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To Our Clients:

Much Ado About Nothing; The Delaware Takeover Law

The much discussed and heavily lobbied Delaware takeover statute today became law with a December 23, 1987 effective date.

The statute is quite simple. If someone crosses the 15% threshold without the approval of the board of directors of the target, it is barred from a business combination with the target for three years, unless

(1) it jumps from below 15% to at least 85% of the target's stock in a tender offer (excluding from the denominator shares controlled by the target's management) or

(2) it obtains the approval of two-thirds of the shares it does not own.

It will be a rare situation where a tender offer will not attract 85% of the target's non-management controlled stock. Only where a single large holder or a group holds about 10% or more, and is prepared to not accept the tender and risk becoming a minority shareholder, will the 85% threshold not be obtained. If there is a large holder, with 10 to 15%, the bidder may follow an alternative strategy and tender for only 51% instead of 100% and state its intention to follow the tender with a cash merger on the assumption that since the remaining shareholders will not want to continue as minority shareholders in a company now controlled by the bidder, the bidder can obtain the approval of two-thirds of the remaining shares.

Since the delay before a raider can effect a squeeze-out merger is only three years, it is easy in today's markets to structure bank or junk-bond financing that will permit the raider to follow either of the strategies described above, and not be in default if it should fail to achieve either the 85% or two-thirds goal.

The 15% threshold before the statute is triggered, leaves ample room for raiders to continue to accumulate a 10 to 15% position and then put the target in play. This has been and continues to be virtually a no-lose proposition for raiders. Either the raider acquires the target at the

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raider's price and then profits by busting it up or the target restructures or finds a white knight at a price that gives the raider a large profit.

The Delaware law does deter two-tier bids where the raider's financing will not accommodate a three-year delay before the raider can squeeze-out the remaining shareholders. However, this form of abusive takeover had become obsolete long before Delaware started to consider adopting a takeover statute.

Since the Delaware statute does not displace other protections against abusive takeovers such as the poison pill, the statute may be summed up as innocuous and there is no reason why Delaware corporations should opt out of it.

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