

# TABLE OF CONTENTS

## CHAPTER 1

### Introduction

§ 1.01	Business Separation Choices . . . . .	1-1
§ 1.02	Labels. . . . .	1-3
§ 1.03	Purposes of Business Separation Transactions . . .	1-5
§ 1.04	History of Business Separation Transactions. . . .	1-8
	[1] Spin-Offs. . . . .	1-8
	[2] Split-Ups and Split-Offs. . . . .	1-10
	[3] Subsidiary IPOs . . . . .	1-10
	[4] Tracking Stock Transactions . . . . .	1-11
	[5] Sales of Subsidiaries and Business Divisions. . . . .	1-11
§ 1.05	The Stock Market Impact of Business Separation Transactions . . . . .	1-13
§ 1.06	Failed Business Separation Transactions . . . . .	1-17
§ 1.07	Conclusion. . . . .	1-18
§ 1.08	Selected Recent Business Separation Transactions . . . . .	1-19

## CHAPTER 2

### An Overview of Business Separation Transactions

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

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

## TABLE OF CONTENTS

v

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

## CHAPTER 3

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

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

	[8] Brand Names, Stationery, and Signage . . . . .	3-14
§ 3.04	Allocating Liabilities in Spin-Off Transactions . . . . .	3-16
	[1] General Allocation Issues . . . . .	3-16
	[2] Assignment of Contract Obligations . . . . .	3-16
	[3] Product Liability . . . . .	3-17
	[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 . . . . .	4-14
	[7] The Voidability of Interested Director Transactions . . . . .	4-14
	[8] Reliance on Management Support . . . . .	4-15
	[9] Reliance on Experts . . . . .	4-17
	[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. . . . .	4-27
	[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. . . . .	4-49
	[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.....	6-9
§ 6.03	Description of the Separation and Related Agreements .....	6-11
	[1] Pre-Spin-Off Relationship .....	6-11
	[2] Allocation of Assets and Liabilities .....	6-11
	[3] Contingent Liabilities.....	6-12
	[4] Transition Services and Intercompany Arrangements .....	6-12
	[5] Leasing Arrangements .....	6-12
	[6] Supply and Distribution Agreements.....	6-13
	[7] Intellectual Property Rights .....	6-13
	[8] Credit and Debt Arrangement .....	6-14
	[9] Continuing Equity Interest.....	6-14
	[10] Noncompetition.....	6-15
	[11] Employee Arrangements .....	6-15
§ 6.04	Form 10 Registration Statement.....	6-16
	[1] Description of the Subsidiary's Business and Properties.....	6-17
	[2] Financial Information: Management's Discussion and Analysis ("MD&A") ...	6-18
	[2A] SEC Guidance .....	6-20
	[3] Safe Harbor Protection.....	6-26
	[4] Security Ownership of Certain Beneficial Owners and Management .....	6-26
	[5] Directors and Executive Officers; Corporate Governance Matters .....	6-27
	[6] Executive Compensation .....	6-32
	[7] Certain Relationships and Related Transactions .....	6-40.3
	[8] Legal Proceedings .....	6-41
	[9] Market Price and Dividends; Related Shareholder Matters .....	6-42
	[10] Recent Sales of Unregistered Securities ...	6-42
	[11] Description of Securities to Be Registered...	6-43

## TABLE OF CONTENTS

xv

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

## CHAPTER 7

### Structuring Subsidiary IPOs

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

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

## **CHAPTER 8**

### **Corporate Law Issues in Subsidiary IPOs**

§ 8.01	Introduction . . . . .	8-2
§ 8.02	The Need for Stockholder Approval . . . . .	8-3
§ 8.03	The Need for Parent and Subsidiary Board Approval . . . . .	8-6
§ 8.04	Obtaining Parent Board Approval of a Subsidiary IPO . . . . .	8-7
	[1] Applicability of the Business Judgment Rule . . . . .	8-7
	[2] Designing an Effective Review Process . . . . .	8-7
	[3] Relevant Factors . . . . .	8-8
	[4] Investment Banker Opinions . . . . .	8-8
	[5] Establishing a Pricing Committee . . . . .	8-9
	[6] Duty of Loyalty Problems . . . . .	8-10

## 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 . . . . .	9-27
	[11] Certain Relationships . . . . .	9-28
	[12] Principal Stockholders . . . . .	9-30
	[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 . . . . .	9-33
	[c] Financial Statements of Businesses Acquired or to Be Acquired . . . . .	9-33
	[d] <i>Pro Forma</i> Financial Information . . . . .	9-35
	[15] Part II of the Registration Statement . . . . .	9-37
	[a] Exhibits . . . . .	9-37
	[b] Other Part II Information . . . . .	9-37
	[16] Signature Requirements . . . . .	9-38
	[17] Expert and Director Consents . . . . .	9-38
§ 9.06	Confidential Submissions, Filing, and Other Preparation Matters . . . . .	9-40
	[1] Confidential Submissions . . . . .	9-40
	[2] EDGAR Filing Mechanics . . . . .	9-41
	[3] Registration Fees . . . . .	9-41
	[4] Confidential Information Requests . . . . .	9-41
	[5] Registration Under the Exchange Act . . . . .	9-42
	[6] Listing on Exchanges . . . . .	9-43
	[7] Financial Industry Regulatory Authority Review . . . . .	9-43
	[8] State Blue Sky Laws . . . . .	9-44
	[9] CUSIP Number . . . . .	9-44
§ 9.07	Activities During the Waiting Period . . . . .	9-45
	[1] Restrictions on Communications During the Waiting Period . . . . .	9-45
	[2] The SEC Review and Comment Process . . . . .	9-51
	[3] Distribution of the Preliminary Prospectus; Recirculation Issues . . . . .	9-53
	[4] Road Show . . . . .	9-54
	[5] Directed Share Programs . . . . .	9-56
§ 9.08	Going Effective and Pricing . . . . .	9-58
	[1] Mechanics of Going Effective . . . . .	9-58
	[2] Pricing and Rule 430A Amendments . . . . .	9-59
	[3] Changes in Volume or Price of Securities Being Registered . . . . .	9-60
§ 9.09	Post-Effective Activities . . . . .	9-62
	[1] Closing . . . . .	9-62
	[2] Delivery of Final Prospectuses . . . . .	9-62
	[3] Post-Effective Amendments, Prospectus Supplements and Stickers . . . . .	9-63
	[4] Communications During the Post-Effective Period . . . . .	9-63



## TABLE OF CONTENTS

xix

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

## CHAPTER 10

### Structuring Tracking Stock Transactions

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

**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

**BUSINESS SEPARATION TRANSACTIONS**

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

## TABLE OF CONTENTS

xxxi

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

## CHAPTER 13

### Tax Issues in Business Separation Transactions

§ 13.01 Spin-Offs, Split-Offs and Split-Ups . . . . .	13-3
[1] Introduction . . . . .	13-3
[2] Section 355 Requirements . . . . .	13-3
[3] Tax Consequences to the Parties . . . . .	13-5
[4] Business Purpose . . . . .	13-6
[a] The Regulations . . . . .	13-7
[b] Requirements for Ruling . . . . .	13-8
[c] Acceptable Business Purposes . . . . .	13-8
[i] Providing Equity Interest to Employees . . . . .	13-9
[ii] Facilitating a Stock Offering . . . . .	13-9
[iii] Facilitating Borrowing . . . . .	13-10
[iv] Saving Significant Costs . . . . .	13-10
[v] Improving Performance by Changing Fit and Focus . . . . .	13-10
[vi] Resolving Competitive Concerns . . . . .	13-11
[vii] Facilitating Acquisitions Generally . . . . .	13-11
[viii] Facilitating Acquisitions of Others . . . . .	13-11
[ix] Insulating One Business from the Risks of Another Business . . . . .	13-12
[d] Valid Business Purposes Not Described in Revenue Procedure 96-30 . . . . .	13-12
[e] Change in Circumstances . . . . .	13-14
[5] Active Conduct of a Trade or Business . . . . .	13-14
[a] Generally . . . . .	13-14
[i] Passive Investment Activities . . . . .	13-15

**BUSINESS SEPARATION TRANSACTIONS**

	[ii] Partnerships . . . . .	13-16
	[b] Satisfying the Active Conduct of a Trade or Business Requirement Through Affiliated Groups . . . . .	13-18
	[c] Five-Year Business History . . . . .	13-18
	[d] Acquisition of Control . . . . .	13-19
[6]	Continuity Requirements . . . . .	13-21
[7]	Device . . . . .	13-21
	[a] Device Factors . . . . .	13-22
	[b] Nondevice Factors . . . . .	13-26
[8]	Distribution of Control; Retention of Stock or Securities . . . . .	13-27
	[a] Statutory Provision . . . . .	13-27
	[b] Regulations . . . . .	13-27
	[c] The Service's Ruling Position . . . . .	13-28
[9]	Section 355 Distributions as Part of a Plan with the Acquisition of Distributing Corp. or Controlled Corp. . . . .	13-28
	[a] Operation of Section 355(e) . . . . .	13-30
	[b] Regulations . . . . .	13-31
	[c] Post-Distribution Acquisition of Distributing Corp. in a Tax-Free Reorganization . . . . .	13-44
	[d] Post-Distribution Acquisition of Controlled Corp. in a Tax-Free Reorganization . . . . .	13-45
[10]	Disqualified Distributions . . . . .	13-45
	[a] Operation of Section 355(d) . . . . .	13-46
	[b] Ownership Rules . . . . .	13-48
[11]	Liabilities in Section 355 Transactions . . . . .	13-49
[12]	Disqualified Investment Corporations ("Cash Rich Split-Offs") . . . . .	13-50
[13]	Section 355 and REITs . . . . .	13-50.1
§ 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 . . . . .	13-62

## CHAPTER 14

### Creditors' Rights Issues in Business Separation Transactions

§ 14.01	Introduction . . . . .	14-3
§ 14.02	Basic Fraudulent Conveyance Law Principles . . . . .	14-5
	[1] Sources of Fraudulent Conveyance Law . . . . .	14-5
	[2] The Uniform Fraudulent Conveyance Act . . . . .	14-6
	[a] Actual Intent to Hinder, Delay or Defraud Creditors . . . . .	14-6
	[b] Constructive Fraud . . . . .	14-7
	[i] Conveyance by an Insolvent . . . . .	14-8
	[ii] Conveyance by Persons with Unreasonably Small Capital . . . . .	14-10
	[iii] Conveyance by Person with Debts Beyond Their Ability to Pay . . . . .	14-11
	[c] Burden of Proof and Standard of Evidence . . . . .	14-12
	[d] Liability for Aiding and Abetting . . . . .	14-13
	[e] Standing . . . . .	14-13
	[f] Remedies . . . . .	14-14
	[g] Statute of Limitations . . . . .	14-15
[3]	The Uniform Fraudulent Transfer Act . . . . .	14-16
	[a] Transactions Constituting Fraudulent Transfers . . . . .	14-16
	[b] Actual Fraud . . . . .	14-16
	[c] Constructive Fraud . . . . .	14-17
	[i] Transfer by an Insolvent . . . . .	14-18
	[ii] Transfer by Persons with Unreasonably Small Assets . . . . .	14-19
	[iii] Transfer by Persons About to Incur Debts . . . . .	14-20
	[d] Preferential Transfers to Insiders . . . . .	14-20
	[e] Relevance of Transferee's Good Faith . . . . .	14-20
	[f] Burden of Proof and Standard of Evidence . . . . .	14-21
	[g] Standing . . . . .	14-22

	[h] Remedies . . . . .	14-22
	[i] Statute of Limitations . . . . .	14-23
§ 14.03	Federal Bankruptcy Law . . . . .	14-24
	[1] Introduction . . . . .	14-24
	[2] Actual Fraud Claims Under Section 548 . . . . .	14-24
	[3] Constructive Fraud Claims Under Section 548 . . . . .	14-24
	[a] Transfers Made When the Debtor Is or Will Be Rendered Insolvent . . . . .	14-25
	[b] Transfers Made by Debtors with Unreasonably Small Capital . . . . .	14-26
	[c] Transfers Made by Debtors Who Intend to Incur Debts Beyond Their Ability to Pay . . . . .	14-26
	[4] Transfers to Good Faith Transferees . . . . .	14-26
	[5] Burden of Proof . . . . .	14-26
	[6] Statute of Limitations . . . . .	14-26
§ 14.04	The “Step Transaction” Approach to Evaluating Fraudulent Conveyance Risk . . . . .	14-28
§ 14.05	Fraudulent Conveyance Issues in Spin-Offs . . . . .	14-29
	[1] Fraudulent Conveyance Issues Associated with Pre-Spin-Off Reorganization . . . . .	14-29
	[a] Pre-Spin-Off Transfer by the Parent . . . . .	14-29
	[b] Pre-Spin-Off Transfers by the Subsidiary . . . . .	14-29
	[2] The Spin-Off as Fraudulent Transfer . . . . .	14-30
§ 14.06	Fraudulent Conveyance Issues in Split-Offs . . . . .	14-31
§ 14.07	Fraudulent Conveyance Issues in Split-Ups . . . . .	14-32
§ 14.08	Fraudulent Conveyance Issues in Subsidiary IPOs . . . . .	14-33
	[1] Claims Related to Reorganization . . . . .	14-33
	[a] Fraudulent Conveyance Issues for the Subsidiary . . . . .	14-33
	[b] Fraudulent Conveyance Issues for the Parent . . . . .	14-33
	[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 . . . . .	16-15
	[4] Investment Banker Disclaimers . . . . .	16-17
	[5] Investment Banker Conflicts of Interest . . . . .	16-18

## CHAPTER 17

**Federal Securities Law Governing  
Newly Public Companies**

§ 17.01	Introduction . . . . .	17-4
	[1] General . . . . .	17-4
	[2] Emerging Growth Companies . . . . .	17-5
§ 17.02	Public Company Reporting Requirements . . . . .	17-7

**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) . . . . .	17-13
	[2] Proxy Rules . . . . .	17-13
	[3] Reports to Shareholders . . . . .	17-15
	[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 . . . . .	17-18
	[7] Internal Controls . . . . .	17-19
	[a] Internal Controls and the Foreign Corrupt Practices Act . . . . .	17-19
	[b] Internal Controls and the Sarbanes-Oxley Act . . . . .	17-20
§ 17.03	Section 16 Beneficial Ownership/Reports . . . . .	17-22
	[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 . . . . .	17-57
[1]	Related Person Transactions . . . . .	17-57
[2]	Auditor Independence . . . . .	17-57
[a]	Audit and Non-Audit Services . . . . .	17-57
[b]	Required Reports to the Audit Committee . . . . .	17-60
[c]	Audit Partner Rotation and Disclosure . . . . .	17-61
[d]	Prohibition Against Hiring of Former Audit Personnel . . . . .	17-62
[e]	Financial Expert Requirements . . . . .	17-62
[f]	Prohibition Against Improper Influence . . . . .	17-63
[3]	Compensation Advisors . . . . .	17-64
[4]	Prohibition Against Loans to Executives . . .	17-65
[5]	Code of Ethics . . . . .	17-66
[6]	Whistleblower Protection . . . . .	17-67
[7]	Professional Conduct Rules for Attorneys . . .	17-69
[8]	Shareholder Approval of Executive Compensation . . . . .	17-70
[a]	Say-on-Pay . . . . .	17-70
[b]	Say-on-Frequency . . . . .	17-71
[c]	Golden Parachute Compensation . . . . .	17-71
§ 17.11	Public Filing Calendar . . . . .	17-72
§ 17.12	Termination of EGC Status and Transition to Non-EGC Reporting Requirements . . . . .	17-75
[1]	Termination of EGC Status . . . . .	17-75
[2]	Transition to Non-EGC Reporting Requirements . . . . .	17-75

## CHAPTER 18

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

§ 18.01	Time Warner/AOL . . . . .	18-2.4
[1]	The Parties and Their Business . . . . .	18-2.4
[2]	Purpose of the Transaction . . . . .	18-3
[3]	Description of the Transaction (Spin-Off) . . .	18-3
[4]	The Basic Deal Document . . . . .	18-4

**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

**BUSINESS SEPARATION TRANSACTIONS**

	[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
§ 18.19	SYNNEX Corporation\Concentrix Corporation. . . . .	18-105
	[1] The Parties and Their Businesses . . . . .	18-105
	[2] Purpose of the Transaction . . . . .	18-105

## TABLE OF CONTENTS

xlv

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

## APPENDIX A

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

<b>APPENDIX A1:</b>	Model Spin-Off Timetable . . . . .	A-1
<b>APPENDIX A2:</b>	Excerpts from Form 10 and Information Statement for Spin-Off by PepsiCo of Tricon Global Restaurants . . . . .	A-13
<b>APPENDIX A3:</b>	Model Spin-Off Distribution Agreement . . . . .	A-35
<b>APPENDIX A4:</b>	Model Transition Services Agreement . . . . .	A-71
<b>APPENDIX A5:</b>	Excerpts from Viacom Form S-4 on Conflicts of Interest . . . . .	A-75

## APPENDIX B

### Subsidiary IPO Documents

<b>APPENDIX B1:</b>	Model Subsidiary IPO Timetable . . . . .	B-1
<b>APPENDIX B2:</b>	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**

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