



**SECURITIES AND
EXCHANGE COMMISSION**
Washington, D. C. 20549

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EMBARGOED

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For Release at 6:00 A.M., March 28, 1984

COMMISSION TO TESTIFY ON TENDER OFFER PROPOSALS

Chairman John S.R. Shad will testify before the House Subcommittee on Telecommunications, Consumer Protection and Finance on the Commission's positions regarding the recommendations of its Advisory Committee on Tender Offers at 1:00 P.M., March 28, 1984.

The Commission has concluded that its views on six recommendations require federal legislation and 14 can be implemented under existing rule-making authority. No formal action is required on the remaining recommendations endorsed by the Commission.

The Commission generally concurs in the Committee's broad policy findings that when conducted in accordance with the laws necessary to protect shareholders and the markets, tender offers add to the liquidity and efficiency of the national markets, facilitate the transfer of corporate control and therefore are a valid method of capital allocation.

On the basis of these general findings, the Commission reiterates its endorsement of the principles of shareholder protection and neutrality that underlie the Williams Act. It agrees with the Committee that regulation should not favor either bidders or targets, but rather should be designed to protect investors and the integrity of the markets against

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fraud, non-disclosure of material information and creation of situations in which a significant number of reasonably diligent small shareholders may be at a disadvantage to market professionals.

Other general principles supported by the Commission were the findings that although takeover regulation should continue to be a federal matter, the internal affairs of the participants should continue to be governed by state law except where federal intervention is necessary to remedy abuses and frustration of federal takeover legislation. In this regard, the Commission urged a stricter application of the business judgment rule that would take into account the potential conflicts between management and shareholders in change of control situations.

The Commission will support legislation:

- To close the 10-day window period that exists in current requirements to report holdings of more than 5% of a class of a company's registered equity securities;
- To bar adoption of change of control related compensation ("golden parachutes") during a tender offer;
- To prohibit a tender offer by a target company for its own shares in defending against another bid;
- To require shareholders' approval of the issuance by a target of more than 5% of a class of securities during a tender offer; and

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- To require shareholders' approval of the repurchase by a recently accumulated block of stock at a premium to market.

Included in the recommendations for which the Commission intends to initiate rulemaking are the following:

- Rule amendments to minimize the regulatory disincentives for exchange offers to make them more competitive with cash tender offers;
- Changes in the timing provisions for tender offers to provide additional withdrawal and prorationing rights, to extend the offer for an increase in the number of shares sought as well as an increase in the price, and to eliminate automatic extension of withdrawal rights upon commencement of a competing offer;
- A requirement that the target company turn over its shareholder lists to a bidder or dissident shareholder within a certain period;
- A new section in the proxy statement to contain information about the issuer's change of control related policies; and
- A prohibition of short, hedged and multiple tendering in partial tender offers.

The Commission reserved for further study the effects of partial and two-tier offers and the Advisory Committee's recommendation that partial tender offers last two weeks longer than offers for all of the shares.

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Chairman Shad established the Advisory Committee on February 25, 1983 to review takeover techniques and the laws applicable to such transactions. The eighteen distinguished members of the Advisory Committee included fourteen members of the business and financial community and the legal and accounting professions, who have been actively involved in numerous tender offers as institutional investors, bidders, targets, arbitrageurs, investment and commercial bankers, attorneys and accountants, two academicians who have written extensively on the subject, a former Supreme Court Justice and a former state securities commissioner.

The Advisory Committee presented its report to the Commission on July 8, 1983. The 50 recommendations in the report addressed many aspects of the current laws governing takeovers. The Commission's staff has studied those recommendations since they were received and the Commission met in open session on March 13, 1984 to arrive at positions on each of the proposals (see SEC News Release 84-10). On the basis of that review, the Commission concurs in 34 of the Committee's proposals. The Commission supports another 13 recommendations with certain qualifications. Six proposals have been rejected, while three others will receive further study. The breakdown applies in certain cases to subparts of recommendations.

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