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To Our Clients:

Takeovers; Some Recent Experiences
And Important Lessons

1. Takeovers in the $2-5 billion range are possible. Prior to this year it was generally assumed that companies with a market value in excess of $1 billion were relatively safe from a non-negotiated takeover. The Seagram offer for St. Joe and the Socal bearhug of Amax show that this assumption is no longer valid.

2. While there are white knights for $2-5 billion deals who can act in 10-20 days, it is axiomatic that it is much more difficult to find a white knight for a $2-5 billion deal than for the $100 million to $1 billion deals that were typical during the past 5 years. Therefore advance preparation is essential. Potential white knights should be identified and the financial information necessary for white knight negotiations should be kept current. Natural resource companies should keep their reserve reports and appraisals up to date. Close coordination between a company and its investment banker is essential. Whether or not advance contact with a potential white knight is desirable is a question for individual determination and no generalization is possible. We continue to believe that it carries significant risk of provoking undesired takeover proposals.

3. Cash self-tender offers and preferred stock exchange offers are more likely to be effective in defeating tender offers for large companies than for small companies. With small companies unless such transactions result in a majority of the stock being in friendly hands, the net effect is to make the overall cost of the takeover lower and thus make it easier rather than more difficult. With the larger companies this is not a significant factor. Also, it is unlikely that the arbitrage of a $2-5 billion takeover will exceed 10% of the target's shares. Therefore the Street does not control the destiny of the target. If the target has a good story and the institutions can be induced to maintain their investment positions, a restructuring of the capitalization of the target can be effective.

4. A raider who springs a tender offer without prior contact with the target is most unlikely to be able to induce the target to enter into discussions with the raider. Where the raider is prepared to negotiate a higher price, the way to achieve negotiations is through an increase in the offer price at the right time. Failure to do so leaves too much room for white knights and foregoes an opportunity to change the psychology of the situation. The shibboleth enjoining bidding against oneself really has no place in a takeover situation. The best time for such a move is after a litigation victory or just prior to a meeting of the target's board. A raider normally cannot litigate its way to a successful takeover.

5. The NYSE 18-1/2% rule (requiring, on pain of delisting, a shareholder vote to approve issuance of more than 18-1/2% of a company's stock) negates one of the most effective takeover defenses. Frequently a target is able to place 25-35% of its stock in friendly hands at a price in excess of the takeover bid, but is prevented from doing so by the NYSE rule. Where the target's board of directors, on the advice of the target's investment bankers, determines that such a placement is in the best interests of the shareholders, there is no legal reason not to go forward. Delisting is one of the elements to be considered by the board, but should not be overriding in the board's determination. NYSE listed companies would be well advised to seek repeal of the NYSE 18-1/2% rule. The rule was adopted prior to the current wave of takeover activity and operates against the shareholders best interests rather than to protect them as originally intended.

6. Despite dicta to the contrary in the St. Joe case, liquidation at a price substantially higher than the takeover bid is a viable alternative and is legal and proper. It is the diametric opposite of entrenchment of management. It can and should be used in appropriate situations.

7. Executive incentive plans and severance arrangements should be amended to protect executives in the event of a takeover. If this is not done prior to a takeover bid, there is danger that it will not be understood as being appropriate and in the best interests of the company and its shareholders. These amendments have become fairly standard and have been adopted by a large number of companies.

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