LEGAL DEVELOPMENTS
IN
THE PENDING ACQUISITION
OF
THE MONY GROUP INC.
BY
AXA FINANCIAL, INC.

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On May 18, 2004, following months of litigation in the Federal and Delaware courts, the stockholders of The Mony Group Inc. ("MONY"), a life insurance and financial services firm with $60 billion in assets under management, approved the acquisition of MONY by AXA Financial, Inc. ("AXA"), a member of AXA Group, one of Europe's leading insurance and financial services companies. Leading up to the stockholder vote, the AXA-MONY transaction had become one of the most contentious acquisitions in the insurance industry in many years. This memorandum discusses the following legal issues arising out of the battle between MONY and certain of its stockholders: 1) the use of MONY's own proxy card by stockholders opposing the merger; 2) inadequate disclosure in the proxy statement of change-in-control payments to MONY's senior management; 3) the change in the record date for the MONY stockholder vote; and 4) the alleged violation of New York Insurance Law.

BACKGROUND

On September 17, 2003, MONY and AXA announced that they had entered into a merger agreement pursuant to which AXA would acquire MONY in a cash transaction valued at approximately $1.5 billion ($31.00 per share). The purchase price represented a 6.2% premium to MONY's closing stock price on the day before the announcement, but equaled a price to book value ratio of only 0.72. Historically, book value has been the floor on acquisition prices in the life insurance industry.

MONY filed a preliminary proxy statement with the Securities and Exchange Commission (the "SEC") on October 14, 2003, and a definitive proxy statement on January 8, 2004. MONY then mailed its proxy materials to its stockholders and announced a special meeting of MONY stockholders to be held on February 24, 2004, at which meeting the merger would be voted upon by holders of record as of January 2, 2004. After receiving the proxy materials, several large institutional stockholders of MONY expressed their opposition to the merger, claiming among other things that the price offered to stockholders was too low, whereas the benefits to MONY's management under the proposed merger were disproportionately high.

In the weeks following the distribution of the proxy materials, numerous lawsuits were filed challenging the proposed merger. Several months of intense legal disputes ensued, resulting in the distribution by MONY of revised proxy materials, as well as a postponement of the MONY stockholders' meeting by three months.

STOCKHOLDERS' USE OF MONY'S PROXY CARD IS NOT EXEMPT FROM PROXY SOLICITATION RULES

Stockholder Mailing of Duplicate Proxy Card

On January 29, 2004, Highfields Capital Management L.P. ("Highfields"), owner of approximately four percent of MONY's capital stock, publicly released (but did not mail) a letter urging the other MONY investors to vote against the merger. Highfields planned to mail this letter to investors and enclose with it a duplicate of the proxy card MONY had previously sent to stockholders, encouraging them to use the card to vote against the merger if they had not already done so, or to change their vote if they had already voted in favor of the merger. In the letter, Highfields instructed the stockholders to return the proxy card not to Highfields, but to the service provider MONY had retained to process the proxy cards.

Having learned of Highfields' intentions, MONY filed a motion in Federal District Court in the Southern District of New York on February 3, 2004, for a preliminary injunction to prevent Highfields from including the copy of MONY's proxy cards in its mailing.

Legal Issue

The issue before the federal court was whether Highfields could include a copy of MONY's proxy card in its mailing to other stockholders without previously filing a proxy statement with the SEC. The federal proxy solicitation rules require any party who solicits a proxy from a holder of a security to file with the SEC detailed information about the solicitation, and about the party making the solicitation, in the form of a proxy statement. That information must also be delivered to the individual security holders (Rules 14a-3 and 14a-6 of the Securities Exchange Act of 1934, as amended (the "Exchange Act")).

However, Rule 14a-2(b)(1) of the Exchange Act provides an exemption from the proxy solicitation rules for communications to stockholders that meet the following conditions:

1) the soliciting party does not seek the authority to act as a proxy for the solicited stockholders; and

2) the soliciting party does not furnish to the solicited stockholders a form of revocation, abstention, consent or authorization.

MONY asserted that the inclusion of a duplicate of MONY's proxy card amounted to furnishing a "form of revocation," and that the proposed mailing thus did not qualify for the exemption.

The SEC's Position

Before preparing its letter to investors, Highfields had informally contacted the SEC to inquire whether the proposed inclusion of MONY's proxy card in its mailing would qualify for the exemption under Rule 14a-2(b)(1). The SEC advised Highfields that a soliciting party could provide a solicited stockholder with a copy of management's proxy card, provided that the proxy card must be returned directly to the service provider retained by the company to process the proxy cards, and not to the soliciting party. The SEC's advice was consistent with its rationale for adopting Rule 14a-2(b)(1) in 1992 -- to correct a power imbalance between management and dissident stockholders arising out of the filing requirement in the proxy rules. In adopting the Rule, the SEC noted that "*the scope of the definition of solicitation under the proxy rules does have a chilling effect on discussion of management performance, out of fear that the communication could after the fact be found to have triggered disclosure and filing obligations…*".[1]

The Federal District Court's Ruling

In his opinion of February 11, 2004,[2] Judge Richard Holwell denied MONY's request for a preliminary injunction. The court found that Highfields' solicitation materials made clear that it was not seeking authorization to act as any stockholder's proxy. Furthermore, the court held that "*while it is true that the proxy card may have the effect of a revocation in those cases where a shareholder has previously submitted a proxy, … that is not a necessary effect inherent in the card and does not transform management's proxy card into a form of revocation that places Highfields outside the ambit of the exemption.*"[3]

MONY appealed the decision to the United States Court of Appeals for the Second Circuit.

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1 Exchange Act Release No. 31326, "*Regulation of Communication Among Shareholders*," 1992 SEC LEXIS 2470, p. 22 (October 16, 1992).

2 *The MONY Group Inc. v. Highfields Capital Management L.P.,* United States District Court Southern District of New York; 04 Civ. 0916; February 11, 2004.

3 Id., p. 8.

The Court of Appeals' Ruling

On April 1, 2004, the Court of Appeals reversed the District Court's ruling and directed entry of a preliminary injunction in favor of MONY.[4] The Court of Appeals held that Highfields' sending out duplicates of MONY's proxy card represented a "form of revocation," and thus was not covered by the exemption under Rule 14a-2(b)(1). Indeed, the court found that in the particular circumstances of the case, "*revocation is the only likely use for such a duplicate proxy because: (i) undecided MONY shareholders presumably retain blank copies of their (original) management proxy cards, and (ii) other than the (presumably few) MONY shareholders who have lost or discarded the multiple proxy cards that have been sent to them by MONY […], the only MONY shareholders who truly "need" proxy card duplicates are those who have already sent their proxy cards and want to revoke their votes.*"[5] The court concluded that any use of the proxy card duplicate by a stockholder would "*inescapably operate […] as a revocation,*" and thus ruled that Highfields' proposed inclusion of MONY's proxy cards in its mailing would not qualify for the exemption under Rule 14a-2(b)(1).

Based on this decision, Highfields was enjoined from including a copy of MONY's proxy card in its mailing to stockholders without first complying with the disclosure requirements. In the weeks following this decision, Highfields did not file a proxy statement with the SEC, and instead desisted from including duplicate proxy cards in its mailings to other stockholders.

DISCLOSURE OF CHANGE-IN-CONTROL PAYMENTS

Request for Injunction before the Delaware Chancery Court

Several other MONY stockholders, including E.M. Capital, Inc., Elm Realty, Inc., Congregate Investors, Ltd. and Abbott Hill Partners, L.P., brought a suit before the Court of Chancery of the State of Delaware requesting a preliminary injunction against the merger, alleging, among other things, that the disclosure in the January proxy statement relating to change-in-control payments was deficient.

The background to this allegation was that, in connection with the merger negotiations with AXA, the Corporate Governance and Nominating Committee of MONY's Board of Directors, a committee comprised entirely of independent directors, engaged a compensation consulting firm, Frederic W. Cook & Co., to analyze the change-in-control provisions of MONY's employment agreements with senior executives. Ernst & Young was retained to assist with the analysis. The consulting firm reported to the MONY Board in June 2003 that the change-in-

[4] MONY Group Inc. v. Highfields Capital Management L.P., Second Circuit Court of Appeals; 04-0678; Opinion issued on May 13, 2004.

[5] Id., p. 18.

control payments provided under the agreements were worth approximately $205 million, or 15.4% of the proposed merger price with AXA as it stood at that time -- far above the usual range of one percent to five percent of the purchase price for acquisitions in the financial services industry.

Upon obtaining this information, the Board of Directors informed senior management that it would not approve a merger unless the change-in-control payments were reduced. Accordingly, senior management entered into new agreements that effectively lowered the payout provisions to $90 million (or six percent of the value of the AXA transaction). Following MONY's disclosure to AXA of these changed circumstances, AXA agreed to increase its price per share from $29.50 to $31, an increase roughly equal to the aggregate reduction in the change-in-control payments.

The January proxy statement disclosed that the potential change-in-control payments had been reviewed by the independent directors and, as a result of that review, had been "*substantially reduced*" to "*be more consistent with current market practices….*"[6] The stockholders argued that the proxy statement was misleading because it failed to disclose as a percentage of transaction value the payments to be made to senior management compared to similar transactions in the financial services industry. The stockholders also alleged that the proxy statement failed to adequately disclose the direct correlation between senior management's compensation and the price per share stockholders were offered by AXA.

The Court of Chancery Ruling

In an opinion issued on February 17, 2004,[7] Judge Stephen P. Lamb of the Delaware Chancery Court granted a limited injunction against the merger and directed MONY to revise its proxy statement to include additional disclosure relating to the change-in-control agreements and the approximately $90 million the company would have to pay to honor them.

The court found that "*the history of AXA's bidding shows that there is essentially a 1:1 ratio between the value of the change in control agreements and the amount per share* [offered]." [8] Furthermore, the court noted that "*by heavily emphasizing the reduction in payments under the change in control agreements, the proxy statement misleadingly implies that the payments under the change in control agreements are consistent with current market practices, while in fact, they are considerably more lucrative than is normal.*"[9] Given these circumstances, the court concluded that the proxy statement must include disclosure of information available to the Board about how

[6] Page 25 of the Definitive Proxy Statement of The MONY Group Inc., filed pursuant to Section 14(a) of the Securities Exchange Act of 1934 on January 8, 2004.

[7] In re the MONY Group Inc. Shareholder Litigation, C.A. No. 20554; February 17, 2004.

[8] Id., p. 23.

[9] Id., p. 25.

the change-in-control payments compare with those of other companies involved in takeovers in the financial services industry.

On April 12, 2004, MONY provided its stockholders with a revised proxy statement containing the additional disclosure required by the Chancery Court, including disclosure that the change-in-control payments under the revised agreements were the 8th largest in terms of the total dollar amount and the 5th largest as a percentage of transaction value in relation to the 18 other transactions as to which the independent directors had been provided information by Ernst & Young. [10]

CHANGE IN THE RECORD DATE FOR STOCKHOLDER VOTE

MONY announced on February 18, 2004, that it would postpone its stockholders' meeting until May 18, 2004, to allow sufficient time to provide the additional disclosure required by the Chancery Court. Notably, MONY also pushed back the record date from January 2, 2004, to April 8, 2004. In response, the stockholders filed an amended complaint in the Chancery Court on February 27, 2004, alleging that MONY's decision to change the record date was an attempt to manipulate the vote on the merger. The stockholders asserted that arbitrageurs who had acquired large numbers of MONY shares after the original record date, and who would benefit financially if the merger took place, could provide a majority in favor of the merger, disenfranchising long-term MONY stockholders. The stockholders were particularly wary of investors in a special type of bond issued by AXA to finance the merger. These bondholders would receive one AXA share if the merger were completed, whereas if it were not completed, they only would receive the original price of the bond plus interest. As the AXA share price had risen sharply since the merger was announced, these bondholders had a strong interest in the merger being completed, and were believed to have taken short-term positions in MONY stock for the purpose of voting in favor of the merger.

The Chancery Court ruled on April 14, 2004,[11] that it was "*abundantly clear*" that the Board of Directors had made its decision to change the record date with an eye on obtaining stockholder approval of the merger. Nevertheless, the court found that the Board had acted in accordance with its fiduciary duties when it postponed the meeting and set a new record date. Indeed, the court held that once a Board of Directors deems a merger agreement favorable, "*it may employ various legal powers to achieve a favorable outcome on the shareholder vote required to approve that agreement,*" provided that they do not preclude a fair opportunity to vote.

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10 Page 30 of Amendment No. 3 to the Definitive Proxy Statement of The MONY Group Inc., filed pursuant to Section 14(a) of the Securities Exchange Act of 1934 on April 12, 2004.

11 In re the MONY Group Inc. Shareholder Litigation, C.A. No. 20554; April 14, 2004.

ALLEGED VIOLATION OF NEW YORK INSURANCE LAW

Several MONY stockholders raised a further legal issue with the New York State Attorney General. MONY was originally a mutual insurance company owned by its policyholders. On December 23, 1998, MONY "demutualized" (i.e., converted to a public stock company) under Section 7312 of the New York Insurance Law. These stockholders alleged that the signing and announcement of the merger agreement violated Section 7312(v). That provision generally prohibits anyone from acquiring or "offering to acquire" beneficial ownership of five percent or more of the voting stock of a demutualized insurer for five years after the date of demutualization without prior approval from the Superintendent of Insurance. In MONY's case, the five-year period did not expire until December 23, 2003 (i.e., three months *after* the announcement of the proposed acquisition by AXA).

The legal question raised was whether the signing and announcement of a merger agreement represented an offer to acquire securities within the meaning of Section 7312(v). If so, AXA would have been in violation by not having obtained regulatory approval prior to September 17, 2003.

In its proxy statement of January 8, 2004, MONY indicated that the New York Insurance Department had concluded that neither the signing nor the announcement of the merger fell within the purview of Section 7312(v). In its revised proxy statement of April 12, 2004, MONY disclosed that the Attorney General's office had telephoned AXA on February 18, 2004, to request a letter explaining AXA's position as to the applicability of Section 7312(v) to the merger. AXA responded by letter dated February 20, 2004. As of the date of the revised proxy statement, neither AXA nor MONY had received any further communication on this issue from the Attorney General's office.

We note that the laws of most states applicable to insurance company mergers and acquisitions contain prohibitions against acquiring -- or making an offer to acquire -- an insurance company without prior insurance regulatory approval. However, the practice in all states has been to permit such offers so long as the consummation of the transaction is itself subject to insurance regulatory approval.

AFTERMATH

Increase in Dividend

On February 18, 2004, MONY and AXA announced that they had amended the merger agreement to permit MONY to declare a dividend of $0.10 per share in addition to the $0.23 to $0.25 dividend that MONY had announced on February 5, 2004, effectively increasing AXA's bid by $0.10 per share. MONY stated that certain members of its senior management team had voluntarily agreed to reduce by approximately $7.4 million the amount of compensation they would receive as a result of the merger in order to fund the additional dividend.

Appraisal Rights

Delaware law provides stockholders with the right to have their shares independently valued by the Court of Chancery in the event a merger is consummated but such stockholders have not voted in favor of the merger. [12] The Court of Chancery is required to determine fair value exclusive of any element of value arising from the accomplishment or expectation of the merger.

Under the merger agreement, AXA has the right to withdraw from the transaction if holders of more than 15% of the issued and outstanding MONY shares demand appraisal. Since holders of 16.7% of such shares have demanded appraisal, AXA's right to withdraw is effective, although AXA has announced that it looks forward to closing the transaction as soon as possible. Under the merger agreement, AXA will be deemed to have waived its appraisal rights condition if it is not invoked within five business days following the satisfaction or waiver of all the other conditions to the merger.

Stockholder Vote Approving the Merger

On May 18, 2004, 53.4% of MONY's outstanding shares were voted in favor of the merger, slightly in excess of the simple majority required for approval. MONY anticipates that the merger will close at the end of the second quarter or the beginning of the third quarter of 2004, subject to the receipt of all required regulatory approvals, including approvals from the insurance departments of Arizona, New York and Ohio.

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[12] Delaware General Corporation Law Section 262.