

SEC Compliance & Disclosure Interpretations

2nd Edition



Wolters Kluwer
Law & Business

CCH

SEC COMPLIANCE AND DISCLOSURE INTERPRETATIONS

2nd Edition



Wolters Kluwer
Law & Business

Editorial Staff

Mark S. Nelson, J.D.

Ted Trautmann, J.D.

Carmen Kane

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher and the author(s) are not engaged in rendering legal, accounting, or other professional services. If legal advice or other professional assistance is required, the services of a competent professional should be sought.

Copyright © 2011 CCH Incorporated

No part of this publication may be reproduced or transmitted in any form or by any means, including electronic, mechanical, photocopying, recording, or utilized by any information storage or retrieval system, without written permission from the publisher.

Published by Wolters Kluwer Law & Business in New York.

Wolters Kluwer Law & Business serves customers worldwide with CCH, Aspen Publishers and Kluwer Law International products.

Printed in the United States of America

ISBN: 978-0-8080-2912-0



Table of Contents

Subject	Page
Securities Act Law Sections	9
Securities Act Rules—General Applicability	59
Securities Act Rules—Particular Situations	179
Industry Guides	239
Securities Act Forms	241
Regulation S-K	333
Exchange Act Law Sections	445
Exchange Act Rules	455
Proxy Rules and Schedule 14A	499
Sections 13(d) and 13(g) and Regulation 13D-G	515
Going-Private Rules and Schedule 13E-3	533
Tender Offer Rules and Schedules	549
Section 16, Related Rules and Forms	561
Exchange Act Forms	599
Form 8-K	621
Trust Indenture Act of 1939	659
Regulation M-A, Other Rules and the Cross-Border Release	677
Regulation FD	713
Regulation AB and Related Rules	721
Regulation S-T	733
Regulation S-X	739
American Recovery and Reinvestment Act of 2009	747
Proxy Disclosure Enhancements Transition	751
Non-GAAP Financial Measures	755
Topical Index	771

SEC COMPLIANCE AND DISCLOSURE INTERPRETATIONS

2nd Edition



Wolters Kluwer
Law & Business

RELATED PUBLICATIONS

Federal Securities Law Reporter

Handbook for Preparing SEC Annual Reports and Proxy Statements

Informal Corporate Disclosure Under Federal Securities Law

Responsibilities of Corporate Officers and Directors Under Federal Securities Law

SEC Docket

SEC Filings Insight

SEC Handbook: Rules and Forms for Financial Statements and Related Disclosures

SEC No-Action Letter Weekly

SEC Today

Securities Act Handbook

To order these and other titles, please visit <http://onlinestore.cch.com>.

CCH

SEC COMPLIANCE AND DISCLOSURE INTERPRETATIONS

2nd Edition



Wolters Kluwer
Law & Business

Editorial Staff

Mark S. Nelson, J.D.

Ted Trautmann, J.D.

Carmen Kane

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher and the author(s) are not engaged in rendering legal, accounting, or other professional services. If legal advice or other professional assistance is required, the services of a competent professional should be sought.

Copyright © 2011 CCH Incorporated

No part of this publication may be reproduced or transmitted in any form or by any means, including electronic, mechanical, photocopying, recording, or utilized by any information storage or retrieval system, without written permission from the publisher.

Published by Wolters Kluwer Law & Business in New York.

Wolters Kluwer Law & Business serves customers worldwide with CCH, Aspen Publishers and Kluwer Law International products.

Printed in the United States of America

ISBN: 978-0-8080-2912-0



Foreword

The Division of Corporation Finance responds to thousands of informal inquiries annually concerning the statutes, rules and regulations it administers. Although statements made by the Division's staff in response to these inquiries are intended to be helpful and instructive, they are not binding due to their highly informal nature. *SEC Compliance and Disclosure Interpretations* is a public compilation of selected responses to informal inquiries, which the Division originally developed for staff training purposes. This work previously went by the name *SEC Telephone Interpretations Manual*.

The C&DI guidance in this manual does not necessarily reflect the views and policies of the Commission or the Division of Corporation Finance. These interpretations are not rules, regulations, or statements of the Commission. Further, the interpretations do not necessarily contain a discussion of all material considerations necessary to reach the conclusions stated and therefore should not be relied on as definitive. Moreover, there can be no assurance that the information in this manual is current, as the positions expressed may change without notice.

As reproduced here, the interpretations are organized by chapter and supplemented with history information, tables of contents and a topical index. The work contains guidance issued through July 8, 2011, including the interpretations issued to reflect the Dodd-Frank Act amendments and subsequent rulemaking. Any C&DI guidance issued after publication of this work can be found at <http://www.sec.gov/divisions/corpfin/cfguidance.shtml>.

August 2011

Table of Contents

Subject	Page
Securities Act Law Sections	9
Securities Act Rules—General Applicability	59
Securities Act Rules—Particular Situations	179
Industry Guides	239
Securities Act Forms	241
Regulation S-K	333
Exchange Act Law Sections	445
Exchange Act Rules	455
Proxy Rules and Schedule 14A	499
Sections 13(d) and 13(g) and Regulation 13D-G	515
Going-Private Rules and Schedule 13E-3	533
Tender Offer Rules and Schedules	549
Section 16, Related Rules and Forms	561
Exchange Act Forms	599
Form 8-K	621
Trust Indenture Act of 1939	659
Regulation M-A, Other Rules and the Cross-Border Release	677
Regulation FD	713
Regulation AB and Related Rules	721
Regulation S-T	733
Regulation S-X	739
American Recovery and Reinvestment Act of 2009	747
Proxy Disclosure Enhancements Transition	751
Non-GAAP Financial Measures	755
Topical Index	771

Chapter 1

Securities Act Law Sections

QUESTIONS and ANSWERS of GENERAL APPLICABILITY

§ 2(a)(1)	
Reserved	¶ 101
§ 2(a)(2)	
Reserved	¶ 102
§ 2(a)(3)	
Declared Dividends	¶ 103
Restricted Securities Transfers	¶ 104
Shelf Registration	¶ 105
Convertible Securities	¶ 106
§ 2(a)(5) to § 2(a)(9)	
Reserved	¶ 106A
§ 2(a)(4)	
Statutory Trust	¶ 106B
§ 2(a)(10)	
Prospectuses	¶ 107
§ 2(a)(11)	
Market Professionals	¶ 108
§ 2(a)(12) to § 2A	
Reserved	¶ 108A
§ 3(a)(2)	
Reserved	¶ 109
§ 3(a)(3)	
Reserved	¶ 110
§ 3(a)(4) to § 3(a)(5)	
Reserved	¶ 110A
§ 3(a)(6)	
Reserved	¶ 111
§ 3(a)(9)	
Stock Dividends	¶ 112
Assumption of Prior Obligations	¶ 113
Solicitations	¶ 114
Conversion	¶ 115
Debentures Guaranteed by Parent	¶ 116
Investment Counselors	¶ 117
Going Private Tender Offer	¶ 118
Restricted Securities	¶ 119
Convertible Debentures	¶ 120
Canadian Subsidiaries	¶ 120A
Bankruptcy	¶ 120B

§ 3(a)(10)

Exchange Transactions	¶ 121
---------------------------------	-------

§ 3(a)(11)

Restricted Securities	¶ 122
Advertisements	¶ 123

§ 3(a)(12)

Reserved	¶ 124
--------------------	-------

§ 3(a)(13) to § 4(1)

Reserved	¶ 124A
--------------------	--------

§ 4(2)

Secondary Offerings	¶ 125
Pending Registration Statement	¶ 126
Pre-Registration Commitments	¶ 127

§ 4(3)

Reserved	¶ 128
--------------------	-------

§ 4(4)

Reserved	¶ 129
--------------------	-------

§ 4(5) to § 4(6)

Reserved	¶ 129A
--------------------	--------

§ 5

Warrants	¶ 130
Powers of Attorney	¶ 131
Shares as Prizes	¶ 132
Blind Pool/Blank Check Offerings	¶ 133
Offer and Sale of Underwriters' Warrants	¶ 134
Secondary Offerings	¶ 135
Listed Securities	¶ 136
Pending Registration Statement	¶ 137
Prior Commitments	¶ 138
Convertible Securities	¶ 139
Convertible Securities	¶ 140
"Equity Line" Arrangements	¶ 141
Private Equity-Line Registration Statements	¶ 142
Conditions	¶ 143
Puts	¶ 144
Completion	¶ 145
Investment Decision	¶ 146
Due Diligence	¶ 147
Bring Downs	¶ 148
Other Securities	¶ 149
Primary Offerings	¶ 150
Underwriters	¶ 151
Form S-3	¶ 152
12-Month Period	¶ 153
Integration	¶ 154
Modified Dutch Auction	¶ 154A
Second Private Placement	¶ 154B
Suspension During Waiting Period	¶ 154C

Lock-Up Agreements with Noteholders	¶ 154D
Exchange Offer Lock-Up Agreements	¶ 154E
Convertible Instruments	¶ 154F
Regulation FD Requirements	¶ 154G

§ 6

Registration Fees	¶ 155
Fee Payment	¶ 156
Debt Securities	¶ 157

§ 7

Banker's Consents	¶ 158
Experts	¶ 159

§ 8 to § 9

Reserved	¶ 160
--------------------	-------

§ 10

Form S-3 Eligibility	¶ 165
--------------------------------	-------

§ 11 to § 16

Reserved	¶ 170
--------------------	-------

§ 17

Reserved	¶ 175
--------------------	-------

§ 18 to § 28

Reserved	¶ 180
--------------------	-------

Schedules A and B

Reserved	¶ 190
--------------------	-------

INTERPRETIVE RESPONSES REGARDING PARTICULAR SITUATIONS

§ 2(a)(1)

Sale and Leaseback	¶ 201
------------------------------	-------

§ 2(a)(2)

Reserved	¶ 202
--------------------	-------

§ 2(a)(3)

Warrants	¶ 203
Holding Company Reorganizations	¶ 204
Convertible Securities	¶ 205
Reverse Statutory Merger	¶ 206
Oil and Gas Interests	¶ 207
Statutory Mergers	¶ 208

§ 2(a)(4) to § 2(a)(9)

Reserved	¶ 208A
--------------------	--------

§ 2(a)(10)

Reserved	¶ 209
--------------------	-------

§ 2(a)(11)

Convertible Securities	¶ 210
----------------------------------	-------

§ 2(a)(12) to § 2A

Reserved	¶ 210A
--------------------	--------

§ 3(a)(2)

Investment in Bank Stock	¶ 211
Industrial Development Bond	¶ 212
Industrial Development Bond	¶ 213
Bankers' Acceptances	¶ 214
Industrial Revenue Bond	¶ 215

§ 3(a)(3)

Payable on Demand	¶ 216
Tracing of Proceeds	¶ 217

§ 3(a)(4) to § 3(a)(5)

Reserved	¶ 218
--------------------	-------

§ 3(a)(6)

Sales by Affiliates	¶ 220
-------------------------------	-------

§ 3(a)(7) to § 3(a)(8)

Reserved	¶ 220A
--------------------	--------

§ 3(a)(9)

Equipment Trust Notes	¶ 221
Solicitations	¶ 222
Conversions	¶ 223
Tender Offers	¶ 224
Indirect Solicitations	¶ 225

§ 3(a)(10)

Fairness	¶ 226
--------------------	-------

§ 3(a)(11)

Temporary Out-of-State Investments	¶ 227
Installment Payments	¶ 228
Exchange Offers	¶ 229
Interstate Mail Order Business	¶ 230
IRA Transfers	¶ 231
Sales to Promoters	¶ 232

§ 3(a)(12)

Bank Holding Companies	¶ 235
----------------------------------	-------

§ 3(a)(13) to § 4(1)

Reserved	¶ 236
--------------------	-------

§ 4(2)

Limited Partnership Interests	¶ 240
Purchaser or Offeree Representatives	¶ 241
Sales to Promoters	¶ 242

§ 4(3)

Dealers	¶ 245
Market Makers	¶ 246

§ 4(4)

List of Prospective Purchasers	¶ 249
--	-------

§ 4(5) to § 4(6)

Reserved	¶ 249A
--------------------	--------

§ 5

Employee Benefit Plans	¶ 250
Oil and Gas Programs	¶ 251
Deferred Compensation Plans	¶ 252
Statutory Mergers	¶ 253
Out of the Money Warrants	¶ 254
Stock Purchase Plans	¶ 255
Warrants	¶ 256
Warrants—Exercise Period	¶ 257
Debentures	¶ 258
Short Sales	¶ 259
Risk Retention	¶ 260
Secondary Resales	¶ 261
Lock-Up Agreements	¶ 262
Financing Plans	¶ 263
Options	¶ 264
401(k) Plans	¶ 265

§ 6

Filing Fee	¶ 275
Foreign General Partner	¶ 276

§ 7

Reserved	¶ 280
----------------	-------

§ 8 to § 9

Reserved	¶ 282
----------------	-------

§ 10

Reserved	¶ 285
----------------	-------

§ 11 to § 16

Reserved	¶ 287
----------------	-------

§ 17

Risk Retention Groups	¶ 290
-----------------------------	-------

§ 18 to § 28

Reserved	¶ 293
----------------	-------

Schedules A and B

Reserved	¶ 295
----------------	-------

QUESTIONS and ANSWERS of GENERAL APPLICABILITY

Section 101. Securities Act Section 2(a)(1)

¶ 101 [Reserved]

None.

Section 102. Securities Act Section 2(a)(2)

¶ 102 [Reserved]

None.