

July 27, 1982

To Our Clients

Tender Offers

Two recent decisions reaffirm important points.

Polinsky v. MCA, Inc., 14 BNA Sec. Reg. & Law Rep. 1289 (9th Cir., July 8, 1982) holds that there is no duty on the part of a tender offeror when it makes pre-offer open-market purchases to disclose its intention to make an offer in the future and that such purchases are not part of the subsequent tender.

Billard v. Rockwell Int'l Corp., 14 BNA Sec. Reg. & Law Rep. 1290 (2nd Cir., June 30, 1982) holds that so long as there is full disclosure the federal securities laws do not regulate "fairness" of a tender offer and that where an insider makes a tender offer and simultaneously discloses favorable target information, even assuming that the tender offer "caps" the market price of the target stock, such action is not a violation of the federal securities laws -- there is no obligation to await market reaction to disclosure of favorable information before announcing a tender offer.

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