

# Index

- Accountants, 197–199, 361, 362
- Accounting practices, 70, 206, 207  
generally accepted accounting principles (GAAP), 56, 95, 168, 184, 187, 198, 219
- Accredited investors, 14, 15, 407–409, 413, 416. *See also* Investors
- Advertising, 15, 93, 414
- Advisors, 105–110, 360–363
- Agent registration exemption, 433–435
- Alpha ( $\alpha$ ), 54, 55, 57–60
- American Institute of Certified Public Accountants (AICPA), 198, 199, 223, 233, 252. *See also* Statements on Auditing Standards (SAS)
- Statements on Standards for Accounting and Review Services, 251, 252
- Angel investing, 19, 20, 22
- Antifraud rule, 211, 221, 413, 421, 432
- Antitakeover provisions, 362, 363
- Antitrust law, 212–215, 396, 397
- Asset purchase, 388, 389, 395
- Attorneys, 360–362, 365
- Auctions, 106, 107, 111
- Audit committee, 150, 167, 171, 174–177, 183, 185, 186, 225
- Auditing standards, 137, 167–188, 223, 228–250
- Auditor independence, 168, 169, 186, 223, 224
- Audits, 167–188, 199, 231–233. *See also* Auditing standards
- “Bad boy” provisions, 417, 430
- Bank Secrecy Act (BSA), 190
- Bankruptcy, 346, 347, 349–356. *See also* Distressed companies
- Benchmarking, 262–265
- Bertrand model, 268, 269
- Beta ( $\beta$ ), 55, 57–60
- Bidding process, 109–111
- “Blank check” companies, 415
- Blue sky laws, 93, 363, 366, 371, 376, 399, 422, 426–432. *See also* State securities laws
- Board of directors, 128, 129, 132, 168, 176, 177, 185–187, 363, 364, 368, 369, 373–376
- Book building, 89
- Book-running manager, 89
- Boutique bank, 89
- Box-Jenkins method, 265
- Breaking syndicate bid, 94
- Breakup fee, 112, 384
- Bribery, 221, 222
- Bridge financing, 74
- Broker-dealers, 430, 433–435
- Bulge bracket bank, 89
- Business intelligence, 255–274
- Buyouts, 7, 21–23, 35, 44, 46–52, 54–63, 68, 70–76, 96, 114, 118–121

- C corporations, 10
- California Public Employees' Retirement System (CalPERS), 5, 25
- California State Teachers' Retirement System (CSTRS), 68, 69
- Capital, cost of, 266–268
- Capital Asset Pricing Model (CAPM), 54–62
- Capital calls, 6, 12, 24
- Capital gains, 8, 34–36, 42, 43
- Caps, 284
- Carried interest (carry), 7, 8
- Cash retention bonus plans, 390–392
- Celler-Kefauver Antimerger Act (1950), 212, 214, 215
- Change, 121–126, 277, 301, 305, 306. *See also* Lean Operations
- Chief executive officers (CEOs), 128, 129, 132, 167, 226
- Chief financial officer (CFO), 167, 226
- Christensen model, 286–288
- Clayton Antitrust Act, 212–215
- Club deals, 12
- Committee of Sponsoring Organizations of the Treadway Commission (COSO), 138–154
- Communications, 92, 93, 148, 149, 157, 159, 184–186, 242–244, 247–250. *See also* Internal control
- Compensation, 7, 8, 76, 85, 128–130, 418–421
- Competitive intelligence. *See* Business intelligence
- Confidential information memorandum (CIM), 107–109
- Confidentiality, 370, 371
- Conflicts of interest, 108, 109, 220
- Consumer protection law, 215–217
- Control acquisitions, 341, 342, 345
- Control activities, 146, 147, 157–159. *See also* Internal control
- Control environment, 141–143, 156–158. *See also* Internal control
- Control Objectives for Information and Related Technology (COBIT), 148, 149
- COSO, 138–154
- Cost of sales, 325–331
- Criminal liability, 227, 432
- Crisis management, 125, 126, 272
- Customer satisfaction, 315–317
- Data normalization, 262–265
- Debt, 22, 23, 35, 43, 44, 67, 68
- Definitive merger agreement, 111, 112
- Deming cycle, 303, 304
- Disclosures, 91, 95, 168, 172, 175–178, 185, 226, 227, 359, 360, 364, 393, 394, 409–411, 420
- Discounted cash flow analysis, 380
- Disinvestment period, 6
- Distressed companies, 4, 341, 343–356
- Distributions, 27–29
- Diversification, 27, 54, 55, 62, 63, 70
- Dot-com era, 45, 53, 76, 77, 96–99, 112
- Due diligence, 9, 11, 25, 26, 90, 110, 111, 205–207, 273, 311–331, 342, 343, 347, 348, 350, 351, 370, 371, 374, 378, 384–387, 395
- Duncan Framework, 285–288

- Earnings before interest, taxes, depreciation, and amortization (EBITDA), 23, 108, 109, 307, 336
- Earnings before interest and tax (EBIT), 108, 109
- Earnings per share (EPS), 88, 379
- Earnouts, 383, 387
- Economic growth, 23, 35–36
- Electronic Data Gathering and Retrieval System (EDGAR), 219
- Employee Retirement Income Security Act of 1974 (ERISA), 16, 17, 33, 42, 96, 118
- Employees, 9, 205, 206, 259, 303, 305–309, 312–318, 390–393
- Energy Policy Act (EPACT), 219
- Enterprise resource planning (ERP), 127, 128
- Enterprise risk management (ERM), 145, 146. *See also* Internal control
- Epsilon ( $\epsilon$ ), 59
- ERISA. *See* Employee Retirement Income Security Act of 1974 (ERISA)
- Ethics, 226
- Evergreen funds, 5
- Executives, 9, 10, 128, 129, 132, 167, 226, 364, 368, 373–376
- Exit strategies, 6, 97, 113, 274. *See also* Initial public offering (IPO); Mergers and acquisitions (M&A); Sale transactions
- Facility assessments, 312–331
- Fairness opinion, 378
- Family members, Rule 701 exemption, 418–421
- Federal Energy Regulatory Commission (FERC), 219, 220
- Federal funds rate (FFR), 35
- Federal Sentencing Guidelines, 227
- Federal Trade Commission (FTC), 212, 214, 215, 217
- Federal Trade Commission Act, 212, 214
- Fees, 7, 11, 28–30, 63, 70, 71, 73–76, 86, 88, 105–106, 112, 359, 368, 384, 430
- Fiduciary-out clause, 111, 112
- Financial printers, 365, 366
- Financial reporting, 56, 86, 152, 153, 162, 167–179, 182–188, 360. *See also* Internal control
- Financial statement fraud, 189, 192–209, 230, 233–244, 249
- Financial statements, 168–171, 173–184, 187, 188, 198–201, 226, 227, 251, 420
- Financially distressed companies. *See* Distressed companies
- Firm commitment underwriting, 89, 90
- Five-factor test for integration, 426
- FoF (fund of fund investments), 4, 11, 17
- Follow-on funds, 13, 18, 27, 28, 31, 32, 56
- Force majeure, 111
- Foreign Corrupt Practices Act of 1977 (FCPA), 217, 221, 222
- Forensic valuation, 274
- Fraud, 172, 173, 178, 180, 183, 185, 189–209, 211, 217, 218, 220, 221, 223, 227–250, 252, 373–376, 432, 433
- Free writing prospectus, 92
- Fund of funds (FoF), 4, 11, 17
- Fund-raising stage, 10–12, 14, 15, 18, 29–36

- Gatekeepers, 11, 29
- General partners (GPs), 5–8,  
13–16, 18, 24–31
- Generally accepted accounting principles (GAAP), 56, 95,  
168, 184, 187, 198, 219
- Generally accepted auditing standards (GAAS), 230, 233,  
244, 245
- Geographical influences on private equity investment, 32, 46–50
- Glass-Steagall Act of 1933, 74
- Going public, 87–91, 212,  
227–229. *See also* Initial public offering (IPO)
- Governance, 117, 125–134, 225,  
226. *See also* Internal control
- Governmental Accountability Office (GAO) Auditing Standards (The Yellow Book), 243
- “Green Shoe” tactic, 93, 94
- Guidance on Monitoring Internal Control Systems*, 139
- Gun jumping, 92, 93
- Hart-Scott-Rodino Antitrust Improvement Act, 212, 215,  
396
- Harvesting of investments, 6, 10, 12  
initial public offerings. *See* Initial public offering (IPO)  
mergers and acquisitions. *See* Mergers and acquisitions (M&A)
- Hedge funds, 16, 26, 211, 212,  
221
- Historical private equity investment levels, 50–54
- Historical private equity returns, 54–62, 337, 338
- History of private equity, 39–46
- Holt-Winters Method, 265
- Individual investors. *See* Investors
- Industry/sector specialization, 32,  
336, 337
- Information Systems Audit and Control Association (ISACA), 148, 149, 228, 253, 254
- Information technology (IT), 148,  
149
- Initial public offering (IPO)  
advantages of, 84, 85, 100  
advisors, selecting, 360–364  
confidentiality, 370, 371  
as contingency plan for M&A,  
107  
disadvantages of, 85, 86  
due diligence, 370, 371, 374  
as exit strategy, 6, 357  
expenses, 369  
going public process, initial steps,  
87–91  
as harvesting method, 83–100  
historical returns, 96–100  
legal process, 360, 364–373  
lock-up periods, 85, 91  
overview, 83–87, 100  
parties involved, 365, 366  
primary offering, 90, 91  
private equity firms going public,  
212, 227–229  
private equity trends, 65–70  
registration documents, 94–96,  
366, 367  
regulatory agencies, 91–93  
reverse takeover compared, 103,  
104  
sale transaction compared,  
358–360  
securities regulation, 212,  
373–376  
size of, 90, 91  
underwriters, 85, 86, 88, 89, 93,  
94, 100, 362, 367, 368

- and venture capital growth, 42, 44, 77
- Insolvency, 346, 347, 349. *See also* Distressed companies
- Institute of Internal Auditors (IIA), SIAS 3, 228, 252, 253
- Institutional investors. *See* Investors
- Integration doctrine, 424–426
- Interest, 35, 344, 345
- Internal control, 137–164, 167–188, 200, 201, 222, 223, 227–250. *See also* Sarbanes-Oxley Act of 2002 (SOX)
- Internal rate of return (IRR), 266
- Internet as source of business intelligence, 257–259
- Intrastate offerings, 421–424
- Inventory management, 322–325
- Investment advisors, 15, 16, 29, 30, 211, 217, 221
- Investment Advisors Act (1940), 211, 217, 221
- Investment banks, 87–89, 105, 377, 378. *See also* Underwriters
- Investment Company Act of 1940, 15, 217, 220, 221
- Investment stage, 10, 12
- Investors, 5, 13–15, 17, 18, 90, 333, 402–409, 413, 416, 430, 431. *See also* Private placement of securities (private offering)
- Issuer-dealer, 431
- Junk bonds, 43, 74
- Lead investor, 32
- League tables, 88
- Lean Operations, 297–309, 322, 323
- Letter of intent (LOI), 89, 393, 394
- Leveraged buyouts (LBOs), 22, 23, 35, 96, 119–121. *See also* Buyouts
- Limited liability companies (LLCs), 10
- Limited partners (LPs), 5, 13, 14, 23–26, 32, 342, 343
- Limited partnership (LP), 10, 13
- Limited partnership agreement (LPA), 7, 13, 14, 17, 23–24, 26–29
- Liquidation of private equity fund, 6
- Liquidity, 83–85, 102, 346, 347, 359, 376, 377
- Loans, 343–346
- Lock-up periods, 85, 91, 191, 368
- Maintenance, 318–320
- Management, 124–126, 128, 129, 168, 338–340, 363, 364
- Management discussion and analysis (MD&A), 95, 227
- Management fees, 7, 28, 29, 63, 70, 71, 73–76
- Management stage, 10, 12
- Manufacturing due diligence, 311–331
- Market Standoff Agreements, 359, 360
- Material adverse (MAC-out) clause, 111
- Material misstatements, 168, 171, 173, 175, 177–180, 182–184, 188, 226, 232, 234, 239, 243, 244, 246–248, 373–375, 432, 433
- Material omissions. *See* Omissions of material facts
- Material weakness, 168–170, 183, 184, 186, 187, 226, 229–232, 248

- Megafunds, 24, 25, 51, 63, 68–70
- Mergers and acquisitions (M&A)
- acquisition structure alternatives, 388–390
  - agreement and plan of merger, 395
  - antitakeover provisions, 362, 363
  - antitrust law, 212–215, 396, 397
  - auctions, 106, 107
  - bidding process, 109–111
  - buyout deals, 68
  - considerations for, 104, 105
  - definitive merger agreement (DMA), 111, 112
  - financial advisor, 105, 106
  - financing, 85
  - forward merger, 101, 113
  - as harvesting method, 83, 97
  - historical trends, 112–114
  - internal control for target companies, value of, 160
  - merger as exit strategy, 6, 113
  - mergers generally, 389
  - overview, 101, 102
  - potential buyers, analyzing, 106, 107
  - reverse merger, 101, 113
  - sale transactions. *See* Sale transactions
  - successful business transformations, reasons for, 121
  - takeovers, 44, 101–104, 121
- Metrics, normalizing performance, 262–265
- Mezzanine financing, 4, 341, 343–346, 355, 356
- Mission statement, 302, 303, 317, 318
- Money laundering, 189–192
- Monitoring of internal control, 149, 150, 157, 159, 160. *See also* Internal control
- Morgan, Gareth, 277, 284, 285, 291, 294, 295
- Mutual funds, 211, 220
- National Securities Markets Improvements Act of 1996 (NSMIA), 417, 418, 426, 427, 432
- National Venture Capital Association, 56, 78
- Negotiations, sale transactions, 378, 383, 384
- Net present value (NPV), 266–268, 270, 271
- New York, 417, 431, 432
- North American Securities Administrators Association, Inc., 429
- Omissions of material facts, 226, 236, 254, 373–375, 412, 432, 433
- Operational data, 325–331
- Operations, internal, 155–157, 160–162
- Operations assessments, 9, 311–331
- Organizational theory, 277–295
- Outsourcing, 9
- Overallotment option, 93, 94
- Pac-Man defense, 102, 103
- Patriot Act, 190–192
- Payback period (PP), 266
- Pension funds, 5, 16, 17, 24, 25, 32–34
- PIPEs, 4
- Pitch books, 105
- Placement agents, 11, 30, 31

- Plan-Do-Check-Act, 303, 304
- Plant assessments, 311–325, 331
- Poison pill takeover defense, 44
- Power of attorney and custody agreement, 368
- Price-to-earnings ratio (PE), 88, 89, 358
- Pricing issues, sale transactions, 379–382
- Private equity firms, 9, 10, 125–134, 154–164, 211–212, 220–221, 227–229, 277, 338–342
- Private equity funds
- antifraud rule, 211, 221
  - and diversification, 62, 63
  - exit strategies. *See* Initial public offering (IPO); Mergers and acquisitions (M&A); Sale transactions
  - follow-on funds, 13, 18, 27, 28, 31, 32, 56
  - fund-raising process, 29–36
  - general partners. *See* General partners (GPs)
  - geographical distribution of, 46–50
  - growth of industry, 39, 63, 118
  - industry focus, 32, 336, 337
  - investment levels, historical, 50–54
  - investment process, 23, 24
  - investment trends, 24–26, 65–81
  - investments, types of, 19–23
  - largest funds, 52
  - Lean Operations, benefits of, 307–309. *See also* Lean Operations
  - life of fund, 5, 6, 10, 133, 307, 357
  - liquidation, 6
  - megafunds, 24, 25, 51, 63, 68, 69
  - naming of, 12, 13
  - new funds, establishing, 29–32, 69
  - oversubscribed, 31, 32, 69
  - overview, 5
  - placement agents, 11
  - process, overview, 8
  - promotion, 10, 11
  - returns, historical, 54–63
  - selection criteria, 335–341
  - stages of, 10–12
  - start-up funds, 18, 69
  - structure of, 10–19
- Private investments in public equity (PIPEs), 4
- Private placement of securities (private offering), 218, 402–406
- resales of restricted securities, 410, 436–439
- Professional skepticism, 203, 204, 236, 237
- Profits, reinvestment of, 28, 29
- Prospectus (selling document), 91, 365–367, 371
- Proxy statements, 397, 398
- “Prudent man rule,” 16, 33
- Public Company Accounting Oversight Board (PCAOB), 158, 199, 223–227
- Auditing Standards, 137, 168–188, 229–233, 249
- Public Utility Holding Company Act, 217, 219, 220
- Quality, 270, 271, 315–317
- Quality Function Deployment (QFD), 288
- Quiet period, 92, 93
- Recapitalization, 390, 392, 393
- Red herring, 91, 366, 371

- Registration requirements,  
 exemption from, 14–16,  
 400–426, 433–438
- Registration statement, 91, 92, 366,  
 371, 373–375, 400
- Regression analysis, 58–60
- Regulation A, 95, 96, 410, 417
- Regulation D, 14, 15, 398,  
 406–418, 424, 425, 427, 429,  
 430, 436
- Regulation S-B, 411
- Relationships, importance of, 272
- Representations and warranties,  
 386
- Reputation, private equity firms,  
 340, 341
- Resale of restricted securities,  
 436–439
- Return on invested capital (ROIC),  
 268
- Risk  
 assessment, 143, 144, 153, 154,  
 156–158, 170–173, 175,  
 238–240, 273, 274. *See also*  
 Internal control
- audit risk, 245, 246
- distressed companies, 349, 350
- enterprise risk management, 145,  
 146. *See also* Internal control
- factors, 95
- fraud. *See* Financial statement  
 fraud
- general partners versus limited  
 partners, 27
- private equity investments,  
 56–59
- risk reduction, sale transactions,  
 383–388
- Road show, 91, 372
- Robinson-Patman Act, 212,  
 214
- Rule 10b-5, 375, 376, 432, 433
- Sale transactions, 6, 107–109,  
 357–360, 376–398
- Sarbanes-Oxley Act of 2002 (SOX),  
 86, 112, 137, 148, 149, 156,  
 157, 162, 167–169, 212, 217,  
 222–227, 231
- SAS. *See* Statements on Auditing  
 Standards (SAS)
- SEC v. Ralston Purina Co.*, 403
- Section 4(2), 402–406, 427, 436
- Section “4(1½)” exemption, 437,  
 438
- Section 4(6) limited offerings, 424,  
 436
- Securities Act of 1933, 217, 218,  
 373–376, 399–426, 432, 433,  
 436, 437
- Securities and Exchange  
 Commission (SEC), 5, 14–16,  
 86, 91–96, 211, 212,  
 217–227, 366, 367, 369–375,  
 400–426, 433–438
- Securities counsel, 360–362, 365
- Securities Exchange Act (1934),  
 217–219, 223, 373, 375, 376,  
 400, 401, 412, 413, 432–434,  
 438
- Seed investors, 20
- Shareholders, 373–376, 388, 397
- Sherman Antitrust Act, 212–214
- Shewhart cycle, 303, 304
- Shorting (short sales), 93, 94
- Sidecar funds, 71, 72
- “Skin in the game,” 19, 25, 31, 85
- Small Business Investment  
 Company (SBIC), 41
- Small Business Investment Incentive  
 Act of 1980, 424
- Stale pricing, 55, 57
- Standardized work processes,  
 305–307
- Staple financing, 109

- Start-up companies, 84
- State securities laws, 93, 363, 366, 371, 376, 399, 422, 426–432, 435, 439
- Statements on Auditing Standards (SAS), 222, 230, 233–250
- Statements on Internal Auditing Standards, SIAS 3, 252, 253
- Statements on Standards for Accounting and Review Services (SSARS), 251–252
- Statutes of limitations, 376, 433
- Stieger Amendment, 42, 43
- Stock acquisitions, 101, 388–390, 395. *See also* Mergers and acquisitions (M&A)
- Stock bonus plans, 390, 392
- Stock exchanges, 218, 219, 428
- Stock options, 85, 128–130
- Strategic planning, 125, 126, 256, 273, 354, 355. *See also* Business intelligence
- Suitability standards, 430, 431
- Suppliers, relationships with, 272
- Takeovers. *See* Mergers and acquisitions (M&A)
- Tax Act of 1981, 43
- Tax issues, 8, 10, 34–36, 42, 43, 67, 197, 198
- Tax Reform Act of 1986, 18, 19
- Teasers, 107
- Technology, 78, 96, 148, 149
- 10 and 10 rule, 73
- Terminology, 5–8
- Testing of internal controls, 170, 173, 175, 179–182, 184, 187
- Time and responsibility schedule, 394, 395
- Tombstone ads, 15, 93
- Trust Indenture Act (1939), 217, 220
- Underwriters, 85, 86, 88, 89, 91, 93, 94, 100, 359, 362, 365, 367, 368, 372, 415
- Unfair trade practices, 214. *See also* Antitrust law
- Uniform Limited Offering Exemption (ULOEE), 429
- Uniform Securities Act, 439
- United States Company Accounting Reform and Investor Protection Act of 2002. *See* Sarbanes-Oxley Act of 2002 (SOX)
- Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA-PATRIOT) Act of 2001, 190–192
- U.S. Pension Protection Act of 2006, 17, 24
- Valuation, target companies, 379, 380
- Value creation, 126, 127, 129, 155–163
- Values statement, 302, 303
- Venture capital (VC), 7, 19–21, 44–51, 53–62, 69, 76–81, 121, 211, 221
- Vintage year, 13
- Vision statement, 302, 303, 317, 318
- Visual management, 321, 322
- “Walking dead” investment, 27
- Whistleblower protection, 148, 225
- Work-in-process (WIP), 322, 323

