

To Our Clients

Takeovers

Two recent cases illustrate the nonapplicability of the Williams Act to companies that are not registered under Section 12 of the Securities Exchange Act of 1934 even though their securities may be actively traded in the United States. One case involved a company emerging from bankruptcy which had had securities registered under Section 12 prior to the bankruptcy and the other case involved a Canadian corporation whose securities were traded on the American Stock Exchange on an unlisted basis.

In Lipper v. Texas International Co., CCH Fed. Sec. L. Rep. ¶ 96,837 (W.D. Okla. Apr. 6, 1979) the court held that Section 14(d) applies only to equity securities registered under Section 12 and therefore where a tender offer was made for nonregistered securities issuable by a bankrupt corporation the common stock of which had been registered prior to bankruptcy but which was wiped out in the bankruptcy, compliance with Section 14(d) was not required.

In Brascan Limited v. Edper Equities Ltd., et al., the court treated the issue as follows:

"Brascan's first contention with respect to the Williams Act is that Edper, from the time it had acquired more than 5% of the stock of Brascan in the early part of 1979, was in violation of §13(d) of the Exchange Act by virtue of its failure to file statements required therein, and that this violation was compounded by Edper's failure to file the statements required by §14(d) before making its purchases on April 30 and May 1. This contention requires little discussion. Sections 13(d) and 14(d) are not applicable to all securities of companies which are registered pursuant to §12 of the Exchange Act. Brascan's shares are not registered pursuant to §12. Brascan is a foreign issuer whose securities are not listed on any national securities exchange in the United States. Its shares are admitted to unlisted trading privileges on the American Stock Exchange, and are exempt from Section 12(g) under the provisions of Rule 12g3-2. The SEC appearing as amicus at the preliminary injunction hearing confirmed that the provisions of §§13(d) and 14(d) were not applicable to Brascan's shares. Rule 12f-4 does not, as plaintiffs argue, mandate a different conclusion."

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