

## **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.