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reason, we often scrutinize the typical big issue in a Section 355 ruling (or Section 355's availability in the absence of a ruling): business purpose.

The goal of "increasing shareholder value" in this context has earned our scrutiny before. (See "Business Purpose For a Spinoff: Is Nothing Sacred?," 1 *M&A Tax Rep't* 4 (November 1992), p. 6; "One More Word: Section 355 and Business Purpose," 1 *M&A Tax Rep't* 6 (January 1993), p. 8.) Now, a new stock offering by RJR Nabisco may cause some rethinking of business purpose, despite the fact that the RJR offering has, at least on its face, nothing to do with Section 355.

A Split Without a Split?

The RJR plan calls for the company to create a separate class of stock pegged to the performance of its \$6.7 billion food business. (See "RJR Nabisco Sets New Class Of Its Stock, *Wall St. J.*, 2/2/93, p. A3.) The plan, like many others, is aimed at "increasing shareholder value." RJR's Chief Financial Officer extolled the virtues of the issuance and the fact that it creates a pure food play and a pure tobacco play.

Interestingly, though, the plan calls for RJR to remain one corporation, thus not affecting the rights of any debtholders or creditors. For each share owned, current shareholders will receive an additional one-eighth of a share in the food company, plus cash dividends. The plan would enable KKR and other shareholders to reap the benefits of the higher multiples assigned to food companies (about 17 times earnings), versus those assigned to tobacco stocks (about ten times earnings).

Section 355 Redux

How does this creative plan impact Section 355? One of the common justifications for a Section 355 transaction is the need to separate one business from

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Can RJR Nabisco's New Stock Disarm Section 355?

by Robert W. Wood • Bancroft & McAlister

Readers of *The M&A Tax Report* hardly need to be reminded of the difficulty of getting a ruling on a divisive reorganization under Section 355. Just becoming comfortable that Section 355 is probably available (based on an opinion of counsel, research, or gut feeling) is not easy. For that

the risks and vicissitudes of the other. In the words of the corporate boardroom, the division may simply enhance shareholder value. In fact, the mere announcement of RJR's plans for this quasi-split caused RJR's stock to surge. (See "Deal of the Century"? Not for RJR Investors," *Wall St. J.*, 3/4/93, p. C1.)

Whether a plan like this will pass muster under Section 355 is anybody's guess. Nonetheless, it is a safe bet that if RJR perfects this structure and it becomes commonplace, it is not too farfetched to imagine that the Service will look even more closely at asserted business purposes in this area. After all, if shareholder value can be enhanced without undertaking a real-life spinoff, there will likely be one more available alternative to a spinoff in many cases. ■

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