

Index

- “A” type reorganization, 255–256
- Accounting
 - Acquisition, 233–239
 - Goodwill, 239–245
 - Intangibles, 229–233
 - Integration, 183
 - Fair value, 228–229
 - Purchase price allocation, 227–228
 - Push-down, 245–249
- Acquisition
 - Accounting, 227–249
 - Definitions, 1
 - Due diligence, 93–146, 273–289
 - Failure, 17
 - Follow up, 32–33
 - Integration, 181–226
 - Process flow, 10–18
 - Reasons for, 1–5
 - Regulations, *see* Regulations
 - SEC reporting of, 184
 - Size, 7
 - Strategy, 7–9
 - Targets, 21–25
 - Team, 41–42
 - Types, 251–263
 - Valuation, 57–82
- Acquisitive reorganization, 258–259
- All-cash acquisition, 261
- Alliances, 26–28
- Anger management, 199–200
- Anti-trust regulations, 265–269
- Appraisal rights, 261–262
- Asset acquisition, 253–254
- Asset due diligence, 113–116, 278–279
- Asset lockup agreement, 174
- Attorneys, role of, 42–43
- Auction process, 18–21, 84
- “B” type reorganization, 256–257
- Back-end plan, 35

- Benefits diligence checklist, 276
- Bankruptcy auction, 20–21
- Benchmark assessment, 240
- Board of directors, *see* Directors
- Board integration, 222
- Bolt-on acquisition, 8
- Bonus plan integration, 216
- Brand diligence checklist, 277
- Branding risk, 76, 108
- Brokers, 44–46, 157
- Bulk sales laws, 16
- Bureaucracy accumulation effect, 194
- Burn or return provision, 31–32
- Business segment due diligence, 136–137
- Bust-up fee, 175
- “C” type reorganization, 257–258
- Capacity analysis, 110–113, 278
- Cash flow analysis, 124–126, 281
- Cash payment, 78–79, 81, 152
- Chief executive officer, role of, 46–47
- Clayton Act, 265
- Clean Air Act, 269
- Clean Water Act, 269
- Closing memorandum, 171–173
- Closing, mechanics of, 179–180
- Collar arrangement, 176–177
- Collective bargaining agreements, 104
- Compensation integration, 215–217
- Competitor reactions, 8–9
- Complexity analysis, 139–140
- Comprehensive Environmental Response, Compensation, and Liability Act, 52, 269–270
- Concentration analysis, 126
- Conditions precedent, 88–89
- Consultants, role of, 52–53
- Continuity of business enterprise rule, 252
- Continuity of interest rule, 252
- Control premium, 65
- Controls integration, 221–222
- Cost of capital, 68–69
- Cost escalation clause, 73
- Cost estimating procedures, 131
- Creeping control, 256
- Crown jewel lockup, 174
- Cultural integration, 201–205, 274–275
- Current market price per share valuation, 58
- Customer due diligence analysis, 126–128, 281–282
- Cutoff criteria, 24–25
- Cyclicalities, reduction of, 2
- “D” type reorganization, 258–259
- Dead hand provision, 35
- Debt
 - Analysis, 117
 - Payment, 79–80, 152

Index**293**

- Defensive acquisition, 2
- Director
 - Elections, staggered, 36
 - Role in acquisitions, 43–44
- Disaster analysis, 76
- Discounted cash flow analysis,
 - 12, 66–69, 71–74
- Divisive reorganization, 259
- Documentation of due diligence,
 - 144–146
- Dress code, 202
- Due diligence
 - Asset, 113–116
 - Brands, 107–108
 - Business segment, 136–137
 - Capacity, 110–113
 - Cash flow, 124–126
 - Checklist, 273–289
 - Culture, 101–102
 - Customer, 126–128
 - Documentation, 144–146
 - Equity, 119–120
 - Forecasting, 137–138
 - Information technology, 132
 - Intellectual property, 106–107
 - Interviews, 95–96
 - Legal, 132–136
 - Liabilities, 116–118
 - Market, 99–100
 - Missing information, 138–139
 - Overview, 96–99
 - Personnel, 102–106
 - Product development,
 - 128–130
 - Production process, 130–132
 - Profitability, 120–123
 - Recordkeeping, 30
 - Red flags, 140–142
 - Risk management, 109–110
 - Team staffing, 93–95
- Duplicative asset accounting, 233
- Earnout provision, 12–13, 30,
 - 74–75, 150
- EBITDA multiple valuation,
 - 58–61
- Employee integration, 205–214
- Employee stock ownership
 - plan, 32
- Enterprise value, 62
- Environmental
 - Liabilities, 112, 133, 161
 - Regulations, 269–271
- Equity diligence checklist, 280
- Estate taxes, 5
- Expected present value
 - technique, 240
- Fair price provision, 35–36
- Fair value determination,
 - 228–229
- Fairness opinion, 15
- Feedback systems, 202
- Financial buyer, 16
- Financing out condition, 13
- Fit matrix, 23–24
- Fixed asset
 - Audit, 113
 - Replacement schedule, 73
- Flip-over provision, 36

- Forecasting due diligence,
 - 137–138
- Forward multiple, 61–62
- Founder integration, 212–213
- Goal linking, 202
- Golden parachute, 36
- Goodwill impairment testing,
 - 239–245
- Grievance records, 104
- Hanging products, 129
- Hart-Scott-Rodino Antitrust
 - Improvement Act, 265–266
- Herfindahl-Hirschman Index,
 - 266–267
- Horizontal merger guidelines,
 - 267–268
- Hostile takeovers, 33–39
- Human resources integration, 184
- Hybrid valuation model, 64
- Indemnification basket, 176
- Industry cyclicality, 73
- Information technology due
 - diligence, 132, 284–285
- Inherent risk, 77
- Insider stock sales, 141
- Intangibles identification,
 - 229–233
- Integration
 - Board, 222
 - Communications, 196–199
 - Compensation, 215–217
 - Controls, 221–222
 - Cultural, 201–205
 - Employee, 205–214
 - Manager, 192–195
 - Metrics, 222–224
 - Pacing, 224
 - Planning, 182–186
 - Process, 219–220
 - Sales, 217–219
 - Synergy realization, 186–192
 - Team, 54, 195–196
 - Technology, 220
 - Timing, 181–182
 - Union, 213–214
- Integration, vertical, 4
- Intellectual property, 2, 23,
 - 106–107, 276–277
- Internet diligence checklist, 285
- Inventory, investigation of, 115
- Investment bankers, 47–48
- Investor
 - Conference calls, 49
 - Progress reports, 200
 - Relations, 48–50
- Issues log, 197
- Job positioning, 206–208
- Lawsuits, 76, 134, 160
- Lawyers, *see* Attorneys, role of
- Layoffs, 214–215
- Leadership style, 202
- Lenders, 50
- Legal
 - Due diligence, 132–136,
 - 285–287

Index

295

- Integration, 183
 - Risks, 29–31
- Letter of intent, *see* Term sheet
- Letter of transmittal, 153–154
- Leveraged buyouts, 50
- Liability
 - Due diligence, 116–118, 279–280
 - Undisclosed, 158
- Line managers, 51–52
- Litigation, *see* Lawsuits
- Local market expertise, 3
- Lockup arrangement, 174

- Management buyout, 17
- Managers, *see* Line managers
- Market overview checklist, 273
- Market share, 3
- Marketing integration, 183–184
- Material adverse change clause, 173–174
- Merger, *see* Acquisitions
- Mergerstat, 65
- Metrics, 222–224

- No-shop clause, 90
- Non-competition agreement, 166
- Non-disclosure agreement, 10

- Offering book, 18
- Options, 88, 119, 152

- Pacing, 224
- Patent
 - Expiration, 5–6, 76, 106
 - Legal rights to, 161
- Payment
 - Method, 78–81
 - Terms, 86
- Pension plan funding, 72
- Personnel diligence checklist, 275–276
- Policies and procedures checklist, 288
- Post-closing activities, 177–178
- Preclosing covenants, 89
- Price/earnings valuation method, 61
- Pricing procedures, 131
- Pro forma financial statements, 14
- Process integration, 219–220
- Product
 - Acquisition of, 3–4
 - Development, 3
 - Development due diligence, 128–130, 283–284
- Production
 - Capacity, 3
 - Due diligence, 130–132, 284
- Profitability analysis, 120–123, 280–281
- Proxy
 - Fight, 34
 - Negotiator, 11
 - Solicitation firm, 53
- Public relations, 48–50
- Purchase agreement
 - Additional agreements section, 165–167
 - Closing section, 167–168

- Purchase agreement (*continued*)
- Components of, 147–148
 - Conduct of business section, 165
 - Letter of transmittal section, 153–154
 - Merger section, 148–153
 - Representations and warranties section, 154–164
 - Seller disclosure schedule, 170–171
 - Supporting documents section, 169
 - Termination prior to closing section, 168
- Purchase price allocation, 227–228
- Push-down accounting, 245–249
- Qualification assessment, 205–206
- Real estate-based valuation, 62–63
- Red flags, 140–142, 289
- Registration rights, 87, 119
- Regulations
- Anti-trust, 265–269
 - Environmental, 269–271
- Regulatory
- Compliance diligence checklist, 287–288
 - Warnings, 142
- Relocations, employee, 208
- Reorganization types, 255–259
- Reports
- Brand acquisition, 108
 - Capital acquisitions, 112–113
 - Cash flow analysis, 125–126
 - Contractual and legal, 136
 - Employee evaluation scoring grid, 206
 - Issues log, 197
 - Liability acquisitions, 118
 - Patent acquisition, 107
 - Personnel acquisition, 105
 - Profitability analysis, 122–123
 - Synergy valuation, 192
- Representations and warranties, 89, 154–163, 163–164
- Resource Conservation and Recovery Act, 270
- Revenue multiple valuation, 58–61, 62
- Reverse lockup, 175
- Reverse triangular merger, 260–261
- Risks
- Diligence checklist, 278
 - Legal, 29–31
 - Management of, 109–110, 184
 - Qualitative factors, 75–77
 - Uninsured, 110
 - Valuation, 28–29
- Sales channels, 4
- Sales diligence checklist, 282–283
- Sales integration, 217–219
- Sales prospectus, 18

Index**297**

- Scorched earth policy, 38–39
- Self-insurance, 110
- SEC reporting, 184
- Sell-side analysts, 22–23
- Setoff rights, 175–176
- Shareholder
 - Impact on acquisitions, 9
 - List, 119
- Spin-off, 259
- Split-off, 259
- Split-up, 259
- Standard & Poor's industry surveys, 23
- Stock option impact on acquisitions, 12
- Stock payment, 79, 81, 151
- Stock lockup, 174
- Strategic buyer, 16
- Supermajority provision, 36–37
- Synergy gains, 65–66, 71–74, 80, 186–192
- Takeover, hostile, 33–39
- Target
 - Acquisition, 21–25
 - Costing, 130
 - Size, 25–26
- Tax
 - Implications of acquisitions, 251–253
 - Loss carry forwards, 115
 - Synergies, 191
- Technology integration, 220
- Tender offer, 33–34
- Term sheet, 13, 83–92
- Throughput philosophy, 130
- Top-up rights, 176
- Toxic Substances Control Act, 270
- Trade secrets, 135–136
- Trade show investigations, 22
- Trademarks, 107, 161
- Trailing multiple, 61–62
- Triangular merger, 260
- Union integration, 213–214
- Valuation
 - Discounted cash flow, 12
 - Methods, 57–82
 - Range analysis, 78
 - Risks, 28–29
 - Scenarios, 69–71
 - Table, 59–60
- Vertical integration, 4
- Voting rights, 37, 119
- Walk-away rights, 176
- Warrants, 88, 119, 152
- White knight, 38, 54
- White squire, 38, 53–54
- Williams Act, 33
- Winner's curse, 28
- Working capital analysis, 124

<http://www.pbookshop.com>