

M&A Webcast:

The Art of Carving: Carve-Out Transactions – Sales of Divisions and Subsidiaries

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Speakers



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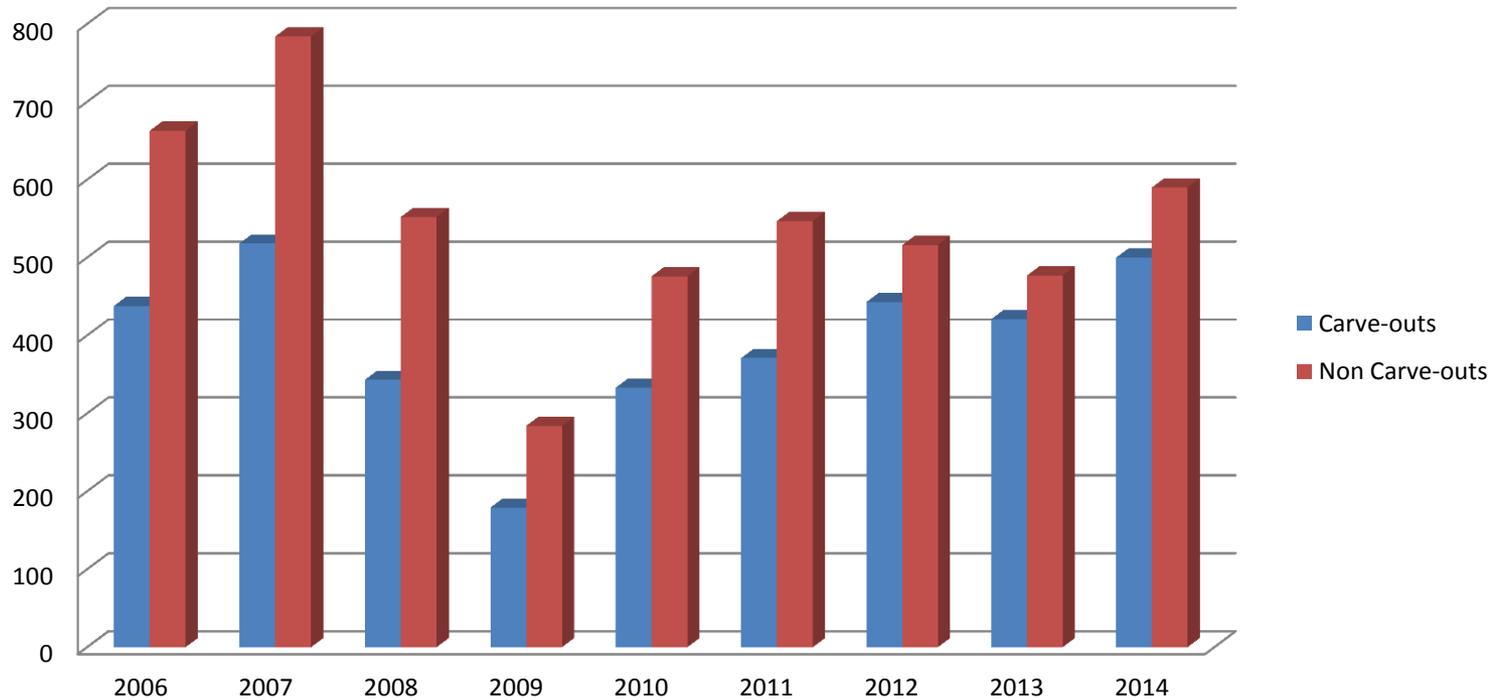
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Agenda

1. Introduction
2. Carve-out Overview
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5. Liability Considerations
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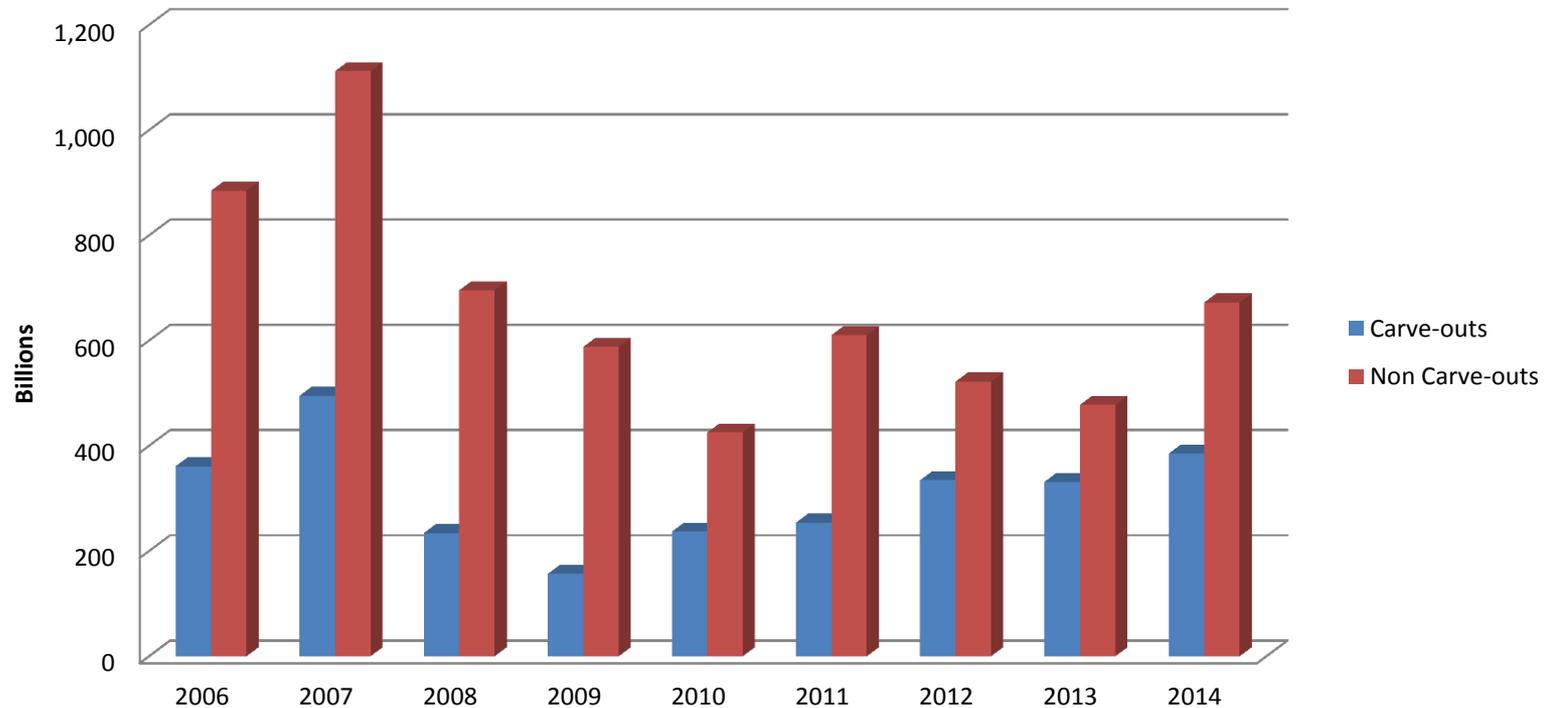
Carve-Out Overview

Number of U.S. Deals Over \$100 Million (2006 - 2014)



Source: Thomson Reuters

Aggregated Value of U.S. Deals Over \$100 Million (2006 - 2014)



Source: Thomson Reuters

Carve-Out Options

When a company decides to carve-out one of its businesses, it has a variety of choices, including the following:

Sale of the Business:

- A direct asset or stock sale (or both)
- A Morris Trust or Reverse Morris Trust

Business Separation Transaction:

- A spin-off
- A subsidiary IPO
- A split-off

. . . or a combination of the above



Sale of the Intel Media division, dedicated to development of Cloud TV products and services, to Verizon Communications
2014



Sale of the motion control business of Kellmorgen Corporation, a subsidiary of DanaHER, to Zapi S.p.A., a manufacturer of electronic equipment

2014



Sale of subsidiary Wayne Services Group, manufacturer of fuel dispensers and solutions, to Riverstone Holdings, an energy-focused private investment firm
2014

A Sale of the Business:

- **Direct Asset or Stock Sale.** A direct sale of the business to be carved out, through the sale of certain assets and assignment of certain liabilities related to the carved out business or the sale of stock of subsidiaries conducting the business (or both).
- **Morris Trust or Reverse Morris Trust.** In a Morris Trust, all assets of the parent company other than those being acquired are transferred to a new company; the new company is then separated from the parent company and distributed to the parent's stockholders, after which the parent company merges with the buyer. In a reverse Morris Trust, the assets to be acquired are separated into the new company, which is distributed to the parent company's stockholders and then merges with the buyer, with the parent company remaining independent.

\$1,225,000,000

 Heineken

Sale of Empaque, Heineken NV's Mexican packaging business, to Crown Holdings Inc.

2014

\$141,500,000

 Matson

Sale of Matson's Hawaii operations to The Pasha Group, a transportation and logistics company

2014

\$1,685,000,000

 Dole

Sale of Dole Worldwide Packaged Foods and Dole Asia Fresh Produce to ITOCHU Corporation

2012

\$2,700,000,000

 TRI Pointe
HOMES

Acquisition of Weyerhaeuser Real Estate Company, the homebuilding and real estate subsidiary of Weyerhaeuser Company

2013

\$2,100,000,000

 LAZARD

Financial advisor to PPG Industries in the separation of its commodity chemicals business into a new company to merge with Georgia Gulf Corporation

2012

Business Separation Transaction

- **Spin-off.** The parent company distributes the stock of a subsidiary to its stockholders in the form of a pro rata dividend. Following the distribution, the stockholders hold stock of the parent and stock of the spun-off company. In a partial spin-off, the parent distributes some of the stock of the subsidiary and retains some of the stock.
- **Subsidiary IPO.** The parent company or the subsidiary sells stock of the subsidiary to the public in a registered public offering. Subsidiary IPOs are sometimes also referred to as carve-outs or equity carve-outs. A parent company may link a subsidiary IPO and spin-off—selling some of the subsidiary’s stock to the public in a carve-out, and then distributing the balance of the stock to the parent company’s stockholders in a spin-off transaction.
- **Split-off.** The parent company makes an offer to its stockholders in which it proposes to exchange the stock of a subsidiary for its own stock. The parent company stockholders have the opportunity to swap some or all of their parent stock for subsidiary stock. If the parent offers all of the subsidiary stock, the result will be the creation of two independent companies. If it offers only some of the subsidiary stock, it will continue to own an interest in the subsidiary going forward.

\$16,000,000,000



Separation of North American grocery business via a tax-free spinoff to its shareholders

2011

\$6,000,000,000



Spin-off of Northrop Grumman's shipbuilding business, Huntington Ingalls Industries, to Northrop stockholders

2011

\$Undisclosed



*The First American Corporation
Spin-off of First American's information services businesses into CoreLogic, Inc.*

2010

\$3,556,000,000



Separation of Williams' exploration and production business (WPX Energy) via an initial public offering and tax-free spin-off

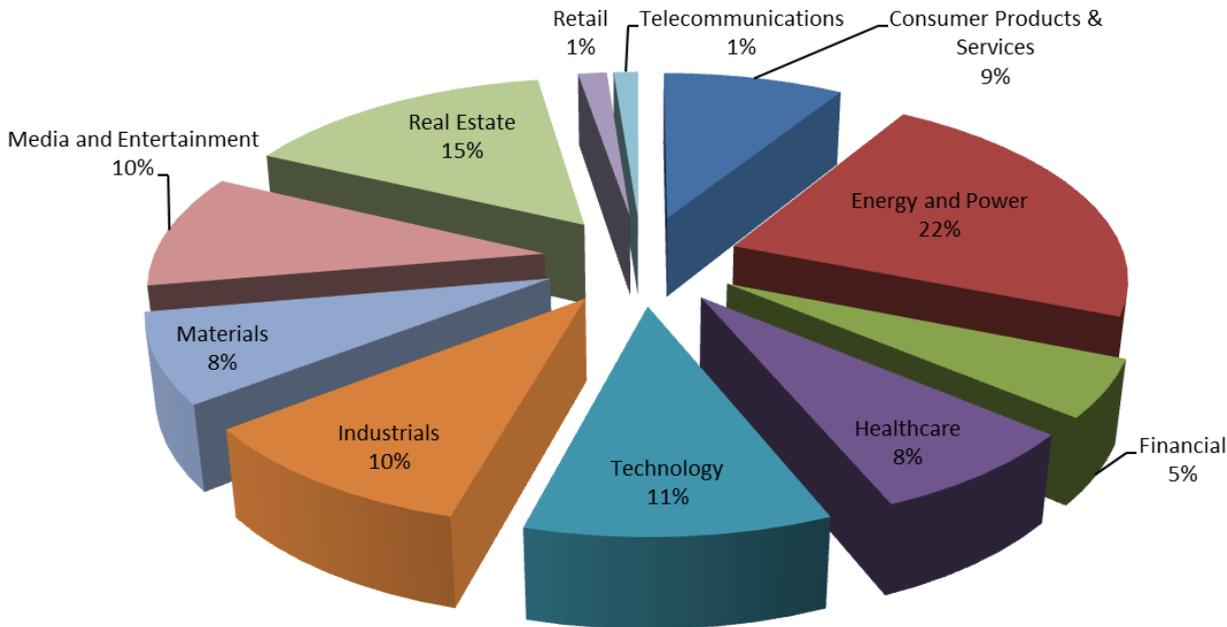
2011

Potential Reasons for Carve-Out Transactions

A parent company may consider a carve-out transaction to satisfy a number of business objectives, including the following:

- **Focus Management Attention on Growth Businesses.** The desire to improve management focus, particularly on businesses with greater potential long-term growth. When a company engages in several businesses, it may be more difficult for the management team to concentrate on the needs of every business.
- **Dispose of Non-Core Businesses.** A desire to dispose of non-core businesses or assets that cannot compete for capital and other resources because of the non-core nature of the business.
- **Unlock Stockholder Value.** A belief that the stock price of the two separated businesses will be greater than that of the parent holding the combined businesses.
- **Manage Capital Needs.** To better manage the capital needs of the separate businesses. Each separated company can access the equity markets or lending markets directly.
- **Eliminate Conflicts.** Help eliminate competition and conflict problems that conglomerates may face operating several different businesses.
- **Other.** Activist pressure and financial pressures.

Industry Breakdown of Carve-outs Over \$100 Million (2014)



Industry	Number of Deals
Consumer Products & Services	44
Energy and Power	112
Financials	25
Healthcare	38
Technology	52
Industrials	51
Materials	39
Media and Entertainment	50
Real Estate	76
Retail	7
Telecommunications	6

Source: Thomson Reuters

Preliminary Considerations

Form of the Transaction

- A. Often tax driven
- B. Form of transaction will drive transaction requirements (required filings liability management, etc.). Compare/contrast a simple taxable subsidiary sale to tax-free sponsored spin-off to public shareholders.
- C. Sequencing of transaction steps matters for a number of reasons (e.g., tax, regulatory and commercial)
 - 1) Tax—sequencing can be the difference between recognizing a gain or loss
 - a) Most often the eggs need to be unscrambled, especially in non-U.S. jurisdictions where multiple business units may share common entity or physical space
 - b) Creates opportunities to harvest losses to offset gains that have to be recognized to complete the transaction
 - 2) Regulatory—spinco may be regulated and remainco may not be. Flip transaction structure and carve out or spin remainco as opposed to spinco to avoid regulatory approvals and clearances.
 - 3) Commercial—contract terms may determine structure. Avoid or ease consent requirements.
- D. Key—need to conduct diligence as part of the planning process

Preliminary Considerations (*cont.*)

Assemble the Carve Out/Spin Team

- A. Representatives from the business unit, parent, treasury, legal, accounting, tax, human resources, benefits, insurance and investor relations
- B. Assign an overall project manager to run the team—needs to own the transaction, be accountable
- C. Team members should be respected members of the organization who wield influence as the tasks they will be asked to perform are many and varied
- D. Team needs to meet regularly (frequency dependent on the complexity of the transaction) and meetings need to be viewed as a first priority
- E. Shifting loyalties are likely to develop as transaction progresses
- F. The need or lack thereof for separate counsel
 - 1) Pre-spin
 - 2) Post-spin
- G. Engage outside advisors—financial, legal, accounting and valuation (solvency)

Preliminary Considerations (*cont.*)

Planning and Timeline

- A. Where does the business unit reside
- B. Business financial segments
- C. Capital structure and liability management
- D. Detailed project management tools and timeline

Asset Allocations

Assets

Once the business to be separated is defined, the assets must be allocated

- Intellectual Property
- Real Estate
- Personal Property and Tangible Assets
- Telecommunications and Information Systems
- Cash and Other Liquid Assets

Asset Allocations (*cont.*)

Contract Obligations

Contract Obligations must be assigned

- Allocation of Rights and Obligations
- Third Party Consents

New Supply Agreements

Determination of the need for new supply agreements

- Analyze Which Suppliers Required
- Terms
- Termination Provisions
- Default Remedies

Liability Considerations

Allocation of Liabilities (Excluding Indebtedness)

- A. Form of transaction is a consideration
 - 1) Spin-off—maximize overall value to pre spin stockholders
 - 2) Carve-out sale—disposal of non-core business unit
 - 3) Solvency and viability
- B. Business unit related liabilities—straight forward
 - 1) Business unit associated with the liability retains the liability
 - 2) Liabilities reflected in carve out balance sheet
- C. Unrelated liabilities—less obvious
 - 1) Securities laws liabilities
 - 2) Governmental investigations and other non-operating regulatory actions
 - 3) Liabilities associated with previously disposed of or discontinued business units

Liability Considerations

Allocation of Liabilities (Excluding Indebtedness) (*cont.*)

D. Environmental liabilities

- 1) Generally, with the business that generated the waste
- 2) Parent CERCLA liability
- 3) Parent has developed special expertise for handling these liabilities
 - a) administration vs. payment obligation
 - b) could be a transition service

E. Product liability

- 1) Business unit's products; discontinued products
- 2) Binding on third parties?
- 3) Availability of insurance

Liability Considerations

Allocation of Liabilities (Excluding Indebtedness) (*cont.*)

F. Litigation

- 1) Business unit's operations gave rise to the dispute
- 2) Parent retaining employees with knowledge and history of dispute
- 3) Administration vs payment obligation
- 4) Differences in opinion as to the amount of the contingent liability

G. Existing Indebtedness

- 1) Part of the capital structure planning process

Financial Statements

Importance of Maintaining/Preparing Separate Division/Subsidiary Financial Statements

- A. SEC rules may require them in almost any structure (see next section)
- B. Potential to increase sales price (buyers pay a premium for visibility and certainty)
- C. May be necessary to support a buyer's debt financing
- D. Overall increase in potential number of buyers

Financial Statements (*cont.*)

SEC Financial Statement Requirements

A. Parent Company Current Report on Form 8-K

- 1) Item 2.01 – Disposition of Significant Amount of Assets
 - a) A disposition must be disclosed if it involves a “significant amount of assets” (if the net book value of the spun-out business or the amount received by the parent company in the disposition is greater than 10% of parent’s total assets)
 - b) Pro forma financials for the parent will be required if the business disposed of is a “significant subsidiary” (if the business exceeds 10% or more under the “investment,” “asset” or “income” tests described below)

SEC Financial Statement Requirements (*cont.*)

B. Financials of the Spun-Out Business – Spin-Out Stock Distributions/IPOs

- 1) If a subsidiary is being spun-out to parent stockholders or is undertaking an IPO, the new entity will require separate audited financials on the same basis as any IPO
 - a) 3 years' financial statements (2 years' balance sheets)
 - b) Exceptions apply in the event the subsidiary/business has been in existence for shorter period of time

SEC Financial Statement Requirements (*cont.*)

C. Financial Reporting of the Buyer – Divestitures of Divisions or Subsidiaries

1) If the buyer is public, there are three governing factors for determining if a buyer will need to include audited financials for the acquired division/business in its own financial reports: Is it a “business,” is it “significant” to the buyer and has the transaction occurred or is it only “probable”?

a) Is a “business” being acquired?

i. Fact-specific inquiry: Is there sufficient continuity in the operation of the division/business such that disclosure of historic financials is material to an understanding of future operations?

(1) Will the nature of the revenue-producing activity of the spun-out business generally remain the same?

(2) Will the facilities, employee base, distribution system, sales force, customer base, operating rights, production techniques or trade names remain after the acquisition?

ii. Presumption that a separate entity, subsidiary or division is a “business.”

SEC Financial Statement Requirements (*cont.*)

- b) How significant is the acquired business to the buyer?
 - i. Three tests:
 - (1) Investment test (purchase price / total assets of buyer)
 - (2) Asset test (total assets / total assets of buyer)
 - (3) Income test (pre-tax income / pre-tax income of buyer)
 - ii. All three tests must be performed
 - iii. The significance level is based on the highest percentage resulting from any of the three tests
- c) Has the acquisition occurred or is it probable?
 - i. If the acquisition is probable but has not yet occurred: Financial statements (and pro forma financials) will be required only if the probable acquisition has a significance level greater than 50%.
 - ii. If the acquisition has occurred: Financial statements (and pro forma financials) will be required in accordance with the following table:

Significance Level	Financial Statements Required?	Required Audited Financials	Required Unaudited Financials	Exceptions
20% or less	No	N/A	N/A	<ul style="list-style-type: none"> Financial statements may be required if the acquirer consummates several acquisitions below the 20% threshold, in which case the acquirer must test the individual insignificant businesses for significance in the aggregate.
20% - 40%	Yes	Most recent fiscal year.	For the interim period from the latest fiscal year-end, and for the corresponding period in the prior fiscal year.	<ul style="list-style-type: none"> <u>74-day grace period</u>: Financials are generally not required for SEC filings within 74 days after the consummation of the acquisition. Note, however, that an initial Form 8-K filed to describe the acquisition must be amended within 71 calendar days after the initial Form 8-K due date to include the required historical target financial statements.
40% - 50%	Yes	2 most recent fiscal years.	Same interim period described above.	<ul style="list-style-type: none"> Same 74-day grace period described above.
Greater than 50%	Yes	3 most recent fiscal years.	Same interim period described above.	<ul style="list-style-type: none"> Small targets with net revenues below \$50 million. Emerging growth company acquirers that only present two years of financial statements pursuant to the JOBS Act need only provide two years of target financial statements. Different rules for foreign targets.

SEC Financial Statement Requirements (*cont.*)

Timing considerations

To avoid costly transaction delays, financial statements should be prepared well in advance of the sale/distribution/IPO process:

- A. The financial statement preparation process can be particularly complex if the carved-out subsidiary or division shares assets and services with its parent
- B. Amounts that were previously not considered material by the parent may be material to the carved-out business, requiring a closer review of accounts and balances
- C. If the SEC will require several years of audited financials, sellers should account for the extra time required to collect and prepare historical financial records
- D. Waiting to prepare statements until after the sale process has commenced carries a substantial risk of disgruntling prospective buyers if the statements do not meet initial financial expectations

Employee Matters

- When do you decide who goes with which business and when do you tell them?
 - Management team for separated company – internal transitions vs. outside hires.
- How do you keep employees properly motivated through closing?
 - Consider retention or transaction bonuses for key employees to motivate them to push the transaction forward to a timely closing.
 - Consider tying all or a portion of the retention/transaction bonus to the value of the business to further incentivize employees.
- Allocation of employee-related liabilities – often subject to a separate agreement.
- Creating the new compensation programs for the companies:
 - How to tie compensation to the performance of the new businesses – packages need to be aligned with the separated businesses.
 - Newco equity grants and plans.
 - Compensation consultant – use parent consultant or hire new consultant?

Employee Matters (*cont.*)

- Treatment of equity grants and bonuses for terminated employees.
- Be sure to focus on matters relating to adjustments to outstanding parent equity awards and parent equity plans early in the transaction process.
 - Performance targets post-closing.
 - Check for anti-dilution provisions and whether any holder consents are required.
 - Consider impact of any adjustment to maximum number of share grants under plans.
 - Review all applicable plans and agreements to confirm that the transaction will not result in any change in control triggers or benefits.
 - Review accounting issues for any adjustments to awards – consult with accountants early.
- Consider overseas issues (particularly Europe).

Corporate Approvals

Legal Standards Applicable to Board of Director Decisions

- A. The “Business Judgment Rule” generally applies to a Board’s decision to undertake a spin-off dividend/IPO or a sale of a division or subsidiary (except as noted below).
 - 1) Presumption in favor of Board's decision – courts will not second guess the Board's decision.
 - 2) The burden is on a plaintiff to prove that the Board did not satisfy its fiduciary duties:
 - a) Duty of Care
 - i. Duty to gather all material information reasonably available before making a decision.
 - b) Duty of Loyalty
 - i. Duty to promote interests of the corporation and its stockholders over self interest.
 - 3) Practical guidance: The Board must in any case undertake a reasonable investigation of the facts and consideration of alternatives.

Legal Standards Applicable to Board of Director Decisions (*cont.*)

- B. Conflicts of interest can give rise to a heightened level of judicial review
 - 1) Examples: A controlling shareholder/director will be affiliated with or will control the spun off company or one or more directors is affiliated with carve-out acquirer
 - 2) The business judgment rule presumption may be lost, and the board may be required to satisfy a two-prong “Entire Fairness” test:
 - a) Fair dealing – Did the Board’s process ensure that alternatives were adequately considered?
 - b) Fair price – Was the consideration received by the corporation or stockholders “fair”?
 - 3) Key Points:
 - a) No presumption in favor of the Board’s actions – burden is shifted to the board to prove entire fairness
 - b) Courts undertake a thorough, substantive after-the-fact review of the process and the fairness of the transaction

Legal Standards Applicable to Board of Director Decisions (*cont.*)

C. Fraudulent Conveyance Laws and Dividend Statutes

- 1) Fraudulent Conveyance: A conveyance (a spin-out distribution or a sale of a business) is deemed fraudulent if it is made for less than reasonably equivalent value while the transferor is (i) insolvent (or rendered so by the transaction), (ii) undercapitalized or (iii) unable to pay debts as they become due
 - a) Highly relevant in a dividend spin-out because the parent company receives no “value” in exchange for its subsidiary in the transaction (or where assets being transferred between the parent and the sub for no consideration prior to a spin out)
 - b) Also relevant in any sale of a division where there is a question as to whether the parent may be insolvent or may be rendered insolvent
- Risk that the spin-out can be unwound (or enjoined)

Legal Standards Applicable to Board of Director Decisions (*cont.*)

- 2) Dividend/Repurchase/Redemption Statutes (DGCL §§ 160 & 170):
Corporations are only allowed to pay dividends or repurchase equity if the transaction will not “impair capital”
 - a) The standard that typically applies is whether the dividend or repurchase is done out of a company’s “surplus” (generally defined as the FMV of assets minus stated liabilities minus the par value of issued capital stock)
 - b) Careful consideration is required because (i) the spin-out (distribution of the spun-out company’s equity to the parent stockholders) can be seen as an unlawful dividend or (ii) the repurchase/redemption (exchanging spun-out company’s equity for equity of the parent) can be seen as an unlawful redemption, in each case, if the capital impairment test not satisfied

Gives rise to breach of fiduciary duty claims and potential personal liability for directors

Board of Director Process in the Spin-Out/Carve-Out Context

A. Special Committees of the Board

- 1) Delaware Corp. Code § 144 (and similar state statutes): An interested party transaction is not void or voidable solely as a result of the conflict if the conflict of interest is disclosed to the board and the board obtains disinterested director approval
- 2) Under relevant case law, a committee of disinterested directors with authority to negotiate and approve the transaction may:
 - a) Preserve for the Board protections of the business judgment rule
 - b) Shift the burden to a plaintiff challenging the transaction
- 3) Key Point: Regardless of whether there is a conflict of interest, companies often appoint a special committee to deliberate on a spin-out transaction because it can facilitate a more thoughtful, detailed evaluation of the deal by a smaller working group of the Board

Board of Director Process in the Spin-Out/Carve-Out Context (*cont.*)

B. Investment Banker/Financial Advisor Advice/Opinions

- 1) Reliance on an expert's advice and/or an opinion of value is an important means of satisfying the Board's duty of care or satisfying the enhanced scrutiny that may apply to the Board's actions under the "entire fairness" test
 - a) Delaware Corp. Code § 141(e) – a Board is protected in relying in good faith on experts
 - b) Courts in reviewing Boards' actions place great weight on whether Board obtained independent advice from a financial expert

Board of Director Process in the Spin-Out/Carve-Out Context (*cont.*)

2) Types of Investment Banker/Financial Advisor Opinions

a) Fairness Opinions

- i. A fairness opinion is the typical opinion rendered to a Board in a sale of a company or a sale of a division – an opinion that the consideration to be received by stockholders or the corporation is “fair from a financial point of view”
- ii. A fairness opinion may also be helpful to a board in assessing whether an exchange ratio is fair to the corporation in a spin-out exchange offer
- iii. Key Point: A traditional fairness opinion may have limited value in a spin-off distribution:
 - (1) parent stockholders are receiving their shares pro rata and continue to own the spun-off business
 - (2) a fairness opinion would typically not address the relative values of the parent and subsidiary in any event
 - (3) it may be more appropriate for the Board to obtain an opinion that the parent and the spun-off entity are both financially viable and solvent (addressed below)

Board of Director Process in the Spin-Out/Carve-Out Context (*cont.*)

b) Solvency Opinions

- i. Solvency opinions help address concerns regarding:
 - (1) whether the spin-off could be unwound or enjoined as a fraudulent conveyance
 - (2) whether the spin-off dividend satisfies corporate laws applicable to the declaration of dividends
- ii. Key Point: It is critical to negotiate for a solvency opinion that addresses the precise legal standard that may be at issue
 - (1) Solvency/Fraudulent Conveyance:
 - a. Not unreasonably small capital
 - b. Will not incur debts beyond its ability to pay
 - (2) Dividends:
 - a. The value of spin off dividend does not exceed the surplus of parent

Board of Director Process in the Spin-Out/Carve-Out Context (*cont.*)

c) Valuation Opinions

- i. Valuation of assets may be needed to support an investment bank's or the board's conclusion that fair value is being received in a transaction or that the entity is solvent
- ii. An appraisal/valuation firm rather than investment bank will be required for this work

Stockholder Approval of Spin-Offs and Divestitures

A. Sale of a Division or a Subsidiary

- 1) A sale of a division or subsidiary may constitute a sale of all or substantially all the company's assets requiring a stockholder vote depending upon the size of the business or division being sold and an evaluation of the relevant facts
- 2) There is extensive case law on what constitutes "all or substantially all":

Quantitative Test: Are the assets, revenue, earnings or net worth of the divested business greater than 50% of the parent's assets, revenue, earnings or net worth?

Qualitative Test: Is the transaction out of the ordinary and does it substantially affect the existence and purpose of the parent corporation? Is it the sale of the corporation's historical business?

Stockholder Approval of Spin-Offs and Divestitures (*cont.*)

B. Spin-Off Distributions

- 1) A spin off distribution of subsidiary stock may or may not be a sale of all or substantially all the assets requiring stockholder approval under state corporate law
 - a) Delaware's statute applicable to the sale of assets (Delaware Corp. Code § 271) covers any “sale, lease or exchange” of all or substantially all a company’s assets. No “sale, lease or exchange” is occurring in a spin off distribution
 - b) New York and California statutes applicable to the sale of assets may apply to spin off distributions because they encompass sales or “transfers” of all or substantially all of a company's assets (see discussion below)
- 2) A spin off distribution would still need to satisfy applicable dividend statutes (see discussion above)

Stockholder Approval of Spin Offs and Divestitures (*cont.*)

- C. Voluntarily submitting a spin-off or divestiture to stockholder approval
 - 1) Companies engaging in spin-off/carve-out transactions often may voluntarily submit the transactions to stockholders for approval
 - a) May shift the burden of proof in a stockholder lawsuit
 - b) Sometimes perceived as good corporate governance

Acquisition Agreement

- A direct asset or stock sale (or both) – typically a Stock Purchase, Asset Purchase or Asset and Stock Purchase Agreement
- A Morris Trust or reverse Morris Trust – typically a Distribution Agreement and Merger Agreement OR a Transaction Agreement

Agreement Terms – Stock or Asset Purchase

- **Purchase Price**
 - Consideration type
 - Adjustments for cash or working capital
 - Earn-outs
- **Representations and Warranties**

Acquisition Agreement (*cont.*)

- **Pre-Closing Covenants**
 - Shared contracts
 - Termination of affiliate transactions
 - No fiduciary out
- **Post-Closing Covenants**
 - Non-compete
 - Non-solicit
 - Employee matters
 - Access
- **Indemnification**
 - Representations and warranties survive closing
 - Procedures for defending third-party claims

Acquisition Agreement (*cont.*)

- **Agreement Terms-Morris Trust/RMT**
 - More like a public company transaction:
 - No survival of representations and warranties
 - Fiduciary out
 - But also similarities to a direct stock or asset carve-out transaction:
 - Cash adjustment at close
 - Non-compete
 - Non-solicit

Post-Closing Matters

Post-Closing Transition Services Agreements

- View of Typical Seller
- Frequent View of Senior Management
- Typical Terms of a Transition Services Agreement

Communications

- For a successful transaction, it is important to understand and communicate the “story” for the separated companies at the appropriate time.
- Gun-jumping rules apply to registered spin-off transactions.
- Avoiding leaks – for significant transactions, this is as important as with a public company sale.
 - Senior officers should be specifically designated to respond to all contacts by investors and the media.
 - Limit communications to factual matters, continue to conduct business affairs in the customary manner, consistent with past practice, and limit dealings with the press.
 - Have counsel review all public communications prior to release, and pre-clear any media interview, conference presentation or other public speaking request.
 - Companies should be mindful that even with information security policies in place, internal communications may be leaked to the media.

Q&A



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Professional Profiles



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Michael Flynn is a partner in Gibson, Dunn & Crutcher’s Orange County Office and is a member of the firm’s Corporate Transactions, Mergers and Acquisitions and Capital Markets Practice Groups. Mr. Flynn specializes in corporate and securities law where he provides general corporate representation, venture capital financings, public offerings, mergers and acquisitions, leveraged recapitalizations and secured and unsecured debt financings for his clients. He has extensive experience counseling publicly held companies on corporate governance matters, defensive measures, disclosure issues and other complex securities law issues.

Mr. Flynn’s clients have included publicly traded and privately held high-growth, technology, life science, manufacturing, real estate, restaurant and consumer products companies. He also provides counsel to equity funds and investment banking firms.

Mr. Flynn received his J.D. degree from Loyola Law School in 1985 and his B.B.A. from the University of Notre Dame in 1982. He is a member of the State Bar of California. He was named one of the Top 100 Attorneys in California by the *Daily Journal* in 2006. Mr. Flynn was named a “Super Lawyer” by *Los Angeles Magazine* in 2012, 2013, 2014 and 2015, and is a past President of The Pacific Club.

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Mr. Griffiths has extensive experience representing private equity firms and their portfolio companies in mergers and acquisitions, and companies in complex carve-out and spin-off transactions and acquisitions. Mr. Griffiths also has extensive experience in corporate finance in both public and private capital markets, troubled company representation (crisis management), and general corporate and securities compliance matters.

Mr. Griffiths is ranked by *Chambers Global: The World's Leading Lawyers for Business* and *Chambers USA: America's Leading Lawyers for Business* as a leading private equity lawyer. *Chambers USA* describes Mr. Griffiths as a "pragmatic and effective problem solver in complex and tense transaction negotiations."

Mr. Griffiths joined Gibson Dunn in 1986 after earning his Juris Doctor from the University of Virginia. He received his Bachelor of Science degree with highest distinction from Purdue University in 1983, majoring in finance.

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Michelle Hodges is a partner in the Orange County office of Gibson Dunn and is a member of the firm's Mergers and Acquisitions, Capital Markets and Life Sciences Practice Groups.

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Ms. Hodges joined Gibson Dunn in 1996 after earning her Juris Doctor and Master of Business Administration from the University of California, Los Angeles. She earned her Bachelor of Horticultural Science degree with first class honors from Massey University, New Zealand, in 1981.

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Peter W. Wardle is a partner in the Los Angeles office of Gibson, Dunn & Crutcher. He is a member of the firm's Corporate Transactions Department and Co-Chair of its Capital Markets practice group.

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Mr. Wardle earned his J.D. in 1997 from the University of California, Los Angeles, School of Law, where he was elected to the Order of the Coif and served as Business Manager of the *UCLA Law Review* and Articles Editor of the *UCLA Entertainment Law Review*. He received an A.B. degree *cum laude* in 1992 from Harvard University. Mr. Wardle is a member of the Board of Directors and Chair of the Governance Committee for The Colburn School. He is a member of the firm's Compensation Committee, National Pro Bono Committee and chair of the Community Affairs Committee, and serves as one of the Pro Bono Partners for the Los Angeles area offices.

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Bradford P. Weirick is a partner with Gibson, Dunn in its Los Angeles office. He is Co-Chair of the firm's Emerging Technologies Practice Group and a member of the firm's Corporations Department, focusing on mergers and acquisitions, private equity investment transactions and public and private securities offerings. Mr. Weirick has substantial experience advising both acquirors/investors and target companies (both public and private) in connection with the negotiation of mergers and acquisitions, strategic transactions and financing transactions. In the technology sector, during the past few years, he has represented Investcorp Technology Partners, ValueClick, Inc., TeleSign, Montgomery & Co., ConduSiv Corporation, Idealab, Fleetmatics, Telepacific, Mulu, eSolar, Objectstar, Softek, Airwave Wireless, Praedicat, Metalogix, Search Optics and Technicolor in connection with acquisitions and strategic transactions; Rustic Canyon Ventures, L.P., Investcorp Venture Capital, Montgomery & Co., Intel Capital and Celerity Partners, L.P. in connection with numerous private equity/venture investments; and various private venture-stage companies in connection with general corporate matters, venture capital financings and acquisitions.

Mr. Weirick joined the firm in 1986 after earning his law degree from the University of California, Berkeley, School of Law. He did his undergraduate work at Dartmouth College, where he graduated *magna cum laude* and was a member of the Phi Beta Kappa honor society. Mr. Weirick has been listed in the 2008-2014 editions of *Chambers USA: America's Leading Lawyers for Business* as a leading Corporate/M&A: Venture Capital Lawyer; identified by *The Best Lawyers in America*® 2006-2014 as a leading lawyer for Mergers & Acquisitions, Private Funds Law, Venture Capital Law and Leveraged Buyouts & Private Equity Law; and named as a Southern California *SuperLawyer* for 2006-2015.