

# Index

## **ABSTENTION**

Defensive maneuvers, **20:3**

## **ACCOUNTING**

Demand for relief, shareholder's complaint, **19:21**

## **ADMINISTRATIVE RELIEF OR ASSISTANCE**

Generally, **11:1-11:18**

Calling for help, **11:1**

Equal Access to Justice Act, **11:18**

Federal administrative agencies, **11:2-11:15**

Parallel proceedings, **11:17**

Securities and Exchange Commission (SEC)

generally, **11:2**

enforcement actions

generally, **11:9**

ancillary relief, **11:12**

authority, source of, **11:9**

disgorgement, **11:11**

procedural advantages, additional, **11:13**

range of relief, **11:10**

using SEC enforcement in private civil litigation, **11:14**

informational use of SEC

confidentiality, requests for confidential treatment in required filings, **11:5**

discovering fruits of investigation, **11:4**

grand jury transcripts, **11:7**

persistence, **11:7**

routine corporate filings, **11:6**

SEC complaints, **11:6**

triggering investigation, **11:3**

State administrative agencies, **11:16**

## **ADMISSIONS**

Discovery, requests for admissions, **21:7**

## **ALLEGATIONS IN SHAREHOLDER COMPLAINTS**

See Commencement of Actions

## **ANSWERS AND RESPONSES**

Generally, **25:1-25:22**

Accompanying affidavit, **25:2**

Affidavit in support of motion, **25:10**

Amended class action complaint, **25:13**

Answer to class action, **25:12**

Answer to complaint alleging breach of fiduciary duty and common law fraud, **25:18**

Answer to state court complaint asserting fraud, **25:14**

Arbitration, Response to claim (FINRA), **25:8**

Counterclaim

Actions for RICO and Clayton Act, **25:22**

Federal court counterclaim, **25:15**

Direct and derivative actions, answer, counterclaim and cross claim, **25:17**

Extension of time to respond to complaint in federal court, **25:1**

Federal securities law, **25:19**

Notice of motion and motion in state court, **25:9**

Order compelling arbitration, **25:11**

Order extending time for response, **25:4**

Removal to federal court, Notice of removal, **25:5**

bond, **25:7**

petition, **25:6**

Reply, **25:16**

State securities law, **25:20**

**ANSWERS AND RESPONSES**

—Cont'd

Stipulation, **25:3**

Third-party complaint for indemnity  
and contribution, **25:21**

**ANTITAKEOVER STATUTES**

See State Antitakeover Statutes

**APPRAISAL**

Demand for relief, shareholder's  
complaint, **19:15-19:17**

**ARBITRATION**

Generally, **18:3-18:19**

Arbitrators, choosing, **18:15**

Availability, **18:4-18:11**

Demand for arbitration, **18:13**

Desirability, **18:19**

Discovery, **18:16**

Enforcement, **18:17**

Motion to stay civil proceeding,  
**18:14**

Racketeer Influenced and Corrupt  
Organizations Act (RICO), **3:25**

Remedies, **18:18**

Stockholders' derivative actions, **9:31**

Venue, **18:12**

**ATTORNEY-CLIENT PRIVILEGE**

Discovery. See Discovery

Stockholders' derivative actions, **9:30**

**ATTORNEY-CLIENT  
RELATIONSHIPS**

Generally, **17:1-17:6**

Attorney liability, **17:6**

Information, client as source of, **15:2,**  
**17:2**

Instructing clients

costs, **17:4**

emotional support, **17:5**

goal clarification, **17:4**

law and procedure, **17:3**

strengthening will of client, **17:4**

**ATTORNEYS**

Disqualification, motion to disqualify  
counsel, **20:22**

**ATTORNEY'S FEES**

Class actions, **12:16**

**ATTORNEY'S FEES—Cont'd**

Common-law wrongs, **10:40**

Defense motion for attorney's fees,  
**20:19**

Demand for relief, shareholder's  
complaint, **19:24**

Racketeer Influenced and Corrupt  
Organizations Act (RICO), **3:20**

Rule 10b-5 private actions, **2:36**

Securities Act § 11, **5:19**

Securities Exchange Act § 9. See  
Securities Exchange Act §§ 9,  
16(b), 18(a)

Securities Exchange Act § 16(b). See  
Securities Exchange Act §§ 9,  
16(b), 18(a)

Stockholders' derivative actions, **9:36**

**BENCH TRIAL**

Generally, **22:2**

**BLUE SKY LAWS**

Generally, **8:2**

Advantages and disadvantages of  
blue sky litigation, **8:15**

Attorney's fees, **8:10**

Causation, **8:8**

Conflict of laws, **8:14**

Defendants, **8:5**

Defenses

generally, **8:12**

statute of limitations, **8:13**

Elements of blue sky action

causation, **8:8**

defendants, **8:5**

misrepresentations, material, **8:7**

omissions, material, **8:7**

parties liable, **8:5**

reliance, **8:8**

scienter, **8:6**

"security," definition of, **8:4**

standing to sue, **8:3**

Limitations, **8:13**

Misrepresentations, material, **8:7**

Omissions, material, **8:7**

Parties liable, **8:5**

Punitive damages, **8:11**

Reliance, **8:8**

## INDEX

### **BLUE SKY LAWS—Cont'd**

- Remedies
  - generally, **8:9**
  - attorney's fees, **8:10**
  - punitive damages, **8:11**
- Scienter, **8:6**
- "Security," definition of, **8:4**
- Standing to sue, **8:3**
- Statute of limitations, **8:13**
- Stay of federal actions, exceptional circumstances, **8:3**

### **BURDEN OF PROOF**

- Racketeer Influenced and Corrupt Organizations Act (RICO), **3:24**

### **BUSINESS JUDGMENT RULE**

- Generally, **16:1-16:10**
- Arbitrary or capricious action, **16:7**
- Attacks on business judgment rule generally, **16:3**
  - arbitrary of capricious action, **16:7**
  - candor, violation of duty of, **16:6**
  - failure to exercise due care, **16:4**
  - good faith, lack of, **16:5**
- Breach of fiduciary duty, **10:19, 10:20**
- Candor, violation of duty of, **16:6**
- Failure to exercise due care, **16:4**
- Good faith, lack of, **16:5**
- Nature of rule, **16:2**
- Negligence, **10:37**

### **CAUSATION**

- Racketeer Influenced and Corrupt Organizations Act (RICO), **3:5**
- Rule 10b-5 private actions, **2:23**
- Securities Act § 17(a), **4:10**

### **CHECKLISTS**

- Racketeer Influenced and Corrupt Organizations Act (RICO), **3:26**

### **CHOICE OF LAW**

- Stockholders' derivative actions, demand requirement, **9:15**

### **CLASS ACTION CERTIFICATION**

- Generally, **26:1-26:29**
- Affidavit in opposition to motion for certification, **26:8**

### **CLASS ACTION CERTIFICATION—Cont'd**

- Affidavit in support of settlement and application for attorneys fees, **26:20**
- Application for reimbursement of fees and expenses, filed by law firm, **26:23**
- Award of attorneys fees and expenses, **26:21**
- Defendants answer to plaintiffs, **26:3**
- Defendants memorandum, **26:2**
- Hearing order, **26:24**
- Industry representative, **26:7**
- Lead plaintiffs memorandum in support of motion, **26:29**
- Memorandum of law in support of motion, **26:5**
- Motion for approval of settlement, **26:26**
- Motion for certification, **26:9**
- Motion for noncommunication order with supporting affidavit, **26:13**
- Noncommunication order, **26:16**
- Notice of intention to appear/objection to stipulation and settlement, **26:19**
- Notice of motion, **26:28**
- Notice of motion and motion for class certification, **26:4**
- Notice of settlement to shareholders, **26:27**
- Notice to class, **26:12**
- Notice to class advising as to prior communications in conflict with official notice, **26:17**
- Opposition to certification, **26:10**
- Opposition to noncommunication order, **26:15**
- Order and judgment approving notice, **26:6**
- Settlement and award of attorneys fees and expenses, **26:22**
- Stipulation and conditional order regarding class certification, **26:18**
- Stipulation and order as to form and contents of notice, **26:11**

**CLASS ACTION CERTIFICATION**  
—**Cont'd**

Stipulation and order extending  
deadline, **26:1**  
Stipulation of settlement, **26:25**  
Support of noncommunication order,  
**26:14**

**CLASS ACTIONS**

Generally, **12:1-12:16**  
Attorney's fees, **12:16**  
Certification  
generally, **12:10**  
motion to deny certification, **20:12**  
Common question of law or fact,  
predominating, **12:6**  
Discovery, **21:8**  
Dismissal or compromise, **12:15**  
Effect of judgment, **12:12**  
Fair and adequate representation,  
**12:8**  
Motion to deny certification, **20:12**  
Notice requirements, **12:11**  
Numerous class, **12:5**  
Orders in class actions, **12:14**  
Partial class actions, **12:13**  
Rationale of class actions, **12:1**  
Reform, **12:3**  
Requirements for class actions  
generally, **12:4**  
common question of law or fact,  
predominating, **12:6**  
fair and adequate representation,  
**12:8**  
numerous class, **12:5**  
superiority of class action over  
individual suits, **12:9**  
typicality of representative's  
claims or defenses, **12:7**  
Securities Litigation Uniform Stan-  
dards Act (SLUSA), **12:3**  
Superiority of class action over indi-  
vidual suits, **12:9**  
Typicality of representative's claims  
or defenses, **12:7**

**CLOSE CORPORATIONS**

Breach of fiduciary duty, **10:18**

**CLOSING ARGUMENTS**

Trial, **22:6-22:11**

**COMMENCEMENT OF ACTIONS**

Generally, **19:1-19:25**  
Accounting, demand for relief, **19:21**  
Appraisal, demand for relief, **19:15-19:17**  
Attorney's fees, demand for relief,  
**19:24**  
Client selection, choosing plaintiff,  
**19:3**  
Complaints, allegations in  
shareholder complaints  
identification of parties, **19:7**  
jurisdictional allegations, **19:5**  
procedural allegations, **19:6**  
substantive allegations, **19:8**  
Damages, demand for relief, **19:14**  
Declaratory relief, demand for relief,  
**19:13**  
Defendant selection, **19:4**  
Demand for relief  
accounting, **19:21**  
appraisal, **19:15-19:17**  
attorney's fees, **19:24**  
damages, **19:14**  
declaratory relief, **19:13**  
dissolution, **19:11**  
fair value determinations, **19:16**  
injunction, **19:10**  
jurisdiction and procedure for  
appraisal, **19:17**  
mandamus, **19:20**  
provisional director, appointment  
of, **19:25**  
punitive damages, **19:23**  
quo warranto, **19:22**  
receivership, **19:12**  
remedies, choice of, **19:9**  
removal of director, **19:25**  
rescission, **19:18**  
specific performance, **19:19**  
Dissolution, demand for relief, **19:11**  
Fair value determinations, **19:16**  
Forum choice, **19:2**  
Injunction, demand for relief, **19:10**  
Jurisdiction and procedure for  
appraisals, **19:17**

## INDEX

### COMMENCEMENT OF ACTIONS —Cont'd

Mandamus, demand for relief, **19:20**  
Provisional director, demand for appointment of, **19:25**  
Punitive damages, demand for relief, **19:23**  
Quo warranto, demand for relief, **19:22**  
Receivership, demand for relief, **19:12**  
Remedies, choice of, **19:9**  
Removal of director, demand for relief, **19:25**  
Rescission, demand for relief, **19:18**  
Specific performance, demand for relief, **19:19**

### COMMON-LAW WRONGS AND REMEDIES

Generally, **10:1-10:45**  
Breach of fiduciary duty  
    generally, **10:2 et seq.**  
    business judgment rule, **10:19**  
    generally, **10:19**  
    burden of proof, **10:20**  
close corporations, **10:18**  
corporate control battles, **10:12**  
corporate perquisites, **10:11**  
defendants, **10:9**  
defenses, **10:19, 10:20**  
directors  
    liability, limiting or eliminating, **10:4**  
    rationale for protecting directors, **10:5**  
    takeovers, fiduciary duty of board where control change implicated, **10:17**  
exculpatory provisions, **10:3**  
expansion of remedies, legislative response, **10:3**  
fiduciary duty, **10:3, 10:6**  
jurisdiction, subject matter, **10:8**  
maneuvers  
    disloyal maneuvers, **10:14**  
    entrenchment maneuvers, **10:15, 10:16**  
    political maneuvers, **10:12**

### COMMON-LAW WRONGS AND REMEDIES—Cont'd

Breach of fiduciary duty—Cont'd  
maneuvers—Cont'd  
    punitive maneuvers, **10:13**  
    selfish maneuvers, **10:11**  
    terminal maneuvers, **10:15**  
parties liable, **10:9**  
punitive damages, **10:22**  
remedies, **10:22**  
self-interested behavior, **10:14**  
spiteful acts, **10:13**  
standing to sue, **10:7**  
substantive wrongs, **10:10**  
takeovers, fiduciary duty of board where control change implicated, **10:17**  
unequal treatment, **10:12**  
visitorial powers doctrine, **10:8**  
Business judgment rule, breach of fiduciary duty, **10:19**  
Fraud  
    generally, **10:23-10:33**  
    compensatory damages, **10:31**  
    consequential damages, **10:32**  
    damages  
        compensatory damages, **10:31**  
        consequential damages, **10:32**  
        punitive damages, **10:33**  
    defendants, **10:28**  
    defenses, **10:29**  
    elements of liability, **10:24**  
    estoppel, **10:29**  
    in pari delicto, **10:29**  
    limitations, **10:29**  
    nature of action, **10:23**  
    parties liable, **10:28**  
    punitive damages, **10:33**  
    ratifications, **10:29**  
    reliance, **10:26**  
    remedies, **10:30-10:38**  
    scienter, **10:25**  
    statute of limitations, **10:29**  
    substantive wrongs, **10:27**  
Negligence  
    generally, **10:34 et seq.**  
    business judgment rule, **10:37**  
    defenses, **10:37**

## COMMON-LAW WRONGS AND REMEDIES—Cont'd

- Negligence—Cont'd
  - direct or derivative actions, **10:38**
  - duty and breach, **10:34**
  - examples, **10:35**
  - nature of action, **10:34**
  - standard of care, **10:36**
- Remedies, miscellaneous
  - attorney's fees, **10:40**
  - breach of contract, **10:41**
  - intentional infliction of emotional distress, **10:44**
  - mandamus, use for discovery, **10:43**
  - punitive damages, **10:39**
  - statute of frauds, **10:42**
  - tortious interference with contract or prospective business advantage, **10:45**

## COMPLAINTS

- See Commencement of Actions;  
Defensive Maneuvers

## COMPLAINTS AND PLEADINGS

- Generally, **24:1-24:48**
- Allegations as to efforts made to obtain relief from board of directors, **24:19**
- Amended complaint stating claims for wrongful termination, **24:29**
- Amended form including counts for violation of Rule 10b-5, **24:23**
- Arbitration
  - demand with statement of claim for breach of contract, **24:1**
- Blue sky laws, Common-law fraud, Negligent misrepresentation, **24:23**
- Breach of fiduciary duty, and mandatory buy-out, **24:28**
- Brief in support of motion to dismiss complaint, **24:40**
- Brief in support of temporary restraining order and preliminary injunction, **24:39**
- Brokerage house customer for damages, **24:33, 24:41**

## COMPLAINTS AND PLEADINGS —Cont'd

- Certificate of service by mailing of amended complaint, **24:4**
- Class action complaint alleging violation of federal securities laws, **24:13**
- Common law action
  - corporate business, **24:8**
- Complaint asserting improprieties in connection with tender offer, **24:37**
- Complaint for breaches of fiduciary duties
  - acquisition of shares from minority shareholders, **24:22**
- Complaint for damages for illegal gift of corporate assets, **24:11**
- Complaint for damages resulting from insider trading, **24:25**
  - another form, **24:26**
  - dissenting shareholder, complaint for appraisal, **24:27**
- Complaint stating claims for wrongful termination, **24:28, 24:30**
- Complaint to enjoin selective redemption of particular class of shares, **24:24**
- Complaint to recover excessive termination compensation from officers and directors, **24:21**
- Customer for damages against brokerage house and broker for churning, **24:34**
- Declaratory and injunctive relief, **24:36**
- Demand with statement of claim for shareholder dispute (AAA International), **24:2**
- Derivative action
  - Misappropriation of corporate assets for personal use by director, **24:20**
- Dissolution of corporation, state court petition, **24:31**
- False statements, **24:35**
- Federal court
  - Blue Sky Law and common law claims to enjoin a tender offer, **24:46**

## INDEX

### COMPLAINTS AND PLEADINGS —Cont'd

- Federal court complaint alleging fraud in real estate investment trusts, **24:6**
- Federal court complaint asserting right to restrict transfer of stock, **24:45**
- Federal court complaint in partnership dispute, **24:7**
- Federal securities law, **24:32**
- Misappropriation of corporate assets ultra vires acts and breach of fiduciary duty, **24:16**
- Motion for temporary restraining order, **24:9, 24:38**
- Notice of motion and motion for temporary restraining order, **24:17**
- Order to show cause, **24:42**
- Petition in dissenters rights action, **24:5**
- Racketeering Influenced and Corrupt Organizations Act (RICO), **24:47**
- State court
  - Class action complaint alleging securities fraud, **24:14**
- State court complaint to enforce restriction on transfer of shares, **24:12**
- State court complaint to enforce right of first refusal agreement, **24:15**
- State court derivative action for rescission or damages for wrongful conveyance, **24:10**
- State securities law
  - Federal diversity complaint, **24:43**
- Statement of claim (National Association of Securities Dealers), **24:3**
- Temporary restraining order and order to show cause, **24:18**
- Third-party complaint
  - Indemnification and contribution, **24:48**
- Voting trust, **24:44**

### CONFLICT OF LAWS

- Blue sky laws, **8:14**

### CONFLICT OF LAWS—Cont'd

- Stockholders' derivative actions, demand requirement, **9:15**

### CONSPIRACY

- Racketeer Influenced and Corrupt Organizations Act (RICO), **3:18**

### CONTRACTS

- Breach of contract, **10:41**
- Tortious interference with contract, **10:45**

### CONTRIBUTION

- Rule 10b-5 private actions, **2:34**
- Securities Act § 11. See Securities Act §§ 11 and 12(2).
- Securities Act § 12(2). See Securities Act §§ 11 and 12(2).

### CORPORATE RECORDS

- See Information and Corporate Secrecy

### CORPORATE VEIL

- Generally, **16:8**
- Piercing the corporate veil, special issues, **16:9**
- Reverse piercing, **16:10**

### COSTS

- See also Litigation Costs
- Derivative actions. See Stockholders' Derivative Actions
- Securities Exchange Act § 9, **6:10**
- Security for expenses, motion for, **20:18**

### COUNTERCLAIMS

- Generally, **20:21**

### CROSSCLAIMS

- Generally, **20:21**

### CROWDFUNDING

- Securities Exchange Act of 1934 § 14, capital raising technique, **7:6**

### DAMAGES

- Demand for relief, shareholder's complaint, **19:14**
- Fraud. See Common-Law Wrongs and Remedies

## **DAMAGES—Cont'd**

Racketeer Influenced and Corrupt Organizations Act (RICO), **3:19**  
 Rule 10b-5. See Rule 10b-5 Private Actions  
 Securities Exchange Act § 9, **6:9**

## **DECLARATORY JUDGMENTS**

Defensive maneuvers, **20:24**  
 Demand for relief, shareholder's complaint, **19:13**

## **DEFENDANTS**

Breach of fiduciary duty, **10:9**  
 Commencement of actions, defendant selection, **19:4**  
 Fraud, **10:28**  
 RICO. See Racketeer Influenced and Corrupt Organizations Act (RICO)  
 Securities Act § 17(a), **4:6**  
 Securities Act § 11. See Securities Act §§ 11 and 12(2).  
 Securities Act § 12(2). See Securities Act §§ 11 and 12(2).  
 Securities Exchange Act § 9. See Securities Exchange Act §§ 9, 16(b), 18(a)  
 Securities Exchange Act § 14, misleading proxy solicitations, **7:10**  
 Securities Exchange Act § 16(b). See Securities Exchange Act §§ 9, 16(b), 18(a)

## **DEFENSES**

See also Defensive Maneuvers  
 Breach of fiduciary duty, **10:19**  
 Derivative actions. See Stockholders' Derivative Actions  
 RICO. See Racketeer Influenced and Corrupt Organizations Act (RICO)  
 Rule 10b-5. See Rule 10b-5 Private Actions  
 Securities Act § 17(a). See Securities Act § 17(a)  
 Securities Exchange Act § 16(b), **6:20**

## **DEFENSIVE MANEUVERS**

See also Defenses  
 Generally, **20:1-20:24**  
 Abstention, **20:3**  
 Attack on judgment, motions under Rule 60(b), **20:23**  
 Attorney's fees, motion for, **20:19**  
 Baseless or bad faith complaint , motion to strike, **20:9**  
 Class action, motion to deny certification, **20:12**  
 Complaint, attack on. Motion practice, below  
 Concession, attack by buying out plaintiffs, **20:16** offering judgment under Rule 68, **20:17**  
 Crossclaims, **20:21**  
 Declaratory judgment, actions for, **20:24**  
 Discovery sanctions, motion for, **20:20**  
 Dismiss, motion to, **20:7, 20:10, 20:13**  
 Disqualification, motion to disqualify counsel, **20:22**  
 Failure to state a claim, motion to dismiss, **20:10**  
 Forum non conveniens, **20:4**  
 Joinder of parties, defensive maneuvers, **20:5**  
 Jury demand, motion attacking, **20:15**  
 More definite statement, motion for, **20:7**  
 Motion practice  
     abstention, **20:3**  
     attorney's fees, motion for, **20:19**  
     baseless or bad faith complaint , motion to strike, **20:9**  
     class action, motion to deny certification, **20:12**  
     complaint, attack on  
         baseless or bad faith complaint , motion to strike, **20:9**  
         dismiss, motion to, **20:7, 20:10**  
         failure to state a claim, motion to dismiss, **20:10**

## INDEX

### DEFENSIVE MANEUVERS

#### —Cont'd

- Motion practice—Cont'd
  - complaint, attack on—Cont'd
    - more definite statement, motion for, **20:7**
    - particularity, motion attacking lack of, **20:7**
    - scandalous or immaterial matter, motion to strike, **20:8**
    - strike, motions to, **20:8, 20:9**
  - derivative actions
    - motions to stay, **20:14**
    - unfair or inadequate representation, motion to dismiss, **20:13**
  - discovery sanctions, motion for, **20:20**
  - dismiss, motion to, **20:7, 20:10, 20:13**
  - failure to state a claim, motion to dismiss, **20:10**
  - forum non conveniens, **20:4**
  - joinder of parties, attack on, **20:5**
  - jury demand, motion attacking, **20:15**
  - more definite statement, motion for, **20:7**
  - particularity, motion attacking lack of, **20:7**
  - personal jurisdiction, attack on, **20:4, 20:5**
  - scandalous or immaterial matter, motion to strike, **20:8**
  - security for expenses, motion for, **20:18**
  - strike, motions to, **20:8, 20:9**
  - subject matter jurisdiction, attack on, **20:2**
  - summary judgment, motion for, **20:11**
  - venue, attack on, **20:6**
- Particularity, motion attacking lack of, **20:7**
- Personal jurisdiction, attack on, **20:4, 20:5**
- Scandalous or immaterial matter, motion to strike, **20:8**

### DEFENSIVE MANEUVERS

#### —Cont'd

- Security for expenses, motion for, **20:18**
- Strike, motions to, **20:8, 20:9**
- Subject matter jurisdiction, attack on, **20:2**
- Summary judgment, motion for, **20:11**
- Venue, attack on, **20:6**

### DEFINITIONS

- RICO. See Racketeer Influenced and Corrupt Organizations Act (RICO)
- “Security,” Rule 10b-5 private actions, **2:10**

### DEMAND FOR RELIEF

- See Commencement of Actions

### DEPOSITIONS

- See discovery

### DERIVATIVE ACTIONS

- See Stockholders' Derivative Actions

### DIRECTORS

- Breach of fiduciary duty. See Common-Law Wrongs and Remedies
- Insider trading, Securities Exchange Act § 16(b), director by deputization, **6:18**
- Provisional director, demand in shareholder's complaint for appointment of, **19:25**
- Removal of director, demand for relief in shareholder's complaint, **19:25**

### DISCOVERY

- Generally, **21:1-21:21, 28:1-28:35**
- Action asserting sale of investment contracts, **28:16**
- Action by customer against brokerage house and broker, **28:13**
- Action by underwriter under federal securities laws, **28:10**
- Admissions, requests for, **21:7**
- Arbitration, **18:16**
- Asserting wrongdoing in connection with corporate takeover, **28:14**

**DISCOVERY—Cont'd**

Attorney-client privilege  
generally, **21:9**  
abrogation, **21:10 et seq.**  
client, who is, **21:15**  
confidence, communication made  
in, **21:14**  
disclosure of privileged materials,  
**21:17**  
not “legal” advice, **21:11**  
purposes for communication non-  
legal, **21:13**  
waiver, **21:16, 21:18**  
wrongdoer, lawyer as, **21:12**  
Class actions, **21:8**  
Defendant in securities action by  
brokerage house against  
customer, **28:11**  
Defensive maneuvers, **20:20**  
Depositions, **28:23**  
notice of taking, **28:24**  
on written questions, **28:25**  
order granting leave to take  
expedited discovery, **28:22**  
permit written deposition, **28:28**  
prevent taking of oral deposition,  
**28:26**  
supporting affidavit, **28:27**  
timing tactics, **21:2**  
written questions, depositions on,  
**21:4**  
Extension of time for discovery, stip-  
ulation, **28:30**  
Order, **28:31**  
First interrogatories directed to  
plaintiffs class action, **28:12**  
Identified in answers to interroga-  
tories, **28:5**  
Internal investigations, **21:21**  
Interrogatories, **21:5**  
Issue of basis for class action, **28:15**  
Joint defense agreement, **28:35**  
Mandamus, **10:43**  
Motion to discover attorney-client  
material based on crime  
fraud exception, **28:29**  
Options, **21:1**

**DISCOVERY—Cont'd**

Prediscovery stipulation for protec-  
tive order, confidentiality agree-  
ment, **28:1**  
Production of documents, requests  
for, **21:6**  
Protective orders, **21:20**  
Request for admissions  
breach of contract action, **28:20**  
securities action, **28:21**  
Request for production of documents,  
**28:4**  
Response  
underwriter asserting default under  
agency agreement, **28:19**  
Response to allegations in counter-  
demand and demand for arbitra-  
tion, **28:8**  
Response to request for production of  
documents, with objections,  
**28:9**  
Sale of unregistered securities and  
breach of fiduciary duty, **28:7**  
Sanctions  
compel production of documents  
and for attorneys fees, **28:33**  
impose costs and compel atten-  
dance at deposition, **28:32**  
Memorandum of law, **28:34**  
Sanctions, motion for, **20:20**  
Securities action asserting  
improprieties, **28:17**  
supplementary interrogatories,  
**28:18**  
Specific request, **28:6**  
Stays of discovery, **21:3**  
Stipulated protective order governing  
discovery, **28:2**  
Stipulation and order to protect  
confidential information, **28:3**  
Stipulations, **21:20**  
Stockholders’ derivative actions, **9:29**  
Tactics, **21:2**  
Work-product doctrine, **21:19**  
Written questions, depositions on,  
**21:4**

**DISGORGEMENT**

SEC enforcement actions, **11:11**

## INDEX

### DISMISSAL

- See also Defensive Maneuvers
- Class actions, **12:15**
- Stockholders' derivative actions, **9:32**

### DISQUALIFICATION

- Attorneys, motion to disqualify counsel, **20:22**

### DISSOLUTION

- Demand for relief, shareholder's complaint, **19:11**

### ENTERPRISE LIABILITY

- See Racketeer Influenced and Corrupt Organizations Act (RICO)

### EQUAL ACCESS TO JUSTICE ACT

- Generally, **11:18**

### EQUITY

- Racketeer Influenced and Corrupt Organizations Act (RICO), availability of private equitable relief, **3:21**

### ESTOPPEL

- See also Time: Limitations, Laches, and Estoppel
- Fraud, **10:29**

### ETHICS

- Stockholders' derivative actions, ethics and representation of defendants, **9:27**

### FAILURE TO STATE A CLAIM

- Motion to dismiss, **20:10**

### FALSE FILINGS

- Misleading statements in SEC filings, Securities Exchange Act § 18(a)

### FEDERAL ACTIONS FOR FRAUD

- Generally, **2:1 et seq.**
- Direct or derivative actions, **2:2**
- Express federal remedies. See Securities Act §§ 11 and 12(2)
- Implied private remedies, **2:5**
- Mail and wire fraud, **2:4**
- Proxy solicitations. See Securities Exchange Act § 14
- Racketeering statutes generally, **2:3**

### FEDERAL ACTIONS FOR FRAUD

#### —Cont'd

- Racketeering statutes—Cont'd
  - mail and wire fraud, **2:4**
- Rule 10b-5. See Rule 10b-5 Private Actions
- Securities fraud provisions, **2:1**
- Tender offers. See Securities Exchange Act § 14
- Wire fraud, **2:4**

### FORUM NON CONVENIENS

- Stockholders' derivative actions, **9:10**

### FRAUD

- See also Common-Law Wrongs and Remedies; Federal Actions for Fraud
- Express federal remedies. See Securities Act §§ 11 and 12(2)
- Proxy solicitations. See Securities Exchange Act § 14
- Rule 10b-5. See Rule 10b-5 Private Actions
- Securities Act § 17(a). See Securities Act § 17(a)
- Tender offers. See Securities Exchange Act § 14

### FRAUD ON THE MARKET THEORY

- Rule 10b-5 private actions, **2:22**

### FREEDOM OF INFORMATION ACT

- Information and corporate secrecy, **15:13**

### GOOD FAITH

- Business judgment rule. See Business Judgment Rule
- Racketeer Influenced and Corrupt Organizations Act (RICO), defense, **3:22**

### IMPLIED PRIVATE REMEDIES

- Federal actions for fraud, generally, **2:5**
- Securities Act § 17(a), **4:4**

### IN PARI DELICTO

- Fraud, **10:29**

**IN PARI DELICTO—Cont'd**

Rule 10b-5 private actions, **2:30**

**INCOME TAX RETURNS**

Information and corporate secrecy, **15:5**

**INDEMNITY**

Rule 10b-5 private actions, **2:34**

Securities Act § 11. See Securities Act §§ 11 and 12(2).

Securities Act § 12(2). See Securities Act §§ 11 and 12(2).

Stockholders' derivative actions, indemnification of officers and directors, **9:37**

**INFORMATION AND CORPORATE SECRECY**

See also Administrative Relief or Assistance

Generally, **15:1-15:15**

Clients as sources of information, **15:2, 17:2**

Corporate records

director's right to inspect, **15:10**

judicial enforcement of shareholders' right to review, **15:9**

statutory and common law rights to review, **15:8**

Defendants as sources of information, **15:3**

Ex-employees as sources of information, **15:4**

Federal Securities Act filings, **15:6**

Financial sources, **15:11**

Freedom of Information Act, **15:13**

Importance of information, **15:1**

Income tax returns, **15:5**

Investigative fruits, **15:14**

Legal audits, **15:15**

Sources of information

clients, **15:2**

corporate records, above

defendants, **15:3**

ex-employees, **15:4**

federal Securities Act filings, **15:6**

financial sources, **15:11**

Freedom of Information Act, **15:13**

income tax returns, **15:5**

**INFORMATION AND CORPORATE SECRECY**

**—Cont'd**

Sources of information—Cont'd  
state administrative filings, **15:7**

unexpected sources, **15:12**

State administrative filings, **15:7**

**INJUNCTIONS**

Demand for relief, shareholder's complaint, **19:10**

Securities Exchange Act § 14, misleading tender offers, **7:32**

**INSIDER TRADING**

Rule 10b-5. See Rule 10b-5 Private Actions

Section 16(b). See Securities Exchange Act §§ 9, 16(b), 18(a)

**INSTRUCTIONS, FINDINGS AND VERDICTS**

Generally, **30:1-30:29**

Annotated proposed findings

dissenters rights action, **30:26**

Defendant in state court action, general, **30:27**

Piercing the corporate veil, **30:25**

Request for submittal, **30:1**

breach of contract, elements, **30:11**

damages in breach of contract action, **30:12**

defendants, **30:15**

disclosure obligation, **30:7**

duty to disclose, **30:8**

elements of claim, **30:4**

exemplary damages, **30:14**

facts as constituting violation, **30:6**

Fraud, elements, **30:2**

injury to professional reputation, **30:13**

Intent, **30:5**

material fact, **30:9**

Rule 10b-5, explained, **30:3**

truth or falsity of representation, **30:10**

State court securities action against stockbroker by customer, **30:29**

Stock purchases

allocation of risk, **30:17**

## INDEX

### **INSTRUCTIONS, FINDINGS AND VERDICTS—Cont'd**

- Stock purchases—Cont'd
  - assumption of risk, **30:19**
  - elements of assumption of risk, **30:22**
  - mitigation of damages, **30:24**
  - negligence and stock market loss, **30:18**
  - Principal-broker relationship, **30:16**
  - professional negligence, proof by expert testimony, **30:23**
  - sale of securities as mitigation of loss, **30:21**
  - standard of care applicable to broker, **30:20**
- Underwriter with pendent claims, special, **30:28**

### **INTERNAL INVESTIGATIONS**

- Discovery, **21:21**

### **INTERROGATORIES**

- Discovery, **21:5**

### **INTERSTATE COMMERCE**

- Rule 10b-5 private actions, **2:8**
- Securities Act § 17(a), **4:14**

### **JOINDER OF PARTIES**

- Defensive maneuvers, **20:5**

### **JUDGMENTS**

- Attack on judgment, motions under Rule 60(b), **20:23**

### **JURISDICTION**

- See also Personal Jurisdiction;  
Subject Matter Jurisdiction
- Breach of fiduciary duty, **10:8**
- Derivative actions. See Stockholders' Derivative Actions
- Pendent jurisdictions, Rule 10b-5.  
See Rule 10b-5 Private Actions
- Securities Act § 12(2), **5:3**
- Securities Exchange Act § 9, **6:7**
- Venue
  - Misleading proxy Solicitations, **7:9**

### **JURY TRIAL**

- Election, **22:2**

### **JURY TRIAL—Cont'd**

- Jury demand, motion attacking, **20:15**
- Selection of jury, **22:3**
- Stockholders' derivative actions, right to jury trial, **9:20**

### **LACHES**

- See also Time: Limitations, Laches, and Estoppel
- Rule 10b-5 private actions, **2:28**

### **LEGAL AUDITS**

- Information and corporate secrecy, **15:15**

### **LIABILITY INSURANCE**

- Stockholders' derivative actions, liability insurance for officers and directors, **9:38**

### **LIABILITY OF STATE REGULATORS**

- Losses by investors, **8:5**

### **LIMITATIONS**

- See also Time: Limitations, Laches, and Estoppel
- Fraud, **10:29**
- Insider trading, Securities Exchange Act § 16(b), **6:21**
- Racketeer Influenced and Corrupt Organizations Act (RICO), **3:23**
- Rule 10b-5 private actions, **2:28**
- Securities Exchange Act § 14, misleading proxy solicitations, **7:12**

### **LITIGATION COSTS**

- Generally, **14:1-14:4**
- Attorney-client relationships, instructing clients as to costs, **17:4**
- Client preparation, **14:2**
- Distributing monetary burden, **14:4**
- Shifting monetary burden, **14:3**

### **MAILS**

- Federal actions for fraud, mail and wire fraud, **2:4**
- Securities Act § 17(a), **4:14**

**MANDAMUS**

Demand for relief, shareholder's complaint, **19:20**  
Discovery, **10:43**

**MANIPULATIVE OR DECEPTIVE PRACTICES**

Market manipulation, Securities Exchange Act § 9, **6:2-6:10**  
Rule 10b-5 private actions, **2:19**

**MEDIATION**

Nonjudicial remedies, **18:20**

**MERGERS**

Time, state statutory requirements, **13:4**

**MISAPPROPRIATION**

Insider trader liability, **2:18**

**MITIGATION**

Rule 10b-5 private actions, duty to mitigate damages, **2:33**

**MORE DEFINITE STATEMENT**

Motion for more definite statement, **20:7**

**MOTION PRACTICE**

See Defensive Maneuvers

**MOTION TO STAY CIVIL PROCEEDING**

Arbitration pending, **18:14**

**MOTIONS**

Generally, **27:1-27:55**  
Affidavit supporting motion for costs, **27:25**  
Alternative for summary judgment, **27:19**  
Appeal, reply brief of appellant, **27:48**  
Appointment of special litigation committee, **27:44**  
Change of venue and for costs of appearance, **27:24**  
Defendants offer of judgment, **27:49**  
notice of acceptance, **27:51**  
order, **27:50**  
proof of service, **27:52**

**MOTIONS—Cont'd**

Dismiss upon offer of judgment, **27:29**  
memorandum in support of motion, **27:30**  
Dismissal for failure to comply with statute of limitations, **27:20**  
supporting memorandum, **27:21**  
Dismissal or, alternatively, for stay of proceedings, **27:43**  
Dismissal pursuant to Federal Rules, **27:45**  
Disqualify counsel or for waiver of conflict of interest, **27:41**  
supporting memorandum, **27:42**  
Enjoin director payment of excessive compensation, attorney fees, unauthorized disbursement of funds, and for audit of corporate books, **27:34**  
order, **27:35**  
First amended complaint, **27:9**  
supporting memorandum for stay of discovery, **27:11**  
supporting reply memorandum, **27:10**  
Memorandum in support of motion to dismiss, **27:13**  
another form, **27:14-27:16**  
Memorandum in support of motion to dismiss in state court securities action, **27:8**  
Memorandum of law in support of motion to dismiss derivative lawsuit, **27:12**  
Motion and motion in federal court proxy actions, **27:26**  
Failure to prove loss causation, notice of motion, **27:27**  
Notice of motion in derivative action, **27:28**  
Motion in federal court action, **27:5**  
Motion to dismiss pursuant, **27:17**  
Notice  
dismiss for lack of subject matter jurisdiction, **27:1**  
Notice of motion and motion for default judgment, **27:53**  
order for judgment, **27:54**

## INDEX

### MOTIONS—Cont'd

- Notice of motion and motion in federal court action, **27:3**
- supporting memorandum, **27:4**
- Order enjoining transfer or removal of assets pendente lite, **27:40**
- Order of dismissal, **27:47**
- Order restraining voting of stock pending hearing on injunction without notice, **27:37**
- Plaintiffs support memorandum in opposition, **27:18**
- Preliminary injunction to prohibit transfer of assets, **27:38**
- Prohibit transfer of assets, **27:39**
- Restrain directors from meeting and taking action on behalf of corporation without consent, **27:32**
- order, **27:33**
- Security for costs, **27:31**
- Settlement agreement and release, **27:55**
- reply memorandum, **27:7**
- supporting memorandum, **27:6**
- Strike baseless or bad faith complaint, **27:23**
- Strike scandalous or immaterial matter, **27:22**
- Supporting memorandum, **27:2**
- Temporary restraining order to restrain voting of transferred shares, **27:36**
- Tolling agreement with uncertified class member, **27:46**

### NEGLIGENCE

- See Common-Law Wrongs and Remedies

### NONJUDICIAL REMEDIES

- Generally, **18:1-18:23**
- Arbitration. See Arbitration
- Litigation drawbacks, **18:1**
- Mediation, **18:20**
- Pretrial settlement, **18:21, 18:22**
- Pretrial settlements. See Settlements
- Velvet-hammer letter, **18:2**

### OFFICERS AND DIRECTORS

- See also Directors
- Derivative actions. See Stockholders' Derivative Actions

### OMISSIONS

- Prospectuses and communications, Securities Act § 12(2), **5:5**
- Proxy solicitations, Securities Exchange Act § 14, **7:4**
- Rule 10b-5 private actions, **2:21**
- Securities Act § 17(a), **4:9**
- Tender offers, Securities Exchange Act § 14, **7:24, 7:25**

### OPENING STATEMENT

- Trial, **22:4**

### OPPRESSION

- Generally, **1:1 et seq.**
- Citadels of oppressive power, **1:5**
- Comforting oppressed
- generally, **1:6**
- strategy and tactics, **1:7**
- Remedies, **1:4**
- Strategy and tactics, **1:7**
- Wrongs, **1:3**

### PARTIES LIABLE

- Defendants. See Defendants
- Securities Exchange Act § 14, misleading proxy solicitations, **7:10**

### PENDENT JURISDICTIONS

- Rule 10b-5. See Rule 10b-5 Private Actions

### PERSONAL JURISDICTION

- Defense attack on personal jurisdiction, **20:4, 20:5**
- Stockholders' derivative actions, **9:8**

### POISON PILLS

- Securities Exchange Act of 1934 § 14, defenses, **7:29**

### PRELITIGATION

- Generally, **23:1-23:18**
- Agreement to submit dispute to arbitration, **23:11**
- Demand for arbitration, **23:18**

**PRELITIGATION—Cont'd**

- Demand on board of directors in derivative action, **23:4**
- general denial, **23:7**
- Letter advising shareholders of dissenters rights, **23:17**
- Letter claiming shareholder/director rights, **23:12**
- Letter requesting information prior to annual meeting, **23:13**
- Minutes of board of directors meeting, **23:9**
- Precomplaint demand letter, Another form, **23:2**
- Precomplaint demand letter, general form, **23:1**
- Reflecting appointment of special committee
  - board of directors, **23:8**
- Report of special committee, **23:10**
- Request under Freedom of Information Act, **23:14**
- possible securities violations, **23:15**
- Response to precomplaint demand letter
  - another form, **23:6**
  - threatening sanctions, **23:5**
- Stock purchase agreement, **23:16**
- Velvet hammer letter to opposing counsel, **23:3**

**PRESUMPTIONS**

- Business judgment rule. See Business Judgment Rule
- Corporate veil. See Corporate Veil

**PRETRIAL SETTLEMENT**

- Nonjudicial remedies, **18:21, 18:22**
- Tactical considerations, **18:22**

**PRETRIAL SETTLEMENTS**

- See Settlements

**PRODUCTION OF DOCUMENTS**

- Discovery, requests for production, **21:6**

**PROSPECTIVE BUSINESS ADVANTAGE**

- Tortious interference with prospective business advantage, **10:45**

**PROSPECTUSES AND COMMUNICATIONS, SECURITIES ACT § 12(2)**

- See Securities Act §§ 11 and 12(2)

**PROTECTIVE ORDERS**

- Discovery, **21:20**

**PROVISIONAL DIRECTOR**

- Demand for relief, shareholder's complaint, **19:25**

**PROXY SOLICITATIONS**

- Fraud. See Securities Exchange Act § 14

**PUNITIVE DAMAGES**

- Breach of fiduciary duty, **10:22**
- Common-law wrongs, **10:39**
- Demand for relief, shareholder's complaint, **19:23**
- Fraud, common law, **10:33**
- Rule 10b-5 private actions, **2:35**
- Securities Exchange Act § 16(b), **6:19**
- Stockholders' derivative actions, **9:35**
- Tender offers, misleading, **7:34**

**QUO WARRANTO**

- Demand for relief, shareholder's complaint, **19:22**

**RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)**

- Generally, **3:1-3:27**
- Arbitration, **3:25**
- Attorney fees, **3:20**
- Burden of proof, **3:24**
- Causation, defendants, **3:5**
- Checklist, **3:26**
- Conducting or participating in enterprise, **3:17**
- Conspiracy, **3:18**
- Damages, **3:19**
- Defendants
  - generally, **3:4**
  - causation, **3:5**
  - enterprise liability, **3:8**
  - standing, **3:5**

## INDEX

### **RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)—Cont'd**

Defenses  
    good faith defense, **3:22**  
    statute of limitations, **3:23**

Definitions  
    generally, **3:9**  
    enterprise, **3:11**  
    person, **3:10**  
    racketeering activity, **3:12**

Elements of RICO, racketeering  
    activity, **3:6**

Enterprise, definition, **3:11**

Enterprise liability  
    generally, **3:7**  
    defendants, **3:8**  
    enterprise, definition, **3:11**  
    respondeat superior, **3:8**  
    secondary liability, **3:8**

Equity, availability of private equitable relief, **3:21**

Good faith defense, **3:22**

History and purpose of RICO, **3:2**

Interest in racketeering activity,  
    acquiring or maintaining, **3:16**

Limitations, **3:23**

Money derived from racketeering  
    activity, using or investing, **3:15**

Pattern of racketeering activity, **3:13**

Person, definition, **3:10**

Private equitable relief, availability  
    of, **3:21**

Process, **3:3**

Racketeering activity  
    definition, **3:12**  
    elements of RICO, **3:6**  
    pattern of racketeering activity,  
        **3:13**

Remedies  
    attorney fees, **3:20**  
    damages, **3:19**  
    equity, availability of private equitable relief, **3:21**

Respondeat superior, enterprise  
    liability, **3:8**

Secondary liability, enterprise  
    liability, **3:8**

### **RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)—Cont'd**

Section 1962, prohibited activities  
    generally, **3:14**  
    conducting or participating in  
        enterprise, **3:17**  
    conspiracy, **3:18**  
    interest in racketeering activity,  
        acquiring or maintaining,  
        **3:16**  
    money derived from racketeering  
        activity, using or investing,  
        **3:15**

Standing, defendants, **3:5**

State “little RICO” statutes, **3:27**

Statute of limitations, **3:23**

Venue, **3:3**

### **RACKETEERING**

Federal actions for fraud, statutes  
    generally, **2:3, 2:4**

RICO. See Racketeer Influenced and  
    Corrupt Organizations Act  
    (RICO)

### **RATIFICATIONS**

Fraud, **10:29**

### **RECEIVERSHIPS**

Demand for relief, shareholder’s  
    complaint, **19:12**

### **RECORDS**

See Information and Corporate  
    Secrecy

### **REGISTRATION STATEMENTS, SECURITIES ACT § 11**

See Securities Act §§ 11 and 12(2)

### **REMAND**

State statutory remedies, **8:22**

### **REMEDIES**

See also Administrative Relief or  
    Assistance; Common-Law  
    Wrongs and Remedies;  
    Nonjudicial Remedies

Generally, **1:4**

Arbitration, **18:18**

**REMEDIES—Cont'd**

- Proxy solicitations, misleading, **7:13 et seq.**
- RICO. See Racketeer Influenced and Corrupt Organizations Act (RICO)
- Rule 10b-5. See Rule 10b-5 Private Actions
- Securities Act § 11. See Securities Act §§ 11 and 12(2).
- Securities Act § 12(2). See Securities Act §§ 11 and 12(2).
- Securities Act § 17(a). See Securities Act § 17(a)
- Tender offers, misleading, **7:31 et seq.**

**RESCISSION**

- Demand for relief, shareholder's complaint, **19:18**
- Securities Exchange Act § 14, misleading tender offers, **7:33**

**RESPONDEAT SUPERIOR**

- Racketeer Influenced and Corrupt Organizations Act (RICO), enterprise liability, **3:8**

**RICO**

- See Racketeer Influenced and Corrupt Organizations Act (RICO)

**RULE 10B-5 PRIVATE ACTIONS**

- Generally, **2:6 et seq.**
- Attorney's fees, **2:36**
- Causation, **2:23**
- Contribution, **2:34**
- Damages
  - generally, **2:32**
  - contribution, **2:34**
  - duty to mitigate, **2:33**
  - indemnity, **2:34**
  - punitive damages, **2:35**
- Defenses
  - generally, **2:27**
  - estoppel, **2:29**
  - in pari delicto, **2:30**
  - knowledge, **2:29**
  - laches, **2:28**
  - limitations, **2:28**
  - misconduct of plaintiff, **2:30**

**RULE 10B-5 PRIVATE ACTIONS—Cont'd**

- Defenses—Cont'd
  - past adjudication, **2:31**
  - ratification, **2:29**
  - unclean hands, **2:30**
  - untimeliness, **2:28**
  - waiver, **2:29**
- Elements of liability
  - generally, **2:6**
  - violation elements, below
- Fraud on the market theory, **2:22**
- "In connection with," **2:26**
- Indemnity, **2:34**
- Insider trader liability
  - generally, **2:15**
  - amplification on duty to disclose, **2:16**
  - misappropriation theory, **2:18**
  - Sarbanes-Oxley, enhanced liability under, **2:17**
- Interstate commerce, means or instrumentalities, **2:8**
- Laches, **2:28**
- Limitations, **2:28**
- Manipulative or deceptive practices, **2:19**
- Materiality, **2:22**
- Misappropriation theory, insider trader liability, **2:18**
- Misrepresentations, **2:21**
- Mitigation, duty to mitigate damages, **2:33**
- Omissions, **2:21**
- Path around disclosure violation requirement, **2:20**
- Pendent jurisdictions
  - generally, **2:13**
  - parties liable, **2:14**
- Private remedy, jurisdiction and origins, **2:7**
- Punitive damages, **2:35**
- "Purchase or sale," **2:25**
- Reliance, **2:22**
- Remedies
  - attorney's fees, **2:36**
  - damages, above

## INDEX

### **RULE 10B-5 PRIVATE ACTIONS —Cont'd**

- Sale of business through stock transfer, **2:11**
- Sarbanes-Oxley, enhanced insider trader liability under, **2:17**
- Scienter, **2:24**
- Securities Act § 17(a), Rule 10b-5 compared
- “Security,” definition, **2:10**
- Service of process, **2:12**
- Standing to sue, **2:9**
- Threshold considerations
  - interstate commerce, means or instrumentalities, **2:8**
  - sale of business through stock transfer, **2:11**
  - “security,” definition, **2:10**
  - service of process, **2:12**
  - standing to sue, **2:9**
  - venue, **2:12**
- Venue, **2:12**
- Violation elements
  - causation, **2:23**
  - fraud on the market theory, **2:22**
  - “in connection with,” **2:26**
  - manipulative or deceptive practices, **2:19**
  - materiality, **2:22**
  - misrepresentations, **2:21**
  - omissions, **2:21**
  - path around disclosure violation requirement, **2:20**
  - “purchase or sale,” **2:25**
  - reliance, **2:22**
  - scienter, **2:24**

### **SARBANES-OXLEY**

- Rule 10b-5, enhanced insider trader liability under Sarbanes-Oxley, **2:17**
- Statute of limitations, **2:28**

### **SCANDALOUS OR IMMATERIAL MATTER**

- Motion to strike, **20:8**

### **SCIENTER**

- Fraud, common law, **10:25**
- Rule 10b-5 private actions, **2:24**

### **SCIENTER—Cont'd**

- Securities Act § 12(2), **5:7**
- Securities Act § 17(a), **4:7**
- Securities Exchange Act § 9. See Securities Exchange Act §§ 9, 16(b), 18(a)
- Securities Exchange Act § 16(b). See Securities Exchange Act §§ 9, 16(b), 18(a)

### **SECONDARY LIABILITY**

- Racketeer Influenced and Corrupt Organizations Act (RICO), enterprise liability, **3:8**

### **SECRECY**

- See Information and Corporate Secrecy

### **SECTION 1962**

- See Racketeer Influenced and Corrupt Organizations Act (RICO)

### **SECURITIES ACT OF 1933 § 17(A)**

- Generally, **4:1-4:15**
- Attorney’s fees, **4:18**
- Causation, **4:10**
- Costs, **4:18**
- Defendants, **4:6**
- Defenses
  - generally, **4:15**
- Elements of violation
  - causation, **4:10**
  - fraudulent practices, **4:11**
  - “in the offer of sale,” **4:13**
  - interstate commerce or mails, use of, **4:14**
  - materiality of misstatement or omission, **4:9**
  - offer or sale, **4:12**
- Fraudulent practices, **4:11**
- Implied private remedy, **4:4**
- “In the offer of sale,” **4:13**
- Interstate commerce or mails, use of, **4:14**
- Liable parties, **4:6**
- Mails or interstate commerce, use of, **4:14**
- Materiality of misstatement or omission, elements of violation, **4:9**
- Misstatement, **4:9**

**SECURITIES ACT OF 1933 § 17(A)**

**—Cont’d**

Offer or sale  
     generally, **4:12**  
     “in the offer of sale,” **4:13**  
 Omission, **4:9**  
 Privity, **4:8**  
 Purpose, **4:2**  
 Remedies  
     attorney’s fees, **4:18**  
     costs, **4:18**  
 Rule 10b-5, Section 17(a) compared  
     with, **4:3**  
 Scienter, **4:7**  
 Scope of protection, **4:5**  
 Terms, **4:2**  
 Threshold considerations  
     defendants, **4:6**  
     liable parties, **4:6**  
     privity, **4:8**  
     scienter, **4:7**  
     scope of protection, **4:5**

**SECURITIES ACT OF 1933 § 12(2)**

See Securities Act §§ 11 and 12(2)

**SECURITIES ACT OF 1933 §§ 11  
AND 12(2)**

Generally, **5:1-5:20**  
 Attorney’s fees, Securities Act § 11,  
     **5:19**  
 Contribution  
     prospectuses and communications,  
         Securities Act § 12(2), **5:10**  
     registration statements, Securities  
         Act § 11, **5:20**  
 Costs, Securities Act § 11, **5:19**  
 Damages, Securities Act § 11, **5:18**  
 Defendants  
     prospectuses and communications,  
         Securities Act § 12(2), **5:8**  
     registration statements, Securities  
         Act § 11, **5:16**  
 Defenses  
     prospectuses and communications,  
         Securities Act § 12(2), **5:9**  
     registration statements, Securities  
         Act § 11, **5:17**

**SECURITIES ACT OF 1933 §§ 11  
AND 12(2)—Cont’d**

Indemnity  
     prospectuses and communications,  
         Securities Act § 12(2), **5:10**  
     registration statements, Securities  
         Act § 11, **5:20**  
 Jurisdiction, Securities Act § 12(2),  
     **5:3**  
 Material misrepresentations and  
     omissions, Securities Act  
     § 12(2), **5:5**  
 Omissions, Securities Act § 12(2),  
     **5:5**  
 Parties liable  
     prospectuses and communications,  
         Securities Act § 12(2), **5:8**  
     registration statements, Securities  
         Act § 11, **5:16**  
 Privity, Securities Act § 12(2), **5:6**  
 Prospectuses and communications,  
     Securities Act § 12(2)  
     generally, **5:2 et seq.**  
     contribution, **5:10**  
     defendants, **5:8**  
     defenses, **5:9**  
     indemnity, **5:10**  
     jurisdiction, **5:3**  
     material misrepresentations and  
         omissions, **5:5**  
     parties liable, **5:8**  
     privity, **5:6**  
     remedies, **5:11**  
     scienter, **5:7**  
     standing to sue, **5:4**  
     tax offset rule, **5:12**  
 Registration statements, Securities  
     Act § 11  
     generally, **5:13 et seq.**  
     attorney’s fees, **5:19**  
     contribution, **5:20**  
     costs, **5:19**  
     damages, **5:18**  
     defenses, **5:17**  
     elements of action, **5:14**  
     indemnity, **5:20**  
     parties liable, **5:16**  
     remedies, **5:18**

## INDEX

### **SECURITIES ACT OF 1933 §§ 11 AND 12(2)—Cont'd**

Registration statements, Securities  
Act § 11—Cont'd  
standing to sue, **5:15**

Remedies  
prospectuses and communications,  
Securities Act § 12(2), **5:11**  
registration statements, Securities  
Act § 11, **5:18**

Scienter, Securities Act § 12(2), **5:7**

Securities Act § 11. Registration  
statements, Securities Act § 11,  
above

Securities Act § 12(2). Prospectuses  
and Communications, Securities  
Act § 12(2), above

Standing to sue  
prospectuses and communications,  
Securities Act § 12(2), **5:4**  
registration statements, Securities  
Act § 11, **5:15**

Tax offset rule, Securities Act  
§ 12(2), **5:12**

### **SECURITIES AND EXCHANGE COMMISSION (SEC)**

See Administrative Relief Or Assis-  
tance

### **SECURITIES EXCHANGE ACT OF 1934 § 14**

Generally, **7:1-7:36**

Attorney's fees  
proxy solicitations, misleading,  
**7:14**  
tender offers, misleading, **7:34**

Crowdfunding, capital raising  
technique, **7:6**

Defenses  
proxy solicitations, misleading,  
**7:10**  
tender offers, misleading, **7:28 et  
seq.**

Jurisdiction and Venue, **7:9**

Omissions  
proxy solicitations, misleading, **7:4**  
tender offers, misleading, **7:24,**  
**7:25**

### **SECURITIES EXCHANGE ACT OF 1934 § 14—Cont'd**

Proxy solicitations, misleading  
administrative remedies, **7:13**  
attorney's fees, **7:14**  
causation, **7:7**  
costs, **7:14**  
crowdfunding, **7:6**  
defendants, **7:10**  
defenses, **7:10**  
elements of section 14(a) action  
defendants, **7:10**  
material fact, **7:5**  
misstatements, **7:4**  
omissions, **7:4**  
parties liable, **7:10**  
scienter, **7:11**

elements of Section 14(a) action  
causation, **7:7**  
injury, **7:7**  
proxy solicitation by subject  
company, **7:3**  
standing, **7:8**

expenses, **7:14**  
injury, **7:7**  
limitations, **7:12**  
material fact, **7:5**  
misstatements, **7:4**  
omissions, **7:4**  
parties liable, **7:10**  
private remedies, **7:13**  
proxy solicitation by subject  
company, **7:3**  
punitive damages, **7:15**

remedies  
administrative remedies, **7:13**  
attorney's fees, **7:14**  
costs, **7:14**  
expenses, **7:14**  
private remedies, **7:13**  
punitive damages, **7:15**

scienter, **7:11**

Section 14(a) and rules thereunder,  
**7:2 et seq.**

standing, **7:8**

statutes of limitations, **7:12**

**SECURITIES EXCHANGE ACT OF  
1934 § 14—Cont'd**

Remedies  
     proxy solicitations, misleading,  
         **7:13 et seq.**  
     tender offers, misleading, **7:31 et  
         seq.**  
 Rule 13e-4 and “going private,”  
     misleading tender offers, **7:36**  
 Scienter  
     proxy solicitations, misleading,  
         **7:11**  
     tender offers, misleading, **7:23**  
 Standing  
     proxy solicitations, misleading, **7:8**  
     tender offers, misleading, **7:21**  
 Statutes of limitations, misleading  
     proxy solicitations, **7:12**  
 Tender offers, misleading  
     attorney’s fees, **7:34**  
     causation, **7:27**  
     compensatory damages, **7:31**  
     curative amendments to tender  
         offer, defense, **7:30**  
     damages, **7:31, 7:34**  
     defenses  
         generally, **7:28**  
         curative amendments to tender  
             offer, **7:30**  
         poison pills, **7:29**  
     disclosure of merger negotiations,  
         **7:25**  
     elements of action  
         causation, **7:27**  
         disclosure of merger negotia-  
             tions, **7:25**  
         manipulative practices, **7:26**  
         misrepresentations, material,  
             **7:24, 7:25**  
         omissions, material, **7:24, 7:25**  
         parties liable, **7:22**  
         reliance, **7:27**  
         scienter, **7:23**  
         standing to sue, **7:21**  
     “going private” and SEC Rule  
         13e-4, **7:36**  
     injunction, **7:32**  
     manipulative practices, **7:26**

**SECURITIES EXCHANGE ACT OF  
1934 § 14—Cont'd**

Tender offers, misleading—Cont'd  
     misrepresentations, material, **7:24,  
         7:25**  
     1979 tender-offer rules, **7:18**  
     omissions, material, **7:24, 7:25**  
     parties liable, **7:22**  
     poison pills, defense, **7:29**  
     private right of action, existence  
         of, **7:20**  
     punitive damages, **7:34**  
     reliance, **7:27**  
     remedies  
         compensatory damages, **7:31**  
         damages, **7:31, 7:34**  
         injunction, **7:32**  
         punitive damages, **7:34**  
         rescission, **7:33**  
     rescission, **7:33**  
     Rule 13e-4 and “going private,”  
         **7:36**  
     scienter, **7:23**  
     Section 14(e), **7:16 et seq.**  
     Section 13(d), litigation under,  
         **7:19**  
     standing to sue, elements of action,  
         **7:21**  
     state take over statutes, **7:35**  
     “tender offer,” definition, **7:17**

**SECURITIES EXCHANGE ACT OF  
1934 §§ 9, 16(B), 18(A)**

Generally, **6:1-6:21**  
 Attorney’s fees  
     insider trading, Securities  
         Exchange Act § 16(b), **6:19**  
     market manipulation, Securities  
         Exchange Act § 9, **6:10**  
 Costs, Securities Exchange Act § 9,  
     **6:10**  
 Damages, Securities Exchange Act  
     § 9, **6:9**  
 Defendants  
     insider trading, Securities  
         Exchange Act § 16(b), **6:18**  
     market manipulation, Securities  
         Exchange Act § 9, **6:5**

## INDEX

### **SECURITIES EXCHANGE ACT OF 1934 §§ 9, 16(B), 18(A)—Cont'd**

Defenses, Securities Exchange Act § 16(b), **6:20**  
Director by deputization, insider trading, Securities Exchange Act § 16(b), **6:18**  
False filings, Securities Exchange Act § 18(a), **6:2**  
Insider trading, Securities Exchange Act § 16(b)  
    generally, **6:11, 6:12**  
    attorney's fees, **6:19**  
    defendants, **6:18**  
    defenses, **6:20, 6:21**  
    director by deputization, **6:18**  
    limitations, **6:21**  
    parties liable, **6:18**  
    punitive damages, **6:19**  
    purchase or sale, **6:15**  
    scienter, **6:14**  
    securities covered, **6:13**  
    Securities Exchange Act § 16, **6:11**  
    "short swing" profit, **6:16**  
    standing to sue, **6:17**  
    statute of limitations, **6:21**  
Jurisdiction, Securities Exchange Act § 9, **6:7**  
Market manipulation, Securities Exchange Act § 9  
    generally, **6:3**  
    attorney's fees, **6:10**  
    costs, **6:10**  
    damages, **6:9**  
    defendants, **6:5**  
    false filings, **6:2**  
    jurisdiction, **6:7**  
    parties liable, **6:5**  
    proscribed activities, **6:8**  
    remedies  
        attorney's fees, **6:10**  
        costs, **6:10**  
        damages, **6:9**  
        scienter, **6:6**  
        standing to sue, **6:4**  
Misleading statements in SEC filings, Securities Exchange Act § 18(a), **6:2**

### **SECURITIES EXCHANGE ACT OF 1934 §§ 9, 16(B), 18(A)—Cont'd**

Parties liable  
    insider trading, Securities Exchange Act § 16(b), **6:18**  
    market manipulation, Securities Exchange Act § 9, **6:5**  
Punitive damages, Securities Exchange Act § 16(b), **6:19**  
Purchase or sale, Securities Exchange Act § 16(b), **6:15**  
Scienter  
    insider trading, Securities Exchange Act § 16(b), **6:14**  
    market manipulation, Securities Exchange Act § 9, **6:6**  
    "Short swing" profit, insider trading, **6:16**  
Standing to sue  
    insider trading, Securities Exchange Act § 16(b), **6:17**  
    market manipulation, Securities Exchange Act § 9, **6:4**  
Statute of limitations, insider trading, Securities Exchange Act § 16(b), **6:21**

### **SECURITIES LITIGATION UNIFORM STANDARDS ACT (SLUSA)**

Class actions, **12:3**  
State statutory remedies, **8:22**

### **"SECURITY"**

Blue Sky laws, **8:4**  
Rule 10b-5 private actions, **2:10**

### **SERVICE OF PROCESS**

Rule 10b-5 private actions, **2:12**

### **SETTLEMENTS**

Stockholders' derivative actions, **9:32**

### **"SHORT SWING" PROFIT**

Insider trading, **6:16**

### **SPECIFIC PERFORMANCE**

Demand for relief, shareholder's complaint, **19:19**

### **STANDING**

Breach of fiduciary duty, **10:7**

**STANDING—Cont'd**

- Racketeer Influenced and Corrupt Organizations Act (RICO), defendants, **3:5**
- Rule 10b-5 private actions, **2:9**
- Securities Exchange Act § 9. See Securities Exchange Act §§ 9, 16(b), 18(a)
- Securities Exchange Act § 16(b). See Securities Exchange Act §§ 9, 16(b), 18(a)
- Stockholders' derivative actions, **9:11-9:14**

**STATE ANTITAKEOVER**

**STATUTES**

- Generally, **8:16 et seq.**
- Constitutionality, **8:19, 8:20**
- Historical background, **8:19, 8:20**
- Post-MITE history, **8:20**
- Remedies, **8:18**
- Scope, **8:17**

**STATE STATUTORY REMEDIES**

- Generally, **8:1-8:22**
- Attractions of state remedies, **8:1**
- Other state statutes, **8:21**
- Remands of securities cases, **8:22**
- Securities Litigation Uniform Standards Act (SLUSA) of 1998, **8:22**
- Securities statutes, **8:2 et seq.**
- Securities statutes. See Blue Sky Laws
- Takeovers. See State Antitakeover Statutes

**STATUTE OF FRAUDS**

- Generally, **10:42**

**STATUTE OF LIMITATIONS**

- See Limitations

**STIPULATIONS**

- Discovery, **21:20**

**STOCKHOLDERS' DERIVATIVE ACTIONS**

- Generally, **9:1-9:39**
- Arbitration, **9:31**
- Attorney-client privilege, **9:30**
- Attorney's fees, **9:36**

**STOCKHOLDERS' DERIVATIVE ACTIONS—Cont'd**

- Background, **9:1**
- Choice of law, demand requirement, **9:15**
- Clean hands, **9:22**
- Collusion
  - allegation of noncollusion as pre-requisite, **9:17**
  - defense, **9:22**
- Corporate or personal recovery, **9:33**
- Costs
  - recovery, **9:36**
  - security for costs, **9:19**
- Defenses
  - generally, **9:21**
  - clean hands, **9:22**
  - collusion, **9:22**
  - pari delicto, **9:22**
  - presumptions of business purpose and good faith, dismissal by special litigation committees generally, **9:23**
  - basis for committee's decision, **9:26**
  - ethics and representation of defendants, **9:27**
  - independence of committee, **9:25**
  - selection of committee, **9:24**
  - special litigation committees, dismissal by, **9:23-9:27**
  - standing, **9:22**
  - untimeliness, **9:28**
- Demand on board of directors, **9:14-9:16**
- Discovery, **9:29**
- Dismissal, **9:32**
- Elements, **9:4**
- Equitable remedies, **9:34**
- Ethics and representation of defendants, **9:27**
- Fair and adequate representation, **9:13, 20:13**
- Federal Rule 23.1, **9:3**
- Forum non conveniens, **9:10**
- Futility of demand, standard for establishing, **9:16**
- Historical perspective, **9:1**

## INDEX

### STOCKHOLDERS' DERIVATIVE ACTIONS—Cont'd

- Indemnification of officers and directors, **9:37**
- Jurisdiction
  - personal jurisdiction, **9:8**
  - removal to federal court, **9:7**
  - subject matter jurisdiction, **9:6**
- Jury trial, right to, **9:20**
- Liability insurance, officers and directors, **9:38**
- Minority stockholders, “unfairly prejudicial” treatment, **9:34**
- Motions to stay, **20:14**
- New statutory remedies, **9:34**
- Noncollusion, allegation of noncollusion as prerequisite, **9:17**
- Officers and directors
  - alternative protection, **9:38**
  - equitable remedies, conduct triggering, **9:34**
  - indemnification, **9:37**
  - liability insurance, **9:38**
  - quasi-derivative actions, **9:39**
- Pari delicto, **9:22**
- Personal jurisdiction, **9:8**
- Personal or corporate recovery, **9:33**
- Plaintiff's preconditions
  - generally, **9:11**
  - demand on board of directors, **9:14-9:16**
  - fair and adequate representation, **9:13**
  - shareholder status, **9:12**
- Presumptions of business purpose and good faith, dismissal by special litigation committees. Defenses, above
- Punitive damages, **9:35**
- Quasi-derivative actions, actions by officers and directors, **9:39**
- Recovery, **9:33-9:35**
- Removal to federal court, **9:7**
- Security for costs, **9:19**
- Settlement, **9:32**
- Shareholder status, **9:12**
- Special litigation committees, dismissal by, **9:23-9:27**

### STOCKHOLDERS' DERIVATIVE ACTIONS—Cont'd

- Standard for establishing futility of demand, **9:16**
- Standing to sue, **9:11-9:14, 9:22**
- State statutes, **9:2**
- Subject matter jurisdiction, **9:6**
- Takeover maneuvers, **9:5**
- Transfer of venue, **9:10**
- 28 U.S.C.A. § 1404(a), transfer of venue, **9:10**
- Unfair or inadequate representation, motion to dismiss, **20:13**
- “Unfairly prejudicial” treatment of minority stockholders, **9:34**
- Untimeliness, **9:28**
- Venue, **9:10**
- Verification of complaint, **9:18**

### SUBJECT MATTER JURISDICTION

- Defensive maneuvers, **20:2**
- Stockholders' derivative actions, **9:6**

### SUMMARY JUDGMENT

- Defensive maneuvers, **20:11**

### TAKEOVERS

- See State Antitakeover Statutes

### TENDER OFFERS

- Fraud. See Securities Exchange Act § 14

### TIME: LIMITATIONS, LACHES, AND ESTOPPEL

- Generally, **13:1-13:7**
- Charter amendments, state statutory requirements, **13:4**
- Defendants, time as on side of, **13:1**
- Equitable defenses, **13:5, 13:6**
- Mergers, state statutory requirements, **13:4**
- Statute of limitations, **13:3**
- Time bar
  - attacking by plaintiff, **13:6**
  - defendant's use of time bar, **13:7**
  - failure of plaintiffs to act, **13:2**

### TRIAL

- Generally, **22:1-22:11**

**TRIAL—Cont'd**

Bench or jury trial, **22:2**  
 Closing arguments, **22:6-22:11**  
 Jury trial, **22:2, 22:3**  
 Opening statement, **22:4**  
 Preparation, **22:1**  
 Strategy and tactics, **22:5**

**TRIAL AND MATTERS**

Generally, **29:1-29:22**  
 Award of attorney fees and costs, **29:14**  
     Another form, **29:15**  
     supporting affidavit, **29:16**  
     supporting affidavit by plaintiffs attorney, **29:18**  
     supporting affidavit of plaintiff, **29:17**  
 Closing argument, **29:13**  
 Confirmation of arbitration award, **29:20**  
     order confirming award, **29:21**  
 Escrow agency agreement, **29:6**  
 Notice of proposed settlement, **29:8**  
 Notice to class, **29:2**  
 Order approving settlement, **29:3**  
 Plan of allocation of settlement proceeds, **29:7**  
 Postjudgment relief, new trial, or remittitur, **29:19**  
 Post-trial brief, shareholders case, **29:22**  
 Settlement and release, **29:4**  
 State securities laws and common-law actions, **29:11**  
 Statement of law, **29:12**

**TRIAL AND MATTERS—Cont'd**

Stipulation, dissenters rights action, **29:1**  
 Stipulation of settlement, **29:5**  
 Trial brief, **29:10**  
 Voir dire, **29:9**

**VELVET-HAMMER LETTER**

Nonjudicial remedies, **18:2**

**VENUE**

Arbitration, **18:12**  
 Attack on venue, **20:6**  
 Defensive maneuvers, **20:6**  
 Jurisdiction and Venue  
     Misleading Proxy solicitations, **7:9**  
 Racketeer Influenced and Corrupt Organizations Act (RICO), **3:3**  
 Rule 10b-5 private actions, **2:12**  
 Stockholders' derivative actions, **9:9, 9:10**

**VISITORIAL POWERS DOCTRINE**

Breach of fiduciary duty, **10:8**

**WORK-PRODUCT DOCTRINE**

Discovery, **21:19**

**WRITTEN QUESTIONS**

Discovery, depositions on written questions, **21:4**

**WRONGS**

Generally, **1:3**  
 Common law. See Common-Law Wrongs and Remedies