Index

ACCUMULATION OF STOCK
Generally, 2:1 et seq.

ACCURACY STANDARD
Section 14(e) (this index)

ACQUISITIONS
Generally, 2:10
Section 13(d)(1) and Section 13(g)(1), purpose of acquiring, holding, voting or disposing of equity securities of an issuer, 2:26

ADDITIONAL CONDITIONS
Section 14(d), 4:63.60

ADDITIONAL INFORMATION
Section 14(d), 4:79, 4:104

ADMINISTRATIVE HISTORY
Section 13(d) and Section 13(g), 2:63
Section 13(d)(1) and Section 13(g)(1), 2:35
Section 14(d), 4:66, 4:87, 4:94, 4:122
Section 14(e), 5:36

AFFILIATE
Section 13(e), 3:5

AFFIRMATIVE DEFENSES
Section 13(d) and Section 13(g), 2:101 to 2:104
Section 14(d), 4:113
Section 14(e), 5:49

AGGREGATION
Section 13(d) and Section 13(g), 2:14, 2:138

ALL-HOLDERS RULE
Section 14(d) (this index)

ALL TENDER OFFERS
Section 14(e), 5:16

AMENDMENTS
Generally, 1:1
Section 13(d) and Section 13(g) (this index)
Section 14(d), 4:63.15, 4:63.60, 4:83, 4:107

ANNOUNCEMENT
Section 14(d), 4:34, 4:37

APPRASIALS
Section 13(e), 3:17
Section 14(d), 4:49

ARRANGEMENTS
Section 13(d) and Section 13(g), 2:59

ASSETS
Section 13(d) and Section 13(g), 2:50
Section 14(d), 4:77, 4:101

BENEFICIAL OWNERSHIP
Generally, 2:135 to 2:139
Agent purchasing too many shares, 2:12
Aggregation, 2:138
Agreement to vote or sell as directed by a third party, 2:12
Assume no breach of contract, 2:12
Beneficial ownership controls in other circumstances, 2:12
Cash-settled total-return equity swaps, 2:12
Common examples of beneficial ownership, 2:12
Commonly controlled entities, 2:12
Construe liberally, 2:12
Contracting away the power to vote or sell, 2:12
Contract sets forth how to vote or sell shares, 2:12
Date becomes the official owner, 2:12
Definition of beneficial ownership, 2:136
Discretionary account, 2:12
Drag along rights, 2:12
Entity acting through agents, 2:12
Entity owning its own shares, 2:12
Evasion, 2:137
Fact question, 2:12
Family members, 2:12
Intent to acquire more than 5 percent, 2:12
Interaction with “groups,” 2:12
Lock-up agreement, 2:12
Majority vote controls how all shares are voted, 2:12
More than one beneficial owner, 2:12
Plaintiff’s burden of proof, 2:12
Power of attorney, 2:12
Preponderance of the evidence, 2:12
Pre-rule 13d-3 cases, 2:12
Record ownership, 2:12
Reporting, 2:137
Reverse lower court only if clearly erroneous, 2:12
Right of first offer, 2:12
Right of first refusal, 2:12
Right to buy upon occurrence of a specified event, 2:12
Rule 13d-3, generally, 2:135 to 2:139
Rule 13d-3(a), definition of beneficial ownership, 2:136
Rule 13d-3(b), evasion of reporting requirements, 2:137
BENEFICIAL OWNERSHIP—Cont’d
Rule 13d-3(c), aggregation of beneficially owned securities, 2:138
Rule 13d-3(d), persons deemed to be beneficial owners, 2:139
‘Rule of three,’ 2:12
Section 16(b) pecuniary interest and Section 13(d), 2:12
Short put options, 2:12
Substance governs over form, 2:12
Support agreement given by stockholder of acquired company, 2:12
Tag along rights, 2:12
Veto power, 2:12
Voting trusts, 2:12

BEST-PRICE RULE
Section 14(d) (this index)

BIDS AND BIDDING
Section 14(d), 4:43, 4:60

BLOCKER
Generally, 2:13, 2:16

BLUE-SKY EXEMPTION
Section 14(d), 4:136

BROKER-DEALERS
Section 13(d) and Section 13(g), 2:17

BURDEN OF PROOF
Section 13(d) and Section 13(g), 2:114

BUSINESS DAYS
Section 14(e), 5:28

CALCULATIONS
Section 13(d) and Section 13(g), 2:84
Section 13(d)(1) and Section 13(g)(1), 2:33
Section 14(e), 4:85

CAPACITY TO SUE
Section 13(d) and Section 13(g), 2:110
Section 14(d), 4:116
Section 14(e), 5:24

CAPITALIZATION
Section 13(d) and Section 13(g), 2:52

CARE, STANDARD OF
Section 14(e), 5:19

CAUSATION
Section 13(d) and Section 13(g), 2:97
Section 14(e), 5:21

CAUSE OF ACTION
Section 13(d) and Section 13(g) (this index)
Section 14(e) (this index)

CERTIFICATION
Section 13(d) and Section 13(g), 2:79

CHANGE OR MODIFICATION
Section 13(d) and Section 13(g), 2:51 to 2:54, 2:64
Section 14(d), 4:50, 4:63.60
Section 14(e), 5:29

CHARTER
Section 13(d) and Section 13(g), 2:54

CLASS
Section 13(d) and Section 13(g), 2:74, 2:88, 2:89
Section 13(d)(1) and Section 13(g)(1), 2:31
Section 14(d), 4:56
Section 14(e), 5:24

CLASS ACTIONS
Section 14(d), 4:120

CLOSED-END REGISTERED INVESTMENT COMPANIES
Section 14(e), 5:46

COMMENCEMENT OF TENDER OFFER
Section 14(d), 4:61, 4:123

COMMUNICATIONS
Section 14(d), 4:51
Section 14(e), 5:48

COMPENSATION
Section 14(d), 4:77, 4:101

COMPLAINTS
Section 13(d) and Section 13(g), 2:113
Section 14(d), 4:119

CONDITIONS
Section 14(d), 4:63.15, 4:63.45, 4:63.60

CONFLICTS IN CLASS ACTIONS
Section 14(d), 4:120

CONFLICTS OF INTEREST
Section 14(d), 4:99

CONSIDERATION
Section 14(d), 4:135

CONSTRUCTION AND INTERPRETATION
Section 13(d) and Section 13(g), 2:6
Section 14(d), 4:20
Section 14(e), 5:10

CONTACTS
Section 14(d), 4:73, 4:99

CONTINGENCY
Section 14(d), definition of tender offer, 4:31

CONTRACTS AND AGREEMENTS
Section 13(d) and Section 13(g), 2:59
Section 14(d), 4:63.15, 4:63.30, 4:73, 4:99

CONTROL PURPOSE
Section 13(d) and Section 13(g), 2:64, 2:122
CONTROL TRANSACTIONS
Section 14(d), 4:9
Section 14(e), 5:6

CONVERSION
Section 13(d) and Section 13(g), 2:122 to 2:125

CONVERSION PRICE
Section 14(d), 4:50

COOLING-OFF PERIOD
Section 13(d) and Section 13(g), 2:122, 2:123

CORPORATION
Section 13(d) and Section 13(g), 2:53

COURT-APPROVED SETTLEMENT
Section 14(d), 4:53

COURT-CREATED TESTS FOR A TENDER OFFER
Section 14(d) (this index)

COVER PAGE
Section 13(d) and Section 13(g), 2:69
Section 13(d)(1) and Section 13(g)(1), 2:41
Section 14(d), 4:68, 4:96

CURING
Section 13(d) and Section 13(g), 2:102
Section 14(e), 5:23

DAMAGES
Section 13(d) and Section 13(g), 2:106
Section 14(d), 4:114
Section 14(e), 5:50

DEFENDANTS
Section 13(d) and Section 13(g), disclosure of plans and proposals, 2:89
Section 14(e), 5:24

DEFENSES
Section 13(d) and Section 13(g), 2:101 to 2:104
Section 14(d), 4:17, 4:113
Section 14(e), 5:49

DEFENSIVE TACTICS
Section 14(e), 5:51

DEFINITIONS
Beneficial ownership, 2:136
Bidder, 4:60
Blocker, 2:16
Class, 2:31, 4:56
Equity security, 2:126
Fact, 2:93
Material, 5:18
Section 13(e) (this index)
Section 14(d), 4:122
Tender offer
   Section 14(d) (this index)
   Section 14(e), 5:12

DELAY
Section 14(d), 4:16
Section 14(e), 5:29

DETERMINATION OF BENEFICIAL OWNERSHIP
Section 13(d) and Section 13(g) (this index)

DIRECT COMMUNICATION
Section 14(d), 4:51

DIRECTORS AND BOARD OF DIRECTORS
Section 14(d), 4:52
Section 14(f) (this index)

DISCLAIMER
Section 13(d) and Section 13(g), 2:20, 2:140

DISCLOSURE
Generally, 1:1
Section 13(d) and Section 13(g) (this index)
Section 13(e), 3:11
Section 14(d) (this index)
Section 14(e), 5:23
Swap (this index)

DISGORGEMENT
Section 13(d) and Section 13(g), 2:108

DISSEMINATION OF INFORMATION
Section 13(d)(1) and Section 13(g)(1), dissemination of Schedule 13D, 2:39
Section 13(e), 3:12
Section 14(d) (this index)

DISSOLUTION
Section 13(d) and Section 13(g), 2:78
Section 13(d)(1) and Section 13(g)(1), 2:24

DIVIDENDS
Section 13(d) and Section 13(g), 2:52

EDGAR
Section 13(d) and Section 13(g), 2:134

ELECTION
Section 14(f) (this index)

EMPLOYMENT
Section 14(d), 4:77, 4:101

ENFORCEMENT ACTIONS
Section 13(d) and Section 13(g), 2:108

EQUITY SECURITY
Section 13(d) and Section 13(g), 2:126
Section 13(d)(1) and Section 13(g)(1), 2:31
Section 14(d), 4:56

EQUITY SWAP
Cash-settled total-return equity swap, description of, 2:12
EVIASION OF REPORTING
Section 13(d) and Section 13(g), 2:13, 2:137

EVIDENCE
Section 13(d) and Section 13(g), 2:114
Section 13(d)(1) and Section 13(g)(1), 2:27

EXCEPTIONS, EXCLUSIONS, AND EXEMPTIONS
Section 13(d) and Section 13(g), 2:8, 2:86, 2:142
Section 13(e), 3:13
Section 14(d) (this index)
Section 14(e), tender offer elements, 5:11

EXCHANGE OFFERS
Section 14(d), 4:54
Section 14(e), concealment or misrepresentation by exchange offeror, 5:14.30, 5:14.60

EXCLUSIONS
Exceptions, Exclusions, and Exemptions (this index)

EXEMPT INVESTORS
Section 13(d) and Section 13(g), 2:121

EXEMPTIONS
Exceptions, Exclusions, and Exemptions (this index)

EXHIBITS
Section 13(d), 2:60
Section 14(d), 4:80, 4:105

EXTENSIONS
Section 14(e), 5:31

EXTRAORDINARY TRANSACTIONS
Section 13(d) and Section 13(g), 2:49

FACT
Section 13(d) and Section 13(g), 2:93

FAIRNESS OF TRANSACTIONS
Section 13(e), 3:16

FILING
Records and Recording (this index)

FINANCIAL STATEMENTS
Section 14(d), 4:78

FIRM TERMS
Section 14(d), 4:30

5 PERCENT
Section 13(d) and Section 13(g), 2:74, 2:75
Section 13(d)(1) and Section 13(g)(1), 2:33
Section 14(d), 4:59, 4:85

FIXED MAXIMUM NUMBER
Section 14(d), definition of tender offer, 4:31

FIXED NUMBER OF SHARES
Section 14(d), definition of tender offer, 4:31

FORMATION OF GROUP
Section 13(d)(1) and Section 13(g)(1) (this index)

FREE CHOICE
Section 14(d), 4:13

FRIENDLY TENDER OFFER
Section 14(d), 4:6, 4:8

GOING-PRIVATE TRANSACTIONS
Section 13(e) (this index)

GROUPS
Generally, 2:21
Acquisition of shares by group members, 2:29
Applicable statutes and rules, 2:22
Content of a group Schedule 13D or Schedule 13G, 2:30
Fact patterns related to group formation generally, 2:25
advisee and advisor, 2:25
agreement not to tender, 2:25
allocation of purchased securities among accounts, 2:25
buying through common agent, 2:25
common control, 2:25
employees being required to agree to vote against a merger, 2:25
entering into a shareholders agreement in the future, 2:25
joint tender offerors, 2:25
lender-borrower relationship, 2:25
limited partners, 2:25
lock-up agreement, 2:25
major shareholders retaining an advisor to oppose a rights offering, 2:25
nominating a director, 2:25
parallel investments by institutional investors, 2:25
registration rights agreement, 2:25
spouse, 2:25
state law/substance over form, 2:25
stockholders agreeing to vote for merger, 2:25
stockholders of disappearing merger partner, 2:25
swap, 2:25
Formation of group, miscellaneous issues generally, 2:28
advisors, 2:28
convertible nonvoting securities, 2:28
date of reported formation, 2:28
disavowal of group in a meeting, 2:28
disclaimers do not control, 2:28
disclosure absent a group, 2:28
entering into a shareholders agreement in the future, 2:28
fact patterns related to group formation, above investment advisor, 2:28
issuer not a group member, 2:28
GROUPS—Cont’d
Formation of group, miscellaneous issues—Cont’d
ownership of 5% or less, 2:28
person owning no securities, 2:28
pleading group formation, 2:28
promoted by issuer, 2:28
real-world risks of being a group member, 2:28
timing for group member to file a Schedule 13D
or Schedule 13G, 2:28
when must a group member file a Schedule 13D
or Schedule 13G?, 2:28
“For the purpose of acquiring, holding, voting or
disposing of equity securities of an issuer,” 2:26
Proof of group formation, 2:27
Specific fact patterns related to group formation.
Fact patterns, above
Statutes and rules, applicable, 2:22
Time and timing
dissolution of group, 2:24
formation of group, 2:23
When. Time and timing, above

HARM
Section 14(e), 5:22

HISTORY
Administrative History (this index)
Legislative History (this index)

HOSTILE TENDER OFFER
Section 14(d), 4:7

HOSTILE TENDER OFFER THAT BECOMES FRIENDLY
Section 14(d), 4:8

IDENTITY
Section 13(d) and Section 13(g), 2:76, 2:77
Section 13(d)(1) and Section 13(g)(1), 2:43
Section 14(d), 4:71, 4:98

IN CONNECTION WITH
Section 14(e), 5:25, 5:48

INJUNCTIONS
Section 13(d) and Section 13(g), 2:107, 2:108
Section 14(d), 4:114
Section 14(e), 5:50

INSTITUTIONAL INVESTORS
Section 13(d) and Section 13(g), 2:119, 2:124, 2:132

INSTRUCTIONS
Section 13(d) and Section 13(g), 2:61, 2:80
Section 14(d), 4:106

INTEREST IN SECURITIES
Section 13(d) and Section 13(g), 2:58
Section 14(d), 4:76, 4:102

ISSUER
Defined, 2:48

JOINT SCHEDULES
Section 13(d) and Section 13(g), 2:128

JURISDICTION
Section 13(d) and Section 13(g), 2:111
Section 14(d), 4:117

JURISDICTIONAL MEANS
Section 13(d) and Section 13(g), 2:100
Section 14(d), 4:55
Section 14(e), 5:15

JURY TRIAL RIGHT
Section 13(d) and Section 13(g), 2:115

LEGISLATIVE HISTORY
Section 13(d) and Section 13(g), 2:5
Section 14(d), 4:19
Section 14(e), 5:9
Section 14(f), 6:1

LETTER TO TARGET COMPANY’S DIRECTORS
Section 14(d), 4:52

LIMITATION OF ACTIONS
Section 13(d) and Section 13(g), 2:103
Section 14(3), 5:49
Section 14(d), 4:113

LIMITATIONS AND RESTRICTIONS
Section 14(d), 4:32

LISTING AND DELISTING
Section 14(d), 4:64, 4:126

LISTS AND LISTING
Delisting. Listing and Delisting (this index)
Section 14(e), list of facts plaintiffs have claimed
are material, 5:14.20

MAJORITY
Section 14(f) (this index)

MANAGERS AND MANAGEMENT
Section 13(d) and Section 13(g), 2:51
Section 14(e), concealments or misrepresentation by
management of target company, 5:14.40, 5:14.70

MARKET PRICE
Section 14(d), 4:29

MATERIAL FACT
Section 14(e) (this index)

MATERIALITY
Section 14(d), 4:63
Section 14(e) (this index)

MEETINGS
Section 14(f) (this index)
MEMBERS
Section 13(d) and Section 13(g), 2:77
Section 13(d)(1) and Section 13(g)(1), 2:29

MERGERS
Section 13(d) and Section 13(g), 2:49
Section 14(d), 4:44

MINI-PROXY STATEMENT
Section 14(f) (this index)

MISLEADING STATEMENTS
Section 13(d) and Section 13(g), 2:91

MISREPRESENTATION
Section 14(e) (this index)

MODIFICATION
Change or Modification (this index)

MOOTNESS
Section 13(d) and Section 13(g), 2:102

NEGOTIABLE TERMS
Section 14(d), 4:30

NEGOTIATIONS
Section 13(e), 3:17
Section 14(d), 4:42, 4:73, 4:99, 4:103

NOTICE AND KNOWLEDGE
Section 13(d) and Section 13(g), 2:78, 2:96
Section 14(d), 4:34, 4:37
Section 14(e), 5:31

OMISSIONS
Section 14(e) (this index)

OPEN-MARKET PURCHASES
Section 14(d), 4:40, 4:42

OPINIONS
Section 13(e), 3:17

ORDINARY COURSE OF BUSINESS
Section 13(d) and Section 13(g), 2:64

OUTSTANDING SHARES
Section 13(d) and Section 13(g), 2:127

OWN STOCK, PURCHASING OF
Section 13(e) (this index)

PARENT HOLDING COMPANY
Section 13(d) and Section 13(g), 2:76

PARTIAL TENDER OFFER
Section 14(e), 5:44

PASSIVE INVESTORS
Section 13(d) and Section 13(g), 2:120, 2:123, 2:133

PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS, AND AGREEMENTS
Section 14(d), 4:99

PAYMENT
Section 14(e), 5:30

PERCENTAGES
Five Percent (this index)
Section 13(d) and Section 13(g), 2:84

PERSONS/ASSETS
Section 14(d), 4:77

PLAINTIFFS
Section 13(d) and Section 13(g), 2:88, 2:96
Section 14(d), 4:112
Section 14(e), 5:26

PLEDGES
Section 13(d) and Section 13(g), 2:18

POISON PILLS
Section 14(d), 4:47

PREMIUM OVER MARKET PRICE
Section 14(d), 4:29

PRESSURE TO SELL
Section 14(d), 4:33

PRICE
Section 14(d) (this index)

PRIVATELY NEGOTIATED PURCHASES
Section 14(d), 4:41, 4:42

PRIVATE RIGHT OF ACTION
Section 13(d) and Section 13(g), 2:88
Section 13(e), 3:18
Section 14(d), 4:112
Section 14(e), 5:24
Section 14(f), 6:1

PRIVATE TRANSACTIONS
Section 13(e) (this index)

PRIVACY
Section 13(d) and Section 13(g), 2:98

PRO RATA PURCHASES
Section 14(d), 4:109

PRO RATA REQUIREMENTS
Section 14(d), 4:129

PROXY STATEMENT
Section 14(f) (this index)

PUBLIC ANNOUNCEMENT
Section 14(d), 4:37

PUBLIC SHAREHOLDERS
Section 14(d), definition of tender offer, 4:27

PURCHASING PROGRAM
Section 14(d), definition of tender offer, 4:34
INDEX

QUALIFIED INSTITUTIONAL INVESTORS
Section 13(d) and Section 13(g), 2:119, 2:124, 2:132

RAPID ACCUMULATION
Section 14(d), definition of tender offer, 4:34

RAPID ACCUMULATION TEST
Section 14(d), 4:37

RECAPITALIZATIONS
Section 14(d), 4:45

RECOMMENDATIONS
Section 14(d), 4:130
Section 14(d) (this index)

RECORDS AND RECORDING
Section 13(d) and Section 13(g) (this index)
Section 13(e), 3:10
Section 14(d) (this index)

REDEMPTION OF SECURITIES
Section 14(d), 4:46

REGISTRATION
Section 13(d) and Section 13(g), 2:56
Section 13(d)(1) and Section 13(g)(1), 2:32
Section 14(d), 4:57
Section 14(e), 5:46

REGULATION 13 D-G
Rules under Williams Act, App B

REGULATION 14D
Rules under Williams Act, App B
Section 14(d), 4:122

REGULATION 14E
Rules under Williams Act, App B
Section 14(d), 4:122

REGULATION M-A
Section 13(d)(1) and Section 13(g)(1), 2:43, 2:44
Section 13(e), 3:15 to 3:17
Section 14(d) (this index)

RELIANCE
Section 13(d) and Section 13(g), 2:95, 2:127
Section 14(e), 5:20

REPORTS AND REPORTING
Section 13(d) and Section 13(g) (this index)
Section 13(e), 3:17

REPURCHASE
Section 14(d), 4:48
Section 14(e), 5:46

RETAINER
Section 14(d), 4:77, 4:101

RIGHT TO JURY TRIAL
Section 13(d) and Section 13(g), 2:115

ROLL-UPS
Section 14(e), 5:47

RULE 10b-5
Section 14(e), 5:13

RULE 13d-1(a)
Section 13(d)(1) and Section 13(g)(1), 2:36 to 2:38

RULE 13d-1(i)
Section 13(d)(1) and Section 13(g)(1), 2:31

RULE 13d-1(j)
Section 13(d) and Section 13(g), 2:84

RULE 13d-1(k)
Section 13(d)(1) and Section 13(g)(1), 2:38

RULE 13d-2
Section 13(d) and Section 13(g), 2:82

RULE 13d-3(d)(1)(i)
Section 13(d) and Section 13(g), 2:84

RULE 13d-5
Section 13(d) and Section 13(g), 2:10

RULE 13d-6
Section 13(d) and Section 13(g), 2:86

RULE 13d-7
Section 13(d)(1) and Section 13(g)(1), 2:38

RULE 13e-3
Section 13(e), 3:7

SCHEDULE 13D
Section 13(d) and Section 13(g) (this index)

SCHEDULE 13G
Section 13(d) and Section 13(g) (this index)

SCHEDULE 14D-1
Section 13(d) and Section 13(g) (this index)

SCHEDULE TO
Form, App C
Section 13(d) and Section 13(g), 2:43 to 2:59
Section 14(d) (this index)
Section 14(e), Item 11 provisions, 5:14.10

SCIENTER
Section 13(d) and Section 13(g), 2:94
Section 14(e), 5:19

SEC ENFORCEMENT ACTIONS
Section 13(d) and Section 13(g), 2:108

SEC EXEMPTION
Section 14(d), 4:137

SECTION 12
Cause of action, 2:99
Issuers, 3:8
Registration, 2:32, 4:57

Index-7
SECTION 13(d) AND SECTION 13(g)
Generally, 2:1 et seq., App A
Acquire, right to, Rule 13d-3(d)(1), 2:16
Administrative history, 2:63
Affirmative defenses, 2:101 to 2:104
Aggregation, 2:14, 2:138
Amendments
disclosure of plans and proposals, 2:62, 2:81, 2:82
filing of
generally, 2:129 to 2:134, App B
EDGAR, 2:134
passive investors, 2:133
qualified institutional investors, 2:132
Rule 13d-2, generally, 2:129 to 2:134
Rule 13d-2(a), amendments to Schedule 13D, 2:130
Rule 13d-2(b), amendments to Schedule 13G, 2:131
Rule 13d-2(c), amendments to Schedule 13G by qualified institutional investors, 2:132
Rule 13d-2(d), amendments to Schedule 13G by passive investors, 2:133
Rule 13d-2(e), EDGAR, 2:134
Arrangements, 2:59
Assets, 2:50
Blocker
Rule 13d-3(b), reporting, 2:13
Rule 13d-3(d)(1), 2:16
Rule 13d-3(d)(1)(i), 2:84
Broker-dealers, Rule 13d-3(d)(2), 2:17
Burden of proof, 2:114
Calculation of percentages, Section 13(d)(4), Rule 13d-1(j), and Rule 13d-3(d)(1)(i), 2:84
Capacity to sue, 2:110
Capitalization, 2:52
Caution, 2:97
Cause of action
generally, 2:90 to 2:100
causation, 2:97
definition of fact, 2:93
disclosure of plans and proposals, 2:87 to 2:89
jurisdictional means, 2:100
materiality, 2:92
misleading statements, 2:91
plaintiff’s knowledge, 2:96
privity, 2:98
reliance, 2:95
scienter, 2:94
Section 12 security, 2:99
Certification, 2:79
Change between Schedule 13D and 13G, 2:64
Change or modification, 2:51 to 2:54
Charter, 2:54
Class, ownership with five percent or less of, 2:74
Classification, 2:76, 2:77
SECTION 13(d) AND SECTION 13(g)—Cont’d
Class of defendants, 2:89
Class of plaintiffs, 2:88
Class of protected persons, 2:7
Comparison to other provisions, 2:2
Complaints, 2:113
Construction and interpretation, 2:6
Contracts and agreements, 2:59
Control, changing, 2:64, 2:112
Control, effect, 2:64, 2:112
Control, influencing, 2:64, 2:112
Control purpose, 2:64, 2:122
Conversion, 2:122 to 2:125
Cooling-off period, 2:122, 2:123
Corporation, 2:53
Cover page, 2:69
Curing, 2:102
Damages, 2:106
Defendants, 2:89
Defenses, 2:101 to 2:104
Definitions
beneficial ownership, 2:136
equity security, 2:126
fact, 2:93
Delisting, Item 4(h) of Schedule 13D, and Item 5(f) of Schedule 14D-1, and Item 6 of Schedule TO (Regulation M-A, Item 1006(c)(6)), 2:55
Determination of beneficial ownership
generally, 2:135 to 2:139, App B
aggregation, 2:138
definition of beneficial ownership, 2:136
evasion, 2:137
reporting, 2:137
Rule 13d-3, generally, 2:135 to 2:139
Rule 13d-3(a), definition of beneficial ownership, 2:136
Rule 13d-3(b), evasion of beneficial ownership, 2:137
Rule 13d-3(c), aggregation of beneficially owned securities, 2:138
Rule 13d-3(d), persons deemed to be beneficial owners, 2:139
Director of issuer representing a Schedule 13D filer, 2:47
Disclaimer, 2:20, 2:140
Disclosure and curing, 2:102
Disclosure of plans and proposals
generally, 2:47 to 2:89
acquisitions or dispositions of issuer securities, 2:48
amendments, 2:62
assets, sales of, 2:50
business or corporate structure, change of, 2:53
calculation of percentages, 2:84
capitalization or dividend policy, change of, 2:52
cause of action, 2:87 to 2:89
charter, changes in, 2:54
SECTION 13(d) AND SECTION 13(g)—Cont’d
Enforcement actions, 2:108
Equity security, 2:126
Evasion of reporting, 2:13, 2:137
Evidence, 2:114
Exclusions and exemptions, 2:8, 2:86, 2:121, 2:142
Extraordinary transactions, 2:49
Fact defined, 2:93
Filer, Rule 13d-1(b), Rule 13d-1(c), and Rule 13d-1(d), 2:64
Filing
amendments, above
disclosure of plans and proposals, 2:60, 2:64 to 2:66, 2:71
Schedule 13D and Schedule 13G
generally, 2:117 to 2:128, App B
amendments, above
change between Schedule 13D and 13G, 2:64
control purpose, 2:122
conversion, 2:122 to 2:125
cooling-off period, 2:122, 2:123
definition of equity security, 2:126
equity security, definition of, 2:126
exempt investors, 2:121
forms, App C
joint schedules, 2:128
outstanding shares, 2:127
passive investors, 2:120, 2:123
qualified institutional investor, 2:119, 2:124
reports and reporting, 2:125, 2:127
Rule 13d-1(a), filing of Schedule 13D, 2:118
Rule 13d-1(b), Schedule 13G for qualified institutional investors, 2:119
Rule 13d-1(c), Schedule 13G for passive investors, 2:120
Rule 13d-1(d), exempt investors to file Schedule 13G, 2:121
Rule 13d-1(e), converting schedules upon obtaining control purpose and related cooling-off period, 2:122
Rule 13d-1(f), passive investor converting schedules upon reaching 20 percent and related cooling-off period, 2:123
Rule 13d-1(g), converting Schedule 13G to Schedule 13D upon ceasing to be qualified institutional investor, 2:124
Rule 13d-1(h), reporting on Schedule 13G after converting to Schedule 13D, 2:125
Rule 13d-1(i), definition of equity security, 2:126
Rule 13d-1(j), reliance on issuer reports regarding number of outstanding shares, 2:127
Rule 13d-1(k), joint Schedule 13D or Schedule 13G, 2:128
Rule 13d-2. Amendments, above
Five percent, 2:74, 2:75

SECTION 13(d) AND SECTION 13(g)—Cont’d
Formation of group. Section 13(d)(1) and Section 13(g)(1), below
Groups. Groups (this index)
History, 2:63
Identification and classification, 2:76, 2:77
Influencing management, 2:64
Injunctions, 2:107, 2:108
Institutional investor, 2:124
Instructions, 2:61, 2:80
Interaction with other remedies, 2:4
Interest in securities of issuer, 2:58
Joint schedules, 2:128
Jurisdiction, 2:111
Jurisdictional means, 2:100
Jury trial right, 2:115
Legislative history, 2:5
Limitation of actions, 2:103
Listing, 2:55
Management, 2:51
Materiality, 2:92
Material to be filed as exhibits, Schedule 13D, item 7, 2:60
Members, 2:77
Mergers, 2:49
Misleading statements, 2:91
Mootness, 2:102
Notice and knowledge, 2:78, 2:96
Ordinary course of business, 2:64
Outstanding shares, 2:127
Overview, 2:1
Parent holding company, 2:76
Passive investors, 2:120, 2:123, 2:133
Percentages, 2:84
Plaintiffs, 2:88, 2:96
Pledges, Rule 13d-3(d)(3), 2:18
Policies, 2:3
Practice and procedure, generally, 2:109 to 2:115
Private right of action and class of plaintiffs, existence of, 2:88
Privy, 2:98
Procedure and practice, generally, 2:109 to 2:115
Protected persons, class of, 2:7
Purposes, 2:3, 2:45, 2:46
Qualified institutional investors, 2:119, 2:124, 2:132
Records and recording. Filing, above
Registration, 2:56
Regulation M-A
Item 1005, 2:59
Item 1006(c)(1), 2:49
Item 1006(c)(2), 2:50
Item 1006(c)(3), 2:52
Item 1006(c)(4), 2:51
Item 1006(c)(5), 2:53
Item 1006(c)(6), 2:55
Item 1006(c)(7), 2:56

Index-10
SECTION 13(d) AND SECTION 13(g)—Cont’d
Regulation M-A—Cont’d
Item 1008, 2:58
Reliance, 2:95, 2:127
Remedies, 2:4, 2:105 to 2:108
Reports and reporting
determination of beneficial ownership, 2:137
disclosure of plans and proposals, 2:76
Rule 13d-3 and Rule 13d-4, beneficial ownership, 2:13
Schedule 13D and Schedule 13G, filing of, 2:125, 2:127
Right to jury trial, 2:115
Rule 13d-3(b), 2:64 to 2:66
Rule 13d-1(c), 2:64 to 2:66
Rule 13d-1(d), 2:64 to 2:66
Rule 13d-1(e), 2:65, 2:66
Rule 13d-1(f), 2:65, 2:66
Rule 13d-1(g), 2:65, 2:66
Rule 13d-1(h), 2:65, 2:66
Rule 13d-1(j), 2:84
Rule 13d-2
generally, 2:82
amendments, above
Rule 13d-2(a), 2:62
Rule 13d-2(b), 2:81
Rule 13d-2(c), 2:81
Rule 13d-2(d), 2:81
Rule 13d-3(a), 2:12
Rule 13d-3 and Rule 13d-4, beneficial ownership
generally, 2:11 to 2:14, App B
aggregation of holdings, Rule 13d-3(c), 2:14
blocker, 2:13
determination of beneficial ownership, above
disclaimer of beneficial ownership, 2:20, 2:140
evading reporting, Rule 13d-3(b), 2:13
Rule 13d-3(a), 2:12
Rule 13d-3(b), 2:13
Rule 13d-3(c), 2:14
Rule 13d-3(d), 2:20
swap, 2:12
voting and investment power, Rule 13d-3(a), 2:12
Rule 13d-3(b), 2:13
Rule 13d-3(c), 2:14
Rule 13d-3(d)
generally, 2:15 to 2:20
acquire, right to, Rule 13d-3(d)(1), 2:16
blocker, 2:16
broker-dealers, Rule 13d-3(d)(2), 2:17
disclaimer of beneficial ownership, Rule 13d-4, 2:20
pledges, Rule 13d-3(d)(3), 2:18
Rule 13d-3(d)(1), 2:16
Rule 13d-3(d)(2), 2:17
Rule 13d-3(d)(3), 2:18
Rule 13d-3(d)(4), 2:19

SECTION 13(d) AND SECTION 13(g)—Cont’d
Rule 13d-3(d)—Cont’d
Rule 13d-4, 2:20
underwriters, Rule 13d-3(d)(4), 2:19
Rule 13d-3(d)(1), 2:16
Rule 13d-3(d)(1)(i), 2:84
Rule 13d-3(d)(2), 2:17
Rule 13d-3(d)(3), 2:18
Rule 13d-3(d)(4), 2:19
Rule 13d-4. Rule 13d-3 and Rule 13d-4, beneficial ownership, above
Rule 13d-5, 2:10, 2:141
Rule 13d-6, 2:86, 2:142
Rule 13d-7, 2:66, 2:143
Rule 13d-1. Filing of Schedule 13D and Schedule 13G, above
Rules under Section 13(d), generally, 2:116 to 2:142, App B
Schedule 13D, Item 4, 2:45, 2:46
Schedule 13D, Item 4(a), 2:48
Schedule 13D, Item 4(b), 2:49
Schedule 13D, Item 4(c), 2:50
Schedule 13D, Item 4(d), 2:51
Schedule 13D, Item 4(e), 2:52
Schedule 13D, Item 4(f), 2:53
Schedule 13D, Item 4(g), 2:54
Schedule 13D, Item 4(h), 2:55
Schedule 13D, Item 4(i), 2:56
Schedule 13D, Item 4(j), 2:57
Schedule 13D, Item 5, 2:58
Schedule 13D, Item 6, 2:59
Schedule 13D, Item 7, 2:60
Schedule 13G. Disclosure of plans and proposals, above
Schedule 14D-1, Item 5, 2:45, 2:46
Schedule 14D-1, Item 5(a), 2:49
Schedule 14D-1, Item 5(b), 2:50
Schedule 14D-1, Item 5(c), 2:51
Schedule 14D-1, Item 5(d), 2:52
Schedule 14D-1, Item 5(e), 2:53
Schedule 14D-1, Item 5(f), 2:55
Schedule 14D-1, Item 5(g), 2:56
Schedule 14D-1, Item 6, 2:58
Schedule 14D-1, Item 7, 2:59
Schedule TO, generally, App C
Schedule TO, Item 5, 2:59
Schedule TO, Item 6
Schedule TO, Item 7
Schedule TO, Item 8

Index
Index-11

1. Disclosure of plans and proposals
   a. change of business or corporate structure, 2:53
   b. change of capitalization or dividend policy, 2:52
   c. change of management, 2:51
   d. delisting, 2:55
   e. mergers and other extraordinary transactions, 2:49
   f. sales of assets, 2:50
SECTION 13(d) AND SECTION 13(g)—Cont’d

Schedule TO, Item 6—Cont’d
disclosure of plans and proposals—Cont’d
termination of registration, 2:56
purpose of transaction, 2:45, 2:46
Schedule TO, Item 8, 2:58
Scienter, 2:94
SEC enforcement actions, 2:108
Section 12 security, 2:99
Section 13(d)(1) and Section 13(g)(1) generally, 2:9 to 2:89
acquisition of securities, Rule 13d-5, 2:10
administrative history, 2:35
calculation of 5 percent and other percentages, 2:33
class defined, 2:31
calculation of 5 percent and other percentages, 2:33
class defined, 2:31
definition of group, Section 13(d)(3), Rule 13d-1(k), and Rule 13d-5(b) generally, 2:21 to 2:30
content of group Schedule 13D or Schedule 13G, 2:30
dissolution of group, 2:24
evidence, 2:27
formation of group generally, 2:23
evidence of, 2:27
fact patterns of, 2:25
miscellaneous issues, 2:28
members, acquisition of shared by, 2:29
for the purpose of acquiring, holding, voting, or disposing of equity securities of an issuer, 2:26
rules applicable, 2:22
Schedule 13D
content of group Schedule 13D or Schedule 13G, 2:30
Schedule 13G, content of group Schedule 13D or Schedule 13G, 2:30
statutes applicable, 2:22
voting, 2:26
disclosure in Schedule 13D
cover page, 2:41
identity and background, Item 2 of Schedule 13D, and Item 2 of Schedule 14D-1, and Item 3 of Schedule TO, (Regulation M-A, Item 1003), 2:43
Item 1, security and issuer, 2:42
Regulation M-A, Item 1003, 2:43
Regulation M-A, Item 1007, 2:44
Schedule 13D, Item 2, 2:43
Schedule 13D, Item 3, 2:44
Schedule 14D-1, 2:43, 2:44
Schedule 14D-1, Item 2, 2:43
Schedule 14D-1, Item 4, 2:44

SECTION 13(d) AND SECTION 13(g)—Cont’d
Section 13(d)(1) and Section 13(g)(1)—Cont’d
disclosure in Schedule 13D—Cont’d
Schedule TO, Item 3, 2:43
Schedule TO, Item 7, 2:44
security and issuer, Item 1, 2:42
dissemination of Schedule 13D, 2:39
dissolution of group, 2:24
equity security (including definition of class), Rule 13d-1(i), 2:31
evidence, 2:27
filing mechanics, Section 13(d)(1), Rule 13d-1(a), Rule 13d-1(k), and Rule 13d-7, 2:38
filings required, 2:34
5 percent, 2:33
5 percent of registered equity security calculation of 5 percent and other percentages, 2:33
class defined, 2:31
definition of class, 2:31
equity security (including definition of class), Rule 13d-1(i), 2:31
5 percent, 2:33
percentages, 2:33
registered under Section 12, 2:32
Rule 13d-1(i), 2:31
Section 12, 2:32
formation of group. Definition of group, Section 13(d)(3), Rule 13d-1(k), and Rule 13d-5(b), above
group defined. Definition of group, Section 13(d)(3), Rule 13d-1(k), and Rule 13d-5(b), above
history, 2:35
identity and background, Item 2 of Schedule 13D, and Item 2 of Schedule 14D-1, and Item 3 of Schedule TO, (Regulation M-A, Item 1003), 2:43
members, acquisition of shared by, 2:29
percentages, 2:33
for the purpose of acquiring, holding, voting, or disposing of equity securities of an issuer, 2:26
records and recording
filing mechanics, Section 13(d)(1), Rule 13d-1(a), Rule 13d-1(k), and Rule 13d-7, 2:38
filings required, 2:34
Schedule 13D filer, Section 13(d)(1) and Rule 13d-1(a), 2:36
triggering duty to file, Section 13(d)(1) and Rule 13d-1(a), 2:37
registered under Section 12, 2:32
Regulation M-A, Item 1003, 2:43
Regulation M-A, Item 1007, 2:44
Rule 13d-1(a), 2:36 to 2:38
Rule 13d-1(i), 2:31
SECTION 13(d) AND SECTION 13(g)—Cont’d
Section 13(d)(1) and Section 13(g)(1)—Cont’d
Rule 13d-1(k). Definition of group, Section 13(d)(3), Rule 13d-1(k), and Rule 13d-5(b), above
Rule 13d-3 and Rule 13d-4, beneficial ownership, below
Rule 13d-3(d), above
Rule 13d-5, acquisition of securities, 2:10
Rule 13d-5(b). Definition of group, Section 13(d)(3), Rule 13d-1(k), and Rule 13d-5(b), above
Rule 13d-7, 2:38
Schedule 13D
generally, 2:35 to 2:39
administrative history, 2:35
content of group, 2:30
dissemination of Schedule 13D, 2:39
filer, Section 13(d)(1) and Rule 13d-1(a), 2:36
filing mechanics, Section 13(d)(1), Rule 13d-1(a), Rule 13d-1(k), and Rule 13d-7, 2:38
history, 2:35
Item 2, 2:43
Item 3, 2:44
records and recording, 2:36 to 2:38
Rule 13d-1(a), 2:36 to 2:38
Rule 13d-1(k), 2:38
Rule 13d-7, 2:38
source and amount of funds or other consideration, Item 3 of Schedule 13D, and Item 4 of Schedule 14D-1, and Item 7 of Schedule TO (Regulation M-A, Item 1007), 2:44
triggering duty to file, Section 13(d)(1) and Rule 13d-1(a), 2:37
Schedule 13D, Item 2, 2:43
Schedule 13D, Item 3, 2:44
Schedule 13G, 2:30
Schedule 14D-1, 2:43, 2:44
Schedule 14D-1, Item 2, 2:43
Schedule 14D-1, Item 4, 2:44
Schedule TO, Item 3, 2:43
Schedule TO, Item 7, 2:44
Section 12, 2:32
Section 13(d)(1), 2:36
Section 13(d)(3). Definition of group, Section 13(d)(3), Rule 13d-1(k), and Rule 13d-5(b), above
security and issuer, Item 1, 2:42
source and amount of funds or other consideration, Item 3 of Schedule 13D, and Item 4 of Schedule 14D-1, and Item 7 of Schedule TO (Regulation M-A, Item 1007), 2:44

SECTION 13(d) AND SECTION 13(g)—Cont’d
Section 13(d)(1) and Section 13(g)(1)—Cont’d
triggering duty to file, Section 13(d)(1) and Rule 13d-1(a), 2:37
voting, 2:26
Section 13(d)(2), 2:82
Section 13(d)(3) and Section 13(g)(3), group, 2:83
Section 13(d)(4), 2:84
Section 13(d)(5), 2:85
Section 13(d)(6), 2:86
Section 13(g)(3), 2:83
Section 13(g)(6), 2:86
Section 14(d)(8), 2:86
Security, 2:99, 2:126
Similar actions, Schedule 13D, Item 4(j), 2:57
Simplified forms, Section 13(d)(5) and Section 13(g), 2:85
Standing to sue, 2:110
Status, Item 3, 2:72
Subject matter jurisdiction, 2:111
Subsidiary, 2:76
Swaps
beneficial ownership, 2:12
cash-settled total-return equity swap, description of, 2:12
disclosure in Schedule 13D
acquisition and disposition of securities, 2:48
contracts, 2:59
exhibits, 2:60
interest in securities, 2:58
purpose, 2:46
source of funds, 2:44
discussion references, 2:86.10
evading beneficial ownership, 2:13
group, long party and short party, 2:25
options not included, 2:16
Section 13(o), 2:5
Termination of registration, Item 4(i) of Schedule 13D, and Item 5(g) of Schedule 14D-1, and Item 6 of Schedule TO (Regulation M-A, Item 1006(c)(7)), 2:56
Third persons, 2:75
Time, 2:122, 2:123
Triggering duty to file, Rule 13d-1(b), Rule 13d-1(c), Rule 13d-1(d), Rule 13d-1(e), Rule 13d-1(f), Rule 13d-1(g), and Rule 13d-1(h), 2:65
Understandings, 2:59
Underwriters, Rule 13d-3(d)(4), 2:19
Venue, 2:112
Voting and investment power, Rule 13d-3(a), 2:12

SECTION 13(e)
Generally, 3:1 et seq., App A
Affiliate, 3:5
Appraisals, 3:17
Definitions. Rule 13e-3 and Schedule 13E-3, below
Disclosure, 3:11

Index-13
SECTION 13(e)—Cont’d
Dissemination of information, 3:12
Exceptions, 3:13
Fairness of transactions, 3:16
Issuers, 3:19
Material to be filed, 3:10
Negotiations, 3:17
Opinions, 3:17
Private right of action, 3:18
Purchase, 3:6
Records and recording, 3:10
Regulation M-A, Item 1013, 3:15
Regulation M-A, Item 1014, 3:16
Regulation M-A, Item 1015, 3:17
Reports, 3:17
Rule 13e-1, purchase of securities by issuer during third-party tender offer, 3:2
Rule 13e-3 and Schedule 13E-3 generally, 3:3 to 3:17
definitions. Rule 13e-3(a), definitions, below private right of action, 3:18
Rule 13e-3(a), definitions generally, 3:5 to 3:7
affiliate, 3:5
purchase, 3:6
Rule 13e-3(a)(1), definition of affiliate, 3:5
Rule 13e-3(a)(2), definition of purchase, 3:6
Rule 13e-3(a)(3), definition of Rule 13e-3 transactions, 3:7
Rule 13e-3 transactions, 3:7
Rule 13e-3(b), Section 12 issuers, 3:8
Rule 13e-3(c), Section 15(d) issuers, 3:9
Rule 13e-3(d), material required to be filed, 3:10
Rule 13e-3(e), disclosure of information to security holders, 3:11
Rule 13e-3(f), dissemination of information to security holders, 3:12
Rule 13e-3(g), exceptions, 3:13
Rule 13e-3, generally, 3:4, App B
Schedule 13E-3, generally, 3:14 to 3:17, App C
Schedule 13E-3, Item 7 and Regulation M-A, Item 1013, purposes, alternatives, reasons, and effects, 3:15
Schedule 13E-3, Item 8 and Regulation M-A, Item 1014, fairness of transaction, 3:16
Schedule 13E-3, Item 9 and Regulation M-A, Item 1015, reports, opinions, appraisals, and negotiations, 3:17
Rule 13e-4, tender offers by issuers, 3:19
Schedule 13E-3. Rule 13e-3 and Schedule 13E-3, above
Section 12 issuers, 3:8
Section 15(d) issuers, 3:9
Security holders, 3:11, 3:12
Third parties, 3:2

SECTION 13(g)
Section 13(d) and Section 13(g) of SEA (this index)

SECTION 14(d)
Generally, 4:1 et seq., App A
Added regulation, need for, 4:2
Additional conditions, 4:63.60
Additional information, 4:79, 4:104
Administrative history, 4:66, 4:87, 4:94, 4:122
Affirmative defenses, 4:113
All-holders rule
Rule 14d-10, below
Section 14(d)(7), all-holders and best-price rules, Rule 14d-10, 4:110
Amendments, 4:63.15, 4:63.60, 4:83, 4:107
Announcement, 4:37
Application of tests of what is a tender offer generally, 4:39 to 4:64
appraisal rights, 4:49
beneficial ownership, Section 14(d)(2) and Rule 14d-1(g)(1), 4:58
bidder defined, Rule 14d-1(g)(2), 4:60
court-approved settlement, 4:53
direct communication with stockholders, 4:51
equity security (including definition of class), 4:56
exchange offers, 4:54
five-percent calculation, 4:59
issuer repurchases, 4:48
jurisdictional means, 4:55
letter to target company’s directors, 4:52
mergers, 4:44
modification of warrants, stock options, and conversion price, 4:50
open-market purchases, 4:40
open-market purchases plus privately negotiated purchases, 4:42
recapitalizations, 4:45
redemption of securities, 4:46
registered under Section 12, 4:57
Rule 14d-2, commencement of tender offer, 4:61
Rule 14d-3, mechanics of filing, 4:62
Rule 14d-4, dissemination of tender offer materials, 4:63
Rule 14d-5, stockholder list, 4:64
special bids, 4:43
stockholders rights plans (poison pills), 4:47
Appraisal rights, 4:49
Assets, 4:77, 4:101
Beneficial ownership, Section 14(d)(2) and Rule 14d-1(g)(1), 4:58
Best-price rule
Rule 14d-10, below
Section 14(d)(7), 4:110
Bids and bidding, 4:43, 4:60
Blue-sky exemption, 4:136
INDEX

SECTION 14(d)—Cont’d
Calculations, 4:85
Capacity to sue, 4:116
Class, definition of, 4:56
Class actions, 4:120
Commencement of tender offer, 4:61, 4:123
Communication, 4:51
Comparison of tests, 4:38
Comparison to other provisions, 4:4
Compensation, 4:77, 4:101
Complaints, 4:119
Conditions, 4:63.15, 4:63.45, 4:63.60
Conflicts in class actions, 4:120
Conflicts of interest, 4:99
Consideration, 4:135
Construction and interpretation, 4:20
Contacts, 4:73, 4:99
Contracts and agreements, 4:63.15, 4:63.30, 4:73, 4:99
Control transactions, 4:9
Conversion price, 4:50
Court-approved settlement, 4:53
Court-created tests to determine existence of tender offer
generally, 4:24 to 4:38
application of tests, above
comparison of tests, 4:38
eight-factor test, generally, 4:25 to 4:35
Factor 1, active and widespread solicitation of public shareholders of issuer, 4:27
Factor 2, solicitation made for substantial percentage of issuer’s stock, 4:28
Factor 3, offer to purchase made at premium over market price, 4:29
Factor 4, terms of offer firm rather than negotiable, 4:30
Factor 5, offer contingent on tender of fixed number of shares, often subject to fixed maximum number to be purchased, 4:31
Factor 6, offer open only for limited period of time, 4:32
Factor 7, offeree subject to pressure to sell stock, 4:33
Factor 8, public announcements of purchasing program concerning target company precede or accompany rapid accumulation of large amounts of target company’s securities, 4:34
public announcement, 4:37
rapid accumulation test, 4:37
totality of circumstances, 4:36
weighing factors, 4:35
Cover page, 4:68, 4:96
Defenses, 4:17, 4:113
Definition of tender offer
generally, 4:22 to 4:85
application of tests, above
court-created tests to determine existence of tender offer, above
Definitions
bidder, 4:60
class, 4:56
Regulations 14D and 14E, 4:122
tender offer. Definition of tender offer, above
Delay as undesirable, 4:16
Direct communication with stockholders, 4:51
Directors, 4:52
Disclosure
generally, 4:65 to 4:85
amendments, 4:83
five percent, 4:85
group, 4:84
Regulation M-A. Schedule TO, below
Rule 14d-4(d)(1) amendment, 4:83
Rule 14d-6, disclosure of tender offer information to security holders, 4:127
Rule 14d-6(c) amendment, 4:83
Schedule TO
generally, 4:66 to 4:83, App C
additional information, 4:79
administrative history, 4:66
cover page, 4:68
exhibits, 4:80
financial statements, 4:78
general instructions, 4:82
identity and background of filing person, 4:71
information required by Schedule 13E-3, 4:81
interest in securities of target company, 4:76
Item 1 and Regulation M-A, Item 1001, summary term sheet, 4:69
Item 2 and Regulation M-A, Item 1002, target company information, 4:70
Item 3 and Regulation M-A, Item 1003, identity and background of filing person, 4:71
Item 4 and Regulation M-A, Item 1004, terms of transaction, 4:71
Item 5 and Regulation M-A, Item 1005, past contacts, transactions, negotiations, and agreements, 4:73
Item 6 and Regulation M-A, Item 1006, purposes of transaction and plans or proposals, 4:74
Item 7 and Regulation M-A, Item 1007, source and amount of funds or other considerations, 4:75
SECTION 14(d)—Cont’d
Disclosure—Cont’d
Schedule TO—Cont’d
Item 8 and Regulation M-A, Item 1008, interest in securities of target company, 4:76
Item 9 and Regulation M-A, Item 1009, persons/assets, retained, employed, compensated, or used, 4:77
Item 10 and Regulation M-A, Item 1010, financial statements, 4:78
Item 11 and Regulation M-A, Item 1011, and additional information, 4:79
Item 12 and Regulation M-A, Item 1012, exhibits, 4:80
past contacts, transactions, negotiations, and agreements, 4:73
persons/assets, retained, employed, compensated, or used, 4:77
purposes of transaction and plans or proposals, 4:74
Schedule 13E-3, 4:81
source and amount of funds or other considerations, 4:75
summary term sheet, 4:69
target company information, 4:70
terms of transaction, 4:72
Section 14(d)(2), group, 4:84
Section 14(d)(3), calculation of five percent, 4:85
Section 14(d)(4), recommendation to stockholders, 4:92
Section 14(e) and Rule 14d-6 disclosure of tender offer information to security holders, 4:65
Dissemination
certain tender offers, 4:126
offers, generally, 4:125
recommendation, 4:91
tender offer materials, 4:63
Employment, 4:77, 4:101
Equity security (including definition of class), 4:56
Evenhanded treatment of tender offerors and target companies, 4:15
Exceptions, exclusions, and exemptions generally, 4:21
Rule 14d-8, exemption from statutory pro rata requirements, 4:129
Rule 14d-10, 4:134, 4:136, 4:137
Section 14(d)(8), exemptions, 4:111
Exchange offers, 4:54
Exhibits, 4:80, 4:105
Financial statements, Schedule TO, Item 10 and Regulation M-A, Item 1010, 4:78
Firm terms, 4:30
Five percent, 4:59, 4:85
Free choice whether or not to tender, giving stockholders, 4:13
Friendly tender offer, 4:6, 4:8

SECTION 14(d)—Cont’d
Group, Section 14(d)(2), 4:84
History
administrative history, 4:66, 4:87, 4:94, 4:122
legislative history, 4:19
Hostile tender offer generally, 4:7
becomes friendly, 4:8
Identity and background of filing person, 4:71, 4:98
Information required by Schedule 13E-3, Schedule TO, Item 13, 4:81
Instructions, 4:106
Interaction with other remedies, 4:18
Interest in securities of target company, 4:76, 4:102
Jurisdiction, 4:117
Jurisdictional means, 4:55
Legislative history, 4:19
Letter to target company’s directors, 4:52
Limitations and restrictions, 4:32
Lists, 4:64, 4:126
Market price, 4:29
Materials, 4:63
Mergers, 4:44
Modification of warrants, stock options, and conversion price, 4:50
Modifying conditions, 4:63, 60
Negotiable terms, 4:30
Negotiations, 4:42, 4:73, 4:99, 4:103
Neither all good nor all bad, tender offers as, 4:14
Notice and knowledge, 4:37
Open-market purchases, 4:40
Open-market purchases plus privately negotiated purchases, 4:42
Overview, 4:3
Past contacts, transactions, negotiations, and agreements, 4:99
Persons/assets, retained, employed, compensated, or used, 4:77
Poison pills, 4:47
Policies, generally, 4:10 to 4:17
Practice, generally, 4:115 to 4:120
Premium over market price, 4:29
Pressure to sell, 4:33
Price
definition of tender offer, 4:29, 4:50
Rule 14d-10, below
Privately negotiated purchases, 4:41, 4:42
Private right of action, 4:112
Procedure, generally, 4:115 to 4:120
Pro rata purchases, 4:109
requirements, 4:129
Protect stockholders, 4:11
Provide information to stockholders, 4:12
Public announcement, 4:37
Purposes, generally, 4:10 to 4:17
Rapid accumulation test, 4:37
**SECTION 14(d)—Cont’d**
Recapitalizations, 4:45

Recommendations
- Rule 14d-9 recommendation or solicitation by target company and others, 4:130
- Section 14(d)(4), recommendation to stockholders, below

Records and recording
- identity and background of filing person, Schedule TO, Item 3 and Regulation M-A, Item 1003, 4:71
- Rule 14d-3, 4:62, 4:124
- Section 14(d)(4), 4:88 to 4:90, 4:98

Redemption of securities, 4:46
Registered under Section 12, 4:57
Regulation 14D, 4:122
Regulation 14e, 4:122
Regulation M-A
disclosure, above
- Section 14(d)(4), recommendation to stockholders, below
Regulation of target company defenses, 4:17
Remedies, 4:18, 4:114
Repurchases, 4:48
Retainer, 4:77, 4:101
Rule 14d-1, 4:122
Rule 14d-1(g)(1), 4:58
Rule 14d-1(g)(2), 4:60
Rule 14d-2, commencement of tender offer, 4:61, 4:123
Rule 14d-3, filing, 4:62, 4:124
Rule 14d-4, 4:125
Rule 14d-4, dissemination of tender offer generally, 4:63
- adding conditions to tender offer, 4:63.60
- amending tender offer, 4:63.15, 4:63.60
- conditions of tender offer, 4:63.15, 4:63.45
- contract status of tender offer, 4:63.15, 4:63.30
- modifying conditions of tender offer, 4:63.60
- terminating tender offer, 4:63.15, 4:63.75
- waiving conditions of tender offer, 4:63.15, 4:63.45
Rule 14d-4(d)(1) amendment, 4:83
Rule 14d-5, 4:64, 4:126
Rule 14d-6, 4:65, 4:127
Rule 14d-6(c), 4:83
Rule 14d-7, 4:108, 4:128
Rule 14d-8, 4:109, 4:129
Rule 14d-9
- recommendation or solicitation by target company and others, 4:130
- Section 14(d)(4), recommendation to stockholders, below
Rule 14d-9(e), 4:88
Rule 14d-10
generally, 4:131 to 4:137
- all-holders rule, generally, Rule 14d-10(a)(1), 4:132

**SECTION 14(d)—Cont’d**
Rule 14d-10—Cont’d
- best-price rule, generally, Rule 14d-10(a)(2), 4:133 to 4:133.30, 4:133 to 4:133.30
- blue-sky exemption, 4:136
- consideration, 4:135
- exclusions from all-holders rule, Rule 14d-10(b), 4:134
- pre-2006 Rule 14d-10(a)(2), best-price rule, 4:133.20
- pre-2006 Rule 14d-10(d), blue-sky exemptions, 4:136
- pre-2006 Rule 14d-10(e), SEC exemption, 4:137
- present Rule 14d-10(a)(2), best-price rule, 4:133.30
- Rule 14d-10(a)(1), all-holders rule, generally, 4:132
- Rule 14d-10(a)(2), best-price rule, generally, 4:133 to 4:133.30
- Rule 14d-10(b), exclusions from all-holders rule, 4:134
- Rule 14d-10(c), more than one type of consideration, 4:135
- Rule 14d-10(d), 4:135.50
- Rule 14d-10(e), blue-sky exemptions, 4:136
- Rule 14d-10(f), SEC exemption, 4:137
- SEC exemption, 4:137
- Section 14(d)(7), all-holders and best-price rules, Rule 14d-10, 4:110
- Rule 14d-11, subsequent offering period, 4:138
- Rule 14e-2, 4:86, 4:89
- Rules, generally, 4:121 to 4:138, App B
- Schedule 13E-3, 4:81, App C
- Schedule TO. Disclosure, above
- SEC exemption, 4:137
- Section 12, 4:57
- Section 13(d) and Section 13(g), 2:86
- Section 14(d)(2), 4:58, 4:84
- Section 14(d)(3), calculation of five percent, 4:85
- Section 14(d)(4), recommendation to stockholders generally, 4:86 to 4:107
- Regulation M-A. Schedule 14D-9, below
- Rule 14d-9
generally, 4:87 to 4:107
- administrative history, 4:87
disclosure, Rule 14d-9(d) and Section 14(e), 4:92
dissemination of recommendation, Rule 14d-9(f) and Rule 14e-2(a), 4:91
filer, Rule 14d-9(e), 4:88
filing date, Rule 14d-9(g) and Rule 14e-2, 4:89
information required in solicitation or recommendation, Rule 14d-9(d) and Section 14(e), 4:93
mechanics of filing, Rule 14d-9(a), Rule 14d-9(b), and Rule 14d-9(f), 4:90
SECTION 14(d)—Cont’d

Section 14(d)(4), recommendation to stockholders

—Cont’d

Rule 14d-9—Cont’d

 Rule 14d-9(a), 4:90
 Rule 14d-9(b), 4:90
 Rule 14d-9(d), 4:92, 4:93
 Rule 14d-9(e), 4:88
 Rule 14d-9(f), 4:90, 4:91
 Rule 14d-9(g), filing date, Rule 14d-9(g) and
 Rule 14e-2, 4:89
 Rule 14e-2(b), 4:91
 Rule 14d-9(c), 4:107
 Rule 14e-2(b), 4:107

Schedule 14D-9, below

Section 14(e), information required in solicitation or recommendation, Rule 14d-9(d) and
Section 14(e), 4:93

Rule 14d-9(c), 4:107
Rule 14e-2(b), 4:107

Schedule 14D-9 generally, 4:94 to 4:107, App C
additional information, 4:104
administrative history, 4:94
amendments, 4:107
cover page, 4:96
exhibits, 4:105
general instructions, 4:106

identity and background of filing person,

4:98
interest in securities of target company,

4:102
Item 1 and Regulation M-A, Item 1002, target company information, 4:97
Item 2 and Regulation M-A, Item 1003, identity and background of filing person,

4:98
Item 3 and Regulation M-A, Item 1005(d), past contacts, transactions, negotiations, and
agreements (conflicts of interest),

4:99
Item 4 and Regulation M-A, Item 1012, solicitation or recommendation, 4:100
Item 5 and Regulation M-A, Item 1009, person/assets, retained, employed, compensated, or used, 4:101
Item 6 and Regulation M-A, Item 1008, interest in securities of target company,

4:102
Item 7 and Regulation M-A, Item 1006(d), purposes of transactions and plans or
proposals (negotiations and transactions by target company), 4:103
Item 8 and Regulation M-A, Item 1011, additional information, 4:104
Item 9 and Regulation M-A, Item 1016, exhibits Schedule 14D-9, 4:105

past contacts, transactions, negotiations, and agreements, 4:99

SECTION 14(d)—Cont’d

Section 14(d)(4), recommendation to stockholders

—Cont’d

Schedule 14D-9—Cont’d

person/assets, retained, employed, compensated, or used, 4:101
purposes of transactions and plans or
proposals, 4:103
Rule 14d-9(c), 4:107
Rule 14e-2(b), 4:107
solicitation or recommendation, 4:100
target company information, 4:97

Section 14(d)(5), withdrawal rights, Rule 14d-7, 4:108
Section 14(d)(6), pro rata purchases, Rule 14d-8, 4:109
Section 14(d)(7), all-holders and best-price rules, Rule 14d-10, 4:110
Section 14(d)(8), exemptions, 4:111
Section 14(d) private right of action (including standing to sue), 4:112
Section 14(e) and Rule 14d-6, disclosure of tender offer information to security holders, 4:65
Security holders, 4:65, 4:127
Security position listings, 4:126
Settlement, 4:53
Solicitation recommendation by target company and others, 4:130
recommendation to stockholders, 4:93, 4:100
substantial percentage of issuer’s stock, 4:28
Special bids, 4:43
Standing to sue, 4:112, 4:116
Steps in tender offer generally, 4:5 to 4:9
comparison to other types of control transac-
tions, 4:9
friendly tender offer, 4:6
hostile tender offer that becomes friendly,

4:8
hostile tender offer, 4:7
hostile tender offer that becomes friendly, 4:8
Stockholders lists, 4:64
rights plans (poison pills), 4:47
Stock options, 4:50
Subject matter jurisdiction, 4:117
Subsequent offering period, 4:138
Substantial percentage, 4:28
Summary term sheet, Schedule TO, Item 1 and
Regulation M-A, Item 1001, 4:69
Target company information, 4:70, 4:97
Tender offer statement, 4:124
Termination, 4:63.15, 4:63.75
Terms, 4:30, 4:72
Tests. Definition of tender offer, above
Third parties, 4:130
Time, 4:32, 4:89, 4:138
INDEX

SECTION 14(d)—Cont’d
Totality of circumstances, 4:36
Transmissions, 4:124
Use, 4:77, 4:101
Venue, 4:118
Waiving conditions, 4:63.15, 4:63.45
Warrants, 4:50
Withdrawal rights, 4:108, 4:128

SECTION 14(e)
Generally, 5:1 et seq., App A
Administrative history, 5:36
Affirmative defenses, 5:49
All tender offers and all securities, 5:16
Business days, 5:28
Care, standard of, 5:19
Causation, 5:21
Cause of action
generally, 5:13 to 5:25
all tender offers and all securities, 5:16
causation, 5:21
in connection with tender offer, 5:25
 curing, 5:23
defendant’s standard of care, 5:19
definition of material, 5:18
disclosure, 5:23
harm, types recognized, 5:22
jurisdictional means, 5:15
materiality, 5:18
omissions. Untrue statements and omissions, below
private right of action, 5:24
reliance, 5:20
Rule 10b-5, comparison to, 5:13
standing to sue, 5:24
untrue statements and omissions, below
Change of terms, 5:29
Class of defendants, 5:24
Closed-end registered investment companies, 5:46
Communications, 5:48
Comparison to other provisions, 5:4
Comparison to other types of control transactions, 5:6
Concealment. Untrue statements and omissions, below
Construction and interpretation, 5:10
Control transactions, 5:6
Curing, 5:23
Defendant’s standard of care, 5:19
Defenses, 5:49
Defensive tactics of target company in face of tender offer, 5:51
Definitions
material, 5:18
tender offer, 5:12
Delay, 5:29
Disclosure, 5:23
Elements, tender offer, 5:11

SECTION 14(e)—Cont’d
Exchange offeror, concealment or misrepresentation by, 5:14.30, 5:14.60
Extensions, 5:31
False statements. Untrue statements and omissions, below
Harm, types recognized, 5:22
History, 5:9, 5:36
In connection with, 5:25, 5:48
Interaction with other remedies, 5:8
Jurisdictional means, 5:15
Legislative history, 5:9
List of facts plaintiffs have claimed are material, 5:14.20
Management of target company, concealments or misrepresentation by, 5:14.40, 5:14.70
Materiality
generally, 5:18
untrue statements and omissions, below
Misrepresentation or omission of material fact
see also other entries throughout this topic
untrue statements and omissions, below
Notice and knowledge, 5:31
Omissions. Untrue statements and omissions, below
Overview, 5:3
Partial tender offer, 5:44
Payment, 5:30
Policies, 5:7
Practice and procedure, 5:52
Private right of action, 5:24
Procedure, 5:52
Purposes, 5:7
Registration, 5:46
Regulation, need for, 5:2
Reliance, 5:20
Remedies, 5:8, 5:50
Repurchase, 5:46
Roll-ups, 5:47
Rule 10b-5, comparison to, 5:13, 5:14.10
Rule 14e-1. Substantive provisions, below
Rule 14e-2, target company’s position, 5:33
Rule 14e-3
generally, 5:34 to 5:43
administrative history, 5:36
attacks on validity, 5:37
contents of rule, generally, 5:38 to 5:43
Rule 14e-3(a), 5:40
Rule 14e-3(b), 5:41
Rule 14e-3(c), 5:42
Rule 14e-3(d), 5:43
Rule 14e-4, short tendering in partial tender offer, 5:44
Rule 14e-5, purchases outside tender offer, 5:45
Rule 14e-6, repurchase offers by certain closed-end registered investment companies, 5:46
Rule 14e-7, roll-ups, 5:47
SECTION 14(e)—Cont’d
Rule 14e-8, prohibited conduct in connection with pre-commencement communications, 5:48
Rules, generally, 5:26 to 5:48, App B
Schedule TO, Item 11 provisions, 5:14.10
Short tendering, 5:44
Standing to sue, 5:24
Steps in tender offer, 5:5
Substantive provisions generally, 5:27 to 5:32
Rule 14e-1, generally, 5:27 to 5:32
Rule 14e-1(a), keep open for 20 business days, 5:28
Rule 14e-1(b), delay for change of terms, 5:29
Rule 14e-1(c), prompt payment, 5:30
Rule 14e-1(d), notice of extensions, 5:31
Rule 14e-1(e), tolling periods, 5:32
Tender offeror, concealments or misrepresentation by, 5:14.50, 5:14.80
Tender offers generally, 5:1 et seq.
inputs, 5:11
Terms, 5:29
Tests of existence of a tender offer, 5:11
Third parties, untrue statements and omissions, 5:14.90
Time, 5:28, 5:32
Tolling periods, 5:32
Untrue statements and omissions generally, 5:14 et seq.
cause of action. See entries throughout this group
contrasting Section 10(b) with Section 14(e), 5:14.10
exchange offeror, concealment or misrepresentation by, 5:14.30, 5:14.60
introduction, 5:14.10
list of facts plaintiffs have claimed are material, 5:14.20
management of target company, concealments or misrepresentation by, 5:14.40, 5:14.70
materiality, generally, 5:14.20
misrepresentation or omission of material fact, 5:14.30 et seq.
Schedule TO, Item 11 provisions, 5:14.10
tender offeror, concealments or misrepresentation by, 5:14.50, 5:14.80
third parties, statements by, 5:14.90
Validity, 5:37

SECTION 14(f)
Generally, 6:1, App A
Rules under Williams Act, App B

SECTION 15(d)
Issuers, 3:9

SECURITIES OF THE ISSUER
Defined, 2:48

SECURITY HOLDERS
Section 13(e), 3:11, 3:12
Section 14(d), 4:65, 4:127

SECURITY POSITION LISTINGS
Section 14(d), 4:126

SETTLEMENT
Section 14(d), 4:53

SHORT TENDERING
Section 14(e), 5:44

SIMILAR ACTIONS
Section 13(d) and Section 13(g), 2:57

SIMPLIFIED FORMS
Section 13(d) and Section 13(g), 2:85

SOLICITATION
Section 14(d) (this index)

SPECIAL BIDS
Section 14(d), 4:43

SPECIFIED REQUIREMENTS
Section 14(d) (this index)

STANDING TO SUE
Section 13(d) and Section 13(g), 2:110
Section 14(d), 4:112, 4:116
Section 14(e), 5:24

STOCKHOLDERS’ MEETINGS
Section 14(f) (this index)

STOCKHOLDERS RIGHTS PLANS (POISON PILLS)
Section 14(d), 4:47

STOCK OPTIONS
Section 14(d), 4:50

SUBJECT MATTER JURISDICTION
Section 13(d) and Section 13(g), 2:111
Section 14(d), 4:117
Section 14(e), 5:52

SUBSEQUENT OFFERING PERIOD
Section 14(d), 4:138

SUBSIDIARY
Section 13(d) and Section 13(g), 2:76

SUBSTANTIAL PERCENTAGE
Section 14(d), 4:28

SUBSTANTIVE REQUIREMENTS
Section 14(d) (this index)

SUMMARY TERM SHEET
Section 14(d), 4:69

SWAP
Beneficial ownership, 2:12

Index-20
INDEX

SWAP—Cont’d
Cash-settled total-return equity swap, description of, 2:12
Disclosure
    acquisition and disposition of securities, 2:48
    contracts, 2:59
    exhibits, 2:60
    interest in securities, 2:58
    purpose, 2:46
    source of funds, 2:44
Evading beneficial ownership, 2:13
Group, long party and short party, 2:25
Options not included, 2:16
Section 13(o), 2:5

TENDER OFFERS
Generally, 4:1 et seq., 5:1 et seq.

TENDER OFFER STATEMENT
Section 14(d), 4:124

TERMINATION OF REGISTRATION
Section 13(d) and Section 13(g), 2:56

TERMINATION OF TENDER OFFER
Section 14(d), 4:63.15, 4:63.75

TERMS
Section 14(d), 4:30, 4:72
Section 14(e), 5:29

TESTS OF EXISTENCE OF A TENDER OFFER
Section 14(d) (this index)
Section 14(e), 5:11

THIRD PARTIES
Section 13(e), 3:2
Section 14(d), 4:130
Section 14(e), untrue statements and omissions, 5:14.90

THIRD PERSONS
Section 13(d) and Section 13(g), 2:75

TIME
Groups (this index)
Section 13(d) and Section 13(g), 2:122, 2:123

TIME—Cont’d
Section 14(d), 4:32, 4:89, 4:138
Section 14(e), 5:28, 5:32

TOLLING PERIODS
Section 14(e), 5:32

TOTALITY OF CIRCUMSTANCES
Section 14(d), 4:36

TRANSMISSIONS
Section 14(d), 4:124

TRIGGERING DUTY TO FILE
Section 13(d) and Section 13(g), 2:65
Section 13(d)(1) and Section 13(g)(1), 2:37

UNDERSTANDING
Section 13(d) and Section 13(g), 2:59
Section 14(f) (this index)

UNDERWRITERS
Section 13(d) and Section 13(g), 2:19

UNTRUE STATEMENTS
Section 14(e) (this index)

VALIDITY
Section 14(e), 5:37

VENUE
Section 13(d) and Section 13(g), 2:112
Section 14(d), 4:118
Section 14(e), 5:52

VOTING
Section 13(d) and Section 13(g), 2:12, 2:31
Section 13(d)(1) and Section 13(g)(1), 2:26

WAIVING CONDITIONS OF TENDER OFFER
Section 14(d), 4:63.15, 4:63.45

WARRANTS
Section 14(d), 4:50

WITHDRAWAL RIGHTS
Section 14(d), 4:108, 4:128