SPECIAL SITUATIONS *with* PENSERRA

Mini-Tender Offers: The only game in town you will rarely, if ever, win

"Mini-tender" offers—offers for less than five percent of a company's stock—have been increasingly used to catch investors off guard. Many investors who hear about mini-tender offers surrender their securities without investigating the offer, assuming that the price offered includes the premium usually present in larger, traditional tender offers. They later learn that they cannot withdraw from the offer and technically end up selling their securities at below-market prices. Ethical? No. Legal? **Absolutely!**

The ethicality of this practice is up for debate but the legality of it preys on a loop hole. Offers below 5% of the company's securities are not governed by Section 14(d) of the Securities Exchange Act, established to protect investors from making such mistakes.

For the most part, both tenders (SEC registered and mini-tenders) are very similar. They each state the terms of the deal in a clear manner, hold an open tender offer for minimum time periods, and make prompt payment to investors after the offer closes. The glaring difference between the two are investors withdrawal rights.

The First Trick of the mini tender is to exploit the "First come, first purchase/no withdrawal rights".

The first come, first purchase terms may pressure customers to make hasty, uninformed tender decisions. The failure to provide withdrawal rights leaves shareholders without a means to reconsider their decisions to tender. Moreover, the lack of withdrawal rights means that shareholders lose control of their securities for the duration of the mini-tender offer, including potentially lengthy periods if the mini-tender offer is extended.

The Second Trick is to offer a price lower than the current market price in hopes investors do not realize the discount.

The price is clearly stated in the filing and most times shows the discount to current market prices.

Read on for an excerpt from AT&Ts response to an unsolicited mini-tender offer in which companies are required to issue.

Mini-Tender Offers:
The only game in town you will rarely, if ever, win

AT&T Inc. – The company learned that TRC Capital Corporation has made an unsolicited "mini-tender" offer, dated August 27, 2015. TRC has offered to purchase up to 3 million shares of AT&T stock at $31.30 per share, or 4.3 percent below AT&T's closing share price on August 26, 2015.

What happens if the stock price falls below the tender price during the tender period? On the surface it would make economic sense to participate in the offer given the current premium, but in those cases refer back to trick 1.

A mini-tender offer with an above-market value tender price may be extended beyond the initial expiration date. In such a case, the market price may rise above the tender price while the offer is extended. As the adage goes, tails I win, heads you lose.

The problem rests with back office systems not being able to recognize the difference between Mini Tenders and SEC registered Tenders and are a persistent nuisance to both investors and brokers.
If you've run into trouble with a mini-tender offer, act promptly. By law, you only have a limited time to take legal action.

Source of mini-tender offer:
https://www.sec.gov/investor/pubs/minitend.htm

For more information, please contact Kevin McLaverty:

925-594-5009
kevin.mclaverty@penserra.com

PENSERRA