

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. | 1-17 |
| | [3] Subsidiary IPOs | 1-18 |
| | [4] Tracking Stock Transactions | 1-22 |
| | [5] Sales of Subsidiaries and Business Divisions. | 1-24 |
| § 1.05 | The Stock Market Impact of Business Separation Transactions | 1-26 |
| § 1.06 | Failed Business Separation Transactions | 1-28.1 |
| § 1.07 | Conclusion. | 1-29 |
| § 1.08 | Selected Business Separation Transactions | 1-30 |

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. | 2-7 |
| | [4] Securities Law Issues. | 2-8 |
| | [5] Fraudulent Conveyance Issues. | 2-9 |
| | [6] Tax Issues | 2-9 |
| | [7] Employee Issues. | 2-10 |
| | [8] Financing Alternatives: Monetization and Recapitalization. | 2-10 |

| | | |
|--------|--|------|
| | [9] The Role of Investment Bankers and Banker Opinions. | 2-11 |
| | [10] Documentation | 2-12 |
| | [11] Timing of Spin-Off Transactions. | 2-12 |
| § 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 | 3-17 |
| | [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. | 3-67 |
| § 3.19 | Supply, Distribution, Marketing and Other Similar Arrangements; Covenants Not to Compete | 3-71 |
| § 3.20 | Administrative Service Arrangements | 3-72 |
| § 3.21 | Adjusting Credit Arrangements | 3-73 |
| § 3.22 | Regulatory Approvals | 3-76 |
| § 3.23 | Third-Party Consents. | 3-77 |
| § 3.24 | Splitting the Stock of the Company to Be Spun Off | 3-78 |
| § 3.25 | Setting a Distribution Ratio | 3-80 |
| § 3.26 | Fractional Shares | 3-81 |
| § 3.27 | Declaring the Spin-Off Dividend | 3-82 |
| § 3.28 | Negotiation of Spin-Off Arrangements | 3-84 |
| § 3.29 | Documenting the Spin-Off Transaction | 3-86 |
| | [1] Documenting Reorganization Transactions | 3-86 |
| | [2] Spin-Off Agreement | 3-87 |
| | [3] Supply Agreement | 3-89 |
| | [4] Administrative Services Agreement | 3-89 |
| | [5] Intellectual Property Licensing Agreement | 3-90 |
| | [6] Marketing Agreement | 3-90 |
| | [7] Environmental Indemnification Agreement | 3-91 |
| | [8] Employee and Employee Benefits Agreement | 3-91 |
| | [9] Insurance Agreement | 3-91 |
| | [10] Lease | 3-91 |
| | [11] Tax-Sharing Agreement | 3-92 |
| § 3.30 | Spin-Off Road Shows | 3-93 |
| § 3.30A | Alternative Spin-Off Structure: Using a Merger Agreement to Effect a Spin-Off. | 3-94 |
| § 3.31 | Structuring Split-Off Transactions | 3-97 |
| | [1] Allocating Assets and Liabilities | 3-97 |
| | [2] Coupling Split-Offs with Subsidiary IPOs and Spin-Offs | 3-97 |
| | [3] Split-Offs by Small or Troubled Companies | 3-97 |

BUSINESS SEPARATION TRANSACTIONS

| | | |
|--------|--|-------|
| | [4] Partial Split-Offs | 3-98 |
| | [5] Setting the Exchange Ratio | 3-98 |
| | [6] Establishing the Number of Shares to Be Issued | 3-99 |
| | [7] Dealing with Fractional Shares | 3-100 |
| | [8] Dealing with Under-Subscribed and Over-Subscribed Offers | 3-100 |
| | [9] Establishing Offer Conditions | 3-100 |
| | [10] Exchange Offer Mechanics | 3-101 |
| | [11] Information Agent and Dealer-Manager | 3-101 |
| § 3.32 | Structuring Split-Up Transactions | 3-102 |
| | [1] Allocating Assets and Liabilities and Other Preliminary Steps | 3-102 |
| | [2] Determining Number of Shares to Be Distributed | 3-102 |
| | [3] Fractional Shares | 3-102 |
| | [4] Developing a Plan of Liquidation | 3-102 |
| | [5] Corporate Law Filings and Notice to Creditors | 3-102 |
| | [6] Shareholder Approval | 3-103 |

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

ix

| | | |
|--------|--|------|
| | [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 | 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 | 4-58 |
| | [1] Basics of Split-Ups | 4-58 |
| | [2] Fiduciary Duties and the Business Judgment Rule in Split-Ups | 4-58 |
| | [3] Liquidation and Dissolution Procedures | 4-58 |

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 | 6-10 |
| § 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 | 6-18.2 |
| | [3] Safe Harbor Protection | 6-23 |
| | [4] Security Ownership of Certain Beneficial Owners and Management | 6-24 |
| | [5] Directors and Executive Officers; Corporate Governance Matters | 6-24 |
| | [6] Executive Compensation | 6-29 |
| | [7] Certain Relationships and Related Transactions | 6-39 |
| | [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 | 8-10 |

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 | 8-17 |
| | [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 | 9-26 |
| | [11] Certain Relationships | 9-28 |
| | [12] Principal Stockholders | 9-29 |
| | [13] Shares Available for Sale | 9-30 |

BUSINESS SEPARATION TRANSACTIONS

| | | |
|--------|---|------|
| | [14] Financial Statement Requirements | 9-31 |
| | [a] Basic Filing Requirements for Annual and Interim Statements | 9-31 |
| | [b] Updating Requirements | 9-32 |
| | [c] Financial Statements of Businesses Acquired or to Be Acquired | 9-33 |
| | [d] <i>Pro Forma</i> Financial Information | 9-34 |
| | [15] Part II of the Registration Statement | 9-36 |
| | [a] Exhibits | 9-36 |
| | [b] Other Part II Information | 9-37 |
| | [16] Signature Requirements | 9-37 |
| | [17] Expert and Director Consents | 9-38 |
| § 9.06 | Confidential Submissions, Filing, and Other Preparation Matters | 9-43 |
| | [1] Confidential Submissions | 9-43 |
| | [2] EDGAR Filing Mechanics | 9-43 |
| | [3] Registration Fees | 9-44 |
| | [4] Confidential Information Requests | 9-44 |
| | [5] Registration Under the Exchange Act | 9-45 |
| | [6] Listing on Exchanges | 9-45 |
| | [7] Financial Industry Regulatory Authority Review | 9-46 |
| | [8] State Blue Sky Laws | 9-47 |
| | [9] CUSIP Number | 9-47 |
| § 9.07 | Activities During the Waiting Period | 9-48 |
| | [1] Restrictions on Communications During the Waiting Period | 9-48 |
| | [2] The SEC Review and Comment Process | 9-55 |
| | [3] Distribution of the Preliminary Prospectus; Recirculation Issues | 9-56 |
| | [4] Road Show | 9-57 |
| | [5] Directed Share Programs | 9-59 |
| § 9.08 | Going Effective and Pricing | 9-61 |
| | [1] Mechanics of Going Effective | 9-61 |
| | [2] Pricing and Rule 430A Amendments | 9-62 |
| | [3] Changes in Volume or Price of Securities Being Registered | 9-63 |
| § 9.09 | Post-Effective Activities | 9-65 |
| | [1] Closing | 9-65 |
| | [2] Delivery of Final Prospectuses | 9-65 |
| | [3] Post-Effective Amendments, Prospectus Supplements and Stickers | 9-66 |
| | [4] Communications During the Post-Effective Quiet Period | 9-66 |

TABLE OF CONTENTS

xix

| | | |
|--------|---|------|
| § 9.10 | The Role of the Underwriters and the Underwriting Agreement | 9-67 |
| | [1] Role of the Underwriters | 9-67 |
| | [2] Selecting an Underwriter | 9-67 |
| | [3] Firm Commitment vs. Best-Efforts Underwritings | 9-69 |
| | [4] Underwriting Agreement | 9-69 |
| | [5] Over-Allotment Option | 9-71 |
| | [6] Lock-Up Option | 9-72 |
| | [7] Accountants' Comfort Letter | 9-72 |
| § 9.11 | Securities Act Liability Issues | 9-74 |
| | [1] Liability Under Section 11 of the Securities Act | 9-74 |
| | [2] Liability Under Section 12(a)(2) of the Securities Act | 9-77 |
| | [3] Controlling Person Liability Under Section 15 of the Securities Act | 9-79 |
| | [4] Liability Under Rule 10b-5 | 9-79 |
| | [5] Liability Under Section 17(a) of the Securities Act | 9-81 |
| | [6] Other Liabilities | 9-81 |
| § 9.12 | Investment Company Act Issues in Subsidiary IPOs | 9-82 |
| § 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 |

BUSINESS SEPARATION TRANSACTIONS

| | | |
|---------|--|-------|
| | [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 |

BUSINESS SEPARATION TRANSACTIONS

| | | |
|---------|--|-------|
| [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

xxv

| | | |
|---------|---|-------|
| | [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 | 12-84 |
| | [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 | 12-86 |
| § 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 |

(Rel. 26)

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-35 |
| | [1] Issuance of Stock by the Buyer | 12A-35 |
| | [2] Private Placement of Buyer’s Stock | 12A-37 |
| | [3] Private Placement of Target’s Stock | 12A-38 |
| | [4] Registration Rights | 12A-39 |
| | [5] Public Disclosure Regarding the | |
| | Transaction | 12A-39 |
| | [6] Sarbanes-Oxley Act Issues | 12A-43 |
| § 12A.11 | Documenting the Deal | 12A-46 |
| | [1] Confidentiality Agreement | 12A-46 |
| | [2] Letter of Intent | 12A-46 |
| | [3] Definitive Agreement | 12A-46 |
| | [a] Representations and Warranties | 12A-47 |
| | [b] Closing Conditions | 12A-47 |
| | [c] Covenants | 12A-48 |
| | [d] Indemnification Issues | 12A-49 |
| | [4] Supply, Distribution, Marketing and Other | |
| | Similar Arrangements | 12A-51 |

TABLE OF CONTENTS

xxxii

| | |
|---|--------|
| [5] Administrative Service Arrangements | 12A-51 |
| § 12A.12 Creditors' Rights Issues | 12A-53 |
| § 12A.13 Employee and Employee Benefit Issues | 12A-55 |
| [1] Determining Employees to Be Retained by Target | 12A-55 |
| [2] WARN Act and State Statutes Regarding Mass Layoffs | 12A-55 |
| [3] Employee Benefit Plan Issues | 12A-56 |
| § 12A.14 Timing of a Subsidiary or Division Sale | 12A-58 |

CHAPTER 13

Tax Issues in Business Separation Transactions

| | |
|--|-------|
| § 13.01 Spin-Offs | 13-3 |
| [1] Introduction | 13-3 |
| [2] Section 355 Requirements | 13-4 |
| [3] Tax Consequences of a Spin-Off | 13-6 |
| [4] Business Purpose | 13-7 |
| [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 the Revenue Procedure | 13-12 |
| [e] Change in Circumstances | 13-14 |
| [5] Active Conduct of a Trade or Business | 13-14 |
| [a] Generally | 13-14 |
| [i] Passive Investment Activities | 13-15 |

(Rel. 26)

BUSINESS SEPARATION TRANSACTIONS

| | | |
|---------|--|---------|
| | [ii] Partnerships | 13-16 |
| | [b] Satisfying the Active Conduct of a Trade or Business Requirement Through Affiliated Groups | 13-17 |
| | [c] Five-Year Business History | 13-19 |
| | [d] Acquisition of Control | 13-20 |
| [6] | Continuity Requirements | 13-22 |
| [7] | Device | 13-22 |
| | [a] Device Factors | 13-23 |
| | [b] Nondevice Factors | 13-26 |
| [8] | Distribution of Control; Retention of Stock or Securities | 13-27 |
| | [a] Statutory Provision | 13-27 |
| | [b] Regulations | 13-28 |
| | [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. | 13-28.1 |
| | [a] Operation of Section 355(e) | 13-28.3 |
| | [b] Regulations | 13-30 |
| | [c] Post-Spin-Off Acquisition of Distributing Corp. in a Tax-Free Reorganization | 13-42 |
| | [d] Post-Spin-Off Acquisition of Controlled Corp. in a Tax-Free Reorganization | 13-43 |
| [10] | Disqualified Distributions | 13-44 |
| | [a] Operation of Section 355(d) | 13-45 |
| | [b] Ownership Rules | 13-47 |
| [11] | Liabilities in Spin-Off Transactions | 13-48 |
| [12] | Disqualified Investment Corporations ("Cash Rich Spin-Offs") | 13-49 |
| § 13.02 | Tracking Stock | 13-51 |
| | [1] The Service's Position | 13-53 |
| | [2] Analogous Code Provisions and Case Law | 13-54.1 |
| | [3] Factors Favoring Treatment as Stock of Issuer | 13-54 |
| | [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 |

TABLE OF CONTENTS

xxxiii

| | | |
|---------|--------------------------------------|-------|
| § 13.03 | Subsidiary IPOs | 13-58 |
| | [1] Treatment of Dividends | 13-59 |
| | [2] Tax Sharing Agreements | 13-61 |
| | [3] Employee Stock Options | 13-63 |

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 |

BUSINESS SEPARATION TRANSACTIONS

| | | |
|---------|---|-------|
| | [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 |
| | [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 |

TABLE OF CONTENTS

xxxv

| | | |
|---------|--|-------|
| § 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 | 16-8 |
| | [b] Superior Financial Alternative Opinions. | 16-10 |
| | [c] Solvency Opinions. | 16-10 |
| | [d] Viability Opinions | 16-12 |
| | [e] Access to Capital Markets Opinions. | 16-13 |
| | [2] Disclosure of Banker Opinions | 16-13 |
| | [3] Investment Banker Liability for Opinions | 16-14 |
| | [4] Investment Banker Disclaimers | 16-16 |
| | [5] Investment Banker Conflicts of Interest | 16-17 |

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 |

TABLE OF CONTENTS

xxxvii

| | | |
|---------|---|-------|
| | [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) | 17-12 |
| | [2] Proxy Rules | 17-13 |
| | [3] Reports to Shareholders | 17-14 |
| | [4] Non-GAAP Financial Measures (Regulation G) | 17-15 |
| | [5] Reports by 5% Beneficial Owners | 17-16 |
| | [6] Tender Offer Rules | 17-17 |
| | [a] Background | 17-17 |
| | [b] Williams Act | 17-17 |
| | [7] Internal Controls | 17-18 |
| | [a] Internal Controls and the Foreign Corrupt Practices Act | 17-18 |
| | [b] Internal Controls and the Sarbanes-Oxley Act | 17-19 |
| § 17.03 | Section 16 Beneficial Ownership/Reports | 17-22 |
| | [1] Who Is Required to Report | 17-22 |
| | [2] Forms 3 and 4 | 17-22 |
| | [3] Annual Form 5 Filing | 17-22 |
| | [4] Retiring Directors and Officers | 17-22 |
| | [5] Puts, Calls, Options or Other Rights or Obligations to Buy or Sell Company Securities | 17-23 |
| | [6] Contents of Reports | 17-23 |
| | [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 | 17-29 |

| | | |
|---------|--|---------|
| § 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 |
| | [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 |

TABLE OF CONTENTS

xxxix

| | | |
|---------|--|-------|
| [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 | 17-58 |
| [1] | Related Person Transactions | 17-58 |
| [2] | Auditor Independence | 17-58 |
| [a] | Audit and Non-Audit Services | 17-58 |
| [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 |

BUSINESS SEPARATION TRANSACTIONS

| | | |
|---------|---|-------|
| | [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 |
| § 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 |

TABLE OF CONTENTS

xli

| | | |
|---------|--|-------|
| | [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 |
| | [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 |

BUSINESS SEPARATION TRANSACTIONS

| | | |
|---------|---|-------|
| | [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 |
| | [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 |

TABLE OF CONTENTS

xliii

| | | |
|---------|--|-------|
| § 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 |
| | [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 |

TABLE OF CONTENTS

xlv

| | | |
|---------|--|--------|
| § 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 |

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 |
|---------------------|--|-----|

BUSINESS SEPARATION TRANSACTIONS

| | |
|---|------|
| 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 |