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

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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.

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