

To: Linda Quinn
From: Martin Lipton

Date: February 28, 1983
UNITED STATES SECURITIES AND EXCHANGE COMMISSION
RECEIVED

Re: SEC Advisory Committee on Tender Offers MAR 4 1983

OFFICE OF ASSOCIATE DIRECTOR
DIVISION OF CORPORATION FINANCE

The preliminary material prepared for the Advisory Committee on Tender Offers notes a number of specific regulatory issues. While each of these issues is of some independent significance, it is important to recognize that each is subsidiary to one or more of three major policy issues. A logical and attractive solution to any one of the specific issues, considered by itself and not in the context of overall policy objectives, may have the diametric opposite result from that which is desired from an overall policy standpoint. While the tensions among the major policy considerations will frequently complicate the process, the direction one chooses on the major policy issues can and should determine the answer to each of the specific issues.

The following outline of the major policy issues and the specific issues they impact may be helpful:

A. Equality of Treatment of Shareholders

vs.

Innovation in Acquisition Techniques

1. Market Accumulations ("creeping tender offers")
2. Partial Bids
3. Two-Tier and Front-End-Loaded Bids
4. Sale of Control at a Premium
5. Same Consideration to All Shareholders
6. Greater Disclosure
7. Longer Offer Period or Pre-Offer Notice
8. Arbitrage Techniques ("short tenders")
9. Saturday Night Specials, Dawn Raids
10. Management Buyouts and Use of Employee Benefit Plans

B. Chilling of Bids and Facilitating Long-Term Planning

vs.

Auction of Companies and Discipline of Management

1. Bidder Shareholder Approval
2. Lock-Ups
3. Big Brother Block Placements
4. Standstills and No-Raid Pacts
5. Longer Offer Period or Pre-Offer Notice
6. Scorched Earth
7. Golden Parachutes
8. Shark Repellants
9. Preemption of State Regulation
10. Regulated Industry-Approval of Change of Control

- C. Restricting Concentration of Power and
Regulation of Big Business
vs.
Discipline of Management and Free Market in Companies
1. Antitrust
 2. Tax
 3. Finance
 4. Regulated Industry--Approval of Change of Control