

“Well, That Didn’t Work.” Handling the Disclosure Implications of Getting Out of a Business Line

Following up on my [latest blog](#) about new lines of business, no one hits a home run every time. Not even the best of companies. Sometimes a line of business will be shut down. Perhaps the assets are sold, or perhaps they are salvageable to be used internally. As the in-house disclosure lawyer, what do you do? What does the disclosure look like when a company announces it's getting out? Match what you did when you got into the business in the first place? Here are a few things to consider: 1. **Press release** - If you issued a press release going in, do you issue a press release going out? If so, you're probably going to be filing the press release as an exhibit to a Form 8-K. 2. **Form 8-K** - Is an SEC filing necessary? Oftentimes one or more of the 8-K boxes winds up being ticked. Disclosure under Item 2.01 (Completion of Acquisition or Disposition of Assets) or Item 2.05 (Costs Associated with Exit or Disposal Activities) may be required. Or Item 2.06 (Material Impairments) may also be implicated. In some cases, a company may even want to voluntarily file an 8-K even if not required. Public reaction to the announcement of your departure from what might have been a promising business opportunity may result in a bang or a whimper. Maybe it was a slow death. Or the company pretty quickly recognized it as fool's gold. The public's perception may help guide your decision about whether to file a voluntary 8-K. 3. **Updating financials for a takedown** - As with recasting segments when you build out a new business line, exiting a business might require an 8-K with updated financial disclosures recasting the business disposed of as discontinued operations, if a capital markets transaction is contemplated before the next Form 10-K is filed. 4. **Board discussions** - How do you handle this wind down and exit in your board discussions? Don't forget to document it as necessary in the board minutes. This reminds me of why I'm so glad I signed up for an Armoire account last year - new, fun clothes to try every month, and I get to send them back for reuse with no regrets (or worries about making excuses)!

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