Due Diligence: Company Information for Law Students

Matthew M. Morrison
Cornell Law Library, mmm72@cornell.edu

Recommended Citation

Follow this and additional works at: http://scholarship.law.cornell.edu/libpub
Part of the Business Intelligence Commons, Legal Education Commons, and the Legal Writing and Research Commons

This Article is brought to you for free and open access by Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Law Librarians' Publications by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.
Due Diligence: Company Information for Law Students

Matthew M. Morrison

Many law students are placed with corporate law firms whose clients are overwhelmingly companies. While many law school courses focus on doctrine, students need to learn company information and where to find it. This article explains why teaching company information is crucial, where to find sources, and how to use these sources.

Why Company Information? ................................................................. 427
Employment Matters ....................................................................... 428
   Current Corporate Clients ............................................................ 429
   Business Development .................................................................. 429
   Mergers and Acquisitions Transactions ........................................ 430
Finding and Understanding Company Information .......................... 431
   Directories .................................................................................. 431
   News .......................................................................................... 432
   Analysis ...................................................................................... 433
   Industry Information .................................................................... 434
   Capital IQ .................................................................................. 435
What the Company Says About Itself .............................................. 436
   Basic Legal Structure: Disclosure ............................................... 436
   Annual Reports ........................................................................... 437
   Press Releases ............................................................................ 438
   Investor/Earnings Conference Calls .............................................. 439
   SEC Filings ................................................................................. 440
   State Filings ............................................................................... 444
Insider Information and Stock Prices .............................................. 445
   Disclosure .................................................................................. 445
   Manipulative and Deceptive Trading Activity ............................... 446
Conclusion ...................................................................................... 448

Why Company Information?

¶1 Law students are not business students. Nonetheless, businesses are, so often, a significant portion of a law student’s future employer’s clientele. Many

** Faculty Services Librarian and Lecturer in Law, Cornell University Law Library, Ithaca, New York.
firms, especially larger ones, are known as “corporate law firms” for a reason. Indeed, many law students take courses on corporations, business law, transactional law, or all of these. At schools such as Cornell, these courses are subscribed in large numbers. However, these courses focus on doctrine. For students to best serve their business clients, they need to understand the client itself: what does the company do; what is its competitive context; what basic law informs its activities; and what information does the client create, especially the information used to satisfy legal requirements?

A recent LexisNexis white paper underscores the importance of teaching business information to law students. Three hundred hiring partners were surveyed, and ninety-five percent of those with transactional practices find new graduates lacking in relevant skills. Skills identified as important include conducting due diligence research, finding basic company information, locating and using checklists, finding and reading Securities and Exchange Commission (SEC) filings, and staying current with business news. These are areas that I focus on when teaching a business information course. In what follows, I expound on the why and how of business information and the legal context in which it resides.

**Employment Matters**

According to the National Association for Law Placement, over half of the class of 2013 went into private practice, with twenty percent of these working for large corporate firms. Others go on to work with business clients directly. Whether in-house or outside counsel, new attorneys need to be versed in basic company information and its intersection with the law.

Thus, students need to know the sources of company information and how and where to obtain it. Enter the law library to teach the main sources and research methods. In my advanced research course in business information, my course objectives are for the students to gain awareness and proficiency in the massive and complex range of business information sources while learning to assess the quality and relevance of sources in a broad context. As a result of the employment reality, students must be prepared to handle the following three areas: current corporate clients, business development, and mergers and acquisitions transactions.

1. I use “company information” and “business information” interchangeably, although “business information” is broader and may include transactional materials such as sample contracts.
3. Id. at 5–6.
5. Id. at 4. Business employment was at eighteen percent, a historic high. Id.
Current Corporate Clients

§5 To provide the best advice to a current client, associates must have knowledge of that client’s business and industry, including key company personnel. In its first-year associate training program, corporate law firm Drinker Biddle echoes this. Moreover, according to Steve Lastres, Director of Knowledge Management Services for Debevoise and Plimpton, law students need to understand legal problems within a client’s larger business context, including specifics of company information.

§6 When working with current corporate clients, an attorney must also be aware of insider activity. They must know both the law and how to find the relevant documents. Relevant reports of insider transactions include Forms 3, 4, and 5. To properly defend against an action under section 16(b) of the Securities Exchange Act, a company’s attorney must be well versed in the investigation of these reports.

Business Development

§7 Sizing up the competition and recruiting new clients is key in today’s competitive environment. Business development relies specifically on competitive intelligence, which includes client intelligence. Competitive intelligence focuses on competitors; however, it must also include “major clients and prospects and their industries.” To be strategic, firms must track the industry trends of potential clients. Moreover, identifying prospective clients relies not only on industry knowledge, but also knowing about key personnel working for the potential client. Client intelligence also directly informs the pitch to a new client. Attorneys

11. See 1 JACOBS, supra note 9, § 2:1.
12. Competitive intelligence has multiple definitions but generally is focused on gathering and analyzing information to better understand the competitive marketplace. See Ann Lee Gibson, How to Create and Use Competitive Intelligence: 45 Tips for Law Firms, LAW PRACT., Mar. 2008, at 47–51.
15. Gibson, supra note 12, at 48.
16. Id.
17. Id. at 50.
should be thinking about how to prepare for the pitch and what solutions and strategies should be proposed. This preparation is greatly informed by both company and industry information.

**Mergers and Acquisitions Transactions**

¶8 Mergers and acquisitions (M&A) are a major piece of a corporate law firm’s work. When acquisitions are in negotiation, due diligence is crucial while also time-consuming and expensive; thus it is typically performed by young associates.

¶9 M&A due diligence involves several steps; the two most relevant ones are discussed here. The first is getting to know the company, which includes its industry, as well as trade publications and prospectuses. The second step involves compiling information that is disseminated in disclosure documents, including proxies and registration statements.

¶10 When one looks at M&A more closely, one can see the importance of teaching business information. M&A transactions require investigations—the acquiring company investigates the target, and the target investigates the acquiring company.

¶11 The acquiring company has three objectives in its investigation of the target. First, does the target meet predetermined acquisition criteria? Second, the acquiring company wants to uncover any potential deal breakers, such as undisclosed liabilities, internal accounting defects, and unobtainable but necessary consents. Third, the acquirer wants information to evaluate the transaction.

¶12 The target company should do an investigation, too. First, the board of directors must have sufficient information to confidently recommend the merger. Second, the target company, in a stock-for-stock sale, will want to know the full background of the acquirer. Finally, in a cash transaction, the target must know whether the acquiring company has sufficient funds.

¶13 The nature of these investigations reveals the importance of the range of documentation that provides company information. Whether seller or buyer, the details revealed in disclosure and other documents are critical. Moreover, that most of this due diligence work is done by young associates emphasizes the importance and utility of offering a business information course to law students.

18. *Id.*
20. *Id.* at 84.
21. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
Finding and Understanding Company Information

Clearly, teaching business information will help a significant number of future attorneys to hit the ground running when joining a corporate law firm. With the foundation laid as to why teaching this information is crucial, let’s turn our attention to finding and understanding the information.

I divide company information into three major categories: (1) what third parties say about the company and its industry; (2) what the company says about itself; and (3) insider information and stock prices. I treat insider information as a separate category because it deals specifically with the personnel—officers and directors—of a company and not directly with what the company says about the corporate entity. Moreover, insider information goes directly to executive compensation, which, as a matter of great importance to shareholders, draws much attention.29

What Third Parties Say About the Company and Its Industry

A plethora of business information is generated by third parties. Discussion of four major categories follows: directories, news, analysis, and industry information. I also include a section on a special resource called Capital IQ. Under each category is a diverse selection of products that I have found to be the best sources. Of course, any given firm may subscribe to one or more of the following products, or it may subscribe to none of them. My aim is to provide an idea of what is available, including free resources, and compare their relative merits.

Directories

Directories provide a broad overview of a company. They are quick sources for obtaining pertinent facts without the depth of SEC filings or company annual reports. These sources provide a new attorney with a way to quickly get up to speed on a client or potential client.

Hoover’s, a product of Dun & Bradstreet, is a standard company directory. It is available both as a stand-alone product and on Lexis Advance. The stand-alone platform provides the complete range of information available, while records on Lexis Advance are somewhat sparse and inconsistent.

The stand-alone platform allows users to search by company, people, or industry. Company profiles provide a complete overview of the company, including a company description, news, industry information, product information, financials, a competitors list, real-time stock information, and profiles of officers and directors.

Lexis Advance splits Hoover’s into basic and in-depth records. Nonetheless, the information provided is sparse compared to the stand-alone platform. For example, the entries for the Boeing Company provide a brief company description, an industries list, a short list of competitors, and some basic financial and stock

information. The in-depth financials and people profiles are two items missing from the LexisNexis records that attorneys need to have. Detailed financial records provide a view into the health of the company, while officer and director profiles inform attorneys of who the main players are and their executive compensation data.

¶21 Mergent Online, another Dun & Bradstreet product, is similar to Hoover’s. While there is certainly overlap between directories, Mergent provides more details in a nicely organized format. Basic data—such as address, date, and state of incorporation, and IRS number, auditor, and registered agent—appear in a banner along the top. Then the user has ten tabs from which to choose for additional information. Most tabs are subdivided into more specific topics. An area of contrast between Hoover’s and Mergent is competitor information. Mergent provides several additional pieces of data for each competitor, which give a broader financial view of the competitor company.30

¶22 An excellent feature of Mergent is the report builder. Users may select pieces of data from five categories: company details, pricing information, company financials, executives, and news. The report can be created in one of several formats, each of which uses a crisp, professional look.

News

¶23 News sources are rich in current company information. Reports of upcoming deals, company actions, changes in executive officers, stock performance, and other information can all be found in news.

¶24 Bloomberg Law is a product of the Bloomberg news and stock information company. Bloomberg’s history31 establishes it as a major source for business news. While one can browse or search the latest news on Bloomberg Law, generally an attorney will want news about a specific company. The user may simply type the company name in the upper-right “go” bar and select the profile page for the company. Once on the profile page, the user will see a news section that includes the current headlines for the company.32 Use the “More” link to run a search of news for the company. The results can be filtered by topic, person, and region, or one may select a different company. One may also manipulate search criteria to narrow by date and relevancy, and also to exclude web sources.

¶25 An interesting feature of Bloomberg Law is the Rumors, Leads, and Insights section within the Business Development Center. Drawn from various wires and media entities, the content is organized into several categories, including M&A Rumors, Initial Public Offerings Rumors, Potential Investigations, and Attorney Moves. Users may draw content for all companies or can tailor the content to a

---

30. Mergent includes EBITDA (earnings before income tax, depreciation, and amortization), total assets and liabilities, PE ratio, and market capitalization.


32. There is also basic information that one would find in the directories discussed above. See supra ¶¶ 17–22.
specific company. The content helps attorneys stay abreast of developments, or potential developments, that have legal consequences.

\[26\] MarketWatch, a Dow Jones company, provides free access to a plethora of company news. The main page is devoted to national news, market news, and headlines for various companies. The main page also includes real-time market information for the United States, Europe, and Asia. As with Bloomberg, users may limit by company by going to the profile page. Using the search icon in the upper-right of the page, one enters either the company name or ticker symbol. Once on the profile page, users have access to real-time stock prices, as well as company-related headlines on the right side. For complete company news, click the News link found on the top of the page. Much of the news reports on company and stock performance and competitor activity. Also, many analyst discussions are included.

Analysis

\[27\] The business world is replete with analysts. Most analysis is focused on company stock performance, thus providing relevant information for investment decisions and choices. Analysis also focuses on the company itself. The legal practitioner can use this analysis to gain greater understanding of the company and its business context, company decisions, financial situation, market challenges, and, of course, stock performance. There are many sources for obtaining expert analysis. These include Business Source Complete and Thomson One.

\[28\] A main feature of Business Source Complete is the SWOT analysis. Prepared by MarketLine, the report analyzes a company’s strengths, weaknesses, opportunities, and threats, hence “SWOT.” In addition, the report provides an overview and key facts.

\[29\] Initially, the SWOT analysis is summarized in a boxed format with several key points in each category. For example, the General Dynamics Corporation’s recent report notes “broad product portfolio and balanced revenue streams” as one strength. An opposing weakness is “business and customer concentration.” Similarly, a “growing global aerospace and defense market” is noted as an opportunity, while an opposing threat is “intense competition.” Each of the points is then fleshed out in the balance of the report with extensive discussion of company activity and statistics. SWOT analyses thus provide a new attorney with a sense of the competitive context in which the company operates, while contrasting positive factors with challenges.

---

33. Users will need to place a company of interest onto their Company Watchlist to access company-specific content.
37. Id.
38. Id.
39. Id. at 29–34.
¶30 In addition to being a directory, Thomson One has extensive analyst reports. As a directory, Thomson One provides comprehensive coverage of company news, financial data, deal information, and coverage of company officers. Nonetheless, Thomson One excels in analyst coverage.

¶31 To access reports, which are primarily targeted to investors, use the Company Views tab, then select the Research tab. Links to reports now display and can be customized by date, title, and contributor. Users may also exclude a contributor and remove nonbroker research. Several of the contributors should be familiar, including Deutsche Bank, Barclays, and Wells Fargo. For each contributor, the name of the analyst is listed.

¶32 The reports themselves vary but typically have common components. Most combine a narrative with relevant data presented in charts and graphs. They also note the stock’s buy/hold/sell rating and the stock’s target price.

¶33 The narratives have value as they provide an expert’s view of the company, its performance, and its stock performance. In a recent report on the General Dynamics Company, contributed by Deutsche Bank, the analyst discussed specific financial items, such as quarterly sales, earnings per share, and cash flow. Nonetheless, the analyst also identified investor fears related to a particular product line and what the company has done to allay those fears, as well as discussing risks the company faces.

Industry Information

¶34 We finish “what third parties say” by looking at industry information. Two sources to consider are Standard & Poor’s (S&P) NetAdvantage, and Mergent Industry Reports, available on LexisNexis. Industry information helps an attorney understand the company’s broader business context and the legal issues that arise in such a context. Company clients do not operate within a vacuum—they compete within an industry and face the challenges that competition presents. Attorneys versed in industry information will better understand the competitive context within which a company is situated.

¶35 S&P NetAdvantage provides extensive surveys on more than fifty industries, from advertising to gaming to textiles, which are written by equity analysts. Users can browse the list of major industries to find a survey, or they can use a company name and the database will provide the relevant industry survey.

¶36 The surveys are divided into an executive summary, an industry performance discussion, an industry profile, and comparative company analysis. A glossary of terms is also provided. Particularly useful pieces of the survey include “how” sections: How the Industry Operates and How to Analyze This Industry. The comparative company analysis shows how a client, or potential client, stacks up against its competition on several key financial metrics.

---

40. Thomson One (www.thomsonone.com) would be suitable as a stand-alone product.
41. For broad searching, use the Screening & Analysis tab, then the Research tab.
42. An analyst’s view of whether a security should be bought or sold in the current market or held for a future disposition. See Downes & Goodman, supra note 22, at 310.
43. A projected price that a broker or analyst advises will be an advantageous time to sell. See id. at 702–03.
44. See generally Gibson, supra note 12, at 47–51.
NetAdvantage also includes sub-industry reviews. For example, in addition to a broad survey on the retailing industry, users can see a review specific to the apparel retailing industry. The sub-industry reviews provide information comparable to the surveys but in a condensed one-paragraph treatment of the specific industry.

Similar to NetAdvantage, Mergent Industry Reports covers a broad range of industries, including aviation, chemicals, and banking. A key difference is that it provides reports that are specific to parts of the world—North America, Asia, Europe, Latin America, and Oceania—while NetAdvantage is North America–centric. The reports combine significant narrative with citations to statistics when relevant.

The Mergent reports discuss numerous points of interest for each industry/region combination. Many reports include a scope note. Reports include a sector overview and discussion of sector performance. For example, the Aviation-Asia Pacific report notes that the region leads growth in the aviation industry, accounting for $500 billion in economic activity. The sector performance section is more granular, looking at specific companies and their stock performance. This leads to an expanded discussion of each of the leading companies in the industry.

Other important sections of the reports include a M&A discussion, policy and regulatory information, industry size and volume, and useful web links. While S&P’s Net Advantage is a very useful product, being able to access Mergent via LexisNexis is an advantage.

S&P’s Capital IQ is a product that goes well beyond the standard directory. It’s essentially a broad combination of the products discussed above and is becoming a de rigueur resource in many corporate law firms. The product includes profiles of companies, industries, people, and funds. Also available are news, government filings, and annual reports. For a given company, the information is extraordinary. This includes a company summary, key people including compensation, financials (balance sheet, cash flow, and capitalization), transactions, equity details, business relationships, investors, and investments.

Of particular interest to attorneys is the transactional information. Capital IQ provides M&A information, public offerings, and takeover defenses. Specifically, M&A information provides the announced date, the closing date, the transaction type (M&A or buyback), the company’s role (seller, buyer, target, with parent company indicated when relevant), buyer details, target details, and size in dollars. Also available are steps a target has taken to guard against a takeover, including corporate documents such as bylaws and other documents.

Public offering information is also available. This includes when the registration was filed, the offer date, the issuer of the securities, the type of securities issued, and the size of the offering in dollars. The type of securities can include corporate bonds, common stock, and other security types.

45. Of course, this assumes that Mergent is included in an employer’s LexisNexis subscription.
46. Approaches a company takes when it is the object of an unfriendly attempt to acquire the company by another company. See Downes & Goodman, supra note 22, at 700.
¶44 With its sheer breadth and depth, an entire article could be devoted to Capital IQ. It is important to address in a business information course because new corporate attorneys are likely to encounter it. However, it is unlikely that a law school library will subscribe to Capital IQ. Business information course instructors might consider bringing in a business librarian to guest lecture on the product.

What the Company Says About Itself

¶45 Companies provide information about themselves in multiple ways. These include annual reports to shareholders, press releases, and information divulged during investor conference calls. Government filings represent the core of what publicly traded companies say about themselves. Companies must make filings with the federal SEC; as well, companies must make basic corporate registrations with appropriate state Secretary of State offices.

¶46 These communications are vitally important to corporate attorneys. They offer attorneys an in-depth understanding of a company, as well as any significant legal ramifications. These include potential legal consequences of what is said, as well as monitoring the content, accuracy, and timeliness of federal and state filings. Moreover, attorneys must maintain intimate knowledge of the company to properly advise their client on the legal aspects of current and planned activities.

Basic Legal Structure: Disclosure

¶47 When delving into corporate and securities law, it is easy to get into the weeds. Remember that the information conveyed by an instructor is in the context of a research course. However, students must understand both the broad legal structure governing public companies and some finer details, especially as they pertain to SEC filings.

¶48 The two major laws that govern company communication to the government and the investing public are the Securities Act of 193347 (’33 Act), and the Securities Exchange Act of 193448 (’34 Act), and concomitant regulations codified at title 17 of the Code of Federal Regulations (C.F.R.). The overriding purpose of these laws is disclosure.49 The ’33 Act regulates the registration of public offerings.50 The ’34 Act seeks integrity in the markets via periodic reporting to the SEC and solicitation of proxies.51 The ’34 Act also includes registration requirements.52

49. See 1 THOMAS LEE HAZEN, THE LAW OF SECURITIES REGULATION §§ 1.2[3][A], 1.2[3][B], Westlaw (database updated March 2016).
50. Id. § 1.2[3][A].
51. Id. § 1.2[3][B]. The ’34 Act created the Securities and Exchange Commission. Id. A proxy solicitation is a request that a corporate shareholder authorize another person to cast the shareholder’s vote at a corporate meeting. Proxy Solicitation, BLACK’S LAW DICTIONARY 1421 (10th ed. 2014).
52. See 2 HAZEN, supra note 49, § 9.2[1].
Under the ’33 Act, when a company is offering new shares, the company must prepare and file two main documents: the registration statement and the prospectus. One should be aware of three significant code sections in title 15 of the U.S.C. that apply. First, section 77g lays out what is required in a registration statement. Second, as section 77g notes, documents specified in either Schedule A or Schedule B must be included. These important schedules are explained in section section 77aa. Finally, the requirements for the prospectus are laid out in section 77j.

The ’34 Act provides for periodic reporting and solicitation of proxies. Two sections of title 15 form the core requirements. Section 78m covers periodic reporting, while section 78n covers proxies. A researcher would benefit from looking at neighboring sections; nonetheless, sections 78m and 78n are fundamental.

Here we seek to lay out the basic statutory structure governing publicly traded company disclosure. As we take up specific types of company information, we’ll see that much of the information is governed by regulations codified in title 17 of the C.F.R. This holds especially true for SEC filings.

**Annual Reports**

Annual reports to shareholders are required by federal regulation. As the regulation states, the report is to accompany a proxy statement made before the company annual meeting. Required content of the report includes audited balance sheets and income and cash flow statements. Detailed requirements of financial statements are laid out in further subsections of the regulation.

In years past, annual reports were glossy print publications mailed with a proxy solicitation and prior to the annual meeting. Now, as then, the publication includes management discussion of company performance with an emphasis on positive results. Financial statements are provided, as well as a roster of corporate officers and directors.

Annual reports are now offered online. Many companies include them on their company websites. For example, General Electric makes available on its site

---

55. A prospectus is given to prospective buyers of a public offering and contains financial information, company history, officers, etc., thus allowing for an informed investment decision. See DOWNES & GOODMAN, supra note 22, at 545.
57. Id. Schedule B applies to securities issued by a foreign government.
58. Id. § 77aa.
59. Id. § 77.
60. Id. § 78m.
61. Id. § 78n.
63. See id. § 240.14a-3(a). Proxy statements are discussed later; see infra ¶¶ 72–73.
64. 17 C.F.R. § 240.14a-3(b).
65. Id.
66. Id.
both current and past annual reports, going back to 2005.\textsuperscript{67} Another source is AnnualReports.com.\textsuperscript{68} The site is a one-stop shop for annual reports from a broad range of companies and for various reporting years. Reports are made available in both PDF and HTML formats, with the HTML version being a reproduction of the company’s 10-K.\textsuperscript{69} The site may be searched by company name or ticker symbol, industry, or stock exchange.

\textsuperscript{\textsuperscript{65}} ProQuest Historical Annual Reports offers back issues of annual reports. This database provides annual reports for U.S. companies from 1844 to the present, in PDF format. Both browsing and searching are available. The advanced search allows users to look up companies by name, NAICS\textsuperscript{70} code, location, person, and \textit{Fortune} rank, among other parameters. For a sample of the depth of the database, ProQuest provides seventy-four reports for Abbott Laboratories covering the years 1931 to 2003. By consulting historical reports, users can get a sense of the company over time. Users can track where the client was financially and competitively and how the company has evolved over a span of years. Users may also identify and trace the executive officers of the company.

\textbf{Press Releases}

\textsuperscript{\textsuperscript{56}} The legal issue presented by press releases is forward-looking statements. \textit{Black’s Law Dictionary} defines a forward-looking statement as “a business’s announcement about something yet to happen, such as its possibilities or expectations for future operations or economic performance.”\textsuperscript{71} Such statements may be misleading if it is unclear whether the speaker is making predictions or stating facts.\textsuperscript{72}

\textsuperscript{\textsuperscript{57}} Forward-looking statements are addressed statutorily. Under 15 U.S.C. § 78u-5(c), a safe harbor is provided for forward-looking statements\textsuperscript{73} made by issuers\textsuperscript{74} and related parties under specific conditions.\textsuperscript{75} These conditions include identifying the statement as forward-looking, as making meaningful cautionary statements, or as immaterial.\textsuperscript{76} Moreover, a statement is covered by the safe harbor if a plaintiff fails to prove that the statement was made with actual knowledge that the statement was false or misleading, or, if made by a business entity, that the

\begin{itemize}
  \item \textsuperscript{67} \textit{Annual Reports}, \textsc{General Electric}, http://www.ge.com/investor-relations/investor-services/personal-investing/annual-reports [https://perma.cc/Q88H-4XQF]. The reports are made available in both PDF and an interactive, graphics-heavy website. See id.
  \item \textsuperscript{68} \textsc{AnnualReports.com}, http://www.annualreports.com/ (last visited Apr. 7, 2016).
  \item \textsuperscript{69} See, e.g., Procter & Gamble’s entry at http://www.annualreports.com/Company/1793 (last visited Apr. 7, 2016). The 10-K filing is discussed later; see infra ¶ 71.
  \item \textsuperscript{70} North American Industry Classification System.
  \item \textsuperscript{71} \textit{Forward-Looking Statement}, \textsc{Black’s Law Dictionary}, supra note 51, at 770.
  \item \textsuperscript{72} Id.
  \item \textsuperscript{73} Defined statutorily as statements that contain projections of revenues, income, earnings, etc., as well as statements that contain projections on future operations, plans, and objectives. See \textit{Application of Safe Harbor for Forward-Looking Statements}, 15 U.S.C. § 78u-5(i)(1) (2012).
  \item \textsuperscript{74} An issuer is a person or entity that issues securities and other financial instruments. \textit{Issuer}, \textsc{Black’s Law Dictionary}, supra note 51, at 960.
  \item \textsuperscript{75} 15 U.S.C. § 78u-5(c).
  \item \textsuperscript{76} Id. § 78u-5(c)(1)(A). For extensive discussion of forward-looking and cautionary statements in press releases, see Harris v. Ivax Corp., 182 F.3d 799 (11th Cir. 1999).
\end{itemize}
statement was made with approval of a company officer and the officer spoke with actual knowledge that the statement was false or misleading.\textsuperscript{77}

\textsuperscript{¶}58 Increasingly, companies are posting their press releases to their company websites. The placement and prominence of the releases vary. For example, Abbott provides releases under the Newsroom section of its site, with the Newsroom link found at the bottom of the main page.\textsuperscript{78} General Dynamics, however, makes press releases available under both the Investor Relations and News sections, which are linked on the top of the main page.\textsuperscript{79} Sample content of General Dynamics releases includes awards of multimillion dollar contracts and the authorization of additional share repurchases.\textsuperscript{80}

\textsuperscript{¶}59 Another major source of press releases is PR Newswire. The Newswire is a one-stop-shop platform that accumulates and disseminates press releases from across the globe.\textsuperscript{81} PR Newswire is available on Lexis Advance, Westlaw, and its own website. On the site, releases may be browsed or searched.\textsuperscript{82} Releases may be searched by company using either the company name or ticker symbol. They then can be filtered by date range.\textsuperscript{83}

\textbf{Investor/Earnings Conference Calls}

\textsuperscript{¶}60 Investor, or earnings, conference calls relay information to investors and analysts to highlight company successes and calm any investor fears.\textsuperscript{84} These conference calls typically occur at the end of the quarter with the release of financial results.\textsuperscript{85} Aspects of a call are (1) the call is facilitated and always acknowledges forward-looking statements and that investors and analysts should not assume future events will happen for certain; (2) participants include the company chairperson, Chief Executive Officer, Chief Financial Officer, and other relevant executives all covering performance issues and future expectations; (3) the call ends with a question and answer period.\textsuperscript{86}

\textsuperscript{¶}61 The legal issue presented by conference calls is the same as the one presented by press releases: forward-looking statements. Conference calls are specifically covered by rules for oral statements.

\textsuperscript{¶}62 Oral forward-looking statements fall within the safe harbor if they are accompanied by a cautionary statement that the statement is forward-looking and that actual results may materially differ from those projected in the

\begin{itemize}
\item \textsuperscript{77} 15 U.S.C. § 78u-5(c)(1)(B).
\item \textsuperscript{78} See Newsroom, ABBOTT, http://www.abbott.com/newsroom.html (last visited Apr. 7, 2016). The company archives releases back to 2013. Id.
\item \textsuperscript{79} GENERAL DYNAMICS CO., http://www.generaldynamics.com/ (last visited Apr. 7, 2016). The company archives releases back to 2009. Id.
\item \textsuperscript{80} See id.
\item \textsuperscript{81} About PR Newswire, PR NEWswire, http://prnewswire.mediaroom.com/about-pr-newswire [https://perma.cc/8NXT-DNLF].
\item \textsuperscript{82} Browse News Releases, PR NEWswire, http://www.prnewswire.com/news-releases/ [https://perma.cc/9EPR-4PMJ].
\item \textsuperscript{85} Id.
\item \textsuperscript{86} Id.
\end{itemize}
forward-looking statement. Moreover, if there are specific factors that could cause results to materially differ from those stated in the forward-looking statement, then the factors must be contained in a readily available written document, the document must be identified, and the document must contain a cautionary statement that meets the safe harbor in 15 U.S.C. § 78u-5(c)(1)(A).

¶63 For conference calls, both transcripts and recordings are available. Transcripts and recordings can be found on a company’s website. These will be found in Investor (or similar) sections on company sites. General Dynamics makes audio available of the four most recent quarterly calls. Under Investor Relations, users should then look for News and Events and then Webcasts. The call is available as an MP3 file. Compare this to Pfizer, which makes both recordings and transcripts available on a page titled Pfizer Presentations. On this page, users will see links for conference call audio, transcripts in PDF, and presentations in PDF. Pfizer requires a brief registration to access the audio. The presentations consist of slides that present bulleted highlights and multiple charts and graphs detailing company performance.

¶64 Nasdaq.com makes transcripts available, including for companies traded on the New York Stock Exchange. From the main page, users should use the search box and type in “call transcripts.” Next, entering a company name or ticker symbol will pull up a history of conference call transcripts. The transcript is complete and includes a listing of the analysts on the call. The coverage goes back one to two years.

¶65 Another source to be aware of is InvestorCalendar. It provides access to current, upcoming, and archived conference calls. The calendar for upcoming calls is the site's most useful feature, allowing users to plan to access calls from current or potential clients. For current day and archived calls, the user can listen to the call transcript. The site can be searched by company name or ticker symbol.

SEC Filings

¶66 The statutory foundation of SEC reporting has already been discussed, including both the ’33 and ’34 Acts. Here, we delve into the regulatory regime that governs, specifically, filings made to the SEC. These regulations are found in title 17 of the C.F.R. In turn, registration statements, prospectuses, 10-Ks, 8-Ks, 10-Qs, and proxy statements will be addressed.

88. See id. § 78u-5(c)(2)(B).
91. Id.
94. See id.
95. See supra ¶¶ 48–50.
General rules and forms fall under the ’33 or ’34 Act. C.F.R. part 230 provides general rules, and part 239 provides for forms, both under the ’33 Act. Under the ’34 Act, general rules are at part 240, while forms are prescribed in part 249.

There are also regulations that apply to both the ’33 and ’34 acts. Regulation S-K provides standard filing instructions. Regulation S-X details the form and content of financial statements. Regulation S-T provides rules on electronic filing.

As noted, the registration statement and prospectus are filed when a company offers the public new stock shares or other securities. Numerous regulations govern the disclosure of information when companies are offering new shares. The general requirements are laid out in part 230 of title 17. There are numerous rules governing the prospectus as well. Details such as legibility, date, and presentation of information are prescribed. Moreover, an additional rule provides for when a prospectus can incorporate by reference and when it cannot.

When a company makes a registration statement, it must file one of several forms, the most significant being S-1, S-3, S-4, and S-8. Form S-1 must be used for initial public offerings, as well as by companies that have been filing for less than three years. S-3 is used by seasoned filers, so it is most commonly encountered. Form S-4 is for stock acquired by stockholders in a merger or stock swap. When stock is offered to employees as part of a benefit plan, Form S-8 must be filed.

As noted earlier, periodic reporting is required under the ’34 Act. The three main periodic reporting forms are the 10-K, the 8-K, and the 10-Q. The 10-K is the annual report, including audited financials, and there are rules on the timing of the filing. The 8-K, which keeps investors up-to-date, is for interim

---

106. Form S-1, Registration Statement Under the Securities Act of 1933, 17 C.F.R. § 239.11. A sample form is available at Forms List, supra note 29.
107. Form S-3, for Registration Under the Securities Act of 1933 of Securities of Certain Issuers Offered Pursuant to Certain Types of Transactions, 17 C.F.R. § 239.13. The rule lays out what constitutes a “seasoned filer.” Id. A sample form is available at Forms List, supra note 29.
108. Form S-4, for the Registration of Securities Issued in Business Combination Transactions, 17 C.F.R. § 239.25. A sample form is available at Forms List, supra note 29.
109. Form S-8, for Registration Under the Securities Act of 1933 of Securities to Be Offered to Employees Pursuant to Employee Benefit Plans, 17 C.F.R. § 239.16b. A sample form is available at Forms List, supra note 29.
110. See 1 HAZEN, supra note 49, § 1.2[3][B].
111. See Form 10-K, for Annual and Transition Reports Pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934, 17 C.F.R. § 249.310. A sample form is available at Forms List, supra note 29.
reporting—events that occur between reporting periods are filed on this form. The 10-Q is for quarterly reports and is filed three times per year.

¶72 A disclosure similar to periodic reporting is the proxy statement. Proxies disclose information specifically to shareholders. This serves shareholder suffrage—shareholders need appropriate information to make informed decisions on how their shares will be voted at a company annual meeting.

¶73 Proxy disclosure requirements are governed by Regulation 14A. Need-to-know information includes how terms are defined and what information must be included in documents used for proxy solicitations. Moreover, filers must be aware of Schedule 14A. This extensive schedule lays out what companies must provide in the proxy statement. Specific items are presented, and these include matters to be acted on, executive compensation, and financial information.

¶74 Regulation S-K provides standard, detailed filing instructions under both the '33 and '34 Acts and covers forms 10-K, 10-Q, 8-K, and proxy statements, which are filed as Form 14A to reflect what is being filed is directly from Schedule 14A. Regulation S-K includes subparts that cover business information, financial information, management, registration statements, and required exhibits. The specific sections address items such as description of business, legal proceedings, management discussion and analysis of financial condition, and officers. Compare the items in the regulation to what is in the filed forms.

112. See Form 8-K, for Current Reports, 17 C.F.R. § 249.308; see also id. § 240.13a-11 or 240.15d-11. A sample form is available at Forms List, supra note 29.
113. See Form 10-Q, for Quarterly and Transition Reports Under Section 13 or 15(d) of the Securities and Exchange Act of 1934, 17 C.F.R. § 349.308a; see also id. § 240.13a-13 or 240.15d-13. A sample form is available at Forms List, supra note 29.
114. Defined as “information that the Securities and Exchange Commission requires must be provided to shareholders before they vote by proxy on company matters.” See Downes & Goodman, supra note 22, at 546.
115. See 3 Hazen, supra note 49, § 10.2[1].
116. See id. §§ 10.1, 10.2.
118. Definitions, 17 C.F.R. § 240.14a-1.
121. Id.
130. Legal Proceedings, 17 C.F.R. § 229.103.
133. Forms List, supra note 29.
¶75 Once familiar with the regulatory regime governing SEC filings, students must know where to find actual company filings. This is done through the SEC’s EDGAR system—the Electronic Data Gathering, Analysis, and Retrieval system. EDGAR is available on several platforms; here we will look at the system on the SEC website, as well as on Bloomberg Law.

¶76 On the SEC website, EDGAR may be searched in multiple ways. To access a particular company’s filings, search by company name, ticker symbol, or Central Index Key (CIK) number. The CIK number, which is an identification number assigned by the SEC to individual corporations and people, is the most accurate way of pulling up a specific company. This is because doing a name search will return various subsidiaries and related entities, each of which has its own CIK number. Fortunately, the site provides a CIK lookup tool.

¶77 Once one has done a company search, the filings will appear in reverse chronological order. There is also a header on the results page. The header contains pertinent information, including company name and address, industry, state of location, and state of incorporation. Below the header is an option to filter results by filing type and date.

¶78 For each filing, the form number, description, and date are listed. Proxy statements are indicated by the filing code of DEF 14A, or definitive proxy statement. A filing is opened by clicking the Documents link. Users will now see multiple links, one for the form itself and others for exhibits. When users open a form, they will note that the content follows what is prescribed by regulation. The 10-K includes a very useful management discussion and analysis, while the DEF 14A includes important executive compensation information. Be aware that filings may refer users to other filings for information; for example, a 10-K may refer readers to the DEF 14A for executive compensation information.

¶79 Should one need to search across companies, full-text keyword searching is available for the past four years, as well as Boolean searching of archived filings.

---

135. While both Westlaw and LexisNexis provide EDGAR, I believe that the offering on Bloomberg Law is superior.
136. Bloomberg is a very useful service, but keep in mind that companies file in EDGAR directly online with the SEC, thus giving the SEC website additional credibility over the for-pay services.
139. See id.
141. See Exhibits, 17 C.F.R. § 229.601.
142. See supra ¶¶ 70–73.
143. This is useful for comparative research.
dating to EDGAR’s advent in 1994. The full-text searching option includes an advanced search that allows users to narrow by filing type, date, company name, CIK number, and SIC classification. One may use Boolean searching on the full-text search function; however, the query will not search both filings and exhibits.

¶80 Bloomberg Law presents EDGAR in a user-friendly format with multiple search options using an all-in-one interface. EDGAR is linked from the main page, as well as from the transactional and company tabs. Like the SEC site, Bloomberg allows users to search companies by name, ticker symbol, CIK number, location, and SIC code. As well, both allow users to search by filing type or form. Bloomberg does a nice job of categorizing the forms so that users can browse by topic to find the forms they need. Topics include registrations, periodic reports, and proxies. This helps students learn the functions of the various forms.

¶81 A useful feature of Bloomberg Law is the ability to keyword-search both forms and exhibits. Exhibits may also be accessed by exhibit title or type. A browseable drop-down menu is provided that guides users through exhibits by type, which are each assigned an exhibit number. This is another great learning feature as students can go through a complete list of exhibit types, learn what exists, and see how they are numbered.

¶82 Searching EDGAR on Bloomberg Law is enhanced by the fact that users may combine search parameters. Working from the all-in-one interface, researchers may run searches that combine company name with one or more exhibits or one or more forms. Thus, if one needs Boeing’s most recent 10-K and 8-Ks, that is easily done. Date restrictions are also available; thus if one needs a company’s material contracts (exhibit 10) from the past year, this is also easily done.

State Filings

¶83 While the focus on filings thus far has been federal, companies make filings with the states, too. State filings are made with a state’s Secretary of State office. The filings include a registered office, a registered agent, and UCC filings. The most important is the registered agent. The agent is the person on whom the state may make notices and service of process. Delaware provides a good example for finding the registered agent for a company. On the website, click the Search for a Business Entity link. Search by company name. The search may provide numerous results that include subsidiaries. One may want to go to the company website to verify its formal name. The record for the company will show some basic information, such as incorporation date. Below this is the registered agent information. This includes the name, address, and phone number of the agent.

145. See [EDGAR Archive], U.S. SEC. & EXCH. COMM’N, http://www.sec.gov/cgi-bin/srch-edgar [https://perma.cc/S4KG-2ACQ]. This allows users to do historical research on a company by looking at what was reported in years past.

146. Standard Industrial Classification code, which is a federal standard numbering system identifying companies by industry, giving users the ability to compare documents filed by industry cohorts. See DOWNES & GOODMAN, supra note 22, at 665.


148. MODEL BUSINESS CORPORATION ACT ANNOTATED § 5.01 cmt. (2013).

Insider Information and Stock Prices

¶84 As previously noted, insider information stands alone as a separate topic because it deals with significant personnel, as opposed to the corporate entity, and the transactions of company stock by these personnel, or “insiders.” Moreover, executive compensation is involved, information that is paid considerable attention.150 Insider activity is also highly regulated, so future attorneys need to know the where and how of this regulatory regime to best serve business clients.

¶85 Three groups of people constitute insiders: first, members of the board of directors;151 second, officers of the corporation;152 and third, beneficial owners of more than ten percent of equity securities.153

Disclosure

¶86 The legal regime governing insiders seeks to ensure market integrity and investor confidence.154 The legislation that addresses these principles are sections 10155 and 16156 of the ’34 Act. These statutes address disclosure of securities transactions conducted by insiders157 and the prohibition against engaging in manipulative or deceptive devices in securities transactions.158

¶87 Section 16 of the ’34 Act directly governs disclosure by insiders, including the disclosures required,159 time of filing,160 contents of statements,161 and other details.162 In addition, the SEC promulgates numerous rules. These include rules detailing insider reports.163 The core rule is 240.16a-3, titled “Reporting transactions and holdings.” This rule explains the reporting process and provides for three important forms: Forms 3, 4, and 5.164

¶88 Forms 3, 4, and 5 are the vehicles of insider reporting. These forms are further detailed by SEC rules. Form 3 is “for initial statements of beneficial ownership of securities” held by insiders.165 This form provides notice to the SEC that an individual has become a director, officer, or beneficial owner, and it must be filed within ten days of becoming such an insider.166 Form 4 is to disclose changes in an insider’s

---

150. See Executive Compensation, 17 C.F.R. § 229.402.
151. See DOWNES & GOODMAN, supra note 22, at 66.
152. Defined at Definition of Terms, 17 C.F.R. § 240.16a-1(f).
153. Id. § 240.16a-1(a).
154. See generally 1 JACOBS, supra note 9, § 1:1.
156. Id. § 78p.
158. Id.
159. Id. § 78p(a).
160. Id. § 78p(a)(2).
161. Id. § 78p(a)(3).
162. See id. §§ 78p(b)–78p(g). These details include profits from purchase, conditions for sale, and securities held in an investment account.
163. See 17 C.F.R. §§ 240.16a-1 to 240.16a-13 (2015). Reporting exemptions are covered by id. §§ 240.16b-1 to 240.16b-8 and §§ 240.16c-1 to 240.16c-4.
164. Reporting Transactions and Holdings, 17 C.F.R. § 240.16a-3.
165. Form 3, Initial Statement of Beneficial Ownership of Securities, 17 C.F.R. § 249.103. See a sample form at Forms List, supra note 29.
166. See 4 HAZEN, supra note 49, § 13.1[1].
ownership of securities. This form is most common and is very important as it provides the means for tracking an insider’s transactions over time. Form 5 is the annual statement of beneficial ownership. It provides filers with a way of disclosing any transactions that were not previously disclosed, were exempt from reporting otherwise, were small acquisitions, or were not reported in the previous two fiscal years of the issuer because the insider acted in good faith in believing their prior reporting was complete.

**Manipulative and Deceptive Trading Activity**

§8 While section 16 of the ’34 Act governs disclosure, section 10 of the Act furthers market integrity and investor confidence by addressing insider malfeasance. Section 10(b) of the Act has an “antifraud provision that renders unlawful manipulative and deceptive acts and practices in connection with the sale or purchase of a security.”

§9 Several rules directly regulate manipulative and deceptive devices in trading. The centerpiece rule is 10b-5. This rule identifies the specific conduct that is proscribed. First, it is unlawful, directly or indirectly, “to employ any device, scheme, or artifice to defraud.” Second, it is unlawful to make false statements of material facts “or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.” Third, it is unlawful “to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.”

§10 Courts have applied four factors to determine whether trading is sufficiently suspicious. The first is timing: the closer the trade is made to a subsequent release of information that impacts the stock price, the more likely scienter exists. Next, one looks at the percentage of stock sold, with larger proportions of total holdings being more suspicious. Third, courts review how trades in question compare to an insider’s trading history: are any anomalies revealed? Finally, courts review how many insiders traded at the same time, with a higher number being more suspicious.

---

169. 17 C.F.R. § 240.16a-3(f).
171. See Manipulative and Deceptive Devices and Contrivances, 17 C.F.R. §§ 240.10b-1 to 240.10b-21.
172. Id. § 240.10b-5(a).
173. Id. § 240.10b-5(b). Information is material if it is information that reasonable investors would find significant in making their investment decisions. COX & HAZEN, supra note 170, § 12:9[1].
174. 17 C.F.R. § 240.10b-5(c).
176. Id.
177. Id.
178. Id.
179. Id.
¶92 When considering rule 10b-5 and the above factors, one can see how an attorney must review Form 4 filings made by a defendant insider. An attorney must track the transactions that Form 4 documents to determine whether there is credible evidence against a client. Moreover, stock prices become important: stock price history must be compared to trading activity and the release of pertinent company information. Historical stock prices are important for determining any ill-gotten gains. To determine profits made or losses avoided, courts must look at purchase and sale prices, and this requires the attorney to review historical prices for the time period at issue.

¶93 As with other SEC filings, I look for insider filings on the SEC website or Bloomberg Law. Finding the filings on the SEC site is very similar to looking up the periodic reporting documents, such as the 10-K. Go to the main EDGAR filings search page and search the company by ticker or CIK number. Once you have the complete results, you can manipulate them to see ownership reports. To see just ownership forms (Forms 3, 4, and 5), click the Only button under Ownership?, and then click Show All. You now have a list of ownership reports; you will see mostly Form 4 filings. This is the most common form filed as it reports transactions for established insiders. Click into a Form 4 to see shares acquired or disposed of, share price, and amount of securities owned by the insider after the transaction.

¶94 To find ownership forms for specific company insiders, go to the Insider Transactions for This Issuer link, found in the blue header on the EDGAR company results page. Click the name of the insider of interest to see a chart of their filings. Be aware that if the insider sits on other company boards, those filings will be included. The chart will list the transactions in reverse chronological order. Click the form number to see the filed document. However, a summary of the filing is provided in the chart. The summary information includes the type of transaction, the number of shares involved, and the number of beneficial shares owned after the transaction; thus, the chart summary provides the most pertinent data.

¶95 Bloomberg Law operates similarly to the SEC site. Access the EDGAR page on Bloomberg. In addition to inputting the relevant company information, the search template allows one to limit the search to ownership forms. In the Forms section at the top of the template, access the Browse button; then select Securities Ownership and Trading and select a form. The other option is to type the form number into the Forms search box and a list of forms will drop down. Search results are in reverse chronological order; forms themselves are replicas of the original filed form.

¶96 To find an individual’s filings on Bloomberg, return to the EDGAR search template. Go to the Company/Filer section and use the last name of the insider in the Name box. In the Role box, select Reporting Owner. There is no need to specify the form needed, but one may do so. Again, the results will be in reverse chronological order.

180. See id. § 8:2; see also 4 HAZEN, supra note 49, § 13.2[7]. In a case in which investors brought a class action against company insiders, the court’s holding relied on the rise in stock prices and average purchase prices. See generally Acticon AG v. China North East Petroleum Holdings Ltd., 692 F.3d 34 (2d Cir. 2012).

181. See EDGAR Company Filings, supra note 137.

182. For explanation and instructions, including transaction codes, of ownership forms, see the instructions for Forms 3, 4, and 5 at Forms List, supra note 29. See also DOWNES & GOODMAN, supra note 22, at 268, 269.
chronological order and, as noted above, will include any and all boards of directors the insider sits on.

¶97 For stock prices, I use two free websites: MarketWatch\(^{183}\) and Yahoo Finance.\(^{184}\) Both offer historical quotes in addition to the current day’s trading. Charts are available for up to ten prior years on MarketWatch, while Yahoo charts go back five years. Charts are useful as you can see stock price activity for a certain day, week, or month and compare the price to dates that an insider made a trade. This can then be compared to dates that information was made public, prior to which only an insider would know. On MarketWatch, look up a company by name or ticker symbol and select the Charts tab. On Yahoo, look up the company and click the Interactive Charts link.

¶98 Both sites also offer day-by-day historical prices. These include opening, high, low, and closing prices for the specific day. On Yahoo, select the Historical Prices link once you have pulled up the information for the relevant company. Historical prices go back to 1962 and can be presented as daily, weekly, or monthly numbers. On MarketWatch, pull up the relevant company and select the Historical Quotes tab. Enter the desired date and click Set. The results provide the opening, high, low, and closing prices for the day. Some company quotes go back as far as 1971. The advantage of Yahoo is that one can set a range of dates to easily note specific prices on specific dates over a relevant time period. Again, this can be compared to insider activity and dates of announcements that affect stock prices.

Conclusion

¶99 Many law students will go on to work for firms that serve numerous company clients. We know that many students are ill prepared to hit the ground running at a corporate law firm for lack of company intelligence. The information I have outlined here constitutes a relatively comprehensive course in company information. Company clients want their attorneys to know them well and to understand their businesses. We can instruct our students to have a means of developing deeper knowledge of company clients. With an understanding of the information they are seeking, its legal context, and how to find it, new associates will offer their firms and their clients a competitive advantage.

183. See MarketWatch, supra note 34.