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To Our Clients:

Bust-Ups and Staggered Boards

Current takeover activity has moved from the cash tender offer of the 1970's to the Icahn-Marshall Field type of bust-up. Staggered election of the board of directors and super-majority merger votes or other shark repellents have proved not to be effective in deterring cash tender offers. However, in many cases a staggered board may be effective in deterring a bust-up. We are currently advising our clients to consider the desirability of a staggered board.

We believe that in the current climate institutional and other professional investors will view a staggered board proxy solicitation differently than one for shark repellents. Bust-ups are detrimental to all shareholders. Initiative and timing are usurped by the raider. If a white knight search must be rushed, the price may be much less than otherwise obtainable. A staggered board is an effective way to assure sufficient time to cope with a bust-up. A staggered board does not prevent or even seriously deter a tender offer or other real takeover transaction.

We believe that there are no legal or practical problems in adopting a staggered board. Indeed, we believe that directors have a duty to protect against creeping takeovers so as to be sure that the shareholders are not deprived of a premium price for the change of control which usually follows an accumulation of more than 10%.

While heretofore we felt that the disadvantages outweighed the advantages, we now feel that in many cases a staggered board is appropriate.

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