This is Release #4 (August 2013)

Conducting Due Diligence in a Securities Offering

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There is no one prescription for diligence, nor could there be as every offering presents unique issues and special considerations. Due diligence needs to be tailored to the issuer, its business and industry, the nature of the offering and issues that arise during the course of the offering. In Conducting Due Diligence in a Securities Offering, procedures that may be taken under appropriate circumstances are described. What is clear under the law, and articulated by the courts over the years, is that a “reasonable investigation” must be undertaken. Conducting Due Diligence in a Securities Offering provides helpful guidance on the various practices and policies to consider when conducting due diligence to all participants in an offering, particularly young attorneys.

Highlights of Release #4 include:

• New § 5:9.9, Testing-the-Waters Communications, explains how the Jumpstart Our Business Startups Act allows certain issuers (emerging growth companies, or EGCs) and underwriters to engage in oral or written communications with qualified institutional buyers and other institutional accredited investors both before and after filing a registration statement.

• New § 5:9.10, Conflict Minerals, explains that the SEC adopted final rules implementing the “conflict minerals” disclosure requirements in section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. These new rules require all companies that file Exchange Act reports with the SEC to disclose annually their use of specified conflict minerals that originated from certain “conflict countries.”

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**Release #4**  
August 2013

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<thead>
<tr>
<th>REMOVE OLD PAGES NUMBERED:</th>
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<tbody>
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</tr>
<tr>
<td>3-1 to 3-10</td>
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<td>5-1 to 5-40</td>
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