

UNWINDING AND RESTRUCTURING THE ENTITY

Nuts and Bolts of Business Reorganization

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UNWINDING AND RESTRUCTURING THE ENTITY

- Overriding principles for Board and Officer Guidance
 - Following applicable law and regulations
 - Following governing entity documents
 - Properly discharging fiduciary duties
 - Conflicts of interest
 - Special committees
 - Establishing and following a transparent and deliberative process to demonstrate compliance with legal and fiduciary duties
 - Properly considering contractual obligations, including credit and employment agreements and other compensatory arrangements

UNWINDING AND RESTRUCTURING THE ENTITY

- Unwinding and Restructuring Transactions
 - Mergers
 - Sales of assets
 - Changes of control
 - Dividends and other distributions to equity holders
 - Recapitalizations
 - Arranging and rearranging debt
 - Restructuring or terminating material contracts
 - Reductions in force
 - Winding up and terminating businesses

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UNWINDING AND RESTRUCTURING THE ENTITY

- Significant concerns
 - Choice of entity
 - Regulatory environment, compliance
 - Lienholders and other counterparties, including key employees
 - Demonstrating proper discharge of fiduciary duties
 - Conflicts of interest
 - Special committees
 - Expert advice, including appraisal and fairness opinion

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UNWINDING AND RESTRUCTURING THE ENTITY

- Significant concerns (con't)
 - Equity holder consent
 - Full disclosure of proposed transactions
 - Preserving indemnification rights
 - D&O insurance
 - Tail policies
 - Transaction insurance

UNWINDING AND RESTRUCTURING THE ENTITY

- Choice of entity
 - Corporations
 - Certificate of formation
 - Exculpation
 - Preemptive rights
 - Classes of stock – blank check or not
 - » Voting
 - » Preferences
 - » Convertibility
 - Amendment requirements
 - Special powers of directors

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