

TABLE OF CONTENTS

CHAPTER 1

Introduction

§ 1.01	Business Separation Choices	1-1
§ 1.02	Labels.	1-3
§ 1.03	Purposes of Business Separation Transactions . . .	1-5
§ 1.04	History of Business Separation Transactions. . . .	1-8
	[1] Spin-Offs.	1-8
	[2] Split-Ups and Split-Offs.	1-10
	[3] Subsidiary IPOs	1-10
	[4] Tracking Stock Transactions	1-11
	[5] Sales of Subsidiaries and Business Divisions.	1-12
§ 1.05	The Stock Market Impact of Business Separation Transactions	1-14
§ 1.06	Failed Business Separation Transactions	1-17
§ 1.07	Conclusion.	1-18
§ 1.08	Selected Recent Business Separation Transactions	1-19

CHAPTER 2

An Overview of Business Separation Transactions

§ 2.01	Introduction	2-3
§ 2.02	Spin-Off Transactions	2-4
	[1] Basic Structure	2-4
	[2] Purpose of Spin-Off Transaction.	2-4
	[3] Corporate Law Issues.	2-8
	[4] Securities Law Issues.	2-9
	[5] Fraudulent Conveyance Issues.	2-9
	[6] Tax Issues	2-9
	[7] Employee Issues.	2-10
	[8] Financing Alternatives: Monetization and Recapitalization.	2-11

	[9]	The Role of Investment Bankers and Banker Opinions.	2-12
	[10]	Documentation	2-12
	[11]	Timing of Spin-Off Transactions.	2-13
§ 2.03		Split-Off Transactions.	2-15
	[1]	Basic Structure	2-15
	[2]	Purpose of Split-Off Transaction.	2-15
	[3]	Corporate Law Issues.	2-16
	[4]	Securities Law Issues.	2-17
	[5]	Fraudulent Conveyance Issues.	2-17
	[6]	Tax Issues	2-17
	[7]	Employees Issues	2-17
	[8]	Financing Alternatives	2-18
	[9]	The Role of Investment Bankers and Banker Opinions.	2-18
	[10]	Documentation	2-18
	[11]	Timing of Split-Off Transactions	2-19
§ 2.04		Split-Up Transactions	2-20
	[1]	Basic Structure	2-20
	[2]	Purpose of Split-Up Transaction	2-20
	[3]	Corporate Law Issues.	2-20
	[4]	Securities Law Issues.	2-20
	[5]	Fraudulent Conveyance Issues.	2-21
	[6]	Tax Issues	2-21
	[7]	Employee Issues.	2-21
	[8]	Financing Alternatives	2-21
	[9]	The Role of Investment Bankers and Banker Opinions.	2-22
	[10]	Documentation	2-22
	[11]	Timing of Split-Up Transactions.	2-22
§ 2.05		Subsidiary IPOs.	2-23
	[1]	Basic Structure	2-23
	[2]	Purpose of a Subsidiary IPO	2-24
	[3]	Corporate Law Issues.	2-24
	[4]	Securities Law Issues.	2-24
	[5]	Fraudulent Conveyance Issues.	2-25
	[6]	Tax Issues	2-25
	[7]	Employee Issues.	2-26
	[8]	Financing Alternatives	2-26
	[9]	The Role of Investment Bankers and Banker Opinions.	2-26
	[10]	Documentation	2-26
	[11]	Timing of Subsidiary IPO	2-27
§ 2.06		Tracking Stock Transactions	2-28
	[1]	Basic Structure	2-28

TABLE OF CONTENTS

v

	[2] Purpose of Tracking Stock Transactions	2-29
	[3] Corporate Law Issues	2-30
	[4] Securities Law Issues	2-30
	[5] Fraudulent Conveyance Issues	2-31
	[6] Tax Issues	2-31
	[7] Employee Issues	2-31
	[8] Financing Alternatives	2-32
	[9] The Role of Investment Bankers and Banker Opinions	2-32
	[10] Documentation	2-32
	[11] Timing of Tracking Stock Transactions	2-32
§ 2.07	Sales of Subsidiaries and Business Divisions	2-34
	[1] Basic Structure	2-34
	[2] Purpose	2-35
	[3] Corporate Law Issues	2-35
	[4] Securities Law Issues	2-36
	[5] Fraudulent Conveyance Issues	2-36
	[6] Tax Issues	2-37
	[7] Morris Trust and Reverse Morris Trust Transactions	2-37
	[8] Employee Issues	2-37
	[9] Financing Alternatives	2-38
	[10] Investment Banks and Fairness Opinions	2-38
	[11] Documentation	2-38
	[12] Timing	2-38

CHAPTER 3

Structuring Spin-Off, Split-Up and Split-Off Transactions

§ 3.01	Overview	3-4
§ 3.02	Defining the Businesses to Be Separated in a Spin-Off Transaction	3-6
§ 3.03	Allocating Assets Between the Parent Company and the Company to Be Spun Off	3-8
	[1] Intellectual Property	3-8
	[2] Real Estate	3-10
	[3] Personal Property and Tangible Assets	3-11
	[4] Telecommunications and Information Systems	3-11
	[5] Cash and Other Liquid Assets	3-12
	[6] Transferring Subsidiaries	3-12
	[7] Identifying Separate Facilities or Groups of Assets	3-14

	[8] Brand Names, Stationery, and Signage	3-14
§ 3.04	Allocating Liabilities in Spin-Off Transactions	3-16
	[1] General Allocation Issues	3-16
	[2] Assignment of Contract Obligations	3-16
	[3] Product Liability	3-16
	[4] Liabilities Associated with a Discontinued Business	3-17
	[5] Unidentifiable Liabilities	3-17
	[6] Environmental Liabilities	3-18
	[7] Litigation-Related Liabilities	3-20
	[8] Employee, Employee Benefits, and Related Liabilities	3-21
	[9] Securities Law Liability	3-22
	[10] Responsibility for Transaction Costs	3-23
§ 3.05	The Balance Sheet Approach to Allocating Assets and Liabilities in a Spin-Off Transaction	3-24
§ 3.06	Impact of Fraudulent Conveyance Statutes and Other Creditors' Rights Concerns on the Allocation of Assets and Liabilities in Spin-Off Transactions	3-25
§ 3.07	Good Company-Bad Company Spin-Offs	3-27
§ 3.07A	The Impact of the 2009 Economic Bailout Efforts on Spin-Offs	3-28
§ 3.08	Spin-Offs of Small Businesses	3-29
§ 3.09	Spin-Offs Coupled with Subsidiary IPOs	3-30
§ 3.10	Spin-Offs, Subsidiary IPOs and Dual Class Voting Structures	3-31
§ 3.11	Spin-Offs Coupled with Subsidiary IPOs and Exchange Offers	3-32
§ 3.12	Spin-Offs Coupled with Acquisitions; Morris Trust and Reverse Morris Trust Transactions	3-33
§ 3.13	Partial Spin-Offs	3-35
§ 3.14	Structuring Cash Payments to the Parent Company in Spin-Off Transactions	3-36
§ 3.14A	Sponsored Spin-Offs	3-38
§ 3.15	Creating a Spin-Off Ready Subsidiary	3-40
	[1] Old vs. New Company	3-40
	[2] State of Incorporation	3-40
	[3] Charter and Bylaws of the Company to Be Spun Off	3-41
	[4] Takeover Defenses	3-43
	[5] Stockholder Rights Plan	3-47

TABLE OF CONTENTS

vii

	[6] Impact of the Sarbanes-Oxley Act, the Dodd-Frank Act, and Renewed Focus on Corporate Governance	3-48
§ 3.16	Selection of Directors for the Company to Be Spun Off	3-58
§ 3.17	Selection of Officers for the Company to Be Spun Off	3-65
§ 3.18	Employees and Employee Benefits in Spin-Off Transactions.	3-66
§ 3.19	Supply, Distribution, Marketing and Other Similar Arrangements; Covenants Not to Compete	3-70
§ 3.20	Administrative Service Arrangements	3-71
§ 3.21	Adjusting Credit Arrangements	3-72
§ 3.22	Regulatory Approvals	3-75
§ 3.23	Third-Party Consents.	3-76
§ 3.24	Splitting the Stock of the Company to Be Spun Off	3-77
§ 3.25	Setting a Distribution Ratio	3-79
§ 3.26	Fractional Shares	3-80
§ 3.27	Declaring the Spin-Off Dividend	3-81
§ 3.28	Negotiation of Spin-Off Arrangements	3-83
§ 3.29	Documenting the Spin-Off Transaction	3-84
	[1] Documenting Reorganization Transactions	3-84
	[2] Spin-Off Agreement	3-85
	[3] Supply Agreement	3-87
	[4] Administrative Services Agreement	3-87
	[5] Intellectual Property Licensing Agreement	3-88
	[6] Marketing Agreement	3-88
	[7] Environmental Indemnification Agreement	3-88
	[8] Employee and Employee Benefits Agreement	3-89
	[9] Insurance Agreement	3-89
	[10] Lease	3-89
	[11] Tax-Sharing Agreement	3-89
§ 3.30	Spin-Off Road Shows	3-90
§ 3.30A	Alternative Spin-Off Structure: Using a Merger Agreement to Effect a Spin-Off.	3-91
§ 3.31	Structuring Split-Off Transactions	3-94
	[1] Allocating Assets and Liabilities	3-94
	[2] Coupling Split-Offs with Subsidiary IPOs and Spin-Offs	3-94
	[3] Split-Offs by Small or Troubled Companies	3-94

BUSINESS SEPARATION TRANSACTIONS

	[4] Partial Split-Offs	3-95
	[5] Setting the Exchange Ratio	3-95
	[6] Establishing the Number of Shares to Be Issued	3-96
	[7] Dealing with Fractional Shares	3-97
	[8] Dealing with Under-Subscribed and Over-Subscribed Offers	3-97
	[9] Establishing Offer Conditions	3-97
	[10] Exchange Offer Mechanics	3-98
	[11] Information Agent and Dealer-Manager	3-98
§ 3.32	Structuring Split-Up Transactions	3-99
	[1] Allocating Assets and Liabilities and Other Preliminary Steps	3-99
	[2] Determining Number of Shares to Be Distributed	3-99
	[3] Fractional Shares	3-99
	[4] Developing a Plan of Liquidation	3-99
	[5] Corporate Law Filings and Notice to Creditors	3-99
	[6] Shareholder Approval	3-100

CHAPTER 4**Corporate Law Issues in Spin-Off, Split-Up
and Split-Off Transactions**

§ 4.01	Introduction	4-3
§ 4.02	Fiduciary Duties and the Business Judgment Rule in Spin-Offs	4-4
	[1] Basics of Fiduciary Duty	4-4
	[2] The Business Judgment Rule	4-8
	[3] Gross Negligence as the Applicable Standard of Care	4-10
	[4] Breach of the Duty of Loyalty and the Entire Fairness Standard	4-11
	[5] The Use of a Special Board Committee	4-12
	[6] The Effect of Stockholder Ratification on Interested Director Transactions	4-13
	[7] The Voidability of Interested Director Transactions	4-14
	[8] Reliance on Management Support	4-15
	[9] Reliance on Experts	4-16
	[10] Factors the Board of Directors May Take into Account in Considering Spin-Off Transactions	4-18

TABLE OF CONTENTS

	[11] Spin-Offs of Majority Controlled Subsidiaries.	4-20
	[12] Spin-Offs Combined with Public Offerings.	4-21
	[13] Spin-Offs Combined with Mergers and Changes in Control	4-22
	[14] The Spin-Off as a Takeover Defense and the Board’s Fiduciary Duties.	4-24
	[15] Fiduciary Duty to Stockholders of Spun-Off Company	4-26
	[16] Fiduciary Duty to Creditors.	4-26
	[17] Exculpation of Directors and Officers.	4-28
§ 4.03	Stockholder Approval of Spin-Offs	4-30
	[1] Spin-Off Transactions as the Disposition of All or Substantially All of a Corporation’s Assets	4-30
	[2] Stockholder Approval of Spin-Offs Combined with Mergers	4-33
	[3] Appraisal Rights.	4-34
	[4] Voluntarily Submitting the Transaction to Stockholders for Approval.	4-36
§ 4.04	Restrictions on Declaration of Dividends	4-38
	[1] Basic Dividend Standards	4-38
	[2] Measuring the Amount of Surplus	4-39
	[3] Measuring the Value of the Subsidiary to Be Spun-Off.	4-41
	[4] Reliance on Management and Experts	4-42
	[5] Role of Investment Bankers, Appraisal Experts and Opinions.	4-43
	[6] Directors’ Personal Liability for Violation of Dividend Restriction Statutes	4-44
	[7] Director Exculpation and Indemnification	4-45
	[8] Declaration Dates, Record Dates and Distribution Dates	4-46
	[9] Contingent Spin-Off Dividends.	4-50
	[10] Obligation to Pay Declared Dividends	4-50
§ 4.05	Corporate Law Issues in Split-Off Transactions.	4-51
	[1] The Basics	4-51
	[2] Fiduciary Duties and the Business Judgment Rule in Split-Off Transactions	4-51
	[3] Factors the Board of Directors May Take into Account in Considering Split-Off Transactions	4-52
	[4] Reliance on Management and Experts	4-53
	[5] The Role of Investment Bankers.	4-53

BUSINESS SEPARATION TRANSACTIONS

	[6] Setting the Exchange Ratio	4-53
	[7] Split-Offs of Partly Owned Subsidiaries	4-54
	[8] The Split-Off as a Takeover Defense	4-54
	[9] The Split-Off as a Sale of All or Substantially All of the Parent's Assets and the Need for Stockholder Approval	4-54
	[10] Appraisal Rights in Split-Offs	4-55
	[11] Application of Dividend Restriction	4-56
§ 4.06	Corporate Law Issues in Split-Up Transactions	4-57
	[1] Basics of Split-Ups	4-57
	[2] Fiduciary Duties and the Business Judgment Rule in Split-Ups	4-57
	[3] Liquidation and Dissolution Procedures	4-57

CHAPTER 5**Securities Law Issues in Spin-Off, Split-Up
and Split-Off Transactions**

§ 5.01	Introduction	5-4
§ 5.02	Spin-Offs and Registration Issues Under the Securities Act	5-6
	[1] Section 5 of the Securities Act	5-6
	[2] Early Spin-Off Decisions	5-6
	[3] The SEC's No-Action Positions	5-6
	[4] The Staff Legal Bulletin	5-8
	[a] The Consideration Requirement	5-9
	[b] The <i>Pro Rata</i> Requirement	5-9
	[c] Adequate Information Requirement	5-10
	[d] Valid Business Purpose for Spin-Off	5-13
	[e] Requirement Relating to Spin-Off of Restricted Securities	5-15
	[5] Impact of Parent Stockholder Vote	5-16
	[6] Change of Control Transactions	5-17
	[7] Partial Distributions	5-18
	[8] Spin-Offs by a Company with a Controlling Stockholder	5-18
	[9] Spin-Offs with Management Interlocks	5-18
	[10] Treatment of Fractional Shares	5-18
	[11] Status of Spun-Off Securities as Restricted Securities Under Rule 144	5-19

TABLE OF CONTENTS

xi

	[12] Eligibility to Use Form S-3	5-20
	[13] Eligibility to Use Form S-8	5-21
	[14] Avoiding Exchange Act Registration	5-22
	[15] Abusive Spin-Offs	5-22
	[16] Spin-Offs by Privately Held Companies	5-23
§ 5.03	Consequences of Registering Spin-Offs	
	Under the Securities Act	5-24
	[1] Section 11 and Section 12(a)(2) Liability	5-24
	[2] Rescission Remedy	5-25
	[3] Securities Act Filing Fees	5-26
	[4] Timing Issues	5-26
	[5] Disclosure Issues	5-26
§ 5.04	Summary of Filing and Disclosure	
	Requirements in Spin-Offs	5-27
§ 5.05	Preparation, Filing and Distribution of	
	Information Statement on Schedule 14C for	
	Spin-Offs Not Registered Under the	
	Securities Act	5-28
	[1] Satisfying the Adequate Information	
	Requirement with an Information	
	Statement	5-28
	[2] Overview of Regulation 14C	5-29
	[a] Rule 14c-1: Definitions	5-29
	[b] Rule 14c-2: Distribution of the	
	Information Statement	5-29
	[c] Rule 14c-3: Annual Report to Be	
	Furnished to Security Holders	5-30
	[d] Rule 14c-4: Presentation of Information	
	in the Information Statement	5-30
	[e] Rule 14c-5: Filing Requirements;	
	Confidential Treatment	5-30
	[f] Rule 14c-6: False or Misleading	
	Statements	5-32
	[g] Rule 14c-7: Providing Copies of	
	Information Statement to Certain	
	Beneficial Owners	5-33
	[3] Overview of Schedule 14C	5-33
	[a] The Schedule 14C Disclosure Items	5-33
	[b] Incorporation by Reference	5-34
	[c] “Plain English” Disclosure	5-34
	[4] Post-Filing Amendments to Information	
	Statement	5-35
	[5] Redistribution of the Definitive	
	Information Statement	5-35

§ 5.06	Preparation, Filing and Distribution of Proxy Statement for Spin-Offs Registered Under the Securities Act	5-36
	[1] Combined Proxy Statement/Prospectus	5-36
	[2] Overview of Regulation 14A	5-36
	[3] Overview of Schedule 14A	5-37
	[4] Filing Requirements	5-38
	[5] Obtaining Confidential Treatment for Preliminary Proxy Statement	5-39
	[6] Post-Filing Amendments to Proxy Statement	5-39
	[7] Redistribution of Definitive Proxy Statement	5-39
	[8] Announcing Voting Results	5-40
§ 5.07	Registering Spin-Off Transactions Under the Securities Act	5-41
	[1] Use of Form S-4	5-41
	[2] Disclosure Requirements	5-41
	[3] Distribution Requirement in the Event of Incorporation by Reference	5-42
	[4] Pre-Effective Amendments to the Prospectus	5-42
	[5] Becoming Effective Under the Securities Act	5-42
	[6] Post-Effective Stickers and Prospectus Supplements; Post-Effective Amendments to the Registration Statement	5-43
§ 5.08	Registering the Class of Subsidiary Securities Being Spun Off Under the Exchange Act	5-45
	[1] All Public Company Spin-Offs Must Be Registered Under the Exchange Act	5-45
	[2] Registration on Form 10 vs. Registration on Form 8-A	5-45
	[3] Form 10 Requirements	5-46
	[4] Form 8-A Requirements	5-46
	[5] Becoming Effective Under the Exchange Act	5-47
§ 5.09	Spin-Offs and the SEC Review Process	5-49
§ 5.10	Due Diligence in Spin-Off Transactions	5-51
§ 5.11	Confidential Information	5-52
§ 5.12	Communications and Disclosures by the Parent and the Subsidiary in Spin-Off Transactions	5-55
	[1] Communications in Spin-Offs Not Being Registered Under the Securities Act	5-55

TABLE OF CONTENTS

xiii

	[2] Communications in Spin-Offs Being Registered Under the Securities Act and the Role of the Gun-Jumping Rules and Proxy Rules	5-57
	[3] Road Shows in Spin-Off Transactions	5-61
	[4] Form 8-K Disclosure Requirements	5-62
	[5] Disclosure of Non-GAAP Financial Measures	5-64
§ 5.13	Listing Spin-Off Securities on an Exchange or the Nasdaq Stock Market	5-66
	[1] Deciding Where to List	5-66
	[2] NYSE Listing Standards	5-66
	[3] Nasdaq Stock Market Listing Standards	5-68
	[4] Application for Listing	5-70
	[5] Coordination of Record Date, Distribution Date and When-Issued Trading with the Exchanges	5-70
	[6] CUSIP Number	5-71
	[7] Products and Services Available to Newly Listed Issuers	5-71
§ 5.14	Application of Blue Sky Laws to Spin-Off Transactions	5-72
§ 5.15	EDGAR Filing Mechanics in Spin-Off Transactions	5-72.1
§ 5.16	Securities Act and Exchange Act Filing Fees in Spin-Offs	5-72.2
§ 5.17	Application of Section 16 to Spin-Off Transactions	5-73
§ 5.18	Application of Regulation M to Spin-Off Transactions	5-75
§ 5.19	Application of Section 13(d) to Spin-Off Transactions	5-77
§ 5.20	Securities Law Issues in Split-Off Transactions	5-80
	[1] Overview of Split-Off Registration and Disclosure Requirements	5-80
	[2] Securities Act Registration	5-80
	[3] Self-Tender Requirements	5-82
	[a] Overview of Rule 13e-4	5-82
	[b] Overview of Schedule TO	5-82
	[c] Typical Disclosures in an Exchange Offer/Prospectus	5-83
	[d] Dissemination of Exchange Offer	5-83
	[4] Registration of Class of Securities Being Split-Off Under the Exchange Act	5-83
	[5] Listing of Securities on an Exchange	5-83

§ 5.21	Securities Law Issues in Split-Up Transactions	5-84
--------	--	------

CHAPTER 6**Securities Law Disclosures in Spin-Offs**

§ 6.01	Overview	6-2
§ 6.02	Information/Proxy Statement	6-4
	[1] Summary of Transaction	6-4
	[2] Risk Factors	6-5
	[3] Parent Company Information	6-9
§ 6.03	Description of the Separation and Related Agreements	6-11
	[1] Pre-Spin-Off Relationship	6-11
	[2] Allocation of Assets and Liabilities	6-11
	[3] Contingent Liabilities	6-12
	[4] Transition Services and Intercompany Arrangements	6-12
	[5] Leasing Arrangements	6-12
	[6] Supply and Distribution Agreements	6-13
	[7] Intellectual Property Rights	6-13
	[8] Credit and Debt Arrangement	6-14
	[9] Continuing Equity Interest	6-14
	[10] Noncompetition	6-15
	[11] Employee Arrangements	6-15
§ 6.04	Form 10 Registration Statement	6-16
	[1] Description of the Subsidiary's Business and Properties	6-17
	[2] Financial Information: Management's Discussion and Analysis ("MD&A") ...	6-18
	[2A] SEC Guidance	6-20
	[3] Safe Harbor Protection	6-26
	[4] Security Ownership of Certain Beneficial Owners and Management	6-26
	[5] Directors and Executive Officers; Corporate Governance Matters	6-27
	[6] Executive Compensation	6-32
	[7] Certain Relationships and Related Transactions	6-40.3
	[8] Legal Proceedings	6-41
	[9] Market Price and Dividends; Related Shareholder Matters	6-42
	[10] Recent Sales of Unregistered Securities ...	6-42
	[11] Description of Securities to Be Registered ...	6-43

TABLE OF CONTENTS

xv

	[12] Indemnification of Directors and Officers . . .	6-43
§ 6.05	Financial Information	6-44
	[1] Audited Balance Sheets and Statements of Income	6-44
	[2] Interim and Stale Financial Information . . .	6-45
	[3] <i>Pro Forma</i> Financial Information	6-45
	[4] Selected Financial Data	6-47
§ 6.06	Exhibits	6-49
§ 6.07	Disclosure to Debt Holders	6-50
§ 6.08	Disclosure of Opinions of Financial Advisors. . .	6-51
§ 6.09	Spin-Off Timeline	6-52

CHAPTER 7

Structuring Subsidiary IPOs

§ 7.01	Introduction	7-2
§ 7.02	Allocation of Assets	7-3
§ 7.03	Allocation of Liability	7-4
§ 7.04	Balance Sheet-Based Allocations	7-5
§ 7.05	Dealing with Parent and Subsidiary Debt and Credit Arrangements	7-6
	[1] The Need for Consents Under Existing Credit Arrangements	7-6
	[2] Establishing New Credit Arrangements for the Subsidiary	7-6
	[3] Restructuring the Parent's Credit Arrangements	7-7
	[4] Intercompany Indebtedness and Parent Guarantees	7-8
	[5] Monetization and Capitalization Opportunities	7-8
§ 7.06	Third Party Consents	7-9
§ 7.07	Governmental Filings and Consents	7-10
§ 7.08	Creating an IPO-Ready Subsidiary	7-11
§ 7.09	Selecting a Board of Directors for the Subsidiary	7-13
§ 7.10	Selecting Officers for the Subsidiary	7-14.4
§ 7.11	Employees and Employee Benefits	7-14.5
§ 7.12	Agreements Between the Parent and the Subsidiary	7-15
	[1] Administrative Services Agreement	7-15
	[2] Supply and Purchase Arrangements	7-15
	[3] Tax Sharing Agreement	7-16
	[4] Other Agreements	7-16

§ 7.13	Procedures for Handling Conflict of Interest, Duty of Loyalty and Corporate Opportunity Problems	7-17
§ 7.14	Secondary vs. Primary Offerings	7-18
	[1] Market Perception	7-18
	[2] Tax Issues	7-18
	[3] Parent and Subsidiary Capital Needs	7-18
	[4] Complete Exit by the Parent	7-19
	[5] Partial Exit by the Parent	7-19
§ 7.15	Using the Over-Allotment Option to Funnel Proceeds	7-20
§ 7.16	Size of the Offering	7-21
	[1] Capital Needs of the Parent and the Subsidiary	7-21
	[2] Market Appetite for Subsidiary Stock	7-21
	[3] Tax Consequences	7-21
	[4] Accounting Consequences	7-22
	[5] Parent's Desire to Exit	7-23
§ 7.17	Coupling Subsidiary IPOs with Spin-Offs and Split-Offs	7-24
§ 7.18	Dual Class Voting Stock Structure	7-25
§ 7.19	Debt-Equity Swaps	7-27
§ 7.20	Taking Cash Out of the Subsidiary	7-28
§ 7.21	Parent Contributions to the Subsidiary	7-29
§ 7.22	NYSE Corporate Governance Listing Standards: Applicability to Companies Engaging in Initial Public Offerings	7-30

CHAPTER 8

Corporate Law Issues in Subsidiary IPOs

§ 8.01	Introduction	8-2
§ 8.02	The Need for Stockholder Approval	8-3
§ 8.03	The Need for Parent and Subsidiary Board Approval	8-6
§ 8.04	Obtaining Parent Board Approval of a Subsidiary IPO	8-7
	[1] Applicability of the Business Judgment Rule	8-7
	[2] Designing an Effective Review Process	8-7
	[3] Relevant Factors	8-8
	[4] Investment Banker Opinions	8-8
	[5] Establishing a Pricing Committee	8-9
	[6] Duty of Loyalty Problems	8-9

TABLE OF CONTENTS

xvii

	[7] Duty to Prospective Subsidiary Stockholders	8-11
§ 8.05	Obtaining Subsidiary Board Approval of the Subsidiary IPO	8-12
§ 8.06	Corporate Issues After the Subsidiary Is Public.	8-14
	[1] Parent’s Fiduciary Duty as Controlling Stockholder.	8-14
	[2] The Entire Fairness Standard.	8-16
	[3] Impact of Disinterested Director Review or Stockholder Approval	8-18
	[4] Dealing with Controlling Stockholder Fiduciary Duties in Subsidiary IPOs.	8-19
§ 8.07	Corporate Opportunity Problems in Subsidiary IPOs.	8-21
	[1] The Law of Corporate Opportunity.	8-21
	[2] Solutions to Corporate Opportunity Problems.	8-25

CHAPTER 9

Securities Law Issues in Subsidiary IPOs

§ 9.01	Introduction	9-3
§ 9.02	Securities Act Registration Basics: Forms and Rules.	9-4
§ 9.03	Gun-Jumping in Subsidiary IPOs: Communications Before Filing the Registration Statement	9-6
§ 9.04	Due Diligence Investigation	9-11
§ 9.05	Drafting the Registration Statement.	9-13
	[1] The Drafting Process	9-13
	[2] “Plain English” Rules.	9-13
	[3] Prospectus Summary	9-14
	[4] The Risk Factors Section.	9-15
	[5] Use of Proceeds	9-17
	[6] Dilution.	9-18
	[7] Management’s Discussion and Analysis (“MD&A”)	9-19
	[8] Description of Business	9-25
	[9] Directors and Executive Officers.	9-26
	[10] Executive Compensation	9-27
	[11] Certain Relationships	9-28
	[12] Principal Stockholders	9-30
	[13] Shares Available for Sale.	9-30

	[14] Financial Statement Requirements	9-31
	[a] Basic Filing Requirements for Annual and Interim Statements	9-31
	[b] Updating Requirements	9-33
	[c] Financial Statements of Businesses Acquired or to Be Acquired	9-33
	[d] <i>Pro Forma</i> Financial Information	9-35
	[15] Part II of the Registration Statement	9-37
	[a] Exhibits	9-37
	[b] Other Part II Information	9-37
	[16] Signature Requirements	9-38
	[17] Expert and Director Consents	9-38
§ 9.06	Confidential Submissions, Filing, and Other Preparation Matters	9-40
	[1] Confidential Submissions	9-40
	[2] EDGAR Filing Mechanics	9-41
	[3] Registration Fees	9-41
	[4] Confidential Information Requests	9-41
	[5] Registration Under the Exchange Act	9-42
	[6] Listing on Exchanges	9-43
	[7] Financial Industry Regulatory Authority Review	9-43
	[8] State Blue Sky Laws	9-44
	[9] CUSIP Number	9-44
§ 9.07	Activities During the Waiting Period	9-45
	[1] Restrictions on Communications During the Waiting Period	9-45
	[2] The SEC Review and Comment Process	9-51
	[3] Distribution of the Preliminary Prospectus; Recirculation Issues	9-53
	[4] Road Show	9-54
	[5] Directed Share Programs	9-56
§ 9.08	Going Effective and Pricing	9-58
	[1] Mechanics of Going Effective	9-58
	[2] Pricing and Rule 430A Amendments	9-59
	[3] Changes in Volume or Price of Securities Being Registered	9-60
§ 9.09	Post-Effective Activities	9-62
	[1] Closing	9-62
	[2] Delivery of Final Prospectuses	9-62
	[3] Post-Effective Amendments, Prospectus Supplements and Stickers	9-63
	[4] Communications During the Post-Effective Period	9-63

TABLE OF CONTENTS

xix

§ 9.10	The Role of the Underwriters and the Underwriting Agreement	9-64
	[1] Role of the Underwriters	9-64
	[2] Selecting an Underwriter	9-64
	[3] Firm Commitment vs. Best-Efforts Underwritings	9-66
	[4] Underwriting Agreement	9-67
	[5] Over-Allotment Option	9-69
	[6] Lock-Up Option	9-69
	[7] Accountants' Comfort Letter	9-69
§ 9.11	Securities Act Liability Issues	9-71
	[1] Liability Under Section 11 of the Securities Act	9-71
	[2] Liability Under Section 12(a)(2) of the Securities Act	9-74
	[3] Controlling Person Liability Under Section 15 of the Securities Act	9-76
	[4] Liability Under Rule 10b-5	9-76
	[5] Liability Under Section 17(a) of the Securities Act	9-78
	[6] Other Liabilities	9-79
§ 9.12	Investment Company Act Issues in Subsidiary IPOs	9-80
§ 9.13	Schedule 13G Filings by the Parent Following a Subsidiary IPO	9-85
§ 9.14	Application of Section 16 in Subsidiary IPOs	9-87
§ 9.15	Application of Regulation M in Subsidiary IPOs	9-88
§ 9.16	Application of 8-K Disclosure Requirements	9-89

CHAPTER 10

Structuring Tracking Stock Transactions

§ 10.01	Introduction	10-2
§ 10.02	Defining the Business Divisions and Allocating Assets and Liabilities	10-5
§ 10.03	Charter Amendment Creating the Tracking Stock	10-7
§ 10.04	Dividend Rights	10-9
	[1] Fixed or Discretionary Dividend	10-9
	[2] The "Available Dividend Amount" Concept	10-9
	[3] Impact of Retained Business	10-11

	[4] Rules Governing Distributions of Securities and Assets	10-11
§ 10.05	Voting Rights	10-13
	[1] Fixed vs. Floating Voting Rights	10-13
	[2] Class Votes	10-14
§ 10.06	Liquidation Rights	10-17
	[1] Fixed or Variable Liquidation Preferences	10-17
	[2] Other Issues	10-17
§ 10.07	Discretionary Conversion Provisions	10-19
	[1] General Conversion Right	10-19
	[2] Conversion upon the Occurrence of a Tax Event	10-19
	[3] Conversion Mechanics and Premiums	10-20
§ 10.08	Mandatory Conversion Provisions	10-22
	[1] Triggering Events	10-22
	[2] Conversion Mechanics and Premiums	10-22
§ 10.09	Rights of Tracking Stock upon Merger, Consolidation or Sale of All or Substantially All of the Parent's Assets	10-25
§ 10.10	The Parent's Retained Interest	10-26
	[1] Overview	10-26
	[2] The Allocation Fraction Concept	10-27
	[3] Other Adjustments to the Parent's Retained Interest	10-28
§ 10.11	Governance Issues	10-29
	[1] The Board of Directors and Conflict of Interest Problems	10-29
	[2] Capital Stock Committees	10-29
§ 10.12	Policy Statements	10-31
	[1] General Policy Statements	10-31
	[2] Corporate Opportunities	10-31
	[3] Cash Management	10-31
	[4] Incurrence of Debt and Issuance of Stock	10-32
	[5] Redemptions and Repurchases of Stock	10-32
	[6] Dividends	10-32
	[7] Allocation of Shared Services	10-32
	[8] Allocation of Assets and Liabilities	10-33
	[9] Allocation of Rights to Intellectual Property	10-33
	[10] Transactions Between the Two Businesses	10-33
	[11] Covenant Not to Compete	10-33
	[12] Treatment of the Parent's Retained Interest	10-33

TABLE OF CONTENTS

xxi

	[13] Tax Allocation	10-33
	[14] Changes to Policies	10-34
§ 10.13	Initial Issuance of Tracking Stock	10-35
	[1] Dividend Distribution	10-35
	[2] Reclassification	10-35
	[3] Offerings	10-35
	[4] Exchange Offer	10-35
	[5] Merger or Other Acquisition Transactions	10-36
	[6] Combination Transactions	10-36
§ 10.14	Subsequent Offerings of Tracking Stock	10-37
§ 10.15	Tracking Stock Transactions Followed by Spin-Offs	10-38

CHAPTER 11

Corporate Law Issues in Tracking Stock Transactions

§ 11.01	Introduction	11-2
§ 11.02	The Charter Amendment	11-3
	[1] Contents of the Charter Amendment	11-3
	[2] Stockholder Approval of Charter Amendment	11-4
	[3] Disclosure to Stockholders	11-5
	[4] Restated Charter	11-6
§ 11.03	Approval of Tracking Stock Policies and Intercompany Agreements	11-8
§ 11.04	Corporate Action Required to Issue Tracking Stock in Public Offering	11-9
§ 11.05	Corporate Action Required to Issue Tracking Stock in a Merger	11-10
§ 11.06	Corporate Action Required for Dividend Distributions	11-12
§ 11.07	Corporate Action Required to Approve Tracking Stock Recapitalization	11-14
§ 11.08	Corporate Action Required to Approve a Tracking Stock Exchange Offer	11-15
§ 11.09	Business Judgment Protection for the Board's Decision to Implement a Tracking Stock Transaction	11-16
§ 11.10	The Duties of the Board of Directors of a Tracking Stock Company	11-19
	[1] Introduction	11-19
	[2] <i>Solomon v. Armstrong</i>	11-20

	[3] <i>In re General Motors Class H Stockholders Litigation</i>	11-23
	[4] Lessons from the <i>GM</i> Cases	11-24
§ 11.11	Role of the Capital Stock Committee	11-27
§ 11.12	Providing Guidance to the Board of Directors and the Role of Tracking Stock Policies.	11-29
§ 11.13	Content of Tracking Stock Policies	11-30
§ 11.14	The Importance of Disclosure to Stockholders	11-32
§ 11.15	Dividends by Tracking Stock Companies	11-33
§ 11.16	Exculpation and Indemnification for Tracking Stock Directors	11-34

CHAPTER 12

Securities Law Issues in Tracking Stock Transactions

§ 12.01	Introduction	12-8
§ 12.02	Overview of SEC Filing Requirements and Disclosure Documents in Tracking Stock Transactions	12-9
§ 12.03	SEC Staff Views on Tracking Stock Disclosure	12-11
§ 12.04	Securities Law Issues Relating to Stockholder Approval of Tracking Stock Charter Amendments	12-14
	[1] Preparation, Filing and Distribution of Proxy Materials Relating to Tracking Stock Charter Amendments.	12-14
	[2] Overview of Proxy Rules.	12-14
	[3] Summary of Regulation 14A.	12-15
	[a] Rule 14a-1: Definitions.	12-15
	[b] Rule 14a-2: Exemptions from Disclosure Rules	12-16
	[c] Rule 14a-3: Information to Be Furnished to Security Holders	12-18
	[d] Rule 14a-4: Form of Proxy and Anti-Bundling Rules	12-19
	[e] Rule 14a-5: Presentation of Information	12-20
	[f] Rule 14a-6: Filing Requirements; Confidential Treatment; Fees	12-20
	[g] Rule 14a-7: Provision of Security Holder List.	12-22
	[h] Rule 14a-8: Stockholder Proposals	12-22

TABLE OF CONTENTS

xxiii

[i]	Rule 14a-9: Liability for False and Misleading Statements	12-22
[j]	Rule 14a-10: Undated or Postdated Proxies	12-23
[k]	Rule 14a-12: Solicitations Prior to Furnishing Required Proxy Statements	12-23
[l]	Rule 14a-13: Communications with Beneficial Owners	12-24
[m]	Rule 14a-14: Modified or Superseded Documents	12-25
[n]	Rule 14a-16: Internet Availability of Proxy Materials	12-25
[4]	Summary of Regulation 14B: Obligations of Brokers, Dealers and Banks	12-26
[5]	Summary of Schedule 14A	12-26
[a]	Cover Page	12-26
[b]	Incorporation by Reference	12-27
[c]	Item 1: Place of Meeting and Related Matters	12-27
[d]	Item 2: Right to Revoke Proxy	12-27
[e]	Item 3: Appraisal Rights	12-28
[f]	Item 4: Information Regarding Persons Making the Solicitation	12-28
[g]	Item 5: Interests of Directors, Officers and Other Persons	12-28
[h]	Item 6: Description of Required Vote	12-29
[i]	Item 7: Elections of Directors	12-29
[j]	Item 8: Compensation of Directors and Executive Officers	12-30
[k]	Item 9: Information Regarding Public Accountants	12-31
[l]	Item 10: Disclosure Regarding Compensation Plans	12-31
[m]	Item 11: Information Related to Securities to Be Issued	12-32
[n]	Item 12: Disclosure Regarding Modification or Exchange of Securities	12-32
[o]	Item 13: Required Financial Information	12-33
[p]	Item 14: Mergers, Consolidations, Acquisitions and Similar Matters	12-35

BUSINESS SEPARATION TRANSACTIONS

[q]	Item 15: Acquisition or Disposition of Property	12-35
[r]	Item 16: Accounting Restatements	12-35
[s]	Item 17: Actions with Respect to Reports of the Company, Its Directors, Officers or Committees or Stockholder Meeting Minutes	12-35
[t]	Item 18: Disclosure Regarding Matters for Which a Vote Is Not Required	12-36
[u]	Item 19: Amendment of Charter, Bylaws or Other Documents	12-36
[v]	Item 20: Other Proposed Action	12-36
[w]	Item 21: Voting Procedures	12-36
[x]	No Signature Requirements	12-37
[6]	Securities Law Issues Relating to Stockholder Approval of Changes to Incentive Plans in Tracking Stock Deals	12-37
[7]	Typical Disclosures in Proxy Statements Seeking Approval of Tracking Stock Charter Amendments	12-38
[a]	Letter from the Chairman	12-38
[b]	Notice of Meeting of Stockholders	12-38
[c]	Questions and Answers About the Tracking Stock Amendment	12-39
[d]	Structure Charts	12-39
[e]	Summary	12-40
[f]	Selected Financial Data	12-40
[g]	Risk Factors	12-41
[h]	Special or Annual Meeting	12-42
[i]	Board Recommendation	12-43
[j]	Reasons for the Tracking Stock Amendment	12-43
[k]	Terms of the Tracking Stock Amendment; Plans for Issuance	12-43
[l]	Material Federal Income Tax Consequences	12-43
[m]	Description of the Business	12-44
[n]	Management's Discussion and Analysis ("MD&A")	12-44
[o]	Relationship Between Tracking Stock and Other Common Stock	12-46
[p]	Equity Incentive Plan Proposal	12-46

TABLE OF CONTENTS

	[q] Stock Ownership of Management and Directors; Stock Ownership in Excess of 5% by Beneficial Owners	12-47
	[r] Financial Statements	12-47
	[s] Annexes to Proxy Statement	12-47
	[8] “Plain English” Requirements	12-47
	[9] Filing Procedures	12-47
	[10] SEC Review Process	12-48
	[11] Communications Restrictions	12-49
§ 12.05	Securities Law Issues in Tracking Stock Offerings	12-51
	[1] Securities Act Registration of Tracking Stock Offerings	12-51
	[2] Coordination of Tracking Stock Offering with Charter Amendment Approval	12-51
	[3] Registration Forms for Tracking Stock Offerings	12-51
	[4] Typical Disclosures in Tracking Stock Offerings	12-52
	[a] Prospectus Summary	12-52
	[b] Selected Financials	12-53
	[c] Risk Factors	12-53
	[d] Use of Proceeds	12-53
	[e] Dividend Policy	12-53
	[f] Management’s Discussion and Analysis (“MD&A”)	12-54
	[g] Description of the Business	12-54
	[h] Management	12-54
	[i] Description of Capital Stock	12-55
	[j] Tracking Stock Policies and Capital Committee	12-55
	[k] Business Relationships Between Tracking Stock Unit and Other Business Units	12-55
	[l] Tax Disclosures	12-55
§ 12.06	Securities Law Issues in Tracking Stock Exchange Offers	12-56
	[1] Overview of Securities Law Issues in Tracking Stock Exchange Offers	12-56
	[2] Summary of Rule 13e-4	12-57
	[a] Rule 13e-4(a): Definitions	12-57
	[b] Rule 13e-4(b): Obligations upon Commencement	12-58

BUSINESS SEPARATION TRANSACTIONS

	[c]	Rule 13e-4(c): Material Required to Be Filed	12-58
	[d]	Rule 13e-4(d): Disclosure of Tender Offer Information	12-59
	[e]	Rule 13e-4(e): Dissemination of Tender Offers to Stockholders	12-59
	[f]	Rule 13e-4(f): Manner of Making Offer	12-60
[3]		Overview of Schedule TO	12-62
	[a]	Preparation of Offer to Exchange and Schedule TO	12-62
	[b]	Cover	12-62
	[c]	General Instructions	12-62
	[d]	Item 1: Summary Term Sheet	12-62
	[e]	Item 2: Subject Company Information	12-63
	[f]	Item 3: Identity and Background of Filing Person	12-63
	[g]	Item 4: Terms of the Transaction	12-63
	[h]	Item 5: Past Contracts, Transactions, Negotiations and Agreements	12-64
	[i]	Item 6: Purpose of the Transaction and Plans or Proposals	12-64
	[j]	Item 7: Source and Amount of Funds or Other Consideration	12-65
	[k]	Item 8: Interest in Securities of the Subject Company	12-65
	[l]	Item 9: Persons and Assets Retained, Employed, Compensated or Used	12-65
	[m]	Item 10: Financial Statements	12-66
	[n]	Item 11: Additional Information	12-66
	[o]	Item 12: Exhibits	12-67
	[p]	Signatures	12-67
[4]		Typical Disclosures in a Tracking Stock Exchange Offer	12-67
	[a]	Cover	12-67
	[b]	Questions and Answers About the Exchange Offer	12-67
	[c]	Summary Term Sheet	12-68
	[d]	Comparative Per Share Data	12-68
	[e]	Summary Historical Financial Data	12-68
	[f]	Risk Factors	12-68
	[g]	Detailed Description of the Exchange Offer	12-69

TABLE OF CONTENTS

xxvii

	[h] Price Range and Dividends	12-70
	[i] Capitalization of the Company and the Tracking Stock Group	12-70
	[j] Business Description	12-70
	[k] Relationship Between Common Stock and Tracking Group Stock and Terms of Tracking Stock	12-70
	[l] Financial Statements	12-71
	[m] Transmittal Letter	12-71
[5]	Registration of a Tracking Stock Exchange Offer Under the Securities Act	12-71
[6]	Preparation and Filing of Disclosure Documents in Registered Tracking Stock Exchange Offers	12-72
[7]	Special Disclosure and Other Requirements in Registered Tracking Stock Exchange Offers	12-73
	[a] Item 1: Outside Front Cover	12-73
	[b] Item 2: Inside Front Cover and Back Page	12-73
	[c] Item 3: Summary	12-74
	[d] Item 4: Material Terms	12-74
	[e] Item 5: <i>Pro Formas</i>	12-74
	[f] Item 6: Material Contracts	12-74
	[g] Item 7: Reoffers	12-75
	[h] Item 8: Named Experts and Counsel	12-75
	[i] Item 9: Indemnification	12-75
	[j] Items 10, 11, 12, 13 and 14: Information About the Company	12-75
	[k] Items 15, 16, 17: Companies to Be Acquired	12-75
	[l] Item 18: Proxies and Consents	12-75
	[m] Items 19 and 20: Interests of Certain Persons	12-76
	[n] Part II	12-76
	[o] Signatures	12-76
[8]	SEC Processing Issues Relating to Tracking Stock Exchange Offers	12-76
[9]	Obligation to Amend and Redistribute Tracking Stock Disclosure Documents	12-78
[10]	Termination of and Extensions to Tracking Stock Exchange Offer	12-79
[11]	Early Commencement of Tracking Stock Exchange Offer	12-80

	[12] The All Holders and Best Price Rules in Tracking Stock Exchange Offers	12-80
	[13] Fees	12-80
§ 12.07	Securities Law Issues in Connection with the Use of Tracking Stock as Merger Consideration	12-82
	[1] Overview of Securities Law Issues in Tracking Stock Mergers	12-82
	[2] SEC Processing of Tracking Stock Mergers	12-82
	[3] The Use of Preliminary Proxy Materials and a Preliminary Prospectus in Tracking Stock Mergers	12-83
	[4] Solicitation and Offer Activity Prior to the Filing of Proxy Materials and Registration Statement	12-83
	[5] Compliance with Proxy Rules and Securities Act	12-84
	[6] Securities Act Fees in Tracking Stock Mergers	12-84
	[7] Typical Disclosures in Joint Proxy Statement/Prospectus Relating to Tracking Stock Merger	12-85
	[a] Letter to Stockholders	12-85
	[b] Notice of Stockholder Meeting to the Target Shareholders	12-85
	[c] Questions and Answers About the Merger	12-85
	[d] Questions and Answers About the Tracking Stock Charter Amendment Proposals	12-85
	[e] Summary	12-86
	[f] Risk Factors	12-86
	[g] Other Items	12-87
§ 12.08	Securities Law Issues in Tracking Stock Distributions	12-89
	[1] Overview	12-89
	[2] Registration of Tracking Stock Distributions Under the Securities Act	12-89
§ 12.09	Securities Law Issues in Tracking Stock Recapitalization	12-91
§ 12.10	Exchange Act Registration in Tracking Stock Transactions	12-92
§ 12.11	Listing Issues in Connection with the Issuance of Tracking Stock	12-93

TABLE OF CONTENTS

xxix

§ 12.12	Obtaining a CUSIP Number	12-94
§ 12.13	Application of Exchange Act Section 13(d) and (g) to Tracking Stock Transactions	12-95
§ 12.14	Application of Exchange Act Section 16 to Tracking Stock Transactions	12-96
§ 12.15	Application of Regulation M to Tracking Stock Transactions	12-98
§ 12.16	Regulation FD in Tracking Stock Transactions	12-99
§ 12.17	Reports on Form 8-K in Connection with Tracking Stock Transactions	12-100.1
§ 12.18	Securities Law Issues in the Conversion of Tracking Stock Back to Common Stock	12-101
§ 12.19	Securities Law Liability Issues in Tracking Stock Transactions	12-102
	[1] Liability Under the Proxy Rules	12-102
	[2] Liability Under the Tender Offer Rules	12-102
	[3] Other Liability Under the Exchange Act	12-102
	[4] Liability Under the Securities Act	12-102
§ 12.20	Investment Company Act Issues in Tracking Stock Transactions	12-103
	[1] Overview of Investment Company Act Problems in Tracking Stock Transactions	12-103
	[2] Status of Tracking Stock Units as Separate Issuers	12-103
	[3] Availability of Exemptions for Tracking Stock Companies	12-104

CHAPTER 12A

Structuring Sales of Subsidiaries or Divisions

§ 12A.01	Introduction	12A-2
§ 12A.02	Negotiations in Business Separation Transactions	12A-4
§ 12A.03	Basic Issues in a Subsidiary or Division Sale	12A-5
§ 12A.04	Structuring the Deal	12A-6
	[1] Asset Sale	12A-7
	[2] Stock Sale	12A-8
	[3] Merger	12A-9
	[4] Tax Consequences of the Transaction Structure	12A-10
	[a] Taxable Asset Sale	12A-10
	[b] Taxable Stock Sale	12A-11

BUSINESS SEPARATION TRANSACTIONS

	[c] Merger	12A-13
	[d] Tax-Free Transactions	12A-13
§ 12A.05	Identifying Businesses to Be Sold	12A-16
	[1] Introduction	12A-16
	[2] Allocation of Assets	12A-16
	[3] Allocation of Liability	12A-16
	[4] “Bad Company” Sales	12A-17
§ 12A.06	Pricing the Deal and Purchase Price	
	Adjustments	12A-18
	[1] Valuation Methods	12A-18
	[2] Pricing Methods	12A-18
§ 12A.07	Determining the Type of Consideration Paid	
	by the Buyer	12A-20
§ 12A.08	Corporate Approval Issues	12A-23
	[1] Board Approval Usually Required	12A-23
	[2] Stockholder Approvals	12A-23
	[a] Parent’s Stockholders	12A-23
	[b] Buyer’s Stockholders	12A-25
	[3] Fairness Opinion	12A-26
	[4] Takeover Defense	12A-26
§ 12A.09	Governmental Approvals and Filings	12A-28
	[1] Antitrust Regulations	12A-28
	[a] General Principles and the	
	Clayton Act	12A-28
	[b] Hart-Scott-Rodino Antitrust	
	Improvements Act	12A-29
	[2] Other Regulatory Restrictions	12A-30
§ 12A.10	Securities Law Issues	12A-33
	[1] Issuance of Stock by the Buyer	12A-33
	[2] Private Placement of Buyer’s Stock	12A-35
	[3] Private Placement of Target’s Stock	12A-37
	[4] Registration Rights	12A-37
	[5] Public Disclosure Regarding the	
	Transaction	12A-38
	[6] Sarbanes-Oxley Act Issues	12A-41
§ 12A.11	Documenting the Deal	12A-44
	[1] Confidentiality Agreement	12A-44
	[2] Letter of Intent	12A-44
	[3] Definitive Agreement	12A-45
	[a] Representations and Warranties	12A-45
	[b] Closing Conditions	12A-45
	[c] Covenants	12A-46
	[d] Indemnification Issues	12A-47
	[4] Supply, Distribution, Marketing and Other	
	Similar Arrangements	12A-49

TABLE OF CONTENTS

xxxii

[5] Administrative Service Arrangements	12A-50
§ 12A.12 Creditors' Rights Issues	12A-51
§ 12A.13 Employee and Employee Benefit Issues	12A-53
[1] Determining Employees to Be Retained by Target	12A-53
[2] WARN Act and State Statutes Regarding Mass Layoffs	12A-53
[3] Employee Benefit Plan Issues	12A-54
§ 12A.14 Timing of a Subsidiary or Division Sale	12A-56

CHAPTER 13

Tax Issues in Business Separation Transactions

§ 13.01 Spin-Offs, Split-Offs and Split-Ups	13-3
[1] Introduction	13-3
[2] Section 355 Requirements	13-3
[3] Tax Consequences to the Parties	13-5
[4] Business Purpose	13-6
[a] The Regulations	13-7
[b] Requirements for Ruling	13-8
[c] Acceptable Business Purposes	13-8
[i] Providing Equity Interest to Employees	13-9
[ii] Facilitating a Stock Offering	13-9
[iii] Facilitating Borrowing	13-10
[iv] Saving Significant Costs	13-10
[v] Improving Performance by Changing Fit and Focus	13-10
[vi] Resolving Competitive Concerns	13-11
[vii] Facilitating Acquisitions Generally	13-11
[viii] Facilitating Acquisitions of Others	13-11
[ix] Insulating One Business from the Risks of Another Business	13-12
[d] Valid Business Purposes Not Described in Revenue Procedure 96-30	13-12
[e] Change in Circumstances	13-14
[5] Active Conduct of a Trade or Business	13-14
[a] Generally	13-14

BUSINESS SEPARATION TRANSACTIONS

	[i] Passive Investment Activities . . .	13-15
	[ii] Partnerships	13-16
	[b] Satisfying the Active Conduct of a Trade or Business Requirement Through Affiliated Groups	13-18
	[c] Five-Year Business History	13-18
	[d] Acquisition of Control	13-19
[6]	Continuity Requirements	13-21
[7]	Device	13-21
	[a] Device Factors	13-22
	[b] Nondevice Factors	13-26
[8]	Distribution of Control; Retention of Stock or Securities	13-27
	[a] Statutory Provision	13-27
	[b] Regulations	13-27
	[c] The Service's Ruling Position	13-28
[9]	Section 355 Distributions as Part of a Plan with the Acquisition of Distributing Corp. or Controlled Corp.	13-28
	[a] Operation of Section 355(e)	13-30
	[b] Regulations	13-31
	[c] Post-Distribution Acquisition of Distributing Corp. in a Tax-Free Reorganization	13-44
	[d] Post-Distribution Acquisition of Controlled Corp. in a Tax-Free Reorganization	13-45
[10]	Disqualified Distributions	13-45
	[a] Operation of Section 355(d)	13-46
	[b] Ownership Rules	13-48
[11]	Liabilities in Section 355 Transactions	13-49
[12]	Disqualified Investment Corporations ("Cash Rich Split-Offs")	13-50.1
[13]	Section 355 and REITs	13-50.2
[14]	Spin-Offs, Split-Offs and Split-Ups under the Corporate Alternative Minimum Tax	13-50.3
[15]	Spin-Offs, Split-Offs and Split-Ups under the Stock Repurchase Excise Tax	13-50.3
§ 13.02	Tracking Stock	13-51
	[1] The Service's Position	13-53
	[2] Analogous Code Provisions and Case Law	13-54

TABLE OF CONTENTS

xxxiii

[3] Factors Favoring Treatment as Stock of Issuer. 13-54.1

[4] Factors Favoring Treatment as Subsidiary Stock. 13-55

[5] Impact on Other Code and Regulatory Provisions. 13-56

 [a] Section 355(d). 13-56

 [b] Section 367 Regulations 13-56

§ 13.03 Subsidiary IPOs. 13-58

 [1] Treatment of Dividends 13-59

 [2] Tax Sharing Agreements 13-61

 [3] Employee Stock Options 13-62

CHAPTER 14

Creditors' Rights Issues in Business Separation Transactions

§ 14.01 Introduction 14-3

§ 14.02 Basic Fraudulent Conveyance Law Principles. . . 14-5

 [1] Sources of Fraudulent Conveyance Law. . . 14-5

 [2] The Uniform Fraudulent Conveyance Act. . . 14-6

 [a] Actual Intent to Hinder, Delay or Defraud Creditors 14-6

 [b] Constructive Fraud. 14-7

 [i] Conveyance by an Insolvent . . . 14-8

 [ii] Conveyance by Persons with Unreasonably Small Capital. . . 14-10

 [iii] Conveyance by Person with Debts Beyond Their Ability to Pay 14-11

 [c] Burden of Proof and Standard of Evidence. 14-12

 [d] Liability for Aiding and Abetting. . . 14-13

 [e] Standing 14-13

 [f] Remedies 14-14

 [g] Statute of Limitations 14-15

 [3] The Uniform Fraudulent Transfer Act 14-16

 [a] Transactions Constituting Fraudulent Transfers 14-16

 [b] Actual Fraud 14-16

 [c] Constructive Fraud. 14-17

 [i] Transfer by an Insolvent. 14-18

 [ii] Transfer by Persons with Unreasonably Small Assets . . . 14-19

	[iii] Transfer by Persons About to Incur Debts	14-20
	[d] Preferential Transfers to Insiders	14-20
	[e] Relevance of Transferee's Good Faith	14-20
	[f] Burden of Proof and Standard of Evidence	14-21
	[g] Standing	14-22
	[h] Remedies	14-22
	[i] Statute of Limitations	14-23
§ 14.03	Federal Bankruptcy Law	14-24
	[1] Introduction	14-24
	[2] Actual Fraud Claims Under Section 548	14-24
	[3] Constructive Fraud Claims Under Section 548	14-24
	[a] Transfers Made When the Debtor Is or Will Be Rendered Insolvent	14-25
	[b] Transfers Made by Debtors with Unreasonably Small Capital	14-26
	[c] Transfers Made by Debtors Who Intend to Incur Debts Beyond Their Ability to Pay	14-26
	[4] Transfers to Good Faith Transferees	14-26
	[5] Burden of Proof	14-26
	[6] Statute of Limitations	14-26
§ 14.04	The "Step Transaction" Approach to Evaluating Fraudulent Conveyance Risk	14-28
§ 14.05	Fraudulent Conveyance Issues in Spin-Offs	14-29
	[1] Fraudulent Conveyance Issues Associated with Pre-Spin-Off Reorganization	14-29
	[a] Pre-Spin-Off Transfer by the Parent	14-29
	[b] Pre-Spin-Off Transfers by the Subsidiary	14-29
	[2] The Spin-Off as Fraudulent Transfer	14-30
§ 14.06	Fraudulent Conveyance Issues in Split-Offs	14-31
§ 14.07	Fraudulent Conveyance Issues in Split-Ups	14-32
§ 14.08	Fraudulent Conveyance Issues in Subsidiary IPOs	14-33
	[1] Claims Related to Reorganization	14-33
	[a] Fraudulent Conveyance Issues for the Subsidiary	14-33
	[b] Fraudulent Conveyance Issues for the Parent	14-33

TABLE OF CONTENTS

xxxv

[2] Issues Associated with the Initial Public Offering	14-34
§ 14.09 Fraudulent Conveyance Issues in Tracking Stock Transactions	14-35
§ 14.10 Preparing to Defend a Transaction Against Fraudulent Conveyance Challenges	14-36
§ 14.11 Solvency Opinions	14-38
§ 14.12 The Relationship Between Fraudulent Conveyance Statutes and Corporate Dividend Statutes	14-39
§ 14.13 Choice of Law Principles in Fraudulent Conveyance Cases	14-40
[1] Introduction	14-40
[2] Application of <i>Restatement</i> Analysis	14-41
[3] Government Interest Analysis	14-44
[4] <i>Lex Loci Delicti</i> Approach	14-45
§ 14.14 Duties of Directors of an Insolvent Corporation	14-46
§ 14.15 Piercing the Corporate Veil	14-49
§ 14.16 Substantive Consolidation	14-54
§ 14.17 Preferential Payments in Fraudulent Conveyances	14-63
§ 14.18 Agency Theory; Aiding and Abetting Theory	14-64

CHAPTER 15

Employee Benefits Issues in Business Separation Transactions

§ 15.01 Introduction	15-2
§ 15.02 Equity Plans	15-4
[1] Initial Considerations	15-4
[2] Types of Equity Incentive Awards	15-5
[a] Options	15-5
[b] Restricted Stock	15-7
[c] Other Awards	15-8
[3] Types of Plans	15-8
[a] Equity Incentive Plan	15-8
[b] Employee Stock Purchase Plan	15-9
[4] Initial Federal Securities Law Considerations	15-11
[a] Rule 701	15-12
[b] Regulation D	15-14
[c] Regulation S	15-15
[5] Other Federal Securities Law Concerns	15-16

	[a] Number of Security Holders	15-16
	[6] State Securities Law	15-19
	[7] Foreign Securities Law	15-20
	[8] Accounting Considerations	15-21
§ 15.03	Other Plans	15-22
§ 15.04	Other Health and Welfare Plans	15-23
§ 15.05	Employment Agreements	15-24
§ 15.06	Tax Considerations—Section 162(m)	15-25
§ 15.07	Section 409A of the Internal Revenue Code	15-27

CHAPTER 16

The Role of the Investment Banker in Business Separation Transactions

§ 16.01	Introduction	16-2
§ 16.02	Relevance of Bankers' Advice Under Corporate Law	16-3
§ 16.03	Investment Banker Evaluation of Alternative Transactions	16-4
	[1] Spin-Offs	16-4
	[2] Split-Ups and Split-Offs	16-4
	[3] Subsidiary IPOs	16-4
	[4] Tracking Stock Transactions	16-4
	[5] Acquisitions, Dispositions and Joint Ventures	16-5
§ 16.04	Implementing the Transaction	16-6
	[1] Spin-Offs	16-6
	[2] Split-Ups and Split-Offs	16-6
	[3] Subsidiary IPOs	16-7
	[4] Tracking Stock Transactions	16-7
	[5] Acquisitions, Dispositions and Joint Ventures	16-7
§ 16.05	Investment Banker Opinions	16-8
	[1] Types of Opinions	16-8
	[a] Fairness Opinions	16-9
	[b] Superior Financial Alternative Opinions	16-10
	[c] Solvency Opinions	16-11
	[d] Viability Opinions	16-13
	[e] Access to Capital Markets Opinions	16-13
	[2] Disclosure of Banker Opinions	16-13
	[3] Investment Banker Liability for Opinions	16-15
	[4] Investment Banker Disclaimers	16-17
	[5] Investment Banker Conflicts of Interest	16-18

CHAPTER 17

**Federal Securities Law Governing
Newly Public Companies**

§ 17.01	Introduction	17-4
	[1] General	17-4
	[2] Emerging Growth Companies	17-5
§ 17.02	Public Company Reporting Requirements	17-7
	[1] Reporting Requirements	17-7
	[a] Form 10-K	17-7
	[b] Form 10-Q	17-9
	[c] Form 8-K	17-10
	[d] Certification of Company Periodic Reports	17-11
	[e] XBRL (eXtensible Business Reporting Language)	17-13
	[2] Proxy Rules	17-13
	[3] Reports to Shareholders	17-15
	[4] Non-GAAP Financial Measures (Regulation G)	17-16
	[5] Reports by 5% Beneficial Owners	17-17
	[6] Tender Offer Rules	17-18
	[a] Background	17-18
	[b] Williams Act	17-18
	[7] Internal Controls	17-19
	[a] Internal Controls and the Foreign Corrupt Practices Act	17-19
	[b] Internal Controls and the Sarbanes-Oxley Act	17-20
§ 17.03	Section 16 Beneficial Ownership/Reports	17-21
	[1] Who Is Required to Report	17-21
	[2] Forms 3 and 4	17-21
	[3] Annual Form 5 Filing	17-21
	[4] Retiring Directors and Officers	17-21
	[5] Puts, Calls, Options or Other Rights or Obligations to Buy or Sell Company Securities	17-22
	[6] Contents of Reports	17-22
	[7] Implications of Late Filings	17-24
	[8] Method of Filing	17-24
§ 17.04	Liability for “Short-Swing” Profits	17-25

	[1] Section 16(b) of the 1934 Act	17-25
	[2] Good Faith Is Not a Defense	17-25
	[3] Sequence of Transactions Is Not Relevant.	17-25
	[4] Computation of Short-Swing Profits	17-25
§ 17.05	Insider Trading	17-27
	[1] Nature of Liability	17-27
	[2] Insider Trading and Securities Fraud Enforcement Act	17-28
	[3] Affirmative Defenses	17-29
	[4] Regulation BTR	17-30
§ 17.06	Rule 144 and Limitations on Public Sales of Company Securities by Directors, Officers and Significant Stockholders	17-31
	[1] Overview	17-31
	[2] Application of Rule 144	17-32
§ 17.07	Regulation FD	17-33
§ 17.08	Nasdaq Requirements	17-35
	[1] Annual and Quarterly Reports	17-35
	[2] Disclosure of Material Nonpublic Information	17-35
	[3] Corporate Governance Listing Requirements	17-36
	[a] Overview	17-36
	[b] Transitional Period for IPOs	17-37
	[c] Controlled Companies	17-38
	[d] Board Independence	17-38
	[e] Independence Definition	17-38
	[f] Audit Committee	17-40
	[g] Nominating/Corporate Governance Committee	17-42
	[h] Compensation Committee	17-42
	[i] Third-Party Compensation Paid to Directors and Nominees	17-44
	[j] Code of Conduct	17-45
	[4] Certification/Notification Requirements	17-45
	[5] Filings Relating to Changes in Shares Outstanding and Name Changes, Notices of Dividends, Stock Splits, Etc.	17-46
§ 17.09	New York Stock Exchange Requirements	17-46.1
	[1] Annual and Quarterly Reports	17-46.1
	[2] Disclosure of Material Nonpublic Information	17-46.1
	[3] Corporate Governance Listing Requirements	17-47

TABLE OF CONTENTS

xxxix

	[a] Overview	17-47
	[b] Transitional Period for IPOs	17-48
	[c] Controlled Companies	17-48
	[d] Board Independence	17-49
	[e] Independence Definition	17-49
	[f] Audit Committee	17-50
	[g] Nominating/Corporate Governance	17-52
	[h] Compensation Committee	17-53
	[i] Code of Conduct	17-55
	[j] Website Posting Requirements	17-55
	[4] Affirmation/Notification Requirements	17-56
	[5] Filings Relating to Changes in Shares Outstanding and Name Changes, Notices of Dividends, Stock Splits, Etc.	17-56
§ 17.10	Corporate Governance and the Sarbanes-Oxley Act and Dodd-Frank Act	17-57
	[1] Related Person Transactions	17-57
	[2] Auditor Independence	17-57
	[a] Audit and Non-Audit Services	17-57
	[b] Required Reports to the Audit Committee	17-60
	[c] Audit Partner Rotation and Disclosure	17-61
	[d] Prohibition Against Hiring of Former Audit Personnel	17-62
	[e] Financial Expert Requirements	17-62
	[f] Prohibition Against Improper Influence	17-63
	[3] Compensation Advisors	17-64
	[4] Prohibition Against Loans to Executives	17-65
	[5] Code of Ethics	17-66
	[6] Whistleblower Protection	17-67
	[7] Professional Conduct Rules for Attorneys	17-69
	[8] Shareholder Approval of Executive Compensation	17-70
	[a] Say-on-Pay	17-70
	[b] Say-on-Frequency	17-71
	[c] Golden Parachute Compensation	17-71
§ 17.11	Public Filing Calendar	17-72
§ 17.12	Termination of EGC Status and Transition to Non-EGC Reporting Requirements	17-75
	[1] Termination of EGC Status	17-75
	[2] Transition to Non-EGC Reporting Requirements	17-75

CHAPTER 18

**Select Spin-Offs and Other
Business Separation Transactions**

§ 18.01	Time Warner/AOL	18-2.4
	[1] The Parties and Their Business.....	18-2.4
	[2] Purpose of the Transaction	18-3
	[3] Description of the Transaction (Spin-Off)...	18-3
	[4] The Basic Deal Document.....	18-4
	[5] Other Key Deal Documents.....	18-6
	[6] Management and Governance	18-6
	[7] Employment Arrangements	18-6
	[8] Tax Consequences of the Spin-Off.....	18-7
	[9] Conditions to Closing the Transaction	18-7
	[10] Financing Arrangements	18-7
	[11] Market Capitalization Data	18-8
§ 18.02	Bristol-Myers Squibb/Mead Johnson Nutrition...	18-9
	[1] The Parties and Their Business.....	18-9
	[2] Purpose of the Transaction	18-9
	[3] Description of the Transaction (IPO Followed by Split-Off).....	18-10
	[a] IPO	18-10
	[b] Split-Off.....	18-11
	[4] The Basic Deal Document.....	18-11
	[5] Other Key Deal Documents.....	18-12
	[6] Management and Governance	18-12
	[7] Employment Arrangements	18-12
	[8] Key Tax Consequences	18-13
	[9] Conditions to Closing the Transaction	18-14
	[10] Financing Arrangements	18-14
	[11] Unusual Deal Feature: International Aspects	18-14
	[12] Market Capitalization Data	18-14
§ 18.03	Advanced Micro Devices/GlobalFoundries	18-15
	[1] The Parties and Their Business.....	18-15
	[2] Purpose of the Transaction	18-15
	[3] The Transaction (Joint Venture) and the Basic Deal Documents	18-15
	[4] Other Key Deal Documents.....	18-17
	[5] Management and Governance	18-18
	[6] Employment Arrangements	18-19
	[7] Conditions to Closing the Transaction	18-19
	[8] Financing Arrangements	18-19
	[9] Market Capitalization Data	18-20

TABLE OF CONTENTS

xli

§ 18.04	Northrop Grumman/Huntington Ingalls Industries	18-21
	[1] The Parties and Their Business	18-21
	[2] Purpose of the Transaction	18-21
	[3] Description of the Transaction (Spin-Off)	18-22
	[4] The Basic Deal Document	18-22
	[5] Other Deal Documents	18-23
	[6] Management and Governance	18-23
	[7] Employment Arrangements	18-23
	[8] Conditions to Closing the Transaction	18-24
	[9] Financing Arrangements	18-24
	[10] Market Capitalization Data	18-25
§ 18.05	Marathon Oil/Marathon Petroleum	18-26
	[1] The Parties and Their Business	18-26
	[2] Purpose of the Transaction	18-26
	[3] Description of the Transaction (Spin-Off)	18-27
	[4] The Basic Deal Document	18-27
	[5] Other Deal Documents	18-28
	[6] Management and Governance	18-28
	[7] Employment Arrangements	18-28
	[8] Conditions to Closing the Transaction	18-29
	[9] Financing Arrangements	18-29
	[10] Market Capitalization Data	18-30
§ 18.06	ConocoPhillips/Phillips 66	18-31
	[1] The Parties and Their Business	18-31
	[2] Purpose of the Transaction	18-31
	[3] Description of the Transaction (Spin-Off)	18-32
	[4] The Basic Deal Document	18-32
	[5] Other Deal Documents	18-33
	[6] Management and Governance	18-33
	[7] Employment Arrangements	18-34
	[8] Conditions to Closing the Transaction	18-34
	[9] Financing Arrangements	18-35
	[10] Market Capitalization Data	18-35
§ 18.07	Pfizer Inc./Zoetis, Inc.	18-36
	[1] The Parties and Their Business	18-36
	[2] Purpose of the Transaction	18-36
	[3] Description of the Transaction (Subsidiary IPO Followed by Split-Off)	18-37
	[a] Subsidiary IPO	18-37
	[b] Split-Off	18-38
	[4] The Basic Deal Document	18-38
	[5] Other Deal Documents	18-39

BUSINESS SEPARATION TRANSACTIONS

	[6] Management and Governance	18-40
	[7] Employment Arrangements	18-40
	[8] Conditions to Closing the Transaction	18-41
	[9] Market Capitalization Data	18-41
§ 18.08	Twenty-First Century Fox/News Corporation	18-42
	[1] The Parties and Their Business	18-42
	[2] Purpose of the Transaction	18-42
	[3] Description of the Transaction (Spin-Off)	18-43
	[4] The Basic Deal Document	18-44
	[5] Other Deal Documents	18-44
	[6] Management and Governance	18-45
	[7] Employment Arrangements	18-45
	[8] Conditions to Closing the Transaction	18-46
	[9] Financing Arrangements	18-46
	[10] Market Capitalization Data	18-46
§ 18.09	Sears Holdings Corporation/Lands' End, Inc.	18-47
	[1] The Parties and Their Business	18-47
	[2] Purpose of the Transaction	18-47
	[3] Description of the Transaction (Spin-Off)	18-48
	[4] The Basic Deal Document	18-48
	[5] Other Deal Documents	18-49
	[6] Management and Governance	18-50
	[7] Employment Arrangements	18-50
	[8] Conditions to Closing the Transaction	18-50
	[9] Financing Arrangements	18-51
	[10] Market Capitalization Data	18-51
§ 18.10	eBay, Inc./PayPal Holdings, Inc.	18-52
	[1] The Parties and Their Business	18-52
	[2] Purpose of the Transaction	18-52
	[3] Description of the Transaction (Spin-Off)	18-53
	[4] The Basic Deal Document	18-53
	[5] Other Deal Documents	18-54
	[6] Management and Governance	18-55
	[7] Employment Arrangements	18-55
	[8] Conditions to Closing the Transaction	18-56
	[9] Financing Arrangements	18-56
	[10] Market Capitalization Data	18-57
§ 18.11	General Electric Co./Synchrony Financial	18-58
	[1] The Parties and Their Business	18-58
	[2] Purpose of the Transaction	18-58
	[3] Description of the Transaction (Subsidiary IPO Followed by Split-Off)	18-59

TABLE OF CONTENTS

xliii

	[a] Subsidiary IPO	18-59
	[b] Split-Off	18-60
	[4] The Basic Deal Document	18-61
	[5] Other Deal Documents	18-61
	[6] Management and Governance	18-62
	[7] Employment Arrangements	18-63
	[8] Conditions to Closing the Transaction	18-63
	[9] Market Capitalization Data	18-63
§ 18.12	Danaher Corporation/Fortive Corporation	18-64
	[1] The Parties and Their Business	18-64
	[2] Purpose of the Transaction	18-64
	[3] Description of the Transaction (Spin-Off)	18-65
	[4] The Basic Deal Document	18-66
	[5] Other Deal Documents	18-67
	[6] Management and Governance	18-68
	[7] Employment Arrangements	18-68
	[8] Conditions to Closing the Transaction	18-69
	[9] Financing Arrangements	18-69
	[10] Market Capitalization Data	18-70
§ 18.13	Xerox Corporation/Conduent Inc.	18-71
	[1] The Parties and Their Businesses	18-71
	[2] Purpose of the Transaction	18-71
	[3] Description of the Transaction (Spin-Off)	18-72
	[4] The Basic Deal Document	18-73
	[5] Other Deal Documents	18-74
	[6] Agreement with Activist Investor	18-75
	[7] Management and Governance	18-76
	[8] Employment Arrangements	18-76
	[9] Conditions to Closing the Transaction	18-77
	[10] Financing Arrangements	18-77
	[11] Market Capitalization Data	18-77
§ 18.14	TEGNA Inc./Cars.com Inc.	18-78
	[1] The Parties and Their Businesses	18-78
	[2] Purpose of the Transaction	18-78
	[3] Description of the Transaction (Spin-Off)	18-80
	[4] The Basic Deal Document	18-81
	[5] Other Deal Documents	18-81
	[6] Management and Governance	18-82
	[7] Employment Arrangements	18-82
	[8] Conditions to Closing the Transaction	18-83
	[9] Financing Arrangements	18-83
	[10] Market Capitalization Data	18-84

§ 18.15	NACCO Industries Inc.\Hamilton Beach Brands Holding Company	18-85
	[1] The Parties and Their Businesses	18-85
	[2] Purpose of the Transaction	18-85
	[3] Description of the Transaction (Spin-Off)	18-86
	[4] The Basic Deal Document	18-87
	[5] Other Deal Documents	18-88
	[6] Management and Governance	18-89
	[7] Compensation Arrangements	18-89
	[8] Conditions to Closing the Transaction	18-89
	[9] Market Capitalization Data	18-89
§ 18.16	Honeywell International Inc.\Resideo Technologies, Inc.	18-90
	[1] The Parties and Their Businesses	18-90
	[2] Purpose of the Transaction	18-90
	[3] Description of the Transaction (Spin-Off)	18-91
	[4] The Basic Deal Document	18-91
	[5] Other Deal Documents	18-92
	[6] Management and Governance	18-94
	[7] Compensation Arrangements	18-94
	[8] Conditions to Closing the Transaction	18-94
	[9] Market Capitalization Data	18-94
§ 18.17	DowDuPont Inc.\Corteva, Inc.	18-95
	[1] The Parties and Their Businesses	18-95
	[2] Purpose of the Transaction	18-95
	[3] Description of the Transaction (Spin-Off)	18-96
	[4] The Basic Deal Document	18-97
	[5] Other Deal Documents	18-98
	[6] Management and Governance	18-98
	[7] Compensation Arrangements	18-99
	[8] Conditions to Closing the Transaction	18-99
	[9] Market Capitalization Data	18-99
§ 18.18	Madison Square Garden Sports Corp.\Madison Square Garden Entertainment Corp.	18-100
	[1] The Parties and Their Businesses	18-100
	[2] Purpose of the Transaction	18-100
	[3] Description of the Transaction (Spin-Off)	18-101
	[4] The Basic Deal Document	18-101
	[5] Other Deal Documents	18-102

TABLE OF CONTENTS

xliv

	[6] Management and Governance	18-103
	[7] Compensation Arrangements	18-103
	[8] Conditions to Closing the Transaction	18-103
	[9] Market Capitalization Data	18-104
§ 18.19	SYNNEX Corporation\Concentrix Corporation. . .	18-105
	[1] The Parties and Their Businesses	18-105
	[2] Purpose of the Transaction	18-105
	[3] Description of the Transaction (Spin-Off). . .	18-105
	[4] The Basic Deal Document.	18-106
	[5] Other Deal Documents.	18-107
	[6] Management and Governance	18-107
	[7] Compensation Arrangements	18-107
	[8] Conditions to Closing the Transaction	18-108
	[9] Market Capitalization Data	18-108
§ 18.20	Dell Technologies Inc.\VMware, Inc.	18-109
	[1] The Parties and Their Businesses	18-109
	[2] Purpose of the Transaction	18-109
	[3] Description of the Transaction (Spin-Off)	18-110
	[4] The Basic Deal Document.	18-110
	[5] Other Deal Documents.	18-111
	[6] Management and Governance	18-112
	[7] Conditions to Closing the Transaction	18-113
	[8] Market Capitalization Data	18-113
§ 18.21	Kellanova\WK Kellogg Co.	18-114
	[1] The Parties and Their Businesses	18-114
	[2] Purpose of the Transaction	18-114
	[3] Description of the Transaction (Spin-Off)	18-115
	[4] The Basic Deal Document.	18-115
	[5] Other Deal Documents.	18-116
	[6] Management and Governance	18-117
	[7] Conditions to Closing the Transaction	18-117
	[8] Market Capitalization Data	18-117

APPENDIX A

Spin-Off, Split-Off and Split-Up Documents

APPENDIX A1:	Model Spin-Off Timetable	A-1
APPENDIX A2:	Excerpts from Form 10 and Information Statement for Spin-Off by PepsiCo of Tricon Global Restaurants	A-13

APPENDIX A3: Model Spin-Off Distribution Agreement	A-35
APPENDIX A4: Model Transition Services Agreement	A-71
APPENDIX A5: Excerpts from Viacom Form S-4 on Conflicts of Interest	A-75

APPENDIX B**Subsidiary IPO Documents**

APPENDIX B1: Model Subsidiary IPO Timetable	B-1
APPENDIX B2: Excerpts from Prospectus Filed Under Securities Act Rule 424(b)(4) for Subsidiary IPO of Agilent Technologies	B-11

APPENDIX C**Tracking Stock Transaction Documents**

APPENDIX C1: Model Tracking Stock Offering Timetable	C-1
APPENDIX C2: Tracking Stock Charter Amendment for AT&T, Inc.	C-7
APPENDIX C3: Tracking Stock Bylaw Amendment for AT&T, Inc.	C-23
APPENDIX C4: AT&T Policy Statement Regarding Wireless Group Tracking Stock Matters	C-25
TABLE OF ABBREVIATIONS	TA-1
INDEX	I-1