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2016 Spin-Off Guide

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A spin-off involves the separation of a company's businesses through the creation of one or more separate, publicly traded companies. Spin-offs have been popular because many investors, boards and managers believe that certain businesses may command higher valuations if owned and managed separately, rather than as part of the same enterprise. An added benefit is that a spin-off can often be accomplished in a manner that is tax-free to both the existing public company (referred to as the parent) and its shareholders. Moreover, in recent years, companies have been able to tap the debt markets to lock in low borrowing costs for the business being separated and monetize a portion of its value. For example, in connection with its $55 billion spin-off from Abbott Laboratories in 2012, AbbVie conducted a $14.7 billion bond offering, which at the time was the largest ever investment-grade corporate bond deal in the United States, at a weighted average interest rate of approximately two percent. Other notable recent spin-offs include Penn National Gaming's spin-off of its real estate assets into the first-ever casino REIT, Energizer's spin-off of its household products business, Gannett's spin-off of its publishing business, DuPont's spin-off of its performance chemicals business, eBay's spin-off of PayPal, Baxter's spin-off of its biopharmaceuticals business, HP's separation of its PC and printer business and its enterprise business, W.R. Grace's separation of its construction products and packaging technologies businesses and its catalyst technologies and engineered materials businesses, and Yum Brands' planned spin-off of its China business. The volume of spin-offs in 2015 was a record-setting $257 billion.

The process of completing a spin-off is complex and requires consideration of a myriad of financial, capital markets, legal, tax and other factors. The issues that arise in an individual situation depend largely on the business goals of the separation transaction, the degree to which the businesses were integrated before the transaction, the extent of the continuing relationships between the businesses after the transaction, and the structure of the transaction. For example, if the businesses were tightly integrated before the transaction or are expected to have significant business relationships following the transaction, it will take more time and effort to allocate assets and liabilities, identify personnel that will be transferred, separate employee benefits plans, obtain consents relating to contracts and other rights, and document ongoing arrangements for shared services (*e.g.*, legal, finance, human resources and information technology) and continuing supply, intellectual property sharing and other commercial or operating agreements. If the parent is expected to own a substantial portion of the spin-off company after the closing, careful planning is also required with respect to the composition of the new company's board, independent director approval of related-party transactions, handling of corporate opportunities and other

matters. In addition to these separation-related issues, spin-offs raise various issues associated with taking a company public, such as drafting and filing the initial disclosure documents, applying for listing on a stock exchange, implementing internal controls and managing ongoing reporting obligations and public investor relations.

The complete publication is intended to help navigate the spin-off process, from the preliminary phases through completion of the transaction. Part II of the guide describes some of the initial planning considerations relating to spin-offs, and includes a discussion of the principal reasons for spin-offs and a comparison to other separation transactions. Part III examines a broad array of general corporate separation issues that may arise in a spin-off. Part IV discusses the transaction agreements commonly executed to implement a spin-off and govern the post-spin relationship between the parent and the spin-off company. Part V identifies the principal securities law matters. Part VI examines certain tax issues, which are critical given the tax-sensitive nature of separation transactions. Finally, Part VII reviews stock exchange listing and trading considerations. A sample illustrative timetable for a spin-off (that is not preceded by an initial public offering) is attached to the complete publication as Annex A. A discussion of post-spin limitations on strategic transactions is attached to the complete publication as Annex B.

The complete publication, including Annexes, is available here.