

To Our Clients

Tender Offer--Disclosure

Crane Co. v. Harsco Corp., CCH Fed. Sec. L. Rep. ¶ 97,898 (D.Del. February 17, 1981) arising out of a tender offer by Crane for 20% of Harsco holds that the following were not material disclosures:

- (1) Failure to state that a 20% holding would enable exertion of significant influence in management.
- (2) Failure to disclose past history of partial acquisitions that were later converted to complete acquisitions. (The court also refused to draw an implication from such history negating a statement that the offeror's purpose was to substantially increase its investment and denying current intention to seek control.)
- (3) Failure to disclose contacts with an officer of target and a former counsel for target on the ground that even if confidential information was obtained, a shareholder would not consider disclosure of these contacts to be material.
- (4) Failure to disclose an antitrust problem where the probability of such problem was not "clearly apparent" at the time the offer was made.

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