

TABLE OF CONTENTS

CHAPTER 1

Introduction to Venture Capital

§ 1.01	Traditional Venture Capital	1-1
§ 1.02	Variations	1-3

CHAPTER 2

Model Term Sheets

§ 2.01	The Term Sheet	2-1
	[1] Model Term Sheet: Series A Preferred Stock	2-2
	[a] Note on “No Shop, No Solicitation” Clauses	2-18
	[2] Model Exclusive Dealing Provisions	2-23
	[3] [Reserved]	2-27
	[4] Binding Obligations Inadvertently Created by the Term Sheet.	2-27
	[5] No Such Thing as Boilerplate.	2-28.1
§ 2.02	Counsel’s Conflicting Roles in Drafting Term Sheets	2-29
§ 2.03	“Play or Pay”	2-30
	[1] The Return of “Play or Pay”.	2-30
	[2] Dealing with the Holdout Who Won’t Pay or Play	2-31
	[3] The Benchmark Case.	2-34
§ 2.04	[Reserved]	2-38
§ 2.05	Valuation: Model Resolutions of Special Meeting of the Board of Directors Establishing Fair Market.	2-39

CHAPTER 3

Series A Round Definitive Documents

§ 3.01	Model Stock Purchase Agreement	3-2
	[1] Representations and Warranties	3-56
	[a] Representation and Warranties Insurance as a Strategic Negotiation Tool for Dealmakers	3-58
	[2] Material Adverse Change	3-70
	[3] Environmental Representations	3-72
	[4] Covenants	3-75
	[5] Time Limits	3-76
	[6] Model Schedule of Exceptions	3-77
	[7] Disclosure Schedule	3-83
	[8] An Efficient Solution for Multiple Closings	3-84
§ 3.02	Model Subscription Agreement, Convertible Preferred Stock	3-96.73
	[1] Subscription Agreement	3-96.85
	[2] Subordinated Convertible Promissory Note	3-96.87
§ 3.03	Model Stockholders Agreement	3-97
	[1] Controlling Shareholder and/or Director Liability	3-109
	[2] Model First Refusal Agreement	3-112
	[3] Limiting Rights of First Refusal and Information Rights to “Major Investors”	3-122
§ 3.04	Model Common Stock Warrant	3-123
	[1] Warrant Anti-Dilution In Case of a Down Round	3-131
§ 3.05	Certificate of Designation of Series A Preferred Stock	3-132
§ 3.06	Sample Opinion Of Issuer’s Counsel	3-150
	[1] Note on Opinion of Issuer’s Counsel	3-164
§ 3.07	Series A Convertible Preferred: Model Certificate of Designation	3-166
	[1] Preferred Dividend PIK Feature	3-183
	[2] Participating Preferred and Variations	3-184
	[3] Conversion Rights	3-189
	[4] Exception to Definition of Dilutive Issuance	3-190
	[5] Full Ratchet and Weighted Average	3-191
	[6] Internal Revenue Code § 305	3-195
	[a] Redemption Provisions	3-195
	[b] Anti-Dilution Provisions	3-197
	[7] Exploding Preferred, Redeemable at the Option of the Holder	3-200
	[8] Broad-Based Weighted Average	3-201
§ 3.07A	Confidentiality Agreement (Short Form)	3-202.1

TABLE OF CONTENTS

ix

§ 3.07B Non-Disclosure Agreements 3-202.5

[1] Non-Disclosure Agreements in Venture
Capital Transactions 3-202.5

[a] Industry Custom 3-202.5

[b] Best Practices 3-202.6

[c] Summary 3-202.7

[2] Non-Disclosure Agreement: Venture Capital
Fund and Prospective Portfolio Investment. 3-202.7

[3] Model Non-Disclosure Agreement
(Alternate Form) 3-202.13

§ 3.07C Model Indemnification Agreement 3-202.15

§ 3.08 Model LLC Agreement 3-203

[1] Model LLC Agreement: Long Form. 3-203

[2] To “LLC” or Not to “LLC”: That is
the Question. 3-272

[3] Model LLC Agreement: Alternative Form. 3-275

[4] Second Amended Model LLC Agreement:
Long Form. 3-304

§ 3.09 Full Ratchet, Weighted Average, Broad-Based
Calculations. 3-382

[1] Weighted Average Anti-Dilution 3-382

[2] Narrow-Based v. Broad-Based Weighted
Average Anti-Dilution. 3-383

CHAPTER 3A

General Partner Issues and Documentation

§ 3A.01 General Partner: LLC Agreement 3A-2

§ 3A.02 Model LLC Agreement for Advisers Fund. 3A-23

§ 3A.03 The General Partnership Vehicle as an LLC 3A-74

§ 3A.04 Placement Fees as Organizational Expenses. 3A-75

§ 3A.05 Side Letters and Special Treatment of
Limited Partners 3A-76

[1] Shortened Time for Redemption. 3A-76

[2] Side Deals. 3A-76

[3] Issues of Transparency 3A-76

[4] Self-Imposed Restrictions 3A-76

[5] Defaulting Partners. 3A-77

[6] Unanswered Questions. 3A-77

§ 3A.06 Co-Investment Rights for LPs: Sample Side Letter 3A-80

§ 3A.07 [Reserved]. 3A-84

§ 3A.08 Limited Partner’s Right to Obtain Access to
Identities of Other Limited Partners 3A-87

[1] Background. 3A-87

	[2]	The Court's Analysis	3A-88
	[3]	Conclusion	3A-90
§ 3A.09		Model Side Letter with State Pension Plan Trustee . . .	3A-91
§ 3A.10		Inadequate PPM Disclosure	3A-97
§ 3A.11		Mandatory Registration	3A-100
	[1]	Registration of Finders	3A-100
	[2]	Business Brokers Not Required to Register as Brokers	3A-109
	[3]	SEC's Warning to Unregistered Finders	3A-111

CHAPTER 4

Fiduciary Duties of Controlling Shareholders in Down-Rounds

§ 4.01		Common Down-Round Characteristics	4-2
	[1]	Lowered Valuation	4-2
	[2]	Staggered Financing	4-3
	[3]	Increased Liquidation Preferences	4-4
	[4]	Participating Preferred Stock	4-6
	[5]	Anti-Dilution Provisions	4-6
	[6]	Redemption Rights	4-7
	[7]	Dividends	4-8
	[8]	Protective Provisions	4-8
	[9]	Directors and Management	4-9
§ 4.02		Venture Financing and the Concept of Fiduciary Duty	4-11
§ 4.03		The Burnout Transaction Illustrated	4-49
§ 4.04		Multiple Series of Securities	4-52
§ 4.05		Fiduciary Duty in Corporate Governance: Public Corporations	4-53
	[1]	Competitive Bids	4-55
	[2]	Fairness Opinions	4-57
	[3]	The Special Committee of Disinterested Directors	4-58
§ 4.06		Fiduciary Duty in the Close Corporation Context	4-62
	[1]	Duty of Care: Delaware Directors Be Careful	4-62
	[2]	Liability After <i>Disney</i>	4-65
	[3]	<i>Disney</i> : Decision on the Merits	4-70
§ 4.06A		Procedures for Protecting VC-Nominated Directors of Portfolio Companies	4-72
	[1]	Section 102(b)(7)	4-72
	[2]	Second Opinions	4-73
	[3]	Written Consent	4-73
	[4]	Ratification	4-74

TABLE OF CONTENTS

xi

	[5] Complete Minutes	4-74
	[6] Role of the Board Member	4-75
§ 4.07	Side Letters and Special Treatment of LPs: Problems and Commentary	4-76

CHAPTER 5

The Placement Memorandum

§ 5.01	Preparation and Content of Placement Memorandum	5-1
§ 5.02	Model Placement Memorandum (Series A Round)	5-5
	[1] Risk Factors	5-23
	[2] “Bespeaks Caution” Doctrine	5-23
	[3] [Reserved].	5-25
	[4] Adjusted Statements and Projections	5-25
	[5] Business Disclosures: Suggested Areas to Cover.	5-27
	[6] Impact on Valuation Issues	5-38
§ 5.03	Model Placement Agent Agreement	5-41
	[1] Placement Agents.	5-54
	[2] Referral Letter Agreement.	5-56

CHAPTER 6

Portfolio Companies: Anti-Dilution and Compensation Issues

§ 6.01	Historical Background of Venture Capital Finance	6-2
§ 6.02	[Reserved].	6-5
§ 6.03	Section 409A of the Internal Revenue Code	6-6
	[1] Overview	6-6
	[2] Final Regulations	6-6
	[3] Plans Included	6-6
	[4] [Reserved].	6-7
	[5] [Reserved].	6-7
	[6] [Reserved].	6-7
	[7] Stock Issues	6-7
	[a] Stock Rights in General.	6-7
	[i] Application to NSOs and SARs	6-7
	[ii] Service Recipient Stock.	6-8
	[b] Modification of a Stock Right.	6-9
	[c] Extension of a Stock Right	6-9

	[d] Valuation of Stock Subject to Stock Rights	6-10
	[i] Public Company Stock	6-10
	[ii] Private Company Stock	6-11
	[e] Presumptive Valuation Methods	6-12
	[f] Independent Appraisal	6-12
	[g] “Start-Up Company” Exception	6-12
	[h] Formula Prices	6-13
	[8] Recent Notices	6-13
	[9] IRS Provides Relief for Unintentional Operational Violations of Section 409A	6-13
§ 6.04	Conclusion	6-15

CHAPTER 7

Surveys of Value of Deal Terms to Venture Capitalists

§ 7.01	Silicon Valley Venture Capital Survey First Quarter 2020	7-2
§ 7.02	Silicon Valley Venture Capital Survey Second Quarter 2020	7-23
§ 7.03	Silicon Valley Venture Capital Survey Third Quarter 2020	7-41
§ 7.04	Silicon Valley Venture Capital Survey Fourth Quarter 2020	7-59

CHAPTER 8

Anatomy of a Cram Down: Selected Documents From a Series AA Financing

§ 8.01	Anatomy of a Round Cramming Down the Prior Series of Preferred	8-2
§ 8.02	Closing Agenda	8-5
§ 8.03	Consent of the Board of Directors	8-8
§ 8.04	Consent of the Stockholders	8-14
§ 8.05	Waiver of Anti-Dilution Adjustment	8-17
§ 8.06	[Reserved]	8-19
§ 8.07	Series AA Preferred Stock Purchase and Exchange Agreement	8-20
§ 8.08	[Fifth] Amended and Restated Stockholders Agreement	8-70
§ 8.09	[Reserved]	8-83
§ 8.10	Certificate of the Secretary	8-84

TABLE OF CONTENTS

xiii

§ 8.11	Compliance Certificate	8-96
§ 8.12	Transmittal Letter	8-97
§ 8.13	Joinder Agreement to the Series AA Preferred Stock Purchase and Exchange Agreement	8-103
§ 8.14	Joinder Agreement to [Fifth] Amended and Restated Stockholders Agreement	8-104
§ 8.15	[Reserved]	8-105
§ 8.16	[Sixth] Amended and Restated Certificate of Incorporation	8-106
§ 8.17	Alternative Term Sheet B Round (Cram Down Features)	8-122
§ 8.18	Term Sheet, E Round: Selected Clauses Specific to Cram Downs	8-128

CHAPTER 9

Revising Expectations: The Future of Venture Capital and Entrepreneurship

§ 9.01	Introduction	9-2.1
§ 9.02	The New World	9-3
	[1] Competition	9-3
	[2] Market Opportunities	9-3
	[3] Returns	9-3
	[4] Valuations	9-4
	[5] Talent	9-4
§ 9.03	Challenges for the Future	9-5
	[1] Big Funds	9-5
	[2] Corporate Investors	9-5
	[3] Angel Investors	9-6
	[4] Boutique Funds	9-6
§ 9.04	Resetting Expectations	9-7
	[1] On the Investor Side	9-7
	[2] On the Entrepreneur Side	9-7
	[3] Exits	9-8
§ 9.05	[Reserved]	9-8.1
§ 9.06	Hidden Traps: Rewards-Based Crowdfunding	9-9
§ 9.07	Critical Change in Section 1202 of the Tax Law	9-12
§ 9.08	IRS Tax Section 1202: Excluding Your Gains on Small Business Investments	9-16
§ 9.09	Explanation of a Special Purpose Vehicle (SPV)	9-17
	[1] Introduction	9-17
	[2] Model LLC Agreement of a Pledge Fund Special Purpose Vehicle	9-20
§ 9.10	[Reserved]	9-53

§ 9.11	[Reserved]	9-54
§ 9.12	[Reserved]	9-57
§ 9.13	[Reserved]	9-58
§ 9.14	The Entrepreneur's Shares: A Balanced Approach To Founder's Equity	9-59
§ 9.15	What You Need to Get Done Now If You Want to Sell Your Company	9-69
§ 9.16	Why You Should Be Using a Board of Advisors and How to Get the Most Benefit From It	9-72
§ 9.17	Form of Stock Incentive Plan	9-74
§ 9.18	Form of Master Services Agreement with Statement of Work	9-90
§ 9.19	Form of Non-Disclosure Agreement with Amendment No. 1	9-100
§ 9.20	Are You Savvy on Restricted Stock Units?	9-110
§ 9.21	Completing a Name Change Without Shareholder Approval	9-114
§ 9.22	Do You Really Own Your Employee's Knowledge?	9-116
§ 9.23	[Reserved]	9-118
§ 9.24	Should You Pay Someone Else's Tax?	9-119
§ 9.25	An Introduction to Distributed Ledger Technology (Blockchain Technology)	9-123
§ 9.26	The Senate Banking Committee's Hearing On Cryptocurrencies	9-133
§ 9.27	SEC Issues Report on Initial Coin Offerings (ICOs)	9-137
§ 9.28	Blockchain Law: ICO Regulation and Other Legal Considerations in the Blockchain Ecosystem	9-146
	[1] Introduction	9-146
	[2] The Technology	9-146
	[a] Using Blockchain to Record Transactions	9-147
	[b] Smart Contracts	9-147
	[c] Use Cases for Blockchain Technology	9-148
	[d] Cryptocurrencies and Initial Coin Offerings (ICOs)	9-148
	[3] SEC Regulation of ICOs	9-148
	[a] Threading the Securities Needle	9-153
	[b] Simple Agreement for Future Tokens (SAFT)	9-153
	[4] Global Focus	9-154
	[5] Accounting Concerns	9-155
	[6] Other Regulatory Concerns	9-155
	[7] Class Action Law Suits	9-155
	[8] Other Legal Issues	9-156
	[a] Blockchain-Based Evidence	9-157

TABLE OF CONTENTS

xv

[b] Anti-Money Laundering (AML), Know-Your-Customer (KYC), and Privacy Regulations	9-157
[c] Jurisdiction	9-158
[d] Intellectual Property	9-158
[e] Taxes	9-159
[f] Reverse ICOs	9-160
[9] Conclusion	9-160

CHAPTER 10

Delaware Guidelines

§ 10.01 Delaware Reinforces the Limits on Indemnification Claims	10-2
[1] <i>Levy v. HLI Operating Company, Inc.</i>	10-3
[2] <i>Schoon v. Troy Corp.</i>	10-5
[3] The Takeaway from <i>Levy</i> and <i>Schoon</i>	10-7
[4] Potential Contractual Workarounds	10-8
[5] Backstop Indemnity from Portfolio Company to the Private Equity Sponsor	10-8
[6] Other Contractual Protections at the Sponsor Level	10-9
§ 10.02 Delaware's Duty of Disclosure	10-12
[1] Discount Rate Used for DCF Valuation	10-12
[2] Failure to Disclose Free Cash-Flow Estimates	10-13
[3] Disclosure of Arrangements with Incumbent Management	10-13
§ 10.03 Designating Delaware's Court of Chancery as the Exclusive Jurisdiction for Intra-Corporate Disputes	10-15
[1] Introduction	10-15
[2] Is a Provision for Exclusive Jurisdiction in Delaware Enforceable?	10-16
[3] Additional Considerations	10-18
§ 10.04 Delaware M&A Guidelines	10-22
[1] <i>In re Southern Peru Copper Corp.</i> <i>Shareholder Derivative Litigation</i>	10-22
[a] Factual and Procedural Background	10-22
[b] Judicial Analysis	10-25
[2] <i>In re Openlane, Inc. Shareholders Litigation</i>	10-27
[a] Factual and Procedural Background	10-28
[b] Judicial Analysis	10-28
§ 10.05 [Reserved]	10-30

§ 10.06	Delaware Court of Chancery Clarifies Application of Business Judgment Review in Post-Closing Merger Context	10-33
§ 10.07	[Reserved]	10-35
§ 10.08	[Reserved]	10-36
§ 10.09	KKR Financial—Strong Confirmation by Delaware Chancery Court of Its Preference for Business Judgment Review Whenever Possible	10-43
§ 10.10	Delaware Formally Adopts Proposed Statutory Amendments Governing Mergers Following the Completion of a Tender Offer	10-47
§ 10.11	It’s Not Just A Delaware Thing: Other Courts Are Also Questioning Disclosure-Only Settlements In M&A Litigation	10-50

CHAPTER 11

Board of Director Issues

§ 11.01	Good Corporate Governance: Best Practices for Creating Value	11-2.3
	[1] Board Composition	11-2.3
	[2] Board Agenda	11-3
	[3] Board Packages	11-3
	[4] Board Meetings	11-4
	[5] Executive Sessions	11-4
	[6] Committees	11-4
	[7] Chairman/CEO Split	11-5
	[8] Identify Risks and Put in Place Oversight Procedures	11-5
§ 11.02	Note on Indemnification	11-6
§ 11.03	Model Agreement of Indemnification of Directors and Officers	11-13
§ 11.04	[Reserved]	11-27
§ 11.05	[Reserved]	11-28
§ 11.06	Indemnity for Investment Professionals	11-29
§ 11.07	Fiduciary Duties of Directors in Negotiated Contractual Terms to Redeem Stock	11-71
	[1] Delaware Cases	11-71
	[2] Colorado Law	11-72
§ 11.08	Controlling Stockholder Transactions and Applying Entire Fairness Analysis	11-73
	[1] <i>Gentile v. Rossette</i>	11-73
	[a] Background	11-73
	[b] The Court’s Analysis	11-74

TABLE OF CONTENTS

xvii

	[i] The Debt Conversion	11-74
	[ii] The Put Option	11-76
[2]	<i>In re CNX Gas Corporation Shareholders Litigation</i>	11-77
[3]	<i>Gentile Lessons and CNX Considerations</i>	11-79
	[a] Unified Standard for Freeze-Out Transactions	11-79
	[b] Use of Special Committees or Independent Advisors	11-79
§ 11.09	[Reserved]	11-80
§ 11.10	Contractual Nature of Preferred Stockholder Rights	11-81
	[1] Background	11-81
	[2] Court’s Analysis	11-85
	[a] Breach of Contract Claim	11-85
	[b] Breach of Fiduciary Duty Claim	11-86
	[3] Ninth Circuit Holds that Debt Can Be Recharacterized as Equity	11-87
	[a] <i>In re Fitness Holdings International, Inc.</i>	11-87
	[i] Background	11-87
	[ii] The Ninth Circuit’s Decision	11-88
	[iii] Recharacterization Standards Applied Outside of the Ninth Circuit	11-89
	[iv] Implications of <i>Fitness Holdings</i>	11-90
§ 11.11	[Reserved]	11-90.1
§ 11.12	Mergers and Compensation	11-90.2
	[1] Application of <i>Revlon</i> Standard to Half Cash/Half Stock Merger	11-90.2
	[a] Background	11-90.2
	[b] Analysis	11-91
	[1A] Revisiting the Rules of the Road in <i>Revlon-Land</i>	11-92
	[2] Reverse Triangular Merger May Violate Contractual Non-Assignment Provision	11-94
	[3] Section 409A Severance Plans and Other Deferred Compensation Programs	11-94.3
	[a] Common Design Impacted	11-95
	[b] Surprise Interpretation by the IRS	11-95
	[c] How to “Fix” the Problem	11-96
	[d] Service Recipient Reporting Requirements	11-96
	[e] Correction of All Plans with Substantially Similar Document Failures	11-96
	[f] Relief Not Available if Service Provider and Certain Service Recipients Under Examination	11-97

	[4]	Proposed Clarifications to Million Dollar Compensation Deduction Limit	11-97
		[a] Exemption Requirements for Stock Options and Stock Appreciation Rights	11-98
		[b] Transition Relief for Newly Public Companies	11-98
	[5]	Carried Interest Legislation	11-99
		[a] Status of Carried Interest Legislation in Congress.	11-100
		[b] Summary of Legislation	11-100
		[i] Ordinary Income and Loss Disallowance	11-101
		[ii] Dispositions and Gain Recognition	11-101
		[iii] Indirect Dispositions of Investment Services Partnership Interests	11-102
		[iv] Qualified Capital	11-102
		[v] Applicable Percentage	11-102
		[vi] “Straight Up” Exception	11-103
		[vii] Self-Employment Tax	11-103
		[c] Implications for Partnerships	11-103
§ 11.13		[Reserved]	11-107
§ 11.14		Forms for Board of Director Issues.	11-108
		[1] Equity Incentive Plan (<i>Form</i>)	11-108
		[2] Convertible Promissory Note—Interest Payable in Common Stock (<i>Form</i>)	11-130.4
§ 11.15		[Reserved]	11-138.6
§ 11.16		The Dodd-Frank Act	11-143
		[1] Advisory Votes on Executive Compensation	11-144
		[a] Dodd-Frank Act Requirements.	11-144
		[b] The SEC’s Implementing Rules.	11-144
		[i] Say-on-Pay Votes.	11-145
		[ii] Say-on-Frequency Votes	11-146
		[iii] Exemption for Smaller Reporting Companies	11-146
		[2] Additional Requirements	11-147
		[3] Say-on-Golden Parachute Vote	11-148
		[4] Implementing Say-on-Pay, Say-on-Frequency and Say-on-Golden Parachute.	11-150
		[a] Disclosure for Say-on-Pay	11-150
		[b] Engagement for Say-on-Pay Votes	11-151
		[i] Direct Interaction with Shareholders	11-151
		[ii] The Use of Additional Soliciting Material	11-152
		[c] Say-on-Frequency Recommendations and Voting	11-153

TABLE OF CONTENTS

xix

	[d] Say-on-Golden Parachute Compensation . . .	11-154
[5]	Compensation Committee Independence and the Use of Compensation Advisers	11-155
	[a] The SEC’s Proposed Rules	11-155
	[i] Compensation Committee Independence and Authority	11-155
	[ii] Compensation Adviser Independence	11-156
	[iii] Proposed Exemptions and Applicability of Listing Standards	11-156
	[iv] Proposed Disclosures Regarding Compensation Consultants	11-157
[6]	Expanded Compensation Disclosure	11-158
	[a] Disclosure of Pay versus Performance	11-158
	[b] Disclosure of CEO Pay versus Median Employee Pay	11-158
	[c] Disclosure of Employee or Director Hedging Policies	11-159
[7]	Additional Governance Provisions	11-159
	[a] Compensation Recovery	11-159
	[b] Separation of Chairman and CEO Positions	11-159
	[c] Broker Discretionary Voting	11-160
	[d] Proxy Access	11-160
[8]	Specialized Corporate Disclosure	11-164
	[a] Conflict Minerals Disclosure	11-165
	[i] Mine Safety Disclosure	11-167
	[b] Payments to Governments by Certain Resource Extraction Companies	11-169
§ 11.17	Ability of Corporation to Redeem Preferred Stock . . .	11-172
§ 11.18	[Reserved]	11-174
§ 11.19	Appraisal as the Exclusive Remedy in Connection with a Short Form Merger	11-175
§ 11.20	[Reserved]	11-177
§ 11.21	Limiting Private Equity Fund Exposure to the ERISA Obligations of Portfolio Companies	11-178
	[1] ERISA Controlled Group Liability	11-178
	[2] The PBGC’s Perspective on Private Equity Funds and ERISA Liability	11-178
	[3] Sun Capital’s Reassertion of PE Fund Independence from ERISA Liabilities	11-179
	[4] Implications	11-180
§ 11.22	[Reserved]	11-181
§ 11.23	[Reserved]	11-182
§ 11.24	[Reserved]	11-183

§ 11.25	The Use of Unregistered Broker-Dealers by Investment Advisers	11-195
	[1] Background.	11-195
	[2] SEC Orders and Settlements	11-196
	[3] Practical Considerations.	11-196
§ 11.26	An Ounce of Prevention—Some Guidance for Target Boards	11-205
	[1] Adviser Conflicts	11-205
	[2] Projections	11-205
	[3] NDAs and Standstills.	11-206
	[4] Motivations.	11-207
§ 11.27	Is a Series LLC Right for Your Business?	11-208
§ 11.28	Revised Rule 504: Another Tool in the Toolkit to Raise Capital	11-211
§ 11.29	[Reserved]	11-213
§ 11.30	[Reserved]	11-214
§ 11.31	[Reserved]	11-215
§ 11.32	[Reserved]	11-216
§ 11.33	A Key Reminder to Directors of Delaware Corporations When Granting Equity Awards under an Equity Incentive Plan	11-239
§ 11.34	ABA Recommendations on Private Placement Broker-Dealers	11-241
§ 11.35	SEC Enforcement Action Related to Private Equity Fees and Expenses	11-309
§ 11.36	SEC Action Against Private Fund Adviser Highlights Importance of Proper Expense Apportionment	11-312
§ 11.37	Seniority Matters	11-314

CHAPTER 12

Overview of the Private Equity Secondary Market

§ 12.01	Overview of the Private Equity Secondary Market . . .	12-2
§ 12.02	Prime Unicorn Index Reports	12-12
	[1] Additions and Deletions	12-12
	[2] Prime Unicorn Index Levels	12-12
	[3] Index Information and Characteristics	12-13
	[4] Ripple Labs Index Comparison.	12-13
	[5] Freshworks Index Comparison	12-14
	[6] DuoLingo Index Comparison	12-15
	[7] Away Index Comparison	12-16
	[8] Glossier Index Comparison	12-17

TABLE OF CONTENTS

[9] Instabase Index Comparison 12-18

[10] Seismic Index Comparison 12-19

[11] Ansun Index Comparison 12-20

[12] Company Valuation and Weight 12-20

[13] Q1 2020 Prime Unicorn Index
Reconstitution Report: New Companies 12-21

[14] Q2 2020 Prime Unicorn Index
Reconstitution Report 12-32

[15] Q3 2020 Prime Unicorn Index
Reconstitution Report 12-39

[16] Q4 2020 Prime Unicorn Index
Reconstitution Report 12-48

[17] Q1 2021 Prime Unicorn Index
Reconstitution Report 12-65

CHAPTER 13

Intellectual Property Issues

§ 13.01 Trade Secrets: Practical Steps to Ensure
They Are En-forceable in Court 13-1

[1] “Reasonable Measures” 13-2

[a] Cutting Off Access 13-2

[b] Ask for Information Back 13-2

[c] Document Suspicious Activities..... 13-3

[d] Put the New Employer on Notice 13-3

[e] Do Not Delay 13-4

[2] Be Ready to Identify Trade Secrets with
“Reasonable Particularity” 13-4

[3] Irreparable Harm 13-4

[4] Do Not Rely Solely on
“Inevitable Disclosure” 13-5

[5] Preserve Evidence 13-5

§ 13.02 Nine Reasons Your Start-Up Needs Patents..... 13-6

§ 13.03 Trademark Security Agreement 13-9

INDEX I-1

