

Index

Accountants

Disclosures, required, **6:18**
Financial Reporting and Auditing Standards
(this index)
Financial statements, opinion as certification,
8:17.40
Generally accepted auditing standards (GAAS),
6:21
Inadequate or materially misleading disclosure,
8:7, 8:12, 8:17, 8:24
“Red flags,” **8:17.50**
Periodic filings by reporting companies, accounting issues for auditor-audit committee communications, **3:17**
“Present fairly” requirement as additional to (GAAP) compliance, **6:39**
Professionals, generally, **4:1, 4:5, 6:21 et seq.**
Public Company Accounting Oversight Board,
6:17
Sarbanes-Oxley Act and SEC Auditor Rules thereunder, **6:16**
Section 10A of Securities Exchange Act of 1934,
6:40
Section 11 violation, accountant’s opinion as certification, **8:17.40**
Section 12(2) of Securities Act of 1933, **8:7**
SEC views, **4:1, 4:5**

Acquisition of business

Legal audit, **App 7A**

Actual knowledge

Safe harbor statute of 1995, **4:11**
Sciencer. See **Sciencer** (this index)

Administrative Law Judges

Constitutionality of SEC appointment process, **8:32**
Enforcement proceedings ruled unconstitutional by Fifth Circuit, **8:33**

Adverse interests

Sciencer exception, **8:31**

Advice

Attorneys, **4:4**
Inadequate or materially misleading disclosure, **8:21**

Agents

Inadequate or materially misleading disclosure, **8:6**

Aiding and abetting

See **Inadequate or Materially Misleading Disclosure** (this index)
SEC, federal civil liability, **8:28**
Section 12(2) of Securities Act of 1933, **8:9**

American Bar Association

Attorneys, background: ABA and state ethical rules, **6:13**

APA challenge

Chamber of Commerce
Proxy Voting, **8:38**

Aspirational statements

Public offerings, **7:14.60**

Assistance

Inadequate or materially misleading disclosure, **8:21**

Attorneys

Advice, **4:4**
Auditors’ requests for information, responses to, **6:3**
Background: ABA and state ethical rules, **6:13**
Designated underwriters’ counsel, **5:4**
Disclosure, **6:9, 8:7, 8:12, 8:16**
Drafting disclosure documents, **4:4**
Fiduciary duties, inside general counsel’s fiduciary duties and liability for failure to advise board concerning monitoring duties, **6:15**
Formal opinions, **4:3**

Inadequate or materially misleading disclosure, **8:7, 8:12, 8:16**

Investigation, duties of reporting attorney, **6:12**

Monitoring duties, inside general counsel’s fiduciary duties and liability for failure to advise board concerning, **6:15**

Opinion letters, **6:2**

Private right of action, **6:14**

Professionals, generally, **4:1-4:4, 6:2 et seq.**

QLCC, reporting to, **6:6**

Reports

Alternative reporting requirement, reporting to QLCC, **6:6**

Investigation duties of reporting attorney, **6:12**
“Up-The-Ladder” reporting requirement, **6:5, 6:8**

Responses

“Appropriate Response” by issuer, SEC due diligence standards, **6:7**

Attorneys—Cont'd

Responses—Cont'd
 Auditors' requests for information, responses to, **6:3**
 Sanctions and discipline, rule violations, **6:11**
 Sarbanes -Oxley Act and SEC Professional Conduct Rules thereunder, **6:4**
 Section 12(2) of Securities Act of 1933, **8:7**
 Securities counsel, **4:6**
 SEC views, **4:1-4:4**
 Supervisory and subordinate attorneys, **6:10**
 "Up-The-Ladder" reporting requirement, **6:5, 6:8**

Audit committee

Financial reporting and auditing standards. See **Financial Reporting and Auditing Standards** (this index)

Audits and auditors

Attorneys, responses to auditors' requests for information, **6:3**
 Corporate Internal Investigation
 Document 5: Form of General Checklist for Acquisition of Business, Prepared by Purchaser, **App 7A**
 Document 6: Preliminary Audit Information, **App 7B**
 Document 7: Form of General Statement of Business for Small Business, **App 7C**
 Financial reporting and auditing standards. See **Financial Reporting and Auditing Standards** (this index)
 Fraud, auditors' duties regarding illegality and, **6:40**
 Inadequate or materially misleading disclosure, **8:24**
 Periodic filings, Securities Exchange Act of 1934, reporting companies. See **Periodic Filings by Reporting Companies** (this index)
 Strengthening auditor independence, **6:19, 6:20**
 Timely reporting to audit committee, **6:20**

Bache & Co.

NASD Notice to Members: 73-17 (April 23, 1973), **App 2E**

Back-Dated Trading Strategies

Required disclosure, **8:27.95**

BarChris

Section 11 of Securities Act of 1933, **7:6**

"Bright line" approach

Inadequate or materially misleading disclosure, **8:23**

Broker-dealer

Guide to Broker-Dealer Compliance, excerpts from, **App 3**

Brokers

Inadequate or materially misleading disclosure, **8:6**

Business of company

Investigation, **2:9, 2:21**

Causation

Inadequate or materially misleading disclosure, **8:18, 8:18.50**

Materialization of risk, **8:18.50**

Mixed affirmative statements and omissions, **8:18.70**

Time delay between corrective disclosure and share price drop, **8:18.55**

Cautions

Judicial bespeaks caution doctrine, **4:17**

Safe harbor statute of 1995, **4:10**

Caveats

See **Professionals** (this index)

Charters

Financial reporting and auditing standards, SRO audit committee, **6:38**

Chevron doctrine

OVERRULED by U.S. Supreme Court, **8:35**

Chris-Craft

Section 11 of Securities Act of 1933, **7:8**

City of New York

NASD Notice to Members: 75-33 (June 3, 1975), **App 5**

Civil liabilities

See also **Inadequate or Materially Misleading Disclosure** (this index)

Section 11 of Securities Act of 1933, **7:10**

Climate disclosure

Final climate disclosure rules adopted, **App 16**

Comment letters

NASD Notice to Members: 73-17

Excerpts from comment letters relating to proposed due diligence standards (April 10, 1973), **App 2A**

Bache & Co. (April 23, 1973), **App 2E**

Davis Polk & Wardwell (April 23, 1973), **App 2C**

Gibson, Dunn & Crutcher Submission (undated), **App 2D**

Morgan Stanley & Co. (April 24, 1973), **App 2B**

NASD Notice to Members: 75-33, excerpts from Comment Letter, Committee on Securities Regulation of Association of Bar of City of New York (June 3, 1975), **App 5**

Commission authority
Safe harbor statute of 1995, **4:16**

Committee on Securities Regulation of Association of Bar of City of New York
NASD Notice to Members: 75-33 (June 3, 1975), excerpts from Comment Letter, Committee on Securities Regulation of Association of Bar of City of New York, **App 5**

Company Questionnaire and Due Diligence Checklist
Forms, **App 8**

Conspiracy
Inadequate or materially misleading disclosure, **8:26**

Constitutionality of FINRA Broker Suspension
Private Nondelegation Doctrine, **8:36**

Corporate governance amendments
NYSE and Nasdaq corporate governance amendments: periodic filings by reporting companies, independent audit committee focus, **3:11**

Corporate Transparency Act
Generally, **App 15**
FAQs clarifying dissolved entities, **App 15B**
Large operating company exemption, **App 15A**

Corrections
Written disclosure of warnings, caveats, and risk factors, **4:14**

“Creating” the misrepresentation
Inadequate or materially misleading disclosure, **8:22**

Criminal liability
Inadequate or materially misleading disclosure, **8:27**

Cryptocurrency
Non-fungible tokens as securities, Howey case, **8:9.60**
SEC injunctive authority, **6:27.50**

Davis Polk & Wardwell
NASD Notice to Members: 73-17 (April 23, 1973), excerpts from comment letters relating to proposed due diligence standards, **App 2C**

Dealers
Inadequate or materially misleading disclosure, **8:6**

Defenses
Advice of counsel defense under § 20(a) of the Exchange Act of 1934, **8:29.50**
Civil liability, waivable defense to, **7:10**

Defenses—Cont’d
Oral misrepresentations or as “inquiry notice” under statutes of limitations, **4:18**
Seller’s due diligence and similar defenses under federal securities laws Committee on federal regulation of securities, **5:2**

Definitions
Due diligence, **1:1**

Designated underwriters’ counsel
Generally, **5:4**

Directors and officers
Inadequate or materially misleading disclosure, **8:12**
Investigation, **2:25**

Discipline
Attorneys, rule violations, **6:11**

Disclosure
Adequacy of or materially misleading disclosure.
See **Inadequate or Materially Misleading Disclosure** (this index)
Independent duty to disclose, **8:13.50**
Periodic filings, Securities Exchange Act of 1934, reporting companies. See **Periodic Filings by Reporting Companies** (this index)
Professionals. See **Professionals** (this index)

Disgorgement
Punitive, attempts to label remedy as, **8:27.60**
Restrictions, **8:27.70**
Statute of limitations, **8:27.50**
Supreme Court upholds remedy, **8:27.70**

Dodd-Frank Act
SEC administrative enforcement of whistleblower protections, **6:1.60**

Due diligence counsel
Periodic filings by reporting companies, **3:18.50**

Dunn & Crutcher Submission
NASD Notice to Members: 73-17, excerpts from comment letters relating to proposed due diligence standards, Gibson, Dunn & Crutcher Submission (undated), **App 2D**

Editing
Inadequate or materially misleading disclosure, **8:21**

Evidence
Accountants, compliance with GAAS and GAAP as evidence of reasonableness, **6:42**
Good faith, proof of under § 20(a) of the 1934 Exchange Act, **8:29.50**

Exceptions or exclusions
Sciencer, adverse interests exception, **8:31**

Exceptions or exclusions—Cont'd

Written disclosure of warnings, caveats, and risk factors, **4:9**

Experts

Section 11 of Securities Act of 1933, reliance on “expertised” part, **7:4**

FAQs

Clarifying dissolved entities, Corporate Transparency Act, **App 15B**

FASB No. 154

Financial reporting and auditing standards, accounting changes and error corrections, **6:27**

Fiduciary duties

Attorneys, inside general counsel's fiduciary duties and liability for failure to advise board concerning monitoring duties, **6:15**

Financial reporting and auditing standards

Application of GAAS and GAAP in decided cases, **6:41**

Audit committee

Generally, **6:28 et seq.**

Charter, SRO audit committee rules, **6:38**

Financial experts, **6:38**

Member independence, **6:37**

Pre-filing review of quarterly financial statements, **6:30**

Quarterly financial statements, pre-filing review of, **6:30**

Report by committee, generally, **6:31**

Safe harbors, **6:34**

SEC audit committee disclosure rules, generally, **6:29-6:34**

Self-regulatory organization audit committee rules, **6:35-6:38**

Auditing Standard No. 5. Internal control over financial reporting, standard for auditing, below

Charters, **6:38**

Compliance with GAAS and GAAP as evidence of reasonableness, **6:42**

FASB No. 154, accounting changes and error corrections, **6:27**

Financial experts, audit committee, **6:38**

Financial statements, integration with audit of, **6:23**

Independence of audit committee members, **6:33**

Independence of auditors, audit committee financial experts, **6:37**

Integration with audit of financial statements, **6:23**

Internal control over financial reporting, standard for auditing

Generally, **6:22 et seq.**

Financial reporting and auditing standards**—Cont'd**

Internal control over financial reporting, standard for auditing—Cont'd

Adverse opinion requirement when material weakness exists, **6:25**

AS 5

integration with audit of financial statements, overview of changes, **6:23**

overview of audit under Auditing Standard 5, **6:24**

requirement for adverse opinion when material weakness exists, **6:25**

FASB No. 154, accounting changes and error corrections, **6:27**

Financial statements, integration with audit of, **6:23**

Integration with audit of financial statements, **6:23**

Material weakness, generally, **6:25**

Overview of audit under Auditing Standard 5, **6:24**

Overview of changes, **6:23**

SEC enforcement and private actions, **6:27.10**

SEC guidance, **6:26**

Securities and Exchange Commission (SEC) guidance, **6:26**

Standard for auditing, **6:22-6:25**

Material omission to fail to disclose investigation into ICFR weaknesses and promotional paid-for public articles, **6:27.75**

Material weakness. Internal control over financial reporting, standard for auditing, above

Pre-filing review of quarterly financial statements, **6:30**

Present fairly requirement, **6:39**

Public Company Accounting Oversight Board standards. See **PCAOB Standards** (this index)

Quarterly financial statements, pre-filing review of, **6:30**

Reasonableness, compliance with GAAS and GAAP as evidence, **6:42**

Safe harbors, **6:34**

SEC audit committee disclosure rules, generally, **6:29-6:34**

SEC authority under Exchange Act § 13, failing to report over a significant time period, **6:27.20**

SEC enforcement, misstatements about interlocking directorates, **6:27.30**

SEC enforcement and private actions, liability for inadequate internal controls, **6:27.10**

SEC guidance, **6:26**

Section 10A of Securities Exchange Act of 1934, duties of accountant, **6:40**

Financial reporting and auditing standards
—Cont'd
 Securities and Exchange Commission guidance, **6:26**
 Self-regulatory organization audit committee rules, **6:35-6:38**

Financials of company
 Investigation, **2:10, 2:22**

Financial/transactional due diligence
 Periodic filings by reporting companies, **3:18.50**

Fincen
 Generally, **App 15**

FINRA (financial industry regulatory authority)
 Investigation, guidance for private placements, **2:14**
 Regulation D offerings, FINRA Regulation Notice 10-22 (April 2010), **App 2F**
 Rule 5123, guidance for private placements, **2:14**

Formal opinions
 Attorneys, **4:3**

Forms
 Company Questionnaire and Due Diligence Checklist, **App 8**
 Manual of Corporate Forms, Form 2-6, **App 6**

Fraud and misrepresentations
 Auditors' duties, **6:40**
 Defense against oral misrepresentations or as "inquiry notice" under statutes of limitations, **4:18**
 Periodic filings by reporting companies, audit committee's assessment of risks of fraud and response thereto, **3:18**
 Section 11 of Securities Act of 1933
 Actionable misrepresentations of legal compliance, **7:14.50**
 Aspirational statements, **7:14.60**
 Objective and subjective elements of opinion falsity, **7:14.20**
 Section 17(a)(2) of Securities Act of 1933, misstatement liability, **8:10.10**
 Section 17(a)(3) of Securities Act of 1933, "scheme" liability, **8:10.20**

Fraudulent Accounting
 Definition of employer, Sarbanes-Oxley, **6:1.70**

Generally Accepted Auditing Standards (GAAS)
 Generally, **6:21**

Guide to Broker-Dealer Compliance
 Excerpts from, **App 3**

Immaterial safe harbor
 Written disclosure of warnings, caveats, and risk factors, **4:12**

Inadequate internal controls over financial reporting
 SEC enforcement and private actions, **6:27.10**

Inadequate or materially misleading disclosure
 Generally, **5:1 et seq., 8:1 et seq.**
 Accountants
 Generally, **8:7, 8:12, 8:17, 8:24**
 Financial statement, opinion as certification, **8:17.40**
 "Red flags," **8:17.50**
 Aiding and abetting liability. Rule 10b-5 of Securities Exchange Act of 1934, infra
 Attorneys, **8:7, 8:12, 8:16**
 BitConnect case, importance or not of targeted solicitation, **8:9.50**
 "Bright line" approach, **8:23**
 Causation-reliance-mixed affirmative statements and omissions, **8:18.70**
 Conspiracy, **8:26**
 Corporate officers, promoters, attorneys, and accountants for preparation of disclosure documents for investors, **8:12**
 "Creating" the misrepresentation, **8:22**
 Duty to disclose, independent, **8:13.50**
 Filings, **8:1 et seq.**
 Financial statement, accountant's opinion as certification, **8:17.40**
 Generic-misstatements-fraud-on-the-market, **8:18.60**
 Independent duty to disclose, **8:13.50**
 Known trend or uncertainty, duty to disclose, **8:17**
 Misstatement liability, Section 17(a)(2) of Securities Act of 1933, **8:10.10**
 Non-fungible tokens as securities, Howey case, **8:9.60**
 Periodic filings, **8:1 et seq.**
 Pleading requirements, private Rule 10b-5 actions, **8:29**
 Qualitatively material facts, duty to disclose, **8:17**
 Rule 10b-5 of Securities Exchange Act of 1934
 Generally, **8:13 et seq.**
 Accountants, **8:17, 8:24**
 "Red flags," **8:17.50**
 Aiding and abetting liability, generally, **8:19 et seq.**
 Attorneys' duty to disclose, **8:16**
 "Bright line" approach, **8:23**
 Causation, **8:18**
 Conspiracy, **8:26**
 "Creating" the misrepresentation, **8:22**
 Drafting, editing, reviewing, advising, or assisting in preparation of statements made by another, **8:21**
 Duty to disclose, independent, **8:13.50**

Inadequate or materially misleading disclosure**—Cont'd**

- Rule 10b-5 of Securities Exchange Act of 1934
 - Cont'd
 - End-runs around no aiding and abetting liability in private action, **8:19 et seq.**
 - Janus case, SEC prosecutorial position, **8:10.40**
 - Materialization of risk, **8:18.50**
 - Misrepresentations in connection with the purchase or sale of a security, **8:17.70**
 - Misstatements, **8:20**
 - Primary violations of nonrepresentational 10b-5 subdivisions, **8:25**
 - Private Rule 10b-5 actions, pleading requirements, **8:29**
 - Professional's duty to disclose, **8:14-8:17**
 - Qualitatively material facts, **8:17**
 - "Red flags," accountants, **8:17.50**
 - SEC actions, **8:27, 8:28**
 - SEC amicus approach, "creating" the misrepresentation, **8:22**
 - Section 12(2) of Securities Act of 1933, **8:9**
 - "Substantial participation" approach, **8:21**
 - Supreme court's Janus decision (2011), **8:19 et seq.**
 - "Trend or uncertainty," **8:17**
 - Underwriter's duties, **8:15**
 - Sale of unregistered securities and securities fraud actions by the SEC, **8:10.25**
 - "Scheme" liability, Section 17(a)(3) of Securities Act of 1933, **8:10.20**
 - Sciencer, corporate, **8:30**
 - SEC amicus approach, "creating" the misrepresentation, **8:22**
 - SEC enforcement, consent decrees and no-deny provisions, **8:27.65**
 - Section 11 of Securities Act of 1933, **8:3, 8:17.60**
 - Section 12(2) of Securities Act of 1933
 - Generally, **8:4 et seq.**
 - Accountants, **8:7**
 - Agents, brokers, dealers, underwriters, and other "sellers," **8:6**
 - Aiding and abetting, **8:9**
 - Attorneys, **8:7**
 - Pinter v. Dahl, **8:5**
 - Post-Pinter, **8:6**
 - Public offerings, **8:8**
 - Section 17(a). See **Section 17(a) (Securities Act of 1933)** (this index)
 - Section 17(a)(2) of Securities Act of 1933, misstatement liability, **8:10.10**
 - Section 17(a)(3) of Securities Act of 1933, "scheme" liability, **8:10.20**
 - Securities Act of 1933
 - Generally, **5:2**

Inadequate or materially misleading disclosure**—Cont'd**

- Securities Act of 1933—Cont'd
 - Section 11, **8:3**
 - Section 12(2) of Securities Act of 1933, *supra*
 - Section 17(a), **8:10**
 - Section 17(a)(2) of Securities Act of 1933, misstatement liability, **8:10.10**
 - Section 17(a)(3) of Securities Act of 1933, "scheme" liability, **8:10.20**
- Securities Exchange Act of 1934
 - Generally, **5:3**
 - Rule 10b-5 of Securities Exchange Act of 1934, *supra*
 - Sellers, generally, **8:6**
 - Sexual misconduct, **8:17.80**
 - Special pleading requirements, private Rule 10b-5 actions, **8:29**
 - "Substantial participation" approach, **8:21**
 - Supreme court's Janus decision (2011), Rule 10b-5 of Securities Exchange Act of 1934, **8:19 et seq.**
 - Time delay between corrective disclosure and share price drop, **8:18.55**
 - Underwriter's duties, **8:15**

Industry of company

- Investigation, **2:17**

Inquiry notice

- Defense, **4:18**

Internal control over financial reporting

- Generally. See **Financial Reporting and Auditing Standards** (this index)
- Periodic filings by reporting companies, **3:20**

Investigation

- Generally, **2:1 et seq.**
- Business of company, **2:9, 2:21**
- Company, investigation of, generally, **2:18-2:22**
- Corporate internal investigation. See **Audits and Auditors** (this index)
- Director and officer questionnaire, **2:25**
- Financials of company, **2:10, 2:22**
- FINRA Rule 5123, guidance for private placements, **2:14**
- Industry of company, **2:17**
- Issuer
 - Generally, **2:7-2:10**
 - Industry, **2:6**
 - Sources outside, **2:13**
 - Sources within, **2:12**
- Legal audit
 - Corporate Internal Investigation
 - Document 5: Form of General Checklist for Acquisition of Business, Prepared by Purchaser, **App 7A**

Investigation—Cont'd
Legal audit—Cont'd
Corporate Internal Investigation—Cont'd
Document 6: Preliminary Audit Information, **App 7B**
Document 7: Form of General Statement of Business for Small Business, **App 7C**
Legal review, **2:23**
Management of company, **2:8, 2:20**
Practical aspects, generally, **2:3**
Preliminary steps, **2:16**
Public offering, **2:24**
Section 11 of Securities Act of 1933, **7:10**
Sources of information, **2:11-2:13**

Investors
Inadequate or materially misleading disclosure, **8:12**

Issuer investigation
Generally, **2:7-2:10**
Industry, **2:6**
Sources outside, **2:13**
Sources within, **2:12**

Janus case
Inadequate or materially misleading disclosure, **8:19 et seq.**
SEC prosecutorial position, **8:10.40**

Judicial bespeaks caution doctrine
Written disclosure of warnings, caveats, and risk factors, **4:17**

Kennedy-Zobrist rules
Written disclosure of warnings, caveats, and risk factors, **4:18**

Knowledge
Sciencer. See **Sciencer** (this index)
Written disclosure of warnings, caveats, and risk factors, **4:11**

Leasco
Section 11 of Securities Act of 1933, **7:7**

Legal audit
See **Audits and Auditors** (this index)

Legal review
Investigation, **2:23**

Limitation of actions
Defense against oral misrepresentations or as "inquiry notice" under statutes of limitations, **4:18**

Management of company
Investigation, **2:8, 2:20**

Management's discussion and analysis (MD&A)
Periodic filings by reporting companies, **3:15**

Manual of Corporate Forms
Form 2-6, **App 6**

Materially misleading disclosure
See **Inadequate or Materially Misleading Disclosure** (this index)

Material weakness
See **Financial Reporting and Auditing Standards** (this index)

Matter of law
Puffery, immateriality as matter of law, **7:14.10**
Section 11 of Securities Act of 1933, **7:11**

Meaningful cautionary statement
Safe harbor statute of 1995, **4:10**

Misleading disclosure
See **Inadequate or Materially Misleading Disclosure** (this index)

Misstatement
Inadequate or materially misleading disclosure, **8:10.10, 8:20**

Monitoring duties
Attorneys, inside general counsel's fiduciary duties and liability for failure to advise board concerning monitoring duties, **6:15**

Morgan Stanley & Co.
NASD Notice to Members: 73-17 (April 24, 1973), excerpts from comment letters relating to proposed due diligence standards, **App 2B**

NASD Notice to Members: 73-17
Excerpts (March 14, 1973), **App 1**
Excerpts from comment letters relating to proposed due diligence standards (April 10, 1973), **App 2A**
Bache & Co. (April 23, 1973), **App 2E**
Davis Polk & Wardwell (April 23, 1973), **App 2C**
Gibson, Dunn & Crutcher Submission (undated), **App 2D**
Morgan Stanley & Co. (April 24, 1973), **App 2B**

NASD Notice to Members: 75-33
Excerpts from (April 25, 1975), **App 4**
Excerpts from Comment Letter, Committee on Securities Regulation of Association of Bar of City of New York (June 3, 1975), **App 5**

Non-final SEC administrative order
FINRA action not subject to judicial review, **8:37**

Non-fungible tokens (nfts)
See **cryptocurrency** (this index)

Notice

- 73-17 NASD notice to members. See **NASD Notice to Members: 73-17** (this index)
- 75-33 NASD notice to members. See **NASD Notice to Members: 75-33** (this index)
- Defense against oral misrepresentations or as “inquiry notice” under statutes of limitations, **4:18**
- Regulation D offerings, FINRA Regulation Notice 10-22 (April 2010), **App 2F**

Opinion letters

- Attorneys’ opinion letters, **6:2**

Opinion or belief statements

- Section 11 of Securities Act of 1933, **7:14**

Oral misrepresentations

- Defense, **4:18**

Oral statements

- Safe harbor statute of 1995, **4:12**

PCAOB standards

- Accountants, due diligence standards, **6:17**
- Auditing standards release, **App 9**
- Auditor Communications with Audit Committees, Standard 16, **3:12.50, App 10**
- Related party transactions and significant unusual transactions, **3:18.50**

Periodic filings by reporting companies

- Generally, **3:1-3:17**
- Accounting issues for auditor-audit committee communications, **3:17**
- Audits and auditors
 - Accounting issues for auditor-audit committee communications, **3:17**
 - Advisors, audit committee authority to retain and pay, **3:9**
 - Auditor Communications with Audit Committees, PCAOB Auditing Standard 16, **3:12.50, App 10**
 - Committee communications, **3:12.50, 3:16, 3:17, App 10**
 - Complaints, audit committee procedures, **3:8**
 - Critical accounting policies and practices, **3:14**
 - Critical role of audit committee, **3:5**
 - Fraud risks, audit committee’s assessment and response, **3:18**
 - Independence of auditors, audit committee’s role in assuring, **3:13**
 - Independence of member of audit committee, **3:6**
 - Independent audit committee focus, NYSE and Nasdaq corporate governance amendments, **3:11**
 - Internal auditors, **3:19**
 - Management’s discussion and analysis (MD&A), **3:15**

Periodic filings by reporting companies—Cont’d

- Audits and auditors—Cont’d
 - NYSE and Nasdaq corporate governance amendments: independent audit committee focus, **3:11**
 - PCAOB Auditing Standard 16, **3:12.50, App 10**
 - Powers of audit committee over auditors, **3:7**
 - Proxy disclosures about the audit committee, **3:10**
 - Timely reporting by auditor to audit committee, **3:12**
 - CEO, Company’s Disclosure Committee and, **3:2**
 - CFO, Company’s Disclosure Committee and, **3:2**
 - Company’s Disclosure Committee and by CEO and CFO, **3:2**
 - Corporate governance amendments: independent audit committee focus, **3:11**
 - Critical accounting policies and practices, **3:14**
 - Disclosure controls and procedures, **3:3, 3:4**
 - Due diligence counsel, **3:18.50**
 - Establishment or evaluation of disclosure controls and procedures, **3:4**
 - Financial/transactional due diligence, **3:18.50**
 - Independent audit committee focus, corporate governance amendments:, **3:11**
 - Internal auditors, **3:19**
 - Internal controls, implementing and monitoring, **3:20**
 - Introduction, **3:1**
 - Management’s discussion and analysis (MD&A), **3:15**
 - NYSE and Nasdaq corporate governance amendments: independent audit committee focus, **3:11**
 - Oversight process, establishing, **3:21**
 - Public Company Accounting Oversight Board. See **PCAOB Standards** (this index)
 - Related party transactions, **3:18.50**
 - Significant unusual transactions, **3:18.50**

Pinter v. Dahl

- Inadequate or materially misleading disclosure, **8:5**

Pleading

- Private Rule 10b-5 actions, special pleading requirements, **8:29**

Pre-filing review of quarterly financial statements

- Financial reporting and auditing standards, **6:30**

Preliminary audit

- Legal audit, Corporate Internal Investigation, Document 6: Preliminary Audit Information, **App 7B**

Prior to SEC Review

Private Nondelegation Doctrine
Constitutionality of FINRA Broker Suspension, **8:36**

Private funds

SEC enforcement authority, private fund advisers curtailed in Fifth Circuit ruling, **8:27.80**

Private Nondelegation Doctrine

FINRA Broker Suspension
Constitutionality, **8:36**

Private placements

Investigation, FINRA Rule 5123, **2:14**

Private right of action

Attorneys, **6:14**
Special pleading requirements for private Rule 10b-5 claims, **8:29**

Professionals

Generally, **4:1 et seq.**, **6:1 et seq.**
Accountants. See **Accountants** (this index)
Attorneys. See **Attorneys** (this index)
Auditors. See **Auditors** (this index)
Caveats. Written disclosure of warnings, caveats, and risk factors, infra
Disclosure
Accountants, required disclosures, **6:18**
Attorneys, **4:4**, **6:9**, **8:7**, **8:12**, **8:16**
Inadequate or materially misleading disclosure, **8:14-8:17**
Written disclosure of warnings, caveats, and risk factors, infra
Enforcing no representation and no-reliance contract provision against Rule 10b-5 claims, **4:19**
Financial reporting standards. See **Financial Reporting and Auditing Standards** (this index)
Inadequate or materially misleading disclosure, **8:14-8:17**
Risk factors. Written disclosure of warnings, caveats, and risk factors, infra
Rule 10b-5, **4:20**
Safe harbor statute of 1995. Written disclosure of warnings, caveats, and risk factors, infra
Sarbanes-Oxley Act
Accountants, SEC Auditor Rules, **6:16**
Attorneys, SEC Professional Conduct Rules, **6:4**
Section 12(2) of Securities Act of 1933, **4:20**
Securities counsel, **4:6**
SEC views, generally, **4:1 et seq.**
State law duties of securities counsel, **4:6**
Statutes. Written disclosure of warnings, caveats, and risk factors, infra
Underwriters, **4:1**

Professionals—Cont'd

Warnings. Written disclosure of warnings, caveats, and risk factors, infra
Written disclosure of warnings, caveats, and risk factors
Generally, **4:7 et seq.**
Defense against oral misrepresentations or as “inquiry notice” under statutes of limitations, **4:18**
Judicial bespeaks caution doctrine, **4:17**
Kennedy-Zobrist rules, **4:18**
Rule 10b-5, **4:19**, **4:20**
Safe harbor statute of 1995
Generally, **4:8 et seq.**
Actual knowledge, **4:11**
Commission authority, **4:16**
Correct, duty to, **4:14**
Exclusions, **4:9**
Immaterial safe harbor, **4:12**
Meaningful cautionary statement, **4:10**
Oral statements, **4:12**
Present statements mixed with future statements, **4:15**
State of mind, **4:11**
Update, duty to, **4:14**
Section 12(2) of Securities Act of 1933, **4:20**
Statutes. Safe harbor statute of 1995, *supra* this group

Promoters

Inadequate or materially misleading disclosure, **8:12**

Proposed due diligence standards

Excerpts from comment letters. See **NASD Notice to Members: 73-17** (this index)

Proxy solicitation

Decades of use
SEC definition, **8:39**

Proxy Voting Advice

SEC Regulations
Chamber Challenge, **8:38**

Public Company Accounting Oversight Board (PCAOB)

See **PCAOB Standards** (this index)

Public offerings

Aspirational statements, **7:14.60**
Inadequate or materially misleading disclosure, **8:8**
Investigation, **2:24**
Objective and subjective elements of opinion falsity, **7:14.20**
Puffery, immateriality as matter of law, **7:14.10**
Section 12(2) of Securities Act of 1933, **8:8**
Statements of opinion or belief as “fact,” **7:14**

Puffery

Immateriality as matter of law, **7:14.10**
 Section 11 of Securities Act of 1933, **7:14**

Purchaser

Legal audit, Corporate Internal Investigation, Document 5: Form of General Checklist for Acquisition of Business, Prepared by Purchaser, **App 7A**

Qualitatively material facts

Inadequate or materially misleading disclosure, **8:17**

Quarterly financial statements

Financial reporting and auditing standards, **6:30**

Reasonableness

Accountants, compliance with GAAS and GAAP as evidence of reasonableness, **6:42**

Investigation, **7:10**

Section 11 of Securities Act of 1933, **7:3, 7:10**

Records and recording

Securities Act of 1933, **5:3, 5:4**

Securities Act of 1934, **5:3, 5:4**

“Red flags”

Inadequate or materially misleading disclosure, **8:17.50**

Regulation D offerings

FINRA Regulation Notice 10-22 (April 2010), **App 2F**

Related party transactions

Periodic filings by reporting companies, **3:18.50**

Reliance

Section 11 of Securities Act of 1933, reliance on “expertised” part, **7:4**

Written disclosure of warnings, caveats, and risk factors, **4:18**

Reporting companies

Securities Exchange Act of 1934, periodic filings.

See **Periodic Filings by Reporting Companies** (this index)

Required disclosure

Back-Dated Trading Strategies, **8:27.95**

Responses

Attorneys. See **Attorneys** (this index)

Auditors’ requests for information, attorneys’ responses, **6:3**

Review

Inadequate or materially misleading disclosure, **8:21**

Investigation, **2:23**

Section 11, submission of registration statements for non-public review by SEC, **7:1.50**

Risk factors

See **Professionals** (this index)

Rule 10-5 claims

No representation and no-reliance contract provision, enforcing against Rule 10-5 claims, **4:19**

Rule 10b-5 (Securities Exchange Act of 1934)

See also **Inadequate or Materially Misleading Disclosure** (this index)

Written disclosure of warnings, caveats, and risk factors, **4:19, 4:20**

Rule 176

Generally, **7:12**

SEC’s proposed expansion of Rule 176 and written comments thereon received by SEC, **7:13**

Rule 5123 (FINRA)

Investigations, guidance for private placements, **2:14**

Safe harbors

Financial reporting and auditing standards, **6:34**
 Professionals. See **Professionals** (this index)

Sanctions

Attorneys, rule violations, **6:11**

Sarbanes-Oxley Act

Accountants, SEC Auditor Rules, **6:16**

Attorneys, SEC professional conduct rules, **6:4**

Auditor Communications with Audit Committees, PCAOB Auditing Standard 16, **3:12.50, App 10**

Definition of employer, **6:1.70**

Whistle-blower protection for employees in employment termination, **6:1.50**

Sciencer

Adverse interests exception, **8:31**

Corporate, inadequate or materially misleading disclosure, **8:30**

Private Rule 10b-5 actions, special pleading requirements, **8:29**

SEC

Administrative Law Judges, constitutionality of appointment process, **8:32**

Administrative Law Judges, enforcement proceedings ruled unconstitutional by Fifth Circuit, **8:33**

Authority under Exchange Act § 13, failing to report over a significant time period, **6:27.20**

Chevron doctrine, overruled by U.S. Supreme Court, **8:35**

Disgorgement remedy

Attempts to label remedy as punitive, **8:27.60**

Statute of limitations, **8:27.50**

SEC—Cont'd

- Disgorgement remedy—Cont'd
 - Supreme Court upholds, **8:27.70**
- Due diligence standards, **6:1 et seq.**
- Enforcement, consent decrees and no-deny provisions, **8:27.65**
- Enforcement, misstatements about interlocking directorates, **6:27.30**
- Enforcement authority, private funds and private fund advisers curtailed in Fifth Circuit ruling, **8:27.80**
- Final disclosure rules for SPACs, **App 3A**
- Financial Reporting and Auditing Standards** (this index)
 - Injunctive authority
 - Consent decree to enjoin future § 17 and related violations, **6:27.40**
 - Cryptocurrency, **6:27.50**
 - Litigants may challenge constitutionality of parallel or collateral administrative proceedings in Federal District Court, **8:34**
 - Material omission to fail to disclose investigation into ICFR weaknesses and promotional paid-for public articles, **6:27.75**
 - Negligent securities "fraud" actions
 - Section 17(a)(2) (Securities Act of 1933), misstatement liability, **8:10.10**
 - Section 17(a)(3) (Securities Act of 1933), scheme liability, **8:10.20**
 - Non-final administrative order
 - FINRA action not subject to judicial review, **8:37**
 - Private funds and private fund advisers curtailed in Fifth Circuit ruling, **8:27.80**
 - Rule 10b-5, aiding and abetting liability, **8:22, 8:27, 8:28**
 - Section 11 of Securities Act of 1933, **7:1.50, 7:13**
 - Solicitation definition
 - Proxy purposes, **8:39**
- SEC Administrative Enforcement**
 - Whistleblower protections, Dodd-Frank Act, **6:1.60**
- Section 10A (Securities Exchange Act of 1934)**
 - Accountants, **6:40**
- Section 11 (Securities Act of 1933)**
 - Generally, **1:1, 7:1 et seq.**
 - Accountant's opinion in financial statement as certification, **8:17.40**
 - BarChris, **7:6**
 - Chris-Craft, **7:8**
 - Definition of due diligence, **1:1**
 - Fraud and Misrepresentations** (this index)
 - Inadequate or materially misleading disclosure, **8:3**
 - Leasco, **7:7**

Section 11 (Securities Act of 1933)—Cont'd

- Liability
 - Generally, **7:2**
 - Market manipulation, **7:2.10**
- Materiality, **8:17.60**
- Matter of law, **7:11**
- Misrepresentations. **Fraud and Misrepresentations** (this index)
 - Puffery, **7:14**
 - Reasonable investigation, **7:10**
 - Reasonableness standard, **7:3**
 - Registration statements, submission for non-public review by SEC, **7:1.50**
 - Reliance on "expertised" part, **7:4**
 - Rule 176, **7:12, 7:13**
 - SEC's proposed expansion of Rule 176 and written comments thereon received by SEC, **7:13**
 - Software Toolworks and Worlds of Wonder, **7:5**
 - Standing-direct listing, **7:2.20**
 - Statements of opinion or belief as "fact," **7:14**
 - Underwriter, duty to conduct reasonable investigation, waivable defense to civil liability, **7:10**
 - WorldCom, **7:9**

Section 12(2) (Securities Act of 1933)

- BitConnect case, importance or not of targeted solicitation, **8:9.50**
- Inadequate or materially misleading disclosure
 - Generally, **8:4 et seq.**
 - Accountants, **8:7**
 - Agents, brokers, dealers, underwriters, and other "sellers," **8:6**
 - Aiding and abetting, **8:9**
 - Attorneys, **8:7**
 - Pinter v. Dahl, **8:5**
 - Post-Pinter, **8:6**
 - Public offerings, **8:8**
- Professionals, written disclosure of warnings, caveats, and risk factors, **4:20**
- Written disclosure of warnings, caveats, and risk factors, **4:20**

Section 17(a) (Securities Act of 1933)

- Inadequate or materially misleading disclosure, **8:10**
- Standard of care, **8:10.30**

Section 17(a)(2) (Securities Act of 1933)

- Negligent securities "fraud" actions by SEC, misstatement liability, **8:10.10**

Section 17(a)(3) (Securities Act of 1933)

- Negligent securities "fraud" actions by SEC, scheme liability, **8:10.20**

Securities Act of 1933

- Adequacy of disclosure. See **Inadequate or Materially Misleading Disclosure** (this index)
- Definition of due diligence, **1:1**
- Filings, **5:3, 5:4, 8:1 et seq.**
- Inadequate disclosure. See **Inadequate or Materially Misleading Disclosure** (this index)
- Materially misleading disclosure. See **Inadequate or Materially Misleading Disclosure** (this index)
- Periodic filings, **8:1 et seq.**
- Section 11 liability. See **Section 11 (Securities Act of 1933)** (this index)
- Section 12. See **Section 12 (Securities Act of 1933)** (this index)
- Section 17(a), inadequate or materially misleading disclosure, **8:10**

Securities and Exchange Commission

- See **SEC** (this index)

Securities counsel

- Generally, **4:6**

Securities Exchange Act of 1934

- Adequacy of or materially misleading disclosure. See **Inadequate or Materially Misleading Disclosure** (this index)
- Advice of counsel defense under § 20(a), **8:29.50**
- Control person liability under § 20(a), **8:29.50**
- Good faith, proof of under § 20(a), **8:29.50**
- Periodic filings. See **Periodic Filings by Reporting Companies** (this index)
- Section 10A, accountants, **6:40**
- Written disclosure of warnings, caveats, and risk factors, **4:19, 4:20**

Self-regulatory organizations (SROs)

- Financial reporting and auditing standards, SRO audit committee rules, **6:35-6:38**

“Sellers”

- See lines throughout this index

Sexual misconduct

- Improper disclosure on part of CEO and corporation, SEC enforcement, **8:17.80**

Small businesses

- Legal audit, Corporate Internal Investigation, Document 7: Form of General Statement of Business for Small Business, **App 7C**

Software Toolworks and Worlds of Wonder

- Section 11 of Securities Act of 1933, **7:5**

Solicitation definition

- SEC
- Proxy purposes, **8:39**

Sources of information

- Investigation, **2:11-2:13**

Special Purpose Acquisition Company

- SEC adopts final disclosure rules for SPACs, **App 3A**

Standard of care

- Inadequate or materially misleading disclosure, **8:10.30**

State law

- Securities counsel, **4:6**

Statements of opinion or belief as “fact”

- Section 11 of Securities Act of 1933, **7:14**

State of mind

- Safe harbor statute of 1995, **4:11**

Statute of limitations

- Oral misrepresentations or as “inquiry notice” under statutes of limitations, **4:18**
- SEC disgorgement remedy, **8:27.50**

Statutes

- Safe harbor statute of 1995, **4:8 et seq.**
- Sarbanes-Oxley Act. **Sarbanes-Oxley Act** (this index)
- Securities Act of 1933. See **Securities Act of 1933** (this index)
- Securities Act of 1934. See **Securities Act of 1934** (this index)

Subordinates

- Attorneys, **6:10**

“Substantial participation” approach

- Inadequate or materially misleading disclosure, **8:21**

Supervisory personnel

- Attorneys, **6:10**

Supreme Court

- Inadequate or materially misleading disclosure, **8:19 et seq.**
- SEC disgorgement remedy, application of statute of limitations, **8:27.50**

Targeted solicitation

- BitConnect case, section 12, **8:9.50**

Task force report

- Seller’s due diligence and similar defenses under federal securities laws Committee on federal regulation of securities, **5:2**

Termination of employment

- Whistle-blower protection for employees, Sarbanes-Oxley, **6:1.50**

INDEX

Third persons

Inadequate or materially misleading disclosure, **8:21**

Trend or uncertainty

Inadequate or materially misleading disclosure, **8:17**

Underwriters

See lines throughout this index

Update, duty to

Safe harbor statute of 1995, **4:14**

“Up-The-Ladder” reporting requirement

Attorneys, **6:5, 6:8**

Waiver

Section 11 of Securities Act of 1933, waivable defense to civil liability, **7:10**

Warnings

See **Professionals** (this index)

Whistle-blower protection

Employees in employment termination, Sarbanes-Oxley, **6:1.50**

WorldCom

Section 11 liability (Securities Act of 1933), **7:9**

Written comments

Section 11 of Securities Act of 1933, SEC’s proposed expansion of Rule 176 and written comments thereon received by SEC, **7:13**

Written disclosure of warnings, caveats, and risk factors

See **Professionals** (this index)