

Index

ABILITY TO REPAY LOAN

Small Business Administration, financing from, **4:1**

ABSENCE OR PRESENCE

Series A convertible preferred stock purchase agreement (annotated), absence of changes or liabilities, **6:27, 6:34**

Term loan agreements, absence of default, **7:42, 7:47**

ACCESSING PUBLIC MARKETS

Small Business Administration, financing from, **4:16**

ACCOUNTANTS

Due Diligence and Civil Liability (this index)

ACCOUNTS AND ACCOUNTING

Federal securities laws, **11:46**

Limited liability companies, **3:61**

ACCREDITED INVESTORS

Definition of, amendments to, **11:4.10**

Federal securities laws, **11:6, 11:6.70**

New worth standard, **11:6.70**

Preferred stock, **6:45**

Review of “accredited investor” definition, SEC, **11:4.30**

Selected SEC guidance, **11:4.20**

ACCUMULATED EARNINGS TAX

S corporations, avoidance, **2:10**

ACQUISITION OR ACQUISITIONS

S corporations, interest in pass-through entity, **2:43**

ACTIONS AND REMEDIES

Litigation (this index)

ACTIVE AND PASSIVE VOICES

Disclosure, **13:12**

ADDITIONAL DEBT

Term loan agreements, **7:50**

ADDITIONAL MATTERS

Benefits of entity, S corporations, **2:11**

ADJUSTMENT OR ADJUSTMENTS

S corporations, adjusted highest section one rate, **2:76**

ADMINISTRATIVE LAW JUDGES (ALJ)

Constitutionality of SEC use, **14:89.50**

ADMINISTRATIVE LAW JUDGES (ALJ)

—Cont’d

Enforcement proceedings rules unconstitutional, Seventh Amendment, **14:89.60**

LIAT-2025-private nondelegation doctrine-constitutionality of broker suspension prior to sec review-appointments clause-FINRA, **14:89.80**

Litigants may challenge the constitutionality of SEC administrative proceedings in Federal District Court parallel or collateral to administrative proceedings before the SEC, **14:89.70**

Non-final SEC administrative order pertaining to FINRA action is not subject to judicial review, **14:89.85**

SEC proxy voting advice business regulations, **14:89.90**

Solicitation and proxy voting advice businesses post loper bright, **14:89.95**

ADMINISTRATIVE PROCEEDINGS

Due Diligence and Civil Liability (this index)

ADVERSE INTERESTS

Due diligence, corporate scienter exception, **14:52.97**

ADVERTISING

Federal securities laws, **11:7, 11:7.50**

ADVICE OF COUNSEL

Opinion of Counsel (this index)

AFFECTED TAXPAYERS

S corporations, limitation on passive losses under Tax Reform Act of 1986, **2:52**

AFFILIATES

Federal securities laws, **11:85, 11:111**

Term loan agreements, **7:54**

AFFIRMATIVE COVENANTS

Term Loan Agreements (this index)

AGENTS AND AGENCY

Due Diligence and Civil Liability (this index)

State blue sky regulation, **15:5**

AGGREGATE OFFERING PRICE

Federal securities laws, **11:9, 11:9.30**

AGREEMENTS OR CONTRACTS

S corporations, buy-sell agreements, **2:22**

AIDING AND ABETTING

Due Diligence and Civil Liability (this index)

ALABAMA

Small business, assistance programs for, **App 18.1**

ALASKA

Small business, assistance programs for, **App 18.2**

ALLOCATION

Limited liability companies, **3:50, 3:56**
 S corporations, tax items, **2:58**
 Series A convertible preferred stock purchase agreement (annotated), **6:81**

ALLOWANCE OR ALLOWANCES

S corporations, losses and deductions, **2:59, 2:60**

ALTERNATIVE MINIMUM TAX

Choosing the business financing format, **1:7**
 S corporations, avoidance of corporate alternative minimum tax, **2:9**

ALTERNATIVE REPORTING

Sarbanes-Oxley Act, due diligence and civil liability, **14:56**

ALTERNATIVE SIZE STANDARDS

Small Business Administration, financing from, **4:1.50**

AMENDMENTS

Accelerated filers, definitions, **13:1.70**
 Federal Securities Laws (this index)
 Items 101, 103, and 105, **13:1.56**
 Items 301, 302, and 303, **13:1.57**
 Limited Liability Companies (this index)
 NVCA Model Venture Financings Documents (2007) (this index)
 Preferred Stock (this index)
 Regulation D and Form D, proposed amendment, **11:4.60**
 Regulation S-K, disclosure, **13:1.50, 13:1.55**
 Regulation S-K, modernization of Items 101, 103, and 105, **13:1.55.10**
 Resales of securities by investors. Federal Securities Laws (this index)
 S corporations, **2:65**
 Small Business Administration, Early Stage SBIC Limited Partnership Agreement, **4:18**
 Small business issuer rules and forms. Federal Securities Laws (this index)
 Smaller reporting company, amendments to definition of, **App 1.10**

AMERICAN BAR ASSOCIATION

Sarbanes-Oxley Act, due diligence and civil liability, **14:63**

AMERICAN CAPITAL STRATEGIES (ACAS)

Business development company (BDC), **5:3**

AMERICAN STOCK EXCHANGE

Going public, **12:28**

AMICUS POSITION

Due diligence and civil liability, “creating” the misrepresentation, **14:49**

AMOUNT OR QUANTITY

Federal Securities Laws (this index)

ANNOTATED OPINION OF STOCK PURCHASE AGREEMENT

Preferred Stock (this index)

ANNOUNCEMENT, REGISTRATION BY

State blue sky regulation, **15:27**

ANNUAL MEETING OF SHAREHOLDERS

Going Public (this index)

ANTIDILUTION PROVISIONS

Choosing the business financing format, **1:15**
 Convertible debenture-long form, **17:3**
 Convertible preferred stock-long form, **17:2**
 “Force down” antidilution provisions, **17:5**
 Forms
 convertible debenture-long form, **17:3**
 convertible preferred stock-long form, **17:2**
 “force down” antidilution provisions, **17:5**
 “pay to play” antidilution provisions, **17:5**
 short form, **17:1**
 stock purchase warrant-long form, **17:4**
 “Pay to play” antidilution provisions, **17:5**
 Preferred stock, **1:15**
 Short form, **17:1**
 Stock purchase warrant-long form, **17:4**

ANTIFRAUD PROVISIONS

State blue sky regulation, **15:6**

APOLLO INVESTMENT (AINV)

Business development company (BDC), **5:3**

APPLICATION OR APPLICABILITY

S corporations, payments for taxable year, **2:78**
 S corporations, percentage or payments for taxable year, **2:75**

APPROVAL

Consent or Approval (this index)

ARES CAPITAL (ARCC)

Business development company (BDC), **5:3**

ARIZONA

Small business, assistance programs for, **App 18.3**

INDEX

ARKANSAS

Small business, assistance programs for, **App 18.4**

ARRANGEMENTS

S corporations, treatment as equity, **2:23**

ARTICLES OF INCORPORATION

Preferred Stock (this index)

ARTICLES OF ORGANIZATION

Limited liability companies, **3:44**

ASPIRATIONAL STATEMENTS

Due diligence and civil liability, **14:15.60**

ASSETS

Digital, **15:3.70**

Preferred stock, **6:29**

“ASSETS REQUIREMENT” OF (C)(2)(II)

Federal securities laws, **11:46 to 11:50**

ASSIGNS

Series A convertible preferred stock purchase agreement (annotated), **6:90**

ASSISTANCE FOR STATE SMALL BUSINESS PROGRAMS

Small Business, State-by-State Summary of Assistance Programs for (this index)

AT-RISK LIMITATIONS

Limited liability companies, **3:63**

S corporations, comparison of taxation of partners and shareholders, **2:61**

ATTORNEYS

Due Diligence and Civil Liability (this index)

Opinion of Counsel (this index)

Sarbanes-Oxley Act (this index)

AUDITORS' FEES

Going public, **12:33**

AUDITS AND AUDITORS

Auditing Standard No. 5, standard for auditing internal control over financial reporting, **12:17 to 12:19**

Auditing Standard No. 16, auditor communications with audit committees, **12:8.50**

Due diligence and civil liability, **14:16, 14:68, 14:74, 14:142**

FAQs, Management's Report on Internal Control (Sept. 24, 2007), **App 11.1**

Independence of Auditor (this index)

Internal control, PCAOB Guidance for Auditors of Smaller Public Companies (January 23, 2009), **App 11.3**

Material misstatement, PCAOB Proposed Auditing Standard Related to Auditor's Assessment of and Response to Risk of Material

AUDITS AND AUDITORS—Cont'd

Misstatement in Financial Statement (Dec. 17, 2009), **App 11.2**

PCAOB Auditing Standard AU 3101, **App 11.6**

PCAOB Auditing Standards Release # 2012-001, **App 11.4**

Preferred stock, **6:69**

Sarbanes-Oxley Act (this index)

S corporations, comparison of taxation of partners and shareholders, **2:69, 2:70**

Securities and Exchange Commission Guidance Regarding Management's Report on Internal Control (June 20, 2007), **App 11**

AUTHORITY AND AUTHORIZATION

Preferred Stock (this index)

AUTOMATIC SHELF-REGISTRATION

SEC's 2005 securities offering revisions, automatic shelf-registration for well-known seasoned issuers, **11:150**

AVOIDANCE

S Corporations (this index)

BAD ACTORS

Felons and Other Bad Actors (this index)

“BAD BOY” EXCLUSIONS

Federal securities laws, **11:74**

BANKS AND FINANCIAL INSTITUTIONS

Institutional Private Placements (this index)

BARCHRIS CASE

Due diligence and civil liability, **14:7**

BAR ORDERS

Due diligence and civil liability, **14:115**

BASE YEAR

S corporations, net base year income, **2:77**

BASIS

S corporations, comparison of taxation of partners and shareholders, **2:55 to 2:57**

BENEFICIAL OWNERSHIP

Federal securities laws, **11:112 to 11:115**

BENEFITS

S corporations, **2:1 et seq.**

“BIG BATH” CHARGE ACCOUNTING PRACTICES

Due diligence and civil liability, **14:96**

BITCONNECT

Due diligence and civil liability, **14:38.50**

BLACKROCK KELSO CAPITAL (BKCC)

Business development company (BDC), **5:3**

BLUE BELL

Due diligence and civil liability, **14:129**

BLUE SKY LAWS

Internet offerings, **11:8**
 Limited Liability Companies (this index)
 Limited offerings exemption, **App 7.1**
 NASAA disclosure guidelines for cover legends,
App 7.2
 Preferred stock, **6:51, 6:60**
 State Blue Sky Regulation (this index)

BOARD OF DIRECTORS

Directors (this index)

BOOKS AND RECORDS

Series A convertible preferred stock purchase agreement (annotated), **6:37**

BOOK VALUE/TAX BASIS DIFFERENCES

Limited liability companies, **3:57**

BRIGHT LINE APPROACH

Due diligence and civil liability, “creating” the misrepresentation, **14:50**

BROKER-DEALERS

FINRA Regulatory Notice 10-22, reasonable investigations by broker-dealers in Regulation D offerings, **App 1.2A**
 State blue sky regulation, **15:5**

BROKERS

Due Diligence and Civil Liability (this index)
 Series A convertible preferred stock purchase agreement (annotated), **6:96**

BROPHY, DAVID J.

Small Business Administration, financing from, **4:8**

“BULLETPROOF” STATUTES

Limited liability companies, **3:4, 3:29**

BURRILL, G. STEVEN

Small Business Administration, financing from, **4:11**

BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATION (BIDCO)

Small business, state assistance to, **5:1**

BUSINESS COVENANTS

Institutional private placements, **7:6**

BUSINESS DEVELOPMENT COMPANIES (BDCs)

Generally, **5:3**
 Test-the-waters communication, Rule 163B, **11:137.60**

“BUSINESS” DISCLOSURES

Disclosure (this index)

BUSINESS OF COMPANY, INVESTIGATION OF

Due diligence and civil liability, **14:24**

BUSINESS PLANS

Outline of, **18:1**
 Small Business Administration, financing from, **4:11**

BUY SELL AGREEMENTS

S corporations, one class of stock requirement for eligibility, **2:22**

CALCULATION

Federal securities laws, net worth of accredited investors, **15:20**

CALIFORNIA

Small business, assistance programs for, **App 18.5**

CALIFORNIA LLC OPERATING AGREEMENT

Form of (2011), **20:4**

CALL PERIOD

Small Business Administration, Early Stage licensing process, **4:17**

CALL PROTECTION

Institutional private placements, **7:3**

CAPITAL AND CAPITALIZATION

Early Stage SBIC Limited Partnership Agreement applicants, **4:18**
 Limited liability companies, **3:49**
 Preferred Stock (this index)
 Small Business Administration, financing from, **4:8, 4:18**
 State blue sky regulation, **15:25**

CAUSATION

Due Diligence and Civil Liability (this index)

C&DIs

Amount of securities sold, limitation on, **11:121.30, 11:121.70, 11:122.50, 11:126.50**
 Bad actor disqualification under Rule 506(d) and disclosures under Rule 506(e), **11:4.52**
 Crowdfunding, **11:75.75**
 Current public information, **11:101.50**
 Definition of “restricted securities,” **11:100.50**
 Emerging growth companies (EGCs), disclosure and registration under FAST Act, **11:153.70**
 General solicitation under Rule 506(c), **11:4.51**
 Holding period for restricted securities, **11:115.50**
 Integration of “separate” offerings
 Rule 147, **11:59**
 Rule 155, **11:40.50**

C&DIs—Cont’d

Integration of “separate” offerings—Cont’d
Rule 506, **11:4.53**

Pre-existing relationships, existence and
substance of, **11:7.55**

Private offering exemption

accredited investors (other than grantor trusts),
11:6.50

aggregate offering price, **11:9.30**

counting purchasers under Rule 501(e),
11:10.30

Form D filings, **11:12.20**

general advertising prohibition, **11:7.50**

informational requirements, **11:10.70**

integration safe harbor under Rule 502(e),
11:12.10

purchaser representatives, **11:10.90**

Rules 504, 505, and 506, **11:12.40**

sophistication under Rule 506, **11:10.90**

Regulation A, **11:64.50**

Regulation S-K (February 2019), **App 5.9**

Resales of securities

definition of “restricted securities,” **11:100.50**

exemptions under Section 4(a)(1) and Rule
144, above

holding period for restricted securities,
11:115.50

Rule 147, **11:59.50**

Rule 147A, **11:59.50**

Rule 501, **11:7.60**

Rule 506, integration of offerings, **11:4.53**

Rule 506(c), **11:7.70**

Section 3(a)(11), **11:59.50**

Securities Act sections, SEC Staff C&DIs, **App
5.3**

CELESTICA CASE

Disclosure, qualitative approach to materiality,
13:4

CENTRALIZATION OF MANAGEMENT

Limited liability companies, **3:30**

CERTIFICATE OF INCORPORATION

NVCA model venture financings documents
(2007) (amended and restated), **15A:4**

CERTIFICATES AND CERTIFICATION

Preferred Stock (this index)

CERTIFIED DEVELOPMENT COMPANIES

Small business, state assistance to, **5:1**

CERTIFIED LENDERS PROGRAM (CLP)

Small Business Administration, financing from,
4:1

CHANGE

Modification or Change (this index)

CHARGE

Self-charged interest, **2:45, 2:46**

CHARTS

S corporations, comparison of partnership and S
corporation provisions, **2:83**

CHEAP STOCK

State blue sky regulation, **15:20**

CHECKLISTS

Due diligence and civil liability, **14:16**

Small Business Administration, applicant for
Early Stage licensing, **4:17**

CHECK-THE-BOX REGULATIONS

Limited Liability Companies (this index)

CHEVRON DOCTRINE

Overruled by U.S. Supreme Court, **14:90.20**

CHOICE OR ELECTION

Choosing the Business Financing Format (this
index)

Form of conversion of debenture at election of
company, **18:5**

Limited liability companies, elective classifica-
tion of certain entities, **3:12 to 3:15**

S corporations, **2:5, 2:6, 2:28**

**CHOOSING THE BUSINESS FINANCING
FORMAT**

Generally, **1:1 to 1:24**

Alternative minimum tax income (AMTI), **1:7**

Antidilution Provisions (this index)

Common stock

generally, **1:19**

tax considerations, **1:6**

Conversion rights of preferred stock provisions,
1:14

Convertible debt or notes, **1:9**

Co-sale, right of, **1:22**

Debt instruments

generally, **1:21**

senior securities, issuer’s choice as to debt or
preferred stock, **1:2**

tax considerations, debt or equity instruments,
1:7, 1:8

Directory of venture capital providers, **1:24**

Dividends on preferred stock, **1:13**

Governing law, **1:1**

Hybrid securities, generally, **1:1**

Introduction, **1:1**

Issuer’s choice of preferred stock or debt, **1:2**

Legal drafting considerations, **1:4**

Liquidation, preference on, **1:17**

Optimal capital structure of issuer, considerations
of, **1:3**

Original issue discount (OID), **1:9, 1:10**

CHOOSING THE BUSINESS FINANCING

FORMAT—Cont'd

- Participating preferred stock, **1:12**
- Partnerships for research and development, **1:23**
- Preferred stock provisions
 - generally, **1:11 to 1:18**
 - antidilution provisions, **1:15**
 - conversion rights, **1:14**
 - dividends on preferred stock, **1:13**
 - issuer's choice of preferred stock or debt, **1:2**
 - liquidation, preference on, **1:17**
 - participating preferred stock, **1:12**
 - redemption right of user, **1:16**
 - voting rights, **1:18**
- Redemption
 - preferred stock provisions, redemption right of user, **1:16**
 - premiums as taxable distributions, **1:10**
- Registration rights, **1:22**
- Resale of rights, **1:22**
- Research and development partnerships, **1:23**
- Senior securities
 - generally, **1:2 to 1:10**
 - debt or preferred stock, issuer's choice of, **1:2**
 - legal drafting, **1:4**
 - optimal capital structure, considerations of, **1:3**
 - tax considerations, below
- Tax considerations
 - generally, **1:5 to 1:10**
 - alternative minimum tax income (AMTI), **1:7**
 - common stock, whether to issue, **1:6**
 - convertible debt or notes, **1:9**
 - debt or equity instruments, **1:7, 1:8**
 - original issue discount (OID), **1:9, 1:10**
 - redemption premiums as taxable distributions, **1:10**
- Usury problems, **1:4**
- Voting rights, preferred stock provisions, **1:18**
- Warrants, **1:20**

CHRIS-CRAFT CASE

- Due diligence and civil liability, **14:9**

CIRCULARS

- Offerings, Small Business Administration, financing from, **4:12**

CIVIL LIABILITY

- Due Diligence and Civil Liability (this index)

CLASS ACTION SETTLEMENTS

- Federal securities laws, **11:100**

CLASSIFICATION

- Limited Liability Companies (this index)
- S corporations, comparison of taxation of partners and shareholders, **2:82**

CLASS OR CLASSES

- S corporations, one class of stock requirement for eligibility, **2:21 to 2:27**

CLOSING CONDITIONS

- Institutional private placements, **7:5**

CLOSING REPRESENTATIONS OF ISSUER

- Institutional private placements, **7:4**

CODE OF ETHICS

- Disclosure, **13:40, 13:41**
- Going public, consequences of, **12:8**

COLLATERAL

- Term loan agreements, **7:17**

COLORADO

- Small business, assistance programs for, **App 18.6**

COMBINATIONS

- Certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:110**

COMMENT LETTER FROM SBA

- Small Business Administration, applicant for Early Stage licensing, **4:17**

COMMERCIAL REAL ESTATE REFINANCING

- Small Business Administration, financing from, **4:1.50**

COMMITMENT FEES

- Term loan agreements, **7:35**

COMMODITY FUTURES TRADING

- Federal securities laws, **11:49**

COMMON LAW NEGLIGENCE CLAIMS

- Due diligence and civil liability, **14:124**

COMMON STOCK

- Choosing the Business Financing Format (this index)
- Stock purchase agreement (common stock), form of, **18:7**
- Structuring investments to improve returns, **6:7**

COMPARISONS

- S Corporations (this index)

COMPASS DIVERSIFIED HOLDINGS (CODI)

- Business development company (BDC), **5:3**

COMPENSATING BALANCES

- Term loan agreements, **7:34**

COMPENSATION

- Disclosure, **13:6, 13:42, 13:43**
- Dodd-Frank Act (2010) corporate governance provisions, **12:34**

INDEX

COMPENSATION—Cont'd

JOBS Act (2012) revisions for emerging growth companies, **12:34**

COMPETENCY OF COUNSEL

Due diligence and civil liability, **14:16**

COMPLIANCE AND COMPLIANCE CERTIFICATE

Series A convertible preferred stock purchase agreement (annotated), **6:33, 6:56**

COMPLIANCE AND DISCLOSURE INTERPRETATIONS

C&DIs (this index)

COMPUTATION OF INTEREST ASSESSMENT

Term loan agreements, **7:32**

CONDITIONS

Preferred Stock (this index)

CONFIDENTIALITY

Emerging growth companies, submission of confidential information, JOBS Act frequently asked questions, **App 12.3**

Going Public (this index)

Rules 406 and 24b-2, confidential treatment applications, **App 19**

Series A convertible preferred stock purchase agreement (annotated), **6:92**

CONFLICTS OF INTEREST

Preferred stock, **6:139**

Small Business Administration, financing from, **4:4**

CONNECTICUT

Small business, assistance programs for, **App 18.7**

CONSENT OR APPROVAL

Preferred Stock (this index)

S corporations, elections, **2:29**

Term loan agreements, **7:40**

CONSPIRACY

Due diligence and civil liability, **14:52.30**

CONTINUITY OF LIFE

Limited liability companies, **3:29**

CONTRACTUAL NON-RELIANCE CLAUSES

Due diligence and civil liability, disclosure “defenses,” **14:99.50**

CONTRIBUTION

Due diligence and civil liability, **14:118, 14:121, 14:122**

Preferred stock, **6:82**

CONTRIBUTIONS OF PROPERTY OR SERVICES

Limited liability companies, **3:53, 3:54**

CONTROL PERSONS

Disclosure, **13:5, 13:40, 13:41**

Liability. Due Diligence and Civil Liability (this index)

CONTROL PROHIBITIONS

Small Business Administration, financing from, **4:4**

CONVERSION OR CONVERSION RIGHTS

C corporation to S corporation, recapture of inventory appreciation, **2:68**

Choosing the business financing format, **1:14**

Federal securities laws, **11:106**

Partnership conversion to LLC, **3:48**

Preferred Stock (this index)

CONVERTIBLE DEBT

Choosing the business financing format, **1:9**

Preferred stock, **6:6**

CONVERTIBLE SECURITIES

Antidilution Provisions (this index)

S corporations, debt, **2:27**

“COOKIE JAR RESERVES” ACCOUNTING PRACTICES

Due diligence and civil liability, **14:96**

COORDINATION, REGISTRATION BY

State blue sky regulation, **15:15**

COREENERGY INFRASTRUCTURE TRUST (CORR)

Business development company (BDC), **5:3**

CORONAVIRUS

Covid-19 Pandemic, this index

CORPORATE CLASSIFICATION

Limited liability companies, **3:8**

CORPORATE DEBT

Institutional Private Placements (this index)

Term Loan Agreements (this index)

CORPORATE GOVERNANCE

Disclosure, **13:8, 13:40, 13:41**

CORPORATE TRANSPARENCY ACT

BOI reporting requirements subject to various litigation, a nationwide injunction and stay, **9:1.50**

District court finds the CTA unconstitutional, **9:6**
FinCEN new FAQs clarifying dissolved entities subject to CTA, **9:7**

FinCEN Q&As; interim final rule, **9:9**

Interim final rule, **9:8**

CORPORATE TRANSPARENCY ACT

—Cont'd

- Large Operating Company Exemption, **9:5**
- Michigan District Court; constitutionality of CTA upheld, **9:6.50**
- Overview, **9:1**
- Penalties for violations, **9:3**
- Proposed rules, **9:4**
- Summary, **9:2**

CORRECTION DUTY

- Due diligence and civil liability, **14:44, 14:107**

CO-SALE AGREEMENT

- NVCA model venture financings documents (2007), **15A:7**

CO-SALES

- Choosing the business financing format, **1:22**
- Forms of, **18:14**

COSTS AND EXPENSES

- Going public, **12:33**
- Preferred Stock (this index)
- Term Loan Agreements (this index)

COUNTING PURCHASERS UNDER RULE 501(E)

- Federal securities laws, **11:10, 11:10.30**

COURT DECISIONS

- Federal Securities Laws (this index)

COVENANTS

- Institutional private placements, **7:6**
- Preferred Stock (this index)
- Term Loan Agreements (this index)

“COVERED” SECURITIES

- State blue sky regulation, **15:1**

COVER PAGES

- Disclosure, **13:14, 13:16, 13:17**

COVID-19 PANDEMIC

- Crowdfunding, temporary amendments to regulation, **11:75.71**
- SEC response, **8:1**

“CREATING” THE MISREPRESENTATION

- Due diligence and civil liability, **14:49**

CRIMINAL LIABILITY

- Due diligence and civil liability, **14:52.70**

CROWDFUNDING

- C&DIs, **11:75.75**
- Covid-19: temporary amendments to regulation crowdfunding, **11:75.71**
- Offerings of \$5,000,000 or less, **11:75.70**
- SEC guidance, **11:75.75**

CRYPTOCURRENCY

- SEC injunctive authority, **14:90.10**

CULPABLE PARTICIPATION REQUIREMENT

- Due diligence and civil liability, **14:83**

CURRENT MARKET CONDITIONS

- Evaluating cost of term loan financing, **7:13**

CURRENT PUBLIC INFORMATION

- Federal securities laws, **11:86, 11:101, 11:101.50**

CUSTOM TAILORING

- Due diligence investigations, **14:16**

DATE

- Time or Date (this index)

DEALERS

- Broker-Dealers (this index)
- Due diligence and civil liability, **14:35**

DEBENTURES

- Convertible debentures forms, **18:2, 18:3**
- Election of company, form of conversion of debenture at, **18:5**
- Forms
 - convertible debentures, **18:2, 18:3**
 - election of company, conversion of debenture at, **18:5**
 - redemption provisions for convertible debentures, **18:2**
 - SBIC, debenture purchase agreement with, **18:11**
 - subordinate provision, **18:4**
- Indenture, form of, **18:6**
- Redemption provisions for convertible debentures, forms of, **18:2**
- SBIC, form of debenture purchase agreement with, **18:11**
- Subordinate provision, form of, **18:4**

DEBT

- Corporate Debt (this index)
- S Corporations (this index)

DEBT INSTRUMENTS

- Choosing the Business Financing Format (this index)

DEDUCTIONS

- Business interest, limitations on, **2:4**
- Pass-through business income, Section 199A, **2:3**
- S corporations, **2:59, 2:60**
- Suspended, losses are, **2:60**
- Tax Cuts and Jobs Act, active business loss, **2:59**

DEEMED DIVIDED ELECTION

- S corporations, passive investment income, **2:37**

INDEX

DEFAULT

- Institutional private placements, events of default, **7:7 to 7:9**
- Term Loan Agreements (this index)

DEFENSES

- Due Diligence and Civil Liability (this index)

DEFINITIONS

- Accelerated filers, amendments to, **13:1.70**
- “Accredited investor”
 - amendments to the definition of, **11:4.10**
 - SEC review, **11:4.30**
- Federal Securities Laws (this index)
- Passive activity, **2:51**
- Passive investment income, **2:34**
- Preferred stock, **6:76**
- S Corporations (this index)
- Smaller reporting company, amendments to definition of, **App 1.10**
- Term loan agreements, **7:22**

DELAWARE

- LLC operating agreement, form of (2022), **20:8**
- Small business, assistance programs for, **App 18.8**

DELAYED FUNDING

- Term loan agreements, **7:25**

DELIVERY

- Annotated opinion of stock purchase agreement, **6:123**
- Federal securities laws, delivery of prospectus—reforms, **11:145**

DESIGNING THE DOCUMENT

- Disclosure, **13:13**

DETERMINATIONS

- S corporations, basis, **2:55, 2:57**

DIGITAL ASSETS

- State blue sky regulation, **15:3.70**

DIGITAL BRANDS GROUP

- Forms for, **19:2**
- Free writing prospectus, **19:2**

DILUTION

- Antidilution Provisions (this index)
- Disclosure, **13:30, 13:31**

“DIRECTED SELLING EFFORTS”

- Federal securities laws, **11:81**

DIRECT LOAN TO S CORPORATION

- Self-charged interest, **2:46**

DIRECTORS

- Disclosure (this index)
- Due Diligence and Civil Liability (this index)

DIRECTORS—Cont’d

- Preferred stock, **6:72**

DIRECTORY OF VENTURE CAPITAL PROVIDERS

- Choosing the business financing format, **1:24**

DISCHARGE

- S corporations, discharge of indebtedness income, **2:49**

DISCIPLINARY ACTIONS

- Professional standards, Sarbanes-Oxley Act and SEC professional conduct rules, **14:61**

DISCLOSURE

- Generally, **13:1 to 13:56**
- Abstractions brought down to earth, **13:12**
- Accelerated filers. Regulation S-K items, below
- Active and passive voices, **13:12**
- Body of prospectus, example of “plain English,” **13:15**
- “Business” section
 - compensation, **13:6**
 - control persons, **13:5**
 - corporate governance, **13:8**
 - description of business, **13:2**
 - description of property, **13:3**
 - directors and officers, generally, **13:5**
 - discussion and analysis of financial condition by management (MD&A), **13:4**
 - executive compensation, **13:6**
 - independence of director, **13:8**
 - management’s discussion and analysis of financial condition (MD&A) (Item 303), **13:4**
 - officers, generally, **13:5**
 - promoters, **13:5**
 - transactions with related persons, **13:7**
- “Capitalization” table, **13:30, 13:31**
- Code of ethics, **13:40, 13:41**
- Common problems encountered with disclosure documents, **13:12**
- Company, description of, **13:15**
- Compensation, **13:6, 13:42, 13:43**
- Control persons, **13:5, 13:40, 13:41**
- Core prospectus, example of “plain English,” **13:15**
- Corporate governance, **13:8, 13:40, 13:41**
- Cover pages
 - example of “plain English,” **13:14**
 - front and back cover page, **13:16, 13:17**
- Description of business, **13:2, 13:38, 13:39**
- Description of “plain English” at a glance, **13:11**
- Description of property, **13:3**
- Description of securities, **13:48, 13:49**
- Designing the document, **13:13**
- Determination of offering price, **13:24, 13:25**

DISCLOSURE—Cont'd

Dilution, **13:30, 13:31**
 Directors and officers. Management, below
 Discussion and analysis of financial condition by management (MD&A), **13:4, 13:34, 13:35**
 Distribution plan, **13:52, 13:53**
 Dividend policy, **13:28, 13:29**
 Due Diligence and Civil Liability (this index)
 Emerging Growth Companies (EGCs) (this index)
 English language. “Plain English,” disclosure in, below
 Examples of “plain English,” **13:14**
 Executive compensation, **13:6, 13:42, 13:43**
 FAST Act, emerging growth companies (EGCs), disclosure and registration, **11:153.70**
 Federal Securities Laws (this index)
 Final disclosure rules for SPACs, SEC adopts, **11:146.95**
 Financial matters
 discussion and analysis of financial condition by management (MD&A), **13:4, 13:34, 13:35**
 FAQs, Management’s Report on Internal Control (Sept. 24, 2007), **App 11.1**
 New Orleans Employees Retirement System v. Celestica Inc., qualitative approach to materiality, **13:4**
 prospectus disclosure, excerpts of financial statements, **13:56**
 quarterly financial data, **13:32, 13:33**
 Staff observations on financial statements, **13:57**
 Five percent beneficial owners, **13:46, 13:47**
 Forward-looking statements, **13:22, 13:23**
 Future sale, shares eligible for, **13:50, 13:51**
 Going Public (this index)
 Handbook on “plain English,” **13:9 to 13:14**
 Hierarchy of document, **13:13**
 “If then” conditionals, use of, **13:12**
 Independence of director, **13:8, 13:40, 13:41**
 Issuer’s business, description of, **13:2, 13:38, 13:39**
 Issuer’s property, description of, **13:3**
 Jargon, elimination of, **13:12**
 Legal proceedings, **13:54, 13:55**
 Management
 directors and officers
 generally, **13:5, 13:40, 13:41**
 Regulation S-K items, below
 discussion and analysis of financial condition (MD&A), **13:4, 13:34, 13:35**
 FAQs, Management’s Report on Internal Control (Sept. 24, 2007), **App 11.1**
 officers. Directors and officers, above in this group

DISCLOSURE—Cont'd

Management—Cont'd
 Regulation S-K items, below
 Securities and Exchange Commission Guidance Regarding Management’s Report on Internal Control (June 20, 2007), **App 11**
 Management’s discussion and analysis of financial condition (MD&A), **13:4, 13:34, 13:35**
 Narrative disclosure in S-K items. Regulation S-K items, below
 Offering price determination, **13:24, 13:25**
 Officers. Management, above
 Orderly and clear presentation of complex information, generally, **13:10**
 Overview, **13:1**
 Paragraph lengths, **13:13**
 Parallel structure of sentences, **13:12**
 “Plain English,” disclosure in
 generally, **13:9 to 13:14**
 abstractions brought down to earth, **13:12**
 active and passive voices, **13:12**
 common problems encountered with disclosure documents, **13:12**
 description of “plain English” at a glance, **13:11**
 designing the document, **13:13**
 examples of “plain English,” **13:14**
 handbook on “plain English,” **13:9 to 13:14**
 hierarchy of document, **13:13**
 “if then” conditionals, use of, **13:12**
 jargon, elimination of, **13:12**
 orderly and clear presentation of complex information, generally, **13:10**
 paragraph lengths, **13:13**
 parallel structure of sentences, **13:12**
 “positive” writing, **13:12**
 short sentences, use of, **13:12**
 summary of “plain English” rules, **13:11**
 superfluous words, omission, **13:12**
 tables, use of, **13:13**
 what is “plain English” document, **13:10**
 writing in “plain English,” **13:12**
 “Positive” writing, **13:12**
 Preferred stock, **6:40**
 Principle and selling stockholders, **13:46, 13:47**
 Promoters, **13:5, 13:40, 13:41**
 Property of business, generally, **13:3**
 Prospectus
 back cover page, **13:16, 13:17**
 body of prospectus, example of “plain English,” **13:15**
 business, **13:38, 13:39**
 “Capitalization” table, **13:30, 13:31**
 code of ethics, **13:40, 13:41**
 compensation, **13:42, 13:43**

DISCLOSURE—Cont'd

Prospectus—Cont'd
 control persons, **13:40, 13:41**
 core prospectus, example of “plain English,” **13:14**
 corporate governance, **13:40, 13:41**
 cover page, example of “plain English,” **13:14**
 description of securities, **13:48, 13:49**
 determination of offering price, **13:24, 13:25**
 dilution, **13:30, 13:31**
 directors and officers, generally, **13:40, 13:41**
 discussion and analysis of financial condition
 by management (MD&A), **13:34, 13:35**
 distribution plan, **13:52, 13:53**
 dividend policy, **13:28, 13:29**
 executive compensation, **13:42, 13:43**
 experts, **13:54, 13:55**
 five percent beneficial owners, **13:46, 13:47**
 forward-looking statements, **13:22, 13:23**
 front cover page, **13:16, 13:17**
 independence of director, **13:40, 13:41**
 legal matters, **13:54, 13:55**
 management’s discussion and analysis of
 financial condition (MD&A), **13:34, 13:35**
 offering price determination, **13:24, 13:25**
 officers, generally, **13:40, 13:41**
 principle and selling stockholders, **13:46, 13:47**
 promoters, **13:40, 13:41**
 quantitative and qualitative disclosures about
 market risk, **13:36, 13:37**
 risk factors, **13:20, 13:21**
 securities description, **13:48, 13:49**
 selected financial data, **13:32, 13:33**
 shares eligible for future sale, **13:50, 13:51**
 Shockwave Medical Prospectus, below
 specific Regulation S-K items, generally, **13:15 to 13:56**
 stock ownership, **13:46, 13:47**
 summary, **13:18**
 summary, example of “plain English,” **13:14**
 transactions with related persons, **13:44, 13:45**
 underwriting, **13:52, 13:53**
 use of proceeds, **13:26, 13:27**
 Quantitative and qualitative disclosures about
 market risk, **13:36, 13:37**
 Regulation S-B items. SEC forms and related
 regulations, **App 5**
 Regulation S-K items
 generally, **13:2 to 13:8**
 accelerated filers, amendments to definitions,
13:1.70
 back cover page of prospectus, **13:16, 13:17**
 “Capitalization” table, **13:30, 13:31**
 certain relationships and transactions, **13:7**

DISCLOSURE—Cont'd

Regulation S-K items—Cont'd
 code of ethics, **13:40, 13:41**
 compensation, **13:6, 13:42, 13:43**
 control persons, **13:5, 13:40, 13:41**
 corporate governance, **13:8, 13:40, 13:41**
 determination of offering price, **13:24**
 dilution, **13:30, 13:31**
 director independence, **13:8, 13:40, 13:41**
 directors and officers, generally, **13:5, 13:40, 13:41**
 discussion and analysis of financial condition
 by management (MD&A), **13:4, 13:34, 13:35**
 distribution plan, **13:52, 13:53**
 dividend policy, **13:28, 13:29**
 executive compensation, **13:6, 13:42, 13:43**
 experts, **13:54, 13:55**
 financial statements, Staff observations, **13:57**
 five percent beneficial owners, **13:46, 13:47**
 front cover page of prospectus, **13:17**
 independence of director, **13:8**
 IPO Registration Statement Part II, Staff
 observations, **13:57**
 issuer’s business, description of, **13:2, 13:38, 13:39**
 large accelerated filers, amendments to defini-
 tions, **13:1.70**
 legal matters, **13:54, 13:55**
 management’s discussion and analysis of
 financial condition (MD&A), **13:4, 13:34, 13:35**
 offering price determination, **13:24**
 officers, generally, **13:5, 13:40, 13:41**
 Part II, Staff observations, **13:57**
 Pinnacle Foods Inc. prospectus, above
 principle and selling stockholders, **13:46, 13:47**
 promoters, **13:5, 13:40, 13:41**
 property, description of, **13:3**
 proposed amendment to modernize Items 101,
 103, and 105, **13:1.55.10**
 quantitative and qualitative disclosures about
 market risk, **13:36, 13:37**
 results of operation, **13:4**
 risk factors, **13:20, 13:21**
 scaled disclosure chart, smaller reporting
 companies, **13:1.10**
 securities description, **13:48, 13:49**
 selected financial data, **13:32, 13:33**
 shares eligible for future sale, **13:50, 13:51**
 stock ownership, **13:46, 13:47**
 transactions with related persons, **13:7, 13:44, 13:45**
 2018 amendments, **13:1.50**
 2019 amendments, **13:1.55**

DISCLOSURE—Cont'd

- Regulation S-K items—Cont'd
 - 2020 amendments, **13:1.57**
 - underwriting, **13:53**
 - use of proceeds, **13:26, 13:27**
- Remuneration of management, **13:6, 13:42, 13:43**
- Reporting companies, smaller, eligibility, **13:1.60**
- Results of operation, **13:4**
- Risk factors, **11:146.50, 13:20, 13:21**
- Sarbanes-Oxley Act, due diligence and civil liability, **14:59, 14:71**
- Scaled disclosure for smaller reporting company.
 - Regulation S-K items, above
- SEC forms and related regulations, **App 5**
- SEC Guidance Regarding Management's Report on Internal Control (June 20, 2007), **App 11**
- SEC Staff observations on financial statements, **13:57**
- Securities description, **13:48, 13:49**
- Selected financial data, **13:32, 13:33**
- Selling stockholders, **13:46, 13:47**
- Shares eligible for future sale, **13:50, 13:51**
- Shockwave Medical Prospectus
 - business, **13:39**
 - "Capitalization" table, **13:31**
 - compensation, **13:43**
 - determination of offering price, **13:25**
 - dilution, **13:31**
 - discussion and analysis of financial condition (MD&A), **13:35**
 - distribution plan, **13:53**
 - dividend policy, **13:29**
 - executive compensation, **13:43**
 - experts, **13:55**
 - financial statements (excerpts), **13:56**
 - five percent beneficial owners, **13:47**
 - forward-offering statements, **13:23**
 - legal matters, **13:55**
 - management, **13:41**
 - offering price determination, **13:25**
 - other items not specified by specific Item, **13:56**
 - principle and selling stockholders, **13:47**
 - quantitative and qualitative disclosures about market risk, **13:37**
 - risk factors, **13:21**
 - securities description, **13:49**
 - selected financial data, **13:33**
 - shares eligible for future sale, **13:51**
 - stock ownership, **13:47**
 - transactions with related persons, **13:45**
 - underwriting, plan of, **13:53**
 - use of proceeds, **13:27**
- Short sentences, use of, **13:12**

DISCLOSURE—Cont'd

- Smaller reporting companies, scaled disclosure chart, **13:1.10**
- Smaller reporting company, scaled disclosure.
 - Regulation S-K items, above
- Stock ownership, **13:46, 13:47**
- Structure Therapeutics
 - front and back cover pages, **13:17**
- Summary, **13:14, 13:18**
- Summary of "plain English" rules, **13:11**
- Superfluous words, omission, **13:12**
- Tables, use of, **13:13**
- Term Loan Agreements (this index)
- Time delay between corrective disclosure and share price drop, Loss causation, **14:45.80**
- Transactions with related persons, **13:7, 13:44, 13:45**
- Typography of document, **13:13**
- Underwriting, **13:52, 13:53**
- Use of proceeds, **13:26, 13:27**
- What is "plain English" document, **13:10**
- Writing in "plain English," **13:12**

DISGORGEMENT REMEDY

- Statute of limitations, **14:90.60**
- Supreme Court upholds propriety of with restrictions, **14:90.65**

DISSOLUTION

- Limited liability companies, **3:51**
- Preferred stock, **6:111**

DISTRIBUTION PLAN

- Disclosure, **13:52, 13:53**

DISTRIBUTIONS

- Limited Liability Companies (this index)

DISTRICT OF COLUMBIA

- Small business, assistance programs for, **App 18.9**

DIVIDENDS

- Choosing the business financing format, **1:13**
- Disclosure of dividend policy, **13:28, 13:29**
- Preferred stock, **6:105, 6:110**
- S corporations, deemed dividend election, **2:37**
- State blue sky regulation, **15:24**

DIVORCE

- Federal securities laws, **11:113**

DOCUMENTATION OF LOAN

- Term loan agreements, **7:16**

DOCUMENTS

- Drafting. Due Diligence and Civil Liability (this index)
- NVCA Model Venture Financings Documents (2007) (this index)

DODD-FRANK ACT

SEC Administrative Enforcement of
Whistleblower Protections, **14:53.60**

**DODD-FRANK WALL STREET REFORM
ACT (2010)**

Corporate governance provisions. Going Public
(this index)

DOING BUSINESS WITHIN STATE

Federal Securities Laws (this index)

DOMESTIC ELIGIBLE ENTITIES

Limited liability companies, **3:13**

DOUBLE TAXATION

S corporations, avoidance, **2:7**

DRAFTING OF DOCUMENTS

Due Diligence and Civil Liability (this index)

DUE DILIGENCE AND CIVIL LIABILITY

Generally, **14:1 to 14:142**

Accountants

actions and proceedings against attorneys and
accountants, below

control person liability, **14:88**

material facts, duty to disclosure, **14:43.50**

preparation of disclosure documents, securities
laws duties relating to, below

professional standards, influence on liability,
below

Rule 10b-5 (1934 Act), **14:40, 14:43.50 et
seq., 14:51, 14:51.50**

Sarbanes-Oxley Act (this index)

Section 12(a)(2) of 1933 Act, **14:36**

state law claims for inadequate or misleading
disclosure, below

Actions and proceedings against attorneys and
accountants

generally, **14:90**

accountants, generally, **14:96**

administrative proceedings, generally, **14:90**

aiding and abetting actions by SEC, **14:97**

attorneys, generally, **14:93 to 14:95**

“big bath” charge accounting practices, **14:96**
“cookie jar reserves” accounting practices,
14:96

disclosure advice, attorneys’ negligence in
providing, **14:95**

drafting disclosure documents, attorneys’
negligence in, **14:95**

Enron case, **14:96**

entry of administrative order, **14:90**

financial statements, generally, **14:96**

“illusory” or “managed” earnings, **14:96**

injunctive proceedings, **14:91**

“materiality abuse” accounting practices,
14:96

DUE DILIGENCE AND CIVIL LIABILITY**—Cont’d**

Actions and proceedings against attorneys and
accountants—Cont’d

“merger magic” accounting practices, **14:96**

Office of Thrift supervision, **14:98**

opinions, attorneys’ negligent issuance of,
14:94

In re Kaye, Scholer, **14:98**

Report of Investigation, **14:90**

“revenue recognition manipulation” account-
ing practices, **14:96**

Rule 102(e) proceedings, **14:92**

SEC enforcement arsenal, generally, **14:90**
stop order proceedings, **14:90**

Administrative law judges, constitutionality of
SEC use, **14:89.50**

Administrative proceedings. Actions and
proceedings against attorneys and
accountants, above

Adverse interests exception, **14:52.97**

Advising in preparation of statement made by
another, **14:48**

Agents and agency

control person liability, **14:81**

Section 12(a)(2) of 1933 Act, **14:35**

Aiding and abetting

actions and proceedings against attorneys and
accountants, **14:97**

Rule 10b-5 (1934 Act), below

Rule 10b-5-standing to bring a claim restricted
with implied private right of action,
14:97.50

Section 12(a)(2) of 1933 Act, **14:38**

Amicus approach of SEC, “creating” the misrep-
resentation, **14:49**

Applicability of safe harbors, **14:102**

Aspirational statements, **14:15.60**

Assisting in preparation of statement made by
another, **14:48**

Attorneys

actions and proceedings against attorneys and
accountants, above

control person liability, **14:88**

inside general counsel’s fiduciary duties and
liability for failure to advise board,
14:64.50

in pari delicto defense, **14:142**

preparation of disclosure documents, securities
laws duties relating to, below

professional standards, influence on liability,
below

Rule 10b-5 (1934 Act), **14:40, 14:43**

Sarbanes-Oxley Act (this index)

Section 12(a)(2) of 1933 Act, **14:36**

state law claims for inadequate or misleading
disclosure, below

DUE DILIGENCE AND CIVIL LIABILITY

—Cont'd

Audits and auditors
 generally, **14:16, 14:68, 14:74**
 Sarbanes-Oxley Act, below
 BarChris case, **14:7**
 Bar orders, proportionate liability, **14:115**
 Belief or opinion, statements of, **14:15**
 “Big bath” charge accounting practices, **14:96**
 Blue Bell, scope of comment in, **14:129**
 Bright line approach, **14:50**
 Brokers
 control persons, broker-dealers as, **14:85**
 Section 12(a)(2) of 1933 Act, **14:35**
 Business of company, investigation of, **14:24**
 Causation requirement, Rule 10b-5 (1934 Act),
 14:45
 Checklists, care in utilizing, **14:16**
 Chevron doctrine, overruled by U.S. Supreme
 Court, **14:90.20**
 Chris-Craft case, **14:9**
 Civil liabilities under federal law for inadequate
 or misleading disclosure, generally, **14:29**
 Commission. SEC, below
 Common law negligence claims, **14:124**
 Competency of counsel, **14:16**
 Compliance, legal, actionable misrepresentations,
 14:15.90
 Conspiracy, Rule 10b-5 (1934 Act), **14:52.30**
 Constitutionality of SEC’s use of administrative
 law judges, **14:89.50**
 Contractual non-reliance clauses, disclosure
 “defenses,” **14:99.50**
 Contribution, proportionate liability, **14:118,**
 14:121, 14:122
 Control person liability
 generally, **14:79**
 accountants, **14:88**
 actual participation, proof of, **14:84**
 agency principles, **14:81**
 attorneys, **14:88**
 broker-dealers as control persons, **14:85**
 culpable participation requirement, **14:83**
 directors and officers as control persons, **14:86**
 good faith, proof of, **14:84**
 lenders, **14:87**
 majority rule, **14:84**
 minority rule, **14:83**
 officers as control persons, **14:86**
 other persons, **14:89**
 Private Securities Litigation Reform Act of
 1995, **14:79**
 promoters, **14:89**
 respondeat superior, **14:81**
 statutory provisions, **14:80, 14:82 to 14:84**
 two prong test, **14:82 to 14:84**

DUE DILIGENCE AND CIVIL LIABILITY

—Cont'd

Control person liability—Cont’d
 underwriters, **14:89**
 “Cookie jar reserves” accounting practices,
 14:96
 Corporate by-laws improperly used to redirect
 jurisdiction of Federal securities law issues
 from Federal to State Court, **14:123.70**
 Corporate scienter
 generally, **14:52.95**
 adverse interests exception, **14:52.97**
 Correction duty, **14:44, 14:107**
 “Creating” the misrepresentation, **14:49**
 Criminal liability, **14:52.70**
 Culpable participation requirement, control
 person liability, **14:83**
 Custom tailoring due diligence investigations,
 14:16
 Dealers, Section 12(a)(2) of 1933 Act, **14:35**
 Defenses. Disclosure “defenses,” below
 Directors. Officers and directors, below
 Disclosure “defenses”
 generally, **14:99**
 advice of counsel defense as proof of good
 faith, **14:84.10**
 applicability of safe harbors, **14:102**
 commission authority to expand safe harbors,
 14:109
 contractual non-reliance clauses, **14:99.50**
 correct duty, **14:107**
 due diligence, **14:106**
 exclusions of safe harbors, **14:102**
 expansion of safe harbors, **14:109**
 “immaterial” safe harbor, **14:105**
 judicial “bespeaks caution” doctrine, **14:110**
 meaningful cautionary statement safe harbor,
 14:103
 offering memorandum, use of, generally, **14:99**
 oral statements, **14:105**
 Rule 10b-5 versus 1933 Act Section 12(a)(2),
 14:100
 rule 508 of 1933 Act, substantial, good faith
 compliance defense, **11:4.70**
 safe harbors, generally, **14:101**
 state of mind safe harbor, **14:104**
 statutory (1995) safe harbors, generally,
 14:101 to 14:110
 taking advantage of safe harbor, **14:108**
 update duty, **14:107**
 Disgorgement remedy, application of statute of
 limitations, **14:90.60**
 Drafting of documents
 actions and proceedings against attorneys and
 accountants, **14:95**
 proportionate liability, **14:122**

DUE DILIGENCE AND CIVIL LIABILITY**—Cont'd**

Drafting of documents—Cont'd
 Rule 10b-5 (1934 Act), **14:48**
 “substantial participation” approach rejected in Janus decision (2011), **14:48**

Due diligence of securities counsel, **14:141**

Editing preparation of statement made by another, **14:48**

Endrun around no aiding and abetting, **14:46 to 14:52.70**

Enron case, **14:96**

Entry of administrative order, **14:90**

Every offering, performance of due diligence for, **14:16**

Exclusions of safe harbors, **14:102**

Expansion of safe harbors, **14:109**

“Expertised” part, reliance on, **14:5**

Federal preemption of pendant state claims, **14:121**

Financial statements
 generally, **14:17, 14:25, 14:96**
 materiality, **14:43, 14:43.50**
 Rule 10b-5 (1934 Act), **14:43, 14:43.50**
 Section 11 liability under the 1933 Act, **14:43.75**

FINRA guidance for private placements, **14:28.50**

Florida developments, **14:138**

Foreign and domestic parties
 cryptocurrency jurisdiction, **14:123.80**

GAAP, **14:77, 14:78**

GAAS, **14:74 to 14:78**

Going Public (this index)

Good faith, proof of, **14:84**

Goodwill, statements of opinion or belief, **14:15**

“Illusory” or “managed” earnings, **14:96**

“Immaterial” safe harbor, **14:105**

Inadequate or materially misleading disclosure, **14:51.50**

Indemnity, proportionate liability, **14:120, 14:121**

Industry of issuer, investigation of, **14:20**

In pari delicto defense, **14:142**

In re Kaye, Scholer, **14:98**

Injunctive proceedings, **14:91**

Introduction, **14:1**

Inventories of company, investigation of, **14:25**

Investigations of due diligence
 generally, **14:16**
 items to investigate in performing due diligence, **14:17**
 practical aspects of due diligence investigations, below
 statutory provisions and decided cases on due diligence, **14:10**

Issuer, investigation of, **14:21 to 14:25**

DUE DILIGENCE AND CIVIL LIABILITY**—Cont'd**

Janus case
 generally, **14:46, 14:48, 14:49**
 effect on 1933 and 1934 Acts, **14:39.80**
 prosecutorial position of SEC, **14:39.80**
 SEC to circumvent Janus using 1934 Act § 20(b), **14:90.50**

Joint and several versus proportionate liability, **14:112 to 14:116**

Judgment reduction formula of Private Securities Litigation Reform Act of 1995 (PSLRA), **14:116**

Judicial “bespeaks caution” doctrine, **14:110**

“Knowing fraud,” joint and several liability for, **14:113**

Leasco case, **14:8**

Lenders as control persons, **14:87**

Licenses, determination of importance of, **14:21**

Litigation. Actions and proceedings against attorneys and accountants, above

Loan loss reserve, statements of opinion or belief, **14:15**

Loss causation
 generally, **14:45**
 fraud-on-the-Market, **14:45.60**
 generic misstatements, fraud-on-the-Market, **14:45.60**
 materialization of the risk, **14:45.50**
 mixed affirmative statements and omissions, reliance, **14:45.70**
 reliance, mixed affirmative statements and omissions, **14:45.70**
 time delay between corrective disclosure and share price drop, **14:45.80**

Loss Causation (this index)

Management
 confidence in, **14:16**
 items to investigate, **14:17**
 practical aspects of due diligence investigations, **14:20, 14:23**

Materiality (this index)
 “Materiality abuse” accounting practices, **14:96**

Meaningful cautionary statement safe harbor, **14:103**

“Merger magic” accounting practices, **14:96**

Misrepresentations of legal compliance, actionable, **14:15.90**

Mississippi “reasonably foreseeable” approach, **14:133**

Misstatement liability under Section 17(a)(2) of 1933 Act, **14:39.50**

“Misstatements,” who makes, **14:47**

Model Rules of Professional Conduct, generally, **14:65, 14:66**

Modified proportionate liability for non knowing defendants, **14:114**

DUE DILIGENCE AND CIVIL LIABILITY

—Cont'd

- National Association of Securities Dealers (NASD), generally, **14:1**
- “Near privity” approach, **14:127**
- Negligent securities “fraud” actions by SEC
 - Section 17(a)(2) misstatement liability, **14:39.50**
 - Section 17(a)(3) scheme liability, **14:39.60**
- No aiding and abetting, endrun around, **14:46 to 14:52.70**
- Non clients
 - professional standards, influence on liability, **14:66**
 - state law claims for inadequate or misleading disclosure, below
- “Non knowing” defendants, proportionate liability for, **14:114**
- Offering memorandum. Disclosure defenses, above
- Office of Thrift supervision, **14:98**
- Officers and directors
 - control person liability, **14:86**
 - outside directors liability under section 11 of 1933 Act, **14:119**
 - preparation of disclosure documents, securities laws duties relating to, below
 - Rule 10b-5 (1934 Act), **14:40, 14:43**
- Opinion or belief statements, **14:15**
- Opinions of attorneys, **14:67, 14:94**
- Oral statements, disclosure “defenses,” **14:105**
- Outside directors liability under section 11 of 1933 Act, **14:119**
- Patents, determination of importance of, **14:21**
- “Pattern” of racketeering activity. RICO claims, below
- Pinter v Dahl, **14:34**
- Post-Pinter cases, **14:35**
- Practical aspects of due diligence investigations
 - generally, **14:18 to 14:28**
 - business of company, investigation of, **14:24**
 - financials of company, investigation of, **14:25**
 - general concerns of underwriters, **14:19**
 - industry of issuer, investigation of, **14:20**
 - inventories of company, investigation of, **14:25**
 - issuer, investigation of, **14:21 to 14:25**
 - licenses, determination of importance of, **14:21**
 - management, investigation of, **14:20, 14:23**
 - patents, determination of importance of, **14:21**
 - sources of information, **14:26 to 14:28**
 - specific steps for underwriters, **14:20 to 14:25**
 - technology, determination of importance of, **14:21**
 - trademarks, determination of importance of, **14:21**
 - underwriters, generally, **14:19 to 14:25**

DUE DILIGENCE AND CIVIL LIABILITY

—Cont'd

- Preemption of pendant state claims, **14:121**
- Preparation of disclosure documents, securities laws duties relating to
 - generally, **14:31**
 - actions and proceedings against attorneys and accountants, above
 - control person liability, above
 - disclosure “defenses,” above
 - professional standards, influence on liability, below
 - Rule 10b-5 (1934 Act), below
 - Section 11 of 1933 Act, disclosure duties under, **14:32**
 - Section 12(a)(2) of 1933 Act, below
 - Section 17(a) of 1933 Act, **14:39**
- “Primary” violations, Rule 10b-5 (1934 Act), **14:52**
- Private funds, Fifth Circuit ruling, **14:90.35**
- Private placements, FINRA guidance, **14:28.50**
- Private Securities Litigation Reform Act of 1995 (PSLRA)
 - control person liability, **14:79**
 - proportionate liability, above
 - Rule 10b-5 (1934 Act), **14:41**
- Privity, state law claims for inadequate or misleading disclosure, **14:138, 14:139**
- Proceedings. Actions and proceedings against attorneys and accountants, above
- Professional standards, influence on liability
 - generally, **14:53**
 - accountants
 - generally, **14:74 to 14:78**
 - Sarbanes-Oxley Act (this index)
 - attorneys
 - generally, **14:65 to 14:68**
 - Sarbanes-Oxley Act (this index)
 - auditing standards (GAAS), **14:74**
 - auditors’ requests for information, lawyers’ responses to, **14:68**
- GAAP, **14:77, 14:78**
- introduction, **14:53**
- Model Rules of Professional Conduct, generally, **14:66**
- non clients, attorney’s duty of disclosure to, **14:66**
- opinion letters of attorneys, **14:67**
- “present fairly,” **14:75**
- Rule 10b-5 (1934 Act), **14:40 to 14:45**
- Sarbanes-Oxley Act (this index)
- Section 10A of Exchange Act of 1934, **14:76**
- Promoters
 - control person liability, **14:89**
 - preparation of disclosure documents, securities laws duties relating to, above

DUE DILIGENCE AND CIVIL LIABILITY**—Cont'd**

Promoters—Cont'd
 Rule 10b-5 (1934 Act), **14:40, 14:43**

Proportionate liability
 generally, **14:111 to 14:122**
 bar orders, **14:115**
 case law prior to 1995 statute, **14:117**
 contribution, **14:118, 14:121, 14:122**
 drafting express contract provisions for contribution, **14:122**
 federal preemption of pendant state claims, **14:121**
 indemnity, **14:120, 14:121**
 joint and several versus proportionate liability, **14:112 to 14:116**
 judgment reduction formula of Private Securities Litigation Reform Act of 1995 (PSLRA), **14:116**
 “knowing fraud,” joint and several liability for, **14:113**
 modified proportionate liability for non knowing defendants, **14:114**
 “non knowing” defendants, proportionate liability for, **14:114**
 outside directors liability under section 11 of 1933 Act, **14:119**
 overview, **14:111**
 preemption of pendant state claims, **14:121**
 Private Securities Litigation Reform Act of 1995 (PSLRA), generally, **14:111 et seq**

Proximate causation. Causation requirement, above

Public offerings, limitation of Section 12(a)(2) of 1933 Act to, **14:37**

Puffery, immateriality as matter of law, **14:15.50**

Racketeer Influenced and Corrupt Practices Organizations. RICO claims, below

Reasonableness standard, **14:4**
 “Reasonably foreseeable” approach, **14:130 to 14:133**

Records and record-keeping, **14:16**
 “Red flags,” **14:51.50**

Report of Investigation, **14:90**

Required disclosure of back-dated trading strategies, **14:90.36**

Respondent superior, control person liability, **14:81**

“Revenue recognition manipulation” accounting practices, **14:96**

Reviewing preparation of statement made by another, **14:48**

Rosenbloom test in New Jersey, **14:131**

Rule 10b-5 (1934 Act)
 generally, **14:40**
 accountants, **14:40, 14:43.50 et seq., 14:51, 14:51.50**

DUE DILIGENCE AND CIVIL LIABILITY**—Cont'd**

Rule 10b-5 (1934 Act)—Cont'd
 advising preparation of statement made by another, **14:48**
 aiding and abetting, endrun around, generally, **14:46 to 14:52.70**
 assisting in preparation of statement made by another, **14:48**
 attorneys, **14:40, 14:42**
 bright line approach, **14:50**
 causation requirement, **14:45**
 certification and consequent section 11 violation, **14:44.50**
 conspiracy, **14:52.30**
 corporate officers, **14:40**
 correction duty of accountants, **14:44**
 “creating” the misrepresentation, **14:49**
 criminal liability, **14:52.70**
 disclosure “defenses,” **14:100**
 drafting preparation of statement by another, **14:48**
 editing preparation of statement made by another, **14:48**
 endrun around no aiding and abetting, **14:46 to 14:52.70**
 financial statement materiality, **14:43**
 inadequate or materially misleading disclosure, **14:51.50**
 independent duty to disclose, **14:40.30**
 Janus decision, **14:39.80, 14:46**
 loss causation, **14:45**
 materiality, **14:40.10**
 “misstatements,” who makes, **14:47**
 no aiding and abetting, endrun around, **14:46 to 14:52.70**
 officers and directors, **14:40**
 opinion in financial statement as certification and consequent section 11 violation, **14:44.50**
 “primary” violations, **14:52**
 Private Securities Litigation Reform Act of 1995, **14:41**
 professional duty, generally, **14:40 to 14:45**
 promoters, **14:40**
 prosecutorial position of SEC, **14:39.80, 14:40.10**
 “red flags,” **14:51.50**
 representations, **11:123**
 reviewing preparation of statement made by another, **14:48**
 SEC actions, generally, **14:52.70**
 section 10A of Securities Exchange Act of 1934, **14:41**
 special pleading requirements, **14:52.90**

DUE DILIGENCE AND CIVIL LIABILITY

—Cont’d

Rule 10b-5 (1934 Act)—Cont’d
 “substantial participation” approach rejected by Supreme Court, **14:48**
 Supreme Court decision in Janus case (2011), **14:46, 14:48, 14:49**
 transaction causation, **14:45**
 unaudited financial information, **14:51**
 update duty of accountants, **14:44**
 who “makes” a misstatement, **14:47**
 Rule 102(e) proceedings, **14:92**
 Rule 176, **14:12**
 Rule 508 of 1933 Act, **11:4.70**
 Safe harbors. Disclosure “defenses,” above
 Sale of unregistered securities and securities fraud actions by SEC, **14:39.40**
 Sanders litigation, **14:14**
 Sarbanes-Oxley, whistle-blower protection for employees in employment termination cases, **14:53.50**
 Sarbanes-Oxley Act (this index)
 Scheme liability under Section 17(a)(3) of 1933 Act, **14:39.60**
 Scope of state law duties, **14:141**
 SEC
 actions and proceedings against attorneys and accountants, above
 authority to expand safe harbors, **14:109**
 disgorgement remedy, application of statute of limitations, **14:90.60**
 disgorgement remedy, Supreme Court upholds propriety of with restrictions, **14:90.65**
 enforcement arsenal against professionals and others, **14:90**
 independent duty to disclose, **14:40.30**
 Janus, **14:39.80, 14:90.50**
 materiality, **14:40.10**
 misstatement liability under Section 17(a)(2) of 1933 Act, **14:39.50**
 professional conduct rules. Sarbanes-Oxley Act (this index)
 professionals duty to disclose material facts, **14:40.50**
 prosecutorial position, **14:39.80, 14:40.10**
 Rule 10b-5 (1934 Act), above
 scheme liability under Section 17(a)(3) of 1933 Act, **14:39.60**
 SEC to circumvent Janus using 1934 Act § 20(b), **14:90.50**
 standard of care under Section 17(a) of 1933 Act, **14:39.70**
 statute of limitations, disgorgement remedy, **14:90.60**
 unregistered brokers under Exchange Act, **14:40.20**

DUE DILIGENCE AND CIVIL LIABILITY

—Cont’d

SEC enforcement authority, Fifth Circuit ruling, **14:90.35**
 Second restatement approach, **14:128**
 Section 10A of Exchange Act of 1934
 professional standards, influence on liability, **14:76**
 Rule 10b-5 (1934 Act), **14:41**
 Section 11 liability
 preparation of disclosure documents, securities laws duties relating to, **14:32**
 statutory provisions and decided cases on due diligence, below
 Section 12(a)(2) of 1933 Act
 generally, **14:33 to 14:38**
 accountants, **14:36**
 agents, **14:35**
 aiding and abetting under section 12, **14:38**
 attorneys, **14:36**
 brokers, **14:35**
 dealers, **14:35**
 Pinter v Dahl, **14:34**
 post-Pinter cases, **14:35**
 public offerings, limitation of section to, **14:37**
 statutory provisions and decided cases on due diligence, **14:13, 14:14**
 underwriters, **14:35**
 Section 17(a) of 1933 Act, **14:39, 14:39.80**
 Section 17(a)(2) of 1933 Act, **14:39.50**
 Section 17(a)(3) of 1933 Act, **14:39.60**
 Securities Act of 1933, generally, **14:2 et seq**
 Securities counsel, due diligence of, **14:141**
 Securities Exchange Act of 1934, generally, **14:30**
 Securities Exchange Commission. SEC, above
 Securities Litigation Uniform Standards Act (SLUSA), reach of, **14:123.50**
 Small Business Administration, qualified applicants for Early Stage licensing process, **4:17**
 Software Toolworks case, **14:6, 14:11**
 Sources of information, practical aspects of due diligence investigations, **14:26 to 14:28**
 Special pleading requirements for Rule 10b-5 claims, **14:52.90**
 Specific steps for underwriters, **14:20 to 14:25**
 Standard of care under Section 17(a) of 1933 Act, **14:39.70**
 State law claims for inadequate or misleading disclosure
 generally, **14:123 et seq.**
 accountants
 clients, common law negligence claims by, **14:124**

DUE DILIGENCE AND CIVIL LIABILITY**—Cont'd**

State law claims for inadequate or misleading disclosure—Cont'd
 accountants—Cont'd
 non clients, actions by. Accountants, common law negligence claims by non clients against, below in this group
 accountants, common law negligence claims by non clients against
 generally, **14:125 et seq.**
 balancing test, **14:135**
 Blue Bell, scope of comment in, **14:129**
 limiting liability by any practical steps, **14:134**
 Mississippi “reasonably foreseeable” approach, **14:133**
 “near privity” approach, **14:127**
 “reasonably foreseeable” approach, **14:130 to 14:133**
 Rosenbloom test in New Jersey, **14:131**
 second restatement approach, **14:128**
 subsequent legislation, **14:136**
 Timm test in Wisconsin, **14:132**
 Ultramares approach, **14:126**
 attorneys
 attorney liability legislation, **14:140**
 clients, common law negligence claims by, **14:124**
 non clients, common law negligence claims by, **14:137 to 14:140**
 Blue Bell, scope of comment in, **14:129**
 common law negligence claims, **14:125 et seq.**
 Florida developments, **14:138**
 in pari delicto defense, **14:142**
 Mississippi “reasonably foreseeable” approach, **14:133**
 “near privity” approach, **14:127**
 non clients
 accountants, common law negligence claims by non clients against, above in this group
 attorneys, common law negligence claims by non clients against, **14:137 to 14:140**
 privity, **14:138, 14:139**
 “reasonably foreseeable” approach, **14:130 to 14:133**
 Rosenbloom test in New Jersey, **14:131**
 scope of state law duties, **14:141**
 second restatement approach, **14:128**
 state securities statutes, generally, **14:123**
 Texas developments, **14:138**
 Timm test in Wisconsin, **14:132**
 Ultramares approach, **14:126, 14:137**
 Statements of opinion or belief, **14:15**

DUE DILIGENCE AND CIVIL LIABILITY**—Cont'd**

State of mind safe harbor, **14:104**
 Statute of limitations, SEC disgorgement remedy, **14:90.60**
 Statutory provisions
 control person liability, **14:80, 14:82 to 14:84**
 due diligence. Statutory provisions and decided cases on due diligence, below
 safe harbors, generally. Disclosure “defenses,” above
 Statutory provisions and decided cases on due diligence
 generally, **14:2 to 14:14**
 BarChris, **14:7**
 Chris-Craft, **14:9**
 due diligence as matter of law, **14:11**
 “expertised” part, reliance on, **14:5**
 introduction, **14:2**
 investigation by underwriter, **14:10**
 Leasco, **14:8**
 reasonableness standard, **14:4**
 Rule 10b-5 (1934 Act), **14:10**
 Rule 176, **14:12**
 Sanders litigation, **14:14**
 Section 11 liability, generally, **14:3 to 14:12**
 Section 12(a)(2) liability, **14:13, 14:14**
 Section 17(a) liability, **14:10**
 Software Toolworks and Worlds of Wonder, **14:6, 14:11**
 underwriter’s duty, generally, **14:10**
 waivable defense by underwriter, **14:10**
 WorldCom case, **14:9.50**
 Worlds of Wonder, **14:6, 14:11**
 “Substantial participation” approach rejected by Supreme Court, **14:48**
 Supreme Court decision in Janus case (2011), **14:46, 14:48, 14:49**
 Taking advantage of safe harbor, **14:108**
 Targeted solicitation, importance or not of, **14:38.50**
 Technology, determination of importance of, **14:21**
 Texas developments, **14:138**
 Timm test in Wisconsin, **14:132**
 Trademarks, determination of importance of, **14:21**
 Transaction causation, **14:45**
 Two prong test, control person liability, **14:82 to 14:84**
 Ultramares approach, **14:126, 14:137**
 Unaudited financial information, **14:51**
 Underwriters
 control person liability, **14:89**
 practical aspects of due diligence investigations, above

DUE DILIGENCE AND CIVIL LIABILITY

—Cont'd

- Underwriters—Cont'd
 - Rule 10b-5 (1934 Act), **14:10**
 - Section 12(a)(2) of 1933 Act, **14:35**
 - Section 17(a) of 1933 Act, **14:10**
 - statutory provisions and decided cases on due diligence, **14:10**
- Update duty, **14:44, 14:107**
- Waivable defense by underwriter, **14:10**
- Whistle-blower protection for employees in employment termination cases, Sarbanes-Oxley, **14:53.50**
- WorldCom case, **14:9.50**
- Worlds of Wonder case, **14:6, 14:11**

DULY AUTHORIZED STOCK

- Preferred stock, **6:128, 6:138**

DURATION

- Limited liability companies, **3:42**

EARLY STAGE SBIC INITIATIVE (2012)

- Small Business Administration, financing from, **4:17**

EARLY STAGE SBIC LIMITED PARTNERSHIP AGREEMENT

- Small Business Administration, financing from, **4:18**

EARNINGS

- S corporations, avoidance of accumulated earnings tax, **2:10**

EDIT OR EDITING

- Preparation of statement made by another, editing of, **14:48**

EFFECTIVE DATES

- Limited Liability Companies (this index)

ELECTION OR CHOICE

- Choice or Election (this index)

ELECTIONS AND VOTING

- Certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:107**
- Choosing the business financing format, **1:18**
- Limited liability companies, **3:16 to 3:18**
- NCVA model venture financings documents (2007), voting agreement, **15A:6**
- State blue sky regulation, **15:23**

ELECTRONIC ROAD SHOWS

- SEC's 2005 revisions to securities offering rules, **11:142**

ELIGIBILITY

- Institutional Private Placements (this index)

EMERGING GROWTH COMPANIES (EGCs)

- Advisory votes of shareholders about executive compensation, **12:34**
 - Communications restrictions, **11:137.50**
 - Confidential submission process for emerging growth companies, JOBS Act frequently asked questions, **App 12.3**
 - Corporate governance, JOBS Act (2012) revisions for emerging growth companies, **12:34**
 - Cross-references within treatise, **11:133.50**
 - Crowdfunding, offerings of \$5,000,000 or less, **11:75.70**
 - Disclosure
 - exemptions available, **11:146.50**
 - extended phase-in, **11:146.50**
 - FAST Act, **11:153.70**
 - JOBS Act exemptions, **12:34**
 - MD&A special disclosures, **11:146.50**
 - opt-out, **11:146.50**
 - risk factors, **11:146.50**
 - Securities Act (1933) issuer registration, **11:133.50**
 - status as EGC, **11:146.50**
 - Exemptions under JOBS Act, **11:146.50, 12:34**
 - Extended phase-in disclosure, **11:146.50**
 - FAST Act
 - disclosure and registration C&DIs, **11:153.70**
 - registration, **11:153.60**
 - Golden parachutes disclosure, exemption under JOBS Act, **12:34**
 - Internal pay equity disclosure exemption under JOBS Act, **12:34**
 - MD&A disclosures, **11:146.50**
 - Opt-out disclosures, **11:146.50**
 - Pay versus performance disclosure exemption under JOBS Act, **12:34**
 - Registration
 - FAST Act, **11:153.60**
 - Securities Act, **11:133.50**
 - Risk factors disclosures, **11:146.50**
 - Status change, notice provision in underwriting agreement, **19:3.50**
 - Underwriting agreement, **19:3.50**
- EMPLOYEE BENEFIT PLANS**
- Federal Securities Laws (this index)
- EMPLOYEES**
- Series A convertible preferred stock purchase agreement (annotated), **6:35**
- ENGLISH LANGUAGE**
- Disclosure (this index)
- ENHANCED LOAN EXTENSION**
- Small Business Administration, financing from, **4:1.50**

INDEX

ENRON CASE

Due diligence and civil liability, **14:96**

ENTIRE AGREEMENT

Series A convertible preferred stock purchase agreement (annotated), **6:97**

ENTRY OF ADMINISTRATIVE ORDER

Due diligence and civil liability, **14:90**

EQUITY

S corporations, one class of stock requirement for eligibility, **2:23**

EQUUS TOTAL RETURN (EQS)

Business development company (BDC), **5:3**

ERISA

Preferred stock, **6:36**

ESTATES

Holding period for restricted securities, **11:107, 11:109**

S corporations, eligible shareholders, **2:17**

ESTIMATED MATTERS

Tax payments, S corporations, **2:67**

ESTOPPEL

Waiver and Estoppel (this index)

EUROPEAN SOURCES OF FUNDS

Small Business Administration, financing from, **4:15**

EVALUATION

Term loan agreements, **7:12 to 7:15**

EVASION SCHEMES

Federal securities laws, **11:92**

EXCEPTIONS

Eligibility for SBA loans, exceptions to generally, **4:1**

EXCESS PASSIVE INVESTMENT INCOME

S corporations, **2:32**

EXCHANGE ACT OF 1934

Due Diligence and Civil Liability (this index)

Federal Securities Laws (this index)

Going Public (this index)

EXCLUSIONS

Due diligence and civil liability, **14:102**

EXECUTIVE COMPENSATION

Disclosure, **13:6, 13:42, 13:43**

Dodd-Frank Act (2010) corporate governance provisions, **12:34**

Item 402 of Regulation S-K, Executive Compensation Staff Q&A (Feb 12, 2007), **App 5.8**

EXECUTIVE COMPENSATION—Cont'd

JOBS Act (2012) revisions for emerging growth companies, **12:34**

EXEMPTIONS

Federal Securities Laws (this index)

Going Public (this index)

Limited liability companies, **3:67**

State Blue Sky Regulation (this index)

EXISTING ELIGIBLE ENTITIES

Limited liability companies, **3:15**

EXPANSION OF SAFE HARBORS

Due diligence and civil liability, **14:109**

EXPENSES

Costs and Expenses (this index)

Offerings, state blue sky regulation, **15:19**

S corporations, investment interest limitation, **2:40 to 2:46**

EXPRESS AGGREGATION UNDER RULE 144(E)(3)

Federal securities laws, **11:119**

FAILURE TO QUALIFY AS SMALL BUSINESS CORPORATION

S corporations, termination of election, **2:31**

FAMILY

Going public, **12:8, 12:32**

FAQs

FinCEN clarifying dissolved entities subject to CTA, **9:7**

FASB STATEMENT NO. 154

Going public, accounting changes and error corrections, **12:22**

FAST ACT

Emerging Growth Companies (EGCs) (this index)

FEDERAL PREEMPTION OF STATE LAW

Due diligence and civil liability, **14:121**

FEDERAL REGISTER NOTICE

Small Business Administration, call periods for Early Stage licensing process, **4:17**

FEDERAL SECURITIES LAWS

2018 and 2008 amendments, summary, **11:152**

Generally, **11:1 to 11:158**

Accounts receivable, intrastate offering exemption, **11:46**

Accredited investors

private offering exemption, **11:6**

resales to, exemptions from registration requirements, **11:83.60**

Acquisition transaction, focus on, **11:94**

FEDERAL SECURITIES LAWS—Cont'd

- Advertising, prohibition of, **11:7, 11:7.50**
- Affiliates, resales of securities by, **11:85, 11:111**
- Aggregate offering price, private offering exemption, **11:9, 11:9.30**
- Aggregation, limitation on amount of securities sold, **11:117 to 11:121**
- Aiding and abetting in private actions, Rule 10b-5 (1934 Act), **14:46**
- Amendments
 - 2018 amendments, smaller business issuers rules and forms, February 2008 as affected by, **11:153**
 - resales of securities by investors, exemptions under Section 4(a)(1) and Rule 144, **11:83.50**
 - Rule 147, **11:41.50**
 - smaller business issuers rules and forms, February 2008 as affected by 2018 amendments, **11:153**
- Amount of securities sold, limitation on
 - C&DIs, **11:121.30, 11:121.70, 11:122.50, 11:126.50**
 - express aggravation, **11:121.50**
 - notice of proposed sale, **11:126.50**
 - Resales of securities by investors, exemptions under section 4(a)(1) and Rule 144, below
 - Rule 144(d)(3), **11:121.50**
 - shell companies, **11:122.50**
 - tacking provisions in Rule 144(d)(3), **11:121.50**
- “Assets requirement” of (c)(2)(ii), **11:46 to 11:50**
- Attorney opinion letter regarding restricted shares, improper issuance of, **11:132.50**
- Automatic shelf-registration for well-known seasoned issuers, SEC’s 2005 securities offering revisions, **11:150**
- “Bad boy” exclusions, Regulation A exemption for offering of 75 million dollars or less, **11:74**
- “Beneficial ownership” under former Rule 144(d)(1), **11:112 to 11:115**
- Blue sky laws, internet offerings, **11:8**
- C&DIs (this index)
- Class action settlements, **11:100**
- Codification of existing Rule 152 interpretations, **11:40**
- Commission, integration as viewed by, **11:32**
- Commodity futures trading, intrastate offering exemption, **11:49**
- Communications revisions of 2005, **11:136 et seq.**
- Compensatory benefit plans and compensatory contracts, exemptions for transactions under, **11:76**

FEDERAL SECURITIES LAWS—Cont'd

- Consideration of same type, integration of “separate” offerings, **11:21**
- Conversions, special tacking rules, **11:106**
- Corporate Transparency Act
 - BOI reporting requirements subject to various litigation, a nationwide injunction and stay, **9:1.50**
 - overview, **9:1**
 - penalties for violations, **9:3**
 - proposed rules, **9:4**
 - summary, **9:2**
- Corporations, holding period for restricted securities, **11:115**
- Counting purchasers under Rule 501(e), **11:10, 11:10.30**
- Court decisions
 - integration of “separate” offerings, **11:33**
 - Section 4(2) decisional law apart from Regulation D, **11:14**
- Crowdfunding (this index)
- Currently effective registration statement, resales under, **11:125**
- Current public information, **11:101.50**
- Current public information, resales of securities by investors, **11:86, 11:101, 11:101.50**
- Defining the problem by task force on integration, **11:25**
- Definitions of “restricted securities.” Resales of securities by investors, exemptions under section 4(a)(1) and Rule 144, below
- Delivery of prospectus, reforms, **11:145**
- “Directed selling efforts,” **11:81**
- Disclosure requirements
 - emerging growth companies, **11:133.50, 11:146.50, 11:153.50**
 - exemption from, **11:132**
 - offering exemption, Regulation A Tier 2 requirements, termination or suspension, **11:75.60**
 - Regulation A exemption for offering of 50 million dollars or less, **11:75.60**
 - Regulation A exemption for offering of 75 million dollars or less, **11:65 to 11:71**
 - resales of securities by investors, **11:132**
 - Rule 10b-5 (1934 Act), aiding and abetting in private actions, **14:46**
 - SEC’s 2005 securities offering revision, risk factor disclosure, **11:146**
 - smaller business issuers, registration and reporting for, **11:154, 11:155**
- Disqualification provisions of Rule 262, **11:74**
- Divorces, holding period for restricted securities, **11:113**
- Doing business within the state requirement.
 - Intrastate offering exemption, below

FEDERAL SECURITIES LAWS—Cont'd

- Electronic road shows, SEC's 2005 securities offering revisions, **11:142**
- Eligibility for regulation A exemption for offering of 75 million dollars or less, **11:62**
- Emerging growth companies
 - communications restrictions, **11:137.50**
 - cross-references, **11:133.50**
 - registration under Securities Act, **11:133.50, 11:153.50**
 - risk factor disclosures, **11:146.50**
- Employee benefit plans. Resales of securities by investors, exemptions under section 4(a)(1) and Rule 144, below
- Estates, holding period for restricted securities, **11:107, 11:109**
- Evasion schemes, resales of securities by investors, **11:92**
- Examples in the adopting release, intrastate offering exemption, **11:44**
- Exchange Act of 1934
 - Regulation A offering exemption, concurrent registration, **11:75.50**
 - small business issuers, registration and reporting for, below
- Exemptions from registration requirements
 - generally, **11:2 to 11:132**
 - "accredited investor"
 - review of accredited investor definition, SEC, **11:4.30**
 - selected SEC guidance, **11:4.20**
 - "accredited investor," amendments to the definition of, **11:4.10**
 - accredited investors, resales to, **11:83.60**
 - amendments (2020) to framework for, **11:1.10**
 - "bad boy" exclusions, Regulation A exemption for offering of 75 million dollars or less, **11:74**
 - compensatory benefit plans and compensation contracts, exemption for transactions under, **11:76**
 - Covid-19: temporary amendments to regulation crowdfunding, **11:75.71**
 - Crowdfunding (this index)
 - felons and other bad actors disqualification, Rule 506(d) and (e), **11:4.40, 11:4.52**
 - framework for, amendments (2020) to, **11:1.10**
 - integration of "separate" offerings, below
 - intrastate offering exemption, below
 - offshore transactions, exemption under Regulation S for, below
 - private offering exemption, below
 - Regulation A offering exemption, 1934 Act concurrent registration, **11:75.50**
 - Regulation A exemption for offering of 50 million dollars or less, below

FEDERAL SECURITIES LAWS—Cont'd

- Exemptions from registration requirements
 - Cont'd
 - Regulation S. Offshore transactions, exemption under Regulation S for, below
 - Resales of securities by investors, exemptions under Section 4(a)(1) and Rule 144, below
 - resales to accredited investors, **11:83.60**
 - review of accredited investor definition, SEC, **11:4.30**
 - Rule 147, amendments, **11:41.50**
 - Rule 506 offerings, **11:4.40, 11:4.50**
 - small offering exemption. Regulation A exemption for offering of 50 million dollars or less, below
 - transactions and not securities as exempt, generally, **11:2**
- Express aggregation
 - amount of securities sold, limitation on, **11:121.50**
 - limitation on amount of securities sold, **11:121.50**
 - Rule 144(e)(3), **11:119**
- Felons and other bad actors, Rule 506 offerings, **11:4.40, 11:4.52**
- Final offering circular, Regulation A exemption for offering of 75 million dollars or less, **11:68**
- Financial statement requirements
 - 2018 and 2008 amendments, summary, **11:152**
 - Form S-1 and Regulation S-K, generally, **11:152**
 - Regulation A exemption for offering of 75 million dollars or less, **11:71**
- Finders, stock issued to, **11:97**
- Foreign state or country. Intrastate offering exemption, below
- Form D filings
 - private offering exemption, **11:12.20**
 - proposed amendment of Form, **11:4.60**
- Form S-1, generally, **11:152**
- Free writing prospectuses, permissible use of, **11:141**
- Fully paid securities, holding period for restricted securities, **11:103**
- Fungibility, holding period for restricted securities, **11:105**
- "Future tense" letters, **11:126**
- Gifts. Resales of securities by investors, exemptions under section 4(a)(1) and Rule 144, below
- Good faith compliance with Regulation A exemption for offering of 75 million dollars or less, **11:72**
- "Gross revenues requirement" of (c)(2)(i), **11:51 to 11:55**

FEDERAL SECURITIES LAWS—Cont'd

Holding period for restricted securities. Resales of securities by investors, exemptions under section 4(1) and Rule 144, below

Hyperlinked information, issuer responsibility for, **11:8**

“In concert,” sale by persons acting, **11:120**

Informational requirements

C&DIs, **11:10.70**

offering circular, **11:69**

private offering exemptions, **11:10.50**

resales by institutional buyers, **11:131**

Information requirements, resales by institutional buyers, **11:131**

Institutional buyers, resales by

generally, **11:127 to 11:132**

disclosure requirements, exemption from, **11:132**

exclusion of certain securities, **11:130**

information requirements, **11:131**

miscellaneous, **11:132**

proof of eligibility, **11:129**

qualified institutional buyers, generally, **11:128**

reliance by seller on Rule 144A, **11:132**

Resales of securities by investors, exemptions under section 4(a)(1) and Rule 144, below

Insurance business, intrastate offering exemption, **11:52**

Integration of “separate” offerings

generally, **11:16 to 11:23**

C&DIs (this index)

codification of existing Rule 152 interpretations, **11:40**

commission, integration as viewed by, **11:32**

consideration, same type of, **11:21**

court decisions, **11:33**

defining the problem by task force on integration, **11:25**

intrastate offering exemption, **11:29, 11:59**

issuer integration, staff interpretations, **11:37**

modification of existing Rule 152 interpretations, **11:40**

offering integration, staff interpretations, **11:35**

private placements, **11:12, 11:30**

proposal for new rules by task force on integration, **11:38**

purpose, same type of, **11:22**

Regulation A exemption for offering of 75 million dollars or less, **11:64**

Regulation D, generally, **11:16**

regulatory and judicial authorities, integration as viewed by. Task force on integration, report of, below in this group

Rule 147, **11:59**

Rule 152, **11:20, 11:39, 11:40**

Rule 155, **11:39, 11:40, 11:40.50**

FEDERAL SECURITIES LAWS—Cont'd

Integration of “separate” offerings—Cont'd

safe harbors

Rule 502(a), **11:12, 11:12.10**

Rules 152 and 155, **11:20, 11:39, 11:40**

same class of security, **11:18**

same time, offerings made at, **11:19, 11:20**

Section 3(a)(9), **11:27**

Section 3(a)(10), **11:27, 11:28**

single plan of financing, **11:17**

staff interpretations of task force on integration, **11:34 to 11:37**

task force on integration, report of

generally, **11:24 to 11:40**

commission, integration as viewed by, **11:32**

court decisions, **11:33**

defining the problem, **11:25**

intrastate offering exemption, **11:29**

issuer integration, staff interpretations, **11:37**

offering integration, staff interpretations, **11:35**

private placements, **11:30**

proposal for new rules, **11:38**

regulatory and judicial authorities, integration as viewed by, generally, **11:31 to 11:37**

Section 3(a)(9), **11:27**

Section 3(a)(10), **11:27, 11:28**

staff interpretations, **11:34 to 11:37**

transaction exemptions, **11:26 to 11:30**

venture integration, staff interpretations, **11:36**

time of offering, **11:19, 11:20**

transaction exemptions, **11:26 to 11:30**

unincorporated businesses, **11:23**

venture integration, staff interpretations, **11:36**

Internet offerings, **11:8, 11:81.11**

Interpretations of Rule 144, **11:91**

Intrastate offering exemption

generally, **11:42 to 11:59**

accounts receivable, **11:46**

“assets requirement” of (c)(2)(ii), **11:46 to 11:50**

commodity futures trading, **11:49**

doing business within the state requirement

generally, **11:43 to 11:57**

adopting release, **11:44**

assets requirement, **11:45**

“assets requirement” of (c)(2)(ii), **11:46 to 11:50**

“gross revenues requirement” of (c)(2)(i), **11:51 to 11:55**

integration problems under rule 147, **11:59**

“net proceeds requirement” of (c)(2)(iii), **11:56**

FEDERAL SECURITIES LAWS—Cont'd

Intrastate offering exemption—Cont'd
 doing business within the state requirement
 —Cont'd
 “principal office requirement” of (c)(2)(iv),
 11:57
 six-month resale limitation, **11:58**
 examples in the adopting release, **11:44**
 “gross revenues requirement” of (c)(2)(i),
 11:51 to 11:55
 insurance business, **11:52**
 integration of “separate” offerings, **11:29**
 integration problems under rule 147, **11:59**
 joint ventures, **11:54**
 lease receivables, **11:50**
 loans, **11:47**
 margin account deposits, **11:49**
 motion picture production and distribution,
 11:53
 “net proceeds requirement” of (c)(2)(iii),
 11:56
 out-of-state cash and securities, **11:48**
 out-of-state investment selection, **11:55**
 “principal office requirement” of (c)(2)(iv),
 11:57
 residence requirement, **11:42**
 Rule 147, integration problems under, **11:59**
 Rule 147A, general provisions, **11:41.60**
 six-month resale limitation, **11:58**
 Investments, Regulation A limitations and restric-
 tions, **11:63.10**
 Issuer and resale safe harbors, **11:79 to 11:82**
 Issuer integration, staff interpretations, **11:37**
 “Issuer” under Regulation D, **11:11**
 JOBS Act (Jumpstart Our Business Startups Act)
 (this index)
 Joint ventures, intrastate offering exemption,
 11:54
 Lease receivables, intrastate offering exemption,
 11:50
 Legality and tax opinions filed in registered offer-
 ings
 SEC’s 2005 securities offering revisions,
 11:151.50
 SEC Staff Legal Bulletin No. 19 (CF) (Oct. 14,
 2011), **App 5.10**
 Limitations and restrictions
 investments, **11:63.10**
 offering price, **11:63**
 Resales of securities by investors, exemptions
 under section 4(a)(1) and Rule 144, below
 Limited liability companies, **3:2**
 Loans, intrastate offering exemption, **11:47**
 Margin account deposits, intrastate offering
 exemption, **11:49**

FEDERAL SECURITIES LAWS—Cont'd

Marital separations and divorces, holding period
 for restricted securities, **11:113**
 Miscellaneous resales by institutional buyers,
 11:132
 Modification
 amendments, above
 existing Rule 152 interpretations, **11:40**
 Motion picture production and distribution, intra-
 state offering exemption, **11:53**
 NASDAQ volume, use to determine amount of
 securities sold, **11:89**
 “Net proceeds requirement” of (c)(2)(iii), **11:56**
 No-action letters. Private offering exemption,
 below
 “no directed selling efforts,” **11:81.01**
 Nonintegration of foreign and U.S. offerings,
 11:81.10
 Nonreporting issuers, SEC’s 2005 securities
 offering rules revisions, **11:151**
 Notice of sale requirement under Rule 144, **11:90**
 Offering circular, **11:67 to 11:69**
 Offering integration, staff interpretations, **11:35**
 Offering price, limitations on, **11:63**
 Offering reform. 2004 proposals for securities
 offering reform, SEC’s, below
 Offshore transactions, exemption under Regula-
 tion S for
 generally, **11:77 to 11:82**
 basic structure of Regulation S, **11:78**
 “directed selling efforts,” **11:81**
 issuer and resale safe harbors, **11:79 to 11:82**
 issuer safe harbors, **11:81.02 to 11:81.08,**
 11:82
 “no directed selling efforts,” **11:81.01**
 resale safe harbors, **11:79 to 11:81**
 safe harbors, **11:79 to 11:82**
 Out-of-state. Intrastate offering exemption, above
 Partnerships, holding period for restricted securi-
 ties, **11:114**
 Pledges. Resales of securities by investors,
 exemptions under section 4(a)(1) and Rule
 144, below
 Preconditions to reliance on Rule 144, **11:86 to**
 11:91
 Preemption of Rule 506 offerings, blue sky laws
 and internet offerings, **11:8**
 Pre-existing relationships, existence and
 substance of, C&DIs, **11:7.55**
 Preliminary offering circular, **11:67**
 “Principal office requirement” of (c)(2)(iv),
 11:57
 Private offering exemption
 generally, **11:3 to 11:23**
 accredited investors, **11:6**
 advertising, prohibition of, **11:7, 11:7.50**

FEDERAL SECURITIES LAWS—Cont'd

Private offering exemption—Cont'd
 aggregate offering price, **11:9, 11:9.30**
 counting purchasers under Rule 501(e), **11:10, 11:10.30**
 decisional law apart from Regulation D, **11:14**
 FAQ, **11:6.80**
 informational requirements, **11:10.50**
 integration of “separate” offerings, above
 integration safe harbor under Rule 502(e),
11:12, 11:12.10
 “issuer” under Regulation D, **11:11**
 no-action letters. SEC no-action letters under
 Regulation D, below in this group
 Regulation D
 generally, **11:4**
 decisional law apart from, **11:14**
 SEC no-action letters under Regulation D,
 below
 Rules 504, 505, and 506, **11:12.40**
 SEC no-action letters under Regulation D
 generally, **11:5 to 11:13**
 accredited investors, **11:6**
 advertising, prohibition of, **11:7**
 aggregate offering price, **11:9**
 counting purchasers under Rule 501(e),
11:10, 11:10.30
 integration safe harbor under Rule 502(e),
11:12, 11:12.10
 “issuer” under Regulation D, **11:11**
 selected SEC no-action letters, **App 9**
 solicitation, prohibition of, **11:7**
 state law and Regulation D, **11:13**
 Section 4(a)(5); Rule 1001, **11:15**
 selected SEC no-action letters, **App 9**
 solicitation, prohibition of, **11:7**
 state law and Regulation D, **11:13**
 Private placements, integration of “separate”
 offerings, **11:30**
 Proof of eligibility, resales by institutional buy-
 ers, **11:129**
 Proposals
 Form D amendment, **11:4.60**
 general solicitation in certain offerings,
 elimination of prohibition, **11:4.50**
 Regulation D amendment, **11:4.60**
 task force on integration, new rules, **11:38**
 Prospectus
 delivery reforms, **11:145**
 free writing prospectuses, permissible use of,
11:141
 Purchaser representatives, **11:10.90**
 Qualifications for exemption from resales of
 securities by investors, **11:84**

FEDERAL SECURITIES LAWS—Cont'd

Recapitalizations. Resales of securities by inves-
 tors, exemptions under section 4(a)(1) and
 Rule 144, below
 Reform. 2004 proposals for securities offering
 reform, SEC’s, below
 Registration
 exemptions from registration requirements,
 above
 shelf registration process, **11:147**
 small business issuers, registration and report-
 ing for, below
 Regulation A exemption for offering of 50 mil-
 lion dollars or less
 1933 Act, **11:75.40, 11:75.65**
 1934 Act, concurrent registration, **11:75.50**
 offering circular
 tier 2, **11:75.60**
 registration concurrent, 1934 Act, **11:75.50**
 reporting companies, 2018 amendments,
11:75.35
 Rule 15c2-11, 1934 Act, **11:75.40**
 safe harbor, **11:75**
 section 12(a)(2), 1933 Act liability, **11:75.65**
 summary of 2015 amendments, **11:75.30**
 Regulation A exemption for offering of 75 mil-
 lion dollars or less
 generally, **11:61 to 11:75.65**
 “bad boy” exclusions, **11:74**
C&DI, 11:64.50
 disclosure and procedural requirements, **11:66**
to 71
 disqualification provisions of Rule 262, **11:74**
 eligibility, **11:62**
 final offering circular, **11:68**
 financial statement requirements, **11:71**
 good faith compliance with regulation, **11:72,**
11:73
 informational content of offering circular,
11:69
 integration, **11:64**
 investments, limitations on, **11:63.10**
 limitations, **11:63, 11:63.10**
 offering circular, **11:67 to 11:69**
 offering price, limitations on, **11:63**
 preliminary offering circular, **11:67**
 procedural requirements, **11:66 to 71**
 reporting requirements, **11:71.10**
 Rule 262, disqualification provisions of, **11:74**
 SEC guidance, **11:64.50**
 substantial compliance, **11:72, 11:73**
 suspension of exemption, **11:73**
 “testing the waters,” **11:65**
 three alternative formats, **11:70**
 threshold, 1934 Act Section 12(g), **11:64.10**

FEDERAL SECURITIES LAWS—Cont'd

Regulation Crowdfunding. Crowdfunding (this index)

Regulation D
 integration of “separate” offerings, **11:16**
 private offering exemption, above
 proposed amendment, **11:4.60**

Regulation S
 distribution compliance, issuer safe harbor, **11:81.05**
 Internet web site offers, **11:81.11**
 IPOs, alternative restrictions, **11:81.08**
 Issuer safe harbor
 alternative restrictions for IPOs, **11:81.08**
 distribution compliance, **11:81.05**
 first category, **11:81.02**
 IPOs, alternative restrictions, **11:81.08**
 offering restrictions, **11:81.06**
 secondary market trading, **11:81.08**
 second category, **11:81.03 to 11:81.06**
 third category, **11:81.07**
 U.S. person, **11:81.04**
 U.S.nonreporting issuers, secondary market trading, **11:81.08**
 offshore transactions, exemption under Regulation S for, above
 Resale safe harbor, **11:81.09**
 Safe no directed selling efforts, **11:81.01**
 Secondary market trading, issuer safe harbor, **11:81.08**
 U.S.nonreporting issuers, issuer safe harbor, **11:81.08**

Regulation S-K, smaller business issuers registration and reporting, **11:152**

Regulation S-P compliance, internet offerings, **11:8**

Reliance by seller on Rule 144A, **11:132**

Reorganizations, definition of “restricted securities,” **11:100**

Reporting
 emerging growth company issuer registration under Securities Act, **11:133.50, 11:153.50**
 Regulation A, exemption reporting requirements, **11:71.10**

Resales of securities by investors
 exemptions under Section 4(a)(1) and Rule 144, **11:83 to 11:126**
 offshore transactions, resale safe harbors, **11:79 to 11:81**

Resales of securities by investors, exemptions under Section 4(a)(1) and Rule 144
 acquisition transaction, focus on, **11:94**
 additional interpretations, **11:124 to 11:126**
 affiliates, **11:85, 11:111**

FEDERAL SECURITIES LAWS—Cont'd

Resales of securities by investors, exemptions under Section 4(a)(1) and Rule 144—Cont'd
 aggregation, limitation on amount of securities sold, **11:117 to 11:120.50**
 amount of securities sold, limitation on generally, **11:116 to 11:121.50**
 aggregation, **11:117 to 11:120.50**
 express aggregation under Rule 144(e)(3), **11:119**
 “in concert,” sale by persons acting, **11:120**
 preconditions to reliance on Rule 144, **11:89**
 “same person” under Rule 144(a)(2), aggregation by, **11:118**
 special tacking provisions under Rule 144(d)(3), **11:119**
 volume limits, sales excluded from, **11:121**
 “beneficial ownership” under former Rule 144(d)(1), **11:112 to 11:115**

C&DIs (this index)
 class action settlements, **11:100**
 conversions, special tacking rules, **11:106**
 corporations, holding period for restricted securities, **11:115**
 currently effective registration statement, resales under, **11:125**
 current public information, **11:86, 11:101**
 definition of “restricted securities”
 generally, **11:93 to 11:100**
 acquisition transaction, focus on, **11:94**
 class action settlements, **11:100**
 employee benefit plans, **11:99**
 finders, stock issued to, **11:97**
 gifts, **11:95**
 pledges, **11:96**
 recapitalizations, **11:100**
 reorganizations, **11:100**
 Section 5, acquisitions violating, **11:98**
 spin-offs, **11:100**
 stock dividends, **11:100**
 underwriters, stock issued to, **11:97**

divorces, holding period for restricted securities, **11:113**

employee benefit plans
 definition of “restricted securities,” **11:99**
 holding period for restricted securities, **11:104**

estates, holding period for restricted securities, **11:107, 11:109**

evasion schemes, **11:92**

express aggregation, **11:119**

finders, stock issued to, **11:97**

fully paid securities, holding period for restricted securities, **11:103**

fungibility, holding period for restricted securities, **11:105**

FEDERAL SECURITIES LAWS—Cont'd

Resales of securities by investors, exemptions under Section 4(a)(1) and Rule 144—Cont'd
 “future tense” letters, **11:126**
 gifts
 affiliates, gifts by, **11:111**
 definition of “restricted securities,” **11:95**
 special tacking rules, **11:107**
 holding period for restricted securities generally, **11:102 to 11:115.50**
 affiliates, gifts and pledges by, **11:111**
 “beneficial ownership” under former Rule 144(d)(1), **11:112 to 11:115**
 conversions, special tacking rules, **11:106**
 corporations, **11:115**
 divorces, **11:113**
 employee benefit plans, **11:104**
 estates, **11:107, 11:109**
 fully paid securities, **11:103**
 fungibility, **11:105**
 gifts, **11:107, 11:111**
 marital separations and divorces, **11:113**
 partnerships, **11:114**
 pledges, **11:107, 11:111**
 preconditions to reliance on Rule 144, **11:87**
 recapitalizations, special tacking rules, **11:106**
 Rule 144(d)(3), tacking rule under, **11:110**
 special tacking rules, **11:106, 11:107**
 tacking rules, **11:106, 11:107, 11:110**
 tracing securities, **11:105**
 trusts, **11:107, 11:108**
 “in concert,” sale by persons acting, **11:120**
 interpretations of Rule, **11:91**
 limitations and restrictions
 amount of securities sold, limitations on, above in this group
 definition of “restricted securities,” above in this group
 holding period for restricted securities, above in this group
 manner of sale restrictions, **11:88**
 marital separations and divorces, holding period for restricted securities, **11:113**
 notice of sale requirement, **11:90**
 partnerships, holding period for restricted securities, **11:114**
 pledges
 definition of “restricted securities,” **11:96**
 holding period for restricted securities, **11:107, 11:111**
 Uniform Commercial Code, sales by pledgees under, **11:124**
 preconditions to reliance on Rule 144, **11:86 to 11:90**
 qualifications for exemption, **11:84**

FEDERAL SECURITIES LAWS—Cont'd

Resales of securities by investors, exemptions under Section 4(a)(1) and Rule 144—Cont'd
 qualified institutional buyers. Institutional buyer, resales by, above in this group
 recapitalizations
 definition of “restricted securities,” **11:100**
 holding period for restricted securities, **11:106**
 reorganizations, definition of “restricted securities,” **11:100**
 restrictions. Limitations and restrictions, above in this group
 Rule 144(d)(3), tacking rule under, **11:110**
 “same person” under Rule 144(a)(2), aggregation by, **11:118**
 schemes to evade registration, **11:92**
 Section 5, acquisitions violating, **11:98**
 special tacking rules
 amount of securities sold, limitation on, **11:119**
 holding period for restricted securities, **11:106, 11:107, 11:110**
 spin-offs, definition of “restricted securities,” **11:100**
 stock dividends, definition of “restricted securities,” **11:100**
 tacking rules. Special tacking rules, above in this group
 technical compliance, sufficiency of, **11:92**
 tracing securities, **11:105**
 trusts, holding period for restricted securities, **11:107, 11:108**
 underwriters, stock issued to, **11:97**
 volume limits, sales excluded from, **11:121**
 Resales to accredited investors, exemptions from registration requirements, **11:83.60**
 Research reports, SEC’s 2005 securities offering revisions, **11:143**
 Residence, intrastate offering exemption, **11:42**
 Restricted shares, improper issuance of attorney opinion letter regarding, **11:132.50**
 Restrictions. Limitations and restrictions, above
 Risk factor disclosures, emerging growth companies, **11:146.50**
 Rule 10b5-1(c) representations, **11:123**
 Rule 15c2-11, Regulation A, offering exemption, **11:75.40**
 Rule 135c notice, internet offerings, **11:8**
 Rule 144. Resales of securities by investors, exemptions under section 4(a)(1) and Rule 144, above
 Rule 144(d)(3), amount of securities sold, limitation on, **11:121.50**
 Rule 147 (this index)
 Rule 152, integration of “separate” offerings, **11:20, 11:39, 11:40**

FEDERAL SECURITIES LAWS—Cont'd

- Rule 155, integration of “separate” offerings, **11:39, 11:40, 11:40.50**
- Rule 163B, test-the-waters communication, **11:137.60**
- Rule 262, disqualification provisions of, **11:74**
- Rule 415, proposed amendments to, **11:149**
- Rule 501, C&DIs, **11:7.60**
- Rule 506(c), C&DIs, **11:7.70**
- Rule 508, substantial, good faith compliance defense, **11:4.70**
- Rules 504, 505, and 506, private offering exemption, **11:12.40**
- Safe harbors
 - integration of “separate” offerings, above offshore transactions, exemption under Regulation S for, **11:79 to 11:82**
 - Regulation A exemption, **11:75**
- Same class of security, integration of “separate” offerings, **11:18**
- “Same person” under Rule 144(a)(2), aggregation by, **11:118**
- Same time, offerings made at, **11:19, 11:20**
- Schemes to evade registration, **11:92**
- SEC guidance, Regulation A, **11:64.50**
- SEC no-action letters. Private offering exemption, above
- Section 3(a)(9), integration of “separate” offerings, **11:27**
- Section 3(a)(10), integration of “separate” offerings, **11:28**
- Section 4(2) decisional law apart from Regulation D, **11:14**
- Section 4(a)(5); Rule 1001, **11:15**
- Section 5, acquisitions violating, **11:98**
- Section 12(a)(2), liability, **11:75.65**
- Securities Act of 1933
 - applicability of, generally, **11:1**
 - Regulation A offering exemption, **11:75.40, 11:75.65**
 - rule 508, substantial, good faith compliance defense, **11:4.70**
 - shelf registration process, **11:147**
 - small business issuers, registration and reporting for, below
 - summary of registration requirements (including 2005 revisions in securities offering rules and JOBS Act), **11:133**
- Securities Act of 1934. Exchange Act of 1934, above
- Securities offering reform
 - 2004 proposals for securities offering reform, SEC’s, below
 - 2005 revisions in securities offering rules, **11:133 to 11:151.50**
- Selected SEC no-action letters, **App 9**

FEDERAL SECURITIES LAWS—Cont'd

- Shelf offerings, SEC’s 2005 securities offering revisions, **11:148**
- Shelf registration for well-known seasoned issuers, automatic, **11:150**
- Shelf registration process under Securities Act, **11:147**
- Shell companies, reporting and nonreporting, **11:122**
- Single plan of financing, **11:17**
- Six-month resale limitation, intrastate offering exemption, **11:58**
- Small Entity Compliance Guide
 - Amendments to Regulation A, **App 1.9**
 - Disclosure update and Simplification, **App 1.9**
- Smaller business issuers, registration and reporting for
 - 2018 amendments affecting February 2008 amendments, **11:153**
 - 2018 and 2008 amendments, summary, **11:152**
 - generally, **11:152 et seq.**
 - C&DIs regarding omission of certain financial information form draft registration statements, **11:161**
 - determination dates, **11:157**
 - disclosure requirements, **11:154, 11:155**
 - eligibility, **11:156**
 - entering and exiting smaller reporting company status, **11:158**
- Exchange Act of 1934, generally, **11:152**
- exclusions, **11:156**
- FAQs regarding voluntary submission of draft registration statements, **11:160**
- Form S-1, generally, **11:152**
- item-by-item disclosure on Regulation S-K, election, **11:155**
- qualifying as smaller reporting company, **11:156, 11:157**
- Regulation S-K, **11:154, 11:155**
- scaled disclosure standards in Regulation S-K, **11:154**
- Securities Act of 1933, generally, **11:152**
- submission of registration statements for non-public review by SEC permitted in all IPOs, **11:159**
- Solicitation, prohibition of
 - advertising, prohibition, **11:7**
 - proposed rule eliminating prohibition, **11:4.50**
- Sophistication under Rule 506, **11:10.90**
- Special Purpose Acquisition Companies (SPACs) (this index)
- Special tacking rules. Resales of securities by investors, exemptions under section 4(a)(1) and Rule 144, above
- Spin-offs, definition of “restricted securities,” **11:100**

FEDERAL SECURITIES LAWS—Cont'd

- Staff interpretations of task force on integration, **11:34 to 11:37**
- State blue sky regulation, **15:1**
- State law and Regulation D, **11:13**
- Stock dividends, definition of “restricted securities,” **11:100**
- Substantial compliance with Regulation A exemption for offering of 75 million dollars or less, **11:72, 11:73**
- Suspension of exemption, Regulation A exemption for offering of 75 million dollars or less, **11:73**
- Task force on integration. Integration of “separate” offerings, above
- Tax opinions filed in registered offerings, SEC’s 2005 securities offering rules revisions, **11:151.50**
- Technical compliance with Rule 144, sufficiency of, **11:92**
- “Testing the waters,” Regulation A exemption for offering of 75 million dollars or less, **11:65**
- Test-the-waters communication, Rule 163B, **11:137.60**
- Thirty-day bright line exclusion from prohibition on offers prior to filing registration statement, **11:139**
- Tier 2 obligations, **11:75.40 to 11:75.90**
- Time of offering, integration of “separate” offerings, **11:19, 11:20**
- Tracing securities, **11:105**
- Transactions and not securities as exempt, generally, **11:2**
- Trusts, holding period for restricted securities, **11:107, 11:108**
- 2015 amendments, summary of, Regulation A exemption for offering of 50 million dollars or less, **11:75.30**
- 2018 amendments, Regulation A, reporting companies, **11:75.35**
- 2005 SEC securities offering revisions
 - generally, **11:133 et seq.**
 - automatic shelf-registration for well-known seasoned issuers, **11:150**
 - background to 2005 revisions, **11:134**
 - communications proposals, **11:136 et seq.**
 - disclosure of risk factors, **11:146**
 - electronic road shows, **11:142**
 - emerging growth companies, communications restrictions, **11:137.50**
 - emerging growth company issuer category, **11:133.50**
 - free writing prospectuses, permissible use of, **11:141**
- JOBS Act registration requirements included in summary of 2012 Securities Act requirements, **11:133**

FEDERAL SECURITIES LAWS—Cont'd

- 2005 SEC securities offering revisions—Cont'd
 - liability uses, **11:144**
 - other categories of issuers, **11:133.50, 11:135**
 - overview of communications proposals, **11:137**
 - permitted continuation of ongoing communications during an offering, **11:138**
 - prospectus delivery reforms, **11:145**
 - research reports, use of, **11:143**
 - risk factor disclosure, **11:146, 11:146.50**
 - Rule 415, proposed amendments to, **11:149**
 - Securities Act shelf registration process, **11:147**
 - shelf offerings, **11:148**
 - shelf registration for well-known seasoned issuers, automatic, **11:150**
 - shelf registration process under Securities Act, **11:147**
 - summary of 2012 current Securities Act registration requirements, **11:133**
 - thirty-day bright line exclusion from prohibition on offers prior to filing registration statement—all issuers, **11:139**
 - unseasoned issuers and non-reporting issuers, **11:151**
 - well-known seasoned issuers, **11:135, 11:150**
 - written offering related communications, relaxation of restrictions on, **11:140**
- 2007 amendments. Amendments, above
- Underwriters, stock issued to, **11:97**
- Unincorporated businesses, integration of “separate” offerings, **11:23**
- Unseasoned issuers, SEC’s 2005 securities offering rules revisions, **11:151**
- Venture integration, staff interpretations, **11:36**
- Volume limits, sales excluded from, **11:121**
- Well-known seasoned issuers under SEC’s 2005 revisions, **11:135, 11:150**
- Written offering related communications, relaxation of restrictions on, **11:140**

FEES

- Term loan agreements, **7:35**

FELONS AND OTHER BAD ACTORS

- C&DI, bad actor disqualification under Rule 506(d) and disclosures under Rule 506(e), **11:4. 52**
- Securities Act of 1933, Rule 506 offerings, disqualification, **11:4.40**

FIDUS INVESTMENT CORP (FDUS)

- Business development company (BDC), **5:3**

FIFTH STREET FINANCE (FSC)

- Business development company (BDC), **5:3**

INDEX

FILING

Going Public (this index)

FINAL OFFERING CIRCULAR

Federal securities laws, **11:68**

FINAL REGULATIONS

Limited Liability Companies (this index)

FINANCES AND FINANCING

Disclosure (this index)

Going Public (this index)

S corporations, debt financed distributions from pass-through entity to its owners, **2:44**

Small Business Administration (this index)

Term Loan Agreements (this index)

FINANCIAL CRIMES ENFORCEMENT NETWORK (FinCEN)

FAQs clarifying dissolved entities subject to CTA, **9:7**

Q&As; interim final rule, **9:9**

FINANCIAL INSTITUTIONS

Banks and Financial Institutions (this index)

FINANCIAL STATEMENTS

Auditing Standard No. 5, integration of audit of internal control over financial reporting with audit of financial statements, **12:18**

Due diligence and civil liability, **14:17, 14:25, 14:96**

Federal Securities Laws (this index)

Material misstatement, PCAOB Proposed Auditing Standard Related to Auditor's Assessment of and Response to Risk of Material Misstatement in Financial Statement (Dec. 17, 2009), **App 11.2**

PCAOB Auditing Standards Release # 2012-001, **App 11.4**

Preferred stock, **6:26, 6:64**

FINDERS

Federal securities laws, **11:97**

Small Business Administration, financing from, **4:10**

FINRA GUIDANCE FOR PRIVATE PLACEMENTS

Due diligence and civil liability, **14:28.50**

FINRA REGULATORY NOTICE 10-22

Reasonable investigations by broker-dealers in Regulation D offerings, **App 1.2A**

FIRST REFUSAL, RIGHT OF

Preferred Stock (this index)

FISCAL YEAR

S corporations, fiscal years permissible without election, **2:72**

FIVE PERCENT BENEFICIAL OWNERS

Disclosure, **13:46, 13:47**

FIXED INTEREST RATES

Term loan agreements, **7:30**

FLEXIBLE STATUTES

Limited liability companies, **3:5**

"FLOATING" INTEREST RATE

Term loan agreements, **7:31**

FLORIDA

Small business, assistance programs for, **App 18.10**

FLORIDA DEVELOPMENTS

Due diligence and civil liability, **14:138**

FLORIDA LLC OPERATING AGREEMENT

Form of (2011), **20:5**

"FORCE DOWN" ANTIDILUTION PROVISIONS

Generally, **17:5**

FOREIGN CORRUPT PRACTICES ACT

Going public, **12:21**

FOREIGN STATE OR COUNTRY

Federal Securities Laws (this index)

Limited Liability Companies (this index)

FORMAT FOR BUSINESS FINANCING

Choosing the Business Financing Format (this index)

FORMS

Antidilution Provisions (this index)

Co-sale provisions, **18:14**

Debentures (this index)

Form D

federal securities laws, **11:4.60, 11:12.20**

Notice of Sales under Regulation D or Section 4(6), **App 2**

Going Public (this index)

Intrastate Offerings and Section 4(2) (this index)

Limited Liability Companies (this index)

Limited Offerings and Regulation A (this index)

Preferred Stock (this index)

Public Offerings (this index)

Registration rights agreement, **18:10**

Rules 144 and 144A (this index)

S corporations, election by small business corporation (IRS Form 2553), **2:84, 2:85**

SEC Forms and Related Regulations (this index)

State blue sky regulation, form U-7, **15:12**

Stock purchase agreement (common stock), **18:7**

Stock repurchase agreement, **18:13**

Term loan agreement, **18:12**

Warrant agreement, **18:8**

FORMS—Cont'd

Warranties and representations, form of, generally, **18:9**

FORM S-1 OFFERING

Final prospectus, **19:1**
 Public offerings, **19:1, 19:3**
 Underwriting agreement, **19:3**

FORWARD-LOOKING STATEMENTS

Disclosure, **13:22, 13:23**

FRAUD AND DECEIT

Aspirational statements, **14:15.60**
 Going public, duties of public companies for 1934 Act periodic filings, financial due diligence, **12:14**
 Imputation of fraud, in pari delicto defense, **14:142**
 PCAOB Proposed Auditing Standard Related to Auditor's Assessment of and Response to Risk of Material Misstatement in Financial Statements (Dec. 17, 2009), **App 11.2**
 Puffery, due diligence and civil liability, **14:15.50**
 State blue sky regulation, **15:6**

FREE TRANSFERABILITY OF INTERESTS

Limited liability companies, **3:31**

FREE WRITING PROSPECTUSES

Digital brands group, **19:2**
 Permissible use of, **11:141**

FREQUENTLY ASKED QUESTIONS

Management's Report on Internal Control (Sept. 24, 2007), **App 11.1**
 Rules 144 and 144A, **App 4.1A**

FULL CIRCLE CAPITAL (FULL)

Business development company (BDC), **5:3**

FULLY PAID STOCK

Holding period for restricted securities, **11:103**
 Preferred stock, **6:130, 6:138**

FUNDING

Term loan agreements, **7:46**

FUNDRAISING

Small Business Administration, Early Stage licensing process, **4:17**

FUNGIBILITY

Holding period for restricted securities, **11:105**

FUTURE OPERATIONS

Term loan agreements, **7:46**

FUTURE SALE, SHARES ELIGIBLE FOR

Disclosure, **13:50, 13:51**

"FUTURE TENSE" LETTERS

Federal securities laws, **11:126**

GAAP

Due diligence and civil liability, **14:77, 14:78**
 Going public, duties under 1934 Act filings, **12:4, 12:12, 12:13**

GAAS

Due diligence and civil liability, **14:74 to 14:78**

GAINS AND LOSSES

Limited liability companies, allocation of, **3:50, 3:56**

GENERAL PARTNERS

Small Business Administration, Early Stage SBIC Limited Partnership Agreement, **4:18**

GENERAL UTILITIES DOCTRINE

S corporations, distribution of appreciated property, **2:64**

GEORGIA

Small business, assistance programs for, **App 18.11**

GIFTS

Federal Securities Laws (this index)

GLADSTONE CAPITAL (GLAD)

Business development company (BDC), **5:3**

GLADSTONE INVESTMENT (GAIN)

Business development company (BDC), **5:3**

GOING PUBLIC

Generally, **12:1 et seq.**
 Advisory votes of shareholders about executive compensation and golden parachutes, **12:34**
 American Exchange requirements, generally, **12:28**
 Audit committee
 auditor-audit committee communications, **12:8.50, 12:12 et seq.**
 auditor independence, role of audit committee in assuring, **12:9**
 charter, **12:27, 12:33**
 disclosure of critical audit matters, **12:14.60**
 due diligence
 critical role in financial due diligence, **12:5**
 financial/transactional due diligence, **12:14.50**
 fraud, assessment of risks and responses thereto, **12:14**
 proxy disclosures about audit committee, **12:6**
 related party transactions, **12:14.50**
 role, generally, **12:8**
 significant unusual transactions, **12:14.50**
 due diligence counsel, PCAOB proposed standards for related party transactions, **12:14**
 financial experts, **12:23**

GOING PUBLIC—Cont'd

- Audit committee—Cont'd
 - independence
 - audit committee's role in assuring independence, **12:9**
 - SEC audit committee disclosure rules, **12:28**
 - self-regulatory organization audit committee rules, **12:32**
 - NYSE and NASDAQ corporate governance amendments, **12:7**
 - related party transactions, PCAOB proposed due diligence standards, **12:14.50**
 - review by, **12:14**
 - SEC audit committee disclosure rules
 - generally, **12:24**
 - charters, **12:27**
 - members' independence, **12:28**
 - prefiling review of quarterly financial statements, **12:25**
 - report, **12:26**
 - safe harbors, **12:29**
 - self-regulatory organization audit committee rules
 - generally, **12:30**
 - charter, **12:33**
 - composition and qualification, **12:31**
 - independence, **12:32**
 - significant unusual transactions, PCAOB proposed due diligence standards, **12:14.50**
- Auditing fees, **12:33**
- Auditing Standard No. 5, standard for auditing internal control over financial reporting, **12:17 to 12:19**
- Code of ethics, consequences of going public, **12:8**
- Compensation committees, Dodd-Frank Act (2010) corporate governance provisions, **12:34**
- Compensation consultants, Dodd-Frank Act (2010) corporate governance provisions, **12:34**
- Consequences of going public
 - audit committees, above
 - code of ethics, **12:8**
 - Foreign Corrupt Practices Act, **12:21**
 - internal controls over financial reporting, **12:17 et seq.**
- Corporate governance provisions, Dodd-Frank Act (2010), **12:34**
- Disclosure
 - audit committee disclosure rules. Audit committee, above
 - compensation consultants, Dodd-Frank Act (2010) corporate governance provisions, **12:34**
 - disclosure committee, below

GOING PUBLIC—Cont'd

- Disclosure—Cont'd
 - duties of public companies for 1934 Act periodic filings, below
 - JOBS Act, emerging growth companies exemptions, **12:34**
- Disclosure committee
 - generally, **12:4**
 - due diligence, **12:2**
- Dodd-Frank Act (2010)
 - advisory votes of shareholders about executive compensation and golden parachutes, **12:34**
 - corporate governance provisions, **12:34**
 - implementing and monitoring appropriate internal controls, **12:15**
 - pay-for-performance, **12:34**
- Due diligence
 - audit committee, above
 - duties of public companies for 1934 Act periodic filings
 - generally, **12:1 et seq.**
 - audit committee, above
 - critical accounting policies and practices, **12:10**
 - critical role of company's audit committee or independent directors in financial due diligence, **12:5**
 - disclosure committee, CEO and CFO, **12:2**
 - fraud, audit committee's or independent director's assessment of risk and responses, **12:14**
 - oversight process, establishing appropriate, **12:16**
 - related party transactions, proposed standards, **12:14.50**
 - significant unusual transactions, proposed standards, **12:14.50**
- Due diligence counsel, PCAOB proposed standards for related party transactions, **12:14.50**
- Duties of public companies for 1934 Act periodic filings
 - generally, **12:1 et seq.**
 - Auditing Standard No. 5, standard for auditing internal control over financial reporting, **12:17 to 12:19**
 - disclosure controls and procedures
 - generally, **12:3**
 - proxy disclosures about audit committee, **12:6**
 - suggestive steps in establishing and evaluating, **12:4**
 - due diligence, above
 - FASB Statement No. 154, accounting changes and error corrections, **12:22**
 - GAAP, **12:4, 12:12, 12:13**

GOING PUBLIC—Cont'd

- Duties of public companies for 1934 Act periodic filings—Cont'd
 - internal controls, implementing and monitoring, **12:15**
 - introduction, **12:1**
- Material omission to fail to disclose SEC investigation into ICFR weaknesses and promotional paid-for public articles, **12:22.80**
- material weakness, requirement for adverse opinion, **12:20**
- oversight process, establishing appropriate, **12:16**
- SEC guidance, standard for auditing internal control over financial reporting, **12:21**
- SEC Injunctive Authority, **12:22.75**
- standard for auditing internal control over financial reporting
 - generally, **12:17**
- Auditing Standard No. 5
 - integration of audit of internal control over financial reporting with audit of financial statements, **12:18**
 - overview of audit, **12:19**
- FASB Statement No. 154, accounting changes and error corrections, **12:22**
- requirement for adverse opinion when material weakness exists, **12:20**
- SEC guidance, **12:21**
- Executive compensation, Dodd-Frank Act (2010) corporate governance provisions, **12:34**
- Expenses, **12:33**
- Family
 - appointment to auditing committee, **12:8**
 - independent director, **12:7**
 - PCAOB proposed standards for related party transactions, **12:14.50**
 - self regulatory organization audit committee rules, **12:32**
- FASB Statement No. 154, accounting changes and error corrections, **12:22**
- Filing requirements. Duties of public companies for 1934 Act periodic filings, above
- Financial due diligence. Due diligence, above
- Financial experts, audit committee, **12:23**
- Foreign Corrupt Practices Act, **12:21**
- Form 10-K report
 - generally, **12:1**
 - auditor-audit committee communications, **12:12, 12:13**
 - financial experts, **12:23**
 - Nasdaq rules, **12:7**
 - NYSE rules, **12:7**
- Fraud, duties of public companies for 1934 Act periodic filings, financial due diligence, **12:14**

GOING PUBLIC—Cont'd

- Golden parachutes disclosure
 - Dodd-Frank Act (2010) corporate governance provisions, **12:34**
 - JOBS Act, emerging growth companies exemption, **12:34**
- Independence. Audit committee, above
- Institutional investment managers reporting, Dodd-Frank Act (2010) corporate governance provisions, **12:34**
- Internal pay equity disclosure, emerging growth companies exemption under JOBS Act, **12:34**
- Introduction, **12:1**
- Listing requirements of stock exchanges, generally, **12:28**
- Management discussion and analysis, **12:11**
- Material weakness, duties of public companies for 1934 Act periodic filings, **12:20**
- NASDAQ, requirements, generally, **12:7, 12:28**
- New York Stock Exchange, requirements, generally, **12:7, 12:28**
- Nominate corporate governance committee, **12:7**
- Pay-for-performance, Dodd-Frank Act (2010) corporate governance provisions, **12:34**
- Pay versus performance disclosure, emerging growth companies exemption under JOBS Act, **12:34**
- Preparing the registration statement, **12:13**
- Proxy disclosures about audit committee, **12:6**
- Registration statement, **12:13**
- Registration under Securities Exchange Act of 1934, generally, **12:1**
- Related party transactions, PCAOB proposed due diligence standards, **12:14.50**
- Reports
 - institutional investment managers, Dodd-Frank Act (2010) corporate governance provisions, **12:34**
 - SEC audit committee disclosure rules, **12:26**
- Revenue recognition policy and practices, **12:13**
- Review by SEC, **12:21**
- Safe harbors, SEC audit committee disclosure rules, **12:29**
- SEC
 - audit committee disclosure rules. Audit committee, above
 - review by, **12:21**
 - rulemaking under Dodd-Frank Act (2010) corporate governance provisions, **12:34**
 - standard for auditing internal control over financial reporting, SEC guidance, **12:21**
- Section 12 trigger to 1934 Act obligations, **12:1**
- Securities Act of 1933, generally, **12:1**
- Securities Exchange Act of 1934, generally, **12:1**
- Self-regulatory organization audit committee. Audit committee, above

INDEX

GOING PUBLIC—Cont'd

Timetable for disclosure, generally, **12:4**

GOLDEN PARACHUTES

Going public, Dodd-Frank Act (2010) corporate governance provisions, **12:34**

GOLUB CAPITAL (GBDC)

Business development company (BDC), **5:3**

GOOD FAITH

Advice of counsel defense as proof of, **14:84.10**

Compliance with Regulation A exemption for offering of 75 million dollars or less, **11:72**

Due diligence and civil liability, **14:84**

Rule 508 of the 1933 Act, substantial, good faith compliance defense, **11:4.70**

GOODWILL

Due diligence and civil liability, **14:15**

GOVERNING LAW

Choosing the business financing format, **1:1**

Preferred stock, **6:102**

GREEN LIGHT LETTERS

Small Business Administration, qualified applicants for Early Stage licensing process, **4:17**

“GROSS REVENUES REQUIREMENT” OF (C)(2)(I)

Federal securities laws, **11:51 to 11:55**

GUAM

Small business, assistance programs for, **App 18.11A**

GUARANTEES

Term loan agreements, **7:17**

HANDBOOK ON “PLAIN ENGLISH”

Disclosure, **13:9 to 13:14**

HAWAII

Small business, assistance programs for, **App 18.12**

HEADINGS

Series A convertible preferred stock purchase agreement (annotated), **6:100**

HEBB JR., DONALD B

Small Business Administration, financing from, **4:16**

HENNING, HARRY I.

Small Business Administration, financing from, **4:6, 4:13, 4:15**

HERCULES TECHNOLOGY GROWTH CAPITAL (HTGC)

Business development company (BDC), **5:3**

HIERARCHY OF DOCUMENT

Disclosure, **13:13**

HIGHEST SECTION ONE RATE

S corporations, taxable year, **2:76**

HIGH YIELD BOND ISSUES

Insurance company private placements distinguished from, **7:2**

HOLDERS AND HOLDING

Federal Securities Laws (this index)

S corporations, avoidance of personal holding company tax, **2:10**

HORIZON TECHNOLOGY (HRZN)

Business development company (BDC), **5:3**

HOWEY TEST

First prong, investment of money and offer of sale, **15:3.40**

Investment of money, first prong, **15:3.40**

Offer of sale, first prong, **15:3.40**

Profits derived solely from the efforts of others, **15:3.60**

State blue sky regulation, **15:3.40, 15:3.50, 15:3.60**

HYBRID SECURITIES

Choosing the business financing format, **1:1**

HYPERLINKED INFORMATION

Internet offerings, issuer responsibility for hyperlinked information, **11:8**

IDAHO

Small business, assistance programs for, **App 18.13**

“IF THEN” CONDITIONALS, USE OF

Disclosure, **13:12**

ILLINOIS

Small business, assistance programs for, **App 18.14**

“ILLUSORY” OR “MANAGED” EARNINGS

Due diligence and civil liability, **14:96**

“IMMATERIAL” SAFE HARBOR

Due diligence and civil liability, **14:105**

IMPACT

S corporations, shareholders and limited partners, **2:54**

INADEQUATE OR MATERIALLY MISLEADING DISCLOSURE

Due diligence and civil liability, **14:51.50**

INADVERTENT TERMINATIONS

S corporations, relief, **2:39**

INCIDENTAL COSTS

Term loan agreements, **7:15, 7:27**

INCIDENTAL REGISTRATION

Preferred stock, **6:79**

INCOME

S Corporations (this index)

INCOME TAXATION

S corporations, state income tax considerations, **2:81**

“IN CONCERT”, SALE BY PERSONS ACTING

Federal securities laws, **11:120**

INDEMNITY OR INDEMNIFICATION

Due diligence and civil liability, **14:120, 14:121**

NVCA model venture financings documents (2007), model indemnification agreement, **15A:9**

Preferred stock, **6:82, 6:83**

INDENTURE

Form of, **18:6**

INDEPENDENCE OF AUDITORS

Going Public (this index)

Professional standards, auditor strengthening under Sarbanes-Oxley Act, **14:72**

INDEPENDENCE OF DIRECTOR

Disclosure, **13:8, 13:40, 13:41**

INDEX

Term loan agreements, **7:31**

INDIANA

Small business, assistance programs for, **App 18.15**

INDUSTRY OF ISSUER

Due diligence and civil liability, **14:20**

INFORMATION REQUIREMENTS

Federal Securities Laws (this index)

INITIAL PUBLIC OFFERING

Emerging growth company, underwriting agreement, **19:3.50**

Final prospectus, **19:1**

Forms for, **19:1, 19:4**

Sample timetable and responsibility schedule, **19:4**

INITIAL REVIEW

Small Business Administration, Early Stage licensing process, **4:17**

INJUNCTIVE PROCEEDINGS

Due diligence and civil liability, **14:91**

IN PARI DELICTO DEFENSE

Due diligence and civil liability, **14:142**

INSIDER TRADING

Going Public (this index)

INSPECTION

Preferred stock, **6:62**

Term loan agreements, **7:49**

INSTITUTIONAL BUYERS

Federal Securities Laws (this index)

State blue sky regulation, **15:9**

INSTITUTIONAL INVESTMENT MANAGERS

Going public, Dodd-Frank Act (2010) corporate governance provisions, **12:34**

INSTITUTIONAL PRIVATE PLACEMENTS

Generally, **7:1 to 7:10**

Bank term loans, insurance company private placements distinguished from, **7:2**

Business covenants, **7:6**

Call protection, **7:3**

Closing conditions, **7:5**

Closing representations of issuer, **7:4**

Covenants, generally, **7:6**

Default, events of, **7:7 to 7:9**

Distinction between “loan agreements,” and “note agreements,” **7:2**

Form of sample note agreement, **7:10**

High yield bond issues, insurance company private placements distinguished from, **7:2**

Insurance company private placements distinguished from bank term loans, **7:2**

Junk bond issues, insurance company private placements distinguished from, **7:2**

Legal overview, generally, **7:2 to 7:10**

Opinion of counsel, **7:5**

Options for prepayments, **7:3**

Overview, generally, **7:2 to 7:10**

Prepayments, **7:3**

Remedies for default, **7:9**

Sample note agreement, **7:10**

Scope of defaults, **7:8**

INSTRUMENTS

S corporations, one class of stock requirement for eligibility, **2:23, 2:25**

INSURANCE

Federal securities laws, **11:52**

Institutional private placements, **7:2**

Preferred Stock (this index)

Term loan agreements, **7:48**

INTEGRATION

Federal Securities Laws (this index)

INTERACTIVE DATA FOR FINANCIAL REPORTING § EA SMALL ENTITY REPORTING GUIDEGenerally, **App 5.4****INTEREST AND INTEREST RATES**Deductions, business interest, limitations on, **2:4**
S corporations, acquisition of interest in pass-through entity, **2:43**S corporations, investment interest limitation, **2:40 to 2:46**Self-charged interest, **2:45, 2:46**State blue sky regulation, **15:24**

Term Loan Agreements (this index)

INTERNAL CONTROL OVER FINANCIAL REPORTINGAdverse opinion required when material weakness exists, **12:20**Auditing control standard, **12:17**Auditing Standard No. 5, **12:18, 12:19**FASB Statement No. 154, accounting changes and error corrections, **12:22**PCAOB Guidance for Auditors of Smaller Public Companies (January 23, 2009), **App 11.3**SEC guidance, **12:21****INTERNAL REVENUE SERVICE (IRS)**S corporation, IRS Initiative on S Corporation Compliance, **2:12****INTERNET OFFERINGS**Federal securities laws, **11:8, 11:81.11**Regulation S, **11:81.11****INTERPRETATIONS OF RULE 144**Federal securities laws, **11:91****INTERVIEW**Small Business Administration, applicants for Early Stage licensing, **4:17****INTRASTATE OFFERINGS**

Federal Securities Laws (this index)

Rule 147 under Securities Act of 1933, **App 3**
SEC Release No. 33-4434 (December 1, 1961), **App 3.1**SEC Release No. 33-4552 (November 6, 1962), **App 1.3****INVENTORIES**Due diligence and civil liability, **14:25**S corporations, recapture of appreciation upon conversion from C corporation to S corporation, **2:68****INVESTIGATIONS**

Due Diligence and Civil Liability (this index)

FINRA Regulatory Notice 10-22, reasonable investigations by broker-dealers in Regulation D offerings, **App 1.2A****INVESTIGATIONS—Cont'd**Professional standards, reporting attorney has no duty to investigate under Sarbanes-Oxley Act and SEC professional conduct rules, **14:62****INVESTMENT CONTRACTS**Domestic security warranting protection under federal securities laws, state blue sky regulation, **15:3.90****INVESTMENTS BY SBIC**Small Business Administration, financing from, **4:3****INVESTORS' RIGHTS AGREEMENT**NVCA model venture financings documents (2007), **15A:5****IOWA**Small business, assistance programs for, **App 18.16****ISSUANCE AND ISSUERS**

Disclosure (this index)

Federal Securities Laws (this index)

Preferred Stock (this index)

JANUS CASE

Due Diligence and Civil Liability (this index)

JARGON, ELIMINATION OFDisclosure, **13:12****JOBS ACT (JUMPSTART OUR BUSINESS STARTUPS ACT)**Crowdfunding, offerings of \$5,000,000 or less, **11:75.70**

Emerging Growth Companies (this index)

Frequently asked questions, **App 12.1 to 12.3**Summary of Securities Act registration requirement including JOBS Act, **11:133**Title 1 of JOBS Act, generally applicable frequently asked questions, **App 12.2****JOINT AND SEVERAL LIABILITY**Due diligence and civil liability, **14:112 to 14:116****JOINT VENTURES**Federal securities laws, **11:54****JUDGES**Constitutionality of SEC use of administrative law judges, **14:89.50****JUDGMENT REDUCTION FORMULA**Private Securities Litigation Reform Act of 1995 (PSLRA), **14:116****JUNK BOND ISSUES**Insurance company private placements distinguished from, **7:2**

JURISDICTION OF STATE

State blue sky regulation, **15:4**

KANSAS

Small business, assistance programs for, **App 18.17**

KCAP CAPITAL (KCAP)

Business development company (BDC), **5:3**

KELLMAN, JOEL D.

Small Business Administration, financing from, **4:6, 4:7, 4:15**

KENTUCKY

Small business, assistance programs for, **App 18.18**

KEY MAN INSURANCE

Preferred stock, **6:66**

KKR FINANCIAL HOLDINGS (KFN)

Business development company (BDC), **5:3**

LATE CHARGES

Term loan agreements, **7:35**

LATER-STAGE INVESTING

Preferred stock, **6:10**

LEASCO CASE

Due diligence and civil liability, **14:8**

LEASE RECEIVABLES

Federal securities laws, **11:50**

LEGAL DRAFTING CONSIDERATIONS

Choosing the business financing format, **1:4**

LEGAL PROCEEDINGS

Disclosure, **13:54, 13:55**

Legality opinions in registered offerings, SEC's 2005 securities offering rules revisions, **11:151.50**

LEGEND, REGISTRATION RIGHTS

Preferred stock, **6:77**

LENDERS

Due diligence and civil liability, **14:87**

LETTER OF INTENT

Form of, **19:5**

LEVERAGED BUY-OUT (LBO) FUNDS

Preferred stock, **6:2**

LEVERAGE OF REGULATORY CAPITAL

Small Business Administration, financing from, **4:17**

LIABILITY

Due Diligence and Civil Liability (this index)

Limited Liability Companies (this index)

LICENSES

Due diligence and civil liability, **14:21**

Small Business Administration, Early Stage SBICs licensing process, **4:17**

Term loan agreements, **7:41**

LICENSING EARLY STAGE SBICs

Small Business Administration, financing from, **4:17**

LIMITATIONS AND RESTRICTIONS

Deductions, business interest, limitations on, **2:4**

Federal Securities Laws (this index)

Going Public (this index)

Limited liability companies, **3:17**

Preferred stock, **6:86**

Term Loan Agreements (this index)

LIMITATIONS OF ACTIONS

Statute of Limitations (this index)

LIMITED LIABILITY COMPANIES

Generally, **3:1 to 3:67**

Accounting methods, **3:61**

Advantages of LLC, **3:34**

Allocation of gains and losses, **3:50, 3:56**

Amendments to check-the-box regulations generally, **3:21 to 3:26**

characterization of elective changes in classification, **3:22**

effective date of proposed regulations, **3:26**

number of members of entity, change in, **3:23**

special basis adjustments under section 743, **3:25**

timing of elective changes in classification, **3:24**

Arizona LLC agreement (2012), **20:11**

Articles of organization, **3:44**

At-risk limitations, **3:63**

Basic characteristics of LLCs, **3:38 to 3:42**

Blue Sky laws

survey of exemptions for LLC interests, **3:67**

Book value/tax basis differences, **3:57**

“Bulletproof” statutes, **3:4, 3:29**

California LLC operating agreement (2011), **20:4**

Capital contributions, **3:49**

Centralization of management, **3:30**

Characterization of elective changes in classification, **3:22**

Check-the-box regulations

generally, **3:6 to 3:20**

amendments to check-the-box regulations, above

conclusion, **3:20**

corporations, final regulations, **3:8**

domestic eligible entities, **3:13**

effective date, **3:19**

elections, **3:16 to 3:18**

LIMITED LIABILITY COMPANIES—Cont'd

- Check-the-box regulations—Cont'd
 - elective classification of certain entities, **3:12 to 3:15**
 - existing eligible entities, **3:15**
 - final regulations, generally, **3:6 to 3:20**
 - foreign corporations, final regulations, **3:9**
 - foreign eligible entities, **3:14**
 - limits on changes in classification by election, **3:17**
 - other business entities, final regulations, **3:10**
 - overview of business entities, **3:7**
 - partnership terminations, **3:18**
 - prior to the check-the-box regulations, below proposed amendments to check-the-box regulations, below
 - single owner entity, final regulations, **3:11**
 - transition rules, **3:19**
- Classification of LLC for federal tax purposes, generally, **3:6 to 3:32**
- Comparisons of LLCs with S corporations and limited partnerships, generally, **3:33 to 3:37**
- Continuity of life prior to the check-the-box regulations, **3:29**
- Contributions of property or services, **3:53, 3:54**
- Conversion of partnership to LLC, **3:48**
- Corporations, final regulations, **3:8**
- Delaware LLC operating agreement (2022), **20:8**
- Disadvantages of LLC, **3:35**
- Dispositions of LLC interests, **3:60**
- Dissolution, **3:51**
- Distributions
 - organization, **3:50**
 - taxation of LLC and members, **3:58**
- Domestic eligible entities, **3:13**
- Duration, **3:42**
- Effective date
 - check-the-box regulations, **3:19**
 - proposed amendments to check-the-box regulations, **3:26**
- Elections, check-the-box regulations, **3:16 to 3:18**
- Elective classification of certain entities, **3:12 to 3:15**
- Exemptions for LLC interests in Blue Sky regulations, survey of, **3:67**
- Existing eligible entities, **3:15**
- Federal securities laws, generally, **3:2**
- Final regulations. Check-the-box regulations, above
- Flexible statutes, **3:5**
- Florida LLC operating agreement form (2011), **20:5**
- Foreign corporations, final regulations, **3:9**
- Foreign eligible entities, **3:14**
- Formation of an LLC, **3:43, 3:53, 3:54**

LIMITED LIABILITY COMPANIES—Cont'd

- Forms of operating agreements
 - Arizona LLC agreement (2012), **20:11**
 - California operating agreement (2011), **20:4**
 - Delaware LLC operating agreement (2022), **20:8**
 - Florida operating agreement (2011), **20:5**
 - Maryland operating agreements (3)(2012), **20:2**
 - Massachusetts LLC agreement (2013), **20:12**
 - Michigan manager-managed model LLC (2013), **20:9**
 - New York operating agreement (2008), **20:1**
 - North Carolina LLC operating agreement (2012), **20:3**
 - South Carolina LLC agreement (2013), **20:10**
 - Texas S corporation LLC operating agreement (2011), **20:6**
 - Virginia LLC agreement (2010), **20:7**
- Free transferability of interests, **3:31**
- Gains and losses, allocation of, **3:50, 3:56**
- General rules for entity classification prior to 1997, **3:27**
- Introduction, **3:1**
- Liability
 - limited liability prior to the check-the-box regulations, **3:28**
 - taxation of LLC and members, **3:55**
 - third parties, liability of members and managers to, **3:47**
- Limited liability prior to the check-the-box regulations, **3:28**
- Limited partnerships, comparisons with, generally, **3:33 to 3:37**
- Limits on changes in classification by election, **3:17**
- Managing the LLC, **3:45, 3:46**
- Maryland operating agreements (3)(2012), **20:2**
- Massachusetts LLC Agreement (2013), **20:12**
- Members and membership
 - basic characteristics of LLCs, **3:38**
 - management by members, **3:45**
 - number of members of entity, change in, **3:23**
 - tax basis of members, **3:55**
- Michigan manager-managed operating agreement (2013), **20:9**
- Name, **3:39**
- Nature of business, **3:40**
- New York LLC operating agreement (2008), **20:1**
- North Carolina LLC operating agreement (2012), **20:3**
- Number of members of entity, change in, **3:23**
- One percent ownership prior to the check-the-box regulations, **3:32**
- Operating agreement
 - generally, **3:44**

LIMITED LIABILITY COMPANIES—Cont'd

Operating agreement—Cont'd
 forms of operating agreements, above

Organization
 generally, **3:43 to 3:51**
 allocation of profits, losses and distributions, **3:50**
 articles of organization, **3:44**
 capital contributions, **3:49**
 conversion of partnership to LLC, **3:48**
 dissolution, **3:51**
 distributions, allocation of, **3:50**
 formation, **3:43**
 liability to third parties, **3:47**
 managing the LLC, **3:45, 3:46**
 members, management by, **3:45**
 operating agreement, **3:44**
 partnership, conversion to LLC, **3:48**
 profits and losses, allocation of, **3:50**
 third parties, liability to, **3:47**

Partnerships
 conversion to LLC, **3:48**
 taxation of LLC and members, **3:52**
 terminations, check-the-box regulations, **3:18**

Passive loss limitations, **3:62**

Powers, generally, **3:41**

Prior to the check-the-box regulations
 generally, **3:28 to 3:32**
 additional complications, **3:32**
 centralization of management, **3:30**
 continuity of life, **3:29**
 free transferability of interests, **3:31**
 limited liability, **3:28**
 one percent ownership, **3:32**
 transferability of interests, **3:31**

Profits and losses, allocation of, **3:50, 3:56**

Property, contributions of, **3:53**

Real Estate Mortgage Investment Conduit (REMIC), **3:7**

Retirement plans, taxation of LLC and members, **3:65**

Self-employment taxes, **3:65**

Services, contributions of, **3:54**

Shelters from taxes, **3:61**

Single owner entity, final regulations, **3:11**

South Carolina LLC agreement (2013), **20:10**

Special basis adjustments under section 743, **3:25**

State securities regulation
 generally, **3:2**
 survey of LLC interests under, **3:67**

State taxation of LLCs, **3:66**

Statutes and acts
 state securities laws, above
 Uniform Limited Liability Company Act (1996), **3:1**

LIMITED LIABILITY COMPANIES—Cont'd

Survey of LLC interests under state securities laws, **3:67**

Tabular comparison of nontax and tax characteristics of limited partnerships LLCs and S corporations, **3:37**

Taxation of LLC and members
 generally, **3:52 to 3:66**
 accounting methods, **3:61**
 allocation of gains and losses, **3:56**
 at-risk limitations, **3:63**
 book value/tax basis differences, **3:57**
 contributions of property or services, **3:53, 3:54**
 dispositions of LLC interests, **3:60**
 distributions to LLC members, **3:58**
 formation of an LLC, **3:53, 3:54**
 gains and losses, allocation of, **3:56**
 liabilities of LLCs, **3:55**
 members tax basis, **3:55**
 other tax issues, **3:61 to 3:66**
 partnerships, LLCs treated as, generally, **3:52**
 passive loss limitations, **3:62**
 property, contributions of, **3:53**
 retirement plans, **3:65**
 self-employment taxes, **3:65**
 services, contributions of, **3:54**
 state taxation of LLCs, **3:66**
 tabular comparison of nontax and tax characteristics of limited partnerships LLCs and S corporations, **3:37**
 tax matters partner, **3:64**
 tax shelters, **3:61**
 termination of an LLC, **3:59**

Termination of an LLC, **3:59**

Texas S corporation LLC operating agreement form (2011), **20:6**

Third parties, liability of members and managers to, **3:47**

Time or date
 effective date, above
 elective changes in classification, timing of, **3:24**

Transferability of interests, **3:31**

Transition rule, check-the-box regulations, **3:19**

Types of LLC statutes, **3:4, 3:5**

Uniform Limited Liability Company Act, generally, **3:1**

Virginia LLC operating agreement (2010), **20:7**

LIMITED OFFERINGS

Form 1-A Regulation A offering statement under Securities Act of 1933, **App 1.7**

NASAA small company offering registration (SCOR) manual, **App 1.5A**

Regulation A-conditional small issues exemption, **App 1.6**

LIMITED OFFERINGS—Cont'd

- Regulation D, **App 1**
- SEC Release No. 33-4552 (November 6, 1962), **App 1.3**
- SEC Release No. 33-6455 (March 3, 1983), **App 1.1**
- Small business
 - NASAA small company offering registration (SCOR) manual, **App 1.5A**
 - Regulation A, small issues exemption, **App 1.6**
- Small Entity Compliance Guide
 - Amendments to Regulation A, **App 1.9**
 - Disclosure and simplification, **App 1.11**
- State blue sky regulation, **15:10**

LIMITED PARTNERSHIPS

- Advertising
 - c&DIs relating to prohibition of general advertising, **6:2:50**
- General partners, Model Early Stage SBIC Limited Partnership Agreement, **4:18**
- Limited liability companies compared with, **3:33 to 3:37**
- S corporations, limitation on passive losses under Tax Reform Act of 1986, **2:54**
- Small Business Administration, Model Early Stage SBIC Limited Partnership Agreement, **4:18**

LIQUIDATION

- Choosing the business financing format, **1:17**
- Preferred stock, **6:106**

LISTING REQUIREMENTS OF STOCK EXCHANGES

- Going public, **12:28**

LITIGATION

- Default of institutional private placements, **7:9**
- Due Diligence and Civil Liability (this index)
- Preferred Stock (this index)
- Term loan agreements, **7:42**

LOAN FEES

- Small Business Administration, financing from, temporary elimination of loan fees, **4:1.50**

LOANS

- Due diligence and civil liability, opinion or belief statements, loan loss reserve, **14:15**
- Federal securities laws, **11:47**
- Recovery loans extension, financing from Small Business Administration, **4:1.50**
- S corporations, self-charged interest on direct loan to S corporation, **2:46**
- Small Business Administration, financing from, **4:3**
- State blue sky regulation, **15:26**

LONG TERM FINANCING

- Small Business Administration (this index)

LORNE, SIMON

- Small Business Administration, financing from, **4:6, 4:12, 4:15**

LOSS CAUSATION

- Due diligence and civil liability
 - generally, **14:45**
 - fraud-on-the-Market, **14:45.60**
 - generic misstatements, fraud-on-the-Market, **14:45.60**
 - materialization of the risk, **14:45.50**
 - mixed affirmative statements and omissions, reliance, **14:45.70**
 - reliance, mixed affirmative statements and omissions, **14:45.70**
 - time delay between corrective disclosure and share price drop, **14:45.80**

LOUISIANA

- Small business, assistance programs for, **App 18.19**

MAINE

- Small business, assistance programs for, **App 18.20**

MAIN STREET CAPITAL (MAIN)

- Business development company (BDC), **5:3**

MANAGEMENT ASSESSMENT QUESTIONNAIRE

- Early Stage SBIC licensing process, **4:17**

MANAGEMENT DISCUSSION AND ANALYSIS

- Emerging growth companies, special MD&A disclosures, **11:146.50**
- Financial condition and results of operations, SEC guidance on, **13:1.58**
- Going public, **12:11**
- Regulation S-K, proposed amendments to, **13:1.58**

MANAGEMENT FEE POLICIES

- Small Business Administration, financing from, **4:18**

MANAGEMENT RIGHTS LETTER

- NVCA model venture financings documents (2007), **15A:8**

MANAGERS AND MANAGEMENT

- Disclosure (this index)
- Due Diligence and Civil Liability (this index)
- Limited Liability Companies (this index), **3:46**
- NVCA model venture financings documents (2007), management rights letter, **15A:8**

MARGIN ACCOUNT DEPOSITS

Federal securities laws, **11:49**

MARITAL SEPARATIONS

Holding period for restricted securities, **11:113**

MARKET RISKS

Disclosure, **13:36, 13:37**

MARYLAND

LLC operating agreement, form of (2012), **20:2**
Small business, assistance programs for, **App 18.21**

MASSACHUSETTS

Small business, assistance programs for, **App 18.22**

MATERIAL CONTRACTS AND OBLIGATIONS

Preferred stock, **6:32**

MATERIALITY

Disclosure, qualitative approach to materiality, Celestica case, **13:4**
Due diligence and civil liability
aspirational statements, **14:15.60**
financial statements, **14:43, 14:43.50, 14:43.75**
prosecutorial position of SEC, **14:40.10**
puffery immaterial as matter of law, **14:15.50**

“MATERIALITY ABUSE” ACCOUNTING PRACTICES

Due diligence and civil liability, **14:96**

MCG CAPITAL (MCGC)

Business development company (BDC), **5:3**

MEDLEY CAPITAL (MCC)

Business development company (BDC), **5:3**

MEMBERS AND MEMBERSHIP

Limited Liability Companies (this index)

MEMORANDA

Offerings. Due Diligence and Civil Liability (this index)

“MERGER MAGIC” ACCOUNTING PRACTICES

Due diligence and civil liability, **14:96**

MERGERS

Series A convertible preferred stock purchase agreement (annotated), **6:89**

MERIT REGULATION OF SECURITIES

State Blue Sky Regulation (this index)

MICHIGAN

Small business, assistance programs for, **App 18.23**

MINIMUM INVESTMENT

Series A convertible preferred stock purchase agreement (annotated), **6:53**

MINNESOTA

Small business, assistance programs for, **App 18.24**

MINORITY ENTERPRISE SMALL BUSINESS INVESTMENT COMPANIES (MESBICS)

Generally, **4:2**

MISSISSIPPI

Small business, assistance programs for, **App 18.25**

MISSISSIPPI “REASONABLY FORESEEABLE” APPROACH

Due diligence and civil liability, **14:133**

MISSOURI

Small business, assistance programs for, **App 18.26**

“MISSTATEMENTS”

Due diligence and civil liability, **14:47**

MODEL EARLY STAGE SBIC LIMITED PARTNERSHIP AGREEMENT

Small Business Administration, financing from, **4:18**

MODEL INDEMNIFICATION AGREEMENT

NVCA model venture financings documents (2007), **15A:9**

MODEL RULES OF PROFESSIONAL CONDUCT

Due diligence and civil liability, **14:65, 14:66**

MODEL VENTURE FINANCINGS DOCUMENTS

NVCA Model Venture Financings Documents (2007) (this index)

MODIFICATION OR CHANGE

Amendments (this index)
Federal Securities Laws (this index)
Preferred Stock (this index)
S corporations, amendments, **2:65**

MONROE CAPITAL (MRCC)

Business development company (BDC), **5:3**

MONTANA

Small business, assistance programs for, **App 18.27**

MOTION PICTURE PRODUCTION AND DISTRIBUTION

Intrastate offering exemption, **11:53**

MVC CAPITAL (MVC)

Business development company (BDC), **5:3**

INDEX

NAME

Limited liability companies, **3:39**

NASAA

State Blue Sky Regulation (this index)

NASD

National Association of Securities Dealers
(NASD) (this index)

NASDAQ

Federal securities laws, **11:89**
Going Public (this index)

NATIONAL ASSOCIATION OF SECURITIES DEALERS (NASD)

See also topics beginning FINRA
Due diligence and civil liability, **14:1**
Going Public (this index)

NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996

State blue sky regulation, **15:1**

NATIONAL VENTURE CAPITAL ASSOCIATION (NVCA)

NVCA Model Venture Financings Documents
(2007) (this index)

“NEAR PRIVITY” APPROACH

Due diligence and civil liability, **14:127**

NEBRASKA

Small business, assistance programs for, **App
18.28**

NEGATIVE COVENANTS

Series A convertible preferred stock purchase
agreement (annotated), **6:71**
Term Loan Agreements (this index)

NEGLIGENT SECURITIES “FRAUD” ACTIONS BY SEC

Section 17(a)(2) misstatement liability, **14:39.50**
Section 17(a)(3) scheme liability, **14:39.60**

NEGOTIATING SKILL

Term loan agreements, **7:29**

NET

Base year income, S corporations, **2:77**
Proceeds requirement, federal securities laws,
11:56
Worth standard, accredited investors, **11:6.70**

NEVADA

Small business, assistance programs for, **App
18.29**

NEW HAMPSHIRE

Small business, assistance programs for, **App
18.30**

NEW JERSEY

Small business, assistance programs for, **App
18.31**

NEW MEXICO

Small business, assistance programs for, **App
18.32**

NEW MOUNTAIN FINANCE (NMFC)

Business development company (BDC), **5:3**

NEW YORK

LLC operating agreement, form of (2008), **20:1**
Small business, assistance programs for, **App
18.33**

NEW YORK STOCK EXCHANGE

Going public, **12:28**

NGP CAPITAL RESOURCES COMPANY (NGPC)

Business development company (BDC), **5:3**

NO-ACTION LETTERS

Federal Securities Laws (this index)

“NOISY” WITHDRAWAL

Sarbanes-Oxley Act, due diligence and civil
liability, **14:58**

NON-ASSESSABLE STOCK

Preferred stock, **6:131, 6:138**

NON-CASH DIVIDENDS

Preferred stock, **6:111**

NONDISCLOSURE AGREEMENTS

Preferred stock, **6:67**

NONREPORTING ISSUERS

SEC’s 2005 securities offering rules revisions,
11:151

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION (NASAA)

State Blue Sky Regulation (this index)

NORTH CAROLINA

LLC operating agreement, form of (2012), **20:3**
Small business, assistance programs for, **App
18.34**

NORTH DAKOTA

Small business, assistance programs for, **App
18.35**

NOTICE OR KNOWLEDGE

Federal securities laws, notice of sale require-
ment under Rule 144, **11:90**
Form D, Notice of Sales under Regulation D or
Section 4(6), **App 2**
Internet offerings, Rule 135c notice, **11:8**

NOTICE OR KNOWLEDGE—Cont'd

Series A convertible preferred stock purchase agreement (annotated), **6:95**
 State blue sky regulation, **15:16**

NUMBER OF MEMBERS

Limited liability companies, **3:23**

NUMBER OF OUTSTANDING SHARES

Preferred stock, **6:127**

NVCA MODEL VENTURE FINANCINGS DOCUMENTS (2007)

Generally, **15A:1 et seq.**
 Amended and restated certificate of incorporation, **15A:4**
 Certificate of incorporation (amended and restated), **15A:4**
 Co-sale agreement, **15A:7**
 First refusal right and co-sale agreement, **15A:7**
 Indemnification agreement, **15A:9**
 Investors' rights agreement, **15A:5**
 Management rights letter, **15A:8**
 Model indemnification agreement, **15A:9**
 Overview of project, **15A:1**
 Right of first refusal and co-sale agreement, **15A:7**
 Stock purchase agreement, **15A:3**
 Term sheet, **15A:2**
 Voting agreement, **15A:6**

OBLIGATIONS

S corporations, obligations treated as equity, **2:23**

OBSERVER RIGHTS

Series A convertible preferred stock purchase agreement (annotated), **6:63**

OFFERING PRICE

Disclosure, **13:24, 13:25**
 State blue sky regulation, **15:22**

OFFERINGS

Public Offerings (this index)

OFFER OR SALE

State blue sky regulation, **15:2**

OFFICE OF THRIFT SUPERVISION

Due diligence and civil liability, **14:98**

OFFICERS

Disclosure (this index)
 Due Diligence and Civil Liability (this index)

OFFSHORE TRANSACTIONS

Federal Securities Laws (this index)

OHIO

Small business, assistance programs for, **App 18.36**

OKLAHOMA

Small business, assistance programs for, **App 18.37**

ONE CLASS OF STOCK REQUIREMENT

S corporations, eligibility, **2:21 to 2:27**

ONE PERCENT OWNERSHIP

Limited liability companies, **3:32**

OPERATING AGREEMENT

Limited Liability Companies (this index)

OPERATING SBICS, DIRECTORY OF

Directory of Operating Small Business Investment Companies (SBIC) (this index)

OPINION OF COUNSEL

Due diligence and civil liability, **14:67, 14:94**
 Going Public (this index)
 Institutional private placements, **7:5**
 Restricted shares, improper issuance of attorney opinion letter regarding, **11:132.50**
 Series A convertible preferred stock purchase agreement (annotated), **6:49**

OPINION OR BELIEF

Due diligence and civil liability, statements, **14:15**

OPTIMAL CAPITAL STRUCTURE

Choosing the business financing format, **1:3**

OPTIONS

Antidilution Provisions (this index)
 Institutional private placements, **7:3**
 S corporations, one class of stock requirement for eligibility, **2:25, 2:26**
 State blue sky regulation, **15:21**

OPT-OUT DISCLOSURES

Emerging growth companies, **11:146.50**

OREGON

Small business, assistance programs for, **App 18.38**

ORGANIZATION

Limited Liability Companies (this index)
 Small Business Administration, applicants for Early Stage SBIC Limited Partnership Agreement, **4:18**

ORIGINAL ISSUE DISCOUNT (OID)

Choosing the business financing format, **1:9, 1:10**
 Preferred stock, **6:5 to 6:9**

OUTLINE OF BUSINESS PLAN

Generally, **18:1**

OUT-OF-STATE

Foreign State or Country (this index)

INDEX

OWNERS AND OWNERSHIP

S corporations, pass-through entities, **2:42, 2:44**

OWN STOCK OR DEBT AS WORTHLESS

S corporations, **2:47**

OXFORD LANE CAPITAL (OXLC)

Business development company (BDC), **5:3**

PARAGRAPH LENGTHS

Disclosure, **13:13**

PARALLEL STRUCTURE OF SENTENCES

Disclosure, **13:12**

PARTICIPATING SECURITIES

Choosing the business financing format, **1:12**

S corporations, material participation and limitation on passive losses under Tax Reform Act of 1986, **2:53**

PARTNERSHIPS

Limited Liability Companies (this index), **3:1 to 3:67**

Research and development, partnerships for, **1:23**

PASSIVE ACTIVITY LOSSES

Activity or activities
s corporations, limitation on passive losses under Tax Reform Act of 1986, **2:51**

Limitations
s corporations, Tax Reform Act of 1986, **2:50 to 2:54**

Limited liability companies, **3:62**

Material participation
s corporations, limitation on passive losses under Tax Reform Act of 1986, **2:53**

S corporations
limitation under Tax Reform Act of 1986, **2:50 to 2:54**

shareholders, **2:54**

Shareholders of S corporations, **2:54**

PASS THROUGH ENTITIES

S corporations, investment interest limitation, **2:40 to 2:46**

PAST EARNINGS RECORD

Small Business Administration, financing from, **4:1**

PATENTS

Due diligence and civil liability, **14:21**

Series A convertible preferred stock purchase agreement (annotated), **6:30**

Term loan agreements, **7:41**

PATTERN OF RACKETEERING ACTIVITY

Due Diligence and Civil Liability (this index)

PAY-FOR-PERFORMANCE

Going public, Dodd-Frank Act (2010) corporate governance provisions, **12:34**

“PAY TO PLAY” ANTIDILUTION PROVISIONS

Generally, **17:5**

PENALTIES

S corporations, taxable year, **2:80**

Term loan agreements, **7:35**

PENNANTPARK FLOATING RATE CAPITAL (PFLT)

Business development company (BDC), **5:3**

PENNANTPARK INVESTMENT (PNNT)

Business development company (BDC), **5:3**

PENNSYLVANIA

Small business, assistance programs for, **App 18.39**

PERCENT OR PERCENTAGE

S corporations, applicable percentage and taxable year, **2:75**

PERMISSIBLE OR ALLOWABLE

S corporations, permissible fiscal years without election, **2:72**

PERMITTED LOANS BY SBIC

Small Business Administration, financing from, **4:3**

PERSONAL HOLDING COMPANY TAX

S corporations, avoidance, **2:10**

PHASE-IN DISCLOSURE

Emerging growth companies, **11:146.50**

PINNACLE FOODS INC.

Prospectus with Regulation S-K items.
Disclosure (this index)

PINTER v DAHL

Due diligence and civil liability, **14:34**

“PLAIN ENGLISH”

Disclosure (this index)

PLANS AND PLANNING

Business Plans (this index)

Disclosure (this index)

Term loan agreements, **7:53**

PLEADING

Due diligence and civil liability, special pleading requirements for Rule 10b-5 claims, **14:52.90**

PLEDGES

Federal Securities Laws (this index)

POINTS AND RELATED CHARGES

Term loan agreements, **7:33**

“POSITIVE” WRITING

Disclosure, **13:12**

POST-PINTER CASES

Due diligence and civil liability, **14:35**

PREEMPTION OF LAWS

Generally. Federal Preemption (this index)

Internet offerings and blue sky laws, **11:8**

Preferred stock, preemptive rights, **6:136**

PREFERRED STOCK

Generally, **6:1 to 6:145**

Absence of changes or liabilities, series A convertible preferred stock purchase agreement (annotated), **6:27, 6:34**

Accredited investor, representations of purchasers, **6:45**

Accuracy of representations by company, series A convertible preferred stock purchase agreement (annotated), **6:59**

Actions. Litigation, below

Adjustment of conversion prices. Certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), below

Allocation of expenses, series A convertible preferred stock purchase agreement (annotated), **6:81**

Amendments

certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), below

series A convertible preferred stock purchase agreement (annotated), **6:98**

Annotated opinion of stock purchase agreement generally, **6:115 to 6:142**

authority of corporation, generally, **6:120 to 6:124**

authorized capital stock, **6:126**

binding obligations, **6:124**

capitalization

generally, **6:125 to 6:133**

authorized capital stock, **6:126**

duly authorized outstanding shares, **6:128**

fully paid outstanding shares, **6:130**

non-assessable outstanding shares, **6:131**

no rights, options, etc., **6:133**

number of outstanding shares, **6:127**

preferred stock, **6:132**

validly issued outstanding shares, **6:129**

conflicts, absence of, **6:139**

consent and approvals, **6:141**

delivery, **6:123**

due organization of corporation, **6:117**

duly authorized stock, **6:128, 6:138**

PREFERRED STOCK—Cont'd

Annotated opinion of stock purchase agreement—Cont'd

execution and delivery, **6:123**

first refusal, rights of, **6:136**

fully paid stock, **6:130, 6:138**

issuance and status of shares

generally, **6:134 to 6:138**

duly authorized common stock, **6:138**

first refusal, rights of, **6:136**

fully paid common stock, **6:138**

non-assessable common stock, **6:138**

preemptive rights, **6:136**

reservation of common stock, **6:137**

validly issued common stock, **6:138**

litigation, **6:140**

non-assessable stock, **6:131, 6:138**

number of outstanding shares, **6:127**

power of corporation, generally, **6:119 to 6:124**

preemptive rights, **6:136**

reservation of common stock, **6:137**

securities law compliance, **6:142**

status of corporation, generally, **6:116 to 6:119**

valid and binding obligations, **6:124**

valid existence of corporation, **6:118**

validly issued stock, **6:129, 6:138**

Antidilution provisions and adjustments, **1:15**

Approval. Consent or approval, below

Articles of incorporation. Certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), below

Assets, representations of company, **6:29**

Assigns, series A convertible preferred stock purchase agreement (annotated), **6:90**

Auditor, covenants of company, **6:69**

Authority and authorization

annotated opinion of stock purchase agreement, **6:120 to 6:124, 6:126**

series A convertible preferred stock purchase agreement (annotated), **6:13, 6:23, 6:43**

Binding obligations of stock purchase agreement, **6:124**

Blue Sky approvals, **6:51, 6:60**

Books and records, series A convertible preferred stock purchase agreement (annotated), **6:37**

Brokers, series A convertible preferred stock purchase agreement (annotated), **6:96**

Capital and capitalization

annotated opinion of stock purchase agreement, above

reorganizations, **6:111**

series A convertible preferred stock purchase agreement (annotated), **6:19**

PREFERRED STOCK—Cont'd

- Certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated)
 - generally, **6:103 to 6:114**
 - adjustment of conversion prices
 - generally, **6:109 to 6:114**
 - capital reorganizations, **6:111**
 - changes affecting series A, **6:114**
 - combinations, **6:110**
 - dissolutions, **6:111**
 - dividends, **6:110**
 - issuances at less than conversion price, **6:112**
 - non-cash dividends, **6:111**
 - reorganizations, **6:111**
 - status of converted or redeemed stock, **6:113**
 - stock purchase rights, **6:111**
 - stock splits, **6:110**
- capital reorganizations, **6:111**
- changes affecting series A, **6:114**
- combinations, **6:110**
- conversion prices. Adjustment of conversion prices, above in this group
 - dissolutions, **6:111**
 - dividends, **6:105, 6:110**
 - issuances at less than conversion price, **6:112**
 - liquidation, preference on, **6:106**
 - non-cash dividends, **6:111**
 - preference on liquidation, **6:106**
 - reorganizations, **6:111**
 - series A preferred stock, generally, **6:103 to 6:114**
 - status of converted or redeemed stock, **6:113**
 - stock purchase rights, **6:111**
 - stock splits, **6:110**
 - voting, **6:107**
- Certificates and certification
 - amendment of articles. Certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), above
 - series A convertible preferred stock purchase agreement (annotated), **6:33, 6:52, 6:56**
- Change or modification
 - certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:114**
 - series A convertible preferred stock purchase agreement (annotated), below
- Choosing the Business Financing Format (this index)
- Closing a series A convertible preferred stock purchase agreement (annotated), **6:16**
- Combinations, certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:110**

PREFERRED STOCK—Cont'd

- Common stock with debt, structuring investments to improve returns, **6:7**
- Compliance and compliance certificate, series A convertible preferred stock purchase agreement (annotated), **6:33, 6:56**
- Conditions. Series A convertible preferred stock purchase agreement (annotated), below
- Confidentiality, series A convertible preferred stock purchase agreement (annotated), **6:92**
- Conflicts, absence of, **6:139**
- Consent or approval
 - annotated opinion of stock purchase agreement, **6:141**
 - series A convertible preferred stock purchase agreement (annotated), **6:24**
- Contribution, registration rights, **6:82**
- Conversion prices. Adjustment of conversion prices, above in this group
 - certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated)
- Convertible debt, **6:6**
- Convertible preferred stock, form of redemption provisions for, **18:2**
- Counterparts, series A convertible preferred stock purchase agreement (annotated), **6:99**
- Covenants of company. Series A convertible preferred sock purchase agreement (annotated), below
- Definitions, registration rights, **6:76**
- Delivery, annotated opinion of stock purchase agreement, **6:123**
- Directors, expenses of, **6:72**
- Disclosures, representations of company, **6:40**
- Dissolutions, **6:111**
- Dividends, **6:105, 6:110**
- Due organization of a corporation, annotated opinion of stock purchase agreement, **6:117**
- Duly authorized stock, **6:128, 6:138**
- Employees, series A convertible preferred stock purchase agreement (annotated), **6:35**
- Entire agreement, series A convertible preferred stock purchase agreement (annotated), **6:97**
- ERISA, representations of company, **6:36**
- Execution, annotated opinion of stock purchase agreement, **6:123**
- Expenses. Series A convertible preferred stock purchase agreement (annotated), below
- Experience, representations of purchasers, **6:44**
- Financial statements, **6:26, 6:64**
- First refusal, right of
 - annotated opinion of stock purchase agreement, **6:136**
 - series A convertible preferred stock purchase agreement (annotated), **6:68**

PREFERRED STOCK—Cont'd

- Forms
 - preferred stock provisions forms, **16:1, 16:2**
 - redemption provisions for convertible preferred stock, **18:2**
- Fully paid stock, **6:130, 6:138**
- Governing law, **6:102**
- Governmental consents, series A convertible preferred stock purchase agreement (annotated), **6:24**
- Headings, series A convertible preferred stock purchase agreement (annotated), **6:100**
- Incidental registration, **6:79**
- Indemnification, registration rights, **6:82, 6:83**
- Information by holder, registration rights, **6:84**
- Inspection, covenants of company, **6:62**
- Insurance. Series A convertible preferred stock purchase agreement (annotated), below
- Introduction, **6:1**
- Investment representations of purchasers, **6:42**
- Issuance of shares
 - annotated opinion of stock purchase agreement, above
 - certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:112**
 - series A convertible preferred stock purchase agreement (annotated), **6:22**
- Key issues in negotiating venture capital contract, **6:11**
- Key man insurance, **6:66**
- Later-stage investing, **6:10**
- Legend, registration rights, **6:77**
- Leveraged buy-out (LBO) funds, **6:2**
- Limitations on subsequent registration rights, **6:86**
- Liquidation, preference on, **6:106**
- Litigation
 - annotated opinion of stock purchase agreement, **6:140**
 - series A convertible preferred stock purchase agreement (annotated), **6:25, 6:65**
- Material changes in covenants of company, **6:65**
- Material contracts and obligations, **6:32**
- Mergers, series A convertible preferred stock purchase agreement (annotated), **6:89**
- Minimum investment, series A convertible preferred stock purchase agreement (annotated), **6:53**
- Modification. Change or modification, above
- Negative covenants, series A convertible preferred stock purchase agreement (annotated), **6:71**
- Non-assessable stock, **6:131, 6:138**
- Non-cash dividends, **6:111**
- Nondisclosure agreements, **6:67**

PREFERRED STOCK—Cont'd

- Note and warrant purchase agreement, **6:144**
- Notices, series A convertible preferred stock purchase agreement (annotated), **6:95**
- Number of outstanding shares, **6:127**
- NVCA Model Venture Financings Documents (2004) (this index)
- Observer rights, series A convertible preferred stock purchase agreement (annotated), **6:63**
- Opinion of counsel, series A convertible preferred stock purchase agreement (annotated), **6:49**
- Organization, representations of company, **6:18**
- Original issue discount (OID), **6:5 to 6:9**
- Participating preferred stock provisions, form, **16:2**
- Patents, series A convertible preferred stock purchase agreement (annotated), **6:30**
- Power of corporation. Annotated opinion of stock purchase agreement, above
- Preemptive rights, **6:136**
- Preference on liquidation, **6:106**
- Property, representations of company, **6:29**
- Purchase agreement, note and warrant purchase agreement, **6:144**
- “Reasonable redemption premiums,” **6:9**
- Redemption
 - convertible preferred stock, form of redemption provisions for, **18:2**
 - redemption premiums, preferred stock with, **6:9**
- Registration rights. Series A convertible preferred stock purchase agreement (annotated), below
- Regulation “D,” **6:2**
- Reorganizations, certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:111**
- Repayment premiums, debt with, **6:5**
- Representations. Series A convertible preferred stock purchase agreement (annotated), below
- Required registrations, series A convertible preferred stock purchase agreement (annotated), **6:78**
- Reservation of common stock
 - annotated opinion of stock purchase agreement, **6:137**
 - series A convertible preferred stock purchase agreement (annotated), **6:73**
- Rule 144 requirements, **6:87**
- Sales or transfers, series A convertible preferred stock purchase agreement (annotated), **6:14, 6:77, 6:91**
- Securities law compliance, **6:142**
- Series A convertible preferred stock purchase agreement (annotated)
 - generally, **6:12 to 6:102**

PREFERRED STOCK—Cont'd

Series A convertible preferred stock purchase agreement (annotated)—Cont'd

- absence of changes or liabilities, **6:27, 6:34**
- accredited investor, representations of purchasers, **6:45**
- accuracy of representations by company, **6:59**
- allocation of expenses, **6:81**
- amendments, **6:98**
- assets, representations of company, **6:29**
- assigns, **6:90**
- auditor, covenants of company, **6:69**
- authority and authorization, **6:13, 6:23, 6:43**
- Blue Sky approvals, **6:51, 6:60**
- books and records, **6:37**
- brokers, **6:96**
- capitalization, representations of company, **6:19**
- certificates and documents, **6:52, 6:56**
- changes
 - covenants of company, **6:65**
 - representations of company, **6:34**
- closing, **6:16**
- compliance and compliance certificate, **6:33, 6:56**
- conditions to obligations of purchasers
 - generally, **6:46 to 6:57**
 - accuracy of representations, **6:47**
 - Blue Sky approvals, **6:51**
 - certificates and documents, **6:52, 6:56**
 - compliance certificate, **6:56**
 - minimum investment, **6:53**
 - opinion of counsel, **6:49**
 - other matters or agreements, **6:50, 6:55, 6:57**
 - performance, **6:48**
 - small business concern documents, **6:54**
 - warranties, accuracy of, **6:47**
- conditions to obligations of the company, generally, **6:58 to 6:60**
- confidentiality, **6:92**
- consents of government, **6:24**
- contribution, registration rights, **6:82**
- counterparts, **6:99**
- covenants of company
 - generally, **6:61 to 6:74**
 - additional covenants, **6:70**
 - auditor, **6:69**
 - changes, **6:65**
 - directors, expenses of, **6:72**
 - expenses of directors, **6:72**
 - financial statements, **6:64**
 - first refusal, right of, **6:68**
 - inspection, **6:62**
 - key man insurance, **6:66**

PREFERRED STOCK—Cont'd

Series A convertible preferred stock purchase agreement (annotated)—Cont'd

- covenants of company—Cont'd
 - litigation, **6:65**
 - material changes, **6:65**
 - negative covenants, **6:71**
 - nondisclosure agreements, **6:67**
 - observer rights, **6:63**
 - reservation of common stock of, **6:73**
 - termination of covenants, **6:74**
- definitions, registration rights, **6:76**
- directors, expenses of, **6:72**
- disclosures, representations of company, **6:40**
- employees, **6:35**
- entire agreement, **6:97**
- ERISA, representations of company, **6:36**
- expenses
 - generally, **6:94**
 - covenants of company, **6:72**
 - registration rights, **6:81**
- experience, representations of purchasers, **6:44**
- financial statements, **6:26, 6:64**
- first refusal, right of, **6:68**
- governing law, **6:102**
- governmental consents, **6:24**
- headings, **6:100**
- incidental registration, **6:79**
- indemnification, registration rights, **6:82, 6:83**
- information by holder, registration rights, **6:84**
- inspection, covenants of company, **6:62**
- insurance
 - key man insurance, **6:66**
 - representations of company, **6:31**
- investment representations of purchasers, **6:42**
- issuance of shares, **6:22**
- key man insurance, **6:66**
- legend, registration rights, **6:77**
- limitations on subsequent registration rights, **6:86**
- litigation, **6:25, 6:65**
- material changes in covenants of company, **6:65**
- material contracts and obligations, **6:32**
- mergers, **6:89**
- minimum investment, **6:53**
- negative covenants, **6:71**
- nondisclosure agreements, **6:67**
- notices, **6:95**
- observer rights, **6:63**
- opinion of counsel, **6:49**
- organization, representations of company, **6:18**
- patents, **6:30**
- property, representations of company, **6:29**

PREFERRED STOCK—Cont'd

Series A convertible preferred stock purchase agreement (annotated)—Cont'd
 registration rights
 generally, **6:75 to 6:89**
 allocation of expenses, **6:81**
 contribution, **6:82**
 definitions, **6:76**
 expenses, allocation of, **6:81**
 incidental registration, **6:79**
 indemnification, **6:82, 6:83**
 information by holder, **6:84**
 legend, **6:77**
 limitations on subsequent registration rights, **6:86**
 mergers, **6:89**
 procedures, **6:80**
 required registrations, **6:78**
 Rule 144 requirements, **6:87**
 sale or transfer of shares, **6:77**
 “stand-off” agreement, **6:85**
 underwriter or underwritten, **6:83, 6:88**
 representations of company
 generally, **6:17 to 6:40**
 absence of changes or liabilities, **6:27, 6:34**
 assets, **6:29**
 authority for agreement, **6:23**
 books and records, **6:37**
 capitalization, **6:19**
 changes, absence of, **6:34**
 compliance, **6:33**
 consents of government, **6:24**
 disclosures, **6:40**
 employees, **6:35**
 ERISA, **6:36**
 financial statements, **6:26**
 governmental consents, **6:24**
 insurance, **6:31**
 issuance of shares, **6:22**
 litigation, **6:25**
 material contracts and obligations, **6:32**
 organization, **6:18**
 patents, **6:30**
 property, **6:29**
 small business concern, **6:38**
 standing, **6:18**
 stockholder list and agreements, **6:21**
 subsidiaries, **6:20**
 taxes, **6:28**
 trademarks, **6:30**
 U.S. real property holding corporation, **6:39**
 representations of purchasers, generally, **6:41 to 6:45**
 required registrations, **6:78**
 reservation of common stock, **6:73**

PREFERRED STOCK—Cont'd

Series A convertible preferred stock purchase agreement (annotated)—Cont'd
 Rule 144 requirements, **6:87**
 sales or transfers, **6:14, 6:77, 6:91**
 severability, **6:101**
 small business concerns, **6:38, 6:54**
 standing, representations of company, **6:18**
 “stand-off” agreement, **6:85**
 stockholder list and agreements, **6:21**
 subsidiaries, **6:20**
 successor and assigns, **6:90**
 survival of representations and warranties, **6:93**
 taxes, representations of company, **6:28**
 termination of covenants, **6:74**
 trademarks, **6:30**
 underwriter or underwritten, **6:83, 6:88**
 U.S. real property holding corporation, **6:39**
 use of proceeds, **6:15**
 waivers, **6:98**
 warranties
 accuracy of representations by company, **6:59**
 conditions to obligations of purchasers, **6:47**
 survival of, **6:93**
 Series A preferred stock
 certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), above
 convertible stock. Series A convertible preferred stock purchase agreement (annotated), above
 Severability, series A convertible preferred stock purchase agreement (annotated), **6:101**
 Simple interest, debt with, **6:4**
 Small business concerns, **6:38, 6:54**
 Standing, representations of company, **6:18**
 “Stand-off” agreement, **6:85**
 Status of converted or redeemed stock, **6:113**
 Status of corporation, generally, **6:116 to 6:119**
 Stockholder list and agreements, **6:21**
 Stock purchase agreement or rights
 annotated opinion of stock purchase agreement, above
 certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:111**
 series A convertible preferred stock purchase agreement (annotated), above
 Stock splits, **6:110**
 Structuring investments to improve returns
 generally, **6:3 to 6:12**
 common stock, debt with, **6:7**
 convertible debt, **6:6**
 original issue discount (OID), **6:5 to 6:9**

PREFERRED STOCK—Cont'd

- Structuring investments to improve returns—Cont'd
 - “reasonable redemption premiums,” **6:9**
 - redemption premiums, preferred stock with, **6:9**
 - repayment premiums, debt with, **6:5**
 - simple interest, debt with, **6:4**
 - warrants, debt with, **6:8**
- Subsidiaries, series A convertible preferred stock purchase agreement (annotated), **6:20**
- Successor and assigns, **6:90**
- Survival of representations and warranties, **6:93**
- Taxes, representations of company, **6:28**
- Termination of covenants, series A convertible preferred stock purchase agreement (annotated), **6:74**
- Trademarks, **6:30**
- Transaction documents, typical, **6:143**
- Typical venture capital transaction documents, **6:143**
- Underwriter or underwritten, **6:83, 6:88**
- U.S. real property holding corporation, **6:39**
- Use of proceeds, series A convertible preferred stock purchase agreement (annotated), **6:15**
- Validity, matters of. Annotated opinion of stock purchase agreement, above
- Venture capital investment, generally, **6:2 to 6:14**
- Voting, certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:107**
- Waivers, series A convertible preferred stock purchase agreement (annotated), **6:98**
- Warranties. Series A convertible preferred stock purchase agreement (annotated), above
- Warrants, **6:8, 6:144**

PRELIMINARY OFFERING CIRCULAR

- Federal securities laws, **11:67**

PREPAYMENTS

- Institutional private placements, **7:3**

PRESENCE

- Absence of Presence (this index)

PRICING THE DEAL

- Small Business Administration, financing from, **4:13**

“PRINCIPAL OFFICE REQUIREMENT” OF (c)(2)(iv)

- Federal securities laws, **11:57**

PRINCIPLE STOCKHOLDERS

- Disclosure, principle and selling stockholders, **13:46, 13:47**

PRIOR OR PREVIOUS MATTERS

- S corporations, previously taxed income election, **2:38**

PRIOR TO CHECK-THE-BOX REGULATIONS

- Limited Liability Companies (this index), **3:1 to 3:67**

PRIVATE FUNDS

- SEC enforcement authority, Fifth Circuit ruling, **14:90.35**

PRIVATE OFFERING EXEMPTION

- C&DIs (this index)
- Federal Securities Laws (this index)

PRIVATE PLACEMENTS

- Due diligence and civil liability, FINRA guidance, **14:28.50**
- Institutional Private Placements (this index)
- Integration of “separate” offerings, **11:30**

PRIVATE RIGHT OF ACTION

- Professional standards, Sarbanes-Oxley Act and SEC professional conduct rules, **14:64**

PRIVATE SECURITIES LITIGATION REFORM ACT

- Due Diligence and Civil Liability (this index)

PRIVITY

- Due diligence and civil liability, **14:138, 14:139**

PROFESSIONAL CONDUCT RULES

- Sarbanes Oxley Act. See Sarbanes Oxley Act (this index)

PROFESSIONAL STANDARDS

- Due Diligence and Civil Liability (this index)
- Sarbanes-Oxley Act. See Sarbanes-Oxley Act (this index)

PROFITS AND LOSSES

- Howey test for investment contract and security, **15:3.60**
- Investment contract and security, Howey test, **15:3.60**
- Limited liability companies, allocation of, **3:50, 3:56**

PROMOTERS

- Disclosure, **13:5, 13:40, 13:41**
- Due Diligence and Civil Liability (this index)

PROPERTY

- S corporations, distribution of appreciated property, **2:62 to 2:66**

PROPORTIONATE LIABILITY

- Due Diligence and Civil Liability (this index)

PROPOSED AMENDMENTS

Limited Liability Companies (this index)

PROSPECT CAPITAL (PSEC)

Business development company (BDC), **5:3**

PROSPECTUS

Disclosure (this index)

Federal Securities Laws (this index)

PROXIMATE CAUSE

Due Diligence and Civil Liability (this index)

**PUBLIC COMPANY ACCOUNTING
OVERSIGHT BOARD**

Auditing Standards Release # 2012-001, **App 11.4**

Auditor communications with audit committees, PCAOB Auditing Standard No. 16, **12:8.50**

Internal control, PCAOB Guidance for Auditors of Smaller Public Companies (January 23, 2009), **App 11.3**

Professional standards, Sarbanes-Oxley Act, **14:70**

Proposed Auditing Standard Related to Auditor's Assessment of and Response to Risk of Material Misstatement in Financial Statements (Dec. 17, 2009), **App 11.2**

PUBLIC OFFERINGS

Due diligence and civil liability, **14:37**

Final prospectus, **19:1**

Forms

final prospectus, **19:1**

initial public offering forms, **19:1, 19:4**

letter of intent, **19:5**

responsibility schedule for initial public offering of common stock, **19:4**

S-1 offering, **19:1, 19:3**

timetable for initial public offering of common stock, **19:4**

underwriting agreements, **19:3**

Initial public offering forms, **19:1, 19:4**

Letter of intent, form of, **19:5**

Responsibility schedule for initial public offering of common stock, form of, **19:4**

S-1 offering form, **19:1, 19:3**

SEC forms. Forms, above

Testing-the-waters, underwriting agreement for emerging growth company, **19:3.50**

Timetable for initial public offering of common stock, form of, **19:4**

Underwriting agreement

emerging growth company, **19:3.50**

Form S-1 offering, **19:3**

PUBLIC OWNERSHIP

Going Public (this index)

PUERTO RICO

Small business, assistance programs for, **App 18.40**

PUFFERY

Due diligence and civil liability, **14:15.50**

PURCHASE AGREEMENT

Preferred stock, note and warrant purchase agreement, **6:144**

PURCHASER REPRESENTATIVES

Federal securities laws, C&DIs, **11:10.90**

**QUALIFIED LEGAL COMPLIANCE
COMMITTEE (QLCC)**

Sarbanes-Oxley Act and SEC professional conduct rules, **14:56**

QUALIFIED OR QUALIFICATION

State blue sky regulation, registration by qualification, **15:17**

QUANTITY

Amount or Quantity (this index)

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

Due Diligence and Civil Liability (this index)

RATE OR RATES

S corporations, adjusted highest section one rate and taxable year, **2:76**

**REAL ESTATE MORTGAGE INVESTMENT
CONDUIT (REMIC)**

Limited liability companies, **3:7**

REASONABLE INVESTIGATION

FINRA Regulatory Notice 10-22, reasonable investigations by broker-dealers in Regulation D offerings, **App 1.2A**

REASONABLENESS STANDARD

Due diligence and civil liability, **14:4**

**“REASONABLE REDEMPTION
PREMIUMS”**

Preferred stock, **6:9**

**“REASONABLY FORESEEABLE”
APPROACH**

Due diligence and civil liability, **14:130 to 14:133**

RECAPITALIZATIONS

Federal Securities Laws (this index)

RECAPTURE

S corporations, inventory appreciation recaptured upon conversion from C corporation to S corporation, **2:68**

RECORDS AND RECORD-KEEPING

- Due diligence and civil liability, **14:16**
- NVCA Model Venture Financings Documents (2007) (this index)

RECOVERY LOANS EXTENSION

- Small Business Administration, financing from, **4:1.50**

REDEMPTION

- Choosing the Business Financing Format (this index)
- Preferred stock, **6:9**
- Provisions for convertible debentures, forms of, **18:2**
- S corporations, one class of stock requirement for eligibility, **2:22**

“RED FLAGS”

- Due diligence and civil liability, **14:51.50**

REFORM AND REVISION

- Federal Securities Laws (this index)

REFUNDS

- S corporations, required payments, **2:79**

REGIONS FINANCING TRUST LITIGATION

- Due diligence and civil liability, **14:15**
- Omnicare extended to proxy statements, **14:15.10**

REGISTRATION

- Choosing the business financing format, **1:22**
- Emerging Growth Companies (EGCs) (this index)
- Federal Securities Laws (this index)
- Form of registration rights agreement, **18:10**
- Going Public (this index)
- Preferred Stock (this index)

REGULATION A

- Federal Securities Laws (this index)
- Limited Offerings (this index)

REGULATION CROWDFUNDING

- Crowdfunding (this index)

REGULATION D

- Defenses, Rule 508, **11:4.70**
- Federal Securities Laws (this index)
- FINRA Regulatory Notice 10-22, reasonable investigations by broker-dealers, **App 1.2A**
- Form D, Notice of Sales under Regulation D or Section 4(6), **App 2**
- Going Public (this index)
- Limited offerings
 - generally, **App 1**
- Preferred stock, **6:2**
- Proposed amendment, **11:4.60**
- State blue sky regulation, **15:11**

REGULATION S

- Generally, **App 8**
- Federal Securities Laws (this index)

REGULATION S-B

- Disclosure (this index)
- SEC forms and related regulations, **App 5**

REGULATION S-K

- Disclosure (this index)
- Item 402, Executive Compensation Staff Q&A (Feb 12, 2007), **App 5.8**
- Proposed amendments to, **13:1.58**
- SEC forms and related regulations, **App 5.7**
- SEC staff compliance and disclosure interpretations (C&DIs) (February 2019), **App 5.9**

REGULATION S-P

- Internet offerings, **11:8**

RE KAYE, SCHOLER

- Due diligence and civil liability, **14:98**

RELATED PARTY TRANSACTIONS

- Due diligence standards proposed by PCAOB, **12:14.50**

RELIANCE BY SELLER ON RULE 144A

- Federal securities laws, **11:132**

REMEDIES

- S corporations, relief from inadvertent termination, **2:39**
- SEC disgorgement remedy, statute of limitations, **14:90.60**

REMUNERATION OF MANAGEMENT

- Disclosure, **13:6, 13:42, 13:43**

REORGANIZATIONS

- Certificate of amendment of articles of incorporation of Megabucks, Inc. (annotated), **6:111**
- Federal securities laws, **11:100**

REPAYMENT PENALTIES

- Term loan agreements, **7:35**

REPAYMENT PREMIUMS

- Preferred stock, **6:5**

REPEAL OR REPEALS

- S corporations, repeal of “General Utilities” doctrine, **2:64**

REPORTS AND REPORTING

- Due diligence and civil liability, **14:90**
- Financial reporting
 - FAQs, Management’s Report on Internal Control (Sept. 24, 2007), **App 11.1**
 - Interactive Data for Financial Reporting—A Small Entity Reporting Guide, **App 5.4**

REPORTS AND REPORTING—Cont’d

- Financial reporting—Cont’d
 - PCAOB Auditing Standards Release # 2012-001, **App 11.4**
 - PCAOB Proposed Auditing Standard Related to Auditor’s Assessment of and Response to Risk of Material Misstatement in Financial Statements (Dec. 17, 2009), **App 11.2**
 - Securities and Exchange Commission Guidance Regarding Management’s Report on Internal Control (June 20, 2007), **App 11**
- Going Public (this index)
- Institutional investment managers, Dodd-Frank Act (2010) corporate governance provisions, **12:34**
- Regulation A, offering exemption reporting requirements, **11:71.10**
- Sarbanes-Oxley Act, **14:56, 14:62, 14:73**

REPRESENTATIONS

- Term Loan Agreements (this index)

RE-SALE OF RIGHTS

- Choosing the business financing format, **1:22**

RESALES OF SECURITIES

- C&DIs (this index)
- Federal Securities Laws (this index)
- Safe harbor, Regulation S, **11:81.09**
- State blue sky regulation, **15:27**

RESEARCH AND DEVELOPMENT

- Partnerships for, **1:23**

RESEARCH AND DEVELOPMENT PARTNERSHIPS

- Choosing the business financing format, **1:23**

RESEARCH REPORTS

- SEC’s 2005 offering revisions, **11:143**

RESERVATION OF COMMON STOCK

- Preferred Stock (this index)

RESIDENCE REQUIREMENT

- Intrastate offering exemption, **11:42**

RESPONDEAT SUPERIOR

- Due diligence and civil liability, **14:81**

RESTRICTIONS

- Limitations and Restrictions (this index)

RESULTS OF OPERATION

- Disclosure, **13:4**

RETIREMENT PLANS

- Limited liability companies, **3:65**

RETURNS

- S corporations, taxable year, **2:74**

“REVENUE RECOGNITION MANIPULATION” ACCOUNTING PRACTICES

- Due diligence and civil liability, **14:96**

REVENUE RECOGNITION POLICY AND PRACTICES

- Going public, **12:13**

REVIEW BY SEC

- “Accredited investor” definition, **11:4.30**
- Going public, **12:21**

REVOCATION

- S corporations, termination of election, **2:30**

REVOLVING CREDIT

- Term loan agreements, **7:11, 7:21**

RHODE ISLAND

- Small business, assistance programs for, **App 18.41**

RICO CLAIMS

- Due Diligence and Civil Liability (this index)

RIGHT OF FIRST REFUSAL

- NVCA model venture financings documents (2007), **15A:7**

RISK FACTORS

- Disclosure, **13:20, 13:21**

RISKS

- Term loan agreements, **7:28**

ROSENBLUM TEST IN NEW JERSEY

- Due diligence and civil liability, **14:131**

RULE 10b-5 (1934 ACT)

- Due Diligence and Civil Liability (this index)

RULE 15c2-11

- Federal securities laws, **11:75.40**

RULE 24b-2

- Confidential treatment applications, **App 19**

RULE 102(E) PROCEEDINGS

- Due diligence and civil liability, **14:92**

RULE 135c NOTICE

- Internet offerings, **11:8**

RULE 135C NOTICE

- Internet offerings, **11:8**

RULES 144 AND 144A

- Federal Securities Laws (this index)
- Institutional Private Placements (this index)
- Offering exemption, Regulation A, **11:75.40**
- Preferred stock, **6:87**
- Questions and staff answers, **App 4.1A**
- Release adopting Rule 144A, **App 4.4**

RULES 144 AND 144A—Cont'd

- Revised Staff Legal Bulletin No. 3 (CF) (Oct. 20, 1999), **App 4.2A**
- Rule 144A Private Resales of securities to institutions, **App 4.3**
- Rule 144 under Securities Act of 1933, **11:75.40, App 4**
- SEC Release No. 33-5306 (September 26, 1972), **App 4.1**
- SEC Release No. 33-6099 (August 2, 1979), **App 4.2**
- Staff Legal Bulletin No. 4 (CF) (Sept. 16, 1997), **App 4.2B**

RULE 147

- Amendments, exemptions from registration requirements, **11:41.50**
- Integration problems under, **11:59**
- Selected C&DIs, **11:59.50**

RULE 147A

- Intrastate offering exemption, **11:41.60**
- SEC guidance, **11:59.50**
- Selected C&DIs, **11:59.50**

RULE 152

- Federal securities laws, **11:20, 11:39, 11:40**

RULE 155

- Federal securities laws, **11:39, 11:40, 11:40.50**

RULE 163B

- Test-the-waters communication, **11:137.60**

RULE 176

- Due diligence and civil liability, **14:12**

RULE 262

- Federal securities laws, **11:74**

RULE 406

- Confidential treatment applications, **App 19**

RULE 415

- Proposed amendments to, **11:149**

RULE 504

- Federal securities laws, **11:12.40**

RULE 505

- Federal securities laws, **11:12.40**

RULE 506

- Bad actor disqualification under Rule 506(d), C&DI (Dec 2013), **11:4.52**
- C&DIs, integration of offerings, **11:4.53**
- Federal securities laws, **11:4.51, 11:4.52, 11:12.40**
- General solicitation under Rule 506(c), C&DI, **11:4.51**
- Internet offerings and blue sky laws, preemption of Rule 506 offerings, **11:8**

RULE 508

- Defense to SEC enforcement actions under Regulation D, **11:4.70**
- Exemptions form Securities Act (1933) registration, **11:4.70**

SAFE HARBORS

- Due Diligence and Civil Liability (this index)
- Federal Securities Laws (this index)
- Going public, SEC audit committee disclosure rules, **12:29**
- S corporations, one class of stock requirement for eligibility, **2:24, 2:26**

SALES OR TRANSFERS

- Co-Sales (this index)
- Disclosure, principle and selling stockholders, **13:46, 13:47**
- Going Public (this index)
- S corporations, buy-sell agreements, **2:22**

SAMPLE NOTE AGREEMENT

- Institutional private placements, **7:10**

SANCTIONS

- Sarbanes-Oxley Act and SEC professional conduct rules, **14:61**

SANDERS, JAMES

- Small Business Administration, financing from, **4:16**

SANDERS LITIGATION

- Due diligence and civil liability, **14:14**

SARBANES-OXLEY ACT

- Generally, **14:54, 14:69 et seq.**
- ABA and state ethical rules, **14:63**
- Alternative reporting to QLCC, **14:56**
- “Appropriate response” by issuer, **14:57**
- Attorney rules, generally, **14:54**
- Auditor rules, generally, **14:69 et seq.**
- Confidential information, permissive disclosure of, **14:59**
- Disclosures in accounting (required), **14:71**
- Due diligence and civil liability. See entries throughout this topic
- Fraudulent Accounting
 - who is an employer under the statute?, **14:53.70**
- Independence of auditors, strengthening, **14:72**
- Investigation, reporting attorney has no duty of, **14:62**
- “Noisy” withdrawal and disaffirmances proposal and alternative proposal, **14:58**
- Permissive disclosure of confidential information, **14:59**
- Private right of action, **14:64**
- Public Company Accounting Oversight Board, **14:70**

SARBANES-OXLEY ACT—Cont'd

- Reports and reporting, generally, **14:56, 14:62, 14:73**
- Sanctions and discipline for rule violations, **14:61**
- SEC auditor rules, generally, **14:69 to 14:73**
- SEC professional conduct rules, generally, **14:54**
- Supervisory and subordinate attorneys, **14:60**
- Timely reporting by auditor to audit committee, audit committee's role, **14:73**
- "Up-the-ladder" reporting, **14:55, 14:58**
- Whistle-blower protection for employees in employment termination cases, **14:53.50**

SBIC

- Small Business Investment Companies (SBIC) (this index)

SCALED DISCLOSURE

- Smaller reporting companies. Disclosure (this index)

SCHEMES TO EVADE REGISTRATION

- Federal securities laws, **11:92**

SCIENTER

- Corporate scienter. Due Diligence and Civil Liability (this index)

S CORPORATIONS

- Generally, **2:1 to 2:86**
- Accumulated earnings tax, avoidance of, **2:10**
- Acquisition of interest in pass-through entity, investment interest limitation, **2:43**
- Additional benefits of entity, **2:11**
- Adjusted highest section one rate, taxable year, **2:76**
- Affected taxpayers, limitation on passive losses under Tax Reform Act of 1986, **2:52**
- Allocation of tax items, comparison of taxation of partners and shareholders, **2:58**
- Allowances of losses and deductions, **2:59, 2:60**
- Alternative minimum tax, avoidance of corporate alternative minimum tax, **2:9**
- Amendments, **2:65**
- Applicable payments, taxable year, **2:78**
- Applicable percentage or payments, taxable year, **2:75**
- Appreciation
 - distribution of appreciated property, comparison of taxation of partners and shareholders, **2:62 to 2:66**
 - recapture of inventory appreciation upon conversion from C corporation to S corporation, comparison of taxation of partners and shareholders, **2:68**
- Arrangements treated as equity, one class of stock requirement for eligibility, **2:23**
- Audits, comparison of taxation of partners and shareholders, **2:69, 2:70**

S CORPORATIONS—Cont'd

- Avoidance
 - accumulated earnings tax, **2:10**
 - corporate alternative minimum tax, **2:9**
 - double taxation, **2:7**
 - elections to avoid election, passive investment income, **2:32**
 - personal holding company tax, **2:10**
 - section 1375, passive investment income, **2:36**
- Basis, comparison of taxation of partners and shareholders, **2:55 to 2:57**
- Benefits of entity, **2:1 et seq.**
- Buy-sell agreements, one class of stock requirement for eligibility, **2:22**
- Case law governing basis, comparison of taxation of partners and shareholders, **2:57**
- C corporations, comparison of taxation of partners and shareholders, **2:66, 2:68**
- Chart, comparison of partnership and S corporation provisions, **2:83**
- Choice of entity, factors in determining, **2:5, 2:6**
- Classification of entity, comparison of taxation of partners and shareholders, **2:82**
- Comparisons
 - partnership and S corporation provisions, **2:83**
 - taxation of partners and taxation of S corporation shareholders, **2:55 to 2:82**
- Consent of shareholders, elections, **2:29**
- Conversion from C corporation to S corporation, recapture of inventory appreciation, **2:68**
- Convertible debt, **2:27**
- Corporations eligible, **2:14**
- Debt
 - basis of indebtedness, final regulations on, **2:56**
 - convertible debt, **2:27**
 - discharge of indebtedness income, tax treatment of certain items, **2:49**
 - investment interest limitation, tax treatment of certain items, **2:43, 2:44**
 - straight debt safe harbor, one class of stock requirement for eligibility, **2:24**
 - worthless debt, tax treatment of certain items, **2:47, 2:48**
- Deductions
 - allowed, **2:59, 2:60**
 - business interest, limitations on, **2:4**
 - pass-through business income, Section 199A, **2:3**
- Deemed dividend election, passive investment income, **2:37**
- Definitions
 - passive activity, **2:51**
 - passive investment income, **2:34**
- Determining basis, comparison of taxation of partners and shareholders, **2:55, 2:57**

S CORPORATIONS—Cont'd

- Direct loan to S corporation, self-charged interest, **2:46**
- Discharge of indebtedness income, tax treatment of certain items, **2:49**
- Distributions
 - appreciated property, comparison of taxation of partners and shareholders, **2:62 to 2:66**
 - debt financed distributions from pass-through entity to its owners, investment interest limitation, **2:44**
- Double taxation, avoidance of, **2:7**
- Elections
 - generally, **2:28 to 2:32**
 - deemed dividend election, passive investment income, **2:37**
 - IRS Form 2553, election by small business corporation, **2:84, 2:85**
 - passive investment income, **2:33 to 2:38**
 - permissible fiscal years without election, taxable year, **2:72**
 - small business trusts, eligible shareholders, **2:19**
 - termination, **2:30 to 2:32, 2:39**
 - To avoid election, passive investment income, **2:32**
 - transition rules for C corporations electing S corporation status, distribution of appreciated property, **2:66**
- Eligibility
 - generally, **2:13 to 2:27**
 - small business administration, financing from, **4:1**
 - taxable year, comparison of taxation of partners and shareholders, **2:73**
- Equity, one class of stock requirement for eligibility, **2:23**
- Estates, eligible shareholders, **2:17**
- Estimated tax payments, comparison of taxation of partners and shareholders, **2:67**
- Excess passive investment income, **2:32, 2:35**
- Expense, investment interest limitation, **2:40 to 2:46**
- Failure to qualify as small business corporation, termination of election, **2:31**
- Financed by debt distributions from pass-through entity to its owners, investment interest limitation, **2:44**
- Fiscal years permissible without election, taxable year, **2:72**
- Forms
 - election by small business corporation (IRS Form 2553), **2:84, 2:85**
 - “General Utilities” doctrine, distribution of appreciated property, **2:64**
- Highest section one rate, taxable year, **2:76**

S CORPORATIONS—Cont'd

- Impact on shareholders and limited partners, limitation on passive losses under Tax Reform Act of 1986, **2:54**
- Inadvertent termination, relief from, **2:39**
- Income
 - discharge of indebtedness income, tax treatment of certain items, **2:49**
 - net base year income, taxable year, **2:77**
 - passive investment income, **2:33 to 2:38**
 - pass-through business income, deduction for, Section 199A, **2:3**
 - state income tax considerations, comparison of taxation of partners and shareholders, **2:81**
- Indebtedness. See Debt, above
- Instruments, one class of stock requirement for eligibility, **2:23, 2:25**
- Inventory appreciation, recapture upon conversion from C corporation to S corporation, **2:68**
- Investment
 - interest limitation, tax treatment of certain items, **2:40 to 2:46**
 - passive investment income, **2:33 to 2:38**
 - potential as investment vehicle, **2:1 et seq.**
- IRS Form 2553, election by small business corporation, **2:84, 2:85**
- IRS Initiative on S Corporation Compliance, **2:12**
- Limitations
 - investment interest limitation, tax treatment of certain items, **2:40 to 2:46**
 - passive losses, Tax Reform Act of 1986, **2:50 to 2:54**
 - statute of limitations, audits, **2:70**
 - transfers, one class of stock requirement for eligibility, **2:22**
- Limited liability companies
 - comparisons with, **3:33 to 3:37**
 - Texas S corporation LLC operating agreement (2011), **20:6**
- Limited partners, limitation on passive losses under Tax Reform Act of 1986, **2:54**
- Losses
 - allowance of losses, **2:59, 2:60**
 - utilization of corporate losses, **2:8**
- Material participation, limitation on passive losses under Tax Reform Act of 1986, **2:53**
- Mechanics of election, **2:28**
- Net base year income, taxable year, **2:77**
- Obligations treated as equity, one class of stock requirement for eligibility, **2:23**
- One class of stock requirement, eligibility, **2:21 to 2:27**
- Options, one class of stock requirement for eligibility, **2:25, 2:26**

S CORPORATIONS—Cont'd

- Other instruments, obligations or arrangements treated as equity, one class of stock requirement for eligibility, **2:23**
- Owners of pass-through entities, investment interest limitation, **2:42, 2:44**
- Own stock or debt of S corporation as worthless, **2:47**
- Partners and partnerships
 - chart, comparison of partnership and S corporation provisions, **2:83**
 - limited partners, limitation on passive losses under Tax Reform Act of 1986, **2:54**
 - taxation of partners compared with taxation of S corporation shareholders, **2:55 to 2:82**
- Passive investment income, **2:33 to 2:38**
- Pass-through business income, deduction for, Section 199A, **2:3**
- Pass-through entities, investment interest limitation, **2:40 to 2:46**
- Payments
 - applicable payments, taxable year, **2:78**
 - estimated tax payments, comparison of taxation of partners and shareholders, **2:67**
 - refunds of required payments, taxable year, **2:79**
- Penalties, taxable year, **2:80**
- Permissible fiscal years without election, taxable year, **2:72**
- Personal holding company tax, avoidance of, **2:10**
- Potential as investment vehicle, **2:1 et seq.**
- Previously taxed income election, passive investment income, **2:38**
- Qualified or qualifying
 - failure to qualify as small business corporation, termination of election, **2:31**
 - subsidiaries, eligible shareholders, **2:16**
 - trusts, eligible shareholders, **2:18, 2:20**
- Recapture of inventory appreciation upon conversion from C corporation to S corporation, comparison of taxation of partners and shareholders, **2:68**
- Recent tax legislation, **2:1**
- Redemptions, one class of stock requirement for eligibility, **2:22**
- Refunds of required payments, taxable year, **2:79**
- Relief from inadvertent termination, **2:39**
- Repeal of “General Utilities” doctrine, distribution of appreciated property, **2:64**
- Return required, taxable year, **2:74**
- Revocation, termination of election, **2:30**
- At risk, comparison of taxation of partners and shareholders, **2:61**
- Rules, distribution of appreciated property, comparison of taxation of partners and shareholders, **2:62 to 2:66**

S CORPORATIONS—Cont'd

- Safe harbors, one class of stock requirement for eligibility, **2:24, 2:26**
- Section 199A, deduction for pass-through business income, **2:3**
- Section 1368(e)(3) election to avoid Section 1375, passive investment income, **2:36**
- Section 1375 avoidance, passive investment income, **2:36**
- Self-charged interest, investment interest limitation, **2:45, 2:46**
- Shareholders
 - comparison of taxation of partners and taxation of S corporation shareholders, **2:55 to 2:82**
 - consents, elections, **2:29**
 - eligibility, **2:15 to 2:19**
 - impact on shareholders, limitation on passive losses under Tax Reform Act of 1986, **2:54**
 - passive loss, **2:54**
- Small business
 - electing small business trusts, eligible shareholders, **2:19**
 - failure to qualify as small business corporation, termination of election, **2:31**
 - IRS Form 2553, election by small business corporation, **2:84, 2:85**
 - real estate taxation and the 2025 budget reconciliation bill, **2:86**
- State income tax considerations, comparison of taxation of partners and shareholders, **2:81**
- Statute of limitations, audits, **2:70**
- Stock
 - disposition of, losses are suspended, **2:60**
 - one class of stock requirement, eligibility, **2:21 to 2:27**
 - worthless stock, tax treatment of certain items, **2:47, 2:48**
- Straight debt safe harbor, one class of stock requirement for eligibility, **2:24**
- Subsidiaries, qualified subchapter S subsidiaries, **2:16**
- Summary, comparison of partnership and S corporation provisions, **2:83**
- Taxable year or years
 - comparison of taxation of partners and shareholders, **2:71 to 2:80**
- Taxation
 - statutes, see lines throughout this index topic
- Tax Cuts and Jobs Act
 - allowances of losses and deductions, **2:59**
 - choice of entity after, **2:6**
- Tax imposed on excess passive investment income, **2:35**
- Taxpayers affected, limitation on passive losses under Tax Reform Act of 1986, **2:52**

S CORPORATIONS—Cont'd

- Tax Reform Act of 1986
 - distribution of appreciated property, comparison of taxation of partners and shareholders, **2:62 to 2:66**
 - limitation on passive losses under Tax Reform Act of 1986, **2:50 to 2:54**
- Tax Reform Act of 1996, audits, comparison of taxation of partners and shareholders, **2:69**
- Tax treatment of certain items, **2:40 to 2:49**
- Termination of election, **2:30 to 2:32, 2:39**
- Texas S corporation LLC operating agreement (2011), **20:6**
- Third party debt, worthless debt, **2:48**
- Transfers, one class of stock requirement for eligibility, **2:22**
- Transition rules, distribution of appreciated property, **2:66**
- Trusts, eligible shareholders, **2:17**
- 2004 Act, **2:2**
- Utilization of corporate losses, **2:8**
- Warrants, one class of stock requirement for eligibility, **2:25**
- Worthless stock and debt, tax treatment of certain items, **2:47, 2:48**

SEC

- Consent decrees and no deny provisions, **14:90.75**
- Cryptocurrency, SEC injunctive authority, **14:90.10**
- Disgorgement remedy, application of statute of limitations, **14:90.60**
- Due Diligence and Civil Liability (this index)
- Enforcement authority, private funds and private fund advisers curtailed in Fifth Circuit ruling, **14:90.35**
- Federal Securities Laws (this index)
- Forms. SEC Forms and Related Regulations (this index)
- Going Public (this index)
- Injunctive remedies, attempt to label as punitive, **14:90.70**
- Misrepresentations in connection with purchase or sale of a security, SEC enforcement, **14:90.30**
- Professional conduct rules. See Sarbanes Oxley Act (this index)

SEC ENFORCEMENT ARSENAL

- Due diligence and civil liability, against professionals and others, **14:90**
- Sexual misconduct, **14:90.40**

SEC FORMS AND RELATED REGULATIONS

- 2018 and 2008 amendments, summary, **11:152**
- Form 8-K, **App 5.5c**
- Form 8-K, SEC staff interpretations, **App 5.5d**

SEC FORMS AND RELATED REGULATIONS—Cont'd

- Form 10-K, **App 5.5b**
- Form 10-Q, **App 5.5**
- Form D, proposed amendment, **11:4.60**
- Form S-1, **11:152, App 5.1**
- Form S-3, **App 5.2**
- Form SB-2, **App 5.4**
- Item 402 of Regulation S-K, Executive Compensation Staff Q&A (Feb 12, 2007), **App 5.8**
- Management's Report on Internal Control, Commission Guidance Regarding (June 20, 2007), **App 11**
- Regulation S-B, **App 5**
- Regulation S-K, **11:152, App 5.7**
- Regulation S-K, SEC C&DIs (February 2019), **App 5.9**
- Sample letter regarding disclosures as to Russia's invasion of Ukraine and related supply chain issues, **App 5.30**
- Staff C&DIs of Securities Act sections, **App 5.3**
- Staff Legal Bulletin No. 7 (Updated June 7, 1999), **App 5.6**

SEC NO-ACTION LETTERS

- Federal Securities Laws (this index)

SECOND RESTATEMENT APPROACH

- Due diligence and civil liability, **14:128**

SECTION 10A OF EXCHANGE ACT OF 1934

- Due Diligence and Civil Liability (this index)

SECTION 11 LIABILITY

- Due Diligence and Civil Liability (this index)

SECTION 12(A)(2) OF 1933 ACT

- Due diligence and liability. Due Diligence and Civil Liability (this index)
- Regulation A offering exemption liability, **11:75.65**

SECTION 17(A) OF 1933 ACT

- Due diligence and civil liability, **14:39, 14:39.80**

SECTION 199A

- Pass-through business income, deduction for, **2:3**

SECURITIES ACT OF 1933

- Due Diligence and Civil Liability (this index)
- Federal Securities Laws (this index)
- Going public, generally, **12:1**
- Rules 144 and 144A (this index)

SECURITIES EXCHANGE ACT OF 1934

- Exchange Act of 1934 (this index)

SECURITIES EXCHANGE COMMISSION

- SEC (this index)

SECURITIES LAW COMPLIANCE

Preferred stock, **6:142**

SECURITIES LAWS

For particular matters regarding securities laws and regulations, see more specific entries throughout this index

Generally, Federal Securities Laws (this index); State Securities Regulation (this index)

As to particular statutes or laws, see topics throughout this index

SECURITIES LITIGATION UNIFORM STANDARDS ACT (SLUSA)

Reach of, due diligence and civil liability, **14:123.50**

SECURITIES OFFERING REVISION

Federal Securities Laws (this index)

SELECTING SECURITIES

Choosing the Business Financing Format (this index)

SELF CHARGED INTEREST

Generally, **2:45, 2:46**

SELF-EMPLOYMENT TAX

Limited liability companies, **3:65**

SELF-REGULATORY ORGANIZATIONS

Going Public (this index)

SENIOR SECURITIES

Choosing the Business Financing Format (this index)

SERIES A PREFERRED STOCK

Preferred Stock (this index)

SERVICES, CONTRIBUTIONS OF

Limited liability companies, **3:54**

SEVERABILITY

Series A convertible preferred stock purchase agreement (annotated), **6:101**

SHAREHOLDERS

S Corporations (this index)

Stockholders (this index)

SHELF OFFERINGS

SEC's 2005 securities offering revisions, **11:148**

SHELF REGISTRATION

Automatic shelf registration for well-known seasoned issuers, **11:150**

Process for registration under Securities Act of 1933, **11:147**

SHELL COMPANY

Federal securities laws, **11:122**

SHELTERS FROM TAXES

Limited liability companies, **3:61**

SHORT SENTENCES, USE OF

Disclosure, **13:12**

SIMPLE INTEREST, DEBT WITH

Preferred stock, **6:4**

SIMULTANEOUS FUNDING

Term loan agreements, **7:24**

SING, GEORGE

Small Business Administration, financing from, **4:6, 4:9, 4:15**

SINGLE OWNER ENTITY

Limited liability companies, **3:11**

SINGLE PLAN OF FINANCING

Federal securities laws, **11:17**

SMALL BUSINESS

Administration. Small Business Administration, Financing From (this index)

Assistance programs to states generally, **5:1, 5:2**

summary of assistance programs for small business, state-by-state. Small Business, State-by-State Summary of Assistance Programs for (this index)

Business and Industrial Development Corporation (BIDCO), **5:1**

Business development companies, introduction and listing, **5:3**

Certified development companies, **5:1**

Federal Securities Laws (this index)

Innovation Development Act, **5:1**

Interactive Data for Financial Reporting—A Small Entity Reporting Guide, **App 5.4**

Investment companies. Small Business Investment Companies (this index)

Limited offerings

NASAA small company offering registration (SCOR) manual, **App 1.5A**

Regulation A, small issues exemption, **App 1.6**

Preferred stock, **6:38, 6:54**

Profiles for state and territories, **App 18.54**

Registration form (Form U-7) for small corporate offerings, **App 1.5**

SBICs. Small Business Investment Companies (this index)

S Corporations (this index)

Small Business Innovation Development Act, **5:1**

Small Entity Compliance Guide

Amendments to Regulation A, **App 1.9**

Disclosure and simplification, **App 1.11**

Smaller reporting company, scaled disclosure. Disclosure (this index)

SMALL BUSINESS—Cont'd

- Specialized small business investment companies (SSBICs), **4:2**
- State and territories, profiles for, **App 18.54**
- State assistance to
 - generally, **5:1, 5:2**
 - summary of assistance programs for small business, state-by-state. Small Business, State-by-State Summary of Assistance Programs for (this index)
- State Blue Sky Regulation (this index)
- State-by-state summary of assistance programs for small business. Small Business, State-by-State Summary of Assistance Programs for (this index)
- Summary of assistance programs for small business, state-by-state. Small Business, State-by-State Summary of Assistance Programs for (this index)

**SMALL BUSINESS, STATE-BY-STATE
SUMMARY OF ASSISTANCE
PROGRAMS FOR**

- Alabama, **App 18.1**
- Alaska, **App 18.2**
- Arizona, **App 18.3**
- Arkansas, **App 18.4**
- California, **App 18.5**
- Colorado, **App 18.6**
- Connecticut, **App 18.7**
- Delaware, **App 18.8**
- District of Columbia, **App 18.9**
- Florida, **App 18.10**
- Georgia, **App 18.11**
- Guam, **App 18.11A**
- Hawaii, **App 18.12**
- Idaho, **App 18.13**
- Illinois, **App 18.14**
- Indiana, **App 18.15**
- Iowa, **App 18.16**
- Kansas, **App 18.17**
- Kentucky, **App 18.18**
- Louisiana, **App 18.19**
- Maine, **App 18.20**
- Maryland, **App 18.21**
- Massachusetts, **App 18.22**
- Michigan, **App 18.23**
- Minnesota, **App 18.24**
- Mississippi, **App 18.25**
- Missouri, **App 18.26**
- Montana, **App 18.27**
- Nebraska, **App 18.28**
- Nevada, **App 18.29**
- New Hampshire, **App 18.30**
- New Jersey, **App 18.31**
- New Mexico, **App 18.32**

**SMALL BUSINESS, STATE-BY-STATE
SUMMARY OF ASSISTANCE
PROGRAMS FOR—Cont'd**

- New York, **App 18.33**
- North Carolina, **App 18.34**
- North Dakota, **App 18.35**
- Ohio, **App 18.36**
- Oklahoma, **App 18.37**
- Oregon, **App 18.38**
- Pennsylvania, **App 18.39**
- Puerto Rico, **App 18.40**
- Rhode Island, **App 18.41**
- Small Business Administration, financing from, **4:5**
- South Carolina, **App 18.42**
- South Dakota, **App 18.43**
- Tennessee, **App 18.44**
- Texas, **App 18.45**
- Utah, **App 18.46**
- Vermont, **App 18.47**
- Virginia, **App 18.49**
- Virgin Islands, **App 18.48**
- Washington, **App 18.50**
- West Virginia, **App 18.51**
- Wisconsin, **App 18.52**
- Wyoming, **App 18.53**

**SMALL BUSINESS ADMINISTRATION,
FINANCING FROM**

- Generally, **4:1 to 4:20**
- Ability to repay loan, showing of, **4:1**
- Accessing the public markets, **4:16**
- Alternative size standards, **4:1.50**
- Amendments to Early Stage SBIC Limited Partnership Agreement, **4:18**
- Bold type provision in Model Early Stage SBIC Limited Partnership Agreement, **4:18**
- Brophy, David J., **4:8**
- Burrill, G. Steven, **4:11**
- Business plans, **4:11**
- Call period, Early Stage licensing process, **4:17**
- Capital information, sources of, **4:8**
- Capitalization, applicants for Early Stage SBIC Limited Partnership Agreement, **4:18**
- Certified Lenders Program (CLP), **4:1**
- Checklist, applicant for Early Stage licensing, **4:17**
- Comment letter from SBA to applicant for Early Stage licensing, **4:17**
- Commercial real estate refinancing, **4:1.50**
- Conflicts of interest, **4:4**
- Control prohibitions, **4:4**
- Deviation from Model Early Stage SBIC Limited Partnership Agreement, explanation, **4:18**
- Directory of operating SBICs, **4:5**

**SMALL BUSINESS ADMINISTRATION,
FINANCING FROM—Cont'd**

Due diligence, qualified applicants for Early Stage licensing process, **4:17**
 Early Stage SBIC Initiative (2012), **4:17**
 Eligibility for SBA loans, generally, **4:1**
 Enhanced loan extension, **4:1.50**
 European sources of funds, **4:15**
 Exceptions to eligibility for SBA loans, generally, **4:1**
 Extension of recovery loans, **4:1.50**
 Federal Register, notice of call periods for Early Stage licensing process, **4:17**
 Financing growth-oriented ventures generally, **4:6 to 4:19**
 accessing the public markets, **4:16**
 business plans, **4:11**
 capital information, sources of, **4:8**
 Early Stage SBIC Initiative (2012), **4:17**
 European sources, **4:15**
 finders, **4:10**
 introduction, **4:7**
 legal aspects in structuring the deal, **4:14**
 Model Early Stage SBIC Limited Partnership Agreement, **4:18, App 6**
 offering circular, use of, **4:12**
 pricing the deal, **4:13**
 SBA financing sources, **4:16**
 sources of capital information, **4:8**
 specific sources of capital, generally, **4:15, 4:16**
 structuring the deal, **4:13**
 United Kingdom sources, **4:6**
 valuing the deal, **4:13**
 when to seek financing, generally, **4:9 to 4:13**
 from whom to seek financing, generally, **4:9 to 4:13**
 Finders, **4:10**
 Fundraising and document preparation, Early Stage licensing process, **4:17**
 General partners, Early Stage SBIC Limited Partnership Agreement, **4:18**
 Green Light letters to qualified applicants for Early Stage licensing process, **4:17**
 Hebb Jr., Donald B, **4:16**
 Henning, Harry L., **4:6, 4:13, 4:15**
 Initial review, Early Stage licensing process, **4:17**
 Interview of applicants for Early Stage licensing, **4:17**
 Introduction, **4:1**
 Investments by SBIC, **4:3**
 Kellman, Joel D., **4:6, 4:7, 4:15**
 Legal aspects in structuring the deal, **4:14**
 Leverage of regulatory capital, **4:17**
 Licensed Early Stage SBICs, **4:17**

**SMALL BUSINESS ADMINISTRATION,
FINANCING FROM—Cont'd**

Limited partnerships, Model Early Stage SBIC Limited Partnership Agreement, **4:18**
 Loans by SBIC, **4:3**
 Lorne, Simon, **4:6, 4:12, 4:15**
 Management Assessment Questionnaire, submission in Early Stage licensing process, **4:17**
 Management fee policies of SBA, **4:18**
 Minority enterprise small business investment companies (MESBICs), generally, **4:2**
 Model Early Stage SBIC Limited Partnership Agreement, **4:18, App 6**
 Offering circular, use of, **4:12**
 Operating SBICs, directory of, **4:5**
 Organizational structure of applicants for Early Stage SBIC Limited Partnership Agreement, **4:18**
 Past earnings record, showing of, **4:1**
 Permitted loans by SBIC, **4:3**
 Pricing the deal, **4:13**
 Recovery loans extension, **4:1.50**
 Sanders, James, **4:6, 4:15**
 SBA financing sources, **4:16**
 Sing, George, **4:6, 4:9, 4:15**
 Small business investment companies (SBICs), generally, **4:1 to 4:5**
 Small Business Jobs Act of 2010, **4:1.50**
 Smerdon, Richard, **4:6**
 Sources of capital information, **4:8**
 Specialized small business investment companies (SSBICs), generally, **4:2**
 Specific sources of capital, generally, **4:15, 4:16**
 Staebler, Michael, **4:10**
 State development company (SDC), **4:1**
 Structuring the deal, **4:13**
 Surety bond program, **4:1**
 Taylor, William L., **4:7**
 Temporary elimination of loan fees, Small Business Jobs Act of 2010, **4:1.50**
 Testa, Richard J., **4:6, 4:15**
 Tjaden, Joost, **4:6, 4:15**
 Track 1 and Track 2 applicants for Early Stage licensing process, **4:17**
 United Kingdom sources of funds, **4:6**
 Valuing the deal, **4:13**
 Von Gehr, George, **4:10, 4:15**
 Withdrawal rights, Model Early Stage SBIC Limited Partnership Agreement, **4:18**
 Working capital, temporary enhancements, **4:1.50**

**SMALL BUSINESS ASSISTANCE
PROGRAMS, STATE-BY-STATE
SUMMARY**
 Generally, **5:2, App 18**

- SMALL BUSINESS DEVELOPMENT CENTERS AND SUBCENTERS**
Small Business Administration, financing from, **4:5**
- SMALL BUSINESS INNOVATION DEVELOPMENT ACT**
Generally, **5:1**
- SMALL BUSINESS INVESTMENT COMPANIES (SBIC)**
Directory, **App 13**
Financing form, Directory of Operating Small Business Investment Companies (SBIC), **4:5**
Form of debenture purchase agreement with, **18:11**
Small Business Administration (this index)
Specialized small business investment companies (SSBICs), **4:2**
- SMALL BUSINESS JOBS ACT OF 2010**
Small Business Administration, financing from, **4:1.50**
- SMALLER BUSINESS ISSUER**
Federal Securities Laws (this index)
- SMALLER REPORTING COMPANY**
Amendments to definition of, **App 1.10**
Eligibility, **11:75.35, 13:1.60**
Interactive Data for Financial Reporting—A Small Entity Reporting Guide, **App 5.4**
Internal control, PCAOB Guidance for Auditors of Smaller Public Companies (January 23, 2009), **App 11.3**
Scaled disclosure. Disclosure (this index)
- SMERDON, RICHARD**
Small Business Administration, financing from, **4:6, 4:15**
- SOFTWARE TOOLWORKS CASE**
Due diligence and civil liability, **14:6, 14:11**
- SOLAR CAPITAL (SLRC)**
Business development company (BDC), **5:3**
- SOLAR SENIOR CAPITAL (SUNS)**
Business development company (BDC), **5:3**
- SOLICITATION, PROHIBITION OF**
C&DI, permitted general solicitation under Rule 506(c), **11:4.51**
Federal securities laws, **11:7, 11:8**
Proposed rule eliminating prohibition, **11:4.50**
- SOPHISTICATION UNDER RULE 506**
Federal securities laws, C&DIs, **11:10.90**
- SOUTH CAROLINA**
Small business, assistance programs for, **App 18.42**
- SOUTH DAKOTA**
Small business, assistance programs for, **App 18.43**
- SPECIAL BASIS ADJUSTMENTS UNDER SECTION 743**
Limited liability companies, **3:25**
- SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES (SSBICS)**
Generally, **4:2**
- SPECIAL PURPOSE ACQUISITION COMPANIES (SPACS)**
Generally, **11:146.60**
CF Disclosure Guidance Topic No. 11, **11:146.70**
Final disclosure rules, SEC adopts, **11:146.95**
New regulatory regime and disclosure rule, SEC, **11:146.90**
SEC
final disclosure rules, **11:146.95**
proposed new regulatory regime and disclosure rules, **11:146.90**
Selected C&DIs, **11:146.80**
- SPECIAL TACKING RULES**
Federal Securities Laws (this index)
- SPIN-OFFS**
Federal securities laws, **11:100**
- SRO POLICIES**
Going Public (this index)
- STAEBLER, MICHAEL**
Small Business Administration, financing from, **4:10**
- STANDING**
Preferred stock, **6:18**
- “STAND-OFF” AGREEMENT**
Preferred stock, **6:85**
- STATE ASSISTANCE TO SMALL BUSINESS**
Generally, **5:1, 5:2**
Summary of assistance programs for small business, state-by-state. Small Business, State-by-State Summary of Assistance Programs for (this index)
- STATE BLUE SKY REGULATION**
Generally, **15:1 to 15:27**
Agent registration, **15:5**
Announcement, registration by, **15:27**
Antifraud provisions, **15:6**
Broker-dealer registration, **15:5**
Capitalization, **15:25**
Cheap stock, **15:20**
Common enterprise, **15:3.50**
Coordination, registration by, **15:15**

STATE BLUE SKY REGULATION—Cont’d
 “Covered” securities, federal law exclusive for, **15:1**
 Definitions, **15:3.50**
 Digital assets, **15:3.70**
 Dividend coverage, **15:24**
 Exemptions from registration requirements
 generally, **15:7 to 15:13**
 Form U-7, **15:12**
 institutional buyer’s exemption, **15:9**
 limited offering exemption (LOE), **15:10**
 Regulation D, **15:11**
 resales of securities, **15:27**
 securities based exemptions, **15:13**
 small offerings registration form, **15:12**
 transaction exemptions, **15:8 to 15:12**
 Uniform Limited Offering Exemption (ULOE), **15:11**
 Existing capitalization, **15:25**
 Federal law exclusive for “covered” securities, **15:1**
 Form U-7, **15:12**
 Fraud provisions, **15:6**
 Howey test, **15:3.40, 15:3.50, 15:3.60**
 Institutional buyer’s exemption, **15:9**
 Interest, **15:24**
 Introduction, **15:1 to 15:6**
 Investment contract, domestic security warranting protection under federal securities laws, **15:3.90**
 Jurisdiction of state, **15:4**
 Limited offering exemption (LOE), **15:10, App 7.1**
 Loans, **15:26**
 Merit regulation of securities
 generally, **15:18 to 15:26**
 capitalization, **15:25**
 cheap stock, **15:20**
 dividend coverage, **15:24**
 existing capitalization, **15:25**
 interest, **15:24**
 loans, **15:26**
 offering expenses, **15:19**
 offering price, **15:22**
 options, **15:21**
 underwriters’ commissions, **15:19**
 voting rights, **15:23**
 warrants, **15:21**
 Methods of state securities registration, **15:14 to 15:17**
 NASAA disclosure guidelines for cover legends, **App 7.2**
 National Securities Markets Improvement Act of 1996, generally, **15:1**

STATE BLUE SKY REGULATION—Cont’d
 North American Securities Administrators Association (NASAA)
 generally, **15:1**
 Uniform Limited Offering Exemption, **App 7**
 Notification, registration by, **15:16**
 Offering expenses, **15:19**
 Offering price, **15:22**
 Offer or sale, **15:2**
 Options, **15:21**
 Profits derived solely from the efforts of others, **15:3.60**
 Qualification, registration by, **15:17**
 Regulation D, **15:11**
 Resales of securities, **15:27**
 Securities based exemptions, **15:13**
 Security, **15:3**
 Small company registrations
 Form U-7, **15:12**
 statement of policy regarding, **App 7.4**
 Transaction exemptions, **15:8 to 15:12**
 Underwriters’ commissions, **15:19**
 Uniform Limited Offering Exemption (ULOE), **15:11**
 Uniform securities acts
 generally, **15:1, App 6**
 Uniform Securities Act (1985), **App 6.1**
 Voting rights, **15:23**
 Warrants, **15:21**

STATE DEVELOPMENT COMPANY (SDC)
 Small Business Administration, financing from, **4:1**

STATE ETHICAL RULES
 Professional standards, Sarbanes-Oxley Act and SEC professional conduct rules, **14:63**

STATE LAW CLAIMS
 Due Diligence and Civil Liability (this index)

STATE OF MIND SAFE HARBOR
 Due diligence and civil liability, **14:104**

STATE SECURITIES REGULATION
 Limited Liability Companies (this index)
 State Blue Sky Regulation (this index)

STATE SMALL BUSINESS DEVELOPMENT CENTERS AND SUBCENTERS
 Small Business Development Centers and Subcenters (this index)

STATE SMALL BUSINESS INVESTMENT COMPANIES, DIRECTORY OF OPERATING
 Directory of Operating Small Business Investment Companies (this index)

STATE TAX

S corporations, state income tax considerations, **2:81**

STATUS

S corporations, transition rules for C corporations electing S corporation status, **2:66**

STATUTE OF LIMITATIONS

S corporations, audits, **2:70**
SEC disgorgement remedy, **14:90.60**

STATUTORY PROVISIONS

Due Diligence and Civil Liability (this index)

STELLUS CAPITAL INVESTMENT SENIOR (SCM)

Business development company (BDC), **5:3**

STOCK DIVIDENDS

Federal securities laws, **11:100**

STOCKHOLDER LIST AND AGREEMENTS

Preferred stock, **6:21**

STOCKHOLDERS

Going Public (this index)

STOCK PURCHASE AGREEMENT

Form of stock purchase agreement (common stock), **18:7**
NVCA model venture financings documents (2007), stock purchase agreement, **15A:3**
Preferred Stock (this index)

STOCK PURCHASE WARRANT-LONG FORM

Generally, **17:4**

STOCK REPURCHASE AGREEMENT

Form of, **18:13**

STOCK SPLITS

Preferred stock, **6:110**

STOCK TRADING

Going Public (this index)

STRAIGHT DEBT SAFE HARBOR

S corporations, one class of stock requirement for eligibility, **2:24**

STRUCTURING

Preferred Stock (this index)
Small Business Administration, financing from, **4:13**
Term loan agreements, **7:18 to 7:22**

SUBSIDIARIES

S corporations, qualified subsidiaries, **2:16**
Series A convertible preferred stock purchase agreement (annotated), **6:20**

“SUBSTANTIAL PARTICIPATION”

Due diligence and civil liability, **14:48**

SUCCESSOR AND ASSIGNS

Preferred stock, **6:90**

SUMMARY

Disclosure, **13:14, 13:18**
S corporations, comparison of partnership and S corporation provisions, **2:83**

SUPERVISORS

Professional standards, Sarbanes-Oxley Act and SEC professional conduct rules—
supervisory attorneys, **14:60**

SURETY BOND PROGRAM

Small Business Administration, financing from, **4:1**

SURVIVAL OF REPRESENTATIONS AND WARRANTIES

Preferred stock, **6:93**

SUSPENSION OF EXEMPTION

Regulation A exemption for offering of 75 million dollars or less, **11:73**

TABLES, USE OF

Disclosure, **13:13, 13:30, 13:31**

TASK FORCE ON INTEGRATION

Federal Securities Laws (this index)

TAX CUTS AND JOBS ACT

Allowance of losses and deductions, **2:59**
S corporations, choice of entity after, **2:6**

TAXES AND TAXATION

Business development companies (BDCs), **5:3**
Choosing the Business Financing Format (this index)
Limited Liability Companies (this index)
Overview of Federal Tax System, 2024, **App 20**
Preferred stock, **6:28**
Term loan agreements, **7:40**

TAX OPINIONS, REGISTERED OFFERINGS

SEC's 2005 securities offering revisions, **11:151.50**
SEC Staff Legal Bulletin No. 19 (CF) (Oct. 14, 2011), **App 5.10**

TAXPAYERS

S corporations, limitation on passive losses under Tax Reform Act of 1986, **2:47**

TAYLOR, WILLIAM L.

Small Business Administration, financing from, **4:7**

TCP CAPITAL (TCPC)

Business development company (BDC), **5:3**

TECHNOLOGY

Due diligence and civil liability, **14:21**

TECHNOLOGY CAPITAL NETWORK (TCN)

Federal securities laws, **11:8**

TENNESSEE

Small business, assistance programs for, **App 18.44**

TERMINATION

Limited liability companies, **3:59**

Sarbanes-Oxley, whistle-blower protection for employees, **14:53.50**

S corporations, election, **2:30 to 2:32, 2:39**

Series A convertible preferred stock purchase agreement (annotated), **6:74**

TERM LOAN AGREEMENTS

Generally, **7:11 to 7:55**

Absence of default, **7:42, 7:47**

Accuracy of information, representations and warranties, **7:43**

Additional debt, creation of, **7:50**

Affiliates, transactions with, **7:54**

Affirmative covenants

generally, **7:44 to 7:49**

absence of default, **7:47**

default, absence, **7:47**

disclosure, **7:45 to 7:49**

financial disclosure, **7:45 to 7:49**

funding, use of, **7:46**

future operations, **7:46**

inspection, **7:49**

insurance, **7:48**

maintenance of assets, **7:48**

Choice of note, **7:20**

Collateral, **7:17**

Collateral advantages, **7:34**

Commitment fees, **7:35**

Compensating balances, **7:34**

Compliance with state and federal laws, **7:40**

Computation of interest assessment, **7:32**

Consent of government, compliance with, **7:40**

Control of licenses, **7:41**

Corporate organization, representations and warranties, **7:38**

Costs and expenses

commitment fees, **7:35**

evaluating cost of term loan financing, **7:12 to 7:15**

incidental costs, **7:15, 7:27**

Covenants

generally, **7:44 to 7:55**

affirmative covenants, above

default provisions, **7:55**

negative covenants, below

TERM LOAN AGREEMENTS—Cont'd

Covenants—Cont'd

restrictions, generally, **7:14**

Current market conditions, evaluating cost of term loan financing, **7:13**

Default

absence of, **7:42, 7:47**

covenants, provisions of, **7:55**

Definitions, **7:22**

Delayed funding, **7:25**

Disclosure. Financial disclosure, below

Documentation of loan, **7:16**

Evaluating cost of term loan financing, **7:12 to 7:15**

Expenses. Costs and expenses, above

Fees, interest rates, **7:35**

Financial disclosure

affirmative covenants, **7:45 to 7:49**

representations and warranties, **7:39**

Fixed interest rates, **7:30**

“Floating” interest rate, **7:31**

Form of, **18:12**

Funding, use of, **7:46**

Future operations, **7:46**

Guarantees, **7:17**

Incidental costs, **7:15, 7:27**

Index, choice of, **7:31**

Inspection, **7:49**

Insurance, **7:48**

Interest rates

generally, **7:26 to 7:35**

collateral advantages, **7:34**

commitment fees, **7:35**

compensating balances, **7:34**

computation of interest assessment, **7:32**

costs, **7:27**

fees, **7:35**

fixed interest rates, **7:30**

“floating” interest rate, **7:31**

incidental costs, **7:27**

index, choice of, **7:31**

late charges, **7:35**

negotiating skill, **7:29**

penalties, **7:35**

points and related charges, **7:33**

repayment penalties, **7:35**

risk, **7:28**

usury problems, **7:33**

variable interest rates, **7:30**

Introduction, **7:11 to 7:35**

Late charges, **7:35**

Licenses, control of, **7:41**

Limitations and restrictions

negative covenants, restricted payments, **7:51**

term loan financing, generally, **7:14**

TERM LOAN AGREEMENTS—Cont'd

- Litigation, absence of, **7:42**
- Loan agreement and loan note, **7:19**
- Maintenance of assets, **7:48**
- Mechanics of funding, **7:23 to 7:25**
- Negative covenants
 - generally, **7:50 to 7:54**
 - additional debt, creation of, **7:50**
 - affiliates, transactions with, **7:54**
 - maintenance of assets, **7:52**
 - planning and operation of business, **7:53**
 - restricted payments, **7:51**
- Negotiating skill concerning interest rates, **7:29**
- Patents, control of, **7:41**
- Penalties, interest rates, **7:35**
- Personal guarantees, **7:17**
- Planning and operation of business, **7:53**
- Points and related charges, **7:33**
- Properties, control of, **7:41**
- Repayment penalties, **7:35**
- Representations and warranties
 - generally, **7:36 to 7:43**
 - absence of default or litigation, **7:42**
 - accuracy of information, **7:43**
 - compliance with state and federal laws, **7:40**
 - consent of government, compliance with, **7:40**
 - control of licenses, **7:41**
 - corporate organization, **7:38**
 - default, absence of, **7:42**
 - disclosure, **7:39**
 - financial disclosure, **7:39**
 - licenses, control of, **7:41**
 - litigation, absence of, **7:42**
 - patents, control of, **7:41**
 - properties, control of, **7:41**
 - taxes, compliance with, **7:40**
 - trademarks, control of, **7:41**
 - validity and enforceability of loan agreement, **7:38**
- Restrictions. Limitations and restrictions, above
- Revolving credit, generally, **7:11, 7:21**
- Risk, interest rates, **7:28**
- Simultaneous funding, **7:24**
- Structuring the loan agreement, **7:18 to 7:22**
- Taxes, compliance with, **7:40**
- Trademarks, control of, **7:41**
- Usury problems, **7:33**
- Validity and enforceability of loan agreement, **7:38**
- Variable interest rates, **7:30**
- Warranties. Representations and warranties, above

TERM SHEET

- NVCA model venture financings documents (2007), **15A:2**

TESTA, RICHARD J.

- Small Business Administration, financing from, **4:6, 4:15**

“TESTING THE WATERS”

- Regulation A exemption for offering of 75 million dollars or less, **11:65**
- Underwriting agreement for emerging growth company, **19:3.50**

TEST-THE-WATERS COMMUNICATION

- Rule 163B, **11:137.60**

TEXAS

- Due diligence and civil liability, developments, **14:138**
- S corporation LLC operating agreement, form of (2011), **20:6**
- Small business, assistance programs for, **App 18.45**

THIRD PARTIES

- Limited liability companies, **3:47**
- S corporations, worthless debt of third party, **2:48**

THIRTY-DAY BRIGHT LINE EXCLUSION

- SEC's 2005 revisions to securities offerings, **11:139**

THL CREDIT (TCRD)

- Business development company (BDC), **5:3**

TICC CAPITAL (TICC)

- Business development company (BDC), **5:3**

TIME OR DATE

- Effective Dates (this index)
- Federal securities laws, time of offering, **11:19, 11:20**
- Going Public (this index)
- Initial public offering of common stock, form of timetable, **19:4**
- Limited Liability Companies (this index), **3:1 to 3:67**

TIMM TEST IN WISCONSIN

- Due diligence and civil liability, **14:132**

TJADEN, JOOST

- Small Business Administration, financing from, **4:6, 4:15**

TRACING SECURITIES

- Federal securities laws, **11:105**

TRACK 1 AND TRACK 2 APPLICANTS

- Small Business Administration, Early Stage licensing process, **4:17**

TRADEMARKS

- Due diligence and civil liability, **14:21**
- Preferred stock, **6:30**
- Term loan agreements, **7:41**

TRANSACTION CAUSATION

Due diligence and civil liability, **14:45**

TRANSACTION DOCUMENTS

Preferred stock, typical venture capital transaction documents, **6:143**

TRANSACTION EXEMPTIONS

State blue sky regulation, **15:8 to 15:12**

TRANSACTIONS WITH RELATED PERSONS

Disclosure, **13:7, 13:44, 13:45**

TRANSFERABILITY OF INTERESTS

Limited liability companies, **3:31**

TRANSFERS

Sales or Transfers (this index)

S corporations, one class of stock requirement for eligibility, **2:22**

TRANSITION RULES

Limited liability companies, **3:19**

S corporations, distribution of appreciated property, **2:66**

TREATMENT

S corporations, tax treatment of certain items, **2:40 to 2:49**

TRIANGLE CAPITAL (TCAP)

Business development company (BDC), **5:3**

TRUSTS AND TRUSTEES

Federal securities laws, **11:107, 11:108**

S corporations, eligible shareholders, **2:17, 2:20**

ULTRAMARES APPROACH

Due diligence and civil liability, **14:126, 14:137**

UNAUDITED FINANCIAL INFORMATION

Due diligence and civil liability, **14:51**

UNDERWRITERS

Disclosure, **13:52, 13:53**

Due Diligence and Civil Liability (this index)

Emerging growth company, underwriting agreement, **19:3.50**

Federal securities laws, **11:97**

Going Public (this index)

Preferred stock, **6:83, 6:88**

Public offerings, Form S-1 offering, **19:3**

State blue sky regulation, underwriters' commissions, **15:19**

UNIFORM LIMITED LIABILITY COMPANY ACT

Limited Liability Companies (this index)

UNIFORM LIMITED OFFERING EXEMPTION (ULOE)

State blue sky regulation, **15:11**

UNIFORM SECURITIES ACTS

State Blue Sky Regulation (this index)

UNINCORPORATED BUSINESSES

Federal securities laws, **11:23**

UNITED KINGDOM SOURCES OF FUNDS

Small Business Administration, financing from, **4:6**

UNSEASONED ISSUERS

SEC's 2005 securities offering rules, **11:151**

UPDATES AND UPDATING

Due diligence and civil liability, **14:44, 14:107**

"UP-THE-LADDER"

Professional standards, Sarbanes-Oxley Act and SEC professional conduct rules, **14:55, 14:58**

U.S. REAL PROPERTY HOLDING CORPORATION

Preferred stock, **6:39**

USE OF PROCEEDS

Disclosure, **13:26, 13:27**

USURY PROBLEMS

Choosing the business financing format, **1:4**

Term loan agreements, **7:33**

UTAH

Small business, assistance programs for, **App 18.46**

VALUING THE DEAL

Small Business Administration, financing from, **4:13**

VARIABLE INTEREST RATES

Term loan agreements, **7:30**

VENTURE INTEGRATION

Federal securities laws, **11:36**

VERMONT

Small business, assistance programs for, **App 18.47**

VIRGINIA

LLC operating agreement, form of (2010), **20:7**

Small business, assistance programs for, **App 18.49**

VIRGIN ISLANDS

Small business, assistance programs for, **App 18.48**

VOLUME LIMITS

Federal securities laws, **11:121**

VON GEHR, GEORGE

Small Business Administration, financing from, **4:10, 4:15**

INDEX

VOTING

Elections and Voting (this index)

VOTING AGREEMENT

NCVA model venture financings documents (2007), **15A:6**

WAIVER AND ESTOPPEL

Due diligence and civil liability, **14:10**
Series A convertible preferred stock purchase agreement (annotated), **6:98**

WALL STREET REFORM ACT (2010)

Corporate governance provisions of Dodd-Frank Act. Going Public (this index)

WARRANTIES

Form of standard representations and warranties, **18:9**

Preferred Stock (this index)

Standard representations and warranties, form of, **18:9**

Term Loan Agreements (this index)

WARRANTS

Antidilution Provisions (this index)

Choosing the business financing format, **1:20**

Form of warrant agreement, **18:8**

Preferred stock, **6:8, 6:144**

S corporations, one class of stock requirement for eligibility, **2:25**

State blue sky regulation, **15:21**

WASHINGTON

Small business, assistance programs for, **App 18:50**

WELL-KNOWN SEASONED ISSUERS

SEC's 2005 securities offering revisions, **11:136, 11:150**

WEST VIRGINIA

Small business, assistance programs for, **App 18:51**

WHISTLE-BLOWER

Sarbanes-Oxley, whistle-blower protection for employees in employment termination cases, **14:53.50**

WHITEHORSE FINANCE (WHF)

Business development company (BDC), **5:3**

WISCONSIN

Small business, assistance programs for, **App 18:52**

WITHDRAWAL RIGHTS

Small Business Administration, Model Early Stage SBIC Limited Partnership Agreement, **4:18**

WORKING CAPITAL ENHANCEMENT

Small Business Administration, financing from, **4:1.50**

WORLDCOM CASE

Due diligence and civil liability, **14:9.50**

WORLDS OF WONDER CASE

Due diligence and civil liability, **14:6, 14:11**

WORTHLESS STOCK AND DEBT

S corporations, tax treatment of certain items, **2:47, 2:48**

WRITING IN "PLAIN ENGLISH"

Disclosure, **13:12**

WRITTEN OFFERING RELATED COMMUNICATIONS

Relaxation of restrictions on, **11:140**

WYOMING

Small business, assistance programs for, **App 18:53**