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*ADMITTED IN VA ONLY

December 31, 1987

Members of the Corporation Law Section

RE: Proposed Section 203

Dear Section Member:

Other members of the Section have already written to you explaining much of the mechanics of proposed Section 203 and the lengthy process and considerable compromise by which the present draft of the statute was achieved. To those comments I would like to add an additional perspective.

I confess to some degree of initial despair as I participated in the debate in Council meetings and reviewed the many comments received on the proposed statute. Much of the debate and comment focused on the perceived right of stockholders to maximize their wealth in the stock market and the perceived right of the board (tainted by self-interest some argued) to protect stockholders from inadequate offers. The arguments went back and forth, but the questions remain unanswered. Are hostile takeovers good or bad, and for whom? Is ineffective management a real factor? Does management resist out of self-interest or genuine concern for stockholders? Do hostile takeovers really achieve a more beneficial reallocation of assets? The debate among legal and economic scholars remains open, and whatever our individual beliefs on these issues, we must admit, I think, that the definitive answers elude us all. So I tried a different approach.

The State of Delaware charters corporate enterprises. The purpose of the General Corporation Law is to enable and encourage the formation and conduct of a business enterprise in the corporate form for the benefit of the state and the economy as a whole, and not simply as a convenient tool for investors. A corporate enterprise has ties not only to its stockholders, but to its creditors, its employees, the communities in which it does business, and the economy as a whole. Corporations may and do legitimately promote interests beyond those of stockholders and management, who are, after all, only temporary participants in the corporate enterprise. As a result, I have come to view the problem from the perspective of the corporation as an enterprise distinct from its stockholders and its management.

The General Corporation Law reposes in the board of directors the duty and responsibility of managing the corporate enterprise. Under Delaware law and as a matter of corporate law generally, directors are not the mere agents or pawns of stockholders. Their role is not simply to satisfy the desires of the stockholders, even

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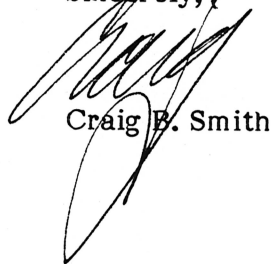
where the desire is that of a majority of the stockholders. Rather, their duty and responsibility is to the corporate enterprise as a whole.

Hostile takeovers by their very nature are simply one step in a larger transaction designed to effect fundamental corporate changes. That transaction is initiated and controlled by a single dominant stockholder. That seems to me to run counter to the basic structure of the General Corporation Law, which places great emphasis on the deliberative processes and judgment of the board of directors, particularly in matters of fundamental corporate changes. The corporation law, therefore, confers power and imposes responsibility on the board to manage the corporate enterprise in the best interests of that enterprise as a whole, and not with a single view to maximizing the immediate return to any single constituency.

Section 203 as currently proposed embodies substantial compromises by those who favor a far stronger statute and by those who oppose any such statute at all. I believe it now reasonably balances those competing interests as well as those of other corporate constituencies, and the corporate enterprise as a whole.

As you engage in your analysis and evaluation of Section 203, I encourage you to focus on the corporate enterprise as a legal entity separate and distinct from its stockholders and its management and to consider how Section 203 serves the interests of that enterprise.

Sincerely,



Craig B. Smith

CBS/kjs