

Index

ACCOUNTANTS

Proxy contests, **4:11**

ACQUIESCENCE

Negotiated acquisition transactions, contract and state corporate law concerns, **3:54**

ACQUISITION AGREEMENTS

All stock reverse merger, acquisition of US corporation, **App V24**

Corporation acquiring LLC, **App F17.50**

Delaware corporation acquiring Israeli company, **App V25**

Preferred stock, exchange of, acquisition of LLC by, **App F93.30**

Recapitalization, acquisition by, **App M11**

US Co acquiring 51% of German Co, option to acquire remaining 49% of company's stock, **App V14**

ACQUISITION CHECKLIST

Documents and forms, **App E1**

ACQUISITION OF INITIAL INTEREST

See Initial Interest Acquisition of (this index)

ADMINISTRATIVE LAW JUDGES

SEC, appointment, **1:26**

AFFILIATE LOCK-UP LETTER

Company affiliate letter, **App F66.10**

AIDING AND ABETTING

Negotiated acquisition transactions, contract and state corporate law concerns, **3:52**

ALASKA

Merger, Alaska and Washington companies, agreement, **App K2**

ALTERNATIVE SUMMARY

ADVERTISEMENT

Tender offer document, **App B6**

ANNOTATED ACQUISITION AGREEMENT

Negotiated acquisition transactions, **App F10**

ANNUAL ADJUSTMENTS

Antitrust law, **7:5**

Interlocking directorates, **7:5**

ANTIFRAUD

Private Securities Litigation Reform Act of 1995 and proxy antifraud, **1:95**

ANTI-TAKEOVER PROVISIONS

Generally, **7:81**

Anti-greenmail statutes, **7:93**

Business combination statutes, **7:88**

Control share acquisition acts, **7:87**

Director's duties statutes, **7:89**

Disclosure statutes, **7:94**

Fair price statutes, **7:90**

Golden parachute agreements, **App D6, App D7**

Governance agreement with board representation, anti-dilution, standstill and voting restriction provisions, **App D8**

New Hampshire's statute, **7:86**

Pennsylvania statutes, **7:84**

Resolution for the board of directors relating to a shareholder rights plan, **App D3**

Severance plan and amended golden parachute employment agreement, **App D7**

Shareholders

Bylaws amendments, **7:91**

Rights plan, **App D1 to App D3**

Rights tax benefit preservation plan, **App D2.5**

Share rights plan endorsement statutes, **7:92**

Shark repellent charter provision regarding the dilution of the principal shareholder, **App D9**

Specific state laws, **7:83 to 7:86**

Standstill agreements, **App D4, App D5**

Standstill and stock restriction agreement, **App D5**

Stockholders

Proposal against the company entering into future golden parachutes, **App D8**

Proposal relating to stockholder rights plan, **App D2**

Supreme Court decisions, **7:82**

Tin parachute statutes, **7:95**

Virginia statutes, **7:85**

ANTITRUST CRIMINAL PENALTY ENHANCEMENT AND REFORM ACT OF 2004

Generally, **9:5.50**

ANTITRUST IMPROVEMENTS ACT

Notification and report form for certain mergers and acquisitions, **App 5E**

ANTITRUST LAW

Generally, **7:2**

Analysis of antitrust, **7:57**

ANTITRUST LAW—Cont'd

Antitrust Criminal Penalty Enhancement and Reform Act of 2004, **9:5.50**

Antitrust Modernization Commission, **7:67**

Bankruptcy approved acquisitions, **9:8.05**

California criminal program, **7:72**

Cases, **7:39 to 7:48**

Compulsory process in investigations, **7:34**

Criminal antitrust laws, **7:71**

Criminal case changes, **7:70**

December 2023, merger guidelines, **7:55**

Department of Justice leniency policy, **7:61**

Divestiture orders, regulatory changes, **7:64**

DOJ Corporate Compliance Programs Guidance, **7:69**

Exclusive patent rights in the pharmaceutical industry, amendments to premerger notification rules related to transfer of, **7:35**

Failing firm defense, **7:60**

Federal Trade Commission (FTC)
Guidance, **7:73**
Statements of antitrust enforcement policy in health care, **App 4A**

Foreign entities, classification, **7:36**

Foreign entities, premerger notification exemptions for, **7:37**

Guidelines
Collaborations among competitors, **App 9A**
International enforcement and cooperation, **7:76, App 10D**

Guidelines for business activities affecting workers, **7:78**

Gun jumping, **7:13**

Hart-Scott-Rodino
Annual report. Hart-Scott-Rodino Annual Report (this index)
Antitrust provisions. Hart-Scott-Rodino Antitrust Provisions (this index)

Health care industry, **9:8, 9:8.05, 9:9 to 9:14, 9:26.50, App 4A to App 4K**

Interlocking directorates, **7:5**

International enforcement and cooperation, **7:76, App 10D, App 10P**

Investigations report, **7:77**

Jurisdictional requirements, **7:4, 7:5**

Killer acquisitions, **7:80**

Legislation, 2021-2022 proposed, **7:79**

Memorandum of Understanding between Federal agencies, **7:56**

Merger Remedies Guide, **App 11A**

Merger retrospective program, **7:74**

Merger review process, analysis of, **7:59**

Mergers. See entries throughout this topic

Model state HSR legislation, **7:54**

Modernization Commission, **7:67**

Modernization reforms, **7:68**

ANTITRUST LAW—Cont'd

1992 horizontal merger guidelines
Generally, **7:50**
1997 revisions, **7:50**
2010 revisions, **7:51**

1997 revisions to 1992 horizontal merger guidelines, **7:50**

Notification and report form for certain mergers and acquisitions, **App 5E**

Public input on strengthening enforcement against illegal mergers and other issues related to mergers and acquisitions, **7:66**

Reforms, modernization, **7:68**

Regulated markets. See Regulated Markets (this index)

Remedies
Generally, **7:58**
Merger Remedies Guide, **App 11A**
2020 Merger Remedies Manual, **7:63**

Replacement policy, **7:75**

Safe Harbor Policy, **7:62**

Sherman Act, regulated markets—health care industry, **9:3, 9:4**

Study of merger remedies, **7:65**

2006 merger reforms, **7:32**

2006 revisions, **7:33**

2010 revisions to 1992 horizontal merger guidelines, **7:51**

2020 merger remedies manual, **7:63**

2020 vertical merger guidelines, **7:52**

2023 merger guidelines, **7:53**

2026 annual adjustments for jurisdictional thresholds, **7:5**

ANTITRUST MODERNIZATION COMMISSION

Generally, **7:67**

APPRAISERS

Proxy contests, **4:12**

ARBITRATION

Delaware Rapid Arbitration Act, **3:82**

Negotiated acquisition transactions, arbitration clauses, **3:129**

Updated guidance regarding the use of arbitration and case selection criteria, **App 11C**

ARTICLES OF MERGER OR CONSOLIDATION

State corporation merger filing forms and fees
URL directory, **App 6**

ARTIFICIAL INTELLIGENCE

FTC statement raises competition concerns, **App 10E-1**

ASSESSMENT OF MERGER

Guidelines, generally, **App 15A**

ASSESSMENT OF MERGER—Cont'd

United Kingdom merger assessment guidelines, **8:9**

ASSET PURCHASE AGREEMENT

Generally, **App F65.60**

Buildings and land with escrow, **App F65.70**

Cloud computing operating assets, international, **App F65.50**

Negotiated Acquisition Transactions (this index)

Operating assets with liability hold back, **App F91**

Operating division, sale of assets and equity in, **App F65.80**

Prior spin-off, **App F65.96**

ASSET ROLLUP

Negotiated acquisition transactions, **App F64**

ASSET TRANSFER AND ASSIGNMENT

Conveyance agreement, **App M15**

ASSIGNMENT AGREEMENT

Conveyance agreement

Asset assignment, **App M15**

Payments due under asset purchase agreement, assignment to successor of buyer, **App F65**

ASSUMPTION OF OBLIGATIONS

Conveyance agreement, **App M15**

ATTORNEY-CLIENT RELATIONSHIP

Insider trading, conflict of interest, **1:87**

ATTORNEYS' FEES

Negotiated Acquisition Transactions (this index)

Tender offers, **5:114**

AUCTION DUTY

See Board of Directors (this index)

AUSTRALIA

Agreement to create Australian holding company from Delaware subsidiary, **App V10**

AVOIDANCE OF ENFORCEMENT

SEC guidelines, **1:98**

AWARDS

Insider trading cases, **1:55**

BACK END MERGERS

Negotiated acquisition transactions, **3:73**

BACKSTOP SUBSCRIPTION

Agreement, **App 28.95**

BANKRUPTCY

Negotiated Acquisition Transactions (this index)

Regulated markets, health care industry, **9:8.05**

BANKS

Generally, **9:32**

BANKS—Cont'd

Antitrust considerations, **9:36, 9:37**

Capital requirements, **9:38**

Cases, **9:39**

Department of Justice review of mergers in banking industry, **9:39.50**

Federal banking statutes, **9:34**

Federal Deposit Insurance Corporation, **9:34.50**

Federal Reserve System guidance, **9:34.60**

Formal interpretation 17, **9:35**

Negotiated acquisition transactions, **3:67, 3:110**

Office of comptroller of currency, 2024 Final Policy Statement, **9:34.55**

Pre-filing information, review by Federal Reserve System, **9:34.60**

Proposal of one bank holding company, documents and forms, **App O3**

Stockholder purchase agreement, cash, stock, and note consideration for multiple banking subsidiaries, **App F80**

Structuring the transaction, **9:33**

BEAR HUG LETTER

Negotiated acquisition transactions, **App F5**

BENEFICIAL OWNERSHIP

Acquisition of initial interest, **1:3**

Amendments to beneficial ownership reporting requirements, **App 1D**

Letter from nominee holders to beneficial owners, **App B6**

Rule 13d-3, **1:9, 1:14**

BEST PRACTICES

Cooperation in merger investigations, **8:8.50, App 10C**

BEST-PRICE RULE

Tender offers, 2006 amendments to tender offer, **5:16**

BILL OF SALE

Generally, **App F56**

BLUE SKY LAWS

Negotiated acquisition transactions, **3:119, 3:120**

BOARD OF DIRECTORS

Generally, **2:1, 2:2**

Auction duty

“For sale” determination, **2:16**

Private equity fund acquisitions and Revlon auction process, **2:18**

Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., **2:15**

Special committee, **2:17**

Blockholder directors, **2:2**

Business judgment rule

Generally, **2:3 to 2:12, 2:19**

Break up fees, **2:29**

BOARD OF DIRECTORS—Cont'd

- Business judgment rule—Cont'd
 - Controlling shareholders, **2:34**
 - Disclosure, duty of care, **2:7**
 - Duty of care, **2:6**
 - Duty of loyalty, **2:5**
 - Exculpation of directors and officers by charter provision, **2:10**
 - Federal securities law analysis, **2:26**
 - Fiduciary duties, consideration of all, **2:8**
 - Fiduciary duty
 - generally, **2:4, 2:8, 2:27**
 - limited partnerships, **2:12**
 - Lock up options, **2:23 to 2:28**
 - Merger transactions, **2:31**
 - No talk provisions, **2:30**
 - Poison pills, **2:22**
 - Post-agreement bidding, **2:25**
 - Post-closing challenge to breach, **2:11**
 - Proxy contests, **2:21**
 - Recapitalizations, **2:32**
 - Reorganizations, **2:33**
 - Specific applications, **2:20 to 2:35**
 - Topping fees, **2:29**
- Defending against tender offers, advance planning, **5:71**
- Defensive response by target company to attempt to remove board of directors, **App C6**
- Delaware Senate Bill 21, **2:35**
- Dissident's solicitation of consents to remove and replace board of directors, **App C4**
- Diversity of board, **2:1**
- Enhanced judicial scrutiny, **2:14**
- Entire fairness test, **2:13**
- Notice of special meeting of directors, **App P1**
- Private equity fund acquisitions, Revlon auction process, **2:18**
- Proxy materials to remove target company's board of directors, **App C5**
- Removal
 - Defensive response by target company to attempt to remove board of directors, **App C6**
 - Dissident's solicitation of consents to remove and replace board of directors, **App C4**
 - Proxy materials to remove target company's board of directors, **App C5**
- Resolution of directors recommending consolidations, **App P2**
- Resolution relating to a shareholder rights plan, **App D3**
- Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., **2:15**

BREAK UPS

- Fees
 - Board of directors, business judgment rule, **2:29**

BREAK UPS—Cont'd

- Fees—Cont'd
 - Negotiated acquisition transactions, **3:134**
 - Penalty, negotiated acquisition transactions, **App F4**

BRITISH VIRGIN ISLANDS

- Reincorporation from to Delaware, **App L9**

BUREAU OF COMPETITION

- See Federal Trade Commission (this index)

BUSINESS COMBINATIONS

- Anti-takeover provisions, **7:88**
- Negotiated Acquisition Transactions (this index)
- 1999 revisions to the business combination regulations, **5:33 to 5:39**
- Proposed revision of SEC business combination transaction rules, **App 1F**
- Rule 241 and 148, **3:117**
- 2008 revisions to exemptions for business combination regulations, **5:40 to 5:45**
- United States company and Swiss Company, **App V6**

BUSINESS JUDGMENT RULE

- Board of directors. See Board of Directors (this index)
- Defending against tender offers, **5:89**

BYLAWS

- Anti-takeover provisions, shareholder bylaws amendments, **7:91**
- Model consent bylaws for Delaware Corporation that have not limited the ability of stockholders to act by written consent, **App U1**

CALIFORNIA

- Non-compete agreements, **3:132**
- Reincorporation to Delaware followed by merger, **App L8**
- Section 338(d)(3) merger with Section 338(h)(10) election between California corporations and Delaware with holdback escrow, negotiated acquisition documents, **App F30**

CANADA

- Acquisitions involving foreign companies, **8:13 to 8:16.60**
- Agreements with other countries, **8:16.60**
- Assessing merger reporting requirements, guidelines, **8:16**
- Canadian model timing agreement for merger reviews, **8:14.50**
- Exchange agreement, **App V9**
- Foreign companies, acquisitions involving, **8:13 to 8:16.60**
- Merger enforcement guidelines, **8:14**

CANADA—Cont'd

- Merger review performance report, **8:15**
- Mergers and acquisitions, generally, **8:13, 8:13.50**
- Officials, meetings with, **8:16.50**
- Poison pills, defending against tender offers, **5:80**
- Reincorporation, from U.S. to Canada, **App L5**
- U.S. Company acquires Canadian Bitcoin Mining Company by Business Combination between U.S. Subsidiary and Canadian Target Company, **App V9.10**

CASE LAW

- See also specific cases throughout this index
- Antitrust law, **7:39 to 7:48**
- Short-swing trading provision, **1:23**

CASH

- Merger, guaranty of debts, **App F91**
- Ratios adjusted by various values, cash and stock mergers, **App F43.50**

CASH EXCHANGE OFFER

- Freeze out merger agreement following offer, **App F27**

CASH GOING PRIVATE OFFER TO PURCHASE

- Negotiated acquisition transactions, **App F46**

CASH MERGER AGREEMENTS

- Cash ratios adjusted by various values, cash and stock mergers, **App F43.50**
- Earnout provisions, **App I9**
- Negotiated acquisition transactions, software companies, **App F87**
- Proxy statement for cash merger, **App I10**

CASH-OUT, GOING PRIVATE TRANSACTION

- Fairness opinion, **App Q2**

CAYMAN ISLAND

- Chinese—Cayman merger, **App V13**
- Merger/conversion/exchange agreement between U.S., Hong Kong and Cayman Island companies with earn out provision, **App V8**

C&DIs

- Form S-4, **App 19A**
- Rule 145 of Securities Act, **App 18A**
- Williams Act, **App 17A**

CERTIFICATES

- Adoption of merger, stockholders' meetings, certificate of corporate secretary of adoption of merger agreement and approval of stockholders, **App O11**
- Delaware Corporation
 - Merger, **App I11**

CHALLENGED INDUSTRY

- Health care industry, **9:31.60**

CHANGE OF CONTROL AGREEMENT

- Golden parachute agreements, **3:63**
- Indentures, defending against tender offers, **5:82**
- Release, change of control agreement with, **App F43.150**

CHANGE OF CONTROL BONUS

- Negotiated acquisition transactions, contract and state corporate law concerns, **3:68**

CHINA

- Acquisition of Nevada company by Chinese company in share exchange, **App V7**
- Chinese—Cayman merger, **App V13**
- Meetings with Chinese officials, **8:11.70**
- Regulatory authority, **8:11.80**
- Reverse mergers, **8:11.50**
- 2013 draft merger regulations, **8:11.60**

CHOICE OF LAW

- Negotiated acquisition transactions, contract and state corporate law concerns, **3:46**

CIVIL PENALTIES

- Insider trading, **1:33**

CLASS ACTIONS

- Disclosure-only settlements, **3:144**
- Lawsuits challenging mergers, settlements, **3:146**

CLASS CERTIFICATION

- Insider trading, cammer factors, **1:32**

CLAYTON ACT

- Generally, **App 1C**
- Regulated markets, health care industry, **9:5**

CLOSED CORPORATION

- Stock purchase agreement, **App F78**

CLOSELY HELD BUSINESS

- Negotiated acquisition transactions, **3:120**

COLLATERAL ESTOPPEL

- Negotiated acquisition transactions, **3:56**

COLUMBIA HOSPITAL CORPORATION

- Health care industry, regulated markets, **9:8.10**

COMPENSATION RULES

- Negotiated acquisition transactions, **3:112**

COMPLIANCE AND DISCLOSURE INTERPRETATIONS (C&DIs)

- Cross-border exemptions, **App 22A**

COMPUTING SERVICES

- Cloud computing operating assets, international asset purchase agreement, **App F65.50**

- COMPUTING SERVICES—Cont’d**
Telecommunications and software agreement, **App M9**
- CONFIDENTIAL DISCLOSURE AGREEMENT**
As to disclosure, generally. See Disclosure (this index)
Delaware Corporation, **App I8**
- CONFIDENTIALITY AGREEMENTS**
“Don’t Ask, Don’t Waive” provisions in confidentiality agreements, **3:72**
Financing source, negotiated acquisition transactions, **App F7**
Negotiated acquisition transactions, “Don’t Ask, Don’t Waive” provisions, **3:72**
Purchaser/seller, negotiated acquisition transactions, **App F6**
- CONFLICT OF INTEREST**
Insider trading, attorney-client relationships, **1:87**
- CONSENT AGREEMENTS**
Health Care Industry (this index)
Negotiated acquisition transactions, written consent, **App F51**
- CONSENT ORDERS**
Mergers, **9:31.50**
- CONSIDERATION**
Negotiated acquisition transactions, right to certain type of consideration following merger, **3:61**
- CONSOLIDATION**
See Merger (this index)
- CONTEMPORANEOUS TRADING REQUIREMENT**
Insider trading, Rule 10b-5, **1:30**
- CONTINGENT SALE AGREEMENT**
Negotiated acquisition transactions, **App F77**
- CONTRACT BETWEEN STOCKHOLDERS**
Debt payment, contract whereby debts of one of companies are to be paid in stock of new company, **App O12**
- CONTRACT ISSUES**
Health care litigation, **9:31.70**
- CONTROLLING PERSON LIABILITY**
Private Securities Litigation Reform Act of 1995, **1:94**
- CONTROLLING SHAREHOLDERS**
Board of directors, business judgment rule, **2:34**
- CONTROL SHARE ACT PROXY STATEMENT TO APPROVE MERGER**
Documents and forms, **App T1**
- CONVERSION AGREEMENT**
Merger/conversion/exchange agreement between U.S., Hong Kong and Cayman Island companies with earn out provision, **App V8**
- CONVERSION OF STOCK ISSUES**
Negotiated acquisition transactions, **3:139**
- CONVEYANCE AGREEMENT**
Transfer and assignment of assets and assumption of obligations, **App M15**
- COOPERATION**
Best practice on cooperation in merger investigations, **8:8.50, App 10C**
Foreign companies, acquisitions by, best practices on cooperation in merger investigations, **8:8.50**
- CORONAVIRUS**
Covid-19 Pandemic, this index
- CORONAVIRUS DISEASE**
Covid-19 Pandemic (this index)
- CORPORATE RESTRUCTURING**
Agreement and plan of, **App M1**
- COSTS**
Employee benefits plans as defensive measures, **7:104**
Health care industry policy statements, exchange of price and cost information, **9:22**
Negotiated acquisition transactions, merger costs, **3:152**
- CREDIT UNIONS**
Changes in operations, **9:39.40**
Federally insured credit union limitations, **9:39.45**
Golden parachute payments, limitations, **9:39.45**
Indemnification payments, limitations, **9:39.45**
NCUA Notice of Proposed Rulemaking, **9:39.40**
- CRIMES**
Antitrust Criminal Penalty Enhancement and Reform Act of 2004, **9:5.50**
Antitrust law, **7:70, 7:71**
California antitrust program, **7:72**
Insider Trading (this index)
- CROSS-BORDER EXEMPTIONS**
Compliance and Disclosure Interpretations, **App 22A**
Proposed revisions of SEC cross-border tender offer rules, **App 1F**
Regulations, **5:40 to 5:45**
2008 revisions, **5:45**

CURING DEFECTS IN STOCK ISSUES

Negotiated acquisition transactions, Delaware law, **3:140**

CUSTOMER ANNOUNCEMENT

Tender offer document, DataDirect customers, **App B2**

CYBERSECURITY COMPANY

Reverse triangular merger, **App I6**

DAMAGES

Negotiated acquisition transactions, merger with liquidated damages provisions, **App F25**

DEALER-MANAGER AGREEMENT

Tender offer documents, **App B7**

DEBT

Guarantee of debt in merger agreement, **App F91**
Guaranty of debt in merger agreement, **App F91**

DEFENSE INDUSTRY MERGERS

Generally, **9:45**
Analysis of mergers, **9:48**
Cases, **9:46**
Settlement agreements, **9:47**
Vertical mergers, **9:49**

DEFINITIVE AGREEMENT

Noncompetition agreements, **3:135**

DELAWARE

Reincorporation from British Virgin Islands to, **App L9**
SPAC reincorporation from Cayman Islands to, **App L11**

DELAWARE CORPORATION

Agreement and plan of merger with corporation of another country, **App I5**
Agreement of merger and consolidation, **App I4**
Australian holding company, agreement to create, **App V10**
Certificates (this index)
Confidential disclosure agreement, **App I8**
Curing defects in stock issuances under Delaware law, **3:140**
Developments in Delaware law to reduce lawsuits in mergers, **3:2**
Merger of Delaware companies to form United Kingdom holding company, **App V11**
Merger of Delaware corporation into foreign corporation, **App I1**
Merger of foreign corporation into Delaware corporation, **App I2**
Model consent bylaws that have not limited the ability of stockholders to act by written consent, **App U1**
Negotiated acquisition transactions
Changes, **3:75**

DELAWARE CORPORATION—Cont'd

Negotiated acquisition transactions—Cont'd
Curing defects in stock issuances under Delaware law, **3:140**
Delaware Rapid Arbitration Act, **3:82**
Merger or consolidation of domestic and foreign corporations, **App 6E**
New York Statutory merger into a Delaware corporation, **App J3**
Rapid Arbitration Act of Delaware, **3:82**
Reincorporation. See Reincorporation, Documents and Forms (this index)
Reorganization agreement, **App V12**
Reverse triangular merger among Delaware Corporations, **App I3**
Section 338(d)(3) merger with Section 338(h)(10) election between California corporations and Delaware with holdback escrow, **App F30**
Spin off agreement, **App M4**

DELAWARE SENATE BILL 21

Board of directors, **2:35**

DEPARTMENT OF JUSTICE

Corporate Compliance Programs Guidance, **7:69**
FTC model request for additional information and documentary material, documents and forms, **App 2A**
FTC statements regarding health care services and providers, documents and forms, **App 4A to App 4K**

DEPOSITORY AGREEMENT

Tender offer document, **App B8**

DISCLAIMERS

Rule 13d-4, **1:10**

DISCLOSURE

Acquisition of initial interest, **1:17**
Acquisitions and depositions of business, press release and fact sheet, **App 23A**
Anti-takeover provisions, **7:94**
Board of directors, duty of disclosure, **2:7**
Case law, **4:34**
Compliance and disclosure interpretations on tender offers and mergers, **App 20A**
Corporate documents, proxy contests and Delaware Section 220 demands for, **4:33**
Cybersecurity risks and incidents, **1:86**
Delaware Corporation, confidential disclosure agreement, **App I8**
Financial, SEC adopts reforms, **3:116**
Foreign Corrupt Practices Act, acquisitions involving foreign companies, **8:7**
Insider trading, selective disclosure, **1:82 to 1:85**
Internet and e-mail, proxy contests, disclosure obligations of public communications by

DISCLOSURE—Cont'd

- electronic means, **4:32**
- Mergers and tender offers, compliance and disclosure interpretations, **App 20A**
- Negotiated acquisition transactions, securities law aspects, **3:97**
- Non-disclosure agreement, **App F8**
- Nondisclosure and noncircumvent agreement, **App F9**
- Proxy contests, **4:31, 4:32**
- State and federal regulatory concerns affecting control acquisitions, disclosure statutes, **7:94**
- Tender offers
 - Compliance interpretations, **App 20A**
 - 1999 revisions to the business combination regulations, disclosure requirements, **5:38**

DISCOVERY ISSUES

- Negotiated acquisition transactions, **3:42 to 3:45**

DISGORGEMENT

- Insider trading, **1:34, 1:35**

DISSIDENT'S SOLICITATION OF CONSENTS TO REMOVE AND REPLACE BOARD OF DIRECTORS

- Proxy contest, **App C4**

DISTRIBUTION AGREEMENT

- Separation, and, **App M7.55**
- Spin-off and IPO master separation and, **App M13**
- Spin-off separation and, **App M10**

DIVERSITY

- Board of directors, **2:1**

DIVESTITURE ORDERS

- Antitrust law, regulatory changes, **7:64**

DIVISIVE MERGERS, 3:136**DOCUMENTS AND FORMS**

- Generally
 - See specific topics in this index
 - Fairness opinions, **App Q1 to App Q4**

“DON'T ASK, DON'T WAIVE”

- Negotiated acquisition transactions, confidentiality agreements, **3:72**

DOUBLE MERGER RULE

- Negotiated acquisition transactions, **3:7**

DRAFTING

- Acquisition transactions, indemnification provisions in, **3:70**

“DRAG ALONG” AGREEMENTS

- LLC joint venture, tag-along, drag-along investor rights agreement, **App N4**
- Negotiated acquisitions and mergers, **App F72**

“DRAG ALONG” AGREEMENTS—Cont'd

- Stock purchase agreement—U.S. company acquiring European company stock for cash and stock with earn out, drag along and tag along provisions, **App F81**

DUE DILIGENCE

- Israeli draft guidelines for information sharing, acquisitions involving foreign companies, **8:19**

DUTCH BANK FAIRNESS OPINION

- US-Dutch stock/cash merger, **App V3**

EARNOUT AGREEMENTS

- Cash merger agreement with earnout provisions, **App I9**
- Merger/conversion/exchange agreement between U.S., Hong Kong and Cayman Island companies with earn out provision, **App V8**
- Negotiated Acquisition Transactions (this index)
- Stock purchase agreement—U.S. company acquiring European company stock for cash and stock with earn out, drag along and tag along provisions, **App F81**

E-COMMERCE COMPANY

- Merger agreement with escrowed shares subject to satisfaction, **App F20**

ECONOMIC ISSUES

- Federal Trade Commission statements, **App 10F**

ELECTION CONTESTS

- See Proxy Contests (this index)

E-MAIL

- See Internet and E-mail (this index)

EMPLOYEE BENEFITS PLANS AND ERISA REQUIREMENTS

- Generally, **7:96**
- Affirmative defenses with the use of plan assets, **7:98**
- Defensive measures, ESOP's as
 - Generally, **7:100, 7:101**
 - Adoption of plan, **7:107**
 - Cases, **7:108**
 - Cost and funding, **7:104**
 - ERISA fiduciary constraints, **7:109**
 - Leverage, **7:103**
 - Size, **7:102**
 - Stockholder dilution, **7:106**
 - Voting and tendering, **7:105**
- Obligation to tender, **7:97**
- Post-acquisition ERISA concerns, **7:110**
- Proxy contests, ERISA fiduciary duties, **4:30**
- Use of plan assets by a bidder, **7:99**

EMPLOYEE PROGRAMS AGREEMENT

- Documents and forms, **App M8**

EMPLOYMENT, REDEMPTION AND EXCHANGE AGREEMENT

Between an acquirer and executive of a target company, **App F93**

EMPLOYMENT AGREEMENT

Documents and forms, **App F93**

ENFORCEMENT ACTIONS

Antitrust law

Antitrust guidelines for international enforcement and cooperation, **7:76, App 10D**

Canadian merger enforcement guidelines, **8:14**

Disgorgement, **1:34**

Hart-Scott-Rodino Annual Report, fiscal year 2022, **App 10Q**

SEC

Disgorgement, **1:34**

Guidelines on avoiding, **1:98**

ENHANCED JUDICIAL SCRUTINY

Board of directors, **2:14**

ENTIRE FAIRNESS TEST

Board of directors, **2:13**

ENVIRONMENTAL LAWS

Generally, **7:117**

Corporate officers and directors, liability under CERCLA, **7:120**

Defenses to CERCLA liability, **7:119**

Enforcement, **7:122**

Liability under CERCLA and SARA, **7:118**

SEC Climate Related Disclosure Rules, **7:123**

Taking account of environmental laws in mergers and acquisitions, **7:121**

EQUITY COMMITMENT LETTER

Negotiated acquisition transactions, **App F99**

EQUITY PURCHASE AGREEMENT

Negotiated acquisition transactions, **App F83**

Telecom subsidiary, **App F43.50**

ERRORS

Negotiated acquisition transactions

Business combination documents, **3:53**

ESCROW AGREEMENT IN A MERGER

Bank holding company and merger with liability and financial milestone, **App F43.85**

E-commerce company, merger agreement with escrowed shares subject to satisfaction, **App F20**

Negotiated acquisition transactions, **App F30, App F89**

Reverse merger with part of merger consideration held in escrow until satisfaction of conditions, **App F21**

Section 338(d)(3) merger with Section 338(h)(10) election between California

ESCROW AGREEMENT IN A MERGER

—Cont'd

corporations and Delaware with holdback escrow, **App F30**

Technology asset purchase agreement with escrow funds, **App F57**

EUROPEAN COMMISSION (EC)

Foreign Companies, Acquisitions Involving, this index

EUROPEAN COMPANY STOCK

Stock purchase agreement—U.S. company acquiring European company stock for cash and stock with earn out, drag along and tag along provisions, **App F81**

EUROPEAN GUIDELINES

Acquisitions involving foreign companies, **8:8, 8:9**

European Union Takeovers Directive, public statement by European Securities and Markets Authority, **8:11.30**

Italian merger threshold guidelines, **8:8**

United Kingdom merger guidance, **8:9**

2022 updated EU competition rules, **8:11.40**

EXCHANGE AGREEMENT

Canadian company agreement, **App V9**

Merger/conversion/exchange agreement between U.S., Hong Kong and Cayman Island companies with earn out provision, **App V8**

Negotiated acquisition transactions, **App F42**

U.S. Company acquires Canadian Bitcoin Mining Company by Business Combination between U.S. Subsidiary and Canadian Target Company, **App V9.10**

EXCHANGE OFFER

Freeze out merger agreement following offer, **App F27**

Proposed revision of SEC exchange offer rules, **App 1F**

Prospectus for merger, **App F97**

Spin-off agreements, exchange offer with underwriters, **App M7.60**

Split-off of subsidiary, **App F96**

2008 revisions to exemptions for exchange offer regulations, **5:40 to 5:45**

EXCLUSIVITY LETTER/MERGER TERMINATION FEE AGREEMENT

Negotiated acquisition transactions, **App F70**

EXEMPTIONS

2008 revisions to exemptions for cross border tender offers, exchange offers, rights offers and business combination regulations, **5:45**

EXON-FLORIO AMENDMENT

Foreign companies, acquisitions by, **8:4**

FAILING FIRM DEFENSE

Generally, **17:15.35**

FAILURE TO PROSECUTE RULE

Negotiated acquisition transactions, **3:142**

FAIRNESS OPINIONS

Cash-out, going private transaction by small public company, **App Q2**

Documents and forms, **App Q1 to App Q4**

Liquidation of target company, merger, **App Q3**

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

Corporation, **9:34.50**

FEDERAL MARGIN RULES

State and federal regulatory concerns affecting control acquisitions, **7:111 to 7:116**

FEDERAL POWER ACT

Inquiry concerning the commissioner's merger policy statement, **App 7**

FEDERAL REGULATORY CONCERNS

See State and Federal Regulatory Concerns Affecting Control Acquisitions (this index)

FEDERAL RESERVE SYSTEM

Regulated markets, guidance, **9:34.60**

FEDERAL TRADE COMMISSION (FTC)

Antitrust Laws (this index)

Best practice on cooperation in merger investigations, **App 10C**

Bureau of Competition statement on

Guidelines for merger investigations, **App 10A**

Negotiating merger remedies, **App 10B**

Economic issues, **App 10E, App 10F**

Hart-Scott-Rodino Annual Report, fiscal years 2023, **App 10R**

Horizontal merger investigation data, fiscal years 1996-2005, **App 10E**

Merger review process reforms, **App 10G**

Regulated market acquisition, challenge by federal agency, **9:51.10**

Statement on generative AI raises competition concerns, **App 10E-1**

FEES

Attorneys' fees

Contribution by co-defendants, **3:138**

Negotiated acquisition transactions, **3:137**

Tender offers, **5:114**

Break up fees

Board of directors, business judgment rule, **2:29**

Negotiated acquisition transactions, **3:134**

Filing fee disclosures and payment methods, **4:20**

Hart-Scott-Rodino antitrust improvements, filing fees, **7:7**

FEES—Cont'd

Health care industry, fee related information, **9:21, App 4E to App 4G**

Internet access, state corporation merger filing forms and fees URL directory, **App 6**

Negotiated acquisition transactions

Attorneys' fees, **3:137**

Deduction of merger costs, **3:152**

State corporation merger filing forms and fees URL directory, **App 6**

Proxy contests, filing obligations and fees, Rule 14a-6, **4:19**

Tender offers, attorneys' fees, **5:114**

Topping fees

Board of directors, business judgment rule, **2:29**

Negotiated acquisition transactions, **3:134**

FIDUCIARY DUTY

Board of directors, business judgment rule

Generally, **2:4, 2:8, 2:27**

Duties owed by officers, **2:9**

Exculpation of directors and officers by charter provision, **2:10**

Limited partnerships, **2:12**

Post-closing challenge to breach, **2:11**

ERISA fiduciary duties, proxy contests, **4:30**

FILINGS

Failure to file or a misleading filing, **1:18, 1:19**

Federal Reserve System review of pre-filings, **9:34.60**

Filing fee disclosures and payment methods, **4:20**

Hart-Scott-Rodino antitrust improvements, filing fees, **7:7**

Proxy contests, filing obligations and fees, Rule 14a-6, **4:19**

SEC enforcement actions, **1:19**

FIRRMA

Foreign Investment Risk Review Modernization Act (FIRRMA) (this index)

FOREIGN COMPANIES, ACQUISITIONS INVOLVING

Generally, **8:1**

Anti-aversion guidance, **8:5.50**

Best practices on cooperation in merger investigations, **8:8.50**

British Virgin Islands company, share purchase agreement, **App V23**

Business combination agreement between United States company and Swiss Company, **App V6**

Canada (this index)

Canadian model timing agreement for merger reviews, **8:14.50**

Canadian officials, meetings with, **8:16.50**

FOREIGN COMPANIES, ACQUISITIONS INVOLVING—Cont'd
CFIUS

- Annual Reports, **8:4.36**
- Enforcement and penalty guidelines, **8:4.35**
- Expansion of transactions and powers, **8:4.30**
- Filing fees, **8:4.40**
- Presidential action under, **8:4.10**
- Transactions under CFIUS, case law, **8:4.20**
- Chinese 2013 draft merger regulations, **8:11.60**
- Chinese officials, meetings with, **8:11.70**
- Chinese regulatory authority, **8:11.80**
- Chinese reverse mergers, **8:11.50**
- European Commission
 - Approved mergers, **8:10**
 - Disapproved mergers, **8:11**
 - Fines, **8:11.20**
 - Merger regulation, changes, **8:9.50**
- European guidelines on assessing mergers, **8:8, 8:9**
- European Securities and Markets Authority, public statement on stockholder cooperation/acting in concert, **8:11.30**
- Exon-Florio amendment, **8:4**
- FIRRMA, regulations to implement, **8:4.45**
- Foreign Corrupt Practices Act, **8:7**
- Foreign ownership of United States businesses, reporting, **8:4.60**
- French Competition Authority guidelines on merger control, **8:17**
- Indian company acquiring Delaware company in merger, **App V26**
- Indian merger law, **8:20**
- International Competition Network, **8:6**
- International Investment and Trade in Services Survey Act, **8:4.60**
- Israeli draft guidelines for information sharing during due diligence, **8:19**
- Italian merger threshold guidelines, **8:8**
- Joint ventures, **8:3**
- Meetings with
 - Canadian officials, **8:16.50**
 - Chinese officials, **8:11.70**
 - Mexican officials, **8:16.50**
- Mergers with other countries, **8:21**
- Mexican officials, meetings with, **8:16.50**
- National Industrial Security Program, **8:4.50**
- Ownership of foreign businesses, reporting, **8:4.60**
- Presidential action under CFIUS, **8:4.10**
- Presidential executive order restricting investment in foreign countries, **8:18**
- Reporting ownership, **8:4.60**
- Share purchase agreement, acquisition of subsidiary assets and licenses, **App V23**

FOREIGN COMPANIES, ACQUISITIONS INVOLVING—Cont'd

- Spin-off of operation into a foreign company in connection with a merger, **App V22**
- Structuring the transaction, **8:2**
- Takeover Code
 - 2011 Amendments, review, **8:9.10**
 - 2013 Amendments, **8:9.30**
 - 2014 Amendments, **8:9.40**
- Tax consequences, **8:5**
- Transaction agreement, **App V19**
- Transactions under CFIUS, case law, **8:4.20**
- United Kingdom merger guidance, **8:9**
- United States agreements with other countries, **8:12**
- United States businesses, reporting foreign ownership of, **8:4.60**
- 2022 updated European Union competition rules, **8:11.40**

FOREIGN CORPORATION

- Agreement and plan of merger with Delaware corporation, **App I5**
- Antitrust law, classifying foreign entities, **7:36**
- Foreign entities, premerger notification exemptions for, **7:37**
- Insider trading, Rule 10b5-1 plans, **1:88**
- Litigation involving Rule 10b5-1 plans, **1:89**
- Merger of Delaware corporation into foreign corporation, **App I1**
- Merger of foreign corporation into Delaware corporation, **App I2**
- Merger or consolidation of Delaware domestic and foreign corporations, **App 6E**

FOREIGN CORRUPT PRACTICES ACT

- Foreign companies, acquisitions involving, **8:7**
- Guidance, 2025, **8:7.50**

FOREIGN INVESTMENT RISK REVIEW MODERNIZATION ACT (FIRRMA)

- Regulations to implement, **8:4.45**

FORM 3

- SEC forms and schedules, **App 3M**

FORM 4

- SEC forms and schedules, **App 3N**

FORM 5

- SEC forms and schedules, **App 3O**

FORM CB

- SEC forms and schedules, **App 3K**

FORM 8-K

- SEC forms and schedules, **App 3E**

FORM S-4

- C&DIs, **App 19A**

FORM S-4—Cont'd

Negotiated acquisition transactions, registering shares for future, unspecified acquisitions, **App F101**

SEC forms and schedules, **App 3A**

FORM S-8

Post-effective amendment No. 1, **App S6**

Super 8K for shell company acquisitions, **App F32**

FORMS AND DOCUMENTS

Generally

See specific topics in this index

FORM TO

SEC forms and schedules, **App 3L**

FORWARDING AGENT AGREEMENT

Tender offer document, **App B9**

FORWARD MERGER AGREEMENT

Negotiated acquisition transactions, **App F13**

Preceded by asset purchase, **App F13.10**

FORWARD TRIANGULAR MERGER

Negotiated acquisition transactions, **App F17**

FRANCE

French Competition Authority guidelines on merger control, **8:17**

FREEZE OUT MERGER AGREEMENT

Cash or stock exchange offer followed by freeze out merger agreement, **App F27**

FTC/DEPARTMENT OF JUSTICE MODEL REQUEST FOR ADDITIONAL INFORMATION AND DOCUMENTARY MATERIAL

Documents and forms, **App 2A**

FTC/DEPARTMENT OF JUSTICE STATEMENTS REGARDING HEALTH CARE SERVICES AND PROVIDERS

Documents and forms, **App 4A to App 4K**

FTC v. BUTTERWORTH HEALTH CORPORATION

Regulated markets, health care industry, **9:12**

FTC v. FREEMAN HOSPITAL

Regulated markets, health care industry, **9:10**

FTC v. TENET HEALTHCARE CORPORATION, INC.

Regulated markets, health care industry, **9:14**

GENERIC MERGER FAIRNESS OPINION

Documents and forms, **App Q1**

GERMANY

Association terms and memorandum, German Irish merger, **App V20**

GERMANY—Cont'd

Stock and asset purchase agreement between US and Germany companies, **App V17**

United States and German companies form Irish holding company, **App V21**

US Co acquiring 51% of German Co, option to acquire remaining 49% of company's stock, **App V14**

GOING PRIVATE MERGER AGREEMENT

Negotiated acquisition transactions, **App F47**

GOING PRIVATE MERGER WITH REVERSE STOCK SPLIT

Negotiated acquisition transactions, **App F44**

GOING PRIVATE SHARE EXCHANGE PLAN MANAGEMENT CASH OUT OF PUBLIC SHAREHOLDERS

Negotiated acquisition transactions, **App F45**

GOING PRIVATE TRANSACTION

Fairness opinions, cash-out, going private transaction by small public company, **App Q2**

GOING PRIVATE TRANSACTIONS

Generally, **6:22**

Compliance and disclosure interpretations, **6:23**

GOLDEN PARACHUTE AGREEMENTS

Anti-takeover provisions, **App D6, App D7**

Federally insured credit union limitations on payments, **9:39.45**

Negotiated acquisition transactions, **3:63, 3:112**

Tender offers, defending against tender offers, **5:83 to 5:86**

GOVERNANCE AGREEMENT WITH BOARD REPRESENTATION, ANTI-DILUTION, STANDSTILL AND VOTING RESTRICTION PROVISIONS

Anti-takeover provisions, **App D8**

GUARANTY

Merger agreement, guarantee of debt, **App F91**

Section 338(d)(3) merger with Section 338(h)(10) election between California corporations and Delaware with holdback escrow in form of note with guaranty, **App F30**

HART-SCOTT-RODINO ANNUAL REPORT

Fiscal Year 2012, **7:16, App 10I**

Fiscal Year 2013, **7:17**

Fiscal Year 2014, **7:18, App 10J**

Fiscal Year 2015, **7:19, App 10K**

Fiscal Year 2017, **7:20, App 10L**

Fiscal Year 2018, **App 10M**

Fiscal Year 2019, **7:21, App 10N**

Fiscal Year 2020, **7:22, App 10O**

Fiscal Year 2021, **7:23, App. 10P**

HART-SCOTT-RODINO ANNUAL REPORT**—Cont'd**Fiscal Year 2022, **7:24, App. 10Q**Fiscal Year 2023, **App. 10R****HART-SCOTT-RODINO ANTITRUST PROVISIONS**Generally, **7:3, App 1C**Analysis of merger review process, **7:59**Civil penalties, assessment of, **7:38**Clearance procedures for merger reviews and antitrust matters (announced March 2002), **7:29**Exemptions, **7:6**Expiration of notification, **7:14**Filing fees, **7:7**FTC reporting of Hart-Scott-Rodino transaction numbers, **7:15**Health care industry, reporting requirements, **9:6**Interlocking directorates, **7:5**Investigations, guidelines for (announced December 2002), **7:30**Jurisdictional requirements, **7:4, 7:5**Limited liability companies, **7:49**Measures announced in 1995, 1996 and 2000, **7:27**Merger review process, analysis, **7:59**Merger review process initiative, **7:28**Most frequently asked HSR questions, **App 5D**Negotiating merger remedies, guidelines for, **7:31**

Notification and report form

Generally, **7:8, App 5E**2011 changes, **7:9**2019 changes, **7:10**

Notification form and associated instructions

2024 amendments to premerger, **7:11**

Premerger notification program

Introductory Guide I, **App 5A**Introductory Guide II, **App 5B**Introductory Guide III, **App 5C**Withdrawal of premerger notification filing, **7:25**Restructuring transactions, **7:39**Review process, steps to improve, **7:26**Transaction numbers, FTC reporting of Hart-Scott-Rodino, **7:15**2006 merger reforms, **7:32**2006 revisions, **7:33**2024 amendments to premerger notification form and associated instructions and related litigation, **7:11**2011 changes to notification and report form, **7:9**2019 changes to notification and report form, **7:10**2026 annual adjustments for jurisdictional thresholds, **7:5****HART-SCOTT-RODINO ANTITRUST****PROVISIONS—Cont'd**Waiting period, **7:12**Withdrawal of premerger notification filing, **7:25****HEALTH CARE INDUSTRY**Generally, **9:2**Advisory opinions, **9:27**Agreement and plan of reorganization by and among Pharmaceutical Holdings, Inc., Pharmaceuticals Merger Sub Inc. and Pharmaceuticals Inc., **App S5**Antitrust activity, **9:8, 9:8.05, 9:9 to 9:14**Antitrust enforcement policy, **9:26.50**Business review letters, **9:27**Cases, **9:7.50**Challenged industry, **9:31.60**Clayton Act, **9:5**Columbia Hospital Corporation, **9:8.10**

Consent agreements

2006 consent agreements, **9:8.50**2007 consent agreements, **9:8.60**2008 consent agreements, **9:8.70**2009 consent agreements, **9:8.80**2010-2011 consent agreements, **9:8.90**2012 consent agreements, **9:8.95**2013 consent agreements, **9:8.96**2014 consent agreements, **9:8.97**2015 consent agreements, **9:8.98**2016 consent agreements, **9:8.99**2018 consent agreements, **9:8.99**2019 consent agreements, **9:8.100**Contract issues in health care litigation, **9:31.70**Forms of consolidations, **9:28**FTC administrative litigation, procedures, **9:7**FTC/Department of Justice statements regarding health care services and providers, **App 4A to App 4K**FTC v. Butterworth Health Corporation, **9:12**FTC v. Freeman Hospital, **9:10**FTC v. Tenet Healthcare Corporation, Inc., **9:14**Hart-Scott-Rodino reporting requirements, **9:6**Limited liability companies, **9:30**

Litigation

Contract issues in health care litigation, **9:31.70**Federal courts, **9:9 to 9:14**Managed care organizations, **9:28, 9:29**

Mergers. See entries throughout this topic

Pharmaceutical industry, **9:31, App S5**Pharmaceutical mergers, development of new approaches to, **9:8.03**

Policy statements

Generally, **9:15**Exchange of price and cost information, **9:22**Fee related information, **9:21**

HEALTH CARE INDUSTRY—Cont'd

- Policy statements—Cont'd
 - Joint purchasing arrangements, **9:23**
 - Joint ventures involving
 - High-technology or other expensive equipment, **9:18**
 - Specialized clinical or other expensive services, **9:19**
 - Mergers among hospitals, **9:17**
 - Multiprovider networks, **9:25**
 - 1996 guidelines
 - Impact of, **9:26**
 - Summary of, **9:16**
 - Non-fee related information, **9:20**
 - Physician network joint ventures, **9:24**
 - Sherman Act, **9:3, 9:4**
 - U.S. v. Long Island Jewish Medical Center, **9:13**
 - U.S. v. Mercy Health Services, **9:11**

HIGH TECHNOLOGY COMPANIES

- Agreement and plan of merger between, **App K1**
- FTC/Department of Justice statements regarding health care services and providers, **App 4C**

HOLDBACK ESCROW

- Section 338(d)(3) merger with Section 338(h)(10) election between California corporations and Delaware with holdback escrow in form of note with guaranty, **App F30**

HOLDING COMPANY

- Australian holding company, creation from Delaware subsidiary and joint venture assets, **App V10**
- Bank holding company merger, **App F36**
- Consolidation of two public companies into holding company structure, **App F37**
- German and United States companies form Irish holding company, **App V21**
- Irish holding company formed by United States and German companies, **App V21**
- Merger of two companies, **App V11**
- United Kingdom holding company, merger of Delaware companies to form, **App V11**
- United States and German companies form Irish holding company, **App V21**

HOMELAND SECURITY PRESIDENTIAL DIRECTIVE/HSPD-7

- Generally, **App 13A**

HONG KONG

- Merger/conversion/exchange agreement between U.S., Hong Kong and Cayman Island companies with earn out provision, **App V8**

HORIZONTAL MERGERS

- Guidelines for public comment (April 20, 2010 release), **App 10H**

HORIZONTAL MERGERS—Cont'd

- Investigation data, fiscal years 1996-2005, **App 10E**
- 1992 horizontal merger guidelines, **7:50**
 - Generally, **7:50**
 - 1997 revisions, **7:50**
 - 2010 revisions, **7:51**
- 1997 revisions to 1992 guidelines, **7:50**
- 2023 merger guidelines, **7:53**
- 2020 vertical merger guidelines, **7:52**
- 2010 revisions to 1992 guidelines, **7:51**

INDEMNIFICATION AGREEMENT

- Negotiated acquisition transactions, **3:70**

INDEMNIFICATION PAYMENTS

- Federally insured credit union limitations, **9:39.45**

INDENTURES

- Defending against tender offers, **5:82**

INDEPENDENT PHYSICIAN ASSOCIATION GROUP CONTRACT

- Documents and forms, **App S3**

INDIAN MERGER LAW

- Foreign companies, acquisitions involving, **8:20**

INFLATION REDUCTION ACT

- Generally, **3:153**

INFORMATION AGENT AGREEMENT

- Tender offer document, **App B4**

INFORMATION STATEMENTS

- Spin-off, **App B10, App M20**

INITIAL INQUIRY

- Negotiated acquisition transactions, **App F1**

INITIAL INTEREST, ACQUISITION OF

- Generally, **1:1**
- “Beneficial ownership,” **1:3**
- Disclosures, **1:17**
- Failure to file or a misleading filing, **1:18, 1:19**
- “Five per centum,” **1:5**
- “Group,” **1:4**
- Insider trading. See Insider Trading (this index)
- Private Securities Litigation Reform Act of 1995, **1:93, 1:97**
- Rule 13d. See Rule 13d (this index)
- Sarbanes-Oxley Act, **1:100**
- SEC guidelines on avoiding enforcement actions, **1:98**
- Secondary liability, **1:92**
- Securities Litigation Uniform Standards Act of 1998, **1:97**
- Security based SWAPS, **1:99**
- Short-swing trading provision, **1:20 to 1:24**
- Statutory and regulatory provisions, **1:2**

INITIAL INTEREST, ACQUISITION OF**—Cont'd**Trading on insider information, **1:25 to 1:91****INITIAL PUBLIC OFFERING (IPO)**Foreign subsidiary, IPO spin-off by U.S. parent company, **App M12**Master separation and distribution agreement, spin-off and IPO, **App M13****INQUIRY CONCERNING THE COMMISSIONER'S MERGER POLICY STATEMENT**Federal Power Act, **App 7****INSIDER TRADING**Generally, **1:25 et seq.**Acquisition of initial interest, **1:25 to 1:91**Administrative Law Judges, appointment, **1:26**2024-2025 agreements, **1:53**Attorney-client relationships, **1:87**Awards, **1:55**

Cases

Criminal liability, **1:81**2014 cases, **1:74**2015 cases, **1:75**2017 cases, **1:76**2018-2019 criminal cases, **1:77**2022-2025 criminal cases, **1:78**2025 cases, **1:79**Civil penalties, **1:33**Class certification and cammer factors, **1:32**

Complaints

Generally, **1:55, 1:56**2005-2006 complaints, **1:57**2007 complaints, **1:58**2008 complaints, **1:59**2009 complaints, **1:60**2010 complaints, **1:61**2011 complaints, **1:62**2012 complaints, **1:63**2013 complaints, **1:64**2014 complaints, **1:65**2015 and 2016 complaints, **1:66**2016 complaints, **1:67**2018-2019 complaints, **1:68**2023-2025 complaints, **1:70**2026 complaints, **1:71**Conflict of interest, **1:87**Contemporaneous trading requirement of Rule 10b-5, **1:30**

Criminal charges and convictions

Generally, **1:73**Case law, **1:81**Overturned, **1:80**Cybersecurity risks and incidents, disclosures, **1:86****INSIDER TRADING—Cont'd**Disclosure, selective, **1:82 to 1:85**Disgorgement in SEC enforcement actions, **1:34**Disgorgement legislation, **1:35**Legislation, **1:90**Liability for, generally, **1:85**Litigation involving Rule 10b5-1 plans, **1:89**Misappropriation theory, **1:29**Penalties, **1:33**Regulation FD, **1:82, 1:83, 1:84**Restrictions on foreign private issuers, **1:91**Rule 10b-5, generally, **1:27, 1:28, 1:30**Rule 10b5-1 plans, **1:88**Rule 14e-3, **1:31**SEC rules concerning selective disclosure and insider trading liability, **1:82 to 1:85**Selective disclosure, **1:82 to 1:85**

Settlement agreements

Generally, **1:36 et seq.**Awards, **1:55**

Cases where agreement not reached.

Complaints, above

2005 agreements, **1:37**2006 agreements, **1:38**2007 agreements, **1:39**2008 agreements, **1:40**2009 agreements, **1:41**2010 agreements, **1:42**2011 agreements, **1:43**2012 agreements, **1:44**2013 agreements, **1:45**2014 agreements, **1:46**2015 agreements, **1:47**2016 agreements, **1:48**2018 agreements, **1:48**2018 and 2019 agreements, **1:49**2020 agreements, **1:50**2022 agreements, **1:51**2023 agreements, **1:52**2026 agreements, **1:54**

Settlement agreements not reached. Complaints, above

Shadow insider trading, **1:72**2005 agreements, **1:37**2005-2006 complaints, **1:57**2006 agreements, **1:38**2016 complaints, **1:67**2007 agreements, **1:39**2007 complaints, **1:58**2008 agreements, **1:40**2008 complaints, **1:59**2009 agreements, **1:41**2009 complaints, **1:60**2010 agreements, **1:42**2010 complaints, **1:61**

INSIDER TRADING—Cont'd

- 2011 agreements, **1:43**
- 2011 complaints, **1:62**
- 2012 agreements, **1:44**
- 2012 complaints, **1:63**
- 2013 agreements, **1:45**
- 2013 complaints, **1:64**
- 2014 agreements, **1:46**
- 2015 agreements, **1:47**
- 2014 complaints, **1:65**
- 2014 criminal cases, **1:74**
- 2015 criminal cases, **1:75**
- 2017 criminal cases, **1:76**
- 2015 and 2016 complaints, **1:66**
- 2016 and 2018 agreements, **1:48**
- 2018-2019 complaints, **1:68**
- 2022 complaints, **1:69**
- 2023-2025 complaints, **1:70**
- 2018-2019 criminal cases, **1:77**
- 2020 agreements, **1:50**
- 2022 agreements, **1:51**
- 2023 agreements, **1:52**
- 2022-2025 criminal cases, **1:78**
- 2025 cases, **1:79**
- 2026 agreements, **1:54**
- 2026 complaints, **1:71**

INSPECTOR OF ELECTIONS

- Proxy contests, **4:7**

INTELLECTUAL PROPERTY

- Exclusive patent rights in the pharmaceutical industry, amendments to premerger notification rules related to transfer of, **7:35**
- Negotiated acquisition transactions, **App F54**

INTELLECTUAL PROPERTY RIGHTS AGREEMENT

- Negotiated acquisition transactions, **App F85**

INTERNAL REVENUE SERVICE GUIDANCE

- “Active trade or business” requirement under Section 355(b), IRS study on, **3:164**
- Disqualified distributions of stock, **3:163**
- Double merger rule, **3:7**
- Negotiated acquisition transactions, **3:7, 3:9**
- Tax free division of a company, **3:70, 3:162, 3:164**

INTERNATIONAL COMPETITION NETWORK (ICN)

- Foreign companies, involving, **8:6**
- Implementation handbook, mergers, **App 12B**
- Merger guidelines workbook, **App 12A**

INTERNATIONAL ENFORCEMENT

- Antitrust guidelines, **7:76, App 10D**

INTERNATIONAL INVESTMENT AND TRADE IN SERVICES SURVEY ACT

- Foreign companies, acquisitions involving, **8:4.60**

INTERNET AND E-MAIL

- Cybersecurity risks and incidents, disclosures, **1:86**
- Proxy contests, disclosure obligations of public communications by electronic means, **4:32**
- State corporation merger filing forms and fees URL directory, **App 6**

INVESTIGATIONS

- Best practices, cooperation in merger investigations, **8:8.50, App 10C**
- Compulsory process, **7:34**
- Horizontal merger investigation data, fiscal years 1996-2005, **App 10E**
- Report, antitrust merger investigations, **7:77**

INVESTMENT ADVISERS

- Regulated markets, acquisitions of advisors, **9:53**
- 2002 amendments to Investment Company Act, **9:54**

INVESTMENT BANKERS

- Negotiated acquisition transactions, **3:110**

INVESTMENT BANKS

- Negotiated acquisition transactions, **3:67**

INVESTMENT COMPANY ACT

- 2002 amendments, **9:54**

IRELAND

- Association terms and memorandum, German Irish merger, **App V20**
- Switzerland company reincorporates into Ireland, **App V16**
- United States and German companies form Irish holding company, **App V21**

IRISH-US

- Combination, **App V15**

IRREVOCABLE PROXY AND VOTING AGREEMENT

- Generally, **App O16**

IRREVOCABLE PROXY WITH SHARES IN A VOTING TRUST

- Documents and forms, **App O7**

IRS GUIDANCE

- Negotiated acquisition transactions, “B” reorganizations, **3:9**

IRS LEGAL ADVICE MEMORANDUM

- Negotiated acquisition transactions, timing of certain acquisition deductions, **App 14B**

IRS LETTER RULINGS

Tender offers, termination agreements, **5:83 to 5:86**

ISRAEL

Acquisitions involving foreign companies, draft guidelines for information sharing during due diligence, **8:19**

ITALY

Acquisitions involving foreign companies, Italian merger threshold guidelines, **8:8**

JOINT PROXY STATEMENT/PROSPECTUS, APPROVAL OF MERGER

Negotiated acquisition transactions, **App F48**

JOINT VENTURE AGREEMENTS

Generally, **App N1**

Foreign companies, acquisitions by, **8:3**

FTC/Department of Justice statements regarding health care services and providers, **App 4C, App 4D, App 4H to App 4K**

Subsidiary, acquiring control of, **App N2**

Tag-along, drag-along investor rights agreement for LLC joint venture, **App N4**

JOINT VENTURES

Australian holding company, creation from Delaware subsidiary and joint venture assets, **App V10**

JUDICIAL DOCTRINES AFFECTING REORGANIZATIONS

See Negotiated Acquisition Transactions (this index)

JUDICIAL NOTICE

Negotiated acquisition transactions, contract and state corporate law concerns, **3:65**

JUDICIAL RATIFICATION

Defective corporate acts, **3:78**

JUSTICE AND FEDERAL TRADE

Commission merger guidelines, **App 24A**

JUSTICE DEPARTMENT

Department of Justice (this index)

LEGALITY OF SECURITIES IN CONNECTION WITH A S-4 REGISTRATION STATEMENT

Documents and forms, **App R1**

LEGALITY OF SECURITIES IN CONNECTION WITH A SUBSCRIPTION AGREEMENT

Documents and forms, **App R2**

LETTER FROM NOMINEE HOLDERS TO BENEFICIAL OWNERS

Tender offer document, **App B6**

LETTER OF INTENT

Negotiated Acquisition Transactions (this index)

LETTER TO BROKERS AND OTHER NOMINEE HOLDERS

Tender offer document, **App B5**

LETTER TO CUSTOMERS REGARDING MERGER

Annotated acquisition agreements, **App F12**

LETTER TO EMPLOYEES REGARDING MERGER

Annotated acquisition agreements, **App F11**

LETTER TO STOCKHOLDERS AS TO ISSUANCE OF SHARES IN CONNECTION WITH PROPOSED MERGER AND CONSOLIDATION

Documents and forms, **App O14**

LETTER TO STOCKHOLDERS AS TO PROPOSED MERGER AND CONSOLIDATION

Documents and forms, **App O13**

LEVERAGED ACQUISITIONS

Generally, **6:1**

Build-up transaction, **6:4**

Federal securities law, **6:20**

Financing the transaction

Generally, **6:5**

Equity investors, **6:8**

Funding obligations, **6:9**

Senior debt, **6:6**

Subordinated debt, **6:7**

Going private transactions

Generally, **6:22**

Compliance and disclosure interpretations, **6:23**

Legal concerns

Generally, **6:10**

Fairness procedures

Generally, **6:14**

Appraisals, **6:16**

Disinterested negotiation, **6:18**

Fairness opinion, **6:15**

Independent review, **6:19**

Majority-minority provision, **6:17**

Federal securities law, **6:20**

Fraudulent conveyance attacks, **6:12, 6:13**

State law, **6:11**

Tax consequences, **6:21**

Nature of buyout, **6:2**

Reasons for buyout, **6:3**

LICENSES

- Negotiated acquisition transactions (asset purchase)
- Software licensing, technology asset purchase agreement with, **App F57**
- Wireless licenses, **App F58**

LIMITED LIABILITY COMPANIES

- Corporation acquiring LLC, **App F17.50**
- Hart-Scott-Rodino antitrust improvements, **7:49**
- Health care industry, **9:30**
- Merger, information technology industry, **App F43.170**
- Negotiated acquisition transactions
 - Forward triangular merger of target corporation into limited liability company subsidiary of acquirer, **App F17**
 - Merger agreement between limited liability company and corporation, **App F31**
 - Merger agreement for limited liability companies contribution agreement and plan of reorganization and merger, **App F40**
 - Requirements, **3:62**
 - Reverse merger into, agreement and plan of merger for, **App F22**
- Preferred stock, exchange of, acquisition, **App F93.30**
- Tag-along, drag-along investor rights agreement for LLC joint venture, **App N4**

LIMITED PARTNERSHIPS

- Fiduciary duty, business judgment rule, **2:12**

LIQUIDATION OF TARGET COMPANY

- Fairness opinion, merger, **App Q3**

LIQUIDATION PROXY

- Negotiated acquisition documents, **App F95**

LOCK-UP AGREEMENTS

- Negotiated Acquisition Transactions (this index)

LOCK-UP OPTIONS

- Board of directors, business judgment rule, **2:23 to 2:28**
- Negotiated acquisition transactions, “lock up” provisions, **3:133**

LOCK-UP PENALTY

- Negotiated acquisition transactions, **App F4**

MAIL AND MAILINGS

- Proxy contest rules, mailings and shareholder lists, Rule 14a-6, **4:19**

MANAGED CARE ORGANIZATIONS

- HMO contract for physician services, **App S2**
- Regulated markets, health care industry, **9:28, 9:29**

MARYLAND

- Negotiated acquisition transactions, Maryland corporation acquiring Maryland real estate investment trust, **App F103**

MASTER SEPARATION AGREEMENT

- Generally, **App M16**

MEDIA COMPANIES

- Negotiated acquisition transactions, dual stock merger with reclassification/conversion merger, **App F104**

MEDICAL SERVICES COMPANY

- Negotiated acquisition transactions
 - Purchase of assets, **App F52**
 - Stock acquisition, **App F76**

MERGER

- Agreement
 - Generally, **App F34, App F43.140**
 - Alaska and Washington companies, **App K2**
 - Plan of, **App F43.60, App F43.75, App F43.140**
 - Reverse Merger, Followed by upstream Merger with target having multiple classes of Common Stock, **App F43.200**
- Alaska and Washington companies, agreement, **App K2**
- Antitrust Law (this index)
- Assessment guidelines
 - Generally, **App 15A**
 - United Kingdom merger guidance, **8:9**
- Bank and holding company
 - Liability and financial milestone escrow, **App F43.85**
 - Statutory merger agreement—bank holding companies with stock-of-cash election, **App F43.88**
 - Subsidiary statutory mergers, **App F43.80**
- Bank holding company merger, **App F36**
- Broker-dealers, registration exemption, related activities, **3:115**
- Canada (this index)
- Canadian model timing agreement for merger reviews, **8:14.50**
- Cash and stock
 - Acquiring company merges subsidiary software operations into target company, **App F27.50**
- Class A and Class B stock, **App F35**
- Compliance and disclosure interpretations on tender offers and mergers, **App 20A**
- Consent orders, **9:31.50**
- Consolidation, operations, new company, **App F43.120**
- Dual stock merger with reclassification/conversion merger, **App F104**

MERGER—Cont'd

- Escrow, bank and holding company and merger with liability and financial milestone, **App F43.85**
- Fairness opinion for merger, **App Q1**
- Federal Trade Commission (this index)
- Foreign companies, acquisitions involving, **8:21**
- Health Care Industry (this index)
- Holding company structure from consolidation of two public companies, **App F37**
- Horizontal mergers, guidelines for public comment (released April 20, 2010), **App 10H**
- International Competition Network (ICN) (this index)
- Investigations (this index)
- Letter to customers regarding, **App F12**
- Letter to employees regarding, **App F11**
- Liquidation of target company, fairness opinion, **App Q3**
- M&A At A Glance, **App 16A**
- Maryland corporation acquiring Maryland real estate investment trust, **App F103**
- Media companies, dual stock merger with reclassification/conversion merger, **App F104**
- Merger/conversion/exchange agreement between U.S., Hong Kong and Cayman Island companies with earn out provision, **App V8**
- Merger Remedies Guide, **App 11A**
- Negotiated Acquisition Transactions (this index)
- Oil and gas, Corporation LLC merger, **App F43.110**
- Oil and Gas Exploration Corporation, **App F43.100**
- Particular provisions in consolidation and merger agreements
 - Generally, **App G1**
 - Sample independent director standards, **App G1.50**
- Partnership interest merger agreement, **App F38**
- Pipe financing, SPAC merger with, **App F28.60**
- Plans and agreement of reorganization, Rolli, Inc., **App F107**
- Post closing lock-up agreement, **App F105**
- Premerger notification program. Hart-Scott-Rodino Antitrust Provisions (this index)
- Public company, spin off to, **App F43.130**
- Real estate investment trust merger into operation partnership, **App F43.90**
- Real estate partnerships followed by parent company merger, **App F43.95**
- Redemption and recapitalization followed by merger agreement, **App M11.70**
- Regulation G and merger litigation, negotiated acquisition transactions, **3:145**
- Reincorporation. Reincorporation, Documents and Forms (this index)

MERGER—Cont'd

- REIT, **App F106**
 - Reverse triangular. See Reverse Triangular Merger (this index)
 - SPAC merger with pipe financing, **App F28.60**
 - Spin-off agreement
 - Generally, **App M4.10**
 - Reverse Morris trust transaction, **App M19**
 - Spin-off agreement
 - Healthcare operations, **App M4.20**
 - Spin-off of operation into a foreign company in connection with a merger, **App V22**
 - Statutory merger agreement—bank holding companies with stock-of-cash election, **App F43.88**
 - Stock
 - Distribution of new company, **App F43.130**
 - Purchase agreement to fund merger, **App F93.20, App F93.40**
 - Subsidiary statutory mergers, bank and holding company, **App F43.80**
 - Telecommunications industry, merger agreement with asset contributions, **App F24**
 - Tender Offers (this index)
 - Termination, **App F43.70**
 - 2020 Merger Remedies Manual, **7:63**
- MERGER, REVERSE TRIANGULAR**
See Reverse Triangular Merger (this index)
- MERGER RETROSPECTIVE PROGRAM**
Generally, **7:74**
- MERGER REVIEW PROCESS REFORMS**
Federal Trade Commission statements, **App 10G**
Hart-Scott-Rodino antitrust provisions, **7:28, 7:59**
- MERGERS**
Merger retrospective program, **7:74**
- MEXICO**
Officials, meetings with, **8:16.50**
- MINUTES OF SPECIAL MEETING OF STOCKHOLDERS**
Documents and forms, **App O10**
- MISAPPROPRIATION THEORY**
Insider trading, **1:29**
- MODEL CONSENT BYLAWS FOR DELAWARE CORPORATION THAT HAVE NOT LIMITED THE ABILITY OF STOCKHOLDERS TO ACT BY WRITTEN CONSENT**
Documents and forms, **App U1**
- MORRIS TRUST**
Spin-off agreement followed by merger in a reverse Morris trust transaction, **App M19**

NASD

Rule 19b-4 under Exchange Act, proposed rule change by NASD, **App 1E**

**NATIONAL CREDIT UNION
ADMINISTRATION**

Changes in credit union operation, **9:39.40**

**NATIONAL INDUSTRIAL SECURITY
PROGRAM**

Foreign companies, acquisitions involving, **8:4.50**

**NATIONAL INDUSTRIAL SECURITY
PROGRAM OPERATING MANUAL**

Generally, **App 13B**

**NEGOTIATED ACQUISITION
TRANSACTIONS**

Generally, **3:1**

Acquiescence, contract and state corporate law concerns, **3:54**

Agreements and related documents

Generally, **3:121**

For detailed matters

see more specific entries throughout this heading

Commitment for funding acquisition, **App F98**

Conveyance, transfer and assignment of assets and assumption of obligations, **App F90**

Covenants not to sue, **3:131**

Definitive agreement

generally, **3:123**

Arbitration clauses, **3:129**

“Break up” fees, **3:134**

Conditions, **3:128**

Covenants, **3:127**

Customary provisions and considerations, **3:124 to 3:130**

“Lock up” provisions, **3:133**

Noncompetition, **3:130**

reliance on representations outside of merger agreement, **3:126**

Representations and warranties, **3:125**

“Topping” fees, **3:134**

Equity commitment letter for merger, **App F99**

Funding acquisition, form of commitment, **App F98**

Letter of intent, below

Mergers, below

Noncompete agreements, **3:130**

Termination of agreement and plan of merger, **App F100**

Agreement to acquire equity and assets of certain entities, **App F92**

Aiding and abetting claims, contract and state corporate law concerns, **3:52**

Annotated acquisition agreement, **App F10**

NEGOTIATED ACQUISITION**TRANSACTIONS—Cont’d**

Approval of merger, proxy statement, **App F53**

Asset exchange agreement, **App F55**

Asset purchase agreements

Generally, **App F63**

Assets in bankruptcy, **App F60**

Final binding offer, **App F87**

Intellectual property, serial preferred stock issued for, **App F54**

Medical services company, **App F52**

Payments due under agreement, assignment to successor of buyer, **App F65**

Provider with 80% control of seller’s equity, **App F54**

Serial preferred stock, **App F54**

Short form, **App F59**

Technology asset purchase agreement with escrow funds and licensing of software, **App F57**

Wireless licenses, **App F58**

Asset rollup, **App F64**

Asset sales

Agreement prior to bankruptcy filing, **App F86**

Purchase agreement—sale of assets and equity in operating division, **App F65.80**

Shareholder transferee tax liability, **3:6**

Attorneys’ fees. Settlement payments and attorneys’ fees, below

Back end mergers, **3:73**

Bank holding company merger, **App F36**

Bankruptcy

Generally, **3:168, App F60**

Assets acquired in bankruptcy proceeding, **3:150**

Asset sale agreement prior to bankruptcy filing, **App F86**

Bear hug letter, **App F5**

Bill of sale, **App F56**

Binding contract, terms necessary, **3:59**

Blue sky laws, **3:119, 3:120**

Break up penalty, **App F4**

Broker-dealer exemption, registration, merger related activities, **3:115**

Bump-up exclusion in directors’ and officers’ insurance, **3:147**

Business combinations, errors in documents, **3:53**

Cases

Bankruptcy, **3:168**

Tax court, **3:155**

Cash going private offer to purchase, **App F46**

Cash merger agreement for software companies, **App F87**

Change of control agreement, **3:135**

Change of control bonus, contract and state corporate law concerns, **3:68**

NEGOTIATED ACQUISITION

TRANSACTIONS—Cont'd

- Class A and Class B stock, merger with, **App F35**
- Closed corporation, stock purchase agreement, **App F78**
- Closely held business, sale, **3:120**
- Collateral estoppel, **3:56**
- Commitment for funding acquisition, form, **App F98**
- Confidentiality agreements
 - “Don’t Ask, Don’t Waive” provisions in confidentiality agreements, **3:72**
 - Financing source, **App F7**
 - Non-disclosure agreement, **App F8**
 - Purchaser/seller, **App F6**
- Consideration, right to certain type of consideration following merger, **3:61**
- Contingent sale agreement, **App F77**
- Contract and state corporate law concerns
 - Generally, **3:28**
 - Accounting implications of change of control bonus, **3:68**
 - Acquiescence, doctrine of, **3:54**
 - Aiding and abetting claims, **3:52**
 - Binding contract, terms necessary, **3:59**
 - Board of directors responsibility, **3:30**
 - Choice of law, **3:46**
 - Consideration, right to certain type of consideration following merger, **3:61**
 - Controlling interest, **3:41**
 - “De facto” merger doctrine, **3:40**
 - Defective corporate acts, judicial ratification, **3:78**
 - Delaware appraisal rights statute, 2018 amendments, **3:32**
 - Demand requirements, **3:64**
 - Derivative vs. non-derivative claims, **3:49**
 - Discovery issues, **3:42 to 3:45**
 - Discrepancy between merger agreement and articles of incorporation, **3:51**
 - Dissenters’ rights of appraisal, **3:31**
 - “Don’t Ask, Don’t Waive” provisions in confidentiality agreements, **3:72**
 - Drafting concerns, **3:77**
 - Earnout provisions, **3:60**
 - Errors in business combination documents, **3:53**
 - Fairness opinions, **3:47**
 - Golden parachute agreements, change in control, **3:63**
 - Indemnification provisions in merger agreements, **3:70**
 - Inspection of corporate records, **3:48**
 - Judicial notice, **3:65**
 - Judicial ratification, defective corporate acts, **3:78**

NEGOTIATED ACQUISITION

TRANSACTIONS—Cont'd

- Contract and state corporate law concerns
 - Cont’d
 - Liabilities of the acquired entity, **3:29**
 - Limited liability company requirements, **3:62**
 - Limited stockholder rights, **3:66**
 - Material adverse concerns, **3:79**
 - Merger requirements, **3:62**
 - Post-merger remedies under state law, **3:69**
 - Right of first refusal, **3:39**
 - Sandbagging, merger agreement, **3:81**
 - Shareholder vote, **3:31**
 - Standing, **3:50, 3:55**
 - Stock options, **3:57**
 - Termination provisions, merger agreement, **3:80**
 - 2000, decisions issues prior, **3:33**
 - 2000-2009, decisions issues during, **3:34**
 - 2010-2016, decisions issues since, **3:35**
 - 2017-2020, decisions issues, **3:36**
 - 2021 and 2025, decisions issues, **3:37**
 - 2026, decisions issues, **3:38**
- Controlling provider, asset purchase agreements, **App F54**
- Conversion of stock issues, **3:139**
- Conveyance, assignment and assumption agreement, **App F90**
- Curing defects in stock issuances under Delaware law, **3:140**
- Damages, merger with liquidated damages provisions, **App F25**
- Debt, guarantee in merger agreement, **App F91**
- Deduction of merger costs, **3:152**
- Defective corporate acts, judicial ratification, **3:78**
- Definitive agreement. Agreements and related documents, above
- Delaware Corporation (this index)
- Demand requirements, **3:64**
- Developments in Delaware law to reduce lawsuits in mergers, **3:2**
- Dissolved corporation, attempt to revive, **3:16**
- Documents and forms. See entries throughout this heading
- “Don’t Ask, Don’t Waive” provisions in confidentiality agreements, **3:72**
- Double merger rule, **3:7**
- “Drag along” agreements, **App F72**
- Earnout agreements, provisions, **3:60**
- Employment, redemption and exchange agreement between an acquirer and executive of a target company, **App F93**
- Employment agreement, **App F93**
- Equity commitment letter for merger, **App F99**
- Equity line of credit, **3:27**

NEGOTIATED ACQUISITION TRANSACTIONS—Cont'd

Equity purchase agreement, **App F83 et seq.**
 Errors in business combination documents, **3:53**
 Escrow agreement in a merger, **App F30, App F89**
 Exchange agreements, **App F42**
 Exclusivity letter/merger termination fee agreement, **App F70**
 Failure to prosecute rule, **3:142**
 Final binding offer, stock and asset purchase agreement, **App F87**
 Forms of negotiated acquisition transactions, **3:3 to 3:27**
 Forward merger agreement, **App F13, F13.10**
 Forward triangular merger of target corporation into limited liability company subsidiary of acquirer, **App F17**
 “Frequent filer” status, tactics of plaintiff’s bar, **3:148**
 Future, unspecified acquisitions, S-4 for registering shares for, **App F101**
 Going private merger agreement of 2022, **App F47**
 Going private merger with reverse stock split, **App F44**
 Going private offer to purchase, cash, **App F46**
 Going private share exchange plan management cash out of public shareholders, **App F45**
 Golden parachute agreements, change in control, **3:63**
 Golden parachute compensation rules, **3:112**
 Guarantee of debt in merger agreement, **App F91**
 Indemnification provisions in merger agreements, **3:70**
 Initial inquiry, **App F1**
 Insurance for representations and warranties, **3:71**
 Intellectual property, serial preferred stock issued for, **App F54**
 Intellectual property rights agreement, **App F85**
 Interest netting, **3:154**
 Internet, state corporation merger filing forms and fees URL directory, **App 6**
 Investment banks, **3:67**
 IRS guidance regarding “B” reorganizations, **3:9**
 IRS legal advice memorandum as to timing of certain acquisition deductions, **App 14B**
 Joint proxy statement/prospectus, approval of merger, **App F48**
 Judicial doctrines affecting reorganizations
 Generally, **3:10**
 Business purpose, **3:14**
 Continuity of business, **3:13**
 Continuity of interest, **3:12**
 Step transactions, **3:11**
 Judicial notice, **3:65**

NEGOTIATED ACQUISITION TRANSACTIONS—Cont'd

Judicial ratification, defective corporate acts, **3:78**
 Letter of intent
 Generally, **App F2**
 Agreements and related documents, **3:122**
 Lock-up and break up penalty, acquisition and spin-off with, **App F4**
 Television facilities, letter of intent to acquire, **App F3**
 Limited liability companies
 Forward triangular merger of target corporation into limited liability company subsidiary of acquirer, **App F17**
 Merger agreement for limited liability companies contribution agreement and plan of reorganization and merger, **App F40**
 Requirements, **3:62**
 Reverse merger into, agreement and plan of merger for, **App F22**
 Limited stockholder rights, **3:66**
 Liquidation proxy, **App F95**
 Lock-up agreement
 Conditional stock purchase and option agreement, **App F67**
 Form of voting and lock-up agreement, **App F69**
 Mergers
 see other lines in this heading
 Short form lock up agreement in merger, **App F74**
 Stock purchase agreement with agreement not to tender shares and proxy grant, **App F66**
 Voting, lock-up and voting agreement, **App F68, App F69**
 Lock-up penalty, **App F4**
 Material adverse concerns, **3:79**
 Meaningful assessment of claims absent, tactics of plaintiff’s bar, **3:148**
 Medical services company
 Purchase of assets, **App F52**
 Stock acquisition, acquisition agreement, **App F76**
 Merger agreements
 See also more specific entries
 Back end mergers with non-affiliated acquirers, **3:73**
 Cash merger agreement for software companies, **App F87**
 Class A and Class B stock, merger with, **App F35**
 Corporation and limited liability, agreement between, **App F31**
 “Drag along” agreements, **App F72**

NEGOTIATED ACQUISITION

TRANSACTIONS—Cont'd

- Merger agreements—Cont'd
 - Dual stock merger with reclassification/
conversion merger, **App F104**
 - Equity commitment letter, **App F99**
 - Forward merger agreement, **App F13 et seq.**
 - Limited liability company and corporation,
agreement between, **App F31**
 - Limited partnership merger agreement, **App F33**
 - Lock-up agreement, above
 - Maryland corporation acquiring Maryland real
estate investment trust, **App F103**
 - Partnership interest merger agreement, **App F38**
 - Plan and agreement for
 - generally, **App F15**
 - Cash merger agreement for software
companies, **App F87**
 - Plan and agreement of, Purchase, **App F16**
 - Post closing lock-up, **App F105**
 - Redemption and recapitalization followed by
merger agreement, **App M11.70**
 - Restricted stock used to acquire target, **App F39**
 - Sandbagging, **3:81**
 - SPAC, **App F28**
 - Squeeze out mergers, **3:74**
 - Termination provisions, **3:80**
 - Top over option provision, **App F29**
- Merger litigation, Regulation G and, **3:145**
- Merger related activities, broker-dealers, registra-
tion exemption, **3:115**
- Merger termination fee agreement/exclusivity
letter, documents and forms, **App F70**
- New listing requirements for reverse merger
companies, **3:19**
- Noncompete agreements, **3:130**
- Non-contravention in merger agreement, consent
to and, **App F50**
- Non-disclosure agreement, **App F8**
- Nondisclosure and noncircumvent agreement,
App F9
- Notes
 - Agreement to acquire equity and assets of
certain entities, **App F92**
 - Reverse merger into public shell with private
placement for notes, **App F19**
- Notice
 - FINRA notice requirements for corporate
related actions, **3:111**
 - Judicial notice, **3:65**
- Option provisions in merger agreements, **App F29**
- Partnership interest merger agreement, **App F38**

NEGOTIATED ACQUISITION

TRANSACTIONS—Cont'd

- Partnership interest sale agreement, **App F79**
- Plan for reorganization through merger agree-
ment, **App F49**
- Plan of dissolution and complete liquidation,
App F94
- Post-merger issues
 - Generally. Settlement payments and attorneys'
fees, below
 - Additional shares, registration, **3:149**
 - Assets acquired in bankruptcy proceedings,
3:150
 - Bump-up exclusion in directors' and officers'
insurance, **3:147**
 - Settlement agreements, below
 - State law remedies, **3:69**
- Preferred stock purchase
 - Financing of take-over bid, **App F77**
 - Share exchange agreements, buyer issues new
class of preferred stock to acquire 100%
of target company's common stock, **App F41**
- Processing of reorganization events, **3:167**
- Proposed NASDAQ changes, **3:25**
- Prospectus
 - Approval of merger, prospectus/joint proxy
statement, **App F48**
 - S-4 for registering shares for future, unspeci-
fied acquisitions, **App F101**
 - S-4 proxy prospectus, **App F102**
- Proxy
 - Prospectus/joint proxy statement, approval of
merger, **App F48**
 - Reverse triangular merger, U.S. company
acquiring Panama company, **App F62**
 - Securities law aspects, proxy rules, **3:84**
 - Target company shareholders, material
explaining impact of merger, **App F61**
- Purchase agreement and plan of merger, **App F16**
- Purchase of assets. Asset purchase, above
- Recapitalization agreement, **App M11.71**
- Registering shares for future, unspecified acquisi-
tions, Form S-4, **App F101**
- Regulation G and merger litigation, **3:145**
- Regulation S Exchange Agreement, **App F42.50**
- Reorganization, limited liability companies con-
tribution agreement and plan of reorganiza-
tion and merger, merger agreement for, **App F40**
- Reverse merger
 - Agreement for public shell, **App F18**
 - Escrow, reverse merger with part of merger
consideration held in escrow until satis-
faction of conditions, **App F21**

NEGOTIATED ACQUISITION TRANSACTIONS—Cont'd

- Reverse merger—Cont'd
 - Limited liability company, agreement and plan of merger for reverse merger into, **App F22**
 - New listing requirements, FINRA, **3:19**
 - Reincorporation by merger, **App L4**
 - Rule 144, **3:20**
 - SEC guidance on reporting, **3:114**
 - Shell companies, **3:17**
 - Shell company, below
 - Triangular merger. See Reverse Triangular Merger (this index)
- Reverse Morris Trust transactions, **3:26**
- Reverse triangular merger. See Reverse Triangular Merger (this index)
- Roll-up transactions, stock purchase agreements, **App F82**
- Rule 241 and 148, business combinations, **3:117**
- Sale and liquidations, **3:15**
- Sandbagging, merger agreement, **3:81**
- Sarbanes-Oxley Act, merger with Sarbanes-Oxley provisions, **App F25**
- Say-on-pay case law, **3:113**
- Say-on-pay compensation rules, **3:112**
- Scienter and Section 16(b) requirements, **3:91**
- SEC guidance and rules on SPACs, **3:23**
- Section 16(b) requirements and scienter, **3:91**
- Securities law aspects
 - Generally, **3:83, 3:85**
 - Blue sky laws, **3:119, 3:120**
 - Compensation rules, **3:112**
 - Exchange Act considerations
 - generally, **3:85**
 - Affirmative disclosure duty, **3:89**
 - Disclosure, **3:86 to 3:89**
 - Financial information, disclosure, **3:87**
 - Merger negotiations and restructuring plans, disclosure, **3:86**
 - Publicity
 - Financial information, disclosure, **3:87**
 - Merger negotiations and restructuring plans, disclosure, **3:86**
 - Proper response to inquiries, **3:88**
 - Response to inquiries, **3:88**
 - Scienter and Section 16(b) requirements, **3:91**
 - Section 16(b) requirements Scienter and, **3:91**
 - “Short swing” profits, **3:92**
 - Financial disclosures, SEC adopts reforms, **3:116**
 - Form S-4, 1933 Act considerations, **3:96**
 - Golden parachute compensation rules, **3:112**
 - Hybrid securities, **3:104 to 3:106**

NEGOTIATED ACQUISITION TRANSACTIONS—Cont'd

- Securities law aspects—Cont'd
 - Investment bankers, **3:110**
 - 1933 Act considerations
 - generally, **3:93**
 - Disclosure, **3:97**
 - Form S-4, **3:96**
 - Resale, **3:95**
 - Rule 145, **3:94, 3:95**
 - Proposed changes, **3:103**
 - Proxy rules, **3:84**
 - Registration, acquisitions exempt from, **3:98 to 3:102**
 - Regulation of merger brokers/finders, **3:118**
 - Say-on-pay case law, **3:113**
 - Say-on-pay compensation rules, **3:112**
 - Scienter and Section 16(b) requirements, **3:91**
 - SEC guidance on reporting reverse mergers and similar transactions, **3:114**
 - Shareholder proposals, unbundling, **3:90**
 - State securities laws, **3:120**
 - Statute of limitations, **3:109**
 - Stock options, **3:108**
 - Tracking or letter stock, **3:107**
- Serial preferred stock, asset purchase agreements, **App F54**
- Settlement agreements
 - Class Actions (this index)
 - Disclosure-only settlements, **3:144**
 - Litigation, **3:143**
- Settlement payments and attorneys' fees
 - Generally, **3:137**
 - Contribution by co-defendants, **3:138**
 - Conversion of stock issues, **3:139**
 - Curing defects in stock issuances under Delaware law, **3:140**
 - Failure to prosecute rule, **3:142**
 - Post-merger issues, generally, **3:137 et seq.**
- S-4 for registering shares for future, unspecified acquisitions, **App F101**
- S-4 proxy prospectus, **App F102**
- Share exchange agreements
 - Buyer issues new class of preferred stock to acquire 100% of target company's common stock, **App F41**
 - Where buyer issues new class of preferred stock to acquire 100% of target company's common stock, **App F41**
- Shareholders, proposals, unbundling, **3:90**
- Shell companies
 - Generally, **App 26**
 - Private placement for notes following reverse merger into public shell, **App F19**
 - Public shell, reverse merger, **App F18, App F19**

NEGOTIATED ACQUISITION**TRANSACTIONS—Cont'd**

- Shell companies—Cont'd
 - Reverse merger, **3:17**
- Short form asset purchase agreement, **App F59**
- SPAC merger agreements, **App F28**
- SPACs and forward purchase agreements, **3:24**
- Special purpose corporation, **3:21**
 - Forward purchase agreements, **3:24**
 - Litigation, **3:22**
 - SEC guidance and rules, **3:23**
- Spin-off with lock-up and break up penalty, acquisition and, **App F4**
- Squeeze out mergers, **3:74**
- Standing, contract and state corporate law concerns, **3:50, 3:55**
- State corporation merger filing forms and fees URL directory, **App 6**
- State law concerns. Contract and state corporate law concerns, above
- Statute of limitations, **3:141**
- Stock acquisition
 - Generally, **App F75**
 - Medical services company, **App F76**
 - Software corporation with earnout provision, **App F48.50**
 - Stock purchase agreements, below
- Stockholders
 - Limited stockholder rights, **3:66**
 - Purchase agreement, cash, stock, and note consideration for multiple banking subsidiaries, **App F80**
 - Voting agreement in a merger, form, **App F71**
- Stock options, **3:57**
- Stock purchase agreements
 - Closed corporation, **App F78**
 - Equity purchase agreement, **App F83 et seq.**
 - Final binding offer, **App F87**
 - Multiple banking subsidiaries, cash, stock, and note consideration for, **App F80**
 - Preferred stock purchase agreement, take-over bid financing, **App F77**
 - Rollup transactions, **App F82**
 - Stock cross purchase agreement, **App F80**
 - U.S. company acquiring European company stock for cash and stock with earn out, drag along and tag along provisions, **App F82**
- Stock splits, **3:58**
- Super 8K for shell company acquisitions, **App F32**
- Tactics of plaintiff's bar, **3:148**
- Take-over bid financing, purchase agreement for preferred stock, **App F77**
- Target company shareholders, proxy material explaining impact of merger to, **App F61**

NEGOTIATED ACQUISITION**TRANSACTIONS—Cont'd**

- Tax Cuts and Jobs Act, impact on mergers, **3:8**
 - Tax issues
 - Division of company, tax-free. Tax-Free (this index)
 - Inflation Reduction Act of 2022, **3:153**
 - Reorganizations, tax-free. Tax-Free (this index)
 - Taxable transactions, **3:4, 3:6**
 - Tax court cases, **3:155**
 - Tax Cuts and Jobs Act, impact on mergers, **3:8**
 - Tax litigation issues, **3:151**
 - Technology asset purchase agreement with escrow funds and licensing of software, **App F57**
 - Television facilities, letter of intent to acquire, **App F3**
 - Termination of agreement and plan of merger, **App F100**
 - Termination provisions, merger agreement, **3:80**
 - Tracking stock merger agreement, **App F23**
 - Transferee tax liability of shareholders and asset sales, **3:6**
 - 2022 going private merger agreement, **App F47**
 - Unbundling shareholder proposals, **3:90**
 - Voting
 - Agreements, generally, **App F68, App F69, App F71**
 - Trust agreement, **App F73**
 - Wireless licenses (asset purchase), **App F58**
 - Written consent agreement, **App F51**
- NET OPERATING LOSS**
- Poison pill agreement, **App D1.7**
- NEVADA**
- Acquisition of Nevada company by Chinese company in share exchange, **App V7**
 - Reverse merger and reincorporation by merger, **App L4**
- NEW HAMPSHIRE**
- Anti-takeover provisions, **7:86**
- NEW JERSEY**
- Reverse merger and reincorporation by merger, **App L4**
- NEW YORK AGREEMENTS FOR MERGER**
- Plan of consideration, **App J2**
 - Plan of merger, **App J1**
 - Statutory merger into a Delaware corporation, **App J3**
- NON-COMPETE AGREEMENTS**
- Negotiated acquisition transactions, **3:130, 3:132**

NON-CONTRAVENTION IN MERGER AGREEMENT

Negotiated acquisition transactions
Consent to and non-contravention, **App F50**

NONDISCLOSURE AGREEMENT

Negotiated acquisition transactions, **App F8**

NONDISCLOSURE AND NONCIRCUMVENT AGREEMENT

Negotiated acquisition transactions, **App F9**

NOTES

Negotiated acquisition transactions
Agreement to acquire equity and assets of certain entities, **App F92**
Reverse merger into public shell with private placement for notes, **App F19**
Section 338(d)(3) merger with Section 338(h)(10) election between California corporations and Delaware with holdback escrow in form of note with guaranty, **App F30**

NOTICE

Advance notice bylaws, **4:46**
Anti-trust laws, notification and report form for certain mergers and acquisitions, **App 5E**
Hart-Scott-Rodino antitrust improvements
2024 amendments to premerger notification form, **7:11**
Withdrawal of premerger notification filing, **7:25**
Negotiated acquisition transactions
Judicial notice, **3:65**
Premerger notification program. Hart-Scott-Rodino Antitrust Provisions (this index)
Special meetings
Directors, documents and forms, **App P1**
Stockholders, documents and forms, **App O1**
Stockholders of plan of merger and of option of exchange stock, documents and forms, **App O15**

OPTIONS

Negotiated acquisition transactions, top over option, **App F29**

OWNERSHIP REPORTS AND TRADING BY OFFICERS, DIRECTORS AND PRINCIPAL SECURITY HOLDERS

Exchange Act releases, **App 1A, App 1B**

PAGERS

Telecommunications industry, **9:43.50**

PARTICULAR PROVISIONS IN CONSOLIDATION AND MERGER AGREEMENTS

Documents and forms, **App G1**

PARTICULAR PROVISIONS IN CONSOLIDATION AND MERGER AGREEMENTS—Cont'd

Sample independent director standards, **App G1.50**

PARTNERSHIP INTEREST MERGER AGREEMENT

Negotiated acquisition transactions, **App F38**

PARTNERSHIP INTEREST SALE AGREEMENT

Negotiated acquisition transactions, **App F79**

PENALTIES

Antitrust Criminal Penalty Enhancement and Reform Act of 2004, **9:5.50**
Insider trading, **1:33**
Negotiated acquisition transactions, letter of intent—acquisition and spin-off with lock-up and break up penalty, **App F4**

PENNSYLVANIA

Anti-takeover provisions, Pennsylvania statutes, **7:84**

PERFORMANCE

Canadian merger review performance report, **8:15**

PETROLEUM INDUSTRY MERGERS

Regulated markets, **9:51.50**

PHARMACEUTICAL INDUSTRY

Agreement and plan of reorganization by and among Pharmaceutical Holdings, Inc., Pharmaceuticals Merger Sub Inc. and Pharmaceuticals Inc., **App S5**
Exclusive patent rights in the pharmaceutical industry, amendments to premerger notification rules related to transfer of, **7:35**
Mergers, development of new approaches to, **9:8.03**
Regulated markets, health care industry, **9:31**

PHYSICIAN NETWORKS

FTC/Department of Justice statements regarding health care services and providers, **App 4I, App 4J**
HMO contract for physician services, **App S2**
Independent physician association group contract, **App S3**
Organizer agreement, **App S4**
Physician network agreements, messenger model, **App S1**
Policy statements, physician network joint ventures, **9:24**

PLAN FOR REORGANIZATION THROUGH MERGER AGREEMENT

Negotiated acquisition documents, **App F49**

PLAN OF DISSOLUTION AND COMPLETE LIQUIDATION

Negotiated acquisition transactions, **App F94**

POISON PILL

Rights plans, **App D1.5**

POISON PILLS

Board of directors, business judgment rule, **2:22**

Net operating loss poison pill agreement, **App D1.7**

Tender offers, defending against

Advance planning, stealth poison pill, **5:77**

Canadian poison pills, **5:80**

French poison pill warrants, **5:81**

POISON PUTS

Change of control provisions in indentures, defending against tender offers, **5:82**

POST-MERGER ISSUES

See Negotiated Acquisition Transactions (this index)

PREFERRED STOCK PURCHASE

Negotiated acquisition transactions, **App F77**

Share exchange agreements, buyer issues new class of preferred stock to acquire 100% of target company's common stock, **App F41**

PREMERGER NOTIFICATION PROGRAM

Hart-Scott-Rodino Antitrust Provisions (this index)

PRIVATE EQUITY FUND ACQUISITIONS

Board of directors and Revlon auction process, **2:18**

PRIVATE PLACEMENT

Public shell company, private placement for notes following reverse merger, **App F19**

PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

Acquisition of initial interest, **1:93, 1:97**

Controlling person liability, **1:94**

Interplay between PSLRA and proxy antifraud provision, **1:95**

Pleading requirements, **1:96**

Proxy antifraud, **1:95**

Securities Litigation Uniform Standards Act of 1998, **1:97**

PROMISSORY NOTES

Agreement to acquire equity and assets of certain entities, **App F92**

PROPOSAL OF MERGER RATHER THAN CONSOLIDATION

Documents and forms, **App O2**

PROSPECTUS

Approval of merger, prospectus/joint proxy statement, **App F48**

Exchange offer prospectus for merger, **App F97**

PROTOCOL FOR COORDINATION IN MERGER INVESTIGATIONS BETWEEN THE FEDERAL ENFORCEMENT AGENCIES AND STATE ATTORNEYS GENERAL

Documents and forms, **App 8A**

PROXY ANTIFRAUD

Private Securities Litigation Reform Act of 1995, **1:95**

PROXY CONTESTS

Generally, **4:1**

Accountants, **4:11**

Advance notice bylaws, **4:46**

Appraisers, **4:12**

Board of directors, business judgment rule, **2:21**

Brokers, **4:10**

Case law, **4:34**

Change in law, state law concerns, **4:56**

Compliance and Disclosure Interpretations (C&DIs), **4:29**

Consent solicitations, state law concerns, **4:54**

Corporate documents, Delaware Section 220 demands for, **4:33**

Defensive measures against proxy contest. Election contests, below

Demand for shareholders list, **App C1**

Disclosure obligations

Case law, **4:34**

Public communications by electronic means, internet and e-mail, **4:32**

Schedule 14A, **4:31**

Election contests

Generally, **4:40**

Defensive measures against proxy contest generally, **4:41**

Classified board of directors, **4:42**

Cumulative voting, **4:43**

Nominating, qualification and removal procedures, **4:44**

Post-election measures, **4:45**

Rules for inspectors of election, **App C3**

Universal proxy rule, **4:47**

Enforceability of oral settlement, state law concerns, **4:57**

ERISA fiduciary duties, **4:30**

Expertise important to the proxy contest, generally, **4:2 to 4:13**

Inspector of elections, **4:7**

Insurgents, strategic considerations, **4:59**

PROXY CONTESTS—Cont'd

Internet and e-mail, disclosure obligations of public communications by electronic means, **4:32**

Investigators, **4:13**

Legal counsel, **4:3**

Litigation issues under Section 14(a)
 Generally, **4:35**
 Materiality, **4:39**
 Private rights of action, **4:36**
 Standing, **4:38**
 Statute of repose, **4:37**

Negotiated acquisition transactions
 Reverse triangular merger, proxy for U.S. company acquiring Panama company, **App F62**
 Securities law aspects, proxy rules, **3:84**

Nominees, **4:4**

Oral settlement enforceability, state law concerns, **4:57**

Printers, **4:8**

Private rights of action, **4:36**

Public communications by electronic means, disclosure obligations, **4:32**

Public relations firm, **4:6**

Reimbursement of expenses, state law concerns, **4:53**

Removal of target company's board of directors, **App C5**

Repose, statute of, **4:37**

Reverse triangular merger, proxy for U.S. company acquiring Panama company, **App F62**

Rules
 Generally, **4:14**
 Alternatives to shareholder proposals, **4:23**
 Anti-fraud provisions, Rule 14a-9, **4:25**
 Conflict between proxy rules and tender offer rules. Tender offers, below
 Definitions, Rule 14a-1, **4:15**
 Exemptions, Rule 14a-2, **4:16**
 Filing obligations and fees, Rule 14a-6, **4:19**
 Information to be furnished to security holders, Rule 14a-3, **4:17**
 Inspectors of election, **App C3**
 Mailings and shareholder lists, Rule 14a-7, **4:21**
 Requirements as to proxy, Rule 14a-4, **4:18**
 Section 14(c), **4:28**
 Shareholder proposals, Rule 14a-8, **4:22**
 Shareholder proposals, 2018 SEC Guidance on, **4:24**
 Solicitation before furnishing a proxy statement, Rule 14a-12, **4:26**

PROXY CONTESTS—Cont'd

Rules—Cont'd
 Solicitation in support of director nominees other than registrant's nominees, Rule 14a-19, **4:27**
 Tender offer rules, conflict between proxy rules and. Tender offers, below
 Shareholder proposals, 2018 SEC Guidance on, **4:24**
 Solicitation and solicitors
 Generally, **4:5**
 Consent solicitations, **4:54**
 Rule 14a-12, solicitation before furnishing a proxy statement, **4:26**
 Rule 14a-19, solicitation in support of director nominees other than registrant's nominees, **4:27**
 Soliciting agent agreement, **App C2**
 Tender offers, shareholders votes, solicitation of, **4:64**

State law concerns
 Generally, **4:48**
 Change in law, **4:56**
 Consent solicitations, **4:54**
 Oral settlement, enforceability, **4:57**
 Reimbursement of expenses, **4:53**
 Stockholder lists, **4:49**
 Voting of shares
 generally, **4:50**
 Equitable right to vote, **4:51**
 Impact of stock loan program, **4:52**
 Vote-buying, **4:55**

Statute of repose, **4:37**

Stockholder lists, state law concerns, **4:49**

Strategic considerations
 Generally, **4:58**
 Insurgents, **4:59**
 Management, **4:60**

Tabulators, **4:9**

Tender offers
 Choosing between proxy contest and tender offers, **4:61**
 Conflict between proxy rules and tender offer rules
 generally, **4:62**
 Letter of transmittal as soliciting material, **4:63**
 Shareholders votes, solicitation of, **4:64**

Universal proxy rule, **4:47**

Voting of shares
 Irrevocable proxy and voting agreement, **App O16**
 Proxy to vote at stockholders' meeting, form, **App O5**
 State law concerns, above

PROXY STATEMENT

- Approval of merger, **App F53**
- Documents and forms, **App F48**
- Cash merger, **App I10**
- Control share act proxy statement to approve merger, documents and forms, **App T1**
- Proxy to vote at stockholders' meeting, documents and forms, **App O5**

PUBLIC COMMENT

- Horizontal mergers, guidelines for public comment (released April 20, 2010), **App 10H**

PUBLIC COMMUNICATIONS BY ELECTRONIC MEANS, INTERNET AND E-MAIL

- Proxy contests, disclosure obligations, **4:32**

PUBLIC RELATIONS FIRM

- Proxy contests, **4:6**

PUBLIC STATEMENT

- Issuance of, **App 4L**

PUBLIC UTILITIES MERGERS

- Regulated markets, **9:50**

PUBLISHED TOMBSTONE

- Offer to purchase for cash, **App B1**

PURCHASE AGREEMENT

- Sponsor of SPAC unit, **App F93.80**

PURPOSE OF MEETING, PARTICULAR STATEMENTS OF

- Documents and forms, **App O4**

RADIO HOLDING COMPANY

- Regulated markets, telecommunications industry, **9:41, 9:42**

REAL ESTATE INVESTMENT TRUSTS

- Merger into operation partnership, **App F43.90**
- Negotiated acquisition transactions, Maryland corporation acquiring Maryland real estate investment trust, **App F103**
- Timber real estate investment trust acquires general partner and limited partnership, **App F43.92**

RECAPITALIZATION AGREEMENT

- Generally, **App M11.50, App M11.71**
- Acquisition by recapitalization, **App M11**
- Merger agreement following redemption and recapitalization, **App M11.70**
- Redemption and recapitalization followed by merger agreement, **App M11.70**
- Restructure of companies, **App M11.60**

REDEMPTION

- Merger agreement following redemption and recapitalization, **App M11.70**

REFORMS TO MERGER PROCESS

- Federal Trade Commission statements, merger review process reform, **App 10G**
- Hart-Scott-Rodino antitrust provisions, merger review process, **7:28, 7:59**
- 2006 merger reforms, **7:32**

REGISTRATION

- Additional shares, post-merger issues, **3:149**
- Broker-dealers, registration exemption, **3:115**
- Legality of securities in connection with a s-4 registration statement, **App R1**
- Post-effective amendment No. 1 to Form S-8, **App S6**
- Securities law aspects, acquisitions exempt from, **3:98 to 3:102**
- Spin-off agreements, rights agreement, **App M5**

REGULATED MARKETS

- Generally, **9:1**
- Antitrust considerations, **9:8, 9:8.05, 9:36**
- Bankruptcy approved acquisitions, antitrust challenges, **9:8.05**
- Banks. See Banks (this index)
- Challenge of acquisition by federal agency
 - Generally, **9:51**
 - Absence of challenge, **9:52**
 - Federal Trade Commission v. Staples, **9:51.10**
 - 2001-2002 cases, **9:51.20**
 - 2003-2005 cases, **9:51.30**
 - 2006-2007 cases, **9:51.40**
 - 2008-2009 cases, **9:51.45**
 - 2010-2011 cases, **9:51.46**
 - 2012-2013 cases, **9:51.47**
 - 2013 cases, **9:51.48**
 - 2014-2015 cases, **9:51.49**
 - 2016-2017 cases, **9:51.49.10**
 - 2018-2019 cases, **9:51.49.20**
 - 2020 cases, **9:51.49.30**
 - 2024 cases, **9:51.49.40**
- Credit union operations, changes, **9:39.40**
- Defense. See Defense Industry Mergers (this index)
- Department of Justice review of mergers in banking industry, **9:39.50**
- Health care. See Health Care Industry (this index)
- Industries, generally, **9:51, 9:52**
- Investment advisors, acquisitions of, **9:53**
- Office of comptroller of currency, 2024 Final Policy Statement, **9:34.55**
- Petroleum industry mergers, **9:51.50**
- Pharmaceutical mergers, development of new approaches to, **9:8.03**
- Public utilities mergers, **9:50**
- Telecommunications. See Telecommunications Industry (this index)
- Transactions not pursued, **9:52.50**

REGULATION FD

Insider trading, **1:83, 1:84**

REGULATION G

Merger litigation, Regulation G and, **3:145**
State and federal regulatory concerns affecting control acquisitions, federal margin rules, **7:115**

REGULATION T

State and federal regulatory concerns affecting control acquisitions, federal margin rules, **7:113**

REGULATION U

State and federal regulatory concerns affecting control acquisitions, federal margin rules, **7:114**

REGULATION X

State and federal regulatory concerns affecting control acquisitions, federal margin rules, **7:116**

REINCORPORATION, DOCUMENTS AND FORMS

British Virgin Islands to Delaware, **App L9**
California to Delaware followed by merger, **App L8**
Delaware to Maryland, **App L2**
Delaware to Nevada, **App L3**
Delaware to Washington, **App L1**
Foreign country to Delaware, combination and merger, **App L6**
Merger. See specific lines throughout this heading
New Jersey to Nevada, reverse merger and reincorporation by merger, **App L4**
Reincorporation by merger agreement from U.S. to Canada, **App L5**
SPAC reincorporating from Cayman Islands to Delaware, **App L11**
U.S. to Canada, **App L5**

RELEASE BY TARGET SHAREHOLDER

Section 338(d)(3) merger with Section 338(h)(10) election between California corporations and Delaware with holdback escrow, **App F30**

REMEDIES

Antitrust law, **7:58**
Insider trading, disgorgement in SEC enforcement actions, **1:34**
Insider trading, disgorgement legislation, **1:35**
Merger Remedies Guide, **App 11A**
2020 Merger Remedies Manual, **7:63**

REORGANIZATION

Agreement and plan
Among Pharmaceutical Holdings, Inc., Pharmaceuticals Merger Sub Inc. and Pharmaceuticals Inc., **App S5**
Limited liability companies contribution agreement and plan of reorganization and merger, **App F40**
Delaware corporation, reorganization agreement, **App V12**
Negotiated acquisition transactions, limited liability companies contribution agreement and plan of reorganization and merger, merger agreement for, **App F40**

REPORTING

Antitrust merger investigations, **7:77**
Canadian merger reporting, **8:15, 8:16**
Foreign companies, acquisitions involving, **8:4.60**
Gun Jumping, **7:13**
Hart-Scott-Rodino antitrust improvements
2024 amendments to premerger notification form
associated instructions, **7:11**
Short-swing trading provision, **1:21**

REPRESENTATIVES

Negotiated acquisition transactions, contract and state corporate law concerns, standing of shareholder representative, **3:50**

REQUEST FOR TAX RULINGS

Documents and forms, **App R3**

RESOLUTION FOR THE BOARD OF DIRECTORS RELATING TO A SHAREHOLDER RIGHTS PLAN

Anti-takeover provisions, **App D3**

RESOLUTION OF DIRECTORS RECOMMENDING CONSOLIDATION

Documents and forms, **App P2**

RESOLUTION OF STOCKHOLDERS FOR CONSOLIDATION

Documents and forms, **App O8, App O9**
Terms of consolidation, resolution setting out, **App O9**

RESTRUCTURING

Recapitalization agreement to restructure companies, **App M11.60**
Restructuring agreements, **App M1 et seq.**
Separation and distribution agreement, **App M7.55**
Split-off agreements, **App M14**
Transactions, **7:39**

REVERSE MERGER

- Acquisitions involving foreign companies, Chinese reverse mergers, **8:11.50**
- All stock, acquisition of US corporation, **App V24**
- Foreign company and U.S. public shell company, share exchange agreement, **App V4**
- Limited liability company, agreement and plan of merger for reverse merger into, **App F22**
- New listing requirements, **3:19**
- Part of merger consideration held in escrow until satisfaction of conditions, **App F21**
- Public shell, **App F18**
- Reporting, SEC guidance, **3:114**
- Rule 144, **3:20**
- Shell companies, **3:17**
- U.S. public shell and foreign company, agreement and plan of merger, **App V5**

REVERSE STOCK SPLIT

- Negotiated acquisition transactions, going private merger with reverse stock split, **App F44**

REVERSE TRIANGULAR MERGER

- Cybersecurity company, **App I6**
- Documents and forms
 - Delaware Corporations, generally, **App I3**
- Negotiated acquisition transactions
 - Business combination, **3:18**
 - Proxy for U.S. company acquiring Panama company, **App F62**
 - Restricted stock issued to one shareholder, **App F14**

REVIEW

- Antitrust law, **7:26, 7:28, 7:29, 7:59**
- Canadian merger review performance report, **8:15**
- Canadian model timing agreement for merger reviews, **8:14.50**
- Federal Trade Commission, merger review process reforms, **App 10G**
- Hart-Scott-Rodino antitrust provisions, **7:26, 7:28, 7:29, 7:59**
- Leveraged acquisitions, independent review, **6:19**

REVLON, INC. v. MACANDREWS & FORBES HOLDINGS, INC.

- Board of directors, auction duty, **2:15**

RIGHTS OFFERS

- 2008 revisions, **5:40 to 5:45**

ROLLOVER AGREEMENT

- Generally, **App F43.65**

ROLL-UP TRANSACTIONS

- Stock purchase agreements, **App F82**

RULE 145

- C&DIs, **App 18A**

RULE 10b-5

- Insider trading. See Insider Trading (this index)

RULE 16B

- Short-swing trading provisions, Rule 16b exemptions, **1:22**

RULE 19b-4

- NASD, Rule 19b-4 under Exchange Act—proposed rule change by NASD, **App 1E**

RULE 13D

- Generally, **1:6**
- Acquisition, Rule 13d-5, **1:11**
- Amendments, Rule 13d-2, **1:8**
- Basic obligation, Rule 13d-1, **1:7**
- Beneficial ownership
 - Compliance updates, **1:16**
 - Disclosure interpretations, **1:16**
 - 1998 amendments, reporting requirements, **1:14**
 - Rule 13d-3, **1:9**
 - SEC compliance, **1:16**
 - SEC guidance, **1:16**
 - 2023 proposed amendments, reporting requirements, **1:15**
- Disclaimers, Rule 13d-4, **1:10**
- Dissemination, Rule 13d-7, **1:13**
- Exemptions, Rule 13d-6, **1:12**
- 1998 amendments to the beneficial ownership reporting requirements, **1:14**
- 2023 proposed amendments to the beneficial ownership reporting requirements, **1:15**

RULE 14d-10 CASE LAW

- Tender offers, **5:17**

RULE 14E-3

- Insider trading, **1:31**

RULES FOR INSPECTORS OF ELECTION

- Proxy contest, **App C3**

SANDBAGGING

- Merger, **3:81**

SARBANES-OXLEY ACT

- Acquisition of initial interest, **1:100**
- Negotiated acquisition transactions, merger with Sarbanes-Oxley provisions, **App F25**

SARS-COV-2

- Covid-19 Pandemic, this index

SAY-ON-PAY

- Case law, **3:113**
- Negotiated acquisition transactions, **3:112**

- SCHEDULE 14A**
SEC forms and schedules, **App 3F**
- SCHEDULE 14C**
SEC forms and schedules, **App 3G**
- SCHEDULE 13D**
SEC forms and schedules, **App 3B**
- SCHEDULE 14D-9**
SEC forms and schedules, **App 3I**
- SCHEDULE 14D-1F**
SEC forms and schedules, **App 3H**
- SCHEDULE 14D-9F**
SEC forms and schedules, **App 3J**
- SCHEDULE 13E-3**
SEC forms and schedules, **App 3D**
- SCHEDULE 13G**
SEC forms and schedules, **App 3C**
- SCIENTER**
Negotiated acquisition transactions, scienter and Section 16(b) requirements, **3:91**
- SECONDARY LIABILITY**
Acquisition of initial interest, **1:92**
- SECURITIES AND EXCHANGE COMMISSION (SEC)**
Administrative Law Judges, appointment, **1:26**
Beneficial ownership
Compliance updates, **1:16**
Disclosure interpretations, **1:16**
Disclosures, acquisitions and depositions of business, press release and fact sheet, **App 23A**
Enforcement actions, failure to file or misleading filing, **1:19**
Negotiated acquisition transactions
Financial disclosures, SEC adopts reforms, **3:116**
Guidance on reporting reverse mergers and similar transactions, **3:114**
Regulation of merger brokers/finders, **3:118**
Sample Letters to Companies regarding Special Disclosures in Filings, **App 25A**
Shareholder proposals, 2018 SEC Guidance on, **4:24**
Tender offers regulations, guidance, **5:46**
- SECURITIES EXCHANGE ACT OF 1934**
NASD, Rule 19b-4 under Exchange Act—proposed rule change by NASD, **App 1E**
- SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998**
Acquisition of initial interest, **1:97**
- SECURITY BASED SWAPS**
Acquisition of initial interest, **1:99**
- SEPARATION AGREEMENT**
Distribution, and, **App M7.55, App M7.80**
Spin-off and IPO master separation and distribution agreement, **App M13**
Spinoff-separation agreement, **App M7.50**
Spinoff separation and distribution agreement, **App M10**
Split-off, **App M16**
- SERIAL PREFERRED STOCK**
Asset purchase agreement, **App F54**
- SETTLEMENT AGREEMENTS**
Insider trading. See Insider Trading (this index)
Negotiated acquisition transactions. See Negotiated Acquisition Transactions (this index)
- SEVERANCE PLAN AND AMENDED GOLDEN PARACHUTE EMPLOYMENT AGREEMENT**
Anti-takeover provisions, **App D7**
- SHARE EXCHANGE AGREEMENT**
Generally, **App F93.10**
Acquisition of Nevada company by Chinese company in share exchange, **App V7**
Buyer issues new class of preferred stock to acquire 100% of target company's common stock, **App F41**
Reverse merger with foreign company and U.S. public shell company, **App V4**
- SHAREHOLDER PROPOSALS**
Alternatives, **4:23**
2018 SEC Guidance on, **4:24**
Unbundling, **3:90**
- SHAREHOLDER RIGHTS PLAN**
Anti-takeover provisions, **App D1 to App D3**
Defending against tender offers, advance planning, **5:74 to 5:78, 5:77**
- SHAREHOLDER RIGHTS TAX BENEFIT PRESERVATION PLAN**
Anti-takeover provisions, **App D2.5**
- SHAREHOLDERS**
See headings and entries beginning with Shareholder and Stockholder
- SHARK REPELLENT CHARTER PROVISION REGARDING THE DILUTION OF THE PRINCIPAL SHAREHOLDER**
Anti-takeover provisions, **App D9**
- SHELL COMPANY**
Private placement for notes following reverse merger into public shell, **App F19**
Public shell, reverse merger, **App F18, App F19**

SHELL COMPANY—Cont'd

- Reverse merger, **3:17**
- Super 8K for shell company acquisitions, **App F32**

SHERMAN ACT

- Regulated markets, health care industry, **9:3, 9:4**

SHORT FORM LOCK UP AGREEMENT IN MERGER

- Negotiated acquisition transactions, **App F74**

SHORT-SWING TRADING PROVISIONS

- Acquisition of initial interest, **1:20 to 1:24**
- Case law, **1:23**
- Negotiated acquisition transactions, “short swing” profits, **3:92**
- Reporting requirements, **1:21**
- 2005 regulatory changes, Rule 16b-3 exemptions, **1:22**

SOFTWARE, TELECOMMUNICATIONS AND COMPUTING SERVICES AGREEMENT

- Documents and forms, **App M9**

SOFTWARE COMPANIES

- Negotiated acquisition transactions, cash merger agreement, **App F87**

SOFTWARE LICENSES

- Negotiated acquisition transactions (technology asset purchase), **App F57**

SOLICITATION AND SOLICITORS

- Dissident’s solicitation of consents to remove and replace board of directors, **App C4**
- Proxy contest. See Proxy Contests (this index)

SPECIAL PURPOSE ACQUISITION CORPORATIONS

- Investment management trust agreement, **App F28.70**
- Pipe financing, SPAC merger with, **App F28.60**
- Promissory note, **App F28.90**
- Sponsor support agreement, **App F28.80**

SPIN-OFF AGREEMENTS

- Assets, **App M18**
- Corporate services agreement, **App M6**
- Delaware corporation, spin off agreement, **App M4**
- Distribution agreement, spinoff separation and distribution agreement, **App M10**
- Employee matters, **App M6.50**
- Exchange offer with underwriters for spin-off, **App M7.60**
- Foreign subsidiary, IPO spin-off by U.S. parent company, **App M12**
- Healthcare operations, **App M4.20**
- Information statement, **App M20**
- Letter to shareholders, **App F12.50**

SPIN-OFF AGREEMENTS—Cont'd

- Litigation, **3:158**
- Master separation and distribution agreement, spin-off and IPO, **App M13**
- Merger following spin-off agreement in a reverse Morris trust transaction, **App M19**
- Negotiated acquisition transactions
 - Divisive mergers, **3:136**
 - Letter of intent—acquisition and spin-off with lock-up and break up penalty, **App F4**
- Registration rights agreement, **App M5**
- Spin-off merger agreement, **App M4.10**
- Spin-off separation agreement, **App M7.50**
- Stock exchange of acquirer and parent company, **App F43.135**
- Tax-free division of company, **3:157, 3:159**
- Tax matters agreement, **App M7**

SPLIT-OFF AGREEMENTS

- Master separation, **App M16**
- Restructuring agreements, **App M14**

SPLIT-OFF DISTRIBUTION

- Agreement, **App M17**

SQUEEZE OUT MERGERS

- Negotiated acquisition transactions, **3:74**

STANDING

- Negotiated acquisition transactions
 - Contract and state corporate law concerns, **3:55**
- Proxy contests, litigation issues under Section 14(a), **4:38**
- Tender offers, standing and right of action, **5:100 to 5:104**

STANDSTILL AGREEMENTS

- Anti-takeover provisions, **App D4, App D5**

STANDSTILL AND STOCK RESTRICTION AGREEMENT

- Anti-takeover provisions, **App D5**

STATE AND FEDERAL REGULATORY CONCERNS AFFECTING CONTROL ACQUISITIONS

- Generally, **7:1**
- Anti-takeover provisions. See Anti-Takeover Provisions (this index)
- Anti-trust laws. See Anti-Trust Law (this index)
- Employee benefits. See Employee Benefits Plans and ERISA Requirements (this index)
- Environmental laws. See Environmental Laws (this index)
- Gun jumping, **7:13**
- Proxy contests. See Proxy Contests (this index)

STATUTE OF LIMITATIONS

- Negotiated acquisition transactions, **3:109, 3:141**

STATUTE OF LIMITATIONS—Cont'd

Repose, statute of. See Statute of Repose (this index)

STATUTE OF REPOSE

Proxy contests, **4:37**

STOCK CROSS PURCHASE AGREEMENT

Negotiated acquisition transactions, **App F80**
Target company stock acquired for chase, notes and stock, **App F84.50**

STOCK EXCHANGE OFFER

Freeze out merger agreement following offer, **App F27**
Prospectus for merger, **App F97**
Split-off of subsidiary, **App F96**

STOCKHOLDER COOPERATION/ACTING IN CONCERT

European Securities and Markets Authority public statement, **8:11.30**

STOCKHOLDER PROPOSALS

Anti-takeover provisions relating to stockholder rights plan, **App D2**

STOCKHOLDER PURCHASE AGREEMENT

Cash, stock, and note consideration for multiple banking subsidiaries, negotiated acquisition transactions, **App F80**

STOCKHOLDER RIGHTS

Negotiated acquisition transactions, limited rights, **3:66**

STOCKHOLDERS

See headings and entries beginning with Shareholder and Stockholder
Business combinations, **3:76**

STOCKHOLDER VOTING AGREEMENT IN A MERGER, FORM OF

Negotiated acquisition transactions, **App F71**

STOCK OPTION AGREEMENTS

Negotiated acquisition transactions, **3:125**

STOCK OPTIONS

Negotiated acquisition transactions, **3:108**

STOCK PURCHASE AGREEMENTS

Merger, to fund, **App F93.20, App F93.40**
Negotiated Acquisition Transactions (this index)
Pipe securities purchase agreement, **App F93.70**
Subsidiary acquisition, **App F43.60**

STOCK SPLITS

Negotiated acquisition transactions, **3:58**

SUBSIDIARIES

Exchange offer for split-off of subsidiary, **App F96**

SUBSIDIARIES—Cont'd

Foreign subsidiary, IPO spin-off by U.S. parent company, **App M12**
Information statement for spin-off, **App B10**
Joint venture to acquire control of operating subsidiary, **App N2**
Negotiated acquisition transactions, **App F17**
Stock purchasing agreement, **App F43.60**
Telecom subsidiary, equity purchase agreement, **App F43.50**

SUCCESSORS

Payments due under asset purchase agreement, assignment to successor of buyer, **App F65**

SUPPLEMENTAL AMENDED OFFER TO PURCHASE

Tender offers, **App B3**

SUPREME COURT DECISIONS

Anti-takeover provisions, **7:82**

SWITZERLAND

Business combination agreement between United States company and Swiss Company, **App V6**
Company reincorporates into Ireland, **App V16**

“TAG ALONG” AGREEMENTS

LLC joint venture, tag-along, drag-along investor rights agreement, **App N4**
Stock purchase agreement—U.S. company acquiring European company stock for cash and stock with earn out, drag along and tag along provisions, **App F82**

TAKEOVER CODE

Acquisitions involving foreign companies, 2011 amendments to Code, **8:9.10**
2011 amendments to Code, **8:9.10**
2013 amendments to Code, **8:9.30**
2014 amendments to Code, **8:9.40**

TAX CONSEQUENCES

Foreign companies, acquisitions by, **8:5**
Leveraged acquisitions, **6:21**
Negotiated acquisition transactions, IRS guidance, **3:9**
Tender Offers (this index)

TAX CUTS AND JOBS ACT

Negotiated acquisition transactions, **3:8**

TAX-FREE

Division of company
Generally, **3:156**
“Active trade or business” requirement under Section 355(b), IRS study on, **3:164**
Developments, **3:166**
Disqualified distributions of stock, **3:163**
Litigation involving spin-off, **3:158**

TAX-FREE—Cont'd

- Division of company—Cont'd
 - Mutual releases, spin-off, **3:159**
 - Reorganizations, **3:165**
 - Section 355 of IRC, **3:162**
 - Spin-off, **3:157, 3:159**
 - Split-off, **3:160**
 - Split-up, **3:161**
- Reorganizations, **3:5, 3:7**

TAX INDEBTEDNESS SHARING AGREEMENT

- Documents and forms, **App M2**

TAX SHARING AND INDEMNIFICATION AGREEMENT

- Documents and forms, **App M3**

TECHNOLOGY ASSET PURCHASE AGREEMENT

- Negotiated acquisition transactions, **App F57**

TELECOMMUNICATIONS INDUSTRY

- Generally, **9:40**
- Asset contributions, merger agreement with, **App F24**
- Documents and forms, telecommunications, software and computing services agreement, **App M9**
- Other telecommunications mergers, **9:44.50**
- Pagers, **9:43.50**
- Radio, **9:41, 9:42**
- Subsidiary, telecom, acquisition by equity purchase agreement, **App F43.50**
- Television companies, **9:44**
- Wireless mobile phones, **9:43**

TELEVISION FACILITIES

- Negotiated acquisition transactions, letter of intent to acquire television facilities, **App F3**

TELEVISION SERVICES

- Regulated markets, telecommunications industry, **9:44**

TENDER OFFERS

- Generally, **5:1, 5:2**
- Acquisitions prior to an offer, **5:62**
- Alternative summary advertisement, **App B6**
- Announcement of offer, **5:65**
- Attorneys' fees, **5:114**
- Best-price rule, 2006 amendments to tender offer, **5:16**
- Commencement of offer, **5:66**
- Compliance and disclosure interpretations on tender offers and mergers, **App 20A**
- Conditions to offer, **5:67**
- Coronavirus/COVID-19 pandemic and shareholders rights plans, **5:79**

TENDER OFFERS—Cont'd

- Customer announcement (DataDirect customers), **App B2**
- Dealer-manager agreement, **App B7**
- Defending against tender offers
 - Generally, **5:68**
 - Advance planning
 - generally, **5:69**
 - Case law, **5:75**
 - Director removal provisions, **5:70**
 - Disproportionate voting rights, **5:85**
 - Economic impact, **5:78**
 - Fair price provisions, **5:73**
 - Friendly voting blocks, **5:86**
 - Golden parachutes, **5:83 to 5:86**
 - IRS letter rulings, termination agreements, **5:84**
 - Shareholder rights plan, **5:74 to 5:78, 5:77**
 - Staggered board of directors, **5:71**
 - Stealth poison pill, **5:77**
 - Super majority voting provisions, **5:72**
 - Termination agreements, **5:83 to 5:86**
 - Advance preparation, **5:87**
 - Canadian poison pills, **5:80**
 - Coronavirus/COVID-19 pandemic and shareholders rights plans, **5:79**
 - French poison pill warrants, **5:81**
 - Indentures, change of control provisions, **5:82**
 - Poison puts, **5:82**
 - Responding to tender offers
 - generally, **5:88**
 - Business judgment rule, **5:89**
 - Tactics
 - generally, **5:90**
 - Acquisition of assets, **5:93**
 - Counter-tactics, **5:96**
 - Disposition of assets, **5:92**
 - Issuance of additional shares, **5:95**
 - Litigation, **5:91**
 - Repurchase of shares, **5:94**
 - Sale of company, **5:97**
 - Settlement, **5:98**
 - Shareholder rights plan, **5:74 to 5:78, 5:77**
 - Stealth poison pills, **5:77**
- Depository agreement, **App B8**
- Financing the tender offer, **5:63**
- Forwarding agent agreement, **App B9**
- Identification of the bidder, **5:61**
- Information agent agreement, **App B4**
- Letter from nominee holders to beneficial owners, **App B6**
- Letter to brokers and other nominee holders, **App B5**
- Litigation issues
 - Generally, **5:99**

TENDER OFFERS—Cont'd

- Litigation issues—Cont'd
 - Corporate records, right to inspect, **5:108**
 - Dutch Action, **5:106**
 - Injunctive relief, **5:109**
 - Misrepresentation in communications, **5:107**
 - Ripeness and forum shopping, **5:105**
 - Standing and right of action, **5:100 to 5:104**
 - Types of claims, **5:110**
- Mini-tender offers. Regulations, below
- Planning the tender offer
 - Generally, **5:55**
 - Arbitrageurs, **5:60**
 - Dealer managers and investment bankers, **5:56**
 - Depositaries, **5:58**
 - Forwarding agents, **5:59**
 - Tax advisors, **5:57**
- Process, generally, **5:54 to 5:67**
- Proposed revision of SEC cross-border tender offer rules, **App 1F**
- Proxy contests. See Proxy Contests (this index)
- Registered exchange of stock for warrants, **App B11**
- Regulations
 - Generally, **5:3**
 - Abbreviated tender or exchange offers for non-convertible debt securities, **5:53**
 - Best-price rule, 2006 amendments to tender offer, **5:16**
 - Exemptions for cross border tender offers, exchange offers, rights offers and business combination regulations, **5:40 to 5:45, App 1F**
 - Issuer tender offers, **5:31, 5:32**
 - Mini-tender offers, **5:48 to 5:51**
 - 1999 revisions to the business combination regulations
 - generally, **5:33**
 - Communications under proxy rules, **5:35**
 - Communications under tender offer rules, **5:36**
 - Communications under the Securities Act, **5:34**
 - Disclosure requirements, **5:38**
 - Early commencement for exchange offers, **5:37**
 - Revisions of tender offer rules, **5:39**
 - Odd lot offers, **5:32**
 - Proxy contests. See Proxy Contests (this index)
 - Put option tender offer and redemption right, **5:52**
 - Relief from restrictions, **5:52**
 - Rule 13(e-4), **5:31, 5:32**
 - Rule 14d-11, **5:18**
 - Rule 14d-10 case law, **5:17**
 - Safe harbor, **5:47**

TENDER OFFERS—Cont'd

- Regulations—Cont'd
 - Schedule TO, **5:29**
 - Schedule 14(d-9) of the Securities Exchange Act, **5:30**
 - SEC guidance, **5:46**
 - Section 14(d) of the Securities Exchange Act, **5:4 to 5:15**
 - Section 14(e) of the Securities Exchange Act, **5:19 to 5:28**
 - 2006 amendments to tender offer best-price rule, **5:16**
 - 2008 revisions to exemptions for cross border tender offers, exchange offers, rights offers and business combination regulations, **5:45**
 - Rule 14d-11, **5:18**
 - Rule 14d-10 case law, **5:17**
 - Shareholder rights plan, **5:74 to 5:79, 5:77**
 - Supplemental amended offer to purchase, **App B3**
 - Tactical and strategic considerations, **5:64**
 - Tax consequences
 - Generally, **5:111**
 - Friendly and hostile acquisitions, **5:112**
 - Share repurchases and, **5:113**
 - 2006 amendments to tender offer best-price rule, **5:16**
 - 2008 revisions to exemptions for cross border tender offers, exchange offers, rights offers and business combination regulations, **5:45**

TERMINATION

- Merger, **3:80, App F43.70**

TERMINOLOGY

- Negotiated acquisition transactions, binding contract, **3:59**

TIN PARACHUTE STATUTES

- Anti-takeover provisions, **7:95**

TOPPING FEES

- Board of directors, business judgment rule, **2:29**
- Negotiated acquisition transactions, **3:134**

TRACKING STOCK MERGER AGREEMENT

- Documents and forms, **App F23**

TRADE COMMISSION STATEMENTS

- Generally, **App 10A et seq.**

TRADING ON INSIDER INFORMATION

- Insider Trading (this index)

TRANSFER AND ASSUMPTION AGREEMENT

- Conveyance agreement, **App M15**

INDEX

2005 REGULATORY CHANGES

Short-swing trading provision, Rule 16b-3 exemptions, **1:22**

2006 MERGER REFORMS

Antitrust law, **7:32**

2006 REVISIONS

Antitrust law, **7:33**

2008 REVISIONS

Business combination regulations, exemptions, **5:40 to 5:45**

UNDERWRITERS

Exchange offer with underwriters for spin-off, **App M7.60**

UNITED KINGDOM

Acquisitions involving foreign companies, merger guidance, **8:9**

Delaware companies, merger to form United Kingdom holding company, **App V11**

Takeover Code

2011 Amendments, review, **8:9.10**

2013 Amendments, **8:9.30**

2014 Amendments, **8:9.40**

UNITED STATES AGREEMENTS WITH OTHER COUNTRIES

Acquisitions involving foreign companies, **8:12**
Irish holding company formed by United States and German companies, **App V21**

Stock and asset purchase agreement, Germany, **App V17**

US Co acquiring 51% of German Co, option to acquire remaining 49% of company's stock, **App V14**

UNIVERSAL PROXY

Contested elections, **4:47**

U.S. PUBLIC SHELL COMPANY, REVERSE MERGER INVOLVING

Agreement and plan of merger, U.S. public shell and foreign company, **App V5**

Share exchange agreement, foreign company and U.S. public shell company, **App V4**

U.S. v. LONG ISLAND JEWISH MEDICAL CENTER

Regulated markets, health care industry, **9:13**

U.S. v. MERCY HEALTH SERVICES

Regulated markets, health care industry, **9:11**

US-DUTCH MERGER SHAREHOLDER SHARE TENDER AGREEMENT

Generally, **App V2**

US-DUTCH STOCK/CASH MERGER

Dutch Bank fairness opinion, **App V3**

US-EURO MERGER PROTOCOL AGREEMENT

Generally, **App V1**

US-IRISH

Combination, **App V15**

VIRGINIA STATUTES

Anti-takeover provisions, **7:85**

VOID OR VOIDABLE

Negotiated acquisition transactions, curing defects in stock issuances under Delaware law, **3:140**

VOTING

Form of voting agreement, **App O6, App O16**

Negotiated acquisition documents

Form of voting and lock-up agreement, **App F69**

Lock-up and voting agreement, **App F68, App F69**

Voting trust agreement, **App F73**

Proxy contests, vote-buying, **4:55**

WAIVER

Negotiated acquisition transactions, "Don't Ask, Don't Waive" provisions, **3:72**

WARRANTS

Negotiated Acquisition Transactions (this index)

Tender offers, French poison pills, **5:81**

WASHINGTON

Merger, Alaska and Washington companies, agreement, **App K2**

WILLIAMS ACT

C&DIs, **App 17A**

WIRELESS LICENSES

Negotiated acquisition transactions (asset purchase), **App F58**

WIRELESS MOBILE PHONES

Regulated markets, telecommunications industry, **9:43**