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To Our Clients:

Recent experience with companies that had not prepared fully to respond to a surprise tender offer leads to the recommendation that companies do a full-team runthrough of response to an offer. Enclosed is our current takeover checklist.

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Discussion Checklist re Takeovers

1. Team to Deal with Takeovers

- a. Company - small group (3-6) of key officers
- b. Law firm - corporate partner and litigation partner; local counsel where needed
- c. Investment banker - current files and periodic due diligence
- d. Proxy soliciting firm (see 20 below re proxy fight)
- e. Public relations firm
- f. Continuing contact and periodic meetings are important

2. No Blackbook

- a. There are no stereotype responses; whatever is necessary can be created in just about the same time as necessary to modify blackbook model
- b. Blackbook type of literary response not effective, but, where liquidation values are high in relation to takeover bid, effort to induce shareholders not to tender may be effective (see 4 below)
- c. Existence of a blackbook can give false sense of security and can be embarrassing in litigation

3. War List of Telephone Numbers of the Team

4. Periodic Team Runthrough of Response to a Hypothetical Takeover Bid

- a. Analysis of loan agreements and indentures with respect to buy back of shares or self tender offers
- b. Authorization of common and preferred stock for acquisition or recapitalization exchange offer
- c. Advance preparation of earnings projections and liquidation values for evaluation of takeover bid and for use in talking to institutional investors
- d. Plan for contacts with institutional investors and analysts
- e. Plan for recapitalization exchange offer
- f. Plan for liquidation

- g. Amendments to stock options, employment agreements, executive incentive plans and severance arrangements
- h. Consortium white knights

5. Preparation of CEO

- a. Handling casual passes
- b. Handling offers

6. Preparation of Board of Directors

- a. Periodic presentations by lawyers and investment bankers to familiarize directors with the law and the advisors
- b. Company may have policy of not engaging in takeover discussions
- c. Directors should refer all approaches to the CEO
- d. Distribution of "Takeover Bids in the Target's Boardroom" and related memos

7. Responses to Casual Passes

- a. No duty to discuss or negotiate
- b. No duty to announce
- c. Important to avoid misunderstanding by refusing to meet and firmly and unequivocally rejecting overture in most cases; most raiders go away if rebuffed at the very outset

8. Response to Offers

- a. No response other than will call you back
- b. Call war list and assemble team
- c. No press release or statement other than "stop-look-and-listen" and call of special board meeting to consider
- d. Consider trading halt (NYSE limits halt to short period)
- e. Determine whether to meet with raider

9. Special Meeting of Board to Consider Offer

- a. No duty to accept or negotiate a takeover offer
- b. Board must act in good faith and on a reasonable basis
- c. No director has ever been held liable for rejection of takeover offer
- d. Presentation
 - (i) Management - budgets, financial position, real values (off-balance sheet values), new products, general outlook, timing
 - (ii) Investment Banker - opinion as to fairness or adequacy, state of the market and the economy, comparable acquisition premiums, timing
 - (iii) Lawyer - legality of takeover (antitrust, compliance with SEC disclosure requirements, regulatory approval of change of control, etc.), reasonable basis for board action
- e. More than half of the targets of bearhugs remain independent; exchange offers are defeated more than half of the time; about 10% of the smaller targets of any-and-all cash tender offers remain independent; more than half of the any-and-all cash tender offers for major (\$ billion plus) companies are defeated

10. Analysis of Raider

- a. Investment banker
- b. Accountant
- c. Lawyer

11. Preparation by Investment Banker

- a. Due diligence file and analysis of off-balance sheet values
- b. Recapitalization and liquidation alternatives
- c. Quarterly review
- d. Communication of material developments and regular contact is important

12. Preparation by Lawyer

- a. Review of business to determine products and markets for antitrust analysis of a raider
- b. Regulatory agency approvals for change of control
- c. State takeover laws (less important today)
- d. Impact of change of control on business
- e. Disclosures that might cause a potential raider to look elsewhere
- f. Recapitalization and liquidation alternatives
- g. Amendments to stock options, executive compensation and incentive arrangements and severance arrangements
- h. Regular communication

13. Shareholder Relations - Usually Not Significant re Takeovers

- a. Dividend policy
- b. Financial public relations
- c. Preparation of fiduciary holders with respect to takeover tactics designed to panic them
- d. Contacts with analysts and institutional holders

14. Response to Accumulation in Market

- a. Monitoring trading
- b. Maintain contact with specialist and arbitrageurs
- c. Immediate response to accumulation
 - (i) Litigation - creeping tender offer
 - (ii) Purchase of accumulated shares
- d. Hart-Scott 10% investment exception

15. Generally Structural Changes such as Staggered Board and Shark Repellent Charter Amendments not Effective

- a. Evidence of fear

- b. Rejection by shareholders; SEC requires very specific disclosures
- c. Not a real deterrent
- d. Taints later action by board when an offer is rejected
- e. Doubt as to legality

16. Contacts with Potential White Knights and Big Brother Standstill Agreements

- a. Advance contact with potential white knights can lead to misunderstanding and takeover bid in certain cases
- b. Standstill agreement may be detrimental to shareholders (disliked by professional investors who may stir up takeover activity)
- c. Doubt as to legality of standstill agreement if not supported by independent business purpose such as exchange of technology or need for capital
- d. Employee trusts may be effective in certain cases

17. Management Group Schedule 13D

- a. Nature and size of holdings; fiduciary problem

18. Hart-Scott-Rodino Antitrust Act and New Antitrust Policies and Legislation

- a. Hart-Scott prevents Sun-Becton Dickinson approach in big companies but under Hart-Scott still can buy up to \$15M even if more than 15% and there is 10% investment exception

19. New Types of State Statutes

- a. Amendments designed to distinguish Kidwell

20. Proxy Fight

- a. Resolution advising sale or liquidation