

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, accounting 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, original 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**
 - 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**
- 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**
 - 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**
- SROs
 - Generally, **13:294 et seq.**
 - Advantages and disadvantages, **13:301**
 - Ancillary relief, **13:299**

ADMINISTRATIVE ENFORCEMENT—Cont'd	AIDER-ABETATORS—Cont'd
SROs—Cont'd	Actions in concert, 8:294
Character of proceedings, 13:295	Administrative enforcement
Collateral effects of orders, 13:298	Generally, 8:368 et seq.
Coordinated SEC-state-SRO investigations, 13:329	Elements, 8:369
Duration of orders, 13:300	Fact patterns, 8:370
Evidence, 13:297	Injunctions, 8:371
Procedural fairness, 13:296	Violations, 8:370
Proof standards, 13:297	Benefit, 8:364 et seq.
Standards, 13:297	Conspirators compared, 8:292
Summary proceedings, 13:302	Court cases, 8:328 et seq.
State laws, 13:318, 13:328	Criminal enforcement, 8:372
State regulators, 3:210	Definitions, 8:349
Summary proceedings, SROs, 13:302	Elements, 8:352
Tender offer challenges, 6:138	Extent of benefit, 8:367
Tipping, 7:159	Extraordinary actions, 8:362
Trading privileges, denial of, 13:240	High conscious intent, 8:358
ADMINISTRATIVE ENFORCEMENT ACTION	Inaction, 8:363
Whistleblower bounty program, successful action, 22:14	Indirect-impersonal dealing, 7:98
ADMISSION OF WRONGDOING	Injunctions, 8:371
Compromise and settlement, 13:166 et seq.	Insiders, 8:339, 8:340
ADVERTISING	Insider trading, 7:449
Madoff Ponzi scheme, 20:2	Janus Capital
ADVISERS	Federal securities laws, applicability, 8:336 to 8:345
See also Analysts (this index)	Impact of Janus decision, 8:337
Insider trading liability, 7:652	Insiders, liability for statements of their corporations, 8:339, 8:340
AFFINITY FRAUD	Legal entity, liability for statements of another, 8:338
Madoff Ponzi scheme, 20:3	Observations and tentative conclusions, 8:342 et seq.
AFFIRMATIVE DEFENSES	Preparation for or assistance to another, 8:336 et seq.
Foreign Corrupt Practices Act (FCPA) (this index)	Rule 10b-5(a) and (c), 8:345
AGGREGATE ACCOUNTING	SEC enforcement actions, applicability, 8:343
Madoff Ponzi scheme, 20:6	Shield function, 8:341
AGREEMENT PLANNING	State law, applicability to, 8:344
See Transaction Planning (this index)	Knowledge of violation, 8:356 et seq.
AIDER-ABETATORS	Legal entity, liability for statements of another, Janus Capital, 8:338
Generally, 8:327 et seq.	Madoff Ponzi scheme, breach of fiduciary duty, 20:5
Absence of benefit, 8:366	Nature of benefit, 8:367
	Ordinary actions, 8:362

INDEX

AIDER-ABETATORS—Cont'd
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.**
SEA § 20(f), **8:348**
Silence, **8:363**
State law, applicability of Janus
Capital, **8:344**
Substantial assistance
Generally, **8:359 et seq.**

AIDER-ABETATORS—Cont'd
Substantial assistance—Cont'd
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 require-
ments, **14:174**
Liabilities under SRO rules
Generally, **14:62 et seq.**
See also **Self Regulatory
Organizations** (this index)

AMICUS CURIAE

Agency participation in private litiga-
tion
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**

ARBITRATION—Cont'd

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**
Common law grounds, **15:59**
Correction, **15:58**

INDEX

ARBITRATION—Cont'd

Challenging awards—Cont'd
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**
Claims
Amendments to pleadings, **15:21**
Considerations before filing, **15:12**

ARBITRATION—Cont'd

Claims—Cont'd
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
Arbital 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**
Expert witnesses
Claimants' experts, **15:34**

ARBITRATION—Cont'd

- Expert witnesses—Cont'd
 - 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**
 - Jurisdictional challenges, **15:57**

ARBITRATION—Cont'd

- 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
 - Joinder, **15:18**

INDEX

ARBITRATION—Cont'd

Procedures—Cont'd

- 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**
- SRO rules, implied liabilities, **14:72**

ARBITRATION—Cont'd

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**
- Converse 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 government, **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**
Sciencer
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**
Sufficiency, **8:214**
Versions of sciencer, 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**

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 evidence, **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 manipulations, **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 requirement, **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 broker-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 manipulations, **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
Sciencer
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, curtailing 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 requirement, **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 Standards Act (SLUSA), **3:217 et seq.**

CHARGES

Mutual fund violations, sales practices, **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, **24:9**
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, **24:9**
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, **24:9**
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**

COHMAND 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
- Birnbaum 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 decisions. **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 proceeding, **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**

Cases in the southern district of NY,
24:5

Class actions, **24:9**

Commodities, virtual currencies as,
25:6

Commodity Futures Trading Com-
mission (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, **24:4**

CFTC, **25:8**

Insider trading cases, **24:8**

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

Private litigation, **24:9**

Regulation

CFTC, **25:5**

SEC, **24:1 to 24:9**

SEC

21(a) Report, **24:3**

Regulation by, **24:1 to 24:9**

SEC approach to cryptocurrencies
prior to January,
2025, 24:2

SEC v. Ripple Labs, **24:6**

Touting cases, **24:7**

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, misappropri-
ation 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

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**

INDEX

DAMAGES—Cont'd

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)
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)

DAMAGES—Cont'd

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
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**

 Contested offers

 Generally, **6:8 et seq.**

 Mode of attack, **6:8**

 Publicity, prefilings, **6:10**

 Relief available, **6:9**

 Direct and indirect dealings, **4:1**

INDEX

DIRECT-IMPERSONAL DEALING

—Cont'd

- 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-personal transactions, **6:324**
 - Indirect-impersonal transactions, **6:326**
 - How must correction be made
 - Rule 10b-5, **6:328**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Disclosure—Cont'd
- Corrections—Cont'd
 - How must correction be made
 - Cont'd
 - 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-personal transactions, **6:320**
 - Indirect-impersonal transactions, **6:322**
 - Rule 14a-9, **6:303**
 - Rule 14c-6, **6:307**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Disclosure—Cont'd
- Corrections—Cont'd
 - What makes correction necessary—Cont'd
 - 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**
 - Specific items, materiality of, **6:252**
 - Would, use of term, **6:249**
- Misrepresentations
 - Earnings, **6:255**
 - Value of assets
 - Generally, **6:270**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Disclosure—Cont'd
- Misrepresentations—Cont'd
 - Value of assets—Cont'd
 - 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**
 - Sources of funds, **6:260**
 - Sources of requirements
 - Generally, **6:220 et seq.**
 - Antifraud provisions, **6:222**
 - Specific items, **6:221**
 - Timing, **6:223**

INDEX

DIRECT-IMPERSONAL DEALING

—Cont'd

- Disclosure—Cont'd
 - 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**
 - Exchange offers
 - Generally, **6:4, 6:7**
 - Contested offers
 - Generally, **6:8 et seq.**
 - Mode of attack, **6:8**
 - Publicity, prefiling, **6:10**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Exchange offers—Cont'd
 - Contested offers—Cont'd
 - 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.**
 - Rule 10b-5, **6:168**
 - Rule 14a-9, **6:166**
 - Rule 14c-6, **6:167**
- Operation, areas of, **6:163**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Mergers—Cont'd
 - Antifraud provisions—Cont'd
 - 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 dissolution, **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.**
 - Information statement rules, **6:156**
 - Proxy rules, **6:155**
 - Rule 10b-5, **6:157**
 - SEA § 14(a), **6:155**
 - SEA § 14(c), **6:156**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Mergers—Cont'd
 - 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 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**
 - Practical problems, **6:251**
 - Probably would, use of term, **6:250**

INDEX

DIRECT-IMPERSONAL DEALING

—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**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Mergers—Cont'd
 - Disclosures—Cont'd
 - Supplementary communications
 - Cont'd
 - 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.**
 - 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

- Mergers—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**
 - McCarren 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**
 - Securities covered
 - Generally, **6:199 et seq.**
 - Insurance companies
 - Generally, **6:201**
 - Antifraud provisions, federal, **6:204**
 - Federal and state rules, **6:202**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Proxy solicitations—Cont'd
 - Securities covered—Cont'd
 - Insurance companies—Cont'd
 - McCarren Act, **6:203**
 - Investment companies, **6:205**
 - Public utility holding companies, **6:206**
 - Publicity, prefiling, **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**
 - Tenderees
 - 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**
 - Challenging
 - Relief available
 - Generally, **6:131 et seq.**
 - Balance of equities, **6:134**
 - Clean hands, **6:136**

INDEX

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
 - Challenging—Cont'd
 - Relief available—Cont'd
 - 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**
 - Fund source data, **6:44**
 - Groups, data on, **6:48**
 - Ideas vs plans, **6:68**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
 - Disclosure requirements—Cont'd
 - Regulated offers—Cont'd
 - 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**
 - Offer, identity of, **6:119**
 - Other information, **6:118**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
 - Disclosure requirements—Cont'd
 - Unregulated offers—Cont'd
 - Outsiders—Cont'd
 - 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**
 - Antifraud provisions, applicability to
 - Generally, **6:22 et seq.**
 - Connection, **6:26**
 - Jurisdictional means, **6:27**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
 - Regulated offers—Cont'd
 - Antifraud provisions, applicability to—Cont'd
 - 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**
 - Issuer offers, **6:144**
 - Noncompliance, effects of, **6:74**

INDEX

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
- Regulated offers—Cont'd
- Disclosure requirements
 - Cont'd
 - 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**
- Foreign laws, **6:15**
- Insurance companies, **6:30**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
- Regulated 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**
- 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**
 - During offer, **6:94**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
- Regulated offers—Cont'd
- Recommendations—Cont'd
 - 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 takeup
 - 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**
 - Relation to other provisions, **6:77**

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
- Regulated offers—Cont'd
- Terms—Cont'd
 - 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.**
- Third persons disclosures, **6:122**

INDEX

DIRECT-IMPERSONAL DEALING

—Cont'd

- Tender offers—Cont'd
 - 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**
- Birmbaum 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 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**
 - 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**
 - Birmbaum 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
 - Birmbaum 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**
 - Birmbaum 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 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**
- Connection requirement
 - Generally, **5:127 et seq.**
 - Another's sale, misconduct in connection 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
 - Birnbaum 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 determiners, **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 determination, **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, earning s, **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 cur-
 ing, **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 require-
 ments, **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 state-
 ments, **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**
Tippers, **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, Commis-
sion 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**

Bespakes 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 statements

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**

Bespakes 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 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**

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
Rajaratnam 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.*
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 cumulativity, 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
 Convertibles 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 cumulativity, **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, generally, 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-abetting, 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**
 - 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**

**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
Sciencer—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 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.*, 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
 Sciencer, 7:379 *et seq.*
Tippers, sciencer, 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 circumstances of offenses, 21:33
Leadership role enhancement (U.S.S.G. § 3B1.1(a)), 21:36, 21:42
Limitation of gain to amount actually 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 trading 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 condition, 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 Regulation FD disclosure, 7:548
Federal securities laws, 7:155 *et seq.*, 7:162 *et seq.*
Fiduciary breach and misappropriation 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
 Sciencer, 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 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.**
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 regula-
tion, **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
 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
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 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**
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**
Sciencer
 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 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.**
 Fiduciary theory, **7:381**
 Misappropriation theory, **7:382**

INSIDERS AND INSIDER TRADING—Cont'd

Sciencer—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**
- Sciencer
 - 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**
 - Sciencer, **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 knowl-
 edge, **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
Sciencer—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
Action for alleged short swing trading by beneficial owners of 10% or more of a public company, 2:6
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 information, 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

LIMITATION OF ACTIONS

—Cont’d

- Administrative enforcement, **13:89, 13:90**
- Arbitration, **15:9**
- Broker-dealer liability
 - Generally, **14:17**
 - 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.**

LIMITATION OF ACTIONS

—Cont’d

- One year period—Cont’d
 - Prospectus fraud, **11:48**
 - Registration fraud, **11:48**
 - SEA § 11, **11:58**
 - SEA § 12(1), **11:48**
 - 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.**

INDEX

LIMITATION OF ACTIONS

—Cont’d

- Securities Act—Cont’d
 - Section 12(2), **11:54 et seq.**
 - Three year statute, **11:53**
 - Tolling, **11:49 et seq.**
- 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 LAMP SHADE

- 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**

MADOFF PONZI SCHEME

—Cont’d

- Ad hoc sales force, feeder funds as, **20:16**
- Advertising, **20:2**
- 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**

MADOFF PONZI SCHEME

—Cont’d

- Auditor independence forfeiture, **20:9**
- Average annual returns, **20:2**
- “Back-office” employees, **20:9**
- 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**

MADOFF PONZI SCHEME

—Cont’d

- Computing customer payments.
 - Investor compensation, methods of computing, above
- Concealment of fraud, **20:2**
- 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**

INDEX

MADOFF PONZI SCHEME

—Cont'd

- Examinations by SEC, **20:2**
- Exclusivity of funds, **20:2**
- Experience of SEC investigative personnel, **20:10**
- 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**

MADOFF PONZI SCHEME

—Cont'd

- Feeder funds—Cont'd
 - Net investment method, distribution of losses to investors, **20:23**
 - Passing losses to investors, **20:23**
 - 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**
- Friehling & 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**

MADOFF PONZI SCHEME

—Cont’d

Integration of broker-dealer and investment management examinations within SEC investigations, **20:13**
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**

MADOFF PONZI SCHEME

—Cont’d

Misrepresentations—Cont’d
Promotional materials, **20:5**
SEC filings, **20:5**
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**

INDEX

MADOFF PONZI SCHEME

—Cont'd

- Red Flags, **20:5, 20:17**
- Listing, **20:5**
- During SEC investigations, **20:10**
- 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**

MADOFF PONZI SCHEME

—Cont'd

- SEC investigations—Cont'd
 - Framework for evaluation of cooperation, **20:15**
 - Integration of broker-dealer and investment management examinations, **20:13**
 - 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**

MADOFF PONZI SCHEME

—Cont’d

SEC investigations—Cont’d
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**
Securities Investor Protection Act and
Corporation, definition of
“customer,” **20:3, 20:24**
Self-regulatory organizations, infor-
mation 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**

MADOFF PONZI SCHEME

—Cont’d

Technical support to falsify docu-
ments, **20:7**
Technology expert, **20:5**
Third party custodian for client
assets, **20:2**
Third party verification of returns,
20:2
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 indepen-
dent 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**

INDEX

MADOFF PONZI SCHEME
—Cont'd
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
 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

MANIPULATION—Cont'd
Defendant's purpose—Cont'd
 Suppressing supply, 8:112
Defendant's willfulness, 8:121
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
 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

MANIPULATION—Cont'd
Rule 10b-5—Cont'd
 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
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.*

INDEX

MATERIALITY—Cont'd

- 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**
- 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.**

MATERIALITY—Cont'd

- Inside information—Cont'd
- 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.**
- 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**

MATERIALITY—Cont'd

Inside information—Cont'd
 Tests of materiality—Cont'd
 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
 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

MATERIALITY—Cont'd

Private actions—Cont'd
 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.
 Flexibility, 8:25
 GAAP, 8:42, 8:44
 Individual responses to informa-
 tion, 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 misrepresen-
 tation, 8:550
 Might test
 Mills case, 8:13
 Would test compared, 8:12

INDEX

MATERIALITY—Cont'd

Private actions—Cont'd
Probability-magnitude test, **8:19**
Product liability suits, **8:28**
Professional views, **8:31**
Proxy fraud, **8:56**
Puffery, **8:35**
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**

MATERIALITY—Cont'd

Private actions—Cont'd
Tests of—Cont'd
 Company publicity, **8:28**
 Component tests, **8:15**
 Court's view, **8:26**
 Definition, **8:9**
 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**

MATERIALITY—Cont'd

- Profits, private actions, **8:43**
- Proxy fraud, **8:56**
- Public disclosure and materiality, **7:280**
- 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**

MATERIALITY—Cont'd

- Securities Exchange Act—Cont'd
 - Section 14, **8:57**
 - Tender offer fraud, **8:57**
 - Tests of materiality, **8:11**
 - 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)

INDEX

MCAFEE, INC.
Backdating of stock options, **18:11**

MCCARRAN ACT
Generally, **6:203**

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.**

MERGERS—Cont'd
Antifraud provisions—Cont'd
Privity—Cont'd
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
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**
Sciencer 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**
Sciencer standard, **6:169**
Rule 14c-6
Causation, **6:180**
Materiality standard, **6:167**
Private actions, **6:161**
Privity, **6:174**
Reliance, **6:177**
Sciencer standard, **6:170**
Sciencer 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**

MERGERS—Cont'd

- Antifraud provisions—Cont'd
 - State law—Cont'd
 - Effect of merger or dissolution, **6:194**
 - Equitable approach, **6:197**
 - Standing approach, **6:196**
 - Violations covered, **6:164**
- 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**

MERGERS—Cont'd

- Proxy solicitations—Cont'd
 - Securities covered—Cont'd
 - Insurance companies—Cont'd
 - 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**
- 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**

INDEX

MISMANAGEMENT—Cont'd

- 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**

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**
- 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**

MUTUAL FUND VIOLATIONS

—Cont’d

- 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
- 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.

NATIONAL ASSOCIATION OF SECURITIES DEALERS (NASD)—Cont’d

- Implied liabilities under SRO rules
 - Cont’d
 - 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
- 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

INDEX

NATIONAL SECURITIES MARKETS IMPROVEMENT ACT (NSMIA)—Cont'd
Federal preemption of registration
—Cont'd
 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

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 Settlement** (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 requirements, 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

NONDISCLOSURE LIABILITY

—**Cont'd**

- 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**

OFFICERS, CORPORATE—Cont'd

- 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, responsibility 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**
- Parties and privity
 - Generally, **8:413 et seq.**
 - See also **Private Actions** (this index)
- Prevention of violations, responsibility 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**

INDEX

OFFICERS, CORPORATE—Cont'd

Rule 10b-5 liability—Cont'd
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**
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**

OFFICERS, CORPORATE—Cont'd

Sarbanes-Oxley Act—Cont'd
Regulation—Cont'd
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**
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**

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.**

PARTIES—Cont'd

Attorneys—Cont'd

See also **Attorneys** (this index)

Broker-dealer supervisorial 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**

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)

INDEX

PARTIES—Cont'd
 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**
 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**
 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**

PLEADING—Cont'd

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**
 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**

PLEADING—Cont'd

Particularity—Cont'd
 Rule 10b-5 liability—Cont'd
 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.**
 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**

INDEX

PLEADING—Cont'd

- 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
 - 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
- PREDICTIONS—Cont'd
- 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
 - Bespicks 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
 - 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

PREDICTIONS—Cont'd

Disclosure obligations—Cont'd
Safe harbor—Cont'd
 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
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

PREDICTIONS—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

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

INDEX

PREEMPTION—Cont'd
Federal—Cont'd
 NSMIA preemption of registration
 —Cont'd
 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
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

PRIVATE ACTIONS—Cont'd
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
 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

PRIVATE ACTIONS—Cont'd

Aider-abettor liability—Cont'd
 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**
 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**

PRIVATE ACTIONS—Cont'd

Broker-dealer liability—Cont'd
 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**
 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**

INDEX

PRIVATE ACTIONS—Cont'd

Broker-dealer liability—Cont'd
Express actions—Cont'd
SA § 11—Cont'd
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
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

PRIVATE ACTIONS—Cont'd

Broker-dealer liability—Cont'd
Express actions—Cont'd
SA § 12(a)(2)—Cont'd
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
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.

PRIVATE ACTIONS—Cont'd

Broker-dealer liability—Cont'd
Implied actions—Cont'd
Rule 10b-5—Cont'd
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**
 Colonial Realty doctrine, **14:64**
 Contraction era, **14:71**

PRIVATE ACTIONS—Cont'd

Broker-dealer liability—Cont'd
Implied actions—Cont'd
SRO rules—Cont'd
 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**
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**

INDEX

PRIVATE ACTIONS—Cont’d

- Broker-dealer liability—Cont’d
 - Markup and markdown practices
 - Cont’d
 - 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**
 - 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**

PRIVATE ACTIONS—Cont’d

- Broker-dealer liability—Cont’d
 - Rescission—Cont’d
 - 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**
 - 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**

PRIVATE ACTIONS—Cont'd

Broker-dealer liability—Cont'd
 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**
 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, Proposition 2, **8:580**
 Dirks case, **8:563**
 Dura Pharmaceuticals case, **8:569**
 8th Circuit, cases accepting loss causation pleading, **8:574**

PRIVATE ACTIONS—Cont'd

Causation—Cont'd
 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**
 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, admission of wrongdoing, **13:176 to 13:181**
Congressional intent, **3:16**
Conspirators, common law fraud, **8:261**
Constructive fraud, **8:242**

INDEX

PRIVATE ACTIONS—Cont'd

Continuation of criminal proceedings, **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**
 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

PRIVATE ACTIONS—Cont'd

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**
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.**

PRIVATE ACTIONS—Cont'd

Implied and express actions—Cont'd
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
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

PRIVATE ACTIONS—Cont'd

Insider trading—Cont'd
 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
 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

INDEX

PRIVATE ACTIONS—Cont'd

Insider trading—Cont'd
Express actions—Cont'd
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**

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

PRIVATE ACTIONS—Cont'd

Insider trading—Cont'd
Implied liability—Cont'd
Same side traders—Cont'd
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**
Institutional defenses, **7:361**
Institutions, burden of proof, **7:367**
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.**

PRIVATE ACTIONS—Cont'd

Insider trading—Cont'd
 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**
Sciencer
 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**
 Sciencer, **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.**

PRIVATE ACTIONS—Cont'd

Insider trading—Cont'd
 Who can sue—Cont'd
 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**
 Agent's interstate activities, **11:13**
 Broker-dealer activities, **11:15**
 Check clearance as interstate activi-
 ty, **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**

INDEX

PRIVATE ACTIONS—Cont'd

- 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**
 - 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, 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**

MD&A predictions and projections, disclosure requirements, **7:17**

Merger challenges

 - Rule 10b-5, **6:162**
 - Rule 14a-9, **6:160**

PRIVATE ACTIONS—Cont'd

- Merger challenges—Cont'd
 - Rule 14c-6, **6:161**
- Merrill Lynch v. Curran, loss causation in Supreme Court decision, **8:562**
- Mills, loss causation in Supreme Court decision, **8:558**
- Misappropriation theory of insider liabilities, **7:579, 7:603**
- 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 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**

PRIVATE ACTIONS—Cont'd

- Parallel civil and criminal proceedings—Cont'd
- Criteria for stay of discovery, **13:136**
- 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.**
- 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)

PRIVATE ACTIONS—Cont'd

- Parties—Cont'd
 - 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**
 - 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**

INDEX

PRIVATE ACTIONS—Cont'd

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**
 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**

PRIVATE ACTIONS—Cont'd

Privity—Cont'd
 Rule 10b-5, **8:288 et seq.**
 Suitability, meaning of generally, **8:293**
 Theory of action, **8:290**
Procedural aspects, **8:581**
Process, **11:40**
Proof (this index)
Proportionate Liability (this index)
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**

PRIVATE ACTIONS—Cont'd

Reliance—Cont'd
Fraud on the market theory (FOMT)—Cont'd
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**
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**

PRIVATE ACTIONS—Cont'd

Reliance—Cont'd
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**
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**

INDEX

PRIVATE ACTIONS—Cont'd

- 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**
 - 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**

PRIVATE ACTIONS—Cont'd

- Scienter—Cont'd
 - Bad faith—Cont'd
 - 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**
 - 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**

PRIVATE ACTIONS—Cont'd

Scienter—Cont'd
Diligence, lack of—Cont'd
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
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

PRIVATE ACTIONS—Cont'd

Scienter—Cont'd
Manipulation—Cont'd
Defendant's purpose—Cont'd
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
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

INDEX

PRIVATE ACTIONS—Cont'd

Scienter—Cont'd
Pleading—Cont'd
Particularity—Cont'd
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
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

PRIVATE ACTIONS—Cont'd

Scienter—Cont'd
Rule 10b-5 fraud—Cont'd
 Actual knowledge—Cont'd
 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
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

PRIVATE ACTIONS—Cont'd

Scienter—Cont'd
Rule 10b-5 fraud—Cont'd
Intent—Cont'd
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 sci-
enter 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.**

PRIVATE ACTIONS—Cont'd

Scienter—Cont'd
Securities Exchange Act—Cont'd
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**
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**

INDEX

PRIVATE ACTIONS—Cont'd
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
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

PRIVATE SECURITIES
LITIGATION REFORM ACT (PSLRA)—Cont'd
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
 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 causation, 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

PRIVILEGES—Cont'd

Attorney-client—Cont'd
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.**
 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**
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**
Usability, meaning of generally, **8:293**

INDEX

PROBABLE CAUSE

Insiders and inside trading, Raj Rajaratnam case, **21:15**

PROCESS

Generally, **11:40**

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**

Bespakes 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**

PROJECTIONS—Cont'd

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**

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**

Bespakes 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**

PROJECTIONS—Cont'd

Safe harbor—Cont'd
PSLRA—Cont'd
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

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

PROOF—Cont'd

Defendant's knowledge and belief, 8:142
Diligence, lack of, 8:239
Fraud on the market theory (FOMT), 8:549, 8:550
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

INDEX

PROPORTIONATE LIABILITY

Generally, 9:47 *et seq.*, 9:57
See also **Joint and Several Liability**
(this index)
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)

PROSPECTUS FRAUD—Cont'd

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

PROXY FRAUD—Cont'd

- Antifraud provisions—Cont'd
- Mergers—Cont'd
 - 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.**
 - 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 dissolution, **6:194**
 - Equitable approach, **6:197**
 - Standing approach, **6:196**
 - Violations covered, **6:164**

PROXY FRAUD—Cont'd

- Antifraud provisions—Cont'd
- Privity
 - Generally, **6:172 et seq.**
 - 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 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**
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.**
- Sciencer
 - 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.**
- Sciencer
 - 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 Stan-
dards 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.**

RESCISSON—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 acquisitions, **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 Enforcement**
(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 transac-
tion, 3:48
Transactions covered, 3:38
Types of violations proscribed,
3:47
Unregistered offerings, 3:46
Mergers, 14a-9 connection require-
ment, 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.**
 - 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

- 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 violations, **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 investment rewards, **4:5**
 - Equalization of bargaining positions, **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**
 - Sciencer, **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 generally, **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 generally, **8:293**
 - Theory of action, **8:290**
 - Sciencer
 - 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**

SEC RULES AND REGULATIONS

—Cont'd

- Rule 10b-5—Cont'd
 - Private fraud actions—Cont'd
 - Sciencer—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
 - Sciencer—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, **3:9**
 - 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 supervisorial 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 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**
 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 Regulations** (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 Enforcement** (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, compromise 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, payments 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 activity, 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 supervisorial 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**
Sciencer, **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
Chadbourne & 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-Chadbourne 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**
Sciencer, **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) litiga-
tion, 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	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
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 Usability, 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	
	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 Chadbourne & 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-Chadbourne 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**
- 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**
- Congressional intent
 - Generally, **6:16 et seq.**
 - Disclosure, **6:17**
 - Fairness, **6:19**
 - Investor protection, **6:17**

TENDER OFFER FRAUD—Cont'd

Congressional intent—Cont'd
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.**
Publicity
Offeror, **6:94**
Target company, **6:98**
Third persons, **6:108**

TENDER OFFER FRAUD—Cont'd

Disclosure requirements—Cont'd
Regulated offers—Cont'd
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**
Five percent offers
Generally, **6:32**
Base for percentages, **6:34**
Foreign laws, **6:15**

INDEX

TENDER OFFER FRAUD—Cont'd

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
Target response to tender offers,
disclosure of, 7:258
Inside information re
Generally, 7:267
Materiality, 7:270

TENDER OFFER FRAUD—Cont'd

Inside information re—Cont'd
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
Price
Increases, effect of, 6:90 *et seq.*
Issuer offers, 6:142
Third-party offers, 6:123
Privity, 8:285

TENDER OFFER FRAUD—Cont'd

- 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**
- Sciencer 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**
 - Offerees
 - Nontendering, **6:126**
 - Tendering, **6:125**
 - Offerors, **6:129**
 - Target companies, **6:128**

TENDER OFFER FRAUD—Cont'd

- Standing to challenge transaction
 - Cont'd
- 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 takeup
 - 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 takeup, 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**
 - Preliminary, **6:131 et seq.**
 - Probability of success, **6:132**
 - Proof elements, **6:132**
 - Relief available, **6:131 et seq.**
 - SEC actions, **6:138**

INDEX

TENDER OFFER FRAUD—Cont'd

Third-party offers—Cont'd
Challenging—Cont'd
 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
Ownership, 6:55
Plans and proposals, 6:45, 6:66
 et seq.
Purposes, 6:45, 6:62 *et seq.*

TENDER OFFER FRAUD—Cont'd

Third-party offers—Cont'd
Disclosure requirements—Cont'd
 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
Market activities
 Offeror
 Before offer, 6:97
 During offer, 6:96

TENDER OFFER FRAUD—Cont'd

Third-party offers—Cont'd
Market activities—Cont'd
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
Regulated offers
Generally, 6:13 *et seq.*
Williams Bill, 6:13

TENDER OFFER FRAUD—Cont'd

Third-party offers—Cont'd
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 takeup
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 takeup, above
Withdrawal rights
Generally, 6:80 *et seq.*
Exemptions, 6:83
Procedure, 6:82
Purpose, 6:81
Voluntary, 6:84

INDEX

TENDER OFFER FRAUD—Cont'd

Third-party offers—Cont'd

- 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**
 - 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.**
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**

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**

UNFAIR TERMS—Cont'd

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**

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**

INDEX

UNFAIR TERMS—Cont'd
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**

VALUE—Cont'd
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 supervisorial 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**

VICARIOUS LIABILITY—Cont'd

- Broker-dealer supervisory duties
 - Cont'd
 - 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**
- 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**

WHAT IS A SECURITY—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**
- 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**
- 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**

INDEX

WHAT IS A SECURITY—Cont'd

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
 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.*

WHAT IS A SECURITY—Cont'd

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
 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

WHISTLEBLOWERS—Cont'd

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**
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

WHISTLEBLOWERS—Cont'd

responsibilities, **22:40**
Officer or director, original informa-
tion, **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 employ-
ees, **22:17**
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.**

INDEX

WHISTLEBLOWERS—Cont’d
Sarbanes-Oxley Act—Cont’d
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, infor-
mation leading to, **22:14**
Supreme Court decisions
Digital Realty Trust, Inc. v. Som-
ers, **22:23, 22:26 to 28**
Lawson v. FMR LLC, **22:22**
Trustee, information obtained by,
22:9
UBS Securities decision, proof of
retaliatory intent under
Sarbanes-Oxley Act, **22:24**
Unlawfully obtained information,
22:12

WHISTLEBLOWERS—Cont’d
Voluntary submission of original
information, **22:6**
WILLFULNESS
Criminal enforcement, SEC refer-
ences, **13:127**
Intent (this index)
Knowledge (this index)
Manipulation, defendant’s willful-
ness, **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**