

August 30, 1978

To Our Clients:

The August 25, 1978 CAB preliminary decision in the National Airlines case may adumbrate a further significant change in the regulatory agency attitude toward takeovers. The Federal Aviation Act requires CAB approval for the acquisition of "control" or 10% or more of the voting stock of an air carrier. The CAB held that pending further consideration it would permit both Texas International Airlines and Pan American World Airlines to purchase up to 25% of National Airlines provided the holdings in excess of 10% are placed in "strict" voting trust.

The Babcock & Wilcox and Los Angeles Coca Cola Bottling situations last year involving the Atomic Energy Act and the Federal Communications Act, respectively, indicated regulatory agency and court reluctance to block a tender offer on the ground that the requisite statutory approval for transfer of control had not been obtained. However, those situations involved only part of the target's business being subject to such regulatory approval. The National Airlines decision reflects regulatory agency determination not to lose power over the ultimate transfer of control or merger question, but at the same time not to interfere with the securities markets and the ability of shareholders to sell at a premium. The issue is still open. The CAB decision on the voting trust question will be decided finally in about 30 days. The CAB has also given a rather pointed signal that no matter what its decision on the voting trust question, it has great reservation with respect to airline mergers from the antitrust and public interest standpoints.

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