## **Contents**

Preface	xv
Acknowledgments	XİX
PART ONE	
The Middle Market	1
CHAPTER 1	
Private Capital Markets	1
Segmented Markets	4
Why Are Markets Segmented?	7 9
Capital Providers Owners' and Managers' Views of Risk/Return	10
Buyers	10
Market Activity	14
Market Activity	17
CHAPTER 2	
Valuation Perspectives for the Private Markets	17
Private Business Valuation Can Be Viewed through Different	
Standard: Cf Value	18
Market Value	21
Fair Market Value	22
Fair Value	22
Incremental Business Value	23
Investment Value	23
Owner Value	23
Collateral Value	23
Book Value	24
Why the Different Versions of Value?	24
Valuation as a Range Concept	25
Value Worlds and Deals	26
An Alternative Valuation Approach	26

Vİİİ

CONTENTS
CONTENTS

CHAPTER 3	
Corporate Development	27
Why Acquire?	28
The Dismal Ds	29
Alternatives	30
The Acquisition Process	31
The Pipeline and Filter	32
Approaching the Target	33
The Balance between a Deep Dive and Locking In the Deal	34
Lower-Middle Market versus Middle Market Deals	34
Valuation from a Strategic's Perspective	35
Structuring the Transaction	37
The Bid	38
Due Diligence	38
Integration	41
Case Study #1	42
Strategic Rationale	42
Challenges	43
Transaction	44
Lessons Learned	44
The Bid Due Diligence Integration Case Study #1 Strategic Rationale Challenges Transaction Lessons Learned Case Study #2	44
Practical Tips and What Causes Deals to Fail	47
What Should We Acquire?	47
Why Are We Doing This?	48
Alignment of Interester	48
Allocate Enough Resources	49
If It Can Go Wrong, It Will Go Wrong	49
CHAPTER 4	
A Global Perspective	51
Advantages of Global M&A	52
Challenges to Global M&A	52
Negotiations and the Importance of Cultural Tune-In	55
Strategic Due Diligence	56
Postmerger Integration: Are the Odds in Your Favor?	59
From the Start: Think Integration	61
Acquisitions that Build Value	62
1. Set Clear Expectations and Invest in High-Quality,	
Two-Way Communication	63
2. Acknowledge Cultural Differences but Simultaneously	
Create a Common Corporate Culture with a Single Goal:	
Achieving High Performance	64

Contents	ix
----------	----

3. Move to a Cross-Border Operating Model	65
The Legal Environment and the Acquisition Process	66
The Legal Environment and the Conduct of Business	67
Taxation	68
Labor	68
Foreign Corrupt Practices Act (FCPA)	69
Success Factors	70

71

S

CHAPTER 5	
Practice Management	73
Primary M&A Advisors	74
Marketing the M&A Practice	76
Networking	76
Marketing and Advertising	77
Pretransaction Consulting	77
Valuation Services	77
Practice Management Primary M&A Advisors Marketing the M&A Practice Networking Marketing and Advertising Pretransaction Consulting Valuation Services Other Consulting Services	78
Becoming an Expert	78
Understanding the Private Business Owner	78
Client Acceptance	79
Initial Financial Analysis	82
Value Discussions	82
Process Discussions	82
Confidentiality	83
Client Engagement	84
Identification of the Parties	85
Scope of Service	85
Limitations and Disclosures	86
Fees	86
Double Lehman Formula	87
Termination and Tail	88
Licensure Issues in the M&A Business	88
CHAPTER 6	
Sell-Side Representation and Process	91
Selling Process Overview	91
Step 1: Data Collection	92
Step 2: Industry Research and Identifying Buyer Types	94

X	CONTENTS
Step 3: The Marketing Book	93
Step 4: Marketing Process	99
Step 5: Negotiating Price and Terms	102
Step 6: Structuring the Transaction	100
Step 7: Receiving Letters of Intent or Term Sheets	109
Step 8: Due Diligence	111
Step 9: Definitive Agreements	112
Step 10: Closing Process	114
CHAPTER 7	
Buy-Side Representation and Process	112
Strategy	117
Engagement and Fees	11
The Filter	11
Financing	120
Quality of Earnings	12
Coordination	12
Engagement and Fees The Filter Financing Quality of Earnings Coordination Integration CHAPTER 8 Mergers Initial Analysis of Both Entities Strategic Rationale Valuation Modeling Understand Cost, Operational, and Cultural Differences Develop the Integration Plan Deal Structure and Negotiations	122
CHAPTER 8	
Mergers	12
Initial Analysis of Both Entities	12.
Strategic Rationale	124
Valuation Modeling	12.
Understand Cost, Operational, and Cultural Differences	12.
Develop the Integration Plan	12
Deal Structure and Negotiations	12
Due Diligence	12
Legal Process and Closing	12
Postclosing Integration	13
CHAPTER 9	
Professional Standards and Ethics	13
Role of the M&A Advisor in the Economy	132
A Whole New Way	13.
The Middle Market Standard	13-
Ethical and Professional Standards	13-
Competence and Professionalism (Reputation)	13-
Best Practices (Activities)	13.
Ethics (Behavioral Boundaries)	13.
Country Specific (Customs)	130

Contents	Xi
PART THREE	
M&A Technical Discussions	137
CHAPTER 10	
Financial Analysis	139
Financial Reporting Motivation	139
EBITDA	140
Balance Sheet Analysis	142
Working Capital	142
Normalization	148
CHAPTER 11	
Deal Structure and Legal Documentation	151
Attorney's Role	151
Attorney's Role Preliminary Legal Documents Confidentiality Agreement Letter of Intent Structure of the Deal Stock Sale/Merger Asset Purchase	153
Confidentiality Agreement	153
Letter of Intent	154
Structure of the Deal	155
Stock Sale/Merger	155
	157
Section 338(h)(10) Election in a Stock Sale Purchase Price	160 160
Consulting and Employment Agreements	160
Due Diligence	161
Acquisition Agreements	161
Representations and Warranties	161
Qualifications to Representations and Warranties	162
Indemnification	163
Earnouts	164
Parameters	165
Benefits of Earnouts	165
Shortcomings of Earnouts	165
Regulatory Compliance	166
CHAPTER 12	
Tax Structure and Strategy	168
Tax Fundamentals	168
Transaction Tax Basics	172
Asset Transactions	172
Stock Transactions	174
Stock versus Asset Sale Example	175

xii	CONTENTS
Negotiations Based on Structure	177
Asset Transaction Details	179
Buyer Tax Issues	185
Tax Glossary and Reference	188
CHAPTER 13	
Tax Provisions Used in M&A	193
Installment Sales	193
Risk of Forfeiture	194
Assets that Qualify for Installment Treatment	194
Installment Planning Opportunity	195
Section 1031 (Like-Kind) Exchanges	196
Third-Party Exchanges	196
Partnership M&A	196
General Partnership Doctrine	197
Partnership versus S Corporation	197
Partnership Gain Tracking Rules	200
Purchase Price Allocation for Partnership Guyers	200
Corporate M&A Issues	201
Contributions to Corporations	201
Mergers and Reorganizations	202
Net Operating Loss Limitations	206
Stock/Asset Sale Election: Section 338	206
S Corporation Issues	208
Tax Glossary and Reference	210
CHAPTER 14	
Regulation and Commance	215
Protecting Investors: Securities Act of 1933	215
Exemptions under the 33 Act	216
Commonly Used Private Placement Exemptions	217
Keeping the Markets Honest: Securities Exchange Act of 193	34 219
Requirements and Rules	219
Williams Act	220
Antitrust Issues and Laws You May Encounter in the Deal	221
Hart-Scott-Rodino Act	221
Specific Industries	222
Exon-Florio	223
Other Regulatory Issues and Laws You May Encounter	
in the Deal	223
Bulk Sales Laws	223
The WARN Act	224

Contents	Xiii
The Investment Banker's Perspective	224
SEC Provisions for Broker-Dealers	225
Investment Advisers Act and Investment Company	225
Act of 1940	226
FINRA Provisions for Broker-Dealers	227
The Company's Perspective	227
Process of Issuing and Selling Securities in the Deal	227
State Blue-Sky Laws	228
Considerations for Public Companies	229
CHAPTER 15	
Financing Sources and Structures	231
Perspective	231
Buyouts Buyout Deal Structure Bridging the Valuation Gap Recapitalization Acquisitions Financing Primer Capital Structure	232
Buyout Deal Structure	234
Bridging the Valuation Gap	237
Recapitalization	237
Acquisitions	237
Financing Primer	239
Capital Structure	239
Factors Shaping the Capital Structure	243
Sources and Types of Funding	246
Debt	247
Private Equity	249 251
Personal Guarantees	231
CHAPTER 16	
Due Diligence	255
Traditional Due Diligence	255
Financial Matters	257
GAAP Compliance	259
Tax Impact and Compliance	260
Compensation and Benefits	262
Legal	263
Information Technology	264
The Diligence Team	265
Due Diligence Process	266
Public versus Private	266
Impact of Globalization	267
Who Relies on Due Diligence?	267
Quality of Earnings	268
Financial Statement Audits	268

xiv	CONTENTS
CHAPTER 17	
Market Valuation	271
Reasons for Appraisal	272
Determine the Value Subworld	272
Calculate the Benefit Stream	273
Synergies	279
Determine Private Return Expectation	281
Specific Investor Return	282
Industry-Specific Return	284
General Investor Returns	284
General Acquisition Selling Multiples	284
Derive Value	285
Global Perspective	289
Epilogue for Business Owners Appendix Transaction Examples Transaction Valuation	291
Appendix	297
Transaction Examples	297
Transaction Valuation	298
Tools, Models, Resources, and Templetes	299
Glossary	301
Notes	337
About the Authors	343
About the Contributces and Reviewers	347
Index Victor	361