

# Index

## **ABILITY TO REPAY LOAN**

Small Business Administration, financing from, **4:1**

## **ABSENCE OR PRESENCE**

Series A convertible preferred stock purchase agreement (annotated), absence of changes or liabilities, **6:27, 6:34**

Term loan agreements, absence of default, **7:42, 7:47**

## **ACCESSING PUBLIC MARKETS**

Small Business Administration, financing from, **4:16**

## **ACCOUNTANTS**

**Due Diligence and Civil Liability** (this index)

## **ACCOUNTS AND ACCOUNTING**

Federal securities laws, **11:46**

Limited liability companies, **3:61**

## **ACCREDITED INVESTORS**

Definition of, amendments to, **11:4.10**

Federal securities laws, **11:6, 11:6.70**

New worth standard, **11:6.70**

Preferred stock, **6:45**

Review of “accredited investor” definition, SEC, **11:4.30**

Selected SEC guidance, **11:4.20**

## **ACCUMULATED EARNINGS TAX**

S corporations, avoidance, **2:10**

## **ACQUISITION OR ACQUISITIONS**

S corporations, interest in pass-through entity, **2:43**

## **ACTIONS AND REMEDIES**

**Litigation** (this index)

## **ACTIVE AND PASSIVE VOICES**

Disclosure, **13:12**

## **ADDITIONAL DEBT**

Term loan agreements, **7:50**

## **ADDITIONAL MATTERS**

Benefits of entity, S corporations, **2:11**

## **ADJUSTMENT OR ADJUSTMENTS**

S corporations, adjusted highest section one rate, **2:76**

## **ADMINISTRATIVE LAW JUDGES (ALJ)**

Constitutionality of SEC use, **14:89.50**

## **ADMINISTRATIVE LAW JUDGES (ALJ)**

### **—Cont’d**

Enforcement proceedings rules unconstitutional, Seventh Amendment, **14:89.60**

LIAT-2025-private nondelegation doctrine-constitutionality of broker suspension prior to sec review-appointments clause-FINRA, **14:89.80**

Litigants may challenge the constitutionality of SEC administrative proceedings in Federal District Court parallel or collateral to administrative proceedings before the SEC, **14:89.70**

Required disclosure of back-dated trading strategies, **14:90.36**

SEC proxy voting advice business regulations, **14:89.90**

## **ADMINISTRATIVE PROCEEDINGS**

**Due Diligence and Civil Liability** (this index)

## **ADVERSE INTERESTS**

Due diligence, corporate scienter exception, **14:52.95.1**

## **ADVERTISING**

Federal securities laws, **11:7, 11:7.50**

## **ADVICE OF COUNSEL**

**Opinion of Counsel** (this index)

## **AFFECTED TAXPAYERS**

S corporations, limitation on passive losses under Tax Reform Act of 1986, **2:52**

## **AFFILIATES**

Federal securities laws, **11:85, 11:111**

Term loan agreements, **7:54**

## **AFFIRMATIVE COVENANTS**

**Term Loan Agreements** (this index)

## **AGENTS AND AGENCY**

**Due Diligence and Civil Liability** (this index)

State blue sky regulation, **15:5**

## **AGGREGATE OFFERING PRICE**

Federal securities laws, **11:9, 11:9.30**

## **AGREEMENTS OR CONTRACTS**

S corporations, buy-sell agreements, **2:22**

## **AIDING AND ABETTING**

**Due Diligence and Civil Liability** (this index)

## **ALABAMA**

Small business, assistance programs for, **App 18.1**

## **ALASKA**

Small business, assistance programs for, **App 18.2**

## **ALLOCATION**

Limited liability companies, **3:50, 3:56**  
S corporations, tax items, **2:58**  
Series A convertible preferred stock purchase agreement (annotated), **6:81**

## **ALLOWANCE OR ALLOWANCES**

S corporations, losses and deductions, **2:59, 2:60**

## **ALTERNATIVE MINIMUM TAX**

Choosing the business financing format, **1:7**  
S corporations, avoidance of corporate alternative minimum tax, **2:9**

## **ALTERNATIVE REPORTING**

Sarbanes-Oxley Act, due diligence and civil liability, **14:56**

## **ALTERNATIVE SIZE STANDARDS**

Small Business Administration, financing from, **4:1.50**

## **AMENDMENTS**

Accelerated filers, definitions, **13:1.70**  
**Federal Securities Laws** (this index)  
Items 101, 103, and 105, **13:1.56**  
Items 301, 302, and 303, **13:1.57**  
**Limited Liability Companies** (this index)  
**NVCA Model Venture Financings Documents (2007)** (this index)  
**Preferred Stock** (this index)  
Regulation D and Form D, proposed amendment, **11:4.60**  
Regulation S-K, disclosure, **13:1.50, 13:1.55**  
Regulation S-K, modernization of Items 101, 103, and 105, **13:1.55.10**  
Resales of securities by investors. **Federal Securities Laws** (this index)  
S corporations, **2:65**  
Small Business Administration, Early Stage SBIC Limited Partnership Agreement, **4:18**  
Small business issuer rules and forms. **Federal Securities Laws** (this index)  
Smaller reporting company, amendments to definition of, **App 1.10**

## **AMERICAN BAR ASSOCIATION**

Sarbanes-Oxley Act, due diligence and civil liability, **14:63**

## **AMERICAN CAPITAL STRATEGIES (ACAS)**

Business development company (BDC), **5:3**

## **AMERICAN STOCK EXCHANGE**

Going public, **12:28**

## **AMICUS POSITION**

Due diligence and civil liability, “creating” the misrepresentation, **14:49**

## **AMOUNT OR QUANTITY**

**Federal Securities Laws** (this index)

## **ANNOTATED OPINION OF STOCK PURCHASE AGREEMENT**

**Preferred Stock** (this index)

## **ANNOUNCEMENT, REGISTRATION BY**

State blue sky regulation, **15:27**

## **ANNUAL MEETING OF SHAREHOLDERS**

**Going Public** (this index)

## **ANTIDILUTION PROVISIONS**

Choosing the business financing format, **1:15**  
Convertible debenture-long form, **17:3**  
Convertible preferred stock-long form, **17:2**  
“Force down” antidilution provisions, **17:5**  
Forms  
    convertible debenture-long form, **17:3**  
    convertible preferred stock-long form, **17:2**  
    “force down” antidilution provisions, **17:5**  
    “pay to play” antidilution provisions, **17:5**  
    short form, **17:1**  
    stock purchase warrant-long form, **17:4**  
“Pay to play” antidilution provisions, **17:5**  
Preferred stock, **1:15**  
Short form, **17:1**  
Stock purchase warrant-long form, **17:4**

## **ANTIFRAUD PROVISIONS**

State blue sky regulation, **15:6**

## **APOLLO INVESTMENT (AINV)**

Business development company (BDC), **5:3**

## **APPLICATION OR APPLICABILITY**

S corporations, payments for taxable year, **2:78**  
S corporations, percentage or payments for taxable year, **2:75**

## **APPROVAL**

**Consent or Approval** (this index)

## **ARES CAPITAL (ARCC)**

Business development company (BDC), **5:3**

## **ARIZONA**

Small business, assistance programs for, **App 18.3**

## **ARKANSAS**

Small business, assistance programs for, **App 18.4**

## ARRANGEMENTS

S corporations, treatment as equity, **2:23**

## ARTICLES OF INCORPORATION

**Preferred Stock** (this index)

## ARTICLES OF ORGANIZATION

Limited liability companies, **3:44**

## ASPIRATIONAL STATEMENTS

Due diligence and civil liability, **14:15.60**

## ASSETS

Digital, **15:3.70**

Preferred stock, **6:29**

## “ASSETS REQUIREMENT” OF (C)(2)(II)

Federal securities laws, **11:46 to 11:50**

## ASSIGNS

Series A convertible preferred stock purchase agreement (annotated), **6:90**

## ASSISTANCE FOR STATE SMALL BUSINESS PROGRAMS

**Small Business, State-by-State Summary of Assistance Programs for** (this index)

## AT-RISK LIMITATIONS

Limited liability companies, **3:63**

S corporations, comparison of taxation of partners and shareholders, **2:61**

## ATTORNEYS

**Due Diligence and Civil Liability** (this index)

**Opinion of Counsel** (this index)

**Sarbanes-Oxley Act** (this index)

## AUDITORS’ FEES

Going public, **12:33**

## AUDITS AND AUDITORS

Auditing Standard No. 5, standard for auditing internal control over financial reporting, **12:17 to 12:19**

Auditing Standard No. 16, auditor communications with audit committees, **12:8.50**

Due diligence and civil liability, **14:16, 14:68, 14:74, 14:142**

FAQs, Management’s Report on Internal Control (Sept. 24, 2007), **App 11.1**

**Independence of Auditor** (this index)

Internal control, PCAOB Guidance for Auditors of Smaller Public Companies (January 23, 2009), **App 11.3**

Material misstatement, PCAOB Proposed Auditing Standard Related to Auditor’s Assessment of and Response to Risk of Material Misstatement in Financial Statement (Dec. 17, 2009), **App 11.2**

PCAOB Auditing Standard AU 3101, **App 11.6**

## AUDITS AND AUDITORS—Cont’d

PCAOB Auditing Standards Release # 2012-001, **App 11.4**

Preferred stock, **6:69**

**Sarbanes-Oxley Act** (this index)

S corporations, comparison of taxation of partners and shareholders, **2:69, 2:70**

Securities and Exchange Commission Guidance Regarding Management’s Report on Internal Control (June 20, 2007), **App 11**

## AUTHORITY AND AUTHORIZATION

**Preferred Stock** (this index)

## AUTOMATIC SHELF-REGISTRATION

SEC’s 2005 securities offering revisions, automatic shelf-registration for well-known seasoned issuers, **11:150**

## AVOIDANCE

**S Corporations** (this index)

## BAD ACTORS

**Felons and Other Bad Actors** (this index)

## “BAD BOY” EXCLUSIONS

Federal securities laws, **11:74**

## BANKS AND FINANCIAL INSTITUTIONS

**Institutional Private Placements** (this index)

## BARCHRIS CASE

Due diligence and civil liability, **14:7**

## BAR ORDERS

Due diligence and civil liability, **14:115**

## BASE YEAR

S corporations, net base year income, **2:77**

## BASIS

S corporations, comparison of taxation of partners and shareholders, **2:55 to 2:57**

## BENEFICIAL OWNERSHIP

Federal securities laws, **11:112 to 11:115**

## BENEFITS

S corporations, **2:1 et seq.**

## “BIG BATH” CHARGE ACCOUNTING PRACTICES

Due diligence and civil liability, **14:96**

## BITCONNECT

Due diligence and civil liability, **14:38.50**

## BLACKROCK KELSO CAPITAL (BKCC)

Business development company (BDC), **5:3**

## BLUE BELL

Due diligence and civil liability, **14:129**

## **BLUE SKY LAWS**

- Internet offerings, **11:8**
- Limited Liability Companies** (this index)
- Limited offerings exemption, **App 7.1**
- NASAA disclosure guidelines for cover legends, **App 7.2**
- Preferred stock, **6:51, 6:60**
- State Blue Sky Regulation** (this index)

## **BOARD OF DIRECTORS**

- Directors** (this index)

## **BOOKS AND RECORDS**

- Series A convertible preferred stock purchase agreement (annotated), **6:37**

## **BOOK VALUE/TAX BASIS DIFFERENCES**

- Limited liability companies, **3:57**

## **BRIGHT LINE APPROACH**

- Due diligence and civil liability, “creating” the misrepresentation, **14:50**

## **BROKER-DEALERS**

- FINRA Regulatory Notice 10-22, reasonable investigations by broker-dealers in Regulation D offerings, **App 1.2A**
- State blue sky regulation, **15:5**

## **BROKERS**

- Due Diligence and Civil Liability** (this index)
- Series A convertible preferred stock purchase agreement (annotated), **6:96**

## **BROPHY, DAVID J.**

- Small Business Administration, financing from, **4:8**

## **“BULLETPROOF” STATUTES**

- Limited liability companies, **3:4, 3:29**

## **BURRILL, G. STEVEN**

- Small Business Administration, financing from, **4:11**

## **BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATION (BIDCO)**

- Small business, state assistance to, **5:1**

## **BUSINESS COVENANTS**

- Institutional private placements, **7:6**

## **BUSINESS DEVELOPMENT COMPANIES (BDCs)**

- Generally, **5:3**
- Test-the-waters communication, Rule 163B, **11:137.60**

## **“BUSINESS” DISCLOSURES**

- Disclosure** (this index)

## **BUSINESS OF COMPANY, INVESTIGATION OF**

- Due diligence and civil liability, **14:24**

## **BUSINESS PLANS**

- Outline of, **18:1**
- Small Business Administration, financing from, **4:11**

## **BUY SELL AGREEMENTS**

- S corporations, one class of stock requirement for eligibility, **2:22**

## **CALCULATION**

- Federal securities laws, net worth of accredited investors, **15:20**

## **CALIFORNIA**

- Small business, assistance programs for, **App 18.5**

## **CALIFORNIA LLC OPERATING AGREEMENT**

- Form of (2011), **20:4**

## **CALL PERIOD**

- Small Business Administration, Early Stage licensing process, **4:17**

## **CALL PROTECTION**

- Institutional private placements, **7:3**

## **CAPITAL AND CAPITALIZATION**

- Early Stage SBIC Limited Partnership Agreement applicants, **4:18**
- Limited liability companies, **3:49**
- Preferred Stock** (this index)
- Small Business Administration, financing from, **4:8, 4:18**
- State blue sky regulation, **15:25**

## **CAUSATION**

- Due Diligence and Civil Liability** (this index)

## **C&DIs**

- Amount of securities sold, limitation on, **11:121.30, 11:121.70, 11:122.50, 11:126.50**
- Bad actor disqualification under Rule 506(d) and disclosures under Rule 506(e), **11:4.52**
- Crowdfunding, **11:75.75**
- Current public information, **11:101.50**
- Definition of “restricted securities,” **11:100.50**
- Emerging growth companies (EGCs), disclosure and registration under FAST Act, **11:153.70**
- General solicitation under Rule 506(c), **11:4.51**
- Holding period for restricted securities, **11:115.50**
- Integration of “separate” offerings
  - Rule 147, **11:59**
  - Rule 155, **11:40.50**
  - Rule 506, **11:4.53**

## **C&DIs—Cont’d**

- Pre-existing relationships, existence and substance of, **11:7.55**
- Private offering exemption
  - accredited investors (other than grantor trusts), **11:6.50**
  - aggregate offering price, **11:9.30**
  - counting purchasers under Rule 501(e), **11:10.30**
  - Form D filings, **11:12.20**
  - general advertising prohibition, **11:7.50**
  - informational requirements, **11:10.70**
  - integration safe harbor under Rule 502(e), **11:12.10**
  - purchaser representatives, **11:10.90**
  - Rules 504, 505, and 506, **11:12.40**
  - sophistication under Rule 506, **11:10.90**
- Regulation A, **11:64.50**
- Regulation S-K (February 2019), **App 5.9**
- Resales of securities
  - definition of “restricted securities,” **11:100.50**
  - exemptions under Section 4(a)(1) and Rule 144, above
  - holding period for restricted securities, **11:115.50**
- Rule 147, **11:59.50**
- Rule 147A, **11:59.50**
- Rule 501, **11:7.60**
- Rule 506, integration of offerings, **11:4.53**
- Rule 506(c), **11:7.70**
- Section 3(a)(11), **11:59.50**
- Securities Act sections, SEC Staff C&DIs, **App 5.3**

## **CELESTICA CASE**

- Disclosure, qualitative approach to materiality, **13:4**

## **CENTRALIZATION OF MANAGEMENT**

- Limited liability companies, **3:30**

## **CERTIFICATE OF INCORPORATION**

- NVCA model venture financings documents (2007) (amended and restated), **15A:4**

## **CERTIFICATES AND CERTIFICATION**

- Preferred Stock** (this index)

## **CERTIFIED DEVELOPMENT COMPANIES**

- Small business, state assistance to, **5:1**

## **CERTIFIED LENDERS PROGRAM (CLP)**

- Small Business Administration, financing from, **4:1**

## **CHANGE**

- Modification or Change** (this index)

## **CHARGE**

- Self-charged interest, **2:45, 2:46**

## **CHARTS**

- S corporations, comparison of partnership and S corporation provisions, **2:83**

## **CHEAP STOCK**

- State blue sky regulation, **15:20**

## **CHECKLISTS**

- Due diligence and civil liability, **14:16**
- Small Business Administration, applicant for Early Stage licensing, **4:17**

## **CHECK-THE-BOX REGULATIONS**

- Limited Liability Companies** (this index)

## **CHEVRON DOCTRINE**

- Overruled by U.S. Supreme Court, **14:90.20**

## **CHOICE OR ELECTION**

- Choosing the Business Financing Format** (this index)
- Form of conversion of debenture at election of company, **18:5**
- Limited liability companies, elective classification of certain entities, **3:12 to 3:15**
- S corporations, **2:5, 2:6, 2:28**

## **CHOOSING THE BUSINESS FINANCING FORMAT**

- Generally, **1:1 to 1:24**
- Alternative minimum tax income (AMTI), **1:7**
- Antidilution Provisions** (this index)
- Common stock
  - generally, **1:19**
  - tax considerations, **1:6**
- Conversion rights of preferred stock provisions, **1:14**
- Convertible debt or notes, **1:9**
- Co-sale, right of, **1:22**
- Debt instruments
  - generally, **1:21**
  - senior securities, issuer’s choice as to debt or preferred stock, **1:2**
  - tax considerations, debt or equity instruments, **1:7, 1:8**
- Directory of venture capital providers, **1:24**
- Dividends on preferred stock, **1:13**
- Governing law, **1:1**
- Hybrid securities, generally, **1:1**
- Introduction, **1:1**
- Issuer’s choice of preferred stock or debt, **1:2**
- Legal drafting considerations, **1:4**
- Liquidation, preference on, **1:17**
- Optimal capital structure of issuer, considerations of, **1:3**
- Original issue discount (OID), **1:9, 1:10**
- Participating preferred stock, **1:12**
- Partnerships for research and development, **1:23**



## **CHOOSING THE BUSINESS FINANCING**

### **FORMAT—Cont'd**

- Preferred stock provisions
  - generally, **1:11 to 1:18**
  - antidilution provisions, **1:15**
  - conversion rights, **1:14**
  - dividends on preferred stock, **1:13**
  - issuer's choice of preferred stock or debt, **1:2**
  - liquidation, preference on, **1:17**
  - participating preferred stock, **1:12**
  - redemption right of user, **1:16**
  - voting rights, **1:18**
- Redemption
  - preferred stock provisions, redemption right of user, **1:16**
  - premiums as taxable distributions, **1:10**
- Registration rights, **1:22**
- Resale of rights, **1:22**
- Research and development partnerships, **1:23**
- Senior securities
  - generally, **1:2 to 1:10**
  - debt or preferred stock, issuer's choice of, **1:2**
  - legal drafting, **1:4**
  - optimal capital structure, considerations of, **1:3**
  - tax considerations, below
- Tax considerations
  - generally, **1:5 to 1:10**
  - alternative minimum tax income (AMTI), **1:7**
  - common stock, whether to issue, **1:6**
  - convertible debt or notes, **1:9**
  - debt or equity instruments, **1:7, 1:8**
  - original issue discount (OID), **1:9, 1:10**
  - redemption premiums as taxable distributions, **1:10**
- Usury problems, **1:4**
- Voting rights, preferred stock provisions, **1:18**
- Warrants, **1:20**

## **CHRIS-CRAFT CASE**

- Due diligence and civil liability, **14:9**

## **CIRCULARS**

- Offerings, Small Business Administration, financing from, **4:12**

## **CIVIL LIABILITY**

- Due Diligence and Civil Liability** (this index)

## **CLASS ACTION SETTLEMENTS**

- Federal securities laws, **11:100**

## **CLASSIFICATION**

- Limited Liability Companies** (this index)
- S corporations, comparison of taxation of partners and shareholders, **2:82**

## **CLASS OR CLASSES**

- S corporations, one class of stock requirement for eligibility, **2:21 to 2:27**

## **CLOSING CONDITIONS**

- Institutional private placements, **7:5**

## **CLOSING REPRESENTATIONS OF ISSUER**

- Institutional private placements, **7:4**

## **CODE OF ETHICS**

- Disclosure, **13:40, 13:41**
- Going public, consequences of, **12:8**

## **COLLATERAL**

- Term loan agreements, **7:17**

## **COLORADO**

- Small business, assistance programs for, **App 18.6**

## **COMBINATIONS**

- Certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:110**

## **COMMENT LETTER FROM SBA**

- Small Business Administration, applicant for Early Stage licensing, **4:17**

## **COMMERCIAL REAL ESTATE REFINANCING**

- Small Business Administration, financing from, **4:1.50**

## **COMMITMENT FEES**

- Term loan agreements, **7:35**

## **COMMODITY FUTURES TRADING**

- Federal securities laws, **11:49**

## **COMMON LAW NEGLIGENCE CLAIMS**

- Due diligence and civil liability, **14:124**

## **COMMON STOCK**

- Choosing the Business Financing Format** (this index)
- Stock purchase agreement (common stock), form of, **18:7**
- Structuring investments to improve returns, **6:7**

## **COMPARISONS**

- S Corporations** (this index)

## **COMPASS DIVERSIFIED HOLDINGS (CODI)**

- Business development company (BDC), **5:3**

## **COMPENSATING BALANCES**

- Term loan agreements, **7:34**

## **COMPENSATION**

- Disclosure, **13:6, 13:42, 13:43**
- Dodd-Frank Act (2010) corporate governance provisions, **12:34**
- JOBS Act (2012) revisions for emerging growth companies, **12:34**

## **COMPETENCY OF COUNSEL**

- Due diligence and civil liability, **14:16**

**COMPLIANCE AND COMPLIANCE  
CERTIFICATE**

Series A convertible preferred stock purchase agreement (annotated), **6:33, 6:56**

**COMPLIANCE AND DISCLOSURE  
INTERPRETATIONS**

**C&DIs** (this index)

**COMPUTATION OF INTEREST  
ASSESSMENT**

Term loan agreements, **7:32**

**CONDITIONS**

**Preferred Stock** (this index)

**CONFIDENTIALITY**

Emerging growth companies, submission of confidential information, JOBS Act frequently asked questions, **App 12.3**

**Going Public** (this index)

Rules 406 and 24b-2, confidential treatment applications, **App 19**

Series A convertible preferred stock purchase agreement (annotated), **6:92**

**CONFLICTS OF INTEREST**

Preferred stock, **6:139**

Small Business Administration, financing from, **4:4**

**CONNECTICUT**

Small business, assistance programs for, **App 18.7**

**CONSENT OR APPROVAL**

**Preferred Stock** (this index)

S corporations, elections, **2:29**

Term loan agreements, **7:40**

**CONSPIRACY**

Due diligence and civil liability, **14:52.30**

**CONTINUITY OF LIFE**

Limited liability companies, **3:29**

**CONTRACTUAL NON-RELIANCE CLAUSES**

Due diligence and civil liability, disclosure “defenses,” **14:99.50**

**CONTRIBUTION**

Due diligence and civil liability, **14:118, 14:121, 14:122**

Preferred stock, **6:82**

**CONTRIBUTIONS OF PROPERTY OR  
SERVICES**

Limited liability companies, **3:53, 3:54**

**CONTROL PERSONS**

Disclosure, **13:5, 13:40, 13:41**

Liability. **Due Diligence and Civil Liability** (this index)

**CONTROL PROHIBITIONS**

Small Business Administration, financing from, **4:4**

**CONVERSION OR CONVERSION RIGHTS**

C corporation to S corporation, recapture of inventory appreciation, **2:68**

Choosing the business financing format, **1:14**

Federal securities laws, **11:106**

Partnership conversion to LLC, **3:48**

**Preferred Stock** (this index)

**CONVERTIBLE DEBT**

Choosing the business financing format, **1:9**

Preferred stock, **6:6**

**CONVERTIBLE SECURITIES**

**Antidilution Provisions** (this index)

S corporations, debt, **2:27**

**“COOKIE JAR RESERVES” ACCOUNTING  
PRACTICES**

Due diligence and civil liability, **14:96**

**COORDINATION, REGISTRATION BY**

State blue sky regulation, **15:15**

**COREENERGY INFRASTRUCTURE TRUST  
(CORR)**

Business development company (BDC), **5:3**

**CORONAVIRUS**

Covid-19 Pandemic, this index

**CORPORATE CLASSIFICATION**

Limited liability companies, **3:8**

**CORPORATE DEBT**

**Institutional Private Placements** (this index)

**Term Loan Agreements** (this index)

**CORPORATE GOVERNANCE**

Disclosure, **13:8, 13:40, 13:41**

**CORPORATE TRANSPARENCY ACT**

BOI reporting requirements subject to various litigation, a nationwide injunction and stay, **9:1.50**

District court finds the CTA unconstitutional, **9:6**

FinCEN new FAQs clarifying dissolved entities subject to CTA, **9:7**

Large Operating Company Exemption, **9:5**

Overview, **9:1**

Penalties for violations, **9:3**

Proposed rules, **9:4**

Summary, **9:2**

**CORRECTION DUTY**

Due diligence and civil liability, **14:44, 14:107**

## **CO-SALE AGREEMENT**

NVCA model venture financings documents (2007), **15A:7**

## **CO-SALES**

Choosing the business financing format, **1:22**  
Forms of, **18:14**

## **COSTS AND EXPENSES**

Going public, **12:33**  
**Preferred Stock** (this index)  
**Term Loan Agreements** (this index)

## **COUNTING PURCHASERS UNDER RULE 501(E)**

Federal securities laws, **11:10, 11:10.30**

## **COURT DECISIONS**

**Federal Securities Laws** (this index)

## **COVENANTS**

Institutional private placements, **7:6**  
**Preferred Stock** (this index)  
**Term Loan Agreements** (this index)

## **“COVERED” SECURITIES**

State blue sky regulation, **15:1**

## **COVER PAGES**

Disclosure, **13:14, 13:16, 13:17**

## **COVID-19 PANDEMIC**

Crowdfunding, temporary amendments to regulation, **11:75.71**  
SEC response, **8:1**

## **“CREATING” THE MISREPRESENTATION**

Due diligence and civil liability, **14:49**

## **CRIMINAL LIABILITY**

Due diligence and civil liability, **14:52.70**

## **CROWDFUNDING**

C&DIs, **11:75.75**  
Covid-19: temporary amendments to regulation crowdfunding, **11:75.71**  
Offerings of \$5,000,000 or less, **11:75.70**  
SEC guidance, **11:75.75**

## **CRYPTOCURRENCY**

SEC injunctive authority, **14:90.10**

## **CULPABLE PARTICIPATION REQUIREMENT**

Due diligence and civil liability, **14:83**

## **CURRENT MARKET CONDITIONS**

Evaluating cost of term loan financing, **7:13**

## **CURRENT PUBLIC INFORMATION**

Federal securities laws, **11:86, 11:101, 11:101.50**

## **CUSTOM TAILORING**

Due diligence investigations, **14:16**

## **DATE**

**Time or Date** (this index)

## **DEALERS**

**Broker-Dealers** (this index)  
Due diligence and civil liability, **14:35**

## **DEBENTURES**

Convertible debentures forms, **18:2, 18:3**  
Election of company, form of conversion of debenture at, **18:5**  
Forms  
convertible debentures, **18:2, 18:3**  
election of company, conversion of debenture at, **18:5**  
redemption provisions for convertible debentures, **18:2**  
SBIC, debenture purchase agreement with, **18:11**  
subordinate provision, **18:4**  
Indenture, form of, **18:6**  
Redemption provisions for convertible debentures, forms of, **18:2**  
SBIC, form of debenture purchase agreement with, **18:11**  
Subordinate provision, form of, **18:4**

## **DEBT**

**Corporate Debt** (this index)  
**S Corporations** (this index)

## **DEBT INSTRUMENTS**

**Choosing the Business Financing Format** (this index)

## **DEDUCTIONS**

Business interest, limitations on, **2:4**  
Pass-through business income, Section 199A, **2:3**  
S corporations, **2:59, 2:60**  
Suspended, losses are, **2:60**  
Tax Cuts and Jobs Act, active business loss, **2:59**

## **DEEMED DIVIDED ELECTION**

S corporations, passive investment income, **2:37**

## **DEFAULT**

Institutional private placements, events of default, **7:7 to 7:9**  
**Term Loan Agreements** (this index)

## **DEFENSES**

**Due Diligence and Civil Liability** (this index)

## **DEFINITIONS**

Accelerated filers, amendments to, **13:1.70**  
“Accredited investor”  
amendments to the definition of, **11:4.10**  
SEC review, **11:4.30**  
**Federal Securities Laws** (this index)  
Passive activity, **2:51**



## INDEX

### DEFINITIONS—Cont'd

- Passive investment income, **2:34**
- Preferred stock, **6:76**
- S Corporations** (this index)
- Smaller reporting company, amendments to definition of, **App 1.10**
- Term loan agreements, **7:22**

### DELAWARE

- LLC operating agreement, form of (2022), **20:8**
- Small business, assistance programs for, **App 18.8**

### DELAYED FUNDING

- Term loan agreements, **7:25**

### DELIVERY

- Annotated opinion of stock purchase agreement, **6:123**
- Federal securities laws, delivery of prospectus—reforms, **11:145**

### DESIGNING THE DOCUMENT

- Disclosure, **13:13**

### DETERMINATIONS

- S corporations, basis, **2:55, 2:57**

### DIGITAL ASSETS

- State blue sky regulation, **15:3.70**

### DIGITAL BRANDS GROUP

- Forms for, **19:2**
- Free writing prospectus, **19:2**

### DILUTION

- Antidilution Provisions** (this index)
- Disclosure, **13:30, 13:31**

### “DIRECTED SELLING EFFORTS”

- Federal securities laws, **11:81**

### DIRECT LOAN TO S CORPORATION

- Self-charged interest, **2:46**

### DIRECTORS

- Disclosure** (this index)
- Due Diligence and Civil Liability** (this index)
- Preferred stock, **6:72**

### DIRECTORY OF VENTURE CAPITAL PROVIDERS

- Choosing the business financing format, **1:24**

### DISCHARGE

- S corporations, discharge of indebtedness income, **2:49**

### DISCIPLINARY ACTIONS

- Professional standards, Sarbanes-Oxley Act and SEC professional conduct rules, **14:61**

### DISCLOSURE

- Generally, **13:1 to 13:56**
- Abstractions brought down to earth, **13:12**
- Accelerated filers. Regulation S-K items, below
- Active and passive voices, **13:12**
- Body of prospectus, example of “plain English,” **13:15**
- “Business” section
  - compensation, **13:6**
  - control persons, **13:5**
  - corporate governance, **13:8**
  - description of business, **13:2**
  - description of property, **13:3**
  - directors and officers, generally, **13:5**
  - discussion and analysis of financial condition by management (MD&A), **13:4**
  - executive compensation, **13:6**
  - independence of director, **13:8**
  - management’s discussion and analysis of financial condition (MD&A) (Item 303), **13:4**
  - officers, generally, **13:5**
  - promoters, **13:5**
  - transactions with related persons, **13:7**
- “Capitalization” table, **13:30, 13:31**
- Code of ethics, **13:40, 13:41**
- Common problems encountered with disclosure documents, **13:12**
- Company, description of, **13:15**
- Compensation, **13:6, 13:42, 13:43**
- Control persons, **13:5, 13:40, 13:41**
- Core prospectus, example of “plain English,” **13:15**
- Corporate governance, **13:8, 13:40, 13:41**
- Cover pages
  - example of “plain English,” **13:14**
  - front and back cover page, **13:16, 13:17**
- Description of business, **13:2, 13:38, 13:39**
- Description of “plain English” at a glance, **13:11**
- Description of property, **13:3**
- Description of securities, **13:48, 13:49**
- Designing the document, **13:13**
- Determination of offering price, **13:24, 13:25**
- Dilution, **13:30, 13:31**
- Directors and officers. Management, below
- Discussion and analysis of financial condition by management (MD&A), **13:4, 13:34, 13:35**
- Distribution plan, **13:52, 13:53**
- Dividend policy, **13:28, 13:29**
- Due Diligence and Civil Liability** (this index)
- Emerging Growth Companies (EGCs)** (this index)
- English language. “Plain English,” disclosure in, below
- Examples of “plain English,” **13:14**
- Executive compensation, **13:6, 13:42, 13:43**

## DISCLOSURE—Cont'd

FAST Act, emerging growth companies (EGCs), disclosure and registration, **11:153.70**

**Federal Securities Laws** (this index)

Final disclosure rules for SPACs, SEC adopts, **11:146.95**

Financial matters

- discussion and analysis of financial condition by management (MD&A), **13:4, 13:34, 13:35**
- FAQs, Management's Report on Internal Control (Sept. 24, 2007), **App 11.1**
- New Orleans Employees Retirement System v. Celestica Inc., qualitative approach to materiality, **13:4**
- prospectus disclosure, excerpts of financial statements, **13:56**
- quarterly financial data, **13:32, 13:33**
- Staff observations on financial statements, **13:57**

Five percent beneficial owners, **13:46, 13:47**

Forward-looking statements, **13:22, 13:23**

Future sale, shares eligible for, **13:50, 13:51**

**Going Public** (this index)

Handbook on "plain English," **13:9 to 13:14**

Hierarchy of document, **13:13**

"If then" conditionals, use of, **13:12**

Independence of director, **13:8, 13:40, 13:41**

Issuer's business, description of, **13:2, 13:38, 13:39**

Issuer's property, description of, **13:3**

Jargon, elimination of, **13:12**

Legal proceedings, **13:54, 13:55**

Management

- directors and officers
  - generally, **13:5, 13:40, 13:41**
  - Regulation S-K items, below
- discussion and analysis of financial condition (MD&A), **13:4, 13:34, 13:35**
- FAQs, Management's Report on Internal Control (Sept. 24, 2007), **App 11.1**
- officers. Directors and officers, above in this group
- Regulation S-K items, below
- Securities and Exchange Commission Guidance Regarding Management's Report on Internal Control (June 20, 2007), **App 11**

Management's discussion and analysis of financial condition (MD&A), **13:4, 13:34, 13:35**

Narrative disclosure in S-K items. Regulation S-K items, below

Offering price determination, **13:24, 13:25**

Officers. Management, above

Orderly and clear presentation of complex information, generally, **13:10**

Overview, **13:1**

## DISCLOSURE—Cont'd

Paragraph lengths, **13:13**

Parallel structure of sentences, **13:12**

"Plain English," disclosure in

- generally, **13:9 to 13:14**
- abstractions brought down to earth, **13:12**
- active and passive voices, **13:12**
- common problems encountered with disclosure documents, **13:12**
- description of "plain English" at a glance, **13:11**
- designing the document, **13:13**
- examples of "plain English," **13:14**
- handbook on "plain English," **13:9 to 13:14**
- hierarchy of document, **13:13**
- "if then" conditionals, use of, **13:12**
- jargon, elimination of, **13:12**
- orderly and clear presentation of complex information, generally, **13:10**
- paragraph lengths, **13:13**
- parallel structure of sentences, **13:12**
- "positive" writing, **13:12**
- short sentences, use of, **13:12**
- summary of "plain English" rules, **13:11**
- superfluous words, omission, **13:12**
- tables, use of, **13:13**
- what is "plain English" document, **13:10**
- writing in "plain English," **13:12**

"Positive" writing, **13:12**

Preferred stock, **6:40**

Principle and selling stockholders, **13:46, 13:47**

Promoters, **13:5, 13:40, 13:41**

Property of business, generally, **13:3**

Prospectus

- back cover page, **13:16, 13:17**
- body of prospectus, example of "plain English," **13:15**
- business, **13:38, 13:39**
- "Capitalization" table, **13:30, 13:31**
- code of ethics, **13:40, 13:41**
- compensation, **13:42, 13:43**
- control persons, **13:40, 13:41**
- core prospectus, example of "plain English," **13:14**
- corporate governance, **13:40, 13:41**
- cover page, example of "plain English," **13:14**
- description of securities, **13:48, 13:49**
- determination of offering price, **13:24, 13:25**
- dilution, **13:30, 13:31**
- directors and officers, generally, **13:40, 13:41**
- discussion and analysis of financial condition by management (MD&A), **13:34, 13:35**
- distribution plan, **13:52, 13:53**
- dividend policy, **13:28, 13:29**
- executive compensation, **13:42, 13:43**

**DISCLOSURE—Cont'd**

Prospectus—Cont'd  
 experts, **13:54, 13:55**  
 five percent beneficial owners, **13:46, 13:47**  
 forward-looking statements, **13:22, 13:23**  
 front cover page, **13:16, 13:17**  
 independence of director, **13:40, 13:41**  
 legal matters, **13:54, 13:55**  
 management's discussion and analysis of financial condition (MD&A), **13:34, 13:35**  
 offering price determination, **13:24, 13:25**  
 officers, generally, **13:40, 13:41**  
 principle and selling stockholders, **13:46, 13:47**  
 promoters, **13:40, 13:41**  
 quantitative and qualitative disclosures about market risk, **13:36, 13:37**  
 risk factors, **13:20, 13:21**  
 securities description, **13:48, 13:49**  
 selected financial data, **13:32, 13:33**  
 shares eligible for future sale, **13:50, 13:51**  
 Shockwave Medical Prospectus, below specific Regulation S-K items, generally, **13:15 to 13:56**  
 stock ownership, **13:46, 13:47**  
 summary, **13:18**  
 summary, example of "plain English," **13:14**  
 transactions with related persons, **13:44, 13:45**  
 underwriting, **13:52, 13:53**  
 use of proceeds, **13:26, 13:27**  
 Quantitative and qualitative disclosures about market risk, **13:36, 13:37**  
 Regulation S-B items. SEC forms and related regulations, **App 5**  
 Regulation S-K items  
 generally, **13:2 to 13:8**  
 accelerated filers, amendments to definitions, **13:1.70**  
 back cover page of prospectus, **13:16, 13:17**  
 "Capitalization" table, **13:30, 13:31**  
 certain relationships and transactions, **13:7**  
 code of ethics, **13:40, 13:41**  
 compensation, **13:6, 13:42, 13:43**  
 control persons, **13:5, 13:40, 13:41**  
 corporate governance, **13:8, 13:40, 13:41**  
 determination of offering price, **13:24**  
 dilution, **13:30, 13:31**  
 director independence, **13:8, 13:40, 13:41**  
 directors and officers, generally, **13:5, 13:40, 13:41**  
 discussion and analysis of financial condition by management (MD&A), **13:4, 13:34, 13:35**  
 distribution plan, **13:52, 13:53**  
 dividend policy, **13:28, 13:29**

**DISCLOSURE—Cont'd**

Regulation S-K items—Cont'd  
 executive compensation, **13:6, 13:42, 13:43**  
 experts, **13:54, 13:55**  
 financial statements, Staff observations, **13:57**  
 five percent beneficial owners, **13:46, 13:47**  
 front cover page of prospectus, **13:17**  
 independence of director, **13:8**  
 IPO Registration Statement Part II, Staff observations, **13:57**  
 issuer's business, description of, **13:2, 13:38, 13:39**  
 large accelerated filers, amendments to definitions, **13:1.70**  
 legal matters, **13:54, 13:55**  
 management's discussion and analysis of financial condition (MD&A), **13:4, 13:34, 13:35**  
 offering price determination, **13:24**  
 officers, generally, **13:5, 13:40, 13:41**  
 Part II, Staff observations, **13:57**  
 Pinnacle Foods Inc. prospectus, above principle and selling stockholders, **13:46, 13:47**  
 promoters, **13:5, 13:40, 13:41**  
 property, description of, **13:3**  
 proposed amendment to modernize Items 101, 103, and 105, **13:1.55.10**  
 quantitative and qualitative disclosures about market risk, **13:36, 13:37**  
 results of operation, **13:4**  
 risk factors, **13:20, 13:21**  
 scaled disclosure chart, smaller reporting companies, **13:1.10**  
 securities description, **13:48, 13:49**  
 selected financial data, **13:32, 13:33**  
 shares eligible for future sale, **13:50, 13:51**  
 stock ownership, **13:46, 13:47**  
 transactions with related persons, **13:7, 13:44, 13:45**  
 2018 amendments, **13:1.50**  
 2019 amendments, **13:1.55**  
 2020 amendments, **13:1.57**  
 underwriting, **13:53**  
 use of proceeds, **13:26, 13:27**  
 Remuneration of management, **13:6, 13:42, 13:43**  
 Reporting companies, smaller, eligibility, **13:1.60**  
 Results of operation, **13:4**  
 Risk factors, **11:146.50, 13:20, 13:21**  
 Sarbanes-Oxley Act, due diligence and civil liability, **14:59, 14:71**  
 Scaled disclosure for smaller reporting company. Regulation S-K items, above  
 SEC forms and related regulations, **App 5**

## **DISCLOSURE—Cont'd**

SEC Guidance Regarding Management's Report on Internal Control (June 20, 2007), **App 11**

SEC Staff observations on financial statements, **13:57**

Securities description, **13:48, 13:49**

Selected financial data, **13:32, 13:33**

Selling stockholders, **13:46, 13:47**

Shares eligible for future sale, **13:50, 13:51**

Shockwave Medical Prospectus

- business, **13:39**
- "Capitalization" table, **13:31**
- compensation, **13:43**
- determination of offering price, **13:25**
- dilution, **13:31**
- discussion and analysis of financial condition (MD&A), **13:35**
- distribution plan, **13:53**
- dividend policy, **13:29**
- executive compensation, **13:43**
- experts, **13:55**
- financial statements (excerpts), **13:56**
- five percent beneficial owners, **13:47**
- forward-offering statements, **13:23**
- legal matters, **13:55**
- management, **13:41**
- offering price determination, **13:25**
- other items not specified by specific Item, **13:56**
- principle and selling stockholders, **13:47**
- quantitative and qualitative disclosures about market risk, **13:37**
- risk factors, **13:21**
- securities description, **13:49**
- selected financial data, **13:33**
- shares eligible for future sale, **13:51**
- stock ownership, **13:47**
- transactions with related persons, **13:45**
- underwriting, plan of, **13:53**
- use of proceeds, **13:27**

Short sentences, use of, **13:12**

Smaller reporting companies, scaled disclosure chart, **13:1.10**

Smaller reporting company, scaled disclosure. Regulation S-K items, above

Stock ownership, **13:46, 13:47**

Structure Therapeutics

- front and back cover pages, **13:17**

Summary, **13:14, 13:18**

Summary of "plain English" rules, **13:11**

Superfluous words, omission, **13:12**

Tables, use of, **13:13**

**Term Loan Agreements** (this index)

Time delay between corrective disclosure and share price drop, Loss causation, **14:45.80**

## **DISCLOSURE—Cont'd**

Transactions with related persons, **13:7, 13:44, 13:45**

Typography of document, **13:13**

Underwriting, **13:52, 13:53**

Use of proceeds, **13:26, 13:27**

What is "plain English" document, **13:10**

Writing in "plain English," **13:12**

## **DISGORGEMENT REMEDY**

Statute of limitations, **14:90.60**

Supreme Court upholds propriety of with restrictions, **14:90.65**

## **DISSOLUTION**

Limited liability companies, **3:51**

Preferred stock, **6:111**

## **DISTRIBUTION PLAN**

Disclosure, **13:52, 13:53**

## **DISTRIBUTIONS**

**Limited Liability Companies** (this index)

## **DISTRICT OF COLUMBIA**

Small business, assistance programs for, **App 18.9**

## **DIVIDENDS**

Choosing the business financing format, **1:13**

Disclosure of dividend policy, **13:28, 13:29**

Preferred stock, **6:105, 6:110**

S corporations, deemed dividend election, **2:37**

State blue sky regulation, **15:24**

## **DIVORCE**

Federal securities laws, **11:113**

## **DOCUMENTATION OF LOAN**

Term loan agreements, **7:16**

## **DOCUMENTS**

Drafting. **Due Diligence and Civil Liability** (this index)

**NVCA Model Venture Financings Documents (2007)** (this index)

## **DODD-FRANK ACT**

SEC Administrative Enforcement of Whistleblower Protections, **14:53.60**

## **DODD-FRANK WALL STREET REFORM ACT (2010)**

Corporate governance provisions. **Going Public** (this index)

## **DOING BUSINESS WITHIN STATE**

**Federal Securities Laws** (this index)

## **DOMESTIC ELIGIBLE ENTITIES**

Limited liability companies, **3:13**

## DOUBLE TAXATION

S corporations, avoidance, **2:7**

## DRAFTING OF DOCUMENTS

**Due Diligence and Civil Liability** (this index)

## DUE DILIGENCE AND CIVIL LIABILITY

Generally, **14:1 to 14:142**

Accountants

actions and proceedings against attorneys and accountants, below

control person liability, **14:88**

material facts, duty to disclosure, **14:43.50**

preparation of disclosure documents, securities laws duties relating to, below

professional standards, influence on liability, below

Rule 10b-5 (1934 Act), **14:40, 14:43.50 et seq., 14:51, 14:51.50**

**Sarbanes-Oxley Act** (this index)

Section 12(a)(2) of 1933 Act, **14:36**

state law claims for inadequate or misleading disclosure, below

Actions and proceedings against attorneys and accountants

generally, **14:90 to 14:98**

accountants, generally, **14:96**

administrative proceedings, generally, **14:90**

aiding and abetting actions by SEC, **14:97**

attorneys, generally, **14:93 to 14:95**

“big bath” charge accounting practices, **14:96**

“cookie jar reserves” accounting practices, **14:96**

disclosure advice, attorneys’ negligence in providing, **14:95**

drafting disclosure documents, attorneys’ negligence in, **14:95**

Enron case, **14:96**

entry of administrative order, **14:90**

financial statements, generally, **14:96**

“illusory” or “managed” earnings, **14:96**

injunctive proceedings, **14:91**

“materiality abuse” accounting practices, **14:96**

“merger magic” accounting practices, **14:96**

Office of Thrift supervision, **14:98**

opinions, attorneys’ negligent issuance of, **14:94**

In re Kaye, Scholer, **14:98**

Report of Investigation, **14:90**

“revenue recognition manipulation” accounting practices, **14:96**

Rule 102(e) proceedings, **14:92**

SEC enforcement arsenal, generally, **14:90 to 14:98**

stop order proceedings, **14:90**

## DUE DILIGENCE AND CIVIL LIABILITY

—Cont’d

Administrative law judges, constitutionality of SEC use, **14:89.50**

Administrative proceedings. Actions and proceedings against attorneys and accountants, above

Adverse interests exception, **14:52.95.1**

Advising in preparation of statement made by another, **14:48**

Agents and agency

control person liability, **14:81**

Section 12(a)(2) of 1933 Act, **14:35**

Aiding and abetting

actions and proceedings against attorneys and accountants, **14:97**

Rule 10b-5 (1934 Act), below

Rule 10b-5-standing to bring a claim restricted with implied private right of action, **14:97.50**

Section 12(a)(2) of 1933 Act, **14:38**

Amicus approach of SEC, “creating” the misrepresentation, **14:49**

Applicability of safe harbors, **14:102**

Aspirational statements, **14:15.60**

Assisting in preparation of statement made by another, **14:48**

Attorneys

actions and proceedings against attorneys and accountants, above

control person liability, **14:88**

inside general counsel’s fiduciary duties and liability for failure to advise board, **14:64.50**

in pari delicto defense, **14:142**

preparation of disclosure documents, securities laws duties relating to, below

professional standards, influence on liability, below

Rule 10b-5 (1934 Act), **14:40, 14:43**

**Sarbanes-Oxley Act** (this index)

Section 12(a)(2) of 1933 Act, **14:36**

state law claims for inadequate or misleading disclosure, below

Audits and auditors

generally, **14:16, 14:68, 14:74**

Sarbanes-Oxley Act, below

BarChris case, **14:7**

Bar orders, proportionate liability, **14:115**

Belief or opinion, statements of, **14:15**

“Big bath” charge accounting practices, **14:96**

Blue Bell, scope of comment in, **14:129**

Bright line approach, **14:50**

Brokers

control persons, broker-dealers as, **14:85**

Section 12(a)(2) of 1933 Act, **14:35**



## DUE DILIGENCE AND CIVIL LIABILITY

### —Cont'd

Business of company, investigation of, **14:24**  
 Causation requirement, Rule 10b-5 (1934 Act), **14:45**  
 Checklists, care in utilizing, **14:16**  
 Chevron doctrine, overruled by U.S. Supreme Court, **14:90.20**  
 Chris-Craft case, **14:9**  
 Civil liabilities under federal law for inadequate or misleading disclosure, generally, **14:29 to 14:138**  
 Commission. SEC, below  
 Common law negligence claims, **14:124**  
 Competency of counsel, **14:16**  
 Compliance, legal, actionable misrepresentations, **14:15.90**  
 Conspiracy, Rule 10b-5 (1934 Act), **14:52.30**  
 Constitutionality of SEC's use of administrative law judges, **14:89.50**  
 Contractual non-reliance clauses, disclosure "defenses," **14:99.50**  
 Contribution, proportionate liability, **14:118, 14:121, 14:122**  
 Control person liability  
     generally, **14:79 to 14:89**  
     accountants, **14:88**  
     actual participation, proof of, **14:84**  
     agency principles, **14:81**  
     attorneys, **14:88**  
     broker-dealers as control persons, **14:85**  
     culpable participation requirement, **14:83**  
     directors and officers as control persons, **14:86**  
     good faith, proof of, **14:84**  
     lenders, **14:87**  
     majority rule, **14:84**  
     minority rule, **14:83**  
     officers as control persons, **14:86**  
     other persons, **14:89**  
     Private Securities Litigation Reform Act of 1995, **14:79**  
     promoters, **14:89**  
     respondeat superior, **14:81**  
     statutory provisions, **14:80, 14:82 to 14:84**  
     two prong test, **14:82 to 14:84**  
     underwriters, **14:89**  
 "Cookie jar reserves" accounting practices, **14:96**  
 Corporate by-laws improperly used to redirect jurisdiction of Federal securities law issues from Federal to State Court, **14:123.70**  
 Corporate scienter  
     generally, **14:52.95**  
     adverse interests exception, **14:52.95.1**  
 Correction duty, **14:44, 14:107**  
 "Creating" the misrepresentation, **14:49**

## DUE DILIGENCE AND CIVIL LIABILITY

### —Cont'd

Criminal liability, **14:52.70**  
 Culpable participation requirement, control person liability, **14:83**  
 Custom tailoring due diligence investigations, **14:16**  
 Dealers, Section 12(a)(2) of 1933 Act, **14:35**  
 Defenses. Disclosure "defenses," below  
 Directors. Officers and directors, below  
 Disclosure "defenses"  
     generally, **14:99 to 14:110**  
     advice of counsel defense as proof of good faith, **14:84.10**  
     applicability of safe harbors, **14:102**  
     commission authority to expand safe harbors, **14:109**  
     contractual non-reliance clauses, **14:99.50**  
     correct duty, **14:107**  
     due diligence, **14:106**  
     exclusions of safe harbors, **14:102**  
     expansion of safe harbors, **14:109**  
     "immaterial" safe harbor, **14:105**  
     judicial "bespeaks caution" doctrine, **14:110**  
     meaningful cautionary statement safe harbor, **14:103**  
     offering memorandum, use of, generally, **14:99 to 14:110**  
     oral statements, **14:105**  
     Rule 10b-5 versus 1933 Act Section 12(a)(2), **14:100**  
     rule 508 of 1933 Act, substantial, good faith compliance defense, **11:4.70**  
     safe harbors, generally, **14:101 to 14:110**  
     state of mind safe harbor, **14:104**  
     statutory (1995) safe harbors, generally, **14:101 to 14:110**  
     taking advantage of safe harbor, **14:108**  
     update duty, **14:107**  
 Disgorgement remedy, application of statute of limitations, **14:90.60**  
 Drafting of documents  
     actions and proceedings against attorneys and accountants, **14:95**  
     proportionate liability, **14:122**  
     Rule 10b-5 (1934 Act), **14:48**  
     "substantial participation" approach rejected in Janus decision (2011), **14:48**  
 Due diligence of securities counsel, **14:141**  
 Editing preparation of statement made by another, **14:48**  
 Endrun around no aiding and abetting, **14:46 to 14:52.70**  
 Enron case, **14:96**  
 Entry of administrative order, **14:90**

## DUE DILIGENCE AND CIVIL LIABILITY

### —Cont'd

- Every offering, performance of due diligence for, **14:16**
- Exclusions of safe harbors, **14:102**
- Expansion of safe harbors, **14:109**
- “Expertised” part, reliance on, **14:5**
- Federal preemption of pendant state claims, **14:121**
- Financial statements
  - generally, **14:17, 14:25, 14:96**
  - materiality, **14:43, 14:43.50**
  - Rule 10b-5 (1934 Act), **14:43, 14:43.50**
  - Section 11 liability under the 1933 Act, **14:43.75**
- FINRA guidance for private placements, **14:28.50**
- Florida developments, **14:138**
- Foreign and domestic parties
  - cryptocurrency jurisdiction, **14:123.80**
- GAAP, **14:77, 14:78**
- GAAS, **14:74 to 14:78**
- Going Public** (this index)
- Good faith, proof of, **14:84**
- Goodwill, statements of opinion or belief, **14:15**
- “Illusory” or “managed” earnings, **14:96**
- “Immaterial” safe harbor, **14:105**
- Inadequate or materially misleading disclosure, **14:51.50**
- Indemnity, proportionate liability, **14:120, 14:121**
- Industry of issuer, investigation of, **14:20**
- In pari delicto defense, **14:142**
- In re Kaye, Scholer, **14:98**
- Injunctive proceedings, **14:91**
- Introduction, **14:1**
- Inventories of company, investigation of, **14:25**
- Investigations of due diligence
  - generally, **14:16**
  - items to investigate in performing due diligence, **14:17**
  - practical aspects of due diligence investigations, below
  - statutory provisions and decided cases on due diligence, **14:10**
- Issuer, investigation of, **14:21 to 14:25**
- Janus case
  - generally, **14:46, 14:48, 14:49**
  - effect on 1933 and 1934 Acts, **14:39.80**
  - prosecutorial position of SEC, **14:39.80**
  - SEC to circumvent Janus using 1934 Act § 20(b), **14:90.50**
- Joint and several versus proportionate liability, **14:112 to 14:116**
- Judgment reduction formula of Private Securities Litigation Reform Act of 1995 (PSLRA), **14:116**

## DUE DILIGENCE AND CIVIL LIABILITY

### —Cont'd

- Judicial “bespeaks caution” doctrine, **14:110**
- “Knowing fraud,” joint and several liability for, **14:113**
- Leasco case, **14:8**
- Lenders as control persons, **14:87**
- Licenses, determination of importance of, **14:21**
- Litigation. Actions and proceedings against attorneys and accountants, above
- Loan loss reserve, statements of opinion or belief, **14:15**
- Loss causation
  - generally, **14:45**
  - fraud-on-the-Market, **14:45.60**
  - generic misstatements, fraud-on-the-Market, **14:45.60**
  - materialization of the risk, **14:45.50**
  - mixed affirmative statements and omissions, reliance, **14:45.70**
  - reliance, mixed affirmative statements and omissions, **14:45.70**
  - time delay between corrective disclosure and share price drop, **14:45.80**
- Loss Causation** (this index)
- Management
  - confidence in, **14:16**
  - items to investigate, **14:17**
  - practical aspects of due diligence investigations, **14:20, 14:23**
- “Materiality abuse” accounting practices, **14:96**
- Materiality** (this index)
- Meaningful cautionary statement safe harbor, **14:103**
- “Merger magic” accounting practices, **14:96**
- Misrepresentations of legal compliance, actionable, **14:15.90**
- Mississippi “reasonably foreseeable” approach, **14:133**
- Misstatement liability under Section 17(a)(2) of 1933 Act, **14:39.50**
- “Misstatements,” who makes, **14:47**
- Model Rules of Professional Conduct, generally, **14:65, 14:66**
- Modified proportionate liability for non knowing defendants, **14:114**
- National Association of Securities Dealers (NASD), generally, **14:1**
- “Near privity” approach, **14:127**
- Negligent securities “fraud” actions by SEC
  - Section 17(a)(2) misstatement liability, **14:39.50**
  - Section 17(a)(3) scheme liability, **14:39.60**
- No aiding and abetting, endrun around, **14:46 to 14:52.70**

## DUE DILIGENCE AND CIVIL LIABILITY

### —Cont'd

Non clients  
     professional standards, influence on liability, **14:66**  
     state law claims for inadequate or misleading disclosure, below  
     “Non knowing” defendants, proportionate liability for, **14:114**  
 Offering memorandum. Disclosure defenses, above  
 Office of Thrift supervision, **14:98**  
 Officers and directors  
     control person liability, **14:86**  
     outside directors liability under section 11 of 1933 Act, **14:119**  
     preparation of disclosure documents, securities laws duties relating to, below  
     Rule 10b-5 (1934 Act), **14:40, 14:43**  
 Opinion or belief statements, **14:15**  
 Opinions of attorneys, **14:67, 14:94**  
 Oral statements, disclosure “defenses,” **14:105**  
 Outside directors liability under section 11 of 1933 Act, **14:119**  
 Patents, determination of importance of, **14:21**  
     “Pattern” of racketeering activity. RICO claims, below  
 Pinter v Dahl, **14:34**  
 Post-Pinter cases, **14:35**  
 Practical aspects of due diligence investigations  
     generally, **14:18 to 14:28**  
     business of company, investigation of, **14:24**  
     financials of company, investigation of, **14:25**  
     general concerns of underwriters, **14:19**  
     industry of issuer, investigation of, **14:20**  
     inventories of company, investigation of, **14:25**  
     issuer, investigation of, **14:21 to 14:25**  
     licenses, determination of importance of, **14:21**  
     management, investigation of, **14:20, 14:23**  
     patents, determination of importance of, **14:21**  
     sources of information, **14:26 to 14:28**  
     specific steps for underwriters, **14:20 to 14:25**  
     technology, determination of importance of, **14:21**  
     trademarks, determination of importance of, **14:21**  
     underwriters, generally, **14:19 to 14:25**  
 Preemption of pendant state claims, **14:121**  
 Preparation of disclosure documents, securities laws duties relating to  
     generally, **14:31 to 14:110**  
     actions and proceedings against attorneys and accountants, above  
     control person liability, above  
     disclosure “defenses,” above

## DUE DILIGENCE AND CIVIL LIABILITY

### —Cont'd

Preparation of disclosure documents, securities laws duties relating to—Cont'd  
     professional standards, influence on liability, below  
     Rule 10b-5 (1934 Act), below  
     Section 11 of 1933 Act, disclosure duties under, **14:32**  
     Section 12(a)(2) of 1933 Act, below  
     Section 17(a) of 1933 Act, **14:39**  
     “Primary” violations, Rule 10b-5 (1934 Act), **14:52**  
 Private funds, Fifth Circuit ruling, **14:90.35**  
 Private placements, FINRA guidance, **14:28.50**  
 Private Securities Litigation Reform Act of 1995 (PSLRA)  
     control person liability, **14:79**  
     proportionate liability, above  
     Rule 10b-5 (1934 Act), **14:41**  
 Privity, state law claims for inadequate or misleading disclosure, **14:138, 14:139**  
 Proceedings. Actions and proceedings against attorneys and accountants, above  
 Professional standards, influence on liability  
     generally, **14:53 to 14:78**  
     accountants  
         generally, **14:74 to 14:78**  
         Sarbanes-Oxley Act (this index)  
     attorneys  
         generally, **14:65 to 14:68**  
         Sarbanes-Oxley Act (this index)  
     auditing standards (GAAS), **14:74**  
     auditors’ requests for information, lawyers’ responses to, **14:68**  
     GAAP, **14:77, 14:78**  
     introduction, **14:53**  
     Model Rules of Professional Conduct, generally, **14:66**  
     non clients, attorney’s duty of disclosure to, **14:66**  
     opinion letters of attorneys, **14:67**  
     “present fairly,” **14:75**  
     Rule 10b-5 (1934 Act), **14:40 to 14:45**  
     Sarbanes-Oxley Act (this index)  
     Section 10A of Exchange Act of 1934, **14:76**  
 Promoters  
     control person liability, **14:89**  
     preparation of disclosure documents, securities laws duties relating to, above  
     Rule 10b-5 (1934 Act), **14:40, 14:43**  
 Proportionate liability  
     generally, **14:111 to 14:122**  
     bar orders, **14:115**  
     case law prior to 1995 statute, **14:117**  
     contribution, **14:118, 14:121, 14:122**

## DUE DILIGENCE AND CIVIL LIABILITY

### —Cont'd

Proportionate liability—Cont'd  
 drafting express contract provisions for contribution, **14:122**  
 federal preemption of pendant state claims, **14:121**  
 indemnity, **14:120, 14:121**  
 joint and several versus proportionate liability, **14:112 to 14:116**  
 judgment reduction formula of Private Securities Litigation Reform Act of 1995 (PSLRA), **14:116**  
 “knowing fraud,” joint and several liability for, **14:113**  
 modified proportionate liability for non knowing defendants, **14:114**  
 “non knowing” defendants, proportionate liability for, **14:114**  
 outside directors liability under section 11 of 1933 Act, **14:119**  
 overview, **14:111**  
 preemption of pendant state claims, **14:121**  
 Private Securities Litigation Reform Act of 1995 (PSLRA), generally, **14:111 et seq**  
 Proximate causation. Causation requirement, above  
 Public offerings, limitation of Section 12(a)(2) of 1933 Act to, **14:37**  
 Puffery, immateriality as matter of law, **14:15.50**  
 Racketeer Influenced and Corrupt Practices Organizations. RICO claims, below  
 Reasonableness standard, **14:4**  
 “Reasonably foreseeable” approach, **14:130 to 14:133**  
 Records and record-keeping, **14:16**  
 “Red flags,” **14:51.50**  
 Report of Investigation, **14:90**  
 Respondeat superior, control person liability, **14:81**  
 “Revenue recognition manipulation” accounting practices, **14:96**  
 Reviewing preparation of statement made by another, **14:48**  
 Rosenbloom test in New Jersey, **14:131**  
 Rule 10b-5 (1934 Act)  
   generally, **14:40 to 14:53**  
   accountants, **14:40, 14:43.50 et seq., 14:51, 14:51.50**  
   advising preparation of statement made by another, **14:48**  
   aiding and abetting, endrun around, generally, **14:46 to 14:52.70**  
   assisting in preparation of statement made by another, **14:48**  
   attorneys, **14:40, 14:42**  
   bright line approach, **14:50**

## DUE DILIGENCE AND CIVIL LIABILITY

### —Cont'd

Rule 10b-5 (1934 Act)—Cont'd  
 causation requirement, **14:45**  
 certification and consequent section 11 violation, **14:44.50**  
 conspiracy, **14:52.30**  
 corporate officers, **14:40**  
 correction duty of accountants, **14:44**  
 “creating” the misrepresentation, **14:49**  
 criminal liability, **14:52.70**  
 disclosure “defenses,” **14:100**  
 drafting preparation of statement by another, **14:48**  
 editing preparation of statement made by another, **14:48**  
 endrun around no aiding and abetting, **14:46 to 14:52.70**  
 financial statement materiality, **14:43**  
 inadequate or materially misleading disclosure, **14:51.50**  
 independent duty to disclose, **14:40.30**  
 Janus decision, **14:39.80, 14:46**  
 loss causation, **14:45**  
 materiality, **14:40.10**  
 “misstatements,” who makes, **14:47**  
 no aiding and abetting, endrun around, **14:46 to 14:52.70**  
 officers and directors, **14:40**  
 opinion in financial statement as certification and consequent section 11 violation, **14:44.50**  
 “primary” violations, **14:52**  
 Private Securities Litigation Reform Act of 1995, **14:41**  
 professional duty, generally, **14:40 to 14:45**  
 promoters, **14:40**  
 prosecutorial position of SEC, **14:39.80, 14:40.10**  
 “red flags,” **14:51.50**  
 representations, **11:123**  
 reviewing preparation of statement made by another, **14:48**  
 SEC actions, generally, **14:52.70**  
 section 10A of Securities Exchange Act of 1934, **14:41**  
 special pleading requirements, **14:52.90**  
 “substantial participation” approach rejected by Supreme Court, **14:48**  
 Supreme Court decision in Janus case (2011), **14:46, 14:48, 14:49**  
 transaction causation, **14:45**  
 unaudited financial information, **14:51**  
 update duty of accountants, **14:44**  
 who “makes” a misstatement, **14:47**  
 Rule 102(e) proceedings, **14:92**

## DUE DILIGENCE AND CIVIL LIABILITY

### —Cont'd

Rule 176, **14:12**  
 Rule 508 of 1933 Act, **11:4.70**  
 Safe harbors. Disclosure “defenses,” above  
 Sale of unregistered securities and securities fraud actions by SEC, **14:39.40**  
 Sanders litigation, **14:14**  
 Sarbanes-Oxley, whistle-blower protection for employees in employment termination cases, **14:53.50**  
**Sarbanes-Oxley Act** (this index)  
 Scheme liability under Section 17(a)(3) of 1933 Act, **14:39.60**  
 Scope of state law duties, **14:141**  
**SEC**  
     actions and proceedings against attorneys and accountants, above  
     authority to expand safe harbors, **14:109**  
     disgorgement remedy, application of statute of limitations, **14:90.60**  
     disgorgement remedy, Supreme Court upholds propriety of with restrictions, **14:90.65**  
     enforcement arsenal against professionals and others, **14:90**  
     Janus, **14:39.80, 14:90.50**  
     materiality, **14:40.10**  
     misstatement liability under Section 17(a)(2) of 1933 Act, **14:39.50**  
     professional conduct rules. **Sarbanes-Oxley Act** (this index)  
     prosecutorial position, **14:39.80, 14:40.10**  
     Rule 10b-5 (1934 Act), above  
     scheme liability under Section 17(a)(3) of 1933 Act, **14:39.60**  
     SEC to circumvent Janus using 1934 Act § 20(b), **14:90.50**  
     standard of care under Section 17(a) of 1933 Act, **14:39.70**  
     statute of limitations, disgorgement remedy, **14:90.60**  
 SEC enforcement authority, Fifth Circuit ruling, **14:90.35**  
 Second restatement approach, **14:128**  
 Section 10A of Exchange Act of 1934  
     professional standards, influence on liability, **14:76**  
     Rule 10b-5 (1934 Act), **14:41**  
 Section 11 liability  
     preparation of disclosure documents, securities laws duties relating to, **14:32**  
     statutory provisions and decided cases on due diligence, below  
 Section 12(a)(2) of 1933 Act  
     generally, **14:33 to 14:38**  
     accountants, **14:36**  
     agents, **14:35**

## DUE DILIGENCE AND CIVIL LIABILITY

### —Cont'd

Section 12(a)(2) of 1933 Act—Cont'd  
     aiding and abetting under section 12, **14:38**  
     attorneys, **14:36**  
     brokers, **14:35**  
     dealers, **14:35**  
     Pinter v Dahl, **14:34**  
     post-Pinter cases, **14:35**  
     public offerings, limitation of section to, **14:37**  
     statutory provisions and decided cases on due diligence, **14:13, 14:14**  
     underwriters, **14:35**  
 Section 17(a) of 1933 Act, **14:39, 14:39.80**  
 Section 17(a)(2) of 1933 Act, **14:39.50**  
 Section 17(a)(3) of 1933 Act, **14:39.60**  
 Securities Act of 1933, generally, **14:2 et seq**  
 Securities counsel, due diligence of, **14:141**  
 Securities Exchange Act of 1934, generally, **14:30**  
 Securities Exchange Commission. SEC, above  
 Securities Litigation Uniform Standards Act (SLUSA), reach of, **14:123.50**  
 Small Business Administration, qualified applicants for Early Stage licensing process, **4:17**  
 Software Toolworks case, **14:6, 14:11**  
 Sources of information, practical aspects of due diligence investigations, **14:26 to 14:28**  
 Special pleading requirements for Rule 10b-5 claims, **14:52.90**  
 Specific steps for underwriters, **14:20 to 14:25**  
 Standard of care under Section 17(a) of 1933 Act, **14:39.70**  
 State law claims for inadequate or misleading disclosure  
     generally, **14:123 et seq.**  
     accountants  
         clients, common law negligence claims by, **14:124**  
         non clients, actions by. Accountants, common law negligence claims by non clients against, below in this group  
     accountants, common law negligence claims by non clients against  
         generally, **14:125 et seq.**  
         balancing test, **14:135**  
         Blue Bell, scope of comment in, **14:129**  
         limiting liability by any practical steps, **14:134**  
         Mississippi “reasonably foreseeable” approach, **14:133**  
         “near privity” approach, **14:127**  
         “reasonably foreseeable” approach, **14:130 to 14:133**  
         Rosenbloom test in New Jersey, **14:131**



## DUE DILIGENCE AND CIVIL LIABILITY

### —Cont'd

- State law claims for inadequate or misleading disclosure—Cont'd
  - accountants, common law negligence claims by non clients against—Cont'd
    - second restatement approach, **14:128**
    - subsequent legislation, **14:136**
    - Timm test in Wisconsin, **14:132**
    - Ultramares approach, **14:126**
  - attorneys
    - attorney liability legislation, **14:140**
    - clients, common law negligence claims by, **14:124**
    - non clients, common law negligence claims by, **14:137 to 14:140**
  - Blue Bell, scope of comment in, **14:129**
  - common law negligence claims, **14:125 et seq.**
  - Florida developments, **14:138**
  - in pari delicto defense, **14:142**
  - Mississippi “reasonably foreseeable” approach, **14:133**
  - “near privity” approach, **14:127**
  - non clients
    - accountants, common law negligence claims by non clients against, above in this group
    - attorneys, common law negligence claims by non clients against, **14:137 to 14:140**
  - privity, **14:138, 14:139**
  - “reasonably foreseeable” approach, **14:130 to 14:133**
  - Rosenbloom test in New Jersey, **14:131**
  - scope of state law duties, **14:141**
  - second restatement approach, **14:128**
  - state securities statutes, generally, **14:123**
  - Texas developments, **14:138**
  - Timm test in Wisconsin, **14:132**
  - Ultramares approach, **14:126, 14:137**
- Statements of opinion or belief, **14:15**
- State of mind safe harbor, **14:104**
- Statute of limitations, SEC disgorgement remedy, **14:90.60**
- Statutory provisions
  - control person liability, **14:80, 14:82 to 14:84**
  - due diligence. Statutory provisions and decided cases on due diligence, below
  - safe harbors, generally. Disclosure “defenses,” above
- Statutory provisions and decided cases on due diligence
  - generally, **14:2 to 14:14**
  - BarChris, **14:7**
  - Chris-Craft, **14:9**
  - due diligence as matter of law, **14:11**

## DUE DILIGENCE AND CIVIL LIABILITY

### —Cont'd

- Statutory provisions and decided cases on due diligence—Cont'd
  - “expertised” part, reliance on, **14:5**
  - introduction, **14:2**
  - investigation by underwriter, **14:10**
  - Leasco, **14:8**
  - reasonableness standard, **14:4**
  - Rule 10b-5 (1934 Act), **14:10**
  - Rule 176, **14:12**
  - Sanders litigation, **14:14**
  - Section 11 liability, generally, **14:3 to 14:12**
  - Section 12(a)(2) liability, **14:13, 14:14**
  - Section 17(a) liability, **14:10**
  - Software Toolworks and Worlds of Wonder, **14:6, 14:11**
  - underwriter’s duty, generally, **14:10**
  - waivable defense by underwriter, **14:10**
  - WorldCom case, **14:9.50**
  - Worlds of Wonder, **14:6, 14:11**
- “Substantial participation” approach rejected by Supreme Court, **14:48**
- Supreme Court decision in Janus case (2011), **14:46, 14:48, 14:49**
- Taking advantage of safe harbor, **14:108**
- Targeted solicitation, importance or not of, **14:38.50**
- Technology, determination of importance of, **14:21**
- Texas developments, **14:138**
- Timm test in Wisconsin, **14:132**
- Trademarks, determination of importance of, **14:21**
- Transaction causation, **14:45**
- Two prong test, control person liability, **14:82 to 14:84**
- Ultramares approach, **14:126, 14:137**
- Unaudited financial information, **14:51**
- Underwriters
  - control person liability, **14:89**
  - practical aspects of due diligence investigations, above
  - Rule 10b-5 (1934 Act), **14:10**
  - Section 12(a)(2) of 1933 Act, **14:35**
  - Section 17(a) of 1933 Act, **14:10**
  - statutory provisions and decided cases on due diligence, **14:10**
- Update duty, **14:44, 14:107**
- Waivable defense by underwriter, **14:10**
- Whistle-blower protection for employees in employment termination cases, Sarbanes-Oxley, **14:53.50**
- WorldCom case, **14:9.50**
- Worlds of Wonder case, **14:6, 14:11**

## **DULY AUTHORIZED STOCK**

Preferred stock, **6:128, 6:138**

## **DURATION**

Limited liability companies, **3:42**

## **EARLY STAGE SBIC INITIATIVE (2012)**

Small Business Administration, financing from, **4:17**

## **EARLY STAGE SBIC LIMITED PARTNERSHIP AGREEMENT**

Small Business Administration, financing from, **4:18**

## **EARNINGS**

S corporations, avoidance of accumulated earnings tax, **2:10**

## **EDIT OR EDITING**

Preparation of statement made by another, editing of, **14:48**

## **EFFECTIVE DATES**

**Limited Liability Companies** (this index)

## **ELECTION OR CHOICE**

**Choice or Election** (this index)

## **ELECTIONS AND VOTING**

Certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:107**  
 Choosing the business financing format, **1:18**  
 Limited liability companies, **3:16 to 3:18**  
 NCVA model venture financings documents (2007), voting agreement, **15A:6**  
 State blue sky regulation, **15:23**

## **ELECTRONIC ROAD SHOWS**

SEC's 2005 revisions to securities offering rules, **11:142**

## **ELIGIBILITY**

**Institutional Private Placements** (this index)

## **EMERGING GROWTH COMPANIES (EGCs)**

Advisory votes of shareholders about executive compensation, **12:34**  
 Communications restrictions, **11:137.50**  
 Confidential submission process for emerging growth companies, JOBS Act frequently asked questions, **App 12.3**  
 Corporate governance, JOBS Act (2012) revisions for emerging growth companies, **12:34**  
 Cross-references within treatise, **11:133.50**  
 Crowdfunding, offerings of \$5,000,000 or less, **11:75.70**  
 Disclosure  
     exemptions available, **11:146.50**  
     extended phase-in, **11:146.50**  
     FAST Act, **11:153.70**  
     JOBS Act exemptions, **12:34**

## **EMERGING GROWTH COMPANIES (EGCs)**

### **—Cont'd**

Disclosure—Cont'd  
     MD&A special disclosures, **11:146.50**  
     opt-out, **11:146.50**  
     risk factors, **11:146.50**  
     Securities Act (1933) issuer registration, **11:133.50**  
     status as EGC, **11:146.50**  
 Exemptions under JOBS Act, **11:146.50, 12:34**  
 Extended phase-in disclosure, **11:146.50**  
 FAST Act  
     disclosure and registration C&DIs, **11:153.70**  
     registration, **11:153.60**  
 Golden parachutes disclosure, exemption under JOBS Act, **12:34**  
 Internal pay equity disclosure exemption under JOBS Act, **12:34**  
 MD&A disclosures, **11:146.50**  
 Opt-out disclosures, **11:146.50**  
 Pay versus performance disclosure exemption under JOBS Act, **12:34**  
 Registration  
     FAST Act, **11:153.60**  
     Securities Act, **11:133.50**  
 Risk factors disclosures, **11:146.50**  
 Status change, notice provision in underwriting agreement, **19:3.50**  
 Underwriting agreement, **19:3.50**

## **EMPLOYEE BENEFIT PLANS**

**Federal Securities Laws** (this index)

## **EMPLOYEES**

Series A convertible preferred stock purchase agreement (annotated), **6:35**

## **ENGLISH LANGUAGE**

**Disclosure** (this index)

## **ENHANCED LOAN EXTENSION**

Small Business Administration, financing from, **4:1.50**

## **ENRON CASE**

Due diligence and civil liability, **14:96**

## **ENTIRE AGREEMENT**

Series A convertible preferred stock purchase agreement (annotated), **6:97**

## **ENTRY OF ADMINISTRATIVE ORDER**

Due diligence and civil liability, **14:90**

## **EQUITY**

S corporations, one class of stock requirement for eligibility, **2:23**

## **EQUUS TOTAL RETURN (EQS)**

Business development company (BDC), **5:3**

**ERISA**

Preferred stock, **6:36**

**ESTATES**

Holding period for restricted securities, **11:107, 11:109**

S corporations, eligible shareholders, **2:17**

**ESTIMATED MATTERS**

Tax payments, S corporations, **2:67**

**ESTOPPEL**

**Waiver and Estoppel** (this index)

**EUROPEAN SOURCES OF FUNDS**

Small Business Administration, financing from, **4:15**

**EVALUATION**

Term loan agreements, **7:12 to 7:15**

**EVASION SCHEMES**

Federal securities laws, **11:92**

**EXCEPTIONS**

Eligibility for SBA loans, exceptions to generally, **4:1**

**EXCESS PASSIVE INVESTMENT INCOME**

S corporations, **2:32**

**EXCHANGE ACT OF 1934**

**Due Diligence and Civil Liability** (this index)

**Federal Securities Laws** (this index)

**Going Public** (this index)

**EXCLUSIONS**

Due diligence and civil liability, **14:102**

**EXECUTIVE COMPENSATION**

Disclosure, **13:6, 13:42, 13:43**

Dodd-Frank Act (2010) corporate governance provisions, **12:34**

Item 402 of Regulation S-K, Executive Compensation Staff Q&A (Feb 12, 2007), **App 5.8**

JOBS Act (2012) revisions for emerging growth companies, **12:34**

**EXEMPTIONS**

**Federal Securities Laws** (this index)

**Going Public** (this index)

Limited liability companies, **3:67**

**State Blue Sky Regulation** (this index)

**EXISTING ELIGIBLE ENTITIES**

Limited liability companies, **3:15**

**EXPANSION OF SAFE HARBORS**

Due diligence and civil liability, **14:109**

**EXPENSES**

**Costs and Expenses** (this index)

**EXPENSES—Cont'd**

Offerings, state blue sky regulation, **15:19**

S corporations, investment interest limitation, **2:40 to 2:46**

**EXPRESS AGGREGATION UNDER RULE 144(E)(3)**

Federal securities laws, **11:119**

**FAILURE TO QUALIFY AS SMALL BUSINESS CORPORATION**

S corporations, termination of election, **2:31**

**FAMILY**

Going public, **12:8, 12:32**

**FAQs**

FinCEN clarifying dissolved entities subject to CTA, **9:7**

**FASB STATEMENT NO. 154**

Going public, accounting changes and error corrections, **12:22**

**FAST ACT**

**Emerging Growth Companies (EGCs)** (this index)

**FEDERAL PREEMPTION OF STATE LAW**

Due diligence and civil liability, **14:121**

**FEDERAL REGISTER NOTICE**

Small Business Administration, call periods for Early Stage licensing process, **4:17**

**FEDERAL SECURITIES LAWS**

2018 and 2008 amendments, summary, **11:152**

Generally, **11:1 to 11:158**

Accounts receivable, intrastate offering exemption, **11:46**

Accredited investors

private offering exemption, **11:6**

resales to, exemptions from registration requirements, **11:83.60**

Acquisition transaction, focus on, **11:94**

Advertising, prohibition of, **11:7, 11:7.50**

Affiliates, resales of securities by, **11:85, 11:111**

Aggregate offering price, private offering exemption, **11:9, 11:9.30**

Aggregation, limitation on amount of securities sold, **11:117 to 11:121**

Aiding and abetting in private actions, Rule 10b-5 (1934 Act), **14:46**

Amendments

2018 amendments, smaller business issuers rules and forms, February 2008 as affected by, **11:153**

resales of securities by investors, exemptions under Section 4(a)(1) and Rule 144, **11:83.50**

Rule 147, **11:41.50**

## FEDERAL SECURITIES LAWS—Cont'd

- Amendments—Cont'd
  - smaller business issuers rules and forms, February 2008 as affected by 2018 amendments, **11:153**
- Amount of securities sold, limitation on
  - C&DIs, **11:121.30, 11:121.70, 11:122.50, 11:126.50**
  - express aggravation, **11:121.50**
  - notice of proposed sale, **11:126.50**
  - Resales of securities by investors, exemptions under section 4(a)(1) and Rule 144, below
  - Rule 144(d)(3), **11:121.50**
  - shell companies, **11:122.50**
  - tacking provisions in Rule 144(d)(3), **11:121.50**
- “Assets requirement” of (c)(2)(ii), **11:46 to 11:50**
- Attorney opinion letter regarding restricted shares, improper issuance of, **11:132.50**
- Automatic shelf-registration for well-known seasoned issuers, SEC’s 2005 securities offering revisions, **11:150**
- “Bad boy” exclusions, Regulation A exemption for offering of 75 million dollars or less, **11:74**
- “Beneficial ownership” under former Rule 144(d)(1), **11:112 to 11:115**
- Blue sky laws, internet offerings, **11:8**
- C&DIs** (this index)
- Class action settlements, **11:100**
- Codification of existing Rule 152 interpretations, **11:40**
- Commission, integration as viewed by, **11:32**
- Commodity futures trading, intrastate offering exemption, **11:49**
- Communications revisions of 2005, **11:136 et seq.**
- Compensatory benefit plans and compensatory contracts, exemptions for transactions under, **11:76**
- Consideration of same type, integration of “separate” offerings, **11:21**
- Conversions, special tacking rules, **11:106**
- Corporate Transparency Act
  - BOI reporting requirements subject to various litigation, a nationwide injunction and stay, **9:1.50**
  - overview, **9:1**
  - penalties for violations, **9:3**
  - proposed rules, **9:4**
  - summary, **9:2**
- Corporations, holding period for restricted securities, **11:115**
- Counting purchasers under Rule 501(e), **11:10, 11:10.30**

## FEDERAL SECURITIES LAWS—Cont'd

- Court decisions
  - integration of “separate” offerings, **11:33**
  - Section 4(2) decisional law apart from Regulation D, **11:14**
- Crowdfunding** (this index)
- Currently effective registration statement, resales under, **11:125**
- Current public information, **11:101.50**
- Current public information, resales of securities by investors, **11:86, 11:101, 11:101.50**
- Defining the problem by task force on integration, **11:25**
- Definitions of “restricted securities.” Resales of securities by investors, exemptions under section 4(a)(1) and Rule 144, below
- Delivery of prospectus, reforms, **11:145**
- “Directed selling efforts,” **11:81**
- Disclosure requirements
  - emerging growth companies, **11:133.50, 11:146.50, 11:153.50**
  - exemption from, **11:132**
  - offering exemption, Regulation A Tier 2 requirements, termination or suspension, **11:75.60**
  - Regulation A exemption for offering of 50 million dollars or less, **11:75.60**
  - Regulation A exemption for offering of 75 million dollars or less, **11:65 to 11:71**
  - resales of securities by investors, **11:132**
  - Rule 10b-5 (1934 Act), aiding and abetting in private actions, **14:46**
  - SEC’s 2005 securities offering revision, risk factor disclosure, **11:146**
  - smaller business issuers, registration and reporting for, **11:154, 11:155**
- Disqualification provisions of Rule 262, **11:74**
- Divorces, holding period for restricted securities, **11:113**
- Doing business within the state requirement.
  - Intrastate offering exemption, below
- Electronic road shows, SEC’s 2005 securities offering revisions, **11:142**
- Eligibility for regulation A exemption for offering of 75 million dollars or less, **11:62**
- Emerging growth companies
  - communications restrictions, **11:137.50**
  - cross-references, **11:133.50**
  - registration under Securities Act, **11:133.50, 11:153.50**
  - risk factor disclosures, **11:146.50**
- Employee benefit plans. Resales of securities by investors, exemptions under section 4(a)(1) and Rule 144, below
- Estates, holding period for restricted securities, **11:107, 11:109**

**FEDERAL SECURITIES LAWS—Cont'd**

- Evasion schemes, resales of securities by investors, **11:92**
- Examples in the adopting release, intrastate offering exemption, **11:44**
- Exchange Act of 1934
  - Regulation A offering exemption, concurrent registration, **11:75.50**
  - small business issuers, registration and reporting for, below
- Exemptions from registration requirements generally, **11:2 to 11:132**
  - “accredited investor”
    - review of accredited investor definition, SEC, **11:4.30**
    - selected SEC guidance, **11:4.20**
  - “accredited investor,” amendments to the definition of, **11:4.10**
  - accredited investors, resales to, **11:83.60**
  - amendments (2020) to framework for, **11:1.10**
  - “bad boy” exclusions, Regulation A exemption for offering of 75 million dollars or less, **11:74**
  - compensatory benefit plans and compensation contracts, exemption for transactions under, **11:76**
  - Covid-19: temporary amendments to regulation crowdfunding, **11:75.71**
- Crowdfunding** (this index)
  - felons and other bad actors disqualification, Rule 506(d) and (e), **11:4.40, 11:4.52**
  - framework for, amendments (2020) to, **11:1.10**
  - integration of “separate” offerings, below
  - intrastate offering exemption, below
  - offshore transactions, exemption under Regulation S for, below
  - private offering exemption, below
  - Regulation A offering exemption, 1934 Act concurrent registration, **11:75.50**
  - Regulation A exemption for offering of 50 million dollars or less, below
  - Regulation S. Offshore transactions, exemption under Regulation S for, below
  - Resales of securities by investors, exemptions under Section 4(a)(1) and Rule 144, below
    - resales to accredited investors, **11:83.60**
    - review of accredited investor definition, SEC, **11:4.30**
  - Rule 147, amendments, **11:41.50**
  - Rule 506 offerings, **11:4.40, 11:4.50**
  - small offering exemption. Regulation A exemption for offering of 50 million dollars or less, below
  - transactions and not securities as exempt, generally, **11:2**

**FEDERAL SECURITIES LAWS—Cont'd**

- Express aggregation
  - amount of securities sold, limitation on, **11:121.50**
  - limitation on amount of securities sold, **11:121.50**
  - Rule 144(e)(3), **11:119**
- Felons and other bad actors, Rule 506 offerings, **11:4.40, 11:4.52**
- Final offering circular, Regulation A exemption for offering of 75 million dollars or less, **11:68**
- Financial statement requirements
  - 2018 and 2008 amendments, summary, **11:152**
  - Form S-1 and Regulation S-K, generally, **11:152**
  - Regulation A exemption for offering of 75 million dollars or less, **11:71**
- Finders, stock issued to, **11:97**
- Foreign state or country. Intrastate offering exemption, below
- Form D filings
  - private offering exemption, **11:12.20**
  - proposed amendment of Form, **11:4.60**
- Form S-1, generally, **11:152**
- Free writing prospectuses, permissible use of, **11:141**
- Fully paid securities, holding period for restricted securities, **11:103**
- Fungibility, holding period for restricted securities, **11:105**
- “Future tense” letters, **11:126**
- Gifts. Resales of securities by investors, exemptions under section 4(a)(1) and Rule 144, below
- Good faith compliance with Regulation A exemption for offering of 75 million dollars or less, **11:72**
- “Gross revenues requirement” of (c)(2)(i), **11:51 to 11:55**
- Holding period for restricted securities. Resales of securities by investors, exemptions under section 4(1) and Rule 144, below
- Hyperlinked information, issuer responsibility for, **11:8**
- “In concert,” sale by persons acting, **11:120**
- Informational requirements
  - C&DIs, **11:10.70**
  - offering circular, **11:69**
  - private offering exemptions, **11:10.50**
  - resales by institutional buyers, **11:131**
- Information requirements, resales by institutional buyers, **11:131**
- Institutional buyers, resales by
  - generally, **11:127 to 11:132**
  - disclosure requirements, exemption from, **11:132**



**FEDERAL SECURITIES LAWS—Cont'd**

Institutional buyers, resales by—Cont'd  
 exclusion of certain securities, **11:130**  
 information requirements, **11:131**  
 miscellaneous, **11:132**  
 proof of eligibility, **11:129**  
 qualified institutional buyers, generally, **11:128**  
 reliance by seller on Rule 144A, **11:132**  
 Resales of securities by investors, exemptions  
 under section 4(a)(1) and Rule 144, below  
 Insurance business, intrastate offering exemption,  
**11:52**  
 Integration of “separate” offerings  
 generally, **11:16 to 11:23**  
**C&DIs** (this index)  
 codification of existing Rule 152 interpreta-  
 tions, **11:40**  
 commission, integration as viewed by, **11:32**  
 consideration, same type of, **11:21**  
 court decisions, **11:33**  
 defining the problem by task force on integra-  
 tion, **11:25**  
 intrastate offering exemption, **11:29, 11:59**  
 issuer integration, staff interpretations, **11:37**  
 modification of existing Rule 152 interpreta-  
 tions, **11:40**  
 offering integration, staff interpretations, **11:35**  
 private placements, **11:12, 11:30**  
 proposal for new rules by task force on integra-  
 tion, **11:38**  
 purpose, same type of, **11:22**  
 Regulation A exemption for offering of 75 mil-  
 lion dollars or less, **11:64**  
 Regulation D, generally, **11:16**  
 regulatory and judicial authorities, integration  
 as viewed by. Task force on integration,  
 report of, below in this group  
 Rule 147, **11:59**  
 Rule 152, **11:20, 11:39, 11:40**  
 Rule 155, **11:39, 11:40, 11:40.50**  
 safe harbors  
     Rule 502(a), **11:12, 11:12.10**  
     Rules 152 and 155, **11:20, 11:39, 11:40**  
 same class of security, **11:18**  
 same time, offerings made at, **11:19, 11:20**  
 Section 3(a)(9), **11:27**  
 Section 3(a)(10), **11:27, 11:28**  
 single plan of financing, **11:17**  
 staff interpretations of task force on integra-  
 tion, **11:34 to 11:37**  
 task force on integration, report of  
     generally, **11:24 to 11:40**  
     commission, integration as viewed by, **11:32**  
     court decisions, **11:33**  
     defining the problem, **11:25**  
     intrastate offering exemption, **11:29**

**FEDERAL SECURITIES LAWS—Cont'd**

Integration of “separate” offerings—Cont'd  
 task force on integration, report of—Cont'd  
     issuer integration, staff interpretations, **11:37**  
     offering integration, staff interpretations,  
     **11:35**  
     private placements, **11:30**  
     proposal for new rules, **11:38**  
     regulatory and judicial authorities, integra-  
     tion as viewed by, generally, **11:31 to**  
     **11:37**  
     Section 3(a)(9), **11:27**  
     Section 3(a)(10), **11:27, 11:28**  
     staff interpretations, **11:34 to 11:37**  
     transaction exemptions, **11:26 to 11:30**  
     venture integration, staff interpretations,  
     **11:36**  
 time of offering, **11:19, 11:20**  
 transaction exemptions, **11:26 to 11:30**  
 unincorporated businesses, **11:23**  
 venture integration, staff interpretations, **11:36**  
 Internet offerings, **11:8, 11:81.11**  
 Interpretations of Rule 144, **11:91**  
 Intrastate offering exemption  
     generally, **11:42 to 11:59**  
     accounts receivable, **11:46**  
     “assets requirement” of (c)(2)(ii), **11:46 to**  
     **11:50**  
     commodity futures trading, **11:49**  
     doing business within the state requirement  
     generally, **11:43 to 11:57**  
     adopting release, **11:44**  
     assets requirement, **11:45**  
     “assets requirement” of (c)(2)(ii), **11:46 to**  
     **11:50**  
     “gross revenues requirement” of (c)(2)(i),  
     **11:51 to 11:55**  
     integration problems under rule 147, **11:59**  
     “net proceeds requirement” of (c)(2)(iii),  
     **11:56**  
     “principal office requirement” of (c)(2)(iv),  
     **11:57**  
     six-month resale limitation, **11:58**  
 examples in the adopting release, **11:44**  
 “gross revenues requirement” of (c)(2)(i),  
**11:51 to 11:55**  
 insurance business, **11:52**  
 integration of “separate” offerings, **11:29**  
 integration problems under rule 147, **11:59**  
 joint ventures, **11:54**  
 lease receivables, **11:50**  
 loans, **11:47**  
 margin account deposits, **11:49**  
 motion picture production and distribution,  
**11:53**

**FEDERAL SECURITIES LAWS—Cont'd**

Intrastate offering exemption—Cont'd  
    “net proceeds requirement” of (c)(2)(iii), **11:56**  
    out-of-state cash and securities, **11:48**  
    out-of-state investment selection, **11:55**  
    “principal office requirement” of (c)(2)(iv), **11:57**  
    residence requirement, **11:42**  
    Rule 147, integration problems under, **11:59**  
    Rule 147A, general provisions, **11:41.60**  
    six-month resale limitation, **11:58**  
Investments, Regulation A limitations and restrictions, **11:63.10**  
Issuer and resale safe harbors, **11:79 to 11:82**  
Issuer integration, staff interpretations, **11:37**  
“Issuer” under Regulation D, **11:11**  
**JOB Act (Jumpstart Our Business Startups Act)** (this index)  
Joint ventures, intrastate offering exemption, **11:54**  
Lease receivables, intrastate offering exemption, **11:50**  
Legality and tax opinions filed in registered offerings  
    SEC’s 2005 securities offering revisions, **11:151.50**  
    SEC Staff Legal Bulletin No. 19 (CF) (Oct. 14, 2011), **App 5.10**  
Limitations and restrictions  
    investments, **11:63.10**  
    offering price, **11:63**  
    Resales of securities by investors, exemptions under section 4(a)(1) and Rule 144, below  
Limited liability companies, **3:2**  
Loans, intrastate offering exemption, **11:47**  
Margin account deposits, intrastate offering exemption, **11:49**  
Marital separations and divorces, holding period for restricted securities, **11:113**  
Miscellaneous resales by institutional buyers, **11:132**  
Modification  
    amendments, above  
    existing Rule 152 interpretations, **11:40**  
Motion picture production and distribution, intrastate offering exemption, **11:53**  
NASDAQ volume, use to determine amount of securities sold, **11:89**  
“Net proceeds requirement” of (c)(2)(iii), **11:56**  
No-action letters. Private offering exemption, below  
    “No directed selling efforts,” **11:81.01**  
Nonintegration of foreign and U.S. offerings, **11:81.10**  
Nonreporting issuers, SEC’s 2005 securities offering rules revisions, **11:151**

**FEDERAL SECURITIES LAWS—Cont'd**

Notice of sale requirement under Rule 144, **11:90**  
Offering circular, **11:67 to 11:69**  
Offering integration, staff interpretations, **11:35**  
Offering price, limitations on, **11:63**  
Offering reform. 2004 proposals for securities offering reform, SEC’s, below  
Offshore transactions, exemption under Regulation S for  
    generally, **11:77 to 11:82**  
    basic structure of Regulation S, **11:78**  
    “directed selling efforts,” **11:81**  
    issuer and resale safe harbors, **11:79 to 11:82**  
    issuer safe harbors, **11:81.02 to 11:81.08, 11:82**  
    “no directed selling efforts,” **11:81.01**  
    resale safe harbors, **11:79 to 11:81**  
    safe harbors, **11:79 to 11:82**  
Out-of-state. Intrastate offering exemption, above  
Partnerships, holding period for restricted securities, **11:114**  
Pledges. Resales of securities by investors, exemptions under section 4(a)(1) and Rule 144, below  
Preconditions to reliance on Rule 144, **11:86 to 11:91**  
Preemption of Rule 506 offerings, blue sky laws and internet offerings, **11:8**  
Pre-existing relationships, existence and substance of, C&DIs, **11:7.55**  
Preliminary offering circular, **11:67**  
“Principal office requirement” of (c)(2)(iv), **11:57**  
Private offering exemption  
    generally, **11:3 to 11:23**  
    accredited investors, **11:6**  
    advertising, prohibition of, **11:7, 11:7.50**  
    aggregate offering price, **11:9, 11:9.30**  
    counting purchasers under Rule 501(e), **11:10, 11:10.30**  
    decisional law apart from Regulation D, **11:14**  
    FAQ, **11:6.80**  
    informational requirements, **11:10.50**  
    integration of “separate” offerings, above  
    integration safe harbor under Rule 502(e), **11:12, 11:12.10**  
    “issuer” under Regulation D, **11:11**  
    no-action letters. SEC no-action letters under Regulation D, below in this group  
Regulation D  
    generally, **11:4**  
    decisional law apart from, **11:14**  
    SEC no-action letters under Regulation D, below  
Rules 504, 505, and 506, **11:12.40**

## **FEDERAL SECURITIES LAWS—Cont'd**

Private offering exemption—Cont'd  
 SEC no-action letters under Regulation D  
   generally, **11:5 to 11:13**  
   accredited investors, **11:6**  
   advertising, prohibition of, **11:7**  
   aggregate offering price, **11:9**  
   counting purchasers under Rule 501(e),  
     **11:10, 11:10.30**  
   integration safe harbor under Rule 502(e),  
     **11:12, 11:12.10**  
   “issuer” under Regulation D, **11:11**  
   selected SEC no-action letters, **App 9**  
   solicitation, prohibition of, **11:7**  
   state law and Regulation D, **11:13**  
 Section 4(a)(5); Rule 1001, **11:15**  
 selected SEC no-action letters, **App 9**  
 solicitation, prohibition of, **11:7**  
 state law and Regulation D, **11:13**  
 Private placements, integration of “separate”  
   offerings, **11:30**  
 Proof of eligibility, resales by institutional buy-  
   ers, **11:129**  
 Proposals  
   Form D amendment, **11:4.60**  
   general solicitation in certain offerings,  
     elimination of prohibition, **11:4.50**  
   Regulation D amendment, **11:4.60**  
   task force on integration, new rules, **11:38**  
 Prospectus  
   delivery reforms, **11:145**  
   free writing prospectuses, permissible use of,  
     **11:141**  
 Purchaser representatives, **11:10.90**  
 Qualifications for exemption from resales of  
   securities by investors, **11:84**  
 Recapitalizations. Resales of securities by inves-  
   tors, exemptions under section 4(a)(1) and  
   Rule 144, below  
 Reform. 2004 proposals for securities offering  
   reform, SEC’s, below  
 Registration  
   exemptions from registration requirements,  
     above  
   shelf registration process, **11:147**  
   small business issuers, registration and report-  
     ing for, below  
 Regulation A exemption for offering of 50 mil-  
   lion dollars or less  
   1933 Act, **11:75.40, 11:75.65**  
   1934 Act, concurrent registration, **11:75.50**  
   offering circular  
     tier 2, **11:75.60**  
   registration concurrent, 1934 Act, **11:75.50**  
   reporting companies, 2018 amendments,  
     **11:75.35**

## **FEDERAL SECURITIES LAWS—Cont'd**

Regulation A exemption for offering of 50 mil-  
   lion dollars or less—Cont'd  
   Rule 15c2-11, 1934 Act, **11:75.40**  
   safe harbor, **11:75**  
   section 12(a)(2), 1933 Act liability, **11:75.65**  
   summary of 2015 amendments, **11:75.30**  
 Regulation A exemption for offering of 75 mil-  
   lion dollars or less  
   generally, **11:61 to 11:75.65**  
   “bad boy” exclusions, **11:74**  
   C&DI, **11:64.50**  
   disclosure and procedural requirements, **11:66**  
     **to 71**  
   disqualification provisions of Rule 262, **11:74**  
   eligibility, **11:62**  
   final offering circular, **11:68**  
   financial statement requirements, **11:71**  
   good faith compliance with regulation, **11:72,**  
     **11:73**  
   informational content of offering circular,  
     **11:69**  
   integration, **11:64**  
   investments, limitations on, **11:63.10**  
   limitations, **11:63, 11:63.10**  
   offering circular, **11:67 to 11:69**  
   offering price, limitations on, **11:63**  
   preliminary offering circular, **11:67**  
   procedural requirements, **11:66 to 71**  
   reporting requirements, **11:71.10**  
   Rule 262, disqualification provisions of, **11:74**  
   SEC guidance, **11:64.50**  
   substantial compliance, **11:72, 11:73**  
   suspension of exemption, **11:73**  
   “testing the waters,” **11:65**  
   three alternative formats, **11:70**  
   threshold, 1934 Act Section 12(g), **11:64.10**  
 Regulation Crowdfunding. **Crowdfunding** (this  
   index)  
 Regulation D  
   integration of “separate” offerings, **11:16**  
   private offering exemption, above  
   proposed amendment, **11:4.60**  
 Regulation S  
   distribution compliance, issuer safe harbor,  
     **11:81.05**  
   Internet web site offers, **11:81.11**  
   IPOs, alternative restrictions, **11:81.08**  
   Issuer safe harbor  
     alternative restrictions for IPOs, **11:81.08**  
     distribution compliance, **11:81.05**  
     first category, **11:81.02**  
     IPOs, alternative restrictions, **11:81.08**  
     offering restrictions, **11:81.06**  
     secondary market trading, **11:81.08**  
     second category, **11:81.03 to 11:81.06**

**FEDERAL SECURITIES LAWS—Cont'd**

- Regulation S—Cont'd
  - Issuer safe harbor—Cont'd
    - third category, **11:81.07**
    - U.S. person, **11:81.04**
    - U.S.nonreporting issuers, secondary market trading, **11:81.08**
  - offshore transactions, exemption under Regulation S for, above
  - Resale safe harbor, **11:81.09**
  - Safe no directed selling efforts, **11:81.01**
  - Secondary market trading, issuer safe harbor, **11:81.08**
  - U.S.nonreporting issuers, issuer safe harbor, **11:81.08**
- Regulation S-K, smaller business issuers registration and reporting, **11:152**
- Regulation S-P compliance, internet offerings, **11:8**
- Reliance by seller on Rule 144A, **11:132**
- Reorganizations, definition of “restricted securities,” **11:100**
- Reporting
  - emerging growth company issuer registration under Securities Act, **11:133.50**, **11:153.50**
  - Regulation A, exemption reporting requirements, **11:71.10**
- Resales of securities by investors
  - exemptions under Section 4(a)(1) and Rule 144, **11:83 to 11:126**
  - offshore transactions, resale safe harbors, **11:79 to 11:81**
- Resales of securities by investors, exemptions under Section 4(a)(1) and Rule 144
  - acquisition transaction, focus on, **11:94**
  - additional interpretations, **11:124 to 11:126**
  - affiliates, **11:85**, **11:111**
  - aggregation, limitation on amount of securities sold, **11:117 to 11:120.50**
  - amount of securities sold, limitation on
    - generally, **11:116 to 11:121.50**
    - aggregation, **11:117 to 11:120.50**
    - express aggregation under Rule 144(e)(3), **11:119**
  - “in concert,” sale by persons acting, **11:120**
  - preconditions to reliance on Rule 144, **11:89**
  - “same person” under Rule 144(a)(2),
    - aggregation by, **11:118**
  - special tacking provisions under Rule 144(d)(3), **11:119**
  - volume limits, sales excluded from, **11:121**
  - “beneficial ownership” under former Rule 144(d)(1), **11:112 to 11:115**
- C&DIs** (this index)
- class action settlements, **11:100**
- conversions, special tacking rules, **11:106**

**FEDERAL SECURITIES LAWS—Cont'd**

- Resales of securities by investors, exemptions under Section 4(a)(1) and Rule 144—Cont'd
  - corporations, holding period for restricted securities, **11:115**
  - currently effective registration statement, resales under, **11:125**
  - current public information, **11:86**, **11:101**
  - definition of “restricted securities”
    - generally, **11:93 to 11:100**
    - acquisition transaction, focus on, **11:94**
    - class action settlements, **11:100**
    - employee benefit plans, **11:99**
    - finders, stock issued to, **11:97**
    - gifts, **11:95**
    - pledges, **11:96**
    - recapitalizations, **11:100**
    - reorganizations, **11:100**
    - Section 5, acquisitions violating, **11:98**
    - spin-offs, **11:100**
    - stock dividends, **11:100**
    - underwriters, stock issued to, **11:97**
  - divorces, holding period for restricted securities, **11:113**
  - employee benefit plans
    - definition of “restricted securities,” **11:99**
    - holding period for restricted securities, **11:104**
  - estates, holding period for restricted securities, **11:107**, **11:109**
  - evasion schemes, **11:92**
  - express aggregation, **11:119**
  - finders, stock issued to, **11:97**
  - fully paid securities, holding period for restricted securities, **11:103**
  - fungibility, holding period for restricted securities, **11:105**
  - “future tense” letters, **11:126**
  - gifts
    - affiliates, gifts by, **11:111**
    - definition of “restricted securities,” **11:95**
    - special tacking rules, **11:107**
  - holding period for restricted securities
    - generally, **11:102 to 11:115.50**
    - affiliates, gifts and pledges by, **11:111**
    - “beneficial ownership” under former Rule 144(d)(1), **11:112 to 11:115**
    - conversions, special tacking rules, **11:106**
    - corporations, **11:115**
    - divorces, **11:113**
    - employee benefit plans, **11:104**
    - estates, **11:107**, **11:109**
    - fully paid securities, **11:103**
    - fungibility, **11:105**
    - gifts, **11:107**, **11:111**
    - marital separations and divorces, **11:113**

**FEDERAL SECURITIES LAWS—Cont'd**

Resales of securities by investors, exemptions under Section 4(a)(1) and Rule 144—Cont'd  
 holding period for restricted securities—Cont'd  
     partnerships, **11:114**  
     pledges, **11:107, 11:111**  
     preconditions to reliance on Rule 144, **11:87**  
     recapitalizations, special tacking rules, **11:106**  
     Rule 144(d)(3), tacking rule under, **11:110**  
     special tacking rules, **11:106, 11:107**  
     tacking rules, **11:106, 11:107, 11:110**  
     tracing securities, **11:105**  
     trusts, **11:107, 11:108**  
 “in concert,” sale by persons acting, **11:120**  
 interpretations of Rule, **11:91**  
 limitations and restrictions  
     amount of securities sold, limitations on, above in this group  
     definition of “restricted securities,” above in this group  
     holding period for restricted securities, above in this group  
     manner of sale restrictions, **11:88**  
 marital separations and divorces, holding period for restricted securities, **11:113**  
 notice of sale requirement, **11:90**  
 partnerships, holding period for restricted securities, **11:114**  
 pledges  
     definition of “restricted securities,” **11:96**  
     holding period for restricted securities, **11:107, 11:111**  
     Uniform Commercial Code, sales by pledgees under, **11:124**  
 preconditions to reliance on Rule 144, **11:86 to 11:90**  
 qualifications for exemption, **11:84**  
 qualified institutional buyers. Institutional buyer, resales by, above in this group  
 recapitalizations  
     definition of “restricted securities,” **11:100**  
     holding period for restricted securities, **11:106**  
 reorganizations, definition of “restricted securities,” **11:100**  
 restrictions. Limitations and restrictions, above in this group  
 Rule 144(d)(3), tacking rule under, **11:110**  
 “same person” under Rule 144(a)(2), aggregation by, **11:118**  
 schemes to evade registration, **11:92**  
 Section 5, acquisitions violating, **11:98**

**FEDERAL SECURITIES LAWS—Cont'd**

Resales of securities by investors, exemptions under Section 4(a)(1) and Rule 144—Cont'd  
 special tacking rules  
     amount of securities sold, limitation on, **11:119**  
     holding period for restricted securities, **11:106, 11:107, 11:110**  
 spin-offs, definition of “restricted securities,” **11:100**  
 stock dividends, definition of “restricted securities,” **11:100**  
 tacking rules. Special tacking rules, above in this group  
 technical compliance, sufficiency of, **11:92**  
 tracing securities, **11:105**  
 trusts, holding period for restricted securities, **11:107, 11:108**  
 underwriters, stock issued to, **11:97**  
 volume limits, sales excluded from, **11:121**  
 Resales to accredited investors, exemptions from registration requirements, **11:83.60**  
 Research reports, SEC’s 2005 securities offering revisions, **11:143**  
 Residence, intrastate offering exemption, **11:42**  
 Restricted shares, improper issuance of attorney opinion letter regarding, **11:132.50**  
 Restrictions. Limitations and restrictions, above  
 Risk factor disclosures, emerging growth companies, **11:146.50**  
 Rule 10b5-1(c) representations, **11:123**  
 Rule 15c2-11, Regulation A, offering exemption, **11:75.40**  
 Rule 135c notice, internet offerings, **11:8**  
 Rule 144. Resales of securities by investors, exemptions under section 4(a)(1) and Rule 144, above  
 Rule 144(d)(3), amount of securities sold, limitation on, **11:121.50**  
**Rule 147** (this index)  
 Rule 152, integration of “separate” offerings, **11:20, 11:39, 11:40**  
 Rule 155, integration of “separate” offerings, **11:39, 11:40, 11:40.50**  
 Rule 163B, test-the-waters communication, **11:137.60**  
 Rule 262, disqualification provisions of, **11:74**  
 Rule 415, proposed amendments to, **11:149**  
 Rule 501, C&DIs, **11:7.60**  
 Rule 506(c), C&DIs, **11:7.70**  
 Rule 508, substantial, good faith compliance defense, **11:4.70**  
 Rules 504, 505, and 506, private offering exemption, **11:12.40**  
 Safe harbors  
     integration of “separate” offerings, above



## FEDERAL SECURITIES LAWS—Cont'd

- Safe harbors—Cont'd
  - offshore transactions, exemption under Regulation S for, **11:79 to 11:82**
  - Regulation A exemption, **11:75**
- Same class of security, integration of “separate” offerings, **11:18**
- “Same person” under Rule 144(a)(2), aggregation by, **11:118**
- Same time, offerings made at, **11:19, 11:20**
- Schemes to evade registration, **11:92**
- SEC guidance, Regulation A, **11:64.50**
- SEC no-action letters. Private offering exemption, above
- Section 3(a)(9), integration of “separate” offerings, **11:27**
- Section 3(a)(10), integration of “separate” offerings, **11:28**
- Section 4(2) decisional law apart from Regulation D, **11:14**
- Section 4(a)(5); Rule 1001, **11:15**
- Section 5, acquisitions violating, **11:98**
- Section 12(a)(2), liability, **11:75.65**
- Securities Act of 1933
  - applicability of, generally, **11:1**
  - Regulation A offering exemption, **11:75.40, 11:75.65**
  - rule 508, substantial, good faith compliance defense, **11:4.70**
  - shelf registration process, **11:147**
  - small business issuers, registration and reporting for, below
  - summary of registration requirements (including 2005 revisions in securities offering rules and JOBS Act), **11:133**
- Securities Act of 1934. Exchange Act of 1934, above
- Securities offering reform
  - 2004 proposals for securities offering reform, SEC's, below
  - 2005 revisions in securities offering rules, **11:133 to 11:151.50**
- Selected SEC no-action letters, **App 9**
- Shelf offerings, SEC's 2005 securities offering revisions, **11:148**
- Shelf registration for well-known seasoned issuers, automatic, **11:150**
- Shelf registration process under Securities Act, **11:147**
- Shell companies, reporting and nonreporting, **11:122**
- Single plan of financing, **11:17**
- Six-month resale limitation, intrastate offering exemption, **11:58**
- Small Entity Compliance Guide
  - Amendments to Regulation A, **App 1.9**
  - Disclosure update and Simplification, **App 1.9**

## FEDERAL SECURITIES LAWS—Cont'd

- Smaller business issuers, registration and reporting for
  - 2018 amendments affecting February 2008 amendments, **11:153**
  - 2018 and 2008 amendments, summary, **11:152** generally, **11:152 et seq.**
- C&DIs regarding omission of certain financial information form draft registration statements, **11:161**
- determination dates, **11:157**
- disclosure requirements, **11:154, 11:155**
- eligibility, **11:156**
- entering and exiting smaller reporting company status, **11:158**
- Exchange Act of 1934, generally, **11:152**
- exclusions, **11:156**
- FAQs regarding voluntary submission of draft registration statements, **11:160**
- Form S-1, generally, **11:152**
- item-by-item disclosure on Regulation S-K, election, **11:155**
- qualifying as smaller reporting company, **11:156, 11:157**
- Regulation S-K, **11:154, 11:155**
- scaled disclosure standards in Regulation S-K, **11:154**
- Securities Act of 1933, generally, **11:152**
- submission of registration statements for non-public review by SEC permitted in all IPOs, **11:159**
- Solicitation, prohibition of
  - advertising, prohibition, **11:7**
  - proposed rule eliminating prohibition, **11:4.50**
- Sophistication under Rule 506, **11:10.90**
- Special Purpose Acquisition Companies (SPACs)** (this index)
- Special tacking rules. Resales of securities by investors, exemptions under section 4(a)(1) and Rule 144, above
- Spin-offs, definition of “restricted securities,” **11:100**
- Staff interpretations of task force on integration, **11:34 to 11:37**
- State blue sky regulation, **15:1**
- State law and Regulation D, **11:13**
- Stock dividends, definition of “restricted securities,” **11:100**
- Substantial compliance with Regulation A exemption for offering of 75 million dollars or less, **11:72, 11:73**
- Suspension of exemption, Regulation A exemption for offering of 75 million dollars or less, **11:73**
- Task force on integration. Integration of “separate” offerings, above

## **FEDERAL SECURITIES LAWS—Cont'd**

- Tax opinions filed in registered offerings, SEC's 2005 securities offering rules revisions, **11:151.50**
- Technical compliance with Rule 144, sufficiency of, **11:92**
- "Testing the waters," Regulation A exemption for offering of 75 million dollars or less, **11:65**
- Test-the-waters communication, Rule 163B, **11:137.60**
- Thirty-day bright line exclusion from prohibition on offers prior to filing registration statement, **11:139**
- Tier 2 obligations, **11:75.40 to 11:75.90**
- Time of offering, integration of "separate" offerings, **11:19, 11:20**
- Tracing securities, **11:105**
- Transactions and not securities as exempt, generally, **11:2**
- Trusts, holding period for restricted securities, **11:107, 11:108**
- 2015 amendments, summary of, Regulation A exemption for offering of 50 million dollars or less, **11:75.30**
- 2018 amendments, Regulation A, reporting companies, **11:75.35**
- 2005 SEC securities offering revisions
  - generally, **11:133 et seq.**
  - automatic shelf-registration for well-known seasoned issuers, **11:150**
  - background to 2005 revisions, **11:134**
  - communications proposals, **11:136 et seq.**
  - disclosure of risk factors, **11:146**
  - electronic road shows, **11:142**
  - emerging growth companies, communications restrictions, **11:137.50**
  - emerging growth company issuer category, **11:133.50**
  - free writing prospectuses, permissible use of, **11:141**
- JOBS Act registration requirements included in summary of 2012 Securities Act requirements, **11:133**
- liability uses, **11:144**
- other categories of issuers, **11:133.50, 11:135**
- overview of communications proposals, **11:137**
- permitted continuation of ongoing communications during an offering, **11:138**
- prospectus delivery reforms, **11:145**
- research reports, use of, **11:143**
- risk factor disclosure, **11:146, 11:146.50**
- Rule 415, proposed amendments to, **11:149**
- Securities Act shelf registration process, **11:147**
- shelf offerings, **11:148**

## **FEDERAL SECURITIES LAWS—Cont'd**

- 2005 SEC securities offering revisions—Cont'd
  - shelf registration for well-known seasoned issuers, automatic, **11:150**
  - shelf registration process under Securities Act, **11:147**
  - summary of 2012 current Securities Act registration requirements, **11:133**
  - thirty-day bright line exclusion from prohibition on offers prior to filing registration statement—all issuers, **11:139**
  - unseasoned issuers and non-reporting issuers, **11:151**
  - well-known seasoned issuers, **11:135, 11:150**
  - written offering related communications, relaxation of restrictions on, **11:140**
- 2007 amendments. Amendments, above
- Underwriters, stock issued to, **11:97**
- Unincorporated businesses, integration of "separate" offerings, **11:23**
- Unseasoned issuers, SEC's 2005 securities offering rules revisions, **11:151**
- Venture integration, staff interpretations, **11:36**
- Volume limits, sales excluded from, **11:121**
- Well-known seasoned issuers under SEC's 2005 revisions, **11:135, 11:150**
- Written offering related communications, relaxation of restrictions on, **11:140**

## **FEES**

- Term loan agreements, **7:35**

## **FELONS AND OTHER BAD ACTORS**

- C&DI, bad actor disqualification under Rule 506(d) and disclosures under Rule 506(e), **11:4. 52**
- Securities Act of 1933, Rule 506 offerings, disqualification, **11:4.40**

## **FIDUS INVESTMENT CORP (FDUS)**

- Business development company (BDC), **5:3**

## **FIFTH STREET FINANCE (FSC)**

- Business development company (BDC), **5:3**

## **FILING**

- Going Public** (this index)

## **FINAL OFFERING CIRCULAR**

- Federal securities laws, **11:68**

## **FINAL REGULATIONS**

- Limited Liability Companies** (this index)

## **FINANCES AND FINANCING**

- Disclosure** (this index)
- Going Public** (this index)
- S corporations, debt financed distributions from pass-through entity to its owners, **2:44**
- Small Business Administration** (this index)

**FINANCES AND FINANCING—Cont’d**  
**Term Loan Agreements** (this index)

**FINANCIAL CRIMES ENFORCEMENT NETWORK (FinCEN)**  
 FAQs clarifying dissolved entities subject to CTA, **9:7**

**FINANCIAL INSTITUTIONS**  
**Banks and Financial Institutions** (this index)

**FINANCIAL STATEMENTS**  
 Auditing Standard No. 5, integration of audit of internal control over financial reporting with audit of financial statements, **12:18**  
 Due diligence and civil liability, **14:17, 14:25, 14:96**  
**Federal Securities Laws** (this index)  
 Material misstatement, PCAOB Proposed Auditing Standard Related to Auditor’s Assessment of and Response to Risk of Material Misstatement in Financial Statement (Dec. 17, 2009), **App 11.2**  
 PCAOB Auditing Standards Release # 2012-001, **App 11.4**  
 Preferred stock, **6:26, 6:64**

**FINDERS**  
 Federal securities laws, **11:97**  
 Small Business Administration, financing from, **4:10**

**FINRA GUIDANCE FOR PRIVATE PLACEMENTS**  
 Due diligence and civil liability, **14:28.50**

**FINRA REGULATORY NOTICE 10-22**  
 Reasonable investigations by broker-dealers in Regulation D offerings, **App 1.2A**

**FIRST REFUSAL, RIGHT OF**  
**Preferred Stock** (this index)

**FISCAL YEAR**  
 S corporations, fiscal years permissible without election, **2:72**

**FIVE PERCENT BENEFICIAL OWNERS**  
 Disclosure, **13:46, 13:47**

**FIXED INTEREST RATES**  
 Term loan agreements, **7:30**

**FLEXIBLE STATUTES**  
 Limited liability companies, **3:5**

**“FLOATING” INTEREST RATE**  
 Term loan agreements, **7:31**

**FLORIDA**  
 Small business, assistance programs for, **App 18.10**

**FLORIDA DEVELOPMENTS**  
 Due diligence and civil liability, **14:138**

**FLORIDA LLC OPERATING AGREEMENT**  
 Form of (2011), **20:5**

**“FORCE DOWN” ANTIDILUTION PROVISIONS**  
 Generally, **17:5**

**FOREIGN CORRUPT PRACTICES ACT**  
 Going public, **12:21**

**FOREIGN STATE OR COUNTRY**  
**Federal Securities Laws** (this index)  
**Limited Liability Companies** (this index)

**FORMAT FOR BUSINESS FINANCING**  
**Choosing the Business Financing Format** (this index)

**FORMS**  
**Antidilution Provisions** (this index)  
 Co-sale provisions, **18:14**  
**Debentures** (this index)  
 Form D  
   federal securities laws, **11:4.60, 11:12.20**  
   Notice of Sales under Regulation D or Section 4(6), **App 2**  
**Going Public** (this index)  
**Intrastate Offerings and Section 4(2)** (this index)  
**Limited Liability Companies** (this index)  
**Limited Offerings and Regulation A** (this index)  
**Preferred Stock** (this index)  
**Public Offerings** (this index)  
 Registration rights agreement, **18:10**  
**Rules 144 and 144A** (this index)  
 S corporations, election by small business corporation (IRS Form 2553), **2:84, 2:85**  
**SEC Forms and Related Regulations** (this index)  
 State blue sky regulation, form U-7, **15:12**  
 Stock purchase agreement (common stock), **18:7**  
 Stock repurchase agreement, **18:13**  
 Term loan agreement, **18:12**  
 Warrant agreement, **18:8**  
 Warranties and representations, form of, generally, **18:9**

**FORM S-1 OFFERING**  
 Final prospectus, **19:1**  
 Public offerings, **19:1, 19:3**  
 Underwriting agreement, **19:3**

**FORWARD-LOOKING STATEMENTS**  
 Disclosure, **13:22, 13:23**

## **FRAUD AND DECEIT**

- Aspirational statements, **14:15.60**
- Going public, duties of public companies for 1934 Act periodic filings, financial due diligence, **12:14**
- Imputation of fraud, in pari delicto defense, **14:142**
- PCAOB Proposed Auditing Standard Related to Auditor's Assessment of and Response to Risk of Material Misstatement in Financial Statements (Dec. 17, 2009), **App 11.2**
- Puffery, due diligence and civil liability, **14:15.50**
- State blue sky regulation, **15:6**

## **FREE TRANSFERABILITY OF INTERESTS**

- Limited liability companies, **3:31**

## **FREE WRITING PROSPECTUSES**

- Digital brands group, **19:2**
- Permissible use of, **11:141**

## **FREQUENTLY ASKED QUESTIONS**

- Management's Report on Internal Control (Sept. 24, 2007), **App 11.1**
- Rules 144 and 144A, **App 4.1A**

## **FULL CIRCLE CAPITAL (FULL)**

- Business development company (BDC), **5:3**

## **FULLY PAID STOCK**

- Holding period for restricted securities, **11:103**
- Preferred stock, **6:130, 6:138**

## **FUNDING**

- Term loan agreements, **7:46**

## **FUNDRAISING**

- Small Business Administration, Early Stage licensing process, **4:17**

## **FUNGIBILITY**

- Holding period for restricted securities, **11:105**

## **FUTURE OPERATIONS**

- Term loan agreements, **7:46**

## **FUTURE SALE, SHARES ELIGIBLE FOR**

- Disclosure, **13:50, 13:51**

## **"FUTURE TENSE" LETTERS**

- Federal securities laws, **11:126**

## **GAAP**

- Due diligence and civil liability, **14:77, 14:78**
- Going public, duties under 1934 Act filings, **12:4, 12:12, 12:13**

## **GAAS**

- Due diligence and civil liability, **14:74 to 14:78**

## **GAINS AND LOSSES**

- Limited liability companies, allocation of, **3:50, 3:56**

## **GENERAL PARTNERS**

- Small Business Administration, Early Stage SBIC Limited Partnership Agreement, **4:18**

## **GENERAL UTILITIES DOCTRINE**

- S corporations, distribution of appreciated property, **2:64**

## **GEORGIA**

- Small business, assistance programs for, **App 18.11**

## **GIFTS**

- Federal Securities Laws** (this index)

## **GLADSTONE CAPITAL (GLAD)**

- Business development company (BDC), **5:3**

## **GLADSTONE INVESTMENT (GAIN)**

- Business development company (BDC), **5:3**

## **GOING PUBLIC**

- Generally, **12:1 et seq.**
- Advisory votes of shareholders about executive compensation and golden parachutes, **12:34**
- American Exchange requirements, generally, **12:28**
- Audit committee
  - auditor-audit committee communications, **12:8.50, 12:12 et seq.**
  - auditor independence, role of audit committee in assuring, **12:9**
  - charter, **12:27, 12:33**
  - disclosure of critical audit matters, **12:14.60**
  - due diligence
    - critical role in financial due diligence, **12:5**
    - financial/transactional due diligence, **12:14.50**
    - fraud, assessment of risks and responses thereto, **12:14**
    - proxy disclosures about audit committee, **12:6**
    - related party transactions, **12:14.50**
    - role, generally, **12:8**
    - significant unusual transactions, **12:14.50**
  - due diligence counsel, PCAOB proposed standards for related party transactions, **12:14**
  - financial experts, **12:23**
  - independence
    - audit committee's role in assuring independence, **12:9**
    - SEC audit committee disclosure rules, **12:28**
    - self-regulatory organization audit committee rules, **12:32**
  - NYSE and NASDAQ corporate governance amendments, **12:7**
  - related party transactions, PCAOB proposed due diligence standards, **12:14.50**
  - review by, **12:14**

**GOING PUBLIC—Cont'd**

- Audit committee—Cont'd
  - SEC audit committee disclosure rules
    - generally, **12:24**
    - charters, **12:27**
    - members' independence, **12:28**
    - prefiling review of quarterly financial statements, **12:25**
    - report, **12:26**
    - safe harbors, **12:29**
  - self-regulatory organization audit committee rules
    - generally, **12:30**
    - charter, **12:33**
    - composition and qualification, **12:31**
    - independence, **12:32**
  - significant unusual transactions, PCAOB proposed due diligence standards, **12:14.50**
- Auditing fees, **12:33**
- Auditing Standard No. 5, standard for auditing internal control over financial reporting, **12:17 to 12:19**
- Code of ethics, consequences of going public, **12:8**
- Compensation committees, Dodd-Frank Act (2010) corporate governance provisions, **12:34**
- Compensation consultants, Dodd-Frank Act (2010) corporate governance provisions, **12:34**
- Consequences of going public
  - audit committees, above
  - code of ethics, **12:8**
  - Foreign Corrupt Practices Act, **12:21**
  - internal controls over financial reporting, **12:17 et seq.**
- Corporate governance provisions, Dodd-Frank Act (2010), **12:34**
- Disclosure
  - audit committee disclosure rules. Audit committee, above
  - compensation consultants, Dodd-Frank Act (2010) corporate governance provisions, **12:34**
  - disclosure committee, below
  - duties of public companies for 1934 Act periodic filings, below
  - JOBS Act, emerging growth companies exemptions, **12:34**
- Disclosure committee
  - generally, **12:4**
  - due diligence, **12:2**
- Dodd-Frank Act (2010)
  - advisory votes of shareholders about executive compensation and golden parachutes, **12:34**

**GOING PUBLIC—Cont'd**

- Dodd-Frank Act (2010)—Cont'd
  - corporate governance provisions, **12:34**
  - implementing and monitoring appropriate internal controls, **12:15**
  - pay-for-performance, **12:34**
- Due diligence
  - audit committee, above
  - duties of public companies for 1934 Act periodic filings
    - generally, **12:1 et seq.**
  - audit committee, above
  - critical accounting policies and practices, **12:10**
  - critical role of company's audit committee or independent directors in financial due diligence, **12:5**
  - disclosure committee, CEO and CFO, **12:2**
  - fraud, audit committee's or independent director's assessment of risk and responses, **12:14**
  - oversight process, establishing appropriate, **12:16**
  - related party transactions, proposed standards, **12:14.50**
  - significant unusual transactions, proposed standards, **12:14.50**
- Due diligence counsel, PCAOB proposed standards for related party transactions, **12:14.50**
- Duties of public companies for 1934 Act periodic filings
  - generally, **12:1 et seq.**
- Auditing Standard No. 5, standard for auditing internal control over financial reporting, **12:17 to 12:19**
- disclosure controls and procedures
  - generally, **12:3**
  - proxy disclosures about audit committee, **12:6**
  - suggestive steps in establishing and evaluating, **12:4**
- due diligence, above
- FASB Statement No. 154, accounting changes and error corrections, **12:22**
- GAAP, **12:4, 12:12, 12:13**
- internal controls, implementing and monitoring, **12:15**
- introduction, **12:1**
- Material omission to fail to disclose SEC investigation into ICFR weaknesses and promotional paid-for public articles, **12:22.80**
- material weakness, requirement for adverse opinion, **12:20**
- oversight process, establishing appropriate, **12:16**



## GOING PUBLIC—Cont'd

Duties of public companies for 1934 Act periodic filings—Cont'd

SEC guidance, standard for auditing internal control over financial reporting, **12:21**

SEC Injunctive Authority, **12:22.75**

standard for auditing internal control over financial reporting

generally, **12:17**

Auditing Standard No. 5

integration of audit of internal control over financial reporting with audit of financial statements, **12:18**

overview of audit, **12:19**

FASB Statement No. 154, accounting changes and error corrections, **12:22**

requirement for adverse opinion when material weakness exists, **12:20**

SEC guidance, **12:21**

Executive compensation, Dodd-Frank Act (2010) corporate governance provisions, **12:34**

Expenses, **12:33**

Family

appointment to auditing committee, **12:8**

independent director, **12:7**

PCAOB proposed standards for related party transactions, **12:14.50**

self regulatory organization audit committee rules, **12:32**

FASB Statement No. 154, accounting changes and error corrections, **12:22**

Filing requirements. Duties of public companies for 1934 Act periodic filings, above

Financial due diligence. Due diligence, above

Financial experts, audit committee, **12:23**

Foreign Corrupt Practices Act, **12:21**

Form 10-K report

generally, **12:1**

auditor-audit committee communications, **12:12, 12:13**

financial experts, **12:23**

Nasdaq rules, **12:7**

NYSE rules, **12:7**

Fraud, duties of public companies for 1934 Act periodic filings, financial due diligence, **12:14**

Golden parachutes disclosure

Dodd-Frank Act (2010) corporate governance provisions, **12:34**

JOBS Act, emerging growth companies exemption, **12:34**

Independence. Audit committee, above

Institutional investment managers reporting, Dodd-Frank Act (2010) corporate governance provisions, **12:34**

## GOING PUBLIC—Cont'd

Internal pay equity disclosure, emerging growth companies exemption under JOBS Act, **12:34**

Introduction, **12:1**

Listing requirements of stock exchanges, generally, **12:28**

Management discussion and analysis, **12:11**

Material weakness, duties of public companies for 1934 Act periodic filings, **12:20**

NASDAQ, requirements, generally, **12:7, 12:28**

New York Stock Exchange, requirements, generally, **12:7, 12:28**

Nominate corporate governance committee, **12:7**

Pay-for-performance, Dodd-Frank Act (2010) corporate governance provisions, **12:34**

Pay versus performance disclosure, emerging growth companies exemption under JOBS Act, **12:34**

Preparing the registration statement, **12:13**

Proxy disclosures about audit committee, **12:6**

Registration statement, **12:13**

Registration under Securities Exchange Act of 1934, generally, **12:1**

Related party transactions, PCAOB proposed due diligence standards, **12:14.50**

Reports

institutional investment managers, Dodd-Frank Act (2010) corporate governance provisions, **12:34**

SEC audit committee disclosure rules, **12:26**

Revenue recognition policy and practices, **12:13**

Review by SEC, **12:21**

Safe harbors, SEC audit committee disclosure rules, **12:29**

SEC

audit committee disclosure rules. Audit committee, above

review by, **12:21**

rulemaking under Dodd-Frank Act (2010) corporate governance provisions, **12:34**

standard for auditing internal control over financial reporting, SEC guidance, **12:21**

Section 12 trigger to 1934 Act obligations, **12:1**

Securities Act of 1933, generally, **12:1**

Securities Exchange Act of 1934, generally, **12:1**

Self-regulatory organization audit committee. Audit committee, above

Timetable for disclosure, generally, **12:4**

## GOLDEN PARACHUTES

Going public, Dodd-Frank Act (2010) corporate governance provisions, **12:34**

## GOLUB CAPITAL (GBDC)

Business development company (BDC), **5:3**

## **GOOD FAITH**

- Advice of counsel defense as proof of, **14:84.10**
- Compliance with Regulation A exemption for offering of 75 million dollars or less, **11:72**
- Due diligence and civil liability, **14:84**
- Rule 508 of the 1933 Act, substantial, good faith compliance defense, **11:4.70**

## **GOODWILL**

- Due diligence and civil liability, **14:15**

## **GOVERNING LAW**

- Choosing the business financing format, **1:1**
- Preferred stock, **6:102**

## **GREEN LIGHT LETTERS**

- Small Business Administration, qualified applicants for Early Stage licensing process, **4:17**

## **“GROSS REVENUES REQUIREMENT” OF (C)(2)(I)**

- Federal securities laws, **11:51 to 11:55**

## **GUAM**

- Small business, assistance programs for, **App 18.11A**

## **GUARANTEES**

- Term loan agreements, **7:17**

## **HANDBOOK ON “PLAIN ENGLISH”**

- Disclosure, **13:9 to 13:14**

## **HAWAII**

- Small business, assistance programs for, **App 18.12**

## **HEADINGS**

- Series A convertible preferred stock purchase agreement (annotated), **6:100**

## **HEBB JR., DONALD B**

- Small Business Administration, financing from, **4:16**

## **HENNING, HARRY I.**

- Small Business Administration, financing from, **4:6, 4:13, 4:15**

## **HERCULES TECHNOLOGY GROWTH CAPITAL (HTGC)**

- Business development company (BDC), **5:3**

## **HIERARCHY OF DOCUMENT**

- Disclosure, **13:13**

## **HIGHEST SECTION ONE RATE**

- S corporations, taxable year, **2:76**

## **HIGH YIELD BOND ISSUES**

- Insurance company private placements distinguished from, **7:2**

## **HOLDERS AND HOLDING**

- Federal Securities Laws** (this index)
- S corporations, avoidance of personal holding company tax, **2:10**

## **HORIZON TECHNOLOGY (HRZN)**

- Business development company (BDC), **5:3**

## **HOWEY TEST**

- First prong, investment of money and offer of sale, **15:3.40**
- Investment of money, first prong, **15:3.40**
- Offer of sale, first prong, **15:3.40**
- Profits derived solely from the efforts of others, **15:3.60**
- State blue sky regulation, **15:3.40, 15:3.50, 15:3.60**

## **HYBRID SECURITIES**

- Choosing the business financing format, **1:1**

## **HYPERLINKED INFORMATION**

- Internet offerings, issuer responsibility for hyperlinked information, **11:8**

## **IDAHO**

- Small business, assistance programs for, **App 18.13**

## **“IF THEN” CONDITIONALS, USE OF**

- Disclosure, **13:12**

## **ILLINOIS**

- Small business, assistance programs for, **App 18.14**

## **“ILLUSORY” OR “MANAGED” EARNINGS**

- Due diligence and civil liability, **14:96**

## **“IMMATERIAL” SAFE HARBOR**

- Due diligence and civil liability, **14:105**

## **IMPACT**

- S corporations, shareholders and limited partners, **2:54**

## **INADEQUATE OR MATERIALLY MISLEADING DISCLOSURE**

- Due diligence and civil liability, **14:51.50**

## **INADVERTENT TERMINATIONS**

- S corporations, relief, **2:39**

## **INCIDENTAL COSTS**

- Term loan agreements, **7:15, 7:27**

## **INCIDENTAL REGISTRATION**

- Preferred stock, **6:79**

## **INCOME**

- S Corporations** (this index)

## **INCOME TAXATION**

S corporations, state income tax considerations, **2:81**

## **“IN CONCERT”, SALE BY PERSONS ACTING**

Federal securities laws, **11:120**

## **INDEMNITY OR INDEMNIFICATION**

Due diligence and civil liability, **14:120, 14:121**  
NVCA model venture financings documents (2007), model indemnification agreement, **15A:9**

Preferred stock, **6:82, 6:83**

## **INDENTURE**

Form of, **18:6**

## **INDEPENDENCE OF AUDITORS**

**Going Public** (this index)  
Professional standards, auditor strengthening under Sarbanes-Oxley Act, **14:72**

## **INDEPENDENCE OF DIRECTOR**

Disclosure, **13:8, 13:40, 13:41**

## **INDEX**

Term loan agreements, **7:31**

## **INDIANA**

Small business, assistance programs for, **App 18.15**

## **INDUSTRY OF ISSUER**

Due diligence and civil liability, **14:20**

## **INFORMATION REQUIREMENTS**

**Federal Securities Laws** (this index)

## **INITIAL PUBLIC OFFERING**

Emerging growth company, underwriting agreement, **19:3.50**  
Final prospectus, **19:1**  
Forms for, **19:1, 19:4**  
Sample timetable and responsibility schedule, **19:4**

## **INITIAL REVIEW**

Small Business Administration, Early Stage licensing process, **4:17**

## **INJUNCTIVE PROCEEDINGS**

Due diligence and civil liability, **14:91**

## **IN PARI DELICTO DEFENSE**

Due diligence and civil liability, **14:142**

## **INSIDER TRADING**

**Going Public** (this index)

## **INSPECTION**

Preferred stock, **6:62**  
Term loan agreements, **7:49**

## **INSTITUTIONAL BUYERS**

**Federal Securities Laws** (this index)  
State blue sky regulation, **15:9**

## **INSTITUTIONAL INVESTMENT MANAGERS**

Going public, Dodd-Frank Act (2010) corporate governance provisions, **12:34**

## **INSTITUTIONAL PRIVATE PLACEMENTS**

Generally, **7:1 to 7:10**  
Bank term loans, insurance company private placements distinguished from, **7:2**  
Business covenants, **7:6**  
Call protection, **7:3**  
Closing conditions, **7:5**  
Closing representations of issuer, **7:4**  
Covenants, generally, **7:6**  
Default, events of, **7:7 to 7:9**  
Distinction between “loan agreements,” and “note agreements,” **7:2**  
Form of sample note agreement, **7:10**  
High yield bond issues, insurance company private placements distinguished from, **7:2**  
Insurance company private placements distinguished from bank term loans, **7:2**  
Junk bond issues, insurance company private placements distinguished from, **7:2**  
Legal overview, generally, **7:2 to 7:10**  
Opinion of counsel, **7:5**  
Options for prepayments, **7:3**  
Overview, generally, **7:2 to 7:10**  
Prepayments, **7:3**  
Remedies for default, **7:9**  
Sample note agreement, **7:10**  
Scope of defaults, **7:8**

## **INSTRUMENTS**

S corporations, one class of stock requirement for eligibility, **2:23, 2:25**

## **INSURANCE**

Federal securities laws, **11:52**  
Institutional private placements, **7:2**  
**Preferred Stock** (this index)  
Term loan agreements, **7:48**

## **INTEGRATION**

**Federal Securities Laws** (this index)

## **INTERACTIVE DATA FOR FINANCIAL REPORTING\$ EA SMALL ENTITY REPORTING GUIDE**

Generally, **App 5.4**

## **INTEREST AND INTEREST RATES**

Deductions, business interest, limitations on, **2:4**  
S corporations, acquisition of interest in pass-through entity, **2:43**

## **INTEREST AND INTEREST RATES—Cont'd**

S corporations, investment interest limitation, **2:40 to 2:46**

Self-charged interest, **2:45, 2:46**

State blue sky regulation, **15:24**

**Term Loan Agreements** (this index)

## **INTERNAL CONTROL OVER FINANCIAL REPORTING**

Adverse opinion required when material weakness exists, **12:20**

Auditing control standard, **12:17**

Auditing Standard No. 5, **12:18, 12:19**

FASB Statement No. 154, accounting changes and error corrections, **12:22**

PCAOB Guidance for Auditors of Smaller Public Companies (January 23, 2009), **App 11.3**

SEC guidance, **12:21**

## **INTERNAL REVENUE SERVICE (IRS)**

S corporation, IRS Initiative on S Corporation Compliance, **2:12**

## **INTERNET OFFERINGS**

Federal securities laws, **11:8, 11:81.11**

Regulation S, **11:81.11**

## **INTERPRETATIONS OF RULE 144**

Federal securities laws, **11:91**

## **INTERVIEW**

Small Business Administration, applicants for Early Stage licensing, **4:17**

## **INTRASTATE OFFERINGS**

**Federal Securities Laws** (this index)

Rule 147 under Securities Act of 1933, **App 3**  
SEC Release No. 33-4434 (December 1, 1961), **App 3.1**

SEC Release No. 33-4552 (November 6, 1962), **App 1.3**

## **INVENTORIES**

Due diligence and civil liability, **14:25**

S corporations, recapture of appreciation upon conversion from C corporation to S corporation, **2:68**

## **INVESTIGATIONS**

**Due Diligence and Civil Liability** (this index)

FINRA Regulatory Notice 10-22, reasonable investigations by broker-dealers in Regulation D offerings, **App 1.2A**

Professional standards, reporting attorney has no duty to investigate under Sarbanes-Oxley Act and SEC professional conduct rules, **14:62**

## **INVESTMENT CONTRACTS**

Domestic security warranting protection under federal securities laws, state blue sky regulation, **15:3.90**

## **INVESTMENTS BY SBIC**

Small Business Administration, financing from, **4:3**

## **INVESTORS' RIGHTS AGREEMENT**

NVCA model venture financings documents (2007), **15A:5**

## **IOWA**

Small business, assistance programs for, **App 18.16**

## **ISSUANCE AND ISSUERS**

**Disclosure** (this index)

**Federal Securities Laws** (this index)

**Preferred Stock** (this index)

## **JANUS CASE**

**Due Diligence and Civil Liability** (this index)

## **JARGON, ELIMINATION OF**

Disclosure, **13:12**

## **JOBS ACT (JUMPSTART OUR BUSINESS STARTUPS ACT)**

Crowdfunding, offerings of \$5,000,000 or less, **11:75.70**

**Emerging Growth Companies** (this index)

Frequently asked questions, **App 12.1 to 12.3**

Summary of Securities Act registration requirement including JOBS Act, **11:133**

Title 1 of JOBS Act, generally applicable frequently asked questions, **App 12.2**

## **JOINT AND SEVERAL LIABILITY**

Due diligence and civil liability, **14:112 to 14:116**

## **JOINT VENTURES**

Federal securities laws, **11:54**

## **JUDGES**

Constitutionality of SEC use of administrative law judges, **14:89.50**

## **JUDGMENT REDUCTION FORMULA**

Private Securities Litigation Reform Act of 1995 (PSLRA), **14:116**

## **JUNK BOND ISSUES**

Insurance company private placements distinguished from, **7:2**

## **JURISDICTION OF STATE**

State blue sky regulation, **15:4**

## **KANSAS**

Small business, assistance programs for, **App 18.17**

**KCAP CAPITAL (KCAP)**

Business development company (BDC), **5:3**

**KELLMAN, JOEL D.**

Small Business Administration, financing from, **4:6, 4:7, 4:15**

**KENTUCKY**

Small business, assistance programs for, **App 18.18**

**KEY MAN INSURANCE**

Preferred stock, **6:66**

**KKR FINANCIAL HOLDINGS (KFN)**

Business development company (BDC), **5:3**

**LATE CHARGES**

Term loan agreements, **7:35**

**LATER-STAGE INVESTING**

Preferred stock, **6:10**

**LEASCO CASE**

Due diligence and civil liability, **14:8**

**LEASE RECEIVABLES**

Federal securities laws, **11:50**

**LEGAL DRAFTING CONSIDERATIONS**

Choosing the business financing format, **1:4**

**LEGAL PROCEEDINGS**

Disclosure, **13:54, 13:55**

Legality opinions in registered offerings, SEC's 2005 securities offering rules revisions, **11:151.50**

**LEGEND, REGISTRATION RIGHTS**

Preferred stock, **6:77**

**LENDERS**

Due diligence and civil liability, **14:87**

**LETTER OF INTENT**

Form of, **19:5**

**LEVERAGED BUY-OUT (LBO) FUNDS**

Preferred stock, **6:2**

**LEVERAGE OF REGULATORY CAPITAL**

Small Business Administration, financing from, **4:17**

**LIABILITY**

**Due Diligence and Civil Liability** (this index)

**Limited Liability Companies** (this index)

**LICENSES**

Due diligence and civil liability, **14:21**

Small Business Administration, Early Stage SBICs licensing process, **4:17**

Term loan agreements, **7:41**

**LICENSING EARLY STAGE SBICs**

Small Business Administration, financing from, **4:17**

**LIMITATIONS AND RESTRICTIONS**

Deductions, business interest, limitations on, **2:4**

**Federal Securities Laws** (this index)

**Going Public** (this index)

Limited liability companies, **3:17**

Preferred stock, **6:86**

**Term Loan Agreements** (this index)

**LIMITATIONS OF ACTIONS**

**Statute of Limitations** (this index)

**LIMITED LIABILITY COMPANIES**

Generally, **3:1 to 3:67**

Accounting methods, **3:61**

Advantages of LLC, **3:34**

Allocation of gains and losses, **3:50, 3:56**

Amendments to check-the-box regulations

generally, **3:21 to 3:26**

characterization of elective changes in classification, **3:22**

effective date of proposed regulations, **3:26**

number of members of entity, change in, **3:23**

special basis adjustments under section 743, **3:25**

timing of elective changes in classification, **3:24**

Arizona LLC agreement (2012), **20:11**

Articles of organization, **3:44**

At-risk limitations, **3:63**

Basic characteristics of LLCs, **3:38 to 3:42**

Blue Sky laws

survey of exemptions for LLC interests, **3:67**

Book value/tax basis differences, **3:57**

“Bulletproof” statutes, **3:4, 3:29**

California LLC operating agreement (2011), **20:4**

Capital contributions, **3:49**

Centralization of management, **3:30**

Characterization of elective changes in classification, **3:22**

Check-the-box regulations

generally, **3:6 to 3:20**

amendments to check-the-box regulations, above

conclusion, **3:20**

corporations, final regulations, **3:8**

domestic eligible entities, **3:13**

effective date, **3:19**

elections, **3:16 to 3:18**

elective classification of certain entities, **3:12 to 3:15**

existing eligible entities, **3:15**

final regulations, generally, **3:6 to 3:20**

foreign corporations, final regulations, **3:9**



**LIMITED LIABILITY COMPANIES—Cont'd**

Check-the-box regulations—Cont'd  
     foreign eligible entities, **3:14**  
     limits on changes in classification by election, **3:17**  
     other business entities, final regulations, **3:10**  
     overview of business entities, **3:7**  
     partnership terminations, **3:18**  
     prior to the check-the-box regulations, below  
         proposed amendments to check-the-box regulations, below  
         single owner entity, final regulations, **3:11**  
         transition rules, **3:19**  
     Classification of LLC for federal tax purposes, generally, **3:6 to 3:32**  
     Comparisons of LLCs with S corporations and limited partnerships, generally, **3:33 to 3:37**  
     Continuity of life prior to the check-the-box regulations, **3:29**  
     Contributions of property or services, **3:53, 3:54**  
     Conversion of partnership to LLC, **3:48**  
     Corporations, final regulations, **3:8**  
     Delaware LLC operating agreement (2022), **20:8**  
     Disadvantages of LLC, **3:35**  
     Dispositions of LLC interests, **3:60**  
     Dissolution, **3:51**  
     Distributions  
         organization, **3:50**  
         taxation of LLC and members, **3:58**  
     Domestic eligible entities, **3:13**  
     Duration, **3:42**  
     Effective date  
         check-the-box regulations, **3:19**  
         proposed amendments to check-the-box regulations, **3:26**  
     Elections, check-the-box regulations, **3:16 to 3:18**  
     Elective classification of certain entities, **3:12 to 3:15**  
     Exemptions for LLC interests in Blue Sky regulations, survey of, **3:67**  
     Existing eligible entities, **3:15**  
     Federal securities laws, generally, **3:2**  
     Final regulations. Check-the-box regulations, above  
     Flexible statutes, **3:5**  
     Florida LLC operating agreement form (2011), **20:5**  
     Foreign corporations, final regulations, **3:9**  
     Foreign eligible entities, **3:14**  
     Formation of an LLC, **3:43, 3:53, 3:54**  
     Forms of operating agreements  
         Arizona LLC agreement (2012), **20:11**  
         California operating agreement (2011), **20:4**  
         Delaware LLC operating agreement (2022), **20:8**

**LIMITED LIABILITY COMPANIES—Cont'd**

Forms of operating agreements—Cont'd  
     Florida operating agreement (2011), **20:5**  
     Maryland operating agreements (3)(2012), **20:2**  
     Massachusetts LLC agreement (2013), **20:12**  
     Michigan manager-managed model LLC (2013), **20:9**  
     New York operating agreement (2008), **20:1**  
     North Carolina LLC operating agreement (2012), **20:3**  
     South Carolina LLC agreement (2013), **20:10**  
     Texas S corporation LLC operating agreement (2011), **20:6**  
     Virginia LLC agreement (2010), **20:7**  
     Free transferability of interests, **3:31**  
     Gains and losses, allocation of, **3:50, 3:56**  
     General rules for entity classification prior to 1997, **3:27**  
     Introduction, **3:1**  
     Liability  
         limited liability prior to the check-the-box regulations, **3:28**  
         taxation of LLC and members, **3:55**  
         third parties, liability of members and managers to, **3:47**  
     Limited liability prior to the check-the-box regulations, **3:28**  
     Limited partnerships, comparisons with, generally, **3:33 to 3:37**  
     Limits on changes in classification by election, **3:17**  
     Managing the LLC, **3:45, 3:46**  
     Maryland operating agreements (3)(2012), **20:2**  
     Massachusetts LLC Agreement (2013), **20:12**  
     Members and membership  
         basic characteristics of LLCs, **3:38**  
         management by members, **3:45**  
         number of members of entity, change in, **3:23**  
         tax basis of members, **3:55**  
     Michigan manager-managed operating agreement (2013), **20:9**  
     Name, **3:39**  
     Nature of business, **3:40**  
     New York LLC operating agreement (2008), **20:1**  
     North Carolina LLC operating agreement (2012), **20:3**  
     Number of members of entity, change in, **3:23**  
     One percent ownership prior to the check-the-box regulations, **3:32**  
     Operating agreement  
         generally, **3:44**  
         forms of operating agreements, above  
     Organization  
         generally, **3:43 to 3:51**

## **LIMITED LIABILITY COMPANIES—Cont'd**

Organization—Cont'd  
 allocation of profits, losses and distributions, **3:50**  
 articles of organization, **3:44**  
 capital contributions, **3:49**  
 conversion of partnership to LLC, **3:48**  
 dissolution, **3:51**  
 distributions, allocation of, **3:50**  
 formation, **3:43**  
 liability to third parties, **3:47**  
 managing the LLC, **3:45, 3:46**  
 members, management by, **3:45**  
 operating agreement, **3:44**  
 partnership, conversion to LLC, **3:48**  
 profits and losses, allocation of, **3:50**  
 third parties, liability to, **3:47**

Partnerships  
 conversion to LLC, **3:48**  
 taxation of LLC and members, **3:52**  
 terminations, check-the-box regulations, **3:18**

Passive loss limitations, **3:62**

Powers, generally, **3:41**

Prior to the check-the-box regulations  
 generally, **3:28 to 3:32**  
 additional complications, **3:32**  
 centralization of management, **3:30**  
 continuity of life, **3:29**  
 free transferability of interests, **3:31**  
 limited liability, **3:28**  
 one percent ownership, **3:32**  
 transferability of interests, **3:31**

Profits and losses, allocation of, **3:50, 3:56**

Property, contributions of, **3:53**

Real Estate Mortgage Investment Conduit (REMIC), **3:7**

Retirement plans, taxation of LLC and members, **3:65**

Self-employment taxes, **3:65**

Services, contributions of, **3:54**

Shelters from taxes, **3:61**

Single owner entity, final regulations, **3:11**

South Carolina LLC agreement (2013), **20:10**

Special basis adjustments under section 743, **3:25**

State securities regulation  
 generally, **3:2**  
 survey of LLC interests under, **3:67**

State taxation of LLCs, **3:66**

Statutes and acts  
 state securities laws, above  
 Uniform Limited Liability Company Act (1996), **3:1**

Survey of LLC interests under state securities laws, **3:67**

## **LIMITED LIABILITY COMPANIES—Cont'd**

Tabular comparison of nontax and tax characteristics of limited partnerships LLCs and S corporations, **3:37**

Taxation of LLC and members  
 generally, **3:52 to 3:66**  
 accounting methods, **3:61**  
 allocation of gains and losses, **3:56**  
 at-risk limitations, **3:63**  
 book value/tax basis differences, **3:57**  
 contributions of property or services, **3:53, 3:54**  
 dispositions of LLC interests, **3:60**  
 distributions to LLC members, **3:58**  
 formation of an LLC, **3:53, 3:54**  
 gains and losses, allocation of, **3:56**  
 liabilities of LLCs, **3:55**  
 members tax basis, **3:55**  
 other tax issues, **3:61 to 3:66**  
 partnerships, LLCs treated as, generally, **3:52**  
 passive loss limitations, **3:62**  
 property, contributions of, **3:53**  
 retirement plans, **3:65**  
 self-employment taxes, **3:65**  
 services, contributions of, **3:54**  
 state taxation of LLCs, **3:66**  
 tabular comparison of nontax and tax characteristics of limited partnerships LLCs and S corporations, **3:37**  
 tax matters partner, **3:64**  
 tax shelters, **3:61**  
 termination of an LLC, **3:59**

Termination of an LLC, **3:59**

Texas S corporation LLC operating agreement form (2011), **20:6**

Third parties, liability of members and managers to, **3:47**

Time or date  
 effective date, above  
 elective changes in classification, timing of, **3:24**

Transferability of interests, **3:31**

Transition rule, check-the-box regulations, **3:19**

Types of LLC statutes, **3:4, 3:5**

Uniform Limited Liability Company Act, generally, **3:1**

Virginia LLC operating agreement (2010), **20:7**

## **LIMITED OFFERINGS**

Form 1-A Regulation A offering statement under Securities Act of 1933, **App 1.7**

NASAA small company offering registration (SCOR) manual, **App 1.5A**

Regulation A-conditional small issues exemption, **App 1.6**

Regulation D, **App 1**

## **LIMITED OFFERINGS—Cont'd**

- SEC Release No. 33-4552 (November 6, 1962), **App 1.3**
- SEC Release No. 33-6455 (March 3, 1983), **App 1.1**
- Small business
  - NASAA small company offering registration (SCOR) manual, **App 1.5A**
  - Regulation A, small issues exemption, **App 1.6**
- Small Entity Compliance Guide
  - Amendments to Regulation A, **App 1.9**
  - Disclosure and simplification, **App 1.11**
- State blue sky regulation, **15:10**

## **LIMITED PARTNERSHIPS**

- Advertising
  - c&DIs relating to prohibition of general advertising, **6:2:50**
- General partners, Model Early Stage SBIC Limited Partnership Agreement, **4:18**
- Limited liability companies compared with, **3:33 to 3:37**
- S corporations, limitation on passive losses under Tax Reform Act of 1986, **2:54**
- Small Business Administration, Model Early Stage SBIC Limited Partnership Agreement, **4:18**

## **LIQUIDATION**

- Choosing the business financing format, **1:17**
- Preferred stock, **6:106**

## **LISTING REQUIREMENTS OF STOCK EXCHANGES**

- Going public, **12:28**

## **LITIGATION**

- Default of institutional private placements, **7:9**
- Due Diligence and Civil Liability** (this index)
- Preferred Stock** (this index)
- Term loan agreements, **7:42**

## **LOAN FEES**

- Small Business Administration, financing from, temporary elimination of loan fees, **4:1.50**

## **LOANS**

- Due diligence and civil liability, opinion or belief statements, loan loss reserve, **14:15**
- Federal securities laws, **11:47**
- Recovery loans extension, financing from Small Business Administration, **4:1.50**
- S corporations, self-charged interest on direct loan to S corporation, **2:46**
- Small Business Administration, financing from, **4:3**
- State blue sky regulation, **15:26**

## **LONG TERM FINANCING**

- Small Business Administration** (this index)

## **LORNE, SIMON**

- Small Business Administration, financing from, **4:6, 4:12, 4:15**

## **LOSS CAUSATION**

- Due diligence and civil liability
  - generally, **14:45**
  - fraud-on-the-Market, **14:45.60**
  - generic misstatements, fraud-on-the-Market, **14:45.60**
  - materialization of the risk, **14:45.50**
  - mixed affirmative statements and omissions, reliance, **14:45.70**
  - reliance, mixed affirmative statements and omissions, **14:45.70**
  - time delay between corrective disclosure and share price drop, **14:45.80**

## **LOUISIANA**

- Small business, assistance programs for, **App 18.19**

## **MAINE**

- Small business, assistance programs for, **App 18.20**

## **MAIN STREET CAPITAL (MAIN)**

- Business development company (BDC), **5:3**

## **MANAGEMENT ASSESSMENT QUESTIONNAIRE**

- Early Stage SBIC licensing process, **4:17**

## **MANAGEMENT DISCUSSION AND ANALYSIS**

- Emerging growth companies, special MD&A disclosures, **11:146.50**
- Financial condition and results of operations, SEC guidance on, **13:1.58**
- Going public, **12:11**
- Regulation S-K, proposed amendments to, **13:1.58**

## **MANAGEMENT FEE POLICIES**

- Small Business Administration, financing from, **4:18**

## **MANAGEMENT RIGHTS LETTER**

- NVCA model venture financings documents (2007), **15A:8**

## **MANAGERS AND MANAGEMENT**

- Disclosure** (this index)
- Due Diligence and Civil Liability** (this index)
- Limited Liability Companies** (this index), **3:46**
- NVCA model venture financings documents (2007), management rights letter, **15A:8**

## **MARGIN ACCOUNT DEPOSITS**

- Federal securities laws, **11:49**

**MARITAL SEPARATIONS**

Holding period for restricted securities, **11:113**

**MARKET RISKS**

Disclosure, **13:36, 13:37**

**MARYLAND**

LLC operating agreement, form of (2012), **20:2**  
Small business, assistance programs for, **App 18.21**

**MASSACHUSETTS**

Small business, assistance programs for, **App 18.22**

**MATERIAL CONTRACTS AND OBLIGATIONS**

Preferred stock, **6:32**

**MATERIALITY**

Disclosure, qualitative approach to materiality, Celestica case, **13:4**  
Due diligence and civil liability  
aspirational statements, **14:15.60**  
financial statements, **14:43, 14:43.50, 14:43.75**  
prosecutorial position of SEC, **14:40.10**  
puffery immaterial as matter of law, **14:15.50**

**“MATERIALITY ABUSE” ACCOUNTING PRACTICES**

Due diligence and civil liability, **14:96**

**MCG CAPITAL (MCGC)**

Business development company (BDC), **5:3**

**MEDLEY CAPITAL (MCC)**

Business development company (BDC), **5:3**

**MEMBERS AND MEMBERSHIP**

**Limited Liability Companies** (this index)

**MEMORANDA**

Offerings. **Due Diligence and Civil Liability** (this index)

**“MERGER MAGIC” ACCOUNTING PRACTICES**

Due diligence and civil liability, **14:96**

**MERGERS**

Series A convertible preferred stock purchase agreement (annotated), **6:89**

**MERIT REGULATION OF SECURITIES**

**State Blue Sky Regulation** (this index)

**MICHIGAN**

Small business, assistance programs for, **App 18.23**

**MINIMUM INVESTMENT**

Series A convertible preferred stock purchase agreement (annotated), **6:53**

**MINNESOTA**

Small business, assistance programs for, **App 18.24**

**MINORITY ENTERPRISE SMALL BUSINESS INVESTMENT COMPANIES (MESBICS)**

Generally, **4:2**

**MISSISSIPPI**

Small business, assistance programs for, **App 18.25**

**MISSISSIPPI “REASONABLY FORESEEABLE” APPROACH**

Due diligence and civil liability, **14:133**

**MISSOURI**

Small business, assistance programs for, **App 18.26**

**“MISSTATEMENTS”**

Due diligence and civil liability, **14:47**

**MODEL EARLY STAGE SBIC LIMITED PARTNERSHIP AGREEMENT**

Small Business Administration, financing from, **4:18**

**MODEL INDEMNIFICATION AGREEMENT**

NVCA model venture financings documents (2007), **15A:9**

**MODEL RULES OF PROFESSIONAL CONDUCT**

Due diligence and civil liability, **14:65, 14:66**

**MODEL VENTURE FINANCINGS DOCUMENTS**

NVCA Model Venture Financings Documents (2007) (this index)

**MODIFICATION OR CHANGE**

**Amendments** (this index)  
**Federal Securities Laws** (this index)  
**Preferred Stock** (this index)  
S corporations, amendments, **2:65**

**MONROE CAPITAL (MRCC)**

Business development company (BDC), **5:3**

**MONTANA**

Small business, assistance programs for, **App 18.27**

**MOTION PICTURE PRODUCTION AND DISTRIBUTION**

Intrastate offering exemption, **11:53**

**MVC CAPITAL (MVC)**

Business development company (BDC), **5:3**

**NAME**

Limited liability companies, **3:39**

## INDEX

### NASAA

**State Blue Sky Regulation** (this index)

### NASD

**National Association of Securities Dealers (NASD)** (this index)

### NASDAQ

Federal securities laws, **11:89**

**Going Public** (this index)

### NATIONAL ASSOCIATION OF SECURITIES DEALERS (NASD)

See also topics beginning **FINRA**

Due diligence and civil liability, **14:1**

**Going Public** (this index)

### NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996

State blue sky regulation, **15:1**

### NATIONAL VENTURE CAPITAL ASSOCIATION (NVCA)

**NVCA Model Venture Financings Documents (2007)** (this index)

### “NEAR PRIVACY” APPROACH

Due diligence and civil liability, **14:127**

### NEBRASKA

Small business, assistance programs for, **App 18:28**

### NEGATIVE COVENANTS

Series A convertible preferred stock purchase agreement (annotated), **6:71**

**Term Loan Agreements** (this index)

### NEGLIGENT SECURITIES “FRAUD” ACTIONS BY SEC

Section 17(a)(2) misstatement liability, **14:39.50**

Section 17(a)(3) scheme liability, **14:39.60**

### NEGOTIATING SKILL

Term loan agreements, **7:29**

### NET

Base year income, S corporations, **2:77**

Proceeds requirement, federal securities laws, **11:56**

Worth standard, accredited investors, **11:6.70**

### NEVADA

Small business, assistance programs for, **App 18:29**

### NEW HAMPSHIRE

Small business, assistance programs for, **App 18:30**

### NEW JERSEY

Small business, assistance programs for, **App 18:31**

### NEW MEXICO

Small business, assistance programs for, **App 18:32**

### NEW MOUNTAIN FINANCE (NMFC)

Business development company (BDC), **5:3**

### NEW YORK

LLC operating agreement, form of (2008), **20:1**

Small business, assistance programs for, **App 18:33**

### NEW YORK STOCK EXCHANGE

Going public, **12:28**

### NGP CAPITAL RESOURCES COMPANY (NGPC)

Business development company (BDC), **5:3**

### NO-ACTION LETTERS

**Federal Securities Laws** (this index)

### “NOISY” WITHDRAWAL

Sarbanes-Oxley Act, due diligence and civil liability, **14:58**

### NON-ASSESSABLE STOCK

Preferred stock, **6:131, 6:138**

### NON-CASH DIVIDENDS

Preferred stock, **6:111**

### NONDISCLOSURE AGREEMENTS

Preferred stock, **6:67**

### NONREPORTING ISSUERS

SEC’s 2005 securities offering rules revisions, **11:151**

### NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION (NASAA)

**State Blue Sky Regulation** (this index)

### NORTH CAROLINA

LLC operating agreement, form of (2012), **20:3**

Small business, assistance programs for, **App 18:34**

### NORTH DAKOTA

Small business, assistance programs for, **App 18:35**

### NOTICE OR KNOWLEDGE

Federal securities laws, notice of sale requirement under Rule 144, **11:90**

Form D, Notice of Sales under Regulation D or Section 4(6), **App 2**

Internet offerings, Rule 135c notice, **11:8**

Series A convertible preferred stock purchase agreement (annotated), **6:95**

State blue sky regulation, **15:16**



**NUMBER OF MEMBERS**

Limited liability companies, **3:23**

**NUMBER OF OUTSTANDING SHARES**

Preferred stock, **6:127**

**NVCA MODEL VENTURE FINANCINGS DOCUMENTS (2007)**

Generally, **15A:1 et seq.**

Amended and restated certificate of incorporation, **15A:4**

Certificate of incorporation (amended and restated), **15A:4**

Co-sale agreement, **15A:7**

First refusal right and co-sale agreement, **15A:7**

Indemnification agreement, **15A:9**

Investors' rights agreement, **15A:5**

Management rights letter, **15A:8**

Model indemnification agreement, **15A:9**

Overview of project, **15A:1**

Right of first refusal and co-sale agreement, **15A:7**

Stock purchase agreement, **15A:3**

Term sheet, **15A:2**

Voting agreement, **15A:6**

**OBLIGATIONS**

S corporations, obligations treated as equity, **2:23**

**OBSERVER RIGHTS**

Series A convertible preferred stock purchase agreement (annotated), **6:63**

**OFFERING PRICE**

Disclosure, **13:24, 13:25**

State blue sky regulation, **15:22**

**OFFERINGS**

**Public Offerings** (this index)

**OFFER OR SALE**

State blue sky regulation, **15:2**

**OFFICE OF THRIFT SUPERVISION**

Due diligence and civil liability, **14:98**

**OFFICERS**

**Disclosure** (this index)

**Due Diligence and Civil Liability** (this index)

**OFFSHORE TRANSACTIONS**

**Federal Securities Laws** (this index)

**OHIO**

Small business, assistance programs for, **App 18.36**

**OKLAHOMA**

Small business, assistance programs for, **App 18.37**

**ONE CLASS OF STOCK REQUIREMENT**

S corporations, eligibility, **2:21 to 2:27**

**ONE PERCENT OWNERSHIP**

Limited liability companies, **3:32**

**OPERATING AGREEMENT**

**Limited Liability Companies** (this index)

**OPERATING SBICS, DIRECTORY OF**

**Directory of Operating Small Business Investment Companies (SBIC)** (this index)

**OPINION OF COUNSEL**

Due diligence and civil liability, **14:67, 14:94**

**Going Public** (this index)

Institutional private placements, **7:5**

Restricted shares, improper issuance of attorney opinion letter regarding, **11:132.50**

Series A convertible preferred stock purchase agreement (annotated), **6:49**

**OPINION OR BELIEF**

Due diligence and civil liability, statements, **14:15**

**OPTIMAL CAPITAL STRUCTURE**

Choosing the business financing format, **1:3**

**OPTIONS**

**Antidilution Provisions** (this index)

Institutional private placements, **7:3**

S corporations, one class of stock requirement for eligibility, **2:25, 2:26**

State blue sky regulation, **15:21**

**OPT-OUT DISCLOSURES**

Emerging growth companies, **11:146.50**

**OREGON**

Small business, assistance programs for, **App 18.38**

**ORGANIZATION**

**Limited Liability Companies** (this index)

Small Business Administration, applicants for Early Stage SBIC Limited Partnership Agreement, **4:18**

**ORIGINAL ISSUE DISCOUNT (OID)**

Choosing the business financing format, **1:9, 1:10**

Preferred stock, **6:5 to 6:9**

**OUTLINE OF BUSINESS PLAN**

Generally, **18:1**

**OUT-OF-STATE**

**Foreign State or Country** (this index)

**OWNERS AND OWNERSHIP**

S corporations, pass-through entities, **2:42, 2:44**

**OWN STOCK OR DEBT AS WORTHLESS**

S corporations, **2:47**

**OXFORD LANE CAPITAL (OXLC)**

Business development company (BDC), **5:3**

**PARAGRAPH LENGTHS**

Disclosure, **13:13**

**PARALLEL STRUCTURE OF SENTENCES**

Disclosure, **13:12**

**PARTICIPATING SECURITIES**

Choosing the business financing format, **1:12**

S corporations, material participation and limitation on passive losses under Tax Reform Act of 1986, **2:53**

**PARTNERSHIPS**

**Limited Liability Companies** (this index), **3:1 to 3:67**

Research and development, partnerships for, **1:23**

**PASSIVE ACTIVITY LOSSES**

Activity or activities

s corporations, limitation on passive losses under Tax Reform Act of 1986, **2:51**

Limitations

s corporations, Tax Reform Act of 1986, **2:50 to 2:54**

Limited liability companies, **3:62**

Material participation

s corporations, limitation on passive losses under Tax Reform Act of 1986, **2:53**

S corporations

limitation under Tax Reform Act of 1986, **2:50 to 2:54**

shareholders, **2:54**

Shareholders of S corporations, **2:54**

**PASS THROUGH ENTITIES**

S corporations, investment interest limitation, **2:40 to 2:46**

**PAST EARNINGS RECORD**

Small Business Administration, financing from, **4:1**

**PATENTS**

Due diligence and civil liability, **14:21**

Series A convertible preferred stock purchase agreement (annotated), **6:30**

Term loan agreements, **7:41**

**PATTERN OF RACKETEERING ACTIVITY**

**Due Diligence and Civil Liability** (this index)

**PAY-FOR-PERFORMANCE**

Going public, Dodd-Frank Act (2010) corporate governance provisions, **12:34**

**“PAY TO PLAY” ANTIDILUTION PROVISIONS**

Generally, **17:5**

**PENALTIES**

S corporations, taxable year, **2:80**

Term loan agreements, **7:35**

**PENNANTPARK FLOATING RATE CAPITAL (PFLT)**

Business development company (BDC), **5:3**

**PENNANTPARK INVESTMENT (PNNT)**

Business development company (BDC), **5:3**

**PENNSYLVANIA**

Small business, assistance programs for, **App 18.39**

**PERCENT OR PERCENTAGE**

S corporations, applicable percentage and taxable year, **2:75**

**PERMISSIBLE OR ALLOWABLE**

S corporations, permissible fiscal years without election, **2:72**

**PERMITTED LOANS BY SBIC**

Small Business Administration, financing from, **4:3**

**PERSONAL HOLDING COMPANY TAX**

S corporations, avoidance, **2:10**

**PHASE-IN DISCLOSURE**

Emerging growth companies, **11:146.50**

**PINNACLE FOODS INC.**

Prospectus with Regulation S-K items.  
**Disclosure** (this index)

**PINTER v DAHL**

Due diligence and civil liability, **14:34**

**“PLAIN ENGLISH”**

**Disclosure** (this index)

**PLANS AND PLANNING**

**Business Plans** (this index)

**Disclosure** (this index)

Term loan agreements, **7:53**

**PLEADING**

Due diligence and civil liability, special pleading requirements for Rule 10b-5 claims, **14:52.90**

**PLEDGES**

**Federal Securities Laws** (this index)

**POINTS AND RELATED CHARGES**

Term loan agreements, **7:33**

**“POSITIVE” WRITING**

Disclosure, **13:12**

**POST-PINTER CASES**

Due diligence and civil liability, **14:35**

**PREEMPTION OF LAWS**

Generally, **Federal Preemption** (this index)

Internet offerings and blue sky laws, **11:8**

Preferred stock, preemptive rights, **6:136**

**PREFERRED STOCK**

Generally, **6:1 to 6:145**

Absence of changes or liabilities, series A convertible preferred stock purchase agreement (annotated), **6:27, 6:34**

Accredited investor, representations of purchasers, **6:45**

Accuracy of representations by company, series A convertible preferred stock purchase agreement (annotated), **6:59**

Actions. Litigation, below

Adjustment of conversion prices. Certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), below

Allocation of expenses, series A convertible preferred stock purchase agreement (annotated), **6:81**

Amendments

certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), below

series A convertible preferred stock purchase agreement (annotated), **6:98**

Annotated opinion of stock purchase agreement generally, **6:115 to 6:142**

authority of corporation, generally, **6:120 to 6:124**

authorized capital stock, **6:126**

binding obligations, **6:124**

capitalization

generally, **6:125 to 6:133**

authorized capital stock, **6:126**

duly authorized outstanding shares, **6:128**

fully paid outstanding shares, **6:130**

non-assessable outstanding shares, **6:131**

no rights, options, etc., **6:133**

number of outstanding shares, **6:127**

preferred stock, **6:132**

validly issued outstanding shares, **6:129**

conflicts, absence of, **6:139**

consent and approvals, **6:141**

delivery, **6:123**

due organization of corporation, **6:117**

duly authorized stock, **6:128, 6:138**

execution and delivery, **6:123**

first refusal, rights of, **6:136**

fully paid stock, **6:130, 6:138**

**PREFERRED STOCK—Cont’d**

Annotated opinion of stock purchase agreement —Cont’d

issuance and status of shares

generally, **6:134 to 6:138**

duly authorized common stock, **6:138**

first refusal, rights of, **6:136**

fully paid common stock, **6:138**

non-assessable common stock, **6:138**

preemptive rights, **6:136**

reservation of common stock, **6:137**

validly issued common stock, **6:138**

litigation, **6:140**

non-assessable stock, **6:131, 6:138**

number of outstanding shares, **6:127**

power of corporation, generally, **6:119 to 6:124**

preemptive rights, **6:136**

reservation of common stock, **6:137**

securities law compliance, **6:142**

status of corporation, generally, **6:116 to 6:119**

valid and binding obligations, **6:124**

valid existence of corporation, **6:118**

validly issued stock, **6:129, 6:138**

Antidilution provisions and adjustments, **1:15**

Approval. Consent or approval, below

Articles of incorporation. Certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), below

Assets, representations of company, **6:29**

Assigns, series A convertible preferred stock purchase agreement (annotated), **6:90**

Auditor, covenants of company, **6:69**

Authority and authorization

annotated opinion of stock purchase agreement, **6:120 to 6:124, 6:126**

series A convertible preferred stock purchase agreement (annotated), **6:13, 6:23, 6:43**

Binding obligations of stock purchase agreement, **6:124**

Blue Sky approvals, **6:51, 6:60**

Books and records, series A convertible preferred stock purchase agreement (annotated), **6:37**

Brokers, series A convertible preferred stock purchase agreement (annotated), **6:96**

Capital and capitalization

annotated opinion of stock purchase agreement, above

reorganizations, **6:111**

series A convertible preferred stock purchase agreement (annotated), **6:19**

Certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated)

generally, **6:103 to 6:114**

adjustment of conversion prices

generally, **6:109 to 6:114**

**PREFERRED STOCK—Cont'd**

- Certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated)
  - Cont'd
- adjustment of conversion prices—Cont'd
  - capital reorganizations, **6:111**
  - changes affecting series A, **6:114**
  - combinations, **6:110**
  - dissolutions, **6:111**
  - dividends, **6:110**
  - issuances at less than conversion price, **6:112**
  - non-cash dividends, **6:111**
  - reorganizations, **6:111**
  - status of converted or redeemed stock, **6:113**
  - stock purchase rights, **6:111**
  - stock splits, **6:110**
- capital reorganizations, **6:111**
- changes affecting series A, **6:114**
- combinations, **6:110**
- conversion prices. Adjustment of conversion prices, above in this group
- dissolutions, **6:111**
- dividends, **6:105, 6:110**
- issuances at less than conversion price, **6:112**
- liquidation, preference on, **6:106**
- non-cash dividends, **6:111**
- preference on liquidation, **6:106**
- reorganizations, **6:111**
- series A preferred stock, generally, **6:103 to 6:114**
- status of converted or redeemed stock, **6:113**
- stock purchase rights, **6:111**
- stock splits, **6:110**
- voting, **6:107**
- Certificates and certification
  - amendment of articles. Certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), above
  - series A convertible preferred stock purchase agreement (annotated), **6:33, 6:52, 6:56**
- Change or modification
  - certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:114**
  - series A convertible preferred stock purchase agreement (annotated), below
- Choosing the Business Financing Format** (this index)
- Closing a series A convertible preferred stock purchase agreement (annotated), **6:16**
- Combinations, certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:110**
- Common stock with debt, structuring investments to improve returns, **6:7**

**PREFERRED STOCK—Cont'd**

- Compliance and compliance certificate, series A convertible preferred stock purchase agreement (annotated), **6:33, 6:56**
- Conditions. Series A convertible preferred stock purchase agreement (annotated), below
- Confidentiality, series A convertible preferred stock purchase agreement (annotated), **6:92**
- Conflicts, absence of, **6:139**
- Consent or approval
  - annotated opinion of stock purchase agreement, **6:141**
  - series A convertible preferred stock purchase agreement (annotated), **6:24**
- Contribution, registration rights, **6:82**
- Conversion prices. Adjustment of conversion prices, above in this group
  - certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated)
- Convertible debt, **6:6**
- Convertible preferred stock, form of redemption provisions for, **18:2**
- Counterparts, series A convertible preferred stock purchase agreement (annotated), **6:99**
- Covenants of company. Series A convertible preferred stock purchase agreement (annotated), below
- Definitions, registration rights, **6:76**
- Delivery, annotated opinion of stock purchase agreement, **6:123**
- Directors, expenses of, **6:72**
- Disclosures, representations of company, **6:40**
- Dissolutions, **6:111**
- Dividends, **6:105, 6:110**
- Due organization of a corporation, annotated opinion of stock purchase agreement, **6:117**
- Duly authorized stock, **6:128, 6:138**
- Employees, series A convertible preferred stock purchase agreement (annotated), **6:35**
- Entire agreement, series A convertible preferred stock purchase agreement (annotated), **6:97**
- ERISA, representations of company, **6:36**
- Execution, annotated opinion of stock purchase agreement, **6:123**
- Expenses. Series A convertible preferred stock purchase agreement (annotated), below
- Experience, representations of purchasers, **6:44**
- Financial statements, **6:26, 6:64**
- First refusal, right of
  - annotated opinion of stock purchase agreement, **6:136**
  - series A convertible preferred stock purchase agreement (annotated), **6:68**
- Forms
  - preferred stock provisions forms, **16:1, 16:2**

## **PREFERRED STOCK—Cont'd**

- Forms—Cont'd
  - redemption provisions for convertible preferred stock, **18:2**
- Fully paid stock, **6:130, 6:138**
- Governing law, **6:102**
- Governmental consents, series A convertible preferred stock purchase agreement (annotated), **6:24**
- Headings, series A convertible preferred stock purchase agreement (annotated), **6:100**
- Incidental registration, **6:79**
- Indemnification, registration rights, **6:82, 6:83**
- Information by holder, registration rights, **6:84**
- Inspection, covenants of company, **6:62**
- Insurance. Series A convertible preferred stock purchase agreement (annotated), below
- Introduction, **6:1**
- Investment representations of purchasers, **6:42**
- Issuance of shares
  - annotated opinion of stock purchase agreement, above
  - certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:112**
  - series A convertible preferred stock purchase agreement (annotated), **6:22**
- Key issues in negotiating venture capital contract, **6:11**
- Key man insurance, **6:66**
- Later-stage investing, **6:10**
- Legend, registration rights, **6:77**
- Leveraged buy-out (LBO) funds, **6:2**
- Limitations on subsequent registration rights, **6:86**
- Liquidation, preference on, **6:106**
- Litigation
  - annotated opinion of stock purchase agreement, **6:140**
  - series A convertible preferred stock purchase agreement (annotated), **6:25, 6:65**
- Material changes in covenants of company, **6:65**
- Material contracts and obligations, **6:32**
- Mergers, series A convertible preferred stock purchase agreement (annotated), **6:89**
- Minimum investment, series A convertible preferred stock purchase agreement (annotated), **6:53**
- Modification. Change or modification, above
- Negative covenants, series A convertible preferred stock purchase agreement (annotated), **6:71**
- Non-assessable stock, **6:131, 6:138**
- Non-cash dividends, **6:111**
- Nondisclosure agreements, **6:67**
- Note and warrant purchase agreement, **6:144**

## **PREFERRED STOCK—Cont'd**

- Notices, series A convertible preferred stock purchase agreement (annotated), **6:95**
- Number of outstanding shares, **6:127**
- NVCA Model Venture Financings Documents (2004)** (this index)
- Observer rights, series A convertible preferred stock purchase agreement (annotated), **6:63**
- Opinion of counsel, series A convertible preferred stock purchase agreement (annotated), **6:49**
- Organization, representations of company, **6:18**
- Original issue discount (OID), **6:5 to 6:9**
- Participating preferred stock provisions, form, **16:2**
- Patents, series A convertible preferred stock purchase agreement (annotated), **6:30**
- Power of corporation. Annotated opinion of stock purchase agreement, above
- Preemptive rights, **6:136**
- Preference on liquidation, **6:106**
- Property, representations of company, **6:29**
- Purchase agreement, note and warrant purchase agreement, **6:144**
- “Reasonable redemption premiums,” **6:9**
- Redemption
  - convertible preferred stock, form of redemption provisions for, **18:2**
  - redemption premiums, preferred stock with, **6:9**
- Registration rights. Series A convertible preferred stock purchase agreement (annotated), below
- Regulation “D,” **6:2**
- Reorganizations, certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:111**
- Repayment premiums, debt with, **6:5**
- Representations. Series A convertible preferred stock purchase agreement (annotated), below
- Required registrations, series A convertible preferred stock purchase agreement (annotated), **6:78**
- Reservation of common stock
  - annotated opinion of stock purchase agreement, **6:137**
  - series A convertible preferred stock purchase agreement (annotated), **6:73**
- Rule 144 requirements, **6:87**
- Sales or transfers, series A convertible preferred stock purchase agreement (annotated), **6:14, 6:77, 6:91**
- Securities law compliance, **6:142**
- Series A convertible preferred stock purchase agreement (annotated)
  - generally, **6:12 to 6:102**
  - absence of changes or liabilities, **6:27, 6:34**



**PREFERRED STOCK—Cont'd**

Series A convertible preferred stock purchase agreement (annotated)—Cont'd  
 accredited investor, representations of purchasers, **6:45**  
 accuracy of representations by company, **6:59**  
 allocation of expenses, **6:81**  
 amendments, **6:98**  
 assets, representations of company, **6:29**  
 assigns, **6:90**  
 auditor, covenants of company, **6:69**  
 authority and authorization, **6:13, 6:23, 6:43**  
 Blue Sky approvals, **6:51, 6:60**  
 books and records, **6:37**  
 brokers, **6:96**  
 capitalization, representations of company, **6:19**  
 certificates and documents, **6:52, 6:56**  
 changes  
     covenants of company, **6:65**  
     representations of company, **6:34**  
 closing, **6:16**  
 compliance and compliance certificate, **6:33, 6:56**  
 conditions to obligations of purchasers  
     generally, **6:46 to 6:57**  
     accuracy of representations, **6:47**  
     Blue Sky approvals, **6:51**  
     certificates and documents, **6:52, 6:56**  
     compliance certificate, **6:56**  
     minimum investment, **6:53**  
     opinion of counsel, **6:49**  
     other matters or agreements, **6:50, 6:55, 6:57**  
     performance, **6:48**  
     small business concern documents, **6:54**  
     warranties, accuracy of, **6:47**  
 conditions to obligations of the company, generally, **6:58 to 6:60**  
 confidentiality, **6:92**  
 consents of government, **6:24**  
 contribution, registration rights, **6:82**  
 counterparts, **6:99**  
 covenants of company  
     generally, **6:61 to 6:74**  
     additional covenants, **6:70**  
     auditor, **6:69**  
     changes, **6:65**  
     directors, expenses of, **6:72**  
     expenses of directors, **6:72**  
     financial statements, **6:64**  
     first refusal, right of, **6:68**  
     inspection, **6:62**  
     key man insurance, **6:66**  
     litigation, **6:65**

**PREFERRED STOCK—Cont'd**

Series A convertible preferred stock purchase agreement (annotated)—Cont'd  
 covenants of company—Cont'd  
     material changes, **6:65**  
     negative covenants, **6:71**  
     nondisclosure agreements, **6:67**  
     observer rights, **6:63**  
     reservation of common stock of, **6:73**  
     termination of covenants, **6:74**  
 definitions, registration rights, **6:76**  
 directors, expenses of, **6:72**  
 disclosures, representations of company, **6:40**  
 employees, **6:35**  
 entire agreement, **6:97**  
 ERISA, representations of company, **6:36**  
 expenses  
     generally, **6:94**  
     covenants of company, **6:72**  
     registration rights, **6:81**  
 experience, representations of purchasers, **6:44**  
 financial statements, **6:26, 6:64**  
 first refusal, right of, **6:68**  
 governing law, **6:102**  
 governmental consents, **6:24**  
 headings, **6:100**  
 incidental registration, **6:79**  
 indemnification, registration rights, **6:82, 6:83**  
 information by holder, registration rights, **6:84**  
 inspection, covenants of company, **6:62**  
 insurance  
     key man insurance, **6:66**  
     representations of company, **6:31**  
 investment representations of purchasers, **6:42**  
 issuance of shares, **6:22**  
 key man insurance, **6:66**  
 legend, registration rights, **6:77**  
 limitations on subsequent registration rights, **6:86**  
 litigation, **6:25, 6:65**  
 material changes in covenants of company, **6:65**  
 material contracts and obligations, **6:32**  
 mergers, **6:89**  
 minimum investment, **6:53**  
 negative covenants, **6:71**  
 nondisclosure agreements, **6:67**  
 notices, **6:95**  
 observer rights, **6:63**  
 opinion of counsel, **6:49**  
 organization, representations of company, **6:18**  
 patents, **6:30**  
 property, representations of company, **6:29**  
 registration rights  
     generally, **6:75 to 6:89**

## **PREFERRED STOCK—Cont'd**

Series A convertible preferred stock purchase agreement (annotated)—Cont'd  
 registration rights—Cont'd  
   allocation of expenses, **6:81**  
   contribution, **6:82**  
   definitions, **6:76**  
   expenses, allocation of, **6:81**  
   incidental registration, **6:79**  
   indemnification, **6:82, 6:83**  
   information by holder, **6:84**  
   legend, **6:77**  
   limitations on subsequent registration rights, **6:86**  
   mergers, **6:89**  
   procedures, **6:80**  
   required registrations, **6:78**  
   Rule 144 requirements, **6:87**  
   sale or transfer of shares, **6:77**  
   “stand-off” agreement, **6:85**  
   underwriter or underwritten, **6:83, 6:88**  
 representations of company  
   generally, **6:17 to 6:40**  
   absence of changes or liabilities, **6:27, 6:34**  
   assets, **6:29**  
   authority for agreement, **6:23**  
   books and records, **6:37**  
   capitalization, **6:19**  
   changes, absence of, **6:34**  
   compliance, **6:33**  
   consents of government, **6:24**  
   disclosures, **6:40**  
   employees, **6:35**  
   ERISA, **6:36**  
   financial statements, **6:26**  
   governmental consents, **6:24**  
   insurance, **6:31**  
   issuance of shares, **6:22**  
   litigation, **6:25**  
   material contracts and obligations, **6:32**  
   organization, **6:18**  
   patents, **6:30**  
   property, **6:29**  
   small business concern, **6:38**  
   standing, **6:18**  
   stockholder list and agreements, **6:21**  
   subsidiaries, **6:20**  
   taxes, **6:28**  
   trademarks, **6:30**  
   U.S. real property holding corporation, **6:39**  
 representations of purchasers, generally, **6:41 to 6:45**  
 required registrations, **6:78**  
 reservation of common stock, **6:73**  
 Rule 144 requirements, **6:87**

## **PREFERRED STOCK—Cont'd**

Series A convertible preferred stock purchase agreement (annotated)—Cont'd  
 sales or transfers, **6:14, 6:77, 6:91**  
 severability, **6:101**  
 small business concerns, **6:38, 6:54**  
 standing, representations of company, **6:18**  
 “stand-off” agreement, **6:85**  
 stockholder list and agreements, **6:21**  
 subsidiaries, **6:20**  
 successor and assigns, **6:90**  
 survival of representations and warranties, **6:93**  
 taxes, representations of company, **6:28**  
 termination of covenants, **6:74**  
 trademarks, **6:30**  
 underwriter or underwritten, **6:83, 6:88**  
 U.S. real property holding corporation, **6:39**  
 use of proceeds, **6:15**  
 waivers, **6:98**  
 warranties  
   accuracy of representations by company, **6:59**  
   conditions to obligations of purchasers, **6:47**  
   survival of, **6:93**  
 Series A preferred stock  
   certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), above  
   convertible stock. Series A convertible preferred stock purchase agreement (annotated), above  
 Severability, series A convertible preferred stock purchase agreement (annotated), **6:101**  
 Simple interest, debt with, **6:4**  
 Small business concerns, **6:38, 6:54**  
 Standing, representations of company, **6:18**  
 “Stand-off” agreement, **6:85**  
 Status of converted or redeemed stock, **6:113**  
 Status of corporation, generally, **6:116 to 6:119**  
 Stockholder list and agreements, **6:21**  
 Stock purchase agreement or rights  
   annotated opinion of stock purchase agreement, above  
   certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:111**  
   series A convertible preferred stock purchase agreement (annotated), above  
 Stock splits, **6:110**  
 Structuring investments to improve returns  
   generally, **6:3 to 6:12**  
   common stock, debt with, **6:7**  
   convertible debt, **6:6**  
   original issue discount (OID), **6:5 to 6:9**  
   “reasonable redemption premiums,” **6:9**

## **PREFERRED STOCK—Cont’d**

- Structuring investments to improve returns—Cont’d
  - redemption premiums, preferred stock with, **6:9**
  - repayment premiums, debt with, **6:5**
  - simple interest, debt with, **6:4**
  - warrants, debt with, **6:8**
- Subsidiaries, series A convertible preferred stock purchase agreement (annotated), **6:20**
- Successor and assigns, **6:90**
- Survival of representations and warranties, **6:93**
- Taxes, representations of company, **6:28**
- Termination of covenants, series A convertible preferred stock purchase agreement (annotated), **6:74**
- Trademarks, **6:30**
- Transaction documents, typical, **6:143**
- Typical venture capital transaction documents, **6:143**
- Underwriter or underwritten, **6:83, 6:88**
- U.S. real property holding corporation, **6:39**
- Use of proceeds, series A convertible preferred stock purchase agreement (annotated), **6:15**
- Validity, matters of. Annotated opinion of stock purchase agreement, above
- Venture capital investment, generally, **6:2 to 6:14**
- Voting, certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:107**
- Waivers, series A convertible preferred stock purchase agreement (annotated), **6:98**
- Warranties. Series A convertible preferred stock purchase agreement (annotated), above
- Warrants, **6:8, 6:144**

## **PRELIMINARY OFFERING CIRCULAR**

- Federal securities laws, **11:67**

## **PREPAYMENTS**

- Institutional private placements, **7:3**

## **PRESENCE**

- Absence of Presence** (this index)

## **PRICING THE DEAL**

- Small Business Administration, financing from, **4:13**

## **“PRINCIPAL OFFICE REQUIREMENT” OF (c)(2)(iv)**

- Federal securities laws, **11:57**

## **PRINCIPLE STOCKHOLDERS**

- Disclosure, principle and selling stockholders, **13:46, 13:47**

## **PRIOR OR PREVIOUS MATTERS**

- S corporations, previously taxed income election, **2:38**

## **PRIOR TO CHECK-THE-BOX REGULATIONS**

- Limited Liability Companies** (this index), **3:1 to 3:67**

## **PRIVATE FUNDS**

- SEC enforcement authority, Fifth Circuit ruling, **14:90.35**

## **PRIVATE OFFERING EXEMPTION**

- C&DIs** (this index)
- Federal Securities Laws** (this index)

## **PRIVATE PLACEMENTS**

- Due diligence and civil liability, FINRA guidance, **14:28.50**
- Institutional Private Placements** (this index)
- Integration of “separate” offerings, **11:30**

## **PRIVATE RIGHT OF ACTION**

- Professional standards, Sarbanes-Oxley Act and SEC professional conduct rules, **14:64**

## **PRIVATE SECURITIES LITIGATION REFORM ACT**

- Due Diligence and Civil Liability** (this index)

## **PRIVITY**

- Due diligence and civil liability, **14:138, 14:139**

## **PROFESSIONAL CONDUCT RULES**

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

## **PROFESSIONAL STANDARDS**

- Due Diligence and Civil Liability** (this index)
- Sarbanes-Oxley Act. See **Sarbanes-Oxley Act** (this index)

## **PROFITS AND LOSSES**

- Howey test for investment contract and security, **15:3.60**
- Investment contract and security, Howey test, **15:3.60**
- Limited liability companies, allocation of, **3:50, 3:56**

## **PROMOTERS**

- Disclosure, **13:5, 13:40, 13:41**
- Due Diligence and Civil Liability** (this index)

## **PROPERTY**

- S corporations, distribution of appreciated property, **2:62 to 2:66**

## **PROPORTIONATE LIABILITY**

- Due Diligence and Civil Liability** (this index)

## **PROPOSED AMENDMENTS**

- Limited Liability Companies** (this index)

## **PROSPECT CAPITAL (PSEC)**

- Business development company (BDC), **5:3**

## **PROSPECTUS**

**Disclosure** (this index)

**Federal Securities Laws** (this index)

## **PROXIMATE CAUSE**

**Due Diligence and Civil Liability** (this index)

## **PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD**

Auditing Standards Release # 2012-001, **App 11.4**

Auditor communications with audit committees, PCAOB Auditing Standard No. 16, **12:8.50**

Internal control, PCAOB Guidance for Auditors of Smaller Public Companies (January 23, 2009), **App 11.3**

Professional standards, Sarbanes-Oxley Act, **14:70**

Proposed Auditing Standard Related to Auditor's Assessment of and Response to Risk of Material Misstatement in Financial Statements (Dec. 17, 2009), **App 11.2**

## **PUBLIC OFFERINGS**

Due diligence and civil liability, **14:37**

Final prospectus, **19:1**

Forms

final prospectus, **19:1**

initial public offering forms, **19:1, 19:4**

letter of intent, **19:5**

responsibility schedule for initial public offering of common stock, **19:4**

S-1 offering, **19:1, 19:3**

timetable for initial public offering of common stock, **19:4**

underwriting agreements, **19:3**

Initial public offering forms, **19:1, 19:4**

Letter of intent, form of, **19:5**

Responsibility schedule for initial public offering of common stock, form of, **19:4**

S-1 offering form, **19:1, 19:3**

SEC forms. Forms, above

Testing-the-waters, underwriting agreement for emerging growth company, **19:3.50**

Timetable for initial public offering of common stock, form of, **19:4**

Underwriting agreement

emerging growth company, **19:3.50**

Form S-1 offering, **19:3**

## **PUBLIC OWNERSHIP**

**Going Public** (this index)

## **PUERTO RICO**

Small business, assistance programs for, **App 18.40**

## **PUFFERY**

Due diligence and civil liability, **14:15.50**

## **PURCHASE AGREEMENT**

Preferred stock, note and warrant purchase agreement, **6:144**

## **PURCHASER REPRESENTATIVES**

Federal securities laws, C&DIs, **11:10.90**

## **QUALIFIED LEGAL COMPLIANCE COMMITTEE (QLCC)**

Sarbanes-Oxley Act and SEC professional conduct rules, **14:56**

## **QUALIFIED OR QUALIFICATION**

State blue sky regulation, registration by qualification, **15:17**

## **QUANTITY**

**Amount or Quantity** (this index)

## **RACKETEER INFLUENCED AND CORRUPT PRACTICES ORGANIZATIONS (RICO)**

**Due Diligence and Civil Liability** (this index)

## **RATE OR RATES**

S corporations, adjusted highest section one rate and taxable year, **2:76**

## **REAL ESTATE MORTGAGE INVESTMENT CONDUIT (REMIC)**

Limited liability companies, **3:7**

## **REASONABLE INVESTIGATION**

FINRA Regulatory Notice 10-22, reasonable investigations by broker-dealers in Regulation D offerings, **App 1.2A**

## **REASONABLENESS STANDARD**

Due diligence and civil liability, **14:4**

## **“REASONABLE REDEMPTION PREMIUMS”**

Preferred stock, **6:9**

## **“REASONABLY FORESEEABLE” APPROACH**

Due diligence and civil liability, **14:130 to 14:133**

## **RECAPITALIZATIONS**

**Federal Securities Laws** (this index)

## **RECAPTURE**

S corporations, inventory appreciation recaptured upon conversion from C corporation to S corporation, **2:68**

## **RECORDS AND RECORD-KEEPING**

Due diligence and civil liability, **14:16**

**NVCA Model Venture Financings Documents (2007)** (this index)

## **RECOVERY LOANS EXTENSION**

Small Business Administration, financing from, **4:1.50**

## REDEMPTION

- Choosing the Business Financing Format** (this index)
- Preferred stock, **6:9**
- Provisions for convertible debentures, forms of, **18:2**
- S corporations, one class of stock requirement for eligibility, **2:22**

## “RED FLAGS”

- Due diligence and civil liability, **14:51.50**

## REFORM AND REVISION

- Federal Securities Laws** (this index)

## REFUNDS

- S corporations, required payments, **2:79**

## REGIONS FINANCING TRUST LITIGATION

- Due diligence and civil liability, **14:15**

## REGISTRATION

- Choosing the business financing format, **1:22**
- Emerging Growth Companies (EGCs)** (this index)
- Federal Securities Laws** (this index)
- Form of registration rights agreement, **18:10**
- Going Public** (this index)
- Preferred Stock** (this index)

## REGULATION A

- Federal Securities Laws** (this index)
- Limited Offerings** (this index)

## REGULATION CROWDFUNDING

- Crowdfunding** (this index)

## REGULATION D

- Defenses, Rule 508, **11:4.70**
- Federal Securities Laws** (this index)
- FINRA Regulatory Notice 10-22, reasonable investigations by broker-dealers, **App 1.2A**
- Form D, Notice of Sales under Regulation D or Section 4(6), **App 2**
- Going Public** (this index)
- Limited offerings
  - generally, **App 1**
- Preferred stock, **6:2**
- Proposed amendment, **11:4.60**
- State blue sky regulation, **15:11**

## REGULATION S

- Generally, **App 8**
- Federal Securities Laws** (this index)

## REGULATION S-B

- Disclosure** (this index)
- SEC forms and related regulations, **App 5**

## REGULATION S-K

- Disclosure** (this index)

## REGULATION S-K—Cont’d

- Item 402, Executive Compensation Staff Q&A (Feb 12, 2007), **App 5.8**
- Proposed amendments to, **13:1.58**
- SEC forms and related regulations, **App 5.7**
- SEC staff compliance and disclosure interpretations (C&DIs) (February 2019), **App 5.9**

## REGULATION S-P

- Internet offerings, **11:8**

## RE KAYE, SCHOLER

- Due diligence and civil liability, **14:98**

## RELATED PARTY TRANSACTIONS

- Due diligence standards proposed by PCAOB, **12:14.50**

## RELIANCE BY SELLER ON RULE 144A

- Federal securities laws, **11:132**

## REMEDIES

- S corporations, relief from inadvertent termination, **2:39**
- SEC disgorgement remedy, statute of limitations, **14:90.60**

## REMUNERATION OF MANAGEMENT

- Disclosure, **13:6, 13:42, 13:43**

## REORGANIZATIONS

- Certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:111**
- Federal securities laws, **11:100**

## REPAYMENT PENALTIES

- Term loan agreements, **7:35**

## REPAYMENT PREMIUMS

- Preferred stock, **6:5**

## REPEAL OR REPEALS

- S corporations, repeal of “General Utilities” doctrine, **2:64**

## REPORTS AND REPORTING

- Due diligence and civil liability, **14:90**
- Financial reporting
  - FAQs, Management’s Report on Internal Control (Sept. 24, 2007), **App 11.1**
  - Interactive Data for Financial Reporting—A Small Entity Reporting Guide, **App 5.4**
  - PCAOB Auditing Standards Release # 2012-001, **App 11.4**
  - PCAOB Proposed Auditing Standard Related to Auditor’s Assessment of and Response to Risk of Material Misstatement in Financial Statements (Dec. 17, 2009), **App 11.2**
  - Securities and Exchange Commission Guidance Regarding Management’s Report on Internal Control (June 20, 2007), **App 11**



## **REPORTS AND REPORTING—Cont'd**

### **Going Public** (this index)

Institutional investment managers, Dodd-Frank Act (2010) corporate governance provisions, **12:34**

Regulation A, offering exemption reporting requirements, **11:71.10**

Sarbanes-Oxley Act, **14:56, 14:62, 14:73**

## **REPRESENTATIONS**

**Term Loan Agreements** (this index)

## **RE-SALE OF RIGHTS**

Choosing the business financing format, **1:22**

## **RESALES OF SECURITIES**

**C&DIs** (this index)

**Federal Securities Laws** (this index)

Safe harbor, Regulation S, **11:81.09**

State blue sky regulation, **15:27**

## **RESEARCH AND DEVELOPMENT**

Partnerships for, **1:23**

## **RESEARCH AND DEVELOPMENT PARTNERSHIPS**

Choosing the business financing format, **1:23**

## **RESEARCH REPORTS**

SEC's 2005 offering revisions, **11:143**

## **RESERVATION OF COMMON STOCK**

**Preferred Stock** (this index)

## **RESIDENCE REQUIREMENT**

Intrastate offering exemption, **11:42**

## **RESPONDEAT SUPERIOR**

Due diligence and civil liability, **14:81**

## **RESTRICTIONS**

**Limitations and Restrictions** (this index)

## **RESULTS OF OPERATION**

Disclosure, **13:4**

## **RETIREMENT PLANS**

Limited liability companies, **3:65**

## **RETURNS**

S corporations, taxable year, **2:74**

## **“REVENUE RECOGNITION MANIPULATION” ACCOUNTING PRACTICES**

Due diligence and civil liability, **14:96**

## **REVENUE RECOGNITION POLICY AND PRACTICES**

Going public, **12:13**

## **REVIEW BY SEC**

“Accredited investor” definition, **11:4.30**

Going public, **12:21**

## **REVOCATION**

S corporations, termination of election, **2:30**

## **REVOLVING CREDIT**

Term loan agreements, **7:11, 7:21**

## **RHODE ISLAND**

Small business, assistance programs for, **App 18.41**

## **RICO CLAIMS**

**Due Diligence and Civil Liability** (this index)

## **RIGHT OF FIRST REFUSAL**

NVCA model venture financings documents (2007), **15A:7**

## **RISK FACTORS**

Disclosure, **13:20, 13:21**

## **RISKS**

Term loan agreements, **7:28**

## **ROSENBLOOM TEST IN NEW JERSEY**

Due diligence and civil liability, **14:131**

## **RULE 10b-5 (1934 ACT)**

**Due Diligence and Civil Liability** (this index)

## **RULE 15c2-11**

Federal securities laws, **11:75.40**

## **RULE 24b-2**

Confidential treatment applications, **App 19**

## **RULE 102(E) PROCEEDINGS**

Due diligence and civil liability, **14:92**

## **RULE 135c NOTICE**

Internet offerings, **11:8**

## **RULE 135C NOTICE**

Internet offerings, **11:8**

## **RULES 144 AND 144A**

**Federal Securities Laws** (this index)

**Institutional Private Placements** (this index)

Offering exemption, Regulation A, **11:75.40**

Preferred stock, **6:87**

Questions and staff answers, **App 4.1A**

Release adopting Rule 144A, **App 4.4**

Revised Staff Legal Bulletin No. 3 (CF) (Oct. 20, 1999), **App 4.2A**

Rule 144A Private Resales of securities to institutions, **App 4.3**

Rule 144 under Securities Act of 1933, **11:75.40, App 4**

SEC Release No. 33-5306 (September 26, 1972), **App 4.1**

SEC Release No. 33-6099 (August 2, 1979), **App 4.2**

Staff Legal Bulletin No. 4 (CF) (Sept. 16, 1997), **App 4.2B**

**RULE 147**

Amendments, exemptions from registration requirements, **11:41.50**  
 Integration problems under, **11:59**  
 Selected C&DIs, **11:59.50**

**RULE 147A**

Intrastate offering exemption, **11:41.60**  
 SEC guidance, **11:59.50**  
 Selected C&DIs, **11:59.50**

**RULE 152**

Federal securities laws, **11:20, 11:39, 11:40**

**RULE 155**

Federal securities laws, **11:39, 11:40, 11:40.50**

**RULE 163B**

Test-the-waters communication, **11:137.60**

**RULE 176**

Due diligence and civil liability, **14:12**

**RULE 262**

Federal securities laws, **11:74**

**RULE 406**

Confidential treatment applications, **App 19**

**RULE 415**

Proposed amendments to, **11:149**

**RULE 504**

Federal securities laws, **11:12.40**

**RULE 505**

Federal securities laws, **11:12.40**

**RULE 506**

Bad actor disqualification under Rule 506(d), C&DI (Dec 2013), **11:4.52**  
 C&DIs, integration of offerings, **11:4.53**  
 Federal securities laws, **11:4.51, 11:4.52, 11:12.40**  
 General solicitation under Rule 506(c), C&DI, **11:4.51**  
 Internet offerings and blue sky laws, preemption of Rule 506 offerings, **11:8**

**RULE 508**

Defense to SEC enforcement actions under Regulation D, **11:4.70**  
 Exemptions from Securities Act (1933) registration, **11:4.70**

**SAFE HARBORS**

**Due Diligence and Civil Liability** (this index)  
**Federal Securities Laws** (this index)  
 Going public, SEC audit committee disclosure rules, **12:29**  
 S corporations, one class of stock requirement for eligibility, **2:24, 2:26**

**SALES OR TRANSFERS**

**Co-Sales** (this index)  
 Disclosure, principle and selling stockholders, **13:46, 13:47**  
**Going Public** (this index)  
 S corporations, buy-sell agreements, **2:22**

**SAMPLE NOTE AGREEMENT**

Institutional private placements, **7:10**

**SANCTIONS**

Sarbanes-Oxley Act and SEC professional conduct rules, **14:61**

**SANDERS, JAMES**

Small Business Administration, financing from, **4:16**

**SANDERS LITIGATION**

Due diligence and civil liability, **14:14**

**SARBANES-OXLEY ACT**

Generally, **14:54 to 14:64, 14:69 et seq.**  
 ABA and state ethical rules, **14:63**  
 Alternative reporting to QLCC, **14:56**  
 “Appropriate response” by issuer, **14:57**  
 Attorney rules, generally, **14:54 to 14:64**  
 Auditor rules, generally, **14:69 et seq.**  
 Confidential information, permissive disclosure of, **14:59**  
 Disclosures in accounting (required), **14:71**  
 Due diligence and civil liability. See entries throughout this topic  
 Independence of auditors, strengthening, **14:72**  
 Investigation, reporting attorney has no duty of, **14:62**  
 “Noisy” withdrawal and disaffirmances proposal and alternative proposal, **14:58**  
 Permissive disclosure of confidential information, **14:59**  
 Private right of action, **14:64**  
 Public Company Accounting Oversight Board, **14:70**  
 Reports and reporting, generally, **14:56, 14:62, 14:73**  
 Sanctions and discipline for rule violations, **14:61**  
 SEC auditor rules, generally, **14:69 to 14:73**  
 SEC professional conduct rules, generally, **14:54 to 14:64**  
 Supervisory and subordinate attorneys, **14:60**  
 Timely reporting by auditor to audit committee, audit committee’s role, **14:73**  
 “Up-the-ladder” reporting, **14:55, 14:58**  
 Whistle-blower protection for employees in employment termination cases, **14:53.50**

**SBIC**

**Small Business Investment Companies (SBIC)** (this index)

## SCALED DISCLOSURE

Smaller reporting companies. **Disclosure** (this index)

## SCHEMES TO EVADE REGISTRATION

Federal securities laws, **11:92**

## SCIENTER

Corporate scienter. **Due Diligence and Civil Liability** (this index)

## S CORPORATIONS

Generally, **2:1 to 2:85**

Accumulated earnings tax, avoidance of, **2:10**

Acquisition of interest in pass-through entity, investment interest limitation, **2:43**

Additional benefits of entity, **2:11**

Adjusted highest section one rate, taxable year, **2:76**

Affected taxpayers, limitation on passive losses under Tax Reform Act of 1986, **2:52**

Allocation of tax items, comparison of taxation of partners and shareholders, **2:58**

Allowances of losses and deductions, **2:59, 2:60**

Alternative minimum tax, avoidance of corporate alternative minimum tax, **2:9**

Amendments, **2:65**

Applicable payments, taxable year, **2:78**

Applicable percentage or payments, taxable year, **2:75**

Appreciation

distribution of appreciated property, comparison of taxation of partners and shareholders, **2:62 to 2:66**

recapture of inventory appreciation upon conversion from C corporation to S corporation, comparison of taxation of partners and shareholders, **2:68**

Arrangements treated as equity, one class of stock requirement for eligibility, **2:23**

Audits, comparison of taxation of partners and shareholders, **2:69, 2:70**

Avoidance

accumulated earnings tax, **2:10**

corporate alternative minimum tax, **2:9**

double taxation, **2:7**

elections to avoid election, passive investment income, **2:32**

personal holding company tax, **2:10**

section 1375, passive investment income, **2:36**

Basis, comparison of taxation of partners and shareholders, **2:55 to 2:57**

Benefits of entity, **2:1 et seq.**

Buy-sell agreements, one class of stock requirement for eligibility, **2:22**

Case law governing basis, comparison of taxation of partners and shareholders, **2:57**

## S CORPORATIONS—Cont'd

C corporations, comparison of taxation of partners and shareholders, **2:66, 2:68**

Chart, comparison of partnership and S corporation provisions, **2:83**

Choice of entity, factors in determining, **2:5, 2:6**

Classification of entity, comparison of taxation of partners and shareholders, **2:82**

Comparisons

partnership and S corporation provisions, **2:83**

taxation of partners and taxation of S corporation shareholders, **2:55 to 2:82**

Consent of shareholders, elections, **2:29**

Conversion from C corporation to S corporation, recapture of inventory appreciation, **2:68**

Convertible debt, **2:27**

Corporations eligible, **2:14**

Debt

basis of indebtedness, final regulations on, **2:56**

convertible debt, **2:27**

discharge of indebtedness income, tax treatment of certain items, **2:49**

investment interest limitation, tax treatment of certain items, **2:43, 2:44**

straight debt safe harbor, one class of stock requirement for eligibility, **2:24**

worthless debt, tax treatment of certain items, **2:47, 2:48**

Deductions

allowed, **2:59, 2:60**

business interest, limitations on, **2:4**

pass-through business income, Section 199A, **2:3**

Deemed dividend election, passive investment income, **2:37**

Definitions

passive activity, **2:51**

passive investment income, **2:34**

Determining basis, comparison of taxation of partners and shareholders, **2:55, 2:57**

Direct loan to S corporation, self-charged interest, **2:46**

Discharge of indebtedness income, tax treatment of certain items, **2:49**

Distributions

appreciated property, comparison of taxation of partners and shareholders, **2:62 to 2:66**

debt financed distributions from pass-through entity to its owners, investment interest limitation, **2:44**

Double taxation, avoidance of, **2:7**

Elections

generally, **2:28 to 2:32**

deemed dividend election, passive investment income, **2:37**

## S CORPORATIONS—Cont'd

### Elections—Cont'd

- IRS Form 2553, election by small business corporation, **2:84, 2:85**
- passive investment income, **2:33 to 2:38**
- permissible fiscal years without election, taxable year, **2:72**
- small business trusts, eligible shareholders, **2:19**
- termination, **2:30 to 2:32, 2:39**
- To avoid election, passive investment income, **2:32**
- transition rules for C corporations electing S corporation status, distribution of appreciated property, **2:66**

### Eligibility

- generally, **2:13 to 2:27**
- small business administration, financing from, **4:1**
- taxable year, comparison of taxation of partners and shareholders, **2:73**

Equity, one class of stock requirement for eligibility, **2:23**

Estates, eligible shareholders, **2:17**

Estimated tax payments, comparison of taxation of partners and shareholders, **2:67**

Excess passive investment income, **2:32, 2:35**

Expense, investment interest limitation, **2:40 to 2:46**

Failure to qualify as small business corporation, termination of election, **2:31**

Financed by debt distributions from pass-through entity to its owners, investment interest limitation, **2:44**

Fiscal years permissible without election, taxable year, **2:72**

### Forms

election by small business corporation (IRS Form 2553), **2:84, 2:85**

“General Utilities” doctrine, distribution of appreciated property, **2:64**

Highest section one rate, taxable year, **2:76**

Impact on shareholders and limited partners, limitation on passive losses under Tax Reform Act of 1986, **2:54**

Inadvertent termination, relief from, **2:39**

### Income

- discharge of indebtedness income, tax treatment of certain items, **2:49**
- net base year income, taxable year, **2:77**
- passive investment income, **2:33 to 2:38**
- pass-through business income, deduction for, Section 199A, **2:3**
- state income tax considerations, comparison of taxation of partners and shareholders, **2:81**

Indebtedness. See Debt, above

## S CORPORATIONS—Cont'd

Instruments, one class of stock requirement for eligibility, **2:23, 2:25**

Inventory appreciation, recapture upon conversion from C corporation to S corporation, **2:68**

### Investment

- interest limitation, tax treatment of certain items, **2:40 to 2:46**
- passive investment income, **2:33 to 2:38**
- potential as investment vehicle, **2:1 et seq.**

IRS Form 2553, election by small business corporation, **2:84, 2:85**

IRS Initiative on S Corporation Compliance, **2:12**

### Limitations

- investment interest limitation, tax treatment of certain items, **2:40 to 2:46**
- passive losses, Tax Reform Act of 1986, **2:50 to 2:54**
- statute of limitations, audits, **2:70**
- transfers, one class of stock requirement for eligibility, **2:22**

### Limited liability companies

- comparisons with, **3:33 to 3:37**
- Texas S corporation LLC operating agreement (2011), **20:6**

Limited partners, limitation on passive losses under Tax Reform Act of 1986, **2:54**

### Losses

- allowance of losses, **2:59, 2:60**
- utilization of corporate losses, **2:8**

Material participation, limitation on passive losses under Tax Reform Act of 1986, **2:53**

Mechanics of election, **2:28**

Net base year income, taxable year, **2:77**

Obligations treated as equity, one class of stock requirement for eligibility, **2:23**

One class of stock requirement, eligibility, **2:21 to 2:27**

Options, one class of stock requirement for eligibility, **2:25, 2:26**

Other instruments, obligations or arrangements treated as equity, one class of stock requirement for eligibility, **2:23**

Owners of pass-through entities, investment interest limitation, **2:42, 2:44**

Own stock or debt of S corporation as worthless, **2:47**

### Partners and partnerships

- chart, comparison of partnership and S corporation provisions, **2:83**
- limited partners, limitation on passive losses under Tax Reform Act of 1986, **2:54**
- taxation of partners compared with taxation of S corporation shareholders, **2:55 to 2:82**

Passive investment income, **2:33 to 2:38**

## S CORPORATIONS—Cont'd

- Pass-through business income, deduction for, Section 199A, **2:3**
- Pass-through entities, investment interest limitation, **2:40 to 2:46**
- Payments
  - applicable payments, taxable year, **2:78**
  - estimated tax payments, comparison of taxation of partners and shareholders, **2:67**
  - refunds of required payments, taxable year, **2:79**
- Penalties, taxable year, **2:80**
- Permissible fiscal years without election, taxable year, **2:72**
- Personal holding company tax, avoidance of, **2:10**
- Potential as investment vehicle, **2:1 et seq.**
- Previously taxed income election, passive investment income, **2:38**
- Qualified or qualifying
  - failure to qualify as small business corporation, termination of election, **2:31**
  - subsidiaries, eligible shareholders, **2:16**
  - trusts, eligible shareholders, **2:18, 2:20**
- Recapture of inventory appreciation upon conversion from C corporation to S corporation, comparison of taxation of partners and shareholders, **2:68**
- Recent tax legislation, **2:1**
- Redemptions, one class of stock requirement for eligibility, **2:22**
- Refunds of required payments, taxable year, **2:79**
- Relief from inadvertent termination, **2:39**
- Repeal of "General Utilities" doctrine, distribution of appreciated property, **2:64**
- Return required, taxable year, **2:74**
- Revocation, termination of election, **2:30**
- At risk, comparison of taxation of partners and shareholders, **2:61**
- Rules, distribution of appreciated property, comparison of taxation of partners and shareholders, **2:62 to 2:66**
- Safe harbors, one class of stock requirement for eligibility, **2:24, 2:26**
- Section 199A, deduction for pass-through business income, **2:3**
- Section 1368(e)(3) election to avoid Section 1375, passive investment income, **2:36**
- Section 1375 avoidance, passive investment income, **2:36**
- Self-charged interest, investment interest limitation, **2:45, 2:46**
- Shareholders
  - comparison of taxation of partners and taxation of S corporation shareholders, **2:55 to 2:82**
  - consents, elections, **2:29**

## S CORPORATIONS—Cont'd

- Shareholders—Cont'd
  - eligibility, **2:15 to 2:19**
  - impact on shareholders, limitation on passive losses under Tax Reform Act of 1986, **2:54**
  - passive loss, **2:54**
- Small business
  - electing small business trusts, eligible shareholders, **2:19**
  - failure to qualify as small business corporation, termination of election, **2:31**
  - IRS Form 2553, election by small business corporation, **2:84, 2:85**
- State income tax considerations, comparison of taxation of partners and shareholders, **2:81**
- Statute of limitations, audits, **2:70**
- Stock
  - disposition of, losses are suspended, **2:60**
  - one class of stock requirement, eligibility, **2:21 to 2:27**
  - worthless stock, tax treatment of certain items, **2:47, 2:48**
- Straight debt safe harbor, one class of stock requirement for eligibility, **2:24**
- Subsidiaries, qualified subchapter S subsidiaries, **2:16**
- Summary, comparison of partnership and S corporation provisions, **2:83**
- Taxable year or years
  - comparison of taxation of partners and shareholders, **2:71 to 2:80**
- Taxation
  - statutes, see lines throughout this index topic
- Tax Cuts and Jobs Act
  - allowances of losses and deductions, **2:59**
  - choice of entity after, **2:6**
- Tax imposed on excess passive investment income, **2:35**
- Taxpayers affected, limitation on passive losses under Tax Reform Act of 1986, **2:52**
- Tax Reform Act of 1986
  - distribution of appreciated property, comparison of taxation of partners and shareholders, **2:62 to 2:66**
  - limitation on passive losses under Tax Reform Act of 1986, **2:50 to 2:54**
- Tax Reform Act of 1996, audits, comparison of taxation of partners and shareholders, **2:69**
- Tax treatment of certain items, **2:40 to 2:49**
- Termination of election, **2:30 to 2:32, 2:39**
- Texas S corporation LLC operating agreement (2011), **20:6**
- Third party debt, worthless debt, **2:48**
- Transfers, one class of stock requirement for eligibility, **2:22**



## **S CORPORATIONS—Cont’d**

- Transition rules, distribution of appreciated property, **2:66**
- Trusts, eligible shareholders, **2:17**
- 2004 Act, **2:2**
- Utilization of corporate losses, **2:8**
- Warrants, one class of stock requirement for eligibility, **2:25**
- Worthless stock and debt, tax treatment of certain items, **2:47, 2:48**

## **SEC**

- Cryptocurrency, SEC injunctive authority, **14:90.10**
- Disgorgement remedy, application of statute of limitations, **14:90.60**
- Due Diligence and Civil Liability** (this index)
- Enforcement authority, private funds and private fund advisers curtailed in Fifth Circuit ruling, **14:90.35**
- Federal Securities Laws** (this index)
- Forms. **SEC Forms and Related Regulations** (this index)
- Going Public** (this index)
- Injunctive remedies, attempt to label as punitive, **14:90.70**
- Misrepresentations in connection with purchase or sale of a security, SEC enforcement, **14:90.30**
- Professional conduct rules. See **Sarbanes Oxley Act** (this index)

## **SEC ENFORCEMENT ARSENAL**

- Due diligence and civil liability, against professionals and others, **14:90**
- Sexual misconduct, **14:90.40**

## **SEC FORMS AND RELATED REGULATIONS**

- 2018 and 2008 amendments, summary, **11:152**
- Form 8-K, **App 5.5c**
- Form 8-K, SEC staff interpretations, **App 5.5d**
- Form 10-K, **App 5.5b**
- Form 10-Q, **App 5.5**
- Form D, proposed amendment, **11:4.60**
- Form S-1, **11:152, App 5.1**
- Form S-3, **App 5.2**
- Form SB-2, **App 5.4**
- Item 402 of Regulation S-K, Executive Compensation Staff Q&A (Feb 12, 2007), **App 5.8**
- Management’s Report on Internal Control, Commission Guidance Regarding (June 20, 2007), **App 11**
- Regulation S-B, **App 5**
- Regulation S-K, **11:152, App 5.7**
- Regulation S-K, SEC C&DIs (February 2019), **App 5.9**

## **SEC FORMS AND RELATED REGULATIONS—Cont’d**

- Sample letter regarding disclosures as to Russia’s invasion of Ukraine and related supply chain issues, **App 5.30**
- Staff C&DIs of Securities Act sections, **App 5.3**
- Staff Legal Bulletin No. 7 (Updated June 7, 1999), **App 5.6**

## **SEC NO-ACTION LETTERS**

- Federal Securities Laws** (this index)

## **SECOND RESTATEMENT APPROACH**

- Due diligence and civil liability, **14:128**

## **SECTION 10A OF EXCHANGE ACT OF 1934**

- Due Diligence and Civil Liability** (this index)

## **SECTION 11 LIABILITY**

- Due Diligence and Civil Liability** (this index)

## **SECTION 12(A)(2) OF 1933 ACT**

- Due diligence and liability. **Due Diligence and Civil Liability** (this index)
- Regulation A offering exemption liability, **11:75.65**

## **SECTION 17(A) OF 1933 ACT**

- Due diligence and civil liability, **14:39, 14:39.80**

## **SECTION 199A**

- Pass-through business income, deduction for, **2:3**

## **SECURITIES ACT OF 1933**

- Due Diligence and Civil Liability** (this index)
- Federal Securities Laws** (this index)
- Going public, generally, **12:1**
- Rules 144 and 144A** (this index)

## **SECURITIES EXCHANGE ACT OF 1934**

- Exchange Act of 1934** (this index)

## **SECURITIES EXCHANGE COMMISSION**

- SEC** (this index)

## **SECURITIES LAW COMPLIANCE**

- Preferred stock, **6:142**

## **SECURITIES LAWS**

- For particular matters regarding securities laws and regulations, see more specific entries throughout this index
- Generally, **Federal Securities Laws** (this index); **State Securities Regulation** (this index)
- As to particular statutes or laws, see topics throughout this index

## **SECURITIES LITIGATION UNIFORM STANDARDS ACT (SLUSA)**

- Reach of, due diligence and civil liability, **14:123.50**

**SECURITIES OFFERING REVISION**

**Federal Securities Laws** (this index)

**SELECTING SECURITIES**

**Choosing the Business Financing Format** (this index)

**SELF CHARGED INTEREST**

Generally, **2:45, 2:46**

**SELF-EMPLOYMENT TAX**

Limited liability companies, **3:65**

**SELF-REGULATORY ORGANIZATIONS**

**Going Public** (this index)

**SENIOR SECURITIES**

**Choosing the Business Financing Format** (this index)

**SERIES A PREFERRED STOCK**

**Preferred Stock** (this index)

**SERVICES, CONTRIBUTIONS OF**

Limited liability companies, **3:54**

**SEVERABILITY**

Series A convertible preferred stock purchase agreement (annotated), **6:101**

**SHAREHOLDERS**

**S Corporations** (this index)

**Stockholders** (this index)

**SHELF OFFERINGS**

SEC's 2005 securities offering revisions, **11:148**

**SHELF REGISTRATION**

Automatic shelf registration for well-known seasoned issuers, **11:150**

Process for registration under Securities Act of 1933, **11:147**

**SHELL COMPANY**

Federal securities laws, **11:122**

**SHELTERS FROM TAXES**

Limited liability companies, **3:61**

**SHORT SENTENCES, USE OF**

Disclosure, **13:12**

**SIMPLE INTEREST, DEBT WITH**

Preferred stock, **6:4**

**SIMULTANEOUS FUNDING**

Term loan agreements, **7:24**

**SING, GEORGE**

Small Business Administration, financing from, **4:6, 4:9, 4:15**

**SINGLE OWNER ENTITY**

Limited liability companies, **3:11**

**SINGLE PLAN OF FINANCING**

Federal securities laws, **11:17**

**SMALL BUSINESS**

Administration. **Small Business Administration, Financing From** (this index)

Assistance programs to states

generally, **5:1, 5:2**

summary of assistance programs for small business, state-by-state. **Small Business, State-by-State Summary of Assistance Programs for** (this index)

Business and Industrial Development Corporation (BIDCO), **5:1**

Business development companies, introduction and listing, **5:3**

Certified development companies, **5:1**

**Federal Securities Laws** (this index)

Innovation Development Act, **5:1**

Interactive Data for Financial Reporting—A Small Entity Reporting Guide, **App 5.4**

Investment companies. **Small Business Investment Companies** (this index)

Limited offerings

NASAA small company offering registration (SCOR) manual, **App 1.5A**

Regulation A, small issues exemption, **App 1.6**

Preferred stock, **6:38, 6:54**

Profiles for state and territories, **App 18.54**

Registration form (Form U-7) for small corporate offerings, **App 1.5**

SBICs. **Small Business Investment Companies** (this index)

**S Corporations** (this index)

Small Business Innovation Development Act, **5:1**

Small Entity Compliance Guide

Amendments to Regulation A, **App 1.9**

Disclosure and simplification, **App 1.11**

Smaller reporting company, scaled disclosure.

**Disclosure** (this index)

Specialized small business investment companies (SSBICs), **4:2**

State and territories, profiles for, **App 18.54**

State assistance to

generally, **5:1, 5:2**

summary of assistance programs for small business, state-by-state. **Small Business, State-by-State Summary of Assistance Programs for** (this index)

**State Blue Sky Regulation** (this index)

State-by-state summary of assistance programs for small business. **Small Business, State-by-State Summary of Assistance Programs for** (this index)

Summary of assistance programs for small business, state-by-state. **Small Business, State-by-State Summary of Assistance**

**SMALL BUSINESS—Cont'd**

**Programs for** (this index)

**SMALL BUSINESS, STATE-BY-STATE**

**SUMMARY OF ASSISTANCE**

**PROGRAMS FOR**

Alabama, **App 18.1**  
 Alaska, **App 18.2**  
 Arizona, **App 18.3**  
 Arkansas, **App 18.4**  
 California, **App 18.5**  
 Colorado, **App 18.6**  
 Connecticut, **App 18.7**  
 Delaware, **App 18.8**  
 District of Columbia, **App 18.9**  
 Florida, **App 18.10**  
 Georgia, **App 18.11**  
 Guam, **App 18.11A**  
 Hawaii, **App 18.12**  
 Idaho, **App 18.13**  
 Illinois, **App 18.14**  
 Indiana, **App 18.15**  
 Iowa, **App 18.16**  
 Kansas, **App 18.17**  
 Kentucky, **App 18.18**  
 Louisiana, **App 18.19**  
 Maine, **App 18.20**  
 Maryland, **App 18.21**  
 Massachusetts, **App 18.22**  
 Michigan, **App 18.23**  
 Minnesota, **App 18.24**  
 Mississippi, **App 18.25**  
 Missouri, **App 18.26**  
 Montana, **App 18.27**  
 Nebraska, **App 18.28**  
 Nevada, **App 18.29**  
 New Hampshire, **App 18.30**  
 New Jersey, **App 18.31**  
 New Mexico, **App 18.32**  
 New York, **App 18.33**  
 North Carolina, **App 18.34**  
 North Dakota, **App 18.35**  
 Ohio, **App 18.36**  
 Oklahoma, **App 18.37**  
 Oregon, **App 18.38**  
 Pennsylvania, **App 18.39**  
 Puerto Rico, **App 18.40**  
 Rhode Island, **App 18.41**  
 Small Business Administration, financing from, **4:5**  
 South Carolina, **App 18.42**  
 South Dakota, **App 18.43**  
 Tennessee, **App 18.44**  
 Texas, **App 18.45**  
 Utah, **App 18.46**  
 Vermont, **App 18.47**

**SMALL BUSINESS, STATE-BY-STATE**

**SUMMARY OF ASSISTANCE**

**PROGRAMS FOR—Cont'd**

Virginia, **App 18.49**  
 Virgin Islands, **App 18.48**  
 Washington, **App 18.50**  
 West Virginia, **App 18.51**  
 Wisconsin, **App 18.52**  
 Wyoming, **App 18.53**

**SMALL BUSINESS ADMINISTRATION,**

**FINANCING FROM**

Generally, **4:1 to 4:20**  
 Ability to repay loan, showing of, **4:1**  
 Accessing the public markets, **4:16**  
 Alternative size standards, **4:1.50**  
 Amendments to Early Stage SBIC Limited Partnership Agreement, **4:18**  
 Bold type provision in Model Early Stage SBIC Limited Partnership Agreement, **4:18**  
 Brophy, David J., **4:8**  
 Burrill, G. Steven, **4:11**  
 Business plans, **4:11**  
 Call period, Early Stage licensing process, **4:17**  
 Capital information, sources of, **4:8**  
 Capitalization, applicants for Early Stage SBIC Limited Partnership Agreement, **4:18**  
 Certified Lenders Program (CLP), **4:1**  
 Checklist, applicant for Early Stage licensing, **4:17**  
 Comment letter from SBA to applicant for Early Stage licensing, **4:17**  
 Commercial real estate refinancing, **4:1.50**  
 Conflicts of interest, **4:4**  
 Control prohibitions, **4:4**  
 Deviation from Model Early Stage SBIC Limited Partnership Agreement, explanation, **4:18**  
 Directory of operating SBICs, **4:5**  
 Due diligence, qualified applicants for Early Stage licensing process, **4:17**  
 Early Stage SBIC Initiative (2012), **4:17**  
 Eligibility for SBA loans, generally, **4:1**  
 Enhanced loan extension, **4:1.50**  
 European sources of funds, **4:15**  
 Exceptions to eligibility for SBA loans, generally, **4:1**  
 Extension of recovery loans, **4:1.50**  
 Federal Register, notice of call periods for Early Stage licensing process, **4:17**  
 Financing growth-oriented ventures  
     generally, **4:6 to 4:19**  
     accessing the public markets, **4:16**  
     business plans, **4:11**  
     capital information, sources of, **4:8**  
     Early Stage SBIC Initiative (2012), **4:17**  
     European sources, **4:15**

**SMALL BUSINESS ADMINISTRATION,  
FINANCING FROM—Cont'd**

Financing growth-oriented ventures—Cont'd  
 finders, **4:10**  
 introduction, **4:7**  
 legal aspects in structuring the deal, **4:14**  
 Model Early Stage SBIC Limited Partnership Agreement, **4:18, App 6**  
 offering circular, use of, **4:12**  
 pricing the deal, **4:13**  
 SBA financing sources, **4:16**  
 sources of capital information, **4:8**  
 specific sources of capital, generally, **4:15, 4:16**  
 structuring the deal, **4:13**  
 United Kingdom sources, **4:6**  
 valuing the deal, **4:13**  
 when to seek financing, generally, **4:9 to 4:13**  
 from whom to seek financing, generally, **4:9 to 4:13**  
 Finders, **4:10**  
 Fundraising and document preparation, Early Stage licensing process, **4:17**  
 General partners, Early Stage SBIC Limited Partnership Agreement, **4:18**  
 Green Light letters to qualified applicants for Early Stage licensing process, **4:17**  
 Hebb Jr., Donald B, **4:16**  
 Henning, Harry L., **4:6, 4:13, 4:15**  
 Initial review, Early Stage licensing process, **4:17**  
 Interview of applicants for Early Stage licensing, **4:17**  
 Introduction, **4:1**  
 Investments by SBIC, **4:3**  
 Kellman, Joel D., **4:6, 4:7, 4:15**  
 Legal aspects in structuring the deal, **4:14**  
 Leverage of regulatory capital, **4:17**  
 Licensed Early Stage SBICs, **4:17**  
 Limited partnerships, Model Early Stage SBIC Limited Partnership Agreement, **4:18**  
 Loans by SBIC, **4:3**  
 Lorne, Simon, **4:6, 4:12, 4:15**  
 Management Assessment Questionnaire, submission in Early Stage licensing process, **4:17**  
 Management fee policies of SBA, **4:18**  
 Minority enterprise small business investment companies (MESBICs), generally, **4:2**  
 Model Early Stage SBIC Limited Partnership Agreement, **4:18, App 6**  
 Offering circular, use of, **4:12**  
 Operating SBICs, directory of, **4:5**  
 Organizational structure of applicants for Early Stage SBIC Limited Partnership Agreement, **4:18**  
 Past earnings record, showing of, **4:1**  
 Permitted loans by SBIC, **4:3**

**SMALL BUSINESS ADMINISTRATION,  
FINANCING FROM—Cont'd**

Pricing the deal, **4:13**  
 Recovery loans extension, **4:1.50**  
 Sanders, James, **4:6, 4:15**  
 SBA financing sources, **4:16**  
 Sing, George, **4:6, 4:9, 4:15**  
 Small business investment companies (SBICs), generally, **4:1 to 4:5**  
 Small Business Jobs Act of 2010, **4:1.50**  
 Smerdon, Richard, **4:6**  
 Sources of capital information, **4:8**  
 Specialized small business investment companies (SSBICs), generally, **4:2**  
 Specific sources of capital, generally, **4:15, 4:16**  
 Staebler, Michael, **4:10**  
 State development company (SDC), **4:1**  
 Structuring the deal, **4:13**  
 Surety bond program, **4:1**  
 Taylor, William L., **4:7**  
 Temporary elimination of loan fees, Small Business Jobs Act of 2010, **4:1.50**  
 Testa, Richard J., **4:6, 4:15**  
 Tjaden, Joost, **4:6, 4:15**  
 Track 1 and Track 2 applicants for Early Stage licensing process, **4:17**  
 United Kingdom sources of funds, **4:6**  
 Valuing the deal, **4:13**  
 Von Gehr, George, **4:10, 4:15**  
 Withdrawal rights, Model Early Stage SBIC Limited Partnership Agreement, **4:18**  
 Working capital, temporary enhancements, **4:1.50**

**SMALL BUSINESS ASSISTANCE  
PROGRAMS, STATE-BY-STATE  
SUMMARY**

Generally, **5:2, App 18**

**SMALL BUSINESS DEVELOPMENT  
CENTERS AND SUBCENTERS**

Small Business Administration, financing from, **4:5**

**SMALL BUSINESS INNOVATION  
DEVELOPMENT ACT**

Generally, **5:1**

**SMALL BUSINESS INVESTMENT  
COMPANIES (SBIC)**

Directory, **App 13**  
 Financing form, Directory of Operating Small Business Investment Companies (SBIC), **4:5**  
 Form of debenture purchase agreement with, **18:11**  
**Small Business Administration** (this index)  
 Specialized small business investment companies (SSBICs), **4:2**

**SMALL BUSINESS JOBS ACT OF 2010**

Small Business Administration, financing from, **4:1.50**

**SMALLER BUSINESS ISSUER**

**Federal Securities Laws** (this index)

**SMALLER REPORTING COMPANY**

Amendments to definition of, **App 1.10**

Eligibility, **11:75.35, 13:1.60**

Interactive Data for Financial Reporting—A  
Small Entity Reporting Guide, **App 5.4**

Internal control, PCAOB Guidance for Auditors  
of Smaller Public Companies (January 23,  
2009), **App 11.3**

Scaled disclosure. **Disclosure** (this index)

**SMERDON, RICHARD**

Small Business Administration, financing from,  
**4:6, 4:15**

**SOFTWARE TOOLWORKS CASE**

Due diligence and civil liability, **14:6, 14:11**

**SOLAR CAPITAL (SLRC)**

Business development company (BDC), **5:3**

**SOLAR SENIOR CAPITAL (SUNS)**

Business development company (BDC), **5:3**

**SOLICITATION, PROHIBITION OF**

C&DI, permitted general solicitation under Rule  
506(c), **11:4.51**

Federal securities laws, **11:7, 11:8**

Proposed rule eliminating prohibition, **11:4.50**

**SOPHISTICATION UNDER RULE 506**

Federal securities laws, C&DIs, **11:10.90**

**SOUTH CAROLINA**

Small business, assistance programs for, **App  
18.42**

**SOUTH DAKOTA**

Small business, assistance programs for, **App  
18.43**

**SPECIAL BASIS ADJUSTMENTS UNDER  
SECTION 743**

Limited liability companies, **3:25**

**SPECIALIZED SMALL BUSINESS  
INVESTMENT COMPANIES (SSBICS)**

Generally, **4:2**

**SPECIAL PURPOSE ACQUISITION  
COMPANIES (SPACS)**

Generally, **11:146.60**

CF Disclosure Guidance Topic No. 11, **11:146.70**

Final disclosure rules, SEC adopts, **11:146.95**

New regulatory regime and disclosure rule, SEC,  
**11:146.90**

**SPECIAL PURPOSE ACQUISITION  
COMPANIES (SPACS)—Cont'd**

**SEC**

final disclosure rules, **11:146.95**

proposed new regulatory regime and disclosure  
rules, **11:146.90**

Selected C&DIs, **11:146.80**

**SPECIAL TACKING RULES**

**Federal Securities Laws** (this index)

**SPIN-OFFS**

Federal securities laws, **11:100**

**SRO POLICIES**

**Going Public** (this index)

**STAEBLER, MICHAEL**

Small Business Administration, financing from,  
**4:10**

**STANDING**

Preferred stock, **6:18**

**“STAND-OFF” AGREEMENT**

Preferred stock, **6:85**

**STATE ASSISTANCE TO SMALL BUSINESS**

Generally, **5:1, 5:2**

Summary of assistance programs for small busi-  
ness, state-by-state. **Small Business, State-  
by-State Summary of Assistance  
Programs for** (this index)

**STATE BLUE SKY REGULATION**

Generally, **15:1 to 15:27**

Agent registration, **15:5**

Announcement, registration by, **15:27**

Antifraud provisions, **15:6**

Broker-dealer registration, **15:5**

Capitalization, **15:25**

Cheap stock, **15:20**

Common enterprise, **15:3.50**

Coordination, registration by, **15:15**

“Covered” securities, federal law exclusive for,  
**15:1**

Definitions, **15:3.50**

Digital assets, **15:3.70**

Dividend coverage, **15:24**

Exemptions from registration requirements  
generally, **15:7 to 15:13**

Form U-7, **15:12**

institutional buyer’s exemption, **15:9**

limited offering exemption (LOE), **15:10**

Regulation D, **15:11**

resales of securities, **15:27**

securities based exemptions, **15:13**

small offerings registration form, **15:12**

transaction exemptions, **15:8 to 15:12**



## **STATE BLUE SKY REGULATION—Cont'd**

Exemptions from registration requirements  
—Cont'd  
Uniform Limited Offering Exemption (ULOE), **15:11**  
Existing capitalization, **15:25**  
Federal law exclusive for “covered” securities, **15:1**  
Form U-7, **15:12**  
Fraud provisions, **15:6**  
Howey test, **15:3.40, 15:3.50, 15:3.60**  
Institutional buyer’s exemption, **15:9**  
Interest, **15:24**  
Introduction, **15:1 to 15:6**  
Investment contract, domestic security warranting protection under federal securities laws, **15:3.90**  
Jurisdiction of state, **15:4**  
Limited offering exemption (LOE), **15:10, App 7.1**  
Loans, **15:26**  
Merit regulation of securities  
generally, **15:18 to 15:26**  
capitalization, **15:25**  
cheap stock, **15:20**  
dividend coverage, **15:24**  
existing capitalization, **15:25**  
interest, **15:24**  
loans, **15:26**  
offering expenses, **15:19**  
offering price, **15:22**  
options, **15:21**  
underwriters’ commissions, **15:19**  
voting rights, **15:23**  
warrants, **15:21**  
Methods of state securities registration, **15:14 to 15:17**  
NASAA disclosure guidelines for cover legends, **App 7.2**  
National Securities Markets Improvement Act of 1996, generally, **15:1**  
North American Securities Administrators Association (NASAA)  
generally, **15:1**  
Uniform Limited Offering Exemption, **App 7**  
Notification, registration by, **15:16**  
Offering expenses, **15:19**  
Offering price, **15:22**  
Offer or sale, **15:2**  
Options, **15:21**  
Profits derived solely from the efforts of others, **15:3.60**  
Qualification, registration by, **15:17**  
Regulation D, **15:11**  
Resales of securities, **15:27**  
Securities based exemptions, **15:13**

## **STATE BLUE SKY REGULATION—Cont'd**

Security, **15:3**  
Small company registrations  
Form U-7, **15:12**  
statement of policy regarding, **App 7.4**  
Transaction exemptions, **15:8 to 15:12**  
Underwriters’ commissions, **15:19**  
Uniform Limited Offering Exemption (ULOE), **15:11**  
Uniform securities acts  
generally, **15:1, App 6**  
Uniform Securities Act (1985), **App 6.1**  
Voting rights, **15:23**  
Warrants, **15:21**

## **STATE DEVELOPMENT COMPANY (SDC)**

Small Business Administration, financing from, **4:1**

## **STATE ETHICAL RULES**

Professional standards, Sarbanes-Oxley Act and SEC professional conduct rules, **14:63**

## **STATE LAW CLAIMS**

**Due Diligence and Civil Liability** (this index)

## **STATE OF MIND SAFE HARBOR**

Due diligence and civil liability, **14:104**

## **STATE SECURITIES REGULATION**

**Limited Liability Companies** (this index)  
**State Blue Sky Regulation** (this index)

## **STATE SMALL BUSINESS DEVELOPMENT CENTERS AND SUBCENTERS**

**Small Business Development Centers and Subcenters** (this index)

## **STATE SMALL BUSINESS INVESTMENT COMPANIES, DIRECTORY OF OPERATING**

**Directory of Operating Small Business Investment Companies** (this index)

## **STATE TAX**

S corporations, state income tax considerations, **2:81**

## **STATUS**

S corporations, transition rules for C corporations electing S corporation status, **2:66**

## **STATUTE OF LIMITATIONS**

S corporations, audits, **2:70**  
SEC disgorgement remedy, **14:90.60**

## **STATUTORY PROVISIONS**

**Due Diligence and Civil Liability** (this index)

## **STELLUS CAPITAL INVESTMENT SENIOR (SCM)**

Business development company (BDC), **5:3**

**STOCK DIVIDENDS**

Federal securities laws, **11:100**

**STOCKHOLDER LIST AND AGREEMENTS**

Preferred stock, **6:21**

**STOCKHOLDERS**

**Going Public** (this index)

**STOCK PURCHASE AGREEMENT**

Form of stock purchase agreement (common stock), **18:7**

NVCA model venture financings documents (2007), stock purchase agreement, **15A:3**

**Preferred Stock** (this index)

**STOCK PURCHASE WARRANT-LONG FORM**

Generally, **17:4**

**STOCK REPURCHASE AGREEMENT**

Form of, **18:13**

**STOCK SPLITS**

Preferred stock, **6:110**

**STOCK TRADING**

**Going Public** (this index)

**STRAIGHT DEBT SAFE HARBOR**

S corporations, one class of stock requirement for eligibility, **2:24**

**STRUCTURING**

**Preferred Stock** (this index)

Small Business Administration, financing from, **4:13**

Term loan agreements, **7:18 to 7:22**

**SUBSIDIARIES**

S corporations, qualified subsidiaries, **2:16**

Series A convertible preferred stock purchase agreement (annotated), **6:20**

**“SUBSTANTIAL PARTICIPATION”**

Due diligence and civil liability, **14:48**

**SUCCESSOR AND ASSIGNS**

Preferred stock, **6:90**

**SUMMARY**

Disclosure, **13:14, 13:18**

S corporations, comparison of partnership and S corporation provisions, **2:83**

**SUPERVISORS**

Professional standards, Sarbanes-Oxley Act and SEC professional conduct rules—supervisory attorneys, **14:60**

**SURETY BOND PROGRAM**

Small Business Administration, financing from, **4:1**

**SURVIVAL OF REPRESENTATIONS AND WARRANTIES**

Preferred stock, **6:93**

**SUSPENSION OF EXEMPTION**

Regulation A exemption for offering of 75 million dollars or less, **11:73**

**TABLES, USE OF**

Disclosure, **13:13, 13:30, 13:31**

**TASK FORCE ON INTEGRATION**

**Federal Securities Laws** (this index)

**TAX CUTS AND JOBS ACT**

Allowance of losses and deductions, **2:59**

S corporations, choice of entity after, **2:6**

**TAXES AND TAXATION**

Business development companies (BDCs), **5:3**

**Choosing the Business Financing Format** (this index)

**Limited Liability Companies** (this index)

Overview of Federal Tax System, 2024, **App 20**

Preferred stock, **6:28**

Term loan agreements, **7:40**

**TAX OPINIONS, REGISTERED OFFERINGS**

SEC’s 2005 securities offering revisions, **11:151.50**

SEC Staff Legal Bulletin No. 19 (CF) (Oct. 14, 2011), **App 5.10**

**TAXPAYERS**

S corporations, limitation on passive losses under Tax Reform Act of 1986, **2:47**

**TAYLOR, WILLIAM L.**

Small Business Administration, financing from, **4:7**

**TCP CAPITAL (TCPC)**

Business development company (BDC), **5:3**

**TECHNOLOGY**

Due diligence and civil liability, **14:21**

**TECHNOLOGY CAPITAL NETWORK (TCN)**

Federal securities laws, **11:8**

**TENNESSEE**

Small business, assistance programs for, **App 18.44**

**TERMINATION**

Limited liability companies, **3:59**

Sarbanes-Oxley, whistle-blower protection for employees, **14:53.50**

S corporations, election, **2:30 to 2:32, 2:39**

Series A convertible preferred stock purchase agreement (annotated), **6:74**

## **TERM LOAN AGREEMENTS**

Generally, **7:11 to 7:55**  
 Absence of default, **7:42, 7:47**  
 Accuracy of information, representations and warranties, **7:43**  
 Additional debt, creation of, **7:50**  
 Affiliates, transactions with, **7:54**  
 Affirmative covenants  
   generally, **7:44 to 7:49**  
   absence of default, **7:47**  
   default, absence, **7:47**  
   disclosure, **7:45 to 7:49**  
   financial disclosure, **7:45 to 7:49**  
   funding, use of, **7:46**  
   future operations, **7:46**  
   inspection, **7:49**  
   insurance, **7:48**  
   maintenance of assets, **7:48**  
 Choice of note, **7:20**  
 Collateral, **7:17**  
 Collateral advantages, **7:34**  
 Commitment fees, **7:35**  
 Compensating balances, **7:34**  
 Compliance with state and federal laws, **7:40**  
 Computation of interest assessment, **7:32**  
 Consent of government, compliance with, **7:40**  
 Control of licenses, **7:41**  
 Corporate organization, representations and warranties, **7:38**  
 Costs and expenses  
   commitment fees, **7:35**  
   evaluating cost of term loan financing, **7:12 to 7:15**  
   incidental costs, **7:15, 7:27**  
 Covenants  
   generally, **7:44 to 7:55**  
   affirmative covenants, above  
   default provisions, **7:55**  
   negative covenants, below  
   restrictions, generally, **7:14**  
 Current market conditions, evaluating cost of term loan financing, **7:13**  
 Default  
   absence of, **7:42, 7:47**  
   covenants, provisions of, **7:55**  
 Definitions, **7:22**  
 Delayed funding, **7:25**  
 Disclosure. Financial disclosure, below  
 Documentation of loan, **7:16**  
 Evaluating cost of term loan financing, **7:12 to 7:15**  
 Expenses. Costs and expenses, above  
 Fees, interest rates, **7:35**  
 Financial disclosure  
   affirmative covenants, **7:45 to 7:49**

## **TERM LOAN AGREEMENTS—Cont'd**

Financial disclosure—Cont'd  
   representations and warranties, **7:39**  
 Fixed interest rates, **7:30**  
 “Floating” interest rate, **7:31**  
 Form of, **18:12**  
 Funding, use of, **7:46**  
 Future operations, **7:46**  
 Guarantees, **7:17**  
 Incidental costs, **7:15, 7:27**  
 Index, choice of, **7:31**  
 Inspection, **7:49**  
 Insurance, **7:48**  
 Interest rates  
   generally, **7:26 to 7:35**  
   collateral advantages, **7:34**  
   commitment fees, **7:35**  
   compensating balances, **7:34**  
   computation of interest assessment, **7:32**  
   costs, **7:27**  
   fees, **7:35**  
   fixed interest rates, **7:30**  
   “floating” interest rate, **7:31**  
   incidental costs, **7:27**  
   index, choice of, **7:31**  
   late charges, **7:35**  
   negotiating skill, **7:29**  
   penalties, **7:35**  
   points and related charges, **7:33**  
   repayment penalties, **7:35**  
   risk, **7:28**  
   usury problems, **7:33**  
   variable interest rates, **7:30**  
 Introduction, **7:11 to 7:35**  
 Late charges, **7:35**  
 Licenses, control of, **7:41**  
 Limitations and restrictions  
   negative covenants, restricted payments, **7:51**  
   term loan financing, generally, **7:14**  
 Litigation, absence of, **7:42**  
 Loan agreement and loan note, **7:19**  
 Maintenance of assets, **7:48**  
 Mechanics of funding, **7:23 to 7:25**  
 Negative covenants  
   generally, **7:50 to 7:54**  
   additional debt, creation of, **7:50**  
   affiliates, transactions with, **7:54**  
   maintenance of assets, **7:52**  
   planning and operation of business, **7:53**  
   restricted payments, **7:51**  
 Negotiating skill concerning interest rates, **7:29**  
 Patents, control of, **7:41**  
 Penalties, interest rates, **7:35**  
 Personal guarantees, **7:17**  
 Planning and operation of business, **7:53**

**TERM LOAN AGREEMENTS—Cont'd**

- Points and related charges, **7:33**
- Properties, control of, **7:41**
- Repayment penalties, **7:35**
- Representations and warranties
  - generally, **7:36 to 7:43**
  - absence of default or litigation, **7:42**
  - accuracy of information, **7:43**
  - compliance with state and federal laws, **7:40**
  - consent of government, compliance with, **7:40**
  - control of licenses, **7:41**
  - corporate organization, **7:38**
  - default, absence of, **7:42**
  - disclosure, **7:39**
  - financial disclosure, **7:39**
  - licenses, control of, **7:41**
  - litigation, absence of, **7:42**
  - patents, control of, **7:41**
  - properties, control of, **7:41**
  - taxes, compliance with, **7:40**
  - trademarks, control of, **7:41**
  - validity and enforceability of loan agreement, **7:38**
- Restrictions. Limitations and restrictions, above
- Revolving credit, generally, **7:11, 7:21**
- Risk, interest rates, **7:28**
- Simultaneous funding, **7:24**
- Structuring the loan agreement, **7:18 to 7:22**
- Taxes, compliance with, **7:40**
- Trademarks, control of, **7:41**
- Usury problems, **7:33**
- Validity and enforceability of loan agreement, **7:38**
- Variable interest rates, **7:30**
- Warranties. Representations and warranties, above

**TERM SHEET**

- NVCA model venture financings documents (2007), **15A:2**

**TESTA, RICHARD J.**

- Small Business Administration, financing from, **4:6, 4:15**

**“TESTING THE WATERS”**

- Regulation A exemption for offering of 75 million dollars or less, **11:65**
- Underwriting agreement for emerging growth company, **19:3.50**

**TEST-THE-WATERS COMMUNICATION**

- Rule 163B, **11:137.60**

**TEXAS**

- Due diligence and civil liability, developments, **14:138**

**TEXAS—Cont'd**

- S corporation LLC operating agreement, form of (2011), **20:6**
- Small business, assistance programs for, **App 18.45**

**THIRD PARTIES**

- Limited liability companies, **3:47**
- S corporations, worthless debt of third party, **2:48**

**THIRTY-DAY BRIGHT LINE EXCLUSION**

- SEC's 2005 revisions to securities offerings, **11:139**

**THL CREDIT (TCRD)**

- Business development company (BDC), **5:3**

**TICC CAPITAL (TICC)**

- Business development company (BDC), **5:3**

**TIME OR DATE**

- Effective Dates** (this index)
- Federal securities laws, time of offering, **11:19, 11:20**
- Going Public** (this index)
- Initial public offering of common stock, form of timetable, **19:4**
- Limited Liability Companies** (this index), **3:1 to 3:67**

**TIMM TEST IN WISCONSIN**

- Due diligence and civil liability, **14:132**

**TJADEN, JOOST**

- Small Business Administration, financing from, **4:6, 4:15**

**TRACING SECURITIES**

- Federal securities laws, **11:105**

**TRACK 1 AND TRACK 2 APPLICANTS**

- Small Business Administration, Early Stage licensing process, **4:17**

**TRADEMARKS**

- Due diligence and civil liability, **14:21**
- Preferred stock, **6:30**
- Term loan agreements, **7:41**

**TRANSACTION CAUSATION**

- Due diligence and civil liability, **14:45**

**TRANSACTION DOCUMENTS**

- Preferred stock, typical venture capital transaction documents, **6:143**

**TRANSACTION EXEMPTIONS**

- State blue sky regulation, **15:8 to 15:12**

**TRANSACTIONS WITH RELATED PERSONS**

- Disclosure, **13:7, 13:44, 13:45**

**TRANSFERABILITY OF INTERESTS**

- Limited liability companies, **3:31**

## **TRANSFERS**

**Sales or Transfers** (this index)  
S corporations, one class of stock requirement for eligibility, **2:22**

## **TRANSITION RULES**

Limited liability companies, **3:19**  
S corporations, distribution of appreciated property, **2:66**

## **TREATMENT**

S corporations, tax treatment of certain items, **2:40 to 2:49**

## **TRIANGLE CAPITAL (TCAP)**

Business development company (BDC), **5:3**

## **TRUSTS AND TRUSTEES**

Federal securities laws, **11:107, 11:108**  
S corporations, eligible shareholders, **2:17, 2:20**

## **ULTRAMARES APPROACH**

Due diligence and civil liability, **14:126, 14:137**

## **UNAUDITED FINANCIAL INFORMATION**

Due diligence and civil liability, **14:51**

## **UNDERWRITERS**

Disclosure, **13:52, 13:53**  
**Due Diligence and Civil Liability** (this index)  
Emerging growth company, underwriting agreement, **19:3.50**  
Federal securities laws, **11:97**  
**Going Public** (this index)  
Preferred stock, **6:83, 6:88**  
Public offerings, Form S-1 offering, **19:3**  
State blue sky regulation, underwriters' commissions, **15:19**

## **UNIFORM LIMITED LIABILITY COMPANY ACT**

**Limited Liability Companies** (this index)

## **UNIFORM LIMITED OFFERING EXEMPTION (ULOE)**

State blue sky regulation, **15:11**

## **UNIFORM SECURITIES ACTS**

**State Blue Sky Regulation** (this index)

## **UNINCORPORATED BUSINESSES**

Federal securities laws, **11:23**

## **UNITED KINGDOM SOURCES OF FUNDS**

Small Business Administration, financing from, **4:6**

## **UNSEASONED ISSUERS**

SEC's 2005 securities offering rules, **11:151**

## **UPDATES AND UPDATING**

Due diligence and civil liability, **14:44, 14:107**

## **"UP-THE-LADDER"**

Professional standards, Sarbanes-Oxley Act and SEC professional conduct rules, **14:55, 14:58**

## **U.S. REAL PROPERTY HOLDING CORPORATION**

Preferred stock, **6:39**

## **USE OF PROCEEDS**

Disclosure, **13:26, 13:27**

## **USURY PROBLEMS**

Choosing the business financing format, **1:4**  
Term loan agreements, **7:33**

## **UTAH**

Small business, assistance programs for, **App 18.46**

## **VALUING THE DEAL**

Small Business Administration, financing from, **4:13**

## **VARIABLE INTEREST RATES**

Term loan agreements, **7:30**

## **VENTURE INTEGRATION**

Federal securities laws, **11:36**

## **VERMONT**

Small business, assistance programs for, **App 18.47**

## **VIRGINIA**

LLC operating agreement, form of (2010), **20:7**  
Small business, assistance programs for, **App 18.49**

## **VIRGIN ISLANDS**

Small business, assistance programs for, **App 18.48**

## **VOLUME LIMITS**

Federal securities laws, **11:121**

## **VON GEHR, GEORGE**

Small Business Administration, financing from, **4:10, 4:15**

## **VOTING**

**Elections and Voting** (this index)

## **VOTING AGREEMENT**

NCVA model venture financings documents (2007), **15A:6**

## **WAIVER AND ESTOPPEL**

Due diligence and civil liability, **14:10**  
Series A convertible preferred stock purchase agreement (annotated), **6:98**



**WALL STREET REFORM ACT (2010)**

Corporate governance provisions of Dodd-Frank Act. **Going Public** (this index)

**WARRANTIES**

Form of standard representations and warranties, **18:9**

**Preferred Stock** (this index)

Standard representations and warranties, form of, **18:9**

**Term Loan Agreements** (this index)

**WARRANTS**

**Antidilution Provisions** (this index)

Choosing the business financing format, **1:20**

Form of warrant agreement, **18:8**

Preferred stock, **6:8, 6:144**

S corporations, one class of stock requirement for eligibility, **2:25**

State blue sky regulation, **15:21**

**WASHINGTON**

Small business, assistance programs for, **App 18.50**

**WELL-KNOWN SEASONED ISSUERS**

SEC's 2005 securities offering revisions, **11:136, 11:150**

**WEST VIRGINIA**

Small business, assistance programs for, **App 18.51**

**WHISTLE-BLOWER**

Sarbanes-Oxley, whistle-blower protection for employees in employment termination cases, **14:53.50**

**WHITEHORSE FINANCE (WHF)**

Business development company (BDC), **5:3**

**WISCONSIN**

Small business, assistance programs for, **App 18.52**

**WITHDRAWAL RIGHTS**

Small Business Administration, Model Early Stage SBIC Limited Partnership Agreement, **4:18**

**WORKING CAPITAL ENHANCEMENT**

Small Business Administration, financing from, **4:1.50**

**WORLDCOM CASE**

Due diligence and civil liability, **14:9.50**

**WORLDS OF WONDER CASE**

Due diligence and civil liability, **14:6, 14:11**

**WORTHLESS STOCK AND DEBT**

S corporations, tax treatment of certain items, **2:47, 2:48**

**WRITING IN "PLAIN ENGLISH"**

Disclosure, **13:12**

**WRITTEN OFFERING RELATED COMMUNICATIONS**

Relaxation of restrictions on, **11:140**

**WYOMING**

Small business, assistance programs for, **App 18.53**