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启动财务

企业初创阶段筹集资金指南

[美] 罗伯特·布朗 (Robert Brown)
艾伦·S·格特曼 (Alan S. Gutterman) / 著

Financing
Start-ups

How to Raise
Money for

Emerging Companies



本书附光盘



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图书在版编目(CIP)数据

启动财务/[美]布朗等著. —影印本. —北京: 中信出版社, 2003.12

书名原文: *Financing Start-ups: How to Raise Money for Emerging Companies*

ISBN 7-80073-965-1

I. 启… II. 布… III. 企业管理: 资金管理-英文 IV. F275.1

中国版本图书馆CIP数据核字(2003)第102097号

Financing Start-ups by Robert Brown and Alan S. Gutterman

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启动财务——企业初创阶段筹集资金指南

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责任编辑: 李 莎

出版发行: 中信出版社(北京市朝阳区东外大街亮马河南路14号塔园外交办公大楼 邮编 100600)

经 销 者: 中信联合发行有限公司

承 印 者: 北京牛山世兴印刷厂

开 本: 787mm × 1092mm 1/16

印 张: 51.75 字 数: 775千字

版 次: 2004年1月第1版

印 次: 2004年1月第1次印刷

京权图字: 01-2003-5916

书 号: ISBN 7-80073-965-1/F · 608

定 价: 119.00元(含光盘)

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HIGHLIGHTS

Financing Start-Ups

How to Raise Money for Emerging Companies

by Robert Brown and Alan S. Gutterman

This revolutionary guide delivers practical strategies for financing companies of all sizes in all stages of development. From primary financing through initial public offering and beyond, *Financing Start-Ups* will tell you how to zero in on the real amount you need; learn how and whom to ask; negotiate so you get what you want; comply with tricky federal and state securities laws; develop an impressive business plan that puts your funding to work; build a long-term financing strategy that keeps you growing; position your company for successive financing stages; take advantage of little-known, alternative sources of financing; and value your business.

2003 Edition

The 2003 Edition includes new and updated information, including the following:

- Description of financing phases — pre-seed, seed, development, first round, and public markets;
- Coverage of Internet securities developments;
- New vignette on selecting the correct bank;
- New chapter on financing R&D through investment partnerships and corporate partnering;
- Detailed description of dot.bombs, the lessons to be learned, and is now the right time to start a business; and
- New agreements, including right of first refusal and co-sale agreement, and amended and restated articles of incorporation.

5/02

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中文版序

以一句很多人使用的话说，会计行业近两年正处于争论的漩涡之中。

2001年以来，美国爆发一系列财务虚假案，使得安然、世通等巨型公司破产，也导致安达信这样一个有着九十多年历史的世界级会计师事务所饱含屈辱地退出审计市场。安然和世通等事件的影响巨大，损失了几十亿美元的价值。人们开始质疑，这些巨人公司的账面价值到底在多大程度上是真实的？事实上，公众对这种价值创造所依赖的会计和财务制度的信任已经动摇。为了重树公众信心，美国制定颁布了《公众公司会计改革和投资者保护法》(Public Company Accounting Reform and Investor Protection Act of 2002)，简称为《萨宾纳斯—奥克斯莱法案》(Sarbanes-Oxley Act)，对美国而且对世界各国会计、公司治理以致整个证券市场，都产生了相当大的影响。

在中国，上述问题也一样沉重。由于与会计信息相关的违规行为而被证监会查处，或被沪深证交所公开谴责和批评的上市公司，已经是越来越多。在一张张让人不放心的公司财务报表面前，公众感到疑惑，无所适从。银广夏和中天勤案件的查处，让会计师和注册会计师面临空前的信任危机，会计和审计专业的信誉面对巨大的挑战。

在会计信息和资本市场问题上，存在着一个“公司财务报告供应链”。谁组成了公司财务报告供应链呢？毫无疑问，公司财务报告供应链启动于公司内部管理层，他们是原始会计信息的拥有者，他们负责编制和向投资者与其他利益相关者提供财务报表，并承担会计信息质量的最终责任。实务中，会计报表和财务报告由CFO领导下的公司财务报告系统编制，由CPA进行独立审计鉴证，经过董事会批准和股东大会通过后予以公布，还要由证券分析师进行分析，由媒体进行信息传播。在获得上述直接和间接财务信息的基础上，投资人和其他利益相关者做出自己的决策。

显然，这个长长的公司财务报告供应链由许多环节组成，每个环节都有不同的供给方和需求方。

从公司财务报告供应链的视角看，应该说，财务信息的可靠性是由链条中的所有各方共同保证。当然，社会和公众有理由对链条中最为重要的两个环节——会计师和审计师——提出更高、更严格的要求。会计师和审计师必须在具备诚信度的同时，把透明度和受托责任奉为职业要素。

写了以上几段话，是为了引出对本套中信财会图书馆影印系列专业书籍的认识和介绍。这套系列丛书包括12本书。大体上可以归为三类：

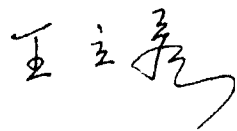
第一类：《会计案头必备：财会人员日常速答手册》、《金融工具——会计及财务报告综合指南》、《商业企业与工业企业财务比率年鉴》、《购买和出售企业专业指南：税收、价值评估、法律和会计核算》、《启动财务——企业初创阶段筹集资金指南》。这几本书的内容聚焦于企业会计和

财务管理人员的日常专业工作。

第二类：《审计委员会——公司董事、管理层以及咨询人员指引》、《会计违规和财务欺诈》、《审计程序》、《审计人员风险管理指南：审计与企业风险管理的结合》。这几本书的内容聚焦于审计方面，维护财务信息质量是共同主题。

第三类：《欧洲会计指南》、《国际会计准则指南》、《FASB准则的再阐释与分析：GAAP指南》。这几本书的共同主题是会计规范。

总而言之，这12本书是一套财会方面的好书，既包含有详细的专业规范，又包含了丰富的实务经验，具体应该特别指出以下重要话题：其一，与公司治理有关的机制问题，《审计委员会——公司董事、管理层以及咨询人员指引》非常值得细读；其二，有关《萨宾纳斯—奥克斯莱法案》的问题，在《会计案头必备：财会人员日常速答手册》一书中专设一章“The Sarbanes-Oxley Act of 2002”予以介绍；其三，《购买和出售企业专业指南：税收、价值评估、法律和会计核算》、《启动财务——企业初创阶段筹集资金指南》等书的主题，不在会计、审计方面，而是专项财务管理；其四，我国会计界对英美制度关注比较多，而对欧洲国家的会计制度了解很少，对此，阅读《欧洲会计指南》会有收益。



2003年初冬

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**To Keith Dunford,
the Impresario
of Entrepreneurs**

ABOUT THE AUTHORS

Robert Brown is a member of Greenebaum Doll & McDonald. He has a Ph.D. from Cambridge University and a Masters degree from Jochi University in Tokyo. During three years of law school, he earned J.D., M.B.A., and Masters degrees from the University of Louisville. Dr. Brown is admitted as an attorney in New York, Washington D.C., California, and Kentucky, and he is qualified as a solicitor in England and Wales, and in Hong Kong. For the past 25 years, he has worked closely with start-up companies as an investment banker and attorney, serving both in-house and as an outside advisor. His previous experience includes assignments in London, New York City, Tokyo, San Francisco, and San Diego. Dr. Brown has taught courses at the law schools of the University of San Francisco and the University of California, Berkeley.

Alan S. Gutterman is an author, consultant, and attorney in private practice in the San Francisco Bay Area. He has over 20 years of experience in representing start-up companies and has recently served as chief operating officer and general counsel of a new media services company in California. He has been a partner in a prominent U.S. law firm in San Francisco and a partner in a Bay Area investment firm. He has a Ph.D. from Cambridge University, a D.B.A. from Golden Gate University, and law and M.B.A. degrees from the University of California, Berkeley. He is a leading author on international and business law issues and is active in state and national bar associations. Dr. Gutterman has taught courses at the law schools of the University of San Francisco and the University of California, Berkeley.

PREFACE

Each year thousands of new companies are established. A few will be successful, employ new workers, and provide lenders and investors with returns on their money. Most, however, will not. Often, the critical difference is the ability to raise and manage money to finance start-up and growth.

This book will help you understand what it takes to raise and keep money. Its focus is small business operating in the corporate form, since most lenders and investors will insist on a corporate structure.

In Part I, we describe general finance issues and financing instruments, including equity securities such as common and preferred stock, debt securities, and convertible instruments.

In Part II, we provide an overview of what is the primary regulatory consideration in capital raising: federal and state securities laws. Included in this section are chapters that show how these laws apply to specific financing transactions (private placements, venture capital investment, public offerings, and underwriting arrangements). We also discuss the trading of securities among investors, what it means to be a public company, and liabilities if you get the rules wrong.

In Parts III and IV we turn to the two main types of financings: private and public. In Part III we describe private financing sources:

- **Alternative sources**, such as internal funds, vendor financing, strategic partners, private loans, commercial loans and leases from financial institutions, and government funding programs; and
- **Private offerings**, such as sales to a small group of private or institutional investors and venture capital financings.

In Part III we also discuss the actual process of raising money: looking for funding, valuing the company, writing a business plan, organizing the road show, negotiating the term sheet, conducting due diligence, and closing the deal.

In Part IV, we turn to public offerings, including underwriting, distribution, Internet sales, and trading.

In Part V, we apply the lessons in the previous chapters to two case studies: the first describes how to finance research and development; the second covers what we can learn from dot.bombs.

In the appendices, we include various forms you are likely to need in raising money. We also include important debt and equity funding sources.

Our objective is to provide an overview of the legal and business issues that arise in obtaining and managing funding. Interspersed throughout the book are vignettes from chief executive officers, chief financing officers, and their advisors, describing their personal experiences in raising and maintaining money for emerging companies.

Acknowledgments

James Michener once wrote that the key to an author's success is the editor. Fans of Max Perkins (editor of Fitzgerald, Hemingway, Wolfe, and Jones) will understand what he meant. We have been blessed with two of the best. Jonathan Koschei, as the senior acquisitions editor, and Rosemary DeStefano, as the developmental editor, are the architects of our vision. JoAnn Koppany is the carpenter who sanded out our rough spots, hammered the nails down, and brought the pieces together. We also wish to thank Lauren Humiston for much of the technical data in the CD-ROM and Elaine T. Hackett, a legal assistant, at Greenebaum Doll & McDonald PLLC for double-checking the blueprints.

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System Requirements

- IBM PC or compatible computer with CD-ROM drive
- Microsoft® Word 6.0 (or above) for Windows™, Adobe Acrobat Reader 4.0 (or above), WordPerfect® 7.0 (or above) for Windows™, or compatible word processor
- 7 MB available on hard drive (if you wish to place CD contents on your hard disk)

The CD-ROM provided with the 2003 edition of *Financing Start-Ups* contains RTF (Rich Text Format) and Acrobat® PDF (Portable Document Format) files, which correspond to Appendices A–K of the book, including a sample business plan, venture capital funding sources, a list of SBA offices, bank funding sources, sample term sheets, a sample document/due diligence request/checklist, and other sample forms (subscription

agreement, placement agent agreement, private placement memorandum, private placement purchase agreement, investors' rights agreement).

The list of the Computer Disc Contents is available on your CD-ROM in a file called `_Contents.rtf`. Open the file `_Contents.rtf`. To open any listed file, click on the hyperlinked filename. If your word processor doesn't support hyperlinked documents you will need to open each document directly. You can open the contents file and view it on your screen or print a hard copy to use for reference.

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Wherever possible, the text of the documents has been formatted so that you can modify the text without altering the format of the documents.

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Microsoft Word is equipped with search capabilities to help you locate specific words or phrases within a document. The Find option listed under the Edit menu performs a search in Microsoft Word.

Important: When you are finished using a file you will be asked to save it. If you have modified the file, you will want to save the modified file under a different name rather than the name of the original file. (Your word processing program will prompt you for a file name.) This will enable you to reuse the original file without your modifications.

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If you are having difficulty printing your document, the following suggestions may correct the problem:

- Select Print from the Microsoft Word File menu. Then choose the Printer function.
- Ensure that the correct printer is selected.
- From this window, choose Options.
- In the media box, make sure that the paper size is correct and that the proper paper tray is selected.
- Check your network connections if applicable.
- If you still have trouble printing successfully, it may be because your printer does not recognize the font Times New Roman. At this point, you should change the font of the document to your default font by selecting the document (CTRL + A) and then choosing Font from the Format menu and highlighting the name of the font you normally use. Changing the font of the document may require additional adjustments to the document format, such as margins, tab stops, and table

cell height and width. Select Page Layout from the View menu to view the appearance of the pages before you try to print again.

Software Support

If you experience any difficulties installing or using any of the word processing documents and cannot resolve the problem using the information presented here, call our toll-free software support group hotline at (800) 486-9296 (hours of operation are 8 a.m. to 5:00 p.m., Eastern time, Monday through Friday) or send e-mail to aspentechsupport@libera.com.

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