younger women a strong message that they belong in this “club,” maybe more of them would stay when the going gets tough.

**Second, direct more M&A deal flow to women advisors.** As more women business leaders have the power to direct business to deal advisors these women can make a point to support great women M&A advisors with deal flow. Guys have been supporting guys for years! Now women are in a position to give M&A deal work to trusted women advisors. This phenomenon will offer our young women one clear path to success, and thus another powerful motivation for these women to stay in the game.

**Third, collaborate, build strong relationships and help one another succeed.** Women deal-makers can do what comes naturally—form strong supportive relationships with other women and help one another succeed with referrals and other support. Since 2012, Jennifer Muller of Houlihan Lokey, Christa Fancher of SRS and I have cosponsored quarterly dinners for a group of senior women M&A professionals in Silicon Valley with an ever-expanding group of women professionals from all corners of the M&A ecosystem in our region. We have two simple goals—to make sure active women dealmakers know each other, and to find ways to support each other so that we can expand the pool and the opportunities to succeed. We are learning from each other ways to encourage our women coming through the ranks.

To steal a phrase, it takes a village to build a talent pool! Collaborating to expand both the pool of talented women deal mavens and our seats at the deal table will leave an important legacy. I look forward to this collaboration model expanding across the US. As I look to my crystal ball, I can see that 20 years from now there will be many senior women dealmakers driving deals. I can’t wait to celebrate!

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**Modernization of Corporate Law in the Fly-Over States**

*By Phil Garon of Faegre Baker Daniels*

When I attended law school and began practicing in the early 1970s, general corporate law and Delaware corporate law were pretty much synonymous. Most other states either patterned their corporation law after Delaware’s or had unsophisticated corporate statutes with many significant gaps. The changes in non-Delaware corporation law in the last 40 years has been stunning, and, in certain respects, the Delaware statute has either not kept pace with more modern state statutes or has been amended to bring it into line with statutes previously enacted in other states.

In 1981, Minnesota adopted a new Business Corporation Act. Because the draft persons were unencumbered by an existing, well-developed statute of recognized stature, they felt free to adopt whatever provisions they felt were best for corporations and their shareholders. Their objective was to provide a comprehensive, flexible corporate statute. Some of the provisions of the new corporate statute, of course, were already in effect in Delaware, but the draft persons patterned many others after corporation statutes of other states or Model Business Corporation Act provisions and created several new provisions that enhanced flexibility or reflected developments in business and financing.

The Minnesota statute, for instance, eliminated the rigid, burdensome surplus test in effect in Delaware to determine whether dividends could be issued or stock could be repurchased, on the theory that a surplus test did not necessarily measure the likelihood that the corporation could pay its creditors after making those shareholder distributions. This also enabled them to discard outdated concepts like “par value” and “capital.” Instead, the Minnesota legislation provided for a more flexible and rational standard that permitted these distributions only if the Board determined that the corporation could pay its debts as they became due after making them.

The draft persons also eliminated the archaic concept of treasury shares applicable to stock that had been repurchased by a corporation. Under Delaware law, that stock inexplicably could be re-sold by a corporation without meeting any statutory standards applicable to new issuances of stock. Instead, the
Minnesota statute simply, and logically, provided that repurchased stock would again become authorized but unissued stock such that its “re-issuance” would be subject to the same standards as any other issuance of stock by that corporation.

Moreover, Minnesota’s statute permitted non-directors to serve on Board committees to take advantage of the expertise of non-directors. It also permitted corporations, in their articles of incorporation or bylaws, to allow directors to vote by proxy if they could not attend a Board meeting.

Delaware did not revise its statute to eliminate the surplus test or the treasury stock concept. It still does not permit non-directors to serve on Board committees nor does it afford corporations the flexibility to allow their directors to vote by proxy.

In other respects, the corporation law of Delaware has followed, not led, the corporate law of other states. For instance, in 2004 Delaware broadened the consideration that could be paid in full for stock to include promissory notes and certain other consideration—more than 20 years after Minnesota and several other states did so. Delaware also finally amended its statute to permit transfers of assets to a wholly owned subsidiary without a shareholder vote even if they constituted transfers of substantially all assets. Moreover, it adopted limited anti-takeover legislation shortly after the adoption of similar legislation in several other states, including Minnesota, Wisconsin and Indiana.

Today, Delaware obviously remains the corporation law leader, and, of course, statutes of other states, including Minnesota, have been amended to include several provisions comparable to amendments previously enacted in Delaware. Nevertheless, it is with some pride that I am able to report that the virtual monopoly that Delaware had on sophisticated corporate legislation 40 years ago has been broken by lawyers and legislators in other states who in certain respects were more willing to eliminate outdated concepts, increase flexibility and reflect developments in the business and financial world.

Innovations in many areas are made by those who previously did not have the superior mousetrap. The area of corporate law is no exception.

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**A New Era for Management Compensation in Change-in-Control Transactions**

*By Michael Katzke & Henry Morgenbesser, Co-Founders of Katzke & Morgenbesser LLP*

Over the last several years we have witnessed a significant retrenchment with respect to change in control-related benefits for management in the context of both public company severance arrangements and private equity treatment of management teams post-transaction. We do not sense that the pressures on management compensation from shareholder advisory groups, compensation committees and private equity sponsors will relent in the near future.

In this environment, it is important for advisors to senior executives and management teams to try to advocate as best they can to protect their clients, even if at times it is only at the margins.

In the public company context, pressure from ISS and Glass Lewis, two prominent proxy advisory service firms, and other shareholder advisory groups, have resulted in material cutbacks to provisions which were prevalent in change in control arrangements beginning in the mid to late 1980’s and continuing up until the past two to three years.

**Excise Tax Gross-Ups.** The contractual gross-up payment for the 20% excise tax imposed under Sections 280G and 4999 of the Internal Revenue Code on golden parachute payments with a value that exceeds 2.99 times an individual's trailing five-year average W-2 compensation (a “280G Excise Tax Gross-Up”) has become a rare provision to see in new change in control severance arrangements and has been eliminated by many companies from previously existing (and often longstanding) agreements (see Disney, among others).

Much more common now are provisions capping payments at the maximum level where golden parachute excise taxes would not apply (a “280G Cap”) or providing for a so-called “valley” provision where the