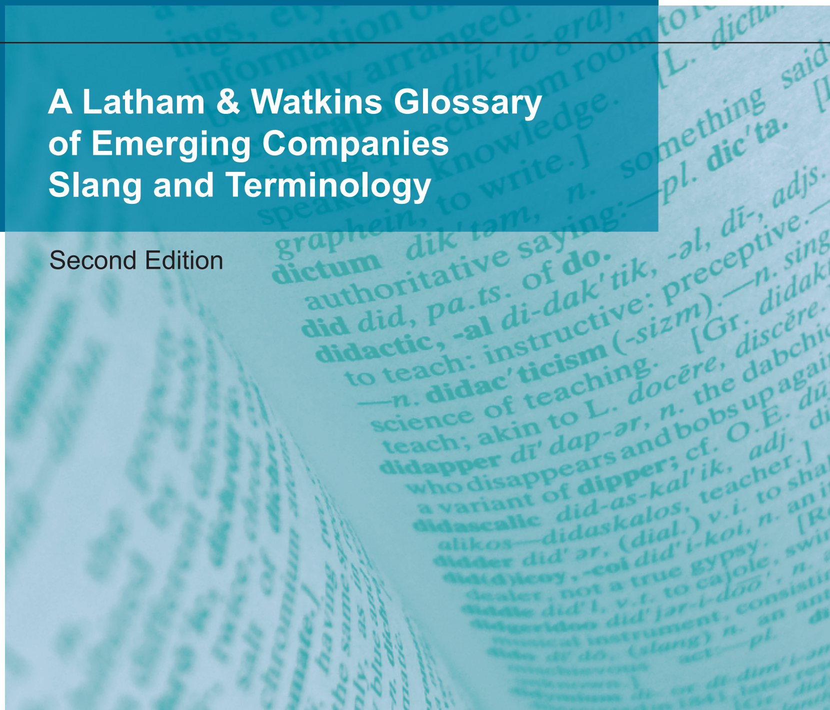
LATHAM & WATKINS LLP

The BOOK *of* JARGON®

Emerging Companies



A Latham & Watkins Glossary of Emerging Companies Slang and Terminology

Second Edition

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The Book of Jargon® – Emerging Companies is one in a series of practice area and industry-specific glossaries published by Latham & Watkins. The definitions provide an introduction to each term and may raise complex legal issues on which specific legal advice is required. The terms are also subject to change as applicable laws and customary practice evolve. As a general matter, this glossary was drafted from a US practice perspective. The information contained herein is not legal advice and should not be construed as such.

409A Valuation: a third-party valuation of a company's Common Stock intended to satisfy the requirements of IRC Section 409A. Most commonly, a company pays a third-party valuation firm to complete the 409A Valuation to help the Board determine the Fair Market Value of the Common Stock. The Board then uses that Fair Market Value to set the Exercise Price for grants of Options to Employees and other service providers. Note that the Board may only rely on this 409A Valuation for up to 12 months, and if significant changes in the business occur before 12 months lapse, the 409A Valuation is no longer valid.

83(b) Election: a tax election that can be made when a shareholder receives an Equity grant that has a substantial risk of Forfeiture. Usually 83(b) Elections occur in Startups with grants of Restricted Stock, where Vesting is applied. By making this election, a shareholder elects to pay tax on the current value of the Equity above the Per Share Price paid at the time of grant, instead of the value of the Shares when they actually vest. The benefit of this election is that at the time the shareholder receives the Shares, the difference between current value and what the shareholder paid is usually zero, and thus there is no immediate tax due and any subsequent gain would be Capital Gains. By contrast, without this election, the shareholder would then have to pay the tax on the gain at the time any Shares vest (which could be monthly and the value could continue to go up). If the value of the company's shares increase over time (which is the goal of all Startups, of course), the shareholder runs the risk of having to pay tax on a greater amount down the line, and that tax would be ordinary income instead of Capital Gains. This election is most common in Early Stage companies where the value of Equity received is small enough such that the taxable income to the shareholder or the Per Share Price for the Equity is manageable. However, if the shareholder stops working for the company and loses a portion of Shares that had not yet Vested, the shareholder will not get back the amount paid up front to make this election. It is always a good idea to run this type of tax decision by a personal tax advisor.

Accelerator: similar to an Incubator, but typically focused on shorter time frames with the goal of quickly determining whether a business will be a success or failure in order to minimize the loss involved.

Accredited Investor: defined under SEC Rule 501 of Regulation D, covers the people and entities that may be offered and sold Securities in a Private Placement without burdensome disclosure requirements (Non-Accredited Investors technically may also participate but the requirements to do so usually outweigh the benefit of allowing it, so this participation is rare). The term covers virtually all types of institutions that are participants in the private placement market (such as Angel Investors, Institutional Investors, Strategic Investors and VCs), and also includes people who either have high net worth or income or are sophisticated. See, by contrast, Crowdfunding.

Accredited Investor Questionnaire: a questionnaire a company uses to solicit enough information to determine if a potential Investor would qualify as an Accredited Investor.

Accrued Interest: the amount of Interest that has accrued and has not yet been paid on an obligation, such as a Convertible Promissory Note or other debt obligation.

Accruing Dividend: a Dividend that automatically accrues without any Board action. However, the Accruing Dividend may still only be paid if and when the Board declares a Dividend or upon a Deemed Liquidity Event. For example, if a party has a US$100 investment and an 8% Accruing Dividend, then after year one the party would have an Accrued Dividend of US$8 that would need to be paid if and when the Board pays any other Dividend or when the corporation liquidates (for example, upon a sale of the corporation). An Accrued Dividend is similar to Accrued Interest, but for Equity. It may also have a compounding feature. An Accruing Dividend is sometimes used as a way to provide a minimum annual Return on Investment, but is not a very common term for an Early Stage Startup. Also called a Cumulative Dividend.

Acquirer: another name for a Buyer or Purchaser.

Acquisition: generally, either the purchase or sale of a company.

Acquisition Agreement: a generic name for any type of definitive agreement that accomplishes a Business Combination or an Acquisition of Securities or assets of another party.

Advisor: in Early Stage companies, generally people who are not Directors, Employees or Officers, but might be useful to the company for strategic advice, introductions to Investors or other third parties (such as customers or vendors). Advisors often serve under an Advisor Agreement with some type of equity grant that will Vest over the period of time the individual serves as an Advisor. Advisors are generally expected to be available when called upon (which may be sporadic or may be a few hours a month) to provide general advice to the CEO and/or Board as needed.

Advisory Board: if a company has multiple Advisors it sometimes forms an Advisory Board that includes all Advisors. This Advisory Board doesn't usually meet, and is mostly in name only.

Advisor Agreement: an agreement under which an Advisor serves, which generally includes an equity grant with Vesting (typically Straight Line Vesting, such as monthly over two years), and provisions providing certain obligations such as confidentiality and the Assignment of Intellectual Property.

Affiliate: defined slightly differently in different types of agreements, but generally refers to a Subsidiary, corporation, Partnership or other

person controlling, controlled by or under common control with another entity. The official securities law definition is found in SEC Rule 144 and Rule 405.

Affirmative Covenants: an agreement to affirmatively do something (think of these as the "Thou Shalt" covenants). These contractual provisions are often found in an Investor Rights Agreement that itemize certain actions the Issuer must take after an investment, such as paying taxes, providing financial and other information, complying with rules of special interest to an Investor (such as Qualified Small Business Stock, or sometimes environmental rules and the like). Compare Negative Covenant.

Allocation: in the context of a Financing Round, the amount an Investor will be able to invest in that round. As an example, if there are three Investors and each one is able to invest up to 33% of the deal, each allocation would be 33%, or US$3 million on a US$9 million offering.

Angel Investor: affluent individuals (as opposed to institutions) who invest in Early Stage companies in amounts typically ranging from as little as US$10,000 or US$25,000 up to about US$1 million. These Investors help bridge the gap between Friends and Family Rounds and institutional money. Angels sometimes invest together in groups to share investment ideas and resources.

Angel Financing: generally, a Financing Round where the Investors are Angel Investors and the investment is typically in a pre-product first or second round Startup based on an idea or minimally viable product.

Anti-Dilution Adjustment: an economic adjustment to existing Securities that is triggered if a company sells Equity in a future Financing at a price below the Per Share Price an Investor paid for such Securities in a preceding Financing Round (see Down Round).

Anti-Dilution Protection: see Anti-Dilution Provisions.

Anti-Dilution Provisions: the provisions that affect the Anti-Dilution Adjustment. These provisions typically provide for an adjustment to the Conversion Ratio of Preferred Stock, so for example, instead of a share of Preferred Stock being converted to a single share of Common Stock (the typical starting Conversion Ratio), an adjustment might instead result in a share of Preferred Stock being converted to two shares of Common Stock. This adjustment allows the basic economics of a Preferred Stock investment (such as the Liquidation Preference) to remain the same, while giving the Preferred Stock a higher proportion of the corporation's Fully Diluted Capitalization to make up for the Down Round. The overwhelmingly most common type of Anti-Dilution Provision in Venture Capital Financings is the Weighted Average Anti-Dilution Protection, which could be broad-based or narrow-based. More rarely, there is also Full Ratchet Anti-Dilution Protection.

Assignment: the transfer of rights and obligations under an agreement to a new party. This transfer of rights commonly occurs when a Stockholder transfers Shares and needs to assign the rights and obligations attached to those Shares to the recipient. In most cases, the agreements that provide for these Stockholder rights have provisions that dictate whether Assignment is permissible and if the Issuer's prior consent is required.

Bad Actor: eligibility to conduct a Rule 506 Private Placement is dependent upon, among other conditions, the absence of any "Bad Actors." Bad Actors may include the Issuer, the Issuer's Directors and Officers, certain significant Stockholders of the Issuer, and any person who has received or will receive direct or indirect compensation for solicitation of Purchasers in connection with such offering, among others. The circumstances that render one a Bad Actor do not include being Keanu Reeves (at least in this context), but rather include certain criminal convictions, restraining orders and regulatory proceedings relating to false statements and certain types of mail fraud in connection with the purchase or sale of a security. See Latham & Watkins Client Alert Number 1569, "You Talkin' to Me?" (July 25, 2013).

Bad Actor Questionnaire: a questionnaire which a company uses to solicit the information needed to determine if a party may qualify as a Bad Actor.

Bad Actor Representations: representations made by both the company and Investors in a transaction agreement, typically a Stock Purchase Agreement in Startups, confirming the absence of any Bad Actors.

Balance Sheet: a Financial Statement on which a company reports its assets, liabilities and Equity as of a given moment in time. The Balance Sheet is in contrast to an Income Statement, which depicts a company's situation over a period of time. The term Balance Sheet derives from the accounting principle that a company's assets must equal (or balance with) its liabilities plus Stockholders' Equity.

Bankruptcy: a US federal court process under the Bankruptcy Code whereby a company restructures or otherwise satisfies its Debt under the supervision of a bankruptcy court.

Bankruptcy Code: Title 11 of the United States Code.

Blue Sky Laws: state, as opposed to US federal, securities laws. While the exact origin of this term is not known, people often refer to a US Supreme Court decision given by Justice McKenna in *Hall v. Geiger-Jones Co.*, 242 U.S. 539 (1917), which dealt with the constitutionality of state securities regulations where he described the fraudulent schemes at issue as "having no more basis than so many feet of 'blue sky'." Since 1996, most state securities regulation has been preempted (with certain exceptions) by the federal securities laws; however, antifraud litigation and notice filings for certain covered Securities still remain under state

jurisdiction. For a Startup conducting a Financing, it is important to know each proposed Investor's state of residency so that the Startup's legal Advisors can determine if any filings under Blue Sky Laws will be required. If filings are required, this could result in certain information about the Financing Round becoming publicly available.

Board: shorthand for Board of Directors.

Board Meetings: meetings of the Board of Directors. These can be regularly scheduled meetings, a calendar of which is usually set at the beginning of each year, or special meetings, which must be called in accordance with the corporation's Bylaws. For most Startups, Board Meetings are often held over the phone or through in-person meetings (sometimes in a coffee shop, college dorm, basement or garage) between the Founders (who typically are the only Directors until a Financing takes place) and representatives of significant Investors who have rights to designate one or more Board members.

Board Minutes: a summary of attendees and matters addressed during Board Meetings. The minutes of a Board Meeting should include any specific resolutions presented to, and approved by, the Board during the meeting. Minutes also generally include high-level detail of other matters presented or discussed (typically just enough detail to trigger memories of what was discussed, but not so much detail that the minutes would stand as a record on their own).

Board Observer: a person who attends and "observes" meetings of the Board, usually pursuant to a contractual right that also includes rights to receive the same materials that are delivered to the Board, subject to certain exceptions (see Board Observer Rights).

Board Observer Rights: a contractual right to attend Board Meetings of the Issuer as a non-voting observer (as well as receive Board materials). Board Observer Rights are often limited to permit exclusion of the Board Observer in the event of a conflict of interest or to protect confidentiality or legal privilege. In Startups, Venture Capitalists may require this right (often documented in a Management Rights Letter at the time of a Financing) to help establish that they are VCOCs.

Board of Directors: the governing body of a corporation appointed by the Stockholders to oversee the general management of the corporation on their behalf (that way the Stockholders can let the Board (and their capital) work for them while Stockholders tend to other affairs). The Board, in turn, appoints and has oversight over the Officers of the corporation, who manage the day-to-day affairs of the business. The Board (and Officers) owe Fiduciary Duties to the corporation to help ensure that the hierarchy operates effectively without the need for the Stockholders to involve themselves in the management of the business beyond the most important decisions (like raising new capital or selling the business, and the like).

Book Entry: the internal ledger system a corporation uses to track its Capitalization records. A Book Entry would be the only official record of stock ownership for a corporation that has approved the issuance of Uncertificated Shares for its equity issuances. Compare to Stock Certificates.

Book Value: the dollar amount stated for particular assets on a company's Balance Sheet.

Bootstrapping: starting a company using your own funds or the funds of immediate family members or other relatives or mentors. This method of Financing, which is very common for Startups, is used to get a company up and running quickly and cheaply before completing a Financing from other third parties.

Bridge Financing: usually a Convertible Debt Financing completed just prior to a Preferred Stock Financing or in between Preferred Stock Financings. Bridge Financing provides the corporation with a bridge to such a Preferred Stock Financing. Often Bridge Financing occurs when the company has received a Term Sheet or it is expected imminently and the corporation needs funding to provide a sufficient runway to get to that Preferred Stock Financing without experiencing a cash crunch.

Broker-Dealer: entities or individuals that are registered with the SEC because they buy and sell Securities for themselves or on behalf of others, acting as a broker when they execute orders on behalf of others and as a dealer when they do so for their own account.

Burn Rate: the net cash (*i.e.*, expenses in excess of cash generated) which a company uses over a specified period of time, usually expressed as a monthly amount. This metric helps a company and its Investors determine when they will need to raise funds again. For example, if a company has a monthly burn rate of US$1 million and US$6 million in the bank, then the company needs to raise money before six months, and since Financings can take several months to complete (including investor meetings and the like), then the company knows that it should be actively engaging in a financing process very soon to avoid running out of money.

Business Combination: a name for any type of transaction that results in the economic and legal combination of businesses and assets of two or more entities, whether accomplished pursuant to operation of law (as in a statutory combination or, Merger), or by an Acquisition of assets or Securities by one entity of another.

Business Judgment Rule: the default standard of judicial review of Board decisions under Delaware and almost all other US state corporation laws and, as applicable, under certain national corporate laws. The Business Judgment Rule, as typically formulated, means that, in reviewing a plaintiff's claim that a Board of Directors breached its Fiduciary Duty to its Stockholders, a court will presume that the Board acted in Good Faith,

with due care and with loyalty to the corporation and its Stockholders. The plaintiff ordinarily bears the burden of proof of rebutting the presumptions inherent in the Business Judgment Rule. The related substantive formulation of the Business Judgment Rule is that a court will not second-guess a Board's judgment unless the actions of the Board lack any rational basis.

Business Plan: a plan that looks forward and models (to the best of a company's ability) how the company's business will look over a period of time, which for venture-backed companies could be anywhere from six months up to two or three years (of course longer-term models are harder to predict in fast-growing and fast-changing enterprises). The business plan can be simple or very detailed. For Early Stage companies whose financial metrics are difficult to predict, the Business Plan will likely be less detailed than for Late Stage companies with more predictability.

Buyer: another name for an Acquirer or Purchaser.

Bylaws: one of the primary governing documents (second to the Certificate of Incorporation) for a corporation, in which most of the rules for the day-to-day operations of a corporation are set forth. Bylaws typically include procedures for how Officers are selected, how Board members may be appointed, how Board Meetings and Stockholder meetings may be called/conducted, etc. Think of the Certificate of Incorporation as the Constitution and the Bylaws as the laws or rules.

C Corporation: the default tax treatment of a corporation as an entity separate from its owner and taxed on its own income. Such entities include those organized as a US federal or state law corporation, an association, or other business entity that is taxable as a corporation under the IRC, but does not include any entity that has elected S Corporation status. Foreign corporations and Limited Liability Companies are generally treated as C Corporations for US tax purposes, though some may elect to be treated as Partnerships or disregarded entities. Almost all corporate Startups that VC's invest in are C Corporations, since S Corporations may not have entities as owners and since VC funds generally prefer not to invest in LLCs.

Cap Table: a record of the Stockholders of a corporation that reflects ownership of the various classes and series of Stock that exist. A Cap Table can also include holders of other Equity, such as Warrants, Options and Convertible Security.

Capital Call: when a Venture Capitalist will ask its Limited Partners to transmit previously committed funds for the purpose of making an investment in a Portfolio Company.

Capital Gains: the gain made on capital investments. When a Stockholder sells Stock in a company that he/she invested in, the gains made would generally be considered Capital Gains.

Capital Markets: a broad term that refers to the market for raising money through securities offerings.

Capitalization: how a company has been capitalized. In a Startup context, Capitalization normally refers to the type and number of shares of a company's Equity. Normally, Startups backed by VCs issue Common Stock (initially to Founders), Options to purchase Common Stock (generally to Employees, Advisors and Consultants) and Preferred Stock (generally to Investors) (in various series/classes based on the Financing Round). A company typically keeps track of its Capitalization using a Cap Table. Some forms of Debt, especially Convertible Promissory Notes, are often also tracked in the Cap Table.

Cash Flow Statement: a Financial Statement in which a company reports its incoming and outgoing cash flows during a specified time period (typically monthly, quarterly or annually).

Cash Position: the amount of cash a company has at a specific time. If a company's Cash Position and Burn Rate are known, the information can be used to determine roughly when the company will need funds in order to continue to operate.

Centaur: a Startup worth at least US$100 million.

CEO: acronym for Chief Executive Officer.

Certificate of Good Standing: a document ordered by a corporation from the secretary of state of the jurisdiction of the corporation's Incorporation (or any additional jurisdictions in which the corporation is qualified to do business) in connection with a Closing. The document certifies that the corporation and its Subsidiaries are good corporate citizens (*i.e.*, that all fees, taxes and penalties owed to the state have been paid, annual reports have been filed, no articles of dissolution have been filed, etc.).

Certificate of Incorporation: a document that the Sole Incorporator of a corporation must file with the secretary of state in the state of Incorporation in order to create the corporation as a legal entity. The Certificate of Incorporation often sets forth the name, address and business purpose of the corporation along with the number and type of Shares that the corporation is authorized to issue. The Certificate of Incorporation for a Startup is typically a fairly short document at the time of Incorporation. However, down the road, when the corporation completes a Preferred Stock Financing, the Certificate of Incorporation grows in length and complexity, as it is where the terms of the Security (such as Liquidation, Dividends, Redemption Rights, Conversion Rights and Protective Provisions) are included.

CFO: acronym for Chief Financial Officer.

Change of Control: generally refers to the sale of a company, but Change of Control can also result from a partial sale of the company — such as a

turnover of more than 50% of the current Stockholders to a third party, or the sale of substantially all of the company's assets.

Chapter 11: part of the US Bankruptcy Code and the part most often discussed. Chapter 11 governs Reorganizations of bankrupt companies in an attempt to turn them around and ensure their survival.

Charter: another name for the Certificate of Incorporation.

Chief Executive Officer (CEO): the highest-ranking executive Officer of a company, in charge of managing the day-to-day affairs of the company. In Startups, the role of CEO is often held by the same Founder who serves as the company's president and a member of the Board.

Chief Financial Officer (CFO): the senior Officer of a company, primarily responsible for managing the company's financing and (usually) accounting activities. In Startups, the role of CFO, if not an official title, is often held by the same Founder who serves as the company's treasurer and is a member of the Board.

Cliff Vesting: time-based Vesting of shares in an equity instrument where, typically, no shares vest until a pre-determined date on which a large chunk of shares vest at one time. The most common example Startups use is the standard Vesting Schedule in which Equity is granted with a total four-year Vesting Schedule that includes a one-year "cliff." This Vesting Schedule means that the first 12 months of Vesting all happen on the one-year anniversary of the Vesting Commencement Date (the moment of the Cliff Vesting) rather than on a monthly basis in that first year. Compare Straight-Line Vesting.

Closing: the consummation of a transaction, when any remaining documents are signed and the money changes hands. Plan on staying up late working the night before (see Pre-Closing). If the Closing goes smoothly, plan on celebrating once all wires have been received.

Closing Certificates: the certificates that must be signed and delivered prior to Closing. These typically include an Officers Certificate and a Secretary's Certificate.

Closing Checklist: the document which lists the various pieces of paper that need to be signed and delivered as Closing Conditions and in connection with the Closing.

Closing Conditions: the conditions that need to be satisfied on or prior to the Closing of the relevant transaction. In VC Financings, these conditions are typically found in the Stock Purchase Agreement.

Closing Date: the date on which the Closing occurs.

Common Director: Preferred Stock Financings usually include a right for the Preferred Stockholders to designate a Board seat. Often — although not always — the Common Stockholders, *i.e.*, the Founders (as the

Founders hold the vast majority of the Common Stock in most Startups), will also have a continuing right to designate one or more Common Directors. The right to designate any Common Director is typically set forth in the Charter and in the Voting Agreement and often will require that the CEO serve as a Common Director.

Common Stock: the Equity slice of a corporation that sits at the bottom of the Waterfall. In Startups, this is the class of Equity typically owned by Founders and Employees. Common Stockholders have Voting Rights by statute.

Common Stockholders: holders of Common Stock.

Condition Precedent: another term for Closing Conditions.

Confidentiality Agreement: a written agreement stating that the disclosure of certain information is only being provided for specific limited purposes, entered into before any disclosure is made and where the recipient of such information agrees to keep it confidential. Also commonly called Non-Disclosure Agreements. A Confidentiality Agreement can be one-way (only one party to the agreement is providing confidential information) or multi-party (two or more parties to the agreement are providing/receiving confidential information). Startups most commonly enter into Confidentiality Agreements prior to the commencement of a Due Diligence process (for either a potential Financing or Merger) or prior to beginning discussions with third parties in regard to potential business relationships.

Consultant: an individual or entity that works for a company under contract as an independent contractor and not an Employee. This classification can be tricky to make, especially for a Startup. The consequences of misclassifying someone as a Consultant instead of an Employee can be significant. Consult legal advisors when assessing this area.

Consulting Agreement: contract under which a Consultant provides services to a company. Consulting Agreements typically include, among other terms, compensation terms (including the grant of Equity, if applicable), a schedule of work to be completed, the duration of the relationship, provisions providing for confidentiality obligations, and the Assignment of any Intellectual Property created while performing services for the company.

Conversion Discount: the discount that is typically offered to the holders of Convertible Debt who invest in Early Stage companies or in companies doing a Bridge Financing. The holders of the Convertible Debt lend money in exchange for the right to have their loan converted into Equity at a discount in a future Equity Financing. This discount is typically documented in a Convertible Promissory Note and usually ranges from 10-20% (but may exceed this amount in rare cases or if the Valuation of a company in the Equity Financing is significantly higher than a

Valuation Cap). A Conversion Discount is often provided as a sweetener to encourage Investors to take the risk associated with investing in an Early Stage company.

Conversion Price: typically either (i) the price at which Preferred Stock will convert into Common Stock (upon certain pre-determined triggers set forth in the Charter) or (ii) the price at which a Convertible Promissory Note will convert into Preferred Stock in a Qualified Financing. See Conversion Discount.

Conversion Ratio: the ratio at which Preferred Stock converts into Common Stock. This Conversion Ratio is the Conversion Price divided by the Original Issue Price.

Conversion Rights: the rights Preferred Stockholders hold to have their Shares of Preferred Stock converted into Common Stock. Conversion Rights usually also include Anti-Dilution Protection so that a Preferred Stockholders' Shares will convert into more Shares of Common Stock if there is a Down Round that triggers an Anti-Dilution Adjustment.

Convertible Debt Financing: the type of Financing Early Stage companies most commonly use because Convertible Debt Financing does not require the company to set a Valuation at which to sell Equity. This type of Financing is a loan that an Investor provides a Startup company, typically documented as a Convertible Promissory Note. Such a note is convertible in the future into Preferred Stock (usually with a Conversion Discount) when a company does a Qualified Financing. Sometimes instead of a Conversion Discount, a Convertible Debt Financing may include the issuance of Warrants with the Warrant Coverage essentially providing the same (or an additional) sweetener for the Investor that a Conversion Discount would offer. In addition to a Convertible Promissory Note, this type of Financing may also, but does not need to, include a Note Purchase Agreement.

Convertible Promissory Note: the instrument that evidences a Convertible Debt Financing. This note is usually a very simple document, which is why it is so ideal for Startups, because the cost and time involved in preparing and negotiating a Convertible Promissory Note are minimal (and significantly less than the cost and time that would be involved in preparing and negotiating the documents for a Preferred Stock Financing). In rare circumstances the Convertible Promissory Note may be secured.

Convertible Security: a Security that is convertible into another type of Security, often Common Stock.

Copyright: a form of protection provided to the authors of "original works of authorship," which can include literary, musical, architectural, pictorial, graphic, sculptural, audiovisual and other types of creations. Copyright protection attaches as soon as the work is created in fixed tangible form and no publication, registration or other action is required

to secure the Copyright (although there are certain advantages to formal registration). Copyright gives the owner the exclusive right to, among other actions: reproduce the Copyrighted work, prepare derivate works, distribute copies or phono-records of the Copyrighted work, perform and display the Copyrighted work publically or authorize others to do the same. Copyright is a form of Intellectual Property. Copyright protection does not extend to works that have not been fixed in tangible form, works that are not original or things such as ideas, procedure, process or names, titles, short phrases, slogans and listings of contents or ingredients.

Co-Sale Rights: contractual rights that one Stockholder in a company (usually a Preferred Stockholder) must sell a certain number of his/her Shares alongside another Stockholder (usually a Founder) who wants to sell some of his/her own Shares. Co-Sale Rights are typically documented in the ROFR Agreement entered into at the time of a Preferred Stock Financing. Also sometimes called Tag Along Rights.

Counterparts: under many legal systems, including those of California, Massachusetts, New York and Delaware, not all signatories to an agreement need to sign the same hardcopy document; each separate signature page that is executed is known as a Counterpart and together they create a binding agreement.

Covenant: legalese for an agreement to do something (Affirmative Covenants), not to do something (Negative Covenants), or to maintain something (Maintenance Covenants).

Crowdfunding: the practice of funding a project by raising small amounts of money from a large number of people, most commonly through the use of Internet platforms such as Kickstarter, Indiegogo, etc. Until recently with the adoption of Regulation Crowdfunding, companies using Crowdfunding did not offer Equity in exchange for the monetary contributions received, but rather typically offered advance product orders, free samples or other non-security-based rewards.

Cumulative Dividend: another name for an Accruing Dividend.

Cumulative Voting: a relatively uncommon structure for a Stockholder voting for members of the Board of Directors. Cumulative Voting entitles each Stockholder to the number of votes equal to the total number of Directors to be elected, and the Stockholder has the right to allocate as many of its votes as it wishes for one, some or all candidates. Under this system, an organized minority of Stockholders could have the opportunity to ensure the election of one or several selected nominees by cumulating the aggregate votes for the chosen Director(s). This type of voting is extremely rare in Startups and often the Charter explicitly provides that Cumulative Voting will not be allowed.

Data Room: where Due Diligence materials are located. Originally a Data Room was a physical location, such as a room set aside in the building of

the Target Company, stacked with boxes of paper; these days it is a virtual Data Room that can be accessed online. A well-done Data Room can be critical to a smooth transaction, and can take a substantial amount of time to populate (depending on the amount of existing documents a company has — which tends to increase with the length of time a company has existed — and the scope of the Due Diligence Request List received). Early planning is key.

Deal Flow: the rate at which Venture Capitalists and Angel Investors receive business proposals or investment offers.

Deal Structure: the legal structure used for a transaction, which is often driven by tax implications or other matters dictating the type of documentation needed.

Debt: an obligation owed by one party (the borrower or debtor) to a second party (the lender or creditor). Debt is generally subject to contractual terms such as the amount and timing of payments of principal and Interest, events of defaults, Covenants, Maturity Date, Conversion Rights (if applicable) and more. The most common types of Debt in Startups are Convertible Promissory Notes and Venture Debt.

Decicorn: a Startup with a valuation of at least US$10 billion. Even rarer than a Unicorn, and much more exciting than a Unicorpse.

Deemed Liquidation Event: a term defined in a corporation's Charter that basically means an exit event or the sale of all or substantially all of the corporation's assets, in each case triggering the company to pay Liquidation Preferences.

Delaware General Corporation Law (DGCL): the statute governing corporate law in the State of Delaware found in Title 8, Chapter 1 of the Delaware Code.

Demand Registration Rights: a type of Registration Right that entitles the holder, subject to certain agreed upon conditions, to force the Issuer to conduct a registered offering of the Issuer's Securities. The Issuer files a Registration Statement with the SEC and takes such other actions to conclude an offering pursuant to that Registration Statement. In Preferred Stock Financings, Demand Registration Rights are typically found in the Investors' Rights Agreement. Compare Piggy Back Registration Rights.

DGCL: acronym for the Delaware General Corporation Law.

Dilution: when an existing Stockholder's percentage ownership in a company is reduced because a new Investor buys Shares in the company or additional Equity is otherwise issued to a third party. For example, if an existing Stockholder owns one share of a company that has 10 shares outstanding, the existing Stockholder would own 10% of the total number of shares (one out of 10), but if the company issued to a new Stockholder an additional 10 shares then the existing Stockholder would only own 5% of the total number of shares (one out of 20). The existing Stockholder would

in this example suffer 5% Dilution of its Share ownership. This Dilution doesn't necessary mean that the value of the existing Stockholders Shares has decreased, since the overall value of the company might actually (hopefully) have increased.

Director: a member of the Board elected by a corporation's Stockholders.

Disclosure Schedule: a schedule prepared in connection with a transaction agreement, typically a Stock Purchase Agreement or Note Purchase Agreement in Startups, that discloses exceptions to statements that the Startup makes in the agreement (called Representations and Warranties) regarding the company and its affairs. Also sometimes referred to as a Schedule of Exceptions.

Disinterested Director: a Director who does not have a financial or other interest in the matter that is being considered for approval by the Board of Directors.

Distribution: the delivery of some sort of compensation or other value (this can be cash, Stock or even a company asset) to the Stockholders in a company because the Stockholders hold Shares (could also be used to describe the Redemption or repurchase of a single person's Shares).

Dividend: a type of Distribution, typically provided for in the Certificate of Incorporation of a corporation.

Double Trigger Acceleration: when the Vesting that applies to either Stock or an Option can be accelerated upon the occurrence of two events, both of which must occur for the acceleration to be triggered. The first triggering event is usually a Change of Control of the company, and the second triggering event is the termination of a Stockholder's employment without "cause" (a term defined in either the Option Agreement, Equity Incentive Plan or RSPA) or terminating a Stockholder's employment for "good reason" (a term defined in either the Option Agreement, Equity Incentive Plan or RSPA).

Down Round: when a company completes an Equity Financing at a Per Share Price that is lower than the price at which Shares were sold in the previous Financing. Startups generally do not like Down Rounds because of the optics of the company's value decreasing and the fact that a Down Round typically means the Investor coming in can negotiate for much more investor-friendly terms. Existing Investors are often displeased, and a Down Round may also increase the difficulty of recruiting Employees. A Down Round often triggers Anti-Dilution Protection rights.

Drag Along Rights: allows a majority Stockholder to require that a minority Stockholder vote to approve a sale of the company to a third party. The idea is that a majority Stockholder may not be able to recognize the full value of the Stockholders stock holdings unless the majority Stockholder can sell the entire company to a third party by "dragging" along minority Stockholders. Drag Along Rights generally provide that the minority

Stockholder enjoy some protections against abuse, including receiving the same terms in the sale as the majority Stockholder. In Preferred Stock Financings, Drag Along Rights are typically found in the Voting Agreement. Compare Tag Along Rights.

Due Diligence: what lawyers, bankers and Investors do to learn about a company. In a VC Financing, Investors (and their lawyers) conduct Due Diligence so they can understand what they are investing in. Due Diligence activities are broad and range from a review of relevant documents (often housed in a Data Room) and Financial Statements to on-site visits and interviews with management, outside accountants, counsel, customers and suppliers. In Capital Markets transactions, the bankers and lawyers conduct Due Diligence in order to establish a Due Diligence Defense.

Due Diligence Defense: the Underwriters' principal defense in Securities offerings lawsuits. The securities laws impose liability on certain persons and entities for damages resulting from any material untrue statement contained in, or omitted from, a Registration Statement. Issuers are strictly liable for the information in the Registration Statement, but other entities (including Underwriters and the Board) involved in the offering can avoid liability by demonstrating a Due Diligence Defense. Specifically, Underwriters and the Board have an affirmative defense to liability if they have relied on experts for the Expertized Parts of the Prospectus and conducted a "reasonable investigation" for the other portions. Similar defenses are available to Rule 10b-5 claims made with respect to Rule 144A Financings and Regulation S offerings.

Due Diligence Request List: a list Investors provide to a company that they are considering investing in. The list requests certain information in order to conduct their Due Diligence. Depending on the type of company and the length of its existence, the depth of the Due Diligence Request List can vary and the process of preparing the response can either require a great deal of work or a lot of "not applicable" responses.

Duty of Candor: a Fiduciary Duty of Directors under Delaware judicial decisions that requires the Board of Directors to provide Stockholders with all the material information necessary to decide how to vote on a matter.

Duty of Care: customarily articulated using the so-called objective "reasonable man" standard — that in making a decision a member of the Board of Directors must use the same degree of care as a reasonable business person would do in the conduct of his/her own business affairs. Under Delaware statutory law and judicial decisions, Directors clearly have an obligation to understand the situation and relevant facts, laws, etc., but in doing so are entitled to rely on Officers and other Directors of the corporation and on Advisers whom they reasonably believe are knowledgeable in the area. The seminal Delaware case on the Duty of Care is *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985), often referred to simply as Van Gorkom. See also Duty of Loyalty.

Duty of Loyalty: encompasses both conflicts of interest (and how to guard against them) and the requirement that the Board of Directors act in Good Faith in what they believe is the best interests of the corporation and its Stockholders.

D&O Insurance: liability insurance payable to the Directors and Officers of a corporation or other entity to offset indemnifiable losses they have suffered as a result of specified acts or failures to act in their capacities as Directors or Officers. D&O Insurance also typically covers reimbursement of the costs associated with defending a lawsuit. Startups often agree to obtain D&O Insurance as a condition to a VC Financing.

Early Stage: in a company's life cycle, the stage from the legal formation of a company until shortly before the second round of Preferred Stock Financing. However, this is a very subjective classification — some people think anything prior an IPO is Early Stage.

Earnout Provisions: a provision in connection with the sale of a company that provides for the possibility of additional consideration to the Sellers based upon the achievement of certain Milestones or other metrics following the Closing. These provisions can be useful to help bridge a Valuation gap between a Buyer and a Seller. However, Sellers should discount the possibility of actually collecting an earnout as they often are not achieved.

EGC: acronym for Emerging Growth Company.

Elevator Pitch: the 30-second version of a Pitch (short enough to make on an elevator ride) as to why a Startup is a good idea and would make for a good investment.

Emerging Growth Company (ECG): a new category of Issuer created by Title I of the JOBS Act. To qualify as an EGC, a company must not have priced its IPO prior to December 9, 2011 and must have annual revenue for its most recently completed fiscal year of less than US$1 billion. Qualification as an EGC allows the Issuer to utilize the so-called "IPO on-ramp," a transition period from private to Public Company that eases certain burdens of the IPO process by scaling back financial disclosure requirements, permitting confidential SEC submissions and pre-filing offers to Institutional Investors and allowing research analysts to publish reports on EGCs immediately after they become public companies. See Latham & Watkins Client Alert No. 1308, The JOBS Act Establishes IPO On-Ramp (March 27, 2012). See also Latham & Watkins publication, The JOBS Act, Two Years Later: An Updated Look at the IPO Landscape (April 5, 2014).

Employee: a person who is hired for a wage or salary to perform work for and under the direction of an employer. It is important to determine if one is acting as Employee (rather than as a Consultant), as one's status as an Employee comes with some legal issues and requirements, including employer liability for the actions of the Employee, minimum wage

requirements, tax withholding and reporting obligations, union eligibility and worker's compensation, among other things.

Employee Stock Option Plan (ESOP): a plan, often referred to instead as an Equity Incentive Plan or a stock incentive plan, pursuant to which the company may grant Options to purchase its Stock and other forms of Equity compensation such as Restricted Stock, to Employees, Directors and Consultants. By granting Equity under such a plan, there are certain tax benefits that are available to certain recipients of these awards if the plan is structured in a way that is consistent with IRC requirements. The use of this type of a plan also provides companies with a way to issue Equity to service providers under an exemption from the registration requirements of US federal and state securities laws.

Employer Tax Identification Number (EIN): the number assigned by the Internal Revenue Service to a company to identify it for tax purposes (similar to an individual's social security number).

Employment Agreement: not very common in Startups (other than Offer Letters, which aren't really the same thing) and are typically only seen at the executive level in Late Stage companies. An Employment Agreement typically covers compensation (both cash and Equity), bonus amounts or eligibility, vacation and any other plans that apply. It may also include severance provisions and whether any of the Equity granted will be subject to Vesting, Double Trigger Acceleration or Single Trigger Acceleration.

Employee Retirement Income Security Act of 1974 (ERISA): the fundamental federal statute regulating pension and welfare plans (such as 401(k)s, medical and dental plans, life and disability insurance etc.) covering most classes of Employees.

Enterprise Value: means the value of a business on a debt-free, cash-free basis, *i.e.*, irrespective of the sources of capital used to finance it. Enterprise Value can be thought of as the price a Buyer would have to pay to buy a company and pay off all the Debt. For example, if the market Capitalization (or Equity Value) of a company is US$95 million, and the company has US$10 million in Debt and US$5 million in cash, a Buyer would have to pay US$95 million to the Equity holders, and another US$5 million to pay off the net Debt (using existing cash to pay off the other US$5 million of Debt). Thus the Buyer's total price to buy the company with no Debt or cash immediately after Closing would be would be US$100 million.

Equity: a Security that represents an ownership interest in an entity.

Equity Financing: a Financing in which a company receives funds from Investors in exchange for Equity in the company. The Equity issued to Investors can be either Common Stock or Preferred Stock, but is most commonly Preferred Stock in Startups.

Equity Incentive Plan: see Employee Stock Option Plan.

Equity Value: the Enterprise Value plus the cash, and minus the Debt. For example, if the Enterprise Value of a company is US$100 million and the company has US$10 million in Debt and US$5 million in cash, the Equity Value would be US$95 million. Think of a Buyer paying US$100 million for the business. The Buyer would be able to use the existing cash to pay the Debt down to US$5 million, and then US$5 million of the US$100 million purchase price to pay off the remaining Debt in full. The remaining US$95 million would be available to be distributed to the equity holders. Or thought of another way, the Buyer could offer a purchase price to the equity holders of US$95 million with an agreement to assume the net debt of US$5 million.

Exchange Act: see Securities Exchange Act.

Exercise Price: the Per-Share Price that must be paid to exercise a right under an Option or Warrant to purchase the Stock and receive shares of that Stock subject to the Option or Warrant.

Exit: the opportunity for Investors to have Liquidity on their investment. Normally, the Exit for an investment in a Private Company occurs through either a Change of Control or IPO (since Shares are more readily tradeable once a company is public, providing Liquidity to the private Investors).

Exit Strategy: strategy that company management employs to get Liquidity for its Investors through an Exit. Investors will rarely enter without an Exit Strategy.

Expertized Parts: generally, the audited Financial Statements contained in the Registration Statement. Under applicable securities laws, the Underwriters and Board can avoid liability for the expertized portion of the Registration Statement if they can show they had no reasonable grounds to believe, and no actual belief, that such statements were untrue or omitted material facts. Note that unaudited Financial Statements are not expertized.

Fair Market Value: for Stock, the current value that a third party would pay for Shares in a company on a per share basis in an "arm's length" transaction, usually without regard to any discounts for lack of a trading market or minority interests. For shares of Common Stock in a Startup, the Fair Market Value is usually determined by the Board or an independent third-party valuation firm through a 409A Valuation.

FCPA: acronym for the Foreign Corrupt Practices Act. This statute prohibits US companies from bribing foreign governmental officials in exchange for contracts, concessions or other benefits conferred by the foreign government.

Fear of Missing Out (FOMO): Just ask a teenager, often used to describe an Investor's decision to invest in a Startup based on a fear of missing out on the next big thing.

Fiduciary: a party with a duty to act solely in the interests of another party. Officers and Directors of a corporation serve as fiduciaries for the corporation's Stockholders and as such owe Fiduciary Duties to such Stockholders.

Fiduciary Duties: see Fiduciary. See also, *e.g.*, Duty of Candor, Duty of Care and Duty of Loyalty.

Final Closing: in a transaction with multiple Closings, Final Closing is the last Closing.

Financial Statements: the Income Statement, Balance Sheet and Cash Flow Statement of a company.

Financing: a transaction in which a company receives funds from Investors, in exchange for Equity or Debt. The payoff after many calls, emails, texts and meetings with potential Investors, countless Pitches and other hard work.

Financing Round: generally describes the type of Financing by referring to the nature of the Investors (*i.e.*, an "Angel Round" or "Friends and Family Round") or to the Security being sold in a Financing (*i.e.*, an "Equity round or "Convertible Promissory Note round"). When Equity is sold, the particular Financing Round is normally identified by the series of Stock being issued in a particular Financing, such as a Series Seed Round, Series A Round, Series B Round, Series C Round, Series D Round, etc.

Finder: someone who uses his/her connections and resources to find Investors to put money in a company. Companies should be careful if they pay any compensation to a Finder based on the success of a Financing — subject to limited exceptions, such Finders are required to be registered as Broker-Dealers with the SEC.

Follow-on Offering: a public offering of Common Stock by a public Issuer subsequent to their Initial Public Offering.

FOMO: acronym for Fear of Missing Out.

Foreign Qualification: when a corporation is doing business in a state that is not its state of Incorporation, the corporation needs to file an application to qualify to do business in that "foreign" state. Whether a Foreign Qualification is necessary depends on the level of business the corporation is conducting in the foreign state (things like presence of an office or Employees in a state typically trigger this requirement). Since each state has its own rules and requirements, it is a good idea to consult with your legal or tax advisors when deciding where you should apply for Foreign Qualification.

Forfeiture Provisions: refers to provisions found in a Restricted Stock Purchase Agreement, which provide that when a Stockholder is no longer employed or providing services to the company, any unvested shares

will automatically be forfeited back to the company for no additional consideration at the time such services end. Forfeiture Provisions are typically seen when the Restricted Stock is issued to the Stockholder in consideration for services or at nominal cost. Compare to Repurchase Provisions.

Form D: a securities law filing made with the SEC after a Financing to procure a safe harbor exemption under Rule 506 under the Securities Act (*i.e.*, Reg D). Startups should understand that once made, this filing is publicly available through the SEC's EDGAR system and may be picked up and written about in the press.

Form S-1: the SEC form Registration Statement filed by an Issuer in connection with an Initial Public Offering.

Founder: one of the initial Stockholders of a company who brings Intellectual Property or other valuable contributions to the company to get the business started. The Founders also typically serve as the initial Officers and Directors of the company. Despite the common misconception, being called a Founder does not bring with it any additional rights above those held as a result of the Equity or positions held within the company. Founder is not a legal term.

Founder Representations: representations made by a Founder in a Stock Purchase Agreement. These representations are typically only seen, if at all, in early Financing Rounds (like a Series Seed or Series A round) and are not common in subsequent rounds. Investors sometimes request these representations in early Financing Rounds where the Founders are essentially the entire company and are aware of every facet of its business, which becomes less and less true as a company grows.

Founders' Shares: Equity held by Founders, which is typically Common Stock in a Startup.

Freemium: a pricing strategy that offers a basic version of a product to users for free with the goal of selling them additional features for a fee.

Friends and Family Round: generally, one of the first Financing Rounds that a Startup completes. Usually the Investors in a Friends and Family Round invest smaller amounts, and this investment is often structured as Convertible Debt Financing (allowing the company to postpone valuing itself too early). Also, as the name describes, most Investors in this type of Financing Round are friends and family members of the Founders. So while friends and family members may be more willing to invest because of their relationship to the Founders, the friends-and-family relationship dynamic can also put extra pressure on the Founders who do not want to let these people down.

Full Ratchet Anti-Dilution Protection: the most drastic type of Anti-Dilution Protection; very rarely seen in VC Financings. Full Ratchet Anti-Dilution Protection means that if a company sells Shares at a price below

that paid by Investors in the company's most recent Financing, then the Investors with Full Ratchet Anti-Dilution Protection have their Conversion Ratio adjusted so that when their Shares of Preferred Stock convert into Common Stock they would receive the same number of Shares of Common Stock as if they had originally purchased their Shares at the new lower price. Full Ratchet Anti-Dilution Protection could result in a significant transfer of ownership from holders of Common Stock (usually Founders) to holders of Preferred Stock, and can be counter-productive if the Dilution to the Founders leaves them without sufficient incentive to continue to build the business. Compare to Weighted Average Anti-Dilution Protection.

Fully Diluted: a way of describing the total Equity of a company that includes both the Outstanding Shares and all Options, Warrants and any other Convertible Securities. Fully Diluted is often used in the context of determining what percentage of a company one person holds — if you describe percent ownership on a Fully Diluted basis, that simply means you've included all Convertible Securities (as if they have converted) in the denominator, as opposed to just the Outstanding Shares.

Fully Diluted Earnings Per Share: an amount equal to the revenue of a company divided by the total number of shares on a Fully Diluted basis.

GAAP: acronym for "generally accepted accounting principles." GAAP represents a set of authoritative standards for recording and reporting accounting information in a given jurisdiction.

General Partner: in a Partnership, a partner that may have personal liability for the liabilities and obligations of the Partnership (but see Limited Liability Limited Partnership). If a Partnership is not a Limited Liability Partnership or a Limited Partnership, its partners will be General Partners by default.

Good Faith: acting honestly and fairly towards one's counterparties. Similar to acting reasonably. Good Faith is also a critical component of a Director's Duty of Loyalty.

Good Standing: a corporation that has filed all annual reports, has no articles of dissolution filed and is current with all fees, taxes and penalties owed to the state in which it is Incorporated or qualified to do business as a Foreign Qualification.

Governing Law: the law that governs a particular agreement and all disputes that may arise as a result of the agreement. Governing Law is usually found in the miscellaneous section of a contract, which comes at the very end of a contract.

Growth Equity Investment: investment in the Equity of a company that you expect to grow rapidly.

Holding Company: a company that sits on top of (or "holds" the Equity of) the Subsidiary that is below it. This concept sometimes connotes a company that does nothing else (*i.e.*, has no operations).

Holding Period: period of time in which a Stockholder must hold its Shares in a company for a specified reason. Some examples include tax holdings periods (*i.e.*, for either short-term or long-term Capital Gain treatment), Vesting periods or a reference to securities laws that require the holding of Shares for certain time periods to be able to resell without registration under the Securities Act.

Incentive Stock Option (ISO): a type of Option that can be granted under an Equity Incentive Plan to Employees only. ISOs qualify for special tax treatment under the IRC. ISOs generally are not taxed upon grant or exercise, but rather upon disposition of the Shares acquired upon exercise of the ISO as long as certain conditions are met. Also known as a way to attract young bright employees.

Income Statement: a Financial Statement on which a company reports its results of operations over a period of time (usually monthly, quarterly or annually). Also commonly referred to as a Profit and Loss Statement, or P&L Statement. Think of an Income Statement as a movie and a Balance Sheet as a snapshot as of a specific moment in time (usually the last day of the period being reported).

Incorporation: the act of officially forming a corporation by filing a Certificate of Incorporation with the secretary of state of the state of Incorporation.

Incubator: organization set up to help Startups with their initial investments and strategies. Incubators typically assist by providing their Startups with office space, management support and other resources. Incubators often require a percentage of the Startup's Equity in exchange for their assistance and investment. Similar to an Accelerator, but Incubators are generally more willing to give companies a longer runway for development.

Inculator: a hybrid between an Accelerator and Incubator, essentially providing the same services but at a slightly longer timeline than an Accelerator, and shorter than an Incubator.

Indemnification Agreement: an agreement in which a company agrees to indemnify its Directors and Officers for actions taken in their capacity as such in order to reduce the potential for personal liability. Startups typically enter these agreements in connection with their first Equity Financing.

Information Rights: rights a company gives to certain Investors (usually "Major Investors" (*e.g.*, those that make investments above a specified threshold typically set forth in an Investor Rights Agreement)) to receive

regular Financial Statements and have access to inspect the books and records of a company. See also Inspection Rights.

Initial Close: in a transaction with multiple Closings, Initial Close is the first Closing.

Initial Public Offering (IPO): the first Registered Public Offering of shares of Common Stock of a company. Following an Initial Public Offering (also known as an IPO) in the US, a company becomes an SEC Reporting Company (if it wasn't already).

Inside Round: a Financing Round led by existing Investors in the company.

Inspection Rights: a type of Information Right given to certain Investors (usually Investors that make investments above a specified threshold typically set forth in an Investor Rights Agreement) to have access to inspect the books and records of a company and meet and talk to certain executives of the company.

Institutional Investor: Investors that are organized for the purpose of investing in multiple companies.

Intellectual Property: property that a company owns that while not physical, is of value for its inherent intellectual worth. Examples include Copyrights, Patents, Service Marks, Trademarks and Trade Secrets.

Interest: additional amount added to a loan that accrues over time (typically expressed as a percentage), which the company needs to repay to the lender.

Internal Rate of Return (IRR): the compounded rate of return of an investment. As an example, if you invest US$100 on day one, and on Day 365 you liquidate your investment and receive US$150, then your IRR was 50%. Investment funds generally have an IRR hurdle they target for investments. For example, if an IRR hurdle is 25%, then an Investor would want their investment to return an annual compounded return equal to at least 25%, and prior to an investment the Investor would want to calculate the total expected exit value, total investment amount and total time to Exit and work backward to see if the investment would, based on those assumptions, yield an IRR that meets their investment hurdle.

Internal Revenue Code (IRC): the federal statutory tax law in the United States, published as Title 26 of the Unites States Code.

Investment Letter: letter laying out the terms of an Investors proposed investment in a company, similar to a letter of intent or a Term Sheet.

Investment Representations: representations made by Investors to the company in connection with their investment (usually found in a Stock Purchase Agreement or other Equity or debt grant documentation), which typically relate to securities law compliance and Accredited Investor status.

Investor: a person or entity who puts money in a company either to purchase Equity or make a loan to the company and get repaid or converted into Equity upon a triggering event in the future.

Investor Rights Agreement: an agreement that a company typically enters into when it issues Preferred Stock to Investors in a VC Financing, which sets out, among other things, certain Registration Rights, Information Rights and Participation Rights for Investors.

IPO: acronym for Initial Public Offering.

IRC: acronym for Internal Revenue Code.

Issue Price: the gross price at which Shares of Stock are sold, usually expressed on a per Share basis.

Issued Shares: the number of Shares of Stock actually sold by a company and held by Stockholders, excluding Shares that may be issued at a later time upon the conversion/exercise of Options, Warrants, Convertible Promissory Notes or other Convertible Securities.

Issuer: the company that is the Seller (or Issuer) of Securities.

JOBS Act: the Jumpstart Our Business Startups Act, signed into law in April 2012. The JOBS Act made significant changes to the US securities laws. Most significantly, Title I of the JOBS Act provides for an IPO on-ramp, streamlining the IPO process for EGCs, a new category of Issuer. The other Titles of the JOBS Act introduced a number of additional changes to the securities laws, including directing the SEC to (1) modify Regulation D under the Securities Act to remove prohibitions on "general solicitation" in connection with Rule 506 offerings to Accredited Investors and (2) expressly permit general solicitation in connection with Rule 144A Financings. See Latham & Watkins publication, The JOBS Act, Two Years Later: An Updated Look at the IPO Landscape (April 5, 2014).

Key Employees: which Employees are considered Key Employees is a determination that is typically made in connection with an Equity Financing, where this term is defined in the Transaction Documents in order to establish which Employees are making certain Representations and Warranties or are bound by certain Covenants. This group typically includes Founders or high-level Employees whose knowledge of the company or services are key to the company's success.

Key Man Insurance: life insurance policies taken out on certain key executives. This type of insurance may be required as a Condition Precedent to a VC Financing (or as an Affirmative Covenant in an Investor Rights Agreement). No doubt should be called Keyperson Policy.

Knowledge Qualifier: a term included (and typically negotiated for) in a Representation and Warranty that a company makes in an Acquisition Agreement, Stock Purchase Agreement, or other agreements with Investors. This term qualifies the Representation and Warranty being

made by the knowledge of certain specified individuals who have relevant knowledge in order to restrict the companies assumed liabilities. The exact Knowledge Qualifier is to be defined in the relevant agreement.

Late Stage: a company that has gone through several Financing Rounds, but has not yet had an Exit.

Launch: when a startup begins offering a product or service to the public. A Launch typically follows a beta or testing period of the same product or service during which the startup tries to resolve any issues.

Lead Investor: Investor who takes the roll of negotiating the Transaction Documents with the company on behalf of all Investors so that the company doesn't get bogged down negotiating the round with multiple Investors. Lead Investor is not a legal title, but more of an implied or agreed upon role.

Legends: statements placed on the back of Stock Certificates identifying certain restrictions or rights applicable to the Shares, a common example of which are Transfer Restrictions.

Leverage: the bargaining power that a company or an Investor (or any other party) has with respect to one another. If a company needs money fast and has few available options, an Investor would have Leverage over the company. Conversely, a hot Unicorn with lots of Investors lined up at the door would have Leverage over the Investors, who will take less attractive terms just to get into the investment. See also FOMO.

Limited Liability Company: a type of company and organizational form that combines many of the attributes of a corporation with attributes of a Partnership. Like corporations, the Equity holders in a Limited Liability Company (called members) generally do not have personal liability for the company's liabilities and obligations. Like Partnerships (and unlike corporations), Limited Liability Companies are by default pass-through entities for tax purposes (although they can elect to be taxed like taxable corporations) and can by agreement decide on what rules the company must follow, including whether or not the Directors (called managers) have Fiduciary Duties to the members.

Limited Liability Limited Partnership: a type of Limited Partnership where the General Partner is not personally liable for the liabilities and obligations of the Partnership. To qualify as a Limited Liability Limited Partnership, a Limited Partnership generally has to comply with the applicable statutory requirements in its state or other jurisdiction of formation.

Limited Liability Partnership (LLP): a type of Partnership that combines many of the attributes of a corporation with attributes of a Partnership, in which some or all of the partners have limited liability. To qualify as a Limited Liability Partnership, a Partnership generally has to comply with

the applicable statutory requirements in its state or other jurisdiction of formation.

Limited Partner (LP): a partner in a Limited Partnership or Limited Liability Limited Partnership that generally does not have personal liability for the liabilities and obligations of the Partnership.

Limited Partnership: a Partnership with Limited Partners and at least one General Partner. To qualify as a Limited Partnership, a Partnership generally has to comply with the applicable statutory requirements in its state or other jurisdiction of formation.

Liquidation: typically either a Change of Control or the Bankruptcy or insolvency of a company (where assets are sold and the proceeds distributed to the owners/creditors through a statutory process).

Liquidation Amount: aggregate amount of proceeds that are distributed to the Stockholders of a company in connection with a Liquidation.

Liquidation Preference: amount that a group of Stockholders are entitled to receive upon Liquidation, in preference to other groups of Stockholders, under the terms of the company's Charter.

Liquidity: the ability to sell Shares of Stock and receive cash or other liquid assets (such as Public Company Stock).

Loan and Security Agreement: in Startups, generally the transaction agreement entered into between a company and a bank for a Venture Debt Financing.

Lock-Up: a period of time during which a Stockholder is not permitted to sell its Shares following a public offering, usually a 90 or 180-day period, depending on the type of offering that starts the Lock-Up period. The purpose of the Lock-Up is to help stabilize the Stock price following the offering by controlling supply of Shares that are trading in the market. See also Market Standoff Agreement.

Lock-Up Agreement: the letters signed by Officers, Directors and other insiders setting forth the terms of their Lock-Ups. These are usually negotiated in connection with the Underwriting Agreement (which is where the Issuer's Lock-up can generally be found). In Startups, Lock-Up provisions are often included in the Investor Rights Agreement or other equity grant documentation.

LP: acronym for Limited Partner.

MAC: acronym for Material Adverse Change.

MAE: acronym for Material Adverse Effect.

Maintenance Covenants: legalese for an agreement to maintain something. In Startups, this type of Covenant is typically found in an Investor Rights Agreement or Loan and Security Agreement and requires

the company to maintain a certain state of affairs, for example, to maintain certain levels of insurance.

Major Investor: an Investor that invests or loans the company an amount of money that meets or exceeds a specified threshold (set forth in the Transaction Documents) that then entitles the Investor to special rights (such as Information Rights).

Management Carve-Out Plan: a type of plan sometimes adopted by the Board of Late Stage Startups to provide a bonus to members of management and Employees based on a predetermined percentage of the proceeds generated from the sale of the company. A Management Carve-Out Plan is often used as an incentive tool especially in circumstances where the Equity held by such management members has been significantly diluted over time or is underwater. However, this type of plan is very case-specific and can be a sensitive topic to raise with Investors (since they are being asked to supplement already granted Employee Equity with additional incentives).

Management Rights Letter: letter that certain Investors (common especially for VCs) request in connection with a Financing pursuant to which they are entitled to receive Information Rights (and sometimes Observation Rights) that may be required for the fund associated with the Investor to be considered a VCOC.

Management Team: a group of Employees, who are typically at the executive level and are in charge of carrying out the day-to-day operations and implementing strategy the Board sets for company.

Mandatory Conversion: generally refers to the conversion of Preferred Stock upon the occurrence of certain specified events (as set forth in the Charter), which most commonly are either an IPO subject to minimum price and/or proceeds requirements (often referred to as a "Qualified IPO") or upon the vote by the holders of a specified threshold of Preferred Stock.

Market Standoff Agreement: another name for a Lock-Up. In Startups, this type of provision is typically found in the Investor Rights Agreement, as well as for Common Stock holders in their Stock Purchase Agreements.

Massachusetts Security Corporation: any foreign or domestic corporation organized or doing business in Massachusetts that is (i) engaged exclusively in buying, selling, dealing in or holding Securities on its own behalf and not as a broker and (ii) classified as a Security corporation by the Commission of Revenue. This type of entity receives beneficial Massachusetts tax treatment.

Material Adverse Change (MAC): just like it sounds, this phrase refers to a "Material Adverse Change" in something — generally either the business or the Debt or equity markets. Material Adverse Change is an extraordinarily high standard in Acquisition Agreements (as of the

publication of this Book of Jargon no Delaware court had ever found a MAC to have occurred). This term is used in two general contexts: either (i) as a Condition Precedent (for instance, a Seller would not have to Close on an Acquisition if there had been a Material Adverse Change to the business); or (ii) as a qualifier to Representations and Warranties (for instance, the environmental Representation is limited to instances where violations of the Representation could (or would) lead to a Material Adverse Change). Also referred to as Material Adverse Effect.

Material Adverse Effect (MAE): another name for Material Adverse Change.

Materiality Qualifier: shorthand for a word or phrase in Representations and Warranties or in Covenants that limit their operation to material events, changes or facts. An example would be insertion of the word "material" in a Representation that a company has all licenses required for the operation of its businesses. MACs and MAEs all include a Materiality Qualifier.

Maturity Date: generally, in the Startup context, the date on which a Convertible Promissory Note or other Debt outstanding must be repaid in full.

Merger: a process pursuant to a state corporate law by which a corporation or other business entity (*e.g.*, an LLC or LP) is combined by operation of law with one or more other corporations or business entities. Typically, the statute contemplates that each entity either be merged into another entity, which is the legally surviving entity, or be the surviving entity into which one or more other entities are merged.

Merger Agreement: an agreement between two or more entities providing for a Merger of at least one of the parties with or into one or more of the other parties. More generically, another name for an Acquisition Agreement. To become effective, a Merger Agreement almost invariably requires approval by both the Board of Directors and the Stockholders of each of the companies participating in the Merger.

Middle Market: refers to companies with between US$50 million and US$1 billion in revenue.

Milestones: contractually agreed targets on the way to reaching some final target, the fulfillment of which triggers specific (agreed upon) consequences. In Startups, subsequent Tranches of a Financing may be contingent upon the achievement of specified Milestones, which would be described in the Stock Purchase Agreement.

Milestone Closing: a Closing in a Financing with multiple Closings that is contingent upon the achievement of a specified Milestone.

Minimum Viable Product: a product designed to allow the Startup team to collect a significant amount of validated learning about the product and its development while expending minimum cost and effort.

NASDAQ: the Nasdaq Stock Market, Inc. NASDAQ is the largest electronic screen-based Equity Securities market in the United States. NYSE and NASDAQ are the two principal market centers for buying and selling Equity Securities in the United States.

NDA: acronym for Non-Disclosure Agreement.

Negative Covenants: legalese for an agreement not to do something. These are contractual provision often found in an Investor Rights Agreement or Loan and Security Agreement for Startups, which prohibit the company from engaging in specified activities, such as issuing new Preferred Stock, amending the Charter, making incurring new Debt, selling assets or making Acquisitions. Think of these Negative Covenants as the "Thou Shalt Not" covenants. Negative Covenants can be highly customized to specific conditions and are often negotiated heavily. Compare Affirmative Covenant.

New York Stock Exchange (NYSE): now part of NYSE Euronext, which was formed in April 2007. In contrast to other exchanges, the NYSE still conducts some of its transactions on a trading floor located on Wall Street.

No General Solicitation: the prohibition of broadly marketing a Securities offering in a Private Placement. While general solicitation is now permitted in certain Reg D offerings as a result of rules adopted by the SEC in July 2013 in connection with the JOBS Act, general solicitation still has not been widely used in the Private Placement context because of some of the procedural requirements that must be met.

No Shop, No Solicitation Clauses: an agreement by one or both companies involved in a Financing or Merger that they will only deal with the other party involved and will not solicit other investments or bids or provide information to other possible bidders or Investors during a certain period of time.

Non-Accredited Investor: an Investor that does not qualify as an Accredited Investor.

Non-Compete Clause: a contractual restraint on competition. In Startups, this type of clause is more common on the East Coast than the West Coast because of the limitations established by certain states, like California, regarding the enforceability of this type of clause.

Non-Cumulative Dividend: a Dividend that does not automatically accrue.

Non-Disclosure Agreement: another name for a Confidentiality Agreement.

Non-Participating Preferred: Preferred Stock that has a Liquidation Preference that gets paid in preference to the holders of Common Stock, but after the Preferred Stockholder receives this amount it does not participate in any assets distributed to the Common Stock unless the

Preferred Stockholder elects to convert into Common Stock (and in that case, they forgo their Liquidation Preference and instead simply get what the Common Stockholders receive).

Non-Qualified Stock Option (NSO): a type of Option granted under an Equity Incentive Plan, typically granted to a non-employee (such as a Director or a Consultant), that does not qualify for the beneficial tax treatment provided by Incentive Stock Options under the Internal Revenue Code.

Non-Solicitation Clause: agreement not to poach or hire a company's Employees or customers. Certain states, like California, have limited the enforceability of this type of clause.

Note Purchase Agreement: similar to a Stock Purchase Agreement but instead of Equity, this agreement provides for a loan to the company in exchange for a Convertible Promissory Note, usually as part of a Bridge Financing.

NYSE: acronym for the New York Stock Exchange.

Observer Rights: another term for Board Observer Rights.

Offer Letter: generally, a letter provided by a company to a prospective Employee setting forth the terms of the offer of employment being extend. Typical terms included in an Offer Letter include, salary, bonus terms (if any), whether Equity will be granted, and if so, whether Vesting will apply, vacation days and any other company policies that would apply.

Officers: the Employees who manage the day-to-day operation of the company and are elected by the Board. In Startups, the Founders are typically the first Officers of the company.

Officers Certificate: a type of Closing Certificate that may be required to be delivered at Closing, which is signed by an Officer of the company. The signing Officer certifies the accuracy of the company Bylaws and Board and Stockholder resolutions adopted in connection with the transaction and attached to the Officers Certificate or the continued accuracy of Representations and Warranties. In Startups, the Closing Certificates required in a Preferred Stock Financing are set forth in the Closing Conditions section of the Stock Purchase Agreement.

Opinion Letter: a legal opinion from lawyers on a discrete matter which will be relied on by another party (for Startups this is typically the Investor). A typical example of an Opinion Letter would be an opinion given as to whether a particular agreement is valid and enforceable in a particular jurisdiction or whether a particular party (typically the Issuer) has the capacity and authority to enter into certain agreements. In Startups an Opinion Letter is typically only seen in Preferred Stock Financings and the types of opinions that can be given are often very limited. Depending on a company's Leverage, recently some Investors have been willing to forgo an Opinion Letter as a Closing Condition.

Option: a contract issued by a company, typically pursuant to an Equity Incentive Plan, allowing the holder to acquire Stock of the company under certain circumstances (usually tied to Vesting over a period of continued employment) upon the payment to the company of the Exercise Price. For Startups, Option grants are a key means of attracting talent, incentivizing Employees and providing adequate compensation (when cash is tight).

Option Agreement: agreement that sets forth the terms and conditions of an Option, including, among other things, the number of Shares subject to the Option, the Exercise Price and the Vesting Schedule (if any).

Option Pool: the number of shares of Common Stock set aside and reserved for issuance under a company's Equity Incentive Plan, which can be increased over time by amending the Equity Incentive Plan (an act requiring both Board and Stockholder consent).

Optional Conversion: conversion of Preferred Stock at the Option of a Preferred Stockholder. Compare to Mandatory Conversion.

Organizational Documents or Org Docs: typically refers to a corporation's Charter and Bylaws.

Original Issue Price: price at which Equity was originally issued, subject to adjustment upon the occurrence of certain events set forth in the Charter (such as Stock Splits, Dividends, Recapitalizations, etc.).

Outstanding Shares: Shares of a company that are actually issued and outstanding as opposed to reserved for future issuance (such as a reserved Option Pool) or issuable pursuant to outstanding Options, Warrants or other Convertible Securities that have not yet been exercised.

Oversubscription Privilege: the ability for holders of Preemptive Rights to purchase more than their specified Pro Rata Amount of Shares if other holders do not elect to purchase their entire Pro Rata Amount.

Par Value: the face value of shares of a company's Stock as set forth in the company's Charter and the minimum amount per Share at which Stock can be sold under the corporation statutes of most jurisdictions.

Pari Passu: If your Latin is a little rusty, this means "on equal footing" or equality of treatment, *e.g.*, in a right of payment. In Startups, Pari Passu typically describes classes of Preferred Stock that have the same rights (as set forth in a company's Charter).

Participating Preferred (with and without cap): Preferred Stock that receives both its Liquidation Preference and is then treated as if it was converted to Common Stock and also gets to participate in any assets distributed to the holders of Common Stock (or up to a certain specified amount if there is a cap). Participating Preferred is the most Investor friendly Liquidation Preference and allows the holders of Preferred Stock essentially to get the best of all worlds. Compare to Non-Participating Preferred.

Participation Rights: right to participate in the Distribution of assets to Common Stock upon a Liquidation held by holders of Participating Preferred. "Participation Rights" is also a phrase used at times to refer to Preemptive Rights.

Partnership: a legal entity, which is an association of two or more individuals or entities to carry on a business created under state law. A Partnership is taxed as a pass-through entity (*i.e.*, not separately taxed on its own income) and is usually governed by a Partnership Agreement, the mandatory contents of which are specified by the relevant law.

Partnership Agreement: the agreement among partners of a Partnership governing their relative rights and obligations among one another with respect to the Partnership. See also Partnership.

Patent: the grant of a property right to an inventor issued by the US Patent and Trademark Office in exchange for public disclosure of the invention. The term of a new Patent is generally 20 years from the date on which the Patent application was filed. A Patent provides the owner with the right to exclude others from making, using, offering for sale or selling the invention in the US and the holder of the Patent must enforce this right. A Patent is a form of Intellectual Property and applicants can seek either a utility or design Patent depending on the nature of the invention. A formal registration and payment of the associated registration fees are required in order to receive a Patent.

Pay to Play: provision pursuant to which Stockholders are required to invest their Pro Rata Amount in future Financings or face a negative consequence. These consequences can range from forced conversion to Common Stock or conversion to Common Stock at a punitive Conversion Ratio or the loss of other preferential rights provided to the Preferred Stockholders.

Periodic Reports: the annual report on Form 10-K and the quarterly reports on Form 10-Q required to be filed with the SEC by all US public companies. US federal securities laws specify precisely who is required to file these reports, but as a general matter, the reports are filed by companies that have completed an IPO, have Securities listed on an exchange, or have a class of Securities registered under the Exchange Act.

Per Share Price: price paid for one Share of Stock.

Piggyback Registration Rights: Registration Rights that permit holders of Private Securities to "piggyback" into a Registration Statement originally filed by the Issuer for a separate purpose. These rights give the holder the ability to "jump onto" an offering that another party (either the Issuer itself or another Security holder) initiated. In Startups, these rights are typically set forth in the Investor Rights Agreement entered into in connection with a VC Financing. Compare Demand Registration Rights.

PIPE: acronym for "private investment in public Equity." In a PIPE transaction, a Public Company issues Equity Securities to Institutional Investors in a Private Placement and, if required for the relevant jurisdiction, undertakes to register the Equity Securities for public resale promptly after the transaction closes.

Pitch: a presentation that entrepreneurs make to Investors or other constituents to describe why the company is a good investment, often focusing on a description of the company, its products or services, the problem the company is trying to solve, the market opportunity, financial projections and what the funding will be used for, among other things. If the pitch is a hit, you may enjoy a home run. See Elevator Pitch.

Pivot: to change directions. For a startup this typically means when the company decides to go after a different market or product or use a product/service for a different purpose then originally intended.

Placement Agent: in a Private Placement, the agent responsible for introducing the Issuer to QIBs and Accredited Investors that may purchase Securities of the Issuer on the terms and conditions set forth in the Private Placement Memorandum (typically a Stock Purchase Agreement in VC Financings) or the Note Purchase Agreement.

Portfolio Company: a company that has been invested in by a Venture Capitalist and now sits in that Venture Capitalist's "portfolio" of companies.

Post-Money Valuation: the valuation of a company after giving effect to a Financing. For example, if a company has a Pre-Money Valuation of US$20 million and raises US$10 million, the Post-Money Valuation is US$30 million (the Price Per Share in the last Financing multiplied by the Fully Diluted Shares in a company immediately after that Financing will also give you the Post-Money Valuation).

Pre-Closing: the night before Closing when you complete all the work so you can have a smooth Closing the next day. Don't plan on getting much sleep.

Pre-Seed Financing: a relatively new investment choice, typically in the six-figure or lower realm, that some Startups complete after or concurrent with the Friends and Family Round and before Seed Capital is raised. With some Seed Capital Investors raising larger amounts for larger Financings, Pre-Seed Financing is becoming more common.

Preemptive Rights: the rights given to existing Stockholders to have first refusal on the transfer of existing Shares or the issue of new Shares by a company. In Startups, these rights are typically given to Preferred Stockholders in a Preferred Stock Financing and are found in the Investor Rights Agreement. Okay, technically Preemptive Rights in Delaware can only exist in the Charter, but these rights are the contractual equivalent

and generally people still (incorrectly) refer to them as Preemptive Rights. This is a Book of Jargon after all, so who are we to correct them?

Preferred Director: the Director or Directors appointed by the Preferred Stockholders pursuant to the designation rights typically provided to Preferred Stockholders in a Preferred Stock Financing and set forth in the Voting Agreement.

Preferred Stock: Stock generally issued to Investors in connection with a Financing that has preferential rights (rights not held by Common Stockholders) that are set forth in the Charter and usually include rights relating to Liquidation, Dividends, Anti-Dilution Protection and Voting Rights, among other things.

Preferred Stock Financing: a transaction in which a corporation receives funds from Investors in exchange for shares of Preferred Stock, which have certain specified "preferential" rights that are set forth in the corporation's Charter (usually as amended and/or restated in connection with the Financing) and a set of transaction documents that typically include a Stock Purchase Agreement, Investor Rights Agreement, ROFR Agreement and Voting Agreement.

Preferred Stockholder: a Stockholder that holds Shares of Preferred Stock in a corporation.

Pre-Money Valuation: valuation of a company prior to the receipt of the investment in connection with a Financing calculated by taking the Per Share Price to be paid by Investors and multiplying that amount by the number of Shares outstanding immediately prior to the Financing (including any proposed increase to the Option Pool).

Pre-Payment: the repayment of a Debt obligation prior to the Maturity Date. Pre-Payment is generally not allowed in connection with Convertible Promissory Notes (lest a company be able to pay off notes that are about to convert at an attractive price).

Private Company: a company with Stock that does not trade in public markets. The term is often used in counter-distinction to the term Public Company. All Startup companies are Private Companies until they go public in an IPO.

Private Equity: a generic term sometimes used as shorthand for a Private Equity sponsor and/or the business of raising and managing Private Equity funds, which invest primarily in mature companies with the goal of buying a controlling stake in a company to make operational and other improvements prior to an Exit. By contrast, Venture Capital, although technically also "Private Equity," generally refers to the purchase of a substantial (but usually minority) stake in a Startup viewed as having high growth potential. See Venture Capital.

Private IPO: a term coined to refer to a large private Financing (typically with a raise of more than US$40 million), including Investors such as mutual funds that are typically considered to be public market Investors, completed by a Late-Stage company that would have traditionally completed an IPO.

Private Placement: a Private Placement of Securities (rather than a Registered Public Offering) done pursuant to an exemption from Section 5 of the Securities Act. VC Financings and almost all Financings done by Startups are Private Placements. See Section 4(a)(2) and Regulation D.

Private Placement Memorandum: an information document prepared by a company, sometimes with the assistance of external Advisors such as lawyers and bankers, to market Securities of the company to potential Investors. A Private Placement Memorandum is sometimes called an offering memorandum.

Private Securities: Securities in a Private Company.

Profit: a financial benefit realized when the amount earned from a specific activity exceeds the amount spent on such activity.

Proprietary Information and Invention Assignment Agreement: an agreement that all Startups should obtain from every Employee (including the Founders) immediately prior to beginning work for the company, pursuant to which the Employee agrees to assign any relevant inventions to the company and to clarify that all work product and inventions created while working for the company belong to company. This is critical to the protection of a company's Intellectual Property. Proprietary Information and Investment Assignment Agreements are sometimes called confidential information and invention assignment agreements.

Pro Rata Amount: an amount in proportion, or prorated. For Startups, Pro Rata Amount is often used to refer to the amount of Stock one Investor will be able to purchase in a Financing pursuant to its Preemptive Rights.

Prospectus: a marketing document included in the Registration Statement filed with the SEC that registered or public offerings are effected through. Plural is "Prospectuses."

Protective Provisions: a type of veto rights that is often negotiated for in connection with a VC Financing that require the approval of the holders of a specified amount of the Preferred Stock before the corporation can take certain actions as set forth in the corporation's Charter. These actions often include amendments to the Bylaws or Charter, subsequent Equity or Debt issuances and increases to the Option Pool. Protective Provisions are one of the key ways VCs maintain some control over actions that could impact their investment even if they don't hold a majority of the Stock in the corporation or control a majority of the Board.

Public Company: a company with Shares registered under the Exchange Act.

Purchaser: another name for an Acquirer or Buyer.

Put Option: a financial contract between a Buyer and a Seller, where the Seller has the right or Option to sell a specific quantity of a commodity, Security or other financial instrument to the Buyer at prices and within time periods that are stated in the contract.

QIB: acronym for Qualified Institutional Buyer.

Qualified Financing: a Financing with negotiated parameters (*e.g.*, must raise at least US$4 million from third-party Investors) that must be met in order to trigger the occurrence of a specified event, such as the automatic conversion of Convertible Promissory Notes.

Qualified Institutional Buyer (QIB): large Institutional Investors that must have at least US$100 million invested in Securities or under management. Qualified Institutional Buyers are the permitted Purchasers of Securities in Rule 144A Financings. See Rule 144A.

Qualified Small Business Stock (QSBS): capital Stock of a domestic C Corporation that operates an active business satisfying various technical requirements set forth in the Internal Revenue Code, which must be reviewed on a case-by-case basis. For example, the corporation must use at least 80% of its asset value in the active conduct of one or more "qualified trades or businesses" (as defined in the IRC), and the corporation's "aggregate gross assets" cannot exceed US$50 million immediately after the Stock is issued. As a result, many Startups may qualify and be eligible to issue QSBS. Many companies in the new and emerging technology sector are potentially eligible to issue QSBS. From a Stockholder's perspective, the receipt of QSBS is beneficial as there is a certain level of gain exclusion from the sale of Stock if held for more than five years (note that the level of gain exclusion may vary depending on when the QSBS was acquired, but could be as much as 100% exclusion).

Ratification: approval by the Board of an action that has already occurred.

Recapitalization: an adjustment or reshuffling of a company's Capitalization, which may be treated as tax free under certain circumstances. Sometimes called a Recap.

Redeemable Preferred: Preferred Stock that has Redemption Rights (either optional or mandatory) as set forth in a corporation's Charter.

Redemption: the repurchase of Shares upon the occurrence of certain specified events at a predetermined price or formula set forth in a corporation's Charter.

Redemption Price: the price paid for Shares in the event of a Redemption as set forth in a corporation's Charter.

Redemption Rights: the right to Redemption held by certain Stockholders as set forth in a corporation's Charter. This right is often negotiated for in connection with a Preferred Stock Financing, but is becoming less common of late (and is rarely seen in West Coast VC Financings).

Registered Public Offering: a Distribution of Securities that is not exempt from registration with the SEC.

Registration Rights or Reg Rights: rights of a Stockholder to force an Issuer to register its Securities with the SEC. These rights enhance the Liquidity of the Securities because registered Securities are freely tradable. Registration Rights (or Reg Rights) can take several forms. Holders of Equity Securities obtained in a VC Financing often have rights to demand that the Issuer register its Securities or to piggyback onto an offering in which the Issuer is already engaging. See Piggy Back Registration Rights and Demand Registration Rights.

Registration Statement: the document filed with the SEC in connection with a Registered Public Offering of Securities. The Registration Statement contains the Prospectus.

Regulation A+: recent amendments to Regulation A under the Securities Act, which took effect on June 19, 2015. The purpose of Regulation A was to lessen the burden of registration under the Securities Act for small offerings. These amendments, among other things, increased the amount of capital that can be raised in Regulation A offerings from US$5 million to US$50 million over a 12 month period and created a two-tiered structure for eligible Issuers. See L&W Client Alert – SEC Adopts Regulation A+ Rules (4/7/15) for more information about Regulation A+.

Regulation Crowdfunding: final rules adopted by the SEC on October 30, 2015, permitting companies to offer and sell Securities through Crowdfunding. Regulation Crowdfunding enables Investors to purchase Securities in Crowdfunding offerings, subject to certain limitations, and require Issuers relying on Regulation Crowdfunding to disclose certain information about their business and offering, as mandated by the JOBS Act. Specifically, Regulation Crowdfunding permits an Issuer to raise a maximum aggregate amount of US$1 million through Crowdfunding offerings in a 12-month period and allow Investors to invest up to US$100,000 across all Crowdfunding offerings in the course of a 12-month period, depending on their annual income and net worth. As a result of Regulation Crowdfunding, Issuers can now conduct Securities offerings that are exempt from the registration requirements of the Securities Act, yet that are open to all types of Investors, including ordinary retail, Non-Accredited Investors. However, it is not clear to what degree Startups will utilize Regulation Crowdfunding given the relatively low investment limits, the complexity of the rules and the associated compliance costs. Issuers may instead opt to rely on other available exemptions which Issuers may use to raise capital through Crowdfunding, including SEC Regulation

A+ and Regulation D, Rule 506(c). See Latham & Watkins Client Alert No. 1893, "SEC Adopts Final Crowdfunding Rules" (November 10, 2015).

Regulation D or Reg D: spells out the rules for a valid Private Placement. Under the Securities Act, any offer to sell Securities must either be registered with the SEC or made pursuant to an exemption. Regulation D provides a safe harbor for sales of Securities in transactions "not involving any public offering" within the meaning of Section 4(a)(2) of the Securities Act (*i.e.*, the most common exemption relied upon for Private Placements). Since Regulation D was originally adopted, the availability of the safe harbor has been subject to the condition that neither the Issuer nor anyone on its behalf will engage in any form of solicitation. The JOBS Act changed all this, and as of September 23, 2013, Rule 506(c) permits general solicitation in Regulation D Private Placements where certain conditions are met, including that the Issuer take "reasonable steps to verify" that Purchasers are Accredited Investors. See Latham & Watkins Client Alert No. 1569, "You Talkin' to Me?" (July 25, 2013). See No General Solicitation.

Regulation D Offering: an offering of Securities made pursuant to Reg D.

Regulation S or Reg S: provides an exemption from the registration requirements of the Securities Act for certain offshore transactions. Most Rule 144A Financings also have a Reg S component to allow for offshore sales. Rule 144A/Regulation S Financings do not have to be registered with the SEC because the Purchasers are either QIBs buying pursuant to Rule 144A or they are outside the US and buying pursuant to Reg S (yes, US securities laws apply to a sale anywhere in the world).

Reincorporation: moving a corporation's state of Incorporation to another jurisdiction.

Reorganization: a generic term for some fundamental change in a company's Capitalization and/or in its financial and legal obligations.

Representations and Warranties: an assertion of fact in a contract (such as an Acquisition Agreement, Merger Agreement, Note Purchase Agreement or Stock Purchase Agreement). Representations and Warranties are the means by which one party to a contract tells the other party that something is true as of a particular date and if that something is not, then the company will provide appropriate disclosures in the corresponding Disclosure Schedule (or be liable for failure to disclose). Representations and Warranties can also be used to allocate a risk of unknown facts and/or future events if appropriately drafted to do so.

Reporting Company: a company that files Periodic Reports with the SEC.

Repurchase Provisions: provisions typically found in Restricted Stock Purchase Agreements issued to Founders that provide the corporation with the right to buy back any Shares that have not yet Vested when the Founder leaves the corporation.

Restricted Securities: Securities that have been issued on a private (unregistered) basis and are not yet eligible for public resale pursuant to Rule 144.

Restricted Stock: Stock not registered for sale under the Securities Act. As a result, the manner in which the Stock may lawfully be sold is restricted to Private Placements and other non-regulated transactions. With respect to equity compensation, Restricted Stock refers to Stock granted or purchased by a Founder or other early Employee who is subject to Vesting and either Forfeiture Provisions or Repurchase Provisions, usually tied to continued service. Employees who join a Startup later on in its life cycle typically receive Options instead of Restricted Stock as the Per Share Price has usually become higher than most Employees would be willing (or able) to pay upfront.

Restricted Stock Purchase Agreement (RSPA): the equity grant documentation typically used to issue Restricted Stock. This agreement typically includes the number of Shares being purchased, the Per Share Price, the Vesting Schedule, either Repurchase Provisions or Forfeiture Provisions, a ROFR and any other restrictions. Founders normally receive their initial Shares of Stock under an RSPA.

Return on Investment (ROI): a calculation used to evaluate the efficiency of an investment. ROI is the amount of proceeds received from the sale of an investment less the cost of the investment, divided by the cost of the investment. An ROI that a venture Investor might seek could range from 2x–10x depending on the stage of investment and level of execution and market risk that lies ahead at the time.

Reverse Subsidiary Merger: a Triangular Merger in which a Subsidiary of the Buyer (usually a wholly owned Subsidiary created for this purpose) is merged with and into the Target Company, and the Target Company is the surviving company in the Merger. A Reverse Subsidiary Merger is the preferred form of Triangular Merger because a Reverse Subsidiary Merger avoids issues concerning the assignability of Target Company contracts and similar rights to the Buyer or one of the Buyer's Subsidiaries. Also referred to as a Reverse Merger, Reverse Sub Merger and Reverse Triangular Merger.

Right of First Refusal (ROFR): the right held by a company to receive notice if a Stockholder subject to this right wants to sell its shares to a third party and to have the ability to purchase the offered Shares first on the same terms and conditions as proposed to the third party. Startups typically have ROFR provisions applicable to all grants of Common Stock (either found in a company's Bylaws or equity grant documentation), as a way to maintain control over who holds Stock in the company. In VC Financings, VCs often require a ROFR Agreement that extends a secondary ROFR to VCs (giving them the right to purchase the offered Shares only after the company has first passed on its ROFR). By contrast, VCs typically do not agree to have their Shares subject to a ROFR.

Rights Offering: offering of Equity made to Stockholders who have Preemptive Rights or Participation Rights with respect to a particular Financing and sometimes to other Stockholders who do not have such rights, as well.

Road Show: the trip around the country (or around the world), often on private jets, that Issuers and bankers (but not lawyers) go on in order to meet with potential Purchasers of the Securities being offered. A Road Show is the heart of the marketing process in a Registered Public Offering.

ROFR: acronym for Right of First Refusal.

ROFR Agreement: an agreement that a corporation typically enters into when it issues Preferred Stock to Investors in a VC Financing, which sets out, among other things, the ROFR held by the corporation and the Investors.

RSPA: acronym for Restricted Stock Purchase Agreement.

Rule 10b-5: the SEC rule regarding employment of manipulative and deceptive practices. Rule 10b-5 is one of the most important SEC rules. This rule seeks to prohibit fraud or deceit in connection with the purchase or sale of any Security, including insider trading.

Rule 144: a rule under the Securities Act creating a safe harbor from Underwriter status for public sales of Restricted Securities.

Rule 144A: provides a resale exemption from the registration requirements of the Securities Act. The rule permits persons who purchase Securities in Private Placements to resell them freely in the Secondary Market if (i) the subject Security is not listed on a national securities exchange and (ii) the sales are to Qualified Institutional Buyers. See Rule 144A Financings for why this rule is so important.

Rule 144A Financings: a transaction where an investment bank buys Securities from an Issuer pursuant to a Private Placement and immediately resells the Securities to QIBs in reliance on Rule 144A. Rule 144A Financings are attractive to Issuers because these transactions can be consummated without SEC registration, allowing greater speed to market.

Rule 405: contains the definitions of many terms used in other Securities Act rules. Sort of like the SEC's Book of Jargon.

Rule 501: contains the definitions and terms used in Reg D. Sort of like the SEC's Book of Jargon.

Rule 504: exemption for limited offerings and sales of Securities not exceeding US$1 million. Given the limitations of this exemption, Rule 504 is far less used than Rule 506.

Rule 505: exemption for limited offers and sales of Securities not exceeding US$5 million. Given the limitations of this exemption, Rule 505 is far less used than Rule 506.

Rule 506: one of the Section 4(a)(2) safe harbors within Regulation D that permits a Private Placement of an unlimited amount of Securities. Rule 506(b) requirements include that (i) the Issuer cannot engage in any form of general solicitation and (ii) the Issuer may only sell to Accredited Investors and up to 35 Non-Accredited Investors who have sufficient knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of the prospective investment (but if there are any Non-Accredited Investors then there are certain disclosure requirements, which Issuers tend to prefer to avoid due to the cost and time associated with drafting such disclosure). However, Rule 506(c) permits general solicitation provided all actual Investors are Accredited Investors and the Issuer has taken reasonable steps to verify that the Investors are Accredited Investors. Rule 506 exemptions are not available if the Issuer or certain associated persons are Bad Actors. See Reg D.

Runway: how much time a company can function (usually measured in months) until they run out of money (and thus need to raise additional funding). Calculated by dividing the current cash by the monthly Burn Rate.

S Corporation: a corporation that has, with the consent of its Stockholders, elected to be treated as a pass-through entity (*i.e.*, not separately taxable on its own income) for US federal tax purposes under the "small business corporation" rules in Subchapter S of the Internal Revenue Code. The Stockholders, limited to US individuals and certain trusts, thus include their pro-rata share of the corporation's income in their own tax returns. Compare to a C Corporation.

SAFE Investment: stands for "Simple Agreement for Equity (SAFE)" and was developed to provide some of the same benefits of Convertible Promissory Notes, but rather than structured as Debt, SAFE Investments are made in return for a contract to issue Equity in the future under certain conditions. Many Institutional Investors and VCs have been hesitant to use this form of investment due to the uncertainty that surrounds it as a new investment structure.

Scalable: the ability for a company to grow its market and product and service offerings exponentially faster than the need to grow the supporting infrastructure of the company. For example, a software company that has already built the software is very "scalable" because the company can easily add customers without very much additional cost to the company.

Schedule of Exceptions: another name for Disclosure Schedule.

Secondary Market: the market through which Stockholders can sell Shares they hold in a Startup directly to other interested parties. Called secondary because the primary market is when the Startup itself issues Shares directly. Formal marketplaces have recently been created to facilitate the increased interest for such a Secondary Market (NASDAQ even just purchased one of these Secondary Markets).

Secondary Sale: the sale by Stockholders of their shares to other interested parties. For practical purposes, however, the numerous Transfer Restrictions that apply to Stockholders in a Startup often make such Secondary Sales very difficult without the consent of other parties in the Startup.

Secretary's Certificate: a Closing Certificate signed by the secretary of the company. In connection with a VC Financing, this certificate typically certifies the true and complete copies of the company's Charter, Bylaws and Board and Stockholder resolutions approving the Financing.

Section 5: a fundamental section of the Securities Act that requires, absent an exemption, that a Registration Statement covering a Security be filed with the SEC before any offer is made, and be declared effective by the SEC before any sale is made. Section 5 divides the world into three distinct time periods: pre-filing (when no offers can be made), pre-effective (when no sales can be made) and post-effective (when sales can be made).

Section 4(a)(2): exempts from Section 5 of the Securities Act any offerings of Securities in "transactions by an Issuer not involving a public offering." Section 4(a)(2) is the statutory origin of Private Placements. Regulation D is the safe harbor that gives definition to this statutory provision. See Regulation D.

Section 409A: section of the IRC that deals with deferred compensation and sets out rules by which certain Equity issuances and company practices regarding Equity may be deemed deferred compensation and therefore subject to onerous tax obligations. For Startups, Section 409A most commonly comes in to play as it relates to the issuance of Options and how the company should determine the Fair Market Value for the Option grant and what factors to consider.

Securities: negotiable financial instruments that represent some type of financial value to the Issuer, such as Debt or Equity.

Securities Act: the Securities Act of 1933, as amended, which governs the registration of Securities.

Securities Exchange Act: the Securities Exchange Act of 1934, as amended, which governs the continuing reporting obligations of companies with registered Securities.

SEC: acronym for the US Securities and Exchange Commission.

Seed Capital: money invested in an Early Stage company prior to its Series A Financing for the company to pursue its Business Plan, often based on having or creating a Minimum Viable Product. Called "seed" to elicit the idea of providing the funds needed for a company to plant its seed, which will hopefully grow into a successful enterprise over time.

Seed Financing: Financing in which Seed Capital is raised by a company.

Seller: another name for a Target Company or party selling assets or Securities in a Business Combination.

Senior Debt: not a specific type of Debt, but rather a general reference to a Debt that is "higher" in the Capitalization of a company than other Debt, such as Subordinated Debt. It is better to be Senior Debt than Subordinated Debt.

Senior Securities: not a specific type of Security, but rather a general reference to a Security that is "higher" in the Capitalization of a company than other Securities. As an example, in the event of a Liquidation, holders of Senior Securities would be paid back prior to the holders of any Securities that are junior to it because such Senior Securities are higher on the Waterfall.

Service Mark: similar to a Trademark, except a Service Mark is a word, phrase, symbol and/or design that distinguishes the source of a service rather than goods.

Shares: a unit in the Equity of a company.

Shell Corporation: usually a corporation that has no individual Investors, but rather its sole Stockholder is another corporation that has set up this entity for a particular business objective.

Single Trigger Acceleration: when the Vesting that applies to either Restricted Stock or an Option is accelerated upon the occurrence of one triggering event, which is often a Change of Control of the company. Investors, like VCs, typically look less favorably upon this type of acceleration (because it is less attractive to potential Buyers who often want to see Vesting continue after an Acquisition) and will sometimes require that the Equity grant documentation be amended to delete this form of acceleration prior to a Financing. By contrast, Investors are typically more willing to allow Double Trigger Acceleration provisions.

Small Business Administration (SBA): a US government agency that provides support to small businesses and entrepreneurs.

Small Business Innovation Research (SBIR): a program run by the Small Business Administration to help certain small businesses conduct research and development through the use of contracts or grants.

Small Business Investment Company (SBIC): a privately owned investment company that is licensed by the Small Business Administration. Small Business Investment Companies supply small businesses with Financing (either Equity or Debt). SBICs provide a viable alternative to VCs for many small enterprises seeking startup capital.

Sole Incorporator: the person (typically one of the Founders) who sets up a corporation by signing and filing the initial paperwork with the secretary of state of the state of Incorporation.

Special Purpose Entity: can be used in a number of different contexts. For example, a Special Purpose Entity can be an entity formed solely for the purpose of participating in a transaction or company established within a corporate group in such a way as to prevent the insolvency of that company from affecting any other company within the group, often for a limited corporate purpose. A typical example would be when a Special Purpose Entity is set up for the purpose of acquiring or operating a particularly risky asset or making investments. Also known as a "Special Purpose Vehicle." Special Purpose Entities are often used to accomplish off-Balance Sheet arrangements.

Spin Off: the division of a business into two or more separate legal entities.

Startup: a new business which can be on any scale — but most Startups start off small and hope to see significant growth over time.

Statutory Voting: vote required by statute as opposed to Voting Rights established by contract.

Stock: Shares in a company/corporation.

Stock Certificate: instrument or piece of paper that represents the Stock an Investor, Employee, Consultant or Director owns in a company. In the old days, a Stock Certificate used to be an extremely important piece of paper (often kept in a safe deposit box or held in a vault). Today, with electronic records and tracking, having an actual Stock Certificate is no longer as exciting (as evidenced by the shift in many Startups to Uncertificated Shares).

Stock Purchase Agreement: agreement by which an Investor purchases and a company issues Shares of Stock (typically Preferred Stock, but can also be used for the issuance of Common Stock). This agreement typically includes, among other things, Representations and Warranties made by the company, a list of Closing Conditions and a schedule of Investors participating in the Financing.

Stockholder: a person or entity who holds Stock in a company.

Stock Split: where the existing Shares of a company are split to create more Shares for the existing Stockholders, with the Stockholders' proportionate shareholdings remaining the same. Used, for example, to facilitate a Spin Off.

Straight-Line Vesting: when a Vesting Schedule provides for linear Vesting, or Vesting at a constant rate over time. A common example of this type of Vesting for Startups would be monthly Vesting during the last three years of a typical Vesting Schedule.

Strategic Acquisition: where a Buyer purchases a Target Company for a particular commercial reason, such as to create certain synergies with, or to obtain particular assets expected to add value to, the Buyer's existing business interests. Buyers in Strategic Acquisitions frequently operate in the same or related industries as the Target Company.

Strategic Investor: an Investor who is not an Institutional Investor, VC or Private Equity Investor, but rather an entity that invests in a company for a particular commercial reason and is often in the same or a related industry as the company it is investing in.

Subordinated Debt: sits in-between Senior Debt and Equity in the Capitalization. VCs providing Bridge Financing to a Portfolio Company will be required to be subordinated to any other existing bank Debt.

Subscription Agreement: this is an agreement by which an Investor subscribes for the purchase of Shares of Stock from a company, similar to a Stock Purchase Agreement.

Subsidiary: a company that is owned by another company, which is the Subsidiary's parent entity.

Sweat Equity: where a party receives an ownership interest in a business or project in return for non-financial contributions, such as their work or effort (and, by proxy, their blood, sweat and tears). Founder Shares are considered Sweat Equity.

Tag Along Rights: the contractual rights of a minority Stockholder to be included in (or to tag along in) a transaction where the majority Stockholder is selling its interests to a third party. Compare Drag Along Rights. Also referred to as Co-Sale Rights. In Startups, if Tag Along Rights were negotiated for in connection with a Preferred Stock Financing, these rights would typically be found in the ROFR Agreement.

Target Company: commonly used name for the company or business purchased in a transaction in which the economic buying and selling entities are discernible.

[fill-in-the-blank]-tech: a term used to describe the application of technology to a specific industry. Some common examples include: adtech, agtech, cleantech, edtech, fintech, regtech, etc.

Tender Offer: a unilateral offer by a Buyer to purchase a Target Company's Securities directly from the owners of those Securities, usually for all cash. A Tender Offer, unlike a Merger Agreement, does not need the assent of the Target Company, which is not a party to the transaction.

Term Sheet: summary of a transaction's principal terms. Term Sheets are very common in Financings and are also very common for proposed Acquisitions of non-public Target Companies, transactions which do not require public disclosure of the negotiations. Investors typically provide Startups with their proposed Term Sheet, which is then negotiated before a decision is made to move forward with the Financing. Term Sheets are rarely intended to be binding and ordinarily should contain a specific provision to that effect. A Term Sheet is normally intended simply to serve as a guide to assist in the preparation of definitive documents for the transaction. There are instances, however, in which a party has tried, sometimes successfully, to enforce a Term Sheet in court.

Traction: when a product or service begins to be used or purchased, essentially a proof of concept.

Trademark: a word, phrase, symbol and/or design that distinguishes the source of goods of one party from another party. In some cases, people use this term to refer to both Trademarks and Service Marks. While Trademarks in the US do not require federal registration, registration does provide certain advantages.

Trade Secret: a formula, device, technique, process or other important component of a business that derives economic value from not being generally known or ascertainable and over which a company takes reasonable efforts to maintain its secrecy. A good example of a Trade Secret is the Coca Cola recipe.

Tranche: French for a slice or a portion, commonly used to describe each time an investment is made in connection with a Financing that has multiple Closings. As an example, if a Series A Financing has three Closings, you could refer to this as a Financing with three Tranches.

Transaction Documents: the principal documents involved in a particular transaction. In a Preferred Stock Financing, the Transaction Documents typically include a Stock Purchase Agreement, amended and restated Charter, Investor Rights Agreement, ROFR Agreement and Voting Agreement.

Transfer Restrictions: restrictions that limit a Stockholder's ability to transfer Shares of Stock in a company typically set forth by statute, provisions in a company's Organizational Documents or provisions in the Equity grant documentation. In Startups, most Common Stock is subject to Transfer Restrictions in the form of a ROFR. Holders of Preferred Stock may also be subject to a ROFR, although this is not very common for VCs (it is more common, however, for Private Equity Investors holding Preferred Stock to accept such restrictions).

Treasury Stock: Issued Shares that are purchased by the Issuer and not returned to the status of authorized but unissued Shares. Treasury Stock thus remains issued but not outstanding (*i.e.*, held by third parties).

Triangular Merger: a Merger in which the Target Company and a Subsidiary of the Buyer are merged, with the result that the Buyer becomes the owner (usually of all the Equity) of the resulting merged entity. Triangular Mergers are by far the most common Merger structure because they do not impact any of the Buyer's legal, corporate and tax attributes.

Uncertificated Shares: shares of Stock issued and recorded in Book Entry form only, with no Stock Certificate issued. Now that Stock Certificates aren't as novel and "cool" as they were back in the day, this form of issuance has become more common, especially in Startups, where skipping Stock Certificates can not only save time and money, but reduce administrative headaches.

Underwriters: the investment banks that buy Securities in the initial purchase from the Issuer and then immediately resell these Securities to the public in a Registered Public Offering. More technically, and in brief, Section 2(a)(11) of the Securities Act defines an Underwriter as any person who has purchased a Security from an Issuer or a controlling person of an Issuer with a view to distributing the Security.

Underwriting Agreement: the contract pursuant to which Underwriters agree to purchase Securities from an Issuer. In Rule 144A Financings and Regulation S offerings, the comparable contract typically is referred to as a purchase agreement.

Unicorn: term coined in the last few years to refer to a Startup with a Valuation more than US$1 billion. When this term was first created, Startups with this high valuation were rare, hence the mythical name. Today, however, the existence of Unicorns has become much more common, so maybe we should start referring to them as thoroughbred horses instead (still valuable, but not as rare).

Unicorpse: a Startup that was once a Unicorn, but is now valued at less than US$1 billion or has since failed before going public.

Valuation: the value of a company. This value can refer to either Enterprise Value or Equity Value, which is often the same for Early Stage Startups with little cash and no Debt. A VC discussing Valuation is almost certainly referring to Equity Value.

Valuation Cap: a term that could be negotiated for in a Convertible Debt Financing, which essentially means that when the Convertible Promissory Notes convert in a future Preferred Stock Financing there is a cap/limit on the Pre-Money Valuation that will be used to determine the conversion (essentially providing protection for those Investors who were willing to come in early). As an example, if there is a US$10 million Valuation Cap in a Convertible Note Financing and the Financing Round that will trigger the conversion has a Pre-Money Valuation of US$20 million, the holders of the Convertible Promissory Notes would convert into Preferred

Stock at the lower US$10 million Valuation because of the Valuation Cap (which, in this example, means they enjoy a 50% discount off the price paid by the new Investors in the Preferred Stock Financing and therefore receive twice as many Shares than they would have received at the US$20 million Pre-Money Valuation).

VC: acronym for Venture Capital or Venture Capitalist, as the case may be.

VCOC: acronym for Venture Capital Operating Company.

Venture Capital Financing or VC Financing: a Preferred Stock Financing led by Venture Capitalists.

Venture Capital: risk capital in the form of Equity (or sometimes Debt) that an investment institution provides to back a business, typically a Startup, which is expected to grow quickly in value. Compare to Private Equity.

Venture Capitalist: person or investment firm that provides Early Stage funding to a company in return for an Equity interest. Often Venture Capitalists will bring technical or other expertise to the company. Most Startups spend weeks, months or even years trying to network and get meetings with VCs in order to Pitch their company in hopes of receiving an investment. VCs are irreverently referred to sometimes as vulture capitalists because they may take a large Equity position for a relatively low price. See also Angel Investor and VC.

Venture Capital Fund: the source of a Venture Capitalist's investment funds. Venture Capitalists typically form Venture Capital Funds pursuant to existing law and then draw from this fund in order to make investments in Portfolio Companies.

Venture Capital Operating Company: a type of operating company that satisfies certain requirements, including, among others, that at least 50% of fund assets be invested in operating companies in which the fund has direct contractual "management rights" in order to be deemed not to hold plan assets subject to ERISA. VCOC's typically require a Management Rights Letter be executed in connection with all of its portfolio investments in order to help maintain the VCOC classification.

Venture Debt: increasingly popular form of funding for Startups. There are specific banks who play in this space.

Vesting: a technique commonly used in relation to Options or Restricted Stock granted to Employees and other service providers in Startups, whereby the rights to exercise the Option or the ability to hold the Restricted Stock free from the risk of Forfeiture/Repurchase Provisions are released to the holder in a staggered manner, becoming exercisable or held clear of restrictions at certain points over a specified time frame or upon the occurrence of specified Milestones. Vesting is viewed by VCs

as the way to ensure that the very Founders these VCs are investing in have skin in the game. As a result, while many Founders may not want to apply Vesting on their shares, it is generally smart to put Vesting in from the beginning, not only to make the company more attractive to potential Investors, but also to minimize the risk of having to amend equity grant documentation at the time of a Financing to add Vesting (which would likely be on much less Founder-favorable terms). In addition, while all Founders think they are the perfect team when they start out, sometimes things don't work out as planned. If there is no Vesting in place, then the Founder who leaves the company gets to keep all of his/her shares even though he/she is no longer working at the company — essentially getting a "free ride." By contrast, if Vesting is applied to the Founder Shares, Vesting serves to protect the Founders who stay against the "free rider" problem.

Vesting Commencement Date: the date from which the Vesting Schedule starts. For Employees, the Vesting Commencement Date is most commonly the first date of employment. By contrast, for Founders, this date is often a prior date, representing the time at which the Founders began working on the Startup (which can even be a date prior to Incorporation in order to give Founders credit for work done in advance of Incorporation).

Vesting Schedule: the schedule provided in the applicable equity grant documentation (typically either an Option Agreement or Restricted Stock Purchase Agreement) that sets forth the Vesting terms for the grant. A typical Vesting Schedule provided to Employees in a Startup is four years, with Cliff Vesting for the first year and monthly Straight-Line Vesting thereafter (*i.e.*, 25% of the total Shares vest after year one and monthly Vesting then occurs during years two through four, so that if you leave the company at the end of year two, you will have only earned half of your Shares).

Voting Agreement: an agreement that a company typically enters into when it issues Preferred Stock to Investors in a VC Financing, which sets out, among other things, the rights of various parties to designate Directors to the Board and includes the Drag-Along provisions.

Voting Right: generally, a Stockholder's right to vote on certain matters pertaining to the company.

Warrant: a Convertible Security setting forth a time period within which the holders may buy Securities from the Issuer at a given price (the "strike" or "exercise" price). Sometimes included as a sweetener in a Convertible Debt Financing or Equity Financing or given to an entity as consideration for services provided to a Startup (as only individuals, not entities, can receive grants under an Equity Incentive Plan).

Warrant Coverage: the percentage of the dollar amount of an Investor's investment that the issued Warrant represents. So if an Investor purchases 1 million shares at a price of US$1 per share for a total investment of US$1 million and the terms of the Financing provide for 10% Warrant Coverage, the Investor would then also receive a Warrant to purchase 100,000 shares at an Exercise Price of US$1 per share.

Waterfall: sometimes called a "payment waterfall," generally refers to the order of application of funds or proceeds. Think of the funds in question as water running down a flight of stairs with a bucket placed on each step — the water (money) flows to the top step first and fills that bucket before the overflow continues on to the second step, and fills that bucket before proceeding to the third step, etc. So, if your deal is that you get paid before someone else, your proverbial bucket will be placed higher in the Waterfall. The person most likely to be left with an empty bucket (or in practice, an unpaid obligation) is, of course, whoever is at the bottom of the Waterfall, which are the holders of Common Stock (most often held by Employees and Founders) in Startups.

Weighted Average Anti-Dilution Protection: the most common form of Anti-Dilution Protection seen in VC Financings. Weighted Average Anti-Dilution Protection applies a formula (see below) that adjusts the rate at which Preferred Stock converts into Common Stock so that existing holders of Preferred Stock will see their Conversion Price reduced (and therefore be entitled to more shares of Common Stock upon conversion) if the company issues Equity with a lower price per share in a later Financing. There are two common flavors of Weighted Average Anti-Dilution Protection, broad-based and narrow-based. In broad-based, "A" (see below) includes Common Stock issuable for outstanding Options, reserved for issuance under the Option Pool and all other Convertible Securities. By contrast, in narrow-based, "A" (see below) typically just includes conversion of the actual Shares outstanding and not any Options, Warrants or the Option Pool.

New Conversion Price = Old Conversion Price x ((A+B) / (A+C))

A = the number of shares of Common Stock outstanding immediately prior to the new dilutive issuance.

B = the number of shares of Common Stock issuable for new amount raised at Old Conversion Price.

C = the number of shares of Common Stock actually issuable for new amount raised.

Written Consent: a signed writing by either the Board or Stockholders of a company that approves certain actions in lieu of voting at a meeting.

Written Consent of Directors: the Board's signed writing that approves a course of action. Under many state corporation laws and most Bylaws, Directors are permitted to act by Written Consent in lieu of voting at a meeting, by a unanimous vote. For Startups, especially those in the Early Stages, Written Consent of Directors is the most common way a Board takes an action. More frequent formal Board Meetings start occurring after the initial VC Financing, when a Venture Capitalist usually joins the Board.

Written Consent of Stockholders: a signed writing by Stockholders that approves a course of action. Under many state or national corporation laws and most Bylaws, Stockholders are permitted to act by Written Consent in lieu of voting at a meeting, either by the same majority vote that would be required at a meeting or by a unanimous vote. In Startups, Stockholders almost always act by Written Consent and very rarely, if ever, hold formal meetings.

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