

Delaware Court Upholds Use of 4.99% Poison Pill to Protect NOLs

March 3, 2010 | Client Update

The Delaware Chancery Court issued an important decision last week in *Selectica, Inc. v. Versata Enterprises, Inc.*, upholding Selectica's adoption and deployment of a rights plan with a 4.99% trigger designed to protect the company's net operating loss carryforwards. The Selectica decision was the first to examine a poison pill after being triggered, and the first to analyze its use in the context of protecting corporate assets as opposed to preventing hostile takeover attempts. Applying a straightforward analysis under *Unocal*, Vice Chancellor Noble found that: (i) the Selectica board of directors was reasonable in concluding that Selectica's NOLs were valuable corporate assets, (ii) the 4.99% trigger of the NOL rights plan was not per se preclusive, and (iii) the board's actions in adopting the NOL rights plan and subsequently implementing its share exchange feature were reasonable in relation to the perceived threat to the value of the NOLs.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

George R. Bason, Jr.
+1 212 450 4340
george.bason@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.

Related materials

[Read the full update](#)