§ 2.02 Spin-Off Transactions

[1]—Basic Structure

In the typical spin-off transaction, the parent company distributes all of the stock of a subsidiary to the parent stockholders in the form of a pro rata dividend. After the distribution is completed, the spun-off company is no longer a subsidiary of the parent, and the parent's stockholders hold not only the parent's stock but also the subsidiary's stock. In some deals, rather than distributing all of the subsidiary's stock, the parent distributes only a portion of the stock and retains the balance. In these transactions, the parent and the parent's stockholders become co-owners of the subsidiary. Whether the parent distributes some or all of the subsidiary's stock, the subsidiary will become a publicly held company if the parent is publicly held.

Spin-offs are often coupled with other business separation transactions. For example, a parent company may sell 15% of a subsidiary's stock in a subsidiary IPO, and then distribute the balance of the subsidiary's stock to the parent stockholders in a spin-off. It may also conduct an exchange offer in which it gives its stockholders the opportunity to swap parent stock for subsidiary stock. Or the parent may spin-off unwanted businesses in anticipation of a merger with another company. In these transactions, careful tax planning is very important.1

[2]—Purpose of Spin-Off Transaction

A parent company will effect a spin-off transaction to serve a variety of purposes. Parent companies frequently identify the desire to improve management focus as one of their principal business motivations for engaging in a spin-off transaction. When a company engages in several businesses, the management team may not be able to concentrate on the needs of any single business. By separating the businesses through a spin-off, the management team for each company can focus on the specific business for which it is responsible—it can develop strategic plans, establish business policies, raise capital and allocate revenue without regard to the needs of any other business.

A spin-off may help eliminate competition and conflict problems that plague conglomerates operating several different businesses. For example, a parent company with business units that manufacture and

1 See: § 1.03 supra; § 13.01[4] infra.
sell electronic products may prohibit the manufacturing unit from selling goods to the retailing unit's competitors. It may also prohibit the retailing unit from distributing the products of other manufacturers that compete with its manufacturing unit. The growth of both units may be significantly constrained by these policies. If the manufacturing unit is spun-off as a separate company, the restrictions can be lifted and both businesses will be free to trade with the other business' competitors.

Companies also cite the desire to implement better compensation packages. When different businesses are divided into separate companies, it is easier to design equity incentives and other compensation programs that reward management based solely on the performance of the business for which they are responsible.

Parent companies sometimes also decide to effect a spin-off transaction to manage better the capital needs of the businesses being separated. The separated businesses can obtain financing and develop capital expenditure and liquidity plans independently. Where the capital needs of the two businesses differ, the freedom to develop separate capital plans may be attractive. The spun-off company can access the equity markets directly by selling its own securities. It can also sell its own debt securities and establish a separate line of credit. In fact, the spun-off company may enjoy the benefit of better stock market valuations and lower borrowing rates than the combined entity would have received before the spin-off.

Transaction planners should recognize, however, that the spin-off may result in one or both of the companies becoming financially weaker. If the balance sheet of the pre-spin-off company was stronger than that of the parent or the spun-off subsidiary, borrowing costs may increase. Spinning off a business with high growth potential may have an adverse impact on the equity value of an otherwise slow-growing parent company.

Companies that operate several businesses sometimes implement a spin-off transaction in connection with a business combination. When an acquiror wants to purchase only one of a parent company's businesses, the parent may spin-off all businesses other than those that the acquiror wants. The acquiror can then combine with the parent. Alternatively, the acquiror can merge with the spun-off subsidiary. Tax rules limit the desirability of these transactions, however.\footnote{See: IRC § 355(e); 26 U.S.C. § 355(e). See also, § 13.01[9] infra.}

A spin-off may be motivated by the simple desire to dispose of unwanted businesses or assets. The parent company's management

\footnote{See: IRC § 355(e); 26 U.S.C. § 355(e). See also, § 13.01[9] infra.}
may believe that a poorly performing or low-growth business is a drag on the performance of a more dynamic business, and conclude that the best solution to this problem is to spin-off the low-growth business. Similarly, management may be concerned that liabilities associated with one business threaten another healthier business, and decide that the threat should be eliminated by separating the two businesses.

Spin-offs may also be motivated by a desire to benefit the stockholders by improving the stock price. The business reasons for affecting a spin-off may indirectly serve this purpose—to the extent a spin-off enables a management team to improve the business' performance, the stock price may improve. However, there are other reasons why a spin-off may impact market performance. In general, conglomerates are out of favor with market analysts and investors. They reason that it is difficult to determine the strength of several unrelated businesses that are part of the same company. As a result, they claim that the market inevitably undervalues these companies. By contrast, analysts and investors argue that "pure play" companies, focused on a single business or a narrow group of related businesses, are easier to understand and more likely to be fairly valued by the market. Thus, spin-offs that have the effect of separating the businesses and creating two or more focused companies with different stocks help unlock value.

During the late 1990s, a long list of so-called “old economy” companies that also operated an e-commerce business relied on the "pure play" argument to justify the spin-off of their e-commerce businesses. They reasoned that the market did not accord full value to the Internet-based activities when they were conducted within a large traditional company. By spinning off the e-commerce business as a separate company, the parent companies hoped their stockholders would benefit from the high values at which Internet companies were trading.

In fact, studies show that market performance often improves after the separation of a parent and subsidiary engaged in different lines of business. The combined market value of the parent and spun-off company stock is often greater than the pre-spin-off market value of the parent company stock. However, this result is not a certainty and the combined valuation sometimes declines.³

A spin-off may serve a variety of other purposes, including the following:

³ See § 1.05 supra.
• **Takeover defense.** A parent may decide to spin-off one of its businesses to make it less attractive to hostile acquirors.
  
• **Avoiding the application of regulations.** The combined company may be subject to restrictive statutes or regulations that one of the business units could avoid if it were separated from the parent.
  
• **Reducing costs.** A business unit may be able to reduce its costs if it separates from the parent. For example, it may be able to reduce its liability insurance costs if the parent has extensive liability exposure.
  
• **Complying with a court or regulatory order.** A court or administrative agency may have ordered the separation of business units operated by the company. These orders are particularly common in the antitrust area.

A spin-off is not a good method for resolving shareholder disputes. A business separation helps resolve a dispute when one shareholder group gets one business and another shareholder group gets another. In a spin-off, the stock of the unit being spun-off is distributed to every stockholder—it does not result in an ownership shift.

Parent companies that decide to go forward with a spin-off may identify several purposes in their securities law filings. They often also list these reasons in requests for rulings from the Internal Revenue Service that the spin-off will be tax-free to shareholders. Section 355 of the Internal Revenue Code requires that a transaction must be motivated by valid business purposes if it is to qualify for tax-free treatment.\(^4\)

### [3]—Corporate Law Issues

Under most state corporation statutes, an affirmative vote by the board of directors is sufficient to approve a spin-off—the parent need not obtain stockholder approval. In making its decision, the board must fulfill its fiduciary duties of good faith and due care in designing and effecting the transaction.\(^5\) If it satisfies this requirement, it will ordinarily enjoy the protections of the business judgment rule. In the absence of a showing that it behaved improperly, the board will be presumed to have acted in accordance with its fiduciary duties.\(^6\)

Neither the board of directors of the parent nor the board of dire

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\(^5\) See § 4.02[1] *infra.*

tors of the subsidiary to be spun-off owes a duty to the future stockholders of the subsidiary. After a spin-off is completed, the spun-off company's stockholders sometimes complain that they have been unfairly treated by both boards. Case law establishes, however, that the parent board's only duty is to the parent stockholders. In addition, until the spin-off is completed, the subsidiary board's only duty is to its sole stockholder parent.7

The board must comply with state corporation law restrictions on its authority to declare dividends. Most state corporation statutes provide that a dividend may be declared only out of profits or corporate surplus. Corporate surplus is usually defined as the value of the company's assets minus its liabilities minus stated capital.8 Board members who violate the prohibition on dividends may be personally liable to the company for the amount of the improperly declared dividend.9

[4]—Securities Law Issues

The SEC staff takes the position that a conventional spin-off distribution need not be registered under the Securities Act of 1933, as amended (the "Securities Act").10 When the parent is a public company, however, the subsidiary's securities must be registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act").11 In addition, the parent must distribute an information statement describing the spun-off company and the transaction to its stockholders. This information statement, which must contain extensive disclosures, is subject to review by the Securities and Exchange Commission (the "SEC") staff.12 The parent and spun-off company must also consider issues arising under Rule 144 promulgated under the Securities Act13 and Section 16 under the Exchange Act.14

[5]—Fraudulent Conveyance Issues

Under both federal bankruptcy and state law fraudulent conveyance rules, a property transfer that is not made for reasonably equivalent value and that leaves the transferring party insolvent will be treated as a fraudulent conveyance. Spin-offs raise fraudulent conveyance issues because by definition the dividend distribution is not a transfer for reasonably equivalent value—the parent company receives nothing in return. If the spin-off has the effect of leaving the parent insolvent because the parent no longer owns the spun-off company's assets, the parent's creditors may be able to challenge the transaction on fraudulent conveyance grounds. In some circumstances, the subsidiary's creditors may also have fraudulent conveyance claims.

[6]—Tax Issues

Generally, if the spin-off qualifies for tax-free treatment under Internal Revenue Code Section 355, neither the parent nor the parent's stockholders will pay tax in the transaction. The subsidiary will have a carryover basis in its assets. A parent's stockholders’ pre-spin-off basis in the parent company stock will be divided between the post-spin-off parent stock and the subsidiary stock based on the relative values of the separated companies. Companies planning spin-offs often seek tax-free rulings from the Internal Revenue Service. In addition, they may ask for a legal opinion regarding tax treatment of the transaction from their lawyers.

If the spin-off does not qualify for tax-free treatment, the parent stockholders will pay tax on the value of the spun-off company's shares that they receive in the distribution. This tax will be assessed at ordinary income tax rates to the extent the parent has current or accumulated earnings and profits. The stockholders' basis in the spun-off company's stock will equal its value at the time of the distribution. Also, the distributing corporation will recognize gain inherent in the stock of the controlled corporation.

Spin-offs that are completed as a preliminary step to a merger

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16 Bankruptcy Code § 355; 26 U.S.C. § 355. See also, Chapter 13 infra.
17 See Bankruptcy Code § 301; 26 U.S.C. § 301. See also, Chapter 13 infra.
18 See Bankruptcy Code § 301(d); 26 U.S.C. § 301(d). See also, Chapter 13 infra.
19 Bankruptcy Code § 311(b); 26 U.S.C. § 311(b). See also, Chapter 13 infra.
transaction may not qualify for tax-free reorganization status under legislation enacted in 1997 and proposed tax rules promulgated there-under. The rules were designed to prevent parent companies from disposing of assets on a tax-free basis by conducting a tax-free spin-off and then a tax-free business combination. These rules, if they apply, would make the spin-off taxable to the distributing corporation, but not the shareholders.

[7]—Employee Issues

As part of the spin-off transaction, the parent must decide which employees will stay and which employees will be assigned to the spun-off company. It must also decide whether the compensation packages of the employees who stay should be modified, and how the compensation packages for the employees who are going with the spun-off entity should be designed. In spin-offs that are motivated in part by the desire to create better-tailored compensation packages, these issues receive significant attention.

The question of how to modify options granted under parent stock option plans prior to the spin-off arises in almost every transaction. In particular, should employee stock options be modified so that employees who are remaining with the parent have options in both the parent and the spun-off subsidiary, or should they have options only in the parent company going forward? Should employees who will work with the subsidiary have options in both the parent and the subsidiary, or should they have options only in the subsidiary going forward? The answers to these questions will depend in part on the terms of the parent's stock option plans.

[8]—Financing Alternatives

The spin-off transaction, by itself, does not raise capital for either the parent or the spun-off company. If the spun-off company needs liquidity, it may establish a line of credit or engage in a public or private offering of debt or equity. If the parent needs cash, it may sell a portion of the subsidiary's stock in conjunction with the spin-off. This transaction may take the form of an initial public offering of the sub-

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21 See Chapter 13 infra.
22 See generally, Chapter 15 infra.
23 Id.
sidiary's shares, a sale to a single strategic investor or both. Spin-offs are often coupled with public offerings in which either the parent or the spun-off company raises capital by selling the spun-off company's equity.\footnote{See: §§ 3.09, 7.17 \textit{infra}.}

Parent companies sometimes garner cash from the transaction by causing the subsidiary to send excess cash upstream before the spin-off is consummated. This payment may be in the form of a dividend or the repayment of intercompany indebtedness. In some cases, the subsidiary gives the parent a promissory note that it agrees to repay following the completion of the transaction. When the subsidiary does not have enough cash to operate as a stand-alone entity, the parent may make a cash infusion prior to effecting the separation or it may enter into guarantee or support arrangements.

\textbf{[9]—The Role of Investment Bankers and Banker Opinions}

Investment bankers play a valuable role in structuring and analyzing spin-off transactions. As part of this role, they may deliver opinions that support the board's decision to order a spin-off. Specifically, they may deliver viability opinions confirming that the parent and the spun-off company will be financially viable following the completion of the transaction. Alternatively, they may deliver solvency opinions that support the board's conclusion that the spin-off does not violate state corporate law dividend restrictions prohibiting the payment of a dividend in an amount that exceeds the parent's net assets, and fraudulent conveyance statutes prohibiting transfers that have the effect of leaving a company insolvent. Traditional fairness opinions—opinions to the effect that a transaction is fair to the stockholders from a financial point of view—are less common in spin-off transactions than they are in merger and acquisition transactions.\footnote{See § 16.05 \textit{infra}.}

\textbf{[10]—Documentation}

The parent and subsidiary to be spun-off usually enter into a spin-off agreement or distribution agreement providing for the declaration of the spin-off dividend. This agreement may also provide for the conveyance of assets to the company to be spun-off and allocate li-
abilities between the parent and the subsidiary. In most transactions, the conveyances are designed to ensure that the parent and the company to be spun-off will have all of the assets they need to carry on their businesses and that they will bear primary responsibility for the liabilities associated with their businesses. The agreement may also establish arrangements under which the parent or the subsidiary makes payments or provides guarantees and indemnities to the other company.

The parent and the subsidiary to be spun-off may also enter into supply, distribution and marketing arrangements and technology licensing agreements. In addition, they may enter into agreements under which the parent will continue to provide the subsidiary with administrative services—such as accounting, legal and other similar services—for a specified period following the completion of the transaction. The parent and the subsidiary to be spun-off may enter into tax sharing agreements. Finally, they may enter into covenants not to compete under which the parent and spun-off company set forth the limits on their freedom to compete. 26

Sample documents are provided at Appendices A3 and A4. 27

[11]—Timing of Spin-Off Transactions

The process of effecting a spin-off is likely to take at least four months. After management makes the decision to go forward with a spin-off, it must decide how to separate the parent company's assets from the assets to be held by the company to be spun-off. The parent and the subsidiary must begin to prepare the spin-off distribution agreement and other related documents. The planning and drafting process is likely to take at least one month, even for the simplest transaction, and may extend beyond a year.

At the same time, the parent and the subsidiary must prepare an information statement for distribution to the shareholders regarding the business to be spun-off. Because the disclosures to be included in this document closely parallel those that would be provided in the prospectus for a company going public, this task requires considerable time and effort. The information statement must include audited financial statements for the company to be spun-off. If the company has not previously been audited, the work involved in preparing financials

26 See § 3.02 infra.
27 See Appendix A3 infra for a copy of a sample spin-off distribution agreement. See Appendix A4 infra for a sample spin-off transition services agreement.
is likely to be significant.

After the information statement is prepared, it must be filed with the SEC. If the SEC decides to review the filings, its review will take at least thirty days. In the typical spin-off transaction, these comments are extensive. Responding to the comments will ordinarily take between two and four weeks. If the SEC gives comments that require significant work on the financials or a re-design of the transaction, the response may take even longer.

In many spin-offs, the parent and the subsidiary will file a request for a private letter ruling from the Internal Revenue Service regarding the tax-free nature of the spin-off. This request ordinarily should not be filed until the planners have prepared close-to-final drafts of the spin-off documents. The ruling process may take four to six months. Thus, the decision to seek a private letter ruling has a significant impact on timing.

Under SEC rules, the information statement that the parent distributes to parent stockholders regarding the spin-off must include audited financial statements for the subsidiary. If the subsidiary's financials have not been audited before, the need to complete an audit may significantly affect the timing of the transaction. The transaction planners should discuss financial statement requirements with the auditors early in the process.

Regulatory requirements may also have a significant impact on timing of the transaction. If the parent or the subsidiary operate regulated businesses, the planners should make sure that their timetable includes enough time to obtain any necessary regulatory approvals. A sample spin-off timetable is included as Appendix A1.

Once the SEC review and comment process is completed, the parent company can declare a record date and distribution date and mail the information statement to its stockholders. This process ordinarily will take approximately one month. In most cases, the parent company distributes the spun-off company stock after the information statement has been distributed.

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28 See Chapter 13 infra.
29 See § 5.04 infra.
30 See § 3.28 infra.
§ 2.03 Split-Off Transactions

[1]—Basic Structure

The split-off transaction is closely related to the spin-off—the end result of the transaction is that the public stockholders of a parent company own stock in two enterprises, the parent and a split-off subsidiary. The principal difference between the two types of transactions is that after the completion of a split-off, the stock of the subsidiary is held by the parent’s stockholders on a non-pro rata basis. Some stockholders may hold only parent stock, while others may hold only subsidiary stock, and still others may hold both.

In the typical split-off, the parent company conducts an exchange offer in which it gives its stockholders the opportunity to swap some or all of their parent company stock for subsidiary stock. For example, each stockholder might be given the right to receive two shares of subsidiary stock in return for a share of parent company stock. Depending on how much stock a stockholder exchanges, he will be left with parent stock only, subsidiary stock only, or a combination of both.

[2]—Purpose of Split-Off Transaction

Although split-offs are much less common than spin-off transactions, they serve the same purposes. A split-off enables the management teams for the separated businesses to better focus on the businesses for which they are responsible, and receive compensation that better rewards their efforts. The split-off businesses can operate free from the constraints that limited their opportunities while they were combined. In addition, the split-off businesses may perform better in the stock market than they did when they were part of a single entity.

Transaction planners choose to affect a split-off rather than a spin-off because the stockholders can decide whether they want to hold parent stock, split-off company stock or a combination of both. This flexibility may be particularly important when stockholders holding a significant interest express preferences for one stock over the other. In a spin-off, by contrast, all stockholders hold both parent and spun-off company stock immediately following the consummation of the transaction. They must engage in market transactions—selling the shares they do not want and buying the shares they do want—if they wish to adjust their holdings.
Split-offs also have a less dilutive effect on parent earnings per share than spin-offs. In a spin-off, the parent loses the benefit of any earnings the subsidiary generates and the number of shares of parent stock outstanding remains the same. Thus, if the subsidiary was profitable, parent earnings per share will decrease. In a split-off, by contrast, the parent loses the subsidiary’s earnings but the number of shares of parent stock outstanding decreases. Thus, parent earnings per share will not decrease as much as in the case of a spin-off. Indeed, earnings per share might even increase.

When the stockholders of a closely-held company that operates more than one business are fighting, a split-off may provide a solution. Management can structure a transaction in which one stockholder faction agrees to accept the stock of a subsidiary that will operate one of the businesses, and the other stockholder faction retains the stock of the parent.

Notwithstanding their advantages, split-offs are much less common than spin-offs. Transaction planners often reject the split-off alternative because they worry that stockholders will not understand how the exchange offer works. They sometimes also want to avoid the burden of setting an exchange ratio for the parent and subsidiary stock that requires them to determine the relative value of the two businesses.

[3]—Corporate Law Issues

Most split-offs are structured as exchange transactions. Thus, the state corporate law restrictions on the payment of dividends that apply to spin-offs are not relevant to split-offs. The parent's board members must act in accordance with their fiduciary duties of care and loyalty to the parent's stockholders. Neither the board of the subsidiary to be split-off nor the parent board will owe a fiduciary duty to the future stockholders of the split-off company. In many cases, stockholder approval will not be required.1

Because the parent board must establish the exchange ratios at which old parent company stock will be exchanged for new parent company and split-off company stock, the board must focus on fairness issues that do not arise in the spin-off context. Specifically, they must consider whether the ratios are fair to the parent stockholders. To support this conclusion, they may decide to obtain a fairness opinion from investment bankers. If the subsidiary has previously sold some of its stock to the public, the parent board may be able to set the ex-

1 See § 4.03 infra.
change ratio by using market prices. If the subsidiary is wholly owned by the parent at the time of the exchange offer, the parent may take the position that a fairness opinion is not necessary because all of the parent stockholders will have the same opportunity to participate in the exchange offer. The fairness issue may be most acute and the need for a fairness opinion may be greatest when the parent does not own all of the subsidiary stock and there is no public market for the subsidiary stock.\footnote{2}

**[4]—Securities Law Issues**

Unlike the spin-off transaction, the split-off transaction must be registered under the Securities Act. The exemption under Section 3(a)(9) of the Securities Act\footnote{3} for exchange offers will not be available because stockholders are exchanging securities in one entity for securities in another—Section 3(a)(9) applies only when securities of the same entity are exchanged.\footnote{4} The split-off securities must also be registered under the Exchange Act. The exchange offer itself must be conducted in accordance with the tender offer rules.\footnote{5}

**[5]—Fraudulent Conveyance Issues**

If the split-off leaves the parent insolvent because it no longer owns the split-off company’s assets—or if the subsidiary will be insolvent once it is split-off—the transaction may raise fraudulent conveyance concerns. The parent company and the subsidiary to be split-off must therefore pay careful attention to the question of whether they will have sufficient capital following completion of the transaction. If there are doubts about the subsidiary's post-closing solvency, the parent should agree to provide support or take steps to improve the subsidiary's balance sheet. If there are doubts about the parent's post-closing solvency, the transaction planners should consider restructuring the transaction or requiring the subsidiary to support the parent following completion.\footnote{6}

\begin{footnotes}
\item[2] See Chapter 16 \textit{infra}.
\item[4] See \textit{id}.
\item[5] See: 15 U.S.C. §§ 78n(d) \textit{et seq}.; 17 C.F.R. §§ 240.14d-1 \textit{et seq}. See also, § 5.21 \textit{infra}.
\item[6] See Chapter 14 \textit{infra}.
\end{footnotes}
[6]—Tax Issues

Split-offs may be structured as tax-free transactions under Section 355 of the Internal Revenue Code.\(^7\) As a result, shareholders who receive parent stock, subsidiary stock or a combination of both in the transaction will not pay tax. Their basis in the old parent stock will be allocated between the parent stock and the new subsidiary stock they hold following the transaction on the basis of the relative values of the parent and the subsidiary.\(^8\)

[7]—Employee Issues

The employee issues are the same in a split-off as they are in the spin-off. The parent and the split-off company must decide which employees will go with each company. They must decide on new compensation packages for employees staying with the parent and employees who will work for the split-off company. They must also decide whether to modify option grants previously provided to employees.\(^9\)

[8]—Financing Alternatives

Like a spin-off, the split-off is not a capital raising transaction. The parent and the subsidiary have the same financing choices in connection with a split-off transaction as they would in a spin-off transaction. The parent can pull cash out of the subsidiary in the form of a dividend or other payment. The subsidiary might establish a bank line of credit, sell debt securities or engage in an initial public offering to raise capital.\(^10\)

[9]—The Role of Investment Bankers and Banker Opinions

Bankers play an important role in most split-offs. The parent board of directors must decide on the appropriate exchange ratio for the parent and subsidiary stock. This determination depends on the relative values of the parent and the subsidiary to be split-off. Most boards want investment bankers’ advice on these values. As suggested above, they may also want the bankers to deliver an opinion to the effect that the exchange ratio is fair to the parent stockholders from a financial

\(^7\) IRC § 355; 26 U.S.C. § 355.
\(^8\) See Chapter 13 infra.
\(^9\) See Chapter 15 infra.
\(^10\) See § 3.21 infra.
point of view. Solvency opinions and viability opinions may also be useful in transactions where there is some doubt about the continuing financial viability of the parent and the subsidiary following the split-off.

[10]—Documentation

In a typical split-off, the parties will enter into an agreement in which the parent and the subsidiary agree how assets and liabilities will be allocated and provide for any transactions necessary to create separate businesses. They may also decide to enter into indemnification arrangements, administrative services agreements, tax sharing agreements, and other agreements similar to those entered into in the spin-off context.

[11]—Timing of Split-Off Transactions

A split-off is likely to take at least three months to complete. The parent and the subsidiary must prepare the separation agreement and any related agreements. They must also prepare a registration statement for the securities to be offered in the split-off exchange, as well as exchange offer materials. This work will take at least one month. Although the parent can commence the exchange after it has filed its registration statement with the SEC, it cannot complete the offer until the SEC finishes its review and declares the registration statement effective. This process may take two months. Under the tender offer rules, the parent must leave the exchange proposal open for at least twenty business days—approximately one calendar month—after the offer commences. If the parent and the subsidiary decide to seek a private letter ruling from the IRS regarding the tax-free nature of the split-off, which can take four to six months, the transaction will last longer.

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12 See § 16.05 infra.
13 See § 3.32 infra.
14 See § 5.21 infra.