

To Our Clients

Tender Offers; Target Sale of
Shares to Defeat Tender Offer

Oscar Gruss & Son v. Natomas Co., No. C-75-1869-CFP (N.D. Cal., Dec. 17, 1976) reached the opposite result from the Milgo case discussed in our memo of January 5, 1977. The Natomas case held that even where the primary purpose of a target selling unissued shares is to defeat a tender offer, there is no violation of Rule 10b-5. While the Natomas case is factually distinguishable from Milgo, it is clear that the Natomas court approached the question with a different attitude. We believe that Milgo is better law and that the trend will be that way. The key factual issue is and will be whether the primary purpose is to defeat a tender offer and, if so, whether that is justified by a legitimate and cogent corporate purpose.

M. Lipton