

July 6, 1976

To Our Clients:

Tender Offers - New York Tender Offer Law
("Security Takeover Disclosure Act")

New York has joined (effective November 1, 1976, if signed by the Governor) the rapidly growing list of states with takeover laws. Like all the other state laws, the New York law is designed to protect incumbent management. Because there is no requirement that the New York Attorney General conclude within a specific time the statutory proceedings he is authorized to commence, for all practical purposes tender offers subject to the New York law are at the whim of the Attorney General. The New York law is subject to the same free preemption and burden on interstate commerce infirmities as the other state takeover laws. The following summarizes the New York law:

Targets Subject: Any New York corporation or any non-New York corporation having its principal place of business and substantial assets in New York.

Takeover Bid: Any tender offer which would result in offeror owing more than 5% of any class of equity security of target. Open market purchases are not covered. (There are special exemptions for securities dealers bids "in the ordinary course of his business of buying and selling such security", private placement exchange offers and offers to not more than 50 persons)

Prenotice Requirement: Twenty days prior notice to target and New York City office of New York Attorney General.

Prenotice Contents: Typical Williams Act disclosures plus three-year and most recent stub financials and Form 10-K type description of offeror's business and management.

Hearing: The Attorney General can conduct a hearing or investigation. "Fairness" of price is not an issue except to the extent that the Attorney General might argue - as he did in the Concord Fabrics case - that "fairness" of price is encompassed in the general proscription of fraud. The offer cannot go forward until the hearing or investigation is concluded.

M. Lipton