

October 4, 1988

To Our Clients:

The Flip-In in New York

The Appellate Division of the New York Supreme Court today affirmed -- without opinion -- a lower court decision in the Irving Bank case invalidating under New York law the flip-in provision of a poison pill. In view of the importance of the issue, the absence of any opinion by the Appellate Division is difficult to interpret. We continue to hold the opinion that the flip-in is valid under New York law, as well as Delaware law. Accordingly, while recognizing that a New York court, despite the severability clause in the poison pill, might invalidate the whole pill and not just the flip-in provision, until there is a definitive decision by the New York Court of Appeals, we will continue to recommend inclusion of a flip-in provision in pills of New York corporations. The flip-in is a vital protection against street sweeps, partial tender offers and open market creeping tender offers. In our opinion, its benefits outweigh the problem created by this adverse court decision.

M. Lipton