# **Index**

#### **ABANDONMENT**

Rule 10b-5, loss causation, 11:9

#### ABSTENTION

Generally, 23:3

#### ABUSIVE DISCOVERY

Private Securities Litigation Reform Act of 1995, class actions, **3:8 to 3:8.90** 

#### ABUSIVE LITIGATION

Private Securities Litigation Reform Act of 1995, sanctions for, **3:19** 

#### **ACCOUNTANTS**

Insider trading, liability, 15:23

#### ACCOUNTING

Sarbanes-Oxley Act, management assessment of internal accounting controls—Section 404, **5A:14** 

# AIDING AND ABETTING

Insider trading, Stoneridge decision, 15:9, 15:17

Rule 10b-5, constitutional law, 9:8

# **ANALYSTS**

Insider trading, fraud on the market theory in actions against analysts, 15:11

Rule 10b-5, fraud-on-the-market theory, **10:30.10** 

# **AOL-SIMPSON DECISION**

Insider trading, Ninth Circuit, expanding liability of secondary actor, **15:28** 

# **APPRAISAL**

Interference with market for corporate control, **16:8** 

### **APPROVAL**

Class actions, judicial approval of settlement, **25:3** 

#### ARBITRATION

Racketeer influenced and corrupt organizations, 22:12 to 22:14

### **ARRANGEMENTS**

Monitoring, institutional investors, **25:1.30** 

8220Pay to play,8221 selection of interim lead plaintiff, **25:1.20** 

# ARTIFICIAL INFLATION

Rule 10b-5, fraud on the market and, 11:11

#### ASSIGNMENT

Section 10(b) claims, 26:1, 26:2

# "AT LEAST AS LIKELY" STANDARD

Supreme Court, pleading requirements for PLS., **3:11.70**, **3:11.80** 

#### ATTORNEY-CLIENT PRIVILEGE

Sarbanes-Oxley Act, securities fraud, new statutory duty to disclose client confidences. **5C:3**, **5C:5** 

# **ATTORNEYS**

Fees. See **Attorneys' Fees** (this index) Insider trading, liability, **15:24** 

Non-lead counsel, issues with and other actors seeking payment from the common fund, **25:4.40** 

Private Securities Litigation Reform Act of 1995, sanctions, **3:19** 

Sarbanes-Oxley Act (SOX) (this index)

# ATTORNEYS' FEES

Generally, 21:1, 21:2

Class actions, 25:4 to 25:4.30

Lodestar versus percentage-of-fund recovery in class action, **25:4.10** 

Objecting to attorneys' fees, 25:4.20

Presumption of reasonableness to agreed-upon fees in class action, **25:4.30** 

#### ATTORNEYS' FEES—Cont'd

Racketeer influenced and corrupt organizations, 22:9

#### **AUCTIONING**

Class actions, selection of class counsel through auctioning, **25:6**, **25:8** 

# **AUDITS AND AUDITORS**

Pleading scienter for outside auditors, **24:5** 

Sarbanes-Oxley Act (SOX) (this index)

#### **AUTOMATIC STAY**

Sarbanes-Oxley Act of 2002, debtor-company in bankruptcy, **5D:3** 

# AWARENESS OF PLAINTIFF

Insider trading, Stoneridge decision, 15:16 to 15:20

# BALANCE OF INTERESTS TEST

International securities regulation, 27:5

# BANKRUPTCY AND SECURITIES FRAUD

Sarbanes-Oxley Act (SOX) (this index)

#### **BARS**

Sarbanes-Oxley Act, officer and director bars—Section 305, **5A:10** 

# BENEFIT OF THE BARGAIN

Instructions to jury, Section 10(b) of Securities Exchange Act of 1934, 24:47

Rule 10b-5, 13:3, 14:65

# **BROKERS**

Implied actions and remedies, Section 15 of Securities Exchange Act of 1934, **19:8** 

#### **CAUSATION**

Instructions to jury, Section 10(b) of Securities Exchange Act of 1934, 24:45

Loss causation. See Private Securities
Litigation Reform Act of 1995
(this index)

Proxy fraud. See **Proxy Fraud** (this index)

Rule 10b-5. See **Rule 10b-5** (this index) Section 11, Securities Act of 1933, **6:25** 

#### CAUSATION—Cont'd

Securities Exchange Act of 1934, **8:4**, **8:16** 

# **CEO**

Sarbanes-Oxley Act, certification requirements, **5A:3**, **5B:4** 

#### CERTIFICATION

Barrier to class certification, **24:15** Class actions

generally, 24:13

barrier, 24:15

loss causation, 24:13.20

materiality, 24:13.10

Sarbanes-Oxley Act (SOX) (this index)

#### **CFO**

Sarbanes-Oxley Act, certification requirements, **5A:3**, **5B:4** 

#### **CHALLENGES**

Event studies in securities fraud litigation, **25B:5** 

#### **CHARTS**

Instructions to jury, 24:26, 24:27

# **CHURNING**

Insider trading. See **Insider Trading** (this index)

# **CIVIL ACTIONS**

Sarbanes-Oxley Act enhancement of private civil liability. See Sarbanes-Oxley Act (SOX) (this index)

# **CLASS ACTION FAIRNESS ACT**

Generally, 25A:1

### **CLASS ACTIONS**

Generally, 25:1 et seq.

Advertising 8220investigations,8221 solicit lead plaintiffs, **25:1.40** 

Attorneys' fees, 25:4 to 25:4.30

Auctioning, selection of class counsel through, **25:6**, **25:8** 

Bankruptcy and securities fraud, 5D:4

Barrier to class certification, 24:15

Certification of class

generally, 11A:17 et seq., 24:13 barrier, 24:15

CLASS ACTIONS—Cont'd

#### Securities Litigation Uniform Standards Certification of class-Cont'd Act of 1998 loss causation, **24:13.20** actions that are joined, consolidated, materiality, 24:13.10 or otherwise proceeding as a "mismatch" defense, 24:13.30 single action, **5:6.50** Morrison case, effect on, 25:9 defined class actions, 5:6 rebutting reliance, 24:13.30 state court, federal class actions in. reliance, rebutting, 24:13.30 5:8.70 Class Action Fairness Act, 25A:1 Security for costs, 25:5 Counsel, selection of, 25:6 Selection of counsel. 25:6 Cy Pres awards, 25:3.20 Selection of interim lead plaintiff Fraud-on-the-theory, 11A:17.10, advertising 8220investigations,8221 11A:17.20 solicit lead plaintiffs, 25:1.40 Independent approval of settlement, monitoring arrangements, institutional 25:3.10 investors, 25:1.30 Judicial approval of settlement, 25:3 8220Pay to play8221 arrangements, Lead plaintiff, selection of, **25:1** et seq. 25:1.20 Lodestar attorney fees versus percent-Settlement, 25:2, 25:3, 25:3.10 age-of-fund recovery in class Third Circuit task force, recommendaaction, 25:4.10 tions, 25:7 Materiality, "plausible" allegation, 11A:17.40 COLLECTIVE SCIENTER Monitoring arrangements, institutional Tellabs case, 24:55 investors, 25:1.30 **COMMON LAW** Non-lead counsel, issues with and other Loss causation, common law fraud, actors seeking payment from the 11A:20 common fund, 25:4.40 Rule 10b-5. See **Rule 10b-5** (this index) Objecting to attorneys' fees, 25:4.20 Sarbanes-Oxley Act, attorney's duty to 8220Pay to play8221 arrangements, blow whistle on securities fraud, 25:1.20 5C:2 Presumptions Section 11, Securities Act of 1933, 6:7 reasonableness to agreed-upon fees, 25:4.30 COMMON SECONDARY ACTORS reliance, rebutting presumption, Insider trading, Stoneridge decision, 11A:17.40 15:18 Private Securities Litigation Reform Act **COMPENSATION** of 1995. See Private Securities Forfeiture of executive compensation **Litigation Reform Act of 1995** upon restatements—Section 304. (this index) 5A:9 Publication of settlement, 25:2 CONDOMINIUMS Rebutting fraud-on-the-theory, **11A:17.10** Investment contracts, 1:6 reliance, presumption of, 11A:17.40 CONDUCT OR MISCONDUCT Reliance, rebutting presumption, Sarbanes-Oxley Act, conduct rules for 11A:17.40 attorneys—Section 307, **5A:12** Rule 10b-5, rebuttal of fraud-on-the-"CONDUCT" TEST market theory, class certification, 10:30.15 Internet, extraterritorial subject matter

CLASS ACTIONS—Cont'd

Sarbanes-Oxley Act (SOX), 5D:4

jurisdiction, 28:3, 28:7, 28:8

#### CONFIDENTIAL SOURCES

Circuit survey and effect of Tellabs, 24:53.10

Discovery, 24:54, 24:54.10

Documents from, 24:53.20

Pleading after Tellabs, **24:52.50**, **24:53**, **24:55** 

Private investigators, 24:53.30

Rule 26 discoverability of identities, **24:54.10** 

# **CONFIDENTIAL WITNESSES**

Securities fraud pleading, 24:53

# CONFLICT OF LAWS

Sarbanes-Oxley Act, state attorney confidentiality standards in conflict with SEC's regime, **5C:5** 

#### CONGRESSIONAL INTENT

Private Securities Litigation Reform Act of 1995, loss causation, 11A:4

### **CONSENT**

Class actions, approval of settlement, 25:3, 25:3.10

#### **CONSEQUENTIAL DAMAGES**

Rule 10b-5. See **Rule 10b-5** (this index)

#### **CONSTITUTIONAL LAW**

Event studies in securities fraud litigation, **25B:2** 

Rule 10b-5. See Rule 10b-5 (this index)

# CONSTRUCTION AND INTERPRETATION

Private Securities Litigation Reform Act of 1995 (this index)

# CONSUMER FINANCIAL PROTECTION BUREAU

Dodd-Frank, 5E:4

# **CONTRACT VOIDANCE**

Generally, 23:6

# CONTRIBUTION AND INDEMNIFICATION

Generally, 20:1 et seq.

Basics of D&O insurance, 20:29

Claim procedure, 20:8

Common provisions in D&O insurance, 20:30

# CONTRIBUTION AND

#### INDEMNIFICATION—Cont'd

Director and officer (D&O) insurance and securities fraud

basics of D&O policy, 20:29

common provisions, 20:30

settlement, 20:32

"tower," 20:31

Implied right to contribution. See **Rule 10b-5** (this index)

# Insurance

generally, 20:28

basics of D&O insurance, 20:29

director and officer (D&O) insurance and securities fraud, above

fraud by directors and officers, 20:29

Joint tortfeasors, 20:4

Judicial power to create, 20:3

Rule 10b-5. See **Rule 10b-5** (this index)

Settlement

D&O insurance, 20:32

effect on contribution, 20:5, 20:27

"Tower," D&O insurance, **20:31** 

### CORNERSTONE RESEARCH

Class actions under PSLRA, statistics, 4:3

# CORPORATE FINANCE THEORY

Private Securities Litigation Reform Act of 1995, loss causation, 11A:8

# CORPORATE OFFICERS AND DIRECTORS

Insider trading, liability, 15:25

#### COSTS AND EXPENSES

Generally, 21:1, 21:2

Attorneys' fees. See **Attorneys' Fees** (this index)

Class actions, security for costs, 25:5

Racketeer influenced and corrupt organizations, **22:9** 

Section 16, Securities Exchange Act of 1934, **8:13** 

# COVER

Rule 10b-5, Tenth Circuit, 14:52

#### CREDIT DEFAULT SWAPS

FINFA rules, 26A:1

#### CRIMINAL LAW

Sarbanes-Oxley Act, reliance on criminal law, **5A:25** 

# **CRYPTOCURRENCIES**

Regulation of, 2:6

#### CY PRES AWARDS

Class actions, 25:3.20

# DAMAGES, LAW OF

Generally, 1:2, 29:1, 29:2

For detailed matters, see more specific entries throughout this index

Securities litigation, 1:4

#### DAMAGES FORMULA

Private Securities Litigation Reform Act of 1995, 3:14.30 to 3:14.50

# DAMAGES FOR VIOLATIONS OF SECTION 12, SECURITIES ACT OF 1933

Conduct prohibited by section 12(a)(1), 7:5

Conduct prohibited by section 12(a)(2), **7:6** 

a 8220prospectus8221 and the 8220public offering8221 limitation. **7:7** 

Contribution and indemnification, **7:15** Introduction to damages under section 12, **7:9-7:13** 

Introduction to damages under section 12 contribution and indemnification, 7:14

Introduction to express remedies, **7:1** 8220Sellers8221 under section 12 and

persons liable, **7:2** those who pass title, **7:3** 

those who successfully solicit, 7:4

Statutes of limitations for section 12(a)(2), **7:16** 

Timeliness bars applicable to section 12 claims, **7:8** 

# **DEALERS**

Implied actions and remedies, Section 15 of Securities Exchange Act of 1934, **19:8** 

# DECEPTIVE CONDUCT PLUS PLAINTIFF AWARENESS

Insider trading, Stoneridge decision, 15:16 to 15:20

#### DEFENSES

Section 11, Securities Act of 1933, 6:4

#### **DEFINITION**

Security, 1:5

#### **DEPOSITIONS**

Expert witnesses, 24:23, 24:24 Instructions to jury, 24:28

# DIRECT MARKET REPERCUSSION THEORY

Rule 10b-5, Second Circuit, 14:10

# DIRECTOR AND OFFICER (D&O) INSURANCE

Ancillary sources of damages, **20:29 et seq.** 

# **DISCIPLINE**

Implied actions and remedies, Section 6(b) of Securities Exchange Act of 1934, **19:3** 

# DISCLOSURE

Duty, materiality, 10:27.60

Implied actions and remedies, Sections 11(d)(2) and 17(a) of Securities Exchange Act of 1934, **19:5** 

Sarbanes-Oxley Act (SOX) (this index)

# **DISCOVERY**

Generally, 24:16

Depositions. See **Depositions** (this index)

Expert witnesses, 24:22 to 24:24

Securities Litigation Uniform Standards Act of 1998, stay, **5:13** 

Tellabs case, 24:53

# DISGORGEMENT

Rule 10b-5. See Rule 10b-5 (this index)

# **DIVIDENDS**

Section 16, Securities Exchange Act of 1934, **8:11** 

#### DODD-FRANK ACT (2010)

Generally, 5E:1 to 5E:5

# DODD-FRANK ACT (2010)—Cont'd

Antifraud measures, security-based swaps, **5E:2** 

Consumer financial protection bureau, **5E:4** 

Extraterritoriality of securities fraud litigation, **5E:5** 

Security-based swaps, antifraud measures, **5E:2** 

Whistleblowers, 5E:3

#### **DUAL INQUIRY TEST**

Ninth Circuit, pleading scienter after Tellabs, **3:11.130** 

# **DURA PHARMACEUTICALS CASE**

Private Securities Litigation Reform Act of 1995 (this index)

#### **DUTY TO DISCLOSE**

Materiality, rule 10b-5, 10:27.60

# **ECONOMIC LOSS**

Private Securities Litigation Reform Act of 1995, loss causation, **11A:7**, **11A:8** 

### "EFFECTS" TEST

Internet, extraterritorial subject matter jurisdiction, **28:4**, **28:7**, **28:8** 

# **ELECTION**

Rule 10b-5, rescission or rescissionary damages, **14:51** 

# **ELECTRONIC DELIVERY**

Federal securities regulation, 5:14

# EMPLOYEE STOCK OPTIONS

Section 16, Securities Exchange Act of 1934, **8:10** 

# ENFORCEMENT OF SECURITIES LAWS

FINFA and role of SROs, 26A:2

#### ENRON SCANDAL

Insider trading, Stoneridge decision, 15:20

Private Securities Litigation Reform Act of 1995, laxity, **4:4** 

#### **EQUITABLE RELIEF**

Racketeer influenced and corrupt organizations, **22:9** 

#### "ETHICS" CODE

Sarbanes-Oxley Act, ethics code for financial officers—Section 406, **5A:15** 

# EVENT STUDIES IN SECURITIES FRAUD LITIGATION

Generally, 25B:1

Accounting for "tangle of factors," 25B:4

Acknowledgment of "tangle of factors," **25B:4** 

Analysis methodology, 25B:3

Challenging reliability, 25B:5

Class certification, 25B:6

Constitutional law, 25B:2

Dispositive role, Seventh Amendment, **25B:2** 

Efficiency of market, 25B:7

Impact of market, 25B:7

Loss causation, 11A:16

Market efficiency, 25B:7

Market impact, 25B:7

Methodology, 25B:3

Potential Seventh Amendment problems, **25B:2** 

Questions of market impact and efficiency, **25B:7** 

Recognition of "tangle of factors," 25B:4

Reliability challenge, 25B:5

Rule 10b-5 claims, **25B:6** 

Section 10(b) of Securities Exchange Act. **25B:6** 

Section 11 of Securities Act of 1933, **25B:8** 

Seventh Amendment problems, 25B:2

Summary judgment, 25B:9

"Tangle of factors," 25B:4

#### **EVIDENCE**

Loss causation, proving, **3:12.10**, **11A:16** 

# **EXHIBITS**

Instructions to jury, 24:26, 24:27

#### **EXPENSES**

Costs and expenses. See Costs and Expenses (this index)

#### EXPERT WITNESSES

Generally, 24:19 et seq. Complaints, 24:2.50 Depositions, 24:23, 24:24 Disclosure, 24:22 to 24:24 Instructions to jury, 24:29, 24:30 Loss causation, 11A:16 Private Securities Litigation Reform Act

of 1995, damages formula, 3:14.50 Types of experts, 24:21

#### EXTENSION OF CREDIT

Implied actions and remedies. See **Implied Actions and Remedies** (this index)

# **EXTERNAL MARKET FORCES**

Rule 10b-5, Seventh Circuit, 14:39

# **EXTRATERRITORIAL** JURISDICTION

Dodd-Frank, 5E:5

International securities regulation. See **International Securities Regula**tion (this index)

# FAIR SHARE RULE

Private Securities Litigation Reform Act of 1995, proportionate liability, 3:14

#### FIDUCIARY DUTY

Rule 10b-5, 10:7

### **FILING**

Implied actions and remedies, Section 13(a) of Securities Exchange Act of 1934, **19:7** 

Private Securities Litigation Reform Act of 1965, NERA and cornerstone research securities, 4:3

#### FINANCIAL EXPERTS

Sarbanes-Oxley Act, audit committee financial experts—Section 407, 5A:16

# FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)

See FINRA (this index)

#### FINANCIAL OFFICERS

Sarbanes-Oxley Act, ethics code—Section 406, **5A:15** SROs, role in enforcing securities laws,

26A:2

#### **FINRA**

Claims involving FINRA members, 26A:1, 26A:2

Credit default swaps under FINFA rules, 26A:1

Customers and credit default swaps under FINFA rules, 26A:1

#### FORCED SALE

Sarbanes-Oxley Act of 2002, bankruptcy and securities fraud, 5D:2

#### FORCED SELLER DOCTRINE

Material misrepresentations, Section 11 and Section 12 claims, 14A:2

#### FOREIGN CUBED CASES

Rule 10b-5, extraterritorial application, 10:2.50, 10:2.60

#### **FORFEITURES**

Sarbanes-Oxley Act of 2002, forfeiture of executive payments upon restatements—Section 304, 5A:9

#### FORMULA FOR DAMAGES

Section 11, Securities Act of 1933. See Section 11, Securities Act of 1933 (this index)

# **FRAUD**

Confidential witnesses, securities fraud pleading, 24:53

Event studies. See Event Studies in Securities Fraud Litigation (this index)

Insider trading, Stoneridge decision, 15:13, 15:16 to 15:20

Proxy fraud. See **Proxy Fraud** (this index)

Section 11, Securities Act of 1933, fraud against mutual funds, 6:4.10

Securities fraud, generally.Sarbanes-Oxley Act (SOX) (this index)

#### FRAUD BY HINDSIGHT

Tellabs case, 24:57

# FRAUD-CREATED-THE-MARKET THEORY

Rule 10b-5, 10:30, 10:31 et seq.

#### FRAUD ON THE MARKET

Analysts, actions against, 15:11
Artificial inflation, Rule 10b-5, 11:11
Endorsement by Supreme Court, 13:17
Insider trading, 15:10, 15:11
Loss causation, 11A:9, 11A:15.10
Measure of damages, uniformity, 13:16
Private Securities Litigation Reform Act of 1995, limitation of scope in Dura Pharmaceuticals court decision, 11A:9

Rule 10b-5, **10:30.10**, **10:30.15**, **10:30.50**, **11:11**, **13:16** 

Stoneridge decision, **15:10** 

### **GLOSSARY**

Generally, App 4

#### **GOOD WILL**

Section 11 and Section 12, Securities Act of 1933, misrepresentation in registration statements, **14A:1** 

# **GROUP PLEADING**

Tellabs, 24:55

# IMPLIED ACTIONS AND REMEDIES

Generally, 19:1 et seq.

Brokers and dealers, Section 15 of Securities Exchange Act of 1934, **19:8** 

Discipline of members, Section 6(b) of Securities Exchange Act of 1934, 19:3

Disclosure requirements, Sections 11(d)(2) and 17(a) of Securities Exchange Act of 1934, **19:5** 

Extension of credit

Rule 10b-16, 19:10

Section 7(c) of Securities Exchange Act of 1934, **19:4** 

Filing requirements, Section 13(a) of Securities Exchange Act of 1934, 19:7

Obstruction of filings, Section 20(c) of Securities Exchange Act of 1934, 19:9

# IMPLIED ACTIONS AND REMEDIES —Cont'd

Reporting requirements, Section 12(b) and (f) of Securities Exchange Act of 1934, **19:6** 

Rule 10b-5. See **Rule 10b-5** (this index) Section 17(a), **19:1, 19:2** 

# INDEMNIFICATION

Contribution and indemnification. See Contribution and Indemnification (this index)

#### **INFERENCES**

Tellabs case, scienter, 24:56 et seq.

#### **INFORMANTS**

Sarbanes-Oxley Act, no retaliation against informants—Section 1107, **5A:21** 

### INITIAL COIN OFFERINGS

Regulation of, 2:6

# **INJUNCTIONS**

Generally, 23:2

Interference with market for corporate control, tender offers, **16:4** 

#### IN LIMINE MOTIONS

Generally, 24:18

# IN RE CHARTER COMMUNICATIONS

Insider trading, Eighth Circuit, 15:27

# INSIDER TRADING

Generally, 15:1 et seq.

Accountant liability, 15:23

Analysts, actions against, 15:11

Attorney liability, 15:24

Central Bank decision, 15:32

Churning, 15:4

Common secondary actors, 15:18

Congressional restatement of scheme / secondary liability, **15:30** 

Corporate officer liability, 15:25

"Creationism" test for scheme / secondary liability, **15:31** 

Deceptive conduct plus plaintiff awareness, **15:16 to 15:20** 

#### INSIDER TRADING—Cont'd INSIDER TRADING—Cont'd Drafting materials used to effect fraudu-Secondary liability issue—Cont'd Fifth Circuit, 15:29 lent transactions, attorney liability, 15:24 Ninth Circuit, AOL-Simpson deci-Duty to disclose, absence of, 15:3 sion, 15:28 Eighth Circuit, In Re Charter Comscheme / secondary liability, 15:30 to munications decision, 15:27 15:32 Fifth Circuit Stoneridge decision, below pleading scienter after Tellabs, 15:10, Supreme Court, 15:7 et seq. 24:10 Seventh Circuit, pleading scienter after secondary liability issue, 15:29 Tellabs, 24:11 First Circuit, pleading scienter after Tel-State court litigation, 15:19 labs, 24:8 Stoneridge decision Fraud on the market, **15:10**, **15:11** generally, 15:7 Implied private rights of action under aiding and abetting liability, 15:9 Section 10(b), 15:12 analysis of impact, 15:14, 15:15 Janus decision, 15:32 Central Bank decision, 15:32 Lorenzo decision, 15:32 common secondary actors, 15:18 Loss causation, pleading, 24:12, 24:15 deceptive conduct plus plaintiff Misrepresentation or omission in audit awareness, 15:16 to 15:20 opinions, accountant liability, Enron litigation, 15:20 15:23 factual background, 15:8 Ninth Circuit, AOL-Simpson decision, fraud on the market, 15:10 expanding liability of secondary implied private rights of action under actor, 15:28 Section 10(b), 15:12 Outside counsel liability, 15:24 Janus decision, 15:32 Primary liability after Stoneridge deci-Lorenzo decision, 15:32 sion, 15:22 policy implications in securities fraud Professional liability under Sarbanesaction, 15:13 Oxley, **15:6** primary liability following decision, Reaffirming bar on aiding and abetting 15:22 liability, 15:9 reaffirming bar on aiding and abetting Reliance, 15:10 liability, 15:9 Reviewing materials used to effect reliance, 15:10 fraudulent transactions, attorney SEC aiding and abetting enforcement liability, **15:24** actions, 15:17 Revising materials used to effect fraudusecondary actor liability, 15:9 lent transactions, attorney liability, secondary liability, generally, 15:7 et 15:24 seq. Sarbanes-Oxley. See Sarbanes-Oxley state court litigation, 15:19 Act (SOX) (this index) Supreme Court Scheme / secondary liability, 15:30, Central Bank decision, 15:26, 15:32 15:31 Janus decision, 15:32 **Scienter** (this index) Lorenzo decision, 15:32 SEC aiding and abetting enforcement actions, 15:17 secondary liability guidance. Stoneridge decision, above Secondary liability, 15:5, 15:9 Secondary liability issue Stoneridge decision, 15:32 Eighth Circuit, In Re Charter Com-Third Circuit, pleading scienter after Tellabs, 24:9 munications decision, 15:27

#### INSTITUTIONAL INVESTORS

Private Securities Litigation Reform Act of 1995, class actions, **3:3**, **3:6**Selection of an interim lead plaintiff, monitoring arrangements, **25:1.30** 

# INSTRUCTIONS TO JURY

Generally, 24:25 et seq.

Benefit of the bargain, Section 10(b) of Securities Exchange Act of 1934, 24:47

Causation, Section 10(b) of Securities Exchange Act of 1934, **24:45** 

Charts and summary exhibits, 24:26, 24:27

Conflicting expert testimony, 24:30

Damages; caution against inference from instruction, **24:31** 

Depositions, 24:28

Expert witnesses, 24:29, 24:30

Joint and several liability, 24:34

Materiality, 24:50

Multiple defendants, caution against, 24:33

Multiple recovery, caution against, **24:32** 

Rescissionary measure, Section 10(b) of Securities Exchange Act of 1934, 24:48

Section 10(b) of Securities Exchange Act of 1934

generally, 24:46 et seq.

benefit of the bargain measure, 24:47

causation, 24:45

general measure, 24:46

rescissionary measure, 24:48

uniform instruction, 24:49

Section 11, Securities Act of 1933. See Section 11, Securities Act of 1933 (this index)

Section 12, Securities Act of 1933, **24:42 to 24:44** 

Uniform instruction, Section 10(b) of Securities Exchange Act of 1934, 24:49

# INSURANCE

See Contribution and Indemnification (this index)

#### INTEREST

Generally, **21:1**, **21:3** Section 16, Securities Exchange Act of 1934, **8:12** 

# INTERFERENCE WITH MARKET FOR CORPORATE CONTROL

Generally, 16:1 et seq.

Appraisal remedies, 16:8

Federal and state law remedies, relationship between, **16:7** 

Injunctions, tender offers, 16:4

Minority shareholders, remedies of, 16:6

Proxy solicitation relief, 16:2

Rescission, 16:5

Tender offers, 16:3, 16:4

### INTERIM LEAD PLAINTIFF

Selection

monitoring arrangements, institutional investors, **25:1.30** 

8220Pay to play8221 arrangements, **25:1.20** 

# INTERNATIONAL SECURITIES REGULATION

Generally, 27:1 et seq.

Balance of interests test, 27:5

Congressional response to Morrison decision, **10:2.60** 

Criticisms of extraterritorial jurisdiction, 27:1 to 27:6

Extraterritorial jurisdiction, 27:1 et seq.

Injury to United States, 27:6

Legislative intent, 27:3, 27:7

Morrison, evolution of and extraterritorial reach of Rule 10b-5, **10:2.70** 

Reliance on international law. 27:4, 27:8

Rule 10b-5, application by Second Circuit, **10:2.50**, **27:10** 

Statutory construction, 27:3, 27:7

#### **INTERNET**

Generally, 5:14, 5:15, 28:1 et seq.

"Conduct" test, extraterritorial subject matter jurisdiction, 28:3, 28:7, 28:8

Cryptocurrencies, regulation of, 2:6

Cyberspace securities transactions, 28:6

"Effects" test, extraterritorial subject matter jurisdiction, 28:4, 28:7, 28:8

#### INTERNET—Cont'd

Extraterritorial subject matter jurisdiction, 28:2 to 28:4
Initial coin offerings, regulation of, 2:6
Jurisdiction, 28:1 et seq.

Personal jurisdiction, 28:5

#### INTRODUCTION

Generally, 1:1 et seq.

# INVESTMENT CONTRACTS

Condominiums, 1:6

#### JOINT AND SEVERAL LIABILITY

Private Securities Litigation Reform Act of 1995, **3:14.10** 

#### JOINT TORTFEASORS

Contribution and indemnification, **20:4** Instructions to jury, **24:34** 

# **JURISDICTION**

Internet. See **Internet** (this index) Securities laws, **1:3.10** 

#### JURY INSTRUCTIONS

Instructions to jury. See **Instructions to Jury** (this index)

### LANGUAGE

Private Securities Litigation Reform Act of 1995, Supreme Court's interpretation of language in Act, 11A:2

# LAXITY

Enron scandal, Private Securities Litigation Reform Act, **4:4** 

# LEGISLATIVE HISTORY

Private Securities Litigation Reform Act of 1995, loss causation, 11A:3

### LIABILITIES

Securities Act of 1993 section 11 liability, elements, **6:3** 

# LIMITATION OF ACTIONS

Rule 10b-5, **9:14 et seq.** 

Sarbanes-Oxley Act. See **Sarbanes-Oxley Act (SOX)** (this index)

Section 10(b), Securities Exchange Act of 1934, **9:18** 

Section 16, Securities Exchange Act of 1934, **8:14.50** 

#### LIMITED LIABILITY COMPANIES

Generally, 2:1 et seq.

Attributes, 2:3, 2:4

Predictability, 2:5

Supreme Court standards for defining security, 2:2, 2:4

#### LITIGATION

Generally, 24:1 et seq.

Artificially inflating the value of a security, **24:3.10** 

Investigating and preparing for securities litigation, **24:1.10** 

accessing internal company information, **24:1.30** 

examining publicly available material, 24:1.20

The dissipation of that artificial inflation, 24:3.20

inflationary loss as a result of the company8217s collapse, **24:3.50** 

inflationary loss through market forces, **24:3.40** 

inflationary loss upon a corrective disclosure and a drop in stock value, 24:3.30

### LOAN LOSS RESERVES

Section 11 and Section 12, Securities Act of 1933, material misrepresentation in registration statements, 14A:1

### **LOANS**

Sarbanes-Oxley Act, prohibition on loans to executive officers and directors. **5A:6** 

# LOSS CAUSATION

Insider trading, pleading, 24:12, 24:15

Private Securities Litigation Reform

Private Securities Litigation Reform Act of 1995 (this index)

Rule 10b-5. See **Rule 10b-5** (this index) Short selling and securities litigation, **24:12.10** 

# MANAGEMENT

Sarbanes-Oxley Act, management assessment of internal accounting controls—Section 404, **5A:14** 

# MARKET IMPACT AND EFFICIENCY

Event studies in securities fraud litigation, **25B:7** 

#### MARKET MANIPULATION

Listed stock manipulations, **8:3 to 8:5** Rule 10b-5, auction rate securities, **10:31.90** 

# **MATERIALITY**

Generally, 18:1 et seq.

Class actions, "plausible" allegation, 11A:17.40

Class certification, 24:13.10

Instructions to jury, 24:50

Private Securities Litigation Reform Act of 1995, **3:9** 

Rule 10b-5. See **Rule 10b-5** (this index) Soft information, **18:3** 

Subjective vs. objective falsehoods, **18:4** Supreme Court and statistical significance, **18:5** 

Supreme Court definition, **18:2** Virginia Bankshares, **18:3** 

# MATERIALIZATION OF RISK THEORY

Loss causation, 11A:15.20

### MERITLESS LITIGATION

Private Securities Litigation Reform Act of 1995, sanctions, **3:19** 

# **METHODOLOGY**

Event studies in securities fraud litigation, **25B:3** 

# MINORITY SHAREHOLDERS

Interference with market for corporate control, **16:6** 

# **MISAPPROPRIATION**

Rule 10b-5, 10:11

#### MISREPRESENTATION

Section 11 and Section 12, Securities Act of 1933, good will and loan loss reserves misrepresented in registration statements, **14A:1** 

# MODEL COMPLAINT UNDER PSLRA

Generally, 3:20, 3:21

# MONITORING ARRANGEMENTS

Selection of an interim lead plaintiff, institutional investors, 25:1.30

#### MOTIONS IN LIMINE

Generally, 24:18

#### **MOTIVE**

Pleading scienter after Tellabs, independent method to establish scienter, 3:11.120

# MULTIDISTRICT TRANSFERS

Pretrial, 24:51

#### MULTIPLE DEFENDANTS

Instructions to jury, 24:33

# MULTIPLE RECOVERY

Instructions to jury, 24:32

#### **MUTUAL FUNDS**

Section 11, Securities Act of 1933, **6:4.10** 

# NATIONAL ECONOMIC RESEARCH ASSOCIATES

Class actions under PSLRA, statistics, 4:3

#### **NEGATIVE CAUSATION**

Section 11, Securities Act of 1933, **6:28**, **6:31** 

# NERA AND CORNERSTONE RESEARCH

Class actions under PSLRA, statistics, 4:3

# **OBSTRUCTION OF FILINGS**

Implied actions and remedies, Section 20(c) of Securities Exchange Act of 1934, **19:9** 

# **OPPORTUNITY**

Pleading scienter after Tellabs, independent method to establish scienter, 3:11.120

#### **OUT-OF-POCKET**

Rule 10b-5, 13:4 to 13:6

#### 8220PAY TO PLAY8221

Arrangements, selection of interim lead plaintiff, **25:1.20** 

#### PENSION BLACKOUT PERIODS

Sarbanes-Oxley Act, insider trades during pension blackout periods— Section 306, **5A:11, 5B:6** 

#### **PLAINTIFF**

Advertising 8220investigations,8221 solicit lead plaintiffs, **25:1.40** 

Monitoring arrangements, institutional investors, **25:1.30** 

8220Pay to play8221 arrangements, **25:1.20** 

# **PLEADINGS**

Generally, 24:2

Adequate theories of loss, 24:3

Confidential witness, securities fraud pleadings, **24:53** 

Experts in complaints, 24:2.50

Loss theories, 24:3

Outside auditors, scienter, 24:5

Private Securities Litigation Reform Act of 1995. See Private Securities

Litigation Reform Act of 1995

(this index)

Tellabs case, 24:52.50, 24:53, 24:55

# POSTJUDGMENT INTEREST

Generally, 21:1, 21:3

#### **PRACTICE**

Generally, 24:1 et seq.

#### **PREEMPTION**

Federal securities regulation, generally, 5:1

Sarbanes-Oxley Act, attorney disclosure requirements, new SEC professional standards, **5C:6** 

# PREJUDGMENT INTEREST

Generally, 21:1, 21:3

# **PRESUMPTIONS**

Attorneys' fees in class action, reasonableness to agreed-upon fees, **25:4.30** 

Reliance, rebutting presumption of in class action, 11A:17.40

# PRESUMPTIONS—Cont'd

Rule 10b-5, **10:30** 

#### PRIVATE ACTIONS

Insider trading, Stoneridge decision, 15:12

Sarbanes-Oxley Act (SOX) (this index)

# PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

Generally, **3:1 et seq., 4:1 et seq.**Abusive discovery, class actions, **3:8 to** 

3:8.90

Abusive litigation, sanctions for, 3:19

Allegations, Tellabs case, **3:11.10** 

"At least as likely" standard, pleading requirements, **3:11.70**, **3:11.80** 

Attorney sanctions for pursuing meritless litigation, **3:19** 

Causation of loss. Loss causation, below Class actions

generally, 3:2 et seq., 4:1 et seq.

abusive discovery, 3:8 to 3:8.90

auctioning, selection of class counsel through, **25:6**, **25:8** 

certification, loss causation, **11A:17 et seq.**, **11A:18**, **24:14**, **24:15** 

empirical analysis, 4:1 et seq.

fraud-on-the-market theory,

11A:17.10, 11A:17.20

grundfest and Perino study, 4:2

institutional investors, 3:3, 3:6

loss causation, 11A:17 et seq., 11A:18, 24:14, 24:15

loss causation and limitation of damages, **3:14.40** 

materiality, "plausible" allegation, 11A:17.40

NERA and cornerstone research securities statistics, **4:3** 

professional and lead plaintiffs, 3:2

rebutting fraud-on-the-market theory, 11A:17.10

rebutting presumption of reliance, 11A:17.40

selection of class representative, **3:4** settlement process, **3:7** 

Complaint under PSLRA, model complaint, **3:20, 3:21** 

# PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995—Cont'd

Congressional intent, loss causation, 11A:4

Construction and interpretation, loss causation. Loss causation, below

Corporate finance theory, loss causation, 11A:8

Damages, generally, 3:13

Damages formula, 3:14.30 to 3:14.50

Decision of Supreme Court

Dura Pharmaceuticals case, consequences, 11A:9 to 11A:12

Halliburton case, loss causation and class certification, **11A:17.30** 

Dual inquiry test of Ninth Circuit, pleading scienter after Tellabs, **3:11.130** 

Dura Pharmaceuticals case, generally, 11A:1

Economic loss, private securities fraud litigation, 11A:7, 11A:8

Eighth Circuit, loss causation,

11A:12.90

Eleventh Circuit, loss causation, 11A:12.120

Enron scandal and laxity, 4:4

Expert witnesses, damages formula, 3:14.50

Fair share rule of proportionate liability, **3:14** 

Federal circuits, uncertain loss causation issues not reached by Court in Dura Pharmaceuticals, 11A:11.1

Fifth Circuit, loss causation, 11A:12.60

Fourth Circuit, loss causation,

11A:12.50

Fraud on the market theory, limitation of scope in Dura Pharmaceuticals court decision, **11A:9** 

Fraud-on-the-market theory, loss causation, **11A:9**, **11A:15.10** 

Institutional investors, class actions, **3:3**, **3:6** 

Joint and several liability for knowing wrongdoing, **3:14.10** 

Language of PSLRA, Supreme Court's interpretation, 11A:2

Legislative history, loss causation, 11A:3

# PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995—Cont'd

Likely impact of "at least as likely" standard, **3:11.80** 

Limitation of scope in Dura
Pharmaceuticals court decision,
11A:9

Loss causation

generally, 3:12, 11A:1 et seq. appropriate theories of loss, 11A:15 circuit survey, 11A:12.10 to 11A:12.120

class certification, 11A:17 et seq., 11A:18, 24:14, 24:15

common law fraud, 11A:20

congress' carefully designed structure of PSLRA and federal securities laws. 11A:5

congressional intent supporting, 11A:4

corporate finance theory, **11A:8** decision of Court in Dura

Pharmaceuticals case, consequences of, 11A:9 to 11A:11

Dura Pharmaceuticals case, generally, 11A:1

economic loss, private securities fraud litigation, 11A:7, 11A:8

Eighth Circuit, 11A:12.90

Eleventh Circuit, 11A:12.120

event studies, 11A:16

evidence, 3:12.10, 11A:16

expert testimony, 11A:16

Fifth Circuit. 11A:12.60

First Circuit, 11A:12.20

Fourth Circuit, 11A:12.50

fraud-on-the-market theory, **11A:9**, **11A:15.10**, **11A:17.10**,

11A:17.20 language of PSLRA, Supreme Court's

interpretation, 11A:2

legislative history, **11A:3** 

limitation of scope in Dura
Pharmaceuticals court decision,

Pharmaceuticals court decision 11A:9, 11A:11

materialization of risk theory, 11A:15.20

Ninth Circuit, 11A:12.100

pleading, 3:12.10, 11A:13

PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995—Cont'd Loss causation—Cont'd	PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995—Cont'd Pleading loss causation under the
policy concerns of Supreme Court in	PSLRA, <b>11A:13</b>
Dura Pharmaceuticals case, 11A:6	Pleadings
post-Dura Pharmaceuticals decision,	generally, <b>3:9 et seq.</b>
11A:14 et seq.	loss causation, above
proving, <b>11A:16</b>	Scienter, pleading after Tellabs, below
proxy fraud, <b>17:6</b>	Policy concerns of Supreme Court in
rebutting fraud-on-the-theory,	Dura Pharmaceuticals case, <b>11A:6</b> Post-Dura developments
11A:17.10	generally, 11A:12
regression analyses, 11A:16	forward looking incentives, <b>10:29</b>
risk free assurances theory, 11A:15.30	loss causation after Dura, 11A:14
SEC actions, 11A:20	Section 11 and Section 12 claims,
Second Circuit, 11A:11.1, 11A:12.30	11A:19
Section 11 and Section 12 claims,	Presumption of reliance, rebutting, class
Seventh Circuit, 11A:12.80	actions, 11A:17.40
Sixth Circuit, <b>11A:12.70</b>	Professional and lead plaintiffs, class
standards imposed by Court, satisfy-	actions, 3:2
ing, 11A:10	Proportionate liability and trial practice,
Supreme Court's decision, 11A:17.30	3:14.20
Supreme Court's interpretation, gen-	Proving loss causation, <b>3:12.10</b>
erally, 11A:1 et seq.	Recklessness as independent method to establish scienter, <b>3:11.120</b>
Tenth Circuit, 11A:12.110	Regression analyses, loss causation,
theories of loss, 11A:15	11A:16
Third Circuit, 11A:12.40	Reliance, rebutting presumption in class
uncertain loss causation issues not reached by Court in Dura	action, 11A:17.40
Pharmaceuticals, <b>11A:11 to</b>	Rule 10b-5, forward looking incentives,
11A:11.2	10:28
Materiality, "plausible" allegation,	Safe harbor, <b>3:15 to 3:18</b>
11A:17.40	Sanctions for abusive litigation, 3:19
Materialization of risk theory,	Scienter, pleading after Tellabs
11A:15.20	generally, <b>3:11.100</b>
Material misstatement or omissions,	award of draw to plaintiffs, 3:11.110
pleadings, 3:9	draw awarded to plaintiffs, 3:11.110
Meritless litigation, sanctions for, 3:19	dual inquiry test of Ninth Circuit, 3:11.130
Model complaint under PSLRA, <b>3:20</b> , <b>3:21</b>	incorporation by reference, <b>3:11.152</b>
Motive and opportunity as independent method to establish scienter,	independent methods to establish scienter, 3:11.120
3:11.120	judicial notice, 3:11.152
Ninth Circuit	motive and opportunity as indepen-
dual inquiry test, pleading scienter after Tellabs, <b>3:11.130</b>	dent method to establish scienter, 3:11.120
loss causation, 11A:12.100 Oral statements, safe harbor, 3:17	recklessness as independent method to establish scienter, <b>3:11.120</b>

PROFITS OF DEFENDANT—Cont'd

Sarbanes-Oxley Act, private action for profits—Section 304

#### circuit survey, 11A:12.30 PROPORTIONATE LIABILITY uncertain loss causation issues not Private Securities Litigation Reform Act reached by Court in Dura of 1995, 3:14.20 Pharmaceuticals, 11A:11.1 Selection of class representative, 3:4 **PROSPECTUS** Forced seller doctrine and Section 11 Settlement and Section 12 claims, 14A:2 class actions, process, 3:7 Material misrepresentations, Section 11 NERA and cornerstone research and Section 12 claims, 14A:1, statistics, 4:3 14A:2 reduction, 3:14.30 Seventh Circuit PROTECTION ORDER application of PSLRA, 3:11.50 Scienter, 24:54.30 confidential sources approval, 3:11.40 PROVISIONAL REMEDIES historical context of PSLRA, 3:11.30 Generally, 23:5 loss causation, 11A:12.80 PROXIMATE CAUSE opinion, 3:11.20 Securities fraud8217s historic lack of a remand, 3:11.90 purchaser-seller requirement, 22:3 Sixth Circuit, loss causation, 11A:12.70 Standards PROXY FRAUD loss causation, 11A:10 Generally, 17:1 et seq. pleadings, 3:11 Hidden agenda in Virginia Bankshares, State of mind, pleadings, 3:10 17:5 Supreme Court History of Section 14(a) actions, 17:2 Loss causation, 17:6 competing inferences and "at least as likely" standard, 3:11.70 Virginia Bankshares, 17:3 to 17:5 interpretation of loss causation. Loss PROXY SOLICITATION causation, below Interference with market for corporate likely impact of "at least as likely" control, 16:2 standard, 3:11.80 opinion, 3:11.60 **PSLRA** Tellabs case, guidance on pleading Private Securities Litigation Reform Act scienter, 3:11.05 of 1995. See Private Securities Litigation Reform Act of 1995 Tellabs case. 3:11.05, 3:11.10 (this index) Tenth Circuit, loss causation, 11A:12.110 PUBLICATION Theories of loss, loss causation, 11A:15 Class actions, settlements, 25:2 Third Circuit, loss causation, 11A:12.40 **PUNITIVE DAMAGES** Trial practice, 3:14.20 Racketeer influenced and corrupt Written statements, safe harbor, 3:17 organizations, 22:14 **PRIVITY** Rule 10b-5, 14:66 Rule 10b-5, Fifth Circuit, 14:25 RACKETEER INFLUENCED AND PROFITS OF DEFENDANT CORRUPT ORGANIZATIONS Rule 10b-5. See **Rule 10b-5** (this index) Generally, 22:1 et seq., App 3

PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995—Cont'd

Second Circuit, loss causation

# RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

-Cont'd

Arbitration, 22:12 to 22:14

Attorneys' fees, 22:9

Costs, 22:9

Equitable relief, 22:9

Historical use of RICO securities fraud, 22:2

Measure of damages, 22:5

Punitive damages, securities arbitration, 22:14

Securities fraud, 22:1

Securities fraud8217s historic causation requirement, **22:4** 

Securities fraud8217s historic lack of a purchaser- seller requirement, **22:3** 

State common law damages, 22:10

State-law RICO equivalents, 22:8

State statutory damages, 22:11

The 8220criminal conviction8221 exception, **22:7** 

The PSLRA8217s RICO bar, 22:6

#### "REAL TIME" DISCLOSURES

Sarbanes-Oxley Act, SEC review of disclosures—Section 409, **5A:18** 

#### REASONABLENESS

Attorneys' fees in class action, agreedupon fees, 25:4.30

#### REBUTTAL

Class actions

fraud-on-the-theory, **11A:17.10** "mismatch" defense, **24:13.30** reliance, presumption of, **11A:17.40**, **24:13.30** 

Rule 10b-5, rebuttal of fraud-on-themarket theory, **10:30.15** 

# RECEIVERSHIP

Generally, 23:4

# RECKLESSNESS

Pleading scienter after Tellabs, independent method to establish scienter, 3:11.120

#### RELIABILITY

Event studies in securities fraud litigation, **25B:5** 

#### RELIANCE

Class action, rebutting presumption, 11A:17.40, 24:13.30

Insider trading, Stoneridge decision, 15:10

Rule 10b-5, 10:30, 10:30.50

#### REMOVAL

Securities Litigation Uniform Standards Act of 1998. **5:12** 

#### REORGANIZATION

Sarbanes-Oxley Act of 2002, bankruptcy and securities fraud, **5D:2** 

# REPORTING

Implied actions and remedies, Section 12(b) and (f) of Securities Exchange Act of 1934, **19:6** 

Sarbanes-Oxley Act, disclosure reports—Section 401, **5A:13**, **5B:7** 

#### RESCISSION

Instructions to jury, Section 10(b) of Securities Exchange Act of 1934, 24:48

Interference with market for corporate control, **16:5** 

Rule 10b-5. See Rule 10b-5 (this index)

### RESCISSORY REMEDIES

Proxy fraud, 17:6

### RESEARCH

Class actions under PSLRA, statistics, 4:3

### **RESERVES**

Section 11 and Section 12, Securities Act of 1933, misrepresentation of loan loss reserves in registration statements, **14A:1** 

# RETALIATION

Informants: Sarbanes-Oxley Act, no retaliation against informants—Section 1107, **5A:21** 

Whistleblower protection, Sarbanes-Oxley Act—Section 806, **5A:20** 

#### RETROACTIVITY

Rule 10b-5, 9:16 et seq.

RICO	RULE 10b-5—Cont'd
Racketeer influenced and corrupt	Connection with purchase or sale, 10:3
organizations. See Racketeer	Consequential damages. Special or
Influenced and Corrupt Organizations (this index)	consequential damages, below Constitutional law
	generally, <b>9:4 et seq.</b>
RULE 10b-5	aiding and abetting, 9:8
Generally, 9:1 et seq., 10:1 et seq., 11:1	consequences of exercise of judicial
et seq., 12:1 et seq., 13:1 et seq.,	power, 9:6
14:1 et seq.	contribution, implied right to, <b>9:7</b>
Abandonment of loss causation, <b>11:9</b> Aiding and abetting, constitutional law,	judicial creation and perpetuation of
9:8	private right of action, <b>9:5</b> , <b>9:6</b> , <b>9:9</b>
American Pipe, tolling, <b>9:20.40</b> Analysis of availability of damages,	Section 27A, <b>9:16.10</b>
12:11	uncertain origins of implied remedy,
Analysts, fraud-on-the-market theory,	9:4
10:30.10	Contract cases, contribution, 20:17
Artificial inflation, fraud on the market	Contract model, 9:11
and, 11:11	Contribution
Auction rate securities and market	generally, 20:9 et seq.
manipulation, 10:31.90	common law, <b>20:22 to 20:24</b>
Availability of damages, analysis, 12:12	congressional action, 20:15
Benefit of the bargain measure of dam-	congressional intent, 20:12
ages, 13:3, 14:65	constitutional law, 9:7
Causation. Loss causation, below Circuit courts, <b>10:13 et seq.</b> , <b>10:31 et</b>	contract cases, 20:17
seq., 14:1 et seq.	distinction between implied and express victims' remedies, 20:25
Circuit split	fleshing out victim's claim, 20:24
"fraud-created-the-market" theory,	holding and analysis of Supreme
10:31 et seq.	Court, <b>20:26</b>
liability under Rule 10b-5, 10:14 et	independent federal regulatory
seq.	scheme, <b>20:18</b>
Class certification, rebuttal of fraud-on-	legislative scheme, 20:16
the-market theory, <b>10:30.15</b>	Northwest Airlines and Texas
Common law	Industries, 20:19
generally, 12:10	policy considerations, 20:13
contribution, <b>20:22 to 20:24</b> fraud, loss causation, <b>11:7</b>	strongest arguments, <b>20:11 et seq.</b> well established right, <b>20:14 et seq.</b>
Conclusion, 11:12	"Cover" measure of damages, Tenth
•	Circuit, 14:52
Conduct rendered unlawful by Rule 10b-5, <b>10:6</b>	Definition of theories, Supreme Court, 13:2
Congressional action, contribution, <b>20:15</b>	Direct market repercussion theory,
Congressional intent, contribution, <b>20:12</b>	Second Circuit, <b>14:10</b> Disclosure, materiality, <b>10:27.60</b>
Congressional response to Lampf,	Disgorgement
9:16.10	generally, 14:62
Congressional response to Morrison	First Circuit, 14:4
decision, 10:2.60	Second Circuit, 14:11

RULE 10b-5—Cont'd	RULE 10b-5—Cont'd
District of Columbia Circuit	Fifth Circuit—Cont'd
generally, 10:25, 14:57 to 14:59	special or consequential damages,
liability under Rule 10b-5, 10:25	14:28
rescissionary relief, 14:58	First Circuit
valuation limits, 14:59	generally, 10:14, 14:2 to 14:4
Divergent court approaches	exceptions, 14:3
"fraud-created-the-market" theory,	liability under Rule 10b-5, 10:14
10:31 et seq.	unjust enrichment or engorgement,
liability under Rule 10b-5, 10:14 et	14:4
seq.	Five year statute of repose, 9:19
Dura's impact on securities fraud sen-	Fleshing out victim's claim, contribu-
tences, 11:11.10	tion, <b>20:24</b>
Duty to disclose, materiality, <b>10:27.60</b>	Foreign cubed cases, extraterritorial
Eighth Circuit	application of Rule 10b-5, <b>10:2.50</b>
generally, 10:21, 14:42 to 14:45	10:2.60, 27:10
calculation of damages, 14:43	Forfeitures, tolling, 9:20.30
liability under Rule 10b-5, <b>10:21</b>	Fourth Circuit
materiality of misstatement or omis-	generally, 10:17, 14:17 to 14:22
sion, 14:45	discretion, factors in applying, 14:18
valuation date, <b>14:44</b> Election of rescission or rescissionary	liability under Rule 10b-5, 10:17
damages, Tenth Circuit, 14:51	materiality of actions or omissions,
Elements of action, 9:13	14:20
Eleventh Circuit	qualified profit measure of damages,
generally, <b>10:24</b> , <b>14:54</b> to <b>14:56</b>	14:21
fraud-created-the-market theory,	rescission, rejection of, 14:19
10:31.30	rescissionary measure of damages,
liability under Rule 10b-5, 10:24	14:22
limitations on damages, 14:56	"Fraud-created-the-market" theory,
rescission, <b>14:55</b> , <b>14:56</b>	10:30
Event studies in securities fraud litiga-	generally, 10:31
tion, <b>25B:6</b>	endorsement by circuit courts, 10:31.10 to 10:31.40
Express remedies, limitations from,	
12:5, 12:6	reconciling circuit split, 10:31.80
External market forces, Seventh Circuit, 14:39	regulatory process, reliance on, <b>10:31.35</b>
Fiduciary duty, breach of, 10:7	rejection by circuit courts, 10:31.55
Fifth Circuit	to 10:31.80
generally, 10:18, 14:23 to 14:28	reliance, <b>10:31.35</b>
fraud-created-the-market theory,	Fraud-on-the-market theory
10:31.20	actions against analysts, 10:30.10
liability under Rule 10b-5, 10:18	artificial inflation, 11:11
limitations on general rule applicability, <b>14:24</b>	measure of damages, uniformity, 13:16
materiality, role in damage measurement, <b>14:27</b>	rebuttal during class certification, 10:30.15
privity, <b>14:25</b>	Implied right to contribution. Contribu-
rescission, 14:26	tion, above

RULE 10b-5—Cont'd	RULE 10b-5—Cont'd
Independent federal regulatory scheme,	Ninth Circuit—Cont'd
contribution, 20:18	rescission, 14:47
Jurisdictional means, 10:2	Objectification of culpability, 10:12
Jurisdictional model, 9:12	Out-of-pocket, Supreme Court, 13:4 to
Legislative intent, materiality, 13:10,	13:6
13:11	Policy considerations, contribution,
Loss causation	20:13
generally, 11:1 et seq.	Presumptions of reliance, 10:30
abandonment of loss causation, 11:9	Private Securities Litigation Reform Act
arguments supporting loss causation,	of 1995, forward looking incentives, <b>10:28</b> , <b>10:29</b>
11:4 et seq.	Privity, Fifth Circuit, <b>14:25</b>
common law fraud, 11:7	Profits of defendant
denial of all recovery, 11:3 evolution, 11:2	generally, <b>14:63</b>
life after loss causation, 11:10	Fourth Circuit, 14:21
regulatory scheme, analogies to, 11:5	Second Circuit, 14:9
Supreme Court declarations, 11:6	Third Circuit, 14:14
unlimited exposure, potential for, 11:8	Public disclosure and materiality,
Loss causation, fraud on the market and	Second Circuit, 14:10
artificial inflation, 11:11	Puffery, <b>10:27.70</b>
Lower courts, 10:13 et seq., 14:1 et seq.	Punitive damages, <b>14:66</b>
Market manipulation and auction rate	Purpose, statute of limitations, <b>9:15</b>
securities, <b>10:31.90</b>	Rebuttal of fraud-on-the-market theory,
Materiality	10:30.15
generally, <b>12:6 to 12:9, 13:7 et seq.</b> ,	Reliance
14:67	fraud-created-the-market theory,
duty to disclose, <b>10:27.60</b>	10:30
Eighth Circuit, 14:45	fraud-on-the-market theory, <b>10:30.50</b> ,
Fifth Circuit, 14:27	10:31.35
Fourth Circuit, 14:20	Remedial powers, <b>12:2 to 12:4</b> Resale price measure of damages,
Ninth Circuit, 14:49	Second Circuit, 14:8
Second Circuit, 14:7	Rescission
Seventh Circuit, 14:34, 14:39, 14:40	generally, <b>14:64</b>
shareholder proposals, 10:27.80	District of Columbia Circuit, 14:58
"statistically significant" test,	Eleventh Circuit, <b>14:55</b> , <b>14:56</b>
10:27.50	Fifth Circuit, 14:26
the 82168216bespeaks cau-	Fourth Circuit, 14:19, 14:22
tion82178217 doctrine, <b>10:27</b>	materiality, 13:12
Third Circuit, 14:16	Ninth Circuit, 14:47
Misappropriation, 10:11	Seventh Circuit, 14:35
Morrison, evolution of and extraterrito-	Third Circuit, 14:15
rial reach of Rule 10b-5, <b>10:2.70</b>	Retroactivity, 9:16 et seq.
Ninth Circuit	Sarbanes-Oxley Act, statutes of limita-
generally, 10:22, 14:46 to 14:49	tions implications, 9:16
calculation of value, 14:48	Scienter, 10:6, 10:10
liability under Rule 10b-5, <b>10:22</b>	SEC investigations
materiality, quantification of, 14:49	two year limitations period, 9:18.10

RULE 10b-5—Cont'd	RULE 10b-5—Cont'd
Second Circuit	Sixth Circuit—Cont'd
generally, 10:15, 14:5 to 14:12	fraud-created-the-market theory,
direct market repercussion theory,	10:31.70
14:10	liability under Rule 10b-5, <b>10:19</b>
disgorgement, 14:11	limitations upon recovery, <b>14:31</b>
exceptions, 14:6	Special or consequential damages
extraterritorial application to foreign	Fifth Circuit, 14:28 Tenth Circuit, 14:53
cubed cases, 10:2.50, 27:10	Standing, holder suits, 10:3.50
liability under Rule 10b-5, <b>10:15</b>	"Statistically significant" test, material-
materiality of misstatements or omissions, <b>14:7</b>	ity, <b>10:27.50</b>
profit of defendant, recovery of, 14:9	Statute of limitations, 9:14 et seq.
public disclosure and materiality,	Statutory guidance, 12:1 et seq.
14:10	Supreme Court guidance, 9:15 to
resale price measure of damages, 14:8	<b>9:20.40, 13:1 et seq.</b> Tellabs case, <b>24:58</b>
Section 27A, constitutional law, <b>9:16.10</b>	Tenth Circuit
Section 27(a), district court jurisdiction,	generally, <b>10:23</b> , <b>14:50</b> to <b>14:53</b>
12:2	consequential damages, 14:53
Section 28(a) limitations on damages, 12:3, 12:4	"cover" measure of damages, 14:52
Securities Act of 1933, <b>12:5 et seq.</b>	election of rescission or rescissionary
Securities Exchange Act of 1934, <b>12:5</b>	damages, <b>14:51</b>
et seq.	fraud-created-the-market theory,
Security, 10:4	10:31.30
Sentencing, Dura's impact on, 11:11.10	liability under Rule 10b-5, <b>10:23</b>
Seventh Circuit	Test for implication, 9:2
generally, <b>14:32 to 14:41</b>	Third Circuit
congruence between rescissionary and	generally, <b>10:16</b> , <b>14:13</b> to <b>14:16</b>
market measure of damages,	fraud-created-the-market theory, 10:31.60
14:38	liability under Rule 10b-5, <b>10:16</b>
exceptions, 14:33	materiality, <b>14:16</b>
external market forces, 14:39	profits of defendant, <b>14:14</b>
fraud-created-the-market theory,	rescission, 14:15
10:31.55	Threshold elements, 10:1 to 10:3
liability under Rule 10b-5, <b>10:20</b>	Tippee liability, <b>10:9, 10:10</b>
materiality, role in damages measure- ment, 14:34	Tipper liability, 10:8
· · · · · · · · · · · · · · · · · · ·	Tolling, 9:20 et seq.
materiality of nondisclosure, quantification of, <b>14:39</b> , <b>14:40</b>	Tort law, <b>12:10</b>
rescission, <b>14:35</b>	Tort model, 9:10
Uniform Commercial Code, analogy	Two and five year limitations period,
to, <b>14:36, 14:37</b>	9:17 et seq.
Shareholder proposals, materiality,	retroactivity, <b>9:17.10</b> Uniform Commercial Code, Seventh
10:27.80	Circuit, 14:36, 14:37
Sixth Circuit	Uniformity of measure of damages
generally, 10:19, 14:29 to 14:31	under Sections 12(2) and 10(b),
additional relief, 14:30	13:13 to 13:16

#### RULE 10b-5—Cont'd SARBANES-OXLEY ACT (SOX) Unjust enrichment, First Circuit, 14:4 -Cont'd Audits and auditors—Cont'd Valuation date, Eighth Circuit, 14:44 Valuation limits, District of Columbia improper influence on audits—Section 303, **5A:8** Circuit. 14:59 Automatic stay, debtor-company in Well established right, contribution, 20:14 et seq. bankruptcy, 5D:3 Bankruptcy and securities fraud **RULE 26** generally, 5D:1 Scienter, discoverability of identities of automatic stay, 5D:3 confidential witnesses, 24:54.10 claims against debtor-company while SAFE HARBOR in bankruptcy, 5D:3 Private Securities Litigation Reform Act class proof of claims, 5D:4 of 1995, 3:15 to 3:18 discharge, excepting securities fraud claims, 5D:5 **SANCTIONS** examiners, **5D:7** Private Securities Litigation Reform Act exceptions, 5D:5 of 1995, abusive litigation, 3:19 forced sale, reorganization proceed-SARBANES-OXLEY ACT (SOX) ings as, 5D:2 Generally, 5A:1 to 5A:24 proof of claims, 5D:4 Attorney-client privilege, securities reorganization proceedings as forced fraud, new statutory duty to dissale, 5D:2 close client confidences, 5C:3, time of claim, 5D:3 5C:5 trustees. 5D:6 Attornevs Bonuses and profits, private action forconduct rules for—Section 307, Section 304, **5B:5** 5A:12 Breach of new withdrawal and disclosure of client confidences, new disclosure obligations, private federal statutory duty, 5C:3 actions against attorneys for, 5B:10 exposure, securities fraud after CEO and CFO certification require-Sarbanes-Oxley, 5C:1 to 5C:9 ments, 5A:3, 5B:4 nationalization consequences, 5C:9 Certification nationalization of securities regula-CEO and CFO certification requiretion, 5C:4 ments, 5A:3, 5B:4 national securities law standards. trend toward. 5C:7 Section 906 certification, **5A:4** preemptive force, SEC attorney Civil actions. Private civil liability professional standards, 5C:6 enhancement, below private right of action against attorney Class proof of claims, 5D:4 for failure to blow whistle, 5C:8 Conflict of laws, state attorney securities fraud following Sarbanesconfidentiality standards in conflict Oxley Act, **5C:1** with SEC's regime, 5C:5 whistleblowing, below Corporate responsibility re CEO and Audits and auditors CFO certification of financial statements, 5B:4 audit committee Criminal law, Act's reliance on, 5A:25 generally—Section 301, **5A:7** financial experts—Section 407, **Damages** 5A:16 private actions-Section 803, damauditor-related provisions, 5A:22 ages not dischargeable, 5B:9

# SARBANES-OXLEY ACT (SOX) —Cont'd

Discharge, excepting securities fraud claims, **5D:5** 

Disclosures

attorney's duty to disclose client confidences, **5C:3** 

disclosure report—Section 401, **5A:13, 5B:7** 

private actions against attorneys for breach of new withdrawal and disclosure obligations, **5B:10** 

rapid and current basis, disclosure on—Section 409, **5B:8** 

"real time" disclosures—Section 409, **5A:18** 

SEC review of disclosures—Section 408, **5A:17** 

Examiners, bankruptcy, 5D:7

Excepting securities fraud claims from bankruptcy discharge, **5D:5** 

Financial experts, audit committee—Section 407, **5A:16** 

Financial officers, ethics code—Section 406, **5A:15** 

Forced sale, reorganization proceedings as, **5D:2** 

Forfeiture of executive payments upon restatements—Section 304, **5A:9** 

Forfeitures

tolling

limitation of actions, securities fraud, **9:20.30** 

Improper influence on audits—Section 303, **5A:8** 

Informants, no retaliation against—Section 1107, **5A:21** 

Insider trading

pension blackout periods, trades during—Section 306, **5A:11, 5B:6** 

professional liability under Sarbanes-Oxley, **15:6** 

Limitation of actions, securities fraud implied remedies, **9:15 et seq.** 

section 10(b) and SEC complaints, 9:18

Section 804, **5A:19, 5B:2** tolling, **9:20 et seq.** 

# SARBANES-OXLEY ACT (SOX) —Cont'd

Loans to executive officers and directors, prohibition, **5A:6** 

Management assessment of internal accounting controls—Section 404, **5A:14** 

Nationalization of securities regulation, damages for attorney exposure, **5C:4** 

National securities law standards, trend toward. **5C:7** 

Officer and director bars—Section 305, **5A:10** 

Omissions from Act, 5A:24

Overview, 5A:2

Political and economic environment, **5A:1** 

Preemptive force, SEC attorney professional standards, **5C:6** 

Private civil liability enhancement

generally, 5B:1 to 5B:9

bonuses and profits, action for, **5B:5** breach of new withdrawal and disclosure obligations, private actions against attorneys for, **5B:10** 

corporate responsibility re CEO / CFO certifications of financial statements, **5B:4** 

damages not dischargeable—Section 803, **5B:9** 

fraud, statute of limitations—Section 804. **5B:2** 

new, private causes of action, **5B:3** pension fund blackouts, insider trading during—Section 306, **5B:6** 

periodic reports, private actions based on disclosures in—Section 306, 5B:7

rapid and current basis, disclosure on—Section 409, **5B:8** 

statute of limitations for fraud—Section 804, **5B:2** 

Private right of action against attorneys failing to blow the whistle, **5C:8** 

Proof of claims, bankruptcy and securities fraud, **5D:4** 

Reorganization proceedings as forced sale, **5D:2** 

SARBANES-OXLEY ACT (SOX)	SCIENTER—Cont'd
—Cont'd	"Core operations" inference—Cont'd
SEC review of disclosures—Section 408, <b>5A:17</b>	allegations, bolstering with core operations inference, <b>24:56.20</b>
Section 906 certification, <b>5A:4</b>	imputing scienter on core operations
Securities fraud	inference alone, 24:56.10
for other aspects of securities fraud,	misconstruing inference, 24:56.40
see specific entries in this topic	reconciling approaches, 24:56.50
attorney exposure to damages. Damages, above	Inference, "core operations," 24:56 et seq.
statute of limitations. Limitation of actions, above	Obtaining order of protection, 24:54.30 Private Securities Litigation Reform
Shorter Section 16 reporting deadline,	Act of 1995 (this index)
5A:5	Red flags, <b>24:6</b>
Significance of Act, <b>5A:23</b>	Rule 10b-5, <b>10:6, 10:10</b>
Statute of limitations. Limitation of actions, above	Rule 26 discoverability of identities of confidential witnesses, <b>24:54.10</b>
Tolling	Tellabs analysis
limitation of actions, securities fraud, 9:20 et seq.	availability of work-product protection, <b>24:54.20</b>
Trustees, bankruptcy, <b>5D:6</b> Whistleblowing	circuit survey, use of confidential witnesses, <b>24:53.10</b>
attorney exposure to damages	collective scienter, 24:55
federal common law duty to blow whistle in re securities fraud,	discovery of confidential witnesses, 24:54, 24:54.10
5C:2	establishing, 24:52
private right of action, failure to	Fifth Circuit, 24:10
blow whistle on securities	First Circuit, 24:8
fraud, 5C:8	obtaining order of protection,
whistleblower protection—Section 806, <b>5A:20</b>	24:54.30 pleading, 24:4, 24:7 to 24:11,
Withdrawal, private actions against	24:52.50, 24:53, 24:55
attorneys for breach of new with-	protection order, 24:54.30
drawal and disclosure obligations, 5B:10	Rule 26 discoverability of identities
3D:10	of confidential sources, 24:54.10
SCIENTER	Seventh Circuit, 24:11
Availability of work-product protection,	Third Circuit, 24:9
<b>24:54.20</b> Collective scienter, <b>24:55</b>	use of confidential witnesses, 24:53, 24:53.10
Confidential sources	work-product protection, 24:54.20
circuit survey, 24:53.10	Work-product protection, <b>24:54.20</b>
discovery, 24:54, 24:54.10	•
documents from, <b>24:53.20</b>	SCOPE OF FEDERAL SECURITIES
pleading, <b>24:52.50</b> , <b>24:53</b> , <b>24:55</b>	REGULATION
private investigators, <b>24:53.30</b>	Generally, <b>5:1 to 5:15</b>
Rule 26 discoverability of identities,	Internet
24:54.10	electronic delivery, <b>5:14</b>
"Core operations" inference	securities fraud, 5:15
generally, <b>24:56</b>	Preemptive course, <b>5:1</b>

SCOPE OF FEDERAL SECURITIES REGULATION—Cont'd Securities Litigation Uniform Standards Act of 1998 (this index)	SECTION 11, SECURITIES ACT OF 1933—Cont'd Instructions to jury generally, 24:35 et seq.
SECONDARY LIABILITY	limit on recovery, 24:40
Insider trading. See Insider Trading	plaintiff retains stock, 24:36
(this index)	plaintiff sells security before suit, <b>24:37</b>
SECTION 10(b), SECURITIES EXCHANGE ACT OF 1934	plaintiff sells security during litigation, <b>24:38</b>
Event studies, 25B:6	special interrogatories, 24:41
Insider trading, Stoneridge decision,	underwriter, defendant as, 24:39
15:12	Legislative history of civil remedies, <b>6:6</b>
Instructions to jury. See <b>Instructions to</b>	Liability, generally, 6:2 to 6:4.10
<b>Jury</b> (this index)	Loan loss reserves, misrepresentation in
Statutes of limitations, 9:18	registration statements, 14A:1
Tellabs case, 24:58	Loss causation, 11A:18, 11A:19, 12:5.05
SECTION 11, SECURITIES ACT OF	Make plaintiff whole, <b>6:20</b>
1933	Misrepresentation of good will and loan
Generally, <b>6:1 et seq.</b>	loss reserves in registration state-
Causation defense, lack of, <b>6:25</b>	ments, 14A:1
Common law remedies, inadequacy of,	Mutual funds, fraud against, <b>6:4.10</b>
6:7	Negative causation, proof of, <b>6:28</b> Overview of violations, <b>6:2 et seq.</b>
Declining market, <b>6:21</b>	Prospectus
Defenses, 6:4	forced seller doctrine and Section 12
Elements of liability, <b>6:3</b>	claims, 14A:2
Event studies, 25B:8	material misrepresentations, private
False statement of opinion, pleading under Section 11, <b>6:3.20</b>	action, 14A:2
Forced seller doctrine and Section 11	private action for material
claims, <b>14A:2</b>	misrepresentations, 14A:2
Formula for damages	Proviso for damages generally, <b>6:25 et seq.</b>
generally, <b>6:9 et seq.</b>	causation defense, lack of, <b>6:25</b>
amended formula, 6:11	conclusion, 6:30
criticism, <b>6:9</b>	judicial guidance, <b>6:27</b>
original formula, 6:10	judicial restraints, <b>6:29</b>
plaintiff keeps security, <b>6:12</b>	negative causation under Section 11,
plaintiff sells security before suit,	6:28, 6:31
6:13	proof of negative causation, <b>6:28</b>
plaintiff sells security during suit,	value, <b>6:26</b>
6:14	Purposes of civil remedies, 6:5 to 6:8
summary of damage alternatives, <b>6:15</b>	Registration statements
to 6:18	good will, misrepresentation, 14A:1
value, <b>6:17, 6:18</b>	loan loss reserves, misrepresentation,
Good will, misrepresentation in registra-	14A:1
tion statements, 14A:1	Rising market, <b>6:22</b>
Influenced market, 6:23	Special interrogatories, 24:41

# SECTION 11, SECURITIES ACT OF 1933—Cont'd

Summary of damage alternatives, **6:15** to **6:18** 

Supplement to common law, design as, **6:8** 

Theory of damages

generally, 6:19 et seq.

contrast with traditional damage formula, **6:19** 

damage alternatives, 6:24

declining market, 6:21

influenced market, 6:23

make plaintiff whole, 6:20

rising market, **6:22** 

**Underwriters** (this index)

Value, **6:17**, **6:18**, **6:26** 

# SECTION 12, SECURITIES ACT OF 1933

Forced seller doctrine and Section 12 claims, 14A:2

Good will, misrepresentation in registration statements, 14A:1

Instructions to jury, 24:42 to 24:44

Loan loss reserves, misrepresentation in registration statements, **14A:1** 

Loss causation, 11A:19, 12:5.05

Misrepresentation of good will and loan loss reserves in registration statements, **14A:1** 

**Prospectus** 

forced seller doctrine and Section 12 claims, 14A:2

material misrepresentations, private action, 14A:2

private action for material misrepresentations, **14A:2** 

Registration statements

good will, misrepresentation, **14A:1** loan loss reserves, misrepresentation, **14A:1** 

# SECTION 16, SECURITIES EXCHANGE ACT OF 1934

Generally, **8:6 et seq.**Dividends, **8:11**Employee stock options, **8:10**Expenses, **8:13** 

Interest, 8:12

# SECTION 16, SECURITIES EXCHANGE ACT OF 1934

—Cont'd

Matching, **8:9** 

Measure of damages, 8:8

Purchase or sale price in noncash transactions, **8:14** 

Statute of limitations, 8:14.50

# SECTION 17(A)

Implied actions and remedies, 19:1, 19:2

#### **SECTION 27A**

Rule 10b-5, constitutional law, 9:16.10

#### SECTION 27(A)

Rule 10b-5, district court jurisdiction, **12:2** 

### SECTION 28(A)

Rule 10b-5, limitations on damages, **12:3, 12:4** 

# **SECURITIES ACT OF 1933**

Generally, App 1

Rule 10b-5. See **Rule 10b-5** (this index)

Section 11, Securities Act of 1933. See Section 11, Securities Act of 1933

(this index)

Section 12, Securities Act of 1933. See Section 12, Securities Act of 1933 (this index)

# SECURITIES AND EXCHANGE COMMISSION

Aiding and abetting enforcement actions, effect of Stoneridge decision, **15:17** 

Complaints, Sarbanes-Oxley Act Section 10(b), **9:16** 

Sarbanes-Oxley Act, SEC review of disclosures—Section 408, **5A:17** 

# SECURITIES EXCHANGE ACT OF 1934

Generally, 8:1 et seq., App 2

Causation, **8:4, 8:16** 

Listed stock manipulations, 8:3 to 8:5

Misstatement in filed reports, 8:15, 8:16

Overview of act. 8:2

Rule 10b-5. See **Rule 10b-5** (this index)

# SECURITIES EXCHANGE ACT OF 1934—Cont'd

Section 9(e), 8:3 to 8:5

Section 10(b), Securities Exchange Act of 1934. See Section 10(b), Securities Exchange Act of 1934 (this index)

Section 16, Securities Exchange Act of 1934. See Section 16, Securities Exchange Act of 1934 (this index) Section 18, 8:15, 8:16

#### SECURITIES FRAUD

Confidential witnesses, pleading, 24:53
Sarbanes-Oxley Act (SOX) (this index)

# SECURITIES FRAUD LITIGATION

Event studies, 25B:1 et seq.

# SECURITIES FRAUD8217S HISTORIC CAUSATION REQUIREMENT

Racketeer influenced and corrupt organizations, **22:4** 

# SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998

Generally, **5:2 to 5:13**Amendment by plaintiff, **5:10**"Best execution" claims, **5:8.30** 

**Class Actions** (this index)

Covered securities, 5:7

Direct rather than derivative actions, 5:8

Discovery stay, 5:13

Dismissal, 5:9

Federal class actions in state court, **5:8.70** 

Language of act, 5:3

Plaintiff's ability to amend, 5:10

Preclusion, 5:4 to 5:8.70

Procedural devices, 5:11 to 5:13

Removal, 5:12

# Scope of Federal Securities Regulation (this index)

Scope of preclusion, 5:4 to 5:8.70

# **SECURITY**

Class actions, security for costs, **25:5** Defined, **1:5** Laws, generally, **1:3** 

### SECURITY—Cont'd

Rule 10b-5, 10:4

# SELECTION OF INTERIM LEAD PLAINTIFF

Advertising 8220investigations,8221 solicit lead plaintiffs, **25:1.40** 

Monitoring arrangements, institutional investors, **25:1.30** 

8220Pay to play8221 arrangements, **25:1.20** 

# SELF-REGULATORY ORGANIZATIONS (SROs)

Enforcement of securities laws, role of SROs, **26A:2** 

FiINRA and the role of SROs in enforcement of securities laws, **26A:2** 

#### **SENTENCING**

Rule 10b-5, 11:11.10

#### **SETTLEMENT**

Class actions, 25:2, 25:3

Contribution, effect on, 20:5, 20:27

Independent approval, 25:3.10

Non-lead counsel, issues with and other actors seeking payment from the common fund, **25:4.40** 

Private Securities Litigation Reform Act of 1995 (this index)

#### SEVENTH AMENDMENT

Event studies in securities fraud litigation, **25B:2** 

# SPECIAL DAMAGES

Rule 10b-5. See Rule 10b-5 (this index)

#### SPECIAL INTERROGATORIES

Section 11, Securities Act of 1933, **24:41** 

# **STANDING**

Rule 10b-5, holder suits, 10:3.50

### STATE COURTS

Federal class actions in state court, **5:8.70** 

Insider trading, Stoneridge decision, 15:19

### STATE-LAW RICO EQUIVALENTS

Racketeer influenced and corrupt organizations, **22:8** 

#### STATE OF MIND

Private Securities Litigation Reform Act of 1995, pleadings, **3:10** 

# "STATISTICALLY SIGNIFICANT"

Rule 10b-5, materiality test, **10:27.50** 

#### **STATISTICS**

Class actions under PSLRA, NERA and cornerstone research, **4:3** 

#### STATUTE OF LIMITATIONS

Limitation of actions. See **Limitation of Actions** (this index)

#### STONERIDGE CASE

**Insider Trading** (this index)

#### SUBROGATION

Generally, 26:1, 26:3

#### **SUMMARY EXHIBITS**

Instructions to jury, **24:26**, **24:27** 

# SUMMARY JUDGMENT

Generally, **24:17** 

Event studies in securities fraud litigation, **25B:9** 

# SUPREME COURT

**Insider Trading** (this index)

Material facts, statistical significance, 18:5

Private Securities Litigation Reform Act of 1995 (this index)

Rule 10b-5, 9:15 to 9:20.40

# SWAPS

Credit default swaps under FINFA rules, **26A:1** 

Dodd-Frank, antifraud measures, 5E:2

# **TELLABS CASE**

Allegations, PSLRA, 3:11.10

Circuit survey, use of confidential witnesses, **24:53.10** 

Collective scienter, 24:55

Confidential sources and pleading, 24:52.50 et seq.

#### TELLABS CASE—Cont'd

Discovery and confidential sources, 24:54, 24:54.10

Establishing scienter, 24:52

Expansion beyond § 10b and Rule 10b-5 actions, 24:58

Fraud by hindsight, 24:57

Group pleading, 24:55

Motive, pleading scienter, 24:52.50

Opportunity, pleading scienter, 24:52.50

Private Securities Litigation Reform Act of 1995, **3:11.05**, **3:11.10** 

Recklessness, pleading scienter, 24:52.50

Rule 10b-5, 24:58

Scienter

availability of work-product protection, **24:54.20** 

circuit survey, use of confidential witnesses, **24:53.10** 

collective scienter, 24:55

confidential witnesses, **24:53**, **24:53.10** 

core operations inference, 24:56 et seq.

discovery of confidential witnesses, 24:54, 24:54.10

establishing, 24:52

Fifth Circuit, 24:10

First Circuit. 24:8

incorporation by reference, 3:11.152

inference, core operations, **24:56 et seq.** 

judicial notice, 3:11.152

motive, pleading scienter, 24:52.50

obtaining order of protection,

24:54.30

opportunity, pleading scienter, 24:52.50

pleading scienter, 24:4, 24:7 to 24:11, 24:52, 24:52.50, 24:55

protection order, 24:54.30

recklessness, pleading scienter, 24:52.50

Rule 26 discoverability of identities of confidential sources, **24:54.10** 

Seventh Circuit, 24:11

Third Circuit, 24:9

work-product protection, 24:54.20

Index-28

# INDEX

# TELLABS CASE—Cont'd

Section 10(b) of Securities Exchange Act of 1934, **24:58** 

Supreme Court, guidance on pleading scienter, **3:11.05** 

#### **TENDER OFFERS**

Interference with market for corporate control, **16:3**, **16:4** 

# THE 8220CRIMINAL CONVICTION8221 EXCEPTION

Racketeer influenced and corrupt organizations, **22:7** 

# THIRD CIRCUIT TASK FORCE

Class actions, 25:7

# TIPPEE LIABILITY

Rule 10b-5, **10:9, 10:10** 

#### TIPPER LIABILITY

Rule 10b-5, **10:8** 

# **UNDERWRITERS**

Actions against, **6:3.10**, **24:39**Liability for shares distributed to public, **6:32** 

#### UNDERWRITERS-Cont'd

Section 11, Securities Act of 1933, **6:3.10, 6:32, 24:39** 

# UNIFORM COMMERCIAL CODE

Rule 10b-5, Seventh Circuit, **14:36**, **14:37** 

# UNJUST ENRICHMENT

Rule 10b-5, First Circuit, 14:4

# **VALUE**

Rule 10b-5, **14:44**, **14:59** Section 11, Securities Act of 1933, **6:17**, **6:18**, **6:26** 

# WHISTLEBLOWING

Dodd-Frank, 5E:3

Sarbanes-Oxley Act (SOX) (this index)

# WITNESSES

Confidential, securities fraud pleadings, 24:53

# WORK-PRODUCT PROTECTION

Scienter, 24:54.20