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Tender Offer Developments--Introduction

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TENDER OFFER DEVELOPMENTS

Introduction

The widespread adoption of state takeover statutes over the past several years has caused tender offer regulation to resemble a three-ring circus where federal statutes, state statutes, and private decisionmaking functioned simultaneously within more or less established boundaries. Recent developments, however, suggest that considerations of federalism may mandate changes in the traditional boundaries of this multilevel regulation. The following articles address some of the consequences that may flow from changes in the pattern and scope of tender offer regulation at different levels.

The student Case Note, for example, analyzes a number of economic and federalism considerations underlying the recent case of *Great Western United Corp. v. Kidwell*. Recently affirmed on appeal, this is the first decision to hold a state takeover statute unconstitutional and suggests that the area of tender offer regulation previously occupied by state takeover statutes may be radically reduced or eliminated. While this Case Note discusses the question of the application of both state and federal tender offer laws in the context of the *Great Western* decision, another student Note focuses exclusively on federal regulation. Here the author analyzes whether a creditor involved in financing a tender offer is subject as a participant to federal tender offer regulation under the Williams Act.

The articles on tender offer regulation are written by practitioners in the field. William Steinbrink writes from the perspective of subject company management which, if protective state statutes are no longer available, face a greater threat of takeover. Mr. Steinbrink undertakes a theoretical analysis demonstrating the basis subject company management may have for assuming a defensive posture. Meredith Brown, on the other hand, discusses recent litigation, legislative changes, and trends in corporate power struggles and their impact on the corporate offeror's strategy.