June 23, 1979

To Our Clients:

Takeovers

The consent decree settlement of the SEC enforcement proceeding against United Financial Corp. and National Steel Corp., SEC v. United Financial Corp., Civ. No. 79-1573 (D.C.D.C. June 18, 1979), in connection with the acquisition of UFC by NS provides some important reminders with respect to the conduct of takeover approaches and what the SEC considers to be material in the way of proxy statement or tender offer disclosure:

1. Stock Exchange Inquiry of a Target Whose Stock Becomes Active. The SEC charged that UFC violated Rule 10b-5 in responding to a NYSE inquiry with respect to whether there were any developments that would account for unusual activity in UFC stock (at a time when its price was about $23 per share) by saying that while UFC had from time to time received unsolicited acquisition inquiries, UFC had not received an acquisition offer and not disclosing that NS had been proposing to make an acquisition offer to UFC at $42 per share.

2. Schedule 13D Disclosure of Intent to Purchase in Open-Market Prior to Merger. After the announcement of an agreement in principle for the merger of UFC with NS, NS purchased shares of UFC which resulted in more than 5% ownership and triggered the filing of a Schedule 13D. The 13D as filed did not disclose an intent to acquire additional shares of UFC in the market. The merger agreement provided that NS would not buy more than 10% of the UFC shares without the consent of UFC. NS intended to acquire up to 10% of UFC shares in the market if the market price remained below the merger price. NS amended the 13D each time it purchased more UFC shares in the market. The amendments did not disclose an intent to purchase more shares. The SEC charged that the failure to disclose the intention to buy additional shares violated Section 13(d) and Rules 13d-1 and 13d-2.

3. Schedule 13D Disclosure of Fee Agreement with Investment Banker. The SEC charged that it was a disclosure violation for NS to fail to disclose in the Schedule 13D that it had an agreement to pay a fee to an investment banker if it acquired UFC.

4. Proxy Statement Disclosure of the History of the Negotiations. The SEC charged that the UFC proxy statement was materially false and misleading in that it failed

to disclose that UFC's Board of Directors accepted NS' $42 offer and agreed to recommend its approval to UFC's stockholders under certain undisclosed conditions imposed by NS, including that the UFC Board accept and agree to recommend the NS offer promptly, without first consulting an investment banker to evaluate the offer and seek a higher offer. The complaint alleges that UFC's two investment banking firms had advised that any offer be subjected to an evaluation prior to the Board's agreeing to it.

The complaint alleges that the UFC proxy statement failed to disclose that the UFC Board, with the assistance of one of the investment bankers, had reached a preliminary determination in January 1979 that $45 per share was the minimum standard against which possible offers should be measured, and that that same investment banker, when informed of NS' offer, said the price should have been higher.

The complaint further alleges that the UFC proxy statement failed to state that, at their initial meeting, NS' Chairman of the Board stated that, in the event of a UFC-NS merger, he would like UFC's Chairman of the Board on the NS Board.

5. Disclosure of Possible Conflict by an Investment Banker Rendering a Fairness Opinion. First Boston rendered a fairness opinion to UFC which was included in the merger proxy statement. The SEC charged that the failure of First Boston or UFC to disclose that First Boston had been one of four co-managers of a NS debt underwriting three years previously violated the disclosure rules.

While the consent decree does not constitute a finding that any of the SEC charges or legal theories are valid, it is most instructive as to the pitfalls to avoid in a typical takeover situation that evolves into a "friendly" merger.

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