## **Table of Contents**

CHA	APTER 1. INTRODUCTION	1
§ 1:1	Power and abuses of power	
§ 1:2	Responsibilities of directors and officers	
§ 1:3	Scope of book	
§ 1:4	Delaware's corporate law predominance	
§ 1:5	Rights, duties, and potential liabilities not covered herein	
CHA	APTER 2. DUTY OF CARE	11
§ 2:1	Introduction	
§ 2:2	Corporate structure and role of independent directors	
§ 2:3	General formulations of the duty of care	
§ 2:4	—The Model Business Corporation Act	
§ 2:5	—State approaches	
§ 2:6	—Notice-inquiry statutes	
§ 2:7	—"Good faith" focus	
§ 2:8	Nonshareholder constituency statutes	
§ 2:9	Requirement of an informed decision	
§ 2:10	Liability for failure to reach an informed decision: Delaware Supreme Court decision in <i>Smith v. Van Gorkom</i>	
§ 2:11	Statutory limitations on directors' liability	
§ 2:12	—Permissive statutes	
§ 2:13	—Self-executing statutes	
§ 2:14	—Common issues	
§ 2:15	Permissible reliance on others	
§ 2:16	Business judgment rule	
§ 2:17	Corporate waste	
§ 2:18	Director inaction or lack of attention	
§ 2:19	Proximate cause	
§ 2:20	Unlawful distributions	
CHA	APTER 3. DUTY OF LOYALTY	77
§ 3:1	General scope	
§ 3:2	Duty of good faith	
§ 3:3	Recasting duty of care claims as bad faith	
§ 3:4	Caremark oversight obligations	
§ 3:5	Conflict of interest transactions	
§ 3:6	Model Business Corporation Act approach	
8 3.7	Delaware General Corporation Law 8 144	

§ 3:8	Materiality of director interest	
§ 3:9	Board action by majority of disinterested directors	
§ 3:10	Quorum and voting requirements	
§ 3:11	Full disclosure	
§ 3:12	Disclosure in other contexts	
§ 3:13	Effect of shareholder or director approval—Delaware law	
§ 3:14	—Other jurisdictions	
§ 3:15	Transactions with controlling shareholders—Delaware law	
§ 3:16	Particular conflict of interest transactions with individual directors or officers	
§ 3:17	—Compensation	
§ 3:18	—Transactions with relatives	
§ 3:19	—Business entity in which a director has an interest	
§ 3:20	—Common directors	
§ 3:21	—Loans to officers and directors	
§ 3:22	Precautionary measures	
§ 3:23	Standard of fairness	
СНА	PTER 4. CORPORATE	
	ORTUNITIES	1.40
§ 4:1	Introduction	149
§ 4.1 § 4:2	Delaware's corporate opportunity test	
§ 4:2	Line of business	
§ 4:4	Interest or expectancy	
§ 4:5	Fairness test	
§ 4:6	American Law Institute approach	
§ 4:7	Significant other factors	
§ 4:8	Significant factors—Relationship between opportunity and corporate business	
§ 4:9	—Corporate or individual capacity	
§ 4:10	—Use of corporate resources	
§ 4:11	—Competitive nature of acquisition	
§ 4:12	—Disclosure and board approval	
§ 4:13	—Disclosure and shareholder approval	
§ 4:14	—Financial inability	
§ 4:15	—Fiduciary's relationship to the corporation	
§ 4:16	Close corporations	
§ 4:17	Competition with corporation	
СПУ	PTER 5. SALE OF CONTROL	100
§ 5:1	General rule	189
-		
§ 5:2	Exceptions to general rule	

## Table of Contents

§ 5:3	—Disproportionate benefits
§ 5:4	—Foreseeable looting—Theory of looting cases
§ 5:5	——Suspicious circumstances
§ 5:6	——Damages
§ 5:7	—Appropriation of corporate assets or opportunities
§ 5:8	—Conversion of corporate opportunity to sell assets
§ 5:9	—Sale of corporate office—Transfer without
	accompanying stock
§ 5:10	— —Accelerated control
§ 5:11	— — Notice requirement of federal securities laws
§ 5:12	—Fraud in connection with purchases from other
	shareholders
§ 5:13	—Breach of fiduciary duty
§ 5:14	Special problems concerning closely held corporations
§ 5:15	Liability of nonselling directors
~	
CHA	PTER 6. MANAGEMENT OPPOSITION
TO T	TENDER OFFERS AND OTHER SHIFTS
IN C	<b>ONTROL</b> 219
§ 6:1	Scope of chapter
§ 6:2	Role of target management
§ 6:3	Unocal enhanced scrutiny
§ 6:4	Revlon: Applicability
§ 6:5	Revlon and maximization of shareholder value
§ 6:6	Corwin and shareholder ratification
§ 6:7	Deal protection devices
§ 6:8	Exculpatory provisions
§ 6:9	Consideration of non-shareholder interests
§ 6:10	Close corporations
§ 6:11	Specific defensive tactics
§ 6:12	Defensive tactics—Charter amendments
§ 6:13	—Poison pills
§ 6:14	—Issuer self-tenders and recapitalizations
§ 6:15	—Greenmail
§ 6:16	—Lock-up options
§ 6:17	No-shop provisions
§ 6:18	Merger covenants and fiduciary-outs
§ 6:19	Maintaining corporate existence through a preplanned
9 0.10	defensive strategy
§ 6:20	Merger termination
§ 6:21	State antitakeover statutes
§ 6:22	—Business combination statutes
§ 6:23	Interference with shareholder voting
_	· · · · ·

CHA	PTER 7. CASH-OUT MERGERS	351
§ 7:1	Background	001
§ 7:2	Historical background	
§ 7:3	Weinberger v. UOP, Inc. and the exclusivity of	
35	appraisal actions	
§ 7:4	Appraisal and fair value	
§ 7:5	Duty of disclosure in mergers and tender offers	
§ 7:6	Entire fairness—Fair dealing and fair price	
§ 7:7	Delaware law—Application of business judgment rule	
0	in controller mergers	
§ 7:8	Entire fairness—Burden shifting	
§ 7:9	——Independent committee approval	
§ 7:10	— — Minority shareholder approval	
§ 7:11	Exculpatory provisions	
§ 7:12	Tender offers by controlling shareholders versus	
0	negotiated mergers	
§ 7:13	Federal securities laws	
§ 7:14	—Filing and disclosure requirements of Rule 13e-3	
§ 7:15	—Antifraud provisions of Rule 10b-5	
§ 7:16	Precautionary measures	
_	·	
<b>CHA</b>	PTER 8. COMMITTEES OF THE	
<b>BOA</b> I	RD OF DIRECTORS	429
§ 8:1	Background	
§ 8:2	Formation of committees	
§ 8:3	Scope of delegation	
§ 8:4	Purposes of committees	
§ 8:5	Composition and function of particular committees—	
	Executive committee	
§ 8:6	—Audit committee	
§ 8:7	—Compensation committee	
§ 8:8	—Nominating committee	
§ 8:9	—Other committees	
§ 8:10	Disclosure concerning committees	
§ 8:11	Liability of committee members	
§ 8:12	Liability of non-committee members	
	PTER 9. SHAREHOLDER DERIVATIV	E
SUIT	S	467
§ 9:1	Background	
§ 9:2	Direct versus derivative suits	
§ 9:3	Rules and statutes regulating derivative suits	
§ 9:4	Plaintiff standing and qualifications—Shareholder	
	status	

## TABLE OF CONTENTS

§ 9:5	—Creditors	
§ 9:6	—Contemporaneous ownership	
§ 9:7	—Continuous ownership	
§ 9:8	—Security for expenses	
§ 9:9	The demand requirement	
§ 9:10	Universal demand requirement	
§ 9:11	Demand futility	
§ 9:12	Futility of demand—Different board of directors	
§ 9:13	—Board inaction and Caremark claims	
§ 9:14	—Director disinterestedness—Financial interest	
§ 9:15	——Compensation concerns	
§ 9:16	<ul> <li>—Appointment/election by interested directors</li> </ul>	
§9:17	——Social and business relationships	
§ 9:18	——Charitable contributions	
§ 9:19	— —Likelihood of liability	
§ 9:20	——Domination and control	
§ 9:21	——Approval of the challenged transaction	
$\S 9:22$	—Absence of valid business judgment	
§ 9:23	——Process	
§ 9:24	——Substance	
§ 9:25	Board refusal of demand	
§ 9:26	Special litigation committees	
§ 9:27	—Delaware	
§ 9:28	—New York	
§ 9:29	—Other approaches	
§ 9:30	—Independence	
§ 9:31	—Reasonable investigation	
§ 9:32	Derivative actions by directors or officers	
§ 9:33	Inspection of books and records	
§ 9:34	Choice of law	
§ 9:35	Forum selection bylaws	
CTTA	DUED 10 CODDODATE ATTODATES	
	PTER 10. CORPORATE ATTORNEY-	
	ENT PRIVILEGE AND THE WORK	
PRO	DUCT DOCTRINE	609
§ 10:1	Background	
§ 10:2	Scope of the privilege	
§ 10:3	—Scope of employment	
§ 10:4	—Direction of corporate superiors	
§ 10:5	Communications between attorney and client for the	
-	purpose of securing legal advice—Former employees	
§ 10:6	—Attorneys acting as such	
§ 10:7	Confidentiality and waiver—Disclosure to third	
	parties	

		OTTION AND DIMECTORS
8	10:8	—Disclosure to governmental agencies
_	10:9	—Dissemination within corporation
_	10:10	Implied waiver—Scope
_	10:11	—Privileged communications at issue
§	10:12	—Inadvertent production
§	10:13	Intentional waiver—Conflict of interest between
		employee and corporation
_	10:14	—Bankruptcy
_	10:15	—Parent and wholly owned subsidiary conflicts
_	10:16	Joint defense or common legal interest privilege
_	10:17	Crime-fraud exception
_	10:18	Privilege in shareholder suits: Garner v. Wolfinbarger
8	10:19	Privilege in shareholder suits—Derivative versus class action suits
8	10:20	—Timing of communications
_	10:21	Derivative litigation—Disclosure of special committee
0	10.21	reports
§	10:22	Representation in derivative suits
§	10:23	Applicability of state privilege rules
§	10:24	Work product doctrine—General
§	10:25	—Anticipation of litigation
_	10:26	—Waiver and exception
_	10:27	Selected problems relating to special investigations
§	10:28	Management's assertion of privilege against board
_	TT A T	OMED 11 EVEDERO CIVIL LIADILION
		PTER 11. EXPRESS CIVIL LIABILITY
		VISIONS OF THE SECURITIES ACT OF
1	933:	<b>SECTIONS 11 AND 12</b> 713
_		ATT-T
Ι	. IN	GENERAL
§	11:1	Introduction
§	11:2	Definition of "security"
Ι	T SZ	
Ş	1. 51	ALE OF UNREGISTERED SECURITIES
•		
	11:3	Section 12(a)(1) liability for violating registration or prospectus delivery requirements—Elements
§		Section 12(a)(1) liability for violating registration or
	11:3	Section 12(a)(1) liability for violating registration or prospectus delivery requirements—Elements
§	11:3 11:4	Section 12(a)(1) liability for violating registration or prospectus delivery requirements—Elements —Jurisdictional means
§ § §	11:3 11:4 11:5 11:6 11:7	Section 12(a)(1) liability for violating registration or prospectus delivery requirements—Elements —Jurisdictional means Seller or offeror liability
§ § §	11:3 11:4 11:5 11:6	Section 12(a)(1) liability for violating registration or prospectus delivery requirements—Elements —Jurisdictional means Seller or offeror liability Scienter In pari delicto Exemptions from registration requirements
\$ \$ \$ \$	11:3 11:4 11:5 11:6 11:7 11:8 11:9	Section 12(a)(1) liability for violating registration or prospectus delivery requirements—Elements —Jurisdictional means Seller or offeror liability Scienter In pari delicto Exemptions from registration requirements —Private offerings
\$ \$ \$ \$	11:3 11:4 11:5 11:6 11:7 11:8	Section 12(a)(1) liability for violating registration or prospectus delivery requirements—Elements —Jurisdictional means Seller or offeror liability Scienter In pari delicto Exemptions from registration requirements

- § 11:11 —Intrastate offerings
- § 11:12 —Resale exemptions

# III. MATERIAL MISSTATEMENTS OR OMISSIONS IN THE REGISTRATION STATEMENT

- § 11:13 Scope and purpose of § 11
- § 11:14 Plaintiffs entitled to sue ("tracing")
- § 11:15 Persons liable
- § 11:16 —Experts
- § 11:17 —Underwriters
- § 11:18 —Control persons
- § 11:19 —Aiders and abettors
- § 11:20 Scienter
- § 11:21 Misstatements and omissions
- § 11:22 Statements of opinion or belief
- § 11:23 Materiality
- § 11:24 Reliance
- § 11:25 Defenses ("Due diligence")
- § 11:26 Defenses—Management directors
- § 11:27 —Lawyer-directors
- § 11:28 —Outside directors
- § 11:29 —Underwriters
- § 11:30 —Experts
- § 11:31 Damages and negative causation

## IV. MISLEADING STATEMENTS IN THE SALE OF SECURITIES

- § 11:32 Scope and elements of § 12(a)(2)
- § 11:33 Standing and scope of "by means of prospectus"
- § 11:34 Materiality
- § 11:35 Persons liable under § 12(a)(2)
- § 11:36 Plaintiff's knowledge
- § 11:37 Reliance and causation
- § 11:38 Scienter and defense of reasonable care
- § 11:39 Remedies

#### V. COMMON ISSUES

- § 11:40 Rule 9(b)
- § 11:41 Statute of limitations and statute of repose
- § 11:42 —Tolling under American Pipe
- § 11:43 Contribution and indemnification
- § 11:44 Attorney's fees

CHAPTER 12. ANTIFRAUD		
PRO	OVISIONS 8	49
I. (	GENERAL	
§ 12:1	1 Scope	
	MISLEADING DISCLOSURE UNDER RULE	
	10B-5	
§ 12:2	2 Overview and elements	
§ 12:3	3 Jurisdictional means	
§ 12:4	Extraterritorial reach	
§ 12:5	Material misrepresentation or omission—Deception	
§ 12:6	Mondisclosure and the duty to disclose	
§ 12:7	—Duty to update and to correct	
§ 12:8	B Materiality	
§ 12:9	9 —"Puffery"	
§ 12:1	10 —Merger negotiations	
§ 12:1	11 —The "bespeaks caution" doctrine	
§ 12:1	2 —Safe harbor for forward-looking statements	
§ 12:1	±	
	Regulation S-K	
§ 12:1	•	
§ 12:1		
§ 12:1	16 Scienter	
§ 12:1	-	
§ 12:1	<u>*</u>	
	security	
§ 12:1		
§ 12:2		
§ 12:2	-	
§ 12:2		
§ 12:2		
§ 12:2	·	
§ 12:2	· · · · · · · · · · · · · · · · · · ·	
	theory"	
§ 12:2	v	
§ 12:2	27 ——Rebuttability of presumption	
§ 12:2	28 —Fraud-created-the-market theory	
§ 12:2	29 —Plaintiff's knowledge and justifiable reliance	
§ 12:3	30 —Non-reliance clauses	
§ 12:3	31 Loss causation	
§ 12:3	32 —Pleading issues	
§ 12:3	33 Loss causation and criminal sentencing	

TABLE OF	Contents
§ 12:34	Economic loss and measure of damages
§ 12:35	Aiding and abetting liability
§ 12:36	Primary versus secondary liability predicated upon
Ü	conduct
§ 12:37	Primary versus secondary liability predicated upon
	misstatements
§ 12:38	Liability for misrepresentations and omissions—
	Corporate insiders
§ 12:39	—Outsiders / third-party entities
§ 12:40	—SEC and criminal actions
§ 12:41	Scheme liability
§ 12:42	Manipulation
§ 12:43	Class certification issues—Materiality —Loss causation
	—Reliance
§ 12:45 § 12:46	
§ 12.40	—Settlement classes
	IABILITY FOR FRAUD UNDER § 17(A) OF
$\mathbf{T}$	HE 1933 ACT
§ 12:47	Scope and terms
§ 12:48	Implied right of action
CHAP	TER 13. INSIDER TRADING 1065
§ 13:1	Scope and elements
§ 13:2	Application to unregistered securities
§ 13:3	Classical theory of insider trading
§ 13:4	—Insiders
§ 13:5	Misappropriation theory of insider trading
§ 13:6	—Duty of trust or confidence and Rule 10b5-2
§ 13:7	Tippers and tippees
§ 13:8	—Personal benefit
§ 13:9	—Misappropriation theory
§ 13:10	—Scienter
§ 13:11	—Tipper scienter
§ 13:12	—Tippee scienter
§ 13:13	—Scienter and remote tippees
§ 13:14	Disclosure to analysts and market professionals
§ 13:15	Mail fraud and insider trading
§ 13:16	Material, nonpublic information
§ 13:17	Express private right of action based on inside trading
§ 13:18	Standing to sue—Contemporaneous trading
§ 13:19	—Option traders
§ 13:20	—Victims of misappropriation

§ 13:21	Rule 10b5-1 and "awareness" of material, nonpublic
¢ 10.00	information
§ 13:22 § 13:23	Damages for insider trading In pari delicto
8 15.25	in pari deneto
	PTER 14. ISSUES COMMON TO RITIES FRAUD ACTIONS 1145
I. GE	NERAL
§ 14:1	Introduction
II. CO	OMMON PLEADING ISSUES
§ 14:2	Pleading fraud with particularity
§ 14:3	Heightened pleading requirement under the Private Securities Litigation Reform Act
§ 14:4	Holistic analysis of allegations required
§ 14:5	"Core operations" inference
§ 14:6	Group pleading
§ 14:7 § 14:8	Corporate scienter Motive as inference of scienter
§ 14.8 § 14:9	Inside trading as inference of scienter
§ 14:3 § 14:10	Sarbanes-Oxley certifications and scienter
§ 14:11	Naming of sources
III. O	THER COMMON ISSUES
§ 14:12	Cumulative nature of remedies
§ 14:13	SEC enforcement actions and collateral estoppel
§ 14:14	Statute of limitations in private actions
§ 14:15	Statute of limitations in SEC enforcement actions
§ 14:16	Contribution and settlement
§ 14:17	Attorney's fees
§ 14:18	State law remedies
§ 14:19	Class actions under state law and the Securities Litigation Uniform Standards Act
§ 14:20	Securities Enforcement Remedies and Penny Stock Reform Act of 1990
§ 14:21	Federal Forum Provisions
CHAF	PTER 15. DISCLOSURES AND
<b>CERT</b>	TIFICATIONS UNDER THE SARBANES-
<b>OXLE</b>	Y ACT1233
	Background

TABLE OF	F CONTENTS
§ 15:2	Certification of annual and quarterly reports
_	Disclosure controls and procedures
§ 15:4	Section 906 Certification
§ 15:5	Executive compensation clawbacks
§ 15:6	Code of ethics
§ 15:7	Off-balance sheet and contractual obligation disclosures
	PTER 16. MANIPULATION AND FALSE FILINGS: SECTIONS 9 AND 18 OF THE
EXCI	HANGE ACT 124

## I. GENERAL

§ 16:1 Scope

### II. FALSE SEC FILINGS UNDER § 18(A)

- § 16:2 Elements
- § 16:3 Filed documents
- § 16:4 Persons liable
- § 16:5 Scienter
- § 16:6 Reliance
- § 16:7 Causation and damages
- § 16:8 Statute of limitations
- § 16:9 Exclusivity

#### III. MANIPULATION UNDER § 9

- § 16:10 Elements
- § 16:11 **Exclusivity**

## **CHAPTER 17. SHORT-SWING TRADING:** SECTION 16 OF THE EXCHANGE ACT..

- § 17:1 Scope
- § 17:2 Coverage of § 16
- § 17:3 Section 16 rules revisions
- § 17:4 Reporting requirements of § 16(a)
- § 17:5 Purpose and elements of § 16(b)
- Definition of director and officer § 17:6
- § 17:7 Deputization
- Status at time of purchase or sale—Officers and § 17:8 directors
- -More than 10% beneficial owner § 17:9
- —Beneficial owners § 17:10

1265

1247

§ 17:11	Direct or indirect pecuniary interest
§ 17:12	Period of less than six months
§ 17:13	Matching purchase and sale of the same equity
ŭ	security
§ 17:14	Objective versus pragmatic approaches to purchase
	and sale
§ 17:15	—Mergers and control contests
§ 17:16	Derivative securities
§ 17:17	Insider transactions with the issuer and employee
	benefit plans
§ 17:18	Timing of purchase and sale
§ 17:19	Recovery of profits
§ 17:20	Standing to sue
§ 17:21	Statute of limitations
§ 17:22	Corporate repurchases and waiver
<b>CHAF</b>	PTER 18. FEDERAL REGULATION OF
TENT	DER OFFERS AND PROXY
оош	<b>UTIATION</b> 1339
I. GE	NERAL.
	NERAL
I. <b>GE</b> § 18:1	
§ 18:1	Scope
§ 18:1	
§ 18:1	Scope
§ 18:1	Scope ENDER OFFERS: WILLIAMS ACT
§ 18:1  II. TH § 18:2 § 18:3	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim
§ 18:1 II. TF § 18:2 § 18:3 § 18:4	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions
§ 18:1 II. TF § 18:2 § 18:3 § 18:4 § 18:5	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions  —Private rights of action
§ 18:1 II. TF § 18:2 § 18:3 § 18:4 § 18:5 § 18:6	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions  —Private rights of action  —Remedies
§ 18:1 II. TF § 18:2 § 18:3 § 18:4 § 18:5 § 18:6 § 18:7	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions  —Private rights of action  —Remedies Definition of "tender offer"
§ 18:1 II. TH § 18:2 § 18:3 § 18:4 § 18:5 § 18:6 § 18:7 § 18:8	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions  —Private rights of action  —Remedies Definition of "tender offer"  —Privately negotiated transactions
§ 18:1 II. TF § 18:2 § 18:3 § 18:4 § 18:5 § 18:6 § 18:7	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions  —Private rights of action  —Remedies Definition of "tender offer"  —Privately negotiated transactions  —Open market purchases
§ 18:1 II. TH § 18:2 § 18:3 § 18:4 § 18:5 § 18:6 § 18:7 § 18:8	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions  —Private rights of action  —Remedies Definition of "tender offer"  —Privately negotiated transactions  —Open market purchases  —Termination of tender offer followed by substantial
§ 18:1  II. TF § 18:2 § 18:3  § 18:4 § 18:5 § 18:6 § 18:7 § 18:8 § 18:9 § 18:10	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions  —Private rights of action  —Remedies Definition of "tender offer"  —Privately negotiated transactions  —Open market purchases  —Termination of tender offer followed by substantial purchases
§ 18:1 II. TF § 18:2 § 18:3 § 18:4 § 18:5 § 18:6 § 18:7 § 18:8 § 18:9	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions  —Private rights of action  —Remedies Definition of "tender offer"  —Privately negotiated transactions  —Open market purchases  —Termination of tender offer followed by substantial purchases  Section 14(d) and (e) disclosure requirements and
§ 18:1  II. TF § 18:2 § 18:3 § 18:4 § 18:5 § 18:6 § 18:7 § 18:8 § 18:9 § 18:10 § 18:11	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions  —Private rights of action  —Remedies Definition of "tender offer"  —Privately negotiated transactions  —Open market purchases  —Termination of tender offer followed by substantial purchases  Section 14(d) and (e) disclosure requirements and antifraud provisions
\$ 18:1  II. TF \$ 18:2 \$ 18:3  \$ 18:4 \$ 18:5 \$ 18:6 \$ 18:7 \$ 18:8 \$ 18:9 \$ 18:10  \$ 18:11 \$ 18:12	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions  —Private rights of action  —Remedies Definition of "tender offer"  —Privately negotiated transactions  —Open market purchases  —Termination of tender offer followed by substantial purchases  Section 14(d) and (e) disclosure requirements and antifraud provisions  Particular disclosure problems
§ 18:1  II. TF § 18:2 § 18:3 § 18:4 § 18:5 § 18:6 § 18:7 § 18:8 § 18:9 § 18:10 § 18:11	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions  —Private rights of action  —Remedies Definition of "tender offer"  —Privately negotiated transactions  —Open market purchases  —Termination of tender offer followed by substantial purchases  Section 14(d) and (e) disclosure requirements and antifraud provisions
\$ 18:1  II. TF \$ 18:2 \$ 18:3  \$ 18:4 \$ 18:5 \$ 18:6 \$ 18:7 \$ 18:8 \$ 18:9 \$ 18:10  \$ 18:11 \$ 18:12 \$ 18:13	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions  —Private rights of action  —Remedies Definition of "tender offer"  —Privately negotiated transactions  —Open market purchases  —Termination of tender offer followed by substantial purchases  Section 14(d) and (e) disclosure requirements and antifraud provisions  Particular disclosure problems Issuer purchases
\$ 18:1  II. TF \$ 18:2 \$ 18:3  \$ 18:4 \$ 18:5 \$ 18:6 \$ 18:7 \$ 18:8 \$ 18:9 \$ 18:10  \$ 18:11 \$ 18:12 \$ 18:13	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions  —Private rights of action  —Remedies Definition of "tender offer"  —Privately negotiated transactions  —Open market purchases  —Termination of tender offer followed by substantial purchases  Section 14(d) and (e) disclosure requirements and antifraud provisions  Particular disclosure problems
\$ 18:1  II. TF \$ 18:2 \$ 18:3  \$ 18:4 \$ 18:5 \$ 18:6 \$ 18:7 \$ 18:8 \$ 18:9 \$ 18:10  \$ 18:11 \$ 18:12 \$ 18:13	Scope  ENDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions  —Private rights of action  —Remedies Definition of "tender offer"  —Privately negotiated transactions  —Open market purchases  —Termination of tender offer followed by substantial purchases  Section 14(d) and (e) disclosure requirements and antifraud provisions  Particular disclosure problems Issuer purchases
\$ 18:1  II. TF \$ 18:2 \$ 18:3  \$ 18:4 \$ 18:5 \$ 18:6 \$ 18:7 \$ 18:8 \$ 18:9 \$ 18:10  \$ 18:11 \$ 18:12 \$ 18:13  III. P	CNDER OFFERS: WILLIAMS ACT  Overview and purpose Section 13(d) disclosure provision—Requirements and aim  —Material misstatements or omissions  —Private rights of action  —Remedies Definition of "tender offer"  —Privately negotiated transactions  —Open market purchases  —Termination of tender offer followed by substantial purchases  Section 14(d) and (e) disclosure requirements and antifraud provisions  Particular disclosure problems Issuer purchases  ROXY SOLICITATION

## TABLE OF CONTENTS

§ 18:16	Solicitation	
§ 18:17	Private right of action	
§ 18:18		
§ 18:19	Persons liable	
§ 18:20	Transaction causation	
§ 18:21	Materiality	
§ 18:22	Culpability	
§ 18:23	Applicability of PSLRA	
§ 18:24	Statute of limitations	
§ 18:25		
§ 18:26	Remedies	
§ 18:27	Costs of solicitation and attorney's fees	
§ 18:28	Particular disclosure requirements	
§ 18:29	<u>.</u>	
§ 18:30		
§ 18:31		
§ 18:32	Shareholder proposals	
CHA	PTER 19. CONTROL PERSON	
	ILITY	1451
§ 19:1	Scope and elements	1101
	Availability of common law agency principles	
§ 19:3	Definition of control	
	Culpable participation and defense of good faith	
	Application of Private Securities Litigation Reform Act	
	Statute of limitations	
§ 19:7	Proportionate liability	
CHA	PTER 20. INDEMNIFICATION AND	
<b>INSU</b>	RANCE	1483
§ 20:1		1100
	Indemnification statutes—An overview	
-	—Delaware—Mandatory indemnification	
	——Permissive indemnification	
	——Fees for fees	
§ 20:6	— —Non-exclusivity	
§ 20:7	——Service at the request of another corporation	
§ 20:8	——Statute of limitations	
§ 20:9	—New York	
§ 20:10	—California	
§ 20:11	—Minnesota	
§ 20:12	Model Business Corporation Act	
§ 20:13	Advances of legal expenses	
§ 20:14	Indemnification under federal securities laws	

§ 20:15		
§ 20:16	Application for directors' and officers' liability insurance	
§ 20:17	Subrogation	
CHAI	PTER 21. PIERCING THE CORPORAT	E
<b>VEIL</b>		531
§ 21:1	Introduction	
§ 21:2	General standards	
§ 21:3	Choice of law	
§ 21:4	Relevant factors	
§ 21:5	—Domination and control	
§ 21:6	—Tort versus contract	
§ 21:7	—Undercapitalization	
§ 21:8	—Diversion of corporate assets	
§ 21:9	—Disregard of corporate formalities	
§ 21:10	—Misrepresentation or confusion	
§ 21:11	—Fraud or injustice	
§ 21:12	Persons liable	
§ 21:13	Parent-subsidiary cases	
CHAI	PTER 22. BENEFIT	
CORI	PORATIONS	565
§ 22:1	Introduction	505
§ 22:2	History	
§ 22:3	The Model Legislation	
§ 22:4	—State corporate law remains generally applicable	
§ 22:5	Election of benefit corporation status	
§ 22:6	—Termination of benefit corporation status	
§ 22:7	—Corporate purposes and public benefit	
§ 22:8	—Accountability—Standard of conduct for directors	
§ 22:9	——Standard of conduct for officers	
§ 22:10	— —Right of action	
§ 22:11	— —The annual benefit report	
§ 22:12	—The benefit director and benefit officer	
§ 22:12	The Delaware approach	
§ 22:14	—Formation	
§ 22:14	—Corporate purposes and public benefit	
§ 22:16	—Stock legend requirement	
§ 22:10 § 22:17	—Standard of conduct for directors	
§ 22:17 § 22:18	—Right of action	
§ 22:18 § 22:19	—Night of action —Disclosure	
-		
§ 22:20	Critiques of the benefit corporation	

CHA	PTER 23. NOT-FOR-PROFIT	
COR	PORATIONS	1599
§ 23:1		
§ 23:2	Creation of not-for-profit corporations	
§ 23:3	Standards of conduct for not-for-profit corporation directors	
§ 23:4	—Strict trust standard	
§ 23:5	—Charitable immunity	
§ 23:6	—The business judgment rule	
§ 23:7	Policy considerations for choosing a standard of conduct—The competing policy interests	
§ 23:8	Model Nonprofit Corporation Act (2008)	
§ 23:9	Expanded protection from liability	
§ 23:10	Statutory Solutions—Special protection for volunteers	
§ 23:11	Statutory proposals	
§ 23:12	Standing to sue	
§ 23:13	Statutory Solutions—Derivative suits	
STRI	PTER 24. THE DODD-FRANK WALL EET REFORM AND CONSUMER	
	TECTION ACT	1635
	Introduction	
-	Implemented provisions	
§ 24:3	r	
§ 24:4	Repeal/reform legislation	
Table o	of Laws and Rules	
Table o	of Cases	
Indov		