

To Our Clients

Recent Developments

1. Minority Shareholder Freezeouts. In Cole v. Schenley Industries, Inc., CCH ¶ 95,765 (S.D.N.Y. Nov. 24, 1976), the second step cash and debt freezeout of the 12% minority interest in Schenley following a tender offer three years earlier was attacked on the basis of Marshel v. AFW Fabrics, 533 F.2d 1277 (2d Cir. 1976) and Green v. Santa Fe Industries, Inc., 533 F.2d 1283 (2d Cir. 1976). The court distinguished Marshel on the basis that it was a going public high, going private low situation and that here, unlike Marshel, the acquiror was a public company in which the frozen out shareholders could invest, if they so desired. The court read Green as finding a Rule 10b-5 violation only when (1) a lack of notice precludes an opportunity for injunctive relief, (2) the freezeout price is grossly unfair and (3) there is no corporate purpose. The court accepted simplification of the corporate structure as a corporate purpose.

2. Short Swing Profits; Buyout of Stock Options. Rosen v. Drisler, CCH ¶ 95,776 (S.D.N.Y. Oct. 26, 1976) holds that the cancellation of an employee stock option, issued more than six months prior to the cancellation, upon payment by the corporation of the difference between the exercise price and the market price does not constitute the equivalent of a purchase of the shares and their immediate sale within § 16(b) and therefore a short swing profits violation.

3. Tender Offers; Definition of Tender Offer. A class action settlement in which securityholders have the right to sell their securities is not a "tender offer" within the Williams Act. Brucker v. Thyssen-Bornemisza Europe N.V., CCH ¶ 95,775 (S.D.N.Y. Nov. 16, 1976).

4. Convertible Debentures; Cash Tender Offer; Short Form Cash Merger. The Brucker case indicates the desirability of giving notice of a cash tender for common to holders of convertibles and that the standard merger provisions of an indenture, rather than the redemption provisions, apply to a short form cash merger. The impact of a cash tender or a cash merger on convertibles and warrants should be disclosed in prospectuses.

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