



SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

January 17, 1986

The Honorable Timothy Wirth  
Chairman  
Subcommittee on Telecommunications,  
Consumer Protection and Finance  
U.S. House of Representatives  
B-331 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Wirth:

At the October 1985 hearing, I indicated that shortly after two vacancies on the Commission were filled, the Commission would review the multiple issues that corporate takeovers raise. The vacancies have been filled and on January 9th, the five-member Commission: a) proposed legislation to reduce the 13D ten day window to two days; b) adopted rules that place issuer tender offers on the same time schedules as third-party tender offers; c) proposed revised "best price" rules; and d) approved publication of a concept release, soliciting comments on whether to regulate: i) acquisitions of substantial shareholdings once a conventional tender offer has commenced; ii) "poison pills"; and iii) whether to permit corporate self-governance through shareholder approved charter amendments of certain requirements under the Williams Act. The Commission also unanimously concluded that the marketplace and the state and federal courts are adequately addressing other takeover issues described below.

Specific Commission actions were as follows.

- 1) The Commission approved a revised legislative proposal that would reduce the current ten calendar day period to two calendar days for the filing of initial beneficial ownership reports (13Ds). This proposal will enhance prompt disclosure of rapid accumulations of securities. The "standstill" provision of the Commission's previous 13(d) legislative proposal was deleted.
- 2) The Commission adopted amendments to conform certain time period requirements governing issuer tender offers to those governing third-party tender offers. Under these amendments, identical time periods for minimum offering periods (twenty business days), withdrawal rights (an initial period of fifteen business days and ten business days after commencement of a competing bid), and proration rights (throughout the period the offer remains open) will apply to issuer and third-party tender offers.

- 3) The Commission approved publication of a release proposing that the previously proposed "best-price" rule be revised to provide:
  - that all holders must be paid the highest consideration paid (as opposed to offered) to any security holder. The proposed amendment responds to concerns that bidders be permitted to reduce their bids in response to target company actions that reduce the value of the target's shares, or for other reasons, so long as shareholders are assured adequate notice and opportunity to act on the revised bid;
  - that upon announcement of a decrease in the consideration offered or securities sought, withdrawal rights must be extended throughout the offer (but not reopened upon commencement of a competing bid), or in an alternative proposal, for an additional ten business days;
  - that a tender offer must remain open for at least ten business days upon announcement of an increase or decrease in the percentage of securities sought. The Commission concluded that such a change is economically comparable to a change in the consideration offered, and that shareholders should be provided the same time to respond to such amended offers.
- 4) Final action on the "all holders" proposals for third-party and issuer tender offers was deferred until the Commission considers adoption of the revised "best price" rule.
- 5) The Commission instructed the staff to prepare for publication a concept release seeking public comment on possible approaches to certain takeover related activities. Specifically, the concept release will address the following topics:
  - whether after commencement of a conventional tender offer, substantial acquisitions of a target company's securities by any person, including the issuer and any previous bidder, should also proceed by a tender offer subject to the Williams Act.

- recent developments in the evolution of "poison pills" and whether legislation or regulation in response to those developments is appropriate.
  - the possible reliance on corporate self-governance mechanisms as a means of introducing greater flexibility into takeover regulation. In particular, the release will explore the merits and drawbacks of a) permitting an exclusion from the pending all-holders rule for corporations whose stockholders vote to amend their charters so as to provide for such an exclusion, and b) permitting corporations to modify other provisions of takeover regulations in accordance with shareholder-approved resolutions.
- 6) The Commission instructed the staff to meet with each Commissioner and determine whether there is a sufficient consensus on a definition of the term "tender offer" to warrant another attempt to codify the term.
- 7) The Commission also considered a variety of offensive and defensive takeover tactics and issues, and unanimously concluded that the marketplace, and state and federal courts are adequately addressing these issues. The Commission therefore determined not to take or recommend actions that would:
- a) require that, after a person acquires a specified percentage of an issuer's securities, subsequent acquisitions may only be effected by means of a tender offer, whether for any or all of the shares [The Commission concluded that this approach is not necessary for the protection of shareholders and impedes legitimate open-market purchase programs];
  - b) require that, before commencing a tender offer, a bidder must obtain approval of its own shareholders [The Commission concluded that this is properly a matter for state law];
  - c) require that, before commencing a tender offer, the bidder must submit its offer to the target's board, and that if a majority of the independent directors do not approve the offer, it must be submitted to the target's shareholders, and that pending their decision, the target company would be prohibited from taking any defensive actions [The Commission concluded that this approach is not necessary for the protection of shareholders and that there is insufficient justification to preempt state law];

- d) require that, in partial tender offers, target shareholders be provided the opportunity to vote for or against the tender offer at the same time that they tender their shares [The Commission concluded that partial tender offers do not require special regulations];
- e) prohibit or limit "two-tier" or partial tender offers [The Commission noted, among other things, the decline in two-tier offers to two in 1985];
- f) prohibit or further regulate antitakeover charter and by-law amendments [The Commission concluded that full disclosures and shareholder approvals are adequate protections of shareholder interests, and that there is insufficient justification to preempt state law];
- g) prohibit the granting of "golden parachutes" [The Commission noted among other things, the changes in taxation of "golden parachutes" and the availability of remedies under state law, and concluded that there is insufficient justification to preempt state law];
- h) prohibit "lock-ups" by target companies [The Commission noted among other things, the recent judicial decisions in the Pantry Pride-Revlon and SCM-Hanson contests and concluded that the courts can adequately address lock-ups on a case-by-case basis];
- i) prohibit "greenmail" transactions [The Commission concluded that market forces, shareholder litigation, and corporate adoption of anti-greenmail provisions are adequately addressing this issue];
- j) require that bidders have "firm" financing commitments prior to commencing tender offers [The Commission noted, among other things, the multiple conditions to "firm" financing commitments, as well as the other terms of tender offers, and determined to continue to rely on full disclosure of such terms and conditions];
- k) prohibit or limit the use of below investment grade securities ("junk bonds") to finance tender offers [The Commission rejected "merit regulation" of such securities and supported continued reliance on full disclosure];  
and

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- 1) regulate arbitrageur activities differently than the activities of other market participants [The Commission concluded that existing laws are adequate to regulate arbitrage activities].

The concept release will be provided as soon as it is available. The legislative proposal will be sent to Congress in the near future.

Sincerely yours,



John Shad

cc: The Honorable John D. Dingell  
The Honorable James T. Broyhill  
The Honorable Matthew J. Rinaldo  
The Honorable Jake Garn  
The Honorable Alfonse M. D'Amato  
The Honorable William Proxmire  
The Honorable Alan Cranston