

This is your Release #15 (May 2019)

Broker-Dealer Regulation

Second Edition

Edited by Clifford E. Kirsch

Eversheds Sutherland (US) LLP, New York City

This fifteenth release to *Broker-Dealer Regulation, Second Edition* updates the treatise with the latest developments in and analysis of the regulatory framework applying to broker-dealers. Editor Cliff Kirsch and an expert group of contributing authors have revised four chapters and offer three new chapters.

Highlights of Release #14 include:

New Chapter 5B, FINRA Membership. In order to become a registered broker-dealer with the U.S. Securities and Exchange Commission (SEC) and a member firm of the Financial Industry Regulatory Authority, Inc. (FINRA), an entity must undergo the registration and membership processes imposed by these regulators and must also be operated by persons that are “associated” with it. This new chapter addresses the obligations imposed by the FINRA membership processes and also references related issues, such as SEC broker-dealer registration and Associated Person registration requirements.

Chapter 10, Broker-Dealer Standard of Care. In certain limited instances, broker-dealers have, based on specific facts and circumstances, been deemed by court decisions as having a fiduciary duty to particular customers. New discussions review these specific instances more fully, as well as several state initiatives that impose a fiduciary duty on broker-dealers by means of legislation and/or regulation (see section 10:2.6).

Chapter 21, Trading Desk Activities. Discussion updated to cover the 2016 amendment to the Trade Reporting and Compliance Engine (TRACE) rules requiring that FINRA members report transactions in U.S. Treasury securities to TRACE (see section 21:7).

Chapter 40A, Pay-to-Play Rules. Updated discussion includes coverage of the SEC approved Municipal Securities Rulemaking Board- (MSRB-)proposed amendments to MSRB Rules G-37 and G-8 that require the disclosure of contributions made to bond ballot campaign committees by a broker-dealer, municipal finance professional (MFP), non-MFP executive officer, or a Political Action Committee controlled by a broker-dealer or MFP (see section 40A:8.3[C]).

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1177 Avenue of the Americas
New York, NY 10036
#267534

Chapter 51, Senior Investors. Reviews the rules governing the financial exploitation of senior investors from a state insurance perspective (see section 51:5).

New Chapter 53, Blockchain and Digital Assets. This new chapter provides an overview of blockchain and digital assets, followed by the existing regulations applicable to broker-dealers and investment advisers engaged in digital asset activities. Depending on what a particular Digital Asset represents, and associated rights, the Digital Asset may be subject to multiple overlapping regulatory frameworks. Section 53:3 provides an overview of the federal securities laws, commodities laws, money transmission laws, and virtual currency regulations relevant to Digital Asset transactions. Each regulatory framework and related guidance is discussed in more detail in section 53:6. Section 53:4 outlines considerations for primary offerings of Digital Asset Securities. Section 53:5 outlines considerations in connection with a registered investment adviser or broker-dealer trading Digital Assets through online trading platforms. The registration requirements and regulatory oversight for each trading venue vary based on, among other factors, the type of Digital Assets offered on the platform. Finally, section 53:7 discusses certain features of blockchain technology that should be considered by market participants in the context of existing regulations, as well as describes other regulatory requirements relevant to broker-dealers and investment advisers that engage in Digital Asset transactions.

New Chapter 54, Role of Federal Reserve in Broker-Dealer Regulation. This new chapter provides an overview of the Federal Reserve and briefly summarizes the role of the Federal Reserve in the regulation of broker-dealer firms. The Federal Reserve has rulemaking and interpretive authority in several different areas that are directly relevant to securities broker-dealers, as summarized below. The Federal Reserve rules described below in sections 54:2.1 and 54:2.2 apply to all securities broker-dealers. Those described in sections 54:2.3 and 54:2.4 apply when securities brokerage accounts are linked to a bank payment or deposit product or service. The rules discussed in sections 54:2.5 through 54:2.9 apply when the broker-dealer is affiliated with a bank or other depository institution, and those in section 54:3 apply when the broker-dealer is a subsidiary of a bank holding company, financial holding company, or savings and loan holding company. Finally, section 54:4 discusses additional Federal Reserve rules and supervisory roles that apply to systemically important institutions based upon the large size, risk profile, and interconnectedness of the organization.

The **Table of Authorities** and **Index** have been updated to reflect the latest revisions.

Thank you for purchasing *Broker-Dealer Regulation*. If you have questions about this product, or would like information on our other products, please contact customer service at info@pli.edu or at (800) 260-4PLI.

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