

# **Bromberg and Lowenfels on Securities Fraud**

**Second Edition**

**Volume 1**

**2025-2 Edition  
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## **Bromberg and Lowenfels on Securities Fraud What’s New in the 2025-2 Update**

This December, 2025 update includes a fully revised and updated **Chapter 24, Cryptocurrencies, Initial Coin Offerings and Blockchain—SEC Regulation**.

Coverage of other new developments is consolidated in an updated **Chapter 2, Latest Developments in Federal Securities Law**. These include significant court decisions in securities class actions, including a private action for alleged short-swing trading. New developments covered include cross-references to the sections of the treatise where there is background information and further discussion of the particular topic.

Highlights of the revised **Chapter 24, Cryptocurrencies, Initial Coin Offerings and Blockchain—SEC Regulation** include the following:

### **SEC’s Approach to Crypto Currency Shifts from Enforcement to Formulating a Pro-Crypto Regulatory Framework**

- On January 21, 2025, the SEC announced the launch of an SEC Crypto Task Force and Commissioner Hester Pierce was named to lead the Crypto Task Force. § 24:1.
- In a public statement, Commissioner Pierce expressed her views as to what type of registration should be required for public offerings of cryptocurrencies and what safe harbors should be created. § 24:1.
- The SEC voluntarily dismissed a number of high-profile enforcement actions involving unregistered public offerings of cryptocurrencies and unregistered online trading platforms for cryptocurrencies. § 24:1.
- The SEC’s Division of Corporation Finance issued a statement on July 1, 2025 with its views on disclosure requirements for crypto asset exchange-traded products (“crypto asset ETPs”). § 24:1.
- In the first half of 2025, the SEC voluntarily dismissed a number of pending enforcement actions. Several of the enforcement cases that were voluntarily dismissed are significant because of the fact that district court judges had issued full opinions on pretrial motions. These cases are discussed at §§ 24:4 to 24:6.

- Summaries of court decisions in SEC enforcement cases involving cryptocurrencies in the SDNY. §§ 24:5 & 24:6.
- Discussion of the settlement of the most closely watched SEC enforcement action involving cryptocurrency, *SEC v. Ripple Labs, Inc.*, the District Judge refused to accept dissolving the permanent injunction against Ripple Labs, Inc. or to reduce the civil penalties by more than half. § 24:6.

Highlights of **Other Latest Developments** in Chapter 2 include the following:

- In *Overstock Securities Litigation*, the Tenth Circuit held that a short seller failed to establish reliance based on the “fraud-on-the-market” presumption of reliance. The Court also held that the plaintiffs failed to plead an actionable claim for insider trading. § 2:4.
- In *New England Carpenters Guaranteed Annuity & Pension Funds v. DeCarlo*, the Second Circuit addressed the question of “When is a statement of opinion that reflects some subjective judgment nevertheless actionable under the federal securities laws?” The Second Circuit reversed part of its own prior opinion in an en banc decision on reconsideration concerning claims of fraudulent statements in financial statements and auditor opinions that went into SEC registration statements and reports. § 2:4.
- Addressing the issue of whether shareholders have standing to bring an action under Section 16(b) of the Securities Exchange Act of 1934 for alleged short-swing trading by beneficial owners of 10% or more of a public company, the Second Circuit held in *Packer on behalf of 1-800-Flowers.Com, Inc. v. Raging Cap. Mgmt., LLC*, that shareholders do have constitutional standing. § 2:6.

## **Dedication**

To Anne, on whose time this was largely written



## About the Authors

**Alan R. Bromberg** is a University Distinguished Professor of Law at the Southern Methodist University Dedman School of Law. He has been a senior fellow of the Yale law faculty and visiting professor at Stanford Law School. He is the author of a number of authoritative publications and numerous articles on tax, partnership, corporate, securities, and commodities law. A life member of the American Law Institute, he sits on the editorial boards of four corporate, securities, and derivatives reviews. He has drafted substantial parts of the Texas corporate, partnership, and securities statutes. He is active on six American Bar and Texas Bar committees in his areas of interest. He is a director of and co-chairs the Legislative Committee of the Texas Business Law Foundation. He practiced law in Dallas before joining the SMU faculty in 1956. Professor Bromberg earned his A.B. from Harvard University and his J.D. from Yale University.

**Lewis D. Lowenfels** has been a practicing corporate securities attorney for over 50 years. He has represented investment banking firms and many prominent Wall Street individuals in all facets of their businesses, including public offerings, private placements, investigations, disciplinary proceedings, and arbitrations. He has served as Special Counsel to the American Stock Exchange and as a Public Governor of the American Stock Exchange from 1993 to 1996. Mr. Lowenfels is also an Adjunct Professor of Law at Seton Hall University Law School. A scholarly practitioner, he has authored dozens of articles on securities law for law reviews and law journals. Earning his B.A. degree from Harvard University, he graduated *Phi Beta Kappa* and *Magna Cum Laude*. He earned his J.D. degree from Harvard Law School.

## About the Contributor

**Author Lewis D. Lowenfels** has the following remarks concerning his contributor.

**Eliot J. Katz** has worked with me for 20 years as a collaborator on my eight-volume treatise, *Bromberg and Lowenfels on Securities Fraud*. I have found Eliot to be a superb lawyer in every way. His research is meticulous and all embracing. His writing is clear, concise, and well organized. And his thinking is creative and imaginative. I could not have had a better collaborator.

Eliot J. Katz has been a licensed attorney since 1980 and a member of the New York bar since 1990. After working in private practice in a suburb of Cleveland, Ohio from 1981 to 1984, he worked as an attorney-editor in legal publishing for over 30 years. Between 2002 and 2019 in his capacity as a principal attorney-editor at Thomson Reuters, he has edited, updated, and written for numerous securities regulations treatises to provide incisive coverage of new developments in securities law. He earned his juris doctor degree from Cleveland-Marshall College of Law in 1980 where he served on the law review. In 2022 he was recognized by JustCause with the organization's McKnight Award for exemplary pro bono legal work in civil matters.

## First Preface

Most corporate and securities lawyers have kept an eye on SEC Rule 10b-5's impressive growth through the years. If my experience and observation are typical, they gave it too little attention—despite extensive coverage in the law journals (see Appendix H)—wishfully thinking it were still a quasi-criminal matter. Businessmen on the whole remained serenely unaware. The filing of the Texas Gulf Sulphur suit gave us all a jolt.

I was asked to talk about the TGS case to the Corporation, Banking and Business Law Section of the State Bar of Texas. My resurvey of 10b-5 for this purpose prompted me to plan an article, then convinced me that a book was more appropriate.

One of the more serious aspects of 10b-5 is that people often get into trouble with it before the lawyers can help. Since the Rule may apply to any business deal involving securities, the businessman must know something of the subject, and I have tried to write for him as well as his lawyer, especially in Part Two (Chapters 4 - 7) and in the chapter summaries.

10b-5's rapid evolution is still under way, and my analysis is certainly not the last word. The publishers and I expect to keep this volume current by supplements as often as developments warrant.

The decision to write this book came at a time which was as ripe for me as for the topic. Southern Methodist University Law School had given me leave and a grant. Yale Law School had appointed me to its faculty as a Senior Fellow with no responsibilities except to study, think, and write. For all this I say thanks to the two schools and their respective Deans, Charles O. Galvin and Louis H. Pollak. I am also grateful to the Yale Law Library staff for its extensive, cheerful help and to Isabel Malone who had the manuscript typed by unseen hands.

Alan R. Bromberg  
New Haven 1967



## Second Preface

Since the first preface was written and published in 1967, many things have happened. The law of securities fraud has proliferated beyond even my expectations, although some contractions have occurred since 1975. These changes are described in the text. This book has expanded from one volume to many. In the process (which still continues) numbering systems have changed to permit more subdivisions; citations have moved to text from footnote to speed and simplify both manuscript and printed copy. The scope has widened to give more or less equal treatment to antifraud provisions other than 10b-5, for it is clear that they are all significantly interrelated, and that some will operate when 10b-5 will not.

I am pleased, and a little awed, by the hundreds of references to this book in the court and SEC decisions, and the uncounted references in lawyers briefs and arguments. That my organization, analysis and ideas seem to be helpful is great compensation for the thousands of hours I have spent to develop them.

But the hours have not been sufficient to keep the book as current as I would like. The subject is too vast for one person—at least this one person—to stay on top of without help. The time has come, then, for a coauthor. I have sought, and luckily found, the best. Lewis Lowenfels of the New York bar has been one of the most acute observers of the changing scene in securities law, and one of the most prolific writers about it. His articles are often cited in the courts, in this text and in the literature generally; they are known to all who work in the field. Fifteen of them have been collected in a book, *L. Lowenfels, Selected Articles Under the Federal Securities Laws (1978)*. I welcome him as a collaborator for the future.

We have decided to change the title from “Securities Law: Fraud—SEC Rule 10b-5” to “Securities Fraud and Commodities Fraud.” This reflects the expansion of the book to cover all the securities fraud provisions, and some decline in the relative importance of 10b-5 in recent years. It also reflects the extensive consideration now given to commodities fraud in the text.

Special thanks go to Mary Grace Shuey, who has typed virtually all the manuscript since the first volume, and done much more.

*Alan R. Bromberg*

P.S. Special thanks go also to Anita Fogel, who took over the preparation of the Table of Cases in 1980, and helped in many other ways.

BROMBERG AND LOWENFELS ON SECURITIES FRAUD

*ARB & LDL*

September 1980

## **Publisher's Preface re. Conversion to the New Standard Format (December, 2003)**

The full contents of the Bromberg & Lowenfels on Securities Fraud treatise have been converted to a new, standard format as part of a broad initiative by the publisher to give all of our Thomson West information content a standard look and presentation, and to facilitate the publication of that content in multiple media, including online.

As part of the conversion to the publisher's chosen format, the publisher has made many changes to the authors' pre-existing architecture and numbering system. The chapter numbering and section numbering have changed, and the cross-references have been updated. The previous version used an elaborate section numbering system based upon parallelism of parenthetical section numbers, such as (300)s for Securities Act and (400)s for Securities Exchange Act, for comparison of issues in different divisions with decimal section numbers. The new, standard format uses a conventional outline format which starts with Roman numeral divisions as the highest level of organizational hierarchy, and continues with capital letters. The mini-table of contents which serve as road maps for the relation of complicated groups of sections have been preserved and the cross-references therein have been updated. There are correlation tables in each binder in order to convert cites to the prior version of the treatise to the section numbering of the new format.

The following changes in the original 2d edition were carried forward into this new format. Whole sections of the text were replaced by complete revisions in the original locations as frequently as feasible. Partial revisions were made through New Matter sections which consisted of (1) rewritten or expanded passages which superseded part of the text, and (2) additional citations and other material which complemented the text. These New Matter sections have been integrated into the main body of the text in this Westlaw compatible format.

Naturally, there have been developments in this fast-changing field occurring after preparation of text revisions. They should be traced by other research methods, such as KeyCite and consulting the weekly CCH Federal Securities Law Reporter and BNA Securities Regulation and Law Reports.

Readers having comments or questions on the new format of the work should direct them to the Publisher. West Customer

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