Index

ABANDONMENT

Initial public offerings, integration, 11:152

ACCELERATION

Initial public offerings, filing requirements, **11:42**

ACCELERATORS

Sources of financing, 5:18

ACCESS TO CAPITAL FOR JOB CREATORS

General solicitation and advertising for exempt offerings, **6:3**Title II of JOBS Act of 2012, **6:3**

ACCOUNTANTS

Initial public offerings, right of approval, **11:26**Securities Laws, this index

ACCOUNTING

Compensation and stock incentives, key employees, **8:14**Initial Public Offerings, this index

ACCOUNTS RECEIVABLE

Second round financing, 10:5

ACCREDITED INVESTORS

Securities laws, **6:4**, **6:5.20**, **6:5.30**

ADVERTISING

Offerings, Form C filing, prior to and after, **6:6.40.1**, **6:6.40.2**

AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

General discussion, 9:43

AGREEMENTS BETWEEN FOUNDERS

General discussion, **3:1 et seq.** Buy-out and buy-sell agreements, **3:5**, **App 3-J**

AGREEMENTS BETWEEN FOUNDERS—Cont'd

Buy-sell agreement checklist, **App** 3-L

Control of stock, 3:2

Cross-purchase agreement, App 3-K

Cumulative voting, 3:2

Dual class stock ownership, 3:2

Employment contracts for founders,

3:4, App 3-E, App 3-F

Inventions by employees, **App 3-H**, **App 3-I**

Inventions by founders, 3:6, App 3-G-1, App 3-G-2

Irrevocable proxies, 3:2, App 3-C

Management of business, 3:3

Patents of founders, 3:6

Responsibility, division of, **3:3**

Secrecy agreements, inventions by employees, **App 3-H**, **App 3-I**

Shareholders' agreements, 3:2, App

3-A, App 3-B "Shotgun" buyout clause, App 3-M

Stock or ownership interests, division of, **3:1**

Valuation of contributions, **3:1** Voting trusts, **3:2**, **App 3-D**

ALCOHOL USE AND TESTING

Employee handbooks, 9:45

ALIENS

Immigration Reform and Control Act of 1986, **9:43**

ALL-HANDS MEETING

Initial public offerings, 11:31

ALLOCATIONS

Partnerships, taxation, 2:6

ALTERNATIVE CREDIT SOURCES

Second round financing, 10:10.50

AMERICA INVENTS ACT (AIA)

General discussion, **9:2**Derivation proceeding, **9:2**First-inventor-to-file, **9:2**Subject matter, **9:2**

AMERICANS WITH

DISABILITIES ACT OF 1990

General discussion, 9:43

ANGEL INVESTORS

Directory, App 5-B Formation of venture, 2:2 Initial financing, 5:16 to 5:18, App 5-B, App 5-E

ANNUAL REPORTS

Operation of public companies Form 10-K, **12:6** Section 12(g) companies, **12:18** Shareholders' meetings, **12:62**

ANTITRUST LAW

General discussion, **9:24 et seq.**Duration of licensing agreements, **9:27**

Field of use restrictions, 9:28
Grant-back provisions, 9:29
Hart-Scott-Rodino Antitrust Improvements Act of 1976, 12:67
Pricing tactics, 9:31
Product price restraints, 9:25
Quantity restrictions, 9:28

Representative, distributor and dealer arrangements, **9:41**

Territorial restraints, 9:26 Tying agreements, 9:30 Unfair competition, 9:32

APPRECIATION RIGHTS

Compensation and stock incentives, key employees, **8:12**, **8:14**

APPROVAL

Intermediary between clients, conflicts of interest, **1:8**

ARBITRARY MARKS

Trademarks, 9:5

ARBITRATION

Employment, 9:46

ASSOCIATED PERSONS

Securities laws, issuer exemption, **6:15**

ATTORNEYS' FEES

Ethics, 1:6, 1:7
Initial financing, 5:6
Initial public offerings, letter of intent, 11:23
Private Securities Litigation Reform Act of 1995, 6:28

AT-WILL EMPLOYMENT

General discussion, 9:45, App 9-H

AUDIT COMMITTEES

Communications with auditors, 12:26, 12:27
Disclosures, 12:23
Financial expert, 12:24
Independence of members, 12:22
Operation of public companies, 12:21
et seq.
Pre-approval of non-audit services,

AUDITING STANDARDS

12:25

Emerging growth companies, 6:3

BACKDATING OF OPTIONS

Compensation and stock incentives, **8:18**

BACKLOG INFORMATION

Initial public offerings, drafting registration statement, **11:56**

"BAD BOY" DISQUALIFICATION

Securities laws, 6:12

BAD FAITH

Torts, 9:12

BANKS

Initial financing, 5:15

BENEFITS

Limited liability companies, employees, **2:10**

Partnerships, employees, 2:10

BEST EFFORTS

Type of underwriting, 11:23

Index-2

BLIND POOLS

Mergers and sales of companies, 10:25

BLUE SKY LAWS

Initial Public Offerings, this index Securities laws, **6:14**

BOOT

Taxation, this index

BREAKUP FEES

Mergers and sales of companies, 14:6

BRIDGE FINANCING

Second round financing, 10:15, App 10-D

BROKERS

Non-registered finders, online matchmaking portals, and demo days, **6:13**

BULLETIN BOARDS

OTC bulletin board, 12:58

BUNDLING DISTRIBUTION AGREEMENT

General discussion, App 9-D

BUREAU OF INDIAN AFFAIRS

Debt financing, second round financing, **10:11**

BUSINESS JUDGMENT RULE

Operation of public companies, 12:79

BUSINESS PLANS

Formation of venture, 2:2, App 2-A, App 2-B, App 2-C

Second round financing, corporate partnering, **10:21**

BUSINESS PURPOSE TEST

Mergers and sales of companies, 14:26

BUSINESS TORTS

Torts, this index

BUYERS

Mergers and Sales of Companies, this index

Securities laws, resales by qualified institutional buyers, **6:20**

BUY-OUT AND BUY-SELL AGREEMENTS

General discussion, 3:5, App 3-J

BUYOUTS

Operation of public companies, resolution of conflicts and breaking of deadlocks, **12:83**

BUY-SELL AGREEMENTS

Initial financing, retention of control, 4:20

CANCELLATION OF DEBT ISSUES (CODI)

Second round financing, 10:31

CAPITAL AND CAPITALIZATION

Initial public offerings, **11:61**Raising capital, role of lawyer, **1:1**Venture Capital, this index

CAPITAL EXPANSION

SEC rule making, **6:3**Shareholder threshold for registration, **6:3**

Title VI of JOBS Act of 2012, 6:3

CAPITAL RAISING

Operation of public companies, 12:2

CERTIFICATES AND CERTIFICATION

Initial financing, amended or restated certificate of incorporation, **App** 7-D

Operation of public companies
Earnings announcements, officer
certifications, **12:30**Form of certification, **App 12-I**

CHEAP STOCK

Initial public offerings, blue sky qualification, 11:37

"CHEAP STOCK"

Formation of venture, protection of secrets, **2:2**

"CHECK-THE-BOX" REGULATIONS

General discussion, 2:11

CIVIL RIGHTS

Title VII of the Civil Rights Act of 1964, **9:43**

CLASS ACTIONS

Private Securities Litigation Reform Act of 1995, **6:28.50**, **6:28.51**

CLOSE CORPORATIONS

Formation, **2:21**Management structure, **2:4**

CLOSING

Initial public offerings, 11:46

CODI (CANCELLATION OF DEBT ISSUES)

Second round financing, 10:31

COMPENSATION AND STOCK INCENTIVES

General discussion, **8:1 et seq., App 8-A**

Accounting, 8:14

Backdating of options, 8:18

Election, Section 83(b), 8:9, App 8-B

Employment, 9:47.50, 9:48

Equity incentive plan, form, **App 8-A**Executive compensation, excessive

Executive compensation, excessive, **8:17**

Form of nonqualified stock option agreement, **App 8-B**

Incentive stock option agreement, form of, **App 8-C**

Incentive stock options, 8:11

Initial public offerings, registration statement, 11:58, 11:134

Memorandum to employees describing different types of incentive stock, **App 8-G**

Nonlapse restrictions, 8:5

Nonqualified stock options, 8:10

Operation of Public Companies, this index

Partnership interests for services, **8:15**

Phantom stock, 8:13

Phantom stock plans, App 8-F

Restricted deferred compensation plans, taxation of, **8:16**

COMPENSATION AND STOCK INCENTIVES—Cont'd

Restricted stock, stock purchase and bonus plans, **8:14**

Restricted stock agreement, App 8-E

Restricted stock grants, 8:8

Stock appreciation rights, 8:12, 8:14

Stock appreciation rights agreement, form, **App 8-D**

Stock purchase and bonus plans, 8:7 to 8:9, 8:14

Substantial risk of forfeiture, 8:3

Taxation of property as compensation, generally, **8:1 et seq.**

Transfer of property, 8:2

Transferability, 8:4

Treatment of employer, 8:6

Vesting provisions of stock options, **8:19**

Worksheet, App 8-G

COMPETITION

Initial public offerings, drafting registration statement, 11:57

Noncompetition Agreements, this index

COMPUTER FRAUD AND ABUSE ACT

Unfair competition, 9:13

COMPUTER SOFTWARE

Initial public offerings, development costs, 11:91

Representative, distributor and dealer arrangements, **App 9-C**, **App 9-E**

CONFIDENTIAL SUBMISSIONS

Emerging growth companies, 6:3

CONFIDENTIALITY

Disclosure, this index

Employee handbooks, 9:45

Employment, 9:47, 9:47.50

Formation of venture, restrictive agreements between founders and previous employers, 2:39

Initial public offerings, drafting registration statement, 11:63

CONFLICTS

Operation of public companies, 12:81

CONFLICTS OF INTEREST

General discussion, **1:2 et seq.** Initial financing, **5:3**

CONSENT

Intermediary between clients, conflicts of interest, 1:8

CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1986

General discussion, 9:43

CONSOLIDATIONS

Corporations, formation of, **2:21**

CONTINGENT FINDER'S FEES

Conflicts of interest, 1:7

CONTINGENT WORKERS

Wages and hours, 9:50, 9:52

CONTINUITY OF EXISTENCE

Corporations, formation of, 2:21 Mergers and sales of companies, 14:26

CONTINUITY OF OWNERSHIP

Mergers and sales of companies, 14:26

CONTRACTS

Agreements Between Founders, this index

Buy-out and buy-sell agreements, 3:5, App 3-J

Buy-sell agreements, retention of control, **4:20**

Contractual and other arrangements to resolve conflicts and break deadlocks, 12:81

Lock-Up Agreements, this index Noncompetition Agreements, this index

CONTROL AT A PREMIUM

Operation of public companies, 13:6

CONVERSIONS

Initial financing, 7:18 to 7:29 Limited liability companies, 2:30

CONVERSIONS—Cont'd

Operation of public companies, officers, directors and ten percent shareholders, **12:38**

CONVERTIBLE ADJUSTABLE RATE PREFERRED STOCK (CARPS)

Initial financing, 7:37

CONVERTIBLE DEBENTURES

Initial financing, 4:8

CONVERTIBLE DEBT

Initial financing, 7:33

CONVERTIBLE EXCHANGEABLE PREFERRED STOCK (CEPS)

Initial financing, 7:36

CONVERTIBLE PREFERRED STOCK

Initial financing, 4:4, 7:34, 7:36, 7:37, App 7-A, App 7-B, App 7-C

COPYRIGHTS

General discussion, **9:6**Role of lawyer, **1:9**Semiconductor chips, **9:6**Written contracts, importance of, **9:8**

CORPORATE CULTURES

Second round financing, corporate partnering, 10:21

CORPORATE PARTNERING

Second Round Financing, this index

CORPORATE TRANSPARENCY ACT

Formation of venture, 2:44

CORPORATIONS

General discussion, 2:21
"Check-the-box" regulations, 2:11
Close Corporations, this index
Directors, this index

Formation

General discussion, 2:3 et seq., App 2-I-A

Basic considerations, **2:4** "Check-the-box" regulations, **2:11**

CORPORATIONS—Cont'd

Formation—Cont'd Self-employment tax issues, 2:12 Taxation, 2:6, 2:7, 2:12 Officers, this index S Corporations, this index Self-employment tax issues, 2:12 State of incorporation, selecting, 2:22 Taxation, 2:6, 2:7, 2:12

CO-SALE AGREEMENTS

Initial financing, App 7-F

COSTS AND EXPENSES

Corporation, formation of, 2:21 Initial Public Offerings, this index

COVENANTS NOT TO COMPETE

Noncompetition Agreements, this index

CRIMINAL PENALTIES

Insider Trading and Securities Fraud Enforcement Act of 1988, 12:51

CROSS-PURCHASE AGREEMENTS

Agreements between founders, **App** 3-K

CROWDFUNDING

Generally, 6:6

Advertising, **6:6.40.1**, **6:6.40.2**

Covered securities under Section 18 of Securities Act of 1933, 6:3

Exclusion of investors from shareholder cap, 6:3

Exemption, 6:3

Form C filing, **6:6.40.1**, **6:6.40.2**

Funding portal, **6:3**

Intrastate equity crowdfunding, 6:9

Investment limits, 6:6.10

Offering limits, **6:6.10**

Offering statement, 6:6.30

Portals, 6:6.20

Reporting, ongoing, 6:6.41

State law relationship, 6:3

Title III of JOBS Act of 2012, 6:3

CUMULATIVE VOTING

Agreements between founders, 3:2

DEADLOCKS

Operation of public companies, 12:81, 12:83

DEALERS

Representative, Distributor and Dealer Arrangements, this index

DEATH

Buy-out and buy-sell agreements, 3:5, App 3-J

DEBT FINANCING

Second Round Financing, this index

DEBT/EQUITY COMBINATION

Initial Financing, this index

DEFECTS

Formation of venture, curing defects in stock issuances, 2:42

DEFINITIONS

Emerging growth companies, 6:3 Security, 6:2

DEMAND RIGHTS

Initial financing, 7:15

DEMO DAYS

Securities laws. 6:13

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Debt financing, second round financing, 10:11

DERIVATION PROCEEDING

Patents, 9:2

DERIVATIVE SECURITIES

Operation of public companies, 12:14, 12:35

DILUTION

Anti-dilution examples, App 7-J Initial financing, 4:16 Initial public offerings, SB-1 registration statement, 11:119

DIRECTORIES

Angel investors, **App 5-B**

DIRECTORS

Corporations, formation of, 2:21

DIRECTORS—Cont'd

Ethics, service by lawyer as director, 1:7

Formation of venture, 2:35

Indemnification agreement, **App 2-H** Initial Public Offerings, this index

Liability, 2:40

Operation of Public Companies, this index

Outside directors, 3:3

Securities laws, liability, 6:22

DISABLED PERSONS

Americans With Disabilities Act of 1990, **9:43**

DISCLOSURE

Confidentiality, this index

Emerging growth companies, 6:3

Initial financing, 4:27

Initial public offerings, Regulation A offering, 11:102

Merger negotiations, 14:13

Operation of public companies, 12:2, 12:19 to 12:31

Securities laws, **6:3.50.1**, **6:3.50.2**, **6:5.50**, **6:21.40**, **12:27**

DISCRIMINATION

Title VII of the Civil Rights Act of 1964, 9:43

DISSOLUTION

Operation of public companies, 13:8

DISTRIBUTION

Initial public offerings, 11:121

DISTRIBUTORS

Representative, Distributor and Dealer Arrangements, this index

DIVIDENDS

Preferred stock, 4:2

DODD-FRANK ACT

Going public, 11:13

Role of lawyer, 1:10

DOWN ROUND, TERM SHEETS FOR

Second round financing, App 10-A

DOWN ROUNDS

Second round financing, 10:13

DRAG-ALONG RIGHTS

Initial financing, 7:25, App 7-F-1

DRUG USE AND TESTING

Employee handbooks, 9:45

DUE DILIGENCE

Formation of venture, **2:43**Initial public offerings, **11:33**, **App 11-**C

Mergers and sales of companies, 14:28, App 14-I

EARNINGS ANNOUNCEMENTS

Operating public companies
General discussion, 12:28 et seq.
Code of ethics, 12:31
Management's report on internal
control over reporting, 12:29
Officer certifications, 12:30

EARNOUTS

Mergers and sales of companies, 14:19

ECONOMIC DEVELOPMENT ADMINISTRATION

Debt financing, second round financing, **10:11**

ECONOMIC EFFECT

Partnerships, taxation, 2:6

EDGAR

Initial public offerings, electronic filing, **11:81**

EDUCATION

Role of lawyer, 1:1

EFFECTIVENESS

Initial Public Offerings, this index

ELECTIONS

"Check-the-box" regulations, 2:11 Compensation and stock incentives, key employees, 8:9

Form of nonqualified stock option agreement, **App 8-B**

Initial financing, sale of equity, **4:6** S corporations, **2:8**

EMERGING GROWTH COMPANIES

Auditing standards, **6:3** Confidential submissions, **6:3**

Definitions, 6:3

Disclosure obligations, 6:3

Internal controls audit, 6:3

Opt in right, 6:3

Qualified institutional buyers, 6:3

Reopening American Capital Markets to Emerging Growth

Companies, Title I of JOBS Act of 2012, **6:3**

Research information about emerging growth companies, availability, **6:3**

Review of Regulation S-K, **6:3** Title I of JOBS Act of 2012, **6:3**

EMOTIONAL DISTRESS, INFLICTION OF

Torts, 9:22

EMPLOYEE BENEFITS

Limited liability companies, **2:10** Partnerships, **2:10**

EMPLOYEE SHAREHOLDERS EXCLUSION

Private company flexibility and growth, **6:3**

EMPLOYEE STOCK PLANS

Securities laws, Rules 701-703 exemption, **6:10**

EMPLOYEE'S RETIREMENT INCOME SECURITY ACT OF 1974

General discussion, 9:43

EMPLOYMENT

General discussion, 9:43 et seq.

Age Discrimination in Employment Act of 1967, **9:43**

Alcohol use and testing, employee handbooks, **9:45**

Americans With Disabilities Act of 1990, **9:43**

Arbitration agreements, **9:46**At-will employment, **9:45**, **App 9-H**

Benefits, employee handbooks, **9:45**

EMPLOYMENT—Cont'd

Confidentiality, employee handbooks, **9:45**

Confidentiality agreements, 9:47, 9:47.50

Consolidated Omnibus Budget Reconciliation Act of 1986, **9:43**

Contingent workers, wages and hours, **9:52**

Drug use and testing, employee handbooks, **9:45**

Employee handbooks, 9:45

Employee policies and agreements, **9:44 et seq.**

Employee's Retirement Income Security Act of 1974, **9:43**

Equal employment opportunity, employee handbooks, **9:45**

Executive compensation agreements, **9:48**

Exempt/nonexempt classifications, wages and hours, **9:51**

Fair Credit and Reporting Act of 1970, **9:43**

Fair Labor Standards Act of 1938, 9:43

Family Medical Leave Act of 1993, 9:43

Federal statutes, generally, 9:43

Formation of venture, former employees of competitor, 2:2

Founders, 3:4, App 3-E, App 3-F

Freelancers, wages and hours, 9:52

Grievances, employee handbooks, **9:45**

Harassment, employee handbooks, **9.45**

Health and safety, 9:43, 9:45

Immigration Reform and Control Act of 1986, **9:43**

Independent contractors, wages and hours, **9:50**, **9:52**

Insurance, 9:53 to 9:55

Liability insurance, 9:54

Mergers and sales of companies, 14:18

Noncompete agreements, 9:47, 9:47.50

EMPLOYMENT—Cont'd

Occupational Safety and Health Act of 1970, **9:43**

Performance appraisals, employee handbooks, **9:45**

Privacy, employee handbooks, **9:45** Standards of conduct, employee handbooks, **9:45**

Temporary workers, wages and hours, **9:52**

Termination, employee handbooks, **9:45**

Termination of employment, **9:47.50**Title VII of the Civil Rights Act of 1964, **9:43**

Volunteers, wages and hours, **9:52** Wages and hours, **9:45**, **9:49** to **9:52** Workers' compensation, **9:55**

ENGAGEMENT LETTER

Beneficial Ownership Reports of US Formed Companies, **App 2-P**

ENTITY FORMATION

General discussion, 2:41

EQUAL EMPLOYMENT OPPORTUNITY

Employee handbooks, **9:45**

EQUIPMENT

Second round financing, 10:7

EQUITY FINANCING

Future, simple agreements, **4:8.1** Second round financing, **10:12 et seq.**

Securities laws, intrastate equity crowdfunding, **6:9**

EQUITY LINES OF CREDIT

Second round financing, 10:16

ERRORS AND OMISSIONS INSURANCE

Directors, 2:38

ESCROW PROVISIONS

Securities laws, minimum-maximum offerings, **6:21.10**

ESTATE PLANNING

Initial public offerings, 11:11

ETHICS

General discussion, **1:2 et seq.** Conflicts of Interest, this index

Fees, 1:6, 1:7

Finder's fees, 1:7

Founders or business entity as client, 1:4

Intermediary between clients, acting as, 1:8

Letters regarding conflict of interest, App 1-A, App 1-B, App 1-C

Mergers and sales of companies, 14.11

Officer or director, service by lawyer as, 1:5

Stock or stock options for fees, **1:6** Who is client, **1:4**

EXCESS PARACHUTE PAYMENT

Employment contracts for founders of business, **3:4**

EXCLUSION OF INVESTORS FROM SHAREHOLDER CAP

Crowdfunding, 6:3

EXECUTIVE SUMMARY

Business plan, 2:3, App 2-B Initial financing, App 5-C

EXECUTIVES

Excessive compensation, 8:17

EXEMPT OFFERINGS

Mergers and sales of companies, exchanges exempt under § 3(a)(10), 14:30

Securities laws, 6:1 et seq.

EXHIBITS

Initial public offerings, SB-1 registration statement, **11:140**

EXIT RATIOS

Initial financing, App 7-K

EXPENSES

Costs and Expenses, this index

EXPERTS

Initial public offerings, 11:126

FACTORING

Second round financing, 10:9

FAIR CREDIT AND REPORTING ACT OF 1970

General discussion, 9:43

FAIR DEALING

Torts, 9:12

FAIR LABOR STANDARDS ACT OF 1938

General discussion, 9:43

FAMILY HOLDINGS

Operation of public companies, officers, directors and ten percent shareholders, **12:12**

FAMILY MEDICAL LEAVE ACT OF 1993

General discussion, 9:43

FARMERS' HOME ADMINISTRATION

Debt financing, second round financing, **10:11**

FEDERAL PREEMPTION

Regulation D exemption, **6:5.90**

FEES

Attorneys' Fees, this index
Breakup fees, mergers and sales of companies, 14:6

Contingent finder's fees, conflicts of interest. 1:7

Finders' Fees, this index

FICTITIOUS NAMES

General discussion, 9:5

FIDUCIARIES

Corporate directors and officers, **2:21** Torts, **9:12**

FILING

Initial Public Offerings, this index

FINANCIAL STATEMENTS

Initial Public Offerings, this index Securities Laws, this index

FINANCING

Initial Financing, this index

FINANCING—Cont'd

Initial Public Offerings, this index Second Round Financing, this index Simple agreements for future equity, 4:8.1

FINDERS

Fees. Finders' Fees, this index Initial financing, **5:20** Mergers and sales of companies, **14:8**, App 14-D

Securities laws, use of non-registered finders, **6:13**

FINDERS' FEES

Ethics, 1:7
Initial financing, App 5-A

FINRA RULE 6490

OTC bulletin board, 12:58

FIRST REFUSAL, RIGHT OF

Initial financing, **App 7-F**Initial public offerings, **11:25**

FIRST-INVENTOR-TO-FILE

Patents, 9:2

FOREIGN LIMITED LIABILITY COMPANIES

General discussion, 2:32

FOREIGN OFFERINGS

Securities laws, 6:8

FORM C

Advertising offerings, prior to and after filing, **6:6.40.1**, **6:6.40.2**

FORM 13D

Operation of public companies, Section 12(g) companies, **12:15**

FORM 13G

Operation of public companies, Section 12(g) companies, **12:16**

FORM OF CERTIFICATION

Operation of public companies, **App** 12-I

FORM S-3

Initial financing, registration, 7:16
Operation of public companies, 12:32

FORM S-3—Cont'd

Second round financing, Private Investment in Public Equity (PIPEs), **10:14.50**

Securities laws, registration of restricted securities, **6:19**

FORMATION OF VENTURE

General discussion, **2:1 et seq.**Board of directors, composition of, **2:38**

Business plan, 2:3, App 2-A, App 2-B, App 2-C

Choice of entity, **2:4 et seq.**, **App 2-J**Common mistakes made by startups, **2:3**

Corporate Transparency Act, **2:44** Corporations, this index

Defects in stock issuances, curing, 2:42

Due diligence, 2:43

Entity formation, 2:41

Goals of founders, 2:2

Limited Liability Companies, this index

Partnerships, this index

Restrictive agreements between founders and previous employers, 2:39

Securities laws, 2:37

Sole Proprietorships, this index Stock, curing defects in issuances,

Venture capital, 2:1, App 2-N

FOUNDERS

Agreements Between Founders, this index

Mergers and sales of companies, **App**14-H

FRAUD

Securities laws, **6:23**, **6:24**

FREELANCE EMPLOYEES

Wages and hours, 9:52

FRINGE BENEFITS

Operation of public companies, 12:72

FUNDING PORTAL

Crowdfunding, **6:3**, **6:6.20**

GENERAL SOLICITATION AND ADVERTISING FOR EXEMPT OFFERINGS

Access to capital for job creators, 6:3

GENERIC NAMES

Trademarks, 9:5

GOOD FAITH

Torts, 9:12

GOVERNMENT LENDERS

Second round financing, 10:11

GRANT-BACK PROVISIONS

Antitrust law, 9:29

GRIEVANCES

Employee handbooks, 9:45

GUN-JUMPING

Initial public offerings, 11:32

HANDBOOKS

Employment, 9:45

HARASSMENT

Employee handbooks, 9:45

HART-SCOTT-RODINO

ANTITRUST

IMPROVEMENTS ACT OF

Operation of public companies, 12:67

HEALTH AND SAFETY

Employment, 9:43, 9:45

Occupational Safety and Health Act of 1970, **9:43**

HIGH-YIELD DEBT

Second round financing, 10:16

HOLDBACKS

Mergers and sales of companies, **14:20**

HOURS

Employment, 9:45, 9:49 to 9:52

HOUSING AND URBAN DEVELOPMENT, DEPARTMENT OF

Debt financing, second round financing, **10:11**

HYBRID PREFERRED STOCK

Initial financing, 4:5, 7:35 et seq.

IMMIGRATION REFORM AND CONTROL ACT OF 1986

General discussion, **9:43**

IMPARTIALITY

Stock or stock options for fees, 1:6

IN PUBLIC USE

Patent law. 9:2

INCENTIVES

Compensation and Stock Incentives, this index

INCORPORATION

Initial financing, amended or restated certificate of incorporation, **App** 7-D

State of incorporation, selection of, 2:22

INCUBATORS

Sources of financing, 5:18

INDEMNIFICATION

Directors, App 2-H
Initial public offerings, 11:127,
11:136
Officers, App 2-H

INDEPENDENT CONTRACTORS

Wages and hours, 9:50, 9:52

INDIAN AFFAIRS, BUREAU OF

Debt financing, second round financing, 10:11

INFORMAL FINANCING

Initial financing, **4:1**

INITIAL FINANCING

General discussion, **4:1** et seq., **5:1** et seq., **7:1** et seq.

Affirmative covenants, **4:17**, **7:9**

Amended capital-raising exemptions, overview, **App 6-B**

Amended certificate of incorporation, App 7-D

Antidilution formulas, **4:16** Attorney's fees, **5:6**

INITIAL FINANCING—Cont'd

Banks and savings and loan associations, **5:15**

Board representation, 7:27

Broad-based weighted average antidilution provision, **7:19**

Business angels, 5:16 to 5:18, App 5-B, App 5-E

Business associates as sources of financing, **5:16**

Buy-sell agreement, retention of control, **4:20**

Capital market, changes in, 5:12

Capitalization worksheet with instructions, **App 7-H**

Capital-raising, mistakes to avoid, **App 4-A**

Collateral business arrangements, 4:22

Common stock, 4:2, 7:39

Conflicts of interest, 5:3

Control, retention of, **4:19 et seq.**, **7:12**

Conversion and antidilution provisions, generally, **7:18 to 7:29**

Convertible adjustable rate preferred stock (CARPS), **7:37**

Convertible debentures, 4:8

Convertible debt, 7:33

Convertible exchangeable preferred stock (CEPS), **7:36**

Convertible preferred stock, 4:4, 7:34, 7:36, 7:37, App 7-A, App 7-B, App 7-C

Co-sale agreement, App 7-F

Covenants, 4:17, 7:9

Debt/equity combination

General discussion, 4:8 et seq.

Convertible debentures, 4:8

Tax considerations, 4:10

Warrants, debentures with, 4:9

Demand rights, 7:15

Disclosure, 4:27

Dividend and liquidation preferences, **7:26**

Documentation, role of issuer's counsel in seeking outside financing, **5:2**

INITIAL FINANCING—Cont'd INITIAL FINANCING—Cont'd Drag-along provisions, sample, **App** Negotiations—Cont'd 7-F-1 Amount of growth capital needed, Drag-along rights, 7:25 7:2, App 7-I **Executive Summary for Private** Board representation, 7:27 Offering, **App 5-C** Broad-based weighted average Exit ratios, App 7-K antidilution provision, 7:19 Capitalization worksheet with Financial considerations in determining type of financing, 4:14 et instructions, App 7-H Combinations of securities, 7:40 Financing memorandum, preparation Common stock, 7:39 of, 5:8 Comparison of various securities, Finders, **5:20** 7:30 et seq. Finder's fees, App 5-A Conditions to closing, 7:10 First refusal, right of, **App 7-F** Control, change of, 7:12 Friends as sources of financing, 5:16 Convertible adjustable rate Hybrid preferred stock, 4:5, 7:35 et preferred stock (CARPS), 7:37 seq. Convertible debt, 7:33 Informal financing, **4:1** Convertible exchangeable Internet portals, 5:18 preferred stock (CEPS), 7:36 Investment bankers, 5:7, 5:19 Convertible preferred stock, 7:34, Investors Expect Ten Essential in a **App 7-C** Business Plan, article by Martin C. Zwilling, App 5-F Co-sale agreement, **App 7-F** Investor's rights agreement, App 7-E Counsel, role of issuer's counsel in seeking outside financing, 5:2 Irrevocable proxies, 7:12 Joint ventures, 4:12 Covenants, 7:9 Leases, 4:23 Demand rights, 7:15 Dividend and liquidation prefer-Legal considerations in determining ences, 7:26 type of financing, 4:14 et seq. Drag-along rights, 7:25 Letters of intent, **4:25**, **7:3**, **App 7-A** First refusal, right of, App 7-F Licensing of product rights, **4:13** Hybrid preferred stock, 7:35 et Limited partnerships, 7:42 seq. Liquidation preferences, 7:17 Investor's rights agreement, **App** Liquidity factors, 4:18 7-E Market price antidilution provision, Irrevocable proxies, 7:12 7:22 Letters of intent and term sheets, Marketing partnerships, 4:21 7:3 Methods, 4:1 et seq. Limited partnerships, 7:42 Multiple adjustable rate preferred Market price antidilution provistock (MARPS), 7:38 sion, 7:22 Narrow-based weighted average antidilution provision, 7:20 Multiple adjustable rate preferred stock (MARPS), 7:38 Negative covenants, 4:17, 7:9 Narrow-based weighted average Negotiations antidilution provision, 7:20 General discussion, 7:1 et seq. Negative covenants, 7:9 Affirmative covenants, 7:9 Payment in kind securities, 7:41 Amended certificate of incorporation, App 7-D Piggyback rights, 7:14

INITIAL FINANCING—Cont'd	INITIAL FINANCING—Cont'd
Negotiations—Cont'd	Sale of debt, 4:7
Procedural provisions, 7:11	Sale of equity
Protective provisions, 7:29	General discussion, 4:2 et seq.
Purchase of security, 7:7	Common stock, 4:2
Ratchet antidilution provision,	Control, retention of, 4:19
7:21	Convertible preferred stock, 4:4
Redemption, 7:28	Hybrid preferred stock, 4:5
Registration rights, 7:13 et seq.	Preferred stock, 4:3
Representations, 7:8	Tax considerations, 4:6
Restated certificate of incorporation, App 7-D	Sample agreements, 7:43
Rights of first offer, 7:23	Sample drag-along provisions, App
Rights of first refusal and co-sale,	7-F-1
7:24	Securities laws, sources of financing, 5:9
S-3 registration, 7:16 Straight debt, 7:31	Security provisions, 4:15
Strategy for negotiations, 7:5	Simple agreement, future equity,
Valuation of company, 7:4	4:8.1
Voting agreement, App 7-G	6 Hidden Reasons Why Investors Say
Voting agreements, 7:27	Come Back Later, article by
Voting trusts, 7:12	Martin C. Zwilling, App 5-F
Warranties, 7:8	Small Business Innovation Research
Warrants, debt with, 7:32	Grants, 5:21
Other sources, 5:22	Small Business Investment Act, 5:12
Payment in kind securities, 7:41	Sophisticated investors, 5:17 , 5:18
Piggyback rights, 7:14	Sources of financing
Planning, role of issuer's counsel in	General discussion, 5:1 et seq.
seeking outside financing, 5:2	accelerators, 5:18
Preferred stock, 4:3	Attorney's fees, 5:6
Preliminary legal steps, 4:26	Banks and savings and loan associations, 5:15
Private offering, executive summary	Business angels, 5:16 to 5:18, App
for, App 5-C	5-B, App 5-E
Protective provisions, 7:29	Capital market, changes in, 5:12
Ratchet antidilution provision, 7:21	Conflicts of interest, 5:3
Redemption, 7:28	Financing memorandum, prepara-
Registration rights, 7:13 et seq.	tion of, 5:8
Relatives as sources of financing, 5:16	Finders, 5:20
	Finder's fees, App 5-A
Representations, 7:8	incubators, 5:18
Research and Development Limited Partnerships, this index	Internet portals, 5:18
Restated certificate of incorporation,	Investment bankers, 5:7, 5:19
App 7-D	Investors Expect Ten Essential in a
Rights of first offer, 7:23	Business Plan, article by
Rights of first refusal and co-sale,	Martin C. Zwilling, App 5-F
7:24	Investor's objectives, 5:11
S-3 registration, 7:16	Other sources, 5:22

INITIAL FINANCING—Cont'd	INITIAL PUBLIC OFFERINGS —Cont'd
Sources of financing—Cont'd Relatives, friends and business	Accountants, right to approve, 11:26
associates, 5:16	Accounting
Role of issuer's counsel, 5:2	General discussion, 11:82 et seq.
Securities laws, 5:9	Changes in and disagreements with
6 Hidden Reasons Why Investors	accountants, 11:136
Say Come Back Later, article	Compilation and review reports for
by Martin C. Zwilling, App	interim periods, 11:90
5-F	Computer software development
Small Business Innovation	costs, 11:91
Research Grants, 5:21	Financial statements, inclusion of
Sophisticated investors, 5:17, 5:18	all required, 11:83
Swilling, Martin C., App 5-F Tax considerations, 5:10	Intangible assets acquired by
Team approach, 5:5	research and development funding, 11:89
"The People's Bank," App 5-D	Pooling versus. purchase, 11:87
Time that company's counsel	Predecessor financial statements,
should be brought into financ-	11:84
ing process, 5:4	Premature revenue recognition,
Venture capital funds, 5:13	11:93
Statutory restrictions, 4:24	Promotional stock, 11:94
Straight debt, 7:31	Qualified auditor's reports, 11:86
Strategy for negotiations, 7:5	Related party transactions, 11:88
Subordination agreements, 4:7.50 ,	Subsidiaries, financial statements
App 4-B	of acquired, 11:85
Subordination provisions, 4:15 Taxation	Waiver of salaries, 11:92
Debt/equity combination, 4:10	Acquisitions, use of stock for, 11:4
Sale of equity, 4:6	Advantages of going public
Sources of financing, 5:10	General discussion, 11:2 et seq.
Term sheets, 7:3, App 7-B	Acquisitions, use of stock for, 11:4
"The People's Bank," App 5-D	Additional financing, ability to
Valuation of company, 7:4, App 7-K	obtain, 11:3
Venture capital funds, 5:13	Comparative analysis of public vs.
Venture investment valuations, App	private offering, App 11-A
7-K	Insiders, value to, 11:5 Key executives, attraction of, 11:6
Voting agreement, App 7-G	Valuation of stock, higher, 11:2
Voting agreements, 7:27	All-hands meeting, 11:31
Voting trusts, 7:12	Alternative financing, 11:15
Warranties, 7:8	Amount of securities offered, letter of
Warrants, debentures with, 4:9	intent, 11:21
Warrants, debt with, 7:32	Backlog information, drafting
INITIAL PUBLIC OFFERINGS	registration statement, 11:56
Abandoned offerings, integration of,	Blue sky qualification
11:152	General discussion, 11:36 et seq.,
Acceleration request, filing require-	11:74
ments, 11:42	Cheap stock, 11:37

Startups (JOBS) Act, 11:14

INITIAL PUBLIC OFFERINGS INITIAL PUBLIC OFFERINGS -Cont'd -Cont'd Blue sky qualification—Cont'd Directors Disadvantages of going public, Right to designate, 11:27 11:12 SB-1 registration statement, Promotional shares, 11:37 11:123 Budgeting for costs, registration, Disadvantages of going public 11:70 General discussion, 11:7 et seq. Calendar, importance of, 11:76 Blue sky laws, 11:12 Capital structure, drafting registration Comparative analysis of public vs. statement, **11:61** private offering, App 11-A Cheap stock, blue sky qualification, Control, possibility of loss of, 11:37 11:10 Cleaning up corporation, registration, Estate planning and taxes, 11:11 11:71 Expenses, 11:9 Closing, 11:46 "Fishbowl," operating in, 11:7 Comparative analysis of public vs. Transfers by insiders, restrictions private offering, App 11-A on, 11:8 Competition, drafting registration Disclosure requirements, Regulation statement, 11:57 A offering, 11:102 Compilation and review reports for Disqualifying provisions, Regulation interim periods, accounting, A offering, 11:101 Distribution, plan of, 11:121 Computer software development Dodd-Frank Act effect, 11:13 costs, accounting, 11:91 Drafting registration statement Confidential treatment, drafting General discussion, 11:52 et seq. registration statement, 11:63 Backlog information, 11:56 Contents of Form S-1, registration Capital structure, 11:61 statement, 11:113 Certain transactions, 11:59 Control, possibility of loss of, 11:10 Competition, 11:57 Control persons, SB-2 registration Confidential treatment, 11:63 statement, 11:123 Executive compensation, 11:58 Costs and expenses Future sale, shares eligible under Disadvantages of going public, Rule 144, 11:60 11:9 Major customers, identification of, Estimation, 11:70 11:64 Issuance and distribution, SB-2 Management's discussion and registration statement, 11:138 analysis, 11:55 Letter of intent, 11:23 New products or marketing plans, Counsel, right to approve, 11:26 11:65 Description of business, SB-1 Proceeds, use of, 11:54 registration statement, 11:129 Projections, 11:62 Description of property, SB-1 Risk factors, 11:53 registration statement, 11:131 Due diligence, 11:33, App 11-C Description of securities, SB-1 EDGAR, electronic filing, 11:81 registration statement, 11:125 Dilution, SB-1 registration statement, Effect of the Jumpstart Our Business

11:119

INITIAL PUBLIC OFFERINGS INITIAL PUBLIC OFFERINGS -Cont'd —Cont'd Effectiveness and the posteffective Governing rules and regulations period General discussion, 11:143 et seq. Closing, **11:46** Registration form, 11:144 Estate planning, disadvantages of Regulation A, 11:149 going public, 11:11 Regulation C, 11:150 Executive compensation, registration Regulation S-K, 11:146 statement, 11:58, 11:134 Regulation S-X, 11:147 Exhibits, SB-1 registration statement, SEC releases and no-action letters, 11:140 11:151 Expenses. Costs and expenses, above SEC rules, 11:148 Experts and counsel, interests of Gun-jumping, 11:32 named, 11:126 Indemnification, 11:127, 11:136 Fees, letter of intent, 11:23 Insiders, value to, 11:5 Filing requirements Intangible assets acquired by research General discussion, 11:35 et seq. and development funding, Acceleration request, 11:42 accounting, 11:89 Blue sky qualification, above Integration EDGAR, electronic filing, 11:81 Abandoned offerings, 11:152 Expediting filing requirements, Introductions to IPOs, 11:1 et seq. 11:80 JOBS Act FINRA, filing with, 11:38 Methods of public offering, 11:95 Introductory telephone call, filing Title IV Regulation A offering. and waiting period, 11:79 Regulation A offering, below Meetings with broker-dealers, Jumpstart Our Business Startups 11:41 (JOBS) Act effect, 11:14 Recirculation of preliminary pro-Key executives, attraction of, 11:6 spectus, 11:43 Legal proceedings, SB-2 registration Rule 134 publicity and brokerstatement, 11:122 dealer marketing efforts, Letter of intent 11:39 General discussion, 11:18 et seq. SEC comments and preeffective Amount of securities offered, amendments, 11:40 11:21 Final offering circular, Regulation A Counsel and accountants, right to offering, 11:105 approve, 11:26 Financial disclosure, changes in and Directors, right to designate, 11:27 disagreements with accountants Fees and expenses, 11:23 on, 11:136 First refusal, right of, 11:25 Financial statements Market-related conditions, 11:29 Accounting, 11:83 Price range, 11:20 Regulation A offering, 11:103 Registration, 11:73 SB-1 registration statement, Special terms, 11:25 to 11:27 11:135 Standard conditions, 11:24 FINRA, filing with, 11:38 Timing of offering, 11:28 First refusal, right of, 11:25 Type of underwriting, 11:22 "Fishbowl," operating in, 11:7 Underwriting, 11:22 Future sale, shares eligible under Rule 144, 11:60 Usual terms, 11:19 et seq.

INITIAL PUBLIC OFFERINGS -Cont'd Major customers, identification of, 11:64 Management's discussion and analysis, 11:55, 11:130 Market for common equity and related stockholder matters, SB-1 registration statement, 11:133 Market-related conditions, letter of intent, 11:29 Meetings with broker-dealers, filing requirements, 11:41 Memorandum, selection of underwriter, 11:17 NASDAQ listing and registration under § 12(b), 11:50 New products or marketing plans, drafting registration statement, 11:65 Offering price, 11:118 Officers, SB-1 registration statement, 11:123 Page-by-page review, registration, 11:78 Pooling versus. purchase, accounting, 11:87 Postclosing matters, 11:49 Posteffective amendments and stickers, 11:48 Predecessor financial statements, accounting, 11:84 Prefiling period General discussion, 11:31 et seq. All-hands meeting, 11:31 Due diligence, 11:33, App 11-C Gun-jumping, 11:32 Timetable, 11:31 Type of form to use, 11:34 Preliminary offering circular, Regulation A offering, 11:104 Premature revenue recognition, accounting, 11:93 Price range, letter of intent, 11:20

INITIAL PUBLIC OFFERINGS —Cont'd Promotional shares, 11:37, 11:94 Promotions, SB-1 registration statement, 11:123 Prospectus filing and delivery requirement, 11:47 Public vs. private offering, App 11-A Publicity, monitoring of, 11:77 Qualified auditor's reports, 11:86 Questionnaires to officers and directors, registration, 11:75 Recirculation of preliminary prospectus, 11:43 Registration General discussion, 11:30 et seq. Blue sky process, 11:74 Blue sky qualification, above Budgeting for costs, 11:70 Calendar, importance of, 11:76 Cleaning up corporation, 11:71 Comparing registration statements of similar issuers, 11:66 Costs, estimation of, 11:70 Drafting registration statement, above Early start, **11:67** Effectiveness and the posteffective period, above Expediting process, 11:51 et seq. Filing requirements, above Letter of intent, 11:73 Page-by-page review, 11:78 Prefiling period, above Publicity, monitoring of, 11:77 Ouestionnaires to officers and directors, 11:75 Selection of registration team, 11:68 Telephone conference with SEC branch chief or staff attorney who will review filing, 11:72 Underwriter, selection of, 11:69 Registration process, effectiveness and the posteffective period General discussion, 11:44 et seq.

closing, 11:46

effective date, 11:44

Effective date, 11:44

Pricing amendment, 11:45

Proceeds, use of, 11:54, 11:117

Projections, drafting registration statement, **11:62**

INITIAL PUBLIC OFFERINGS INITIAL PUBLIC OFFERINGS -Cont'd —Cont'd Registration process, effectiveness SB-1 registration statement—Cont'd and the posteffective period Description of securities, 11:125 —Cont'd Dilution. 11:119 NASDAQ listing and registration Directors, executive officers, under § 12(b), **11:50** promotions and control Postclosing matters, 11:49 persons, 11:123 Posteffective amendments and Distribution, plan of, 11:121 stickers, 11:48 Executive compensation, 11:134 Pricing amendment, 11:45 Exhibits, 11:140 Prospectus filing and delivery Expenses of issuance and distriburequirement, 11:47 tion, 11:138 registration process, 11:44 Experts and counsel, interests of Regulation A offering named, 11:126 General discussion, 11:149 Financial statements, 11:135 Disclosure requirements, 11:102 Front of registration statement and outside front cover of pro-Disqualifying provisions, 11:101 spectus, 11:114 Final offering circular, 11:105 Indemnification for Securities Act Financial statements, 11:103 liabilities, disclosure of com-Preliminary offering circular, mission position on, 11:127 11:104 Indemnification of officers and Sales material, filing of, 11:108 directors, 11:137 Substantial compliance, 11:107 Inside front and outside back cover Test the waters provisions, 11:106 of prospectus, 11:115 Trust Indenture Act, 11:109 Legal proceedings, 11:122 Regulation A offerings, 11:16 Market for common equity and Regulation C, **11:150** related stockholder matters, Regulation S-K, 11:146 11:133 Regulation S-X, 11:147 Offering price, determination of, Related party transactions, account-11:118 ing, 11:88 Organization within last 5 years, Reporting requirements under 11:128 Exchange Act, **11:110** Part I, 11:114 et seq. Risk factors, drafting registration Part II, 11:137 et seq. statement, 11:53 Proceeds, use of, 11:117 Rule 134 publicity and broker-dealer Recent sales of unregistered secumarketing efforts, 11:39 rities, 11:139 Sales material, Regulation A offering, 11:108 Selling security holders, 11:120 Signatures, 11:142 Sarbanes-Oxley Act effect, 11:13 Summary information and risk SB-1 registration statement factors, 11:116 Accounting and financial Undertakings, 11:141 disclosure, changes in and disagreements with SB-2 registration statement accountants on, 11:136 Description of business, 11:129 Certain relationships and related Management's discussion and transactions, 11:132 analysis or plan of operation, Description of property, 11:131 11:130

INITIAL PUBLIC OFFERINGS —Cont'd

SB-2 registration statement—Cont'd Security ownership of certain beneficial owners and management, 11:124

SCOR legislation, 11:112

SEC comments and preeffective amendments, 11:40

SEC releases and no-action letters, 11:151

SEC rules, 11:148

Selection of registration team, 11:68

Self-underwriting, 11:17

Signatures, SB-1 registration statement, **11:142**

Small business initiatives

Regulation A offering, above Reporting requirements under Exchange Act, 11:110, 11:111

SB-2 registration statement, above State SCOR legislation, 11:112

Transitional small business issuer, reporting requirements under Exchange Act, 11:111

State SCOR legislation, 11:112

Subsidiaries, financial statements of acquired, 11:85

Substantial compliance, Regulation A offering, **11:107**

Summary information and risk factors, SB-2 registration statement, 11:116

Taxes, disadvantages of going public, 11:11

Telephone conference with SEC branch chief or staff attorney who will review filing, **11:72**

Test the waters provisions, Regulation A offering, 11:106

Timetable, 11:31, App 11-B

Timing of offering, letter of intent, 11:28

Transfers by insiders, restrictions on, 11:8

Transitional small business issuer, reporting requirements under Exchange Act, 11:111

INITIAL PUBLIC OFFERINGS —Cont'd

Trust Indenture Act, Regulation A offering, 11:109

Undertakings, SB-1 registration statement, 11:141

Underwriter, selection of, **11:17**, **11:69**

Underwriting, letter of intent, 11:22 Valuation of stock, advantages of going public, 11:2

Waiver of salaries, accounting, 11:92

INSIDER TRADING

General discussion, **12:44 et seq.** Attorney's memorandum outlining liability, **App 12-F, App 12-G**

Compliance procedures, 12:50

Criminal penalties, Insider Trading and Securities Fraud Enforcement Act of 1988, 12:51

Insider Trading and Securities Fraud Enforcement Act of 1988, **12:48 to 12:51**

Insider Trading Sanctions Act of 1984, **12:47**

Liability to purchasers, 12:50

Pension fund blackout periods, **12:45**

Persons liable under Insider Trading and Securities Fraud Enforcement Act of 1988, **12:49**

Policy statement on prevention of insider trading, **App 12-H**

Purchasers, liability of, 12:50

Rules 10b-5, 10b5-1 and 10b5-2, **12:46**

Securities Enforcement Remedies and Penny Stock Reform Act of 1990, **12:52**

INSURANCE

Employment, **9:53 to 9:55**Liability Insurance, this index
Operation of public companies, **12:71**

INTANGIBLE ASSETS

Initial public offerings, research and development funding, 11:89

INTEGRATION

Initial Public Offerings, this index

INTEGRATION—Cont'd

Securities laws, 6:11

INTELLECTUAL PROPERTY

General discussion, 9:1 et seq.
Copyrights, this index
Servicemarks. Trademarks and
Servicemarks, this index
Trade Names, this index
Trade Secrets, this index
Trademarks, this index

INTERFERENCE

Patents, 9:2

INTERFERENCE WITH CONTRACTUAL RELATIONS

Torts, 9:12, 9:22

INTERFERENCE WITH PROSPECTIVE ADVANTAGE

Torts, 9:12, 9:21

INTERNAL CONTROLS AUDIT

Emerging growth companies, 6:3

INTERNET PORTALS

Initial financing, 5:18

Operating public companies, social media, 12:27

Securities laws, use of Internet matchmaking portals, **6:13**

INTRASTATE OFFERINGS

Securities laws. 6:9

INVENTIONS

Employees, App 3-H, App 3-I

Formation of venture, restrictive agreements between founders and previous employers, 2:39

Founders, **3:6**, **App 3-G-1**, **App 3-G-2**

Patents, this index

INVENTORY

Second round financing, 10:6

INVESTMENTS

Limits, crowdfunding, **6:6.10**Stock or stock options for fees, **1:6**

INVESTORS

Formation of venture, sales to nonaccredited investors, **2:2**

IRREVOCABLE PROXIES

General discussion, **3:2**, **App 3-C** Initial financing, **7:12**

ISSUANCE OF STOCK

Formation of venture, curing defects in stock issuances, **2:42**

ISSUER'S EXEMPTION

Securities laws, 6:15

JOBS ACT

General discussion, 6:3

General qualifications, Dollar ceiling, 11:96

Initial public offerings, 11:95

Integration

Regulation A offering, 11:99

JOBS Act

SEC filing and Staff review, 11:98

Methods, public offering, 11:100

Regulation A offering

Integration, 11:99

SEC filing and Staff review, 11:98

Title IV, general discussion, 11:99

et seq.

Type of issuer, **11:100**

Title IV Regulation A offering, 11:95 et seq.

JOINT VENTURES

Initial financing, 4:12

Limited liability companies, 2:34

JUMPSTART OUR BUSINESS STARTUPS (JOBS) ACT OF 2012

General discussion, **6:3** Initial public offerings, **11:14**

KEY EMPLOYEES

Compensation and Stock Incentives, this index

LAPSE RESTRICTIONS

Initial financing, sale of equity, 4:6

LEASES

Initial financing, 4:23

LEASES—Cont'd

Second round financing, 10:10

LEGAL OPINIONS

Securities laws, liability of lawyers and accountants, **6:26.20**

LETTERS OF INTENT

Initial financing, **4:25**, **7:3**, **App 7-A**Initial Public Offerings, this index
Limited partnerships, **App 2-M**Mergers and sales of companies, **14:7**, **App 14-C**

LIABILITY INSURANCE

Directors, 2:38
Employment, 9:54

LIABILITY OF DIRECTORS AND OFFICERS

Securities laws. 6:22

LIABILITY OF LAWYERS AND ACCOUNTANTS

Securities Laws, this index

LICENSING

Initial financing, **4:13**

LIMITED LIABILITY COMPANIES

General discussion, **2:22 et seq.** Checklist for operating agreements, **App 2-K-A**

"Check-the-box" regulations, **2:11** Conversion, **2:30**

Employee benefits, 2:10

Foreign limited liability companies, 2:32

Formation

General discussion, 2:4 et seq., 2:24, App 2-I-B

Basic considerations, 2:4

"Check-the-box" regulations, 2:11

Employee benefits, 2:10

Operating agreements, App 2-K, App 2-L-A, App 2-L-B

Self-employment tax issues, **2:12** Taxation, **2:9**, **2:12**

Governance provisions, 2:29

LIMITED LIABILITY

COMPANIES—Cont'd

Information letter to clients, Firm not providing reporting services

CTA, App 2-O

Joint venture, use of limited liability company for, 2:34

Limited liability, generally, 2:28

Limited partnership, limited liability company as general partner of, 2:35

Members, 2:27

Operating agreements, App 2-K, App 2-K-A, App 2-L-A, App 2-L-B

Requirements, 2:26

Selection of state statute, 2:33

Self-employment tax issues, 2:12

Taxation, 2:9, 2:12

Transfer of interests, 2:31

LIMITED LIABILITY COMPANIES CHARACTERISTICS

Goal, 2:23

LIMITED LIABILITY PARTNERSHIPS

General discussion, 2:36

LIMITED PARTNERSHIPS

Initial financing, 7:42

Letter of intent and term sheet, **App** 2-M

Limited liability companies, 2:35

Marketing partnerships, initial financing, **4:21**

Partnership agreement, App 2-F

Research and Development Limited Partnerships, this index

LIQUIDATION PREFERENCES

Initial financing, 7:17

LIQUIDITY FACTORS

Initial financing, 4:18

LOCK-UP AGREEMENTS

Mergers and sales of companies, 14:6

LOG

Offering log, XYZ Technology Inc. v. Offering Log, **App 6-C**

LONG TERM EMPLOYMENT CONTRACTS

Founders of business, agreements of, 3:4

MALPRACTICE

Officer or director, service by lawyer as, 1:7

MANAGEMENT STRUCTURE

Corporations, formation of, **2:21**Formation of venture, choice of form of entity, **2:4**

MANUFACTURING FACILITIES

General discussion, 9:56 et seq. Definition of lease, 9:57
I.R.C. Section 467, 9:59
Options to purchase, 9:60
Purchase vs. lease, 9:58 et seq.

MARKETING PARTNERSHIPS

Initial financing, 4:21

MASK WORKS

Semiconductor chips, 9:6

MATCHMAKERS

Securities laws, use of online matchmaking portals, **6:13**

MEDICAL LEAVE

Family Medical Leave Act of 1993, **9:43**

MEMBERS

Limited liability companies, 2:27

MERGERS AND SALES OF COMPANIES

General discussion, **14:1 et seq.**Acquisitions, representation of buyer, **14:31**

Asset purchase agreement, **App 14-G** Attorneys, ethical considerations, indemnification provisions,

14:21 Blind pools, 10:25

Boot, taxation, 14:25

MERGERS AND SALES OF COMPANIES—Cont'd

Breakup fees, 14:6

Business purpose test, **14:26** Buyers

Checklist, sale of company, **App** 14-K

Representation in acquisition, 14:31

Continuity of business enterprise, 14:26

Continuity of ownership, 14:26 Control, sale of, 14:3

Covenants not to compete, **14:17**

Disclosure of merger negotiations, 14:13

Due diligence, 14:28, App 14-I

Earnouts, 14:19

Employment agreements, **14:18** Ethical considerations for attorneys, **14:11**

Exchanges exempt under § 3(a)(10), 14:30

Finder's agreements, **14:8**, **App 14-D** Forms of reorganization, **14:24**

Founder's checklist for sale or retention of company, **App 14-H**

Holdbacks, **14:20**

Judicial requirements, 14:26

Letters of intent, 14:7, App 14-C

Lock-up agreements, 14:6

Nondisclosure agreements, **14:4**, **App 14-A**

Notification under Hart-Scott-Rodino Antitrust Improvements Act of 1976, 14:9

Penny stocks, 10:28

PIPEs, 10:27

Proxy rules, **14:16**

Public companies, mergers with General discussion, **10:24 et seq.**

Blind pools, **10:25**

Penny stocks, 10:28

PIPEs, 10:27

Public shells, 10:26

Reverse mergers, 10:27

Public shells, 10:26

MERGERS AND SALES OF COMPANIES—Cont'd Purchase options, 14:5, App 14-B Registration rights, 14:22 Representation of buyer in acquisition, 14:31 Representations and warranties, survival, 14:20.1 Restrictive agreements, 14:2 Retention or sale of company, founder's checklist, App 14-H Reverse mergers, 10:27 Rule 145 transactions, 14:14 Sale of company Buyer's checklist, App 14-K Founder's checklist, App 14-H Seller's checklist, App 14-J Sale of "stock," 14:12 Sale or retention of company. founder's checklist, App 14-H Second round financing, App 10-B Securities laws General discussion, 14:10 et seq. Covenants not to compete, 14:17 Disclosure of merger negotiations, 14:13 Earnouts, 14:19 Employment agreements, 14:18 Ethical considerations for attorneys, **14:11** Holdbacks, 14:20 Proxy rules, 14:16 Registration rights, 14:22 Rule 145 transactions, 14:14 Sale of "stock," 14:12 Short-swing profits, 14:15 Special stock provisions, 14:19 to 14:22 Seller's checklist, sale of company, **App 14-J** Short-swing profits, 14:15 Statutory merger agreement, App Stock purchase agreement, App 14-F Survival, representations and warranties. 14:20.1

Tax considerations, 14:23 to 14:25.

MERGERS AND SALES OF COMPANIES—Cont'd Valuation, 14:1.1

MINIMUM-MAXIMUM OFFERINGS

Securities Laws, this index

MISREPRESENTATION

Securities laws, **6:23**, **6:24**

MONEY-FINDER SCAMS

Second round financing, App 10-E

MONOPOLIES

Antitrust Law, this index

MULTIPLE ADJUSTABLE RATE PREFERRED STOCK (MARPS)

Initial financing, 7:38

NASDAQ

Initial public offerings, listing and registration under § 12(b), 11:50 Operation of public companies, 12:55 to 12:58, App 12-B

NATIVE AMERICANS

Bureau of indian affairs, second round financing, **10:11**

NEGOTIATIONS

Initial Financing, this index Second round financing, **10:2**, **10:23**

NET WORTH

Securities laws, definition of accredited investor, **6:5.30**

NEUTRAL SCRIBE

Intermediary between clients, acting as, 1:8

NONCOMPETITION AGREEMENTS

Employment, 9:47, 9:47.50

Formation of venture, restrictive agreements between founders and previous employers, 2:39

Mergers and sales of companies, 14:17

NONCONVENTIONAL LENDERS

Second round financing, 10:10.50

14:27

NONLAPSE RESTRICTIONS

Compensation and stock incentives, **8:5**

NON-REGISTERED FINDERS

Securities laws, 6:13

NOTICE

Mergers and sales of companies, Hart-Scott-Rodino Antitrust Improvements Act of 1976, **14:9**

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

General discussion, 9:43

OFFERING LOG

XYZ Technology Inc. v. Offering Log, securities, **App 6-C**

OFFICERS

Corporations, formation of, **2:21** Ethics, service by lawyer as officer, **1:5**

Indemnification agreement, App 2-H Initial public offerings, SB-1 registration statement, 11:123

Operation of Public Companies, this index

Securities laws, liability, 6:22

ON SALE

Patent law, 9:2

OPERATING AGREEMENTS

Limited liability companies, App 2-K, App 2-K-A, App 2-L-A, App 2-L-B

OPERATION OF PUBLIC COMPANIES

General discussion, 12:1 et seq., 13:1 et seq.

Acquisition of other businesses
General discussion, **12:64 et seq.**Corporate and securities issues, **12:66**

Hart-Scott-Rodino Antitrust Improvements Act of 1976, 12:67

Tax issues, 12:65

Annual reports on Form 10-K, 12:6

OPERATION OF PUBLIC COMPANIES—Cont'd

Annual reports to shareholders, Section 12(g) companies, **12:18**

Attorney standards of professional conduct, "up the ladder" reporting, **12:84**

Attorney's letter outlining issuer's obligations under Exchange Act, **App 12-E**

Business judgment rule, **12:79**Buyouts, resolution of conflicts and breaking of deadlocks, **12:83**

Capital raising, smaller company, 12:2

Certification, form of, **App 12-I**Compensation. Executive compensation, below

Control at a premium, sale of, **13:6** Control of management

General discussion, 12:74 et seq. Business judgment rule, 12:79 Deadlocks, 12:83

Early prevention of conflicts, importance of, **12:82**

Majority control, 12:78

Preventive measures, **12:75**

Remedies of the squeezee, 12:80

Squeeze-out techniques, 12:76 et seq.

Conversions, officers, directors and ten percent shareholders, 12:38

Deadlocks, control of management, 12:83

Derivative securities, 12:14, 12:35

Directors. Officers, directors and ten percent shareholders, below

Disclosure controls and procedures, 12:19 to 12:31

Disclosure requirements, smaller company, 12:2

Dissolution of company, 13:8

Executive compensation

General discussion, **12:68 et seq.** Fringe benefits, **12:72**

Insurance benefits, 12:71

Limit on deductible compensation, 12:73

COMPANIES—Cont'd Executive compensation—Cont'd Nonqualified deferred compensation plans, **12:70** Qualified retirement plans, 12:69 Exercises, officers, directors and ten percent shareholders, 12:38 Family holdings, officers, directors and ten percent shareholders, 12:12 Form 13D, Section 12(g) companies, 12:15 Form 13G, Section 12(g) companies, 12:16 Form of certification, App 12-I Form of seller's representation letter, App 13-A Form S-3 eligibility rule proposals, 12:32 Fringe benefits, 12:72 Full disclosure, Regulation FD, 12:27 Hart-Scott-Rodino Antitrust Improvements Act of 1976, 12:67 Insider Trading, this index Insurance benefits, 12:71 Majority control, 12:78 Matching, officers, directors and ten percent shareholders, **12:40** NASDAQ market and exchange listings, 12:55 to 12:58, App 12-B Nonqualified deferred compensation plans, **12:70** Officers, directors and ten percent shareholders General discussion, 12:33 et seq. Corporate holdings, pecuniary interest, 12:12 "Derivative securities." 12:35 Exclusions. 12:36 Exercises and conversions, 12:38 Family holdings, pecuniary interest, 12:12 Matching, 12:40 Partnerships, pecuniary interest, 12:12 Pecuniary interest, reporting

requirements, 12:12

Profits. 12:41, 12:42

OPERATION OF PUBLIC

OPERATION OF PUBLIC COMPANIES—Cont'd Officers, directors and ten percent shareholders—Cont'd Purchase, 12:39 Ouestionnaire for directors, officers and five percent or more shareholders, **App 12-C** Reporting requirements, Section 16(a), **12:12 to 12:14** Shared interests, pecuniary interest, 12:12 Short-swing profits, 12:34 et seq. Short-term options, profits on, 12:42 Third-party options, 12:37 Transactions between issuer and its directors or officers, 12:43 Trusts, pecuniary interest, 12:12 OTC bulletin board, eligibility requirements, 12:58 Partnerships, officers, directors and ten percent shareholders, 12:12 Pecuniary interest, officers, directors and ten percent shareholders, 12:12 Penalties for failure to file periodic reports, 12:20 Periodic reports on Form 8-K, 12:8 Premium, sale of control at, 13:6 Preventive measures, control of management, 12:75 Private sale, 13:5 Privately held company, valuation of, 13:10 Proxy material, Section 12(g) companies, 12:17 Qualified retirement plans, 12:69 Quarterly reports on Form 10-Q, 12:7 Questionnaire for directors, officers and five percent or more shareholders, App 12-C Regulation FD, 12:27 Reporting requirements General discussion, 12:1 et seq. Annual reports on Form 10-K, 12:6

Annual reports to shareholders,

12:18

Section 12(g) companies,

OPERATION OF PUBLIC OPERATION OF PUBLIC COMPANIES—Cont'd COMPANIES—Cont'd Reporting requirements—Cont'd Shareholders' Meetings, this index Attorney's letter outlining issuer's Shelf registration, sale of stock of obligations under Exchange founders, 13:4 Act, **App 12-E** Shelf-offering rule proposals, 12:32 Derivative securities, Section 16(a) Short-swing profits, officers, directors reports, 12:14 and ten percent shareholders, Form 13D, Section 12(g) 12:34 et seq. companies, 12:15 Short-term options, officers, directors Form 13G, Section 12(g) and ten percent shareholders, companies, 12:16 12:42 NASDAO market listing, 12:55 Smaller companies Officers, directors and ten percent Capital raising, 12:2 shareholders, 12:12 to 12:14 Disclosure requirements, 12:2 Penalties for failure to file periodic Smaller reporting companies, 12:10 reports, 12:20 Social media, 12:27 Periodic reports on Form 8-K, 12:8 Squeeze-out techniques, 12:76 et Proxy material, Section 12(g) seq. companies, 12:17 Stock of founders, sale of Quarterly reports on Form 10-Q, General discussion, 13:1 et seq. 12:7 Public sale, 13:1 et seq. Section 12(b) companies, 12:4.50 Rule 144 sales, 13:2 Section 12(g) companies, 12:4, Shelf registration, 13:4 12:11 et seq., App 12-A Section 15(d) companies, 12:3, Underwritten secondary offering, 12:5 to 12:8 13:3 Sudden death buyouts, resolution of Section 16(a) reports, Section conflicts and breaking of 12(g) companies, **12:12 to** deadlocks, 12:83 12:18 **Taxation** Selective disclosure, 12:27 Acquisition of other businesses, Smaller reporting companies, 12:10 12:65 Restructuring, 13:9 Tax consequences, 13:7 Rule 14a-19: "Universal" proxy Ten percent shareholders. Officers, cards, 12:17.50 directors and ten percent Rule 144 sales, 13:2 shareholders, above Sale of control at a premium, 13:6 Trusts, officers, directors and ten percent shareholders, 12:12 Section 12(b) companies, 12:4.50 Underwritten secondary offering, sale Section 12(g) companies, 12:4, 12:11 of stock of founders, 13:3 et seq., App 12-A Section 15(d) companies, 12:3, 12:5 Valuation of a privately held company, 13:10 to 12:8 Section 16(a) reports, Section 12(g) Value judgment, App 13-B companies, 12:12 to 12:18 Workouts, 13:9 Selective disclosure, 12:27 **OPTIONS** Shared interests, officers, directors and ten percent shareholders, Compensation and stock incentives. 12:12 backdating, 8:18

OPTIONS—Cont'd

Emerging growth companies, opt in right, **6:3**Stock Options, this index Vesting provisions, **8:19**

OTC BULLETIN BOARD

FINRA Rule 6490, **12:58**Operation of public companies, eligibility requirements, **12:58**

OTC Markets distinguished, 12:58

OUTREACH ON CHANGES TO THE LAW

SEC requirement, **6:3**Title VII of JOBS Act of 2012, **6:3**

OUTSIDE DIRECTORS

General discussion, 3:3

OVERLAPPING INVENTIONS

Patents, 9:2

PARTIES

Unfair competition, 9:12

PARTNERSHIPS

General discussion, **2:20**Cancellation of debt issues (CODI), **10:31**

"Check-the-box" regulations, 2:11 CODI (cancellation of debt issues), 10:31

Compensation and stock incentives, 8:15

Employee benefits, 2:10

Formation

General discussion, 2:4 et seq., App 2-D, App 2-E

Basic considerations, 2:4

"Check-the-box" regulations, 2:11

Employee benefits, **2:10**

Limited liability partnerships, 2:36

Self-employment tax issues, **2:12**

Taxation, 2:6, 2:12

Limited liability partnerships, 2:36 Limited Partnerships, this index Operation of public companies, officers, directors and ten percent shareholders, 12:12

PARTNERSHIPS—Cont'd

Research and Development Limited Partnerships, this index Second Round Financing, this index Self-employment tax issues, 2:12 Taxation, 2:6, 2:12

PASSIVE ACTIVITIES

Taxes, planning for losses, 2:17

PATENT AND TRADEMARK OFFICE

Utility patents, 9:2

PATENTS

General discussion, 9:2

America Invents Act (AIA), 9:2

Derivation proceeding, 9:2

Design patents, 9:2

Employer's right to patents and trade

secrets, 9:7, 9:8

First-inventor-to-file, 9:2

Formation of venture, 2:2

Founders, 3:6

In public use, 9:2

Initial operating problems, 9:2

Interference, 9:2

Inventorship vs. ownership, 9:2

Nonconfidential submission agree-

ment, App 9-A

On sale, 9:2

Plant patents, 9:2

Priority of invention, 9:2

Role of lawyer, 1:9

Subject matter, 9:2

Utility patents, 9:2, 9:7, 9:9

Written contracts, importance of, 9:8

PAYMENT-IN-KIND DIVIDENDS

Preferred stock. 4:2

PECUNIARY INTEREST

Operation of public companies, officers, directors and ten percent shareholders, **12:12**

PEER TO PEER LENDING

Second round financing, **10:10.50**

PENALTIES

Insider Trading and Securities Fraud Enforcement Act of 1988, 12:51

PENALTIES—Cont'd

Operation of public companies, failure to file periodic reports, 12:20

PENNY STOCKS

Mergers and sales of companies, 10:28

PERFORMANCE APPRAISALS

Employee handbooks, 9:45

PHANTOM STOCK

General discussion, 8:13

PHANTOM STOCK PLANS

General discussion, App 8-F

PIGGYBACK RIGHTS

Initial financing, 7:14

PIK DIVIDENDS

Preferred stock, 4:2

PIPEs

Mergers and sales of companies, 10:27

Second Round Financing, this index

PLANT PATENTS

General discussion, 9:2

POSTEFFECTIVE PERIOD

Initial Public Offerings, this index

PREEMPTION

Federal Preemption, this index

PREFERRED STOCK

Initial financing, 4:3

PREFILING PERIOD

Initial Public Offerings, this index

PRICES

Antitrust law, restraints, 9:25

PRICING TACTICS

Antitrust law, 9:31

PRIMARY RESIDENCE

Securities laws, accredited investor definition, **6:5.30**

PRIORITY OF INVENTION

Patents, 9:2

PRIVACY

Employee handbooks, **9:45** Torts, **9:22**

PRIVATE COMPANY FLEXIBILITY AND GROWTH

Employee shareholders exclusion, **6:3**

SEC rule making, revision of "held of record," **6:3**

SEC study of enforcement authority, **6:3**

Threshold for registration, **6:3**Title V of JOBS Act of 2012, **6:3**

PRIVATE INVESTMENT IN PUBLIC EQUITY (PIPES)

Mergers and sales of companies, 10:27

Second Round Financing, this index

PRIVATE OFFERINGS

Initial financing, **App 5-C**Securities, **2:37**, **6:4**, **App 6-A**Securities, Regulation D exemption, **6:5.50.3**

PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

General discussion, **6:27 et seq.** Attorney's fees, **6:5.40** Class actions and other litigation

reforms, **6:28.50**, **6:28.51**

Heightened pleading standard, **6:27.10**

Proportionate liability, **6:27.30**Safe-harbor for forward-looking statements, **6:27.20**

PRIVATELY HELD COMPANIES

Operation of public companies, 13:10

PRIVILEGED COMMUNICATIONS

Officer or director, service by lawyer as, 1:5

PROJECTIONS

Initial public offerings, drafting registration statement, 11:62

PROMOTIONAL SHARES

Initial public offerings, 11:37, 11:94

PROMOTIONS

Initial public offerings, SB-1 registration statement, **11:123**

PROPORTIONATE LIABILITY

Private Securities Litigation Reform Act of 1995, **6:27.30**

PROXIES

Delivery of proxy material, 12:17.10 Enhanced disclosure, 12:17.20 Irrevocable Proxies, this index Mergers and sales of companies, 14:16

Operation of public companies, Section 12(g) companies, 12:17

Pay ratio disclosure, 12:17.30

Rules 14a-19: "Universal" proxy cards, operation of public companies, 12:17.50

Say-on-Pay, 12:17.30

Shareholders' meetings, 12:61

PUBLIC COMPANIES

Initial Public Offerings, this index Mergers and Sales of Companies, this index

Operation of Public Companies, this index

PUBLIC SHELL SCAMS

Second round financing, App 10-E

PUBLIC SHELLS

Mergers and sales of companies, **10:26**

PUBLICITY

Initial public offerings, 11:77

PURCHASERS

Insider trading, 12:50

QUALIFIED BUSINESS INCOME

Deduction from taxes, 2:14

QUALIFIED INSTITUTIONAL BUYERS

Emerging growth companies, 6:3

RECORDS

Formation of venture, organizational records, 2:2

REGISTRATION

Initial Financing, this index
Initial Public Offerings, this index
Mergers and sales of companies,
14:22

Securities laws, 6:1, 6:19

REGULATION A

Initial Public Offerings, this index Securities laws, **6:7**

REGULATION C

Initial public offerings, 11:150

REGULATION CF

Crowdfunding, this index

REGULATION D EXEMPTION

Securities Laws, this index

REGULATION S

Securities laws, 6:8

REGULATION S-K

Emerging growth companies, **6:3** Initial public offerings, **11:146**

REGULATION S-X

Initial public offerings, 11:147

RELATED PARTY TRANSACTIONS

Initial public offerings, accounting, 11:88

REOPENING AMERICAN CAPITAL MARKETS TO EMERGING GROWTH COMPANIES

Title I of JOBS Act of 2012, 6:3

REPORTING REQUIREMENTS

Annual Reports, this index Crowdfunding, **6:6.41** Initial public offerings, **11:110** Operation of Public Companies, this index

REPRESENTATIONS

Mergers and sales of companies, survival, **14:20.1**

REPRESENTATIVE, DISTRIBUTOR AND DEALER ARRANGEMENTS

Antitrust considerations, **9:41**Bundling distribution agreement, **App 9-D**

Checklist for drafting license agreement, **App 9-F**

Competing products, handling of, 9:41

Demo days, **6:13**

Distributors, generally, **App 9-B**, **App 9-D**

Exclusiveness of territory, **9:41**Internet matchmaking portals, **6:13**Manufacturer's representatives, generally, **App 9-B**

Non-registered finders, **6:13**Online matchmaking portals, **6:13**Sales representative agreement, **App**9-G

Software developers, **App 9-C, App 9-E**

Unfair competition, wrongful termination, **9:17**

Value added resellers, generally, **App** 9-C

RESCISSION

Informal financing, **4:1**

RESEARCH AND DEVELOPMENT LIMITED PARTNERSHIPS

Initial financing, 4:21

RESEARCH INFORMATION

Emerging growth companies, 6:3

RESTRICTED SECURITIES

Securities Laws, this index

RETENTION OF COMPANY

Mergers and sales of companies, **App** 14-H

RETIREMENT

Buy-out and buy-sell agreements, **3:5, App 3-J**

RISK FACTORS

Initial public offerings, drafting registration statement, 11:53

ROLE OF LAWYER

General discussion, **1:1 et seq.**Dodd-Frank Act, responsibilities under, **1:10**

Dodd-Frank Act provisions, **1:10** Ethics, this index

Legal advice vs. business and financial advice, **1:5**

Patent lawyers, 1:9

Startups, introduction, 1:1

The case for representing startups, 1:2

RULE 134

Initial public offerings, 11:39

RULE 144

Form of seller's representation letter, **App 13-A**

Operation of public companies, 13:2 Second round financing, Private Investment in Public Equity (PIPEs), 10:14.50

Securities laws, 6:18

RULE 144A

Second round financing, 10:29

RULE 145 TRANSACTIONS

Mergers and sales of companies, 14:14

RULE 504

Securities laws, Regulation D exemption, **6:5.10**

RULE 506

Securities laws, Regulation D exemption, **6:5.20**

RULE 508

Securities laws, Regulation D exemption, **6:5.80**

RULES 10B-5, 10B5-1 AND 10B5-2

Insider trading, 12:46

RULES 701-703

Securities laws, exemption for employee stock plans, **6:10**

RULES 14A-19

Universal" proxy cards, operation of public companies, 12:17.50

S-3

Form S-3, this index

S CORPORATIONS

General discussion, 2:4 et seq. Basic considerations, 2:4 "Check-the-box" regulations, 2:11 Elections, 2:8 Self-employment tax issues, 2:12 Taxation, 2:8, 2:12

SAFE HARBORS

Private Securities Litigation Reform Act of 1995, forward-looking statements, **6:27.20**

Securities laws, foreign offering exemption, **6:8**

SAFETY

Health and Safety, this index

SALE OF CONTROL AT A PREMIUM

Operation of public companies, 13:6

SALE OF PIPES

Second round financing, 10:29

SALES OF COMPANIES

Mergers and Sales of Companies, this index

SARBANES-OXLEY ACT

Going public, 11:13
Role of lawyer, 1:10

SAVINGS AND LOAN ASSOCIATIONS

Initial financing, 5:15

SB-2 REGISTRATION STATEMENT

Initial Public Offerings, this index

SCOR LEGISLATION

Initial public offerings, 11:112

SEC 2008 AMENDMENTS TO RULE 144 AND S-3, EFFECT OF

Second round financing, Private Investment in Public Equity (PIPEs), **10:14.50**

SEC FORM S-3

Form S-3, this index

SEC REQUIREMENT

Outreach on changes to the law, 6:3

SEC RULE MAKING

Capital expansion, **6:3**Private company flexibility and growth, **6:3**

SECOND ROUND FINANCING

General discussion, 10:1 et seq.
Accounts receivable financing, 10:5
Alternative credit sources, 10:10.50
Asset lenders, 10:8
Bridge financing, 10:15, App 10-D
Business plan, corporate partnering, 10:21
Cancellation of debt issues (CODI),

10:31 CODI (cancellation of debt issues),

10:31

Commercial bank loans, **10:4** Corporate cultures, corporate partnering, **10:21**

Corporate partnering

General discussion, 10:17 et seq. Business plan, 10:21
Corporate cultures, 10:21
Equity-oriented arrangement, 10:18

Expected benefits, **10:21**Finding a partner, **10:22**General planning and approach, **10:21**

Negotiating the agreement, 10:23
Operating environment, 10:21
Product-driven arrangement, 10:20
Resources of each partner, 10:21
Responsibilities of partners, 10:21
Statement of goals and objectives, 10:21

SECOND ROUND FINANCING SECOND ROUND FINANCING —Cont'd —Cont'd Corporate partnering—Cont'd Merging with public shell companies, Structure of partnership, 10:21 dangers, App 10-B Technology-driven arrangement, Money-finder scams, App 10-E 10:19 Negotiation, 10:2, 10:23 Nonconventional lenders, 10:10.50 Debt financing Operating environment, corporate General discussion, 10:2 et seq. partnering, 10:21 Accounts receivable financing, Peer to peer lending, 10:10.50 10:5 PIPEs. Private Investment in Public Asset lenders, 10:8 Equity (PIPEs), below Commercial bank loans, 10:4 Private activity bonds, 10:30 Equipment financing, 10:7 Private Investment in Public Equity Factoring, 10:9 (PIPEs) Government lenders, 10:11 General discussion, 10:14, App Inventory financing, 10:6 10-C Leasing, 10:10 Effect of SEC's 2008 amendments Loan guarantees, 10:3 to Rule 144 and S-3, 10:14.50 Negotiating the loan, 10:2 Rule 144, effect of amendments to, Security interests, 10:2 10:14.50 Taxation, 10:2 Rule 144A, sale of PIPEs under, 10:29 Down rounds, 10:13 S-3, effect of amendments to, Effect of SEC's 2008 amendments to 10:14.50 Rule 144 and S-3, **10:14.50** Sale of PIPEs under Rule 144A, Equipment financing, 10:7 10:29 Equity financing SEC's 2008 amendments to Rule General discussion, 10:12 et seq. 144 and S-3, effect of, Bridge financing, 10:15 10:14.50 Down rounds, 10:13 Product-driven arrangement, Equity lines of credit, 10:16 corporate partnering, 10:20 High-yield debt, 10:16 Public shell scams, App 10-E PIPEs. Private Investment in Pub-Resources of each partner, corporate lic Equity (PIPEs), below partnering, 10:21 Private Investment in Public Responsibilities of partners, Equity (PIPEs), below corporate partnering, 10:21 Second rounds, 10:12 Rule 144, effect of amendments to, "Toxic convertibles," 10:16 10:14.50 Equity lines of credit, 10:16 Rule 144A, sale of PIPEs under, Equity-oriented arrangement, 10:29 corporate partnering, 10:18 S-3, effect of amendments to, Factoring, 10:9 10:14.50 Government lenders, 10:11 Sale of PIPEs under Rule 144A, High-yield debt, 10:16 10:29 Inventory financing, 10:6 Second rounds, 10:12 Leasing, **10:10** SEC's 2008 amendments to Rule 144 and S-3, effect of, 10:14.50 Mergers with Public Companies, this Security agreement, App 10-F index

SECOND ROUND FINANCING —Cont'd

Security interests, 10:2

Shell game, App 10-B

Strategic alliances. Corporate partnering, above

Structure of partnership, corporate partnering, **10:21**

Taxation, 10:2

Technology-driven arrangement, corporate partnering, **10:19**

Term sheet for the down round, **App**10-A

Term sheets, **App 10-A**, **App 10-D** "Toxic convertibles," **10:16**

SECRECY AGREEMENTS

Inventions by employees, **App 3-H**, **App 3-I**

SECTION 11

Securities laws, liability of lawyers and accountants, **6:24**

SECTION 12

Securities laws, liability of lawyers and accountants, **6:25**

SECTION 12(B) COMPANIES

Operation of public companies, 12:4.50

SECTION 12(G) COMPANIES

Operation of public companies, 12:4, 12:11 et seq., App 12-A

SECTION 15(D) COMPANIES

Operation of public companies, 12:3, 12:5 to 12:8

SECTION 16(A) REPORTS

Operation of public companies, Section 12(g) companies, **12:12 to 12:18**

SECURITIES ENFORCEMENT REMEDIES AND PENNY STOCK REFORM ACT OF 1990

Insider trading, 12:52

SECURITIES LAWS

General discussion, 6:1 et seq.

SECURITIES LAWS—Cont'd

Access to Capital for Job Creators, Title II of JOBS Act of 2012, 6:3

Accountants. Liability of lawyers and accountants, this index

Accredited investors, **6:4**, **6:5.20**, **6:5.30**

Antifraud provisions, 6:23, 6:24

Associated persons of issuer, exemption, **6:15**

"Bad boy" disqualification provisions, **6:12**

Blue sky laws, 6:14

Capital Expansion, Title VI of JOBS Act of 2012, **6:3**

Covered securities under SA Section 18, crowdfunding, **6:3**

Crowdfunding, this index

Definition, security, 6:2

Demo days, 6:13

Directors, liability, 6:22

Disclosure, 6:3.50.1, 6:3.50.2, 6:5.50, 6:21.40, 12:27

Employee stock plans, Rules 701-703 exemption, **6:10**

Escrow provisions, minimummaximum offerings, **6:21.10**

Exempt offerings, 6:1 et seq.

Extensions of offering period, minimum-maximum offerings, 6:21.20

Federal preemption, Regulation D exemption, **6:5.90**

Financial statements

generally, **6:3.50.1**, **6:3.50.2**, **6:5.50**

Regulation D exemption, **6:3.50.2**, **6:5.50**

Finders, use of non-registered, 6:13

Foreign offering exemption, 6:8

Formation of venture, 2:37

Fraud provisions, 6:23, 6:24

Initial financing, 5:9

Integration, 6:11

Internet matchmaking portals, use of, **6:13**

Intrastate equity crowdfunding, **6:9**Intrastate offering exemption, **6:9**

SECURITIES LAWS—Cont'd SECURITIES LAWS—Cont'd Issuer's exemption, **6:7** Private offering memorandum JOBS Act of 2012, 6:3 —Cont'd Jumpstart Our Business Startups Sample, App 6-A (JOBS) Act of 2012, **6:3** Private Securities Litigation Reform Act of 1995, this index Legal opinions, liability of lawyers and accountants, 6:26.20 Public offering, statutory private Liability, directors and officers, **6:22** offering exemption, **6:5.40** Liability of lawyers and accountants Qualified institutional buyers, resales by, **6:20** General discussion, 6:26 et seq. Legal opinions, **6:26.20** Registration, **6:1** Section 11, 6:24 Registration of restricted securities Section 12, 6:25 on SEC Form S-3, 6:19 Standards of professional conduct Regulation A exemption, 6:7 when practicing before SEC, Regulation CF. Crowdfunding, this 6:26.10 index Matchmaking portals, use of online, Regulation D exemption generally, 6:5 Mergers and Sales of Companies, this Accredited investors, **6:5.20** index Amount of securities, **6:5.10** Minimum-maximum offerings Disclosure requirements, 6:3.50.1, General discussion, 6:21 et seq. 6:3.50.2, 6:5.50 Disclosure, **6:21.40** federal preemption, 6:5.90 Escrow provisions, **6:21.10** Financial statement information. Extensions of offering period, 6:3.50.2, 6:5.50 6:21.20 General solicitation, 6:5.40 Net worth calculation, accredited Manner of offering, 6:5.40 investor, **6:5.30** Non-financial statement informa-Non-registered finders, online tion, **6:3.50.2**, **6:5.50** matchmaking portals and demo Nonreporting companies, days, use of, **6:13** disclosure requirements, Nonreporting companies, disclosure 6:3.50.2 requirements, **6:3.50.2** Notice on Form D, 6:5.70 Notice on Form D, Regulation D Private offering memorandum, exemption, 6:5.70 6:5.50.3 Officers, liability, 6:22 Reporting companies, disclosure Online matchmaking portals, use of, requirements, **6:3.50.1** Resale restrictions, **6:5.60** Outreach on Changes to the Law, Rule 504, 6:5.10 Title VII of JOBS Act of 2012, Rule 506, 6:5.20 Primary residence, net worth calcula-Rule 508 good faith compliance, tion, **6:5.30** 6:5.80 Private Company Flexibility and Regulation FD, 12:27 Growth, Title V of JOBS Act, Regulation S exemption, 6:8 Reopening American Capital Markets Private offering exemptions, 6:4 to Emerging Growth Private offering memorandum Companies, Title I of JOBS Act, Need for. **6:5.50.3**

SECURITIES LAWS—Cont'd

Reporting companies, disclosure requirements, **6:3.50.1**

Resales

Qualified institutional buyers, **6:20** Restricted securities, resales of, below

Restrictions, 6:5.60

Restricted securities, registration on SEC Form S-3. **6:19**

Restricted securities, resales of General discussion, **6:17**Rule 144, under, **6:18**

Rule 144, this index

Rule 504, Regulation D exemption, **6:5.10**

Rule 506, Regulation D exemption, **6:5.20**

Rule 508 good faith compliance, Regulation D exemption, **6:5.80**

Rules 701-703 exemption for employee stock plans, **6:10**

Safe harbors, foreign offering exemption, **6:8**

Sample memorandum to clients:
Private offering of securities, **App 6-A**

SEC Form S-3, registration of restricted securities, **6:19**

Second round financing, Rule 144A, **10:29**

Section 11, liability of lawyers and accountants, **6:24**

Section 12, liability of lawyers and accountants, **6:25**

Small Company Capital Formation, Title IV of JOBS Act, **6:3**

State blue sky laws, 6:14

Statutory private offering exemptions, **6:4**

Suitability standards, 6:16

Use of non-registered finders, online matchmaking portals and demo days, **6:13**

SECURITY AGREEMENT

Second round financing, App 10-F

SECURITY INTERESTS

Second round financing, 10:2

SELF-EMPLOYMENT

General discussion, 2:12

SELF-UNDERWRITING

Initial public offerings, 11:17

SELLERS

Mergers and sales of companies, sale of company checklist, **App 14-J**

Operation of public companies, form of seller's representation letter, **App 13-A**

Representative, distributor and dealer arrangements, value added resellers, **App 9-C**

SEMICONDUCTOR CHIPS

Copyrights, 9:6

SERVICEMARKS

Trademarks and Servicemarks, this index

SHAREHOLDERS

Agreements between founders, 3:2, App 3-A, App 3-B

Capital expansion, threshold for registration, **6:3**

Meetings. Shareholders' Meetings, this index

SHAREHOLDERS' MEETINGS

General discussion, 12:60 et seq.

Annual report to shareholders, 12:62

Conduct of meetings, 12:63

Proxy rules, 12:61

Script for annual meeting for election of directors, **App 12-D**

SHELF REGISTRATION

Operation of public companies, sale of stock of founders, 13:4

SHELF-OFFERING RULE PROPOSALS

Operation of public companies, 12:32

SHELL GAME

Second round financing, App 10-B

SHOP RIGHTS

Patents and trade secrets, 9:7, 9:8

SHORT-SWING PROFITS

Mergers and sales of companies, 14:15

Operation of public companies, officers, directors and ten percent shareholders, **12:34 et seq.**

SHORT-TERM OPTIONS

Operation of public companies, officers, directors and ten percent shareholders, **12:42**

"SHOTGUN" BUYOUT CLAUSE

Agreements between founders, **App** 3-M

SIGNATURES

Initial public offerings, SB-1 registration statement, **11:142**

SMALL BUSINESS ADMINISTRATION

Debt financing, second round financing, **10:11**

SMALL BUSINESS INITIATIVES

Initial Public Offerings, this index

SMALL BUSINESS INNOVATION RESEARCH GRANTS

Initial financing, 5:21

SMALL BUSINESS INVESTMENT ACT

Initial financing, 5:12

SMALL COMPANY CAPITAL FORMATION

Authority to exempt certain securities, **6:3**

State law relationship, **6:3**Title IV of JOBS Act of 2012, **6:3**

SMALLER COMPANIES

Operation of public companies, 12:2

SOCIAL MEDIA

Operation of public companies, 12:27

SOFTWARE

Computer Software, this index

SOLE PROPRIETORSHIPS

General discussion, 2:4 et seq.

SOLE PROPRIETORSHIPS

—Cont'd

Basic considerations, **2:4** "Check-the-box" regulations, **2:11** Self-employment tax issues, **2:12** Taxation, **2:4**, **2:12**

SOPHISTICATED INVESTORS

Initial financing, 5:17, 5:18

SOURCES OF FINANCING

Initial Financing, this index

SQUEEZE-OUT TECHNIQUES

Operation of public companies, 12:76 et seq.

STARTUPS

Common mistakes made, 2:1
Introductions, 1:1
The case for representing, role of lawyer, 1:2

STATE LAW RELATIONSHIP

Crowdfunding, 6:3

STATE OF INCORPORATION

"Cheap Stock," this index

Selection of, 2:22

STOCK

Compensation and Stock Incentives, this index
Curing defects in stock issuances, 2:42
Dividends, this index
Ethics, fees, 1:6
Options. Stock Options, this index
Proxies, this index

STOCK OPTIONS

Employee benefits, taxation, **2:10**Ethics, fees, **1:6**Manufacturing facilities, **9:60**Sales to nonaccredited investors, **2:1**

STRATEGIC ALLIANCES

Second Round Financing, this index

SUBORDINATION

Initial financing, 4:15

SUBSIDIARIES

Initial public offerings, financial statements, 11:85

SUBSTANTIAL COMPLIANCE

Initial public offerings, Regulation A offering, 11:107

SUBSTANTIALITY

Partnerships, taxation, 2:6

SUDDEN DEATH BUYOUTS

Operation of public companies, resolution of conflicts and breaking of deadlocks, 12:83

SUGGESTIVE MARKS

Trademarks, 9:5

SUPERMAJORITY VOTES

Stock control arrangements, 3:2

SURVIVAL OF

REPRESENTATIONS AND WARRANTIES

Mergers and sales of companies, 14:20.1

TAXATION

Boot

Mergers and sales of companies, 14:25

Transfer on commencement of corporation or partnership,

"Check-the-box" regulations, 2:11

Compensation and Stock Incentives, this index

Conversions, 2:15, 2:16

Corporations, 2:8, 2:12

Counsel, responsibilities under Circular 230, 1:11

Deduction of qualified business income, 2:14

Formation of venture

General discussion, 2:5 et seq.

"Check-the-box" regulations, 2:11

Conversions, 2:15, 2:16

Corporations, 2:7, 2:7

Initial tax considerations, 2:12 et seq.

Limited liability companies, 2:9

TAXATION—Cont'd

Formation of venture—Cont'd

Losses, planning for, 2:17

Organizational costs, 2:19

Partnerships, 2:7

qualified business income, deduction, 2:14

S corporations, 2:8

Self-employment issues, 2:12

Sole proprietorships, 2:5

Taxable years, 2:18

Transfers on commencement of corporation or partnership, 2:13

Initial Financing, this index

Initial public offerings, 11:11

Limited liability companies, 2:9, 2:12

Losses, planning for, 2:17

Mergers and sales of companies,

14:23 to 14:25, 14:27

Operation of Public Companies, this index

Organizational costs, 2:19

Partnerships, 2:6, 2:12

Qualified business income, deduction, 2:14

Restricted deferred compensation plans, 8:16

S corporations, **2:8, 2:12**

Second round financing, 10:2

Self-employment issues, 2:12

Sole proprietorships, 2:5, 2:12

Stock or ownership interests, division of, 3:1

Taxable years, 2:18

TEMPORARY WORKERS

Wages and hours, 9:52

TEN PERCENT SHAREHOLDERS

Operation of Public Companies, this index

TERM SHEETS

Initial financing, 7:3, App 7-B Limited partnerships, App 2-M Second round financing, App 10-A,

App 10-D

TERMINATION

General discussion, **App 2-G**Buy-out and buy-sell agreements, **3:5, App 3-J**Employee handbooks, **9:45**

TERMINATION OF EMPLOYMENT

Initial operating problems, 9:47.50

TERRITORIAL RESTRAINTS

Antitrust law, 9:26

TEST THE WATERS

Initial public offerings, Regulation A offering, 11:106

"THE PEOPLE'S BANK"

Initial financing, App 5-D

THRESHOLD FOR REGISTRATION

Private company flexibility and growth, **6:3**

TITLE IV OF JOBS ACT

Regulation A offering. Initial Public Offerings, this index

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

General discussion, 9:43

TORTS

General discussion, **9:19 et seq.**Confidential relationship, breach of, **9:12**

Emotional distress, infliction of, 9:22
Fair dealing, duty of, 9:12
Fiduciary duty, breach of, 9:12
Good faith, duty of, 9:12
Inducement of breach of contract,

Interference with contractual relations, 9:12, 9:22

Interference with prospective advantage, **9:12, 9:21**

Privacy, invasion of, **9:22** Trade libel, **9:23**

9:20

"TOXIC CONVERTIBLES"

Second round financing, 10:16

TRADE LIBEL

Torts, 9:23

TRADE NAMES

General discussion, **9:5** Written contracts, importance of, **9:8**

TRADE SECRETS

General discussion, 9:3, 9:4, 9:7, 9:9
Formation of venture, protection of secrets, 2:1
Nonconfidential submission agreement, App 9-A
Role of lawyer, 1:9

Uniform Trade Secrets Act, 9:4

TRADEMARKS AND SERVICEMARKS

General discussion, **9:5**Formation of venture, **2:1**Written contracts, importance of, **9:8**

TRUST INDENTURE ACT

Initial public offerings, Regulation A offering, 11:109

TRUSTS

Operation of public companies, officers, directors and ten percent shareholders, **12:12** Voting Trusts, this index

TYING AGREEMENTS

Antitrust law, 9:30

UNDERTAKINGS

Initial public offerings, SB-1 registration statement, **11:141**

UNDERWRITERS AND UNDERWRITING

Initial public offerings, 11:17, 11:22, 11:69

UNFAIR COMPETITION

General discussion, **9:10 et seq.**Agency, wrongful termination of, **9:17**

Antitrust law, 9:32

Competing business, organization of, 9:16

Computer Fraud and Abuse Act, 9:13 Contractual restraints, 9:18

UNFAIR COMPETITION—Cont'd

Customers, solicitation by former employees, **9:14**

Distributorship, wrongful termination of, **9:17**

Employees of company, solicitation by former employees, **9:15**

Former employees, **9:14**, **9:15**

History, **9:11**

Parties, **9:12**

Torts, this index

UNIFORM TRADE SECRETS ACT

General discussion, 9:4

UTILITY PATENTS

General discussion, **9:2**, **9:7**, **9:9**

VALUATION

Buy-out and buy-sell agreements, 3:5, App 3-J

Contributions, agreements between founders. **3:1**

Initial financing, 7:4, App 7-K

Initial public offerings, 11:2

Mergers and sales of companies, **14:1.1**

Operation of public companies, 13:10

VALUE JUDGMENT

Rule 144 sales, App 13-B

VENTURE CAPITAL

Formation of venture, 2:1, App 2-N Initial financing, 5:13

VENTURE INVESTMENT VALUATIONS

Initial financing, App 7-K

VESTING PROVISIONS

Compensation and stock incentives, **8:19**

VOLUNTEERS

Wages and hours, 9:52

VOTES AND VOTING

Initial financing, voting agreement, App 7-G

Supermajority Votes, this index Voting Trusts, this index

VOTING TRUSTS

General discussion, **3:2, App 3-D** Initial financing, **7:12**

WAGES

Employment, 9:45, 9:49 to 9:52

WAIVER

Initial public offerings, 11:92

WARRANTIES

Initial financing, 7:8

Mergers and sales of companies, survival, **14:20.1**

WARRANTS

Initial financing, 4:9, 7:32

WHISTLEBLOWERS

Role of lawyer, 1:10

WORKERS' COMPENSATION

General discussion, 9:55

WORKOUTS

Operation of public companies, 13:9

XYZ TECHNOLOGY INC. V. OFFERING LOG

Securities, App 6-C