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# *Enforcing Federal and State Securities Laws*

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Seminar Topic: This material provides an in-depth examination of the process and procedure of enforcing federal and state securities laws.

This material is intended to be a guide in general. As always, if you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.



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Disclaimer: The views expressed herein are not a legal opinion. Every fact situation is different and the reader is encouraged to seek legal advice for their particular situation.

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# *About The Author*

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## **JAMES J. MOYLAN**

Jim has a national securities and commodity futures litigation practice. In addition, he has a general corporate practice, counseling business owners on: types of business entities, formation of business entities, governing documents and governance, reporting, compliance and best practices.

Jim began his career in 1972 as a Trial Attorney in the Division of Enforcement at the United States Securities and Exchange Commission in Washington, D.C. In 1975, Jim joined the Chicago Board Options Exchange, Inc., as Assistant General Counsel. In 1977, Jim entered private practice.

In addition to his practice, Jim has been on the Adjunct Faculty at IIT Chicago-Kent College of Law and taught Securities Regulation from 1976-2002. Jim is currently on the Adjunct Faculty at his alma mater, the University of Denver, College of Law, teaching Securities Litigation. Jim also serves as an Adjunct Professor in the Para-Legal Program at Colorado Mountain College.

Jim has authored over a dozen law review articles and is a frequent lecturer and panelist on CLE Programs related to: Securities, Commodity Futures, Corporate Law, and Dispute Resolution – Arbitration and Mediation.

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# **ENFORCING THE FEDERAL AND STATE SECURITIES LAWS**

## **BY**

## **JAMES J. MOYLAN**

### **I. SOURCES FOR INVESTIGATIONS**

- A. *Market Surveillance*
- B. *Complaints*
  - i. *Public*
  - ii. *Industry sources*
  - iii. *Competitors*
  - iv. *Shareholders*
  - v. *Customers*
  - vi. *Tips (Anonymous and otherwise.)*
- C. *Newspaper stories*
- D. *Financial publications*
- E. *Blogs*
- F. *Web-sites*
- G. *Chat-rooms*
- H. *Etc.*

### **II. ENFORCEMENT AGENCIES FOR THE SECURITIES LAWS**

- A. *U.S. Securities and Exchange Commission Headquarters Office – Washington, D.C. Regional Offices – Include: Atlanta, Boston, Chicago, Denver, Fort Worth, Los Angeles, Miami, New York, Philadelphia, Salt Lake, and San Francisco. Note, Branch Office, e.g.: Miami, Philadelphia, San Francisco, converted to Regional Offices.*
- B. *State Securities Departments Independent Department/Commissions or under Secretary of State Offices*
- C. *Securities Industry Self-Regulatory Organizations - (“SRO’S”)*

### **III. THE INVESTIGATIVE PROCESS**

*SEC - Example*

- A. *Informal Inquiry*
- B. *Formal Order of Investigation*
  - i. *Administer Oaths*
  - ii. *Subpoena Documents*
  - iii. *Investigative Testimony*
    - Defense Counsel’s role*
    - SEC Enforcement Attorney’s role*
- C. *Wells Submission*



- D. *Recommendation Memorandum to the Commission*
  - i. *Close – No Further Action*
  - ii. *Warning letter*
  - iii. *Public Release*
  - iv. *Administrative Proceeding – SEC Registrants*
  - v. *Cease and Desist*
  - vi. *Civil Injunction*
  - vii. *Criminal Reference*
- E. *Issues – Parallel Investigations, Fifth Amendment, etc.*

#### **IV. ENFORCEMENT**

- A. *Criminal*
  - Federal-Department of Justice – U.S. Attorneys*
  - SEC Attorney – Deputized*
  - State – Attorney General’s Office – Criminal Division*
- B. *Civil Injunction*
  - SEC Enforcement Division*
  - State – Attorney General – Civil Division*
  - Statutory Injunction v. Equitable Injunction*
    - i. *Compare and contrast elements*
  - Rescission - Disgorgement*
  - Civil Penalties*
- C. *Administrative Proceedings*
  - Cease and Desist*
  - Administrative Proceeding - Hearing*
  - SEC – Administrative Law Judges*
  - States – Hearing Officers*
- D. *Private Rights of Action*
  - Individual(s)*
  - Class Actions*

#### **V. CONCLUSION AND QUESTIONS**