

## ***Publicly Traded Corporations Handbook***

### **Highlights for the December 2025 Edition**

Highlights for the December 2025 Edition of the *Publicly Traded Corporations Handbook* include updates, revisions, and enhancements to the following sections:

- ***Chapter 3. Delaware Corporate Law.*** Rewriting § 3:3 (Direct v. derivative suits); Updating § 3:4 (Demand futility—Overview); Updating § 3:7 (First prong of the Universal Test); Rewriting § 3:8 (Second prong of the Universal Test); Rewriting § 3:9 (Third prong of the Universal Test); Updating § 3:31 (The entire fairness test—Controlling shareholders).
- ***Chapter 4. Federal Securities Law—Definition of “Security”.*** Updating: § 4:6. (Investment contracts as securities—Common enterprise); § 4:28 (LLC interests as securities—Fourth Circuit); § 4:53 (Viatical settlements and life settlements as securities); § 4:55 (Real estate schemes and investments and investments as securities); § 4:57 (Cryptocurrencies and digital tokens as securities)
- ***Chapter 5B. Securities Act of 1933 – Liability.*** Updating § 5B:4 (Section 11—Claims that “Sound in fraud”); § 5B:11 (Tracing under Section 11); § 5B:18 (Materiality under Section 11); § 5B:64 (Section 12(a)(2)—The defendant is a “statutory seller”); § 5B:72. Control-person liability.
- ***Chapter 6. Securities Exchange Act of 1934.*** Updating § 6:35 (Item 103 of Regulation S-K); § 6:58 (Item 402—Executive compensation).
- ***Chapter 7. Private Securities Litigation Reform Act of 1995.*** Updating § 7:19 (Lead plaintiffs); Rewriting § 7:20 (Multiple lead plaintiffs); Updating § 7:21 (Disqualifying presumptive lead plaintiffs).
- ***Chapter 8. Sarbanes-Oxley.*** Updating § 8:50 (SOX whistleblower provisions—Statute of limitations).
- ***Chapter 11. Introduction to Securities Fraud under Rule 10b-5.*** Updating § 11:30 (The “in connection with” element); § 11:61 (Scheme liability—Examples of inherently deceptive conduct).
- ***Chapter 12. Securities Fraud – Materiality & Falsity.*** Updating § 12:5 (Pleading materiality and falsity); § 12:24 (Risk disclosures); § 12:47 (Falsity); § 12:93 (Fact vs. Opinion—Statements of belief or opinion); § 12:98 (Opinions about adequacy of loss reserves); § 12:143 (Puffery); § 12:146 (Examples of nonactionable puffery).

- **Chapter 13A. Securities Fraud – Scierter – First Circuit.** Updating § 13A:2 (General considerations); § 13A:11 (Inferring scierter (recklessness) when defendants knowingly disseminated false information or knew of undisclosed facts).
- **Chapter 13B. Securities Fraud – Scierter – Second Circuit.** Updating § 13B:16 (Generalized motives); § 13B:31 (Inferring scierter from the defendants’ knowledge of/access to contradictory information); § 13B:32 (Inferring scierter from access to specific reports); § 13B:34 (Inferring scierter from red flags); § 13B:35 (Core operations doctrine); § 13B:40 (Inferring scierter from GAAP violations); § 13B:63 (Corporate scierter; Collective corporate scierter).
- **Chapter 13C. Securities Fraud – Scierter – Third Circuit.** Rewriting § 13C:13 (Inferring scierter (recklessness) from core operations); § 13C:15 (Inferring scierter (recklessness) from the defendants’ knowledge of facts or access to information contradicting their public statements); § 13C:40 (Confidential witnesses); § 13C:41 (Corporate scierter).
- **Chapter 13E. Securities Fraud – Scierter – Fifth Circuit.** Updating § 13E:20 (Core operations doctrine); § 13E:21 (Inferring scierter from access to internal corporate reports); § 13E:51 (Inferring scierter from generalized motives or goals); § 13E:71 (Corporate scierter; Group pleading rejected).
- **Chapter 13F. Securities Fraud – Scierter – Sixth Circuit.** Updating: § 13F:21 (Inferring scierter—*Helwig’s* first factor—Insider trading at a suspicious time or in an unusual amount); § 13F:27 (Inferring scierter—*Helwig’s* seventh factor—GAAP violations); § 13F:37 (Inferring scierter from the sheer magnitude of the fraud).
- **Chapter 13H. Securities Fraud – Scierter – Eighth Circuit.** Rewriting most of chapter.
- **Chapter 13I. Securities Fraud – Scierter – Ninth Circuit.** Rewriting most of chapter.
- **Chapter 13K. Securities Fraud – Scierter – Eleventh Circuit.** Updating § 13K:9 (Direct evidence of scierter); § 13K:27 (Inferring scierter from officers’ resignations); § 13K:28 (Inferring scierter (recklessness) from evidence that defendants were confronted directly with improprieties; Widespread publicity of improprieties); § 13K:29 (Inferring scierter (recklessness) based on allegations of company-wide misconduct)
- **Chapter 14. Securities Fraud under Rule 10b-5—Reliance.** Rewriting § 14:19 (Affiliated Ute in mixed cases—Test for mixed cases in the Sixth Circuit); § 14:26. (Affiliated Ute presumption of reliance for scheme liability claims).

## HIGHLIGHTS

- ***Chapter 15. Securities Fraud under Rule 10b-5—Loss causation.*** Updating § 15:13 (Corrective disclosures); § 15:27 (Second Circuit); § 15:33 (Third Circuit).
- ***Chapter 17. Insider trading.*** Updating § 17:40 (Section 16(b)—Short-swing transactions).