

Index

ADMINISTRATIVE REMEDIES

SEC enforcement proceedings. See **Securities and Enforcement Commission** (this index)

ADMINISTRATIVE SUBPOENAS AND SUMMONSES

See **Subpoenas and Other Regulatory Requests** (this index)

AFFIRMATIVE DEFENSES

FCPA anti-bribery provisions, **12:11, 12:12**
FINRA disciplinary proceedings, **9:40**

AMNESTY

Antitrust. See **Antitrust Criminal Investigations** (this index)

ANONYMOUS COMPLAINTS

Compliance programs, **2:23**

ANTI-MONEY LAUNDERING ACT OF 2020

Anti-money laundering (AML) investigations, **13:6**

ANTI-MONEY LAUNDERING (AML) INVESTIGATIONS

Generally, **13:1-13:38**
Anti-Money Laundering Act of 2020, **13:6**
Bank examinations, **13:23**
Bank Secrecy Act
defending clients, **13:2**
Bank Secrecy Act
updates, BSA/AML, 1970's and 2000's, **13:3**
Board of directors, **13:21**
Cease and desist orders
enforcement, **13:35**
Compliance program
administering, **13:16**
developing, **13:16**

ANTI-MONEY LAUNDERING (AML) INVESTIGATIONS —Cont'd

Compliance program—Cont'd
requirements, **13:17**
Cybercrime, **21:20**
Defending clients
Anti-Money Laundering Act of 2020, **13:6**
Bank Secrecy Act, **13:2**
updates, BSA/AML, 1970's and 2000's, **13:3**
enforcement, **13:12**
federal banking regulators, jurisdiction, **13:10**
interim AML rules, **13:5**
introduction, **13:1**
jurisdiction
generally, **13:7-13:11**
Department of Justice, **13:8**
federal banking regulators, **13:10**
other federal agencies, **13:9**
state agencies, **13:11**
United States Attorneys' Offices, **13:8**
other federal agencies, jurisdiction, **13:9**
Patriot Act of 2001, **13:4**
state agencies, jurisdiction, **13:11**
updates, BSA/AML, 1970's and 2000's, Bank Secrecy Act, **13:3**
Deferred prosecution
enforcement, **13:34**
Department of Justice
defending clients, **13:8**
Enforcement
generally, **13:31-13:37**
cease and desist orders, **13:35**
civil penalties, **13:33**
criminal penalties, **13:32**

**ANTI-MONEY LAUNDERING
(AML) INVESTIGATIONS**

—Cont'd

Enforcement—Cont'd
 defending clients, **13:12**
 deferred prosecution, **13:34**
 independent monitors, **13:36**
 nonprosecution agreements, **13:34**
 recent trends, **13:14**
 remediation, **13:37**
 trends, **13:38**
 Expanded extraterritorial jurisdiction, **13:15**
 Failure to identify or file SARs, suspicious activity, **13:20**
 Federal banking regulators, jurisdiction, **13:10**
 Identifying and responding to red flags, **13:22**
 Independent monitors
 enforcement, **13:36**
 Interim AML rules, **13:5**
 Jurisdiction
 expanded extraterritorial, **13:15**
 Law enforcement inquiry, approach
 generally, **13:24-13:30**
 confidential information, **13:30**
 document requests, voluntary, **13:25**
 information collection, **13:27**
 interval investigations, **13:28**
 multiple agencies, **13:29**
 subpoenas, **13:26**
 New anti-money laundering crimes, **13:13**
 Nonprosecution agreements
 enforcement, **13:34**
 Oversight, board of directors, **13:21**
 Patriot Act of 2001
 defending clients, **13:4**
 Recent trends, enforcement, **13:14**
 Regulatory inquiry, approach
 generally, **13:24-13:30**
 confidential information, **13:30**
 document requests, voluntary, **13:25**
 information collection, **13:27**
 interval investigations, **13:28**

**ANTI-MONEY LAUNDERING
(AML) INVESTIGATIONS**

—Cont'd

Regulatory inquiry, approach
 —Cont'd
 multiple agencies, **13:29**
 subpoenas, **13:26**
 Remediation
 enforcement, **13:37**
 Rules, interim AML, **13:5**
 State agencies, jurisdiction, defending clients, **13:11**
 Subpoenas
 regulatory inquiry, approach, **13:26**
 Suspicious activity
 failure to identify or file SARs, **13:20**
 monitoring and reporting, **13:19**
 Trends, enforcement, **13:38**
 United States Attorneys' Offices
 defending clients, **13:8**
 Whistleblower program, **13:18**

**ANTITRUST CRIMINAL
INVESTIGATIONS**

Generally, **14:1 to 14:35**

Amnesty program

 amnesty plus, penalty plus and omnibus questions, anticipating impacts, **14:27**
 applying for marker, **14:20**
 conducting analysis promptly, **14:25**
 cooperation, **14:23**
 corporate program, **14:18**
 grand jury investigations, responding when amnesty is not available, below
 individual program, **14:19**
 likely future civil litigation, accounting for, **14:28**
 marker redemption, **14:21**
 other government enforcement exposure, accounting for, whether to seek amnesty, **14:29**
 overview, **14:17 et seq.**

INDEX

ANTITRUST CRIMINAL

INVESTIGATIONS—Cont'd

- Amnesty program—Cont'd
 - possible parallel applications in other jurisdictions, accounting for, **14:26**
 - revocation of conditional amnesty, **14:22**
 - whether to seek amnesty
 - generally, **14:24 to 14:29**
 - amnesty plus, penalty plus and omnibus questions, anticipating impacts, **14:27**
 - conducting analysis promptly, **14:25**
 - likely future civil litigation, accounting for, **14:28**
 - other government enforcement exposure, accounting for, **14:29**
 - possible parallel applications in other jurisdictions, accounting for, **14:26**
- Cartels. International cartels, below
- Cooperation with grand jury investigation, benefits and risks, **14:31, 14:32**
- Corporate plea agreements, **14:33**
- Discovery of potential exposure, **14:15**
- Elements of offense, **14:3**
- Fines and prison sentences
 - generally, **14:6 to 14:11**
 - Antitrust Division's emphasis on prison sentences, **14:8**
 - foreign nationals facing sentences, **14:10**
 - higher corporate fines, steady trend, **14:7**
 - individuals who do not plead guilty, more frequent prosecution, **14:11**
 - more frequent and longer sentences, **14:9**
- Grand jury investigations, responding when amnesty is not available generally, **14:30 to 14:34**
- Agreements & Compliance
 - Program Credit, Deferred Prosecution, **14:34**

ANTITRUST CRIMINAL

INVESTIGATIONS—Cont'd

- Grand jury investigations, responding when amnesty is not available—Cont'd
 - cooperation, benefits and risks, **14:31, 14:32**
 - corporate plea agreements, **14:33**
 - Deferred Prosecution Agreements & Compliance Program Credit, **14:34**
 - individual carve outs, **14:33**
 - In summary, **14:35**
 - Individual carve outs, **14:33**
 - Initial investigation, **14:16**
 - International cartels
 - generally, **14:12 to 14:14**
 - international cooperation and multijurisdictional investigations, **14:13**
 - U.S. enforcement, **14:14**
 - Overview, **14:1**
 - Penalties, **14:5**
 - Plea agreements, corporate, **14:33**
 - Potential exposure
 - discovery, **14:15**
 - initial response, **14:15, 14:16**
 - sources of, **14:2 to 14:16**
 - Prison time. Fines and prison sentences, above
 - Statute of limitations, **14:4**
 - Statutory basis
 - generally, **14:2 to 14:5**
 - elements of offense, **14:3**
 - penalties, **14:5**
 - statute of limitations, **14:4**
- ### APPEAL AND REVIEW
- CFPB enforcement actions, **8:29**
 - FINRA disciplinary proceedings, **9:52, 9:53**
 - Motions to quash, **18:54**
 - PCAOB disciplinary proceedings.
 - Public Company Accounting Oversight Board** (this index)
- ### ARREST
- Material witness warrants and arrests, clients located outside United States, **5:38**

ASSESSMENTS

Monetary assessments, U.S. Attorney's Office and DOJ investigations, **6:23**

ASSET FORFEITURE

See **Forfeiture** (this index)

ASSET FREEZES

SEC enforcement proceedings, **7:65**

ATTORNEY-CLIENT PRIVILEGE

Internal investigations. See **Internal Investigations** (this index)

Media consultants, **20:11**

Motions to quash in grand jury and administrative contexts, **18:50**

Public statements during investigation, potential waiver of privilege, **20:9**

ATTORNEYS GENERAL

State AGs. See **New York** (this index); **State Regulators and Attorneys General** (this index)

AUDITS AND AUDITING

Monitoring and auditing systems. See **Compliance Programs** (this index)

SEC enforcement proceedings, prohibition of improper influence on conduct of audits, **7:69**

BANK SECRECY ACT (BSA)

Anti-money laundering (AML) investigations
defending clients, **13:2**

Cybercrime, **21:20**

Updates, 1970's and 2000's, **13:3**

BEST INTERESTS

Regulation, securities and exchange commission, **7:12**

BONUSES

Forfeiture, SEC enforcement proceedings, **7:67**

BORDER STOPS

Clients located outside United States, seizures of laptops and other items, **5:37**

BRIBERY

FCPA, anti-bribery provisions. See **Foreign Corrupt Practices Act** (this index)

CARTELS

International cartels. See **Antitrust Criminal Investigations** (this index)

CEASE AND DESIST ORDERS

CFPB enforcement actions, temporary orders, **8:30**

SEC administrative remedies, **7:73**

CENSURE

SEC administrative remedies, **7:75**

CHINA

Recent developments, securities and exchange commission, **7:13**

CIVIL ASSET FORFEITURE

Fugitive disentitlement, **17:9**

COLLECTION OF DOCUMENTS

See **Documents** (this index)

COMMODITIES FUTURE

TRADING COMMISSION

Generally, **1:4**

Restraining assets. See **Forfeiture** (this index)

Subpoenas, **18:8**

COMPLIANCE PROGRAMS

Generally, **2:1 to 2:28**

Anonymous complaints, **2:23**

Anti-money laundering (AML) investigations

administering, **13:16**

developing, **13:16**

requirements, **13:17**

Auditing. Monitoring and auditing systems, below

Benefits of effective program, **2:1**

Conclusion, **2:28**

Corporate integrity agreements (CIAs), **2:16**

Design, **2:12**

Evolving notion of compliance program effectiveness, **2:3**

INDEX

COMPLIANCE PROGRAMS

—Cont'd

- Foreign Corrupt Practices Act (FCPA)
 - best practices, **12:20**
 - Enforcement Trends and Guidance, **12:21**
- Implementing effective program
 - generally, **2:18 to 2:27**
 - monitoring and auditing systems, below
 - risk assessments, **2:18**
 - training, **2:20**
 - written policies and procedures, **2:19**
- Internal audit, **2:25**
- Issue remediation, **2:27**
- Monitoring and auditing systems
 - generally, **2:21 to 2:26**
 - anonymous complaints, **2:23**
 - internal audit, **2:25**
 - non-retaliation, **2:24**
 - open door policy, **2:22**
 - other monitoring, **2:26**
- Monitorships, **2:17**
- Non-retaliation, **2:24**
- Open door policy, **2:22**
- Principles of federal prosecution of business organizations, **2:10, 2:11**
- Purposes of effective program, **2:1**
- Risk assessments, **2:18**
- Sentencing guidelines. See **Federal Sentencing Guidelines** (this index)
- Training, **2:20**
- USAO/DOJ investigations, **6:14**
- Written policies and procedures, **2:19**

COMPUTER FRAUD AND ABUSE ACT (CFAA)

- Generally, **21:14-21:16**
- Common issues
 - investigations and prosecutions, **21:16**
- Cybercrime, **21:14-21:16**
- Investigations and prosecutions, common issues, **21:16**
- Prohibited conduct, **21:15**

COMPUTERS

- Clients located outside United States, border stops and seizures of laptops and other items, **5:37**

CONFIDENTIALITY

- CFPB investigations, disclosure and protections for confidential information, **8:18, 8:19**
- FINRA investigations, confidentiality concerns, **9:23**
- Internal investigations, protecting confidential communications, **3:20**
- PCAOB investigations, **10:35**

CONSTITUTIONAL LAW

- Asset forfeiture, constitutional violations. See **Forfeiture** (this index)

CONSUMER FINANCIAL PROTECTION BUREAU

- Generally, **1:6, 8:1 to 8:39**
- Adjudication. Enforcement actions, below
- Appeals, **8:29**
- Cease and desist orders, temporary, **8:30**
- Civil actions, **8:31**
- Civil Investigative Demand (CID).
 - Investigations, below
- Closure of investigation, **8:24**
- Confidential information, **8:18, 8:19**
- Cooperation, credit for, **8:23**
- Covered persons, **8:3**
- Early warning process (NORA), **8:27**
- Enforcement actions
 - generally, **8:9, 8:26 to 8:35**
 - adjudication
 - generally, **8:28**
 - appeals, **8:29**
 - cease and desist orders, temporary, **8:30**
 - decisions, **8:29**
 - appeals, **8:29**
 - cease and desist orders, temporary, **8:30**
 - civil actions, **8:31**
 - civil money penalties, **8:35**

**CONSUMER FINANCIAL
PROTECTION BUREAU**

—Cont'd

- Enforcement actions—Cont'd
 - decisions, **8:29**
 - early warning process (NORA), **8:27**
 - parallel and coordinated proceedings, below
 - restitution, **8:34**
 - settlement, below
- Federal agency partnerships, **8:37**
- Federal consumer financial law, CFPB jurisdiction, **8:4**
- Formation and early history, **8:2**
- Functions and organizational structure
 - generally, **8:6**
 - enforcement, **8:9**
 - rulemaking, **8:8**
 - supervision, **8:7**
- In summary, **8:39**
- Individuals as targets of investigations, **8:22**
- Investigations
 - generally, **8:10 to 8:24**
 - Civil Investigative Demand (CID)
 - generally, **8:11**
 - assessing, **8:12**
 - meet and confer, **8:13**
 - noncompliance, **8:16**
 - petition for order modifying or setting aside, **8:15**
 - productions/responses, **8:17**
 - testimony, investigational hearings, **8:21**
 - written modifications, **8:14**
 - closure of investigation, **8:24**
 - confidential information, **8:18, 8:19**
 - cooperation, credit for, **8:23**
 - individuals as targets, **8:22**
 - meet and confer, **8:13**
 - noncompliance, **8:16**
 - Non-Public Supervisory Actions, **8:25**
 - parallel and coordinated proceedings, below

**CONSUMER FINANCIAL
PROTECTION BUREAU**

—Cont'd

- Investigations—Cont'd
 - privilege, assertion of, **8:20**
 - productions/responses, **8:17**
 - testimony, investigational hearings, **8:21**
- Jurisdiction
 - generally, **8:3**
 - covered persons, **8:3**
 - federal consumer financial law, **8:4**
 - service providers, **8:3**
 - unfair, deceptive and abusive acts and practices, **8:5**
- Meet and confer, **8:13**
- Non-Public Supervisory Actions, investigations, **8:25**
- Parallel and coordinated investigations and enforcement proceedings
 - generally, **8:36-8:38**
 - federal agency partnerships, **8:37**
 - state agency partnerships, **8:38**
- Petition for order modifying or setting aside CID, **8:15**
- Privilege, assertion of, **8:20**
- Restitution, **8:34**
- Rulemaking, **8:8**
- Service providers, **8:3**
- Settlement
 - generally, **8:32**
 - civil money penalties, **8:35**
 - restitution, **8:34**
 - substantive conduct provisions, **8:33**
- State agency partnerships, **8:38**
- Supervision, **8:7**
- Temporary cease and desist orders, **8:30**
- Testimony, investigational hearings, **8:21**
- Unfair, deceptive and abusive acts and practices, **8:5**

CONTRACTS AND AGREEMENTS

- See also **Joint Defense Agreements** (this index)

INDEX

CONTRACTS AND AGREEMENTS

—Cont'd

- Indemnification provisions,
contractual, **5:28**
- Non-prosecution and deferred prosecution agreements, **6:21**
- Proffer agreements, **5:20**
- Safe passage agreements, clients
located outside United States,
5:38
- SEC investigation, agreement on
scope of document production,
7:38

COOPERATION

- Mitigating factors, **6:11**
- Parallel proceedings, **16:35, 16:36**
- PCAOB investigation, non-cooperation, **10:31, 10:32**

CORPORATE INTEGRITY AGREEMENTS (CIAS)

- Generally, **2:16**

CORPORATIONS

- Representing corporations in
investigations. See **U.S.
Attorney's Office and DOJ
Investigations** (this index)

CRIMINAL LAW

- Antitrust. See **Antitrust Criminal
Investigations** (this index)
- Asset forfeiture. See **Forfeiture** (this
index)
- Calculation of corporate criminal
fines. See **Federal Sentencing
Guidelines** (this index)
- Guilty pleas, **6:22**
- Insider trading. See **Insider Trading**
(this index)
- Parallel proceedings. See **Parallel
Criminal and Civil Proceedings**
(this index)
- Representing corporations in
investigations. See **U.S.
Attorney's Office and DOJ
Investigations** (this index)
- SEC, criminal enforcement, **7:83**
- Sentencing. See **Federal Sentencing
Guidelines** (this index)

CRYPTOCURRENCY

- Cybercrime, **21:19**
- Recent developments, **7:3**
- Regulation of sales and trading,
21:21
- Sales and trading, regulation of,
21:21

CYBER BREACHES

- Preventing and mitigating, **21:5**
- Security breaches, personal information, **21:7**

CYBERCRIME

- Generally, **21:1-21:22**
- Advising targets or subjects of, **21:11**
- Anti-money laundering, **21:20**
- Bank secrecy act, **21:20**
- Categories, **21:2**
- Computer Fraud and Abuse Act
(CFAA), **21:14-21:16**
- Computer Fraud and Abuse Act
(CFAA)
generally, **21:14-21:16**
common issues
investigations and prosecutions,
21:16
investigations and prosecutions,
common issues, **21:16**
prohibited conduct, **21:15**
- Conclusion, **21:22**
- Criminal cyber Incident, response,
21:6
- Cryptocurrency, **21:19**
- Current landscape, **21:12**
- Department of Justice
procedures and policy, **21:13**
- In general, **21:19**
- Introduction, **21:1, 21:19**
- Investigation
security breaches, potential, **21:8**
- OFAC and ransomware, **21:10**
- Ransomware, **21:9, 21:10**
- Security breaches, personal information, **21:7**
- Statutory overview, **21:3**
- Stored Communications Act 821218
U.S.C. 0167 2701, **21:18**
- Victims, advising, **21:4**

CYBERCRIME—Cont'd

What is cybercrime?, **21:1, 21:2**
Wiretap Statute 821218 U.S.C. 0167
2511, **21:17**

DATA COLLECTION PLAN

See **Documents** (this index)

DEBARMENT

U.S. Attorney's Office and DOJ
investigations, **6:25**

**DEFERRED PROSECUTION
AGREEMENTS**

U.S. Attorney's Office and DOJ
investigations, **6:21**

DEPARTMENT OF JUSTICE

Anti-money laundering (AML)
investigations, defending clients,
13:8

Coordination between SEC and DOJ.
See **Parallel Criminal and
Civil Proceedings** (this index)

Investigations. See **U.S. Attorney's
Office and DOJ Investigations**
(this index)

Organizational structure, **6:2**

Procedures and policy
cybercrimes, **21:13**

DISCIPLINE

FINRA proceedings. See **Financial
Industry Regulatory Authority**
(this index)

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

DISCOVERY

FINRA disciplinary proceedings. See
**Financial Industry Regulatory
Authority** (this index)

Parallel proceedings, discoverability
of internal investigation materi-
als, **16:30**

PCAOB disciplinary proceedings,
10:44, 10:45

DOCUMENTS

Collection of documents
generally, **18:15 to 18:30**
data collection plan
generally, **18:18**

DOCUMENTS—Cont'd

Collection of documents—Cont'd

data collection plan—Cont'd
impact of compliance on
company's resources,
18:23

implementing, **18:30**

issues relevant to government's
document request, **18:19**

key players and relevant time
frame, **18:20**

location of potentially
responsive documents,
18:22

preserving and collecting docu-
ments, **18:23**

what documents and electronic
materials does company
have, **18:21**

deadlines and rolling production,
18:25

documenting agreement with
government, **18:28**

electronic documents. See
**Electronic Information and
Communications** (this index)

interviewing custodians, **18:29**

meeting to discuss scope of
request, **18:26**

negotiating scope of subpoena,
18:24 to 18:28

predictive coding to relieve
burden, **18:27**

response team

assembling, **18:15**

membership, **18:16**

tasks and responsibilities, **18:17**

Counsels review of documents
privilege issues in cross-border
disputes, **18:31**

Data collection plan. Collection of
documents, above

Electronic documents. See
**Electronic Information and
Communications** (this index)

FINRA. See **Financial Industry
Regulatory Authority** (this
index)

Individuals, defending, document
access and review, **5:9, 5:16**

INDEX

DOCUMENTS—Cont'd

- Interviewing custodians, **18:29**
- Investigations. See **Internal Investigations** (this index)
- Negotiating scope of subpoena, **18:24 to 18:28**
- Preservation of documents
 - importance of, **7:31**
 - internal investigations, **3:26**
- Privilege issues. Production of documents, below
- Production of documents
 - generally, **18:31 to 18:42**
 - cost-shifting, potential for, **18:42**
 - counsel's review of documents
 - privilege issues in cross-border disputes, **18:31**
 - cover letter, **18:39**
 - FOIA requests, **18:37**
 - formatting production, **18:38**
 - grand jury secrecy, **18:36**
 - grand jury subpoena, certifying compliance, **18:40**
 - privilege issues
 - generally, **18:32 to 18:35**
 - privilege log, **18:35**
 - Rule 502, **18:34**
 - third party, privileged materials subpoenaed from, **18:33**
 - waiver, **18:32**
 - third party, privileged materials subpoenaed from, **18:33**
- Response team. Collection of documents, above
- Retention practices interview, outline, **App 18B**
- SEC investigations, subpoena duces tecum. See **Securities and Exchange Commission** (this index)
- Third party, privileged materials subpoenaed from, **18:33**

DODD-FRANK ACT

- State regulators and attorneys general, impact on, **11:3**

DOUBLE JEOPARDY

- Asset forfeiture, **17:26**

DUE PROCESS

- Asset forfeiture, **17:27 to 17:29**

EFFECTIVENESS

- See **Compliance Programs** (this index)

ELECTRONIC INFORMATION AND COMMUNICATIONS

- Generally, **19:1 to 19:17**
- Back-up tapes, **19:14**
- Cloud storage, **19:15**
- Collection issues and strategies, **19:4**
- Complex data sources, **19:10 to 19:15**
- Conclusion, **19:17**
- Data review issues and strategies, **19:5 et seq.**
- De-duplication, near duplicates and e-mail threads, **19:8**
- Enterprise databases, **19:12**
- Enterprise vaults, **19:11**
- File extensions and exception handling, **19:7**
- Insider trading, **15:22**
- Preservation issues and strategies, **19:3**
- Production issues, **19:16**
- Response team, selecting, **19:2**
- Search terms, **19:6**
- Smartphones and other mobile devices, **19:13**
- Subpoenas, **18:5**
- Technology assisted review, **19:9**

EMPLOYEES

- See **Internal Investigations** (this index)

ENFORCEMENT ACTIONS

- CFPB. See **Consumer Financial Protection Bureau** (this index)
- Insider trading laws. See **Insider Trading** (this index)
- SEC. See **Securities and Exchange Commission** (this index)
- State officials, recent trends and developments, **11:2, 11:6**

EVIDENCE

- FINRA investigations, sufficiency of evidence review, **9:26**
- Obtaining evidence outside United States, **5:41**

EXPERTS

- FINRA disciplinary proceedings, expert witness determinations, **9:48**
- Insider trading, expert network firms, **15:40**
- Internal investigations, **3:22**

EXTRATERRITORIAL JURISDICTION

- Clients located outside U.S., **5:34**

FALSE CLAIMS ACT

- See **New York** (this index)

FALSE STATEMENTS

- Statute, **5:25**

FALSE TESTIMONY

- Practical considerations, **5:26**

FEDERAL COURTS

- SEC enforcement proceedings. See **Securities and Enforcement Commission** (this index)

FEDERAL SENTENCING GUIDELINES

- Calculation of corporate criminal fines
 - generally, **2:4 to 2:9**
 - base fine, **2:5**
 - culpability score, **2:6**
 - departures from guideline fine range, **2:8**
 - fine multiplier, **2:7**
 - probation, **2:9**
- Corporate compliance programs
 - generally, **2:2 to 2:9**
 - calculation of corporate criminal fines, above
 - evolving notion of program effectiveness, **2:3**
- Culpability score, **2:6**
- Departures from guideline fine range, **2:8**

FEDERAL SENTENCING GUIDELINES—Cont'd

- Probation, **2:9**

FEES AND COSTS

- Payment by individuals. **Individuals, Defending** (this index)

FIFTH AMENDMENT

- Asserting privilege, **5:10, 7:44**
- Asset forfeiture, constitutional violations, **17:26 to 17:29**
- Motions to quash in grand jury and administrative contexts, **18:49**
- Privilege issues arising in parallel proceedings. See **Parallel Criminal and Civil Proceedings** (this index)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

- White collar landscape, **1:5**

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)

- Generally, **9:1 to 9:53**
- Advertising regulation, **9:13**
- Appeal of hearing panel's decision, **9:52, 9:53**
- Confidentiality concerns, **9:23**
- Cook era, **9:5**
- Cooperation, extraordinary, credit for, **9:25**
- Decision of hearing panel, **9:50**
- Disciplinary proceedings
 - generally, **10:38 to 10:53**
 - affirmative defenses, **9:40**
 - appeal of hearing panel's decision
 - Adjudicatory Council, National, **9:52**
 - further appeals, **9:53**
- discovery
 - generally, **9:43 to 9:47**
 - documents or testimony, respondent's request, **9:45**
 - Rule 8210 requests, staff's ability to issue post-complaint, **9:47**
 - staff's investigative file, **9:44**

INDEX

FINANCIAL INDUSTRY

REGULATORY AUTHORITY (FINRA)—Cont'd

- Disciplinary proceedings—Cont'd
 - discovery—Cont'd
 - witness statements, production of, respondent's request, **9:46**
 - documents or testimony, respondent's request, **9:45**
 - expert witness determinations, **9:48**
 - hearings
 - generally, **9:49**
 - panel's decision and appeals, **9:50 et seq.**
 - request for hearing, **9:41**
 - National Adjudicatory Council, **9:52**
 - Office of Disciplinary Affairs Review, **9:36**
 - pre-hearing conference, **9:42**
 - pre-hearing submissions and expert determinations, **9:48**
 - responding to complaint
 - generally, **9:39**
 - affirmative defenses, **9:40**
 - requesting hearing, **9:41**
 - Rule 8210 requests, staff's ability to issue post-complaint, **9:47**
 - sanctions, potential, **9:51**
 - staff's investigative file, discovery of, **9:44**
 - witness statements, production of, respondent's request, **9:46**
- Discovery. Disciplinary proceedings, above
- Document and/or information requests
 - generally, **9:15**
 - basics of responding to request, **9:17**
 - common issues or problems, **9:18**
 - disciplinary proceedings, respondent's requests, **9:45, 9:46**
 - internal investigations, **9:19**
- Early history of NASD, **9:3**
- Enforcement, **9:14**

FINANCIAL INDUSTRY

REGULATORY AUTHORITY (FINRA)—Cont'd

- Examinations and market surveillance
 - generally, **9:9**
 - enforcement, **9:14**
 - market regulation, **9:11**
 - member regulation, **9:10**
 - Office of Fraud Detection and Market Intelligence (OFDMI), **9:12**
- Expert witness determinations, disciplinary proceedings, **9:48**
- Functions and organizational structure, **9:7 to 9:14**
- Hearings. Disciplinary proceedings, above
- Investigations
 - generally, **9:15 to 9:37**
 - confidentiality concerns, **9:23**
 - cooperation, extraordinary, credit for, **9:25**
 - discovery of staff's investigative file, **9:44**
 - document and/or information requests, above
 - parallel regulatory or criminal proceedings, **9:24**
 - settlement, below
 - sufficiency of evidence review, **9:26**
 - testimony, on-the-record
 - generally, **9:20**
 - basics of testimony, **9:21**
 - counsel's role, **9:22**
 - Wells process, below
- Jurisdiction, **9:6**
- Market regulation, examinations and market surveillance, **9:11**
- Market surveillance. Examinations and market surveillance, above
- Negotiating the AWC, **9:35**
- Office of Disciplinary Affairs Review, **9:36**
- Office of Fraud Detection and Market Intelligence (OFDMI), examinations and market surveillance, **9:12**

FINANCIAL INDUSTRY

REGULATORY AUTHORITY (FINRA)—Cont'd

- Organizational structure, **9:7 to 9:14**
- Overview, **9:2**
- Parallel regulatory or criminal proceedings, **9:24**
- Pre-hearing conference, disciplinary proceedings, **9:42**
- Pre-hearing submissions, disciplinary proceedings, **9:48**
- Publication of settlement, **9:37**
- Rule 8210 requests, staff's ability to issue post-complaint, **9:47**
- Rulemaking, **9:8**
- Sanctions, potential, **9:51**
- Schapiro and post-Schapiro eras, **9:4**
- Settlement process
 - generally, **9:33**
 - negotiating the AWC, **9:35**
 - Office of Disciplinary Affairs Review, **9:36**
 - publication of settlement, **9:37**
 - reaching agreement in principle, **9:34**
- Settlement vs. litigation, deciding between, **9:32**
- Sufficiency of evidence review, **9:26**
- Testimony
 - disciplinary proceedings, respondent's request for documents or testimony, **9:45**
 - investigations, above
- Wells process
 - generally, **9:27 to 9:31**
 - responding to Wells notification, **9:28**
 - staff responses, **9:31**
 - written Wells submissions and alternatives, **9:29, 9:30**
- Witness statements, production of, respondent's request in disciplinary proceedings, **9:46**

FINES AND PENALTIES

- Antitrust. See **Antitrust Criminal Investigations** (this index)
- Asset forfeiture, Eighth Amendment excessive fines clause, **17:25**

FINES AND PENALTIES—Cont'd

- Calculation of corporate criminal fines. See **Federal Sentencing Guidelines** (this index)
- CFPB enforcement actions, civil money penalties, **8:35**
- FCPA fines, sanctions and penalties, **12:17 to 12:19**
- Insider trading. See **Insider Trading** (this index)
- Monetary assessments, U.S. Attorney's Office and DOJ investigations, **6:23**
- SEC enforcement proceedings
 - administrative fines, **7:74**
 - civil monetary penalties, **7:62**

FOIA

- See **Freedom of Information Act** (this index)

FOREIGN CORRUPT PRACTICES ACT (FCPA)

- Generally, **12:1 to 12:21**
- Accounting and internal controls provisions, **12:14, 12:15**
- Anti-bribery provisions, **12:3**
 - generally, **12:5 to 12:12**
 - affirmative defenses, **12:11, 12:12**
 - corruptly, **12:8**
 - defenses
 - generally, **12:10**
 - affirmative defenses, **12:11, 12:12**
 - facilitating, expediting or grease payments, **12:10**
 - legality under local law, **12:11**
 - reasonable and bona fide expenditures defense, **12:12**
 - facilitating, expediting or grease payments, **12:10**
 - legality under local law defense, **12:11**
 - obtaining, retaining or directing business or improper advantages, **12:9**
 - reasonable and bona fide expenditures defense, **12:12**
 - who is foreign official, **12:7**

INDEX

FOREIGN CORRUPT PRACTICES

ACT (FCPA)—Cont'd

Anti-bribery provisions, **12:3**

—Cont'd

who is subject to, **12:6**

Books and records and internal controls provisions

generally, **12:13 to 12:15**

liability under accounting and internal controls provisions, **12:15**

requirements of accounting and internal controls provisions, **12:14**

Collateral effects of FCPA violations, **12:18**

Compliance programs

best practices, **12:20**

Enforcement Trends and Guidance, **12:21**

Fines, sanctions and penalties

generally, **12:17**

collateral effects of FCPA violations, **12:18**

threat of significant prison terms, individual liability includes, **12:19**

History, **12:2**

Individual liability includes threat of significant prison terms, **12:19**

Inherited liability in mergers and acquisitions context, **12:16**

Key Enforcement Trends, **12:4**

Mergers and acquisitions context, inherited liability, **12:16**

Overview, **12:17**

Provisions

generally, **12:3**

anti-bribery provisions, above books and records and internal control provisions, above

Threat of significant prison terms, individual liability includes, **12:19**

FOREIGN-BASED CLIENTS

Special considerations. See **Individuals, Defending**

FORFEITURE

Generally, **17:1 to 17:38**

Administrative forfeiture, **17:5**

CFTC. SEC and CFTC authority to restrain assets, below

Civil asset forfeiture

generally, **17:6 to 17:9**

complaint, **17:7**

constitutional violations, below

defenses, below

fugitive disentitlement, **17:9**

hearing, **17:8**

restraining order, **17:8**

seizure, **17:7**

trial, **17:10**

Compensating whistleblowers

criminal and civil asset forfeiture, **17:21**

Conclusion, **17:39**

Constitutional violations

generally, **17:24 to 17:29**

delayed hearing, **17:28**

double jeopardy, **17:26**

due process

generally, **17:27**

delayed hearing, **17:28**

lack of notice, **17:29**

Eighth Amendment excessive fines clause, **17:25**

lack of notice, **17:29**

Criminal and civil asset forfeiture

compensating whistleblowers, **17:21**

Criminal asset forfeiture

generally, **17:11 to 17:22**

ancillary hearings, **17:15**

constitutional violations, above

defenses, below

initiation, **17:12**

mortgage fraud, **17:18**

orders, **17:14**

Paycheck Protection Program

Fraud, **17:19**

receivership, **17:16**

restraint, **17:12**

substitute assets, **17:17**

terrorism, International Criminal Networks, **17:22**

FORFEITURE—Cont'd

- Criminal asset forfeiture—Cont'd
 - trial, **17:12**
 - victims of fraud, compensating, **17:20**
- Defenses to civil and criminal asset forfeiture
 - generally, **17:23 to 17:34**
 - constitutional violations, below
 - innocent owner defense, **17:30 to 17:32**
 - insufficient nexus defense, **17:33**
 - legitimate source defense, **17:34**
- Delayed hearing, **17:28**
- Double jeopardy, **17:26**
- Due process. Constitutional violations, above
- Excessive fines clause (Eighth Amendment), **17:25**
- Fugitive disentitlement
 - civil asset forfeiture, **17:9**
- Governing statutes, **17:3**
- Injunctive relief. SEC and CFTC authority to restrain assets, below
- Innocent owner defense
 - generally, **17:30**
 - owner of property when illegal activity occurred, **17:31**
 - purchased property after illegal activity occurred, **17:32**
- Insider trading, criminal forfeiture, **15:30**
- Insufficient nexus defense, **17:33**
- Legitimate source defense, **17:34**
- Mortgage fraud, **17:18**
- Notice, lack of, **17:29**
- Paycheck Protection Program Fraud
 - criminal asset forfeiture, **17:19**
- Receivership, **17:16**
- Restraining order, **17:8**
- SEC and CFTC authority to restrain assets
 - generally, **17:35 to 17:38**
 - asset freeze, **17:37**
 - basis for government authority to seek injunctive relief, **17:35**
 - no future misconduct as defense to TRO, **17:38**

FORFEITURE—Cont'd

- SEC and CFTC authority to restrain assets—Cont'd
 - standards applicable to requests for injunctive relief, **17:36**
- TROs and preliminary injunctions, government requests, **17:35**
- Statutes, governing, **17:3**
- Substitute assets, **17:17**
- Terrorism, forfeiture around the globe
 - Forfeitures around the globe, **17:22**
- Theories of asset forfeiture, **17:4**
- Types of proceedings, **17:2**
- Victims of fraud, compensating, **17:20**

FORFEITURES AROUND THE GLOBE

- Criminal asset forfeiture, **17:22**

FRAUD

- Anti-fraud prohibitions (Securities Exchange Act), **7:55**
- Criminal asset forfeiture, **17:18, 17:20**
- Paycheck Protection Program, **17:19**
- Scienter and nonscienter fraud, **7:57**

FREEDOM OF INFORMATION ACT

- Document production, FOIA requests, **18:37**
- Parallel proceedings, gaining access to materials. See **Parallel Criminal and Civil Proceedings** (this index)
- Sample request letter, **App 18C**

GENERAL COUNSEL, ROLE IN CRISIS

- Generally, **4:1 to 4:12**
- Board, communicating with, **4:10**
- Conclusion, **4:12**
- Crisis or problem, **4:2**
- Early factual garble, dealing with, **4:8**
- External audiences, communicating with, **4:11**
- Gatekeeper role, **4:3**
- Getting the right help
 - generally, **4:4 to 4:7**
 - inside or outside company, **4:7**

INDEX

GENERAL COUNSEL, ROLE IN CRISIS—Cont'd

- Getting the right help—Cont'd
 - judgment vs. intelligence, **4:5**
 - where is this person found, **4:6**
- Judgment vs. intelligence, **4:5**
- Nature of issue, understanding, **4:2, 4:3**
- Senior management, communicating with, **4:9**
- Stakeholders, communicating with
 - generally, **4:8 to 4:11**
 - board, **4:10**
 - early factual garble, dealing with, **4:8**
 - external audiences, **4:11**
 - senior management, **4:9**

GRAND JURY

- Antitrust. See **Antitrust Criminal Investigations** (this index)
- Document production, grand jury secrecy, **18:36**
- Parallel proceedings, limitations on use of materials. See **Parallel Criminal and Civil Proceedings** (this index)
- Subpoenas. See **Subpoenas and Other Regulatory Requests** (this index)

GUILTY PLEAS

- U.S. Attorney's Office and DOJ investigations, **6:22**

IMMUNITY

- Statutory immunity in federal court, **5:21**

INDEMNIFICATION

- Directors and officers, **7:84**
- Individuals, defending, **5:27, 5:28**

INDIVIDUALS, DEFENDING

- Generally, **5:1 to 5:43**
- Access to documents, **5:9**
- Client expectations, **5:6**
- Client liability for company's investigative costs
 - generally, **5:30 to 5:32**

INDIVIDUALS, DEFENDING—Cont'd

- Client liability for company's investigative costs—Cont'd
 - government-requested investigations, **5:31**
 - practical considerations, **5:32**
- Clients located outside United States, special considerations
 - generally, **5:33 to 5:43**
 - border stops and seizures of laptops and other items, **5:37**
 - compelling client's testimony, **5:35**
 - evidence outside United States, obtaining, **5:41**
 - material witness warrants and arrests, **5:38**
- MLAT interviews/voluntary interviews, whether to submit, **5:43**
- risks of travel to United States and outside United States, **5:40**
- safe passage agreements, **5:39**
- voluntary interviews with company counsel outside United States, **5:42**
- Clients located outside U.S., special considerations
 - criminal counsel outside United States, obtaining, **5:33**
 - extraterritorial jurisdiction, **5:34**
 - risks of travel to U.S. and outside United States, **5:36**
- Client's role as subject, target or witness, **5:2**
- Company counsel
 - voluntary interviews outside United States, **5:42**
 - whether client should speak to, **5:13**
- Compelling testimony by client located outside United States, **5:35**
- Conflicts of interest
 - downside of joint representation, **5:3**
 - written waiver, obtaining, **5:4**
- Criminal counsel outside United States, obtaining, **5:33**

INDIVIDUALS, DEFENDING

—Cont'd

D& O insurance, **5:29**
 Documents
 access, **5:9**
 review, **5:16**
 Evidence outside United States,
 obtaining, **5:41**
 Extraterritorial jurisdiction, **5:34**
 False statement statute, **5:25**
 False testimony, practical
 considerations, **5:26**
 Fifth Amendment privilege, asserting,
 5:10
 Grand jury subpoenas
 generally, **5:14**
 preparing client to testify, **5:15**
 Immunity in federal court, statutory,
 5:21
 Indemnification
 generally, **5:27**
 contractual provisions, **5:28**
 Initial considerations, **5:2 to 5:5**
 Interviews, **5:17**
 Investigative costs. Client liability for
 company's investigative costs,
 above
 Joint defense agreements, **5:5, App**
 5A
 Joint representation
 downside, **5:3**
 written waiver, obtaining, **5:4**
 Legal fees and investigative costs
 generally, **5:27 to 5:32**
 client liability for company costs,
 5:30 to 5:32
 D& O insurance, **5:29**
 indemnification, **5:27, 5:28**
 Managing client, **5:6 to 5:8**
 Material witness warrants and arrests,
 clients located outside United
 States, **5:38**
 MLAT interviews/voluntary
 interviews, whether to submit,
 5:43
 Obstruction of justice issues
 generally, **5:22 to 5:26**
 false statement statute, **5:25**

INDIVIDUALS, DEFENDING

—Cont'd

Obstruction of justice issues—Cont'd
 false testimony, practical
 considerations, **5:26**
 obstruction statutes, **5:23**
 perjury statutes, **5:24**
 Perjury statutes, **5:24**
 Personal issues, addressing, **5:8**
 Proffer sessions
 generally, **5:18**
 agreements, **5:20**
 risks, **5:19**
 Psychological effect on client, **5:7**
 Risks of proffer sessions, **5:19**
 Safe passage agreements, clients
 located outside United States,
 5:38
 Talking to government and company
 counsel
 generally, **5:10 to 5:21**
 company counsel, whether client
 should speak to, **5:13**
 company policy, **5:11**
 Fifth Amendment privilege, assert-
 ing, **5:10**
 grand jury subpoenas, **5:14, 5:15**
 timing, **5:12**
 Timing, talking to government and
 company counsel, **5:12**

INJUNCTIONS

SEC and CFTC authority to restrain
 assets. See **Forfeiture** (this
 index)
 SEC enforcement proceedings, **7:61**

INSIDER TRADING

Generally, **15:1 to 15:41**
 Basic preventive measures
 compliance professionals and
 culture, **15:36**
 compliance systems, routine test-
 ing, **15:39**
 minimizing likelihood of Insider
 Trading Investigation or
 Enforcement Action
 compliance professionals, **15:36**
 education, **15:37**

INDEX

INSIDER TRADING—Cont'd

- Basic preventive measures—Cont'd
 - minimizing likelihood of Insider Trading Investigation or Enforcement Action—Cont'd
 - monitoring systems and restricted lists, **15:38**
 - routine testing of compliance systems, **15:39**
 - monitoring systems and restricted lists, **15:38**
 - routine testing of compliance systems, **15:39**
- Breach of duty of trust and confidence, **15:12**
- Classical theory, **15:8**
- Commencement of investigations and enforcement actions, **15:19**
- Common defenses, practical approach, **15:17**
- Conclusion, **15:41**
- Cooperating witnesses, **15:24**
- Criminal forfeiture, **15:30**
- Disbarment or loss of office, **15:32**
- Disgorgement in civil cases, **15:30**
- Duty of trust and confidence, existence and breach, **15:12**
- Electronic communications, **15:22**
- Enforcement of laws
 - generally, **15:18 to 15:27**
 - commencement of investigations and enforcement actions, **15:19**
 - cooperating witnesses, **15:24**
 - financial transactions, **15:23**
 - finances, sanctions, and penalties, below
 - links between traders and insiders, establishing, **15:21 to 15:24**
 - phases of investigation, **15:20**
 - responding to investigation, **15:25, 15:26**
 - telephone and electronic communications, **15:22**
 - timeline, **15:20**
 - trends, **15:27**
 - who enforces prohibitions, **15:18**
- Entities, responding to investigation, **15:25**

INSIDER TRADING—Cont'd

- Expert network firms, **15:40**
- Financial transactions, **15:23**
- Fines, sanctions, and penalties
 - generally, **15:28 to 15:33**
 - criminal forfeiture, **15:30**
 - disbarment or loss of office, **15:32**
 - disgorgement in civil cases, **15:30**
 - finances, **15:31**
 - imprisonment, **15:29**
 - trends, **15:33**
- Imprisonment, **15:29**
- Individuals, responding to investigation, **15:26**
- Investigations. Enforcement of laws, above
- Links between traders and insiders, establishing, **15:21**
- Mail and wire fraud statutes, **15:5**
- Materiality, **15:14**
- Minimizing likelihood of Insider Trading Investigation or Enforcement Action
 - generally, **15:34 to 15:41**
 - basic preventive measures, **15:35 to 15:39**
 - expert network firms, **15:40**
- Misappropriation theory, **15:9**
- Nonpublic nature of information, **15:13**
- Overview, law of insider trading, **15:2**
- Phases of investigation, **15:20**
- Practical approach, **15:11, 15:17**
 - common defenses, **15:17**
- Purchase or sale of securities, use or possession of information in connection with, **15:16**
- Recent enforcement actions, **7:8, 15:27**
- Regulation FD (fair disclosure), **15:6**
- Responding to investigation
 - entities, **15:25**
 - individuals, **15:26**
- Sanctions. Fines, sanctions, and penalties, above
- Sarbanes-Oxley Act of 2002, **15:4**
- Scienter, **15:15**

INSIDER TRADING—Cont'd

- Securities Exchange Act of 1934, **15:3**
- Statutory and regulatory sources of insider trading law
 - mail and wire fraud statutes, **15:5**
 - Regulation FD (fair disclosure), **15:6**
 - Sarbanes-Oxley Act of 2002, **15:4**
 - Securities Exchange Act of 1934, **15:3**
- Telephone and electronic communications, **15:22**
- Theoretical underpinnings
 - generally, **15:7**
 - classical theory, **15:8**
 - misappropriation theory, **15:9**
 - tipper/tippee liability, **15:10**
- Timeline, **15:20**
- Tipper/tippee liability, **15:10**
- Use or possession of information in connection with purchase or sale of securities, **15:16**
- Wire fraud statutes, **15:5**

INSPECTIONS

- PCAOB. See **Public Accounting Oversight Board** (this index)

INSURANCE

- D& O insurance, **5:29**

INTERNAL AUDIT

- Generally, **2:25**

INTERNAL INVESTIGATIONS

- Generally, **3:1 to 3:44**
- Attorney assistance
 - generally, **3:9 to 3:13**
 - in-house counsel, **3:10**
 - outside counsel, **3:11 to 3:13**
 - which lawyers should assist, **3:9**
- Attorney-client issues
 - generally, **3:17 to 3:21**
 - confidential communications, protecting, **3:20**
 - joint defense agreements, deciding whether to participate, **3:21**
 - multiple representations, **3:18**

INTERNAL INVESTIGATIONS—Cont'd

- Attorney-client issues—Cont'd
 - separate counsel for employees, providing, **3:19**
- Client, reporting to
 - generally, **3:35 to 3:43**
 - final draft, allowing company employees to review, **3:38**
 - general issues to address, **3:36**
 - special committee, reporting to, **3:39**
 - written or oral report, deciding between, **3:37**
- Collecting documents, **3:27**
- Conclusion, **3:44**
- Conducting an investigation
 - generally, **3:14 to 3:34**
 - attorney-client issues, above
 - controlling costs, **3:16**
 - cooperation credit, maximizing potential, **3:15**
 - document collection, review and analysis, below
 - interviewing key witnesses, below
 - investigative plan, developing, **3:14, 3:15**
 - runaway investigation, preventing, **3:16**
 - voluntary self-disclosure, maximizing potential, **3:15**
- Confidential communications, protecting, **3:20**
- Contents of presentation to government, **3:41**
- Controlling costs, **3:16**
- Cooperation credit, maximizing potential
 - conducting an investigation, **3:15**
- Determining whether to conduct
 - generally, **3:3**
 - incentives, **3:4**
 - risks, **3:5**
- Document collection, review and analysis
 - generally, **3:40 to 3:30**
 - collecting documents, **3:27**
 - organizing and processing documents, **3:28**

INDEX

INTERNAL INVESTIGATIONS

—Cont'd

- Document collection, review and analysis—Cont'd
 - preliminary considerations, **3:25**
 - preserving documents, **3:26**
 - reviewing and analyzing documents, **3:29**
 - subpoena compliance and production, **3:30**
- Employees
 - final draft of report to client, allowing company employees to review, **3:38**
 - notifying employees of investigation, **3:23**
 - separate counsel, providing, **3:19**
 - uncooperative employees, handling, **3:34**
- Experts and outside vendors, retaining, **3:22**
- Final draft of client report, allowing company employees to review, **3:38**
- FINRA investigations, **9:19**
- Government, reporting to
 - generally, **3:40 to 3:43**
 - contents of presentation, **3:41**
 - privilege and work product protections, potential waivers, **3:42**
 - whistleblower program, considerations arising from SEC's final rules, **3:43**
- How internal investigation arises, **3:2**
- Incentives to conduct, **3:4**
- In-house counsel, assistance of, **3:10**
- Interviewing key witnesses
 - generally, **3:31 to 3:34**
 - drafting interview memoranda, **3:33**
 - privilege issues and Upjohn warnings, **3:32**
 - uncooperative employees, handling, **3:34**
- Investigative plan, developing, **3:14, 3:15**
- Joint defense agreements, deciding whether to participate, **3:21**

INTERNAL INVESTIGATIONS

—Cont'd

- Key witnesses. Interviewing key witnesses, above
- Nature of alleged misconduct, **3:6**
- Notifying employees of investigation, **3:23**
- Objectives and scope, defining generally, **3:7**
- Organizing and processing documents, **3:28**
- Outside counsel, assistance of
 - generally, **3:11 to 3:13**
 - role of, **3:13**
 - SEC matters, retaining outside counsel to investigate, **7:20**
 - selecting outside counsel, **3:12**
- Outside vendors, retaining, **3:22**
- Parallel proceedings, impact of. See **Parallel Criminal and Civil Proceedings** (this index)
- Preparation
 - generally, **3:6 to 3:13**
 - attorney assistance, above
 - nature of alleged misconduct, **3:6**
 - objectives and scope, defining, **3:7**
 - who should control investigation, determining, **3:8**
- Preservation of documents, **3:26**
- Privilege
 - attorney-client issues, above
 - key witness interviews, privilege issues and Upjohn warnings, **3:32**
 - potential waivers of privilege and work product protections in reporting to government, **3:42**
- Reporting results
 - generally, **3:35 to 3:43**
 - client, reporting to, above
 - government, reporting to, above
- Reviewing and analyzing documents, **3:29**
- Risks, **3:5**
- Role of outside counsel, **3:13**
- Runaway investigation, preventing, **3:16**

INTERNAL INVESTIGATIONS

—Cont'd

- SEC investigations and enforcement actions
 - generally, **7:19 to 7:23**
 - outside counsel, retaining to investigate, **7:20**
 - self-disclosure of wrongdoing, pros and cons, **7:21 to 7:23**
- Selecting outside counsel, **3:12**
- Separate counsel for employees, providing, **3:19**
- Special committee, reporting to, **3:39**
- Subpoena compliance and production, **3:30**
- Uncooperative employees, handling, **3:34**
- Upjohn warnings, interviewing key witnesses, **3:32**
- Voluntary self-disclosure, maximizing potential
 - conduct of investigation, **3:15**
- Waivers of privilege and work product protections in reporting to government, **3:42**
- Whistleblower program, considerations arising from SEC's final rules, **3:43**
- Who should control investigation, determining, **3:8**
- Witnesses. Interviewing key witnesses, above
- Work product protections, potential waiver in reporting to government, **3:42**
- Written or oral report to client, deciding between, **3:37**

INTERNAL REVENUE SERVICE

- Criminal and civil arms investigating together, **16:4**
- Summonses, **18:9**

INTERVIEWS

- Document custodians, **18:29**
- Document retention practices
 - interview, outline, **App 18B**
- Individuals, defending, **5:17**
- Key witnesses, interviewing. See **Internal Investigations** (this index)

INTERVIEWS—Cont'd

- MLAT interviews/voluntary interviews, whether to submit, **5:43**
- Parallel proceedings, witness interviews, **16:33**
- Voluntary interviews with company counsel outside United States, **5:42**

INVESTIGATIONS

- Antitrust. See **Antitrust Criminal Investigations** (this index)
- Consumer protection. See **Consumer Financial Protection Bureau** (this index)
- FINRA. See **Financial Industry Regulatory Authority** (this index)
- Internal. See **Internal Investigations** (this index)
- PCAOB. See **Public Accounting Oversight Board** (this index)
- Public statements during investigation. See **Media Matters** (this index)
- SEC. See **Securities and Exchange Commission** (this index)
- State officials, recent trends and developments, **11:2, 11:6**
- USAO/DOJ. See **U.S. Attorney's Office and DOJ Investigations** (this index)

ISSUE REMEDIATION

- Compliance programs, **2:27**

JOINT DEFENSE AGREEMENTS

- Individuals, defending, **5:5, App 5A**
- Internal investigations, deciding whether to participate, **3:21**

JOINT REPRESENTATION

- Defending individuals, **5:3, 5:4**

JURISDICTION

- Agencies, AML investigations, **13:7**
- CFPB. See **Consumer Financial Protection Bureau** (this index)
- Extraterritorial jurisdiction, clients located outside United States, **13:15**

INDEX

JURISDICTION—Cont'd

FINRA, **9:6**

JUSTICE DEPARTMENT

See **Department of Justice** (this index)

LITIGATION HOLDS

Generally, **18:10 to 18:14**

Duty to implement, **18:10**

Ensuring compliance, **18:14**

Formulating and documenting, **18:11**

Memorandum

contents, **18:12**

distribution, **18:13**

sample, **App 18A**

MARTIN ACT

See **New York** (this index)

MEDIA MATTERS

Generally, **20:1 to 20:16**

Admissions of party opponent, potential, **20:7**

Attorney-client privilege
media consultants, **20:13**
potential waiver, **20:9**

Client protections, potential waiver, **20:8**

Conclusion, **20:16**

Consultants, retaining and dealing with, **20:14**

Consultants, role of
generally, **20:11**
attorney-client privilege issues, **20:12**
work product protection issues, **20:14**

Dealing with media, **20:2**

Defensive strategies, **20:5**

Offensive strategies, **20:4**

Risks of making public statements during investigation, **20:6 to 20:10**

Social media, **20:15**

Strategies

generally, **20:3**

defensive, **20:5**

offensive, **20:4**

MEDIA MATTERS—Cont'd

Work product protection, potential waiver, **20:10**

MIRANDA WARNINGS

Parallel proceedings, government's duty to provide warning in course of administrative questioning, **16:14**

MONETARY ASSESSMENTS

U.S. Attorney's Office and DOJ investigations, **6:23**

MONITORING AND AUDITING SYSTEMS

See **Compliance Programs** (this index)

MONITORSHIPS

Compliance programs, **2:17**

U.S. Attorney's Office and DOJ investigations, monitors and/or reporting obligations, **6:24**

MORTGAGE FRAUD

Criminal asset forfeiture, **17:18**

MOTIONS TO QUASH

Subpoenas. See **Subpoenas and Other Regulatory Requests** (this index)

NEW YORK

Attorney general's office
generally, **11:4**
organization, **11:5**
recent trends in investigations and enforcement actions, **11:6**

Conclusion, **11:28**

Department of Financial Services
generally, **11:21 to 11:25**
attorney general vs. superintendent powers, **11:24**
broad powers under state and federal law, **11:22**
expansion of superintendent powers, **11:25**
organization, **11:23**

False Claims Act

generally, **11:15 to 11:20**

elements of violation, **11:17**

NEW YORK—Cont'd

- False Claims Act—Cont'd
 - prohibited conduct, **11:16**
 - qui tam suits, **11:18**
 - recent investigations, **11:20**
 - scope of civil liability, **11:19**
- Manhattan DA's office
 - organization and jurisdiction, **11:26**
 - recent trends and prosecutions, **11:27**
- Martin Act
 - generally, **11:8 to 11:13**
 - civil liability, **11:12**
 - criminal liability, **11:13**
 - elements of violation, **11:11**
 - history, **11:9**
 - scope of investigatory power, **11:10**
- Statutory powers, overview, **11:7**
- Taxpayer Protection Bureau, **11:14**

NOTICE

- Asset forfeiture, lack of notice, **17:29**
- Internal investigations, notifying employees, **3:23**
- PCAOB investigation, Rule 5109(d) notices, **10:29**

OBSTRUCTION OF JUSTICE

- See **Individuals, Defending** (this index)

OFFICE OF FRAUD DETECTION AND MARKET INTELLIGENCE (OFDMI)

- Financial industry regulatory authority (FINRA), **9:12**

OFFICERS AND DIRECTORS

- Enforcement proceedings, officer and director bar, **7:64, 7:78**
- Indemnification, **7:84**
- Internal controls and corporate officers, compelled changes, **7:66**

OPEN DOOR POLICY

- Compliance programs, **2:22**

OUTSIDE COUNSEL

- See **Internal Investigations** (this index)

PARALLEL CRIMINAL AND CIVIL PROCEEDINGS

- Generally, **16:1 to 16:37**
- CFPB. See **Consumer Financial Protection Bureau** (this index)
- Civil liability, use of criminal order of restitution to satisfy, **16:29**
- Civil process, gaining access to materials, **16:27**
- Conclusion, **16:37**
- Corporate fraud task force, **16:2**
- Employee assertions of privilege, impact on company, **16:13**
- Fifth Amendment issues
 - generally, **16:11 to 16:14**
 - assertion in later proceeding after waiver in earlier proceeding, **16:12**
 - employee assertions, impact on company, **16:13**
- Miranda warnings in course of administrative questioning, government's duty to provide, **16:14**
- FINRA investigations, **9:24**
- FOIA access to materials
 - generally, **16:24**
 - how to make FOIA request, **16:26**
 - materials governed by act, **16:25**
- Grand jury materials, limitations on use of
 - generally, **16:19 to 16:23**
 - judicial proceeding, materials preliminary to, or in connection with, **16:22**
 - matters occurring before grand jury, **16:21**
 - particularized need, demonstration by parties, **16:23**
 - secrecy rule and exceptions
 - generally, **16:19, 16:20**
 - attorney's duty, **16:20**
 - judicial proceeding, materials preliminary to, or in connection with, **16:22**

INDEX

PARALLEL CRIMINAL AND CIVIL PROCEEDINGS

—Cont'd

- Grand jury materials, limitations on use of—Cont'd
 - secrecy rule and exceptions—Cont'd
 - matters occurring before grand jury, **16:21**
 - particularized need, demonstration by parties, **16:23**
- Increase in investigations and charging, **16:2 to 16:4**
- Internal investigation, impact of parallel investigation
 - generally, **16:30 to 16:36**
 - conclusions, **16:34**
 - cooperation
 - individual employees, **16:36**
 - timing, **16:35**
 - discoverability of internal investigation materials, **16:30**
 - government agency, document collection by, **16:31**
 - private plaintiff, document collection by, **16:32**
 - procedure and protocol, **16:30 to 16:34**
 - remedial actions, **16:34**
 - witness interviews, **16:33**
- IRS, criminal and civil arms investigating together, **16:4**
- Joint resolutions of civil and criminal matters, **16:28**
- Miranda warnings in course of administrative questioning, government's duty to provide, **16:14**
- Restitution order, use to satisfy civil liability, **16:29**
- SEC and DOJ, coordination between
 - generally, **16:3, 16:5 to 16:10**
 - additional facts for consideration, **16:7 to 16:10**
 - affirmative misrepresentations vs. nondisclosure, **16:9**
 - background legal principles, **16:5**
 - degree of direction/control by DOJ over civil case, **16:8**

PARALLEL CRIMINAL AND CIVIL PROCEEDINGS

—Cont'd

- SEC and DOJ, coordination between—Cont'd
 - deviation from normal civil process, **16:10**
 - length of disposition/interviews, **16:10**
 - prohibitions, **16:6**
- Stay of civil or administrative proceedings
 - generally, **16:15 to 16:18**
 - grant of stay, main factors in deciding, **16:18**
 - how to obtain stay, **16:17**
 - whether to seek stay, **16:16**

PATRIOT ACT OF 2001

- Anti-money laundering (AML) investigations, **13:4**

PAYCHECK PROTECTION PROGRAM

- Fraud, **17:19**

PCAOB

- See **Public Accounting Oversight Board** (this index)

PERJURY

- Statutes, **5:24**

PONZI SCHEMES

- Recent enforcement actions, **7:9**

PRESENTATIONS

- Prosecutors, presentations to. See **U.S. Attorney's Office and DOJ Investigations** (this index)

PRIVILEGES

- Attorney-client. See **Attorney-Client Privilege** (this index)
- CFPB investigation, assertion of privilege, **8:20**
- Document production. See **Documents** (this index)
- Fifth Amendment privilege, asserting, **5:10**
- Internal investigations. See **Internal Investigations** (this index)

PRIVILEGES—Cont’d

PCAOB investigation, assertion of privileges, **10:27**

PROBATION

Federal sentencing guidelines, **2:9**

PRODUCTION OF DOCUMENTS

See **Documents** (this index)

PROFFER SESSIONS

Individuals, defending, **5:18 to 5:20**

PROSECUTORS

Investigations. See **U.S. Attorney’s Office and DOJ Investigations** (this index)

PUBLIC COMPANY

ACCOUNTING OVERSIGHT BOARD (PCAOB)

Generally, **10:1 to 10:54**

Appeals. Disciplinary proceedings, below

Available remedies, **10:15**

Board, **10:8**

Case management order, disciplinary proceedings, **10:41**

Confidentiality, **10:35**

Disciplinary proceedings

generally, **10:36 to 10:54**

answer to Order Instituting

Proceedings, **10:43**

appeals

generally, **10:51**

initial decisions, **10:51**

interlocutory review, **10:52**

procedure, **10:53**

board review

initial decisions, **10:51**

procedure, **10:53**

briefs, post-hearing, **10:49**

case management order, **10:41**

contested proceedings, **10:39 et seq.**

discovery

investigative record, **10:44**

pre-hearing, **10:45**

hearing procedures, **10:48**

initial decision, **10:50, 10:51**

initiation, **10:36**

PUBLIC COMPANY

ACCOUNTING OVERSIGHT BOARD (PCAOB)—Cont’d

Disciplinary proceedings—Cont’d

interlocutory review, **10:52**

motions, **10:46, 10:47**

order instituting proceedings

generally, **10:40**

answer, **10:43**

pre-hearing discovery, **10:45**

pre-hearing procedures, **10:41**

sanctions and collateral consequences, **10:54**

SEC oversight, **10:13**

settlements

procedures, **10:37**

waivers, **10:38**

stay requests, **10:42**

summary disposition motion, **10:47**

types of proceedings, **10:39**

Discovery in disciplinary proceedings, **10:44, 10:45**

Division of Enforcement and Investigations, **10:10**

Division of Registration and Inspections, **10:9**

Enforcement

generally, **10:7**

Division of Enforcement and Investigations, **10:10**

Expedited procedures, **10:32**

Formation, **10:2**

Informal inquiries, **10:21**

Inspections

generally, **10:5, 10:16 et seq.**

international oversight, **10:17**

reports, **10:18**

sources, **10:16**

Investigations

generally, **10:16 et seq.**

commencement and closure procedures, **10:22**

conduct, **10:20, 10:35**

confidentiality, **10:35**

coordination, SEC referrals, **10:33**

demands and requests by board, **10:24**

INDEX

PUBLIC COMPANY

ACCOUNTING OVERSIGHT BOARD (PCAOB)—Cont'd

Investigations—Cont'd
discovery of investigative record,
10:44
expedited procedures, **10:32**
formal investigations
generally, **10:22**
commencement and closure
procedures, **10:22**
order, **10:23**
informal inquiries, **10:21**
non-cooperation, **10:31, 10:32**
notices and submissions (Rule
5109(d)), **10:29, 10:30**
order of formal investigation,
10:23
privileges, assertion of, **10:27**
production, procedure for, **10:25**
referrals, **10:33, 10:34**
Rule 5109(d) notices and submis-
sions, **10:29, 10:30**
SEC referrals, **10:33**
sources, **10:19**
testimony, **10:26**
witness rights, **10:28**
Non-cooperation
expedited procedures, **10:32**
grounds for proceeding, **10:31**
Organizational structure
generally, **10:8**
board, **10:8**
Division of Enforcement and
Investigations, **10:10**
Division of Registration and
Inspections, **10:9**
Referrals, **10:33, 10:34**
Registration, **10:4**
Responsibilities, **10:3 to 10:7**
Rulemaking, SEC oversight, **10:12**
Sanctions
generally, **10:14**
collateral consequences, **10:54**
SEC oversight
generally, **10:11**
disciplinary actions, **10:13**
rulemaking, **10:12**

PUBLIC COMPANY

ACCOUNTING OVERSIGHT BOARD (PCAOB)—Cont'd

SEC referrals, **10:33**
Settlement of disciplinary proceed-
ings, **10:37, 10:38**
Standard setting, **10:6**
Stay requests, disciplinary proceed-
ings, **10:42**
Summary disposition motion, **10:47**
Testimony, **10:26**
Witness rights, **10:28**

PUBLIC STATEMENTS

See **Media Matters** (this index)

QUASHAL

Motions to quash. See **Subpoenas
and Other Regulatory
Requests** (this index)

QUI TAM SUITS

False Claims Act (New York), **11:18**

RANSOMWARE

Cybercrime, **21:9**

RECEIVERSHIP

Criminal asset forfeiture, **17:16**

REMEDIAL ACTION

Mitigating factors, **6:13**

RESTITUTION

CFPB enforcement actions, **8:34**
Criminal order of restitution, use to
satisfy civil liability, **16:29**

RETALIATION

Monitoring and auditing systems,
non-retaliation, **2:24**

SAFE PASSAGE AGREEMENTS

Clients located outside United States,
5:38

SANCTIONS

FCPA fines, sanctions and penalties,
12:17 to 12:19
FINRA disciplinary proceedings,
potential sanctions, **9:51**
Insider trading. See **Insider Trading**
(this index)

SANCTIONS—Cont'd

- PCAOB disciplinary proceedings,
10:14, 10:54
- SEC enforcement proceedings. See
**Securities and Exchange Com-
mission** (this index)

SCIENTER

- Fraud, scienter and nonscienter, 7:57
- Insider trading, 15:15

SEARCH AND SEIZURE

- Clients located outside United States,
border stops and seizures of
laptops and other items, 5:37

**SECURITIES AND EXCHANGE
COMMISSION**

- Generally, 1:3
- Administrative Proceedings
 - recent developments, 7:7
- Administrative remedies
 - generally, 7:62 to 7:81
 - bar against persons appearing
before SEC and Rule 102(e)
proceedings, 7:78
 - broker-dealers, penalties for, 7:81
 - cease and desist orders, 7:73
 - censure, 7:75
 - deregistration, 7:77
 - emergency powers, statutory, use
of, 7:80
 - finest, 7:74
 - officer and director bar, 7:78
 - section 21(a)(1) reports, 7:76
 - settlement documents, 7:93
 - stop orders, 7:77
 - trading suspensions, 7:77
- Ancillary relief. Federal court
enforcement proceedings, below
- Anti-fraud prohibitions, generally,
7:55
- Asset freezes, 7:65
- Assets, restraining. See **Forfeiture**
(this index)
- Audit, conduct of, prohibition of
improper influence, 7:69
- Bar against persons appearing before
SEC and Rule 102(e) proceed-
ings, 7:79

**SECURITIES AND EXCHANGE
COMMISSION—Cont'd**

- Bonus forfeiture, 7:67
- Books and records, potential statutory
violations, 7:56
- Broker-dealers, penalties for, 7:81
- Cease and desist orders, 7:73
- Censure, administrative remedies,
7:75
- China
 - recent developments, 7:13
- Civil monetary penalties, 7:62
- Closing investigation without
charges, 7:101
- Coordination between SEC and DOJ.
See **Parallel Criminal and
Civil Proceedings** (this index)
- Corrective disclosure, 7:68
- Counsel, attendance and role of,
formal investigations, 7:43
- Criminal enforcement, 7:83
- Cryptocurrency, 7:3
- Cyber-related misconduct
 - recent developments, 7:5
- Exchange-Traded Products
(ETPs), 7:6
- Defending Clients, Investigations and
enforcement
 - Generally, 7:1 et seq.
 - organization, 7:2
- Deregistration, 7:77
- Document certification, settlement
offers, 7:99
- Document production. Subpoena
duces tecum, below
- Electronic searches of documents,
7:34
- Emergency powers, statutory, use of,
7:80
- Employment law issues under foreign
law, 7:37
- Enforcement
 - administrative remedies, above
 - criminal enforcement, 7:83
 - federal court enforcement proceed-
ings, below
 - recent enforcement actions, below
 - staff's enforcement recommenda-
tion, 7:89

INDEX

SECURITIES AND EXCHANGE COMMISSION—Cont'd

- Escalation of disputes, **7:49**
- Ethical issues regarding representation, **7:26**
- Federal court enforcement proceedings
 - generally, **7:61 to 7:82**
 - ancillary relief
 - generally, **7:63 to 7:69**
 - asset freezes, **7:65**
 - audit, conduct of, prohibition of improper influence, **7:69**
 - bonus forfeiture, **7:67**
 - corrective disclosure, **7:68**
 - internal controls and corporate officers, compelled changes, **7:66**
 - officer and director bar, **7:64**
 - asset freezes, **7:65**
 - audit, conduct of, prohibition of improper influence, **7:69**
 - bonus forfeiture, **7:67**
 - civil monetary penalties, **7:62**
 - corrective disclosure, **7:68**
 - injunctive relief, **7:61**
 - internal controls and corporate officers, compelled changes, **7:66**
- Obtaining discovery from the SEC, **7:70**
 - officer and director bar, **7:64**
 - settlement documents, **7:92**
 - third parties, obtaining discovery, **7:71**
- Fifth Amendment privilege, assertion of, **7:44**
- Financial reporting
 - recent enforcement actions, **7:11**
- Fines, administrative, **7:74**
- Foreign Corrupt Practices Act
 - control person liability, **7:59**
 - potential statutory violations, **7:59**
- Foreign privacy and employment law issues, **7:37**
- Formal investigation
 - generally, **7:27 to 7:52**
 - escalation of disputes, **7:49**

SECURITIES AND EXCHANGE COMMISSION—Cont'd

- Formal investigation—Cont'd
 - Freedom of Information Act and access requests, **7:52**
 - investigative tools, **7:29**
 - order of investigation, **7:28**
 - sanctions against SEC personnel, **7:51**
 - staff, initial contact with, **7:30**
 - subpoena ad testificandum, below
 - subpoena duces tecum, below
 - sworn statements under section 21(a), **7:48**
- Fraud, potential statutory violations
 - anti-fraud prohibitions, generally, **7:55**
 - scienter and nonscienter fraud, **7:57**
- Hard copy searches of documents, **7:35**
- Incentives to aid SEC in pursuing investigation, **7:17**
- Initial contact with staff, **7:30**
- Initial internal investigation
 - generally, **7:18**
 - outside counsel, retaining, **7:20**
 - self-disclosure of wrongdoing, pros and cons, **7:21 to 7:23**
- Initial investigative activities
 - generally, **7:24 to 7:26**
 - ethical issues regarding representation, **7:26**
 - matter under inquiry, **7:24**
 - SEC requests, **7:25**
- Initial investigative stages
 - generally, **7:18**
 - formal investigation, above
- Injunctive relief, **7:61**
- Insider trading, **7:8**
- Insider trading. See **Insider Trading** (this index)
- Internal controls and corporate officers, compelled changes, **7:66**
- Investigation closed, no charges, **7:101**
- Investigative tools, **7:29**

**SECURITIES AND EXCHANGE
COMMISSION—Cont'd**

- Litigation release, settlement offers, **7:100**
- Officer and director bar, **7:64, 7:78**
- Off-system communications
 - recent enforcement actions, **7:10**
- Opening investigation, basis for, **7:16**
- Order of investigation, formal, **7:28**
- Outside counsel, retaining to investigate, **7:20**
- PCAOB oversight, **10:11 to 10:13**
- Ponzi schemes, recent enforcement actions, **7:9**
- Potential statutory violations
 - generally, **7:54 to 7:60**
 - anti-fraud prohibitions, generally, **7:55**
 - books and records, **7:56**
 - Foreign Corrupt Practices Act, **7:59**
 - scienter and nonscienter fraud, **7:57**
 - supervisory duties, **7:58**
- Privacy issues under foreign law, **7:37**
- Production of documents. Subpoena duces tecum, below
- Recent developments
 - generally, **7:3-7:9**
 - Administrative Proceedings, **7:7**
 - China, **7:13**
 - cryptocurrency, **7:3**
 - Howey and Registration Cases, **7:4**
 - cyber-related misconduct, **7:5**
 - ESG Litigation, **7:14**
 - Other Litigation Developments, **7:15**
 - regulation best interest, **7:12**
 - remedies, **7:16**
- Recent enforcement actions
 - financial reporting, **7:11**
 - insider trading, **7:8**
 - off-system communications, **7:10**
 - Ponzi schemes, **7:9**
 - revenue recognition, **7:11**

**SECURITIES AND EXCHANGE
COMMISSION—Cont'd**

- Regulation best interest
 - recent developments, **7:12**
- Remedies
 - recent developments, **7:16**
- Representation, ethical issues regarding, **7:26**
- Revenue recognition
 - recent enforcement actions, **7:11**
- Sanctions
 - potential statutory violations, above
 - SEC personnel, sanctions against, **7:51**
 - understanding potential sanctions, **7:53**
- Scienter and nonscienter fraud, **7:57**
- Section 21(a)(1) reports, administrative remedies, **7:76**
- Self-disclosure of wrongdoing, pros and cons
 - generally, **7:21**
 - corporations, **7:22**
 - individuals, **7:23**
- Settlement offers
 - generally, **7:90 to 7:100**
 - document certification, **7:99**
 - filed case, settlement through, **7:98**
 - final commission approval, **7:97**
 - inconsistent statements, prohibition against, **7:96**
 - litigation release, **7:100**
 - negotiations with staff, **7:91**
 - neither admit nor deny, **7:95**
 - settlement documents
 - administrative proceedings, **7:93**
 - federal court proceedings, **7:92**
 - terms of settlement
 - generally, **7:94**
 - inconsistent statements, prohibition against, **7:96**
 - neither admit nor deny, **7:95**
- Staff
 - enforcement recommendation, **7:89**
 - initial contact with, **7:30**

INDEX

SECURITIES AND EXCHANGE COMMISSION—Cont'd

- Staff—Cont'd
 - sanctions against SEC personnel, **7:51**
 - settlement negotiations, **7:91**
- Statutory violations. Potential statutory violations, *above*
- Stop orders, **7:77**
- Subpoena ad testificandum
 - generally, **7:39 to 7:47, 18:8**
 - counsel, attendance and role of, **7:43**
 - duration of testimony, **7:46**
 - enforcement proceedings, **7:50**
 - Fifth Amendment privilege, assertion of, **7:44**
 - preliminary matters prior to testimony, **7:42**
 - preparation for testimony, **7:41**
 - Role of counsel, **7:45**
 - scheduling testimony, **7:40**
 - transcripts, access to, **7:47**
- Subpoena duces tecum
 - generally, **7:31 to 7:38, 18:8**
 - accompanying documents and authentication, **18:41**
 - compliance with subpoena, **7:32, 18:41**
 - definition of document, **7:33**
 - document preservation, importance of, **7:31**
 - electronic searches, **7:34**
 - enforcement proceedings, **7:50**
 - foreign privacy and employment law issues, **7:37**
 - hard copy searches, **7:35**
 - production of documents required to be retained, **7:36**
 - scope of production, agreement on, **7:38**
- Supervisory duties, potential statutory violations, **7:58**
- Sworn statements under section 21(a), **7:48**
- Trading suspensions, **7:77**
- Transcripts, access to, **7:47**

SECURITIES AND EXCHANGE COMMISSION—Cont'd

- Well-Known Seasoned Issuer (WKSI) status, suspension of, **7:82**
- Wells process
 - generally, **7:85 to 7:88**
 - pre-Wells communications, **7:86**
 - Wells call, **7:87**
 - Wells submission, **7:88**
- Whistleblower Program
 - incentives to aid SEC in pursuing investigation, **7:17**
- Witnesses and testimony. Subpoena ad testificandum, *above*

SELF-INCRIMINATION

- See **Fifth Amendment Privilege** (this index)

SENTENCING GUIDELINES

- See **Federal Sentencing Guidelines** (this index)

SETTLEMENT

- CFPB enforcement proceedings. See **Consumer Financial Protection Bureau** (this index)
- FINRA investigations. See **Financial Industry Regulatory Authority** (this index)
- PCAOB disciplinary proceedings, **10:37, 10:38**
- SEC enforcement proceedings. See **Securities and Enforcement Commission** (this index)

SOCIAL MEDIA

- Media matters, **20:15**

STATE REGULATORS AND ATTORNEYS GENERAL

- Generally, **12:1 et seq.**
- Dodd-Frank Act's impact, **11:3**
- New York investigations and enforcement actions. **New York** (this index)
- Recent trends and developments, **11:2, 11:6**
- State AGs, generally, **1:7**
- Statutory powers, overview, **11:7**

STATUTE OF LIMITATIONS

Antitrust criminal investigations,
14:4

STAY OF PROCEEDINGS

Parallel proceedings. See **Parallel Criminal and Civil Proceedings** (this index)

PCAOB disciplinary proceedings,
10:42

STORED COMMUNICATIONS ACT

Cybercrime, **21:18**

SUBPOENAS AND OTHER REGULATORY REQUESTS

Generally, **18:1 to 18:57**

Administrative subpoenas and summonses

generally, **18:7 to 18:9**

IRS summonses, **18:9**

sanctions for failure to respond or cooperate, **18:56**

SEC and CFTC subpoenas, **18:8**

Anti-money laundering (AML) investigations

regulatory inquiry, approach, **13:26**

Appellate review, motions to quash,
18:54

Attorney-client privilege, **18:50**

CFTC subpoenas, **18:8**

Collection of documents. See **Documents** (this index)

Conclusion, **18:57**

Electronically stored communications, **18:5**

Fifth Amendment privileges, **18:49**

Forthwith subpoenas, **18:6**

Grand jury subpoenas
generally, **5:14, 18:2 to 18:6**

ad testificandum, **18:3**

certifying compliance, **18:40**

client preparation, **5:15**

duces tecum, **18:4**

electronically stored communications, **18:5**

forthwith subpoenas, **18:6**

motions to quash, below

SUBPOENAS AND OTHER REGULATORY REQUESTS

—Cont'd

Grand jury subpoenas—Cont'd
privileges in grand jury and administrative contexts,
below

Internal investigations, subpoena compliance and production,
3:30

IRS summonses, **18:9**

Litigation holds. See **Litigation Holds** (this index)

Motions to quash

generally, **18:43 to 18:56**

administrative subpoenas and summonses, sanctions for failure to respond or cooperate,
18:56

appellate review, **18:54**

grand jury subpoenas

generally, **18:43 to 18:46**

burden, **18:46**

particularity, **18:45**

relevancy, **18:44**

sanctions for failure to respond or cooperate, **18:55**

privileges in grand jury and administrative contexts,
below

regulatory requests, **18:47**

sanctions for failure to respond or cooperate, **18:55, 18:56**

Negotiating scope of subpoena

generally, **18:24 to 18:28**

deadlines, **18:25**

documenting agreement with government, **18:28**

meeting with investigators, **18:26**

predictive coding to relieve burden, **18:27**

rolling production, **18:25**

Privileges in grand jury and administrative contexts

generally, **18:48 to 18:53**

attorney-client privilege, **18:50**

Fifth Amendment, **18:49**

other privileges, **18:52**

other subpoena objections, **18:53**

INDEX

SUBPOENAS AND OTHER REGULATORY REQUESTS

—Cont'd

- Privileges in grand jury and administrative contexts—Cont'd work product doctrine, **18:51**
- Production of documents. See **Documents** (this index)
- Regulatory inquiry, approach, anti-money laundering (AML) investigations, **13:26**
- Regulatory requests, motions to quash, **18:47**
- Scope of subpoena. Negotiating scope of subpoena, above
- SEC investigations. See **Securities and Exchange Commission** (this index)
- Types of subpoenas and summonses, **18:1 to 18:9**
- Work product doctrine, **18:51**

SUMMONSES

- Administrative subpoenas and summonses. See **Subpoenas and Other Regulatory Requests** (this index)

TERRORISM

- Criminal asset forfeiture, **17:22**

TRANSCRIPTS

- Access to, SEC investigations, **7:47**

U.S. ATTORNEY'S OFFICE AND DOJ INVESTIGATIONS

- Generally, **6:1 to 6:25**
- Anti-money laundering (AML) investigations, **13:8**
- Compliance programs, **6:14**
- Conclusion, **6:26**
- Cooperation
 - mitigating factor, **6:11**
 - mitigation, **6:11**
- Coordination among USAOs and main Justice, **6:4**
- Corporate criminal prosecutions, **6:6**
- Corporate enforcement policy, **6:8**
- Debarment, **6:25**
- Deferred prosecution agreements, **6:21**

U.S. ATTORNEY'S OFFICE AND DOJ INVESTIGATIONS

—Cont'd

- Factors considered by prosecutor, **6:9**
- Forms of resolution, **6:20**
- Guilty pleas, **6:22**
- Lifecycle, **6:5**
- Mitigating factors
 - compliance, **6:14**
 - cooperation, **6:11**
 - remedial action, **6:13**
- Monetary assessments, **6:23**
- Monitors and/or reporting obligations, **6:24**
- Non-prosecution and deferred prosecution agreements, **6:21**
- Organizational structure of DOJ, **6:2**
- Other factors, **6:15**
- Presentations to prosecutors
 - generally, **6:16 to 6:19**
 - know the process, **6:18**
 - know your audience, **6:17**
 - scope of presentations, **6:19**
- Principles of prosecution of business organizations (DOJ), **6:7**
- Procedures and policy, cybercrimes, **21:13**
- Remedial action as mitigating factors, **6:13**
- Reporting, timely, **6:10**
- Reporting obligations, **6:24**
- Resolving case, **6:20**
- Self-reporting, **6:8**
- Timely reporting, **6:10**
- USAOs, generally, **6:3**

WARRANTS

- Material witness warrants and arrests, clients located outside United States, **5:38**

WELL-KNOWN SEASONED ISSUERS

- Suspension of status, **7:82**

WELLS PROCESS

- See **Financial Industry Regulatory Authority; Securities and Exchange Commission** (this index)

WHISTLEBLOWER PROGRAM

Incentives to aid SEC in pursuing investigation, securities and exchange commission, **7:17**

WHISTLEBLOWERS

Anti-money laundering (AML) investigations, programs, **13:18**
 Compensating whistleblowers, forfeiture, **17:21**
 Forfeiture
 compensating whistleblowers, **17:21**
 Internal investigations, considerations arising from SEC's final rules implementing whistleblower program, **3:43**
 Programs
 anti-money laundering (AML) investigations, **13:18**

WHITE COLLAR LANDSCAPE

Commodities Future Trading Commission, **1:4**
 Conclusion, **1:8**
 Consumer Financial Protection Bureau, **1:6**
 Department of Justice
 generally, **1:2**
 Financial Industry Regulatory Authority, **1:5**
 Introduction, **1:1 to 1:8**
 Regulators
 Commodities Future Trading Commission, **1:4**
 Consumer Financial Protection Bureau, **1:6**
 Securities and Exchange Commission, **1:3, 1:4**

WHITE COLLAR LANDSCAPE

—**Cont'd**

Securities and Exchange Commission, **1:3, 1:4**
 State attorneys general, **1:7**

WIRETAP STATUTE

Cybercrime, **21:17**

WITNESSES

FINRA disciplinary proceedings, respondent's request for witness statements, **9:46**
 Insider trading, cooperating witnesses, **15:24**
 Interviewing key witnesses. See **Internal Investigations** (this index)
 Material witness warrants and arrests, clients located outside United States, **5:38**
 PCAOB inquiries and investigations, rights of witnesses, **10:28**
 Subpoena ad testificandum, SEC investigations. See **Securities and Exchange Commission** (this index)

WORK PRODUCT

Media consultants, **20:14**
 Motions to quash in grand jury and administrative contexts, **18:51**
 Potential waiver in reporting to government on internal investigation, **3:42**
 Public statements during investigation, potential waiver of protection, **20:10**