

Table of Contents

Volume 2

PART I. VENTURE CAPITAL AND SMALL BUSINESS FINANCINGS

CHAPTER 1. CHOOSING THE BUSINESS FINANCING FORMAT: SELECTING THE SECURITIES

- § 1:1 Introduction
- § 1:2 Senior securities: Issuer's choice of preferred stock or debt
- § 1:3 —Considerations of issuer's optimal capital structure
- § 1:4 —Legal drafting
- § 1:5 —General tax considerations, from the company's standpoint, in structuring venture capital investments
 - Whether to issue common stock
 - Whether to issue debt or equity
 - Classifying the instrument as debt or as equity
 - Whether to issue convertible debt or debt plus warrants
 - Redemption premiums as taxable distributions
- § 1:11 Preferred stock provisions: General overview
- § 1:12 —Participating preferred stock
- § 1:13 —Dividends on preferred stock
- § 1:14 —Conversion rights
- § 1:15 —Antidilution provisions
- § 1:16 —Redemption right of issuer
- § 1:17 —Preference on liquidation
- § 1:18 —Voting rights
- § 1:19 Common stock
- § 1:20 Warrants
- § 1:21 Corporate debt instruments: General overview
- § 1:22 Resale and registration rights; Right of co-sale
- § 1:23 Research and development partnerships
- § 1:24 Directory of venture capital providers

CHAPTER 2. THE “S CORPORATION”—ITS POTENTIAL AS AN INVESTMENT VEHICLE

I. INTRODUCTION

- § 2:1 Recent tax legislation
- § 2:2 The 2004 tax legislation provisions
- § 2:3 Section 199A: The deduction for pass-through business income
- § 2:4 Limitation on deductibility of business interest
- § 2:5 Factors in determining choice of entity
- § 2:6 Choice of entity considerations after the 2017 TCJA
- § 2:7 Avoidance of double taxation

- § 2:8 Utilization of corporate losses
- § 2:9 Avoidance of the corporate alternative minimum tax
- § 2:10 Avoidance of the personal holding company and accumulated earnings taxes
- § 2:11 Additional benefits of the S Corporation entity
- § 2:12 IRS Initiative on S Corporation Compliance

II. SUBCHAPTER S ACT

A. ELIGIBILITY REQUIREMENTS

- § 2:13 Generally
- § 2:14 —Eligible corporations
- § 2:15 —Eligible shareholders
- § 2:16 ——Qualified Subchapter S subsidiaries
- § 2:17 ——Trusts and estates as shareholders—Introduction
- § 2:18 ——Qualified subchapter S trust
- § 2:19 ——Electing small business trusts
- § 2:20 Summary of trusts as S Corporation shareholders
- § 2:21 Generally—Requirement of one class of stock
- § 2:22 ——Redemptions, buy-sell agreements, and restrictions on transfers
- § 2:23 ——Other instruments, obligations, or arrangements treated as equity
- § 2:24 ——Straight debt safe harbor
- § 2:25 ——Options, warrants, and similar instruments
- § 2:26 ——Safe harbor for certain options
- § 2:27 ——Convertible debt

B. ELECTION AND TERMINATION OF ELECTION

- § 2:28 Election mechanics
- § 2:29 Shareholders' consents
- § 2:30 Termination by revocation
- § 2:31 Termination for failure to qualify as a small business corporation
- § 2:32 Termination where there is excess passive investment income

C. PASSIVE INVESTMENT INCOME

- § 2:33 Generally
- § 2:34 —Passive investment income defined
- § 2:35 —Tax imposed on excess passive investment income
- § 2:36 —Elections to avoid Section 1375— Section 1368(e)(3) election
- § 2:37 —Deemed dividend election
- § 2:38 —“Previously taxed income” election

D. RELIEF FROM INADVERTENT TERMINATION

- § 2:39 Generally

III. TAX TREATMENT OF CERTAIN ITEMS

- § 2:40 Investment interest limitation
- § 2:41 —Treatment of interest expense in the S corporation context
- § 2:42 ——Interest incurred by a pass-through entity and passed through to its owners

TABLE OF CONTENTS

- § 2:43 ——Interest on debt incurred to acquire an interest in a pass-through entity
- § 2:44 ——Debt financed distributions from the pass-through entity to its owners
- § 2:45 ——Self-charged interest
- § 2:46 ——Direct loan to S corporation
- § 2:47 Worthless stock and worthless debt—The S corporation's own stock or debt
- § 2:48 —Third-party debt
- § 2:49 Discharge of indebtedness income

IV. LIMITATION ON PASSIVE LOSSES UNDER THE 1986 TAX REFORM ACT

- § 2:50 Overview
- § 2:51 Definition of passive activity
- § 2:52 Affected taxpayers
- § 2:53 “Material participation”
- § 2:54 Impact on S corporation shareholders and limited partners

V. COMPARISON OF TAXATION OF PARTNERS COMPARED TO TAXATION OF S CORPORATION SHAREHOLDERS

- § 2:55 Determining basis
- § 2:56 Final Regulations on basis of indebtedness
- § 2:57 Determining basis—Case law governing basis
- § 2:58 Allocation of tax items
- § 2:59 Allowances of losses and deductions—Active business loss limitation under the 2017 Tax Cuts and Jobs Act (TCJA)
- § 2:60 —Disposition of S stock when losses are suspended
- § 2:61 At risk
- § 2:62 Distribution of appreciated property—Rules before 1987
- § 2:63 —Distributions after the 1986 Act
- § 2:64 ——Repeal of the *General Utilities* Doctrine
- § 2:65 ——Amended Section 1374
- § 2:66 ——Transition rules for C corporations electing S corporation status
- § 2:67 Required estimated tax payments
- § 2:68 Recapture of inventory appreciation upon conversion from a C corporation to an S corporation
- § 2:69 Audit procedures—Under the 1996 Act
- § 2:70 —Statute of limitations
- § 2:71 Taxable year
- § 2:72 —Permissible fiscal years without a Section 444 election
- § 2:73 —Eligibility
- § 2:74 —Section 7519: Required returns
- § 2:75 —Applicable percentage
- § 2:76 —Adjusted highest section 1 rate
- § 2:77 —Net base year income
- § 2:78 —Applicable payments
- § 2:79 —Refunds of required payments
- § 2:80 —Penalties
- § 2:81 State income tax considerations
- § 2:82 Entity classification

VI. COMPARISON OF PARTNERSHIP AND S CORPORATION PROVISIONS SUMMARY—CHART

§ 2:83 Generally

VII. ELECTION BY A SMALL BUSINESS TO BE AN S CORPORATION

§ 2:84 Generally

§ 2:85 Instructions for Form 2553

§ 2:86 Real Estate Taxation and the 2025 Budget Reconciliation Bill

CHAPTER 3. LIMITED LIABILITY COMPANIES

§ 3:1 Introduction

§ 3:2 Federal and state securities laws—Federal securities laws

§ 3:3 —State securities laws

§ 3:4 Types of LLC statutes—“Bulletproof” statutes

§ 3:5 —“Flexible” statutes

§ 3:6 Classification of the LLC for federal tax purposes—Check-the-box regulations

§ 3:7 —Final regulations—Overview of business entities

§ 3:8 ——Corporations

§ 3:9 ——Foreign corporations

§ 3:10 ——Other business entities

§ 3:11 ——Single owner entity

§ 3:12 ——Elective classification of certain entities

§ 3:13 ——Domestic eligible entities

§ 3:14 ——Foreign eligible entities

§ 3:15 ——Existing eligible entities

§ 3:16 ——Elections

§ 3:17 ——Limits on changes in classification by election

§ 3:18 ——Certain partnership terminations

§ 3:19 ——Effective date and transition rules

§ 3:20 ——Conclusion

§ 3:21 —Amendments to Check-The-Box Regulations—Generally

§ 3:22 —Characterization of elective changes in classification

§ 3:23 —Change in number of members of entities

§ 3:24 —Timing of elective changes in classification

§ 3:25 —Effective date of amendments

§ 3:26 —Revenue Ruling 99-5 and Revenue Ruling 99-6

§ 3:27 —General rules for entity classification prior to 1997

§ 3:28 —Prior to the check-the-box regulations—Limited liability

§ 3:29 —Continuity of life

§ 3:30 —Centralization of management

§ 3:31 —Free transferability of interests

§ 3:32 —Additional complications: One percent ownership and additional requirements under Revenue Procedure 95-10

§ 3:33 Entity comparison of LLCs with S corporations and limited partnerships—LLCs and S corporations

§ 3:34 —Advantages of an LLC

§ 3:35 —Disadvantages of an LLC

§ 3:36 —LLCs and limited partnerships

TABLE OF CONTENTS

- § 3:37 —Tabular comparison of nontax and tax characteristics of limited partnerships, LLCs, and S corporations
- § 3:38 Basic characteristics of LLCs—Membership
- § 3:39 —Name
- § 3:40 —Nature of the business
- § 3:41 —Powers
- § 3:42 —Duration
- § 3:43 Organization—Formation
- § 3:44 —Articles of organization and operating agreement
- § 3:45 —Managing the LLC—Management by members
- § 3:46 ——Managers
- § 3:47 —Liability of members and managers to third parties
- § 3:48 —Conversion of a partnership to an LLC
- § 3:49 —Capital contributions
- § 3:50 —Allocation of profits, losses, and distributions
- § 3:51 —Dissolution
- § 3:52 Taxation of LLCs and members—LLCs treated as partnerships
- § 3:53 —Formation of an LLC—Contributions of property
- § 3:54 ——Contributions of services
- § 3:55 —LLC liabilities and member's tax basis
- § 3:56 —Allocation of gains and losses
- § 3:57 —Book value/tax basis differences
- § 3:58 —Distributions to LLC members
- § 3:59 —Termination of an LLC
- § 3:60 —Dispositions of LLC interests
- § 3:61 —Other tax issues—Methods of accounting
- § 3:62 ——Passive loss limitations
- § 3:63 ——At-risk limitations
- § 3:64 ——Tax matters partner
- § 3:65 ——Self-employment taxes and retirement plans
- § 3:66 ——State taxation of LLCs
- § 3:67 Survey of LLC interests under state securities laws

CHAPTER 4. FINANCING FROM THE SMALL BUSINESS ADMINISTRATION, SBICS, AND OTHER SOURCES

- § 4:1 Introduction to Small Business Administration programs
- § 4:1.50 Small Business Jobs Act of 2010
- § 4:2 Small business investment companies (SBICs)
- § 4:3 Permitted loans and investments by an SBIC
- § 4:4 Conflicts of interest; Control prohibitions
- § 4:5 Directory of Operating SBICs
- § 4:6 *[Reserved]*
- § 4:7 *[Reserved]*
- § 4:8 *[Reserved]*
- § 4:9 *[Reserved]*
- § 4:10 *[Reserved]*
- § 4:11 *[Reserved]*
- § 4:12 *[Reserved]*
- § 4:13 *[Reserved]*
- § 4:14 *[Reserved]*
- § 4:15 *[Reserved]*
- § 4:16 *[Reserved]*

- § 4:17 Early Stage SBIC Initiative
- § 4:18 Early Stage SBIC Model Limited Partnership Agreement

CHAPTER 5. STATE ASSISTANCE TO SMALL BUSINESS; BUSINESS DEVELOPMENT COMPANIES

- § 5:1 Introduction
- § 5:2 State-by-state listing of assistance programs
- § 5:3 Business development companies

CHAPTER 6. NEGOTIATING AND STRUCTURING VENTURE CAPITAL INVESTMENTS: PRINCIPALLY, PREFERRED STOCK

I. NEGOTIATING AND STRUCTURING VENTURE CAPITAL INVESTMENTS: PRINCIPALLY, PREFERRED STOCK

- § 6:1 Introduction
- § 6:2 Venture capital investment
- § 6:3 —Structuring investments to improve returns
- § 6:4 ——Debt with simple interest
- § 6:5 ——Debt with repayment premiums
- § 6:6 ——Convertible debt
- § 6:7 ——Debt with common stock
- § 6:8 ——Debt with warrants
- § 6:9 ——Preferred stock with redemption premiums—Section 305
- § 6:10 —Later-stage investing
- § 6:11 Key issues in negotiating the venture capital contract
- § 6:12 Series A convertible preferred stock purchase agreement (annotated)
- § 6:13 —Authorization and sale of shares—Authorization
- § 6:14 —Sale of shares
- § 6:15 —Use of proceeds
- § 6:16 —The closing
- § 6:17 —Representations of the company
- § 6:18 ——Organization and standing
- § 6:19 ——Capitalization
- § 6:20 ——Subsidiaries
- § 6:21 ——Stockholder list and agreements
- § 6:22 ——Issuance of shares
- § 6:23 ——Authority for agreement
- § 6:24 ——Governmental consents
- § 6:25 ——Litigation
- § 6:26 ——Financial statements
- § 6:27 ——Absence of liabilities
- § 6:28 ——Taxes
- § 6:29 ——Property and assets
- § 6:30 ——Patents and trademarks
- § 6:31 ——Insurance
- § 6:32 ——Material contracts and obligations
- § 6:33 ——Compliance
- § 6:34 ——Absence of changes
- § 6:35 ——Employees

TABLE OF CONTENTS

§ 6:36	— —ERISA
§ 6:37	— —Books and records
§ 6:38	— —Small business concern
§ 6:39	— —U.S. real property holding corporation
§ 6:40	— —Disclosures
§ 6:41	— —Representations of the purchasers
§ 6:42	— —Investment
§ 6:43	— —Authority
§ 6:44	— —Experience
§ 6:45	— —Accredited investor
§ 6:46	— —Conditions to the obligations of the purchasers
§ 6:47	— —Accuracy of representations and warranties
§ 6:48	— —Performance
§ 6:49	— —Opinion of counsel
§ 6:50	— —Other agreements
§ 6:51	— —Blue sky approvals
§ 6:52	— —Certificates and documents
§ 6:53	— —Minimum investment
§ 6:54	— —Small business concern documents
§ 6:55	— —Other
§ 6:56	— —Compliance certificate
§ 6:57	— —Other matters
§ 6:58	— —Conditions to the obligations of the company
§ 6:59	— —Accuracy of representations and warranties
§ 6:60	— —Blue sky approvals
§ 6:61	— —Covenants of the company
§ 6:62	— —Inspection
§ 6:63	— —Observer rights
§ 6:64	— —Financial statements and other information
§ 6:65	— —Material changes and litigation
§ 6:66	— —Key man insurance
§ 6:67	— —Nondisclosure agreements
§ 6:68	— —Right of first refusal
§ 6:69	— —Auditor
§ 6:70	— —Additional covenants
§ 6:71	— —Negative covenants
§ 6:72	— —Expenses of directors
§ 6:73	— —Reservation of common stock
§ 6:74	— —Termination of covenants
§ 6:75	— —Registration rights
§ 6:76	— —Certain definitions
§ 6:77	— —Sale or transfer of shares; Legend
§ 6:78	— —Required registrations
§ 6:79	— —Incidental registration
§ 6:80	— —Registration procedures
§ 6:81	— —Allocation of expenses
§ 6:82	— —Indemnification and contribution
§ 6:83	— —Indemnification with respect to underwritten offering
§ 6:84	— —Information by holder
§ 6:85	— —“Stand-off” agreement
§ 6:86	— —Limitations on subsequent registration rights

- § 6:87 ——Rule 144 requirements
- § 6:88 ——Selection of underwriter
- § 6:89 ——Mergers, etc
- § 6:90 ——Successors and assigns
- § 6:91 ——Transfers of certain rights
- § 6:92 ——Confidentiality
- § 6:93 ——Survival of representations and warranties
- § 6:94 ——Expenses
- § 6:95 ——Notices
- § 6:96 ——Brokers
- § 6:97 ——Entire agreement
- § 6:98 ——Amendments and waivers
- § 6:99 ——Counterparts
- § 6:100 ——Headings
- § 6:101 ——Severability
- § 6:102 ——Governing law
- § 6:103 Certificate of amendment of the articles of incorporation of Megabucks, Inc. (annotated)
 - § 6:104 ——Series a preferred stock
 - § 6:105 ——Dividends
 - § 6:106 ——Preference on liquidation
 - § 6:107 ——Voting
 - § 6:108 ——Conversion rights
 - § 6:109 ——Adjustment of conversion prices
 - § 6:110 ——Stock splits, dividends and combinations
 - § 6:111 ——Non-cash dividends, stock purchase rights, capital reorganizations and dissolutions
 - § 6:112 ——Issuances at less than the conversion price
 - § 6:113 ——Status of converted or redeemed stock
 - § 6:114 ——Changes affecting series A
 - § 6:115 Annotated opinion
 - § 6:116 ——Corporate status
 - § 6:117 ——Due organization
 - § 6:118 ——Valid existence and good standing
 - § 6:119 ——Corporate power
 - § 6:120 ——Corporate power and authority re agreement
 - § 6:121 ——Corporate power
 - § 6:122 ——Due authorization
 - § 6:123 ——Due execution and delivery
 - § 6:124 ——Valid and binding obligations
 - § 6:125 ——Capitalization
 - § 6:126 ——Authorized capital stock
 - § 6:127 ——Number of outstanding shares
 - § 6:128 ——Outstanding shares duly authorized
 - § 6:129 ——Outstanding shares validly issued
 - § 6:130 ——Outstanding shares fully paid
 - § 6:131 ——Outstanding shares nonassessable
 - § 6:132 ——Preferred stock
 - § 6:133 ——No rights, options, etc
 - § 6:134 ——Issuance and status of shares
 - § 6:135 ——Issuance of shares
 - § 6:136 ——Preemptive rights, rights of first refusal

TABLE OF CONTENTS

- § 6:137 ——Reservation of common stock
- § 6:138 ——Common stock to be duly authorized, validly issued, fully paid and nonassessable
- § 6:139 —No conflicts
- § 6:140 —Litigation
- § 6:141 —Consents and approvals
- § 6:142 —Securities law compliance
- § 6:143 Typical venture capital transaction documents
- § 6:144 Note and warrant purchase agreement

CHAPTER 7. INSTITUTIONAL DEBT PRIVATE PLACEMENTS AND TERM LOAN AGREEMENTS

- § 7:1 Corporate debt: Institutional private placements and term loans
- § 7:2 Institutional private placements: A legal overview—Insurance company private placements distinguished from bank term loans and publicly placed junk or high yield bond issues
- § 7:3 —Call protection and prepayments
- § 7:4 —Closing representations of issuer
- § 7:5 —Closing conditions
- § 7:6 —Business covenants
- § 7:7 —Events of default—Purpose of inclusion
- § 7:8 ——Scope of defaults
- § 7:9 ——Remedies
- § 7:10 —Sample note agreement
- § 7:11 Introduction to term loan agreements
- § 7:12 —Evaluating cost of term loan financing
- § 7:13 ——Current market conditions
- § 7:14 ——Covenants and contractual restrictions
- § 7:15 ——Incidental costs
- § 7:16 —Loan documentation
- § 7:17 —Collateral and personal guarantees
- § 7:18 Structuring the loan agreement
- § 7:19 —Loan agreement and loan note
- § 7:20 —Choice of note
- § 7:21 —Term loan agreement and revolving credit
- § 7:22 —Definition of terms
- § 7:23 Mechanics of funding
- § 7:24 —Simultaneous funding
- § 7:25 —Delayed funding
- § 7:26 Interest rates
- § 7:27 —Incidental costs
- § 7:28 —Risk
- § 7:29 —Negotiating skill
- § 7:30 —Fixed interest or variable interest rates
- § 7:31 —Choice of index
- § 7:32 —Computation of interest assessment
- § 7:33 —Points and related charges
- § 7:34 —Compensating balances and collateral advantages
- § 7:35 —Commitment fees, repayment penalties, and late charges
- § 7:36 Representations, warranties, and covenants—In general
- § 7:37 —Representations and warranties

- § 7:38 ——Corporate organization; Validity and enforceability of loan agreement
- § 7:39 ——Financial disclosure
- § 7:40 ——Compliance with state and federal laws; Taxes; Government consents
- § 7:41 ——Control of licenses, properties, patents, and trademarks
- § 7:42 ——Absence of default or litigation
- § 7:43 ——Accuracy of information
- § 7:44 —Affirmative and negative covenants—In general
- § 7:45 ——Affirmative covenants—Financial disclosure
- § 7:46 ——Use of funding and future operations
- § 7:47 ——Absence of default
- § 7:48 ——Maintenance of assets; Insurance
- § 7:49 ——Inspection
- § 7:50 ——Negative covenants—Creation of additional debt
- § 7:51 ——Restricted payments
- § 7:52 ——Maintenance of assets
- § 7:53 ——Planning and operation of business
- § 7:54 ——Transactions with affiliates
- § 7:55 ——Default provisions

CHAPTER 8. COVID-19 (NOVEL CORANAVIRUS) PANDEMIC

- § 8:1 SEC Response

CHAPTER 9. CORPORATE TRANSPARENCY ACT

- § 9:1 Overview of the Act
- § 9:1.50 BOI reporting requirements subject to various litigation, a nationwide injunction and stay
- § 9:2 Summary of the Corporate Transparency Act
- § 9:3 *Penalties for Violations*
- § 9:4 Proposed Rules
- § 9:5 Corporate Transparency Act: The Large Operating Company Exemption
- § 9:6 One District Court finds the Corporate Transparency Act (CTA) Unconstitutional
- § 9:7 FinCEN new FAQs clarifying dissolved entities subject to CTA

CHAPTER 10. MISCELLANEOUS

- § 10:1 SEC Amends Regulation 13D-G Rules for Beneficial Ownership Reporting
- § 10:2 Final Regulations On Domestically Controlled REITs

**CHAPTER 11. FEDERAL SECURITIES LAWS:
SECURITIES ACT (1933) REGISTRATION EXEMPTIONS
(§§ 11:2-11:132); SECURITIES ACT REGISTRATION
(§§ 11:133-11:151); SECURITIES ACT REGISTRATION
STATEMENTS AND EXCHANGE ACT (1934)
REGISTRATION AND REPORTING FOR “SMALLER”
BUSINESS ISSUERS AND FOR “EMERGING GROWTH
COMPANIES” (§§ 11:152-END)**

**A. EXEMPTIONS FROM SECURITIES ACT (1933)
REGISTRATION**

§ 11:1	General applicability of 1933 Act to business financings using securities
§ 11:1.10	Amendments (2020) to Exempt Offering Framework
§ 11:2	Transactional exemptions from registration requirements of the 1933 Act—Generally
§ 11:3	—Private offering exemption
§ 11:4	—Regulation D
§ 11:4.10	Amendments to the definition of “accredited investor”
§ 11:4.20	Selected SEC guidance regarding accredited investors
§ 11:4.30	SEC Review of “accredited investor” definition
§ 11:4.40	Disqualification of Rule 506 Offerings Involving Felons and Other Bad Actors: Rule 506(d) and (e)
§ 11:4.50	Rule 506(c) eliminates prohibition against general solicitation in certain Rule 506 offerings
§ 11:4.51	C&DIIs concerning permitted general solicitation under Rule 506(c)
§ 11:4.52	C&DIIs concerning bad actor disqualification under Rule 506(d) and disclosures under Rule 506 (e) (Dec. 4, 2013)
§ 11:4.53	C&DIIs regarding integration of offerings under Rule 506
§ 11:4.60	Proposed amendments to Regulation D and Form D
§ 11:4.70	Rule 508—Substantial, good faith compliance defense
§ 11:5	Transactional exemptions from registration requirements of the 1933 Act—Private offering exemption—SEC no-action letters under Regulation D, 1983 staff release and C&DIIs
§ 11:6	— —SEC no-action letters under Regulation D and 1983 staff release—Accredited investors
§ 11:6.50	C&DIIs relating to accredited investors (other than grantor trusts)
§ 11:6.70	Accredited Investors: Net Worth Standard
§ 11:6.80	FAQ about exempt offerings
§ 11:7	Transactional exemptions from registration requirements of the 1933 Act—Private offering exemption—SEC no-action letters under Regulation D and 1983 staff release—Prohibition of general advertising or solicitation applicable (after 2014 amendments) to Rule 506(b) offerings
§ 11:7.50	Selected C&DIIs relating to prohibition of general advertising applicable (after 2014 amendments) to offerings under Rule 506(b)
§ 11:7.55	Selected C&DIIs relating to existence and substance of pre-existing relationships
§ 11:7.60	Selected C&DIIs relating to Rule 501
§ 11:7.70	Selected C&DIIs relating to Rule 506(c)

§ 11:8	Internet offerings
§ 11:9	Transactional exemptions from registration requirements of the 1933 Act—Private offering exemption—SEC no-action letters under Regulation D and 1983 staff release—Aggregate offering price
§ 11:9.30	C&DI relating to aggregate offering price
§ 11:10	Transactional exemptions from registration requirements of the 1933 Act—Private offering exemption—SEC no-action letters under Regulation D and 1983 staff release—Counting purchasers under Rule 501(e)
§ 11:10.30	C&DI relating to counting purchasers under Rule 501(e)
§ 11:10.50	Informational requirements
§ 11:10.70	Selected C&DI relating to informational requirements
§ 11:10.90	C&DI relating to “sophistication” under Rule 506—Purchaser representatives
§ 11:11	Transactional exemptions from registration requirements of the 1933 Act—Private offering exemption—SEC no-action letters under Regulation D and 1983 staff release—“Issuer” under Regulation D
§ 11:12	— — — Integration safe harbor under Rule 502(a)
§ 11:12.10	C&DI relating to the integration safe harbor
§ 11:12.20	Selected C&DI relating to Form D filings
§ 11:12.40	Selected C&DI relating to Rules 504, 505, and 506
§ 11:13	Transactional exemptions from registration requirements of the 1933 Act—Private offering exemption—SEC no-action letters under Regulation D and 1983 staff release—Regulation D and state law
§ 11:14	— — — Section 4(a)(2) decisional law apart from Regulation D
§ 11:15	— — — Section 4(a)(5); Rule 1001
§ 11:16	— — — Integration of “separate” offerings
§ 11:17	— — — Single plan of financing
§ 11:18	— — — Same class of security
§ 11:19	— — — Offerings made at or about the same time—Generally
§ 11:20	— — — — Rule 152
§ 11:21	— — — Same type of consideration
§ 11:22	— — — Offerings made for the same general purpose
§ 11:23	— — — Unincorporated businesses
§ 11:24	— Integration of securities offerings: Excerpts from report of the task force on integration
§ 11:25	— — Defining the problem
§ 11:26	— — Transaction exemptions from registration
§ 11:27	— — — Section 3(a)(9)
§ 11:28	— — — Section 3(a)(10)
§ 11:29	— — — Intrastate offering exemption
§ 11:30	— — — Private placements
§ 11:31	— — — Integration as viewed by the regulatory and judicial authorities
§ 11:32	— — — The Commission
§ 11:33	— — — Court decisions
§ 11:34	— — — Staff interpretations
§ 11:35	— — — — Offering integration
§ 11:36	— — — — Venture integration
§ 11:37	— — — — Issuer integration
§ 11:38	— — — An integration proposal
§ 11:39	— — — Rules 152 and 155
§ 11:40	— — — Existing Rule 152 interpretations codified or modified

TABLE OF CONTENTS

§ 11:40.50	C&DIIs relating to Rule 155
§ 11:41	Transactional exemptions from registration requirements of the 1933 Act—Intrastate offering exemption
§ 11:41.50	Amended Rule 147—General provisions
§ 11:41.60	New intrastate offering exemption under Rule 147A—General provisions
§ 11:42	Transactional exemptions from registration requirements of the 1933 Act—Intrastate offering exemption—Residence
§ 11:43	— — Doing business within the state requirement
§ 11:44	— — — The examples in the adopting release
§ 11:45	— — — The “assets requirement”
§ 11:46	— — — The (c)(2)(ii) “assets requirement”—Accounts receivable
§ 11:47	— — — — Loans
§ 11:48	— — — — The (c)(2)(ii) “assets requirement”—Out-of-state cash and securities
§ 11:49	— — — — The (c)(2)(ii) “assets requirement”—Margin account deposits—Commodity futures trading
§ 11:50	— — — — Lease receivables
§ 11:51	— — — — The (c)(2)(i) “gross revenues requirement”
§ 11:52	— — — — The (c)(2)(i) “gross revenues requirement”—Insurance business
§ 11:53	— — — — The (c)(2)(i) “gross revenues requirement”—Motion picture production and distribution
§ 11:54	— — — — Joint ventures
§ 11:55	— — — — Out-of-state investment selection
§ 11:56	— — — — The (c)(2)(iii) “net proceeds requirement”
§ 11:57	— — — — The (c)(2)(iv) “principal office requirement”
§ 11:58	— — Six-month resale limitation
§ 11:59	— — Integration problems under Rule 147
§ 11:59.50	Selected C&DIIs relating to Rule 147, 147A and Section 3(a)(11)
§ 11:60	Transactional exemptions from registration requirements of the 1933 Act—Existing law apart from Rule 147
§ 11:61	— Regulation A: Conditional exemption available for offerings of \$75 million or less
§ 11:62	— — Eligibility
§ 11:63	— — Limitations on offering price
§ 11:63.10	— — Limitations on Investments
§ 11:64	— — Integration
§ 11:64.10	Offering exemption up to \$50 million under expanded and modified Regulation A (effective June 19, 2015)—Section 12(g) 1934 Act Threshold
§ 11:64.50	Conditional exemption available for offerings of \$75 million or less—Selected C&DIIs regarding Regulation A
§ 11:65	Transactional exemptions from registration requirements of the 1933 Act—Regulation A: Conditional exemption available for offerings of \$75 million or less—“Testing the waters”
§ 11:66	— — Disclosure and procedural requirements—Electronic filing
§ 11:67	— — — Preliminary offering circular
§ 11:68	— — — Final offering circular
§ 11:69	— — — Informational content of offering circular
§ 11:70	— — — Form 1-A
§ 11:71	— — — Financial statement requirements

§ 11:71.10	Offering exemption up to \$50 million under expanded and modified Regulation A (effective June 19, 2015)—Ongoing reporting requirements
§ 11:72	Transactional exemptions from registration requirements of the 1933 Act—Regulation A: Conditional exemption available for offerings of \$75 million or less—Substantial and “good faith” compliance with regulation
§ 11:73	— — —Suspension of exemption
§ 11:74	— — —Disqualification provisions of Rule 262—The “bad boy” exclusions
§ 11:75	Offering exemption up to \$50 million under expanded and modified Regulation A (effective June 19, 2015)—Safe harbor
§ 11:75.30	—Summary of 2015 Amendments
§ 11:75.35	The 2018 Amendments to Regulation A make reporting companies eligible
§ 11:75.40	Offering exemption up to \$50 million under expanded and modified Regulation A (effective June 19, 2015)—1934 Act Rule 152c2-11, 1933 Act Rules 144 and 144A
§ 11:75.50	—Concurrent 1934 Act Registration
§ 11:75.60	—Termination or Suspension of Tier 2 Disclosure Obligations
§ 11:75.65	—Section 12 (a)(2) liability under 1933 Act
§ 11:75.70	Crowdfunding: Offerings of \$5,000,000 or less
§ 11:75.71	COVID-19: Temporary Amendments to Regulation Crowdfunding
§ 11:75.75	Selected C&DI’s regarding Regulation Crowdfunding
§ 11:76	Transactional exemptions from registration requirements of the 1933 Act—Exemption for transactions under compensatory benefit plans and compensation contracts
§ 11:77	—Exemption under Regulation S for offshore transactions
§ 11:78	— — —Basic structure of Regulation S
§ 11:79	— — —The issuer and resale safe harbors
§ 11:80	— — —Offshore transaction
§ 11:81	— — —No “directed selling efforts” in U.S. allowed
§ 11:81.01	Regulation S—Two basic conditions to safe no directed selling efforts
§ 11:81.02	—Issuer safe harbor—First category
§ 11:81.03	— — —Second category
§ 11:81.04	— — —U.S. person
§ 11:81.05	— — —Measurement of distribution compliance
§ 11:81.06	— — —Offering restrictions
§ 11:81.07	— — —Third category
§ 11:81.08	— — —Acceptable alternative restrictions and procedures for IPOs and secondary market trading of U.S. nonreporting issuers
§ 11:81.09	—Resale safe harbor
§ 11:81.10	Nonintegration of foreign and U.S. offerings
§ 11:81.11	Internet web site offers
§ 11:82	Transactional exemptions from registration requirements of the 1933 Act—Exemption under Regulation S for offshore transactions—Issuer safe harbor
§ 11:83	Exemptions from registration under Section 4(a)(1) and Rule 144: Resales of securities by investors
§ 11:83.50	—December 2007 Amendments to Rule 144
§ 11:83.60	New exemption for resales to accredited investors: Section 4(a)(7)
§ 11:84	Exemptions from registration under Section 4(a)(1) and Rule 144: Resales of securities by investors—Who qualifies for the exemption?
§ 11:85	—Affiliates and persons deemed affiliates under Rule 144

TABLE OF CONTENTS

§ 11:86	— Preconditions to reliance on Rule 144—Current public information
§ 11:87	— — Holding period requirement
§ 11:88	— — Manner of sale restrictions
§ 11:89	— — Limitation on amount of securities sold
§ 11:90	— — Notice of sale requirement
§ 11:91	— Interpretations of the rule: An almost exclusive preserve of the SEC staff
§ 11:92	— Schemes to evade registration: Technical compliance insufficient
§ 11:93	— “Restricted securities” defined
§ 11:94	— — Focus on the acquisition transaction
§ 11:95	— — Gifts
§ 11:96	— — Pledges
§ 11:97	— — Stock issued to underwriters and finders as compensation
§ 11:98	— — Acquisitions violating Section 5
§ 11:99	— — Employee benefit plans
§ 11:100	— — Stock dividends, spin-offs, recapitalizations, reorganizations, and class action settlements
§ 11:100.50	Selected C&DIIs relating to “restricted securities” definition
§ 11:101	Exemptions from registration under Section 4(a)(1) and Rule 144: Resales of securities by investors—Current public information
§ 11:101.50	Selected C&DIIs relating to current public information
§ 11:102	Exemptions from registration under Section 4(a)(1) and Rule 144: Resales of securities by investors—Holding period for restricted securities
§ 11:103	— — Fully paid securities
§ 11:104	— — Employee benefit plans
§ 11:105	— — Tracing securities—No fungibility
§ 11:106	— — Special tacking rules for recapitalizations, conversions, and similar transactions
§ 11:107	— — Special tacking rules for pledges, gifts, trusts and estates
§ 11:108	— — Trusts
§ 11:109	— — Estates—Special rules
§ 11:110	— — Tacking under Rule 144(d)(3) and aggregation under Rule 144(e)
§ 11:111	— — Gifts and pledges of non-restricted stock by affiliates
§ 11:112	— — “Beneficial” ownership under former Rule 144(d)(1)
§ 11:113	— — — Marital separations and divorces
§ 11:114	— — — Partnerships
§ 11:115	— — — Corporations
§ 11:115.50	Selected C&DIIs relating to holding period for restricted securities
§ 11:116	Exemptions from registration under Section 4(a)(1) and Rule 144: Resales of securities by investors—Limitation on amount of securities sold
§ 11:117	— — Aggregation
§ 11:118	— — — Aggregation by the same “person” under Rule 144(a)(2)
§ 11:119	— — — Express aggregation under Rule 144(e)(3) because of the special tacking provisions in Rule 144(d)(3)
§ 11:120	— — — Sales by persons agreeing to act “in concert”
§ 11:121	— — Sales excluded from volume limits
§ 11:121.30	Selected C&DIIs relating to limitation on amount of securities sold
§ 11:121.50	Limitation on amount of securities sold—Aggregation—Express aggregation under Rule 144(e)(3) because of the special tacking provisions in Rule 144(d)(3)

§ 11:121.70	C&DIIs relating to manner of sale
§ 11:122	Treatment of securities issued by “reporting and non-reporting shell companies”
§ 11:122.50	C&DIIs relating to shell companies
§ 11:123	Representations required from security holders relying on Exchange Act Rule 10b5-1(c)
§ 11:124	Exemptions from registration under Section 4(a)(1) and Rule 144: Resales of securities by investors—Additional interpretations—Section 4(1 ½): Sales by pledgees under the Uniform Commercial Code
§ 11:125	— —Resales of securities registered under a currently effective registration statement
§ 11:126	— —“Future tense” letters
§ 11:126.50	C&DIIs relating to notice of proposed sale
§ 11:127	Exemption from registration under Rule 144A: Resales of securities by qualified institutional buyers
§ 11:128	—Qualified institutional buyers
§ 11:129	—Proof of eligibility
§ 11:130	—Exclusion of certain securities
§ 11:131	—Information requirements
§ 11:132	—Miscellaneous
§ 11:132.50	Improper issuance of attorney opinion letter regarding restricted shares

B. SECURITIES ACT REGISTRATION

§ 11:133	Summary of current Securities Act registration requirements (including the “2005 revisions” in the SEC’s securities offering reform rules and the JOBS Act (2012))
§ 11:133.50	The “Emerging Growth Company” (EGC): JOBS Act (2012) introduced EGC “issuer” category to the 1933 Act registration process, with relaxed offering rules and reduced disclosure and reporting requirements under both the 1933 and 1934 Acts—Overview and cross-references to other sections of this treatise
§ 11:134	Background to the 2005 revisions
§ 11:135	Well-known seasoned issuers—Other categories of issuers under the 2005 revisions
§ 11:136	The 2005 communications revisions
§ 11:137	Overview of the 2005 communications revisions
§ 11:137.50	Communications restrictions further eased for EGCs only—JOBS Act (2012)
§ 11:137.60	Rule 163B adopted to permit test-the-waters communications by all issuers to certain types of investors
§ 11:138	Permitted continuation of ongoing communications during an offering
§ 11:139	30-day bright line exclusion from the prohibition on offers prior to filing a registration statement—All issuers
§ 11:140	Relaxation of restrictions on written offering related communications
§ 11:141	Permissible use of free writing prospectuses
§ 11:142	Electronic road shows
§ 11:143	Use of research reports
§ 11:144	Liability issues
§ 11:145	Prospectus delivery reforms
§ 11:146	Risk factor disclosure
§ 11:146.50	Special Disclosures for Emerging Growth Companies

TABLE OF CONTENTS

§ 11:146.60	Overview of SPACs
§ 11:146.70	CF Disclosure Guidance Topic No. 11 regarding special purpose acquisition companies
§ 11:146.80	Selected C&DIIs focused on SPACs
§ 11:146.90	SEC Proposes new regulatory regime and disclosure rules for SPACs
§ 11:146.95	SEC adopts final disclosure rules for SPACs
§ 11:147	Securities Act shelf registration process
§ 11:148	Shelf offerings
§ 11:149	Revisions to Rule 415
§ 11:150	Automatic shelf registration for well-known seasoned issuers
§ 11:151	Unseasoned issuers and non-reporting issuers
§ 11:151.50	Legality and tax opinions filed in registered offerings

C. SECURITIES ACT REGISTRATION STATEMENTS AND EXCHANGE ACT (1934) REGISTRATION AND REPORTING FOR “SMALLER” BUSINESS ISSUERS—REPORTING FOR “EMERGING GROWTH COMPANIES” (EGCS) UNDER JOBS ACT 2012

§ 11:152	Simplified Securities Act (1933) registration under Forms S-1 and Exchange Act (1934) registration and reporting for “smaller” business issuers and Regulation S-K—Summary of 2008 amendments and 2018 amendments
§ 11:153	Overview of the February, 2008 amendments as affected by the 2018 amendments
§ 11:153.50	Reduced 1933 Act registration statement disclosures and 1934 Act reporting disclosures for “Emerging Growth Companies” (EGCs) under the JOBS Act (2012)
§ 11:153.60	Further relaxed registration requirements for “Emerging Growth Companies” (EGCs) under the FAST Act (2015)
§ 11:153.70	C&DIIs regarding registration and disclosure requirements affecting “Emerging Growth Companies” (EGCs) under the FAST Act (2015)
§ 11:154	Scaled disclosure standards in Regulation S-K
§ 11:155	Electing disclosure requirements on a Regulation S-K item-by-item basis
§ 11:156	Qualifying for treatment as a “smaller reporting company”—Eligibility and exclusions
§ 11:157	—Determination dates
§ 11:158	Entering and exiting smaller reporting company status
§ 11:159	Submission of registration statements for non-public review by SEC permitted in all IPOs
§ 11:160	FAQs regarding voluntary submission of draft registration statements
§ 11:161	C&DIIs regarding omission of certain financial information from draft registration statements

CHAPTER 12. DUTIES OF PUBLIC COMPANIES FOR 1934 ACT FILINGS

§ 12:1	Section 12 trigger to 1934 Act obligations
§ 12:1.50	Introduction
§ 12:2	Due diligence by company’s disclosure committee and by CEO and CFO
§ 12:3	Disclosure controls and procedures

- § 12:4 Suggested steps in establishing and evaluating disclosure controls and procedures
- § 12:5 Critical role of company's audit committee (if any, or the independent directors) in financial due diligence
- § 12:6 Proxy disclosures about the audit committee
- § 12:7 NYSE and Nasdaq corporate governance amendments: Independent audit committee focus
- § 12:8 Timely reporting by the auditor to the audit committee; Audit committee's due diligence role
- § 12:8.50 PCAOB Auditing Standard No. 16: Auditor Communications with Audit Committees
- § 12:9 Audit committee's role in assuring auditor independence
- § 12:10 Due diligence concerning critical accounting policies and practices
- § 12:11 Management's discussion and analysis (MD & A)
- § 12:12 Auditor-audit committee communications
- § 12:13 Specific accounting issues for auditor-audit committee communications
- § 12:14 Financial due diligence continued: Audit committee's or the independent directors' assessment of the risks of fraud and responses thereto; PCAOB standards
- § 12:14.50 Financial/transactional due diligence: PCAOB Standard for related party transactions; significant unusual transactions; relevance to due diligence counsel
- § 12:14.60 PCAOB Auditing Standard 3101—Disclosure of critical audit matters
- § 12:15 Implementing and monitoring appropriate internal controls
- § 12:16 Due diligence: Establishing an appropriate oversight process
- § 12:17 Standard for auditing control over financial reporting
- § 12:18 Auditing Standard No. 5—An audit of internal control over financial reporting that is integrated with an audit of financial statements—Overview of changes
- § 12:19 Overview of the audit under AS 5
- § 12:20 Standard for auditing internal control over financial reporting—Requirement for adverse opinion when a material weakness exists
- § 12:21 —SEC guidance
- § 12:22 Standard for auditing internal control over financial reporting-FASB No. 154, accounting changes and error corrections
- § 12:22.50 Liability for inadequate internal controls: SEC enforcement and private actions
- § 12:22.60 SEC Authority under Exchange Act § 13—Failing to Report under the Exchange Act over a Significant Time Period
- § 12:22.70 —SEC enforcement—Nondisclosed interlocking directorates, and misstatements about same in proxies and reporting
- § 12:22.75 —SEC Injunctive Authority—Consent Decree to enjoin future § 17 and related violations
- § 12:22.80 —Material omission to fail to disclose SEC investigation into ICFR weaknesses and promotional paid-for public articles
- § 12:23 Audit committee—Financial experts
- § 12:24 —SEC audit committee disclosure rules
- § 12:25 —Pre-filing review of quarterly financial statements
- § 12:26 —Audit committee report
- § 12:27 —Audit committee charters
- § 12:28 —Audit committee members' independence
- § 12:29 —Safe harbors
- § 12:30 —Self regulatory organization audit committee rules

TABLE OF CONTENTS

§ 12:31	—Composition and qualification
§ 12:32	—Independence
§ 12:33	—Audit committee charter
§ 12:34	Corporate Governance Provisions of Dodd-Frank Act (2010) and SEC Rule-Making Thereunder; JOBS Act (2012) Revisions for “Emerging Growth Companies”

Volume 2A

CHAPTER 13. DISCLOSURE FOR SECURITIES OFFERINGS

A. OVERVIEW: REGULATION S-K

§ 13:1	Overview: Regulation S-K
§ 13:1.10	Scaled disclosure chart
§ 13:1.50	The 2018 Amendments to Regulation S-K
§ 13:1.55	The 2019 Amendments to Regulation S-K
§ 13:1.56	Amendments (2020) to Modernize Regulation S-K Items 101, 103, and 105; Transitional FAQs
§ 13:1.57	Amendments (2020) to Regulation S-K Items 301, 302 and 303
§ 13:1.58	SEC guidance on management’s discussion and analysis of financial condition and results of operations; proposed amendments to Regulation S-K
§ 13:1.60	Expansion of eligibility for smaller reporting company status
§ 13:1.70	Amendments to accelerated filer and large accelerated filer definitions
§ 13:2	Regulation S-K items—Item 101: Description of issuer’s business
§ 13:3	—Item 102: Description of property
§ 13:4	—Item 303: Management’s discussion and analysis
§ 13:5	—Item 401: Directors, executive officers, promoters and control persons
§ 13:6	—Item 402 of Regulation S-K: Executive compensation
§ 13:7	—Item 404: Certain relationships and related transactions
§ 13:8	—Item 407: Director independence and other corporate governance matters

B. “PLAIN ENGLISH”

§ 13:9	Disclosure in “plain English”
§ 13:10	—What is a “plain English” document?
§ 13:11	—Plain English at a glance
§ 13:12	—Writing in plain English
§ 13:13	—Designing the document
§ 13:14	—Plain English examples

C. PROSPECTUS DISCLOSURE: SPECIFIC REGULATION S-K ITEMS

§ 13:15	Introduction
§ 13:16	Front and Back Cover Pages of Prospectus
§ 13:17	Structure Therapeutics Prospectus: Front and Back Cover Pages
§ 13:18	Prospectus Summary
§ 13:19	Structure Therapeutics Prospectus: Prospectus Summary

- § 13:20 Risk factors
- § 13:21 Shockwave Medical Prospectus: Risk factors
- § 13:22 Forward-looking statements
- § 13:23 Shockwave Medical Prospectus: Forward-looking statements
- § 13:24 Determining the offering price
- § 13:25 Shockwave Medical Prospectus: Determining the offering price
- § 13:26 Use of proceeds
- § 13:27 Shockwave Medical Prospectus: Use of proceeds
- § 13:28 Dividend policy
- § 13:29 Shockwave Medical Prospectus: Dividend policy
- § 13:30 Capitalization and dilution
- § 13:31 Shockwave Medical Prospectus: Capitalization and dilution
- § 13:32 Selected financial data
- § 13:33 Shockwave Medical Prospectus: Selected financial data
- § 13:34 Management's Discussion and Analysis of financial condition and results of operations ("MD&A")
- § 13:35 Shockwave Medical Prospectus: MD&A
- § 13:36 Quantitative and qualitative disclosures about market risk
- § 13:37 Shockwave Medical Prospectus: Quantitative and qualitative disclosures about market risk
- § 13:38 Business
- § 13:39 Shockwave Medical Prospectus: Business
- § 13:40 Management
- § 13:41 Shockwave Medical Prospectus: Management
- § 13:42 Executive compensation
- § 13:43 Shockwave Medical Prospectus: Executive Compensation
- § 13:44 Transactions with related persons
- § 13:45 Shockwave Medical Prospectus: Transactions with related persons
- § 13:46 Stock ownership by more than five percent beneficial owners and stock ownership of management; selling stockholders
- § 13:47 Shockwave Medical Prospectus: Stock ownership by more than five percent beneficial owners and stock ownership of management; selling stockholders
- § 13:48 Description of company's securities
- § 13:49 Shockwave Medical Prospectus: Description of company's securities
- § 13:50 Shares eligible for future sale
- § 13:51 Shockwave Medical Prospectus: Shares eligible for future sale
- § 13:52 Plan of Distribution—Underwriting
- § 13:53 Shockwave Medical Prospectus: Plan of Distribution and Underwriting
- § 13:54 Legal matters and Experts
- § 13:55 Shockwave Medical Prospectus: Legal matters and Experts
- § 13:56 Other parts of Shockwave Medical prospectus not covered above (not mandated by a specific Item in Regulation S-K)
- § 13:57 Staff observations on the financial statements, observations on Part II (not included in the Prospectus) of an IPO registration statement and general comments; disclosure controls and procedures and internal controls of smaller issuers

CHAPTER 14. DUE DILIGENCE AND CIVIL LIABILITY

- § 14:1 Introduction
- § 14:2 Statutory provisions on due diligence and decided cases—Introduction
- § 14:3 —Section 11 liability

TABLE OF CONTENTS

§ 14:3.10	Section 11 and § 10(b) Liability—Market Manipulation
§ 14:3.20	Section 11 Liability—Standing—Direct Listing
§ 14:4	Statutory provisions on due diligence and decided cases—Section 11 liability—Standard of reasonableness
§ 14:5	— — Reliance on “expertised” part
§ 14:6	— — <i>Software Toolworks and Worlds of Wonder</i>
§ 14:7	— — <i>BarChris</i>
§ 14:8	— — <i>Leasco</i>
§ 14:9	— — <i>Chris-Craft</i>
§ 14:9.50	— — <i>WorldCom</i>
§ 14:10	— — Does an underwriter have a mandatory duty to conduct a reasonable investigation or merely a “waivable” defense to civil liability? SEC’s position, adopted by courts: mandatory duty under Section 17(a) of the 1933 Act and Rule 10b-5 under the 1934 Act
§ 14:11	— — Due diligence met as a matter of law
§ 14:12	— — Rule 176
§ 14:13	— — Section 12(a)(2) liability
§ 14:14	— — Due diligence under Section 12(a)(2)
§ 14:15	Statements of opinion or belief
§ 14:15.10	Omnicare extended to Proxy Statements
§ 14:15.50	“Puffery”—Immateriality as a Matter of Law
§ 14:15.60	Aspirational statements
§ 14:15.90	Actionable Misrepresentations of Legal Compliance—Cases
§ 14:16	Some general principles to follow in conducting due diligence investigations
§ 14:17	Items to investigate in performing due diligence
§ 14:18	Practical aspects of due diligence investigations
§ 14:19	— General concerns for underwriters
§ 14:20	— Specific steps for underwriters
§ 14:21	— — Investigating issuer’s industry
§ 14:22	— — Investigating the issuer
§ 14:23	— — — Company and its management
§ 14:24	— — — Company’s business
§ 14:25	— — — Company’s financials
§ 14:26	— Sources of information
§ 14:27	— — Sources within the issuer
§ 14:28	— — Sources outside the issuer
§ 14:28.50	FINRA Guidance for private placements; FINRA Rule 5123
§ 14:29	Civil liabilities under federal law for inadequate or materially misleading disclosure—Securities Act of 1933
§ 14:30	— Securities Exchange Act of 1934
§ 14:31	— Securities laws duties of corporate officers, promoters, attorneys, and accountants for preparation of disclosure documents for investors: Overview
§ 14:32	— — Section 11 of 1933 Act: Do persons other than those specifically named have disclosure due diligence duties thereunder?
§ 14:33	— — Section 12(a)(2) of 1933 Act
§ 14:34	— — — <i>Pinter v. Dahl</i> : Who has disclosure and due diligence duties?
§ 14:35	— — — Post- <i>Pinter</i> cases: Agents, brokers, dealers, underwriters, and other Section 12(a)(2) “sellers”
§ 14:36	— — — Attorneys and accountants

§ 14:37	— — — Supreme Court holds Section 12(a)(2) applies only to public offerings
§ 14:38	— — — No aiding and abetting under Section 12
§ 14:38.50	The importance or not of targeted solicitation under Section 12—The BitConnect case
§ 14:39	Civil liabilities under federal law for inadequate or materially misleading disclosure—Securities laws duties of corporate officers, promoters, attorneys, and accountants for preparation of disclosure documents for investors: Overview—Section 17(a) of 1933 Act
§ 14:39.40	Sale of unregistered securities and securities fraud actions by the SEC
§ 14:39.50	Negligent securities “Fraud” Actions by SEC: Section 17(a)(2) misstatement liability
§ 14:39.60	Negligent securities “Fraud” Actions by SEC: Section 17(a)(3) “scheme” liability
§ 14:39.70	Standard of Care under 1933 Act § 17(a)
§ 14:39.80	The SEC Sets Forth its Prosecutorial Position on <i>Janus</i> and <i>Janus'</i> Effect on Rule 10b-5 and Section 17(a)
§ 14:40	Civil liabilities under federal law for inadequate or materially misleading disclosure—Securities laws duties of corporate officers, promoters, attorneys, and accountants for preparation of disclosure documents for investors: Overview—Rule 10b-5 (1934 Act)
§ 14:40.10	The SEC Sets Forth its Prosecutorial Position on Materiality under Rule 10b-5
§ 14:40.20	SEC Responsibility to Regulate Unregistered Brokers under Exchange Act § 15
§ 14:40.30	Rule 10b-5 (1934 Act)—Independent Duty to Disclose?
§ 14:40.50	— Professional’s duty to disclose material facts—Underwriter’s duties
§ 14:41	Civil liabilities under federal law for inadequate or materially misleading disclosure—Securities laws duties of corporate officers, promoters, attorneys, and accountants for preparation of disclosure documents for investors: Overview—Rule 10b-5 (1934 Act)—Professional’s duty to disclose material facts
§ 14:42	— — — Attorneys
§ 14:43	— — — Financial statement “materiality”
§ 14:43.50	— — — Accountants’ duty to disclose material facts
§ 14:43.75	— — — Materiality and § 11 liability under the 1933 Act
§ 14:44	— — — Accountant’s duty to correct versus asserted duty to update
§ 14:44.50	— — — Accountant’s opinion in financial statement as certification and consequent Section 11 violation
§ 14:45	— — — Transaction and loss causation
§ 14:45.50	Loss causation—Materialization of the risk
§ 14:45.60	— Generic Misstatements—Fraud-on-the-Market
§ 14:45.70	Causation—Reliance—Mixed Affirmative Statements and Omissions
§ 14:45.80	Loss Causation—Time delay between corrective disclosure and share price drop
§ 14:46	Civil liabilities under federal law for inadequate or materially misleading disclosure—Securities laws duties of corporate officers, promoters, attorneys, and accountants for preparation of disclosure documents for investors: Overview—Rule 10b-5 (1934 Act)—End-run around no aiding and abetting liability in private actions? Few, if any, after the Supreme Court’s decision in <i>Janus</i> (2011)
§ 14:47	— — — End-run around no aiding and abetting liability in private actions?—Who “makes” a misstatement?

TABLE OF CONTENTS

§ 14:48	— — — — Drafting, editing, reviewing, advising, or assisting in preparation of statements made by another: “substantial participation” approach—Expressly rejected by the Supreme Court in <i>Janus</i>
§ 14:49	— — — — SEC <i>Amicus</i> approach: “creating” the misrepresentation— Expressly rejected by the Supreme Court in <i>Janus</i>
§ 14:50	— — — — The “Bright Line” approach
§ 14:51	— — — — Statements “made” by an accountant regarding unaudited financial information; interim reviews
§ 14:51.50	— — — — Accountants: “red flags” requiring additional due diligence?
§ 14:52	— — — — End-run around no aiding and abetting liability in private actions?—“Primary” violations of the nonrepresentational 10b-5 subdivisions
§ 14:52.30	— — — — Conspiracy
§ 14:52.70	— — — — SEC actions and criminal liability
§ 14:52.90	Special pleading requirements for Rule 10b-5 claims
§ 14:52.95	Corporate <i>Scienter</i>
§ 14:52.97	Corporate <i>Scienter</i> —Adverse Interests Exception
§ 14:53	Civil liabilities under federal law for inadequate or materially misleading disclosure—Securities laws duties of corporate officers, promoters, attorneys, and accountants for preparation of disclosure documents for investors: Overview—Influence of professional standards on liability—Introduction
§ 14:53.50	Whistle-blower protection for employees in employment termination cases under Sarbanes-Oxley clarified in unanimous U.S. Supreme Court Opinion
§ 14:53.60	SEC Administrative Enforcement of Whistleblower Protections under Dodd-Frank Act
§ 14:53.70	Fraudulent Accounting and Sarbanes-Oxley—Who is an Employer Under the Statute?
§ 14:54	Civil liabilities under federal law for inadequate or materially misleading disclosure—Securities laws duties of corporate officers, promoters, attorneys, and accountants for preparation of disclosure documents for investors: Overview—Attorneys—Sarbanes-Oxley Act (2002) and SEC Professional Conduct Rules (2003) Thereunder
§ 14:55	— — “Up the Ladder” Reporting Requirement
§ 14:56	— — Alternative: Reporting to QLCC
§ 14:57	— — “Appropriate Response” by Issuer
§ 14:58	— — If “Up the Ladder” Fails: “Noisy” Withdrawal and Disaffirmance Proposal and Alternative Proposal
§ 14:59	— — Permissive disclosure of confidential information
§ 14:60	— — Supervisory and Subordinate Attorneys
§ 14:61	— — Sanctions and discipline for rule violations
§ 14:62	— — Reporting attorney has no duty to investigate
§ 14:63	— — Background: ABA and State Ethical Rules
§ 14:64	— — No private right of action
§ 14:64.50	— — Inside general counsel’s fiduciary duties and liability for failure to advise board concerning its monitoring duties
§ 14:65	— — Attorneys—Applicable model rules and model code provisions, generally
§ 14:66	— — — Disclosure obligations to nonclients
§ 14:67	— — — Opinion letters
§ 14:68	— — — Lawyers’ responses to auditors’ requests for information

§ 14:69	— — Accountants—Sarbanes-Oxley Act (2002) and SEC Auditor Rules (2003) Thereunder
§ 14:70	— — The Public Company Accounting Oversight Board
§ 14:71	— — Required Accounting Disclosures
§ 14:72	— — Strengthening Auditor Independence
§ 14:73	— — Timely Reporting by Auditor to Audit Committee; Audit Committee's Role
§ 14:74	— — — Due diligence for accountants—Generally accepted auditing standards (GAAS)
§ 14:75	— — — “Present Fairly”—A Requirement Additional to GAAP Compliance?
§ 14:76	— — — Section 10A—Exchange Act
§ 14:77	— — — — Application of GAAS and GAAP in decided cases
§ 14:78	— — — — Compliance with GAAS and GAAP as evidence of reasonableness
§ 14:79	— — — Control person liability
§ 14:80	— — — Statutory provisions
§ 14:81	— — — Employers and principals: Respondent superior and agency principles
§ 14:82	— — — Statutory control person liability: Two-prong test
§ 14:83	— — — — Culpable participation requirement: Minority rule
§ 14:84	— — — — Majority rule: Plaintiff must prove actual participation in control in general; Defendant must prove “good faith”
§ 14:84.10	Advice of Counsel Defense to prove Good Faith under § 20(a) of the 1934 Exchange Act
§ 14:85	Civil liabilities under federal law for inadequate or materially misleading disclosure—Securities laws duties of corporate officers, promoters, attorneys, and accountants for preparation of disclosure documents for investors: Overview—Control person liability—Broker-dealers as control persons
§ 14:86	— — — Directors and officers as control persons
§ 14:87	— — — Lenders
§ 14:88	— — — Attorneys and accountants
§ 14:89	— — — Other persons
§ 14:89.50	Constitutionality of SEC’s Appointment Process Regarding Administrative Law Judges
§ 14:89.60	SEC Administrative Law Judge (ALJ) enforcement proceedings involving Civil Fines ruled Unconstitutional Seventh Amendment violation by U.S. Supreme Court
§ 14:89.70	Supreme Court holds that litigants may challenge the constitutionality of SEC administrative proceedings in Federal District Court parallel or collateral to administrative proceedings before the SEC
§ 14:89.80	Private Nondelegation Doctrine-Constitutionality of Broker Suspension Prior to SEC Review-Appointments Clause-FINRA
§ 14:89.85	Non-final SEC administrative order pertaining to FINRA action is not subject to judicial review
§ 14:89.90	SEC proxy voting advice business regulations
§ 14:89.95	Solicitation and Proxy Voting Advice Businesses—Post Loper Bright
§ 14:90	Civil liabilities under federal law for inadequate or materially misleading disclosure—Securities laws duties of corporate officers, promoters, attorneys, and accountants for preparation of disclosure documents for investors: Overview—SEC and other agency actions

TABLE OF CONTENTS

	and proceedings against attorneys and accountants—SEC enforcement arsenal against professionals and others
§ 14:90.10	SEC injunctive authority: Cryptocurrency
§ 14:90.20	Chevron doctrine used for 40 years is overruled by U.S. Supreme Court
§ 14:90.30	SEC enforcement arsenal: Misrepresentations in connection with the Purchase or Sale of a Security
§ 14:90.35	SEC enforcement authority pertaining to private funds and private fund advisers curtailed in Fifth Circuit ruling
§ 14:90.36	Required disclosure of back-dated trading strategies
§ 14:90.40	SEC enforcement arsenal—Sexual misconduct
§ 14:90.50	SEC to circumvent <i>Janus</i> using 1934 Act § 20(b)?
§ 14:90.60	Supreme Court applies statute of limitations to the SEC disgorgement remedy
§ 14:90.65	Supreme court upholds propriety of SEC disgorgement remedy while noting restrictions
§ 14:90.70	Attempt to label SEC injunctive remedies as punitive
§ 14:90.75	—SEC Enforcement Arsenal—Consent Decrees and No-Deny Provisions
§ 14:91	Civil liabilities under federal law for inadequate or materially misleading disclosure—Securities laws duties of corporate officers, promoters, attorneys, and accountants for preparation of disclosure documents for investors: Overview—SEC and other agency actions and proceedings against attorneys and accountants—Civil injunctive actions
§ 14:92	— — —Rule 102(e) proceedings
§ 14:93	— — —Attorneys
§ 14:94	— — —Negligent issuance of formal opinions
§ 14:95	— — —Drafting disclosure documents; Providing disclosure and other advice
§ 14:96	— — —Accountants
§ 14:97	— — —Aiding and abetting actions brought by SEC
§ 14:97.50	— — —Rule 10b-5-Standing to bring a claim restricted with implied private right of action
§ 14:98	— — — <i>In re Kaye, Scholer</i> —Office of Thrift Supervision
§ 14:99	— — —Disclosure “defenses”—Using offering memorandum as a defense against allegations of oral misrepresentation or as “inquiry notice” under statutes of limitations or as unreasonable or “unjustifiable” reliance by plaintiff
§ 14:99.50	— — —Contractual non-reliance clauses
§ 14:100	— — —Rule 10b-5 versus 1933 Act Section 12(a)(2)
§ 14:101	— — —1995 statutory safe harbors; The judicial “bespeaks caution” doctrine
§ 14:102	— — —Statutory safe harbor: Applicability and exclusions
§ 14:103	— — —Meaningful cautionary statement safe harbor
§ 14:104	— — —State of mind safe harbor: Actual knowledge
§ 14:105	— — —Oral statements; “Immaterial” safe harbor
§ 14:106	— — —Due diligence
§ 14:107	— — —Duty to update or correct?
§ 14:108	— — —Companies taking advantage of the safe harbor
§ 14:109	— — —Commission authority to expand safe harbors
§ 14:110	— — —Judicial “bespeaks caution” doctrine

- § 14:111 —Proportionate liability, contribution, settlement and indemnity—
Overview: 1995 statutory changes
- § 14:112 ——Joint and several versus proportionate liability
- § 14:113 ——Joint and several liability for “knowing” fraud
- § 14:114 ——Modified proportionate liability for “nonknowing” defendants
- § 14:115 ——Bar orders
- § 14:116 ——PSLRA judgment reduction formula
- § 14:117 ——Case law prior to 1995 statute
- § 14:118 ——Contribution under PSLRA: Two different provisions
- § 14:119 ——Outside directors’ liability under Section 11 of the 1933 Act
- § 14:120 ——Indemnity
- § 14:121 ——Federal preemption of pendent state claims for indemnification and contribution
- § 14:122 ——Drafting express contract provisions for contribution
- § 14:123 State law claims for inadequate or materially misleading disclosure—
State securities statutes
- § 14:123.50 The reach of the Securities Litigation Uniform Standards Act (SLUSA)
- § 14:123.70 Corporate by-laws improperly used to redirect jurisdiction of Federal securities law issues from Federal to State Court
- § 14:123.80 Foreign and domestic parties—Cryptocurrency jurisdiction
- § 14:124 State law claims for inadequate or materially misleading disclosure—
Common-law negligence claims by clients against attorneys and accountants
- § 14:125 —Common-law negligence claims against accountants by nonclients
- § 14:126 ——*Ultramares* approach
- § 14:127 ——States following “near privity” approach
- § 14:128 ——*Second Restatement* approach
- § 14:129 ——*Blue Bell*: The scope of comment h
- § 14:130 ——“Reasonably foreseeable” approach
- § 14:131 ——*Rosenbloom*: Reasonably foreseeable user test in New Jersey decision—overruled by 1995 statute
- § 14:132 ——*Timm*: Reasonably foreseeable injury test in Wisconsin
- § 14:133 ——Mississippi: Reasonably foreseeable user test
- § 14:134 ——Any practical steps possible to limit liability under the foreseeability or *Restatement* approach?
- § 14:135 ——Balancing test
- § 14:136 ——Subsequent legislation
- § 14:137 —Common-law negligence claims against attorneys by nonclients—
Application of *Ultramares-Credit Alliance* to attorneys
- § 14:138 ——Developments in “privity” states: Florida and Texas
- § 14:139 ——Liability without privity
- § 14:140 ——Attorney liability legislation
- § 14:141 Due diligence duties of securities counsel: Scope of state law duties
- § 14:142 In pari delicto defense

CHAPTER 15. STATE BLUE SKY REGULATION

- § 15:1 Introduction
- § 15:2 —Offer or sale
- § 15:3 —Security
- § 15:3.40 First prong of Howey test—The investment of money and an offer of sale

TABLE OF CONTENTS

§ 15:3.50	Problems in the definition of a security—The <i>Howey</i> test and common enterprise
§ 15:3.60	Howey Test for Investment Contract and Security—Profits derived solely from the efforts of others
§ 15:3.70	Digital assets as securities, generally
§ 15:3.90	Investment contract as domestic security warranting protection under federal securities laws
§ 15:4	Introduction—State jurisdiction
§ 15:5	—Broker-dealer and agent registration
§ 15:6	—Antifraud provisions
§ 15:7	Exemptions from state securities registration requirements
§ 15:8	—Transaction based exemptions
§ 15:9	—Institutional buyers' exemption
§ 15:10	—Limited offering exemption
§ 15:11	—Regulation D and Uniform Limited Offering Exemption
§ 15:12	—Form U-7: Small Offerings Registration Form
§ 15:13	—Securities based exemptions
§ 15:14	Methods of state securities registration
§ 15:15	—Registration by coordination
§ 15:16	—Registration by notification
§ 15:17	—Registration by qualification
§ 15:18	Merit regulation of securities
§ 15:19	—Underwriters' commissions and offering expenses
§ 15:20	—Cheap stock
§ 15:21	—Options and warrants
§ 15:22	—Offering price
§ 15:23	—Voting rights
§ 15:24	—Interest and dividend coverage
§ 15:25	—Existing capitalization
§ 15:26	—Loans and other material affiliated transactions
§ 15:27	Resales of securities

PART II. FORMS

CHAPTER 15A. NATIONAL VENTURE CAPITAL ASSOCIATION (NVCA) MODEL VENTURE FINANCINGS DOCUMENTS

§ 15A:1	An overview of the NVCA's model venture financing documents project
§ 15A:2	Term sheet
§ 15A:3	Stock purchase agreement
§ 15A:4	Amended and restated certificate of incorporation
§ 15A:5	Investors' rights agreement
§ 15A:6	Voting agreement
§ 15A:7	Right of first refusal and co-sale agreement
§ 15A:8	Management rights letter
§ 15A:9	Indemnification agreement

CHAPTER 16. PREFERRED STOCK PROVISIONS

§ 16:1	Preferred stock provisions, generally
§ 16:2	Participating preferred provisions

CHAPTER 17. ANTIDILUTION PROVISIONS

- § 17:1 Antidilution provision-short form
- § 17:2 Antidilution provision: Convertible preferred stock-long form
- § 17:3 Antidilution provision: Convertible debenture-long form
- § 17:4 Antidilution provision: Stock purchase warrant-long form
- § 17:5 “Pay to play” or “force down” antidilution provisions

CHAPTER 18. STOCK PURCHASE AGREEMENTS, DEBENTURES, AND RELATED AGREEMENTS AND PROVISIONS; TERM LOAN AGREEMENT

- § 18:1 A business plan outline
- § 18:2 Redemption provisions for convertible preferred stock and debentures:
Optional and mandatory provisions; Sinking fund provisions
- § 18:3 Convertible debenture
- § 18:4 Debenture subordination provision
- § 18:5 Conversion of debenture at company’s election
- § 18:6 Indenture
- § 18:7 Stock purchase agreement (common stock)
- § 18:8 Warrant agreement
- § 18:9 Standard representations and warranties
- § 18:10 Registration rights agreement
- § 18:11 Debenture purchase agreement with an SBIC
- § 18:12 Term loan agreement
- § 18:13 Stock repurchase agreement
- § 18:14 Co-sale provisions

Volume 2B

CHAPTER 19. PUBLIC OFFERING FORMS

- § 19:1 Final Prospectus for a public offering
- § 19:2 Digital brands group freewriting prospectus
- § 19:3 Underwriting Agreement for a public offering
- § 19:3.50 Special provisions in an underwriting agreement for an emerging growth company (“EGC”)
- § 19:4 Sample timetable and responsibility schedule for an initial public offering of common stock
- § 19:5 Letter of intent

CHAPTER 20. LLC OPERATING AGREEMENTS

- § 20:1 New York LLC Operating Agreement (2008)
- § 20:2 Maryland LLC Operating Agreements (3)(2012)
- § 20:3 North Carolina LLC Operating Agreement (2012)
- § 20:4 California LLC Operating Agreement (2013)
- § 20:5 Florida LLC Operating Agreement (2011)
- § 20:6 Texas S Corp LLC Operating Agreement (2011)
- § 20:7 Virginia (2010)
- § 20:8 Delaware LLC Operating Agreement (2022)
- § 20:9 Michigan Manager-Managed Model LLC Operating Agreement (2013)
- § 20:10 South Carolina LLC Operating Agreement (2013)

TABLE OF CONTENTS

- § 20:11 Arizona LLC Operating Agreement (2012)
- § 20:12 Massachusetts LLC Operating Agreement (2013)

LIMITED OFFERINGS AND REGULATION A

- APPENDIX 1. Regulation D
- APPENDIX 1.1. SEC Release No. 33-6455 (March 3, 1983)
- APPENDIX 1.2. Review of the “Accredited Investor” Definition Under Dodd-Frank
- APPENDIX 1.2a. FINRA Regulatory Notice 10-22
- APPENDIX 1.3. SEC Release No. 33-4552 (November 6, 1962)—Private Offering Exemption
- APPENDIX 1.5. Small Corporate Offerings Registration Form (Form U-7)
- APPENDIX 1.5a. NASAA Small Company Offering Registration (SCOR) Manual
- APPENDIX 1.6. Regulation A—Conditional Small Issues Exemption
- APPENDIX 1.7. Form 1-A Regulation A Offering Statement Under the Securities Act of 1933
- APPENDIX 1.7a. Form 1-K General Instructions
- APPENDIX 1.7b. Form 1-SA Semiannual Report Pursuant to Regulation A
- APPENDIX 1.7c. Form 1-U Current Report Pursuant to Regulation A
- APPENDIX 1.7d. Form 1-Z Exit Report Under Regulation A
- APPENDIX 1.8. SEC “Bad Actor” Compliance Guide for Small Entities
- APPENDIX 1.9. Amendments to Regulation A: A Small Entity Compliance Guide
- APPENDIX 1.10. Amendments to the Smaller Reporting Company Definition
- APPENDIX 1.11. Disclosure Update and Simplification: A Small Entity Compliance Guide
- APPENDIX 2. Form D—Notice of Sales Under Regulation D or Section 4(5)
- APPENDIX 2.1. *[Reserved]*
- APPENDIX 3. SEC Rule 147
- APPENDIX 3.1. SEC Rule 147 (as amended)
- APPENDIX 3.2. 1974 SEC Release Adopting Rule 147

Volume 2C

RULES 144 AND 144A

- APPENDIX 4. Rule 144
- APPENDIX 4.1. SEC Release No. 33-5306 (September 26, 1972)
- APPENDIX 4.1a. [Deleted]
- APPENDIX 4.2. SEC Release No. 33-6099 (August 2, 1979)
- APPENDIX 4.2a. Revised Staff Legal Bulletin No. 3 (CF) (Oct. 20, 1999)
- APPENDIX 4.2b. Staff Legal Bulletin No. 4 (CF) (Sept. 16, 1997)
- APPENDIX 4.3. Rule 144A. Private Resales of Securities to Institutions

APPENDIX 4.4. Release Adopting Rule 144A

SEC FORMS

- APPENDIX 5. Compliance and Disclosure Interpretations (“C&DIs”) as to Securities Act Rules
- APPENDIX 5.1. Form S-1
- APPENDIX 5.2. Form S-3
- APPENDIX 5.3. Compliance and Disclosure Interpretations (“C&DIs”) regarding Securities Act Sections
- APPENDIX 5.4. Interactive Data for Financial Reporting—A Small Entity Reporting Guide
- APPENDIX 5.5. Form 10-Q
- APPENDIX 5.5a. Form 10
- APPENDIX 5.5b. Form 10-K
- APPENDIX 5.5c. Form 8-K
- APPENDIX 5.5d. SEC staff interpretations of Form 8-K
- APPENDIX 5.6. Staff Legal Bulletin No. 7 (Updated June 7, 1999)
- APPENDIX 5.7. Compliance and Disclosure Interpretations (“C&DIs”) as to Regulation S-K
- APPENDIX 5.8. Item 402 of Regulation S-K—Executive Compensation Staff Q.&A. (Feb. 12, 2007)
- APPENDIX 5.9. Exchange Act Rules
- APPENDIX 5.10. Legality and Tax Opinions Filed in Registered Offerings Staff Legal Bulletin No. 19 (CF) (Oct. 14, 2011)
- APPENDIX 5.20. Sample Letter to Companies Regarding Climate Change Disclosures
- APPENDIX 5.30. Sample Letter Regarding Disclosures as to Russia’s Invasion of Ukraine and Related Supply Chain Issues
- APPENDIX 5.40. Shareholder Proposals: Staff Legal Bulletin No. 14M (CF)
- APPENDIX 5.50. Proxy Rules and Schedules 14A/14C
- APPENDIX 5.60. Exchange Act Sections 13(d) and 13(g) and Regulation 13D-G Beneficial Ownership Reporting

SBA FORMS

- APPENDIX 6. EARLY STAGE SBICs Limited Partnership Agreement (LPA) FORM
- APPENDIX 6.1. EARLY STAGE SBIC MANAGEMENT ASSESSMENT QUESTIONNAIRE AND LICENSE APPLICATION FORM

STATE SECURITIES REGULATION

- APPENDIX 7. NASAA Uniform Limited Offering Exemption
- APPENDIX 7.1. Blue Sky Limited Offering Exemptions
- APPENDIX 7.2. NASAA Disclosure Guidelines for Cover Legends, Adopted on October 2, 2004
- APPENDIX 7.3. *[Reserved]*

TABLE OF CONTENTS

APPENDIX 7.4. Statement Of Policy Regarding Small Company Registrations

REGULATION S

APPENDIX 8. Regulation S

APPENDIX 8.1. No Action Letter: Coach, Inc. and J.P. Morgan Chase Bank, N.A. (November 23, 2011)

SEC NO-ACTION LETTERS

APPENDIX 9. Selected SEC No-Action Letters

Volume 2D

APPENDIX 11. Commission Guidance Regarding Management's Report on Internal Control (June 20, 2007)

APPENDIX 11.1. Management's Report on Internal Control—Frequently Asked Questions (Sept. 24, 2007)

APPENDIX 11.2. Risk of Material Misstatement in Financial Statements—PCAOB Rules on Risk Assessment Standards (Approved by SEC, December 23, 2010)

APPENDIX 11.3. Internal Control—PCAOB Guidance for Auditors of Smaller Public Companies (January 23, 2009)

APPENDIX 11.4. PCAOB Auditing Standards Release #2014-002 (June 10, 2014)

APPENDIX 11.5. Auditing Standard No. 16 — Auditor Communication with Audit Committees (Aug. 15, 2012)

APPENDIX 11.6. PCAOB Auditing Standard AU 3101

APPENDIX 12.1. Jumpstart Our Business Startups Act Frequently Asked Questions

APPENDIX 12.2. Jumpstart Our Business Startups Act, Frequently Asked Questions, Generally Applicable Questions On Title I of the Jobs Act

APPENDIX 12.3. Jumpstart Our Business Startups Act, Frequently Asked Questions, Confidential Submission Process for Emerging Growth Companies

APPENDIX 12.4. Jumpstart Our Business Startups Act Frequently Asked Questions About Research Analysts and Underwriters

APPENDIX 12.5. Jumpstart Our Business Startups Act Frequently Asked Questions About Crowdfunding Intermediaries

APPENDIX 13. Directory of Operating SBICs

APPENDIX 14. SEC Cybersecurity Disclosure Guidance

APPENDIX 14A. C&DIs regarding Form 8K Disclosures of Material Cybersecurity Incidents insert as Release VCSB-2

APPENDIX 15. C&DIs Covering Cybersecurity Incident Disclosures Pursuant to Item 1.05 of Form 8-K

APPENDIX 16. Statement

APPENDIX 17. Voluntary Submission of Draft Registration Statements — FAQs

APPENDIX 17.5. Statement Re- Crypto Asset Exchange Traded Products

**STATE-BY-STATE SUMMARY OF ASSISTANCE
PROGRAMS FOR SMALL BUSINESS**

APPENDIX 18.	State-by-State Summary of Assistance Programs for Small Business
APPENDIX 18.1.	Alabama Resources
APPENDIX 18.2.	Alaska Resources
APPENDIX 18.3.	Arizona Resources
APPENDIX 18.4.	Arkansas Resources
APPENDIX 18.5.	California Resources
APPENDIX 18.6.	Colorado Resources
APPENDIX 18.7.	Connecticut Resources
APPENDIX 18.8.	Delaware Resources
APPENDIX 18.9.	District of Columbia Resources
APPENDIX 18.10.	Florida Resources
APPENDIX 18.11.	Georgia Resources
APPENDIX 18.11a.	Guam Resources
APPENDIX 18.12.	Hawaii Resources
APPENDIX 18.13.	Idaho Resources
APPENDIX 18.14.	Illinois Resources
APPENDIX 18.15.	Indiana Resources
APPENDIX 18.16.	Iowa Resources
APPENDIX 18.17.	Kansas Resources
APPENDIX 18.18.	Kentucky Resources
APPENDIX 18.19.	Louisiana Resources
APPENDIX 18.20.	Maine Resources
APPENDIX 18.21.	Maryland Resources
APPENDIX 18.22.	Massachusetts Resources
APPENDIX 18.23.	Michigan Resources
APPENDIX 18.24.	Minnesota Resources
APPENDIX 18.25.	Mississippi Resources
APPENDIX 18.26.	Missouri Resources
APPENDIX 18.27.	Montana Resources
APPENDIX 18.28.	Nebraska Resources
APPENDIX 18.29.	Nevada Resources
APPENDIX 18.30.	New Hampshire Resources
APPENDIX 18.31.	New Jersey Resources
APPENDIX 18.32.	New Mexico Resources
APPENDIX 18.33.	New York Resources
APPENDIX 18.34.	North Carolina Resources
APPENDIX 18.35.	North Dakota Resources

TABLE OF CONTENTS

APPENDIX 18.36.	Ohio Resources
APPENDIX 18.37.	Oklahoma Resources
APPENDIX 18.38.	Oregon Resources
APPENDIX 18.39.	Pennsylvania Resources
APPENDIX 18.40.	Puerto Rico Resources
APPENDIX 18.41.	Rhode Island Resources
APPENDIX 18.42.	South Carolina Resources
APPENDIX 18.43.	South Dakota Resources
APPENDIX 18.44.	Tennessee Resources
APPENDIX 18.45.	Texas Resources
APPENDIX 18.46.	Utah Resources
APPENDIX 18.47.	Vermont Resources
APPENDIX 18.48.	Virgin Islands Resources
APPENDIX 18.49.	Virginia Resources
APPENDIX 18.50.	Washington Resources
APPENDIX 18.51.	West Virginia Resources
APPENDIX 18.52.	Wisconsin Resources
APPENDIX 18.53.	Wyoming Resources
APPENDIX 18.54.	2021 Small Business Profiles for the States and Territories

RULES 406 AND 24B-2

APPENDIX 19.	Confidential Treatment Applications Submitted Pursuant to Rules 406 and 24b-2
--------------	---

FEDERAL TAX SYSTEM

APPENDIX 20.	Overview of Federal Tax System as of 2024
--------------	---

APPENDIX 21.	[Reserved]
--------------	------------

Table of Laws and Rules

Table of Cases

Index