Table of Contents

Volume 21

CHAPTER 1. SECURITIES AND EXCHANGE COMMISSION (SEC)

I. ENFORCEMENT POWER: HISTORY AND PURPOSE

§ 1:1 Generally

II. JURISDICTION

§ 1:2 Generally
§ 1:3 —Securities Act of 1933
§ 1:4 —Securities Exchange Act of 1934
§ 1:5 —Securities Enforcement Remedies and Penny Stock Reform Act of 1990
§ 1:6 —Trust Indenture Act of 1939
§ 1:7 —Investment Company Act of 1940
§ 1:8 —Investment Advisers Act of 1940
§ 1:9 —Bankruptcy Act of 1986
§ 1:10 —Sarbanes—Oxley Act of 2002
§ 1:11 —Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
§ 1:12 —Jumpstart Our Business Startups Act of 2012
§ 1:13 Commission
§ 1:14 Operational divisions and offices
§ 1:15 —Office of General Counsel
§ 1:16 —Division of Corporation Finance
§ 1:17 —Division of Trading and Markets
§ 1:18 —Division of Enforcement
§ 1:19 —Division of Investment Management
§ 1:20 —Division of Risk, Strategy, and Financial Information
§ 1:21 —Division of Examinations
§ 1:22 —Office of Chief Accountant
§ 1:23 —Office of Filings and Information Services
§ 1:24 —Office of Administrative Law Judges
§ 1:25 —Adjudication
§ 1:26 —Office of International Affairs
§ 1:27 —Regional offices
§ 1:28 —The Office of Municipal Securities
§ 1:29 —Office of Internet Enforcement

III. ADMINISTRATIVE FUNCTIONS

§ 1:30 Generally

§ 1:31 —Conferences
§ 1:32 —No-action letters
§ 1:33 —Comments
§ 1:34 —Investigations
§ 1:35 —Cooperation with foreign and domestic authorities
§ 1:36 —Referrals for criminal prosecution
§ 1:37 — —Formal
§ 1:38 — —Informal
§ 1:39 —Rule-making proceedings

IV. JUDICIAL REVIEW

§ 1:40 Generally

CHAPTER 2. INFORMAL AND FORMAL SEC INVESTIGATIONS

§ 2:1 Introduction
§ 2:2 Initiation of inquiries
§ 2:3 Informal inquiries
§ 2:4 Formal investigations
§ 2:5 Freedom of Information Act
§ 2:6 Routine uses and dissemination of information
§ 2:7 The Public Company Accounting Oversight Board
§ 2:8 Cooperation and the SEC
§ 2:9 Witness testimony and formal immunity
§ 2:10 Letter of informal immunity
§ 2:11 Immunity and foreign prosecution
§ 2:12 Inadvertent immunity
§ 2:13 Act of production doctrine
§ 2:14 Sharing information
§ 2:15 Coordinated Criminal and Civil Investigations
§ 2:16 Government bad faith
§ 2:17 Interference with right to counsel
§ 2:18 Criminal referral
§ 2:19 Other administrative agencies
§ 2:20 Third-party litigation

CHAPTER 3. THE SEC WHISTLEBLOWER AWARD PROGRAM

I. INTRODUCTION

§ 3:1 Generally

II. ELIGIBILITY PREREQUISITES

§ 3:2 Generally
§ 3:3 Voluntary submission
§ 3:4 Original information

§ 3:5 Factual information
§ 3:6 Independent analysis
§ 3:7 Original information—Exclusions for individuals who derive information through the attorney-client privilege
§ 3:8 —Exclusions: criminally culpable individuals
§ 3:9 —Exclusions: employees of certain government agencies
§ 3:10 —Exclusions: experts retained to assist the whistleblower
§ 3:11 —Qualified exclusions
§ 3:12 Examples of exceptions: compliance and audit professionals
§ 3:13 Examples of exceptions: officers, directors, trustees, and partners

III. SUBMITTING INFORMATION

§ 3:14 Generally
§ 3:15 Form TCR
§ 3:16 Multiple whistleblowers

IV. PROTECTION OF A WHISTLEBLOWER'S INFORMATION

§ 3:17 Confidentiality
§ 3:18 Anonymity for whistleblowers; necessity of representation by attorney to proceed anonymously
§ 3:19 Independent third parties not bound by confidentiality or anonymity provisions

V. POST-SUBMISSION DISQUALIFICATIONS AS WHISTLEBLOWER

§ 3:20 Generally
§ 3:21 Wrongful conduct
§ 3:22 Information acquired from an auditor
§ 3:23 Refusal to fulfill additional obligations
§ 3:23.50 Permanent bars for frivolous or fraudulent award applications

VI. COVERED ACTIONS

§ 3:24 Judicial or administrative actions
§ 3:25 Successful enforcement requirement

VII. MULTIPLE ACTIONS

§ 3:26 Multiple successful SEC actions
§ 3:27 Related actions

VIII. MONETARY SANCTIONS COLLECTED

§ 3:28 Penalties, disgorgement, interest, and deposits

IX. AWARD CLAIMS

§ 3:29 Notice of covered action

§ 3:30 Award claims in SEC actions
§ 3:31 Award claims involving related actions

X. FACTORS THAT MAY INCREASE THE AWARD AMOUNT

§ 3:32 Generally
§ 3:33 Significance
§ 3:34 Assistance provided by the whistleblower; definitions of terms
§ 3:35 Law enforcement interest
§ 3:36 Participation in internal compliance

XI. FACTORS THAT MAY DECREASE THE AWARD AMOUNT

§ 3:37 Generally
§ 3:38 Culpability
§ 3:39 Unreasonable delay
§ 3:40 Interference with internal compliance or reporting systems

XII. AWARD DETERMINATIONS

§ 3:41 Generally
§ 3:42 Whether to issue an award
§ 3:43 To whom to issue an award
§ 3:44 Amount of the award
§ 3:44.50 Summary dispositions of award claims
§ 3:45 Preliminary determinations of award
§ 3:46 Contested preliminary award determinations
§ 3:47 Relevant factors in responding to an adverse preliminary determination
§ 3:48 Relevant factors in contesting the amount of an award
§ 3:49 Payment of the Whistleblower Award
§ 3:50 Investors' money not used to pay awards
§ 3:51 Appeals of final orders

XIII. WHISTLEBLOWER PROTECTIONS

§ 3:52 Generally
§ 3:53 Confidentiality agreements prohibiting disclosure to authorities
§ 3:54 Non-disparagement clauses inhibiting disclosure to authorities
§ 3:55 Liquidated damages and forfeiture clauses in severance agreements
§ 3:56 Agreements waiving an employee's right to a monetary award
§ 3:57 Attempting to discover an SEC whistleblower's identity
§ 3:57.50 Requiring employee representations regarding whistleblowing

§ 3:58 Disclosing an employee's identity as an SEC whistleblower
§ 3:59 Anti-retaliation; private right of action
§ 3:60 Anti-retaliation; SEC action
§ 3:61 SEC enforcement of anti-retaliation protections without findings of substantive securities law violations
§ 3:62 SEC sanctions for retaliating against an internal-only whistleblower
§ 3:62.50 SEC enforcement actions for retaliating against investors
§ 3:63 Protection limited to lawful acts
§ 3:64 Private SEC whistleblower anti-retaliation protections only apply to individuals who report to the SEC

Appendix 3A. JP Morgan Chase Bank, N.A.—SEC Preliminary Determination of Claims Review Staff (12/18/2015) Whistleblower Covered Action—Redacted by SEC

Appendix 3B. Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, Letter to The Honorable Jay Clayton, Chairman, U.S. Securities and Exchange Commission Re: File No. S7-18-18, Amendments to the SEC's Whistleblower Program Rules (Sept. 18, 2018)

Appendix 3C. Preliminary Summary Disposition

CHAPTER 4. PARALLEL PROCEEDINGS

I. IN GENERAL

§ 4:1 Introduction
§ 4:2 Proffers
§ 4:3 The decision to assert the Fifth Amendment privilege against self-incrimination

II. STAYS AND PROTECTIVE ORDERS

§ 4:4 Generally
§ 4:5 Protective orders
§ 4:6 Stays of civil and administrative proceedings
§ 4:7 Government requests to stay civil and administrative proceedings
§ 4:8 Defendant request to stay of civil and administrative proceedings
§ 4:9 Stay of congressional investigation

III. DEPARTMENT OF JUSTICE INVESTIGATIONS

§ 4:10 Introduction
§ 4:11 Grand jury investigations
§ 4:12 Search warrants
§ 4:13 Wiretaps
§ 4:14 Grand jury secrecy

IV. COLLATERAL ESTOPPEL

§ 4:15 Introduction
§ 4:16 Mutuality
§ 4:17 Double jeopardy
§ 4:18 Criminal convictions
§ 4:19 Criminal acquittals
§ 4:20 Mistrials
§ 4:21 Administrative proceedings

V. CIVIL REMEDIES

§ 4:22 Settlements On Consent
§ 4:23 Remedies available
§ 4:24 Civil monetary penalties
§ 4:25 Disgorgement
§ 4:26 —Statute of limitations
§ 4:27 Remedies for failure to pay settlement disgorgement or penalties
§ 4:28 Bar orders & other equitable remedies
§ 4:29 Clawbacks
§ 4:30 Equity receiverships
§ 4:31 FIRREA
§ 4:32 Administrative proceedings
§ 4:33 Administrative proceedings: disqualification from appearing or practicing before the commission

VI. LEGAL REPRESENTATION ISSUES

§ 4:34 Multiple representation
§ 4:35 Indemnification and advancement of legal fees
§ 4:36 Joint defense agreements—Introduction
§ 4:37 —Development
§ 4:38 —Scope
§ 4:39 —Protecting the common interest
§ 4:40 —Waiver and withdrawal
§ 4:41 —Drafting
§ 4:42 —Corporation and employees

CHAPTER 5. INTERNATIONALIZATION OF SECURITIES CRIMES

I. INTRODUCTION

§ 5:1 Generally

II. COOPERATION UNDERSTANDINGS, AGREEMENTS AND DECLARATIONS

A. MEMORANDA OF UNDERSTANDING (MOUS) WITH FOREIGN REGULATORS

§ 5:2 Generally

§ 5:3 IOSCO resolution on principles for record keeping, collection of information, enforcement powers and mutual cooperation to improve the enforcement of securities and futures laws
§ 5:4 IOSCO Multilateral Memorandum of Understanding
§ 5:5 SEC Memoranda of Understanding (MOUs)
§ 5:6 German MOU
§ 5:7 Portuguese MOU
§ 5:8 Indian MOU
§ 5:9 Swiss securities law

B. INITIATIVES RELATING TO CONTROLS AND COOPERATION

§ 5:10 Overview
§ 5:11 Bank of England MOU
§ 5:12 Limited purpose broker-dealer
§ 5:13 Oversight of cross-border investment business
§ 5:14 Information sharing agreements regarding securities trading in multiple markets

C. RECENT COURT DECISIONS

§ 5:15 International assistance in evidence gathering
§ 5:16 British Columbia—Global Securities Corporation
§ 5:17 APL case
§ 5:18 International assistance in asset freezes
§ 5:19 SEC exercise of discretion in prosecutions
§ 5:20 Production of evidence; conflict with foreign laws
§ 5:21 Extraterritorial jurisdiction over activities affecting U.S. securities markets
§ 5:22 Generally
§ 5:23 Extending reach of U.S. securities laws—Pre-*Morrison* tests
§ 5:24 Extraterritorial jurisdiction over activities affecting U.S. securities markets—Transactional test formulated in *Morrison v. National Australia Bank*
§ 5:25 —Lloyd's of London cases
§ 5:26 Substantive rights—*United States v. Balsys*

D. INTERNATIONAL ANTI-CORRUPTION EFFORTS

§ 5:27 Generally
§ 5:28 United Kingdom's Bribery Act
§ 5:29 Comparison of UK Bribery Act with the Federal Corrupt Practices Act (FCPA)
§ 5:30 Rise of anti-corruption laws in Asia

E. INTERNATIONAL ENFORCEMENT IN ACCOUNTING

§ 5:31 Public Company Accounting Oversight Board's Expanding Role in International Enforcement

§ 5:32 China's cooperation with the PCAOB
§ 5:33 European Commission's Cooperation with the PCAOB

F. CONCLUSIONS ON INTERNATIONAL REGULATION AND COOPERATION IN SECURITIES REGULATION

§ 5:34 Generally

III. OVERVIEW ON INTERNATIONAL SHARING OF INFORMATION AND EVIDENCE FOR SECURITIES ENFORCEMENT

§ 5:35 Generally

IV. THE HAGUE CONVENTION ON TAKING OF EVIDENCE ABROAD

§ 5:36 Generally

V. LETTERS ROGATORY AND SEC SUBPOENAS

§ 5:37 Early case law on letters rogatory
§ 5:38 Current use of letters rogatory in criminal cases
§ 5:39 Broadened reach of subpoenas: documents outside the United States
§ 5:40 Compelled waivers of foreign secrecy laws
§ 5:41 Mutual Legal Assistance Treaties (MLATs)
§ 5:42 Selected MLATs
§ 5:43 —Swiss MLAT
§ 5:44 Newer MLATs

VI. STATUTORY CHANGES IN VARIOUS COUNTRIES TO ALLOW FOR GREATER ASSISTANCE IN SECURITIES INVESTIGATIONS

§ 5:45 Generally

VII. U.S. CONSTITUTION AND INTERNATIONAL CRIMINAL MATTERS

§ 5:46 Generally
§ 5:46.50 Disentitlement

VIII. EXTRADITION

§ 5:47 Generally
§ 5:48 Extradition from the United States
§ 5:49 Generally—U.S. extradition procedures: overview
§ 5:50 Extradition to the United States: In general
§ 5:51 Generally—Use of human rights statutes to oppose extradition to the United States

IX. PERSONAL DATA PRIVACY RULES

§ 5:52 European Union personal data privacy rules

X. ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT PROTECTION IN CROSS-BORDER ENFORCEMENT

§ 5:53 United States attorney-client privilege and work product doctrine for in-house counsel
§ 5:54 Foreign attorney-client privilege and work product doctrine for in-house counsel

Appendix 5A. International Organization of Securities Commissions Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (2016)

CHAPTER 6. CRIMINAL STATUTES FREQUENTLY CHARGED IN SECURITIES CASES

I. INTRODUCTION

§ 6:1 Generally

II. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)

§ 6:2 Applicability and operation
§ 6:3 Pattern of racketeering activity
§ 6:4 RICO enterprise
§ 6:5 Participation in the enterprise
§ 6:6 Securities fraud as a predicate offense
§ 6:7 Department of Justice review
§ 6:8 Criminal RICO forfeiture
§ 6:9 *Princeton Newport* and *Elliott* cases
§ 6:10 Eighth Amendment limitations on criminal RICO forfeiture

III. MONEY LAUNDERING

§ 6:11 Introduction
§ 6:12 Elements of money laundering—Financial institutions
§ 6:13 —Knowledge of unlawful activities
§ 6:14 —"Specified unlawful activity"
§ 6:15 —Covered property: "Monetary instruments"
§ 6:16 —Financial transaction
§ 6:17 —Proceeds
§ 6:18 —Conducts or attempts to conduct
§ 6:19 Types of violations

§ 6:20 Concealment
§ 6:21 International transportation
§ 6:22 Section 1957—Monetary transactions
§ 6:23 Bank Secrecy Act

IV. CONSPIRACY

§ 6:24 Introduction
§ 6:25 Elements
§ 6:26 Agreement
§ 6:27 Number of persons
§ 6:28 Overt act
§ 6:29 State of mind

V. MAIL FRAUD AND WIRE FRAUD

§ 6:30 Introduction
§ 6:31 Elements
§ 6:32 Scheme to defraud
§ 6:33 Specific intent to defraud
§ 6:34 Use of the mails or wires in furtherance of the scheme
§ 6:35 Nature of the injury
§ 6:36 Securities-related mail and wire fraud prosecutions—Insider trading
§ 6:37 —Market manipulation
§ 6:38 —Fraudulent financial reporting
§ 6:39 —Conversion of customer moneys
§ 6:40 Good faith defense

VI. FALSE STATEMENTS STATUTE

§ 6:41 Introduction
§ 6:42 False statement—Nature of the statement

VII. PERJURY

§ 6:43 Introduction
§ 6:44 Section 1621: General perjury
§ 6:45 —Whoever
§ 6:46 —Oath
§ 6:47 —Competent tribunal and authorized officer or person
§ 6:48 —Testify
§ 6:49 —Intent
§ 6:50 —Materiality
§ 6:51 —Two-witness rule
§ 6:52 —Literal truth and ambiguities
§ 6:53 —Recantation
§ 6:54 —Immunity
§ 6:55 Section 1622: Subornation of perjury—Scope of Section 1622
§ 6:56 —Elements

§ 6:57 Section 1623: Perjury before a grand jury or court—Purpose
§ 6:58 —Ancillary proceeding
§ 6:59 —Documents presented to grand jury
§ 6:60 —Willfulness, materiality, literal truth, and ambiguity
§ 6:61 —Recantation

VIII. OBSTRUCTION OF JUSTICE

§ 6:62 Introduction
§ 6:63 Section 1503
§ 6:64 —Overlap between Sections 1503 and 1512
§ 6:65 —Purpose
§ 6:66 —Elements
§ 6:67 — —Proceeding
§ 6:68 — —Persons
§ 6:69 — —Knowledge
§ 6:70 — —Corruptly
§ 6:71 — —Influences, obstructs, or impedes
§ 6:72 — —Endeavor
§ 6:73 Section 1505
§ 6:74 Section 1510—Generally
§ 6:75 —Obstructing other investigations
§ 6:76 Sections 1512 and 1513—Introduction
§ 6:77 Section 1512—Testing a witness's or informant's story
§ 6:78 —Jurisdiction and venue
§ 6:79 —Persons covered
§ 6:80 —Prohibited activities
§ 6:81 Section 1517—Introduction
§ 6:82 —Doubtful application to brokers, dealers, investment bankers, and investment companies
§ 6:83 —Arguments for exclusion
§ 6:84 —Arguments for inclusion
§ 6:85 —Mandatory records
§ 6:86 —Elements
§ 6:87 Section 1519—Sarbanes-Oxley addition
§ 6:88 —Elements of the offense
§ 6:89 —Intent
§ 6:90 Section 1520—Failure to retain audit work papers

IX. FOREIGN BRIBERY

§ 6:91 Foreign Corrupt Practices Act (FCPA)
§ 6:92 —Elements
§ 6:93 —"Foreign official"
§ 6:94 —"Obtain or retain business"
§ 6:95 —Defenses

X. FALSE CLAIMS ACT (FCA)

§ 6:96 Overview

§ 6:97 Private claims
§ 6:98 Expanding the FCA
§ 6:99 Application to financial services

CHAPTER 7. CRIMINAL SECURITIES CASE LAW

I. IN GENERAL

§ 7:1 History and purpose

II. REQUIREMENTS FOR CRIMINAL LIABILITY

§ 7:2 Standards of culpability; willfully
§ 7:3 Standards of culpability; willfully and knowingly
§ 7:4 Standards of culpability; willfully—Good faith defense
§ 7:5 Jurisdictional requirements
§ 7:6 Venue

III. SECURITIES ACT OF 1933

§ 7:7 Liability provisions
§ 7:8 Section 5—Elements
§ 7:9 —Intent
§ 7:10 —"Offer or sale"
§ 7:11 Digital assets as securities
§ 7:12 Cryptocurrencies
§ 7:13 Non-fungible tokens
§ 7:14 Crypto asset exchange platforms
§ 7:15 Criminal prosecutions involving digital assets
§ 7:16 Section 5—Defenses
§ 7:17 Section 17; antifraud liability
§ 7:18 —Intent
§ 7:19 —Section 17 defenses
§ 7:20 Section 24: False Filing Liability

IV. SECURITIES EXCHANGE ACT OF 1934

§ 7:21 Sections generally giving rise to criminal prosecution
§ 7:22 Section 10 and Rule 10b-5; Elements
§ 7:23 Section 10(b) and Rule 10b-5; Elements—Misstatement or omission
§ 7:24 —Materiality
§ 7:25 —"In connection with"
§ 7:26 Aiding and abetting
§ 7:27 Standards of culpability—Section 10(b) and Rule 10b-5—Intent to defraud
§ 7:28 Section 10 and Rule 10b-5—Insider trading
§ 7:29 Section 10(b) and Rule 10b-5—Insider trading—The classical theory

§ 7:30 — —Misappropriation theory
§ 7:31 — —Duty of trust and confidence
§ 7:32 Shadow trading—Insider trading
§ 7:33 Section 10(b) and Rule 10b-5—Insider Trading—Tipper/Tippee Liability
§ 7:34 —Insider trading—"On the basis of"
§ 7:35 — —Material nonpublic information
§ 7:36 Section 14(e) and Rule 14e-3—Insider trading in tender offers
§ 7:37 Market manipulation
§ 7:38 Market Manipulation—Proof of a Violation
§ 7:39 Disclosure and filing violations—Annual and periodic reports
§ 7:40 —Proxy materials
§ 7:41 —Insider ownership reports
§ 7:42 Broker-Dealer Violations
§ 7:43 Accounting and books-and-records violations
§ 7:44 —Basic requirements
§ 7:45 —Elements of a violation
§ 7:46 Corporate responsibility for financial reports—Certification of periodic reports

V. OTHER ACTS

§ 7:47 Trust Indenture Act of 1939
§ 7:48 Investment Company Act of 1940
§ 7:49 Investment Advisers Act of 1940
§ 7:50 Public Utility Holding Company Act of 1935

CHAPTER 8. THE TRUST INDENTURE ACT OF 1939

I. INTRODUCTION

§ 8:1 Generally

II. SCOPE OF APPLICABILITY

§ 8:2 Scope of application
§ 8:3 Exempted securities
§ 8:4 SEC's power to exempt

III. THE QUALIFICATION PROCESS

§ 8:5 Generally
§ 8:6 Qualifying securities requiring registration under the Securities Act
§ 8:7 Qualifying securities not requiring registration under the Securities Act
§ 8:8 Effect of qualification

IV. ELIGIBILITY AND DISQUALIFICATION OF TRUSTEES

§ 8:9 Eligibility of trustees
§ 8:10 Disqualification
§ 8:11 SEC's powers investigate trustees

V. REGULATIONS ON THE TRUST INDENTURE

A. SEC'S POWERS

§ 8:12 SEC's rulemaking and enforcement

B. DUTIES OF OBLIGORS AND SECURITIES SELLERS

§ 8:13 Duty to furnish trustee with bondholders' lists
§ 8:14 Duty to file periodic reports
§ 8:15 Duty to provide trustee with evidence of compliance with conditions precedent
§ 8:16 Duty to provide trustee with evidence of recording of indenture
§ 8:17 Duty to provide trustee with fair value certificates
§ 8:18 Prohibition on certain representations

C. TRUSTEE'S DUTIES AND POWERS

§ 8:19 Duty to furnish indenture holders with bondholders' lists
§ 8:20 Duty to report to indenture holders
§ 8:21 Duties prior to default
§ 8:22 Duties in case of default
§ 8:23 Undertaking for costs

D. TRUSTEE CLAIMS AGAINST OBLIGOR

§ 8:24 Generally
§ 8:25 Exceptions
§ 8:26 Apportionment
§ 8:27 Resigned/removed trustees
§ 8:28 Paying agents' duties
§ 8:29 Indenture holders' duties and powers
§ 8:30 Regulations on indenture provisions
§ 8:31 Defenses in general

VI. SEC ENFORCEMENT

§ 8:32 Generally

VII. PRIVATE CAUSE OF ACTION

§ 8:33 Private actions generally
§ 8:34 Liability for misleading statements

§ 8:35 Trustees' powers upon obligor's default
§ 8:36 Assessment of damages for violations

CHAPTER 9. THE INVESTMENT ADVISERS ACT OF 1940

I. INTRODUCTION

§ 9:1 Generally

II. WHO IS AN INVESTMENT ADVISER

§ 9:2 Generally
§ 9:3 Compensation
§ 9:4 The "business" standard
§ 9:5 Advising/providing analyses
§ 9:6 "Others"
§ 9:7 Securities
§ 9:8 Non-resident investment advisers or clients
§ 9:9 Exceptions to the definition
§ 9:10 Banks and bank holding companies
§ 9:11 Professionals
§ 9:12 Brokers and dealers
§ 9:13 Bona fide publications
§ 9:14 Others

III. REGISTRATION UNDER THE ADVISERS ACT

§ 9:15 Requirement for registration
§ 9:16 Exemptions, prohibitions and disqualifications to registration
§ 9:17 Intrastate investment advisers
§ 9:18 Advisers to insurance companies
§ 9:19 Foreign private advisers
§ 9:20 Charitable organizations and church plans
§ 9:21 CFTC-registered investment advisers
§ 9:22 Advisers to small businesses
§ 9:23 Venture capital fund advisers
§ 9:24 Private fund advisers
§ 9:25 Prohibitions on state-regulated advisers
§ 9:26 Disqualification
§ 9:27 Procedure for registration
§ 9:28 Regulation of registration information
§ 9:29 Cancellation, withdrawal, suspension or revocation of registration

IV. REGULATION OF INVESTMENT ADVISERS UNDER THE ADVISERS ACT

§ 9:30 SEC's rulemaking powers

§ 9:31 Fiduciary duty
§ 9:32 Duty to supervise and establish compliance procedures
§ 9:33 Duty to keep records and report; generally
§ 9:34 Reporting for private funds
§ 9:35 Filing depositories and inquiry response systems
§ 9:36 Regulation of information
§ 9:37 Constitutionality of record-keeping and disclosure requirements
§ 9:38 Restrictions on investment advisory contracts
§ 9:39 Prohibitions on fraudulent practices
§ 9:40 Scienter
§ 9:41 Fraudulent conduct
§ 9:42 Breach of fiduciary duty
§ 9:43 Conflict of interest and disclosure
§ 9:44 Agency cross transactions and agent-principal transactions
§ 9:45 Fraudulent, deceptive or manipulative acts, practices or courses of business
§ 9:46 Advertisements
§ 9:47 Custody of client funds/securities
§ 9:48 Referral cash fees
§ 9:49 Political contributions
§ 9:50 Proxy voting
§ 9:51 Private investment vehicles
§ 9:52 Mismanagement and trading errors
§ 9:53 Prohibition on material misstatements and misrepresentations
§ 9:54 Validity of contracts
§ 9:55 Defenses in general

V. ENFORCEMENT MECHANISMS UNDER THE ADVISERS ACT

§ 9:56 Introduction
§ 9:57 Investigative powers
§ 9:58 Proceedings to enforce compliance
§ 9:59 Administrative proceedings; sanctions under Section 203(e) and (f)
§ 9:60 Cease and desist proceedings
§ 9:61 Penalties under administrative proceedings
§ 9:62 Civil proceedings
§ 9:63 Criminal proceedings
§ 9:64 Powers of exemption
§ 9:65 Hearings, standard of proof, limitations periods, orders and review

VI. INTERACTION WITH STATE REGULATION

§ 9:66 Generally; Blue Sky aspects

VII. ACTIONS IN PRIVATE LAW

§ 9:67 Private right of action

§ 9:68 Limitation

CHAPTER 10. SENTENCING

§ 10:1 Introduction
§ 10:2 History of the Federal Sentencing Guidelines
§ 10:3 Calculating the guidelines sentence—§ 2B1.1 gain and loss
§ 10:4 —§ 2B1.1 related offense characteristics
§ 10:5 —§ 2B1.4 insider trading
§ 10:6 —Adjustments
§ 10:7 The reasonableness of the sentence
§ 10:8 Organizational sentencing guidelines
§ 10:9 Restitution

Volume 21A

A. SEC MATERIALS

APPENDIX 1. SEC Formal Order of Investigation
APPENDIX 2. Administrative Subpoena Materials (*In the Matter of Enron Corp.*)
APPENDIX 3. Form 1661 Supplemental Information for Entities Subject to Inspection by the Commission and Directed to Supply Information Other Than Pursuant to Commission Subpoena
APPENDIX 4. Form 1662 Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena
APPENDIX 5. SEC Statement on the Relationship of Cooperation to Agency Enforcement Decisions
APPENDIX 5A. Sample SEC No Enforcement Action Letter (Mar. 20, 2025)
APPENDIX 5B. Sample SEC Voluntary Inquiry Close-Out Letter (Mar. 24, 2025)
APPENDIX 6. Enforcement Manual (Feb. 24, 2026)
APPENDIX 7. Resource Guide to the U.S. Foreign Corrupt Practices Act
APPENDIX 8. Proffer Letter and Agreement for Immunity With U.S. Attorney and SEC Jointly
APPENDIX 9. SEC Letter of Intent Re Settlement and Immunity Agreement
APPENDIX 9A. SEC Offer of Settlement
APPENDIX 10. SEC v. Delta Equity Services Corp. and Grenier Case Materials

APPENDIX 11. Rules on Enforcement Activities (17 C.F.R. § 202.5)
APPENDIX 12. Accounting Fraud Complaint (SEC v. ClearOne Communications, Flood and Strohm)
APPENDIX 13. Insider Trading Complaint (SEC v. CR Intrinsic Investors et al.)
APPENDIX 14A. Tip, Complaint, or Referral
APPENDIX 14B. Online Confirmation of Submission of Form TCR
APPENDIX 15. Whistleblower Award Documents
APPENDIX 15A. Confidentiality Agreement Redacted
APPENDIX 15B. Whistleblower Payment Information Form
APPENDIX 15C. SEC Notice of Covered Action 2012-66 (2/13/2015)
APPENDIX 15D. Letter of House Committee on Financial Services to SEC Chair Mary Jo White (10/27/2014)
APPENDIX 15E. SEC Non-Prosecution Agreement
APPENDIX 15F. SEC Deferred Prosecution Agreement
APPENDIX 15G. Application for Consideration as a Receiver
APPENDIX 15H. Order Determining Whistleblower Award Claims

B. DEPARTMENT OF JUSTICE MATERIALS

APPENDIX 16. United States Attorney's Manual Selected Provisions
APPENDIX 17. Insider Trading Indictment and Jury Verdict Form (United States v. Goffer et al.)
APPENDIX 18. FCPA Criminal Information and Deferred Prosecution Agreement (US v. Panalpina)
APPENDIX 19. Insider Trading Indictment and Jury Instructions (United States v. Gupta)
APPENDIX 20. Accounting Fraud Indictment (US v. Flood and Strohm)
APPENDIX 21. Broad "Letter Immunity"—U.S. Attorney
APPENDIX 22. Broad "Letter Immunity"—U.S. Attorney—Specific proffer of information requirement
APPENDIX 23. Gillion Proffer Agreement
APPENDIX 24. Department of Justice Authorization for Immunity Use
APPENDIX 25. U.S. Attorney's Application for Order Granting Use Immunity
APPENDIX 26. Judicial Order Granting Use Immunity
APPENDIX 27. Dual And Successive Prosecution Policy ("*Petite* Policy") of the Department of Justice issued by

Attorney General Janet Reno on December 14, 1994

APPENDIX 28. Principles of Federal Prosecution of Business Organizations

APPENDIX 29. Memorandum on Outside Monitors

APPENDIX 30. Federal Sentencing Guidelines (Fraud, Insider Trading, and Sentencing Table) [effective Nov. 1, 2012]

APPENDIX 31. Sentencing of Organizations

C. INTERNATIONAL SECURITIES MATERIALS

APPENDIX 32. European Union Market Abuse Directive of 16 April 2014

APPENDIX 33. IOSCO Multilateral Memorandum of Understanding

APPENDIX 34. Financial Services Authority Decisions on Trading on Confidential Information (David Einhorn and Greenlight Capital)

APPENDIX 35. European Court of Justice Opinion on Market Abuse (Geltl v. Daimler)

APPENDIX 36. In re Securities Act, R.S.B.C. 1996, C.418 and In The Matter of Global Securities Corp and British Columbia Securities Commission

APPENDIX 37. In re Evidence (Civil Proceedings in Other Jurisdictions) Act (July 27, 1998)

APPENDIX 38. United Nations Convention Against Transnational Organized Crime

APPENDIX 38A. UN Convention Against Corruption - Ratification Status

APPENDIX 38B. OECD Convention on Combating Bribery - Ratification Status

D. MEMORANDA OF UNDERSTANDING (MOUS)

APPENDIX 39. Office of International Affairs: SEC's Cooperative Arrangements with Foreign Regulators

APPENDIX 39A. Advancing the SEC's Mission through International Organizations

APPENDIX 40. Office of International Affairs: Cooperative Arrangements with Foreign Regulators

APPENDIX 41. Commission of the European Communities Statement

APPENDIX 42. MOU European Securities and Markets Authority

APPENDIX 43. MOU College of Euronext Regulators

APPENDIX 44. MOU Ontario Quebec and BC
APPENDIX 45. MOU Consultation Cooperation and Exchange of Information Alberta BC Ontario and Quebec
APPENDIX 46. Understanding and Administrative Agreement France
APPENDIX 47. MOU Germany
APPENDIX 48. MOU German Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) April 2007
APPENDIX 49. MOU German BaFin December 2007
APPENDIX 50. MOU Germany Asset Management
APPENDIX 51. Protocol Germany
APPENDIX 52. MOU Italy
APPENDIX 53. MOU Consultation Cooperation and Exchange of Information Italy
APPENDIX 54. MOU Japan
APPENDIX 55. Terms of Reference Japan Financial Services Agency
APPENDIX 56. MOU Russia
APPENDIX 57. MOU UKQ
APPENDIX 58. MOU UK FSA
APPENDIX 59. MOU Bank of England
APPENDIX 60. MOU Consultation Cooperation and Exchange of Information UK
APPENDIX 61. Protocol FSA and FRC

E. COUNSEL REPRESENTATION MATERIALS

APPENDIX 62. Joint Defense and Confidentiality Agreement
APPENDIX 63. Joint Defense and Confidentiality Agreement-Alternate Example
APPENDIX 64. Joint Defense Agreement-US v Flood
APPENDIX 65. Joint Defense Agreement US v Reeves
APPENDIX 66. Letter (Redacted) from United States Attorney to Counsel Agreeing to Treat Produced Attorney Client or Work Product Material as "Attorney Proffer"
APPENDIX 67. New York County Lawyers' Association Committee on Professional Ethics: Joint Representation in Criminal Cases of Clients with Conflicting Interests
APPENDIX 68. District of Columbia Bar Opinion 14: Duty Attorney Owes to Former Client Whom Attorney Represented in Connection With Civil

Investigation by Government Regulatory Agency-Attorney's File on Former Client Subpoenaed by Grand Jury

APPENDIX 69. Sentencing Tables

APPENDIX 70. Defense Sentencing Memo—Insider Trading—U.S. v. Salman (4/4/2014)

APPENDIX 71. Sentencing Memo.—Accounting Fraud—Government's Sentencing Memo — U.S. v. Cuti (11/1/2010)

APPENDIX 72. Sentencing Memo.—Accounting Fraud—Defense Sentencing Memo — U.S. v. Cuti (10/18/2010)

APPENDIX 73. Sentencing Memo.—Accounting Fraud—Defense Sentencing Memo — Co-Defendant's Other Level of Culpability (11/1/2010)

APPENDIX 74. Select Pages from Jury Instructions in Audet v. Fraser (D, Conn. Nov 1, 2021)

APPENDIX 75. Jury Verdict Form in Audet v. Fraser (D, Conn. Nov 1, 2021)

Table of Laws and Rules

Table of Additional Authorities

Table of Cases

Index