



OFFICE OF THE
GENERAL COUNSEL

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Pitt
my binder-
briefs

January 25, 1977

The Honorable Edward Weinfeld
United States District Judge
United States Courthouse
New York, New York 10007

Re: Applied Digital Data Systems, Inc. v.
Milgo Electronic Corp., et al., S.D.N.Y.
No. 76 Civ. 5454 (E.W.)

Dear Judge Weinfeld:

We have been advised by counsel for the plaintiff in the above-captioned action that this Court has requested counsel to solicit the views of the Commission on the issue of whether, and under what circumstances, a federal district court in an action under the federal securities laws, may require a company to provide a tender offeror for that company's shares with a list of the company's shareholders. The Commission has considered this question and has authorized me to send you this letter expressing its views.

The federal securities laws do not now expressly impose an obligation on a target company to provide a list of shareholders to a tender offeror seeking to acquire that company's shares. The Commission, however, has proposed, for public comment, a new Rule 14e-1 pursuant to the Williams Act provisions of the Securities Exchange Act of 1934, which would, under certain circumstances, impose such a requirement on a company whose shares are the subject of a tender offer. See, Securities Exchange Act Release No. 1267, CCH Fed. Sec. L. Rep. ¶ 80,659 (Aug. 2, 1976). 1/ The Commission

1/ In an analogous context, the Commission's Rule 14a-7 (17 C.F.R. 240.14a-7), adopted under the proxy provisions of the Securities Exchange Act, requires the management of an issuer, when it has made, or intends to make, a solicitation for proxies, to provide a shareholders' list to a shareholder who requests it.

The Honorable Edward Weinfeld
Page Two

proposed such a rule in the belief that it would further the Williams Act philosophy of providing shareholders of a target company with all available material information and of assuring that contests for control are fair. 2/

In adopting the Williams Act, Congress evidenced a concern with the need to protect, and to place on an equal footing, all participants in the marketplace, including persons who make tender offers, current stockholders and potential investors. 3/ Despite the absence, at this time, of an express requirement that shareholders' lists be provided upon request to tender offerors, the Commission believes that, under certain circumstances, a court may direct, as an appropriate form of relief in an action brought under the Williams Act provisions, that a shareholders' list be provided. See, Mesa Petroleum Co. v. Aztec Oil & Gas Co., 406 F. Supp. 910 (N.D. Tex., 1976).

Courts of equity have traditionally been held to have the power to shape full relief once the jurisdiction of the court is properly invoked, 4/ and this principle has been applied in actions under the federal securities laws. 5/ The Supreme Court has recognized this in Mills v. Electric Auto-Lite Co., 396 U.S. 375, 391 (1970), where the court noted that it "cannot fairly infer from the Securities Exchange Act of 1934 a purpose to circumscribe the courts' power to grant appropriate remedies." Accord, J. I. Case Co. v. Borak, 377 U.S. 426, 433 (1964).

2/ See, S. Rep. No. 550, 90th Cong., 1st Sess. 3 (1967); H.R. Rep. No. 1711, 90th Cong., 2d Sess. 4 (1968).

3/ See, Senate Committee on Banking and Currency, Hearings Before the Subcommittee on Securities on S.510, 90th Cong., 1st Sess. 70-71 (1967).

4/ See, e.g., Pomeroy, Equity Jurisprudence, §§ 114-115, 181, 231, 236(a), 239(a) (5th ed., 1941).

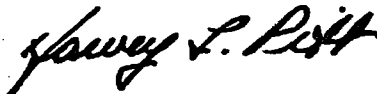
5/ See, e.g., Securities and Exchange Commission v. Manor Nursing Centers, Inc., 458 F.2d 1082 (C.A. 2, 1972).

The Honorable Edward Weinfeld
Page Three

Hence, it follows that, when a court determines that it is appropriate in an action under the Williams Act, it is empowered to shape full relief in light of the harm to the plaintiff and consistent with the overall purpose of the Williams Act. We believe, moreover, that, just as a court may issue a temporary restraining order or preliminary injunction where there has been an appropriate showing, a court may fashion other forms of relief on a temporary or interim basis to further the purposes of the statutory scheme under which the court's jurisdiction has been invoked. Where, for example, a target company has disseminated false or misleading information to its shareholders, it might be appropriate for the court to direct the company to distribute correcting literature of its own, or to distribute literature prepared by the tender offeror, or to provide the tender offeror with a shareholders' list so that the tender offeror may itself disseminate its literature.

The particular type of relief, if any, to be granted will depend upon the circumstances of each case, and the Commission takes no position on whether it is appropriate in this case for the Court to direct the target company to produce a copy of its shareholders' list.

Respectfully yours,



Harvey L. Pitt
General Counsel

cc: Counsel for all parties