

April 5, 2011

Activists Target Companies With Market Caps Over \$50 Billion

In a speech to the Council of Institutional Investors yesterday, Nelson Peltz, one of the most successful of the activist investors, said the recent changes in corporate governance would enable him to make investments in the heretofore “untouchables”—companies with market capitalizations over \$50 billion. Mr. Peltz noted that the new governance rules give activists more tools with which to pressure companies, noting that larger companies provide bigger profit opportunities than smaller companies.

Activist investors with significant records of success will be able to use the new governance rules to convince institutional investors, like the members of the Council of Institutional Investors, to join them in pressuring companies to change their business strategies to those advocated by the activists, whether or not they are in the best interests of the long-term success of the companies and their long-term investors.

There has been a notable increase in hostile takeover and activist investor activity this year. If the present favorable market conditions for this activity continue, there will be a further increase. There is also little doubt that Mr. Peltz’s prediction that the targets will be among the largest companies is also correct.

All companies, even the very largest, should have up-to-date plans for dealing with activists and strategies to avoid inviting the notice of activists.

Martin Lipton