CRAVATH

Spin-offs and Other Separation Transactions: An Overview

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Overview and Recent Market Trends

Spin-offs Are Very Popular

"The market for initial public offerings may have turned ice-cold last year amid a brutal bear market for stocks, yet corporate spinoff activity heated up."

"Across a wide swath of industries, a host of iconic brand-name blue-chip companies and others are pursuing spinoffs of some of their business units as they seek to juice growth, boost returns, and create shareholder value."

– Morningstar,
Spinoffs are the new IPOs, January 26, 2023

"Better Call Saul, The Colbert Report, Law & Order: SVU — Sometimes a spinoff is just as good as the original."

"Wall Street has seemingly taken that lesson to heart. Corporate spinoff activity surged by 33% in 2022 to its second-highest level on record, according to a new analysis by Goldman Sachs."

– cnn.com,
What's a corporate spinoff and why is Wall Street obsessed?, February 17, 2023

"US companies are set to continue spinning off business units this year in a push to boost margins and increase shareholder value, according to strategists at Goldman Sachs Group Inc."

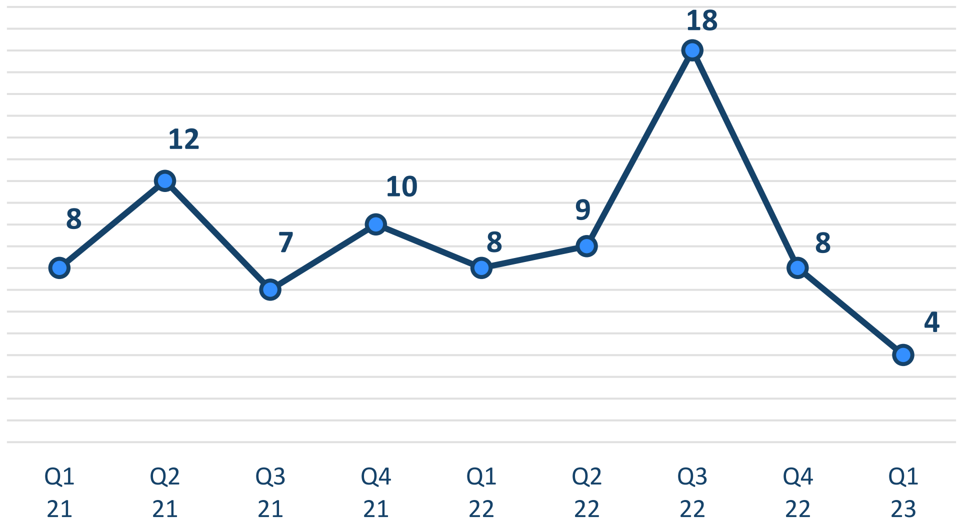
"US firms announced 44 new spinoffs last year and completed 20, including General Electric Co.'s carve out of its medical-equipment business and Intel Corp.'s spinoff of self-driving technology business Mobileye. Overall, the number of announced spinoffs in the US surged by 33% in 2022, a trend that strategists including David Kostin and Jenny Ma expect to continue."

– Bloomberg Law, *Goldman Sees More US Spinoffs With Companies Squeezed: ECM Watch*, February 16, 2023

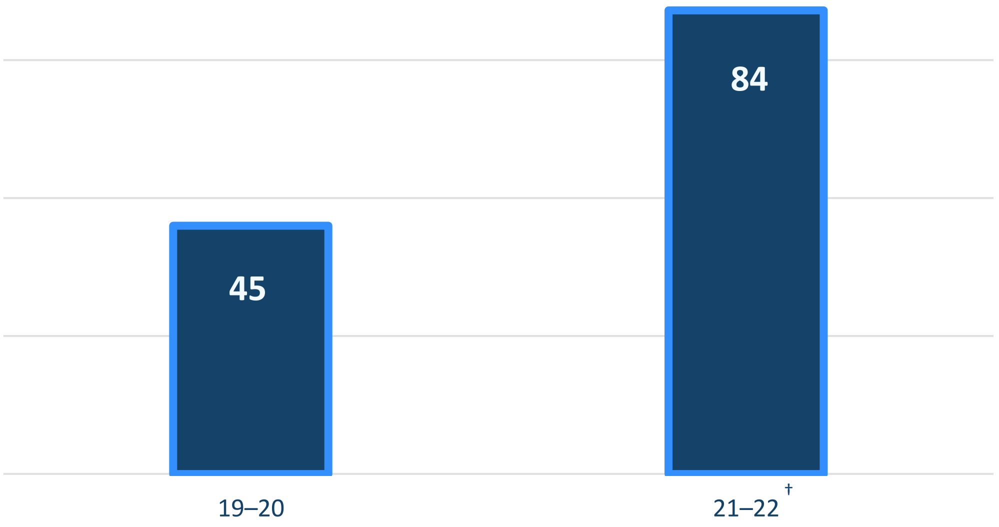
Spin-off Activity

- **84 separation transactions have been announced since January 1, 2021, including spin-offs and subsidiary-IPOs**
- **Of the 84 announced separation transactions:**
  - 33 have been completed
  - 41 are pending
  - 10 were withdrawn

Announced Separation Transactions by Quarter



Separation Transactions Announced in 19–20 vs. 21–22†

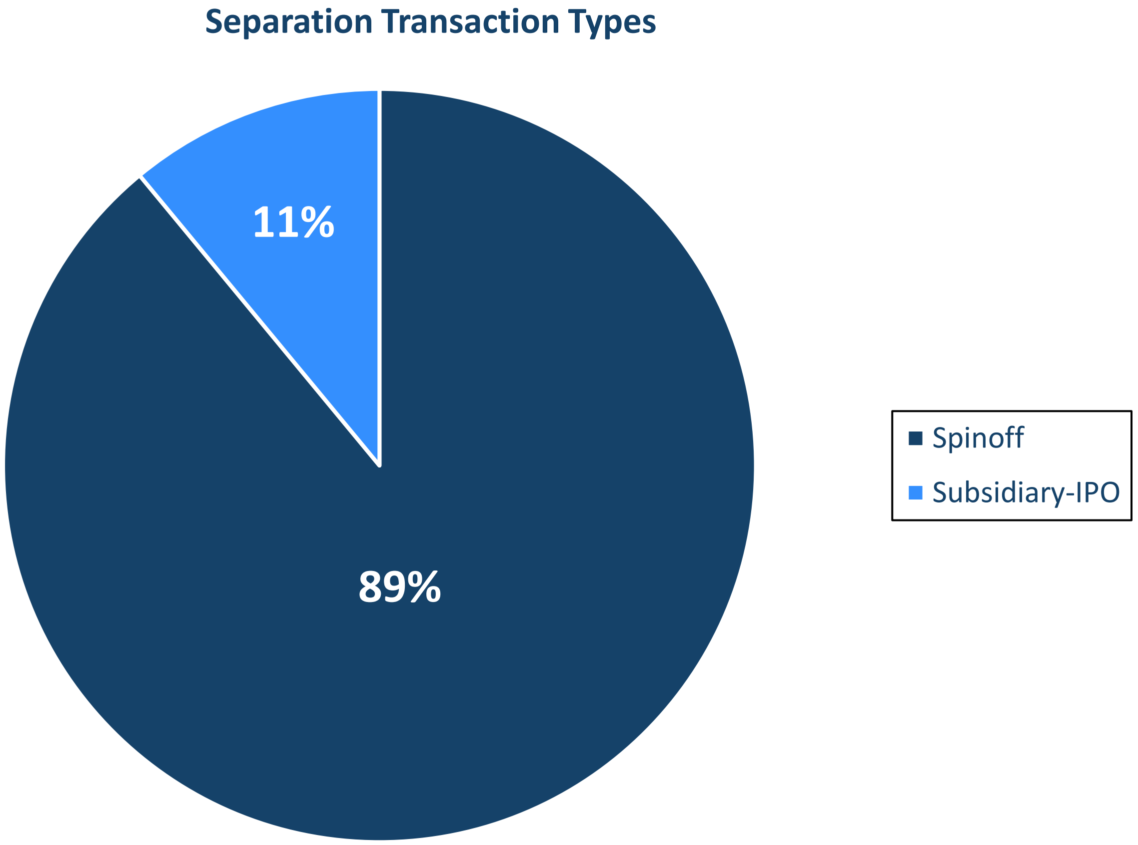


† Includes four announced separations in Q1 23 (as of February 22)

Source: Deal Point Data

Popularity of Separation Transaction Types

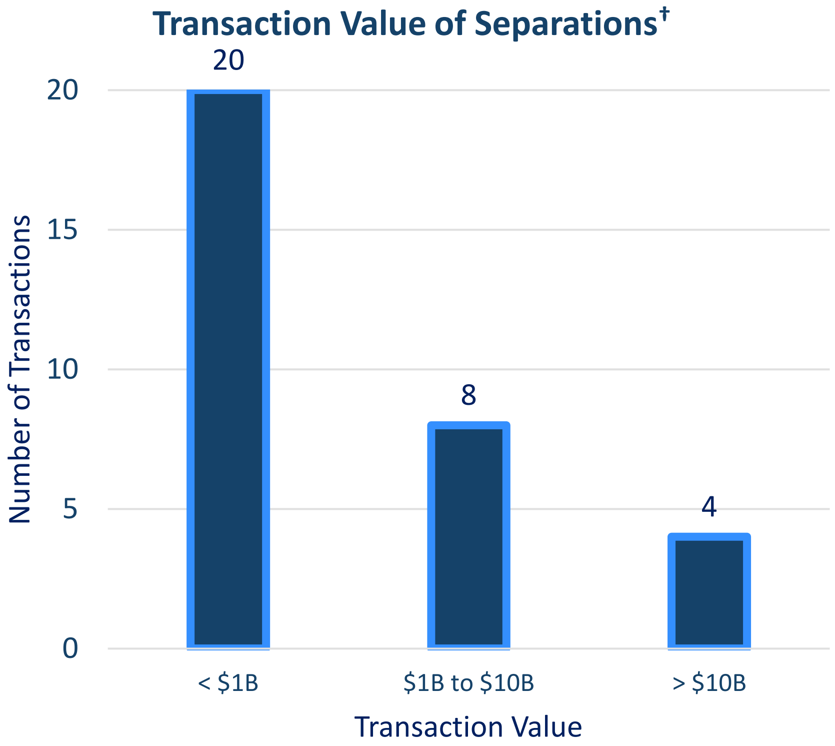
- **Of the 84 announced separation transactions since January 1, 2021:**
  - 75 are spin-offs
  - 9 are subsidiary-IPOs

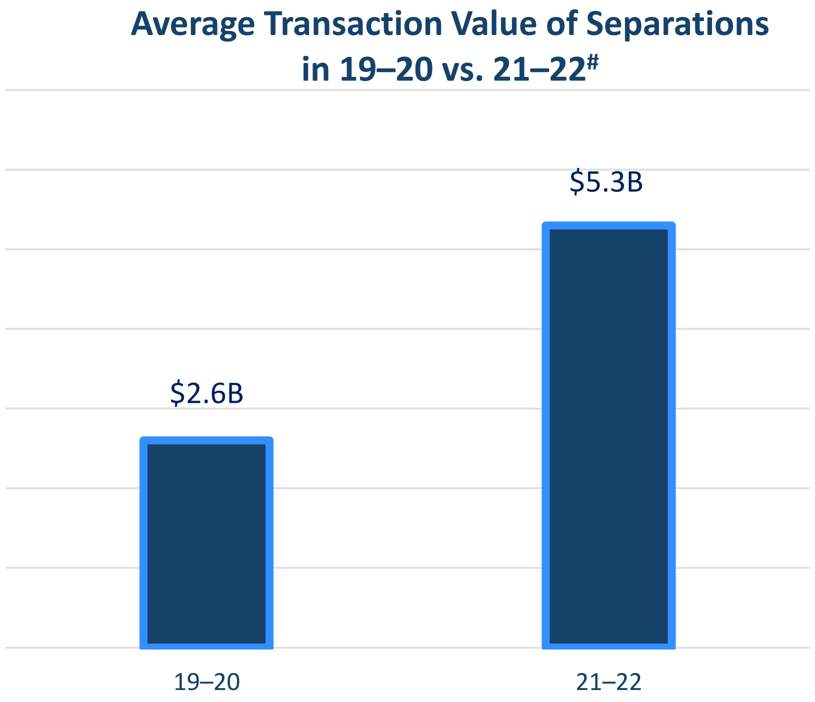


Source: Deal Point Data

Transaction Value

- **The average transaction value for the 33 completed separation transactions was approximately $5.3 billion, more than double the prior period**
  - Transaction value is calculated by multiplying the number of shares of Spinco by its closing stock price on the first day of trading, or gross proceeds from the IPO for subsidiary-IPOs





† Includes separations announced since 2021; excludes one completed transaction where the resulting SpinCo was an independent public reporting company yet did not have publicly traded common stock

Includes four announced separations in Q1 23 (as of February 22)

Source: Deal Point Data

Reasons to Pursue Spin-off / Separation

- "Unlocking" Value
  - Market may not be properly valuing a smaller segment or division of a business
  - Different businesses may trade at different multiples and separating the business may allow Parent (or Spinco) to trade at a higher multiple
  - One business may be stable/slow growth and one business may be high grow
  - Business may attract different pools of investors
- Allowing Parent to focus on core business(es)
  - Greater flexibility for management to invest in and run Parent
  - Spinco business may have become ancillary to Parent's overall business / strategy
- Allowing Spinco to focus on Spinco
  - Greater flexibility for management to invest in and run Spinco

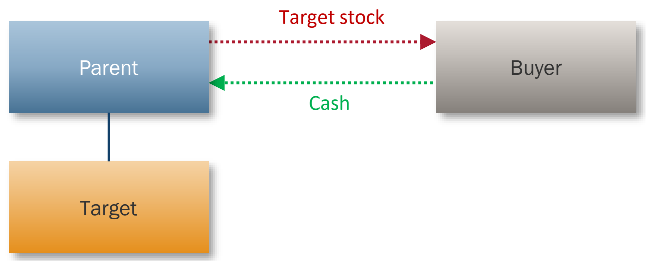
Key Considerations

- What is the business or other need to separate the business?
- What are the prospects of Parent and Spinco as standalone businesses?
- Does the Parent want to raise proceeds (either through a debt offering and/or equity offering)?
  - There is typically a distribution of cash from Spinco to Parent in any spin-off transaction
- What are Parent's commercial objectives?
  - Complete or partial disposition
  - Use of proceeds
  - Obtaining a valuation for Spinco?
- What is the tax basis in the Spinco business/assets?
- What are the market conditions at the time of the separation?

Key Considerations (cont'd)

- How big is the Spinco business and are there any natural M&A / RMT candidates?
- Are there any legal or contractual constraints?
  - Regulatory approvals needed?
  - Any restrictions under Parent's credit facilities / bond indentures?
  - Any other contractual constraints that may be relevant?
- How business is held and how integrated it is with Parent's other businesses?
- Is the business purely domestic or is it global?

Why are Tax Considerations So Important?



- With a sale, Parent is taxed on its gain in target stock and can retain the after-tax sales proceeds
  - Gain = FMV *minus* Tax Basis
  - Federal Income Tax = 21% *times* Gain; state tax is incremental
  - Tax attributes may be available to reduce tax
  - In some cases, particularly where the target assets represent substantially all of Parent's assets, Parent may be required to repay a portion of its indebtedness
- If Parent distributes the proceeds to shareholders, the form of the distribution will generally produce different tax results
  - Pro rata distribution = taxable dividend (no basis recovery)
  - Share repurchase = capital gain (basis recovery allowed)
- Share repurchases will likely subject Parent itself to a new 1% excise tax on the value of the stock repurchased

General Tax Considerations

- Spin-offs are generally intended to be tax-free to all parties, including shareholders
  - The efficiency of no tax friction to effect the separation is often a key driving force in any spin-off
- To qualify as tax-free, the transaction must meet a number of requirements, based on:
  - The form of the transaction – Parent must distribute 80%+ of stock in Spinco
  - "Business purpose" – the commercial reason why the companies are separating
  - "Active trade or business" – each company must have at least one active business conducted for at least five years
  - "Not a Device" – not a disguised dividend
  - Complete separation – ongoing relationships between the companies are subject to scrutiny
- Post-closing actions by either company can cause the spin-off to be taxable on a retroactive basis

	Tax Consequences of a "Busted" Spin Transaction
Parent	▪ Taxed as if it had sold Spinco for cash ▪ May also make internal restructurings taxable
Shareholders	▪ Taxable dividend (as if FMV of Spinco stock were paid in cash) ▪ Dividend withholding tax on distributions to foreign shareholders

Structures and Key Considerations

Basic Spin-off / Separation Structures

Several structures may be used to separate a business from a parent company (“Parent”). Each of these structures first requires the assets and liabilities of such business to be held by, or transferred to, a subsidiary of Parent that will be divested (“Spinco”)

Spin-off

- Parent distributes the shares of Spinco to Parent’s shareholders through a pro rata dividend

Split-off (+ first step IPO)

- Parent offers its shareholders shares of Spinco in exchange for shares in Parent

Reverse Morris Trust (“RMT”)

- Parent effects a spin-off of Spinco, and thereafter, Spinco promptly merges with a third party

Generally tax free

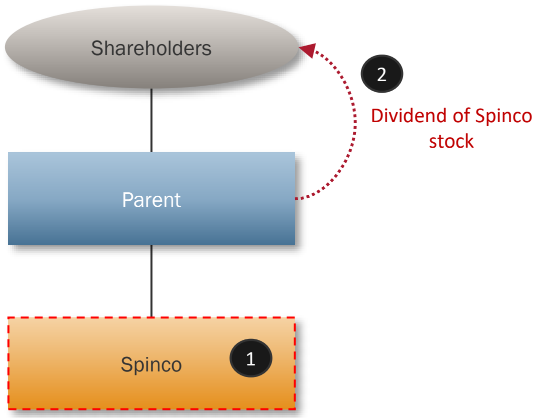
Sale / Divestiture

- Parent sells business for cash consideration (or stock consideration)

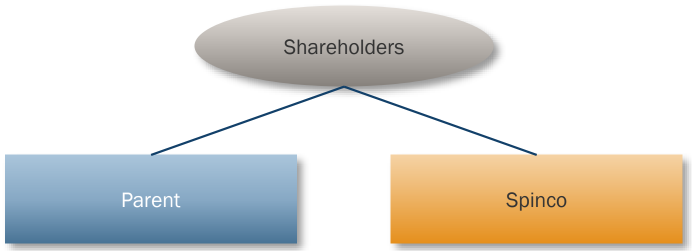
Generally taxable

Spin-off Transaction

Transaction



Result



Steps

(1) Assets and liabilities are transferred as needed between Parent and Spinco in preparation for the separation

(2) Parent distributes Spinco stock to its shareholders on a pro rata basis

- A spin-off transaction itself does not raise new capital
  - However, spin-offs often involve cash distributions from Spinco to Parent, including with the proceeds of debt incurred by Spinco in connection with the spin-off (see slide 21)
- Because Parent's existing shareholders receive shares of Spinco automatically in a spin-off, Parent's existing shareholders generally do not make an "investment decision" in connection with a spin-off

Spin-off Transaction Considerations

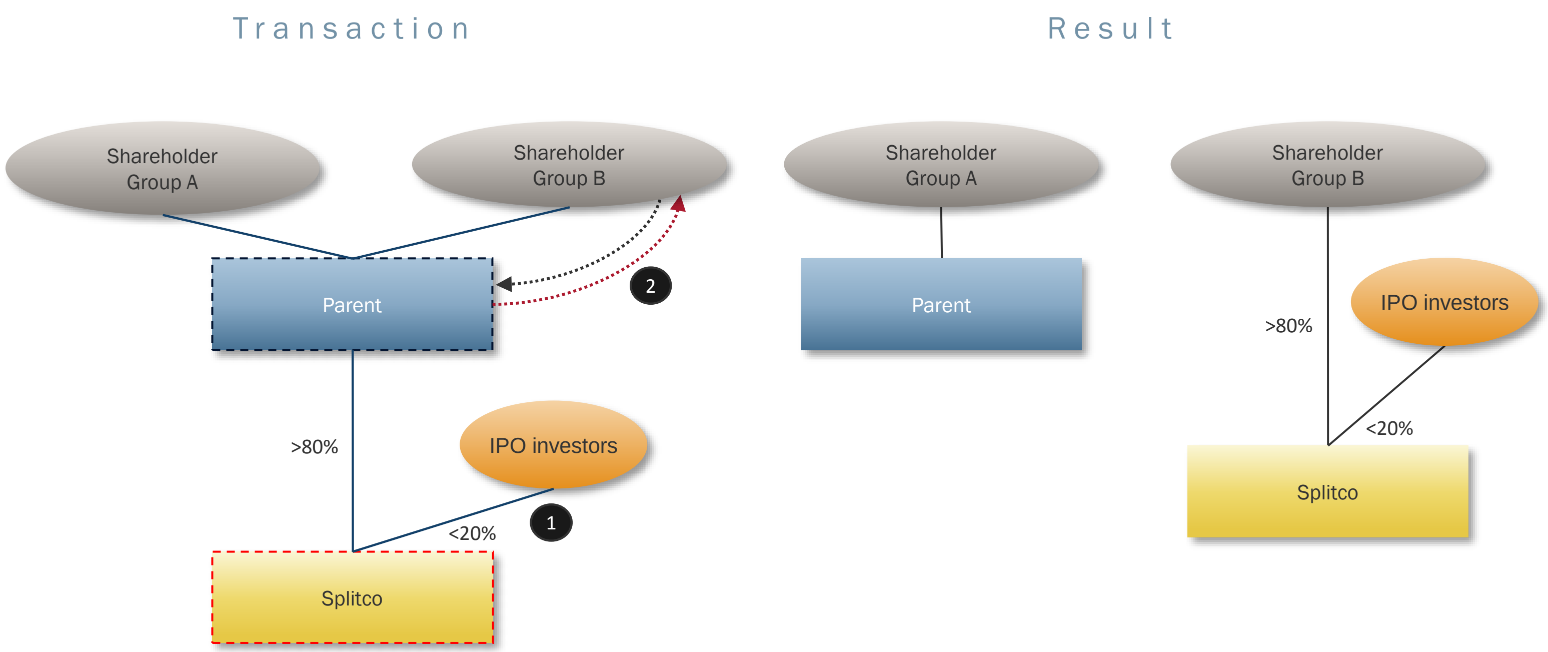
Benefits of a Spin-off

- ✓ Low execution complexity from a capital markets perspective
- ✓ Quick timeline
- ✓ If investor base for Parent and Spinco are likely to be the same that may minimize investor turnover
- ✓ Low transaction costs

Spin-off Considerations / Complexities

- ✗ No accretion benefit for Parent
- ✗ Parent does not receive any value for equity distribution (but typically receives value from debt proceeds)
- ✗ May result in a significant amount of shareholder churn post-spin

Split-off Transactions



Steps

(1) Parent completes IPO for Splitco (less than 20%) and then

(2) Offers to exchange Splitco stock for Parent stock (usually at a premium)

Note

A Split-off is sometimes followed by a "clean-up" distribution (either in the form of a spin-off or debt-for-equity exchange) in which Parent distributes any shares of Splitco that were not subscribed for in the Split-off on a pro rata basis

The "clean-up" distribution is usually not needed because the Split-off distributes all of Parent's shares

- This structure reduces the number of outstanding shares of Parent and gives Parent shareholders the ability to choose whether they want shares of Splitco
  - Reduces earnings dilution at the Parent level and post-transaction "churn"
  - A split-off is almost always done only after Splitco has been taken public in an IPO in order to provide a basis on which to set the exchange ratio in the split-off

Split-off Transaction Considerations

Benefits of a Split-off

- ✓ Accretive to earnings from a Parent shareholder perspective
- ✓ Form of a tax-efficient share repurchase
- ✓ Allows shareholders to “opt” into Splitco and thus reduce “churn”
- ✓ Allows Splitco shareholder base to be developed through an underwritten offering process

Split-off Considerations / Complexities

- ✗ Requires a valuation for Splitco, which in practice means an IPO needs to occur prior to the split-off
- ✗ Two-steps adds complexity and takes longer
- ✗ Subject to market conditions for first-step and exchange ratio for split-off is also subject to market conditions
- ✗ Transaction cost friction resulting from paying a premium to induce shareholders to participate in the split-off
- ✗ Requires that Parent is large enough as compared to Splitco to efficiently execute the split-off
- ✗ Requires liquid trading market for both Parent and Splitco stock

Reverse Morris Trust (“RMT”) a/k/a “Spin-Merge” Transactions

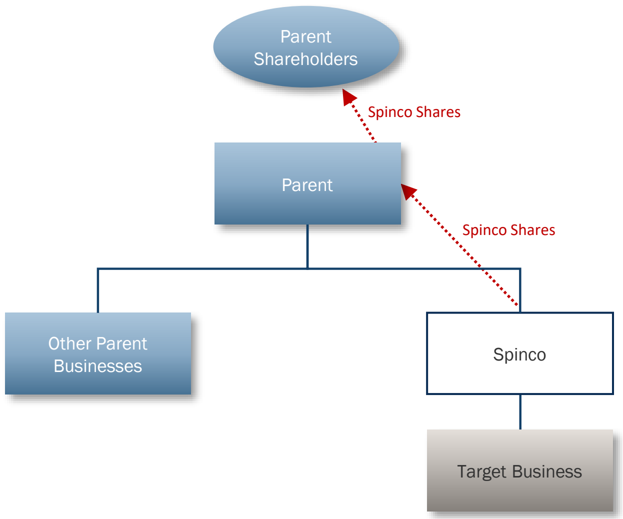
- A “Reverse Morris Trust” or “RMT” or “Spin-Merge” transaction can be another tax-efficient way to separate a business
- A RMT transaction is a spin/split-off combined with an M&A transaction
  - Typically, a RMT involves a Parent and an acquiror entering into a series of agreements whereby Parent engages in an internal reorganization to contribute the target business into a newly formed subsidiary (“Spinco”), with Parent distributing the equity of Spinco to its shareholders
  - Immediately after the distribution of the Spinco equity, Spinco is acquired by the acquiror through a merger and becomes a subsidiary of the acquiror
  - Former Parent shareholders cannot receive cash consideration
- The primary benefit of a RMT is that it effectively allows the selling company to transfer a business to a third party in a transaction involving stock consideration in a manner that is tax-free to all parties if certain requirements are met
- A key requirement for tax-free treatment is that Parent’s shareholders must hold more than 50% of the acquiror’s shares after the transaction. Generally, this means that the acquiror must be smaller than Spinco

Reverse Morris Trust (“RMT”) a/k/a “Spin-Merge” Transactions (cont’d)

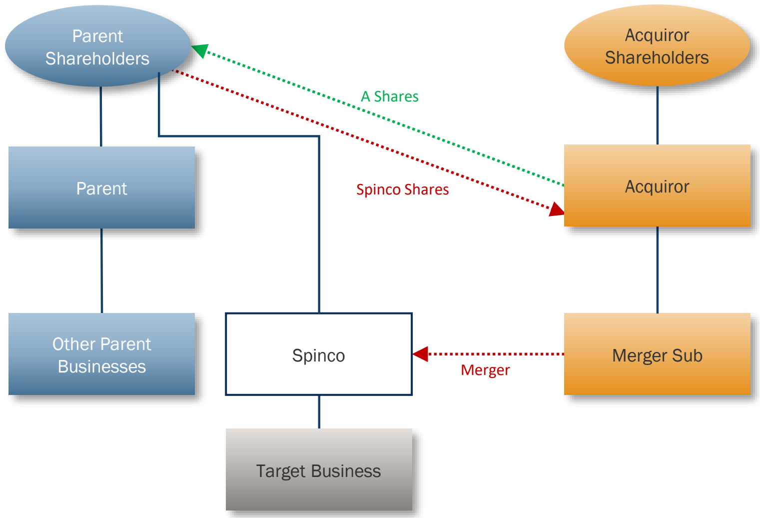
- RMT planning points
  - If Parent shareholders hold 50% or less of acquiror shares, then Parent is taxed as if it sold shares in Spinco for cash
  - Overlapping shareholder bases may mitigate an ownership shift even where the counterparty is larger
  - It may be possible to achieve the right ownership split by “shrinking” the size of the counterparty by paying a dividend before closing
- As with any other spin-off, post-closing actions by either company can retroactively cause the spin-off to be taxable

Illustrative RMT / Spin-Merge Transaction Structure

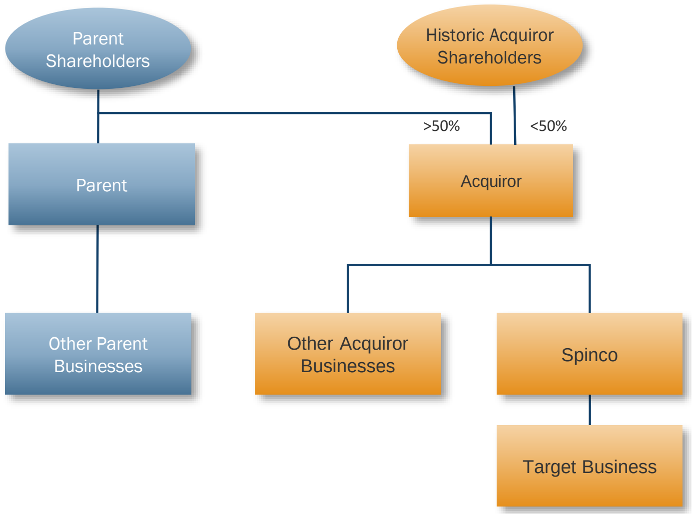
Step 1 – Drop and Spin: Parent completes an internal reorganization to transfer the assets and liabilities related to the target business (the "Target Business") into a newly formed, wholly owned subsidiary ("Spinco") in exchange for Spinco shares. Parent will then distribute the Spinco shares to Parent's shareholders.



Step 2 – Merger: Immediately after the distribution in Step 1, the acquiror ("Acquiror") will acquire Spinco. Typically, the acquisition will be structured as a reverse subsidiary merger, in which Acquiror forms a new wholly owned subsidiary ("Merger Sub") which merges with and into Spinco, with Spinco surviving the merger as a wholly owned subsidiary of Acquiror. In the merger, the Spinco shareholders (*i.e.*, historic Parent shareholders) will receive newly issued shares of Acquiror in exchange for all of their Spinco shares.



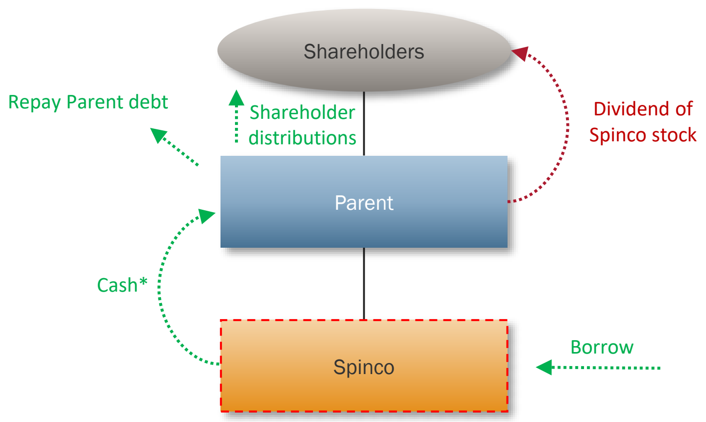
Final Structure: Upon completion of the transaction, Spinco will be a wholly owned subsidiary of Acquiror. Typically, Parent shareholders will own more than 50% of the outstanding shares of Acquiror after the merger and historic Acquiror shareholders will own the remaining outstanding shares of Acquiror.



Extracting Value from Spinco through Capital Structure

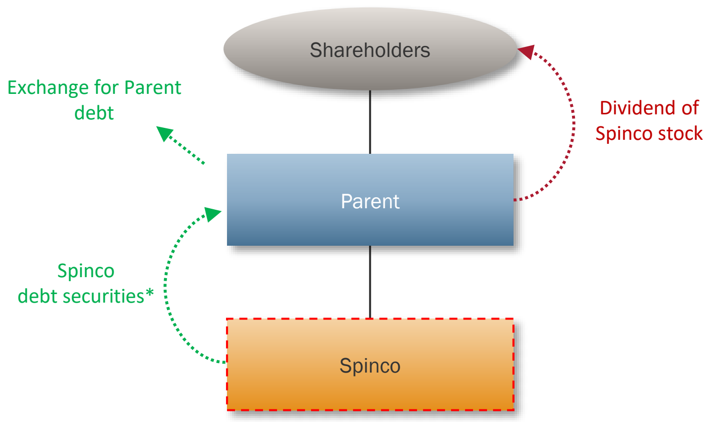
- Unlike a sale transaction, in a spin-off Parent does not receive unrestricted cash from a buyer
- Typically, however, Parent can extract value from Spinco without incurring tax

Cash Dividend



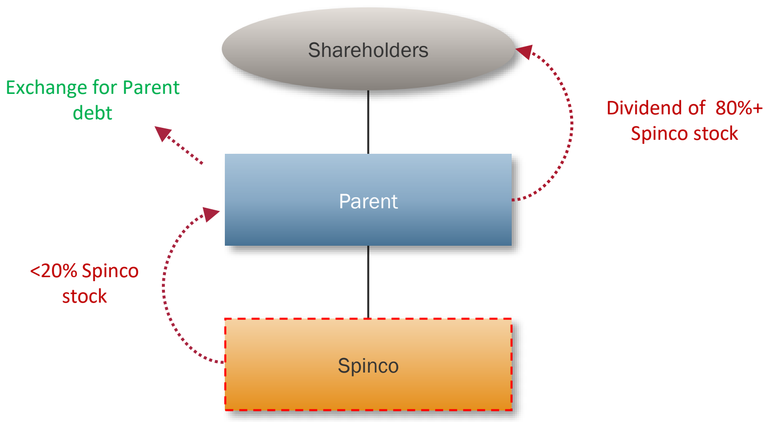
* Limited to Parent's tax basis in Spinco stock

Debt-for-Debt Exchange



* "securities" for tax purposes (long-term debt)

Debt-for-Equity Exchange



Not limited to Parent's tax basis in Spinco stock
Usually facilitated by investment bank + IRS ruling

Tax Considerations and Process

A Snapshot of the Main Tax Requirements

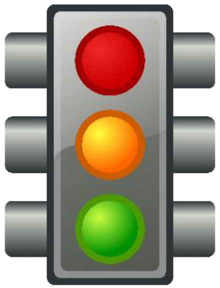
		Requirement	Path to Satisfy		
			Structure	Representations	Contractual Restrictions
1	***Business Purpose***	Motivated by corporate-level, non-tax business rationale		✓	
2	***Distribution of 80%+***	Parent must distribute “control” of Spinco (significant limitations on retention of any Spinco stock)	✓		
3	***Active trade or business***	Both Spinco and Parent must be engaged in a historic 5-year “active trade or business” (ATB) after the spin-off		✓	✓
4	***Complete Separation***	“Complete separation” of Spinco and Parent; ongoing relationships should be of a type and on a basis consistent with those between companies that are not, and had never been, related	✓		✓
5	***Not a “Device” for a Disguised Dividend***	Cannot be used as a device to distribute “earnings and profits” or recover basis of Spinco or Parent stock	✓		✓
6	***No 50% change of control***	No 50% change in control of Spinco or Parent as part of a “plan” with the spin-off	✓		✓

Tax Opinions, IRS Rulings and Representation Letters

- Tax-free separations are completed on the basis of either tax opinions or IRS private letter rulings or both
  - Levels of comfort (“should” vs. “will”)
  - IRS ruling does not cover all legal issues, so opinion is always needed, too
- Tax opinions generally are given on the basis of representations contained in letters from management
  - Generally follow standard forms but are customized for unique issues present in each transaction
  - Often require coordination between tax function and other functions inside the companies
  - These can also form the basis of indemnification (for example, Spinco may be required to indemnify if it takes actions “inconsistent with” its representations)
- In some cases, an IRS ruling to obtain assurance on technical tax issues, especially those on which counsel cannot opine
  - Statements made to IRS generally will be supported with specific representations
  - IRS ruling request often takes 3-6 months to prepare
  - New IRS “fast track” procedure allows many spin-off rulings to be issued within 12 weeks of filing a ruling request
- IRS rulings are released publicly after they are issued, but identifying information about taxpayers is redacted

Tax Matters Agreement

- The Tax Matters Agreement (TMA) serves three main functions:
  - to allocate tax risk
  - to protect the tax-free status of the spin-off by restricting Spinco's actions after closing
  - to provide for tax return filing, cooperation and information-sharing
- "Ordinary Taxes" vs. "Transaction Taxes" – who should bear each and why?
- Spinco generally must indemnify Parent if it does something that causes the spin-off to be taxable
- Typical "Restricted Actions"
  - Repurchase of Spinco debt securities
  - Share buybacks
  - Actions "inconsistent with" rep letters
  - Dispositions of businesses or business assets, other than in ordinary course
  - Issuances of stock / Facilitating share acquisitions



- Often Spinco may take a Restricted Action if it obtains assurances (opinion from tax counsel or IRS ruling) that the action will not have adverse tax consequences
  - Even then, Spinco retains legal risk, via indemnity, if the Restricted Action triggers tax

It is critical for Spinco to understand when it could be responsible for triggering spin-off taxes and avoid actions that might trigger them

Continuing Relationships Between Parent and Spinco

- Tax-free spin-offs generally require a "complete separation" of two companies
  - Desired end state: two independent companies that deal with each other (if at all) at arm's length as if they had never been affiliated
  - Generally not possible to accomplish this immediately at closing
- Permissible "day one" arrangements generally fall into two categories
  - Transitional arrangements – typically at cost or cost-plus and no more than 2 years
  - Arm's length arrangements – typically at FMV terms and sometimes over longer periods of time
- All continuing relationships must be consistent with the "business purpose" for the spin-off
  - Relationships that involve shared support services (*e.g.*, IT, accounting, tax) or real estate (*e.g.*, office space) are generally permissible and flexible
  - Relationships touching on the core functions of the businesses (*e.g.*, sales, manufacturing, R&D) should be permitted only in extraordinary circumstances, and only then at arm's length from day one
  - Relationships that are immaterial (both economically and qualitatively to the businesses) do not generally impede the business purpose
  - "Overlapping" directors and executives call for particular scrutiny

Executing a Separation Transaction

Initial Preparation – Separation Considerations

- Begin to identify assets and liabilities of the business to be spun off
  - Identify necessary intercompany arrangements post-spin
    - How will general corporate services be handled (*e.g.*, accounting, HR, legal, investor relations, payroll, IT)?
    - How will real estate be handled? Are there shared facilities? Will subleases / restacking of personnel be required?
    - How will IP be split between the two entities and what licenses will be needed post-spin?
    - Do the two businesses share critical IP?
    - How will existing litigation be handled? Who will control it? Will splitting the company affect the ability to settle?
    - Are there any comingled contracts or other commercial arrangements that will need to be assigned / novated / bifurcated?
  - Identify internal restructuring steps and intercompany transfers
    - Identify assets and liabilities that will need to be transferred from their current legal entity to achieve desired allocation
    - Determine tax efficient means to effect transfers

Initial Preparation – Separation Considerations (cont’d)

- Begin to identify third party consent issues and determine timing and process for obtaining necessary consents or waivers
  - Material contracts and debt agreements
  - Governmental and regulatory approvals
  - Labor matters
  - Non-wholly owned subsidiaries, JVs, minority investments
- Begin to determine whether Parent will seek a tax opinion or private letter ruling in connection with the transaction
- Begin to determine allocation of employees
  - How will the separation of employees be implemented? Who will go where?
  - Consider the effect of the spin-off on employee retention
  - When will employees be notified of the separation?
- Begin to evaluate employee compensation and benefits matters

Communications Strategy

- Consider what will be disclosed (and known) at the initial announcement, including:
  - Structure
  - Leadership
  - Name of Spinco
  - Expected timing for separation
- Need to consider communication strategy with many different constituents, including:
  - Shareholders
  - Customers and suppliers
  - Rating agencies
  - Existing lenders
  - Governmental and regulatory bodies
  - Employees

Typical Separation Documentation

- Separation and Distribution Agreement – Documents principal terms of separation, including asset and liability allocation
- Employee Matters Agreement – Allocates liabilities related to employee matters
- Tax Matters Agreement
- Transition Services Agreement
  - Documents any post-spin services that will be required by Spinco from one another
  - Need to distinguish between services required for a transitional period, which could be provided on a simple cost or cost-plus model, versus those required longer term which must be on arm’s-length terms
- Other agreements that may be required:
  - IP licenses
  - Long-term commercial arrangements between Spinco and Parent (not covered under the TSA)
- Tax opinion and/or ruling and related representation letters

Spinco Financial Statements

- Begin preparation of required financial statements
  - Required Spinco financial statements in registration statement:
    - Standalone audited “carve-out” financial statements of Spinco are required
    - Spinco financial statements are often the gating item for starting the SEC process
- “Carve-out” financial statements typically reflect allocation of corporate overhead expenses, interest and tax and other corporate charges, rather than being prepared on the basis of actual costs that would be incurred by Spinco as a standalone company
- Pro forma financial statements for Spinco and Parent reflecting the separation may also be required

Spinco Governance

- Begin to determine Spinco's post-closing leadership
  - Consider who will be asked to hold key senior executive positions at Spinco
  - Begin to determine composition of Spinco Board
- Begin to determine Spinco's post-closing corporate governance profile
  - Jurisdiction of incorporation of Spinco
  - Stock exchange on which shares of Spinco will be listed
  - Preparation of Spinco charter, bylaws and corporate governance policies
  - Consider where governance will be changed from what is in effect at Parent today

Spinco Capital Structure

- Consider what financing will be put in place at Spinco in connection with the spin-off
  - Term loan(s) / revolver / senior notes / other?
  - Debt transaction may be effected in order for Spinco to pay "midnight" dividend in cash to Parent before the spin-off occurs
  - Debt-for-debt and debt-for-equity exchanges potentially provide additional tax efficient means for Parent to extract value
- Determine whether any existing Parent debt will need to be refinanced or amended
- Consider projected Parent dividend levels post-spin, if Parent pays dividend
- Consider fraudulent conveyance / solvency issues and other state law requirements
  - Confirm post-spin solvency of Parent and "surplus" for dividend, and ability of Spinco to deliver cash dividend (if any) to Parent under applicable state law
- Consider any restrictions in Parent's existing debt documents
  - Do Parent's existing debt documents permit the spin-off?
  - Is Spinco debt, if any, permitted to be incurred under Parent's debt documents?

Employee Matters

- Allocation of employees
  - Determine which employees will go where
  - Consider the effect of the spin-off on employee retention
- Compensation and benefits
  - Consider how the post-spin compensation and benefits for the two companies will be structured, including to account for changes in the relative valuations of the two businesses on a standalone basis
  - Consider how equity-based compensation will be handled post-spin
  - Determine treatment of and allocation of liabilities associated with pension plans or other post-retirement plans
- Union / works council issues
  - Determine impact of spin-off under collective bargaining agreements (if any)
  - Determine whether consultation with works council (if any) for employees outside the U.S. is necessary

Treatment of Equity Awards

- Equity awards held by Parent and Spinco employees are adjusted at the time of a spin-off to preserve their pre-transaction value to the employees
  - There are two common approaches, referred to as the "employer method" and the "shareholder method"
  - It is possible to use different approaches for different types or categories of awards (*e.g.*, RSUs vs. options and vested vs. non-vested)
  - Choice of treatment has HR, tax, accounting, finance and other implications and will require input from various functional groups and advisors
- Employer Method – Awards held by Parent employees continue as Parent awards and awards held by Spinco employees convert into Spinco awards
  - Number of awards, exercise price and performance metrics are adjusted to preserve aggregate value and incentives, and other terms and conditions generally remain the same
- Shareholder Method – Parent awards are converted into a combination of Parent awards and Spinco awards (generally corresponding to the distribution ratio to the regular shareholders in the transaction)
  - Exercise prices and performance metrics of all awards are adjusted to preserve aggregate value and incentives and other terms and conditions remain the same
  - Spinco awards will generally have the same vesting schedules as the original Parent awards to which they relate

SEC Registration & Stock Exchange Listing

- Shares of Spinco must be registered with the SEC before being listed and distributed to Parent's shareholders
  - Spinco shares are registered by filing a registration statement with the SEC
    - Typically registration statement is on Form 10
    - The requirements of Form 10 are similar to the requirements of Form S-1, which is used for IPOs
    - Form 10 requirements include financial statements, MD&A, CD&A and a description of Spinco's business
  - SEC review process of a Form 10 is similar to that of a Form S-1
  - SEC must declare the registration statement effective before the spin-off can be completed
- Stock exchange listing process
  - Spinco shares must be approved for listing by the selected stock exchange on which shares of Spinco will trade
  - Listing process pursued in parallel with SEC registration process
  - Listing process is similar to the process for an IPO

Overview of Form 10 – Content

- The Form 10 includes the following components:
    - Form 10 “shell”, which lists the documents filed as exhibits
    - Exhibits: (1) Information Statement, (2) organizational documents of Spinco, (3) transaction agreements (*i.e.*, Separation and Distribution Agreement, Tax Matters Agreement, etc.) and (4) other exhibits which are required under SEC rules
- Information Statement
    - The Information Statement is the main document that is distributed to Parent’s shareholders
    - The disclosure in the Information Statement is similar to the disclosure that would be in a prospectus for an IPO
- The information in the Form 10 is subject to the liability standards of the Securities Exchange Act of 1934

Overview of Form 10 – Process

- The Form 10 can be submitted confidentially until Parent is ready to file the Form 10 publicly
  - The Form 10 must be publicly filed at least 15 days prior to the requested date of effectiveness
  - If contents of the Form 10 are being shared with investors, while the Form 10 remains confidential, need to consider whether the Form 10 contains any material non-public information with respect to Parent
- If the spin-off will include bond financing, need to consider timing of bond financing together with the status of the Form 10
  - Bond offering disclosure will be based on Form 10 disclosure

Making Spinco Standalone

Creation of Standalone Infrastructure for Spinco

- Develop name and brand identity
  - Can be a significant effort to find and clear a new name and logo on a global basis, while maintaining confidentiality
  - Consideration should be given to any names that will be shared by Parent and Spinco
- Replicate or replace shared support services and corporate-level functions and systems
  - Accounting, HR, legal, investor relations, payroll, IT, intellectual property, etc.
  - Replicating existing enterprise-wide systems can be a major workstream, especially where commercially available software is interconnected with proprietary infrastructure or there is a need for significant data migration or sharing
    - Can create IT license and infrastructure issues, data ownership/access issues and data privacy compliance issues

Creation of Standalone Infrastructure for Spinco (cont'd)

- Establish internal controls
  - Internal controls over financial reporting must be set up at Spinco if not already in place
    - Will require coordination among internal financial reporting, legal personnel, Board and outside auditors
  - Upgrading internal systems may be necessary
    - Could include purchasing IT infrastructure, hiring additional finance, accounting and IT staff and implementing additional financial and management controls and reporting systems
  - As a newly public company, Spinco will be subject to many requirements immediately and will be subject to SOX 404 auditor attestation requirements in Spinco's second annual report
- Establish disclosure and compliance programs
  - Anti-bribery (*e.g.*, FCPA), export control, sanctions, data privacy and other compliance programs required immediately
  - Disclosure controls and procedures necessary for a newly public company
  - Spinco required to comply with relevant stock exchange's criteria for continued listing

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PARTNER, CORPORATE

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EDUCATION

J.D., 2009, Columbia Law School,
Harlan Fiske Stone Scholar

M.B.A., 2009, Columbia University

B.A., 2004, Tufts University, *Phi Beta Kappa*,
summa cum laude

Michael E. Mariani focuses his practice on representing companies and major investment banks in a variety of public and private financings and liability management transactions, including initial public offerings, spin-offs, investment grade, high-yield and convertible debt offerings, and acquisition financing transactions.

NOTABLE WORK HIGHLIGHTS

Mr. Mariani also advises clients on public disclosure and corporate governance matters, as well as mergers and acquisitions.

Mr. Mariani's corporate clients have included Convey Health Solutions, Crown Castle, CyrusOne, Evolent Health, IBM, Johnson & Johnson, Time Warner, Unilever, Weyerhaeuser and Xerox.

Mr. Mariani's notable transactions include:

- IPOs for BioAtla, Blue Capital Reinsurance, Convey Health Solutions and Diplomat Pharmacy
- Other equity offerings for agilon health, Albemarle, BioAtla, CoStar Group, Crown Castle, CyrusOne, Denny's, JPMorgan Chase, Lazard, Monogram Health, The Mosaic Company, Replimune, Sabra Health Care REIT, TG Therapeutics and Toll Brothers
- High-yield debt offerings for Boyne, Chemours, Chesapeake Energy, Compass Minerals, Credit Acceptance, Denbury Resources, goeasy, Greif, LYCRA, Murphy Oil Corporation, Murphy Oil USA, NCR, Neiman Marcus, TerraForm Global, TerraForm Power, TI Automotive, Time Inc., U.S. Concrete, World Acceptance and WW (Weight Watchers)
- Convertible debt offerings for DHT Holdings and Evolent Health
- Investment grade debt offerings for Albemarle, Allegion, CyrusOne, IBM, JPMorgan Chase, Mars, Skyworks, Time Warner, Toll Brothers and Zimmer Biomet
- Spin-offs for Time Warner (AOL and Time Inc.) and Xerox (Conduent)
- Johnson & Johnson in the planned separation of its Consumer Health business
- Represented the underwriters in the largest bank bond offering in history at the time (JPMorgan Chase's $13 billion registered floating rate notes and fixed-to-floating rate notes offering) and in over 40 offerings for JPMorgan Chase, collectively raising over $120 billion since 2018 alone

Law360 recognized Mr. Mariani as one of five outstanding capital markets lawyers in the nation under the age of 40, noting his role in guiding "several watershed deals in his career, including steering IBM's massive $20 billion bond to fund its acquisition of Red Hat and JPMorgan on a landmark SOFR-linked notes deal." Mr. Mariani has also been recognized for his work in capital markets by *Chambers USA*, *Chambers Global*, *The Legal 500 US* and *IFLR1000*. Additionally, Mr. Mariani has been recognized for his work in fintech by *The Legal 500 US* and for his work in mergers and acquisitions by *IFLR1000*.

Mr. Mariani is a published author on a broad range of topics related to capital markets and securities laws. He co-authored the "Direct Listings: Going Public Without an IPO" chapter in The Review of Securities & Commodities Regulation. Mr. Mariani also contributes to the conversation at the intersection of securities law, finance and fintech. Most recently, he co-authored a paper entitled "Blockchain and Custody of Digital Assets" and the United States chapter of *The Legal 500*'s "Blockchain Country Comparative Guide" from 2019 through 2022. Mr. Mariani was selected to serve as a member of *Law360*'s Capital Markets Editorial Advisory Board in 2022.

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EDUCATION

J.D., 2005, University of Virginia School of Law
Order of the Coif

A.B., 1999, Princeton University *with Honors*

J. Leonard Teti II advises on the tax aspects of mergers and acquisitions, spin-offs and private equity transactions. Clients seek out Mr. Teti for his ability to provide practical, clear and commercial advice on the tax issues central to complex domestic and cross-border transactions. He also advises clients during the course of audits by the Internal Revenue Service and other tax authorities.

NOTABLE WORK HIGHLIGHTS

Mr. Teti's clients have included Alliant Techsystems, Amazon, AmerisourceBergen, Avon, Barnes & Noble, Credit Suisse, Dentsu Aegis, DMGT, DTE Energy, ECN Capital, Exyte, FS Investments, GW Pharmaceuticals, IBM, Johnson & Johnson, JPMorgan Chase, Light & Wonder, The Linde Group, Novartis, RELX Group, Robinhood, Schneider Electric, SPANX, Time Warner, Viatris, Vista Outdoor and WestRock.

Mr. Teti has significant experience advising companies in spin-offs and M&A transactions in connection with spin-offs. Notable matters include representing:

- Alliant Techsystems in the spin-off of its Sporting Group to its shareholders and merger of its Aerospace and Defense Groups with Orbital Sciences;
- Barnes & Noble in its spin-off of Barnes & Noble Education;
- DTE Energy in the $7 billion spin-off of its midstream business (DT Midstream);
- Johnson & Johnson in the planned separation of its Consumer Health business;
- Mylan in its $50 billion "Reverse Morris Trust" combination with Upjohn, a division of Pfizer, to form Viatris;
- Novartis in its $29.8 billion spin-off of Alcon;
- Time Warner in its spin-offs of AOL and Time Warner Cable;
- Valvoline in the pending $2.65 billion separation and sale of its Global Products business to Aramco; and
- Vista Outdoor in the planned separation of its Outdoor Products and Sporting Products segments.

Mr. Teti's notable M&A and other transactions include representing:

- Amazon in its $8.45 billion acquisition of MGM;
- Cowen in its pending $1.9 billion acquisition by TD;
- FS Investments in its pending combination with Portfolio Advisors, creating a $73 billion alternative investment firm, and in the transition of the management of its business development company (BDC) platform to investment advisory partnerships with EIG Global Energy Partners and KKR;
- IBM in acquisitions and dispositions aggregating more than $13 billion in value;
- Johnson & Johnson in numerous matters, including its $16.6 billion acquisition of Abiomed;
- Linde in its $70 billion merger of equals with Praxair; and
- Robinhood in its initial IPO.

Mr. Teti has been repeatedly recognized for his work in the tax arena by *Chambers USA*, *The Legal 500 US* and *Super Lawyers*. In 2016, he was named a "Rising Star" by *Law360*, recognizing him as one of five outstanding tax lawyers in the nation under the age of 40.

Mr. Teti is the host of Cravath's "On Tax" podcast and has authored several blog posts, including "President Biden's Tax Proposals" in January 2021 and "US Government Finalizes Rules on Transfers to Partnerships with Related Foreign Partners" in February 2020, which were published by *European Tax Blog*. Mr. Teti is a member of the International Bar Association. He serves as the President of the Board of Trustees of the New Jersey Scholars Program and has served as a member of the Alumni Council of the University of Virginia School of Law.

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