

TAKEOVERS -- CURRENT DEVELOPMENTS

Martin Lipton

1. Factors Affecting Takeovers
2. Defending Against Corporate Takeovers
3. Takeover Response Checklist
4. Bank Takeovers: Federal Reserve Board Guidelines
5. Revised Department of Justice Merger Guidelines
6. Two-Tier Pricing and Related Issues
7. Proposed Corporate Takeover Tax Act of 1982



## FACTORS AFFECTING TAKEOVERS

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1. Availability of acquisition currency
  - a. Bank credit
    - (i) Periodic Federal Reserve Board restrictions on acquisition loans
    - (ii) Margin requirements
    - (iii) Cost--high interest rates
  - b. High price earnings ratios
    - (i) 1960's exchange offers, e.g., Leasco-Reliance
    - (ii) Sale of high price earnings ratio stock for cash and use of cash for acquisition
  - c. Unusual profitability
    - (i) E.g., oil company acquisitions--Mobil-Marcor; Exxon-Reliance; Shell-Belridge
  - d. Flight capital
    - (i) E.g., Kuwait; Flick
    - (ii) Committee on Foreign Investment--Elf Aquitaine-Texasgulf
  - e. Window periods for common stock mergers without premiums
    - (i) E.g., Dart and Kraft; Nabisco and Standard Brands; ConGen and INA
2. Major changes in an industry
  - a. Effort to compete with dominant factor
    - (i) E.g., beer
  - b. Consolidation of small original entrants
    - (i) E.g., cable-TV
  - c. Change in technology; economies of scale
  - d. Change in regulation
    - (i) E.g., banking
  - e. Addition of product line, technology or geographical area
3. Accounting rules
  - a. Capitalization vs. expense
  - b. Amortization of goodwill
  - c. Negative goodwill, dirty pooling, etc.

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4. Stock market values out-of-line with underlying values
  - a. Target stock lower than underlying value of target
  - b. Acquiror stock higher than value of target
5. Inflation expectations
  - a. Relationship to interest rates
6. General business attitude
  - a. Recession
  - b. Merger fads
  - c. Diversification from dying industry
  - d. Disaggregation
    - (i) E.g., Esmark-Vickers-Mobil; Northwest Industries-Beatrice
  - e. Development of corporate acquisition departments and willingness of major corporations to be opportunistic
  - f. Management and leveraged buyouts
7. Credibility of investment bankers
  - a. Development of a sophisticated acquisition industry--merger and acquisition departments, glamorous advisors, arbitrageurs, private partnerships, etc.
  - b. Ability of investment bankers to find white knights quickly
  - c. Willingness of directors to rely on investment bankers' opinions
8. Presence of a market irritant
  - a. E.g., Seagram; Icahn; Engle
  - b. Multiplier effect of defensive planning and creation of war chests
  - c. Proxy fights and bust-ups

9. Regulatory climate

- a. Antitrust
  - (i) Hart-Scott-Rodino
  - (ii) Merger Guidelines
- b. State takeover laws
  - (i) Time to find a white knight
  - (ii) Development of bearhug approach
  - (iii) Constitutional attack--Mite case
- c. Williams Act and SEC takeover rules
  - (i) Open-market purchases; dawn raids
  - (ii) Lock-ups, e.g., Pullman; Marathon; Marshall Field
  - (iii) Front-end loads, e.g., Conoco; Marathon
  - (iv) Partial offers
- d. Regulatory agency approval of change of control
  - (i) Reluctance to interfere with takeovers
  - (ii) E.g., NRC-Babcock & Wilcox; CAB-Western Airlines; ICC-Southern Pacific; FCC-U.A. Cablevision; FRB July 8, 1982 Guidelines; State Insurance Commissions
  - (iii) Constitutional issue as to state agencies
- e. Congressional attitude
  - (i) Antitrust
  - (ii) Margin; proposed extension of U.S. limits to foreign borrowers from foreign banks
  - (iii) Reciprocity; limitations on foreign investment
  - (iv) Proposed Corporate Takeover Tax Act of 1982
  - (v) Threat of investigation or legislation, e.g., Crown Zellerbach-Philipp Petroleum

10. Directors consideration of takeover bid

- a. Business judgment rule vs. rule of passivity
- b. Staggered boards and shark repellants
- c. Golden parachutes

