

November 29, 1976

To Our Clients:

Tender Offers

Two recent consent decrees obtained by the SEC illustrate the importance of careful drafting of the disclosures in Schedules 13D and 14D.

In SEC v. Rowland, Inc., Civ. No. 75-1122 (D.D.C.) 16% of the issuer's stock was acquired by a group consisting of officers of the issuer and the issuer's principal customer and its affiliates. The customer supplied the financing for the purchase by the issuer's officers. A 13D was filed by the customer and its affiliates stating that the purpose of the acquisition was "for investment and to create a closer affiliation" with the customer. The SEC complaint charged failure to disclose that "a purpose of the transactions were [sic] to insure that incumbent management of [issuer] continue in office and to prevent persons considered undesirable by incumbent management from obtaining control of [issuer]" and failure to disclose that the officers of the issuer were acting as a group with the customer and its affiliates.

In SEC v. Royal Industries, Inc., Civ. No. 76-2124 (D.D.C.) the complaint charged that the target of an announced tender offer failed to disclose substantial payments to the target's management which would be triggered by the offeror obtaining 25% of the target's stock and that a principal purpose of an acquisition agreed to after the tender offer was announced "was to interpose a potential antitrust obstacle to [the] proposed tender offer." While the complaint and consent decree were premised on disclosure violations of Section 14(d)(4) and Rule 14d-4, they call attention to the possibility that such defensive devices may give rise not only to disclosure questions, but also to questions whether they violate Section 14(e) and state law fiduciary duties.

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In Plantronics, CCH Fed. Sec. L. Rep. ¶ 80,774 (Avail. Sept. 27, 1976) the SEC took the position that changes in the management of a corporation that has filed a Schedule 13D which changes do not constitute a change of control of the corporation, do not require amendment of the Schedule 13D until such time as amendment is otherwise required.

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