

CORPORATE FINANCING WEEK

DELAWARE READIES SWEEPING TAKEOVER BILL

Bill could give corporate directors the right to force a shareholder to redeem stock

MERGERS & ACQUISITIONS

The state of Delaware, once cautious about drafting a specific anti-takeover law, quietly has revived effort to write a bill that would give sweeping power to corporations fighting hostile takeovers. One provision being considered, at the urging of corporate lobbyists, would give directors the right to force an unfriendly shareholder to sell back stock to the company at his initial purchase price.

The bill may be so controversial and unique in design that, if approved, it will certainly draw widespread national attention. What's more, since most major U.S. companies are incorporated in Delaware, any changes in the state law could be widely copied by other states that want to attract business.

Attorneys working on the proposal stressed that a final version has not been approved by the bar committee. "We're a long way away from doing anything," said Lewis Black, partner with Morris, Nichols, Arsh & Tunnell in Wilmington, and a member of the committee preparing the statute. "It would be premature to say that it is ready."

Many companies incorporated in Delaware have urged the state to come up with an anti-takeover law. The Delaware legislature, currently adjourned, will meet in a special session next month to discuss a "quality of life" bill. Although some sources said there may be pressure to have a takeover bill ready by then, Black emphasized it won't be ready until at least January, when the regular legislative session begins.

Since an influential Supreme Court decision in April, states have been re-examining the need to draft laws to protect their chartered companies. That decision, *CTS Corp. v. Dynamics Corp.*, said that states may enact laws to protect companies incorporated in that state. The ruling let stand an Indiana law that restricted the voting rights of a bidder by requiring a general shareholder vote to determine how much voting power the bidder's stock should have.

The Delaware Bar voted in June not to recommend a similar law to the state legislature because the lawyers were not completely satisfied it should be adopted for

Delaware (IDD, 6/15). But sources said pressure from some Delaware-chartered companies, including Boeing Co. and Hercules, convinced some members of the group that companies might leave Delaware and incorporate in another state more willing to draft an anti-takeover law, rather than suffer for Delaware's hesitation.

Cliff Whitehill, general counsel of General Mills and a member of the Delaware group examining the issue, said the group is also reconsidering whether to suggest passage of a provision similar to the Indiana anti-takeover law.

But the more unusual proposal, put forth by the law firm of Skadden, Arps, State, Meagher & Flom, would apply a little-used Delaware law to the question of hostile takeovers. The law allows a board of directors to force shareholders to redeem their common stock if the board believes the shareholders' ownership could endanger the company charter. An example of this would be if a federal statute prohibited, say, a ship-

ping company from being more than 10% owned by foreign shareholders, Black explained.

Put plainly, a board could require a corporate raider to cough up his stock if the board could prove the takeover attempt would be harmful. "It would allow the board of directors to determine whether it would be in the best shareholder interest to have the stock redeemed," Whitehill said.

The proposal could open the door to numerous loopholes in the reasoning for the stock redemption, and is thus unlikely to garner much support, attorneys noted.

Whitehill added that it is unclear at what price the stock would be redeemed under the proposal. "It could be redeemed at a formula or a fixed price," he said. "But the current thought is to redeem it at the price the purchaser paid for it." The reason, he said, is to prevent a "kind of statutory greenmail" in which the shareholder demands an exaggerated price to give up his stock.

Alexandra Clough

ASSET-BACKED FINANCING

Maryland Bank To Launch First Public Asset-Backed Deal

Could use variable-rate structure

Maryland Bank, N.A. is preparing to securitize a portion of its roughly \$2.23 billion portfolio of credit card receivables, according to Vernon Wright, v.p. and manager of capital markets at Maryland National Bank, a sister bank of Delaware-based Maryland Bank. The \$500 million transaction, which was filed with the Securities and Exchange Commission last week, is expected to be priced in late November, he said. The deal will mark the bank's inaugural public issue of asset-backed securities and, depending on market conditions and the bank's outlook on interest rates at the time the deal is priced, may also be the first public offering of variable-rate credit card-backed securities.

Maryland Bank's deal will be similar in structure to credit card-backed transactions previously issued by First National Bank of

Chicago and Bank of America, but will contain "a few twists," said Craig Goldberg, v.p. at First Boston, which will lead manage the offering with Goldman, Sachs & Co. as co-manager. For example, the deal will include a controlled amortization payout feature.

Goldberg explained that, unlike traditional credit card deals which have a variable rate payment rate, Maryland Bank's deal will specify a maximum repayment rate to investors during the amortization period. This feature makes the tail-end of the security look like a fixed-pay obligation, which is attractive to investors, he noted.

While none of the MNC Financial commercial bank subsidiaries, which include Maryland Bank, Maryland National and American Security, has ventured into the public market with an issue of asset backed