

**Response to Purported "Facts"
Set Forth in the Campaign Mounted
by Out-of-State Opponents
to Proposed Section 203**

Who Wins if proposed Section 203 is adopted?

- * All stockholders of Delaware corporations, who will realize greater short term values in acquisitions or will benefit from retaining the long term value of their investment, rather than having it siphoned off by a raider.
- * The small, less sophisticated stockholder, who will be less likely to be trapped in the back-end of a two step acquisition.
- * All Delaware taxpayers, who will benefit from the continued payment of franchise taxes by Delaware corporations, which accounts for 16% of state revenues.
- * Employees of Delaware corporations, who will be less likely to face the threat that their company will be broken up or that employee cut backs will be made to finance the acquisition debt of under capitalized raiders or to make greenmail payments.
- * Suppliers to Delaware corporations, whose corporate customers are less likely to be saddled with debt resulting from acquisition attempts by underfinanced raiders, and thus will be better credit risks.

Who Loses?

- * T. Boone Pickens and those who follow his methods, since this legislation will encourage them to pay to stockholders of Delaware corporations a greater percentage of the gap between market values and asset values.
- * Wall Street professionals, such as brokers and advisors to pension funds, who profit from the artificial stock market activity generated by corporate raiders who make offers for companies with no intention to actually purchase and operate the business.

What other groups can be expected to oppose the legislation?

- * Unelected officials of federal agencies who would prefer that takeover methods be solely a matter of federal concern, a concept rejected by the U.S. Supreme Court in its April, 1987 decision in CTS Corp. v. Dynamics Corp. of America.
- * Various academics who have traditionally advocated federal chartering of major corporations.

Are there any studies which show that proposed Section 203 will result in a decrease in stock prices? No.

- * The proposed Delaware statute is unique, in that rather than seeking to broadly prohibit takeovers as some other states have done, it offers a series of incentives to acquirors to pay full value to stockholders and to treat them equally. Thus, no economic study of other statutes has precedential value.
- * The reported references by the opponents of Section 203 to economic studies of the effects of passage of the New York, Ohio and New Jersey statutes are misleading. Those statutes are much more restrictive than proposed Section 203. Furthermore, studies conducted by Professor Margotta of Northeastern University conclude that, even in the case of those statutes, small drops in stock prices around the date of passage are statistically insignificant and are followed by rebounding stock prices.

Can assurance be given that corporations will not leave Delaware if the General Assembly fails to pass the balanced proposal advocated by the Bar Association? No.

- * Twenty-seven other states now have takeover legislation and more can be expected to act.
- * Reincorporation from Delaware to another state is easy, requiring only director approval plus a majority vote of stockholders.
- * Contrary to the assertions made by opponents to Section 203, there is generally no significant stockholder opposition to such moves. In September, 1985 Pepsi, one of the largest Delaware corporations, reincorporated in North Carolina without even holding a meeting of stockholders, obtaining stockholder approval instead by written consent.
- * At least six major corporations have threatened to leave and, if they did, others could be expected to follow.

Is this bill constitutional? Almost certainly yes.

- * The U.S. Supreme Court's 1987 decision in CTS v. Dynamics Corporation of America broadly affirmed the right of the states, and particularly the state of incorporation, to act in this area.
- * The Council of the Corporation Law Section drafted proposed Section 203 with reference to CTS to maximize the prospects that the legislation will, if challenged, be found to be constitutional.

Will the adoption of Section 203 result in pre-emption of all state takeover laws? Probably not.

- * A committee of the U.S. Senate has recently rejected a proposal to overrule the CTS case and pre-empt state takeover laws.
- * Proposed Section 203 is more balanced and moderate than the legislation on the books in other states.
- * Even if a future congress were to pre-empt state takeover legislation and substitute for it meaningful federal legislation, Delaware's status as the corporate domicile of choice would be unaffected since we would retain all those features which presently distinguish our corporation law from those of other states.