February 1, 1997

Merger Activity

After a record setting 1996, mergers have begun 1997 at a blistering pace. Again there are major transactions in the defense, communications, health care, energy and financial services industries. And again there is a continuation of the effort to focus on core businesses through restructuring by spinoff or sale. With the possibility that the tax-free Morris Trust spinoff-merger transaction will, by amendment to the tax law, no longer be available after this week, there has been heightened interest in this type of spinoff.

There is a marked change in boardroom attitude toward mergers. There is no reluctance to pursue strategic acquisitions, including those in excess of $10 billion and very little reluctance to making hostile takeover bids of that size, particularly when a company considers the target to be a strategic imperative, such as the Norfolk Southern bid to break up the CSX-Conrail merger.

Recognizing the potential for a proxy fight to replace directors who are opposing a hostile takeover bid, more target boards are opting to seek the highest price, rather than fight to remain independent. The perception by potential raiders of this change in attitude encourages increased hostile takeover activity. Unlike institutional investors in England, American institutions rarely, if ever, will refuse to tender into a premium bid and back management in remaining independent. Indeed, American institutional investors are actively seeking to promote takeover bids by voting against poison pills and staggered boards.

The stock market continues to be receptive to mergers and takeovers. Acquirors will often find that their shares go up, not down, on the announcement of an acquisition. Indeed the structuring (pooling accounting or purchase accounting and a stock repurchase program) of a transaction to minimize dilution or to be accretive has become a key element in mega-deals. A road show to advise analysts and investors of synergies and other benefits of an acquisition is today an essential aspect of acquisition planning.

There is more than ample currency for acquisitions. Multi-billion dollar acquisition bank loans are committed overnight and syndicated in less than two weeks. Buyout funds are awash with cash and are still considerable factors in the volume of transactions.

Hedge funds and aggressive mutual funds have become important factors in stimulating deals. For example, Michael Price, who was a factor in the merger of the Chase Bank with the Chemical Bank, the sale of the Michigan National Bank and the Dial spinoff, is currently reported to have acquired a stake in Dow Jones and be making known his views as to its strategic direction. A hedge fund is reported to be taking a similar position.

Preparation to deal with mergers and takeovers, either as an acquiror or target continues to be critical. It is only with full understanding of the sometimes rapidly changing dynamics of the merger market that a company can plan to remain independent, be in a position to protect a negotiated merger against an interloper and obtain the highest value for its shareholders.

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