2016 BUSINESS LAW UPDATE

April 7th, 2016

STINSON LEONARD STREET

MERGERS & ACQUISITIONS

Jonathan Vessey and Tom Jensen, Stinson Leonard Street

NON-RELIANCE, INTEGRATION AND EXCLUSIVE REMEDIES

TrueBlue, Inc. v. Leeds Equity Partners IV, LP:

"The Purchaser acknowledges that neither the Company, nor any of its Subsidiaries nor any seller nor any other Person … makes, or has made, any representation or warranty with respect to … information or documents made available to the Purchaser or its counsel, accountants or advisors with respect to the Company, its Subsidiaries or any of their respective businesses, assets, liabilities or operations. … The Purchaser acknowledges and agrees that the representations and warranties set forth in this Agreement (as qualified by the Schedules) supersede, replace and nullify in every respect the data set forth in any other document, material or statement, whether written or oral, made available to the Purchaser."

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NON-RELIANCE, INTEGRATION AND EXCLUSIVE REMEDIES

Prairie Capital III, L.P. v. Double E Holding Corp.:

"Notwithstanding anything to the contrary herein, the existence of this Article VII ...and of the rights and restrictions set forth therein and elsewhere in this Agreement do not limit any legal remedy against any Party hereto to the extent such Party has committed actual fraud against the Party seeking such legal remedy."

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NON-RELIANCE, INTEGRATION AND EXCLUSIVE REMEDIES

Prairie Capital:

"…**the Buyer has relied** on (a) the results of its own independent investigation and (b) the representations and warranties of the Double E Parties expressly and specifically set forth in this Agreement…SUCH REPRESENTATIONS AND WARRANTIES…CONSTITUTE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES…TO THE BUYER IN CONNECTION WITH THE TRANSACTIONS, AND **THE BUYER …AGREES** THAT ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE EXPRESS OR IMPLIED…ARE SPECIFICALLY DISCLAIMED…"

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NON-RELIANCE, INTEGRATION AND EXCLUSIVE REMEDIES

Prairie Capital:

"This Agreement…set[s] forth the entire understanding of the Parties with respect to the Transaction, supersede[s] all prior discussions, understandings, agreements and representations and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for any Party in connection with the negotiation of the terms hereof."

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NON-RELIANCE, INTEGRATION AND EXCLUSIVE REMEDIES

FdG Logistics v. A&R Logistics:

EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE 5, THE COMPANY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY AND ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED INCLUDING ANY IMPLIED REPRESENTATION OR WARRANTY AS TO CONDITION, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

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NON-RELIANCE, INTEGRATION AND EXCLUSIVE REMEDIES

- (continued)
- NOTWITHSTANDING ANYTHING TO THE CONTRARY, (A**) THE COMPANY SHALL NOT BE DEEMED** TO MAKE TO BUYER ANY REPRESENTATION OR WARRANTY OTHER THAN AS EXPRESSLY MADE BY THE COMPANY IN THIS AGREEMENT AND (B) **THE COMPANY MAKES NO REPRESENTATION OR WARRANTY** TO BUYER WITH RESPECT TO (I) ANY PROJECTIONS, ESTIMATES OR BUDGETS HERETOFORE DELIVERED TO OR MADE AVAILABLE TO BUYER OR ITS COUNSEL, ACCOUNTANTS OR ADVISORS OF FUTURE REVENUES, EXPENSES OR EXPENDITURES OR FUTURE FINANCIAL RESULTS OF OPERATIONS OF THE COMPANY UNLESS ALSO EXPRESSLY INCLUDED IN THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE 5, OR (II) EXCEPT AS EXPRESSLY COVERED BY A REPRESENTATION AND WARRANTY CONTAINED IN THIS ARTICLE 5, ANY OTHER INFORMATION OR DOCUMENTS (FINANCIAL OR OTHERWISE) MADE AVAILABLE TO BUYER OR ITS COUNSEL, ACCOUNTANTS OR ADVISORS WITH RESPECT TO THE COMPANY
- [**Note:** No statements from Buyer's perspective]

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NON-RELIANCE, INTEGRATION AND EXCLUSIVE REMEDIES

FdG Logistics:

This Agreement, the Transaction Documents and the documents referred to herein and therein contain the entire agreement between the Parties and supersede any prior understandings, agreements or representations by or between the Parties, written or oral, which may have related to the subject matter hereof in any way.

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NON-RELIANCE, INTEGRATION AND EXCLUSIVE REMEDIES

- Statement about Sellers' representations (missing Buyer non-reliance language) – This is helpful but not sufficient per *FdG*:
  - "The Sellers have not made any representations and warranties other than the representations and warranties that are expressly set forth in this Agreement."
- Statement about Buyer's non-reliance – Necessary under *FdG*:
  - "The Buyer has not relied on any representations and warranties of the Seller other than the representations and warranties of the Seller that are expressly set forth in this Agreement."
- Recommendation: Include the Buyer non-reliance language and Seller disclaimer.

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STOCK OPTIONS IN MERGER

Fox v. CDx Holdings, Inc.:

- "Options are not shares, and option holders are not stockholders"
- Treatment of options in a merger is governed by option and plan, not by statutory authority for cancelling shares and not by merger agreement

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IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING

- Duty of Good Faith and Fair Dealing is a "Gap Filler" under Delaware law

- Limited to situations where it is clear the contracting parties would have agreed to prohibit the conduct later complained of had they thought to negotiate with respect to the matter

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FORTIS ADVISOR LLC V. DIALOG SEMICONDUCTOR

- Contract required buyer to use commercially reasonable best efforts to achieve and pay the earn-out payments in full
- No implied duty of good faith; commercially reasonable best efforts standard didn't leave a gap

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LAZARD TECHNOLOGY PARTNERS V. QINETIQ NORTH AMERICA OPERATIONS LLC

- Agreement required buyer to not take action ***with intent to reduce*** earn out payment
- No implied duty
- Negotiation history can be important
- Standards used elsewhere in the agreement may set parameters

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SIGA TECHNOLOGIES INC. V. PHARMATHENE, INC

- Expectation damages awarded based on breach of obligation to negotiate in good faith
- Consider negotiating the type of damages
- An obligation to negotiate an agreement in good faith should be taken seriously

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- Consider risks and benefits of "preliminary agreement" vs. going directly to a definitive agreement
- A change in circumstances generally does not support renegotiation of terms
- A party's internal and external communications will be considered in determining its "willfulness"

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INTERESTED PARTY TRANSACTIONS *SWOMLEY V. SCHLECHT* (SYNQOR)

- First Application of Kahn v. M&F Worldwide to a private M&A deal
- Ability to shift the standard of review from entire fairness to business judgment
- Court granted motion to dismiss at the pleading stage before any discovery
- Reminder that directors of private companies are generally held to the same standards as directors of public companies

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INTERESTED PARTY TRANSACTIONS *SWOMLEY V. SCHLECHT* (SYNQOR)

Six part test

- The controlling stockholder conditions the procession of the transaction on the approval of both a special committee and a majority of the minority stockholders
- The special committee is independent
- The special committee is empowered to freely select its own advisors and to say no definitively
- The special committee meets its duty of care in negotiating a fair price
- The vote of the minority is informed
- The vote of the minority is not coerced

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TRENDS IN ACTIVIST INVESTING

John Granda and Steve Quinlivan, Stinson Leonard Street

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TRENDS IN ACTIVISM: 2015

- Amount of money in activist hedge funds continues to grow by over 20% per year
  - More billion dollar investments by activists
- More proxy contests
- Higher incumbent win rate
- But:
  - More settlements resulting in board seats
  - More non-proxy contest activism resulting in board seats

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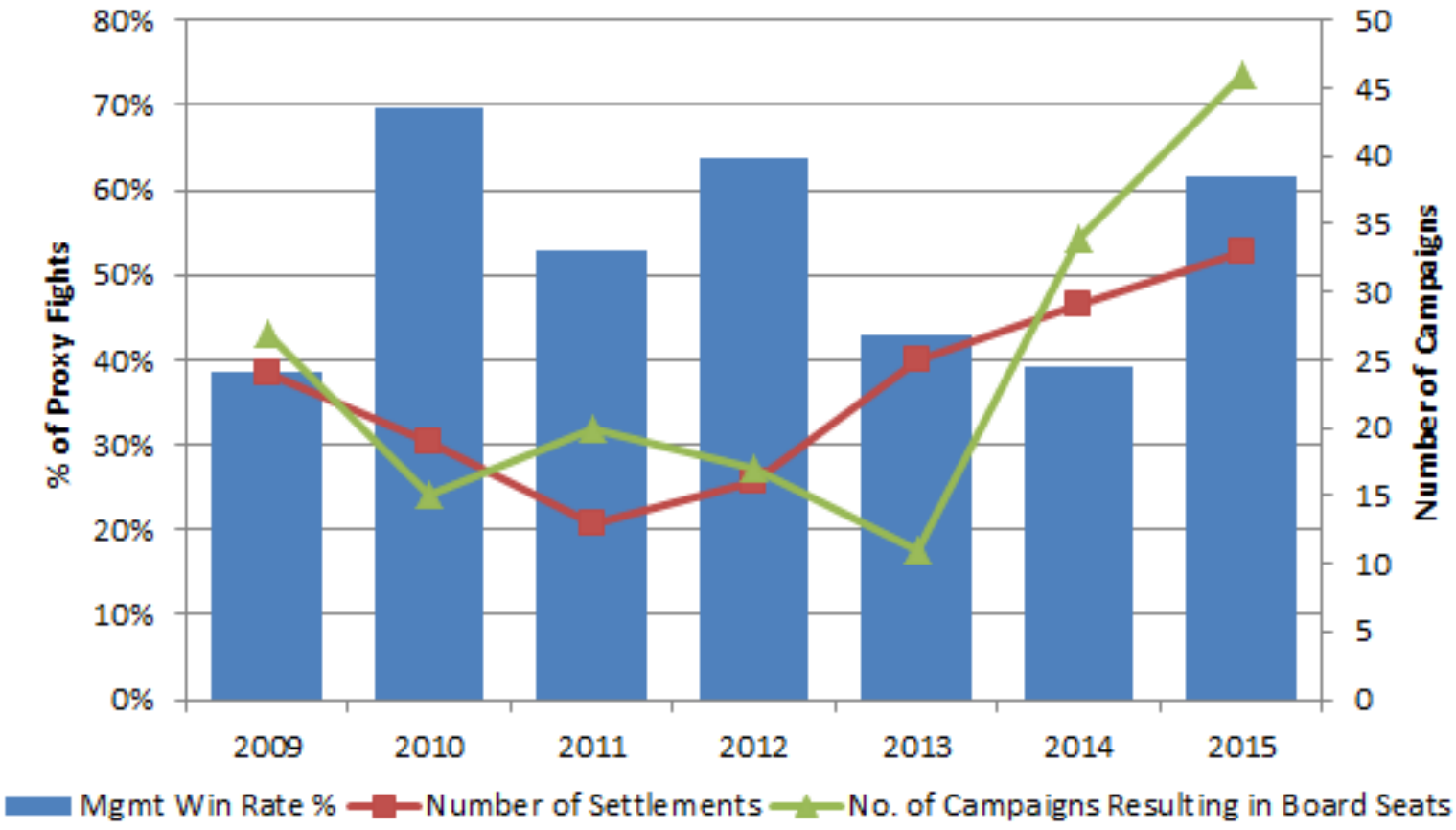
Management Proxy Fight Win Rate is Up
But So Are Settlements and Non-Proxy Fight Campaigns Resulting in Board Seats



Source: FactSet

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OTHER DIFFERENCES FROM SHAREHOLDER ACTIVISM WE SAW IN 2014

- Proxy access proposals are up by more than 400% with a higher success rate at 58%
  - All had ownership requirements of 3%, a holding period of three years, and capped the number of directors that could be elected by proxy access to 25% or less
- More players: the names involved with shareholder activism are no longer simply high-profile activists
  - New activists are more unpredictable and do not follow the usual playbook
  - More of a focus on utilization of the media and a PR campaign
  - Prudent directors will stay abreast on the expanding universe of activists and funds

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ACTIVIST INVESTORS: PLAYERS AND STRATEGIES

PLAYERS:

- Economic/ Financial Activists
- Governance Activists
- Social Issue Activists

Activist investors run the full spectrum of fund size and target size and can focus on a specific industry or be industry-agnostic.

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RISE OF THE "SUGGESTIVIST" INVESTOR

- An increasing class of shareholders is becoming active in agitating for company action
- Not necessarily hedge funds or traditional short-term investor
- Long-suffering shareholder increasingly unhappy with direction of the company
- Difficult to identify in advance, can seem to come out of nowhere
- May lack experience in activism, which can lead to unpredictable approaches

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Economic Activists

- Pressure the company to adopt changes that maximize shareholder value
- M&A activism, balance sheet activism, and operational activism
- Examples:
  - Capital structure
  - Spin-offs
  - Sale of company
  - Operational improvements

Governance Activists

- Pressure the company to strengthen corporate governance
- Examples:
  - Shareholder proxy access
  - Eliminate shareholders rights plan
  - "Say-on-Pay"

❖ Governance and economic activism often go hand-in-hand as governance reforms enhance the efficacy of economic activism and the likelihood of returns.

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SETTLEMENTS WITH ACTIVIST INVESTORS

Settlement Time Decreasing

- 2013 – 74 days
- 2014 – 67 days
- 2015 – 56 days

Settlement Terms

- Typical
  - Non-disparagement
  - Standstill (term)
  - Board nominates activist
  - Activist supports board nominee
  - Activist nominee participates in committees
  - Maintenance of activist ownership
- Becoming rare – expense reimbursement

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BROKAW ACT

- Pending legislation
- 5% positions reportable in 2 days
- Includes short positons
- Beneficial ownership includes pecuniary interests
- Includes those engaging in coordinating activities (i.e. wolf packs)

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What can directors do to prepare for and protect against disruptive shareholder activism?

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BOARD ENGAGEMENT

- Engaged board is the key to being ready for activist threats
- Know the shareholder base inside and out and maintain open and frequent communications with shareholders
- Engage proactively with proxy advisory firms to identify potential problems in advance
- Ensure a unified voice from management and the board
- Adopt a formal preparedness plan with adviser input

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COMPONENTS OF A PREPAREDNESS PLAN

- Identification of the key team
- Provide for annual vulnerability analysis in light of typical activist themes
- Ensure bylaws permit short-notice, telephonic board meetings
- Develop and brief board on modern shareholder rights plan that can be taken off the shelf and adopted quickly
- Develop a communications plan to articulate the company's strategy and progress in light of typical activist themes

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COMPONENTS OF A PREPAREDNESS PLAN

- Institute a stock watch program to monitor for activists and detect unusual trading activity
- Evaluate change of control covenants in agreements; eliminate poison puts in debt instruments
- Review benefit plans and severance agreements and evaluate in light of change of control
- Ensure availability of credit to fund typical defensive measures like stock buy-back program
- Review D&O coverage to ensure adequacy

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EVALUATING SETTLEMENT VS. PROXY FIGHT

As backdrop, it is important to note the trend toward settlements with activists . Approximately 40% of threatened proxy contests are settled, 20% are withdrawn, and the Company prevails on about half of the proxy contests that go to a vote. A framework for evaluating whether to settle or engage in a proxy fight is set forth below:

1. Evaluate whether the activist will pursue or agitate for a sale of company or is it simply seeking to influence policy or leadership
   - If a sale of Company – is it the right time to sell to maximize value and would sale be best strategic alternative reasonably available – may need to conduct a process to determine
   - If policy or leadership change is being proposed – is that approach reasonably likely to produce superior shareholder value over the Company's current plan and leadership and is it otherwise in best interests of shareholders

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EVALUATING SETTLEMENT VS. PROXY FIGHT (CONT'D)

2. Analyze realistic chances for success in a proxy contest based on feedback from large shareholders, insight from the war team of senior management and legal, financial, investor relations and proxy advisors.
3. Look at settlement terms and track record of actions of particular activist involved following settlement – has it been constructive and value added or obstreperous or value destroying

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EVALUATING SETTLEMENT VS. PROXY FIGHT (CONT'D)

4. Consider advantages and disadvantages of engaging in early dialog with the particular activist involved
   - Determine whether there is an opportunity for a constructive relationship with activist
   - Be prepared to explain rationale for company strategy
   - Communicate open-mindedness and flexibility
   - Be willing to cooperate and negotiate

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EVALUATING SETTLEMENT VS. PROXY FIGHT (CONT'D)

5. Consider cost and collateral damage from a proxy contest versus anticipated terms of a reasonable settlement following balanced analysis of discussion with activist, your assessment of shareholder sentiment and director fiduciary duties.

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EVALUATING SETTLEMENT VS. PROXY FIGHT (CONT'D)

6. Finally, the Board, with advice from management and its advisers, should determine whether the best outcome for the Company and its shareholders is a proxy fight versus a settlement that may provide Board representation to activist nominees and/or a change in strategy, operations or other actions (like a spin-off, greater capital allocation to shareholders or changes in governance or Board members or management)
   - A middle ground short of a settlement may be to make shareholder friendly changes to avoid a proxy fight; these actions can also increase chance of winning proxy fight

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CORPORATE LAW AND GOVERNANCE UPDATE

Eric Mikkelson and David Jenson, Stinson Leonard Street

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AGENDA

- DE Statutory Updates
- Recent Delaware Cases
- 2016 Delaware Proposals
- Update on the Minnesota LLC Act
- Update on MNvest Crowdfunding Legislation and Rules
- Other MN Statutory Updates
- Significant MN Cases

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STATUTORY UPDATES

- 2015 Amendments to the Delaware General Corporation Law (DGCL)
- 2015 Amendments to the Delaware Limited Liability Company Act (DLLCA) and the Delaware Revised Uniform Limited Partnership Act (DRULPA)

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DGCL AMENDMENTS

Fee Shifting Bylaws: DGCL Sections 109(f) and 115

- Issue: whether charter or bylaw provision can shift legal costs of defending an "internal corporate claim" to the stockholder bringing the claim
- 2014 case upheld fee shifting bylaw of a non-stock corporation
- 2015 amendments prohibit fee shifting charter or bylaw amendments for stock corporations
- Fee shifting provision would be valid if included in a stockholders agreement

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DGCL AMENDMENTS

Exclusive Forum Bylaws

- Issue: Can charter or bylaw provision designate a particular forum as the exclusive forum for resolving internal corporate claims?
- 2013 decision held that Delaware could be designated the exclusive forum
- 2015 amendments to Section 115 permit certificate of incorporation or bylaws to designate Delaware as exclusive forum for internal corporate claims
- Designating a state other than Delaware as exclusive forum for internal corporate claims is facially invalid
- Internal corporate claim involves a breach of duty by director, officer or shareholder or matters subject to jurisdiction of Delaware Court of Chancery

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DGCL AMENDMENTS

- Section 152
  - Board can authorize stock to be issued based on external factors or decisions of others (such as in an at-the-market offering program), as long as resolutions contain certain details
- Section 157(b)
  - Board can set stock price based on formula that depends on external factors, such as market prices, as long as the factors are clearly described

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DGCL AMENDMENTS

Section 204 Validation of Defective Corporate Acts – 2015 amendments enact a number of clarifications and refinements

- Stockholder validation required if the defective act would require a stockholder vote (then or now)
- Multiple defective acts can be validated at once, but each must be considered separately for quorum and voting purposes
- Provide specific procedure for ratifying election of initial board
- Cut off challenges to validation 120 days after validation or notice of validation
- Establish requirements for when a certificate of validation must be filed with the SOS and prescribe content

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DLLCA AND DRULPA AMENDMENTS

- Removed default rule that, if LLC or LP has multiple classes or groups, separate vote is required for major actions
  - Apply to mergers, consolidations, transfers, domestications, continuances, conversions, termination and winding up of a series, and dissolution
  - LLC or LP agreement may validly contain class or group voting requirements, but statutory default is gone
- Affects Sections 18-209(b), 18-213(b), 18-215(k), 18-215(l), 18-216(b), and 18-801(a)

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IN RE EBIX INC. STOCKHOLDER LITIGATION

- Activist investor Barrington threatened proxy battle against board of Ebix, Inc.
- Ebix considered adopting a package of protective bylaws, but did not adopt them
- Ebix entered into a settlement agreement with Barrington giving Barrington 2 board sets, plus cash
- After settlement agreement, package of bylaw amendments was adopted

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IN RE EBIX INC. STOCKHOLDER LITIGATION

- Plaintiffs challenged the settlement agreement and the bylaw amendments
- Issue for the court: what standard to apply to the board actions?
  - Typically, deferential business judgment rule applies to board action
  - Heightened *Unocal* standard applies to board action taken in response to a threat of change of control of the board
  - *Unocal* shifts burden to the board to demonstrate (1) reasonable grounds for perceiving a threat, and (2) responsive action was reasonable in relation to the threat

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IN RE EBIX INC. STOCKHOLDER LITIGATION

Court finds:

- BJR applies to settlement agreement
  - Cannot logically conclude that an agreement that cedes partial control of the board is a "defensive" measure
- *Unocal* applies to bylaws
  - Even though adopted after the immediate threat had subsided, Barrington is a known activist and is likely to agitate again after 2 year standstill period
  - Later bylaw amendments were a response to the ongoing threat posed by Barrington

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IN RE VAALCO ENERGY, INC. STOCKHOLDER LITIGATION

- Vaalco previously had a classified board and had adopted bylaws providing directors could be removed only for cause (permissible under Section 141(k) of the DGCL)
- Shareholders voted to declassify board in 2009, but bylaws were not amended
- In response to a 2015 proxy solicitation to remove the board, board argued directors could only be removed for cause

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IN RE VAALCO ENERGY, INC. STOCKHOLDER LITIGATION

Court finds:

- Under the plain language of Section 141(k), charter or bylaw provisions limiting removal to cause are not valid for stock corporations with a non-classified Board
  - Board argued that it should be treated as a single-class classified board, but court noted no action to classify after declassifying in 2009
- Provisions would be enforceable in a stockholders agreement

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CALESA VS. AMERICAN CAPITAL

- Strong contractual rights (here, debt covenants) do not necessarily establish control
- But minority (26%) shareholder, with such strong contractual rights, was deemed "controller" where shareholder also had affiliations with majority of directors
- As a result, "entire fairness" standard applied to transaction, not mere "business judgment" standard

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2016 DGCL PROPOSED AMENDMENTS

- Appraisal Rights
- Intermediate form mergers
- Chancery Court jurisdiction
- Other

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THE NEW MN LLC ACT

- Minnesota Revised Uniform Limited Liability Company Act, Chapter 322C of the Minnesota Statutes
- A version of the Revised Uniform Limited Liability Company Act (2006)
- Effective August 1, 2015 for all new MN LLCs
- For LLCs in existence prior to August 1, 2015, 322B continues to apply until January 1, 2018 (unless the 322B LLC opts in to 322C before then)
  - Per 322C, can only opt-in by amending the "operating agreement" (i.e., articles, MCA, bylaws)

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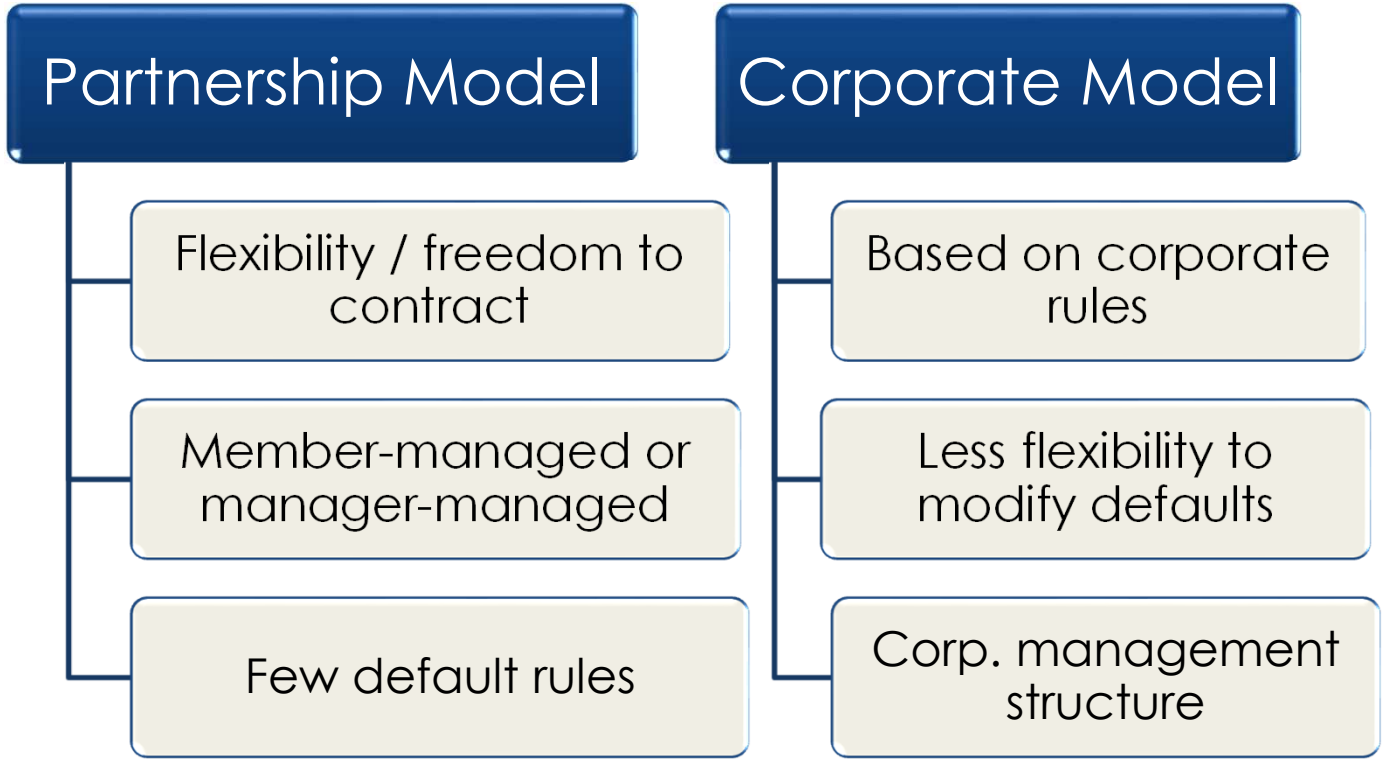
THE NEW MN LLC ACT

- Existing LLC Act is based on a corporate model (clone of the MBCA)
- New LLC Act is based on a partnership model (and on the RULLCA)



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THE NEW MN LLC ACT

- **Operating Agreement** is now the single agreement among the members
- More flexibility to structure relations among the members in the Operating Agreement and fewer default rules
- The default rules that remain are (in some cases) different from the 322B default rules
- Three management options: member-managed, manager-managed, board-managed
- **STRONGLY RECOMMEND UPDATING LLC DOCUMENTS BEFORE JANUARY 1, 2018**

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MNVEST LEGISLATION

- Intrastate securities offering exemption (80A.461)
- Issuer Requirements
  - Organized under MN law and not a partnership
  - Principal office located in MN
  - At least 80% of assets located in MN (measured semi-annually)
  - At least 80% of gross revenues derived from operation of the business in MN (prior fiscal year or trailing 12 months, depending on timing of the offering)

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MNVEST LEGISLATION

- Offering Requirements
  - Offers and sales only to MN residents
  - At least 80% of proceeds must be used for operations in MN
  - Must be conducted exclusively online through a "MNvest portal"
  - Portal must take steps to limit access to MN residents (due diligence requirement, "reasonable steps")
  - $2 million per year limit on funds raised if issuer has audited financials; otherwise $1 million per year limit

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MNVEST LEGISLATION

- More Offering Requirements
  - Disclosure document disseminated through portal
  - Advance filing (10 days) of offering materials with MN Department of Commerce
  - Required use of escrow until offering minimum is achieved
  - For non-accredited investors, cannot purchase more than $10,000 in a single MNvest offering
  - Bad boy disqualifications
- Department of Commerce Rules pending

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OTHER MN STATUTORY UPDATES – ENTITY CONVERSIONS

- Updates to the Minnesota Business Corporations Act and the Minnesota Limited Liability Company Act regarding entity conversions (LLC to corporation, etc.)
- A clear and consistent conversion regime
- New definitions and new conversion provisions
- Generally, require approval of a plan of conversion and filing of articles of conversion
- No change in legal identity (not a transfer for state law purposes)

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MINNESOTA CASE LAW – LEWIS V. BORCHERT

- MN court of appeals decision relating to application of LLC Act's equitable remedies provision (322B.833)
- Lewis, Borchert, and McDonald each own approximately 1/3 of an LLC and a related corporation
- Breakdown of relations leads to proposal to buy out Lewis from each company. There is no buy-sell agreement for the LLC, but there is a stockholders' agreement for the corp.
- Tentative agreement reached on buyout from the LLC, but no agreement on buyout of corp.
- B&M refuse to go through with LLC buyout unless agreement can also be reached on corp. buyout
- Lewis initiates action for buyout of his LLC interest

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MINNESOTA CASE LAW – LEWIS V. BORCHERT

- Is refusal to buy Lewis out from LLC without an agreement on the corp. a valid negotiating strategy, or "unfairly prejudicial conduct?"
  - Court finds that the "tentative agreement" on LLC buyout established "reasonable expectation" of Lewis
- Takeaways:
  - Trial courts enjoy very wide discretion in these cases, and decisions are reviewed only for abuse of discretion, **so make sure buy-sell provisions are included in LLC agreements**
  - Reasonable expectations can be established even without a signed agreement

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MINNESOTA CASE LAW – IN RE MEDTRONIC SHAREHOLDER LITIGATION

- 2016 MN court of appeals decision re. test for determining direct vs. derivative claims and
- Inversion transaction results in 15% excise tax to shareholders and dilution of ownership
  - But executives and board members are compensated by the company for the excise tax with $60 million in tax gross up payments
- Shareholder group sues alleging direct claims
- Trial court finds claims are derivative because no special injury to shareholders bringing suit and dismisses for failure to follow derivative claim procedures

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MINNESOTA CASE LAW – IN RE MEDTRONIC SHAREHOLDER LITIGATION

- Court of appeals reverses, adopting a Delaware test for determining whether a claim is direct or derivative.
  - Even if all shareholders are harmed, claim is direct if (i) shareholders would receive the benefit of the recovery, and (ii) the injury is not suffered by the corporation
- There is some ambiguity regarding when MN courts will apply DE law to shareholder litigation
- Medtronic has petitioned the MN Supreme Court for review

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ENVIRONMENTAL LAW UPDATE

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ENVIRONMENTAL REVIEW & PERMITTING

Aleava Sayre

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NEW OR EXPANDED FACILITIES AND OPERATIONS MAY TRIGGER ENVIRONMENTAL REVIEW AND PERMITTING

- **Certain business decisions may trigger regulatory processes that can significantly impact budgets, schedules, and outcomes**

- **These business decisions include:**
  - Construction of new facilities
  - Expansion of existing facilities
  - Significant changes in operations that may have environmental consequences
  - Proposals for new activities that may require federal or state commitments/actions
  - Acquisition of other entities (under certain circumstances)

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CURRENT REGULATORY ENVIRONMENT CAN BE DAUNTING

- **Threats of litigation or political concerns have changed the regulatory landscape**

- **Regulatory trends across the country are adversely affecting business objectives**

- **Agencies are more likely to:**
  - Default to requiring environmental review or permitting
  - Refuse to exercise discretion to limit scope of requirements or apply available exemptions
  - Increase opportunities for public involvement
  - Respond to public involvement by imposing additional requirements on companies
  - Delay in making controversial decisions

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FOUR KEY STRATEGIES TO IMPROVE BUSINESS OUTCOMES

- **Project Planning**
- **Understanding the Legal Framework**
- **Facilitating Agency Decision-Making**
- **Navigating the Process**

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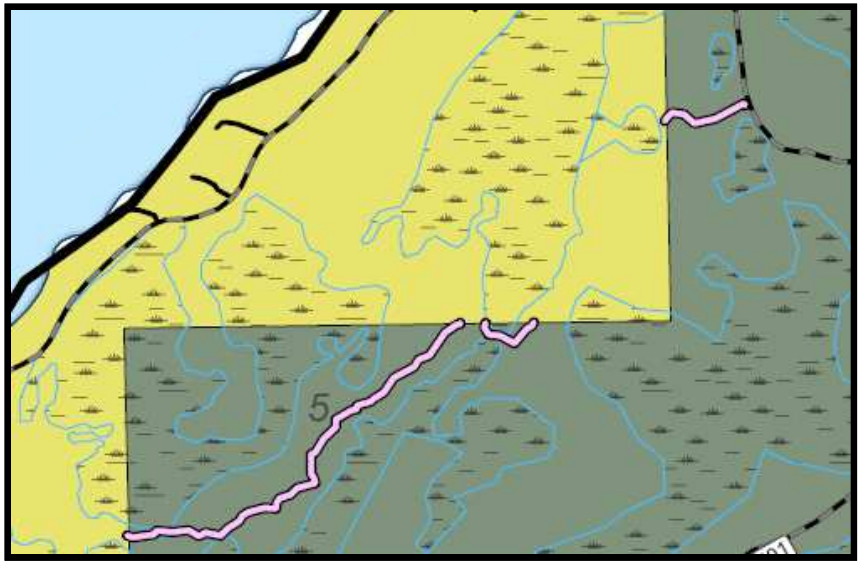
PROACTIVE VS. REACTIVE PLANNING

- **Carefully review the proposed activity or project to ensure that no component is omitted from the planning process**
- **Analyze environmental review and permitting requirements before committing to or creating expectations regarding a project**



- **Once a company publicly proposes a project or activity, the regulatory process may be triggered and companies risk losing control of the process**
- **Strategic choices in deciding what activity to pursue may significantly affect environmental review and permitting requirements, including:**
  - Whether certain regulatory approvals are required
  - The form, scope and duration of environmental review
  - Which federal or state agencies are involved
  - Degree of public involvement

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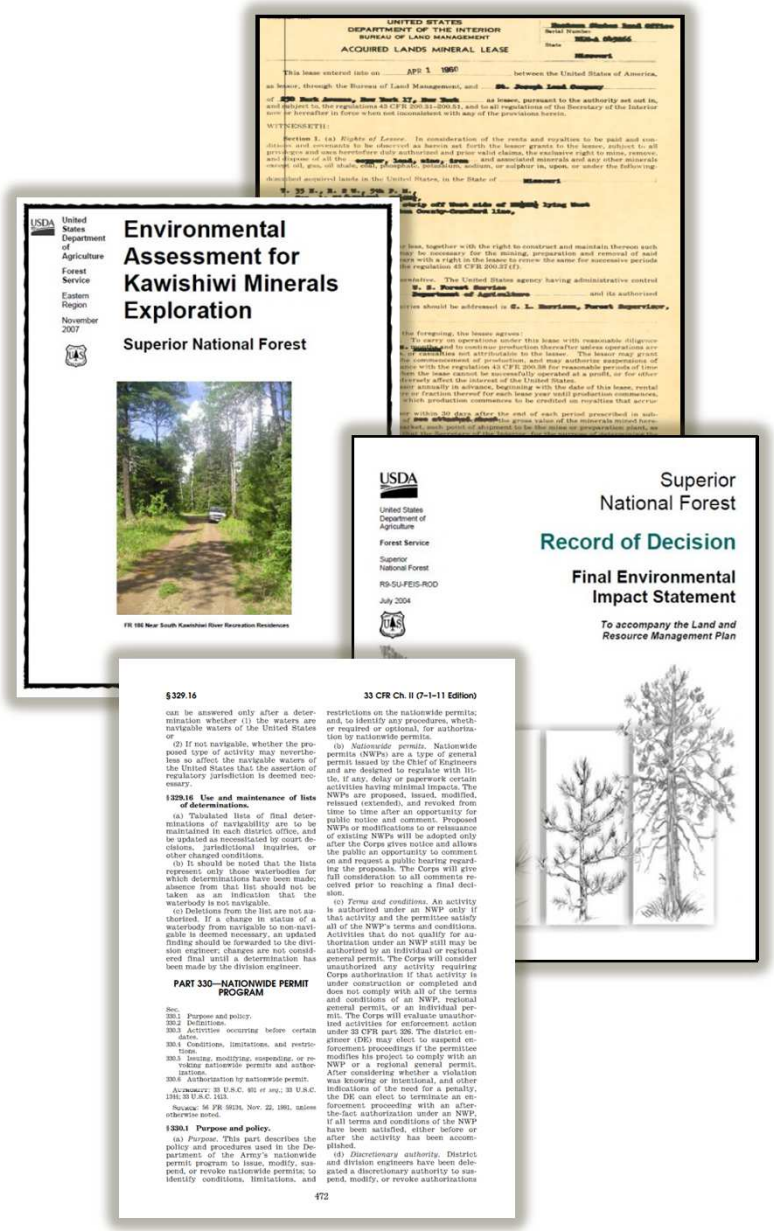
KNOWING IS HALF THE BATTLE



- Identify <u>all</u> potential environmental permit requirements
- Understand environmental review options (EIS, EA, CX)
- Assess which regulatory processes are likely to be critical path and the relationship between various permitting programs
- Be prepared to educate the agencies on the law, including their own regulations
- Develop early advocacy positions on key permitting issues
- Assemble favorable precedent

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HELP AGENCIES HELP YOU

- **Agencies identify various barriers to efficient environmental review and permitting processes:**
  - Insufficient technical information
  - Inadequate budgets
  - Limits to staff time and resources

- **Eliminate these barriers to reduce risks of project delay**
  - Listen to agency needs/concerns and adjust strategy accordingly
  - Negotiate cost recovery agreements
  - Submit technical information early in process
  - When appropriate, prepare key documents and materials
  - Help define roles and responsibilities among different agencies

- **These strategies have other benefits:**
  - Develop productive partnership and credibility with key decision-makers
  - Persuade agencies that more limited scope is appropriate based on sound science and technical data

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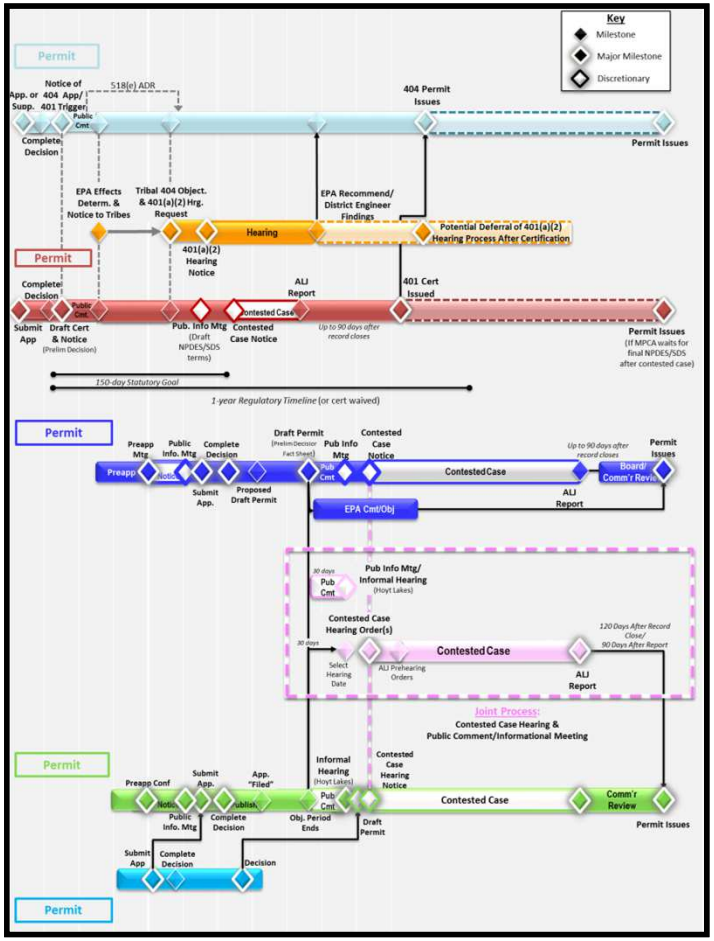
CONTROL THE PROCESS OR THE PROCESS WILL CONTROL YOU



- **Projects will often involve both federal and state permits (e.g., federal wetlands and state water)**

- **Careful coordination with all federal and state agencies is necessary to:**
  - Avoid duplication of work and activities
  - Minimize the risk of procedural defects
  - Avoid costly delays while agencies determine next steps
  - Prevent opponents from hijacking the process

- **Key tactics include:**
  - Aligning milestones & integrating procedures
  - Consolidating opportunities for public involvement
  - Fostering exchange of information and coordination among agencies
  - Identifying and holding agencies accountable to statutory/regulatory timeframes
  - Developing an administrative record to support efforts to defend final permit

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ENVIRONMENTAL RISK IDENTIFICATION AND MANAGEMENT STRATEGIES FOR ACQUISITIONS

Stacy Stotts

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INTRODUCTION

- Recent developments on the environmental transactional front:
  - Changes to "All Appropriate Inquiries" related to CRECs, HRECs and VECs.
  - EPA's renewed willingness to issue "Comfort Letters".
- Various components of a comprehensive strategy for environmental risk management from a transactional perspective – and, specifically, from Buyer's perspective.
- Buyer's "perfect world": all of the protections from environmental liability associated with historic/existing contamination would be provided, including statutory liability protection, environmental insurance coverage, and contractual liability protection.

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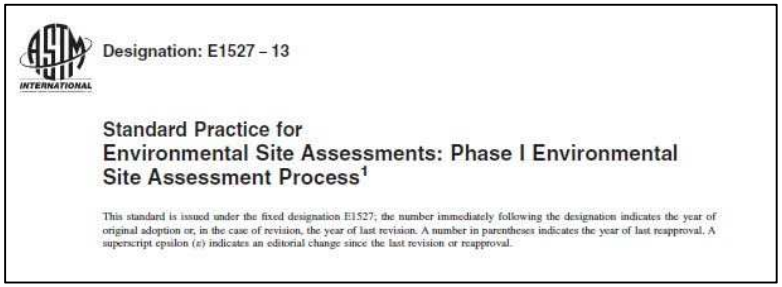
"ALL APPROPRIATE INQUIRIES"

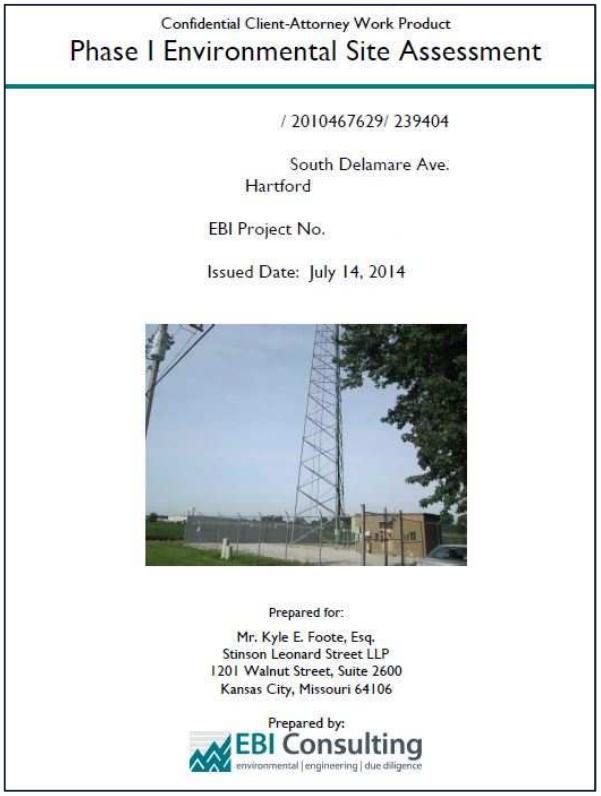
- Conduct "AAI" to qualify for CERCLA liability protection.
  - Quality environmental consultant is essential
  - Analysis of CRECs, HRECs, VECs is required (but frequently omitted)
  - Deficient Phase I ESA = no liability protection
  - If REC is identified: Post-closing "Reasonable Steps" and "Continuing Obligations"



Designation: E1527 – 13

Standard Practice for
Environmental Site Assessments: Phase I Environmental Site Assessment Process[1]

This standard is issued under the fixed designation E1527; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval.



Confidential Client-Attorney Work Product

Phase I Environmental Site Assessment

/ 2010467629/ 239404

South Delamare Ave.
Hartford

EBI Project No.

Issued Date: July 14, 2014

Prepared for:
Mr. Kyle E. Foote, Esq.
Stinson Leonard Street LLP
1201 Walnut Street, Suite 2600
Kansas City, Missouri 64106

Prepared by:
EBI Consulting
environmental | engineering | due diligence

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ASSET DEAL vs STOCK DEAL

- Asset Deal – opportunity for Buyer to establish new "environmental baseline":
  - Identify existing environmental conditions and past uses.
  - Qualify as an "Innocent Landowner" or "BFPP".
- Stock Deal – Buyer "steps into the shoes" of Seller (i.e., qualify for Seller's liability protections):
  - Did Seller qualify for CERCLA liability protection at time of its acquisition?
  - If yes, obtain Reliance Letter and negotiate covenant for future environmental compliance.
  - If no, negotiate direct purchase price reduction and indemnification.

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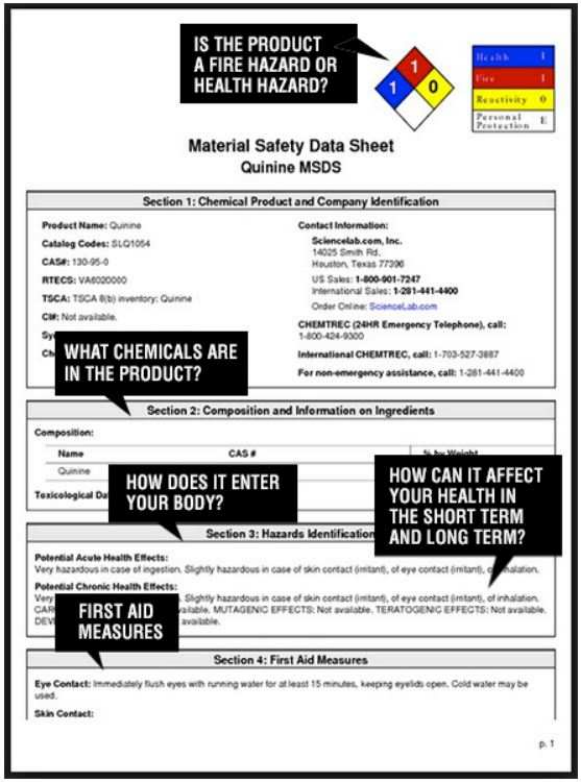
EXISTING USE vs PROPOSED USE

Distinguish the existing use from the proposed use, and establish this in the "Purchase Agreement."

- Identify different chemicals, products and wastes used and generated at the facility pre- and post-closing using MSDS and Hazardous Waste Manifests.
- Require the removal/disposal of all "products" that will not be used by Buyer.



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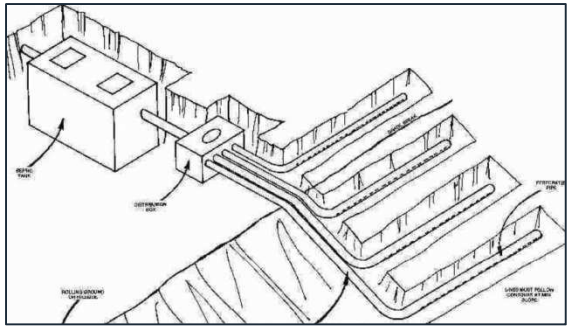
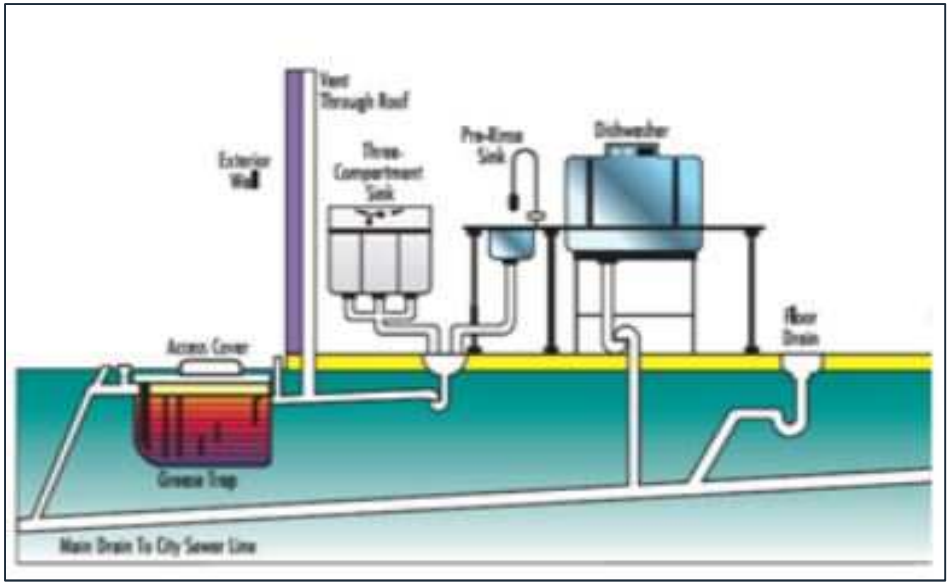
PHYSICAL/STRUCTURAL CHANGES TO "EXPOSURE PATHWAYS"

- Identify “exposure pathways”
- Make physical/structural changes to interrupt or break "exposure pathways"





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DEMOLITION OR RENOVATION

- Demolition or renovation?
  - If yes, conduct ACM/LBP surveys, search for USTs, estimate potentially impacted soil/groundwater
  - Buyer can estimate costs of abatement, encapsulation, removal and disposal - and negotiate a price reduction
  - Buyer can avoid inadvertently causing a "release" and violating Environmental Laws or OSHA Laws

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ORDERS AND PERMITS WITH CONTINUING OBLIGATIONS

- Orders/Permits require ongoing remediation, treatment, monitoring?
  - Compliance effort – what is required?
  - Whose responsibility - Seller or Buyer?
  - Amendment/transfer of permits?
  - If Buyer assumes responsibilities, estimate cost associated with compliance and negotiate purchase price reduction.

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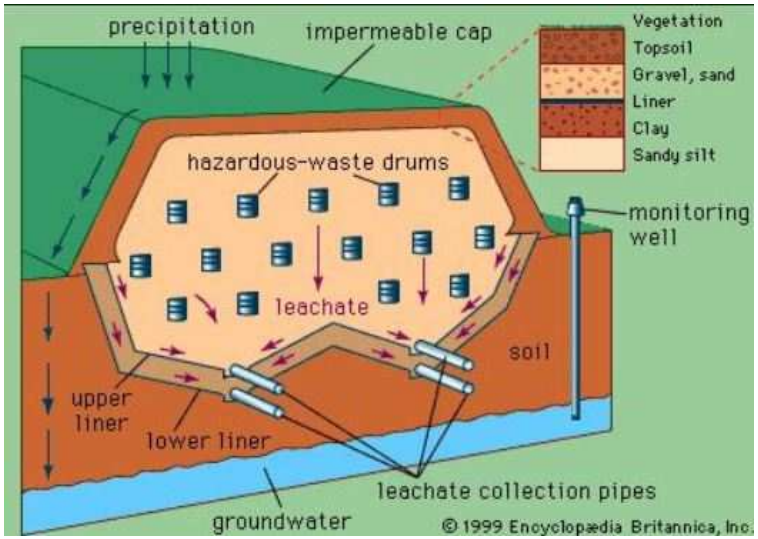
AULS AND DEED RESTRICTIONS

- Contamination remaining in place subject to AULs or Deed Restrictions?



- Restrictions on excavation, impacts to remedial and monitoring equipment systems, vapor mitigation and "cap" maintenance

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COMFORT/STATUS LETTERS

- EPA's "Revised Policy on the Issuance of Superfund Comfort/Status Letters", August 25, 2015.
  - Facilitate private investment in reuse and redevelopment of impacted property by easing developer's fears and uncertainties.
  - Required by banks and prospective purchasers.
  - Confirm investigations / environmental conditions.
  - Confirm that Buyer's proposed use is not a concern.
  - Confirm that future owners/operators have no liability for remediation of existing contamination.

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CONTRACTUAL ENVIRONMENTAL INDEMNIFICATION PROVISIONS

- "Seller shall defend, indemnify and hold harmless Buyer. . . from and against . . . all Claims and Damages associated with Environmental Conditions at, affecting or emanating from the Real Property which existed on or prior to the Closing Date . . . ."

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ENVIRONMENTAL INSURANCE

- Warranted when risks are uncertain and remediation costs are exorbitant
- Damage claims, including third-party bodily injury and property damage
- Cost overruns on remediation activities
- Releases caused by cleanup and/or construction activities
- Lender's pollution liability for banks relating to secured properties (beyond Secured Creditor Exclusion).

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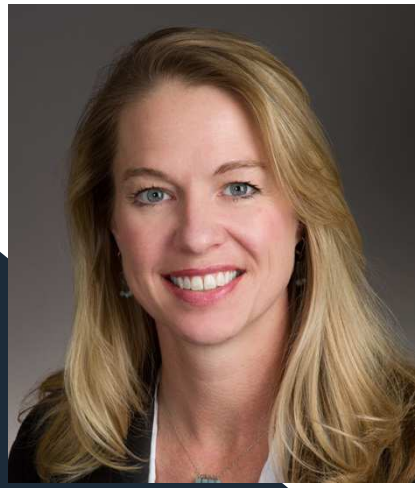

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SECURITIES LAW UPDATE

TJ Lynn and Drew Kuettel, Stinson Leonard Street

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AGENDA

- Dodd-Frank Act Executive Compensation Rulemaking Status
- FAST Act
- Regulation A+
- Title III Crowdfunding
- Conflict Minerals

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DODD-FRANK COMPENSATION RULEMAKING STATUS

Rule	Covered Issuers	Summary
Say on Pay Vote Rule 951 *Status: Effective*	File a proxy statement (schedule 14A) for an annual meeting at which directors are elected, except emerging growth companies ("EGC"). Foreign private issuers exempt ("FPI").	Stockholder advisory vote on executive compensation and include a resolution in proxy statements to approve the compensation every 1, 2 or 3 years.
Say on Golden Parachutes Vote Rule 951 *Status: Effective*	Reporting companies subject to SEC's proxy rules, except: • EGCs • For agreements and understandings with senior management of FPIs	Companies seeking stockholder approval of acquisition, merger or other disposition must make disclosure about "golden parachute" and conduct a stockholder vote to approve.

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DODD-FRANK COMPENSATION RULEMAKING STATUS

Rule	Covered Issuers	Summary
Compensation Committee Independence Rule 952(a) *Status: Effective*	Required of companies with listed equity securities except for: • Controlled companies • Smaller reporting companies • Limited partnerships • Companies in bankruptcy • Open-ended management investment companies • FPIs, if they comply with disclosure requirements about their governance practices.	SEC must direct national securities exchanges to set heightened independence standards for compensation committees.
Comp Committee Authority&Advisors Rule 952(b)-(e) *Status: Effective*	• NYSE: SRCs must comply but not required to evaluate consultant independence. • NASDAQ: SRCs are exempt • Controlled companies are exempt • FPIs rely on exemptions	Comp committees must - • Evaluate the independence • Have authority to engage and supervise • Receive adequate funding

DODD-FRANK COMPENSATION RULEMAKING STATUS

Rule	Covered Issuers	Summary
Enhanced Compensation Consultant Disclosure Rule 952(c)(2) *Status: Effective*	File a proxy statement (schedule 14A) for an annual meeting at which directors are elected. Foreign private issuers exempt ("FPI").	Companies must disclose information about certain compensation consultants, any related conflicts of interest and how conflicts are being managed.
Pay vs. Performance Disclosure Rule 953 *Status: proposed rules in April 2015*	Reporting companies except- • EGCs • FPIs • Registered investment companies • SRCs can take advantage of scaled disclosure requirements	• Total comp for the principal executive officer ("PEO") • Average total comp for other non-executive officers ("NEO") • Company and peer group total shareholder return • Narrative disclosure describing relationship

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DODD-FRANK COMPENSATION RULEMAKING STATUS

Rule	Covered Issuers	Summary
Pay Ratio Disclosure Rule 953 *Status: adopted August 2015*	Reporting companies except- • EGCs • SRCs • FPIs • Registered investment companies	Proxy statement disclosure of the ratio between the compensation of the company's PEO and the median compensation of all company employees.
Compensation Clawbacks Rule 954 *Status: proposed rules July 2015*	Companies with exchange listed-securities except for certain registered investment companies to the extent they do not otherwise provide incentive-based compensation to their employees.	Securities exchanges must adopt listing standards requiring companies to adopt policies for recovery of erroneously awarded incentive-based compensation from their executive officers.

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DODD-FRANK COMPENSATION RULEMAKING STATUS

Rule	Covered Issuers	Summary
Employee & Director Hedging Disclosure Rule 955 *Status: proposed rules February 2015*	File a proxy statement (schedule 14A) for an annual meeting at which directors are elected. FPI exempt.	Proxy statement disclosure of whether a company permits directors, officers or other employees to engage in certain hedging transactions relating to company equity securities.
Financial Institution Incentive Compensation Disclosure & Regulation Rule 956 *Status: proposed rules 2011 (revisions expected 2016)*	Covered financial institutions including- • Broker-dealers • Investment advisers • Depository institutions and holding companies. Institutions with assets of less than $1 billion are exempt	Disclosure to regulators of incentive compensation and prohibition of incentive compensation arrangements that encourage inappropriate risks or could lead to material financial loss.

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FAST ACT

- Fixing America's Surface Transportation Act ("FAST Act") signed into law on December 4, 2015
- Division G of the FAST Act continues the work of the Jumpstart Our Business Startups Act of 2012 ("JOBS Act") by implementing additional changes to the federal securities laws designed to make it easier for smaller companies to raise capital

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FAST ACT

- Key provisions include:
  - Change to Timing Requirements for Initial Public Filing of EGC IPO Registration Statements
  - Grace Period for Change of Status of EGCs
  - Simplified Disclosure Requirements for EGCs
  - Amendments to Form 10-K and Regulation S-K
  - New Section 4(a)(7) Exemption
  - Forward Incorporation by Reference in Form S-1s Filed by Smaller Reporting Companies
  - Exchange Act Registration Thresholds for Savings and Loan Holding Companies

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REGULATION A+

- Simplifies SEC filing process (qualification) for public offerings and sales
- Tier 1 – up to $20 million annually
  - Subject to state blue sky review
  - No ongoing reporting
- Tier 2 – up to $50 million annually
  - Not subject to state blue sky review
  - Audited financial statements required
  - Ongoing annual and semiannual reporting
- Scaled disclosures (other than MD&A) between Tier 1 and 2

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REGULATION A+

- Offerings currently being made
- Elio Motors raises $17 million in crowdfunding-like offering
- About 35 offerings qualified to date
- SEC comment letters resemble registered offerings
- Montana and Massachusetts have challenged in court

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TITLE III CROWDFUNDING

- Effective May 16, 2016
- Permits public offers and sales of up to $1,000,000 annually
- Investment limitations of $2,000 to $100,000 per investor
- Dependent upon annual income and net worth
- Must be conducted through a broker or funding portal

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TITLE III CROWDFUNDING

- Offering statement must be filed with SEC on EDGAR
  - Not subject to review
- Limited advertising akin to a tombstone notice
- Ongoing filing of annual reports with the SEC
- Too complex to be used?

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CONFLICT MINERALS

- Initial decision found portions of the rule violated First Amendment
- SEC issues guidance
  - No company required to describe products as DRC conflict free
  - No IPSA required unless described as DRC conflict free etc.
- Rehearing affirmed decision
- Rehearing en banc denied
- Deadline for cert petition extended to today (April 7, 2016)
- Informally SEC advises to keep following prior guidance

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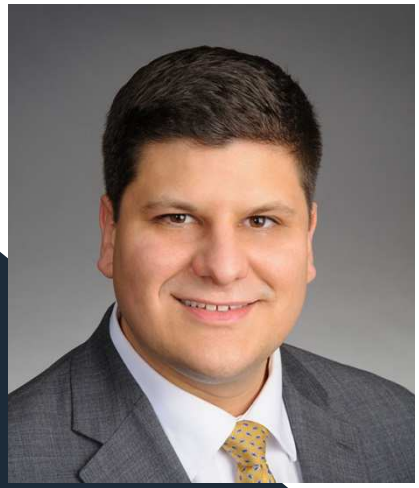

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LABOR AND EMPLOYMENT LAW UPDATE

Kristin Berger Parker, Stinson Leonard Street

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TOPICS

- Arbitration Agreements
- Government Contractors
- Confidentiality Provisions
- DOL Proposed Regulations
- WESA and MN-Specific Updates

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ARBITRATION AGREEMENTS UNDER FAA GAIN STRENGTH

DirecTV Inc. v. Imburgia, 136 S. Ct. 463 (2015)

DirecTV Inc. v. Imburgia, 136 S. Ct. 463 (2015)

- Decided December 2015
- Putative class action filed in CA state court in 2008
- Customers of satellite provider challenging early termination fees
- Service agreement had arbitration and waiver of class claims clause

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ARBITRATION AGREEMENTS
(CONTINUED)

DirecTV Inc. v. Imburgia, 136 S. Ct. 463 (2015)

- Arbitration clause conditioned on enforceability of class waiver under "the law of your state"
- CA court: class arbitration waivers in consumer form contracts were viewed as "unconscionable"
- Therefore, unenforceable under the law of California
- CA court also said "law of your state" meant state law absent FAA preemption
- *AT&T Mobility v. Concepcion* decided while *DirecTV* case pending in CA

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ARBITRATION AGREEMENTS
(CONTINUED)

DirecTV Inc. v. Imburgia, 136 S. Ct. 463 (2015)

- USSC reversed
- Federal Arbitration Act prohibits state law discrimination against arbitration clauses
- FAA states arbitration clauses are valid except if unenforceable on same grounds as any other contract
- Because CA court's decision was restricted to arbitration agreements, it was impermissible

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ARBITRATION AGREEMENTS
(CONTINUED)

DirecTV Inc. v. Imburgia, 136 S. Ct. 463 (2015)

- Key takeaway: State law doctrines regarding validity of arbitration clauses that treat such clauses differently than other contractual provisions are impermissible
- May be moving towards uniform enforceability of arbitration clauses across the US
- Nevertheless, arbitration provisions must be carefully drafted

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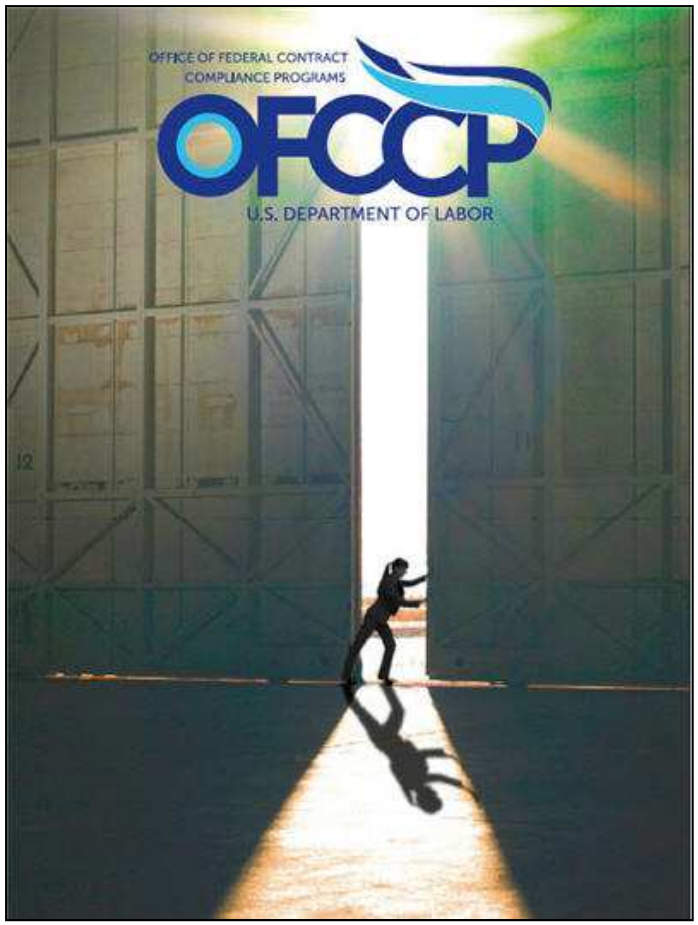
EMPLOYMENT UPDATES FOR GOVERNMENT CONTRACTORS



- OFCCP 2016 Enforcement Initiatives
- New Requirements in 2016 for Covered Government Contractors

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2016 OFCCP INITIATIVES

- 2016 FY Budget Request Enforcement Priorities
  - Implementing new regulations
  - Investigating systemic pay discrimination cases
  - Eliminating discrimination in the construction industry
- OFCCP's Focus Remains on Discrimination in Hiring
  - Continued focus on entry-level positions that attract a large number of applicants
  - OFCCP launched a "Class Member Locator" website with open cases

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2016 OFCCP INITIATIVES *(CONTINUED)*

- Systemic Pay Discrimination
  - OFCCP is projecting that compensation-related violations will increase to 40% of all discrimination violations in the next 2 years
  - OFCCP defines systemic discrimination as
    - a measureable pattern of discrimination, which it may find based on a statistical analysis, or
    - an identified practice applicable to multiple employees that results in discrimination, such as "steering" employees of one particular class to lower-paying jobs.

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NEW PAY TRANSPARENCY RULE

- Executive Order 13665 took effect **January 11, 2016**
- Prohibits federal contractors from discharging or discriminating against employees and applicants who ask about or discuss compensation
- Does not permit employees who have access to compensation information as part of their essential job functions to disclose other employees' compensation

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PAID SICK LEAVE FOR EMPLOYEES EXECUTIVE ORDER 13706

- Effective **January 1, 2017**, contractors are required to provide paid sick leave to employees
- Must allow employees to earn at least 56 hours or 7 days of paid sick leave annually

Key provisions:

- Must allow employees to earn at least one hour of paid sick leave for every 30 hours worked
- Paid sick leave must carry over from year to year and must be reinstated for employees rehired within 12 months of job separation
- May use paid sick leave to cover a broad variety of absences set forth in the order
- Employers are not required to pay out accrued and unused sick leave upon termination of employment

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NEW EEOC PAY DATA RULE

Rule Announced January 2016, Proposed Change to EEO-1 Report

- Applies to federal contractors and private employers with 100+ employees
- Purpose: prevent pay discrimination
- Effective September 2017, employers will report:
  - Pay ranges
  - Hours worked
- Comment Period through April 1
- Concerns:
  - Additional reporting burdens on employers
  - Increased risk of investigations/claims
  - Confidentiality issues regarding employers' data

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CONFIDENTIALITY AGREEMENTS

Do Confidentiality Agreements Violate the Law?

- Trend by many government agencies to ban confidentiality agreements that restrict reporting violations of the law
- On January 22, 2016, the Department of Defense and NASA proposed a rule to stop funding to contractors who force employees to sign confidentiality agreements that bar them from blowing the whistle on waste, fraud and abuse

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CONFIDENTIALITY AGREEMENTS
(CONTINUED)

- Sample language to address this trend:
  - Nothing in this Agreement prohibits Employee from reporting possible violations of federal or state law or regulation to any government agency or entity, including but not limited to the EEOC, DOL, Department of Justice, Securities and Exchange Commission, Department of Defense, Congress, and any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of applicable law.

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NEW PROPOSED REGULATIONS EXPANDING OVERTIME ELIGIBILITY

In June of 2015, the U.S. Department of Labor ("DOL") announced its anticipated proposed revisions to the Fair Labor Standards Act ("FLSA") overtime exemption regulations, which would make it harder for employers to classify employees as exempt from overtime pay.

When ??

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NEW PROPOSED REGULATIONS EXPANDING OVERTIME ELIGIBILITY *(CONTINUED)*

- Increase the threshold salary level for exempt status to the 40th percentile of earnings for full-time salaried workers. The DOL estimates that this would result in a $970 per week or $50,440 per year salary requirement by the time the final rule is implemented in 2016.
- Increase the threshold salary for the highly compensated employee exemption to the 90th percentile of earnings for full-time salaried workers. The DOL estimates that this would result in a salary requirement of $122,148 per year.

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NEW PROPOSED REGULATIONS EXPANDING OVERTIME ELIGIBILITY

(CONTINUED)

- Use new rules as an opportunity to clean up potential misclassification problems.
- Understand how your workforce will react to potential changes from exempt to non-exempt status and be prepared to communicate reasons for change.

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THE WOMEN'S ECONOMIC SECURITY ACT (WESA)

- New "Familial Status" Protection under MHRA
- Expansion of MN Parenting Leave Act – 6 to 12 weeks
- Expansion of MN Paid Sick Leave for Care of Relatives
- Pregnancy Accommodation
- Nursing Mothers
- Wage disclosure Protection

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VALUATIONS AND THE M&A MARKETING

CHARTWELL OVERVIEW

PREPARED FOR STINSON LEONARD STREET LLP

Wil Becker and Ted Margarit, Chartwell Financial Advisory
Tammie Ptacek, Stinson Leonard Street

STRICTLY PRIVATE & CONFIDENTIAL
APRIL 7, 2016

CHARTWELL STINSON LEONARD STREET

TABLE OF CONTENTS

CHARTWELL STINSON LEONARD STREET

CHARTWELL'S CORPORATE ADVISORY EXPERTISE

Chartwell has substantial investment banking, corporate ESOP advisory, M&A, and capital markets expertise

- Our team has career experience with major investment banks (ABN AMRO, Bank of America Merrill Lynch, Bank of Montreal (BMO), Harris Williams & Co., and Lazard Middle Market), completing hundreds of M&A, ESOP, corporate finance and capital markets transactions
- As an independent firm, we are relationship driven, unbiased to outcome and free from conflicts – Chartwell delivers solutions based advice to optimize our client's objectives

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CORPORATE ESOP ADVISORY

- Equity sales to newly created and/or existing ESOP
- Tax-free sales, 1042 election
- Complex ESOP structures involving multi-layered capital structures
- ESOP re-levering, restructurings, terminations
- Sale of ESOP-owned companies

MERGERS & ACQUISITIONS

- Full sell-side capabilities:
  - Majority, control sell-side
  - Minority, non-control sell-side
- Management-sponsored leveraged buyouts (MBO)
- Dual track (ESOP/non-ESOP), tailored M&A processes
- Buy-side transactions

CAPITAL MARKETS

- Act as placement agent in connection with a transaction advisory mandate:
  - ESOPs
  - Mergers and acquisitions
  - Recapitalizations /LBOs
- Broad investor base:
  - Bank/non-bank investors

TPI HOSPITALITY
Complete Sale to an ESOP
Sell-Side Advisor

Goldn Plump
Merger of the Company with a Strategic Partner
Financial Advisor

marco
Sale of the Company to Norwest Equity Partners
Sell-Side Advisor

MacArthurCo.
Acquired Weekes Forest Products, Inc.
Buy-Side Advisor

INSIDE EDGE
$20,000,000
Senior Credit Facilities
$30,000,000
Junior Capital
Placement Agent

THE BERNARD GROUP
INSPIRED MERCHANDISING SOLUTIONS
$21,000,000
Senior Credit Facilities
Placement Agent

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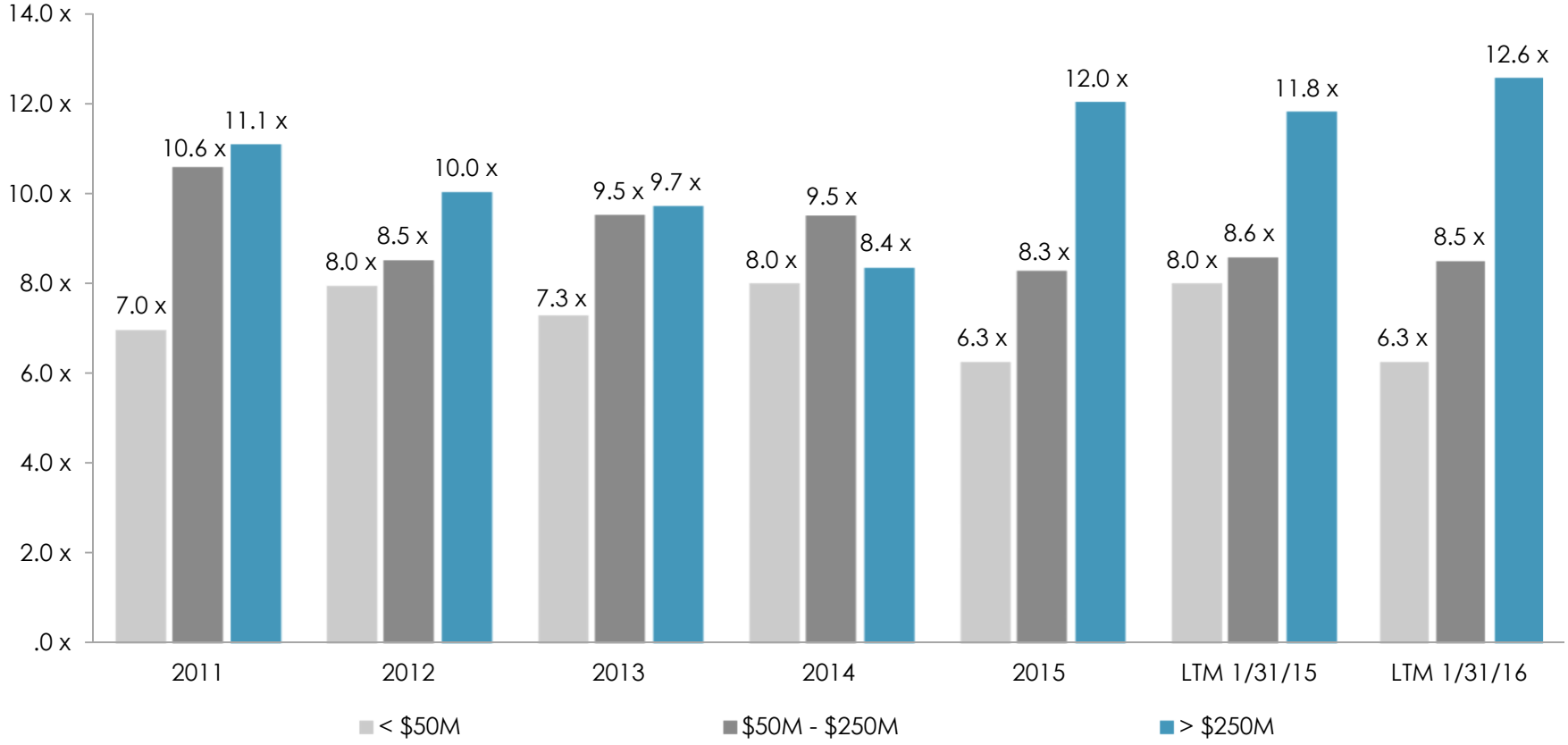
I. MARKET UPDATE

AVERAGE LTM EBITDA MULTIPLES BY TRANSACTION SIZE



Source: S&P - Capital IQ; excludes multiples > 25x

EBITDA multiples in the lower market contracted, while mid market deal values held steady and upper market multiples expanded to an all time high with favorable credit multipoles, strong demand from strategic and financial buyers, and robust financial performance

Source: S&P Capital IQ (Announced Deals)

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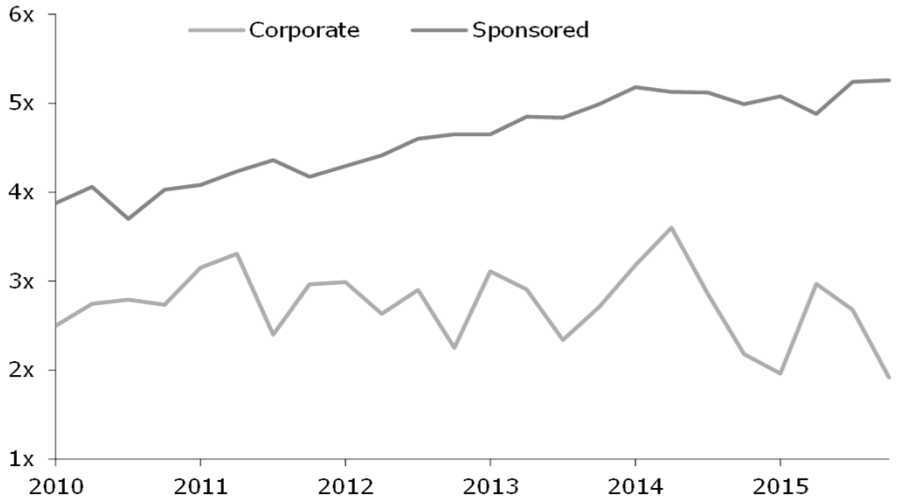
DEBT CAPITAL MARKETS ACTIVITY

SUMMARY

- 56% of 2015 loan deals were sponsor-backed, down from 69% in 2014
- Overall sponsor volume fell sharply on the year by 40%, from $114 billion in 2014 to $69 billion in 2015
- Overall corporate volume was down slightly by 4%, from $51 billion in 2014 to $49 billion in 2015
- Separation is widening between leverage levels in corporate and sponsored deals
- Average total leverage for Q4 sponsored deals reached 5.3x
- Corporate deal leverage fell from 2014 highs to 1.9x in Q4

CORPORATE VS. SPONSORED TOTAL LEVERAGE



Source: Wells Fargo Securities

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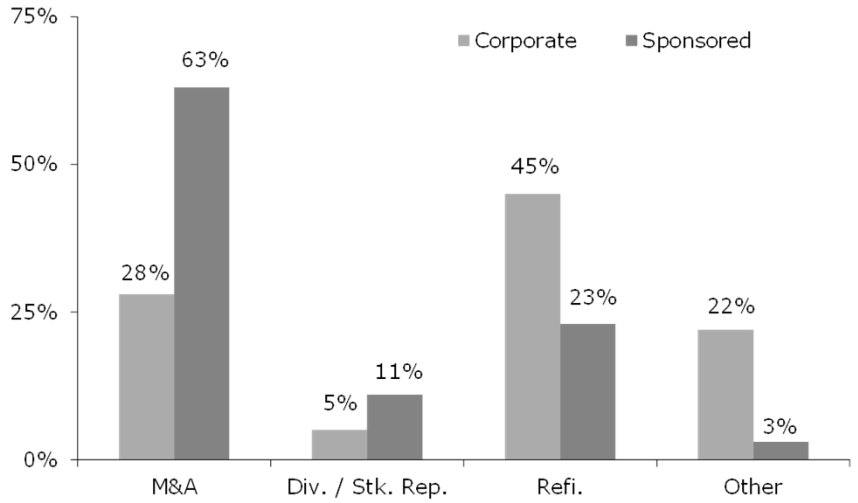
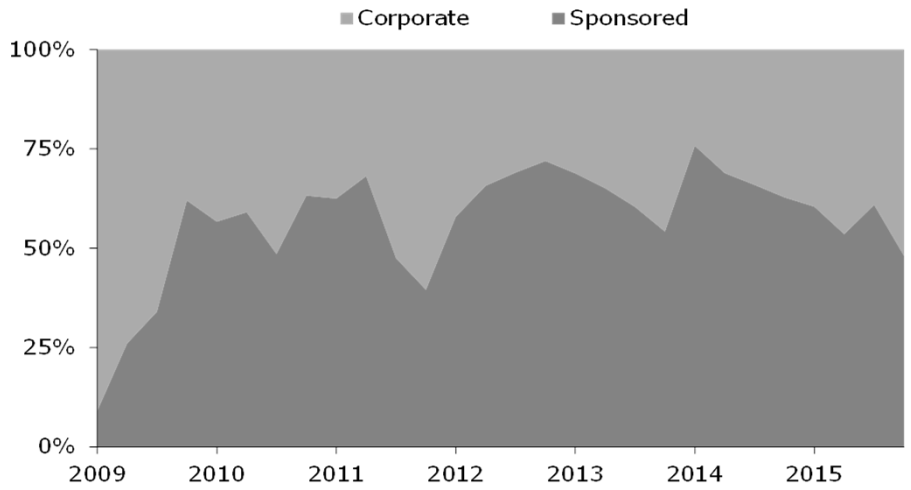
DEBT CAPITAL MARKETS ACTIVITY

CORPORATE VS. SPONSORED PURPOSE



CORPORATE VS. SPONSORED MARKET SHARE



Source: Wells Fargo Securities

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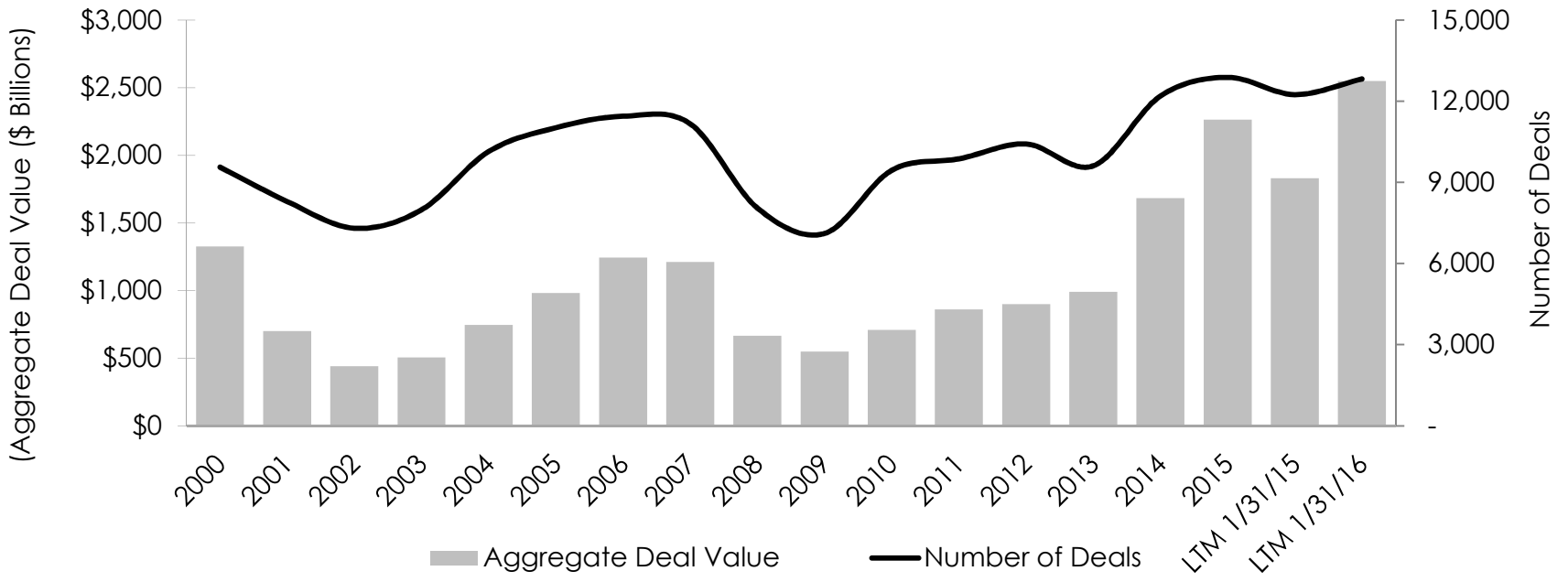
DOMESTIC M&A ACTIVITY BY YEAR

AGGREGATE DEAL VALUE



Record M&A activity in 2015, exceeding $2.0 trillion in transaction value

Strong activity driven by strong balance sheets, favorable credit markets, and increasing valuation multiples

M&A backlog and pitch activity remains strong, with M&A activity in the first half of 2016 expected to exceed second half of 2015

Source: Mergerstat Monthly Review

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RELEVANT VALUATION CASE STUDIES

COMPLEX CORPORATE STRUCTURES

- Inadvertent administrative dissolution of key subsidiaries not discovered for over a decade
- Failure to operate subsidiaries as separate businesses causes difficulty when a division encompassing the subsidiaries business is sold
- In some states (such as NJ), relatively easy to "accidentally" create a domestic corporation when attempting to register as a foreign corporation; resolving can be complicated by non-business-friendly secretaries of state that are slow to comprehend issues and process documents; name availability issues when attempting to register actual operating company

SELLING PEAK EARNINGS

- Our client is an industrial equipment manufacturer that, in the year prior to sale, achieved peak revenues and earnings of $100 and $22.5 million, respectively, representing 20+% CAGRs
- Lenders were hesitant to underwrite the LTM results, as the Company did not have a track record of performing at this level
- Before approaching the market, Chartwell assisted the Company's management in building out a projection model that incorporated the business's sales backlog, which indicated two years of revenue was already on order, to substantiate the projections and build comfort that future results would remain at this level

CONTRACTS

- Identify any right of first refusal over the sale of the business and get it waived before going to market
- Contracts requiring prior notice (e.g., 30 days) in connection with an assignment or a change in control of the company are problematic from a deal announcement perspective
- Software due diligence is on the increase, especially with respect to open source code embedded in company software, resulting in closer scrutiny of all software contracts and IP assignments; inability to produce robust IP assignments from independent contractors who worked on company software is problematic
- Review of key revenue-generating and expense contracts and comparison to financial model is critical

MARKET PREPARATION

- We assisted our client in the acquisition of two unique distribution companies with multiple locations. Both companies were brought to market with the intent to fast track closings, but encountered inordinate delays due to issues associated with general deal terms
- The first company historically operated "fat" on inventory and was unprepared to address appropriate Net Working Capital targets
- The second company was a party to "above market" leases with related parties and were unprepared to address adjustments to market terms, and the ultimate impact to the purchase price

CHARTWELL STINSON LEONARD STREET

III. APPENDIX

A. CHARTWELL EXPERTISE

COMPREHENSIVE FINANCIAL ADVISORY

Chartwell's financial advisory expertise is focused on the unique needs of middle-market companies

CHARTWELL	• Chartwell's innovative solutions help companies, shareholders, and fiduciaries achieve their goals and objectives • Thousands of successfully completed engagements are a testament to our professionals' ability to execute the most demanding and complex projects • Our uncompromising values assure key stakeholders receive unbiased advice and opinions free from conflicts
ADVISORY	• Comprehensive financial analysis catered to individual situations designed to optimize stakeholder outcomes • Specialized in ownership transition, long term capital planning, and synthetic equity plan design • 1,500+ consulting engagements driving superior client results
CORPORATE FINANCE	• Guidance, analysis, and execution of value-added investment banking services • Proven M&A execution on behalf of buyers and sellers with 500+ completed transactions • Capital markets expertise with an emphasis on all forms of debt capital placement
TRANSACTION OPINIONS	• Skilled in analysis of transactions from a financial fairness and solvency perspective • Opinions reviewed and scrutinized by numerous third parties, including regulatory agencies • More than 35 transaction opinions issued annually
VALUATION	• Independent, professional, well documented valuation opinions designed to withstand regulatory scrutiny • ESOP and ERISA, corporate planning, estate and gift, equity compensation, and financial reporting • Leading national valuation firm with 400+ engagements completed annually

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SELL-SIDE M&A

Chartwell professionals have extensive experience with sell-side M&A and have completed numerous sell-side transactions

- These transactions include multiple strategic sales and leveraged buyouts across the full spectrum of different situations and industries
- Conducted numerous complex deal processes, including: unilateral, limited shop, dual-track, and full auction strategies
- Coordinated deal flow/idea generation as a principal in private equity and as advisors in global investment banks
- As advisors, represented private equity, corporate, and family/closely-held sellers
- First-hand knowledge of corporate acquirer mindset
- Familiar with all types of private equity and their investment strategies:
  - Institutional
  - Family office
  - Hybrids

WHAT THIS MEANS FOR CHARTWELL CLIENTS

- Working knowledge of transaction criteria and what acquirers are seeking
- Investment thesis (e.g., deal rationale, hold periods, etc.)
- Valuation/pricing/return thresholds
- Deal structuring and terms (commercial and legal)
- Financing source and capital structuring

SELECT TRANSACTIONS

marco
Sale of the Company to Norwest Equity Partners
Sell-Side Advisor

Daniels Trading
EXCELLENCE THROUGH EXECUTION
Sale of the Company to GAIN Capital Holdings, Inc.
Sell-Side Advisor

DYMAX
Sale of the Company to Resa Power Solutions
Sell-Side Advisor

TOP THIRD AG MARKETING
Sale of the Company to GAIN Capital Holdings, Inc.
Sell-Side Advisor

John M. Campbell & Co.
Sale of the Company to PetroSkills, LLC
Sell-Side Advisor

QUEENSGATE FOODSERVICE
Sale of the company to The Chefs' Warehouse
Sell-Side Advisor

Biomark
SPECIALISTS IN ELECTRONIC IDENTIFICATION
Sale of the Company to AllflexUSA, Inc.
Sell-Side Advisor

SCHROEDER
Sale of the Company to Agropur
Sell-Side Advisor

BUY-SIDE M&A

Our professionals have not only transacted as advisors to acquirers, we have executed transactions as principal investors

- Completed a number of strategic acquisitions that effected a strategic transformation, as well as tactical add-ons
- Reviewed, evaluated, and proposed on countless other situations
- Responsible for corporate development and strategy
  - Acquisition criteria
  - Deal flow
  - Valuation methods
  - Structuring

WHAT THIS MEANS FOR CHARTWELL CLIENTS

- Complete (actual) understanding of acquisition process
- Keen understanding of synergies (hard and soft)
- Development of strategic investment thesis and rationale
- Valuation expertise
- Deal structuring, due diligence, and closing

SELECT TRANSACTIONS

MacArthurCo.

Acquisition of Weekes Forest Products, Inc.
Buy-Side Advisor

EP

Acquisition of Ease Entertainment Services
Buy-Side Advisor

GREENHECK
Building Value in Air.

Buy-out of ESOP Ownership
Buy-Side Advisor

padillacrt

Acquisition of CRT/tanaka
Buy-Side Advisor

MPW Industrial Services Group, Inc.

Public to Private
Buy-Side Advisor

EPS

Acquisition of BBL Building Components
Buy-Side Advisor

DIAGEO

Acquisition of Bistrial European Baker
Buy-Side Advisor

PALM BEACH CAPITAL

Acquisition of Atlas Paper Mills
Buy-Side Advisor

CAPITAL MARKETS

Chartwell's Capital Markets Advisory practice provides both capital structure advisory and efficient debt placement services

- Chartwell provides unbiased, product-neutral, optimal capital structure advice
- The team has extensive expertise in the capital markets as a placement agent, in addition to direct experience as a lender/investor in debt securities
- Chartwell's real-time knowledge of the capital markets provides clients a practical understanding of what is feasible based on their particular financial characteristics
- Chartwell's expertise and services may be leveraged across a multitude of capital needs and security types

TRANSACTION TYPES

- New issuance
- Expansion
- Recapitalization
- Refinancing
- Restructuring
- Cross-border debt issuance

DEBT SECURITIES

- Senior bank debt (revolver, term loans)
- Senior institutional cash flow loans
- Second-lien loans
- Senior traditional private placements
- Junior capital/mezzanine
- Convertible preferred securities

SELECT TRANSACTIONS

$75,000,000
Senior Credit Facilities
Financial Advisor

$88,000,000
Senior Credit Facilities
Financial Advisor

$225,000,000
Refinancing &
Recapitalization
Financial Advisor

$20,000,000
Senior Credit Facilities
$30,000,000
Junior Capital
Financial Advisor

$21,000,000
Senior Credit Facilities
Financial Advisor

$30,000,000
Senior Credit Facilities
$10,000,000
Subordinated Notes
Financial Advisor

$175,000,000
Senior Secured Notes
Financial Advisor

$30,000,000
Senior Credit Facilities
$60,000,000
Junior Capital
Financial Advisor

LEADING NATIONAL ESOP ADVISORY FIRM

Our professionals have comprehensive experience in ESOP-related engagements, having represented companies, shareholders, and trustees

- Nationally recognized market leaders with significant experience advising on all aspects of complex ESOP-related projects and transactions
- Long-term relationships with the leading ESOP trustees, lawyers, financial advisors, consultants, administrators, fiduciaries, and related professionals
- Demonstrated commitment to ESOPs since 1986

ESOP SERVICES

- Annual valuation and advisory services
- Fairness and solvency opinions
- Equity sales to new and existing ESOPs
- Transaction structuring
- Sustainability analysis
- Executive compensation benchmarking
- Synthetic equity plan design
- Financing and recapitalizations of ESOP-owned companies
- Acquisitions of ESOP companies
- Sale and termination of ESOPs

CHARTWELL INVOLVEMENT

- Active Board members of The National Center for Employee Ownership and The ESOP Association
- Frequent speakers at ESOP conferences
- ESCA Advisory Committee members
- The ESOP Association various Advisory committees
- The ESOP Association chapter officers
- National Center for Employee Ownership active members

COMPANY REPRESENTATION	TRUSTEE REPRESENTATION
TPI HOSPITALITY Complete Sale to an ESOP **Sell-Side Advisor**	LITEHOUSE ESOP acquired controlling interest to become 100% ESOP owned **Trustee Advisor**
INSIDE EDGE Complete Sale to an ESOP **Sell-Side Advisor**	INTER-ISLAND SOLAR SUPPLY The Solaray Corporation Newly formed ESOP acquired 100% interest **Trustee Advisor**
ALL MY SONS MOVING & STORAGE Complete Sale to an ESOP **Sell-Side Advisor**	TRADEHOME Newly formed ESOP acquired 100% interest **Trustee Advisor**
PIMA MEDICAL INSTITUTE Minority Sale to an ESOP **Sell-Side Advisor**	Goldn Plump Merger of the Company with a strategic partner **Trustee Advisor**

B. BIOGRAPHIES

WILFRED F. BECKER, JR., ASA

MANAGING DIRECTOR

PRESENT POSITION

Wil leads Chartwell's Valuation practice. He specializes in valuations of privately held companies for equity compensation plans, financial reporting, and general corporate planning purposes, as well as valuations of companies with complex capital and ownership structures. Wil conducts valuations of corporate securities issued as equity compensation to comply with IRS and financial reporting requirements under IRC §409A and ASC 718, respectively. He also supports Chartwell's Corporate Finance group with M&A and corporate consulting. Wil provides advisory services for corporate initiatives such as acquisitions, recapitalizations, consolidations or spin-offs.

MEMBERSHIPS AND DESIGNATIONS

Wil is a member of Financial Executives International, the Association for Corporate Growth, the Appraisal Issues Task Force, and the National Center for Employee Ownership. He is designated as an Accredited Senior Appraiser in Business Valuation by the American Society of Appraisers. Wil is a Registered Representative with Chartwell affiliate, CCS Transactions, LLC and holds FINRA Series 7, 24, 63, and 79 licenses.

Wil is a frequent presenter on M&A and valuation issues to professional groups.

PRIOR EXPERIENCE AND EDUCATION

Wil holds a Bachelor of Arts degree in finance, with honors, from the University of St. Thomas. He also holds a Master of Business Administration degree with an emphasis in finance from the University of St. Thomas.

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EDWARD J. MARGARIT (TED)

VICE PRESIDENT

TED MARGARIT
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612-230-3126
ted.margarit@chartwellfa.com

PRESENT POSITION

Ted is a member of Chartwell's Corporate Finance practice where he focuses on providing ownership transition strategies, including the execution of ESOP transactions and/or traditional sell-side M&A processes with strategic and private equity buyers. His combination of industry experience, transaction analysis, execution expertise, and a practical, solutions-focused legal perspective provide Ted with a unique skillset to advise clients in a comprehensive, holistic fashion.

MEMBERSHIPS AND DESIGNATIONS

Ted holds the FINRA Series 63 and 79 licenses, as well as licenses to practice law in Minnesota and North Dakota. He is admitted to practice before the North Dakota Federal District Court, the United States Tax Court, and the U.S. 8th Circuit Court of Appeals. Additionally, Ted is a member of the Legislative and Regulatory Advisory Committee of The ESOP Association (TEA) and frequently speaks at The ESOP Association and National Center for Employee Ownership (NCEO) conferences.

PRIOR EXPERIENCE AND EDUCATION

Prior to joining Chartwell, Ted was an investment banker in the Consumer Group at Harris Williams & Company, a preeminent sell-side M&A advisor to the middle market where he advised companies in the consumer products and services, food and beverage, and restaurant and retail sectors. Prior to Harris Williams & Co., Ted began his investment banking career in the Middle Market
M&A Group at Lazard, Ltd., a leading global investment banking services provider.

Preceding his investment banking career, Ted practiced law in the areas of M&A and tax, with a particular emphasis on the creation, maintenance, and termination of ESOPs. Included in his ESOP practice were transactions involving both the purchase and sale of sponsoring employers, as well as general ESOP operational issues, IRS/DOL compliance reviews and corrective actions, and plan document drafting.

Ted earned his Masters of Business Administration in Corporate Finance and Real Estate from the University of North Carolina's Kenan-Flagler Business School, a Juris Doctor from the University of St. Thomas School of Law, and a Bachelor of Business Administration in Aviation Management from the University of North Dakota, where he also received his Commercial Pilot license.

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EMPLOYEE BENEFITS LAW UPDATE

Angela Bohmann, Stinson Leonard Street

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AFFORDABLE CARE ACT (ACA) NOT REPEALED

- Cadillac Tax Delay – 2018 to 2020
- Repeal of Automatic Enrollment – 11/1/15
- IRS guidance on employer reimbursement for individual health insurance policies
  - Not permitted pre tax or after tax

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AFFORDABLE CARE ACT (ACA) NOT REPEALED

- Section 4980H – Employer "play-or-pay" mandate fully effective
- Reporting Requirements
  - W-2 Reporting required
  - Large employers must provide coverage reports – Form 1095-C
  - Originally due to employees Feb.1 – delayed until March 31, 2016
  - Employer filing delayed from February 28 to May 31, 2016 (June 30 if filed electronically)

STINSON LEONARD STREET

INCREASED PENALTIES FOR FAILURE TO FILE 1095-C

Increased Penalty Amounts

Penalty	New Amount	Old Amount
Failure to file/furnish an annual IRS return (1094-B or C) or to provide individual statements to all full-time employees (1095-C) – penalty is per return/statement	$250	$100
Annual cap on penalties	$3,000,000	$1,500,000
Lower cap for entities with gross receipts of not more than $5,000,000	$1,000,000	$500,000
Failure to file return or furnish statement when corrected within 30 days of required filing date (penalty per return/statement)	$50	$30
Annual cap on penalties when corrected within 30 days of required filing date	$500,000	$250,000
Lower cap for entities with gross receipts of not more than $5,000,000, when corrected within 30 days of required filing date	$175,000	$75,000

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INCREASED PENALTIES FOR FAILURE TO FILE 1095-C

Increased Penalty Amounts

Penalty	New Amount	Old Amount
Failure to file/furnish by August 1 of the year in which the required filing date occurs	$100	$60
Cap on penalties when corrected by August 1 of the year in which the required filing date occurs	$1,500,000	$500,000
Lower Cap for entities with gross receipts of not more than $5,000,000 when corrected by August 1 of the year in which the required filing date occurs	$500,000	$200,000
Penalty per filing in case of intentional disregard. No cap applies in this case.	$500	$250

STINSON LEONARD STREET

WELLNESS BENEFITS UNDER ATTACK BY EEOC

- ACA supports wellness programs
- ACA permits employer to provide incentive to employees who participate in wellness programs of up to 30% of the cost of employee-only health plan coverage, and up to 50% for tobacco cessation program

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WELLNESS BENEFITS UNDER ATTACK BY EEOC

Proposed EEOC Regulations Issued April 2015:

- If wellness program includes disability-related inquiries and/or medical examinations, employers can offer incentives of up to 30% of total cost of employee-only coverage
- Limitation applies to all wellness programs - participatory, health-contingent, or combination

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WELLNESS BENEFITS UNDER ATTACK BY EEOC

Proposed EEOC Regulations Issued April 2015:

- Special rules for smoking cessation programs
  - Smoking cessation program that only asks if tobacco used not subject to EEOC rules
  - Wellness program requiring employees to submit to medical testing to determine tobacco use is medical examination limiting even tobacco-related incentives to 30% instead of 50% as allowed by ACA wellness rules

STINSON LEONARD STREET

WELLNESS BENEFITS UNDER ATTACK BY EEOC

- November 2014, EEOC sought injunction against Honeywell Inc. wellness program that required blood and BMI tests to get HSA dollars
- EEOC claimed that program violated ADA which prohibits non-job related medical testing
- Court denied EEOC's request for injunction, concluding that it was not clear that ADA was violated (*EEOC v. Honeywell*, No. 14-4517, DC MN, 2014)

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WELLNESS BENEFITS UNDER ATTACK BY EEOC

- In Orion Energy Systems (E.D. Wis.), EEOC sued alleging retaliation against employee who declined to participate in Orion wellness program and was later terminated
- EEOC also alleged that Orion's wellness plan requiring completion of health risk assessment and fitness test violated ADA because not voluntary
- Company paid 100% of health premium for employees who completed HRA and charged a $50 surcharge if fitness test not completed
- Case still pending

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WELLNESS BENEFITS UNDER ATTACK BY EEOC

- EEOC recently failed in attack on wellness program in EEOC vs. Flambeau (WD WI 2015)
  - Employer's health plan required employees to submit to health risk assessment as a condition to participation
  - EEOC sued when employee was dropped from employer's plan for failure to participate
  - Federal district court found program met ADA safe harbor for "bona fide benefit plans"
  - EEOC is appealing decision

STINSON LEONARD STREET

401(K) LAWSUITS: FEES AND EXPENSES

- Over 40 actions filed so far against large 401(k) plans
  - Recent ones include:
    - Bell v. Anthem, Inc. (12-29-2015)
    - Krikorian v. Great West Life (1-14-2016)
    - Jacobs v. Verizon (2-11-2016)
    - White v. Chevron Corp. (2-17-2016)
- Challenging fees, share classes, stable value funds

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401(K) LAWSUITS: FEES AND EXPENSES

Important for ERISA fiduciaries (e.g., 401(k) plan committees) to:

- Evaluate fees and expenses being paid by 401(k) plan and 401(k) plan participants
- Conduct regular reviews of all fees and expenses

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401(K) LAWSUITS: FEES AND EXPENSES

- Establish objective process to determine fees and expenses being paid from plan (or by plan participant)
- Understand specific services received from service provider
- Evaluate reasonableness of fees for desired level of services
- Benchmark against other providers

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401(K) LAWSUITS: FEES AND EXPENSES

- Review fee disclosure
- Monitor share classes
- Evaluate how fees should be allocated among participants
  - Per capita
  - Pro rata based on account balance
  - Per transaction
- Document decisions

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US DEPT OF LABOR FIDUCIARY REGULATIONS

- On April 20, 2015, US Department of Labor (DOL) proposed redefining term *investment advice* within pension and retirement plans
- Current Rule: Brokers and dealers generally subject to SEC's suitability standard - not higher fiduciary standard
- Final Rule (Issued April 6, 2016): Brokers and dealers will be considered fiduciaries subject to "best interest" of client with respect to recommended investments in plans or IRAs

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US DEPT OF LABOR FIDUCIARY REGULATIONS

- Regulations address some of industry's concerns
- Covers advice, but not education
- Recommendation to roll over plan balance to IRA will be fiduciary advice
- Full implementation by January 1, 2018

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401(K) SAFE HARBOR PLAN CHANGES

- January 29, 2016 IRS issued notice on safe harbor 401(k) plans
- More mid-year changes allowed
  - If content of safe harbor notice not affected, no special notice required
  - If content of safe harbor notice is affected, must provide updated notice and at least a 30 day election period to change deferrals
  - Notice between 30 and 90 days in advance if possible
  - If change adopted retroactively, within 30 days of date of adoption

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401(K) SAFE HARBOR PLAN CHANGES

- Some changes not allowed
  - Increase years of service required for vesting
  - Narrow group of employees eligible for safe harbor contributions
  - Change type of safe harbor plan
  - Increase match unless change adopted at least 3 months before year end and change applies retroactively to entire year
    - Might need to change from payroll-period match to plan year match

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401(K) SAFE HARBOR PLAN CHANGES

- Example of allowable changes
  - Add 59½ in service withdrawal feature
  - Change default investment
  - Add automatic contribution features (but not change to qualified automatic contribution feature)
  - Change entry date prospectively

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IRS DETERMINATION LETTER PROGRAM REVAMPED

- Preapproved volume submitter and prototype retirement plans must be restated by April 30, 2016 for Pension Protection Act (PPA)
- IRS opened Cycle A on Feb 1, 2016 for next (last) round of restatements
- IRS has announced that 5 year cycles will end with Cycle A and that determination letters will only be permitted for new plans, terminating plans and certain as yet undefined plan events

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IRS DETERMINATION LETTER PROGRAM REVAMPED

- New policy raises significant issues for employer sponsors, outside auditors and buyers of companies
- Employers with individually designed plans can move to pre-approved plans by April 30, 2017

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RECENT CHANGES TO IRS QUALIFIED PLAN CORRECTION PROGRAM (EPCRS)

- Rev. Proc. 2015-28: – New safe harbor EPCRS correction for **automatic contribution** features
- Relief if error corrected in first 9½ months after end of plan year
- Affected participant(s) must be notified within 45 days after correct deferrals begin
- Corrected matching contributions must be made within two-year window and adjusted for earnings
- Currently only available for failures on or before 12/31/20

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RECENT CHANGES TO EPCRS

- Rev. Proc. 2015-28: – New safe harbor for elective deferral failures corrected quickly
- Relief if elective deferral failure corrected within first 3 months of failure
- After 3 months, but before two-year SCP period expires, plan sponsor may make corrective contribution of 25% (QNEC)
  - Affected participant(s) must be notified within 45 days after correct deferrals begin
  - Corrected matching contributions must be made within two-year window

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RECENT CHANGES TO EPCRS

- Rev. Proc. 2016-8: – New lower voluntary correction fees effective February 1, 2016:

# Participants	Old fee	New fee
20 or less	$750	$500
21-50	$1000	$750
51-100	$2500	$1500
101-500	$5000	$5000
501-1000	$8000	$5000
1001-5000	$15,000	$10,000
5001-10,000	$20,000	$10,000
10,001 +	$25,000	$15,000

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ANGELA BOHMANN

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angela.bohmann@stinson.com

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INTELLECTUAL PROPERTY AND TECHNOLOGY UPDATE

David Axtell and Ruth Rivard, Stinson Leonard Street

BEWARE THE FRAUDULENT TRADEMARK RENEWAL REMINDERS

- Renewals for federal trademark registration occur between the 5th and 6th year and every 10th year.

- If your registrations are maintained by Stinson, you will receive a notice from us, via email, about the upcoming renewal.

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SCAMMERS SEND OFFICIAL LOOKING "NOTICES"

Trademark Renewal Service LLC
600 Third avenue, 2nd Floor
New York City
New York 10016
United States

Reminder

www.trademarkrenewalservice.org

Correspondence address:	Date: 2014-08-29	2
150 South 5th Street, Suite 2300 Minneapolis, MN55402 United States		

Trademark name:	Registration Number:	Number of classes:
CORE COUNSEL	2997288	1

Your trademark is about to expire. Renewal date: 2014-09-20

Your trademark registration requires a filing between the 9th and 10th years after registration to remain valid.
Sign and return this document in order to renew your trademark.

OWNER	TRADEMARK	
150 South 5th Street, Suite 2300 Minneapolis, MN55402 United States	Type of Mark:	SERVICE MARK
	Register:	PRINCIPAL
	Renewal date:	2014-09-20
	Filling date:	2004-02-24
	Date in location:	2011-02-26
	Registration date:	2005-09-20
	Classes:	042
	Serial Number:	78373491

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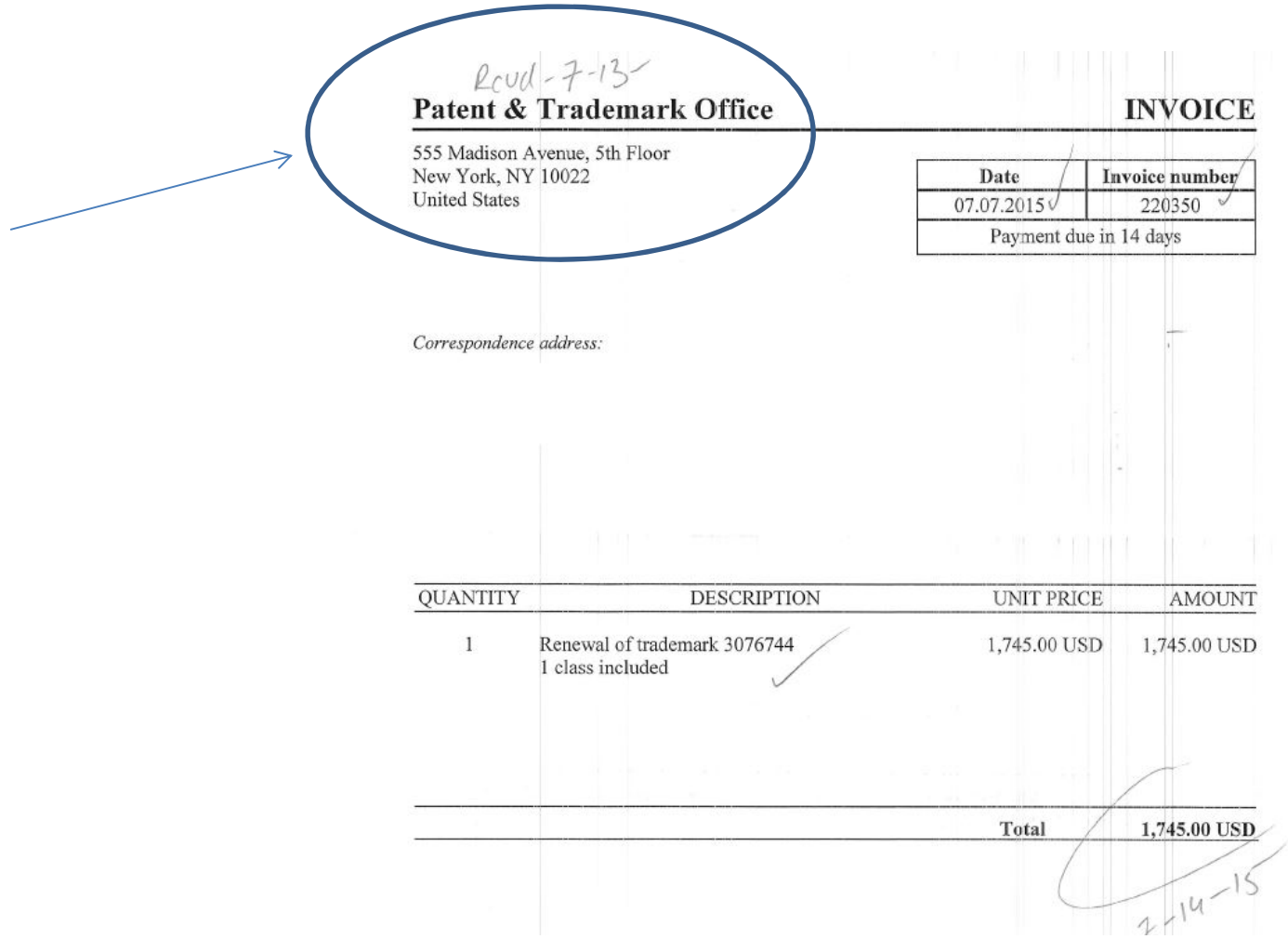
NOT FROM THE USPTO



Rcvd - 7-13

Patent & Trademark Office

555 Madison Avenue, 5th Floor
New York, NY 10022
United States

INVOICE

Date	Invoice number
07.07.2015	220350
Payment due in 14 days	

Correspondence address:

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1	Renewal of trademark 3076744 1 class included	1,745.00 USD	1,745.00 USD
		Total	**1,745.00 USD**

7-14-15

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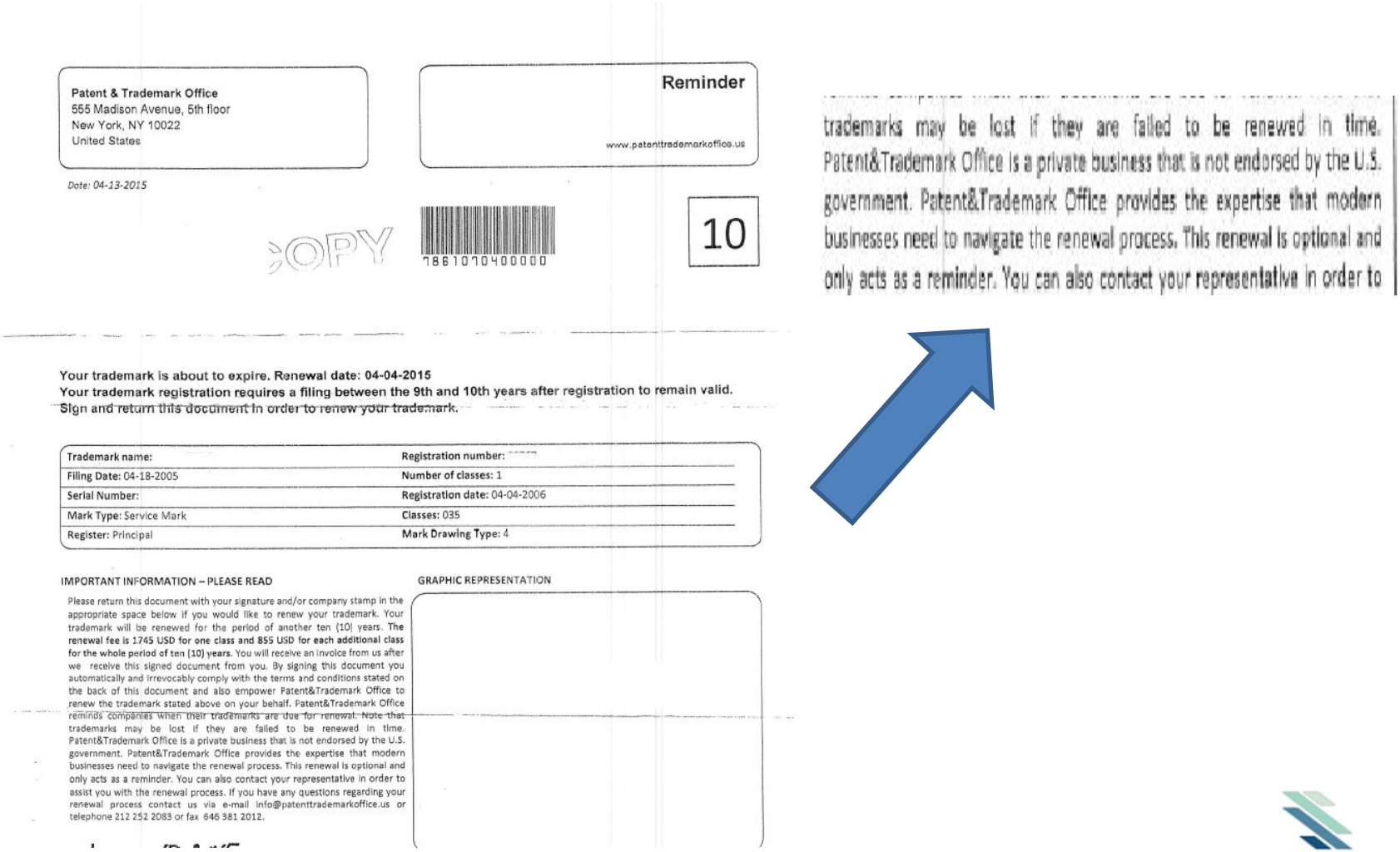
READ THE FINE PRINT



Patent & Trademark Office
555 Madison Avenue, 5th floor
New York, NY 10022
United States

Reminder

www.patenttrademarkoffice.us

Date: 04-13-2015

COPY

786107040000

10

Your trademark is about to expire. Renewal date: 04-04-2015
Your trademark registration requires a filing between the 9th and 10th years after registration to remain valid.
Sign and return this document in order to renew your trademark.

Trademark name:	**Registration number:**
Filing Date: 04-18-2005	**Number of classes:** 1
Serial Number:	**Registration date:** 04-04-2006
Mark Type: Service Mark	**Classes:** 035
Register: Principal	**Mark Drawing Type:** 4

IMPORTANT INFORMATION – PLEASE READ

Please return this document with your signature and/or company stamp in the appropriate space below if you would like to renew your trademark. Your trademark will be renewed for the period of another ten (10) years. **The renewal fee is 1745 USD for one class and 855 USD for each additional class for the whole period of ten (10) years.** You will receive an invoice from us after we receive this signed document from you. By signing this document you automatically and irrevocably comply with the terms and conditions stated on the back of this document and also empower Patent&Trademark Office to renew the trademark stated above on your behalf. Patent&Trademark Office reminds companies when their trademarks are due for renewal. Note that trademarks may be lost if they are failed to be renewed in time. Patent&Trademark Office is a private business that is not endorsed by the U.S. government. Patent&Trademark Office provides the expertise that modern businesses need to navigate the renewal process. This renewal is optional and only acts as a reminder. You can also contact your representative in order to assist you with the renewal process. If you have any questions regarding your renewal process contact us via e-mail info@patenttrademarkoffice.us or telephone 212 252 2083 or fax 646 381 2012.

GRAPHIC REPRESENTATION

trademarks may be lost if they are failed to be renewed in time. Patent&Trademark Office is a private business that is not endorsed by the U.S. government. Patent&Trademark Office provides the expertise that modern businesses need to navigate the renewal process. This renewal is optional and only acts as a reminder. You can also contact your representative in order to

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WHAT'S THE PROBLEM?

- The fees can be excessive - often more than twice the normal cost.
- The filing is usually done improperly; improper proof of use filed; unauthorized signature for filing.
- At this time it is unclear how the USPTO will respond to these improper filings. The improper filing may be used to invalidate the registration if ever challenged by a third party.

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WHAT TO DO

- The USPTO will correspond only with the official correspondent, typically the attorney of record.
- Check with your trademark counsel before paying a suspicious invoice/USPTO fee.
- If there has been a fraudulent renewal, USPTO is recommending another renewal should be submitted via a voluntary submission.

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OTHER TYPES OF SCAMS

Offers to list trademark in "internet database"

TPP Trademark & Patent Publications

CASE ID 11892677 / 0301

TPP Trademark and Patent • Przemysłowa 8/108 • 75-216 Koszalin

UNITED STATES OF AMERICA

Registration Number:
Registration Date:
Application Number:
Application Date: 29.02.2016
Classes: 35, 41, 43

TRADEMARK REGISTRATION

REPRODUCTION OF MARK:

Pos.	Description	Curr.	Amount
01	Filing Fee	USD	1560,00
02	Additional Fee	USD	0,00
	Total Filing Fee	USD	1560,00

PAYMENT:

BY WIRE TRANSFER :
AMOUNT: 1560,00 $
BENEFICIARY : TPP Trademark and Patent
BANK NAME : WBK Bank
IBAN : PL47 1090 1711 0000 0001 2990 7937
BIC/SWIFT : WBKPPLPP
PAYMENT TITLE : 11892677 / 0301

BY CHECK:
TPP Trademark and Patent Publication
Przemysłowa 8/108
75-216 Koszalin Poland (European Union)

Please pay the amount, within 10 days by wire transfer. Don't forget to quote the trademark number.

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OTHER TYPES OF SCAMS

Domain Registration Services scams

- Claims that another entity is attempting to register your company name/trademark.
- States they are checking to see if you have "authorized" this registration.
- Will state that if you don't reply, they will complete the registration for the other entity.
- Relentless if you respond.

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EXAMPLE OF DOMAIN REGISTRATION SERVICES SCAMS

-------- Original Message --------
Subject: About the "itsyourdeck"
From: "Matt Fung"<matt@ncon.net.cn>
Date: Wed, May 06, 2015 11:49 pm
To: "

Dear Sir/Madam,
About the " ". We are the department of Asian Domain Registration Service in China. Here I have something to confirm with you. We formally received an application on May 7th, 2015 that a company claimed "CreTong Company" were applying to register " " as their Net Brand and some " " Asian countries top-level domain names through our firm.
Now we are handling this registration, and after our initial checking, we found the name were similar to your company's, so we need to check with you whether your company has authorized that company to register these names. If you authorized this, we would finish the registration at once. If you did not authorize, please let us know within 7 workdays, so that we could handle this issue better. After the deadline we will unconditionally finish the registration for "CreTong Company" Looking forward to your prompt reply.
(It's very urgent, so please transfer this email to your CEO or appropriate person. Thanks a lot.)
Best Regards,
Matt Fung
Senior Adviser Manager

纳斯互联
DT World Service

Tel:00865534228271 || **Fax**:00865534228028
Webs:www.dt-ws.org
Address:No.8-8018, Peace Building, Jinghu District, Wuhu City, China

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SPIDERS, TROLLS AND BULLIES

Copyright owners use "web crawlers" - referred to as spiders - to scour websites looking for infringing images.

Non-practicing patent owners are suing end users in multi-party lawsuits.

Some trademark owners can be overreaching in enforcing trademark rights.

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WHAT CAN YOU DO?

- Have sound media polices.
- Clear advertising material prior to use.
- Include indemnification provisions in vendor agreements.
- Prepare protocol for when and to whom to turn for questions regarding IP.

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Let's go Crazy

FAIR USE - DMCA TAKEDOWN NOTICES

- Digital Millennium Copyright Act ("DMCA") allows copyright owner to demand infringing material be taken down from online sources.
- The Act requires the owner have a "good faith belief" the material is infringing.
- *Lenz v. Universal Music*: The district court ruled that the "good faith belief" requires consideration whether the allegedly infringing work falls into a fair use exception.

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WHAT IS FAIR USE?

- Fair use is complicated, but generally, allows the use of another's material if for commentary, criticism or parody
- The fair use consideration prior to sending a takedown notice doesn't have to be "searching or intensive."
- Policies for DMCA procedures should take into account reasonable fair use considerations.

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DISPARAGING TRADEMARKS? REDSKINS AND THE SLANTS

- The 1946 Lanham Act bars the registration of disparaging trademarks.
- The Washington DC football team's federal trademark registration was revoked in 2014 based on a finding that the name was offensive.
- The USPTO denied registration of SLANTS by a rock band based on same provision of the Lanham Act.
- December 2015, U.S. Court of Appeals for the Federal Circuit in Washington DC struck down the law as unconstitutional, citing the First Amendment.

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TRENDS IN PURCHASE AGREEMENTS

- Open Source
- General Software Licensing Compliance
- Data Security
- Data Privacy

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OPEN SOURCE AND THIRD PARTY CODE

What Is It?

- Software for which the underlying programming code is available to users so that they may read it, make changes to it, and build versions of the software incorporating their changes.

What Isn't It?

- Typically as defined or referred to in purchase agreements, not commercially available code under standard restrictive licenses in exchange for money.

Which is Worse?

- Depends on the business model and whether you are in compliance with license terms.

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OPEN SOURCE AND THIRD PARTY CODE

- Most deal counsel and their clients simply do not understand the issues
- Most of the time not a real problem
- Red Flag: GPL License – viral licensing
  - "You must license the entire work, as a whole, under this License to anyone who comes into possession of a copy"
  - "You may convey a covered work in object code form under the terms of sections 4 and 5, provided that you also convey the machine-readable Corresponding Source under the terms of this License"
- Red Flag: Lack of source control
- Red Flag: Alternative license schemes
- Red Flag: Well, we don't use it

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GENERAL SOFTWARE LICENSE COMPLIANCE

- Always in purchase agreements
- BSA bounty program
- Pre- and post- close license audits
  - Fox in the chicken coop syndrome
  - Privileged review
  - Mitigation
- Remember: As your business becomes more automated, license tracking becomes more essential
- Red Flag: Bob is in charge of that, you'll have to ask him…

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DATA SECURITY

- Increasingly, deal partners want reps and warranties around no breach.
- SSAE 16 Type I and II audits, penetration testing, and ongoing security measures.
- Vendor terms, indemnification, insurance
- Red Flag: Because of what we do, this isn't a concern.
- Red Flag: What do you mean Business Continuity Plan?
- Red Flag: This encryption thing, is that important to you? It slows down our system…
- Red Flag: I guess I never talked to our vendors about that…

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DATA SECURITY – VENDOR TERMS

- Require security audits and penetration testing
  - Who performs?
  - Who pays for it?
  - Who sees the report?
  - Privilege?
- Require remediation
- Require insurance
  - Forensic analysis of breach, identification of data impacted and victims, identification of legal requirements, remediation and data recovery, breach notification, customer PR and credit monitoring.
  - Newer issues: Ransomware; Insurer "preferred providers" and resulting forensic malpractice and loss of control over who is the real client (classic insurance coverage issues).
- Consider code quality reviews (internal and external code development)

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DATA PRIVACY

- Now in most purchase agreements
- Most deal counsel and their clients simply do not understand the issues
- Do you have a policy? Do you follow it? Can you transfer data?
  - Red Flag: A "no" or "I don't know" answer to any of the above."
- HIPAA, GLB, contractual obligations
- Is your data ready for change?

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DATA PRIVACY - INTERNATIONAL

- Bringing data to US from EU
- U.S. Safe Harbor Program
- *Schrems*, October 2015
  - U.S. government (NSA) undermined US business practices
  - Ramifications of Apple iPhone security debate?
- Model contract clause option

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DATA PRIVACY - INTERNATIONAL

Privacy Shield

- Obtaining written guarantees from the White House and the U.S. intelligence community with commitments to limit the scope and circumstances of surveillance;
- Requiring the U.S. to create a new "Ombudsperson" to address complaints of EU citizens regarding access of their information by U.S. public authorities;
- Requiring the EU and U.S. to participate in an annual joint review of the Privacy Shield program, including review of national security access by U.S. public authorities.

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DATA PRIVACY - INTERNATIONAL

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DATA PRIVACY - INTERNATIONAL

- Stronger Data Protection Obligations
  - Increased transparency regarding personal data use;
  - Increased data protections (meaning EU citizens will have more rights to control and monitor how U.S. companies use their data);
  - More comprehensive requirements to notify EU citizens of their rights.
- Stepped-Up Enforcement in the U.S.
  - "independent, vigorous enforcement," "strengthen cooperation," "special team."
- More Redress to EU Citizens
  - No-cost to citizen ADR process and binding ADR;
  - Complaint referral to Department of Commerce and FTC.

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STRATEGIC VENTURE INVESTING UPDATE

Scott Claassen, Stinson Leonard Street

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STRATEGIC VENTURE CAPITAL PROFILE

- Investing by a company in support of its business
- Wide range of goals
- May emphasize strategic goals over financial returns

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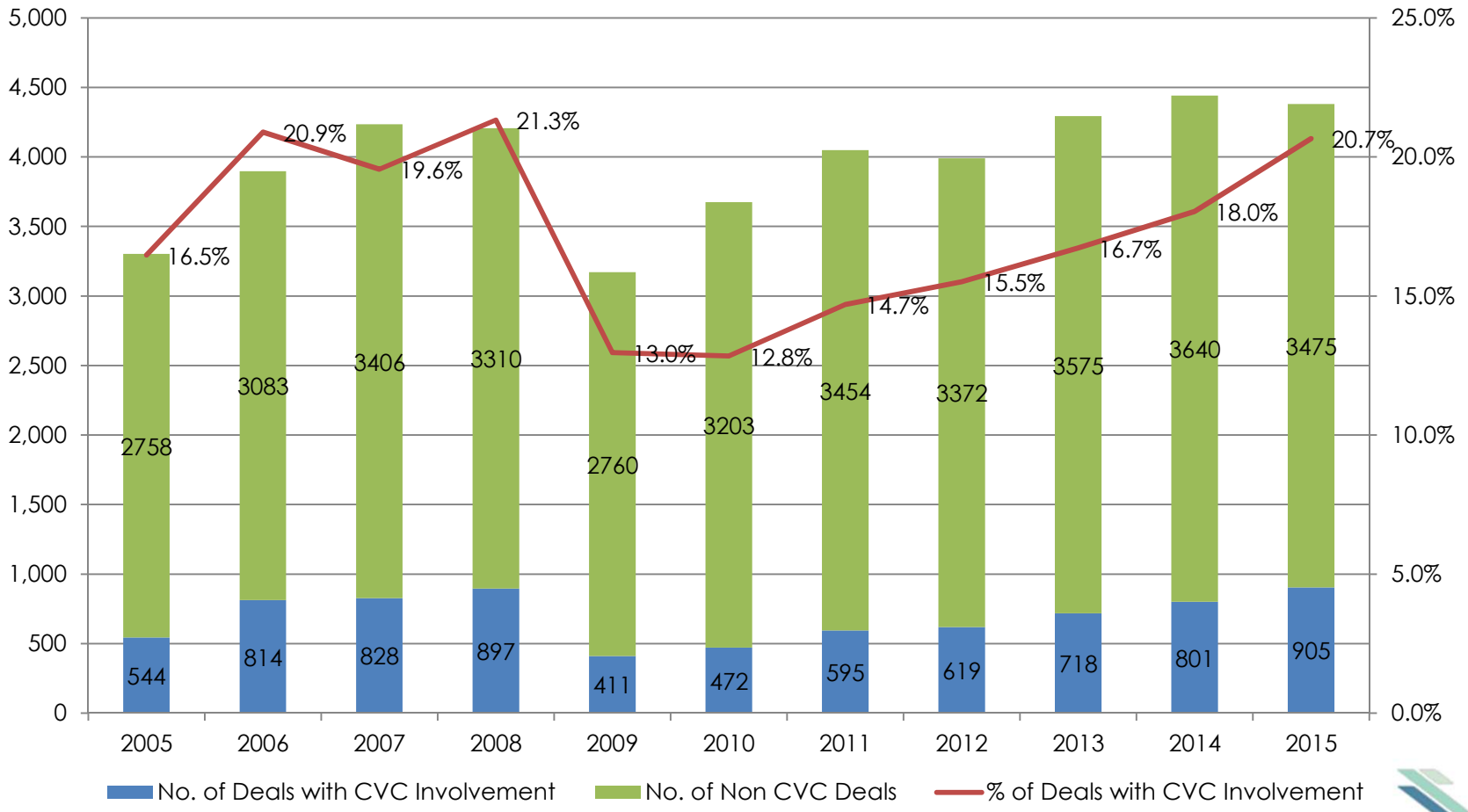
NUMBER OF VENTURE DEALS



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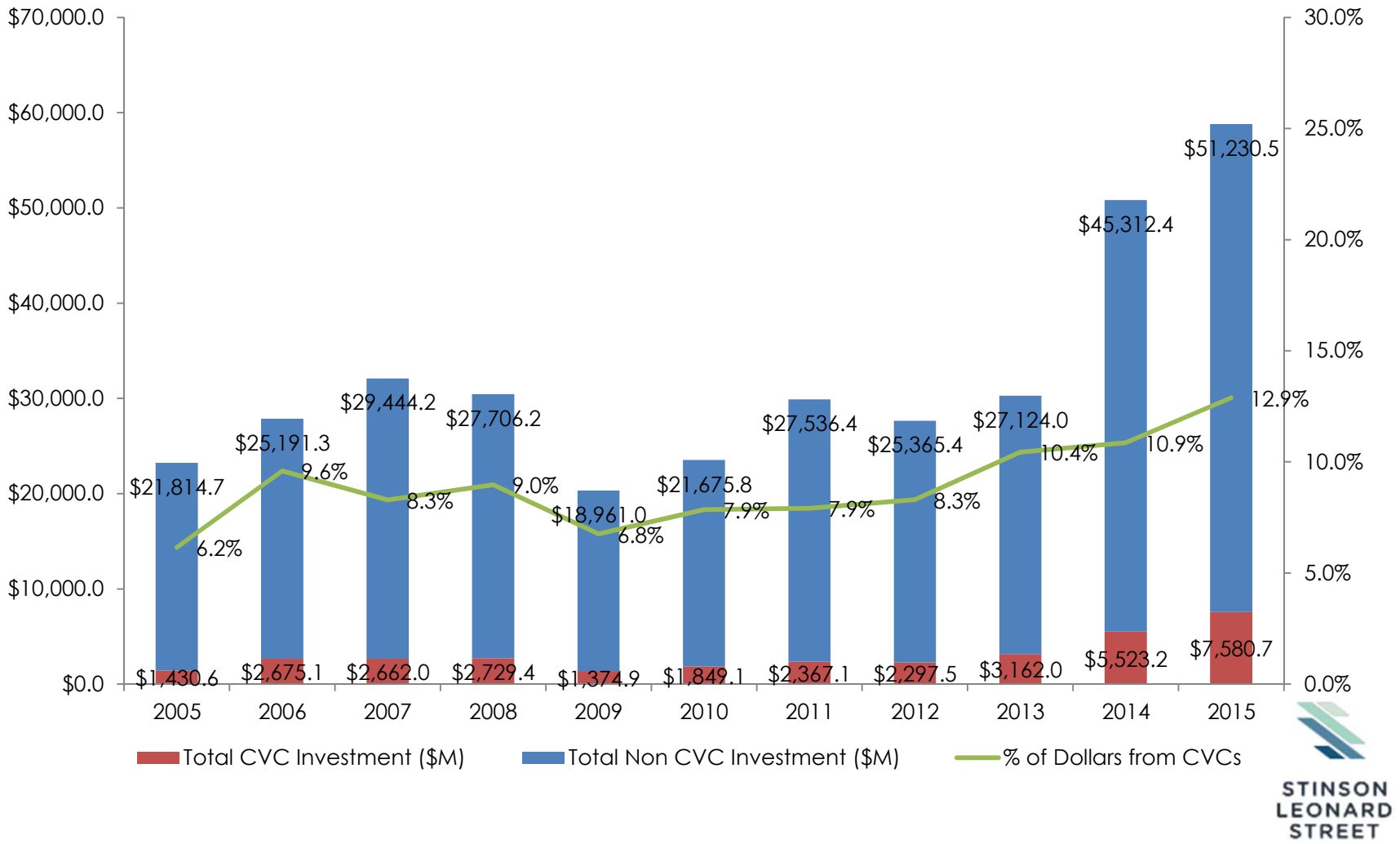
DOLLARS INVESTED IN VENTURE DEALS



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ADDITIONAL STRATEGIC VENTURE TRENDS

- Also Trending Up:
  - Average Amount Invested Per Deal
  - Number of CVC Funds Investing

- CVC Moving toward Earlier Stage Investments

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RAMIFICATIONS

- Benefits:
  - Access to Sales and Marketing Channels
  - Operating partnerships
  - Industry Expertise
- Potential downside
  - Too much influence or too many strings
  - Misaligned incentives
  - Lower exit valuations

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