

REPORT OF THE SUBCOMMITTEE ON  
BASIC OBJECTIVES

The Subcommittee on Basic Objectives, consisting of Joseph Flom, Robert Rubin and Martin Lipton (Chairman), submits the following report as its recommendations as to the basic objectives of federal takeover regulation:

1. Neutrality and Protection of Shareholders. Tender offer regulation should not favor either the bidder or the target, but should aim to achieve a reasonable balance while at the same time protecting the interests of shareholders and the integrity of the markets. Tender offer regulation should recognize that tender offers take place in a national securities market.
2. Innovation. Tender offer regulation should not unduly restrict innovations in tender offer techniques. These techniques should be able to evolve in relationship to changes in the market and the economy.
3. Scope of Regulation. Even though regulation may restrict innovations in tender offer techniques, it is desirable to have sufficient regulation to insure the integrity of the markets and to protect market participants against fraud, nondisclosure of material information and the creation of situations in which a significant number of small shareholders may be at a disadvantage to market professionals.
4. Relationship to Other Legislative Objectives.
  - (a) State Tender Offer Laws. State regulation should be confined to local companies -- for example, those incorporated in the state and with more than 50% of their shares within the state.
  - (b) State Regulation of Public Interest Businesses. Federal tender offer regulation should not preempt traditional state regulation of banks, utilities, insurance companies and similar businesses.
  - (c) Federal Regulation. Tender offer regulation should not override regulation of banks, broadcast licensees, railroads, ship operators, nuclear licensees, etc.

(d) Relationship with Other Federal Public Interest Regulation. Tender offer regulation should not be used to achieve antitrust, labor, tax, use of credit and similar objectives. Those objectives should be achieved by separate legislation or regulation.

5. Coordination with State Corporation Law. Except to the extent necessary to eliminate abuses or interference with the intended functioning of federal tender offer regulation, federal tender offer regulation should not preempt or override state corporation law. Essentially the business judgment rule should continue to govern most tender offer activity.
6. Elimination of the Present Bias Against Securities Tender Offers. Cash and securities tender offers should be placed on an equal regulatory footing so that bidders, the market and shareholders, and not regulation, decide between the two.
7. Periodic Abuses Should be Restricted. The evolution of the market and innovation in tender offer techniques may from time to time produce abuses such as "greenmail." Tender offer regulation should be flexible to allow the SEC to deal with such abuses as soon as they appear.