Index

ABANDONMENT
Rule 10b-5, loss causation, 11:9

ABSTENTION
Generally, 23:3

ABUSIVE DISCOVERY
Private Securities Litigation Reform Act of 1995, class actions, 3:8 to 3:8.90

ABUSIVE LITIGATION
Private Securities Litigation Reform Act of 1995, sanctions for, 3:19

ACCOUNTANTS
Insider trading, liability, 15:23

ACCOUNTING
Sarbanes-Oxley Act, management assessment of internal accounting controls—Section 404, 5A:14

AIDING AND ABETTING
Insider trading, Stoneridge decision, 15:9, 15:17
Rule 10b-5, constitutional law, 9:8

ANALYSTS
Insider trading, fraud on the market theory in actions against analysts, 15:11
Rule 10b-5, fraud-on-the-market theory, 10:30.10

AOL-SIMPSON DECISION
Insider trading, Ninth Circuit, expanding liability of secondary actor, 15:28

APPRaisal
Interference with market for corporate control, 16:8

APPROVAL
Class actions, judicial approval of settlement, 25:3

ARBITRATION
Racketeer influenced and corrupt organizations, 22:12 to 22:14

ARTIFICIAL INFLATION
Rule 10b-5, fraud on the market and, 11:11

ASSIGNMENT
Section 10(b) claims, 26:1, 26:2

“AT LEAST AS LIKELY” STANDARD
Supreme Court, pleading requirements for PLS., 3:11.70, 3:11.80

ATTORNEY-CLIENT PRIVILEGE
Sarbanes-Oxley Act, securities fraud, new statutory duty to disclose client confidences, 5C:3, 5C:5

ATTORNEYS
Fees. See Attorneys’ Fees (this index)
Insider trading, liability, 15:24
Non-lead counsel, issues with, 25:4.40
Private Securities Litigation Reform Act of 1995, sanctions, 3:19
Sarbanes-Oxley Act (SOX) (this index)

ATTORNEYS’ FEES
Generally, 21:1, 21:2
Class actions, 25:4 to 25:4.30
Lodestar versus percentage-of-fund recovery in class action, 25:4.10
Objecting to attorneys’ fees, 25:4.20
Presumption of reasonableness to agreed-upon fees in class action, 25:4.30
Racketeer influenced and corrupt organizations, 22:9

AUCTIONING
Class actions, selection of class counsel through auctioning, 25:6, 25:8

AUDITS AND AUDITORS
Pleading scienter for outside auditors, 24:5
AUDITS AND AUDITORS—Cont’d
Sarbanes-Oxley Act (SOX) (this index)

AUTOMATIC STAY
Sarbanes-Oxley Act of 2002, debtor-company in bankruptcy, 5D:3

AWARENESS OF PLAINTIFF
Insider trading. Stoneridge decision, 15:16 to 15:20

BALANCE OF INTERESTS TEST
International securities regulation, 27:5

BANKRUPTCY AND SECURITIES FRAUD
Sarbanes-Oxley Act (SOX) (this index)

BARS
Sarbanes-Oxley Act, officer and director bars—Section 305, 5A:10

BENEFIT OF THE BARGAIN
Instructions to jury, Section 10(b) of Securities Exchange Act of 1934, 24:47
Rule 10b-5, 13:3, 14:65

BROKERS
Implied actions and remedies, Section 15 of Securities Exchange Act of 1934, 19:8

CAUSATION
Instructions to jury, Section 10(b) of Securities Exchange Act of 1934, 24:45
Loss causation. See Private Securities Litigation Reform Act of 1995 (this index)
Proxy fraud. See Proxy Fraud (this index)
Racketeer influenced and corrupt organizations, 22:4
Rule 10b-5. See Rule 10b-5 (this index)
Section 11, Securities Act of 1933, 6:25
Securities Exchange Act of 1934, 8:4, 8:16

CEO
Sarbanes-Oxley Act, certification requirements, 5A:3, 5B:4

CERTIFICATION
Barrier to class certification, 24:15
Class actions generally, 24:13
barrier, 24:15
loss causation, 24:13.20 to 24:15
materiality, 24:13.10
Sarbanes-Oxley Act (SOX) (this index)

CFO
Sarbanes-Oxley Act, certification requirements, 5A:3, 5B:4

CHALLENGES
Event studies in securities fraud litigation, 25B:5

CHARTS
Instructions to jury, 24:26, 24:27

CHURNING
Insider trading. See Insider Trading (this index)

CIVIL ACTIONS
Sarbanes-Oxley Act enhancement of private civil liability. See Sarbanes-Oxley Act (SOX) (this index)

CLASS ACTION FAIRNESS ACT
Generally, 25A:1

CLASS ACTIONS
Generally, 25:1 et seq.
Attorneys’ fees, 25:4 to 25:4.30
Auctioning, selection of class counsel through, 25:6, 25:8
Bankruptcy and securities fraud, 5D:4
Barrier to class certification, 24:15
Certification of class generally, 11A:17 et seq., 24:13
barrier, 24:15
loss causation, 24:13.20 to 24:15
materiality, 24:13.10
Morrison case, effect on, 25:9
Class Action Fairness Act, 25A:1
Counsel, selection of, 25:6
Cy Pres awards, 25:3.20
Fraud-on-the-theory, 11A:17.10, 11A:17.20
CLASS ACTIONS—Cont’d
Independent approval of settlement, 25:3.10
Judicial approval of settlement, 25:3
Lead plaintiff, selection of, 25:1
Lodestar attorney fees versus percentage-of-fund recovery in class action, 25:4.10
Materiality, “plausible” allegation, 11A:17.40
Non-lead counsel, issues with, 25:4.40
Objecting to attorneys’ fees, 25:4.20
Presumptions
reasonableness to agreed-upon fees, 25:4.30
reliance, rebutting presumption, 11A:17.40
Private Securities Litigation Reform Act of 1995. See Private Securities Litigation Reform Act of 1995 (this index)
Publication of settlement, 25:2
Rebutting
fraud-on-the-theory, 11A:17.10
reliance, presumption of, 11A:17.40
Reliance, rebutting presumption, 11A:17.40
Rule 10b-5, rebuttal of fraud-on-the-market theory, class certification, 10:30.15
Sarbanes-Oxley Act (SOX), 5D:4
Securities Litigation Uniform Standards Act of 1998 defined class, 5:6
state court, federal class actions in, 5:8.70
Security for costs, 25:5
Selection of counsel, 25:6
Settlement, 25:2, 25:3, 25:3.10
Third Circuit task force, recommendations, 25:7

COLLECTIVE SCIENTER
Tellabs case, 24:55

COMMON LAW—Cont’d
Sarbanes-Oxley Act, attorney’s duty to blow whistle on securities fraud, 5C:2
Section 11, Securities Act of 1933, 6:7
COMMON SECONDARY ACTORS
Insider trading, Stoneridge decision, 15:18

COMPENSATION
Forfeiture of executive compensation upon restatements—Section 304, 5A:9

CONDOMINIUMS
Investment contracts, 1:6

CONDUCT OR MISCONDUCT
Sarbanes-Oxley Act, conduct rules for attorneys—Section 307, 5A:12

“CONDUCT” TEST
Internet, extraterritorial subject matter jurisdiction, 28:3, 28:7, 28:8

CONFIDENTIAL SOURCES
Circuit survey and effect of Tellabs, 24:53.10
Discovery, 24:54, 24:54.10
Pleading after Tellabs, 24:52.50, 24:53, 24:55
Rule 26 discoverability of identities, 24:54.10

CONFLICT OF LAWS
Sarbanes-Oxley Act, state attorney confidentiality standards in conflict with SEC’s regime, 5C:5

CONGRESSIONAL INTENT
Private Securities Litigation Reform Act of 1995, loss causation, 11A:4

CONSENT
Class actions, approval of settlement, 25:3, 25:3.10

CONSEQUENTIAL DAMAGES
Rule 10b-5. See Rule 10b-5 (this index)

CONSIDERATION
Section 12, Securities Act of 1933, 7:9, 7:10

© 2019 Thomson Reuters, Rel. 18, 12/2019
DEBATES
Section 11, Securities Act of 1933, 6:4
DEFINITION
Security, 1:5
DEPOSITIONS
Expert witnesses, 24:23, 24:24
Instructions to jury, 24:28
DIRECT MARKET REPERCUSSION THEORY
Rule 10b-5, Second Circuit, 14:10
DIRECTOR AND OFFICER (D&O) INSURANCE
Ancillary sources of damages, 20:29 et seq.
DISCIPLINE
Implied actions and remedies, Section 6(b) of Securities Exchange Act of 1934, 19:3
DISCLOSURE
Implied actions and remedies, Sections 11(d)(2) and 17(a) of Securities Exchange Act of 1934, 19:5
Sarbanes-Oxley Act (SOX) (this index)
DISCOVERY
Generally, 24:16
Depositions. See Depositions (this index)
Expert witnesses, 24:22 to 24:24
Tellabs case, 24:53
DISGORGEMENT
Rule 10b-5. See Rule 10b-5 (this index)
DIVIDENDS
Section 16, Securities Exchange Act of 1934, 8:11
DODD-FRANK ACT (2010)
Generally, 5E:1 to 5E:5
Antifraud measures, security-based swaps, 5E:2
Consumer financial protection bureau, 5E:4
Extraterritoriality of securities fraud litigation, 5E:5
DODD-FRANK ACT (2010)—Cont’d
Security-based swaps, antifraud measures, 5E:2
Whistleblowers, 5E:3
DUAL INQUIRY TEST
Ninth Circuit, pleading scienter after Tellabs, 5:11.130
DURA PHARMACEUTICALS CASE
Private Securities Litigation Reform Act of 1995 (this index)
ECONOMIC LOSS
“EFFECTS” TEST
Internet, extraterritorial subject matter jurisdiction, 28:4, 28:7, 28:8
ELECTION
Rule 10b-5, rescission or rescissionary damages, 14:51
ELECTRONIC DELIVERY
Federal securities regulation, 5:14
EMPLOYEE STOCK OPTIONS
Section 16, Securities Exchange Act of 1934, 8:10
ENFORCEMENT OF SECURITIES LAWS
FINFA and role of SROs, 26A:2
ENRON SCANDAL
Insider trading, Stoneridge decision, 15:20
Private Securities Litigation Reform Act of 1995, laxity, 4:4
EQUITABLE RELIEF
Racketeer influenced and corrupt organizations, 22:9
“ETHICS” CODE
Sarbanes-Oxley Act, ethics code for financial officers—Section 406, 5A:15
EVENT STUDIES IN SECURITIES FRAUD LITIGATION
Generally, 25B:1
EVENT STUDIES IN SECURITIES
FRAUD LITIGATION—Cont’d
Accounting for “tangle of factors,” 25B:4
Acknowledgment of “tangle of factors,” 25B:4
Analysis methodology, 25B:3
Challenging reliability, 25B:5
Class certification, 25B:6
Constitutional law, 25B:2
Dispositive role, Seventh Amendment, 25B:2
Efficiency of market, 25B:7
Impact of market, 25B:7
Loss causation, 11A:16
Market efficiency, 25B:7
Market impact, 25B:7
Methodology, 25B:3
Potential Seventh Amendment problems, 25B:2
Questions of market impact and efficiency, 25B:7
Recognition of “tangle of factors,” 25B:4
Reliability challenge, 25B:5
Rule 10b-5 claims, 25B:6
Section 10(b) of Securities Exchange Act, 25B:6
Section 11 of Securities Act of 1933, 25B:8
Seventh Amendment problems, 25B:2
Summary judgment, 25B:9
“Tangle of factors,” 25B:4

EVIDENCE
Loss causation, proving, 3:12.10, 11A:16

EXHIBITS
Instructions to jury, 24:26, 24:27

EXPENSES
Costs and expenses. See Costs and Expenses (this index)

EXPERT WITNESSES
Generally, 24:19 et seq.
Depositions, 24:23, 24:24
Disclosure, 24:22 to 24:24
Instructions to jury, 24:29, 24:30
Loss causation, 11A:16

EXPERT WITNESSES—Cont’d
Types of experts, 24:21

EXTENSION OF CREDIT
Implied actions and remedies. See Implied Actions and Remedies (this index)

EXTERNAL MARKET FORCES
Rule 10b-5, Seventh Circuit, 14:39

EXTRATERRITORIAL JURISDICTION
Dodd-Frank, 5E:5
International securities regulation. See International Securities Regulation (this index)

FAIR SHARE RULE
Private Securities Litigation Reform Act of 1995, proportionate liability, 3:14

FIDUCIARY DUTY
Rule 10b-5, 10:7

FILING
Implied actions and remedies, Section 13(a) of Securities Exchange Act of 1934, 19:7
Private Securities Litigation Reform Act of 1965, NERA and cornerstone research securities, 4:3

FINANCIAL EXPERTS
Sarbanes-Oxley Act, audit committee financial experts—Section 407, 5A:16

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
See FINRA (this index)

FINANCIAL OFFICERS
Sarbanes-Oxley Act, ethics code—Section 406, 5A:15
SROs, role in enforcing securities laws, 26A:2
FINRA
Claims involving FINRA members, 26A:1, 26A:2
Credit default swaps under FINFA rules, 26A:1
Customers and credit default swaps under FINFA rules, 26A:1

FORCED SALE
Sarbanes-Oxley Act of 2002, bankruptcy and securities fraud, 5D:2

FORCED SELLER DOCTRINE
Material misrepresentations, Section 11 and Section 12 claims, 14A:2

FOREIGN CUBED CASES
Rule 10b-5, extraterritorial application, 10:2.50, 10:2.60

FORFEITURES
Sarbanes-Oxley Act of 2002, forfeiture of executive payments upon restatements—Section 304, 5A:9

FORMULA FOR DAMAGES
Section 11, Securities Act of 1933. See Section 11, Securities Act of 1933 (this index)

FRAUD
Event studies. See Event Studies in Securities Fraud Litigation (this index)
Insider trading, Stoneridge decision, 15:13, 15:16 to 15:20
Proxy fraud. See Proxy Fraud (this index)
Section 11, Securities Act of 1933, fraud against mutual funds, 6:4.10
Securities fraud, generally. Sarbanes-Oxley Act (SOX) (this index)

FRAUD BY HINDSIGHT
Tellabs case, 24:57

FRAUD-CREATED-THE-MARKET THEORY
Rule 10b-5, 10:30, 10:31 et seq.

FRAUD ON THE MARKET
Analysts, actions against, 15:11
Artificial inflation, Rule 10b-5, 11:11
Endorsement by Supreme Court, 13:17

FRAUD ON THE MARKET—Cont’d
Insider trading, 15:10, 15:11
Loss causation, 11A:9, 11A:15.10
Measure of damages, uniformity, 13:16
Private Securities Litigation Reform Act of 1995, limitation of scope in Dura Pharmaceuticals court decision, 11A:9
Rule 10b-5, 10:30.10, 10:30.15, 10:30.50, 11:11, 13:16
Stoneridge decision, 15:10

GLOSSARY
Generally, App 4

GOOD WILL
Section 11 and Section 12, Securities Act of 1933, misrepresentation in registration statements, 14A:1

GROUP PLEADING
Tellabs, 24:55

IMPLIED ACTIONS AND REMEDIES
Generally, 19:1 et seq.
Brokers and dealers, Section 15 of Securities Exchange Act of 1934, 19:8
Discipline of members, Section 6(b) of Securities Exchange Act of 1934, 19:3
Disclosure requirements, Sections 11(d)(2) and 17(a) of Securities Exchange Act of 1934, 19:5
Extension of credit
Rule 10b-16, 19:10
Section 7(c) of Securities Exchange Act of 1934, 19:4
Filing requirements, Section 13(a) of Securities Exchange Act of 1934, 19:7
Obstruction of filings, Section 20(c) of Securities Exchange Act of 1934, 19:9
Reporting requirements, Section 12(b) and (f) of Securities Exchange Act of 1934, 19:6
Rule 10b-5. See Rule 10b-5 (this index)
Section 17(a), 19:1, 19:2

INDEMNIFICATION
Contribution and indemnification. See Contribution and Indemnification (this index)
INFERENCES
Tellabs case, scirent, 24:56 et seq.

INFORMANTS
Sarbanes-Oxley Act, no retaliation against informants—Section 1107, 5A:21

INITIAL COIN OFFERINGS
Regulation of, 2:6

INJUNCTIONS
Generally, 23:2
Interference with market for corporate control, tender offers, 16:4

IN LIMINE MOTIONS
Generally, 24:18

IN RE CHARTER COMMUNICATIONS
Insider trading, Eighth Circuit, 15:27

INSIDER TRADING—Cont’d
Implied private rights of action under Section 10(b), 15:12
Janus decision, 15:32
Lorenzo decision, 15:32
Loss causation, pleading, 24:12, 24:15
Misrepresentation or omission in audit opinions, accountant liability, 15:23
Ninth Circuit, AOL-Simpson decision, expanding liability of secondary actor, 15:28
Outside counsel liability, 15:24
Primary liability after Stoneridge decision, 15:22
Professional liability under Sarbanes-Oxley, 15:6
Reaffirming bar on aiding and abetting liability, 15:9
Reliance, 15:10
Reviewing materials used to effect fraudulent transactions, attorney liability, 15:24
Revising materials used to effect fraudulent transactions, attorney liability, 15:24
Sarbanes-Oxley. See Sarbanes-Oxley Act (SOX) (this index)
Scheme / secondary liability, 15:30, 15:31
Sciente (this index)
SEC aiding and abetting enforcement actions, 15:17
Secondary liability, 15:5, 15:9
Secondary liability issue
Eighth Circuit, In Re Charter Communications decision, 15:27
Fifth Circuit, 15:29
Ninth Circuit, AOL-Simpson decision, 15:28
scheme / secondary liability, 15:30 to 15:32
Stoneridge decision, below Supreme Court, 15:7 et seq.
Seventh Circuit, pleading scirent after Tellabs, 24:11
State court litigation, 15:19
Stoneridge decision
generally, 15:7

Index-8
INSIDER TRADING—Cont’d
Stoneridge decision—Cont’d
  aiding and abetting liability, 15:9
  analysis of impact, 15:14, 15:15
  Central Bank decision, 15:32
  common secondary actors, 15:18
  deceptive conduct plus plaintiff awareness, 15:16 to 15:20
  Enron litigation, 15:20
  factual background, 15:8
  fraud on the market, 15:10
  implied private rights of action under Section 10(b), 15:12
  Janus decision, 15:32
  Lorenzo decision, 15:32
  policy implications in securities fraud action, 15:13
  primary liability following decision, 15:22
  reaffirming bar on aiding and abetting liability, 15:9
  reliance, 15:10
  SEC aiding and abetting enforcement actions, 15:17
  secondary actor liability, 15:9
  secondary liability, generally, 15:7 et seq.
  state court litigation, 15:19
Supreme Court
  Central Bank decision, 15:26, 15:32
  Janus decision, 15:32
  Lorenzo decision, 15:32
  secondary liability guidance.
  Stoneridge decision, above
  Stoneridge decision, 15:32
Third Circuit, pleading scienter after Tellabs, 24:9
INSTITUTIONAL INVESTORS
Private Securities Litigation Reform Act of 1995, class actions, 3:3, 3:6
INSTRUCTIONS TO JURY—Cont’d
Charts and summary exhibits, 24:26, 24:27
Conflicting expert testimony, 24:30
Damages; caution against inference from instruction, 24:31
Depositions, 24:28
Expert witnesses, 24:29, 24:30
Joint and several liability, 24:34
Materiality, 24:50
Multiple defendants, caution against, 24:33
Multiple recovery, caution against, 24:32
Rescissionary measure, Section 10(b) of Securities Exchange Act of 1934, 24:48
Section 10(b) of Securities Exchange Act of 1934 generally, 24:46 et seq.
  benefit of the bargain measure, 24:47
  causation, 24:45
  general measure, 24:46
  rescissionary measure, 24:48
  uniform instruction, 24:49
Section 11, Securities Act of 1933. See Section 11, Securities Act of 1933 (this index)
Section 12, Securities Act of 1933, 24:42 to 24:44
Uniform instruction, Section 10(b) of Securities Exchange Act of 1934, 24:49
INSURANCE
See Contribution and Indemnification (this index)
INTEREST
Generally, 21:1, 21:3
Section 16, Securities Exchange Act of 1934, 8:12
INTERFERENCE WITH MARKET FOR CORPORATE CONTROL
Generally, 16:1 et seq.
  Appraisal remedies, 16:8
  Federal and state law remedies, relationship between, 16:7
  Injunctions, tender offers, 16:4
  Minority shareholders, remedies of, 16:6
INTERFERENCE WITH MARKET FOR CORPORATE CONTROL
—Cont’d
Proxy solicitation relief, 16:2
Rescission, 16:5
Tender offers, 16:3, 16:4

INTERNATIONAL SECURITIES REGULATION
Generally, 27:1 et seq.
Balance of interests test, 27:5
Congressional response to Morrison decision, 10:2.60
Criticisms of extraterritorial jurisdiction, 27:1 to 27:6
Extraterritorial jurisdiction, 27:1 et seq.
Injury to United States, 27:6
Legislative intent, 27:3, 27:7
Reliance on international law, 27:4, 27:8
Rule 10b-5, application by Second Circuit, 10:2.50, 27:10
Statutory construction, 27:3, 27:7

INTERNET
Generally, 5:14, 5:15, 28:1 et seq.
“Conduct” test, extraterritorial subject matter jurisdiction, 28:3, 28:7, 28:8
Cryptocurrencies, regulation of, 2:6
Cyberspace securities transactions, 28:6
“Effects” test, extraterritorial subject matter jurisdiction, 28:4, 28:7, 28:8
Extraterritorial subject matter jurisdiction, 28:2 to 28:4
Initial coin offerings, regulation of, 2:6
Jurisdiction, 28:1 et seq.
Personal jurisdiction, 28:5

INTRODUCTION
Generally, 1:1 et seq.

INVESTMENT CONTRACTS
Condominiums, 1:6

JOINT AND SEVERAL LIABILITY
Private Securities Litigation Reform Act of 1995, 3:14.10

JOINT TORTFEASORS
Contribution and indemnification, 20:4
Instructions to jury, 24:34

JURISDICTION
Internet. See Internet (this index)
Securities laws, 1:3.10

JURY INSTRUCTIONS
Instructions to jury. See Instructions to Jury (this index)

LANGUAGE
Private Securities Litigation Reform Act of 1995, Supreme Court’s interpretation of language in Act, 11A:2

LAXITY
Enron scandal, Private Securities Litigation Reform Act, 4:4

LEGISLATIVE HISTORY
Private Securities Litigation Reform Act of 1995, loss causation, 11A:3

LIMITATION OF ACTIONS
Rule 10b-5, 9:14 et seq.
Sarbanes-Oxley Act. See Sarbanes-Oxley Act (SOX) (this index)
Section 10(b), Securities Exchange Act of 1934, 9:18
Section 12(a)(2), Securities Act of 1933, 7:16
Section 16, Securities Exchange Act of 1934, 8:14.50

LIMITED LIABILITY COMPANIES
Generally, 2:1 et seq.
Attributes, 2:3, 2:4
Predictability, 2:5
Supreme Court standards for defining security, 2:2, 2:4

LITIGATION
Generally, 24:1 et seq.

LOAN LOSS RESERVES
Section 11 and Section 12, Securities Act of 1933, material misrepresentation in registration statements, 14A:1

LOANS
Sarbanes-Oxley Act, prohibition on loans to executive officers and directors, 5A:6

Index-10
INDEX

LOSS CAUSATION
Insider trading, pleading, 24:12, 24:15
Private Securities Litigation Reform Act of 1995 (this index)
Rule 10b-5. See Rule 10b-5 (this index)

MANAGEMENT
Sarbanes-Oxley Act, management assessment of internal accounting controls—Section 404, 5A:14

MARKET IMPACT AND EFFICIENCY
Event studies in securities fraud litigation, 25B:7

MARKET MANIPULATION
Listed stock manipulations, 8:3 to 8:5
Rule 10b-5, auction rate securities, 10:31.90

MATERIALITY
Generally, 18:1 et seq.
Class actions, “plausible” allegation, 11A:17.40
Class certification, 24:13.10
Instructions to jury, 24:50
Private Securities Litigation Reform Act of 1995, 3:9
Rule 10b-5. See Rule 10b-5 (this index)
Soft information, 18:3
Subjective vs. objective falsehoods, 18:4
Supreme Court and statistical significance, 18:5
Supreme Court definition, 18:2
Virginia Bankshares, 18:3

MATERIALIZATION OF RISK THEORY
Loss causation, 11A:15.20

MERITLESS LITIGATION
Private Securities Litigation Reform Act of 1995, sanctions, 3:19

METHODOLOGY
Event studies in securities fraud litigation, 25B:3

MINORITY SHAREHOLDERS
Interference with market for corporate control, 16:6

MISAPPROPRIATION
Rule 10b-5, 10:11

MISREPRESENTATION
Section 11 and Section 12, Securities Act of 1933, good will and loan loss reserves misrepresented in registration statements, 14A:1

MODEL COMPLAINT UNDER PSLRA
Generally, 3:20, 3:21

MOTIONS IN LIMINE
Generally, 24:18

MOTIVE
Pleading scienter after Tellabs, independent method to establish scienter, 3:11.120

MULTIDISTRICT TRANSFERS
Pretrial, 24:51

MULTIPLE DEFENDANTS
Instructions to jury, 24:33

MULTIPLE RECOVERY
Instructions to jury, 24:32

MUTUAL FUNDS
Section 11, Securities Act of 1933, 6:4.10

NATIONAL ECONOMIC RESEARCH ASSOCIATES
Class actions under PSLRA, statistics, 4:3

NEGATIVE CAUSATION
Section 11, Securities Act of 1933, 6:28, 6:31

NERA AND CORNERSTONE RESEARCH
Class actions under PSLRA, statistics, 4:3

OBSTRUCTION OF FILINGS
Implied actions and remedies, Section 20(c) of Securities Exchange Act of 1934, 19:9

© 2019 Thomson Reuters, Rel. 18, 12/2019
OPPORTUNITY
Pleading scienter after Tellabs, independent method to establish scienter,
3:11.120

OUT-OF-POCKET
Rule 10b-5, 13:4 to 13:6

PENSION BLACKOUT PERIODS
Sarbanes-Oxley Act, insider trades during pension blackout periods—Section 306, 5A:11, 5B:6

PLEADINGS
Generally, 24:2
Adequate theories of loss, 24:3
Loss theories, 24:3
Outside auditors, scienter, 24:5
Private Securities Litigation Reform Act of 1995. See Private Securities Litigation Reform Act of 1995 (this index)
Tellabs case, 24:52.50, 24:53, 24:55

POSTJUDGMENT INTEREST
Generally, 21:1, 21:3

PRACTICE
Generally, 24:1 et seq.

PREDICATE ACTS
Racketeer influenced and corrupt organizations, 22:7

PREEMPTION
Federal securities regulation, generally, 5:1
Sarbanes-Oxley Act, attorney disclosure requirements, new SEC professional standards, 5C:6

PREJUDGMENT INTEREST
Generally, 21:1, 21:3

PRESUMPTIONS
Attorneys’ fees in class action, reasonableness to agreed-upon fees, 25:4.30
Reliance, rebutting presumption of in class action, 11A:17.40
Rule 10b-5, 10:30

PRIVATE ACTIONS
Insider trading, Stoneridge decision, 15:12
Sarbanes-Oxley Act (SOX) (this index)

PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995
Generally, 3:1 et seq., 4:1 et seq.
Abusive discovery, class actions, 3:8 to 3:8.90
Abusive litigation, sanctions for, 3:19
Allegations, Tellabs case, 3:11.10
Appropriate pleading rule, loss causation, 11A:13
“At least as likely” standard, pleading requirements, 3:11.70, 3:11.80
Attorney sanctions for pursuing meritless litigation, 3:19
Causation of loss. Loss causation, below Class actions
generally, 3:2 et seq., 4:1 et seq.
abusive discovery, 3:8 to 3:8.90
auctioning, selection of class counsel through, 25:6, 25:8
certification, loss causation, 11A:17 et seq., 11A:18, 24:14, 24:15
empirical analysis, 4:1 et seq.
fraud-on-the-market theory, 11A:17.10, 11A:17.20
grundfest and Perino study, 4:2
institutional investors, 3:3, 3:6
loss causation, 11A:17 et seq., 11A:18, 24:14, 24:15
loss causation and limitation of damages, 3:14.40
materiality, “plausible” allegation, 11A:17.40
NERA and cornerstone research securities statistics, 4:3
professional and lead plaintiffs, 3:2
rebutting fraud-on-the-market theory, 11A:17.10
rebutting presumption of reliance, 11A:17.40
selection of class representative, 3:4
settlement process, 3:7
Complaint under PSLRA, model complaint, 3:20, 3:21

Index-12
Congressional intent, loss causation, 11A:4
Construction and interpretation, loss causation. Loss causation, below
Corporate finance theory, loss causation, 11A:8
Damages, generally, 3:13
Damages formula, 3:14.30 to 3:14.50
Decision of Supreme Court
Dura Pharmaceuticals case, consequences, 11A:9 to 11A:12
Halliburton case, loss causation and class certification, 11A:17.30
Dual inquiry test of Ninth Circuit, pleading scienter after Tellabs, 3:11.130
Dura Pharmaceuticals case, generally, 11A:1
Economic loss, private securities fraud litigation, 11A:7, 11A:8
Eighth Circuit, loss causation, 11A:12.90
Eleventh Circuit, loss causation, 11A:12.120
Enron scandal and laxity, 4:4
Expert witnesses, damages formula, 3:14.50
Fair share rule of proportionate liability, 3:14
Federal circuits, uncertain loss causation issues not reached by Court in Dura Pharmaceuticals, 11A:11.1
Fifth Circuit, loss causation, 11A:12.60
Fourth Circuit, loss causation, 11A:12.50
Fraud on the market theory, limitation of scope in Dura Pharmaceuticals court decision, 11A:9
Fraud-on-the-market theory, loss causation, 11A:9, 11A:15.10
Institutional investors, class actions, 3:3, 3:6
Joint and several liability for knowing wrongdoing, 3:14.10
Language of PSLRA, Supreme Court’s interpretation, 11A:2
Legislative history, loss causation, 11A:3

Likely impact of “at least as likely” standard, 3:11.80
Limitation of scope in Dura Pharmaceuticals court decision, 11A:9
Loss causation generally, 3:12, 11A:1 et seq.
appropiate pleading rule, 11A:13
appropriate theories of loss, 11A:15
circuit survey, 11A:12.10 to 11A:12.120
class certification, 11A:17 et seq., 11A:18, 24:14, 24:15
common law fraud, 11A:20
congress’s carefully designed structure of PSLRA and federal securities laws, 11A:5
congressional intent supporting, 11A:4
corporate finance theory, 11A:8
decision of Court in Dura Pharmaceuticals case, consequences of, 11A:9 to 11A:11
Dura Pharmaceuticals case, generally, 11A:1
economic loss, private securities fraud litigation, 11A:7, 11A:8
Eighth Circuit, 11A:12.90
Eleventh Circuit, 11A:12.120
event studies, 11A:16
evidence, 3:12.10, 11A:16
expert testimony, 11A:16
Fifth Circuit, 11A:12.60
First Circuit, 11A:12.20
Fourth Circuit, 11A:12.50
fraud-on-the-market theory, 11A:9, 11A:15.10, 11A:17.10, 11A:17.20
language of PSLRA, Supreme Court’s interpretation, 11A:2
legislative history, 11A:3
limitation of scope in Dura Pharmaceuticals court decision, 11A:9, 11A:11
materialization of risk theory, 11A:15.20
Ninth Circuit, 11A:12.100
PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995—Cont’d

Loss causation—Cont’d
pleading, 3:12.10, 11A:13
policy concerns of Supreme Court in Dura Pharmaceuticals case, 11A:6
post-Dura Pharmaceuticals decision, 11A:14 et seq.
proving, 11A:16
proxy fraud, 17:6
rebutting fraud-on-the-theory, 11A:17.10
regression analyses, 11A:16
risk free assurances theory, 11A:15.30
Rule 8 vs. Rule 9 pleading, 11A:13
SEC actions, 11A:20
Second Circuit, 11A:11.1, 11A:12.30
Section 11 and Section 12 claims, 11A:19
Seventh Circuit, 11A:12.80
Sixth Circuit, 11A:12.70
standards imposed by Court, satisfying, 11A:10
Supreme Court’s decision, 11A:17.30
Supreme Court’s interpretation, generally, 11A:1 et seq.
Tenth Circuit, 11A:12.110
theories of loss, 11A:15
Third Circuit, 11A:12.40
uncertain loss causation issues not reached by Court in Dura Pharmaceuticals, 11A:11 to 11A:11.2
Materiality, “plausible” allegation, 11A:17.40
Materialization of risk theory, 11A:15.20
Material misstatement or omissions, pleadings, 3:9
Meritless litigation, sanctions for, 3:19
Model complaint under PSLRA, 3:20, 3:21
Motive and opportunity as independent method to establish scienter, 3:11.120
Ninth Circuit
dual inquiry test, pleading scienter after Tellabs, 3:11.130

PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995—Cont’d

Ninth Circuit—Cont’d
loss causation, 11A:12.100
Oral statements, safe harbor, 3:17
Pleadings
generally, 3:9 et seq.
loss causation, above
Rule 8 vs. Rule 9, 11A:13
Scienter, pleading after Tellabs, below
Policy concerns of Supreme Court in Dura Pharmaceuticals case, 11A:6
Post-Dura developments
generally, 11A:12
forward looking incentives, 10:29
loss causation after Dura, 11A:14
Section 11 and Section 12 claims, 11A:19
Presumption of reliance, rebutting, class actions, 11A:17.40
Professional and lead plaintiffs, class actions, 3:2
Proportionate liability and trial practice, 3:14.20
Proving loss causation, 3:12.10
Recklessness as independent method to establish scienter, 3:11.120
Regression analyses, loss causation, 11A:16
Reliance, rebutting presumption in class action, 11A:17.40
Rule 8 vs. Rule 9, pleading loss causation, 11A:13
Rule 10b-5, forward looking incentives, 10:28
Safe harbor, 3:15 to 3:18
Sanctions for abusive litigation, 3:19
Scienter, pleading after Tellabs
generally, 3:11.100
award of draw to plaintiffs, 3:11.110
draw awarded to plaintiffs, 3:11.110
dual inquiry test of Ninth Circuit, 3:11.130
incorporation by reference, 3:11.152
independent methods to establish scienter, 3:11.120
judicial notice, 3:11.152
PRIVACY
Rule 10b-5, Fifth Circuit, 14:25
Section 12, Securities Act of 1933, 7:6

PROFITS OF DEFENDANT
Rule 10b-5. See Rule 10b-5 (this index)
Sarbanes-Oxley Act, private action for profits—Section 304

PROPORTIONATE LIABILITY
Private Securities Litigation Reform Act of 1995, 3:14.20

PROSPECTUS
Forced seller doctrine and Section 11 and Section 12 claims, 14A:2
Material misrepresentations, Section 11 and Section 12 claims, 14A:1, 14A:2

PROTECTION ORDER
Scienter, 24:54.30

PROVISIONAL REMEDIES
Generally, 23:5

PROXIMATE CAUSE
Racketeer influenced and corrupt organizations, 22:3

PROXY FRAUD
Generally, 17:1 et seq.
Hidden agenda in Virginia Bankshares, 17:5
History of Section 14(a) actions, 17:2
Loss causation, 17:6
Virginia Bankshares, 17:3 to 17:5

PROXY SOLICITATION
Interference with market for corporate control, 16:2

PSLRA
Private Securities Litigation Reform Act of 1995. See Private Securities Litigation Reform Act of 1995 (this index)

PUBLICATION
Class actions, settlements, 25:2

PUFFERY
Rule 10b-5, 10:27.70

© 2019 Thomson Reuters, Rel. 18, 12/2019
PUNITIVE DAMAGES
Racketeer influenced and corrupt organizations, 22:14
Rule 10b-5, 14:66

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
Generally, 22:1 et seq., App 3
Antitrust analogy, measure of damages, 22:6
Arbitration, 22:12 to 22:14
Attorneys’ fees, 22:9
Causation, 22:4
Costs, 22:9
Equitable relief, 22:9
Measure of damages, 22:5 to 22:7
“Predicate act” approach, measure of damages, 22:7
Proximate cause of injury to business or property, 22:3
Punitive damages, securities arbitration, 22:14
Purchaser-seller requirements, 22:2
Securities fraud, 22:1
State common law damages, 22:10
State statutory damages, 22:11
Treble damages, 22:8

“REAL TIME” DISCLOSURES
Sarbanes-Oxley Act, SEC review of disclosures—Section 409, 5A:18

REASONABLENESS
Attorneys’ fees in class action, agreed-upon fees, 25:4.30

REBUTTAL
Class actions
fraud-on-the-theory, 11A:17.10
reliance, presumption of, 11A:17.40
Rule 10b-5, rebuttal of fraud-on-the-market theory, 10:30.15

RECEIVERSHIP
Generally, 23:4

RECKLESSNESS
Pleading scienter after Tellabs, independent method to establish scienter, 3:11.120

RELATIVITY
Event studies in securities fraud litigation, 25B:5

RELIABILITY
Class action, rebutting presumption, 11A:17.40
Insider trading, Stoneridge decision, 15:10
Rule 10b-5, 10:30, 10:30.50

REMOVAL
Securities Litigation Uniform Standards Act of 1998, 5:12

REORGANIZATION
Sarbanes-Oxley Act of 2002, bankruptcy and securities fraud, 5D:2

REPORTING
Implied actions and remedies, Section 12(b) and (f) of Securities Exchange Act of 1934, 19:6
Sarbanes-Oxley Act, disclosure reports—Section 401, 5A:13, 5B:7

RESCISSION
Instructions to jury, Section 10(b) of Securities Exchange Act of 1934, 24:48
Interference with market for corporate control, 16:5
Rule 10b-5. See Rule 10b-5 (this index)
Section 12, Securities Act of 1933, 7:8, 7:11, 7:12

RESCISSORY REMEDIES
Proxy fraud, 17:6

RESEARCH
Class actions under PSLRA, statistics, 4:3

RESERVES
Section 11 and Section 12, Securities Act of 1933, misrepresentation of loan loss reserves in registration statements, 14A:1

RETAILATION
Informants: Sarbanes-Oxley Act, no retaliation against informants—Section 1107, 5A:21
INDEX

RETALIATION—Cont’d
Whistleblower protection, Sarbanes-Oxley Act—Section 806, 5A:20

RETROACTIVITY
Rule 10b-5, 9:16 et seq.

RICO
Racketeer influenced and corrupt organizations. See Racketeer Influenced and Corrupt Organizations (this index)

RULE 10b-5—Cont’d
Congressional intent, contribution, 20:12
Congressional response to Lampf, 9:16.10
Congressional response to Morrison decision, 10:2.60
Connection with purchase or sale, 10:3
Consequential damages. Special or consequential damages, below
Constitutional law
generally, 9:4 et seq.
aiding and abetting, 9:8
consequences of exercise of judicial power, 9:6
contribution, implied right to, 9:7
judicial creation and perpetuation of private right of action, 9:5, 9:6, 9:9
Section 27A, 9:16.10
uncertain origins of implied remedy, 9:4
Contract cases, contribution, 20:17
Contract model, 9:11
Contribution
generally, 20:9 et seq.
common law, 20:22 to 20:24
congressional action, 20:15
congressional intent, 20:12
constitutional law, 9:7
contract cases, 20:17
distinction between implied and express victims’ remedies, 20:25
fleshing out victim’s claim, 20:24
holding and analysis of Supreme Court, 20:26
independent federal regulatory scheme, 20:18
legislative scheme, 20:16
Northwest Airlines and Texas Industries, 20:19
policy considerations, 20:13
strongest arguments, 20:11 et seq.
well established right, 20:14 et seq.
“Cover” measure of damages, Tenth Circuit, 14:52
Definition of theories, Supreme Court, 13:2
RULE 10b-5—Cont’d

Direct market repercussion theory,
Second Circuit, 14:10
Disgorgement
generally, 14:62
First Circuit, 14:4
Second Circuit, 14:11
District of Columbia Circuit
generally, 10:25, 14:57 to 14:59
liability under Rule 10b-5, 10:25
rescissionary relief, 14:58
valuation limits, 14:59
Divergent court approaches
“fraud-created-the-market” theory,
10:31 et seq.
liability under Rule 10b-5, 10:14 et seq.
Dura’s impact on securities fraud sentences, 11:11.10
Eighth Circuit
generally, 10:21, 14:42 to 14:45
calculation of damages, 14:43
liability under Rule 10b-5, 10:21
materiality of misstatement or omission, 14:45
valuation date, 14:44
Election of rescission or rescissionary damages, Tenth Circuit, 14:51
Elements of action, 9:13
Eleventh Circuit
generally, 10:24, 14:54 to 14:56
fraud-created-the-market theory,
10:31.30
liability under Rule 10b-5, 10:24
limitations on damages, 14:56
rescission, 14:55, 14:56
Event studies in securities fraud litigation, 25B:6
Express remedies, limitations from, 12:5, 12:6
External market forces, Seventh Circuit, 14:39
Fiduciary duty, breach of, 10:7
Fifth Circuit
generally, 10:18, 14:23 to 14:28
fraud-created-the-market theory,
10:31.20
liability under Rule 10b-5, 10:18

RULE 10b-5—Cont’d

Fifth Circuit—Cont’d
limitations on general rule applicability, 14:24
materiality, role in damage measurement, 14:27
privity, 14:25
rescission, 14:26
special or consequential damages, 14:28
First Circuit
generally, 10:14, 14:2 to 14:4
exceptions, 14:3
liability under Rule 10b-5, 10:14
unjust enrichment or engorgement, 14:4
Five year statute of repose, 9:19
Fleshing out victim’s claim, contribution, 20:24
Foreign cased cases, extraterritorial application of Rule 10b-5, 10:2.50, 10:2.60, 27:10
Forfeitures, tolling, 9:20.30
Fourth Circuit
generally, 10:17, 14:17 to 14:22
discretion, factors in applying, 14:18
liability under Rule 10b-5, 10:17
materiality of actions or omissions, 14:20
qualified profit measure of damages, 14:21
rescission, rejection of, 14:19
rescissionary measure of damages, 14:22
“Fraud-created-the-market” theory, 10:30
generally, 10:31
endorsement by circuit courts, 10:31.10 to 10:31.40
reconciling circuit split, 10:31.80
regulatory process, reliance on, 10:31.35
rejection by circuit courts, 10:31.55 to 10:31.80
reliance, 10:31.35
Fraud-on-the-market theory
actions against analysts, 10:30.10
artificial inflation, 11:11
RULE 10b-5—Cont’d
Second Circuit
generally, 10:15, 14:5 to 14:12
direct market repercussion theory, 14:10
disgorgement, 14:11
exceptions, 14:6
extraterritorial application to foreign cubed cases, 10:2.50, 27:10
liability under Rule 10b-5, 10:15
materiality of misstatements or omissions, 14:7
profit of defendant, recovery of, 14:9
public disclosure and materiality, 14:10
resale price measure of damages, 14:8
Section 12, Securities Act of 1933, compared, 7:13
Section 27A, constitutional law, 9:16.10
Section 27(a), district court jurisdiction, 12:2
Section 28(a) limitations on damages, 12:3, 12:4
Securities Act of 1933, 12:5 et seq.
Securities, 10:4
Sentencing, Dura’s impact on, 11:11.10
Seventh Circuit
generally, 14:32 to 14:41
congruence between rescissionary and market measure of damages, 14:38
exceptions, 14:33
external market forces, 14:39
fraud-created-the-market theory, 10:31.55
liability under Rule 10b-5, 10:20
materiality, role in damages measurement, 14:34
materiality of nondisclosure, quantification of, 14:39, 14:40
rescission, 14:35
Uniform Commercial Code, analogy to, 14:36, 14:37
Sixth Circuit
generally, 10:19, 14:29 to 14:31
additional relief, 14:30
RULE 10b-5—Cont’d
Sixth Circuit—Cont’d
fraud-created-the-market theory, 10:31.70
liability under Rule 10b-5, 10:19
limitations upon recovery, 14:31
Special or consequential damages
Fifth Circuit, 14:28
Tenth Circuit, 14:53
Standing, holder suits, 10:3.50
“Statistically significant” test, materiality, 10:27.50
Statute of limitations, 9:14 et seq.
Statutory guidance, 12:1 et seq.
Supreme Court guidance, 9:15 to 9:20.40, 13:1 et seq.
Tellabs case, 24:58
Tenth Circuit
generally, 10:23, 14:50 to 14:53
consequential damages, 14:53
“cover” measure of damages, 14:52
election of rescission or rescissionary damages, 14:51
fraud-created-the-market theory, 10:31.30
liability under Rule 10b-5, 10:23
Test for implication, 9:2
Third Circuit
generally, 10:16, 14:13 to 14:16
fraud-created-the-market theory, 10:31.60
liability under Rule 10b-5, 10:16
materiality, 14:16
profits of defendant, 14:14
rescission, 14:15
Threshold elements, 10:1 to 10:3
Tippee liability, 10:9, 10:10
Tipper liability, 10:8
Tolling, 9:20 et seq.
Tort law, 12:10
Tort model, 9:10
Two and five year limitations period, 9:17 et seq.
retroactivity, 9:17.10
Uniform Commercial Code, Seventh Circuit, 14:36, 14:37
Uniformity of measure of damages under Sections 12(2) and 10(b), 13:13 to 13:16
INDEX

RULE 10b-5—Cont’d
Unjust enrichment, First Circuit, 14:4
Unlawful conduct, 10:5 et seq.
Valuation date, Eighth Circuit, 14:44
Valuation limits, District of Columbia Circuit, 14:59
Well established right, contribution, 20:14 et seq.

RULE 26
Scienter, discoverability of identities of confidential witnesses, 24:54.10

SAFE HARBOR
Private Securities Litigation Reform Act of 1995, 3:15 to 3:18

SANCTIONS
Private Securities Litigation Reform Act of 1995, abusive litigation, 3:19

SARBANES-OXLEY ACT (SOX)
Generally, 5A:1 to 5A:24
Attorney-client privilege, securities fraud, new statutory duty to disclose client confidences, 5C:3, 5C:5
Attorneys conduct rules for—Section 307, 5A:12
disclosure of client confidences, new federal statutory duty, 5C:3
exposure, securities fraud after Sarbanes-Oxley, 5C:1 to 5C:9
nationalization consequences, 5C:9
nationalization of securities regulation, 5C:4
national securities law standards, trend toward, 5C:7
preemptive force, SEC attorney professional standards, 5C:6
private right of action against attorney for failure to blow whistle, 5C:8
securities fraud following Sarbanes-Oxley Act, 5C:1
whistleblowing, below
Audits and auditors
audit committee
generally—Section 301, 5A:7
financial experts—Section 407, 5A:16

SARBANES-OXLEY ACT (SOX)—Cont’d
Audits and auditors—Cont’d
auditor-related provisions, 5A:22
improper influence on audits—Section 303, 5A:8
Automatic stay, debtor-company in bankruptcy, 5D:3
Bankruptcy and securities fraud generally, 5D:1
automatic stay, 5D:3
claims against debtor-company while in bankruptcy, 5D:3
class proof of claims, 5D:4
discharge, excepting securities fraud claims, 5D:5
examiners, 5D:7
exceptions, 5D:5
forced sale, reorganization proceedings as, 5D:2
proof of claims, 5D:4
reorganization proceedings as forced sale, 5D:2
time of claim, 5D:3
trustees, 5D:6
Bonuses and profits, private action for—Section 304, 5B:5
Breach of new withdrawal and disclosure obligations, private actions against attorneys for, 5B:10
CEO and CFO certification requirements, 5A:3, 5B:4
Certification
CEO and CFO certification requirements, 5A:3, 5B:4
Section 906 certification, 5A:4
Civil actions. Private civil liability enhancement, below
Class proof of claims, 5D:4
Conflict of laws, state attorney confidentiality standards in conflict with SEC’s regime, 5C:5
Corporate responsibility re CEO and CFO certification of financial statements, 5B:4
Criminal law, Act’s reliance on, 5A:25
Damages
private actions—Section 803, damages not dischargeable, 5B:9

© 2019 Thomson Reuters, Rel. 18, 12/2019
SARBANES-OXLEY ACT (SOX)
—Cont’d
Discharge, excepting securities fraud claims, 5D:5
Disclosures
attorney’s duty to disclose client confidences, 5C:3
disclosure report—Section 401, 5A:13, 5B:7
private actions against attorneys for breach of new withdrawal and disclosure obligations, 5B:10
rapid and current basis, disclosure on—Section 409, 5B:8
“real time” disclosures—Section 409, 5A:18
SEC review of disclosures—Section 408, 5A:17
Examiners, bankruptcy, 5D:7
Excepting securities fraud claims from bankruptcy discharge, 5D:5
Financial experts, audit committee—Section 407, 5A:16
Financial officers, ethics code—Section 406, 5A:15
Forced sale, reorganization proceedings as, 5D:2
Forfeiture of executive payments upon restatements—Section 304, 5A:9
Forfeitures
tolling
limitation of actions, securities fraud, 9:20.30
Improper influence on audits—Section 303, 5A:8
Informants, no retaliation against—Section 1107, 5A:21
Insider trading
pension blackout periods, trades during—Section 306, 5A:11, 5B:6
professional liability under Sarbanes-Oxley, 15:6
Limitation of actions, securities fraud implied remedies, 9:15 et seq.
section 10(b) and SEC complaints, 9:18
Section 804, 5A:19, 5B:2
tolling, 9:20 et seq.

SARBANES-OXLEY ACT (SOX)
—Cont’d
Loans to executive officers and directors, prohibition, 5A:6
Management assessment of internal accounting controls—Section 404, 5A:14
Nationalization of securities regulation, damages for attorney exposure, 5C:4
National securities law standards, trend toward, 5C:7
Officer and director bars—Section 305, 5A:10
Omissions from Act, 5A:24
Overview, 5A:2
Political and economic environment, 5A:1
Preemptive force, SEC attorney professional standards, 5C:6
Private civil liability enhancement generally, 5B:1 to 5B:9
bonuses and profits, action for, 5B:5
breach of new withdrawal and disclosure obligations, private actions against attorneys for, 5B:10
corporate responsibility re CEO / CFO certifications of financial statements, 5B:4
damages not dischargeable—Section 803, 5B:9
fraud, statute of limitations—Section 804, 5B:2
new, private causes of action, 5B:3
pension fund blackouts, insider trading during—Section 306, 5B:6
periodic reports, private actions based on disclosures in—Section 306, 5B:7
rapid and current basis, disclosure on—Section 409, 5B:8
statute of limitations for fraud—Section 804, 5B:2
Private right of action against attorneys failing to blow the whistle, 5C:8
Proof of claims, bankruptcy and securities fraud, 5D:4
Reorganization proceedings as forced sale, 5D:2
SARBANES-OXLEY ACT (SOX)—Cont’d
SEC review of disclosures—Section 408, 5A:17
Section 906 certification, 5A:4
Securities fraud
   for other aspects of securities fraud,
       see specific entries in this topic
       attorney exposure to damages. Dam-
       ages, above
       statute of limitations. Limitation of
       actions, above
Shorter Section 16 reporting deadline, 5A:5
Significance of Act, 5A:23
Statute of limitations. Limitation of
actions, above
Tolling
   limitation of actions, securities fraud,
       9:20 et seq.
Trustees, bankruptcy, 5D:6
Whistleblowing
   attorney exposure to damages
   federal common law duty to blow
   whistle in re securities fraud,
       5C:2
   private right of action, failure to
   blow whistle on securities
   fraud, 5C:8
whistleblower protection—Section 806, 5A:20
Withdrawal, private actions against
attorneys for breach of new with-
drawal and disclosure obligations,
5B:10

SCIENTER—Cont’d
“Core operations” inference—Cont’d
   imputing scienter on core operations
   inference alone, 24:56.10
   misconstruing inference, 24:56.40
   reconciling approaches, 24:56.50
Inference, “core operations,” 24:56 et seq.
Obtaining order of protection, 24:54.30
Private Securities Litigation Reform
Act of 1995 (this index)
Red flags, 24:6
Rule 10b-5, 10:6, 10:10
Rule 26 discoverability of identities of
confidential witnesses, 24:54.10
Tellabs analysis
   availability of work-product protec-
tion, 24:54.20
   circuit survey, use of confidential wit-
nesses, 24:53.10
   collective scienter, 24:55
   discovery of confidential witnesses,
       24:54, 24:54.10
   establishing, 24:52
   Fifth Circuit, 24:10
   First Circuit, 24:8
   obtaining order of protection,
       24:54.30
   pleading, 24:4, 24:7 to 24:11,
       24:52.50, 24:53, 24:55
   protection order, 24:54.30
   Rule 26 discoverability of identities
   of confidential sources, 24:54.10
   Seventh Circuit, 24:11
   Third Circuit, 24:9
   use of confidential witnesses, 24:53,
       24:53.10
   work-product protection, 24:54.20
   Work-product protection, 24:54.20

SCOPE OF FEDERAL SECURITIES
REGULATION
Generally, 5:1 to 5:15
Internet
   electronic delivery, 5:14
   securities fraud, 5:15
   Preemptive course, 5:1
Securities Litigation Uniform Stan-
dards Act of 1998 (this index)
SECONDARY LIABILITY
Insider trading. See Insider Trading (this index)

SECTION 10(b), SECURITIES EXCHANGE ACT OF 1934
Event studies, 25B:6
Insider trading, Stoneridge decision, 15:12
Instructions to jury. See Instructions to Jury (this index)
Statutes of limitations, 9:18
Tellabs case, 24:58

SECTION 11, SECURITIES ACT OF 1933
Generally, 6:1 et seq.
Causation defense, lack of, 6:25
Common law remedies, inadequacy of, 6:7
Declining market, 6:21
Defenses, 6:4
Elements of liability, 6:3
Event studies, 25B:8
Forced seller doctrine and Section 11 claims, 14A:2
Formula for damages generally, 6:9 et seq.
amended formula, 6:11
criticism, 6:9
original formula, 6:10
plaintiff keeps security, 6:12
plaintiff sells security before suit, 6:13
plaintiff sells security during suit, 6:14
summary of damage alternatives, 6:15 to 6:18
value, 6:17, 6:18
Good will, misrepresentation in registration statements, 14A:1
Influenced market, 6:23
Instructions to jury generally, 24:35 et seq.
limit on recovery, 24:40
plaintiff retains stock, 24:36
plaintiff sells security before suit, 24:37
plaintiff sells security during litigation, 24:38

SECTION 11, SECURITIES ACT OF 1933—Cont’d
Instructions to jury—Cont’d
special interrogatories, 24:41
underwriter, defendant as, 24:39
Legislative history of civil remedies, 6:6
Liability, generally, 6:2 to 6:4.10
Loan loss reserves, misrepresentation in registration statements, 14A:1
Loss causation, 11A:18, 11A:19, 12:5.05
Make plaintiff whole, 6:20
Misrepresentation of good will and loan loss reserves in registration statements, 14A:1
Mutual funds, fraud against, 6:4.10
Negative causation, proof of, 6:28
Overview of violations, 6:2 et seq.
Prospectus
forced seller doctrine and Section 12 claims, 14A:2
material misrepresentations, private action, 14A:2
private action for material misrepresentations, 14A:2
Proviso for damages generally, 6:25 et seq.
causation defense, lack of, 6:25
conclusion, 6:30
judicial guidance, 6:27
judicial restraints, 6:29
negative causation under Section 11, 6:28, 6:31
proof of negative causation, 6:28
value, 6:26
Purpose of civil remedies, 6:5 to 6:8
Registration statements
good will, misrepresentation, 14A:1
loan loss reserves, misrepresentation, 14A:1
Rising market, 6:22
Special interrogatories, 24:41
Summary of damage alternatives, 6:15 to 6:18
Supplement to common law, design as, 6:8
Theory of damages generally, 6:19 et seq.
SECTION 11, SECURITIES ACT OF 1933—Cont’d
Theory of damages—Cont’d
contrast with traditional damage formula, 6:19
damage alternatives, 6:24
decaying market, 6:21
influenced market, 6:23
make plaintiff whole, 6:20
rising market, 6:22
Underwriters (this index)
Value, 6:17, 6:18, 6:26

SECTION 12, SECURITIES ACT OF 1933
Generally, 7:1 et seq.
Consideration, 7:9, 7:10
Contribution, 7:15
Forced seller doctrine and Section 12 claims, 14A:2
Good will, misrepresentation in registration statements, 14A:1
Indemnification, 7:15
Instructions to jury, 24:42 to 24:44
Legislative history, express damages, 7:7
Loan loss reserves, misrepresentation in registration statements, 14A:1
Loss causation, 11A:19, 12:5.05
Misrepresentation of good will and loan loss reserves in registration statements, 14A:1
Overview of liability, 7:2
Privity, Section 12(2) liability, 7:6
Prospectus
forced seller doctrine and Section 12 claims, 14A:2
material misrepresentations, private action, 14A:2
private action for material misrepresentations, 14A:2
Public offerings, Section 12(2) liability, 7:5
Registration statements
good will, misrepresentation, 14A:1
loan loss reserves, misrepresentation, 14A:1
Rescission, 7:8, 7:11, 7:12
Rule 10b-5, compared, 7:13

SECTION 12, SECURITIES ACT OF 1933—Cont’d
Section 12(1) liability, 7:3
Section 12(2) liability, 7:4 et seq.
Statutes of limitations, Section 12(a)(2), 7:16
Tax benefits, materiality, 7:14

SECTION 16, SECURITIES EXCHANGE ACT OF 1934
Generally, 8:6 et seq.
Dividends, 8:11
Employee stock options, 8:10
Expenses, 8:13
Interest, 8:12
Matching, 8:9
Measure of damages, 8:8
Purchase or sale price in noncash transactions, 8:14
Statute of limitations, 8:14.50

SECTION 17(A)
Implied actions and remedies, 19:1, 19:2

SECTION 27A
Rule 10b-5, constitutional law, 9:16.10

SECTION 27(A)
Rule 10b-5, district court jurisdiction, 12:2

SECTION 28(A)
Rule 10b-5, limitations on damages, 12:3, 12:4

SECURITIES ACT OF 1933
Generally, App 1
Rule 10b-5. See Rule 10b-5 (this index)
Section 11, Securities Act of 1933. See Section 11, Securities Act of 1933 (this index)
Section 12, Securities Act of 1933. See Section 12, Securities Act of 1933 (this index)

SECURITIES AND EXCHANGE COMMISSION
Aiding and abetting enforcement actions, effect of Stoneridge decision, 15:17

© 2019 Thomson Reuters, Rel. 18, 12/2019
SECURITIES AND EXCHANGE COMMISSION—Cont’d
Complaints, Sarbanes-Oxley Act Section 10(b), 9:16
Sarbanes-Oxley Act, SEC review of disclosures—Section 408, 5A:17

SECURITIES EXCHANGE ACT OF 1934
Generally, 8:1 et seq., App 2
Causation, 8:4, 8:16
Listed stock manipulations, 8:3 to 8:5
Misstatement in filed reports, 8:15, 8:16
Overview of act, 8:2
Rule 10b-5. See Rule 10b-5 (this index)
Section 9(e), 8:3 to 8:5
Section 10(b), Securities Exchange Act of 1934. See Section 10(b), Securities Exchange Act of 1934 (this index)
Section 18, 8:15, 8:16

SECURITIES FRAUD
Sarbanes-Oxley Act (SOX) (this index)
SECURITIES FRAUD LITIGATION
Event studies, 25B:1 et seq.

SECURITIES LITIGATION
UNIFORM STANDARDS ACT OF 1998—Cont’d
Scope of preclusion, 5:4 to 5:8.70

SECURITIES LITIGATION
UNIFORM STANDARDS ACT OF 1998
Generally, 5:2 to 5:13
Amendment by plaintiff, 5:10
“Best execution” claims, 5:8.30
Class Actions (this index)
Covered securities, 5:7
Direct rather than derivative actions, 5:8
Discovery stay, 5:13
Dismissal, 5:9
Federal class actions in state court, 5:8.70
Language of act, 5:3
Plaintiff’s ability to amend, 5:10
Preclusion, 5:4 to 5:8.70
Procedural devices, 5:11 to 5:13
Removal, 5:12
Scope of Federal Securities Regulation (this index)

SECURITY
Class actions, security for costs, 25:5
Defined, 1:5
Laws, generally, 1:3
Rule 10b-5, 10:4

SELF-REGULATORY ORGANIZATIONS (SROs)
Enforcement of securities laws, role of SROs, 26A:2
FINRA and the role of SROs in enforcement of securities laws, 26A:2

SENTENCING
Rule 10b-5, 11:11.10

SETTLEMENT
Class actions, 25:2, 25:3
Contribution, effect on, 20:5, 20:27
Independent approval, 25:3.10
Non-lead counsel, issues with, 25:4.40
Private Securities Litigation Reform Act of 1995 (this index)

SEVENTH AMENDMENT
Event studies in securities fraud litigation, 25B:2

SPECIAL DAMAGES
Rule 10b-5. See Rule 10b-5 (this index)

SPECIAL INTERROGATORIES
Section 11, Securities Act of 1933, 24:41

STANDING
Rule 10b-5, holder suits, 10:3.50

STATE COURTS
Federal class actions in state court, 5:8.70
Insider trading, Stoneridge decision, 15:19

STATE OF MIND
Private Securities Litigation Reform Act of 1995, pleadings, 3:10

Index-26
“STATISTICALLY SIGNIFICANT”
Rule 10b-5, materiality test, 10:27.50

STATISTICS
Class actions under PSLRA, NERA and cornerstone research, 4:3

STATUTE OF LIMITATIONS
Limitation of actions. See Limitation of Actions (this index)

STONERIDGE CASE
Insider Trading (this index)

SUBROGATION
Generally, 26:1, 26:3

SUMMARY EXHIBITS
Instructions to jury, 24:26, 24:27

SUMMARY JUDGMENT
Generally, 24:17
Event studies in securities fraud litigation, 25B:9

SUPREME COURT
Insider Trading (this index)
Material facts, statistical significance, 18:5
Private Securities Litigation Reform Act of 1995 (this index)
Rule 10b-5, 9:15 to 9:20.40

SWAPS
Credit default swaps under FINFA rules, 26A:1
Dodd-Frank, antifraud measures, 5E:2

TAX BENEFITS
Section 12, Securities Act of 1933, materiality, 7:14

TELLABS CASE
Allegations, PSLRA, 3:11.10
Circuit survey, use of confidential witnesses, 24:53.10
Collective scienter, 24:55
Confidential sources and pleading, 24:52.50 et seq.
Discovery and confidential sources, 24:54, 24:54.10
Establishing scienter, 24:52
Expansion beyond § 10b and Rule 10b-5 actions, 24:58

TELLABS CASE—Cont’d
Fraud by hindsight, 24:57
Group pleading, 24:55
Motive, pleading scienter, 24:52.50
Opportunity, pleading scienter, 24:52.50
Private Securities Litigation Reform Act of 1995, 3:11.05, 3:11.10
Recklessness, pleading scienter, 24:52.50
Rule 10b-5, 24:58

Scienter
availability of work-product protection, 24:54.20
circuit survey, use of confidential witnesses, 24:53.10
collective scienter, 24:55
confidential witnesses, 24:53, 24:53.10
core operations inference, 24:56 et seq.
discovery of confidential witnesses, 24:54, 24:54.10
establishing, 24:52
Fifth Circuit, 24:10
First Circuit, 24:8
incorporation by reference, 3:11.152
inference, core operations, 24:56 et seq.
judicial notice, 3:11.152
motive, pleading scienter, 24:52.50
obtaining order of protection, 24:54.30
opportunity, pleading scienter, 24:52.50
pleading scienter, 24:4, 24:7 to 24:11, 24:52, 24:52.50, 24:55
protection order, 24:54.30
recklessness, pleading scienter, 24:52.50
Rule 26 discoverability of identities of confidential sources, 24:54.10
Seventh Circuit, 24:11
Third Circuit, 24:9
work-product protection, 24:54.20
Section 10(b) of Securities Exchange Act of 1934, 24:58
Supreme Court, guidance on pleading scienter, 3:11.05

© 2019 Thomson Reuters, Rel. 18, 12/2019
TENDER OFFERS
Interference with market for corporate control, 16:3, 16:4

THIRD CIRCUIT TASK FORCE
Class actions, 25:7

TIPPEE LIABILITY
Rule 10b-5, 10:9, 10:10

TIPPER LIABILITY
Rule 10b-5, 10:8

TREBLE DAMAGES
Racketeer influenced and corrupt organizations, 22:8

UNDERWRITERS—Cont’d
Section 11, Securities Act of 1933, 6:3.10, 6:32, 24:39

UNIFORM COMMERCIAL CODE
Rule 10b-5, Seventh Circuit, 14:36, 14:37

UNJUST ENRICHMENT
Rule 10b-5, First Circuit, 14:4

VALUE
Rule 10b-5, 14:44, 14:59
Section 11, Securities Act of 1933, 6:17, 6:18, 6:26

WHISTLEBLOWING
Dodd-Frank, 5E:3
Sarbanes-Oxley Act (SOX) (this index)

WORK-PRODUCT PROTECTION
Scienter, 24:54.20