Table of Contents

CHAPTER 1. NECESSITY OF SECURITIES COMPLIANCE PROGRAM

I. INTRODUCTION

§ 1:1 Introduction

II. OBJECTIVES OF COMPLIANCE PROGRAM

- § 1:2 Avoidance of liability
- § 1:3 Investor/shareholder relations; company websites
- § 1:4 Corporate finance

III. OVERVIEW OF APPLICABLE LAW

- § 1:5 Securities Act of 1933
- § 1:6 Registration of securities
- § 1:7 —Standard registration information
- § 1:8 —Essential financial and market information
- § 1:9 —General business information
- § 1:10 —Forms required
- § 1:11 ——Form S-1
- § 1:12 ——Form S-3
- § 1:13 ——Form S-8
- § 1:14 ——Miscellaneous forms
- § 1:15 —Smaller reporting companies
- § 1:16 —Securities offering reform
- § 1:17 Legislative definition of security
- § 1:18 —Court interpretations
- § 1:19 Securities Act exemptions from registration
- § 1:20 Exempt transactions—Sales of securities pursuant to Rule 144
- § 1:21 —Compliance suggestions
- § 1:22 Securities Exchange Act of 1934
- § 1:23 —Purpose and intent
- § 1:24 —Integrated disclosure
- § 1:25 —Applicability to issuers
- § 1:26 —Periodic reporting requirements and filing deadlines for annual, quarterly, and special reports
- § 1:27 —Periodic reporting for smaller reporting companies
- § 1:28 —Financial reporting and internal controls
- § 1:29 —The Foreign Corrupt Practices Act

SECURITIES AND CORPORATE GOVERNANCE COMPLIANCE

§ 1:30	Annual report on Form 10-K
§ 1:31	—Purpose
§ 1:32	—Contents
§ 1:33	—Signature and certification
§ 1:34	—Management's discussion and analysis
§ 1:35	Coronavirus/COVID 19 Pandemic and Corporate
	Internal Controls
§ 1:36	Annual report on Form 10-K—Disclosure in MD&A of off-balance sheet arrangements and aggregate contractual obligations
§ 1:37	—Disclosure of non-GAAP financial measures
§ 1:38	—Disclosure of critical accounting policies
§ 1:39	—Stock performance graph
§ 1:40	—Stock performance graph —Filing
§ 1:40	—Timeg —Timetable
§ 1:42	Quarterly report on Form 10-Q
§ 1:42	—Purpose
§ 1:44	—Contents
§ 1:45	——Part I
§ 1:46	——Part II
§ 1:47	—Signature and certification
§ 1:48	—Filing
§ 1:49	—Timetable
§ 1:50	Pre-filing review of interim financial statements by
3 1.00	auditors
§ 1:51	Current report on Form 8-K
§ 1:52	—Purpose
§ 1:53	—Contents
§ 1:54	-Relationship of Regulation G and Item 2.02 of
8 1.55	Form 8-K to Regulation FD —Time of filing
§ 1:55	
§ 1:56	Limited safe harbor for Section 10(b) liability and Form S-3 eligibility
§ 1:57	Periodic reports—Practical filing requirements
§ 1:58	—Amendments
§ 1:59	Williams Act: Reports relating to ownership of stock (Schedule 13D/Schedule 13G)
§ 1:60	Exhibits to Exchange Act filings
§ 1:61	Electronic Data Gathering, Analysis and Retrieval
5	System (EDGAR)
§ 1:62	—Filing and disclosure
§ 1:63	—Incorporation by reference
§ 1:64	—Paper filing
§ 1:65	—Exhibits
§ 1·66	—Filing fees

TABLE OF CONTENTS

§ 1:67	XBRL
§ 1:68	Proxy statements general and SEC guidance on select issues
§ 1:69	Proxy statements—Purpose
§ 1:70	—Contents
§ 1:71	—Directors and executive officers
§ 1:72	—Executive compensation
§ 1:73	——Compensation Discussion and Analysis ("CD&A")
§ 1:74	——Summary compensation table
§ 1:75	— —Grants of Plan-Based Awards
§ 1:76	——Holdings and Exercises of Previously Granted
0	Equity Awards
§ 1:77	——Nonqualified Deferred Compensation Table
§ 1:78	——Pension plans
§ 1:79	——Potential payments upon termination or
	change-in-control
§ 1:80	——Report of compensation committee
§ 1:81	——Committee relationships
§ 1:82	—Compensation consultants
§ 1:83	—Compensation committee independence
§ 1:84	—Director compensation agreements
§ 1:85	—Shareholder approved and other stock plans table
§ 1:86	—Certain relationships and related transactions
§ 1:87	——Review policies
§ 1:88	—Certain beneficial owners and management
§ 1:89	—Section 16(a) compliance
§ 1:90	—Code of ethics
§ 1:91	—Board and committee meetings
§ 1:92	—Audit committee—Financial expert
§ 1:93	——Pre-approval of services
§ 1:94	——Communications with the auditor
§ 1:95	——Self-regulatory organization ("SRO") listing
	standards for audit committees
§ 1:96	——Required disclosure concerning audit committee
	independence
§ 1:97	 —Public filing of audit committee reports
§ 1:98	——Required disclosure concerning audit committee
	charters
§ 1:99	—Corporate governance disclosure requirements
§ 1:100	—Legal proceedings
§ 1:101	—Independent public accountants
§ 1:102	—Services prohibited to be performed by the
	independent public accountants
§ 1:103	—Partner rotation, client employment relationships

SECURITIES AND CORPORATE GOVERNANCE COMPLIANCE

	and compensation of the independent public
	accountants
§ 1:104	—Solicitation requirements
§ 1:105	——SEC review and filing requirements
§ 1:106	—Proposals of security holders
§ 1:107	——Omissions
§ 1:108	—Proxy cards
§ 1:109	Director nominations—Shareholder proxy access
	proposals
§ 1:110	e-Proxy rules for distribution of annual meeting
	documents
§ 1:111	Conflict minerals disclosure; Iran Notice
§ 1:112	Section 16 reporting and obligations
§ 1:113	—Purpose
§ 1:114	—Applicability
§ 1:115	—Pecuniary interest
§ 1:116	—Deferred reporting
§ 1:117	—Prior transactions
§ 1:118	—Former officers or directors
§ 1:119	—Newly authorized representatives
§ 1:120	—Transactions exempt from reporting
§ 1:121	—Filing requirements
§ 1:122	—Compliance suggestions
§ 1:123	—Short-swing profits
§ 1:124	—Exemptions
§ 1:125	—Employee benefit plans
§ 1:126	—Gifts and inheritance
§ 1:127	—Short sales
§ 1:128	—Section 16(a) liability
§ 1:129	—Section 16(b) liability; shareholder demand for disgorgement of profits
§ 1:130	Nonperiodic disclosure obligations
§ 1:131	—Stock market disclosure requirements
§ 1:132	Non-periodic disclosure obligations—Materiality
§ 1:133	Nonperiodic disclosure obligations—Duty to disclose
§ 1:134	Deferred disclosure
§ 1:135	Compliance suggestions for disclosure issues
§ 1:136	Insider trading
§ 1:137	—Laws and regulations
§ 1:138	Criminal insider trading
§ 1:139	Insider trading—Sanctions and penalties
§ 1:140	—Corporate compliance measures
§ 1:141	Sales of stock by officers and directors
§ 1:142	Blackout period trading restrictions
§ 1:143	Code of professional standards for attorneys

Table of Contents

§ 1:144	Forward-looking statements/projections
§ 1:145	Repurchases of stock
§ 1:146	—Safe Harbor Rule
§ 1:147	——Conditions
§ 1:148	—Other considerations
§ 1:149	Disclosure of share repurchases
§ 1:150	Odd lot tender offers
§ 1:151	Transfer agent regulation
§ 1:152	—Processing standards

IV. INDUSTRY SELF-REGULATION

§ 1:153 —Recordkeeping requirements

§ 1:154	Stock exchange listing
§ 1:155	—Contractual nature of listing obligations
§ 1:156	Exchange obligations differing from securities laws

V. LIABILITY AND ENFORCEMENT

§ 1:157	Exchange Act—Liability
§ 1:158	Securities Act—SEC review and enforcement
§ 1:159	Probative value of SEC review
§ 1:160	Stock market delisting
§ 1:161	Private litigation
§ 1:162	Tax Cut and Jobs Act of 2017 and SEC Financial
	Statements: Standard Accounting Bulletin 118
§ 1:163	Regulation and Legislation Concerning
	Cryptocurrencies

CHAPTER 2. ESTABLISHING AND MONITORING SECURITIES COMPLIANCE PROGRAM

I. EDUCATING AND COMMUNICATING WITH MANAGEMENT

- § 2:1 Need for securities compliance program and related policies: insider trading policy, code of ethics and record retention policy
- § 2:2 Need for periodic evaluations of internal controls and procedures
- § 2:3 Education of parties involved and SEC Resources

II. ESTABLISHING COMPLIANCE TEAM AND A DISCLOSURE COMMITTEE

§ 2:4 Responsible parties

SECURITIES AND CORPORATE GOVERNANCE COMPLIANCE

§ 2:5	Other key personnel—Chief Executive Officer and Chief Financial Officer
§ 2:6	Other key personnel—Board of Directors and legal counsel guidance
§ 2:7	Internal accounting controls
§ 2:8	The audit committee
§ 2:9	—Audit committee charters
§ 2:10	-Membership and qualifications of audit committees
§ 2:11	Establishment of compliance program
§ 2:12	Written disclosure policy
§ 2:13	Considerations for conflict minerals disclosure
	compliance program

III. RISK ASSESSMENT

- § 2:14 Design of program
- § 2:15 —Written memoranda
- § 2:16 —Seminars
- § 2:17 —Access to counsel
- § 2:18 —Questionnaires
- § 2:19 Document retention and centralized recordkeeping
- § 2:20 Preventive law and risk management
- § 2:21 Benchmarking
- § 2:22 Insurance and indemnification
- § 2:23 Monitoring regulatory compliance and changes in law
- § 2:24 Cybersecurity Disclosures
- § 2:25 Climate Change Disclosures

CHAPTER 3. COMPONENTS OF SECURITIES COMPLIANCE PROGRAM

I. ASSESSING CURRENT POLICIES AND PROCEDURES

§ 3:1	Generally
§ 3:2	Initial audit
§ 3:3	—Purpose
§ 3:4	—Scope
§ 3:5	Pre-audit procedures
§ 3:6	—Evaluation team
§ 3:7	Interviews
§ 3:8	Upjohn Warnings
§ 3:9	Interviews—Persons to be interviewed
§ 3:10	—Introductory remarks
§ 3:11	—Questions to be asked

TABLE OF CONTENTS

§ 3:12	Documents to be reviewed
§ 3:13	Results of review
§ 3:14	Preserving confidentiality
§ 3:15	Reducing discoverability
§ 3:16	—Attorney-client privilege
§ 3:17	—Work-product immunity
§ 3:18	—Self-evaluative privilege
§ 3:19	Addressing legal violations
§ 3:20	Follow-up audits
§ 3:21	—Annual due diligence meetings
§ 3:22	—Auditors' letters

II. DOCUMENT REVIEW AND RETENTION

Ş	3:23	Document	retention	schedule

- § 3:24 Parties responsible for retention
- § 3:25 Document storage and destruction

III. COMPLIANCE TIMETABLES

§ 3:26 Tickler systems

IV. DEVELOPING APPROPRIATE COMMUNICATIONS WITH OUTSIDE PARTIES

- § 3:27 Handling government inquiries and investigations
- § 3:28 Handling inquiries from media, financial analysts and/or public
- § 3:29 Internet dissemination of disclosure
- § 3:30 —Compliance suggestions

V. COMPANY EDUCATION AND AWARENESS

- § 3:31 Identifying education needs
- § 3:32 New-hire orientation
- § 3:33 Seminars and meetings
- § 3:34 Written materials
- § 3:35 Codes of conduct and ethics and business principles
- § 3:36 Reporting violations
- § 3:37 Securities and Exchange Commission Website and Assistance

VI. SPECIAL NEEDS IN MERGERS AND ACQUISITIONS

- § 3:38 Coordinating existing compliance efforts
- § 3:39 Parent/subsidiary issues

VII. DERIVATIVES

§ 3:40 Special needs

VIII. EXTRATERRITORIAL COMPLIANCE ISSUES—FOREIGN CORRUPT PRACTICES ACT AND ANTI-MONEY LAUNDERING

- § 3:41 A Foreign Corrupt Practices Act compliance program's objectives
- § 3:42 Anti-money laundering law compliance

IX. SEC REFORMS

§ 3:43 SEC filing and disclosure reforms

CHAPTER 4. APPENDIX OF FORMS AND EXHIBITS

I. GOVERNMENT FORMS

- § 4:1 Section 302 certification of principal executive officer and principal financial officer
- § 4:2 Statement pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- § 4:3 Inline XBRL requirements
- § 4:4 Form 10-K
- § 4:5 —Checklist for annual report on Form 10–K
- § 4:6 Proxy statements and audit committee disclosures
- § 4:7 Form 10-Q
- § 4:8 —Checklist for quarterly report on Form 10-Q
- § 4:9 Form 8-K
- § 4:10 —Checklist for current report on Form 8-K
- § 4:11 Form SD; IRANNOTICE
- § 4:12 Form SD—Checklist for Form SD Specialized Disclosure Report
- § 4:13 Form S-1
- § 4:14 Form S-3
- § 4:15 Form S-4
- § 4:16 Free Writing Prospectus
- § 4:17 Form S-8
- § 4:18 Form 3
- § 4:19 —General instructions
- § 4:20 Form 4
- § 4:21 —General instructions
- § 4:22 Form 5

TABLE OF CONTENTS

TABLE OF CONTENTS			
§ 4:23 § 4:24 § 4:25 § 4:26			
II. R	EQUIREMENTS AND SCHEDULES		
§ 4:27	Major New York Stock Exchange equity and debt listing requirements		
§ 4:28	Corporate governance requirements: New York Stock Exchange listed company		
§ 4:29	Major NASDAQ stock market listing requirements		
§ 4:30	Corporate governance requirements: NASDAQ listed company		
§ 4:31	Major SEC reporting requirements for public corporations		
§ 4:32	Annual meeting countdown schedule checklist		
§ 4:33	Securities law compliance calendar		
III. (QUESTIONNAIRES		
§ 4:34	Annual executive officers' questionnaire		
§ 4:35	Annual directors' questionnaire		
§ 4:36	Section 16—Broker instruction/representation		
IV.	MEMORANDA		
§ 4:37	Confidentiality memorandum to managers		
§ 4:38	Confidentiality memorandum to employees		
§ 4:39	Stock option ownership confirmation		
§ 4:40	Officers and directors—Insider trading		
§ 4:41	—Discussions with securities analysts		
§ 4:42	—Investor relations memorandum		
§ 4:43	—Rule 144 exempt transactions memorandum		
§ 4:44	— Rule 144 checklist		
§ 4:45	—Obligations of the newly public company under federal securities laws		
§ 4:46	—Annual reminder to directors and officers of restrictions on transactions in the company shares		
V. B	OARD OF DIRECTOR MATERIALS		
§ 4:47	Corporate governance guidelines: NYSE listed company		
§ 4:48	Nominating & governance committee charter		
§ 4:49	Audit committee charter		
§ 4:50	Compensation committee charter		
-	•		

VI. MISCELLANEOUS MATERIALS

- § 4:51 Securities disclosure checklist
- § 4:52 Sample letter: Securities law obligations of directors and executive officers
- § 4:53 Company code of business conduct and ethics for directors, officers and employees
- § 4:54 Insider trading policy: Publicly held company
- § 4:55 Rule 10b5-1 stock trading plan
- § 4:56 Law firm policy for compliance with the Securities and Exchange Commission's rule governing attorney conduct
- § 4:57 Foreign Corrupt Practices Act policy and representative compliance certification

VII. 50 STATE SURVEYS

- § 4:58 Corporate responsibility
- § 4:59 Civil liability for securities violations

VIII. REFERENCES TO SELECT SEC GUIDANCE ON COMPLIANCE

- § 4:60 SEC guidance on Section 16(b) of Exchange Act
- § 4:61 SEC small business compliance guides
- § 4:62 SEC Financial Reporting Manual
- § 4:63 SEC Guidance on management's report on internal control over financial reporting and certification of disclosure in Exchange Act periodic reports
- § 4:64 SEC Policy Statements
- § 4:65 SEC compliance letters
- § 4:66 SEC Speech—Applying a principles—Based approach to disclosing complex, uncertain and evolving risks
- § 4:67 SEC Guidance on Impact of COVID-19

IX. DEPARTMENT OF JUSTICE GUIDANCE

§ 4:68 Department of Justice Evaluation of Corporate Compliance Programs

Table of Laws and Rules

Table of Cases

Index