

To Our Clients

Tender Offers--Disclosure

The Riggs Bank takeover fight has produced several interesting holdings with respect to tender offer disclosure issues:

(1) Where an individual is seeking to acquire shares that will give him approximately 35% ownership of the target and is borrowing large sums to finance the purchase, full financial statements are not required, but sufficient information about financial condition to enable evaluation of debt service requirements is necessary. It is not clear whether the court would have required personal financial disclosure if the target was not a bank or the acquired shares were not being pledged as collateral for the borrowing to buy them.

(2) Disclosure of a loan agreement default provision that might result in the acquired shares being "liquidated" is required (in a partial tender offer) in that the possibility that the acquired shares might be "dumped" on the market is material to the decision to hold shares in the target.

(3) Where future plans for merger etc. are not definite, general disclosure is sufficient.

(4) The making of a tender offer by a person who has previously acquired 5% of the target and filed a Schedule 13-D does not cure a Section 13(d) violation for failing to disclose "intention" to make the tender offer prior to the "final decision" to make the tender offer. The court seems to be saying that the Schedule 13-D should be amended when the consideration of a tender offer has progressed to a point where the intent is formed and there is some objective (such as private purchase of more shares as here) action referable to that intent.

Riggs National Bank v. Allbritton, CCH Fed. Sec. L. Rep. ¶ 97,899 (D.D.C. March 17, 1981).

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