State Attorneys General Powers and Responsibilities

Edited by
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National Association of Attorneys General

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This book is dedicated to Attorneys General and the men and women who work for them in the 56 jurisdictions. They continue to make an important contribution to state govenment and the American legal system. Without them, there would be no book to write.

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This book is a collaborative effort, in which different authors with expertise in each substantive area contribute their time and talent. The principal authors are noted on each chapter, but we would like to thank them again here for their hard work and dedication. Many thanks to the following authors:

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Chapter 14

Securities Regulation

By A. Valerie Mirko, General Counsel, North American Securities Administrators Association; Zachary T. Knepper, Deputy General Counsel, North American Securities Administrators Association.

States were the first authorities in the United States to regulate securities and the securities industry. Kansas adopted the first securities law in 1911, and other states soon followed. It was not until the 1930s that Congress began enacting federal securities laws.[1] Today, all fifty states, the District of Columbia and some U.S. territories have securities statutes. These laws, sometimes called "blue sky laws," have existed alongside the federal securities laws for decades. This chapter is focused on state securities law and discusses federal law only insofar as necessary to inform the discussion of state law, whether to highlight co-existing regulatory regimes or other interrelated issues.

The role of state attorneys general in securities regulation and enforcement varies across jurisdictions. In some states, such as Delaware, New York and South Carolina, the attorney general has responsibility for administering the state's securities laws. In other states, such as Maryland and New Jersey, this responsibility is assigned to a securities administrator who is part of the attorney general's office; the relationship between the attorney general's litigation staff and the securities administrator's staff may differ from state to state in terms of how cases are brought. And still other states, like California, Connecticut, Florida, Illinois and

1 There are four primary federal securities statutes, the Securities Act of 1933 (15 U.S.C. § 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. § 78a *et seq.*), the Investment Company Act of 1940 (15 U.S.C. § 80a-1 *et seq.*), and the Investment Advisers Act of 1940 (15 U.S.C. § 80b-1 *et seq.*). Congress has amended these statutes numerous times since they were first adopted. The U.S. Securities and Exchange Commission ("SEC") is the federal agency tasked with administering these statutes, including by issuing supporting regulations and bringing civil enforcement actions for violations. The U.S. Department of Justice brings criminal actions for violations of federal securities laws.

Texas, have dedicated securities regulatory authorities that are independent of the state's attorney general (and which may exist in secretary of state's office or another bureau, or as an entirely independent regulatory agency). In these states, the attorney general's office may be responsible for bringing criminal securities cases, consulting with securities regulators or advising elected officials.

Most states have enacted either the Uniform Securities Act of 1956 as amended (the "1956 Act") or the more recent Uniform Securities Act of 2002 as amended (the "2002 Act"), two model state securities statutes.[2] Some states have enacted securities statutes that are essentially unique. For a citation to each jurisdiction's statute and an overview of whether the jurisdiction follows one of the uniform securities acts, see chart 14-1 at the end of this chapter.[3]

Broadly speaking, state securities statutes seek to accomplish three goals: (i) identify whether a given financial product is a "security" and, if so, whether it must be registered (or notice filed) with a state regulator; (ii) establish conduct standards for the securities industry, especially investment advisers, investment adviser representatives, broker-dealers and broker-dealer agents; and (iii) provide administrative, civil and criminal enforcement mechanisms to combat fraud or other violations of law. This chapter follows this basic three-part structure.

Securities Law Basics

What is a "Security"?

A threshold question in securities law is whether a given financial instrument is a "security." The answer to this question will affect the extent to which securities laws are relevant to transactions involving the instrument. This is a complex issue and there is no all-inclusive, universal test to assess whether something is or is not a security.[4] While there are statutory definitions, there is also a growing body of case law, usually in the context of instruments where their status as a security is not as clear.

2 In addition, a few states follow the Revised Uniform Securities Act of 1985 (the "1985 Act"), an interim model act between the 1956 Act and the 2002 Act.

3 Chart 14-1 provides a simplified overview of each jurisdiction's statute and should be used as starting point for research. Readers should not assume that each jurisdiction necessarily follows all aspects of a uniform securities act or that jurisdictions with securities statutes described as unique share no similarities with any of the uniform securities acts.

4 *People v. Figueroa*, 715 P.2d 680, 695 (Cal. 1986).

Federal and state securities laws define "security" by way of example. The 1956 Act, for instance, contains this definition:

> "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay [a fixed sum of] money either in a lump sum or periodically for life or for some other specified period.[5]

It is often readily apparent whether a financial instrument is a security: common stocks of publicly-traded companies are securities; corporate bonds are securities; shares of mutual funds or exchange-traded funds ("ETFs") are securities. But in many cases, the answer will not be so self-evident. Federal and state courts have adopted various tests to adjudicate these closer cases.

The single most important case in assessing whether a financial instrument is a security is the Supreme Court's 1946 *Howey* decision.[6] *Howey* evaluated whether an economic interest in a Florida citrus grove was a security under the federal Securities Act of 1933 (the "Securities Act"). The Court focused its analysis on whether the economic interest constituted an "investment contract," which is one of the many enumerated terms in the federal definition of a "security" (and in the 1956 Act's definition printed above). The Court held that the economic interest would be an investment contract—and therefore a security—if it constituted an "investment of money in a common enterprise with profits to come solely from the efforts of others."[7] Federal and state courts routinely follow this

5 1956 Act § 401(m). *See also* 2002 Act § 102(28).

6 *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

7 *See Int'l Brotherhood of Teamsters v. Daniel*, 439 U.S. 551, 558 (1979) (discussing and restating the *Howey* test).

investment contract test when analyzing whether other financial instruments are securities.[8]

Another important case is the Supreme Court's 1990 *Reves* decision.[9] The question before the Court in *Reves* was whether certain promissory notes were securities under federal law. The Court considered the question and the long-standing *Howey* test, and concluded that the *Howey* test was ill-suited. The Court accordingly adopted a new test, the "family resemblance test," by which federal courts should evaluate whether financial instruments denominated as "notes" are securities.[10] Many state courts have followed *Reves* and will apply its family resemblance test alongside (or in lieu of) *Howey*, but other state courts have rejected it.[11] The family resemblance test is complex, and case law within each jurisdiction should be consulted to determine whether and how to apply *Reves*.

Howey and *Reves* are but two of many federal cases that assessed whether a given financial instrument is a security. Other financial instruments that federal courts have considered include: bank-issued certificates of deposit,[12] brokered certificates of deposit,[13] limited partnership interests,[14] mortgage participations,[15] verbal option agreements,[16] equipment leases marketed as tax shelters,[17] commodity pools[18] and securities-based swap agreements[19] (to name just a few). Federal cases like these are relevant to assessing whether a given financial instrument is a security under state law.

8 Courts have relaxed the element of the *Howey* test that states that profits must come *solely* from the efforts of others. Courts will find that a financial instrument is a security if an investor commits labor as well as capital. *E.g.*, *Mathews v. Cassidy Turley Maryland, Inc.*, 80 A.3d 269, 281 (Md. 2013). Courts disagree, though, on how to assess the common enterprise element of the *Howey* test. *See*, *e.g.*, *SEC v. ETS Payphones*, 300 F.3d 1281 (11th Cir. 2002) (discussing different standards courts use to assess a common enterprise, including "horizontal commonality" versus "vertical commonality"), *rev'd on other grounds,* 540 U.S. 389 (2004).

9 *Reves v. Ernst & Young*, 494 U.S. 56 (1990).

10 *Id.* at 64-65.

11 *Compare State v. Friend*, 40 P.3d 436, 438 (Nev. 2002) (adopting *Reves's* family resemblance test), *Reinhart v. Boeck*, 918 N.E.2d 382, 393-97 (Ind. Ct. App. 2009) (same), *and State v. Pedersen*, 95 P.3d 385, 389-90 (Wash. Ct. App. 2004) (same), *with Waters v. Milsap*, 465 S.W.3d 851, 858 (Ark. 2015) (declining to follow *Reves*).

12 *Marine Bank v. Weaver*, 455 U.S. 551 (1982).

13 *Gary Plastic Pkg. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F.2d 230 (2d Cir. 1985).

14 *Steinhardt Group v. Citicorp*, 126 F.3d 144 (3d Cir. 1997).

15 *Pollack v. Laidlaw Holdings*, 27 F.3d 808 (2d Cir. 1994), *cert. den.* 513 U.S. 963 (1994).

16 *Wharf (Holdings) Ltd. v. United Int'l Holdings*, 532 U.S. 588 (2001).

17 *United States v. Morse*, 785 F.2d 771 (9th Cir. 1986), *cert. den.* 479 U.S. 861 (1986).

18 *SEC v. Unique Fin. Concepts, Inc.*, 196 F.3d 1195 (11th Cir. 1999).

19 *Parkcentral Global Hub Ltd. v. Porsche Auto Holdings*, 763 F.3d 198 (2d Cir. 2014).

Although *Howey* and *Reves* are good places to start when considering the scope of what constitutes a security under state law, they are by no means the only relevant tests used by state courts. In California, Hawaii and a few other states, the "risk capital test" is commonly used alongside *Howey* to evaluate whether a financial instrument is a security. Under the risk capital test, an investment contract (and hence, a security) is created whenever: (1) an offeree furnishes initial value to an offeror, (2) a portion of the initial value is subject to the risks of the enterprise, (3) the furnishing of the initial value is induced by the offeror's promises or representations, giving rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree, and (4) the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.[20]

One question that frequently arises under state law is whether a financial interest in an oil or gas venture is a security. Oil and gas frauds are among the most common cases brought by state securities regulators.[21] These ventures may be structured as limited partnerships, with investors contributing capital while a management company operates the project, or as the sale of fractional interests in oil or gas extraction leases. Either structure can constitute a security. The 1956 Act's definition of security, reproduced above, expressly includes certificates of interest in "any profit-sharing agreement" or "participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease." Courts in Ohio, Texas and Oklahoma have applied such terms to find that oil and gas interests were securities.[22] A contrary conclusion was reached by a Pennsylvania court, though, where the transaction was structured as a simple lease of mineral rights from a landowner to an extraction company.[23]

Another issue is whether insurance products that have investment characteristics should be regulated as securities. The most common examples are annuities. Annuities are contracts sold by insurance companies wherein the purchaser provides money to the insurance company (either in a lump sum or over

20 *See People v. Black*, 8 Cal. App. 5th 889 at 900 (Cal. Ct. App. 2017), *discussing Silver Hills Country Club v. Sobieski*, 361 P.2d 906 (Cal. 1961); *Trivectra v. Ushijima*, 144 P.3d 1, 9 (Haw. 2006), *discussing State v. Hawaii Mkt. Ctr.*, 485 P.2d 105, 109 (Haw. 1971).

21 *See* NASAA 2016 Enforcement Report at 4 ("In 2015, the most common fraudulent investment products involved real estate or oil and gas ventures.").

22 *Sorenson v. Tenuta*, 577 N.E.2d 408 (Ct. App. Ohio 1989); *Ben-Schoter v. State*, 634 S.W.2d 28 (Tex. Ct. App. 1982), *remanded on other grounds* 638 S.W.2d 902 (Tex. Crim. App. 1982); *State v. Petco Oil & Gas, Inc.*, 558 P.2d 1163 (Okla. 1977).

23 *Lenau v. Co-Exprise, Inc.*, 102 A.3d 423 (Pa. Super. Ct. 2014), *appeal den.* 102 A.2d 423 (Pa. 2015).

time) in exchange for a promised future income stream from the insurance company. Annuities can have a wide variety of features, but a core consideration is whether the future payment stream is fixed (*i.e.*, determinable when the annuity contract is executed) or variable (*i.e.*, future payments will depend upon one or more changeable factors). Federal and state securities laws commonly hold that fixed annuities are not securities.[24] Variable annuities are treated as securities under federal law and in some states.[25] (Securities regulators have found variable annuities to be an area particularly rife with abusive sales practices.)

Securities Registration (or Notice Filing) Requirements

If a given financial instrument is a security, the next question is whether it must be registered with a state securities regulator (or, potentially, notice filed in the case of federal "covered securities").[26] It is a basic principle of securities law that a security must be registered or lawfully exempt from registration before it may be offered or sold to investors.[27] It is a crime to offer or sell an unregistered security without a valid registration exemption.[28] There are few defenses. It is the responsibility of securities issuers to comply with securities registration requirements.[29] State courts generally agree that ignorance of the registration and

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24 *See* 1956 Act § 401(m); 2002 Act § 102(28); *see also Am. Equity Inv. Life Ins. v. SEC*, 613 F.3d 166 (D.C. Cir. 2010) (reviewing regulation of fixed annuities and a related product, fixed-indexed annuities).

25 *Compare Lander v. Hartford Life & Annuity Ins. Co.*, 251 F.3d 101 (2d Cir. 2001) (noting that variable annuities are securities under federal law and citing *SEC v. Variable Annuity Life Ins. Co.*, 359 U.S. 65 (1959)), *Maese v. Garrett*, 329 P.3d 713, 722 (N.M. Ct. App. 2014) (Sutin, J., concurring) (stating a variable annuity "is a security or is in the nature of a security"), *cert. den.* 328 P.3d 1187 (N.M. 2014), *and Fong v. Oh*, 172 P.3d 499, 507 (Haw. 2007) (noting variable annuities are included within the state's definition of "security"), *with Van Dyke v. White*, 60 N.E.3d 1009, 1016-17 (Ill. App. Ct. 2016) (holding variable annuities and indexed annuities are not securities under Illinois law), *appeal granted* No. 121452, 2017 Ill. Lexis 246 (Ill. Mar. 29, 2017).

26 In 1996, the federal government enacted the National Securities Markets Improvement Act, Pub. L. 104-290, 110 Stat. 3416 (the "NSMIA"), which preempted much state regulation of securities offerings. Among other changes, the NSMIA preempted state registration of "covered securities," such as nationally traded securities and mutual funds. States can still require registration of non-covered securities and generally can require notice filings of covered securities. For more information about covered securities exempt from state securities registration, see Section 18 of the Securities Act (15 U.S.C. § 77r).

27 This requirement comes from Section 5 of the Securities Act (15 U.S.C. § 77e) and related provisions of state securities laws such as Sections 301 of the 1956 Act and the 2002 Act.

28 *E.g.*, *United States v. Bartko*, 728 F.3d 327 (4th Cir. 2013) (affirming conviction for, among other crimes, unlawful sale of unregistered securities), *cert. den.* 134 S. Ct. 1043 (2014); *Drakulich v. State*, 877 N.E.2d 525 (Ind. Ct. App. 2008) (same), *appeal den.* 891 N.E.2d 40 (Ind. 2008).

29 *Wright v. Natl. Warranty Co.*, 953 F.2d 256, 259 (6th Cir. 1992); *State v. Mahmood*, 724 P.2d

exemption rules is no defense,[30] and at least one court has held that not even reliance on the advice of counsel is a defense.[31] Moreover, regardless of whether the registration standards have been met, the antifraud provisions of the securities laws will always apply to any transaction involving a security.[32]

Federal and state securities registration and exemption requirements are extremely complex and are beyond the scope of this chapter. For questions about securities registration issues, experienced securities counsel should be consulted. (State attorneys general and their staffs should consult with their states' securities regulators, who can serve as a resource in this regard.) There are numerous federal and state registration exemptions on which issuers may rely. Two exemptions that state securities regulators and law enforcement staff may encounter, the exemption for intrastate offerings and the exemption for certain private placements, are discussed below.

An issuer does not have to register (or notice file) a security with the SEC or with a state securities regulator in a state that adheres to the 1956 Act or 2002 Act provided the issuer offers the security solely within a single state and limits the scope of the offering. Specifically, Section 3(a)(11) of the federal Securities Act exempts from SEC registration any security "offered and sold to persons resident within a single State" if the issuer is also incorporated in and doing business in the state.[33] The scope of this exemption is not defined precisely,[34] so issuers generally rely on an SEC rule that sets forth explicit criteria under which an offering will be deemed to qualify for this federal intrastate offering exemption.[35] The 1956 Act and the 2002 Act similarly exempt from state registration an intrastate offering that is made to only certain categories of qualifying investors (*e.g.*,

1021, 1028 (Wash. Ct. App. 1986), *app. den.* 107 Wash. 2d 1002 (1986).

30 *E.g.*, *State v. Casper*, 297 S.W.3d 676, 691-94 (Tenn. 2009). There is less uniformity among federal courts on this issue. *Compare United States v. Bailey*, 588 Fed. Appx. 730, 731 (9th Cir. 2014) (noting specific intent is not required for the federal crime of selling unregistered securities), *with United States v. Lindo*, 18 F.3d 353, 357 (6th Cir. 1994) (suggesting specific intent is an element of the crime under federal law).

31 *State v. Andresen*, 773 A.2d 328, 341 (Conn. 2001).

32 *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 692 (1985); *Coastal Fin. Corp. v. Coastal Fin. Corp. of N. Providence*, 387 A.2d 1373, 1376 (R.I. 1978).

33 15 U.S.C. § 77c(a)(11).

34 *See*, *e.g.*, *Busch v. Carpenter*, 827 F.2d 653, 656-59 (10th Cir. 1987) (discussing the basic requirements for the exemption).

35 *See* 17 C.F.R. § 230.147; *SEC v. Milanowski*, No. 08-cv-511, 2010 WL 11401596, at *10 (D. Nev. Mar. 15, 2010).

institutional investors or registered investment advisers) and/or a limited number of non-qualifying investors (*e.g.*, retail investors).[36]

The SEC's Regulation D provides perhaps the most commonly relied upon registration exemption.[37] In particular, Rule 506 of Regulation D exempts a security from SEC registration if the security is sold to only "accredited investors" as defined in the regulation[38] or to no more than thirty-five non-accredited but sophisticated investors,[39] provided certain other requirements are met. Notably, investors need not be from a single state (and there is no offering limit). If an issuer complies with these requirements, the issuer must file only a notice of the offering with the SEC (called a Form D).[40] States cannot require registration of the offering, though states can, and usually do, require the issuer file a notice of the offering via Form D.[41] States accept these filings either on paper or electronically via the Electronic Filing Depository.

Regulating the Securities Industry

In addition to regulating the offer and sale of securities, federal and state securities laws regulate the conduct of organizations and individuals in the securities business. The main categories of regulated securities participants are investment advisers (and their individual investment adviser representatives) and broker-dealers (and their individual broker-dealer agents).

Investment Advisers and Investment Adviser Representatives

The Investment Advisers Act of 1940 (the "Advisers Act") and related SEC rules set forth federal standards for investment advisers and their associated persons.[42] Section 202 of the Advisers Act defines an "investment adviser" as

36 *See* 1956 Act § 402(b)(9); 2002 Act § 202(14).

37 17 C.F.R. §§ 230.500 *et seq.*

38 *See* 17 C.F.R. §§ 230.501(a), 230.506(c).

39 *See* 17 C.F.R. § 230.506(b)(2).

40 *See* 17 C.F.R. § 230.503(a).

41 *See* Sections 18(a) and (b) of the Securities Act (15 U.S.C. §§ 77r(a), 77r(b)(4)(E)) (declaring no state may require registration of a "covered security" and including Rule 506 offerings within the scope of covered securities). *See also* 1956 Act §§ 301, 307; 2002 Act §§ 301, 302. (Note: New York and Florida do not accept Form D filings.).

42 15 U.S.C. § 80b-1 *et seq.* Investment advisers to mutual funds and other investment companies registered with the SEC incur additional obligations pursuant to the Investment Company

including "any person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities . . . ."[43] This capacious definition is then limited by several notable exceptions, including for brokers and dealers,[44] banks[45] and qualifying publishers.[46] Sections 203 and 203A of the Advisers Act divide the regulation of investment advisers between the SEC and the states.[47] In general, investment advisers that meet certain thresholds for assets under management or that advise mutual funds must register with the SEC and become subject to the SEC's rules. Investment advisers that cannot register with the SEC may be required to register with the state or states in which they conduct business. Acting as an unregistered investment adviser is unlawful, though federal authorities generally charge this offense civilly, not criminally.[48]

The most important ruling in the regulation of investment advisers is the Supreme Court's 1963 decision, *SEC v. Capital Gains Research Bureau*.[49] *Capital Gains* is widely cited by federal and state courts for its standards regarding the scope of an investment adviser's duties. Invoking principles of common law, the court held investment advisers (whether registered or not) to "an affirmative duty of utmost good faith, and full and fair disclosure of all material facts, as well as an affirmative obligation to employ every reasonable care to avoid misleading clients."[50] For example, under *Capital Gains* it is fraud for an investment adviser not to disclose all actual or potential conflicts of interest to a client.[51]

Although states are largely preempted from regulating SEC-registered advisers, states may regulate and require registration by investment advisers that cannot register with the SEC but that meet certain criteria.[52] The dividing line between SEC and state regulation of investment advisers is complicated and

Act of 1940, 15 U.S.C. § 80a-1 *et seq.*

43 15 U.S.C. § 80b-2(a)(11).

44 15 U.S.C. § 80b-2(a)(11)(C).

45 15 U.S.C. § 80b-2(a)(11)(A).

46 15 U.S.C. § 80b-2(a)(11)(D).

47 *See* 15 U.S.C. §§ 80b-3, 80b-3a.

48 *E.g.*, *Lowe v. SEC*, 472 U.S. 181 (1985) (finding publisher was exempt from investment adviser registration).

49 375 U.S. 180 (1963).

50 *Id*. at 194.

51 *E.g.*, *Vernazza v. SEC*, 327 F.3d 851, 859 (9th Cir. 2003) ("It is indisputable that potential conflicts of interest are 'material' facts with respect to [an adviser's] clients and the [SEC]."), *amended by* 335 F.3d 1096 (9th Cir. 2003).

52 *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, SEC Release No. IA-1633, 1997 WL 253350, at *22-23 (May 15, 1997).

nonlinear, but in general, advisers with over $100 million in regulatory assets under management or that advise registered investment companies (such as mutual funds) must register with the SEC.[53] Regardless of an adviser's registration status, states can always bring anti-fraud claims against any investment adviser operating within their borders.[54]

The state uniform securities acts include provisions for state investment adviser regulation.[55] States can also establish their own rules and regulatory guidance for state-registered investment advisers, such as rules relating to unethical business practices[56] or compliance programs.[57] The North American Securities Administrators Association, Inc. ("NASAA") assists in this regard by promulgating model rules and acts.[58]

States can also regulate supervised persons of SEC-registered or state-registered advisers who provide investment advice to clients.[59] These individuals are called investment adviser representatives, and states may establish registration, testing and conduct standards for them.[60] States bring civil and criminal charges against investment advisers and investment adviser representatives for violations of state securities laws.[61]

Broker-Dealers and Broker-Dealer Agents

The Securities Exchange Act of 1934 (the "Exchange Act") and SEC rules thereunder regulate the conduct of brokers and dealers. Subject to some exceptions, Section 3 of the Exchange Act states that "any person engaged in the

53 There are currently approximately 12,000 SEC-registered advisers and approximately 17,500 state-registered advisers. For an overview of federal and state regulation of investment advisers (as well as the regulation of broker-dealers), see the January 2011 *Study on Investment Advisers and Broker-Dealers* by the staff of the U.S. Securities and Exchange Commission.

54 *See* Section 203A (b)(2) of the Advisers Act (15 U.S.C. § 80b-3a (b)(2)).

55 *E.g.*, 1956 Act §§ 201(c), 102; 2002 Act §§ 403, 502.

56 *E.g.*, Dishonest or Unethical Practices, Md. Code Regs. § 02.02.05.03 (2017).

57 *E.g.*, Supervision Requirements, Conn. Agencies Regs. § 36b-31-6f (2017).

58 *E.g.*, NASAA Unethical Business Practices of Investment Advisers, Investment Adviser Representatives, and Federal Covered Advisers, Model Rule 102(a)(4)-1, as amended Sept. 11, 2005, available at: NASAA's model acts and rules are available on NASAA's website, www.nasaag.org.

59 *See* 1956 Act §§ 201(c), 202(a); 2002 Act §§ 404, 406.

60 *See* 1956 Act § 401(g); 2002 Act § 102(16). *See also Ex Parte Paxton*, 493 S.W.3d 292 (Tex. Ct. App. 2016) (discussing state regulation of investment adviser representatives); 17 C.F.R. § 275.203A-3(a) (defining the term investment adviser representative for purposes of the federal Advisers Act).

61 *E.g.*, *Harris v. State*, 27 So. 3d 582 (Ala. 2008); *Smith v. State*, 993 N.E.2d 1182 (Ind. Ct. App. 2013) *appeal den.* 8 N.E.3d 202 (Ind. 2014); *Fin. Solutions and Assoc. v. Carnahan*, 316 S.W.3d 518 (Mo. Ct. App. 2010).

business of effecting transactions in securities for the account of others" is a broker,[62] while any person engaged in the business of buying or selling securities for its own account is a dealer.[63] These two terms are often combined as "broker-dealer" (or "broker/dealer") for simplification or to describe firms engaged in both types of activity. Broker-dealer activities are related to, but distinct from, investment advisory activities. Some firms straddle this boundary and accordingly register as both broker-dealers and investment advisers. Such dually-registered firms must then comply with all applicable broker-dealer and investment adviser regulations.

Virtually all brokers or dealers must register with the SEC.[64] Federal authorities bring civil and criminal charges for acting as an unregistered broker-dealer.[65] Broker-dealers also must become members of a qualifying self-regulatory organization ("SRO"), the most well-known of which is the Financial Industry Regulatory Authority ("FINRA").[66] FINRA has established a comprehensive rulebook that governs all aspects of a broker-dealer's operations. FINRA also has its own enforcement department that investigates and brings claims against its members for violations of the securities laws or FINRA's rules. Persons employed by, or working at the direction of, broker-dealers also may need to personally register with FINRA or another SRO.[67] These persons, commonly called registered representatives or broker-dealer agents, must comply with FINRA's extensive regulatory regime of conduct standards, testing, training, and reporting.

A state can require an SEC-registered broker or dealer doing business in the state to register with it[68] and generally can regulate the conduct of SEC-registered broker-dealers so long the state's regulations do not conflict with regulatory standards set by the SEC or an SRO pursuant to federal law.[69] States

62 15 U.S.C. § 78c(a)(4).

63 15 U.S.C. § 78c(a)(5).

64 Unlike the regulation of investment advisers, which is bifurcated between federal and state responsibilities, all broker-dealers must register with the SEC unless they qualify for certain exemptions, such as the intrastate broker exemption. For an overview of broker-dealer registration requirements, see the SEC staff's Guide to Broker-Dealer Registration (Oct. 6, 2009), available at: www.sec.gov/reportspubs/investor-publications/divisionsmarketregbdguidehtm.html.

65 *E.g.*, *United States v. Brown*, 164 F.3d 518 (10th Cir. 1998); *SEC v. Collyard*, 154 F. Supp. 3d 781 (D. Minn. 2015), *aff'd,* 861 F.3d 760 (8th Cir. 2017).

66 *See* Section 15(b)(8) of the Exchange Act (15 U.S.C. § 78o(b)(8)).

67 *See* Section 15(b)(7) of the Exchange Act (15 U.S.C. § 78o(b)(7)) and SEC Rule 15b7-1 thereunder (17 C.F.R. § 240.15b7-1).

68 1956 Act §§ 201(a), 202(a); 2002 Act §§ 401, 406.

69 *See* Section 18(c)(1) of the Securities Act (15 U.S.C. § 77r(c)(1)) and Section 28(a) of the

are expressly preempted, however, from establishing "capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting requirements" for SEC-registered broker-dealers that exceed those imposed by the SEC or an SRO pursuant to federal law.[70] Separately, states have broad discretion to register and regulate broker-dealers that are exempt from SEC registration (such as because a broker's business is conducted entirely within a single state). To maintain consistency with federal standards, many states incorporate FINRA rules by reference, thereby making FINRA rule violations actionable by the state.[71]

States bring civil and criminal cases against broker-dealers for failing to register and have broad authority to police fraud.[72] States also can register and regulate the conduct of broker-dealer agents.[73] States bring administrative proceedings and civil or criminal court actions against broker-dealer agents for fraud and other violations of state law.[74]

Enforcement

A third purpose of state securities laws is to establish mechanisms for enforcement. The uniform securities acts provide for administrative enforcement as well as the filing of civil or criminal court actions by state regulators and law enforcement authorities. The uniform securities acts also encourage cooperation among law enforcement authorities in different states, and states can bring multijurisdictional enforcement actions.[75] The issue of enforcement and the general standards for a civil or criminal securities fraud charge are discussed below.

Exchange Act (15 U.S.C. § 78bb(a)).

70 *See* Section 15(i)(1) of the Exchange Act (15 U.S.C. § 78o(i)(1)). Section 203(a) of the 1956 Act and Section 411 of the 2002 Act acknowledge this limited federal preemption of state broker-dealer regulation.

71 *E.g.*, *In re Brokers Int'l Fin. Svcs.*, Neb. Dept. of Banking and Fin., 2015 WL 757854 (Jan. 7, 2015).

72 *E.g.*, *State v. Casper*, 297 S.W.3d 676 (Tenn. 2009); *In re Synergy Oil et al.*, Mo. Sec'y of State Sec. Div., Case No. AP-15-13, 2016 WL 554406 (Jan. 20, 2016).

73 *See* 1956 Act §§ 201(a), 202(a); 2002 Act §§ 402, 406.

74 *E.g.*, *State v. Kelson*, 348 P.3d 373 (Utah Ct. App. 2015); *North Atlantic Sec. v. Office of Sec.*, 92 A.3d 335 (Me. 2014); *In re Omniview Cap. Advisors and Abraxas Discala*, Conn. Dept. of Banking, Docket No. CRF-16-8169-S, 2017 WL 782998 (Feb. 17, 2017).

75 *See* 1956 Act § 420; 2002 Act § 602(f). Previous multijurisdictional securities enforcement efforts have included actions targeting investment banking conflicts of interest and sales of auction

Territorial Jurisdiction

For a state to bring a securities charge, the government must establish as a threshold issue that state courts have territorial jurisdiction over the matter. Territorial jurisdiction refers to a state's ability to define and enforce the law within its own borders.[76]

The uniform securities acts confer territorial jurisdiction over the conduct of broker-dealers, investment advisers and their associated persons operating within the state.[77] Law enforcement authorities thus can always pursue claims against these types of defendants, whether properly registered with the state or not. In addition, the uniform securities acts confer territorial jurisdiction for state law enforcement authorities to bring securities fraud claims related to private securities transactions involving entirely unregulated buyers and sellers. Territorial jurisdiction over such securities transactions can arise in either of two ways: (i) if an offer, purchase or sale of a security has occurred in-state, or (ii) if a securities transaction that occurred outside the state nonetheless "originated from" the state.[78]

For the vast majority of securities transactions, territorial jurisdiction will exist (if at all) under the first of these two prongs. For example, if a fraudster telephones a victim in another state and solicits the victim to participate in a fraudulent securities offering, territorial jurisdiction will exist in both the state from which the defendant placed the call and the state in which the victim received the call because there was conduct incident to the fraud in both states.[79] Either state's law enforcement authorities thus could seek to bring an action against the fraudster. In some cases, though, a state prosecutor may seek to assert territorial jurisdiction over a fraudulent securities transaction that has occurred outside the prosecutor's state. This is potentially problematic, as it runs up against the general presumption in the law that territorial jurisdiction will not exist where conduct has occurred entirely outside a jurisdiction's borders.[80] Nonetheless, the uniform securities acts can confer territorial jurisdiction over an extraterritorial offer, purchase or sale of a security if "any portion of the selling process" has occurred in-state or if there was a sufficient "territorial nexus" between the state

rate securities.

76 *State v. Rimmer*, 877 N.W.2d 652, 661 (Iowa 2016).

77 *See* 1956 Act §§ 406 to 410; 2002 Act §§ 602 to 604.

78 *See* 1956 Act § 414; 2002 Act § 610.

79 *See State v. West*, 149 A.2d 217, 333-34 (N.J. 1959); *Shappley v. State*, 520 S.W.2d 766, 768 (Tex. Crim. App. 1974).

80 *Allen v. Oakbrook Sec. Corp.*, 763 So. 2d 1099, 1101 (Fla. Dist. Ct. App. 1999).

and the extraterritorial transaction.[81] (This form of territorial jurisdiction is rarely applied, and so there are comparatively few precedents on point.)

If a securities violation transpires in more than one state, each state in which there was conduct incidental to the violation can assert territorial jurisdiction, and can do so over the entire scope of the misconduct, not just the conduct occurring within its borders.[82] This may even result in potentially duplicative prosecutions. But it will not violate constitutional principles of double jeopardy, as each state is a separate sovereign.[83]

Civil Versus Criminal Securities Fraud Charges and Statutes of Limitations

Securities statutes are at root criminal laws. Courts broadly accept that securities laws are intended to be remedial and should be liberally construed to protect investors.[84] State authorities have significant discretion in how to charge suspected securities frauds. Under the uniform securities acts, a state could bring a securities fraud claim administratively (before a hearing officer, administrative law judge or other state official) or through a civil or criminal proceeding in state court. The applicable statute of limitations for a securities fraud charge may depend on a variety of circumstances, including the nature of the allegations and whether the charges are civil or criminal. State securities statutes may include an express statute of limitations, which should supersede other potentially applicable limitations periods.[85] (The law of each jurisdiction should be consulted to determine the appropriate limitations periods for civil or criminal charges.)

81 *State v. Lundberg*, Civil Case No. 114,897, 2017 WL 839448, at *6 (Kan. Ct. App. Mar. 3, 2017). For additional background on extraterritorial application of state securities laws, see NASAA's *amicus curiae* brief in *Lundberg*.

82 *See Rimmer*, 877 N.W.2d at 665; *McNamara v. State*, 377 P.3d 106, 110 (Nev. 2016).

83 *Heath v. Alabama*, 474 U.S. 82, 88 (1985). For similar reasons, duplicative state and federal prosecutions do not violate the Constitution. *Id.* at 89.

84 *Cox v. Garvin*, 607 S.E.2d 549, 552 (Ga. 2005); *State v. Brewer*, 932 S.W.2d 1, 10 (Tenn. Crim. App. 1996); *State ex rel. Mays v. Ridenhour*, 811 P.2d 1220, 1230 (Kan. 1991); *State v. Nagel*, 279 N.W.2d 911, 915 (S.D. 1979).

85 *See*, *e.g.*, *State v. Taylor*, 349 P.3d 696, 701 (Utah 2015); *State v. Burchard*, 848 P.2d 440, 442-43 (Idaho Ct. App. 1993). Under federal law, the SEC's ability to obtain civil penalties and disgorgement is subject to a five-year statute of limitations. *See Kokesh v. SEC*, ___ U.S. ___, 137 S. Ct. 1130 (2017); *Gabelli v. SEC*, 568 U.S. 442 (2013).

Securities Fraud Elements

The 1956 Act and the 2002 Act set forth the following standard for securities fraud:

> It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly
>
> 1. to employ any device, scheme, or artifice to defraud,
>
> 2. to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or
>
> 3. to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.[86]

This fraud standard becomes actionable administratively, civilly or criminally through other sections of the uniform securities acts.[87] The following jury instruction summarizes the elements of a criminal securities fraud charge.

The elements of the crime of securities fraud are:

1. that a defendant,
2. in the connection with the offer, sale, or purchase of any security,
3. directly or indirectly,
4. willfully,
5. either:
    a. employed a device, scheme or artifice to defraud another person;

86 1956 Act § 101; 2002 Act § 501.

87 *See* 1956 Act § 101, cmt. 1; 2002 Act § 501, cmt. 4.

b. made an untrue statement of material fact, or omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or

c. engaged in an act, practice or course of business which operated or would have operated as a fraud or deceit upon another person.[88]

Courts generally agree that reliance and scienter are not required elements of securities fraud charges brought by the government.[89] The government must show that a defendant acted "willfully," but this is a lesser burden than showing scienter.[90] A defendant has acted willfully if he "acted intentionally in the sense that he was aware of what he was doing."[91] State courts accordingly generally agree that the required *mens rea* for a securities fraud conviction is general intent, not specific intent.[92]

Fraudulent Conduct

Securities fraud charges are usually predicated on a material misrepresentation or omission—*i.e.*, on a defendant's lies. Misstatements or misrepresentations are affirmative falsehoods, while actionable omissions are failures to disclose despite a duty of disclosure. The core question in establishing liability is whether the misrepresentation or omission was material.

Federal and state courts have framed a variety of tests for assessing materiality. The basic question in each of these tests is: Was the misrepresentation or omission something that a reasonable investor would have considered significant in deciding how to act given the total mix of information available at the time?[93] To assess the materiality of contingent or future events, courts apply a probability

88 *See People v. Destro*, 215 P.3d 1147, 1151 (Colo. Ct. App. 2008).

89 *See Harrington v. Sec'y of State*, 129 So.3d 153, 170 (Miss. 2013) (reviewing federal and state precedents that conclude scienter and reliance are not required elements of a securities fraud charge brought by the government).

90 *State v. Larsen*, 865 P.2d 1355, 1358-60 (Utah 1993).

91 *State v. Irons*, 574 N.W.2d 144, 149 (Neb. 1998). *See also State v. Wallace*, 124 P.3d 259, 263 (Utah Ct. App. 2005) (stating that to act willfully "means to act deliberately and purposefully, as distinguished from merely accidentally or inadvertently") (internal citation omitted), *aff'd* 150 P.3d 540 (Utah 2006).

92 *See State v. Atteberry*, 44 Kan. App. 2d 478, 494-95 (Kan. Ct. App. 2010) (holding the *mens rea* in Kansas is general intent); 2002 USA § 508, cmt. 6 (stating most courts interpret "willfully" under state securities laws as a general intent *mens rea*). *But see People v. Simon*, 886 P.2d 1271, 1291 (Cal. 1995) (concluding criminal securities fraud under California law requires proof of specific intent).

93 *Bridwell v. State*, 804 S.W.2d 900, 903-04 (Tex. Crim. App. 1991) citing *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

and magnitude calculus to assess the relative importance and likelihood of the event's occurrence.[94]

A second basis for a securities fraud charge is manipulative or deceptive conduct. This could include, for example, an investment adviser or broker-dealer conducting excessive securities trading in a client's account to generate increased transactional fees (an unlawful practice commonly called "churning").[95] Frauds can also involve a mix of material misrepresentations or omissions and manipulative or deceptive conduct. For example, in "pump and dump" schemes, one or more defendants will attempt to pump up the market price of the security, perhaps through public misrepresentations combined with manipulative securities trading, and then sell the securities before the price of the security eventually collapses.[96]

Offering Fraud

Offering frauds are among the most common types of securities fraud cases brought by state authorities. These are quintessential frauds: an issuer or promoter sells a security but misrepresents the potential prospects for success and/or withholds information about important problems or risks inherent in the security. Offering frauds can involve registered or unregistered securities issued by corporations, partnerships, or other persons. One noteworthy recent trend has been frauds perpetrated against foreign citizens seeking EB-5 visas to live in the United States.[97] Offering frauds also may involve additional securities violations and other types of illegal activity. The cases discussed below are broadly illustrative of offering frauds.

In *State v. Reeder*, Washington state prosecutors brought securities fraud and theft by deception charges against a defendant who swindled an acquaintance out of over $1.7 million.[98] A jury found the defendant guilty on fourteen counts of each offense, corresponding to one count for each of the fourteen times the victim had transferred money to the defendant. The defendant induced the victim to execute the money transfers ostensibly to participate in several real estate investments. But the investments were a sham, rooted in fabricated documents and the

94 *United States v. Mylett*, 97 F.3d 663, 667 (2d Cir. 1996), *cert. den.* 521 U.S. 1119 (1997).

95 *E.g.*, *In re James Mark McLaughlin*, Ala. Sec. Comm'n Order No. OB-2013-0017, 2013 WL 6699974 (Nov. 8, 2013).

96 *E.g.*, *People v. Thompson*, Case No. 3853/2014, 2016 WL 2905651 (N.Y. Sup. Ct. May 16, 2016); *People v. D.H. Blair & Co.*, No. 3282/2000, 2002 N.Y. Misc. Lexis (N.Y. Sup. Ct. Jan. 29, 2002).

97 *See* Informed Investor Advisory: EB-5 Fraud, North American Securities Administrators Association (Aug. 2016).

98 *State v. Reeder*, 330 P.3d 786 (Wash. Ct. App. 2014), *aff'd* 365 P.3d 1243 (Wash. 2015).

defendant's lies. Prosecutors charged the defendant with securities fraud because he had provided the victim with promissory notes, which the court found to be securities. Each of the victim's fourteen payments to the defendant was treated as a distinct count of securities fraud as well as theft by deception. In another case, prosecutors in Wisconsin secured a criminal conviction against a defendant for securities fraud and unlawful sale of unregistered securities after the defendant induced approximately 1,000 individuals to invest in the defendant's failed business venture.[99] Interestingly, the court permitted the defendant to assert an advice of counsel defense, though the defense was unavailing.

Many offering frauds arise from mining or drilling ventures that seek to take advantage of mineral rights leases. In these arrangements, a landowner (or other person holding mineral rights to a property) will lease mineral extraction rights to a mining or drilling company. Additional investors may be brought in to provide capital for the venture. *People v. Pahl* is an example of such a case.[100] There, the defendant, who was the president of a drilling company, leased oil and gas extraction rights to land in Colorado. The defendant then persuaded several investors to put up money and participate in the venture pursuant to a joint operating agreement. But the defendant's company never drilled a well and the defendant absconded with the investors' money. It was later discovered that the defendant had withheld from investors several important facts about the proposed venture, and the defendant was convicted of securities fraud and related charges. On appeal, the defendant argued *inter alia* that his securities fraud conviction was unfounded because the underlying joint operating agreement, known as a "form 610 agreement," was not a security. The appellate court was unmoved. It concluded that, based on *Howey* and other precedents, the form 610 agreement was a security and his securities fraud conviction was therefore sound.

Murchison v. State is another (somewhat unique) offering fraud case.[101] The defendants were two men who were the primary beneficial owners of a successful Texas broker-dealer. In 1994, the firm ran into trouble. Investments the firm owned began to lose value, causing the firm to accrue operating losses. The defendants sought to stabilize the broker-dealer's finances by selling debentures, a form of debt security, from the broker-dealer to selected customers. The customers were told the broker-dealer's finances were sound, it would repurchase the debentures at par after a few months, and the debentures were backed by U.S.

99 *State v. Ross*, 659 N.W.2d 122 (Wis. Ct. App. 2003), *review den.* 665 N.W.2d 375 (Wis. 2003).

100 *People v. Pahl*, 169 P.3d 169 (Colo. Ct. App. 2006), *cert. den.* 2007 Colo. Lexis 910 (Colo. 2007).

101 *Murchison v. State*, 93 S.W.3d 239 (Tex. App. 2002).

Treasury bonds and would pay hefty interest. These statements, which were eventually shown to be materially false or misleading, induced several customers to buy the firm's debentures. The broker-dealer eventually collapsed, and the defendants were convicted of securities fraud for their misleading debenture sales.[102]

Ponzi Schemes

Ponzi schemes are frauds in which a defendant uses one investor's money to pay ostensible investment returns to another investor. These schemes resemble pyramid marketing schemes (and courts may use either term).[103] Probably the best-known Ponzi schemer is Bernard Madoff, though he is by no means the only person—or even the most recent person—to perpetrate such a scam.

For example, a 2017 decision from the Montana Supreme Court outlined in detail how a defendant had hoodwinked investors into investing in a series of bogus companies, misused their money for his own purposes and to keep his scheme going, and tried (unsuccessfully) to keep his fraud hidden from state regulators.[104] In another Ponzi scheme, prosecuted in Georgia, the defendant bilked investors with so-called private placement investment notes he asserted would pay investors high, fixed rates of return based on the profits from a local computer supply company.[105] But the defendant stole the investors' money and was convicted of securities fraud. The defendant argued on appeal that the notes he sold were loans, not securities, and therefore the securities fraud convictions could not stand. A Georgia appellate court disagreed.

Insider Trading

Federal civil and criminal authorities are active in policing insider trading. Insider trading is the act of buying or selling a security (or tipping someone else who trades) based on material nonpublic information about the security in breach of a duty owed to the source of the information.[106] Insider trading is unlawful because it is considered deceptive.[107] Insider trading is not defined in any federal

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102 As noted in the opinion, the defendants' underlying conduct may also have constituted illegal "parking" of securities, though this does not appear to have been charged. *See id.* at 246. For a discussion of "parking," see *Yoshikawa v. SEC*, 192 F.3d 1209 (9th Cir. 1999).

103 For a discussion of Ponzi schemes and pyramid schemes in comparison to legitimate multilevel marketing programs, see *United States v. Gold Unlimited, Inc.*, 177 F.3d 472 (6th Cir. 1999).

104 *State v. Reynolds*, 389 P.3d 243 (Mont. 2017).

105 *Rasch v. State*, 579 S.E.2d 817 (Ga. Ct. App. 2003).

106 *See, e.g.*, *United States v. Rajaratnam*, 719 F.3d 139 (2d Cir. 2013), *cert. den.* 134 S. Ct. 2820 (2014); *SEC v. Rocklage*, 470 F.3d 1 (1st Cir. 2006).

107 *See, e.g.*, *United States v. O'Hagan*, 521 U.S. 642, 650-653 (1997).

statute. Rather, the scope of the crime has developed through decades of federal case law.

Insider trading is illegal under the antifraud provisions of state securities statutes for the same reasons it is illegal under federal securities law. In addition, some states, such as California, have enacted statutes expressly criminalizing insider trading.[108] A few states have brought cases related to insider trading, but there are comparatively fewer state precedents than federal precedents on this issue.[109]

Securities Fraud as a RICO Predicate Offense

As discussed above, securities fraud prosecutions often include other charges, such as unlawful sale of unregistered securities or theft. In addition, securities frauds may involve a pattern of corrupt activity. In these situations, securities fraud can serve as a predicate act for a racketeering ("RICO") charge under federal or state law.[110] State prosecutors therefore should be mindful of the potential ability to bring RICO charges in a securities fraud case.

Secondary Liability

This chapter has focused on primary liability for a securities violation—*i.e.*, on direct violations by a defendant of an obligation or prohibition imposed by law. It is worth noting, though, that securities charges can be brought against secondary violators as well—*i.e.*, against defendants who assist in or exert control over a primary violator. Federal securities laws expressly provide for broad secondary liability.[111] Although secondary liability under the uniform securities acts is more circumscribed, other general legal theories under state law may apply. For

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108 *See* Cal. Corp. Code § 25402.

109 *E.g.*, *People v. Napolitano*, 282 A.D.2d 49 (N.Y. App. Div. 2001), *appeal den.* 96 N.Y.2d 866 (2001); *In re Scott Shay*, Ill. Sec'y of State File No. 9900215, 2000 WL 373887 (Jan. 12, 2000).

110 *See*, *e.g.*, *United States v. Yanotti*, 541 F.3d 112 (2d Cir. 2008), *cert. den.* 556 U.S. 1130 (2009); *State v. Kelson*, 284 P.3d 695 (Utah Ct. App. 2012), *aff'd after remand* 348 P.3d 373 (Utah Ct. App. 2015).

111 *E.g.*, 15 U.S.C. §§ 78t(a), (e) (establishing control person and aiding and abetting liability for violations of the Exchange Act or SEC rules issued thereunder).

instance, state prosecutors may be able to extend secondary liability for securities violations under state law through conspiracy,[112] aiding and abetting,[113] or control person theories.[114]

112 *E.g.*, *Drakulich v. State*, 877 N.E.2d 525 (Ind. Ct. App. 2008), *transfer den.* 891 N.E.2d 40 (Ind. 2008).

113 *E.g.*, *State v. Qwest Communication Int'l*, 904 A.2d 775 (N.J. Super. Ct. App. Div. 2006).

114 *E.g.*, *Eastern Vanguard Forex, Ltd. v. Arizona Corp. Comm'n*, 79 P.3d 86 (Ariz. Ct. App. 2003).

TABLE 14-1—State Securities Statutes

Jurisdiction	Statutory Citations	Follows a Uniform Securities Act?[1]
Alabama	Ala. Code §§ 8-6-1 *et seq.*	1956 Act
Alaska	Alaska Stat. §§ 45.55.01 *et seq.*	1956 Act
Arizona	Ariz. Rev. Stat. §§ 44-1801 *et seq.*	No
Arkansas	Ark. Code. §§ 23-42-101 *et seq.*	1956 Act
California	Cal. Corp. Code §§ 25000 *et seq.*	No
Colorado	Colo. Rev. Stat. §§ 11-51-101 *et seq.*	1985 Act
Connecticut	Conn. Gen. Stat. §§ 36b-2 *et seq.*	1956 Act
Delaware	Del. Code tit. 6, §§ 73-103 *et seq.*	1956 Act
District of Columbia	D.C. Code §§ 31-5601.01 *et seq.*	1985 Act
Florida	Fla. Stat. §§ 517.011 *et seq.*	No
Georgia	Ga. Code §§ 10-5-1 *et seq.*	2002 Act
Guam	Guam Code tit. 46, §§ 46101 *et seq.*	1956 Act
Hawaii	Haw. Rev. Stat. §§ 485A-101 *et seq.*	2002 Act
Idaho	Idaho Code §§ 30-14-101 *et seq.*	2002 Act
Illinois	815 Ill. Comp. Stat. 5/1 *et seq.*	No
Indiana	Ind. Code §§ 23-19-1-1 *et seq.*	2002 Act
Iowa	Iowa Code §§ 502.101 *et seq.*	2002 Act
Kansas	Kan. Stat. §§ 17-12a101 *et seq.*	2002 Act
Kentucky	Ky. Rev. Stat. §§ 292.310 *et seq.*	1956 Act
Louisiana	La. Rev. Stat. §§ 51:710 *et seq.*	No
Maine	Me. Rev. Stat. tit. 32, §§ 135-16101 *et seq.*	2002 Act
Maryland	Md. Code Corps. & Assns. §§ 11-101 *et seq.*	1956 Act
Massachusetts	Mass. Gen. Laws ch. 110A, §§ 101 *et seq.*	1956 Act
Michigan	Mich. Comp. Laws §§ 451.2101 *et seq.*	2002 Act

1 This chart presents a simplified overview of whether each jurisdiction follows one of the three uniform securities acts—and, if so, to which uniform act the jurisdiction's statute is most analogous. This chart thus includes jurisdictions that have adopted a uniform securities act verbatim (or nearly verbatim) as well as jurisdictions that have adopted substantial parts of a uniform act or that have revised their otherwise unique securities statutes over time to more closely follow the uniform acts. Readers should consult the law of each jurisdiction directly to assess similarities and differences between the jurisdiction's securities laws and the uniform securities acts.

TABLE 14-1—State Securities Statutes

Jurisdiction	Statutory Citations	Follows a Uniform Securities Act?[1]
Minnesota	Minn. Stat. §§ 80A.40 *et seq.*	2002 Act
Mississippi	Miss. Code §§ 75-71-101 *et seq.*	2002 Act
Missouri	Mo. Rev. Stat. §§ 409.1-101 *et seq.*	2002 Act
Montana	Mont. Code §§ 30-10-101 *et seq.*	1956 Act
Nebraska	Neb. Rev. Stat. §§ 8-1101 *et seq.*	1956 Act
Nevada	Nev. Rev. Stat. §§ 90.211 *et seq.*	1985 Act
New Hampshire	N.H. Rev. Stat. §§ 421-B:1-101 *et seq.*	2002 Act
New Jersey	N.J. Stat. §§ 49:3-47 *et seq.*	1956 Act
New Mexico	N.M. Stat. §§ 58-13c-101 *et seq.*	2002 Act
New York	N.Y. Gen. Bus. Law §§ 352 *et seq.*	No
North Carolina	N.C. Gen. Stat §§ 78A-1 *et seq.*	1956 Act
North Dakota	N.D. Cent. Code §§ 10-04-01 *et seq.*	No
Ohio	Ohio Rev. Code §§ 1707.01 *et seq.*	No
Oklahoma	Okla. Stat. tit. 71, §§ 1-101 *et seq.*	2002 Act
Oregon	Or. Rev. Stat. §§ 59.005 *et seq.*	1956 Act
Pennsylvania	70 Pa. Cons. Stat. §§ 1-101 *et seq.*	1956 Act
Puerto Rico	P.R. Laws tit. 10, §§ 851 *et seq.*	1956 Act
Rhode Island	R.I. Gen. Laws §§ 7-11-101 *et seq.*	1985 Act
South Carolina	S.C. Code §§ 35-1-101 *et seq.*	2002 Act
South Dakota	S.D. Codified Laws §§ 47-31B-101 *et seq.*	2002 Act
Tennessee	Tenn. Code §§ 48-1-101 *et seq.*	1956 Act
Texas	Tex. Rev. Civ. Stat. Art. 581-1 *et seq.*	No
Utah	Utah Code §§ 61-1-1 *et seq.*	1956 Act
Vermont	Vt. Stat. tit. 9, §§ 5101 *et seq.*	2002 Act
Virginia	Va. Code §§ 13.1-501 *et seq.*	1956 Act
Virgin Islands	V.I. Code tit. 9, §§ 601 *et seq.*	2002 Act
Washington	Wash. Rev. Code §§ 21.20.005 *et seq.*	1956 Act
West Virginia	W. Va. Code §§ 32-1-101 *et seq.*	1956 Act
Wisconsin	Wis. Stat. §§ 555.101 *et seq.*	2002 Act
Wyoming	Wyo. Stat. §§ 17-4-101 *et seq.*	2002 Act