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March 7, 1983

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
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MAR 8 1983

OFFICE OF ASSOCIATE CHIEF OF
DIVISION OF CORPORATION FINANCE

Ms. Linda C. Quinn
Associate Director
Corporations Finance Division
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

SEC Advisory Committee on Tender Offers

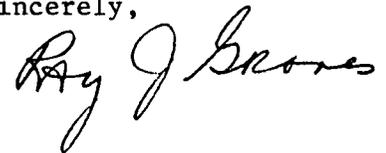
Dear Ms. Quinn:

Based on the "Very Preliminary Outline of Issues", the Commission's February 28 Press Release and the Committee Membership, I believe accounting treatment has properly been classified as a "second-tier" issue. The identified main issues exist whether or not the accounting treatment is considered.

There are, however, several legitimate issues involving accounting treatment, financial disclosures and federal income taxes. Whether the SEC Advisory Committee on Tender Offers has the time, inclination or charter to cover these issues is not known to me at this time. In that spirit, enclosed is a list of six suggested issues about accounting, disclosures and income taxes.

My present schedule will permit me to attend four of the five tentatively scheduled meetings mentioned in Chairman Shad's February 18 letter (I expect to be out of the country on April 15). My partner, Gary Zell, a former SEC Accounting Fellow, will be working with me and attending the Committee meetings. I look forward to meeting you on March 18.

Sincerely,



RJG:pjd
Enclosure

Suggested Questions
SEC Advisory Committee on Tender Offers

I. Accounting, Federal Income Taxes and Disclosures

A. Accounting standards provide two methods for reporting business combinations ("purchase" and "pooling of interests"). These methods are not alternatives for reporting a transaction. When certain criteria are met (e.g., 90% common stock, restrictions on treasury stock transactions) the combination is reported as a pooling of interests (restatement of prior financial reports as if the companies had always been combined). Accounting standards are established by the private sector body, the Financial Accounting Standards Board ("FASB").

1. Do the accounting requirements for reporting business combinations affect the tender offer process?
2. Should there be two accounting methods (purchase and pooling of interests) for reporting business combinations?
3. Are the various criteria to use pooling accounting too narrow (e.g., 90% common stock, restrictions on treasury stock transactions)?

B. Accounting standards for reporting investments in other enterprises (1) permit consolidation when over 50% of voting control is held, (2) generally require equity accounting for 20% to 50% investments and (3) generally require using the cost method (only reporting dividends received as income) for investments of less than 20%.

1. Do the accounting requirements for reporting investments in other entities influence the tender offer process?
2. Should consolidation of other entities continue to be permitted when over 50% of voting control is held or should there be additional limitations on consolidation?
3. Should equity accounting be continued for investments of 20% to 50% of an investee's stock?

C. Rulings from the Internal Revenue Service are frequently requested in connection with tender offers because of the complicated tax provisions for mergers. It may take from two to twelve months to obtain the IRS response and, for some complicated requests, the IRS declines to issue a ruling. Should all governmental agencies, including the IRS, be required to coordinate their responses to a tender offer and to respond in a timely manner? (This issue could be a subissue to item I-D-2 on the preliminary outline.)

- .. Should IRS be required to respond within a specified time frame on a ruling request involving a tender offer for a public company?
 2. Should IRS be required to rule on certain substantive tax questions such as the status of "debt vs. equity" for the consideration used in the acquisition of a public company?
- D. There are a number of special tax provisions that were enacted to prevent abuses in using private companies to convert ordinary income into capital gains income and to restrict tax free mergers. Should these provisions apply to tender offers of public companies?
1. The "collapsible" corporation rules prevent using a corporate structure to convert ordinary income activities such as movie production and real estate development into capital gains. The "collapsible" corporation tests regarding appreciated assets constructed in the last three years may result in the target company's shareholders being taxed on their gains at ordinary tax rates, a result not intended. Substantial professional effort is sometimes required to avoid this result.
 2. Part stock and part cash transactions may result in a gain to the extent cash is received. If the cash distribution is substantially pro rata, the IRS and some courts have held that it is ordinary income. This is because of code provisions designed to prevent companies from distributing cash using redemption and reorganization techniques in lieu of declaring dividends.
 3. Should the tax provisions for taxable and tax-free mergers be changed so that acquisitions which are similar in substance are treated similarly for tax purposes to the exchanging shareholders? Should highly technical rules which govern the tax-free acquisition provisions of the Code be eliminated, e.g., the "solely-for-voting-stock" requirement in stock-for-stock reorganization exchanges? Should these be changed so that minor amounts of cash do not prevent tax-free treatment? Or should they be the same as the pooling of interests accounting provisions?
- E. Some tender offers and proxy statements discuss tax issues at length and others refer shareholders to their own advisors. Should there be a greater disclosure of tax effects of the transaction and other pertinent tax facts in tender offers and proxy statements?
1. Should an opinion be required of competent tax advisors on the probable tax consequences to the shareholders and the corporations?

2. If there is a risk of ordinary income treatment to some or all shareholders, should there be required disclosure of (i) tax earnings and profits per share, (ii) how exchange treatment is determined for tax purposes, (iii) possible alternatives to the shareholders (e.g., sale of stock on the market to avoid this risk).
- F. In two-tier offers the initial offer to shareholders generally does not include any pro forma financial information. The registration and proxy statements used for the exchange of securities in the second tier include pro forma financial information, but are not available until after the deadline for responding to the first offer. When a two-tier offer is made, should pro forma information be required in the initial offer to reflect the interests of the residual security offered to the second-tier? Should pro forma information only be required in the initial offer when the front end and back end have expected values that differ by a certain percentage?