

**Securities Regulation - Statutes  
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**I. Securities Act of 1933:**

**A. § 2 – p. 2 (definition section)**

1. **Subsection (a)(1)** says that the term **security** means “any note, stock, treasury stock...investment contract...put, call...option, or privilege entered into on a national securities exchange relating to foreign currency...or any interest or instrument commonly known as a security....”
2. **Subsection (a)(3)** defines an **offer** as “every attempt to offer to dispose of, or solicitation of an offer to buy a security...for value.”

This section also says that a **sale** shall include every contract of sale or disposition of a security or interest in a security for value.

3. **Subsection (a)(10)** defines a **prospectus** as a notice, advertisement, letter, communication which offers any security for sale, except that a) a communication after the effective date shall not be deemed a prospectus if it is proved that prior to the communication, a written prospectus was sent ...and b) a notice shall not be deemed to be a prospectus if it states from whom a written prospectus may be obtained and does not more than identify the security, state the price etc
4. **Subsection (a)(11)** defines **underwriter** as any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, **or** any person who buys securities with a **view or intent towards distribution**, contrasted to someone who buys the securities with a view towards investment.
5. **Subsection (a)(12)** defines a **dealer** as any person who engages as agent, broker or principal in the business of offering, buying, selling or otherwise trading or dealing in securities issued by another person.

**B. § 3 → Deals with exemptions for registration**

1. Registration is NOT required for transactions by
  - a. a person **other than** an
    - 1) Issuer,
    - 2) Underwriter,
    - 3) Dealer,
  - b. Stock that does NOT require an IPO.
2. **Subsection (a)(11)** Any security which is part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State and Territory.
3. **Subsection (b) Additional Exemptions.** The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be

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prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this title with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds \$5,000,000.

**C. § 4 - Exempted Transactions - p. 9**

The provisions of section 5 shall not apply to:

1. **Subsection (1)** Any transactions by any person other than an issuer, underwriter or dealer.
2. **Subsection (2)** Transactions by an issuer not involving any public offering.
3. **Subsection (3)** Transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transactions) except...(in certain circumstances)
4. **Subsection (4)** Broker's transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders.

**D. § 5 – Prohibitions Relating to Interstate Commerce and the Mails - p. 10**

1. **Subsection (a)** says that you cannot sell a security until a registration statement becomes effective.
  - a. **Sale or delivery after sale of unregistered securities. Unless a registration statement is in effect** as to a security, it shall be unlawful for any person, directly or indirectly –
    - 1) To make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any **prospectus** or otherwise; or
    - 2) To carry or cause to be carried through the mail or interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.
2. **Subsection (b)(1)** says it is unlawful to transmit any prospectus, relating to any security with respect to which a registration statement has been filed unless such prospectus meets the requirements of **§ 10**.
  - a. **Necessity of prospectus meeting requirements of Section 10 of this title.** It shall be unlawful for any person, directly or indirectly –
    - 1) To make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security with respect to which a registration

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statement has been filed under this title, **unless such prospectus meets the requirements of subsection (a) of section 10**; or

3. **Subsection (b)(2)** says that it shall be unlawful to carry or transmit any security for sale unless accompanied or preceded by a prospectus that meets requirements of **§10(a)**.
    - a. **Necessity of prospectus meeting requirements of Section 10 of this title.** It shall be unlawful for any person, directly or indirectly –
      - 1) To carry or cause to be carried through the mail or interstate commerce any such security for the purpose of sale or for final delivery after sale, unless accompanied by a prospectus or preceded by a prospectus that meets such requirements of subsection (a) of section 10.
  4. **Subsection (c)** says that it shall be unlawful to offer to sell or offer to buy through the use of a prospectus, unless a registration statement has been filed as to such security.
    - 1) **Necessity of filing registration statement.** It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of an prospectus or otherwise any security, **unless a registration statement has been filed as to such security**, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 8.
- E. **§§ 6** → spells out the procedures for filing a registration statement.
- F. **§ 7** → contains the information required in a registration statement
- G. **§ 8** (p. 14) → gives the SEC the authority to review the registration statement.
  1. **Subsection (a)** says that the registration statement becomes effective 20 days from filing it. Any time the statement is amended the 20-day wait period starts over. Section 8 also gives the SEC the authority to shorten 20-day period amendment
- H. **§ 10** → contains the information required in a prospectus.
- I. **§ 11** – p. 18
  1. **Subsection (a)** In case any part of the registration statement when such part became effective contained an untrue statement of material fact *or* omitted a material fact required to be stated therein or necessary to make the statements not misleading, any person acquiring such security...may...sue.
  2. **Subsection (b)** sets out the **due diligence** defense. This defense is not available to issuers. An issuer is strictly liable for material misrepresentations or omissions

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in registration statements. The defendant's have the burden of proof. Defendants are not liable:

- a. (A) for any part of the registration statement **not made on the authority of an expert**, at the time of the filing of the registration statement you have to **make a reasonable investigation** and have a *reasonable grounds to believe that statements were true* and there was no omission of material fact.
- b. (B) part of registration made by an **expert**, *after reasonable investigation, expert he had reasonable ground to believe it was true.*
- c. (C) if you are **not an expert, as to the parts prepared by the expert, there is no requirement that you do an investigation**, you just have to *have a reasonable ground to believe that the statements are not false.*

Under § 11(b)(3) a defendant must show that he made a reasonable investigation and reasonably believed at the time that the registration became effective there were no misstatements of omissions.

3. **Subsection (c)** In determining...what constitutes a reasonable investigation and reasonable ground for belief, the standard of reasonableness shall be that required of a prudent man in the management of his own property.
  4. **Subsection (g)** In no case shall the amount recoverable under this section exceed the price at which the security was offered to the public.
- J. § 12
1. **Subsection (a)(1)** says that any person who offers or sells a security in violation of section 5 is civilly liable to the person purchasing from him.
  2. **Subsection (a)(2)** says that any person who **offers or sells** a security in interstate commerce by means of a **prospectus or oral communication**, which includes an **untrue statement** of material fact or **omits** to state a material fact...shall be liable.
- K. § 13 → contains a statute of limitations that apply to § 11 and § 12 cases. It says that the statute of limitations is two years after you discovered or should have discovered a misstatement. But, no matter what you only have 5 years to bring a case after the security is sold to the public.
- L. § 14 → The anti-waiver provision. A buyer of securities cannot waive compliance with any provision of the '33 Act or with any of the Commission's rules and regulations.
- M. § 15 → controlling person is jointly and severally liable for people they control, when they violate § 11 or 12.

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N. § 17 → general anti-fraud. It prohibits fraud by any person who offers or sells securities.

II. **RULES under Securities Act of 1933**

A. **Rule 134** – p. 56

B. **Rule 135: Notice of the Proposed Registered Offerings** - on p. 60.

1. This is a safe harbor provision for § 5. It is an exception to the definition of an offer.
2. **When notice is not an offer.** For purposes of section 5 of the Act only, an issuer or a selling security holder (and any person acting on behalf of either of them) that publishes through any medium a notice of a proposed offering to be registered under the Act will not be deemed to offer its securities for sale through that notice if:
  - a. **Legend.** The notice includes a statement to the effect that it does not constitute an offer of any securities for sale; and
  - b. **Limited Notice Content.** The notice otherwise includes no more than the following information:
    - 1) The name of the issuer;
    - 2) The title, amount and basic terms of the securities offered;
    - 3) The amount of the offering, if any, to be made by selling securities holders;
    - 4) The anticipated timing of the offering;
    - 5) A brief statement of the manner and the purpose of the offering, without naming the underwriters;
    - 6) Whether the issuer is directing its offering to only a particular class of purchasers;
    - 7) Any statements or legends required by the laws of any state or foreign country or administrative authority; and
    - 8) In the following offerings, the notice may contain additional information, as follows:
      - a) **Rights Offering.** In a rights offering to existing security holders:
        - i. The class of security holders eligible to subscribe;
        - ii. The subscription ratio and expected subscription price;
        - iii. The proposed record date;
        - iv. The anticipated issuance date of the rights; and

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- v. The subscription period or expiration date of the rights offering.
  - b) **Offering to Employees.** In an offering to employees of the issuer or an affiliated company
    - i. The name of the employer;
    - ii. The class of employees being offered the securities;
    - iii. The offering price; and
    - iv. The duration of the offering period.
  - c) **Exchange Offer.** In an exchange offer:
    - i. The basic terms of the exchange offer;
    - ii. The name of the subject company;
    - iii. The subject class of securities sought in the exchange offer
  - d) **Rule 145(a) Offering.** In a Rule 145(a) offering:
    - i. The name of the person whose assets are to be sold in exchange for the securities to be offered;
    - ii. The name of any other parties to the transaction;
    - iii. A brief description of the business of the parties to the transaction;
    - iv. The date, time and place of the meeting of securities holders to vote on or consent to the transaction; and
    - v. A brief description of the transaction and the basic terms of the transaction.
3. **Corrections of misstatements about the offering.** A person that publishes a notice in reliance on this section may issue a notice that contains no more information than is necessary to correct inaccuracies published about the proposed offering.
- C. **Rules 137, 138, and 139** are safe harbor rules that allow securities firms (broker dealers) to disseminate specific information during the registration process.
- D. **Rule 144 - Persons deemed not to be engaged in a Distribution and therefore not underwriters** - p. 70
- 1. **Holding Period.** You can resell restricted securities if you hold them for 1 year. But, if it's less than 2 years there's a limit on volume. In any 3-month period you can sell no more than 1% of issuers total outstanding shares or the average weekly trading volume of the past 4 weeks (which ever is larger is the limit of what you can sell). If you hold for 2 years then that limit does not apply except for one condition → You could not have been affiliate for 3 months prior to your sale.
- E. **Rule 147: "Part of an Issue," "Person Resident," and "Doing Business Within" for Purposes of Section 3(a)(11)** defines the term doing business.

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- F. **Rule 155** provides a safe harbor is a party starts to do a private offering and then changes her mind. For the purposes of integration this abandoned offering will not be combined with a later public offering.
  - G. **Rule 165** is a safe harbor for business corporations. It lets them disseminate specific information during the registration process.
  - H. **Rule 175** → says that if you make a prediction in a filing you cannot be liable for the prediction if you have a reasonable basis.
  - I. **Rule 176** → lists the factors that are relevant to whether there has been a reasonable investigation.
  - J. **Rule 408** → Says that a company must disclose any information that is material. Thus, even if not specifically asked for on the registration form, if the information is material then it must be disclosed.
  - K. **Rule 415** - p. 128. This rule lists of who can use shelf registration. Any company that can use an S-3 can use shelf registration.
  - L. **Rule 430** allows an issuer to send out a preliminary prospectus (red herring prospectus) during the waiting period.
  - M. **Rule 434** – p. 148. This says that after a registration is effective if an offeree has already been sent a red herring prospectus, all you have to do is send supplemental information.
  - N. **Rule 421** - p. 137. This rule says that the prospectus should be intelligible to people that are not professionals. In other words it must be written in plain English; no legalese allowed.
  - O. **Rule 473** Includes language-delaying amendment. Don't have to file an amendment every 20 days to keep the process going. Solves problem about automatic effectiveness in 20 days. This process is called **acceleration** because the Commission can **accelerate** the registration statement's effectiveness.
- III. **Regulation A in the 1933 Act – Conditional small issues exemption - Rules 251 to 263** - p. 104
- A. **Rule 251**
    - 1. **Subsection (a)** - tells you who is eligible. Only US or Canadian companies are eligible. You also cannot be a company that is required to file Exchange Act reports.

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2. **Subsection (b)** - sets out the \$5 million limit. In the case of any 12-month period, you cannot use regulation A to raise more than \$5 million (designed for small businesses).
  3. **Subsection (c)** - This is the integration from safe harbor. A Regulation A offering will not be integrated with any prior offering or with any offering done more than 6 months after a regulation A offering.
  4. **Subsection (d)** – puts conditions on what you can do with a Regulation A offering. Creates offering that’s similar to a short form registration. You must file a form called **form 1-A**. This form must be approved by the Commission.
- B. **Rule 254** - allows you to make offers prior to any filing with commission. This is the “Test the Waters” provision.
- C. **Rule 260** protects issuers who substantially and in good faith comply with the requirements of Regulation A against the loss of the exemption. There is no loss of the exemption if:
1. The requirement was not directly intended to protect that investor;
  2. The failure to comply was insignificant to the offering as a whole; **and**
  3. The issuer made a good faith and reasonable attempt to comply with and of the requirements of Regulation A.
- D. **Rule 262** says that Regulation A filings shall not be available if the issuer or any of its directors, officers, promoters, or other affiliated persons are subject to proceedings orders or judgments related to violations of the federal securities laws.
- IV. **Regulation D – Limited offerings – p. 169 (Rules 501 to 508)**
- A. **Rule 501: Definitions and Terms Used in Regulation D –**
1. Subsection (a)
    - a. **Accredited Investor.** “Accredited Investor” shall mean any person who comes within any of the following categories, or who the issuer believes comes within any of the following categories, at the time of the sale of the securities to that person:
      - 1) Any bank; broker or dealer; insurance company; investment company or a business development company; Small Business Investment Company, ect.;
      - 2) Any private business development company;
      - 3) Any 501(c)(3) organization, not formed with the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;

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- 4) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of that issuer;
  - 5) **Any natural person whose individual net worth or joint net worth with that person's spouse at the time of his purchase exceeds \$1,000,000;**
  - 6) **Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;**
  - 7) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person;
  - 8) Any entity in which all of the equity owners are accredited investors.
2. Subsection (e)
- a. **Calculation of number of purchasers. For purposes of calculating the number of purchasers under Rule 505(b) and Rule 506(b) only, the following shall apply:**
    - 1) The following purchasers shall be excluded:
      - i. Any relative, spouse or relative of the spouse of a purchaser who has the same principal residence as the purchaser;
      - ii. Any trust or estate in which a purchaser and any of the persons related to him...have more than 50 percent of the beneficial interest (excluding contingent interests);
      - iii. Any corporation or other organization of which a purchaser and any persons related to him...are beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares); and
      - iv. Any **accredited investor**.

**B. Rule 502**

1. **Subsection (a)** – integration rule of Regulation D. There is no integration of a Regulation D offering with another offering as long as they are more than 6 months apart.
2. **Subsection (b)** – Disclosure requirements. The issuer must give purchasers certain information regarding the issuer and allow the purchaser to ask questions about the issuer. These requirements do not apply to accredited investors.

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3. **Subsection (c)** - limitations on manner of offering –no general solicitations or general advertising by issuer or any person acting on behalf the issuer. But, is the issuer can show a pre-existing relationship with the offeree then it is not a general solicitation.
  4. **Subsection (d)** – limits on resale. The issuer must exercise reasonable care to assure that the securities purchasers are not underwriters within the meaning of § 2(a)(11).
- C. **Rule 503** - an issuer must file a notice of the sale - Form D - within 15 days of the offering.
- D. **Rule 504: Exemption for Limited Offerings and Sales of Securities Not Exceeding \$1,000,000** –
1. Subsection (b)(2)
    - a. The aggregate offering price for an offering of securities under this Rule 504, shall **not exceed \$1,000,000**, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under the Rule 504, in reliance on any exemption under **section 3(b), or in violation of section 5(a) of the Securities Act.**
- E. **Rule 505: Exemption for Limited Offerings and Sales of Securities Not Exceeding \$5,000,000** –
1. Subsection (b)(2)(i)
    - a. **Limitation on aggregate offering price.** The aggregate offering price for an offering of securities...shall **not exceed \$5,000,000**, less the aggregate offering price of all securities sold within the twelve months before the start of and during the offering of securities...in reliance on any exception **under § 3(b) of the act or in violation of section 5(a) of the Act.**
  2. Subsection (b)(2)(ii)
    - a. **Limitation on number of purchasers.** There are no more than or the issuer reasonably believe there are **no more than 35 purchasers** of securities from the issuer in any offering under this section.
- F. **Rule 506: Exemption for Limited Offerings and Sales Without Regard to Dollar Amount of Offering** –
1. Subsection (b)(1)
    - a. **General Conditions.** To qualify for exemption under rule 506, offers and sales must satisfy all the terms and conditions of Rules 501 and 502.
  2. Subsection (b)(2)
    - a. **Specific Conditions**

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- 1) **Limitation on number of purchasers.** There are no more than or the issuer reasonably believe there are **no more than 35 purchasers** of securities from the issuer in any offering under this section.
  
- 2) **Nature of Purchasers.** Each purchaser who **is not an accredited investor** either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to any sale that such purchaser comes within this description.

G. **Rule 508** says that the failure to comply with Rules 504-506 requirements will not result in the loss of the exemption if the person relying on the exemption shows a good faith and reasonable attempt to comply.

V. **Securities Exchange Act of 1934:** (This act is much longer than the '33 act)

A. **§ 3** – p. 693

1. **Subsection (a)(10)** contains the definition of a security. The term security means “any note, stock, treasury stock...investment contract...put, call...option, or privilege entered into on a national securities exchange relating to foreign currency...or any interest or instrument commonly known as a security....”

B. **§ 5** → requires trade associations to register with the SEC.

C. **§§ 7 & 8** → margin requirements and borrowing and lending.

D. **§ 9** → specifically targets manipulation in connection with securities traded on an exchange.

1. **Subsection (a)** it shall be unlawful **(1)** for any person for the purpose of creating a false or misleading appearance of active trading in any security or a false or misleading appearance with respect to the market for any such security, **(A)** to effect any transaction in such security which involves no change in the beneficial ownership thereof, or **(B)** to enter an order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size at the same price has been or will be entered by or for the same parties or different parties...

2. **Subsection (a)** it shall be unlawful **(2)** to effect a series of transactions in any registered security creating the actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

3. **Subsection (e)** Any person who **willfully participates** in any transaction in violation of a, shall be liable to any person who shall purchase or sell any security at a price that was affected by the conduct.

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**E. § 10(b)→ (Rule 10b-5)**

1. It shall be unlawful for any person ... to use or employ, *in connection with the purchase OR sale* of any security registered on a national securities exchange or any security not so registered...any *manipulative or deceptive device or contrivance* in contravention of such rules and regulations as the Commission may prescribe...

**F. § 12**

1. **Subsection (a) General requirement of registration** It shall be unlawful for any member, broker, or dealer to effect any transaction in any security...on a national stock exchange unless a registration is effective as to such security...

2. **Subsection (g) Registration of Securities by Issuer; Exemptions**

- a. Paragraph (1)

- 1) Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall –
- 2) Within one hundred and twenty days after the last day of its first fiscal year ended after the effective date of this subsection on which the issuer has total assets exceeding \$1,000,000 and a class of equity security...held of record by 750 or more persons; **and**
- 3) Within one hundred and twenty days after the last day of its first fiscal year ended after two years from the effective date of this subsection on which the issuer has total assets exceeding \$1,000,000 and a class of equity security...held of record by 500 or more or less than 750 persons.

Register such security by filing with the Commission a registration statement.

**NOTE: the \$1 mill asset min was recently changed to \$10 million**

- b. Paragraph (4)

- 1) Registration of any class of security pursuant to this subsection shall be terminated 90 days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders of record of such class of security is reduced to less than 300 persons.

**G. § 13→ reporting requirements.**

1. **Subsection (d)** any group or person that acquires ownership of 5% or more of a company's stock must disclose certain information (whether or not you are dealing with a takeover). You have to file or make disclosure within 10 days and send to the issuer a statement containing the background, identity, residence and citizenship of the owner, the source of the funds, the purpose of the purchases, and number of shares.

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2. **Subsection (e)** governs takeovers by an issuer.
- H. **§ 14**→ contains disclosure requirements relating to proxies and tender offers and prohibits fraud with proxy solicitations and tender offers.
1. **Subsection (a)** any person soliciting proxies with respect to any security registered under the exchange act **MUST** comply with rules and regulations adopted by the SEC.
  2. **Subsection (d)** It is unlawful to make a tender offer if afterwards the person would be the beneficial owner of 5% of the class, **UNLESS** a **§ 13(d)** statement has been filed. Includes specific rules that must be followed for tender offers.
    - a. The offer must be open for 20 days.
    - b. The target can withdraw at any time.
    - c. Purchaser has to purchase the shares pro rata.
      - 1) If buyer makes a Tender Offer for 75% of shares, each shareholder will only sell 75% of their shares. This means that if a bidder needs 75% and 90% of the shareholders say that they will sell their shares, then all of those shareholders are entitled to sell some shares.
    - d. It is not first come first served. You can't consume until you get to 75% and then stop. You must wait the twenty days and then, after that break down the 75% that you need among the 90% of shareholders that are willing to sell.
  3. **Subsection (e)** It shall be unlawful to make any untrue statement of a material fact...in connection with any tender offer.
- I. **§ 15** → Registration of brokers and dealers.
1. Authorizes SEC to bring administrative action against any securities firm and against any person associated with a securities firm. It gives the SEC an authority to shut down a firm and bar a person from securities industry for life.
- J. **§ 16(b)**→
1. Deals with trading by corporate officers, directors, and shareholders who own ten percent or more of company stock. Corporate officers and directors are regulated because they have “material non-public” information.
  2. Corporate officers and directors cannot make a profit trading their own securities. If they do, they must pay the money back.

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**VI. Rules under the 1934 Securities Act**

- A. **Rule 10b-5** → “It shall be unlawful for any person...to employ any device, scheme or artifice to defraud, to make any untrue statement of material fact or to omit to state a material fact necessary to make the statements not misleading, or to engage in any act, practice or course of business which would operate as a fraud or deceit on any person in connection with the purchase OR sale of any security.”
- B. **Rule 14a-1 – Definitions**
- C. **Rule 14a-3 – Information to be Furnished to Shareholders**
1. Sets forth the type of information that has to be given to shareholders in connection with a proxy solicitation.
  2. Annual reports must accompany proxies.
- D. **Rule 14a-4 – Requirements as to Proxy**
- E. **Rule 14a-6:** companies have to *file preliminary copies of materials with the SEC*.
1. Exceptions include situations when matters to be voted on include election of directors, approval of auditors, or proposal of shareholders. Companies are required to file copies, staff selectively reviews them and gives comments.
- F. **Rule 14a-7** –deals with providing shareholder lists- corporation must comply with a request for a shareholder list.
- G. **Rule 14a-8(i)(1)-(13)** deals with shareholder proposals.
1. **Rule:** if a shareholder meets the requirements, then the **shareholder can have their proposal, along with a brief statement explaining it, included in the proxy materials.**
    - a. Shareholder must own 1/10 of the securities, or \$2000 worth of securities.
    - b. Proposals cannot exceed 500 words.
  2. Question 9 – bases for excluding a shareholder proposal
    - a. Proposals that relate to “ordinary business operations of the issuer” can be omitted.
- H. **Rule 14a-9** it is unlawful to make any material misstatement or omission in connection with proxy solicitation.
- I. **Rule 14a-10 – Prohibition of Certain Solicitations**
- J. **Rule 14e-3** - If anyone has taken a substantial step to commence a tender offer then it is unlawful to trade in the target company’s securities if you know or have reason to

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know that you are in possession of material non public information obtained directly or indirectly from the bidder or from the target.

- K. **Rule 102e** gives the SEC authority over lawyers and accountants who appear or practice before the Commission.
1. If a lawyer or accountant engages in unethical or improper professional conduct, then the Commission can suspend or bar the individual from practicing before the Commission.

VII. **Sarbanes Oxley**

- A. **§ 307** required the Commission to set forth minimum standard of professional conduct for attorneys.
1. The Commission rule has to require that the attorney report evidence of securities law violations to the CEO or CLO. If the CEO or CLO does not respond appropriately, then the attorney must report the violations up to the board of directors or a committee of the board of directors.
  2. The Commission also allows any lawyer to reveal confidential information without the company's consent in order to prevent a crime that would result in a substantial financial loss.