

December 3, 1979

To Our Clients:

The New Tender Offer Rules

The SEC has announced the adoption of new tender offer rules. The new rules will take effect in early January, 1980. They are detailed and broad-ranging. A notable aspect, and one pointed out in the SEC's release, is the extent to which they conflict with, and thereby appear to preempt, the state takeover statutes.

The SEC has also published for comment amendments to the new rules. These would add a definition of "tender offer," which the SEC has until now consistently treated as a question to be left to judicial interpretation (although it had formulated criteria for judicial guidance, see our memoranda of September 29, 1978 on the Kennecott case, May 29, 1979 on the Brascan case and June 12, 1979 on the Hoover case); replace Rule 10b-13 with a new rule dealing with purchases outside a tender offer; enlarge the Williams Act requirements for equal treatment of target security holders; and prohibit certain trading in target securities on the basis of non-public information about a proposed or ongoing tender offer.

Attached is a memorandum which summarizes the SEC's actions and details their more important aspects and effects. They constitute a major revision of tender offer law. The extent to which they will significantly impact current acquisition strategy will emerge as the business, financial and legal communities gain experience in working with the new rules.

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