

A BOARD PRIMER

The '33 & '34 Acts

What Board Members Need to Know—The Basics

The two federal statutes that govern how companies raise capital, report to investors, and trade their securities—and what they mean for directors

Two Statutes Every Director Lives Under

The 1933 and 1934 Acts are the backbone of U.S. securities regulation

- **You sign filings.** Directors personally sign registration statements and oversee the disclosures investors rely on.
- **You owe disclosure.** The Acts turn the board's oversight duty into concrete, recurring reporting obligations.
- **You carry liability.** Directors can face personal liability for materially false or misleading disclosures.
- **You oversee trading.** Insider-trading and ownership-reporting rules apply directly to directors and officers.

THE ONE-LINE SUMMARY

The '33 Act governs *selling* securities. The '34 Act governs *trading* them and living as a public company.

Two Acts, Two Jobs

One governs how securities are sold; the other, how they trade and report

THE '33 ACT

“Getting In”

The primary market — selling securities

- Register the offering with the SEC
- Deliver a prospectus with full, fair disclosure
- Limited exemptions (e.g., private placements)
- Liability for a false registration statement

THE '34 ACT

“Staying Public”

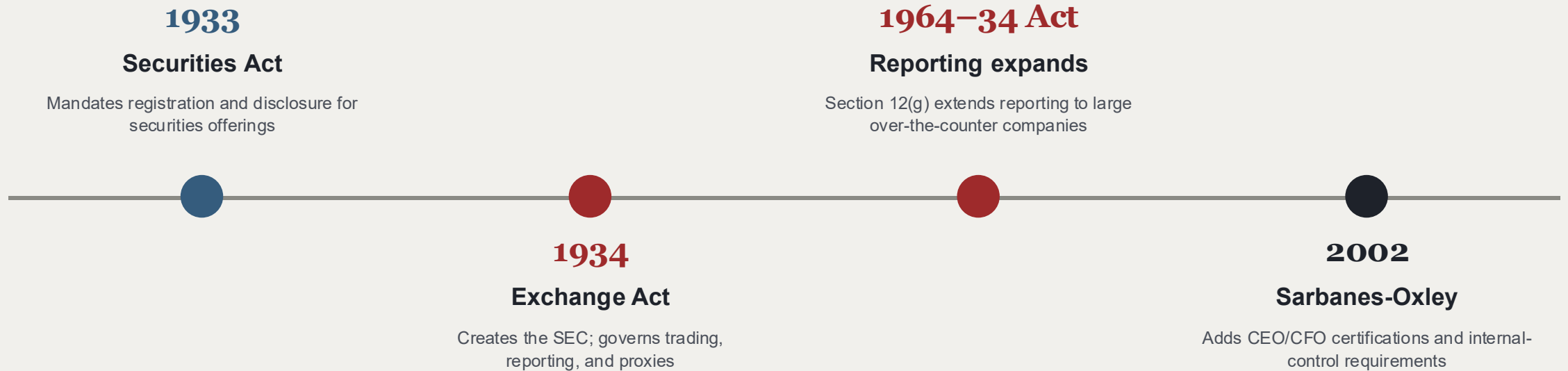
The secondary market — trading & reporting

- Periodic reporting (10-K, 10-Q, 8-K)
- Proxy rules and shareholder voting
- Insider reporting and short-swing profits
- Antifraud and insider-trading rules

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A Ninety-Year Framework

Born of the 1929 crash, refined ever since



Registration & Disclosure at the Offering

Before a company sells securities to the public, it must tell investors the truth

Registration

A company must file a registration statement and deliver a prospectus before selling securities to the public. (§ 5)

Full and fair disclosure

The prospectus must give investors the material facts they need—no half-truths or omissions.

Exemptions

Private placements and certain limited offerings are exempt from registration. (§§ 3–4)

Director liability

Directors sign the registration statement and can be personally liable if it is materially false—subject to a due-diligence defense. (§ 11)

Ongoing Reporting, Trading & Governance

Once public, a company reports continuously and plays by the trading rules

The SEC

The 1934 Act created the Securities and Exchange Commission to enforce the federal securities laws.

Periodic reporting

Public companies file annual (10-K), quarterly (10-Q), and current (8-K) reports. (§§ 13, 15(d))

Proxies & insiders

Proxy rules govern shareholder voting (§ 14); insiders report holdings and disgorge short-swing profits. (§ 16)

Antifraud

Section 10(b) and Rule 10b-5 prohibit fraud and insider trading in connection with securities.

Insider Trading & Rule 10b-5

Trading on material nonpublic information is the classic securities offense

- **Material nonpublic information.** Directors routinely receive it—and may not trade on it, or tip others, until it is public.
- **Rule 10b-5.** The SEC's core antifraud rule reaches insider trading and misstatements in connection with securities.
- **Section 16.** Directors and officers report their holdings (Forms 3, 4, 5) and must disgorge profits on trades within any six-month window.
- **Guardrails.** Pre-clearance, blackout windows, and Rule 10b5-1 trading plans keep directors on the right side of the line.

THE BRIGHT LINE

If it isn't public, don't trade on it—and don't tell anyone who will.

Director Liability—and the Defenses

Where directors are personally exposed, and how process protects them

- **Section 11 ('33 Act).** Directors who sign a materially false registration statement can be personally liable to investors.
- **Rule 10b-5 ('34 Act).** Fraud or insider trading exposes individuals to SEC and private claims.
- **False reports.** Misleading periodic reports and proxies can draw enforcement and shareholder suits.

THE DEFENSE IS PROCESS

- **Due diligence.** Directors who reasonably investigate can defend a § 11 claim.
- **Reliance on experts.** Good-faith reliance on auditors and counsel supports the defense.
- **Certifications.** Sarbanes-Oxley requires senior officers to certify the reports.
- **Engaged oversight.** Asking questions and documenting them is the best protection.

What Gets Filed, and When

The recurring disclosures the board oversees

10-K	10-Q	8-K	Proxy	Forms 3/4/5
Annual report	Quarterly report	Current report	Annual meeting	Insider holdings
Audited financials and a full business and risk review	Unaudited financials and updates, three times a year	Material events, generally within four business days	Voting matters, director elections, and pay disclosure	Directors' and officers' ownership and trades

Five Questions Every Director Should Ask

A practical checklist for securities-law oversight

Are our disclosures accurate?

Confirm controls produce complete, timely, and truthful filings.

Do we have a trading policy?

Pre-clearance, blackout windows, and 10b5-1 plans for insiders.

Are Section 16 filings current?

Directors' and officers' Forms 3, 4, and 5 filed on time.

Who signs, and on what basis?

Ensure due-diligence support before signing registration statements.

Is bad news escalated fast?

An 8-K clock runs in business days—management must move quickly.

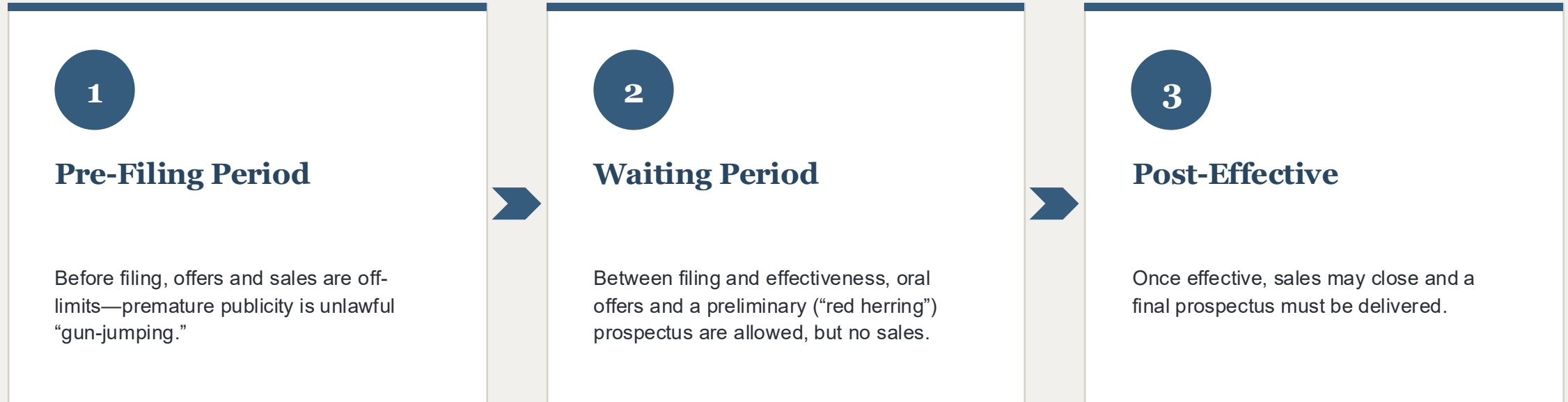
APPENDIX

A Closer Look

Going one level deeper on registration, reporting triggers, ownership and proxy disclosure under the two Acts

How a Registration Moves to Effectiveness

Three phases govern what a company may say and do at each stage



“Offer” and “sale” are defined broadly. Almost any communication that conditions the market can count—so timing and content are tightly controlled.

When Registration Is Not Required

Exemptions fall into two families—exempt securities and exempt transactions

EXEMPT SECURITIES (§ 3)

- Certain instruments are exempt by their nature.
- Examples include government and municipal securities and certain bank securities.
- The exemption attaches to the security itself.

EXEMPT TRANSACTIONS (§ 4)

- **Private placements (§ 4(a)(2))**. Sales not involving a public offering—often to sophisticated investors.
- **Regulation D**. Safe harbors that give private placements clear, usable conditions.
- **Ordinary trading (§ 4(a)(1))**. Everyday secondary sales by ordinary investors.

What Makes a Company a Reporting Company

Three independent triggers pull a company into ongoing SEC reporting

§ 12(b)

Exchange listing

Securities listed on a national exchange must be registered—and effective—before listing.

§ 12(g)

Size thresholds

A company must register a class within 120 days after fiscal year-end once it exceeds asset and shareholder thresholds.

§ 15(d)

An effective '33 registration

Completing a registered offering automatically triggers the same periodic reporting.

Reporting does not simply stop. A company must affirmatively deregister under the Act to suspend or end its reporting obligations.

Ownership, Insiders & the Proxy

Provisions that put directors and large holders on the record

Beneficial ownership — §§ 13(d) / (g)

Anyone crossing 5% of a class files a Schedule 13D, or a short-form 13G for passive holders.

Insider reporting — § 16(a)

Directors, officers, and 10% holders report holdings on Forms 3, 4, and 5.

Short-swing profits — § 16(b)

Profits from a purchase and sale within any six-month window are recoverable by the company.

Proxy rules — § 14(a)

Solicitations require SEC-compliant disclosure; Rule 14a-8 governs shareholder proposals.

Proxy Disclosure in the 2026 Season

How the '34 Act's proxy rules are playing out in current board disclosure

- **Board risk oversight.** Item 407(h) of Regulation S-K requires proxy disclosure of the board's role in risk oversight—now a focus area for investors.
- **Director skills matrices.** Roughly 80% of S&P 500 proxies included a skills matrix in 2025, up from about 45% in 2021.
- **AI oversight.** Disclosure of directors' AI expertise and board oversight of AI rose sharply—from about 26% to 44% of large companies year-over-year.
- **Cybersecurity.** The Form 10-K must describe how the board is informed about and oversees cybersecurity risk.

THE THROUGH-LINE

The '34 Act's proxy rules are where board oversight becomes *public, comparable, and votable*.