

A

add-back adjustments, 100, 103–4

add-back calculations, 104

add-in adjustments, 102

all-cash acquirers, 3

Antitrust Division of Justice Department,
232

auction

broad, 20, 144, 145t8.1, 151–55

limited, 144, 145t8.1, 150–53, 155

marketing process, two-step, 161

participation in, 154

process deviation, 147

B

backup buyers, 65, 238–39

bankruptcy

of an ESOP company, 136

bar, 250

court, 257–67

court order mandated sale, 160

creditors' rights and, 250

filing to protect interests, 257–58

judge, 136

laws, regulations, and procedures, 250

other court proceedings and, 160

process and unsecured creditors, 257
sale, 110

United States Bankruptcy Code, Section
363(b), 251

book value, 34–36, 47–48, 218, 222

broad auction, 20, 144, 145t8.1, 151–55

Buridan, Jean, 1

business

information on company, 90–97, 186

owners, 3, 5, 14–15, 33

for sale, 2, 14, 23, 38, 64, 69, 89, 270,
299

temperament, 22–23

valuation, 33–34

buyers, backup, 65, 238–39

buyers, prospective

competitors and, 159

confidentiality, 158–65

confidentiality agreement, 174–79

credit providers and, 159

customers and, 158

employees and, 158–59

indication of interest, 168–73, 181–82,
230

key manager/shareholder, death of, 160

nondisclosure agreements, 162

buyers, prospective (*cont'd*)
 offering memorandum, 165–68
 process letter, sample, 179–80
 publicly traded companies, sales of,
 159–60
 suppliers and confidentiality, 158

C

carried interest, 8, 127
 cash flow
 bankruptcy case and, 257
 of the investment banker, 27
 multiple of measure of, 36–38
 prior signing date of LOI, 216
 closing bonus, 77–78
 closing-out of investment fund, 2
 closing process, 234–37
 closing the deal, 17, 87
 company stock, 4
 ESOP owns, 134
 purchasing the, 90
 sale of, 59–61
 warrants, options to purchase, 287
 confidentiality agreement
 buyers, prospective, 174–79
 offering memorandum, 106, 109–12,
 116–17, 129, 133, 144–45, 149, 152,
 157, 161, 163
 prospective buyers, 158–65
 risk and, 114
 strategic buyers and violation of, 94
 contact information, 107, 180
 contacts
 attorney's, 30
 investment banker, 258
 of investment banker, 20–22
 with screened list of buyers, 145
 with strategic and financial buyers, 145
 contingency payments, 57–59
 co-owners, differences between, 2, 5–6
 corporate divestitures, 2
 cosmetic issues, 68

costs for parts of company not sold, 102
 created value, 43–46
 customer(s)
 company's, 39, 48–49, 93
 company sale, knowledge of, 80
 listing, sample, 95
 listing, sample disguised, 95
 lists of key, 75
 marketing efforts for, 94
 prospective, 105, 119
 video to promote company to, 104, 116

D

data processing systems, 95
 data room, 193–94
 about, 112–16, 144, 154, 161–62, 173,
 185, 190, 193
 “data box” for each buyer, 114
 definitive purchase agreement, 90
 online, 32, 114–15, 144, 161, 168, 173,
 185, 190
 seller's online, 230
 decision to act, painful, 250–51
 definitive purchase agreement
 about, 116
 clarifying, 213
 data room supports, 90
 drafting and distributing, 197, 199
 economic value, 208
 exhibits, 116, 229, 243–46, 277
 final edits and schedules to, 225
 lawyers and, 17
 length of, 229
 marketing vehicles and, 90
 markup of, 215
 sample, 240–46
 seller negotiating, 215
 different forms of consideration, 209–13
 diversification parties, 132–33
 due diligence
 after the LOI is signed, 225–27
 asset-based lender, 219

- buyer's, 67, 230–32, 237
 - buyer's follow-up, 277
 - final, 115, 232
 - final purchase price, 200
 - financial sponsor, 130, 147
 - fiscal year and, 73
 - information, 16, 230, 232
 - interim goals, 238
 - investigation, 207
 - issues, 202
 - letter of intent, 198, 219–20, 222
 - management team and, 75–76
 - offering memorandum, 90
 - problems uncovered in, 216
 - process, 200, 203, 207, 216
 - seller's response to buyer's, 234–36
 - strategic buyers and, 141
- E**
- earning fluctuations, 40–41
 - earning power
 - future earnings, 35–36, 41
 - measure of, multiple of, 36–38, 47
 - past earnings, multiple of, 41
 - earnings before interest, taxes, depreciation, and amortization (EBITDA)
 - adjusting for valuation purposes, 100–101, 103–4, 107–8, 182
 - cash flow or earning power, 36
 - company's, 38, 46, 253
 - company's loan, 253
 - earnings fluctuations, 40
 - historical, 45, 100, 188
 - historical vs. projected, 45
 - in letter of intent, 217–23
 - of manufacturer of specialty fasteners, 78–79
 - multiple, 37–38, 45
 - negative, 48
 - “negative compensation addback,” 103
 - president-owner's income, 101
 - of privately held companies, 72
 - revenue of company, 37
 - value of the company, 40
 - worth of the company, 41
 - earnout
 - ability to pay, 212
 - arrangement, lucrative, 201
 - duration of, 212
 - five-year lucrative incentive, 6
 - future litigation and, 57
 - guidelines for a successful, 57–58
 - payment, contingent, 38, 52, 57
 - for selling managers, 58
 - for selling shareholders, 58–59
 - splitting the future value, 57
 - tax implications of, 59
 - EBITDA. *See* earnings before interest, taxes, depreciation, and amortization (EBITDA)
 - Employee Retirement Income Security Act (ERISA), 133, 219, 246
 - employees, 80–81, 98–99
 - Employee Stock Ownership Plan (ESOP), 133–36, 283
 - engagement agreement, 27
 - environmental issues, 49, 64–66, 87, 99, 113, 219
 - environmental situation, 99
 - ERISA. *See* Employee Retirement Income Security Act (ERISA)
 - escrow, 198
 - about, 201, 208, 210, 219–20, 223, 227, 290
 - account, 222, 297
 - agreement, 138, 219–20, 223, 243
 - amount, 17
 - funds, 270
 - ESOP. *See* Employee Stock Ownership Plan (ESOP)
 - exclusivity
 - bidder, 198
 - buyer, 226–27

- exclusivity (*cont'd*)
 company and other buyers, 198
 judges grant extensions of, 260
 in marital context, 198
 provision, 200, 204
 provision, all-critical, 199
 provision, seller and the, 200
 provision and letter of intent, 203, 205,
 220–21, 226–27
 purchase price, negotiating the, 220–21,
 226–27
- executive summary, 91–92, 106–10
- exhibits
 about, 103–6
 customer listing, sample, 95
 definitive purchase agreement, 116, 229,
 243–46, 277
 executive summary, sample, 108
 financial sheet with add-back
 adjustments, 100, 103–4
 offering memorandum, 152
 process alternatives, 145
 stand-alone, 149
 supplier listing, sample, 97
- expense reimbursement, 27, 105, 285
- F**
- facility tours, 190–93
- family
 members, 3, 7, 67, 101, 104, 139–41,
 160, 219, 303
 owned businesses, 7, 140, 142
- Federal Trade Commission (FTC), 232
- fees
 flat, 23
 flat percentage, 23–24
 investment banker, 23–29
 Lehman, 24–25
 monthly, daily or hourly, 26
 reverse Lehman, 25–26
 situation-based incentive, 26
 “fiduciary out,” 160
- Filippell, Mark, 249, 307
- final offers
 about, 162, 167, 173
 buyer asked to make, 173
 buyer due diligence, 230
 buyer’s, 202
 closing, 89
 date for submission of, 194
 draft purchase agreement, 273, 275
 evaluation of, 276
 final purchase price, negotiating,
 200–201
 management presentations for finalists,
 167
 markup of the purchase agreements,
 200
 orchestrating, 17
 by second date, 162
 seller’s response to, 199–200
- financial pressures, 2, 9
- financial results, 71, 73
- financial review, 100–103
- financial sponsors
 about, 125–32
 auction participation, 154
 auction process deviation, 147
 business brokers authorized by, 10
 buying and selling companies for a
 living, 153
 finder firms and targeted industries,
 150
 investment banking skills, 18
 liquidity events and, 8–9
 networks of finders, 142
 as potential buyers, 92, 121, 125–32
 profit from carried interest, 8
 prospective buyers, 15
 run by professional investors, 4
 specialized, 132
 strategic buyers vs., 124
 top price offering, 149
 valuation of portfolio, 41

- financial statements
 - add-back adjustment to, 100
 - adjustments to, 92
 - annual audited, 218
 - bankruptcy and, 257
 - cost of resolving lawsuits on, 99
 - pretransaction checklist, seller's
 - attorney, 281
 - raw, 36
 - tidying up, 67
 - year-end, 223
- financial summary, 107
- fiscal year, 41, 73, 182, 284

- G
- gross negligence, 27–28

- H
- Hart-Scott-Rodino filing, 232–33
- Herbert, George, 117
- history of company, 30, 92–93, 104–5
- honesty as the best policy, 2–4

- I
- illness or death, 2, 6–7, 160
- indemnification, 27–28, 138, 242, 283
- indication of interest, 168–73, 181–82, 230
- industry description, 92–93
- intangibles, 38–39
- Interim Net Book Value, 222
- internal company changes, 73
- internal rate of return, 8
- international
 - access, investment banker's, 21
 - alliances, membership in, 21
 - buyers, 20–21
 - experience, 21
 - offices, 21
- investment bankers
 - choosing the right, 29–32
 - collaborating with, 274–75
 - criteria for selecting, 19–23
 - fees, 23–29
 - presentations, competing, 30
 - questions asked of owners, 4
 - two mistakes when selecting, 31
 - what they do, 14–19
- investment considerations, 92, 106–8

- K
- Khashoggi, Adnan, 13

- L
- lawsuits
 - about, 66–67
 - antitrust laws, violation of, 232
 - breach of confidentiality, 94
 - buyer, 90, 200
 - cost of resolving, 99
 - current of pending, 113, 246
 - indemnification for past, 138
 - post-closing, 90
 - potential, 35, 58
 - regulatory entanglement and, 115
 - risk of, 66
 - seller's rights in, 99
 - seller's violation of the LOI, 227
 - settlement costs, 104
 - violation and attempt to avoid, 165
- lawyers, effective vs. ineffective, 278–80
- leaks, dealing with, 82–86
- legal
 - checkup, 274
 - claims, 271
 - counsel, 250
 - deliberations, 259
 - dispute, 18, 102
 - documents, 269
 - exposure, 99
 - fees, 261
 - fine points, 260
 - hassle of bankruptcy, 257
 - process, 252

letter of intent (LOI)
 about, 198–201, 302
 bankruptcy counsel files, 258
 best price and most reasonable terms,
 258
 charitable trust and, 302
 closing and, performance between,
 227–29
 date for submission, 180, 182
 exclusivity provision, 200, 204
 final offer price, 200
 indication of interest, 181
 key legal issues and, 209
 negotiations and, 215–16
 samples, 217–23
 signature, meaning of a, 203, 216
 signed, 65
 limited auction, 144, 145t8.1, 150–53, 155
 limited partnerships, 4, 8, 60, 125, 142
 liquidity events, 8
 LOI. *See* letter of intent (LOI)
 long-term timing deals, 71–73
 “low-ball” offers, 7

M

M&A. *See* mergers and acquisitions (M&A)
 M&A International Inc., 21
 major contracts, 73–74
 management
 buyers, 136, 138
 buyers rely on, to run business, 96
 changes, 68–71
 incentive, 219
 reports, 96
 management presentations
 about, 185–86, 189–94
 blocking and tackling, 186–88
 buyer meets, 98, 161–62, 173
 data room, 112–16
 definitive purchase agreement, 116
 document preparation, 89–90, 98,
 110–12

for the finalists, 167
 indications of interest, 87, 154, 161, 163,
 167–70
 letter of intent and, 228, 230
 management team and, 171–72, 185–89
 negotiating purchase price and, 197,
 204, 207, 215
 offering materials, preparation of, 139,
 144
 pitfalls, 189–90
 practice makes perfect, 189
 preparing for and delivering, 197
 purchasing agreement and, 275
 sellers prepare customized, 111
 management team
 about, 1, 5, 136–39
 after sales closing, 293
 as buyers, 136–38
 company sale process, 229
 internal company changes, 73
 investment banker and, 274
 involving the, 75–80
 management incentive, 219
 management presentations, 171–72,
 185–89
 new owner and, 291
 offering memorandum, 75, 79, 90, 98
 poaching by buyers, 96, 98
 prospective buyers and, 16, 110–11, 136,
 170–72, 227
 seller's, 229, 236
 upgrading, 71
 workforce, informing the, 81–82
 market consolidation, 8
 marketing philosophy, 20
 marketing strategy, 14–15, 122
 markup
 of different forms of consideration,
 207–9, 212
 of purchase agreement, 198–200,
 202–19, 276
 merger & acquisition lawyer, 272–74, 280

- mergers and acquisitions (M&A)
 advisor, 20
 assignment and Lehman fee, 25
 auction process, 162
 business valuation, 34
 experience, 18–20
 experience and skills, 273
 firms in foreign countries, 21
 firms with international connections, 21
 Hart-Scott-Rodino Antitrust filing,
 232–33
 intermediary, 13, 32
 lawyer, 272–75, 278–80
 legal force behind the engagement, 198
 marketing process, 30
 mediums of exchange in, 52–59
 playbook, 144
 process, 86
 professional billing rate, 26
 tacticians, 40
 transactions, cross-border, 20
 transactions, middle-market, 232
 version of antitrust, 232
 visitation, tactical “blocking and
 tackling” of, 170
- N
- “negative compensation addback,” 103
 negotiated sale, 144–50, 145t8.1, 153, 155
 negotiating dynamics, reversed, 226–32
 negotiating strategies, 213–15
 case-specific, 201–15
 four comparable offers, 204–5
 higher price with tough terms vs. lower
 price and reasonable terms, 206–7
 letter of intent, sample, 217–23
 negotiating dynamics, 215–16
 one clearly superior offer, 202–4
 one high price offer with tough terms,
 208–9
 six offers with different forms of
 consideration, 209–13
- three offers with high prices and tough
 terms, 207–8
- New York Stock Exchange, 6, 118
 nonrecurring events, 102
 notes in lieu of cash, 52–53
- O
- offering memorandum
 about, 90–106
 annual financial statement, 100, 103
 auction marketing process, two-step,
 161
 broad auction, 145
 buyers, prospective, 165–68
 buyer’s indications of interest, 103
 confidential documents, extremely,
 166–67
 confidentiality agreement and, 108–10,
 114, 129, 131, 133, 146, 149, 154,
 161–63, 174–78
 cosmetic changes to, 239
 definitive purchase agreement, 116
 destruction of, 163–64
 digital vs. physical version of, 166–67
 distributing to buyers, 165–68, 197, 230,
 234
 due diligence, 90
 executive summary (teaser), 105–6,
 108–9
 indications of interest, 168
 investment banker, 161
 limited auction, 145
 management presentation, 89, 110–12,
 116, 139, 144, 154, 161–62
 management team, 75, 79, 90, 98
 photographs of plant and people, 104
 preparation of company for sale, 144
 preparation time, 252
 preparing, 15–16, 86, 89–90, 157, 197
 as a presentation guide, 110
 prospective buyer, 89, 149, 197
 questions, responding to, 16

offering memorandum (*cont'd*)
 risk of, 90–91
 unions and labor union agreements,
 98–99
 offices and other facilities, 96
 online data room, 32, 114–15, 144, 161,
 168, 173, 185, 190
 ordinary negligence, 27–28
 out-of-pocket expenses, 27
 owner compensation, excess, 100
 owner expenses, excess, 101–2

P

post-closing
 financial matters, 298–305
 hubris, 296–97
 immediate cooperation, 290–95
 legal matters, 297–98
 subsequent matters, 295–98
 post-sale closure
 charitable giving, 300–303
 closing month following, 293
 investments, 303–4
 new horizons, 304–5
 notification, customer, 291–92
 notification, employee, 290–91
 notification, general public, 292–93
 notification, supplier, 292
 notification methodology, alternative,
 293–95
 playing field, leveling the, 305
 post-transaction litigation, 27
 preparation for sale, 64–71
 pretransaction checklist, seller's attorney,
 281–88
 products and development, 93
 professional investors, 4
 prospective buyers
 bidding war, 37
 broad auction and, 144
 broad auction process, 153
 client approach by, 148

company management, reliance on, 96
 confidentiality agreement, 161–63,
 174–79, 197
 confidentiality efforts, undermining, 74
 confidentiality issues, 155
 confirming interest of, 109
 contacting, 15–16, 109
 data room documents, 113
 dreaded call from, 153
 executive summary teaser, 106–7
 face-to-face meetings with, 16–17
 “fiduciary out,” 160
 identification and cultivation of, 153
 identifying and vetting, 141
 identity of selling firm, 161
 information requirements of, 93
 intentions and confidentiality, 74
 investment banker and, 20, 29–30, 110
 key managers, retain, 77
 lawsuit risk, 66
 letter of intent, 198–99, 227
 management buyers and, 138
 management team and, 172
 negotiated sale and, 144
 offering memorandum, 89–90, 149, 197
 purchase-agreement markup, 205
 researching, 15
 revised bids, 205
 select group of managers and, 80
 seller questions the integrity of, 162
 seller's Web site, 68
 synergies between client and, 111
 trade show cocktail party, 155
 valuing companies and, 49–50
 walk-thought of client's business, 68
 publicly traded
 companies, sales of, 159–60
 strategic buyers, 128
 public offerings, 4, 8, 125, 211
 purchase agreement
 drafting and negotiating the, 275–78
 markup, 200, 278

- negotiating, 17
 - negotiating out of, 229–230
 - negotiations, 200
- R
- recapitalization, 4
 - Redford, Robert, 289
 - retainers, up-front, 27
 - retention bonus, 77
 - retirement, 2, 5, 11, 57, 71, 128, 133–34, 212
- risk
- in auction process, 149
 - benefits *vs.*, 298
 - buyer's, 69
 - of buyers learning of each other, 152
 - buyer willingly assumes, 59
 - catastrophic, reducing, 74
 - collateral, protecting the downside, 255
 - of company's appraisal, 138
 - confidentiality agreement and, 114
 - of disclosures, 85–86 138
 - environmental, 99
 - of ESOP, 136
 - of exposing confidential sale, 151
 - factors in offering memorandum, 90–91
 - of Federal Trade Commission (FTC), 232
 - financial sponsors and, 125–28, 131, 133
 - of hurting the company, 155
 - investment, 90
 - of lawsuit, 66, 115
 - lawyers and minimizing of, 270–71
 - of leaking marketing materials, 163
 - of limited auction, 150–51
 - of losing the deal, 203
 - of making offers, 169
 - post-transaction, 270
 - of projected performance, 36–37
 - of prospective buyer, 66
 - publicity, 137
 - of rumors, 83
 - sale put at, 270
 - for seller, 237, 277
 - structure a trust to cover, 279
 - of synergies from business combination, 40
 - tolerance for, 5
 - trade show/convention, 74
 - volatility and, 36
 - ways to mitigate, 96
- S
- sale decision, 3, 8, 10–11, 205
 - sales organization, 93, 119
 - sales transaction, tails covering, 28–29
 - secured party sales, 256–57
 - seller's
 - attorney pretransaction checklist, 281–82
 - exposure if buyer does not close, 237
 - management team, 5, 186–89, 229
 - stock price, 16
 - time, freeing up the, 17–18
 - “unfair advantages,” 14
 - Web site, 68
 - senior lender dynamics, 252–56
 - shareholder objectives, 107
 - short-term timing deals, 73–75
 - spray-and-pray letter, 9
 - stock, 54–56
 - stock options, 52, 56–57, 113, 220, 222, 283, 285
 - strategic buyers
 - about, 118–25
 - company divided into two parts for, 44
 - confidentiality agreement, violation of, 94
 - corporate, 123, 126
 - dealing with, 149
 - as diversification parties, 132–33
 - due diligence, 141
 - feedback from, 39
 - high bids from, 86

- strategic buyers (*cont'd*)
- internal review process, 226
 - negotiation by, 98
 - preemptive bid, 18, 140, 146, 149, 155
 - publicly traded, 128
 - purchase agreement, revisions to, 275
 - showing the business to, 46
 - synergies and, 93, 148, 154
 - in tank business, 45
 - unlocked value by, 47–50
 - well financed, 15
- strategic position, change in, 7–8
- suppliers, 35, 80, 94, 96–97, 105, 154, 157–60
- synergy (synergies)
- deriving profits from, 127
 - marketing, 119
 - operations, 119
 - owners, direct contact with, 148–59
 - product, 120
 - prospective buyers and client, 111
 - provided by buyer, 39–42
 - research and development, 120
 - risk of, 40
 - speculative, 120–21
 - strategic buyers and, 93, 148, 154
- T
- taxes, 299–300
 - third-party sale, 5
 - timing, 71–75
- trade show cocktail party, 155
- trade shows, 39, 44, 74, 83, 85, 105, 155, 163, 235
- transaction value, 23, 53
- U
- United States Bankruptcy Code, Section 363(b), 251
 - unsolicited offer, 2, 9–10, 45
- V
- valuation methodologies, 34–42
 - valuation theory in real-world, 42–43
 - value fluctuations, 41
 - value vs. currency, 51
 - video about company, 104–5
- W
- website upgrades, 68
 - West, Mae, 7
 - Western Reserve Partners, 16, 22, 49, 80, 108, 112, 123, 149, 179, 182, 238, 274, 295
 - “what’s in it for me?,” 4
 - workforce
 - in executive summary, 108
 - informing the, 80–83
 - working capital, 17, 179, 183, 244
- Y
- Young Presidents’ Organization, 3