

June 1, 1987

To Our Clients:

The Proposed Delaware Takeover Statute

The Delaware Bar is considering introducing a takeover statute similar to the Indiana statute upheld by the Supreme Court in the CTS case.

The Delaware statute would be applicable to all Delaware corporations without regard to where they are headquartered or where their shareholders reside.

There is still an open question as to whether applicability of the statute will require a shareholder vote or only board action.

The Delaware statute will lengthen the tender offer period from 20 business days to 50 calendar days. The tradeoff for the additional time is a mandatory shareholder vote on the tender offer -- a vote that management will lose unless it presents a restructuring alternative that provides greater value to the shareholders.

Further, the mere existence of the statute will enable raiders to argue that it is the principal test for a tender offer and that defenses designed to keep a company independent should be held to a higher legal standard than at present.

The statute would be greatly improved by the addition of two provisions:

(1) Only those shareholders who were such on the date a raider first disclosed that it might seek control are eligible to vote. This would eliminate arbitrageurs making the vote a sure thing.

(2) An express recognition of the holding of the Delaware Supreme Court in the Unocal case that in considering a takeover bid the directors of the target may take into account constituencies other than the shareholders, such as employees, customers, suppliers, creditors and the community at large.

Delaware should be urged to make these additions.

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