Securities Law Research

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Statutes and Laws

PRIMARY SOURCES
Securities Act of 1933

  - This act is also known as the “‘33 Act” and the “Securities Act”
  - It relates to the initial offer and sale of securities and was the first attempt to regulate the sale of securities
  - Enacted after the aftermath of the 1929 stock market crash, the Securities Acts of 1933 and 1934 form the basis of securities regulation in the U.S.
  - Until its passage, securities were regulated only by the states.
  - This act applies only to new issues of securities.
Securities Exchange Act of 1934

  - This act is also known as the “Exchange Act” and the “’34 Act”
  - This law covers trading and regulation in secondary markets
  - This act extended federal regulation of securities trading to securities that were already issued and outstanding.
  - This is the act that created the Securities and Exchange Commission ("SEC").
Investor Related Acts

  - Requires that certain advisers register with the SEC

  - This act applies to companies whose business primarily involves investing in other companies
  - For instance it regulates mutual funds or other entities investing and trading securities

- Irving Picard, Madoff trustee is working under this statute and the SIPC
- $500,000 limit is to protect against broker malfeasance, not poor investment decisions and/or changes in the market value of securities
Private Securities Litigation Reform Act (PSLRA)

  - Purpose is to curb abusive litigation in which attorneys file suit only to wrest settlements from issuers
  - Plaintiff must allege that the defendant acted with the required state of mind, i.e., that he knew the challenged statement was false at the time it was made, or was reckless in not recognizing that the statement was false
  - Plaintiff prove loss causation
  - Elements must be present with “particularity”.
Gramm-Leach-Bliley (Financial Services Modernization) Act of 1999

  
  ○ Repealed the Glass-Steagall Act of 1933, which prohibited banks, securities firms, and insurance companies from affiliating with each other
  
  ○ Some commenters posit that this was an important cause of the 2008 financial collapse.

- AKA Sarbanes-Oxley Act of 2002 or SOX
- Sets auditing standards to improve company financial controls and public disclosure of financial status
- Establishes new accountability standards and criminal penalties for corporate officers and directors, and new independence standards for external auditors
- Also created the Public Company Accounting Oversight Board, which creates standards to be applied in audits of companies registered with the SEC
Locating SEC Regulations

- Published in the *Federal Register*
- Codified in Title 17 of the *Code of Federal Regulations*
- Westlaw (FSEC-FR; FSEC-CFR)
- Lexis (FEDREG; FEDCFR)
- SEC Website has comprehensive list of current and proposed regs: [http://sec.gov/rules.shtml](http://sec.gov/rules.shtml)
Commonly Cited SEC Regulations

- **10b-5**
  - Securities fraud, insider trading: 17 C.F.R. §§ 240.10b-5, 240.10b5-1, 240.10b5-2
  - Trust indentures: 17 C.F.R. § 260.10b-5

- **Regulation 8B** (registration statements under the Investment Company Act), 17 C.F.R. §§ 270.8b-1 through 270.8b-33

- **Regulation D** (rules governing the limited offer & sale of securities without registration under the '33 Act), 17 C.F.R. §§ 230.501-230.508


- **Regulation S-P** (privacy of consumer financial information), 17 C.F.R. Part 248


- **Regulation S-X** (accounting rules), 17 C.F.R. Part 210

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 230, 239, 240, 249, 260, and 269


Smaller Reporting Company Regulatory Relief and Simplification

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to its disclosure and reporting requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934 to expand the number of companies that qualify for its scaled disclosure requirements for smaller reporting companies. Companies that have less than $75 million in public annual reports on Form 10-K, and may elect to comply with the new scaled disclosure requirements of Regulation S-K, Companies newly qualifying as “smaller reporting companies” will have the option to use the new scaled Regulation S-K requirements when filing their next periodic report due after the effective date of the amendments. These companies will determine eligibility for smaller reporting company status based on the last business day of their most recent second fiscal quarter, or based on the alternative initial registration statement calculation discussed in Section IV. If a registration statement was filed on an “SB” form before the effective date of the rule amendments, and the company seeks to amend it after the effective date of the rule amendments, the company must file the amendment on the appropriate form available to the issuer without an “SB” designation. As discussed in Section IV, to provide a transition period, these issuers will be able to file Form 20, and 15d–21,10 and Exchange Act Forms 0–1, 8–A, 8–K, 10, 10–Q, 10–K, 11–K, 20–F, and SE.11 We are amending Schedules 14A and 14C.12 In Regulation S-X,13 we are amending Rules 210.3–01, 210.3–05, 210.3–10, 210.3–12, 210.3–14, 210.4–01, and 210.10–01 and adding a new Article 8 containing the financial statement requirements available to smaller reporting companies.14 Finally, we are amending Trust Indenture Act Rules 0–11, 4d–9, and 10a–515 and Section 269.0–1 of the Trust Indenture Act Forms.16

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   A. Moving Scaled Disclosure Item Requirements From Regulation S–B Into Regulation S–K
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SEC Rules - Releases

- Include all of the SEC’s regulatory publications, including rules, decisions, orders, notices, guidance and interpretation and other information

- Published in the SEC Docket, available as part of our subscription to the CCH Business and Finance Library; SEC Reporters and Primary Material and on Lexis and Westlaw
Types of Releases

- **Interpretive Releases**
  SEC’s views on the meaning of securities laws

- **Litigation Releases**
  Descriptions of its civil suits and some criminal suits

- **Concept Releases**
  Before issuing a PR, SEC asks for comments on “concept” from the public
SEC Interpretation:
Electronic Storage of Broker-Dealer Records

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241
[Release No. 34-47806]

Electronic Storage of Broker-Dealer Records

AGENCY: The Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Securities and Exchange Commission is publishing its views on the operation of its rule permitting broker-dealers to store required records in electronic form. Under the rule, electronic records must be preserved exclusively in a non-rewritable and non-erasable format. This interpretation clarifies that broker-dealers may employ a storage system that prevents alteration or erasure of the records for their required retention period.

EFFECTIVE DATE: May 12, 2003.

FOR FURTHER INFORMATION: Michael A. Macchiaroli, Associate Director, 202/942-0131; Thomas K. McGowan, Assistant Director, 202/942-4886; or Randall W. Roy, Special Counsel, 202/942-0798, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-1001.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is publishing guidance with respect to paragraph (f)(2)(ii)(A) of Rule 17a-4, which requires broker-dealers maintaining records electronically to use a digital storage medium or system that [p]reserve[s]
More Regulatory Actions No-Action Letters

- No-Action Letters are responses to private requests of individual entities on the legality of certain actions – pronouncements are NOT legally binding.

Locating Regulatory Actions Online

- Commissioners Opinions: [http://www.sec.gov/litigation/opinions.shtml](http://www.sec.gov/litigation/opinions.shtml) 1996-
- Other Commission Orders, Notices, and Information: [http://www.sec.gov/rules/other.shtml](http://www.sec.gov/rules/other.shtml) selected, 1995 -
Enforcement Actions Administrative Proceedings

- Initial Decisions – By Administrative Law Judges at the SEC – adjudications contain findings of fact, law and recommended sanctions
  - Parties may appeal to the Commission
  - Commission also reviews disciplinary recommendations from individual SEC offices
  - Appeals of Commission decisions go to the U.S. Courts of Appeals

_All decisions are available via CCH_
Locating Administrative Decisions

- **CCH Federal Securities Law Reporter** *KF1068.4 .C58 1964*
  - Also available online through the **CCH Business and Finance Internet Research NetWork**; select the "Securities" tab.

- **LIVEDGAR** contains ALJ Decisions & Orders: 1995 - ; Commissioners Opinions: 1996 –
  - Select the Securities Regulatory Library, then Litigation.

- **SEC Web Site**

- **Westlaw** *(FSEC-RELS)*
  - also contains other types of relevant SEC documents

  - Contains SEC Decisions 1933— and other relevant documents
CCH Databases

- **Business and Finance Network** → Practice Areas → Financial Services Tree (Banking, Securities Compliance, Exchanges & SRO’s)
- **Exchanges and SRO’s Tree:** NASD, Guides to the NYSE, AMEX, BSE, CHX, NSX; Options and futures exchanges
- Commodities Futures materials
- Treatises and Current Awareness Tools
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Securities and Exchange Commission v. Bally Total Fitness Holding Corporation, Civ. 08...Litigation Release No. 20470 Bally Total Fitness Settles Financial...Securities and Exchange Commission v. Bally Total Fitness Holding Corporation, Civ. 08...

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Bally Total Fitness Settles Financial Fraud Charges With SEC

The Securities and Exchange Commission today filed financial fraud charges against Bally Total Fitness Holding Corporation, a nationwide commercial operator of fitness centers that has recently emerged from bankruptcy proceedings under new, private ownership. The Commission alleges that Bally’s financial statements were affected by more than two dozen accounting improprieties, which caused Bally to overstate its originally reported year-end 2001 stockholders’ equity by nearly $1.8 billion, or more than 340%. The Commission’s complaint further alleges that Bally understated its originally reported 2002 net loss by $92.4 million, or 93.41%, and understated its originally reported 2003 net loss by $90.8 million, or 84.54%. As a result, the Commission alleges that Bally violated the antifraud, reporting, books and records, and internal control provisions of the federal securities laws.
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SEC Filings

  - Foreign and U.S. companies are required to file registration statements, periodic reports and other information on EDGAR (Electronic Data Gathering Analysis and Retrieval System)
- **Lexis** – SEC Filing & EDGAR
- **Westlaw** – [LIVEDGAR](https://www.livedgar.com) (subscription service used by many firms)
Free sites for Company Information

State Securities Statutes

- States have their own laws and regulations regarding securities
- SEC has primary jurisdiction of the NASD and exchanges, but every state has its own “Blue Sky Laws”
- The term “Blue Sky” comes from *Hall vs. Geiger-Jones Co.*, 242 U.S. 539 (1917), “name that is given to the law indicates the evil at which it is aimed, that is, to use the language of a cited case, "speculative schemes which have no more basis than so many feet of 'blue sky'".
Blue Sky Laws

- Require registration of securities offerings, and registration of brokers and brokerage firms

- Each state has a regulatory agency which administers the law, typically known as the State Securities Commissioner

- [http://www.seclaw.com/stcomm.htm](http://www.seclaw.com/stcomm.htm) for a list of Commissioners

- Blue Sky Reporter, available through CCH is source; contains decisions from 1936 – and rules and regulations from all 50 states.
Sources of State Securities Laws

- **LexisNexis**
  - Legal > Area of Law - By Topic > Securities > Statutes, Regulations & Administrative Materials > By State Code > State Codes, Constitutions, Court Rules & ALS, Combined

- **Westlaw**
  - Blue Sky Statutes (**BLUESKY-ST**) (combined states)
  - Blue Sky Statutes by Individual State (XXSEC-ST where XX is the state's postal abbreviation)

- **CCH Blue Sky Law Reporter KF1431.B5 C6**
  - Provides state securities statutes and regulations, as well as selected state securities law cases.
  - Also available online through the **CCH Business & Finance Network**; select the "Securities" tab.
Secondary Print Sources

- **Selected Treatises**
  - Securities Regulation 4th (Loss and Seligman)
    KF1431 .L6 1989
  - Cox & Hazen on Corporations KF1414 .C69 2003
  - Law of Securities Regulation (Hazen) 5th
    KF1439 .H39 2007 Reserve
  - Blue Sky Law (Long) KF1439.A1 S42

- **Searching in Leagle, under subject heading:**
  - Securities -- United States
  - Securities Fraud -- United States
  - Securities -- Cases
  - Corporations -- Finance -- Law and legislation -- United States
BNA: Securities and Corporate Responsibility Library

Securities and Corporate Responsibility Library:

- **Broker/Dealer Compliance Report**
- **Broker/Dealer Compliance Report**
- **Corporate Governance Report**
- **Securities Law Daily**
- **Securities Regulation & Law Report**
- **World Securities Law Report**
- **White-Collar Crime Reporter** (available through Westlaw)
Tips and Tricks

• A common pitfall is locating sections of Acts and regulations
  ○ You may start as references to sections of the act as it was enacted
  ○ Also, be sure to locate codified version using tables and notes in USCA or USCS

• Regulations correlator in the Finding Devices of the Federal Securities Law Reporter. Chicago, Ill.: Commerce Clearinghouse. KF1068.4 .C63 also available from CCH Intelliconnect

Locating Cases

- Federal Securities Law Reporter
  - In Print at \textit{KF1068.4 .C63}
  - LexisNexis (CCH;CCHSEC)
  - Online with Subscription from CCH: \textit{Intelliconnect}

- BNA’s Securities Regulation and Law Report
  - In Print at \textit{KF1431 .B8}
  - LexisNexis (BNA/SECREG)
  - Online with Subscription: \textit{http://news.bna.com/srln/}

- Westlaw (\textit{FSEC-CS})

- LexisNexis: \textit{Legal > Area of Law - By Topic > Securities > Cases & Court Rules > Federal > Federal Securities Cases}

- Also try various Blogs
PLI Secondary Materials

- **SEC Speaks**
  - CLE/Seminar that highlights the SEC’s initiatives and priorities for the year ahead
  - Available from [Practicing Law Institute](http://pli.org)

- **PLI Corporate Law and Practice Handbook Series**
  - Westlaw ([PLICORP-ALL](http://pli.org))
  - Also look up individual titles in LEAGLE
InSights: The Corporate and Securities Law Advisor

- A monthly publication covering law developments in corporate and securities law.
- Available on Westlaw
- Find in Pence Law Library: KF1397.I57
Stanford Securities Class Action Clearinghouse

The Securities Class Action Clearinghouse provides detailed information relating to the prosecution, defense, and settlement of federal class action securities fraud litigation. The Clearinghouse maintains an Index of Filings of 3075 issues that have been named in federal class action securities fraud lawsuits since passage of the Private Securities Litigation Reform Act of 1995. The Clearinghouse also contains copies of more than 32,400 complaints, briefs, filings, and other litigation-related materials filed in these cases.

CLEARINGHOUSE RESEARCH

2009 Filings: A Year in Review
Securities Class Action Filings Decline Sharply in 2009. With Steepest Drop in Claims Related to the Credit Crisis. Plaintiff Law Firms Turn to Old Cases
View the Press Release or download the Full Report

2009 Mid-Year Assessment of Filings
View the Press Release or download the Full Report

Post-Reform ACT Securities Settlements Through Dec 2008
Value of 2008 Securities Class Action Settlements Cut by Half from 2007 Levels, According to Report by Cornerstone Research. Future Damages Expected to Rise Due to Financial Crisis
View the Press Release or download the Full Report

Cornerstone Research Securities Web Site

Recent Filings:
- Cedar Corp 02/03/2010
- Management, Inc.
- CRM Holdings 02/03/2010
- Ltd.
- Nokia Corporation 02/03/2010
- ProShares Trust 02/04/2010
- Allied Capital 02/11/2010
- Corporation

Live Recent Decisions
- News
- Stone Energy
- Corporation 01/27/2010
- Apple
- Computer, Inc.
- Vivendi 01/30/2010
- Universal S.A.
- Thornburg 02/01/2010
- Mortgage, Inc.
Print Legislative Histories


Electronic Legislative Histories

**Westlaw**

- Federal Securities Legislative History (*FSEC-LH* [122]). Contains selected legislative history documents for federal securities acts beginning with 1933. Full text.

**LexisNexis**

  - Provides abstracts of and citations to committee reports, hearings, and other legislative documents produced in association with federal securities laws enacted since 1970. Links to the full text of selected documents.
- [Legal > Area of Law - By Topic > Securities > Statutes, Regulations & Administrative Materials > Federal > House and Senate Committee Reports of the 1933 and 1934 Acts](https://www.lexisnexis.com/legislaw/committee_reports.html)
  - Full text.
International Securities Regulation

- **International Organization of Securities Commissions** contains a list of foreign regulators similar to the SEC.

- **CCH Business and Finance Internet Research NetWork** (International Business tab) provides securities laws of 37 selected foreign countries, including Australia, Canada, China, France, Germany, and Italy. Foreign corporations laws (not necessarily securities laws, but sometimes including them) are available for many countries through.