WACHTELL, LIPTON, ROSEN & KATZ June 18, 1986

To Our Clients:

Takeovers - Where Do We Go From Here

There have been dramatic changes in takeover activity during the past year:

- lower interest rates and inflation expectations have caused a general repricing away from minerals and fixed assets
- the decline in the price of oil has brought a halt to the oil industry bust-ups
- the run-up in stock market price-earnings ratios has eliminated many of the bargains sought by the takeover entrepreneurs
- loan portfolio problems and capital requirements have slowed bank mergers while at the same time accelerating interstate banking through rescue efforts
- the pending new tax law has created uncertainties that have had a significant dampening impact on acquisitions
- antitrust policy no longer discourages vertical and conglomerate mergers and horizontal mergers are easier
- the availability of virtually unlimited junk bond and bank financing has raised the target size threshold from less than a billion to six billion; indeed, for the right bargain, there is probably no limit on boot-strap financing
- takeover entrepreneurs and arbitrageurs command tens of billions of capital and have the ability to put large companies in play and acquire enough stock to force either a white knight deal or a radical restructuring

- if presented with a proposal that would result in a takeover premium, institutional investors will vote against management and in favor of the takeover proposal

- the market continues to favor simplification, redeployment and leverage thereby spawning more LBOs, management recapitalizations and voluntary disaggregations and restructurings

- gaps in regulation permit dawn raid type open market accumulations thereby encouraging takeovers

- conflicting and confusing court decisions with respect to directors responses to takeover situations, the resultant fear of personal liability and the D&O insurance crisis, have (needlessly in our opinion) made some boards more amenable to forcing a deal rather than fighting to remain independent

- American advisors have become involved in the heightened takeover activity in Canada and England

- intensive cultivation of the Japanese market and the accumulation of dollars in Japan, portends a significant increase in Japanese acquisitions of American companies, including unfriendly takeovers

- the repricing of equities and the large arbitrage market are likely to encourage future equity exchange offers

- the poison pill has been adopted by about 200 major corporations and has proved to be effective; legislation modeled on the pill has been adopted in New York and several other states

- there is a growing movement toward nonvoting, light voting and scaled voting capitalizations; this is an area in which there will be significant activity in the next two years

- the Administration is heavily pro takeover and there is a growing pro takeover attitude in the federal courts.

The bottom line of all this is a continued high level of takeover activity and an absolute necessity that all companies, no matter what their size, remain prepared to deal with takeovers.

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