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TerraLex Conference March 2007 (Taipei)

Anti Takeover Mechanisms: Current Trends and Strategies

Brief Overview from the U.S.

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Anti-Takeover Trends

“Shareholder-Friendly” Trends

- Declining Use of Certain Defenses
 - 54% of S&P 500 Companies are pill free
- Increase in Management Proposals to Declassify Boards
- Increase in early redemption of poison pills



Poison Pills (Shareholder Rights Plans)

- Designed to make target less attractive to corporate raiders
- Provides shareholders (exclusive of bidder) a stock purchase right exercisable prior to or subsequent to a hostile takeover
- Flip-over vs. Flip-in



Effect of Pill on Transactions

- Bidder will negotiate with the board to redeem or amend the rights plan
- Increases board's negotiation power
- Often results in increased premiums for target shareholders



Dead Hand Provisions (Continuing Director Provisions)

- Limit's redemption power to “continuing directors”
 - Directors seated at the time the rights plan was adopted, or their successors
 - Directors unaffiliated with and seated before the hostile bidder acquired its shares
 - Directors nominated to replace a continuing director by a majority of the seated continuing directors
- Limitations under state corporate laws



“Chewable Plans”

- Automatic redemption when favorable conditions are met (qualifying offer)
 - Open to all SH for specified minimum period
 - Supported by a firm financing commitment
 - Accompanied by an opinion from a nationally recognized investment bank that price is fair to all SH
 - Results in offeror acquiring a specified %
 - Accompanied by commitment to a second-step merger transaction at the same price



“TIDE” Plans

- 3-year, independent director evaluation plans
- Standard plan requiring company’s outside/independent directors to review the plan at regular intervals and recommend modifications or amendments



Protective By-law/Charter Provisions

- Staggered Boards
- Special Meeting Limitations
- Advance Notice
- Disallowance of Written Consents
- Supermajority votes
- Fair Price Provisions
- Limitations on Removals of Directors



Protective By-law/Charter Provisions, cont'd.

- Blank Check Preferred Stock
 - Charter provision
 - Board-issued preferred stock
- Adjournment and Postponement



Super-voting Stock Plans

- Issued to existing SH as dividend or part of an exchange offer
- Must be authorized by Charter
- Typically provides holder with disproportionately high voting rights and lower dividend and liquidation rights than ordinary common stock
- Ordinarily, non-transferable and convertible at any time



Friendly Stock Issuances

- White Squires
 - Often less than 20% to avoid NYSE rule requiring SH approval
 - Particularly effective in States with Business Combination Statutes (DE GCL §203)
- White Knights
- ESOPs



Economic Alternatives

- Recapitalizations
 - Merger (with partial cash out)
 - Reclassifications (convert common into preferred redeemable for cash and common stock)
- Spin-offs/Split-offs
- Stock buyback



Change-of-Control Employment Contracts

- Golden Parachutes triggered upon a change in corporate control
- Tin Parachutes



Other

- Pac-man Defense
- Litigation
- Acquisitions
- Regulatory Protective Measures
 - Reincorporation in other states
- Regulated Industries

