

RECENT DEVELOPMENTS IN . . . SECURITIES LAW

BY JEREMY WEINSTEIN



This is a brief, highly opinionated notice of a few of the many recent developments in securities law. Further developments before publication will no doubt render

some of this obsolete, but I hope to have piqued the reader's interest in a very challenging and fun area of the law.

EXECUTIVE COMPENSATION DISCLOSURE

Publicity about executive pay hikes amid a sustained domestic recession, unemployment, and poor corporate performance, epitomized by the Japanese visit of American auto executives, has prompted new executive compensation disclosure rules. These rules require companies to present executive compensation clearly, and to justify it in a Compensation Committee Report stating policies and discussing the relationship, if any, between corporate performance and executive pay. Shareholder understanding of the company's performance is to be enhanced by a "performance chart" comparing total shareholder return over the past five years measured on a dividend-reinvestment basis against the performance of the overall stock market, and also against either a published industry index or a company-developed peer group index. A company has tremendous latitude in developing the peer group index, or even determining if it has peers. Commissioner Beese is pleased that "almost any good faith effort will satisfy the requirements of these rules." Fertile areas for development include valuation of equity, and disguising increases by "placing" compensation in prior years.

MLP REFORM

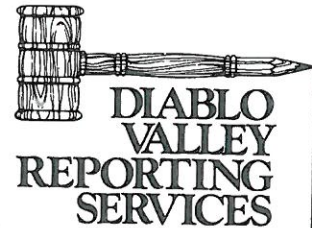
A Master Limited Partnership roll-up is the conversion by the sponsor of several public limited partnerships with limited life span into a single massive entity with indefinite life span, generally undertaken to increase and make permanent the sponsors management fees. A distribution-paying, liquidating entity is changed into a permanent, suspended-dividend entity. Senator Phil Gramm, who received into war chests under his control \$230,000 in donations from MLP fee-takers, blocked the bill in the Senate last year, but the Limited Partnership Rollup Reform Act seems back on track. H.R. 617 requires enhanced disclosure and an independent fairness opinion, strengthens dissenters' rights and access to investor lists, exempts certain preliminary communications among investors from SEC filing requirements, prohibits contingent or differential compensation of soliciting proxies or consents, and maximizes the solicitation period at 60 days. In other words, it removes a lot of the obstacles that forced investors into a very bad "take it or leave it" situation. Unfortunately, this may be locking the stable door after the horse has bolted, as there have been few rollups since 1992. Significant further reform is needed to enhance the rights of those twice victimized by the sponsor's poor management of their original investment and the roll-up. Unit holders have a long climb before they even have rights ordinarily afforded a corporation's common shareholders.

Jeremy Weinstein is an attorney with Pacific Venture Finance, Inc., in Walnut Creek. He is on the steering committee of the Corporate Council and Business Attorneys Section

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SECTION NEWS

Corporate Counsel and Business Attorneys

by Jeremy Weinstein

The Corporate Counsel and Business Attorneys' Section provides an opportunity for in-house counsel to plug into the local business bar. The section's meetings are intended to give in-house counsel the "give and take" common in law firms and to allow in-house counsel and local business attorneys to interact. We put on lunch programs about once every two months, which generally earn attendees 1 MCLE credit each.

The group is keenly interested in increasing its membership, especially among in-house counsel, our principal constituency. Interested attorneys should contact Miggett Maxwell at

(510) 975-5332 for a membership application.

David Katzen of McCutchen Doyle has been the section President for the past three years. At our last meeting, David was presented with a token of appreciation for his dedicated service by the Steering Committee, *The Criminal Prosecution and Capital Punishment of Animals: The Lost History of Europe's Animal Trials*, by E. P. Evans, 1906. David would very much like to see a successor assume the helm, and interested attorneys should contact me or David at (510) 937-8000. Therefore, any local attorney who talks to me is on notice that he or she may be drafted to replace David.

New members of the Steering Committee are Smeeta Rishi and Michael Radin. The Section is glad to have the dynamic contributions of these two local business attorneys.

On May 5, the section put on a successful lunch program called "Protecting Your Assets: Wealth Pro-

tection and Preservation in the Nineties." The panel consisted of Tom Hogan, Richard Breitwieser, and was led by Darrell Ott.

The next project of the section is a *Jurassic Park* program. In Michael Crichton's *Jurassic Park*, soon to be a Steven Spielberg picture for release this summer, the central character is a lawyer visiting a "dinosaur park" in which his firm has an ownership interest. That and many other knotty legal issues presented in the novel, such as areas of law and regulation likely to develop with advances in biotechnology (comparing entertainment, medicinal and industrial applications), theft of intellectual property, technology export, and limits of protection of intellectual property rights, present a great opportunity for a fascinating panel presentation. Those who would like to participate, or have ideas, or would otherwise like to be involved, should contact me at (510) 943-3103. ★

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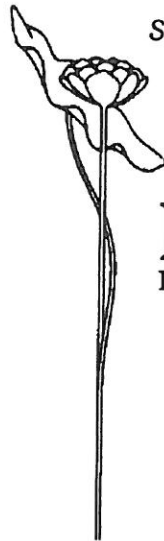
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