

Index

ABSOLUTE ACTIVIST RULE

Antifraud provisions, **22:105**

ACCESS

Proxy access. **Proxy Regulation** (this index)

ACCESS CODES

Obtaining codes. **EDGAR** (this index)
SEC enforcement of data security, broken windows policy, **36:115**

ACCESS EQUALS DELIVERY

Prospectus, **5:30**

ACCOUNTANTS

See also **Auditors** (this index)
Accountant-lawyer interface, **39:51**
Auditor's duty to detect and report illegal activities
amendments to Section 10A of Exchange Act, **39:15**
Section 10A of Exchange Act, **39:14**
Disqualification for improper professional conduct, **39:5**
Enron demise, financial reporting fraud, **39:2**
Improper professional conduct
disqualification under Sarbanes-Oxley Act, **39:5**
Rule 102(e) standard of improper professional conduct for accountants, below
JOBS Act (2012)
auditing standards, **5:57**
audit of ICFR, **5:56**
Public Company Accounting Oversight Board (this index)
Reports of auditors
Generally, **21:38 et seq.**
see also **Public Company Accounting Oversight Board** (this index)
Rule 102(e) standard of improper professional conduct for accountants
generally, **39:6**
amendment of Rule 102(e) in response to Checkosky, **39:10**
Checkosky case, **39:7 to 39:11**
Commission amends Rule 102(e) in response to Checkosky, **39:10**
focus on miscreant accountants, **39:12**
good faith defense, **39:13**
ill-fated audits, Checkosky Saga, **39:7**
miscreant accountants, focus on, **39:12**
revisit of Checkosky decision, **39:11**
round one of Checkosky case, **39:8**
round two of Checkosky case, **39:9**
Sarbanes-Oxley Act, **39:4, 39:5**

ACCOUNTANTS—Cont'd

SEC, new directions, **39:1 to 39:5**
SEC Rules of Practice. Rule 102(e) standard of improper professional conduct for accountants, above
WorldCom surpasses Enron, **39:3**

ACQUISITION COMPANIES

Generally, **5:80**
Bifurcated approach to classifying warrants, **5:94**
Conflicts of interest litigation in state court, **5:88**
Convertible securities, **5:86**
Criminal litigation and alleged fraud proximate to the business combination, **5:89**
Digital world, Trump media, **5:85**
IPO prior to staff warrant guidance
pre-rule amendments issuers re-classified warrants and restated financial statements, **5:91**
IPOs post-staff guidance, **5:95**
Market developments in 2023-2024 and adoption of the final rules, SPAC, **5:83**
Merger agreement
provision requiring SPAC, **5:92**
Period following proposal of the SEC rules, **5:82**
Redemptions, including by tender offer, **5:87**
SPAC market prior to the SEC Rule proposals, **5:81**
Special meeting of warrant holders to amend outstanding warrants, **5:93**
Statistical information about SPACs, additional, **5:84**
Transactions that omit warrants from SPAC capital structure, **5:96**
Warrant imbroglio, **5:90**
Warrants classified as equity, **5:97**

ADMINISTRATIVE LAW

Enforcement by SEC (this index)

ADMINISTRATIVE PROCEEDINGS

Challenges to administrative authority
DTC and NSCC, **36:164**
FINRA enjoined under private non-delegation doctrine, **36:163**
Constitutionality of administrative forum for certain enforcement actions, **36:160**

AFFILIATES

Trading by. **Resales of Restricted Securities** (this index)

AFFIRMATIVE DEFENSES

Final Rule 9j-1(e), **1:56.05**

AGING REQUIREMENTS

Integrated disclosure system, uniform financial statements, **3:4**

AIDING AND ABETTING

Improper professional conduct, **39:20**
Private Actions, Implied Remedies (this index)
 SEC enforcement
 administrative sanctions, **36:41**
 cease and desist orders, **36:78**
 injunctions, **36:14**

ALTERNATIVE TRADING SYSTEMS (ATSs)

Broker-dealer regulation, **19:27, 19:29, 19:30**

AMENDMENT OF BYLAWS

Shareholder Proposals (this index)

AMERICAN DEPOSITARY RECEIPTS (ADR)

U.S. markets, purchases of ADRs on, **22:102**

ANALYSTS

Classic insider trading under Rule 10b-5, analysts liability, **33:4**
 Conflicts of interest. **Listing on Trading Markets (SROs) and SRO Regulation** (this index)
 JOBS Act (2012)
 conflicts of interest, **5:61**
 Regulation AC, **5:62**
 Section 501 of Sarbanes-Oxley Act, **5:62**

ANGEL INVESTOR PLATFORM

AngelList, online funding portals, Rule 506 offerings, **19:6.08**

ANGEL INVESTORS

Exempt offerings
 regulation D common requirements, **9:24.12**

ANNUAL REPORT TO SHAREHOLDERS

Glossary of key disclosure forms, **3:6**

ANTI MONEY LAUNDERING COMPLIANCE

Broker Dealer Litigation and Arbitration (this index)

ARBITRATION

Broker Dealer Litigation and Arbitration (this index)

ARTHUR ANDERSEN LLP

Obstruction of justice, **21:2**

ASSET BACKED SECURITIES

Dodd Frank Act (this index)

AT-THE-MARKET OFFERINGS

Public offering distribution process, **5:75**

ATTORNEY FEES

PSLRA, **30:21, 30:23**

AUDITORS

See also **Accountants** (this index)

AUDITS

Attestations, **21:31**
 Conflict minerals, independent private sector audit, **12:115**
Corporate Governance and Federal Securities Laws (this index)
 Duty to detect and report illegal activities
 amendments to Section 10A of Exchange Act, **39:15**
 Section 10A of Exchange Act, **39:14**
 Emerging growth companies
 auditing standards, **5:57**
 audit of internal control over financial reporting, **5:56**
 Ethics standards, **21:31**
 Fraud assessment, PCAOB, Auditing Standard No. 5, **21:43**
 ICFR audits, **5:56**
 Ill-fated audits, Checkosky Saga, **39:7**
Integrated Disclosure System (this index)
 Outside auditor's quarterly review of financial information, **12:37**
Proxy Regulation (this index)
 Quality control, **21:31**
 Real time disclosure, **12:92**
 Reports of auditors
 Generally, **21:38 et seq.**
 see also **Public Company Accounting Oversight Board** (this index)
 Rotation of auditors, **18:51.10**
 Rule 102(e) standard of improper professional conduct, **39:7**
 Sarbanes-Oxley SRO audit committee listing requirements, **15:12 to 15:14**
 Section 404 assessment of internal control over financial reporting, **12:54, 12:57**
 Section 404(b) of SOX, interplay with smaller reporting company status, amendments affecting, **12:57.02**
 Work papers, preservation, **21:78**

BENEFICIAL OWNERSHIP REPORTING
 13D and 13G amendments reflecting material changes:
 Rules 13d-2(a) and (b), **13:5**
 13D-G deadline extended from 5:30 pm to 10 pm:
 Rules 13(a)(4) and 201(a) of Regulation S-T, **13:7**
 13G deadlines when beneficial ownership exceeds 10 percent: Rules 13d-2(c) and (d), **13:6**
 Generally, **13:1 to 13:16**
 Accelerated timetable for filing initial 13D: Rule 13d-1(a), **13:2**
 Carve-out for security-based swaps, **13:10**
 Cash-settled equity-based derivative securities, **13:8**
 Deadline for filing upon loss of 13G eligibility: Rules 13d-1(e), (f) and (g), **13:4**
 Exemptions, **13:15**
 Filing deadlines, **13:2 to 13:7**
 Groups, **13:12, 13:13**

BENEFICIAL OWNERSHIP REPORTING—Cont'd

Initial 13G filing deadlines: Rules 13d-1(b), (c) and (d), **13:3**

Schedule 13D disclosure requirements, **13:16**

Security-based swaps, **13:10 to 13:13**

Tipping impending filing of schedule 13D, **13:14**

BLACKOUT PERIODS

Reporting and Short Swing Profit Liability Under Section 16 (this index)

Sarbanes-Oxley Act, unlawful insider trading during pension plan blackout periods, **25:11**

Transnational aspects, insider trading during pension fund blackout periods, **22:21**

BREXIT

Integrated disclosure system, **3:77**

BROKEN WINDOWS POLICY

Enforcement by SEC (this index)

BROKER DEALER LITIGATION AND ARBITRATION

Generally, **35:1 to 35:55**

Anticipation of research reports, **35:3**

Anti-money laundering compliance. Money laundering and terrorism, below

Arbitration

generally, **35:33**

agreement to arbitrate, **35:34, 35:35**

arbitral procedures, **35:37**

Arbitration Act, **35:36**

class actions, **35:39**

consequences of agreement to arbitrate, disclosure, **35:35**

consolidation, **35:38**

disclosure to customers of consequences of agreement to arbitrate, **35:35**

Dodd-Frank Wall Street Reform Act, **35:39.10**

joinder and consolidation, **35:38**

punitive damages, below

statute of limitations, below

validity of agreement to arbitrate, **35:34**

venue, **35:38**

Class actions, arbitration, **35:39**

Clearing broker liability, **35:22**

Clearing dealers, NYSE rules, **35:21**

Communications. Disclosure and communication requirements, below

Consolidation, arbitration, **35:38**

Contemporaneous transactions, dealer mark-ups and mark-downs, **35:15**

Criminal offenses reporting, **35:31**

Day-trading risk disclosure, **35:29**

Debt securities

disclosure and communication requirements, **35:30**

excessive dealer mark-ups and mark-downs, **35:19**

BROKER DEALER LITIGATION AND ARBITRATION—Cont'd

Disclosure and communication requirements

arbitration, consequences of agreement to arbitrate, **35:35**

debt securities, **35:30**

market makers, obligations, **35:20**

merger and day-trading risk disclosure, **35:29**

reporting of criminal offenses, **35:31**

subordination loan agreements, **35:32**

Excessive dealer mark-ups and mark-downs

generally, **35:8**

contemporaneous transactions, **35:15**

debt securities, **35:19**

determining prevailing market price, **35:9**

dominated market and market price, **35:13**

fiduciary duty to disclose markups and wrap program, **35:18**

market price in dominated market, **35:13**

NASD analysis, **35:10 to 35:12**

Nasdaq/NMS securities, **35:10**

non-Nasdaq securities, **35:12**

other Nasdaq securities, **35:11**

prevailing market price determination, **35:9**

private actions, **35:16**

registered representative responsibilities, **35:17**

riskless transactions, **35:14**

wrap program and fiduciary duty to disclose markups, **35:18**

Joinder, arbitration, **35:38**

Limit orders, **35:2**

Market price and excessive dealer mark-ups and mark-downs, **35:9, 35:13**

Mark-ups and mark-downs. Excessive dealer mark-ups and mark-downs, above

Merger and day-trading risk disclosure, **35:29**

Money laundering and terrorism

AML compliance programs, **35:25**

background, **35:24**

crowdfunding, funding portals, **19:6.28**

customer identification and verification, **35:26**

financial cooperation, **35:28**

identification of customer, **35:26**

reporting suspicious activities, **35:27**

verification of customer, **35:26**

NASD analysis, excessive dealer mark-ups and mark-downs, **35:10 to 35:12**

Nasdaq/NMS securities, excessive dealer mark-ups and mark-downs, **35:11**

NASD Code of Procedure

application and purpose, **35:52**

bar or denial of access, **35:55**

cancellation, **35:55**

disciplinary proceedings, **35:53, 35:54**

eligibility procedures, **35:55**

review of disciplinary proceedings, **35:54**

**BROKER DEALER LITIGATION AND
ARBITRATION—Cont'd**

- NASD Code of Procedure—Cont'd
 - suspension or cancellation, **35:55**
- NASD membership rules
 - generally, **35:49**
 - enforcing disciplinary fees, **35:51.10**
 - investigations and sanctions, **35:51**
 - membership and registration rules, **35:50**
- Nasdaq/NMS securities, excessive dealer mark-ups and mark-downs, **35:10**
- New York Stock Exchange rules, clearing dealers, **35:21**
- Non-discretionary accounts, **35:23**
- Oversight of broker-dealers
 - excessive dealer mark-ups and mark-downs, above misconduct and remedial sanctions, **35:1**
 - regulation of trading practices, below remedial sanctions for misconduct, **35:1**
 - supervision, **35:1.10**
- Private actions, excessive dealer mark-ups and mark-downs, **35:16**
- Punitive damages
 - generally, **35:40**
 - arbitration, **35:40 to 35:44**
 - background, **35:41**
 - contractual restrictions, NASD limitation, **35:43**
 - Mastrobuono case, **35:42**
 - NASD limitation on contractual restrictions, **35:43**
 - proposals to restrict punitive damages, **35:44**
 - restrictions, **35:43, 35:44**
- Regulation of trading practices
 - best execution, **35:7**
 - institutional investors, **35:5**
 - limit orders, **35:2**
 - suitability, **35:4, 35:5**
 - trading in anticipation of research reports, **35:3**
 - yield burning, **35:6**
- Riskless transactions, excessive dealer mark-ups and mark-downs, **35:14**
- SEC enforcement, **25:7, 36:77**
- Securities Litigation Uniform Standards Act (SLUSA), failure to perform, **31:25**
- Statute of limitations
 - arbitration, **35:45 to 35:48**
 - Code of Arbitration amendment proposal, **35:45**
 - judicial review of awards, **35:47**
 - proposed amendment to Code of Arbitration, **35:45**
 - Ruder committee recommendations, **35:48**
 - Section 15, **35:46**
- Subordination loan agreements, **35:32**
- Supervision of broker-dealers, **35:1.10**
- Suspending registration, SEC enforcement, **36:77**
- Suspicious activities reporting, **35:27**
- Terrorism. Money laundering and terrorism, above
- Validity of agreement to arbitrate, **35:34**

**BROKER DEALER LITIGATION AND
ARBITRATION—Cont'd**

- Venue, arbitration, **35:38**
- Wrap program and fiduciary duty to disclose markups, **35:18**
- Yield burning, **35:6**

BROKER DEALER REGULATION

- Generally, **19:1 to 19:41**
- ATs (alternative trading systems), **19:27, 19:29, 19:30**
- Broker-dealer trading systems, **19:25**
- Bulletin boards
 - issuer, **19:17**
 - third-party, **19:18**
- Capital and related requirements, **19:20**
- Compensation, online funding portals, JOBS Act, Rule 506 offerings, **19:6.04**
- Confirmation requirements and settlement requirements
 - generally, **19:10**
 - debt securities, **19:11**
 - electronic confirmations, **19:12**
 - payment for order flow, **19:13**
 - settlement cycle, **19:14**
- Cross-border stock exchange combinations and link-ages, **19:34**
- Debt securities, **19:11**
- Demutualization, **19:33**
- Dodd-Frank Act, **19:23.10**
- ECNs (electronic communications networks), **19:26**
- Electronic media
 - confirmations, **19:12**
 - delivery by broker-dealers, **19:15**
 - Internet trading through broker-dealers, **19:16**
 - issuer bulletin boards, **19:17**
 - on-line trading, **19:17**
 - suitability and online communications, **19:19**
 - third-party bulletin boards, **19:18**
- Enforcement by SEC** (this index)
- Exclusion of banks from definition of broker-dealers, **19:4**
- Federal registration
 - generally, **19:1**
 - angel investor platform, AngelList, Rule 506 offerings, **19:6.08**
 - crowdfunding, funding portals, **19:6.22, 19:6.24**
 - exclusion of banks from definition of broker-dealers, **19:4**
 - finders (SEC v. Milken), **19:3**
 - Gramm-Leach-Bliley Act, **19:4, 19:5**
 - issuer broker-dealer safe harbor, **19:2**
 - networking arrangements between banks and broker-dealers, **19:6**
 - online funding portals, JOBS Act, Rule 506 offerings, **19:6.02, 19:6.04**
- Fiduciary duties, **19:23.10**
- Gramm-Leach-Bliley Act, **19:4, 19:5**
- Internet trading through broker-dealers, **19:16**

BROKER DEALER REGULATION—Cont'd

Issuer broker-dealer safe harbor, **19:2**
 Issuer bulletin boards, **19:17**
 Liquidation proceedings under SIPA, **19:21**
 Listed securities, **19:24**
 Networking arrangements between banks and broker-dealers, **19:6**
 NSMIA limited preemption of state broker-dealer requirements, **19:7**
 NSMIA reform of federal margin rules, **19:23**
 Off-board trading, elimination of NYSE Rule 390, **19:35**
 On-line trading, **19:17**
 Pacific exchange, Archipelago, **19:32**
 Payment for order flow, **19:13**
 Qualified independent underwriters, **19:22**
 Registration
 federal registration, above
 state registration, below
 Regulation best interest, **19:23.12 et seq.**
 care obligation, **19:23.18**
 compliance obligation, **19:23.22**
 conflict of interest obligation, **19:23.20**
 disclosure obligation, **19:23.16**
 dual registrants, **19:23.28**
 hold recommendations and monitoring services, **19:23.26**
 liability considerations, **19:23.32**
 record keeping, **19:23.30**
 state fiduciary standards, **19:23.36**
 Securities Investor Protection Act, liquidation proceedings under SIPA, **19:21**
 Securities markets in transition
 ATs (alternative trading systems), **19:27, 19:29, 19:30**
 broker-dealer trading systems, **19:25**
 cross-border stock exchange combinations and linkages, **19:34**
 definition of exchange, **19:28**
 demutualization, **19:33**
 ECNs (electronic communications networks), **19:26**
 exemption for certain ATs, **19:29**
 listed securities, **19:24**
 off-board trading, elimination of NYSE Rule 390, **19:35**
 Pacific exchange, Archipelago, **19:32**
 registration as an exchange, **19:30, 19:31**
 Settlement requirements. Confirmation requirements and settlement requirements, above
 State registration
 angel investor platform, AngelList, Rule 506 offerings, **19:6.08**
 examinations, **19:9**
 NSMIA limited preemption of state broker-dealer requirements, **19:7**
 online funding portals, JOBS Act, Rule 506 offerings, **19:6.04**

BROKER DEALER REGULATION—Cont'd

State registration—Cont'd
 other state requirements, **19:8**
 Suitability and online communications, **19:19**
 Third-party bulletin boards, **19:18**

BUSH/PITT RESPONSE

Worldcom's financial reporting fraud, **1:30**

BUSINESS COMBINATIONS

Hostile Takeover, Defensive Strategies and Wilmington Filers (this index)
International Transactions (this index)
 Proxy regulation, **17:14**
Public Offering Distribution Process (this index)
Public Offering Registration (this index)

CANADIAN MULTI-JURISDICTIONAL DISCLOSURE SYSTEM

International Transactions (this index)

CHEVRON DEFERENCE

Loper bright enters., inc. v. Raimondo, **36:162**

CHOICE OF LAW/FORUM CLAUSES

Generally, **37:26**
 Delaware charter provision, California upholding federal forum in, **37:26.06**
 Derivative actions, **37:26.08, 37:26.10**

CLASS ACTIONS

Broker-dealer arbitration, **35:39**
 Damages, PSLRA, **30:26**
 Ninth Circuit class action settlement judgment, full faith and credit, **31:28**
 Private actions, implied remedies (primarily Rule 10b-5), projected judicial and legislative backlash, **27:43**
Private Actions, State Remedies and SLUSA (this index)
PSLRA (this index)
 Securities fraud litigation, background, **25:2**
 Statute of limitations, pleading class period and Sarbanes-Oxley Act, **32:35**
 Tolling, **32:6.02, 32:6.04, 32:6.06**

CLAWBACKS

Corporate governance, **18:72.10**

CLEARANCE AND SETTLEMENT

Offshore distributions, Regulation S, **22:43.10 to 22:43.30**

CLIMATE CHANGE

Disclosure
 2024 standards, **3:76.04**
 attestation of Scope 1 and Scope 2 emissions, **3:76.16**
 GHG emissions, **3:76.14**
 governance, **3:76.06**
 interactive data requirement, **3:76.20**

CLIMATE CHANGE—Cont'd

- Disclosure—Cont'd
 - risk management, **3:76.10**
 - safe harbor for certain climate-related disclosures, **3:76.18**
 - strategy, **3:76.08**
 - targets and goals, **3:76.12**
 - vanishing 2024 rules, **3:76.02**
- Disclosure and communication, effects, **3:76**

COLLATERAL ESTOPPEL

- Generally, **37:27**

COMMERCIAL PAPER EXCLUSION/EXEMPTION

- Promissory note as security, **2:7 to 2:12**

COMMON ENTERPRISE

- Investment contract as security, **2:2, 2:18 to 2:20**

COMPENSATION COMMITTEES

- NYSE rules, **15:22.10**

COMPLIANCE AND DISCLOSURE INTERPRETATIONS (CDI)

- Generally, **3:20.02**
- NGFM use, **3:22**
- Regulation G compliance, increased scrutiny by SEC, **3:20.02**

CONCURRENT JURISDICTION

- Securities Litigation Uniform Standards Act (SLUSA) and Securities Act, limitation, **31:24**

CONFIDENTIAL INFORMATION

- Emerging growth companies, draft registration statement, **5:64**
- Private actions, implied remedies (primarily Rule 10b-5), timely corporate disclosure, **27:35, 27:36**
- Public company accounting oversight board, disciplinary proceedings, **21:64**
- Public offering registration, **6:8.02**
- 2025 accommodations, **6:8.04**

CONFLICT MINERALS

- Generally, **12:108 to 12:129**
- Audit, independent private sector, **12:115**
- Contemporary topics, **1:80**
- Country of origin inquiry, reasonable, **12:112**
- Court on remand in 2017 sets aside portion of rule, **12:128**
- D.C. circuit reaffirms holding in National Association of Manufacturers v. SEC, **12:127**
- Defined, **12:110**
- Definitions, **12:110**
- District Court upholds rule, **12:122**
- District Court vacation of initial rules, integrated disclosure system, **3:75.04**
- Due diligence and chain of custody, **12:114**
- First Amendment, invalidation, **12:123**
- Independent private sector audit, **12:115**

CONFLICT MINERALS—Cont'd

- Integrated disclosure system, District Court vacation of initial rules, **3:75.04**
- Legal challenges, generally, **12:120, 12:121**
- Minerals already in supply chain, **12:119**
- Necessary to functionality or production, **12:111**
- Reporting
 - Conflict Minerals Report, **12:113**
 - disclosure and filing of information, **12:117**
 - issuers subject to requirements, **12:116**
 - period for reporting, **12:118**
- SEC actions in 2017 following final judgment of the district court, **12:129**
- Securities and Exchange Commission (SEC)
 - petition for rehearing, **12:125**
 - SEC stays invalidated portion of rule, **12:124**
- Standard of review, compelled commercial speech, **12:126**

CONFLICTS OF INTEREST

- Analysts, JOBS Act (2012), **5:61**
- Dodd-Frank Act, **1:57.14**
- Enforcement by SEC** (this index)
- Listing on Trading Markets (SROs) and SRO Regulation** (this index)
- Public offering registration, Trust Indenture Act and debt securities, **6:131**

CONGRESS OF U.S.

- Legislative Histories SEC** (this index)
- Resource extraction rule, Congressional abrogation, **3:75.08**

CONSTITUTIONAL CHALLENGES

- Conflict minerals, **12:123**
- Public Company Accounting Oversight Board, removal of members, **21:5 et seq.**

CONSULTANTS

- Executive compensation and corporate governance, **15:44**
- Exempt offerings, exemption for employee benefit plans of nonreporting companies, **9:45**
- Public offering registration, Form S-8, employee benefit plans, **6:60**

CONSUMER PROTECTION

- Economic Growth Regulation Relief and Consumer Protection Act** (this index)

CONTEMPORARY TOPICS

- DOL rule on selecting plan investments
 - a political seesaw, **1:84**
- Public companies, capital formation and U.S. markets, focus on, **1:78**
- Regulatory flexibility act publications, **1:76**
- SEC and the unified agenda, **1:77**

CONTINUOUS DISCLOSURE

- Canadian multijurisdictional disclosure system, **22:77**

CONTINUOUS DISCLOSURE—Cont'd

- Disclosure** (this index)
- Integrated Disclosure System** (this index)
- Municipal Securities Distribution** (this index)
- Transnational aspects, **22:77**

CONTRIBUTION

- Joint Liability, Contribution, Partial Settlement and Contribution Bars Under Securities Acts** (this index)

CONTROLLING PERSON LIABILITY

- Insider trading, civil penalty, **33:39**
- Private actions, express remedies, **26:51**
- Private Actions, Implied Remedies** (this index)
- SEC enforcement, civil penalty, **36:19**

CORPORATE FINANCING

- Regulation A offerings, public offerings by small companies, Corporate Financing Rule, **7:25**

CORPORATE GOVERNANCE AND FEDERAL SECURITIES LAWS

- Generally, **15:1 to 15:46**
- Attendance by director, **15:2**
- Audit committees, **15:3**
- Blue ribbon panel report, **15:4**
- Communications of shareholders with board, improving
 - communications, generally, **15:36**
 - corporate democracy, **15:34**
 - nominating process, expansion of related disclosure, **15:35**
 - proxy rules, review by Commission, **15:34**
- Compensation committee
 - executive compensation, **15:43**
 - NYSE, **15:20.10, 15:22, 15:22.10**
- Director and employee hedging, **15:41.02**
- Director's attendance and integrity, **15:2**
- Disclosure
 - code of ethics or lack thereof, **15:32**
 - executive compensation and corporate governance, **15:42.16, 15:42.20**
 - expertise of audit committee members, **15:31**
 - golden leash disclosure, **15:30.02**
 - nominating process, improving communications of shareholders with board, **15:35**
 - NYSE initiatives, required disclosures, **15:24**
 - proxy statement, independent board chair, **15:41**
 - responsibilities of directors as to disclosure, **15:38**
 - SROs other corporate governance initiatives, **15:24**
- Employee and director hedging, **15:41.02**
- Executive Compensation** (this index)
- Foreign Corrupt Practices Act** (this index)
- Golden leash disclosure, **15:30.02**
- Government assistance, executive compensation provisions applicable to companies receiving, **15:46**
- Independence of compensation committee, **15:43**

CORPORATE GOVERNANCE AND FEDERAL SECURITIES LAWS—Cont'd

- Independent board chair, **15:41**
- Initiatives
 - revision of listing requirements. Sarbanes-Oxley SRO audit committee listing requirements, below
 - SROs other corporate governance initiatives, below
- Integrity of director, **15:2**
- Loans to officers and directors, restriction, **15:33**
- Nasdaq
 - audit committee listing standards, **15:12, 15:14**
 - compensation, **15:28.10**
 - corporate governance initiatives, **15:26 to 15:30**
 - executive sessions of independent directors and other initiatives, **15:29**
 - foreign issuers, **15:30**
 - independent director, defined, **15:27**
 - majority of board to be independent directors, **15:26**
 - role of independent directors in nomination and compensation process, **15:28**
- NYSE
 - audit committee listing standards prior to Sarbanes-Oxley Act, **15:12**
 - certification of CEOs, **15:24**
 - compensation committees, **15:22**
 - disclosures required, **15:24**
 - Dodd-Frank, changes to compensation committee rules, **15:20.10**
 - executive sessions of non-management directors, **15:23**
 - independence of majority of directors, **15:20**
 - independent director defined, **15:21**
 - majority of board to be independent directors, **15:20**
 - nominating/corporate governance committees, **15:22**
 - other corporate governance initiatives, **15:19 to 15:25**
 - revision of NYSE audit committee listing standards, **15:13, 15:14**
 - Section 303A proposal, **15:25**
- Proxy regulation
 - disclosure of independent board chair in annual proxy statement, **15:41**
- Reduced voting rights of public shareholders, **15:4.50**
- Report of blue ribbon panel, **15:4**
- Restricting loans to officers and directors, **15:33**
- Rule 10A-3 adoption by SEC
 - generally, **15:7 to 15:11**
 - affiliate aspect of independence under Rule 10A-3, **15:8**
 - commercial and family relationships, **15:9**
 - composition and independence of audit committees of listed companies, **15:7**
 - extent of independence standards, **15:11**
 - foreign private issuers, **15:10**
 - independence of audit committees of listed companies, **15:7**

CORPORATE GOVERNANCE AND FEDERAL SECURITIES LAWS—Cont'd

Rule 10A-3 adoption by SEC—Cont'd
independence under Rule 10A-3, **15:8**

Sarbanes-Oxley SRO audit committee listing requirements
generally, **15:6**
defects, opportunity to cure, **15:16**
delisting, **15:16**
directive to Commission, **15:5, 15:6**
empowering audit committee of listed companies, **15:15**
general exemptions, **15:17**
multidirectional focus, **15:5**
Nasdaq audit committee listing standards, **15:14**
NYSE and Nasdaq audit committee response, **15:12 to 15:14**
NYSE audit committee listing standards, revision, **15:13, 15:14**
revisions to NYSE audit committee listing standards, **15:13, 15:14**

Rule 10A-3 adoption by SEC, above
SEC adopts Rule 10A-3, **15:7 to 15:11**
standards prior to Sarbanes-Oxley, **15:12**
status of other SROs, **15:18**

Shareholder Proposals (this index)

SROs other corporate governance initiatives
audit committee listing requirements, **15:18**
certification of CEO, NYSE, **15:24**
changes to NYSE compensation committee rules, Dodd-Frank, **15:20.10**
compensation, compensation committees and independence, **15:18.20**
compensation advisers, **15:18.25**
compensation committees, **15:18.10, 15:18.20, 15:20.10**
NYSE, **15:22**
compensation rules of, **15:28.10**
disclosures required, NYSE, **15:24**
Dodd-Frank Act, **15:18.10, 15:20.10**
effective and compliance dates, **15:18.15**
executive sessions of independent directors and other initiatives, Nasdaq, **15:29**
executive sessions of non-management directors, NYSE, **15:23**
foreign issuers, Nasdaq, **15:30**
independent director, defined
Nasdaq, **15:27**
NYSE, **15:21**
majority of board to consist of independent directors
Nasdaq, **15:26**
NYSE, **15:20**
Nasdaq corporate governance initiatives, **15:26 to 15:30**
nominating/corporate governance committees, NYSE, **15:22**

CORPORATE GOVERNANCE AND FEDERAL SECURITIES LAWS—Cont'd

SROs other corporate governance initiatives—Cont'd
NYSE other corporate governance initiatives, **15:19 to 15:25**
role of independent directors in nomination and compensation process, Nasdaq, **15:28**
Section 303A proposal, NYSE, **15:25**
Structure of corporate board and corporate governance, **15:1**
Transactions with management and executive compensation, **15:37**

COSTS

Listing on trading markets (SROs) and SRO regulation, analysts' conflicts of interest, **11:36**
PSLRA, security for costs, **30:21**

COVID-19 CRISIS

Changes
authentication document retention requirements of Regulation S-T, **1:88**
conducting shareholder meetings, **1:94**
filing procedures for paper documents other than Form 144, **1:92**
paper filings under Form 144, **1:91**
reporting and filing obligations and proxy delivery requirements, **1:87**
requirements for certain paper submissions, **1:93**

Conditional relief for small businesses pursuing crowdfunding offerings, **1:95**

Disclosure guidance from the division of corporation finance, **1:98**

Introduction, **1:86**

Nasdaq waivers of certain shareholder approval requirements, **1:97**

NYSE waivers of certain shareholder approval requirements, **1:96**

Public statement on financial reporting from the chief accountant, **1:99**

S-3 eligibility, and the 10(a)(3) update, **1:90**

Shelf takedowns during pendency of extension, **1:89**

CREDIT RATINGS

Dodd-Frank Wall Street Reform Act, **1:57.14, 1:60**

CREDIT RISK RETENTION

Dodd-Frank Act (this index)

CRIMINAL ENFORCEMENT

Enforcement by SEC (this index)

CROSS BORDER EXEMPTIONS

International Transactions (this index)

CROWDFUNDING

Generally, **9:50**
Accredited investor crowdfunding, Section 4(b)(1) platforms, **19:6.02, 19:6.04**
Anti-money laundering compliance, fund portals, **19:6.28**

CROWDFUNDING—Cont'd

Federal registration, funding portals, **19:6.22, 19:6.24**
 Fund portals, **19:6.22 to 19:6.30**
 JOBS Act, **9:49**
 Permissible activities, fund portals, **19:6.26**
 Privacy, funding portals, **9:6.28**
 Records, funding portals, **9:6.30**

CRYPTO-ASSET LENDING PLATFORMS

BlockFi: Crypto Lending Platforms, **8:51**
 SEC v. Genesis Global Capital LLC, **8:52**

CRYPTO-ASSET PLATFORMS

Generally, **8:47 to 8:50**
 Coinbase, **8:49**
 Exchange of third-party tokens on secondary platforms,
8:50
 Introduction, **8:47**
 SEC v. Binance Holdings Limited, **8:48**

CRYPTOCURRENCIES

Generally, **8:1 to 8:62**
 Already functional utility tokens, **8:6**
 Applications, **8:14**
 Bankman-Fried, Ellison and Wang, **8:59**
 Custodial services for crypto assets, **8:60**
 financial innovation and technology, **8:61**
 Barksdale, **8:27**
 DAO: SEC's Section 21(a) Report, **8:18**
 Definition of dealer, **8:57**
 Efforts of others, Howey prong, **8:7**
 Enforcement actions
 LBRY, inc., **8:34**
 terraform labs pte ltd., **8:35**
 Enforcement actions, SEC v. Ripple
 2025 postscript, **8:46.02**
 the hinman affair, **8:40**
 institutional sales, **8:42**
 larsen and garlinghouse, **8:45**
 other distributions, **8:44**
 programmatic sales, **8:43**
 secondary market transactions, **8:46**
 summary judgment motions granted in part and
 denied in part, **8:41**
 Extraterritoriality, **8:5**
 FinHub's Framework for "Investment Contract" analy-
 sis of digital assets
 generally, **8:8**
 Forman considerations, **8:11**
 reasonable expectation of profits, **8:10**
 reliance on the efforts of others, **8:9**
 First token offering no-action letter, **8:12**
 Futures on XRP, **8:62**
 Hints of change emerge in 2024, **8:2**
 Howey test
 "investment of money" prong, payment in
 cryptocurrency may satisfy, **8:19**

CRYPTOCURRENCIES—Cont'd

Howey test—Cont'd
 Test and application to cryptocurrency, initial coin
 offerings, security token offerings, **8:7**
 Howey test and application to, **8:7**
 Insider trading, alleged; Wahi brothers, **8:58**
 Introduction to significant recent cases, **8:4**
 Miscellaneous
 Ripple class action, **8:53**
 Motion to dismiss in terraform., **8:36**
 Munchee, **8:19**
 Non-fungible tokens: Impact Theory, **8:55**
 Paragon Coin, **8:20**
 Pocketful of Quarters, **8:13**
 Prevails on Howey and registration claims in summary
 judgment motion in terraform, **8:37**
 Rensel v. Centra Tech, **8:21**
 SAFT, **8:16, 8:17**
 SEC's Section 21(a) Report, DAO, **8:18**
 SEC v. Blockvest, **8:23, 8:24**
 permanent injunction and other remedies for registra-
 tion and fraud violations, **8:25**
 SEC v. Ripple, **8:39**
 SEC v. Sun, **8:54**
 Simple Agreement for Future Tokens (SAFT), **8:16,**
8:17
 Staking-as-a-service: Kraken, **8:56**
 Terraform, postscript, **8:38**
 Tezos private civil litigation, **8:26**
 The Tezos private civil litigation, **8:26**
The SAFT (this index)
 Transitioning from security to non-security status, **8:15**
 Trump 2.0
 peirce and the pursuit of a new world order, **8:3**
 U.S. v. Zaslavskiy, **8:22**
 Zaslavskiy, U.S. v., **8:22**

CYBERSECURITY

Generally, **38:1, 40:1 to 40:20**
 Court largely credits company disclosure in aftermath
 of malware attack, **38:8**
 Data protection, **40:13**
 Data security enforcement, broken windows policy,
36:115
 Disclosure in the 10-K and 20-F: risk management,
 strategy, and governance, **38:4**
 Disclosures, **3:80**
 2022 proposing release, **40:3.04**
 Enforcement
 civil, **40:18**
 SEC, **40:17**
 Fate of the SEC enforcement action against solarwinds,
38:9
 FINRA, **40:10**
 Foreign private issuers, **38:6**
 Gensler-era settled enforcement actions against
 companies impacted by the solarwinds, **38:10**

CYBERSECURITY—Cont'd

- Identity theft red flag rules, **40:14**
- Internal controls, and disclosure controls, **38:12**
- Litigation, **40:19**
- March 2025
 - hearing and correspondence presage likely house action, **38:2**
 - recent dissents by Republican Commissioners may presage SEC action, **38:3**
- Office of Compliance Inspections and Examinations (OCIE), initiative, **40:9**
- Petition for rescission of SEC incident reporting rule, **38:7**
- Privacy of consumer financial information, **40:13**
- Public company cybersecurity disclosures; interpretive release, **40:3.02**
- Regulation S-P, **40:13**
- Regulation Systems Compliance and Integrity, **40:12**
- Reporting material cybersecurity incidents on form 8-K, **38:5**
- Roundtable recommendations
 - generally, **40:4**
 - critical market systems, **40:6**
 - disclosure, **40:5**
 - market professionals, **40:7**
- SEC
 - disclosure failures arising from massive data breach, **38:14**
 - sanctions foreign issuer after finding delayed and misleading disclosure following cyber breach, **38:13**
- SEC enforcement of data security, broken windows policy, **36:115**
- Securities and Exchange Commission (SEC)
 - action, **40:2 to 40:8**
 - comment letters and sample disclosures, **40:8**
 - enforcement, **40:17**
 - roundtable recommendations, above
 - staff guidance, below
- Settled enforcement action for incomplete disclosures following ransomware attack, **38:11**
- SOX and SEC rules, **40:15**
- Staff guidance
 - disclosure, Topic No. 2, **40:3**
 - investment management, **40:11**
- State security breach notification laws, **40:20**

CYBERSECURITY DISCLOSURE

- Generally, **3:80**

CYBERSECURITY INFORMATION SHARING ACT

- Generally, **40:16**

CYBERSPACE

- Internet** (this index)

DAMAGES

- Generally, **37:3**

DAMAGES—Cont'd

- Private actions, implied remedies (primarily Rule 10b-5), **27:10, 27:74**
- PSLRA
 - class action provisions, **30:26**
 - loss causation in Supreme Court, **29:81**
 - Section 11 actions, **29:115**
- Punitive damages. **Broker Dealer Litigation and Arbitration** (this index)

DEFINITIONS

- Conflict minerals, **12:110**
- Cyberspace securities, **2:22**
- Investment Contract as Security** (this index)
- Investment Contracts** (this index)
- Limited liability company interest as security, **2:4**
- Oil and gas rights, fractional undivided interests, **2:21**
- Partnership interest as security, **2:3**
- Promissory Note as Security** (this index)
- Sale of business, structure, **2:5, 2:6**

DELAWARE TAKEOVER LAW

- Hostile Takeover, Defensive Strategies and Wilmington Filers** (this index)

DEMO DAYS

- Exempt offerings, regulation D common requirements, **9:24.14**

DEPARTMENT OF LABOR

- Whistleblower protection regulations, **36:111**

DEPOSITORY INSTITUTIONS

- Financial subsidiaries. **Gramm Leach Bliley Act** (this index)
- Registration and reporting under Exchange Act, and Section 12(g)/15(d), over-the-counter securities, **12:17.34**

DEPOSITORY TRUST COMPANY (CEDE)

- Acquisition of beneficial ownership through DTC book entries, **22:109**
- Proxy regulation, role in soliciting beneficial owners, **17:10**

DERIVATIVE SECURITIES

- Generally, **14:1**
- Call equivalent and put equivalent positions, **14:4**
- Case of symmetry, **14:5**
- Choice of law/forum clauses, **37:26.08, 37:26.10**
- Concept of derivative securities, **14:3**
- Old approach to options and other derivative securities, **14:2**
- Pecuniary interest test, Section 16(a) reporting of insider transactions, **14:20 to 14:28**
- Reporting and short-swing profit liability under Section 16, **14:1 to 14:6**
- Rights with unfixed exercise price and other special situations, **14:6**

DERIVATIVE SECURITIES—Cont'd

- Section 16(a) reporting of insider transactions pecuniary interest test, **14:24**
- post Sarbanes-Oxley Act, **14:34**
- Section 16(b) litigation, **14:41**
- Section 16(b) matching transactions, **14:1 to 14:6, 14:13**

DESIGNATED OFFSHORE SECURITIES MARKETS (DOSM)

- Resale advantages, Regulation S, **22:41.04**

DISCLOSURE

- Generally, **3:1**
- See also **Integrated Disclosure System** (this index)
- Annual filings prior to adoption of the final rules, **3:76.32**
- Background of and reasons for the de-SPAC transaction, **5:113**
- Board determination about the de-SPAC transaction, **5:114**
- Broken windows policy, fraudulent tweets, **36:119**
- Broker Dealer Litigation and Arbitration** (this index)
- Climate change, effects, **3:76**
- Companies, preparing for the potential rules, **3:76.26**
- Compliance and Disclosure Interpretations** (this index)
- Conflict minerals, **12:117**
- Conflicts of interest, **5:111**
- Corporate Governance and Federal Securities Laws** (this index)
- Cybersecurity disclosure** (this index)
- Cybersecurity disclosures, 2022 proposing release, **40:3.04**
- Cybersecurity disclosures, public company; interpretive release, **40:3.02**
- De-SPAC transactions, **5:112**
- Emerging Growth Companies** (this index)
- Enhanced projections disclosure, **5:117**
- Executive Compensation** (this index)
- Exempt Offerings** (this index)
- Financial statement requirements
 - business combination transactions involving shell companies, **5:120**
- Fraudulent tweets, broken windows policy, **36:119**
- Going Private Transactions** (this index)
- Insider Trading** (this index)
- Integrated Disclosure System** (this index)
- International Transactions** (this index)
- Investment management, **3:76.34**
- JOBS Act (2012)** (this index)
- Listing on Trading Markets (SROs) and SRO Regulation** (this index)
- Litigation against the company, preparing, **3:76.30**
- Litigation over the climate rules, **3:76.24**
- Municipal Securities Distribution** (this index)
- Non-financial disclosures in de-SPAC disclosure documents, **5:119**

DISCLOSURE—Cont'd

- Nonreporting companies and Rule 15c2-11, **12:102**
- Penny Stock Market Regulation** (this index)
- Political context and response to the 2024 rules, **3:76.22**
- Private actions, implied remedies (primarily Rule 10b-5), SEC investigation disclosures, **27:36.02**
- Private Actions, Implied Remedies** (this index)
- Projections in de-SPAC transactions, Item 1609, **5:116**
- Proxy regulation, **17:16, 17:18**
- Public company cybersecurity disclosures; interpretive release, **40:3.02**
- Public Offering Registration** (this index)
- Registration and Reporting Under Exchange Act** (this index)
- Regulation S-K** (this index)
- Related party disclosures
 - Generally, **3:87 et seq.**
 - See also **Integrated Disclosure System** (this index)
- Reports, opinions, appraisals, and negotiations, **5:115**
- Resource extraction, payments to governments, **3:75 to 3:75.04**
- Scaled disclosure for smaller reporting companies, **4:1 to 4:8**
- SEC investigation disclosures, private actions, **27:36.02**
- Setting a reporting strategy, preparing, **3:76.28**
- Shareholder proposals to amend bylaws, disclosure of proxy voting policies by investment companies and investment advisers, **18:89**
- S-K disclosure standards for SPACs, **5:108**
- SPAC offerings other than de-SPAC transactions, **5:109**
- Sponsor, affiliates, and promoters, **5:110**
- Structured data requirement, **5:118**
- Structured disclosure, SEC Regulation S-K concept release, **3:117**

DISCOVERY

- Private actions, state remedies, stay of discovery, **31:4**
- Private actions, state remedies and SLUSA, stay of discovery, **31:23**
- Stay of discovery
 - documents furnished in government and other investigations, **30:16**
 - Federal Rules of Civil Procedure, **30:14**
 - government and other investigations, documents furnished, **30:16**
 - particularized discovery, **30:15, 30:16**
 - PSLRA stay of discovery provisions, **30:13**
 - state remedies, **31:4**
 - state remedies and SLUSA, **31:23**

DISCRETIONARY SECURITIES/COMMODITIES ACCOUNTS

- Investment contracts, **2:20**

DISCRETIONARY VOTING

- Executive compensation and corporate governance, **15:42.14**

DISCRETIONARY VOTING—Cont'd

Proxy regulation, soliciting beneficial owners, **17:13.10**

DISGORGEMENT

Enforcement by SEC (this index)

Listing on trading markets (SROs) and SRO regulation, analysts' conflicts of interest, **11:36**

DISQUALIFICATION WAIVERS

Contemporary topics, **1:81**

DODD FRANK ACT

Asset-backed securities

credit risk retention, **1:57.16**

pre-Dodd-Frank proposed amendments to Regulation AB, **1:57.12**

regulation prior to Dodd-Frank, **1:57**

role in financial crisis, **1:57.10**

Background to legislative process, **1:53**

Broker-dealer arbitration, **35:39.10**

Broker-dealer regulation, **19:23.10**

Compensation committees, NYSE rules, **15:22.10**

Conflicts of interest, **1:57.14**

Conflicts of interest, prohibition of; 2023 re-proposal, **1:57.18**

Context of reform, **1:52**

Credit ratings, **1:57.14, 1:60**

Credit risk retention

permissible forms, **1:57.16**

statutory requirements, **1:57.16**

Executive Compensation (this index)

Extraterritoriality

generally, **37:2.10**

Final rule, **1:56.12**

Financial stability, **1:55**

Hedge funds, banking entities, relationship, **1:56.14**

Investment advisers. See **Investment Companies and Investment Advisers** (this index)

Investment banks, Volcker Rule, **1:56.10 to 1:56.14**

Issuer pay conflict and Rule 17g-5, **1:57.14**

Legislative process, **1:53**

Morrison, **37:2.10**

Overview, **1:54**

Pay ratio rule, **3:64.20**

Private equity funds, banking entities, relationship, Volcker Rule, **1:56.14**

Proprietary trading, Volcker Rule, **1:56.10 to 1:56.14**

Proxy regulation, soliciting beneficial owners, discretionary voting, **17:13.10**

Public company accounting oversight board, updates, auditing, attestation, quality control, and ethics standards, **21:34.24**

Regulation AB

asset-based securities, **1:57, 1:57.10**

pre-Dodd-Frank Act proposed amendments, **1:57.12**

Resolution authority, **1:58**

SEC enforcement

aiding and abetting, enforcement authority, **36:112**

DODD FRANK ACT—Cont'd

SEC enforcement—Cont'd

deadline for enforcement actions and inspections, **36:113**

injunctions, control person liability, **36:15.10**

Securitization, **1:54, 1:57.10, 1:57.16**

Security

Generally, **1:56 to 1:56.06**

based swap antifraud rule, **1:56**

final Rule 9j-1(a): Fraudulent, manipulative, or deceptive conduct; price manipulation, **1:56.03**

final Rule 9j-1(b) and (c): Material non-public information, **1:56.04**

final Rule 9j-1(e): Safe harbors and affirmative defenses, **1:56.05**

final Rule 15Fh-4(c), **1:56.06**

proposed Rule 9j-1, **1:56.01**

proposed Rule 15Fh-4, **1:56.02**

Short sales, **1:59**

SROs other corporate governance initiatives, compensation committees, **15:18.10, 15:20.10**

2023 re-proposal, **1:57.18**

Volcker Rule

generally, **1:56.10 to 1:56.14**

DOMESTIC MARKET MANIPULATION

Antifraud provisions, **22:103**

DRAFT REGISTRATION STATEMENT

Confidential submission, JOBS Act (2012), **5:64**

ECONOMIC GROWTH REGULATION RELIEF AND CONSUMER PROTECTION ACT

Title V

generally, **1:71 to 1:71.08**

algorithmic trading, study on, **1:71.08**

proxy rule parity for closed-end funds, **1:71.06**

EDGAR

Background. Obtaining access codes, below

Filings releases enforcement by SEC, broken windows policy, **36:120**

Press releases enforcement by SEC, broken windows policy, **36:120**

EDWARDS DECISION

Supreme Court on investment contracts, **2:13, 2:15, 2:19**

EIGHTH CIRCUIT

Insider trading, misappropriator as inside trader, **33:10, 33:17**

Promissory note as security, Reves case, **2:9**

ELECTRONIC COMMUNICATIONS NETWORKS (ECN)

Broker-dealer regulation, **19:26**

ELECTRONIC ROAD SHOWS

Public offering distribution process, securities offering reform, **5:48**

ELECTRONIC ROAD SHOWS—Cont'd

Securities offering reform, **5:21**

EMERGING GROWTH COMPANIES

Generally, **5:51 et seq.**

Analysts

conflicts of interest, **5:61**

Regulation AC, **5:62**

Section 501 of Sarbanes-Oxley Act, **5:62**

Auditing standards, **5:57**

Audit of internal control over financial reporting, **5:56**

Confidential submission of draft registration statement, **5:64**

Conflicts of interest involving analysts, **5:61**

Disclosure

generally, **5:52**

executive compensation, **5:53**

financial information, **5:54**

Extension of time to comply with financial accounting standards, **5:55**

FINRA quiet periods and research reports, **5:60**

General staff comment, **5:66**

Internal control over financial reporting, **5:56**

IPOs and research reports, **5:58**

JOBS Act (2012), **5:51 et seq.**

Opt-in right for emerging growth companies, **5:65**

Research reports

FINRA quiet periods, **5:60**

IPOs, **5:58**

Section 5 registration and research reports, **5:59**

Sample risk factor, **5:66**

Section 5 registration and research reports, **5:59**

Test-the-waters communications, **5:63**

ENFORCEMENT BY SEC

Generally, **25:6, 25:7**

Administrative adjudication and sanctions

amendments to SEC Rules of Practice, **36:136**

Appeals from administrative proceedings, below appointment process and tenure protection for SEC ALJs, **36:137**

backlash over administrative proceedings, **36:131**

cease and desist orders, below

controversy over administrative proceedings, **36:130 et seq.**

efforts to address perception of SEC ALJ bias, **36:135**

judicial vs. administrative lawmaking, which is better forum for development of securities law?, **36:134**

perception of bias in SEC adjudications, **36:132**

Rules of Practice. Administrative proceeding and SEC Rules of Practice, below

statute of limitations, below

types of cases adjudicated by SEC, **36:133**

Administrative enforcement remedies

generally, **36:30**

ENFORCEMENT BY SEC—Cont'd

Administrative enforcement remedies—Cont'd

administrative fines, **36:32, 36:33**

aiders and abettors, sanctions, **36:41**

Appeals from administrative proceedings, below cease and desist orders, below in this group

fines and remedial sanctions for securities professionals, **36:31 to 36:34**

penny stock participations, matching wits with recidivists, **36:40**

public interest, determination, **36:33**

recidivists, penny stock participations, **36:40**

suspension of trading, **36:42**

willfulness determination, **36:24**

Administrative law judges

adjudicatory vs. executive functions, **36:139**

Appeals from administrative proceedings, below appointment process and tenure protection for SEC ALJs, **36:137**

constitutional officer status, **36:138**

D.C. Circuit finds SEC ALJ appointments constitutional, **36:138**

dual tenure protections, **36:139**

efforts to address perception of SEC ALJ bias, **36:135**

perception of bias in SEC adjudications, **36:132**

Administrative proceeding and SEC Rules of Practice

Accountants (this index)

aiding and abetting, cease and desist orders, **36:78**

amendments, **36:136**

Appeals from administrative proceedings, below background, **36:55**

cease and desist orders, **36:77, 36:78**

controversy over administrative proceedings, **36:130 et seq.**

disciplinary and certain other decisions of SROs, review by Commission, **36:75**

discovery, below

disgorgement, proceedings to approve plan for, **36:79**

hearings and hearing officers, below

initial decision and Commission review

briefs and briefing schedule, **36:71**

decision of Commission, **36:73**

judicial review and stay pending review, **36:74**

oral argument, **36:72**

petition for review, **36:70**

review petition, **36:70**

stay pending judicial review, **36:74**

initiation of proceeding, **36:57**

intervention, **36:59**

PCAOB decisions, review by Commission, **36:76**

Rule 102(e) standard of improper professional conduct

Accountants (this index)

securities practitioners, **39:18**

ENFORCEMENT BY SEC—Cont'd

- Administrative proceeding and SEC Rules of Practice—Cont'd
 - scope of Rules of Practice, **36:54**
 - securities practitioners and Rule 102(e) standard of improper professional conduct, **39:18**
 - suspending registration of broker-dealer, **36:77**
 - temporary cease and desist orders, **36:77**
 - Wells statements, **36:56**
- Administrative vs judicial lawmaking, which is the better forum for development of securities law?, **36:134**
- Admissions policy, **36:79.02**
- Aiding and abetting
 - administrative sanctions, **36:41**
 - cease and desist orders, **36:78**
 - injunctions, **36:14**
- Alternative trading systems, broken windows policy, **36:119**
- Appeals from administrative proceedings
 - Generally, **36:140 et seq.**
 - amendments to rules, **36:136**
 - controversy over administrative proceedings, **36:130 et seq.**
 - judicial vs. administrative lawmaking: which is better forum for development of securities law?, **36:134**
 - nature of judicial review, **36:140**
 - timing of judicial review, **36:140**
- Appointment process and tenure protection for SEC ALJs, **36:137**
- Attorneys as gatekeepers, SEC enforcement focus, **39:49**
- Backlash over administrative proceedings, **36:131**
- Barring securities violators from acting as officer or director of public company
 - generally, **36:20**
 - cease and desist orders, **36:39**
 - Sarbanes-Oxley lowers standard for officer/director bar, **36:21**
 - unfitness and substantial unfitness distinguished, **36:22**
- Broken windows policy
 - Generally, **36:114 et seq.**
 - alternative trading systems, **36:119**
 - data security, **36:115**
 - EDGAR filings and press releases, **36:120**
 - fraudulent tweets, **36:119**
 - internal control reporting deficiencies
 - Generally, **36:116**
 - outside auditor roles, **36:117**
 - misrepresentations concerning non-financial products, **36:118**
 - MusclePharm, **36:116**
 - non-financial products misrepresentations, **36:118**
- Broker-dealer compliance, litigation, and arbitration, **25:7**

ENFORCEMENT BY SEC—Cont'd

- Cease and desist orders
 - generally, **36:35**
 - accounting following disgorgement, **36:38**
 - administrative proceeding and SEC Rules of Practice, **36:77, 36:78**
 - civil penalties, **36:37.10**
 - disgorgement and accounting, **36:38**
 - enforcement of order, **36:37**
 - officer and director bar, **36:39**
 - temporary cease and desist order, **36:36**
- Civil penalties
 - generally, **36:16**
 - cease and desist orders, **36:37.10**
 - composite, **36:17**
 - controlling persons, **36:19**
 - penalty, generally, **36:18 et seq.**
- Civil proceedings
 - barring securities violators from acting as officer or director of public company, above
 - civil penalties, above
 - disgorgement and fair funds for victims, below
 - injunctions, below
- Collateral consequences, potential, **36:79.06**
- Controlling persons, civil penalties, **36:19**
- Controversy over administrative proceedings, **36:130 et seq.**
- Criminal proceedings
 - generally, **36:1**
 - allegations of presidential violations: SOX 0167 1102, **36:6.06**
 - corporate defendants, sentencing guidelines, **36:11**
 - corporate fraud task force, **36:3**
 - Corruptly impeding an official proceeding: SOX 0167 1102, **36:6.02**
 - D.C. Circuit applies fischer: SOX 0167 1102, **36:6.04**
 - determination of amount of loss, **36:10**
 - enhanced sentencing guidelines after Booker, **36:9**
 - loss determination, **36:10**
 - no knowledge clause, **36:6**
 - post Booker enhanced sentencing guidelines, **36:9**
 - Sarbanes-Oxley and sentencing, **36:7, 36:8**
 - Sarbanes-Oxley enhanced penalties for securities fraud and related crimes, **36:2**
 - sentencing guidelines, **36:8, 36:11**
 - significance of statutory penalties, **36:4**
 - SOA, instructing the Sentencing Commission on the seriousness of financial fraud, **36:7**
 - statutory penalties, **36:4**
 - supreme court limits: SOX 0167 1102, **36:6.08**
 - willfulness, **36:5**
- Cybersecurity** (this index)
- Data security, broken windows policy, **36:115**
- Discovery
 - generally, **36:60**

ENFORCEMENT BY SEC—Cont'd

- Discovery—Cont'd
 - administrative proceedings, **36:60 to 36:65**
 - motions for documents, **36:63**
 - request to inspect and copy Division of Enforcement documents, **36:61**
 - subpoenas for documents, **36:62**
 - withholding of documents by Division of Enforcement, **36:64**
- Disgorgement and fair funds for victims
 - generally, **36:23**
 - administrative proceedings to approve plan, **36:79**
 - enriching disgorgement funds available for distribution to investors, **36:25**
 - equity related compensation, **36:26**
 - executive equity related compensation, **36:24**
 - expansion of fair funds, **36:28**
 - Liu v SEC—Supreme Court considers legitimacy of disgorgement, **36:29.02 et seq.**
 - ownership of disgorgement funds, **36:29**
 - reimbursement of equity related compensation in event of reinstatements, **36:26**
 - reinstatement, reimbursement of equity related compensation, **36:26**
- Dodd-Frank Act** (this index)
- EDGAR filings and press releases, broken windows policy, **36:120**
- Fraudulent tweets, broken windows policy, **36:119**
- Hearings and hearing officers
 - Administrative Law Judges, above
 - authority of hearing officer, **36:66**
 - hearing, generally, **36:67**
 - proposed findings and conclusions, **36:68**
 - summary disposition motion, **36:69**
- Initial decision. Administrative proceeding and SEC Rules of Practice, above
- Injunctions
 - generally, **36:12**
 - aiding and abetting, **36:14**
 - control person liability in Dodd-Frank Wall Street Reform Act, **36:15.10**
 - modification of consent decrees, SEC v. Musk, **36:15.12**
 - probability of further violations, **36:13**
 - scienter and probability of further violations, **36:13**
 - statute of limitations, **36:15**
- Internal control reporting deficiencies
 - Generally, **36:116**
 - outside auditor roles, **36:117**
- Judicial review. Appeals from administrative proceedings, above
- Judicial vs. administrative lawmaking, which is the better forum for development of securities law?, **36:134**
- Jurisdiction
 - federal vs. state court jurisdiction for violation of state securities and other laws, **37:1.02**

ENFORCEMENT BY SEC—Cont'd

- Minor offenses. Broken windows policy, above
- Misrepresentations concerning non-financial products, broken windows policy, **36:118**
- Nature of judicial review of administrative proceedings, **36:140**
- No-admit-no-deny settlements, criticism of, **36:79.04**
- Non-financial products misrepresentations, broken windows policy, **36:118**
- Officer and director bar. Barring securities violators from acting as officer or director of public company, above
- Perception of bias in SEC adjudications, **36:132**
- Petty offenses. Broken windows policy, above
- Post-Enron
 - asset freeze orders and SOA temporary freeze provision, **36:105**
 - booster shot funding for the SEC, **36:107**
 - Computer Associates/Kumar/Richards, **36:102**
 - Department of Labor regulations for whistleblower protection, **36:111**
 - employees reporting securities fraud, **36:110 to 36:110.20**
 - expanding the range of unlawful securities-related conduct, **36:108**
 - Forbes and Shelton (Cendant), **36:101**
 - Joseph P. Nacchio, et al. (Qwest), **36:100**
 - Madoff ponzi scheme fall out, **36:106**
 - penny stock offering bar, **36:109**
 - SEC post-Enron/WorldCom enforcement record generally, **36:91**
 - Adelphia Communications elaborate and extensive corporate fraud, **36:94**
 - Enron related actions, **36:92**
 - Homestore, Inc. and round-tipping, **36:98**
 - Rite Aid, case against, **36:96**
 - Waste Management/Arthur Andersen case, **36:97**
 - WorldCom real-time enforcement, **36:93**
 - Xerox and earnings management, **36:95**
- SEC v. Koninklijke Ahold N.V. (Royal Ahold), **36:103**
- SEC v. Qwest Communications International, Inc, **36:99**
- SEC v. Time Warner, Inc, **36:104**
- unlawful securities-related conduct range expanded, **36:108**
- whistleblower protection, **36:110 to 36:110.20**
- whistle blower protection post-Enron, below
- Potential collateral consequences, **36:79.06**
- Pre-Enron
 - accounting irregularities, **36:81**
 - prevalence of blatant securities fraud and need for priorities, **36:80**
- Review of initial decision. Administrative proceeding and SEC Rules of Practice, above
- Rules of Practice. Administrative proceeding and SEC Rules of Practice, above

ENFORCEMENT BY SEC—Cont'd

Sarbanes Oxley Act (this index)
 Securities litigation, generally, **25:7**
 Settlements, criticism of no-admit-no-deny settlements, **36:79.04**
 Small violations. Broken windows policy, above
 Statute of limitations
 generally, **36:43 to 36:53.06**
 cease and desist orders, **36:46**
 continuing violation doctrine, **36:53**
 court's invitation to challenge disgorgement, **36:52**
 injunctions, **36:15**
 injunctive actions post-Kokesh, **36:53.06**
 Johnson case, **36:45**
 Kokesh case, **36:48 et seq.**
 sanctions based on prior injunction or conviction, **36:53.04**
 SRO proceedings, **36:53.02**
 Subpoenas, discovery of documents, **36:62**
 Timing of judicial review of administrative proceedings, **36:140**
 Types of cases adjudicated by SEC, **36:133**
 Victim reimbursement. Disgorgement and fair funds for victims, above
 Wells statements, **36:56**
 Whistleblower protection post-Enron
 2020 rule amendments
 independent analysis, **36:111.30**
 materials that may form the basis of the SEC award determination, **36:111.26**
 summary disposition procedures, **36:111.28**
 unreasonable reporting delays, **36:111.24**
 courts construe Dodd-Frank whistleblower provisions, **36:111.10**
 Dodd-Frank bounty program, **36:111.02**
 DOL regulations, **36:111**
 employee report wrongdoing to receive protection, **36:111.12**
 employees reporting securities fraud, **36:110 to 36:110.20**
 extraterritorial application of anti-retaliation provisions, **36:110.20**
 final rules on Dodd-Frank whistleblower protection, **36:111.04**
 impact on companies, internal compliance, **36:111.06**
 limits on which employees can collect under the Dodd-Frank whistleblower provision, **36:111.08**
 status and notice requirements, 2020 amendments, **36:111.13**
 anti-retaliation, **36:111.14**
 criteria for determining amount of award, **36:111.20**
 expanded application of judicial or administrative action, **36:111.16**
 related actions, **36:111.18**
 Use of dollar amount of award in determining amount of award 2022 amendments, **36:111.22**

ENFORCEMENT BY SEC—Cont'd

Willfulness determination
 administrative enforcement remedies, **36:24**
 criminal proceedings, **36:5**

ENRON CORPORATION

Arthur Andersen LLP, prosecution for obstruction of justice, **21:2**
 Demise of Enron as background, **1:28**
Discovery (this index)
Enforcement by SEC (this index)
 Financial fraud, generally, **21:1**
 Financial fraud and securities litigation, **25:8**
Integrated Disclosure System (this index)
PSLRA (this index)
 Registration and reporting under Exchange Act, background, **12:2**
Shareholder Proposals (this index)

EVIDENCE

Burden of proof
 discovery of fraud, pleading time of discovery, **32:30**
 shareholder proposals, social and public policy issues, **18:65**
 Joint liability, contribution, partial settlement and contribution bars under securities acts, evidentiary hearing, **37:20**
 PSLRA and pleading securities fraud
 motive and opportunity framework, **29:4**
 preponderance of evidence standard for class certification, **29:106**
 Securities practitioners, evidence of material violation, **39:30**
 Standard of proof, **37:29**

EXCLUSIONS

Promissory note as security, **2:12**
Shareholder Proposals (this index)

EXECUTIVE COMPENSATION

Corporate governance
 compensation committee independence, **15:43**
 compensation consultants, **15:44**
 disclosures, **15:42.16, 15:42.20**
 discretionary voting, **15:42.14**
 financial institutions, executive compensation at, **15:45**
 Form 8-K and issuer decision on frequency, **15:42.10**
 frequency, **15:42.06, 15:42.08, 15:42.10**
 golden parachute compensation, **15:42.16, 15:42.18, 15:42.22**
 government assistance, provisions applicable to companies receiving, **15:46**
 independence of compensation committee, **15:43**
 overview, **15:42**
 proxy, preliminary or definitive filing, Rule 14a-6, **15:42.12**
 Regulation S-K, Item 402(t) disclosures, **15:42.18, 15:42.20**

EXECUTIVE COMPENSATION—Cont'd

- Corporate governance—Cont'd
 - say-on-frequency, **15:42.06**
 - SEC implementing rules, **15:42.02**
 - shareholder approvals, **15:42.04, 15:42.16**
 - shareholder proposals on pay and frequency, **15:42.08**
 - shareholder vote on golden parachute compensation, **15:42.22**
 - smaller reporting companies, **15:42.24**
 - transactions with management, **15:37**
- Disclosure
 - JOBS Act (2012), **5:53**
 - private actions, **15:56**
- Dodd-Frank Act (2010)
 - corporate governance, **15:42 to 15:42.16**
 - pay ratio rule, **3:64.20**
 - pay versus performance, **3:64.46**
 - recovery under. Private actions, below
- Integrated disclosure system, Regulation S-K
 - generally, **3:47**
 - background, **3:47**
 - compensation and risk management, **3:54**
 - compensation consultants, **3:63.10**
 - compensation discussion and analysis, **3:53**
 - compensation of directors, **3:61**
 - compensation tables, **3:49**
 - corporate governance disclosure, **3:63**
 - Dodd-Frank Act (2010), above
 - interplay of equity grants and release of MNPI, **3:52.02**
 - relationship to Staff Accounting Bulletin No. 120, **3:52.04**
 - miscellaneous, **3:64**
 - named executive officers, **3:48**
 - narrative disclosure to summary and supplemental tables, **3:52**
 - non-executive compensation, **3:55**
 - nonqualified deferred compensation table, **3:59**
 - option exercises and stock vesting, **3:57**
 - other compensation disclosures, **3:64.10**
 - outstanding equity awards at fiscal year-end, **3:56**
 - overview, **3:47**
 - pay ratio, below
 - pay versus performance, below
 - post-employment compensation, **3:58**
 - potential post-employment payments, **3:60**
 - Regulation S-K, generally, **3:47 to 3:64.46**
 - risk management, **3:54**
 - stock vesting and option exercising, **3:57**
 - summary compensation table, **3:50**
 - supplemental grants of plan-based awards table, **3:51**
 - transactions with related persons, management, **3:62**
- Pay ratio
 - generally, **3:64.14 to 3:64.38**
 - cost-of-living adjustments, **3:64.32**

EXECUTIVE COMPENSATION—Cont'd

- Pay ratio—Cont'd
 - dissent on the Commission, **3:64.16**
 - Dodd-Frank requirement, **3:64.20**
 - filing issues, **3:64.34**
 - median employee, pay ratio, above PEO, **3:64.28**
 - ratio, **3:64.22**
 - transition periods, **3:64.36**
- Pay Versus Performance** (this index)
- Private actions
 - generally, **15:48 to 15:59**
 - amount recoverable, **15:52**
 - compensation subject to recovery, **15:55**
 - disclosure, **15:56**
 - exhibits, **15:58**
 - foreign private issuers, **15:57**
 - inclusions and exclusions, **15:54**
 - issuer obligation to recover, **15:52**
 - recovery policy, **15:50**
 - Rule 10D-1, overview, **15:49**
 - time period, **15:51**
 - transition issues, **15:59**
- Regulation S-K
 - corporate governance, Item 402(t) disclosures, **15:42.18, 15:42.20**
 - integrated disclosure system, above
- EXEMPTIONS**
 - Promissory note as security, **2:12**
 - Public offering registration, Trust Indenture Act and debt securities, **6:125**
 - Rule 16b-3 exemption. **Reporting and Short Swing Profit Liability under Section 16** (this index)
- EXEMPT OFFERINGS**
 - Generally, **9:1 to 9:49**
 - Accredited investors, verification, general solicitation, **9:33.18 to 9:33.22**
 - Angel investors, regulation D common requirements, **9:24.12**
 - Canadian multijurisdictional disclosure system, exempt offering alternatives, **22:78**
 - Consultants, exemption for employee benefit plans of nonreporting companies, **9:45**
 - Crowdfunding** (this index)
 - Demo days, regulation D common requirements, **9:24.14**
 - Disclosure
 - Canadian multijurisdictional disclosure system, exempt offering alternatives, **22:78**
 - exemption for employee benefit plans of nonreporting companies, **9:44**
 - Regulation D common requirements, below
 - Regulation D exemption, **9:31**
 - Exemption for employee benefit plans of nonreporting companies
 - consultants, **9:45**

EXEMPT OFFERINGS—Cont'd

Exemption for employee benefit plans of nonreporting companies—Cont'd
 quantitative limitations and required disclosure, **9:44**
 Rule 701 exemption, **9:43**

Facebook placement, Regulation D common requirements, **9:24.10**

“Facilitating Capital Formation” proposing release, **9:3.02 et seq.**

Integration of 506(c) solicitation with prior solicitations under 506(b), **9:33.27**

Internet
 private placements on Internet, **9:46**
 Rule 504 offerings, **9:47**
 Rule 1001 offerings, **9:47**
 state blue sky laws, **9:48**

Intrastate exemption, **9:2**

JOBS Act (2012)
Crowdfunding (this index)
 integration of 506(c) solicitation with prior solicitations under 506(b), **9:33.27**
 Rule 506/144A offerings, elimination of restriction on general solicitation, **9:24.15, 9:33.10 to 9:33.26**

Privately offered funds, Rule 506, **9:33.26**

Regulation D common requirements
 advertising or solicitation, **9:24, 9:24.05**
 angel investors, **9:24.12**
 check box, reliance on Rule 506(c), **9:33.24**
 demo days, **9:24.14**
 disclosure
 generally, **9:16**
 financial statement disclosure of non-reporting company, **9:19**
 non-financial statement disclosure of non-reporting company, **9:18**
 non-reporting company, **9:19**
 non-financial statement disclosure, **9:18**
 other disclosure, **9:20**
 reporting company, **9:17**

Facebook placement and general solicitation, **9:24.10**

filing, **9:21**

general solicitation or general advertising, **9:24, 9:24.05, 9:24.10**

JOBS Act, **9:33.10 to 9:33.26**

integration, Regulation D safe harbor, **9:22**

integration of subsequent public offering, **9:23**

Rule 506/144A offerings, elimination of restriction on general solicitation under JOBS Act, **9:24.15, 9:33.10 to 9:33.26**

Rule 508 and insignificant failure penalties to comply, **9:25**

safe harbor, integration, **9:22**

2007 guidance on general solicitation, **9:24.05**

venture fairs, **9:24.14**

EXEMPT OFFERINGS—Cont'd

Regulation D exemption
 generally, **9:4**
 accredited investors, **9:8**
 verification, general solicitation, **9:33.18 to 9:33.22**
 “accredited investors,” proposal to expand the meaning of, **9:9**

California exemption, **9:26**

disqualification provisions, **9:12**

Form 10-K
 reporting sales, **9:28**
 summary page, **12:34**

Form 10-Q, reporting sales, **9:28**

Form D, **9:14**

integration safe harbor, **9:13**

miscellany, **9:29**

reporting sales on Form 10-Q and Form 10-K, **9:28**

Rule 135(c), **9:27**

Rule 504 exemption, **9:5**

Rule 505 exemption, rescinded, **9:6**

Rule 506 exemption, **9:7**

Staff interpretations of Regulation D
 aggregate offering price, **9:30**
 all-or-none offerings, **9:33**
 disclosure requirements, **9:31**
 manner of offering, **9:32**

Rule 155. Integration of private and public offerings, Rule 155 safe harbors, above

Section 4(a)(2) exemption, **9:1**

Section 4(a)(6) exemption, **9:3**

Venture fairs, regulation D common requirements, **9:24.14**

EXHIBITS

Integrated disclosure system, **3:72 to 3:72.08**

Private actions, executive compensation, **15:58**

EXTRATERRITORIALITY

Generally, **37:2**

See also **International Transactions** (this index)

Antifraud provisions
 Securities Act, **22:113**

District court, allows enforcement action against
 Binance to proceed
 SEC v. Binance, **22:117**

Dodd-Frank, **22:115**

Dodd-Frank Act, **37:2.10**

Irrevocable liability in cryptocurrency transactions and the location of the first verifying node, **22:120**

Lanham Act, **22:123**

Morrison, **37:2.10**

Remedies phase of Terraform, **22:119**

RICO, **22:122**

Ripple, **22:116**

Second Circuit considers a platform purporting to exist solely in cyberspace

Williams v. Binance, **22:118**

EXTRATERRITORIALITY—Cont'd

Subject matter jurisdiction pre-Morrison, **37:2, 37:2.10**

FACEBOOK PLACEMENT

Exempt offerings, Regulation D common requirements, **9:24.10**

Registration under Exchange Act, Section 12(g), **12:17.15**

Resale of restricted securities, Rule 144, **10:11.02**

FEDERAL SECURITIES LAWS

Corporate Governance and Federal Securities Laws (this index)

Foreign Corrupt Practices Act (this index)

Gramm Leach Bliley Act (this index)

Investment Advisers Act, **1:13**

Investment Company Act of 1940, **1:12**

Penny Stock Reform Act. **Penny Stock Market Regulation** (this index)

Private Securities Litigation Reform Act. **PSLRA** (this index)

Public Utility Holding Company Act, **1:14**

Sarbanes Oxley Act (this index)

Securities Act of 1933, generally, **1:9**

Securities Exchange Act of 1934, generally, **1:10**

Securities Litigation Uniform Standards Act. **SLUSA** (this index)

Trust Indenture Act (this index)

FIDUCIARY DUTY

Broker-dealer litigation and arbitration
excessive dealer mark-ups and mark-downs, **35:18**
wrap program and fiduciary duty to disclose
markups, **35:18**

Broker-dealer regulation, **19:23.10**

Insider trading, Rule 10b-5, relationships imposing
fiduciary duty, **33:29 to 33:34**

Investment advisers, **20:34, 20:34.10**

Private actions, attempting to avoid SLUSA by artful
allegations, **31:19**

SLUSA, breach of fiduciary duty, **31:19**

FIDUCIARY RULE

Contemporary topics, **1:83**

FIFTH CIRCUIT

Private actions, attempting to avoid SLUSA by artful
allegations, **31:22**

PSLRA (this index)

FILINGS

EDGAR filings and press releases enforcement by
SEC, broken windows policy, **36:120**

FINANCIAL CRISIS

Financial Stability Oversight Council, **1:55**

FINANCIAL HOLDING COMPANIES

Functional regulation, **1:27**

Gramm-Leach-Bliley Act, **1:20, 1:21, 1:27**

Permissible activities, **1:21**

FINANCIAL INFORMATION

Disclosure, JOBS Act (2012), **5:54**

FINANCING TECHNIQUES

Coinbase direct listing, **5:72.16**

Direct floor listings, primary, **5:72.14**

Outstanding shares in a direct listing, **5:72.12**

Rulemaking proceeding on direct listings, **5:72.02**

Slack direct listing, **5:72.08**

Slack litigation, introduction, **5:72.10**

Spotify template for a direct listing, **5:72.06**

Which shares are registered in a direct listing?, **5:72.04**

FINRA

Cybersecurity, **40:10**

Oversight of broker-dealers. **Broker Dealer Litigation and Arbitration** (this index)

Quiet periods, research reports, JOBS Act (2012), **5:60**

Resales of restricted securities under Rule 144A and
fixed price offerings, **10:29.20**

FIRST AMENDMENT

Conflict minerals, **12:123**

FIXING AMERICA'S SURFACE**TRANSPORTATION (FAST) ACT**

Generally, **1:65**

Legislative history, **1:66**

Private resales of restricted securities, **10:30**

FOREIGN CORRUPT PRACTICES ACT

Books and records, **15:39**

Corrupt payments, **15:40**

Internal controls over accounting, **15:39**

FOREIGN CUBED CASES

Dodd-Frank Act, **37:2.10**

Extraterritoriality and Morrison, **37:2.10**

FOREIGN PRIVATE INVESTORS

Listing on Trading Markets (SROs) and SRO Regulation (this index)

FORM 1

PCAOB, registration of public accounting firms, **21:28**

FORM 4

Section 16(a) reporting of insider transactions, **14:29**

FORM 5

Section 16(a) reporting of insider transactions, **14:32**

FORM 8-A

Glossary of key disclosure forms, **3:6**

Regulation A offerings, **7:28**

Simplified registration, **12:22**

Simplified registration under Exchange Act, **12:21, 12:22**

FORM 8-K

Corporate governance and executive compensation,
frequency, **15:42.10**

FORM 8-K—Cont'd

Glossary of key disclosure forms, **3:6**
 Real time disclosure. **Registration and Reporting under Exchange Act** (this index)

FORM 10

Glossary of key disclosure forms, **3:6**
 Integrated disclosure system, **3:65**

FORM 10-K

Exempt offerings, **9:28**
 Glossary of key disclosure forms, **3:6**
 Reporting under Exchange Act, **12:32, 12:33**
 Summary page, **12:34**

FORM 10-Q

Exempt offerings, **9:28**
 Glossary of key disclosure forms, **3:6**
 Reporting under Exchange Act, **12:35, 12:37**

FORM 15F

Trading securities of FPIS, deregistration, **11:40**

FORM ADV

Registration of investment advisers, **20:40**

FORM AP

PCAOB, **21:34.32**

FORM CER-1

State securities registration, **24:10**

FORM D

Exempt offerings, **9:14**
 check box, reliance on Rule 506(c), **9:33.24**

FORM NF

State securities registration, **24:24**

FORM S-1

Glossary of key disclosure forms, **3:6, 6:20**
 Secondary shelf offering, **6:41, 6:42**

FORM S-3

Glossary of key disclosure forms, **3:6, 6:22**
 Secondary shelf offerings, **6:38, 6:39**

FORM S-4/F-4

Public Offering Registration (this index)

FORM S-8

Glossary of key disclosure forms, **3:6, 6:54**
Public Offering Registration (this index)

FORM S-11

Public offering registration, real estate investment companies, **6:67**

FORWARD LOOKING STATEMENTS

Bespeaks caution and the uncovered forward-looking statement
 generally, **28:28**
 circuit court decisions, generally, **28:30**
 enforcement actions and speaks caution, **28:35**

FORWARD LOOKING STATEMENTS—Cont'd

Bespeaks caution and the uncovered forward-looking statement—Cont'd

Grossman case and Tenth Circuit, **28:33**

reasonable basis, **28:29**

Tenth Circuit, **28:33**

Third Circuit, **28:31**

Trump case and Third Circuit, **28:31**

Worlds of Wonder case, **28:32**

Post-PSLRA

circuit courts of appeals

cautionary statements, **28:52**

Eleventh Circuit, **28:39**

estimates of expected losses on restatement of financials, Third Circuit, **28:50**

failure to disclose trends as violation of Rule 10b-5, Scholastic, **28:48**

Fourth Circuit, immateriality of projections, **28:49**

immateriality of projections as matter of law, Fourth Circuit, **28:49**

Judge Kennedy, soft information and Sixth Circuit precedent, **28:44**

Judge Merritt, soft information and Sixth Circuit precedent, **28:44**

majority opinion in Vencor II, Sixth Circuit, **28:43, 28:44**

mixed lists, **28:39, 28:40**

omissions and cautionary statements, **28:39, 28:40**

other side of soft information, Sixth Circuit, **28:45**

Raab case, immateriality of projections as matter of law, **28:49**

reliance on stock sales to establish scienter, Scholastic, **28:45**

Rule 10b-5 violation, failure to disclose trends, **28:48**

safe harbor for forward-looking statements, majority opinion in Vencor II, **28:43**

Scholastic case, Second Circuit and soft information, **28:46 to 28:48**

Second Circuit and soft information, **28:46 to 28:48**

Sixth Circuit, **28:41 to 28:45**

soft information, **28:41 to 28:45**

Third Circuit, **28:50**

timing issues affecting safe harbor, **28:51**

Vencor II, Sixth Circuit divides over soft information, **28:43, 28:44**

Vencor I panel opinion, Sixth Circuit, **28:42**

district courts

actual knowledge, pleading and other issues, **28:38**

cautionary statement prong, **28:37**

judicial confusion, **28:36**

Fourth Circuit, immateriality of projections, **28:49**

puffery and safe harbors, **28:22**

Rule 175/3b-6 safe harbor after PSLRA, **28:27**

FORWARD LOOKING STATEMENTS—Cont'd

Post-PSLRA—Cont'd

scope of SEC's power to amend forward-looking statements, **28:26**

PSLRA safe harbor

actual knowledge, what constitutes, **28:16**

actual knowledge of falsity or misleading nature of statement, **28:14 to 28:19**

adequacy of cautionary statements, **28:10**

adoption of PSLRA, **28:1**

cautionary statements as first prong, **28:9 to 28:13**

definition of forward-looking statements, **28:7**

discovery issues, **28:24**

exclusions and scope, **28:5**

free-standing safe harbor, **28:14**

future-oriented general statements, **28:20 to 28:23**

identification of maker of forward-looking statement, **28:17**

immateriality and puffery, **28:20 to 28:23**

immateriality and what market knows, **28:23**

Judge Easterbrook, **28:11**

knowledge level of market and immateriality, **28:23**

legislative history, **28:3, 28:10**

maker of forward-looking statement, **28:17**

meaningful cautionary statements, **28:9, 28:11**

metamorphose of safe harbor in House and Senate, **28:3**

misstating historical facts, **28:13**

obligation to update, **28:8**

oral forward-looking statements, **28:19**

outline, **28:6 to 28:8**

pleading and discovery issues, **28:24**

pre-PSLRA law, **28:2**

puffery and immateriality, **28:20 to 28:23**

post-PSLRA, **28:22**

safe harbor, conference committee, and SEC, **28:4**

safety of safe harbor, **28:25**

SEC and forward-looking statements after PSLRA, below

Tellabs and forward-looking statements, **28:12**

three levels, **28:6**

underwriter's forward-looking statements, **28:18**

update obligation, **28:8**

when is forward-looking statement false or misleading, **28:15**

Scienter post-PSLRA, circuit courts of appeals and reliance on stock sales to establish scienter, **28:45**

SEC and forward-looking statements after PSLRA amendment by SEC, **28:26**

Rule 175/3b-6 safe harbor after PSLRA, **28:27**

scope of Commission's power to amend PSLRA safe-harbor, **28:26**

Sixth Circuit, post-PSLRA, **28:41 to 28:45**

Third Circuit

bespeaks caution and the uncovered forward-looking statement, **28:31**

FORWARD LOOKING STATEMENTS—Cont'd

Third Circuit—Cont'd

post-PSLRA, estimates of expected losses on restatement of financials, **28:50**

FOURTH CIRCUIT

Forward-looking statements, immateriality of projections, **28:49**

Insider trading, misappropriator as inside trader, **33:8**

Private actions, implied remedies, timely corporate disclosure, **27:34**

FRACTIONAL UNDIVIDED INTERESTS IN OIL AND GAS RIGHTS

Consideration as securities, **2:21**

FRAUD**Enforcement by SEC** (this index)

Enron/WorldCom and financial fraud at Fortune 500 companies, generally, **21:1**

Financial fraud and securities litigation. **Sarbanes Oxley Act** (this index)

International transactions, **22:99**

Malpractice (professional negligence), attorney/fraudulent management interface, **39:54**

Morrison v. National Australia Bank, **22:99**

PCAOB, Auditing Standard No. 5, fraud assessment, **21:43**

Pleading securities fraud. **PSLRA** (this index)

Private actions, express remedies

blue sky general fraud provisions, **26:2**

enforcement of general fraud provisions, **26:4**

federal general fraud provisions, **26:1**

Private actions, implied remedies (primarily Rule 10b-5), reliance, **27:21 to 27:24**

SEC enforcement

corporate fraud task force, **36:3**

disgorgement and fair funds for victims, **36:79**

enhanced penalties for securities fraud and related crimes under SOA, **36:2**

Sentencing Commission, instruction on seriousness of financial fraud, **36:7**

Shareholder victims. **Fraud on Shareholders** (this index)

Statute of Limitations and Private Actions Under Securities Acts (this index)

FRAUD ON SHAREHOLDERS

Generally, **34:1 to 34:10**

Deception and oppression of minority shareholders

absence of impact on outcome, **34:7**

causation, **34:5 to 34:7**

proxy solicitations and causation, **34:6**

Deception on shareholders, **34:2**

Derivative actions, **34:1, 34:9**

Mergers and private actions, **34:3**

Private actions involving acquisitions in action, **34:8**

Procedural aspects of derivative actions, **34:9**

FRAUD ON SHAREHOLDERS—Cont'd

Reimbursement provision of Sarbanes-Oxley Act, **34:10**

Representations relating to fairness as involving deception, Virginia Bankshares case, **34:4**

Sarbanes-Oxley reimbursement provision, **34:10**

Virginia Bankshares case, representations relating to fairness as involving deception, **34:4**

FRIVOLOUS ACTIONS

PSLRA, **30:17**

FUNDERS CLUB

Online venture capital platforms, Jobs Act (2012), **19:6.06**

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP)

Integrated disclosure system
non-GAAP financial measures, **3:22**

Integrated disclosure system, post-Enron non-GAAP financial measures in public announcements, **3:18**

Non-GAAP financial measures
compliance & disclosure interpretations, **3:22**
enforcement actions involving non-GAAP measures, **3:20.03**

GLASS STEAGALL ACT

Supplanted. **Gramm Leach Bliley Act** (this index)

GLOSSY ANNUAL REPORT

Glossary of key disclosure forms, **3:6**

GOLDEN PARACHUTE COMPENSATION

Executive compensation and corporate governance, **15:42.16, 15:42.18, 15:42.22**

GRAMM LEACH BLILEY ACT

Financial subsidiaries of depository institutions
generally, **1:22**
operating subsidiaries, **1:25**
permissible activities for financial subsidiaries, **1:24**
qualifications, **1:23**

Glass-Steagall supplanted
generally, **1:18**

financial holding companies (FHCs), **1:20, 1:21**
overview of the Act, **1:19**

permissible activities for FHCs, **1:21**

Holding companies

financial holding companies, **1:20, 1:21, 1:27**
functional regulation of financial holding companies, **1:27**

investment bank holding companies, **1:26**

GREENHOUSE GAS EMISSIONS

Disclosure and communication, effects, **3:76**

GUARANTORS

Integrated Disclosure System (this index)

GUIDE 2

Integrated disclosure system, Regulation S-K in outline, **3:8**

HEDGE FUNDS

Adviser registration. **Investment Companies and Investment Advisers** (this index)

Banking entities, relationship, **1:56.14**

HOLDING COMPANIES

Financial Holding Companies (this index)

Investment bank holding companies, **1:26**

Volcker Rule, **1:56.10 to 1:56.14**

HOSTILE TAKEOVERS, DEFENSIVE STRATEGIES AND WILMINGTON FILERS

Business combination acts. State regulation of takeovers, below

Delaware as National Takeover Court
merger agreements. No-talk provisions in merger agreements, below in this group

Evolution of Delaware takeover law

Unocal, Moran, Revlon triumvirate, below

Poison pills
dead hand poison pill, above

Delaware as National Takeover Court, above

Unitrin case refining Unocal. Post-Paramount/QVC, above

Unocal, Moran, Revlon triumvirate
refining Unocal. Post-Paramount/QVC, above

HOWEY TEST

“Investment of money” prong, payment in cryptocurrency may satisfy, **8:19**

Test and application to cryptocurrency, initial coin offerings, security token offerings, **8:7**

IDENTITY THEFT

Red flags, cybersecurity, **40:14**

IMPROPER PROFESSIONAL CONDUCT

Accountants (this index)

Securities Practitioners (this index)

INCORPORATION BY REFERENCE

Integrated disclosure system, **3:73, 3:73.02**

INDEPENDENT ELECTION CORPORATION OF AMERICA

Proxy regulation, role in soliciting beneficial owners, **17:10**

INDUSTRY GUIDES

Disclosures, generally, **3:71**

Integrated disclosure system, Regulation S-K in outline, **3:8**

INITIAL COIN OFFERINGS

Cryptocurrencies (this index)

INITIAL PUBLIC OFFERINGS (IPO)

Emerging growth companies, research reports, **5:58**

INITIAL PUBLIC OFFERINGS (IPO)—Cont'd

- Jobs act
 - research reports, **5:58**
- Jobs Act
 - omission of certain financial information prior to IPO, **5:54.02**
- Omission of certain financial information prior, Jobs Act, **5:54.02**
- Public Offering Registration** (this index)

INJUNCTIONS

- Enforcement by SEC** (this index)

INQUIRY NOTICE

- Statute of Limitations and Private Actions Under Securities Acts** (this index)

INSIDER TRADING

- Generally, **33:1 to 33:56**
- Civil penalties under Insider Trading Sanctions Act of 1984, **33:39, 33:41**
- Civil penalty as punishment for double jeopardy purposes
 - Halper case, **33:42**
 - Harper case, **33:43**
 - Hudson case and repudiation of Harper, **33:43**
 - post-Hudson case, **33:44**
 - sanctions under Securities Acts, **33:45**
- Classic insider trading under Rule 10b-5
 - generally, **33:1**
 - Chiarella case, **33:2**
 - Dirks case, analysts and tipper/tippee liability, **33:4**
 - market information, parity of information and outsiders, Chiarella case, **33:3**
- Martoma
 - Rejection of Newman's meaningful close personal relationship requirement, **33:4.08**
- Newman
 - Generally, **33:4.02**
 - Ninth Circuit rejects Newman's view of personal benefit requirement in context of gift of information to trading relative or friend, **33:4.04**
- outsiders, market information, and parity of information, Chiarella case, **33:3**
- Salman
 - Ninth Circuit rejects Newman's view of personal benefit requirement in context of gift of information to trading relative or friend, **33:4.04**
 - Second Circuit view of personal benefit (pre-Salman), **33:4.02**
 - Supreme Court easily holds tipper need not receive pecuniary or similar benefit in exchange for gift of information to family or friends (affirming Ninth Circuit), **33:4.06**
 - Supreme Court easily holds tipper need not receive pecuniary or similar benefit in exchange for gift of information to family or friends (affirming Ninth Circuit), **33:4.06**
- Congress members, **33:45.20**

INSIDER TRADING—Cont'd

- Cryptocurrencies; Wahi brothers, **8:58**
- Dirks case, analysts and tipper/tippee liability
 - classic insider trading under Rule 10b-5, **33:4**
 - reversal, Rule 14e-3 and tipper, **33:16**
- Disclosure. Regulation FD, below
- Enforcement by SEC** (this index)
- Insider Trading Act of 1988
 - features outline, **33:35**
 - House Energy and Commerce Committee view of substantive law, **33:36**
 - Insider Trading Sanctions Act of 1984, **33:38**
 - private actions, **33:37**
 - substantive law of insider trading, view of House Energy and Commerce Committee, **33:36**
- Insider Trading Sanctions Act of 1984
 - broker-dealers, special duties, **33:40**
 - civil penalties, **33:39, 33:41**
 - controlling persons, civil penalty, **33:39**
 - investment advisers, special duties, **33:40**
 - prior to Insider Trading Act of 1988, **33:38**
 - special duties of broker-dealers and investment advisers, **33:40**
 - tipping, civil penalty, **33:41**
- Legislation
 - Insider Trading Act of 1988, above
 - Insider Trading Sanctions Act of 1984, above
- Members of Congress, **33:45.20**
- Misappropriator as inside trader
 - prior to O'Hagan
 - generally, **33:5**
 - Carpenter case, Second Circuit, **33:7**
 - contrary view, Fourth Circuit, **33:8**
 - Fourth Circuit, **33:8**
 - Newman/Materia cases genre, Second Circuit, **33:6**
 - Second Circuit, **33:6, 33:7**
 - United States v. O'Hagan and aftermath
 - choice of remedies, **33:20**
 - coherence and consistency, dissent by Justice Thomas, **33:11**
 - commencement of tender offer, **33:18**
 - in connection and deception issues, **33:9**
 - deception issue, **33:9**
 - Dirks case reversal, Rule 14e-3 and tipper, **33:16**
 - Eighth Circuit
 - point by point rebuttal, **33:10**
 - remand of O'Hagan, **33:17**
 - Justice Burger dissent, other misappropriation theory, **33:12**
 - Justice Thomas dissent, **33:11, 33:15**
 - mail fraud count, reversal, **33:20**
 - O'Hagan on remand in Eighth Circuit, **33:17**
 - other misappropriation theory, **33:12**
 - pleading issues, **33:19**

INSIDER TRADING—Cont'd

- Misappropriator as inside trader—Cont'd
 - United States v. O'Hagan and aftermath—Cont'd
 - prophylactic rule to prevent fraudulent trading, **33:14**
 - rebutting the Eighth Circuit, point by point, **33:10**
 - Rule 14e-3, **33:13, 33:14, 33:16**
 - tender offer, substantial steps to commence, **33:18**
- Regulation FD
 - accessibility and Internet conference calls, **33:56**
 - application to securities offerings, **33:54**
 - disclosure of material nonpublic information on behalf of issuer, **33:48**
 - earnings forecasts and materiality issue, **33:51**
 - elements of a violation, SEC enforcement, **33:53**
 - fair disclosure regulation in outline, **33:47**
 - intentional and non-intentional selective disclosure, **33:49**
 - Internet conference calls, **33:56**
 - making public disclosure, **33:50**
 - materiality issue, **33:51**
 - public disclosure, how to make, **33:50**
 - registered securities offerings, **33:54**
 - Regulation FD fallout, **33:55**
 - SEC enforcement, elements of a violation, **33:53**
 - SEC staff answers questions relating to Regulation FD, telephone interpretations, **33:52**
 - Securities Act registered offerings, **33:46**
 - selective disclosure, generally, **33:46**
 - telephone interpretations, SEC staff answers questions relating to Regulation FD, **33:52**
 - timing of the disclosure, **33:49**
- Reporting and Short Swing Profit Liability under Section 16** (this index)
- Resale of restricted securities, secondary markets, **10:11.04**
- Rule 10b-5
 - classic insider trading under Rule 10b-5, above fiduciary duty. Rule 10b-5, relationships imposing fiduciary duty, Chestman case, below material information. Rule 10b-5, use of vs. possession of material information, below
- Rule 10b-5, relationships imposing fiduciary duty, Chestman case
 - generally, **33:29**
 - dissent, **33:33**
 - fact-based application, **33:32**
 - functional equivalent of fiduciary duty analysis, **33:31**
 - Judge Winter for dissenters, **33:33**
 - reversing Chestman, family and other relationships giving rise to a duty of trust and confidence, **33:34**
 - traditional fiduciary duty analysis, **33:30**
 - trust and confidence duty, Chestman reversed, **33:34**

INSIDER TRADING—Cont'd

- Rule 10b-5, use of vs. possession of material information
 - awareness of material nonpublic information as standard, **33:24**
 - Eleventh Circuit vs. Second Circuit—Rule 10b-5, **33:21**
 - materiality issue, **33:23**
 - Ninth Circuit, United States v. Smith—Rule 10b-5, **33:22**
 - Rule 14e-3, **33:28**
 - Rule 10b5-1(C), affirmative defense
 - 2022 proposals
 - generally, **33:26.04**
 - additional disclosure requirements, **33:26.20**
 - alterations, **33:25.02**
 - amendments in final form, **33:26.06**
 - background of amendments, **33:26**
 - cancellations, **33:25.02, 33:26.16**
 - certifications, **33:26.10**
 - checkbox on Forms 4 and 5, **33:26.30**
 - cooling-off periods, **33:26.08**
 - disclosure of insider trading policies, **33:26.22**
 - interplay of equity grants and release of MNPI, **33:26.24**
 - modifications, **33:26.16**
 - multiple overlapping trading arrangements, **33:26.12**
 - overview, **33:26.02**
 - reporting gifts of securities, **33:26.28**
 - requirement to “operate” plan in good faith, **33:26.18**
 - single-trade arrangements, **33:26.14**
 - Staff Accounting Bulletin No. 120, **33:26.26**
 - terminations, **33:25.02**
 - generally, **33:25**
 - restrictive wall for entities, **33:27**
 - Rule 14e-3
 - Dirks case reversal, Rule 14e-3 and tipper, **33:16**
 - misappropriator as inside trader, **33:13, 33:14**
 - Rule 10b5, use of vs. possession of material information, **33:28**
 - Second Circuit
 - misappropriator as inside trader, **33:6, 33:7**
 - Rule 10b-5, use of vs. possession of material information, **33:21**
 - Selective disclosure. Regulation FD, above
 - Tipper/tippee liability under Rule 10b-5, Dirks case, **33:4**
- INSIDER TRADING ACT**
Insider Trading (this index)
- INSIDER TRADING SANCTIONS ACT**
Insider Trading (this index)
- INSTITUTIONAL SHAREHOLDER SERVICES**
Proxy Regulation (this index)

INTEGRATED DISCLOSURE SYSTEM

See also **Disclosure** (this index)

Affiliates. Related party disclosures, below

Affiliates whose securities collateralize securities being registered, related party disclosures, **3:96**

Aging requirements for uniform financial statements, **3:4**

Audit committees
disclosures, **3:67**
quarterly review of financial statements, **3:67**
report, **3:67**

Brexit, **3:77**

Businesses acquired or to be acquired, related party disclosures, **3:88**

Collateralized securities registered by affiliates, **3:96**

Compliance and disclosure interpretations
post-Enron, **3:20.02**
use of NGFM, **3:22**

Congressional abrogation of resource extraction rule, **3:75.08**

Cybersecurity disclosure, **3:80**

Disclosure systems under Securities Acts, **3:1**

Effectiveness of disclosure
Generally, **3:85 et seq.**
Jobs Act, **5:67**
Related party disclosures, below
Staff Report on review of Regulation S-K, **3:86**

Enron Corp
Pre-Enron, below
Post-Enron, below

Executive Compensation (this index)

Exemptions, related party reporting requirements, **3:94**

Exhibits, **3:72 to 3:72.08**

Fast act modernization and simplification proposals generally, **3:118, 3:119**

50 percent or less owned persons disclosures, **3:89**

Flash financial information in Securities Act registration statements, **3:4.02**

Form 10 disclosures, **3:65**

Form S-1 forward incorporation on Form S-1, smaller reporting companies, **4:8.02**

Forward incorporation on Form S-1, smaller reporting companies, **4:8.02**

Glossary of key disclosure forms, **3:6**

Guarantors and issuers of guaranteed securities, related party disclosures, **3:90 et seq.**

Guarantors related to registrant. Related party disclosures, below

Hyperlink requirements, **3:74, 3:74.02**

Incorporation by reference, **3:73, 3:73.02**

Incorporation of information from outside the financial statements, **3:9.04**

Incorporation on Form S-1, smaller reporting companies, **4:8.02**

Increased scrutiny by SEC of Regulation G compliance, **3:20.02**

Industry guides, **3:8, 3:71**

INTEGRATED DISCLOSURE SYSTEM—Cont'd

Issuers of guaranteed securities, related party disclosures, **3:90 et seq.**

Jobs Act, effectiveness of disclosure, **5:67**

Management's discussion and analysis (the MD&A)
2019 amendments, **3:32.02**
auditor's attestation, **3:33**
the euro and MD&A, **3:34**
financial disclosure catch-all, **3:32**
post-Enron proposal for upgrade in financial disclosures, **3:16**

Median employee, pay ratio rule
calculating compensation, **3:64.28**
defining set of employees, **3:64.30**
identification, **3:64.24, 3:64.26**

Necessary steps to integration, **3:3**

New directions, **3:5**

Non-GAAP financial measures, **3:22**

Outside auditors, quarterly review of financial statements, **3:67**

Parent and subsidiary. Related party disclosures, below

PEO, pay ratio rule, **3:64.28**

Post-Enron
generally, **3:15 et seq.**
accounting standards established, **3:27**
Brixmor imbroglio, **3:20.04**
compliance and disclosure interpretations issued, **3:20.02**
Form 8-K Item 12 and earnings release including NGFM (non-GAAP financial measure), **3:19**
modernizations, generally, **3:5**
non-GAAP financial measures (NGFM) and foreign private issuers, **3:21**
non-GAAP financial measures (NGFM) in filed documents, **3:20**
non-GAAP financial measures (NGFM) in public announcements, **3:18**
off-balance sheet debt for special purpose entities, **3:23**
pro-forma financial information, **3:17**
public announcements, financial measures, **3:18**
Regulation G, **3:18**
Sarbanes-Oxley Act (SOX)
disclosure of off-balance sheet transactions, **3:24**
indirect impact on Regulation S-K, **3:26**
special purpose entities, study, **3:25**

SEC increases scrutiny of Regulation G compliance, **3:20.02**

SEC issues compliance and disclosure interpretations, **3:20.02**

SEC proposal to upgrade financial disclosures in MD&A, **3:16**

SEC staff compliance & disclosure interpretations about the use of ngfm, **3:22**

special purpose entities and off-balance sheet debt, **3:23**

INTEGRATED DISCLOSURE SYSTEM—Cont'd

Pre-Enron stage
 changes in accounting for mergers and acquisitions and goodwill, **3:12, 3:13**
 good will, changes in accounting for, **3:12, 3:13**
 Levitt alert, **3:10**
 materiality, focus on qualitative aspects, **3:11**
 mergers and acquisitions, changes in accounting, **3:12, 3:13**
 other initiatives, **3:14**
 pooling, elimination, **3:13**
 Private actions, express remedies, greater liability exposure under integrated disclosure, **26:53**
 Projections and other forward-looking information, **3:68, 3:69**
 Proposed disclosure regarding of insider trading policies
 10b5-1 and non-10b5-1 trading arrangements, **3:79.02**
 generally, **3:79**
 Quarterly review of financial statements, **3:67**
 Regulation G compliance, increased scrutiny by SEC, **3:20.02**
 Regulation M-A, mergers and acquisitions, **3:66**
Regulation S-K (this index)
 Related party disclosures
 Generally, **3:87 et seq.**
 affiliates, collateralized securities registered by, **3:96**
 affiliates whose securities collateralize securities being registered, **3:96**
 businesses acquired or to be acquired, **3:88**
 collateralized securities registered by affiliates, **3:96**
 exemption from reporting requirements, **3:94**
 50 percent or less owned persons, **3:89**
 guarantors and issuers of guaranteed securities, **3:90 et seq.**
 issuers of guaranteed securities, **3:90 et seq.**
 parent and one or more other subsidiaries of parent as guarantors, **3:92**
 parent of subsidiary's securities as guarantor, **3:91**
 reporting requirements exemption, **3:94**
 request for comment, **3:95**
 Rule 3-09, **3:89**
 Rule 3-10, **3:94**
 subsidiary of parent securities as guarantor, **3:93**
 unconsolidated subsidiaries, **3:89**
 Request for comment on related party disclosures, **3:95**
 Resource extraction rule
 Congressional abrogation, **3:75.08**
 district court vacation of initial rules, **3:75.04**
 first final rules, **3:75.02**
 Status 2014-2016, **3:75.06**
 Revenue recognition, **3:4.04**
 Rule 3-09, related party disclosures, **3:89**

INTEGRATED DISCLOSURE SYSTEM—Cont'd

Rule 3-10
 affiliates whose securities collateralize securities registered or being registered; Rules 3-16 and 13:02, **3:96.08**
 amendments to, **3:96.02 to 3:96.08**
 recently acquired subsidiary issuers and guarantors, **3:96.04**
 related party disclosures, **3:94**
 revised alternative disclosures; Rule 13-1, **3:96.06**
 SEC increases scrutiny of Regulation G compliance, **3:20.02**
 SEC issues compliance and disclosure interpretations post-Enron, **3:20.02**
 Security ratings, **3:70**
 Shifting emphasis to 1934 Act disclosure, **3:2**
 Simplification proposals. Fast act modernization and simplification proposals, above
 Smaller reporting companies and forward incorporation on Form S-1, **4:8.02**
 Staff Report on review of Regulation S-K, **3:86**
 Standardization, **3:7**
 Standardized financial statements, **3:9**
 Structured disclosure, SEC Regulation S-K concept release, **3:117**
 Subsidiaries. Related party disclosures, above
 Third parties. Related party disclosures, above
 Transnational aspects, access to U.S. capital markets, **22:2**
 2017 tax legislation on financial reporting and disclosure, impact of, **3:9.02**
 Unconsolidated subsidiaries' disclosures, **3:89**
 Uniform financial statement aging requirements, **3:4**

INTERNATIONAL TRANSACTIONS

Absolute Activist rule, antifraud provisions, **22:105**
 Access to U.S. capital markets
 generally, **22:1**
 integrated disclosure for foreign private issuers, **22:2**
 Acquisition of beneficial ownership through DTC book entries, antifraud provisions, **22:109**
 Advantages of obtaining DOSM status, offshore distributions, **22:41.04**
 Antifraud provisions
 Generally, **22:100 et seq.**
 Absolute Activist rule, **22:105**
 acquisition of beneficial ownership through DTC book entries, **22:109**
 beneficial ownership acquisition through DTC book entries, **22:109**
 closing conditions, irrevocable liability established notwithstanding, **22:108**
 closing funds delivery in U.S., **22:107**
 delivery of stock transfer documents or closing funds in U.S., **22:107**
 delivery of subscription price as final act incurring irrevocable liability, **22:106**

INTERNATIONAL TRANSACTIONS—Cont'd

Antifraud provisions—Cont'd
 development of the irrevocable liability/transfer of title standard, **22:104**
 domestic market manipulation, **22:103**
 DTC book entries, acquisition of beneficial ownership through, **22:109**
 dual listing in U.S., **22:101**
 emerging principles post-Morrison, **22:98**
 extraterritoriality and the Securities Act, **22:113**
 foreign investors, U.S. issuer, irrevocable liability in U.S., **22:105**
 foreign investors, U.S.-listed reference security, **22:112**
 foreign reference securities, U.S. investors, securities-based swaps on, **22:111**
 incurring irrevocable liability; delivery of subscription price as final act, **22:106**
 irrevocable liability established notwithstanding closing conditions, **22:108**
 irrevocable liability in U.S., foreign investors, U.S. issuer, **22:105**
 irrevocable liability/transfer of title standard development, **22:104**
 liability under Absolute Activist rule, **22:105**
 listing theory rejection, **22:101**
 market manipulation, domestic, **22:103**
 Morrison v. National Australia Bank
 Generally, **22:99**
 emerging principles, **22:98**
 offers and Section 17(a), **22:110**
 overview, **22:97**
 purchases by U.S. investors on foreign exchanges, **22:100**
 purchases of ADRs on U.S. markets, **22:102**
 rejection of listing theory, **22:101**
 securities-based swaps on foreign reference securities by U.S. investors, **22:111**
 SEC v. Tourre, **22:110**
 stock transfer documents delivery in U.S., **22:107**
 U.S. investors, securities-based swaps on foreign reference securities, **22:111**
 U.S.-listed reference security, **22:112**
 Applicability of antifraud rules to purchases of unsponsored ADRs, Stoyas, **22:102.2**
 on remand, **22:102.4**
 Beneficial ownership acquisition through DTC book entries, antifraud provisions, **22:109**
 Business combinations and exchange offers
 Canadian multijurisdictional disclosure system, **22:74**
 cross-border exemptions, Rule 802 exemption, **22:84**
 Canadian multijurisdictional disclosure system
 generally, **22:72**
 business combinations and securities exchange bids, **22:74**
 exempt offering alternatives, **22:78**

INTERNATIONAL TRANSACTIONS—Cont'd

Canadian multijurisdictional disclosure system
 —Cont'd
 liability and continuous disclosure, **22:77**
 offering requirements, **22:73**
 other substantive and disclosure requirements, **22:75**
 tender offers, **22:76**
 Class certification argument, **22:102.6**
 Closing conditions, irrevocable liability established notwithstanding, **22:108**
 Closing funds delivery in U.S., antifraud provisions, **22:107**
 Comparison of exit strategies, privately placed foreign securities, offshore distributions, Regulation S resales, **22:41.02**
 Cross-border exemptions
 acquisitions of foreign private issuers, shutting out U.S. security holders, **22:80**
 background, **22:81**
 cross-border tender offers
 generally, **22:85**
 expansion of Rule 13e-3 exemption, **22:88**
 Rule 13e-3 exemption, **22:88**
 Tier II partial tender offer exemption, **22:87**
 Tier I tender offer exemption, **22:86**
 definitions and common aspects, **22:82**
 exchange offers for foreign private issuers, shutting out U.S. security holders, **22:80**
 foreign private issuers and U.S. investors, **22:79**
 rights offerings by foreign private issuers, shutting out U.S. security holders from, **22:80**
 Rule 801 exemption for rights offerings, **22:83**
 Rule 802 exemption for business combinations and exchange offers, **22:84**
 tender offers for foreign private issuers, shutting out U.S. security holders from, **22:80**
 Delivery of stock transfer documents or closing funds in U.S., antifraud provisions, **22:107**
 Delivery of subscription price as final act, incurring irrevocable liability, **22:106**
 Development of the irrevocable liability/transfer of title standard, **22:104**
 Disclosure
 Canadian multijurisdictional disclosure system, above
 integrated disclosure for foreign private issuers, **22:2**
 multijurisdictional disclosure system, below
 registration and reporting under Exchange Act, **22:17, 22:19**
 District courts distinguish pontiac partially revive listing theory, **22:101.02**
 Dodd-Frank Act
 extraterritoriality, **37:2.10**
 Domestic market manipulation, antifraud provisions, **22:103**
 DOSM status advantages, offshore distributions, Regulation S resales, **22:41.04**

INTERNATIONAL TRANSACTIONS—Cont'd

- DTC book entries, acquisition of beneficial ownership through, antifraud provisions, **22:109**
- Dual listing in U.S., antifraud provisions, **22:101**
- Exit strategy comparison, privately placed foreign securities, offshore distributions, Regulation S resales, **22:41.02**
- Exit strategy comparison, privately placed foreign securities, resales offshore distributions, Regulation S, **22:41.02**
- Extraterritoriality** (this index)
- Foreign issuer, dual-listed securities foreign recognition regime, purchase on foreign securities exchange, **22:102.8**
- Foreign reference securities, U.S. investors, securities-based swaps on, **22:111**
- Incurring irrevocable liability; delivery of subscription price as final act, antifraud provisions, **22:106**
- Integrated disclosure for foreign private issuers, **22:2**
- Internet
 - alternative for Exchange Act Rule 12g3-2(b) filings, **22:12**
 - Exchange Act registration and reporting, alternative for Rule 12g3-2(b) filings, **22:12**
 - offshore broker-dealer services, **22:94**
 - offshore offers of advisory services, **22:93**
 - offshore offers of securities on Internet, below
- Irrevocable liability established notwithstanding closing conditions, **22:108**
- Irrevocable Liability** (this index)
- Irrevocable liability/transfer of title standard development, **22:104**
- Liability
 - Absolute Activist rule, **22:105**
 - delivery of subscription price as final act, antifraud provisions, **22:106**
- Listing theory rejection, antifraud provisions, **22:101**
- Market manipulation, domestic, antifraud provisions, **22:103**
- Morrison v. National Australia Bank
 - Generally, **22:99**
 - emerging antifraud provision principles, **22:98**
- Multijurisdictional disclosure system
 - generally, **22:57**
 - accounting under MJDS, **22:62**
 - basic MJDS forms, **22:60**
 - Canadian multijurisdictional disclosure system, above
 - definitions, **22:58**
 - Exchange Act registration, **22:69, 22:70**
 - Exchange Act reporting, **22:69**
 - filing and effective dates, **22:68**
 - foreign private issuer, **22:59**
 - Form 40-F, **22:71**
 - Form F-3 alternative, **22:61**
 - Form F-10 reconciliation requirements, **22:63**
 - Form F-X, **22:67**

INTERNATIONAL TRANSACTIONS—Cont'd

- Multijurisdictional disclosure system—Cont'd
 - legends, **22:65**
 - prospectus, **22:64**
 - registration process, **22:66**
- Mutual recognition, **22:96**
- Offerings in U.S. by foreign issuers
 - access to U.S. capital markets, **22:1, 22:2**
 - European Union, **22:9**
 - F-1 and F-3 registration statements, **22:3**
 - financial statements for foreign private issuers, **22:4**
 - foreign governmental issuers, **22:10**
 - international accounting standards, **22:9**
 - SEC, international accounting standards, and the European Union, **22:9**
 - shelf registration, **22:5**
- Off Exchange Transactions** (this index)
- Offshore broker-dealer services on the Internet, **22:94**
- Offshore distributions, Regulation S
 - generally, **22:25 to 22:29**
 - advantages of obtaining DOSM status, resales, **22:41.04**
- Category 1
 - offering restrictions, **22:34**
 - offerings of foreign securities and overseas directed offerings, **22:33**
- Category 2
 - debt, preferred, and asset-backed securities of non-reporting foreign issuers, **22:35**
 - debt securities of a reporting issuer, **22:35**
 - equity securities of a foreign private issuer, **22:35**
- Category 3 safe harbor
 - debt securities of nonreporting domestic issuers, **22:36**
 - equity securities of domestic issuers, **22:36**
 - equity securities with SUSMI of non-reporting foreign issuers, **22:36**
 - EU Central Depositories Regulation, **22:36.02**
 - Euroclear, **22:36.02**
 - London Stock Exchange, **22:36.02**
 - substantial U.S. marked interest of non-reporting foreign issuers, equity securities with, **22:36**
- clearance and settlement, **22:43.10 to 22:43.30**
- comparison of exit strategies, privately placed foreign securities resales, **22:41.02**
- convertibles, **22:38**
- definition of U.S. person, **22:29**
- directed selling efforts, **22:31**
- distribution compliance period and domestic equity securities, **22:32**
- distributions pursuant to Regulation S, generally, **22:26**
- domestic equity securities resale, Rule 144 restricted securities solution, **22:33**
- DOSM status advantages, resales, **22:41.04**
- failure to comply with safe harbor condition or restriction, **22:39**

INTERNATIONAL TRANSACTIONS—Cont'd

Offshore distributions, Regulation S—Cont'd
 general statement (non-safe harbor) approach, **22:28**
 issuer-distributor safe harbor, **22:32 to 22:39**
 offshore offerings, **22:31**
 offshore transactions, **22:30**
 privately placed foreign securities, comparison of
 exit strategies, resales, **22:41.02**
 resales
 advantages of obtaining DOSM status, **22:41.04**
 comparison of exit strategies, privately placed
 foreign securities, **22:41.02**
 DOSM status advantages, **22:41.04**
 exit strategy comparison, privately placed foreign
 securities, resales, **22:41.02**
 privately placed foreign securities, comparison of
 exit strategies, **22:41.02**
 Rule 144 restricted securities solution for domestic
 equity securities, **22:33**
 Rule 904 safe harbor for resale
 resale of securities issued in reliance on an
 exemption, **22:41**
 securities distributed pursuant to Regulation S,
22:40
 U.S. resales, **22:42**
 Rule 144 restricted securities solution for domestic
 equity securities, **22:33**
 Rule 904 safe harbor for resale
 resale of securities issued in reliance on an exemp-
 tion, **22:41**
 securities distributed pursuant to Regulation S,
22:40
 safe harbors
 issuer-distributor safe harbor, **22:32 to 22:39**
 Rule 904 safe harbor for resales, **22:40, 22:41**
 Section 12(1) actions, **22:27**
 Securities Act Release 4708, **22:25**
 U.S. person defined, **22:29**
 U.S. resales, **22:42**
 warrants, **22:37**
 Offshore offers of advisory services on Internet, **22:93**
 Offshore offers of securities on Internet
 generally, **22:49**
 concurrent U.S. registered offering, **22:53**
 general precautionary procedures, **22:50**
 offerings by investment companies, **22:55**
 offshore offerings by U.S. issuers, **22:54**
 Regulation S offerings by foreign issuers, **22:51**
 third-party providers, **22:56**
 U.S. exempt tranche, **22:52**
 Offshore press information
 background, **22:46**
 Securities Act safe harbor, **22:47**
 Williams Act safe harbor, **22:48**
 Privately placed foreign securities, comparison of exit
 strategies, resales, offshore distributions, Regula-
 tion S, **22:41.02**

INTERNATIONAL TRANSACTIONS—Cont'd

Purchases by U.S. investors on foreign exchanges,
 antifraud provisions, **22:100**
 Purchases of ADRs on U.S. markets, **22:102**
 Registration and reporting under Exchange Act
 attorneys, rules of professional responsibility, **22:20**
 Audit Committee responsibility/independence and
 corporate governance, **22:16**
 auditor independence, **22:22**
 code of ethics for senior financial officers, **22:18**
 corporate governance, Audit Committee responsibil-
 ity, **22:16**
 cybersecurity, **22:24.02**
 disclosure of Audit Committee financial expert,
22:17
 disclosure of off-balance sheet arrangements and
 non-GAAP financial measures, **22:19**
 foreign securities traded on Nasdaq, **22:13**
 independence, Audit Committee responsibility, **22:16**
 insider trading during pension fund blackout periods,
22:21
 Internet alternative for Rule 12g3-2(b) filings, **22:12**
 registration and reporting by foreign companies,
22:11
 rules not applicable to foreign issuers, **22:23**
 rules of professional responsibility for attorneys,
22:20
 Sarbanes-Oxley Act and foreign issuers, generally,
22:14
 Sarbanes-Oxley and foreign accountants, **22:24**
 Section 404 assessment of ICFR, **22:15**
 Sections 302 and 906 certifications, **22:15**
 Regulation S
 advantages of obtaining DOSM status, resales,
22:41.04
 offshore distributions, Regulation S, above
 offshore offers of securities on Internet, **22:51**
 Rejection of listing theory
 antifraud provisions, **22:101**
 Safe harbors
 offshore distributions, Regulation S, above
 offshore press information
 Securities Act safe harbor, **22:47**
 Williams Act safe harbor, **22:48**
 Sale by registered investment companies and offshore
 funds, **22:89**
 Securities Act
 extraterritoriality and antifraud provisions, **22:113**
 offshore distributions, Regulation S, Securities Act
 Release 4708, **22:25**
 safe harbor, **22:47**
 Securities-based swaps on foreign reference securities
 by U.S. investors, antifraud provisions, **22:111**
 Special purpose acquisition corporations, **22:95**
 Stock exchange listing of restricted securities
 generally, **22:44**
 special situation no-action letters, **22:45**

INTERNATIONAL TRANSACTIONS—Cont'd

- Stock transfer documents delivery in U.S., antifraud provisions, **22:107**
- Tender offers. Cross-border exemptions, above
- Trading practices rules
 - generally, **22:90 to 22:92**
 - class exemptions, **22:92**
 - 144A transactions, **22:91**
- U.S. investors, securities-based swaps on foreign reference securities, antifraud provisions, **22:111**
- U.S. markets, purchases of ADRs on, **22:102**
- U.S. resales, Regulation S, **22:42**
- U.S.-listed reference security, antifraud provisions, **22:112**

INTERNET

- Broker-dealer regulation, Internet trading, **19:16**
- Data security enforcement, broken windows policy, **36:115**
- Electronic road shows, securities offering reform, **5:21, 5:48**
- Exempt Offerings** (this index)
- Insider trading, Regulation FD, Internet conference calls, **33:56**
- International Transactions** (this index)
- Investment companies, availability of information on internet, **20:12**
- IPO internet bubble, **6:92**
- Public offering distribution process, **5:5, 5:18**
- SEC enforcement of data security, broken windows policy, **36:115**
- Securities in cyberspace, **2:22**
- Securities offering reform, **5:21, 5:48, 5:49**
- Shareholder proposals, reference to Internet site, **18:87**
- Trading securities of FPIS, availability of English translations of filings on Internet, **11:41**

INTERPRETATIONS

- Compliance and Disclosure Interpretations** (this index)

INVESTMENT BANKS

- Volcker Rule, **1:56.10 to 1:56.14**

INVESTMENT COMPANIES AND INVESTMENT ADVISERS

- Generally, **20:1 to 20:43**
- Enforcement by SEC** (this index)
- Investment advisers
 - generally, **20:32 to 20:40.24**
 - analysis of status as investment adviser, **20:33**
 - authority of states to register investment adviser representatives, **20:42**
 - basic allocation and preemption of jurisdiction, **20:41**
 - broker-dealers, **20:35, 20:36**
 - Dodd-Frank Act
 - effective dates, **20:40.22**
 - exempt reporting advisers, **20:40.18, 20:40.20**

INVESTMENT COMPANIES AND INVESTMENT ADVISERS—Cont'd

- Investment advisers—Cont'd
- Dodd-Frank Act—Cont'd
 - fiduciary duty, **20:34.10**
 - fiduciary duty, interpretation released with Regulation BI, **20:34.12**
 - fifth circuit blows up the 2023 private fund advisor rules, **20:40.24**
 - foreign private advisers, registration exemption, **20:40.14**
 - previously exempt advisers, **20:40.20**
 - private fund advisers, registration exemption, **20:40.12**
 - registration and reporting, **20:40.10 to 20:40.22**
 - registration exemptions, **20:40.12, 20:40.14**
 - Section 203(b)(3), exempt advisers, **20:40.20**
 - statutory overview, registration and reporting, **20:40.10**
 - venture capital funds, **20:40.16**
 - electronic filing, transition to, **20:40**
 - fiduciary duty, **20:34, 20:34.10**
 - fiduciary duty, interpretation released with Regulation BI, **20:34.12**
 - financial planners, **20:38**
 - financial publications and Lowe, **20:39**
 - Form ADV registration, **20:40**
 - further staff study, **20:37**
 - jurisdiction over allocated between SEC and states, **20:41 to 20:43**
 - Lowe and financial publications, **20:39**
 - preemption issues, **20:43**
 - registration on Form ADV and transition to electronic filing, **20:40**
 - Rule 203(a)(11)-1 as adopted, **20:36**
 - “solely incidental” prong of the Advisers Act, interpretation, **20:37.10**
- Investment companies
 - adoption of fund governance standards, **20:2**
 - availability of information on internet, **20:12**
 - business development companies, **20:26**
 - Chamber of Commerce, **20:4, 20:6**
 - contractual plans, **20:8**
 - disclosure, prospectus, **20:10**
 - fund governance standards, **20:2, 20:3**
 - internet availability of prospectus, **20:12**
 - late trading, **20:28, 20:29**
 - litigation, **20:6**
 - market timing, **20:28, 20:30**
 - new rules and initiatives by SEC, **20:31**
 - NSMIA small business incentives, **20:25**
 - offering of investment company shares, **20:7**
 - open end mutual funds, **20:1**
 - prospectus and summary prospectus, **20:10, 20:11**
 - registration requirements, **20:9**
 - Rule 498 summary prospectus, **20:11**
 - SEC reconsideration, **20:5**

INVESTMENT COMPANIES AND INVESTMENT ADVISERS—Cont'd

- Investment companies—Cont'd
 - state regulation, **20:27**
 - substantive regulation, **20:13**
 - summary prospectus, **20:10**
 - summary section of statutory prospectus, **20:11**
- Investment Company Act Amendments of 1996
 - generally, **20:16**
 - advertising prospectus, **20:18**
 - books, records and inspections, **20:21**
 - disclosure, performance data in Rule 506(c) offerings, private investment companies, **20:24.14**
 - fund of funds, **20:17**
 - insurance contracts, **20:22**
 - Model 3(c)(7) procedures for offerings under Rule 144A
 - 1999, **20:24.11**
 - 2003, **20:24.11**
 - 2008 book-entry offerings, **20:24.12**
 - names of investment company, **20:23**
 - private investment companies, **20:24**
 - disclosure, performance data in Rule 506(c) offerings, **20:24.14**
 - sales literature, **20:24.16**
 - staff interpretations, **20:24.10**
 - registration of securities, **20:19**
 - reports to SEC and shareholders, **20:20**
 - Rule 144A offerings. Model 3(c)(7) procedures for offerings under Rule 144A, above in this group
 - sales literature, private investment companies, **20:24.16**
 - variable insurance contracts, **20:22**
- Sarbanes-Oxley Act
 - certification of investment company reports, **20:14**
 - other impacts on investment companies, **20:15**
- Shareholder proposals to amend bylaws, disclosure of proxy voting policies by investment companies and investment advisers, **18:89**

INVESTMENT COMPANY ACT**Investment Companies and Investment Advisers (this index)****INVESTMENT CONTRACT AS SECURITY**

- Generally, **2:1**
- Common enterprise issue, **2:2**
- Supreme Court takes another look at investment contracts
 - commonality conundrum, **2:18, 2:19**
 - discretionary securities/commodities accounts, **2:20**
 - Edwards decision, **2:13, 2:15, 2:19**
 - Forman opportunity, **2:14**
 - Justice O'Connor and common sense, **2:15**
 - promise of a fixed return as profit, **2:13, 2:16**
 - remand and commonality issue, **2:19**
 - Reves roadmap, **2:17**

INVESTOR-DRIVEN INITIATIVES

- Contemporary topics, **1:73**

ISSUER/UNDERWRITER PAY CONFLICT

- Dodd-Frank Act, Rule 17g-5, **1:57.14**

JOBS ACT (2012)

- Generally, **1:61 to 1:64**
- Accountants
 - auditing standards, **5:57**
 - audit of ICFR, **5:56**
- Accredited investors, verification, general solicitation, **9:33.18 to 9:33.22**
- Analysts
 - conflicts of interest, **5:61**
 - Regulation AC, **5:62**
 - Section 501 of Sarbanes-Oxley Act, **5:62**
- Ancillary services, Section 4(b)(1) platforms, online funding portals, Rule 506 offerings, **19:6.04**
- Angel investor platform, AngelList, online funding portals, Rule 506 offerings, **19:6.08**
- Auditing standards, **5:57**
- Audit of internal control over financial reporting, **5:56**
- Check box, Form D, reliance on Rule 506(c), **9:33.24**
- Compensation, Section 4(b)(1) platforms, online funding portals, Rule 506 offerings, **19:6.04**
- Confidential submission of draft registration statement, **5:64**
- Conflicts of interest involving analysts, **5:61**
- Crowdfunding, **9:49**
- Disclosure
 - generally, **5:52**
 - executive compensation, **5:53**
 - financial information, **5:54**
- Early returns, **1:64**
- Emerging growth companies, **5:51 et seq.**
- Exchange Act registration of over-the-counter securities
 - amendment of Section 12(g), **12:9.10**
- Exempt offerings
 - elimination of restriction on general solicitation in Rule 506/144A offerings, **9:24.15, 9:33.10 to 9:33.26**
 - integration of 506(c) solicitation with prior solicitations under 506(b), **9:33.27**
- Extension of time to comply with financial accounting standards, **5:55**
- FINRA quiet periods and research reports, **5:60**
- FundersClub, online venture capital platforms, **19:6.06**
- General solicitation, elimination of restriction on general solicitation in Rule 506/144A offerings, **9:33.10 to 9:33.26**
- Integration of 506(c) solicitation with prior solicitations under 506(b), exempt offerings, **9:33.27**
- Internal control over financial reporting, **5:56**
- IPOs, omission of certain financial information prior to IPO, **5:54.02**
- IPOs and research reports, **5:58**
- Legislative history, **1:61 to 1:64**

JOBS ACT (2012)—Cont'd

- Omission of certain financial information prior to IPO, **5:54.02**
- Online funding portals, Rule 506 offerings, **19:6.02, 19:6.04**
- Online venture capital platforms, FundersClub, **19:6.06**
- Opt-in right for emerging growth companies, **5:65**
- Privately offered funds, exempt offerings under Rule 506, **9:33.26**
- Registration and reporting under exchange act, section 12(g), over-the-counter securities, **12:17.32**
- Regulation A offerings, **7:2**
- Regulation S-K and disclosure effectiveness, **5:67**
- Research reports
 - FINRA quiet periods, **5:60**
 - IPOs, **5:58**
 - Section 5 registration and research reports, **5:59**
- Section 4(b)(1) platforms, online funding portals, Rule 506 offerings, **19:6.02, 19:6.04**
- Section 5 registration and research reports, **5:59**
- Test-the-waters communications, **5:63**
- Title I, On Ramp, **5:50**

JOINT LIABILITY, CONTRIBUTION, PARTIAL SETTLEMENT AND CONTRIBUTION BARS UNDER SECURITIES ACTS

- Generally, **37:14 to 37:22**
- Allocation problem, **37:16**
- Bifurcation of law of joint and several liability, **37:4**
- Contribution, generally, **37:4**
- Evidentiary hearing, Masters case, **37:20**
- Joint liability under Securities Act, generally, **37:14**
- Judgment reduction method, **37:18.04, 37:18.06**
- Kaypro case and relative culpability, Ninth Circuit, **37:17**
- Masters case, relative fault, pro tanto, set-off, and the evidentiary hearing, **37:20**
- Ninth Circuit
 - Kaypro and relative culpability, **37:17**
 - subsequent developments, **37:18**
- Notice, judgment reduction method, **37:18.04**
- Outside directors, reconciling liability with that of other defendants, Section 11 actions, **37:21**
- Partial settlements, generally, **37:4**
- Pro tanto
 - Masters case, **37:20**
 - Second Circuit, Singer case, **37:19**
- PSLRA (this index)
- Reconciling liability of outside directors with that of other defendants in Section 11 action, **37:21**
- Relative fault, Masters case, **37:20**
- Rieckborn v. Velti, **37:18.02 to 37:18.06**
- Right to contribution, **37:15**
- Second Circuit
 - Masters case, relative fault, pro tanto, set-off, and the evidentiary hearing, **37:20**
 - Singer case and pro tanto, **37:19**

JOINT LIABILITY, CONTRIBUTION, PARTIAL SETTLEMENT AND CONTRIBUTION BARS UNDER SECURITIES ACTS—Cont'd

- Section 11 actions
 - outside directors, reconciling liability with that of other defendants, **37:21**
 - statute of limitations in action for contribution, **37:22**
- Set-off, Masters case, **37:20**
- Singer case and pro tanto, Second Circuit, **37:19**
- Statute of limitations, action for contribution under Section 11, **37:22**
- Subsequent Ninth Circuit developments, **37:18**

JUDICIAL REVIEW

- Adjudication and appeals under 15 U.S.C.A., **36:145**
- Axon
 - generally, **36:141**
 - concurring opinions, **36:154**
- Cochran
 - court finds it lacks jurisdiction, **36:155**
 - En banc Fifth Circuit holds district court has jurisdiction, **36:157**
 - Fifth Circuit panel upholds district courts dismissal, **36:156**
- Cochran sought to enjoin new SEC proceedings in federal district court, **36:144**
- Follow-on administrative proceedings against regulated entities staff position, **36:159.02**
- Harm facing Cochran distinguishable from harm facing respondents in Standard Oil, **36:153**
- Initial SEC proceedings against Cochran, **36:142**
- Majority view before Axon
 - Factual and procedural history of circuit court cases, **36:159**
 - summary of circuit court opinions, **36:158**
- New SEC proceedings against Cochran after Supreme Court decides Lucia, **36:143**
- Second and third Thunder Basin factors favored Cochran, **36:152**
- Statutory-review scheme precludes district court jurisdiction
 - Thunder Basin analysis, **36:146**
- Supreme Court found
 - Elgin before Axon, **36:148**
 - Free Enterprise Fund: before Axon, **36:149**
 - Thunder Basin before Axon, **36:147**
- Unconstitutional agency adjudication is too late to be meaningful, **36:151**

JURISDICTION

- Generally, **37:1**
- Extraterritoriality
 - Dodd-Frank Act and Morrison, **37:2.10**
 - pre-Morrison, **37:2**
- Federal vs. state court jurisdiction for violation of state securities and other laws, **37:1.02**
- Pendent (supplemental) jurisdiction, **37:23**
- Securities litigation, personal jurisdiction, **25:12**

JURISDICTION—Cont'dSubject matter jurisdiction, **37:3****JURY TRIAL**Right to jury trial, **37:28****LEGISLATIVE HISTORY**FAST Act, **1:66**JOBS Act (2012), **1:61 to 1:64****LISTING ON TRADING MARKETS (SROs) AND SRO REGULATION**Generally, **11:1 to 11:44**

Analysts' conflicts of interest

aftermath of global settlement, **11:37**background, **11:19 to 11:22**

disclosure/sunshine approach, below

focus on conflicted analysts and research departments, **11:20**global settlement, litigation, **11:33**independent third party research, **11:35**NYSE and NASD adopt rules regulating research and analysts, **11:22**penalties, disgorgement, and other costs to settling firms, **11:36**regulation by litigation, **11:33 to 11:37**regulatory aspect of global settlement, **11:34**research separated from investment banking, below
Sarbanes-Oxley adds Section 15d to Exchange Act, belowSEC bully pulpit, **11:21**

Conflicts of interest. Analysts' conflicts of interest, above

Disclosure/sunshine approach

Banc of America, **11:32.14**disclosure of possible bias arising from compensation from and relationships to subject companies, **11:31**distribution of member research reports, **11:32.10**other matters, **11:32**reining in research ratings and price targets, **11:30**trading ahead of research, **11:32.12**

Foreign private issuers. Trading securities of FPIS, the new pink sheets, below

Nasdaq board diversity rule, vacated, **11:7.02**

Nasdaq stock market

generally, **11:1**corporate governance standards, **11:6, 11:7**

initial listings, non-quantitative criteria

administrative review process, **11:10 to 11:12**Commission review, **11:11**listing and delisting procedure, **11:9**non-quantitative and policy factors, **11:12**qualitative criteria, **11:8**review by SEC, **11:11**listing criteria, **11:1 to 11:5**national capital market, quantitative standards for listing, **11:2****LISTING ON TRADING MARKETS (SROs) AND SRO REGULATION—Cont'd**

Nasdaq stock market—Cont'd

OTC bulletin board, **11:5**

quantitative standards for listing

Nasdaq national capital market, **11:2**shareholder approval of equity compensation plans, **11:7**

New York Stock Exchange listing standards

corporate governance requirements, **11:16**ESG, **11:18**shareholder approval of equity compensation plans, **11:17**

Research separated from investment banking

insulating research analysts' compensation from investment banking, **11:28**protecting purity of research product, **11:26**quiet periods, **11:29**restrictions on using analysts to obtain investment banking business, **11:27**termination of coverage, **11:29**

Sarbanes-Oxley adds Section 15d to Exchange Act

NYSE and NASD road to Sarbanes-Oxley, **11:25**Regulation AC adopted by SEC, **11:24**Sarbanes-Oxley directive to SEC, **11:23**

Shareholder approval of equity compensation plans

Nasdaq stock market, **11:7**New York Stock Exchange listing standards, **11:17**Trading ahead of research, **11:32.12**

Trading securities of FPIS, the pink sheets

generally, **11:38**delisting securities of foreign private issuers and barriers to Exchange Act deregistration, **11:39**electronic pink sheets, **11:43, 11:44**Form 15F deregistration of FPI securities solution, **11:40**listed foreign private issuers exiting '34 Act reporting, **11:38**new listing categories, **11:44**other FPIs accessing U.S. trading market, **11:42**Rule 12g3-2(b) exemption conditioned on availability of English translations of filings on Internet, **11:41****LITIGATION**Cybersecurity and SEC, **40:19****MALPRACTICE (PROFESSIONAL NEGLIGENCE)****Securities Practitioners** (this index)**MANAGEMENT'S DISCUSSION AND ANALYSIS (MD&A)****Integrated Disclosure System** (this index)**MANDATORY ELECTRONIC FILINGS****EDGAR** (this index)**MANIPULATION**Antifraud provisions, market manipulation, **22:103**

MANIPULATION—Cont'd

Tellabs aftermath, pleading manipulation, **29:50**

MARKET MANIPULATION, DOMESTIC

Antifraud provisions, **22:103**

MARK UPS AND MARK DOWNS

Broker Dealer Litigation and Arbitration (this index)

MATERIALITY

Private Actions, Implied Remedies (this index)

MERGERS AND ACQUISITIONS

Integrated disclosure system, pre-Enron stage changes in accounting, **3:12**

Public offering distribution process, distinctive features of mergers vis-a-vis exchange offers under Securities Acts, **5:37**

Public offering registration, issuer repurchases, **6:116**
Reporting and Short Swing Profit Liability Under Section 16 (this index)

MINES AND MINERALS

Payments to governments, disclosure, **3:75 to 3:75.04**

MODERNIZED EDGAR

EDGAR (this index)

MONEY LAUNDERING

Broker Dealer Litigation and Arbitration (this index)

MORRISON CASE

Extraterritoriality, **37:2.10**

Subject matter jurisdiction, **37:2, 37:2.10**

MORTGAGES

Asset Backed Securities (this index)

MULTIJURISDICTIONAL DISCLOSURE SYSTEM

International Transactions (this index)

MUTUAL RECOGNITION

Transnational aspects, **22:96**

NASD

Corporate financing rule. **Public Offering Registration** (this index)

Listing on trading markets (SROs) and SRO regulation, **11:22, 11:25**

Membership rules and code of procedure. **Broker Dealer Litigation and Arbitration** (this index)

Self-regulatory authorities, **1:2**

NASDAQ STOCK MARKET

Broker-dealer litigation and arbitration, excessive dealer mark-ups and mark-downs, **35:10, 35:11**

Corporate Governance and Federal Securities Laws (this index)

Listing on Trading Markets (SROs) and SRO Regulation (this index)

Registration under Exchange Act, **12:6**

Sarbanes-Oxley SRO audit committee listing requirements, **15:12 to 15:14**

NASDAQ STOCK MARKET—Cont'd

Securities markets, **1:50**

State securities registration, **24:3**

Transnational aspects, foreign securities traded on Nasdaq, **22:13**

NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS (NRSROs)

Dodd-Frank Wall Street Reform Act, **1:57.14**

Issuer pay conflict and Rule 17g-5, **1:57.14**

NATIONAL SECURITIES MARKETS IMPROVEMENT ACT

NSMIA (this index)

NEW YORK STOCK EXCHANGE

Clearing dealers, NYSE rules, **35:21**

Compensation committees, NYSE rules, **15:22.10**

Corporate Governance and Federal Securities Laws (this index)

Listing on Trading Markets (SROs) and SRO Regulation (this index)

Registration under Exchange Act, **12:5**

Sarbanes-Oxley SRO audit committee listing requirements, **15:12 to 15:14**

Self-regulatory authorities (stock exchanges and the NASD), **1:2**

NINTH CIRCUIT

Class action settlement judgment, full faith and credit, **31:28**

Forward-looking statements, post-PSLRA, cautionary statements, **28:52**

Insider trading, use of vs. possession of material information, **33:22**

Joint liability, contribution, partial settlement and contribution bars under securities acts, **37:17, 37:18**

PSLRA (this index)

NO ACTION LETTERS

Shareholder Proposals (this index)

NON-PUBLIC INFORMATION

Final Rule 9j-1(b) and (c), **1:56.04**

NSMIA

Broker-dealer regulation, **19:7, 19:23**

Investment companies, small business incentives, **20:25**

Preemption of state registration. **State Securities Registration** (this index)

Private securities actions in state courts, impact of NSMIA, **31:7**

Security reforms of 1990s, **1:17**

OFFERING STATEMENTS AND CIRCULARS

Regulation A. **Public Offerings by Small Companies** (this index)

OFFSHORE OFFERS

International Transactions (this index)

INDEX

OIL AND GAS PRODUCERS

Integrated disclosure system, reserve recognition accounting, **3:36**

Payments to governments, disclosure, **3:75 to 3:75.04**

OIL AND GAS RIGHTS

Fractional undivided interests in rights, consideration as securities, **2:21**

ONLINE VENTURE CAPITAL PLATFORMS

FundersClub, Jobs Act (2012), **19:6.06**

ON RAMP

JOBS Act (2012) Title I, **5:50**

OPT IN RIGHT

Emerging growth companies, JOBS Act (2012), **5:65**

OTC BULLETIN BOARDS

Nasdaq stock market, **11:5**

Securities markets, **1:51**

PARENT AND SUBSIDIARY

Depository institutions' financial subsidiaries. **Gramm Leach Bliley Act** (this index)

Integrated Disclosure System (this index)

PARTIAL SETTLEMENT

Joint Liability, Contribution, Partial Settlement and Contribution Bars Under Securities Acts (this index)

PARTNERSHIP AND LIMITED LIABILITY COMPANY INTERESTS

Limited liability company interest as security, **2:4**

Partnership interest as security, **2:3**

PAY RATIO RULE

Impact of political developments, **1:82**

Integrated Disclosure System (this index)

PAY VERSUS PERFORMANCE

Generally, **3:64.44**

Dodd-Frank Act, **3:64.46**

PENALTIES

Enforcement by SEC (this index)

Insider Trading (this index)

Listing on trading markets (SROs) and SRO regulation, analysts' conflicts of interest, **11:36**

PENDENT JURISDICTION

Generally, **37:23**

PENNY STOCK MARKET REGULATION

Blank check offerings. **Public Offerings by Small Companies** (this index)

Disclosure rules. PSRA penny stock transaction disclosure rules, below

Penny Stock Reform Act

disclosure rules. PSRA penny stock transaction disclosure rules, below

substantive regulation, below

PENNY STOCK MARKET REGULATION—Cont'd

SEC enforcement post-Enron, penny stock offering bar, **36:109**

PENSION PLAN BLACKOUT PERIODS

Reporting and Short Swing Profit Liability Under Section 16 (this index)

Sarbanes-Oxley Act, unlawful insider trading during pension plan blackout periods, **25:11**

Transnational aspects, insider trading during, **22:21**

PINK SHEETS

Securities markets, **1:51**

Trading securities of FPIS. **Listing on Trading Markets (SROs) and SRO Regulation** (this index)

PLAIN ENGLISH

Public Offering Registration (this index)

POISON PILLS

Hostile Takeover, Defensive Strategies and Wilmington Filers (this index)

Shareholder proposals to amend bylaws, **18:78, 18:82**

POLITICAL SPENDING

Contemporary topics, **1:79**

PRESS RELEASES

EDGAR filings and press releases enforcement by SEC, broken windows policy, **36:120**

Offshore press information

background, **22:46**

Securities Act safe harbor, **22:47**

Williams Act safe harbor, **22:48**

PRICE MANIPULATION

Final Rule 9j-1(a), **1:56.03**

PRIVATE ACTIONS

Broker-dealer litigation, excessive dealer mark-ups and mark-downs, **35:16**

Exchange Act Section 12(g) registration, over-the-counter securities, **12:17.25**

Express remedies. **Private Actions, Express Remedies** (this index)

Fraud on shareholders, **34:3, 34:8**

Implied remedies. **Private Actions, Implied Remedies** (this index)

Insider Trading Act of 1988, **33:37**

State remedies. **Private Actions, State Remedies and SLUSA** (this index)

Statute of Limitations and Private Actions under Securities Acts (this index)

PRIVATE ACTIONS, EXPRESS REMEDIES

Generally, **26:1 to 26:56**

Blue sky general fraud provisions, **26:2**

Common law fraud, **26:56**

Controlling person liability, **26:51**

Enforcement of general fraud and registration provisions, **26:4**

PRIVATE ACTIONS, EXPRESS REMEDIES**—Cont'd**

Federal general fraud provisions, **26:1**

Fraud

- blue sky general fraud provisions, **26:2**
- common law fraud, **26:56**
- federal general fraud provisions, **26:1**
- Section 11 action for false registration statements (including prospectus), below
- Section 12(a)(2) claims, below
- Section 18(a), action for fraud in Exchange Act filings, **26:54**

Greater liability exposure under integrated disclosure, **26:53**

Liability of controlling persons, **26:51**

Limitation of actions, **26:52**

Other express remedies, **26:55**

Private remedies, generally, **26:5**

PSLRA related issues. Section 11 action for false registration statements (including prospectus), below

Registration violations

- generally, **26:3**
- enforcement of general registration provisions, **26:4**
- Section 11 action for false registration statements (including prospectus), below
- Section 12(1), action by purchaser of unregistered securities, **26:6**

Rule 10b-5 perspective, concurrent express and implied remedies, **27:5**

Section 11 action for false registration statements (including prospectus)

- assertion of claim based on Section 11, **26:31**
- bespeaks caution, **26:50**
- defenses
 - due diligence defenses and BarChris, **26:37, 26:43**
 - experts and expertised portions, below in this group
 - forward-looking statements, **26:36**
 - historical and existing facts, **26:35**
 - Rule 8(a) and failure to state claim, **26:47**
 - special causation defense, **26:46**
- direct listings; Supreme Court granting certiorari in Slack case, **26:31.12**
- due diligence defenses and BarChris, **26:37, 26:43**
- experts and expertised portions
 - generally, **26:38**
 - defenses of expert, **26:39**
 - forward-looking statements, **26:41**
 - non-expert defendants' defenses, **26:40**
- forward-looking statements, **26:36**
- (aaa)generally, **26:31 et seq.**
- historical and existing facts, **26:35**
- knowledge of falsity, **26:34.06**
- mortgage-backed securities, **26:31.10**
- Omnicare, **26:34.06**
- parties, **26:31, 26:31.10, 26:32**

PRIVATE ACTIONS, EXPRESS REMEDIES**—Cont'd**

Section 11 action for false registration statements (including prospectus)—Cont'd

- plaintiffs' requirements for establishment, **26:33 to 26:34.02**

PSLRA related issues

- bespeaks caution, **26:50**
- safe harbor rules and express remedies, **26:49**
- Section 11 liability and PSLRA, **26:48**

Puda, **26:34.06**

Rule 8(a) and failure to state claim, **26:47**

safe harbor rules and express remedies, PSLRA related issues, **26:49**

special causation defense, **26:46**

underwriters' due diligence

- BarChris, **26:43**
- forward-looking statements of underwriter, **26:45**
- obligations, generally, **26:42**
- other cases, **26:44**

Section 11 liability intertwined with liability under Section 12(a)(2), **26:23**

Section 12(1), action by purchaser of unregistered securities, **26:6**

Section 12(a)(2) claims

- action for fraud in sale of securities
 - generally, **26:7**
 - Section 12(a)(2) and PSLRA, **26:9**
 - Section 12(a)(2) in outline, **26:8**
- conflict between prospectus and other communications
 - case law, **26:28**
 - oral communications at road shows, **26:26**
 - oral forward-looking statements and PSLRA, **26:29**
 - oral representations, **26:26, 26:28**
 - PSLRA and oral forward-looking statements, **26:29**
 - road shows, oral communications at, **26:26**
 - rule that prospectus rules, **26:27**
 - Section 12(a)(2) liability for inconsistent communications, **26:25**
 - SOR and Section 12(a)(1) liability, **26:30**
 - supplemental sales literature, **26:26**
- liability under Section 12(a)(2)
 - aftermarket purchasers, **26:24**
 - intertwining of Section 12(a)(2) and Section 11 liability, **26:23**
 - issuer as seller in firm underwriting, case law, **26:20**
 - other offering participants as Section 12(a)(2) seller, **26:22**
 - Rule 159A and aftermarket purchasers, **26:24**
 - Rule 159A and issuer as Section 12(a)(2) seller, **26:21**
 - Section 11 liability intertwined, **26:23**

PRIVATE ACTIONS, EXPRESS REMEDIES**—Cont'd**

- Section 12(a)(2) claims—Cont'd
 - seller for purposes of Section 12(a)(2)
 - aider and abettor liability under Section 12, **26:19**
 - case law, **26:18**
 - Pinter v. Dahl, **26:18**
 - SOR communications subject to Section 12(a)(2)
 - generally, **26:16**
 - communications subject to/not subject to Section 12(a)(2), **26:17**
 - Supreme Court restricts Section 12(a)(2) to public offering of securities
 - blue sky alternative, **26:15**
 - conflict in Circuits, **26:10**
 - consistent meaning to prospectus, **26:11**
 - Gustafson decision, **26:11**
 - legislative history, **26:11, 26:13**
 - new construction of prospectus, **26:14**
 - Section 2(10) definition of prospectus, **26:12**
 - state securities acts civil liability provisions, **26:15**
 - Section 18(a), action for fraud in Exchange Act filings, **26:54**
 - Securities offering reform, express remedies, Section 12(a)(1) liability, conflict between prospectus and other communications, **26:30**
 - SOR communications subject to Section 12(a)(2)
 - generally, **26:16**
 - communications subject to/not subject to Section 12(a)(2), **26:17**
 - Statute of limitations, **26:52**

PRIVATE ACTIONS, IMPLIED REMEDIES

- Generally, primarily rule 10b-5, **27:1 et seq.**
- Aiding and abetting
 - accountants not quoted in offering documents, **27:52**
 - attorneys, **27:52**
 - bright line vs. substantial participation vs. creation, **27:54 to 27:56**
 - Central Bank case, conspiracy implications, **27:49**
 - directors as primary violators, **27:57 to 27:62**
 - drafters of disclosure documents, **27:53**
 - duty analysis, *Lanza v. Drexel*, **27:62**
 - experts, reports and opinions, **27:51**
 - false or misleading representations made indirectly, **27:63**
 - group pleading distinguished from substantive liability as primary violator, **27:58**
 - indirectly making false or misleading representations, **27:63**
 - issuers and sellers as primary violators, **27:50**
 - Lanza v. Drexel* decision, **27:59 to 27:62**
 - primary violators, **27:50 to 27:62**
 - reckless disregard, *Lanza v. Drexel*, **27:60**
 - reports and opinions of experts, **27:51**
 - Rule 10b-5 violation, **27:48**
 - scheme to defraud, **27:64 to 27:66**

PRIVATE ACTIONS, IMPLIED REMEDIES**—Cont'd**

- Aiding and abetting—Cont'd
 - secondary violators as participants in scheme to defraud, **27:65**
 - SEC's view, bright line vs. substantial participation vs. creation, **27:55**
 - seller for purposes of Section 12(a)(2), liability, **26:19**
 - sellers and issuers as primary violators, **27:50**
 - Stoneridge* opinion, **27:65, 27:66**
 - substantive liability as primary violator, **27:58**
- Causation
 - AUSA
 - acknowledged creative accounting, **27:76**
 - Judge Oakes' essay on law of loss causation, **27:78**
 - loss causation, **27:78**
 - more likely than not approach, Second Circuit, **27:80**
 - opinion on remand, **27:79**
 - resolving three different views of a three-member panel, remand for further findings, **27:77**
 - Second Circuit and more likely than not approach, **27:80**
 - damages, confluence with causation, **27:74**
 - loss causation after PSLRA, **27:81**
 - transaction and loss causation, **27:74**
- Controlling person liability
 - generally, **27:67**
 - alternate Section 20(a) approach, **27:71**
 - culpable participant, **27:68 to 27:70**
 - First Jersey case, effect on culpable participant, **27:70**
 - Section 20(a) liability, **27:69, 27:71**
 - Culpable participant, controlling person liability, **27:68 to 27:70**
- Disclosure
 - aiding and abetting, drafters of disclosure documents, **27:53**
 - SEC investigations, **27:36.02**
 - timely corporate disclosure, below
- Fraud on the market, reliance, **27:21 to 27:23**
- In-connection requirement
 - generally, **27:38, 27:39**
 - investment value, misrepresentations as to, **27:40**
 - misrepresentations as to investment value, **27:40**
 - necessity that misrepresentation relate to investment value, **27:40**
 - Zandford* case, **27:41**
- Internal projections, **27:44**
- Item 303 interplay with Rule 10b-5, **27:37.08 to 27:37.14**
- Liability of entities
 - entities as primary violators, **27:73**
 - respondeat superior vs. exclusivity of Section 20(a), **27:72**

PRIVATE ACTIONS, IMPLIED REMEDIES**—Cont'd**

- Materiality
 - generally, **27:26**
 - search for standard, **27:27**
- Necessity that misrepresentation relate to investment value
 - in-connection requirement, **27:40**
 - purchaser-seller requirement, **27:15**
- Non-reliance clauses in stock purchase agreements, **27:25.02**
- Privity
 - market representations, **27:16, 27:17**
 - tender offer, market purchasers and representations made in connection, **27:17**
 - Texas Gulf Sulphur and representations made to market, **27:16**
- Projections
 - analyst reports, issuer's liability, **27:46**
 - class actions and judicial and legislative backlash, **27:43**
 - determining liability, **27:47**
 - duty to disclose projections or other soft information, **27:45**
 - failure to disclose, **27:44**
 - guidance, imprimatur, and issuer's liability for analyst reports, **27:46**
 - imprimatur and guidance, liability, **27:46**
 - internal projections, **27:44**
 - judicial backlash, class actions, **27:43**
 - legislative backlash, class actions, **27:43**
 - published information, liability, **27:46**
- Purchaser-seller requirement
 - Blue Chip, **27:13, 27:14**
 - investment value, misrepresentations as to, **27:15**
 - misrepresentations as to investment value, **27:15**
 - necessity that misrepresentation relate to investment value, **27:15**
 - oral contracts of sale as a purchase or sale within Blue Chip, **27:14**
- Recklessness and scienter, **27:19**
- Reliance
 - generally, **27:20**
 - care taken by plaintiff, **27:25**
 - creation of market by fraud, **27:24**
 - fraud created the market, **27:24**
 - fraud on the market, **27:21 to 27:23**
 - nature of fraud on the market, **27:23**
 - plaintiff's care, **27:25**
 - research reports of analysts and fraud-on-the-market doctrine, **27:22**
- Respondeat superior, liability of entities, **27:72**
- Rule 10b-5 perspective
 - aiding and abetting, **27:48**
 - Central Bank and implied claims, **27:8**
 - concurrent express and implied remedies, **27:5**

PRIVATE ACTIONS, IMPLIED REMEDIES**—Cont'd**

- Rule 10b-5 perspective—Cont'd
 - damages for violation of Rule 14d-10, implied private remedy, **27:10**
 - fall of implied remedy, **27:3**
 - guerilla warfare and Rule 10b-5, **27:7**
 - implied remedies, generally, **27:1 to 27:4**
 - “makers” of material misstatements, **27:12.02**
 - non-“maker” liability for misrepresentations, **27:12.04**
 - non-RICO alternative, **27:12**
 - PSLRA and Rule 10b-5 actions, **27:11**
 - resuscitation of implied remedies, **27:4**
 - rise of implied remedies, **27:2**
 - Rule 14d-10 violation, damages, **27:10**
 - Scheme liability requiring conduct beyond misstatements and omissions; Rio Tinto case, **27:12.06**
 - Section 17(a) of Securities Act and implied remedies, **27:6**
 - Wharf v. UIH, scope of implied claim, **27:9**
- Scienter
 - generally, **27:18**
 - recklessness, **27:19**
- SEC investigation disclosures, **27:36.02**
- Second Circuit
 - causation, more likely than not approach, **27:80**
 - timely corporate disclosure, duty to disclose confidential information, **27:36**
- Section 20(a), liability of entities, **27:72**
- Soft information, duty to disclose, **27:45**
- SROs and timely corporate disclosure, **27:29**
- Stock purchase agreement non-reliance clauses in, **27:25.02**
- Third Circuit's bright line rule, timely corporate disclosure, **27:31**
- Timely corporate disclosure
 - generally, **27:28 to 27:37.06**
 - Basic case in Supreme Court, **27:32, 27:33**
 - bright line rule of Third Circuit, **27:31**
 - Carnation decision, **27:30**
 - confidential information and duty to disclose, **27:35, 27:36**
 - duty to disclose, **27:28**
 - duty to update, **27:37 et seq.**
 - Fourth Circuit applies Basic, **27:34**
 - Item 303 and Rule 10b-5, **27:37.08 to 27:37.14**
 - Second Circuit and duty to disclose confidential information, **27:36**
 - SROs, **27:29**
 - structured disclosure and confidentiality after Basic, **27:35**
 - Supreme Court and Basic case, **27:32, 27:33**
 - Supreme court in macquarie settles the 303 / 10b-5 issue, **27:37.16**
 - Third Circuit's bright line rule, **27:31**
 - update duty, **27:37 et seq.**

PRIVATE ACTIONS, STATE REMEDIES AND SLUSA

- Generally, **31:1 to 31:32**
- Class action settlement judgment, preclusive effect, Matsushita
 - alternative approaches, **31:32**
 - barely adequate settlement, **31:27**
 - class action conflicts, **31:31**
 - Delaware state court, refusal to vacate order of settlement, **31:30**
 - Ninth Circuit, full faith and credit issue, **31:28**
 - rejected settlement, **31:26**
 - Supreme Court, **31:29**
- In connection with, SLUSA, **31:19.16**
- Covered securities, SLUSA, **31:19.16**
- Knopick, **31:19.16**
- Misrepresentation by whom, SLUSA, **31:19.18**
- Ninth Circuit, full faith and credit issue, preclusive effect of class action settlement judgment, **31:28**
- Private securities actions in state courts
 - generally, **31:1**
 - blue sky civil liability provisions, **31:2**
 - California syndrome, **31:3**
 - Delaware alternative, **31:5**
 - discovery, impact of state claims and/or actions in state courts on stay provisions, **31:4**
 - impact of the National Securities Markets Improvement Act of 1996 on state actions, **31:7**
 - state legislation prompted by PSLRA, **31:6**
 - stay of discovery, impact of state claims and/or actions in state courts, **31:4**
- Securities Litigation Uniform Standards Act (SLUSA)
 - generally, **31:8**
 - aftermath to deferral to federal court, **31:21**
 - attempting to avoid SLUSA by artful allegations
 - breach of fiduciary duty, **31:19**
 - Fifth Circuit, **31:22**
 - Morgan Stanley case, **31:18**
 - Xpedior II case, **31:17**
 - avoidance of SLUSA by artful allegations
 - generally, **31:14**
 - applicability of SLUSA, **31:16**
 - Second Circuit, application of Spielman principles in Dabit case, **31:15**
 - broker-dealer's failure to perform, **31:25**
 - concurrent jurisdiction of actions under Securities Act, limitation, **31:24**
 - in connection with, **31:19.16**
 - covered class, **31:10**
 - covered securities, **31:9, 31:19.16**
 - Dabit case, **31:13, 31:15**
 - deferring to federal actions and PSLRA, **31:20, 31:21**
 - Delaware carve-out, deferring to federal actions and PSLRA, **31:20**
 - Fifth Circuit and avoidance of SLUSA, **31:22**

PRIVATE ACTIONS, STATE REMEDIES AND SLUSA—Cont'd

- Securities Litigation Uniform Standards Act (SLUSA)
 - Cont'd
 - Knopick, **31:19.16**
 - misrepresentation by whom, **31:19.18**
 - preclusion in the Second Circuit, **31:19.18**
 - removal to federal court, **31:11**
 - Second Circuit
 - avoidance of SLUSA by artful allegations, **31:15**
 - preclusion in the, **31:19.18**
 - stay of discovery in state action, **31:23**
 - Supreme Court, broad construction of SLUSA
 - Dabit case, **31:12, 31:13**
 - who has made misrepresentations, **31:19.18**
 - Stay of discovery in state action, **31:4, 31:23**
 - Supreme Court, class action settlement judgment, preclusive effect, Matsushita, **31:29**
 - Who has made misrepresentations
 - securities Litigation Uniform Standards Act (SLUSA), **31:19.18**

PRIVATE EQUITY FUNDS

- Banking entities, relationship, **1:56.14**

PRIVATELY OFFERED FUNDS

- Exempt offerings, Rule 506, **9:33.26**

PRIVATE SECURITIES LITIGATION REFORM ACT (PSLRA)

- PSLRA (this index)

PROFITS

- Investment contract as security, Supreme Court on promise of fixed return, **2:13, 2:16**

PROMISSORY NOTE AS SECURITY

- Generally, **2:7**
- Commercial paper exclusion/exemption, generally, **2:12**
- Promissory notes as (not as) a security, **2:8**
- Reves applied, **2:11**
- Reves in Eighth Circuit, **2:9**
- Reves in Supreme Court, **2:10**

PROPRIETARY TRADING

- Volcker Rule, **1:56.10 to 1:56.14**

PROSPECTUS

- Generally, **5:26**
- Access equals delivery, **5:30**
- Closing and impact of T2, **5:31**
- Delivery of prospectus in aftermarket, **5:32**
- Distribution of preliminary prospectus, **5:27**
- Electronic public offering, **5:33**
- Final prospectus
 - access equals delivery, **5:30**
 - relationship to preliminary prospectus, **5:28**
- Plain English
 - generally, **6:9**

PROSPECTUS—Cont'd

- Plain English—Cont'd
 - certain sections, **6:10**
 - clear writing for entire prospectus, **6:11**
 - cover page, **6:14**
 - inside front and outside back cover page, **6:15**
 - Item 503: summary, risk factors, fixed charges, **6:16**
 - Plain English handbook, **6:12**
 - SEC as pedagogue, **6:13**
 - Staff Legal Bulletin No. 7: Plain English, **6:17**
- Preliminary prospectus
 - distribution, **5:27**
 - relationship to definitive prospectus, **5:28**
- Relationship of preliminary prospectus to definitive prospectus: Rule 430A, **5:28**
- Re-ordering, **5:29**
- Rule 430A, relationship of preliminary prospectus to definitive prospectus, **5:28**
- T2, impact, **5:31**
- Transnational aspects, multijurisdictional disclosure system, **22:64**

PROXY ACCESS

- Generally, **17:20 et seq**
- Shareholder proposal campaigns, **17:20.18**
- Shareholder Proposals** (this index)
- 2017 proxy season, **17:20.20**

PROXY REGULATION

- Advisory firms
 - advisor litigation filed by pro industry groups, **17:21.06**
 - Clayton Commission in 2020 adopts rules governing status of proxy advisers under the proxy rules, **17:21.02**
 - definition of solicitation filed by ISS, **17:21.12**
 - fifth circuit decision, **17:21.08**
 - Gensler Commission in 2022 largely overrides Clayton's 2020 amendments, **17:21.04**
 - Glass Lewis, below
 - Institutional Shareholder Services, below
 - sixth circuit opinion, **17:21.10**
- Audit committee discussions with auditor, **17:17.02**
- Audit committee report, **17:17**
- Autori, audit committee discussions with, **17:17.02**
- Business combinations and other extraordinary corporate actions, **17:14**
- Changes to proxy statements resulting from new executive compensation regime, **17:17**
- Contribution to disclosure, **17:16**
- Depository Trust Company, role in soliciting beneficial owners, **17:10**
- Executive compensation regime resulting in changes to proxy statements, **17:17**
- Fees paid to auditors, proxy disclosure, **17:18**
- IECA, role in soliciting beneficial owners, **17:10**
- Institutional Shareholder Services
 - distributions, stock splits and dividends, **17:2**

PROXY REGULATION—Cont'd

- Majority vote standard in uncontested director elections, **17:19**
- Proxy access
 - adoption by SEC, **17:20**
 - aftermath of Business Roundtable, **17:20.12**
 - arbitrary and capricious review, **17:20.06**
 - Business Roundtable decision, **17:20.04, 17:20.12**
 - capital formation, consideration, **17:20.08**
 - competition, consideration, **17:20.08**
 - D.C. Circuit challenge, **17:20**
 - efficiency, consideration, **17:20.08**
 - prior case law, **17:20.10**
 - shareholder proposals, **17:20.02**
 - standard of review, **17:20.06**
- Proxy disclosure of fees paid to auditors, **17:18**
- Review and update of proxy access, **17:20.14 et seq.**
- Rule 14a-9, **17:15**
- Shareholder proposal campaigns
 - proxy access, **17:20.18**
 - 2017 proxy season, **17:20.20**
- Solicitation of proxies
 - generally, **17:1**
 - exempt solicitations, **17:2**
 - outline, **17:4**
 - proxy contests, **17:8**
 - proxy statements, **17:6, 17:7**
 - research reports, **17:5**
 - routine solicitations, **17:3**
 - small business issuers, proxy statement, **17:7**
- Soliciting beneficial owners
 - generally, **17:9**
 - communicating directly with NOBOs, **17:12**
 - discretionary voting, **17:13.10**
 - distributing proxy materials to BOs, **17:11**
 - IECA, **17:10**
 - NOBOs (non-objecting beneficial owners), communicating directly with, **17:12**
 - reaching beneficial owners in proxy contest, **17:13**
 - Reform Act, discretionary voting, **17:13.10**
 - role of SROs, IECA, and cede, **17:10**
 - SROs, **17:10**
- SROs, role in soliciting beneficial owners, **17:10**
- Uncontested director elections, majority vote standard, **17:19**

PROXY STATEMENTS

- Glossary of key disclosure forms, **3:6**

PSLRA

- Actions brought in state courts after SLUSA and the Delaware carve-out, **25:16**
- After market purchasers, Section 11 actions, **29:115**
- Attorney fees, **30:21, 30:23**
- Class action provisions
 - attorney fees, impact of PSLRA, **30:23**
 - attorney-related provisions, **30:24**

PSLRA—Cont'd

- Class action provisions—Cont'd
 - causation and damages, **30:26**
 - damages, **30:26**
 - other plaintiff-related provisions, **30:25**
 - pleading securities fraud, **29:4**
 - RICO and securities fraud, **30:27**
 - settlements, **30:22**
- Contentious case law, **30:19**
- Express remedies, private actions
 - Section 11 action for false registration statements (including prospectus)
 - PSLRA related issues
 - bespeaks caution, **26:50**
 - safe harbor rules and express remedies, **26:49**
 - Section 11 liability and PSLRA, **26:48**
 - Section 12(a)(2) claims
 - action for fraud in sale of securities
 - Section 12(a)(2) and PSLRA, **26:9**
 - conflict between prospectus and oral forward-looking statements, **26:29**
- Federal Rules of Civil Procedure, **30:14, 30:18, 30:20**
- Fifth Circuit
 - pleading securities fraud, below
 - scienter, below
- Fraud
 - class action provisions, RICO and securities fraud, **30:27**
 - joint and several liability for knowing securities fraud, **37:5**
 - pleading securities fraud, below
- Frivolous actions, **30:17**
- Implied remedies, private actions
 - loss causation after PSLRA, **27:81**
 - Rule 10b-5 perspective, **27:11**
- Information and belief proviso
 - pleading securities fraud, below
- Joint, several, and proportionate liability under PSLRA
 - contribution under PSLRA, **37:10, 37:11**
 - knowledge of securities fraud, joint and several liability, **37:5**
 - less pecunious plaintiff and uncollectibility, **37:7**
 - limitation period on action for contribution, **37:12**
 - more pecunious plaintiff, **37:8**
 - one jointly and severally liable, contribution rights, **37:11**
 - partial settlement and contribution bars, **37:13**
 - pleading proportionate liability, **37:9**
 - qualified proportionate liability, **37:6 to 37:8, 37:10**
 - relative percentage of responsibility, **37:6**
 - statute of limitations, action for contribution, **37:12**
 - uncollectibility and the less pecunious plaintiff, **37:7**
- Loss causation and Supreme Court
 - class certification, **29:106.04**
 - corrective disclosure, **29:89**
 - damages, impact of Dura Pharmaceuticals, **29:81**

PSLRA—Cont'd

- Loss causation and Supreme Court—Cont'd
 - District Courts in Second Circuit post-Dura, **29:87**
 - Dura Pharmaceuticals case, damages determination, **29:81**
 - Fifth Circuit post-Dura, **29:89, 29:90**
 - oral argument, Rule 8(a)/9(b), **29:80**
 - other circuits, post Dura Pharmaceutical, **29:85 to 29:90**
 - paid too much not adequate to allege loss causation, **29:78**
 - partial disclosures, impact, **29:89**
 - Rule 8(a)(2) vs. Rule 9(b)(2) issue, **29:79**
 - Rule 8(a)/9(b) discussion in oral argument, **29:80**
 - Second Circuit, concealment of risk that when disclosed caused loss, **29:86**
 - Sixth Circuit applies Dura, **29:85**
- Ninth Circuit
 - class certification, **29:106.02, 29:106.04**
 - pleading securities fraud, below
 - selection of lead counsel, fee aspect of adequacy, **30:12**
 - sound in fraud difference, pleading securities fraud, **29:110**
- Outline of PSLRA, **25:4**
- Penny Stock Market Regulation** (this index)
- Pleading securities fraud
 - generally, **29:1 to 29:136**
 - amendment of pleadings, **29:91**
 - announcement of SEC investigation coupled with subsequent corrective disclosure, loss causation, **29:84.02**
- Apple Computer contest, backdating of stock options, **29:130**
- appropriate standard in other circuit courts, **29:105**
- backdating of stock options
 - generally, **29:119 to 29:136**
 - accounting for options, **29:121**
 - acknowledging material weakness in ICFR, Brocade communications private actions, **29:128**
 - amended Form 10-K, Mercury interactive, **29:134**
 - Apple Computer contest, **29:130**
 - Brocade communications private actions, **29:127 to 29:129**
 - Brocade defendants speak back, **29:125**
 - class action opportunity, **29:120**
 - Converse technology, **29:131, 29:132**
 - exposure of backdated option grants, **29:122**
 - grant of backdated options, exposure, **29:122**
 - loss causation, Mercury interactive, **29:136**
 - material weaknesses in ICFR, acknowledgment, **29:128**
 - Mercury interactive, **29:134 to 29:136**
 - opportunity for class action lawyers, **29:120**
 - outline of some problem areas, **29:123**
 - private actions, Mercury interactive, **29:135**

PSLRA—Cont'd

Pleading securities fraud—Cont'd
 backdating of stock options—Cont'd
 problem areas in broad outline, **29:123**
 restated financial statements, Brocade communications private actions, **29:127**
 SEC action against Brocade defendants and DOJ indictment, **29:124**
 SEC and DOJ actions, Comverse technology, **29:131**
 some problem areas in broad outline, **29:123**
 special committee reveals all, Mercury interactive, **29:133**
 statute of limitations defense, Brocade SEC/DOJ actions, **29:126**

background, **29:1 to 29:5**
 Baptist Foundation investors, **29:92**
 battle of memoranda re: class certification, **29:104**
 Brocade case, backdating of stock options
 defendants speak back, **29:125**
 SEC action against Brocade defendants and DOJ indictment, **29:124**
 statute of limitations defense, Brocade SEC/DOJ actions, **29:126**

Brocade communications private actions, backdating of stock options
 generally, **29:129**
 acknowledging material weakness in ICFR, **29:128**
 restated financial statements, **29:127**

claims other than 10b-5
 after market purchasers
 shares and damages, **29:115**
 tracing shares and damages, Section 11 actions, **29:115**

pleading state of mind, **29:118**
 PSLRA, pleading state of mind, **29:118**
 Rule 8(a) and failure to state claim, **29:117**
 Rule 9(b), Section 12 seller, **29:116**
 Rule 9(b) and pleading who is Section 12 seller, **29:116**
 Rule 14a-9, state of mind, **29:118**
 Rule 14a-9 private action, pleading state of mind, **29:118**
 Section 11 actions, **29:115**
 sound in fraud difference, below in this group

class actions, **29:4**
 class certification
 generally, **29:96 to 29:106.24**
 Arkansas Teacher's Retirement, rebutting presumption defendants need not show a complete absence of price impact, **29:106.34**
 extraterritoriality, presumption against, **29:106.42**
 Fifth Circuit, **29:106.10, 29:106.14**
 Fifth Circuit allows appeal of district court's decision to certify class, **29:106.28**

PSLRA—Cont'd

Pleading securities fraud—Cont'd
 class certification—Cont'd
 Halliburton appellate litigation, **29:106.14 to 29:106.18**
 Halliburton II
 developments after, **29:106.22**
 district court's summary, **29:106.24**
 Fifth Circuit allows appeal of district court's decision to certify class, **29:106.28**
 remand, **29:106.26**
 IBEW Local 98 Pension Fund v. Best Buy, **29:106.36**
 lack of price impact, **29:106.18 to 29:106.22**
 loss causation and class certification, **29:106.08, 29:106.14**
 market efficiency, establishing, **29:106.38**
 materiality, class certification, **29:106.04**
 Ninth Circuit, **29:106.02**
 Oracle case, **29:106.06**
 presumption of reliance, **29:106.38, 29:106.40**
 price impact, burden for demonstrating, **29:106.38**
 price impact and class certification, **29:106.16 to 29:106.22**
 reliance, presumption of, **29:106.38, 29:106.40**
 Supreme Court, **29:106.04**
 Thomas/Scalia/Alito concurring opinion, **29:106.20**

class redefined, **29:99, 29:100**
 Converse technology, backdating of stock options private actions, **29:132**
 SEC and DOJ actions, **29:131**
 denial of motion for reconsideration, **29:101**
 Eisen case, clarification of misunderstanding, **29:97**
 emerging consensus, **29:5**
 enhanced pleading standard of PSLRA, **29:2**
 error by district court, **29:98**
 federal rules of procedure, **29:1**
 Fifth Circuit
 information and belief proviso, Novak standard, **29:69, 29:70**
 loss causation, corrective disclosures, partial disclosures impact, **29:89**
 preponderance of evidence standard for class certification, **29:106**

group pleading issues, **29:93**
 guarantee of § 1 billion, **29:102**
 information and belief proviso
 Fifth Circuit adopts Novak standard, **29:69, 29:70**
 Kinder-Morgan and information and belief allegations, **29:70**
 Ninth Circuit, **29:63, 29:64**
 Novak applied by district courts, below in this group
 Second Circuit, Novak, below in this group
 Silicon Graphics, Ninth Circuit, **29:63**
 joint and several liability for knowledge, **37:5**

PSLRA—Cont'd

Pleading securities fraud—Cont'd
 leave to amend, **29:91**
 legislative history, **29:2, 29:3**
 loss causation
 11th Circuit, **29:90.02**
 allegedly misleading communications on social media, *In re Tesla Securities Litigation*, **29:84.06**
 announcement of an internal investigation, **29:84**
 announcement of SEC investigation coupled with subsequent corrective disclosure, **29:84.02**
 corrective disclosure and announcement of an internal investigation, **29:84**
 internal investigation announcement of an, **29:84**
 materialization of the risk theory of loss causation, **29:90.04**
 plaintiff not required to prove fraud revealed to market, **29:84.04**
 Sapssov v. Health Management, **29:90.02**
 subsequent corrective disclosure, announcement of SEC investigation coupled with, **29:84.02**
 Tenth Circuit applies the materialization of the risk theory of loss causation, **29:90.04**
 loss causation and Supreme Court, above materialization of the risk theory of loss causation, **29:90.04**
 Mercury interactive, backdating of stock options
 generally, **29:134 to 29:136**
 amended Form 10-K, **29:134**
 loss causation, **29:136**
 private actions, **29:135**
 special committee results, **29:133**
 motion for reconsideration, denial, **29:101**
 Ninth Circuit
 class certification, **29:106.02**
 sound in fraud difference, **29:110**
 not over until it is over, **29:103**
 Novak applied by district courts
 confidential witnesses, **29:76, 29:77**
 District of New Jersey, **29:72**
 District of Utah, **29:74**
 identity of confidential witnesses, discovery by defendant, **29:77**
 information and belief proviso, **29:71 to 29:77**
 Judge Kimball and District of Utah, **29:74**
 Judge Lechner v. Judge Irenas in District of New Jersey, **29:72**
 Judge Moreno and Southern District of Florida, **29:73**
 Judge Thrash and Northern District of Georgia, **29:71**
 Northern District of Georgia, **29:71**
 Second Circuit, **29:66**
 Southern District of Florida, **29:73**
 Supreme Court denies petition for certiorari, **29:75**

PSLRA—Cont'd

Pleading securities fraud—Cont'd
 Novak case
 in district courts. Novak applied by district courts, above in this group
 Second Circuit, Novak, below
 Supreme Court denies petition for certiorari, **29:75**
 redefined class, **29:99, 29:100**
 retroactive legislative history, **29:3**
 Rule 8(a) and failure to state claim, **29:117**
 Rule 9(b) and pleading who is Section 12 seller, **29:116**
 Rule 14a-9 private action, pleading state of mind, **29:118**
 Sarbanes-Oxley Act, indirect impact, **29:94**
 scienter, below
 Second Circuit
 loss causation in Supreme Court, post *Dura Pharmaceutical*, **29:86, 29:87**
 Novak case. Second Circuit, Novak, below in this group
 sound in fraud difference, Rombach and pleading Section 11 claim, **29:113**
 Second Circuit, Novak
 generally, **29:65**
 district courts, **29:66**
 information and belief proviso, generally, **29:65 to 29:68**
 Novak applied by district courts, above in this group
 remand, issues on, **29:67**
 Section 11 actions
 after market purchasers, tracing shares and damages of, claims other than 10b-5, **29:115**
 sound in fraud difference, below in this group
 Sixth Circuit, loss causation in Supreme Court, post *Dura Pharmaceutical*, **29:85**
 sound in fraud difference
 Lone Star difference, **29:109**
 Ninth Circuit concerns, **29:110**
 pleading claims other than 10b-5, **29:107 to 29:114**
 Rombach and pleading Section 11 claims, **29:112, 29:113**
 Rule 8(e)(2) and stating claims in alternative factor, **29:111**
 Rule 9(b) and pleading Section 11 and Section 12 claims, **29:108**
 Second Circuit District Courts, Rombach and pleading Section 11 claims, **29:113**
 section 11 and item 303, **29:113.10**
 Section 11 claims, generally, **29:107**
 Section 12(2) claims, **29:107**
 Section 12 claims, Rule 9(b), **29:108**
 Suprema and new look in Third Circuit, **29:114**
 Third Circuit, Suprema case, **29:114**

PSLRA—Cont'd

- Pleading securities fraud—Cont'd
 - subsequent corrective disclosure, announcement of SEC investigation coupled with, loss causation, **29:84.02**
 - summary judgment standard, **29:95**
 - Tenth Circuit applies the materialization of the risk theory of loss causation, **29:90.04**
 - Third Circuit, sound in fraud difference, Supreme case, **29:114**
 - vanishing guarantee of § 1 billion, **29:102**
- Post-PSLRA
 - Rule 175/3b-6 safe harbor, **28:27**
 - safe harbor for forward-looking statements and puffery, **28:22**
- Presumptions
 - Rule 11, **30:20**
 - selection of lead plaintiff, **30:1, 30:4**
- Private securities actions in state courts, state legislation prompted by PSLRA, **31:6**
- RICO, class action provisions, **30:27**
- Rule 11, **30:18, 30:20**
- Safe harbor for forward-looking statements
 - actual knowledge of falsity or misleading nature of statement, **28:14 to 28:19**
 - adequacy of cautionary statements, **28:10**
 - adoption of PSLRA, **28:1**
 - cautionary statements as first prong, **28:9 to 28:13**
 - definition of forward-looking statements, **28:7**
 - discovery issues, **28:24**
 - exclusions and scope, **28:5**
 - free-standing safe harbor, **28:14**
 - future-oriented general statements, **28:20 to 28:23**
 - identification of maker of forward-looking statement, **28:17**
 - immateriality and puffery, **28:20 to 28:23**
 - immateriality and what market knows, **28:23**
 - Judge Easterbrook, **28:11**
 - knowledge level of market and immateriality, **28:23**
 - legislative history, **28:3, 28:10**
 - maker of forward-looking statement, **28:17**
 - meaningful cautionary statements, **28:9, 28:11**
 - metamorphose of safe harbor in House and Senate, **28:3**
 - misstating historical facts, **28:13**
 - obligation to update, **28:8**
 - oral forward-looking statements, **28:19**
 - outline, **28:6 to 28:8**
 - pleading and discovery issues, **28:24**
 - pre-PSLRA law, **28:2**
 - puffery and immateriality, **28:20 to 28:23**
 - post-PSLRA, **28:22**
 - safe harbor, conference committee, and SEC, **28:4**
 - safety of safe harbor, **28:25**
 - SEC and forward-looking statements after PSLRA, below
 - Tellabs and forward-looking statements, **28:12**

PSLRA—Cont'd

- Safe harbor for forward-looking statements—Cont'd
 - three levels, **28:6**
 - underwriter's forward-looking statements, **28:18**
 - update obligation, **28:8**
 - what constitutes actual knowledge, **28:16**
 - when is forward-looking statement false or misleading, **28:15**
- Scienter
 - Second Circuit
 - Seventh Circuit, Tellabs aftermath, pleading manipulation, **29:50**
 - state of mind pleading. Second Circuit, adoption of pre-PSLRA state of mind pleading standard, below
 - Seventh Circuit, Tellabs
 - generally, **29:40**
 - aftermath
 - confidential witnesses, Judge Easterbrook and impact of Tellabs on use such sources, **29:47, 29:48**
 - Disclosures though imperfect may undercut evidence of scienter, *Mehta v. Ocular Therapeutix*, **29:54**
 - Heightened pleading standards in the Ninth Circuit, *Nguyen v. Endologix*, **29:55**
 - impact on lower courts, **29:51**
 - Judge Easterbrook and impact of Tellabs on use of confidential witnesses (sources), **29:47**
 - justification of reliance on confidential sources, Tellabs on remand, **29:48**
 - mortgage litigation, pleading fraud, **29:53**
 - pleading fraud, **29:53**
 - pleading materiality, **29:52**
 - remand to Seventh Circuit, **29:48, 29:49**
 - Second Circuit on pleading manipulation, **29:50**
 - strong inference created by conflicting allegations, Tellabs on remand, **29:49**
 - Tellabs, Supreme Court and pleading strong inference of scienter
 - generally, **29:41**
 - cogent and at least as compelling standard, **29:44**
 - dicta, relevant, **29:46**
 - jade falcon, Justice Scalia confronted by Justice Ginsburg, **29:43**
 - jury usurpation, **29:45**
 - Justice Ginsburg confronts Justice Scalia, a jade falcon, and more plausible view, **29:43**
 - strong inference standard and competing inferences, **29:42**
 - usurpation of jury non-issue, **29:45**
 - Tellabs on remand to Seventh Circuit
 - accounting for conflicting inferences allegations of scienter creating strong inference of scienter, **29:49**
 - justified reliance on confidential sources, **29:48**

PSLRA—Cont'd

- Scienter—Cont'd
 - Tellabs. Seventh Circuit, Tellabs, above
- SEC and forward-looking statements after PSLRA amendment by SEC, **28:26**
 - Rule 175/3b-6 safe harbor after PSLRA, **28:27**
- Second Circuit
 - pleading securities fraud, above
 - scienter, above
- Section 11 actions
 - express remedies, private actions, above
 - pleading securities fraud, above
- Securities Litigation Uniform Standards Act (SLUSA), deferring to federal actions, **31:20, 31:21**
- Security for costs, **30:21**
- Security reforms of 1990s, **1:15**
- Selection of lead counsel
 - bidding process, **30:9 to 30:12**
 - Cendant case and bidding process imposed by District court, **30:9**
 - fee aspect of adequacy, **30:11, 30:12**
 - Judge Walker, fee negotiation in Third Circuit, **30:11**
 - Ninth Circuit and restriction on fee aspect of adequacy, **30:12**
 - Third Circuit rejection of court imposed bidding process, **30:10 to 30:12**
- Selection of lead plaintiff
 - generally, **30:1 to 30:8**
 - aggregating plaintiffs, **30:6**
 - Cendant case, **30:7**
 - class representative lead plaintiff overlap, **30:8**
 - fee negotiation, adequacy of lead plaintiff, **30:11, 30:12**
 - initiation of action notice, **30:2**
 - institutional investors, **30:4, 30:5**
 - most adequate plaintiff (institutional investors) presumption, **30:4**
 - notice of initiation of action, **30:2**
 - overlap with class representative, **30:8**
 - Oxford case, role of institutional investors, **30:5**
 - presumption, **30:1, 30:4**
 - recruitment, **30:3**
 - soliciting plaintiffs, **30:6**
 - using notice to recruit, **30:3**
- Settlement
 - class action provisions
 - generally, **30:22**
 - partial settlement and contribution bars under PSLRA, **37:13**
- Sixth Circuit
 - pleading securities fraud, **29:85**
 - scienter, above
- Statute of limitations, contribution, action under PSLRA, **37:12**

PSLRA—Cont'd

- Stay of discovery
 - documents furnished in government and other investigations, **30:16**
 - Federal Rules of Civil Procedure, **30:14**
 - government and other investigations, documents furnished, **30:16**
 - particularized discovery, **30:15, 30:16**
 - provisions, generally, **30:13**
- Tellabs. Seventh Circuit, Tellabs, above
- Third Circuit
 - pleading securities fraud, sound in fraud difference, Suprema case, **29:114**
 - selection of lead counsel, rejection of court imposed bidding process, **30:10 to 30:12**
- Unresolved issues, **25:5**

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD (PCAOB)

- Accountants, generally, **39:4**
- Accounting standards
 - generally, **21:80 to 21:83**
 - FASB designated as Sarbanes-Oxley standard setting board, **21:82**
 - financial engineering, **21:80**
 - principled-based accounting standards, effect, **21:83**
 - reincarnation of financial accounting standards board (FASB), **21:81**
- Attack on constitutionality of PCAOB, **21:5**
- Audit committees
 - communications, auditing standards, **21:73.10**
 - definitions, communications, auditing standards, **21:73.12**
- Auditing, attestation, quality control, and ethics standards
 - adoption of interim professional standards, **21:31**
 - attestation standards, establishing, **21:30**
 - Auditing Standard No. 1 adoption, **21:33**
 - broker-dealer matters, **21:34.26**
 - amendments to PCAOB standards, **21:34.28**
 - changes to PCAOB standards, **21:34.33**
 - developments in 2015-2016, **21:34.38**
 - disclosure of engagement partners, **21:34.30 et seq.**
 - Dodd-Frank, updates, **21:34.24**
 - establishing standards, **21:30**
 - ethics standards, establishing, **21:30**
 - Form AP, **21:34.32**
 - interim professional standards, adoption, **21:31**
 - other information, proposed other information standard, **21:34.18**
 - response, material inconsistency or misstatement of fact, **21:34.20**
 - other participants in audits, required disclosures, **21:34.31**
 - procedure for adopting professional standards, **21:32**

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD (PCAOB)—Cont'd

Auditing, attestation, quality control, and ethics standards—Cont'd

- proposed other information standard, **21:34.18**
- response, material inconsistency or misstatement of fact, **21:34.20**
- quality control standards, establishing, **21:30**
- reorganization of PCAOB auditing standards, **21:34.22**
- Reorganization of auditing standards, below required disclosures for other participants in audits, **21:34.31**
- testing for auditing, attestation, quality control, and ethics standards, **21:34**

Auditing Standard No. 4, reporting on elimination of material weaknesses, **21:56**

Auditing Standard No. 5

- generally, **21:39**
- adoption of Auditing Standard No. 4, reporting on elimination of material weaknesses, **21:56**
- another's work, use of, **21:46**
- auditor's opinion, **21:53**
- audits of ICFR and financial statements, integration, **21:40**
- communications by auditor to management, **21:52**
- controls, testing design and effectiveness, **21:49**
- deficiency, definition, **21:50**
- definition of material weakness, deficiency, and significant deficiency, **21:50**
- design and effectiveness of controls, **21:49**
- evaluation of deficiencies and indicators of material weakness, **21:51**
- fraud assessment, **21:43**
- ICFR quarterly changes, **21:55**
- integrating audits of ICFR and financial statements, **21:40**
- management's representation letter, **21:52**
- materiality as planning aspect, **21:45**
- material weakness, definition, **21:50**
- misstatement, understanding likely sources, **21:47**
- planning, **21:45**
- quarterly changes in ICFR and Section 302 certification, **21:55**
- reporting on elimination of material weaknesses, Auditing Standard No. 4, **21:56**
- risk assessment, **21:42**
- scale of audit, **21:44**
- Section 302 certification, quarterly changes, **21:55**
- significant accounts and disclosures, identification, **21:47**
- significant deficiency, definition, **21:50**
- sources of misstatement, understanding, **21:47**
- staff guidance and auditing internal control over financial reporting, **21:56.02**
- subsequent developments, **21:54**
- testing design and effectiveness of controls, **21:49**

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD (PCAOB)—Cont'd

Auditing Standard No. 5—Cont'd

- top-down approach, **21:41**
- walkthroughs, **21:48**
- work of others, using, **21:46**

Auditing Standard No. 16, overview, auditor independence and non-audit services, **21:73.14**

Auditor independence and non-audit services

- 2020 amendments to auditor independence requirements, **21:76.02**
- generally, **21:66 to 21:76.02**
- administration of engagement, **21:72**

audit committees

- communications, auditing standards, **21:73.10**
- definitions, communications, auditing standards, **21:73.12**
- disclosure of fees, **21:74**
- ex-auditors as financial employees, **21:76**
- fees disclosure, **21:74**
- proscribed non-audit services defined, **21:69**
- report by auditor to audit committee, **21:73**
- rotation of partners on audit engagement, **21:75**
- rules on auditors performing tax services for audit clients, **21:71**
- SEC oversight and overlap with PCAOB, **21:66**
- SOA proscription of non-audit services, **21:68**
- tax services for audit clients, adoption of rules, **21:71**
- wavering on tax services, **21:70**

Audit work papers, preservation, **21:78**

Background

- Enron/WorldCom and financial fraud at Fortune 500 companies, **21:1**
- prosecution of Arthur Andersen LLP for obstruction of justice, **21:2**
- Sarbanes-Oxley Act adoption in 2002, **21:4**
- SEC's short-lived proposal to create public accounting board, **21:3**

Changes to standards, **21:34.33**

Changes to standards and rules, **21:34.44**

China, agreement with, **21:62.04**

Constitutionality challenge, **21:5 et seq.**

Developments in 2015-2016, auditing, attestation, quality control, and ethics standards, **21:34.38**

Disciplinary proceedings

- generally, **21:60**
- confidentiality, **21:64**

Disciplinary sanctions

- generally, **21:61**
- foreign accounting firms, **21:62**
- SEC review, **21:63**

Document shredding, **21:78**

Dodd-Frank, updates, auditing, attestation, quality control, and ethics standards, **21:34.24**

Financial accounting standards board (FASB)

- designated as Sarbanes-Oxley standard setting board, **21:82**

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD (PCAOB)—Cont'd

- Financial engineering and accounting standards, **21:80**
- Foreign accounting firms, **21:62, 21:79**
- Form AP, **21:34.32**
- Holding Foreign Companies Accountable Act and regulatory follow-up, **21:62.02**
- Improper influence on conduct of audits, Rule 13b2-2(b), **21:77**
- Inspections of foreign accounting firms, **21:62**
- Inspections of registered public accounting firms
 - report of inspection, **21:58**
 - scope of inspection, **21:57**
- Interim auditing standards during reorganization, **21:34.48**
- Interpretive publications, reorganization of auditing standards, **21:34.50**
- Investigations
 - generally, **21:59**
 - China, agreement with, **21:62.04**
 - confidentiality, **21:64**
 - foreign accounting firms, **21:62**
- Obstruction of justice, **21:78**
- Other participants in audits, required disclosures, **21:34.31**
- PCAOB investigations, disciplinary proceedings and sanctions
 - foreign accounting firms, inspection of, investigations of, and imposing disciplinary sanctions on, **21:62**
 - SEC review of disciplinary sanctions, **21:63**
 - stealth board, **21:64**
- Preservation of audit work papers, shredding documents, and obstruction of justice, **21:78**
- Principled-based accounting standards, effect, **21:83**
- Proposed standards for reports of auditors, **21:38 et seq.**
- Registration of public accounting firms
 - generally, **21:24**
 - broker-dealer auditors and voluntary registrants, **21:25**
 - Form 1 registration application, **21:28**
 - identification of firms that must register, **21:24**
 - online registration, **21:27**
 - processing registration applications, **21:29**
 - registration process and ramifications, **21:26**
- Regulatory agency, generally, **1:8**
- Reincarnating financial accounting standards board (FASB), **21:81**
- Removal of Board members
 - at will removal of members by SEC, **21:15.12**
 - new attack on the PCAOB, **21:15.14**
 - unconstitutionality of dual for-cause limitations on removal of Board members, **21:15.10**
- Reorganization of auditing standards
 - Generally, **21:34.40 et seq.**
 - changes to standards and rules, **21:34.44**

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD (PCAOB)—Cont'd

- Reorganization of auditing standards—Cont'd
 - effective date, **21:34.56**
 - interim auditing standards, **21:34.48**
 - interpretive publications, **21:34.50**
 - other changes to PCAOB standards, **21:34.52, 21:34.54**
 - rules changes, **21:34.44**
 - standards, **21:34.42**
 - standards changes, **21:34.44 et seq.**
 - Reports of auditors
 - Generally, **21:38 et seq.**
 - additional changes to report, **21:38.08**
 - amendments to standards, **21:38.14**
 - audit report and private civil litigation, **21:38.20**
 - committees, effect of standards on, **21:38.18**
 - critical audit matters, **21:38.04, 21:38.06**
 - effective date, **21:38.16**
 - emphasis of a matter, **21:38.12**
 - explanatory language required by other PCAOB standards, **21:38.10**
 - rulemaking history, **21:38.02**
 - Required disclosures for other participants in audits
 - auditing, attestation, quality control, and ethics standards, **21:34.31**
 - Rule 13b2-2(b), improper influence on conduct of audits, **21:77**
 - Rulemaking history, **21:38.02**
 - Rules changes, reorganization of auditing standards, **21:34.44**
 - Sarbanes-Oxley Act (SOX) § 802, **21:78.02**
 - SEC enforcement, review of PCAOB decision by Commission, **36:76**
 - Shredding documents, **21:78**
 - Standards, changes to, **21:34.33, 21:34.44 et seq.**
 - Stealth Board, **21:64**
 - Structure, rules, and functions
 - annual accounting support fee, **21:23**
 - by-laws and code of ethics, **21:19**
 - funding of PCAOB and standard setting body, **21:22**
 - initial organization, **21:16, 21:17**
 - PCAOB rule-making authority and procedures, **21:21**
 - prerequisite steps to organization and function, **21:17**
 - SEC declaration that PCAOB organized and functional, **21:18**
- PUBLIC OFFERING**
- Distribution. **Public Offering Distribution Process** (this index)
 - Integration. **Exempt Offerings** (this index)
 - Prospectus, electronic public offering, **5:33**
 - Registration. **Public Offering Registration** (this index)
 - Section 12a(2) claims. **Private Actions, Express Remedies** (this index)

PUBLIC OFFERING—Cont'd

Small companies. **Public Offerings by Small Companies** (this index)

PUBLIC OFFERING DISTRIBUTION PROCESS

At-the-market offerings, **5:75**

Bought deals, **5:73**

Business combinations and liberalization of communications while in registration

generally, **5:36**

communications after filing registration statement, **5:39**

communications prior to filing registration statement, **5:38**

conforming exchange offers and tender offer rules, **5:41**

conforming proxy rules, **5:40**

distinctive features of mergers vis-a-vis exchange offers under Securities Acts, **5:37**

Communications before and after filing

business combinations and liberalization of communications while in registration, **5:38, 5:39**

Communications during pre-filing period

business combinations and liberalization of communications while in registration, **5:38**

Rule 163A communications more than 30 days before filing, **5:10**

Rule 163 and well-know seasoned issuer, **5:9**

Direct listings, **5:72, 5:72.02**

Electronic road shows

Internet and securities offering reform, **5:48**

liberalizing communications, **5:21**

Free writing prospectus

generally, **5:42**

acceleration of effective date practices pre-SOR, **5:43**

avoidance of Section 12(a)(2) liability, **5:45**

common sense, **5:13**

conditions to use, **5:14**

filing, **5:15, 5:16**

innovation, **5:13**

issuer's obligation to file Rule 433 free writing prospectus, **5:15**

media free writing prospectuses, **5:47**

Rule 433, **5:14, 5:15**

sales material, **5:46, 5:47**

Section 12(a)(2) liability avoidance, **5:45**

securities offering reform, generally, **5:13 to 5:16, 5:42**

subtle and otherwise sales material, **5:46**

supplement, **5:44**

underwriters and other offering participants, filing by, **5:16**

written communication published or distributed by the media as free writing prospectus, **5:17**

Internet, securities offering reform, **5:48, 5:49**

PUBLIC OFFERING DISTRIBUTION PROCESS**—Cont'd**

Non-reporting issuers

classification of issuers, **5:7**

communications before and after filing, **5:12**

Outline of registration-distribution process

generally, **5:1**

conditional offers to buy, **5:3.02**

Internet age, legal concepts vs. common sense, **5:5**

legal concepts vs. common sense, **5:5**

offer, what constitutes, **5:4, 5:5**

pre-filing period, **5:2**

traditional lore as to what constitutes an offer, **5:4**

waiting period, from filing to pricing, **5:3, 5:3.02**

Prospectus, generally. **Prospectus** (this index)

Registered direct offerings, **5:74**

Regulation FD, securities offering reform, **5:34, 5:35**

Securities offering reform

generally, **5:6**

archived historical information on Web, **5:18**

classification of issuers, **5:7**

communications before and after filing

proposed rule, **5:13**

Rule 168 limited communications, **5:11**

Rule 169 limited communications, non-reporting issuers, **5:12**

testing the waters prior to registered offering, **5:12.02**

communications during pre-filing period

Rule 163A communications more than 30 days before filing, **5:10**

Rule 163 and well-known seasoned issuers, **5:9**

conventional road show presentations, **5:20**

electronic offerings, **5:49**

electronic road shows, **5:21, 5:48**

exclusion of registered securities offering disclosures, Regulation FD, **5:35**

free writing prospectus, above

ineligible issuers, **5:8**

Internet, **5:48, 5:49**

non-reporting issuers, **5:7**

public offering registration, **6:2**

Regulation FD, **5:34, 5:35**

research reports. SOR and research reports, below road show presentations, **5:20, 5:21**

Rule 134 communications expanded, **5:19**

Rule 433, **5:18**

seasoned issuers, **5:7**

unseasoned issuers, **5:7**

well-known seasoned issuers, **5:7**

SOR and research reports

generally, **5:22 to 5:25**

broker-dealers not participating in a distribution, **5:25**

issuer specific reports, **5:22**

Rule 137, **5:25**

PUBLIC OFFERING DISTRIBUTION PROCESS**—Cont'd**

SOR and research reports—Cont'd

Rule 138, **5:24**Rule 139, **5:22, 5:23**Sponsor-backed IPOs, **5:70**Unicorns and the IPO market, **5:71, 5:71.02**Wall-crossed offerings, **5:76**

Well-known seasoned issuers

classification of issuers, **5:7**communications during pre-filing, **5:9****PUBLIC OFFERING REGISTRATION**Generally, **6:1 to 6:138**

Delayed and unallocated primary shelf offerings

automatic shelf-registration, **6:35**

other secondary shelf offerings

Form S-1 secondary shelf offering, **6:41**Rule 430C and the Form S-1 secondary shelf offerings, **6:42**

pre-SOR and Rule 430b

generally, **6:28**conceptual framework, **6:29**marketing of delayed unallocated primary shelf offering, **6:32**practice prior to SOR, **6:30**unallocated shelf walkthrough, **6:31**

Rule 430b and content of shelf prospectus

critique of Rule 430B as applicable to delayed shelf offering by seasoned issuer, **6:34**primary offerings on Form S-3 or F-3, **6:33**seasoned issuer, critique of Rule 430B as applicable to delayed shelf offering by, **6:34**

secondary shelf offerings subject to Rule 430b and Item 512

generally, **6:36**delayed primary shelf and concurrent or alternative secondary shelf offering, **6:40**PIPE resale offerings, **6:37**Rule 430B and the addition or substitution of selling security holders, **6:39**secondary shelf offerings on Form S-3, **6:38, 6:39**

Section 11 effective date of prospectus supplements

accountants and other experts, **6:47**background, **6:43**determining the Section 11 effective date and as to whom after SOR, **6:44**issuer and underwriter, **6:45**officers and directors, **6:46**

Securities Act of 1933 registration and SOR

automatic shelf registration in action, **6:48**Form S-1 and reliance on General Instruction VII to incorporate by reference, **6:50**SOR and revised Item 512 undertakings, **6:55**underwriting agreements after SOR and Sarbanes-Oxley, **6:49**Direct participation programs, **6:136****PUBLIC OFFERING REGISTRATION—Cont'd**

Disclosure

Form S-4/F-4 for corporate combinations and exchange offers, mandatory prospectus disclosure, **6:55**

integrated disclosure and Securities Act registration, below

issuer repurchases, **6:114**generally, **6:122**adoption or termination of 10b5-1 plans under the 2023 amendments, **6:122.16**background to the 2023 amendments, **6:122.02**narrative repurchase disclosures, **6:122.10**notes concerning the Fifth Circuits vacatur, **6:122.07**officer or director transactions proximate to repurchase plan announcements, **6:122.12**political context and the appellate litigation, **6:122.06**quantitative repurchase disclosure requirements under the 2023 amendments, **6:122.08**repurchase disclosure requirements and related provisions under the 2023 amendments, **6:122.14**vacated SEC repurchase rules, **6:122.04**Extension of credit and direct participation programs, **6:136**

Forms

Forms S-1 and S-3A. Integrated disclosure and Securities Act registration, below

Form S-4/F-4 for corporate combinations and exchange offers, below

Form S-8, employee benefit plans, below

Form S-11, real estate investment companies, **6:67**

Form S-4/F-4 for corporate combinations and exchange offers

generally, **6:52**impact of liberalized business combinations regime on the Form S-4, **6:57**long form version for S-1 level disclosure, **6:53**mandatory prospectus disclosure, **6:55**short form version for S-3 level disclosure, **6:54**transactions to which applicable, **6:56**

Form S-8, employee benefit plans

effectiveness of registration statement on Form S-8, **6:61**eligibility, generally, **6:59**employee eligibility with emphasis on consultants and advisors, **6:60**

prospectus

generally, **6:62**updating prospectus, **6:63**registration statement, **6:64**reporting under Exchange Act, **6:65**small business issuers and Form S-8, **6:66**

PUBLIC OFFERING REGISTRATION—Cont'd

- Integrated disclosure and Securities Act registration content of prospectus/registration statement
 - basic information package, **6:23**
 - comment letters and responses, public availability, **6:27**
 - disclosure primarily applicable to Form S-1, **6:25**
 - incorporating BIP and in-depth information from Exchange Act reports, **6:24**
 - incorporating standard information items from Exchange Act reports, **6:22**
 - in-depth information, **6:23**
 - Part II of registration statement, **6:26**
 - public availability of comment letters and responses, **6:27**
 - standardized registration items, **6:21**
- Forms S-1 and S-3
 - generally, **6:18, 6:19**
 - access to S-3 without § 75 million float, **6:20**
- IPO allocations
 - book-building, SEC guidance, **6:100**
 - commission guidance on IPO allocations and book-building, **6:100**
 - IPO internet bubble, **6:92**
 - NASDR initiated litigation, **6:93**
 - path to conflicting rule proposals, **6:94**
 - SEC and NASDR initiated litigation, **6:93**
 - SEC guidance, **6:100**
- Issuer repurchases
 - acquisitions, mergers and similar transactions, **6:116**
 - alternative conditions, **6:121**
 - circuit breakers, **6:121**
 - disclosure requirements
 - generally, **6:122**
 - eligible securities, purchases, and purchasers, **6:115**
 - manner of purchase, **6:117**
 - mergers, acquisitions and similar transactions, **6:116**
 - price, **6:119**
 - Rule 10b-18, issuer repurchase safe harbor and disclosure, **6:114**
 - timing, **6:118**
 - volume, **6:120**
- Limited partnership roll-ups, **6:137**
- Mergers, acquisitions and similar transactions, issuer repurchases, **6:116**
- NASD corporate financing rule
 - fairness of underwriting compensation
 - generally, **6:68 et seq**
 - background, **6:69**
 - banned forms of underwriting compensation, **6:79.10**
 - compensation paid to related persons of the underwriter, **6:79.02**
 - disclosure, **6:79.08**
 - filing and fee requirements, **6:79.12**

PUBLIC OFFERING REGISTRATION—Cont'd

- NASD corporate financing rule—Cont'd
 - fairness of underwriting compensation—Cont'd
 - items deemed not to be underwriting compensation or deemed exceptions, **6:75**
 - items deemed underwriting compensation, **6:74**
 - lock-up requirements, **6:79.06**
 - offerings exempt from rule and/or filing, **6:70**
 - offerings for which filing must be made, **6:73**
 - offering subject of rule but exempt from filing, **6:71**
 - shelf offerings, **6:72**
 - unfair or unreasonable underwriting compensation, **6:79.04**
 - valuation of non-cash compensation, **6:79**
 - venture capital transactions, **6:76 to 6:78**
 - offerings of securities of dealer or affiliate of dealer, **6:80, 6:81**
 - qualified independent underwriter, **6:81**
- New issue rule
 - hot issues and prior rule, **6:82**
 - Rule 2790, **6:83**
- Overview of the registration statement and the registration process, **6:1**
- Plain English
 - generally, **6:9**
 - certain sections of prospectus, **6:10**
 - clear writing for entire prospectus, **6:11**
 - cover page of prospectus, **6:14**
 - inside front and outside back cover page of prospectus, **6:15**
 - Item 503: summary, risk factors, fixed charges, **6:16**
 - Plain English handbook, **6:12**
 - SEC as pedagogue, **6:13**
 - Staff Legal Bulletin No. 7: Plain English, **6:17**
- Prospectus
 - Form S-8, employee benefit plans, **6:62, 6:63**
 - supplements, Section 11 effective date. Delayed and unallocated primary shelf offerings, above
- Real estate investment companies, Form S-11, **6:67**
- Regulation M, distribution regimen for distribution participants, issuers, and others
 - generally, **6:101**
 - affiliated purchasers, **6:105**
 - agent independent of issuer, **6:106**
 - average daily trading volume (ADTV), defined, **6:108**
 - completion of participation in distribution, **6:111**
 - covered and reference securities, **6:107**
 - definitions
 - average daily trading volume (ADTV), **6:108**
 - distribution, **6:110**
 - restricted period, **6:109**
 - exceptions applicable to both Rules 101 and 102, **6:104**
 - passive market making, **6:112**
 - restricted period, defined, **6:109**

PUBLIC OFFERING REGISTRATION—Cont'd

- Regulation M, distribution regimen for distribution participants, issuers, and others—Cont'd
 - Rule 101, distribution participants, **6:102, 6:104**
 - Rule 102, issuers, selling shareholders, and affiliated purchasers, **6:103, 6:104**
 - stabilizing transactions, **6:113**
 - what constitutes a distribution, **6:110**
- Securities offering reform, **6:2**
- State registration of securities, **6:138**
- Trust Indenture Act and debt securities
 - generally, **6:123**
 - conflicts of interest, **6:131**
 - debtholder rights, **6:133**
 - delayed determination of trustee eligibility, **6:130**
 - exemptions, **6:125**
 - foreign trustees eligibility, **6:129**
 - implementing rules and forms, **6:135**
 - mandatory inclusion of indenture provisions, **6:127**
 - qualification and qualification procedure, **6:126**
 - retroactivity of 1990 amendments, **6:134**
 - rights and responsibilities, **6:132**
 - scope, **6:124**
 - trustee eligibility, **6:128 to 6:130**
- Underwriters
 - delayed and unallocated primary shelf offerings, **6:45, 6:49**
 - NASD corporate financing rule, fairness of underwriting compensation, **6:68 to 6:81**
- Up-front issues
 - generally, **6:3**
 - acceleration requests, **6:6, 6:7**
 - amendments and requests for acceleration, **6:6**
 - change in price range, **6:4**
 - confidential filing, **6:8.02**
 - decrease in size of offering, **6:4**
 - increase in size of offering, **6:5**
 - requests for acceleration, **6:6, 6:7**
 - SEC objection to appropriateness of form, **6:8**
 - signatures and acceleration requests, **6:7**
 - size of offering, **6:4, 6:5**

PUBLIC OFFERINGS BY SMALL COMPANIES

- Blank check offerings of penny stock
 - acquisition threshold, **7:41**
 - conclusion, **7:46**
 - deductions from Rule 419 account, **7:39**
 - delivery of prospectus and investor opt-out procedure, **7:43**
 - five steps to release of funds, **7:40**
 - investor opt-out procedure, **7:43**
 - Penny Stock Reform Act, **7:36**
 - post-effective amendment, **7:42**
 - post release requirements, **7:45**
 - release of funds and securities from Rule 419 account, **7:44**
 - Rule 419 account, **7:38, 7:39, 7:44**

PUBLIC OFFERINGS BY SMALL COMPANIES—Cont'd

- Blank check offerings of penny stock—Cont'd
 - scope of Rule 419, **7:37**
- Prospectus delivery, blank check offerings of penny stock, **7:43**
- Regulation A offerings
 - generally, **7:1 to 7:47**
 - at-the-market offerings, **7:24**
 - background, **7:1**
 - civil liability, **7:28.04**
 - convertible and exchangeable securities, **7:6**
 - Corporate Financing Rule, **7:25**
 - deviations from Regulation A term, condition, or requirement, insignificant, **7:22**
 - disqualification provisions, **7:26**
 - eligible issuers, **7:4**
 - Exchange Act registration on Form 8-A, **7:28**
 - exemption, suspension, **7:21**
 - integration with other offerings, **7:7**
 - JOBS Act, **7:2**
 - offering statements and circulars
 - generally, **7:9**
 - confidential submissions, **7:10**
 - delayed and continuous offerings, **7:16**
 - delivery of final circular, **7:15**
 - financial statement requirements, **7:13**
 - offering circulars, **7:11 to 7:17**
 - preliminary offering circulars, **7:11**
 - price related information, **7:14**
 - supplements, **7:17**
 - offers and sales, **7:5**
 - registration, Section 12(g), **7:27**
 - reporting
 - generally, **7:19**
 - duty to file reports, termination or suspension, **7:20**
 - exit report, **7:19**
 - periodic and current reporting, **7:19**
 - resales, **7:8**
 - scope of exemption, **7:3**
 - state securities law, **7:23**
 - suspension of exemption, **7:21**
 - testing the waters, **7:18**
 - voting equity securities, **7:28.02**
- Rule 504 offerings
 - generally, **7:32**
 - alternative paths, **7:35**
 - eligibility, **7:33**
 - quantitative limitations, **7:34**
 - three alternative paths, **7:35**
- Rules 10b-9/15c2-4 impoundments, **7:47**
- Securities Act registration for smaller reporting companies
 - miscellany, **7:30**
 - Regulation S-K, **7:31**

PUBLIC OFFERINGS BY SMALL COMPANIES**—Cont'd**

- Securities Act registration for smaller reporting companies—Cont'd
- Trust Indenture Act, registration on Form S-1, **7:29**

QUALIFICATIONS AND DISQUALIFICATIONS

- Regulation A offerings, public offerings by small companies, **7:26**

QUALIFIED LEGAL COMPLIANCE COMMITTEE

- Authority and responsibility of the QLCC, **39:42**
- Involving the QLCC, **39:41**
- Structure of Legal Compliance Committee, **39:40**

RECLASSIFICATIONS

- Reporting and Short Swing Profit Liability Under Section 16** (this index)

RED FLAG RULES

- Identity theft, cybersecurity, **40:14**

REFORM ACT

- Dodd Frank Act** (this index)

REFORMS

- NSMIA (this index), **1:17**
- PSLRA (this index)
- Securities Offering Reforms** (this index)
- Security reforms of 1990s, **1:17**
- SLUSA (this index)

REGISTRATION

- Dodd-Frank Act, **20:40.10 to 20:40.24**
- Exchange Act. **Registration and Reporting Under Exchange Act** (this index)

REGISTRATION AND REPORTING UNDER EXCHANGE ACT

- Generally, **12:1 et seq.**
- Afterthought to central stage, **12:1**
- Amtrust/New England Carpenters management reports as statements of opinion, **12:75.07**
- Annual report to shareholders, **12:31**
- Assessment of internal controls. Section 404 assessment of internal control over financial reporting, below
- Automatic effectiveness of Form 8-A, **12:22**
- Background, **12:1 to 12:4**
- Bank securities, **12:17**
- Central stage, **12:1**
- Certification of periodic reports generally, **12:41 to 12:48.05**
- Civil litigation and internal control over reporting, **12:75.02 to 12:75.10**
- non-accelerated filers, legislative exemption under Dodd-Frank Act, **12:54.10**
- Sarbanes-Oxley Section 302 certification generally, **12:41**

REGISTRATION AND REPORTING UNDER EXCHANGE ACT—Cont'd

- Certification of periodic reports—Cont'd
- Sarbanes-Oxley Section 302 certification—Cont'd
- accuracy and completeness of periodic reports, **12:44**
- certification form, **12:43**
- Commission's task and approach, **12:42**
- disclosure controls and procedures, certification and process, **12:45**
- foreign private issuers, **12:48**
- internal control over financial reporting, **12:46**
- investment company reports, **12:47**
- Section 906 certification and criminal penalties, **12:49, 12:50**
- Commission's response, **12:3**
- Continuous disclosure
- Generally, **12:27**
- Form 10-K summary page, **12:34**
- Depository institutions and Section 12(g)/15(d), over-the-counter securities, **12:17.34**
- Determining Exchange Act reporting status of company, **12:39**
- Disclosure
- certification of periodic reports, Sarbanes-Oxley Section 302, **12:45**
- nonreporting companies, Rule 15c2-11, **12:102**
- real time disclosure, below
- Sarbanes-Oxley Section 302 certification, **12:45**
- Disclosure control and social media, **12:48.05**
- Enron/WorldCom, **12:2**
- Exemption, over-the-counter securities, Section 12(g), **12:17.36**
- Exempt securities, **12:17**
- Facebook placement and Section 12(g), **12:17.15**
- False statements, SEC enforcement, **12:48.02**
- Financial reporting, private civil liability and certifications, **12:48.03**
- Foreign securities, **12:17**
- Form 8-A simplified registration, **12:21, 12:22**
- Form 10, **12:19, 12:33**
- Form 10, SOR amendments, **12:33**
- Form 10-K, **12:32, 12:33**
- reporting under Exchange Act, **12:32**
- SOR amendments, **12:33**
- summary page, **12:34**
- Form 10-Q, **12:35**
- Incorporation by reference, **12:23**
- Insurance securities, **12:17**
- Internal control over financial reporting, Sarbanes-Oxley Section 302 certification, **12:46**
- JOBS Act and Section 12(g), Over-the-counter securities, **12:17.32**
- Listed securities, **12:5, 12:6, 12:25**
- Nasdaq Stock Market, **12:6**
- New York Stock Exchange and other national securities exchanges, **12:5**

REGISTRATION AND REPORTING UNDER EXCHANGE ACT—Cont'd

- Outside auditor's quarterly review of financial information, **12:37**
- Over-the-counter securities
 - generally, **12:7 et seq., 12:24**
 - accredited investors and Section 12(g), **12:12.10**
 - accredited investor status, **12:17.38**
 - amendment of Section 12(g) (JOBS Act), **12:9.10**
 - asset test, **12:13**
 - bank, insurance, foreign, and exempt securities, **12:17**
 - basic statutory provision, **12:9**
 - certificaitons of termination of registration, **12:17.40**
 - class of securities, **12:11**
 - depository institutions and Section 12(g)/15(d), **12:17.34**
 - deregistration, **12:15**
 - employee holders and Section 12(g), **12:17.42**
 - employees and Section 12(g), **12:12.10**
 - exemption from Section 12(g), **12:17.36**
 - Facebook placement, **12:17.15**
 - JOBS Act, Section 12(g), **12:9.10**
 - JOBS Act and Section 12(g), **12:17.32**
 - limitation to equity securities, **12:10**
 - ownership of record revisited, **12:12.05**
 - private companies and transfer restrictions, Section 12(b), **12:17.10**
 - private right of action, Section 12(g), **12:17.25**
 - proposed rule 12g5-1(a)(8), **12:17.44**
 - QIBs and Section 12(g), **12:12.10**
 - savings and loan holding companies and Section 12(g)/15(d), **12:17.34**
 - SEC Chairman Shapiro discusses Section 12(g) and market changes, **12:17.05**
 - shareholders of record, **12:12**
 - special purpose vehicles and Section 12(b), **12:17.20**
 - staff study on Section 12(g), **12:17.30**
 - stock options and Section 12(g) registration, **12:8**
 - time to register, **12:14**
 - voluntary registration, **12:16**
- Prioritizing and enhancing review process, **12:38**
- Private actions, express remedies, **26:3, 26:4**
- Private civil liability and section 302 certifications relating to internal control over financial reporting: Opinion statements, **12:48.04**
- Procedures, generally, **12:18 to 12:26**
- Real time disclosure
 - Commission adds Items 10, 11, and 12 to Form 8-K, **12:77**
 - Form 8-K
 - Commission adds Items 10, 11, and 12 to Form 8-K, **12:77**
 - Section 1, registrant's business and operations
 - Item 1.01, Entry into material definitive agreement, **12:79**

REGISTRATION AND REPORTING UNDER EXCHANGE ACT—Cont'd

- Real time disclosure—Cont'd
- Form 8-K—Cont'd
 - Section 1, registrant's business and operations—Cont'd
 - Item 1.02, Termination of material definitive agreement, **12:80**
 - Item 1.03, Bankruptcy or receivership, **12:81**
 - Item 1.05 Material Cybersecurity Incidents, **12:81.04**
 - Section 2, financial information
 - Item 2.01, Completion of acquisition or disposition of assets, **12:82**
 - Item 2.02, Results of operations and financial condition, **12:83**
 - Item 2.03, Creation of direct financial obligation or obligation under an off-balance sheet arrangement of registrant, **12:84**
 - Item 2.04, Triggering events that accelerate or increase direct financial obligation or obligation under off balance sheet arrangement, **12:85**
 - Item 2.05, Costs associated with exit or disposal activities, **12:86**
 - Item 2.06, Material impairments, **12:87**
 - Section 3, securities and trading markets
 - Item 3.01, Notice of delisting or failure to satisfy a continued listing rule or standard; transfer of listing, **12:88**
 - Item 3.02, Unregistered sales of equity securities, **12:89**
 - Item 3.03, Material modification to rights of security holders, **12:90**
 - Section 4, matters related to accountants and financial statements
 - Item 4.01, Changes in registrant's certifying accountant, **12:91**
 - Item 4.02, Non-reliance on previously issued financial statements or related audit report or completed interim, **12:92**
 - Section 5, corporate governance and management
 - Item 5.01, Changes in control of registrant, **12:93**
 - Item 5.02, Appointment of certain officers, **12:95**
 - Item 5.02, Compensatory arrangements of certain officers, **12:95**
 - Item 5.02, Departure of directors or certain officers, **12:95**
 - Item 5.02, Election of directors, **12:95**
 - Item 5.03, Amendments to articles of incorporation or bylaws, **12:96**
 - Item 5.03, Change in fiscal year, **12:96**
 - Item 5.04, Temporary suspension of trading under registrant's employee benefit plans, **12:97**

REGISTRATION AND REPORTING UNDER EXCHANGE ACT—Cont'd

Real time disclosure—Cont'd
 Form 8-K—Cont'd
 Section 5, corporate governance and management—Cont'd
 Item 5.05, Amendments to registrant's code of ethics, **12:98**
 Item 5.05, Waiver of provision of code of ethics, **12:98**
 Item 5.06, Change in shell company status, **12:94**
 Section 7, Item 7.01, Regulation FD Disclosure, **12:99**
 Section 8, Item 8.01, Other events, **12:100**
 Section 9, Item 9.01, Financial statements and exhibits, **12:101**
 Form 8-K makeover, **12:78**
 SOA real-time disclosures, **12:76**
 Regulation A offerings, Section 12(g), **7:27**
 Regulation of companies with registered securities, **12:26**
 Sarbanes-Oxley
 background, **12:4**
 Section 302 certification. Certification of periodic reports, above
 Section 404(a) reform. SEC Commission guidance becomes rule, below
 Section 404 assessment of internal control over financial reporting, below
 Savings and loan holding companies and Section 12(g)/15(d), over-the-counter securities, **12:17.34**
 SEC and Department of Justice make-do approach, Section 906 certification, **12:50**
 SEC Commission guidance becomes rule
 Commission's concept release, **12:61**
 early returns and consequences, **12:58**
 first roundtable, **12:59**
 second roundtable and Commission's response, **12:60**
 Section 404(a) reform
 broad principles, **12:65**
 determining whether deficiencies are significant deficiency or material weakness, **12:74**
 documenting assessment, **12:73**
 entity-level controls and information technology general controls, **12:69**
 foreign private issuers, **12:75**
 ICFR design assessment, **12:70**
 identifying controls that address financial reporting risks, **12:68**
 identifying financial reporting risks, **12:67**
 implementing Section 404 reform, **12:64**
 operating effectiveness of ICFR, **12:71**
 SEC guidance in outline, **12:66**
 testing and monitoring of controls, **12:72**
 two broad principles, **12:65**

REGISTRATION AND REPORTING UNDER EXCHANGE ACT—Cont'd

Section 404 assessment of internal control over financial reporting
 generally, **12:51 to 12:61**
 amendments affecting Section 404(b) of SOX, interplay with smaller reporting company status, **12:57.02**
 auditor's attestation of internal control over financial reporting assessment, **12:54**
 AU_Section 333 and management's representation letter to auditors, **12:57**
 COSO framework, **12:53**
 COSO guidance for smaller business companies, **12:53.02**
 design assessment, **12:70**
 implementation by Commission, **12:52**
 operating effectiveness, **12:71**
 quarterly evaluation of changes in internal control over financial reporting, **12:55**
 related matters, **12:56**
 Section 906 certification and criminal penalties, **12:49, 12:50**
 Separate and distinct registrations, **12:18**
 Simplified registration, **12:21, 12:22**
 Smaller reporting companies, **12:20**
Smaller Reporting Companies (this index)
 Social media, disclosure control and, **12:48.05**
 SOR amendments to Form 10-K and Form 10, **12:33**

REGULATION A OFFERINGS

Public Offerings by Small Companies (this index)

REGULATION AB

Asset-backed securities regulation, **1:57**
 Pre-Dodd-Frank Act proposed amendments, **1:57.12**

REGULATION D

Exempt Offerings (this index)
State Securities Registration (this index)

REGULATION FD

Exclusion of registered securities offering disclosures, **5:35**
Insider Trading (this index)
 Public offering distribution process, securities offering reform, **5:34, 5:35**
 Registration and reporting under Exchange Act, Form 8-K, **12:99**

REGULATION G

Compliance increased scrutiny by SEC, **3:20.02**

REGULATION M

Public Offering Registration (this index)

REGULATION M-A

Generally, **3:55**
 Integrated disclosure system, Items 1000-1016, **3:8**

REGULATION S

- DOSM status advantages
 - offshore distributions, Regulation S resales, **22:41.04**
- Offshore distributions. **International Transactions** (this index)

REGULATION S-K

- Audience for disclosure, SEC concept release, **3:100**
- Basic information package, **3:28 to 3:38**
- Business description, in-depth disclosure, **3:40**
- Business of registrant, **3:37**
- Categorization of registrants, SEC concept release, **3:114**
- Changes in and disagreements with accountants, **3:38**
- Compensation and risk management, **3:54**
- Compensation consultants, **3:63.10**
- Compensation discussion and analysis, **3:53**
- Compensation of directors, **3:61**
- Compensation tables, **3:49**
- Compliance and competitive costs, SEC concept release, **3:101**
- Compliance & disclosure interpretations, non-GAAP financial measures, **3:22**
- Concept release. SEC Concept release, below
- Content and focus of MD&A, SEC concept release, **3:104**
- Contractual obligations, SEC concept release, **3:106**
- Corporate governance
 - generally, **3:63**
 - Item 402(t) disclosures, **15:42.18, 15:42.20**
- Critical accounting estimates, SEC concept release, **3:107**
- Description of securities, **3:30.02**
- Dodd-Frank Act (2010), above
- Effectiveness of disclosure
 - Generally, **3:85 et seq.**
 - see also **Integrated Disclosure System** (this index)
 - Jobs Act, **5:67**
- Executive compensation, **3:47 et seq.**
- Executive Compensation** (this index)
- Executive officers and directors, in-depth disclosure, **3:43**
- Exhibits, SEC concept release, **3:112**
- Financial schedules, in-depth disclosure, **3:45**
- Focus and content of MD&A, SEC concept release, **3:104**
- Guide 2, integrated disclosure system, Regulation S-K in outline, **3:8**
- Hyperlinks, SEC concept release, **3:116**
- Industry Guides
 - Generally, **3:8**
 - integrated disclosure system, Regulation S-K in outline, **3:8**
 - SEC concept release, **3:110**
- Integrated Disclosure System** (this index)

REGULATION S-K—Cont'd

- Interplay of equity grants and release of MNPI, **3:52.02**
- relationship to Staff Accounting Bulletin No. 120, **3:52.04**
- Items 801 and 802, Industry Guides, integrated disclosure system, Regulation S-K in outline, **3:66**
- Jobs Act, effectiveness of disclosure, **5:67**
- Legal entity identifiers, SEC concept release, **3:113**
- Legal proceedings, in-depth disclosure, **3:42**
- Management's discussion and analysis (the MD&A), above
- Market and dividend information, **3:30**
- Market risk, quantitative and qualitative disclosures about, SEC concept release, **3:108**
- MD&A content and focus, SEC concept release, **3:104**
- Miscellaneous, **3:64**
- Named executive officers, **3:48**
- Narrative disclosure to summary and supplemental tables, **3:52**
- Nature of investor, SEC concept release, **3:100**
- Non-executive compensation, **3:55**
- Non-GAAP financial measures, compliance & disclosure interpretations, **3:22**
- Nonqualified deferred compensation table, **3:59**
- Oil and gas producers, reserve recognition accounting, **3:36**
- Option exercises and stock vesting, **3:57**
- Other compensation disclosures, **3:64.10**
- Outstanding equity awards at fiscal year-end, **3:56**
- Overview, **3:47**
- Pay ratio, below
- Pay versus performance, below
- Post-employment compensation, **3:58**
- Potential post-employment payments, **3:60**
- Principles-based vs. prescriptive disclosure standards, SEC concept release, **3:99**
- Properties description, in-depth disclosure, **3:41**
- Public policy, SEC concept release, **3:111**
- Quantitative and qualitative disclosures about market risk
 - SEC concept release, **3:108**
- Reform proposals. SEC Concept release, below, XREF
- Registrant categorization, SEC concept release, **3:114**
- Regulation S-K, generally, **3:47 to 3:64.46**
- Regulation S-K in outline, **3:8**
- Related party disclosures
 - Generally, **3:87 et seq.**
 - see also **Integrated Disclosure System** (this index)
- Related stockholder matters, SEC concept release, **3:109**
- Reserve recognition accounting, oil and gas producers, **3:36**
- Risk factor disclosure, proposed, **3:37.04**
- Risk factors, **3:37.02**
- Risk management, **3:54**
- Scaled requirements, **3:114**

REGULATION S-K—Cont'd

SEC concept release
 Generally, **3:97 et seq.**
 audience for disclosure, **3:100**
 categorization of registrants, **3:114**
 compliance and competitive costs, **3:101**
 content and focus of MD&A, **3:104**
 Contractual obligations, **3:106**
 critical accounting estimates, **3:107**
 exhibits, **3:112**
 focus and content of MD&A, **3:104**
 hyperlinks, **3:116**
 incorporation by reference, **3:115**
 Industry Guides, **3:110**
 legal entity identifiers, **3:113**
 market risk, quantitative and qualitative disclosures about, **3:108**
 MD&A content and focus, **3:104**
 nature of investor, **3:100**
 off-balance sheet arrangements, **3:105**
 principles-based vs. prescriptive disclosure standards, **3:99**
 public policy, **3:111**
 quantitative and qualitative disclosures about market risk, **3:108**
 registrant categorization, **3:114**
 related stockholder matters, **3:109**
 scaled requirements, **3:114**
 selected financial data, **3:102**
 structured disclosure, **3:117**
 subsidiary identifiers, **3:113**
 sunset provisions, **3:98**
 supplementary financial information, **3:103**
 sustainability, **3:111**
 Securities Act registration for smaller reporting companies, **7:31**
 Security holdings, in-depth disclosure, **3:44**
 Selected financial information, **3:29**
 Smaller reporting companies, **7:31**
 SOX indirect impact on, **3:26**
 Staff Report on review of Regulation S-K, **3:86**
 Stock underlying equity compensation plans, **3:30**
 Stock vesting and option exercising, **3:57**
 Structured disclosure, SEC concept release, **3:117**
 Subsidiary identifiers, SEC concept release, **3:113**
 Summary compensation table, **3:50**
 Supplemental grants of plan-based awards table, **3:51**
 Supplementary financial information
 Generally, **3:35**
 SEC concept release, **3:103**
 Sustainability, SEC concept release, **3:111**
 Transactions with related persons, management, **3:62**
 Unregistered securities, in-depth disclosure of sale, **3:46**

REGULATION S-P

Cybersecurity, **40:13**

REGULATORY AGENCIES

Banking authorities, **1:3**
 Municipal securities, **1:4**
Public Company Accounting Oversight Board (this index)
 Securities and Exchange Commission, generally, **1:1**
 The securities investor protection corporation, **1:7**
 Self-regulatory authorities (stock exchanges and the NASD), **1:2**
 State insurance commissioners, **1:6**
 State securities commission, **1:5**

RELIANCE

Private Actions, Implied Remedies (this index)

REMOVAL OF PCAOB MEMBER

Public Company Accounting Oversight Board (PCAOB) (this index)

REPORTING

Beneficial Ownership Reporting (this index)
Conflict Minerals (this index)
 Dodd-Frank Act reporting requirements, **20:40.10 to 20:40.24**
 Internal control reporting deficiencies enforcement by SEC, broken windows policy
 Generally, **36:116**
 outside auditor roles, **36:117**
 PCAOB reports of auditors
 Generally, **21:38 et seq.**
 see also **Public Company Accounting Oversight Board** (this index)
 Regulation A. **Public Offerings by Small Companies** (this index)
Reporting and Short Swing Profit Liability under Section 16 (this index)

REPORTING AND SHORT SWING PROFIT LIABILITY UNDER SECTION 16

Generally, **14:1 to 14:67**
 Blackout period. Sarbanes-Oxley officer and director blackout period, below
 Date of purchase or sale, **14:63**
Derivative Securities (this index)
 Indirect purchases and sales, **14:64**
 Insider transactions. Section 16(a) reporting of insider transactions, below
 Mergers and reclassifications
 Bruh v. Bessemer Venture Partners: different take on reclassifications, **14:60**
 deputization and Rule 16b-3, **14:61**
 Dreiling v. American Express: disagreement with Levy, **14:55**
 Gryl: Second Circuit takes issue with prong of Skadden, **14:52**
 Levy Court limits Rule 16b-7 in reclassifications, **14:49**
 Levy v. Sterling, **14:47, 14:56, 14:59**
 overview of Levy v. Sterling, **14:47**

**REPORTING AND SHORT SWING PROFIT
LIABILITY UNDER SECTION 16—Cont'd**

Mergers and reclassifications—Cont'd
 proposed revisions to Rule 16b-3, **14:53**
 proposed revisions to Rule 16b-7, **14:54**
 Rule 16b-3, final amendments adopted by SEC, **14:7, 14:57**
 Rule 16b-7, **14:48**
 final amendments adopted by SEC, **14:58**
 SEC adopts final amendments
 Rule 16b-3, **14:7**
 Rule 16b-7, **14:58**
 Section 16(b) litigation, **14:47 to 14:61**
 stay of litigation, *Levy v. Sterling*, **14:56**
 subsequent developments, *Levy v. Sterling*, **14:59**
 Third Circuit restricts 16b-3 to compensatory transactions, **14:51**
 unorthodox transaction doctrine, **14:50**

Pecuniary interest test
 generally, **14:20**
 checkbox on forms 4 and 5 to identify transactions pursuant to trading arrangements, **14:28.04**
 corporations, **14:22**
 derivative securities, **14:24**
 determining transactions by beneficial owner subject to reporting and shortswing liability, **14:20 to 14:28**
 disclaiming beneficial ownership, **14:28**
 dividends, **14:26**
 dual ownership and joint reporting, **14:27**
 family members, **14:21**
 partnerships, **14:23**
 performance fee arrangements, **14:25**
 reporting gifts of securities, **14:28.02**
 Section 16(b) liability and pecuniary ownership, **14:38**

Pecuniary ownership and Section 16(b) liability, **14:38**

Pension plan blackout period. Sarbanes-Oxley officer and director blackout period, *below*

Rule 16b-3 and surrender of already owned shares in option exercises, **14:62**

Rule 16b-3 exemption
 generally, **14:7**
 acquisitions from issuer, **14:9**
 discretionary transactions, **14:11**
 dispositions to issuer, **14:10**
 SARs under revised rules, **14:12**
 tax-conditioned plans, **14:8**

Sarbanes-Oxley officer and director blackout period
 generally, **14:65**
 Commission adopts rules implementing Section 306, **14:66**
 notice to be given by Plan Administrator of Pension Plan blackout periods, **14:67**
 Section 306(b) and contents of notice of pension plan blackout period, **14:67**
 Section 306 implementation, **14:66**

**REPORTING AND SHORT SWING PROFIT
LIABILITY UNDER SECTION 16—Cont'd**

Section 16(a) reporting of insider transactions
 beneficial owner, identifying ten percent holders, **14:17**
 officers and directors, **14:15**
 pecuniary interest test, *above*
 post Sarbanes-Oxley Act
 derivative securities transactions, **14:36**
 EDGAR and Section 16(a) reporting, **14:30**
 equity swaps, **14:34**
 Form 4, **14:29**
 Form 5, **14:32**
 issuer disclosure of reporting compliance, **14:37**
 mandatory posting on company website, **14:31**
 option repricing and Section 16, **14:33**
 transactions not reportable, **14:35**
 specific exclusions from beneficial ownership, **14:19**
 ten percent holders, identifying, **14:17**
 transactions while not officer or director, **14:16**
 trusts and trustees, **14:18**

Section 16(b) litigation
 generally, **14:38**
 conversion caps and Section 16(b) liability, **14:41**
 convertible securities and Section 16(b) liability, **14:39**
 Credit Suisse Securities (USA) LLC v. Simmonds, **14:46.10**
 derivative securities, **14:44**
 equitable tolling, **14:46**
 group concept and Section 16(b) liability, **14:42**
 limitations on group theory, **14:43**
 mergers and reclassifications, *above*
 pecuniary ownership and Section 16(b) liability, **14:40**
 statute of limitations, **14:46, 14:46.10**
 ten percent owners and Section 16(b) liability, **14:42**
 ten percent ownership at time of purchase and sale, **14:45**
 time of purchase and sale, ten percent ownership at, **14:45**

Section 16(b) matching transactions
Derivative Securities (this index)
 determining recoverable profit, **14:14**
 mergers, **14:13**
 Rule 16b-3 exemption, *above*
 Third Circuit, mergers and reclassifications, **14:51**

REPRESENTATIONS

Harsco case, limiting representations to those in sale agreement, **37:25**

RESALES

Regulation A offerings, public offerings by small companies, **7:8**

Restricted securities. **Resales of Restricted Securities** (this index)

RESALES OF RESTRICTED SECURITIES

Generally, **10:1 to 10:22**
 Amendments to Rule 144, tabular approach, **10:2**
 FAST Act, private resales under the, **10:30**
 Insider trading and secondary markets, **10:11.04**
 Investment companies, Model 3(c)(7) procedures for offerings under Rule 144A
 1999, **20:24.11**
 2003, **20:24.11**
 2008 book-entry offerings, **20:24.12**
 Private resales under the FAST Act, **10:30**
 Resales of restricted stock
 Facebook offering, **10:11.02**
 insider trading and secondary markets, **10:11.04**
 preemption of state registration of secondary trading, **10:11**
 presumptive underwriter doctrine, **10:10**
 registered secondary distributions, **10:9**
 Rule 144, below
 Rule 144A, below
 Section 4(a)(1/2) exemption, **10:8**
 trading restricted securities, **10:11.02**
 Rule 144
 generally, **10:1**
 amendments, tabular approach, **10:2**
 application to affiliates, **10:4**
 insider trading and secondary markets, **10:11.04**
 interrelationships with private placements, Regulation S and Rule 144A, **10:12**
 meshing Rule 701 exemption and Rule 144, **10:6**
 miscellany, **10:7**
 new Rule 144, **10:3**
 non-affiliates, use of Rule 144, **10:5**
 preemption of state registration of secondary trading, **10:11**
 presumptive underwriter doctrine, **10:10**
 registered secondary distributions, **10:9**
 reporting companies, use of Rule 144, **10:5**
 Section 4(a)(1/2) exemption, **10:8**
 tabular approach, **10:2**
 trading restricted securities, **10:11.02**
 use of Rule 144, **10:5**
 Rule 144A
 direct offerings, **10:29.02**
 eligible securities, **10:14**
 general solicitation, **10:22**
 informational requirements and other conditions, **10:15**
 interrelationships with private placements, Regulation S and Rule 144, **10:12**
 investment companies, Model 3(c)(7) procedures for offerings under Rule 144A, above
 no-action letters, **10:19**
 original issue discount, **10:29.04**
 PORTAL Alliance, **10:18.02**
 preemption of state blue sky laws, **10:21**

RESALES OF RESTRICTED SECURITIES—Cont'd

Rule 144A—Cont'd
 private placements under Rule 144A, **10:17**
 qualified institutional buyer, **10:13**
 resales of Rule 144A securities, **10:16**
 Rule 144A and secondary trading, **10:18**
 Section 4(a)(1/2) exemption, **10:8**
 state securities registration, Rule 144A exemptions, **24:26**
 syndicate issues
 generally, **10:29.06 to 10:29.20**
 agreements, selected dealers, **10:29.16**
 compensation of selling group, disclosure of, **10:29.14**
 fixed-price offerings and FINRA Rule 5141, **10:29.20**
 members of selling group, disclosure of, **10:29.12**
 selected dealers, **10:29.06, 10:29.16**
 selling group members, **10:29.08, 10:29.12, 10:29.14**
 settlement, **10:29.18**
 sub-underwriters, **10:29.06, 10:29.10**
 transnational aspects, trading practices rules, 144A transactions, **22:91**
 Syndicate issues. Rule 144A, above

RESEARCH REPORTS

FINRA quiet periods, **5:60**
 IPOs, **5:58**
 JOBS Act (2012), **5:58 to 5:60**
 Section 5 registration, **5:59**

RESERVE RECOGNITION ACCOUNTING

Integrated disclosure system, Regulation S-K and oil and gas producers, **3:36**

RESOURCE EXTRACTION

Integrated disclosure system
 district court vacation of initial rules, **3:75.04**
 first final rules, **3:75.02**
 Payments to governments, disclosure, **3:75 to 3:75.04**

RESOURCE EXTRACTION RULE

Adopted in 2020, **3:75.10, 3:75.12**
 Congressional abrogation, **3:75.08**
 Status 2014-2016, **3:75.06**

REVES DECISION

Application of decision, **2:11**
 Eighth Circuit, **2:9**
 Supreme Court, **2:10, 2:17**

RISKMETRICS

Proxy Regulation (this index)

RISK RETENTION

Dodd-Frank Wall Street Reform Act, **1:57.16**

ROAD SHOW PRESENTATIONS

Securities offering reform, **5:20, 5:21**

RULE 10b-5

Classic insider trading under Rule 10b-5. **Insider Trading** (this index)

Enforcement by SEC (this index)

Private Actions, Implied Remedies (this index)

RULES 144 AND 144A

Resales of Restricted Securities (this index)

SAFE HARBORS

Final Rule 9j-1(e), **1:56.05**

SALE OF BUSINESS DOCTRINE

Limiting representations to contract representations, **2:6**

Sale of business structured as sale of stock, **2:5**

SARBANES OXLEY ACT (SOX)

Generally, **1:32**

Accountants (this index)

Analysts, Section 501, **5:62**

Attack of SOX, **1:41**

Background

capital market malaise, **1:28**

Enron demise, financial reporting fraud, capital market malaise, **1:28**

financial reporting fraud, **1:28 to 1:31**

legislative maneuvering, **1:31**

Worldcom's startling financial confession generally, **1:29**

Bush/Pitt response, **1:30**

Corporate Governance and Federal Securities Laws (this index)

Cybersecurity and SEC rules, **40:15**

Financial fraud and securities litigation

background, Enron demise, financial reporting fraud, capital market malaise, **1:28**

Enron/WorldCom, Sarbanes-Oxley Act impact on securities litigation, **25:8**

fraud on shareholders, reimbursement provision, **34:10**

impact of Act on securities litigation, **25:8**

opportunities for plaintiffs' lawyers, **25:10**

period of limitations enlarged, **25:9**

private action potential under Section 304, **25:12**

regulation of securities fraud, **1:35**

Section 304 issues, **25:12, 25:13**

unlawful insider trading during pension plan blackout periods, **25:11**

Impact on CEOs and CFOs, **1:38**

Impact on corporate governance, **1:36**

Impact on investment banking companies, research, and securities analysts, **1:39**

Impact on reporting under Exchange Act, **1:34**

Investment Companies and Investment Advisers (this index)

Listing on Trading Markets (SROs) and SRO Regulation (this index)

PCAOB, **21:78.02**

SARBANES OXLEY ACT (SOX)—Cont'd

Public offering registration, delayed and unallocated primary shelf offerings, **6:49**

Registration and Reporting Under Exchange Act (this index)

Regulation of accountants and accounting principles, **1:33**

Regulation of attorneys, **1:37**

Regulation of securities fraud, **1:35**

Reporting and Short Swing Profit Liability Under Section 16 (this index)

SEC enforcement

barring securities violators from acting as officer or director of public company, **36:21**

criminal proceedings, sentencing, **36:2, 36:7, 36:8**

enhanced penalties for securities fraud and related crimes under SOA, **36:2**

post-Enron, asset freeze orders and SOA temporary freeze provision, **36:105**

Sentencing Commission, **36:7**

sentencing guidelines, **36:8, 36:9, 36:11**

Statute of Limitations and Private Actions Under Securities Acts (this index)

Worthy of note, **1:40**

SAVINGS AND LOAN HOLDING COMPANIES

Registration and reporting under Exchange Act, and Section 12(g)/15(d), over-the-counter securities, **12:17.34**

SCIENTER

Forward-looking statements, circuit courts of appeals and reliance on stock sales to establish scienter, **28:45**

Private actions, implied remedies (primarily Rule 10b-5)

generally, **27:18**

recklessness, **27:19**

Private Securities Litigation Reform Act. **PSLRA** (this index)

SEC enforcement, injunctions, **36:13**

SEC

Securities Exchange Commission (this index)

SECONDARY DISTRIBUTIONS

Resales of Restricted Securities (this index)

SECOND CIRCUIT

Forward-looking statements post-PSLRA, soft information, **28:46 to 28:48**

Insider Trading (this index)

Joint Liability, Contribution, Partial Settlement and Contribution Bars Under Securities Acts (this index)

Private actions, avoidance of SLUSA by artful allegations, **31:15**

Private Actions, Implied Remedies (this index)

PSLRA (this index)

Shareholder proposals, AFSCME v. AIG, **18:25**

SECTION 11 ACTIONS

- Private Actions, Express Remedies** (this index)
- PSLRA** (this index)
- Public Offering Registration** (this index)
- Reconciling liability of outside directors with that of other defendants in Section 11 action, **37:21**
- Statute of limitations and private actions under securities acts
 - contribution under Section 11, **37:22**
 - Sarbanes-Oxley Act, extended period and Section 11 actions, **32:34**

SECTION 12(a)(2) CLAIMS

- Private Actions, Express Remedies** (this index)

SECTION 12 ACTIONS

- Statute of limitations and private actions under securities acts, Sarbanes-Oxley Act, extended period and Section 12(a)(2) actions, **32:34**

SECTION 16

- EDGAR** (this index)
- Reporting and Short Swing Profit Liability Under Section 16** (this index)

SECURITIES ACT

- Antifraud provisions
 - extraterritoriality and the Securities Act, **22:113**
- Extraterritoriality and antifraud provisions, **22:113**
- Extraterritoriality and the Securities Act antifraud provisions, **22:113**
- provisions of the Securities Act Beyond Rule 901, **22:114**

SECURITIES AND EXCHANGE COMMISSION (SEC)

- Generally, **1:1**
- Accountants
 - SEC, new directions, **39:1 to 39:5**
 - SEC amends Rule 102(e) standard of improper professional conduct for accountants, **39:10**
 - SEC Rules of Practice. Rule 102(e) standard of improper professional conduct for accountants, above
- Administrative law. **Enforcement by SEC** (this index)
- Admissions policy, **36:79.02**
- Attorneys as gatekeepers, SEC enforcement focus, **39:49**
- Compliance and disclosure interpretations
 - NGFM use, **3:22**
 - Regulation G compliance, increased scrutiny, **3:20.02**
- Compliance and Disclosure Interpretations** (this index), **xrI**
- Concept release for Regulation S-K. **Regulation S-K** (this index)
- Conflict minerals
 - petition for rehearing, **12:125**
 - SEC stays invalidated portion of rule, **12:124**

SECURITIES AND EXCHANGE COMMISSION (SEC)—Cont'd

- Controlling person liability, civil penalty, **36:19**
- Corporate Governance and Federal Securities Laws** (this index)
- Cybersecurity** (this index)
- Enforcement by SEC** (this index)
 - Executive compensation
 - implementing rules, **15:42.02**
 - pay ratio, dissent on the Commission, **3:64.16**
 - Forward Looking Statements** (this index)
 - Fraud** (this index)
 - Integrated disclosure system
 - request for comment on related party disclosures, **3:95**
 - SEC proposal to upgrade financial disclosures in MD&A, **3:16**
 - International accounting standards, and the European Union, **22:9**
 - Investigation disclosures, private actions, implied remedies (primarily Rule 10b-5), **27:36.02**
 - Investment Companies and Investment Advisers** (this index)
 - Jurisdiction
 - federal vs. state court jurisdiction for violation of state securities and other laws, **37:1.02**
 - Plain English rules, SEC as pedagogue, **6:13**
 - Private actions, implied remedies (primarily Rule 10b-5), investigation disclosures, **27:36.02**
 - Proxy access regulation adoption, **17:20**
 - PSLRA** (this index)
 - Public Company Accounting Oversight Board** (this index)
 - Public Offering Registration** (this index)
 - Public policy shift, **1:72**
 - Registration and Reporting Under Exchange Act** (this index)
 - Regulation FD
 - elements of a violation, SEC enforcement, **33:53**
 - SEC enforcement, elements of a violation, **33:53**
 - staff answers questions relating to Regulation FD, telephone interpretations, **33:52**
 - telephone interpretations, SEC staff answers questions relating to Regulation FD, **33:52**
 - Regulation S-K
 - concept release. **Regulation S-K** (this index)
 - Staff Report on review of, **3:86**
 - Related party disclosures, request for comment on, **3:95**
 - Reporting and Short Swing Profit Liability Under Section 16** (this index)
 - Request for comment on related party disclosures, **3:95**
 - Sarbanes Oxley Act** (this index)
 - Sarbanes-Oxley Act Section 307, Commission adopts rules implementing, **39:24, 39:25**
 - Securities practitioners appearing and practicing before the Commission, definitions, **39:27**

SECURITIES AND EXCHANGE COMMISSION (SEC)—Cont'd

- Senate influence on nominations, **1:74**
- Shareholder proposals, social and public policy issues, ambivalence of Commission, **18:15**
- Shareholder Proposals** (this index)
- Willfulness, SEC enforcement
 - administrative enforcement remedies, **36:34**
 - criminal proceedings, **36:5**

SECURITIES INVESTOR PROTECTION ACT (SIPA)

- Broker-dealer regulation, liquidation proceedings, **19:21**

SECURITIES INVESTOR PROTECTION CORPORATION (SIPC)

- Regulatory agencies, **1:7**

SECURITIES LITIGATION

- Generally, **25:11**
- Arbitration, **25:7**
- Background
 - generally, **25:1**
 - Basic case, **25:3**
 - class actions, securities fraud, **25:2**
 - securities fraud class actions, **25:2**
 - Texas Gulf Sulphur and Basic, **25:3**
- Broker-dealer compliance, **25:7**
- Enforcement by SEC** (this index)
- Financial fraud and Sarbanes-Oxley Act. **Sarbanes Oxley Act** (this index)
- Personal jurisdiction, **25:15**
- Private Securities Litigation Reform Act. **PSLRA** (this index)
- Securities Litigation Uniform Standards Act. **SLUSA** (this index)
- Venue, service and process, and the like, **25:15**

SECURITIES LITIGATION UNIFORM STANDARDS ACT (SLUSA)

- SLUSA (this index)

SECURITIES MARKETS

- Broker Dealer Regulation** (this index)
- Distribution markets, **1:48**
- Improvements. **NSMIA** (this index)
- Insider Trading** (this index)
- Listed securities, **1:49**
- Listing on Trading Markets (SROs) and SRO Regulation** (this index)
- Nasdaq Stock Market** (this index)
- New York Stock Exchange** (this index)
- OTC bulletin board and pink sheets, **1:51**
- Penny Stock Market Regulation** (this index)
- Transnational aspects, access to U.S. capital markets, **22:1, 22:2**

SECURITIES OFFERING REFORM

- Impact on liability, **1:46**

SECURITIES OFFERING REFORM—Cont'd

- Impact on primary offerings, **1:44**
- Impact on secondary offerings, **1:45**
- Liberalization of communications, **1:43**
- Other aspects of SOR, **1:47**
- Private Actions, Express Remedies** (this index)
- Protracted path to SOR, **1:42**
- Public Offering Distribution Process** (this index)

SECURITIES PRACTITIONERS

- ABA task force on corporate responsibility and revisions to ABA Model Rules of Professional Responsibility, **39:48**
- Accountant-lawyer interface, **39:51**
- Appropriate response
 - colorable defense as appropriate response to reporting attorney, **39:37**
 - to reporting attorney absent pending investigation or proceeding, **39:36**
- Commission adopts rules implementing Section 307 daunting task, **39:25**
- proposal and response, **39:24**
- Definitions
 - appearing and practicing before the Commission, **39:27**
 - attorney, **39:28**
 - evidence of material violation, **39:30**
 - issuer, **39:26**
 - representation of an issuer, **39:29**
- Firm-wide responsibility in preparation of filed documents, **39:50**
- Going up-the-ladder
 - improper professional conduct, SOA Section 307 and the obligation to go up the ladder, **39:23**
 - Sarbanes-Oxley Act Section 307, **39:23**
 - slippery slope and connecting the dots, **39:33**
 - subordinate attorney to supervising attorney, **39:31**
 - supervising attorney to Chief Legal Officer, **39:32**
- Improper professional conduct
 - generally, **39:16**
 - Carter Johnson case
 - aiding and abetting aspect, **39:20**
 - factual background, **39:19**
 - improper professional conduct, **39:21**
 - missing in action, **39:22**
 - gatekeeper role, **39:17**
 - Rule 102(e) codified under Sarbanes-Oxley Act Section 602, **39:18**
 - Sarbanes-Oxley Act Section 602 codifies Rule 102(e), **39:18**
 - SOA Section 307 and the obligation to go up the [corporate] ladder, **39:23**
- Malpractice (professional negligence)
 - attorney/fraudulent management interface, **39:54**
 - disclosure counsel, duty to issuer and investors, **39:53**
 - FDIC v. O'Melveny & Myers, **39:52**

SECURITIES PRACTITIONERS—Cont'd

- Noisy withdrawal provisions
 - remnants of noisy withdrawal, **39:45**
 - reproposed provisions, **39:46**
- Opinions of counsel, duty in rendering, **39:55**
- Preparation of filed documents, firm-wide responsibility, **39:50**
- Qualified legal compliance committee
 - authority and responsibility of the QLCC, **39:42**
 - involving the QLCC, **39:41**
 - structure of Legal Compliance Committee, **39:40**
- Responsibilities of Chief Legal Officer
 - generally, **39:38**
 - when CLO retains or directs an attorney to investigate/defend, **39:39**
- Role and obligation of attorneys directed or retained to investigate/defend
 - attorney defending issuer, or issuer's officers, directors, employees, or agent, **39:35**
 - attorney investigating evidence of a material violation, **39:34**
- Sarbanes-Oxley Act Section 307
 - Commission adopts rules implementing, **39:24, 39:25**
 - improper professional conduct, **39:23**
- SEC enforcement focuses on attorneys as gatekeepers, **39:49**
- Violation of Part 205
 - no private actions, **39:44**
 - sanctions for violations of any provision, **39:43**

SECURITIZATION

- Dodd-Frank Wall Street Reform Act, **1:54, 1:57.10, 1:57.16**

SECURITY REFORMS OF 1990S

- National Securities Markets Improvement Act of 1966, **1:17**
- Private Securities Litigation Reform Act of 1995, **1:15**
- Securities Litigation Uniform Standards Act of 1998, **1:16**

SECURITY TOKENS

- See **Cryptocurrencies** (this index)

SETTLEMENT

- Broker Dealer Regulation** (this index)
- Joint Liability, Contribution, Partial Settlement and Contribution Bars Under Securities Acts** (this index)
- Private Actions, State Remedies and SLUSA** (this index)
- PSLRA** (this index)
- Resales of restricted securities under Rule 144A and syndicate issues, **10:29.18**

SETTLEMENT CYCLE

- Generally, **19:36**
- Compliance dates and pathway, **19:41**

SETTLEMENT CYCLE—Cont'd

- Exchange Act Rule, **19:39**
- Move, **19:37, 19:38**
- Rule 204-2, **19:40**

SHAREHOLDER PROPOSALS

- Generally, **18:1 to 18:89**
- AFSCME
 - outline of SEC proposal to facilitate shareholder nominees, **18:27**
 - Rule 14a-11, **18:29**
 - Rule 14a-11, notice on Schedule 14N, **18:28**
 - Rule 14a-18 disclosure, **18:29**
 - Schedule 14N notice, **18:28**
 - SEC Interpretive Release and alternative proposed rule, **18:26**
 - Second Circuit, AFSCME v. AIG, **18:25**
 - shareholder nominee access proposal, **18:24 et seq.**
 - Shott Slate expense reimbursement proposals
 - generally, **18:32**
 - Delaware Supreme Court, SEC and, **18:33**
- Amendment of bylaws. Shareholder proposals to amend bylaws, below
- Campaigns, proxy access, **17:20.18**
- Clawbacks, corporate governance proposals, **18:72.10**
- Corporate governance proposals
 - clawbacks, **18:72.10**
 - electing directors by majority vote of shareholders, **18:70**
 - executive compensation proposals, **15:42.08, 18:72, 18:73**
 - golden parachutes, **15:42.16, 15:42.22**
 - Intel model, **18:71**
 - non-contested election of directors, attack on plurality vote, **18:69**
 - other proposals, **18:75**
 - pay and frequency proposals, **15:42.08**
 - plurality vote for non-contested election of directors, attack on, **18:69**
 - say-on-pay proposals, **18:73**
 - separation of CEO and chairman of board of directors and related issues, **18:74**
- Eligibility and procedures
 - affiliated introducing and clearing brokers and Rule 14a-8(b) and (f), **18:3.35**
 - Apache I, **18:3.15**
 - Apache II, **18:3.25**
 - Apache III, **18:3.30**
 - failure to comply as exclusion, **18:3 to 18:5**
 - outline of exclusions, **18:6**
 - ownership of shares, **18:3, 18:3.10**
 - proposals, generally, **18:5**
 - receipt of proposals, **18:4**
 - staff approach post-Apache I, pre-SLB 14F, **18:3.20**
 - time by which proposals must be received, **18:4**
- Enron Corp. Impact of Enron related financial fraud, below

SHAREHOLDER PROPOSALS—Cont'd

- Exclusions
 - buzzword grounds for ordinary business exclusion, **18:51**
 - eligibility and procedures, **18:3 to 18:5**
 - global warming and ordinary business exclusion, **18:56 to 18:59**
 - no-action letter, below
 - outline of exclusions, **18:6**
 - resubmission, **18:88**
 - subject area approach to ordinary business exclusion, **18:34 to 18:51**
- Impact of Enron related financial fraud
 - approval of stock option plans by stockholders, **18:21**
 - ordinary business exclusion, **18:22**
 - proposals to expense stock options, **18:23**
 - proxy season 2002, **18:19**
 - restrictions on services of independent auditors, proposals, **18:20**
- Internet sites, references to, **18:87**
- No-action letters
 - adjudication of exclusion process by SEC staff, **18:7**
 - circuit courts of appeal, direct review, **18:11**
 - deference to which no-action letters are entitled, **18:13**
 - direct review by circuit courts of appeal, **18:11**
 - Division of Corporation Finance Staff Legal Bulletins 14A to 4C, **18:9**
 - exclusion process, generally, **18:7 to 18:10**
 - independent audit and other committees, proposals, **18:10**
 - judicial process, **18:11 to 18:13**
 - private actions to enforce Rule 14a-8, **18:12**
 - Staff Legal Bulletin 14, **18:8**
- Poison pills, shareholder proposals to amend bylaws, **18:78, 18:82**
- Proxy access
 - Generally, **17:20.02**
 - campaigns, **17:20.18**
 - review and update, **17:20.14 et seq.**
 - 2017 proxy season, **17:20.20**
- Public policy. Social and public policy, below
- Reference to Internet site, **18:87**
- Resubmission exclusion, **18:88**
- Review and update of proxy access, **17:20.14 et seq.**
- Rule 14a-8, **18:1, 18:2**
- Shareholder proposals to amend bylaws
 - generally, **18:76**
 - Delaware Court of Chancery, **18:83**
 - disclosure of proxy voting policies by investment companies and investment advisers, **18:89**
 - Division of Corporate Finance, **18:80**
 - effectiveness of shareholder proposal bylaw approved by shareholders, **18:81**
 - empowering shareholders, **18:85**
 - poison pill shareholder proposal, **18:78, 18:82**

SHAREHOLDER PROPOSALS—Cont'd

- Shareholder proposals to amend bylaws—Cont'd
 - Professor Bebchuk, **18:82**
 - proposals in form of bylaw amendments, **18:79, 18:80**
 - province of board invaded, **18:77**
 - Rule 14a-8(i)(10) substantial compliance counterattack, **18:84**
 - 2007 shareholder bylaw proposals and no-action requests, **18:86**
- Shott Slate expense reimbursement proposals
 - generally, **18:32**
 - Delaware Supreme Court, SEC and, **18:33**
- Social and public policy issues
 - ambivalence of Commission, **18:15**
 - Cracker Barrel story, **18:16, 18:17**
 - global warming and ordinary business exclusion
 - Milloy 2008 climate-related proposals, **18:59**
 - ICCR agenda, **18:67**
 - Medical Committee decision legacy, **18:14**
 - new/old rule, some general guidelines, **18:18**
 - not significantly related exclusion
 - burden of proof, **18:65**
 - Burma aberration, **18:61**
 - genetically engineered products, **18:66**
 - not adopted proposed significant amendment, **18:60**
 - otherwise significantly related, **18:63, 18:64**
 - SEC staff refocus, **18:62**
 - precatory proposals and social responsibility, **18:67, 18:68**
 - reversal of Cracker Barrel, 1998 amendments to Rule 14a-8, **18:17**
 - Rule 14a-8, 1998 amendments and reversal of Cracker Barrel, **18:17**
- Subject area approach
 - abortions, **18:39**
 - advertisement of product, **18:42**
 - auditor rotation, **18:51.10**
 - bank redlining, **18:48**
 - buzzword grounds for exclusion under ordinary business exclusion, **18:51**
 - charitable contributions, **18:40**
 - common areas, ordinary business exclusion, **18:34 to 18:51**
 - dividend policy, **18:50**
 - employee benefits, **18:36**
 - environment, **18:46**
 - executive compensation, **18:37**
 - global warming and ordinary business exclusion
 - climate-related proposals during 2008 proxy season, **18:58**
 - proposals and risks evaluation, **18:56**
 - skeptic weighs-in on global warming, **18:57**
 - health care, **18:45**
 - human rights, **18:38**
 - infant formula, **18:43**

SHAREHOLDER PROPOSALS—Cont'd

- Subject area approach—Cont'd
 - labor-related matters, **18:35**
 - legislative or political process involvement, **18:49**
 - net neutrality, **18:51.15**
 - nuclear power, **18:47**
 - ordinary business exclusion common areas, **18:34 to 18:51**
 - plant closings, **18:44**
 - political contributions, **18:49**
 - rotation of auditors, **18:51.10**
 - tobacco and other harmful products, **18:41**
 - vendor standards proposals
 - Cracker Barrel decision, effect on, **18:53**
 - Maquiladora trap, **18:54, 18:55**
 - president's codes of conduct, **18:52**
 - 2017 proxy season, **17:20.20**

SHORT SALES

- Dodd-Frank Wall Street Reform Act, **1:59**

SHORT SWING PROFITS

- Liability under Section 16. **Reporting and Short Swing Profit Liability under Section 16** (this index)

SIPC (SECURITIES INVESTOR PROTECTION CORPORATION)

- Regulatory agencies, **1:7**

SIXTH CIRCUIT

- Forward-looking statements, post-PSLRA, **28:41 to 28:45**
- PSLRA (this index)

SLUSA

- Deferring to federal actions and PSLRA, **31:20**
- Private Actions, State Remedies and SLUSA** (this index)
- PSLRA, actions brought in state courts after SLUSA and the Delaware carve-out, **25:16**
- Security reforms of 1990s, **1:16**
- Stay of discovery, **31:23**

SMALLER REPORTING COMPANIES

- Generally, **4:1 to 4:16**
- Corporate governance and executive compensation, **15:42.24**
- Disclosure
 - Exchange Act exemptions for compensatory stock options, **4:14**
 - scaled disclosure for smaller reporting companies, below
- Exchange Act exemptions for compensatory stock options
 - documentation, **4:15**
 - reporting companies, **4:16**
 - required disclosure, **4:14**
 - restrictions on transfer, **4:13**
 - Rule 12h-1, generally, **4:12**

SMALLER REPORTING COMPANIES—Cont'd

- F-3 availability for smaller reporting companies, **4:9**
- Public Offerings by Small Companies** (this index)
- Registration under Exchange Act, **12:20**
- Rule 12h-1. Exchange Act exemptions for compensatory stock options, above
- S-3 availability on limited basis
 - generally, **4:9**
 - one-third of public float limitation, **4:10, 4:11**
- Scaled disclosure for smaller reporting companies
 - generally, **4:1, 4:4**
 - accelerated filer and large accelerated filer definitions, amendments to, **4:2.14, 12:57.04**
 - determining whether issuer is smaller reporting company, **4:2, 4:2.2 to 4:2.16**
 - differences in scaled disclosure for smaller reporting companies, **4:6**
 - emerging growth company rules, interplay with, **4:2.12**
 - financial statements of businesses acquired or to be acquired, **4:2.16**
 - foreign private issuers, **4:7**
 - initial qualification thresholds
 - lower company revenues, **4:2.08**
 - public float, **4:2.04**
 - miscellany, **4:8**
 - public float
 - initial qualification thresholds, **4:2.04**
 - subsequent qualification thresholds, **4:2.06**
 - Regulation S-X Article 8 financial statements, **4:5**
 - subsequent qualification thresholds
 - public float, **4:2.06**
 - revenue, **4:2.10**

SOCIAL MEDIA

- Enforcement by SEC, broken windows policy, **36:119**
- Registration and reporting under exchange act, **12:48.05**

SOLICITATION

- JOBS Act (2012), elimination of restriction on general solicitation in Rule 506/144A offerings, **9:24.15, 9:33.10 to 9:33.26**
- Proxy Regulation** (this index)

SPAC RULES

- Background of the commissions rulemaking initiative, **5:99**
- What is a SPAC?, **5:98**

STATE SECURITIES REGISTRATION

- Generally, **24:1 to 24:32**
- Basic registration pattern, **24:1**
- Enforcement actions by state, exclusion from preemption, **24:31**
- Exchange listed securities, **24:2**
- Exclusion of state enforcement actions from preemption, **24:31**

STATE SECURITIES REGISTRATION—Cont'd

- Exemptions from registration
 - accredited investor exemption, private offering alternatives, **24:26**
 - combining state accredited investor exemption with Rule 504, **24:27**
 - institutional investor exemption, private offering alternatives, **24:26**
 - limited number of offerees or purchasers, private offering exemptions, **24:25**
 - Regulation D (Rule 506 or 505) compatible exemptions
 - California Exemption, **24:29**
 - Uniform Limited Offering Exemption, **24:28**
 - Rule 144A exemptions, **24:26**
 - Rule 504 and with state accredited investor exemption, **24:27**
 - state private offering alternatives, **24:25 to 24:27**
- Federal vs. state court jurisdiction for violation of state securities and other laws, **37:1.02**
- Jurisdiction
 - Generally, **37:1**
 - state vs. federal court jurisdiction for violation of state securities and other laws, **37:1.02**
- Merit requirements, **24:5**
- Merrill Lynch v. Manning, **37:1.02**
- Nasdaq/NMS securities, **24:3**
- National Marketing System securities, **24:3**
- NSMIA and preemption of state registration
 - generally, **24:6**
 - coordinated equity review procedures, **24:9, 24:10**
 - Form CER-1, **24:10**
 - limited preemption areas, **24:15, 24:16**
 - merit review after NSMIA
 - coordinated equity review SOPs, **24:13**
 - merit review uniformity, **24:14**
 - role of NASAA, **24:12**
 - statutory provisions, **24:11**
 - post NSMIA, offerings subject to state registration, **24:8 to 24:10**
 - preemption and investment companies
 - Form NF, **24:24**
 - notice filings, **24:24**
 - state merit provisions, preemption, **24:23**
 - related NSMIA limits on state registration, **24:7**
 - Rule 506 preemption
 - generally, **24:17**
 - federally exempted securities as covered securities, **24:22**
 - issuers after NSMIA, **24:21**
 - New York, New York, **24:20**
 - registration of agents after NSMIA, **24:21**
 - Rule 505, former, **24:18**
 - substantially similar filing requirement, **24:19**
 - secondary trading preemption, **24:16**
 - Registered SEC offerings, registration by coordination, **24:4**

STATE SECURITIES REGISTRATION—Cont'd

- Regulation D. Exemptions from registration, above Rule 504, Regulation A, and SCOR, **24:30**
- Small Corporate Offering Registration Form (SCOR), **24:30**

STATUTE OF LIMITATIONS AND PRIVATE ACTIONS UNDER SECURITIES ACTS

- Generally, **32:1 to 32:41**
- Background
 - generally, **32:1**
 - dissent, **32:5**
 - equitable tolling issue, **32:6**
 - Justice Scalia concurs, **32:3**
 - Kennedy-O'Connor view, **32:4**
 - Lampf case, **32:2, 32:6**
- Broker Dealer Litigation and Arbitration** (this index)
- Class actions
 - pleading class period and Sarbanes-Oxley Act, **32:35**
 - tolling, **32:6.02, 32:6.04, 32:6.06**
- Contribution under Section 11, **37:22**
- Discovery of fraud, equating with what is needed to file complaint
 - access and loose ends, **32:26**
 - burden of proof and pleading time of discovery, **32:30**
 - CDW Computer case, **32:27**
 - circuit courts of appeal post-Posner, **32:28**
 - District Courts, **32:29**
 - Fujisawa case, **32:26**
 - inquiry notice redefined, Medco II case, **32:25**
 - Judge Posner, **32:25**
 - loose ends and access, facts of Fujisawa case, **32:26**
 - Medco II, **32:25**
 - pleading time of discovery, burden of proof, **32:30**
- Enforcement by SEC** (this index)
- Equitable tolling diligence standards
 - background, **32:6**
 - judicial activism and one year after discovery, **32:10 to 32:13**
- Express remedies, **26:52**
- Fraud
 - discovery of fraud, equating with what is needed to file complaint, above
 - PSLRA, pleading securities fraud, backdating of stock options, **29:126**
- Inquiry notice as beginning of analysis
 - constructive notice, **32:16**
 - Eckstein I case, **32:17**
 - Eckstein II case, **32:18**
 - equitable estoppel, **32:24**
 - excite inquiry standard of inquiry notice, **32:23**
 - information superhighway, Whirlpool case, **32:21**
 - Judge Easterbrook, **32:17, 32:18**
 - Judge Posner, **32:19**
 - Medco case, **32:19, 32:20**
 - possibility vs. probability, **32:14**

**STATUTE OF LIMITATIONS AND PRIVATE
ACTIONS UNDER SECURITIES ACTS
—Cont'd**

Inquiry notice as beginning of analysis—Cont'd
 probability vs possibility, **32:14**
 remand of Medco case, **32:20**
 risk factors as storm warnings, **32:22**
 should have discovered vs. suspicion, **32:15**
 storm warnings, **32:16, 32:22**
 sufficient to excite inquiry standard of inquiry notice,
32:23
 Supreme Court input, **32:39, 32:40**
 suspicion vs. should have discovered, **32:15**
 Whirlpool case, **32:21**

Judicial activism and one year after discovery
 courts and legislative history, **32:8**
 equitable tolling diligence standards, generally,
32:10 to 32:13
 investor's delay in bringing suit, **32:9**
 legislative history, **32:7, 32:8**
 plaintiffs' diligence standard under equitable tolling,
32:11
 Rule 10b-5, equitable tolling diligence standards,
32:13
 Section 13, equitable tolling diligence standards,
32:12

Medco case
 discovery of fraud, equating with what is needed to
 file complaint, Medco II, **32:25**
 inquiry notice as beginning of analysis, **32:19, 32:20**

One year after discovery. Inquiry notice as beginning of
 analysis, above

PSLRA, pleading securities fraud, backdating of stock
 options, **29:126**

Reporting and short-swing profit liability under Section
 16(b), **14:46, 14:46.10**

Sarbanes-Oxley Act
 extended period and Section 11 or 12(a)(2) actions,
32:34
 extension of period of limitations, **32:32 to 32:35**
 omnibus statute of limitations, **32:31**
 pleading class period, **32:35**
 retroactivity issues, **32:33**
 Section 11 actions, **32:34**
 Section 12(a)(2) actions, **32:34**
 unresolved issues, **32:32**

Supreme Court input
 generally, **32:36**
 allegations, **32:38**
 briefs, **32:41**
 complaint allegations, **32:38**
 critical date, information available prior, **32:37**
 discovery by plaintiff, **32:46, 32:48, 32:49**
 establishment of scienter by falsity of representation,
32:45
 failure to investigate after inquiry notice, **32:47**
 falsity of representation, **32:45**

**STATUTE OF LIMITATIONS AND PRIVATE
ACTIONS UNDER SECURITIES ACTS
—Cont'd**

Supreme Court input—Cont'd
 FDA warning letter, **32:37**
 finding against Merck, **32:42 et seq.**
 inquiry notice, **32:39, 32:40**
 inquiry notice and commencement of limitations
 period, **32:42, 32:46, 32:47**
 Justice Breyer and finding against Merck, **32:42 et
 seq.**
 naproxin hypothesis, **32:37**
 notice of inquiry, **32:39**
 plethora of information available prior to critical
 date, **32:37**
 reasonable hypothetical plaintiff, discovery by, **32:48**
 reliance on Circuit Court precedent, **32:43**
 scienter as fact for purposes of 10b-5, **32:44**
 Third Circuit and inquiry notice, **32:39, 32:40**
 VIGOR study results, **32:37**
 VIOXX, Merck case, **32:36 et seq.**
 Third Circuit and inquiry notice, **32:39, 32:40**
 Tolling in class actions, **32:6.02, 32:6.04, 32:6.06**

SUBJECT MATTER JURISDICTION

Generally, **37:2**
 Foreign cubed cases, **37:2.10**
 Morrison and extraterritoriality, **37:2.10**
 Pre-Morrison and extraterritoriality, **37:2**

SUBMISSION TEMPLATE

Completion. **EDGAR** (this index)

SUBSIDIARY CORPORATIONS

Parent and Subsidiaries (this index)

SUBSTANTIVE PROVISIONS

Business combinations involving shell companies,
5:107
 Investment Company Act, **5:106**
 Major overhaul of SEC SPAC rules, **5:100**
 Minimum distribution period for prospectuses and
 proxy statements, **5:101**
 PSLRA safe harbor, **5:104**
 Smaller reporting company status, **5:105**
 Status of SPAC IPO underwriter as underwriter in de-
 SPAC transaction, **5:103**
 Target company as co-registrant on S-4/F-4, **5:102**

SUPPLEMENTAL JURISDICTION

Generally, **37:23**

SYNDICATE, SYNDICATES, AND SYNDICATION

Resale of Securities (this index)

TENDER OFFERS

Canadian multijurisdictional disclosure system, **22:76**
 Cash tender offer
 commencement of cash tender offers, below

TENDER OFFERS—Cont'd

- Disclosure
 - Canadian multijurisdictional disclosure system, **22:76**
- Private actions, implied remedies (primarily Rule 10b-5), privity, **27:17**
- Transnational aspects, **22:76**

TENTH CIRCUIT

- Forward-looking statements, bespeaks caution, **28:33**

TERRORISM

- Money laundering and terrorism. **Broker Dealer Litigation and Arbitration** (this index)

TEST THE WATERS COMMUNICATIONS

- JOBS Act (2012), **5:63**
- Regulation A offerings, **7:18**

THE MAJOR QUESTIONS DOCTRINE

- West Virginia v. EPA, **36:161**

THE SAFT

- Generally, **8:28 to 8:33**
- Kik: SEC complaint, **8:32**
- Kik: SEC wins summary judgment and the SAFT structure fails, **8:33**
- Kik Interactive, Inc. Wells submission, **8:31**
- 8220Metaphysical8221 considerations, **8:29**
- Telegram, **8:30**

THIRD CIRCUIT

- Bright line rule, timely corporate disclosure, private actions and implied remedies, **27:31**
- Forward-looking statements
 - bespeaks caution and the uncovered forward-looking statement, **28:31**
 - circuit courts of appeals post-PSLRA, **28:50**
- PSLRA (this index)
- Reporting and short-swing profit liability under Section 16, mergers and reclassifications, **14:51**
- Statute of limitations and private actions under Securities Acts, inquiry notice, **32:39, 32:40**

TIMELY CORPORATE DISCLOSURE

- Private Actions, Implied Remedies** (this index)

TRANSNATIONAL ASPECTS

- International Transactions** (this index)

TRUST INDENTURE ACT

- Generally, **1:11**
- Public Offering Registration** (this index)

TWEETS

- Enforcement by SEC, broken windows policy, **36:119**

UNDERWRITERS AND UNDERWRITING

- Broker-dealer regulation, qualified independent underwriters, **19:22**
- Dodd-Frank Act, Rule 17g-5, issuer/underwriter pay conflict, **1:57.14**
- Private actions
 - Section 11 action for false registration statements, underwriters' due diligence, **26:42 to 26:47**
 - Section 12(a)(2) claims, issuer as seller in firm underwriting, case law, **26:20**
- PSLRA safe harbor, underwriter's forward-looking statements, **28:18**
- Public offering distribution process, free writing prospectus, **5:16**
- Public Offering Registration** (this index)
- Resale of restricted stock presumptive underwriter doctrine, **10:10**

VENTURE CAPITAL

- Online venture capital platforms, FundersClub, Jobs Act (2012), **19:6.06**

VENTURE FAIRS

- Exempt offerings, regulation D common requirements, **9:24.14**

VENUE

- Generally, **37:1**
- Arbitration, **35:38**
- Securities litigation, **25:15**

VOLCKER RULE

- Dodd-Frank Act** (this index)

WAIVER

- Generally, **37:24**
- Registration and reporting under Exchange Act, Form 8-K, Section 5, Item 5.05, waiver of provision of code of ethics, **12:98**

WALL STREET REFORM ACT

- Dodd-Frank Act** (this index)

WELLS STATEMENTS

- SEC enforcement, **36:56**

WILLFULNESS

- SEC enforcement
 - administrative enforcement remedies, **36:34**
 - criminal proceedings, **36:5**

WORLD.COM

- Financial fraud, generally, **21:1**
- Financial fraud and securities litigation, **25:8**
- Financial reporting fraud, background, **1:29, 1:30**
- Registration and reporting under Exchange Act, background, **12:2**