

October 25, 1978

To Our Clients

Takeovers; Shark Repellent Provisions

The SEC will look askance at proxy material for shark repellent provisions.

In SEC Release No. 34-15230 (October 13, 1978) the SEC sets forth its views as to required proxy statement disclosures with respect to shark repellent provisions. In general the SEC will require explicit statements with respect to the negative impact on the shareholders and the benefits to management. The release details the nature of the disclosures the SEC will demand with respect to super-majority voting provisions, staggered boards, special classes of voting stock, and other shark repellent provisions.

While the release does not establish new disclosure requirements, it does serve to emphasize the negative aspects of shark repellent provisions. First, except in rare situations of companies that would be attractive to bootstrappers they are not a real practical deterrent to a takeover attempt. Second, they cast doubt on the legitimacy of rejection of takeover proposals that might be received in the future. Third, they advertise that the company fears that it is a takeover candidate. Fourth, there is danger (particularly where there are large institutional holdings) that they will not receive the requisite vote and thereby advertise that the shareholders are receptive to a takeover. Fifth, there are questions as to their legal validity. Sixth, they mislead management into a sense of false security.

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