

# **SOS Educational Webcast: The Spin Cycle: Don't Let Your Transaction Fade**

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# Materials Slides

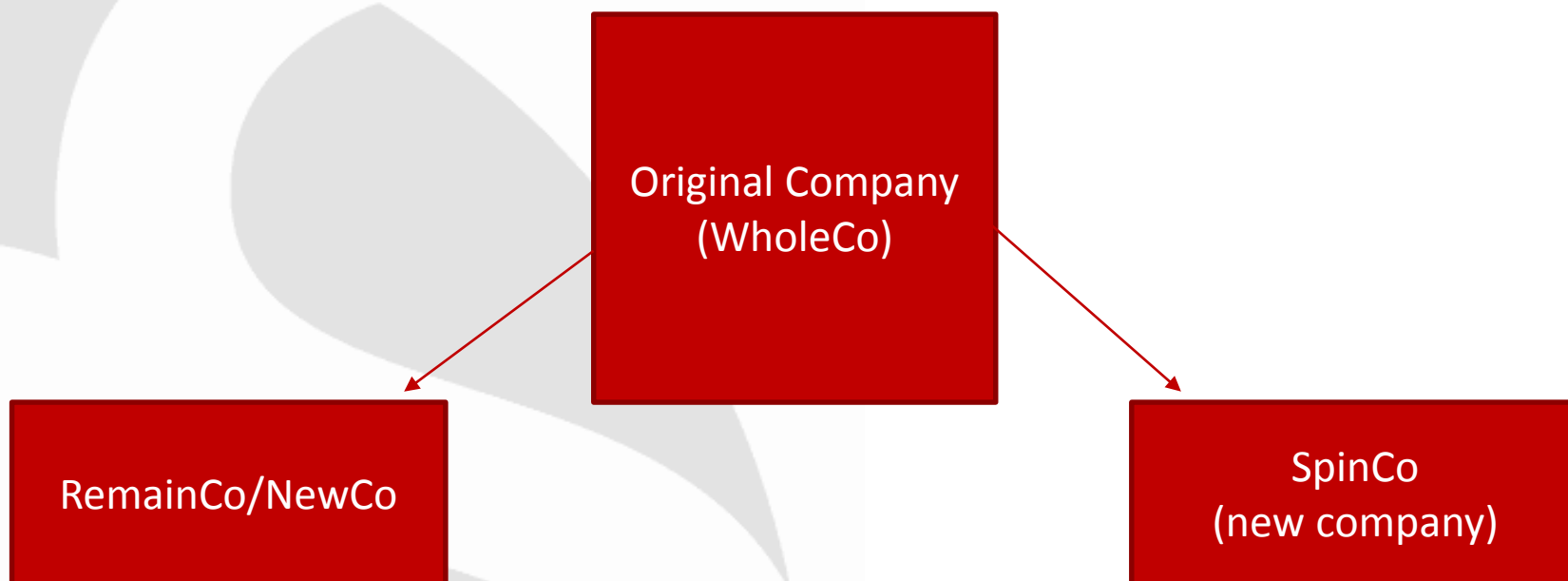
[http://www.sos-team.com/pdfs/spin\\_off\\_webcast.pdf](http://www.sos-team.com/pdfs/spin_off_webcast.pdf)

# Agenda

- What is a spin-off?
- What happens to equity awards?
- Spin Team
- Complications for Equity
- Administrative Issues
- International Compliance Issues
- Accounting Issues
- Shareholder Issues
- The Importance of Communications

# What is a spin-off?

Securities and Exchange Commission: “What is a Spin-Off? In a spin-off a parent company distributes shares of a subsidiary to the parent company’s shareholders.”



# What is a spin-off? (con't)

- Form 10
  - SpinCo files Form 10 (and amendments) to register shares
- Record Date
  - Establishes shareholders entitled to dividend of SpinCo shares
- Spin Date
  - Date on which RemainCo and SpinCo separate. SpinCo becomes an independent company. Trading in public market likely to begin on this date.
- Distribution Date
  - Date on which SpinCo shares are deposited in shareholder's account

# What happens to equity awards?

- Separated/Concentrated/Employment Approach
  - Employees receive equity awards only in company of final employment
- Basket/Bucket/Portfolio/Shareholder Approach
  - Employee receives equity awards in both RemainCo and SpinCo, regardless of employment
- Hybrid approach
  - Some combination of both approaches, possibly unvested awards in Separated Approach, vested awards in Basket Approach

# Spin Team

- Board of Directors
- External compensation consultants
- Legal Counsel (internal and external)
- Management
- Finance
- Tax department
- Human Resources
- Stock Administration
- Auditors (external and internal)



# Complications for Equity

- Changing vendors/providers
  - Transfer agent
  - Stock administration systems
  - Broker
- Where is the employee's stock history?
  - Tax considerations for reporting
- Bulk transfer of shares? Timing? Positive or negative consent?
  - ESPP shares – tracking dispositions
  - Long shares – ISO tracking, convenience
- Cash distribution along with stock?
- Any planned RIFs?

# Complications for Equity (con't.)

- Equity plan amendments, creation
  - RemainCo – generally no change
  - SpinCo – new plans must be established, usually by sole shareholder (parent company) immediately prior to spin-off
- Will new award agreements be required for both RemainCo and SpinCo?
  - Required acceptance or informative only
- Section 16 filing for SpinCo
  - Required at spin

# Complications for Equity (con't.)

- Equity adjustment rules – who owns the decision making process?
  - External and Internal sources may have responsibility for developing the actual adjustment rules, formulas
  - May change many times prior to finalization immediately prior to spin date
  - Need to make sure it is not taxable to participant when possible – no benefit provided with adjustment
- Who will be responsible for providing final formulas and rules to stock administration and/or vendor performing adjustments
  - Set process in place and timelines to ensure correct data is passed in a timely manner

# Administrative Issues

- Record/Spin/Distribution Date creep: possible regulatory delays
  - Don't expect weeks of notice, it just happens
- What happens to the ESPP?
  - RemainCo – usually no changes
  - SpinCo – employees are generally removed from RemainCo purchase if purchase is happening after spin date, new plan may not be effective for some period post-spin
- SpinCo stock administration team – when will they be put in place
  - Training needed if new, need to understand historical data and spin impact
- Who will perform the spin-off adjustments?
  - Equity vendor may provide service or contract with other service providers

# Administrative Issues (con't.)

- Performance Awards – payout or adjust performance metric
  - RemainCo employees generally no impact
  - SpinCo employees may have award paid out or converted
- Data considerations
  - Converted awards:
    - Rounding rules for prices and shares
    - Flags for accounts and grants (user fields)
    - Grant number for converted grants – prefixes?
  - What will SpinCo display for employees – entire history or just SpinCo data?
- Who signs off on final converted data?
- Testing – don't assume the adjustments will work correctly, know the issues and develop a plan of attack

# Administrative Issues (con't.)

- Employee tax rates and payroll reporting, if using Basket approach
  - Where will rates come from?
  - How will payroll receive income/tax withholding details?
  - How will tax dollars be passed between companies?
  - Linkage between stock administration teams is vital
- Blackout? When and for how long?
  - Company imposed vs. vendor requirement
- RIF employees: treated as RemainCo or SpinCo?
- Reverse split for RemainCo?

# International Compliance Issues

- Although adjustments may be tax neutral in the US, they may not be in other countries
  - Who pays for additional employee cost
- Timeline for country specific review and approval of adjustments and SpinCo plans
  - Vacation/Holiday Periods
  - Local legal experts, works councils, tax experts, etc. all need to be involved
- Tax qualified plans – need to review for retaining qualified status or obtaining new approvals
  - UK, France, Israel
- China SAFE
  - SpinCo cannot start process until spin date
  - Approval can take 3-12 months – how will equity be handled during this time
- Cash payments to employee shareholders
  - Payroll, transfer agent or accounts payable

# Accounting Issues

- Does WholeCo have performance awards? How are these treated for 162(m) purposes?
- Will the adjustment/conversion of the outstanding awards create incremental expense for either RemainCo or SpinCo?
- Can the stock administration system track the incremental expense or will it need to be tracked manually on a spreadsheet?
- Non-employee vs. employee considerations if basket/shareholder approach
- Is the Spin Date a month end or quarter end? How will the financial reporting for RemainCo and SpinCo be handled?



# Shareholder Issues

- Roadshow for RemainCo or SpinCo?
- Is the distribution a tax neutral event for US residents? International residents?
- Will tax supplements be drafted for international shareholders? Remember, international employees are shareholders too.
- Cost basis advice: Where will it be posted?
- Distribution of cash? How? In what currency?

# The Importance of Communication

- Repeat, remind, repeat, remind. Use successive communications as building blocks.
  - Use care to not provide exact calculations too soon – sets expectations that are difficult to change
- Different populations have different concerns: consider some directed communications: 10b5-1 plan holders, executives
- Equity in offer letters, pre spin: how many shares do employees really receive?
- Blackout:
  - Ample notice, especially for optionholders
  - How are vestings treated?
  - How long?

# Questions?

# Contact Information



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