

To Our Clients

Takeovers

Unlike the any-and-all cash tender offer climate of the 1970's, the current climate (and the popularity of partial tender offers, proxy fights, open-market accumulations and other bust-ups) stresses the importance of careful structural planning to avoid or mitigate the impact of an unwanted takeover.

Among the key structural matters which should be considered are:

- (1) Staggered board of directors;
- (2) Limitation on special meetings of shareholders and shareholder action without a meeting;
- (3) Charter proscription of a front-end loaded takeover;
- (4) Golden parachutes (option acceleration and cash-out, employment contract, severance plan);
- (5) Crown jewels in separate free standing subsidiaries;
- (6) Indentures and loan agreements that do not restrict spinoffs and self-tenders;
- (7) A plan of liquidation;
- (8) Financing for a reverse tender or preemptive strike against a raider;
- (9) Sufficient authorized common and open-end preferred stock;
- (10) Warrant dividend that deters takeover at low price; and
- (11) An experienced investment banker who is up-to-date on the company and thus able to evaluate a takeover bid on short notice.

Not all of these structural matters are appropriate for every company. Only one or two for some, more for others. However, unless they are carefully considered in advance a company will not be adequately prepared to respond to a takeover.

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