

SURVEY

ESCAPING THE MARKET: REGULATING CONFLICTS IN GOING PRIVATE TRANSACTIONS

Spring 2003 saw the publication of the *Columbia Business Law Review*'s second annual survey of law, with an overview of the disclosure requirements that had recently been implemented in securities and corporate governance regulation.¹ This year, in the third annual survey, we chose to address a phenomenon that has resulted, in part, from those very requirements—the increasing numbers of public corporations choosing to go private.

The first piece of the survey, *A Brief Roadmap to Going Private*, provides a broad review of the different methods available for corporations to go private. It discusses the typical players in a going private transaction, common sources of funding, different ways of structuring the deal, and relevant legal considerations. In effect a practitioner's introduction to going private, this paper presents and bridges the major issues involved in the typical going private transaction.

The second piece of the survey examines the state law component of the relevant regulatory environment against the theoretical backdrop of the race to the top/race to the bottom debate. *Going Private Transactions: Delaware's Race to the Bottom* presents the existing theoretical frameworks as they apply to going private transactions, introduces the different actors at the state level responsible for the direction of state corporate law, and analyzes the empirical evidence on the subject.

¹ Survey, *The Best Disinfectant: Analyzing the Implementation of Disclosure Requirements in Securities and Corporate Governance Regulations*, 2003 COLUM. BUS. L. REV. 579.

The final piece of the survey scrutinizes a particular type of conflict in the going private context—a going private transaction motivated by insider information on the part of existing insiders, e.g. top management. *Governing Insiders Going Private on Inside Information* outlines the various legal doctrines that can be applied to this scenario, at both the state and federal levels, and compares these doctrines in terms of their covered conduct, remedies, and other relevant attributes. The paper concludes with a set of recommendations for improving the existing regulatory framework for these transactions.

We look forward to continuing to provide you with the survey as an annual feature of the *Columbia Business Law Review*. We hope you find the materials in this survey timely and useful, and we would greatly appreciate your comments and feedback in order to improve the selection of materials and format in this new *Columbia Business Law Review* endeavour.

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