

Index

A. EZRA MERKIN

Madoff feeder funds, **20:18**

ABBREVIATIONS

Generally, **1:2**

ABSOLUTE LIABILITY

Innocent defendants, **8:243**

ACCESS INTERNATIONAL

Madoff feeder funds, globalization,
20:21

ACCOUNTANTS AND ACCOUNTING PRACTICES

Generally, **8:405 et seq.**

Actions in concert, **8:294**

Administrative regulation, **13:84**

Aider-Abettors (this index)

Audit Committees (this index)

Backdating of stock options, account-
ing violations, **18:4, 18:7**

Chinese walls

Generally, **7:343 et seq.**

Evolution of rule, **7:344**

Operation, **7:345**

Conspiracies, **8:304 et seq.**

Control person liability, **8:373 et seq.**

Foreign Corrupt Practices Act
(FCPA), **19:5, 19:9**

Fraudulent accounting, **13:112**

Injunctions, fraudulent accounting,
13:112

Madoff Ponzi scheme, **20:9**

Misrepresentation

Generally, **8:406**

Injunctions, fraudulent accounting,
13:112

Madoff Ponzi scheme, **20:9**

Violations in generally accepted
accounting principles
(GAAP). See **Indirect-
Impersonal Dealing** (this
index)

ACCOUNTANTS AND ACCOUNTING PRACTICES —Cont'd

Omissions, **8:408**

Participation in misrepresentation by
others, **8:407**

Parties and privity

Generally, **8:404 et seq.**

See also **Private Actions** (this
index)

Private actions, materiality and
GAAP, **8:42, 8:44**

Rule 10b-5 liability

Generally, **8:404 et seq.**

Actions in concert, **8:294**

Aider-abettor liability, **8:327 et
seq.**

Concerted action, **8:294**

Conspiracies, **8:304 et seq.**

Control person liability, **8:373 et
seq.**

Inducement, **8:295**

Injunction suits, **8:303**

Insiders, inducement by, **8:299**

Issuers, inducement by, **8:297**

Participants generally, **8:292**

Participants in violations generally,
8:294

Pleading

Generally, **8:319 et seq.**

Affirmative conduct, **8:321**

Aiding-abetting, **8:324**

Choice of parties, **8:320**

Conspiracy, **8:325**

No affirmative conduct, **8:322**

Participation, **8:323**

Special elements, **8:326**

Sarbanes-Oxley Act, **3:156 et seq.**

SEC rulemaking authority as to, **3:5**

Whistleblower bounty program, orig-
inal information, **22:10**

ACCREDITED INVESTORS

Crowdfunding, JOBS Act, current status, **14:219**

ACQUISITIONS

See also **Mergers** (this index)

Agreements

Disclosure not required, **7:261**

Disclosure required, **7:260**

Cybersecurity, **26:2**

Definitions, **7:250**

Disclosure of inside information re

Generally, **7:248 et seq.**

Agreements

Disclosure not required, **7:261**

Disclosure required, **7:260**

Company, trading by, **7:256**

Definitions, **7:250**

Disclosure document obligations, **7:259**

Leaks, **7:255**

Materiality of negotiated acquisitions, **7:262 et seq.**

Plans, **7:211, 7:214**

Preliminary negotiations

Misleading statements, **7:253**

No statement made, **7:252**

Other situations, **7:254**

Prior statement now misleading, **7:257**

Rumors, **7:255**

Stages of negotiated acquisitions, **7:249**

Target response to tender offers, **7:258**

When disclosure required

Generally, **7:251 et seq.**

Agreements, disclosure of, **7:260**

Materiality of negotiated acquisitions, **7:262 et seq.**

Negotiated, **7:248**

Nonnegotiated

Generally, **7:267**

See also **Tender Offer Fraud** (this index)

Preliminary negotiations

Misleading statements, **7:253**

No statement made, **7:252**

ACQUISITIONS—Cont'd

Preliminary negotiations—Cont'd

Other situations, **7:254**

Stages of negotiated acquisitions, **7:249**

Target response to tender offers, disclosure of, **7:258**

ACTIONS IN CONCERT

Generally, **8:294**

Aider-Abettors (this index)

Madoff Ponzi scheme (this index)

Parties (this index)

ACTUAL KNOWLEDGE

Generally, **8:165**

See also **Knowledge** (this index)

Versions of scienter, relations among, **8:166**

ADMINISTRATIVE

ENFORCEMENT

Generally, **13:80 et seq.**

Accountings, SEC, **13:84**

Actual knowledge, scienter, **8:175**

Advantages and disadvantages

CFTC, **13:244**

SEC, **13:95**

SROs, **13:301**

Aider-abettors

Generally, **8:327 et seq., 8:368 et seq.**

Absence of benefit, **8:366**

Benefit, **8:364 et seq.**

Court cases, **8:328 et seq.**

Definitions, **8:349**

Elements, **8:352, 8:369**

Extent of benefit, **8:367**

Fact patterns, **8:370**

High conscious intent, **8:358**

Injunctions, **8:371**

Janus Capital, preparation for or assistance to another, **8:336 et seq.**

Knowledge of violation, **8:356 et seq.**

Nature of benefit, **8:367**

Origins of doctrine, **8:351**

Presence of benefit, **8:365**

Primary violations, **8:355**

INDEX

ADMINISTRATIVE

ENFORCEMENT—Cont'd

- Aider-abettors—Cont'd
 - PSLRA, **8:347**
 - Requirements, **8:352**
 - SEA § 20(f), **8:348**
 - Substantial assistance
 - Generally, **8:359 et seq.**
 - Extraordinary actions, **8:362**
 - Inaction, **8:363**
 - Ordinary actions, **8:362**
 - Proximate cause, **8:360**
 - Silence, **8:363**
 - Timing, **8:361**
 - Violations, **8:370**
- Amicus curiae participation in private litigation, **13:79, 13:234, 13:293**
- Ancillary relief
 - CFTC
 - Generally, **13:242**
 - Injunctions and, **13:250**
 - Civil penalties, **13:108 et seq.**
 - Injunctions** (this index)
 - Insider trading charges, **7:419, 7:437**
- SEC
 - Generally, **13:93**
 - Civil penalties, **13:108**
 - Injunctions and, **13:107 et seq.**
 - SROs, **13:299**
 - WorldCom, **13:109**
- Asset freezes, **13:100**
- Audit committee standards,
 - Sarbanes-Oxley Act, **8:458**
- Bar orders. Collateral bars against individuals, below
- Bounties to informants, **7:445**
- Burden of proof, insider trading charges, **7:366**
- Causation, **10:1**
- Cease and desist orders
 - CFTC, **13:239**
 - Likelihood of future violation, **13:239**
 - Permanent, **13:85**
 - SEC, **13:85, 13:86**
 - Temporary, **13:86**

ADMINISTRATIVE

ENFORCEMENT—Cont'd

- CFTC
 - Generally, **13:235 et seq.**
 - Advantages and disadvantages, **13:244**
 - Ancillary relief
 - Generally, **13:242**
 - Injunctions and, **13:250**
 - Cease and desist orders, **13:239**
 - Collateral effects of orders, **13:241**
 - Cryptocurrencies, **25:8**
 - Duration of orders, **13:243**
 - Evidence, **13:236**
 - Proof standards, **13:236**
 - Scienter, **13:237**
 - Trading privileges, denial of, **13:240**
- Character of proceedings
 - CFTC, **13:235**
 - SEC, **13:80**
 - SROs, **13:295**
- Civil penalties
 - See also **Civil Penalties** (this index)
 - Ancillary relief, **13:108**
 - CFTC, **13:238**
 - Injunctions** (this index)
 - Insider trading charges, **7:420**
 - SEC, **13:83**
- Collateral bars against individuals
 - Generally, **13:87**
 - Corporate office orders, **13:88**
 - Injunctions including, **13:117**
- Collateral effects of orders
 - CFTC, **13:241**
 - SEC, **13:92**
 - SROs, **13:298**
- Compliance orders, SEC, **13:82**
- Conspiracies, **8:312**
- Constructive knowledge and scienter, **8:186**
- Control person liability
 - Generally, **8:373 et seq.**
 - See also **Control Person Liability** (this index)
 - Insider trading charges
 - Generally, **7:451 et seq.**

ADMINISTRATIVE

ENFORCEMENT—Cont'd

- Control person liability—Cont'd
 - Insider trading charges—Cont'd
 - All control persons, **7:453**
 - Amount of liability, **7:459**
 - Broker-dealer control persons, **7:456**
 - B test, **7:456**
 - Contribution to violation, **7:458**
 - Failure to act, **7:455**
 - Investment adviser control persons, **7:456**
 - Knowledge
 - Failure to have preventive policies in place, **7:457**
 - Likelihood of violation, **7:454**
 - Policy/procedure failures, **7:457**
 - Reckless disregard
 - Failure to have preventive policies in place, **7:457**
 - Likelihood of violation, **7:454**
 - Requirements, **7:452**
 - Respondeat superior liability, **7:450**
 - Substantial contribution to violation, **7:458**
 - A test, **7:453**
 - Coordinated SEC-state-SRO investigations, **13:329**
 - Criminal enforcement
 - See also **Criminal Enforcement** (this index)
 - Compared, **13:95**
 - Disgorgement, **13:84**
 - Disposition of penalties, **7:445**
 - Double jeopardy limitations, insider trading charges, **7:443**
 - Duration of orders
 - CFTC, **13:243**
 - SEC, **13:94, 13:300**
 - Equitable relief generally, **13:118**
 - Evidence
 - CFTC, **13:236**
 - SEC, **13:91**
 - SROs, **13:297**
 - Implied liability
 - See also **Implied Liability** (this index)

ADMINISTRATIVE

ENFORCEMENT—Cont'd

- Implied liability—Cont'd
 - Contraction era, **3:81, 3:82**
 - Expansion era, **3:61, 3:62**
- Indirect-impersonal dealing, GAAP violations, **7:65, 7:71**
- Informal enforcement actions
 - CFTC, **13:233**
 - SEC, **13:78**
 - SROs, **13:292**
- Informants, awards to, **7:445**
- Injunctions** (this index)
- Investigations
 - Generally, **13:1 et seq.**
 - See also **Investigations** (this index)
- Judge or jury
 - Insider trading charges, **7:421, 7:446**
 - Penalty actions, **7:446**
- Jurisdiction
 - Generally, **11:2 et seq.**
 - See also **Jurisdiction** (this index)
- Limitation of SEC actions, **13:89, 13:90, 13:184 to 13:189**
- MD&A predictions and projections, disclosure requirements, **7:13**
- Misappropriation theory of insider liabilities, **7:578**
- Monetary penalties
 - CFTC, **13:238**
 - SEC, **13:83, 13:108**
- Motion practice, **7:365**
- National Securities Markets Improvement Act (NSMIA), **3:199**
- Orders
 - Collateral effects of
 - CFTC, **13:241**
 - SEC, **13:92**
 - SROs, **13:298**
 - Compliance orders, **13:82**
- Penalty actions
 - Generally, **7:438**
 - Aider-abettors, **7:449**
 - Amount of penalty
 - Control persons, **7:459**
 - Court-imposed, **7:439**

INDEX

ADMINISTRATIVE

ENFORCEMENT—Cont'd

Penalty actions—Cont'd

Bounties, **7:445**

Control persons, penalties imposed on, **7:440**

Court imposed penalties, **7:439**

Disposition of penalties, **7:445**

Double jeopardy limitations, **7:443**

Factors considered in imposition of penalties, **7:442**

Informants, awards to, **7:445**

Judge or jury, **7:446**

Maximum penalties imposed, **7:441**

Persons liable

Generally, **7:447**

Aider-abettors, **7:449**

Control person liability, above

Employers, **7:450**

Respondeat superior liability, **7:450**

Tipsters, **7:448**

Traders, **7:448**

Respondeat superior liability, **7:450**

Settled penalties, **7:444**

Tippees, penalties imposed on, **7:439**

Traders, penalties imposed on, **7:439**

Procedural fairness, SROs, **13:296**

Proof standards

CFTC, **13:236**

SEC, **13:91**

SROs, **13:297**

Quantum of proof, insider trading charges, **7:366**

Quasi-judicial jurisdiction of SEC, **10:1**

Reliance, **10:1**

Respondeat superior liability, insider trading charges, **7:450**

Rule 10b-5, implied liability, **3:62**, **3:82**

Sanctions

SEC, **13:81**, **13:82**

Statutory, **7:417**

ADMINISTRATIVE

ENFORCEMENT—Cont'd

Sarbanes-Oxley Act, audit committee standards, **8:458**

Scienter

Generally, **10:1**

Actual knowledge, **8:175**

CFTC, **13:237**

Constructive knowledge, **8:186**

Diligence, lack of, **8:235**

Negligence, **8:235**

Touting, **8:98**

Unreasonable conduct, **8:235**

SEA § 16(b), **7:159**

SEC

Advantages and disadvantages, **13:95**

Ancillary relief

Generally, **13:93**

Injunctions and, **13:107 et seq.**

WorldCom, **13:109**

Asset freezes, **13:100**

Backdating stock options, investigations, **18:6**, **18:8**

Cease and desist orders

Permanent, **13:85**

Temporary, **13:86**

Character of proceedings, **13:80**

Collateral effects of orders, **13:92**

Coordinated SEC-state-SRO investigations, **13:329**

Cryptocurrencies, **24:3**

Order on motions for summary judgment, SEC v. Ripple Labs, **24:5**

SEC v. Ripple Labs, **24:4**

Discovery rule rejected for limitation of actions, **13:90**

Duration of orders, **13:94**

Enforcement Manual 2010 revisions, **20:15**

Equitable relief generally, **13:118**

Evidence, **13:91**

Limitation of actions, **13:89**, **13:90**

Proof standards, **13:91**

Role in, **10:1**

Securities Litigation Uniform Standards Act (SLUSA), **3:216**

ADMINISTRATIVE

ENFORCEMENT—Cont'd

SROs

Generally, **13:294 et seq.**

Advantages and disadvantages,
13:301

Ancillary relief, **13:299**

Character of proceedings, **13:295**

Collateral effects of orders, **13:298**

Coordinated SEC-state-SRO
investigations, **13:329**

Duration of orders, **13:300**

Evidence, **13:297**

Procedural fairness, **13:296**

Proof standards, **13:297**

Standards, **13:297**

Summary proceedings, **13:302**

State laws, **13:318, 13:328**

State regulators, **3:210**

Summary proceedings, SROs, **13:302**

Tender offer challenges, **6:138**

Tipping, **7:159**

Trading privileges, denial of, **13:240**

ADMINISTRATIVE

ENFORCEMENT ACTION

Whistleblower bounty program, suc-
cessful action, **22:14**

ADMISSION OF WRONGDOING

Compromise and settlement, **13:166
et seq.**

ADVERTISING

Madoff Ponzi scheme, **20:2**

ADVISERS

See also **Analysts** (this index)

Insider trading liability, **7:652**

AFFINITY FRAUD

Madoff Ponzi scheme, **20:3**

AFFIRMATIVE DEFENSES

**Foreign Corrupt Practices Act
(FCPA)** (this index)

AGGREGATE ACCOUNTING

Madoff Ponzi scheme, **20:6**

AGREEMENT PLANNING

See **Transaction Planning** (this
index)

AIDER-ABETTORS

Generally, **8:327 et seq.**

Absence of benefit, **8:366**

Actions in concert, **8:294**

Administrative enforcement

Generally, **8:368 et seq.**

Elements, **8:369**

Fact patterns, **8:370**

Injunctions, **8:371**

Violations, **8:370**

Benefit, **8:364 et seq.**

Conspirators compared, **8:292**

Court cases, **8:328 et seq.**

Criminal enforcement, **8:372**

Definitions, **8:349**

Elements, **8:352**

Extent of benefit, **8:367**

Extraordinary actions, **8:362**

High conscious intent, **8:358**

Inaction, **8:363**

Indirect-impersonal dealing, **7:98**

Injunctions, **8:371**

Insiders, **8:339, 8:340**

Insider trading, **7:449**

Janus Capital

Federal securities laws, applicabil-
ity, **8:336 to 8:345**

Impact of Janus decision, **8:337**

Insiders, liability for statements of
their corporations, **8:339,
8:340**

Legal entity, liability for state-
ments of another, **8:338**

Observations and tentative conclu-
sions, **8:342 et seq.**

Preparation for or assistance to
another, **8:336 et seq.**

Rule 10b-5(a) and (c), **8:345**

SEC enforcement actions,
applicability, **8:343**

Shield function, **8:341**

State law, applicability to, **8:344**

Knowledge of violation, **8:356 et
seq.**

INDEX

AIDER-ABETTORS—Cont'd

- Legal entity, liability for statements of another, Janus Capital, **8:338**
- Madoff Ponzi scheme, breach of fiduciary duty, **20:5**
- Nature of benefit, **8:367**
- Ordinary actions, **8:362**
- Origins of doctrine, **8:351**
- Parties and privity
 - Generally, **8:327 et seq.**
 - See also **Parties** (this index)
- Pleading
 - Generally, **8:324**
 - Affirmative conduct, **8:321**
 - Choice of parties, **8:320**
 - Conspiracy, **8:325**
 - No affirmative conduct, **8:322**
 - Participation, **8:323**
 - Special elements, **8:326**
- Preparation for or assistance to another, Janus Capital, **8:336 et seq.**
- Presence of benefit, **8:365**
- Primary violations, **8:355**
- Privity
 - Implied liability, **8:279**
 - SA § 12(2), **8:269**
 - SA § 17(a), **8:279**
 - Sales fraud, **8:269**
- Proximate cause, **8:360**
- PSLRA, **8:347**
- Requirements, **8:352**
- Rule 10b-5 liability
 - Actions in concert, **8:294**
 - Aider-abettor liability, **8:327 et seq.**
 - Concerted action, **8:294**
 - Conspirators compared, **8:292**
 - Inducement, **8:295**
 - Injunction suits, **8:303**
 - Insiders, inducement by, **8:299**
 - Issuers, inducement by, **8:297**
 - Janus Capital, Rule 10b-5(a) and (c), **8:345**
 - Participants generally, **8:292**
 - Participants in violations generally, **8:294**
 - Pleading, **8:319 et seq.**

AIDER-ABETTORS—Cont'd

- SEA § 20(f), **8:348**
- Silence, **8:363**
- State law, applicability of Janus Capital, **8:344**
- Substantial assistance
 - Generally, **8:359 et seq.**
 - Extraordinary actions, **8:362**
 - Inaction, **8:363**
 - Ordinary actions, **8:362**
 - Proximate cause, **8:360**
 - Silence, **8:363**
 - Timing, **8:361**

ALLEGATIONS

- Foreign Corrupt Practices Act (FCPA)** (this index)

ALTERNATE ACCOUNT STATEMENTS

- Madoff Ponzi scheme, **20:6**

ALTERNATIVE DISPUTE RESOLUTION

- See **Arbitration** (this index)

AMERICAN LAW INSTITUTE (ALI)

- Federal Securities Code, **1:23**
- Integration of fraud rules, proposals for, **3:52**
- IPA, current status, **3:154**

AMERICAN STOCK EXCHANGE (ASE)

- Broker-dealer supervision requirements, **14:174**
- Liabilities under SRO rules
 - Generally, **14:62 et seq.**
- See also **Self Regulatory Organizations** (this index)

AMICUS CURIAE

- Agency participation in private litigation
 - CFTC, **13:234**
 - SEC, **13:79**
 - SROs, **13:293**
- Wells Submissions** (this index)
- Whistleblowers, *Lawson v. FMR LLC*, **22:21**

ANALOG DEVICES INC.

Backdating of stock options, **18:1, 18:10**

ANALYSTS

Full disclosure regulations, **7:528**
Sarbanes-Oxley Act, **3:168**

ANCILLARY RELIEF

Generally, **13:93**
Administrative enforcement
CFTC, **13:242**
SEC, **13:93**
SROs, **13:299**
CFTC injunctions and, **13:250**
Criminal enforcement
CFTC references, **13:260**
SEC references, **13:130**
Disgorgement (this index)
Injunctions (this index)
Insider trading actions, **7:490**
Rescission (this index)
Restitution (this index)
SEC injunctions
Generally, **13:107 et seq.**
For detailed treatment
See **Injunctions** (this index)

ANNUAL REPORTS

Generally, **6:242**
Proxies and proxy solicitations, **6:211**

ANNUITIES

Flexible fund annuities as securities, **5:25**
Variable annuities as securities, **5:23**

APPEARANCE

Arbitration (this index)

APPLE INC.

Backdating of stock options, **18:8**

APPRAISALS AND APPRAISAL RIGHTS

Generally, **6:192, 6:193**
Exclusive appraisal rights, **6:192**

APPROVAL

SEC investigations, use of wiretap, **13:151**

ARBITRATION

Generally, **15:1 to 15:77**
AAA arbitration, **15:8**
Agreements. Pre-dispute agreements, below
Amendments to pleadings, **15:21**
Appearance
Hearings, **15:25**
Sanctions for noncompliance with
arbitral orders, **15:63**
Aspects, **15:60**
Awards
Generally, **15:50 et seq.**
Challenging awards, below
Equities, awards based on, **15:75**
Madoff feeder funds, awards
against, **20:18**
Payment, **15:64**
Power of arbitrator to grant, **15:57**
Refusal to vacate, **15:59**
Sanctions for noncompliance.
Sanctions, below
Briefs, **15:47**
Broker as hostile witness
Claimants' case, **15:30**
Respondents' case, **15:40**
Broker-dealer disputes
Clearing brokers, **15:72**
Correspondent introducing
brokers, **15:72**
Equities, awards based on, **15:75**
Failure to supervise, **15:73**
Introducing brokers, **15:72**
Litigation and arbitration
compared, **15:6**
Predispute agreements, **15:5**
Punitive damages, **14:111, 15:74**
Securities law, arbitral extensions,
15:71 et seq.
Splitting the baby, **15:75**
SRO arbitration, **15:8**
Transaction Planning (this index)
Unsuitability, **15:73**
Witnesses, brokers as, **15:30, 15:40**
Challenging awards
Generally, **15:51 et seq.**
Authority, award exceeding, **15:57**

INDEX

ARBITRATION—Cont'd

Challenging awards—Cont'd

Common law grounds, **15:59**

Correction, **15:58**

Corruption, **15:54**

Evident partiality, **15:55**

Federal Arbitration Act § 10(a)(1),
15:54

Federal Arbitration Act § 10(a)(2),
15:55

Federal Arbitration Act § 10(a)(3),
15:56

Federal Arbitration Act § 10(a)(4),
15:57

Federal Arbitration Act § 11, **15:58**

Fraud, **15:54**

Grounds, **15:53 et seq.**

Jurisdictional, **15:57**

Misconduct, **15:56**

Modification, **15:58**

Partiality, **15:55**

Power of arbitrator, award exceeding,
15:57

Procedure, **15:52**

Refusal to vacate, **15:59**

Undue influence, **15:54**

Claimants' case

Attorneys' fees, **15:38**

Briefs, **15:47**

Broker as hostile witness, **15:30**

Closing, **15:46**

Costs, **15:38**

Cross-examination, defending against,
15:33

Damages, **15:35**

Direct examination of witnesses,
15:31, 15:43

Evidence rules, **15:32**

Expert witnesses

Generally, **15:34**

Cross examination, **15:42**

Interest, **15:38**

Mitigation of damages, **15:35**

Presentation, **15:29**

Punitive damages, **15:36, 15:37, 15:74**

Summation, **15:46**

ARBITRATION—Cont'd

Claims

Amendments to pleadings, **15:21**

Considerations before filing, **15:12**

Filing, **15:13**

Preparing, **15:13**

Responding to, **15:14**

Class actions, **15:67**

Clearing brokers, **15:72**

Considerations before filing claims,
15:12

Consolidation, **15:18**

Correction, challenging awards,
15:58

Correspondent introducing brokers,
15:72

Corruption challenges to awards,
15:54

Court cases, **15:3, 15:71**

Cross-examination

Claimants' case, **15:33**

Respondents' case, **15:41, 15:44**

Customer, defined, **15:10**

Damages

Attorneys' fees, **15:38**

Costs, **15:38**

Interest, **15:38**

Mitigation of damages, **15:35**

Punitive damages, **15:36, 15:37, 15:74**

Definition of customer, **15:10**

Development of securities industry arbitration, **15:4**

Disciplinary authority

References to by arbitration, **15:62**

Relationship to arbitration, **15:61**

Disciplinary sanctions

Arbitral awards, failure to pay,
15:64

Noncompliance with arbitral orders for production of documents or appearance, **15:63**

Discovery, **15:15, 15:63**

Equities, awards based on, **15:75**

Evidence, prejudicial material offered in, **15:19**

Evidence rules, **15:32**

Exchange arbitration systems, **15:8**

ARBITRATION—Cont’d

- Expert witnesses
 - Claimants’ experts, **15:34**
 - Cross examination, **15:42**
 - Respondents’ experts, **15:45**
- Expungement, **15:70**
- Failure to supervise, **15:73**
- Filing claims
 - Generally, **15:13**
 - Amendments to pleadings, **15:21**
- Fraud challenges to awards, **15:54**
- Hearings
 - Generally, **15:26 et seq.**
 - Adjournments, **15:23**
 - Appearances, **15:25**
 - Awards, **15:50 et seq.**
 - Briefs, **15:47**
 - Broker as hostile witness, **15:30, 15:40**
 - Claimants’ case, **15:29**
 - Closing, **15:46**
 - Cross-examination
 - Claimants’ case, **15:33**
 - Respondents’ case, **15:41, 15:44**
 - Direct examination
 - Claimants’ case, **15:31**
 - Respondent’s case, **15:43**
 - Evidence rules, **15:32**
 - Expert witnesses
 - Claimants’ experts, **15:34**
 - Cross examination, **15:42**
 - Respondents’ experts, **15:45**
 - Failure to appear, **15:25**
 - Opening statements, **15:28**
 - Posthearing procedures, **15:48 et seq.**
 - Prehearing procedures, **15:11 et seq.**
 - Records of proceedings, **15:24**
 - Reopening, **15:49**
 - Respondents’ case, **15:39 et seq.**
 - Sequestration of witnesses, **15:27**
 - Situs of, **15:20**
 - Summation, **15:46**
 - Implied liabilities under SRO rules, **14:72**
 - Introducing brokers, **15:72**
 - Joinder, **15:18**

ARBITRATION—Cont’d

- Jurisdictional challenges, **15:57**
- Limitation of actions, **15:9**
- Litigation compared, **15:6**
- Madoff feeder funds, awards against, **20:18**
- Margin rules, applicability in, **14:61**
- McMahon case, **15:3, 15:71**
- Mediation, **15:69**
- Mitigation of damages, **15:35**
- Modification, challenging awards, **15:58**
- Orders, noncompliance sanctions
 - Appearance, **15:63**
 - Production of documents, **15:63**
- Partiality challenges to awards, **15:55**
- Payment, disciplinary sanctions for failure to pay arbitral awards, **15:64**
- Pleadings, **15:21**
- Posthearing procedures
 - Generally, **15:48 et seq.**
 - Reopening the hearing, **15:49**
- Pre-dispute agreements
 - Generally, **15:5**
 - Clearing brokers, **15:72**
 - Development, **15:4**
 - Transaction planning, **12:11**
 - Validity, **15:3, 15:71**
- Prejudicial material offered in evidence, **15:19**
- Preparing claims, **15:13**
- Procedures
 - Generally, **15:11 et seq.**
 - AAA arbitration, **15:8**
 - Adjournments, **15:23**
 - Amendments to pleadings, **15:21**
 - Awards, **15:50 et seq.**
 - Briefs, **15:47**
 - Consolidation, **15:18**
 - Cross-examination
 - Claimants’ case, **15:33**
 - Respondents’ case, **15:41, 15:44**
 - Discovery, **15:15, 15:63**
 - Evidence rules, **15:32**
 - Exchange arbitration systems, **15:8**
 - Filing claims, **15:13**
 - Hearings, above

INDEX

ARBITRATION—Cont'd

- Procedures—Cont'd
 - Joinder, **15:18**
 - Jurisdictional challenges, **15:57**
 - Pleadings, **15:21**
 - Posthearing process, **15:48 et seq.**
 - Prehearing, **15:11 et seq.**
 - Prejudicial material offered in evidence, **15:19**
 - Preparing claims, **15:13**
 - Reopening the hearing, **15:49**
 - Respondents' case, **15:39 et seq.**
 - Responding to claims, **15:14**
 - Selection of arbitrators, **15:16**
 - Sequestration of witnesses, **15:27**
 - Severance, **15:18**
 - Situs of hearing, **15:20**
 - SRO arbitration, **15:8**
- Production of documents, disciplinary sanctions for noncompliance with arbitral orders, **15:63**
- Punitive damages
 - Generally, **15:36, 15:37, 15:74**
 - Broker-dealer liability, **14:111**
- Records of proceedings, **15:24**
- Respondents' case
 - Generally, **15:39 et seq.**
 - Briefs, **15:47**
 - Broker as hostile witness, **15:40**
 - Closing, **15:46**
 - Cross-examination, defending against, **15:41, 15:44**
 - Expert witnesses, **15:45**
 - Summation, **15:46**
- Responding to claims, **15:14**
- RICO claims, **15:66**
- Rodriguez case, **15:3, 15:71**
- Sanctions
 - Appearance, **15:63**
 - Payment, **15:64**
 - Production of documents, **15:63**
- Securities law, arbitral extensions, **15:71 et seq.**
- Selection of arbitrators, **15:16**
- Sequestration of witnesses, **15:27**
- Severance, **15:18**
- Six-year eligibility rules, **15:9**
- SRO arbitration, **15:8**

ARBITRATION—Cont'd

- SRO rules, implied liabilities, **14:72**
- Successful and unsuccessful cases, **15:7**
- Suitability rules, **14:205**
- Transaction planning, **12:11**
- Undue influence challenges to awards, **15:54**
- Unsuitability, **15:73**
- Validity of arbitration provisions, **15:3, 15:71**
- Witnesses
 - Broker as hostile witness, **15:30, 15:40**
 - Cross-examination
 - Claimants' case, **15:33**
 - Respondents' case, **15:41, 15:44**
 - Direct examination
 - Claimants' case, **15:31**
 - Respondent's case, **15:43**
 - Evidence rules, **15:32**
 - Expert witnesses
 - Claimants' experts, **15:34**
 - Cross examination, **15:42**
 - Respondents' experts, **15:45**
 - Sequestration, **15:27**

ARGUMENTS

- Rajaratnam criminal case. **Insiders and Insider Trading** (this index)

ARREST

- Criminal inside trading, Raj Rajaratnam, **21:4**

ASE

- See **American Stock Exchange** (this index)

ASSET MANAGEMENT UNIT

- SEC investigations, **20:12**

ASSETS

- Disclosure requirements
 - Generally, **6:261 et seq., 6:267**
- Assets
 - Reasons, **6:273**
 - Value of assets, below
- Existence of assets, **6:262**

ASSETS—Cont'd

- Disclosure requirements—Cont'd
 - Misrepresentations of value of assets
 - Generally, **6:270**
 - Defenses, **6:271**
 - Precautions, **6:272**
- Value of assets
 - Generally, **6:263 et seq.**
 - Firm offers, **6:265**
 - Hard data, **6:264**
 - Misrepresentations
 - Generally, **6:270**
 - Defenses, **6:271**
 - Precautions, **6:272**
 - Modified view
 - Disposition plans, **6:266**
 - Hard data, **6:264**
 - Other situations, **6:268**
 - Policies, **6:269**
 - Reasons, **6:269**
 - Replacement costs, **6:267**
 - Traditional view, **6:263**
- Freezes, SEC, **13:100**
- Insider use of information about, **7:206**
- Sales. See **Mergers** (this index)

ATTORNEY-CLIENT PRIVILEGE

- Whistleblower bounty program, original information, **22:8**

ATTORNEY GENERAL ERIC SCHNEIDERMAN OF NEW YORK

- Coordinated investigations following subprime mortgage crisis, **13:336**

ATTORNEYS

- Generally, **8:409 et seq.**
- Actions against attorneys by SEC.
 - SEC actions against, below
- Actions in concert, **8:294**
- Aider-Abettors** (this index)
- Backdating of stock options, **18:7, 18:11**
- Chinese walls
 - Generally, **7:343 et seq.**
 - Evolution of rule, **7:344**

ATTORNEYS—Cont'd

- Chinese walls—Cont'd
 - Operation, **7:345**
- Conflicts of interest
 - CFTC investigations, **13:207**
 - SEC investigations, **13:15**
 - SRO investigations, **13:277**
- Conspiracies, **8:304 et seq.**
- Control person liability, **8:373 et seq.**
- Investigations
 - Generally, **13:1 et seq.**
 - See also **Investigations** (this index)
 - Backdating of stock options, **18:7, 18:11**
 - CFTC cases, **13:219**
 - SEC cases, **13:27**
 - SRO cases, **13:281**
- Issuers, advisers to as insiders, **7:569**
- Madoff Ponzi scheme, compliance counsel, **20:5**
- Misrepresentations
 - Generally, **8:411**
 - Bond counsel issuing improper legal opinion, SEC actions against, **8:442**
 - Participation, **8:410**
- Multiple clients
 - CFTC investigations, **13:207**
 - SEC investigations, **13:15**
 - SRO investigations, **13:277**
- Parties and privity
 - Generally, **8:409 et seq.**
 - See also **Parties** (this index)
- “PIPE” schemes, SEC actions against, **8:443**
- Privileges
 - Generally, **13:31 et seq.**
 - Attorney-client
 - Generally, **13:36**
 - Waiver, **13:37 et seq.**
 - CFTC investigations, **13:223**
 - Claiming, strategic considerations, **13:61 to 13:65**
 - SEC investigations, **13:31 et seq.**
 - Self incrimination
 - Generally, **13:32**
 - Waiver, **13:33**

INDEX

ATTORNEYS—Cont'd

- Privileges—Cont'd
 - SRO investigations, **13:285**
 - Waiver, **13:33, 13:37 et seq.**
 - Work product, **13:55, 13:59**
- Professional conduct rules, **8:425**
- “Pump-and-dump” schemes, SEC actions against, **8:443**
- Regulation, **8:424 et seq.**
- Right to counsel
 - CFTC investigations, **13:206**
 - SEC investigations, **13:14**
 - SRO investigations, **13:276**
- Rule 10b-5 liability
 - Generally, **8:409 et seq.**
 - Actions in concert, **8:294**
 - Aider-abettor liability, **8:327 et seq.**
 - Concerted action, **8:294**
 - Conspiracies, **8:304 et seq.**
 - Control person liability, **8:373 et seq.**
 - Inducement, **8:295**
 - Injunction suits, **8:303**
 - Insiders, inducement by, **8:299**
 - Issuers, inducement by, **8:297**
- Misrepresentations
 - Generally, **8:411**
 - Participation, **8:410**
- Observations, **8:412**
- Participants generally, **8:292**
- Participants in violations generally, **8:294**
- Pleading
 - Generally, **8:319 et seq.**
 - Affirmative conduct, **8:321**
 - Aiding-abetting, **8:324**
 - Choice of parties, **8:320**
 - Conspiracy, **8:325**
 - No affirmative conduct, **8:322**
 - Participation, **8:323**
 - Special elements, **8:326**
- Sarbanes-Oxley Act
 - Generally, **3:156 et seq., 3:165, 8:424 et seq.**
 - Follow-up reporting obligations, **8:427**
 - Reporting obligations, **8:426**

ATTORNEYS—Cont'd

- Sarbanes-Oxley Act—Cont'd
 - SEC, reporting to, **8:432 et seq.**
 - SEC actions against attorneys, below
- SEC
 - Actions against attorneys. SEC actions against, below
 - Reporting obligations, **8:432 et seq.**
 - Rulemaking authority as to, **3:5**
- SEC actions against
 - Generally, **8:436 et seq.**
 - Auditors, furnishing false information to, **8:440**
 - Backdating of stock options, **18:11**
 - Financial or accounting fraud, **8:440**
 - Form 8-K, **8:439**
 - Form 10, **8:439**
 - Form 10-K, **8:439**
 - Form 10-Q, **8:439**
 - Form 13D, **8:439**
 - Form ADV, **8:439**
 - Form BD, **8:439**
 - Forms 12b-25, **8:445**
 - Manipulating stock option exercise dates, **8:444**
 - Offering circulars, **8:439**
 - Participating in preparation and filing of false and misleading forms, **8:439**
 - “PIPE” schemes, involvement, **8:443**
 - Prospectuses, **8:439**
 - Proxy statements, **8:439**
 - “Pump-and-dump” schemes, involvement, **8:443**
 - Reflections, **8:448**
 - Trading on inside information, **8:447**
 - Unethical and obstructive professional conduct, **8:446**
 - Unregistered distributions of securities, activities in connection with, **8:441**
- Second-guessing disclosure counsel, **8:423**

ATTORNEYS—Cont'd

Securities and Exchange Commission (SEC). SEC, above
 Securities professionals as insiders, **7:572**
 SRO investigations, right to counsel in, **13:276**
Wells Submissions (this index)

ATTORNEYS' FEES

Generally, **9:18**
 Arbitrations, **15:38**
 Broker-dealer liability, **14:53**
 Contribution, **9:75**
 Enforcement investigations, **13:39, 13:45, 13:58**
 Transaction planning, allocations, **9:75**

AUCTION RATE SECURITY (ARS) LITIGATION

Coordinated SEC-state-SRO investigations, generally, **13:322 et seq.**
 Criminal aspects, **13:330**
 Government regulatory suits, **13:329**
 Investor recovery as objective, **13:324**
 Private litigation, **13:327, 13:328**
 Securities and market, **13:325**
 Seller management liability, **13:330**
 State law, private litigation, **13:328**
 Violations, **13:326**

AUDIT COMMITTEES

Generally, **8:449 et seq.**
 See also **Directors, Corporate** (this index)
 Backdating of stock options, resignations and firings, **18:7**
 Financial experts, Sarbanes-Oxley Act liabilities, **3:166**

AUDITORS

Indirect-impersonal dealing, GAAP violations, **7:70**
 Injunctions, ancillary relief, **13:113**
 Madoff Ponzi scheme, **20:9**
 Sarbanes-Oxley Act oversight standards, **8:453**

AUDIT RECORDS

Sarbanes-Oxley Act actions based on, **3:171**

AVERAGE ANNUAL RETURNS

Madoff Ponzi scheme, **20:2**

AWARDS

Arbitration (this index)

BACKDATING OF STOCK OPTIONS

Generally, **18:1 et seq.**
 Accounting rules, violations, **18:4**
 Acquisitions, mergers, and underwritings, effect on, **18:12**
 Analog Devices Inc., **18:1, 18:10**
 Annual, quarterly, or periodic reports, false or misleading statements, **18:3**
 Apple Inc., **18:8**
 Bed Bath and Beyond, response to inquiry, **18:8**
 Brooks Automation Inc., **18:1**
 Bullet-dodging, **18:1**
 Comverse Technology Inc., **18:1, 18:11**
 Derivative actions by stockholders, **18:10**
 DOJ investigations, **18:6, 18:8**
 Employee recruitment incentive, **18:10**
 End of options backdating, **18:15**
 Exchange delisting, **11:9**
 Expired option exercise, **18:1**
 False and misleading financial statements, **18:3**
 Falsifying corporate books and records, **18:3**
 Federal securities laws, violations, **18:3**
 Fictitious or untimely names, **18:1**
 Forward-dating, **18:1**
 Hedge funds, delayed filings of financial statements, **18:9**
 In-house general counsel, criminal prosecution, **18:11**
 Internal accounting controls, failure to implement system, **18:3**

INDEX

BACKDATING OF STOCK

OPTIONS—Cont'd

“In-the-money” options

Accounting rules, violations, **18:4**

Individual circumstances caveat,
18:2

“Reloading,” **18:1**

Investigations and actions by govern-
ment, **18:6, 18:8**

IRC violations, **18:5**

Legal backdating, **18:2**

Manipulating option exercise dates,
18:14

McAfee, Inc., **18:11**

Mercury Interactive Corp., **18:1,**
18:10

Micrel recruitment incentive, **18:10**

Monster Worldwide Inc., **18:7, 18:11**

Private litigation, **18:10**

Proxy solicitation involving false and
misleading statements, **18:3**

Recklessness or intent to defraud,
18:3

“Reloading” with “in-the-money”
options, **18:1**

Resignations and firings, **18:7**

Restatements and delayed filings of
financial statements, **18:9**

Reyes conviction, **18:16**

Secret slush fund of backdated
options, **18:2, 18:3**

Sloppy, careless, or mistaken
backdating, **18:2**

Springloading, **18:1**

Springloading and bullet dodging,
18:13

Sycamore Networks Inc. employee
hire date practices, **18:10**

Tax law implications and violations,
18:5

UnitedHealth Group Inc., **18:1, 18:5,**
18:8, 18:10

Violations of federal securities laws,
18:3

Vitesse Semiconductor Corp., **18:1**

Wider ramifications, **18:6**

“BACK-OFFICE” EMPLOYEES

Madoff Ponzi scheme, **20:9**

BAD FAITH

Generally, **8:210 et seq.**

See also **Good Faith** (this index)

Burden of proof, **8:219**

Effect of good or bad faith generally,
8:216 et seq.

Good reputation, effect of, **8:218**

Insufficiency, **8:215**

Necessity of, **8:212, 8:213**

Proof, **8:220**

Scienter

Generally, **8:210 et seq.**

Burden of proof, **8:219**

Effect of good or bad faith gener-
ally, **8:216 et seq.**

Good reputation, effect of, **8:218**

Insufficiency, **8:215**

Necessity of, **8:212, 8:213**

Proof, **8:220**

Sufficiency, **8:214**

Sufficiency, **8:214**

Versions of scienter, relations among,
8:211

BAIL IN SECURITIES

PROSECUTIONS

Insiders and Insider Trading (this
index)

BALANCE SHEETS

Off-balance sheet transactions,
Sarbanes-Oxley Act, **8:413**

BANCO SANTANDER

Madoff feeder funds, globalization,
20:21

BANKERS

Investment Bankers (this index)

BANKS

Tender offer regulation, **6:29**

BASIC CASE

Private actions, loss causation in
Supreme Court decision, **8:565**

BED BATH AND BEYOND

Backdating of stock options, response
to inquiry, **18:8**

BELIEF

- Defendant's belief
 - Rule 10b-5 fraud, **8:240**
- Scienter
 - Burden of proof, **8:74, 8:77**
 - Expert parts of registration statements, **8:76 et seq.**
 - Proof, **8:75, 8:78**
- Defendant's knowledge and belief
 - Broker-dealer fraud, **8:141**
 - Burden of proof, **8:141**
- Proxy fraud
 - Generally, **8:126 et seq.**
 - Burden of proof, **8:127**
 - Proof, **8:128**
- Scienter, **8:141**
- Tender offer fraud
 - Generally, **8:133 et seq.**
 - Burden of proof, **8:134**
 - Proof, **8:135**
- Intent** (this index)
- Knowledge** (this index)
- Proxy fraud, defendant's knowledge and belief
 - Generally, **8:126 et seq.**
 - Burden of proof, **8:127**
 - Proof, **8:128**
- Scienter
 - See also **Scienter** (this index)
 - Defendant's belief
 - Burden of proof, **8:74, 8:77**
 - Expert parts of registration statements, **8:76 et seq.**
 - Proof, **8:75, 8:78**
- Tender offer fraud, defendant's knowledge and belief
 - Generally, **8:133 et seq.**
 - Burden of proof, **8:134**
 - Proof, **8:135**

BESPEAKS CAUTION DOCTRINE

- Generally, **8:2**
- Nondisclosure liability, **8:2**
- Safe harbor for predictions and projections, **7:22**

BIRNBAUM RULE

- Generally, **5:70**

BIRNBAUM RULE—Cont'd

- Interrelations of fraud rules generally, **3:50**
- Supreme Court's dispositions, **5:71**

BITCOIN

- Background, **25:3**

BLACKOUTS

- Insider trading, director and officer trading during, **7:161**

BLANK CHECK COMPANIES

- Penny stock sales, **14:145**

BLOCKCHAIN

- Cryptocurrencies** (this index)

BLUE CHIP CASE

- Private actions, loss causation in Supreme Court decision, **8:560**

BLUE SKY LAWS

- See **State Law** (this index)

BONDS

- Actions on, SLUSA limitations, **3:211**
- Municipal securities, suitability rules, **14:193**

BOOK VALUE

- Value indicators generally, **5:162**

BORAK DECISION

- Private actions, loss causation in Supreme Court decision, **8:557**

BOUNTY PROGRAMS

- Whistleblowers** (this index)

BREACH OF FIDUCIARY DUTY

- Madoff Ponzi scheme, **20:5**

BREAKPOINT DISCOUNTS

- Mutual fund violations, sales charges, **17:15**

BRIBERY

- Foreign Corrupt Practices Act (FCPA), undisclosed payments to foreign government officials, **19:1 et seq.**

BRIEFS

- SEC proceedings, **1:13**

INDEX

BRIEFS—Cont'd

Wells Submissions (this index)

BROKER-DEALER LIABILITY

Generally, **14:1 et seq.**

See also **Direct-Personal Dealing**
(this index)

Accumulation of stock, manipulation
by, **7:134**

Aider-abettor liabilities, **7:449**

Arbitration

See also **Arbitration** (this index)

Clearing brokers, **15:72**

Correspondent introducing
brokers, **15:72**

Equities, awards based on, **15:75**

Failure to supervise, **15:73**

Introducing brokers, **15:72**

Litigation compared, **15:6**

Punitive damages, **14:111, 15:74**

Securities law, arbitral extensions,
15:71 et seq.

Splitting the baby, **15:75**

SRO arbitration procedures, **15:8**

Suitability rules, **14:205**

Unsuitability, **15:73**

Witnesses, brokers as, **15:30,**
15:40

Attorneys' fees, **14:53**

Awareness of MNPI

Generally, **7:316, 7:349 et seq.**

Possession distinguished, **7:349**

Bar orders against individuals, **13:87**

Blank check companies, **14:145**

Broker's knowledge, **14:41**

Burden of proof

Express actions, **14:42**

Insider trading charges, **7:366**

Business judgment standard, **7:50**

Capping, **7:136**

Causation, **14:91 et seq.**

Chinese walls

Generally, **7:343 et seq.**

Evolution of rule, **7:344**

Operation, **7:345**

Churning (this index)

Circular trading, **7:135**

BROKER-DEALER LIABILITY

—Cont'd

Class actions

SA § 11, **14:18**

SA § 12, **14:57**

Clearing brokers, **15:72**

Collateral bar orders against
individuals, **13:87, 13:88**

Commissions, **5:133**

Connection requirement

Commissions, **5:133**

Kickbacks, **5:133**

Contraction era, compensatory dam-
ages in, **14:105**

Control, churning, **14:113**

Control person liability

Generally, **7:451 et seq., 8:373 et**
seq., 8:394 et seq.

All control persons, **7:453**

Amount of liability, **7:459**

Broker-dealer control persons,
7:456

B test, **7:456**

Contribution to violation, **7:458**

Failure to act, **7:455**

Investment adviser control
persons, **7:456**

Knowledge

Failure to have preventive poli-
cies in place, **7:457**

Likelihood of violation, **7:454**

Penalties, **7:440**

Policy/procedure failures, **7:457**

Private actions against, **7:486,**
7:512

Reckless disregard

Failure to have preventive poli-
cies in place, **7:457**

Likelihood of violation, **7:454**

Requirements, **7:452**

Respondeat superior liability,
7:450

Substantial contribution to viola-
tion, **7:458**

A test, **7:453**

Cornering the market, **7:134**

Correspondent introducing brokers,
15:72

BROKER-DEALER LIABILITY

—Cont'd

- Costs in express actions, **14:53**
- Criminal prosecutions
 - Generally, **7:460 et seq.**
 - Amount of penalties, **7:466**
 - Disgorgement, **7:465**
 - Judge or jury, **7:467**
 - Mail and wire fraud, **7:463**
 - Penalties, **7:466**
 - Restitution, **7:465**
 - RICO, **7:464**
 - Securities violations, **7:462**
- Cross trading
 - Generally, **14:128**
 - Manipulation, **7:135**
- Crowdfunding, **14:215**
- Cybersecurity, **26:4, 26:5**
- Damages
 - Express actions, **14:46, 14:51**
 - Implied actions, **14:95 et seq.**
 - SA § 11, **14:15**
- Debt securities markups, **14:163**
- Defenses to insider trading charges
 - Amount defined, **7:355**
 - Binding contract defense, **7:351**
 - Burden of proof, **7:369**
 - Common terms and issues, **7:355 et seq.**
 - Date defined, **7:357**
 - Delegation alternative to amount, price and date, **7:358**
 - Exclusiveness of defenses, **7:360**
 - Institutional defenses, **7:361**
 - Instructions defense, **7:352**
 - Overriding limitations, **7:359**
 - Price defined, **7:356**
 - Relation to other laws, **7:362**
 - Systematic plans defense, **7:353**
 - Tracking plans defense, **7:354**
- Direct and indirect dealings, **4:1**
- Disclosures
 - Corrections, **6:312**
 - Markup and markdown practices, **14:149**
- Due diligence defense
 - Generally, **14:5**

BROKER-DEALER LIABILITY

—Cont'd

- Due diligence defense—Cont'd
 - Misrepresentation claims, consideration of, **7:52**
 - SEC view, **14:9**
- Equities, arbitration awards based on, **15:75**
- Excessive trading
 - Generally, **14:114 et seq.**
 - See also **Churning** (this index)
 - Benchmark for, **14:116 et seq.**
 - Commission ratios, **14:119 et seq.**
 - Cross trading, **14:128**
 - Frequency of trades, **14:122**
 - In-and-out trading, **14:122**
 - Loss ratio, **14:126**
 - Number of trades, **14:122**
 - Quality of securities purchased, **14:127**
 - Six, rule of, **14:116 et seq.**
 - Turnover rate, **14:115**
- Expert testimony, churning, **14:132**
- Express actions
 - Generally, **14:2 et seq.**
 - Attorneys' fees, **14:53**
 - Broker as defendant
 - SA § 12(a)(1), **14:20**
 - SA § 12(a)(2), **14:28**
 - Broker's knowledge, **14:41**
 - Burden of proof, **14:42**
 - Class actions
 - SA § 11, **14:18**
 - SA § 12, **14:57**
 - Costs, **14:53**
 - Damages
 - Generally, **14:46, 14:51**
 - SA § 11, **14:15**
 - Integrated disclosure systems, **14:7**
 - Interest, **14:48**
 - Limitation of actions
 - Generally, **14:17**
 - SA § 12(a)(1), **14:25**
 - SA § 12(a)(2), **14:56**
 - Misrepresentations, **14:39**
 - Offerors, brokers as
 - SA § 12(a)(1), **14:22**
 - SA § 12(a)(2), **14:29 et seq.**

INDEX

BROKER-DEALER LIABILITY

—Cont'd

Express actions—Cont'd
Omissions, **14:39**
In pari delicto defense, **14:21**
Privity, **14:34**
Proximate cause, **14:35**
Punitive damages, **14:54**
Purchaser, plaintiff as
SA § 12(a)(1), **14:23**
SA § 12(a)(2), **14:44**
Purchaser's knowledge, **14:40**
Recovery, **14:45 et seq.**
Rescission, **14:46, 14:50**
SA § 11
Generally, **14:2 et seq., 14:3 et seq.**
Court cases, **14:6**
Damages, **14:15**
Due diligence defense
Generally, **14:5**
SEC view, **14:9**
Integrated disclosure systems, **14:7**
Later filings, effect of, **14:10**
Non-managing underwriters, **14:13**
Participating underwriters, **14:13**
Policy considerations, **14:12**
Reasonable investigation defense
Generally, **14:5**
Integrated disclosure systems, **14:7**
SEC Rule 176, **14:8**
Reasonable investigation requirement, **14:11**
SEC Rule 176, **14:7**
SEC Rule 412, **14:7**
SEC view of due diligence techniques, **14:9**
Underwriters
Generally, **14:4**
Due diligence, **14:14**
SA § 12(a)(1)
Generally, **14:19 et seq.**
Broker as defendant, **14:20**

BROKER-DEALER LIABILITY

—Cont'd

Express actions—Cont'd
SA § 12(a)(1)—Cont'd
Class actions, **14:57**
Exemptions from SA § 5, **14:24**
Limitation of actions, **14:25**
Offerors, brokers as, **14:22**
In pari delicto defense, **14:21**
Purchaser, plaintiff as, **14:23**
Sellers, brokers as, **14:22**
Violations of SA § 5, **14:26**
SA § 12(a)(2)
Generally, **14:27 et seq.**
Attorneys' fees, **14:53**
Broker as defendant, **14:28**
Broker's knowledge, **14:41**
Burden of proof, **14:42**
Class actions, **14:57**
Costs, **14:53**
Damages, **14:46, 14:51**
Interest, **14:48**
Limitation of actions, **14:56**
Misrepresentations, **14:39**
Offerors, brokers as, **14:29 et seq.**
Omissions, **14:39**
Pinter case, **14:30, 14:38**
Privity, **14:34**
Proximate cause, **14:35**
Punitive damages, **14:54**
Purchaser, plaintiff as, **14:44**
Purchaser's knowledge, **14:40**
Reasonable care, **14:43**
Reasonable investigation requirement, **14:43**
Recovery, **14:45 et seq.**
Rescission, **14:46, 14:50**
SEA § 10(b) and, overlap between, **14:55**
Sellers, brokers as, **14:29 et seq.**
Substantial factor in sale, broker as, **14:35**
Tax considerations, **14:48**
Tender, **14:49**
Transactional coverage, **14:58**
Sellers, brokers as
SA § 12(a)(1), **14:22**

BROKER-DEALER LIABILITY

—Cont'd

Express actions—Cont'd
 Sellers, brokers as—Cont'd
 SA § 12(a)(2), **14:29 et seq.**
 Substantial factor in sale, broker as, **14:35**
 Tax considerations, **14:48**
 Violations of SA § 5, **14:26**
 Failure to supervise, **15:73**
 Fiduciary criteria and insider liability
 Generally, **7:561 et seq.**
 Contraction era, **7:576**
 Creation
 Generally, **7:567**
 Advisers to issuers, **7:569**
 Business associates of issuers, **7:570**
 Law characterizing relation, **7:573**
 Position with issuer, **7:568**
 Prior dealings, creation by, **7:571**
 Securities professionals, **7:572**
 Criteria, **7:561 et seq.**
 Expansion era, **7:574**
 Issuers, **7:565**
 Market insiders, **7:575**
 Suitability, **14:202, 14:206**
 With whom must relationship exist, **7:562 et seq.**
 Flexible fund annuities, **5:24**
 Front running manipulation
 Generally, **7:139 et seq.**
 Court cases, **7:142**
 SEC interpretations
 Generally, **7:140**
 Decisions, **7:142**
 SRO interpretations
 Generally, **7:140**
 Criticisms, **7:141**
 Decisions, **7:142**
 Insider trading, **7:168**
 Full disclosure regulations, analysts' roles, **7:528**
 Good faith, **7:53**
 Guidelines for information releases, **7:54**

BROKER-DEALER LIABILITY

—Cont'd

Implied actions
 See also **Implied Liability** (this index)
 Margin rules
 Generally, **14:59**
 Arbitration, use in, **14:61**
 Court cases, **14:60**
 SEA § 7, **14:59**
 Rule 10b-5
 Generally, **14:73 et seq.**
 Causation, **14:91 et seq.**
 Connection requirement, **14:94**
 Contraction era, compensatory damages in, **14:105**
 Damages, **14:95 et seq.**
 Elements of action, **14:74**
 Issuer misrepresentations, **14:76**
 Issuer nondisclosures, **14:77**
 Justifiable reliance, **14:89**
 Market misrepresentations, **14:78**
 Market nondisclosures, **14:79**
 Materiality, **14:82**
 Misrepresentation, **14:75 et seq.**
 Mitigation of damages, **14:102**
 Nondisclosure, **14:75 et seq.**
 Opinions, **14:81**
 Out-of-pocket damages, **14:103**
 Predictions, **14:81**
 Proximate cause, **14:92**
 Punitive damages, **14:106 et seq.**
 Recklessness, **14:83 et seq.**
 Recommendations, **14:81**
 Reliance, **14:86 et seq.**
 Rescission
 Chasins measure, **14:97**
 Lost profits, **14:101**
 Nye measure, **14:101**
 Rolf measure, **14:100**
 Restitution, **14:104**
 Scienter, **14:83 et seq.**
 SRO rules
 Generally, **14:62 et seq.**
 Arbitration, **14:72**
 Buttrey doctrine, **14:65**

INDEX

BROKER-DEALER LIABILITY

—Cont'd

- Implied actions—Cont'd
 - SRO rules—Cont'd
 - Colonial Realty doctrine, **14:64**
 - Contraction era, **14:71**
 - Court cases, **14:64 et seq.**
 - Expansion era, **14:63 et seq.**
- In-and-out trading, **14:122**
- Indemnification, **9:76**
- Information release guidelines, **7:54**
- Inquiry duties of brokers, **14:189**
- Insider trading
 - Generally, **7:213 et seq., 7:557 et seq.**
 - See also **Insiders and Insider Trading** (this index)
- Access criteria, **7:560**
- Acquisitions, **7:214**
- Administrative enforcement
 - Generally, **7:415 et seq., 7:416 et seq.**
 - Ancillary relief, **7:419, 7:437**
 - Civil penalties, **7:420**
 - Disgorgement, **7:418, 7:425 et seq.**
 - Hearing, right to, **7:424**
- Injunctive actions
 - Generally, **7:422 et seq.**
 - Disgorgement orders, **7:425 et seq.**
 - Hearing, right to, **7:424**
- Judge or jury, **7:421**
- Sanctions, **7:417**
- Aider-abettors, **7:449**
- Burden of proof
 - Generally, **7:366**
 - Defenses, **7:369**
 - Institutions, **7:367**
- Buyers, **7:563**
- Congressional intent, **7:559**
- Connection with requirement
 - Market transactions, **7:370**
 - Rule 10b-5, **7:370**
 - Rule 14e-3, **7:371**
 - Tender offers, **7:371**
- Contraction era, **7:561 et seq.**

BROKER-DEALER LIABILITY

—Cont'd

- Insider trading—Cont'd
- Control person liability
 - Generally, **7:451 et seq.**
 - All control persons, **7:453**
 - Amount of liability, **7:459**
 - Broker-dealer control persons, **7:456**
 - B test, **7:456**
 - Contribution to violation, **7:458**
 - Failure to act, **7:455**
 - Investment adviser control persons, **7:456**
 - Knowledge
 - Failure to have preventive policies in place, **7:457**
 - Likelihood of violation, **7:454**
 - Penalties, **7:440**
 - Policy/procedure failures, **7:457**
 - Reckless disregard
 - Failure to have preventive policies in place, **7:457**
 - Likelihood of violation, **7:454**
 - Requirements, **7:452**
 - Respondeat superior liability, **7:450**
 - Substantial contribution to violation, **7:458**
 - A test, **7:453**
- Criminal enforcement, **7:465**
- Damages, **7:488**
- Defenses, burden of proving, **7:369**
- Disgorgement, **7:465**
- Expansion era, **7:560**
- Institutions, burden of proof, **7:367**
- Issuers, applicability to, **7:565**
- Judge or jury
 - Criminal proceedings, **7:467**
 - SEC penalty actions, **7:446**
- Martha Stewart case
 - Generally, **7:403 et seq.**
 - Acquittal, **7:411**
 - Background of case, **7:404**
 - Imclone stock sale, **7:404**
 - Indictment, **7:405**
 - Inferences from evidence, **7:409**

BROKER-DEALER LIABILITY

—Cont'd

Insider trading—Cont'd
 Martha Stewart case—Cont'd
 Intent inference test, **7:410**
 Limits on argument and evidence, **7:407**
 Misrepresentation, **7:406**
 Scienter, generally, **7:403 et seq.**
 Sufficiency of evidence test, **7:408**
 Motion practice, **7:365**
 Opposite side traders
 Damages, **7:522**
 Elements of action, **7:518**
 Relations of parties to market, **7:494**
 Suits by, **7:504**
 Parties, **7:363**
 Pleading
 Generally, **7:364**
 Scienter, **7:398**
 Policies, preventive
 Generally, **7:468 et seq., 7:470**
 Control person liabilities for failure to have, **7:457**
 Education, **7:473**
 Information policies and procedures, **7:474**
 Investment advisers, **7:470**
 Nature of policies and procedures, **7:472**
 Organizations, requirements for, **7:471**
 Procedures, **7:476**
 Sanctions for violations, **7:477**
 Tipping policies, **7:475**
 Trading policies, **7:475**
 Private actions
 Generally, **7:478 et seq., 7:491 et seq.**
 Amount of liability, **7:488, 7:521 et seq.**
 Ancillary relief, **7:490, 7:525**
 Background, **7:501**
 Causation, **7:517**
 Contemporaneous traders, actions by, **7:503 et seq.**

BROKER-DEALER LIABILITY

—Cont'd

Insider trading—Cont'd
 Private actions—Cont'd
 Control persons, actions against, **7:486, 7:512**
 Convertibles traders, suits by, **7:508**
 Damages, **7:488, 7:521 et seq.**
 Elements of action, **7:514 et seq.**
 Express causes of action, **7:478 et seq.**
 Fiduciary theory, **7:498**
 Implied causes of action, **7:491 et seq., 7:493 et seq.**
 Market, relation of parties to, **7:493 et seq.**
 Misappropriation theory, **7:499**
 Opposite side traders
 Damages, **7:522**
 Elements of action, **7:518**
 Relations of parties to market, **7:494**
 Suits by, **7:504**
 Option traders, suits by, **7:507**
 Other liabilities, relation to, **7:489**
 Parties defendant, **7:483, 7:509**
 Parties plaintiff
 Express causes of action, **7:480 et seq.**
 Implied actions, **7:502 et seq.**
 Relation to other liabilities, **7:489, 7:524**
 Reliance, **7:516**
 Rule 10b-5, **7:497 et seq.**
 Rule 14e-3, **7:500**
 Same class of securities, actions by traders in, **7:482, 7:506**
 Same side traders
 Damages, **7:523**
 Elements of action, **7:519**
 Relations of parties to market, **7:495**
 Suits by, **7:505**
 Standing, **7:520**
 Tippers, actions against, **7:485, 7:511**

INDEX

BROKER-DEALER LIABILITY

—Cont'd

Insider trading—Cont'd

Private actions—Cont'd

Traders

Actions against, **7:484, 7:510**

Contemporaneous, suits by,
7:481

Who can be sued, **7:483, 7:509**

Who can sue, generally, **7:502**

Who may sue

Express causes of action,
7:480 et seq.

Implied actions, **7:502 et seq.**

Procedural aspects, **7:363 et seq.**

Proof, **7:368**

Publicity, **7:216**

Quantum of proof, **7:366, 7:367**

Recommendations, **7:215**

Relationships subject to regulation,
7:562 et seq.

Respondeat superior liability,
7:450

RICO, **7:414, 7:464**

Same side traders

Damages, **7:523**

Elements of action, **7:519**

Relations of parties to market,
7:495

Suits by, **7:505**

Scienter

Generally, **7:372 et seq.**

Fiduciary theory

Tippers, **7:381**

Trading insiders, **7:377**

Trading tippees, **7:385**

Mail and wire fraud, **7:413**

Martha Stewart case

Generally, **7:403 et seq.**

Acquittal, **7:411**

Background of case, **7:404**

Imclone stock sale, **7:404**

Indictment, **7:405**

Inferences from evidence,
7:409

Intent inference test, **7:410**

Limits on argument and evi-
dence, **7:407**

BROKER-DEALER LIABILITY

—Cont'd

Insider trading—Cont'd

Scienter—Cont'd

Martha Stewart case—Cont'd

Misrepresentation, **7:406**

Sufficiency of evidence test,
7:408

Misappropriation theory

Tippers, **7:382**

Trading insiders, **7:378**

Trading tippees, **7:386**

Pleading, **7:398**

Proof, **7:399 et seq.**

Rule 10b-5, **7:374 et seq.**

Rule 14e-3, **7:412**

Tippers

Generally, **7:379 et seq.**

Proof, **7:401**

Trading insiders

Generally, **7:375 et seq.**

Proof, **7:400**

Trading tippees

Generally, **7:383 et seq.**

Proof, **7:402**

SEC efforts to define, **7:559**

SEC penalty actions

Generally, **7:438**

Aider-abettors, **7:449**

Amount of penalty

Control persons, **7:459**

Court-imposed, **7:439**

Bounties, **7:445**

Control persons, penalties

imposed on, **7:440**

Court imposed penalties, **7:439**

Disposition of penalties, **7:445**

Double jeopardy limitations,
7:443

Factors considered in imposition
of penalties, **7:442**

Informants, awards to, **7:445**

Judge or jury, **7:446**

Maximum penalties imposed,
7:441

Persons liable

Generally, **7:447**

Aider-abettors, **7:449**

BROKER-DEALER LIABILITY

—Cont'd

Insider trading—Cont'd
 SEC penalty actions—Cont'd
 Persons liable—Cont'd
 Employers, **7:450**
 Respondeat superior liability, **7:450**
 Tippers, **7:448**
 Traders, **7:448**
 Respondeat superior liability, **7:450**
 Settled penalties, **7:444**
 Tippees, penalties imposed on, **7:439**
 Traders, penalties imposed on, **7:439**
 Sellers, **7:563**
 Tender offers, **7:214**
 Third parties, applicability to, **7:566**
 Tippers, scienter, **7:379 et seq.**
 Unfairness criteria, **7:560**
 Insider Trading and Securities Fraud Enforcement Act, **14:168**
 Institutional investors, suitability rules, **14:190**
 Insurance, **9:76**
 Integrated disclosure systems, **14:7**
 Intent, consideration of in misrepresentation claims, **7:53**
 Interrelations of fraud rules
 Generally, **3:37 et seq.**
 Birnbaum rule, **3:50**
 Breadth of proscriptions, **3:52**
 Causation, **3:48**
 Defenses to private actions, **3:51**
 Displacing provisions, **3:53**
 Elements of private cause of action, **3:50**
 Exempt offerings, **3:46**
 Implied and express private actions, **3:50**
 Implied Liability (this index)
 Integration proposals, **3:52**
 Joint use of multiple provisions, **3:53**
 Overlapping provisions, **3:53 et seq.**

BROKER-DEALER LIABILITY

—Cont'd

Interrelations of fraud rules—Cont'd
 Parties subject to rule, **3:49**
 Place of transaction as factor, **3:38**
 Prospectus fraud, **3:41 et seq.**
 Public offerings, **3:40**
 Registered offerings, **3:39, 3:45**
 Relationship of conduct to transaction, **3:48**
 Transactions covered, **3:38**
 Types of violations proscribed, **3:47**
 Unregistered offerings, **3:46**
 Introducing brokers, **15:72**
 Joint and several liability, **9:31**
 Jurisdiction, generally, **11:15**
 Justifiable reliance, **14:89**
 Kickbacks, **5:133**
 Limitation of actions
 Generally, **11:45 et seq.**
 See also **Limitation of Actions** (this index)
 Express actions
 SA § 12(a)(1), **14:25**
 SA § 12(a)(2), **14:56**
 Lost profits, rescission and, **14:101**
 Manipulation
 Generally, **7:118 et seq.**
 Accumulation of stock, **7:134**
 Actual or apparent trading, **7:124**
 Capping, **7:136**
 Circular trading, **7:135**
 Cornering the market, **7:134**
 Cross trading, **7:135**
 Definition, **7:119**
 Depressing prices, **7:124**
 Federal securities laws, **7:120**
 Front running
 Generally, **7:139 et seq.**
 Court cases, **7:142**
 SEC interpretations
 Generally, **7:140**
 Decisions, **7:142**
 SRO interpretations
 Generally, **7:140**
 Criticisms, **7:141**
 Decisions, **7:142**

INDEX

BROKER-DEALER LIABILITY

—Cont'd

Manipulation—Cont'd
Front running—Cont'd
SRO interpretations—Cont'd
Insider trading, **7:168**
Marking the close, **7:131**
Matched orders, **7:121**
Painting the tape, **7:132**
Parking
Generally, **7:143 et seq.**
Capital requirements, use to
avoid, **7:147**
Control fights, use in, **7:146**
Definitions, **7:144**
Margin requirements, parking to
avoid, **7:148**
Record keeping violations,
7:149
Tax evasion uses, **7:150**
Pegging, **7:136**
Raising prices, **7:124**
Rule 10b-5
Generally, **7:130 et seq.**
Accumulation of stock, **7:134**
Capping, **7:136**
Circular trading, **7:135**
Control, **7:138**
Cornering the market, **7:134**
Cross trading, **7:135**
Domination, **7:138**
Front running manipulation,
above
Marking the close, **7:131**
Painting the tape, **7:132**
Parking, above
Pegging, **7:136**
Short selling, **7:137**
Successive activity price
manipulations, **7:133**
SEA § 9(a)(1), **7:121**
SEA § 9(a)(2)
Generally, **7:122 et seq.**
Actual or apparent trading,
7:124
Depressing prices, **7:124**
Purpose, **7:125**
Raising prices, **7:124**

BROKER-DEALER LIABILITY

—Cont'd

Manipulation—Cont'd
SEA § 9(a)(2)—Cont'd
Series of transactions, **7:123**
SEA § 9(a)(3), **7:126**
SEA § 9(a)(4), **7:126**
SEA § 9(a)(5), **7:126**
SEA § 9(a)(6), **7:127**
SEA § 9(b), **7:128**
SEA § 9(e), **7:129**
Short selling, **7:137**
Successive activity price manipula-
tions, **7:133**
Wash sales, **7:121**
Margin rules
Generally, **14:59**
Arbitration, use in, **14:61**
Court cases, **14:60**
Parking to avoid, **7:148**
SEA § 7, **14:59**
Market insiders, **7:575**
Market maker status, **14:152 et seq.**
Market reaction as public/nonpublic
test of information, **7:281**
Marking the close, **7:131**
Markup and markdown practices
Generally, **14:148 et seq.**
Basis
Generally, **14:150 et seq.**
Contemporaneous defined
NASD criteria, **14:161**
SEC criteria, **14:156**
Customers, comparative
frequency of purchases
from, **14:158**
Dominating market makers,
14:154
Inter-dealer prices, availability
of, **14:155**
Inter-dealer trades, frequency of,
14:158
Market-makers, retail, **14:153**
Market maker status, **14:152 et**
seq.
NASD criteria, **14:157 et seq.**
Non dominating market makers,
14:160

BROKER-DEALER LIABILITY

—Cont'd

- Markup and markdown practices
 - Cont'd
- Basis—Cont'd
 - Non market makers
 - NASD criteria, **14:159**
 - SEC criteria, **14:152**
 - Retailer market makers, **14:153**
 - SEC criteria, **14:150 et seq.**
- Debt securities markups, **14:163**
- Disclosure, **14:149**
- Five percent policy, **14:162**
- Inter-dealer prices, availability of, **14:155**
- Inter-dealer trades, frequency of, **14:158**
- Market maker status, **14:152 et seq.**
- Matched order manipulations, **7:121**
- Materiality
 - Generally, **14:82**
 - Public disclosure and, **7:280**
- Misappropriation theory of insider liabilities
 - Generally, **7:577**
 - Agreed confidentiality, **7:589**
 - Close family relationships, **7:587**
 - Connection element, **7:597**
 - Connection with transaction, **7:680**
 - Court cases, **7:582 et seq.**
 - Enforcement actions, **7:578**
 - Family relationships, **7:587**
 - Mail and wire fraud, **7:594**
 - Private actions, **7:579, 7:603**
 - Rule 10b5-2, **7:585 et seq.**
 - Shared confidences, **7:590**
- Misrepresentations
 - Generally, **7:5, 7:46 et seq.**
 - See also **Forward Looking Information** (this index)
 - Analyst projections, **7:9**
 - Business judgment standard, **7:50**
 - Company projections, **7:8**
 - Due diligence, **7:52**
 - Earnings, **7:47**
 - Express actions, **14:39**
 - Good faith, **7:53**

BROKER-DEALER LIABILITY

—Cont'd

- Misrepresentations—Cont'd
 - Guidelines for information releases, **7:54**
 - Information release guidelines, **7:54**
 - Intent, **7:53**
 - Negligence, **7:52**
 - Predictions, **7:46**
 - Predictions and projection disclosure obligations
 - Generally, **7:10 et seq.**
 - Capital resources, **7:15**
 - Liquidity, **7:14**
 - With MD&A requirement
 - Administrative enforcement, **7:13**
 - Private actions, **7:17**
 - Operation results, **7:16**
 - Private actions on MD&A requirements, **7:17**
 - Restrictions on disclosures, **7:18**
- Safe harbor
 - Generally, **7:19 et seq.**
 - Background, **7:20**
 - Bespeaks caution doctrine, **7:22**
- PSLRA
 - Generally, **7:23 et seq.**
 - Actual knowledge prong, **7:36**
 - Attacking cautionary statements, **7:29**
 - Caution prong, **7:26**
 - Corrections, **7:45**
 - Definition of forward looking statement, **7:25**
 - Discovery stays, **7:44**
 - Drafting cautionary statements, **7:28**
 - Eligible makers, **7:37**
 - Exclusions, **7:40**
 - Expandability, **7:41**
 - Falsity, actual knowledge of, **7:36**
 - Immateriality, **7:35, 7:38**
 - Later disclosures, **7:30**

INDEX

BROKER-DEALER LIABILITY

—Cont'd

- Misrepresentations—Cont'd
 - Predictions and projection disclosure obligations—Cont'd
 - Safe harbor—Cont'd
 - PSLRA—Cont'd
 - Motion practice, **7:43**
 - Nonexclusiveness, **7:41**
 - Oral statements referencing caution, **7:31, 7:39**
 - Procedural aspects, **7:42**
 - Prohibited uses, **7:40**
 - Scope of Act, **7:24**
 - Statements with cautions, **7:27**
 - Update duty, **7:45**
 - Readily available cautionary statements
 - Generally disseminated, **7:34**
 - SEC filings, **7:33**
 - Timing, **7:32**
 - SA Rule 175, **7:21**
 - SEA Rule 3b-6, **7:21**
 - SEC, traditional position, **7:18**
 - With SEC encouragement, **7:12**
 - Without SEC rule, **7:11**
- Public disclosure as curing, **7:276 et seq.**
- Reasonable investor standard, **7:51**
- Scienter, **7:53**
- Standards for preparation of information, **7:49**
- Suitability rules, **14:198**
- Violations, criteria for determining, **7:49**
- MNPI
 - Nonpublic information, below
- Motion practice, **7:365**
- Negligence
 - Misrepresentation claims, consideration of, **7:52**
 - Suitability claims, **14:203**
- Non-managing underwriters, **14:13**
- Nonpublic information
 - Generally, **7:271 et seq.**

BROKER-DEALER LIABILITY

—Cont'd

- Nonpublic information—Cont'd
 - Absorption requirement, **7:306 et seq.**
 - Burden of proof, **7:312**
 - Duty to disclose generally, **7:275**
 - Eliminating nonpublic information, Regulation FD, **7:552**
 - Full disclosure duty triggered by partial disclosure of, **7:536**
 - Investment community disclosure, **7:300**
- Issuer disclosures
 - Generally, **7:282 et seq.**
 - Proxy statements, **7:287**
 - Reports, **7:289**
 - Tender offer statements, **7:288**
- Law and fact questions, **7:314**
- Market reaction as public/nonpublic test, **7:281**
- Materiality and public disclosure, **7:280**
- Media disclosures
 - Generally, **7:292 et seq.**
 - Particular media, **7:299**
 - Timing, **7:297**
- Misrepresentations, public disclosure as curing, **7:276 et seq.**
- Motion practice, **7:311**
- Omissions, public disclosure as curing, **7:276 et seq.**
- Pleading, **7:310**
- Procedural aspects, **7:309 et seq.**
- Proof, **7:313**
- Proxy statements, **7:287**
- Public as affecting insider trading, **7:272 et seq.**
- Quantum of proof, **7:312**
- Rumors, **7:301**
- Time in becoming public, **7:304 et seq.**
- Tipping of, **7:272 et seq.**
- Omissions
 - Express actions, **14:39**
 - Public disclosure as curing, **7:276 et seq.**

BROKER-DEALER LIABILITY

—Cont'd

On basis of inside information, trades made, **7:348**
 Opinions, **14:81**
 Opposite side traders
 Damages, **7:522**
 Elements of action, **7:518**
 Relations of parties to market, **7:494**
 Suits by, **7:504**
 Options, suitability rules, **14:192**
 Organization of treatise, **4:1**
 Out-of-pocket damages, **14:103**
 Painting the tape, **7:132**
 In pari delicto defense, **14:21**
 Parking
 Generally, **7:143 et seq.**
 Capital requirements, use to avoid, **7:147**
 Control fights, use in, **7:146**
 Definitions, **7:144**
 Margin requirements, parking to avoid, **7:148**
 Record keeping violations, **7:149**
 Tax evasion uses, **7:150**
 Participating underwriters, **14:13**
 Pegging, **7:136**
Penny Stock Sales (this index)
 Personal and impersonal dealings, **4:1**
 Pleading
 Generally, **11:104 et seq.**
 See also **Pleading** (this index)
 Churning, **14:131**
 Insider trading charges, **7:364**
 Nonpublic nature of information, **7:310**
 Possession of MNPI
 Generally, **7:316**
 Awareness and possession distinguished, **7:349**
 Burden of proof, **7:321, 7:341**
 Chinese walls, **7:343 et seq.**
 Connection with transaction, **7:681**
 Individuals, proof for, **7:342**
 Knowing possession, **7:320**
 Mere possession, **7:319**

BROKER-DEALER LIABILITY

—Cont'd

Possession of MNPI—Cont'd
 Organizations, proof for, **7:343 et seq.**
 Precautions against trading, **7:346**
 Proof, **7:322 et seq.**
 Rule 10b-5
 Generally, **7:318 et seq.**
 Access, proof of, **7:323**
 Awareness and possession distinguished, **7:349**
 Burden of proof, **7:321**
 Contact, proof of, **7:324**
 Individuals, proof as to, **7:322**
 Knowing possession, **7:320**
 Mere possession, **7:319**
 Organizations, proof for, **7:326**
 Proof, **7:322 et seq.**
 Trading, proof of, **7:325**
 Use inferred from possession, **7:328**
 Rule 14e-3
 Generally, **7:340 et seq.**
 Burden of proof, **7:341**
 Chinese walls, **7:343 et seq.**
 Individuals, proof for, **7:342**
 Organizations, proof for, **7:343 et seq.**
 Precautions against trading, **7:346**
 Standard of proof, **7:341**
 Standard of proof, **7:341**
 Use compared, **7:317**
 Predictions, **7:7, 14:81**
 Privity
 Express actions, **14:34**
 Implied liability, **8:276**
 SA § 12(2), **8:266**
 SA § 17(a), **8:276**
 Sales fraud, **8:266**
 SEA § 15(c)(1), **8:286**
 Procedure, **14:130 et seq.**
 Proof of churning, **14:132**
 Proximate cause
 Generally, **14:92**
 Express actions, **14:35**

INDEX

BROKER-DEALER LIABILITY

—Cont'd

- Public or nonpublic character of information. Nonpublic information, *above*
- Punitive damages
 - Generally, **14:106 et seq., 15:74**
 - Arbitration, **14:111**
 - Express actions, **14:54**
- Purchaser, plaintiff as
 - SA § 12(a)(1), **14:23**
 - SA § 12(a)(2), **14:44**
- Purchaser's knowledge, **14:40**
- Quantum of proof, insider trading charges, **7:366**
- Reasonable investigation defense
 - Generally, **14:5**
 - Integrated disclosure systems, **14:7**
 - SA § 11, **14:11**
 - SA § 12(a)(2), **14:43**
 - SEC Rule 176, **14:8**
- Reasonable investor standard, **7:51**
- Recklessness, **14:83 et seq.**
- Recommendations
 - Generally, **14:81**
 - Suitability rules, **14:186**
- Reliance, **14:86 et seq.**
- Remedies** (this index)
- Rescission
 - Chasins measure, **14:97**
 - Express actions, **14:46, 14:50**
 - Implied actions, **14:95 et seq.**
 - Lost profits, **14:101**
 - Nye measure, **14:101**
 - Rolf measure, **14:100**
- Respondeat superior liability, insider trading, **7:450**
- Restitution, **14:104**
- Retirement accounts, suitability and fiduciary duty, **14:206**
- Rule 10b-5
 - Generally, **14:73 et seq.**
 - Application to, **3:27**
 - Causation, **14:91 et seq.**
 - Connection requirement, **14:94**
 - Contraction era, compensatory damages in, **14:105**
 - Damages, **14:95 et seq.**

BROKER-DEALER LIABILITY

—Cont'd

- Rule 10b-5—Cont'd
 - Elements of action, **14:74**
 - Issuer misrepresentations, **14:76**
 - Issuer nondisclosures, **14:77**
 - Justifiable reliance, **14:89**
 - Market misrepresentations, **14:78**
 - Market nondisclosures, **14:79**
 - Materiality, **14:82**
 - Misrepresentation, **14:75 et seq.**
 - Mitigation of damages, **14:102**
 - Nondisclosure, **14:75 et seq.**
 - Opinions, **14:81**
 - Out-of-pocket damages, **14:103**
 - Predictions, **14:81**
 - Proximate cause, **14:92**
 - Punitive damages, **14:106 et seq.**
 - Recklessness, **14:83 et seq.**
 - Recommendations, **14:81**
 - Reliance, **14:86 et seq.**
- Rescission
 - Chasins measure, **14:97**
 - Lost profits, **14:101**
 - Nye measure, **14:101**
 - Rolf measure, **14:100**
- Restitution, **14:104**
- Scienter, **14:83 et seq.**
- Rumors, **7:301**
- SA § 11
 - Generally, **14:2 et seq., 14:3 et seq.**
 - Court cases, **14:6**
 - Damages, **14:15**
 - Due diligence defense
 - Generally, **14:5**
 - SEC view, **14:9**
 - Integrated disclosure systems, **14:7**
 - Later filings, effect of, **14:10**
 - Non-managing underwriters, **14:13**
 - Participating underwriters, **14:13**
 - Policy considerations, **14:12**
 - Reasonable investigation defense
 - Generally, **14:5**
 - Integrated disclosure systems, **14:7**
 - SEC Rule 176, **14:8**

BROKER-DEALER LIABILITY

—Cont'd

- SA § 11—Cont'd
 - Reasonable investigation require-
ment, **14:11**
 - SEC Rule 176, **14:7**
 - SEC Rule 412, **14:7**
 - SEC view of due diligence
techniques, **14:9**
 - Underwriters' due diligence, **14:14**
- SA § 12(a)(2), **14:43**
- Sales fraud, privity, **8:266**
- Same side traders
 - Damages, **7:523**
 - Elements of action, **7:519**
 - Relations of parties to market,
7:495
 - Suits by, **7:505**
- Scalping, **12:3**
- Scienter
 - Generally, **8:139 et seq., 14:83 et
seq.**
 - Burden of proof, **8:141**
 - Churning, **14:129**
 - Defendant's intent, **8:143**
 - Defendant's knowledge and belief
 - Generally, **8:140 et seq.**
 - Burden of proof, **8:141**
 - Proof, **8:142**
 - Misrepresentation claims,
consideration of, **7:53**
 - Plaintiff's knowledge, **8:144**
 - Pleading, **8:145**
 - Proof, **8:142**
 - SEA § 15(c)(1), **8:139 et seq.**
- SEC investigations, integration of
broker-dealer and investment
management examinations,
20:13
- SEC supervisory authority over bro-
ker-dealers, **10:1**
- Securities types
 - Generally, **5:9 et seq.**
 - Alternative government regulation,
5:35
 - Certificates of deposit, **5:28**
 - Characteristics of instrument in
commerce, **5:39**

BROKER-DEALER LIABILITY

—Cont'd

- Securities types—Cont'd
 - Common elements in defining a
security, **5:32 et seq.**
 - Context clause, **5:18**
 - Cooperative apartment corporation
shares, **5:26**
 - Court cases, **5:20 et seq.**
- Employee benefit plans
 - Generally, **5:42 et seq.**
 - Contributory plans
 - Involuntary, **5:46**
 - Voluntary, **5:48**
 - Defined plans, **5:49**
 - Distinguishing contributory
from noncontributory, **5:52**
 - Distinguishing voluntary from
involuntary plans, **5:51**
 - ERISA, preemptive effect of,
5:43
 - ESOPs, **5:48**
 - Involuntary contributory plans,
5:46
 - Involuntary noncontributory
plans, **5:45**
 - Noncontributory plans
 - Involuntary, **5:45**
 - Voluntary, **5:47**
 - Pension plans, **5:49**
 - Sales, **5:44**
 - Voluntary contributory plans,
5:48
 - Voluntary noncontributory
plans, **5:47**
- Evidence of indebtedness, **5:13**
- Expectations of public, **5:40**
- Flexible fund annuities, **5:25**
- Fractional interests in mineral
rights, **5:21**
- Guarantees, **5:15**
- Howey test, **5:22**
- Interest, **5:14**
- International Brotherhood of
Teamsters case, **5:27**
- Investment risk as factor, **5:34**
- Joiner Leasing Corp case, **5:21**
- Judicial decisions, **5:20 et seq.**

INDEX

BROKER-DEALER LIABILITY

—Cont'd

Securities types—Cont'd

Landreth Timber Co case, **5:29**

Marine Bank case, **5:28**

Marketing as factor, **5:33**

Motivations of purchasers, **5:37**

Motivations of sellers, **5:38**

9 month notes, **5:17**

Notes, **5:30**

Oil and gas interests

Generally, **5:16**

Fractional interests, **5:21**

Passive or active purchasers, **5:36**

Pension plans, employee interests
in, **5:27**

Perceptions of public, **5:40**

Reeves v. Ernst & Young case,
5:30

Relative importance of elements,
5:41

SA § 2(1)(a) definition

Generally, **5:10**

Evidence of indebtedness, **5:13**

Guarantees, **5:15**

Interest, **5:14**

9 month notes, **5:17**

Oil and gas interests, **5:16**

SEA § 3(a)(10) differences, **5:12**
et seq.

SEA § 3(a)(10) similarities, **5:11**

SEA § 3(A)(10)

Generally, **5:10**

Evidence of indebtedness, **5:13**

Guarantees, **5:15**

Interest, **5:14**

9 month notes, **5:17**

Oil and gas interests, **5:16**

SA § 2(1)(a) differences, **5:12 et**
seq.

SA § 2(1)(a) similarities, **5:11**

State law definitions, **5:19**

Statutory definitions, **5:10 et seq.**

United Benefit Life Ins Co case,
5:24

United Housing Foundation, Inc
case, **5:26**

Variable annuities, **5:23**

BROKER-DEALER LIABILITY

—Cont'd

Sellers, brokers as, express actions,
14:22, 14:29 et seq.

Short selling manipulation, **7:137**

SRO rules

Generally, **14:62 et seq.**

Arbitration, **14:72**

Buttrey doctrine, **14:65**

Colonial Realty doctrine, **14:64**

Contraction era, **14:71**

Court cases, **14:64 et seq.**

Expansion era, **14:63 et seq.**

Substantial factor in sale, broker as,
14:35

Successive activity price manipula-
tions, **7:133**

Suitability rules

Generally, **14:183 et seq.**

See also **Suitability** (this index)

Arbitration, **14:205**

Consumer fraud claims, **14:204**

Damage claims, **14:196 et seq.**

Disciplinary actions, **14:194**

Fiduciary breaches, **14:202**

Fiduciary duty, **14:206**

FINRA Rule 2090, know your
customer, **14:191**

FINRA Rule 2111, **14:186**

FINRA Rule 2111(a), **14:187,**
14:188

Fraud claims, **14:199**

Inquiry duties of brokers, **14:189**

Institutional investors, **14:190**

Investment strategy, **14:188**

Know your customer, **14:191**

Misrepresentation, claims based
on, **14:198**

Municipal securities, **14:193**

NASD IM-2320-3, **14:190**

NASD Rule 2310(c), **14:187**

NASD rules generally, **14:185**

Negligence, **14:203**

Options, **14:192**

Private damage claims, **14:196 et**
seq.

Recommendations to customers,
14:187

BROKER-DEALER LIABILITY

—Cont'd

- Suitability rules—Cont'd
 - Retirement accounts, **14:206**
 - Rule 10b-5 claims, **14:197 et seq.**
 - SEA § 10(b) claims, **14:197 et seq.**
 - SEC rules, **14:195**
 - SRO rules, **14:184**
 - State law claims
 - Generally, **14:200 et seq.**
 - Consumer fraud, **14:204**
 - Fiduciary breaches, **14:202**
 - Negligence, **14:203**
 - Statutory violations, **14:201**
 - Supervisory duties
 - Generally, **14:164 et seq.**
 - Amex requirements, **14:174**
 - Branch office managers, **14:178**
 - Chief executive officers, **14:180**
 - Compliance officers, **14:181**
 - Court cases, **14:176**
 - Deficiencies, **14:175**
 - General counsel, **14:182**
 - Heads of functional areas, **14:179**
 - Individual responsibilities, **14:177 et seq.**
 - Insider Trading and Securities
 - Fraud Enforcement Act, **14:168**
 - NASD requirements, **14:172**
 - NYSE requirements, **14:173**
 - Rule 14e-3(b), **14:169**
 - Safe harbor programs, **14:175**
 - Sanctions, **14:175**
 - SEA § 15(b)(4)(D), **14:166**
 - SEA § 15(b)(4)(E), **14:165**
 - SEA § 15(b)(6), **14:165**
 - SEA § 19, **14:170**
 - SEA § 20(a), **14:167**
 - SRO requirements, **14:171 et seq.**
 - Tippee liability
 - Generally, **7:623, 7:631**
 - Benefit to insider-tipper, **7:627**
 - Dirks background, **7:625**
 - Family benefit to, **7:630**
 - Fiduciary breach requirement, **7:626**
 - Friends, benefit to, **7:630**

BROKER-DEALER LIABILITY

—Cont'd

- Tippee liability—Cont'd
 - Need for fiduciary benefit, **7:626**
 - Nonpublic information, **7:272 et seq.**
 - Pecuniary benefit, **7:628**
 - Receipt in fiduciary breach, **7:623**
 - Relations, benefit to, **7:630**
 - Reputational benefit, **7:629**
 - Tip defined, **7:624**
- Transaction Planning** (this index)
- Unsuitability, **15:73**
- Use of MNPI
 - Generally, **7:316**
 - Burden of proof, **7:331**
 - Connection with transaction, **7:681**
 - Individuals, proof for, **7:332**
 - Organizations, proof for, **7:339**
 - Possession compared, **7:317**
 - Rule 10b-5
 - Generally, **7:327 et seq.**
 - Burden of proof, **7:331**
 - Individuals, proof for, **7:332**
 - Inferences, **7:328**
 - Organizations, proof for, **7:339**
 - Possession, use inferred from, **7:328**
 - Rebuttal evidence, **7:337, 7:338**
 - Size of transaction, proof value, **7:334**
 - Standard of proof, **7:331**
 - Timing, proof of, **7:333**
 - Type of transaction, proof value, **7:335**
 - Rule 14e-3, generally, **7:347**
 - Size of transaction, proof value, **7:334**
 - Standard of proof, **7:331**
 - Timing, proof of, **7:333**
 - Type of transaction, proof value, **7:335**
 - Wash sales manipulation, **7:121**
- What is a Security** (this index)
- BROOKS AUTOMATION INC.**
 - Backdating of stock options, **18:1**

INDEX

BURDEN OF PROOF

- Actual knowledge, **8:178**
- Bad faith, **8:219**
- Broker-dealer liability, **14:42**
- Causation, **5:98**
- Constructive knowledge, **8:189**
- Diligence, lack of, **8:238**
- Fraud on the market theory (FOMT), **8:548**
- Implied liability, **8:255**
- Insider trading charges, **7:366**
- Intent, **8:201**
- Manipulation, **8:104**
- Motive, **8:208**
- Negligence, **8:238**
- Proportionate liability, **9:63**
- Proxies and proxy solicitations, **8:127**
- Recklessness, **8:227**
- Scienter
 - Generally, **8:66, 8:77, 8:84**
 - Actual knowledge, **8:178**
 - Bad faith, **8:219**
 - Constructive knowledge, **8:189**
 - Diligence, lack of, **8:238**
 - Intent, **8:201**
 - Motive, **8:208**
 - Negligence, **8:238**
 - Proxies and proxy solicitations, **8:127**
 - Recklessness, **8:227**
 - SEC, false reports to, **8:148**
 - Tender offer fraud, **8:134**
 - Unreasonable conduct, **8:238**
- SEC, false reports to, **8:148**
- Securities Act Section 17(a), **8:84**
- Tender offer fraud, **8:134**
- Unfair terms, **5:153**
- Unreasonable conduct, **8:238**

BUSINESS ASSOCIATES

- Madoff Ponzi scheme, **20:6**

BUSINESS JUDGMENT

STANDARD

- Misrepresentation claims, consideration of, **7:50**
- Timely disclosure of inside information, **7:241**

BUSINESS PRIORITY

- ESG, **29:1**

BUYER-SELLER

REQUIREMENTS

- Generally, **5:110 et seq., 8:582**
- Broad interpretation, **5:117**
- Broker-dealer liability
 - SA § 12(a)(1), **14:23**
 - SA § 12(a)(2), **14:44**
- Company as buyer-seller, **5:124**
- Control, sales of, **5:113**
- Definition, **5:111**
- Direct-impersonal dealing, **6:182**
- Direct-personal dealing
 - Generally, **5:110 et seq.**
 - Broad interpretation, **5:117**
 - Company as buyer-seller, **5:124**
 - Control, sales of, **5:113**
 - Definition, **5:111**
 - Forced sales, **5:120**
 - Injunction suits, **5:122**
 - Interpretation of requirement, **5:117**
- Issuances, **5:121**
- Liquidations, **5:119**
- Loss causation as substitute, **5:123**
- Mergers, **5:118**
- Modified view, **5:117**
- Pleading, **5:126**
- Strict view, **5:112 et seq.**
- Forced sales, **5:120**
- Injunction suits, **5:122**
- Interpretation of requirement, **5:117**
- Issuances, **5:121**
- Liquidations, **5:119**
- Loss causation as substitute, **5:123**
- Mergers, **5:118**
- Modified view, **5:117**
- Pleading, **5:126**
- Reliance, **8:582**
- Strict view, **5:112 et seq.**

BUYOUTS

- Investment Bankers** (this index)

CAPPING

- Manipulation, **7:136**

CASE OPINIONS

See **Court Decisions** (this index)

CASH FLOW

Disclosures, **6:260**

CAUSATION

Generally, **5:89 et seq.**

Administrative enforcement actions,
10:1

Broker-dealer liability, **14:91 et seq.**

Burden of proof, **5:98**

Damage causation. See **Damages**
(this index)

Definition, **5:90**

Direct-personal dealing

Generally, **5:89 et seq.**

Loss causation, **5:91**

Meaning, **5:90**

Transaction causation, **5:92**

Fraud on the market

Generally, **8:520 et seq.**

See also **Reliance** (this index)

Indirect-impersonal dealing, curtail-
ing scheme to defraud, **7:76**

Insider trading actions, **7:517**

Loss causation

Generally, **5:91**

See also other entries throughout
this topic

Scienter, SA § 17(b), touting, **8:93**

Substitute for buyer-seller require-
ment, **5:123**

Madoff Ponzi scheme, cause
investigation, **20:5**

Materiality, pleading and proof,
5:107

Minority vote requirements, **5:93 et
seq.**

Misconduct, relation to securities
transaction generally, **3:48**

Modified view, **5:95**

Pleading

Generally, **8:571 et seq.**

Materiality, **5:107**

Modified causation, **5:105 et seq.**

Strict causation, **5:99 et seq.**

Policies, **5:97**

Private Actions (this index)

CAUSATION—Cont'd

Proof

Materiality, **5:107**

Modified causation, **5:105 et seq.**

Proxy solicitation as element,
5:108

Strict causation, **5:99 et seq.**

Reasons, **5:97**

Reliance

Generally, **8:484 et seq.**

See also **Reliance** (this index)

Strict view, **5:93, 5:94**

Transaction causation, **5:92, 8:484**

Ute presumption, **8:484**

Voting

Modified causation, **5:105 et seq.**

Strict causation, **5:100 et seq.**

CEA

See **Commodities Exchange Act**
(this index)

CEASE AND DESIST ORDERS

CFTC, **13:239**

Likelihood of future violation,
13:239

Permanent, **13:85, 13:239**

SEC

Permanent, **13:85**

Temporary, **13:86**

Temporary, **13:86**

CERTIFICATES OF DEPOSIT

Security, treatment as, **5:28**

CFTC

See **Commodity Futures Trading
Commission** (this index)

CHADBOURNE & PARKE LLP v. TROICE

Post-Chadbourne cases, **3:220 to
3:222**

Securities Litigation Uniform Stan-
dards Act (SLUSA), **3:217 et
seq.**

CHARGES

Mutual fund violations, sales prac-
tices, **17:15**

INDEX

CHARGES—Cont'd

SEC investigations, investor recovery, **13:55**

CHARITABLE FOUNDATIONS

Madoff Ponzi scheme, **20:3**

CHIASSON/NEWMAN CASES

Court decisions, **7:387 et seq.**

CHICAGO BOARD OPTIONS EXCHANGE (CBOE)

Suitability rules, **14:192**

CHIEF FINANCIAL OFFICER

Madoff Ponzi scheme, **20:6, 20:8**

CHINESE WALLS

Generally, **7:343 et seq.**

Evolution of rule, **7:344**

Operation, **7:345**

CHINESE WAY OF DOING BUSINESS

Foreign Corrupt Practices Act (FCPA), **19:11**

CHURNING

Generally, **14:112 et seq.**

Control, **14:113**

Damages, **14:136**

Defenses, **14:133 et seq.**

Definition, **14:138**

Elements of action, **14:113 et seq.**

Excessive trading

Generally, **14:114 et seq.**

Benchmark for, **14:116 et seq.**

Commission ratios, **14:119 et seq.**

Cross trading, **14:128**

Frequency of trades, **14:122**

In-and-out trading, **14:122**

Loss ratio, **14:126**

Number of trades, **14:122**

Quality of securities purchased, **14:127**

Six, rule of, **14:116 et seq.**

Turnover rate, **14:115**

Expert testimony, **14:132**

In-and-out trading, **14:122**

Pleading, **14:131**

Procedure, **14:130 et seq.**

CHURNING—Cont'd

Proof, **14:132**

Scienter, **14:129**

State law actions, **14:137 et seq.**

CIRCUITS

See **Court Decisions** (this index)

CIRCULAR TRADING

Manipulation through, **7:135**

CIVIL PENALTIES

Generally, **7:438 et seq.**

See also **Securities and Exchange Commission** (this index)

Administrative enforcement generally

CFTC, **13:238**

SEC, **13:83**

Ancillary relief, **13:108 et seq.**

CFTC, **13:238**

Financial test, **13:238**

Injunctions (this index)

SEC

Administrative enforcement, **13:83**

Ancillary relief, **13:108**

CLASS ACTIONS

Generally, **8:515 et seq.**

Backdating of stock options, private litigation, **18:10**

Blockchain, **24:6**

Certification

Generally, **8:516**

Materiality of alleged misrepresentation, proof, **8:550**

Misrepresentation cases, **8:517**

Omission cases, **8:518**

Covid-19 Pandemic (this index)

Cryptocurrencies, **24:6**

Cybersecurity, **26:6, 26:7**

Damages, **9:13**

Derivative suits compare, **3:212**

Desirability of class actions, **8:526**

Discovery limitations, **3:203**

Initial coin offerings, **24:6**

Jurisdictional means, **11:42**

Limitation of actions

Generally, **11:96 et seq.**

Tolling, **11:97**

CLASS ACTIONS—Cont’d

- Mass-type actions, SLUSA limitations, **3:206**
- Private, ESG, **29:3**
- Related class-type actions, SLUSA limitations, **3:205**
- Reliance, **8:515 et seq.**
- SA § 11, **14:18**
- SA § 12, **14:57**
- SA § 17(b), touting, **8:90**
- SLUSA limitations on state actions
 - Generally, **3:201 et seq.**
 - Abolition of state claims, **3:202**
 - Administrative actions by states, **3:210**
 - Administrative enforcement, **3:216**
 - Bonds, actions on, **3:211**
 - Congressional intent, **3:201**
 - Covered class actions, **3:204**
 - Criminal enforcement, **3:216**
 - Derivative suits, **3:212**
 - Discovery limitations, **3:203**
 - Government enforcement, **3:216**
 - Incorporation state, actions under laws of, **3:209**
 - Indenture contract actions, **3:211**
 - Individual fraud claims, **3:215**
 - Mass-type actions, **3:206**
 - Permitted class actions, **3:208 et seq.**
 - Private rights, effect on, **3:215**
 - Recklessness, **3:214**
 - Related class-type actions, **3:205**
 - Scienter, **3:214**
 - Scope, **3:204 et seq.**
 - Securities covered by SLUSA, **3:207**
 - State governments, actions by, **3:210**
 - Utility of class actions, **8:526**

CLOSING ARGUMENTS

- Insiders and inside trading, Raj Rajaratnam case, **21:25**

COHMAD SECURITIES CORPORATION

- Madoff feeder funds, **20:22**

COLLATERALIZED DEBT OBLIGATIONS (CDOS)

- Coordinated investigations following subprime mortgage crisis, **13:331.10**

COMMODITIES EXCHANGE ACT (CEA)

- Section 6(b), **13:194**
- Section 8, **13:193**
- Section 14(b), **13:196**
- Section 16(a), **13:193**
- USCA cross reference table, **App I**

COMMODITIES FRAUD

- Joint and several liability, **9:46**
- Suitability rules, **14:192**

COMMODITY FUTURES TRADING COMMISSION (CFTC)

- Generally, **1:15**
- Administrative Enforcement** (this index)
- Amicus curiae participation in private litigation, **13:234**
- Ancillary relief, **13:250**
- Authority to investigate
 - Generally, **13:192**
 - Publishing data, restrictions on, **13:193**
- Cease and desist orders, **13:239**
- Collateral effects of orders, **13:241**
- Conferences with staff, **13:218**
- Conflicts of interest in investigations, **13:207**
- Counsel investigations, **13:219**
- Criminal enforcement references
 - Generally, **13:254 et seq.**
 - See also **Criminal Enforcement** (this index)
- Cryptocurrencies** (this index)
- Decisions, **1:15**
- Deregulation. Progressive deregulation, below
- Discovery
 - Generally, **13:224 et seq.**
 - Document subpoenas, **13:225**
 - FOIA requests, **13:226**
 - Production requests, **13:227**

INDEX

COMMODITY FUTURES

TRADING COMMISSION (CFTC)—Cont'd

- Document production, **13:217**
- Documents, third party access to, **13:224 et seq.**
- Enforcement actions. See **Administrative Enforcement** (this index)
- Exempt transactions, see also Progressive deregulation, below
- Factors influencing outcome of investigations, **13:264**
- FOIA requests, **13:226**
- Informal enforcement actions, **13:233**
- Informal warnings, **13:230**
- Information given by agency, **13:204**
- Injunctions** (this index)
- Interrogations, generally, **13:221**
- Investigations
 - Generally, **13:1 et seq.**
 - See also **Investigations** (this index)
- Justice Department references
 - Generally, **13:254 et seq.**
 - See also **Criminal Enforcement** (this index)
- Orders
 - Cease and desist orders, **13:239**
 - Collateral effects of orders, **13:241**
 - Duration of orders, **13:243**
 - Formal orders of investigation, **13:208 et seq.**
 - Validity challenges, **13:212**
- Outcomes of investigations, **13:228 et seq.**
- Progressive deregulation
 - See also Exempt transactions, above
- Pronouncements, **1:15**
- Public reports of investigations, **13:232**
- Reports of investigations, **13:232**
- Requests for information, **13:203**
- Right to counsel in investigations, **13:206**
- Risk disclosure requirements, **6:289**
- Securities law and preemption. Jurisdiction, above

COMMODITY FUTURES

TRADING COMMISSION (CFTC)—Cont'd

- Staff conferences, **13:218**
 - State authorities, references to, **13:231**
 - State investigations, **13:197**
 - Subpoena power, **13:200**
 - Subpoenas
 - Generally, **13:213 et seq.**
 - Content, **13:214**
 - Document production, **13:217**
 - Document subpoenas, **13:225**
 - Evaluation, **13:215**
 - Responses, **13:217**
 - Validity challenges, **13:216**
 - Testimony
 - Generally, **13:220 et seq.**
 - Interrogations, **13:221**
 - Preparing witnesses, **13:220**
 - Transcripts, **13:222**
 - Trading privileges, denial of, **13:240**
 - Transcripts
 - Generally, **13:222**
 - Third party access to, **13:224 et seq.**
 - Warnings, **13:230**
 - Wells submissions, **13:265**
- ### COMMON LAW FRAUD
- Commodities fraud generally, **1:24**
 - Conspirators, **8:261**
 - Corrections, disclosure, **6:291**
 - Defendant's knowledge and intent, **8:59**
 - Direct-personal dealing
 - Generally, **5:2**
 - Theories and sources of liability, **5:54**
 - Disclosures, **6:291**
 - Fraud on the market theory, **8:531**
 - Insider trading liability, **7:153**
 - Joint and several liability, **9:20**
 - Joint tortfeasors, **8:261**
 - Materiality, **8:6**
 - Parties, **8:259**
 - Plaintiff's knowledge, **8:60**
 - Privity, **8:259**

COMMON LAW FRAUD—Cont'd

Reliance, **8:487**
 Securities fraud generally, **1:22**
 Special facts and common law fraud,
3:19
 State law, **3:185**

COMMUNICATIONS

Disclosure (this index)
Letters (this index)
Supplementary Communications
 (this index)

COMPARATIVE FAULT

Contribution (this index)
 Indemnification, **9:76**
 Insurance, **9:76**
Proportionate Liability (this index)

COMPENSATION

Madoff Ponzi scheme, affiliated
 individuals, **20:5, 20:6, 20:9**
 Private actions, materiality, **8:43**

COMPLIANCE COUNSEL

Madoff Ponzi scheme, **20:5**

COMPLIANCE PERSONNEL

Whistleblower bounty program, orig-
 inal information, **22:9**

COMPLIANCE PROGRAMS

Foreign Corrupt Practices Act
 (FCPA), **19:14**

**COMPROMISE AND
 SETTLEMENT**

Admission of wrongdoing, **13:166 et
 seq.**
 Contribution, **9:72**
Foreign Corrupt Practices Act
 (FCPA) (this index)
 Indemnification, **9:76**
 Insider trading penalty actions, **7:444**
 Insurance, **9:76, 13:183**
 Investigations
 Investment bankers global settle-
 ment, ancillary relief, **13:110**
 SEC, **13:154 to 13:157, 20:15**
 SROs, **13:305**
 State agency, **13:321**

COMPROMISE AND

SETTLEMENT—Cont'd

Investment bankers global settlement,
 ancillary relief, **13:110**
 Madoff fraud, Picower settlement,
20:24
 Mediation, **15:69**
Negotiations (this index)
 No-action letters, SEC, **1:12**
 Penalty actions, **7:444**
 Releases of Rule 10b-5 liability,
12:11
 Restitution to defrauded investors,
 SEC role in
 In court, **10:3**
 Out of court, **10:2**
 SEC cases, **1:9**
 SEC role in, **10:2, 10:3**
 State agency investigations, **13:321**
 Uncontested court decisions, **1:17**

COMPULSORY DISCLOSURE

See **Disclosure** (this index)

COMPUTER PROGRAMMERS

Madoff Ponzi scheme, **20:7**

COMVERSE TECHNOLOGY INC.

Backdating of stock options, **18:1,**
18:11

CONCEALMENT

Madoff Ponzi scheme, **20:2**

CONCERTED ACTION

Generally, **8:294**
Aider-Abettors (this index)
Conspiracies and Conspirators
 (this index)
Parties (this index)

CONFLICTS OF INTEREST

Generally, **5:145**
 Arms length transactions
 Generally, **5:144**
 Reasons and policies, **5:149**
 Corporate officers, **8:417**
 Directors, **8:417**
 Direct-personal dealing
 Generally, **5:53 et seq., 5:141 et
 seq.**

INDEX

CONFLICTS OF INTEREST

—Cont'd

- Direct-personal dealing—Cont'd
 - Alternative forums, efficiency of, **5:65**
 - Arms length transactions
 - Generally, **5:144**
 - Reasons and policies, **5:149**
 - Birmbaun Canon, **5:70 et seq.**
 - Burden of proof
 - Causation requirements, **5:98**
 - Unfair terms, **5:153**
 - Buyer-seller requirements
 - Generally, **5:110 et seq.**
 - Broad interpretation, **5:117**
 - Company as buyer-seller, **5:124**
 - Control, sales of, **5:113**
 - Definition, **5:111**
 - Forced sales, **5:120**
 - Injunction suits, **5:122**
 - Interpretation of requirement, **5:117**
 - Issuances, **5:121**
 - Liquidations, **5:119**
 - Loss causation as substitute, **5:123**
 - Mergers, **5:118**
 - Modified view, **5:117**
 - Strict view, **5:112 et seq.**
 - Causation requirements
 - Generally, **5:89 et seq.**
 - Burden of proof, **5:98**
 - Loss causation, **5:91**
 - Loss causation as substitute for buyer-seller requirement, **5:123**
 - Meaning, **5:90**
 - Minority vote requirements, **5:93 et seq.**
 - Modified view, **5:95**
 - Pleading
 - Materiality, **5:107**
 - Modified causation, **5:105 et seq.**
 - Proxy solicitation as element, **5:108**
 - Strict causation, **5:99 et seq.**
 - Policies, **5:97**

CONFLICTS OF INTEREST

—Cont'd

- Direct-personal dealing—Cont'd
- Causation requirements—Cont'd
- Proof
 - Materiality, **5:107**
 - Modified causation, **5:105 et seq.**
 - Proxy solicitation as element, **5:108**
 - Strict causation, **5:99 et seq.**
- Proxy solicitation as element, **5:108**
- Reasons, **5:97**
- Strict view, **5:93, 5:94**
- Transaction causation, **5:92**
- Voting
 - Modified causation, **5:105 et seq.**
 - Strict causation, **5:100 et seq.**
- Common law theories and sources, **5:54**
- Connection requirement
 - Generally, **5:127 et seq.**
 - Another's sale, misconduct in connection with, **5:132**
- Commissions, **5:133**
- Court cases, **5:135**
- Definition, **5:128**
- Injunction suits, **5:138**
- Kickbacks, **5:133**
- Market transactions, misconduct affecting, **5:134**
- Mechanical interpretation of, **5:130**
- Modified view, **5:130 et seq.**
- Pleading, **5:140**
- Policies, **5:139**
- Post-sale misconduct, **5:131**
- Reasons, **5:139**
- Strict view, **5:129**
- Third party misconduct, **5:132**
- Continuity of investor protection, **5:67**
- Control, sales of, **5:113**
- Court cases
 - Birmbaun Canon, **5:70 et seq.**

CONFLICTS OF INTEREST

—Cont'd

- Direct-personal dealing—Cont'd
- Court cases—Cont'd
 - Connection requirement, **5:135 et seq.**
 - Unfairness
 - Generally, **5:183 et seq.**
 - Fair terms, **5:185**
 - SEC decisions, **5:186**
 - Unfair terms, **5:184**
- Deception requirement
 - Generally, **5:79 et seq.**
 - Company, deception of, **5:84 et seq.**
 - Creditors, deception of, **5:86**
 - Decisional impairment, **5:84**
 - Directors, deception of, **5:82**
 - Economic effect of deception, **5:84**
 - Knowledge, imputation of, **5:85**
 - Meaning, **5:80**
 - Modified views, **5:82 et seq.**
 - Pleading, **5:88**
 - Policies, **5:87**
 - Reasons, **5:87**
 - Shareholders, deception of, **5:83**
 - Strict view, **5:81**
- Disclosure
 - Generally, **5:187 et seq.**
 - Information disclosed, **5:189**
 - Method of disclosure, **5:188**
- Fairness. Unfair terms, below
- Fraud vs fiduciary breach, **5:60**
- Injunction suits
 - Buyer-seller requirements, **5:122**
 - Connection requirements, **5:138**
- Intrusion argument, **5:61 et seq.**
- Investor protection, continuity of, **5:67**
- Mismanagement exception
 - Generally, **5:72 et seq.**
 - Abuse of trading process, **5:76**
 - Fraud as part of, **5:75**
 - Meaning, **5:73**
 - Pleading, **5:78**
 - Policies, **5:77**

CONFLICTS OF INTEREST

—Cont'd

- Direct-personal dealing—Cont'd
- Mismanagement exception
 - Cont'd
 - Reasons, **5:77**
 - Strict view, **5:74**
- Obstacles
 - Generally, **5:56 et seq.**
 - Alternative forums, efficiency of, **5:65**
 - Application to other provisions, **5:69**
 - Birmbaun Canon, **5:70 et seq., 5:71**
 - Causation requirements
 - Loss causation, **5:91**
 - Meaning, **5:90**
 - Transaction causation, **5:92**
 - Continuity of investor protection, **5:67**
- Deception requirement
 - Generally, **5:79 et seq.**
 - Company, deception of, **5:84 et seq.**
 - Creditors, deception of, **5:86**
 - Decisional impairment, **5:84**
 - Directors, deception of, **5:82**
 - Economic effect of deception, **5:84**
 - Knowledge, imputation of, **5:85**
 - Meaning, **5:80**
 - Modified views, **5:82 et seq.**
 - Policies, **5:87**
 - Reasons, **5:87**
 - Shareholders, deception of, **5:83**
 - Strict view, **5:81**
- Decline of, **5:58**
- Federal comparison, **5:55**
- Fraud vs fiduciary breach, **5:60**
- Interrelation of, **5:59**
- Intrusion argument, **5:61 et seq.**
- Investor protection, continuity of, **5:67**
- Mismanagement exception
 - Generally, **5:72 et seq.**

INDEX

CONFLICTS OF INTEREST

—Cont'd

- Direct-personal dealing—Cont'd
- Obstacles—Cont'd
 - Mismanagement exception—Cont'd
 - Abuse of trading process, **5:76**
 - Fraud as part of, **5:75**
 - Meaning, **5:73**
 - Policies, **5:77**
 - Public, effect of trading abuse on, **5:76**
 - Reasons, **5:77**
 - Strict view, **5:74**
 - Operation of, **5:57 et seq.**
 - Policies, **5:60**
 - Reasons for, **5:60**
 - Rise of, **5:58**
 - Standards, uniformity of, **5:66**
 - Uniformity of standards, **5:66**
- Pleading
 - Buyer-seller requirements, **5:126**
 - Causation requirements, **5:99 et seq.**
 - Company as buyer seller, **5:126**
 - Connection requirement, **5:140**
 - Deception requirement, **5:88**
 - Materiality, **5:107**
 - Mismanagement exception, **5:78**
 - Modified causation, **5:105 et seq.**
 - Strict causation, **5:99 et seq.**
 - Unfair terms, **5:152**
- Sources, common law, **5:54**
- Standards, uniformity of, **5:66**
- Theories, common law, **5:54**
- Unfair terms
 - Generally, **5:142 et seq.**
 - Actual control, **5:156**
 - Arms length transactions
 - Generally, **5:144**
 - Reasons and policies, **5:149**
 - Book value, **5:162**
 - Burden of proof, **5:153**
 - Business decisions as value determiners, **5:171**

CONFLICTS OF INTEREST

—Cont'd

- Direct-personal dealing—Cont'd
- Unfair terms—Cont'd
 - Capitalization of earnings as test of value, **5:161**
- Conflict transactions
 - Generally, **5:145**
 - Reasons and policies, **5:150**
- Control, proof of, **5:155**
- Control premiums and discounts, **5:166**
- Control sales, **5:191**
- Court cases, **5:183 et seq.**
- Definition, **5:143**
- Disclosure
 - Generally, **5:187 et seq.**
 - Information disclosed, **5:189**
 - Method of disclosure, **5:188**
 - Persons to whom disclosure made, **5:190**
- Discounts, control, **5:166**
- Earnings tests of value, **5:161**
- Fair terms, effect of, **5:147**
- Full disclosure, effect of
 - Generally, **5:146**
 - Reasons and policies, **5:151**
- Influence, proof of, **5:155**
- Investment bankers
 - Generally, **5:172 et seq.**
 - Controlled company bankers, **5:175**
 - Controlling company bankers, **5:177**
 - Dual representation bankers, **5:176**
 - No banker transactions, **5:178**
 - Opinions of, challenging, **5:181**
 - Prior relations of, **5:182**
 - Qualities of bankers, **5:173**
 - Roles of bankers, **5:174**
 - Successive bankers, **5:179**
 - Trials, bankers for, **5:180**
- Legal decisions as value determiners, **5:170**
- Liquidation value, **5:163**

CONFLICTS OF INTEREST

—Cont'd

- Direct-personal dealing—Cont'd
- Unfair terms—Cont'd
 - Market prices as value indicators, **5:160**
 - Pleading, **5:152**
 - Policies, **5:148 et seq.**
 - Potential control, **5:156**
 - Premiums, control, **5:166**
 - Proof of elements, **5:154**
 - Range of fairness, **5:143**
 - Reasons, **5:148 et seq.**
 - Shareholder votes, effect of
 - Generally, **5:146**
 - Reasons and policies, **5:151**
 - Tax factors in value determination, **5:164**
 - Time factors in value determination, **5:165**
 - Value determiners, **5:169 et seq.**
 - Value indicators, **5:158 et seq.**
 - Uniformity of standards, **5:66**
- Disclosure
 - Generally, **5:187 et seq.**
 - Information disclosed, **5:189**
 - Method of disclosure, **5:188**
 - Persons to whom disclosure made, **5:190**
- Madoff Ponzi scheme, **20:5**
- Reasons and policies, **5:150**

CONFLICTS OF LAW

- Jurisdiction, foreign cubed cases, **11:31**

CONGRESS

- Foreign Corrupt Practices Act (FCPA), actions against members of Congress, **19:12**

CONGRESSIONAL INTENT

- Concurrent history, **3:92**
- Implied liability
 - Contraction era, **3:76**
 - Expansion era, **3:56**
- Insiders, scope of regulations, **7:559**
- Interpretation, use of legislative history in
 - Concurrent history, **3:92**

CONGRESSIONAL INTENT

—Cont'd

- Interpretation, use of legislative history in—Cont'd
 - Contraction era, **3:90 et seq.**
 - Expansion era, **3:68**
 - Later history, **3:93**
 - Occasions for use, **3:91**
 - Statutory structure, **3:94**
- Later history, **3:93**
- Merger regulation
 - Generally, **6:154 et seq.**
 - Information statement rules, **6:156**
 - Proxy rules, **6:155**
 - Rule 10b-5, **6:157**
 - SEA § 14(a), **6:155**
 - SEA § 14(c), **6:156**
- Private Securities Litigation Reform Act (PSLRA), **3:214**
- Rule 10b-5
 - Generally, **3:14 et seq.**
 - Deceptive devices, **3:17**
 - Manipulative devices, **3:17**
 - Private enforcement rights, **3:16**
 - Scienter, **8:158**
 - Scope of coverage, **3:15**
 - Securities Act and, **3:10**
 - Semiofficial evidence, **3:15**
- Sarbanes-Oxley Act, **3:158**
- Scienter, **8:158**
- SEA
 - Generally, **3:11**
- Rule 10b-5 history
 - Generally, **3:14 et seq.**
 - Deceptive devices, **3:17**
 - Manipulative devices, **3:17**
 - Private enforcement rights, **3:16**
 - Scope of coverage, **3:15**
 - Semiofficial evidence, **3:15**
- Securities Litigation Uniform Standards Act (SLUSA), **3:201, 3:214**
- Statutory structure, **3:94**
- Tender offers
 - Generally, **6:16 et seq.**
 - Disclosure, **6:17**
 - Fairness, **6:19**
 - Investor protection, **6:17**

INDEX

CONGRESSIONAL INTENT

—Cont'd

Tender offers—Cont'd
Target management protection,
6:18

CONNECTION WITH REQUIREMENT

Generally, **5:127 et seq.**
Another's sale, misconduct in connection with, **5:132**
Commissions, **5:133**
Definition, **5:128**
Direct-impersonal dealing
Generally, **6:183 et seq.**
Rule 10b-5, **6:185**
Rule 14a-9, **6:183**
Rule 14c-6, **6:184**
Direct-personal dealing
Generally, **5:127 et seq.**
Another's sale, misconduct in connection with, **5:132**
Commissions, **5:133**
Court cases, **5:135**
Injunction suits, **5:138**
Kickbacks, **5:133**
Market transactions, misconduct affecting, **5:134**
Mechanical interpretation of, **5:130**
Modified view, **5:130 et seq.**
Pleading, **5:140**
Post-sale misconduct, **5:131**
Reasons, **5:139**
Strict view, **5:129**
Third party misconduct, **5:132**
Injunction suits, **5:138**
Insider trading
Generally, **7:676 et seq.**
Inducing action, **7:682**
Investment decision, influencing, **7:682**
Market transactions, **7:370**
Misappropriation theory, **7:597, 7:680**
Non-participation in pertinent transactions, **7:677**
Possession vs use, **7:681**
Price, affecting, **7:682**

CONNECTION WITH REQUIREMENT—Cont'd

Insider trading—Cont'd
Purchase, inducing, **7:682**
Purchaser-seller test, **7:678**
Rule 14e-3, **7:371**
Tender offers, **7:371**
Touching test, **7:678**
Kickbacks, **5:133**
Market transactions, misconduct affecting, **5:134**
Mechanical interpretation of, **5:130**
Merger challenges
Generally, **6:183 et seq.**
Rule 10b-5, **6:185**
Rule 14a-9, **6:183**
Rule 14c-6, **6:184**
Misappropriation theory of insider liabilities, **7:597**
Modified view, **5:130 et seq.**
Pleading, **5:140**
Policies, **5:139**
Post-sale misconduct, **5:131**
Purchaser-seller test, **7:678**
Reasons, **5:139**
Strict view, **5:129**
Third party misconduct, **5:132**
Touching test, **7:678**

CONSISTENCY OF RETURNS

Madoff Ponzi scheme, **20:2**

CONSOLIDATION OF ACTIONS

SLUSA restrictions, **3:206**

CONSPIRACIES AND CONSPIRATORS

Generally, **8:304 et seq.**
Actions in concert, **8:294**
Affirmative conduct
Generally, **8:305 et seq.**
No affirmative conduct, **8:310**
Aider-abettors compared, **8:292**
Common law fraud, **8:261**
Control sales, **8:307**
Injunctions, **8:312**
Insiders and Insider Trading (this index)
Madoff Ponzi Scheme (this index)

**CONSPIRACIES AND
CONSPIRATORS—Cont'd**

Misrepresentations, **8:305**

Nondisclosures, **8:306**

Other violations, **8:309**

Overt acts

Generally, **8:305 et seq.**

No overt act, **8:310**

Parties and privity

Generally, **8:304 et seq.**

See also **Private Actions** (this index)

Pleading

Generally, **8:325**

Affirmative conduct, **8:321**

Aiding-abetting, **8:324**

Choice of parties, **8:320**

No affirmative conduct, **8:322**

Participation, **8:323**

Special elements, **8:326**

Privity

Implied liability, **8:280**

SA § 12(2), **8:270**

SA § 17(a), **8:280**

Sales fraud, **8:270**

Relations to other actors, **8:311**

Rule 10b-5 liability

Actions in concert, **8:294**

Aider-abettor liability, **8:327 et seq.**

Aider-abettors compared, **8:292**

Concerted action, **8:294**

Inducement, **8:295**

Injunction suits, **8:303**

Insiders, inducement by, **8:299**

Issuers, inducement by, **8:297**

Participants generally, **8:292**

Participants in violations generally, **8:294**

Pleading, **8:319 et seq.**

SEC decisions, **8:312**

CONSTRUCTIVE FRAUD

Generally, **8:242**

CONSTRUCTIVE KNOWLEDGE

Generally, **8:180**

See also **Knowledge** (this index)

**CONSTRUCTIVE KNOWLEDGE
—Cont'd**

Versions of scienter, relations among, **8:181**

CONTRACTION ERA

See also **Expansion Era; Implied Liability** (this index)

Compensatory damages in, **14:105**

Fiduciary criteria

Generally, **7:561 et seq.**

Contraction era, **7:576**

Creation

Generally, **7:567**

Advisers to issuers, **7:569**

Business associates of issuers, **7:570**

Law characterizing relation, **7:573**

Position with issuer, **7:568**

Prior dealings, creation by, **7:571**

Securities professionals, **7:572**

Criteria, **7:561 et seq.**

Information possession criteria, **7:574**

Issuers, **7:565**

Market insiders, **7:575**

With whom must relationship exist, **7:562 et seq.**

Implied liabilities under SRO rules, **14:71**

Implied private actions under 10b-5

Generally, **3:74 et seq.**

See also **Implied Liability** (this index)

Administrative enforcement, supplement to, **3:81**

Administrative interpretation, **3:82**

Congressional intent, **3:76**

Cort v Ash, **3:95**

Flexibility to achieve remedial purpose, **3:88**

Judicial restraint, **3:85**

Legislative history, uses of, **3:90 et seq.**

Modes of interpretation, **3:86 et seq.**

Negative implication, **3:87**

INDEX

CONTRACTION ERA—Cont'd

- Implied private actions under 10b-5
 - Cont'd
 - Policies, **3:75**
 - Policy effectuation, **3:80**
 - Practicality, **3:83**
 - Reasons, **3:75**
 - Statutory jurisdictional grant, **3:79**
 - Statutory literalism, **3:89**
 - Statutory tort, **3:77**
 - Supplement to administrative enforcement, **3:81**
 - Vexatiousness, **3:84, 3:85**
 - Voidability, statutory, **3:78**
- Information possession criteria of insider liabilities, **7:576**
- Insider trading by issuers, **7:646**
- Overlapping remedies
 - Generally, **3:102 et seq.**
 - Comparison of elements of express and implied rights, **3:105**
 - Defense strategies, **3:103**
 - Exclusions, effect of, **3:108**
 - Falsity vs scheme, **3:106**
 - Nullification test, **3:104**
- SA § 11
 - Generally, **3:109 et seq.**
 - Defendants excluded, **3:112**
 - Documents excluded, **3:113**
 - Failure to satisfy substantive elements, **3:115**
 - Plaintiffs excluded, **3:111**
 - Securities excluded, **3:110**
 - Substantive elements, failure to satisfy, **3:115**
 - Transactions excluded, **3:110**
- SA § 12(2)
 - Generally, **3:116 et seq.**
 - Commercial paper, **3:119**
 - Defendants excluded, **3:121**
 - Documents excluded, **3:122**
 - Failure to satisfy substantive elements, **3:124**
 - Government securities, **3:118**
 - Municipal securities, **3:117**
 - Plaintiffs excluded, **3:120**
 - Securities excluded, **3:117 et seq.**

CONTRACTION ERA—Cont'd

- Overlapping remedies—Cont'd
- SA § 12(2)—Cont'd
 - Substantive elements, **3:124**
- SEA § 9
 - Generally, **3:125 et seq.**
 - Defendants excluded, **3:129**
 - Documents excluded, **3:130**
 - Failure to satisfy substantive elements, **3:132**
 - Government securities, **3:127**
 - Municipal securities, **3:127**
 - OTC securities, **3:126**
 - Plaintiffs excluded, **3:128**
 - Securities excluded, **3:126 et seq.**
 - Substantive elements, **3:132**
- SEA § 18
 - Generally, **3:133 et seq.**
 - Decisions rejecting IPA, **3:137**
 - Decisions sustaining IPA, **3:138**
 - Defendants excluded, **3:141**
 - Documents excluded, **3:142, 3:143**
 - Failure to satisfy substantive elements, **3:145**
 - Filed and unfiled documents, **3:142 et seq.**
 - Fischman rationale, **3:135**
 - Narrow focus of § 18, **3:136**
 - Plaintiffs excluded, **3:140**
 - Reexamination, reasons for, **3:134**
 - Scienter, **3:135**
 - Securities excluded, **3:139**
 - Substantive elements, **3:145**
 - Statutory cumulativity, **3:107**
 - Supreme Court approach, **3:104**
- Rule 10b-5 history generally, **3:32**
- SRO rules, implied liabilities, **14:71**
- State law, **3:184**

CONTRACT PLANNING

- See **Transaction Planning** (this index)

CONTRIBUTION

- Generally, **9:66 et seq.**
- Attorneys' fees, **9:75**

CONTRIBUTION—Cont'd

- Costs, **9:75**
- Court cases, **9:68**
- Indemnification, **9:76**
- Insurance, **9:76**
- Knowing defendants, **9:70**
- Limitation of actions, **9:74**
- Measure of, **9:73**
- Musick case, **9:68**
- Nonknowing defendants, **9:71**
- Proportionate liability and, **9:69**
- Settlement, **9:72**
- Statutory bases, **9:67**

CONTROL, SALES OF

- See also **Tender Offer Fraud** (this index)
- Buyer-seller requirements, **5:113**
- Conspiracies, **8:307**

CONTROL PERSON LIABILITY

- Generally, **7:451 et seq., 8:373 et seq.**
- Actions in concert, **8:294**
- Actual control, **5:156**
- Broker-dealers
 - Generally, **7:456**
 - Good faith defense, **8:394 et seq.**
- B test, **7:456**
- Conspiracies
 - Generally, **8:304 et seq.**
 - Control, sales of, **8:307**
- Contribution to violation, **7:458**
- Corporate policy, control over, **8:382 et seq.**
- Court cases, **8:380 et seq.**
- Culpable participation, **8:378, 8:388 et seq.**
- Disclosure of merger offers leading to board control changes, **6:61**
- Element of control, **8:379**
- Failure to act, **7:455**
- Good faith defense
 - Generally, **8:393 et seq.**
 - Broker-dealers, **8:394 et seq.**
 - SA § 15, **8:393 et seq.**
 - SEA § 20(a), **8:393 et seq.**
- Influence, proof of, **5:155**

CONTROL PERSON LIABILITY—Cont'd

- Insider trading charges
 - Generally, **7:451 et seq.**
 - All control persons, **7:453**
 - Amount of liability, **7:459**
 - Broker-dealer control persons, **7:456**
 - B test, **7:456**
 - Contribution to violation, **7:458**
 - Failure to act, **7:455**
 - Investment adviser control persons, **7:456**
- Knowledge
 - Failure to have preventive policies in place, **7:457**
 - Likelihood of violation, **7:454**
- Policy/procedure failures, **7:457**
- Private actions against, **7:486, 7:512**
- Reckless disregard
 - Failure to have preventive policies in place, **7:457**
 - Likelihood of violation, **7:454**
- Requirements, **7:452**
- Respondeat superior liability, **7:450**
- Substantial contribution to violation, **7:458**
- A test, **7:453**
- Insider trading penalties imposed on, **7:440**
- Investment adviser control persons, **7:456**
- Investment bankers for controlled companies, **5:175**
- Investment bankers for controlling companies, **5:177**
- Investment bankers representing controlled and controlling companies, **5:176**
- Joint and several liability
 - Generally, **9:33**
 - SA § 15, **9:25**
 - SEA § 20(a), **9:33**
- Knowledge
 - Failure to have preventive policies in place, **7:457**
 - Likelihood of violation, **7:454**

INDEX

CONTROL PERSON LIABILITY

—Cont'd

Law and fact questions, **8:381**
Legislative history, **8:375**
Madoff Ponzi scheme, **20:5**
Parking stock in control fights, **7:146**
Participation, culpable, **8:378, 8:388 et seq.**
Parties and privity
 Generally, **8:373 et seq.**
 See also **Parties** (this index)
Pleading
 Affirmative conduct, **8:321**
 Aiding-abetting, **8:324**
 Choice of parties, **8:320**
 Conspiracy, **8:325**
 No affirmative conduct, **8:322**
 Participation, **8:323**
 Special elements, **8:326**
Policy/procedure failures, **7:457**
Potential control, **5:156**
Privity
 Implied liability, **8:281**
 SA § 12(2), **8:271**
 SA § 17(a), **8:281**
 Sales fraud, **8:271**
Proof of, **5:155**
Proportionate liability, **9:53**
Reckless disregard
 Failure to have preventive policies in place, **7:457**
 Likelihood of violation, **7:454**
Requirements, **7:452**
Rule 10b-5 liability
 Actions in concert, **8:294**
 Aider-abettor liability, **8:327 et seq.**
 Concerted action, **8:294**
 Conspiracies, **8:304 et seq.**
 Inducement, **8:295**
 Injunction suits, **8:303**
 Insiders, inducement by, **8:299**
 Issuers, inducement by, **8:297**
 Participants, **8:292, 8:294**
 Pleading, **8:319 et seq.**
SA § 15, **8:393 et seq.**
Sales, unfair terms, **5:191**
SEA § 20(a), **8:393 et seq.**

CONTROL PERSON LIABILITY

—Cont'd

Standard of participation, **8:377**
Statutory language, **8:374**
Substantial contribution to violation, **7:458**
Unfair terms in control sales, **5:191**
Valuation of control premiums and discounts, **5:166**

COOPERATION

SEC investigation, **20:15**

COOPERATIVE APARTMENTS

Shares in as securities, **5:26**

COORDINATED SEC-STATE-SRO INVESTIGATIONS

Generally, **13:322 et seq.**
ARS securities and market, **13:325**
ARS seller management liability, **13:330**
ARS violations, **13:326**
Auction Rate Security (ARS), generally, **13:323**
Criminal aspects, **13:331**
Government regulatory suits, **13:329**
Investor recovery as objective, **13:324**
Private litigation, **13:327, 13:328**
State law, private litigation, **13:328**

CORNERING THE MARKET

Manipulation, **7:134**

CORONAVIRUS

Covid-19 Pandemic (this index)

CORPORATE GOVERNANCE

Generally, **8:414**

CORPORATE OFFICERS

See **Officers, Corporate** (this index)

CORRECTION

Arbitration, challenging awards, **15:58**
Private actions, correction and price drop, Proposition 2, **8:580**

CORRUPTION

Coordinated investigations following
subprime mortgage crisis,
13:338

COSTS AND EXPENSES

Costs of enforcement, insiders and
insider trading, **7:195**

Foreign Corrupt Practices Act
(FCPA), affirmative defense,
19:4

COUNSEL, RIGHT TO

See **Attorneys** (this index)

COURT DECISIONS

Aider-abettor liability, **8:328 et seq.**

Arbitration provisions, validity of,
15:3, 15:71

Asterisks, **1:2**

Birnbaum Rule (this index)

Broker-dealer supervision liabilities,
14:176

Cady, Roberts & Co case, **App E**

Central Bank decision, **7:79, 7:85**

Chadbourne case, **3:217 et seq.**

Chiasson/Newman cases, **7:387 et
seq.**

Citation formats, **1:3**

Contested cases, **1:16**

Contribution, **9:68**

Control person liability, **8:380 et seq.**

Cooper case, **8:419**

Corporate officers, Rule 10b-5
liabilities, **8:415 et seq.**

Damages

Benefit of bargain measure, **9:6**

Circuit Courts, **9:4 et seq.**

Consequential damages, **9:8**

Constructive trust measure, **9:7**

Disgorgement, **9:7**

District court confusion, **9:10**

Out-of-pocket measure, **9:5**

Supreme Court, **9:3**

Unjust enrichment, **9:7**

Directors, Rule 10b-5 liabilities,
8:415 et seq.

Disclosures, **6:281**

Disgorgement, **9:42**

Fischman rationale, **3:135**

COURT DECISIONS—Cont'd

Front running, **7:142**

Gould case, **8:417**

Grace case, **8:423**

Gutfreund case, **8:420**

Howey test, **5:22**

Implied liabilities under SRO rules,
14:64 et seq.

Indirect-impersonal dealing, GAAP
violations, **7:62 et seq.**

International Brotherhood of
Teamsters case, **5:27**

International transactions, **11:174**

IPA, current status of, **3:148 et seq.**

Joiner Leasing Corp case, **5:21**

Joint and several liability, **9:42**

Lampf case, **11:63 et seq.**

Lipkind case, **11:63 et seq.**

Loss causation, private actions in
Supreme Court decisions, **8:556
to 8:570**

Margin rules, **14:60**

Materiality tests

Mills case, **8:13**

TSC cases, **8:14**

McMahon case, **15:3, 15:71**

Mills case, **8:13, 8:558**

Misappropriation theory of insider
liabilities, **7:582 et seq.**

Musick case, **9:68**

National Telephone case, **8:422**

Notations, **1:2**

Omnicare decision, fact vs. opinion
standard, **8:3**

Petigrow case, **11:63 et seq.**

Pinter case, **14:30, 14:38**

Plaut case, **11:69**

Pleva case, **11:63 et seq.**

Post-Chadbourne cases, **3:220 to
3:222**

Private actions, Supreme Court deci-
sions. **Private Actions** (this
index)

Prupis case, **11:63 et seq.**

Recklessness, **11:141 et seq., 11:162
et seq., 14:83 et seq.**

Risk disclosures, **6:281**

Rodriguez case, **15:3, 15:71**

INDEX

COURT DECISIONS—Cont'd

- SA § 11, **14:6**
- Scienter, **14:83 et seq.**
- SRO rules, implied liabilities, **14:64 et seq.**
- Stirling Homex case, **8:416**
- Stoneridge case, **7:82, 7:83**
- TSC cases, **8:14**
- UBS Securities decision, proof of retaliatory intent under Sarbanes-Oxley Act, **22:24**
- Uncontested cases, **1:17**
- Unfairness
 - Generally, **5:183 et seq.**
 - Fair terms, **5:185**
 - SEC decisions, **5:186**
 - Unfair terms, **5:184**
- United Benefit Life Ins Co case, **5:24**
- United Housing Foundation, Inc case, **5:26**
- Ward La France Truck Corp case, **App D**
- What is a security
 - Generally, **5:20 et seq.**
 - Flexible fund annuities, **5:25**
 - Howey test, **5:22**
 - International Brotherhood of Teamsters case, **5:27**
 - Joiner Leasing Corp case, **5:21**
 - Landreth Timber Co case, **5:29**
 - Marine Bank case, **5:28**
 - Reeves v. Ernst & Young case, **5:30**
 - SEC v. Edwards case, **5:31**
 - United Benefit Life Ins Co case, **5:24**
 - United Housing Foundation, Inc case, **5:26**
 - Variable annuities, **5:23**

COVID-19 PANDEMIC

- Generally, **27:1 to 27:9**
- Class actions
 - Foreign companies, misleading disclosure re: impact and effect of Covid-19 on, **27:7**
 - Insider trading, **27:4**
 - Material nonpublic information, misuse of, **27:4**

COVID-19 PANDEMIC—Cont'd

- Class actions—Cont'd
 - Misleading disclosures, **27:3, 27:5 to 27:7**
 - Misuse of material nonpublic information, **27:4**
 - Other Covid-19 related class actions, **27:8**
 - Private securities, **27:1**
 - Tests and treatments, misleading disclosure re:, **27:3**
 - Video conferencing, misleading disclosure re: capacity of provider for remote learning to meet surge demand, **27:6**
 - Video conferencing, misleading disclosure re: privacy and security for, **27:5**
- DOJ criminal actions, **27:2**
- Foreign companies, misleading disclosure re: impact and effect of Covid-19 on, class actions, **27:7**
- Insider trading, class actions, **27:4**
- Material nonpublic information, misuse of, class actions, **27:4**
- Misleading disclosures, class actions, **27:3, 27:5 to 27:7**
- Misuse of material nonpublic information, class actions, **27:4**
- Other Covid-19 related class actions, **27:8**
- Overview, **27:1**
- Private securities, class actions, **27:1**
- Private securities class actions related to, **27:1**
- Securities enforcement actions, **27:1, 27:2**
- Tests and treatments, misleading disclosure re:, class actions, **27:3**
- Video conferencing, misleading disclosure re: capacity of provider for remote learning to meet surge demand, class actions, **27:6**
- Video conferencing, misleading disclosure re: privacy and security for, class actions, **27:5**

CREDIBILITY

Madoff Ponzi scheme, **20:2**

CREDIT SUISSE SECURITIES

LITIGATION

Coordinated investigations following
subprime mortgage crisis,
13:337

CRIMINAL ENFORCEMENT

Generally, **13:121 et seq., 13:253 et
seq.**

Actual knowledge, scienter, **8:176**

Administrative enforcement
compared, SEC, **13:95**

Advantages and disadvantages

CFTC references, **13:262**

SEC references, **13:132**

Aider-abettor liability

Generally, **8:327 et seq., 8:372**

Absence of benefit, **8:366**

Benefit, **8:364 et seq.**

Court cases, **8:328 et seq.**

Definitions, **8:349**

Elements, **8:352**

Extent of benefit, **8:367**

High conscious intent, **8:358**

Janus Capital, preparation for or
assistance to another, **8:336 et
seq.**

Knowledge of violation, **8:356 et
seq.**

Nature of benefit, **8:367**

Origins of doctrine, **8:351**

Presence of benefit, **8:365**

Primary violations, **8:355**

PSLRA, **8:347**

Requirements, **8:352**

SEA § 20(f), **8:348**

Substantial assistance

Generally, **8:359 et seq.**

Extraordinary actions, **8:362**

Inaction, **8:363**

Ordinary actions, **8:362**

Proximate cause, **8:360**

Silence, **8:363**

Timing, **8:361**

Ancillary relief

CFTC references, **13:260**

CRIMINAL ENFORCEMENT

—Cont'd

Ancillary relief—Cont'd

SEC references, **13:130**

Burden of proof, insider trading
charges, **7:366**

CFTC references

Generally, **13:254**

Advantages and disadvantages,
13:262

Ancillary relief, **13:260**

Character, **13:253**

Collateral effects, **13:259**

Duration, **13:261**

Grand juries, **13:256**

Participation of agency, **13:255**

Plea bargaining, **13:257**

Proof standards, **13:258 et seq.**

Sentencing, **13:261**

Character

CFTC references, **13:253**

SEC references, **13:121**

Collateral effects

CFTC references, **13:259**

SEC references, **13:129**

Commodities fraud generally, **1:24**

Constructive knowledge, **8:187**

Continuations of civil proceedings,
13:137, 13:138

Control person liability

Generally, **8:373 et seq.**

See also **Control Person Liability**
(this index)

Coordinated SEC-state-SRO
investigations, **13:331**

Defenses, **13:128**

Deferred prosecution agreement,
JPMorgan/Madoff, **10:5**

Diligence, lack of, **8:236**

Discovery

Civil-criminal flow of information,
13:139

Criminal-civil flow of information,
13:139.10, 13:141

Failure to warn of criminal
proceeding in civil proceed-
ing, **13:142**

INDEX

CRIMINAL ENFORCEMENT

—Cont'd

- Double jeopardy limitations, insider trading charges, **7:443**
- Duration
 - CFTC references, **13:261**
 - SEC references, **13:131**
- Foreign Corrupt Practices Act (FCPA)** (this index)
- Global Ponzi scheme. **Madoff Ponzi Scheme** (this index)
- Grand juries
 - CFTC references, **13:256**
 - SEC references, **13:124**
- Ignorance of law, **13:128**
- Implied Liability** (this index)
- Insider trading
 - Generally, **7:415 et seq., 7:460 et seq.**
 - See also **Administrative Enforcement** (this index)
 - Amount of penalties, **7:466**
 - Burden of proof
 - Generally, **7:366**
 - Defenses, **7:369**
 - Institutions, **7:367**
 - Connection with requirement
 - Market transactions, **7:370**
 - Rule 10b-5, **7:370**
 - Rule 14e-3, **7:371**
 - Tender offers, **7:371**
 - Defenses
 - Generally, **7:350**
 - Amount defined, **7:355**
 - Binding contract defense, **7:351**
 - Burden of proving, **7:369**
 - Common terms and issues, **7:355 et seq.**
 - Date defined, **7:357**
 - Delegation alternative to amount, price and date, **7:358**
 - Exclusiveness of defenses, **7:360**
 - Institutional defenses, **7:361**
 - Instructions defense, **7:352**
 - Overriding limitations, **7:359**
 - Price defined, **7:356**

CRIMINAL ENFORCEMENT

—Cont'd

- Insider trading—Cont'd
 - Defenses—Cont'd
 - Relation to other laws, **7:362**
 - Systematic plans defense, **7:353**
 - Tracking plans defense, **7:354**
 - Disgorgement, **7:465**
 - Institutional defenses, **7:361**
 - Institutions, burden of proof, **7:367**
 - Judge or jury, **7:467**
 - Mail and wire fraud, **7:463**
 - Martha Stewart case. Scienter, below in this group
 - Misappropriation theory, **7:578 et seq.**
 - Motion practice, **7:365**
 - New York district federal prosecutions, **App J**
 - Parties, **7:363**
 - Penalties, **7:466**
 - Pleading
 - Generally, **7:364**
 - Scienter, **7:398**
 - Procedural aspects, **7:363 et seq.**
 - Proof, **7:368**
 - Quantum of proof, **7:366, 7:367**
 - Raj Rajaratnam case, **21:1 et seq.**
 - Restitution, **7:465**
 - RICO, **7:414, 7:464**
 - Scienter
 - Generally, **7:372 et seq.**
 - Fiduciary theory
 - Tippers, **7:381**
 - Trading insiders, **7:377**
 - Trading tippees, **7:385**
 - Mail and wire fraud, **7:413**
 - Martha Stewart case
 - Generally, **7:403 et seq.**
 - Acquittal, **7:411**
 - Background of case, **7:404**
 - Imclone stock sale, **7:404**
 - Indictment, **7:405**
 - Inferences from evidence, **7:409**
 - Intent inference test, **7:410**
 - Limits on argument and evidence, **7:407**

CRIMINAL ENFORCEMENT

—Cont'd

Insider trading—Cont'd
 Scienter—Cont'd
 Martha Stewart case—Cont'd
 Misrepresentation, **7:406**
 Sufficiency of evidence test, **7:408**
 Misappropriation theory
 Tippers, **7:382**
 Trading insiders, **7:378**
 Trading tippees, **7:386**
 Pleading, **7:398**
 Proof, **7:399 et seq.**
 Rule 10b-5, **7:374 et seq.**
 Rule 14e-3, **7:412**
 Tippers
 Generally, **7:379 et seq.**
 Proof, **7:401**
 Trading insiders
 Generally, **7:375 et seq.**
 Proof, **7:400**
 Trading tippees
 Generally, **7:383 et seq.**
 Proof, **7:402**
 Securities violations, **7:462**
 Tippers, scienter, **7:379 et seq.**
 Intent, **8:197**
 Investigations
 Generally, **13:1 et seq.**
 See also **Investigations** (this index)
 JPMorgan/Madoff, deferred prosecution agreement, **10:5**
 Mail and wire fraud
 Generally, **7:171, 7:463**
 Scienter, **7:413**
 Martha Stewart case
 Generally, **7:403 et seq.**
 Acquittal, **7:411**
 Background of case, **7:404**
 Imclone stock sale, **7:404**
 Indictment, **7:405**
 Inferences from evidence, **7:409**
 Insiders and inside trading, generally, **7:403 et seq.**
 Intent inference test, **7:410**

CRIMINAL ENFORCEMENT

—Cont'd

Martha Stewart case—Cont'd
 Limits on argument and evidence, **7:407**
 Misrepresentation, **7:406**
 Scienter, generally, **7:403 et seq.**
 Sufficiency of evidence test, **7:408**
 Motion practice, **7:365**
 Negligence and scienter, **8:236**
 No-knowledge defenses, **13:128**
 Parallel civil and criminal proceedings
 Generally, **13:133 et seq.**
 Battle over discovery, **13:135**
 CFTC references, **13:263**
 Civil-criminal flow of information, **13:139**
 Continuation of criminal proceedings, **13:140**
 Continuations of civil proceedings, **13:137, 13:138**
 Criminal-civil flow of information, **13:141, 13:143**
 Criteria for stay of discovery, **13:136**
 Discovery, **13:138, 13:139, 13:141, 13:142, 13:143**
 Failure to warn of criminal proceeding in civil proceeding, **13:142**
 Reasons for concern, **13:134**
 SEC references, **13:133 et seq.**
 Participation of agency
 CFTC references, **13:255**
 SEC references, **13:123**
 Penalty actions
 Generally, **7:438 et seq.**
 See also **Securities and Exchange Commission** (this index)
 Plea bargaining
 CFTC references, **13:257**
 SEC references, **13:125**
 Pleadings, **7:364**
 Private actions, scienter, **8:65**
 Proof standards
 CFTC references, **13:258 et seq.**
 SEC references, **13:126 et seq.**

INDEX

CRIMINAL ENFORCEMENT

—Cont'd

- Quantum of proof, **7:366**
- Raj Rajaratnam case, **21:1 et seq.**
- References from administrative agencies
 - CFTC references, **13:254**
 - SEC references, **13:122**
 - SRO references, **13:304**
- Sanctions under rules generally, **3:4**
- Scienter
 - Actual knowledge, **8:176**
 - Constructive knowledge, **8:187**
 - Diligence, lack of, **8:236**
 - Intent, **8:197**
 - Negligence, **8:236**
 - Private actions, **8:65**
 - SEC references, **13:127**
 - Unreasonable conduct, **8:236**
- SEC
 - Investigations, information sharing by Office of Market Intelligence, **20:14**
 - Raj Rajaratnam case, early investigation, **21:3**
- References
 - Generally, **13:122**
 - Advantages and disadvantages, **13:132**
 - Ancillary relief, **13:130**
 - Character, **13:121**
 - Collateral effects, **13:129**
 - Defenses, **13:128**
 - Duration, **13:131**
 - Grand juries, **13:124**
 - Ignorance of law, **13:128**
 - No-knowledge defenses, **13:128**
 - Participation of agency, **13:123**
 - Plea bargaining, **13:125**
 - Proof standards, **13:126 et seq.**
 - Scienter, **13:127**
 - Sentencing, **13:131**
 - Willfulness, **13:127**
- Role in, **10:1, 10:4**
- Securities fraud generally, **1:22**
- Securities Litigation Uniform Standards Act (SLUSA), effect of, **3:216**

CRIMINAL ENFORCEMENT

—Cont'd

- Sentencing
 - CFTC references, **13:261**
 - SEC references, **13:131**
- SRO references, **13:304**
- State investigations, **13:320**
- Touting, scienter, **8:99**
- Unreasonable conduct, **8:236**
- Whistleblowers, retaliation, **22:16**
- Willfulness, **13:127**

CROSS TRADING

- Manipulation practices, **7:135**

CROWDFUNDING

- Generally, **14:207 et seq.**
- Accredited investors, JOBS Act, current status, **14:219**
- Background, **14:207**
- Broker-dealer liability, **14:215**
- Disclosure, JOBS Act, current status, **14:219**
- Enforcement priorities, **14:208**
- Fraud, potential, **14:209, 14:212**
- History, **14:210 et seq.**
- Implementation, JOBS Act, current status, **14:219**
- JOBS Act, **14:214 et seq.**
- Kickstarter, **14:211**
- Loomi lampshade, **14:211**
- Ogre, **14:211**
- Portals, **14:217**
 - Description, **14:223**
- Proposed rules, reaction, **14:220, 14:221**
- Registration of securities, **14:216**
- Regulation A, application of law, **14:215**
- Regulation D, application of law, **14:215**
- Risk, **14:212**
- Safecast Geiger counter, **14:211**
- SEC rules and regulations, **14:216**
- Securities and Exchange Commission (SEC), **14:218**
- Solicitation, JOBS Act, current status, **14:219**
- State regulators, reaction, **14:222**

CROWDFUNDING—Cont’d

Vetting projects, **14:212**

CRYPTOCURRENCIES

Generally, **24:1**

Bitcoin, **25:3**

Class actions, **24:6**

Commodities, virtual currencies as, **25:6**

Commodity Futures Trading Commission (CFTC)

Generally, **25:1 to 25:10**

Background, **25:3**

Bitcoin, **25:3**

Criminal activity, **25:4**

Enforcement actions, **25:8**

Jurisdiction, **25:2, 25:7**

Regulation and oversight, **25:5**

Spot markets, **25:7**

Statutory framework, **25:2**

Warning to investors, **25:9**

Criminal activity, **25:4**

Enforcement actions

CFTC, **25:8**

Order on motions for summary judgment, SEC v. Ripple Labs, **24:5**

SEC, **24:3**

SEC v. Ripple Labs, **24:4**

Jurisdiction of CFTC, **25:2, 25:7**

Order on motions for summary judgment, SEC v. Ripple Labs, **24:5**

Private litigation, **24:6**

Regulation

CFTC, **25:5**

SEC, **24:1 to 24:7**

SEC

21(a) Report, **24:2**

Enforcement actions, **24:3**

Order on motions for summary judgment, SEC v. Ripple Labs, **24:5**

SEC v. Ripple Labs, **24:4**

Future regulatory approach, **24:7**

Regulation by, **24:1 to 24:7**

Summary judgment, SEC v. Ripple Labs, **24:5**

CUSTODIAN OF CLIENT ASSETS

Madoff Ponzi scheme, **20:2**

**“CUSTOMER” UNDER
SECURITIES INVESTOR
PROTECTION ACT**

Madoff Ponzi scheme, **20:3**

CYBERSECURITY

Generally, **26:1 et seq.**

Broker-dealer, hacking of, **26:4, 26:5**

Customer data

Disclose hacking, failure to, **26:1**

Protect, failure to, **26:5**

Cyber breaches. Private securities litigation, cyber breaches, below

Disclose hacking, failure to, customer data, **26:1**

Failure to

Disclose hacking, **26:1**

Implement identity theft program, **26:4, 26:5**

Protect customer data, **26:5**

Final rule

Cybersecurity risk management, **26:9**

Governance, **26:9**

Incident disclosure, **26:9**

Strategy, **26:9**

Governance, final rule, **26:9**

Identity theft program, failure to implement, **26:4, 26:5**

Illegal trading, **26:2, 26:3**

Incident disclosure, final rule, **26:9**

Mergers and acquisitions, **26:2**

Misappropriation

Customer data, **26:5**

Non-public information, **26:2, 26:3**

Non-public information, misappropriation of, **26:2, 26:3**

Private securities litigation, cyber breaches

Class actions

Securities Act of 1933, **26:7**

Securities Exchange Act of 1934, Rule 10b-5, **26:6**

Fiduciary duties, **26:8**

Shareholder derivative actions, **26:8**

INDEX

CYBERSECURITY—Cont'd

Regulation S-P, **26:4, 26:5**
Risk management, final rule, **26:9**
Safeguards rule, SEC, **26:4, 26:5**
Strategy, final rule, **26:9**

DAMAGES

Generally, **9:1 et seq.**
Ancillary remedies and, **9:17**
Arbitrations
Attorneys' fees, **15:38**
Costs, **15:38**
Interest, **15:38**
Mitigation of damages, **15:35**
Punitive, **15:36, 15:37, 15:74**
Attorneys' fees
Generally, **9:18**
Arbitrations, **15:38**
Broker-dealer liability, **14:53**
Contribution, **9:75**
Benefit of bargain measure, **9:6**
Broker-dealer liability
Express actions, **14:46, 14:51**
Implied actions, **14:95 et seq.**
Rule 10b-5, **14:95 et seq.**
SA § 11, **14:15**
Causation, **8:553**
Churning, **14:136**
Civil Penalties (this index)
Class actions, **9:13**
Consequential damages, **9:8**
Constructive trust measure, **9:7**
Contribution (this index)
Costs
Arbitrations, **15:38**
Broker-dealer liability, **14:53**
Contribution, **9:75**
Court cases
Benefit of bargain measure, **9:6**
Circuit Courts, **9:4 et seq.**
Consequential damages, **9:8**
Constructive trust measure, **9:7**
Disgorgement, **9:7**
District court confusion, **9:10**
Out-of-pocket measure, **9:5**
Supreme Court, **9:3**
Unjust enrichment, **9:7**
Disgorgement (this index)

DAMAGES—Cont'd

Enforcement action civil penalties
CFTC, **13:238**
Financial test, **13:238**
SEC, **13:83**
Fraud on the market theory (FOMT)
Generally, **8:520 et seq., 8:552**
See also **Reliance** (this index)
Indemnification, **9:76**
Insider trading violations, **7:488**
Insurance, **9:76**
Interest, **15:38**
Joint and Several Liability (this index)
Lost profits, rescission and, **14:101**
Market based price determinations, **8:525**
Multiple recoveries, **9:15**
Other damages, **9:14**
Out-of-pocket damages, broker-dealer liability, **14:103**
Out-of-pocket measure, court cases, **9:5**
Price, market based price determinations, **8:525**
Proportionate Liability (this index)
Punitive Damages (this index)
Reliance
Generally, **8:484 et seq.**
See also **Reliance** (this index)
Causation, **8:553**
Fraud on the market theory (FOMT), **8:552**
Rescissional damages, **14:51**
Rule 10b-5, **14:95 et seq.**
SA § 11, **14:15**
SEA § 21D(e), **9:11**
Statutory bases, **9:2**
Unjust enrichment, **9:7**

DAY TRADING

NASD risk disclosure requirements, **6:284**

DECEPTION

Generally, **5:79 et seq.**
Directors, deception of, **5:82**
Economic effect of deception, **5:84**
Knowledge, imputation of, **5:85**

DECEPTION—Cont'd

Meaning, **5:80**
 Modified views, **5:82 et seq.**
 Pleading, **5:88**
 Policies, **5:87**
 Reasons, **5:87**
 Shareholders, deception of, **5:83**
 Strict view, **5:81**

DEFENSES

Foreign Corrupt Practices Act (FCPA) (this index)

DEFINED BENEFIT PLANS

Employee Benefit Plans (this index)

DEFINITIONS

See also **What is a Security** (this index)
 Aider-abettor, **8:349**
 Causation, **5:90**
 Churning, **14:138**
 Customer, **15:10**
 Direct-personal transactions, **1:2**
 Manipulation, **7:119**
 Materiality, **8:9**
 Material nonpublic information, **7:152**
 Mergers, **6:147**
 MNPI, **7:152**
 Opposite side traders, **7:494**
 Parking, **7:144**
 Prospectus, **3:41 et seq.**
 Proxy, **6:208**
 Same side traders, **7:495**
 Scalping, **12:3**
 Scienter, **8:155 et seq.**
 Security. See **What is a Security** (this index)
 Solicitation, **6:209**
 Tip, **7:624**
 Trade, **1:2**
 Whistleblowers, **22:5, 22:23 et seq.**

DEPOSITORY TRUST

CORPORATION (DTC)

Madoff Ponzi scheme, BMIS account, **20:6**

DERELICTION OF DUTIES

Madoff Ponzi scheme, **20:5, 20:9**

DERIVATIVE SUITS

Class actions compared, **3:212**
 Jurisdictional means, **11:43**
 Private securities litigation, cyber breaches, **26:8**
 Securities Litigation Uniform Standards Act, effect on, **3:212**

DEXIA v. BEAR STEARNS LITIGATION

Coordinated investigations following subprime mortgage crisis, **13:335**

DIGITAL REALTY TRUST, INC. v. SOMERS

Whistleblowers, definition, **22:23 et seq.**

DILIGENCE, LACK OF

Generally, **8:229 et seq.**
 See also **Due Diligence** (this index)
 Burden of proof, **8:238**
 Criminal cases, **8:236**
 Injunctions, **8:234**
 Insufficiency, **8:237**
 Necessity, **8:231, 8:232**
 Proof, **8:239**
 Scienter, **8:234**
 SEC decisions, **8:235**
 Sufficiency, **8:233 et seq.**
 Versions of scienter, relations among, **8:230**

DIRECT-IMPERSONAL DEALING

Generally, **6:1 et seq., 12:12**
 Actual knowledge and scienter, **8:171**
 Antifraud provisions
 Materiality standard
 Generally, **6:165 et seq.**
 Rule 10b-5, **6:168**
 Rule 14a-9, **6:166**
 Rule 14c-6, **6:167**
 Mergers, **6:151**
 Scienter standard
 Generally, **6:169 et seq.**
 Rule 10b-5, **6:171**
 Rule 14a-9, **6:169**
 Rule 14c-6, **6:170**
 Buyer-seller requirement, **6:182**

INDEX

DIRECT-IMPERSONAL DEALING

—Cont'd

- Contested offers
 - Generally, **6:8 et seq.**
 - Mode of attack, **6:8**
 - Publicity, prefiling, **6:10**
 - Relief available, **6:9**
- Direct and indirect dealings, **4:1**
- Disclosure
 - Generally, **6:212 et seq., 6:267**
 - Advance letters
 - Proxy rules, **6:240**
 - Registration under SA, **6:241**
 - Aggregate materiality, **6:253**
 - Annual reports, **6:242**
 - Application of funds, **6:260**
- Assets
 - Generally, **6:261 et seq.**
 - Existence of, **6:262**
 - Reasons, **6:273**
 - Value of assets, below
- Balance, **6:229**
- Buried facts, **6:232**
- Cash flow, **6:260**
- Clarity, **6:225**
- Comparative tables, **6:219**
- Consistency, **6:228**
- Conspicuity. Prominence, below
- Context, **6:235**
- Corrections
 - Generally, **6:290 et seq., 6:321**
 - See also Supplementary communications, below
 - Another's statements, correction of, **6:319**
 - Blue sky laws, **6:292**
 - Broker-dealer fraud, **6:312**
 - Common law, **6:291**
 - False reports to SEC, **6:313**
 - Fraud in general, **6:314 et seq.**
 - How long correction is necessary
 - Rule 14a-9, **6:304**
 - Rule 14c-6, **6:308**
 - SA § 11, **6:296**
 - How long is correction necessary
 - Generally, **6:323, 6:325**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Disclosure—Cont'd
- Corrections—Cont'd
 - How long is correction necessary—Cont'd
 - Direct-personal transactions, **6:324**
 - Indirect-impersonal transactions, **6:326**
- How must correction be made
 - Rule 10b-5, **6:328**
 - Rule 14a-9, **6:306**
 - Rule 14c-6, **6:310**
 - SA § 11, **6:298**
- Market manipulation, **6:300**
- Proxy fraud, **6:302**
- Registration fraud, **6:294 et seq.**
- Rule 10b-5 requirements
 - Fraud in general, **6:314 et seq.**
 - How long is correction necessary, **6:323 et seq.**
 - How must correction be made, **6:328**
 - What makes correction necessary, **6:319 et seq.**
 - What must be corrected, **6:327**
 - Who entitled to correction, **6:328**
- Rule 14a-9, **6:303 et seq.**
- Rule 14c-6, **6:307 et seq.**
- SA § 11, **6:294 et seq.**
- SA § 12(2), **6:293**
- SA § 17(a), **6:299**
- Sales fraud
 - Express liability, **6:293**
 - Implied liability, **6:299**
- SEA § 9(a), **6:300**
- SEA § 10, **6:301**
- SEA § 14, **6:302**
- SEC, false reports to, **6:313**
- State law, **6:292**
- Tender offer fraud, **6:311**
- What makes correction necessary
 - Generally, **6:319**

**DIRECT-IMPERSONAL DEALING
—Cont'd**

Disclosure—Cont'd
 Corrections—Cont'd
 What makes correction necessary—Cont'd
 Direct-personal transactions, **6:320**
 Indirect-impersonal transactions, **6:322**
 Rule 14a-9, **6:303**
 Rule 14c-6, **6:307**
 SA § 11, **6:295**
 What must be corrected
 Rule 10b-5, **6:327**
 Rule 14a-9, **6:305**
 Rule 14c-6, **6:309**
 SA § 11, **6:297**
 Who entitled to correction
 Rule 10b-5, **6:328**
 Rule 14a-9, **6:306**
 Rule 14c-6, **6:310**
 SA § 11, **6:298**
 Cross references, **6:233**
 Detail, **6:234**
 Distribution, **6:214 et seq.**
 Earnings
 Generally, **6:254**
 Inherently misleading statements, **6:256**
 Interim, **6:259**
 Misrepresentations, **6:255**
 Nondisclosure of, **6:257**
 Predictions, **6:255**
 Exchange offers, **6:12**
 Form and substance, **6:235**
 Interim earnings, **6:259**
 Interpretation, **6:236**
 Level, **6:227**
 Locus, **6:214 et seq.**
 Materiality
 Generally, **6:248 et seq.**
 Aggregate, **6:253**
 Might, use of term, **6:249**
 Practical problems, **6:251**
 Probably would, use of term, **6:250**

**DIRECT-IMPERSONAL DEALING
—Cont'd**

Disclosure—Cont'd
 Materiality—Cont'd
 Specific items, materiality of, **6:252**
 Would, use of term, **6:249**
 Misrepresentations
 Earnings, **6:255**
 Value of assets
 Generally, **6:270**
 Defenses, **6:271**
 Precautions, **6:272**
 Numerical information, **6:237**
 Opposition communications, **6:247**
 Organization, **6:226**
 Overall effect, **6:238**
 Predictions, earning, **6:255**
 Presentation, **6:224 et seq.**
 Prominence
 Generally, **6:230 et seq.**
 Buried and scattered facts, **6:232**
 Similar emphasis, **6:231**
 Public sales, **6:12**
 Repetition, **6:233**
 Risk
 Generally, **6:275 et seq.**
 CFTC requirements, **6:289**
 Context, **6:275**
 Court cases, **6:281**
 Day trading, **6:284**
 Extended hour trading, **6:285**
 Margin trading, **6:286**
 NASD requirements, **6:283 et seq.**
 Plain English requirements, **6:278**
 Safe harbor, **6:282**
 SA filings, **6:279**
 SEA filings, **6:280**
 Short selling, **6:287**
 Specific requirements, **6:277**
 Uninsured products, **6:288**
 Rule 10b-5 requirements, **6:218**
 SA § 5 requirements, **6:217**
 Scattered facts, **6:232**
 SEA § 14(a) requirements, **6:215**
 SEA § 14(c) requirements, **6:216**

INDEX

DIRECT-IMPERSONAL DEALING

—Cont'd

Disclosure—Cont'd
Sources of funds, **6:260**
Sources of requirements
Generally, **6:220 et seq.**
Antifraud provisions, **6:222**
Specific items, **6:221**
Timing, **6:223**
Specific information requirements,
6:2
Style, **6:224 et seq.**
Supplementary communications
Generally, **6:239 et seq.**
See also Corrections, above
Advance letters
Proxy rules, **6:240**
Registration under SA, **6:241**
Annual reports, **6:242**
Cover letters, **6:243**
Followup solicitations, **6:244**
Generally available information,
6:246
Other communications, **6:245**
Transmittal letters, **6:243**
Timing requirements, **6:223**
Value of assets
Generally, **6:263 et seq.**
Firm offers, **6:265**
Hard data, **6:264**
Misrepresentation
Generally, **6:270**
Defenses, **6:271**
Precautions, **6:272**
Modified view
Disposition plans, **6:266**
Hard data, **6:264**
Other situations, **6:268**
Policies, **6:269**
Reasons, **6:269**
Replacement costs, **6:267**
Traditional view, **6:263**
Distributions
Generally, **6:4**
Disclosure, **6:12**
Exchange offers, below
Registered offerings, **6:5**
Unregistered offerings, **6:6**

DIRECT-IMPERSONAL DEALING

—Cont'd

Exchange offers
Generally, **6:4, 6:7**
Contested offers
Generally, **6:8 et seq.**
Mode of attack, **6:8**
Publicity, prefilings, **6:10**
Relief available, **6:9**
Standing to challenge, **6:11**
Disclosure, **6:12**
Registered offerings, **6:5**
Unregistered offerings, **6:6**
Fraud on the market
Generally, **8:520 et seq.**
See also **Reliance** (this index)
Issuer tender offers
Generally, **6:141**
Disclosure requirements, **6:144**
Price, **6:142**
Redemptions, **6:145**
Standing to challenge, **6:143**
Market-informing responsibilities,
12:7
Mediation, **15:69**
Mergers
Generally, **6:146 et seq.**
Antifraud provisions
Generally, **6:158 et seq.**
Buyer-seller requirement, **6:182**
Causation
Generally, **6:179 et seq.**
Rule 10b-5, **6:181**
Rule 14a-9, **6:179**
Rule 14c-6, **6:180**
Comparative language, **6:164**
Connection requirement
Generally, **6:183 et seq.**
Rule 10b-5, **6:185**
Rule 14a-9, **6:183**
Rule 14c-6, **6:184**
Federal laws generally, **6:151**
Jurisdictional means
Generally, **6:188 et seq.**
Rule 10b-5, **6:190**
Rule 14a-9, **6:188, 6:189**
Materiality standard
Generally, **6:165 et seq.**

DIRECT-IMPERSONAL DEALING

—Cont'd

Mergers—Cont'd
 Antifraud provisions—Cont'd
 Materiality standard—Cont'd
 Rule 10b-5, **6:168**
 Rule 14a-9, **6:166**
 Rule 14c-6, **6:167**
 Operation, areas of, **6:163**
 Private actions, **6:160 et seq.**
 Privity
 Generally, **6:172 et seq.**
 Rule 10b-5, **6:175**
 Rule 14a-9, **6:173**
 Rule 14c-6, **6:174**
 Reliance
 Generally, **6:176 et seq.**
 Rule 10b-5, **6:178**
 Rule 14a-9, **6:176**
 Rule 14c-6, **6:177**
 Rule 10b-5, relation of proxy
 rules to, **6:159 et seq.**
 Rule 10b-5 private actions,
 6:162
 Rule 14a-9 private actions,
 6:160
 Rule 14c-6 private actions,
 6:161
 Scier standard
 Generally, **6:169 et seq.**
 Rule 10b-5, **6:171**
 Rule 14a-9, **6:169**
 Rule 14c-6, **6:170**
 SEA § 14(e), **6:186**
 Securities Act, **6:187**
 State law
 Generally, **6:191 et seq.**
 Appraisal rights, **6:192, 6:193**
 Delaware law, **6:196**
 Effect of merger or dissolu-
 tion, **6:194**
 Equitable approach, **6:197**
 Standing approach, **6:196**
 Violations covered, **6:164**
 Background, **6:148 et seq.**
 Congressional intent
 Generally, **6:154 et seq.**

DIRECT-IMPERSONAL DEALING

—Cont'd

Mergers—Cont'd
 Congressional intent—Cont'd
 Information statement rules,
 6:156
 Proxy rules, **6:155**
 Rule 10b-5, **6:157**
 SEA § 14(a), **6:155**
 SEA § 14(c), **6:156**
 Definition, **6:147**
 Disclosures
 Generally, **6:212 et seq.**
 Advance letters
 Proxy rules, **6:240**
 Registration under SA, **6:241**
 Aggregate materiality, **6:253**
 Annual reports, **6:242**
 Application of funds, **6:260**
 Assets
 Generally, **6:261 et seq.**
 Existence of, **6:262**
 Reasons, **6:273**
 Balance, **6:229**
 Buried facts, **6:232**
 Cash flow, **6:260**
 Clarity, **6:225**
 Comparative tables, **6:219**
 Congressional intent, **6:156**
 Consistency, **6:228**
 Conspicuity. Prominence, below
 Context, **6:235**
 Cross references, **6:233**
 Detail, **6:234**
 Distribution, **6:214 et seq.**
 Earnings
 Generally, **6:254**
 Inherently misleading state-
 ments, **6:256**
 Interim, **6:259**
 Misrepresentations, **6:255**
 Nondisclosure of, **6:257**
 Predictions, **6:255**
 Form and substance, **6:235**
 Interim earnings, **6:259**
 Interpretation, **6:236**
 Level, **6:227**
 Locus, **6:214 et seq.**

INDEX

DIRECT-IMPERSONAL DEALING

—Cont'd

Mergers—Cont'd
Disclosures—Cont'd
Materiality
 Generally, **6:248 et seq.**
 Aggregate, **6:253**
 Might, use of term, **6:249**
 Practical problems, **6:251**
 Probably would, use of term, **6:250**
 Specific items, materiality of, **6:252**
 Would, use of term, **6:249**
Misrepresentations
 Earnings, **6:255**
 Value of assets
 Generally, **6:270**
 Defenses, **6:271**
 Precautions, **6:272**
Numerical information, **6:237**
Opposition communications, **6:247**
Organization, **6:226**
Overall effect, **6:238**
Predictions, earning, **6:255**
Presentation, **6:224 et seq.**
Prominence
 Generally, **6:230 et seq.**
 Buried and scattered facts, **6:232**
 Similar emphasis, **6:231**
Repetition, **6:233**
Rule 10b-5 requirements, **6:218**
SA § 5 requirements, **6:217**
Scattered facts, **6:232**
SEA § 14(a) requirements, **6:215**
SEA § 14(c) requirements, **6:216**
Sources of funds, **6:260**
Sources of requirements
 Generally, **6:220 et seq.**
 Antifraud provisions, **6:222**
 Specific items, **6:221**
 Timing, **6:223**
Style, **6:224 et seq.**

DIRECT-IMPERSONAL DEALING

—Cont'd

Mergers—Cont'd
Disclosures—Cont'd
Supplementary communications
 Generally, **6:239 et seq.**
Advance letters
 Proxy rules, **6:240**
 Registration under SA, **6:241**
Annual reports, **6:242**
Cover letters, **6:243**
Followup solicitations, **6:244**
Generally available information, **6:246**
Other communications, **6:245**
Transmittal letters, **6:243**
Timing requirements, **6:223**
Value of assets
 Generally, **6:263 et seq.**
 Firm offers, **6:265**
 Hard data, **6:264**
Misrepresentations
 Generally, **6:270**
 Defenses, **6:271**
 Precautions, **6:272**
Modified view
 Disposition plans, **6:266**
 Hard data, **6:264**
 Other situations, **6:268**
Policies, **6:269**
Reasons, **6:269**
Replacement costs, **6:267**
Traditional view, **6:263**
Federal laws
 Generally, **6:149**
 Antifraud provisions, **6:151**
 Proxy rules, **6:150**
 SA registration requirements, **6:152**
Private actions
 Generally, **6:160 et seq.**
 Rule 10b-5, **6:162**
 Rule 14a-9, **6:160**
 Rule 14c-6, **6:161**
Proxy solicitations
 Generally, **6:198 et seq.**

DIRECT-IMPERSONAL DEALING

—Cont'd

Mergers—Cont'd
 Proxy solicitations—Cont'd
 Scope of regulations
 Generally, **6:207 et seq.**
 Annual reports, **6:211**
 Excluded solicitations, **6:210**
 Proxy defined, **6:208**
 Solicitation defined, **6:209**
 Securities covered
 Generally, **6:199 et seq.**
 Insurance companies
 Generally, **6:201**
 Antifraud provisions,
 federal, **6:204**
 Federal and state rules,
 6:202
 McCarran Act, **6:203**
 Investment companies, **6:205**
 Public utility holding
 companies, **6:206**
 SA registration requirements,
 6:152
 Scope of regulations
 Generally, **6:207 et seq.**
 Annual reports, **6:211**
 Excluded solicitations, **6:210**
 Proxy defined, **6:208**
 Solicitation defined, **6:209**
 State law
 Generally, **6:153**
 Appraisal rights, **6:192, 6:193**
 Organization of treatise, **4:1**
 Personal and impersonal dealings,
 4:1
 Proxy solicitations
 Generally, **6:198 et seq.**
 See also **Proxy Fraud** (this index)
 Mergers, **6:198 et seq.**
 Nonmerger solicitations, **6:274**
 Scope of regulations
 Generally, **6:207 et seq.**
 Annual reports, **6:211**
 Excluded solicitations, **6:210**
 Proxy defined, **6:208**
 Solicitation defined, **6:209**

DIRECT-IMPERSONAL DEALING

—Cont'd

Proxy solicitations—Cont'd
 Securities covered
 Generally, **6:199 et seq.**
 Insurance companies
 Generally, **6:201**
 Antifraud provisions, federal,
 6:204
 Federal and state rules, **6:202**
 McCarran Act, **6:203**
 Investment companies, **6:205**
 Public utility holding
 companies, **6:206**
 Publicity, profiling, **6:10**
 Public sales
 Generally, **6:4**
 Disclosure, **6:12**
 Exchange offers, above, **6:7**
 Registered offerings, **6:5**
 Unregistered offerings, **6:6**
 Registered offerings, **6:5**
 Reliance
 Generally, **8:484 et seq.**
 See also **Reliance** (this index)
 Risk disclosures. Disclosures, above
 Rule 10b-5
 Application to, **3:28**
 Responsibilities generally, **12:7**
 Scienter and actual knowledge, **8:171**
 Standing to challenge transaction,
 tender offers
 Generally, **6:124**
 Implied rights, **6:124**
 Issuer offers, **6:143**
 Nontendering offerees, **6:126**
 Offerees, **6:125**
 Offerors, **6:129**
 Target companies, **6:128**
 Tenderers
 Nontendering, **6:126**
 Undecided, **6:127**
 Tendering offerees, **6:125**
 Third parties, **6:130**
 State law appraisal rights, **6:192,**
 6:193
 Tender offers
 Banks, regulation of, **6:29**

INDEX

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
 - Challenging
 - Relief available
 - Generally, **6:131 et seq.**
 - Balance of equities, **6:134**
 - Clean hands, **6:136**
 - Final relief, **6:140**
 - Inadequacy of other remedies, **6:133**
 - Irreparable injuries, **6:133**
 - Preliminary, **6:131 et seq.**
 - Probability of success, **6:132**
 - Proof elements, **6:132**
 - SEC actions, **6:138**
 - Time for relief, **6:139**
 - Types of relief, **6:135**
 - Standing to challenge, below
 - Congressional intent
 - Generally, **6:16 et seq.**
 - Disclosure, **6:17**
 - Fairness, **6:19**
 - Investor protection, **6:17**
 - Target management protection, **6:18**
 - Definitions, **6:31**
 - Disclosure requirements
 - Regulated offers
 - Generally, **6:41**
 - Arrangements, **6:47**
 - Changes, effects of
 - Generally, **6:49**
 - SEC filings, **6:52**
 - Ten percent threshold disclosure requirements, **6:57**
 - Control change information, **6:61**
 - Control purposes, **6:64**
 - Date of information
 - Generally, **6:49**
 - SEC filings, **6:52**
 - Ten percent threshold disclosure requirements, **6:57**
 - Deviation from stated plans, **6:70**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
 - Disclosure requirements—Cont'd
 - Regulated offers—Cont'd
 - Fund source data, **6:44**
 - Groups, data on, **6:48**
 - Ideas vs plans, **6:68**
 - Issuer offers, **6:144**
 - Noncompliance, effects of, **6:74**
 - Offer data, **6:43**
 - Offeror data, **6:42**
 - Ownership, **6:55**
 - Plans and proposals, **6:45, 6:66 et seq.**
 - Publicity
 - Offeror, **6:94**
 - Target company, **6:98**
 - Third persons, **6:108**
 - Purposes, **6:45, 6:62 et seq.**
 - Sanctions for noncompliance, **6:74**
 - SEC filings
 - Generally, **6:50 et seq.**
 - Changes, effects of, **6:52**
 - Date of information, **6:52**
 - Other disseminations, **6:54**
 - Processing, **6:53**
 - Scope of disclosure, **6:51**
 - Time of filing, **6:50**
 - Securities, data on, **6:46**
 - Ten percent threshold
 - Generally, **6:55 et seq.**
 - Changes, effect of, **6:57**
 - Date of information, **6:57**
 - Exemptions, **6:60**
 - Other disseminations, **6:59**
 - Ownership, **6:55**
 - Scope of disclosure, **6:56**
 - SEC processing, **6:58**
 - Understandings, **6:47**
- Unregulated offers
 - Generally, **6:113**
 - Insiders, **6:114**
 - Outsiders
 - Generally, **6:115 et seq.**

**DIRECT-IMPERSONAL DEALING
—Cont'd**

- Tender offers—Cont'd
 - Disclosure requirements—Cont'd
 - Unregulated offers—Cont'd
 - Outsiders—Cont'd
 - Issuer, information about, **6:117**
 - Offer, identity of, **6:119**
 - Other information, **6:118**
 - Plans and proposals, **6:116**
 - Policy factors, **6:120**
 - Target company, **6:121**
 - Third persons, **6:122**
 - Disclosures, corrections, **6:311**
 - Duration of offer, **6:89**
 - Exchange offers, **6:36**
 - Five percent offers
 - Generally, **6:32**
 - Base for percentages, **6:34**
 - Foreign laws, **6:15**
 - Insiders, offers by
 - Generally, **6:111**
 - Disclosure requirements, **6:114**
 - Issuer offers
 - Generally, **6:141**
 - Disclosure requirements, **6:144**
 - Price, **6:142**
 - Redemptions, **6:145**
 - Standing to challenge, **6:143**
 - Medium of payment, **6:36**
 - Outsiders, offers by
 - Generally, **6:112**
 - Disclosures
 - Generally, **6:115 et seq.**
 - Issuer, information about, **6:117**
 - Offer, identity of, **6:119**
 - Other information, **6:118**
 - Plans and proposals, **6:116**
 - Policy factors, **6:120**
 - Price
 - Increases, effect of, **6:90 et seq.**
 - Issuer offers, **6:142**
 - Third-party offers, **6:123**
 - Regulated offers
 - Generally, **6:13 et seq., 6:33**

**DIRECT-IMPERSONAL DEALING
—Cont'd**

- Tender offers—Cont'd
- Regulated offers—Cont'd
 - Antifraud provisions, applicability to
 - Generally, **6:22 et seq.**
 - Connection, **6:26**
 - Jurisdictional means, **6:27**
 - Opposition, applicability to, **6:23**
 - Proxy rules, **6:24**
 - SEA § 14(e), **6:24**
 - Banks, coverage of, **6:29**
 - Congressional intent
 - Generally, **6:16 et seq.**
 - Disclosure, **6:17**
 - Fairness, **6:19**
 - Investor protection, **6:17**
 - Target management protection, **6:18**
 - Coverage, **6:28 et seq.**
 - Definitional exclusions, **6:40**
 - Definitions, **6:31**
 - Disclosure requirements
 - Generally, **6:41**
 - Arrangements, **6:47**
 - Changes, effects of
 - Generally, **6:49**
 - SEC filings, **6:52**
 - Ten percent threshold disclosure requirements, **6:57**
 - Control change information, **6:61**
 - Control purposes, **6:64**
 - Date of information
 - Generally, **6:49**
 - SEC filings, **6:52**
 - Ten percent threshold disclosure requirements, **6:57**
 - Deviation from stated plans, **6:70**
 - Funds, source of, **6:44**
 - Fund source data, **6:44**
 - Groups, data on, **6:48**
 - Ideas vs plans, **6:68**

INDEX

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
 - Regulated offers—Cont'd
 - Disclosure requirements—Cont'd
 - Issuer offers, **6:144**
 - Noncompliance, effects of, **6:74**
 - Offer data, **6:43**
 - Offeror data, **6:42**
 - Ownership, **6:55**
 - Plans, **6:45**
 - Plans and proposals, **6:66 et seq.**
 - Publicity
 - Offeror, **6:94**
 - Target company, **6:98**
 - Third persons, **6:108**
 - Purposes, **6:45, 6:62 et seq.**
 - Sanctions for noncompliance, **6:74**
 - SEC filings
 - Generally, **6:50 et seq.**
 - Changes, effects of, **6:52**
 - Date of information, **6:52**
 - Other disseminations, **6:54**
 - Processing, **6:53**
 - Scope of disclosure, **6:51**
 - Time of filing, **6:50**
 - Securities, data on, **6:46**
 - Ten percent threshold
 - Generally, **6:55 et seq.**
 - Changes, effect of, **6:57**
 - Date of information, **6:57**
 - Exemptions, **6:60**
 - Other disseminations, **6:59**
 - Ownership, **6:55**
 - Scope of disclosure, **6:56**
 - SEC processing, **6:58**
 - Understandings, **6:47**
- Duration of offer, **6:89**
- Exchange offers, **6:36**
- Excluded offers, **6:38 et seq.**
- Express exclusions, **6:39**
- Five percent offers
 - Generally, **6:32**
 - Base for percentages, **6:34**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
 - Regulated offers—Cont'd
 - Foreign laws, **6:15**
 - Insurance companies, **6:30**
 - Market activities
 - Offeror
 - Before offer, **6:97**
 - During offer, **6:96**
 - Target company
 - Generally, **6:106 et seq.**
 - Filing, **6:107**
 - Information to be disclosed, **6:107**
 - Scope of regulation, **6:106**
 - Third persons, **6:109**
 - Medium of payment, **6:36**
 - Opposition, applicability of antifraud provisions to, **6:23**
 - Price increases, effect of
 - Generally, **6:90 et seq.**
 - Exemptions, **6:93**
 - Procedure, **6:92**
 - Purpose of requirement, **6:91**
 - Proxy rule antifraud provisions, applicability to, **6:24**
 - Publicity
 - Offeror
 - Before offer, **6:95**
 - During offer, **6:94**
 - Target company
 - Generally, **6:98**
 - Attack, modes of, **6:105**
 - Change, effect of, **6:101**
 - Date of information, **6:101**
 - Exemptions, **6:103**
 - Other disseminations, **6:102**
 - Scope of antifraud provisions, **6:104**
 - Scope of disclosure, **6:100**
 - Time of filing, **6:99**
 - Third persons, **6:108**
 - Recommendations
 - Offeror
 - Before offer, **6:95**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
- Regulated offers—Cont'd
- Recommendations—Cont'd
 - Offeror—Cont'd
 - During offer, **6:94**
 - Target company
 - Generally, **6:98**
 - Attack, modes of, **6:105**
 - Change, effect of, **6:101**
 - Date of information, **6:101**
 - Exemptions, **6:103**
 - Other disseminations, **6:102**
 - Scope of antifraud provisions, **6:104**
 - Scope of disclosure, **6:100**
 - Time of filing, **6:99**
 - Third persons, **6:108**
- Scope
 - Generally, **6:28, 6:31 et seq.**
 - Definitions, **6:31**
 - Exchange offers, **6:36**
 - Five percent offers
 - Generally, **6:32**
 - Base for percentages, **6:34**
 - Jurisdictional means, **6:35**
 - Medium of payment, **6:36**
 - Special bids, **6:37**
 - Two percent offers
 - Generally, **6:32**
 - Base for percentages, **6:34**
- SEA § 14(e) antifraud provisions, **6:24**
- Special bids, **6:37**
- State laws, **6:14**
- Ten day pro rata takeover
 - Generally, **6:85, 6:85 et seq.**
 - Exemptions, **6:88**
 - Procedures, **6:87**
 - Purpose, **6:86**
- Terms
 - Generally, **6:75 et seq.**
 - Applicability, **6:78**
 - Duration of offer, **6:89**
 - Freedom of offerer, degrees of, **6:75**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
- Regulated offers—Cont'd
- Terms—Cont'd
 - Relation to other provisions, **6:77**
 - Scope of requirements, **6:76**
 - Time factors, importance of, **6:79**
 - Voluntary withdrawal rights, **6:84**
 - Withdrawal rights
 - Generally, **6:80 et seq.**
 - Exemptions, **6:83**
 - Procedure, **6:82**
 - Purpose, **6:81**
 - Requirement, **6:80**
 - Voluntary, **6:84**
- Two percent offers
 - Generally, **6:32**
 - Base for percentages, **6:34**
- Voluntary withdrawal rights, **6:84**
- Williams Bill, **6:13**
- Withdrawal rights
 - Generally, **6:80 et seq.**
 - Exemptions, **6:83**
 - Procedure, **6:82**
 - Purpose, **6:81**
 - Voluntary, **6:84**
- Special bids, **6:37**
- Standing to challenge
 - Generally, **6:124**
 - Implied rights, **6:124**
 - Issuer offers, **6:143**
 - Nontendering offerees, **6:126**
 - Offerees, tendering, **6:125**
 - Offerors, **6:129**
 - Target companies, **6:128**
- Tenderees
 - Nontendering, **6:126**
 - Undecided, **6:127**
 - Tendering offerees, **6:125**
 - Third parties, **6:130**
- State laws, **6:14**
- Target company disclosures, **6:121**
- Third party offers, **6:13 et seq.**

INDEX

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
 - Third persons disclosures, **6:122**
 - Two percent offers
 - Generally, **6:32**
 - Base for percentages, **6:34**
 - Unregulated offers
 - Generally, **6:110**
 - Disclosure requirements
 - Generally, **6:113**
 - Insiders, **6:114**
 - Outsiders
 - Generally, **6:115 et seq.**
 - Issuer, information about, **6:117**
 - Offer, identity of, **6:119**
 - Other information, **6:118**
 - Plans and proposals, **6:116**
 - Policy factors, **6:120**
 - Target company, **6:121**
 - Third persons, **6:122**
 - Insiders
 - Generally, **6:111**
 - Disclosure requirements, **6:114**
 - Outsiders
 - Generally, **6:112**
 - Disclosures
 - Generally, **6:115 et seq.**
 - Issuer, information about, **6:117**
 - Offer, identity of, **6:119**
 - Other information, **6:118**
 - Plans and proposals, **6:116**
 - Policy factors, **6:120**
 - Target company, disclosures, **6:121**
 - Third persons, disclosures, **6:122**
 - Williams Bill, **6:13**
 - Transaction Planning** (this index)
 - Types of direct-impersonal dealings, **6:1**
 - What is a Security** (this index)

DIRECTORS, CORPORATE

- Generally, **8:413**
- Actions in concert, **8:294**

DIRECTORS, CORPORATE

—Cont'd

- Audit committees
 - Generally, **8:449 et seq.**
- Auditor, oversight of, **8:453**
- Backdating of stock options, resignations, **18:7**
- Background, **8:449**
- Definitions, **8:449**
- Financial experts, **8:459**
- Legislative standards, **8:450**
- Sarbanes-Oxley Act standards
 - Generally, **8:450 et seq.**
 - Administrative implementation, **8:451**
 - Advisers, **8:455**
 - Auditor, oversight of, **8:453**
 - Complaint procedures, **8:454**
 - Enforcement, **8:458**
 - Exemptions, **8:457**
 - Financial experts, **8:459**
 - Funding, **8:456**
 - Independence requirements, **8:452**
- Auditor, oversight of, **8:453**
- Backdating of stock options, resignations, **18:3, 18:7**
- Bar orders against individuals, **13:87**
- Blackout period trading prohibitions, **8:472, 8:475**
- Collateral bar orders against individuals, **13:87, 13:88**
- Conflict of interest, **8:417**
- Conspiracies, **8:304 et seq.**
- Control person liability, **8:373 et seq.**
- Corporate governance, **8:414**
- Correction of violations, responsibility for, **8:418**
- Ethics codes, **8:483**
- Financial experts, **8:459**
- Indemnification, **9:76**
- Injunctions against, **13:117**
- Insider trading liability, **7:649**
- Inside trading reports, **8:471**
- Insurance, **9:76**
- Internal controls, **8:466**
- Loan prohibitions, **8:481**

DIRECTORS, CORPORATE

—Cont'd

- Madoff Ponzi scheme, director of operations, **20:8**
- Market, responsibilities to inform
 - Business changes, **8:422**
 - Grace case, **8:423**
 - National Telephone case, **8:422**
 - Second-guessing disclosure counsel, **8:423**
- Mutual fund violations, **17:20**
- Parties and privity
 - Generally, **8:413 et seq.**
 - See also **Parties** (this index)
- Prevention of violations, responsibility for, **8:418**
- Responsibilities, **8:413**
- Rule 10b-5 liabilities
 - Generally, **8:413 et seq.**
 - Actions in concert, **8:294**
 - Aider-abettor liability, **8:327 et seq.**
 - Backdating of stock options, violations of federal securities laws, **18:3, 18:10**
 - Concerted action, **8:294**
 - Conflict of interest, **8:417**
 - Conspiracies, **8:304 et seq.**
 - Control person liability, **8:373 et seq.**
 - Cooper case, **8:419**
 - Corporate governance, **8:414**
 - Correction of violations, responsibility for, **8:418**
 - Court cases, **8:415 et seq.**
 - Gould case, **8:417**
 - Gutfreund case, **8:420**
 - Inducement, **8:295**
 - Informed, responsibility to be, **8:415 et seq.**
 - Injunction suits, **8:303**
 - Insiders, inducement by, **8:299**
 - Issuers, inducement by, **8:297**
 - Market, responsibilities to inform
 - Business changes, **8:422**
 - Grace case, **8:423**
 - National Telephone case, **8:422**

DIRECTORS, CORPORATE

—Cont'd

- Rule 10b-5 liabilities—Cont'd
- Market, responsibilities to inform
 - Cont'd
 - Second-guessing disclosure counsel, **8:423**
- Participants generally, **8:292**
- Participants in violations generally, **8:294**
- Pleading
 - Generally, **8:319 et seq.**
 - Affirmative conduct, **8:321**
 - Aiding-abetting, **8:324**
 - Choice of parties, **8:320**
 - Conspiracy, **8:325**
 - No affirmative conduct, **8:322**
 - Participation, **8:323**
 - Special elements, **8:326**
- Prevention of violations, responsibility for, **8:418**
- Stirling Homex case, **8:416**
- Sarbanes-Oxley Act liabilities
 - Auditor, oversight of, **8:453**
 - Blackout periods, **8:472, 8:475**
 - Certification, **8:462**
 - Ethics codes, **8:483**
 - Financial experts, **8:459**
 - Inside trading reports, **8:471**
 - Loan prohibitions, **8:481**
- Regulation
 - Generally, **8:461 et seq.**
 - Acquisition method, **8:474**
 - Bar from office, **8:482**
 - Blackout periods, **8:475**
 - Blackout trading prohibitions, **8:472**
 - Certification, **8:462**
 - Disclosure controls, **8:466**
 - Enforcement, **8:476**
 - Ethics codes, **8:483**
 - Evaluations, **8:468**
 - Exemptions, **8:479**
 - Fair presentation, **8:465**
 - Forfeiture on accounting restatement, **8:480**
 - Inside trading reports, **8:471**
 - Internal controls, **8:466**

INDEX

DIRECTORS, CORPORATE

—Cont'd

- Sarbanes-Oxley Act liabilities
 - Cont'd
 - Regulation—Cont'd
 - Liability, **8:476**
 - Loan prohibitions, **8:481**
 - Non-financial information, **8:467**
 - Notice, **8:478**
 - Profit measure, **8:477**
 - Regulation BTR, **8:473**
 - Response to evidence of violations, **8:470**
 - SEC implementation, **8:464, 8:473**
 - Section 302 legislation, **8:463**
 - Section 906, **8:469**
 - Regulation BTR, **8:473**
- Whistleblower bounty program, original information, **22:9**

DIRECT-PERSONAL DEALING

- Generally, **5:1 et seq., 5:53 et seq., 5:141 et seq.**
- Abuse of trading process, **5:76**
- Actual knowledge and scienter, **8:170**
- Arms length transactions
 - Generally, **5:144**
 - Reasons and policies, **5:149**
- Birmbaun canon, **5:70 et seq.**
- Broker-dealers, actions against
 - Generally, **14:2 et seq.**
 - See also **Broker-Dealer Liability** (this index)
 - Attorneys' fees, **14:53**
 - Broker's knowledge, **14:41**
 - Burden of proof, **14:42**
 - Causation, **14:91 et seq.**
 - Churning** (this index)
 - Class actions
 - SA § 11, **14:18**
 - SA § 12, **14:57**
 - Costs, **14:53**
 - Damages
 - Express actions, **14:46, 14:51**
 - Implied actions, **14:95 et seq.**
 - Debt securities markups, **14:163**

DIRECT-PERSONAL DEALING

—Cont'd

- Broker-dealers, actions against
 - Cont'd
 - Due diligence defense
 - Generally, **14:5**
 - SEC view, **14:9**
 - Express actions
 - Generally, **14:2 et seq.**
 - Attorneys' fees, **14:53**
 - Broker as defendant
 - SA § 12(a)(1), **14:20**
 - SA § 12(a)(2), **14:28**
 - Broker's knowledge, **14:41**
 - Burden of proof, **14:42**
 - Class actions
 - SA § 11, **14:18**
 - SA § 12, **14:57**
 - Costs, **14:53**
 - Damages, **14:46, 14:51**
 - Integrated disclosure systems, **14:7**
 - Interest, **14:48**
 - Limitation of actions, **14:17**
 - SA § 12(a)(1), **14:25**
 - SA § 12(a)(2), **14:56**
 - Misrepresentations, **14:39**
 - Offerors, brokers as
 - SA § 12(a)(1), **14:22**
 - SA § 12(a)(2), **14:29 et seq.**
 - Omissions, **14:39**
 - In pari delicto defense, **14:21**
 - Privity, **14:34**
 - Proximate cause, **14:35**
 - Punitive damages, **14:54**
 - Purchaser, plaintiff as
 - SA § 12(a)(1), **14:23**
 - SA § 12(a)(2), **14:44**
 - Purchaser's knowledge, **14:40**
 - Reasonable investigation defense
 - Generally, **14:5**
 - Integrated disclosure systems, **14:7**
 - SEC Rule 176, **14:8**
 - Recovery, **14:45 et seq.**
 - Rescission, **14:46, 14:50**

DIRECT-PERSONAL DEALING

—Cont'd

- Broker-dealers, actions against
 - Cont'd
- Express actions—Cont'd
 - SA § 11
 - Generally, **14:2 et seq., 14:3 et seq.**
 - Court cases, **14:6**
 - Damages, **14:15**
 - Integrated disclosure systems, **14:7**
 - Later filings, effect of, **14:10**
 - Non-managing underwriters, **14:13**
 - Participating underwriters, **14:13**
 - Policy considerations, **14:12**
 - Reasonable investigation requirement, **14:11**
 - SEC Rule 176, **14:7**
 - SEC Rule 412, **14:7**
 - SEC view of due diligence techniques, **14:9**
 - SA § 12(a)(1)
 - Generally, **14:19 et seq.**
 - Broker as defendant, **14:20**
 - Class actions, **14:57**
 - Exemptions from SA § 5, **14:24**
 - Limitation of actions, **14:25**
 - Offerors, brokers as, **14:22**
 - In pari delicto defense, **14:21**
 - Purchaser, plaintiff as, **14:23**
 - Sellers, brokers as, **14:22**
 - Violations of SA § 5, **14:26**
 - SA § 12(a)(2)
 - Generally, **14:27 et seq.**
 - Attorneys' fees, **14:53**
 - Broker as defendant, **14:28**
 - Broker's knowledge, **14:41**
 - Burden of proof, **14:42**
 - Class actions, **14:57**
 - Costs, **14:53**
 - Damages, **14:46, 14:51**
 - Interest, **14:48**
 - Limitation of actions, **14:56**
 - Misrepresentations, **14:39**

DIRECT-PERSONAL DEALING

—Cont'd

- Broker-dealers, actions against
 - Cont'd
- Express actions—Cont'd
 - SA § 12(a)(2)—Cont'd
 - Offerors, brokers as, **14:29 et seq.**
 - Omissions, **14:39**
 - Pinter case, **14:30, 14:38**
 - Privity, **14:34**
 - Proximate cause, **14:35**
 - Punitive damages, **14:54**
 - Purchaser, plaintiff as, **14:44**
 - Purchaser's knowledge, **14:40**
 - Reasonable care, **14:43**
 - Reasonable investigation requirement, **14:43**
 - Recovery, **14:45 et seq.**
 - Rescission, **14:46, 14:50**
 - SEA § 10(b) and, overlap between, **14:55**
 - Sellers, brokers as, **14:29 et seq.**
 - Substantial factor in sale, broker as, **14:35**
 - Tax considerations, **14:48**
 - Tender, **14:49**
 - Transactional coverage, **14:58**
 - Sellers, brokers as
 - SA § 12(a)(1), **14:22**
 - SA § 12(a)(2), **14:29 et seq.**
 - Substantial factor in sale, broker as, **14:35**
 - Tax considerations, **14:48**
 - Violations of SA § 5, **14:26**
- Express actions, SA § 11
 - Due diligence defense
 - Generally, **14:5**
 - SEC view, **14:9**
 - Reasonable investigation defense
 - Generally, **14:5**
 - Integrated disclosure systems, **14:7**
 - SEC Rule 176, **14:8**
- Underwriters
 - Generally, **14:4**

INDEX

DIRECT-PERSONAL DEALING

—Cont'd

- Broker-dealers, actions against
 - Cont'd
 - Express actions, SA § 11—Cont'd
 - Underwriters—Cont'd
 - Due diligence, **14:14**
- Implied actions
- Margin rules
 - Generally, **14:59**
 - Arbitration, use in, **14:61**
 - Court cases, **14:60**
 - SEA § 7, **14:59**
- Rule 10b-5
 - Generally, **14:73 et seq.**
 - Connection requirement, **14:94**
 - Contraction era, compensatory damages in, **14:105**
 - Damages, **14:95 et seq.**
 - Elements of action, **14:74**
 - Issuer misrepresentations, **14:76**
 - Issuer nondisclosures, **14:77**
 - Justifiable reliance, **14:89**
 - Market misrepresentations, **14:78**
 - Market nondisclosures, **14:79**
 - Materiality, **14:82**
 - Misrepresentation, **14:75 et seq.**
 - Mitigation of damages, **14:102**
 - Nondisclosure, **14:75 et seq.**
 - Opinions, **14:81**
 - Out-of-pocket damages, **14:103**
 - Predictions, **14:81**
 - Proximate cause, **14:92**
 - Punitive damages, **14:106 et seq.**
 - Recklessness, **14:83 et seq.**
 - Recommendations, **14:81**
 - Reliance, **14:86 et seq.**
 - Restitution, **14:104**
 - Scienter, **14:83 et seq.**
- SRO rules
 - Generally, **14:62 et seq.**

DIRECT-PERSONAL DEALING

—Cont'd

- Broker-dealers, actions against
 - Cont'd
 - Implied actions—Cont'd
 - SRO rules—Cont'd
 - Arbitration, **14:72**
 - Buttrey doctrine, **14:65**
 - Colonial Realty doctrine, **14:64**
 - Contraction era, **14:71**
 - Court cases, **14:64 et seq.**
 - Expansion era, **14:63 et seq.**
- Implied actions, Rule 10b-5, rescission
 - Chasins measure, **14:97**
 - Lost profits, **14:101**
 - Nye measure, **14:101**
 - Rolf measure, **14:100**
- Insider Trading and Securities Fraud Enforcement Act, **14:168**
- Justifiable reliance, **14:89**
- Limitation of actions, express actions
 - SA § 12(a)(1), **14:25**
 - SA § 12(a)(2), **14:56**
- Lost profits, rescission and, **14:101**
- Markup and markdown practices
 - Generally, **14:148 et seq.**
- Basis
 - Generally, **14:150 et seq.**
 - Customers, comparative frequency of purchases from, **14:158**
 - Dominating market makers, **14:154**
 - Inter-dealer prices, availability of, **14:155**
 - Inter-dealer trades, frequency of, **14:158**
 - Market-makers, retail, **14:153**
 - Market maker status, **14:152 et seq.**
 - NASD criteria, **14:157 et seq.**
 - Non dominating market makers, **14:160**
 - Retailer market makers, **14:153**

DIRECT-PERSONAL DEALING

—Cont'd

Broker-dealers, actions against
 —Cont'd
 Markup and markdown practices
 —Cont'd
 Basis—Cont'd
 SEC criteria, **14:150 et seq.**
 Debt securities markups, **14:163**
 Disclosure, **14:149**
 Five percent policy, **14:162**
 Inter-dealer prices, availability
 of, **14:155**
 Inter-dealer trades, frequency of,
 14:158
 Market maker status, **14:152 et**
 seq.
 Markup and markdown practices,
 basis
 Contemporaneous defined
 NASD criteria, **14:161**
 SEC criteria, **14:156**
 Non market makers
 NASD criteria, **14:159**
 SEC criteria, **14:152**
 Materiality, **14:82**
 Misrepresentations, **14:39**
 Offerors, brokers as, **14:22, 14:29**
 et seq.
 Omissions, **14:39**
 Opinions, **14:81**
 Out-of-pocket damages, **14:103**
 In pari delicto defense, express
 actions, **14:21**
 Penny Stock Sales (this index)
 Predictions, **14:81**
 Privity, **14:34**
 Proximate cause
 Generally, **14:92**
 Express actions, **14:35**
 Punitive damages
 Generally, **14:106 et seq.**
 Express actions, **14:54**
 Purchaser, plaintiff as
 SA § 12(a)(1), **14:23**
 SA § 12(a)(2), **14:44**
 Purchaser's knowledge, **14:40**

DIRECT-PERSONAL DEALING

—Cont'd

Broker-dealers, actions against
 —Cont'd
 Reasonable investigation defense
 Generally, **14:5**
 Integrated disclosure systems,
 14:7
 SEC Rule 176, **14:8**
 Reasonable investigation require-
 ment
 SA § 11, **14:11**
 SA § 12(a)(2), **14:43**
 Recklessness, **14:83 et seq.**
 Recommendations, **14:81**
 Recovery, **14:45 et seq.**
 Reliance, **14:86 et seq.**
 Rescission
 Chasins measure, **14:97**
 Express actions, **14:46, 14:50**
 Implied actions, **14:95 et seq.**
 Lost profits, **14:101**
 Nye measure, **14:101**
 Rolf measure, **14:100**
 Restitution, **14:104**
 Rule 10b-5
 Generally, **14:73 et seq.**
 Causation, **14:91 et seq.**
 Connection requirement, **14:94**
 Contraction era, compensatory
 damages in, **14:105**
 Damages, **14:95 et seq.**
 Elements of action, **14:74**
 Issuer misrepresentations, **14:76**
 Issuer nondisclosures, **14:77**
 Justifiable reliance, **14:89**
 Market misrepresentations,
 14:78
 Market nondisclosures, **14:79**
 Materiality, **14:82**
 Misrepresentation, **14:75 et seq.**
 Mitigation of damages, **14:102**
 Nondisclosure, **14:75 et seq.**
 Opinions, **14:81**
 Out-of-pocket damages, **14:103**
 Predictions, **14:81**
 Proximate cause, **14:92**

INDEX

DIRECT-PERSONAL DEALING

—Cont'd

- Broker-dealers, actions against
 - Cont'd
 - Rule 10b-5—Cont'd
 - Punitive damages, **14:106 et seq.**
 - Recklessness, **14:83 et seq.**
 - Recommendations, **14:81**
 - Reliance, **14:86 et seq.**
 - Rescission
 - Chasins measure, **14:97**
 - Lost profits, **14:101**
 - Nye measure, **14:101**
 - Rolf measure, **14:100**
 - Restitution, **14:104**
 - Scienter, **14:83 et seq.**
- SA § 11
 - Damages, **14:15**
 - Reasonable investigation requirement, **14:11**
- SA § 12(a)(2), **14:43**
- Scienter, **14:83 et seq.**
- Sellers, brokers as, **14:22, 14:29 et seq.**
- Substantial factor in sale, broker as, **14:35**
- Suitability** (this index)
- Supervision liabilities
 - Generally, **14:164 et seq.**
 - Amex requirements, **14:174**
 - Branch office managers, **14:178**
 - Chief executive officers, **14:180**
 - Compliance officers, **14:181**
 - Court cases, **14:176**
 - Deficiencies, **14:175**
 - General counsel, **14:182**
 - Heads of functional areas, **14:179**
 - Individual responsibilities, **14:177 et seq.**
 - Insider Trading and Securities Fraud Enforcement Act, **14:168**
 - NASD requirements, **14:172**
 - NYSE requirements, **14:173**
 - Rule 14e-3(b), **14:169**
 - Safe harbor programs, **14:175**

DIRECT-PERSONAL DEALING

—Cont'd

- Broker-dealers, actions against
 - Cont'd
 - Supervision liabilities—Cont'd
 - Sanctions, **14:175**
 - SEA § 15(b)(4)(D), **14:166**
 - SEA § 15(b)(4)(E), **14:165**
 - SEA § 15(b)(6), **14:165**
 - SEA § 19, **14:170**
 - SEA § 20(a), **14:167**
 - SRO requirements, **14:171 et seq.**
- Burden of proof
 - Broker-dealers, actions against, **14:42**
 - Causation requirements, **5:98**
 - Unfair terms, **5:153**
- Buyer-seller requirements
 - Generally, **5:110 et seq.**
 - Broad interpretation, **5:117**
 - Company as buyer-seller, **5:124**
 - Control, sales of, **5:113**
 - Definition, **5:111**
 - Forced sales, **5:120**
 - Injunction suits, **5:122**
 - Interpretation of requirement, **5:117**
 - Issuances, **5:121**
 - Liquidations, **5:119**
 - Loss causation as substitute, **5:123**
 - Mergers, **5:118**
 - Modified view, **5:117**
 - Pleading, **5:126**
 - Strict view, **5:112 et seq.**
- Causation requirements
 - Generally, **5:89 et seq.**
 - Burden of proof, **5:98**
 - Loss causation, **5:91, 5:123**
 - Meaning, **5:90**
 - Minority vote requirements, **5:93 et seq.**
 - Modified view, **5:95**
- Pleading
 - Materiality, **5:107**
 - Modified causation, **5:105 et seq.**

DIRECT-PERSONAL DEALING

—Cont'd

- Causation requirements—Cont'd
 - Pleading—Cont'd
 - Proxy solicitation as element, **5:108**
 - Strict causation, **5:99 et seq.**
 - Policies, **5:97**
 - Proof
 - Materiality, **5:107**
 - Modified causation, **5:105 et seq.**
 - Proxy solicitation as element, **5:108**
 - Strict causation, **5:99 et seq.**
 - Proxy solicitation as element, **5:108**
 - Reasons, **5:97**
 - Strict view, **5:93, 5:94**
 - Transaction causation, **5:92**
 - Voting
 - Modified causation, **5:105 et seq.**
 - Strict causation, **5:100 et seq.**
- Churning** (this index)
- Common law theories and sources, **5:54**
- Conflict of interest transactions
 - Generally, **5:53 et seq., 5:141 et seq.**
 - Alternative forums, efficiency of, **5:65**
 - Arms length transactions
 - Generally, **5:144**
 - Reasons and policies, **5:149**
 - Birmaun Canon, **5:70 et seq., 5:71**
 - Burden of proof
 - Causation requirements, **5:98**
 - Unfair terms, **5:153**
 - Buyer-seller requirements
 - Generally, **5:110 et seq.**
 - Broad interpretation, **5:117**
 - Company as buyer-seller, **5:124**
 - Control, sales of, **5:113**
 - Definition, **5:111**
 - Forced sales, **5:120**
 - Injunction suits, **5:122**

DIRECT-PERSONAL DEALING

—Cont'd

- Conflict of interest transactions
 - Cont'd
- Buyer-seller requirements—Cont'd
 - Interpretation of requirement, **5:117**
 - Issuances, **5:121**
 - Liquidations, **5:119**
 - Loss causation as substitute, **5:123**
 - Mergers, **5:118**
 - Modified view, **5:117**
 - Strict view, **5:112 et seq.**
- Causation requirements
 - Generally, **5:89 et seq.**
 - Burden of proof, **5:98**
 - Loss causation, **5:91, 5:123**
 - Meaning, **5:90**
 - Minority vote requirements, **5:93 et seq.**
 - Modified view, **5:95**
- Pleading
 - Materiality, **5:107**
 - Modified causation, **5:105 et seq.**
 - Proxy solicitation as element, **5:108**
 - Strict causation, **5:99 et seq.**
- Policies, **5:97**
- Proof
 - Materiality, **5:107**
 - Modified causation, **5:105 et seq.**
 - Proxy solicitation as element, **5:108**
 - Strict causation, **5:99 et seq.**
- Proxy solicitation as element, **5:108**
- Reasons, **5:97**
- Strict view, **5:93, 5:94**
- Transaction causation, **5:92**
- Voting
 - Modified causation, **5:105 et seq.**
 - Strict causation, **5:100 et seq.**
- Common law theories and sources, **5:54**

INDEX

DIRECT-PERSONAL DEALING

—Cont'd

- Conflict of interest transactions
 - Cont'd
- Connection requirement
 - Generally, **5:127 et seq.**
 - Another's sale, misconduct in connection with, **5:132**
 - Commissions, **5:133**
 - Court cases, **5:135**
 - Definition, **5:128**
 - Injunction suits, **5:138**
 - Kickbacks, **5:133**
 - Market transactions, misconduct affecting, **5:134**
 - Mechanical interpretation of, **5:130**
 - Modified view, **5:130 et seq.**
 - Pleading, **5:140**
 - Policies, **5:139**
 - Post-sale misconduct, **5:131**
 - Reasons, **5:139**
 - Strict view, **5:129**
 - Third party misconduct, **5:132**
- Continuity of investor protection, **5:67**
- Control, sales of, **5:113**
- Court cases
 - Birmbaun Canon, **5:70 et seq.**
 - Connection requirement, **5:135 et seq.**
- Unfairness
 - Generally, **5:183 et seq.**
 - Fair terms, **5:185**
 - SEC decisions, **5:186**
 - Unfair terms, **5:184**
- Deception requirement
 - Generally, **5:79 et seq.**
 - Company, deception of, **5:84 et seq.**
 - Creditors, deception of, **5:86**
 - Decisional impairment, **5:84**
 - Directors, deception of, **5:82**
 - Economic effect of deception, **5:84**
 - Knowledge, imputation of, **5:85**
 - Meaning, **5:80**
 - Modified views, **5:82 et seq.**

DIRECT-PERSONAL DEALING

—Cont'd

- Conflict of interest transactions
 - Cont'd
- Deception requirement—Cont'd
 - Pleading, **5:88**
 - Policies, **5:87**
 - Reasons, **5:87**
 - Shareholders, deception of, **5:83**
 - Strict view, **5:81**
- Disclosure
 - Generally, **5:187 et seq.**
 - Full disclosure, **5:187 et seq.**
 - Information disclosed, **5:189**
 - Method of disclosure, **5:188**
- Fairness. Unfair terms, below
- Fraud vs fiduciary breach, **5:60**
- Full disclosure, **5:187 et seq.**
- Injunction suits
 - Buyer-seller requirements, **5:122**
 - Connection requirements, **5:138**
- Intrusion argument, **5:61 et seq.**
- Investor protection, continuity of, **5:67**
- Mismanagement exception
 - Generally, **5:72 et seq.**
 - Abuse of trading process, **5:76**
 - Fraud as part of, **5:75**
 - Meaning, **5:73**
 - Pleading, **5:78**
 - Policies, **5:77**
 - Public, effect of trading abuse on, **5:76**
 - Reasons, **5:77**
 - Strict view, **5:74**
- Obstacles
 - Generally, **5:56 et seq.**
 - Alternative forums, efficiency of, **5:65**
 - Application to other provisions, **5:69**
 - Birmbaun Canon, **5:70 et seq.**
 - Buyer-seller requirements
 - Generally, **5:110 et seq.**
 - Broad interpretation, **5:117**
 - Company as buyer-seller, **5:124**

DIRECT-PERSONAL DEALING

—Cont'd

- Conflict of interest transactions
 - Cont'd
- Obstacles—Cont'd
 - Buyer-seller requirements
 - Cont'd
 - Control, sales of, **5:113**
 - Definition, **5:111**
 - Forced sales, **5:120**
 - Injunction suits, **5:122**
 - Interpretation of requirement, **5:117**
 - Issuances, **5:121**
 - Liquidations, **5:119**
 - Loss causation as substitute, **5:123**
 - Mergers, **5:118**
 - Modified view, **5:117**
 - Strict view, **5:112 et seq.**
 - Causation requirements
 - Burden of proof, **5:98**
 - Loss causation, **5:91**
 - Loss causation as substitute for buyer-seller requirement, **5:123**
 - Meaning, **5:90**
 - Minority vote requirements, **5:93 et seq.**
 - Modified view, **5:95**
 - Pleading
 - Generally, **5:99 et seq.**
 - Materiality, **5:107**
 - Proxy solicitation as element, **5:108**
 - Policies, **5:97**
 - Proof
 - Generally, **5:99 et seq.**
 - Materiality, **5:107**
 - Proxy solicitation as element, **5:108**
 - Proxy solicitation as element, **5:108**
 - Reasons, **5:97**
 - Strict view, **5:93, 5:94**
 - Transaction causation, **5:92**
 - Voting
 - Modified causation, **5:105 et seq.**

DIRECT-PERSONAL DEALING

—Cont'd

- Conflict of interest transactions
 - Cont'd
- Obstacles—Cont'd
 - Causation requirements
 - Cont'd
 - Voting—Cont'd
 - Strict causation, **5:100 et seq.**
 - Connection requirement
 - Generally, **5:127 et seq.**
 - Another's sale, misconduct in connection with, **5:132**
 - Commissions, **5:133**
 - Court cases, **5:135**
 - Definition, **5:128**
 - Injunction suits, **5:138**
 - Kickbacks, **5:133**
 - Market transactions, misconduct affecting, **5:134**
 - Mechanical interpretation of, **5:130**
 - Modified view, **5:130 et seq.**
 - Pleading, **5:140**
 - Policies, **5:139**
 - Post-sale misconduct, **5:131**
 - Reasons, **5:139**
 - Strict view, **5:129**
 - Third party misconduct, **5:132**
- Continuity of investor protection, **5:67**
- Control, sales of, **5:113**
- Deception requirement
 - Generally, **5:79 et seq.**
 - Company, deception of, **5:84 et seq.**
 - Creditors, deception of, **5:86**
 - Decisional impairment, **5:84**
 - Directors, deception of, **5:82**
 - Economic effect of deception, **5:84**
 - Knowledge, imputation of, **5:85**
 - Meaning, **5:80**
 - Modified views, **5:82 et seq.**
 - Pleading, **5:88**

INDEX

DIRECT-PERSONAL DEALING

—Cont'd

- Conflict of interest transactions
 - Cont'd
 - Obstacles—Cont'd
 - Deception requirement—Cont'd
 - Policies, **5:87**
 - Reasons, **5:87**
 - Shareholders, deception of, **5:83**
 - Strict view, **5:81**
 - Decline of, **5:58**
 - Federal comparison, **5:55**
 - Fraud vs fiduciary breach, **5:60**
 - Interrelation of, **5:59**
 - Intrusion argument, **5:61 et seq.**
 - Investor protection, continuity of, **5:67**
 - Mismanagement exception
 - Generally, **5:72 et seq.**
 - Abuse of trading process, **5:76**
 - Fraud as part of, **5:75**
 - Meaning, **5:73**
 - Pleading, **5:78**
 - Policies, **5:77**
 - Public, effect of trading abuse on, **5:76**
 - Reasons, **5:77**
 - Strict view, **5:74**
 - Operation of, **5:57 et seq.**
 - Policies, **5:60**
 - Reasons for, **5:60**
 - Rise of, **5:58**
 - Standards, uniformity of, **5:66**
 - Uniformity of standards, **5:66**
- Pleading
- Buyer-seller requirements, **5:126**
 - Causation requirements, **5:99 et seq.**
 - Company as buyer seller, **5:126**
 - Connection requirement, **5:140**
 - Deception requirement, **5:88**
 - Materiality, **5:107**
 - Mismanagement exception, **5:78**
 - Modified causation, **5:105 et seq.**

DIRECT-PERSONAL DEALING

—Cont'd

- Conflict of interest transactions
 - Cont'd
 - Pleading—Cont'd
 - Strict causation, **5:99 et seq.**
 - Unfair terms, **5:152**
 - Sources, common law, **5:54**
 - Standards, uniformity of, **5:66**
 - Theories, common law, **5:54**
- Unfair terms
- Generally, **5:142 et seq.**
 - Actual control, **5:156**
 - Arms length transactions
 - Generally, **5:144**
 - Reasons and policies, **5:149**
 - Book value, **5:162**
 - Burden of proof, **5:153**
 - Business decisions as value determiners, **5:171**
 - Capitalization of earnings as test of value, **5:161**
 - Conflict transactions
 - Generally, **5:145**
 - Reasons and policies, **5:150**
 - Control, proof of, **5:155**
 - Control premiums and discounts, **5:166**
 - Control sales, **5:191**
 - Court cases, **5:183 et seq.**
 - Definition, **5:143**
 - Disclosure
 - Generally, **5:187 et seq.**
 - Full disclosure, **5:187 et seq.**
 - Information disclosed, **5:189**
 - Method of disclosure, **5:188**
 - Persons to whom disclosure made, **5:190**
 - Discounts, control, **5:166**
 - Earnings tests of value, **5:161**
 - Fair terms, effect of, **5:147**
 - Full disclosure, effect of
 - Generally, **5:146**
 - Reasons and policies, **5:151**
 - Influence, proof of, **5:155**
 - Investment bankers
 - Generally, **5:172 et seq.**

DIRECT-PERSONAL DEALING

—Cont'd

Conflict of interest transactions
 —Cont'd
 Unfair terms—Cont'd
 Investment bankers—Cont'd
 Controlled company bankers,
 5:175
 Controlling company bankers,
 5:177
 Dual representation bankers,
 5:176
 No banker transactions, **5:178**
 Opinions of, challenging,
 5:181
 Prior relations of, **5:182**
 Qualities of bankers, **5:173**
 Roles of bankers, **5:174**
 Successive bankers, **5:179**
 Trials, bankers for, **5:180**
 Legal decisions as value
 determiners, **5:170**
 Liquidation value, **5:163**
 Market prices as value indica-
 tors, **5:160**
 Pleading, **5:152**
 Policies, **5:148 et seq.**
 Potential control, **5:156**
 Premiums, control, **5:166**
 Proof of elements, **5:154**
 Range of fairness, **5:143**
 Reasons, **5:148 et seq.**
 Shareholder votes, effect of
 Generally, **5:146**
 Reasons and policies, **5:151**
 Tax factors in value determina-
 tion, **5:164**
 Time factors in value determina-
 tion, **5:165**
 Value determiners, **5:169 et seq.**
 Value indicators, **5:158 et seq.**
 Uniformity of standards, **5:66**
 Connection requirement
 Generally, **5:127 et seq.**
 Another's sale, misconduct in con-
 nection with, **5:132**
 Commissions, **5:133**
 Court cases, **5:135**

DIRECT-PERSONAL DEALING

—Cont'd

Connection requirement—Cont'd
 Definition, **5:128**
 Injunction suits, **5:138**
 Kickbacks, **5:133**
 Market transactions, misconduct
 affecting, **5:134**
 Mechanical interpretation of,
 5:130
 Modified view, **5:130 et seq.**
 Pleading, **5:140**
 Policies, **5:139**
 Post-sale misconduct, **5:131**
 Reasons, **5:139**
 Strict view, **5:129**
 Third party misconduct, **5:132**
 Context, **5:1**
 Control, sales of, **5:113**
 Court cases
 Birmbaun Canon, **5:70 et seq.**
 Connection requirement, **5:135,**
 5:135 et seq.
 Unfairness
 Generally, **5:183 et seq.**
 Fair terms, **5:185**
 SEC decisions, **5:186**
 Unfair terms, **5:184**
 Deception
 Generally, **5:79 et seq.**
 Company, deception of, **5:84 et**
 seq.
 Decisional impairment, **5:84**
 Directors, deception of, **5:82**
 Economic effect of deception, **5:84**
 Knowledge, imputation of, **5:85**
 Meaning, **5:80**
 Modified views, **5:82 et seq.**
 Pleading, **5:88**
 Policies, **5:87**
 Reasons, **5:87**
 Shareholders, deception of, **5:83**
 Strict view, **5:81**
 Definition, **1:2**
 Direct and indirect dealings, **4:1**
 Disclosure
 Generally, **5:187 et seq.**

INDEX

DIRECT-PERSONAL DEALING

—Cont'd

- Disclosure—Cont'd
 - Corrections
 - How long is correction necessary, **6:324**
 - What makes correction necessary, **6:320**
 - Information disclosed, **5:189**
 - Method of disclosure, **5:188**
- Fairness. Unfair terms, below
- Fraud on the market
 - Generally, **8:520 et seq.**
 - See also **Reliance** (this index)
- Injunction suits
 - Buyer-seller requirements, **5:122**
 - Connection requirements, **5:138**
- Issuer liabilities
 - Privately held securities, **5:6**
 - Publicly held securities, **5:7**
- Legal factors in party relationships, **5:5**
- Market-informing responsibilities, **12:7**
- Mediation, **15:69**
- Mismanagement
 - Generally, **5:72 et seq.**
 - Abuse of trading process, **5:76**
 - Fraud as part of, **5:75**
 - Meaning, **5:73**
 - Pleading, **5:78**
 - Policies, **5:77**
 - Public, effect of trading abuse on, **5:76**
 - Reasons, **5:77**
 - Strict view, **5:74**
- Misrepresentations, **5:2**
- Nondisclosures, **5:2**
- Obstacles
 - Generally, **5:56 et seq.**
 - Alternative forums, efficiency of, **5:65**
 - Application to other provisions, **5:69**
 - Continuity of investor protection, **5:67**
 - Decline of, **5:58**
 - Federal comparison, **5:55**

DIRECT-PERSONAL DEALING

—Cont'd

- Obstacles—Cont'd
 - Interrelation of, **5:59**
 - Intrusion argument, **5:61 et seq.**
 - Mismanagement exception, fraud as part of, **5:75**
 - Operation of, **5:57 et seq.**
 - Reasons for, **5:60**
 - Rise of, **5:58**
 - Uniformity of standards, **5:66**
- Organization of treatise, **4:1**
- OTC market distinguished, **1:2**
- Other deceptions, **5:3**
- Penny Stock Sales** (this index)
- Personal and impersonal dealings, **4:1**
- Pleading
 - Buyer-seller requirements, **5:126**
 - Causation requirements, **5:99 et seq.**
 - Company as buyer seller, **5:126**
 - Connection requirement, **5:140**
 - Deception requirement, **5:88**
 - Materiality, **5:107**
 - Mismanagement exception, **5:78**
 - Modified causation, **5:105 et seq.**
 - Strict causation, **5:99 et seq.**
 - Unfair terms, **5:152**
- Practical factors in party relationships, **5:4**
- Privately held securities, issuer liabilities as to, **5:6**
- Private transactions, **5:8**
- Proxy solicitation as element, **5:108**
- Publicly held securities, issuer liabilities as to, **5:7**
- Relations of parties
 - Legal factors, **5:5**
 - Practical factors, **5:4**
- Reliance
 - Generally, **8:484 et seq.**
 - See also **Reliance** (this index)
- Rule 10b-5
 - Application to
 - Generally, **3:26**
 - Broker-dealer transactions, **3:27**
 - Responsibilities generally, **12:7**

DIRECT-PERSONAL DEALING

—Cont'd

Scienter and actual knowledge, **8:170**
 Securities types
 Generally, **5:9 et seq.**
 Alternative government regulation, **5:35**
 Certificates of deposit, **5:28**
 Characteristics of instrument in commerce, **5:39**
 Common elements in defining a security, **5:32 et seq.**
 Context clause, **5:18**
 Cooperative apartment corporation shares, **5:26**
 Court cases, **5:20 et seq.**
 Employee benefit plans
 Generally, **5:42 et seq.**
 Contributory plans
 Involuntary, **5:46**
 Voluntary, **5:48**
 Defined plans, **5:49**
 Distinguishing contributory from noncontributory, **5:52**
 Distinguishing voluntary from involuntary plans, **5:51**
 ERISA, preemptive effect of, **5:43**
 ESOPs, **5:48**
 Involuntary contributory plans, **5:46**
 Involuntary noncontributory plans, **5:45**
 Noncontributory plans
 Involuntary, **5:45**
 Voluntary, **5:47**
 Pension plans, **5:49**
 Sales, **5:44**
 Voluntary contributory plans, **5:48**
 Voluntary noncontributory plans, **5:47**
 Evidence of indebtedness, **5:13**
 Expectations of public, **5:40**
 Flexible fund annuities, **5:24, 5:25**
 Fractional interests in mineral rights, **5:21**
 Guarantees, **5:15**
 Howey test, **5:22**

DIRECT-PERSONAL DEALING

—Cont'd

Securities types—Cont'd
 Interest, **5:14**
 International Brotherhood of Teamsters case, **5:27**
 Investment risk as factor, **5:34**
 Joiner Leasing Corp case, **5:21**
 Judicial decisions, **5:20 et seq.**
 Landreth Timber Co case, **5:29**
 Marine Bank case, **5:28**
 Marketing as factor, **5:33**
 Motivations of purchasers, **5:37**
 Motivations of sellers, **5:38**
 9 month notes, **5:17**
 Notes, **5:30**
 Oil and gas interests
 Generally, **5:16**
 Fractional interests, **5:21**
 Passive or active purchasers, **5:36**
 Pension plans, employee interests in, **5:27**
 Perceptions of public, **5:40**
 Reeves v. Ernst & Young case, **5:30**
 Relative importance of elements, **5:41**
 SA § 2(1)(a) definition
 Generally, **5:10**
 Evidence of indebtedness, **5:13**
 Guarantees, **5:15**
 Interest, **5:14**
 9 month notes, **5:17**
 Oil and gas interests, **5:16**
 SEA § 3(a)(10) differences, **5:12 et seq.**
 SEA § 3(a)(10) similarities, **5:11**
 SEA § 3(A)(10)
 Generally, **5:10**
 Evidence of indebtedness, **5:13**
 Guarantees, **5:15**
 Interest, **5:14**
 9 month notes, **5:17**
 Oil and gas interests, **5:16**
 SA § 2(1)(a) differences, **5:12 et seq.**
 SA § 2(1)(a) similarities, **5:11**
 State law definitions, **5:19**

INDEX

DIRECT-PERSONAL DEALING

—Cont'd

Securities types—Cont'd

Statutory definitions, **5:10 et seq.**

United Benefit Life Ins Co case,
5:24

United Housing Foundation, Inc
case, **5:26**

Variable annuities, **5:23**

Suitability (this index)

Transaction Planning (this index)

Unfair terms

Generally, **5:142 et seq.**

Actual control, **5:156**

Arms length transactions

Generally, **5:144**

Reasons and policies, **5:149**

Book value, **5:162**

Burden of proof, **5:153**

Business decisions as value
determiners, **5:171**

Capitalization of earnings as test of
value, **5:161**

Conflict transactions

Generally, **5:145**

Reasons and policies, **5:150**

Control, proof of, **5:155**

Control premiums and discounts,
5:166

Control sales, **5:191**

Court cases, **5:183 et seq.**

Definition, **5:143**

Disclosure

Generally, **5:187 et seq.**

Information disclosed, **5:189**

Method of disclosure, **5:188**

Persons to whom disclosure
made, **5:190**

Discounts, control, **5:166**

Earnings tests of value, **5:161**

Fair terms, effect of, **5:147**

Full disclosure, effect of

Generally, **5:146**

Reasons and policies, **5:151**

Influence, proof of, **5:155**

Investment bankers

Generally, **5:172 et seq.**

DIRECT-PERSONAL DEALING

—Cont'd

Unfair terms—Cont'd

Investment bankers—Cont'd

Controlled company bankers,
5:175

Controlling company bankers,
5:177

Dual representation bankers,
5:176

No banker transactions, **5:178**

Opinions of, challenging, **5:181**

Prior relations of, **5:182**

Qualities of bankers, **5:173**

Roles of bankers, **5:174**

Successive bankers, **5:179**

Trials, bankers for, **5:180**

Legal decisions as value determin-
ers, **5:170**

Liquidation value, **5:163**

Market prices as value indicators,
5:160

Pleading, **5:152**

Policies, **5:148 et seq.**

Potential control, **5:156**

Premiums, control, **5:166**

Proof of elements, **5:154**

Range of fairness, **5:143**

Reasons, **5:148 et seq.**

Shareholder votes, effect of

Generally, **5:146**

Reasons and policies, **5:151**

Tax factors in value determination,
5:164

Time factors in value determina-
tion, **5:165**

Value determiners, **5:169 et seq.**

Value indicators, **5:158 et seq.**

What is a Security (this index)

DIRKS CASE

Insider trading, gifts to relatives,
7:396

Private actions, loss causation in
Supreme Court decision, **8:563**

DISCIPLINARY PROCEEDINGS

Injunctions, collateral effects, **13:106**

DISCLOSURES

Generally, **5:187 et seq., 6:267**
 Acquisition information
 Required disclosures, **7:259**
 Timely disclosure
 Generally, **7:248 et seq.**
 Agreements
 Disclosure not required, **7:261**
 Disclosure required, **7:260**
 Company, trading by, **7:256**
 Definitions, **7:250**
 Disclosure document obligations, **7:259**
 Leaks, **7:255**
 Materiality of negotiated acquisitions, **7:262 et seq.**
 Preliminary negotiations
 Misleading statements, **7:253**
 No statement made, **7:252**
 Other situations, **7:254**
 Prior statement now misleading, **7:257**
 Rumors, **7:255**
 Stages of negotiated acquisitions, **7:249**
 Target response to tender offers, **7:258**
 When disclosure required, **7:251 et seq., 7:260**
 Advance letters
 Proxy rules, **6:240**
 Registration under SA, **6:241**
 Aggregate materiality, **6:253**
 Analysts' roles in full disclosure regulations, **7:528**
 Annual reports, **6:242**
 Antifraud provisions and Regulation FD, **7:546**
 Application of funds, **6:260**
 Assets
 Generally, **6:261 et seq.**
 Existence of, **6:262**
 Reasons, **6:273**
 Value of assets, below
 Awareness of MNPI
 Generally, **7:316, 7:349 et seq.**
 Possession distinguished, **7:349**

DISCLOSURES—Cont'd

Backdating of stock options, executive compensation, **18:1 et seq.**
 Balance, **6:229**
 Burden of proof, nonpublic nature of information, **7:312**
 Buried facts, **6:232**
 Cash flow, **6:260**
 Clarity, **6:225**
 Compulsory disclosure. Regulation FD, below
 Consistency, **6:228**
 Conspicuity. Prominence, below
 Conspirators' nondisclosures, **8:306**
 Context
 Generally, **6:235**
 Risk disclosures, **6:275**
 Control, merger offers leading to board control changes, **6:61**
 Corrections
 Generally, **6:290 et seq.**
 See also Supplementary communications, below
 Another's statements, correction of, **6:319**
 Blue sky laws, **6:292**
 Broker-dealer fraud, **6:312**
 Common law, **6:291**
 False reports to SEC, **6:313**
 Fraud in general, **6:314 et seq.**
 How long correction is necessary
 Generally, **6:323**
 Direct-impersonal transactions, **6:325**
 Direct-personal transactions, **6:324**
 Indirect-impersonal transactions, **6:326**
 Rule 14a-9, **6:304**
 Rule 14c-6, **6:308**
 SA § 11, **6:296**
 How must correction be made
 Rule 10b-5, **6:328**
 Rule 14a-9, **6:306**
 Rule 14c-6, **6:310**
 SA § 11, **6:298**
 Market manipulation, **6:300**
 Proxy fraud, **6:302**

INDEX

DISCLOSURES—Cont'd

Corrections—Cont'd

Registration fraud, **6:294 et seq.**

Rule 10b-5 requirements

Fraud in general, **6:314 et seq.**

How long is correction necessary, **6:323 et seq.**

How must correction be made, **6:328**

What makes correction necessary, **6:319 et seq.**

What must be corrected, **6:327**

Who entitled to correction, **6:328**

Rule 14a-9, **6:303 et seq.**

Rule 14c-6, **6:307 et seq.**

SA § 11, **6:294 et seq.**

SA § 12(2), **6:293**

SA § 17(a), **6:299**

Safe harbor for predictions and projections

Later disclosures, **7:30**

Update duties, **7:45**

Sales fraud

Express liability, **6:293**

Implied liability, **6:299**

SEA § 9(a), **6:300**

SEA § 10, **6:301**

SEA § 14, **6:302**

SEC, false reports to, **6:313**

State law, **6:292**

Tender offer fraud, **6:311**

What makes correction necessary

Generally, **6:319**

Direct-impersonal transactions, **6:321**

Direct-personal transactions, **6:320**

Indirect-impersonal transactions, **6:322**

Rule 14a-9, **6:303**

Rule 14c-6, **6:307**

SA § 11, **6:295**

What must be corrected

Rule 10b-5, **6:327**

Rule 14a-9, **6:305**

Rule 14c-6, **6:309**

SA § 11, **6:297**

DISCLOSURES—Cont'd

Corrections—Cont'd

Who entitled to correction

Rule 10b-5, **6:328**

Rule 14a-9, **6:306**

Rule 14c-6, **6:310**

SA § 11, **6:298**

Cover letters, **6:243**

Covid-19 pandemic, misleading disclosures re: class actions, **27:3, 27:5 to 27:7**

Cross references, **6:233**

Crowdfunding, **14:216**

JOBS Act, current status, **14:219**

Cybersecurity, failure to, **26:1**

Detail, **6:234**

Direct-impersonal dealing

Generally, **6:212 et seq.**

Advance letters

Proxy rules, **6:240**

Registration under SA, **6:241**

Aggregate materiality, **6:253**

Annual reports, **6:242**

Application of funds, **6:260**

Assets

Generally, **6:261 et seq.**

Existence of, **6:262**

Reasons, **6:273**

Value of assets, below

Balance, **6:229**

Buried facts, **6:232**

Cash flow, **6:260**

Clarity, **6:225**

Comparative tables, **6:219**

Consistency, **6:228**

Conspicuity. Prominence, below

Context, **6:235**

Control, merger offers leading to board control changes, **6:61**

Corrections

Generally, **6:290 et seq.**

See also Supplementary communications, below

Another's statements, correction of, **6:319**

Blue sky laws, **6:292**

Broker-dealer fraud, **6:312**

Common law, **6:291**

DISCLOSURES—Cont'd

Direct-impersonal dealing—Cont'd
 Corrections—Cont'd
 False reports to SEC, **6:313**
 Fraud in general, **6:314 et seq.**
 How long correction is necessary
 Generally, **6:323**
 Direct-impersonal transactions, **6:325**
 Direct-personal transactions, **6:324**
 Indirect-impersonal transactions, **6:326**
 Rule 14a-9, **6:304**
 Rule 14c-6, **6:308**
 SA § 11, **6:296**
 How must correction be made
 Rule 10b-5, **6:328**
 Rule 14a-9, **6:306**
 Rule 14c-6, **6:310**
 SA § 11, **6:298**
 Market manipulation, **6:300**
 Proxy fraud, **6:302**
 Registration fraud, **6:294 et seq.**
 Rule 10b-5 requirements
 Fraud in general, **6:314 et seq.**
 How long is correction necessary, **6:323 et seq.**
 How must correction be made, **6:328**
 What makes correction necessary, **6:319 et seq.**
 What must be corrected, **6:327**
 Who entitled to correction, **6:328**
 Rule 14a-9, **6:303 et seq.**
 Rule 14c-6, **6:307 et seq.**
 SA § 11, **6:294 et seq.**
 SA § 12(2), **6:293**
 SA § 17(a), **6:299**
 Sales fraud
 Express liability, **6:293**
 Implied liability, **6:299**
 SEA § 9(a), **6:300**
 SEA § 10, **6:301**

DISCLOSURES—Cont'd

Direct-impersonal dealing—Cont'd
 Corrections—Cont'd
 SEA § 14, **6:302**
 SEC, false reports to, **6:313**
 State law, **6:292**
 Tender offer fraud, **6:311**
 What makes correction necessary
 Generally, **6:319**
 Direct-impersonal transactions, **6:321**
 Direct-personal transactions, **6:320**
 Indirect-impersonal transactions, **6:322**
 Rule 14a-9, **6:303**
 Rule 14c-6, **6:307**
 SA § 11, **6:295**
 What must be corrected
 Rule 10b-5, **6:327**
 Rule 14a-9, **6:305**
 Rule 14c-6, **6:309**
 SA § 11, **6:297**
 Who entitled to correction
 Rule 10b-5, **6:328**
 Rule 14a-9, **6:306**
 Rule 14c-6, **6:310**
 SA § 11, **6:298**
 Cross references, **6:233**
 Detail, **6:234**
 Distribution, **6:214 et seq.**
 Earnings
 Generally, **6:254**
 Inherently misleading statements, **6:256**
 Interim, **6:259**
 Misrepresentations, **6:255**
 Nondisclosure of, **6:257**
 Predictions, **6:255**
 Exchange offers, **6:12**
 Form and substance, **6:235**
 Interim earnings, **6:259**
 Interpretation, **6:236**
 Level, **6:227**
 Locus, **6:214 et seq.**
 Materiality
 Generally, **6:248 et seq.**

INDEX

DISCLOSURES—Cont'd

- Direct-impersonal dealing—Cont'd
 - Materiality—Cont'd
 - Aggregate, **6:253**
 - Might, use of term, **6:249**
 - Practical problems, **6:251**
 - Probably would, use of term, **6:250**
 - Specific items, materiality of, **6:252**
 - Would, use of term, **6:249**
- Merger information statement
 - rules, Congressional intent, **6:156**
- Misrepresentations
 - Earnings, **6:255**
 - Value of assets
 - Generally, **6:270**
 - Defenses, **6:271**
 - Precautions, **6:272**
- Numerical information, **6:237**
- Opposition communications, **6:247**
- Organization, **6:226**
- Overall effect, **6:238**
- Predictions, earnings, **6:255**
- Presentation, **6:224 et seq.**
- Prominence
 - Generally, **6:230 et seq.**
 - Buried and scattered facts, **6:232**
 - Similar emphasis, **6:231**
- Publicity, prefiling, **6:10**
- Public sales, **6:12**
- Repetition, **6:233**
- Risk
 - Generally, **6:275 et seq.**
 - CFTC requirements, **6:289**
 - Context, **6:275**
 - Court cases, **6:281**
 - Day trading, **6:284**
 - Extended hour trading, **6:285**
 - Margin trading, **6:286**
 - NASD requirements, **6:283 et seq.**
 - Plain English requirements, **6:278**
 - Safe harbor, **6:282**
 - SA filings, **6:279**
 - SEA filings, **6:280**

DISCLOSURES—Cont'd

- Direct-impersonal dealing—Cont'd
 - Risk—Cont'd
 - Short selling, **6:287**
 - Specific requirements, **6:277**
 - Uninsured products, **6:288**
- Rule 10b-5 requirements, **6:218**
- SA § 5 requirements, **6:217**
- Scattered facts, **6:232**
- SEA § 14(a) requirements, **6:215**
- SEA § 14(c) requirements, **6:216**
- Sources of funds, **6:260**
- Sources of requirements
 - Generally, **6:220 et seq.**
 - Antifraud provisions, **6:222**
 - Specific items, **6:221**
 - Timing, **6:223**
- Specific information requirements, **6:2**
- Style, **6:224 et seq.**
- Supplementary communications
 - Generally, **6:239 et seq.**
 - See also Corrections, above
- Advance letters
 - Proxy rules, **6:240**
 - Registration under SA, **6:241**
- Annual reports, **6:242**
- Cover letters, **6:243**
- Followup solicitations, **6:244**
- Generally available information, **6:246**
- Other communications, **6:245**
- Transmittal letters, **6:243**

Tender offers

- Congressional intent, **6:17**

Regulated offers

- Generally, **6:41**
- Arrangements, **6:47**
- Changes, effects of
 - Generally, **6:49**
 - SEC filings, **6:52**
 - Ten percent threshold disclosure requirements, **6:57**

Control change information, **6:61**

Control purposes, **6:64**

DISCLOSURES—Cont'd

- Direct-impersonal dealing—Cont'd
- Tender offers—Cont'd
- Regulated offers—Cont'd
 - Date of information
 - Generally, **6:49**
 - SEC filings, **6:52**
 - Ten percent threshold disclosure requirements, **6:57**
 - Deviation from stated plans, **6:70**
 - Funds, source of, **6:44**
 - Fund source data, **6:44**
 - Groups, data on, **6:48**
 - Ideas vs plans, **6:68**
 - Issuer offers, **6:144**
 - Noncompliance, effects of, **6:74**
 - Offer data, **6:43**
 - Offeror data, **6:42**
 - Ownership, **6:55**
 - Plans, **6:45**
 - Plans and proposals, **6:66 et seq.**
 - Publicity
 - Offeror, **6:94**
 - Target company, **6:98**
 - Third persons, **6:108**
 - Purposes, **6:45, 6:62 et seq.**
 - Sanctions for noncompliance, **6:74**
 - SEC filings
 - Generally, **6:50 et seq.**
 - Changes, effects of, **6:52**
 - Date of information, **6:52**
 - Other disseminations, **6:54**
 - Processing, **6:53**
 - Scope of disclosure, **6:51**
 - Time of filing, **6:50**
 - Securities, data on, **6:46**
 - Ten percent threshold
 - Generally, **6:55 et seq.**
 - Changes, effect of, **6:57**
 - Date of information, **6:57**
 - Exemptions, **6:60**
 - Other disseminations, **6:59**
 - Ownership, **6:55**

DISCLOSURES—Cont'd

- Direct-impersonal dealing—Cont'd
- Tender offers—Cont'd
- Regulated offers—Cont'd
 - Ten percent threshold—Cont'd
 - Scope of disclosure, **6:56**
 - SEC processing, **6:58**
 - Understandings, **6:47**
- Unregulated offers
 - Generally, **6:113**
 - Insiders, **6:114**
 - Outsiders
 - Generally, **6:115 et seq.**
 - Issuer, information about, **6:117**
 - Offer, identity of, **6:119**
 - Other information, **6:118**
 - Plans and proposals, **6:116**
 - Policy factors, **6:120**
 - Target company, **6:121**
- Timing requirements, **6:223**
- Value of assets
 - Generally, **6:263 et seq.**
 - Firm offers, **6:265**
 - Hard data, **6:264**
 - Misrepresentations
 - Generally, **6:270**
 - Defenses, **6:271**
 - Precautions, **6:272**
 - Modified view
 - Disposition plans, **6:266**
 - Hard data, **6:264**
 - Other situations, **6:268**
 - Policies, **6:269**
 - Reasons, **6:269**
 - Replacement costs, **6:267**
 - Traditional view, **6:263**
- Direct-personal dealing
 - Generally, **5:146, 5:187 et seq.**
 - Information disclosed, **5:189**
 - Method of disclosure, **5:188**
 - Nondisclosures generally, **5:2**
 - Unfair terms
 - Generally, **5:187 et seq.**
 - Information disclosed, **5:189**
 - Method of disclosure, **5:188**

INDEX

DISCLOSURES—Cont'd

- Direct-personal dealing—Cont'd
- Unfair terms—Cont'd
 - Persons to whom disclosure made, **5:190**
 - Reasons and policies, **5:151**
- Dividend actions
 - Materiality, **7:247**
 - When disclosure required, **7:246**
- Earnings
 - Generally, **6:254**
 - Executive compensation, backdating of stock options, **18:1 et seq.**
 - Inherently misleading statements, **6:256**
 - Interim, **6:259**
 - Misrepresentations, **6:255**
 - Nondisclosure of, **6:257**
 - Predictions, **6:255**
- Exchange offers, **6:12**
- Exemption provisions and Regulation FD, **7:548**
- Final rule on incident disclosure, cybersecurity, **26:9**
- Foreign Corrupt Practices Act (FCPA)** (this index)
- Form and substance, **6:235**
- Forward Looking Information** (this index)
- Fraud on the market
 - Generally, **8:520 et seq.**
 - See also **Reliance** (this index)
 - Theory and disclosure policy, **8:533**
- Full disclosure duty
 - Regulation FD, below
 - Trigger, **7:536**
- Grace case, **8:423**
- Information disclosed, **5:189**
- Information types, **7:2**
- Inside information
 - Dividend actions, materiality, **7:247**
 - Law violations and timeliness considerations, **7:244**
 - Timely disclosure
 - Generally, **7:238 et seq.**

DISCLOSURES—Cont'd

- Inside information—Cont'd
- Timely disclosure—Cont'd
- Acquisition information
 - Generally, **7:248 et seq.**
- Agreements
 - Disclosure not required, **7:261**
 - Disclosure required, **7:260**
- Company, trading by, **7:256**
- Definitions, **7:250**
- Disclosure document obligations, **7:259**
- Leaks, **7:255**
- Materiality of negotiated acquisitions, **7:262 et seq.**
- Preliminary negotiations
 - Misleading statements, **7:253**
 - No statement made, **7:252**
 - Other situations, **7:254**
- Prior statement now misleading, **7:257**
- Rumors, **7:255**
- Stages of negotiated acquisitions, **7:249**
- Target response to tender offers, **7:258**
- When disclosure of agreement required, **7:260**
- When disclosure required, **7:251 et seq.**
- Business judgment considerations, **7:241**
- Corporate purpose considerations, **7:242**
- Delays, justifications for, **7:240**
- Dividend actions
 - Evolving information, **7:245**
 - Materiality, **7:247**
 - When disclosure required, **7:246**
- Justification for delay, **7:240**
- Law violations and timeliness considerations, **7:244**
- Ripeness and timing, **7:243**
- Tender offers
 - Generally, **7:267**

DISCLOSURES—Cont'd

- Inside information—Cont'd
 - Timely disclosure—Cont'd
 - Tender offers—Cont'd
 - Materiality, **7:270**
 - Stages of nonnegotiated acquisitions, **7:268**
 - When disclosure required, **7:269**
- Insiders
 - Generally, **7:152 et seq.**
 - See also **Insiders and Insider Trading** (this index)
 - Disclose or abstain duties
 - Generally, **7:197 et seq.**
 - Duration of duty, **7:200**
 - Nature of duty, **7:198**
 - Who is entitled to disclosure, **7:199**
 - Regulation FD, below
 - Intentional and nonintentional partial disclosures, **7:538 et seq.**
 - Interim earnings, **6:259**
 - Interpretation, **6:236**
 - Investment community disclosure, **7:300**
- Issuer disclosures
 - Generally, **7:282 et seq.**
 - Awareness of MNPI
 - Generally, **7:316, 7:349 et seq.**
 - Possession distinguished, **7:349**
 - Burden of proof, nonpublic nature of information, **7:312**
 - Full disclosure duty triggered by partial disclosure, **7:536**
 - Law and fact questions, nonpublic character of information, **7:314**
 - Limitations period, disclosure as starting, **7:279**
 - Market reaction as public/nonpublic test, **7:281**
 - Materiality and public disclosure, **7:280**
 - Misrepresentations, public disclosure as curing, **7:276 et seq.**
- MNPI
 - Materiality, above

DISCLOSURES—Cont'd

- Issuer disclosures—Cont'd
 - MNPI—Cont'd
 - Nonpublic information, below
- Nonpublic information
 - Generally, **7:271 et seq.**
 - Absorption requirement, **7:306 et seq.**
 - Burden of proof, **7:312**
 - Eliminating nonpublic information, Regulation FD, **7:552**
 - Full disclosure duty triggered by partial disclosure of, **7:536**
 - Law and fact questions, **7:314**
 - Limitations period, disclosure as starting, **7:279**
 - Market reaction as public/nonpublic test, **7:281**
 - Materiality and public disclosure, **7:280**
 - Misrepresentations, public disclosure as curing, **7:276 et seq.**
 - Motion practice, **7:311**
 - Omissions, public disclosure as curing, **7:276 et seq.**
 - Pleading, **7:310**
 - Procedural aspects, **7:309 et seq.**
 - Proof, **7:313**
 - Public as affecting insider trading, **7:272 et seq.**
 - Quantum of proof, **7:312**
 - Rumors, **7:301**
 - Time in becoming public, **7:304 et seq.**
 - Tipping of, **7:272 et seq.**
- Omissions, public disclosure as curing, **7:276 et seq.**
- Periodic reports, **7:289**
- Pleading nonpublic nature of information, **7:310**
- Possession of MNPI
 - Generally, **7:316**
 - Awareness and possession distinguished, **7:349**
 - Burden of proof, **7:321, 7:341**
 - Chinese walls, **7:343 et seq.**

INDEX

DISCLOSURES—Cont'd

Issuer disclosures—Cont'd

Possession of MNPI—Cont'd

Connection with transaction,
7:681

Individuals, proof for, **7:342**

Knowing possession, **7:320**

Mere possession, **7:319**

Organizations, proof for, **7:343**
et seq.

Precautions against trading,
7:346

Proof, **7:322 et seq.**

Rule 10b-5

Generally, **7:318 et seq.**

Access, proof of, **7:323**

Awareness and possession
distinguished, **7:349**

Burden of proof, **7:321**

Contact, proof of, **7:324**

Individuals, proof as to, **7:322**

Knowing possession, **7:320**

Mere possession, **7:319**

Organizations, proof for,
7:326

Proof, **7:322 et seq.**

Trading, proof of, **7:325**

Use inferred from possession,
7:328

Rule 14e-3

Generally, **7:340 et seq.**

Burden of proof, **7:341**

Chinese walls, **7:343 et seq.**

Individuals, proof for, **7:342**

Organizations, proof for,
7:343 et seq.

Precautions against trading,
7:346

Standard of proof, **7:341**

Standard of proof, **7:341**

Use compared, **7:317**

Press releases, **7:283**

Proof of nonpublic character of
information, **7:313**

Prospectuses, **7:286**

Proxy statements, **7:287**

Reports, **7:289**

Rumors, **7:301**

DISCLOSURES—Cont'd

Issuer disclosures—Cont'd

SEC filings, **7:285**

Shareholder communications,
7:284

Tender offer statements, **7:288**

Use of MNPI

Generally, **7:316**

Burden of proof, **7:331**

Connection with transaction,
7:681

Individuals, proof for, **7:332**

Organizations, proof for, **7:339**

Possession compared, **7:317**

Rule 10b-5

Generally, **7:327 et seq.**

Burden of proof, **7:331**

Individuals, proof for, **7:332**

Inferences, **7:328**

Organizations, proof for,
7:339

Possession, use inferred from,
7:328

Rebuttal evidence, **7:337**,
7:338

Size of transaction, proof
value, **7:334**

Standard of proof, **7:331**

Timing, proof of, **7:333**

Type of transaction, proof
value, **7:335**

Rule 14e-3, **7:347**

Size of transaction, proof value,
7:334

Standard of proof, **7:331**

Timing, proof of, **7:333**

Type of transaction, proof value,
7:335

Law and fact questions, **7:314**

Law violations and timeliness
considerations, **7:244**

Level, **6:227**

Limitations period, disclosure as
starting, **7:279**

Market, management responsibilities
to inform

Generally, **8:421**

Business changes, **8:422**

Grace case, **8:423**

DISCLOSURES—Cont'd

Market, management responsibilities to inform—Cont'd
 National Telephone case, **8:422**
 Second-guessing disclosure counsel, **8:423**
 Market reaction as public/nonpublic test, **7:281**
 Markup and markdown practices, **14:149**
 Materiality
 Generally, **6:248 et seq.**
 Aggregate, **6:253**
 Might, use of term, **6:249**
 Practical problems, **6:251**
 Probably would, use of term, **6:250**
 Safe harbor for predictions and projections, **7:35, 7:38**
 Selective disclosures, materiality of, **7:535**
 Specific items, materiality of, **6:252**
 Would, use of term, **6:249**
 Materiality and public disclosure, **7:280**
 Material nonpublic information (MNPI)
 Generally, **7:152**
 Awareness of MNPI, above
 Possession of MNPI, below
 Use of MNPI, below
 Merger information statement rules, Congressional intent, **6:156**
 Method of disclosure
 Generally, **5:188**
 Regulation FD, **7:544**
 Misrepresentation
 Backdating of stock options, **18:1 et seq.**
 Earnings, **6:255**
 Public disclosure as curing, **7:276 et seq.**
 Value of assets
 Generally, **6:270**
 Defenses, **6:271**
 Precautions, **6:272**
 MNPI. Material nonpublic information, above

DISCLOSURES—Cont'd

Mutual fund violations, misleading prospectuses, **17:7**
Nondisclosure liability (this index)
 Nonpublic information
 Generally, **7:271 et seq.**
 Absorption requirement, **7:306 et seq.**
 Burden of proof, **7:312**
 Duty to disclose generally, **7:275**
 Eliminating nonpublic information, Regulation FD, **7:552**
 Full disclosure duty triggered by partial disclosure of, **7:536**
 Investment community disclosure, **7:300**
 Issuer disclosures
 Generally, **7:282 et seq.**
 Periodic reports, **7:289**
 Press releases, **7:283**
 Prospectuses, **7:286**
 Proxy statements, **7:287**
 Reports, **7:289**
 SEC filings, **7:285**
 Shareholder communications, **7:284**
 Tender offer statements, **7:288**
 Law and fact questions, **7:314**
 Limitations period, disclosure as starting, **7:279**
 Market reaction as public/nonpublic test, **7:281**
 Materiality and public disclosure, **7:280**
 Media disclosures
 Generally, **7:292 et seq.**
 Particular media, **7:299**
 Timing, **7:297**
 Misrepresentations, public disclosure as curing, **7:276 et seq.**
 Motion practice, **7:311**
 Omissions, public disclosure as curing, **7:276 et seq.**
 Pleading, **7:310**
 Procedural aspects, **7:309 et seq.**
 Proof, **7:313**
 Public as affecting insider trading, **7:272 et seq.**

INDEX

DISCLOSURES—Cont'd

- Nonpublic information—Cont'd
 - Quantum of proof, **7:312**
 - Rumors, **7:301**
 - Time in becoming public, **7:304 et seq.**
 - Tipping of, **7:272 et seq.**
- Numerical information, **6:237**
- NYSE rules, **App F**
- Omissions, public disclosure as curing, **7:276 et seq.**
- Opposition communications, **6:247**
- Organization, **6:226**
- Overall effect, **6:238**
- Payments to foreign government officials, **Foreign Corrupt Practices Act (FCPA)** (this index)
- Periodic reports, **7:289**
- Plain English requirements, **6:278**
- Possession of MNPI
 - Generally, **7:316**
 - Awareness and possession distinguished, **7:349**
 - Burden of proof, **7:321, 7:341**
 - Chinese walls, **7:343 et seq.**
 - Connection with transaction, **7:681**
 - Individuals, proof for, **7:342**
 - Knowing possession, **7:320**
 - Mere possession, **7:319**
 - Organizations, proof for, **7:343 et seq.**
 - Precautions against trading, **7:346**
 - Proof, **7:322 et seq.**
- Rule 10b-5
 - Generally, **7:318 et seq.**
 - Access, proof of, **7:323**
 - Awareness and possession distinguished, **7:349**
 - Burden of proof, **7:321**
 - Contact, proof of, **7:324**
 - Individuals, proof as to, **7:322**
 - Knowing possession, **7:320**
 - Mere possession, **7:319**
 - Organizations, proof for, **7:326**
 - Proof, **7:322 et seq.**
 - Trading, proof of, **7:325**

DISCLOSURES—Cont'd

- Possession of MNPI—Cont'd
 - Rule 10b-5—Cont'd
 - Use inferred from possession, **7:328**
 - Rule 14e-3
 - Generally, **7:340 et seq.**
 - Burden of proof, **7:341**
 - Chinese walls, **7:343 et seq.**
 - Individuals, proof for, **7:342**
 - Organizations, proof for, **7:343 et seq.**
 - Precautions against trading, **7:346**
 - Standard of proof, **7:341**
 - Standard of proof, **7:341**
 - Use compared, **7:317**
- Predictions and projection disclosure obligations
 - Generally, **7:10 et seq.**
- Capital resources, **7:15**
- Earnings, **6:255**
- Liquidity, **7:14**
- With MD&A requirement
 - Administrative enforcement, **7:13**
 - Private actions, **7:17**
- Nondisclosure liability, **8:2**
- Operation results, **7:16**
- Private actions on MD&A requirements, **7:17**
- Restrictions on disclosures, **7:18**
- Safe harbor
 - Generally, **7:19 et seq.**
 - Background, **7:20**
 - Bespeaks caution doctrine, **7:22**
- PSLRA
 - Generally, **7:23 et seq.**
 - Actual knowledge prong, **7:36**
 - Attacking cautionary statements, **7:29**
 - Caution prong, **7:26**
 - Corrections, **7:45**
 - Definition of forward looking statement, **7:25**
 - Discovery stays, **7:44**

DISCLOSURES—Cont'd

- Predictions and projection disclosure obligations—Cont'd
- Safe harbor—Cont'd
- PSLRA—Cont'd
 - Drafting cautionary statements, **7:28**
 - Eligible makers, **7:37**
 - Exclusions, **7:40**
 - Expandability, **7:41**
 - Falsity, actual knowledge of, **7:36**
 - Immateriality, **7:35, 7:38**
 - Later disclosures, **7:30**
 - Motion practice, **7:43**
 - Nonexclusiveness, **7:41**
 - Oral statements referencing caution, **7:31, 7:39**
 - Procedural aspects, **7:42**
 - Prohibited uses, **7:40**
 - Scope of Act, **7:24**
 - Statements with cautions, **7:27**
 - Update duty, **7:45**
- Readily available cautionary statements
 - Generally disseminated, **7:34**
 - SEC filings, **7:33**
 - Timing, **7:32**
- SA Rule 175, **7:21**
- SEA Rule 3b-6, **7:21**
- SEC, traditional position, **7:18**
- With SEC encouragement, **7:12**
- Without SEC rule, **7:11**
- Presentation, **6:224 et seq.**
- Prominence
 - Generally, **6:230 et seq.**
 - Buried and scattered facts, **6:232**
 - Similar emphasis, **6:231**
- Prompt disclosure requirement, Regulation FD, **7:543**
- Public or nonpublic character of information. Nonpublic information, above
- Public sales, **6:12**
- Registration provisions and Regulation FD, **7:547**

DISCLOSURES—Cont'd

- Regulation FD
 - Generally, **7:526 et seq.**
 - Analysts' roles, **7:528**
 - Antifraud provisions and, **7:546**
 - Avoiding selective disclosure, **7:553**
 - Companies covered, **7:545**
 - Compliance, **7:551 et seq.**
 - Curing violations, **7:554**
 - Eliminating nonpublic information, **7:552**
 - Enforcement, **7:549**
 - Exemption provisions and, **7:548**
 - Information, triggering, **7:534**
 - Intentional and nonintentional partial disclosures, **7:538 et seq.**
 - Materiality of triggering information, **7:535**
 - Method of disclosure, **7:544**
 - Persons triggering duty, **7:537**
 - Policy basis, **7:527**
 - Prompt disclosure requirement, **7:543**
 - Registration provisions and, **7:547**
 - Regulatory gap, **7:530**
 - Scope of regulation, **7:545**
 - SEC filing, compliance by, **7:555**
 - Selective disclosure
 - Generally, **7:529**
 - Avoiding, **7:553**
 - Curing violations, **7:554**
 - Materiality, **7:535**
 - Nonpublic nature of information disclosed, **7:536**
 - Triggering full disclosure obligation, **7:532**
 - Unintentional disclosures, **7:540**
 - Simultaneous disclosure requirements, **7:542**
 - Timing requirements, **7:541 et seq.**
 - Triggering events
 - Generally, **7:531 et seq.**
 - Information, triggering, **7:534**
 - Intentional and nonintentional partial disclosures, **7:538 et seq.**

INDEX

DISCLOSURES—Cont'd

Regulation FD—Cont'd

Triggering events—Cont'd

Materiality of triggering information, **7:535**

Nonintentional disclosures, **7:540**

Nonpublic nature of information disclosed, **7:536**

Nontriggering disclosures, **7:533**

Persons triggering duty, **7:537**

Selective disclosures, **7:532**

Unintentional disclosures, **7:540**

Unintentional disclosures, **7:540**

Validity, **7:550**

Violations, curing, **7:554**

Release of Information (this index)

Reliance

Generally, **8:484 et seq.**

See also **Reliance** (this index)

Repetition, **6:233**

Ripeness and timely disclosure of inside information, **7:243**

Risk disclosures

Generally, **6:275 et seq.**

CFTC requirements, **6:289**

Context, **6:275**

Court cases, **6:281**

Day trading, **6:284**

Extended hour trading, **6:285**

Margin trading, **6:286**

NASD requirements, **6:283 et seq.**

Plain English requirements, **6:278**

Safe harbor, **6:282**

SA filings, **6:279**

SEA filings, **6:280**

Short selling, **6:287**

Specific requirements, **6:277**

Uninsured products, **6:288**

Rule 10b-5 as disclosure rule, **12:3**

Rumors, **7:301**

Safe harbor for predictions and projections

Generally, **7:19 et seq.**

Background, **7:20**

Bespeaks caution doctrine, **7:22**

Immateriality, **7:35, 7:38**

DISCLOSURES—Cont'd

Safe harbor for predictions and projections—Cont'd

PSLRA

Generally, **7:23 et seq.**

Actual knowledge prong, **7:36**

Attacking cautionary statements, **7:29**

Caution prong, **7:26**

Corrections, **7:45**

Definition of forward looking statement, **7:25**

Discovery stays, **7:44**

Drafting cautionary statements, **7:28**

Eligible makers, **7:37**

Exclusions, **7:40**

Expandability, **7:41**

Falsity, actual knowledge of, **7:36**

Later disclosures, **7:30**

Motion practice, **7:43**

Nonexclusiveness, **7:41**

Oral statements referencing caution, **7:31, 7:39**

Procedural aspects, **7:42**

Prohibited uses, **7:40**

Scope of Act, **7:24**

Statements with cautions, **7:27**

Update duty, **7:45**

Readily available cautionary statements

Generally disseminated, **7:34**

SEC filings, **7:33**

Timing, **7:32**

SA Rule 175, **7:21**

SEA Rule 3b-6, **7:21**

Sarbanes-Oxley Act controls, **8:466**

Scattered facts, **6:232**

SEC filings of issuer disclosures, **7:285**

Second-guessing disclosure counsel, **8:423**

Selective disclosure and full disclosure obligations

Generally, **7:529**

Avoiding, **7:553**

Curing violations, **7:554**

DISCLOSURES—Cont'd

- Selective disclosure and full disclosure obligations—Cont'd
 - Materiality, **7:535**
 - Nonpublic nature of information disclosed, **7:536**
 - Triggering full disclosure obligation, **7:532**
 - Unintentional disclosures, **7:540**
- Simultaneous FD disclosure requirements, **7:542**
- Sources of funds, **6:260**
- Style, **6:224 et seq.**
- Supplementary communications
 - Generally, **6:239 et seq.**
 - See also Corrections, above
 - Advance letters
 - Proxy rules, **6:240**
 - Registration under SA, **6:241**
 - Annual reports, **6:242**
 - Cover letters, **6:243**
 - Followup solicitations, **6:244**
 - Generally available information, **6:246**
 - Other communications, **6:245**
 - Transmittal letters, **6:243**
- Tender offers
 - Generally, **7:288**
 - Congressional intent, **6:17**
- Regulated offers
 - Generally, **6:41**
 - Arrangements, **6:47**
 - Changes, effects of
 - Generally, **6:49**
 - SEC filings, **6:52**
 - Ten percent threshold disclosure requirements, **6:57**
 - Control change information, **6:61**
 - Control purposes, **6:64**
 - Date of information
 - Generally, **6:49**
 - SEC filings, **6:52**
 - Ten percent threshold disclosure requirements, **6:57**

DISCLOSURES—Cont'd

- Tender offers—Cont'd
- Regulated offers—Cont'd
 - Deviation from stated plans, **6:70**
 - Funds, source of, **6:44**
 - Groups, data on, **6:48**
 - Ideas vs plans, **6:68**
 - Issuer offers, **6:144**
 - Noncompliance, effects of, **6:74**
 - Offer data, **6:43**
 - Offeror data, **6:42**
 - Ownership, **6:55**
 - Plans and proposals, **6:45, 6:66 et seq.**
- Publicity
 - Offeror, **6:94**
 - Target company, **6:98**
 - Third persons, **6:108**
- Purposes, **6:45, 6:62 et seq.**
- Sanctions for noncompliance, **6:74**
- SEC filings
 - Generally, **6:50 et seq.**
 - Changes, effects of, **6:52**
 - Date of information, **6:52**
 - Other disseminations, **6:54**
 - Processing, **6:53**
 - Scope of disclosure, **6:51**
 - Time of filing, **6:50**
- Securities, data on, **6:46**
- Ten percent threshold
 - Generally, **6:55 et seq.**
 - Changes, effect of, **6:57**
 - Date of information, **6:57**
 - Exemptions, **6:60**
 - Other disseminations, **6:59**
 - Ownership, **6:55**
 - Scope of disclosure, **6:56**
 - SEC processing, **6:58**
- Understandings, **6:47**
- Unregulated offers
 - Generally, **6:113**
- Insiders, **6:114**
- Outsiders
 - Generally, **6:115 et seq.**
 - Issuer, information about, **6:117**

INDEX

DISCLOSURES—Cont'd

- Tender offers—Cont'd
 - Unregulated offers—Cont'd
 - Outsiders—Cont'd
 - Offer, identity of, **6:119**
 - Other information, **6:118**
 - Plans and proposals, **6:116**
 - Policy factors, **6:120**
 - Target company, **6:121**
 - Third persons, **6:122**
 - Time in becoming public, **7:304 et seq.**
 - Timely disclosure of inside information
 - Generally, **7:238 et seq.**
 - Acquisition information
 - Generally, **7:248 et seq.**
 - Agreements
 - Disclosure not required, **7:261**
 - Disclosure required, **7:260**
 - Company, trading by, **7:256**
 - Definitions, **7:250**
 - Disclosure document obligations, **7:259**
 - Leaks, **7:255**
 - Materiality of negotiated acquisitions, **7:262 et seq.**
 - Preliminary negotiations
 - Misleading statements, **7:253**
 - No statement made, **7:252**
 - Other situations, **7:254**
 - Prior statement now misleading, **7:257**
 - Rumors, **7:255**
 - Stages of negotiated acquisitions, **7:249**
 - Target response to tender offers, **7:258**
 - When disclosure of agreement required, **7:260**
 - When disclosure required, **7:251 et seq.**
 - Business judgment considerations, **7:241**
 - Corporate purpose considerations, **7:242**
 - Delays, justifications for, **7:240**

DISCLOSURES—Cont'd

- Timely disclosure of inside information—Cont'd
 - Dividend actions
 - Evolving information, **7:245**
 - Materiality, **7:247**
 - When disclosure required, **7:246**
 - Evolving information. Dividend actions, above
 - Justification for delay, **7:240**
 - Law violations and timeliness considerations, **7:244**
 - Ripeness and timing, **7:243**
- Tender offers
 - Generally, **7:267**
 - Materiality, **7:270**
 - Stages of nonnegotiated acquisitions, **7:268**
 - When disclosure required, **7:269**
- Timing of FD requirements, **7:541 et seq.**
- Touting, class actions, **8:90**
- Transmittal letters, **6:243**
- Types of information, **7:2**
- Unfair terms
 - Generally, **5:187 et seq.**
 - Full disclosure of
 - Generally, **5:146**
 - Reasons and policies, **5:151**
 - Information disclosed, **5:189**
 - Method of disclosure, **5:188**
 - Persons to whom disclosure made, **5:190**
- Unintentional disclosures and Regulation FD, **7:540**
- Use of MNPI
 - Generally, **7:316**
 - Burden of proof, **7:331**
 - Connection with transaction, **7:681**
 - Individuals, proof for, **7:332**
 - Organizations, proof for, **7:339**
 - Possession compared, **7:317**
 - Rule 10b-5
 - Generally, **7:327 et seq.**
 - Burden of proof, **7:331**
 - Individuals, proof for, **7:332**
 - Inferences, **7:328**
 - Organizations, proof for, **7:339**

DISCLOSURES—Cont'd

- Use of MNPI—Cont'd
 - Rule 10b-5—Cont'd
 - Possession, use inferred from, **7:328**
 - Rebuttal evidence, **7:337, 7:338**
 - Size of transaction, proof value, **7:334**
 - Standard of proof, **7:331**
 - Timing, proof of, **7:333**
 - Type of transaction, proof value, **7:335**
 - Rule 14e-3, generally, **7:347**
 - Size of transaction, proof value, **7:334**
 - Standard of proof, **7:331**
 - Timing, proof of, **7:333**
 - Type of transaction, proof value, **7:335**
- Value of assets
 - Generally, **6:263 et seq.**
 - Firm offers, **6:265**
 - Hard data, **6:264**
 - Misrepresentations
 - Generally, **6:270**
 - Defenses, **6:271**
 - Precautions, **6:272**
 - Modified view
 - Disposition plans, **6:266**
 - Hard data, **6:264**
 - Other situations, **6:268**
 - Policies, **6:269**
 - Reasons, **6:269**
 - Replacement costs, **6:267**
 - Traditional view, **6:263**

DISCOVERY

- Generally, **13:66 et seq.**
- Administrative enforcement by SEC, limitation of actions, **13:90**
- Arbitration, **15:15, 15:63**
- Criminal enforcement
 - Civil-criminal flow of information, **13:139**
 - Criminal-civil flow of information, **13:141**
 - Failure to warn of criminal proceeding in civil proceeding, **13:142**

DISCOVERY—Cont'd

- Document subpoenas, **13:67, 13:225**
- FOIA requests, **13:68, 13:226**
- Parallel civil and criminal proceedings
 - Civil-criminal flow of information, **13:139**
 - Criminal-civil flow of information, **13:141, 13:143**
 - Failure to warn of criminal proceeding in civil proceeding, **13:142**
- Pleading particularity requirements and discovery stays, **11:120 et seq.**
- Production requests, **13:69, 13:227**
- PSLRA stays, **7:44**
- SEC administrative enforcement, limitation of actions, **13:90**
- Securities Litigation Uniform Standards Act limitations, **3:203**

DISGORGEMENT

- Administrative enforcement, SEC, **13:84**
- Amount, **7:426 et seq.**
- Court cases, **9:7**
- Criminal proceedings, **7:465**
- Disposition of disgorgement
 - Generally, **7:433 et seq.**
 - Actual beneficiaries, **7:436**
 - Administration, **7:435**
 - Intended beneficiaries, **7:434**
 - Procedure, **7:435**
- Enforcement, limitations on, *Liu v. SEC*, **13:189**
- Insider trading charges
 - Generally, **7:418, 7:425 et seq., 7:465**
 - Amount, **7:426 et seq.**
 - Criminal proceedings, **7:465**
 - Disposition of disgorgement, **7:433 et seq.**
 - Market measure, **7:428**
 - Measurement methods, **7:426 et seq.**
 - Pocket measure, **7:427**
 - Prejudgment interest, **7:432**

INDEX

DISGORGEMENT—Cont'd

- Insider trading charges—Cont'd
 - Price changes and measurement, **7:430**
 - Reasonable time for measuring, **7:429**
 - Time for measuring, **7:429**
 - Vicarious liability, **7:431**
- Joint and several liability
 - Generally, **9:26, 9:35**
 - Rule 10b-5, **9:39 et seq.**
- Liu v. SEC, **13:189**
- Market measure, **7:428**
- Measurement methods, **7:426 et seq.**
- Pocket measure, **7:427**
- Prejudgment interest, **7:432**
- Price changes and measurement, **7:430**
- Reasonable time for measuring, **7:429**
- Time for measuring, **7:429**
- Vicarious liability, **7:431**

DISTRIBUTION

- Madoff feeder funds losses to investors, **20:23**

DIVIDENDS

- Inside information re
 - Generally, **7:207, 7:245**
 - Materiality, **7:247**
 - When information required, **7:246**

DODD-FRANK WHISTLEBLOWER BOUNTY PROGRAM

- Generally, **22:1 et seq.**

DOJ INVESTIGATIONS

- Backdating of stock options, wider ramifications, **18:6, 18:8**
- Standard and Poor's ratings, subprime mortgage crisis, **13:338**

DONATION MODEL

- Crowdfunding, **14:210**

DOORSTEP SALES

- See **Over The Counter Market** (this index)

DRAFTING AGREEMENTS

- See **Transaction Planning** (this index)

DUAL ROLES

- Madoff feeder funds investment manager, **20:19**

DUE DILIGENCE

- Generally, **14:5**
- See also **Diligence, Lack of** (this index)
- Foreign Corrupt Practices Act (FCPA), **19:15**
- Madoff feeder funds, failure as to due diligence, **20:17, 20:18**
- Misrepresentation claims, consideration of, **7:52**
- Reliance, **8:506**
- SA § 11, **14:5**
- SEC view, **14:9**
- Underwriters', **14:14**

DURA PHARMACEUTICALS

- Private actions, loss causation in Supreme Court decision, **8:569**

EARNINGS

- Capitalization, value indicators generally, **5:161**
- Insider use of information re
 - Generally, **7:205**
 - Predictions, **7:204**
- Misrepresentations, **7:47**
- Predictions, **7:204**

EGALITARIAN THEORY

- Rule 10b-5 and, **12:2**

ELDER ABUSE

- See **Senior Investor Financial Abuse** (this index)

EMPLOYEE BENEFIT PLANS

- ERISA preemption, **5:43**
- Securities, treatment as
 - Generally, **5:42 et seq.**
- Contributory plans
 - Involuntary, **5:46**
 - Voluntary, **5:48**
- Defined plans, **5:49**

EMPLOYEE BENEFIT PLANS

—**Cont'd**

- Securities, treatment as—Cont'd
 - Distinguishing contributory from noncontributory, **5:52**
 - Distinguishing voluntary from involuntary plans, **5:51**
- ERISA, preemptive effect of, **5:43**
- ESOPs, **5:48**
- Involuntary contributory plans, **5:46**
- Involuntary noncontributory plans, **5:45**
- Noncontributory plans
 - Involuntary, **5:45**
 - Voluntary, **5:47**
- Pension plans, **5:49**
- Sales, **5:44**
- Voluntary contributory plans, **5:48**
- Voluntary noncontributory plans, **5:47**

EMPLOYEES OF PUBLIC ACCOUNTING FIRM

- Whistleblower bounty program, original information, **22:10**

ENRON

- Indirect-impersonal dealing, **7:87**
- Private actions, materiality, **8:40**

ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG)

- Business priority, **29:1**
- Private class actions, **29:3**
- SEC enforcement focus, **29:1**
- SEC's ESG-related enforcement actions
 - Climate, **29:2**
 - Task Force, **29:2**
- SEC's proposed, regulations, **29:4**

EQUITABLE FRAUD

- Generally, **8:242**

EQUITY CROWDFUNDING

- See **Crowdfunding** (this index)

EQUITYNET

- Crowdfunding, portals, description, **14:223**

ETHICS CODES

- Sarbanes-Oxley Act, **8:483**

EVASION OF FEDERAL INCOME TAXES

- Madoff Ponzi scheme, **20:6**

EXCEPTIONS AND EXCLUSIONS

- Whistleblower bounty program, original information, **22:11, 22:13**

EXCHANGES

- American Stock Exchange** (this index)
- Arbitration** (this index)
- Auction rate security (ARS), securities and market, **13:325**
- Delisting, backdating of stock options, **11:9**
- Direct-Impersonal Dealing** (this index)
- Implied liabilities under SRO rules
 - Generally, **14:62 et seq.**
 - See also **Self Regulatory Organizations** (this index)
- Indirect-Impersonal Dealing** (this index)
- Interstate commerce, **11:7**
- National Association of Securities Dealers** (this index)
- New York Stock Exchange** (this index)
- Over The Counter Market** (this index)

EXCLUSIVITY OF FUNDS

- Madoff Ponzi scheme, **20:2**

EXPANSION ERA

- See also **Contraction Era** (this index)
- Implied liability
 - See also **Implied Liability** (this index)
 - Rule 10b-5, **3:54 et seq.**
 - SRO rules, **14:63 et seq.**
- Insider trading
 - Issuers, **7:645**
 - Regulation, **7:560**
 - Tippee violations, **7:665**
 - Tipping violations, **7:656**

INDEX

EXPANSION ERA—Cont'd

- Issuers' insider trading, **7:645**
- New expansion era
 - Generally, **3:32**
 - Current status of IPA, **3:146**
- Overlapping remedies
 - Generally, **3:69 et seq.**
 - SA § 11, **3:70**
 - SA § 12(2), **3:71**
 - SEA § 9, **3:72**
 - SEA § 18, **3:73**
- Rule 10b-5 history generally, **3:30**
- SRO rules, implied liabilities, **14:63 et seq.**
- State law, **3:184**

EXPERT WITNESSES

- Arbitrations
 - Claimants' experts, **15:34**
 - Cross examination, **15:42**
 - Respondents' experts, **15:45**
- Investment bankers
 - Generally, **5:180**
 - Challenging opinions of, **5:181**

EXPUNGEMENT

- Arbitration, **15:70**

EXTENDED HOUR TRADING

- NASD risk disclosure requirements, **6:285**

EXTRATERRITORIALITY

- Jurisdiction, foreign cubed cases, **11:17 et seq.**
- Whistleblowers, protection, application of law, **22:31**

FACE-TO-FACE TRANSACTIONS

- See **Direct-Personal Dealing** (this index)

FAIRFIELD GREENWICH GROUP

- Madoff feeder funds, **20:17**

FAIR FUNDS

- Injunctions, victim access to penalty, **13:116**

FAIRNESS

- See also **Unfair Terms** (this index)

FAIRNESS—Cont'd

- Rule 10b-5 as fairness rule, **12:5, 12:13**
- Tender offer fairness, Congressional intent, **6:19**

FAIR SHARE LIABILITY

- See **Proportionate Liability** (this index)

FALSE INFORMATION

- Attorneys** (this index)
- Dissemination of material false information, liability for, Lorenzo v. SEC, **8:346**
- Madoff Ponzi scheme, **20:6**

FAMILY MEMBERS

- Madoff Ponzi scheme, **20:5**

FEDERAL AGENCIES

- SEC investigations, information sharing by Office of Market Intelligence, **20:14**

FEDERAL ARBITRATION ACT

- Generally, **15:54 et seq.**
- See also **Arbitration** (this index)

FEDERAL SECURITIES CODE

- American Law Institute proposal, **1:23**

FEDERAL SENTENCING GUIDELINES

- Insiders and inside trading, Raj Rajaratnam criminal case, **21:29 to 21:31**

FEEDER FUNDS

- Madoff Ponzi scheme, **20:2, 20:16 et seq.**

FEES

- Attorneys' Fees** (this index)
- Madoff feeder funds, **20:24**

FIDUCIARY DUTIES

- Breach, insider trading and misappropriation theory, **7:315**
- Creation of relationship
 - Generally, **7:567**
 - Advisers to issuers, **7:569**

FIDUCIARY DUTIES—Cont'd

- Creation of relationship—Cont'd
 - Business associates of issuers, **7:570**
 - Law characterizing relation, **7:573**
 - Position with issuer, **7:568**
 - Prior dealings, creation by, **7:571**
 - Securities professionals, **7:572**
- Insider trading
 - Generally, **7:561 et seq.**
 - Breach, **7:315**
 - Contraction era, **7:576**
 - Creation
 - Generally, **7:567**
 - Advisers to issuers, **7:569**
 - Business associates of issuers, **7:570**
 - Law characterizing relation, **7:573**
 - Position with issuer, **7:568**
 - Prior dealings, creation by, **7:571**
 - Securities professionals, **7:572**
 - Criteria, **7:561 et seq.**
 - Expansion era, **7:574**
 - Issuers, **7:565**
 - Market insiders, **7:575**
 - Scienter
 - Private actions, **7:498**
 - Tipsters, **7:381**
 - Trading insiders, **7:377**
 - Trading tippees, **7:385**
 - With whom must relationship exist, **7:562 et seq.**
- Investment Bankers** (this index)
- Madoff Ponzi scheme, **20:5**
- Private securities litigation, cyber breaches, **26:8**
- Reliance on relationship, **8:500**
- Suitability claims, **14:202**
- Suitability rules, **14:206**

FILIP DECISION

- SEC investigations, attorney-client privilege, **13:50 et seq.**

FINANCIAL ABUSE

- See **Senior Investor Financial Abuse** (this index)

FINANCIAL ACCOUNTING

STANDARDS BOARD (FASB)

- Indirect-impersonal dealing, **7:60**

FINANCIAL CRISIS INQUIRY COMMISSION

- Subprime mortgage crisis, Commission report, **13:333**

FINANCIAL EXPERTS

- See **Audit Committees** (this index)
- Sarbanes-Oxley Act standards, **8:459**

FINANCIAL INCENTIVES

- Madoff Ponzi scheme, **20:2**

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)

- Creation, **14:183**
- Suitability rules, **14:185**
- FINRA Rule 2090, know your customer, **14:191**
- FINRA Rule 2111, **14:186**
- FINRA Rule 2111(a), **14:187, 14:188**
- Institutional investors, **14:190**
- Know your customer, **14:191**
- Recommendations to customers, **14:187**

FINANCIAL INFORMATION

- Backdating of stock options, **18:1 et seq.**
- Officers' certifications and Sarbanes-Oxley Act liability, **3:169**
- Pro forma financial information, Sarbanes-Oxley Act liabilities based on, **3:170**

FINANCIAL STATEMENTS

- Backdating of stock options, wider ramifications, **18:6**
- Madoff Ponzi scheme, **20:5 to 20:7**

FLEXIBLE FUND ANNUITIES

- What is a security, **5:25**

FOIA REQUESTS

- Generally, **13:226**
- SEC investigations, **13:68**

INDEX

FORCED SALES

Buyer-seller requirements, **5:120**

FORECASTS

Generally, **7:5 et seq.**

Forward Looking Information (this index)

Predictions (this index)

Projections (this index)

FOREIGN ACCOUNTS

Insiders' use of, **7:177**

FOREIGN AND INTERNATIONAL TRANSACTIONS

Conduct or effect, **11:19, 11:24**

Conflict with foreign law, **11:31**

Discerning intent, **11:23**

Domestic contacts, **11:36**

Enforcement, **11:37**

Foreign cubed case

Generally, **11:16**

American actors, **11:30**

Clear statement, **11:35**

Conduct or effect, **11:24**

Conduct or effect test, **11:19**

Conflict with foreign law, **11:31**

Discerning intent, **11:23**

Domestic contacts, **11:36**

Evolution of jurisdictional tests, **11:33**

Extraterritoriality, specificity, **11:29**

Facts in Morrison, **11:20**

Focus of securities laws purpose, **11:37**

Foreign law, conflict with, **11:31**

Foreign references in statute, **11:28**

Gaps in legislature, **11:34**

Holding in Morrison case, **11:17**

Importance of domestic contacts, **11:36**

Intent, **11:23**

International context, **11:18**

Judges, role, **11:26**

Judicial filling of legislative gaps, **11:34**

Jurisdictional tests, **11:33**

Justice Steven's concurrence, **11:32 to 11:37**

FOREIGN AND INTERNATIONAL TRANSACTIONS—Cont'd

Foreign cubed case—Cont'd

Legislators, role, **11:26**

Morrison case, **11:17, 11:20**

Presumptions, **11:22, 11:35**

Prior law, **11:19**

References in statute, **11:28**

Rule 10b-5, **11:27**

Scalia's debate with Steven's concurrence, **11:25**

SEA § 10(b), generally, **11:27**

SEC enforcement of authority, **11:37**

Securities laws purpose and focus, **11:36**

Specificity of extraterritoriality, **11:29**

Subject matter jurisdiction, **11:21**

Intent, **11:23**

International transactions, generally, **11:172 et seq.**

Jurisdictional means, **11:16**

Jurisdictional tests, **11:33**

Morrison case, generally, **11:16 to 11:37**

Presumptions, **11:22, 11:35**

References in statute, **11:28**

SEC enforcement of authority, **11:37**

Specificity of extraterritoriality, **11:29**

Statement clarity, foreign cubed case, **11:35**

Statutory bases, international transactions, **11:173**

Subject matter jurisdiction, **11:21**

FOREIGN CITIZENS

Foreign Corrupt Practices Act (FCPA), allegations and settlements, **19:12**

FOREIGN CORRUPT PRACTICES ACT (FCPA)

Generally, **19:1 et seq.**

Accounting practices, **19:5, 19:9**

Actions against private individuals, members of Congress, and foreign citizens, **19:12**

Affirmative defenses

Generally, **19:3 to 19:5**

FOREIGN CORRUPT PRACTICES

ACT (FCPA)—Cont'd

Affirmative defenses—Cont'd
 Accounting provisions, **19:5**
 Foreign law, **19:3**
 Lodging expenses, **19:4**
 Travel expenses, **19:4**
 Allegations and settlements
 Generally, **19:6**
 Bookkeeping in multiple sets, **19:9**
 Boxes of cash and two sets of books, **19:9**
 Chinese way of doing business, **19:11**
 Congress, actions against members, **19:12**
 Foreign citizens, actions against, **19:12**
 Ineffective bribe, **19:8**
 Initial public offering, foreign company and pervasive fraud, **19:10**
 Multiple sets of books, **19:9**
 Pervasive fraud, **19:10**
 Private individuals, actions against, **19:12**
 UN Iraqi Oil-for-Food program, **19:7**
 Background of Act, **19:1**
 Basis for private actions, **19:13**
 Bookkeeping in multiple sets, **19:9**
 Boxes of cash and two sets of books, **19:9**
 Bribe, effectiveness, **19:8**
 Chinese way of doing business, **19:11**
 Compliance programs, **19:14**
 Congress, actions against members, **19:12**
 Costs and expenses, **19:4**
 Developments in enforcement, **19:16**
 Due diligence, **19:15**
 Effectiveness of bribe, **19:8**
 Enforcement, recent trends, currents, and developments, **19:16**
 Exception, **19:2**
 Expense of travel and lodging, affirmative defense, **19:4**
 Foreign citizens, actions against, **19:12**

FOREIGN CORRUPT PRACTICES

ACT (FCPA)—Cont'd

Foreign law as affirmative defense, **19:3**
 Grease payments as statutory exception, **19:2**
 Initial public offering, foreign company and pervasive fraud, **19:10**
 Lodging expenses, affirmative defense, **19:4**
 Mergers and acquisitions, mitigation of risks, **19:15**
 Mitigation of risks in mergers and acquisitions, **19:15**
 Multiple sets of books, **19:9**
 Pervasive fraud, **19:10**
 Private actions, **19:13**
 Private individuals, actions against, **19:12**
 Recent trends, currents, and developments in enforcement, **19:16**
 Risks in mergers and acquisitions, mitigation, **19:15**
 Settlements. Allegations and settlements, above
 Statutory accounting provisions, affirmative defense, **19:5**
 Statutory affirmative defenses. Affirmative defenses, above
 Statutory exception, **19:2**
 Travel and lodging expenses, affirmative defense, **19:4**
 Undisclosed payments, generally, **19:1 et seq.**
 UN Iraqi Oil-for-Food program, **19:7**
 U.S. Congress, actions against members, **19:12**
 Written foreign law as affirmative defense, **19:3**

FOREIGN CORRUPT PRACTICES

ACT UNIT

SEC investigations, **20:12**

FOREIGN COUNTRIES

Whistleblowers, protection, application of law, **22:31**

FOREIGN LAW

Foreign Corrupt Practices Act (FCPA), affirmative defense, **19:3**

INDEX

FOREIGN TRANSACTIONS

See **Foreign and International Transactions** (this index)

FORESEEABILITY

Coordinated investigations following
subprime mortgage crisis,
13:334

FORWARD LOOKING INFORMATION

Generally, **7:5 et seq.**

See also **Predictions; Projections**
(this index)

Attacking cautionary statements,
7:29

Bespeaks caution doctrine, **7:22**

Definition, **7:25**

Drafting cautionary statements, **7:28**

Forecasts distinguished, **7:5**

Information types, **7:2**

Later disclosures, **7:30**

Misrepresentations

Generally, **7:5**

Analyst projections, **7:9**

Company projections, **7:8**

Predictions and projection
disclosure obligations

Generally, **7:10 et seq.**

Capital resources, **7:15**

Liquidity, **7:14**

With MD&A requirement

Administrative enforcement,
7:13

Private actions, **7:17**

Operation results, **7:16**

Private actions on MD&A
requirements, **7:17**

With SEC encouragement, **7:12**

Without SEC rule, **7:11**

Pleading, **11:132**

Predictions distinguished, **7:5**

Projections distinguished, **7:5**

Readily available cautionary state-
ments

Generally disseminated, **7:34**

SEC filings, **7:33**

Timing, **7:32**

Restrictions on disclosures, **7:18**

FORWARD LOOKING

INFORMATION—Cont'd

Safe harbor

Generally, **7:19 et seq.**

Actual knowledge prong, **7:36**

Attacking cautionary statements,
7:29

Background, **7:20**

Bespeaks caution doctrine, **7:22**

Caution prong, **7:26**

Discovery stays, **7:44**

Drafting cautionary statements,
7:28

Falsity, actual knowledge of, **7:36**

Immateriality, **7:35, 7:38**

Later disclosures, **7:30**

PSLRA

Generally, **7:23 et seq.**

Actual knowledge prong, **7:36**

Attacking cautionary statements,
7:29

Caution prong, **7:26**

Corrections, **7:45**

Definition of forward looking
statement, **7:25**

Discovery stays, **7:44**

Drafting cautionary statements,
7:28

Eligible makers, **7:37**

Exclusions, **7:40**

Expandability, **7:41**

Falsity, actual knowledge of,
7:36

Immateriality, **7:35, 7:38**

Later disclosures, **7:30**

Motion practice, **7:43**

Nonexclusiveness, **7:41**

Oral statements referencing cau-
tion, **7:31, 7:39**

Procedural aspects, **7:42**

Prohibited uses, **7:40**

Readily available cautionary
statements

Generally disseminated, **7:34**

SEC filings, **7:33**

Timing, **7:32**

Scope of Act, **7:24**

Statements with cautions, **7:27**

FORWARD LOOKING

INFORMATION—Cont'd

- Safe harbor—Cont'd
- PSLRA—Cont'd
 - Update duty, **7:45**
- SA Rule 175, **7:21**
- SEA Rule 3b-6, **7:21**
- Statements with cautions, **7:27**
- SA Rule 175, **7:21**
- SEA Rule 3b-6, **7:21**
- SEC, traditional position, **7:18**
- Types of information, **7:2**

FRAUD

- Accounting, **13:112**
- Common law fraud. See **Common Law Fraud** (this index)
- Crowdfunding, potential, **14:209, 14:212**
- Cybersecurity** (this index)
- Foreign Corrupt Practices Act (FCPA), **19:10**
- Foreign cubed cases. See **Foreign and International Transactions** (this index)
- Fraud on the market theory (FOMT). See **Reliance** (this index)
- Fraud to enter the market theory (FEMT). See **Reliance** (this index)
- Global fraud. **Madoff Ponzi Scheme** (this index)
- Indirect-Impersonal Dealing** (this index)
- Madoff Ponzi Scheme** (this index)
- Mutual fund violations, broker fraud, **17:8**
- Ponzi scheme. **Madoff Ponzi Scheme** (this index)
- Subprime mortgage crisis, DOJ suit against Standard and Poor's, **13:338**
- Suitability claims, consumer fraud, **14:204**

FRONT RUNNING

- Generally, **7:139 et seq.**
- Court cases, **7:142**
- SEC interpretations
 - Generally, **7:140**

FRONT RUNNING—Cont'd

- SEC interpretations—Cont'd
 - Decisions, **7:142**
- SRO interpretations
 - Criticisms, **7:141**
 - Decisions, **7:142**

FULL DISCLOSURE

- See **Disclosure** (this index)

FUND DISTRIBUTION PAYMENTS

- Mutual fund violations, sales practices, **17:14**

GAAP

- Private actions, materiality, **8:42, 8:44**

GALLEON GROUP HEDGE FUND

- Criminal insider trading, Raj Raratnam case, **21:1 et seq.**

GIFTS

- Insiders and insider trading, **7:396**

GLOBAL FRAUD

- Madoff Ponzi scheme, **20:1 et seq.**

GOOD FAITH

- See also **Bad Faith** (this index)
- Control person liability defense, **8:393 et seq.**
- Effect of good or bad faith generally, **8:216 et seq.**
- Misrepresentation claims, consideration of, **7:53**
- Plaintiff's in Rule 10b-5 cases, **8:254**
- SA § 15, **8:393 et seq.**
- SEA § 20(a), **8:393 et seq.**
- SEC, false reports to, **8:150**

GOVERNING LAW

- Jurisdiction, foreign cubed cases, **11:31**

GOVERNMENT ENFORCEMENT

- See **Administrative Enforcement** (this index)

GRAND JURIES

- See **Criminal Enforcement** (this index)

INDEX

GREASE PAYMENTS

Foreign Corrupt Practices Act
(FCPA), **19:2**

HACKING

Cybersecurity, **26:1 et seq.**

HEDGE FUNDS

Backdating of stock options and
delayed filings, **18:9**
Criminal insider trading, Raj
Rajaratnam case, **21:1 et seq.**
Madoff Ponzi scheme, **20:1, 20:2**
Mutual fund violations, **17:21**

HISTORY

Crowdfunding, **14:210 et seq.**

HOLMES CASE

Private actions, loss causation in
Supreme Court decision, **8:567**

HOWEY TEST

What is a security, **5:22**

IMPLIED LIABILITY

Generally, **3:54 et seq., 8:242 et seq.**
Absolute liability, **8:243**
Actual knowledge of plaintiff, **8:244**
Administrative interpretation, Rule
10b-5, **3:62, 3:82**
ALI Federal Securities Code, **3:154**
Analysts' certifications, actions based
on, **3:168**
Attorneys, implied private actions
against under Sarbanes-Oxley
Act, **3:165**
Audit committee financial experts,
3:166
Audit records, actions based on,
3:171
Broker-dealers, actions against
Generally, **14:73 et seq.**
Causation, **14:91 et seq.**
Connection requirement, **14:94**
Contraction era, compensatory
damages in, **14:105**
Damages, **14:95 et seq.**
Elements of action, **14:74**
Issuer misrepresentations, **14:76**
Issuer nondisclosures, **14:77**

IMPLIED LIABILITY—Cont'd

Broker-dealers, actions against
—Cont'd
Justifiable reliance, **14:89**
Margin rules
Generally, **14:59**
Arbitration, use in, **14:61**
Court cases, **14:60**
SEA § 7, **14:59**
Market misrepresentations, **14:78**
Market nondisclosures, **14:79**
Materiality, **14:82**
Misrepresentation, **14:75 et seq.**
Mitigation of damages, **14:102**
Nondisclosure, **14:75 et seq.**
Opinions, **14:81**
Out-of-pocket damages, **14:103**
Predictions, **14:81**
Proximate cause, **14:92**
Punitive damages, **14:106 et seq.**
Recklessness, **14:83 et seq.**
Recommendations, **14:81**
Reliance, **14:86 et seq.**
Rescission
Chasins measure, **14:97**
Lost profits, **14:101**
Nye measure, **14:101**
Rolf measure, **14:100**
Restitution, **14:104**
Rule 10b-5
Generally, **14:73 et seq.**
Causation, **14:91 et seq.**
Connection requirement, **14:94**
Contraction era, compensatory
damages in, **14:105**
Damages, **14:95 et seq.**
Elements of action, **14:74**
Issuer misrepresentations, **14:76**
Issuer nondisclosures, **14:77**
Justifiable reliance, **14:89**
Market misrepresentations,
14:78
Market nondisclosures, **14:79**
Materiality, **14:82**
Misrepresentation, **14:75 et seq.**
Mitigation of damages, **14:102**
Nondisclosure, **14:75 et seq.**
Opinions, **14:81**

IMPLIED LIABILITY—Cont'd

- Broker-dealers, actions against
 - Cont'd
 - Rule 10b-5—Cont'd
 - Out-of-pocket damages, **14:103**
 - Predictions, **14:81**
 - Proximate cause, **14:92**
 - Punitive damages, **14:106 et seq.**
 - Recklessness, **14:83 et seq.**
 - Recommendations, **14:81**
 - Reliance, **14:86 et seq.**
 - Rescission
 - Chasins measure, **14:97**
 - Lost profits, **14:101**
 - Nye measure, **14:101**
 - Rolf measure, **14:100**
 - Restitution, **14:104**
 - Scienter, **14:83 et seq.**
 - SRO rules
 - Generally, **14:62 et seq.**
 - Arbitration, **14:72**
 - Buttrey doctrine, **14:65**
 - Colonial Realty doctrine, **14:64**
 - Contraction era, **14:71**
 - Court cases, **14:64 et seq.**
 - Expansion era, **14:63 et seq.**
 - Burden of proof
 - Generally, **8:255**
 - Scienter, **8:134**
 - Tender offer fraud, **8:134**
 - Causation, insider trading, **7:517**
 - Checklists arguing IPA cases, **3:151 et seq.**
 - Churning** (this index)
 - Congressional intent, Rule 10b-5, **3:56**
 - Constructive fraud, **8:242**
 - Contraction era
 - 10b-5 actions
 - Generally, **3:74 et seq.**
 - Administrative enforcement, supplement to, **3:81**
 - Administrative interpretation, **3:82**
 - Congressional intent, **3:76**
 - Cort v Ash, **3:95**

IMPLIED LIABILITY—Cont'd

- Contraction era—Cont'd
 - 10b-5 actions—Cont'd
 - Flexibility to achieve remedial purpose, **3:88**
 - Judicial restraint, **3:85**
 - Legislative history, uses of, **3:90 et seq.**
 - Modes of interpretation, **3:86 et seq.**
 - Negative implication, **3:87**
 - Policies, **3:75**
 - Policy effectuation, **3:80**
 - Practicality, **3:83**
 - Reasons, **3:75**
 - Statutory jurisdictional grant, **3:79**
 - Statutory literalism, **3:89**
 - Statutory tort, **3:77**
 - Supplement to administrative enforcement, **3:81**
 - Vexatiousness, **3:84, 3:85**
 - Voidability, statutory, **3:78**
 - Manipulation
 - Generally, **3:125 et seq.**
 - Defendants excluded, **3:129**
 - Documents excluded, **3:130**
 - Failure to satisfy substantive elements, **3:132**
 - Government securities, **3:127**
 - Municipal securities, **3:127**
 - OTC securities, **3:126**
 - Plaintiffs excluded, **3:128**
 - Securities excluded, **3:126 et seq.**
 - Substantive elements, **3:132**
 - Nullification test, **3:104**
 - Overlapping remedies
 - Generally, **3:102 et seq.**
 - Comparison of elements of express and implied rights, **3:105**
 - Defense strategies, **3:103**
 - Exclusions, effect of, **3:108**
 - Falsity vs scheme, **3:106**
 - Nullification test, **3:104**
 - SA § 11
 - Generally, **3:109 et seq.**

INDEX

IMPLIED LIABILITY—Cont'd

Contraction era—Cont'd

Overlapping remedies—Cont'd

SA § 11—Cont'd

Defendants excluded, **3:112**

Documents excluded, **3:113**

Failure to satisfy substantive elements, **3:115**

Plaintiffs excluded, **3:111**

Securities excluded, **3:110**

Substantive elements, failure to satisfy, **3:115**

Transactions excluded, **3:110**

SA § 12(2)

Generally, **3:116 et seq.**

Commercial paper, **3:119**

Defendants excluded, **3:121**

Documents excluded, **3:122**

Failure to satisfy substantive elements, **3:124**

Government securities, **3:118**

Municipal securities, **3:117**

Plaintiffs excluded, **3:120**

Securities excluded, **3:117 et seq.**

Substantive elements, **3:124**

SEA § 9

Generally, **3:125 et seq.**

Defendants excluded, **3:129**

Documents excluded, **3:130**

Failure to satisfy substantive elements, **3:132**

Government securities, **3:127**

Municipal securities, **3:127**

OTC securities, **3:126**

Plaintiffs excluded, **3:128**

Securities excluded, **3:126 et seq.**

Substantive elements, **3:132**

SEA § 18

Generally, **3:133 et seq.**

Decisions rejecting IPA, **3:137**

Decisions sustaining IPA, **3:138**

Defendants excluded, **3:141**

Documents excluded, **3:142, 3:143**

IMPLIED LIABILITY—Cont'd

Contraction era—Cont'd

Overlapping remedies—Cont'd

SEA § 18—Cont'd

Failure to satisfy substantive elements, **3:145**

Filed and unfiled documents, **3:142 et seq.**

Fischman rationale, **3:135**

Narrow focus of § 18, **3:136**

Plaintiffs excluded, **3:140**

Reexamination, reasons for, **3:134**

Scienter, **3:135**

Securities excluded, **3:139**

Substantive elements, **3:145**

Statutory cumulativeness, **3:107**

Supreme Court approach, **3:104**

Registered offerings

Generally, **3:109 et seq.**

Defendants excluded, **3:112**

Documents excluded, **3:113**

Failure to satisfy substantive elements, **3:115**

Plaintiffs excluded, **3:111**

Securities excluded, **3:110**

Substantive elements, failure to satisfy, **3:115**

Transactions excluded, **3:110**

SEC filings, reliance on

Generally, **3:133 et seq.**

Decisions rejecting IPA, **3:137**

Decisions sustaining IPA, **3:138**

Defendants excluded, **3:141**

Documents excluded, **3:142, 3:143**

Failure to satisfy substantive elements, **3:145**

Filed and unfiled documents, **3:142 et seq.**

Fischman rationale, **3:135**

Narrow focus of § 18, **3:136**

Plaintiffs excluded, **3:140**

Reexamination, reasons for, **3:134**

Scienter, **3:135**

Securities excluded, **3:139**

Substantive elements, **3:145**

IMPLIED LIABILITY—Cont'd

Contribution (this index)
 Contributory negligence, **8:253**
 Current status of IPA, **3:146 et seq.**
 Defense strategies, **3:103**
 Disclosure, **3:60, 3:80**
 Equitable fraud, **8:242**
 Ethical standards, **3:60, 3:80**
 Expansion era
 Generally, **3:54 et seq.**
 Manipulation, **3:72**
 New expansion era, **3:146**
 Overlapping remedies
 Generally, **3:69 et seq.**
 SA § 11, **3:70**
 SA § 12(2), **3:71**
 SEA § 9, **3:72**
 SEA § 18, **3:73**
 Registered offerings, **3:70**
 SEC filings, reliance on, **3:73**
 Expenses, security for, **3:175**
 Federal vs state private actions, relative advantages, **3:200**
 Financial report certifications, Sarbanes-Oxley Act, **3:169**
 Fraud on the market
 Generally, **8:520 et seq.**
 See also **Reliance** (this index)
 Good faith of plaintiff, **8:254**
 Implied private actions (IPA) generally, **3:53**
 Indemnification, **9:76**
 Innocent defendants, **8:243**
 Insider trading
 Generally, **7:491 et seq.**
 Amount of liability, **7:521 et seq.**
 Ancillary relief, **7:525**
 Background, **7:501**
 Causation, **7:517**
 Contemporaneous traders, actions by, **7:503 et seq.**
 Control persons, actions against, **7:512**
 Convertible traders, suits by, **7:508**
 Damages, **7:521 et seq.**
 Elements of action, **7:514 et seq.**
 Fiduciary theory, **7:498**

IMPLIED LIABILITY—Cont'd

Insider trading—Cont'd
 Market, relation of parties to, **7:493 et seq.**
 Misappropriation theory, **7:499**
 Opposite side traders
 Damages, **7:522**
 Elements of action, **7:518**
 Relations of parties to market, **7:494**
 Suits by, **7:504**
 Option traders, suits by, **7:507**
 Parties defendant, **7:509**
 Relation to other liabilities, **7:524**
 Reliance, **7:516**
 Rule 10b-5, **7:497 et seq.**
 Rule 14e-3, **7:500**
 Same side traders
 Damages, **7:523**
 Elements of action, **7:519**
 Relations of parties to market, **7:495**
 Suits by, **7:505**
 Standing, **7:520**
 Tippers, actions against, **7:511**
 Traders, actions against, **7:510**
 Who can be sued, **7:509**
 Who can sue, **7:502**
 Insurance, **9:76**
 Interpretation
 Generally, **3:64 et seq., 3:86 et seq.**
 Expansion era, **3:64 et seq., 3:86 et seq.**
 Flexibility to achieve remedial purpose
 Contraction era, **3:88**
 Expansion era, **3:66**
 Legislative history, use of
 Contraction era, **3:90 et seq.**
 Expansion era, **3:68**
 Literalism, statutory
 Contraction era, **3:89**
 Expansion era, **3:67**
 Negative implication
 Contraction era, **3:87**
 Expansion era, **3:65**

INDEX

IMPLIED LIABILITY—Cont'd

Interpretation—Cont'd

Remedial purpose, flexibility to achieve

Contraction era, **3:88**

Expansion era, **3:66**

Statutory literalism

Contraction era, **3:89**

Expansion era, **3:67**

Investment Advisers Act, **3:155**

Investor protection considerations, **3:60, 3:80**

Joint and Several Liability (this index)

Jurisdiction

Generally, **11:2 et seq.**

Adviser activities, **11:15**

Agent's interstate activities, **11:13**

Broker-dealer activities, **11:15**

Check clearance as interstate activity, **11:11**

Class actions, **11:42**

Defenses, **11:41**

Derivative suits, **11:43**

Foreign transactions, **11:16**

Fraud, interstate nature of, **11:9**

International transactions, **11:16**

Interstate commerce, **11:3**

Local telephone use, **11:4**

Mails, use of, **11:6**

Misconduct, relation of jurisdictional means to

Generally, **11:8 et seq.**

Agent's interstate activities, **11:13**

Check clearances, **11:11**

Fraud, **11:9**

Plaintiff's interstate activities, **11:14**

Transaction, **11:10, 11:12**

Plaintiff's interstate activities, **11:14**

Pleading, **11:38**

Procedure, **11:39 et seq.**

Scope of commerce, **11:3**

Securities exchanges and interstate commerce, **11:7**

IMPLIED LIABILITY—Cont'd

Jurisdiction—Cont'd

Statutory jurisdictional grant

Contraction era, **3:79**

Expansion era, **3:59**

Telephone use, **11:4**

Transactions, interstate, **11:10, 11:12**

Jurisdictional grants, statutory

Contraction era, **3:79**

Expansion era, **3:59**

Limitation of actions

Generally, **8:251, 11:61 et seq.**

See also **Limitation of Actions** (this index)

Court cases, **11:63 et seq.**

Rule 10b-5, **3:174**

Sarbanes-Oxley Act, **3:161, 11:92**

Manipulation

Contraction era

Generally, **3:125 et seq.**

Defendants excluded, **3:129**

Documents excluded, **3:130**

Failure to satisfy substantive elements, **3:132**

Government securities, **3:127**

Municipal securities, **3:127**

OTC securities, **3:126**

Plaintiffs excluded, **3:128**

Securities excluded, **3:126 et seq.**

Substantive elements, **3:132**

Expansion era, **3:72**

Materiality

Proxy fraud, **8:56**

SEA § 10, **8:55**

Misrepresentation, plaintiff's knowledge of, **8:246**

Modes of interpretation

Expansion era, **3:64 et seq., 3:86 et seq.**

Rule 10b-5, **3:64 et seq., 3:86 et seq.**

Negligence of plaintiff, **8:253**

New expansion era, **3:146**

Nondisclosure, plaintiff's knowledge, **8:245**

Nullification test, **3:104**

IMPLIED LIABILITY—Cont'd

- Officers' certifications of financial reports, **3:169**
- Overlapping remedies
- Contraction era
 - Generally, **3:102 et seq.**
 - Comparison of elements of express and implied rights, **3:105**
 - Defense strategies, **3:103**
 - Exclusions, effect of, **3:108**
 - Falsity vs scheme, **3:106**
 - Nullification test, **3:104**
 - SA § 11
 - Generally, **3:109 et seq.**
 - Defendants excluded, **3:112**
 - Documents excluded, **3:113**
 - Failure to satisfy substantive elements, **3:115**
 - Plaintiffs excluded, **3:111**
 - Securities excluded, **3:110**
 - Substantive elements, failure to satisfy, **3:115**
 - Transactions excluded, **3:110**
 - SA § 12(2)
 - Generally, **3:116 et seq.**
 - Commercial paper, **3:119**
 - Defendants excluded, **3:121**
 - Documents excluded, **3:122**
 - Failure to satisfy substantive elements, **3:124**
 - Government securities, **3:118**
 - Municipal securities, **3:117**
 - Plaintiffs excluded, **3:120**
 - Securities excluded, **3:117 et seq.**
 - Substantive elements, **3:124**
 - SEA § 9
 - Generally, **3:125 et seq.**
 - Defendants excluded, **3:129**
 - Documents excluded, **3:130**
 - Failure to satisfy substantive elements, **3:132**
 - Government securities, **3:127**
 - Municipal securities, **3:127**
 - OTC securities, **3:126**
 - Plaintiffs excluded, **3:128**

IMPLIED LIABILITY—Cont'd

- Overlapping remedies—Cont'd
- Contraction era—Cont'd
 - SEA § 9—Cont'd
 - Securities excluded, **3:126 et seq.**
 - Substantive elements, **3:132**
 - SEA § 18
 - Generally, **3:133 et seq.**
 - Decisions rejecting IPA, **3:137**
 - Decisions sustaining IPA, **3:138**
 - Defendants excluded, **3:141**
 - Documents excluded, **3:142, 3:143**
 - Failure to satisfy substantive elements, **3:145**
 - Filed and unfiled documents, **3:142 et seq.**
 - Fischman rationale, **3:135**
 - Narrow focus of § 18, **3:136**
 - Plaintiffs excluded, **3:140**
 - Reexamination, reasons for, **3:134**
 - Scienter, **3:135**
 - Securities excluded, **3:139**
 - Substantive elements, **3:145**
 - Statutory cumulativeness, **3:107**
 - Supreme Court approach, **3:104**
- Expansion era
 - Generally, **3:69 et seq.**
 - SA § 11, **3:70**
 - SA § 12(2), **3:71**
 - SEA § 9, **3:72**
 - SEA § 18, **3:73**
 - Nullification test, **3:104**
- Parties
 - Proxy fraud, **8:284**
 - SEA § 14
 - Proxy fraud, **8:284**
 - Tender offer fraud, **8:285**
 - SEA § 15(c)(1), **8:286**
 - SEA § 18, **8:287**
 - Tender offer fraud, **8:285**
- Penny Stock Sales** (this index)
- Plaintiff's knowledge
 - Generally, **8:244 et seq.**

INDEX

IMPLIED LIABILITY—Cont'd

Plaintiff's knowledge—Cont'd

- Actual knowledge, **8:244**
- Comparative knowledge, **8:249**
- Constructive knowledge, **8:250**
- Limitation of actions, **8:251**
- Misrepresentation, **8:246**
- Nondisclosure, **8:245**
- Theoretical knowledge, **8:248**

Pleading

- Generally, **8:257, 11:104 et seq.**
- See also **Private Actions** (this index)
- Broker-dealer fraud, **8:145**
- Jurisdiction, **11:38**
- Particularity, **11:114**
- Pleading, **11:104**
- Scienter
 - Broker-dealer fraud, **8:145**
 - Tender offer fraud, **8:138**

Policies

- Effectuation, Rule 10b-5, **3:60, 3:80**

- Rule 10b-5, **3:55**

Practicality, expansion era, **3:63, 3:83**

Private actions generally

- Generally, **8:1 et seq.**
- See also **Private Actions** (this index)

Privity

- Generally, **8:288 et seq.**
- Rule 10b-5, **3:176**

Pro forma financial information disclosures, **3:170**

Proof

- Generally, **8:256**
- Defendant's knowledge and belief, **8:142**
- Rule 10b-5, **3:177**
- Scienter, **8:135, 8:142**
- Tender offer fraud, **8:135**

Proportionate Liability (this index)

Proxy fraud

- Materiality, **8:56**
- Scienter
 - Generally, **8:125 et seq.**
 - Burden of proof, **8:127**
 - Intent, **8:129**

IMPLIED LIABILITY—Cont'd

Proxy fraud—Cont'd

Scienter—Cont'd

- Plaintiff's knowledge, **8:130**
- Pleading, **8:131**
- Proof, **8:128**

Punitive damages, **14:106 et seq.**

Registered offerings

Contraction era

- Generally, **3:109 et seq.**
- Defendants excluded, **3:112**
- Documents excluded, **3:113**
- Failure to satisfy substantive elements, **3:115**
- Plaintiffs excluded, **3:111**
- Securities excluded, **3:110**
- Substantive elements, failure to satisfy, **3:115**
- Transactions excluded, **3:110**

Expansion era, **3:70**

Regulation G liabilities, **3:170**

Reliance

- Generally, **8:484 et seq.**
- See also **Reliance** (this index)
- Insider trading, **7:516**

Remedies, Rule 10b-5, **3:178**

Remedies (this index)

Rule 10b-5

- Generally, **3:54 et seq.**
- Absorption principle, **3:173**
- Administrative interpretation, **3:62, 3:82**
- Clause 3, primacy of, **3:182**
- Congressional intent, **3:56**
- Current status of IPA, **3:146 et seq.**
- Displacements within 10b-5, **3:181**
- Expansion era, **3:54 et seq.**
- Expenses, security for, **3:175**
- Implied civil recovery, Rule 10b-5 without, **3:180**
- Jurisdictional grant, statutory, **3:59, 3:79**
- Limitations of actions, **3:174**
- Modes of interpretation, **3:64 et seq., 3:86 et seq.**
- Overlaps within 10b-5, **3:181**
- Policies
 - Generally, **3:55**

IMPLIED LIABILITY—Cont'd

Rule 10b-5—Cont'd
 Policies—Cont'd
 Effectuation, **3:60, 3:80**
 Practicality, **3:63, 3:83**
 Prevalence of rule, **3:179**
 Privity requirements, **3:176**
 Proof requirements, **3:177**
 Reasons, **3:55**
 Remedies, **3:178**
 Security for expenses, **3:175**
 Silent conduct, **3:182**
 Statutory tort principles, **3:57, 3:77**
 Supplement to government enforcement, **3:61, 3:81**
 Voidability, statutory, **3:58**
 SA 17(a), **3:155**
 Sales fraud, parties
 Generally, **8:274 et seq.**
 Aider-abettors, **8:279**
 Brokers, **8:276**
 Buyers, **8:275**
 Conspirators, **8:280**
 Control persons, **8:281**
 Insiders, **8:277**
 Participants, **8:278**
 Sarbanes-Oxley Act
 Generally, **3:156 et seq.**
 Analysts' certifications, actions based on, **3:168**
 Attorneys, implied private actions against, **3:165**
 Audit committee financial experts, **3:166**
 Audit records, actions based on, **3:171**
 Express actions negating IPA, **3:162**
 Financial report certifications, **3:169**
 History of enactment, **3:159**
 Legislative intent, **3:158**
 Limitation of actions, **3:161**
 Off-balance sheet transactions, **3:167**
 Officers' certifications of financial reports, **3:169**
 Overview, **3:157**

IMPLIED LIABILITY—Cont'd

Sarbanes-Oxley Act—Cont'd
 Pro forma financial information, liabilities based on, **3:170**
 Provisions adversely impacting IPA, **3:163**
 Regulation G liabilities, **3:170**
 Rejection of IPA, **3:161**
 SEC rules and releases, **3:164 et seq.**
 Scienter
 Broker-dealer fraud
 Generally, **8:139 et seq.**
 Burden of proof, **8:141**
 Defendant's intent, **8:143**
 Defendant's knowledge and belief
 Generally, **8:140 et seq.**
 Burden of proof, **8:141**
 Proof, **8:142**
 Plaintiff's knowledge, **8:144**
 Pleading, **8:145**
 Proof, **8:142**
 Pleading, **8:131, 8:138, 8:145**
 Proxy fraud
 Generally, **8:125 et seq., 8:126 et seq.**
 Burden of proof, **8:127**
 Intent, **8:129**
 Plaintiff's knowledge, **8:130**
 Pleading, **8:131**
 Proof, **8:128**
 Tender offer fraud
 Defendant's intent, **8:136**
 Defendant's knowledge and belief
 Generally, **8:133 et seq.**
 Burden of proof, **8:134**
 Proof, **8:135**
 Intent, **8:136**
 Plaintiff's knowledge, **8:137**
 Pleading, **8:138**
 SEA § 14, **8:132 et seq.**
 SEC filings, reliance on
 Contraction era
 Generally, **3:133 et seq.**
 Decisions rejecting IPA, **3:137**
 Decisions sustaining IPA, **3:138**

INDEX

IMPLIED LIABILITY—Cont'd

- SEC filings, reliance on—Cont'd
 - Contraction era—Cont'd
 - Defendants excluded, **3:141**
 - Documents excluded, **3:142, 3:143**
 - Failure to satisfy substantive elements, **3:145**
 - Filed and unfiled documents, **3:142 et seq.**
 - Fischman rationale, **3:135**
 - Narrow focus of § 18, **3:136**
 - Plaintiffs excluded, **3:140**
 - Reexamination, reasons for, **3:134**
 - Scienter, **3:135**
 - Securities excluded, **3:139**
 - Substantive elements, **3:145**
- Expansion era, **3:73**
- Security for expenses, **3:175**
- Standing, **7:520**
- Statutory tort principles
 - Contraction era, **3:77**
 - Expansion era, **3:57**
- Strict liability, **8:243**
- Suitability** (this index)
- Supplement to government enforcement, Rule 10b-5, **3:61, 3:81**
- Supreme Court, **3:148**
- Tender offer fraud
 - Generally, **8:132 et seq.**
- Scienter
 - Defendant's intent, **8:136**
 - Defendant's knowledge and belief
 - Generally, **8:133 et seq.**
 - Burden of proof, **8:134**
 - Proof, **8:135**
 - Intent, **8:136**
 - Plaintiff's knowledge, **8:137**
 - Pleading, **8:138**
- Standing to challenge, **6:124**
- Tests for implied rights
 - Generally, **3:100**
 - Prohibitory language, **3:101**
- Voidability, statutory
 - Contraction era, **3:78**
 - Expansion era, **3:58**

IMPLIED PRIVATE ACTIONS (IPA)

- Generally, **3:53**
- See also **Implied Liability** (this index)

INDEMNIFICATION

- Generally, **9:76, 12:11**

INDIRECT-IMPERSONAL DEALING

- Generally, **7:1 et seq.**
- Accumulation of stock, manipulation by, **7:134**
- Actual knowledge and scienter, **8:172**
- Actual or apparent trading, **7:124**
- Aiding-abetting, **7:98**
- Analyst projections, **7:9**
- Antifraud provisions and Regulation FD disclosure, **7:546**
- Bright line vs. substantial participation, **7:89**
- Business judgment standard, misrepresentation claims, consideration of, **7:50**
- Capping, **7:136**
- Causation, **7:76**
- Central Bank decision, **7:79, 7:85**
- Circular trading, **7:135**
- Company projections, **7:8**
- Cornering the market, **7:134**
- Criminal enforcement
 - Burden of proof, insider trading charges, **7:366**
- Defenses to insider trading charges, generally, **7:350**
- Double jeopardy limitations, insider trading charges, **7:443**
- Insiders
 - Generally, **7:460 et seq.**
 - Amount of penalties, **7:466**
 - Disgorgement, **7:465**
 - Judge or jury, **7:467**
 - Mail and wire fraud, **7:463**
 - Penalties, **7:466**
 - Restitution, **7:465**
 - RICO, **7:464**
 - Securities violations, **7:462**

**INDIRECT-IMPERSONAL
DEALING—Cont'd**

Criminal enforcement—Cont'd
 Insider trading
 Generally, **7:415 et seq.**
 Mail and wire fraud, **7:171**
 Insider trading charges
 Burden of proof
 Generally, **7:366**
 Defenses, **7:369**
 Institutions, **7:367**
 Connection with requirement
 Market transactions, **7:370**
 Rule 10b-5, **7:370**
 Rule 14e-3, **7:371**
 Tender offers, **7:371**
 Defenses
 Generally, **7:350**
 Amount defined, **7:355**
 Binding contract defense,
 7:351
 Burden of proof, **7:369**
 Burden of proving, **7:369**
 Common terms and issues,
 7:355 et seq.
 Date defined, **7:357**
 Delegation alternative to
 amount, price and date,
 7:358
 Exclusiveness of defenses,
 7:360
 Institutional defenses, **7:361**
 Instructions defense, **7:352**
 Overriding limitations, **7:359**
 Price defined, **7:356**
 Relation to other laws, **7:362**
 Systematic plans defense,
 7:353
 Tracking plans defense, **7:354**
 Fiduciary breach, **7:315**
 Institutional defenses, **7:361**
 Institutions, burden of proof,
 7:367
 Motion practice, **7:365**
 Parties, **7:363**
 Pleading
 Generally, **7:364**
 Scienter, **7:398**

**INDIRECT-IMPERSONAL
DEALING—Cont'd**

Criminal enforcement—Cont'd
 Insider trading charges—Cont'd
 Procedural aspects, **7:363 et seq.**
 Proof, **7:368**
 Quantum of proof, **7:366, 7:367**
 RICO, **7:414, 7:464**
 Scienter
 Generally, **7:372 et seq.**
 Fiduciary theory
 Tippers, **7:381**
 Trading insiders, **7:377**
 Trading tippees, **7:385**
 Mail and wire fraud, **7:413**
 Martha Stewart case
 Generally, **7:403 et seq.**
 Acquittal, **7:411**
 Background of case, **7:404**
 Imclone stock sale, **7:404**
 Indictment, **7:405**
 Inferences from evidence,
 7:409
 Intent inference test, **7:410**
 Limits on argument and
 evidence, **7:407**
 Misrepresentation, **7:406**
 Sufficiency of evidence
 test, **7:408**
 Misappropriation theory
 Tippers, **7:382**
 Trading insiders, **7:378**
 Trading tippees, **7:386**
 Pleading, **7:398**
 Proof, **7:399 et seq.**
 Rule 10b-5, **7:374 et seq.**
 Rule 14e-3, **7:412**
 Tippers
 Generally, **7:379 et seq.**
 Proof, **7:401**
 Trading insiders
 Generally, **7:375 et seq.**
 Proof, **7:400**
 Trading tippees
 Generally, **7:383 et seq.**
 Proof, **7:402**
 Tippers, **7:379 et seq.**

INDEX

INDIRECT-IMPERSONAL DEALING—Cont'd

- Criminal enforcement—Cont'd
 - Mail and wire fraud
 - Generally, **7:171, 7:463**
 - Scienter, **7:413**
 - Motion practice, **7:365**
 - Penalty actions, **7:438 et seq.**
 - Pleadings, **7:364**
 - Quantum of proof, **7:366**
- Cross trading manipulation, **7:135**
- Curtailing scheme to defraud. Fraud,
below
- Defenses to insider trading charges
 - Generally, **7:350**
 - Amount defined, **7:355**
 - Binding contract defense, **7:351**
 - Burden of proof, **7:369**
 - Common terms and issues, **7:355 et seq.**
 - Date defined, **7:357**
 - Delegation alternative to amount,
price and date, **7:358**
 - Exclusiveness of defenses, **7:360**
 - Institutional defenses, **7:361**
 - Instructions defense, **7:352**
 - Overriding limitations, **7:359**
 - Price defined, **7:356**
 - Relation to other laws, **7:362**
 - Systematic plans defense, **7:353**
 - Tracking plans defense, **7:354**
- Depressing price manipulations,
7:124
- Derivatives, see also **Derivatives
Fraud** (this index)
- Direct and indirect dealings, **4:1,
7:91, 7:108, 7:116**
- Disclosure corrections
 - How long is correction necessary,
6:326
 - What makes correction necessary,
6:322
- Due diligence, consideration of in
misrepresentation claims, **7:52**
- Enron case, **7:87**
- Exemption provisions and Regulation
FD disclosure, **7:548**
- Fiduciary breach, **7:315**

INDIRECT-IMPERSONAL DEALING—Cont'd

- Fifth Circuit, Enron case, **7:87**
- First Circuit, Lernout case, **7:106**
- Foreign law, insiders, **7:201**
- Fraud
 - Generally, **7:84 to 7:620**
 - Bright line vs. substantial
participation, **7:89**
 - Central Bank decision, **7:79, 7:85**
 - Creation of misrepresentation,
7:90
 - Curtailing scheme to defraud, gen-
erally, **7:75 et seq.**
 - Directly and indirectly, **7:91,
7:108, 7:116**
 - Fifth Circuit, Enron case, **7:87**
 - First Circuit, Lernout case, **7:106**
 - Group scienter, **7:99**
 - Group violations, **7:92, 7:95**
 - Historical perspective, **7:81**
 - Insider defendants, **7:102**
 - Liability, scope of, **7:96**
 - Manipulation vs. scheme, **7:113**
 - Misrepresentation vs. scheme,
7:88, 7:110, 7:112
 - Misrepresentation vs. scheme
revisited, **7:115**
 - Ninth Circuit, Homestore case,
7:101
 - Outsider defendants, **7:103**
 - Participation, **7:116**
 - Primary liability vs. aiding-abet-
ting, **7:98**
 - Primary violators, **7:104, 7:109,
7:110, 7:114**
 - Private actions for schemes, **7:105**
- PSLRA
 - Application of, **7:97**
 - Impact of, **7:86**
- Reliance, **7:76 to 7:78, 7:80**
- Scheme to defraud, generally, **7:84 et seq.**
- SEC authority, **7:93**
- Secondary actors, **7:104, 7:114**
- Second Circuit, Parmalat case,
7:111
- SEC view of reliance, **7:77, 7:80**

**INDIRECT-IMPERSONAL
DEALING—Cont'd**

- Fraud—Cont'd
 - Specific violations, **7:100**
 - Stoneridge amici, **7:83**
 - Stoneridge impact, **7:82**
 - Supreme Court, Zandford case, **7:117**
 - Zone and reliance permitted, **7:78**
- Front running manipulation
 - Generally, **7:139 et seq.**
 - Court cases, **7:142**
 - SEC interpretations
 - Generally, **7:140**
 - Decisions, **7:142**
 - SRO interpretations
 - Generally, **7:140**
 - Criticisms, **7:141**
 - Decisions, **7:142**
 - Insider trading, **7:168**
- Good faith, consideration of in misrepresentation claims, **7:53**
- Group scienter, **7:99**
- Guidelines for information releases, **7:54**
- Homestore case, **7:101**
- Information release guidelines, **7:54**
- Information types, **7:2**
- Inside trading
 - See also **Insiders and Insider Trading** (this index)
 - Agreed confidentiality, **7:589**
 - Benefit to insider-tipper, **7:627**
 - Fraud, **7:102**
 - Information, **7:4**
 - Misappropriation theory of liability
 - Generally, **7:577**
 - Agreed confidentiality, **7:589**
 - Close family relationships, **7:587**
 - Connection element, **7:597**
 - Connection with transaction, **7:680**
 - Court cases, **7:582 et seq.**
 - Enforcement actions, **7:578**
 - Family relationships, **7:587**
 - Mail and wire fraud, **7:594**
 - Private actions, **7:579, 7:603**

**INDIRECT-IMPERSONAL
DEALING—Cont'd**

- Inside trading—Cont'd
 - Misappropriation theory of liability
 - Cont'd
 - Rule 10b5-2, **7:585 et seq.**
 - SEC v. Mark Cuban, stress test for misappropriation theory, generally, **7:604 to 7:622**
 - Shared confidences, **7:590**
 - Regulation FD disclosure, below
 - Shared confidences, **7:590**
- Tippees
 - Generally, **7:623**
 - Benefit to insider-tipper, **7:627**
 - Dirks background, **7:625**
 - Family benefit to, **7:630**
 - Fiduciary breach requirement, **7:626**
 - Friends, benefit to, **7:630**
 - Need for fiduciary benefit, **7:626**
 - Pecuniary benefit, **7:628**
 - Receipt in fiduciary breach, **7:623**
 - Relations, benefit to, **7:630**
 - Reputational benefit, **7:629**
 - Tip defined, **7:624**
- Intent, consideration of in misrepresentation claims, **7:53**
- Lernout case, **7:106**
- Mail and wire fraud, **7:463**
- Manipulation
 - Generally, **7:118 et seq.**
 - Accumulation of stock, **7:134**
 - Actual or apparent trading, **7:124**
 - Capping, **7:136**
 - Circular trading, **7:135**
 - Cornering the market, **7:134**
 - Cross trading, **7:135**
 - Definition, **7:119**
 - Depressing prices, **7:124**
 - Federal securities laws, **7:120**
 - Fraud, scheme, **7:113**
 - Front running
 - Generally, **7:139 et seq.**
 - Court cases, **7:142**

INDEX

INDIRECT-IMPERSONAL DEALING—Cont'd

- Manipulation—Cont'd
 - Front running—Cont'd
 - SEC interpretations
 - Generally, **7:140**
 - Decisions, **7:142**
 - SRO interpretations
 - Generally, **7:140**
 - Criticisms, **7:141**
 - Decisions, **7:142**
 - Insider trading, **7:168**
 - Margin requirements, parking to avoid, **7:148**
 - Marking the close, **7:131**
 - Matched orders, **7:121**
 - Painting the tape, **7:132**
 - Parking
 - Generally, **7:143 et seq.**
 - Capital requirements, use to avoid, **7:147**
 - Control fights, use in, **7:146**
 - Definitions, **7:144**
 - Margin requirements
 - Parking to avoid, **7:148**
 - Use to avoid, **7:148**
 - Record keeping violations, **7:149**
 - Tax evasion uses, **7:150**
 - Pegging, **7:136**
 - Raising prices, **7:124**
 - Rule 10b-5
 - Generally, **7:130 et seq.**
 - Accumulation of stock, **7:134**
 - Capping, **7:136**
 - Circular trading, **7:135**
 - Control, **7:138**
 - Cornering the market, **7:134**
 - Cross trading, **7:135**
 - Domination, **7:138**
 - Front running, above
 - Marking the close, **7:131**
 - Painting the tape, **7:132**
 - Parking, above
 - Pegging, **7:136**
 - Short selling, **7:137**
 - Successive activity price manipulations, **7:133**

INDIRECT-IMPERSONAL DEALING—Cont'd

- Manipulation—Cont'd
 - SEA § 9(a)(1), **7:121**
 - SEA § 9(a)(2)
 - Generally, **7:122 et seq.**
 - Actual or apparent trading, **7:124**
 - Depressing prices, **7:124**
 - Purpose, **7:125**
 - Raising prices, **7:124**
 - Series of transactions, **7:123**
 - SEA § 9(a)(3), **7:126**
 - SEA § 9(a)(4), **7:126**
 - SEA § 9(a)(5), **7:126**
 - SEA § 9(a)(6), **7:127**
 - SEA § 9(b), **7:128**
 - SEA § 9(e), **7:129**
 - Short selling, **7:137**
 - Successive activity price manipulations, **7:133**
 - Wash sales, **7:121**
- Margin requirements, parking to avoid, **7:148**
- Market-informing responsibilities, **12:7**
- Marking the close manipulations, **7:131**
- Matched order manipulations, **7:121**
- Mediation, **15:69**
- Method of disclosure, Regulation FD, **7:544**
- Misappropriation by insiders
 - Generally, **7:577**
 - Agreed confidentiality, **7:589**
 - Arguments of parties on appeal, **7:619**
 - Close family relationships, **7:587**
 - Conclusion of Cuban case, **7:622**
 - Confidentiality, **7:611**
 - Connection element, **7:597**
 - Connection with transaction, **7:680**
 - Court cases, **7:582 et seq.**
 - Cuban responds to charges, **7:607**
 - Disclosure, trading with impunity, **7:609**
 - District court ruling in favor of Cuban, **7:616**

**INDIRECT-IMPERSONAL
DEALING—Cont’d**

Misappropriation by insiders
—Cont’d
Enforcement actions, **7:578**
Family relationships, **7:587**
Federal charges filed by Commission, **7:606**
Five law professors file brief amici curiae in support of Cuban’s motion, **7:615**
Lack of agreement by Cuban not to trade, **7:617**
Limitation of Rule 10b-5 to family and other personal relationships, **7:613**
Mail and wire fraud, **7:594**
Mark Cuban and Commission as players, **7:605**
Motion to dismiss, **7:610**
Pre-emptive strike against application of SEC Rule 10b5-2(b)(1), **7:612**
Private actions, **7:579, 7:603**
Reexamination of development of misappropriation theory, **7:608**
Relevancy of Cuban’s opinion, **7:621**
Response by SEC to Cuban’s motion, **7:614**
Response to charges by Cuban, **7:607**
Rule 10b5-2, **7:585 et seq.**
Rule 10b5-2 evaluation by District Court, **7:618**
SEC v. Mark Cuban, stress test for misappropriation theory, generally, **7:604 to 7:622**
Shared confidences, **7:590**
Sufficiency of SEC allegations of misappropriation, **7:617**
Telephone calls, evaluation, **7:620**
Trading with impunity, **7:609**
Misrepresentations
Generally, **7:5, 7:46 et seq.**
See also **Forward Looking Information** (this index)
Analyst projections, **7:9**

**INDIRECT-IMPERSONAL
DEALING—Cont’d**

Misrepresentations—Cont’d
Business judgment standard, **7:50**
Company projections, **7:8**
Creation of misrepresentation, **7:90**
Due diligence, **7:52**
Earnings, **7:47**
GAAP violations
Generally, **7:55 et seq.**
Auditor violation, **7:70**
Court decisions, generally, **7:62 et seq.**
Enforcement cases, **7:65, 7:71**
Financial Accounting Standards Board (FASB), **7:60**
Fraud
Fraud without GAAP violation, **7:63**
GAAP violation with fraud, **7:66 to 7:71**
GAAP violation without fraud, **7:64, 7:65**
Judicial eyes, GAAP in judicial eyes, **7:57**
Non-GAAP financial measures, **7:74**
PRO FORMAs (NGFMs), **7:72 to 7:74**
Public communications not filed with SEC, **7:73**
Public Company Accounting Oversight Board (PCAOB), **7:61**
Red flags, **7:70**
Reg G, **7:73**
Sarbanes-Oxley restrictions on pro forma or non-GAAP financial information, **7:72**
Scienter, allegations supporting, **7:69**
SEC, **7:58, 7:59, 7:72 to 7:74**
Sources of GAAP, **7:59, 7:60, 7:61**
Statutes, GAAP in statutes, **7:56**
Generally accepted accounting principles. GAAP violations, above

INDEX

INDIRECT-IMPERSONAL DEALING—Cont'd

- Misrepresentations—Cont'd
 - Good faith, **7:53**
 - Guidelines for information releases, **7:54**
 - Information release guidelines, **7:54**
 - Intent, **7:53**
 - Negligence, **7:52**
 - Predictions, **7:46**
 - Predictions and projection disclosure obligations
 - Generally, **7:10 et seq.**
 - Capital resources, **7:15**
 - Liquidity, **7:14**
 - With MD&A requirement
 - Administrative enforcement, **7:13**
 - Private actions, **7:17**
 - Operation results, **7:16**
 - Private actions on MD&A requirements, **7:17**
 - Restrictions on disclosures, **7:18**
 - Safe harbor
 - Generally, **7:19 et seq.**
 - Background, **7:20**
 - Bespeaks caution doctrine, **7:22**
 - PSLRA
 - Generally, **7:23 et seq.**
 - Actual knowledge prong, **7:36**
 - Attacking cautionary statements, **7:29**
 - Caution prong, **7:26**
 - Corrections, **7:45**
 - Definition of forward looking statement, **7:25**
 - Discovery stays, **7:44**
 - Drafting cautionary statements, **7:28**
 - Eligible makers, **7:37**
 - Exclusions, **7:40**
 - Expandability, **7:41**
 - Falsity, actual knowledge of, **7:36**
 - Immateriality, **7:35, 7:38**

INDIRECT-IMPERSONAL DEALING—Cont'd

- Misrepresentations—Cont'd
 - Predictions and projection disclosure obligations—Cont'd
 - Safe harbor—Cont'd
 - PSLRA—Cont'd
 - Later disclosures, **7:30**
 - Motion practice, **7:43**
 - Nonexclusiveness, **7:41**
 - Oral statements referencing caution, **7:31, 7:39**
 - Procedural aspects, **7:42**
 - Prohibited uses, **7:40**
 - Scope of Act, **7:24**
 - Statements with cautions, **7:27**
 - Update duty, **7:45**
- Readily available cautionary statements
 - Generally disseminated, **7:34**
 - SEC filings, **7:33**
 - Timing, **7:32**
 - SA Rule 175, **7:21**
 - SEA Rule 3b-6, **7:21**
- SEC
 - Generally, **7:11**
 - Encouragement of, **7:12**
 - Traditional position, **7:18**
- Reasonable investor standard, **7:51**
- Scheme to defraud vs. misrepresentation, **7:88, 7:110, 7:112**
- Scheme to defraud vs. misrepresentation revisited, **7:115**
- Scienter, **7:53**
- Standards for preparation of information, **7:49**
- Violations, criteria for determining, **7:49**
- Negligence, consideration of in misrepresentation claims, **7:52**
- Ninth Circuit, Homestore case, **7:101**
- Opposite side traders
 - Damages, **7:522**
 - Elements of action, **7:518**
 - Relations of parties to market, **7:494**

**INDIRECT-IMPERSONAL
DEALING—Cont'd**

- Opposite side traders—Cont'd
 - Suits by, **7:504**
- Organization of treatise, **4:1**
- Outsider defendants, **7:103**
- Painting the tape manipulations, **7:132**
- Parking
 - Generally, **7:143 et seq.**
 - Capital requirements, use to avoid, **7:147**
 - Control fights, use in, **7:146**
 - Definitions, **7:144**
 - Margin requirements
 - Parking to avoid, **7:148**
 - Use to avoid, **7:148**
 - Record keeping violations, **7:149**
 - Tax evasion uses, **7:150**
- Parmalat case, **7:111**
- Participation, **7:116**
- Pegging, **7:136**
- Personal and impersonal dealings, **4:1**
- Price, importance of, **7:3**
- Primary liability vs. aiding-abetting, **7:98**
- Primary violators in scheme to defraud, **7:104, 7:109, 7:110, 7:114**
- Private actions for schemes to defraud, **7:105**
- PSLRA
 - Application of, **7:97**
 - Impact of, **7:86**
- Raising price manipulations, **7:124**
- Reasonable investor standard, **7:51**
- Regulation FD disclosure
 - Generally, **7:526 et seq.**
 - Analysts' roles, **7:528**
 - Antifraud provisions and, **7:546**
 - Avoiding selective disclosure, **7:553**
 - Companies covered, **7:545**
 - Compliance, **7:551 et seq.**
 - Curing violations, **7:554**
 - Eliminating nonpublic information, **7:552**

**INDIRECT-IMPERSONAL
DEALING—Cont'd**

- Regulation FD disclosure—Cont'd
 - Enforcement, **7:549**
 - Exemption provisions and, **7:548**
 - Information, triggering, **7:534**
 - Intentional and nonintentional partial disclosures, **7:538 et seq.**
 - Materiality of triggering information, **7:535**
 - Method of disclosure, **7:544**
 - Persons triggering duty, **7:537**
 - Policy basis, **7:527**
 - Prompt disclosure requirement, **7:543**
 - Registration provisions and, **7:547**
 - Regulatory gap, **7:530**
 - Scope of regulation, **7:545**
 - SEC filing, compliance by, **7:555**
 - Selective disclosure
 - Generally, **7:529**
 - Avoiding, **7:553**
 - Curing violations, **7:554**
 - Materiality, **7:535**
 - Nonpublic nature of information disclosed, **7:536**
 - Triggering full disclosure obligation, **7:532**
 - Unintentional disclosures, **7:540**
 - Simultaneous disclosure requirements, **7:542**
 - Timing requirements, **7:541 et seq.**
 - Triggering events
 - Generally, **7:531 et seq.**
 - Information, triggering, **7:534**
 - Intentional and nonintentional partial disclosures, **7:538 et seq.**
 - Materiality of triggering information, **7:535**
 - Nonintentional disclosures, **7:540**
 - Nonpublic nature of information disclosed, **7:536**
 - Nontriggering disclosures, **7:533**
 - Persons triggering duty, **7:537**
 - Selective disclosures, **7:532**
 - Unintentional disclosures, **7:540**

INDEX

INDIRECT-IMPERSONAL DEALING—Cont'd

- Regulation FD disclosure—Cont'd
 - Unintentional disclosures, **7:540**
 - Validity, **7:550**
 - Violations, curing, **7:554**
- Reliance, curtailing scheme to defraud, **7:76 to 7:78, 7:80**
- Remoteness, **7:76**
- Rule 10b-5 application to, **3:28**
- Rule 10b-5 responsibilities generally, **12:7**
- Rule 14e-3, **7:166**
- Rule 15c1-2, **7:165**
- Rule 144, **7:167**
- SA § 17(a), **7:164**
- Same side traders
 - Damages, **7:523**
 - Elements of action, **7:519**
 - Relations of parties to market, **7:495**
 - Suits by, **7:505**
- Scienter
 - Actual knowledge, **8:172**
 - Misrepresentation claims, consideration of, **7:53**
 - Scheme to defraud, group scienter, **7:99**
- Secondary actors in scheme to defraud, **7:104, 7:114**
- Second Circuit, Parmalat case, **7:111**
- Securities and Exchange Commission (SEC), **7:58, 7:59, 7:72 to 7:74, 7:77, 7:80, 7:93**
- Selective disclosure and full disclosure obligations
 - Generally, **7:529**
 - Avoiding, **7:553**
 - Curing violations, **7:554**
 - Materiality, **7:535**
 - Nonpublic nature of information disclosed, **7:536**
 - Triggering full disclosure obligation, **7:532**
 - Unintentional disclosures, **7:540**
- Short selling manipulations, **7:137**
- Simultaneous FD disclosure requirements, **7:542**
- SRO rules, insider trading, **7:168**

INDIRECT-IMPERSONAL DEALING—Cont'd

- Stoneridge case, curtailing scheme to defraud
 - Amici, **7:83**
 - Impact, **7:82**
- Substantial participation in scheme to defraud, **7:89**
- Successive activity price manipulations, **7:133**
- Supreme Court, Zandford case, **7:117**
- Tender offers
 - Disclosures in, **7:288**
 - Inside information as to pending offers, **7:214**
- Timing of FD disclosure requirements, **7:541 et seq.**
- Tippee liabilities
 - Generally, **7:623**
 - Benefit to insider-tipper, **7:627**
 - Dirks background, **7:625**
 - Family benefit to, **7:630**
 - Fiduciary breach requirement, **7:626**
 - Friends, benefit to, **7:630**
 - Need for fiduciary benefit, **7:626**
 - Pecuniary benefit, **7:628**
 - Receipt in fiduciary breach, **7:623**
 - Relations, benefit to, **7:630**
 - Reputational benefit, **7:629**
 - Tip defined, **7:624**
- Transaction types, **7:1**
- Unintentional disclosures and Regulation FD disclosure, **7:540**
- Wash sale manipulations, **7:121**
- What is a Security** (this index)
- Zandford case, **7:117**
- Zone, curtailing scheme to defraud, **7:78**

INDUCEMENT

- Generally, **8:295**
- Aider-Abettors** (this index)
- Parties** (this index)

INFORMANTS

- Generally, **7:445**

INFORMATION

- See **Release of Information** (this index)
- Disclosure** (this index)
- Insiders and Insider Trading** (this index)
- Original information. See **Whistleblowers** (this index)

INITIAL COIN OFFERINGS

- Cryptocurrencies** (this index)

INITIAL PUBLIC OFFERINGS (IPOs)

- Foreign Corrupt Practices Act (FCPA), **19:10**
- Injunctions, ancillary relief, **13:111**

INJUNCTIONS

- Accounting, fraudulent accounting, **13:112**
- Actual knowledge and scienter, **8:174**
- Administrative enforcement of aider-abettor liability, **8:371**
- Advantages and disadvantages
 - CFTC, **13:252**
 - SEC, **13:120**
- Aider-abettor liability, **8:371**
- Aider-abettor restraints, **8:371**
- Ancillary relief
 - Auditors, **13:113**
 - CFTC, **13:250**
 - Fraudulent accounting, **13:112**
 - Initial public offerings (IPOs), **13:111**
 - Investment bankers global settlement, **13:110**
 - Monetary civil penalties, generally, **13:108 et seq.**
 - Mutual funds, **13:114**
 - Other violations, **13:115**
 - SEC, **13:107 et seq.**
 - Victim access to penalty, fair funds, **13:116**
 - WorldCom, **13:109**
- Asset freezes, **13:100**
- Auditors, ancillary relief, **13:113**
- Balance of equities, **6:134**
- Bar orders in, **13:117**
- Buyer-seller requirements, **5:122**

INJUNCTIONS—Cont'd

- Cease and desist orders
 - CFTC, **13:239**
 - Likelihood of future violation, **13:239**
 - Market impact, **13:240**
 - Permanent, **13:85**
 - Temporary, **13:86**
- CFTC
 - Generally, **13:245 et seq.**
 - Advantages and disadvantages, **13:252**
 - Ancillary relief, **13:250**
 - Character of proceedings, **13:245**
 - Collateral effect, **13:249**
 - Duration, **13:251**
 - Evidence, **13:246**
 - Likelihood of future violations, **13:239, 13:248**
 - Market impact, **13:240**
 - Proof, **13:246**
 - Proper showing, **13:248**
 - Scienter, **13:247**
 - Standards, **13:246**
 - Trading privileges, denial of, **13:240**
- Character of proceedings
 - CFTC, **13:245**
 - SEC, **13:96**
- Civil penalties in addition to
 - Ancillary relief, generally, **13:108 et seq.**
 - Auditors, **13:113**
 - Fraudulent accounting, **13:112**
 - Initial public offerings (IPOs), **13:111**
 - Investment bankers global settlement, **13:110**
 - Mutual funds, **13:114**
 - Other violations, **13:115**
 - SEC, **13:108**
 - Victim access to penalty, fair funds, **13:116**
 - WorldCom, **13:109**
- Collateral effect
 - CFTC, **13:249**
 - Disciplinary proceedings, **13:106**
 - SEC, **13:105, 13:106**

INDEX

INJUNCTIONS—Cont'd

- Conspirators, **8:312**
- Constructive knowledge and scienter, **8:185**
- Disciplinary proceedings, **13:106**
- Duration
 - CFTC, **13:251**
 - SEC, **13:119**
- Equitable relief generally, **13:118**
- Evidence
 - CFTC, **13:246**
 - SEC, **13:101**
- Fraudulent accounting, ancillary relief, **13:112**
- Inadequacy of other remedies, **6:133**
- Initial public offerings (IPOs), ancillary relief, **13:111**
- Insider trading charges
 - Generally, **7:422 et seq.**
 - Disgorgement orders, **7:425 et seq.**
 - Hearing, right to, **7:424**
- Intent and scienter, **8:195**
- Investment bankers global settlement, ancillary relief, **13:110**
- Irreparable injuries, **6:133**
- Likelihood of future violations
 - CFTC, **13:239, 13:248**
 - SEC, **13:103**
- Limitation of actions, **13:99**
- Market impact, CFTC, **13:240**
- Monetary civil penalties. Civil penalties in addition to, above
- Mutual funds, ancillary relief, **13:114**
- Parallel civil and criminal proceedings
 - Generally, **13:133 et seq.**
 - Battle over discovery, **13:135**
 - CFTC references, **13:263**
 - Civil-criminal flow of information, **13:139**
 - Continuation of criminal proceedings, **13:140**
 - Continuations of civil proceedings, **13:137, 13:138**
 - Criminal-civil flow of information, **13:143**
 - Criteria for stay of discovery, **13:136**

INJUNCTIONS—Cont'd

- Parallel civil and criminal proceedings—Cont'd
- Discovery, **13:139, 13:142, 13:143**
 - Continuation of civil proceedings with, **13:138**
- Failure to warn of criminal proceeding in civil proceeding, **13:142**
- Reasons for concern, **13:134**
- SEC references, **13:133 et seq.**
- Preliminary injunctions, **6:131 et seq.**
- Private suits, relation to, **13:98**
- Privity considerations, **8:303**
- Probability of success, **6:132**
- Proof standards
 - CFTC, **13:246**
 - SEC, **13:101**
- Proper showing
 - CFTC, **13:248**
 - SEC, **13:103**
- Scienter
 - Actual knowledge, **8:174**
 - CFTC, **13:247**
 - Constructive knowledge, **8:185**
 - Intent, **8:195**
 - SEC, **13:102**
- SEC
 - Generally, **13:96 et seq.**
 - Advantages and disadvantages, **13:120**
 - Ancillary relief, **13:107 et seq.**
 - Asset freezes, **13:100**
 - Bar orders in, **13:117**
 - Character of proceedings, **13:96**
 - Civil penalties in addition to, **13:108**
 - Collateral effect, **13:105, 13:106**
 - Duration, **13:119**
 - Equitable relief generally, **13:118**
 - Evidence, **13:101**
 - Likelihood of future violations, **13:103**
 - Limitation of actions, **13:99**
 - Private suits, relation to, **13:98**
 - Proof standards, **13:101**
 - Proper showing, **13:103**
 - Scienter, **13:102**

INJUNCTIONS—Cont'd

- SEC—Cont'd
 - Standards, **13:101**
 - Undertakings, **13:97**
 - WorldCom, **13:109**
- SROs, **13:303**
- Standards
 - CFTC, **13:246**
 - SEC, **13:101**
- State investigations, **13:319**
- Tender offer challenges
 - Generally, **6:131 et seq., 6:137**
 - Balance of equities, **6:134**
 - Clean hands, **6:136**
 - Final relief, **6:140**
 - Inadequacy of other remedies, **6:133**
 - Irreparable injuries, **6:133**
 - Preliminary injunctions, **6:131 et seq.**
 - Probability of success, **6:132**
 - Proof elements, **6:132**
 - SEC actions, **6:138**
 - Time for relief, **6:139**
 - Types of relief, **6:135**
- Trading privileges, denial of, **13:240**
- Types of relief, **6:135**
- Undertakings, **13:97**
- Victim access to penalty, fair funds, **13:116**
- WorldCom, ancillary relief, **13:109**

INNOCENT DEFENDANTS

- Strict liability, **8:243**

INSIDERS AND INSIDER TRADING

- Generally, **7:152 et seq.**
- Access criteria, **7:560**
- Acquisition plans, **7:211**
- Acquisitions, **7:214**
- Administrative enforcement
 - Generally, **7:159, 7:415 et seq.**
 - Ancillary relief, **7:419, 7:437**
 - Bounties, **7:445**
 - Burden of proof
 - Generally, **7:366**
 - Defenses, **7:369**
 - Institutions, **7:367**

INSIDERS AND INSIDER TRADING—Cont'd

- Administrative enforcement—Cont'd
- Civil penalties, **7:420**
- Connection with requirement
 - Market transactions, **7:370**
 - Rule 10b-5, **7:370**
 - Rule 14e-3, **7:371**
 - Tender offers, **7:371**
- Control person liability
 - Generally, **7:451 et seq.**
 - All control persons, **7:453**
 - Amount of liability, **7:459**
 - Broker-dealer control persons, **7:456**
 - B test, **7:456**
 - Contribution to violation, **7:458**
 - Failure to act, **7:455**
 - Investment adviser control persons, **7:456**
- Knowledge
 - Failure to have preventive policies in place, **7:457**
 - Likelihood of violation, **7:454**
- Penalties imposed on, **7:440**
- Policy/procedure failures, **7:457**
- Reckless disregard
 - Failure to have preventive policies in place, **7:457**
 - Likelihood of violation, **7:454**
- Requirements, **7:452**
- Respondeat superior liability, **7:450**
- Substantial contribution to violation, **7:458**
- A test, **7:453**
- Defenses
 - Generally, **7:350**
 - Amount defined, **7:355**
 - Binding contract defense, **7:351**
 - Burden of proving, **7:369**
 - Common terms and issues, **7:355 et seq.**
 - Date defined, **7:357**
 - Delegation alternative to amount, price and date, **7:358**

INDEX

INSIDERS AND INSIDER TRADING—Cont'd

- Administrative enforcement—Cont'd
- Defenses—Cont'd
 - Exclusiveness of defenses,
7:360
 - Institutional defenses, **7:361**
 - Instructions defense, **7:352**
 - Overriding limitations, **7:359**
 - Price defined, **7:356**
 - Relation to other laws, **7:362**
 - Systematic plans defense, **7:353**
 - Tracking plans defense, **7:354**
- Disgorgement, **7:418, 7:425 et seq.**
- Disposition of penalties, **7:445**
- Double jeopardy limitations, **7:443**
- Hearing, right to, **7:424**
- Informants, awards to, **7:445**
- Injunctive actions
 - Generally, **7:422 et seq.**
 - Disgorgement orders, **7:425 et seq.**
 - Hearing, right to, **7:424**
- Institutional defenses, **7:361**
- Institutions
 - Burden of proof, **7:367**
 - Defenses, **7:361**
- Judge or jury, **7:421**
 - Generally, **7:421**
 - Penalty actions, **7:446**
- Martha Stewart case. Scienter,
below in this group
- Misappropriation theory, **7:578**
- Motion practice, **7:365**
- Parties, **7:363**
- Penalty actions
 - Generally, **7:438**
 - Amount of penalty
 - Control persons, **7:459**
 - Court-imposed, **7:439**
 - Bounties, **7:445**
 - Control persons, penalties
imposed on, **7:440**
 - Court imposed penalties, **7:439**
 - Disposition of penalties, **7:445**
 - Double jeopardy limitations,
7:443

INSIDERS AND INSIDER TRADING—Cont'd

- Administrative enforcement—Cont'd
- Penalty actions—Cont'd
 - Factors considered in imposition
of penalties, **7:442**
 - Informants, awards to, **7:445**
 - Judge or jury, **7:446**
 - Maximum penalties imposed,
7:441
- Persons liable
 - Generally, **7:447**
 - Aider-abettors, **7:449**
 - Employers, **7:450**
 - Respondeat superior liability,
7:450
 - Tippers, **7:448**
 - Traders, **7:448**
- Respondeat superior liability,
7:450
- Settled penalties, **7:444**
- Tippees, penalties imposed on,
7:439
- Traders, penalties imposed on,
7:439
- Pleading
 - Generally, **7:364**
 - Scienter, **7:398**
- Procedural aspects, **7:363 et seq.**
- Proof, **7:368**
- Quantum of proof, **7:366, 7:367**
- Reporting requirements
 - Generally, **7:175 et seq.**
 - Detection of illegal trades, **7:178**
- Respondeat superior liability,
7:450
- RICO, **7:414, 7:464**
- Sanctions, **7:417**
- Sanctions, statutory, **7:417**
- Scienter
 - Generally, **7:372 et seq.**
 - Fiduciary theory
 - Tippers, **7:381**
 - Trading insiders, **7:377**
 - Trading tippees, **7:385**
 - Mail and wire fraud, **7:413**
 - Martha Stewart case
 - Generally, **7:403 et seq.**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Administrative enforcement—Cont'd
 Scienter—Cont'd
 Martha Stewart case—Cont'd
 Acquittal, **7:411**
 Background of case, **7:404**
 Imclone stock sale, **7:404**
 Indictment, **7:405**
 Inferences from evidence,
 7:409
 Intent inference test, **7:410**
 Limits on argument and evi-
 dence, **7:407**
 Misrepresentation, **7:406**
 Sufficiency of evidence test,
 7:408
 Misappropriation theory
 Tippers, **7:382**
 Trading insiders, **7:378**
 Trading tippees, **7:386**
 Pleading, **7:398**
 Proof, **7:399 et seq.**
 Rule 10b-5, **7:374 et seq.**
 Rule 14e-3, **7:412**
 Tippers
 Generally, **7:379 et seq.,**
 7:382
 Proof, **7:401**
 Trading insiders
 Generally, **7:375 et seq.**
 Proof, **7:400**
 Trading tippees
 Generally, **7:383 et seq.**
 Proof, **7:402**
 SEA § 16(b), **7:159**
 Tippees, penalties imposed on,
 7:439
 Tippers
 Generally, **7:159**
 Scienter, **7:379 et seq.**
 Tippers, scienter, **7:379 et seq.**
 Wiretap in enforcement, **13:146,**
 13:153
 Advisers to issuers, **7:569**
 Agreed confidentiality, **7:589**
 Analysts' roles in full disclosure
 regulations, **7:528**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Antifraud provisions and Regulation
 FD disclosure, **7:546**
 Arguments in Rajaratnam criminal
 case
 Closing arguments, **21:25**
 Defense arguments, **21:38**
 DOJ argument on nature and cir-
 cumstances of offenses, **21:33**
 Leadership role enhancement
 (U.S.S.G. § 3B1.1(a)), **21:36,**
 21:42
 Limitation of gain to amount actu-
 ally realized by defendant,
 21:40
 Obstruction enhancement under
 U.S.S.G § 3C1.1, **21:43**
 Sentencing arguments, **21:32**
 Seriousness of offense overstated
 under Sentencing Guidelines
 calculations, **21:41**
 Arrest of Raj Rajaratnam, **21:4**
 Asset information, **7:206**
 Awareness of MNPI
 Generally, **7:316, 7:349 et seq.**
 Possession distinguished, **7:349**
 Bail in securities prosecutions. Raj
 Rajaratnam and criminal insider
 trading, below
 Benefit of tipper, transmission of
 information for, **7:661**
 Benefit to insider-tipper, **7:627**
 Blackouts, director and officer trad-
 ing during, **7:161**
 Bounties to informants, **7:445**
 Burden of proof
 Generally, **7:366**
 Defenses, **7:369**
 Institutions, **7:367**
 Nonpublic nature of information,
 7:312
 Business associates to issuers, **7:570**
 Business judgment, timely disclosure,
 7:241
 Calculation of sentence in Raj
 Rajaratnam criminal case, **21:34**
 et seq.
 California statutes, **App G**

INDEX

INSIDERS AND INSIDER TRADING—Cont'd

- Case law, **7:182**
- Causation, **7:517**
- Chiasson/Newman cases, **7:387 et seq.**
- Chinese walls
 - Generally, **7:343 et seq.**
 - Evolution of rule, **7:344**
 - Operation, **7:345**
- Closing arguments, Raj Rajaratnam criminal case, **21:25**
- Co-conspirators, Raj Rajaratnam and criminal insider trading, **21:20 to 21:24, 21:44**
- Common law, **7:153**
- Compulsory disclosure. Regulation FD disclosure, below
- Connection with requirement
 - Generally, **7:676 et seq.**
 - Inducing action, **7:682**
 - Investment decision, influencing, **7:682**
 - Market transactions, **7:370**
 - Misappropriation theory, **7:680**
 - Non-participation in pertinent transactions, **7:677**
 - Possession vs use, **7:681**
 - Price, affecting, **7:682**
 - Purchase, inducing, **7:682**
 - Purchaser-seller test, **7:678**
 - Rule 10b-5, **7:370**
 - Rule 14e-3, **7:371**
 - Tender offers, **7:371**
 - Touching test, **7:678**
- Conspirators, insider trades
 - Generally, **8:308**
 - Raj Rajaratnam and criminal insider trading, **21:20 to 21:24, 21:44**
- Control person liability
 - Generally, **7:451 et seq.**
 - All control persons, **7:453**
 - Amount of liability, **7:459**
 - Broker-dealer control persons, **7:456**
 - B test, **7:456**
 - Contribution to violation, **7:458**

INSIDERS AND INSIDER TRADING—Cont'd

- Control person liability—Cont'd
- Failure to act, **7:455**
- Investment adviser control persons, **7:456**
- Knowledge
 - Failure to have preventive policies in place, **7:457**
 - Likelihood of violation, **7:454**
- Penalties imposed on, **7:440**
- Policy/procedure failures, **7:457**
- Private actions against, **7:486, 7:512**
- Reckless disregard
 - Failure to have preventive policies in place, **7:457**
 - Likelihood of violation, **7:454**
- Requirements, **7:452**
- Respondeat superior liability, **7:450**
- Substantial contribution to violation, **7:458**
- A test, **7:453**
- Corporate information, **7:203 et seq.**
- Costs of enforcement, **7:195**
- Counts One through Five, Raj Rajaratnam conspiracies, **21:20 to 21:24**
- Criminal enforcement
 - Generally, **7:460 et seq.**
 - Amount of penalties, **7:466**
 - Disgorgement, **7:465**
 - Judge or jury, **7:467**
 - Mail and wire fraud, **7:463**
 - Martha Stewart case, below
 - New York district federal prosecutions, **App J**
 - Penalties, **7:466**
 - Raj Rajaratnam case, **21:1 et seq.**
 - Restitution, **7:465**
 - RICO, **7:464**
 - Securities violations, **7:462**
- Damages, **7:488**
- Defenses
 - Generally, **7:350**
 - Amount defined, **7:355**
 - Binding contract defense, **7:351**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Defenses—Cont'd
 Burden of proof, **7:369**
 Common terms and issues, **7:355 et seq.**
 Date defined, **7:357**
 Delegation alternative to amount, price and date, **7:358**
 Exclusiveness of defenses, **7:360**
 Institutional defenses, **7:361**
 Instructions defense, **7:352**
 Overriding limitations, **7:359**
 Price defined, **7:356**
 Rajaratnam criminal case, **21:38**
 Relation to other laws, **7:362**
 Systematic plans defense, **7:353**
 Tracking plans defense, **7:354**
 Detention, pre-trial, Raj Rajaratnam case, **21:6, 21:8**
 Deteriorations in financial condition, **7:208**
 Direct-impersonal dealing, tender offers, unregulated
 Generally, **6:111**
 Disclosure requirements, **6:114**
 Disclose or abstain duty
 Generally, **7:197 et seq.**
 Duration of duty, **7:200**
 Nature of duty, **7:198**
 Regulation FD disclosure, below
 Who is entitled to disclosure, **7:199**
 Disproportionate liability, **7:196**
 Dividend actions
 Generally, **7:207**
 When disclosure required, **7:246**
 DOJ argument on nature and circumstances of Rajaratnam's criminal offenses, **21:33**
 Earnings information
 Generally, **7:205**
 Predictions, **7:204**
 Employers, harm to, **7:190**
 Evidence
 Burden of proof, above
 Trial on the merits, proof at, **21:19**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Evidence—Cont'd
 Wiretap. Raj Rajaratnam and criminal insider trading, below
 Exemption provisions and Regulation FD disclosure, **7:548**
 Expansion era, scope of regulations, **7:560**
 Family of tippee, benefit to, **7:630**
 Federal bail in securities prosecutions, **21:8**
 Federal securities laws, **7:155 et seq., 7:162 et seq.**
 Federal Sentencing Guidelines
 Length of sentence, **21:30**
 Raj Rajaratnam and criminal insider trading, **21:28 to 21:31**
 Statutory maximum, **21:29**
 Strategies, **21:31**
 Structure of Guidelines, **21:28**
 Fiduciary relationships
 Breach, misappropriation theory and fiduciary breach, **7:576**
 Contraction era, **7:576**
 Creation
 Generally, **7:567**
 Advisers to issuers, **7:569**
 Business associates of issuers, **7:570**
 Law characterizing relation, **7:573**
 Position with issuer, **7:568**
 Prior dealings, creation by, **7:571**
 Securities professionals, **7:572**
 Criteria, **7:561 et seq.**
 Expansion era, **7:574**
 Issuers, **7:565**
 Market insiders, **7:575**
 Private actions, **7:498**
 Scope of relationships, **7:562 et seq.**
 Tippers, **7:381**
 Trading insiders, **7:377**
 Trading tippees, **7:385**
 With whom must relationship exist, **7:562 et seq.**

INDEX

INSIDERS AND INSIDER TRADING—Cont'd

- Foreign accounts, use of, **7:177**
- Foreign law, **7:201**
- Friends of tippee, benefit to, **7:630**
- Full disclosure
 - Duty triggered by partial disclosure, **7:536**
 - Regulation FD disclosure, below
- Galleon conspiracy, Count One, **21:20**
- Gift to relative, **7:396**
- Harmless insider trading, **7:194**
- Harm to employers, **7:190**
- Harm to individual investors, **7:186, 7:187**
- Harm to investor confidence, **7:184**
- Harm to issuers, **7:188**
- Harm to market integrity, **7:185**
- Harm to principals, **7:190**
- Hearing, bail, **21:9**
- High frequency trading and front running, **7:169**
- Indirect-impersonal dealing
 - For detailed treatment
 - See **Indirect-Impersonal Dealing** (this index)
 - Generally, **7:152 et seq.**
 - Acquisition plans, **7:211**
 - Administrative enforcement
 - Generally, **7:415 et seq., 7:416 et seq.**
 - Ancillary relief, **7:419, 7:437**
 - Civil penalties, **7:420**
 - Disgorgement, **7:418, 7:425 et seq.**
 - Hearing, right to, **7:424**
 - Injunctive actions
 - Generally, **7:422 et seq.**
 - Disgorgement orders, **7:425 et seq.**
 - Hearing, right to, **7:424**
 - Judge or jury, **7:421**
 - Penalty actions, below
 - Sanctions, statutory, **7:417**
 - Antifraud provisions and Regulation FD disclosure, **7:546**
 - Asset information, **7:206**

INSIDERS AND INSIDER TRADING—Cont'd

- Indirect-impersonal dealing—Cont'd
- Awareness of MNPI
 - Generally, **7:316, 7:349 et seq.**
 - Possession distinguished, **7:349**
- On basis of inside information, trades made, **7:348**
- Blackouts, director and officer trading during, **7:161**
- Blue sky law, **7:154**
- Burden of proof
 - Generally, **7:366**
 - Defenses, **7:369**
 - Institutions, **7:367**
 - Nonpublic nature of information, **7:312**
- Case law, recent, **7:182**
- Chiasson/Newman cases, **7:387 et seq.**
- Common law, **7:153**
- Connection with requirement
 - Generally, **7:676 et seq.**
 - Inducing action, **7:682**
 - Investment decision, influencing, **7:682**
 - Market transactions, **7:370**
 - Misappropriation theory, **7:680**
 - Non-participation in pertinent transactions, **7:677**
 - Possession vs use, **7:681**
 - Price, affecting, **7:682**
 - Purchase, inducing, **7:682**
 - Purchaser-seller test, **7:678**
 - Rule 10b-5, **7:370**
 - Rule 14e-3, **7:371**
 - Tender offers, **7:371**
 - Touching test, **7:678**
- Corporate information, **7:203 et seq.**
- Costs of enforcement, **7:195**
- Criminal enforcement, **7:465**
- Defendants as insiders, **7:102**
- Defenses to insider trading charges
 - Generally, **7:350**
 - Amount defined, **7:355**
 - Binding contract defense, **7:351**
 - Burden of proof, **7:369**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Indirect-impersonal dealing—Cont'd
 Defenses to insider trading charges
 —Cont'd
 Common terms and issues,
 7:355 et seq.
 Date defined, **7:357**
 Delegation alternative to
 amount, price and date,
 7:358
 Exclusiveness of defenses,
 7:360
 Institutional defenses, **7:361**
 Instructions defense, **7:352**
 Overriding limitations, **7:359**
 Price defined, **7:356**
 Relation to other laws, **7:362**
 Systematic plans defense, **7:353**
 Tracking plans defense, **7:354**
 Deteriorations in financial condi-
 tion, **7:208**
 Disclose or abstain duty
 Generally, **7:197 et seq.**
 Duration of duty, **7:200**
 Nature of duty, **7:198**
 Regulation FD disclosure, below
 Who is entitled to disclosure,
 7:199
 Disproportionate liability, **7:196**
 Dividend actions
 Generally, **7:207**
 When disclosure required, **7:246**
 Earnings
 Generally, **7:205**
 Predictions, **7:204**
 Employers, harm to, **7:190**
 Exemption provisions and Regula-
 tion FD disclosure, **7:548**
 Federal securities laws, **7:155 et**
 seq., 7:162 et seq.
 Fiduciary breach and misappropri-
 ation theory, **7:315**
 Fiduciary relationships
 Contraction era, **7:576**
 Creation
 Generally, **7:567**
 Advisers to issuers, **7:569**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Indirect-impersonal dealing—Cont'd
 Fiduciary relationships—Cont'd
 Creation—Cont'd
 Business associates of issuers,
 7:570
 Law characterizing relation,
 7:573
 Position with issuer, **7:568**
 Prior dealings, creation by,
 7:571
 Securities professionals,
 7:572
 Criteria, **7:561 et seq.**
 Expansion era, **7:574**
 Issuers, **7:565**
 Market insiders, **7:575**
 Scienter, **7:381**
 Scope of relationships, **7:561 et**
 seq.
 With whom must relationship
 exist, **7:562 et seq.**
 Foreign accounts, use of, **7:177**
 Foreign law, **7:201**
 Full disclosure
 Duty triggered by partial
 disclosure of nonpublic
 information, **7:536**
 Regulation FD disclosure, below
 Gift to relative, **7:396**
 Harmless insider trading, **7:194**
 Harm to employers, **7:190**
 Harm to individual investors,
 7:186, 7:187
 Harm to investor confidence, **7:184**
 Harm to issuers, **7:188**
 Harm to market integrity, **7:185**
 Harm to principals, **7:190**
 Individual investors, harm to,
 7:186, 7:187
 Information, unequal, **7:181**
 Information possession criteria,
 7:576
 Insider short sales, **7:157**
 Institutional defenses, **7:361**
 Institutions, burden of proof, **7:367**
 Internal rules, **7:173**

INDEX

INSIDERS AND INSIDER TRADING—Cont'd

- Indirect-impersonal dealing—Cont'd
 - Investor confidence, harm to,
7:184
- Issuer disclosures
 - Periodic reports, **7:289**
 - Press releases, **7:283**
 - Prospectuses, **7:286**
 - Reports, **7:289**
 - SEC filings, **7:285**
 - Shareholder communications,
7:284
 - Tender offer statements, **7:288**
- Issuer liability
 - Generally, **7:643 et seq.**
 - Advisers, **7:652**
 - Affiliated entities, **7:647**
 - Business associates, **7:653**
 - Contraction era, **7:646**
 - Directors, **7:649**
 - Employees, **7:650**
 - Expansion era, **7:645**
 - Officers, **7:648**
 - Shareholders, **7:651**
 - Tippees, **7:654**
- Issuers, harm to, **7:188**
- Judge or jury
 - Administrative enforcement,
7:421
 - Penalty actions, **7:446**
- Kinds of information
 - Generally, **7:202 et seq.**
 - Acquisition plans, **7:211**
 - Acquisitions, **7:214**
 - Assets, **7:206**
 - Corporate information, **7:203 et seq.**
 - Deteriorations in financial
condition, **7:208**
 - Dividends, **7:207**
 - Earnings
 - Generally, **7:205**
 - Predictions, **7:204**
 - Market information, **7:213 et seq.**
 - Operational information, **7:209**

INSIDERS AND INSIDER TRADING—Cont'd

- Indirect-impersonal dealing—Cont'd
 - Kinds of information—Cont'd
 - Outside information, **7:213 et seq.**
 - Predictions, earning, **7:204**
 - Publicity, **7:216**
 - Recommendations, **7:215**
 - Share repurchase plans, **7:210**
 - Tender offers, **7:214**
- Law and fact questions, **7:314**
- Limitations period, disclosure as
starting, **7:279**
- Mail and wire fraud
 - Generally, **7:171, 7:463**
 - Scienter, **7:413**
- Management compensation, **7:193**
- Market efficiency, **7:192**
- Market insiders, **7:575**
- Market integrity harm to, **7:185**
- Market reaction as public/
nonpublic test, **7:281**
- Martha Stewart case. Scienter,
below in this group
- Materiality
 - Generally, **7:218 et seq.**
 - Acquisitions
 - Negotiated, **7:262 et seq.**
 - Nonnegotiated, **7:270**
 - Actual market impact after
release, **7:236**
 - Aggregate materiality, **7:225**
 - Burden of proof, **7:226**
 - Dividend information, **7:247**
 - Evidence, **7:229 et seq.**
 - Expectations, relation to, **7:233**
 - Factors, **7:229 et seq.**
 - Graduations of materiality,
7:224
 - Law or fact issue, **7:227**
 - Magnitude relative to company,
7:230
 - Market release, actual impact of,
7:236
 - Probability relative to company,
7:230
 - Proof, **7:226**

**INSIDERS AND INSIDER
TRADING—Cont'd**

- Indirect-impersonal dealing—Cont'd
- Materiality—Cont'd
 - Public disclosure and materiality, **7:280**
 - Public information, relation of inside information to, **7:234**
 - Readily available information compared, **7:234**
 - Reasonable investor test
 - Generally, **7:221**
 - Substantial market impact test compared, **7:223**
 - Regulation FD triggering disclosures, **7:535**
 - Relation to expectations, **7:233**
 - Reliability, **7:231**
 - Specificity, **7:232**
 - Standard of proof, **7:228**
 - Substantial market impact test
 - Generally, **7:222**
 - Reasonable investor test compared, **7:223**
 - Tests of materiality
 - Generally, **7:219 et seq.**
 - Aggregate materiality test, **7:225**
 - Graduations of materiality, **7:224**
 - Mosaic theory, **7:225**
 - Reasonable investor test
 - Generally, **7:221**
 - Substantial market impact test compared, **7:223**
 - Significant alteration of total mix, **7:221**
 - Substantial market impact test
 - Generally, **7:222**
 - Reasonable investor test compared, **7:223**
 - Use as test of materiality, **7:235**
 - Materiality and public disclosure, **7:280**
 - Media disclosures
 - Generally, **7:292 et seq.**
 - Particular media, **7:299**
 - Timing, **7:297**

**INSIDERS AND INSIDER
TRADING—Cont'd**

- Indirect-impersonal dealing—Cont'd
- Method of disclosure, Regulation FD, **7:544**
- Misappropriation theory
 - Private actions, **7:499**
 - Scienter, tippers, **7:382**
- Misrepresentations, disclosures as curing, **7:276 et seq.**
- MNPI
 - Defined, **7:152**
 - Materiality, above
 - Nonpublic information, below
- Moral considerations, **7:189**
- Motion practice, **7:365**
- Nonpublic information
 - Generally, **7:271 et seq.**
 - Absorption requirement, **7:306 et seq.**
 - Burden of proof, **7:312**
 - Duty to disclose generally, **7:275**
 - Eliminating nonpublic information, Regulation FD, **7:552**
 - Full disclosure duty triggered by partial disclosure of, **7:536**
 - Investment community disclosure, **7:300**
- Issuer disclosures
 - Generally, **7:282 et seq.**
 - Periodic reports, **7:289**
 - Press releases, **7:283**
 - Prospectuses, **7:286**
 - Proxy statements, **7:287**
 - Reports, **7:289**
 - SEC filings, **7:285**
 - Shareholder communications, **7:284**
 - Tender offer statements, **7:288**
- Law and fact questions, **7:314**
- Limitations period, disclosure as starting, **7:279**
- Market reaction as public/nonpublic test, **7:281**
- Materiality and public disclosure, **7:280**

INDEX

INSIDERS AND INSIDER TRADING—Cont'd

- Indirect-impersonal dealing—Cont'd
- Nonpublic information—Cont'd
 - Media disclosures
 - Generally, **7:292 et seq.**
 - Particular media, **7:299**
 - Timing, **7:297**
 - Misrepresentations, public disclosure as curing, **7:276 et seq.**
 - Motion practice, **7:311**
 - Omissions, public disclosure as curing, **7:276 et seq.**
 - Pleading, **7:310**
 - Procedural aspects, **7:309 et seq.**
 - Proof, **7:313**
 - Public as affecting insider trading, **7:272 et seq.**
 - Quantum of proof, **7:312**
 - Rumors, **7:301**
 - Time in becoming public, **7:304 et seq.**
 - Tipping of, **7:272 et seq.**
- Omissions, public disclosure as curing, **7:276 et seq.**
- Operational information, **7:209**
- Opposite side traders
 - Damages, **7:522**
 - Elements of action, **7:518**
 - Relations of parties to market, **7:494**
 - Suits by, **7:504**
- Parties, **7:363**
- Penalty actions, below
- Persons subject to regulation
 - Generally, **7:642 et seq.**
 - Advisers, **7:652**
 - Affiliated entities, **7:647**
 - Business associates, **7:653**
 - Contraction era, **7:646**
 - Directors, **7:649**
 - Employees, **7:650**
 - Expansion era, **7:645**
 - Issuers, **7:643 et seq.**
 - Officers, **7:648**
 - Shareholders, **7:651**

INSIDERS AND INSIDER TRADING—Cont'd

- Indirect-impersonal dealing—Cont'd
- Persons subject to regulation—Cont'd
 - Tippees, **7:654**
- Pervasiveness, **7:195**
- Pleading
 - Generally, **7:364**
 - Nonpublic nature of information, **7:310**
 - Scienter, **7:398**
- Policies, preventive
 - Generally, **7:468 et seq.**
 - Arguments con, **7:180 et seq.**
 - Arguments pro, **7:191 et seq.**
 - Broker-dealers, **7:470**
 - Control person liabilities for failure to have, **7:457**
 - Education, **7:473**
 - Information policies and procedures, **7:474**
 - Investment advisers, **7:470**
 - Nature of policies and procedures, **7:472**
 - Organizations, requirements for, **7:471**
 - Procedures, **7:476**
 - Sanctions for violations, **7:477**
 - Tipping policies, **7:475**
 - Trading policies, **7:475**
- Possession of MNPI
 - Generally, **7:316**
 - Awareness and possession distinguished, **7:349**
 - Burden of proof, **7:321, 7:341**
 - Chinese walls
 - Generally, **7:343 et seq.**
 - Evolution of rule, **7:344**
 - Operation, **7:345**
 - Connection with transaction, **7:681**
 - Individuals, proof for, **7:342**
 - Knowing possession, **7:320**
 - Mere possession, **7:319**
 - Organizations, proof for, **7:343 et seq.**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Indirect-impersonal dealing—Cont'd
 Possession of MNPI—Cont'd
 Precautions against trading,
 7:346
 Proof, **7:322 et seq.**
 Rule 10b-5
 Generally, **7:318 et seq.**
 Access, proof of, **7:323**
 Awareness and possession
 distinguished, **7:349**
 Burden of proof, **7:321**
 Contact, proof of, **7:324**
 Individuals, proof as to, **7:322**
 Knowing possession, **7:320**
 Mere possession, **7:319**
 Organizations, proof for,
 7:326
 Proof, **7:322 et seq.**
 Trading, proof of, **7:325**
 Use inferred from possession,
 7:328
 Rule 14e-3
 Generally, **7:340 et seq.**
 Burden of proof, **7:341**
 Chinese walls, **7:343 et seq.**
 Individuals, proof for, **7:342**
 Organizations, proof for,
 7:343 et seq.
 Precautions against trading,
 7:346
 Standard of proof, **7:341**
 Standard of proof, **7:341**
 Use compared, **7:317**
 Predictions, earnings, **7:204**
 Principals, harm to, **7:190**
 Private actions
 Generally, **7:478 et seq., 7:491
 et seq.**
 Amount of liability, **7:488,
 7:521 et seq.**
 Ancillary relief, **7:490, 7:525**
 Background, **7:501**
 Causation, **7:517**
 Contemporaneous traders,
 actions by, **7:503 et seq.**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Indirect-impersonal dealing—Cont'd
 Private actions—Cont'd
 Control persons, actions against,
 7:486, 7:512
 Convertibles traders, suits by,
 7:508
 Damages, **7:488, 7:521 et seq.**
 Elements of action, **7:514 et
 seq.**
 Express causes of action, **7:478
 et seq.**
 Fiduciary theory, **7:498**
 Implied causes of action, **7:491
 et seq., 7:493 et seq.**
 Market, relation of parties to,
 7:493 et seq.
 Misappropriation theory, **7:499**
 Opposite side traders
 Damages, **7:522**
 Elements of action, **7:518**
 Relations of parties to market,
 7:494
 Suits by, **7:504**
 Option traders, suits by, **7:507**
 Other liabilities, relation to,
 7:489
 Parties defendant, **7:483, 7:509**
 Parties plaintiff
 Express causes of action,
 7:480 et seq.
 Implied actions, **7:502 et seq.**
 Relation to other liabilities,
 7:489, 7:524
 Reliance, **7:516**
 Rule 10b-5, **7:497 et seq.**
 Rule 14e-3, **7:500**
 Same class of securities, actions
 by traders in, **7:482, 7:506**
 Same side traders
 Damages, **7:523**
 Elements of action, **7:519**
 Relations of parties to market,
 7:495
 Suits by, **7:505**
 Standing, **7:520**
 Tippers, actions against, **7:485,
 7:511**

INDEX

INSIDERS AND INSIDER TRADING—Cont'd

- Indirect-impersonal dealing—Cont'd
- Private actions—Cont'd
- Traders
 - Actions against, **7:484, 7:510**
 - Contemporaneous, suits by, **7:481**
 - Who can be sued, **7:483, 7:509**
 - Who can sue
 - Express causes of action, **7:480 et seq.**
 - Implied actions, **7:502 et seq.**
- Procedural aspects, **7:363 et seq.**
- Prompt disclosure requirement, Regulation FD, **7:543**
- Proof
 - Generally, **7:368**
 - Nonpublic nature of information, **7:313**
- Protection of information traders, **7:183**
- Proximity of tippee, **7:673**
- Public or nonpublic character of information. Nonpublic information, above
- Quantum of proof, **7:366, 7:367**
- Reasons
 - Con, **7:180 et seq.**
 - Pro, **7:191 et seq.**
- Registration provisions and Regulation FD disclosure, **7:547**
- Regulation FD disclosure
 - Generally, **7:526 et seq.**
 - Analysts' roles, **7:528**
 - Antifraud provisions and, **7:546**
 - Avoiding selective disclosure, **7:553**
 - Companies covered, **7:545**
 - Compliance, **7:551 et seq.**
 - Curing violations, **7:554**
 - Eliminating nonpublic information, **7:552**
 - Enforcement, **7:549**
 - Exemption provisions and, **7:548**
 - Information, triggering, **7:534**

INSIDERS AND INSIDER TRADING—Cont'd

- Indirect-impersonal dealing—Cont'd
- Regulation FD disclosure—Cont'd
- Intentional and nonintentional partial disclosures, **7:538 et seq.**
- Materiality of triggering information, **7:535**
- Method of disclosure, **7:544**
- Persons triggering duty, **7:537**
- Policy basis, **7:527**
- Prompt disclosure requirement, **7:543**
- Registration provisions and, **7:547**
- Regulatory gap, **7:530**
- Scope of regulation, **7:545**
- SEC filing, compliance by, **7:555**
- Selective disclosure
 - Generally, **7:529**
 - Avoiding, **7:553**
 - Curing violations, **7:554**
 - Materiality, **7:535**
 - Nonpublic nature of information disclosed, **7:536**
 - Triggering full disclosure obligation, **7:532**
 - Unintentional disclosures, **7:540**
- Simultaneous disclosure requirements, **7:542**
- Timing requirements, **7:541 et seq.**
- Triggering events
 - Generally, **7:531 et seq.**
 - Information, triggering, **7:534**
 - Intentional and nonintentional partial disclosures, **7:538 et seq.**
 - Materiality of triggering information, **7:535**
 - Non-intentional disclosures, **7:540**
 - Nonpublic nature of information disclosed, **7:536**
 - Nontriggering disclosures, **7:533**

**INSIDERS AND INSIDER
TRADING—Cont'd**

- Indirect-impersonal dealing—Cont'd
- Regulation FD disclosure—Cont'd
- Triggering events—Cont'd
 - Persons triggering duty, **7:537**
 - Selective disclosures, **7:532**
 - Unintentional disclosures, **7:540**
 - Unintentional disclosures, **7:540**
 - Validity, **7:550**
 - Violations, curing, **7:554**
- Relationships subject to regulation, **7:562 et seq.**
- Relative gift, **7:396**
- Reliance, **7:516**
- Remoteness of tippee, **7:673**
- Reporting requirements
 - Generally, **7:175 et seq.**
 - Detection of illegal trades, **7:178**
 - Extent of activity, **7:179**
 - Foreign accounts, use of, **7:177**
 - Publication, **7:176**
- RICO, **7:414, 7:464**
- Rule 10b-5, **7:163**
- Rule 14e-3, **7:166**
- Rule 15c1-2, **7:165**
- Rule 144, **7:167**
- SA § 17(a), **7:164**
- Scienter
 - Generally, **7:372 et seq.**
- Fiduciary theory
 - Tippers, **7:381**
 - Trading insiders, **7:377**
 - Trading tippees, **7:385**
- Knowledge that tippee will trade, **7:662**
- Mail and wire fraud, **7:413**
- Martha Stewart case
 - Generally, **7:403 et seq.**
 - Acquittal, **7:411**
 - Background of case, **7:404**
 - Imclone stock sale, **7:404**
 - Indictment, **7:405**
 - Inferences from evidence, **7:409**
 - Intent inference test, **7:410**

**INSIDERS AND INSIDER
TRADING—Cont'd**

- Indirect-impersonal dealing—Cont'd
- Scienter—Cont'd
 - Martha Stewart case—Cont'd
 - Limits on argument and evidence, **7:407**
 - Misrepresentation, **7:406**
 - Sufficiency of evidence test, **7:408**
 - Misappropriation theory
 - Tippers, **7:382**
 - Trading insiders, **7:378**
 - Trading tippees, **7:386**
- Pleading, **7:398**
- Proof, **7:399 et seq.**
- Rule 10b-5, **7:374 et seq.**
- Rule 14e-3, **7:412**
- Tippee violations, **7:672**
- Tippers
 - Generally, **7:379 et seq.**
 - Proof, **7:401**
- Tipping violations, **7:662**
- Trading insiders
 - Generally, **7:375 et seq.**
 - Proof, **7:400**
- Trading tippees
 - Generally, **7:383 et seq.**
 - Proof, **7:402**
- Scope of regulations
 - Generally, **7:557 et seq.**
 - Access criteria, **7:560**
 - Buyers, **7:563**
 - Congressional intent, **7:559**
 - Contraction era, **7:561 et seq.**
 - Expansion era, **7:560**
 - Issuers, applicability to, **7:565**
 - Relationships subject to regulation, **7:562 et seq.**
 - SEC efforts to define, **7:559**
 - Sellers, **7:563**
 - Third parties, applicability to, **7:566**
 - Unfairness criteria, **7:560**
- SEA § 16(b)
 - Generally, **7:156 et seq.**
 - Administrative enforcement, **7:159**

INDEX

INSIDERS AND INSIDER TRADING—Cont'd

- Indirect-impersonal dealing—Cont'd
 - SEA § 16(b)—Cont'd
 - Blackouts, director and officer trading during, **7:161**
 - Civil penalties, **7:159**
 - Insider short sales, **7:157**
 - Private actions, **7:160**
 - Short swing trading, **7:156**
 - Tipping, **7:158**
- SEC Rule 14e-3
 - Generally, **7:632 et seq.**
 - Duty imposed, **7:633**
 - Supreme Court validation, **7:636, 7:637**
 - Validity, **7:634 et seq.**
- Selective disclosure and full disclosure obligations
 - Generally, **7:529**
 - Avoiding, **7:553**
 - Curing violations, **7:554**
 - Materiality, **7:535**
 - Nonpublic nature of information disclosed, **7:536**
 - Triggering full disclosure obligation, **7:532**
 - Unintentional disclosures, **7:540**
- Share repurchase plans, **7:210**
- Short swing trading, SEA § 16(b), **7:156**
- SRO rules, **7:168**
- State law, **7:153**
- Timely disclosure
 - Generally, **7:238 et seq.**
 - Acquisition information
 - Generally, **7:248 et seq.**
 - Agreements
 - Disclosure not required, **7:261**
 - Disclosure required, **7:260**
 - Company, trading by, **7:256**
 - Definitions, **7:250**
 - Disclosure document obligations, **7:259**
 - Leaks, **7:255**

INSIDERS AND INSIDER TRADING—Cont'd

- Indirect-impersonal dealing—Cont'd
- Timely disclosure—Cont'd
 - Acquisition information—Cont'd
 - Materiality of negotiated acquisitions, **7:262 et seq.**
 - Preliminary negotiations
 - Misleading statements, **7:253**
 - No statement made, **7:252**
 - Other situations, **7:254**
 - Prior statement now misleading, **7:257**
 - Rumors, **7:255**
 - Stages of negotiated acquisitions, **7:249**
 - Target response to tender offers, **7:258**
 - When disclosure of agreement required, **7:260**
 - When disclosure required, **7:251 et seq.**
- Business judgment considerations, **7:241**
- Corporate purpose considerations, **7:242**
- Delays, justifications for, **7:240**
- Dividend actions
 - Evolving information, **7:245**
 - Materiality, **7:247**
 - When disclosure required, **7:246**
- Justification for delay, **7:240**
- Law violations and timeliness considerations, **7:244**
- Ripeness and timing, **7:243**
- Tender offers
 - Generally, **7:267**
 - Materiality, **7:270**
 - Stages of nonnegotiated acquisitions, **7:268**
 - When disclosure required, **7:269**
- Tippee's knowledge of tipper's benefit, **7:387**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Indirect-impersonal dealing—Cont'd
 Tippee violations
 Generally, **7:664 et seq.**
 Benefit to tipper, **7:671**
 Elements of, **7:668 et seq.**
 Expansion era, **7:665**
 Issuer affiliated, **7:654**
 Knowledge of inside source,
 7:672
 Misappropriation, **7:675**
 Policies, **7:666**
 Possession element, **7:669**
 Proof of possession element,
 7:670
 Proximity of tippee, **7:673**
 Reasons, **7:666**
 Remoteness of tippee, **7:673**
 Scienter, **7:672**
 Specificity of possession ele-
 ment, **7:669**
 Theories of, **7:667**
 Tipper violation, necessity of,
 7:674
 Trading as violation, **7:664 et**
 seq., 7:675
 Tippers, scienter, **7:379 et seq.**
 Tipping
 Generally, **7:655 et seq.**
 Benefit of tipper, transmission of
 information for, **7:661**
 Elements of violations, **7:658 et**
 seq.
 Expansion era, **7:656**
 Knowledge that tippee will
 trade, **7:662**
 Necessity of tippee trading,
 7:663
 Nonpublic information, **7:272 et**
 seq.
 Policies, **7:657**
 Private purpose, transmission of
 information for, **7:661**
 Proof of transmission of infor-
 mation, **7:660**
 Reasons, **7:657**
 Scienter, **7:662**
 SEA § 16(b), **7:158**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Indirect-impersonal dealing—Cont'd
 Tipping—Cont'd
 Transmission of information,
 7:659
 Violations, elements, **7:658 et**
 seq.
 Unequal information, **7:181**
 Unfairness of activities, **7:181**
 Unintentional disclosures and
 Regulation FD disclosure,
 7:540
 Use of MNPI
 Generally, **7:316**
 Burden of proof, **7:331**
 Connection with transaction,
 7:681
 Individuals, proof for, **7:332**
 Organizations, proof for, **7:339**
 Possession compared, **7:317**
 Rule 10b-5
 Generally, **7:327 et seq.**
 Burden of proof, **7:331**
 Individuals, proof for, **7:332**
 Inferences, **7:328**
 Organizations, proof for,
 7:339
 Possession, use inferred from,
 7:328
 Rebuttal evidence, **7:337,**
 7:338
 Size of transaction, proof
 value, **7:334**
 Standard of proof, **7:331**
 Timing, proof of, **7:333**
 Type of transaction, proof
 value, **7:335**
 Rule 14e-3, generally, **7:347**
 Size of transaction, proof value,
 7:334
 Standard of proof, **7:331**
 Timing, proof of, **7:333**
 Type of transaction, proof value,
 7:335
 Individual investors, harm to, **7:186,**
 7:187
 Inducement by insiders, **8:299**
 Informants, awards to, **7:445**

INDEX

INSIDERS AND INSIDER TRADING—Cont'd

- Information, unequal, **7:181**
- Information generally, **7:4**
- Insider short sales, **7:157**
- Insider trading law enforcement (SEC)
 - Generally, **7:415 et seq.**
- Administrative proceedings
 - Generally, **7:416 et seq.**
 - Ancillary relief, **7:419, 7:437**
 - Civil penalties, **7:420**
 - Disgorgement, **7:418**
 - Judge or jury, **7:421**
 - Sanctions, statutory, **7:417**
- Criminal proceedings, **7:465**
- Disgorgement orders
 - Administrative proceedings, **7:425 et seq.**
 - Criminal proceedings, **7:465**
- Hearing, right to, **7:424**
- Injunctive actions
 - Generally, **7:422 et seq.**
 - Disgorgement orders, **7:425 et seq.**
 - Hearing, right to, **7:424**
- Judge or jury
 - Administrative proceedings, **7:421**
 - Penalty actions, **7:446**
- Penalty actions, 6:347 et seq.
- Policies, preventive
 - Generally, **7:468 et seq.**
 - Broker-dealers, **7:470**
 - Control person liabilities for failure to have, **7:457**
 - Education, **7:473**
 - Information policies and procedures, **7:474**
 - Investment advisers, **7:470**
 - Nature of policies and procedures, **7:472**
 - Organizations, requirements for, **7:471**
 - Procedures, **7:476**
 - Sanctions for violations, **7:477**
 - Tipping policies, **7:475**
 - Trading policies, **7:475**

INSIDERS AND INSIDER TRADING—Cont'd

- Insider trading law enforcement (SEC)—Cont'd
 - Scope of regulations, **7:559**
- Institutional investors
 - Burden of proof, **7:367**
 - Defenses, **7:361**
- Intentional and nonintentional partial disclosures, **7:538 et seq.**
- Internal rules, **7:173**
- Interpositioning, **7:170**
- Investigations
 - Generally, **13:1 et seq.**
 - See also **Investigations** (this index)
 - SEC investigations, below
- Investment community disclosure, **7:300**
- Investor confidence, harm to, **7:184**
- Issuer disclosures
 - Generally, **7:282 et seq.**
 - Periodic reports, **7:289**
 - Press releases, **7:283**
 - Prospectuses, **7:286**
 - Proxy statements, **7:287**
 - Reports, **7:289**
 - SEC filings, **7:285**
 - Shareholder communications, **7:284**
 - Tender offer statements, **7:288**
- Issuers, harm to, **7:188**
- Joint and several liability, **9:36**
- Judge or jury
 - Administrative enforcement, **7:421**
 - Criminal proceedings, **7:467**
 - Penalty actions, **7:446**
 - Raj Rajaratnam criminal case, jury trial, **21:26**
- Kinds of information
 - Generally, **7:202 et seq.**
 - Acquisitions, **7:214**
 - Corporate information, **7:203 et seq.**
 - Publicity, **7:216**
 - Recommendations, **7:215**
 - Tender offers, **7:214**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Knowledge of inside source, tippee violations, **7:672**
 Knowledge that tippee will trade, **7:662**
 Law and fact questions, nonpublic character of information, **7:314**
 Leadership role sentencing enhancement (U.S.S.G. § 3B1.1(a)), **21:36**
 Limitations period, disclosure as starting, **7:279**
 Mail and wire fraud
 Generally, **7:171, 7:463**
 Scienter, **7:413**
 Management compensation, **7:193**
 Market efficiency, **7:192**
 Market insiders, **7:575**
 Market integrity harm to, **7:185**
 Market reaction as public/nonpublic test, **7:281**
 Martha Stewart case
 Generally, **7:403 et seq.**
 Acquittal, **7:411**
 Background of case, **7:404**
 Imclone stock sale, **7:404**
 Indictment, **7:405**
 Inferences from evidence, **7:409**
 Intent inference test, **7:410**
 Limits on argument and evidence, **7:407**
 Misrepresentation, **7:406**
 Scienter, generally, **7:403 et seq.**
 Sufficiency of evidence test, **7:408**
 Materiality
 Generally, **7:218 et seq.**
 Acquisitions
 Negotiations, **7:262 et seq.**
 Nonnegotiated, **7:270**
 Actual market impact after release, **7:236**
 Aggregate materiality, **7:225**
 Burden of proof, **7:226**
 Dividend information, **7:247**
 Evidence, **7:229 et seq.**
 Expectations, relation to, **7:233**
 Factors, **7:229 et seq.**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Materiality—Cont'd
 Graduations of materiality, **7:224**
 Law or fact issue, **7:227**
 Magnitude relative to company, **7:230**
 Market release, actual impact of, **7:236**
 Probability relative to company, **7:230**
 Proof, **7:226**
 Public disclosure and materiality, **7:280**
 Public information, relation of inside information to, **7:234**
 Readily available information compared, **7:234**
 Reasonable investor test
 Generally, **7:221**
 Substantial market impact test compared, **7:223**
 Regulation FD triggering disclosures, **7:535**
 Relation to expectations, **7:233**
 Reliability, **7:231**
 Selective disclosures, materiality of, **7:535**
 Specificity, **7:232**
 Standard of proof, **7:228**
 Substantial market impact test
 Generally, **7:222**
 Reasonable investor test compared, **7:223**
 Tests of materiality
 Generally, **7:219 et seq.**
 Aggregate materiality test, **7:225**
 Graduations of materiality, **7:224**
 Mosaic theory, **7:225**
 Reasonable investor test
 Generally, **7:221**
 Substantial market impact test compared, **7:223**
 Significant alteration of total mix, **7:221**
 Substantial market impact test
 Generally, **7:222**

INDEX

INSIDERS AND INSIDER TRADING—Cont'd

- Materiality—Cont'd
 - Tests of materiality—Cont'd
 - Substantial market impact test—Cont'd
 - Reasonable investor test compared, **7:223**
 - Use as test of, **7:235**
- Materiality and public disclosure, **7:280, 21:16**
- Material nonpublic information (MNPI)
 - Defined, **7:152**
 - Materiality, above
 - Nonpublic information, below
- Media disclosures
 - Generally, **7:292 et seq.**
 - Particular media, **7:299**
 - Timing, **7:297**
- Merits, trial on, Raj Rajaratnam case, **21:19**
- Method of disclosure, Regulation FD, **7:544**
- Misappropriation theory of liability
 - Generally, **7:577**
 - Agreed confidentiality, **7:589**
 - Close family relationships, **7:587**
 - Connection element, **7:597**
 - Connection with transaction, **7:680**
 - Court cases, **7:582 et seq.**
 - Enforcement actions, **7:578**
 - Family relationships, **7:587**
 - Mail and wire fraud, **7:594**
 - Private actions, **7:499, 7:579, 7:603**
 - Rule 10b5-2, **7:585 et seq.**
 - Shared confidences, **7:590**
 - Tippers, **7:382**
 - Trading insiders, **7:378**
 - Trading tippees, **7:386**
- Misrepresentations, public disclosure as curing, **7:276 et seq.**
- MNPI
 - Defined, **7:152**
 - Materiality, above
 - Nonpublic information, below
- Monitoring rules in context, **7:174**

INSIDERS AND INSIDER TRADING—Cont'd

- Moral considerations, **7:189**
- Motion practice
 - Generally, **7:365**
 - Nonpublic nature of information, **7:311**
 - Suppression of wiretap evidence, **21:12**
- Mutual fund violations, **17:9**
- Necessity requirement, wiretap evidence in Raj Rajaratnam case, **21:14, 21:17**
- Nonpublic information
 - Generally, **7:271 et seq.**
 - Absorption requirement, **7:306 et seq.**
 - Burden of proof, **7:312**
 - Duty to disclose generally, **7:275**
 - Eliminating nonpublic information, Regulation FD, **7:552**
 - Full disclosure duty triggered by partial disclosure of, **7:536**
 - Investment community disclosure, **7:300**
- Issuer disclosures
 - Generally, **7:282 et seq.**
 - Periodic reports, **7:289**
 - Press releases, **7:283**
 - Prospectuses, **7:286**
 - Proxy statements, **7:287**
 - Reports, **7:289**
 - SEC filings, **7:285**
 - Shareholder communications, **7:284**
 - Tender offer statements, **7:288**
- Law and fact questions, **7:314**
- Limitations period, disclosure as starting, **7:279**
- Market reaction as public/nonpublic test, **7:281**
- Materiality and public disclosure, **7:280**
- Media disclosures
 - Generally, **7:292 et seq.**
 - Particular media, **7:299**
 - Timing, **7:297**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Nonpublic information—Cont'd
 Misrepresentations, public disclosure as curing, **7:276 et seq.**
 Motion practice, **7:311**
 Omissions, public disclosure as curing, **7:276 et seq.**
 Pleading, **7:310**
 Procedural aspects, **7:309 et seq.**
 Proof, **7:313**
 Public as affecting insider trading, **7:272 et seq.**
 Quantum of proof, **7:312**
 Rumors, **7:301**
 Time in becoming public, **7:304 et seq.**
 Tipping of, **7:272 et seq.**
 NYSE rules, **App F**
 Obstruction sentencing enhancement under U.S.S.G § 3C1.1, **21:37, 21:43**
 Omissions
 Materiality of, Raj Rajaratnam case, **21:16**
 Public disclosure as curing, **7:276 et seq.**
 On basis of inside information, trades made, **7:348**
 Operational information, **7:209**
 Opposite side traders
 Damages, **7:522**
 Elements of action, **7:518**
 Relations of parties to market, **7:494**
 Suits by, **7:504**
 Opposition to motion to suppress wiretap evidence, Raj Rajaratnam case, **21:13**
 Overview, **7:638 et seq.**
 Parties, **7:363**
 Pecuniary benefit to tippee, **7:628**
 Penalty actions
 Generally, **7:438**
 Aider-abettors, **7:449**
 Amount of penalty
 Control persons, **7:459**
 Court-imposed, **7:439**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Penalty actions—Cont'd
 Bounties, **7:445**
 Control person liability
 Generally, **7:451 et seq.**
 All control persons, **7:453**
 Amount of liability, **7:459**
 Broker-dealer control persons, **7:456**
 B test, **7:456**
 Contribution to violation, **7:458**
 Failure to act, **7:455**
 Investment adviser control persons, **7:456**
 Knowledge
 Failure to have preventive policies in place, **7:457**
 Likelihood of violation, **7:454**
 Policy/procedure failures, **7:457**
 Reckless disregard
 Failure to have preventive policies in place, **7:457**
 Likelihood of violation, **7:454**
 Requirements, **7:452**
 Respondeat superior liability, **7:450**
 Substantial contribution to violation, **7:458**
 A test, **7:453**
 Control persons, penalties imposed on, **7:440**
 Court imposed penalties, **7:439**
 Disposition of penalties, **7:445**
 Double jeopardy limitations, **7:443**
 Factors considered in imposition of penalties, **7:442**
 Informants, awards to, **7:445**
 Judge or jury, **7:446**
 Maximum penalties imposed, **7:441**
 Persons liable
 Generally, **7:447**
 Aider-abettors, **7:449**
 Control person liability, above
 Employers, **7:450**
 Respondeat superior liability, **7:450**

INDEX

INSIDERS AND INSIDER TRADING—Cont'd

- Penalty actions—Cont'd
 - Persons liable—Cont'd
 - Tipplers, **7:448**
 - Traders, **7:448**
 - Respondeat superior liability, **7:450**
 - Settled penalties, **7:444**
 - Tippees, penalties imposed on, **7:439**
 - Traders, penalties imposed on, **7:439**
- Persons subject to regulation
 - Generally, **7:642 et seq.**
 - Advisers, **7:652**
 - Affiliated entities, **7:647**
 - Business associates, **7:653**
 - Contraction era, **7:646**
 - Directors, **7:649**
 - Employees, **7:650**
 - Expansion era, **7:645**
 - Issuers, **7:643 et seq.**
 - Officers, **7:648**
 - Shareholders, **7:651**
 - Tippees, **7:654**
- Pervasiveness, **7:195**
- Pleading
 - Generally, **7:364**
 - Nonpublic nature of information, **7:310**
 - Scienter, **7:398**
- Policies, preventive
 - Generally, **7:468 et seq.**
 - Arguments pro, **7:191 et seq.**
 - Broker-dealers, **7:470**
 - Con arguments, **7:180 et seq.**
 - Control person liabilities for failure to have, **7:457**
 - Education, **7:473**
 - Information policies and procedures, **7:474**
 - Investment advisers, **7:470**
 - Nature of policies and procedures, **7:472**
 - Organizations, requirements for, **7:471**
 - Procedures, **7:476**

INSIDERS AND INSIDER TRADING—Cont'd

- Policies, preventive—Cont'd
 - Sanctions for violations, **7:477**
 - Tipping policies, **7:475**
 - Trading policies, **7:475**
- Possession of MNPI
 - Generally, **7:316**
 - Awareness and possession distinguished, **7:349**
 - Burden of proof, **7:321, 7:341**
 - Chinese walls
 - Generally, **7:343 et seq.**
 - Evolution of rule, **7:344**
 - Operation, **7:345**
 - Connection with transaction, **7:681**
 - Individuals, proof for, **7:342**
 - Knowing possession, **7:320**
 - Mere possession, **7:319**
 - Organizations, proof for, **7:343 et seq.**
- Precautions against trading, **7:346**
- Proof, **7:322 et seq.**
- Rule 10b-5
 - Generally, **7:318 et seq.**
 - Access, proof of, **7:323**
 - Awareness and possession distinguished, **7:349**
 - Burden of proof, **7:321**
 - Contact, proof of, **7:324**
 - Individuals, proof as to, **7:322**
 - Knowing possession, **7:320**
 - Mere possession, **7:319**
 - Organizations, proof for, **7:326**
 - Proof, **7:322 et seq.**
 - Trading, proof of, **7:325**
 - Use inferred from possession, **7:328**
- Rule 14e-3
 - Generally, **7:340 et seq.**
 - Burden of proof, **7:341**
 - Chinese walls, **7:343 et seq.**
 - Individuals, proof for, **7:342**
 - Organizations, proof for, **7:343 et seq.**
 - Precautions against trading, **7:346**
 - Standard of proof, **7:341**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Possession of MNPI—Cont'd
 Standard of proof, **7:341**
 Use compared, **7:317**
 Predictions, earning, **7:204**
 Pre-trial detention, Raj Rajaratnam case, **21:6, 21:8**
 Principals, harm to, **7:190**
 Private actions
 Generally, **7:478 et seq., 7:491 et seq.**
 Amount of liability, **7:488, 7:521 et seq.**
 Ancillary relief, **7:490, 7:525**
 Background, **7:501**
 Causation, **7:517**
 Contemporaneous traders, actions by, **7:503 et seq.**
 Control persons, actions against, **7:486, 7:512**
 Convertibles traders, suits by, **7:508**
 Damages, **7:488, 7:521 et seq.**
 Elements of action, **7:514 et seq.**
 Express causes of action, **7:478 et seq.**
 Fiduciary theory, **7:498**
 Implied causes of action, **7:491 et seq., 7:493 et seq.**
 Market, relation of parties to, **7:493 et seq.**
 Misappropriation theory, **7:499**
 Opposite side traders
 Damages, **7:522**
 Elements of action, **7:518**
 Relations of parties to market, **7:494**
 Suits by, **7:504**
 Option traders, suits by, **7:507**
 Other liabilities, relation to, **7:489**
 Parties defendant, **7:483, 7:509**
 Parties plaintiff
 Express causes of action, **7:480 et seq.**
 Implied actions, **7:502 et seq.**
 Relation to other liabilities, **7:489, 7:524**
 Reliance, **7:516**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Private actions—Cont'd
 Rule 10b-5, **7:497 et seq.**
 Rule 14e-3, **7:500**
 Same class of securities, actions by traders in, **7:482, 7:506**
 Same side traders
 Damages, **7:523**
 Elements of action, **7:519**
 Relations of parties to market, **7:495**
 Suits by, **7:505**
 SEA § 16(b), **7:160**
 Standing, **7:520**
 Tippers, actions against, **7:485, 7:511**
 Traders
 Actions against, **7:484, 7:510**
 Contemporaneous, suits by, **7:481**
 Who can be sued, **7:483, 7:509**
 Who can sue, generally, **7:502**
 Who may sue
 Express causes of action, **7:480 et seq.**
 Implied actions, **7:502 et seq.**
 Private purpose, transmission of information for, **7:661**
 Privity
 Implied liability, **8:277**
 SA § 12(2), **8:267**
 SA § 17(a), **8:277**
 Sales fraud, **8:267**
 Probable cause, Raj Rajaratnam case, **21:15**
 Procedural aspects, **7:363 et seq.**
 Prompt disclosure requirement, Regulation FD, **7:543**
 Proof
 Generally, **7:368**
 Materiality, **7:226**
 Nonpublic nature of information, **7:313**
 Transmission of information, **7:660**
 Protection of information traders, **7:183**

INDEX

INSIDERS AND INSIDER TRADING—Cont'd

- Proximity of tippee, **7:673**
- Publicity, **7:216**
- Public or nonpublic character of information. Nonpublic information, above
- Quantum of proof, **7:366, 7:367**
- Rajaratnam-Chiesi conspiracy, Count Five, **21:24**
- Rajaratnam-Goel conspiracy, Count Three, **21:22**
- Rajaratnam-Khan conspiracy, Count Two, **21:21**
- Rajaratnam-Kumar conspiracy, Count Four, **21:23**
- Raj Rajaratnam and criminal insider trading
 - Generally, **21:1 et seq.**
 - Arguments in Rajaratnam criminal case, above
 - Arrest of Rajaratnam, **21:4**
 - Background of Rajaratnam, **21:2**
 - Bail hearing, **21:9**
 - Bail in securities prosecutions
 - Generally, **21:5**
 - Federal bail, **21:8**
 - Final word, **21:10**
 - Hearing, **21:9**
 - Calculation of gain under U.S.S.G., by Rajaratnam, **21:39, 21:40**
 - Calculation of sentence, **21:34 et seq.**
 - Closing arguments, **21:25**
 - Co-conspirators' sentences, **21:44**
 - Conclusions and observations on sentencing, **21:49**
 - Counts One through Five, **21:20 to 21:24**
 - Court decision on suppression of wiretap evidence, **21:14**
 - Criminal offenses, DOJ argument on nature and circumstances, **21:33**
 - Defense arguments on nature and character of defendant, **21:38**
 - Disputes, opinion of Judge Holwell resolving sentencing disputes, **21:45**

INSIDERS AND INSIDER TRADING—Cont'd

- Raj Rajaratnam and criminal insider trading—Cont'd
- DOJ arguments, **21:33**
- Early investigation by SEC, **21:3**
- Failure to establish probable cause, **21:15**
- Federal bail, **21:8**
- Federal Sentencing Guidelines, **21:28 to 21:31**
- Gain, **21:35, 21:39, 21:40**
- Galleon conspiracy
 - Count One, **21:20**
 - Gain, **21:46**
- Government opposition to suppression of wiretap evidence, **21:13**
- Government's technical sentencing guideline calculation, **21:34**
- Hearing, bail, **21:9**
- Interpretation of Sentencing Guidelines, **21:46**
- Investigation by SEC, early, **21:3**
- Judge Holwell's opinions, **21:45, 21:46**
- Jury trial, **21:26**
- Leadership role enhancement (U.S.S.G. § 3B1.1(a)), **21:36, 21:42, 21:47**
- Length of sentence under Federal Sentencing Guidelines, **21:30**
- Limitation of gain to amount actually realized by defendant, **21:40**
- Materiality of omissions, **21:16**
- Motion to suppress wiretap evidence, **21:12**
- Necessity requirement, **21:14, 21:17**
- Obstruction enhancement under U.S.S.G. § 3C1.1, **21:37, 21:43, 21:48**
- Omissions, materiality of, **21:16**
- Opposition to motion to suppress wiretap evidence, **21:13**
- Overview of sentencing arguments, **21:32**
- Pre-trial detention, **21:6, 21:8**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Raj Rajaratnam and criminal insider trading—Cont'd
 Probable cause, **21:15**
 Proof at trial on the merits, **21:19**
 Rajaratnam-Chiesi conspiracy, Count Five, **21:24**
 Rajaratnam-Goel conspiracy, Count Three, **21:22**
 Rajaratnam-Khan conspiracy, Count Two, **21:21**
 Rajaratnam-Kumar conspiracy, Count Four, **21:23**
 Resolution of leadership role enhancement, **21:47**
 Resolution of obstruction issue, **21:48**
 Sentencing phase, generally, **21:27**
 Seriousness of offense, overstatement by Sentencing Guidelines, **21:41**
 Share of gains of Galleon case, **21:46**
 Statutory maximum, **21:29**
 Strategies of Federal Sentencing Guidelines, **21:31**
 Structure of Federal Sentencing Guidelines, **21:28**
 Suppression of wiretap evidence, motion for, **21:12**
 Trial on the merits, **21:19**
 Trial preparation, **21:7**
 Wiretap evidence
 Conclusions regarding suppression motion, **21:18**
 Court decision on suppression, **21:14**
 Government opposition to suppression, **21:13**
 Insider trading investigation generally, **21:11**
 Materiality of omissions, **21:16**
 Motion to suppress, **21:12**
 Necessity doctrine, **21:13**
 Necessity requirement, **21:17**
 Opposition to motion to suppress, **21:13**

**INSIDERS AND INSIDER
TRADING—Cont'd**

Raj Rajaratnam and criminal insider trading—Cont'd
 Wiretap evidence—Cont'd
 Probable cause, failure to establish, **21:15**
 Reasons
 Con, **7:180 et seq.**
 Pro, **7:191 et seq.**
 Recommendations, **7:215**
 Registration provisions and Regulation FD disclosure, **7:547**
 Regulation FD disclosure
 Generally, **7:526 et seq.**
 Analysts' roles, **7:528**
 Antifraud provisions and, **7:546**
 Avoiding selective disclosure, **7:553**
 Companies covered, **7:545**
 Compliance, **7:551 et seq.**
 Curing violations, **7:554**
 Eliminating nonpublic information, **7:552**
 Enforcement, **7:549**
 Exemption provisions and, **7:548**
 Information, triggering, **7:534**
 Intentional and nonintentional partial disclosures, **7:538 et seq.**
 Materiality of triggering information, **7:535**
 Method of disclosure, **7:544**
 Persons triggering duty, **7:537**
 Policy basis, **7:527**
 Prompt disclosure requirement, **7:543**
 Registration provisions and, **7:547**
 Regulatory gap, **7:530**
 Scope of regulation, **7:545**
 SEC filing, compliance by, **7:555**
 Selective disclosure
 Generally, **7:529**
 Avoiding, **7:553**
 Curing violations, **7:554**
 Materiality, **7:535**
 Nonpublic nature of information disclosed, **7:536**

INDEX

INSIDERS AND INSIDER TRADING—Cont'd

Regulation FD disclosure—Cont'd
Selective disclosure—Cont'd
Triggering full disclosure
obligation, **7:532**
Unintentional disclosures, **7:540**
Simultaneous disclosure require-
ments, **7:542**
Timing requirements, **7:541 et seq.**
Triggering events
Generally, **7:531 et seq.**
Information, triggering, **7:534**
Intentional and nonintentional
partial disclosures, **7:538 et**
seq.
Materiality of triggering infor-
mation, **7:535**
Non-intentional disclosures,
7:540
Nonpublic nature of information
disclosed, **7:536**
Nontriggering disclosures, **7:533**
Persons triggering duty, **7:537**
Selective disclosures, **7:532**
Unintentional disclosures, **7:540**
Unintentional disclosures, **7:540**
Validity, **7:550**
Violations, curing, **7:554**
Relationships subject to regulation,
7:562 et seq.
Relations of tippee, benefit to, **7:630**
Relative, gift to, **7:396**
Reliance, private actions, **7:516**
Remoteness of tippee, **7:673**
Reporting requirements
Generally, **7:175 et seq.**
Detection of illegal trades, **7:178**
Extent of activity, **7:179**
Foreign accounts, use of, **7:177**
Publication, **7:176**
Reputational benefit to tippee, **7:629**
RICO, **7:414, 7:464**
Rule 10b-5, **4:1, 7:163, 12:4**
Rule 14e-3, **7:166**
Rule 15c1-2, **7:165**
Rule 144, **7:167**

INSIDERS AND INSIDER TRADING—Cont'd

SA § 17(a)
Generally, **7:164**
Indirect-impersonal dealing, **7:164**
Same side traders
Damages, **7:523**
Elements of action, **7:519**
Relations of parties to market,
7:495
Suits by, **7:505**
Sarbanes-Oxley Act, inside trading
reports, **8:471**
Scienter
Generally, **7:372 et seq.**
Fiduciary theory
Tippers, **7:381**
Trading insiders, **7:377**
Trading tippees, **7:385**
Knowledge that tippee will trade,
7:662
Mail and wire fraud, **7:413**
Martha Stewart case
Generally, **7:403 et seq.**
Acquittal, **7:411**
Background of case, **7:404**
Imclone stock sale, **7:404**
Indictment, **7:405**
Inferences from evidence, **7:409**
Intent inference test, **7:410**
Limits on argument and evi-
dence, **7:407**
Misrepresentation, **7:406**
Sufficiency of evidence test,
7:408
Misappropriation theory
Tippers, **7:382**
Trading insiders, **7:378**
Trading tippees, **7:386**
Pleading, **7:398**
Proof, **7:399 et seq.**
Rule 10b-5, **7:374 et seq.**
Rule 14e-3, **7:412**
Tippee violations, **7:672**
Tippers
Generally, **7:379 et seq.**
Fiduciary theory, **7:381**
Misappropriation theory, **7:382**

**INSIDERS AND INSIDER
TRADING—Cont'd**

- Scienter—Cont'd
- Tippers—Cont'd
 - Proof, **7:401**
- Tipping violations, **7:662**
- Trading insiders, **7:375 et seq., 7:400**
- Trading tippees
 - Generally, **7:383 et seq.**
 - Proof, **7:402**
- Scope of regulations
 - Generally, **7:557 et seq.**
 - Access criteria, **7:560**
 - Buyers, **7:563**
 - Congressional intent, **7:559**
 - Contraction era, **7:561 et seq.**
 - Expansion era, **7:560**
 - Issuers, applicability to, **7:565**
 - Relationships subject to regulation, **7:562 et seq.**
 - SEC efforts to define, **7:559**
 - Sellers, **7:563**
 - Third parties, applicability to, **7:566**
 - Unfairness criteria, **7:560**
- SEA § 16(b)
 - Generally, **7:156 et seq.**
 - Administrative enforcement, **7:159**
 - Civil penalties, **7:159**
 - Insider short sales, **7:157**
 - Private actions, **7:160**
 - Short swing trading, **7:156**
 - Tipping, **7:158**
- SEC investigations
 - Raj Rajaratnam case, early investigation, **21:3**
 - Wiretap in enforcement, **13:146, 13:153**
- SEC Rule 14e-3
 - Generally, **7:632 et seq.**
 - Duty imposed, **7:633**
 - Supreme Court validation, **7:636, 7:637**
 - Validity, **7:634 et seq.**
- Securities Act (SA), Mail and wire fraud, **7:172**

**INSIDERS AND INSIDER
TRADING—Cont'd**

- Securities professionals as insiders, **7:572**
- Selective disclosure and full disclosure obligations
 - Generally, **7:529**
 - Avoiding, **7:553**
 - Curing violations, **7:554**
 - Materiality, **7:535**
 - Nonpublic nature of information disclosed, **7:536**
 - Triggering full disclosure obligation, **7:532**
 - Unintentional disclosures, **7:540**
- Sentencing phase of Raj Rajaratnam criminal insider trading case, **21:27 et seq.**
- Shared confidences, **7:590**
- Share repurchase plans, **7:210**
- Short swing trading, SEA § 16(b), **7:156**
- Simultaneous FD disclosure requirements, **7:542**
- SRO rules, **7:168**
- State law, **7:153**
- Summary of provisions, **7:638 et seq.**
- Suppression of wiretap evidence, **21:12 to 21:18**
- Tender offers, **6:111, 7:214**
- Timely disclosure
 - Generally, **7:238 et seq.**
- Acquisition information
 - Generally, **7:248 et seq.**
- Agreements
 - Disclosure not required, **7:261**
 - Disclosure required, **7:260**
- Company, trading by, **7:256**
- Definitions, **7:250**
- Disclosure document obligations, **7:259**
- Leaks, **7:255**
- Materiality of negotiated acquisitions, **7:262 et seq.**
- Preliminary negotiations
 - Misleading statements, **7:253**
 - No statement made, **7:252**
 - Other situations, **7:254**

INDEX

INSIDERS AND INSIDER TRADING—Cont'd

- Timely disclosure—Cont'd
 - Acquisition information—Cont'd
 - Prior statement now misleading, **7:257**
 - Rumors, **7:255**
 - Stages of negotiated acquisitions, **7:249**
 - Target response to tender offers, **7:258**
 - When disclosure of agreement required, **7:260**
 - When disclosure required, **7:251 et seq.**
 - Business judgment considerations, **7:241**
 - Corporate purpose considerations, **7:242**
 - Delays, justifications for, **7:240**
 - Dividend actions
 - Evolving information, **7:245**
 - Materiality, **7:247**
 - When disclosure required, **7:246**
 - Evolving information. Dividend actions, above
 - Justification for delay, **7:240**
 - Law violations and timeliness considerations, **7:244**
 - Ripeness and timing, **7:243**
 - Tender offers
 - Generally, **7:267**
 - Materiality, **7:270**
 - Stages of nonnegotiated acquisitions, **7:268**
 - When disclosure required, **7:269**
 - Timing of FD disclosure requirements, **7:541 et seq.**
 - Tippee's knowledge of tipper's benefit, **7:387**
 - Tippee violations
 - Generally, **7:623, 7:664 et seq.**
 - Benefit to insider-tipper, **7:627**
 - Benefit to tipper, **7:671**
 - Dirks background, **7:396, 7:625**
 - Elements of, **7:668 et seq.**
 - Expansion era, **7:665**
 - Family benefit to, **7:630**

INSIDERS AND INSIDER TRADING—Cont'd

- Tippee violations—Cont'd
 - Fiduciary breach requirement, **7:626**
 - Friends, benefit to, **7:630**
 - Issuers, **7:654**
 - Knowledge of inside source, **7:672**
 - Misappropriation, **7:675**
 - Need for fiduciary benefit, **7:626**
 - Pecuniary benefit, **7:628**
 - Penalties imposed on, **7:439**
 - Policies, **7:666**
 - Proof of possession element, **7:670**
 - Proximity of tippee, **7:673**
 - Reasons, **7:666**
 - Receipt in fiduciary breach, **7:623**
 - Relations, benefit to, **7:630**
 - Remoteness of tippee, **7:673**
 - Reputational benefit, **7:629**
 - Scienter, **7:672**
 - Theories of, **7:667**
 - Tip defined, **7:624**
 - Tipper violation, necessity of, **7:674**
 - Trading, **7:675**
- Tipper violations
 - Fiduciary theory, **7:381**
 - Misappropriation theory, **7:382**
 - Scienter, **7:379 et seq.**
- Tipping violations
 - Generally, **7:655 et seq.**
 - Benefit of tipper, transmission of information for, **7:661**
 - Elements of violations, **7:658 et seq.**
 - Expansion era, **7:656**
 - Joint and several liability, **9:36**
 - Knowledge that tippee will trade, **7:662**
 - Necessity of tippee trading, **7:663**
 - Nonpublic information, **7:272 et seq.**
 - Policies, **7:657**
 - Private purpose, transmission of information for, **7:661**
 - Proof of transmission of information, **7:660**

**INSIDERS AND INSIDER
TRADING—Cont'd**

- Tipping violations—Cont'd
 - Reasons, **7:657**
 - Scienter, **7:662**
 - SEA § 16(b), **7:158**
 - Transmission of information, **7:659**
 - Violations, elements, **7:658 et seq.**
- Transmission of information, **7:659**
- Trial on the merits, Raj Rajaratnam case, **21:19**
- Trial preparation, Raj Rajaratnam case, **21:7**
- Unequal information, **7:181**
- Unfairness criteria, **7:560**
- Unfairness of activities, **7:181**
- Unintentional disclosures and Regulation FD disclosure, **7:540**
- Use of MNPI
 - Generally, **7:316**
 - Burden of proof, **7:331**
 - Connection with transaction, **7:681**
 - Individuals, proof for, **7:332**
 - Organizations, proof for, **7:339**
 - Possession compared, **7:317**
 - Rule 10b-5
 - Generally, **7:327 et seq.**
 - Burden of proof, **7:331**
 - Individuals, proof for, **7:332**
 - Inferences, **7:328**
 - Organizations, proof for, **7:339**
 - Possession, use inferred from, **7:328**
 - Rebuttal evidence, **7:337, 7:338**
 - Size of transaction, proof value, **7:334**
 - Standard of proof, **7:331**
 - Timing, proof of, **7:333**
 - Type of transaction, proof value, **7:335**
 - Rule 14e-3, generally, **7:347**
 - Size of transaction, proof value, **7:334**
 - Standard of proof, **7:331**
 - Timing, proof of, **7:333**
 - Type of transaction, proof value, **7:335**

**INSIDERS AND INSIDER
TRADING—Cont'd**

- Wiretap in enforcement
 - Raj Rajaratnam and criminal insider trading, above
- SEC investigations, **13:146, 13:153**

**INSIDER TRADING AND
SECURITIES FRAUD
ENFORCEMENT ACT**

- Broker-dealer liability, **14:168**

INSTITUTIONAL INVESTORS

- Suitability of investments, **14:190**

INSURANCE

- Generally, **9:76**
- Madoff Ponzi scheme, recovery, **20:24**
- SEC settlements, coverage for settling defendants, **13:183**
- Uninsured products NASD risk disclosure requirements, **6:288**

INSURANCE COMPANIES

- Proxy rules, applicability of
 - Generally, **6:201**
 - Antifraud provisions, federal, **6:204**
 - Federal and state rules, **6:202**
 - McCarran Act, **6:203**

INTENT

- Generally, **8:58 et seq., 8:191 et seq.**
- See also **Knowledge** (this index)
- Absence of intent, effect of, **8:200**
- Administrative intent, **3:19**
- Common law, **8:59**
- Congressional Intent** (this index)
- Conscious intent, **8:358**
- Criminal cases, **8:197**
- Defendant's intent
 - Blue sky laws, **8:61**
 - Broker-dealer fraud, **8:143**
 - Common law, **8:59**
 - Manipulation, **8:119**
 - SA § 12(2), **8:68**
 - SA § 17(a), **8:86**
 - Scienter
 - Generally, **8:86**

INDEX

INTENT—Cont'd

- Defendant's intent—Cont'd
 - Scienter—Cont'd
 - Broker-dealer fraud, **8:143**
 - Tender offers, **8:136**
 - SEC, false reports to, **8:150**
 - Tender offers, **8:136**
- Defendant's knowledge and intent, **8:79**
- Foreign cubed cases, discerning intent, **11:23**
- High conscious intent, **8:358**
- Insufficiency, **8:199**
- Manipulation, defendant's intent, **8:119**
- Misrepresentation claims, consideration of, **7:53**
- Presence of intent, effect of, **8:200**
- Private actions, necessity of proving intent in, **8:194**
- Privity determinations, **8:316**
- Proxy fraud, **8:129**
- Scienter
 - Generally, **8:58, 8:191 et seq.**
 - See also **Scienter** (this index)
 - Absence of intent, effect of, **8:200**
 - Burden of proof, **8:201**
 - Criminal cases, **8:197**
 - Injunctions, **8:195**
 - Insufficiency, **8:199**
 - Necessity, **8:193 et seq.**
 - Presence of intent, effect of, **8:200**
 - Private actions, necessity of proving intent in, **8:194**
 - Proof, **8:202**
 - Proxy fraud, **8:129**
 - SEC decisions, **8:196**
 - Sufficiency, **8:198**
 - Tender offers, **8:136**
- SEC, false reports to, **8:150**
- Sufficiency, **8:198**
- Versions of scienter, relations among, **8:192**

INTERFERENCE

- Private actions, materiality, **8:43**

INTERMEDIARIES

- Mutual fund violations, **17:18**

INTERNAL REVENUE CODE

- Backdating of stock options, **18:5**

INTERNATIONAL FRAUD

- Madoff Ponzi scheme, **20:1 et seq.**

INTERNATIONAL TRANSACTIONS

- See **Foreign and International Transactions** (this index)

INTERNET

- See **Crowdfunding** (this index)

INTERPRETATION

- Congressional Intent** (this index)
- Disclosures, **6:236**
- Flexibility to achieve remedial purpose
 - Contraction era, **3:88**
 - Expansion era, **3:66**
- Implied liability
 - Generally, **3:64 et seq., 3:86 et seq.**
- Flexibility to achieve remedial purpose
 - Contraction era, **3:88**
 - Expansion era, **3:66**
- Legislative history, use of
 - Contraction era, **3:90 et seq.**
 - Expansion era, **3:68**
- Literalism, statutory
 - Contraction era, **3:89**
 - Expansion era, **3:67**
- Negative implication
 - Contraction era, **3:87**
 - Expansion era, **3:65**
- Remedial purpose, flexibility to achieve
 - Contraction era, **3:88**
 - Expansion era, **3:66**
- Rule 10b-5, **3:64 et seq., 3:86 et seq.**
- Statutory literalism
 - Contraction era, **3:89**
 - Expansion era, **3:67**
- Legislative history, use of
 - Contraction era, **3:90 et seq.**
 - Expansion era, **3:68**

INTERPRETATION—Cont’d

- Literalism, statutory
 - Contraction era, **3:89**
 - Expansion era, **3:67**
- Negative implication
 - Contraction era, **3:87**
 - Expansion era, **3:65**
- Remedial purpose, flexibility to achieve
 - Contraction era, **3:88**
 - Expansion era, **3:66**
- Statutory literalism
 - Contraction era, **3:89**
 - Expansion era, **3:67**

INVESTIGATIONS

- Generally, **13:1 et seq.**
- Administrative Enforcement** (this index)
- Attorney General Eric Schneiderman of New York, Martin Act suits following subprime mortgage crisis, **13:336, 13:337**
- Attorneys
 - CFTC investigations
 - Counsel investigations, **13:219**
 - Multiple clients, **13:207**
 - Conflicts of interest
 - CFTC investigations, **13:207**
 - SEC investigations, **13:15**
 - SRO investigations, **13:277**
 - Counsel investigations
 - CFTC investigations, **13:219**
 - SEC investigations, **13:27**
 - SRO investigations, **13:281**
 - Early strategy, **13:3**
 - Foresight, need for, **13:3**
 - Privileges
 - Generally, **13:31 et seq.**
 - Attorney-client
 - Generally, **13:36**
 - Filip era
 - Changes in policy, **13:54**
 - Cooperation, **13:51, 13:52**
 - Internal investigations, **13:52**
 - Investor recovery, **13:55**
 - Joint defense, **13:54**

INVESTIGATIONS—Cont’d

- Attorneys—Cont’d
- Privileges—Cont’d
- Attorney-client—Cont’d
- Filip era—Cont’d
 - Relief from pressure to waive, **13:50**
 - Sharing agreements, **13:54**
 - Waiver request, **13:53**
 - Work product, **13:54**
- Waiver
 - Constitutional analysis, **13:42**
 - Constitutional violations, **13:43**
 - District Court reconsideration (Stein IV), **13:46**
 - Fee claims, **13:45**
 - Filip era, **13:50**
 - Findings, **13:41**
 - Legal fee payment, **13:39**
 - McNulty era, **13:48**
 - Pressure to waive, **13:38**
 - Proffers under threat of nonpayment of legal fees, **13:44**
 - Relief from pressure to waive, **13:48 et seq.**
 - Second Circuit (Stein V), **13:47**
 - Specter Bill, **13:49**
 - US v. Stein, **13:39 et seq.**
- Claiming, strategic considerations, **13:61 to 13:65**
- Self incrimination
 - Generally, **13:32**
 - Waiver, **13:33**
- Waiver, **13:33, 13:37 et seq.**
- Work product, **13:59**
- Right to counsel
 - CFTC, **13:206**
 - SEC, **13:14**
 - SROs, **13:276**
- SEC investigations
 - Cooperation agreements, **20:15**
 - Counsel investigations, **13:27**
 - Multiple clients, **13:15**

INDEX

INVESTIGATIONS—Cont'd

- Attorneys—Cont'd
 - SEC investigations—Cont'd
 - Waiver of attorney-client privileges, **13:37 et seq.**
 - SRO investigations
 - Counsel investigations, **13:281**
 - Multiple clients, **13:277**
 - Strategy, early, **13:3**
- Auction Rate Security (ARS) litigation
 - Coordinated SEC-state-SRO investigations, generally, **13:322 et seq.**
 - Criminal aspects, **13:331**
 - Government regulatory suits, **13:329**
 - Investor recovery as objective, **13:324**
 - Private litigation, **13:327, 13:328**
 - Securities and market, **13:325**
 - Seller management liability, **13:330**
 - State law, private litigation, **13:328**
 - Violations, **13:326**
- Audits of investigations, **13:163**
- Authority to investigate
 - CFTC
 - Generally, **13:192**
 - CEA § 6(b), **13:194**
 - CEA § 8, **13:193**
 - CEA § 14(b), **13:196**
 - CEA § 16(a), **13:193**
 - Inspection of records, **13:195**
 - Interpretation, **13:198**
 - Publishing data, restrictions on, **13:193**
 - Records inspections, **13:195**
 - State investigations, **13:197**
 - SEC, **13:6**
 - SROs, **13:268**
 - State agencies, **13:314**
- Cause investigation, Madoff Ponzi scheme, **20:5**
- CFTC
 - Generally, **13:190 et seq.**
 - Administrative Enforcement**
(this index)

INVESTIGATIONS—Cont'd

- CFTC—Cont'd
 - Amicus curiae participation in private litigation, **13:234**
 - Authority to investigate
 - Generally, **13:192**
 - Inspection of records, **13:195**
 - Interpretation, **13:198**
 - Publishing data, restrictions on, **13:193**
 - Records inspections, **13:195**
 - State investigations, **13:197**
 - CEA § 6(b), **13:194**
 - CEA § 8, **13:193**
 - CEA § 16(a), **13:193**
 - Character of investigations, **13:191**
 - Collateral effects of orders, **13:241**
 - Conferences with staff, **13:218**
 - Conflicts of interest, **13:207**
 - Contacts, responses to, **13:205**
 - Counsel investigations, **13:219**
 - Discovery
 - Generally, **13:224 et seq.**
 - Document production, **13:217**
 - Document subpoenas, **13:225**
 - FOIA requests, **13:226**
 - Production requests, **13:227**
 - Rule 34 production requests, **13:227**
- Documents
 - Production, **13:217**
 - Subpoenas, **13:225**
 - Third party access to, **13:224 et seq.**
- Early strategy, **13:3**
- Factors influencing outcome, **13:264**
- FOIA requests, **13:226**
- Foresight, need for, **13:3**
- Formal orders of investigation
 - Generally, **13:208**
 - Access to orders, **13:210**
 - Content, **13:209**
 - Evaluation, **13:211**
 - Issuance, **13:208**
 - Validity, **13:212**
- Implications of investigations, **13:2**

INVESTIGATIONS—Cont’d

CFTC—Cont’d

- Informal enforcement actions, **13:233**
- Informal warnings, **13:230**
- Information given by agency, **13:204**
- Inspection of records, **13:195**
- Multiple clients, **13:207**
- Negotiating an outcome, **13:266**
- No further action outcomes, **13:229**
- Outcomes of investigations, **13:228 et seq.**
- Overview, **13:1**
- Parallel civil and criminal proceedings, **13:263**
- Private investigations, **13:201**
- Privileges, **13:223**
- Production requests, **13:227**
- Public investigations, **13:201**
- Public reports, **13:232**
- Records inspections, **13:195**
- Reports, **13:232**
- Requests for information, **13:203**
- Responses to contacts, **13:205**
- Right to counsel, **13:206**
- Rule 34 production requests, **13:227**
- Rule 45(b) subpoenas, **13:225**
- SROs, references to, **13:231**
- Staff conferences, **13:218**
- State authorities, references to, **13:231**
- State investigations, **13:197**
- Statistics, **13:202**
- Strategy, early, **13:3**
- Subpoenas
 - Generally, **13:203, 13:213 et seq.**
 - Content, **13:214**
 - Document production, **13:217**
 - Document subpoenas, **13:225**
 - Evaluation, **13:215**
 - Power to issue, **13:200**
 - Responses, **13:217**
 - Validity challenges, **13:216**

INVESTIGATIONS—Cont’d

CFTC—Cont’d

- Testimony
 - Generally, **13:220 et seq.**
 - Interrogations, **13:221**
 - Preparing witnesses, **13:220**
 - Transcripts, **13:222**
- Transcripts, third party access to, **13:224 et seq.**
- Triggers of investigations, **13:199**
- Types of investigations, **13:200 et seq.**
- Warnings, **13:230**
- Wells submissions, **13:265**
- Character of investigations
 - CFTC, **13:191**
 - SEC, **13:5**
- Collateral effects of orders
 - CFTC, **13:241**
 - SEC, **13:92**
 - SROs, **13:298**
- Collateralized debt
 - obligations(CDOs), subprime mortgage crisis, **13:332**
- Compliance orders, SEC, **13:82**
- Conflicts of interest
 - CFTC investigations, **13:207**
 - SEC investigations, **13:15**
 - SRO investigations, **13:277**
- Contacts, responses to
 - CFTC, **13:205**
 - SEC, **13:13**
 - SROs, **13:275**
- Cooperation by target
 - Assistance provided, **20:15**
 - Framework for evaluation of cooperation, **20:15**
 - Remediation, **20:15**
 - SEC investigations, **13:154 to 13:157, 20:15**
 - Self-policing, **20:15**
 - Self-reporting, **20:15**
 - SROs investigations, **13:305**
- Coordinated SEC-state-SRO investigations
 - Generally, **13:322 et seq.**
 - ARS seller management liability, **13:330**

INDEX

INVESTIGATIONS—Cont'd

- Coordinated SEC-state-SRO investigations—Cont'd
 - ARS violations, **13:326**
 - Auction Rate Security (ARS), **13:323**
 - Criminal aspects, **13:331**
 - Government regulatory suits, **13:329**
 - Investor recovery as objective, **13:324**
 - Private litigation, **13:327, 13:328**
 - State law, private litigation, **13:328**
 - Subprime mortgage crisis, **13:332 to 13:339**
- Corruption, DOJ suit against Standard and Poor's, **13:338**
- Counsel investigations
 - CFTC, **13:219**
 - SEC, **13:27**
 - SROs, **13:281**
- Creators of residential mortgage-backed securities, investor litigation, **13:335**
- Credit Suisse Securities suit, subprime mortgage crisis, **13:337**
- Dexia v. Bear Stearns case, subprime mortgage crisis, **13:335**
- Discovery
 - CFTC
 - Generally, **13:224 et seq.**
 - Document production, **13:217**
 - Document subpoenas, **13:225**
 - FOIA requests, **13:226**
 - Production requests, **13:227**
 - SEC
 - Generally, **13:66 et seq.**
 - Document production, **13:25**
 - Document subpoenas, **13:67**
 - FOIA requests, **13:68**
 - Production requests, **13:69**
 - SROs, generally, **13:286**
- Documents
 - Production
 - CFTC, **13:217**
 - SEC, **13:25**

INVESTIGATIONS—Cont'd

- Documents—Cont'd
 - Third party access to
 - CFTC, **13:224 et seq.**
 - SEC, **13:66 et seq.**
 - SROs, **13:286**
- DOJ suit against Standard and Poor's, **13:338**
- Enforcement actions. See **Administrative Enforcement** (this index)
- Factors influencing outcome
 - CFTC, **13:264**
 - SEC, **13:154 to 13:157**
 - SROs, **13:305**
- Financial Crisis Inquiry Commission report, summary, **13:333**
- First Amendment rights, **13:35**
- FOIA requests
 - CFTC, **13:226**
 - SEC, **13:68**
- Foreseeability, subprime mortgage crisis, **13:334**
- Formal investigations, SEC, **13:8**
- Formal orders of investigation
 - Access to orders
 - CFTC, **13:210**
 - SEC, **13:18**
 - CFTC
 - Generally, **13:208**
 - Access to orders, **13:210**
 - Content, **13:209**
 - Evaluation, **13:211**
 - Validity, **13:212**
 - Content
 - CFTC, **13:209**
 - SEC, **13:17**
 - Evaluation
 - CFTC, **13:211**
 - SEC, **13:19**
 - Issuance
 - CFTC, **13:208**
 - SEC, **13:16**
 - SEC
 - Generally, **13:16 et seq.**
 - Access to orders, **13:18**
 - Content, **13:17**
 - Evaluation, **13:19**

INVESTIGATIONS—Cont'd

- Formal orders of investigation
 - Cont'd
 - SEC—Cont'd
 - Validity, **13:20**
 - SROs, **13:278**
 - Validity
 - CFTC, **13:212**
 - SEC, **13:20**
- Fraud, DOJ suit against Standard and Poor's, **13:338**
- Informal enforcement actions
 - CFTC, **13:233**
 - SROs, **13:292**
- Informal investigations, SEC, **13:8**
- Informal warnings
 - CFTC, **13:230**
 - SEC, **13:72**
 - SROs, **13:289**
- Information given by agency
 - CFTC, **13:204**
 - SEC, **13:12**
 - SROs, **13:274**
- Injunctions** (this index)
- Insiders and Insider Trading** (this index)
- Investor litigation following
 - subprime mortgage crisis, **13:335**
- Investor recovery as objective of coordinated SEC-state-SRO investigations, **13:324**
- JP Morgan/Bear Stearns action,
 - subprime mortgage crisis, **13:336**
- Jurisdiction
 - Generally, **11:2 et seq.**
 - See also **Jurisdiction** (this index)
- Madoff Ponzi scheme, SEC
 - investigations, **20:2, 20:6**
- Martin Act suits, subprime mortgage crisis, **13:336, 13:337**
- Mortgage backed securities (MBSs),
 - subprime mortgage crisis, **13:332**
- Negotiating an outcome
 - CFTC, **13:266**
 - SEC
 - Generally, **13:161 et seq.**

INVESTIGATIONS—Cont'd

- Negotiating an outcome—Cont'd
- SEC—Cont'd
 - Advantages and disadvantages, **13:163**
 - Authority of staff, **13:162**
 - Considerations, **13:165**
 - Objectives, **13:164**
- SROs
 - Generally, **13:308 et seq.**
 - Advantages and disadvantages, **13:310**
 - Considerations, **13:312**
 - Objectives, **13:311**
- No further action outcomes
 - CFTC, **13:229**
 - SEC, **13:71**
 - SROs, **13:288**
- Orders
 - CFTC
 - Collateral effects of orders, **13:241**
 - Duration of orders, **13:243**
 - Collateral effects of orders
 - CFTC, **13:241**
 - SEC, **13:92**
 - SROs, **13:298**
 - Compliance orders, SEC, **13:82**
 - Duration of orders
 - CFTC, **13:243**
 - SEC, **13:94**
 - SROs, **13:300**
 - Formal orders of investigation,
 - above
- SEC
 - Collateral effects of orders, **13:92**
 - Compliance orders, **13:82**
 - Duration of orders, **13:94**
- SROs
 - Collateral effects of orders, **13:298**
 - Duration of orders, **13:300**
- Outcomes of investigations
 - CFTC, **13:228 et seq.**
 - SEC, **13:70 et seq.**
 - SROs, **13:287 et seq.**
 - State agencies, **13:317**

INDEX

INVESTIGATIONS—Cont'd

- Overview, **13:1**
- Parallel civil and criminal proceedings
 - Generally, **13:133 et seq.**
 - Battle over discovery, **13:135**
 - CFTC references, **13:263**
 - Civil-criminal flow of information, **13:139**
 - Continuation of criminal proceedings, **13:140**
 - Continuations of civil proceedings, **13:137, 13:138**
 - Criminal-civil flow of information, **13:141, 13:142, 13:143**
 - Criteria for stay of discovery, **13:136**
 - Discovery, **13:139, 13:141, 13:143**
 - Failure to warn of criminal proceeding in civil proceeding, **13:142**
 - Reasons for concern, **13:134**
 - SEC references, **13:133 et seq.**
- Payments to foreign government officials. **Foreign Corrupt Practices Act (FCPA)** (this index)
- Preliminary investigations, **13:8**
- Private investigations
 - CFTC, **13:201**
 - SEC, **13:9**
 - SROs, **13:271**
- Private litigation, **13:327, 13:328**
- Privileges
 - Attorney-client, SEC
 - Generally, **13:36**
 - Waiver, **13:37 et seq.**
 - CFTC investigations, generally, **13:223**
 - Claiming, strategic considerations, SEC, **13:61 to 13:65**
- SEC
 - Generally, **13:31 et seq.**
 - Attorney-client
 - Generally, **13:36**
 - Waiver, **13:37 et seq.**
 - Claiming, strategic considerations, **13:61 to 13:65**

INVESTIGATIONS—Cont'd

- Privileges—Cont'd
 - SEC—Cont'd
 - Self incrimination
 - Generally, **13:32**
 - Waiver, **13:33**
 - Unreasonable search and seizure, **13:34**
 - Waiver, **13:33**
 - Work product, **13:59**
 - Self incrimination
 - Generally, **13:32**
 - Waiver, **13:33**
 - SRO investigations, **13:285**
 - Unreasonable search and seizure, **13:34**
 - Waiver, **13:33, 13:37 et seq.**
 - Work product, **13:59**
- Public investigations
 - CFTC, **13:201**
 - SEC, **13:9**
 - SROs, **13:271**
- Reports
 - CFTC, **13:232**
 - SEC, **1:10, 13:74 et seq.**
 - SROs, **13:291**
- Requests for information
 - CFTC, **13:203**
 - SEC, **13:11**
 - SROs, **13:273**
- Residential mortgages, failure during subprime mortgage crisis, **13:332**
- Responses to contacts
 - CFTC, **13:205**
 - SEC, **13:13**
 - SROs, **13:275**
- Right to counsel
 - CFTC, **13:206**
 - SEC, **13:14**
 - SROs, **13:276**
- Rule 45(b) subpoenas
 - CFTC, **13:225**
 - SEC, **13:67**
- Sanctions, SEC, **13:81**
- SEC
 - Generally, **13:4 et seq.**

INVESTIGATIONS—Cont'd

SEC—Cont'd

Access, use of wiretap in enforcement, **13:150**

Administrative Enforcement
(this index)

Adoption of changes, **20:11**

Amicus curiae participation in private litigation, **13:79**

Analysis of tips, complaints and referrals by Office of Market Intelligence, **20:14**

Asset Management Unit, **20:12**

Assistance provided, **20:15**

Attorney-client privilege

Generally, **13:36**

Filip era

Changes in policy, **13:54**

Cooperation, **13:51, 13:52**

Internal investigations, **13:52**

Investor recovery, **13:55**

Joint defense, **13:54**

Relief from pressure to waive, **13:50**

Sharing agreements, **13:54**

Waiver request, **13:53**

Work product, **13:54**

Waiver

Generally, **13:37 et seq.**

Constitutional analysis, **13:42**

Constitutional violations, **13:43**

District Court reconsideration (Stein IV), **13:46**

Fee claims, **13:45**

Filip era, **13:50**

Findings, **13:41**

KPMG's actions, **13:40**

Legal fee payment, **13:39**

McNulty era, **13:48**

Pressure to waive, **13:38**

Proffers under threat of nonpayment of legal fees, **13:44**

Relief from pressure to waive, **13:48 et seq.**

Second Circuit (Stein V), **13:47**

Specter Bill, **13:49**

INVESTIGATIONS—Cont'd

SEC—Cont'd

Attorney-client privilege—Cont'd

Waiver—Cont'd

US v. Stein, **13:39 et seq.**

Audits of investigations, **13:163**

Authority for wiretap, **13:145**

Authority to investigate, **13:6**

Bounties to whistleblowers, **20:15**

Changes, **20:11**

Character of investigations, **13:5**

Collateral effects of orders, **13:92**

Collateral horrors of cooperation, **20:15**

Collection of tips, complaints and referrals by Office of Market Intelligence, **20:14**

Compliance orders, **13:82**

Conferences with staff, **13:26**

Conflicts of interest, **13:15**

Contacts, responses to, **13:13**

Control of wiretap results, **13:148**

Cooperation agreements, **20:15**

Cooperation by target, **13:154 to 13:157, 20:15**

Coordinated SEC-state-SRO investigations

Generally, **13:322 et seq.**

ARS securities and market, **13:325**

ARS seller management liability, **13:330**

ARS violations, **13:326**

Auction Rate Security (ARS), **13:323**

Criminal aspects, **13:331**

Government regulatory suits, **13:329**

Investor recovery as objective, **13:324**

Private litigation, **13:327, 13:328**

State law, private litigation, **13:328**

Counsel investigations, **13:27**

Deferred prosecution agreements, **20:15**

Delay of SEC investigations, **20:10**

INDEX

INVESTIGATIONS—Cont'd

SEC—Cont'd

Discovery

- Generally, **13:66 et seq.**
- Document production, **13:25**
- Document subpoenas, **13:67**
- FOIA requests, **13:68**
- Production requests, **13:69**
- Rule 34 production requests, **13:69**
- Document production, **13:25**
- Documents, third party access to, **13:66 et seq.**
- Document subpoenas, **13:67**
- Early strategy, **13:3**
- Encouraging cooperation, **20:15**
- Enforcement Manual 2010 revisions, **20:15**
- Evaluation of cooperation, **20:15**
- Experience level of investigative personnel, **20:10**
- Expertise of investigators, **20:12**
- Factors influencing outcome, **13:154 to 13:157**
- First Amendment freedoms, **13:35**
- Focus of SEC examinations, **20:10**
- FOIA requests, **13:68**
- Foreign Corrupt Practices Act Unit, **20:12**
- Foresight, need for, **13:3**
- Formal investigations, **13:8**
- Formal orders of investigation
 - Generally, **13:16 et seq.**
 - Access to orders, **13:18**
 - Content, **13:17**
 - Evaluation, **13:19**
 - Issuance, **13:16**
 - Validity, **13:20**
- Fostering cooperation, **20:15**
- Framework for evaluation of cooperation, **20:15**
- Galleon cases, use of wiretap in enforcement, **13:146, 13:153**
- Implications of investigations, **13:2**
- Informal enforcement actions, **13:78**
- Informal investigations, **13:8**

INVESTIGATIONS—Cont'd

SEC—Cont'd

- Informal warnings, **13:72**
- Information given by agency, **13:12**
- Insider trading, use of wiretap in enforcement, **13:146, 13:153**
- Internal communications within investigations, **20:10**
- Judicial approval of wiretap, **13:151**
- Madoff Ponzi scheme, **20:2, 20:6, 20:10 to 20:24**
- Market Abuse Unit, **20:12**
- Monitoring of tips, complaints and referrals by Office of Market Intelligence, **20:14**
- Multiple clients, **13:15**
- Municipal Securities and Public Pensions Unit, **20:12**
- Negotiating an outcome
 - Generally, **13:161 et seq.**
 - Advantages and disadvantages, **13:163**
 - Authority of staff, **13:162**
 - Considerations, **13:165**
 - Objectives, **13:164**
- No further action outcomes, **13:71**
- Nonprosecution agreements, **20:15**
- Office of Market Intelligence, **20:14**
- Outcomes of investigations, **13:70 et seq.**
- Overview, **13:1**
- Parallel civil and criminal proceedings, **13:133 et seq.**
- Preliminary investigations, **13:8**
- Privacy interests, use of wiretap in enforcement, **13:149, 13:150**
- Private investigations, **13:9**
- Privileges
 - Generally, **13:31 et seq.**
 - Attorney-client
 - Generally, **13:36**
 - Waiver, **13:37 et seq.**
 - Claiming, strategic considerations, **13:61 to 13:65**

INVESTIGATIONS—Cont'd

SEC—Cont'd

Privileges—Cont'd

Self incrimination

Generally, **13:32**

Waiver, **13:33**

Waiver, **13:33**

Work product, **13:59**

Production requests, **13:69**

Proffer agreements, **20:15**

Public access, use of wiretap in enforcement, **13:149**

Public investigations, **13:9**

Public reports, **13:74 et seq.**

Rajaratnam case issues yet to be resolved, **13:153**

Red flags during investigations, **20:10**

Referrals, screening by Office of Market Intelligence, **20:14**

Relevancy of wiretap, **13:152**

Remediation by target, **20:15**

Reports, **1:10, 13:74 et seq.**

Requests for information, **13:11**

Resolutions of examiners, **20:10**

Responses to contacts, **13:13**

Restricted immunity offers, **20:15**

Review, use of wiretap in enforcement, **13:147**

Right to counsel, **13:14**

Risks of cooperation, **20:15**

Rule 34 production requests, **13:69**

Rule 45(b) subpoenas, **13:67**

Sanctions, **13:81**

Scope of investigations, **20:10**

SEA § 21(a) reports, **13:74 et seq.**

Seaboard Report, **20:15**

Self-policing by target, **20:15**

Self-reporting by target, **20:15**

Settlements, **13:154 to 13:157**

Sharing information with other agencies, etc., **20:14**

Shortening of Wells process, **20:13**

Specialized investigation units, **20:12**

Specialized investigators, **20:12**

Specificity, **13:104**

SROs, references to, **13:73**

INVESTIGATIONS—Cont'd

SEC—Cont'd

Staff conferences, **13:26**

Staffing of investigations, **20:10**

Staff performance evaluation, **20:13**

State authorities, references to, **13:73**

Statistics, **13:10**

Strategy, early, **13:3**

Streamlining internal investigation procedures, **20:13**

Structured and New Products Unit, **20:12**

Subpoenas

Generally, **13:11, 13:21 et seq.**

Content, **13:22**

Document production, **13:25**

Document subpoenas, **13:67**

Evaluation, **13:23**

Responses, **13:25**

Validity challenges, **13:24**

Testimony

Generally, **13:28 et seq.**

Interrogations, **13:29**

Preparing witnesses, **13:28**

Transcripts, **13:30**

Tips and connections between tips, **20:14**

Tolling requirements for investigations, **20:13**

Training of investigators, **20:12**

Transcripts, third party access to, **13:66 et seq.**

Triggers of investigations, **13:7**

Types of investigations, **13:8 et seq.**

Unreasonable search and seizure, **13:34**

Warnings, **13:72**

Web site for post-Madoff reforms, **20:13**

Wells submissions

Generally, **13:158**

Advantages and disadvantages, **13:160**

Character, **13:159**

Timeframe, **20:13**

INDEX

INVESTIGATIONS—Cont'd

SEC—Cont'd

Whistleblowers, **20:14, 20:15**

Wiretap in enforcement, **13:144 et seq.**

Work product privileges, **13:59**

Self-dealing, DOJ suit against Standard and Poor's, **13:338**

Settlements

SEC, **13:154 to 13:157**

SROs, **13:305**

State agencies, **13:321**

Specificity, **13:104**

SROs

Generally, **13:267 et seq.**

Amicus curiae participation in private litigation, **13:293**

ARS securities and market, **13:325**

ARS seller management liability, **13:330**

ARS violations, **13:326**

Auction Rate Security (ARS), **13:323**

Authority

Orders, **13:278**

Subpoenas, **13:279**

Authority to investigate, **13:268**

CFTC references of investigations to, **13:231**

Collateral effects of orders, **13:298**

Conferences with staff, **13:280**

Conflicts of interest, **13:277**

Contacts, responses to, **13:275**

Cooperation by target, **13:305**

Coordinated SEC-state-SRO investigations, generally, **13:322 et seq.**

Counsel investigations, **13:281**

Criminal aspects, **13:331**

Criminal enforcement references, **13:304**

Discovery, **13:286**

Documents, third party access to, **13:286**

Early strategy, **13:3**

Factors influencing outcome, **13:305**

Foresight, need for, **13:3**

INVESTIGATIONS—Cont'd

SROs—Cont'd

Formal orders of investigation, **13:278**

Government regulatory suits, **13:329**

Implications of investigations, **13:2**

Informal enforcement actions, **13:292**

Informal warnings, **13:289**

Information given by agency, **13:274**

Information sharing by SEC Office of Market Intelligence, **20:14**

Interorganization references, **13:290**

Investor recovery as objective, **13:324**

Multiple clients, **13:277**

Negotiating an outcome
Generally, **13:308 et seq.**

Advantages and disadvantages, **13:310**

Considerations, **13:312**

Objectives, **13:311**

No further action outcomes, **13:288**

Orders, **13:278**

Outcomes of investigations, **13:287 et seq.**

Overview, **13:1**

Private investigations, **13:271**

Private litigation, **13:327, 13:328**

Privileges, **13:285**

Public investigations, **13:271**

Public reports, **13:291**

References between SROs, **13:290**

Reports, **13:291**

Requests for information, **13:273**

Responses to contacts, **13:275**

Right to counsel, **13:276**

SEC references of investigations to, **13:73**

Settlements, **13:305**

Staff conferences, **13:280**

State authorities, references to, **13:290**

State law, private litigation, **13:328**

INVESTIGATIONS—Cont'd

SROs—Cont'd
 Statistics, **13:272**
 Strategy, early, **13:3**
 Subpoena power, **13:270**
 Subpoenas, **13:279**
 Summary proceedings, **13:302**
 Testimony
 Generally, **13:282 et seq.**
 Interrogations, **13:283**
 Preparing witnesses, **13:282**
 Transcripts, **13:284**
 Transcripts, third party access to, **13:286**
 Triggers of investigations, **13:269**
 Types of investigations, **13:270**
 Warnings, **13:289**
 Wells submission equivalents
 Generally, **13:306**
 Character, **13:307**
 Staff conferences
 CFTC, **13:218**
 SEC, **13:26**
 SROs, **13:280**
 Standard and Poor's ratings of mortgage-backed securities, **13:338**
 State agencies
 Generally, **13:313 et seq.**
 ARS securities and market, **13:325**
 ARS seller management liability, **13:330**
 ARS violations, **13:326**
 Auction Rate Security (ARS), **13:323**
 Authority, **13:314**
 CFTC references of investigations to, **13:231**
 Coordinated SEC-state-SRO investigations, generally, **13:322 et seq.**
 Criminal aspects, **13:331**
 Government regulatory suits, **13:329**
 Information sharing by SEC Office of Market Intelligence, **20:14**
 Investor recovery as objective, **13:324**

INVESTIGATIONS—Cont'd

State agencies—Cont'd
 Outcomes of investigations, **13:317**
 Private litigation, **13:327, 13:328**
 SEC references of investigations to, **13:73**
 Settlements, **13:321**
 SRO references of investigations to, **13:290**
 State law, private litigation, **13:328**
 Subpoenas, **13:315**
 Statistics
 CFTC, **13:202**
 SEC, **13:10**
 SROs, **13:272**
 Subpoenas
 CFTC
 Generally, **13:203, 13:213 et seq.**
 Content, **13:214**
 Document production, **13:217, 13:225**
 Evaluation, **13:215**
 Responses, **13:217**
 Validity challenges, **13:216**
 Content
 CFTC, **13:214**
 SEC, **13:22**
 Document production
 CFTC, **13:217**
 SEC, **13:25**
 Document subpoenas
 CFTC, **13:225**
 SEC, **13:67**
 Evaluation
 CFTC, **13:215**
 SEC, **13:23**
 Power to issue
 CFTC, **13:200**
 SROs, **13:270**
 Responses
 CFTC, **13:217**
 SEC, **13:25**
 SEC
 Generally, **13:11, 13:21 et seq.**
 Content, **13:22**
 Document production, **13:25**

INDEX

INVESTIGATIONS—Cont'd

- Subpoenas—Cont'd
 - SEC—Cont'd
 - Document subpoenas, **13:67**
 - Evaluation, **13:23**
 - Responses, **13:25**
 - Validity challenges, **13:24**
 - SROs, **13:279**
 - State agencies, **13:315**
 - Validity challenges
 - CFTC, **13:216**
 - SEC, **13:24**
 - Subprime mortgage crisis
 - Attorney General Eric Schneiderman of New York, Martin Act suits, **13:336, 13:337**
 - Collateralized debt obligations(CDOs), **13:332**
 - Creators of residential mortgage-backed securities, investor litigation, **13:335**
 - Credit Suisse Securities suit, **13:337**
 - Dexia v. Bear Stearns case, **13:335**
 - Financial Crisis Inquiry Commission report, summary, **13:333**
 - Foreseeability, **13:334**
 - Investor litigation, **13:335**
 - JP Morgan/Bear Stearns suit, **13:336**
 - Litigation, **13:332, 13:335 to 13:339**
 - Martin Act suits, **13:336, 13:337**
 - Mortgage backed securities (MBSs), **13:332**
 - Residential mortgages, failure, **13:332**
 - Underwriters of residential mortgage-backed securities, investor litigation, **13:335**
- Summary proceedings, **13:302**
- Testimony
- CFTC
 - Generally, **13:220 et seq.**
 - Interrogations, **13:221**
 - Preparing witnesses, **13:220**
 - Transcripts, **13:222**
 - Interrogations
 - CFTC, **13:221**

INVESTIGATIONS—Cont'd

- Testimony—Cont'd
 - Interrogations—Cont'd
 - SEC, **13:29**
 - SROs, **13:283**
 - Preparing witnesses
 - CFTC, **13:220**
 - SEC, **13:28**
 - SROs, **13:282**
- SEC
 - Generally, **13:28 et seq.**
 - Interrogations, **13:29**
 - Preparing witnesses, **13:28**
 - Transcripts, **13:30**
- SROs
 - Generally, **13:282 et seq.**
 - Interrogations, **13:283**
 - Preparing witnesses, **13:282**
 - Transcripts, **13:284**
- Transcripts
 - CFTC, **13:222**
 - SEC, **13:30**
 - SROs, **13:284**
- Third party access to
 - CFTC, **13:224 et seq.**
 - SEC, **13:66 et seq.**
 - SROs, **13:286**
- Triggers of investigations
 - CFTC, **13:199**
 - SEC, **13:7**
 - SROs, **13:269**
- Types of investigations
 - CFTC, **13:200 et seq.**
 - SEC, **13:8 et seq.**
 - SROs, **13:270**
- Underwriters of residential mortgage-backed securities, investor litigation, **13:335**
- Warnings
 - CFTC, **13:230**
 - SEC, **13:72**
 - SROs, **13:289**
- Wells submissions
 - Generally, **13:158**
 - Advantages and disadvantages, **13:160**
 - Character, **13:159**
 - SROs, **13:306, 13:307**

INVESTIGATIONS—Cont'd

Wells submissions—Cont'd

Timeframe, **20:13**

INVESTMENT ADVISERS

Control person liability, **7:456**

Insider trading, **7:470**

Madoff Ponzi scheme, fraud, **20:6**

INVESTMENT ADVISERS ACT

Implied private actions (IPA), **3:155**

INVESTMENT BANKERS

Generally, **5:172 et seq.**

Controlled company bankers, **5:175**

Controlling company bankers, **5:177**

Dual representation bankers, **5:176**

Global settlement, ancillary relief,
13:110

Injunctions, global settlement and
ancillary relief, **13:110**

Madoff Ponzi scheme, Sonja Kohn,
20:21

Opinions of, challenging, **5:181**

Prior relations of, **5:182**

Qualities of bankers, **5:173**

Roles of bankers, **5:174**

Successive bankers, **5:179**

Trials, bankers for, **5:180**

Unfair terms

Generally, **5:172 et seq.**

Controlled company bankers,
5:175

Controlling company bankers,
5:177

Dual representation bankers, **5:176**

Opinions of, challenging, **5:181**

Prior relations of, **5:182**

Qualities of bankers, **5:173**

Roles of bankers, **5:174**

Successive bankers, **5:179**

Trials, bankers for, **5:180**

INVESTMENT COMPANIES

Proxy rules, applicability of, **6:205**

INVESTMENT MANAGERS

Madoff feeder funds, dual roles,
20:19

SEC investigations, integration of
broker-dealer and investment

INVESTMENT MANAGERS

—Cont'd

management examinations,
20:13

INVESTOR RECOVERY

Objective of coordinated SEC-state-
SRO investigations, **13:324**

IPA

See **Implied Private Actions** (this
index)

ISSUERS

Advisers to issuers as insiders, **7:569**

Analysts' roles in full disclosure
regulations, **7:528**

Antifraud provisions and Regulation
FD disclosure, **7:546**

Business associates to issuers as
insiders, **7:570**

Buyer-seller requirements, **5:121**

Compulsory disclosure. Regulation
FD disclosure, below

Disclosure

Generally, **7:282 et seq.**

Awareness of MNPI

Generally, **7:316, 7:349 et seq.**

Possession distinguished, **7:349**

On basis of inside information,
trades made, **7:348**

Burden of proof, nonpublic nature
of information, **7:312**

Full disclosure

Duty triggered by partial
disclosure, **7:536**

Regulation FD disclosure, below

Law and fact questions, nonpublic
character of information,
7:314

Limitations period, disclosure as
starting, **7:279**

Materiality and public disclosure,
7:280

Media disclosures

Generally, **7:292 et seq.**

Particular media, **7:299**

Timing, **7:297**

INDEX

ISSUERS—Cont'd

Disclosure—Cont'd

Misrepresentations, public disclosure as curing, **7:276 et seq.**

MNPI

Materiality, above

Nonpublic information, below

Nonpublic information

Generally, **7:271 et seq.**

Absorption requirement, **7:306 et seq.**

Burden of proof, **7:312**

Duty to disclose generally, **7:275**

Eliminating nonpublic information, Regulation FD, **7:552**

Full disclosure duty triggered by partial disclosure of, **7:536**

Law and fact questions, **7:314**

Limitations period, disclosure as starting, **7:279**

Materiality and public disclosure, **7:280**

Media disclosures

Generally, **7:292 et seq.**

Particular media, **7:299**

Timing, **7:297**

Misrepresentations, public disclosure as curing, **7:276 et seq.**

Motion practice, **7:311**

Omissions, public disclosure as curing, **7:276 et seq.**

Pleading, **7:310**

Procedural aspects, **7:309 et seq.**

Proof, **7:313**

Public as affecting insider trading, **7:272 et seq.**

Quantum of proof, **7:312**

Rumors, **7:301**

Time in becoming public, **7:304 et seq.**

Tipping of, **7:272 et seq.**

Omissions, public disclosure as curing, **7:276 et seq.**

Periodic reports, **7:289**

ISSUERS—Cont'd

Disclosure—Cont'd

Pleading nonpublic nature of information, **7:310**

Possession of MNPI

Generally, **7:316**

Awareness and possession distinguished, **7:349**

Burden of proof, **7:321, 7:341**

Chinese walls, **7:343 et seq.**

Connection with transaction, **7:681**

Individuals, proof for, **7:342**

Knowing possession, **7:320**

Mere possession, **7:319**

Organizations, proof for, **7:343 et seq.**

Precautions against trading, **7:346**

Proof, **7:322 et seq.**

Rule 10b-5

Generally, **7:318 et seq.**

Access, proof of, **7:323**

Awareness and possession distinguished, **7:349**

Burden of proof, **7:321**

Contact, proof of, **7:324**

Individuals, proof as to, **7:322**

Knowing possession, **7:320**

Mere possession, **7:319**

Organizations, proof for, **7:326**

Proof, **7:322 et seq.**

Trading, proof of, **7:325**

Use inferred from possession, **7:328**

Rule 14e-3

Generally, **7:340 et seq.**

Burden of proof, **7:341**

Chinese walls, **7:343 et seq.**

Individuals, proof for, **7:342**

Organizations, proof for, **7:343 et seq.**

Precautions against trading, **7:346**

Standard of proof, **7:341**

Standard of proof, **7:341**

Use compared, **7:317**

ISSUERS—Cont'd

Disclosure—Cont'd
 Press releases, **7:283**
 Proof of nonpublic character of information, **7:313**
 Prospectuses, **7:286**
 Proxy statements, **7:287**
 Reports, **7:289**
 Rumors, **7:301**
 SEC filings, **7:285**
 Shareholder communications, **7:284**
 Tender offer statements, **7:288**
 Tipping nonpublic information, **7:272 et seq.**
 Use of MNPI
 Generally, **7:316**
 Burden of proof, **7:331**
 Connection with transaction, **7:681**
 Individuals, proof for, **7:332**
 Organizations, proof for, **7:339**
 Possession compared, **7:317**
 Rule 10b-5
 Generally, **7:327 et seq.**
 Burden of proof, **7:331**
 Individuals, proof for, **7:332**
 Inferences, **7:328**
 Organizations, proof for, **7:339**
 Possession, use inferred from, **7:328**
 Rebuttal evidence, **7:337, 7:338**
 Size of transaction, proof value, **7:334**
 Standard of proof, **7:331**
 Timing, proof of, **7:333**
 Type of transaction, proof value, **7:335**
 Rule 14e-3, **7:347**
 Size of transaction, proof value, **7:334**
 Standard of proof, **7:331**
 Timing, proof of, **7:333**
 Type of transaction, proof value, **7:335**
 Exemption provisions and Regulation FD disclosure, **7:548**

ISSUERS—Cont'd

Inside trading regulation
 Generally, **7:557 et seq.**
 Access criteria, **7:560**
 Buyers, **7:563**
 Congressional intent, **7:559**
 Contraction era, **7:561 et seq.**
 Expansion era, **7:560**
 Issuers
 Generally, **7:643 et seq.**
 Advisers, **7:652**
 Affiliated entities, **7:647**
 Applicability to, **7:565**
 Business associates, **7:653**
 Contraction era, **7:646**
 Directors, **7:649**
 Employees, **7:650**
 Expansion era, **7:645**
 Officers, **7:648**
 Shareholders, **7:651**
 Tippees, **7:654**
 Relationships subject to regulation, **7:562 et seq.**
 SEC efforts to define, **7:559**
 Sellers, **7:563**
 Third parties, applicability to, **7:566**
 Unfairness criteria, **7:560**
 Intentional and nonintentional partial disclosures, **7:538 et seq.**
 Method of disclosure, Regulation FD, **7:544**
 Periodic reports, **7:289**
 Press releases, **7:283**
 Privately held securities, issuer liabilities as to, **5:6**
 Prompt disclosure requirement, Regulation FD, **7:543**
 Prospectuses, disclosure by, **7:286**
 Proxy statement disclosures, **7:287**
 Publicly held securities, issuer liabilities as to, **5:7**
 Redemptions, **6:145**
 Registration provisions and Regulation FD disclosure, **7:547**
 Regulation FD disclosure
 Generally, **7:526 et seq.**
 Analysts' roles, **7:528**

INDEX

ISSUERS—Cont'd

- Regulation FD disclosure—Cont'd
 - Antifraud provisions and, **7:546**
 - Avoiding selective disclosure, **7:553**
 - Companies covered, **7:545**
 - Compliance, **7:551 et seq.**
 - Curing violations, **7:554**
 - Eliminating nonpublic information, **7:552**
 - Exemption provisions and, **7:548**
 - Information, triggering, **7:534**
 - Intentional and nonintentional partial disclosures, **7:538 et seq.**
 - Materiality of triggering information, **7:535**
 - Method of disclosure, **7:544**
 - Persons triggering duty, **7:537**
 - Policy basis, **7:527**
 - Prompt disclosure requirement, **7:543**
 - Registration provisions and, **7:547**
 - Regulatory gap, **7:530**
 - Scope of regulation, **7:545**
 - SEC filing, compliance by, **7:555**
 - Selective disclosure
 - Generally, **7:529**
 - Avoiding, **7:553**
 - Curing violations, **7:554**
 - Materiality, **7:535**
 - Nonpublic nature of information disclosed, **7:536**
 - Triggering full disclosure obligation, **7:532**
 - Unintentional disclosures, **7:540**
 - Simultaneous disclosure requirements, **7:542**
 - Timing requirements, **7:541 et seq.**
 - Triggering events
 - Generally, **7:531 et seq.**
 - Information, triggering, **7:534**
 - Intentional and nonintentional partial disclosures, **7:538 et seq.**
 - Materiality of triggering information, **7:535**
 - Non-intentional disclosures, **7:540**

ISSUERS—Cont'd

- Regulation FD disclosure—Cont'd
 - Triggering events—Cont'd
 - Nonpublic nature of information disclosed, **7:536**
 - Nontriggering disclosures, **7:533**
 - Persons triggering duty, **7:537**
 - Selective disclosures, **7:532**
 - Unintentional disclosures, **7:540**
 - Unintentional disclosures, **7:540**
 - Validity, **7:550**
 - Violations, curing, **7:554**
- Reports, disclosure, **7:289**
- SEC filing disclosures, **7:285**
- Securities professionals as insiders, **7:572**
- Selective disclosure and full disclosure obligations
 - Generally, **7:529**
 - Avoiding, **7:553**
 - Curing violations, **7:554**
 - Materiality, **7:535**
 - Nonpublic nature of information disclosed, **7:536**
 - Triggering full disclosure obligation, **7:532**
 - Unintentional disclosures, **7:540**
- Shareholder communications, disclosure by, **7:284**
- Simultaneous FD disclosure requirements, **7:542**
- Tender offers
 - Generally, **6:141**
 - Disclosure requirements, **6:144**
 - Price, **6:142**
 - Redemptions, **6:145**
 - Standing to challenge, **6:143**
- Tender offer statement disclosure, **7:288**
- Timing of FD disclosure requirements, **7:541 et seq.**
- Unintentional disclosures and Regulation FD disclosure, **7:540**

JOBS ACT

- See **Crowdfunding** (this index)

JOINDER

- Arbitration proceedings, **15:18**

JOINDER—Cont'd

SLUSA restrictions, **3:206**

JOINT AND SEVERAL LIABILITY

Generally, **9:19 et seq.**

See also **Contribution; Proportionate Liability** (this index)

Blue sky law, **9:21**

Broker-dealer fraud, **9:31**

Commodities law, **9:46**

Common law, **9:20**

Control persons, **9:25, 9:33**

Court cases, **9:42**

Disgorgement, **9:26**

Rule 10b-5 liability, **9:39 et seq.**

Securities Exchange Act, **9:35**

Indemnification, **9:76**

Insurance, **9:76**

Knowing violators, **9:51**

Market manipulation, **9:28**

Proportionate liability compared, **9:47**

Proxy fraud, **9:29**

Registration statement fraud, **9:24**

Restitution, **9:44**

Rule 10b-5 liability

Generally, **9:37 et seq.**

Damages, **9:38**

Disgorgement, **9:39 et seq.**

SEC, false reports to, **9:32**

Securities Act

Generally, **9:22 et seq.**

Control persons, **9:25**

Disgorgement, **9:26**

Registration statement fraud, **9:24**

Section 11, **9:24**

Section 12(2), **9:23**

Section 15, **9:25**

Securities Exchange Act

Generally, **9:27 et seq.**

Broker-dealer fraud, **9:31**

Damages, **9:34**

Disgorgement, **9:35**

Market manipulation, **9:28**

Proxy fraud, **9:29**

SEC, false reports to, **9:32**

Section 9(a), **9:28**

JOINT AND SEVERAL LIABILITY—Cont'd

Securities Exchange Act—Cont'd

Section 14

Proxy fraud, **9:29**

Tender offer fraud, **9:30**

Section 15(c)(1), **9:31**

Section 18, **9:32**

Section 20(a), **9:33**

Section 20(A)(c), **9:36**

Tender offer fraud, **9:30**

Tipping, **9:36**

Self regulatory discipline, **9:45**

State law, **9:20**

Tender offer fraud, **9:30**

Tipping, **9:36**

JOINT TORTFEASORS

Common law fraud, **8:261**

JP MORGAN/BEAR STEARNS LITIGATION

Coordinated investigations following subprime mortgage crisis, **13:336**

JP MORGAN/MADOFF LITIGATION

Deferred prosecution agreements, **10:5**

JUDICIAL APPROVAL

SEC investigations, use of wiretap, **13:151**

JUDICIAL ENFORCEMENT ACTIONS

Whistleblower bounty program, **22:14**

JUDICIAL OPINIONS

See **Court Decisions** (this index)

JURISDICTION

Generally, **11:2 et seq., 12:10**

Adviser activities, **11:15**

Agent's interstate activities, **11:13**

Broker-dealer activities, **11:15**

Check clearance as interstate activity, **11:11**

Class actions, **11:42**

INDEX

JURISDICTION—Cont'd

- Cryptocurrencies, CFTC jurisdiction, **25:2**
- Defenses, **11:41**
- Derivative suits, **11:43**
- Foreign and International Transactions** (this index)
- Fraud, interstate nature of, **11:9**
- Implied Liability** (this index)
- International transactions. **Foreign and International Transactions** (this index)
- Interstate commerce, **11:3**
- Local telephone use, **11:4**
- Mails, use of, **11:6**
- Misconduct, relation of jurisdictional means to
 - Generally, **11:8 et seq.**
 - Agent's interstate activities, **11:13**
 - Check clearances, **11:11**
 - Fraud, **11:9**
 - Plaintiff's interstate activities, **11:14**
 - Transaction, **11:10, 11:12**
- Plaintiff's interstate activities, **11:14**
- Pleading, **11:38**
- Procedure, **11:39 et seq.**
- Process, **11:40**
- Scope of commerce, **11:3**
- Securities exchanges and interstate commerce, **11:7**
- Service of process, **11:40**
- Telephone use, **11:4**
- Transaction, interstate, **11:10, 11:12**
- Venue, **11:39**

JURY TRIAL

- Insiders and inside trading, Raj Rajaratnam criminal case, **21:26**

KICKSTARTER

- Crowdfunding, **14:211**

KINGATE

- Madoff feeder funds, globalization, **20:21**

KNOWLEDGE

- Generally, **8:58 et seq.**

KNOWLEDGE—Cont'd

- Access to information, reliance, **8:499**
- Actual knowledge
 - Plaintiff's knowledge, **8:244**
- Scienter
 - Generally, **8:165 et seq.**
 - Burden of proof, **8:178**
 - Criminal prosecutions, **8:176**
 - Direct-impersonal transactions, **8:171**
 - Direct-personal transactions, **8:170**
 - Indirect-impersonal transactions, **8:172**
 - Injunctions, **8:174**
 - Insufficiency of, **8:177**
 - Necessity of, **8:167, 8:168**
 - Proof, **8:179**
 - SEC decisions, **8:175**
 - Sufficiency of, **8:169 et seq.**
- Aider-abettor liability, knowledge of violation, **8:356 et seq.**
- Broker's knowledge, **14:41**
- Burden of proof, **8:66**
- Common law, **8:59**
- Comparative knowledge, **8:249**
- Constructive knowledge
 - Generally, **8:250**
 - Burden of proof, **8:189**
 - Criminal prosecutions, **8:187**
 - Injunctions, **8:185**
 - Insufficiency, **8:188**
 - Necessity, **8:182, 8:183**
 - Proof, **8:190**
 - Scienter, **8:180 et seq.**
 - SEC decisions, **8:186**
 - Sufficiency, **8:184 et seq.**
- Criminal enforcement, SEC references, **13:128**
- Defendant's knowledge
 - Broker-dealer liability, **14:41**
 - Burden of proof, **8:66, 8:84**
 - Common law, **8:59**
 - Contribution, **9:70**
 - Criminal context, **8:65**
 - Joint and several liability, **9:51**
 - Manipulation, **8:120**

KNOWLEDGE—Cont'd

Defendant's knowledge—Cont'd
 Proof, **8:67, 8:85**
 Proportionate liability, **9:51, 9:60**
 SA § 12(2), **8:64 et seq.**
 SA § 17(a), **8:83 et seq.**
 Scienter, **8:83 et seq.**
 SEC, false reports to
 Generally, **8:147 et seq.**
 Burden of proof, **8:148**
 Proof, **8:149**
 Defendant's knowledge and belief
 Broker-dealer fraud
 Burden of proof, scienter, **8:141**
 Proof, **8:142**
 Scienter, **8:142**
 Burden of proof, **8:141**
 Proof, **8:142**
 Proxy fraud
 Generally, **8:126 et seq.**
 Burden of proof, **8:127**
 Proof, **8:128**
 Scienter
 Burden of proof, **8:141**
 Proof, **8:142**
 Tender offer fraud
 Generally, **8:133 et seq.**
 Burden of proof, **8:134**
 Proof, **8:135**
 Defendant's knowledge and intent
 Blue sky laws, **8:61**
 Common law, **8:59**
 SA § 11, **8:79**
 Expertise of plaintiff, reliance, **8:497**
 Fraud on the market
 Generally, **8:520 et seq.**
 See also **Reliance** (this index)
 Intent and scienter
 Criminal prosecutions, **8:197**
 Injunctions, **8:195**
 Long-standing relationships, reliance, **8:498**
 Madoff Ponzi scheme, "knowing assistance" in fraud, **20:4 to 20:9**
 Manipulation
 Defendant's knowledge, **8:120**
 Plaintiff's knowledge, **8:122**

KNOWLEDGE—Cont'd

Misrepresentation, plaintiff's knowledge, **8:246**
 Nondisclosure, plaintiff's knowledge, **8:245**
 Plaintiff's knowledge
 Generally, **8:244 et seq.**
 Actual knowledge, **8:244**
 Blue sky laws, **8:62**
 Broker-dealer fraud
 Generally, **14:40**
 Scienter, **8:144**
 Common law, **8:60**
 Comparative knowledge, **8:249**
 Constructive knowledge, **8:250**
 Limitation of actions, **8:70, 8:251**
 Manipulation, **8:122**
 Misrepresentation, **8:246**
 Nondisclosure, **8:245**
 Proxy fraud, **8:130**
 SA § 11, **8:80**
 SA § 12(2), **8:69**
 SA § 17(a), **8:87**
 Scienter
 Generally, **8:87**
 Broker-dealer fraud, **8:144**
 Manipulation, **8:122**
 Proxy fraud, **8:130**
 Tender offers, **8:137**
 Tender offers, **8:137**
 Theoretical knowledge, **8:248**
 Privity determinations, **8:315**
 Proxy fraud
 Generally, **8:126 et seq.**
 Burden of proof, **8:127**
 Proof, **8:128**
 Purchaser's knowledge, **14:40**
 Reliance
 Generally, **8:484 et seq.**
 See also **Reliance** (this index)
 Scienter
 Generally, **8:58**
 See also **Scienter** (this index)
 Actual knowledge
 Generally, **8:165 et seq.**
 Burden of proof, **8:178**
 Criminal prosecutions, **8:176**

INDEX

KNOWLEDGE—Cont'd

Scienter—Cont'd

Actual knowledge—Cont'd

Direct-impersonal transactions,
8:171

Direct-personal transactions,
8:170

Indirect-impersonal transactions,
8:172

Injunctions, **8:174**

Insufficiency of, **8:177**

Necessity of, **8:167, 8:168**

Proof, **8:179**

SEC decisions, **8:175**

Sufficiency of, **8:169 et seq.**

Constructive knowledge

Generally, **8:180 et seq.**

Burden of proof, **8:189**

Criminal prosecutions, **8:187**

Injunctions, **8:185**

Insufficiency, **8:188**

Necessity, **8:182, 8:183**

Proof, **8:190**

SEC decisions, **8:186**

Sufficiency, **8:184 et seq.**

Criminal prosecutions

Actual knowledge, **8:176**

Constructive knowledge, **8:187**

Intent, **8:197**

Intent

Criminal prosecutions, **8:197**

Injunctions, **8:195**

Plaintiff's knowledge, **8:122**

SEC, false reports to

Generally, **8:147 et seq.**

Burden of proof, **8:148**

Proof, **8:149**

Sophistication of plaintiff, reliance
and, **8:497**

Tender offer fraud

Generally, **8:133 et seq.**

Burden of proof, **8:134**

Proof, **8:135**

Tender offers fraud actions, **8:137**

Theoretical knowledge, **8:248**

LATEST DEVELOPMENTS

Generally, **2:1 et seq.**

LATEST DEVELOPMENTS

—Cont'd

Cryptocurrency

SEC enforcement actions, **2:3**

Securities class action, **2:5**

SEC enforcement actions, **2:2, 2:3**

Securities class action, **2:4, 2:5**

LAWSON v. FMR LLC

Whistleblowers, **22:18 et seq.**

LAWYERS

See **Attorneys** (this index)

LEGALITY OR ILLEGALITY

Whistleblower bounty program,
unlawfully obtained informa-
tion, **22:12**

LEGAL TRANSACTIONS

See **Transaction Planning** (this
index)

LEGISLATIVE INTENT

See **Congressional Intent** (this
index)

LERNOUT CASE

Indirect-impersonal dealing, **7:106**

LETTERS

Advance letters

Proxy rules, **6:240**

Registration under SA, **6:241**

Cover letters, **6:243**

No-Action Letters (this index)

Transmittal letters, **6:243**

LIES TO INVESTORS

Madoff Ponzi scheme, **20:6**

LIMITATION OF ACTIONS

Generally, **8:251, 11:45 et seq.**

Accrual, one year period, **11:71 et
seq.**

Actual notice

One year period, **11:71 et seq.**

Sarbanes-Oxley Act, **11:93**

Administrative enforcement, **13:89,
13:90**

Arbitration, **15:9**

Broker-dealer liability

Generally, **14:17**

LIMITATION OF ACTIONS

—Cont'd

- Broker-dealer liability—Cont'd
 - SA § 12(a)(1), **14:25**
 - SA § 12(a)(2), **14:56**
- Class actions
 - Generally, **11:96 et seq.**
 - Tolling, **11:97**
- Discovery rule, **8:251**
 - Rejected by SEC, **13:90**
- Enforcement actions
 - Generally, **13:184 to 13:189**
 - Kokesh case decision, **13:184 to 13:189**
 - Liu v. SEC, **13:189**
- Equitable estoppel, **11:52**
- Equitable tolling, **11:100**
- Express actions
 - Generally, **11:46**
 - Broker-dealer liability, **14:17**
- Implied actions
 - Generally, **11:61 et seq.**
 - Court cases, **11:63 et seq.**
 - Cutoff, **11:64**
 - Retroactivity, **11:66, 11:70**
 - Rule 10b-5, **3:174**
 - Sarbanes-Oxley Act, **11:92**
 - Tolling, **11:65**
- Injunctions, SEC, **13:99**
- Knowledge of violation, **8:251**
- Kokesh case decision, **13:184 to 13:189**
- Literal application of statute, **11:48**
- Misleading prospectus communications, **11:54 et seq.**
- Notice, one year period, **11:71 et seq.**
- One year period
 - Generally, **11:71 et seq.**
 - Accrual, **11:71 et seq.**
 - Actual notice, **11:71 et seq.**
 - Court cases, **11:72**
 - Misleading registration statements, **11:58**
 - Notice, **11:71 et seq.**
 - Prospectus fraud, **11:48**
 - Registration fraud, **11:48**
 - SEA § 11, **11:58**
 - SEA § 12(1), **11:48**

LIMITATION OF ACTIONS

—Cont'd

- One year period—Cont'd
 - SEA § 12(2), **11:55**
 - Trigger, **11:71 et seq.**
- Oral communications, **11:54 et seq.**
- Plaintiff's knowledge of fraud, **8:70**
- Procedure, **11:60**
- Repose statute, **11:100**
- Retroactivity
 - Implied actions, **11:66, 11:70**
 - Sarbanes-Oxley Act, **11:94**
- RICO, **11:103**
- Rule 10b-5 implied liability, **3:174**
- Sarbanes-Oxley Act
 - Generally, **3:161, 11:87 et seq.**
 - Actual notice, **11:93**
 - Implied actions, **11:92**
 - Retroactivity, **11:94**
 - Securities Act express actions, **11:90**
 - Securities Exchange Act express actions, **11:91**
 - Tolling, **11:93**
- SEC
 - Administrative enforcement, **13:89, 13:90**
 - Discovery rule rejected for limitation of actions, **13:90**
 - Injunctions, **13:99**
 - Investigations, tolling requirements, **20:13**
- Securities Act
 - Generally, **11:46**
 - Equitable estoppel, **11:52**
 - Equitable tolling, **11:100**
 - Literal application of statute, **11:48**
 - One year statute, **11:48**
 - Prospectus violations, **11:47 et seq.**
 - Registration violations, **11:47 et seq.**
 - Section 11, **11:57 et seq.**
 - Section 12(1), **11:47 et seq.**
 - Section 12(2), **11:54 et seq.**
 - Three year statute, **11:53**
 - Tolling, **11:49 et seq.**

INDEX

LIMITATION OF ACTIONS

—Cont'd

- Three year period
 - Generally, **11:53, 11:82 et seq.**
 - Accrual, **11:83 et seq.**
 - Misleading registration statements, **11:59**
 - SEA § 11, **11:59**
 - Trigger, **11:83 et seq.**
- Tolling
 - Class actions, **11:97**
 - Implied actions, **11:65**
 - One year statute, **11:49 et seq.**
 - Sarbanes-Oxley Act, **11:93**
 - Trigger, one year period, **11:71 et seq.**
- Whistleblower bounty program, original information, **22:8, 22:12**

LIQUIDATIONS

- Buyer-seller requirements, **5:119**

LIQUIDATION VALUE

- Value indicators generally, **5:163**

LODGING EXPENSES

- Foreign Corrupt Practices Act (FCPA), **19:4**

LOOMI LAMPSHADE

- Crowdfunding, **14:211**

LORENZO v. SEC

- Dissemination of material false information, liability for, *Lorenzo v. SEC*, **8:346**

LOSS CAUSATION

- Causation** (this index)

MADOFF PONZI SCHEME

- Generally, **20:1 et seq.**
- A. Ezra Merkin feeder funds, **20:18**
- Access International, globalized feeder funds, **20:21**
- Accountants. Civil actions against accounts for feeder funds, below
- Accounting firm, **20:9**
- Ad hoc sales force, feeder funds as, **20:16**
- Advertising, **20:2**

MADOFF PONZI SCHEME

—Cont'd

- Affiliated individuals
 - Generally, **20:4**
 - Accountant, **20:9**
 - “Back-office” employees, **20:9**
 - Brother’s role in fraud, **20:5**
 - Business associates, **20:6 to 20:8**
 - Director of operations, **20:8**
 - Director of trading, **20:8**
 - Family members, **20:5**
 - Fiduciary liability of Madoff family members, **20:5**
 - Former Chief Financial Officer, **20:8**
 - Frank DiPascali, Jr., business associate, **20:6**
 - Marriage of Madoff niece to SEC regulator viewed as conflict of interest, **20:5**
 - Niece’s role in fraud, **20:5**
 - “Omissions” provision of federal Rule 10b-5(b), **20:5**
 - Perjury, **20:6**
 - Senior executives, **20:5**
 - Sons’ role in fraud, **20:5**
 - Spouse’s role in fraud, **20:5**
 - Supervisors of stock trading desks, **20:5**
 - Technology expert, **20:5**
 - Wife’s role in fraud, **20:5**
- Affinity fraud, **20:3**
- Aggregate accounting, **20:6**
- Aiding and abetting breach of fiduciary duty, **20:5**
- Alternate account statements, **20:6**
- Analysis of tips, complaints and referrals, Office of Market Intelligence, **20:14**
- Appointment of third party custodian for client assets, **20:2**
- Artistic projects, **20:3**
- Asset Management Unit, **20:12**
- Attempt to evade federal income taxes, **20:6**
- Auditor independence forfeiture, **20:9**
- Average annual returns, **20:2**
- “Back-office” employees, **20:9**

MADOFF PONZI SCHEME

—Cont’d

Banco Santander, globalized feeder funds, **20:21**
 Breach of fiduciary duty, **20:5**
 Business associates, **20:6**
 Charitable foundations, **20:3**
 Chief Financial Officer, **20:6**
 Citibank, action against by Trustee Picard
 Court responses, **20:41**
 Loans, swaps, and instrument derivatives tied to Madoff, **20:42**
 Civil actions against accountants for feeder funds
 Generally, **20:25**
 Claims of negligence and/or negligent misrepresentations, **20:28 to 20:31**
 Claims under federal securities laws, **20:26**
 Common law fraud claims, **20:27**
 GAAS and GAAP violations, **20:32**
 Lack of privity, **20:29**
 N.Y. Martin Act preemption, **20:31**
 Presence of privity, **20:30**
 Privity, **20:29, 20:30**
 Cohmad Securities Corporation, in-house feeder fund, **20:22**
 Collection of tips, complaints and referrals, Office of Market Intelligence, **20:14**
 Compensation
 Accounting firm, **20:9**
 Business associates, **20:6**
 Certain family members, **20:5**
 Computation. Investor compensation, methods of computing, below
 Complaints, screening by Office of Market Intelligence, **20:14**
 Compliance counsel, **20:5**
 Computer programmers, **20:7**
 Computing customer payments.
 Investor compensation, methods of computing, above
 Concealment of fraud, **20:2**

MADOFF PONZI SCHEME

—Cont’d

Conduct of SEC investigations and examinations, **20:10**
 Conflict of interest, marriage of family member to SEC regulator, **20:5**
 Consistency of returns, **20:2**
 Conspiracy, **20:6**
 Controlling person liability, **20:5**
 Cooperation agreements, **20:15**
 Cooperation by target, **20:15**
 Cover-up, **20:6**
 Credibility of operation, **20:2**
 Criminal enforcement authorities, information sharing by Office of Market Intelligence, **20:14**
 Custodian for client assets, **20:2**
 Customer account statements, misrepresentations, **20:5**
 “Customer” under Securities Investor Protection Act, **20:3, 20:24**
 Deferred prosecution agreements, **20:15**
 JPMorgan, **10:5**
 Delay of SEC investigations, **20:10**
 Depository Trust Corporation BMIS account, **20:6**
 Dereliction of duties
 Accounting and auditing duties, **20:9**
 Executive duties, **20:5**
 Director of operations, **20:8**
 Distribution of feeder funds losses to investors, **20:23**
 Dorothy Jo account, **20:6**
 DTC reports falsified, **20:6**
 Dual roles, feeder funds investment manager, **20:19**
 Due diligence failure, **20:17, 20:18**
 Elements, **20:2**
 Enforcement Manual 2010 revisions, **20:15**
 Evaluation of cooperation by individuals, **20:15**
 Examinations by SEC, **20:2**
 Exclusivity of funds, **20:2**
 Experience of SEC investigative personnel, **20:10**

INDEX

MADOFF PONZI SCHEME

—Cont'd

Expertise of SEC investigators, **20:12**
Fairfield Greenwich Group, feeder fund, **20:17**
Falsified books and records, **20:6**
Falsifying records, **20:6**
Family members, **20:5**
Federal agencies, information sharing by Office of Market Intelligence, **20:14**
Feeder funds
 Access International, globalization, **20:21**
 Ad hoc sales force, **20:16**
 A.Ezra Merkin, misrepresentation to investors, **20:18**
 Arbitration awards, **20:18**
 Banco Santander, globalization, **20:21**
 Civil actions against accountants for feeder funds, above
 Cohmad Securities Corporation, **20:22**
 Concealment of fraud, **20:2**
 Depth of pocket, **20:20**
 Dual roles of investment manager, **20:19**
 Due diligence, failure, **20:17**, **20:18**
 Fairfield Greenwich Group, **20:17**
 Financial resources, **20:20**
 Globalization, **20:21**
 Independent scrutiny, **20:16**
 Individualized loss treatment, **20:23**
 In-house feeder fund, **20:22**
 Insurance policy information, **20:24**
 Investigation of red flags, failure, **20:17**
 Kingate, globalization, **20:21**
 Losses, passing to investors, **20:23**
 Misrepresentations to investors, **20:18**
 Net investment method, distribution of losses to investors, **20:23**
 Passing losses to investors, **20:23**

MADOFF PONZI SCHEME

—Cont'd

Feeder funds—Cont'd
 Picower settlement, **20:24**
 Profits raising red flags, **20:19**
 Protection under PSLRA, **20:18**
 Protective buffer, **20:16**
 Red flags, failure to investigate, **20:17**
 Restatement method, distribution of losses to investors, **20:23**
 SIPC, definition of customer, **20:24**
 Sonja Kohn, Austrian banker, **20:21**
 Stanley Chai, **20:19**
 Tremont-Rye, **20:20**
 Valuation method, distribution of losses to investors, **20:23**
Fees charged by feeder funds, **20:24**
Fiduciary liability of Madoff family members, **20:5**
Financial incentives, **20:2**
Focus of SEC examinations, **20:10**
Foreign Corrupt Practices Act Unit, **20:12**
Form ADV, **20:6**
Former Chief Financial Officer, **20:8**
Forms 13-F, **20:6**
Framework for evaluation of cooperation by individuals, **20:15**
Friedling & Horowitz, auditors, **20:1**, **20:9**
Funding to scientific and medical projects, depletion, **20:3**
Generation of random numbers, **20:6**
Global fraud, **20:1 et seq.**
Globalized feeder funds, **20:21**
HSBC Bank, action against by Trustee Picard, court responses, **20:40**
In-house feeder fund, **20:22**
Insurance policy information, **20:24**
Integration of broker-dealer and investment management examinations within SEC investigations, **20:13**

MADOFF PONZI SCHEME

—Cont'd

Internal communications within SEC investigations, **20:10**
 Internal SEC investigation procedures, streamlining, **20:13**
 International money laundering, **20:6**
 Investment adviser fraud, generally, **20:6**
 Investor compensation, methods of computing
 Clawback claims against investors who withdrew more than they deposited, **20:35**
 Inflation and net equity, **20:36**
 Interest and net equity, **20:36**
 Net losers v. net winners, **20:34**
 Second Circuit decision, net losers v. net winners, **20:34**
 Trustee Picard, generally, **20:33**
 JP Morgan Chase & Co.
 Action against Madoff's primary bank by Trustee Picard, court responses, **20:39**
 Deferred prosecution agreements, **10:5**
 Kingate, globalization of feeder funds, **20:21**
 "Knowing assistance" in fraud, **20:4 to 20:9**
 Lies to investors, **20:6**
 Losses of feeder funds, passing to investors, **20:23**
 Mail fraud, **20:6**
 Mailings to investors, **20:6**
 Market Abuse Unit, **20:12**
 Marriage of family member to SEC regulator, **20:5**
 Material misrepresentations, **20:9**
 Merrill, action against by Trustee Picard, court responses, **20:41**
 Misrepresentations
 Accounting firm, **20:9**
 Customer account statements, **20:5**
 Feeder funds, **20:18**
 Promotional materials, **20:5**
 SEC filings, **20:5**

MADOFF PONZI SCHEME

—Cont'd

Monitoring of tips, complaints and referrals, Office of Market Intelligence, **20:14**
 Municipal Securities and Public Pensions Unit, **20:12**
 Net investment method, distribution of losses to investors, **20:23**
 Non-investment advisory component of BMIS, **20:8**
 Office of Compliance Inspections and Examinations (OCIE), **20:2, 20:5**
 Office of Market Intelligence
 Analysis of tips, complaints and referrals, **20:14**
 Collection of tips, complaints and referrals, **20:14**
 Criminal enforcement authorities, **20:14**
 Federal agencies, **20:14**
 Monitoring of tips, complaints and referrals, **20:14**
 Priority criteria, **20:14**
 Risk criteria, **20:14**
 Screening of tips, complaints and referrals, **20:14**
 Self-regulatory organizations, **20:14**
 State agencies, **20:14**
 "Omissions" provision of federal Rule 10b-5(b), **20:5**
 Perjury, **20:6**
 Picower settlement, **20:24**
 Priority criteria, Office of Market Intelligence, **20:14**
 Proffer agreements, **20:15**
 Promotional materials, misrepresentations, **20:5**
 Protective buffer, feeder funds as, **20:16**
 Public pension funds, depletion, **20:3**
 Random numbers generation, **20:6**
 Redemptions to investors, **20:2, 20:3, 20:6**
 Red Flags, **20:5, 20:17**
 Listing, **20:5**
 During SEC investigations, **20:10**

INDEX

MADOFF PONZI SCHEME

—Cont'd

Referrals, screening by Office of Market Intelligence, **20:14**
Registration as investment adviser, **20:6**
Regulatory oversight failure, **20:2**
Resolutions of SEC examiners, **20:10**
Restatement method, distribution of losses to investors, **20:23**
Retirement funds, depletion, **20:3**
Risk criteria, Office of Market Intelligence, **20:14**
Scope of SEC investigations, **20:10**
SEC filings, misrepresentations, **20:5**
SEC investigations
 Accounting firm, **20:9**
 Adoption of changes, **20:11**
 Asset Management Unit, **20:12**
 Assistance provided, **20:15**
 Bounties to whistleblowers, **20:15**
 Business associates, **20:6**
 Changes, **20:11**
 Collateral horrors, **20:15**
 Company cooperation, **20:15**
 Concealment of fraud, **20:2**
 Conduct of investigations and examinations, **20:6, 20:10**
 Cooperation, **20:15**
 Cooperation agreements, **20:15**
 Deferred prosecution agreements, **20:15**
 Delay, **20:10**
 Encouraging cooperation, **20:15**
 Enforcement Manual 2010 revisions, **20:15**
 Experience of investigative personnel, **20:10**
 Expertise of investigator, **20:12**
 Feeder funds, **20:16 et seq.**
 Focus of examinations, **20:10**
 Foreign Corrupt Practices Act Unit, **20:12**
 Fostering cooperation, **20:15**
 Framework for evaluation of cooperation, **20:15**
 Integration of broker-dealer and investment management examinations, **20:13**

MADOFF PONZI SCHEME

—Cont'd

SEC investigations—Cont'd
 Internal communications, **20:10**
 Internal procedures, streamlining, **20:13**
 Market Abuse Unit, **20:12**
 Municipal Securities and Public Pensions Unit, **20:12**
 Nonprosecution agreements, **20:15**
 Office of Market Intelligence, **20:14**
 Proffer agreements, **20:15**
 Red flags during investigations, **20:10**
 Remediation by target, **20:15**
 Resolutions of examinations, **20:10**
 Restricted immunity offers, **20:15**
 Risks of cooperation, **20:15**
 Scope of investigations, **20:10**
 Seaboard Report, **20:15**
 Self-policing by target, **20:15**
 Self-reporting by target, **20:15**
 Sharing information with other agencies, etc., **20:14**
 Shortening of Wells process, **20:13**
 Specialization of investigators, **20:12**
 Specialized units, **20:12**
 Staffing, **20:10**
 Staff performance evaluation, **20:13**
 Streamlining structure and procedures, **20:13**
 Structured and New Products Unit, **20:12**
 Tips and connections between tips, **20:14**
 Tolling requirements, **20:13**
 Training, **20:12**
 Web site for post-Madoff reforms, **20:13**
 Wells submissions, timeframe, **20:13**
 Whistleblowers, **20:14, 20:15**
SEC staff performance evaluation, **20:13**
Section 10(b) and Rule 10b-5, **20:5**

MADOFF PONZI SCHEME

—Cont'd

Securities Investor Protection Act and Corporation, definition of “customer,” **20:3, 20:24**

Self-regulatory organizations, information sharing by Office of Market Intelligence, **20:14**

Senior executives, **20:5**

703 slush fund, **20:6**

Shared ethnic and religious bonds, **20:3**

Shifting counterparties, **20:6**

Shortening of Wells process, **20:13**

Should have known, **20:5**

Silence as to investment with firms, **20:2**

SIPC, definition of customer, **20:24**

‘Social status’ of funds, **20:2**

Sonja Kohn and global feeder funds, **20:21**

Special accounts, **20:6**

Specialization of SEC investigators, **20:12**

Specialized SEC investigation units, **20:12**

Split-strike conversion, **20:6**

Spouse’s role in fraud, **20:5**

Staffing of SEC investigations, **20:10**

State agencies, information sharing by Office of Market Intelligence, **20:14**

Stature in securities industry, **20:2**

Streamlining SEC investigation structure and procedures, **20:13**

Structured and New Products Unit, **20:12**

Suicide by investors, **20:3**

Supervisors of stock trading desks, **20:5**

Tax evasion, **20:6**

Tax fraud, **20:9**

Technical support to falsify documents, **20:7**

Technology expert, **20:5**

Third party custodian for client assets, **20:2**

Third party verification of returns, **20:2**

MADOFF PONZI SCHEME

—Cont'd

Tips and connections between tips, Office of Market Intelligence, **20:14**

Tolling requirements for SEC investigations, **20:13**

Training of SEC investigators, **20:12**

Transhumanism project, **20:3**

Tremont-Rye feeder funds, **20:20**

Trustee Picard

- Actions against banks involved with Madoff, **20:38 to 20:41**

Citibank

- Action against, **20:41**
- Action against banks, **20:42**

Compensation for investors, methods of computing, **20:33 to 20:37**

Court responses

- Citibank, action against, **20:41**
- HSBC Bank, action against, **20:40**
- JP Morgan Chase & Co., action against Madoff’s primary bank, **20:39**
- Merrill, action against, **20:41**
- HSBC Bank, action against, **20:40**
- JP Morgan Chase & Co., action against Madoff’s primary bank, **20:39**
- Merrill, action against banks, **20:41, 20:42**

Valuation method, distribution of losses to investors, **20:23**

Verification of returns with independent third-parties, **20:2**

Victims, **20:3**

Web site for post-Madoff reforms, **20:13**

Wells submissions, timeframe, **20:13**

Whistleblowers, **20:14, 20:15**

Wire fraud, **20:6**

Withdrawal of funds in timely manner, **20:2, 20:3**

MAIL AND WIRE FRAUD

Insider trading

- Generally, **7:171, 7:463**

INDEX

MAIL AND WIRE FRAUD—Cont'd

- Insider trading—Cont'd
 - Misappropriation theory, **7:594**
 - Scienter, **7:413**
- Madoff Ponzi scheme, **20:6**

MANAGEMENT

- Directors, Corporate** (this index)
- Mismanagement** (this index)
- Mutual fund violations, **17:19**
- Officers, Corporate** (this index)

MANAGEMENT DISCUSSION AND ANALYSIS (MD&A)

- Administrative enforcement, **7:13**
- Private actions, **7:17**

MANIPULATION

- Generally, **7:118 et seq., 8:102 et seq.**
- Accumulation of stock, **7:134**
- Actual or apparent trading, **7:124**
- Burden of proof, **8:104**
- Circular trading, **7:135**
- Cornering the market, **7:134**
- Cross trading, **7:135**
- Defendant's intent, **8:119**
- Defendant's knowledge, **8:120**
- Defendant's purpose
 - Generally, **8:103 et seq.**
 - Burden of proof, **8:104**
 - Defense of proper purpose, **8:118**
 - Direct evidence, **8:106**
 - Indirect evidence, **8:107**
 - Large blocks, **8:108**
 - Large proportion of trading, **8:109**
 - Painting the tape, **8:110**
 - Playoff of markets, **8:114**
 - Price action, **8:113**
 - Profit, **8:115**
 - Proof, **8:105**
 - Proper purpose as defense, **8:118**
 - Stimulating demand, **8:110, 8:111**
 - Suppressing supply, **8:112**
- Defendant's willfulness, **8:121**
- Definition, **7:119**
- Depressing prices, **7:124**
- Federal securities laws, **7:120**

MANIPULATION—Cont'd

- Front running
 - Generally, **7:139 et seq.**
 - Court cases, **7:142**
 - SEC interpretations
 - Generally, **7:140**
 - Decisions, **7:142**
 - SRO interpretations
 - Generally, **7:140**
 - Criticisms, **7:141**
 - Decisions, **7:142**
 - Insider trading, **7:168**
- Indirect-impersonal dealing, **7:113**
- Joint and several liability, **9:28**
- Madoff Ponzi scheme, **20:6**
- Margin requirements, parking to avoid, **7:148**
- Matched orders, **7:121**
- Materiality, **8:54**
- Painting the tape, **7:132, 8:110**
- Parking
 - Generally, **7:143 et seq.**
 - Capital requirements, use to avoid, **7:147**
 - Control fights, use in, **7:146**
 - Definitions, **7:144**
 - Margin requirements, parking to avoid, **7:148**
 - Record keeping violations, **7:149**
 - Tax evasion uses, **7:150**
- Pegging, **7:136**
- Plaintiff's knowledge, **8:122**
- Playoff of markets, **8:114**
- Price action, **8:113**
- Proof, **8:105**
- Raising prices, **7:124**
- Rule 10b-5
 - Generally, **7:130 et seq.**
 - Accumulation of stock, **7:134**
 - Capping, **7:136**
 - Circular trading, **7:135**
 - Control, **7:138**
 - Cornering the market, **7:134**
 - Cross trading, **7:135**
 - Domination, **7:138**
 - Front running, above
 - Marking the close, **7:131**
 - Painting the tape, **7:132**

MANIPULATION—Cont'd

- Rule 10b-5—Cont'd
 - Parking, above
 - Pegging, **7:136**
 - Short selling, **7:137**
 - Successive activity price manipulations, **7:133**
- SEA § 9(a)(1), **7:121**
- SEA § 9(a)(2)
 - Generally, **7:122 et seq.**
 - Actual or apparent trading, **7:124**
 - Depressing prices, **7:124**
 - Purpose, **7:125**
 - Raising prices, **7:124**
 - Series of transactions, **7:123**
- SEA § 9(a)(3), **7:126**
- SEA § 9(a)(4), **7:126**
- SEA § 9(a)(5), **7:126**
- SEA § 9(a)(6), **7:127**
- SEA § 9(b), **7:128**
- SEA § 9(e), **7:129**
- Securities Exchange Act materiality requirement, **8:54**
- Short selling, **7:137**
- Stimulating demand, **8:110**
- Successive activity price manipulations, **7:133**
- Suppressing supply, **8:112**
- Wash sales, **7:121**

MARGIN RULES

- Generally, **14:59**
- Arbitration, use in, **14:61**
- Court cases, **14:60**
- NASD risk disclosure requirements for margin trading, **6:286**
- Parking to avoid, **7:148**
- SEA § 7, **14:59**

MARKET ABUSE UNIT

- SEC investigations, **20:12**

MARKET IMPACT

- Materiality tests, **8:21**

MARKET INSIDERS

- Generally, **7:575**

MARKET MANIPULATION

- See **Manipulation** (this index)

MARKETS

- See **Exchanges** (this index)

MARKET TIMING

- See **Mutual Fund Violations** (this index)

MARKET TRADES

- Indirect-Impersonal Dealing** (this index)

MARKING THE CLOSE

- Manipulation, **7:131**

MARKUPS AND MARKDOWNS

- See **Broker-Dealer Liability** (this index)

MARTHA STEWART CASE

- Generally, **7:403 et seq.**
- Acquittal, **7:411**
- Background of case, **7:404**
- Imclone stock sale, generally, **7:404**
- Indictment, **7:405**
- Inferences from evidence, **7:409**
- Insiders and inside trading, generally, **7:403 et seq.**
- Intent inference test, **7:410**
- Limits on argument and evidence, **7:407**
- Misrepresentation, **7:406**
- Scienter, generally, **7:403 et seq.**
- Sufficiency of evidence test, **7:408**

MARTIN ACT SUITS

- Coordinated investigations following subprime mortgage crisis, **13:336, 13:337**

MATCHED ORDERS

- Manipulation, **7:121**

MATERIALITY

- Generally, **6:165 et seq., 6:248 et seq., 8:4 et seq.**
- Aggregate, **6:253, 7:225**
- Blue sky law, **8:7**
- Broker-dealer liability, **14:82**
- Burden of proof, **7:226**
- Compensation, private actions, **8:43**
- Component tests, **8:15**
- Contingent information factor, **8:36**

INDEX

MATERIALITY—Cont'd

- Definition, **8:9**
- Enron connection, **8:40**
- Evidence inside information, **7:229 et seq.**
- Factors
 - Generally, **8:33 et seq.**
 - Compensation, interference from, **8:43**
 - Contingent information, **8:36**
 - Enron connection, **8:40**
 - Federal security law, **8:33 et seq.**
 - GAAP, **8:42, 8:44**
 - Interference from compensation and profits, **8:43**
 - Intersection with scienter and GAAP, **8:44**
 - Miscellaneous factors, **8:48**
 - Other elements, relation to, **8:39 et seq.**
 - Profits, interference from, **8:43**
 - Public information, relation to, **8:38**
 - Puffery, **8:35**
 - Quantity, **8:47**
 - Related party reporting and GAAP, **8:42**
 - Reliability, **8:34**
 - Scienter, **8:44, 8:45**
 - Soft information, **8:37**
 - Specificity, **8:35**
 - Time factors, **8:46**
 - Vagueness, **8:35**
- Federal security law
 - Factors, **8:33 et seq.**
 - Tests of, **8:8 et seq.**
- GAAP, **8:42, 8:44**
- Graduations of materiality, **7:224**
- Inside information
 - Generally, **7:218 et seq.**
 - Acquisitions
 - Negotiations, **7:262 et seq.**
 - Nonnegotiated, **7:270**
 - Actual market impact after release, **7:236**
 - Burden of proof, **7:226**
 - Dividend information, **7:247**
 - Evidence, **7:229 et seq.**

MATERIALITY—Cont'd

- Inside information—Cont'd
 - Expectations, relation to, **7:233**
 - Factors, **7:229 et seq.**
 - Graduations of materiality, **7:224**
 - Law or fact issue, **7:227**
 - Magnitude relative to company, **7:230**
 - Market release, actual impact of, **7:236**
 - Probability relative to company, **7:230**
 - Proof, **7:226**
 - Public disclosure and materiality, **7:280**
 - Public information, relation of inside information to, **7:234**
 - Readily available information compared, **7:234**
 - Reasonable investor test
 - Generally, **7:221**
 - Substantial market impact test compared, **7:223**
 - Regulation FD triggering disclosures, **7:535**
 - Relation to expectations, **7:233**
 - Reliability, **7:231**
 - Specificity, **7:232**
 - Standard of proof, **7:228**
 - Substantial market impact test
 - Generally, **7:222**
 - Reasonable investor test compared, **7:223**
- Tests of materiality
 - Generally, **7:219 et seq.**
 - Aggregate materiality test, **7:225**
 - Graduations of materiality, **7:224**
 - Mosaic theory, **7:225**
 - Reasonable investor test
 - Generally, **7:221**
 - Substantial market impact test compared, **7:223**
 - Significant alteration of total mix, **7:221**
 - Substantial market impact test
 - Generally, **7:222**

MATERIALITY—Cont'd

- Inside information—Cont'd
 - Tests of materiality—Cont'd
 - Substantial market impact test—Cont'd
 - Reasonable investor test compared, **7:223**
 - Use as test of materiality, **7:235**
 - Interference from compensation and profits, **8:43**
 - Intersection with scienter and GAAP, **8:44**
 - Law and fact questions, **8:23**
 - Madoff Ponzi scheme, **20:9**
 - Magnitude relative to company, **7:230**
 - Market impact test, **8:21**
 - Merger challenges, **6:165 et seq.**
 - Might, use of term, **6:249**
 - Might test
 - Mills case, **8:13**
 - Would test compared, **8:12**
 - Mosaic theory, **7:225**
 - Pleading and proof, **5:107**
 - Practical problems, **6:251**
 - Private actions
 - Generally, **8:4 et seq.**
 - Accumulation of information, **8:27**
 - Blue sky law, **8:7**
 - Causation, **8:31**
 - Class certification, **8:550**
 - Common law tests, **8:6**
 - Company publicity, **8:28**
 - Component tests, **8:15**
 - Contingent information factor, **8:36**
 - Court's view, **8:26**
 - Definition, **8:9**
 - Dissemination of material false information, liability for, **Lorenzo v. SEC, 8:346**
 - Enron connection, **8:40**
 - Factors
 - Generally, **8:33 et seq.**
 - Compensation, interference from, **8:43**
 - Contingent information, **8:36**
 - Enron connection, **8:40**

MATERIALITY—Cont'd

- Private actions—Cont'd
 - Factors—Cont'd
 - Federal security law, **8:33 et seq.**
 - GAAP, **8:42, 8:44**
 - Interference from compensation and profits, **8:43**
 - Intersection with scienter and GAAP, **8:44**
 - Miscellaneous factors, **8:48**
 - Other elements, relation to, **8:39 et seq.**
 - Profits, interference from, **8:43**
 - Public information, relation to, **8:38**
 - Puffery, **8:35**
 - Quantity, **8:47**
 - Related party reporting and GAAP, **8:42**
 - Reliability, **8:34**
 - Scienter, **8:44, 8:45**
 - Soft information, **8:37**
 - Specificity, **8:35**
 - Time factors, **8:46**
 - Vagueness, **8:35**
 - Federal security law
 - Factors, **8:33 et seq.**
 - Tests of, **8:8 et seq.**
 - Flexibility, **8:25**
 - GAAP, **8:42, 8:44**
 - Individual responses to information, High Court recognition, **8:29**
 - Intersection with scienter and GAAP, **8:44**
 - Law and fact questions, **8:23**
 - Market impact test, **8:21**
 - Materiality of alleged misrepresentation, **8:550**
 - Might test
 - Mills case, **8:13**
 - Would test compared, **8:12**
 - Probability-magnitude test, **8:19**
 - Product liability suits, **8:28**
 - Professional views, **8:31**
 - Proxy fraud, **8:56**
 - Puffery, **8:35**

INDEX

MATERIALITY—Cont'd

Private actions—Cont'd

Quantitative factors, **8:47**

Reasonable investors react like professionals, **8:32**

Related party reporting and GAAP, **8:42**

Reliability factor, **8:34**

Reliance

Generally, **8:507**

Distinctions, **8:519**

Presumptive reliance and materiality of omissions, **8:509**

Substitutions of theories, **8:524**

Reviewed, **8:24**

Scienter, **8:44, 8:45**

Securities Act

Generally, **8:49 et seq.**

Registration fraud, **8:51**

Sales fraud, **8:50, 8:52**

Section 11, **8:51**

Section 12(a)(2), **8:50**

Section 17(a), **8:52**

Tests of, **8:10**

Securities Exchange Act

Generally, **8:53 et seq.**

Market manipulation, **8:54**

Proxy fraud, **8:56**

Section 9(a), **8:54**

Section 10, **8:55**

Section 14, **8:57**

Tender offer fraud, **8:57**

Tests of, **8:11**

Soft information factor, **8:37**

Specificity factor, **8:35**

State laws, **8:7**

Statistics, **8:30, 8:31**

Tests of

Generally, **8:8 et seq.**

Accumulation of information, **8:27**

Causation, **8:31**

Company publicity, **8:28**

Component tests, **8:15**

Court's view, **8:26**

Definition, **8:9**

MATERIALITY—Cont'd

Private actions—Cont'd

Tests of—Cont'd

Extension to other provisions, **8:16**

Fact vs information, **8:20**

Federal security law, **8:8 et seq.**

Flexibility, **8:25**

Individual responses to information, High Court recognition, **8:29**

Information vs fact, **8:20**

Law and fact questions, **8:23**

Market impact test, **8:21**

Might test

Mills case, **8:13**

Would test compared, **8:12**

Mills case, **8:13**

Parties, nature of, **8:17**

Probability-magnitude test, **8:19**

Product liability suits, **8:28**

Professional views, **8:31**

Reasonable investors react like professionals, **8:32**

Reviewed, **8:24**

Securities Act, **8:10**

Securities Exchange Act, **8:11**

Statistics, **8:30, 8:31**

Time of determination, **8:22**

Transaction, nature of, **8:18**

TSC cases, **8:14**

Violation, nature of, **8:17**

Would test

Might test compared, **8:12**

TSC cases, **8:14**

Zicam, **8:27, 8:28**

Time factors, **8:46**

Vagueness factor, **8:35**

Would test

Might test compared, **8:12**

TSC cases, **8:14**

Zicam, **8:27, 8:28**

Probability-magnitude test, **8:19**

Probably would, use of term, **6:250**

Profits, private actions, **8:43**

Proxy fraud, **8:56**

Public disclosure and materiality, **7:280**

MATERIALITY—Cont'd

- Puffery, **8:35**
- Quantitative factors, **8:47**
- Readily available information compared, **7:234**
- Reasonable investor test
 - Generally, **7:221**
 - Substantial market impact test compared, **7:223**
- Regulation FD triggering disclosures, **7:535**
- Related party reporting and GAAP, **8:42**
- Reliability
 - Generally, **8:34**
 - Inside information, **7:231**
- Reliance
 - Generally, **8:507**
 - Distinctions, **8:519**
 - Presumptive reliance and materiality of omissions, **8:509**
 - Substitutions of theories, **8:524**
- Rule 10b-5
 - Generally, **6:168**
 - Violations, materiality of, **12:2**
- Rule 14a-9, **6:166**
- Rule 14c-6, **6:167**
- Safe harbor for predictions and projections, **7:35, 7:38**
- Scienter, **8:44, 8:45**
- Securities Act
 - Generally, **8:49 et seq.**
 - Registration fraud, **8:51**
 - Sales fraud, **8:50, 8:52**
 - Section 11, **8:51**
 - Section 12(a)(2), **8:50**
 - Section 17(a), **8:52, 8:442**
 - Tests of, **8:10**
- Securities Exchange Act
 - Generally, **8:53 et seq.**
 - Market manipulation, **8:54**
 - Proxy fraud, **8:56**
 - Section 9(a), **8:54**
 - Section 10, **8:55**
 - Section 14, **8:57**
 - Tender offer fraud, **8:57**
 - Tests of materiality, **8:11**

MATERIALITY—Cont'd

- Selective disclosures, materiality of, **7:535**
- Soft information factor, **8:37**
- Specific items, materiality of, **6:252**
- Specificity
 - Generally, **8:35**
 - Inside information, **7:232**
- State laws, **8:7**
- Substantial market impact test
 - Generally, **7:222**
 - Reasonable investor test compared, **7:223**
- Tests of
 - Generally, **7:219 et seq.**
 - Aggregate materiality test, **7:225**
 - Graduations of materiality, **7:224**
 - Mosaic theory, **7:225**
 - Reasonable investor test
 - Generally, **7:221**
 - Substantial market impact test compared, **7:223**
 - Significant alteration of total mix, **7:221**
 - Substantial market impact test
 - Generally, **7:222**
 - Reasonable investor test compared, **7:223**
- Time factors, **8:46**
- Use of inside information as test of materiality, **7:235**
- Vagueness factor, **8:35**
- Weiss decision, lawyers issuing improper legal opinions, **8:442**
- Would test
 - Might test compared, **8:12**
 - TSC cases, **8:14**
 - Use of term generally, **6:249**

MATERIAL NONPUBLIC INFORMATION (MNPI)

- Generally, **7:152**
- See also **Insiders and Insider Trading** (this index)

MCAFEE, INC.

- Backdating of stock options, **18:11**

MCCARRAN ACT

- Generally, **6:203**

INDEX

MCNULTY DECISION

SEC investigations, **13:48, 13:65**

MD&A

See **Management Discussion and Analysis** (this index)

MEDIATION

Generally, **15:69**

MERCURY INTERACTIVE CORP.

Backdating of stock options, **18:1, 18:10**

MERGERS

Generally, **6:146 et seq.**

See also **Acquisitions** (this index)

Antifraud provisions

Generally, **6:158 et seq.**

Buyer-seller requirement, **6:182**

Causation

Generally, **6:179 et seq.**

Rule 10b-5, **6:181**

Rule 14a-9, **6:179**

Rule 14c-6, **6:180**

Comparative language, **6:164**

Connection requirement

Generally, **6:183 et seq.**

Rule 10b-5, **6:185**

Rule 14a-9, **6:183**

Rule 14c-6, **6:184**

Federal laws generally, **6:151**

Jurisdictional means

Generally, **6:188 et seq.**

Rule 10b-5, **6:190**

Rule 14a-9, **6:188, 6:189**

Materiality standard

Generally, **6:165 et seq.**

Rule 10b-5, **6:168**

Rule 14a-9, **6:166**

Rule 14c-6, **6:167**

Operation, areas of, **6:163**

Private actions, **6:160 et seq.**

Privity

Generally, **6:172 et seq.**

Rule 10b-5, **6:175**

Rule 14a-9, **6:173**

Rule 14c-6, **6:174**

Reliance

Generally, **6:176 et seq.**

MERGERS—Cont'd

Antifraud provisions—Cont'd

Reliance—Cont'd

Rule 10b-5, **6:178**

Rule 14a-9, **6:176**

Rule 14c-6, **6:177**

Rule 10b-5

Causation, **6:181**

Jurisdictional means, **6:190**

Materiality standard, **6:168**

Private actions, **6:162**

Privity, **6:175**

Relation of proxy rules to, **6:159 et seq.**

Reliance, **6:178**

Scienter standard, **6:171**

Rule 14a-9

Causation, **6:179**

Jurisdictional means, **6:188, 6:189**

Materiality standard, **6:166**

Private actions, **6:160**

Privity, **6:173**

Reliance, **6:176**

Scienter standard, **6:169**

Rule 14c-6

Causation, **6:180**

Materiality standard, **6:167**

Private actions, **6:161**

Privity, **6:174**

Reliance, **6:177**

Scienter standard, **6:170**

Scienter standard

Generally, **6:169 et seq.**

Rule 10b-5, **6:171**

Rule 14a-9, **6:169**

Rule 14c-6, **6:170**

SEA § 14(e), **6:186**

Securities Act, **6:187**

State law

Generally, **6:191 et seq.**

Appraisal rights, **6:192, 6:193**

Delaware law, **6:196**

Effect of merger or dissolution, **6:194**

Equitable approach, **6:197**

Standing approach, **6:196**

Violations covered, **6:164**

MERGERS—Cont'd

- Appraisal rights, state law, **6:192, 6:193**
- Background, **6:148 et seq.**
- Buyer-seller requirements, **5:118**
- Congressional intent
 - Generally, **6:154 et seq.**
 - Information statement rules, **6:156**
 - Proxy rules, **6:155**
 - Rule 10b-5, **6:157**
 - SEA § 14(a), **6:155**
 - SEA § 14(c), **6:156**
- Cybersecurity, **26:2**
- Definition, **6:147**
- Federal laws
 - Generally, **6:149**
 - Antifraud provisions, **6:151**
 - Foreign Corrupt Practices Act (FCPA), mitigation of risks, **19:15**
 - Proxy rules, **6:150**
 - SA registration requirements, **6:152**
- Foreign Corrupt Practices Act (FCPA), mitigation of risks, **19:15**
- Investment Bankers** (this index)
- Private actions
 - Generally, **6:160 et seq.**
 - Rule 10b-5, **6:162**
 - Rule 14a-9, **6:160**
 - Rule 14c-6, **6:161**
- Proxy solicitations
 - Generally, **6:146 et seq., 6:198 et seq.**
- See also **Proxy Fraud** (this index)
- Securities covered
 - Generally, **6:199 et seq.**
 - Insurance companies
 - Generally, **6:201**
 - Antifraud provisions, federal, **6:204**
 - Federal and state rules, **6:202**
 - McCarran Act, **6:203**
 - Investment companies, **6:205**
 - Public utility holding companies, **6:206**
 - Roles of bankers, **5:174**

MERGERS—Cont'd

- SA registration requirements, **6:152**
- State laws, **6:153**
- Tender Offer Fraud** (this index)
- Types of direct-impersonal dealings, **6:1**
- MERRILL LYNCH v. CURRAN**
 - Private actions, loss causation in Supreme Court decision, **8:562**
- MILLS DECISION**
 - Private actions, loss causation in Supreme Court decision, **8:558**
- MISAPPROPRIATION**
 - Cybersecurity** (this index)
 - Fiduciary breach, **7:315**
 - Insider liabilities
 - Generally, **7:577**
 - Agreed confidentiality, **7:589**
 - Close family relationships, **7:587**
 - Connection element, **7:597**
 - Connection with transaction, **7:680**
 - Court cases, **7:582 et seq.**
 - Enforcement actions, **7:578**
 - Family relationships, **7:587**
 - Fiduciary breach, **7:315**
 - Mail and wire fraud, **7:594**
 - Private actions, **7:579, 7:603**
 - Rule 10b5-2, **7:585 et seq.**
 - SEC v. Mark Cuban, stress test for misappropriation theory, generally, **7:604 to 7:622**
 - Shared confidences, **7:590**
- MISMANAGEMENT**
 - Generally, **5:72 et seq.**
 - Abuse of trading process, **5:76**
 - Fraud as part of, **5:75**
 - Meaning, **5:73**
 - Pleading, **5:78**
 - Policies, **5:77**
 - Public, effect of trading abuse on, **5:76**
 - Reasons, **5:77**
 - Strict view, **5:74**
- MISPRICING FUND SHARES**
 - Mutual fund violations, sales practices, **17:16**

INDEX

MISREPRESENTATION

Indirect-Impersonal Dealing (this index)

Madoff Ponzi Scheme (this index)

MISREPRESENTATION, COMMON LAW

See **Common Law Fraud** (this index)

MITIGATION

Foreign Corrupt Practices Act (FCPA), risks in mergers and acquisitions, **19:15**

MNPI

See **Material Nonpublic Information** (this index)

MODELS

Crowdfunding, **14:210**

MODIFICATION

Arbitration, challenging awards, **15:58**

MONETARY CIVIL PENALTIES

See **Civil Penalties** (this index)

MONEY LAUNDERING

Madoff Ponzi scheme, **20:6**

MONSTER WORLDWIDE INC.

Backdating of stock options, **18:7, 18:11**

MORGAN STANLEY PROCEEDING

Mutual fund violations, **17:14, 17:15**

MORRISON CASE

Jurisdiction, foreign cubed case, **11:16 to 11:37**

MORTGAGE-BACKED SECURITIES (MBSS)

Coordinated investigations following subprime mortgage crisis, **13:332**

MOTIVE

Generally, **8:203 et seq.**
Absence, effect of, **8:207**
Burden of proof, **8:208**
Pleading, **11:139**

MOTIVE—Cont'd

Presence, effect of, **8:207**

Proof, **8:209**

Scienter

Generally, **8:203 et seq.**

Absence, effect of, **8:207**

Burden of proof, **8:208**

Necessity, **8:205, 8:206**

Presence, effect of, **8:207**

Proof, **8:209**

Versions of scienter, relations among, **8:204**

MUNICIPAL SECURITIES

Suitability rules, **14:193**

MUNICIPAL SECURITIES AND PUBLIC PENSIONS UNIT

SEC investigations, **20:12**

MUTUAL FUND VIOLATIONS

Generally, **17:1 et seq.**

Breakpoint discounts, sales charges, **17:15**

Broker fraud, **17:8**

Canary complaint, generally, **17:2**

Charges, sales practices, **17:15**

Directors, **17:20**

Disclosure, misleading prospectuses, **17:7**

Fund distribution payments, sales practices, **17:14**

Governance rules, SEC's, **17:20**

Hedge funds, **17:21**

Injunctions, ancillary relief, **13:114**

Inside information, trading on, **17:9**

Intermediaries, **17:18**

Late trading, **17:3, 17:4, 17:10, 17:11**

Managements, **17:19**

Market timing

Generally, **17:5 to 17:12**

Broker fraud, **17:8**

Inside information, trading on, **17:9**

Misleading prospectuses, **17:7**

Misleading prospectuses, **17:7**

Mispricing fund shares, sales practices, **17:16**

Morgan Stanley proceeding, **17:14, 17:15**

MUTUAL FUND VIOLATIONS

—Cont'd

- Parties' roles and responsibilities in mutual fund scandal, generally, **17:17 to 17:21**
- Prospectus disclosure, misleading prospectuses, **17:7**
- Responsibilities in mutual fund scandal, generally, **17:17 to 17:21**
- Sales practice issues
 - Generally, **17:13 to 17:17**
 - Breakpoint discounts, sales charges, **17:15**
 - Charges, **17:15**
 - Fund distribution payments, **17:14**
 - Mispricing fund shares, **17:16**
- SEC governance rules, **17:20**
- Senior management, **17:19**
- Solutions proposed by SEC, **17:11, 17:12**

NATIONAL ASSOCIATION OF SECURITIES DEALERS (NASD)

- See also **Self Regulatory Organizations** (this index)
- Broker-dealer supervision requirements, **14:172**
- Day trading risk disclosure requirements, **6:284**
- Extended hour trading, risk disclosure requirements, **6:285**
- Implied liabilities under SRO rules
 - Generally, **14:62 et seq.**
 - See also **Self Regulatory Organizations** (this index)
- Margin trading risk disclosure requirements, **6:286**
- Markup and markdown practices
 - Generally, **14:157 et seq.**
 - Contemporaneous defined, **14:161**
 - Customers, comparative frequency of purchases from, **14:158**
 - Five percent policy, **14:162**
 - Inter-dealer trades, frequency of, **14:158**
 - Non dominating market makers, **14:160**

NATIONAL ASSOCIATION OF SECURITIES DEALERS (NASD)—Cont'd

- Risk disclosure requirements
 - Generally, **6:283 et seq.**
 - Day trading, **6:284**
 - Extended hour trading, **6:285**
 - Margin trading, **6:286**
 - Short selling, **6:287**
 - Uninsured products, **6:288**
- Short selling risk disclosure requirements, **6:287**
- Suitability rules
 - Generally, **14:185**
 - Inquiry duties of brokers, **14:189**
 - NASD IM-2320-3, **14:190**
- Uninsured products, risk disclosure requirements, **6:288**

NATIONAL SECURITIES MARKETS IMPROVEMENT ACT (NSMIA)

- Generally, **3:187 et seq.**
- Administrative enforcement, **3:199**
- Enactment, **3:32**
- Federal preemption of registration
 - Generally, **3:187 et seq.**
 - Buyer characteristics, **3:193**
 - Exemptions, **3:195 et seq.**
 - Government enforcement, **3:199**
 - Mutual funds, **3:191**
 - Nationally traded securities, **3:190**
 - Private rights, effects on, **3:198**
 - Qualified purchasers, **3:192**
 - Regulation preemption, **3:188**
 - Remaining state jurisdiction, **3:197**
 - Scope of act, **3:189 et seq.**
 - Securities characteristics, **3:194**
 - Securities covered, **3:189 et seq.**
 - Securities exemptions, **3:196**
 - Transaction exemptions, **3:195**
- Government enforcement, **3:199**
- Mutual funds registration, **3:191**
- Qualified purchasers, **3:192**
- Regulation preemption, **3:188**
- Remaining state jurisdiction, **3:197**
- Scope of act, **3:189 et seq.**
- SLUSA scope compared, **3:207**

INDEX

NEGATIVE IMPLICATION

Contraction era, **3:87**

Expansion era, **3:65**

NEGLIGENCE

Generally, **8:229 et seq.**

Burden of proof, **8:238**

Criminal cases, **8:236**

Injunctions, **8:234**

Insufficiency, **8:237**

Misrepresentation claims,
consideration of, **7:52**

Necessity, **8:231, 8:232**

Proof, **8:239**

Scienter, **8:234**

SEC decisions, **8:235**

Sufficiency, **8:233 et seq.**

Suitability claims, **14:203**

Versions of scienter, relations among,
8:230

Weiss decision, SEC action against
bond counsel issuing improper
legal opinion, **8:442**

NEGOTIATED TRANSACTIONS

See **Transaction Planning** (this
index)

NEGOTIATIONS

See also **Compromise and Settle-
ment** (this index)

Acquisition negotiation disclosures.
See **Acquisitions** (this index)

SEC investigations

Generally, **13:161 et seq., 13:266**

Advantages and disadvantages,
13:163

Authority of staff, **13:162**

Considerations, **13:165**

Objectives, **13:164**

SRO investigations

Generally, **13:308 et seq.**

Advantages and disadvantages,
13:310

Considerations, **13:312**

Objectives, **13:311**

Procedures, **13:309**

NEWMAN/CHIASSON CASES

Court decisions, **7:387 et seq.**

NEW YORK STOCK EXCHANGE (NYSE)

Broker-dealer supervision require-
ments, **14:173**

Disclosure rules, **App F**

Implied liabilities under SRO rules

Generally, **14:62 et seq.**

See also **Self Regulatory
Organizations** (this index)

Insider trading rules, **App F**

1933 ACT

See **Securities Act** (this index)

1934 ACT

See **Securities Exchange Act** (this
index)

NO-ACTION LETTERS

SEC, **1:12**

NONDISCLOSURE LIABILITY

See **Disclosure** (this index)

Broker-dealer liability, **14:75 et seq.**

Concealment of fraud, **8:501**

Conspirators, **8:306**

Fact or opinion as subject of, **8:2**

Fraud on the market

Generally, **8:520 et seq.**

See also **Reliance** (this index)

Insiders and Insider Trading (this
index)

Opinion or fact as subject of, **8:2**

Pleading, **11:131**

Predictions, **8:2**

Reliance

Generally, **8:484 et seq.**

See also **Reliance** (this index)

Concealment of fraud, **8:501**

Rule 10b-5 elements generally, **8:2**

Rule 10b-5 liability, **14:75 et seq.**

NON-INVESTMENT ADVISORY COMPONENT

Madoff Ponzi scheme, **20:8**

NONPUBLIC INFORMATION

See **Insiders and Insider Trading**
(this index)

Cybersecurity, **26:2, 26:3**

NOTATIONS

Generally, **1:2**

NYSE

See **New York Stock Exchange** (this index)

**OFF-BALANCE SHEET
TRANSACTIONS**

Sarbanes-Oxley Act, **8:413**

**OFFICE OF COMPLIANCE
INSPECTIONS AND
EXAMINATIONS (OCIE)**

Madoff Ponzi scheme, **20:2, 20:5**

**OFFICE OF MARKET
INTELLIGENCE**

SEC investigations, **20:14**

OFFICERS, CORPORATE

Actions in concert, **8:294**

Backdating of stock options,
ramifications, **18:3, 18:7**

Bar orders against individuals, **13:87**

Blackout periods

Generally, **8:475**

Trading prohibitions, **8:472**

Collateral bar orders against
individuals, **13:87, 13:88**

Conflict of interest, **8:417**

Conspiracies, **8:304 et seq.**

Control person liability, **8:373 et seq.**

Corporate governance, **8:414**

Correction of violations, responsibil-
ity for, **8:418**

Ethics codes, **8:483**

Indemnification, **9:76**

Injunctions against, **13:117**

Insider reports, **8:471**

Insider trading liability, **7:648**

Insurance, **9:76**

Internal controls, **8:466**

Loan prohibitions, **8:481**

Market, responsibilities to inform
Generally, **8:421**

Business changes, **8:422**

Grace case, **8:423**

National Telephone case, **8:422**

Second-guessing disclosure
counsel, **8:423**

OFFICERS, CORPORATE—Cont'd

Parties and privity

Generally, **8:413 et seq.**

See also **Private Actions** (this
index)

Prevention of violations, responsibil-
ity for, **8:418**

Responsibilities, **8:413**

Rule 10b-5 liability

Generally, **8:413 et seq.**

Actions in concert, **8:294**

Aider-abettor liability, **8:327 et
seq.**

Backdating of stock options, **18:3,
18:10**

Concerted action, **8:294**

Conflict of interest, **8:417**

Conspiracies, **8:304 et seq.**

Control person liability, **8:373 et
seq.**

Cooper case, **8:419**

Corporate governance, **8:414**

Correction of violations,
responsibility for, **8:418**

Court cases, **8:415 et seq.**

Gould case, **8:417**

Gutfreund case, **8:420**

Inducement, **8:295**

Informed, responsibility to be,
8:415 et seq.

Injunction suits, **8:303**

Insiders, inducement by, **8:299**

Issuers, inducement by, **8:297**

Market, responsibilities to inform
Generally, **8:421**

Business changes, **8:422**

Grace case, **8:423**

National Telephone case, **8:422**

Second-guessing disclosure
counsel, **8:423**

Participants generally, **8:292**

Participants in violations generally,
8:294

Pleading

Generally, **8:319 et seq.**

Affirmative conduct, **8:321**

Aiding-abetting, **8:324**

Choice of parties, **8:320**

INDEX

OFFICERS, CORPORATE—Cont'd

- Rule 10b-5 liability—Cont'd
 - Pleading—Cont'd
 - Conspiracy, **8:325**
 - No affirmative conduct, **8:322**
 - Participation, **8:323**
 - Special elements, **8:326**
 - Prevention of violations,
 - responsibility for, **8:418**
 - Stirling Homex case, **8:416**
- Sarbanes-Oxley Act
 - Backdating of stock options, **18:3**
 - Blackout periods
 - Generally, **8:475**
 - Trading prohibitions, **8:472**
 - Certification, **8:462**
 - Ethics codes, **8:483**
 - Inside trading reports, **8:471**
 - Liabilities, **3:169**
 - Loan prohibitions, **8:481**
 - Regulation
 - Generally, **8:461 et seq.**
 - Acquisition method, **8:474**
 - Bar from office, **8:482**
 - Blackout periods, **8:475**
 - Blackout trading prohibitions, **8:472**
 - Certification, **8:462**
 - Disclosure controls, **8:466**
 - Enforcement, **8:476**
 - Ethics codes, **8:483**
 - Evaluations, **8:468**
 - Exemptions, **8:479**
 - Fair presentation, **8:465**
 - Forfeiture on accounting restatement, **8:480**
 - Inside trading reports, **8:471**
 - Internal controls, **8:466**
 - Liability, **8:476**
 - Loan prohibitions, **8:481**
 - Non-financial information, **8:467**
 - Notice, **8:478**
 - Profit measure, **8:477**
 - Regulation BTR, **8:473**
 - Response to evidence of violations, **8:470**

OFFICERS, CORPORATE—Cont'd

- Sarbanes-Oxley Act—Cont'd
 - Regulation—Cont'd
 - SEC implementation, **8:464, 8:473**
 - Section 302 legislation, **8:463**
 - Section 906, **8:469**
 - Regulation BTR, **8:473**
 - Whistleblower bounty program, original information, **22:9**

OGRE

- Crowdfunding, **14:211**

O'HAGAN CASE

- Private actions, loss causation in Supreme Court decision, **8:568**

OMISSIONS

- Accountants, **8:408**
- Insiders and Insider Trading** (this index)
- Madoff Ponzi scheme, **20:5**

OPEN-MARKET TRADES

- Indirect-Impersonal Dealing** (this index)

OPINIONS

- See also **Court Decisions** (this index)
- Broker-dealer liability, **14:81**

OPPOSITE SIDE TRADERS

- Damages, **7:522**
- Definition, **7:494**
- Elements of action, **7:518**

ORDER ON MOTIONS

- Summary judgment, SEC v. Ripple Labs, **24:5**

ORIGINAL INFORMATION

- Whistleblowers** (this index)

OVER THE COUNTER (OTC) MARKET

- Defined, **1:2**
- Direct-personal transactions distinguished, **1:2**
- Doorstep sales, **1:2**

PAINTING THE TAPE

- Manipulation, **7:132**

PARKING

- Generally, **7:143 et seq.**
- Capital requirements, use to avoid, **7:147**
- Control fights, use in, **7:146**
- Definitions, **7:144**
- Margin requirements, use to avoid, **7:148**
- Record keeping violations, **7:149**
- Tax evasion uses, **7:150**

PARMALAT CASE

- Indirect-impersonal dealing, **7:111**

PARTIES

- Generally, **8:258 et seq.**
- See also **Private Actions** (this index)
- Accountants, liability of
 - Generally, **8:404 et seq.**
 - See also **Accountants** (this index)
- Aider-abettors
 - Generally, **8:327 et seq.**
 - See also **Aider-Abettors** (this index)
- Attorneys
 - Generally, **8:409 et seq.**
 - See also **Attorneys** (this index)
- Broker-dealer supervisory liabilities
 - Generally, **14:164 et seq.**
 - Amex requirements, **14:174**
 - Branch office managers, **14:178**
 - Chief executive officers, **14:180**
 - Compliance officers, **14:181**
 - Court cases, **14:176**
 - Deficiencies, **14:175**
 - General counsel, **14:182**
 - Heads of functional areas, **14:179**
 - Individual responsibilities, **14:177 et seq.**
 - Insider Trading and Securities Fraud Enforcement Act, **14:168**
 - NASD requirements, **14:172**
 - NYSE requirements, **14:173**
 - Rule 14e-3(b), **14:169**
 - Safe harbor programs, **14:175**
 - Sanctions, **14:175**
 - SEA § 15(b)(4)(D), **14:166**
 - SEA § 15(b)(4)(E), **14:165**

PARTIES—Cont'd

- Broker-dealer supervisory liabilities
 - Cont'd
 - SEA § 15(b)(6), **14:165**
 - SEA § 19, **14:170**
 - SEA § 20(a), **14:167**
 - SRO requirements, **14:171 et seq.**
 - Conspirators
 - Generally, **8:304 et seq.**
 - See also **Conspiracies and Conspirators** (this index)
 - Contribution** (this index)
 - Control persons
 - Generally, **8:373 et seq.**
 - See also **Control Person Liability** (this index)
 - Corporate officers and directors
 - Generally, **8:413 et seq.**
 - See also **Directors, Corporate; Officers, Corporate** (this index)
 - Indemnification, **9:76**
 - Insurance, **9:76**
 - Joint and Several Liability** (this index)
 - Mutual Fund Violations** (this index)
 - Proportionate Liability** (this index)
- ## **PAYMENTS**
- Arbitration, disciplinary sanctions for failure to pay arbitral award, **15:64**
 - Foreign government officials.
 - Foreign Corrupt Practices Act (FCPA)** (this index)

PEGGING

- Manipulation, **7:136**

PENALTIES

- See **Civil Penalties** (this index)

PENNY STOCK SALES

- Generally, **14:141 et seq.**
- Blank check companies, **14:145**
- Criticisms of Reform Act, **14:146**
- Pre-quotation requirements, **14:147**
- Pre-sale requirements, **14:142**
- Reform Act of 1990 generally, **14:143**

INDEX

PENNY STOCK SALES—Cont'd

- Rule 3a51-1, **14:144**
- Rule 15c2-11, **14:147**
- Rule 15g-1, **14:144**
- Rule 15g-8, **14:145**
- Rule 15g-9, **14:142**
- Rule 174, **14:145**
- Rule 419, **14:145**
- Secondary market trading, **14:144**

PENSIONS

- Employee Benefit Plans** (this index)
- Employee interests in as securities, **5:27**

PEOPLE'S REPUBLIC OF CHINA

- Foreign Corrupt Practices Act (FCPA), **19:11**

PERJURY

- Madoff Ponzi scheme, **20:6**

PICOWER

- Madoff feeder funds, **20:24**

PIPER CASE

- Private actions, loss causation in Supreme Court decision, **8:561**

“PIPE” SCHEMES

- SEC actions against attorneys, **8:443**

PLAIN ENGLISH

- Generally, **6:278**
- See also **Disclosure** (this index)

PLANNING

- See **Transaction Planning** (this index)

PLEA BARGAINING

- See **Criminal Enforcement** (this index)

PLEADING

- Generally, **11:104 et seq., 11:133 et seq.**
- See also **Private Actions** (this index)
- Analysts' statements, **11:127**
- Broker-dealer fraud, scienter, **8:145**
- Buyer-seller requirements, **5:126**

PLEADING—Cont'd

- Causation
 - Acceptance of loss causation pleading, **8:571 to 8:574**
 - Rejection of loss causation pleading, **8:575 to 8:577**
- Circumstantial evidence of recklessness, **11:162**
- Company as buyer seller, **5:126**
- Connection requirement, **5:140**
- Conscious behavior, **11:162**
- Contents, **11:120**
- Deception, **5:88**
- Fact statements, **11:120 et seq.**
- Failure to anticipate, **11:131**
- Falsity, **11:116**
- Forward looking statements, **11:132**
- Fraud on the market theory (FOMT), **8:546**
- Group statements, **11:123**
- Hindsight cases, **11:130 et seq.**
- Implied liability, **8:257**
- Information and belief, **11:128**
- Insider trading charges, **7:364**
- Jurisdiction, **11:38**
- Loss causation. Causation, above
- Manipulation, **8:123**
- Materiality, **5:107**
- Misleading character, **11:118**
- Mismanagement, **5:78**
- Modified causation, **5:105 et seq.**
- Motive, **11:139**
- Nondisclosure, **11:131**
- Opportunity, **11:139**
- Particularity
 - Generally, **11:104 et seq., 11:115 et seq.**
 - Analysts' statements, **11:127**
 - Conflicting concerns, **11:109, 11:110**
 - Contents, **11:120**
 - Discovery stays, **11:120 et seq.**
 - Fact statements, **11:120 et seq., 11:122**
 - Failure to anticipate, **11:131**
 - Falsity, **11:116, 11:117**
 - Forward looking statements, **11:132**

PLEADING—Cont'd

Particularity—Cont'd
 FRCP Rule 9(b)
 Conflicting concerns, **11:109**
 Purposes, **11:107**
 Tactical importance, **11:105**
 Group statements, **11:123, 11:124**
 Hindsight cases, **11:130 et seq.**
 Implied liability, **11:114**
 Information and belief, **11:128**
 Misleading character, **11:118, 11:119**
 Motive, **11:139**
 Nondisclosure, **11:131**
 Parties, **11:120**
 Place, **11:120**
 Predictions, **11:132**
 Private Securities Litigation Reform Act, **11:104 et seq.**
 Purposes of rule, **11:107, 11:108**
 Registration fraud, **11:112**
 Rule 10b-5 liability
 Generally, **11:115 et seq.**
 Analysts' statements, **11:127**
 Fact statements, **11:120 et seq., 11:122**
 Failure to anticipate, **11:131**
 Falsity, **11:116, 11:117**
 Forward looking statements, **11:132**
 Group statements, **11:123, 11:124**
 Hindsight cases, **11:130 et seq.**
 Information and belief, **11:128, 11:129**
 Misleading character, **11:118, 11:119**
 Nondisclosure, **11:131**
 Predictions, **11:132**
 Scienter, **11:133 et seq.**
 Third party statements, **11:127**
 Unattributed statements, **11:125, 11:126**
 SA § 11, **11:112**
 SA § 12(2), **11:111**
 Sales fraud, **11:111**
 Scienter
 Generally, **11:133 et seq.**

PLEADING—Cont'd

Particularity—Cont'd
 Scienter—Cont'd
 Bases for inferring, **11:135**
 Circumstantial evidence of recklessness, **11:162**
 Conscious behavior, **11:162**
 Motive, **11:139**
 Opportunity, **11:139**
 Recklessness
 Generally, **11:141**
 Circumstantial evidence, **11:162**
 Securities Exchange Act, **11:134**
 SEA § 21D(b)
 Conflicting concerns, **11:110**
 Purposes, **11:108**
 Tactical importance, **11:106**
 Securities Act
 Registration fraud, **11:112**
 Sales fraud, **11:111**
 Securities Exchange Act, **11:113**
 Tactical importance, **11:105, 11:106**
 Third party statements, **11:127**
 Time, **11:120**
 Unattributed statements, **11:125, 11:126**
 Parties, **11:120**
 Place, **11:120**
 Predictions, **11:132**
 Privity
 Generally, **8:319 et seq.**
 Affirmative conduct, **8:321**
 Aiding-abetting, **8:324**
 Choice of parties, **8:320**
 Conspiracy, **8:325**
 No affirmative conduct, **8:322**
 Participation, **8:323**
 Special elements, **8:326**
 Proportionate liability, **9:58**
 Proxy fraud, scienter, **8:131**
 Recklessness
 Generally, **11:141**
 Circumstantial evidence, **11:162**
 SA § 11 requirements, **8:81**
 Scienter
 Generally, **8:81**

INDEX

PLEADING—Cont'd

- Scienter—Cont'd
 - Bases for inferring, **11:135**
 - Broker-dealer fraud, **8:145**
 - Manipulation, **8:123**
 - Particularity, **11:133 et seq.**
 - Proxy fraud, **8:131**
 - SEC, false reports to, **8:152**
 - Tender offer fraud, **8:138**
- SEA § 21D(b) requirements, **11:134**
- Strict causation, **5:99 et seq.**
- Tender offer fraud scienter, **8:138**
- Third party statements, **11:127**
- Time, **11:120**
- Unattributed statements, **11:125**
- Unfair terms, **5:152**

PONZI SCHEME

- Madoff Ponzi Scheme** (this index)

PORTALS

- Crowdfunding, **14:217**
- Description, **14:223**

PREDICTIONS

- Generally, **7:5 et seq.**
- See also **Forward Looking Information** (this index)
- Broker-dealer liability, **14:81**
- Broker predictions, **7:7**
- Brokers, **7:7**
- Disclosure obligations
 - Generally, **7:10 et seq.**
 - Capital resources, **7:15**
 - Liquidity, **7:14**
 - With MD&A requirement
 - Administrative enforcement, **7:13**
 - Private actions, **7:17**
 - Operation results, **7:16**
 - Private actions on MD&A requirements, **7:17**
 - Restrictions on disclosures, **7:18**
- Safe harbor
 - Generally, **7:19 et seq.**
 - Background, **7:20**
 - Bespeaks caution doctrine, **7:22**
- PSLRA
 - Generally, **7:23 et seq.**

PREDICTIONS—Cont'd

- Disclosure obligations—Cont'd
 - Safe harbor—Cont'd
 - PSLRA—Cont'd
 - Actual knowledge prong, **7:36**
 - Attacking cautionary statements, **7:29**
 - Caution prong, **7:26**
 - Corrections, **7:45**
 - Definition of forward looking statement, **7:25**
 - Discovery stays, **7:44**
 - Drafting cautionary statements, **7:28**
 - Eligible makers, **7:37**
 - Exclusions, **7:40**
 - Expandability, **7:41**
 - Falsity, actual knowledge of, **7:36**
 - Later disclosures, **7:30**
 - Motion practice, **7:43**
 - Nonexclusiveness, **7:41**
 - Oral statements referencing caution, **7:31, 7:39**
 - Procedural aspects, **7:42**
 - Prohibited uses, **7:40**
 - Scope of Act, **7:24**
 - Statements with cautions, **7:27**
 - Update duty, **7:45**
 - Readily available cautionary statements
 - Generally disseminated, **7:34**
 - SEC filings, **7:33**
 - Timing, **7:32**
 - SA Rule 175, **7:21**
 - SEA Rule 3b-6, **7:21**
 - SEC, traditional position, **7:18**
 - With SEC encouragement, **7:12**
 - Without SEC rule, **7:11**
- ### Earnings
- Inherently misleading statements, **6:256**
 - Insider use, **7:204**
 - Misrepresentations, **6:255**
 - Nondisclosure, **6:257**
- ### Forecasts distinguished, 7:5

PREDICTIONS—Cont'd

- Forward looking information generally, **7:5**
- Fraud, predictions and projections as, **7:6**
- Inherently misleading earnings statements, **6:256**
- Misrepresentations, **7:46**
- Nondisclosure
 - Generally, **8:2**
 - Earnings information, **6:257**
- Pleading particularity, **11:132**
- Projections distinguished, **7:5**
- Safe harbor
 - Generally, **7:19 et seq.**
 - Attacking cautionary statements, **7:29**
 - Background, **7:20**
 - Bespeaks caution doctrine, **7:22**
 - Immateriality, **7:35, 7:38**
 - Later disclosures, **7:30**
 - Motion practice, **7:43**
- PSLRA
 - Generally, **7:23 et seq.**
 - Actual knowledge prong, **7:36**
 - Attacking cautionary statements, **7:29**
 - Caution prong, **7:26**
 - Corrections, **7:45**
 - Definition of forward looking statement, **7:25**
 - Discovery stays, **7:44**
 - Drafting cautionary statements, **7:28**
 - Eligible makers, **7:37**
 - Exclusions, **7:40**
 - Expandability, **7:41**
 - Falsity, actual knowledge of, **7:36**
 - Later disclosures, **7:30**
 - Motion practice, **7:43**
 - Nonexclusiveness, **7:41**
 - Oral statements referencing caution, **7:31, 7:39**
 - Procedural aspects, **7:42**
 - Prohibited uses, **7:40**
 - Scope of Act, **7:24**
 - Statements with cautions, **7:27**

PREDICTIONS—Cont'd

- Safe harbor—Cont'd
- PSLRA—Cont'd
 - Update duty, **7:45**
- Readily available cautionary statements
 - Generally disseminated, **7:34**
 - SEC filings, **7:33**
 - Timing, **7:32**
- SA Rule 175, **7:21**
- SEA Rule 3b-6, **7:21**

PREEMPTION

- Federal
 - See also **Securities Litigation Uniform Standards Act; State Law** (this index)
 - Employee benefit plans, **5:43**
 - ERISA, **5:43**
 - Mutual funds registration, **3:191**
 - Nationally traded securities, **3:190**
 - NSMIA preemption of registration
 - Generally, **3:187 et seq.**
 - Buyer characteristics, **3:193**
 - Exemptions, **3:195 et seq.**
 - Government enforcement, **3:199**
 - Mutual funds, **3:191**
 - Nationally traded securities, **3:190**
 - Private rights, effects on, **3:198**
 - Qualified purchasers, **3:192**
 - Regulation preemption, **3:188**
 - Remaining state jurisdiction, **3:197**
 - Scope of act, **3:189 et seq.**
 - Securities characteristics, **3:194**
 - Securities covered, **3:189 et seq.**
 - Securities exemptions, **3:196**
 - Transaction exemptions, **3:195**

PRE-PURCHASE MODEL

- Crowdfunding, **14:210**

PRESS RELEASES

- Disclosures by, **7:283**

PRESUMPTIONS

- Fraud on the market theory (FOMT), **8:521**

INDEX

PRESUMPTIONS—Cont'd

- Materiality, presumptive reliance and, **8:509**
- Reliance
 - Generally, **8:508 et seq.**
 - See also **Reliance** (this index)
- Ute presumption, **8:484**

PRICE

- Market based price determinations, **8:525**
- Retroactive pricing of stock option grants. See **Backdating of Stock Options** (this index)

PRICE DROP

- Private actions, correction and price drop, Proposition 2, **8:580**

PRICE INFLATION

- Private actions, Proposition 1, **8:579**

PRIVACY

- SEC investigations, use of wiretap in enforcement, **13:149, 13:150**

PRIVATE ACTIONS

- Generally, **8:1 et seq.**
- Absolute liability, **8:243**
- Actions in concert, **8:294**
- Admission of wrongdoing, compromise and settlement, **13:176 to 13:181**
- Aider-abettor liability
 - Generally, **8:327 et seq.**
 - Absence of benefit, **8:366**
 - Benefit, **8:364 et seq.**
 - Court cases, **8:328 et seq.**
 - Definitions, **8:349**
 - Dissemination of material false information, liability for, *Lorenzo v. SEC*, **8:346**
 - Elements, **8:352**
 - Extent of benefit, **8:367**
 - High conscious intent, **8:358**
- Janus Capital
 - Federal securities laws, applicability, **8:336 to 8:345**
 - Impact of Janus decision, **8:337**

PRIVATE ACTIONS—Cont'd

- Aider-abettor liability—Cont'd
 - Janus Capital—Cont'd
 - Insiders, liability for statements of their corporations, **8:339, 8:340**
 - Legal entity, liability for statements of another, **8:338**
 - Observations and tentative conclusions, **8:342 et seq.**
 - Preparation for or assistance to another, **8:336 et seq.**
 - Rule 10b-5(a) and (c), **8:345**
 - SEC enforcement actions, applicability, **8:343**
 - Shield function, **8:341**
 - State law, applicability to, **8:344**
 - Knowledge of violation, **8:356 et seq.**
 - Legal entity, liability for statements of another, Janus Capital, **8:338**
 - Nature of benefit, **8:367**
 - Origins of doctrine, **8:351**
 - Preparation for or assistance to another, Janus Capital, **8:336 et seq.**
 - Presence of benefit, **8:365**
 - Primary violations, **8:355**
 - PSLRA, **8:347**
 - Requirements, **8:352**
 - Rule 10b-5(a) and (c), Janus Capital, **8:345**
 - SEA § 20(f), **8:348**
 - SEC enforcement actions, applicability, Janus Capital, **8:343**
 - State law, applicability to, Janus Capital, **8:344**
 - Substantial assistance
 - Generally, **8:359 et seq.**
 - Extraordinary actions, **8:362**
 - Inaction, **8:363**
 - Ordinary actions, **8:362**
 - Proximate cause, **8:360**
 - Silence, **8:363**
 - Timing, **8:361**

PRIVATE ACTIONS—Cont'd

- Amicus curiae participation by agencies
 - CFTC, **13:234**
 - SEC, **13:79**
 - SROs, **13:293**
- Ancillary remedies, **9:17**
- Arbitration compared, **15:6**
- Backdating stock options, **18:10**
- Basic case, loss causation in Supreme Court decision, **8:565**
- Blue Chip case, loss causation in Supreme Court decision, **8:560**
- Bonds, actions on, SLUSA limitations, **3:211**
- Borak, loss causation in Supreme Court decision, **8:557**
- Broker-dealer liability
 - Generally, **14:1 et seq.**
 - See also **Broker-Dealer Liability** (this index)
 - Attorneys' fees, express actions, **14:53**
 - Broker's knowledge, express actions, **14:41**
 - Burden of proof, SA § 12(a)(2), **14:42**
 - Causation, **14:91 et seq.**
 - Churning** (this index)
 - Class actions
 - SA § 11, **14:18**
 - SA § 12, **14:57**
 - Costs, express actions, **14:53**
 - Damages
 - Express actions, **14:46, 14:51**
 - Implied actions, **14:95 et seq.**
 - Debt securities markups, **14:163**
 - Due diligence defense
 - Generally, **14:5**
 - SEC view, **14:9**
 - Express actions
 - Generally, **14:2 et seq.**
 - Attorneys' fees, **14:53**
 - Broker's knowledge, **14:41**
 - Class actions
 - SA § 11, **14:18**
 - SA § 12, **14:57**
 - Costs, **14:53**

PRIVATE ACTIONS—Cont'd

- Broker-dealer liability—Cont'd
 - Express actions—Cont'd
 - Damages, **14:46, 14:51**
 - Due diligence defense
 - Generally, **14:5**
 - SEC view, **14:9**
 - Integrated disclosure systems, **14:7**
 - Interest, **14:48**
 - Limitation of actions, **14:17**
 - SA § 12(a)(1), **14:25**
 - SA § 12(a)(2), **14:56**
 - Misrepresentations, **14:39**
 - Offerors, brokers as
 - SA § 12(a)(1), **14:22**
 - SA § 12(a)(2), **14:29 et seq.**
 - Omissions, **14:39**
 - In pari delicto defense, **14:21**
 - Privity, **14:34**
 - Proximate cause, **14:35**
 - Punitive damages, **14:54**
 - Purchaser, plaintiff as
 - SA § 12(a)(1), **14:23**
 - SA § 12(a)(2), **14:44**
 - Purchaser's knowledge, **14:40**
 - Recovery, **14:45 et seq.**
 - Rescission, **14:46, 14:50**
 - SA § 11
 - Generally, **14:2 et seq., 14:3 et seq.**
 - Court cases, **14:6**
 - Damages, **14:15**
 - Due diligence defense
 - Generally, **14:5**
 - SEC view, **14:9**
 - Integrated disclosure systems, **14:7**
 - Later filings, effect of, **14:10**
 - Non-managing underwriters, **14:13**
 - Participating underwriters, **14:13**
 - Policy considerations, **14:12**
 - Reasonable investigation defense
 - Generally, **14:5**

INDEX

PRIVATE ACTIONS—Cont'd

- Broker-dealer liability—Cont'd
- Express actions—Cont'd
 - SA § 11—Cont'd
 - Reasonable investigation defense—Cont'd
 - Integrated disclosure systems, **14:7**
 - SEC Rule 176, **14:8**
 - Reasonable investigation requirement, **14:11**
 - SEC Rule 176, **14:7**
 - SEC Rule 412, **14:7**
 - SEC view of due diligence techniques, **14:9**
- Underwriters
 - Generally, **14:4**
 - Due diligence, **14:14**
- SA § 12(a)(1)
 - Generally, **14:19 et seq.**
 - Broker as defendant, **14:20**
 - Class actions, **14:57**
 - Exemptions from SA § 5, **14:24**
 - Limitation of actions, **14:25**
 - Offerors, brokers as, **14:22**
 - In pari delicto defense, **14:21**
 - Purchaser, plaintiff as, **14:23**
 - Sellers, brokers as, **14:22**
 - Violations of SA § 5, **14:26**
- SA § 12(a)(2)
 - Generally, **14:27 et seq.**
 - Attorneys' fees, **14:53**
 - Broker as defendant, **14:28**
 - Broker's knowledge, **14:41**
 - Burden of proof, **14:42**
 - Class actions, **14:57**
 - Costs, **14:53**
 - Damages, **14:46, 14:51**
 - Interest, **14:48**
 - Limitation of actions, **14:56**
 - Misrepresentations, **14:39**
 - Offerors, brokers as, **14:29 et seq.**
 - Omissions, **14:39**
 - Pinter case, **14:30, 14:38**
 - Privity, **14:34**
 - Proximate cause, **14:35**

PRIVATE ACTIONS—Cont'd

- Broker-dealer liability—Cont'd
- Express actions—Cont'd
 - SA § 12(a)(2)—Cont'd
 - Punitive damages, **14:54**
 - Purchaser, plaintiff as, **14:44**
 - Purchaser's knowledge, **14:40**
 - Reasonable care, **14:43**
 - Reasonable investigation requirement, **14:43**
 - Recovery, **14:45 et seq.**
 - Rescission, **14:46, 14:50**
 - SEA § 10(b) and, overlap between, **14:55**
 - Sellers, brokers as, **14:29 et seq.**
 - Substantial factor in sale, broker as, **14:35**
 - Tax considerations, **14:48**
 - Tender, **14:49**
 - Transactional coverage, **14:58**
- Sellers, brokers as
 - SA § 12(a)(1), **14:22**
 - SA § 12(a)(2), **14:29 et seq.**
- Substantial factor in sale, broker as, **14:35**
- Tax considerations, **14:48**
- Violations of SA § 5, **14:26**
- Implied actions
- Margin rules
 - Generally, **14:59**
 - Arbitration, use in, **14:61**
 - Court cases, **14:60**
 - SEA § 7, **14:59**
- Rule 10b-5
 - Generally, **14:73 et seq.**
 - Causation, **14:91 et seq.**
 - Connection requirement, **14:94**
 - Contraction era, compensatory damages in, **14:105**
 - Damages, **14:95 et seq.**
 - Elements of action, **14:74**
 - Issuer misrepresentations, **14:76**
 - Issuer nondisclosures, **14:77**
 - Justifiable reliance, **14:89**

PRIVATE ACTIONS—Cont'd

- Broker-dealer liability—Cont'd
- Implied actions—Cont'd
- Rule 10b-5—Cont'd
 - Market misrepresentations, **14:78**
 - Market nondisclosures, **14:79**
 - Materiality, **14:82**
 - Misrepresentation, **14:75 et seq.**
 - Mitigation of damages, **14:102**
 - Nondisclosure, **14:75 et seq.**
 - Opinions, **14:81**
 - Out-of-pocket damages, **14:103**
 - Predictions, **14:81**
 - Proximate cause, **14:92**
 - Punitive damages, **14:106 et seq.**
 - Recklessness, **14:83 et seq.**
 - Recommendations, **14:81**
 - Reliance, **14:86 et seq.**
 - Rescission
 - Chasins measure, **14:97**
 - Lost profits, **14:101**
 - Nye measure, **14:101**
 - Rolf measure, **14:100**
 - Restitution, **14:104**
 - Scienter, **14:83 et seq.**
- SRO rules
 - Generally, **14:62 et seq.**
 - Arbitration, **14:72**
 - Buttrey doctrine, **14:65**
 - Colonial Realty doctrine, **14:64**
 - Contraction era, **14:71**
 - Court cases, **14:64 et seq.**
 - Expansion era, **14:63 et seq.**
- Insider Trading and Securities Fraud Enforcement Act, **14:168**
- Integrated disclosure systems, **14:7**
- Limitation of actions
 - Generally, **14:17**
 - SA § 12(a)(1), **14:25**
 - SA § 12(a)(2), **14:56**
 - Lost profits, rescission and, **14:101**

PRIVATE ACTIONS—Cont'd

- Broker-dealer liability—Cont'd
- Margin rules
 - Generally, **14:59**
 - Arbitration, use in, **14:61**
 - Court cases, **14:60**
 - SEA § 7, **14:59**
- Market maker status, **14:152 et seq.**
- Markup and markdown practices
 - Generally, **14:148 et seq.**
- Basis
 - Generally, **14:150 et seq.**
 - Contemporaneous defined, **14:156**
 - Customers, comparative frequency of purchases from, **14:158**
 - Dominating market makers, **14:154**
 - Inter-dealer prices, availability of, **14:155**
 - Inter-dealer trades, frequency of, **14:158**
 - Market-makers, retail, **14:153**
 - Market maker status, **14:152 et seq.**
 - NASD criteria, **14:157 et seq.**
 - Non dominating market makers, **14:160**
 - Non market makers
 - NASD criteria, **14:159**
 - SEC criteria, **14:152**
 - Retailer market makers, **14:153**
- Debt securities markups, **14:163**
- Disclosure, **14:149**
- Five percent policy, **14:162**
- Inter-dealer prices, availability of, **14:155**
- Inter-dealer trades, frequency of, **14:158**
- Market maker status, **14:152 et seq.**
- Materiality, **14:82**
- Misrepresentations, **14:39**
- Offerors, brokers as, express actions, **14:22, 14:29 et seq.**
- Omissions, **14:39**

INDEX

PRIVATE ACTIONS—Cont'd

- Broker-dealer liability—Cont'd
 - Opinions, **14:81**
 - Out-of-pocket damages, **14:103**
 - In pari delicto defense, **14:21**
 - Penny Stock Sales** (this index)
 - Predictions, **14:81**
 - Privity, **14:34**
 - Proximate cause
 - Generally, **14:92**
 - Express actions, **14:35**
 - Punitive damages, **14:54**
 - Purchaser, plaintiff as
 - SA § 12(a)(1), **14:23**
 - SA § 12(a)(2), **14:44**
 - Reasonable investigation defense
 - Generally, **14:5**
 - Integrated disclosure systems, **14:7**
 - SEC Rule 176, **14:8**
 - Reasonable investigation requirement
 - SA § 11, **14:11**
 - SA § 12(a)(2), **14:43**
 - Recklessness, **14:83 et seq.**
 - Recommendations, **14:81**
 - Recovery, **14:45 et seq.**
 - Reliance, **14:86 et seq.**
 - Rescission
 - Chasins measure, **14:97**
 - Express actions, **14:46, 14:50**
 - Implied actions, **14:95 et seq.**
 - Lost profits, **14:101**
 - Nye measure, **14:101**
 - Rolf measure, **14:100**
 - Rule 10b-5
 - Generally, **14:73 et seq.**
 - Causation, **14:91 et seq.**
 - Connection requirement, **14:94**
 - Contraction era, compensatory damages in, **14:105**
 - Damages, **14:95 et seq.**
 - Elements of action, **14:74**
 - Issuer misrepresentations, **14:76**
 - Issuer nondisclosures, **14:77**
 - Justifiable reliance, **14:89**
 - Market misrepresentations, **14:78**

PRIVATE ACTIONS—Cont'd

- Broker-dealer liability—Cont'd
 - Rule 10b-5—Cont'd
 - Market nondisclosures, **14:79**
 - Materiality, **14:82**
 - Misrepresentation, **14:75 et seq.**
 - Mitigation of damages, **14:102**
 - Nondisclosure, **14:75 et seq.**
 - Opinions, **14:81**
 - Out-of-pocket damages, **14:103**
 - Predictions, **14:81**
 - Proximate cause, **14:92**
 - Punitive damages, **14:106 et seq.**
 - Recklessness, **14:83 et seq.**
 - Recommendations, **14:81**
 - Reliance, **14:86 et seq.**
 - Rescission
 - Chasins measure, **14:97**
 - Lost profits, **14:101**
 - Nye measure, **14:101**
 - Rolf measure, **14:100**
 - Restitution, **14:104**
 - Scienter, **14:83 et seq.**
- SA § 11, reasonable investigation requirement, **14:11**
- SA § 12(a)(1), broker as defendant, **14:20**
- SA § 12(a)(2)
 - Broker as defendant, **14:28**
 - Burden of proof, **14:42**
 - Reasonable investigation requirement, **14:43**
- Scienter, **14:83 et seq.**
- Sellers, brokers as, **14:22, 14:29 et seq.**
- Substantial factor in sale, broker as, express actions, **14:35**
- Suitability** (this index)
- Supervisory duties
 - Generally, **14:164 et seq.**
 - Amex requirements, **14:174**
 - Branch office managers, **14:178**
 - Chief executive officers, **14:180**
 - Compliance officers, **14:181**
 - Court cases, **14:176**
 - Deficiencies, **14:175**
 - General counsel, **14:182**

PRIVATE ACTIONS—Cont'd

Broker-dealer liability—Cont'd
 Supervisorial duties—Cont'd
 Heads of functional areas,
 14:179
 Individual responsibilities,
 14:177 et seq.
 Insider Trading and Securities
 Fraud Enforcement Act,
 14:168
 NASD requirements, **14:172**
 NYSE requirements, **14:173**
 Rule 14e-3(b), **14:169**
 Safe harbor programs, **14:175**
 Sanctions, **14:175**
 SEA § 15(b)(4)(D), **14:166**
 SEA § 15(b)(4)(E), **14:165**
 SEA § 15(b)(6), **14:165**
 SEA § 19, **14:170**
 SEA § 20(a), **14:167**
 SRO requirements, **14:171 et**
 seq.

Burden of Proof (this index)

Causation

 Generally, **8:555 et seq.**
 Basic case, **8:565**
 Blue Chip case, **8:560**
 Borak decision, **8:557**
 Correction and price drop, Proposi-
 tion 2, **8:580**
 Dirks case, **8:563**
 Dura Pharmaceuticals case, **8:569**
 8th Circuit, cases accepting loss
 causation pleading, **8:574**
 11th Circuit, cases rejecting loss
 causation pleading, **8:577**
 Halliburton, **8:570**
 Holmes case, **8:567**
 Insider trading, **7:517**
 Merrill Lynch v. Curran, **8:562**
 Mills decision, **8:558**
 9th Circuit, cases accepting loss
 causation pleading, **8:571**
 O'Hagan, **8:568**
 Piper case, **8:561**
 Pleading
 Acceptance of loss causation
 pleading, **8:571 to 8:574**

PRIVATE ACTIONS—Cont'd

Causation—Cont'd
 Pleading—Cont'd
 Rejection of loss causation
 pleading, **8:575 to 8:577**
 Price inflation, Proposition 1,
 8:579
 Procedural aspects, **8:581**
 Randall case, **8:564**
 Resolution of issues, **8:578 to**
 8:581
 2nd Circuit
 Cases accepting loss causation
 pleading, **8:572**
 Cases rejecting loss causation
 pleading, **8:575**
 7th Circuit, cases rejecting loss
 causation pleading, **8:576**
 Supreme Court decisions, **8:556 to**
 8:570
 3rd Circuit, cases accepting loss
 causation pleading, **8:573**
 Transaction causation, **8:484**
 Ute Indians, **8:484, 8:559**
 Virginia bankshares, **8:566**
 CFTC, amicus curiae participation,
 13:234
Churning (this index)
Class Actions (this index)
 Compromise and settlement, admis-
 sion of wrongdoing, **13:176 to**
 13:181
 Congressional intent, **3:16**
 Conspirators, common law fraud,
 8:261
 Constructive fraud, **8:242**
 Continuation of criminal proceed-
 ings, **13:140**
Contribution (this index)
 Control person liability
 Generally, **8:373 et seq.**
 Broker-dealers, **8:394 et seq.**
 Corporate policy of affairs, control
 over, **8:382 et seq.**
 Court cases, **8:380 et seq.**
 Culpable participation, **8:378,**
 8:388 et seq.
 Element of control, **8:379**

INDEX

PRIVATE ACTIONS—Cont'd

Control person liability—Cont'd

Good faith defense

Generally, **8:393 et seq.**

Broker-dealers, **8:394 et seq.**

SA § 15, **8:393 et seq.**

SEA § 20(a), **8:393 et seq.**

Law and fact questions, **8:381**

Legislative history, **8:375**

Participation, culpable, **8:378, 8:388 et seq.**

Standard of participation, **8:377**

Statutory language, **8:374**

Coordinated SEC-state-SRO investigations, **13:327, 13:328**

Correction and price drop, Proposition 2, **8:580**

Defenses, interrelations of fraud rules generally, **3:51**

Direct-Impersonal Dealing (this index)

Direct-Personal Dealing (this index)

Dirks case, loss causation in Supreme Court decision, **8:563**

Dura Pharmaceuticals case, loss causation in Supreme Court decision, **8:569**

8th Circuit, cases accepting loss causation pleading, **8:574**

Elements of actions under fraud rules, **3:50**

11th Circuit, cases rejecting loss causation pleading, **8:577**

Equitable fraud, **8:242**

Expert testimony, churning, **14:132**

Express actions. Implied and express actions, below

Federal security law

Materiality factors, **8:33 et seq.**

Materiality tests, **8:8 et seq.**

Federal vs state private actions, relative advantages, **3:200**

Foreign Corrupt Practices Act (FCPA), allegations and settlements, **19:12, 19:13**

Fraud on the market. Reliance, below

Good faith of plaintiff, **8:254**

Halliburton, loss causation, **8:570**

PRIVATE ACTIONS—Cont'd

Holmes case, loss causation in

Supreme Court decision, **8:567**

Implied and express actions

Generally, **3:54 et seq., 8:242 et seq.**

See also **Implied Liability** (this index)

Absolute liability, **8:243**

Actual knowledge of plaintiff, **8:244**

Broker-dealer liability, above

Burden of proof, **8:255**

Constructive fraud, **8:242**

Contributory negligence, **8:253**

Cort v Ash, **3:95 et seq.**

Current status of 10b-5 actions, **3:146 et seq.**

Elements, **3:50**

Equitable fraud, **8:242**

Good faith of plaintiff, **8:254**

Innocent defendants, **8:243**

Insider trading, express causes of action, **7:491 et seq., 7:493 et seq.**

Interrelations of fraud rules generally, **3:50**

Limitation of actions, **11:46**

Misrepresentation, plaintiff's knowledge, **8:246**

Negligence of plaintiff, **8:253**

Nondisclosure, plaintiff's knowledge, **8:245**

Overlapping remedies in contraction era, **3:102 et seq.**

Overlapping remedies in expansion era, **3:69 et seq.**

Plaintiff's knowledge

Generally, **8:244 et seq.**

Actual knowledge, **8:244**

Comparative knowledge, **8:249**

Constructive knowledge, **8:250**

Limitation of actions, **8:251**

Misrepresentation, **8:246**

Nondisclosure, **8:245**

Theoretical knowledge, **8:248**

Pleading, **8:257**

Proof, **8:256**

PRIVATE ACTIONS—Cont'd

- Implied and express actions—Cont'd
 - Reliance, **8:484**
 - Strict liability, **8:243**
- Indemnification, **9:76**
- Indirect-Impersonal Dealing** (this index)
- Injunctions, scienter requirement
 - Actual knowledge, **8:174**
 - Constructive knowledge, **8:185**
 - Intent, **8:195**
- Innocent defendants, **8:243**
- Insider trading
 - Generally, **7:160, 7:478 et seq., 7:491 et seq.**
 - Amount of liability, **7:488, 7:521 et seq.**
 - Ancillary relief, **7:490, 7:525**
 - Background, **7:501**
 - Burden of proof
 - Generally, **7:366**
 - Defenses, **7:369**
 - Institutions, **7:367**
 - Causation
 - Generally, **7:517**
 - Implied liability, **7:517**
 - Connection with requirement
 - Market transactions, **7:370**
 - Rule 10b-5, **7:370**
 - Rule 14e-3, **7:371**
 - Tender offers, **7:371**
 - Contemporaneous traders, actions by, **7:503 et seq.**
 - Control persons, actions against, **7:486, 7:512**
 - Convertibles traders, suits by, **7:508**
 - Damages, **7:488, 7:521 et seq.**
 - Defenses
 - Generally, **7:350**
 - Amount defined, **7:355**
 - Binding contract defense, **7:351**
 - Burden of proving, **7:369**
 - Common terms and issues, **7:355 et seq.**
 - Date defined, **7:357**

PRIVATE ACTIONS—Cont'd

- Insider trading—Cont'd
- Defenses—Cont'd
 - Delegation alternative to amount, price and date, **7:358**
 - Exclusiveness of defenses, **7:360**
 - Institutional defenses, **7:361**
 - Instructions defense, **7:352**
 - Overriding limitations, **7:359**
 - Price defined, **7:356**
 - Relation to other laws, **7:362**
 - Systematic plans defense, **7:353**
 - Tracking plans defense, **7:354**
- Elements of action, **7:514 et seq.**
- Express actions
 - Generally, **7:478 et seq.**
 - Amount of liability, **7:488**
 - Ancillary relief, **7:490**
 - Control persons, actions against, **7:486**
 - Damages, **7:488**
 - Other liabilities, relation to, **7:489**
 - Parties defendant, **7:483**
 - Parties plaintiff
 - Express causes of action, **7:480 et seq.**
 - Implied actions, **7:502 et seq.**
 - Relation to other liabilities, **7:489**
 - Same class of securities, actions by traders in, **7:482, 7:506**
 - Tippers, actions against, **7:485**
- Traders
 - Actions against, **7:484**
 - Contemporaneous, suits by, **7:481**
 - Who can be sued, **7:483**
 - Who may sue
 - Express causes of action, **7:480 et seq.**
 - Implied actions, **7:502 et seq.**
- Fiduciary theory
 - Generally, **7:498**
 - Scienter, **7:385**

INDEX

PRIVATE ACTIONS—Cont'd

Insider trading—Cont'd

Implied liability

Generally, **7:491 et seq.**

Amount of liability, **7:521 et seq.**

Ancillary relief, **7:525**

Background, **7:501**

Causation, **7:517**

Contemporaneous traders,
actions by, **7:503 et seq.**

Control persons, actions against,
7:512

Convertibles traders, suits by,
7:508

Damages, **7:521 et seq.**

Elements of action, **7:514 et seq.**

Fiduciary theory, **7:498**

Market, relation of parties to,
7:493 et seq.

Misappropriation theory, **7:499**

Opposite side traders

Damages, **7:522**

Elements of action, **7:518**

Relations of parties to market,
7:494

Suits by, **7:504**

Option traders, suits by, **7:507**

Parties defendant, **7:509**

Relation to other liabilities,
7:524

Reliance, **7:516**

Rule 10b-5, **7:497 et seq.**

Rule 14e-3, **7:500**

Same side traders

Damages, **7:523**

Elements of action, **7:519**

Relations of parties to market,
7:495

Suits by, **7:505**

Standing, **7:520**

Tipsters, actions against, **7:511**

Traders, actions against, **7:510**

Who can be sued, **7:509**

Who can sue, **7:502**

Institutional defenses, **7:361**

Institutions, burden of proof, **7:367**

PRIVATE ACTIONS—Cont'd

Insider trading—Cont'd

Janus Capital, liability for state-
ments of their corporations,
8:339, 8:340

Market, relation of parties to,
7:493 et seq.

Misappropriation theory

Generally, **7:499**

Scienter, **7:386**

Motion practice, **7:365**

Opposite side traders

Damages, **7:522**

Elements of action, **7:518**

Relations of parties to market,
7:494

Suits by, **7:504**

Option traders, suits by, **7:507**

Other liabilities, relation to, **7:489**

Parties, **7:363**

Parties defendant, **7:483, 7:509**

Parties plaintiff

Express causes of action, **7:480 et seq.**

Implied actions, **7:502 et seq.**

Pleading

Generally, **7:364**

Scienter, **7:398**

Procedural aspects, **7:363 et seq.**

Proof, **7:368**

Quantum of proof, **7:366, 7:367**

Relation to other liabilities, **7:489, 7:524**

Reliance

Generally, **7:516**

Implied liability, **7:516**

RICO, **7:414, 7:464**

Rule 10b-5, **7:497 et seq.**

Rule 14e-3, **7:500**

Same class of securities, actions by
traders in, **7:482, 7:506**

Same side traders

Damages, **7:523**

Elements of action, **7:519**

Relations of parties to market,
7:495

Suits by, **7:505**

PRIVATE ACTIONS—Cont'd

Insider trading—Cont'd

Scienter

Generally, **7:372 et seq.**

Fiduciary theory

Tippers, **7:381**

Trading insiders, **7:377**

Trading tippees, **7:385**

Mail and wire fraud, **7:413**

Misappropriation theory

Tippers, **7:382**

Trading insiders, **7:378**

Trading tippees, **7:386**

Pleading, **7:398**

Proof, **7:399 et seq.**

Rule 10b-5, **7:374 et seq.**

Rule 14e-3, **7:412**

Tippers

Generally, **7:379 et seq.**

Proof, **7:401**

Trading insiders

Generally, **7:375 et seq.**

Proof, **7:400**

Trading tippees

Generally, **7:383 et seq.**

Proof, **7:402**

Standing, **7:520**

Tippers

Actions against, **7:485, 7:511**

Scienter, **7:379 et seq.**

Traders

Actions against, **7:484, 7:510**

Contemporaneous, suits by,
7:481

Who can be sued, **7:483, 7:509**

Who can sue

Generally, **7:502**

Express causes of action, **7:480 et seq.**

Implied actions, **7:502 et seq.**

Insurance, **9:76**

Joint and Several Liability (this index)

Joint tortfeasors, common law fraud,
8:261

Jurisdiction

Generally, **11:2 et seq.**

Adviser activities, **11:15**

PRIVATE ACTIONS—Cont'd

Jurisdiction—Cont'd

Agent's interstate activities, **11:13**

Broker-dealer activities, **11:15**

Check clearance as interstate activity, **11:11**

Class actions, **11:42**

Defenses, **11:41**

Derivative suits, **11:43**

Foreign transactions, **11:16**

Fraud, interstate nature of, **11:9**

International transactions, **11:16**

Interstate commerce, **11:3**

Local telephone use, **11:4**

Mails, use of, **11:6**

Misconduct, relation of

jurisdictional means to

Generally, **11:8 et seq.**

Agent's interstate activities,
11:13

Check clearances, **11:11**

Fraud, **11:9**

Plaintiff's interstate activities,
11:14

Transaction, **11:10, 11:12**

Plaintiff's interstate activities,
11:14

Pleading, **11:38**

Procedure, **11:39 et seq.**

Process, **11:40**

Scope of commerce, **11:3**

Securities exchanges and interstate commerce, **11:7**

Service of process, **11:40**

Telephone use, **11:4**

Transaction, interstate nature of,
11:10, 11:12

Venue, **11:39**

Limitation of Actions (this index)

Loss causation. Causation, above

Manipulation

Generally, **8:102 et seq.**

Burden of proof, **8:104**

Defendant's purpose

Generally, **8:103 et seq.**

Burden of proof, **8:104**

Direct evidence, **8:106**

Indirect evidence, **8:107**

INDEX

PRIVATE ACTIONS—Cont'd

Manipulation—Cont'd

Defendant's purpose—Cont'd

Large blocks, **8:108**

Large proportion of trading,
8:109

Painting the tape, **8:110**

Playoff of markets, **8:114**

Price action, **8:113**

Profit, **8:115**

Proof, **8:105**

Stimulating demand, **8:110**

Suppressing supply, **8:112**

Indirect evidence of purpose,
8:107

Materiality, **8:54**

Painting the tape, **8:110**

Playoff of markets, **8:114**

Price action, **8:113**

Proof, **8:105**

Martha Stewart case

Generally, **7:403 et seq.**

Acquittal, **7:411**

Background of case, **7:404**

Imclone stock sale, **7:404**

Indictment, **7:405**

Inferences from evidence, **7:409**

Insiders and insider trading, gener-
ally, **7:403 et seq.**

Intent inference test, **7:410**

Limits on argument and evidence,
7:407

Misrepresentation, **7:406**

Scienter, generally, **7:403 et seq.**

Sufficiency of evidence test, **7:408**

MD&A predictions and projections,
disclosure requirements, **7:17**

Merger challenges

Rule 10b-5, **6:162**

Rule 14a-9, **6:160**

Rule 14c-6, **6:161**

Merrill Lynch v. Curran, loss causa-
tion in Supreme Court decision,
8:562

Mills, loss causation in Supreme
Court decision, **8:558**

Misappropriation theory of insider
liabilities, **7:579, 7:603**

PRIVATE ACTIONS—Cont'd

Misrepresentations

Fact or opinion as subject of, **8:2**

Omnicare decision, fact vs.
opinion standard, **8:3**

Opinion or fact as subject of, **8:2**

Plaintiff's knowledge, **8:246**

Rule 10b-5 elements generally, **8:2**

Motion practice

Fraud on the market theory
(FOMT), **8:547**

Insider trading charges, **7:365**

Proportionate liability, **9:59**

Negligence of plaintiff, **8:253**

9th Circuit, cases accepting loss
causation pleading, **8:571**

Nondisclosure

Fact or opinion as subject of, **8:2**

Omnicare decision, fact vs.
opinion standard, **8:3**

Opinion or fact as subject of, **8:2**

Rule 10b-5 elements generally, **8:2**

NSMIA preemption, **3:198**

Observations, **13:182**

O'Hagan case, loss causation in
Supreme Court decision, **8:568**

Parallel civil and criminal proceed- ings

Generally, **13:133 et seq.**

Battle over discovery, **13:135**

CFTC references, **13:263**

Civil-criminal flow of information,
13:139

Continuation of criminal proceed-
ings, **13:140**

Continuations of civil proceedings,
13:137, 13:138

Criminal-civil flow of information,
13:141, 13:143

Criteria for stay of discovery,
13:136

Discovery, **13:139, 13:142, 13:143**

Continuation of civil proceed-
ings with, **13:138**

Failure to warn of criminal
proceeding in civil proceed-
ing, **13:142**

Reasons for concern, **13:134**

SEC references, **13:133 et seq.**

PRIVATE ACTIONS—Cont'd

Parallel criminal proceedings, **13:143**

Parties

Generally, **8:258 et seq.**

Aider-abettors

Implied liability, **8:279**

SA § 12(2), **8:269**

Blue sky law, **8:262**

Brokers

Implied liability, **8:276**

SA § 12(2), **8:266**

Buyers, **8:265**

Common law, **8:259**

Conspirators

Generally, **8:261**

Implied liability, **8:280**

SA § 12(2), **8:270**

Contribution (this index)

Control persons, **8:271**

Distinctions, **8:258**

Implied liability

Generally, **8:274 et seq.**

Aider-abettors, **8:279**

Brokers, **8:276**

Buyers, **8:275**

Conspirators, **8:280**

Control persons, **8:281**

Insiders, **8:277**

Participants, **8:278**

Indemnification, **9:76**

Insiders

Implied liability, **8:277**

SA § 12(2), **8:267**

Insurance, **9:76**

Joint and Several Liability (this index)

Joint tortfeasors, **8:261**

Participants, **8:268**

Proportionate Liability (this index)

Proxy fraud, **8:284**

Registration fraud, **8:273**

SA § 11, **8:273**

Sales fraud

Generally, **8:263 et seq.**

Aider-abettors, **8:269**

Brokers, **8:266**

Buyers, **8:265**

PRIVATE ACTIONS—Cont'd

Parties—Cont'd

Sales fraud—Cont'd

Conspirators, **8:270**

Control persons, **8:271**

Implied liability, **8:274 et seq.**

Insiders, **8:267**

Others, **8:272**

Participants, **8:268**

SA § 17(a), **8:274 et seq.**

Sellers, **8:264**

SEA § 9, **8:282**

SEA § 10, **8:283**

SEA § 14

Proxy fraud, **8:284**

Tender offer fraud, **8:285**

SEA § 15(c)(1), **8:286**

SEA § 18, **8:287**

Securities Act, **8:263 et seq.**

Securities Exchange Act, **8:282 et seq.**

Sellers, **8:264**

Tender offer fraud, **8:285**

Penny Stock Sales (this index)

Piper case, loss causation in Supreme Court decision, **8:561**

Plaintiff's knowledge

Generally, **8:244 et seq.**

Actual knowledge, **8:244**

Comparative knowledge, **8:249**

Constructive knowledge, **8:250**

Limitation of actions, **8:251**

Misrepresentation, **8:246**

Nondisclosure, **8:245**

Theoretical knowledge, **8:248**

Pleading (this index)

Price drop, Proposition 2, **8:580**

Price inflation, Proposition 1, **8:579**

Privity

Generally, **8:288 et seq.**

Accountants, liability of, **8:404**

Actions in concert, **8:294**

Agreement, **8:314**

Aider-abettor liability, **8:327 et seq.**

Aider-abettors, **8:327 et seq.**

Aiding and abetting generally, **8:292**

INDEX

PRIVATE ACTIONS—Cont'd

- Privity—Cont'd
 - Attorneys, **8:409**
 - Benefit, **8:317**
 - Combination, **8:314**
 - Concerted action, **8:294**
 - Conspiracy generally, **8:292**
 - Conspirators, **8:304 et seq.**
 - Control person liability, **8:373 et seq.**
 - Distinctions, **8:258**
 - Extent of liability, **8:318**
 - Implied liability, **8:288 et seq.**
 - Inducement, **8:295**
 - Injunction suits, **8:303**
 - Insiders, inducement by, **8:299**
 - Intent, **8:316**
 - Issuers, inducement by, **8:297**
 - Knowledge, **8:315**
 - Liability, extent of, **8:318**
 - Limits, **8:291**
 - Officers and directors, **8:413**
 - Participants generally, **8:292**
 - Participants in violations generally, **8:294**
 - Participation generally, **8:292**
 - Pleading
 - Generally, **8:319 et seq.**
 - Affirmative conduct, **8:321**
 - Aiding-abetting, **8:324**
 - Choice of parties, **8:320**
 - Conspiracy, **8:325**
 - No affirmative conduct, **8:322**
 - Participation, **8:323**
 - Special elements, **8:326**
 - Policies, **8:289**
 - Reasons, **8:289**
 - Rescission, availability of, **8:290**
 - Rule 10b-5, **8:288 et seq.**
 - Suability, meaning of generally, **8:293**
 - Theory of action, **8:290**
- Procedural aspects, **8:581**
- Process, **11:40**
- Proof** (this index)
- Proportionate Liability** (this index)

PRIVATE ACTIONS—Cont'd

- Quantum of proof
 - Fraud on the market theory (FOMT), **8:548**
 - Insider trading charges, **7:366**
 - Proportionate liability, **9:63**
- Randall case, loss causation in Supreme Court decision, **8:564**
- Reduction in price, Proposition 2, **8:580**
- Reliance
 - Generally, **8:484 et seq.**
 - Access to information, **8:499**
 - Anti-reliance devices, **8:511 et seq.**
 - Blue sky law, **8:488**
 - Buyer-seller requirement, **8:582**
 - Causation as substitute for reliance, **8:524**
- Class actions
 - Generally, **8:515 et seq.**
 - Desirability of class actions, **8:526**
 - Utility of class actions, **8:526**
- Common law, **8:487**
- Concealment of fraud, **8:501**
- Damages
 - Causation, **8:553**
 - Fraud on the market theory (FOMT), **8:552**
- Disclaimers, **8:514**
- Due diligence, **8:506**
- Expertise of plaintiff, **8:497**
- Fiduciary relationships, **8:500**
- Fraud on the market theory (FOMT)
 - Generally, **8:520 et seq.**
 - Background, **8:521**
 - Burden of proof, **8:548**
 - Causation as substitute for reliance, **8:524**
 - Class certification, **8:550**
 - Common law, **8:531**
 - Damages measure, **8:552**
 - Desirability of class actions, **8:526**
 - Disclosure policy and, **8:533**
 - Fairness, **8:527**

PRIVATE ACTIONS—Cont'd

Reliance—Cont'd
 Fraud on the market theory (FOMT)—Cont'd
 Indirect or presumed reliance, **8:539 et seq.**
 Indirect reliance, **8:521**
 Market based price determinations, **8:525**
 Materiality as substitute for reliance, **8:524**
 Materiality of alleged misrepresentation, **8:550**
 Motion practice, **8:547**
 Nature of market, **8:536 et seq.**
 Novelty of theory, **8:529**
 Parties, **8:545**
 Pleading, **8:546**
 Policies, **8:523, 8:528 et seq.**
 Presumption, treatment as, **8:521**
 Presumptions, **8:510**
 Price determinations, market based, **8:525**
 Procedural aspects of theory, **8:545 et seq.**
 Proof, **8:549, 8:550**
 Quantum of proof, **8:548**
 Reasons, **8:523, 8:528 et seq.**
 Rebuttal of theory, **8:542 et seq.**
 Scope of theory, **8:522**
 Statutory bases, **8:532**
 Utility of class actions, **8:526**
 Fraud to enter the market theory (FEMT)
 Indirect or presumed reliance, **8:541**
 Nature of market, **8:538**
 Rebuttal of theory, **8:544**
 Generality of misrepresentation, **8:504**
 Indirect reliance, **8:521**
 Insider trading, **7:516**
 Integration clauses, **8:513**
 Justifiable, **8:496**
 Long-standing relationships, **8:498**
 Materiality
 Generally, **8:507**

PRIVATE ACTIONS—Cont'd

Reliance—Cont'd
 Materiality—Cont'd
 Distinctions, **8:519**
 Presumptive reliance and materiality of omissions, **8:509**
 Substitutions of theories, **8:524**
 No-reliance clauses, **8:512**
 Opportunity to detect fraud, **8:502**
 Plaintiff initiation, **8:503**
 Presumptions
 Generally, **8:508 et seq.**
 Fraud on the market, above
 Material omissions, **8:509**
 Ute presumption, **8:484**
 Proof of subjective reliance, **8:485**
 Registration fraud, **8:491**
 Rule 10b-5, **8:493 et seq.**
 SA § 11, **8:491**
 SA § 12(a)(2), **8:490**
 SA § 17(a), **8:492**
 SA generally, **8:489 et seq.**
 Sales fraud
 Generally, **8:489 et seq.**
 Express liability, **8:490**
 Implied liability, **8:492**
 Sophistication of plaintiff, **8:497**
 Specificity of misrepresentation, **8:504**
 State law, **8:488**
 Subjective reliance, **8:485**
 Transaction planning, **8:511 et seq.**
 Ute presumption, **8:484**
 Remedies (this index)
 Residue, **8:583**
 Restitution to defrauded investors,
 SEC role in
 In court, **10:3**
 Out of court, **10:2**
 Sales fraud
 Generally, **8:489 et seq.**
 Aider-abettors, **8:269**
 Brokers, **8:266**
 Buyers, **8:265**
 Conspirators, **8:270**
 Control persons, **8:271**
 Insiders, **8:267**

INDEX

PRIVATE ACTIONS—Cont'd

- Sales fraud—Cont'd
 - Others, **8:272**
 - Participants, **8:268**
 - Parties, **8:263 et seq.**
 - SA § 17(a), **8:274 et seq.**
 - Sellers, **8:264**
- Same side traders
 - Damages, **7:523**
 - Elements of action, **7:519**
 - Relations of parties to market, **7:495**
 - Suits by, **7:505**
- Sarbanes-Oxley Act liability, **8:476**
- Scienter
 - Generally, **8:58 et seq.**
 - Actual knowledge
 - Generally, **8:165 et seq.**
 - Burden of proof, **8:178**
 - Criminal prosecutions, **8:176**
 - Direct-impersonal transactions, **8:171**
 - Direct-personal transactions, **8:170**
 - Indirect-impersonal transactions, **8:172**
 - Injunctions, **8:174**
 - Insufficiency of, **8:177**
 - Necessity of, **8:167, 8:168**
 - Proof, **8:179**
 - SEC decisions, **8:175**
 - Sufficiency of, **8:169 et seq.**
 - Bad faith
 - Generally, **8:210 et seq.**
 - Burden of proof, **8:219**
 - Effect of good or bad faith generally, **8:216 et seq.**
 - Good reputation, effect of, **8:218**
 - Insufficiency, **8:215**
 - Necessity of, **8:212, 8:213**
 - Proof, **8:220**
 - Sufficiency, **8:214**
 - Belief of defendant, **8:240**
- Blue sky law
 - Defendant's knowledge and intent, **8:61**
 - Plaintiff's knowledge, **8:62**

PRIVATE ACTIONS—Cont'd

- Scienter—Cont'd
 - Broker-dealer fraud
 - Generally, **8:139 et seq.**
 - Burden of proof, **8:141**
 - Defendant's intent, **8:143**
 - Defendant's knowledge and belief
 - Generally, **8:140 et seq.**
 - Burden of proof, **8:141**
 - Proof, **8:142**
 - Plaintiff's knowledge, **8:144**
 - Pleading, **8:145**
 - Proof, **8:142**
 - Burden of proof, **8:66**
 - Common law
 - Defendant's knowledge and intent, **8:59**
 - Plaintiff's knowledge, **8:60**
 - Constructive knowledge
 - Generally, **8:180 et seq.**
 - Burden of proof, **8:189**
 - Criminal prosecutions, **8:187**
 - Injunctions, **8:185**
 - Insufficiency, **8:188**
 - Necessity, **8:182, 8:183**
 - Proof, **8:190**
 - SEC decisions, **8:186**
 - Sufficiency, **8:184 et seq.**
 - Defendant's knowledge and intent
 - Blue sky laws, **8:61**
 - Common law, **8:59**
 - Defendant standards, **8:164**
 - Definitions, **8:155 et seq.**
 - Diligence, lack of
 - Generally, **8:229 et seq.**
 - Burden of proof, **8:238**
 - Criminal cases, **8:236**
 - Injunctions, **8:234**
 - Insufficiency, **8:237**
 - Necessity, **8:231, 8:232**
 - Proof, **8:239**
 - SEC decisions, **8:235**
 - Sufficiency, **8:233 et seq.**
 - Intent
 - Generally, **8:191 et seq.**
 - Absence of intent, effect of, **8:200**

PRIVATE ACTIONS—Cont'd

Scienter—Cont'd
 Intent—Cont'd
 Burden of proof, **8:201**
 Criminal cases, **8:197**
 Criminal prosecutions, **8:197**
 Injunctions, **8:195**
 Insufficiency, **8:199**
 Necessity, **8:193 et seq.**
 Presence of intent, effect of, **8:200**
 Proof, **8:202**
 SEC decisions, **8:196**
 Sufficiency, **8:198**
 Limitation of actions, plaintiff's knowledge of fraud, **8:70**
 Manipulation
 Generally, **8:102 et seq.**
 Burden of proof, **8:104**
 Defendant's intent, **8:119**
 Defendant's knowledge, **8:120**
 Defendant's purpose
 Generally, **8:103 et seq.**
 Burden of proof, **8:104**
 Defense of proper purpose, **8:118**
 Direct evidence, **8:106**
 Indirect evidence, **8:107**
 Large blocks, **8:108**
 Large proportion of trading, **8:109**
 Painting the tape, **8:110**
 Playoff of markets, **8:114**
 Price action, **8:113**
 Profit, **8:115**
 Proof, **8:105**
 Proper purpose as defense, **8:118**
 Stimulating demand, **8:110, 8:111**
 Suppressing supply, **8:112**
 Defendant's willfulness, **8:121**
 Direct evidence, **8:106**
 Indirect evidence of purpose, **8:107**
 Large block trades, **8:108**
 Large proportion of trading, **8:109**

PRIVATE ACTIONS—Cont'd

Scienter—Cont'd
 Manipulation—Cont'd
 Painting the tape, **8:110**
 Plaintiff's knowledge, **8:122**
 Playoff of markets, **8:114**
 Pleading, **8:123**
 Price action, **8:113**
 Proof, **8:105**
 Stimulating demand, **8:110**
 Suppressing supply, **8:112**
 Materiality, **8:44, 8:45**
 Motive
 Generally, **8:203 et seq.**
 Absence, effect of, **8:207**
 Burden of proof, **8:208**
 Necessity, **8:205, 8:206**
 Presence, effect of, **8:207**
 Proof, **8:209**
 Negligence
 Generally, **8:229 et seq.**
 Burden of proof, **8:238**
 Criminal cases, **8:236**
 Injunctions, **8:234**
 Insufficiency, **8:237**
 Necessity, **8:231, 8:232**
 Proof, **8:239**
 SEC decisions, **8:235**
 Sufficiency, **8:233 et seq.**
 Other elements, relation of scienter to, **8:163**
 Plaintiff's knowledge
 Blue sky laws, **8:62**
 Common law, **8:60**
 Plaintiff standards, **8:164**
 Pleading
 Particularity
 Generally, **11:133 et seq.**
 Bases for inferring, **11:135**
 Circumstantial evidence of recklessness, **11:162**
 Conscious behavior, **11:162**
 Motive, **11:139**
 Opportunity, **11:139**
 Recklessness, **11:141, 11:162**
 SEA § 21D(b), **11:134**
 SEC, false reports to, **8:152**

INDEX

PRIVATE ACTIONS—Cont'd

Scienter—Cont'd

Proof

Actual knowledge, **8:179**

Proxy fraud

Generally, **8:125 et seq., 8:126 et seq.**

Burden of proof, **8:127**

Intent, **8:129**

Plaintiff's knowledge, **8:130**

Pleading, **8:131**

Proof, **8:128**

Recklessness

Generally, **8:221 et seq.**

Burden of proof, **8:227**

Insufficiency, **8:226**

Necessity, **8:223, 8:224**

Proof, **8:228**

Sufficiency, **8:225**

Registration statement fraud, **8:72 et seq.**

Reputation, **8:218**

Rule 10b-5 fraud

Generally, **8:154 et seq.**

Actual knowledge

Generally, **8:165 et seq.**

Burden of proof, **8:178**

Criminal prosecutions, **8:176**

Direct-impersonal transactions, **8:171**

Direct-personal transactions, **8:170**

Indirect-impersonal transactions, **8:172**

Injunctions, **8:174**

Insufficiency of, **8:177**

Necessity of, **8:167, 8:168**

Proof, **8:179**

SEC decisions, **8:175**

Sufficiency of, **8:169 et seq.**

Bad faith

Generally, **8:210 et seq.**

Burden of proof, **8:219**

Effect of good or bad faith generally, **8:216 et seq.**

Good reputation, effect of, **8:218**

Insufficiency, **8:215**

PRIVATE ACTIONS—Cont'd

Scienter—Cont'd

Rule 10b-5 fraud—Cont'd

Bad faith—Cont'd

Necessity of, **8:212, 8:213**

Proof, **8:220**

Sufficiency, **8:214**

Belief of defendant, **8:240**

Breadth of rule, **8:160**

Congressional intent, **8:158**

Constructive knowledge

Generally, **8:180 et seq.**

Burden of proof, **8:189**

Criminal prosecutions, **8:187**

Injunctions, **8:185**

Insufficiency, **8:188**

Necessity, **8:182, 8:183**

Proof, **8:190**

SEC decisions, **8:186**

Sufficiency, **8:184 et seq.**

Defendant standards, **8:164**

Diligence, lack of

Generally, **8:229 et seq.**

Injunctions, **8:234**

Flexibility, need for, **8:162**

Formulations, **8:155**

Intent

Generally, **8:191 et seq.**

Absence of intent, effect of, **8:200**

Burden of proof, **8:201**

Criminal cases, **8:197**

Criminal prosecutions, **8:197**

Injunctions, **8:195**

Insufficiency, **8:199**

Necessity, **8:193 et seq.**

Presence of intent, effect of, **8:200**

Proof, **8:202**

SEC decisions, **8:196**

Sufficiency, **8:198**

Motive

Generally, **8:203 et seq.**

Absence, effect of, **8:207**

Burden of proof, **8:208**

Necessity, **8:205, 8:206**

Presence, effect of, **8:207**

Proof, **8:209**

PRIVATE ACTIONS—Cont'd

Scienter—Cont'd
 Rule 10b-5 fraud—Cont'd
 Negligence
 Generally, **8:229 et seq.**
 Injunctions, **8:234**
 Other elements, relation of scienter to, **8:163**
 Plaintiff standards, **8:164**
 Policy, **8:161**
 Reasons, **8:161**
 Recklessness, **8:221 et seq.**
 Reputation, **8:218**
 Scope of rule, **8:160**
 Semantic confusion, **8:156, 8:157**
 Unreasonable conduct
 Generally, **8:229 et seq.**
 Injunctions, **8:234**
 Willfulness, **8:241**
 SEA § 15(c)(1), **8:139 et seq.**
 SEC, false reports to
 Generally, **8:146**
 Defendant's intent, **8:150**
 Defendant's knowledge
 Generally, **8:147 et seq.**
 Burden of proof, **8:148**
 Proof, **8:149**
 Good faith, **8:150**
 Plaintiff's knowledge, **8:151**
 Pleading, **8:152**
 Privity, **8:287**
 Quantitative factors, **8:153**
 Securities Exchange Act
 Generally, **8:101 et seq.**
 Rule 10b-5 fraud, **8:154 et seq.**
 Section 9(a), **8:102 et seq.**
 Section 10, **8:124**
 Section 14, **8:125, 8:132 et seq.**
 Section 15(c)(1), **8:139 et seq.**
 Section 18, **8:146 et seq.**
 Stimulating demand, **8:110**
 Tender offer fraud
 Defendant's intent, **8:136**
 Defendant's knowledge and belief
 Generally, **8:133 et seq.**
 Burden of proof, **8:134**

PRIVATE ACTIONS—Cont'd

Scienter—Cont'd
 Tender offer fraud—Cont'd
 Defendant's knowledge and belief—Cont'd
 Proof, **8:135**
 Intent, **8:136**
 Plaintiff's knowledge, **8:137**
 Pleading, **8:138**
 Unreasonable conduct
 Generally, **8:229 et seq.**
 Burden of proof, **8:238**
 Criminal cases, **8:236**
 Injunctions, **8:234**
 Insufficiency, **8:237**
 Necessity, **8:231, 8:232**
 Proof, **8:239**
 SEC decisions, **8:235**
 Sufficiency, **8:233 et seq.**
 Versions of scienter, relations among
 Actual knowledge, **8:166**
 Bad faith, **8:211**
 Constructive knowledge, **8:181**
 Diligence, lack of, **8:230**
 Intent, **8:192**
 Motive, **8:204**
 Negligence, **8:230**
 Purpose, **8:204**
 Recklessness, **8:222**
 Unreasonable conduct, **8:230**
 Willfulness, **8:241**
 Scienter (this index)
 2nd Circuit
 Cases accepting loss causation pleading, **8:572**
 Cases rejecting loss causation pleading, **8:575**
 SEC role in restitution to defrauded investors
 Coordinated SEC-state-SRO investigations, **13:324**
 In court, **10:3**
 Out of court, **10:2**
 SEC, amicus curiae participation, **13:79**
 Service of process, **11:40**

INDEX

PRIVATE ACTIONS—Cont'd

- 7th Circuit, cases rejecting loss causation pleading, **8:576**
- SROs, amicus curiae participation, **13:293**
- Standing
 - Distinctions, **8:258**
 - Implied liability, **7:520**
 - Insider trading, **7:520**
- Strict liability, **8:243**
- Suitability** (this index)
- Supreme Court, loss causation, **8:556 to 8:570**
- 3rd Circuit, cases accepting loss causation pleading, **8:573**
- Ute Indians, **8:484, 8:559**
- Venue, **11:39**
- Virginia bankshares, loss causation in Supreme Court decision, **8:566**
- Whistleblowers, employers, **22:16**

PRIVATE CLASS ACTIONS

- ESG, **29:3**

PRIVATE COMPANIES

- Whistleblowers, employees, **22:17**

PRIVATE INFORMATION

- See **Insiders and Insider Trading** (this index)

PRIVATE SECURITIES

LITIGATION REFORM ACT (PSLRA)

- Aider-abettor liability, **8:347**
- Congressional intent, **3:214**
- Discovery stays, **7:44**
- Feeder fund protection, **20:18**
- Forward looking statement defined, **7:25**
- Indirect-impersonal dealing, **7:86, 7:97**
- Pleading** (this index)
- Predictions and projections
 - Generally, **7:23 et seq.**
 - Actual knowledge prong, **7:36**
 - Attacking cautionary statements, **7:29**
 - Caution prong, **7:26**
 - Corrections, **7:45**

PRIVATE SECURITIES

LITIGATION REFORM ACT (PSLRA)—Cont'd

- Predictions and projections—Cont'd
 - Definition of forward looking statement, **7:25**
 - Discovery stays, **7:44**
 - Drafting cautionary statements, **7:28**
 - Eligible makers, **7:37**
 - Exclusions, **7:40**
 - Expandability, **7:41**
 - Falsity, actual knowledge of, **7:36**
 - Immateriality, **7:35, 7:38**
 - Later disclosures, **7:30**
 - Motion practice, **7:43**
 - Nonexclusiveness, **7:41**
 - Oral statements referencing caution, **7:31, 7:39**
 - Procedural aspects, **7:42**
 - Prohibited uses, **7:40**
 - Readily available cautionary statements
 - Generally disseminated, **7:34**
 - SEC filings, **7:33**
 - Timing, **7:32**
 - Scope of Act, **7:24**
 - Statements with cautions, **7:27**
 - Update duty, **7:45**
- Proportionate Liability** (this index)
- Rule 10b-5 and, **3:1**
- Scope of Act, **7:24**
- SLUSA and, **3:214**

PRIVATE TRANSACTIONS

- See **Direct-Personal Dealing** (this index)

PRIVILEGES

- Generally, **13:31 et seq.**
- Attorney-client
 - Generally, **13:36**
- Filip era
 - Changes in policy, **13:54**
 - Cooperation, **13:51, 13:52**
 - Internal investigations, **13:52**
 - Investor recovery, **13:55**
 - Joint defense, **13:54**

PRIVILEGES—Cont'd

Attorney-client—Cont'd
 Filip era—Cont'd
 Relief from pressure to waive, **13:50**
 Sharing agreements, **13:54**
 Waiver request, **13:53**
 Work product, **13:54**
 Waiver
 Generally, **13:37 et seq.**
 CFTC, **13:57**
 Constitutional analysis, **13:42**
 Constitutional violations, **13:43**
 District Court reconsideration (Stein IV), **13:46**
 Fee claims, **13:45**
 Filip Era, **13:50**
 Findings, **13:41**
 KPMG's actions, **13:40**
 Legal fee payment, **13:39**
 McNulty era, **13:48**
 Pressure not to pay legal fees, **13:58**
 Pressure to waive, **13:38**
 Proffers under threat of nonpayment of legal fees, **13:44**
 Relief from pressure to waive, **13:48 et seq.**
 SEC, **13:56**
 Second Circuit (Stein V), **13:47**
 Specter Bill, **13:49**
 US v. Stein, **13:39 et seq.**
 CFTC investigations, **13:223**
 Claiming, strategic considerations, **13:61 to 13:65**
 SEC investigations, **13:31 et seq.**
 Self incrimination
 Generally, **13:32**
 Waiver, **13:33**
 SRO investigations, **13:285**
 Waiver, **13:33**
 Work product, **13:59**

PRIVITY

Generally, **6:172 et seq., 8:258 et seq.**
 See also **Private Actions** (this index)
 Actions in concert, **8:294**
 Agreement, **8:314**

PRIVITY—Cont'd

Benefit, **8:317**
 Combination, **8:314**
 Control person liability, **8:373 et seq.**
 Extent of liability, **8:318**
 Implied liability, Rule 10b-5, **3:176**
 Intent, **8:316**
 Knowledge, **8:315**
 Liability, extent of, **8:318**
 Merger challenges, **6:172 et seq.**
 Participation, pleading, **8:323**
 Pleading
 Generally, **8:319 et seq.**
 Affirmative conduct, **8:321**
 Aiding-abetting, **8:324**
 Choice of parties, **8:320**
 Conspiracy, **8:325**
 No affirmative conduct, **8:322**
 Participation, **8:323**
 Special elements, **8:326**
 Rule 10b-5
 Generally, **6:175**
 Actions in concert, **8:294**
 Aider-abettor liability, **8:327 et seq.**
 Concerted action, **8:294**
 Control person liability, **8:373 et seq.**
 Implied liability, **3:176**
 Inducement, **8:295**
 Injunction suits, **8:303**
 Insiders, inducement by, **8:299**
 Issuers, inducement by, **8:297**
 Participants generally, **8:292**
 Participants in violations generally, **8:294**
 Rule 14a-9, **6:173**
 Rule 14c-6, **6:174**
 Suability, meaning of generally, **8:293**

PROBABLE CAUSE

Insiders and inside trading, Raj
 Rajaratnam case, **21:15**

PROCESS

Generally, **11:40**

INDEX

PROFITS

- Madoff feeder funds, **20:19**
- Private actions, materiality, **8:43**

PRO FORMA FINANCIAL INFORMATION

- Sarbanes-Oxley Act liabilities based on, **3:170**

PROJECTIONS

- Generally, **7:5, 7:5 et seq.**
- See also **Forward Looking Information** (this index)
- Analyst projections, **7:9**
- Company projections, **7:8**
- Disclosure obligations
 - Generally, **7:10 et seq.**
 - Capital resources, **7:15**
 - Liquidity, **7:14**
 - With MD&A requirement
 - Administrative enforcement, **7:13**
 - Private actions, **7:17**
 - Operation results, **7:16**
 - Private actions on MD&A requirements, **7:17**
 - Restrictions on disclosures, **7:18**
- Safe harbor
 - Generally, **7:19 et seq.**
 - Background, **7:20**
 - Bespeaks caution doctrine, **7:22**
 - Immateriality, **7:35, 7:38**
- PSLRA
 - Generally, **7:23 et seq.**
 - Actual knowledge prong, **7:36**
 - Attacking cautionary statements, **7:29**
 - Caution prong, **7:26**
 - Corrections, **7:45**
 - Definition of forward looking statement, **7:25**
 - Discovery stays, **7:44**
 - Drafting cautionary statements, **7:28**
 - Eligible makers, **7:37**
 - Exclusions, **7:40**
 - Expandability, **7:41**

PROJECTIONS—Cont'd

- Disclosure obligations—Cont'd
- Safe harbor—Cont'd
- PSLRA—Cont'd
 - Falsity, actual knowledge of, **7:36**
 - Immateriality, **7:35, 7:38**
 - Later disclosures, **7:30**
 - Motion practice, **7:43**
 - Nonexclusiveness, **7:41**
 - Oral statements referencing caution, **7:31, 7:39**
 - Procedural aspects, **7:42**
 - Prohibited uses, **7:40**
 - Scope of Act, **7:24**
 - Statements with cautions, **7:27**
 - Update duty, **7:45**
- Readily available cautionary statements
 - Generally disseminated, **7:34**
 - SEC filings, **7:33**
 - Timing, **7:32**
- SA Rule 175, **7:21**
- SEA Rule 3b-6, **7:21**
- SEC, traditional position, **7:18**
- With SEC encouragement, **7:12**
- Without SEC rule, **7:11**
- Forecasts distinguished, **7:5**
- Fraud, predictions and projections as, **7:6**
- Predictions distinguished, **7:5**
- Safe harbor
 - Generally, **7:19 et seq.**
 - Background, **7:20**
 - Bespeaks caution doctrine, **7:22**
 - Immateriality, **7:35, 7:38**
 - Motion practice, **7:43**
 - Oral statements referencing caution, **7:31, 7:39**
- PSLRA
 - Generally, **7:23 et seq.**
 - Actual knowledge prong, **7:36**
 - Attacking cautionary statements, **7:29**
 - Caution prong, **7:26**
 - Corrections, **7:45**

PROJECTIONS—Cont'd

- Safe harbor—Cont'd
 - PSLRA—Cont'd
 - Definition of forward looking statement, **7:25**
 - Discovery stays, **7:44**
 - Drafting cautionary statements, **7:28**
 - Eligible makers, **7:37**
 - Exclusions, **7:40**
 - Expandability, **7:41**
 - Falsity, actual knowledge of, **7:36**
 - Later disclosures, **7:30**
 - Motion practice, **7:43**
 - Nonexclusiveness, **7:41**
 - Oral statements referencing caution, **7:31, 7:39**
 - Procedural aspects, **7:42**
 - Prohibited uses, **7:40**
 - Scope of Act, **7:24**
 - Statements with cautions, **7:27**
 - Update duty, **7:45**
 - Readily available cautionary statements
 - Generally disseminated, **7:34**
 - SEC filings, **7:33**
 - Timing, **7:32**
 - SA Rule 175, **7:21**
 - SEA Rule 3b-6, **7:21**

PROMOTIONAL MATERIALS

- Madoff Ponzi scheme, **20:5**

PROOF

- Bad faith, scienter, **8:220**
- Broker-dealer fraud
 - Defendant's knowledge and belief, **8:142**
 - Scienter, **8:142**
- Churning, **14:132**
- Class certification, materiality of alleged misrepresentation, **8:550**
- Constructive knowledge, **8:190**
- Defendant's knowledge and belief, **8:142**
- Diligence, lack of, **8:239**
- Fraud on the market theory (FOMT), **8:549, 8:550**

PROOF—Cont'd

- Implied liability
 - Generally, **8:256**
 - Rule 10b-5, **3:177**
- Insiders and Insider Trading** (this index)
- Intent, **8:202**
- Motive, **8:209**
- Negligence, **8:239**
- Proportionate liability, **9:64**
- Proxy fraud, **8:128**
- Recklessness, **8:228**
- Reliance, **8:485**
- Retaliatory intent under Sarbanes-Oxley Act, UBS Securities decision, **22:24**
- Rule 10b-5 implied liability, **3:177**
- Scienter
 - Generally, **8:67**
 - Actual knowledge, **8:179**
 - Bad faith, **8:220**
 - Broker-dealer fraud, **8:142**
 - Constructive knowledge, **8:190**
 - Defendant's knowledge and belief, **8:142**
 - Diligence, lack of, **8:239**
 - Intent, **8:202**
 - Motive, **8:209**
 - Negligence, **8:239**
 - Proxies and proxy solicitations, **8:128**
 - Recklessness, **8:228**
 - SEC, false reports to, **8:149**
 - Tender offer fraud, **8:135**
 - Unreasonable conduct, **8:239**
- SEC, false reports to, **8:149**
- Securities Act
 - Scienter, **8:67**
 - Section 11, **8:78**
 - Section 17(a), **8:85**
- Subjective reliance, **8:485**
- Tender offer fraud, **8:135**
- Unreasonable conduct, **8:239**

PROPORTIONATE LIABILITY

- Generally, **9:47 et seq., 9:57**
- See also **Joint and Several Liability** (this index)

INDEX

PROPORTIONATE LIABILITY

—Cont'd

Additions to, **9:54**
Apportionment determinations, **9:61**
Background, **9:48**
Burden of proof, **9:63**
Contribution and, **9:69**
Control persons, **9:53**
Damage limitations, effect of, **9:55**
Fair share liability, **9:52**
Indemnification, **9:76**
Insurance, **9:76**
Joint and several liability compared, **9:47**
Knowing violators
 Generally, **9:51**
 Determinations, **9:60**
Legislative history, **9:48**
Measure of liability, **9:49 et seq.**
Motion practice, **9:59**
Nature of liability, **9:49 et seq.**
Nondisclosures to jury, **9:62**
Nonknowing violators, **9:52**
Parties, **9:57**
Pleadings, **9:58**
Private Securities Litigation Reform Act, **9:48**
Procedural aspects, **9:56 et seq.**
Proof, **9:64**
Quantum of proof, **9:63**
Scope of liability, **9:50**
Securities Act provisions, **9:48**
Securities Exchange Act provisions, **9:48**
Settlement, effect of, **9:65**

PROSPECTUS DISCLOSURE

Mutual fund violations, misleading prospectuses, **17:7**

PROSPECTUS FRAUD

Contextual definitions, **3:43**
Disclosure by, **7:286**
Issuer disclosure by, **7:286**
Limitation of actions, **11:47 et seq.**
Meanings of, **3:41 et seq.**
Penny Stock Sales (this index)
Statutory definition, **3:42**
Suitability (this index)

PROXIMATE CAUSE

See also **Causation** (this index)
Aider-abettor liability, substantial assistance, **8:360**
Broker-dealer liability, **14:92**

PROXY FRAUD

Generally, **6:198 et seq.**
See also **Direct-Impersonal Dealing** (this index)
Antifraud provisions
 Backdating of stock options, **18:3**
Causation
 Generally, **6:179 et seq.**
 Rule 10b-5, **6:181**
 Rule 14a-9, **6:179**
 Rule 14c-6, **6:180**
Connection requirement
 Generally, **6:183 et seq.**
 Rule 10b-5, **6:185**
 Rule 14a-9, **6:183**
 Rule 14c-6, **6:184**
Jurisdictional means
 Generally, **6:188 et seq.**
 Rule 10b-5, **6:190**
 Rule 14a-9, **6:188, 6:189**
Materiality standard
 Generally, **6:165 et seq.**
 Rule 10b-5, **6:168**
 Rule 14a-9, **6:166**
 Rule 14c-6, **6:167**
Mergers
 Generally, **6:158 et seq.**
 Buyer-seller requirement, **6:182**
Causation
 Generally, **6:179 et seq.**
 Rule 10b-5, **6:181**
 Rule 14a-9, **6:179**
 Rule 14c-6, **6:180**
Comparative language, **6:164**
Connection requirement
 Generally, **6:183 et seq.**
 Rule 10b-5, **6:185**
 Rule 14a-9, **6:183**
 Rule 14c-6, **6:184**
Jurisdictional means
 Generally, **6:188 et seq.**
 Rule 10b-5, **6:190**

PROXY FRAUD—Cont'd

Antifraud provisions—Cont'd

Mergers—Cont'd

Jurisdictional means—Cont'd

Rule 14a-9, **6:188, 6:189**

Materiality standard

Generally, **6:165 et seq.**

Rule 10b-5, **6:168**

Rule 14a-9, **6:166**

Rule 14c-6, **6:167**

Operation, areas of, **6:163**

Private actions, **6:160 et seq.**

Privity

Generally, **6:172 et seq.**

Rule 10b-5, **6:175**

Rule 14a-9, **6:173**

Rule 14c-6, **6:174**

Reliance

Generally, **6:176 et seq.**

Rule 10b-5, **6:178**

Rule 14a-9, **6:176**

Rule 14c-6, **6:177**

Rule 10b-5, relation of proxy
rules to, **6:159 et seq.**

Rule 10b-5 private actions,
6:162

Rule 14a-9 private actions,
6:160

Rule 14c-6 private actions,
6:161

Scienter standard

Generally, **6:169 et seq.**

Rule 10b-5, **6:171**

Rule 14a-9, **6:169**

Rule 14c-6, **6:170**

SEA § 14(e), **6:186**

Securities Act, **6:187**

State law

Generally, **6:191 et seq.**

Appraisal rights, **6:192, 6:193**

Delaware law, **6:196**

Effect of merger or dissolu-
tion, **6:194**

Equitable approach, **6:197**

Standing approach, **6:196**

Violations covered, **6:164**

Privity

Generally, **6:172 et seq.**

PROXY FRAUD—Cont'd

Antifraud provisions—Cont'd

Privity—Cont'd

Rule 10b-5, **6:175**

Rule 14a-9, **6:173**

Rule 14c-6, **6:174**

Proxy rules, **6:24**

Reliance

Generally, **6:176 et seq.**

Rule 10b-5, **6:178**

Rule 14a-9, **6:176**

Rule 14c-6, **6:177**

Rule 10b-5

Causation, **6:181**

Materiality standard, **6:168**

Privity, **6:175**

Proxy rules, relation to, **6:159 et
seq.**

Reliance, **6:178**

Scienter standard, **6:171**

Rule 14a-9

Causation, **6:179**

Materiality standard, **6:166**

Privity, **6:173**

Reliance, **6:176**

Scienter standard, **6:169**

Rule 14c-6

Causation, **6:180**

Materiality standard, **6:167**

Privity, **6:174**

Reliance, **6:177**

Scienter standard, **6:170**

Scienter standard

Generally, **6:169 et seq.**

Rule 10b-5, **6:171**

Rule 14a-9, **6:169**

Rule 14c-6, **6:170**

SEA § 14(e), **6:186**

Securities Act, **6:187**

State law

Generally, **6:191 et seq.**

Appraisal rights, **6:192, 6:193**

Delaware law, **6:196**

Effect of merger or dissolution,
6:194

Equitable approach, **6:197**

Standing approach, **6:196**

INDEX

PROXY FRAUD—Cont'd

Antifraud provisions—Cont'd

Tender offers

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

Connection, **6:26**

Jurisdictional means, **6:27**

Opposition, applicability to,
6:23

Proxy rules, **6:24**

SEA § 14(e), **6:24**

Conflict of interest transactions,
5:108

Definitions, **6:208, 6:209**

Direct-personal dealing, **5:108**

Disclosures

Generally, **6:212 et seq., 6:267**

Advance letters

Proxy rules, **6:240**

Registration under SA, **6:241**

Aggregate materiality, **6:253**

Annual reports, **6:242**

Application of funds, **6:260**

Assets

Generally, **6:261 et seq.**

Existence of, **6:262**

Reasons, **6:273**

Value of assets, below

Balance, **6:229**

Buried facts, **6:232**

Cash flow, **6:260**

Clarity, **6:225**

Comparative tables, **6:219**

Consistency, **6:228**

Conspicuity. Prominence, below

Context, **6:235**

Corrections, **6:302**

Generally, **6:290 et seq.**

See also Supplementary communications, below

Another's statements, correction of, **6:319**

Blue sky laws, **6:292**

Broker-dealer fraud, **6:312**

Common law, **6:291**

False reports to SEC, **6:313**

Fraud in general, **6:314 et seq.**

PROXY FRAUD—Cont'd

Disclosures—Cont'd

Corrections, **6:302**—Cont'd

How long correction is necessary

Rule 14a-9, **6:304**

Rule 14c-6, **6:308**

SA § 11, **6:296**

How long is correction necessary

Generally, **6:323**

Direct-impersonal transactions, **6:325**

Direct-personal transactions,
6:324

Indirect-impersonal transactions, **6:326**

How must correction be made

Rule 10b-5, **6:328**

Rule 14a-9, **6:306**

Rule 14c-6, **6:310**

SA § 11, **6:298**

Market manipulation, **6:300**

Proxy fraud, **6:302**

Registration fraud, **6:294 et seq.**

Rule 10b-5 requirements

Fraud in general, **6:314 et seq.**

How long is correction necessary, **6:323 et seq.**

How must correction be made, **6:328**

What makes correction necessary, **6:319 et seq.**

What must be corrected,
6:327

Who entitled to correction,
6:328

Rule 14a-9, **6:303 et seq.**

Rule 14c-6, **6:307 et seq.**

SA § 11, **6:294 et seq.**

SA § 12(2), **6:293**

SA § 17(a), **6:299**

Sales fraud

Express liability, **6:293**

Implied liability, **6:299**

SEA § 9(a), **6:300**

SEA § 10, **6:301**

PROXY FRAUD—Cont'd

- Disclosures—Cont'd
 - Corrections, **6:302—Cont'd**
 - SEA § 14, **6:302**
 - State law, **6:292**
 - Tender offer fraud, **6:311**
 - What makes correction necessary
 - Generally, **6:319**
 - Direct-impersonal transactions, **6:321**
 - Direct-personal transactions, **6:320**
 - Indirect-impersonal transactions, **6:322**
 - Rule 14a-9, **6:303**
 - Rule 14c-6, **6:307**
 - SA § 11, **6:295**
 - What must be corrected
 - Rule 10b-5, **6:327**
 - Rule 14a-9, **6:305**
 - Rule 14c-6, **6:309**
 - SA § 11, **6:297**
 - Who entitled to correction
 - Rule 10b-5, **6:328**
 - Rule 14a-9, **6:306**
 - Rule 14c-6, **6:310**
 - SA § 11, **6:298**
 - Cross references, **6:233**
 - Detail, **6:234**
 - Distribution, **6:214 et seq.**
 - Earnings
 - Generally, **6:254**
 - Inherently misleading statements, **6:256**
 - Interim, **6:259**
 - Misrepresentations, **6:255**
 - Nondisclosure of, **6:257**
 - Predictions, **6:255**
 - Form and substance, **6:235**
 - Interim earnings, **6:259**
 - Interpretation, **6:236**
 - Level, **6:227**
 - Locus, **6:214 et seq.**
 - Materiality
 - Generally, **6:248 et seq.**
 - Aggregate, **6:253**
 - Might, use of term, **6:249**

PROXY FRAUD—Cont'd

- Disclosures—Cont'd
 - Materiality—Cont'd
 - Practical problems, **6:251**
 - Probably would, use of term, **6:250**
 - Specific items, materiality of, **6:252**
 - Would, use of term, **6:249**
 - Misrepresentations
 - Earnings, **6:255**
 - Value of assets
 - Generally, **6:270**
 - Defenses, **6:271**
 - Precautions, **6:272**
 - Numerical information, **6:237**
 - Opposition communications, **6:247**
 - Organization, **6:226**
 - Overall effect, **6:238**
 - Predictions, earning, **6:255**
 - Presentation, **6:224 et seq.**
 - Prominence
 - Generally, **6:230 et seq.**
 - Buried and scattered facts, **6:232**
 - Similar emphasis, **6:231**
 - Repetition, **6:233**
 - Risk
 - Generally, **6:275 et seq.**
 - CFTC requirements, **6:289**
 - Context, **6:275**
 - Court cases, **6:281**
 - Day trading, **6:284**
 - Extended hour trading, **6:285**
 - Margin trading, **6:286**
 - NASD requirements, **6:283 et seq.**
 - Plain English requirements, **6:278**
 - Safe harbor, **6:282**
 - SA filings, **6:279**
 - SEA filings, **6:280**
 - Short selling, **6:287**
 - Specific requirements, **6:277**
 - Uninsured products, **6:288**
 - Rule 10b-5 requirements, **6:218**
 - SA § 5 requirements, **6:217**
 - Scattered facts, **6:232**
 - SEA § 14(a) requirements, **6:215**

INDEX

PROXY FRAUD—Cont'd

Disclosures—Cont'd

SEA § 14(c) requirements, **6:216**

Sources of funds, **6:260**

Sources of requirements

Generally, **6:220 et seq.**

Antifraud provisions, **6:222**

Specific items, **6:221**

Timing, **6:223**

Style, **6:224 et seq.**

Supplementary communications

Generally, **6:239 et seq.**

See also Corrections, above

Advance letters

Proxy rules, **6:240**

Registration under SA, **6:241**

Annual reports, **6:242**

Cover letters, **6:243**

Followup solicitations, **6:244**

Generally available information,
6:246

Other communications, **6:245**

Transmittal letters, **6:243**

Timing requirements, **6:223**

Value of assets

Generally, **6:263 et seq.**

Firm offers, **6:265**

Hard data, **6:264**

Misrepresentation

Defenses, **6:271**

Precautions, **6:272**

Misrepresentations, generally,
6:270

Modified view

Disposition plans, **6:266**

Hard data, **6:264**

Other situations, **6:268**

Policies, **6:269**

Reasons, **6:269**

Replacement costs, **6:267**

Traditional view, **6:263**

Disclosures of nonpublic information
through, **7:287**

Federal laws generally, **6:150**

Joint and several liability, **9:29**

Materiality, private actions, **8:56**

PROXY FRAUD—Cont'd

Mergers

Generally, **6:146 et seq., 6:198 et
seq.**

See also **Mergers** (this index)

Disclosures

Generally, **6:212 et seq., 6:267**

Advance letters

Proxy rules, **6:240**

Registration under SA, **6:241**

Aggregate materiality, **6:253**

Annual reports, **6:242**

Application of funds, **6:260**

Assets

Generally, **6:261 et seq.**

Existence of, **6:262**

Reasons, **6:273**

Balance, **6:229**

Buried facts, **6:232**

Cash flow, **6:260**

Clarity, **6:225**

Comparative tables, **6:219**

Consistency, **6:228**

Conspicuity. Prominence, below

Context, **6:235**

Cross references, **6:233**

Detail, **6:234**

Distribution, **6:214 et seq.**

Earnings

Generally, **6:254**

Inherently misleading state-
ments, **6:256**

Interim, **6:259**

Misrepresentations, **6:255**

Nondisclosure of, **6:257**

Predictions, **6:255**

Form and substance, **6:235**

Interim earnings, **6:259**

Interpretation, **6:236**

Level, **6:227**

Locus, **6:214 et seq.**

Materiality

Generally, **6:248 et seq.**

Aggregate, **6:253**

Might, use of term, **6:249**

Practical problems, **6:251**

Probably would, use of term,
6:250

PROXY FRAUD—Cont'd

- Mergers—Cont'd
- Disclosures—Cont'd
 - Materiality—Cont'd
 - Specific items, materiality of, **6:252**
 - Would, use of term, **6:249**
- Misrepresentations
 - Earnings, **6:255**
 - Value of assets
 - Generally, **6:270**
 - Defenses, **6:271**
 - Precautions, **6:272**
- Numerical information, **6:237**
- Opposition communications, **6:247**
- Organization, **6:226**
- Overall effect, **6:238**
- Predictions, earning, **6:255**
- Presentation, **6:224 et seq.**
- Prominence
 - Generally, **6:230 et seq.**
 - Buried and scattered facts, **6:232**
 - Similar emphasis, **6:231**
- Repetition, **6:233**
- Rule 10b-5 requirements, **6:218**
- SA § 5 requirements, **6:217**
- Scattered facts, **6:232**
- SEA § 14(a) requirements, **6:215**
- SEA § 14(c) requirements, **6:216**
- Sources of funds, **6:260**
- Sources of requirements
 - Generally, **6:220 et seq.**
 - Antifraud provisions, **6:222**
 - Specific items, **6:221**
 - Timing, **6:223**
- Style, **6:224 et seq.**
- Supplementary communications
 - Generally, **6:239 et seq.**
 - Advance letters
 - Proxy rules, **6:240**
 - Registration under SA, **6:241**
 - Annual reports, **6:242**
 - Cover letters, **6:243**

PROXY FRAUD—Cont'd

- Mergers—Cont'd
- Disclosures—Cont'd
 - Supplementary communications—Cont'd
 - Followup solicitations, **6:244**
 - Generally available information, **6:246**
 - Other communications, **6:245**
 - Transmittal letters, **6:243**
 - Timing requirements, **6:223**
- Value of assets
 - Generally, **6:263 et seq.**
 - Firm offers, **6:265**
 - Hard data, **6:264**
 - Misrepresentations
 - Generally, **6:270**
 - Defenses, **6:271**
 - Precautions, **6:272**
 - Modified view
 - Disposition plans, **6:266**
 - Hard data, **6:264**
 - Other situations, **6:268**
 - Policies, **6:269**
 - Reasons, **6:269**
 - Replacement costs, **6:267**
 - Traditional view, **6:263**
- Private actions, **6:160 et seq.**
- Scope of regulations
 - Generally, **6:207 et seq.**
 - Annual reports, **6:211**
 - Excluded solicitations, **6:210**
 - Proxy defined, **6:208**
 - Solicitation defined, **6:209**
- Securities covered
 - Generally, **6:199 et seq.**
 - Insurance companies
 - Generally, **6:201**
 - Antifraud provisions, federal, **6:204**
 - Federal and state rules, **6:202**
 - McCarran Act, **6:203**
 - Investment companies, **6:205**
 - Public utility holding companies, **6:206**
- Nonmerger solicitations, **6:274**
- Nonpublic information disclosures through, **7:287**

INDEX

PROXY FRAUD—Cont'd

- Private actions
 - Materiality, **8:56**
 - Merger challenges, **6:160 et seq.**
- Scienter
 - Generally, **8:125 et seq., 8:126 et seq.**
 - Burden of proof, **8:127**
 - Intent, **8:129**
 - Plaintiff's knowledge, **8:130**
 - Pleading, **8:131**
 - Proof, **8:128**
- Privity, **8:284**
- Risk disclosures. Disclosures, above
- Rule 10b-5, relation of proxy rules to, **6:159 et seq.**
- Scienter
 - Generally, **8:125 et seq., 8:126 et seq.**
 - Burden of proof, **8:127**
 - Intent, **8:129**
 - Plaintiff's knowledge, **8:130**
 - Pleading, **8:131**
 - Proof, **8:128**
- Scope of regulations
 - Generally, **6:207 et seq.**
 - Annual reports, **6:211**
 - Excluded solicitations, **6:210**
 - Proxy defined, **6:208**
 - Solicitation defined, **6:209**
- SEA § 14(e)
 - Generally, **6:186**
 - Proxy rules, relation to, **6:24**
- SEC rules, Congressional intent, **6:155**
- Securities covered
 - Generally, **6:199 et seq.**
- Insurance companies
 - Generally, **6:201**
 - Antifraud provisions, federal, **6:204**
 - Federal and state rules, **6:202**
 - McCarran Act, **6:203**
 - Investment companies, **6:205**
 - Public utility holding companies, **6:206**
- Tender Offer Fraud (this index)

PROXY FRAUD—Cont'd

- Types of direct-impersonal dealings, **6:1**
- ### **PUBLIC ACCESS**
- SEC investigations, use of wiretap in enforcement, **13:149**
- ### **PUBLIC ACCOUNTING FIRM**
- Whistleblower bounty program, original information from employees, **22:10**
- ### **PUBLIC COMPANIES**
- Whistleblowers, employees, **22:17**
- ### **PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD (PCAOB)**
- Indirect-impersonal dealing, GAAP violations, **7:61**
- ### **PUBLIC INFORMATION**
- See **Insiders and Insider Trading** (this index)
- ### **PUBLIC PENSION FUNDS**
- Madoff Ponzi scheme, **20:3**
- ### **PUBLIC SALES**
- See also **Direct-Impersonal Dealing** (this index)
 - Disclosure, **6:12**
 - Interrelations of fraud rules, **3:40**
 - Types of direct-impersonal dealings, **6:1**
- ### **PUBLIC UTILITY HOLDING COMPANIES**
- Proxy rules, applicability to, **6:206**
- ### **PUFFERY**
- Materiality factors, **8:35**
- ### **“PUMP-AND-DUMP” SCHEMES**
- SEC actions against attorneys, **8:443**
- ### **PUNITIVE DAMAGES**
- Generally, **9:12**
 - Arbitration
 - Generally, **15:36, 15:37, 15:74**
 - Broker-dealer liability, **14:111**
 - Broker-dealer liability
 - Generally, **14:106 et seq., 15:74**

PUNITIVE DAMAGES—Cont'd

Broker-dealer liability—Cont'd
 Arbitration, **14:111**
 Federal securities law, **14:106**
 State law, **14:107 et seq.**
 State law, **14:107 et seq.**

PURPOSE

Generally, **8:203**
 Defense of proper purpose, **8:118**
Intent (this index)
Knowledge (this index)
 Manipulation, defendant's purpose
 Generally, **8:103 et seq.**
 Burden of proof, **8:104**
 Defense of proper purpose, **8:118**
 Direct evidence, **8:106**
 Indirect evidence, **8:107**
 Large blocks, **8:108**
 Large proportion of trading, **8:109**
 Painting the tape, **8:110**
 Playoff of markets, **8:114**
 Price action, **8:113**
 Profit, **8:115**
 Proof, **8:105**
 Proper purpose as defense, **8:118**
 Stimulating demand, **8:110, 8:111**
 Suppressing supply, **8:112**
Motive (this index)
 Proper purpose as defense, **8:118**
Scienter (this index)
 Versions of scienter, relations among, **8:204**

RANDALL CASE

Private actions, loss causation in
 Supreme Court decision, **8:564**

**REASONABLE INVESTIGATION
 DEFENSE**

SA § 11
 Generally, **14:5**
 Integrated disclosure systems, **14:7**
 SEC Rule 176, **14:8**

**REASONABLE INVESTOR
 STANDARD**

Misrepresentation claims,
 consideration of, **7:51**

**REASONABLENESS OF
 CONDUCT**

See **Unreasonable Conduct** (this index)

RECKLESSNESS

Generally, **8:221 et seq., 11:141**
 Broker-dealer liability, **14:83 et seq.**
 Burden of proof, **8:227**
 Circumstantial evidence, **11:162**
 Court cases, **11:141 et seq., 11:162 et seq., 14:83 et seq.**
 Insufficiency, **8:226**
 Necessity, **8:223, 8:224**
 Pleading
 Generally, **11:141**
 Circumstantial evidence, **11:162**
 Proof, **8:228**
 Securities Litigation Uniform Standards Act (SLUSA), **3:214**
 Sufficiency, **8:225**
 Versions of scienter, relations among, **8:222**

**RECORDS AND RECORD
 KEEPING**

CFTC inspection of records, **13:195**
 Parking rule violations, **7:149**
 Sarbanes-Oxley Act actions, **3:171**

REDEMPTIONS

Issuer tender offers, **6:145**
 Madoff Ponzi scheme, **20:2, 20:3, 20:6**

RED FLAGS

Madoff Ponzi scheme, **20:5, 20:17**

REDUCTION IN PRICE

Private actions, correction and price drop, Proposition 2, **8:580**

REFERENCES

Jurisdiction, foreign cubed cases, **11:28**

REFORM ACT

See **Private Securities Litigation Reform Act** (this index)

INDEX

REGISTRATION AS INVESTMENT ADVISER

Madoff Ponzi scheme, **20:6**

REGISTRATION OF SECURITIES

Crowdfunding, **14:216**

Fraud rules applicable to registered offerings generally, **3:39, 3:45**

Limitation of actions, **11:47 et seq.**

Mutual funds, **3:191**

Nationally traded securities, **3:190**

NSMIA preemption

Generally, **3:187 et seq.**

Buyer characteristics, **3:193**

Exemptions, **3:195 et seq.**

Government enforcement, **3:199**

Mutual funds, **3:191**

Nationally traded securities, **3:190**

Private rights, effects on, **3:198**

Qualified purchasers, **3:192**

Regulation preemption, **3:188**

Remaining state jurisdiction, **3:197**

Scope of act, **3:189 et seq.**

Securities characteristics, **3:194**

Securities covered, **3:189 et seq.**

Securities exemptions, **3:196**

Transaction exemptions, **3:195**

Regulation FD disclosures, **7:547**

Regulation preemption, NSMIA, **3:188**

REGULATION A

Crowdfunding, application of law, **14:215**

REGULATION D

Crowdfunding, application of law, **14:215**

REGULATION G

Indirect-impersonal dealing, GAAP violations, **7:73**

Sarbanes-Oxley Act liabilities, **3:170**

REGULATION S-P

Cybersecurity, **26:4, 26:5**

RELEASE OF INFORMATION

See also **Disclosure** (this index)

Dividend actions, materiality, **7:247**

RELEASE OF INFORMATION

—Cont'd

Inside information, timely disclosure

Generally, **7:238 et seq.**

Acquisition information

Generally, **7:248 et seq.**

Agreements

Disclosure not required, **7:261**

Disclosure required, **7:260**

Company, trading by, **7:256**

Definitions, **7:250**

Disclosure document obligations, **7:259**

Leaks, **7:255**

Materiality of negotiated acquisitions, **7:262 et seq.**

Preliminary negotiations

Misleading statements, **7:253**

No statement made, **7:252**

Other situations, **7:254**

Prior statement now misleading, **7:257**

Rumors, **7:255**

Stages of negotiated acquisitions, **7:249**

Target response to tender offers, **7:258**

When disclosure of agreement required, **7:260**

When disclosure required, **7:251 et seq.**

Business judgment considerations, **7:241**

Corporate purpose considerations, **7:242**

Delays, justifications for, **7:240**

Dividend actions

Evolving information, **7:245**

Materiality, **7:247**

When disclosure required, **7:246**

Justification for delay, **7:240**

Law violations and timeliness considerations, **7:244**

Ripeness and timing, **7:243**

Tender offers

Generally, **7:267**

Materiality, **7:270**

RELEASE OF INFORMATION

—**Cont'd**

- Inside information, timely disclosure
—**Cont'd**
- Tender offers—**Cont'd**
 - Stages of nonnegotiated acquisitions, **7:268**
 - When disclosure required, **7:269**
- Ripeness and timely disclosure, **7:243**

RELEVANCY

- SEC investigations, use of wiretap, **13:152**

RELIANCE

- Generally, **6:176 et seq., 8:484 et seq.**
- Access to information, **8:499**
- Administrative enforcement actions, **10:1**
- Anti-reliance devices, **8:511 et seq.**
- Blue sky law, **8:488**
- Broker-dealer liability
 - Generally, **14:86 et seq.**
 - Justifiable reliance, **14:89**
- Buyer-seller requirement, **8:582**
- Causation as substitute for reliance, **8:524**
- Class actions
 - Desirability of class actions, **8:526**
 - Utility of class actions, **8:526**
- Common law, **8:487**
- Concealment of fraud, **8:501**
- Damages
 - Causation, **8:553**
 - Fraud on the market theory (FOMT), **8:552**
- Disclaimers, **8:514**
- Due diligence, **8:506**
- Expertise of plaintiff, **8:497**
- Fiduciary relationships, **8:500**
- Fraud on the market theory (FOMT)
 - Generally, **8:520 et seq.**
 - Background, **8:521**
 - Causation as substitute for reliance, **8:524**
 - Common law, **8:531**
 - Damages measure, **8:552**

RELIANCE—Cont'd

- Fraud on the market theory (FOMT)
 - Cont'd**
 - Desirability of class actions, **8:526**
 - Disclosure policy and, **8:533**
 - Fairness, **8:527**
 - Indirect or presumed reliance, **8:539 et seq.**
 - Indirect reliance, **8:521**
 - Market based price determinations, **8:525**
 - Materiality as substitute for reliance, **8:524**
 - Nature of market, **8:536 et seq.**
 - Novelty of theory, **8:529**
 - Parties, **8:545**
 - Policies, **8:523, 8:528 et seq.**
 - Presumptions, **8:510**
 - Treatment as, **8:521**
 - Price determinations, market based, **8:525**
 - Procedural aspects of theory, **8:545 et seq.**
 - Reasons, **8:523, 8:528 et seq.**
 - Rebuttal of theory, **8:542 et seq.**
 - Scope of theory, **8:522**
 - Statutory bases, **8:532**
 - Utility of class actions, **8:526**
- Fraud to enter the market theory (FEMT)
 - Indirect or presumed reliance, **8:541**
 - Nature of market, **8:538**
 - Rebuttal of theory, **8:544**
- Generality of misrepresentation, **8:504**
- Indirect-impersonal dealing, curtailing scheme to defraud, **7:76 to 7:78, 7:80**
- Indirect reliance, **8:521**
- Integration clauses, **8:513**
- Justifiable
 - Generally, **14:89**
 - Rule 10b-5, **8:496**
- Long-standing relationships, **8:498**
- Materiality
 - Generally, **8:507**
 - Distinctions, **8:519**

INDEX

RELIANCE—Cont'd

Materiality—Cont'd

Presumptive reliance and materiality of omissions, **8:509**

Substitutions of theories, **8:524**

Merger challenges, **6:176 et seq.**

No-reliance clauses, **8:512**

Opportunity to detect fraud, **8:502**

Overview, **8:486**

Plaintiff initiation, **8:503**

Presumptions

Generally, **8:508 et seq.**

Fraud on the market, **8:510**

Material omissions, **8:509**

Ute presumption, **8:484**

Proof, subjective reliance, **8:485**

Registration fraud, **8:491**

SA § 11, **8:491**

SA § 12(a)(2), **8:490**

SA § 17(a), **8:492**

SA generally, **8:489 et seq.**

Sales fraud, **8:489 et seq.**

Sophistication of plaintiff, **8:497**

Specificity of misrepresentation, **8:504**

State law, **8:488**

Subjective reliance, **8:485**

Transaction planning, **8:511 et seq.**

Ute presumption, **8:484**

RELIEF IN PRIVATE ACTIONS

See **Remedies** (this index)

REMEDIES

Generally, **9:1 et seq.**

Ancillary relief

Generally, **9:17**

Insider trading, **7:419, 7:437, 7:490**

Attorneys' fees, **9:18**

Contribution (this index)

Damages (this index)

Disgorgement (this index)

Fraud on the market

Generally, **8:520 et seq.**

See also **Reliance** (this index)

Implied liability, **3:178**

Indemnification, **9:76**

Injunctions (this index)

REMEDIES—Cont'd

Insider trading charges

Ancillary relief, **7:419, 7:437**

Disgorgement, **7:418, 7:425 et seq., 7:465**

Insurance, **9:76**

Interest, prejudgment, **9:16**

Interpretation, flexibility to achieve remedial purpose

Contraction era, **3:88**

Expansion era, **3:66**

Joint and Several Liability (this index)

Multiple recoveries, **9:15**

Penalty actions

Generally, **7:438 et seq.**

See also **Civil Penalties** (this index)

Prejudgment interest, **9:16**

Proportionate Liability (this index)

Reliance

Generally, **8:484 et seq.**

See also **Reliance** (this index)

Rescission (this index)

Restitution (this index)

Rule 10b-5 implied liability, **3:178**

Sanctions. See **Administrative Enforcement** (this index)

REMOTENESS

Indirect-impersonal dealing, curtailing scheme to defraud, **7:76**

REPORTING

See also **Securities and Exchange Commission** (this index)

Foreign accounts, use of, **7:177**

Insider and Insider Trading (this index)

Whistleblowers, preservation of employee's right to report, **22:33**

REPUTATION

Scienter, aspects of, **8:218**

RESCISSION

Broker-dealer liability

Express actions, **14:46, 14:50**

Implied actions, **14:95 et seq.**

RESCISSION—Cont'd

Chasins measure, **14:97**
 Damages, rescissional, **14:51**
 Lost profits, **14:101**
 Nye measure, **14:101**
 Privity, **8:290**
 Rolf measure, **14:100**

RESIDENTIAL

**MORTGAGE-BACKED
 SECURITIES**

Coordinated investigations, investor
 litigation against creators,
13:335

**RESIDENTIAL MORTGAGES
 FAILURES**

Coordinated investigations following
 subprime mortgage crisis,
13:332

RESIDUE

Private actions, **8:583**

RESPONDEAT SUPERIOR

See also **Control Person Liability**
 (this index)
 Insider trading, **7:450**

RESTITUTION

Broker-dealer liability, **14:104**
 Criminal prosecutions, **7:465**
 Insiders, **7:465**
 Joint and several liability, **9:44**

RETALIATORY INTENT

UBS Securities decision, Sarbanes-
 Oxley Act, **22:24**

RETIREMENT ACCOUNTS

Suitability and fiduciary duty, **14:206**

RETIREMENT FUNDS

Madoff Ponzi scheme, **20:3**

**RETROACTIVE PRICING OF
 STOCK OPTION GRANTS**

Generally, **18:1 et seq.**
 See also **Backdating of Stock
 Options** (this index)

REVIEW

SEC investigations, use of wiretap in
 enforcement, **13:147**

REWARD MODEL

Crowdfunding, **14:210**

RICO VIOLATIONS

Arbitration of RICO claims, **15:66**
 Insider trading violations, **7:414,**
7:464
 Limitation of actions, **11:103**

RIGHT TO COUNSEL

See **Attorneys** (this index)

RISK DISCLOSURES

Generally, **6:275 et seq.**
 See also **Disclosure** (this index)

RISK MANAGEMENT

Final rule, cybersecurity, **26:9**

RISK MITIGATION

Foreign Corrupt Practices Act
 (FCPA), mergers and acquisi-
 tions, **19:15**

SA

See **Securities Act** (this index)

SAFECAST GEIGER COUNTER

Crowdfunding, **14:211**

**SALE-LEASEBACKS FOR FIXED
 RETURNS**

SEC v. Edwards case, **5:31**

SALES OF ASSETS

See **Mergers** (this index)

SALES PRACTICES

Feeder funds in Madoff Ponzi
 scheme, **20:2, 20:16**
Mutual Fund Violations (this index)

SAME SIDE TRADERS

Generally, **7:519**
 Damages, **7:523**
 Definition, **7:495**

SANCTIONS

See also **Administrative Enforce-
 ment** (this index)
Arbitration (this index)
 Collateral bars against individuals
 Generally, **13:87**
 Corporate office orders, **13:88**

INDEX

SANCTIONS—Cont'd

- Collateral bars against individuals
—Cont'd
- Injunctions including, **13:117**
- Criminal Enforcement** (this index)
- SEC, **13:81**

SARBANES-OXLEY ACT

- Generally, **3:156 et seq.**
- Analysts' certifications, IPA based on, **3:168**
- Attorneys
- Generally, **8:424 et seq.**
- Follow-up reporting obligations, **8:427**
- Implied private actions against, **3:165**
- Reporting obligations, **8:426**
- SEC, reporting to, **8:432 et seq.**
- SEC actions against
- Generally, **8:436 et seq.**
- Auditors, furnishing false information to, **8:440**
- Financial or accounting fraud, **8:440**
- Form 8-K, **8:439**
- Form 10, **8:439**
- Form 10-K, **8:439**
- Form 10-Q, **8:439**
- Form 13D, **8:439**
- Form ADV, **8:439**
- Form BD, **8:439**
- Forms 12b-25, **8:445**
- Manipulating stock option exercise dates, **8:444**
- Offering circulars, **8:439**
- Participating in preparation and filing of false and misleading forms, **8:439**
- "PIPE" schemes, **8:443**
- Prospectuses, **8:439**
- Proxy statements, **8:439**
- "Pump-and-dump" schemes, **8:443**
- Reflections, **8:448**
- Trading on inside information, **8:447**
- Unethical and obstructive professional conduct, **8:446**

SARBANES-OXLEY ACT—Cont'd

- Attorneys—Cont'd
- SEC actions against—Cont'd
- Unregistered distributions of securities, activities in connection with, **8:441**
- Audit committee financial experts, **3:166**
- Audit committee standards
- Generally, **8:450 et seq.**
- Administrative implementation, **8:451**
- Advisers, **8:455**
- Auditor, oversight of, **8:453**
- Complaint procedures, **8:454**
- Enforcement, **8:458**
- Exemptions, **8:457**
- Financial experts, **8:459**
- Funding, **8:456**
- Independence requirements, **8:452**
- Auditor, oversight of, **8:453**
- Audit records, actions based on, **3:171**
- Backdating of stock options, violations of federal securities laws, **18:2, 18:3**
- Blackout periods
- Generally, **8:475**
- Trading prohibitions, **8:472**
- Certification, **8:462**
- Director and officer regulation
- Generally, **8:461 et seq.**
- Acquisition method, **8:474**
- Backdating of stock options, **18:2, 18:3**
- Bar from office, **8:482**
- Blackout periods, **8:475**
- Blackout trading prohibitions, **8:472**
- Certification, **8:462**
- Disclosure controls, **8:466**
- Enforcement, **8:476**
- Ethics codes, **8:483**
- Evaluations, **8:468**
- Exemptions, **8:479**
- Fair presentation, **8:465**
- Forfeiture on accounting restatement, **8:480**

SARBANES-OXLEY ACT—Cont’d

Director and officer regulation
 —Cont’d
 Inside trading reports, **8:471**
 Internal controls, **8:466**
 Liability, **8:476**
 Loan prohibitions, **8:481**
 Non-financial information, **8:467**
 Notice, **8:478**
 Option grant reporting, **18:1**
 Profit measure, **8:477**
 Regulation BTR, **8:473**
 Response to evidence of violations, **8:470**
 SEC implementation, **8:464, 8:473**
 Section 302 legislation, **8:463**
 Section 906, **8:469**
 Disclosure controls, **8:466**
 Enforcement, **8:476**
 Ethics codes, **8:483**
 Exemptions, **8:479**
 Financial experts, **3:166, 8:459**
 Financial report certifications, **3:169**
 History of enactment, **3:159**
 Implied private actions (IPA)
 Generally, **3:156 et seq.**
 Analysts’ certifications, actions based on, **3:168**
 Attorneys, implied private actions against, **3:165**
 Audit committee financial experts, **3:166**
 Audit records, actions based on, **3:171**
 Express actions negating, **3:162**
 Financial report certifications, **3:169**
 History of enactment, **3:159**
 Legislative intent, **3:158**
 Limitation of actions, **3:161**
 Off-balance sheet transactions, **3:167**
 Officers’ certifications of financial reports, **3:169**
 Overview, **3:157**
 Pro forma financial information, liabilities based on, **3:170**

SARBANES-OXLEY ACT—Cont’d

Implied private actions (IPA)
 —Cont’d
 Provisions adversely impacting, **3:163**
 Regulation G liabilities, **3:170**
 Rejection of, **3:161**
 SEC rules and releases, **3:164 et seq.**
 Indirect-impersonal dealing, restrictions on pro forma or non-GAAP financial information, **7:72**
 Inside general counsel, backdating of stock options, **18:11**
 Inside trading reports, **8:471**
 Internal controls, **8:466**
 Legislative intent, **3:158**
 Liability, **8:476**
 Limitation of actions
 Generally, **3:161, 11:87 et seq.**
 Actual notice, **11:93**
 Retroactivity, **11:94**
 Securities Act express actions, **11:90**
 Securities Exchange Act express actions, **11:91**
 Tolling, **11:93**
 Loan prohibitions, **8:481**
 Notice, **8:478**
 Off-balance sheet transactions, **3:167**
 Officers’ certifications of financial reports, **3:169**
 Pro forma financial information, liabilities based on, **3:170**
 Regulation BTR, **8:473**
 Regulation G liabilities, **3:170**
 Rule 10b-5 IPA compared, **3:172**
 Whistleblowers (this index)

SARS-COV-2

Covid-19 Pandemic (this index)

SCALPING

Generally, **12:3**

SCIENTER

Generally, **6:169 et seq., 8:58 et seq.**
 Actual knowledge
 Generally, **8:165 et seq.**

INDEX

SCIENTER—Cont'd

- Actual knowledge—Cont'd
 - Burden of proof, **8:178**
 - Criminal prosecutions, **8:176**
 - Direct-impersonal transactions, **8:171**
 - Direct-personal transactions, **8:170**
 - Indirect-impersonal transactions, **8:172**
 - Injunctions, **8:174**
 - Insufficiency of, **8:177**
 - Necessity of, **8:167, 8:168**
 - Proof, **8:179**
 - SEC decisions, **8:175**
 - Sufficiency of, **8:169 et seq.**
- Bad faith
 - Generally, **8:210 et seq.**
 - Burden of proof, **8:219**
 - Effect of good or bad faith generally, **8:216 et seq.**
 - Good reputation, effect of, **8:218**
 - Insufficiency, **8:215**
 - Necessity of, **8:212, 8:213**
 - Proof, **8:220**
 - Sufficiency, **8:214**
- Belief of defendant, **8:240**
- Blue sky laws
 - Defendant's knowledge and intent, **8:61**
 - Plaintiff's knowledge, **8:62**
- Broker-dealer fraud
 - Generally, **8:139 et seq., 14:83 et seq.**
 - Burden of proof, **8:141**
 - Churning, **14:129**
 - Defendant's intent, **8:143**
 - Defendant's knowledge and belief
 - Generally, **8:140 et seq.**
 - Burden of proof, **8:141**
 - Proof, **8:142**
 - Implied liability
 - Generally, **8:139 et seq.**
 - Defendant's intent, **8:143**
 - Defendant's knowledge and belief
 - Generally, **8:140 et seq.**
 - Burden of proof, **8:141**
 - Proof, **8:142**

SCIENTER—Cont'd

- Broker-dealer fraud—Cont'd
 - Implied liability—Cont'd
 - Plaintiff's knowledge, **8:144**
 - Pleading, **8:145**
 - Plaintiff's knowledge, **8:144**
 - Pleading, **8:145**
 - Proof, **8:142**
 - SEA § 15(c)(1), **8:139 et seq.**
- Burden of proof, **8:74, 8:77**
- CFTC
 - Enforcement actions, **13:237**
 - Injunctions, **13:247**
- Churning, **14:129**
- Common law
 - Defendant's knowledge and intent, **8:59**
 - Plaintiff's knowledge, **8:60**
- Constructive knowledge
 - Generally, **8:180 et seq.**
 - Burden of proof, **8:189**
 - Criminal prosecutions, **8:187**
 - Injunctions, **8:185**
 - Insufficiency, **8:188**
 - Necessity, **8:182, 8:183**
 - Proof, **8:190**
 - SEC decisions, **8:186**
 - Sufficiency, **8:184 et seq.**
- Court cases, **14:83 et seq.**
- Criminal enforcement
 - Actual knowledge, **8:176**
 - Constructive knowledge, **8:187**
 - Intent, **8:197**
 - SEC references, **13:127**
- Defendant's knowledge and intent
 - Blue sky laws, **8:61**
 - Common law, **8:59**
 - SA § 11, **8:79**
- Defendant standards, **8:164**
- Definitions, **8:155 et seq.**
- Diligence, lack of
 - Generally, **8:229 et seq.**
 - Burden of proof, **8:238**
 - Criminal cases, **8:236**
 - Injunctions, **8:234**
 - Insufficiency, **8:237**
 - Necessity, **8:231, 8:232**
 - Proof, **8:239**

SCIENTER—Cont'd

- Diligence, lack of—Cont'd
 - SEC decisions, **8:235**
 - Sufficiency, **8:233 et seq.**
- Fiduciary theory, insider trading charges
 - Tippers, **7:381**
 - Trading insiders, **7:377**
 - Trading tippees, **7:385**
- Indirect-impersonal dealing, **7:69, 7:99**
- Injunctions
 - Actual knowledge, **8:174**
 - CFTC, **13:247**
 - Constructive knowledge, **8:185**
 - Intent, **8:195**
 - SEC, **13:102**
- Insiders, tippee violations, **7:672**
- Insider trading charges
 - Generally, **7:372 et seq.**
 - Fiduciary theory
 - Tippers, **7:381**
 - Trading insiders, **7:377**
 - Trading tippees, **7:385**
 - Misappropriation theory
 - Tippers, **7:382**
 - Trading insiders, **7:378**
 - Trading tippees, **7:386**
 - Rule 10b-5, **7:374 et seq.**
 - Rule 14e-3, **7:412**
 - Tippers
 - Generally, **7:379 et seq.**
 - Fiduciary theory, **7:381**
 - Misappropriation theory, **7:382**
 - Trading insiders, **7:375 et seq.**
 - Trading tippees, **7:383 et seq.**
- Intent
 - Generally, **8:191 et seq.**
 - See also **Intent** (this index)
 - Absence of intent, effect of, **8:200**
 - Burden of proof, **8:201**
 - Criminal cases, **8:197**
 - Criminal prosecutions, **8:197**
 - Injunctions, **8:195**
 - Insufficiency, **8:199**
 - Necessity, **8:193 et seq.**
 - Presence of intent, effect of, **8:200**

SCIENTER—Cont'd

- Intent—Cont'd
 - Private actions, necessity of proving intent in, **8:194**
 - Proof, **8:202**
 - SEC decisions, **8:196**
 - Sufficiency, **8:198**
- Knowledge
 - See also **Knowledge** (this index)
- Manipulation
 - Generally, **8:102 et seq.**
 - Burden of proof, **8:104**
 - Defendant's intent, **8:119**
 - Defendant's knowledge, **8:120**
 - Defendant's purpose
 - Generally, **8:103 et seq.**
 - Burden of proof, **8:104**
 - Defense of proper purpose, **8:118**
 - Direct evidence, **8:106**
 - Indirect evidence, **8:107**
 - Large blocks, **8:108**
 - Large proportion of trading, **8:109**
 - Painting the tape, **8:110**
 - Playoff of markets, **8:114**
 - Price action, **8:113**
 - Profit, **8:115**
 - Proof, **8:105**
 - Proper purpose as defense, **8:118**
 - Stimulating demand, **8:110, 8:111**
 - Suppressing supply, **8:112**
 - Defendant's willfulness, **8:121**
 - Plaintiff's knowledge, **8:122**
 - Proof, **8:105**
- Merger challenges, **6:169 et seq.**
- Misappropriation theory insider trading charges
 - Tippers, **7:382**
 - Trading insiders, **7:378**
 - Trading tippees, **7:386**
- Misrepresentation claims, consideration of, **7:53**
- Motive
 - Generally, **8:203 et seq.**
 - Absence, effect of, **8:207**

INDEX

SCIENTER—Cont'd

Motive—Cont'd

- Burden of proof, **8:208**
- Necessity, **8:205, 8:206**
- Pleading, **11:139**
- Presence, effect of, **8:207**
- Proof, **8:209**

Negligence

- Generally, **8:229 et seq.**
- Burden of proof, **8:238**
- Criminal cases, **8:236**
- Injunctions, **8:234**
- Insufficiency, **8:237**
- Necessity, **8:231, 8:232**
- Proof, **8:239**
- SEC decisions, **8:235**
- Sufficiency, **8:233 et seq.**

Opportunity, **11:139**

Plaintiff's knowledge

- Blue sky laws, **8:62**
- Common law, **8:60**
- SA § 11, **8:80**

Plaintiff standards, **8:164**

Pleading

- Motive, **11:139**
- Opportunity, **11:139**
- Particularity
 - Generally, **11:133 et seq.**
 - Bases for inferring, **11:135**
 - Circumstantial evidence of recklessness, **11:162**
 - Conscious behavior, **11:162**
 - Motive, **11:139**
 - Opportunity, **11:139**
- Recklessness
 - Generally, **11:141**
 - Circumstantial evidence, **11:162**
 - SEA § 21D(b), **11:134**
- Recklessness
 - Generally, **11:141**
 - Circumstantial evidence, **11:162**
- Proof, **8:75, 8:78**
- Proxy fraud
 - Generally, **8:125 et seq., 8:126 et seq.**
 - Burden of proof, **8:127**
 - Intent, **8:129**

SCIENTER—Cont'd

Proxy fraud—Cont'd

- Plaintiff's knowledge, **8:130**
- Pleading, **8:131**
- Proof, **8:128**

- PSLRA and section 21D(b),
 - Recklessness, **11:44.10**

Recklessness

- Generally, **8:221 et seq.**
- Burden of proof, **8:227**
- Insufficiency, **8:226**
- Necessity, **8:223, 8:224**
- Pleading
 - Generally, **11:141**
 - Circumstantial evidence, **11:162**
- Proof, **8:228**
- PSLRA and section 21D(b),
 - 11:44.10**
- Sufficiency, **8:225**

Registration statement fraud, **8:72 et seq.**

Reputation, **8:218**

Rule 10b-5

- Generally, **6:171, 8:154 et seq.**
- Actual knowledge
 - Generally, **8:165 et seq.**
 - Burden of proof, **8:178**
 - Criminal prosecutions, **8:176**
 - Direct-impersonal transactions, **8:171**
 - Direct-personal transactions, **8:170**
 - Indirect-impersonal transactions, **8:172**
 - Injunctions, **8:174**
 - Insufficiency of, **8:177**
 - Necessity of, **8:167, 8:168**
 - Proof, **8:179**
 - SEC decisions, **8:175**
 - Sufficiency of, **8:169 et seq.**

Bad faith

- Generally, **8:210 et seq.**
- Burden of proof, **8:219**
- Effect of good or bad faith generally, **8:216 et seq.**
- Good reputation, effect of, **8:218**
- Insufficiency, **8:215**

SCIENTER—Cont'd

- Rule 10b-5—Cont'd
 - Bad faith—Cont'd
 - Necessity of, **8:212, 8:213**
 - Proof, **8:220**
 - Sufficiency, **8:214**
 - Belief of defendant, **8:240**
 - Breadth of rule, **8:160**
 - Congressional intent, **8:158**
 - Constructive knowledge
 - Generally, **8:180 et seq.**
 - Burden of proof, **8:189**
 - Criminal prosecutions, **8:187**
 - Injunctions, **8:185**
 - Insufficiency, **8:188**
 - Necessity, **8:182, 8:183**
 - Proof, **8:190**
 - SEC decisions, **8:186**
 - Sufficiency, **8:184 et seq.**
 - Criminal prosecutions
 - Actual knowledge, **8:176**
 - Constructive knowledge, **8:187**
 - Intent, **8:197**
 - Defendant standards, **8:164**
 - Diligence, lack of
 - Generally, **8:229 et seq.**
 - Burden of proof, **8:238**
 - Criminal cases, **8:236**
 - Injunctions, **8:234**
 - Insufficiency, **8:237**
 - Necessity, **8:231, 8:232**
 - Proof, **8:239**
 - SEC decisions, **8:235**
 - Sufficiency, **8:233 et seq.**
 - Flexibility, need for, **8:162**
 - Formulations, **8:155**
 - Intent
 - Generally, **8:191 et seq.**
 - Absence of intent, effect of, **8:200**
 - Burden of proof, **8:201**
 - Criminal cases, **8:197**
 - Criminal prosecutions, **8:197**
 - Injunctions, **8:195**
 - Insufficiency, **8:199**
 - Necessity, **8:193 et seq.**
 - Presence of intent, effect of, **8:200**

SCIENTER—Cont'd

- Rule 10b-5—Cont'd
 - Intent—Cont'd
 - Private actions, necessity of proving intent in, **8:194**
 - Proof, **8:202**
 - SEC decisions, **8:196**
 - Sufficiency, **8:198**
 - Motive
 - Generally, **8:203 et seq.**
 - Absence, effect of, **8:207**
 - Burden of proof, **8:208**
 - Necessity, **8:205, 8:206**
 - Presence, effect of, **8:207**
 - Proof, **8:209**
 - Negligence
 - Generally, **8:229 et seq.**
 - Burden of proof, **8:238**
 - Criminal cases, **8:236**
 - Injunctions, **8:234**
 - Insufficiency, **8:237**
 - Necessity, **8:231, 8:232**
 - Proof, **8:239**
 - SEC decisions, **8:235**
 - Sufficiency, **8:233 et seq.**
 - Other elements, relation of scienter to, **8:163**
 - Plaintiff standards, **8:164**
 - Policy, **8:161**
 - Reasons, **8:161**
 - Recklessness
 - Generally, **8:221 et seq.**
 - Burden of proof, **8:227**
 - Insufficiency, **8:226**
 - Necessity, **8:223, 8:224**
 - Proof, **8:228**
 - Sufficiency, **8:225**
 - Reputation, **8:218**
 - Scope of rule, **8:160**
 - Semantic confusion, **8:156, 8:157**
 - Touting, SA § 17(b), **8:95**
 - Unreasonable conduct
 - Generally, **8:229 et seq.**
 - Burden of proof, **8:238**
 - Criminal cases, **8:236**
 - Injunctions, **8:234**
 - Insufficiency, **8:237**
 - Necessity, **8:231, 8:232**

INDEX

SCIENTER—Cont'd

Rule 10b-5—Cont'd

Unreasonable conduct—Cont'd

Proof, **8:239**

SEC decisions, **8:235**

Sufficiency, **8:233 et seq.**

Willfulness, **8:241**

Rule 14a-9, **6:169**

Rule 14c-6, **6:170**

SEC

False reports to

Generally, **8:146**

Defendant's intent, **8:150**

Defendant's knowledge

Generally, **8:147 et seq.**

Burden of proof, **8:148**

Proof, **8:149**

Good faith, **8:150**

Plaintiff's knowledge, **8:151**

Pleading, **8:152**

Privity, **8:287**

Quantitative factors, **8:153**

Injunctions, **13:102**

Securities Act

Burden of proof, **8:66**

Registration statement fraud, **8:72 et seq.**

Sales fraud, **8:63 et seq.**, **8:82 et seq.**

Section 11

Generally, **8:72 et seq.**

Burden of proof, **8:74 et seq.**

Defendant's knowledge and intent, **8:79**

Expert parts, **8:76 et seq.**

Nonexpert parts, **8:73 et seq.**

Plaintiff's knowledge, **8:80**

Pleading, **8:81**

Proof, **8:75, 8:78**

Section 12(2)

Generally, **8:63 et seq.**

Burden of proof, **8:66**

Defendant's intent, **8:68**

Defendant's knowledge

Generally, **8:64 et seq.**

Burden of proof, **8:66**

Criminal context, **8:65**

Proof, **8:67**

SCIENTER—Cont'd

Securities Act—Cont'd

Section 12(2)—Cont'd

Limitation of actions, plaintiff's knowledge of fraud, **8:70**

Plaintiff's knowledge, **8:69, 8:70**

Pleading, **8:71**

Proof, **8:67**

Section 17(a)

Generally, **8:82**

Bond counsel issuing improper legal opinion, **8:442**

Burden of proof, **8:84**

Defendant's intent, **8:86**

Defendant's knowledge, **8:83 et seq.**

Plaintiff's knowledge, **8:87**

Pleading, **8:88**

Proof, **8:85**

Section 17(b), touting

Generally, **8:89 to 8:71.22**

Class action complaints, undisclosed touting, **8:90**

Criminal context, **8:99**

Dismissal motions, legal standard, **8:91**

Janus case, **8:94**

Loss causation, **8:93**

Requirements, **8:92, 8:96**

Rule 10b-5, **8:95**

Scheme liability, reliance on, **8:97**

SEC enforcement, **8:98**

Securities Exchange Act

Generally, **8:101 et seq.**

Rule 10b-5 fraud, **8:154 et seq.**

Section 9(a), **8:102 et seq.**

Section 10, **8:124**

Section 14, **8:125, 8:132 et seq.**

Section 18, **8:146 et seq.**

Securities Litigation Uniform Standards Act (SLUSA), **3:214**

Semantic confusion, **8:156, 8:157**

Strong inference, **11:136.10**

Tellabs, **11:137, 11:138**

Tender offer fraud

Defendant's intent, **8:136**

SCIENTER—Cont'd

- Tender offer fraud—Cont'd
 - Defendant's knowledge and belief
 - Generally, **8:133 et seq.**
 - Burden of proof, **8:134**
 - Proof, **8:135**
 - Intent, **8:136**
 - Plaintiff's knowledge, **8:137**
 - Pleading, **8:138**
- Tippers, insider trading charges, **7:379 et seq.**
- Unreasonable conduct
 - Generally, **8:229 et seq.**
 - Burden of proof, **8:238**
 - Criminal cases, **8:236**
 - Injunctions, **8:234**
 - Insufficiency, **8:237**
 - Necessity, **8:231, 8:232**
 - Proof, **8:239**
 - SEC decisions, **8:235**
 - Sufficiency, **8:233 et seq.**
- Versions of scienter, relations among
 - Actual knowledge, **8:166**
 - Bad faith, **8:211**
 - Constructive knowledge, **8:181**
 - Diligence, lack of, **8:230**
 - Intent, **8:192**
 - Motive, **8:204**
 - Negligence, **8:230**
 - Purpose, **8:204**
 - Recklessness, **8:222**
 - Unreasonable conduct, **8:230**
 - Willfulness, **8:241**

SEA

- See **Securities Exchange Act** (this index)

SEARCH AND SEIZURE

- SEC investigations, **13:34**

SEC

- See **Securities and Exchange Commission** (this index)

SECONDARY LIABILITY

- Parties** (this index)
- Proportionate Liability** (this index)
- Vicarious Liability** (this index)

SEC RULES AND REGULATIONS

- Generally, **1:14**
- Administrative intent, **3:19**
- Antifraud provisions and Regulation
 - FD disclosure, **7:546**
- Authority of SEC
 - Generally, **3:5**
 - Regulation FD, **7:550**
- Caption changes, 10b-5, **3:22**
- Comparative language, **3:1**
- Connection requirement
 - 10b-5, **6:185**
 - 14c-6, **6:184**
- Crowdfunding, **14:215**
- Depression rules, **3:24**
- Integration proposals, **3:52**
- Interrelations of fraud rules
 - Generally, **3:37 et seq.**
 - Birnbaum rule, **3:50**
 - Breadth of proscriptions, **3:52**
 - Causation, **3:48**
 - Defenses to private actions, **3:51**
 - Displacing provisions, **3:53**
 - Elements of private cause of action, **3:50**
 - Exempt offerings, **3:46**
 - Implied and express private actions, **3:50**
 - Implied Liability** (this index)
 - Integration proposals, **3:52**
 - Joint use of multiple provisions, **3:53**
 - Overlapping provisions, **3:53 et seq.**
 - Parties subject to rule, **3:49**
 - Place of transaction as factor, **3:38**
 - Prospectus fraud, **3:41 et seq.**
 - Public offerings, **3:40**
 - Registered offerings, **3:39, 3:45**
 - Relationship of conduct to transaction, **3:48**
 - Transactions covered, **3:38**
 - Types of violations proscribed, **3:47**
 - Unregistered offerings, **3:46**
- Mergers, 14a-9 connection requirement, **6:183**

INDEX

SEC RULES AND REGULATIONS

—Cont'd

- Numbering
 - 10b-5 changes, **3:21**
 - Generally, **1:2**
- Organization, **1:2**
- Parties subject to rules
 - 10b-5, **3:49**
 - 15c1-2, **3:49**
- Private transactions, application of 10b-5 to
 - Generally, **3:26**
 - Broker-dealer transactions, **3:27**
- Proposed ESG regulations, **29:4**
- Prosperity rules, **3:24**
- Proxy rules
 - 10b-5, relation to, **6:159 et seq.**
 - 14a-9
 - Privity, **6:173**
 - Scienter standard, **6:169**
 - 14c-6, causation, **6:180**
 - Congressional intent, **6:155**
 - SEA § 14(e), relation to, **6:24**
- Registered offerings, fraud rules applicable to, **3:39, 3:45**
- Registration provisions and Regulation FD disclosure, **7:547**
- Regulation BTR, **8:473**
- Regulation FD disclosure
 - Generally, **7:526 et seq.**
 - Analysts' roles, **7:528**
 - Antifraud provisions and, **7:546**
 - Avoiding selective disclosure, **7:553**
 - Companies covered, **7:545**
 - Compliance, **7:551 et seq.**
 - Curing violations, **7:554**
 - Eliminating nonpublic information, **7:552**
 - Enforcement, **7:549**
 - Exemption provisions and, **7:548**
 - Filing with SEC, compliance by, **7:555**
 - Information, triggering, **7:534**
 - Intentional and nonintentional partial disclosures, **7:538 et seq.**

SEC RULES AND REGULATIONS

—Cont'd

- Regulation FD disclosure—Cont'd
 - Materiality of triggering information, **7:535**
 - Method of disclosure, **7:544**
 - Persons triggering duty, **7:537**
 - Policy basis, **7:527**
 - Prompt disclosure requirement, **7:543**
 - Registration provisions and, **7:547**
 - Regulatory gap, **7:530**
 - Scope of regulation, **7:545**
- Selective disclosure
 - Generally, **7:529**
 - Avoiding, **7:553**
 - Curing violations, **7:554**
 - Materiality, **7:535**
 - Nonpublic nature of information disclosed, **7:536**
 - Triggering full disclosure obligation, **7:532**
 - Unintentional disclosures, **7:540**
- Simultaneous disclosure requirements, **7:542**
- Timing requirements, **7:541 et seq.**
- Triggering events
 - Generally, **7:531 et seq.**
 - Information, triggering, **7:534**
 - Intentional and nonintentional partial disclosures, **7:538 et seq.**
 - Materiality of triggering information, **7:535**
 - Non-intentional disclosures, **7:540**
 - Nonpublic nature of information disclosed, **7:536**
 - Nontriggering disclosures, **7:533**
 - Persons triggering duty, **7:537**
 - Selective disclosures, **7:532**
 - Unintentional disclosures, **7:540**
- Validity, **7:550**
- Violations, curing, **7:554**
- Rifle rules and shotgun rules, **3:36**
- Rule 3a51-1, **14:144**
- Rule 3b-6, **7:21**
- Rule 10b-1 through 17, **3:34**

SEC RULES AND REGULATIONS

—Cont'd

Rule 10b-5
 Generally, **1:18 et seq.**
 Absolute liability, **8:243**
 Absorption principle, **3:173**
 Access to investment rewards,
 equalization of, **4:5**
 Actions in concert, **8:294**
 Administrative intent, **3:19**
 Adoption, validity of, **3:3**
 Antiwaivers, **12:11**
 Arbitration of claimed violations,
 12:11
 Attitudes and unintentional viola-
 tions, **12:14**
 Avoiding liability, **12:10**
 Backdating stock options, **18:3,**
 18:10
 Bargaining positions, equalization
 of, **4:4**
 Breadth of fraud proscriptions,
 3:52
 Broker-dealer transactions,
 application to, **3:27**
 Caption changes, **3:22**
 Causation
 Generally, **3:48**
 Proxies and proxy solicitations,
 6:181
 Changes
 Generally, **3:20 et seq.**
 Caption changes, **3:22**
 Legislation, **3:23**
 Numbering changes, **3:21**
 Proposals for, **12:9**
 Clause 3, primacy of, **3:182**
 Comparative language, **3:1**
 Congressional intent
 Generally, **3:14 et seq.**
 Deceptive devices, **3:17**
 Manipulative devices, **3:17**
 Merger regulation, **6:157**
 Private enforcement rights, **3:16**
 SA, **3:10**
 Scope of coverage, **3:15**
 Semiofficial evidence, **3:15**

SEC RULES AND REGULATIONS

—Cont'd

Rule 10b-5—Cont'd
 Connection requirement, mergers,
 6:185
 Construction, **1:18 et seq.**
 Contraction era, **3:31**
 Criminal enforcement, **10:4**
 Curing violations, **12:15**
Direct-Impersonal Dealing (this
 index)
Direct-Personal Dealing (this
 index)
 Disclosure corrections, **6:314 et**
 seq.
 Disclosure requirements, **6:218**
 Disclosure rule, treatment as, **12:3**
 Displacements within 10b-5, **3:181**
 Economic background, **3:24**
 Elements of private cause of
 action, **3:50**
 Enactment, **3:18**
 Equalization of access to invest-
 ment rewards, **4:5**
 Equalization of bargaining posi-
 tions, **4:4**
 Equalization of information, **4:5**
 Equalization rule, treatment as,
 12:2
 Ethical standards, **3:60, 3:80**
 Evolution of, **12:1**
 Expanding scope of, **12:8**
 Expansion era
 Generally, **3:30**
 New expansion era, **3:32**
 Expenses, security for, **3:175**
 Fairness rule, treatment as, **12:5,**
 12:13
 Federal vs state private actions,
 relative advantages, **3:200**
 Fragmented text, **1:19**
 Front running, **7:139 et seq.**
 Gap-filling purpose, **3:19**
 Good faith of plaintiff, **8:254**
 Growth of, **12:1**
 History
 Generally, **3:6 et seq.**
 Economic background, **3:24**

INDEX

SEC RULES AND REGULATIONS

—Cont'd

- Rule 10b-5—Cont'd
 - Implied civil recovery, Rule 10b-5 without, **3:180**
- Implied liability, **3:175**
 - Generally, **8:242 et seq.**
 - Absolute liability, **8:243**
 - Burden of proof, **8:255**
 - Clause 3, primacy of, **3:182**
 - Constructive fraud, **8:242**
- Contraction era
 - Generally, **3:74 et seq.**
 - Administrative enforcement, supplement to, **3:81**
 - Administrative interpretation, **3:82**
 - Congressional intent, **3:76**
 - Cort v Ash, **3:95**
 - Flexibility to achieve remedial purpose, **3:88**
 - Judicial restraint, **3:85**
 - Legislative history, uses of, **3:90 et seq.**
 - Modes of interpretation, **3:86 et seq.**
 - Negative implication, **3:87**
 - Policies, **3:75**
 - Policy effectuation, **3:80**
 - Practicality, **3:83**
 - Reasons, **3:75**
 - Statutory jurisdictional grant, **3:79**
 - Statutory literalism, **3:89**
 - Statutory tort, **3:77**
 - Vexatiousness, **3:84, 3:85**
 - Voidability, statutory, **3:78**
- Contributory negligence, **8:253**
- Displacements within 10b-5, **3:181**
- Equitable fraud, **8:242**
- Expenses, security for, **3:175**
- Good faith of plaintiff, **8:254**
- Implied civil recovery, Rule 10b-5 without, **3:180**
- Innocent defendants, **8:243**
- Limitations of actions, **3:174**
- Negligence of plaintiff, **8:253**

SEC RULES AND REGULATIONS

—Cont'd

- Rule 10b-5—Cont'd
 - Implied liability, **3:175**—Cont'd
 - Overlaps within 10b-5, **3:181**
 - Plaintiff's knowledge
 - Generally, **8:244 et seq.**
 - Actual knowledge, **8:244**
 - Comparative knowledge, **8:249**
 - Constructive knowledge, **8:250**
 - Limitation of actions, **8:251**
 - Misrepresentation, **8:246**
 - Nondisclosure, **8:245**
 - Theoretical knowledge, **8:248**
 - Pleading, **8:257**
 - Prevalence of rule, **3:179**
 - Privity requirements, **3:176**
 - Proof, **8:256**
 - Proof requirements, **3:177**
 - Remedies, **3:178**
 - Security for expenses, **3:175**
 - Silent conduct, **3:182**
 - Strict liability, **8:243**
- Indirect-impersonal dealing
 - Generally, **3:28**
 - Insiders, **7:163**
- Information, equalization of, **4:5**
- Innocent defendants, **8:243**
- Insider rule, treatment as, **4:1, 12:4**
- Insider trading charges
 - Connection with requirement, **7:370**
 - Indirect-impersonal dealing, **7:163**
 - Private actions, **7:497 et seq.**
 - Scienter, **7:374 et seq.**
- Integration proposals, **3:52**
- Intentional and unintentional violations, **12:14**
- Interpretation, **1:18 et seq.**
- Interrelations of fraud rules
 - Generally, **3:37 et seq.**
 - Birnbaum rule, **3:50**
 - Breadth of proscriptions, **3:52**
 - Causation, **3:48**
 - Defenses to private actions, **3:51**

SEC RULES AND REGULATIONS

—Cont'd

Rule 10b-5—Cont'd
 Interrelations of fraud rules
 —Cont'd
 Displacing provisions, **3:53**
 Elements of private cause of action, **3:50**
 Exempt offerings, **3:46**
 Implied and express private actions, **3:50**
 Implied Liability (this index)
 Integration proposals, **3:52**
 Joint use of multiple provisions, **3:53**
 Overlapping provisions, **3:53 et seq.**
 Parties subject to rule, **3:49**
 Place of transaction as factor, **3:38**
 Prospectus fraud, **3:41 et seq.**
 Public offerings, **3:40**
 Registered offerings, **3:39, 3:45**
 Relationship of conduct to transaction, **3:48**
 Transactions covered, **3:38**
 Types of violations proscribed, **3:47**
 Unregistered offerings, **3:46**
 Investor protection considerations, **3:60, 3:80**
 Joint and several liability, **9:37 et seq.**
 Joint use of multiple fraud provisions, **3:53**
 Jurisdictional means
 Generally, **11:2 et seq.**
 Proxies and proxy solicitations, **6:190**
 Key clauses, **1:18 et seq.**
 Key phrases, **1:20**
 Landmarks, **3:29 et seq.**
 Language, **3:1**
 Limitations of actions, **3:174**
 Manipulation, **7:130 et seq.**
 Market-informing rule, treatment as, **12:6**
 Materiality of violations, **12:2**
 Materiality standard, **6:168**

SEC RULES AND REGULATIONS

—Cont'd

Rule 10b-5—Cont'd
 Merger regulation
 Congressional intent, **6:157**
 Private action challenges, **6:162**
 Misappropriation theory of insider liabilities, **7:585 et seq.**
 Misrepresentations
 Fact or opinion as subject of, **8:2**
 Omnicare decision, fact vs. opinion standard, **8:3**
 Opinion or fact as subject of, **8:2**
 Plaintiff's knowledge, **8:246**
 Rule 10b-5 elements generally, **8:2**
 Net effect of rule, **1:21**
 New expansion era, **3:146**
 Nondisclosure
 Fact or opinion as subject of, **8:2**
 Omnicare decision, fact vs. opinion standard, **8:3**
 Opinion or fact as subject of, **8:2**
 Rule 10b-5 elements generally, **8:2**
 Numbering changes, **3:21**
 Other § 10(b) rules
 Generally, **3:33 et seq.**
 Proposed rules, **3:35**
 Overlaps within 10b-5, **3:181**
 Parking, **7:143 et seq.**
 Parties subject to rule, **3:49**
 Plaintiff's knowledge
 Generally, **8:244 et seq.**
 Actual knowledge, **8:244**
 Comparative knowledge, **8:249**
 Constructive knowledge, **8:250**
 Limitation of actions, **8:251**
 Nondisclosure, **8:245**
 Theoretical knowledge, **8:248**
 Pleading, particularity
 Generally, **11:115 et seq.**
 Analysts' statements, **11:127**
 Fact statements, **11:120 et seq., 11:122**
 Failure to anticipate, **11:131**
 Falsity, **11:116, 11:117**

INDEX

SEC RULES AND REGULATIONS

—Cont'd

Rule 10b-5—Cont'd

Pleading, particularity—Cont'd

Forward looking statements,

11:132

Group statements, **11:123,**

11:124

Hindsight cases, **11:130 et seq.**

Information and belief, **11:128,**

11:129

Misleading character, **11:118,**

11:119

Nondisclosure, **11:131**

Predictions, **11:132**

Scienter, **11:133 et seq.**

Third party statements, **11:127**

Unattributed statements, **11:125,**

11:126

Possession of inside information

Generally, **7:318 et seq.**

Access, proof of, **7:323**

Awareness and possession
distinguished, **7:349**

Burden of proof, **7:321**

Contact, proof of, **7:324**

Individuals, proof as to, **7:322**

Knowing possession, **7:320**

Mere possession, **7:319**

Organizations, proof for, **7:326**

Proof, **7:322 et seq.**

Trading, proof of, **7:325**

Use inferred from possession,
7:328

Prevalence of rule, **3:179**

Private fraud actions

Privity

Generally, **8:288 et seq.**

Accountants, liability of,
8:404

Actions in concert, **8:294**

Agreement, **8:314**

Aider-abettors, **8:327 et seq.**

Aiding and abetting generally,
8:292

Attorneys, **8:409**

Benefit, **8:317**

Combination, **8:314**

SEC RULES AND REGULATIONS

—Cont'd

Rule 10b-5—Cont'd

Private fraud actions—Cont'd

Privity—Cont'd

Conspiracy generally, **8:292**

Conspirators, **8:304 et seq.**

Corporate officers, **8:413**

Directors, **8:413**

Extent of liability, **8:318**

Intent, **8:316**

Knowledge, **8:315**

Limits, **8:291**

Participants in violations gen-
erally, **8:294**

Participation generally, **8:292**

Pleading, **8:319 et seq.**

Policies, **8:289**

Reasons, **8:289**

Rescission, availability of,
8:290

Suability, meaning of gener-
ally, **8:293**

Theory of action, **8:290**

Scienter

Generally, **8:154 et seq.**

Actual knowledge

Generally, **8:165 et seq.**

Burden of proof, **8:178**

Criminal prosecutions,
8:176

Direct-impersonal transac-
tions, **8:171**

Direct-personal transac-
tions, **8:170**

Indirect-impersonal
transactions, **8:172**

Injunctions, **8:174**

Insufficiency of, **8:177**

Necessity of, **8:167, 8:168**

Proof, **8:179**

SEC decisions, **8:175**

Sufficiency of, **8:169 et
seq.**

Bad faith

Generally, **8:210 et seq.**

Burden of proof, **8:219**

SEC RULES AND REGULATIONS

—Cont'd

Rule 10b-5—Cont'd
 Private fraud actions—Cont'd
 Scienter—Cont'd
 Bad faith—Cont'd
 Effect of good or bad faith generally, **8:216 et seq.**
 Good reputation, effect of, **8:218**
 Insufficiency, **8:215**
 Necessity of, **8:212, 8:213**
 Proof, **8:220**
 Sufficiency, **8:214**
 Belief of defendant, **8:240**
 Breadth of rule, **8:160**
 Congressional intent, **8:158**
 Constructive knowledge
 Generally, **8:180 et seq.**
 Burden of proof, **8:189**
 Criminal prosecutions, **8:187**
 Injunctions, **8:185**
 Insufficiency, **8:188**
 Necessity, **8:182, 8:183**
 Proof, **8:190**
 SEC decisions, **8:186**
 Sufficiency, **8:184 et seq.**
 Defendant standards, **8:164**
 Definitions, **8:155 et seq.**
 Diligence, lack of
 Generally, **8:229 et seq.**
 Injunctions, **8:234**
 Flexibility, need for, **8:162**
 Formulations, **8:155**
 Intent
 Generally, **8:191 et seq.**
 Absence of intent, effect of, **8:200**
 Burden of proof, **8:201**
 Criminal cases, **8:197**
 Criminal prosecutions, **8:197**
 Injunctions, **8:195**
 Insufficiency, **8:199**
 Necessity, **8:193 et seq.**

SEC RULES AND REGULATIONS

—Cont'd

Rule 10b-5—Cont'd
 Private fraud actions—Cont'd
 Scienter—Cont'd
 Intent—Cont'd
 Presence of intent, effect of, **8:200**
 Proof, **8:202**
 SEC decisions, **8:196**
 Sufficiency, **8:198**
 Motive
 Generally, **8:203 et seq.**
 Absence, effect of, **8:207**
 Burden of proof, **8:208**
 Necessity, **8:205, 8:206**
 Presence, effect of, **8:207**
 Proof, **8:209**
 Negligence
 Generally, **8:229 et seq.**
 Injunctions, **8:234**
 Other elements, relation of scienter to, **8:163**
 Plaintiff standards, **8:164**
 Policy, **8:161**
 Reasons, **8:161**
 Recklessness, **8:221 et seq.**
 Reputation, **8:218**
 Scope of rule, **8:160**
 Semantic confusion, **8:156, 8:157**
 Unreasonable conduct
 Generally, **8:229 et seq.**
 Injunctions, **8:234**
 Versions of scienter, relations among
 Actual knowledge, **8:166**
 Bad faith, **8:211**
 Constructive knowledge, **8:181**
 Diligence, lack of, **8:230**
 Intent, **8:192**
 Motive, **8:204**
 Negligence, **8:230**
 Purpose, **8:204**
 Recklessness, **8:222**
 Unreasonable conduct, **8:230**

INDEX

SEC RULES AND REGULATIONS

—Cont'd

Rule 10b-5—Cont'd
Private fraud actions—Cont'd
 Scienter—Cont'd
 Willfulness, **8:241**
Private transactions, application to
 Generally, **3:26**
 Broker-dealer transactions, **3:27**
Privity
 Actions in concert, **8:294**
 Implied liability, **3:176**
Proliferation of rule, **12:1**
Promulgation, **3:18**
Proof requirements, **3:177**
Proposals for change, **12:9**
Proposed companion rules, **3:35**
Proxies and proxy solicitations
 Causation, **6:181**
 Jurisdictional means, **6:190**
 Materiality standard, **6:168**
 Privity, **6:175**
 Reliance, **6:178**
 Scienter standard, **6:171**
Proxy rules, relation to, **6:159 et seq.**
PSLRA and, **3:1**
Purpose of rule, **3:19**
Rationales for protection afforded by, **4:2 et seq.**
Relationship of conduct to transaction, **3:48**
Releases of liability, **12:11**
Reliance
 Generally, **8:493 et seq.**
 Proxies and proxy solicitations, **6:178**
Remedies, implied liability, **3:178**
Rescission offers to cure violations, **12:15**
Retrenchment era, **3:31**
Rule 15c1-2 compared, **3:27**
SA § 17(a) compared
 Generally, **3:27**
 Early version, **3:8**
 Final version, **3:9**
Sanctions, **3:4**

SEC RULES AND REGULATIONS

—Cont'd

Rule 10b-5—Cont'd
SA provisions and history of, **3:7 et seq.**
Sarbanes-Oxley Act implied liabilities, **3:172**
Scienter
 Insider trading charges, **7:374 et seq.**
 Intent, proof of in private actions, **8:194**
 Proxies and proxy solicitations, **6:171**
Scope of operation
 Generally, **3:25 et seq.**
 Broker-dealer transactions, **3:27**
 Direct-impersonal transactions, **3:28**
 Direct-personal transactions
 Generally, **3:26**
 Broker-dealer transactions, **3:27**
 Expansion of, **12:8**
 Indirect-impersonal transactions, **3:28**
 Private transactions, **3:26**
SEA 10(b) and
 Early version, **3:12**
 Final version, **3:13**
 Madoff Ponzi scheme, **20:5**
SEA and, **3:11 et seq.**
Seller protection, **4:3**
Shot gun use of SEA § 10(b), **3:36**
Silent conduct, **3:182**
Special facts and common law fraud, **3:19**
State and federal laws, relationships between, **3:184 et seq.**
Status of rule, **3:2 et seq.**
Statutory limits on rules, **3:5**
Strict liability, **8:243**
Suitability claims, **14:197 et seq.**
Supreme Court, **3:148**
Text of rule, **App A**
Transaction Planning (this index)
Types of violations proscribed, **3:47**

SEC RULES AND REGULATIONS

—Cont'd

- Rule 10b-5—Cont'd
 - Unintentional violations, **12:14**
 - Use of inside information
 - Generally, **7:327 et seq.**
 - Burden of proof, **7:331**
 - Individuals, proof for, **7:332**
 - Inferences, **7:328**
 - Organizations, proof for, **7:339**
 - Possession, use inferred from, **7:328**
 - Rebuttal evidence, **7:337, 7:338**
 - Size of transaction, proof value, **7:334**
 - Standard of proof, **7:331**
 - Timing, proof of, **7:333**
 - Type of transaction, proof value, **7:335**
 - Validity, **3:3**
 - Violations, preventive law responses, **12:15**
 - Waivers of, **12:11**
- Rule 13a-1, **18:3**
- Rule 13a-13, **18:3**
- Rule 13a-14, **18:3**
- Rule 14a, **18:3, 18:10**
- Rule 14a-9
 - Causation, proxy fraud, **6:179**
 - Disclosures of corrections, **6:303 et seq.**
 - Jurisdictional means, **6:188, 6:189**
 - Materiality standard, **6:166**
 - Mergers
 - Connection requirement, **6:183**
 - Private action challenges, **6:160**
 - Proxies and proxy solicitations
 - Causation, **6:179**
 - Jurisdictional means, **6:188, 6:189**
 - Materiality standard, **6:166**
 - Privity, **6:173**
 - Reliance, **6:176**
 - Scienter standard, **6:169**
 - Reliance, **6:176**
- Rule 14c-6
 - Connection requirement mergers, **6:184**

SEC RULES AND REGULATIONS

—Cont'd

- Rule 14c-6—Cont'd
 - Disclosure corrections, **6:307 et seq.**
 - Materiality standard, **6:167**
 - Mergers, private action challenges, **6:161**
 - Privity, **6:174**
 - Proxies and proxy solicitations
 - Causation, **6:180**
 - Materiality standard, **6:167**
 - Privity, **6:174**
 - Reliance, **6:177**
 - Scienter standard, **6:170**
 - Reliance, **6:177**
 - Scienter, **6:170**
- Rule 14e-3
 - Generally, **7:632 et seq.**
 - Broker-dealer supervisory liabilities, **14:169**
 - Duty imposed, **7:633**
 - Indirect-impersonal dealing, **7:166**
 - Insider trading charges
 - Connection with requirement, **7:371**
 - Indirect-impersonal dealing, **7:166**
 - Private actions, **7:500**
 - Scienter, **7:412**
 - Possession of inside information
 - Generally, **7:340 et seq.**
 - Burden of proof, **7:341**
 - Chinese walls, **7:343 et seq.**
 - Individuals, proof for, **7:342**
 - Organizations, proof for, **7:343 et seq.**
 - Precautions against trading, **7:346**
 - Standard of proof, **7:341**
 - Scienter, **7:412**
 - Supreme Court validation, **7:636, 7:637**
 - Use of inside information, **7:347**
 - Validity, **7:634 et seq.**
- Rule 15c1-2
 - 10b-5 compared, **3:27**
 - Causation, **3:48**

INDEX

SEC RULES AND REGULATIONS

—Cont'd

Rule 15c1-2—Cont'd

Elements of private cause of action, **3:50**

Implied Liability (this index)

Indirect-impersonal dealing, **7:165**

Insiders, **7:165**

Integration proposals, **3:52**

Interrelations of fraud rules

Generally, **3:37 et seq.**

Birnbaum rule, **3:50**

Breadth of proscriptions, **3:52**

Causation, **3:48**

Defenses to private actions, **3:51**

Displacing provisions, **3:53**

Elements of private cause of action, **3:50**

Exempt offerings, **3:46**

Implied and express private actions, **3:50**

Implied Liability (this index)

Integration proposals, **3:52**

Joint use of multiple provisions, **3:53**

Overlapping provisions, **3:53 et seq.**

Parties subject to rule, **3:49**

Place of transaction as factor, **3:38**

Prospectus fraud, **3:41 et seq.**

Public offerings, **3:40**

Registered offerings, **3:39, 3:45**

Relationship of conduct to transaction, **3:48**

Transactions covered, **3:38**

Types of violations proscribed, **3:47**

Unregistered offerings, **3:46**

Joint use of multiple fraud provisions, **3:53**

Parties subject to rule, **3:49**

Relationship of conduct to transaction, **3:48**

Types of violations proscribed, **3:47**

Rule 15c2-11, **14:147**

Rule 15g-1, **14:144**

SEC RULES AND REGULATIONS

—Cont'd

Rule 15g-8, **14:145**

Rule 15g-9, **14:142**

Rule 16a-3, **18:3**

Rule 144, indirect-impersonal dealing, **7:167**

Rule 144A, crowdfunding, **14:216**

Rule 174, **14:145**

Rule 175, **7:21**

Rule 176, **14:7**

Rule 412, **14:7, 14:10**

Rule 419, **14:145**

Rule 506, crowdfunding, **14:216**

SA § 17(a) and 10b-5 compared, **3:27**

Sanctions

Generally, **3:4**

Rule 10b-5, **3:4**

Sarbanes-Oxley Act, **3:164 et seq.**

Special facts and common law fraud, **3:19**

Status of rules generally, **3:2 et seq.**

Statutory limits on rules, **3:5**

Suitability rules, **14:195**

Triggering events, **7:540**

Validity

Antifraud rules generally, **3:3**

Regulation FD, **7:550**

Rule 10b-5, **3:3**

What is a Security (this index)

SECURITIES ACT (SA)

Backdating of stock options, violations of federal securities laws, **18:3**

Congressional intent, Rule 10b-5 history, **3:10**

Cybersecurity, class actions, **26:7**

Disclosure requirements in filings, **6:279**

Enactment, **3:7**

Implied Liability (this index)

Insiders and inside trading, Mail and wire fraud, **7:172**

Interrelations of fraud rules

Generally, **3:37 et seq.**

Birnbaum rule, **3:50**

Breadth of proscriptions, **3:52**

Causation, **3:48**

SECURITIES ACT (SA)—Cont'd

Interrelations of fraud rules—Cont'd

Defenses to private actions, **3:51**

Displacing provisions, **3:53**

Elements of private cause of action, **3:50**

Exempt offerings, **3:46**

Implied and express private actions, **3:50**

Implied Liability (this index)

Integration proposals, **3:52**

Joint use of multiple provisions, **3:53**

Overlapping provisions, **3:53 et seq.**

Parties subject to rule, **3:49**

Place of transaction as factor, **3:38**

Prospectus fraud, **3:41 et seq.**

Public offerings, **3:40**

Registered offerings, **3:39, 3:45**

Relationship of conduct to transaction, **3:48**

Transactions covered, **3:38**

Types of violations proscribed, **3:47**

Unregistered offerings, **3:46**

Materiality

Generally, **8:49 et seq.**

Registration fraud, **8:51**

Sales fraud, **8:50, 8:52**

Section 11, **8:51**

Section 12(a)(2), **8:50**

Section 17(a), **8:52**

Tests of, **8:10**

Mergers, registration requirements, **6:152**

Proxy solicitation antifraud provisions, **6:187**

Public offerings, interrelations of fraud rules, **3:40**

Risk disclosures requirements in filings, **6:279**

Rules. See **SEC Rules and Regulations** (this index)

Section 2(1)(a), what is a security

Generally, **5:10**

Evidence of indebtedness, **5:13**

Guarantees, **5:15**

SECURITIES ACT (SA)—Cont'd

Section 2(1)(a), what is a security

—Cont'd

Interest, **5:14**

9 month notes, **5:17**

Oil and gas interests, **5:16**

SEA § 3(a)(10) differences, **5:12 et seq.**

SEA § 3(a)(10) similarities, **5:11**

Section 5

Generally, **6:217**

Crowdfunding, application of law, **14:215**

Exemptions, **14:24**

Violations, **14:26**

Section 11

Broker-dealer liability, **14:2 et seq.**

Broker-Dealer Liability (this index)

Class actions, **14:18**

Contraction era, implied private actions in

Generally, **3:109 et seq.**

Defendants excluded, **3:112**

Documents excluded, **3:113**

Failure to satisfy substantive elements, **3:115**

Plaintiffs excluded, **3:111**

Securities excluded, **3:110**

Substantive elements, failure to satisfy, **3:115**

Transactions excluded, **3:110**

Court cases, **14:6**

Damages, **14:15**

Disclosure corrections, **6:294 et seq.**

Due diligence defense

Generally, **14:5**

SEC view, **14:9**

Expansion era, implied private actions in, **3:70**

Implied Liability (this index)

Implied private actions in contraction era

Generally, **3:109 et seq.**

Defendants excluded, **3:112**

Documents excluded, **3:113**

INDEX

SECURITIES ACT (SA)—Cont'd

Section 11—Cont'd

Implied private actions in contraction era—Cont'd

Failure to satisfy substantive elements, **3:115**

Plaintiffs excluded, **3:111**

Securities excluded, **3:110**

Substantive elements, failure to satisfy, **3:115**

Transactions excluded, **3:110**

Implied private actions in expansion era, **3:70**

Integrated disclosure systems, **14:7**

Interrelations of fraud rules

Generally, **3:37 et seq.**

Birnbaum rule, **3:50**

Breadth of proscriptions, **3:52**

Causation, **3:48**

Defenses to private actions, **3:51**

Displacing provisions, **3:53**

Elements of private cause of action, **3:50**

Exempt offerings, **3:46**

Implied and express private actions, **3:50**

Implied Liability (this index)

Integration proposals, **3:52**

Joint use of multiple provisions, **3:53**

Overlapping provisions, **3:53 et seq.**

Parties subject to rule, **3:49**

Place of transaction as factor, **3:38**

Prospectus fraud, **3:41 et seq.**

Public offerings, **3:40**

Registered offerings, **3:39, 3:45**

Relationship of conduct to transaction, **3:48**

Transactions covered, **3:38**

Types of violations proscribed, **3:47**

Unregistered offerings, **3:46**

Joint and several liability, **9:24**

Joint use of multiple fraud provisions, **3:53**

Later filings, effect of, **14:10**

Limitation of actions, **11:57 et seq.**

SECURITIES ACT (SA)—Cont'd

Section 11—Cont'd

Materiality, **8:51**

Non-managing underwriters, **14:13**

Participating underwriters, **14:13**

Parties, **8:273**

Pleading particularity, **11:112**

Policy considerations, **14:12**

Reasonable investigation defense

Generally, **14:5**

Integrated disclosure systems, **14:7**

SEC Rule 176, **14:8**

Reasonable investigation requirement, **14:11**

Registered offerings, fraud rules applicable to, **3:39, 3:45**

Reliance, **8:491**

SEA § 10(b) compared, **14:16**

SEC Rule 176, **14:7**

SEC Rule 412, **14:7**

SEC view of due diligence techniques, **14:9**

Underwriters

Generally, **14:4**

Due diligence, **14:14**

Section 11(f)

Contribution, **9:67**

Proportionate liability, **9:48**

Section 12(1), **11:47 et seq.**

Section 12(2)

Contraction era, implied private actions in

Generally, **3:116 et seq.**

Commercial paper, **3:119**

Defendants excluded, **3:121**

Documents excluded, **3:122**

Failure to satisfy substantive elements, **3:124**

Government securities, **3:118**

Municipal securities, **3:117**

Plaintiffs excluded, **3:120**

Securities excluded, **3:117 et seq.**

Substantive elements, **3:124**

Disclosure corrections, **6:293**

Exempt offerings, application of fraud rules to, **3:46**

SECURITIES ACT (SA)—Cont'd

Section 12(2)—Cont'd

Expansion era, implied private actions in, **3:71**

Implied Liability (this index)

Implied private actions (IPA)

Contraction era

Generally, **3:116 et seq.**

Commercial paper, **3:119**

Defendants excluded, **3:121**

Documents excluded, **3:122**

Failure to satisfy substantive elements, **3:124**

Government securities, **3:118**

Municipal securities, **3:117**

Plaintiffs excluded, **3:120**

Securities excluded, **3:117 et seq.**

Substantive elements, **3:124**

Expansion era, **3:71**

Interrelations of fraud rules

Generally, **3:37 et seq.**

Birnbaum rule, **3:50**

Breadth of proscriptions, **3:52**

Causation, **3:48**

Defenses to private actions, **3:51**

Displacing provisions, **3:53**

Elements of private cause of action, **3:50**

Exempt offerings, **3:46**

Implied and express private actions, **3:50**

Implied Liability (this index)

Integration proposals, **3:52**

Joint use of multiple provisions, **3:53**

Overlapping provisions, **3:53 et seq.**

Parties subject to rule, **3:49**

Place of transaction as factor, **3:38**

Prospectus fraud, **3:41 et seq.**

Public offerings, **3:40**

Registered offerings, **3:39, 3:45**

Relationship of conduct to transaction, **3:48**

Transactions covered, **3:38**

SECURITIES ACT (SA)—Cont'd

Section 12(2)—Cont'd

Interrelations of fraud rules
—Cont'd

Types of violations proscribed, **3:47**

Unregistered offerings, **3:46**

Joint and several liability, **9:23**

Joint use of multiple fraud provisions, **3:53**

Limitation of actions, **11:54 et seq.**

Parties, **8:263 et seq.**

Pleading particularity, **11:111**

Public offerings and interrelations of fraud rules, **3:40**

Unregistered offerings, fraud rules applicable to, **3:46**

Section 12(a)(1)

Generally, **14:19 et seq.**

Broker-Dealer Liability (this index)

Section 12(a)(2)

Generally, **14:27 et seq.**

Broker-Dealer Liability (this index)

Materiality, **8:50**

Pinter case, **14:30, 14:38**

Privity, **14:34**

Punitive damages, **14:54**

Reasonable investigation requirement, **14:43**

Reliance, **8:490**

Relief available, **14:45**

SEA § 10(b) and, overlap between, **14:55**

Section 12 class actions, **14:57**

Section 15

Control person liability, **8:393 et seq.**

Good faith defense, **8:393 et seq.**

Joint and several liability, **9:25**

Section 17(a)

Breadth of fraud proscriptions, **3:52**

Disclosure corrections, **6:299**

Drafting, **3:8**

Final version, **3:9**

Implied Liability (this index)

INDEX

SECURITIES ACT (SA)—Cont'd

Section 17(a)—Cont'd

Implied private actions (IPA),
3:155

Insiders, **7:164**

Interrelations of fraud rules

Generally, **3:37 et seq.**

Birnbaum rule, **3:50**

Breadth of proscriptions, **3:52**

Causation, **3:48**

Defenses to private actions, **3:51**

Displacing provisions, **3:53**

Elements of private cause of
action, **3:50**

Exempt offerings, **3:46**

Implied and express private
actions, **3:50**

Implied Liability (this index)

Integration proposals, **3:52**

Joint use of multiple provisions,
3:53

Overlapping provisions, **3:53 et
seq.**

Parties subject to rule, **3:49**

Place of transaction as factor,
3:38

Prospectus fraud, **3:41 et seq.**

Public offerings, **3:40**

Registered offerings, **3:39, 3:45**

Relationship of conduct to trans-
action, **3:48**

Transactions covered, **3:38**

Types of violations proscribed,
3:47

Unregistered offerings, **3:46**

Joint use of multiple fraud provi-
sions, **3:53**

Materiality, **8:52**

Parties, **8:274 et seq.**

Reliance, **8:492**

Rule 10b-5 compared, **3:27**

Text, **App C**

USCA cross reference table, **App H**

What is a Security (this index)

SECURITIES AND EXCHANGE COMMISSION (SEC)

Generally, **1:4 et seq., 10:1 et seq.**

SECURITIES AND EXCHANGE COMMISSION (SEC)—Cont'd

See also **SEC Rules and Regula-
tions** (this index)

Accessibility of decisions, **1:6**

Accountants, rulemaking authority as
to, **3:5**

Accounting orders, **13:84**

Actions against attorneys by. See
Attorneys (this index)

Administrative enforcement

See also **Administrative Enforce-
ment** (this index)

Role in

Generally, **10:1**

In court, **10:3**

Out of court, **10:2**

Administrative intent, Rule 10b-5
history, **3:19**

Admission of wrongdoing, compro-
mise and settlement, **13:166 et
seq.**

Amicus curiae participation in private
litigation, **13:79**

Ancillary relief, **13:107 et seq.**

Articulation of standards, **1:7**

Asset freezes, **13:100**

Attorneys (this index)

Authority, rulemaking, **3:5**

Authority of staff to negotiate,
13:162

Authority to investigate, **13:6**

Backdating of stock options,
investigations, **18:3, 18:6, 18:8**

Bar orders. Collateral bars against
individuals, below

Bounties to informants, **7:445**

Briefs, **1:13**

Broker-dealers

Cybersecurity, **26:4, 26:5**

Supervisory authority over, **10:1**

Cady, Roberts & Co case, **App E**

Cease and desist orders

Permanent, **13:85**

Temporary, **13:86**

Collateral bars against individuals

Generally, **13:87**

Corporate office orders, **13:88**

**SECURITIES AND EXCHANGE
COMMISSION (SEC)—Cont'd**

- Collateral bars against individuals
—Cont'd
 - Injunctions including, **13:117**
- Collateral effects of orders, **13:92**
- Compliance orders, **13:82**
- Compromise and settlement, admission of wrongdoing, **13:166 et seq.**
- Conferences with staff, **13:26**
- Conflicts of interest in investigations, **13:15**
- Connection with requirement, **10:1**
- Contested cases
 - Generally, **1:5**
 - Initial decisions, **1:8**
- Control person liability
 - Generally, **7:451 et seq.**
 - A test, **7:453**
 - All control persons, **7:453**
 - Amount of liability, **7:459**
 - Broker-dealer control persons, **7:456**
 - B test, **7:456**
 - Contribution to violation, **7:458**
 - Failure to act, **7:455**
 - Investment adviser control persons, **7:456**
- Knowledge
 - Failure to have preventive policies in place, **7:457**
 - Likelihood of violation, **7:454**
 - Madoff Ponzi scheme, **20:5**
 - Policy/procedure failures, **7:457**
 - Reckless disregard
 - Failure to have preventive policies in place, **7:457**
 - Likelihood of violation, **7:454**
 - Requirements, **7:452**
 - Respondeat superior liability, **7:450**
 - Substantial contribution to violation, **7:458**
- Cooperation agreements, **20:15**
- Counsel investigations, **13:27**
- Criminal enforcement references
 - Generally, **13:122 et seq.**

**SECURITIES AND EXCHANGE
COMMISSION (SEC)—Cont'd**

- Criminal enforcement references
 - Cont'd
 - See also **Criminal Enforcement** (this index)
 - Role in prosecution, **10:1, 10:4**
- Crowdfunding, **14:218**
- Cryptocurrencies** (this index)
- Cybersecurity, **26:4, 26:5**
- Decisions, **1:4 et seq.**
- Director and officer regulation, Sarbanes-Oxley Act, **8:464**
- Disclosures
 - Correction requirements, **6:313**
 - Filings as, **7:285**
- Discovery
 - Generally, **13:66 et seq.**
 - Document subpoenas, **13:67**
 - FOIA requests, **13:68**
 - Production requests, **13:69**
- Disgorgement orders, **13:84**
- Document production, **13:25**
- Documents, third party access to, **13:66 et seq.**
- Due diligence defense techniques, **14:9**
- Enforcement actions. See **Administrative Enforcement** (this index)
- Enforcement focus, ESG, **29:1**
- ESG-related enforcement actions
 - Climate, **29:2**
 - Task force, **29:2**
- False reports to
 - Generally, **8:146**
- Corrections, **6:313**
- Defendant's knowledge
 - Burden of proof, **8:148**
 - Proof, **8:149**
- Good faith, **8:150**
- Joint and several liability, **9:32**
- Madoff Ponzi scheme, **20:5**
- Plaintiff's knowledge, **8:151**
- Pleading, **8:152**
- Privity, **8:287**
- Quantitative factors, **8:153**
- SEA § 18, **8:287**

INDEX

SECURITIES AND EXCHANGE COMMISSION (SEC)—Cont'd

Filings

Disclosures, **7:285**

Madoff Ponzi scheme, **20:5**

Reliance on and implied private
actions

Contraction era

Generally, **3:133 et seq.**

Decisions rejecting IPA,
3:137

Decisions sustaining IPA,
3:138

Defendants excluded, **3:141**

Documents excluded, **3:142,**
3:143

Failure to satisfy substantive
elements, **3:145**

Filed and unfiled documents,
3:142 et seq.

Fischman rationale, **3:135**

Narrow focus of § 18, **3:136**

Plaintiffs excluded, **3:140**

Reexamination, reasons for,
3:134

Scienter, **3:135**

Securities excluded, **3:139**

Substantive elements, **3:145**

Expansion era, **3:73**

Finding decisions, **1:6**

FOIA requests, **13:68**

Foreign government officials, pay-
ments to. **Foreign Corrupt
Practices Act (FCPA)** (this
index)

Front running

Generally, **7:140**

Decisions, **7:142**

Implied liabilities, SEC role in
developing theories of, **10:1**

Indirect-impersonal dealing, **7:58,**
7:59, 7:72 to 7:74, 7:77, 7:80,
7:93

Informal enforcement actions, **13:78**

Informal warnings, **13:72**

Informants, awards to, **7:445**

Initial decisions in contested cases,
1:8

Injunctions (this index)

SECURITIES AND EXCHANGE COMMISSION (SEC)—Cont'd

Insider trading. **Insider and Insider
Trading** (this index)

Insurance coverage for settling
defendants, **13:183**

Interrogations, **13:29**

Investigations

Generally, **13:1 et seq.**

See also **Investigations** (this
index)

Backdating of stock options, **18:6,**
18:8

**Foreign Corrupt Practices Act
(FCPA)** (this index)

Madoff Ponzi Scheme (this index)

Reports, **1:10**

Jurisdictional means

Generally, **10:1, 11:2 et seq.,**
12:10

See also **Jurisdiction** (this index)

Adviser activities, **11:15**

Agent's interstate activities, **11:13**

Broker-dealer activities, **11:15**

Check clearance as interstate activ-
ity, **11:11**

Class actions, **11:42**

Defenses, **11:41**

Derivative suits, **11:43**

Foreign cubed cases, **11:37**

Foreign transactions, **11:16**

Fraud, interstate nature of, **11:9**

International transactions, **11:16**

Interstate commerce, **11:3**

Local telephone use, **11:4**

Mails, use of, **11:6**

Misconduct, relation of
jurisdictional means to
Generally, **11:8 et seq.**

Agent's interstate activities,
11:13

Check clearances, **11:11**

Fraud, **11:9**

Plaintiff's interstate activities,
11:14

Transaction, **11:10, 11:12**

Plaintiff's interstate activities,
11:14

**SECURITIES AND EXCHANGE
COMMISSION (SEC)—Cont'd**

Jurisdictional means—Cont'd
 Pleading, **11:38**
 Procedure, **11:39 et seq.**
 Process, **11:40**
 Scope of commerce, **11:3**
 Securities exchanges and interstate commerce, **11:7**
 Service of process, **11:40**
 Telephone use, **11:4**
 Transaction, interstate, **11:10, 11:12**
 Venue, **11:39**
 Justice Department references
 Generally, **13:122 et seq.**
 See also **Criminal Enforcement** (this index)
 Limitation of actions, enforcement actions, **13:184 et seq.**
 Madoff Ponzi scheme, **20:2, 20:5, 20:6**
 Markup and markdown practices, SEC basis criteria, **14:150 et seq.**
 Negotiations with
 Generally, **13:161 et seq., 13:266**
 Advantages and disadvantages, **13:163**
 Authority of staff, **13:162**
 Considerations, **13:165**
 Objectives, **13:164**
 No-action letters, **1:12**
 NSMIA preemption of state registration laws, **3:187 et seq.**
 Observations on private litigation, **13:182**
 Orders
 Accountings, **13:84**
 Bar orders. Collateral bars against individuals, below
 Cease and desist orders
 Permanent, **13:85**
 Temporary, **13:86**
 Collateral bars against individuals
 Generally, **13:87**
 Corporate office orders, **13:88**
 Injunctions including, **13:117**

**SECURITIES AND EXCHANGE
COMMISSION (SEC)—Cont'd**

Orders—Cont'd
 Collateral effects of orders, **13:92**
 Compliance orders, **13:82**
 Disgorgement, **13:84**
 Duration of orders, **13:94**
 Formal orders of investigation, **13:16 et seq.**
 Validity challenges, **13:20**
 Outcomes of investigations, **13:70 et seq.**
 Penalty actions
 Generally, **7:438**
 See also **Civil Penalties** (this index)
 Aider-abettors, **7:449**
 Amount of penalty
 Control persons, **7:459**
 Court-imposed, **7:439**
 Bounties, **7:445**
 Control persons, penalties imposed on, **7:440**
 Court imposed penalties, **7:439**
 Disposition of penalties, **7:445**
 Double jeopardy limitations, **7:443**
 Factors considered in imposition of penalties, **7:442**
 Informants, awards to, **7:445**
 Insider trading law enforcement, **7:438 et seq.**
 Judge or jury, **7:446**
 Maximum penalties imposed, **7:441**
 Persons liable
 Generally, **7:447**
 Aider-abettors, **7:449**
 Control person liability, above
 Employers, **7:450**
 Respondeat superior liability, **7:450**
 Tippers, **7:448**
 Traders, **7:448**
 Respondeat superior liability, **7:450**
 Settled penalties, **7:444**
 Tippees, penalties imposed on, **7:439**

INDEX

SECURITIES AND EXCHANGE COMMISSION (SEC)—Cont'd

- Penalty actions—Cont'd
 - Traders, penalties imposed on, **7:439**
- Private relief, role in
 - In court, **10:3**
 - Out of court, **10:2**
- Pronouncements, **1:4 et seq.**
- Proposed ESG regulations, **29:4**
- Public reports of investigations, **13:74 et seq.**
- Quasi-judicial jurisdiction, **10:1**
- Regulation G and Sarbanes-Oxley Act liabilities, **3:170**
- Releases
 - Generally, **1:11**
 - Sarbanes-Oxley Act rules and releases, **3:164 et seq.**
- Reports of investigations, **1:10, 13:74 et seq.**
- Requests for information, **13:11**
- Respondeat superior liability, penalty actions, **7:450**
- Restitution to defrauded investors, role in
 - In court, **10:3**
 - Out of court, **10:2**
- Right to counsel in investigations, **13:14**
- Rulemaking authority, **3:5**
- Rules. See **SEC Rules and Regulations** (this index)
- Safeguards rule, violations of, **26:4, 26:5**
- Sarbanes-Oxley Act
 - Attorneys** (this index)
 - Director and officer regulation, **8:464**
 - Implementation, **8:473**
 - Reporting obligations, **8:432 et seq.**
 - Rules and releases, **3:164 et seq.**
- SEA § 21(a) reports of investigations, **13:74 et seq.**
- SEA Release No. 3230, **App B**
- Settled cases, **1:9**
- Settlement of penalty actions, **7:444**

SECURITIES AND EXCHANGE COMMISSION (SEC)—Cont'd

- Settlements, admission of wrongdoing, **13:166 et seq.**
- Staff conferences, **13:26**
- Standards, articulation, **1:7**
- Subpoenas
 - Generally, **13:21 et seq.**
 - Content, **13:22**
 - Document production, **13:25**
 - Document subpoenas, **13:67**
 - Evaluation, **13:23**
 - Responses, **13:25**
 - Validity challenges, **13:24**
- Suitability rules, **14:195**
- Tender offer challenges, **6:138**
- Tender offer disclosure filings
 - Generally, **6:50 et seq.**
 - Changes, effects of, **6:52**
 - Date of information, **6:52**
 - Other disseminations, **6:54**
 - Processing, **6:53**
 - Scope of disclosure, **6:51**
 - Time of filing, **6:50**
- Testimony before
 - Generally, **13:28 et seq.**
 - Interrogations, **13:29**
 - Preparing witnesses, **13:28**
 - Transcripts, **13:30**
- Transcripts
 - Generally, **13:30**
 - Third party access to, **13:66 et seq.**
- Unreasonable search and seizure, **13:34**
- Ward La France Truck Corp case, **App D**
- Warnings, **13:72**
- Wells submissions
 - Generally, **13:158**
 - Advantages and disadvantages, **13:160**
 - Character, **13:159**
- What is a Security** (this index)

SECURITIES EXCHANGE ACT (SEA)

- Congressional intent
 - Generally, **3:11**

**SECURITIES EXCHANGE ACT
(SEA)—Cont'd**

Congressional intent—Cont'd
 Rule 10b-5 history
 Generally, **3:14 et seq.**
 Deceptive devices, **3:17**
 Manipulative devices, **3:17**
 Private enforcement rights, **3:16**
 Scope of coverage, **3:15**
 Semiofficial evidence, **3:15**
 Cybersecurity, class actions, **26:6**
 Disclosure requirements in filings, **6:280**
Implied Liability (this index)
 Interrelations of fraud rules
 Generally, **3:37 et seq.**
 Birnbaum rule, **3:50**
 Breadth of proscriptions, **3:52**
 Causation, **3:48**
 Defenses to private actions, **3:51**
 Displacing provisions, **3:53**
 Elements of private cause of action, **3:50**
 Exempt offerings, **3:46**
 Implied and express private actions, **3:50**
Implied Liability (this index)
 Integration proposals, **3:52**
 Joint use of multiple provisions, **3:53**
 Overlapping provisions, **3:53 et seq.**
 Parties subject to rule, **3:49**
 Place of transaction as factor, **3:38**
 Prospectus fraud, **3:41 et seq.**
 Public offerings, **3:40**
 Registered offerings, **3:39, 3:45**
 Relationship of conduct to transaction, **3:48**
 Transactions covered, **3:38**
 Types of violations proscribed, **3:47**
 Unregistered offerings, **3:46**
 Materiality
 Generally, **8:53 et seq.**
 Market manipulation, **8:54**
 Proxy fraud, **8:56**
 Section 9(a), **8:54**

**SECURITIES EXCHANGE ACT
(SEA)—Cont'd**

Materiality—Cont'd
 Section 10, **8:55**
 Section 14, **8:57**
 Tender offer fraud, **8:57**
 Tests of, **8:11**
 Release No. 3230, **App B**
 Risk disclosure requirements in filings, **6:280**
 Rule 10b-5 history
 Generally, **3:11 et seq.**
 Congressional intent, **3:14 et seq.**
 Deceptive devices, **3:17**
 Enactment, **3:18**
 Manipulative devices, **3:17**
 Private enforcement rights, **3:16**
 Promulgation, **3:18**
 Scope of coverage, **3:15**
 Section 10(b) and
 Early version, **3:12**
 Final version, **3:13**
 Semiofficial evidence, **3:15**
 Rules. See **SEC Rules and Regulations** (this index)
 Section 3(A)(10), what is a security
 Generally, **5:10**
 Evidence of indebtedness, **5:13**
 Guarantees, **5:15**
 Interest, **5:14**
 9 month notes, **5:17**
 Oil and gas interests, **5:16**
 SA § 2(1)(a) differences, **5:12 et seq.**
 SA § 2(1)(a) similarities, **5:11**
 Section 7, **14:59**
 Section 9
 Contraction era, implied private actions in
 Generally, **3:125 et seq.**
 Defendants excluded, **3:129**
 Documents excluded, **3:130**
 Failure to satisfy substantive elements, **3:132**
 Government securities, **3:127**
 Municipal securities, **3:127**
 OTC securities, **3:126**
 Plaintiffs excluded, **3:128**

INDEX

SECURITIES EXCHANGE ACT (SEA)—Cont'd

Section 9—Cont'd

Contraction era, implied private
actions in—Cont'd

Securities excluded, **3:126 et
seq.**

Substantive elements, **3:132**

Expansion era, implied private
actions in, **3:72**

Implied private actions (IPA)

Contraction era

Generally, **3:125 et seq.**

Defendants excluded, **3:129**

Documents excluded, **3:130**

Failure to satisfy substantive
elements, **3:132**

Government securities, **3:127**

Municipal securities, **3:127**

OTC securities, **3:126**

Plaintiffs excluded, **3:128**

Securities excluded, **3:126 et
seq.**

Substantive elements, **3:132**

Expansion era, **3:72**

Privity, **8:282**

Section 9(a)

Disclosure corrections, **6:300**

False and misleading, **3:1**

Joint and several liability, **9:28**

Manipulation of market, **8:102 et
seq.**

Materiality, **8:54**

Scienter, **8:102 et seq.**

Section 9(a)(1), **7:121**

Section 9(a)(2), manipulation

Generally, **7:122 et seq.**

Actual or apparent trading, **7:124**

Depressing prices, **7:124**

Purpose, **7:125**

Raising prices, **7:124**

Series of transactions, **7:123**

Section 9(a)(3), **7:126**

Section 9(a)(4), **7:126**

Section 9(a)(5), **7:126**

Section 9(a)(6), **7:127**

Section 9(b), **7:128**

SECURITIES EXCHANGE ACT (SEA)—Cont'd

Section 9(e)

Contribution, **9:67**

Manipulation, **7:129**

Section 10

Disclosure corrections, **6:301**

Implied liability, **8:55**

Materiality, **8:55**

Privity, **8:283**

Scienter, **8:124**

Section 10(b)

Foreign cubed cases. **Foreign and
International Transactions**
(this index)

Front running, **7:139 et seq.**

Madoff Ponzi scheme, **20:5**

Manipulation, **7:130 et seq.**

Parking, **7:143 et seq.**

Proposed rules, **3:35**

Rule 10b-5 history and

Early version, **3:12**

Final version, **3:13**

Madoff Ponzi scheme, **20:5**

Rules

Generally, **3:33 et seq.**

See also **SEC Rules** (this index)

Rules 1 through 17, **3:34**

SA § 11 compared, **14:16**

SEA § 12(a)(2) and, overlap
between, **14:55**

Shotgun use, **3:36**

Suitability claims, **14:197 et seq.**

Underwriters' due diligence, **14:14**

Section 14

Disclosure corrections, **6:302**

Implied liability, **8:132 et seq.**

Joint and several liability

Proxy fraud, **9:29**

Tender offer fraud, **9:30**

Manipulation of market, **8:132 et
seq.**

Materiality, **8:57**

Privity

Proxy fraud, **8:284**

Tender offer fraud, **8:285**

Proxy fraud, joint and several
liability, **9:29**

**SECURITIES EXCHANGE ACT
(SEA)—Cont'd**

- Section 14—Cont'd
 - Scienter, **8:125, 8:132 et seq.**
 - Tender offer fraud, joint and several liability, **9:30**
- Section 14(a)
 - Congressional intent, **6:155**
 - Disclosure requirements, **6:215**
 - Merger regulation, **6:155**
- Section 14(c)
 - Congressional intent, **6:156**
 - Disclosure requirements, **6:216**
 - Merger regulation, **6:156**
- Section 14(e)
 - Proxies and proxy solicitations, **6:186**
 - Proxy rules, relation to, **6:24**
 - Scope of provision, **6:25**
- Section 15(b)(4)(D), **14:166**
- Section 15(b)(4)(E), **14:165**
- Section 15(b)(6), **14:165**
- Section 15(c)(1)
 - Joint and several liability, **9:31**
 - Manipulation of market, **8:139 et seq.**
 - Privity, **8:286**
 - Scienter, **8:139 et seq.**
- Section 16(b)
 - Administrative enforcement, **7:159**
 - Backdating of stock options, **18:10**
 - Blackouts, director and officer trading during, **7:161**
 - Civil penalties, **7:159**
 - Private actions, **7:160**
 - Short sales, **7:157**
 - Short swing trading, **7:156**
 - Tipping, **7:158**
- Section 18
 - Generally, **8:146 et seq.**
 - Contraction era, implied private actions in
 - Generally, **3:133 et seq.**
 - Decisions rejecting IPA, **3:137**
 - Decisions sustaining IPA, **3:138**
 - Defendants excluded, **3:141**
 - Documents excluded, **3:142, 3:143**

**SECURITIES EXCHANGE ACT
(SEA)—Cont'd**

- Section 18—Cont'd
 - Contraction era, implied private actions in—Cont'd
 - Failure to satisfy substantive elements, **3:145**
 - Filed and unfiled documents, **3:142 et seq.**
 - Fischman rationale, **3:135**
 - Narrow focus of § 18, **3:136**
 - Plaintiffs excluded, **3:140**
 - Reexamination, reasons for, **3:134**
 - Scienter, **3:135**
 - Securities excluded, **3:139**
 - Substantive elements, **3:145**
 - Expansion era, implied private actions in, **3:73**
 - Fischman rationale, **3:135**
 - Implied private actions (IPA)
 - Contraction era
 - Generally, **3:133 et seq.**
 - Decisions rejecting IPA, **3:137**
 - Decisions sustaining IPA, **3:138**
 - Defendants excluded, **3:141**
 - Documents excluded, **3:142, 3:143**
 - Failure to satisfy substantive elements, **3:145**
 - Filed and unfiled documents, **3:142 et seq.**
 - Fischman rationale, **3:135**
 - Narrow focus of § 18, **3:136**
 - Plaintiffs excluded, **3:140**
 - Reexamination, reasons for, **3:134**
 - Scienter, **3:135**
 - Securities excluded, **3:139**
 - Substantive elements, **3:145**
 - Expansion era, **3:73**
 - Narrow focus, **3:136**
 - Privity, **8:287**
 - Scienter, **3:135**
 - Section 18(b), **9:67**
 - Section 19, broker-dealer supervisory liabilities, **14:170**

INDEX

SECURITIES EXCHANGE ACT (SEA)—Cont'd

- Section 20(a)
 - Broker-dealer supervisory liabilities, **14:167**
 - Control person liability, **8:393 et seq.**
 - Good faith defense, **8:393 et seq.**
- Section 20A(c), **9:36**
- Section 20(f), **8:348**
- Section 21(a), **13:74 et seq.**
- Section 21D(b), pleading particularity
 - Conflicting concerns, **11:110**
 - Fact statements, **11:122**
 - Falsity, **11:117**
 - Group statements, **11:124**
 - Information and belief, **11:129**
 - Misleading character, **11:119**
 - Purposes, **11:108**
 - Scienter, **11:134**
 - Tactical importance, **11:106**
 - Unattributed statements, **11:126**
- Section 21D(e), **9:11**
- Section 21D(g)
 - Contribution, **9:69**
 - Proportionate liability, **9:48**
- Text, **App C**
- USCA cross reference table, **App H**
- What is a Security** (this index)
- Whistleblowers, protection, **22:16**
- Williams Bill, **6:13**

SECURITIES INVESTOR PROTECTION ACT (SIPA) AND CORPORATION (SIPC)

- Madoff Ponzi scheme, definition of customer, **20:3, 20:24**

SECURITIES LITIGATION UNIFORM STANDARDS ACT (SLUSA)

- Generally, **3:201 et seq.**
- Abolition of state claims, **3:202**
- Administrative actions by states, **3:210**
- Administrative enforcement, **3:216**
- Bonds, actions on, **3:211**

SECURITIES LITIGATION UNIFORM STANDARDS ACT (SLUSA)—Cont'd

- Chadbourn & Parke LLP v. Troice, **3:217 et seq.**
- Congressional intent, **3:201, 3:214**
- Consolidation restrictions, **3:206**
- Criminal enforcement, **3:216**
- Derivative suits, **3:212**
- Discovery limitations, **3:203**
- Effective date, **3:213**
- Enactment, **3:32**
- Government enforcement, **3:216**
- Incorporation state, actions under laws of, **3:209**
- Joinder restrictions, **3:206**
- Mass-type actions, **3:206**
- NMSIA scope compared, **3:207**
- Post-Chadbourn cases, **3:220 to 3:222**
- Private rights, effect on, **3:215**
- PSLRA, **3:214**
- Recklessness, **3:214**
- Related class-type actions, **3:205**
- Retroactivity, **3:213**
- Scienter, **3:214**
- Securities covered, **3:207**
- State class action limitations
 - Generally, **3:201 et seq.**
 - Administrative actions by states, **3:210**
 - Administrative enforcement, **3:216**
 - Bonds, actions on, **3:211**
 - Covered class actions, **3:204**
 - Criminal enforcement, **3:216**
 - Derivative suits, **3:212**
 - Discovery limitations, **3:203**
 - Government enforcement, **3:216**
 - Incorporation state, actions under laws of, **3:209**
 - Indenture contract actions, **3:211**
 - Individual fraud claims, **3:215**
 - Mass-type actions, **3:206**
 - Permitted class actions, **3:208 et seq.**
 - Private rights, effect on, **3:215**
 - Recklessness, **3:214**
 - Related class-type actions, **3:205**

**SECURITIES LITIGATION
UNIFORM STANDARDS ACT
(SLUSA)—Cont'd**

State class action limitations—Cont'd
 Scienter, **3:214**
 Scope, **3:204 et seq.**
 Securities covered by SLUSA,
3:207
 State governments, actions by,
3:210

SELECTIVE DISCLOSURE

See **Disclosure** (this index)

SELF-DEALING

Coordinated investigations following
 subprime mortgage crisis,
13:338

**SELF REGULATORY
ORGANIZATIONS (SRO)**

Amicus curiae participation in private
 litigation, **13:293**
 Arbitration procedures, **15:8**
 Auction Rate Securities (ARS) litigation,
 coordinated SEC-state-SRO investigations,
13:322 et seq.
 Authority
 Injunctions, **13:303**
 Investigations, **13:268**
 Orders, **13:278**
 Subpoenas, **13:279**
 Broker-dealer supervision liabilities
 Generally, **14:171 et seq.**
 Amex requirements, **14:174**
 Branch office managers, **14:178**
 Chief executive officers, **14:180**
 Compliance officers, **14:181**
 Court cases, **14:176**
 Deficiencies, **14:175**
 General counsel, **14:182**
 Heads of functional areas, **14:179**
 Individual responsibilities, **14:177 et seq.**
 NASD requirements, **14:172**
 NYSE requirements, **14:173**
 Safe harbor programs, **14:175**
 Sanctions, **14:175**

**SELF REGULATORY
ORGANIZATIONS (SRO)
—Cont'd**

CFTC references of investigations to,
13:231
 Collateral effects of orders, **13:298**
 Conferences with staff, **13:280**
 Conflicts of interest in investigations,
13:277
 Counsel investigations, **13:281**
 Criminal enforcement references,
13:304
 Disciplinary authority
 Joint and several liability, **9:45**
 References by arbitrators, **15:62**
 Relationship to arbitration, **15:61**
 Discovery, **13:286**
 Documents, third party access to,
13:286
 Front running
 Generally, **7:140**
 Criticisms of SRO interpretations,
7:141
 Decisions, **7:142**
 Insider trading, **7:168**
 Implied liabilities under SRO rules
 Generally, **14:62 et seq.**
 Arbitration, **14:72**
 Buttrey doctrine, **14:65**
 Colonial Realty doctrine, **14:64**
 Contraction era, **14:71**
 Court cases, **14:64 et seq.**
 Expansion era, **14:63 et seq.**
 Informal enforcement actions, **13:292**
 Informal warnings, **13:289**
 Information requests, **13:273**
 Injunctions, **13:303**
 Insider trading, front running, **7:168**
 Interrogations, **13:283**
 Investigations
 Generally, **13:1 et seq.**
 See also **Investigations** (this index)
 Negotiations with
 Generally, **13:308 et seq.**
 Advantages and disadvantages,
13:310
 Considerations, **13:312**

INDEX

SELF REGULATORY

ORGANIZATIONS (SRO)

—Cont'd

Negotiations with—Cont'd

Objectives, **13:311**

Orders

Generally, **13:278**

Collateral effects of orders, **13:298**

Duration of orders, **13:300**

Outcomes of investigations, **13:287 et seq.**

Public reports of investigations, **13:291**

Reports of investigations, **13:291**

Requests for information, **13:273**

Right to counsel in investigations, **13:276**

SEC investigations, information sharing by Office of Market Intelligence, **20:14**

Staff conferences, **13:280**

Subpoena power, **13:270, 13:279**

Suitability rules

Generally, **14:183 et seq.**

See also **Suitability** (this index)

Chicago Board Options Exchange (CBOE), **14:192**

Disciplinary actions, **14:194**

FINRA Rule 2090, know your customer, **14:191**

FINRA Rule 2111, **14:186**

FINRA Rule 2111(a), **14:187, 14:188**

FINRA rules generally, **14:185**

Inquiry duties of brokers, **14:189**

Institutional investors, **14:190**

Investment strategy, **14:188**

Know your customer, **14:191**

Municipal securities, **14:193**

NASD IM-2320-3, **14:190**

NASD rules generally, **14:185**

Options, **14:192**

Recommendations to customers, **14:187**

Testimony

Generally, **13:282 et seq.**

Interrogations, **13:283**

Preparing witnesses, **13:282**

SELF REGULATORY

ORGANIZATIONS (SRO)

—Cont'd

Testimony—Cont'd

Transcripts, **13:284**

Transcripts

Generally, **13:284**

Third party access to, **13:286**

Warnings, **13:289**

Wells submission equivalents

Generally, **13:306**

Character, **13:307**

SENIOR INVESTOR FINANCIAL

ABUSE

Generally, **23:1**

Compliance practices, **23:3**

Enforcement actions by regulators, **23:2**

Protection against, **23:3**

SENIOR MANAGEMENT

Madoff Ponzi scheme, **20:5**

Mutual fund violations, **17:19**

SENTENCING

Insiders and inside trading, Raj

Rajaratnam criminal case, **21:28 to 21:49**

SERVICE OF PROCESS

See **Process** (this index)

SETTLEMENT

See **Compromise and Settlement** (this index)

703 SLUSH FUND

Madoff Ponzi scheme, **20:6**

SHAREHOLDERS

Insider trading liability, **7:651**

Unfair terms, effect of shareholder votes as to

Generally, **5:146**

Reasons and policies, **5:151**

SHIFTING COUNTERPARTIES

Madoff Ponzi scheme, **20:6**

SHORT SALES

Insider short sales, **7:157**

Manipulation, **7:137**

SHORT SALES—Cont'd

NASD risk disclosure requirements,
6:287

SHORT SWING TRADING

SEA § 16(b), **7:156**

SHOULD HAVE KNOWN

Madoff Ponzi scheme, **20:5**

SONJA KOHN

Madoff feeder funds, globalization,
20:21

SPECIAL PURPOSE

**ACQUISITION COMPANIES
(SPACS)**

Overview, **28:1**

Private damage actions, **28:3**

SEC

Disclosure guidance, **28:1**

Enforcement actions, **28:2**

Proposed rule changes, **28:4**

Senator Elizabeth Warren report,
28:4

SPECIFICITY

Investigations, **13:104**

Materiality factors, **8:35**

SPLIT-STRIKE CONVERSION

Madoff Ponzi scheme, **20:6**

**STANDARD AND POOR'S
RATINGS**

Coordinated investigations following
subprime mortgage crisis,
13:338

STANDING

Generally, **8:258 et seq.**

See also **Parties; Private Actions**
(this index)

State law, **6:196**

Suability, meaning of generally,
8:293

Tender offers, standing to challenge

Generally, **6:124**

Implied rights, **6:124**

Issuer offers, **6:143**

Offerees

Nontendering, **6:126**

STANDING—Cont'd

Tender offers, standing to challenge

—Cont'd

Offerees—Cont'd

Tendering, **6:125**

Offerors, **6:129**

Target companies, **6:128**

Tenderees

Generally, **6:125**

Nontendering, **6:126**

Undecided, **6:127**

Third parties, **6:130**

STATE AGENCIES

Investigations (this index)

STATE LAW

Generally, **3:184 et seq.**

Administrative actions by states,
3:210

Administrative enforcement

Generally, **13:318**

Effect of SLUSA, **3:216**

Auction Rate Security (ARS) litigation. Coordinated SEC-state-SRO investigations, below

Authority of state agencies, **13:314**

Blue sky laws

Generally, **3:186**

Corrections of disclosures, **6:292**

Crowdfunding, **14:222**

Defendant's intent, **8:61**

Insider trading, **7:154**

Joint and several liability, **9:21**

Joint liabilities, **8:262**

Materiality, **8:7**

Parties to fraud actions, **8:262**

Plaintiff's knowledge, **8:62**

Privity, **8:262**

Reliance, **8:488**

Bonds, actions on, **3:211**

California statutes, insider trading,

App G

CFTC references of investigations to,
13:231

Chadbourn & Parke LLP v. Troice,
3:217 et seq.

Churning actions, **14:137 et seq.**

INDEX

STATE LAW—Cont'd

- Class action limitations under SLUSA
 - Generally, **3:201 et seq.**
 - Abolition of state claims, **3:202**
 - Administrative actions by states, **3:210**
 - Administrative enforcement, **3:216**
 - Bonds, actions on, **3:211**
 - Congressional intent, **3:201**
 - Covered class actions, **3:204**
 - Criminal enforcement, **3:216**
 - Derivative suits, **3:212**
 - Discovery limitations, **3:203**
 - Government enforcement, **3:216**
 - Incorporation state, actions under laws of, **3:209**
 - Indenture contract actions, **3:211**
 - Individual fraud claims, **3:215**
 - Mass-type actions, **3:206**
 - Permitted class actions, **3:208 et seq.**
 - Private rights, effect on, **3:215**
 - Recklessness, **3:214**
 - Related class-type actions, **3:205**
 - Scienter, **3:214**
 - Scope, **3:204 et seq.**
 - Securities covered by SLUSA, **3:207**
 - State governments, actions by, **3:210**
- Commodities fraud, investigations, **13:197**
- Common law, **3:185**
- Consolidation, SLUSA restrictions, **3:206**
- Contraction era, **3:184**
- Coordinated SEC-state-SRO investigations
 - Generally, **13:322 et seq.**
 - ARS securities and market, **13:325**
 - ARS seller management liability, **13:330**
 - ARS violations, **13:326**
 - Auction Rate Security (ARS) litigation, generally, **13:323**
 - Criminal aspects, **13:331**

STATE LAW—Cont'd

- Coordinated SEC-state-SRO investigations—Cont'd
 - Government regulatory suits, **13:329**
 - Investor recovery as objective, **13:324**
 - Private litigation, **13:327, 13:328**
 - State law, private litigation, **13:328**
- Court v Ash, **3:99**
- Criminal enforcement
 - Generally, **13:320**
 - Effect of SLUSA, **3:216**
- Defendant's intent, **8:61**
- Expansion era, **3:184**
- Federal vs state private actions, relative advantages, **3:200**
- Incorporation state, actions under laws of, **3:209**
- Injunctions, **13:319**
- Insider trading
 - Generally, **7:153**
 - Blue sky law, **7:154**
 - California statutes, **App G**
- Insurance companies
 - McCarran Act, **6:203**
 - Proxy rules, applicability of, **6:202, 6:203**
- Investigations
 - Generally, **13:313 et seq.**
 - Administrative enforcement, **13:318**
 - Authority of state agencies, **13:314**
 - Coordinated SEC-state-SRO investigations, above
 - Criminal prosecutions, **13:320**
 - Injunctions, **13:319**
 - Outcomes, **13:317**
 - References of to state authorities
 - CFTC references, **13:231**
 - SEC references, **13:73**
 - SRO references, **13:290**
 - Settlements, **13:321**
 - Subpoenas, **13:315**
- Joinder, SLUSA restrictions, **3:206**
- Joint and several liability, **9:20**
- Joint liabilities, **8:262**
- Materiality, **8:7**

STATE LAW—Cont'd

Mergers

Generally, **6:153, 6:191 et seq.**
 Appraisal rights, **6:192, 6:193**
 Delaware law, **6:196**
 Effect of merger or dissolution,
6:194

Equitable approach, **6:197**
 Standing approach, **6:196**

Parties to fraud actions, **8:262**

Plaintiff's knowledge, **8:62**

Post-Chadbourn cases, **3:220 to 3:222**

Privity, **8:262**

Proxies and proxy solicitations

Generally, **6:191 et seq.**
 Appraisal rights, **6:192, 6:193**
 Delaware law, **6:196**
 Effect of merger or dissolution,
6:194

Equitable approach, **6:197**
 Standing approach, **6:196**

Punitive damages, **14:107 et seq.**

References of investigation to state authorities

CFTC references, **13:231**
 SEC references, **13:73**
 SRO references, **13:290**

Reliance, **8:488**

SEC references of investigations to,
13:73

Settlements of investigations, **13:321**

SRO references of investigations to,
13:290

Standing, **6:196**

Subpoenas, state agency investigations,
13:315

Suitability claims

Generally, **14:200 et seq.**
 Consumer fraud, **14:204**
 Fiduciary breaches, **14:202**
 Negligence, **14:203**
 Statutory violations, **14:201**

Traditional areas, **3:99**

What is a security, **5:19**

STATE OF MIND

Intent (this index)

Knowledge (this index)

STATE OF MIND—Cont'd

Purpose (this index)

Scienter (this index)

**STATURE IN SECURITIES
INDUSTRY**

Madoff Ponzi scheme, **20:2**

STATUTES OF LIMITATION

See **Limitation of Actions** (this index)

STEIN DECISION

SEC investigation, attorney-client privileges, **13:39 et seq.**

STRICT LIABILITY

Innocent defendants, **8:243**

**SUBJECT MATTER
JURISDICTION**

Jurisdiction, foreign cubed case,
11:21

SUBPOENAS

See also **Securities and Exchange
Commission** (this index)

CFTC, **13:200**

Investigations

See also **Investigations** (this index)

CFTC, **13:200**

SROs, **13:270**

State agencies, **13:315**

SROs, **13:270**

State agency investigations, **13:315**

SUBSTANTIAL ASSISTANCE

Generally, **8:359 et seq.**

See also **Aider-Abettors** (this index)

SUBSTANTIAL PARTICIPATION

Indirect-impersonal dealing, **7:89**

SUITABILITY

Generally, **14:183 et seq.**

Arbitration, **14:205**

Consumer fraud claims, **14:204**

Damage claims, **14:196 et seq.**

Fiduciary breaches, **14:202**

Fiduciary duties, **14:206**

Fraud claims, **14:199**

Inquiry duties of brokers, **14:189**

INDEX

SUITABILITY—Cont'd

- Institutional investors, **14:190**
- Misrepresentation, claims based on, **14:198**
- Negligence claims, **14:203**
- Option trading, **14:192**
- Private damage claims, **14:196 et seq.**
- Recommendations to customers, **14:186**
- Retirement accounts, **14:206**
- Rule 10b-5 claims, **14:197 et seq.**
- SEA § 10(b) claims, **14:197 et seq.**
- SEC rules, **14:195**
- SRO rules
 - Chicago Board Options Exchange (CBOE), **14:192**
 - Disciplinary actions, **14:194**
 - FINRA Rule 2090, know your customer, **14:191**
 - FINRA Rule 2111, **14:186**
 - FINRA Rule 2111(a), **14:187, 14:188**
 - FINRA rules generally, **14:185**
 - Inquiry duties of brokers, **14:189**
 - Institutional investors, **14:190**
 - Investment strategy, **14:188**
 - Know your customer, **14:191**
 - Municipal securities, **14:193**
 - NASD IM-2320-3, **14:190**
 - NASD rules generally, **14:185**
 - Options, **14:192**
 - Recommendations to customers, **14:187**
- State law claims
 - Generally, **14:200 et seq.**
 - Consumer fraud, **14:204**
 - Fiduciary breaches, **14:202**
 - Negligence, **14:203**
 - Statutory violations, **14:201**

SUMMARY JUDGMENT

- Order on motions, SEC v. Ripple Labs, **24:5**

SUPERVISORS OF STOCK TRADING DESKS

- Madoff Ponzi scheme, **20:5**

SUPPLEMENTARY

COMMUNICATIONS

- Generally, **6:239**
- See also **Disclosure** (this index)

SUPREME COURT

- Indirect-impersonal dealing, scheme to defraud, Zandford case, **7:117**
- Omnicare decision, fact vs. opinion standard, **8:3**
- Private actions, loss causation, **8:556 to 8:570**
- Whistleblowers** (this index)

TASK FORCE

- SEC's ESG-related enforcement actions, **29:2**

TAX FRAUD

- Madoff Ponzi scheme, **20:6, 20:9**

TECHNICAL SUPPORT

- Madoff Ponzi scheme, **20:5, 20:7**

TENDER OFFER FRAUD

- See also **Proxy Fraud** (this index)
- Antifraud provisions, applicability to
 - Generally, **6:22 et seq.**
 - Connection, **6:26**
 - Jurisdictional means, **6:27**
 - Opposition, applicability to, **6:23**
 - Proxy rules, **6:24**
 - SEA § 14(e), **6:24**
- Banks, regulation of, **6:29**
- Challenging
 - Balance of equities, **6:134**
 - Clean hands, **6:136**
 - Final relief, **6:140**
 - Inadequacy of other remedies, **6:133**
 - Irreparable injuries, **6:133**
 - Preliminary, **6:131 et seq.**
 - Probability of success, **6:132**
 - Proof elements, **6:132**
 - Relief available generally, **6:131 et seq.**
- SEC actions, **6:138**
- Standing to challenge, below
- Time for relief, **6:139**
- Types of relief, **6:135**

TENDER OFFER FRAUD—Cont'd

- Congressional intent
 - Generally, **6:16 et seq.**
 - Disclosure, **6:17**
 - Fairness, **6:19**
 - Investor protection, **6:17**
 - Target management protection, **6:18**
- Connection with requirement, **7:371**
- Definitional exclusions, **6:40**
- Definitions, **6:31**
- Direct-impersonal dealing
 - Generally, **6:33**
 - Disclosure corrections, **6:311**
 - Issuer offer disclosure requirements, **6:144**
- Disclosure requirements
 - Regulated offers
 - Generally, **6:41**
 - Arrangements, **6:47**
 - Changes, effects of
 - Generally, **6:49**
 - SEC filings, **6:52**
 - Ten percent threshold disclosure requirements, **6:57**
 - Control change information, **6:61**
 - Control purposes, **6:64**
 - Date of information
 - Generally, **6:49**
 - SEC filings, **6:52**
 - Ten percent threshold disclosure requirements, **6:57**
 - Deviation from stated plans, **6:70**
 - Funds, source of, **6:44**
 - Fund source data, **6:44**
 - Groups, data on, **6:48**
 - Ideas vs plans, **6:68**
 - Issuer offers, **6:144**
 - Noncompliance, effects of, **6:74**
 - Offer data, **6:43**
 - Offeror data, **6:42**
 - Ownership, **6:55**
 - Plans and proposals, **6:45, 6:66 et seq.**

TENDER OFFER FRAUD—Cont'd

- Disclosure requirements—Cont'd
 - Regulated offers—Cont'd
 - Publicity
 - Offeror, **6:94**
 - Target company, **6:98**
 - Third persons, **6:108**
 - Purposes, **6:45, 6:62 et seq.**
 - Sanctions for noncompliance, **6:74**
 - SEC filings
 - Generally, **6:50 et seq.**
 - Changes, effects of, **6:52**
 - Date of information, **6:52**
 - Other disseminations, **6:54**
 - Processing, **6:53**
 - Scope of disclosure, **6:51**
 - Time of filing, **6:50**
 - Securities, data on, **6:46**
 - Ten percent threshold
 - Generally, **6:55 et seq.**
 - Changes, effect of, **6:57**
 - Date of information, **6:57**
 - Exemptions, **6:60**
 - Other disseminations, **6:59**
 - Ownership, **6:55**
 - Scope of disclosure, **6:56**
 - SEC processing, **6:58**
 - Understandings, **6:47**
 - Unregulated offers
 - Generally, **6:113**
 - Insiders, **6:114**
 - Outsiders
 - Generally, **6:115 et seq.**
 - Issuer, information about, **6:117**
 - Offer, identity of, **6:119**
 - Other information, **6:118**
 - Plans and proposals, **6:116**
 - Policy factors, **6:120**
 - Target company, **6:121**
 - Third persons, **6:122**
 - Disclosures in offers, **7:288**
 - Exchange offers, **6:36**
 - Excluded offers, **6:38 et seq.**
 - Express exclusions, **6:39**
 - Fairness, Congressional intent, **6:19**

INDEX

TENDER OFFER FRAUD—Cont'd

- Five percent offers
 - Generally, **6:32**
 - Base for percentages, **6:34**
- Foreign laws, **6:15**
- Indirect-impersonal dealing
 - Disclosures in, **7:288**
- Inside information re
 - Generally, **7:267**
- Acquisitions
 - Generally, **7:248 et seq.**
- Agreements
 - Disclosure not required, **7:261**
 - Disclosure required, **7:260**
- Company, trading by, **7:256**
- Definitions, **7:250**
- Disclosure document obligations, **7:259**
- Leaks, **7:255**
- Materiality of negotiated acquisitions, **7:262 et seq.**
- Preliminary negotiations
 - Misleading statements, **7:253**
 - No statement made, **7:252**
 - Other situations, **7:254**
- Prior statement now misleading, **7:257**
- Rumors, **7:255**
- Stages of negotiated acquisitions, **7:249**
- Target response to tender offers, **7:258**
- When disclosure of agreement required, **7:260**
- When disclosure required, **7:251 et seq.**
- Connection with requirement, **7:371**
- Materiality, **7:270**
- Pending offers, **7:214**
- Stages of nonnegotiated acquisitions, **7:268**
- Target response to tender offers, **7:258**
- When disclosure required, **7:269**

TENDER OFFER FRAUD—Cont'd

- Indirect-impersonal dealing—Cont'd
 - Target response to tender offers, disclosure of, **7:258**
- Inside information re
 - Generally, **7:267**
 - Materiality, **7:270**
 - Pending offers, **7:214**
 - Stages of nonnegotiated acquisitions, **7:268**
 - When disclosure required, **7:269**
- Insiders, offers by
 - Generally, **6:111**
 - Disclosure requirements, **6:114**
- Insurance company offers, **6:30**
- Investment Bankers** (this index)
- Issuer offers
 - Generally, **6:141**
 - Disclosure requirements, **6:144**
 - Price, **6:142**
 - Redemptions, **6:145**
 - Standing to challenge, **6:143**
- Joint and several liability, **9:30**
- Managers, protection, **6:18**
- Market activities
 - Offeror
 - Before offer, **6:97**
 - During offer, **6:96**
 - Target company
 - Generally, **6:106 et seq.**
 - Filing, **6:107**
 - Information to be disclosed, **6:107**
 - Scope of regulation, **6:106**
 - Third persons, **6:109**
- Materiality, **8:57**
- Medium of payment, **6:36**
- Opposition, applicability of antifraud provisions to, **6:23**
- Outsiders, offers by
 - Generally, **6:112**
- Disclosures
 - Generally, **6:115 et seq.**
 - Issuer, information about, **6:117**
 - Offer, identity of, **6:119**
 - Other information, **6:118**
 - Plans and proposals, **6:116**
 - Policy factors, **6:120**

TENDER OFFER FRAUD—Cont'd

- Price
 - Increases, effect of, **6:90 et seq.**
 - Issuer offers, **6:142**
 - Third-party offers, **6:123**
- Privity, **8:285**
- Proxy rule antifraud provisions, applicability to, **6:24**
- Proxy solicitations
 - Generally, **6:13 et seq.**
 - See also **Proxy Fraud** (this index)
- Publicity
 - Offeror
 - Before offer, **6:95**
 - During offer, **6:94**
 - Target company
 - Generally, **6:98, 6:101**
 - Attack, modes of, **6:105**
 - Date of information, **6:101**
 - Exemptions, **6:103**
 - Other disseminations, **6:102**
 - Scope of antifraud provisions, **6:104**
 - Scope of disclosure, **6:100**
 - Time of filing, **6:99**
 - Third persons, **6:108**
- Recommendations
 - Offeror
 - Before offer, **6:95**
 - During offer, **6:94**
 - Third persons, **6:108**
- Scienter in fraud actions
 - Defendant's intent, **8:136**
 - Defendant's knowledge and belief
 - Generally, **8:133 et seq.**
 - Burden of proof, **8:134**
 - Proof, **8:135**
 - Intent, **8:136**
 - Plaintiff's knowledge, **8:137**
 - Pleading, **8:138**
- SEA § 14(e) antifraud provisions, applicability to, **6:24**
- Special bids, **6:37**
- Standing to challenge transaction
 - Generally, **6:124**
 - Implied rights, **6:124**
 - Issuer offers, **6:143**

TENDER OFFER FRAUD—Cont'd

- Standing to challenge transaction
 - Cont'd
- Offerees
 - Nontendering, **6:126**
 - Tendering, **6:125**
- Offerors, **6:129**
- Target companies, **6:128**
- Tenderees
 - Generally, **6:125**
 - Nontendering, **6:126**
 - Undecided, **6:127**
- Third parties, **6:130**
- State laws, **6:14**
- Target company disclosures, **6:121**
- Ten day pro rata takeover
 - Exemptions, **6:88**
 - Procedures, **6:87**
 - Purpose, **6:86**
- Terms
 - Generally, **6:75 et seq.**
 - Duration of offer, **6:89**
 - Freedom of offerer, degrees of, **6:75**
 - Ten day pro rata takeover, above
 - Withdrawal rights
 - Generally, **6:80 et seq.**
 - Procedure, **6:82**
 - Purpose, **6:81**
 - Voluntary, **6:84**
- Third-party offers
 - Antifraud provisions, applicability to
 - Generally, **6:22 et seq.**
 - Connection, **6:26**
 - Jurisdictional means, **6:27**
 - Opposition, applicability to, **6:23**
 - Proxy rules, **6:24**
 - SEA § 14(e), **6:24**
 - Banks, regulation of, **6:29**
- Challenging
 - Balance of equities, **6:134**
 - Clean hands, **6:136**
 - Final relief, **6:140**
 - Inadequacy of other remedies, **6:133**
 - Irreparable injuries, **6:133**

INDEX

TENDER OFFER FRAUD—Cont'd

- Third-party offers—Cont'd
 - Challenging—Cont'd
 - Preliminary, **6:131 et seq.**
 - Probability of success, **6:132**
 - Proof elements, **6:132**
 - Relief available, **6:131 et seq.**
 - SEC actions, **6:138**
 - Standing to challenge, below
 - Time for relief, **6:139**
 - Types of relief, **6:135**
 - Congressional intent
 - Generally, **6:16 et seq.**
 - Disclosure, **6:17**
 - Fairness, **6:19**
 - Investor protection, **6:17**
 - Target management protection, **6:18**
 - Coverage of regulations, **6:28 et seq.**
 - Definitional exclusions, **6:40**
 - Direct-impersonal dealings, **6:33**
 - Disclosure requirements
 - Generally, **6:41**
 - Arrangements, **6:47**
 - Changes, effects of
 - Generally, **6:49**
 - SEC filings, **6:52**
 - Ten percent threshold disclosure requirements, **6:57**
 - Control change information, **6:61**
 - Control purposes, **6:64**
 - Date of information
 - Generally, **6:49**
 - SEC filings, **6:52**
 - Ten percent threshold disclosure requirements, **6:57**
 - Deviation from stated plans, **6:70**
 - Funds, source of, **6:44**
 - Fund source data, **6:44**
 - Groups, data on, **6:48**
 - Ideas vs plans, **6:68**
 - Noncompliance, effects of, **6:74**
 - Offer data, **6:43**

TENDER OFFER FRAUD—Cont'd

- Third-party offers—Cont'd
 - Disclosure requirements—Cont'd
 - Ownership, **6:55**
 - Plans and proposals, **6:45, 6:66 et seq.**
 - Purposes, **6:45, 6:62 et seq.**
 - Sanctions for noncompliance, **6:74**
 - SEC filings
 - Generally, **6:50 et seq.**
 - Changes, effects of, **6:52**
 - Date of information, **6:52**
 - Other disseminations, **6:54**
 - Processing, **6:53**
 - Scope of disclosure, **6:51**
 - Time of filing, **6:50**
 - Securities, data on, **6:46**
 - Ten percent threshold
 - Generally, **6:55 et seq.**
 - Changes, effect of, **6:57**
 - Date of information, **6:57**
 - Exemptions, **6:60**
 - Other disseminations, **6:59**
 - Ownership, **6:55**
 - Scope of disclosure, **6:56**
 - SEC processing, **6:58**
 - Understandings, **6:47**
 - Unregulated offers
 - Generally, **6:113**
 - Insiders, **6:114**
 - Outsiders
 - Generally, **6:115 et seq.**
 - Issuer, information about, **6:117**
 - Offer, identity of, **6:119**
 - Other information, **6:118**
 - Plans and proposals, **6:116**
 - Policy factors, **6:120**
 - Target company, **6:121**
 - Third persons, **6:122**
 - Excluded offers, **6:38 et seq.**
 - Express exclusions, **6:39**
 - Foreign laws, **6:15**
 - Insiders, offers by
 - Generally, **6:111**
 - Disclosure requirements, **6:114**
 - Insurance companies, **6:30**

TENDER OFFER FRAUD—Cont'd

- Third-party offers—Cont'd
 - Market activities
 - Offeror
 - Before offer, **6:97**
 - During offer, **6:96**
 - Target company
 - Generally, **6:106 et seq.**
 - Filing, **6:107**
 - Information to be disclosed, **6:107**
 - Scope of regulation, **6:106**
 - Third persons, **6:109**
 - Outsiders, offers by
 - Generally, **6:112**
 - Disclosures
 - Generally, **6:115 et seq.**
 - Issuer, information about, **6:117**
 - Offer, identity of, **6:119**
 - Other information, **6:118**
 - Plans and proposals, **6:116**
 - Policy factors, **6:120**
 - Price, **6:123**
 - Price increases, effect of, **6:90 et seq.**
 - Publicity
 - Offeror
 - Before offer, **6:95**
 - During offer, **6:94**
 - Target company
 - Generally, **6:98**
 - Attack, modes of, **6:105**
 - Change, effect of, **6:101**
 - Date of information, **6:101**
 - Exemptions, **6:103**
 - Other disseminations, **6:102**
 - Scope of antifraud provisions, **6:104**
 - Scope of disclosure, **6:100**
 - Time of filing, **6:99**
 - Third persons, **6:108**
 - Recommendations
 - Offeror
 - Before offer, **6:95**
 - During offer, **6:94**
 - Third persons, **6:108**

TENDER OFFER FRAUD—Cont'd

- Third-party offers—Cont'd
 - Regulated offers
 - Generally, **6:13 et seq.**
 - Williams Bill, **6:13**
 - Scope of regulation
 - Generally, **6:28 et seq., 6:31 et seq.**
 - Definitions, **6:31**
 - Direct-impersonal dealings, **6:33**
 - Exchange offers, **6:36**
 - Five percent offers
 - Generally, **6:32**
 - Base for percentages, **6:34**
 - Jurisdictional means, **6:35**
 - Medium of payment, **6:36**
 - Special bids, **6:37**
 - Two percent offers
 - Generally, **6:32**
 - Base for percentages, **6:34**
 - Standing to challenge transaction
 - Generally, **6:124**
 - Implied rights, **6:124**
 - Nontendering offerees, **6:126**
 - Offerees, tendering, **6:125**
 - Offerors, **6:129**
 - Target companies, **6:128**
 - Tenderees
 - Nontendering, **6:126**
 - Undecided, **6:127**
 - Tendering offerees, **6:125**
 - Third parties, **6:130**
 - State laws, **6:14**
 - Target company disclosures, **6:121**
 - Ten day pro rata takeover
 - Generally, **6:85 et seq.**
 - Exemptions, **6:88**
 - Procedures, **6:87**
 - Purpose, **6:86**
 - Terms
 - Generally, **6:75 et seq.**
 - Duration of offer, **6:89**
 - Freedom of offerer, degrees of, **6:75**
 - Ten day pro rata takeover, above
 - Withdrawal rights
 - Generally, **6:80 et seq.**
 - Exemptions, **6:83**

INDEX

TENDER OFFER FRAUD—Cont'd

- Third-party offers—Cont'd
 - Terms—Cont'd
 - Withdrawal rights—Cont'd
 - Procedure, **6:82**
 - Purpose, **6:81**
 - Voluntary, **6:84**
- Third person disclosures, **6:122**
- Unregulated offers
 - Generally, **6:110**
- Insiders
 - Generally, **6:111**
 - Disclosure requirements, **6:114**
- Outsiders
 - Generally, **6:112**
- Disclosures
 - Generally, **6:115 et seq.**
 - Issuer, information about, **6:117**
 - Offer, identity of, **6:119**
 - Other information, **6:118**
 - Plans and proposals, **6:116**
 - Policy factors, **6:120**
- Target company disclosures, **6:121**
- Third party disclosures, **6:122**
- Williams Bill, **6:13**
- Third person disclosures, **6:122**
- Two percent offers
 - Generally, **6:32**
 - Base for percentages, **6:34**
- Types of direct-impersonal dealings, **6:1**
- Unregulated tender offers
 - Generally, **6:110**
- Insiders
 - Generally, **6:111**
 - Disclosure requirements, **6:114**
- Outsiders
 - Generally, **6:112**
- Disclosures
 - Generally, **6:115 et seq.**
 - Issuer, information about, **6:117**
 - Offer, identity of, **6:119**
 - Other information, **6:118**
 - Plans and proposals, **6:116**

TENDER OFFER FRAUD—Cont'd

- Unregulated tender offers—Cont'd
 - Outsiders—Cont'd
 - Disclosures—Cont'd
 - Policy factors, **6:120**
- Target company disclosures, **6:121**
- Third person disclosures, **6:122**
- Williams Bill, **6:13**

TIPPERS AND TIPPEES

- Generally, **7:623 et seq.**
- See also **Insiders and Insider Trading** (this index)

TORTS

- Common Law Fraud** (this index)
- Joint and Several Liability** (this index)

TRADES AND TRADING

- Broker-Dealer Liability** (this index)
- Definition, **1:2**
- Direct-Impersonal Dealing** (this index)
- Direct-Personal Dealing** (this index)
- Illegal, cybersecurity, **26:2, 26:3**
- Indirect-Impersonal Dealing** (this index)
- Mutual Fund Violations** (this index)
- Private transaction liabilities, **5:8**

TRANSACTION PLANNING

- Generally, **12:10 et seq.**
- Antiwaiver provision of Rule 10b-5, **12:11**
- Arbitration provisions, **12:11**
- Attorneys' fees allocations, **9:75**
- Contribution provisions, **9:75**
- Costs allocations, **9:75**
- Disclaimers, **8:514, 12:11**
- Disclosures of risk factors, **12:11**
- Fairness, techniques promoting, **12:13**
- Indemnification provisions, **12:11**
- Integration clauses, **8:513**
- No-action clauses, **12:11**
- Procedures, **12:12**
- Releases of liability, **12:11**
- Reliance, anti-reliance devices, **8:511 et seq.**

TRANSACTION PLANNING

—Cont'd

- Representation, **12:11**
- Risk factors, disclosures of, **12:11**
- Waivers of Rule 10b-5, **12:11**
- Warranties, **12:11**

TRANSCRIPTS

- CFTC investigations, **13:222**
- SEC investigations, **13:30**
- SRO investigations, **13:284**

TRAVEL EXPENSES

- Foreign Corrupt Practices Act (FCPA), affirmative defense, **19:4**

TREMONT-RYE

- Madoff feeder funds, **20:20**

TRUSTEES

- Whistleblower bounty program, original information, **22:9**

UNDERWRITERS

- See also **Broker-Dealer Liability** (this index)
- Court cases, **14:6**
- Definition, **14:4**
- Due diligence defense
 - Generally, **14:5, 14:14**
 - SEC view, **14:9**
- Non-managing underwriters, **14:13**
- Participating underwriters, **14:13**
- Reasonable investigation defense
 - Generally, **14:5**
 - Integrated disclosure systems, **14:7**
 - SEC Rule 176, **14:8**
- SA § 11 liabilities, **14:4**
- Subprime mortgage crisis, coordinated investigations, **13:335**

UNFAIR TERMS

- Generally, **5:142 et seq.**
- Actual control, **5:156**
- Arms length transactions
 - Generally, **5:144**
 - Reasons and policies, **5:149**
- Book value, **5:162**
- Burden of proof, **5:153**

UNFAIR TERMS—Cont'd

- Business decisions as value determiners, **5:171**
- Capitalization of earnings as test of value, **5:161**
- Conflict transactions
 - Generally, **5:145**
 - Reasons and policies, **5:150**
- Control, proof of, **5:155**
- Control premiums and discounts, **5:166**
- Control sales, **5:191**
- Court cases, **5:183 et seq.**
- Definition, **5:143**
- Disclosure
 - Generally, **5:187 et seq.**
 - Information disclosed, **5:189**
 - Method of disclosure, **5:188**
 - Persons to whom disclosure made, **5:190**
- Discounts, control, **5:166**
- Earnings tests of value, **5:161**
- Fair terms, effect of, **5:147**
- Full disclosure, effect of
 - Generally, **5:146**
 - Reasons and policies, **5:151**
- Influence, proof of, **5:155**
- Investment bankers
 - Generally, **5:172 et seq.**
 - Controlled company bankers, **5:175**
 - Controlling company bankers, **5:177**
 - Dual representation bankers, **5:176**
 - No banker transactions, **5:178**
 - Opinions of, challenging, **5:181**
 - Prior relations of, **5:182**
 - Qualities of bankers, **5:173**
 - Roles of bankers, **5:174**
 - Successive bankers, **5:179**
 - Trials, bankers for, **5:180**
- Legal decisions as value determiners, **5:170**
- Liquidation value, **5:163**
- Market prices as value indicators, **5:160**
- No banker transactions, **5:178**
- Pleading, **5:152**

INDEX

UNFAIR TERMS—Cont'd

- Policies, **5:148 et seq.**
- Potential control, **5:156**
- Premiums, control, **5:166**
- Proof of elements, **5:154**
- Range of fairness, **5:143**
- Reasons, **5:148 et seq.**
- Shareholder votes, effect of
 - Generally, **5:146**
 - Reasons and policies, **5:151**
- Tax factors in value determination, **5:164**
- Time factors in value determination, **5:165**
- Value determiners, **5:169 et seq.**
- Value indicators, **5:158 et seq.**

UNINSURED PRODUCTS

- NASD risk disclosure requirements, **6:288**

UN IRAQI OIL-FOR-FOOD PROGRAM

- Foreign Corrupt Practices Act (FCPA), **19:7**

UNITEDHEALTH GROUP INC.

- Backdating of stock options, **18:1, 18:5, 18:8, 18:10**

UNREASONABLE CONDUCT

- Generally, **8:229 et seq.**
- Burden of proof, **8:238**
- Criminal cases, **8:236**
- Injunctions, **8:234**
- Insufficiency, **8:237**
- Necessity, **8:231, 8:232**
- Proof, **8:239**
- Scienter, **8:234**
- SEC decisions, **8:235**
- Sufficiency, **8:233 et seq.**
- Versions of scienter, relations among, **8:230**

UTE INDIANS

- Private actions, **8:484, 8:559**

VAGUENESS

- Materiality factors, **8:35**

VALUE

- Asset valuation
 - Generally, **6:263 et seq.**
 - See also **Assets** (this index)
- Backdating of Stock Options** (this index)
- Business decisions as determiners, **5:171**
- Control premiums and discounts, **5:166**
- Determiners, **5:169 et seq.**
- Discounts, control, **5:166**
- Indicators
 - Generally, **5:158 et seq.**
 - Book value, **5:162**
 - Capitalization of earnings as test of value, **5:161**
 - Earnings capitalization, **5:161**
 - Earnings tests of value, **5:161**
 - Liquidation value, **5:163**
 - Market prices as, **5:160**
- Legal decisions as determiners, **5:170**
- Premiums, control, **5:166**
- Tax factors in value determination, **5:164**
- Time factors in value determination, **5:165**

VARIABLE ANNUITIES

- What is a security, **5:23**

VENUE

- Generally, **11:39**

VERIFICATION OF RETURNS

- Madoff Ponzi scheme, **20:2**

VICARIOUS LIABILITY

- See also **Control Person Liability; Parties** (this index)
- Broker-dealer supervisory duties
 - Generally, **14:164 et seq.**
 - Amex requirements, **14:174**
 - Branch office managers, **14:178**
 - Chief executive officers, **14:180**
 - Compliance officers, **14:181**
 - Court cases, **14:176**
 - Deficiencies, **14:175**
 - General counsel, **14:182**
 - Heads of functional areas, **14:179**

VICARIOUS LIABILITY—Cont'd

- Broker-dealer supervisory duties
—Cont'd
- Individual responsibilities, **14:177 et seq.**
- Insider Trading and Securities Fraud Enforcement Act, **14:168**
- NASD requirements, **14:172**
- NYSE requirements, **14:173**
- Rule 14e-3(b), **14:169**
- Safe harbor programs, **14:175**
- Sanctions, **14:175**
- SEA § 15(b)(4)(D), **14:166**
- SEA § 15(b)(4)(E), **14:165**
- SEA § 15(b)(6), **14:165**
- SEA § 19, **14:170**
- SEA § 20(a), **14:167**
- SRO requirements, **14:171 et seq.**
- Contribution** (this index)
- Disgorgement sanctions, **7:431**
- Indemnification, **9:76**
- Insurance, **9:76**
- Joint and Several Liability** (this index)
- Proportionate Liability** (this index)

VIRGINIA BANKSHARES

- Private actions, loss causation in
Supreme Court decision, **8:566**

VITESSE SEMICONDUCTOR CORP.

- Backdating of stock options, **18:1**

VOLUNTARY ACT

- Whistleblower bounty program, voluntary submission of original information, **22:6**

WASH SALES

- Manipulation, **7:121**

WEISS DECISION

- SEC action against bond counsel
issuing improper legal opinion, **8:442**

WELLS SUBMISSIONS

- Generally, **13:158**
- Advantages and disadvantages, **13:160**

WELLS SUBMISSIONS—Cont'd

- Character, **13:159**
- Timeframe, **20:13**

WHAT IS A SECURITY

- Generally, **5:9 et seq.**
- Alternative government regulation, **5:35**
- Certificates of deposit, **5:28**
- Characteristics of instrument in commerce, **5:39**
- Common elements in defining a security, **5:32 et seq.**
- Context clause, **5:18**
- Cooperative apartment corporation shares, **5:26**
- Court cases, **5:20 et seq.**
- Employee benefit plans
 - Generally, **5:42 et seq.**
- Contributory plans
 - Involuntary, **5:46**
 - Voluntary, **5:48**
- Defined plans, **5:49**
- Distinguishing contributory from noncontributory, **5:52**
- Distinguishing voluntary from involuntary plans, **5:51**
- ERISA, preemptive effect of, **5:43**
- ESOPs, **5:48**
- Involuntary contributory plans, **5:46**
- Involuntary noncontributory plans, **5:45**
- Noncontributory plans
 - Involuntary, **5:45**
 - Voluntary, **5:47**
- Pension plans, **5:49**
- Relative importance of elements, **5:41**
- Sales, **5:44**
- Voluntary contributory plans, **5:48**
- Voluntary noncontributory plans, **5:47**
- Evidence of indebtedness, **5:13**
- Expectations of public, **5:40**
- Flexible fund annuities, **5:24, 5:25**
- Fractional interests in mineral rights, **5:21**
- Guarantees, **5:15**

INDEX

WHAT IS A SECURITY—Cont'd

- Howey test, **5:22**
- Interest, **5:14**
- International Brotherhood of Teamsters case, **5:27**
- Investment risk as factor, **5:34**
- Joiner Leasing Corp case, **5:21**
- Judicial decisions, **5:20 et seq.**
- Landreth Timber Co case, **5:29**
- Marine Bank case, **5:28**
- Marketing as factor, **5:33**
- Motivations of purchasers, **5:37**
- Motivations of sellers, **5:38**
- 9 month notes, **5:17**
- Notes, **5:30**
- NSMIA, **3:189, 3:207**
- Oil and gas interests
 - Generally, **5:16**
 - Fractional interests, **5:21**
- Passive or active purchasers, **5:36**
- Perceptions of public, **5:40**
- Proxy rules, applicability of
 - Generally, **6:199 et seq.**
 - Insurance companies
 - Generally, **6:201**
 - Antifraud provisions, federal, **6:204**
 - Federal and state rules, **6:202**
 - McCarran Act, **6:203**
 - Investment companies, **6:205**
 - Public utility holding companies, **6:206**
- Reeves v. Ernst & Young case, **5:30**
- SA § 2(1)(a) definition
 - Generally, **5:10**
 - Evidence of indebtedness, **5:13**
 - Guarantees, **5:15**
 - Interest, **5:14**
 - 9 month notes, **5:17**
 - Oil and gas interests, **5:16**
 - SEA § 3(a)(10) differences, **5:12 et seq.**
 - SEA § 3(a)(10) similarities, **5:11**
- SEA § 3(A)(10) definition
 - Generally, **5:10**
 - Evidence of indebtedness, **5:13**
 - Guarantees, **5:15**
 - Interest, **5:14**

WHAT IS A SECURITY—Cont'd

- SEA § 3(A)(10) definition—Cont'd
 - 9 month notes, **5:17**
 - Oil and gas interests, **5:16**
 - SA § 2(1)(a) differences, **5:12 et seq.**
 - SA § 2(1)(a) similarities, **5:11**
- SEC v. Edwards case, **5:31**
- SLUSA definition, **3:207**
- State law definitions, **5:19**
- Statutory definitions, **5:10 et seq.**
- United Benefit Life Ins Co case, **5:24**
- United Housing Foundation, Inc case, **5:26**
- Variable annuities, **5:23**

WHISTLEBLOWERS

- Accountants, original information, **22:10**
- Administrative action covered, Whistleblower Bounty Program, **22:3**
- Administrative enforcement action success, information leading to, **22:14**
- Amicus curiae, Lawson v. FMR LLC, **22:21**
- Anonymity, **22:16**
- Anti-retaliation actions and proceedings, **22:32**
- Attorney-client privilege as to original information, **22:8**
- Bounty programs
 - Dodd-Frank Whistleblower Bounty Program, **22:1 et seq.**
 - Duties and responsibilities, **22:35 et seq.**
 - Case law, **22:41**
 - Dodd-Frank, **22:38**
 - NY Ethics Committee opinion 746, **22:40**
 - Sarbanes-Oxley Act, SEC Series 205, **22:37**
 - SEC v. National Student Marketing Corp., **22:36**
 - State rules of professional conduct, **22:39**
 - 1988 Program under SEA § 21A(e), **22:2**

WHISTLEBLOWERS—Cont'd

- Bounty programs—Cont'd
 - SEC investigations, bounties to whistleblowers, **20:15**
- Case law, **22:25 to 22:28**
- Case law, bounty program, duties and responsibilities, **22:41**
- Claims, decisions, **22:15**
- Compliance personnel, original information, **22:9**
- Criminal enforcement, retaliation, **22:16**
- Definition of whistleblower, **22:5, 22:23 et seq.**
- Definitions, **22:23 et seq.**
- Digital Realty Trust, Inc. v. Somers
 - Generally, **22:23, 22:28**
 - Decisions reversed by, **22:26**
 - Decisions vindicated by, **22:27**
- Dodd-Frank Whistleblower Bounty Program
 - Administrative action covered, **22:3**
 - Definition, **22:5, 22:23, 22:28**
 - Duties and responsibilities, **22:38**
 - Judicial action covered, **22:3**
 - Original information, voluntary submission, **22:6**
 - Protection, **22:16 et seq.**
 - Related action, **22:4**
- Employees of public accounting firms, original information, **22:10**
- Employees of public and private companies, **22:17**
- Employer-employee relationship, whistleblower protection outside, **22:34**
- Exceptions to limitations, original information, **22:11**
- Excluded persons, information from, **22:13**
- Extraterritoriality, protection, application of law, **22:31**
- First Circuit decision, Lawson v. FMR LLC, **22:19, 22:20**
- Foreign countries, protection, application of law, **22:31**

WHISTLEBLOWERS—Cont'd

- Judicial action covered,
 - Whistleblower Bounty Program, **22:3**
- Judicial enforcement action success, information leading to, **22:14**
- Lawson v. FMR LLC, **22:18 et seq.**
- Limitations in original information, **22:8, 22:12**
- 1988 bounty program under SEA § 21A(e), **22:2**
- NY Ethics Committee opinion 746, bounty program, duties and responsibilities, **22:40**
- Officer or director, original information, **22:9**
- Original information
 - Generally, **22:7**
 - Accountants, **22:10**
 - Attorney-client privilege, **22:8**
 - Compliance personnel, **22:9**
 - Employees of public accounting firms, **22:10**
 - Exceptions to limitations, **22:11**
 - Limitations, **22:8, 22:12**
 - Officer or director, information obtained by, **22:9**
 - Public accounting firm employees, **22:10**
 - Trustee, information obtained by, **22:9**
 - Unlawfully obtained information, **22:12**
 - Voluntary submission, **22:6**
- Private actions, employers, **22:16**
- Private anti-retaliation actions by, **22:29**
- Proof of retaliatory intent, Sarbanes-Oxley Act, **22:24**
- Protection
 - Dodd-Frank Whistleblower Bounty Program, **22:16 et seq.**
 - Employer-employee relationship, whistleblower protection outside, **22:34**
 - Proceedings, **22:32**
 - Public and private company employees, **22:17**

INDEX

WHISTLEBLOWERS—Cont'd

- Reasonable belief standard, **22:16**
- Related actions covered,
 - Whistleblower Bounty Program, **22:4**
- Reporting rights preservation, **22:33**
- Reports, SEC, definition of whistleblower, **22:25 et seq.**
- Retaliation, protection, Dodd-Frank Whistleblower Bounty Program, **22:16 et seq.**
- Sarbanes-Oxley Act
 - Generally, **22:16 et seq.**
 - Amicus curiae, *Lawson v. FMR LLC*, **22:21**
 - Bounty program, duties and responsibilities, SEC Series 205, **22:37**
 - Extraterritoriality, **22:31**
 - First Circuit decision, *Lawson v. FMR LLC*, **22:19, 22:20**
 - Lawson v. FMR LLC*, **22:18 et seq.**
 - Proof of retaliatory intent, **22:24**
 - Public and private company employees, **22:17**
 - Supreme Court decision, *Lawson v. FMR LLC*, **22:22**
- SEC decisions regarding bounty claims under SEA § 21F, **20:15**
- SEC investigations, **20:14, 20:15**
- SEC rules, definition, **22:23**
- Securities Exchange Act, protection, **22:16**
- SEC v. National Student Marketing Corp., bounty program, duties and responsibilities, **22:36**
- State rules of professional conduct, bounty program, duties and responsibilities, **22:39**
- Successful enforcement action, information leading to, **22:14**
- Supreme Court decisions
 - Digital Realty Trust, Inc. v. Somers, **22:23, 22:26 to 28**
 - Lawson v. FMR LLC*, **22:22**
- Trustee, information obtained by, **22:9**

WHISTLEBLOWERS—Cont'd

- UBS Securities decision, proof of retaliatory intent under Sarbanes-Oxley Act, **22:24**
- Unlawfully obtained information, **22:12**
- Voluntary submission of original information, **22:6**

WILLFULNESS

- Criminal enforcement, SEC references, **13:127**
- Intent** (this index)
- Knowledge** (this index)
- Manipulation, defendant's willfulness, **8:121**
- Scienter** (this index)

WILLIAMS BILL

- Generally, **6:13**

WIRE FRAUD

- See **Mail and Wire Fraud** (this index)

WIRETAP IN ENFORCEMENT

- Authority, **13:145**
- Control of wiretap results, **13:148**
- Galleon cases, **13:146, 13:153**
- Insider trading, **13:146, 13:153**
- Judicial approval, **13:151**
- Privacy interests, **13:149, 13:150**
- Public access, **13:149**
- Rajaratnam case issues yet to be resolved, **13:153**
- Relevancy of wiretap, **13:152**
- Review, **13:147**
- SEC access, **13:150**
- SEC investigation, **13:144 et seq.**

WORLDCOM

- Injunctions and ancillary relief, **13:109**

ZANDFORD CASE

- Indirect-impersonal dealing, **7:117**

ZONE

- Indirect-impersonal dealing
 - Curtailing scheme to defraud, **7:78**