Taubman Centers' decision to go public put it at risk for a takeover
By Brent Snavely
November 25, 2002

Ironically, the decision 10 years ago by Taubman Centers Inc. to become the first mall developer to become a publicly traded real estate investment trust made it possible for it to become the target of a hostile takeover attempt by the largest mall owner in the country.

Simon Property Group Inc. is pursuing aggressively a hostile acquisition of Bloomfield Hills-based Taubman (NYSE: TCO) and has offered to pay more than $3.85 billion.

Wall Street has responded positively: Taubman's stock has risen from $14.80 to close at $16.40 on Friday since the offer was made Nov. 13, and several analysts have published reports favoring an acquisition.

For the past decade, Taubman Centers' decision to become publicly traded on the New York Stock Exchange has been a point of pride for the company, symbolizing one of many firsts in its 52-year history.

But as Nathan Forbes, general partner of the Southfield-based mall developer Forbes Co., points out, publicly owned companies have obligations to public investors.

"Any public company basically becomes responsible to their shareholders," Forbes said "The real question on that is: Is shopping-center ownership conducive to the public-ownership market?"

If Simon Property wins its battle to buy Taubman Centers, Forbes argues, the interests of shareholders would prevail over shoppers.

"I think any time there is consolidation in business, I think the consumer loses out," Forbes said.

Although Forbes views Simon Property as one of the better mall operators, he argues that the larger Simon Property can't possibly devote as much attention to its 249 malls as Taubman Centers can to 30 malls.

"It's good for the shopping public to have families that have an entrepreneurial approach," Forbes said.

Forbes is the general partner of a joint venture with Taubman Centers for a mall in Orlando, Fla., called Mall at Millenia, which opened last month.

Over the past 18 months, Taubman Centers has opened five malls, making the company one of the most aggressive developers in the industry.

With two of the malls, Mall at Millenia and International Plaza in Tampa, Fla., Taubman Centers hit home runs. But at Dolphin Mall in Miami, Taubman opened the mall late, suffered cost overruns and lost several tenants during the first year of operation.

Institutional investors are major shareholders in Taubman Centers. A majority of the shares not owned by the Taubman family are owned by institutions such as Morgan Stanley.

The heavy institutional ownership mix was one of several reasons that caused Oak Park resident and Taubman Centers shareholder Howard Schneider to sell all his shares. Schneider said he also was concerned about a 1998 corporate restructuring that effectively gave the Taubman family veto rights over any proposed acquisition and by shareholder lawsuits that began to emerge last week.

Schneider sold his 2,159 shares Nov. 14 when Taubman Centers' stock closed at $16.99, its highest point in five years.

"I was aware, of course, of the 1998 transaction," Schneider said. "But I was unaware, as I suppose everybody else was, that this enabled the family to issue an additional quantity of the Series B (shares) with the voting rights."

As it stands, a successful acquisition offer must be approved by 66.7 percent of Taubman Centers' shareholders. Taubman Centers says it can block the acquisition offer because the family and family allies have control over more than a third of the voting stock - more than enough to block the acquisition.

But three shareholder lawsuits filed in Oakland County Circuit Court make the argument that Taubman Centers has an obligation to consider the offer because the company is publicly held.

"You don't just say no when a company makes what appears to be a serious offer to purchase the company," said Powell Miller, a partner at Miller Shea P.C. in Troy. "You have a fiduciary obligation to examine the option to determine whether it's in the best interest of the shareholders to accept to the offer."

Miller represents Lionel Glancy, a shareholder who filed a lawsuit Nov. 14 in Oakland County Circuit Court.

While Forbes said Taubman is confident that its legal arguments will prevail in court and on Wall Street, the company wouldn't be defending itself from Simon Property if it were privately held.

Brent Snavely: (313) 446-0405, bsnavely@crain.com