ADDITIONAL CONSUMER PROTECTION IN CORPORATE TAKEOVERS AND INCREASING THE SECURITIES ACT EXEMPTIONS FOR SMALL BUSINESSMEN

HEARING

BEFORE THE

SUBCOMMITTEE ON SECURITIES

OF THE

COMMITTEE ON BANKING AND CURRENCY

UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

S. 336

A BILL TO AMEND SECTION 3(b) OF THE SECURITIES ACT OF 1933 TO PERMIT THE EXEMPTION OF SECURITY ISSUES, NOT EXCEEDING $500,000 IN AGGREGATE AMOUNT, FROM THE PROVISIONS OF SUCH ACT

S. 3431

A BILL TO EXTEND THE COVERAGE OF SECTIONS 13(d), 14(d), AND 14(e) OF THE SECURITIES EXCHANGE ACT OF 1934 IN ORDER TO PROVIDE ADDITIONAL PROTECTION FOR INVESTORS

MARCH 25, 1970

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ADDITIONAL CONSUMER PROTECTION IN CORPORATE TAKEOVERS AND INCREASING THE SECURITIES ACT EXEMPTIONS FOR SMALL BUSINESSMEN

WEDNESDAY, MARCH 25, 1970

U.S. SENATE,
COMMITTEE ON BANKING AND CURRENCY,
SUBCOMMITTEE ON SECURITIES,
Washington, D.C.

The subcommittee met at 10:10 a.m. in room 5302, New Senate Office Building, Senator Harrison A. Williams, Jr., chairman of the subcommittee, presiding.

Present: Senators Williams, Bennett, and Packwood.

Senator WILLIAMS. The meeting of the Subcommittee on Securities of the Banking and Currency Committee will come to order.

Today the subcommittee begins hearings on S. 3431, a bill to provide additional investor protection in corporate takeover bids. The subcommittee will also consider S. 336, a bill to increase the Small Business Securities Act registration statement exemption from $300,000 to $500,000.

During the 90th Congress I introduced legislation which has been enacted to protect small investors who get caught in the crunch of corporate takeover bids. My legislation for the first time established full disclosure requirements for any person who accumulates or who seeks to accumulate 10 percent of the stock of a corporation. Over the last 2 years this act has worked well in lifting the veil of secrecy that had previously surrounded tender offers; however, in my opinion, certain legislative adjustments have now become necessary.

Anyone who reads the financial press is aware of the increase in corporate takeovers and the rise of conglomerate corporations. Between August 1968 and April 1969 there were 243 filings made with the Securities and Exchange Commission announcing proposed tender offers. In addition, there were 188 acquisitions of more than 10 percent of a company's stock. The dollar amount for tender offers alone was $1.45 billion.

Ten percent of the stock of large corporations, indeed even 5 percent, can involve large amounts of money and can have a significant impact on corporate control.

The SEC has also informed me of a recent tendency of people contemplating a takeover to terminate their acquisition at the 9 percent level in order to avoid compliance with the act's requirements. Here the need for the full disclosure provisions of the Securities Exchange Act are of the utmost necessity if we are to have adequate investor protection.

S. 3431 would extend the protection of tender offer legislation to acquisitions of over 5 percent of a company's stock. It would also extend coverage to shareholders of publicly held insurance companies who are currently at the mercy of secret takeover bids. This disparity in consumer protection is unwarranted and should no longer be tolerated.

Section 4 of S. 3431 gives the Commission rulemaking power with respect to fraudulent, deceptive and manipulative activities used in tender offers. The techniques currently being used in these offers have become increasingly sophisticated and they change rapidly. This is particularly true when the takeover is resisted by incumbent management. In some instances industrial warfare occurs.

Claims and counterclaims, charges and countercharges are hurled back and forth. Efforts are made to influence the price of the securities involved.

The bill before us would add to the Commission's rulemaking power and enable it to deal promptly and with flexibility with this rapidly changing problem.

The second bill to be heard this morning is S. 336. This bill would increase the exemption under section 3(b) of the Securities Act from $300,000 to $500,000. The purpose of section 3(b) is to exempt small business from the expensive and time-consuming efforts involved in filing a full registration statement. It was intended to aid small businessmen in raising the necessary funds for plant expansion, increasing their inventories and for other worthwhile purposes.

The present figure of $300,000 has been in the act since 1945. During the past 25 years costs have continued to rise throughout the economy. Obviously $300,000 has far less purchasing power today than it did back in 1945. This is an appropriate time for the Congress to examine the statutory ceiling to determine what, if any, increase may be required in order for this exemption to fulfill its original purpose.

We will insert copies of the bills and relevant reports at this point in the record.

(The information follows:)

91ST CONGRESS
1ST SESSION

S. 336

IN THE SENATE OF THE UNITED STATES

JANUARY 16 (legislative day, JANUARY 10), 1969

Mr. SPARKMAN (for himself, Mr. BENNETT, Mr. FULBRIGHT, Mr. HATFIELD, Mr. MCINTYRE, Mr. MONDALE, Mr. NELSON, and Mr. WILLIAMS of New Jersey) introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

A BILL

To amend section 3 (b) of the Securities Act of 1933 to permit the exemption of security issues, not exceeding $500,000 in aggregate amount, from the provisions of such Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 (b) of the Securities Act of 1933 (15 U.S.C. 77c. (b)) is amended by striking out "$300,000" and inserting in lieu thereof "$500,000".

II

MEMORANDUM OF THE SECURITIES AND EXCHANGE COMMISSION

S. 336 would amend Section 3(b) of the Securities Act of 1933 [15 U.S.C. 77c (b)] so as to increase the maximum aggregate amount of securities of certain issuers offered to the public, which may be exempted from registration under the Act pursuant to rules and regulations of the Securities and Exchange Commission, from $300,000 to $500,000. The Commission would support enactment of this amendment for this reasons set forth below.

Section 3(b) of the Securities Act of 1933, at the time of its enactment, authorized the Commission to exempt certain classes of securities if the total offering price of the issue to the public did not exceed $100,000. The Act was amended in 1945 to increase the limitation to $300.000. The legislative history of that amendment indicates that the primary reason for the increase was the desire of Congress to aid small business in raising necessary capital for the commencement or expansion of business, and it considered that $100,000 would, in many cases, be an inadequate amount for the accomplishment of such objectives in view of generally increased costs as compared to those existing when the Act was passed in 1933.

Since then, individual members of Congress, and members of the financial community, have suggested on numerous occasions the desirability of a further increase in such limitation. When the Act was amended in 1954, the bill which passed the Senate would have raised such ceiling to $500,000. However, no such provision was included in the bill which passed the House of Representatives. When the differences in the two versions were submitted to conference, the Conference Committee declined to accept the Senate version of the bill in this respect, and it was the Conference Committee's version which was enacted into law.

In the 24 years since the last amendment to Section 3(b) of the Act, costs have continued to rise throughout the economy, with the result that the $300,000 of 1945 has substantially less purchasing power today. In many cases, it is an inadequate amount to finance properly either a small established business seeking to modernize or expand, or a newly organized venture requiring a substantial amount of seed capital. In fact, statistics published by the Department of Commerce indicate that the average cost of business fixed capital in 1968 was 2.3 times the cost in 1945, so that it would take almost $700,000 now to purchase the same amount of capital goods which could have been bought in 1945 for $300,000. (Comparison of Table 8.1, page 159, "National Income and Product Accounts of the United States, 1929–1965", with Table 16, page 10 of March 1969 issue of "Survey of Current Business", both published by Office of Business Economics of the Department of Commerce.)

The $300,000 limitation also makes it more difficult for issuers to interest investment bankers in exempt offerings under Section 3(b) because the larger and more experienced investment banking houses are not interested in underwriting such small issues, partly because returns to them would not be commensurate with the effort needed to underwrite such an offering. Where an underwriter can be found, the underwriting commissions for these small issues run as high as 15% to 20% of the amount sold which, of course, reduces the funds available to the issuer of the securities. In times of increasingly tight money, banks and private sources may not be willing or able to provide adequate risk capital and, therefore, small business needs to have access to public financing.

Congress has indicated a continuing interest in promoting small business and new ventures and has provided several specific means of accomplishing this goal, such as Small Business Administration loans and Small Business Investment Company enabling legislation. The exemption afforded under Section 3(b) of the Securities Act of 1933 is looked upon as an important adjunct to existing legislation in this field. However, to be effective, it should be realistic and reflect current price levels. The increase from $300,000 to $500,000 in the exemption limitation proposed under S. 336 would appear to be a fair and modest increase when balanced against changes in purchasing power during the past 24 years. Therefore, the Commission feels that enactment of S. 336 at this time would be appropriate.

SMALL BUSINESS ADMINISTRATION,
Washington, D.C., November 24, 1969.

HON. JOHN SPARKMAN,
Chairman, Committee on Banking and Currency,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of January 29, 1969, for the views of the Small Business Administration with regard to S. 336, a bill "To amend section 3(b) of the Securities Act of 1933 to permit the exemption of security issues, not exceeding $500,000 in amount, from the provisions of such Act."

As you clearly indicated in your remarks in the Senate on January 16, 1969, S. 336 would increase from $300,000 to $500,000 the maximum public offering of securities which the Securities and Exchange Commission is authorized to exempt under the 1933 Act.

As you also pointed out, the initial maximum exemption contained in the Act was $100,000, and the 1945 increase to $300,000 indicated the intent of the Congress to aid small business concerns in raising necessary funds for business expansion.

Just as an increase from $100,000 to $300,000 was necessary and warranted in 1945, a similar increase to $500,000 is more than warranted at this time. The current purchasing power of the dollar is about one-third what it was in 1933, and is only about two-thirds of what it was in 1945. Too, the capital requirements of small businesses are much greater than they have ever been before, partly due to increased mechanization and to technological innovations.

All things considered, a $500,000 limitation on exempted offerings of securities today would provide about the same relative degree of limitation that the $100,000 figure provided in 1933. Thus, I would strongly favor enactment of S. 336.

Section 3(c) of the Securities Act of 1933 relates to a similar exemption of security issues of small business investment companies which the Securities and Exchange Commission (SEC) may prescribe, and the SEC has implemented that legislative policy in the issuance of Regulation E (17 CFR § 230.601 *et seq.*), which sets a maximum public offering limit of $300,000 which the SEC is authorized to exempt from certain filing requirements. While S. 336 will only amend section 3(b) of the Securities Act of 1933, which permits exemption of securities issues of small business concerns, as further implemented in SEC Regulation A (17 CFR § 230.251 *et seq.*), the Small Business Administration would hope that the enactment of S. 336 will be followed by an SEC amendment of Regulation E as well as Regulation A so as to keep the exemption for small business concerns and small business investment companies on a parity.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

HILARY SANDOVAL, JR., *Administrator.*

91ST CONGRESS
2D SESSION

S. 3431

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 1970

Mr. WILLIAMS of New Jersey (for himself and Mr. BROOKE) introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

A BILL

To extend the coverage of sections 13(d), 14(d), and 14(e) of the Securities Exchange Act of 1934 in order to provide additional protection for investors.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the part of paragraph (1) of subsection (d) of section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) which precedes clause (A) is amended—

(1) by inserting after "section 12 of this title" the following: ", or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of this title,"; and

(2) by striking out "10 per centum" and inserting in lieu thereof "5 per centum".

SEC. 2. The first sentence of paragraph (1) of subsection (d) of section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n (d) (1)) is amended—

(1) by inserting after "section 12 of this title," the following: "or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12 (g) (2) (G) of this title,"; and

(2) by striking out "10 per centum" and inserting in lieu thereof "5 per centum"

SEC. 3. Paragraph 8 of subsection (d) of section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n (d) (8)) is amended by striking out clause (A) and redesignating clauses (B), (C), and (D) as clauses (A). (B). and (C), respectively.

SEC. 4. Subsection (e) of section 14 of the Securities Exchange Act (15 U.S.C. 78n (e)) is amended by adding the following sentence at the end thereof: "The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative."

Senator WILLIAMS. We will begin appropriately this morning with the statement of the Chairman of the Securities and Exchange Commission, the Honorable Hamer H. Budge. Mr. Chairman, the committee welcomes you.

STATEMENT OF HAMER H. BUDGE, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION

Mr. BUDGE. Thank you, Mr. Chairman. I am delighted to be here under these circumstances.

Senator WILLIAMS. The feeling is mutual.

Mr. BUDGE. Mr. Chairman and members of the subcommittee, it is a pleasure for me to be here this morning to present the Commission's views on S. 3431, pertaining to certain amendments to the Williams bill, and S. 336, a proposal to increase the regulation A ceiling under the Securities Act of 1933.

I should like to begin today with a discussion of the amendments to the Williams bill, which became law on July 29, 1968. The subcommittee is to be congratulated in accomplishing this important reform in securing for the investing public additional protections in an area which has become increasingly significant in recent years.

The original legislation is now Public Law 90–439 and provides for disclosures with respect to substantial acquisitions of securities registered under the Securities Exchange Act and in connection with tender offers for such securities, together with protections against fradulent activities. It permits Commission regulation of corporations' purchases of their own shares and provides for disclosure in connection with changes of a majority of the board of directors in conjunction with acquisitions of securities and takeover bids. It also provides for the regulation of solicitations or recommendations to accept or reject the tender offer. Substantive protections for the public investor to whom the tender offer is directed are also provided, such as providing a limited time in which tendered securities can be withdrawn, a limited period during which securities must be taken up on a pro rata basis rather than a first-come, first-serve basis, and provisions that if the terms of a tender offer are varied by increasing the price it must afford the benefit of that increase to persons who have already tendered their securities.

Immediately after enactment of the legislation, the Commission adopted regulations pertaining to the form and content of the disclosures to be furnished and related matters. This was done since certain provisions in the legislation were not self-executing. I have a complete set of the pertinent regulations with me today if the committee would like to have them inserted in the record at this point.

Senator WILLIAMS. We would appreciate that, Mr. Chairman. They will be inserted in the record (see p. 38).

Mr. BUDGE. I neglected to state, Mr. Chairman, that seated with me at the table is Mr. Philip Loomis, the General Counsel of the Commission, and Mr. Charles Shreve, the Director of the Division of Corporation Finance.

Senator WILLIAMS. We welcome the two gentlemen.

Mr. BUDGE. As I have said before, our experience with the operation of the Williams bill has been most satisfactory. The quality of disclosure available to the investing public has been substantially improved in addition to providing important new protections concerning the terms of the tender offers. Since the enactment of the legislation through January 1970, filings relating to 96 tender offers and 382 acquisitions of securities have been made with the Commission and made available to the public. The 96 tender offers involved a total of $2.26 billion. If the committe wishes, I can submit for the record a table showing the names of the companies involved in the 96 tender invitations, as well as the dates and dollar amounts involved.

Senator WILLIAMS. That would be helpful. It will be included (see p. 16).

Mr. BUDGE. After this brief sketch, I would like to turn now to the specific amendments pending before you in S. 3431. The first section of the bill would amend in two respects section 13(d) (1) of Public Law 90–439, which section requires any person who acquires 10 percent or more of equity securities registered under the Securities Exchange Act or any equity security issued by a registered closed-end investment company to file with the Commission certain specified disclosures. These would include, for example, disclosures pertaining to the identity and background of the person who acquired such securities, the source and the amount of funds to be used, and the purposes for which the shares were acquired.

The first amendment to section 13(d) (1) would be to extend its coverage to insurance companies. The present law applies only to securities registered pursuant to section 12 of the Securities Exchange Act and to registered closed-end investment companies. The securities of insurance companies are not so registered by reason of the exemption contained in section 12g(2) (G) of the Securities Exchange Act for insurance company securities which are subject to specified State regulation.

The Commission, of course, does not wish to disturb the congressional decision reached in 1964 to leave reporting, proxy solicitation and the regulation of insider trading with respect to the securities of insurance companies to appropriate State authorities. As I had occasion to mention in my testimony before this subcommittee last March, however, it may well be that the considerations which resulted in leaving this latter type of regulation to the States may be inapplicable to tender offers. More frequent than not, tender offers are made on a nationwide basis and are not presently regulated by State insurance commissioners. Indeed, it might be quite difficult for a State commissioner to regulate a tender offer made from outside his State. While we do not know precisely the number of insurance companies to which the amendment would extend, we have information showing that for the calendar year 1969, 14 tender offers were made for shares issued by national insurance companies. I have this list with me today if you would like it to be included in the record.

Senator WILLIAMS. Again, we would be grateful for that material (see p. 26).

Mr. BUDGE. The second change in S. 3431, as it relates to section 13(d) (1), would be to reduce the 10-percent figure in that section to 5

percent. This would mean that the provisions of present law would be triggered at the 5-percent level instead of the present 10-percent level. The principal reason this change would be appropriate is that there is evidence that companies undertaking an acquisition, limit their prior purchases of stock in the open market to around 9 percent as a means of avoiding making disclosures to the investing public. Obviously, 10 percent of the securities of the larger corporations represents very large amounts of money.

Section 14(d), which was likewise added by Public Law 90–439, makes it unlawful to make a cash tender offer for securities subject to these provisions without filing with the Commission a statement containing essentially the same information as is provided for in section 13(d) and furnishing such part of this information as the Commission may require to security holders who are invited to tender their shares. Section 14(d) also contains provisions governing the terms of a cash tender offer.

The present bill, S. 3431, would eliminate the exemption contained in section 14(d) for exchange offers of securities registered under the Securities Act of 1933. The exchange offer is a situation where instead of offering cash for the securities of the target company, securities of the acquiring company are offered.

While registration under the Securities Act provides for disclosure and thus is an adequate substitute for the disclosures required by section 14(d), the substantive provisions of the bill as they relate to the terms of the cash tender are not applicable to exchange offers of securities nor does the bill at present provide for regulation of solicitations in opposition to such an exchange offer.

Our information shows that from the effective date of the bill through December 31, 1969, offerings of securities in exchange for other securities in the approximate aggregate amount of $18 billion were registered with the Commission. These offerings which are exempt from most of the provisions of the law, exceeded in number and in dollar amount the cash tender offers which are subject to existing law. We have noticed a tendency to use exchange offers when an attempt is made to take over large corporations which would be extremely difficult to finance by means of a cash tender offer. S. 3431, if enacted, would have the desirable result of extending the substantive and other protections of the Williams bill to the larger group of public security holders to whom such offers are made.

The final amendment contained in S. 3431 would be to Section 14(e). Existing section 14(e) prohibits false statements and fraudulent or deceptive practices in connection with tender offers, but it does not grant the Commission any rulemaking authority to deal with such practices. Section 4 of S. 3431 would add a sentence granting to the Commission rulemaking power to define and prescribe means reasonably designed to prevent fraudulent, deceptive and manipulative practices. The language in this amendment is identical with that contained in existing section 15(c)(2) of the Exchange Act, which grants the Commission rulemaking power with respect to fraudulent, deceptive or manipulative practices by brokers and dealers in transactions in the over-the-counter markets. The rulemaking power provided for by section 4 of the bill would enable the Commission to deal more effectively

with the devices sometimes employed by both sides in contested offers.

We have a further suggestion for amendment to section 13(e) of the Securities Exchange Act of 1934. This section authorizes the Commission to adopt rules and regulations with respect to purchases by certain issuers of their own securities. Subsection (e)(2) provides that a purchase by or for a person in a control relationship with the issuer, or a purchase by a person on behalf of the issuer is considered to be a purchase by the issuer for the purpose of the subsection. We suggest that the subsection be made subject to the authority of the Commission to adopt such rules and regulations as may be appropriate. It seems unnecessary to place on persons in a control relationship with the issuer all of the requirements, such as notice to shareholders and other restrictions, which may be appropriate for purchases by the issuer of its security.

Before turning to S. 336, Mr. Chairman, I would once again like to express the Commission's appreciation for the subcommittee's efforts in this important area and to offer to answer any questions which members of the subcommittee may have.

Senator WILLIAMS. Mr. Chairman, the American Life Convention and the Life Insurance Association of America have submitted a statement to the committee stating that S. 3431 would not be inconsistent with the 1964 act amendments since tender offers are not within the area wholly regulated by State commissioners (see p. 109).

I think that the statement from the Life Convention is borne out by your excellent statement here this morning. It should be abundantly clear that this is an area, as you suggest, where the tender offer would be on a national basis, where State regulation does not protect the shareholder. Is that right?

Mr. BUDGE. I think that is true, Mr. Chairman. I think it would be very difficult for a State insurance commissioner to control the type of thing we are talking about here this morning.

Senator WILLIAMS. We appreciate your precise statement and I join you as chairman of this subcommittee, in recommending this legislation.

I have one or two other questions. I wonder if you could give the committee some examples of the fraudulent, deceptive, or manipulative practices used in tender offers which the proposed Commission rulemaking powers would prevent.

Mr. BUDGE. I have one which comes to mind rather quickly where the Commission moved in with an injunction—and perhaps further steps will be taken there—where a very large solicitation was made for the stock of the company and the individuals making the solicitation through the newspapers and other media just did not have the funds to pay for the stock that they were asking people to deposit.

I can furnish other examples for the record which would be indicative, if I may, Mr. Chairman.

Senator WILLIAMS. If you could, it would be most helpful to the committee as we continue developing this legislation.

I wonder, also, if you could give us examples of situations where the Commission's proposed amendment to section 13(e)(2) would apply.

(The following was received for the record:)

MEMORANDUM PREPARED BY DIVISION OF CORPORATION FINANCE

A. PROBLEM AREAS WHICH MAY BE DEALT WITH BY RULE-MAKING AUTHORITY PROPOSED IN SECTION 4 OF S. 3431 WHICH WOULD AMEND SECTION 14(e) OF THE SECURITIES EXCHANGE ACT OF 1934

1. The person who makes a tender offer may fail (a) to pay for securities purchased, or (b) to return to their owners securities not purchased, promptly upon the termination of the tender offer in accordance with the practices of the financial community for settlement of transactions, usually within five days.

2. The person who makes a tender offer may not have in hand the funds to pay for the securities he offers to purchase (or reasonable additional amounts which he reserves discretion to purchase) or a legally enforceable commitment to borrow such funds from responsible person.

3. The person making a tender bid may fail to make an appropriate announcement or to withdraw such bid promptly after the period for pro rata acceptance has expired and the amount of securities proffered in response to the bid has reached the amount of securities announced to be purchased.

4. The person who proposes to make a tender bid may omit to disclose, in approaching others to join as members of a "group" as that term is defined in the statute, the identity, financial responsibility and other material facts with respect to other members of the "group."

5. The person who has become aware that a tender bid is to be made, or has reason to believe that such bid will be made, may fail to disclose material facts with respect thereto to persons who sell to him securities for which the tender bid is to be made.

6. Management of the target company in a tender bid may omit to make timely disclosure of its position in favor of or in opposition to such bid or change in such position.

7. A member of management of a target company, or a member of his family, may proffer their securities in response to the tender bid without disclosing to other shareholders the material facts with respect to such action.

B. PROBLEMS WHICH MAY BE DEALT WITH PURSUANT TO RULE MAKING AUTHORITY UNDER SECTION 13(e)(2) AS PROPOSED BY THE SEC

Because Section 13(e)(2) provides that, for the purposes of Section 13(e), a purchase by or for the issuer or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to control of the issuer or any such person, shall be deemed to be a purchase by the issuer, it is not clear that the Commission, under the present statute, may adopt rules, in regard to purchase by a company of securities issued by it, to prescribe means designed to prevent acts and practices which are fraudulent, deceptive or manipulative (such as requiring an issuer to provide holders of equity securities information regarding to the reasons for such purchase, the source of funds, the number of shares to be purchased, the price and method of purchase) unless such prohobitions are applied to all the persons mentioned.

When funds of a company are not used, furnishing the mentioned information to shareholders in advance of purchases does not involve the considerations and implications associated with the use of corporate funds.

Further, a person controlling, or under common control with, the issuer who proposes to purchase a substantial amount of securities from public security holders is already subject to the controls provided by Section 14(d) with regard to tender offers.

Mr. BUDGE. The purpose there, Mr. Chairman, was not to impose upon persons who happen to be in a control relationship. The same duties as may be imposed upon the insurer. We are using that as an example. It might be that the Commission would want to impose those burdens, but I think in many other instances we would not want to.

The idea is to relieve persons from undue burdens if there is no real reason for inforcing them. I would ask Mr. Shreve to amplify that, if I may, Mr. Chairman.

Mr. SHREVE. We have tried to draft rules under this section and found that what seemed to be appropriate for the issuer very often was not appropriate for other persons and we were thereby hampered in the formulation of appropriate rules. I think this change would permit us to make the necessary distinctions.

Mr. BUDGE. In other words, Mr. Chairman, we feel that this provision of the Act is so broad that we should be in a position to exempt some of the individuals from some of the rules that may be appropriate to impose upon the issuer itself.

Senator WILLIAMS. I see. Mr. Chairman, the National Association of Securities Dealers in their testimony proposed an amendment to S. 3431 to exempt from the disclosure provisions of section 13(d) broker-dealers acquiring the specified percentage of securities in the course of normal marketmaking activities.

If you have been appraised of this suggestion could we have the benefit of your views on the desirability of such an amendment.

Mr. BUDGE. Mr. Chairman, I am not familiar with that suggestion. It had not been proposed to me before. I think the Commission would want to examine that.

I understand that the New York Stock Exchange is seeking a similar exemption for the specialists on the floor of the New York Stock Exchange, and I am very sure that we would want to examine that. I just cannot conceive of the specialist in his normal marketmaking activities acquiring 5 percent of a company, certainly not in very many instances, and if he were, I think the Commission might want to know about it.

The same thing could be true with this exemption asked for by the NASD. The Commission would like to reserve on that, if we may, and provide you with a supplemental statement.

Senator WILLIAMS. I would appreciate that. This suggestion first came to my attention at 1 o'clock this morning as I was reading over the statements given to me in advance. At 1 o'clock in the morning it sounded most reasonable and it still sounds reasonable, but I do believe we will hear testimony on this proposal this morning and we would be glad to have your comments following the formal presentation.

Mr. BUDGE. Those will be furnished for the record, Mr. Chairman.

Senator WILLIAMS. The New York Stock Exchange in its testimony will recommend that the 5 percent standard be made applicable only to companies with assets in excess of $250 million. Again, I do not know whether this has been advanced to you or not. At this time do you care to comment on that suggestion?

Mr. BUDGE. I have only heard of that this morning, Mr. Chairman, and there again, the Commission would like to reserve its comment. However, I am not sure that that figure is not substantially higher than we would want to go. But we have not examined that particular suggestion and the Commission has reached no conclusion concerning it.

Senator WILLIAMS. The statement of the Exchange also suggests several other amendments and I wonder if we could follow the same procedure and have the Commission submit written comments on these amendments for our record.

Mr. BUDGE. We will be happy to do that, Mr. Chairman.

Senator WILLIAMS. Mr. Chairman, do you have any examples of tender offers for between 5 and 10 percent of the stock of a corporation having less than $250 million in assets, and would you supply us with the number of such offers made over the last 5 years and the total dollar amount? I am sure that you do not have that in your briefcase but could you include that information for our hearing record?

Mr. BUDGE. Yes, that will be supplied.

(The following was received for the record:)

STATEMENT ON REPORTING PROVISIONS OF SECTION 13(d) OF PUBLIC LAW 90–439

We do not agree that specialists on exchanges and market makers for over-the-counter securities should be exempted from the ownership reporting provisions of Section 13(d) of Public Law 90–439 or the tender bid provisions of Section 14(d) thereof. No reason for such exemption has been put forward other than inconveniences to the specialist or market maker. The statutory purpose could be evaded if a class of persons exempted from the statute were permitted to accumulate securities which could be sold as a block to a person or persons who could not have accumulated the block without public notice as provided by the statute. The circumstance that a specialist has purchased 5% of an issue of securities would be of interest to the Commission in its oversight of exchange activities.

We suggest that any unnecessary inconveniences or burden to specialists and market makers can be appropriately dealt with by the Commission pursuant to its rule making authority to vary the filing requirements with respect to such persons to avoid repetition of information already in the public files of the Commission.

Similarly, and for essentially the same reasons, we do not agree with the suggestion which has been made that an investment company registered under the Investment Company Act of 1940 should be exempted from the ownership reporting provisions of Section 13(d) and the tender bid provisions of Section 14(d). Registered investment companies are required to report certain portfolio transactions to the Commission quarterly on Form N–1 Q. However, such reports do not include information on sources of funds or reasons for such transactions. Therefore, such reports would not be adequate substitutes for the more timely and comprehensive reports required by Section 13(d). Where relief from some provision of the reporting requirement is not inconsistent with the protection of investors such purpose could be achieved through use of the Commission's rule making power.

PROPOSAL THAT THE 5 PERCENT TESTS IN SECTIONS 13(d) AND 14(d) NOT BE MADE APPLICABLE TO COMPANIES WITH TOTAL ASSETS NOT EXCEEDING $250 MILLION

We do not agree that equity securities issued by companies with total assets not exceeding $250 million should remain under a 10% while securities of larger companies are under a 5% test for the purpose of the ownership reporting provisions of Section 13(d) of Public Law 90–439 and the tender bid provisions of Section 14(d) thereof.

We do not feel that the amount of total assest of an issuer is an appropriate basis for policy in this area. There is no assurance that there is a relationship between the total assest of a company and the aggregate market value of its outstanding shares. Market valuations reflect differences in historical earnings, future prospects and presence or absence of leverage in capital structure as well as other factors.

A specified amount of money will purchase a larger percentage of the stock of a company whose shares are valued in the market at a low level than the same amount applied to a company which is larger in terms of market valuation. A smaller amount of money is needed to reach the level of working control of the company which is small in terms of market valuation. In a widely held large company, management may be able to ward off attacks upon control through readly access to proxy machinery.

The accompanying compilations of tender offers show that the overwhelming portion of such offers related to companies whose total assets did not exceed $250 million. Of the 98 tender bids which are the subject of filings with the Commission pursuant to Public Law 90–439, 88 relate to issuers whose assets did not exceed $250 million. Of the 140 tender bids relating to companies covered by the statute but where the tender bid occurrred in the five years before the statute was enacted, 130 related to issuers whose assets did not exceed $250 million.

The purpose of the statute is to provide full disclosure, for the protection of investors, in connection with a cash takeover bid or other acquisition which may cause a shift in control of an issuer. It appears to us that shareholders of small companies, as well as shareholders of large companies, may be concerned with developments which may lead to changes in control.

The proposal to apply the 10% test to smaller companies, we understand, arises from the desire to minimize the burden and inconvenience of the reporting and filing requirements both on the persons required to make reports and filings and upon the Commission where such documents are deposited. However, the public interest and the protection of investors would not appear to be served by the 10% percentage test for smaller companies.

TENDER OFFERS FILED UNDER THE WILLIAMS BILL IN ALPHABETICAL ORDER—BY TARGET COMPANIES THROUGH FEBRUARY 1970

File No.	Target, total assets of target (in millions)	Bidder	Date filed	Shares of target outstanding (approximate)	Shares of target held by bidder prior to offer	Percent	Shares of target acquired by bidder within 60 days prior to offer	Percent
1–5052	API Instruments Co ($5.2)	Technology Inc	June 2, 1969	536,100	52,638	10	27,400.0	5
0–2991	Aircraft Acceptance Corp. ($6.4)	Capital Leasing Co	Dec. 3, 1968	92,100				
0–2991	Aircraft Acceptance Corp. ($6.4)	AVEMCO Corp	Dec. 10, 1968	92,100				
1–3999	Alan Wood Steel Co. ($124.4)	Bauer International (Europa) 6MBH	Dec. 22, 1969	753,100	76,800	10	53,400.0	7
1–4502	Alside Inc. ($26.9)	USS Inc	Dec. 11, 1968	2,114,000	1,373,795	65		
1–1204	Amerada Petroleum Corp. ($471.1)	Hess Oil & Chemical Corp	Mar. 18, 1969	12,823,000	1,243,824	10		
0–2534	American Vitrified Products Co. ($10.1)	General Waterworks Corp	Oct. 24, 1968	475,000	384,782	81		
0–3288	Applied Dynamics Inc. ($6.6)	Reliance Electric Co	July 3, 1969	556,000				
1–4405	Armor & Co. ($560.5)	Greyhound Food Management Inc	Jan. 27, 1969	6,095,200				
0–407	Automobile Banking Corp. ($43.3)	Martin J. Whitman & Martin Hoffinger	Aug. 1, 1968	444,000	1,700	4		
0–395	Arrowhead & Puritas Waters Inc. ($10.2)	Allegheny Beverage Co	Oct. 14, 1968	685,200				
1–850	Bastian Blessing Co. ($26.5)	Pioneer Astro Industries Inc	Sept. 5, 1968	819,800	8,616	1		
0–2393	Bayly Manufacturing Co. ($8.9)	J. C. Wood	June 2, 1969	373,200				
1–3436	Benrus Watch Co. Inc. ($29.4)	White Weld & Co. et al	Nov. 1, 1968	614,000	237,748	39	200,600.0	33
0–499	Boss Linco Lines Inc. ($10.2)	Novo Industries Corp	Nov. 18, 1968	332,500	181,119	54		
1–4867	Bowser Inc. ($65.9)	Keene Corp	Aug. 29, 1968	634,150	499,275.5	97	499,275.5	79
1–4519	C. Brewer & Co. Ltd. ($11.6)	International Utilities Investment Corp	Jan. 9, 1969	2,260,014	583,918	26	166,172.0	7
0–1657	C. G. Conn, Ltd. ($21.2)	Kernal Co	Oct. 9, 1968	665,000	82,500	12	82,500.0	12
0–1657	Do	Crowell, Coller & MacMillian Inc	Oct. 16, 1968	665,000				
1–3374	Canadian Breweries Ltd. ($292.4)	Philip Morris Inc	May 20, 1969	21,762,000				
0–157	Cap Roc Inc. ($8.4)	Iroquois Industries Inc	Oct. 4, 1968	486,700	14,100	3	14,000.0	3
1–3061	Chemtron Corp. ($239.2)	Elgin National Industries	Apr. 25, 1969	3,714,000	100,100	2.7	100,100.0	2.7
0–3089	Chubb Corp. ($624.6)	American Finance Corp	Oct. 1, 1969	4,694,240	230,944	5	230,944.0	5
0–1469	Churchill Downs ($5.2)	National Industries Inc	Feb. 25, 1969	383,200	600		600.0	
0–1469	Churchill Downs ($5.2)	Kentucky Derby Protective Group	Mar. 10, 1969	383,200	6,500	2		
0–1488	Commonwealth, Inc. ($51.6)	General Acceptance Corp	Oct. 14, 1968	861,000				
0–202	Consolidated Water Co. ($56.8)	Apache Corp	Sept. 11, 1968	338,300				
1–1609	Coro Inc. ($14.6)	Richton International Corp	July 24, 1969	426,200	161,122	38	161,122.0	38
0–567	Crescent Niagara Corp. ($12.8)	Cooper Industries, Inc	Aug. 28, 1968	625,300				
0–729	Denver Union Stockyards ($5)	Denver Union Associates	Nov. 4, 1968	49,300	12,133	25	12,133.0	25
1–3994	Diners Club, Inc., ($150.1)	Continental Instrument Co	Feb. 6, 1970	[1] 3,541,000	[1] 1,910,090	54		
0–3629	Dudley Sports Co., Inc. ($1.4)	Athlone Industries	Oct. 1, 1969	376,800				
0–3272	Dynasciences Corp. ($1.5)	Whittaker Corp	June 4, 1969	1,655,000	1,304,004	80	1,304,004.0	80
1–4240	Electronic Specialty ($48.6)	International Controls Corp	Aug. 16, 1968	1,850,000	38,100	2		
0–776	Ex Lax Inc. ($15.5)	General Cigar	Dec. 31, 1969	Class A, 60,575; Class B, 18,558; Preferred, 1,000.	Class A, 43,013; Class B, 16,440; Preferred, 3.	71 89	1,327.0 2.0	2
0–3042	First Executive Corp. ($3.7)	Wolfe Wilder et al	Jan. 9, 1969	88,100	177,494	20	148,295.0	17
0–2764	Foamland USA Inc. ($1.7)	Daryl Industries Inc	Aug. 27, 1968	427,800				
1–5377	Furman-Wolfson Trust ($112.8)	FWA Realty Corp	Feb. 24, 1969	4,633,600	728,006	16		

0–2676	G.T. Corp. ($7.8)	Jack M. Bass Jr	Mar. 12, 1969	309,100	7,804	3	200.0	
0–2773	General Laboratory Associates, Inc. ($5.3)	Simmonds Precision Products, Inc	Sept. 25, 1968	441,600				
0–2010	Harley Davidson Motor Co. ($26.2)	Bangor Punta Corp	Nov. 12, 1968	713,554	118,000	17		
1–4149	Heli Coil Corp. ($20)	Mite Corp	Nov. 26, 1969	1,396,650	508,058	36	507,958.0	36
0–1893	Honeggers & Co., Inc. ($7.4)	Petroleum Resources Corp	Nov. 12, 1968	312,300				
0–3760	Industrial Air Products Co. ($16.3)	American Cryogenics Inc	July 18, 1969	1,224,000				
0–2581	Insley Manufacturing Corp. ($6.4)	Desa Industries Inc	Aug. 28, 1969	257,453				
0–2053	International Investment Co., Inc. ($4.8)	Allan Gittleson & Sidney Harman	Jan. 15, 1970	248,100	10,050	4		
1–643	International Salt Co. ($76.8)	KZO	Sept. 9, 1969	1,919,200				
0–2165	Iowa National Investment Co ($1)	John J. Marget	Feb. 25, 1970	1,195,900	18,233	2		
0–482	Jones Motor Co. ($23.8)	Alleghany Corp	Sept. 5, 1968	616,000				
0–2408	Julian & Kohenge Co. ($8.4)	Amadac Industries Inc	June 19, 1969	119,800	56,250	47	56,250.0	47
1–4950	Kissel Co. ($55.7)	Pittsburgh National Bank	Nov. 3, 1969	934,600				
1–5155	Lau Blower Co. ($15.4)	Nortek Inc	Aug. 22, 1968	786,800	14,500	2		
0–2216	Leeds Shoes Inc. ($5.2)	Goodbody & Co	Sept. 18, 1968	1,358,000				
1–5778	Magnetics Inc. ($15.5)	Hale Brothers Associates, Inc	Nov. 1, 1968	1,181,544	35,000	3	35,500.0	3
1–2500	Metro-Goldwyn-Mayer Inc. ($328.6)	Tracy Investment Co	July 22, 1969	5,874,500				
1–2500	do	do	Sept. 10, 1969	5,874,500	1,263,950	22		
1–5022	Miehle Goss Dexter Inc. ($169)	North American Rockwell	Nov. 19, 1968	5,000,000	251,000	5	115,600.0	2
0–2924	Montana Flour Mills Co. ($13.3)	V.W.R. United Corp	Dec. 20, 1968	144,000				
0–2924	do	White Dulany Co	Dec. 23, 1968	144,000	200			
0–2924	do	Nebraska Consolidated Mills Co	Dec. 24, 1968	144,000				
0–745	Morris Plan ($133.3) (San Francisco, Calif.)	Sirrom Partners	Jan. 8, 1969	765,000	6,094		6,094.0	
0–3473	National Car Rental Systems, Inc. ($76.3)	Household Finance Corp	Aug. 18, 1969	11,744,900	6,672,503	57	3,323,040.0	28
0–968	National Development Corp. ($7)	EF Middleton	July 14, 1969	834,500	289,589	35		
0–1773	Pacific Vegetable Oil Corp. ($32)	Sidney Hoffman	Aug. 27, 1968	640,100	28,800	5		
0–4319	Pan American Sulphur Co. ($79.2)	Susquehanna Corp	Nov. 25, 1968	4,751,342	300			
1–3216	Piper Aircraft Corp. ($54.2)	Chris Craft Industries, Inc	Jan. 23, 1969	1,640,000	200,500	12	200,500.0	12
1–3216	Piper Aircraft Corp. ($54.2)	Chris Craft Industries	Mar. 19, 1969	1,640,000	556,206	34	9,190.0	
1–4175	Polymer Corp. ($17.1)	ACF Industries, Inc	Nov. 22, 1968	525,049				
1–1371	Richman Brothers Inc. ($47.5)	F. W. Woolworth Co	Jan. 28, 1969	1,886,100				
0–272	Riley Stoker Corp. ($39.4)	Scam Instrument Corp	Apr. 28, 1969	394,100	85,811	22	85,811.0	22
0–1711	Rock of Ages Corp. ($11.2)	Nortek Inc	Dec. 11, 1968	304,200				
0–3966	Roosevelt Raceway Inc. ($36.1)	G & W Land & Development Corp	Sept. 24, 1969	1,304,600	127,173	10	127,173.0	10
1–2677	Ryan Aeronautical Inc. ($151.6)	Teledyne, Inc	Nov. 19, 1968	2,571,000				
0–1156	Scholz Homes Inc. ($9.8)	Inland Steel Co	Dec. 19, 1969	3,332,000				
1–5268	Simplex Wire & Cable Co. ($39)	Harbill Associates	Feb. 7, 1969	861,000	4,000		4,000.0	
1–1247	Sinclair Oil Corp. ($1,851.3)	Atlantic Richfield Co	Dec. 11, 1968	12,563,400				
0–1525	South Dakota Corp. ($6.4)	Charles A. Roth, et al	Jan. 24, 1969	2,893,000	511,553	18	4,600.0	
0–1525	South Dakota Corp. ($6.4)	Independent Investors Group	Mar. 23, 1969	2,893,000	632,345	22	94,000.0	3
0–1297	Southdown Inc. ($17.3)	Zapata Norness Inc	Feb. 24, 1969	1,336,600				
0–2495	Standard Knitting Mills Inc ($21.6)	Chadbourn Inc	Nov. 17, 1969	4,371			1,325.0	30
1–5470	Superior Coach Corp. ($24.1)	Sheller-Globe Corp	Aug. 12, 1968	1,375,500				
0–2350	Technibilt Corp. ($1.8)	Gleason Corp	Oct. 28, 1968	359,200	197,908			
1–2094	Thor Power Tool Co. ($19)	Stewart Warner Corp	Aug. 22, 1968	727,603	452,333	62		
1–4443	Transwestern Pipeline Co. ($254.7)	Texas Eastern Transmission Corp	Nov. 4, 1968	6,026,000	5,876,437	98.1	3,257.0	
0–182	Tyler Pipe ($17.8)	Saturn Industries	Aug. 26, 1968	1,104,580				
1–4202	UMC Industries Inc. ($83.5)	Liquidonics Industries, Inc	Feb. 4, 1969	5,128,700	941,300	18	14,000.0	

[1] On fully converted basis.

TENDER OFFERS—COMPANIES OTHER THAN BANKS AND INSURANCE COMPANIES, JANUARY 1965 THROUGH JULY 1968 (PRIOR TO EFFECTIVE DATE OF PUBLIC LAW 90-439)

COMPANIES WHICH APPARENTLY WOULD HAVE BEEN WITHIN THE SCOPE OF SEC. 14(d) OF PUBLIC LAW 90-439 IF SUCH STATUTE HAD BEEN IN EFFECT AT THE TIME OF THE TENDER OFFER.

[In alphabetical order—by target companies]

Name of bidder	Name of target company	Approximated date of offer	Total assets of target (in millions)	Description of offer
Continental Grain Co	Allied Mills Inc	July 1965	$53.7	Continental Grain Co. offered to purchase 413,000 shares (37 percent) at $50 per share.
Hughes Tool Co	American Broadcasting Co., Inc	July 1968	262.8	Hughes Tool Co. offered to purchase a minimum of 200,000 shares (4.3 percent) at $74.25 per share with option to purchase a greater or lesser number of shares.
American Export Isbrandtsen Co	American Export Isbrandtsen Lines Inc. (a subsidery of the bidder; target company had 683 shareholders as of the date of the offer).	May 1966	177.4	The parent company offered to purchase all outstanding shares at $50 per share.
Management & Capital Co	American Metal Products Co	January 1965	44.0	Management & Capital Co. offered to purchase a minimum of 300,000 shares (21.8 percent) and a maximum of 400,000 shares (29 percent) at $24 per share.
Alleghany Beverage Corp	Arrowhead & Puritas Waters, Inc	October 1968	12.5	Alleghany Beverage Corp. offered to purchase 315,000 shares (47 percent) at $50 per share with option to purchase any number of shares tendered.
S. T. Scheinman	Art Metal Co	July 1966	25.7	Mr. Scheinman offered to purchase a minimum of 125,000 shares (12.4 percent) at $25 per share.
Fifth Avenue Industries Corp	Austin Nichols & Co	January 1967	15.8	Fifth Avenue Industries offered to purchase all shares of Austin Nichols & Co. at $20 per share.
Paul Revere Corp	AVCO Corp	February 1967	481.1	Paul Revere Corp. offered to purchase a minimum of 4,000,000 shares (29 percent) at $33 per share.
Lawrence Schacht & Associates	Belmont Iron Works	January 1965	4.0	Lawrence Schacht offered to purchase 500,000 shares (33 percent) at $11 per share.
Raymond G. Perleman & Associates	Belmont Iron Works	November 1966	4.1	Raymond G. Perleman offered to purchase a minimum of 35,000 shares (23 percent) at $22 per share. Shares in excess of this amount would be accepted on a pro rata basis.
Consolidated Foods Corp	Broch (E. J.) & Sons	February 1966	52.3	Consolidated Foods offered to purchase a minimum of 400,000 shares (17.5 percent) at $48 per share.
Great-America Corp	Braniff Airways Inc	November 1965	98.8	Great America Corp. offered to purchase all outstanding shares at $75 per share.
Kilroy Drilling & Products Co	Brewster-Bartle Drilling Co	January 1965	8.6	Kilroy Drilling & Production Co. offered to purchase all outstanding shares at $5 per share.
Gulf Resources & Chemical Corp	Bunker Hill Co	January 1968	69.8	Gulf Resources & Chemical Corp. has offered to purchase all shares at $56 per share.
Wm. Underwood Co	Burham & Morrill Co	August 1965	7.9	Wm. Underwood Co. offered to purchase all outstanding shares at $19 per share.
Eltra Corp	Burrus Mills	February 1966	17.1	Eltra Corp. offered to purchase all outstanding shares at $80 for each share of prefered and $15.75 for each share of common.

Noranda Mines, Ltd	Canada Wire & Cable	January 1965	38.3	Noranda offered to purchase all outstanding shares of stock for $5 plus 4 shares of Noranda common stock in exchange for each share of class A stock or for each 10 shares of class B stock.
H. K. Porter Co., Inc	Carey (Philip) Manufacturing Co	February 1966	62.2	H. K. Porter Co., Inc., offered to purchase a minimum of 300,000 shares (30 percent) at $38 per share.
Glen Alden Corp	do	do	62.2	Glen Alden offered to purchase 300,000 shares (30 percent) at $40 per share.
Murayco, Inc	Carter (J. W.) Co	October 1965	1.6	Carter Co. offered to purchase ⅔ of the outstanding shares at $5⅝ per share.
American Steel & Pump Corp	Castle (A. M.) & Co	May 1966	36.4	American Steel & Pump Corp. offered to purchase a minimum of 241,000 shares (50.5 percent) at $27.50 per share.
Bourns, Inc	Chicago Aerial Industries	March 1965	6.7	Bourns Inc. offered to purchase all outstanding shares at $16 per share. At the time of the offer Bourns owned 45 percent of the outstanding shares.
Chesapeake & Ohio Railway	Chicago South Shore & South Bend Railroad	do	9.0	Chesapeake & Ohio Railway offered to purchase all outstanding shares at $42.50 per share. The tender offer was abandoned due to problems under the Interstate Commerce Act.
U.S. Smelting, Refining & Mining Co	Clevite Corp	May 1968	87.1	U.S. Smelting, Refining & Mining Co. offered to purchase a minimum of 300,000 shares (15.8 percent) with option to accept less.
William M. White, Jr. & Associates	Colorado Milling & Elevator Co	August 1965	33.9	The bidder offered to purchase 50,000 shares (9.1 percent) at $25 per share.
Banque de Paris et des Pays Bos	Columbia Pictures Corp	October 1966	162.8	Bidder offered to purchase a minimum of 200,000 (11 percent) and a maximum of 350,000 shares (19 percent) at $33 per share.
Patroit News Co	Conde Nost Publications	March 1965	27.4	Patroit News offered to purchase a minimum of 61,082 shares (4.1 percent) at $15 per share.
Inter-City Baking Co., Ltd	Consolidated Bakeries of Canada	April 1966	7.7	The bidder offered to purchase all outstanding shares at $8 per share provided at least 90 percent of the outstanding shares are tendered.
National City Lines, Inc	D.C. International, Inc. (formerly Denver Chicago Trucking Co.)	January 1967	27.4	National City Lines offered to purchase all shares at $21 per share.
Gulf & Western Industries	Delta Steamship Lines, Inc	August 1967	41.7	Gulf & Western Industries offered to purchase all shares at $25 per share.
Champion Spark Plug Co	DeVilBiss Co	May 1968	27.8	Champion Spark Plug Company offered to purchase all shares tendered at $34 per share provided at least 90,000 shares (6%) are tendered.
Owen H. Alpen, H. M. Kaplan	Devonbrook, Inc	do	1.6	Bidders offered to purchase all shares tendered at $1 per share.
Emerson Electric Co	Dodge Manufacturing Corp	June 1969	27.0	Emerson Electric offered to purchase all shares at $63 per share.
Consolidated Paper Corp., Ltd	Doeskin Products	February 1965	6.1	Consolidated Paper offered to purchase all outstanding shares at $5.25 per share provided at least 691,000 shares (50 percent) were tendered.
Rockwell Standard Corp	Draper Corp	March 1967	76.0	Rockwell Standard Corp. offered to purchase all shares at $30 per share.
American Tobacco Co	Duffy Matt	June 1968	40.4	American Tobacco Co. offered to purchase all outstanding shares at $40 per share.
Pittsburg Brewing Co	Duquesne Brewing Co	December 1965	16.1	Pittsburg Brewing Co. offered to purchase 180,000 shares (32 percent) at $11.30 per share.
Pittsburg Coke & Chemical	Edgewater Steel Co	March 1968	17.4	Pittsburg Coke & Chemical offered to purchase 135,000 shares (37 percent) at $47.50 per share.
National Union Electric Corp	Emerson Radio & Phonograph	June 1965	48.5	National Union offered to purchase all shares tendered up to 51 percent of the outstanding shares at $18 per share with options to buy additional shares.

TENDER OFFERS—COMPANIES OTHER THAN BANKS AND INSURANCE COMPANIES, JANUARY 1965 THROUGH JULY 1968 (PRIOR TO EFFECTIVE DATE OF PUBLIC LAW 90-439)—Continued

COMPANIES WHICH APPARENTLY WOULD HAVE BEEN WITHIN THE SCOPE OF SEC. 14(d) OF PUBLIC LAW 90-439 IF SUCH STATUTE HAD BEEN IN EFFECT AT THE TIME OF THE TENDER OFFER.—Con.

[In alphabetical order—by target companies]

Name of bidder	Name of target company	Approximated date of offer	Total assets of target (in millions)	Description of offer
Broadway Hale Stores, Inc	Emporium Capwell Co	January 1968	$136.7	Broadway Hale Stores offered to purchase shares at $47 per share. Broadway Hale acquired 750,000 shares which increased its interest in the target to over 50 percent.
Crowell, Collier & Macmillan	Famous Artists Schools, Inc	July 1965	12.2	Crowell, Collier & Macmillan offered to purchase up to 200,000 shares (17 percent) at $24 per share with options to purchase additional shares tendered.
Simkin's Industries, Inc	Federal Paper Board Co., Inc	January 1968	84.8	Simkin's Industries has offered to purchase shares at $35 per share. Simkin's acquired approximately 7 percent of the outstanding shares as a result of the offer.
Peak, Inc. (subsidiary of Gamble Skogmo, Inc.)	First National Stores, Inc	July 1966	129.6	Peak, Inc. offered to purchase a minimum of 500,000 shares (31 percent) at $38 per share.
C N A Finance Corp	General Finance Corp	June 1968	300.6	C N A Financial offered to purchase all shares at $32 per share.
Canadian Wallpaper Manufacturers	General Paint Corp. of Canada	August 1966	2.3	Canadian Wallpaper Manufacturers offered to pruchase all outstanding shares at $35 per share, provided at least 90 percent of each class of common stock is tendered.
McCory Corp	Glen Alden Corp	January 1965	101.4	McCory Corp. offered to purchase all shares outstanding in exchange for $4 and $10.25 principal amount of junior subordinated notes.
Greatamerica Corp	Glidden Co	June 3 1967	198.7	Greatamerica offered to purchase all shares of common stock at $30 per share and all shares of preferred stock at $84.375 per share.
Loran Coal, Ltd	Great West Coal Co., Ltd	April 1965	4.1	Loran Coal offered to purchase all outstanding shares at $5.35 per share provided a minimum of 289,440 shares (90 percent) were tendered.
Colorado Milling & Elevator Co	Great Western Sugar Co	April 1966	8,115.0	Colorado Milling & Elevator Co. offered to purchase 110,000 shares (73 percent) of preferred stock at $190 per share and 100,000 shares (5.6 percent) of common stock at $44 per share.
Liquidanics Industries, Inc	Greer Hydraulics, Inc	August 1967	3.7	Liquidanics offered to purchase all shares at $25 per share.
N.G.C. Publishing Corp. (subsidiary of National General Corp.)	Grosset & Dunlop, Inc	April 1968	39.1	N.G.C. Publishing offers to purchase all outstanding shares at $41 per share.
Sun Chemical Corp	Harshaw Chemical Co	August 1966	50.3	Sun Chemical Corp. offered to purchase a minimum of 3,500,000 shares (33 percent) at $40 per share.
Houston Oil Field Material Co	Holly Sugar Corp	March 1967	87.6	The bidder offered to purchase all shares at $24 per share.
Crane Co	Huttig Sash & Door Co	June 1968	13.3	Crane Co. offered to purchase 60,000 shares (26 percent) at $57 per share.
St. Louis Steel Casting, Inc	Hydraulic Press Brick Co	August 1965	6.9	St. Louis Steel Casting offered to purchase all outstanding shares at $14.50 per share. Offer was contingent upon at least 80 percent of the outstanding shares being tendered.
Old Fort Industries	Illinois Brick Co	September 1967	7.3	Old Fort Industries offered to purchase all shares at $25 per share.

Gates Rubber Co	IML Freight, Inc	Ap 65	16.9 Gates Rubber Co. offered to purchase all shares at $23 per share and acquired 80 percent of the outstanding shares pursuant to the offer.
United Utilities, Inc	Inter-Mountain Telephone Co	August 1965	48.6 United Utilities offered to purchase 106,000 shares (5 percent) at $32.50. At the time of the offer United Utilities owned 45 percent of the outstanding shares.
Ling-Temco-Vought, Inc	Jones & Laughlin Steel Corp	May 1968	1,092.8 Ling-Temco-Vought offered to purchase 5,000,000 shares (63 percent) at $85 per share.
Genesco	Julius Garfinckel & Co	March 1966	30.5 Genesco offered to purchase a maximum of 575,000 shares (53 percent) at $43.50 per share.
Kaneb Pipe Line Co	Kansas-Nebraska Natural Gas Co	September 1967	96.4 Kaneb Pipe Line Co. offered to purchase shares at $32 per share.
Occidental Petroleum Corp	Kern County Land Co	June 1967	253.9 Occidental offered to purchase 500,000 shares (12 percent) at $83.50 per share.
Anadite, Inc	Kropp Forge Co	May 1967	9.6 Anadite offered to purchase a minimum of 255,000 shares (19 percent) at $6 per share.
Diebold, Inc	Lamson Corp	April 1965	28.7 Diebold, Inc. offered to purchase 141,000 shares (51 percent) at $31.50 per share.
Total American, Inc	Leonard Refineries, Inc	February 1966	35.9 Total American, Inc., offered to purchase 300,000 shares (24 percent) at $17.15 per share.
Dresser Industries, Inc	Link-Belt Co	March 1967	144.0 Dresser Industries offered to purchase all shares at $48 per share.
F. M. C. Corp	do	do	144.0 F. M. C. offered to purchase all shares at $58 per share.
Simmonds Precision Products, Inc	Liquidometer Corp	October 1965	5.0 Simmonds Precision Products offered to purchase 186,754 shares (36 percent) at $9.50 per share provided at least 161,134 shares (31 percent) are tendered.
Philadelphia & Reading Corp	Lone Star Steel Co	September 1965	156.4 Philadelphia & Reading Corp. offered to purchase a minimum of 2,000,000 shares (52 percent) at $22.00 per share.
Dorchester Gas Producing Co	Louisiana Gas Service Co	December 1965	25.3 Dorchester offered to purchase all outstanding shares provided at least 290,000 shares (43 percent) are tendered.
Macco Development Corp	Macco Realty Co	September 1965	7.6 Macco Development Corp. offered to purchase all shares of common stock at $14 per share.
Amsted Industries	Macwhyte Co	July 1967	11.5 Amsted Industries offered to purchase all shares at $41.50 per share.
Glen Alden Corp	McKesson & Robbins, Inc	June 1965	270.6 Glen Alden Corp. offered to purchase a minimum of 1,000,000 shares (24 percent) at $49 per share.
Foremost Dairies, Inc	McKesson & Robbins, Inc	January 1966	285.5 Foremost Dairies offered to purchase 1,000,000 shares (24 percent) at $51 per share.
Undisclosed purchaser	Metro-Goldwyn-Mayer, Inc	April 1967	62.6 Bidder offered to purchase all shares at $43 per share.
Miami Window Corp	Miami Extruders, Inc	January 1965	3.2 Miami Window Corp. offered to purchase up to 270,000 shares (77 percent (at $4.50 per share.
Chicago & North Western Railway Co	Michigan Chemical Corp	July 1965	17.7 Chicago & North Western Railway Co. offered to purchase a minimum of 230,000 shares (30 percent) at $33 per share.
American Electric Power Co., Inc	Michigan Gas & Electric Co	September 1967	25.5 American Electric Power Co. offered to purchase all shares at $16.43 per share.
Eastern Stainless Steel Corp	Moore Drop Forging Co	November 1967	21.1 Eastern Stainless Steel offered to purchase all shares at $45.50 per share.
Amk Corp	Morrell (John) & Co	November 1966	102.1 Morrell & Co. offered to purchase 200,000 shares (16 percent) at $27.50 per share.
A-S Capital Corp. (wholly owned subsidiary of American Radiator and Standard Sanitary Corp.)	Mosler Safe Co	June 1967	47.8 A-S Capital Corp. offered to purchase shares at $38.50 per share Prior to this offer, A-S Capital Corp. owned 90 percent of the outstanding shares.

TENDER OFFERS—COMPANIES OTHER THAN BANKS AND INSURANCE COMPANIES, JANUARY 1965 THROUGH JULY 1968 (PRIOR TO EFFECTIVE DATE OF PUBLIC LAW 90-439)—Continued

COMPANIES WHICH APPARENTLY WOULD HAVE BEEN WITHIN THE SCOPE OF SEC. 14(d) OF PUBLIC LAW 90-439 IF SUCH STATUTE HAD BEEN IN EFFECT AT THE TIME OF THE TENDER OFFER.—Con.

[In alphabetical order—by target companies]

Name of bidder	Name of target company	Approximated date of offer	Total assets of target (in millions)	Description of offer
U.S. Smelting, Refining & Mining Co	Mueller Brass Co	March 1965	$48.7	U.S. Smelting, Refining & Mining Co. offered to purchase all outstanding shares at 42 per share. As a result of his offer U.S. Smelting, Refining & Mining Co. acquired 74 percent of the outstanding shares.
Eltra Corp	do	March 1965	48.7	Eltra offered to purchase all outstanding shares at $40 per share.
Combustion Engineer, Inc	National Tank Co	September 1965	34.7	Combustion Engineers offered to purchase 818,031 shares (54 percent) at $35 per share providing at least 75,681 shares (5 percent) were tendered.
Monogram Industries Inc	National Screw & Manufacturing Co	July 1967	28.7	Monogram Industries offered to purchase all shares at $60 per share.
Coplay Cement Manufacturing Co	Nazareth Cement Co	November 1965	10.4	Coplay Cement offered to purchase all outstanding shares at $15 per share provided at least 206,332 shares (67 percent) are tendered.
ABC Consolidated Corp	Nedicks Stores, Inc	April 1965	3.4	ABC Consolidated Corp. offered to purchase all outstanding shares at $12.50 per share provided at least ⅔ of the outstanding shares are tendered.
Victoreen Instrument Co	North & Judd Manufacturing Co	July 1966	10.1	Victoreen Instrument Co. offered to purchase a minimum of 100,000 shares (40 percent) at $34 per share..
Eltra Corp	North American Refactories	January 1966	15.9	Eltra Corp. offered to purchase all outstanding shares at $34 per share.
Kewanne Oil Co	North Penn Gas Co	December 1965	12.0	Kewanne Oil Co. offered to purchase 200,000 shares (45 percent) at $18.25 per share.
Nortruk Corp	Norwalk Truck Lines, Inc	September 1965	24.7	Nortruk offered to purchase all the outstanding shares at $21.50 per share provided at least 80 percent of the outstanding shares are tendered.
Liggett & Myers Tobacco Co	Paddington Corp	May 1966	24.1	Liggett & Myers offered to purchase all outstanding shares at $35 per share.
Baldwin Montrose Chemical Co., Inc., F.M.I. Ltd., Fever & Martin Productions, Inc.	Paramount Pictures Corp	May 1965	154.4	The bidder offered to purchase 125,000 shares (8 percent) at $64 per share.
Triangle Corp	Precisionware, Inc	April 1965	2.8	Triangle Corp. offered to purchase 420,809 shares (83 percent) at $6.25 per share provided at least 317,498 shares (62 percent) where tendered.
Northern & Central Gas Co., Ltd	Quebec Natural Gas Co., Ltd	March 1967	110.4	The bidder offered to purchase all shares at $14 per share.
Seaburg Corp	Raybestos-Morhatter	February 1968	71.3	Seaburg Corp. offered to purchase 30,000 shares (50 percent) at $80 per share.
Do	Rheem Manufacturing Co	November 1967	109.8	Seaburg Corp. has offered to purchase all shares at $50 per share.
City Investing Co	do	do	109.8	City Investing Co. has offered to purchase all shares at $60 per share.

Husky Oil Co	Rimrock Tidelands, Inc	July 1965		
Otto Boulevard Corp	Roxbury Carpet Co	August 1965		
S. State Street Corp. (subsidiary of Corsom Price Scott & Co.	do	March 1968		
W. R. Grace & Co	Ruberoid Co	February 1966		
Crane Co	Sawhill Tubular Products, Inc	April 1968		
Peter W. Reiss	Simon (William) Brewery	July 1966		
Wallace Murray Corp	Simmonds Saw & Steel Co	December 1965		
Business Ventures Co	Small Business Investment Co	March 1967		
Clevite Corp	Sonotone Corp	September 1967		
Jim Walter Corp	South Shore Oil & Development Corp	March 1967		
Roberts Scott & Co	Southwestern Capital Corp	September 1967		
Dunhill International Inc	Spalding Bros., Inc	January 1968		
American Steel & Pump Corp	Standard Products Co	September 1965		
Michigan Seamless Tube	Standard Tube Co	March 1965		
Liggett & Myers Tobacco Co	Star Industries, Inc	May 1966		
Bangor Punta Corp	Starcraft Corp	March 1968		
Girard Trust Corn Exchange Bank	Strawbridge Clothier	February 1965		
Undisclosed purchaser	Studebaker Corp	February 1966		
Dresser Industries, Inc	Symington-Wayne Corp	July 1967		
Iroquois Industries, Inc	Syracuse Corp	June 1967		
Ebasco Industries, Inc	Taylor Instrument Co	July 1968		
International Silver Co	Taylor Publishing Co	September 1967		
Missouri Pacific Railroad Co	Texas & Pacific Railroad Co	January 1967		
Stewart-Warner Corp	Thor Power Tool Co	January 1966		
Ogden American Corp	Tillie Lewis Foods, Inc	December, 1965		
B.V.D. Co	Timely Clothes, Inc	February, 1966		

8.6	Husky Oil Col offered to purchase a minimum of 300,000 shares (19 percent) and a maximum of 400,000 shares (26 percent) at $7.50 per share. Husky Oil Co. and its parent owned prior to this offer 60 percent of Rimrock's outstanding shares.
13.9	Otto offered to purchase all the outstanding shares at $7.50 per share.
12.9	S. State Street Corp. offered to purchase 80,000 shares (16 percent) at $9 per share.
111.3	W. R. Grace & Co. offered to purchase a minimum of 700,000 shares (38 percent) at $50 per share.
23.4	Crane Co. offered to purchase a minimum of 250,000 shares (38 percent) at $20 per share.
1.7	Mr. Reiss offered to purchase a minimum of 300,000 shares (20 percent at $150 per share.
52.8	Wallace Murray Corp. offered to purchase outstanding shares at $43.50 per share.
14.2	Business Ventures Co. offered to purchase all shares at $15.50 per share.
12.7	Clevite Corp. offered to purchase all shares at $10.50 per share.
6.5	Jim Walter Corp. offered to purchase all shares at $35 per share.
4.3	Southwestern Capital Corp. offered to purchase all shares at $1.65 per share.
45.7	Dunhill International offered to purchase all shares at $32.50 per share.
17.4	American Steel & Pump Corp. offered to buy 400,000 shares (51 percent) at $15 per share.
7.6	Michigan Seamless Tube Co. offered to purchase all outstanding shares at $11 per share.
25.1	Liggett & Myers offered to purchase all outstanding shares at $55 per share.
10.2	Bangor Punta, who owned 73 percent of the outstanding shares at the time of the offer, offered $32 worth of its common stock or $29 cash for the remaining shares.
62.6	Tenders were invited for shares of the target company at a price not to exceed $105 per share until $191,167 is exhausted, representing approximately 0.19 percent of the outstanding shares.
106.9	Bidder offered to purchase a minimum of 500,000 shares (18 percent) at $30 per share.
66.0	Presser Industries offered to purchase all shares at $40.
11.1	Iroquois offered to purchase all shares at $60 per share.
53.9	Ebasco Industries offered to purchase all shares tendered at $65 per share.
12.8	International Silver Co. offered to purchase all shares at $25 per share.
207.8	Missouri Pacific Co. offered to purchase all shares at $90 per share.
24.8	Stewart-Warner Corp. offered to purchase 200,000 shares (28 percent) at $19 per share.
31.3	Ogden American Corp. offered to purchase all outstanding shares at $14.50 per share.
9.2	B.V.D. Co. offered to purchase all outstanding shares at $20 per share.

TENDER OFFERS—COMPANIES OTHER THAN BANKS AND INSURANCE COMPANIES, JANUARY 1965 THROUGH JULY 1968 (PRIOR TO EFFECTIVE DATE OF PUBLIC LAW 90-439)—Continued

COMPANIES WHICH APPARENTLY WOULD HAVE BEEN WITHIN THE SCOPE OF SEC. 14(d) OF PUBLIC LAW 90-439 IF SUCH STATUTE HAD BEEN IN EFFECT AT THE TIME OF THE TENDER OFFER.—Con.

[In alphabetical order—by target companies]

Name of bidder	Name of target company	Approximated date of offer	Total assets of target (in millions)	Description of offer
Gelco Enterprises, Ltd	Trans Canada Corp. Fund	April 1965	$37.4	Gelco Enterprises offered to purchase a minimum of 2,200,000 shares (54 percent) at $13 per share.
Texas Eastern Transmission Corp	Transwestern Pipeline Co	April 1967	235.0	Texas Eastern offered to purchase all shares at $16 per share providing a minimum of 3,000,000 shares (51 percent) were tendered.
Pennzoil Co	United Gas Corp	November 1965	835.1	Pennzoil offered to purchase a minimum of 1,000,000 shares (7.8 percent) at $41 per share.
Matson Navigation Co., U.S. Freight Co., Waterman Industries.	United States Lines	January 1968	232.8	Bidders offered to purchase all shares at $50 per share.
Walter Kiddle & Co	United States Lines	January 1968	232.8	Walter Kiddle & Co. offered to purchase all shares at $47.50 per share.
General Instruments Corp	Universal Controls Inc	February 1967	39	General Instruments Corp. offered to purchase all shares at $6.25 per share.
Giannini Controls Corp	Veeder Root, Inc	November 1965	33	Giannini Controls offered to purchase a minimum of 390,000 shares (35 percent) at $38 per share.
Tung-Sol Electric Inc	Wagner Electric Corp	January 1966	78.6	Tung-Sol Electric has offered to purchase a minimum of 954,000 shares (47 percent) at $35 per share.
Whirlpool Corp	Warwick Electronics	October 1966	58.9	Whirlpool offered to purchase all shares at $13.25 per share.
Steck Co	Warlick Press, Inc	July 1965	.9	Steck Co. offered to purchase 307,000 sahres (81 percent) at $7 per share.
University Computing Co	Western Union Telegraph Co	May 1968	740.8	University Computing Co. offered to purchase a minimum of 750,000 shares (10 percent) at $44 per share.
Marblehead Corp	Whitin Machine Works	August 1965	38.3	Marblehead Corp. offered to purchase at least ⅔ of the outstanding shares at $30 per share.
First Worcester Corp	do	September 1965	38.3	First Worcester Corp. offered to purchase 353,000 shares (50 percent) at $35 per share.
John F. Maher	Williams-McWilliam Industries	February 1966	11	John F. Maher offered to purchase 450,000 shares (56 percent) at $12.50 per share.
Russ Togs, Inc	Youth Craft Creations Inc	October 1967	4.2	Russ Togs, Inc., offered to purchase all shares at $15 per share.
Standard Prudential United Corp	Yuba Industries, Inc	September 1967	19.2	Standard Prudential United Corp. offered to purchase all common stock at $28 per share and all referred to above at $11 per share.

SPECIAL BIDS, 1965–70, NEW YORK STOCK EXCHANGE—ALPHABETICAL ORDER BY TARGET COMPANY

Name of bidder	Name of target	Approximate date of offer	Total assets of target (in millions)	Amount of bid (shares)	Percent of bid shares to outstanding shares	Shares purchased
Electric Bond & Share	American & Foreign Power	Sept. 28, 1965	616.2	400,000	5.4	400,000
Fever & Martin Productions	Chris-Craft Industries, Inc	Jan. 5, 1967	88.5	40,000	2.4	None
Penn-Dixie Cement Corp	Continental Steel Corp	July 18, 1968	51.2	250,000	23.6	268,796
Amerace Corp	Elastic Stop Nut Corp. of America	Apr. 30, 1968	41.0	125,000	9.4	137,000
Bernard P. McDonough	Endicott Johnson Corp	Apr. 18, 1968	88.2	100,000	12.3	19,073
The Singer Co	General Precision Equipment	Jan. 23, 1968	322.7	590,000	7.5	274,790
Talley Ind	General Time Corp	Feb. 19, 1968	77.8	200,000	9.5	66,437
Madison Fund Gutzweiler Bank	First National Stores, Inc	July 22, 1968	132.0	200,000	12.5	200,000
The D. J. B. Foundation Daniel J. Bernstein, treasurer	Japan Fund	Oct. 15, 1965	18.9	60,000	3.3	37,809

Note: The American Stock Exchange reported no special bids.

TENDER OFFERS, INSURANCE COMPANIES, 1965–70—INSURANCE COMPANIES WHICH APPARENTLY WOULD HAVE BEEN WITHIN THE SCOPE OF SEC. 14(D) OF PUBLIC 439 IF SUCH STATUTE HAD BEEN IN EFFECT AT THE TIME OF THE TENDER OFFER AND IF INSURANCE COMPANIES WERE SUBJECT TO THE LAW AS PROPOSED IN

[In alphabetical order and by target companies—Amounts in millions]

Name of bidder	Name of target company	Approximated date of offer	Total assets of target	Description of offer
American General Insurance Co	California Western States Life Insurance Co	November 1968	$366.5	American General Insurance Co., offered to purchase 702,563 shares (13 percent) at $30 per share. The offer was oversubscribed and American General Insurance owned 33 percent of the outstanding shares after the offer.
Security Corp	Fidelity & Deposit Co. of Maryland	February 1969	122.8	Security Corp. offered to purchase a minimum of 400,000 shares (21.4 percent) and a maximum of 1,000,000 shares (53.5 percent) at $65 per share.
Continental Insurance Co	Glen Falls Insurance Co	June 1968	277.9	Continental Insurance Co. offered to purchase all outstanding shares at $60 per share. As of June 18, 1968, Continental had acquired 85 percent of the outstanding shares.
United States Fidelity & Guaranty Co	Glen Falls Insurance Co	do	277.9	The bidder offered to purchase all outstanding shares at $52.50 per share.
State Mutual Life Assurance Co. of America	Hanover Insurance Co	do	187.3	State Mutual offered to purchase 311,700 shres (25.2 percent) at $53 per share.
2 undisclosed purchasers	Jackson National Life Insurance Co. (Mich.)	March 1967	3.8	The bidders offered to purchase all shares at $3.75 per share.
Pennsylvania Life Co	Massachusetts Indemnity & Life Insurance Co.	October 1968	48.1	Pennsylvania Life offered to purchase all shares at $66 per share. As of January 1969 Pennsylvania Life owned 98 percent of the outstanding shares.
Fidelity Corp	Monumental Life Insurance Co	November 1968	358.5	Fidelity Corp. made a tender offer af $47 per share to acquire up to 1,000,000 shares (33 percent).
Pennsylvania Life Insurance Co	National Central Life Insurance Co	June 1968	11.4	Pennslyvania Life Insurance Co. offered to purchase all shares of the target at $30 per share on a first-come, first-accepted basis.
American International Enterprise, Inc	National Union Fire Insurance of Pittsburgh	January 1968	111.3	American International Enterprises offered to purchase a maximum of 440,000 shares (50 percent) at $23.50 per share.
Undisclosed group of purchasers	Pacific Insurance Co. of New York	September 1966	37.8	Purchasers offered to purchase a minimum of 65,000 shares (3.2 percent) at $64 per share.
Undisclosed purchaser	Phoenix Insurance Co	February 1966	356.1	The bidder offered to purchase 957,000 shares (52 percent) at $75 per share provided at least 887,000 shares (48 percent) tendered.
Associates Investment Co	Providence Washington Insurance Co	September 1968	55.9	Associates Investment Co. offered to purchase all shares of common at $39 per share and all shares of preferred at $50.70 per share.
Home Insurance Co	Seaboard Surety Co	January 1968	49.2	Home Insurance Co. has offered to purchase all shares at $75 per share.
Teledyne, Inc	United Insurance Co. of America	October 1967	303.2	Teledyne, Inc., offered to purchase shares at $35 per share. As a result of this offer, Teledyne acquired 23 percent of the outstanding shares. In May 1968 Teledyne made a 2d tender offer at $35 per share and increased its holdings to 51 percent of the outstanding shares.

Senator WILLIAMS. Senator Packwood.

Senator PACKWOOD. Mr. Chairman, you indicated in your statement that the substantive provisions of this bill that we are now considering as they relate to the terms of the cash tender offer are not applicable to exchange offers of securities nor does the bill presently provide for such regulation of solicitations. Do you feel that this matter should be addressed in this legislation, and if you do, would you be willing to submit draft provisions to us to consider?

Mr. BUDGE. Yes, we will be happy to do that, Senator.

Senator PACKWOOD. Do you think it should be contained in this legislation?

Mr. BUDGE. I believe that it is. If I understand your question, Senator, I think that the exchange provisions are in here—I mean, the exchange type of tender offer, exchange for securities.

Senator PACKWOOD. Mr. Chairman, let me ask you a couple of other things. In the bill, the corporate takeover bill which is presently before us, is authority for the SEC to promulgate rules and regulations designed to prevent the fraudulent, deceptive and manipulative practices. The Commission was vested this authority in 1968. What changes have taken place between now and then that would justify this new authority?

Mr. BUDGE. The one to which you have just alluded, Senator, the exchange offer—the exchange of securities for securities rather than the cash offer. That has been actually by far the more active field than the cash tender offers.

As to specific instances, if I could, I would like to yield to Mr. Shreve who might amplify that a little bit.

Senator PACKWOOD. Fine.

Mr. SHREVE. I did not bring a list of specific cases, but the dollar figures which Mr. Budge gave would indicate the far greater reach of these tender offers. Also, under present economic conditions, as you may know, cash tender offers have tended to fall off very greatly and exchange offers are now the more popular method of acquisition.

Also, as Mr. Budge mentioned, it is possible by means of the exchange offer to gain control of a much larger company because of the large amount of cash which would otherwise be involved.

Mr. BUDGE. I might mention one other area, too, Senator. That is that at the present time the legislation does not control the activities of those who are soliciting in opposition to the exchange offer and sometimes they are activities which may be more fraudulent, more manipulative than those of the persons making the tender offer. That is one of the things that we would like to correct by this bill.

Senator PACKWOOD. When similar legislation was being considered in 1968 there was some question whether the SEC had authority of tender offer to insist that management provide a bidder with a stockholder list. To round off the record of these hearings, I would appreciate it if you could inform us whether the SEC possesses such authority today and whether it has been exercised. If not, do you not think in all fairness to all bidders that these should be made available? Could this authority be vested in the SEC pursuant to the rulemaking provisions which are incorporated in this bill?

Mr. SHREVE. As you probably know, there is such a provision in the Commission's proxy rules today. That provision, however, is triggered by the fact that if the company wishes to solicit proxies then it must transmit material at the request of some opposition group. We have given consideration to the possibility of a similar approach for tender offers to be authorized under the present law. However, the tender offer generally comes before the opposition, or the company's, solicitation takes place, so that it is difficult to key the giving of a list or the transmission of material, to the company's opposition solicitation. We are still exploring that subject.

I do not know that we have reached any final conclusion as to just how it might properly be done under the Commission's present powers. Mr. Loomis, do you want to add to that?

Mr. LOOMIS. The Commission does not now exercise the power to require the company to furnish the bidder a stockholders' list. We leave that to State law which generally governs when someone can get a stockholders' list. There is some question, and I think some difference of opinion among the Commission staff, as to whether under present law we have this power. It might be that enactment of this legislation would increase the likelihood that we have it, but there is a serious question of policy as to whether we should intervene, so to speak, on behalf of the bidder and require the management against its will to provide him with a stockholders' list rather than leaving that to the State courts.

Senator PACKWOOD. I have no other questions, Mr. Chairman.

Senator WILLIAMS. Senator Bennett.

Senator BENNETT. No questions.

Senator WILLIAMS. We will turn now to your statement, Mr. Chairman, on S. 336.

Mr. BUDGE. Mr. Chairman, S. 336 would amend section 3(b) of the Securities Act of 1933 so as to increase the maximum aggregate amount of securities of certain issuers offered to the public which may be exempted from registration under the act pursuant to rules and regulations of the Securities and Exchange Commission, from $300,000 to $500,000. The Commission supports this amendment, and if it is enacted the Commission will act promptly to consider what amendments to its rules and regulations are necessary to give effect to the intent of Congress. A pressing purpose of S. 336 is to aid small businesses in raising capital, and the regulation primarily affected will be the Commission's regulation A.

At this point, I believe it would be helpful to explain the effect of S. 336 in the context of the general provisions of the Securities Act. The act, as you know, requires that companies proposing to make public offerings of securities file registration statements covering those securities with the Commission, unless the statute provides an exemption. Section 3(b) of the act authorizes the Commission by appropriate rules and regulations to provide such an exemption for offerings not exceeding a specified dollar amount. This dollar amount was set at $100,000 in 1933 and a 1945 amendment to the Securities Act increased the amount to $300,000. Section 3(b) still contains the $300,000 figure today, 25 years later.

The legislative history of the 1945 amendment indicates that the primary reason for the increase then was the desire of Congress to aid

small businesses in raising necessary capital for the commencement or expansion of business, and it considered that $100,000 would, in many cases, be an inadequate amount for the accomplishment of such objectives in view of generally increased costs as compared to those existing when the act was passed in 1933.

An identical situation exists at the present time. Costs have continued to rise throughout the economy with the result that the $300,000 of 1945 has subsantially less purchasing power today, as the chairman has indicated. In many cases, it is an inadequate amount to finance properly either a small established business seeking to modernize or expand, or a newly organized venture requiring a substantial amount of seed capital. It would take substantially more dollars now to purchase the same amount of capital goods which could have been bought in 1945 for $300,000. One purpose of S. 336, then, is simply to update Section 3(b) so that the original policy underlying that section will be carried out in present-day economic conditions.

Current economic conditions also present other problems for a company desiring to raise $300,000 or less through the vehicle of a regulation A offering. The $300,000 limitation makes it difficult for issuers to interest investment bankers in such offerings because the larger and more experienced investment banking houses are not interested in underwriting small issues, partly because returns to them would not be commensurate with the effort needed to underwrite such an offering. Where an underwriter can be found, the underwriting commissions for small issues may run as high as 15 percent to 20 percent of the amount sold which, of course, reduces the funds available to the issuer of the securities. The problems facing a small company in obtaining financing may be considerable because such sources as banks and private investors may not be willing or able to provide adequate risk capital. A public offering may therefore be the only viable alternative source of financing, whatever the cost.

This explains, then, why Members of Congress and the financial community have suggested the desirability of a further increase in the $300,000 limitation. I might mention in passing that this is not the first time such a proposal has been before the Congress. When the Securities Act was amended in 1954, the bill which passed the Senate would have raised the limitation to $500,000. However, no such provision was included in the bill which passed the House of Representatives. When the differences in the two versions were submitted to conference, the conference committee declined to accept the Senate version of the bill in this respect, and it was the conference committee's version which was enacted into law.

At the beginning of my comments on this bill, I mentioned that section 3(b) authorizes the Commission to promulgate rules and regulations to give effect to the exemption provided by that section. Several such rules and regulations have been adopted, namely, rules 234, 235, and 236 and regulations A and F. I have copies of these rules and regulations if you wish to include them in the record.

Senator WILLIAMS. I would appreciate it. They will be included (see p. 50).

Mr. BUDGE. They provide exemptions for first-lien notes, securities of cooperative housing corporations, and assessments on assessable stock, and exemptions for certain other securities.

For purposes of S. 336, the most relevant exemption is that provided by regulation A. Regulation A presently permits a company to obtain needed capital not in excess of $300,000, including underwriting commissions, in any one year, from a public offering of its securities without registration, provided certain specified conditions are met. These include the filing of a notification supplying basic information about the company and the filing and use in the offering of an offering circular. These documents are somewhat simpler to prepare and less expensive to print than the full registration statement required under the Securities Act for nonexempt offerings. It will be necessary for the Commission to amend regulation A to give effect to the wishes of Congress if it enacts S. 336 into law. The Commission will consider such an amendment promptly after enactment of the bill.

Gentlemen, this concludes my comments on these two bills. I will be happy to answer any questions you may have.

Senator WILLIAMS. Thank you, Mr. Chairman. I wonder if you could explain—I know this is too complicated for a hearing situation—the items required in a full registration statement that are not required under regulation A? Is there a voluminous list of differences?

Mr. BUDGE. Well, I think Mr. Shreve could give you a very short answer to that, Mr. Chairman, if you would permit that.

Mr. SHREVE. If you want a detailed answer, Mr. Chairman, I think it would be advisable for us to prepare a chart for you.

Senator WILLIAMS. I think that would be useful for our hearing record; if that information could be supplied it would be included in the record.

Mr. SHREVE. All right, Senator. I would say perhaps the primary difference at the present time is that the regulation does not require certified financial statements whereas registration does.

Mr. BUDGE. The difference in the expense, Mr. Chairman, is very significant. The legal fees, the accounting fees, the printing charges, all are substantially larger on a normal filing than they are under the regulation A proceeding.

Senator WILLIAMS. I know the committee would like to have this material in our record. I am sure the Members of the Senate will be calling on us to explain the differences at a later time.

Mr. BUDGE. We will be happy to supply them.

(The following was received for the record:)

A COMPARISON OF DISCLOSURE REQUIREMENTS IN A PROSPECTUS UNDER THE SECURITIES ACT OF 1933 AND AN OFFERING CIRCULAR USED IN THE REGULATION A EXEMPTION

PROSPECTUS REQUIREMENTS FOR REGISTRATION STATEMENT FILED ON TYPICAL FORM S–1	OFFERING CIRCULAR AS REQUIRED UNDER SCHEDULE I OF REGULATION A
Rule 425	
The outside front cover page must contain the language specified in Rule 425 to the effect that the Commission does not approve or disapprove of the securities offered nor pass on the accuracy of the prospectus.	The outside cover page must contain a required statement that the securities are offered pursuant to an exemption from registration and a statement similar to that required by Rule 425.

Proposed offering The outside front cover page sets forth the terms of the offering and summary information such as the type and amount of securities offered, the offering price to the public, commissions and discounts, additional expenses of issuer and proceeds to the issuer or selling stockholder.	Similar information is required.
Plan of Distribution The method by which the securities are offered and if by an underwriter, then the name and address of the underwriters, their participation, the nature of the offering, and material relationships between the underwriter and the issuer.	Similar information is required.
Securities Act Release No. 4936 Where the company does not have a history of earnings or is in the development stage, Release 4936 requires that the prospectus contain a section in the forefront of the document describing certain "high risk" factors to be considered by a prospective purchaser. Also a statement of dilution of a purchaser's investment is required.	Pursuant to Rule 256(e) similar information is required.
Use of Proceeds by Registrant Principal purposes for which the proceeds will be used, the amounts for each purpose and the priority of the purposes.	Similar information is required.
Sales Otherwise Than for Cash Where sales are to be made otherwise than for cash, disclosure on the consideration for the proposed transaction.	Similar information is required.
Capital Structure A statement of outstanding equity and debt securities, both long and short term, as of a date within 90 days of filing.	Similar information is required pursuant to Rule 256(e).
Summary of earnings A summary of earnings for the last five years, the last three of which must be certified by independent certified public accountants. If the end of the last year is not within 90 days of the filing date then a similar statement for the interim period ending within such 90 day period, together with the corresponding period for the previous year.	A profit and loss statement for each of the last two years, or such shorter period as the issuer has been in existence. Where such statement is not of a date within 90 days of filing a statement for an interim period ending within 90 days is required. Such statements need not be certified.
Organization of registrant The year in which issuer was organized, the place of organization, and the nature of the entity.	Similar information is required.
Parents of registrant Parents of issuer showing the basis of control.	Similar information is required.

Description of Business The development of the issuer's business over the last five years, or since organization, the nature of its present or proposed business, principal markets, and the registrant's competitive position in its industry.	Similar information is required.
Description of Property The location and general character of principal plants, mines or other important physical properties.	Similar information is required.
If Organized Within Five Years Where less than five years old disclosure regarding promoters should include significant transactions between such promoters and the issuer such as assets transferred, consideration given therefor and the cost of such assets to promoters where recently acquired.	Similar information is required where the issuer is less than three years old.
Options To Purchase Securities Information on options to purchase securities outstanding as of a date within 30 days of filing, including the terms of such options.	Similar information is required.
Principal Holders of Securities Information on 10% stockholder of voting securities of the issuer and as to equity securities held by officers and directors as a group.	Similar information is required.
Interest of Management and Others in Certain Transactions The material interests of management, 10% stockholders and associates, direct or indirect in transactions with the registrant.	Similar information is required.
Financial statements The prospectus shall include a balance sheet as of a date within 90 days of filing, or six months where the issuer meets certain tests. The balance sheet need not be certified if there is also included a certified balance sheet as of the last fiscal year of the issuer or as of a date within a year of filing. The form and content of financial statements are governed by Regulation S–X which also requires certain schedules to be filed.	The profit and loss statement for two years mentioned earlier must be accompanied by a balance sheet as of a date within 90 days of filing. Financial statements need not be certified but must be prepared in accordance with generally accepted accounting principles. The schedules called for by Regulation S–X need not be filed under the exemption.
Pending legal proceedings Material legal proceedings involving the issuer or its major subsidiaries, giving the nature of the proceedings and the court of jurisdiction. Where principals of the issuer or their associates are litigants, adverse to the issuer, such facts should be disclosed.	Similar information is required pursuant to Rule 256(e).
Securities being registered A description of the securities being registered is required.	Similar information is required.

Directors and executive officers.	
The names of all directors and executive officers of the issuer, the position held by such persons and the principal occupation for the last five years of such executive officers.	Similar information is required.
Remuneration of directors and officers	
Remuneration for each director and each of the three highest paid executive officers exceeding $30,000 during the last fiscal year, and the aggregate remuneration paid to all officers and directors. Also indirect remuneration such as retirement and pension benefits.	Similar information is required except that there is no $30,000 exception.

EXHIBITS

(Major differences in requirements)

Securities	
The registration statement must contain copies of the articles of incorporation and the by-laws, and other documents which define the rights of securities outstanding or to be outstanding.	Any indenture or other instruments defining the rights of debt securities to be offered, and/or the portion of the articles or by-laws setting forth the rights of equity securities offered.
Major Contracts	
All major contracts must be filed.	Contracts need not be furnished, except as supplemental information when requested by the staff.
Opinion and Consent of Counsel to the Issuer	
An opinion of counsel as to the legality of the issue is required as well as a consent to being named as counsel.	Only the consent of counsel to be named in the filing is required.

OTHER DIFFERENCES

A filing fee of one-fiftieth of 1% of the aggregate amount registered is required.	No filing fee is required.
The registration statement is processed in the Commission's office in Washington, D.C.	A notification under Regulation A is processed by the staff of the Commission's Regional Office, of which there are nine, where the filing is made.

Senator WILLIAMS. Could you explain in general, if it can be explained, what type of companies use regulation A?

Mr. BUDGE. It is the smaller company, the company that either is just starting out and wants venture capital, people who have what they think is a good idea and who do not need the millions of dollars which the normal investment banking houses are interested in underwriting. It is the company which is known locally in a geographic area.

Personally, I think that the regulation A is used a lot more outside of the big urban centers than it is inside. It is the companies which are known in their local communities who want to expand either their plant facilities, their inventories, or their service facilities in some way, and who do not need $4 or $5 million. They want something less than that. In this instance we are suggesting that the $500,000 called for in this bill would not even equate after 25 years to the $300,000 which is in the present law.

I think this bill is really of very vital importance to the smaller companies around the country.

Senator WILLIAMS. That leads to the observation that it has been 25 years since the act was amended to increase ceiling of $300,000. Here, of course, we fix a figure. Do you have any observation on whether this is the way to do it—fixing the statutory ceiling at $500,000? There is another way—letting the Commission have a maximum of flexibility in determining the ceiling and determining it according to economic conditions. That suggestion probably will be raised during our hearings. I wonder if you have an observation on that alternative, Mr. Chairman.

Mr. BUDGE. I think the Commission would be very happy to accept the responsibility of fixing the ceiling amount. I am satisfied that under present circumstances the Commission would certainly not fix it less than $500,000.

Senator WILLIAMS. I appreciate the answer.

Senator PACKWOOD. I have no questions.

Senator WILLIAMS. Senator Bennett.

Senator BENNETT. I have just one question, Mr. Chairman. This may not be a fair statement but I have the impression that in the mining industry you run into problems of fraud with small companies. Will this change affect that situation in any way? Will there be less protection for the investor who is being asked to invest in a small company as a result of this change?

Mr. BUDGE. I would think not, Senator. This actually simply makes the figure of $300,000 more realistic to today's value of the dollar. I would think that the protection would be identical with the protections afforded by the present exemption.

Senator BENNETT. Do you think the present $300,000 limit prevents or discourages people from forming companies and going public because of the cost of underwriting?

Mr. BUDGE. I think it does. As to the mining venture, the instances where the Commission has had the most difficulty with the mining venture is when they are attempting an intrastate offering anyway, which is not covered by this regulation A. Most of them try—if they have a fraudulent offering, they try very scrupulously to stay within the intrastate coverage.

Senator BENNETT. I am aware of that situation. They do not always succeed. Some enthusiastic salesman crosses the State line and you find them on your doorstep.

Mr. BUDGE. That is correct. Of course, we do attempt to follow up on the fraud. We are authorized to do that wherever it exists, but I just do not see that except for the making of the dollar amount more realistic where there would be any change in the present protection.

Mr. LOOMIS. I think that one advantage in an act raising the ceiling from $300,000 to $500,000 is that in the case of mining ventures and other small ventures, this would lead them to use regulation A when they need a little more than $300,000 and could get by with $500,000 instead of driving them into attempting to avail themselves of the intrastate exemption where no disclosure is required.

Under regulation A the disclosure, while less than under registration, is still useful.

Senator BENNETT. That is all, Mr. Chairman.

Senator WILLIAMS. Thank you, Chairman Budge.

(The full prepared statement of Chairman Budge and various attachments are reprinted as follows:)

STATEMENT OF HAMER H. BUDGE, CHAIRMAN OF THE SECURITIES AND EXCHANGE COMMISSION

Mr. Chairman and members of the subcommittee, it is a pleasure to be here this morning to present the Commission's views on S. 3431, pertaining to certain amendments to the Williams bill, and S. 336, a proposal to increase the Regulation A ceiling under the Securities Act of 1933.

I should like to begin today with a discussion of the amendments to the Williams bill, which became law on July 29, 1968. The subcommittee is to be congratulated in accomplishing this important reform in securing for the investing public additional protections in an area which has become increasingly significant in recent years.

The original legislation is now Public Law 90–439 and provides for disclosures with respect to substantial acquisitions of securities registered under the Securities Exchange Act and in connection with tender offers for such securities, together with protections against fradulent activities. It permits Commission regulation of corporations' purchases of their own shares and provides for disclosure in connection with changes of a majority of the board of directors in conjunction with acquisitions of securities and takeover bids. It also provides for the regulation of solicitations or recommendations to accept or reject the tender offer. Substantive protections for the public investor to whom the tender offer is directed are also provided, such as providing a limited time in which tendered securities can be withdrawn, a limited period during which securities must be taken up on a pro rata basis rather than a first-come, first-serve basis, and provisions that if the terms of a tender offer are varied by increasing the price it must afford the benefit of that increase to persons who have already tendered their securities.

Immediately after enactment of the legislation, the Commission adopted regulations pertaining to the form and content of the disclosures to be furnished and related matters. This was done since certain provisions in the legislation were not self-executing. I have a complete set of the pertinent regulations with me today if the committee would like to have them inserted in the record at this point.

As I have said before, our experience with the operation of the Williams bill has been most satisfactory. The quality of disclosure available to the investing public has been substantially improved in addition to providing important new protections concerning the terms of the tender offers. Since the enactment of the legislation through January 1970, filings relating to 96 tender offers and 382 acquisitions of securities have been made with the Commission and made available to the public. The 96 tender offers involved a total of $2.26 billion. If the committee wishes, I can submit for the record a table showing the names of the companies involved in the 96 tender invitations, as well as the dates and dollar amounts involved.

After this brief sketch, I would like to turn now to the specific amendments pending before you in S. 3431. The first section of the bill would amend in two respects Section 13(d)(1) of Public Law 90–439, which section requires any person who acquires ten percent or more of equity securities registered under the Securities Exchange Act or any equity security issued by a registered closed-end investment company to file with the Commission certain specified disclosures. These would include, for example, disclosures pertaining to the identity and background of the person who acquired such securities, the source and the amount of funds to be used, and the purposes for which the shares were acquired.

The first amendment to Section 13(d)(1) would be to extend its coverage to insurance companies. The present law applies only to securities registered pursuant to Section 12 of the Securities Exchange Act and to registered closed-end investment companies. The securities of insurance companies are not so registered by reason of the exemption contained in Section 12g(2)(G) of the Securities Exchange Act for insurance company securities which are subject to specified state regulation.

The Commission, of course, does not wish to disturb the Congressional decision reached in 1964 to leave reporting, proxy solicitation and the regulation of insider trading with respect to the securities of insurance companies to appropriate state authorities. As I had occasion to mention in my testimony before this subcommittee last March, however, it may well be that the considerations which resulted in leaving this latter type of regulation to the states may be inapplicable to tender offers. More frequent than not, tender offers are made on a nationwide basis and are not presently regulated by state insurance commissioners. Indeed, it might be quite difficult for a state commissioner to regulate a tender offer made from outside his state. While we do not know precisely the number of insurance companies to which the amendment would extend, we have information showing that for the calendar year 1969, 14 tender offers were made for shares issued by national insurance companies. I have this list with me today if you would like it to be included in the record.

The second change in S. 3431, as it relates to Section 13(d)(1), would be to reduce the ten percent figure in that section to five percent. This would mean that the provisions of present law would be triggered at the five percent level instead of the present ten percent level. The principal reason this change would be appropriate is that there is evidence that companies undertaking an acquisition, limit their prior purchases of stock in the open market to around nine percent as a means of avoiding making disclosures to the investing public. Obviously, ten percent of the securities of the larger corporations represents very large amounts of money.

Section 14(d), which was likewise added by Public Law 90–439, makes it unlawful to make a cash tender offer for securities subject to these provisions without filing with the Commission a statement containing essentially the same information as is provided for in Section 13(d) and furnishing such part of this information as the Commission may require to security holders who are invited to tender their shares. Section 14(d) also contains provisions governing the terms of a cash tender offer.

The present bill, S. 3431, would eliminate the exemption contained in Section 14(d) for exchange offers of securities registered under the Securities Act of 1933. The exchange offer is a situation where instead of offering cash for the securities of the target company, securities of the acquiring company are offered.

While registration under the Securities Act provides for disclosure and thus is an adequate substitute for the disclosures required by Section 14(d), the substantive provisions of the bill as they relate to the terms of the cash tender are not applicable to exchange offers of securities nor does the bill at present provide for regulation of solicitations in opposition to such an exchange offer.

Our information shows that from the effective date of the bill through December 31, 1969, offerings of securities in exchange for other securities in the approximate aggregate amount of $18 billion were registered with the Commission. These offerings which are exempt from most of the provisions of the law, exceeded in number and in dollar amount the cash tender offers which are subject to existing law. We have noticed a tendency to use exchange offers when an attempt is made to take over large corporations which would be extremely difficult to finance by means of a cash tender offer. S. 3431, if enacted, would have the desirable result of extending the substantive and other protections of the Williams bill to the larger group of public security holders to whom such offers are made.

The final amendment contained in S. 3431 would be to Section 14(e). Existing Section 14(e) prohibits false statements and fraudulent or deceptive practices in connection with tender offers, but it does not grant the Commission any rule-making authority to deal with such practices. Section 4 of S. 3431 would add a sentence granting to the Commission rule-making power to define and prescribe means reasonably designed to prevent fraudulent, deceptive and manipulative practices. The language in this amendment is identical with that contained in existing Section 15(c)(2) of the Exchange Act, which grants the Commission rule-making power with respect to fraudulent, deceptive or manipulative practices by brokers and dealers in transactions in the over-the-counter markets. The rule-making power provided for by Section 4 of the bill would enable the Commission to deal more effectively with the devices sometimes employed on both sides in contested offers.

We have a further suggestion for amendment to Section 13(e) of the Securities Exchange Act of 1934. This section authorizes the Commission to adopt rules and regulations with respect to purchases by certain issuers of their own securities.

Subsection (e)(2) provides that a purchase by or for a person in a control relationship with the issure, or a purchase by a person on behalf of the issuer is considered to be a purchase by the issuer for the purpose of the subsection. We suggest that the subsection be made subject to the authority of the Commission to adopt such rules and regulations as may be appropriate. It seems unnecessary to place on persons in a control relationship with the issuer all of the requirements, such as notice to shareholders and other restrictions, which may be appropriate for purchases by the issuer of its security.

For the foregoing reasons the Commission strongly supports the proposal to amend Public Law 90–439.

Before turning to S. 336, I would once again like to express the Commission's appreciation for the subcommittee's efforts in this important area and to offer to answer any questions which members of the subcommittee may have.

S. 336: A Proposal To Permit an Exemption of Security Issues not Exceeding $500,000 From Certain Provisions

S. 336 would amend Section 3(b) of the Securities Act of 1933 so as to increase the maximum aggregate amount of securities of certain issuers offered to the public, which may be exempted from registration under the Act pursuant to rules and regulations of the Securities and Exchange Commission, from $300,000 to $500,000. The Commission supports this amendment, and if it is enacted the Commission will act promptly to consider what amendments to its rules and regulations are necessary to give effect to the intent of Congress. A pressing purpose of S. 336 is to aid small businesses in raising capital, and the regulation primarily affected will be the Commission's Regulation A.

At this point, I believe it would be helpful to explain the effect of S. 336 in the context of the general provisions of the Securities Act. The Act, as you know, requires that companies proposing to make public offerings of securities file registration statements covering those securities with the Commission, unless the statute provides an exemption. Section 3(b) of the Act authorizes the Commission by appropriate rules and regulations to provide such an exemption for offerings not exceeding a specified dollar amount. This dollar amount was set at $100,000 in 1933 and a 1945 amendment to the Securities Act increased the amount to $300,000. Section 3(b) still contains the $300,000 figure today, 25 years later.

The legislative history of the 1945 amendment indicates that the primary reason for the increase then was the desire of Congress to aid small businesses in raising necessary capital for the commencement or expansion of business, and it considered that $100,000 would, in many cases, be an inadequate amount for the accomplishment of such objectives in view of generally increased costs as compared to those existing when the Act was passed in 1933.

An identical situation exists at the present time. Costs have continued to rise throughout the economy with the result that the $300,000 of 1945 has substantially less purchasing power today. In many cases, it is an inadequate amount to finance properly either a small established business seeking to modernize or expand, or a newly organized venture requiring a substantial amount of seed capital. It would take substantially more dollars now to purchase the same amount of capital goods which could have been bought in 1945 for $300,000. One purpose of S. 336, then, is simply to update Section 3(b) so that the original policy underlying that section will be carried out in present-day economic conditions.

Current economic conditions also present other problems for a company desiring to raise $300,000 or less through the vehicle of a Regulation A offering. The $300,000 limitation makes it difficult for issuers to interest investment bankers in such offerings because the larger and more experienced investment banking houses are not interested in underwriting small issues, partly because returns to them would not be commensurate with the effort needed to underwrite such an offering. Where an underwriter can be found, the underwriting commissions for small issues may run as high as 15% to 20% of the amount sold which, of course, reduces the funds available to the issuer of the securities. The problems facing a small company in obtaining financing may be considerable because such sources as banks and private investors may not be willing or able to provide adequate risk capital. A public offering may therefore be the only viable alternative source of financing, whatever the cost.

This explains, then, why members of Congress and the financial community have suggested the desirability of a further increase in the $300,000 limitation. I might mention in passing that this is not the first time such a proposal has been before the Congress. When the Securities Act was amended in 1954, the bill which passed the Senate would have raised the limitation to $500,000. However, no such provision was included in the bill which passed the House of Representatives. When the differences in the two versions were submitted to conference, the Conference Committee declined to accept the Senate version of the bill in this respect, and it was the Conference Committee's version which was enacted into law.

At the beginning of my comments on this bill, I mentioned that Section 3(b) authorizes the Commission to promulgate rules and regulations to give effect to the exemption provided by that section. Several such rules and regulations have been adopted, namely, Rules 234, 235 and 236 and Regulations A and F. I have copies of these rules and regulations if you wish to include them in the record. They provide exemptions for first lien notes, securities of cooperative housing corporations and assessments on assessable stock, and exemptions for certain other securities.

For purposes of S. 336, the most relevant exemption is that provided by Regulation A. Regulation A presently permits a company to obtain needed capital not in excess of $300,000, including underwriting commissions, in any one year, from a public offering of its securities without registration, provided specified conditions are met. These include the filing of a notification supplying basic information about the company and the filing and use in the offering of an offering circular. These documents are somewhat simpler to prepare and less expensive to print than the full registration statement required under the Securities Act for nonexempt offerings. It will be necessary for the Commission to amend Regulation A to give effect to the wishes of Congress if it enacts S. 336 into law. The Commission will consider such an amendment promptly after enactment of the bill.

Rules Adopted by Securities and Exchange Commission Pursuant to Public Law 90–439

Adoption of Rule 10b–13 Under the Securities Exchange Act of 1934

The Securities and Exchange Commission today announced the adoption of Rule 10b–13 under the Securities Exchange Act of 1934 ("the Act") to prohibit a person who makes a cash tender offer or exchange offer for an equity security from purchasing that security (or any other security immediately convertible into or exchangeable for that security) otherwise than pursuant to the tender or exchange offer, during the period beginning with the public announcement or other commencement of the offering, whichever is earlier, and the time when the offer must by its terms be accepted or rejected.

On May 5, 1969, in Securities Exchange Act Release No. 8595, the Commission published its revised proposal to adopt Rule 10b–13. It has considered the comments and suggestions in response to that proposal and now adopts the rule in the form set forth below.

Where securities are purchased for a consideration greater than that of the tender offer price, this operates to the disadvantage of the security holders who have already deposited their securities and who are unable to withdraw them in order to obtain the advantage of possible resulting higher market prices. Additionally, irrespective of the price at which such purchases are made, they are often fraudulent or manipulative in nature and they can deceive the investing public as to the true state of affairs. Their consequences can be various, depending upon conditions in the market and the nature of the purchases. They could defeat the tender offer, either by driving the market price above the offer price or by otherwise reducing the number of shares tendered below the stated minimum. Alternatively, they could further the tender offer by raising the market price to the point where ordinary investors sell in the market to arbitrageurs, who in turn tender. Accordingly, by prohibiting a person who makes a cash tender offer or exchange offer from purchasing equity securities of the same class during the tender offer period otherwise than pursuant to the offer itself, the rule accomplishes the objective of safeguarding the interests of the persons who have tendered their securities in response to a cash tender offer or exchange offer;

moreover once the offer has been made, the rule removes any incentive on the part of holders of substantial blocks of securities to demand from the person making a tender offer or exchange offer a consideration greater than or different from that currently offered to public investors.

Although the rule applies to purchases of securities immediately convertible into or exchangeable for securities of the same class which are the subject of the offer, it does not prohibit a person who, at the commencement of the offer, owns securities convertible into or exchangeable for securities of the class which are the subject of the offer from converting or exchanging such holding into such securities.

The rule deals with purchases or arrangements to purchase, directly or indirectly, which are made from the time of public announcement or initiation of the tender offer or exchange offer, until the person making the offer is required either to accept or reject the tendered securities. As used in the rule an offer could be publicly announced or otherwise made known to the holders of the target security through a published advertisement, a news release, or other communication by or for the person making the offer to holders of the security being sought for cash tender or exchange. Moreover, any understanding or arrangement during the tender offer period, whether or not the terms and conditions thereof have been agreed upon, to make or negotiate such a purchase after the expiration of that period would be prohibited by the rule. Purchases made prior to the inception of that period are not specifically prohibited under the rule, although disclosure of such purchases within a specific prior period is required to be filed in schedules filed under Sections 13(d) and 14(d) of the Act. Of course, the general anti-fraud and anti-manipulation provisions could apply to such pretender purchases. The prohibition of Rule 10b–13 applies to exchange offers when publicly announced even though they cannot be made until the happening of a future event, such as the effectiveness of a registration statement under the Securities Act of 1933. As the Commission explained in Securities Exchange Act Release No. 8595, as applied to the offer by one company of its own securities in exchange for the securities of another issuer, the application of Rule 10b–13 to exchange offers in essentially a codification of existing interpretations under Rule 10b–6, which among other things, prohibits a person making a distribution from bidding for or purchasing the security being distributed or any right to acquire that security. These interpretations have pointed out that the security to be acquired in the exchange offer is, in substance, either a right to acquire the security being distributed or is brought within the rule under paragraph (b) thereof; and Rule 10b–6 prohibits the purchase of such security during the distribution except through the exchange offer, unless an exemption is available.

Since Rule 10b–13 applies to a cash tender offer or an offer of an exchange by an issuer to its own security holders of one class of its securities for another, if repurchase of the other security is subject to the prohibitions of Rule 10b–6, the issuer would have to obtain an exemption under paragraph (f) of that rule. Rule 10b–13 does, however, exempt from its prohibitions purchases if otherwise lawful, under specified conditions pursuant to "qualified stock options" or "employee stock purchase plans" as defined in Sections 422 and 423 of the Internal Revenue Code of 1954 as amended, or "restricted stock options" as defined in Section 424(b) of the Internal Revenue Code of 1954 as amended, as well as purchases under specified types of employee plans.

In addition, Rule 10b–13 contains a provision that the Commission may, unconditionally or on terms and conditions, exempt any transaction from the operation of the rule, if the Commission finds that the exemption would not result in the use of a manipulative or deceptive device or contrivance or of a fraudulent, deceptive or manipulative act or practice comprehended within the purpose of the rule. It is contemplated that this exemptive provision would be narrowly construed and that an exemption would be granted by the Commission only in cases involving very special circumstances.

STATUTORY BASIS

The Securities and Exchange Commission acting pursuant to the provisions of the Securities Exchange Act of 1934, and particularly Sections 10(b), 13(e), 14(e) and 23(a) thereof, and deeming it necessary and appropriate in the public interest and for the protection of investors, hereby adopts Rule 10b–13 as set forth below, effective, November 10, 1969.

TEXT OF RULE 10b–13

Rule 10b–13. Prohibiting Other Purchases During Tender Offer or Exchange Offer

(a) No person who makes a cash tender offer or exchange offer for any equity security shall, directly or indirectly, purchase, or make any arrangement to purchase, any such security (or any other security which is immediately convertible into or exchangeable for such security), otherwise than pursuant to such tender offer or exchange offer, from the time such tender offer or exchange offer is publicly announced or otherwise made known by such person to holders of the security to be acquired until the expiration of the period, including any extensions thereof, during which securities tendered pursuant to such tender offer or exchange offer may by the terms of such offer be accepted or rejected; *provided, however*, that if such person is the owner of another security which is immediately convertible into or exchangeable for the security which is the subject of the offer, his subsequent exercise of his right of conversion or exchange with respect to such other security shall not be prohibited by this rule.

(b) The term "exchange offer" as used in this rule shall include a tender offer for, or request or invitation for tenders of, any security in exchange for any consideration other than for cash.

(c) The provision of this rule shall not apply to a purchase of a security of the same class as that which is the subject of a cash tender offer or exchange offer (or of any other security which is immediately convertible into or exchangeable for such security) if such purchase is made b the issuer, by participating employees of the issuer or the employees of its subsidiaries, or by the trustee or other person acquiring such security for the account of such employees, pursuant to (1) a stock option plan involving only "qualified stock options", or qualifying as an "employee stock purchase plan" as those terms are defined in Sections 422 and 423 of the Internal Revenue Code of 1954, as amended; *provided, however*, that for the purposes of this paragraph an option which meets all of the conditions of that section other than the date of issuance shall be deemed to be "restricted stock options"; or (2) a savings, investment, pension or other stock purchase plan providing for both (A) periodic payments (or payroll deductions) for acquisition of securities by or on behalf of participating employees and (B) periodic purchases of the securities by participating employees, or the person acquiring them for the account of such employees.

(d) This rule shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempt such transaction or transactions, either unconditionally or on specified terms or conditions, as not constituting a manipulative or deceptive device or contrivance or a fraudulent, or deceptive or manipulative act or practice comprehended within the purpose of this rule.

By the Commission.

ORVAL L. DUBOIS, *Secretary.*

ADOPTION OF RULE 13d–4 UNDER SECTION 13(d)

The Securities and Exchange Commission has amended its temporary rules under Section 13(d) of the Securities Exchange Act of 1934 by adding thereto a new Rule 13d–4. Section 13(d) requires certain disclosure with respect to the acquisition of more than 10 percent of a class of equity securities registered pursuant to Section 12 of the Act.

The new Rule 13d–4 provides an exemption from Section 13(d) of the Act with respect to purchases of securities by security holders pursuant to pre-emptive rights where the purchaser does not acquire more than his or its pro rata share of the securities offered.

It is contemplated that a similar rule will be incorporated in the permanent rules under Section 13(d) which are now under consideration.

The text of the new rule is as follows:

Rule 13d–4. Exemption of Acquisitions Pursuant to Pre-emptive Rights

An acquisition of securities of an issuer by a security holder who prior to such acquisition was the beneficial owner of more than 10 percent of the outstanding securities of the same class as those acquired shall be exempt from Section 13(d) of the Act if the following conditions are met:

(a) The acquisition is made pursuant to pre-emptive subscription rights in an offering made to all holders of securities of the class to which the pre-emptive subscription rights pertain;

(b) The purchaser does not, through the exercise of such pre-emptive subscription rights, acquire more than his or its pro rata share of the securities offered; and

(c) The acquisition is duly reported pursuant to Section 16(a) of the Act and the rule and regulations thereunder.

* * * * * * *

The Commission finds that the foregoing rule is appropriate in the public interest and is consistent with the protection of investors and that notice and procedure pursuant to the Administrative Procedure Act is not necessary. Since the rule provides an exemption from Section 13(d) of the Act, the Commission finds that it may be made effective immediately. Accordingly, the rule shall become effective upon publication January 31, 1969.

By the Commission:

ORVAL L. DUBOIS, *Secretary.*

AMENDMENT TO TEMPORARY RULES UNDER SECTIONS 13(d), 13(e), 14(d) AND 14(f)

The Securities and Exchange Commission has amended its temporary rules under Sections 13(d), 13(e), 14(d) and 14(f) of the Securities Exchange Act of 1934 to specify the number of copies of material to be filed with the Commission. Previously, the number of copies to be filed was not specified and the number filed in many cases was not sufficient for the use of the staff in the expeditious examination of the material filed.

The sections of the Act referred to relate to matters such as the acquisition of equity securities by the issuer thereof or other persons, the invitation of tender offers, and changes in the majority of the directors of a company.

The text of the amendments follows:

Rule 13d–1.—Rule 13d–1 has been amended by adding thereto the following sentence:

"Eight copies of the statement shall be filed with the Commission."

Rule 13d–2.—Rule 13d–2 has been amended by adding thereto the following sentence:

"Eight copies of each such amendment shall be filed with the Commission."

Rule 13e–1.—The introductory clause of paragraph (a) of Rule 13e–1 has been amended to read as follows:

"(a) The issuer has filed with the Commission eight copies of a statement containing the information specified below with respect to the proposed purchases:"

Rule 14d–1.—Rule 14d–1 has been amended by adding thereto a new paragraph (e) reading as follows:

"(e) Eight copies of the statement required by paragraph (a), every amendment to such statement, and all other material required by this rule, shall be filed with the Commission."

Rule 14f–1.—Rule 14f–1 has been amended by adding thereto the following sentence:

"Eight copies of such information shall be filed with the Commission."

* * * * * * *

The Commission finds that the foregoing rules relate to procedure rather than matters of substance and that notice and procedure pursuant to the Administrative Procedure Act is not necessary. In view of the nature of the rules, the Commission finds that they may be made effective less than 30 days after publication. Accordingly, the rules shall be effective with respect to material filed with the Commission on or after April 1, 1969.

By the Commission:

ORVAL L. DUBOIS, *Secretary.*

NOTICE OF PROPOSED NEW RULE 10b–13

Notice is hereby given that the Securities and Exchange Commission has under consideration a proposed new Rule 10b–13 with respect to purchases of securities during the period that a tender offer with respect to such securities is being made. The rule would provide that any person who makes a tender offer and, during the period of such offer, purchases the securities otherwise than pursuant

to the tender offer, shall also purchase all tendered securities at a price equal to the highest price paid in purchases made otherwise than pursuant to the tender offer, or at the tender offer price, whichever is higher.

The purpose of the proposed rule is to require a person making a tender offer to treat the persons responding to the tender offer on substantially the same basis and terms as those accorded to other selling stockholders if he purchases securities in the open market otherwise at a price either higher or lower than that at which the tender offer is made. Where securities are purchased in the open market at a price higher than the tender offer price, it works to the disadvantage of security holders who have deposited their securities and are unable to withdraw them in order to take advantage of the higher market price. Where securities are purchased in the open market at a price lower than the tender offer price, this may result in a reduction in the amount of tendered securities accepted or the rejection of all such securities. The proposed rule would thus safeguard the interests of the persons who have tendered their securities in response to the tender offer.

While the proposed rule deals only with purchases made in the open market or otherwise during the period that a tender offer is outstanding, purchases immediately prior to making the tender offer may also, in some instances, work to the disadvantage of persons who are later invited to tender their securities. The Commission invites comments on the desirability of expanding the provisions of the rule to cover transactions prior to making a tender offer. The proposed rule would apply to purchases of securities immediately convertible into or exchangeable for securities of the class which is the subject of the tender offer.

The proposed rule, which would be adopted pursuant to Sections 10(b), 14(d) and (e) and 23 (a) of the Act, read as follows:

Rule 10b–13. Other Purchases During Period of Tender Offer

(a) No person who makes a tender offer for, or a request or invitation for tenders of, any security, shall thereafter purchase, directly or indirectly, prior to the expiration and consummation of such tender offer, any security of the same class otherwise than pursuant to such tender offer, unless such person agrees to purchase from any person who tenders securities pursuant to the tender offer, all securities tendered by such person, at a price equal to the highest price paid for securities purchased otherwise than pursuant to the tender offer, or at the tender offer price, whichever is higher.

(b) The purchase of a security of the same class as used in this rule shall include the purchase of any security which is immediately exchangeable for or convertible into such security.

* * * * * * *

All interested persons are invited to submit their views and comments on the proposed rule, in writing, to the Securities and Exchange Commission, Washingon, D.C. 20549, on or before September 30, 1968. Except where it is requested that such communication not be disclosed, they will be considered available for public inspection.

By the Commission:

ORVAL L. DUBOIS, *Secretary.*

ADOPTION OF AMENDMENTS TO TEMPORARY RULES AND REGULATIONS UNDER SECTIONS 13(d) AND (e) AND 14(d)

On July 30, 1968 the Commission announced, in Securities Exchange Act Release No. 8370, the adoption of temporary rules and regulations to implement the recent amendments to Sections 13 and 14 of the Securities Exchange Act of 1934, effected by Public Law 90–439. The Commission has amended these rules and regulations by adding certain new rules thereto and amending some of the previously adopted rules and regulations. A brief description of the changes involved in the amendments follows.

Rule 13d–1 has been amended by deleting therefrom the reference to July 29, 1968, the effective date of the statutory amendments. The reference to that date has led some persons to construe the rule as being applicable only if more than ten percent of a class of equity securities is acquired after such date. The rule is intended to apply, in accordance with the statute, whenever any person acquires after that date any equity securities if after such acquisition the person is then the beneficial owner of more than ten percent of the class.

A new Rule 13d–3 has been added to Regulation 13D. This rule provides that for the purpose of determining whether a person is the beneficial owner of a specified percentage of a class of equity securities, he shall be deemed to be the beneficial owner of securities of that class which he has the right to acquire through the exercise of presently exercisable options, warrants or rights or through the conversion of presently convertible securities, or otherwise.

Rule 13e–1 provides that no issuer which is subject to Section 13(e) of the Act shall purchase any of its equity securities when a tender offer is being made unless a statement with respect to the proposed purchase has been filed with the Commission and the substance of the information contained therein has been sent to its equity security holders within the preceding six months. The rule has been construed by some persons to mean that an issuer may either file the information with the Commission or transmit it to its security holders. The intent of the rule is that the issuer must comply with both conditions prior to any such purchase and the rule has been amended to make this clear.

Rule 14d–1 of Regulation 14D specifies the information to be filed with the Commission and furnished to the issuer and security holders in connection with tender offers for equity securities of an issuer. The amendment provides that all tender offers for, or requests or invitations for tenders of, securities published or sent to security holders shall include, in addition to the information previously required, information with respect to the rights of security holders to withdraw their securities and with respect to the pro rata acceptance of tenders where all of the securities tendered are not accepted.

A new Rule 14d-2 has been adopted which provides that Regulation 14D does not apply to certain communications which in the absence of such a rule would be deemed to constitute tender offers, or solicitations in favor of or in opposition to such offers. The exclusions relate to matters such as offers to no more than ten security holders during any period of twelve months, the call or redemption of any security in accordance with the terms and conditions of the governing instruments and the furnishing of information or advice to customers or clients by attorneys, banks, brokers, fiduciaries or investment advisers.

Item 4 of Schedule 13D has been amended to require a statement of the purpose or purposes for which securities of an issuer have been or are to be purchased. Under the existing item this information is not specifically required. The amended item would also require, where the issuer is a registered closed-end investment company, information with respect to any plans or proposals to change its fundamental investment policy.

Item 5 of Schedule 13D has been amended to require information with respect to recent transactions in the securities of the issuer. Under the existing item this information is not required.

Schedule 14D has been amended by adding thereto a new Item 5 which would require information with respect to recent transactions by insiders in securities of the issuer.

It is suggested that the applicable sections of the statute be read in connection with the temporary rules. The Commission's staff will endeavor to be as helpful as possible in connection with interpretive or other problems which may arise under the new legislation or the rules thereunder. The Commission will be glad to receive any comments or suggestions which interested persons may wish to make in regard to the temporary rules or these amendments thereto.

It should be noted that a "special bid" to purchase equity securities through the facilities of a national securities exchange ordinarily, under the regulations of such exchange, would constitute a "tender offer" or "request or invitation for offers" within the meaning of Sections 14(d) and (e) of the Act. Any such bid, therefore, can be lawfully made only in accordance with the provisions of those sections, including paragraph (5), withdrawal provisions, and paragraph (6), pro rata provisions, of Section 14(d), and the rules and regulations thereunder.

The text of the new and amended rules which were adopted pursuant to the Securities Exchange Act of 1934, particularly Sections 13(d) and (e), 14(d) and (e) and 23(a) thereof, is attached hereto.

The Commission finds that it is necessary in the public interest and for the protection of investors that additional temporary rules and regulations be adopted immediately to implement the recent amendments to Sections 13 and 14 of the Securities Exchange Act of 1934 and that notice and procedure pursuant to the Administrative Procedure Act is impracticable. Accordingly, the foregoing rules and regulations shall become effective immediately.

By the Commission:

ORVAL L. DUBOIS, *Secretary.*

I. Rule 13d–1 as amended reads as follows:

Rule 13d–1. Filing of Schedule 13D

Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to Section 12 of the Act, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, is directly or indirectly the beneficial owner of more than 10 per centum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Commission, a statement containing the information required by Schedule 13D.

II. The following new Rule 13d–3 has been added to Regulation 13D:

Rule 13d–3. Determination of Ownership of Specified Percentages of a Class of Equity Securities

In determining, for the purposes of Section 13(d) or Section 14(d), whether a person is directly or indirectly the beneficial owner of securities of any class, such person shall be deemed to be the beneficial owner of securities of such class which such person has the right to acquire through the exercise of presently exercisable options, warrants or rights or through the conversion of presently convertible securities, or otherwise. The securities subject to such options, warrants, rights or conversion privileges held by a person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such person but shall not be deemed to be outstanding for the purpose of computing the percentage of the class owned by any other person.

III. Rule 13e–1 as amended reads as follows:

Rule 13e–1. Purchase of Securities by Issuer Thereof

When a person other than the issuer makes a tender offer for, or request or invitation for tenders of, any class of equity securities of an issuer subject to Section 13(e) of the Act, and such person has filed a statement with the Commission pursuant to Rule 14d–1 and the issuer has received notice thereof, such issuer shall not thereafter, during the period such tender offer, request or invitation continues, purchase any equity securities of which it is the issuer unless it has complied with both of the following conditions:

(a) The issuer has filed with the Commission a statement containing the information specified below with respect to proposed purchases:

(1) The title and amount of securities to be purchased, the names of the persons or classes of persons from whom, and the market in which, the securities are to be purchased, including the name of any exchange on which the purchase is to be made;

(2) The purpose for which the purchase is to be made and whether the securities are to be retired, held in the treasury of the issuer or otherwise disposed of, indicating such disposition; and

(3) The source and amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto; and

(b) The issuer has at any time within the past six months sent or given to its equity security holders the substance of the information contained in the statement required by subparagraph (a).

Provided, however, that any issuer making such purchases which commenced prior to July 30, 1968 shall, if such purchases continue after such date, comply with the provisions of this rule on or before August 12, 1968.

IV. Rule 14d–1 has been amended as follows:

Rule 14d–1. Filing of Schedule 13D and Furnishing of Information to Security Holders

(a) (No change.)

(b) (No change.)

(c) All tender offers for, or requests or invitations for tenders of, securities published or sent or given to the holders of such securities shall include the following information:

(1) The name of the person making the tender offer, request or invitation;

(2) The exact dates prior to which, and after which, security holders who deposit their securities will have the right to withdraw their securities pursuant to Section 14(d)(5) of the Act, or otherwise;

(3) If the tender offer or request or invitation for tenders is for less than all of the outstanding securities of the class and the person making the offer, request or invitation is not obligated to purchase all of the securities tendered, the date of expiration of the period during which the securities will be taken up pro rata pursuant to Section 14(d)(6), or otherwise; and

(4) The information required by Items 2(a), (c) and (e), 3, 4, 5, and 6 of Schedule 13D, or a fair and adequate summary thereof.

(d) (No change.)

V. The following new Rule 14d–2 has been added to Regulation 14D:

Rule 14d–2. Certain Communications to Which Rules Do Not Apply

The rules contained in this regulation do not apply to the following communications:

(a) offers to purchase securities made in connection with a distribution of securities permitted by Rule 10b–6, 10b–7 or 10b–8.

(b) the call or redemption of any security in accordance with the terms and conditions of the governing instruments.

(c) offers to purchase securities evidenced by a script certificate, order form or similar document which represents a fractional interest in a share of stock or similar security.

(d) offers to purchase securities pursuant to a statutory procedure for the purchase of dissenting shareholders' securities.

(e) the furnishing of information and advice regarding a tender offer to customers or clients by attorneys, banks, brokers, fiduciaries or investment advisers, who are not otherwise participating in the tender offer or soliciation, on the unsolicited request of a person or pursuant to a general contract for advice to the person to whom the information or advice is given.

(f) A communication from an issuer to its security holders which does no more than (1) identify a tender offer or request or invitation for tenders made by another person, (2) state that the management of the issuer is studying the matter and will, on or before a specified date (which shall be not later than 10 days prior to the date specified in the offer, request or invitation, as the last date on which tenders will be accepted, or such shorter period as the Commission may authorize) advise security holders as to the management's recommendation to accept or reject the offer, request or invitation, and (3) request security holders to defer making a determination as to whether or not they should accept or reject the offer, request or invitation until they have received the management's recommendation with respect thereto.

(g) offers to purchase securities in transactions exempt from registration under the Securities Act of 1933 pursuant to Section 3(a)(10) thereof.

VI. Item 4 of Schedule 13D has been amended as follows:

Item 4. Purpose of Transaction

State the purpose or purposes of the purchase or proposed purchase of securities of the issuer. If the purpose or one of the purposes of the purchase or proposed purchase is to acquire control of the business of the issuer, describe any plans of proposals which the purchasers may have to liquidate the issuer, to sell its assets or to merge it with any other persons, or to make any other major change in its business or corporate structure, including, if the issuer is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote would be required by Section 13 of the investment Company Act of 1940.

VII. Item 5 of Schedule 13D has been amended as follows:

Item 5. Interest in Securities of the Issuer

State the number of shares of security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such persons, and (ii) each associate of such person, giving the name and address of each such associate. Furnish information as to all transactions in the class of securities in which this statement relates which were effected during the past 60 days by the person filing this statement and by its subsidiaries and their officers directors and affiliated persons.

VIII. The following new Item 5 has been added to Schedule 14D:

Item 5. Additional Information to be Furnished

(a) Furnish information as to all transactions in the class of securities to which this statement relates which were effected during the past 60 days by the issuer and its subsidiaries and their officers, directors and affiliated persons.

ADOPTION OF TEMPORARY RULES AND REGULATIONS UNDER SECTIONS 13(d) AND (e) AND SECTIONS 14(d) AND (f)

The Securities and Exchange Commission has adopted temporary rules and regulations to implement the recent amendments, effected by Bill S. 510, to Sections 13 and 14 of the Securities Exchange Act of 1934. These amendments, set forth in Sections 13(d) and (e) and Sections 14(d) and (f) of the Act, apply to classes of equity securities registered pursuant to Section 12 of the Act and classes of equity securities issued by closed-end investment companies registered under the Investment Company Act of 1940. They relate to the acquisition of more than ten percent of a class of such securities by any person, the purchase of securities by the issuer thereof, the making of tender offers or solicitations in favor of, or in opposition to, such tender offers, and the replacement of a majority of the directors of an issuer in connection with an acquisition subject to Section 13(d) or a tender offer subject to Section 14(d) of the Act. The statutory amendments became effective immediately when the President signed the Bill on July 29, 1968. The Commission adopted the temporary rules to put into operation the provisions of the amendments. This constitutes a first step in the development of comprehensive regulations to accomplish the full purposes of the statutory amendments.

The rules under the new Section 13(d) with respect to the acquisition of securities are set forth in Regulation 13D. That regulation provides that the information with respect to such acquisitions called for by Schedule 13D be filed with the Commission and sent to the issuer of the security and to each exchange where the security is traded. For the purpose of preventing fraudulent, deceptive or manipulative acts and practices, the Commission had adopted Rule 13e–1. The rule provides that no issuer which is subject to Section 13(e) of the Act shall purchase any of its equity securities when a tender offer is being made unless a statement with respect to the proposed purchase has been filed by it with the Commission. and the substance of the information therein has been sent or given to its equity security holders within the preceding six months.

The rules under Section 14(d) with respect to tender offers and solicitations to accept or to reject such offers are set forth in Regulation 14D. That regulation provides that the information called for by Schedule 13D or Schedule 14D shall be filed with the Commission. Certain of such information, or a fair and adequate summary thereof, is required to be included in all requests and solicitations.

Rule 14f–1 relates to the replacement of a majority of the directors of an issuer in connection with an acquisition subject to Section 13(d) or a tender offer subject to Section 14(d) of the Act. The rule requires that not less than 10 days prior to the time the persons elected or designated as directors of the issuer take office, or such shorter period as the Commission may authorize, the issuer shall file with the Commission and transmit to certain holders of securities of the issuer information required by certain items of the Commission's proxy rules.

Provisions are made for delay in compliance with the rules in regard to activities which had been commenced before the statutory amendments became effective.

It is suggested that the applicable sections of the statute be read in connection with the temporary rules. The Commission's staff will endeavor to be as helpful as possible in connection with interpretive or other problems which may arise under the new legislation or the rules thereunder. The Commission will be glad to receive any comments or suggestions which interested persons may wish to make in regard to the temporary rules.

It should be noted that compliance with these rules does not provide relief from other applicable provisions of the Act and rules and regulations thereunder.

The rules and regulations which were adopted pursuant to the Securities Exchange Act of 1934, particularly Sections 13(d) and (e) and Sections 14(d) and (f), are attached to this release.

The Commission finds that it is necessary in the public interest and for the protection of investors that temporary rules and regulations be adopted immediately to implement the recent amendments to Sections 13 and 14 of the Securities

Exchange Act of 1934 and that notice and procedure pursuant the Administrative Procedure Act is impracticable. Accordingly, the foregoing rules and regulations shall become effective immediately.

By the Commission:

ORVAL L. DUBOIS, *Secretary.*

REGULATION 13D

Rule 13d–1. Filing of Schedule 13D

Any person who, after acquiring, subsequent to July 29, 1968, directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to Section 12 of the Act, or any security issued by a closed-end investment company registered under the Investment Company Act of 1940, is directly or indirectly the beneficial owner of more than 10 per centum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Commission, a statement containing the information required by Schedule 13D.

Rule 13d–2. Filing of Amendments

If any material change occurs in the facts set forth in the statement required by Rule 13d–1, the person who filed such statement shall promptly file with the Commission and send to the issuer and the exchange an amendment disclosing such change.

Rule 13e–1. Purchase of Securities by Issuer Thereof

When a person other than the issuer makes a tender offer for, or request or invitation for tenders of, any class of equity securities of an issuer subject to Section 13(e) of the Act, and such person has filed a statement with the Commission pursuant to Rule 14d–1 and the issuer has received notice thereof, such issuer shall not thereafter, during the period such tender offer, request or invitation continues, purchase any equity securities of which it is the issuer unless:

(a) The issuer has filed with the Commission a statement containing the information specified below with respect to proposed purchases:

(1) The title and amount of securities to be purchased, the names of the persons or classes of persons from whom, and the market in which, the securities are to be purchased, including the name of any exchange on which the purchase is to be made;

(2) The purpose for which the purchase is to be made and whether the securities are to be retired, held in the treasury of the issuer or otherwise disposed of, indicating such disposition; and

(3) The source and amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto.

(b) The issuer has at any time within the past six months sent or given to its equity security holders the substance of the information contained in the statement required by subparagraph (a).

Provided, however, that any issuer making such purchases which commenced prior to July 30, 1968 shall, if such purchases continue after such date, comply with the provisions of this rule on or before August 12, 1968.

REGULATION 14D

Rule 14d–1. Filing of Schedule 13D

(a) No person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, shall make a tender offer for, or a request or invitation for tenders of, any class of any equity security which is registered pursuant to section 12 of the Act, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 10 per centum of such class, unless, at the time copies of the offer or request or invitation are first published or sent or given to security

holders, such person has filed with the Commission a statement containing the information and exhibits required by Schedule 13D: *Provided, however*, that any person making a tender offer for or a request or invitation for tenders which commenced prior to July 30, 1968 shall, if such offer, request or invitation continues after such date, file the statement required by this rule on or before August 12, 1968.

(b) If any material change occurs in the facts set forth in the statement required by paragraph (a) of this rule, the person who filed such statement shall promptly file with the Commission an amendment disclosing such change.

(c) All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders shall contain the name of the persons making such requests, invitations, or advertisements and the information required by Items 2(a), (c) and (e), 3, 4, 5 and 6 of Schedule 13D, or a fair and adequate summary thereof, and shall be filed with the Commission as part of the statement required by paragraph (a) of this rule.

(d) Any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain the name of the persons making such solicitation or request and the information required by Items 2(a), (c) and (e), 3, 4, 5 and 6 of Schedule 13D, or a fair and adequate summary thereof: *Provided, however*, that such material may omit any of such information previously furnished to the persons solicited or requested for tender offers. Copies of such additional material soliciting or requesting such tender offers shall be filed with the Commission not later than the time copies of such material are first published or sent or given to security holders.

Rule 14d–4. Filing of Schedule 14D

(a) No solicitation or recommendation to the holders of a security to accept or reject a tender offer or request or invitation for tenders subject to Section 14(d) of the Act shall be made unless, at the time copies of the solicitation or recommendation are first published or sent or given to holders of the security, the person making such solicitation or recommendation has filed with the Commission a statement containing the information specified by Schedule 14D: *Provided, however*, that this rule shall not apply to (1) a person required by Rule 14d–1(a) to file a statement, or (2) a person, other than the issuer or the management of the issuer, who makes no written solicitations or recommendations other than solicitations or recommendations copies of which have been filed with the Commission pursuant to this rule of Rule 14d–1: *And, provided further*, that any person making a solicitation or recommendation to the holders of a security to accept or reject a tender offer or request or invitation for tenders which solicitation or recommendation commenced prior to July 30, 1968 shall, if such solicitation or recommendation continues after such date, file the statement required by this rule on or before August 12, 1968.

(b) If any material change occurs in the facts set forth in the statement required by paragraph (a) of this rule, the person who filed such statement shall promptly file with the Commission an amendment disclosing such change.

(c) Any written solicitation or recommendation to the holders of a security to accept or reject a tender offer or request or invitation for tenders subject to Section 14(d) of the Act shall include the name of the person making such solicitation or recommendation and the information required by Items 1(b), 2(b) of Schedule 14D or a fair and adequate summary thereof: *Provided, however*, that such written solicitation or recommendation may omit any of such information previously furnished to the persons to whom the solicitation or recommendation is made.

Rule 14f–1. Change in Majority of Directors

If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to section 13(d) or 14(d) of the Act, any persons are to be elected or designated as directors of the issuer, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer, then, not less than 10 days prior to the date any such person take office as a director, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor, the issuer shall file with the Commission and transmit to all holders of record of securities of the issuer who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by Items 5(a), (d), (e) and (f), 6 and 7 of Schedule 14A of Regulation 14A to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders.

SCHEDULE 13D.—INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT TO RULE 13d–1 OR 14d–1

Notes.—A. The item numbers and captions of the items shall be included but the text of the items are to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. If the statement is filed by a partnership, limited partnership, syndicate, or other group, the information called for by Items 2 to 6, inclusive, shall be given with respect to (1) each partner or any partnership or limited partnership, (2) each member of such syndicate or group and (3) each person controlling such partner or member. If a person referred to in (1), (2) or (3) is a corporation or the statement is filed by a corporation, the information called for by the above-mentioned items shall be given with respect to each officer and director of such corporation and each person controlling such corporation.

Item 1. Security and Issuer

State the title of the class of equity securities to which this statement relates and the name and address of the issuer of such securities.

Item 2. Identity and Background

State the following with respect to the person filing this statement:

(a) Name and business address;

(b) Residence address;

(c) Present principal occupation or employment and the name, principal business and address of any corporation or other organizations in which such employment is carried on;

(d) Material occupations, positions, offices or employments during the last 10 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on; and

(e) Whether or not, during the last 10 years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, and penalty imposed, or other disposition of the case. A negative answer to this sub-item need not be furnished to security holders.

Item 3. Source and Amount of Funds or Other Consideration

State the source and amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto.

Item 4. Purpose of Transaction

If the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, describe any plans or proposals which such persons may have to liquidate such issuer,. to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure.

Item 5. Interest in Securities of the Issuer

State the number of shares of the security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) each associate of such person, giving the name and address of each such associate.

Item 6. Contracts, Arrangements, or Understandings with respect to Securities of the Issuer

Furnish information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

Item 7. Persons Retained, Employed or to be Compensated

Where the Schedule 13D relates to a tender offer, or request or invitation for tenders, identify all persons and classes of persons employed, retained or to be compensated by the person filing this Schedule 13D, or by any person on his behalf, to make solicitations or recommendations to security holders and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 8. Material to be Filed as Exhibits

Copies of all requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders, additional material soliciting or requestion such tender offers, solicitations or recommendations to the holders of the security to accept or reject a tender offer or request or invitation for tenders shall be filed as an exhibit.

SIGNATURE

I certify that to the best of my knowledge and belief the information set forth in this statement is true, complete and correct.

(*Date*) (*Signature*)

If the statement is signed on behalf of a person by an authorized representative, evidence of the representative's authority to sign on behalf of such person shall be filed with the statement.

SCHEDULE 14D

Item 1. Security and Issuer

(a) State the title of the class of equity securities to which this statement relates and the name and address of the issuer of such securities.

(b) Identify the tender offer or request or invitation for tenders to which this statement relates and state the reasons for the solicitation or recommendation to security holders to accept or reject such tender offer, request, or invitation for tenders.

Item 2. Identity and Background

(a) State the name and business address of the person filing this statement.

(b) Describe any arrangement or understanding in regard to the solicitation with (i) the issuer or the management of the issuer or (ii) the maker of the tender offer or request or invitation for tender of securities of the class to which this statement relates.

Item 3. Persons Retained, Employed or to be Compensated

Identify any person or class or persons employed, retained or to be compensated, by the person filing this Schedule 14D, or by any person on his behalf, to make solicitations or recommendations to security holders and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 4. Material to be filed as Exhibits

Copies of all solicitations or recommendations to accept or to reject a tender offer or request or invitation for tenders of the securities specified in Item 1 shall be filed as an exhibit.

SIGNATURE

I certify that to the best of my knowledge and belief the information set forth in this statement is true, complete and correct.

(Date) (Signature)

If the statement is signed on behalf of a person by an authorized representative, evidence of the representative's authority to sign on behalf of such person shall be filed with the statement.

MISCELLANEOUS EXEMPTIONS

RULE 234—EXEMPTION OF FIRST LIEN NOTES

(*a*) Promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial property shall be exempt from registration under the Act if such notes are offered in accordance with the following terms and conditions:

(1) Neither the aggregate unpaid principal amount of the notes secured by the lien on the property nor the aggregate amount at which such notes are offered to the public shall exceed $100,000;

(2) The aggregate unpaid principal amount of all indebtedness secured by the first lien on the property shall not exceed 75 percent of the appraised value of such property;

(3) The principal amount of each note to be offered under this regulation shall not be less than $500, and the total number of notes secured by the first lien on the property shall not exceed 125; and

(4) The notes shall be sold for cash or purchasers' obligations to pay cash within 60 days after sale.

(*b*) Interests or participations in, or promissory notes secured by a lien upon, another note or notes which are in turn secured by a first lien upon real estate shall not be deemed to be directly secured by a first lien on real estate within the meaning of this rule.

(*c*) No exemption shall be available under this rule for any investment contract or other security the offering of which is involved in the offering of the notes directly secured by a first lien upon real estate.

RULE 235—EXEMPTION OF SECURITIES OF COOPERATIVE HOUSING CORPORATIONS

(*a*) Stock or other securities representing membership in any cooperative housing corporation shall be exempt from registration under the Act if the terms and conditions of this rule are met. The term "cooperative housing corporation" as used herein means a corporation each of whose members is entitled, solely by reason of his membership in such corporation—

(1) To occupy for dwelling purposes a house, or an apartment in a building, owned or leased or to be owned or leased, by such corporation; or

(2) To purchase a dwelling constructed or to be constructed by such corporation.

(*b*) Such corporation shall not be or intend to be engaged in any business or activity other than the ownership, leasing management or construction of residential properties for its members, except to the extent that such business or activity is incidental to the ownership, leasing, management, or construction of such residential properties.

(*c*) The securities shall be isued only in connection with the sale or lease of dwelling units to persons who are or thereupon become members of the corporation and shall be transferable by the purchasers only in connection with the transfer of such dwelling units or leases to other persons who are or thereupon become such members.

(*d*) The aggregate offering price of all securities of the corporation offered pursuant to this rule during any 12-month period shall not exceed $300,000, including any unsold securities initially offered prior to the beginning of such period.

(*e*) The aggregate offering price of securities offered pursuant to this rule shall be computed upon the basis of the price at which the securities are to be sold to members or, if such price is not separately specified, upon the basis of the par or stated value of the securities to be offered.

RULE 236—EXEMPTION OF SHARES OFFERED IN CONNECTION WITH CERTAIN TRANSACTIONS

Shares of stock or similar security offered to provide funds to be distributed to shareholders of the issuer of such securities in lieu of issuing fractional shares, scrip certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction, shall be exempt from registration under the Act if the following conditions are met:

(*a*) The issuer of such shares is required to file and has filed reports with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934;

(*b*) The aggregate gross proceeds from the sale of all shares offered in connection with the transaction for the purpose of providing such funds does not exceed $100,000; and

(*c*) At least 10 days prior to the offering of the shares, the issuer shall furnish to the Commission in writing the following information: (i) that it proposes to offer shares in reliance upon the exemption provided by this rule; (ii) the estimated number of shares to be so offered; (iii) the aggregate market value of such shares as of the latest practicable date; and (iv) a brief description of the transaction in connection with which the shares are to be offered.

REGULATION A

GENERAL EXEMPTION
FROM REGISTRATION UNDER
THE SECURITIES ACT OF 1933

(As in Effect November 1, 1968)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

CONTENTS

REGULATION A

GENERAL EXEMPTION

REGULATION A—GENERAL EXEMPTION

Rule 251 Definitions of Terms Used in This Regulation

As used in this regulation, the following terms shall have the meaning indicated:

Affiliate. An "affiliate" of an issuer is a person controlling, controlled by or under common control with such issuer.

Predecessor. A "predecessor" of an issuer is (i) a person the major portion of whose assets have been acquired directly or indirectly by the issuer, or (ii) a person from which the issuer acquired directly or indirectly the major portion of its assets.

Promoter. The term "promoter" includes—

(*a*) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer:

(*b*) Any person who, in connection with the founding or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

Province. A "Province" is any Province or Territory of Canada.

Resident. A "resident" of a specified country is an individual resident of such country or a corporation or other organization which is incorporated or organized under the laws of such country or any of its political subdivisions.

State. A "State" is any State, Territory or insular possession of the United States, or the District of Columbia.

Underwriter. The term "underwriter" shall have the meaning given in section 2(11) of the Act.

Rule 252 Securities Exempted

(*a*) Except as hereinafter provided in this regulation, securities issued by any of the following persons shall be exempt from registration under the Act if offered in accordance with the terms and conditions of this regulation:

(1) Any corporation, unincorporated association or trust (i) which is incorporated or organized under the laws of the United States or Canada or any State or Province thereof and (ii) which has or proposes to have its principal business operations in the United States or Canada; or

(2) Any individual who is a resident of, and has or proposes to have his principal business operations in, any State or Province; or

(3) In the case of an offering to existing security holders on a pro rata basis pursuant to warrants or rights, any direct or indirect majority-owned subsidiary of any issuer specified in (1) above which has securities registered on a national securities exchange pursuant to the provisions of the Securities Exchange Act of 1934.

(*b*) No exemption under this regulation shall be available for any of the following securities:

(1) Fractional undivided interests in oil or gas rights as defined in Rule 300, or similar interests in other mineral rights;

(2) Securities of any investment company registered or required to be registered under the Investment Company Act of 1940.

(*c*) No exemption under this regulation shall be available for the securities of any issuer if such issuer, any of its predecessors or any affiliated issuer—

(1) Has filed a registration statement which is the subject of any proceeding or examination under section 8 of the Act, or is the subject of any refusal order or stop order entered thereunder within 5 years prior to the filing of the notification required by Rule 255;

(2) Is subject to pending proceedings under Rule 261 or any similar rule adopted under section 3(b) of the Act, or to an order en-

tered thereunder within 5 years prior to the filing of such notification;

(3) Has been convicted within 5 years prior to the filing of such notification of any crime or offense involving the purchase or sale of securities;

(4) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within 5 years prior to the filing of such notification, temporarily or permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of securities; or

(5) Is subject to a United States Post Office fraud order.

(*d*) No exemption under this regulation shall be available for the securities of any issuer, if any of its directors, officers or principal security holders, any of its promoters presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter—

(1) Has been convicted within 10 years prior to the filing of the notification required by Rule 255 of any crime or offense involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer or investment adviser;

(2) Is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer or investment adviser;

(3) Is subject to an order of the Commission entered pursuant to section 15(b) of the Securities Exchange Act of 1934; has been found by the Commission to be a cause of any such order which is still in effect; or is subject to an order of the Commission entered pursuant to section 203(d) or (e) of the Investment Advisors Act of 1940;

(4) Has been and is suspended or expelled from membership in a national or provincial securities dealers association or a national securities exchange or a Canadian securities exchange for conduct inconsistent with just and equitable principles of trade; or

(5) Is subject to a United States Post Office fraud order.

(*e*) No exemption under this regulation shall be available for the securities of any issuer if any underwriter of such securities, or any director, officer or partner of any such underwriter was, or was named as, an underwriter of any securities—

(1) Covered by any registration statement which is the subject of any proceeding or examination under section 8 of the Act, or is the subject of any refusal order or stop order entered thereunder within 5 years prior to the filing of the notification required by Rule 255; or

(2) Covered by an filing which is subject to pending proceedings under Rule 261 or any similar rule adopted under section 3(b) of the Act, or to an order entered thereunder within 5 years prior to the filing of such notification.

(*f*) Paragraph (*c*), (*d*) or (*e*) shall not apply to the securities of any issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied. Any such determination by the Commission shall be without prejudice to any other action by the Commission in any other proceeding or matter with respect to the issuer or any other person.

Rule 253 Special Requirements for Certain Offerings

(*a*) The following provisions of this rule shall apply to any offering under this regulation of securities of any issuer which—

(1) was incorporated or organized within 1 year prior to the date of filing the notification required by Rule 255 and has not had a net income from operations; or

(2) was incorporated or organized more than 1 year prior to such date and has not had a net income from operations, of the character in which the issuer intends to engage, for at least one of the last 2 fiscal years.

(*b*) If the issuer conducts or proposes to conduct its principal business operations in

Canada, the securities to be offered hereunder shall be qualified or made eligible for offering in the Province in which such operations are or will be conducted. The securities of any other issuer incorporated or organized under the laws of Canada or any Province thereof shall be qualified or made eligible for offering in the Province in which the issuer has its principal office or principal place of business in Canada. All securities subject to this paragraph shall be offered in the Province in which they are qualified or made eligible for offering, concurrently with the offering in the United States. Issuers engaged in extractive or manufacturing enterprises shall be deemed to have their principal business operations in the Province in which their principal plants or other properties are located.

(*c*) In computing the amount of securities which may be offered hereunder, there shall be included, in addition to the securities specified in Rule 254—

(1) All securities issued prior to the filing of the notification, or proposed to be issued, for a consideration consisting in whole or in part of assets or services and held by the person to whom issued; and

(2) All securities issued to and held by or proposed to be issued, pursuant to options or otherwise, to any director, officer or promoter of the issuer, or to any underwriter, dealer or security salesman:

Provided, That such securities need not be included to the extent that effective provision is made, by escrow arrangements or otherwise, to assure that none of such securities or any interest therein will be reoffered to the public within 1 year after the commencement of the offering hereunder and that any reoffering of such securities will be made in accordance with the applicable provisions of the Act.

(*d*) None of the securities to be offered hereunder shall be offered for the account of any person other than the issuer of such securities.

(*e*) Rule 257 shall not apply to any offering of securities under this regulation by any issuer which is subject to this rule.

Rule 254 Amount of Securities Exempted

(*a*) The aggregate offering price of all of the following securities of (i) the issuer, (ii) its predecessors and (iii) all of its affiliates which were incorporated or organized, or became affiliates of the issuer, within the past 2 years, shall not exceed $300,000:

(1) All securities of such persons presently being offered under this regulation, or under any other regulation adopted pursuant to section 3(b) of the Act, or specified in the notification required by Rule 255 as proposed to be so offered;

(2) All securities of such persons previously sold pursuant to an offering under this regulation, or under any other regulation adopted pursuant to section 3(b) of the Act, commenced within 1 year prior to the commencement of the proposed offering; and

(3) All securities of such persons sold in violation of section 5(a) of the Act within 1 year prior to the commencement of the proposed offering.

Notwithstanding the foregoing, the aggregate offering price of all securities of such persons so offered or sold on behalf of any one person other than the issuer or issuers of such securities shall not exceed $100,000, except that this limitation shall not apply if the securities are to be offered on behalf of the estate of a deceased person within 2 years after the death of such person.

(*b*) The aggregate offering price of securities which have a determinable market value shall be computed upon the basis of such market value as determined from transactions or quotations on a specified date within 15 days prior to the date of filing the notification, or the offering price to the public, whichever is higher: *Provided,* That the aggregate gross proceeds actually received from the public for the securities offered hereunder shall not exceed the maximum aggregate offering price permitted in the particular case by paragraph (*a*) above.

(*c*) Where securities which have no determinable market value are offered in exchange for outstanding securities, claims, property, or services, the aggregate offering price thereof

shall be computed at the public offering price of securities of the same class for cash, or if no cash offering is to be made, then upon the basis of the value of the securities, claims, property or services to be received in exchange, as established by bona fide sales made within a reasonable time, or in the absence of such sales, upon the basis of the fair value of the securities, claims, property or services to be received in exchange, as determined by some accepted standard.

(*d*) The following securities need not be included in computing the amount of securities which may be offered under this regulation:

(1) Unsold securities the offering of which has been withdrawn with the consent of the Commission by amending the pertinent notification to reduce the amount stated therein as proposed to be offered;

(2) Securities acquired or to be acquired, otherwise than for distribution by a single holder of the majority of the outstanding voting stock of the issuer in connection with a pro rata offering to stockholders;

(3) In the case of an offering by an issuer to existing security holders on a pro rata basis pursuant to warrants or rights, that portion of the offering made outside of the United States and Canada;

(4) In the case of an offering of interests in an unincorporated theatrical production, interests in any affiliated unincorporated theatrical production; or

(5) In the case of an offering of interests in an unincorporated issuer organized to hold title to, lease, operate or improve specific real property, interests in any affiliated issuer organized to hold title to, lease, operate or improve other specific real property.

Rule 255 Filing of Notification on Form 1–A

(*a*) At least 10 days (Saturdays, Sundays and holidays excluded) prior to the date on which the initial offering of any securities is to be made under this regulation, there shall be filed with the Regional Office of the Commission specified below four copies of a notification on Form 1–A. The Commission may, however, in its discretion, authorize the commencement of the offering prior to the expiration of such 10-day period upon a written request for such authorization.

(*b*) The notification shall be signed by the issuer and each person, other than the issuer, for whose account any of the securities are to be offered. If the notification is signed by any person on behalf of any other person, evidence of authority to sign on behalf of such other person shall be filed with the notification, except where an officer of the issuer signs on behalf of the issuer.

(*c*) The notification shall be filed with the Regional Office for the region in which the issuer's principal business operations are conducted or proposed to be conducted in the United States. The notification of an issuer having or proposing to have its principal business operations in Canada shall be filed with the Regional Office nearest the place where the issuer's principal business operations are conducted or proposed to be conducted, unless the offering is to be made through a principal underwriter located in the United States, in which case the notification shall be filed with the Regional Office for the region in which such underwriter has its principal office.

(*d*) Any amendment to the notification shall be signed in the same manner as the original notification. Four copies of such amendment shall be filed with the same Regional Office as the original notification at least 10 days prior to any offering of the securities subsequent to the filing of such amendment, or such shorter period as the Commission, in its discretion, may authorize upon a written request for such authorization.

(*e*) A notification or any exhibit or other document filed as a part thereof may be withdrawn upon application unless the notification is subject to an order under Rule 261 at the time the application is filed or becomes subject to such an order within 15 days (Saturdays, Sundays and holidays excluded) thereafter: *Provided*, That a notification may not be withdrawn after any of the securities proposed to be offered thereunder have been sold. Any such application shall be signed in the same manner and filed with the same Regional Office as the notification.

Rule 256 Filing and Use of the Offering Circular

(*a*) Except as provided in paragraph (*c*) of this rule and in Rule 257—

(1) No written offer of securities of any issuer shall be made under this regulation unless an offering circular containing the information specified in Schedule I of Form 1–A is concurrently given or has previously been given to the person to whom the offer is made, or has been sent to such person under such circumstances that it would normally have been received by him at or prior to the time of such written offer; and

(2) No securities of such issuer shall be sold under this regulation unless such an offering circular is given to the person to whom the securities were sold, or is sent to such person under such circumstances that it would normally be received by him, with or prior to any confirmation of the sale, or prior to the payment by him of all or any part of the purchase price of the securities, whichever first occurs.

(*b*) In the case of transactions effected on a securities exchange, delivery of the offering circular shall be deemed to have been made if prior to such transactions a reasonable number of copies of the offering circular have been furnished to the exchange for delivery to any person or persons requesting copies thereof.

(*c*) Any written advertisement or other written communication, or any radio or television broadcast, which states from whom an offering circular containing the information specified in Schedule I of Form 1–A may be obtained and in addition contains no more than the following information may be published, distributed or broadcast at or after the commencement of the public offering to any person prior to sending or giving such person a copy of such circular:

(1) The name of the issuer of such security;

(2) The title of the security, the amount being offered, and the per-unit offering price to the public;

(3) The identity of the general type of business of the issuer; and

(4) A brief statement as to the general character and location of its property.

(*d*) The offering circular may be printed, mimeographed, lithographed or typewritten, or prepared by any similar process which will result in clearly legible copies. If printed, it shall be set in roman type at least as large as 10-point modern type, except that financial statements and other statistical or tabular matter may be set in roman type at least as large as 8-point modern type. All type shall be leaded at least 2 points.

(*e*) If the offering is not completed within 9 months from the date of the offering circular, a revised offering circular shall be prepared, filed and used in accordance with these rules as for an original offering circular, except that in the case of offerings under stock purchase, savings, stock option or other similar plans for the benefit of employees, if the offering is not completed within 12 months from the date of the offering circular, a revised offering circular shall be prepared, filed and used in accordance with these rules as for an original offering circular. In no event shall an offering circular be used which is false or misleading in light of the circumstances then existing.

(*f*) Four copies of the offering circular required by this rule, which is to be used at the commencement of the offering, shall be filed with the notification required by Rule 255 at the time such notification is filed and shall be deemed a part thereof. If the offering circular is thereafter revised or amended, four copies of such revised or amended circular shall be filed as an amendment to the notification with the appropriate Regional Office of the Commission at least 10 days prior to its use, or such shorter period as the Commission may, in its discretion, authorize upon a written request for such authorization.

Rule 257 Offerings Not in Excess of $50,000

Except as to issues specified in paragraph (*a*) of Rule 253 and issues of assessable stock, the offering circular specified in Rule 256 need not be filed or used in connection with an offering of securities under this regulation if the aggregate offering price of all securities of the issuer, its predecessors and affiliates offered or sold without the use of such an offering circular does not exceed $50,000, computed

in accordance with Rule 254, provided the following conditions are met:

(*a*) There shall be filed as an exhibit to the notification four copies of a statement setting forth the information (other than financial statements) required by Schedule I of Form 1–A to be set forth in an offering circular.

(*b*) No advertisement, article or other communication published in any newspaper, magazine or other periodical and no radio or television broadcast in regard to the offering shall contain more than the following information:

(1) The name of the issuer of such security;

(2) The title of the security, amount offered, and the per-unit offering price to the public;

(3) The identity of the general type of business of the issuer;

(4) A brief statement as to the general character and location of its property; and

(5) By whom orders will be filled or from whom further information may be obtained.

Rule 258 Sales Material To Be Filed

Four copies of each of the following communications prepared or authorized by the issuer or anyone associated with the issuer, any of its affiliates or any principal underwriter for use in connection with the offering of any securities under this regulation shall be filed, with the office of the Commission with which the notification is filed, at least 5 days (exclusive of Saturdays, Sundays and holidays) prior to any use thereof, or such shorter period as the Commission, in its discretion, may authorize:

(*a*) Every advertisement, article or other communication proposed to be published in any newspaper, magazine or other periodical;

(*b*) The script of every radio or television broadcast; and

(*c*) Every letter, circular or other written communication proposed to be sent, given or otherwise communicated to more than 10 persons, except offering circulars filed pursuant to Rule 256 (*f*).

Rule 259 Prohibition of Certain Statements

No offering circular or other written or oral communication used in connection with any offering under this regulation shall contain any language stating or implying that the Commission has in any way passed upon the merits of, or given approval to, the securities offered or the terms of the offering or has determined that the securities are exempt from registration, or has made any finding that the statements in any such offering circular or other communication are accurate or complete.

Rule 260 Reports of Sales Hereunder

Within 30 days after the end of each 6-month period following the date of the original offering circular required by Rule 256, or of the statement required by Rule 257, the issuer or other person for whose account the securities are offered shall file with the Regional Office of the Commission with which the notification was filed four copies of a report on Form 2–A containing the information called for by that form. A final report shall be made upon completion or termination of the offering and may be made prior to the end of the 6-month period in which the last sale is made.

Rule 261 Suspension of Exemption

(*a*) The Commission may, at any time after the filing of a notification, enter an order temporarily suspending the exemption, if it has reason to believe that—

(1) No exemption is available under this regulation for the securities purported to be offered hereunder or any of the terms or conditions of this regulation have not been complied with, including failure to file any report as required by Rule 260.

(2) The notification, the offering circular or any other sales literature contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(3) The offering is being made or would be made in violation of section 17 of the Act;

(4) Any event has occurred after the filing of the notification which would have rendered the exemption hereunder unavailable if it had occurred prior to such filing;

(5) Any person specified in paragraph (*c*)

of Rule 252 has been indicted for any crime or offense of the character specified in subparagraph (3) thereof, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in subparagraph (4) of such paragraph;

(6) Any person specified in paragraph (*d*) of Rule 252 has been indicted for any crime or offense of the character specified in subparagraph (1) thereof, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in subparagraph (2) of such paragraph; or

(7) The issuer or any promoter, officer, director or underwriter has failed to cooperate, or has obstructed or refused to permit the making of an investigation by the Commission in connection with any offering made or proposed to be made hereunder.

(*b*) Upon the entry of an order under paragraph (*a*) of this rule, the Commission will promptly give notice to the persons on whose behalf the notification was filed (i) that such order has been entered, together with a brief statement of the reasons for the entry of the order, and (ii) that the Commission, upon receipt of a written request within 30 days after the entry of such order, will, within 20 days after the receipt of such request, set the matter down for hearing at a place to be designated by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the 30th day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission. Where a hearing is requested or is ordered by the Commission, the Commission will, after notice of and opportunity for such hearing, either vacate the order or enter an order permanently suspending the exemption.

(*c*) The Commission may at any time after notice of an opportunity for hearing, enter an order permanently suspending the exemption for any reason upon which it could have entered a temporary suspension order under paragraph (*a*) of this rule. Any such order shall remain in effect until vacated by the Commission.

(*d*) All notices required by this rule shall be given to the person or persons on whose behalf the notification was filed by personal service, registered or certified mail or confirmed telegraphic notice at the addresses of such persons given in the notification.

(Amended, para. (*d*), eff. Dec. 4, 1964, Release 33–4744.)

Rule 262 Consent to Service of Process

(*a*) If the issuer, any of its directors or officers, any person for whose account any of the securities are to be offered, or any underwriter of the securities to be offered, is not a resident of the United States, each such nonresident person shall, at the time of filing the notification required by Rule 255, furnish to the Commission in a form prescribed by or acceptable to it, a written irrevocable consent and power of attorney which—

(1) Designates the Securities and Exchange Commission as an agent upon whom may be served any process, pleadings, or other papers in any civil suit or action brought against the person executing the consent and power of attorney or to which he has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of the United States, where the cause of action (i) accrues on or after the effective date of this rule, and (ii) arises out of any offering made or purported to be made under this regulation or any purchase or sale of any security in connection therewith; and

(2) Stipulates and agrees that any such civil suit or action may be commenced by the service of process upon the Commission and the forwarding of a copy thereof as provided in paragraph (*b*) of this rule, and that the service as aforesaid of any such process, pleadings, or other papers upon the Commission shall be taken and held in all courts to be as valid and binding as if due personal service thereof had been made.

(*b*) Service of any process, pleadings or other papers on the Commission under this rule shall be made by delivering the requisite

number of copies thereof to the Secretary of the Commission or to such other person as the Commission may authorize to act in its behalf. Whenever any process, pleadings or other papers as aforesaid are served upon the Commission, it shall promptly forward a copy thereof by registered or certified mail to the appropriate defendants at their last address of record filed with the Commission. The Commission shall be furnished a sufficient number of copies for such purpose, and one copy for its files.

(Amended para. (*b*) eff. Dec. 4, 1964, Release 33–4744).

Rule 263 Notice of Delayed or Suspended Offering and Sale

If within 3 business days after the issuer has received notice that the Commission has no further comments with respect to the notification a bona fide effort is not made to proceed with the offering and sale of the securities proposed to be offered under this regulation, or if the offering or sale of such securities is suspended by the issuer or any underwriter within 15 days after the issuer has received such notice, a notice of the delay or suspension, stating the reasons therefor, shall be filed by the issuer or underwriter with the Regional Office of the Commission with which the notification was filed, unless such information is set forth in the offering circular. Such notice shall be sent promptly by telegraph or air mail and if sent by telegraph shall be confirmed in writing within a reasonable time by the filing of a signed copy of the notice.

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REGULATION A

FORM 1-A—NOTIFICATION UNDER REGULATION A [1]

Item 1. The Issuer.

Furnish the following information as to the issuer of the securities proposed to be offered hereunder:

(a) Exact name of issuer;

(b) Date of incorporation or organization and name of State or Province or other jurisdiction under the laws of which it was incorporated or organized;

(c) Name of State or Province or other jurisdiction in which issuer's principal business operations are conducted or proposed to be conducted;

(d) If the issuer is subject to Rule 253(*b*), names of all States and Provinces in which the issuer owns or leases, or proposes to own or lease, any mine, plant or other physical property, indicating all such properties held or to be held in each such State or Province. Furnish similar information as to any such properties held or to be held in any country other than the United States or Canada.

Item 2. Predecessors, Affiliates and Principal Security Holders of Issuer.

List the full name and complete address of each of the following persons:

(a) Each predecessor of the issuer. If any such predecessor is no longer in existence, so state and give its last address prior to its dissolution.

(b) Each affiliate of the issuer, indicating the nature of the affiliation.

(c) Each person who owns of record, or is known to own beneficially, 10 percent or more of the outstanding securities of any class of the issuer, stating the title and amount owned by each such person.

Item 3. Directors, Officers and Promoters.

List the full name and complete residence address of each of the following persons:

(a) Each director of the issuer;

(b) Each officer of the issuer, indicating all positions and offices held with the issuer;

(c) If the issuer was incorporated or organized within the past 3 years, each promoter of the issuer.

Item 4. Counsel for Issuer and Underwriters.

Give the name and address of counsel for the issuer in connection with the proposed offering. Furnish similar information as to any counsel for the underwriters.

Item 5. Actions against the Issuer or its Predecessors or Affiliated Issuers.

State whether the issuer or any of its predecessors or affiliated issuers—

(a) Has been convicted of any crime or offense specified in paragraph (*c*) (3) of Rule 252;

(b) Is subject to any order, judgment or decree specified in paragraph (*c*) (4) of that rule; or

(c) Is subject to a U.S. Post Office fraud order.

Instruction. If the answer to any of the foregoing sub-items is in the affirmative, explain fully, giving the pertinent names, dates and other details.

[1] The notification shall contain the item numbers and captions of all items, but the text of the items may be omitted if all of the information required by each item is clearly set forth under the respective item number and caption.

Item 6. Actions against Directors, Officers and Others.

State whether any person specified in paragraph (*d*) of Rule 252—

(a) Has been convicted of any crime or offense specified in subparagraph (1) thereof;

(b) Is subject to any order, judgment or decree specified in subparagraph (2) thereof;

(c) Has been and is suspended or expelled from membership in any national or provincial securities dealers association or national securities exchange or Canadian securities exchange;

(d) Is subject to a U.S. Post Office fraud order.

Instruction. If the answer to any of the foregoing sub-items is in the affirmative, explain fully, giving the pertinent names, dates and other details.

Item 7. Connection of Underwriters with Other Offerings.

State whether or not any underwriter or other person specified in paragraph (*e*) of Rule 252 was, or was named as, an underwriter of any securities covered by a registration statement or other filing of the character specified in subparagraph (1) or (2) of that paragraph.

Instruction. If the answer to any of the foregoing sub-items is in the affirmative, explain fully, giving the pertinent names, dates and other details.

Item 8. Jurisdictions in which Securities are to be Offered.

(a) If the issuer is subject to Rule 253 (*b*), state the Province in which the securities covered by this notification have been or will be qualified or made eligible for offering.

(b) List the names of the States, Provinces and other jurisdictions in which the securities covered by this notification are proposed to be offered through underwriters, dealers or salesmen in such jurisdictions.

(c) If the offering is to be made by advertisements, mail, telephone or otherwise in States, Provinces or other jurisdictions other than those listed under (b) above, describe the methods proposed to be employed in making the offering therein and list such States, Provinces or other jurisdictions to the extent that they are known.

(d) If the offering or any part thereof is to be made by use of the facilities of any securities exchange, name the exchange.

Note. No securities shall be offered or sold in any other State, Province or other jurisdiction or by use of the facilities of any other exchange until an amendment to the notification has been filed listing the names of the additional jurisdictions or exchanges.

Item 9. Unregistered Securities Issued or Sold Within One Year.

(a) As to any unregistered securities issued by the issuer or any of its predecessors or affiliated issuers within 1 year prior to the filing of this notification, state (i) the name of such issuer; (ii) the title and amount of securities issued; (iii) the aggregate offering price or other consideration for which they were issued and the basis for computing the amount thereof; and (iv) the names of the persons or the identity of the class of persons to whom the securities were issued.

(b) As to any unregistered securities of the issuer or any of its predecessors or affiliated issuers which were sold within 1 year prior to the filing of this notification by or for the account of any person who at the time was a director, officer, promoter or principal security holder of the issuer of such securities, or was an underwriter of any securities of such issuer, furnish the information specified in (i) through (iv) or paragraph (a).

(c) Indicate the section of the Act or rule or regulation of the Commission under which exemption from registration was claimed with respect to such securities and state briefly the facts relied upon for the exemption.

Item 10. Other Present or Proposed Offerings.

State whether or not the issuer or any of its affiliated issuers is presently offering or presently contemplates the offering of any securities, in the United States or Canada, in addition to those covered by this notification. If so, describe fully the present or proposed offering.

Item 11. Exhibits.

Four copies of each of the documents specified below shall be filed as exhibits to the notification. List under this item all such documents filed.

(a) Any indenture or other instruments defining the rights of holders of debt securities to be offered hereunder. If equity securities are to be offered, furnish copies of the provisions of the governing instruments defining the rights of holders of such securities.

(b) All underwriting contracts relating to the securities to be offered hereunder.

(c) A written consent and certification, in the form set forth below, signed by each underwriter of the securities proposed to be offered hereunder. All underwriters may, with appropriate modifications, sign the same consent and certification or separate consents and certifications may be signed by any underwriter or group of underwriters. At least one copy of each consent and certification shall be signed manually.

(d) If any of the securities proposed to be offered hereunder are to be offered for the account of any person other than the issuer, a written statement signed by the issuer representing that the proposed offering will not interfere with any needed financing by the issuer under this regulation.

(e) Each consent to service of process required by Rule 262. Each such consent shall be prepared and executed in conformity with the appropriate form prescibed therefor. At least one copy of each such consent shall be signed manually. Any copies not manually signed shall bear typed or printed signatures.

(f) The offering circular required by Rule 256, or if the offering is to be made pursuant to Rule 257, the statement required by paragraph (*a*) of that rule and any offering circular to be used in connection with such offering.

(g) If any accountant, engineer, geologist, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the notification required by Rule 255, the offering circular required by Rule 256 or the statement required by Rule 257, or is named as having prepared or certified a report or valuation, whether or not for use in connection with the notification, offering circular or statement, the written consent of such person shall be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship.

(h) Any escrow or other similar arrangement relied upon to meet the requirements of Rule 253 (*c*).

SIGNATURE [1]

This notification has been signed in the City of ..... State (or Province) of ..... on ....., 19....

.....
(Issuer)

By .....
(Name and Title)

.....
(Selling security holder)

CONSENT AND CERTIFICATION BY UNDERWRITER

1. The undersigned hereby consent to being named as underwriter in a notification and offering circular filed with the Securities and Exchange Commission by (*name of issuer*) pursuant to Regulation A in connection with a proposed offering of (*title of securities*) to the public.

2. The undersigned hereby certifies that it furnished the statements and information set forth

[1] The notification will be signed in accordance with Rule 255. At least one copy shall be signed manually by or on behalf of the issuer and each selling security holder. Any copies not manually signed shall bear typed or printed signatures.

in such notification and offering circular with respect to the undersigned, its directors and officers or partners, that such statements and information are accurate, complete and fully responsive to the requirements of Form 1–A and Schedule I thereto, and do not omit any information required to be stated therein with respect of any of such persons, or necessary to make the statements and information therein with respect to any of them not misleading.

_____
(Underwriter)

By _____
(Principal Officer)

Date _____

SCHEDULE I—INFORMATION TO BE INCLUDED IN THE OFFERING CIRCULAR REQUIRED BY RULE 256

The offering circular required by Rule 256, or statement required by Rule 257, shall be dated and shall contain the following information:

1. The following statement shall be set forth on the outside front cover page of the offering circular in capital letters in type as large as that used generally in the body of the circular:

THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE UNITED STATES SECURIIES AND EXCHANGE COMMISSION. THE COMMISSION DOES NOT PASS UPON THE MERITS OF ANY SECURITIES NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE.

2. State the exact name and address of the issuer, the name of the State or other jurisdiction under the laws of which it was incorporated or organized and the date of its incorporation or organization.

3. (a) Give the following information, in the tabular form indicated, on the outside front cover page of the offering circular on a per-share or other unit basis.

Offering price to public	Underwriting discounts or commissions	Proceeds to issuer or other persons

(b) If any of the securities are to be offered for the account of any person other than the issuer, give the name and address of each such security holder, the total amount he owns and the amount to be offered hereunder for his account.

4. (a) State the amount of securities to be offered pursuant to this regulation, the aggregate offering price to the public, the aggreagate underwriting discounts or commissions, the amount of expenses of the issuer and the amount of expenses of the underwriters to be borne by the issuer, and the aggregate proceeds to the issuer or security holders for whose account the securities are to be offered.

(b) If the securities are not to be offered for cash, state the basis upon which the offering is to be made.

5. Describe briefly the method by which the securities are to be offered and if the offering is to be made by or through underwriters, the name and address of each underwriter and the amount of the participation of each such underwriter, indicating the nature of any material relationship between the issuer and such underwriter.

6. (a) Furnish a reasonably itemized statement of the purposes for which the net cash proceeds to the issuer from the sale of the securities are to be used and the amount to be used for each such purpose, indicating in what order of priority the proceeds will be used for the respective purposes.

(b) Describe any arrangements for the return of funds to subscribers if all of the securities to be offered are not sold; if there are no such arrangements, so state.

7. Give a brief description of the securities to be offered pursuant to this regulation. Include the following information:

(a) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or noncumulative; a brief indication of the preference, if any; and if convertible, the conversion rate.

(b) In the case of debt securities, the rate of interest; the date of maturity, or if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1965 to 1975"; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and if convertible, the conversion rate.

(c) In the case of any other kind of securities, appropriate information of a comparable character.

8A. **Mining business.** If the issuer is engaged or proposes to engage in mining or exploratory mining operations, briefly describe the business or proposed business of the issuer in accordance with the following instructions:

(a) Give the location and means of access to the mining properties now held or intended

to be acquired and the nature of the title under which such properties are held or intended to be held. Indicate any known risks to which such title may be subject.

(b) Identify the principal metallic or other constituents of the deposits to be explored or developed and describe the characteristics of such deposits. No claim shall be made as to the existence of a body of ore unless it has been sufficiently tested to be properly classified as "proven" or "probable" ore, as defined below. If the work done has not established the existence of proven or probable ore, a statement shall be made that no body of commercial ore is known to exist on the property.

(c) The term "proven ore" means a body of ore so extensively sampled that the risk of failure in continuity of the ore in such body is reduced to a minimum. The term "probable ore" means ore as to which the risk of failure in continuity is greater than for proven ore, but as to which there is sufficient warrant for assuming continuity of the ore.

(d) If statements are made as to the existence of proven or probable ore, furnish separately for the information of the Commission copies of the pertinent maps and other supporting data, including calculations, with respect to such ore. Geologists' and engineers' reports, if used in an offering circular, shall be written in a clear and concise form.

(e) If the properties are known to have been previously explored, developed or mined by anyone and that fact or the results of such previous work is material, furnish information as to such work insofar as it is known and material.

8B. Oil or gas business. If the issuer is engaged or proposes to engage in the oil or gas business, briefly describe the business or proposed business of the issuer in accordance with the following instructions:

(a) State the area and location of the various properties proposed to be developed or exploited by the issuer and the nature of the issuer's interest therein.

(b) State the development which has occurred to date on or near the properties held. If no such development has occurred, a statement to that effect shall be made.

(c) State (in tabular form), for all productive properties, net production of oil and gas to issuer's interest from each of the properties by years for the past 4 years prior to the latest year, and by months for the latest year, as well as the number of net producing wells owned by the issuer which contributed to the production during each of the time periods involved.

(d) State the estimated future reserves net to issuer's interest in such properties which are proved.

(e) If statements concerning geology or engineering are made, furnish separately for the information of the Commission copies of the pertinent reports and other supporting data. Geologists' and engineers' reports, if used in an offering circular, shall be written in a clear and concise form.

8C. Other business. If the issuer is engaged or proposes to engage in any business other than those specified in Items 8A and 8B, briefly describe the business or proposed business of the issuer in accordance with the following instructions:

(a) State the nature of issuer's present or proposed products of services, the principal market therefor and the length of time issuer has been in commercial production.

(b) State the location and general character of the plants or other physical properties now held or presently intended to be acquired and the nature of the title under which such properties are held or proposed to be held.

(c) If the issuer intends to exploit or develop any new invention or process, state how such invention or process is to be applied commercially and whether or not it is covered by any patent, issued or pending. Identify by serial number and date any applicable patents or patent applications.

(d) Engineers' and other technical reports, if used in the offering circular, shall be written in a clear and concise form.

9. (a) Give the full names and complete residence addresses of all directors and officers of the issuer and of any person or persons controlling the issuer. If the issuer was incorporated or organized within the last 3 years,

furnish similar information as to all promoters of the issuer.

(b) State the aggregate annual remuneration of all directors and officers of the issuer as a group and the annual remuneration of each of the three highest-paid officers of the issuer.

(c) Describe all direct and indirect interests (by security holdings or otherwise) of each person named in answer to (a) above (i) in the issuer or its affiliates and (ii) in any material transactions within the past 2 years or in any material proposed transactions to which the issuer or any of its predecessors or affiliates was or is to be a party. Include the cost to such persons of any property or services for which any payment by or for the account of the issuer has been or is to be made.

(d) If the issuer was incorporated or organized within the last 3 years, state the percentage of outstanding securities of the issuer which will be held by directors, officers and promoters, as a group, and the percentage of such securities which will be held by the public, if all of the securities to be offered under this regulation are sold, and the respective amounts of cash (including cash expended for property transferred to the issuer) paid therefor by such group and by the public.

10. A brief description of all options or warrants presently outstanding or proposed to be granted to purchase securities of the issuer, including the names of the principal holders of such options or warrants, the cost of the options or warrants to them, the terms and conditions upon which they may be exercised and the price at which the securities may be acquired pursuant to such options or warrants.

11. Furnish appropriate financial statements of the issuer, or of the issuer and its predecessors, as required below. Such statements shall be prepared in accordance with generally accepted accounting principles and practices but need not be certified.

(a) If the issuer is a commercial, industrial or extractive company in the promotional, exploratory or development stage, the following statements shall be furnished:

(1) Separate statements of (i) assets, (ii) liabilities, and (iii) capital shares, as of a date within 90 days prior to the filing of the notification, or such longer period of time, not exceeding 6 months, as the Commission may permit at the written request of the issuer upon a showing of good cause therefor.

(2) A statement of cash receipts and disbursements for each of at least 2 full fiscal years prior to the date of the statements furnished pursuant to paragraph (1) above, and for the period, if any, between the close of the last full fiscal year and the date of such statements, or for the period of the issuer's existence if less than the period specified above.

In such statements, dollar amounts shall be extended only for cash transactions and transactions involving amounts receivable or payable in cash. Amounts due to or from, or paid to or received from, underwriters, promoters, directors, officers, employees and principal stockholders, shall be stated separately for each such class of persons, if significant in amount. The statement of assets shall include as a separate item unrecovered promotional, exploratory and development costs. The statement of cash receipts and disbursements shall be itemized as appropriate to the nature of the enterprise.

(b) If paragraph (a) does not apply to the issuer, there shall be furnished a balance sheet of the issuer as of the date specified in subparagraph (a)(1) and profit and loss statements and analyses of surplus for the periods specified in subparagraph (a)(2). Even though paragraph (a) may apply to the issuer, a balance sheet in conventional form may nevertheless be furnished in lieu of the statements specified in subparagraph (a)(1) if the assets reflected therein which were acquired in exchange for capital stock are not carried at an amount in excess of identifiable cash cost to promoters, predecessor companies or other transferors.

FORM 2-A—REPORT PURSUANT TO RULE 260 OF REGULATION A

1. Name of issuer ----------

2. Name of underwriter ----------

3. Date of this report ----------

4. (a) Date offering commenced ----------
   (b) Date offering completed, if completed --
   (c) If offering has not commenced, state reasons briefly ----------

5. (a) Total number of shares or other units offered hereunder ----------
   (b) Number of such shares or other units sold from commencement of offering to date ------
   (c) Number of such shares or other units still being offered ----------

6. (a) Total amount received from public from commencement of offering to date -- $--------
   (b) Underwriting discount allowed ---------- $--------
   (c) Expenses paid to or for the account of the underwriters ------ $--------
   (d) Other expenses paid to date by or for the account of the issuer:
      (1) Legal (including organization) ---------- $--------
      (2) Accounting ---------- $--------
      (3) Engineers' fees incurred prior to offering ---------- $--------
      (4) Printing and advertising ---------- $--------
      (5) Other ---------- $--------
   (e) Total costs and expenses ((b), (c), and (d)) ---------- $--------
   (f) Proceeds to issuer after above deductions ((a) minus (e)) ---------- $--------

7. Use of net proceeds from commencement of offering to date:

	Payments to officers, directors and affiliates	Payments to others
(a) Salaries and fees ----------	$--------	$--------
(b) Purchase of real estate ----------	$--------	$--------
(c) Purchase and installation of machinery and equipment --------	$--------	$--------
(d) Construction of plant building and facilities ----------	$--------	$--------
(e) Development expense (product development, research, patent costs, etc.) ----------	$--------	$--------
(f) Purchase of raw materials, inventories, supplies, etc ----------	$--------	$--------
(g) Selling, advertising, and other sales promotion ----------	$--------	$--------
(h) Other disbursements ----------	$--------	$--------
(i) Totals ----------	$--------	$--------
(j) Balance of cash proceeds on hand ----------	$--------	

Instructions. 1. If the issuer is a mining company, substitute for captions (e), (f) and (g) the following captions: "Road building," "Exploration expense (other than drilling)," "Exploratory drilling" and "Mine Development."

2. If the issuer is an oil or gas company, substitute for captions (e), (f) and (g) the following caption: "Exploratory and other drilling."

8. State briefly the nature and extent of each type of the issuer's principal activities to date.

Instruction. Mining companies shall include exploratory activity, showing the aggregate footage of exploratory drilling and number of holes drilled. Oil and gas companies shall include the number of wells drilled and their depth. Other companies shall include information as to plant construction, development, production and sales.

9. State whether the offering has been discontinued, and if so, state the date and describe briefly the reasons for such discontinuance.
10. List the names and addresses of all brokers and dealers who have, to the knowledge of the issuer or underwriters, participated in the distribution of the securities offered during the period covered by this report.

Instruction. In reports made subsequent to the initial report, the information need be given only with respect to persons not previously reported.

11. State the number of shares held by each promoter, director, officer or controlling person of the issuer, if different from the amount stated in the offering circular.

Date _____ By _____
(Issuer)*

_____
(Name and Title)*

_____
(Selling security holder)*

Date _____

*At least one copy of the report shall be signed manually by each person whose signature is required. Any copies not manually signed shall bear typed or printed signatures.

FORM 3-A—IRREVOCABLE APPOINTMENT BY INDIVIDUAL OF AGENT FOR SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS

(Pursuant to Regulation A under Securities Act of 1933)

1. I, _____ of _____, hereby designate and appoint, without power of revocation, the United States Securities and Exchange Commission as my agent upon whom may be served all process, pleadings and other papers in any civil suit or action brought against me arising out of any offering made or purported to be made under Regulation A, adopted by the United States Securities and Exchange Commission under the Securities Act of 1933, or any purchase or sale of any securities in connection therewith, in any court of competent jurisdiction, Federal, State or Territorial, located in the United States or in its territories.

2. I hereby consent, stipulate and agree, without power of revocation—

(a) That any civil suit or action brought against me arising out of any offering made or purported to be made under Regulation A, adopted by the United States Securities and Exchange Commission under the Securities Act of 1933, or any purchase or sale of any securities in connection therewith, may be commenced against me in any court of competent jurisdiction, Federal, State, or Territorial, located in the United States or in its territories as defined by the Securities Act of 1933, by service of process upon the United States Securities and Exchange Commission;

(b) That service of process, pleadings or other papers upon the United States Securities and Exchange Commission, as aforesaid, shall be taken and held in all courts to be as valid and as binding upon me as if due personal service had been made upon me; and

(c) That service upon the United States Securities and Exchange Commission may be effected by delivering copies of said process, pleadings, or other papers to the Secretary of the said Commission or any other person designated by it for such purpose, and that the certificate of the Secretary of the United States Securities and Exchange Commission or of such other person reciting that said process, pleadings or other papers were received by the United States Securities and Exchange Commission and that a copy of each such process, pleading, or other paper was forwarded to me at the last address supplied by me shall constitute evidence of such service upon me.

IN WITNESS WHEREOF, I have executed this irrevocable power of attorney, consent, stipulation and agreement at _____ this _____ day of _____, A.D. 19___.

_____ (SEAL)

State (or Province) of _____ }
County of _____ } ss.

I, _____, _____
(Name) (Official Position)*

in and for said County in the State (or Province) aforesaid, do hereby certify that _____
(Name of Individual Appointing Agent for Service)

_____ personally appeared before me this day and signed and sealed the above instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this ____ day of _____, A.D. _____.

_____

_____
(Official Position)

My Commission (or office) expires

_____

* Notary Public or other official authorized by law to administer oaths.

Note: The person executing this irrevocable power of attorney, consent, stipulation and agreement should appear before a person authorized to administer acknowledgments in the jurisdiction in which it is executed and acknowledged that he executed it as his free and voluntary act. The acknowledgment should be in the form pre-

scribed by the law of the jurisdiction in which it is executed. The form of acknowledgment suggested should be used only if it is consistent with the requirements of the law of such jurisdiction.

The failure of any acknowledgement to meet applicable requirements shall not affect the validity or effect of the foregoing irrevocable power of attorney, consent, stipulation and agreement.

FORM 4-A—IRREVOCABLE APPOINTMENT BY CORPORATION* OF AGENT FOR SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS

(Pursuant to Regulation A under Securities Act of 1933)

1. The _____ (Name of Corporation), a corporation, duly organized and existing by virtue of the laws of _____ (Name of State or Province), hereby designates and appoints, without power of revocation, the United States Securities and Exchange Commission, as the agent of said corporation upon whom may be served all process, pleadings, and other papers in any civil suit or acton brought against said corporation arising out of any offering made or purported to be made under Regulation A, adopted by the United States Securities and Exchange Commission under the Securities Act of 1933, or any purchase or sale of any securities in connection therewith, in any court of competent jurisdiction, Federal, State, or Territorial, located in the United States or in its territories.

2. Said corporation, _____ (Name of Corporation), hereby consents, stipulates and agrees, without power of revocation—

(a) That any civil suit or action brought against it arising out of any offering made or purported to be made under Regulation A, adopted by the United States Securities and Exchange Commission under the Securities Act of 1933, or any purchase or sale of any securities in connection therewith, may be commenced against it in any court of competent jurisdiction, Federal, State, or Territorial, located in the United States or in its territories as defined by the Securities Act of 1933, by service of process upon the United States Securities and Exchange Commission;

(b) That service of process, pleadings, and other papers upon the United States Securities and Exchange Commission, as aforesaid, shall be taken and held in all courts to be as valid and as binding upon it as if due personal service thereof had been duly made upon it; and

(c) that service upon the United States Securities and Exchange Commission may be effected by delivering copies of said process, pleadings or other papers to the Secretary of the said Commission or any other person designated by it for such purpose, and that the certificate of the Secretary of the United States Securities and Exchange Commission or of such other person reciting that said process, pleadings or other papers were received by the United States Securities and Exchange Commission and that a copy of each such process, pleading, or other paper was forwarded to this corporation at the last address supplied by it shall constitute evidence of such service upon this corporation.

IN WITNESS WHEREOF the President and Secretary of _____ (Name of Corporation), by the authority and direction of the Board of Directors of said corporation, have executed this irrevocable power of attorney and consent, stipulation and agreement, for and on behalf of the said corporation, at _____, this _____ day of _____, A.D. _____.

Attest _____ (Secretary)

_____ (Corporate Name)

By _____ (President)

(Corporate Seal)
State (or Province) of _____ } ss.
County of _____

I, _____, a _____ (Official Position)**, in and for said County in the State (or Province) aforesaid, do hereby certify that _____ (Name of President) and _____ (Name of Secretary) personally

*In the case of an association or other form of organization, appropriate revisions shuold be made.

**Notary Public or other official authorized by law to administer oaths.

appeared before me this day, stated that they are respectively the President and Secretary of the ----------, that they are the same persons named in the foregoing instrument as the President and Secretary of said corporation and that they have been duly authorized to execute said instrument for the corporation, and signed and sealed said instrument for and on behalf of said corporation as its free and voluntary act for the uses and purposes therein set forth.

(Name of Corporation)

Given under my hand and seal this ------ day of ----------, A.D. 19------.

My commission (or office) expires: ----------

(Official Position)

Note: The person (or persons) executing this irrevocable power of attorney, consent, stipulation and agreement should appear before a person authorized to administer acknowledgments in the jurisdiction in which it is executed and acknowledge that he (or they) executed it as his (or their) free and voluntary act. The acknowledgment should be in the form prescribed by the law of the jurisdiction in which it is executed. The form of acknowledgment suggested should be used only if it is consistent with the requirements of the law of such jurisdiction.

The failure of any acknowledgment to meet applicable requirements shall not affect the validity or effect of the foregoing irrevocable power of attorney, consent, stipulation and agreement.

FORM 5–A—CERTIFICATE OF RESOLUTION AUTHORIZING IRREVOCABLE APPOINTMENT BY CORPORATION* OF AGENT FOR SERVICE OF PROCESS, PLEADINGS, AND OTHER PAPERS

(Pursuant to Regulation A under Securities Act of 1933)

At a duly constituted meeting of the Board of Directors of _____ (Name of Corporation) _____, a corporation organized and existing by virtue of the laws of _____ (Name of State or Province) _____, held at the office of said corporation at _____ on the _____ day of _____, A.D. 19____, the following resolution was adopted:

BE IT RESOLVED that the President and Secretary of this corporation, _____ (Name of Corporation) _____, be and hereby are authorized and directed to execute in legal form, and to deliver to the United States Securities and Exchange Commission, on behalf of this corporation, in such wording as may be prescribed by or acceptable to the United States Securities and Exchange Commission,

(1) A power of attorney designating and appointing, without power of revocation, the United States Securities and Exchange Commission as the agent of this corporation upon whom may be served all process, pleadings and other papers in any civil suit or action brought against this corporation arising out of any offering made or purported to be made under Regulation A, adopted by the United States Securities and Exchange Commission under the Securities Act of 1933, or any purchase or sale of any securities in connection therewith, in any court of competent jurisdiction, Federal, State, or Territorial, located in the United States or in its territories as defined by the Securities Act of 1933;

(2) A stipulation, consent and agreement, likewise without power of revocation, that any civil suit or action brought against this corporation arising out of any offering made or purported to be made under Regulation A, adopted by the United States Securities and Exchange Commission under the Securities Act of 1933, or any purchase or sale of any securities in connection therewith, may be commenced against this corporation in any court of competent jurisdiction, Federal, State, or Territorial, located in the United States or in its territories as defined by the Securities Act of 1933, by service of process upon the United States Securities and Exchange Commission; and

(3) A stipulation, consent and agreement that service upon the United States Securities and Exchange Commission may be effected by delivering copies of said process, pleadings or other papers to the Secretary of the United States Securities and Exchange Commission or any other person designated by it for such purpose, that the certificate of the Secretary of the United States Securities and Exchange Commission or of such other person reciting that said process, pleadings or other papers were received by the United States Securities and Exchange Commission and that a copy of each such process, pleading or other paper was forwarded to this corporation at the last address supplied by it shall constitute evidence of such service upon this corporation, and that service of process, pleadings and other papers upon the United States Securities and Exchange Commission, as aforesaid, shall be taken and held in all courts to be as valid and binding upon this corporation as if due personal service thereof had been duly made.

State (or Province) of _____ }
County of _____ } ss:

*In the case of an association or other form of organization, appropriate revisions should be made.

I, _____, being duly sworn, depose and say that I am Secretary of _____ (Name of Corporation), and that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors of said corporation on the _____ day of _____, A.D. 19_____, as the same appears on the records of said corporation now in my custody and control.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said corporation.

_____, (Secretary)

(Corporate Seal)

Subscribed and sworn to before me this _____ day of _____ A. D. 19____.

(Seal) _____

_____ (Official Position)**

My Commission (or office) expires _____,

**Notary Public or other official authorized by law to administer oaths.

Note: This certificate of resolution should be executed and verified before a person authorized to administer oaths in the jurisdiction in which it is executed. The verification should be in the form prescribed by the law of the jurisdiction in which it is executed. The form of acknowledgment suggested should be used only if it is consistent with the requirements of the law of such jurisdiction.

The failure of any verification to meet applicable requirements shall not affect the validity or effect of the foregoing certificate of resolution.

FORM 6-A—IRREVOCABLE APPOINTMENT BY PARTNERSHIP OF AGENT FOR SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS

(Pursuant to Regulation A under Securities Act of 1933)

1. The undersigned, jointly and severally, as follows,

_____ (Name), _____ (Name)
_____ (Name), _____ (Name)
_____ (Name), _____ (Name)

members of a partnership doing business as _____ (Firm Name)
having its principal place of business at _____
hereby designate and appoint, without power of revocation, the United States Securities and Exchange Commission as the agent of the partnership, and as the agent of each of them individually, upon whom may be served all process, pleadings, and other papers in any civil suit or action brought against said partnership firm, or against said persons, jointly or severally, arising out of any offering made or purported to be made under Regulation A, adopted by the United States Securities and Exchange Commission under the Securities Act of 1933, or any purchase or sale of any securities in connection therewith, in any court of competent jurisdiction, Federal, State, or Territorial, located in the United States or in its territories as defined by the Securities Act of 1933.

2. The undersigned, jointly and severally, and as members of a partnership doing business as _____ (Firm Name), hereby consent, stipulate and agree, without power of revocation—

(a) That any civil suit or action arising out of any offering made or purported to be made under Regulation A, adopted by the United States Securities and Exchange Commission under the Securities Act of 1933, or any purchase or sale of any securities in connection therewith, may be commenced against said partnership firm, or against said persons, jointly or severally, in any court of competent jurisdiction located in the United States or in its Territories as defined by the Securities Act of 1933, by service of process upon the United States Securities and Exchange Commission,

(b) That service of process, pleadings and other papers upon the United States Securities and Exchange Commission, as aforesaid, shall be taken and held in all courts to be as valid and as binding on said partnership firm, and on said persons, jointly and severally, as if due personal service had been duly made, and

(c) That service upon the United States Securities and Exchange Commission may be effected by delivering copies of said process, pleadings, or other papers to the Secretary of the said Commission or any other person designated by it for such purpose, and that the certificate of the Secretary of the United States Securities and Exchange Commission or such other person reciting that said process, pleadings or other papers were received by the United States Securities and Exchange Commission and that a copy of each such process, pleading, or other paper was forwarded to said partnership firm and to each said person at the last address supplied by said partnership firm and by each such person shall constitute evidence of such service upon said partnership firm and each said person.

IN WITNESS WHEREOF, the undersigned, individually and as members of said partnership doing business as _____ (Firm Name) have executed this irrevocable power of attorney and consent, stipulation and agreement for the purposes herein set forth

43-327 O—70——6

at _____ this ____ day of _____, A. D. 19____.

_____ (Seal)

_____ (Seal)

_____ (Seal)

_____ (Seal)

_____ (Seal)

_____ (Seal)

State (or Province) of _____ }
} ss:
County of _____ }

I, _____, _____ in and for said County in the State (or Province) aforesaid, do hereby certify that

_____, _____
(Name) (Name)

_____, _____
(Name) (Name)

_____, _____
(Name) (Name)

*Notary Public or other official authorized by law to administer oaths.

personally appeared before me this day and signed and sealed the above instrument as their free and voluntary act, and as the free and voluntary act of each of them, for the uses and purposes therein set forth.

Given under my hand and seal this ____ day of _____, A. D. 19____.

_____

_____
(Official Position)*

My Commission (or office) expires _____.

*Notary Public or other official authorized by law to administer oaths.

Note. The person (or persons) executing this irrevocable power of attorney, consent, stipulation and agreement should appear before a person authorized to administer acknowledgments in the jurisdiction in which it is executed and acknowledge that he (or they) executed it as his (or their) free and voluntary act. The acknowledgment should be in the form prescribed by the law of the jurisdiction in which it is executed. The form of acknowledgment suggested should be used only if it is consistent with the requirements of the law of such jurisdiction.

The failure of any acknowledge to meet applicable requirements shall not affect the validity or effect of the foregoing irrevocable power of attorney, consent, stipulation and agreement.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

REGULATION B
under the Securities Act of 1933

EXEMPTIONS RELATING TO FRACTIONAL UNDIVIDED INTERESTS IN OIL OR GAS RIGHTS

(As in Effect January 16, 1967)

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EXEMPTIONS RELATING TO FRACTIONAL UNDIVIDED INTERESTS IN OIL OR GAS RIGHTS

REGULATION B—EXEMPTIONS RELATING TO FRACTIONAL UNDIVIDED INTERESTS IN OIL OR GAS RIGHTS

ARTICLE 1. DEFINITIONS

Rule 300 Definitions of Terms Used in Regulation B

When used in Regulation B—

(*a*) The term "fractional undivided interests in oil or gas rights" includes landowners' royalty interests, overriding royalty interests, working interests, participating interests, and oil or gas payments, as defined in subdivisions (*b*) to (*f*), inclusive, of this rule.

(*b*) The term "landowners' royalty interests" means fractional undivided interests in the royalty reserved by a landowner or fee owner upon the creation of an oil or gas lease.

(*c*) The term "overriding royalty interests" means fractional undivided interests or rights of participation in the oil or gas, or in the proceeds from the sale of the oil or gas, produced from a specified tract, which are limited in duration to the terms of an existing lease and which are not subject to any portion of the expense of development, operation, or maintenance.

(*d*) The term "working interests" means fractional undivided interests in an oil or gas leasehold which are subject to any portion of the expense of development, operation, or maintenance.

(*e*) The term "participating interests" means fractional undivided interests or rights of participation in the oil or gas, or in the proceeds from the sale of oil or gas, produced from a specified tract, which are limited in duration to the terms of an existing lease and which are subject to any portion of the expense of development, operation, or maintenance.

(*f*) The term "oil or gas payments" means fractional undivided interests or rights of participation in the oil or gas, or in the proceeds from the sale of oil or gas, produced from a specified tract, and which are limited to a maximum amount fixed in barrels of oil, cubic feet of gas, or dollars.

(*g*) The term "offeror" means any issuer of, underwriter of, or dealer in, any of the interests or rights defined in subdivisions (*b*) to (*f*), inclusive, of this rule, or any other person who issues, offers, or sells, any such interest or rights.

(*h*) The term "offering sheet" means any of the schedules from A to F, inclusive, the form of which is prescribed by the Commission, when appropriately completed so as to comply with the requirements of Regulation B, and particularly Rule 330 thereof.

ARTICLE 2. EXEMPTIONS AVAILABLE TO FRACTIONAL UNDIVIDED INTERESTS IN OIL OR GAS RIGHTS UNDER SECTION 3 (b) OF THE ACT

Rule 310 Limitation Upon Exemption

Pursuant to section 3 (*b*) of the Securities Act of 1933, as amended, but subject to the terms and conditions prescribed by Regulation B and the rules contained therein, fractional undivided interests in oil or gas rights, as defined in Rule 300, are added to the classes of securities exempted as provided in section 3 (*a*) of such Act; but no issue or offering, of which any interest sought to be exempted hereunder is a part, shall be exempted under Regulation B where the aggregate amount at which such issue or offering is issued, offered, or sold, exceeds $100,000.

Rule 312 Exemption Not Available to Offeror, If Unregistered Dealer

If any offeror of any of the fractional undivided interests in oil or gas rights defined in Rule 300 is, in fact, a "dealer," as such term is defined in the Securities Exchange Act of 1934, the exemption provided by Regulation B shall not be available, and, such offeror shall not be relieved from the liability which, in the absence of the exemption provided by Regulation B, would be imposed upon him because the security offered for sale, or sold, was unregistered, unless such offeror is, at the time of each offer to sell, and at the time of each sale, duly registered as a dealer under section 15 of said Act.

Rule 314 Exceptions to Availability of Exemption

(*a*) Except as provided in (*b*) below, no exemption shall be available under this regulation unless it appears that the operating lessee or lessees will own, unencumbered in his name or their names, upon completion of the sale of the issue, a working interest in the tract or tracts involved equal to whichever of the following amounts is greater: (*i*) 20 percent of the total production from such tract or tracts of all oil, gas or other hydrocarbon substances, or (*ii*) the total percent-

age of production from such tract or tracts which is not subject to any portion of the expenses of development, operation or maintenance.

(*b*) Paragraph (*a*) shall not apply if (*i*) the aggregate amount at which the issue is offered to the public does not exceed $30,000 and (*ii*) the smallest interest which is separately offered or sold to the public is not so offered or sold for less than $300.

(*c*) As used in this rule, the terms "operating lessee or lessees" shall include the lessee of record actually engaged in developing and operating the tract or tracts involved and all other owners of working interests who are regularly engaged in the business of exploring for or producing oil or gas and who have consented in writing to the development and operation of said tract or tracts by such lessee of record.

ARTICLE 3. REQUIREMENTS FOR OFFEROR SEEKING EXEMPTION

Rule 320 Conditions to Exemption and Relief From Liability for Nonregistration

The exemption provided by Regulation B shall be available, and, an offeror of any of the fractional undivided interests in oil or gas rights defined in Rule 300 shall be relieved from the liability which, in the absence of the exemption provided by Regulation B, would be imposed upon him because the security offered for sale, or sold, was unregistered, only upon condition—

(*a*) That prior to any offer to sell any security sought to be exempted hereunder, the offeror, or some person acting on his behalf, shall file with the Commission four copies of an offering sheet accurately describing such security and complying with the requirements of Rule 330.

(*b*) That the offeror, at the time of the initial offer to sell any security sought to be exempted hereunder, shall deliver, or cause to be delivered, to every person solicited to buy, a copy of the offering sheet then on file with the Commission (as amended, if amended) accurately describing such security and complying with the requirements of Rule 330.

The term "offer to sell," as used in subdivision (*b*) of this rule, shall not be deemed to include a notice, circular, advertisement, letter, or communication published in any newspaper, or sent through the mails, or by means of any instrument of transportation, or communication in interstate commerce, or broadcast by radio, if such notice, circular, advertisement, letter, communication, or radio broadcast states only from whom an offering sheet may be obtained, and, in addition, does no more than identify the security, state the price thereof, and state by whom orders will be executed.

(*c*) That the offering sheet referred to in subdivision (*a*) and (*b*) of this rule is fully effective in all respects at the time of each initial offer to sell and at the time of the making of each contract for the sale of any security described therein.

(*d*) That prior to the making of each contract of sale with, and prior to the payment of any part of the consideration by, the purchaser of any security sought to be exempted hereunder, the offeror shall deliver to each purchaser evidence satisfactory to each such purchaser of the validity of the title which he is to receive and upon which the value of his interest depends.

(*e*) That not later than fifteen days after the making of each contract for the sale of any interest sought to be exempted hereunder, the offeror making such sale shall file with the Commission a written report of such sale on Form 1–G, which shall be kept confidential, unless the Commission shall order otherwise.

Rule 322 Transactions Conditionally Excepted

Compliance with Rule 320 shall not be required in any of the following types of transactions, provided exact copies of any prospectus, notice, circular letter, or circular communication sent through the mails, or by means of any instrument of transportation or communication in interstate commerce, to any of the persons, corporations, or trusts designated in subdivisions (*b*), (*c*), and (*d*) of this rule, preliminary to the delivery of, or in lieu of, an offering sheet, or designed to communicate any of the information required in any offering sheet, are simultaneously filed with the Commission:

(*a*) Offers or sales to a person regularly engaged in the business of exploring for, or producing oil, or gas.

(*b*) Offers or sales to a person duly registered as a dealer under section 15 of the Securities Exchange Act of 1934, as amended, who is resident, or, if a partnership or corporation, maintains a bona fide place of business within the same State or Territory within which the oil or gas property involved in such sale is located.

(*c*) Offers or sales to a person duly registered as a dealer under section 15 of the Securities Exchange Act of 1934, as amended, who is not resident, or, if a partnership or corporation, does not

maintain a bona fide place of business within the same State or Territory within which the oil or gas property involved in such sale is located, provided and upon condition that the offeror making the sale in question shall, not later than 15 days after making the sale of the interests, file with the Commission a written report of such sale on Form 2–G, which shall be kept confidential unless the Commission shall order otherwise.

(*d*) Offers or sales to a corporation or trust, not registered as a dealer under section 15 of the Securities Exchange Act of 1934, as amended, the assets of which consist principally of oil or gas rights, and stock of which, or certificates of interest or participation in which, are at the time registered under the Securities Act of 1933, as amended, provided and upon condition that the offeror making the sale in question shall, not later than fifteen days after making the sale of the interest, file with the Commission a written report of such sale on Form 2–G, which shall be kept confidential unless the Commission shall order otherwise.

Rule 324 Filing of Offering Sheets on Behalf of Other Persons

An offering sheet may be filed with the Commission for, and on behalf of, other persons, provided all such other persons are duly registered as dealers under section 15 of the Securities Exchange Act of 1934, as amended, and upon condition that signed lists containing the names and addresses of all such persons are filed with the Commission in duplicate prior to any use of such offering sheet by such other persons; and the Commission may refuse to accept for filing any list which contains the name of any person who is not so registered.

Rule 326 Liability for Unauthorized Use of Offering Sheet

Any person using an offering sheet in connection with an offer to sell any security described therein shall not be entitled to the exemption provided by Regulation B, and, shall not be relieved from any liability which, in the absence of the exemption provided by Regulation B, would be imposed upon such person because such security was unregistered, unless such offering sheet has previously been filed with the Commission by, or for, and on behalf of, such person, and is at the time of its use fully effective.

Rule 328 Restricting Use of Estimations not Included in Offering Sheets

A person using any estimation of the amount of oil or gas recoverable from the tract involved, or from any other tract for comparative purposes, in connection with an offer to sell any fractional undivided interest in oil or gas rights, defined in Rule 300, shall not be entitled to the exemption provided by Regulation B, and, shall not be relieved from any liability which, in the absence of the exemption provided by Regulation B, would be imposed upon such person because such security was unregistered, unless such estimation is included in, and furnished as part of, an offering sheet accurately describing such security: *Provided, however*, That the provisions of this rule shall not be applicable in the case of a sale to a person regularly engaged in the business of exploring for, or producing, oil or gas.

ARTICLE 4. FORM OF OFFERING SHEETS

Rule 330 Form and Contents of Offering Sheets

The offering sheets required by Regulation B, and particularly Rule 320 thereof, shall be filed with the Commission substantially in the form prescribed by the Commission in the schedules specifically enumerated in subdivision (*g*) of this rule, which schedules, as amended and adopted as of August 1, 1943, are, by reference, hereby incorporated in, and made a part of, this rule.

(*a*) The offering sheet shall contain in substance, in the prescribed sequence, the statements, information, and factual data required by the appropriate schedule and shall be responsive to the requirements of each and every item and exhibit of the appropriate schedule.

(*b*) If an item of required information cannot be furnished, or there is reason to doubt the accuracy of all the information which has been acquired with regard thereto, the answer to the item may be omitted, but a full explanation of the reason for the omission must be given. In no case, however, may there be omitted on this ground information which is a matter of public record in the State or Territory in which the tract is located.

(*c*) All information contained in an offering sheet, including exhibits, shall be as of a date not more than 110 days prior to the delivery of the offering sheet to the purchaser, and also as of a date not more than 110 days prior to the making of each contract for the sale of any security described therein.

(*d*) Each offering sheet filed with the Commission shall be executed in the manner prescribed by the Commission and shall bear the original signature of the person making the filing.

(*e*) Each offering sheet used, distributed, or delivered by the person making the filing shall be a copy of the offering sheet filed with the Commission (as amended, if amended).

(*f*) Each offering sheet used, distributed, or delivered by a person other than the person filing same with the Commission shall be a copy of the offering sheet filed with the Commission (as amended, if amended). It shall also be executed in the manner prescribed by the Commission, and shall bear the original signature of the person so using, distributing, or delivering same.

(*g*) The schedules hereinbefore referred to, and which are, by reference, hereby incorporated in, and made a part of, this rule, are as follows:

(1) **Schedule A.**—If the interests offered are producing landowners' royalty interests.

(2) **Schedule B.**—If the interests offered are nonproducing landowners' royalty interests.

(3) **Schedule C.**—If the interests offered are producing overriding interests, working interests, or participating interests.

(4) **Schedule D.**—If the interests offered are nonproducing overriding interests, working interests, or participating interests.

(5) **Schedule E.**—If the interests offered are oil payments, gas payments, or oil and gas payments to be made from tracts represented to be producing at the time of the offering.

(6) **Schedule F.**—If the interests offered are oil payments, gas payments, or oil and gas payments to be made from tracts represented to be nonproducing at the time of the offering.

Specimen copies of schedules A to F, inclusive, may be procured from the U. S. Securities and Exchange Commission, Washington, D. C., upon request.

Rule 332 Representations in Offering Sheets

Every offering sheet, whether it does, or does not, comply with the requirements of Rule 330, shall be deemed to have been filed or used or distributed or delivered upon the express condition that—

(*a*) All statements or information contained in divisions I and II of any offering sheet, or in any exhibit attached thereto or incorporated therein shall constitute continuing representations, by the person filing such offering sheet to any person who may, in reliance upon a copy of such offering sheet, purchase any interest described therein, that the statements contained in divisions I and II thereof and in the exhibits attached thereto are substantially correct and that no material fact has been omitted, the inclusion of which would reasonably appear necessary, in the light of the circumstances, to make the information contained therein not misleading to the purchaser.

(*b*) All statements or information contained in any offering sheet, or in any exhibit attached thereto or incorporated therein, shall constitute continuing representations by any offeror who shall deliver, or cause such offering sheet to be delivered, to any person who may, in reliance upon a copy of such offering sheet, purchase any interest described therein from, or through, such offeror, that such offering sheet is a true copy of an offering sheet filed with the Securities and Exchange Commission in compliance with the rules and regulations of the Commission on behalf of such offeror, that such offeror has reasonable grounds to believe, and does believe, that the statements contained therein are substantially correct, and, that no material fact known to the offeror has been omitted, the inclusion of which would reasonably appear necessary, in the light of the circumstances, to make the information contained therein not misleading to the purchaser.

(*c*) If an estimation of recoverable oil or gas, or a geological report made by someone other than the person filing the offering sheet, is included in the offering sheet, the contents thereof shall not be regarded as a representation by the person filing the offering sheet, provided the person filing the

offering sheet has reason to believe, and does believe, that the author of such estimation or report possesses the qualifications and integrity necessary to make such estimation or report, and provided the person filing the offering sheet does not know or believe the estimation or report to be untrue or misleading in any respect.

Rule 334 Interests Involving Noncontiguous Tracts

Oil or gas interests involving non-contiguous tracts of land may be included in the same offering sheet only upon condition that—

(*a*) All interests offered for sale thereunder are landowners' royalty interests.

(*b*) All of the tracts involved are currently producing oil or gas and are located wholly within the limits of the same oil or gas pool, or if the interests are non-producing interests, all of the tracts involved appear, on the basis of all past or proposed development for oil or gas, to have equal possibilities.

(*c*) All tracts so involved are being currently operated by the same operator under an oil and gas lease executed by one or more landowners, each of whom was, at the time of the execution of said oil and gas lease, the owner of a fee or mineral interest in each of the tracts involved.

(*d*) The purchaser of any such interest is entitled to the same fractional portion of the oil and gas produced from each tract covered by said lease, irrespective of the specific tract to which such purchaser may receive a conveyance and irrespective of the specific tract from which such production may be obtained.

ARTICLE 5. SUSPENSION ORDERS AND THEIR EFFECT

Rule 340 Suspension Orders

(*a*) If, at any time within 7 days after the date upon which an offering sheet is received by the Commission for filing, the Commission has reasonable grounds to believe that such offering sheet is incomplete or inaccurate in any material respect, or includes an untrue statement of a material fact, or omits to state any material fact necessary to make the statements therein contained not misleading, or fails to comply with any of the requirements of Regulation B, the Commission may enter an order temporarily suspending the effectiveness of the filing of such offering sheet pending a final hearing thereon. The Commission shall, promptly upon the entry of any such order, give notice to the person filing such offering sheet; (1) that such order has been entered, and (2) that the Commission will, upon receipt of a written request from the person filing such offering sheet, set the matter for hearing, within 20 days after the receipt of such request, at a place to be designated by the Commission. Upon receipt of any such request, the Commission will forthwith set the matter for hearing accordingly, and will promptly give notice of the time and place thereof. If the Commission does not set the matter for hearing upon a date within such 20-day period, the order for suspension then in effect shall, upon expiration of said 20-day period, expire and be of no further force or effect. Such hearing may be continued from time to time for cause, but if the Commission does not enter an order permanently suspending the effectiveness of such offering sheet within 60 days after such hearing is finally closed, the suspension order then in effect shall, upon expiration of said 60-day period, likewise expire and be of no further force or effect.

(*b*) If, at any time after notice and opportunity for hearing, either at the written request of a person filing an offering sheet or upon motion of the Commission, the Commission finds that an offering sheet is incomplete or inaccurate in any material respects, or includes an untrue statement of a material fact, or omits to state any material facts necessary to make the statements therein contained not misleading, or fails to comply with any of the requirements of Regulation B, the Commission may enter an order permanently suspending the effectiveness of the filing of such offering sheet, or, if an order has been entered pursuant to subdivision (*a*) of this rule, and is still in effect, may make the suspension effected by such order permanent.

(*c*) If, before the hearing with respect thereto is finally closed, the Commission finds that an offering sheet has been amended to cure the objections specified in any temporary suspension order entered pursuant to subdivision (*a*) of this rule, or specified in any notice given pursuant to subdivision (*b*) of this rule, the Commission will thereupon terminate the proceeding which may have been instituted by any such temporary

suspension order, or by any such notice, and give notice of such action to the person who filed the offering sheet.

(*d*) All notices required by this rule shall be given to the person who filed the offering sheet, and shall be given either by personal service, or by registered or certified mail, or confirmed telegraphic notice, addressed to such person at the address given in the offering sheet.

(Amended para. (*d*) eff. Dec. 4, 1964, Release 33-4744).

Rule 342 Effect of Suspension Order

An offering sheet complying with the requirements of Regulation B, and particularly Rule 330, shall become effective on the eighth day after the date upon which it is received by the Commission for filing, except that—

(*a*) If the Commission shall enter an order under Rule 340 (*a*) suspending the effectiveness of the filing of such offering sheet within seven days after the date upon which it is received by the Commission for filing, the filing thereof shall not become effective for any purpose whatever until such proceeding is terminated, or such order for suspension expires.

(*b*) If the Commission shall at any time give notice of a hearing or enter an order under Rule 340 (*b*) suspending the effectiveness of the filing of such offering sheet, said offering sheet shall not be effective for any purpose whatever subsequent to the giving of such notice or during the period of such suspension.

ARTICLE 6. WITHDRAWAL, AMENDMENT, AND TERMINATION OF OFFERING SHEETS

Rule 350 Withdrawal of Offering Sheet

Any person who has filed an offering sheet may apply to the Commission for an order consenting to the withdrawal of same, provided none of the securities described in said offering sheet have been sold, and such person shall so represent to the Commission in writing. The Commission will enter an order consenting thereto unless it shall find that sales of the securities described in said offering sheet have, in fact, been made.

Rule 352 When Offering Sheet May Be Amended

Any person who has filed an offering sheet may, subject to the provisions of Rule 354, file amendments thereto, but only under the following conditions and in the following instances:

(*a*) In the event none of the securities referred to in said offering sheet have been sold and the person filing the offering sheet shall so represent to the Commission in writing.

(*b*) In the event a suspension order is in effect and the hearing with respect thereto has not been finally closed.

(*c*) In the event no suspension order is in effect, but notice has been given by the Commission pursuant to Rule 340 (*b*), and the hearing with respect thereto has not been finally closed.

Rule 354 How Offering Sheet May Be Amended

Any amendment to an offering sheet shall be filed in accordance with this rule and shall become and be effective only as hereinafter provided:

(*a*) The amendment shall be filed with the Commission, in quadruplicate, and each copy shall bear the signature of the person who filed the offering sheet as well as every other person whose estimations or statements are modified or affected by such amendment.

(*b*) An amendment shall be made either by filing or substituting a wholly corrected offering sheet, or by filing or substituting entire exhibits or pages, as amended.

(*c*) Any amendment complying with the requirements of this rule shall become effective at such time as the Commission may order.

Rule 356 Voluntary Termination of Effectiveness of Offering Sheet

Any person who has filed an offering sheet may apply to the Commission for an order terminating the effectiveness of the filing thereof, provided such person shall file with the Commission an affidavit that all persons on whose behalf said offering sheet has been filed, to whom copies thereof have been delivered (naming all such persons), have been notified in writing of the intention to terminate the effectiveness of said offering sheet. The Commission will enter an order terminating the effectiveness of such offering sheet unless it shall find that such affidavit is insufficient, or that such notice of intention has not been given, as required, or it is not appropriate in the public interest so to do.

ADOPTION OF RULES AND REGULATIONS RELATING TO ASSESSABLE STOCK

The Securities and Exchange Commission announced today that it has adopted certain rule changes relative to assessable stock. These rule changes make it clear that the levying of assessments on assessable stock involves the offering and sale of securities within the meaning of the Securities Act of 1933. A draft of the proposed rule changes was published on March 5, 1958 and revised proposals, which included a proposed exemption from registration, were published on March 4, 1959. The Commission has given careful consideration to all of the views and comments submitted in regard to these proposals.

The new Rule 136 defines the term "offer", "offer to sell", "offer for sale" and "sale" to include specifically the levying of assessments on assessable stock. The rule also provides that the offer or sale of assessable stock at public auction or otherwise to realize the amount of an unpaid assessment thereon is not exempt from the Act as a transaction by a person other than an issuer, underwriter or dealer. However, any person who acts solely as an auctioneer at such an auction sale is not deemed to be an underwriter. The rule further provides that any person who acquires assessable stock at such a sale with a view to its distribution is to be deemed an underwriter of the stock. An amendment to Rule 140 has been adopted to make it clear that it applies to the levying of assessments, as well as to other types of offers and sales.

The new exemption regulation (designated Regulation F) provides a conditional exemption from registration for assessments and for securities sold at delinquent assessment sales. A condition to the availability of an exemption under the regulation is the filing of a comparatively simple notification giving brief information as to the issuer, its management and its recent and proposed assessments. Any notice or advertisement of the assessment or any delinquent assessment sales must include or be accompanied by a reasonably detailed statement of the purposes for which the proceeds from the assessment or assessment sales are to be used. Any literature used in connection with the levying of the assessment or the delinquent assessment sales must be filed with the Commission. The exemption may be suspended under certain circumstances, such as a finding by the Commission that fraud is involved.

The text of the new Rule 136 and of the amended Rule 140 is set forth below. The text of the new Regulation F is attached.

Rule 136. Definition of Certain Terms in Relation to Assessable Stock

(a) An "offer", "offer to sell" or "offer for sale" of securities shall be deemed to be made to the holders of assessable stock of a corporation when such corporation shall give notice of an assessment to the holders of such assessable stock. A "sale" shall be deemed to occur when a stockholder shall pay or agree to pay all or any part of such an assessment.

(b) The term "transactions by any person other than an issuer, underwriter or dealer" in section 4(1) of the Act shall not be deemed to include the offering or sale of assessable stock, at public auction or otherwise, upon the failure of the holder of such stock to pay an assessment levied thereon by the issuer, where the offer or sale is made for the purpose of realizing the amount of the assessment and any of the proceeds of such sale are to be received by the issuer. However, any person whose functions are limited to acting as auctioneer at such an auction sale shall not be deemed to be an underwriter of the securities offered or sold at the auction sale. Any person who acquires assessable stock at any such public auction or other sale with a view to the distribution thereof shall be deemed to be an underwriter of such assessable stock.

(c) The term "assessable stock" means stock which is subject to resale by the issuer pursuant to statute or otherwise in the event of a failure of the holder of such stock to pay any assessment levied thereon.

Rule 140. Definition of "Distribution" in section 2(11) for Certain Transactions

A person, the chief part of whose business consists of the purchase of the securities of one issuer, or of two or more affiliated issuers, and the sale of its own securities, including the levying of assessments on its asessable stock and the resale of such stock upon the failure of the holder thereof to pay any assessment levied thereon, to furnish the proceeds with which to acquire the securities of such issuer or affiliated isuers, is to be regarded as engaged in the distribution of the securities of such issuer or affiliated issuers within the meaning of section 2(11) of the Act.

* * * * * * *

The foregoing action is taken pursuant to the Securities Act of 1933, particularly sections 2(3), 2(11), 3(b), 4(1) and 19(a) thereof and shall become effective September 1, 1959.

By the Commission.

ORVAL L. DUBOIS, *Secretary.*

REGULATION F.—EXEMPTION FOR ASSESSMENTS ON ASSESSABLE STOCK AND FOR ASSESSABLE STOCK OFFERED OR SOLD TO REALIZE AMOUNT OF ASSESSMENT THEREON

Rule 651. Scope of Exemption

(a) The following shall be exempt from registration under the Act, subject to the terms and conditions of this regulation:

(1) Assessments on assessable stock of any corporation incorporated under the laws of, and havings its principal business operations in, any State or Territory of the United States, or the District of Columbia;

(2) Assessable stock of any such corporation offered or sold at public auction or otherwise for the purpose of relaizing the amount of an assessment levied thereon, or reoffered to the public by an underwriter or dealer.

(b) The amount of the following shall not exceed $300,000 in any period of one year commencing on or after July 1, 1959.

(1) The aggregate amount of all assessments levied on assessable stock of the issuer;

(2) The aggregate offering price of all securities of the isuer offered under this regulation or any other rule or regulation adopted pursuant to section 3(b) of the Act; and

(3) The aggregate sale price of all securities of the issuer sold in violation of section 5(a) of the Act.

(c) Notwithstanding the foregoing, no exemption under this regulation shall be available to an issuer so long as the issuer is subject to a suspension order issued pursuant to Rule 656, or any similar order issued pursuant to any other rule or regulation under the Act, unless the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied. Any such determination by the Commission shall be without prejudice to any other action by the Commission in any other proceeding or matter with respect to the issuer or any other person.

Rule 652. Filing of Notification

At least 10 days (Saturdays, Sundays and holidays excluded) prior to the date on which the initial offering of any securities is to be made under this regulation, there shall be filed with the Regional Office of the Commission for the region in which the issuer conducts its principal business operations four copies of a notification on Form 1–F containing the information specified in that form. The Commission may, in its discretion, authorize the commencement of the offering prior to the expiration of such ten-day period upon a written request for such authorization.

Rule 653. Information to be Given Stockholders and Others

Every notice or advertisement of the assessment or of any delinquent assessment sale which is sent to holders of the issuer's assessable stock or otherwise published shall include or be accompanied by a reasonably detailed statement of the purposes for which the proceeds from the assessment and from any delinquent assessment sales are to be used.

Rule 654. Sales Material to be Filed

Four copies of each of the following communications prepared or authorized by the issuer or anyone associated with the issuer or any of its affiliates or by any underwriter, for use in connection with the offering of any securities under this regulation shall be filed, with the Office of the Commission with which the notification is filed, at least ten days (exclusive of Saturdays, Sundays and holidays) prior to any use thereof, or such shorter period as the Commission, in its discretion, may authorize:

(1) Every notice or advertisement proposed to be published in any newspaper, magazine or other periodical;

(2) The script of every radio or television broadcast; and

(3) Every letter, circular or other written communication proposed to be sent, given or otherwise communicated to more than ten persons.

Rule 655. Prohibition of Certain Statements

No written or oral communication used in connection with any offering under this regulation shall contain any language stating or implying that the Commission has in any way passed upon the merits of, or given approval to, any securities of the issuer, has determined that the assessment or proposed assessment is necessary or desirable or that the offering is exempt from registration, or has made any finding that the statements contained in such communication are accurate or complete.

Rule 656. Suspension of Exemption

(a) The Commission may, at any time after the filing of a notification, issue an order temporarily suspending the exemption if it has reason to believe that—

(1) No exemption is available under this regulation for the securities proposed or purported to be offered hereunder, or any of the terms or conditions of this regulation have not been complied with;

(2) Any written communication or radio or television broadcast used or proposed to be used in connection with the offering contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(3) The offering is being made or would be made in violation of section 17 of the Act;

(4) The issuer or any promoter, director or officer thereof has failed to cooperate, or has obstructed or refused to permit the making of any investigation by the Commission in connection with any offering made or proposed to be made hereunder.

(b) Upon the issuance of an order under paragraph (a) of this rule, the Commission will promptly give notice to the issuer (i) that such order has been issued, together with a brief statement of the reasons for the issuance of the order, and (ii) that the Commission, upon receipt of a written request within 30 days after the issuance of such order, will within 20 days after the receipt of such request, set the matter down for hearing at a place to be designated by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the thirtieth day after its issuance and shall remain in effect unless or until it is modified or vacated by the Commission. Where a hearing is requested or is ordered by the Commission, the Commission will, after notice of an opportunity for such hearing, either vacate the order or issue an order permanently suspending the exemption.

(c) The Commission may at any time after notice of and opportunity for hearing, issue an order permanently suspending the exemption for any reason upon which it could have issued a temporary suspension order under paragraph (a) of this rule. Any such order shall remain in effect until vacated by the Commission.

(d) All notices required by this rule shall be given to the issuer by personal service, registered mail or confirmed telegraphic notice at the address of the issuer given in the notification.

FORM 1-F—NOTIFICATION UNDER REGULATION F[1]

Item 1. The Issuer

Furnish the following information as to the issuer of the securities upon which the proposed assessment is to be levied:

(a) Exact name of issuer;

(b) Date of incorporation or organization and name of State or other jurisdiction under the laws of which it was incorporated or organized;

(c) Name of State or other jurisdiction in which issuer's principal business operations are conducted.

Item 2. Principal Security Holders of Issuer

List the full name and complete residence address of each person who owns of record, or is known to own beneficially, ten percent or more of the oustanding securities of any class of the issuer, stating the title and amount owned by each such person.

[1] The notification shall contain the item numbers and captions of all items, but the text of the items may be omitted if all of the information required by each item is clearly set forth under the respective item number and caption.

Item 3. Directors and Officers

List the full name and complete residence address of each director and each officer of the issuer, indicating all positions and offices with the issuer held by each such person.

Item 4. Prior Assessments within One Year

Furnish the following information as to each assessment levied by the issuer on its assessable stock within the last year prior to the filing of this notification—

(a) Date of assessment and number of assessable shares outstanding on such date;

(b) Amount of assessment per share and total amount of assessment for all shares then outstanding;

(c) Number of shares sold because of failure of shareholders to pay the assessment, and amount realized from such sales;

(d) Total amount realized from the assessment and sales and a reasonably itemized statement as to the purposes for which such amount was used.

Item 5. Unregistered Securities Issued or Sold within One Year

As to any unregistered securities issued by the issuer within one year prior to the filing of this notification, state—

(a) the title and amount of securities issued;

(b) the aggregate offering price or other consideration for which they were issued and the basis for computing the amount thereof;

(c) the names of the persons or the identity of the class of persons to whom the securities were issued; and

(d) the section of the Act or rule or regulation of the Commission under which exemption from registration was claimed with respect to such securities and a brief statement of the facts relied upon for the exemption.

Item 6. Proposed Assessment

Furnish the following information as to the proposed assessment with respect to which this notification is filed—

(a) Approximate date notice of the assessment will be given to the shareholders and the period of time thereafter within which the assessment may be made without forfeiture;

(b) Number of assessable shares now outstanding, the amount of the assessment per share and the total amount of the assessment;

(c) Give a reasonably detailed statement of the purposes for which the proceeds from the assessment and from any forfeiture sales are to be used.

SIGNATURE [2]

This notification has been signed in the City of _____ State of _____ on _____, 19__.

_____

(Issuer)

By_____

(Name and title)

[2] At least one copy shall be signed manually by or on behalf of the issuer. Any copies not manually signed shall bear typed or printed signatures.

TENDER OFFERS FILED UNDER THE WILLIAMS BILL IN ALPHABETICAL ORDER—BY TARGET COMPANIES

File No.	Target	Bidder	Date filed	Shares of target outstanding (approximate)	Shares of target held by bidder prior to offer	Percent	Shares of target acquired by bidder within 60 days prior to offer	Percent
1-5052	API Instruments Co	Technology, Inc	June 2, 1969	536,100	52,638.0	10.0	27,400.0	5.0
0-2991	Aircraft Acceptance Corp	Capital Leasing Co	Dec. 3, 1968	92,100				
0-2991	do	AVEMCO Corp	Dec. 10, 1968	92,100				
1-3999	Alan Wood Steel Co	Bauer International (Europa) 6MBH	Dec. 22, 1969	753,100	76,800.0	10.0	53,400.0	7.0
1-4502	Alside Inc	United States Steel, Inc	Dec. 11, 1968	2,114,000	1,373,795.0	65.0		
1-1204	Amerada Petroleum Corp	Hess Oil & Chemical Corp	Mar. 18, 1969	12,823,000	1,243,824.0	10.0		
0-2534	American Vitrified Products Co	General Water Works Corp	Oct. 24, 1968	475,000	384,782.0	81.0		
0-3288	Applied Dynamics Inc	Reliance Electric Co	July 3, 1969	556,000				
1-4405	Armour & Co	Greyhound Food Management Inc	Jan. 27, 1969	6,095,200				
0-407	Automobile Banking Corp	Martin J. Whitman & Martin Hoffinger	Aug. 1, 1968	444,000	1,700.0	4.0		
0-395	Arrowhead & Puritas Waters, Inc	Allegheny Beverage Co	Oct. 14, 1968	685,200				
1-850	Bastian Blessing Co	Pioneer Astro Industries Inc	Sept. 5, 1968	819,800	8,616.0	1.0		
0-2393	Bayly Manufacturing Co	J. C. Wood	June 2, 1969	373,200				
1-3436	Benrus Watch Co., Inc	White Weld & Co. et al	Nov. 1, 1968	614,000	237,748.0	39.0	200,600.0	33.0
0-499	Boss Linco Lines, Inc	Novo Industries Corp	Nov. 18, 1968	332,500	181,119.0	54.0		
1-4867	Bowser, Inc	Keene Corp	Aug. 29, 1968	634,150	499,275.5	79.0	499,275.5	79.0
1-4519	C. Brewer & Co., Ltd	International Utilities Investment Corp	Jan. 9, 1969	2,260,014	583,918.0	26.0	166,172.0	7.0
0-1657	C. G. Conn, Ltd	Kernal Co	Oct. 9, 1968	665,000	82,500.0	12.0	82,500.0	12.0
0-1657	do	Crowell, Collier & MacMillan Inc	Oct. 16, 1968	665,000				
1-3374	Canadian Breweries, Ltd	Philip Morris, Inc	May 20, 1969	21,762,000				
0-157	Cap Roc, Inc	Iroquois Industries, Inc	Oct. 4, 1968	486,700	14,100.0	3.0	14,000.0	3.0
1-3061	Chemtron Corp	Elgin National Industries	Apr. 25, 1969	3,714,000	100,000.0	2.7	100,000.0	2.7
0-3089	Chubb Corp	American Finance Corp	Oct. 1, 1969	4,694,240	230,944.0	5.0	230,944.0	5.0
0-1469	Churchill Downs	National Industries, Inc	Feb. 25, 1969	383,200	600.0		600.0	
0-1469	do	Kentucky Derby Protective Group	Mar. 10, 1969	383,200	6,500.0	2.0		
0-1488	Commonwealth, Inc	General Acceptance Corp	Oct. 14, 1968	861,000				
0-202	Consolidated Water Co	Apache Corp	Sept. 11, 1968	338,300				
1-1609	Coro, Inc	Richton International Corp	July 24, 1969	426,200	161,122.0	38.0	161,122.0	38.0
0-567	Crescent Niagara Corp	Cooper Industries, Inc	Aug. 28, 1968	625,300				
0-729	Denver Union Stockyards	Denver Union Associates	Nov. 4, 1968	49,300	12,133.0	25.0	12,133.0	25.0
1-3994	Diners Club, Inc	Continental Instrument Co	Feb. 6, 1970	[1] 3,541,000	[1] 1,910,090.0	54.0		
0-3629	Dudley Sports Co., Inc	Athlone Industries	Oct. 1, 1969	376,800				
0-3272	Dynasciences Corp	Whittaker Corp	June 4, 1969	1,655,000	1,304,004.0	80.0	1,304,004.0	80.0
1-4240	Electronic Specialty	International Controls Corp	Aug. 16, 1968	1,850,000	38,100.0	2.0		
0-776	Ex Lax, Inc	General Cigar	Dec. 31, 1969	[2] 60,575 [3] 18,558 [4] 1,000	[2] 43,013.0 [3] 16,440.0 [4] 3.0	71.0 89.0	1,327.0 2.0	2.0
0-3042	First Executive Corp	Wolfe Wilder, et al	Jan. 9, 1969	880,100	177,494.0	20.0	148,295.0	17.0
0-2764	Foamland USA, Inc	Daryl Industries, Inc	Aug. 27, 1968	427,800				
1-5377	Furman-Wolfson Trust	FWA Realty Corp	Feb. 24, 1969	4,633,600	728,006.0	16.0		

See footnotes at end of table, p. 93.

TENDER OFFERS FILED UNDER THE WILLIAMS BILL IN ALPHABETICAL ORDER—BY TARGET COMPANIES—Continued

File No.	Target	Bidder	Date filed	Shares of target outstanding (approximate)	Shares of target held by bidder prior to offer	Percent	Shares of target acquired by bidder within 60 days prior to offer	Percent
0-2676	G. T. Corp	Jack M. Bass, Jr	May 12, 1969	309,100	7,804.0	3.0	200.0	
0-2773	General Laboratory Associates, Inc	Simmonds Precision Products, Inc	Sept. 25, 1968	441,600				
0-2010	Harley Davidson Motor Co	Bangor Punta Corp	Nov. 12, 1968	713,554	118,000.0	17.0		
1-4149	Heli Coil Corp	Mite Corp	Nov. 26, 1969	1,396,650	508,058.0	36.0	507,958.0	36.0
0-1893	Honeggers & Co., Inc	Petroleum Resources Corp	Nov. 12, 1968	321,300				
0-3760	Industrial Air Products Co	American Cryogenics, Inc	July 18, 1969	1,224,000				
0-2581	Insley Manufacturing Corp	Desa Industries, Inc	Aug. 28, 1969	257,453				
0-2053	International Investment Co., Inc	Allan Gittleson & Sidney Harman	Jan. 15, 1970	248,100	10,050.0	4.0		
1-643	International Salt Co	K Z O	Sept. 9, 1969	1,919,200				
0-2165	Iowa National Investment Co	John J. Marget	Feb. 25, 1970	1,195,900	18,233.0	2.0		
0-482	Jones Motor Co	Alleghany Corp	Sept. 5, 1968	616,000				
0-2408	Julian & Kohenge Co	Amadac Industries, Inc	June 19, 1969	119,800	56,250.0	47.0	56,250.0	47.0
1-4950	Kissel Co	Pittsburgh National Bank	Nov. 3, 1969	934,600				
1-5155	Lau Blower Co	Nortek, Inc	Aug. 22, 1968	786,800	14,500.0	2.0		
0-2216	Leeds Shoes, Inc	Goodbody & Co	Sept. 18, 1968	1,358,000				
1-5778	Magnetics, Inc	Hale Bros. Associates, Inc	Nov. 1, 1968	1,181,544	35,000.0	3.0	35,500.0	3.0
1-2500	Metro-Goldwyn-Mayer, Inc	Tracy Investment Co	July 22, 1969	5,874,500				
1-2500	do	do	Sept 10, 1969	5,874,500	1,263,950.0	22.0		
1-5022	Miehle Goss Dexter, Inc	North American Rockwell	Nov. 19, 1968	5,000,000	251,000.0	5.0	115,600.0	2.0
0-2924	Montana Flour Mills Co	V W R United Corp	Dec. 20, 1968	144,000				
0-2924	do	White Dulaney Co	Dec. 23, 1968	144,000	200.0			
0-2924	do	Nebraska Consolidated Mills Co	Dec. 24, 1968	144,000				
0-745	Morris Plan	Sirrom Partners	Jan. 8, 1969	765,000	6,094.0		6,094.0	
0-3473	National Car Rental Systems, Inc	Household Finance Corp	Aug. 18, 1969	11,744,900	6,672,503.0	57.0	3,323,040.0	28.0
0-968	National Development Corp	EF Middleton	July 14, 1969	834,500	289,589.0	35.0		
0-1773	Pacific Vegetable Oil Corp	Sidney Hoffman	Aug. 27, 1968	640,100	28,800.0	5.0		
0-4319	Pan American Sulphur Co	Susquehanna Corp	Nov. 25, 1968	4,751,342	300.0			
1-3216	Piper Aircraft Corp	Chris Craft Industries, Inc	Jan. 23, 1969	1,640,000	200,500.0	12.0	200,500.0	12.0
1-3216	do	Chris Craft Industries	May 19, 1969	1,640,000	556,206.0	34.0	9,190.0	
1-4175	Polymer Corp	ACF Industries, Inc	Nov. 22, 1968	525,049				
1-1371	Richman Bros., Inc	F. W. Woolworth Co	Jan. 28, 1969	1,886,100				
0-272	Riley Stoker Corp	Scam Instrument Corp	Apr. 28, 1969	394,100	85,811.0	22.0	85,811.0	22.0
0-1711	Rock of Ages Corp	Nortek, Inc	Dec. 11, 1968	304,200				
0-3966	Roosevelt Raceway, Inc	G & W Land & Development Corp	Sept. 24, 1969	1,304,600	127,173.0	10.0	127,173.0	10.0
1-2677	Ryan Aeronautical, Inc	Teledyne, Inc	Nov. 5, 1968	2,571,000				
0-1156	Scholz Homes, Inc	Inland Steel Co	Dec. 19, 1969	3,332,000				
1-5268	Simplex Wire & Cable Co	Harbill Associates	Feb. 7, 1969	861,000	4,000.0		4,000.0	
1-1247	Sinclair Oil Corp	Atlantic Richfield Co	Dec. 11, 1968	12,563,400				
0-1525	South Dakota Corp	Charles A. Roth et al	Jan. 24, 1969	2,893,000	511,553.0	18.0	4,600.0	
0-1525	do	Independent Investors Group	May 23, 1969	2,893,000	632,345.0	22.0	94,000.0	3.0
0-1297	Southdown, Inc	Zapata Norness, Inc	Feb. 24, 1969	1,336,600				

0–2495	Standard Knitting Mills, Inc	Chadbourn, Inc	Nov. 17, 1969	4,371			1,325.0	30.0
1–5470	Superior Coach Corp	Sheller-Globe Corp	Aug. 12, 1968	1,375,500				
0–2350	Technibilt Corp	Gleason Corp	Oct. 28, 1968	359,200	197,908.0			
1–2094	Thor Power Tool Co	Stewart Warner Corp	Aug. 22, 1968	727,603	452,333.0	62.0		
1–4443	Transwestern Pipeline Co	Texas Eastern Transmission Corp	Nov. 4, 1968	6,026,000	5,876,437.0	98.1	3,257.0	
0–182	Tyler Pipe	Saturn Industries	Aug. 26, 1968	1,104,580				
1–4202	UMC Industries, Inc	Liquidonics Industries, Inc	Feb. 4, 1969	5,128,700	941,300.0	18.0	14,000.0	
1–4052	United States Borax & Chemical	Pyrites Co., Inc	Dec. 6, 1968	4,228,000	3,100,000.0	73.0		
0–2984	Vail Associates, Inc	James A. Krentler	Sept. 20, 1968	871,200	71,200.0	8.0	10,000.0	1.0
0–973	Victor Products Corp	Funkhouser Industries, Inc	Dec. 6, 1968	725,745	348,913.0	48.0	150.0	
0–42	Waddell & Reed	CWR (subsidiary of Continental Investment Corp).	June 3, 1969	[2] 912,900 [3] 113,900				
0–1447	Waltham Watch Co	Iseca, Inc	Sept. 3, 1968	407,300	283,976.0	70.0	283,976.0	70.0
1–1521	Western Air Lines, Inc	Kirk Kerkorian	Dec. 9, 1968	4,908,000				
811–932	Wisconsin Securities Co. of Delaware	Clement Construction Co	Aug. 6, 1969	63,573	15,000.0	24.0		
0–1115	Wyandotte Chemical Corp	BASF Overzee N.V	Oct. 7, 1969	2,914,900	417,996.0	14.0		
0–1115	do	do	Dec. 31, 1969	2,934,900	2,903,926.0	99.0	474,722.0	16.0
0–357	Yosemite Park and Curry Co	Shasta Telecasting Corp	June 5, 1969	1,050,000	217,072.0	20.7	44,995.0	4.3
0–357	do	do	Aug. 1, 1969	1,050,000	337,817.0	32.2	120,745.0	11.5
1–1315	Youngstown Sheet & Tube Co	Lykes Corp	Dec. 16, 1968	10,708,324				

[1] On fully converted basis.
[2] Class A.
[3] Class B.
[4] Preferred.

TENDER OFFERS FILED UNDER THE WILLIAMS BILL IN ALPHABETICAL ORDER BY BIDDER COMPANIES

File No.	Target	Bidder	Date filed	Shares of target outstanding (approximate)	Shares of target held by bidder prior to offer	Percent	Shares of target acquired by bidder within 60 days prior to offer	Percent
1-4175	Polymer Corp	ACF Industries, Inc	Nov. 22, 1968	525,049				
0-2053	International Investment Co., Inc	Allan Gittleson & Sidney Harman	Jan. 15, 1970	248,100	10,050.0	4.0		
0-482	Jones Motor Co	Alleghany Corp	Sept. 5, 1968	616,000				
0-395	Arrowhead & Puritas Waters, Inc	Allegheny Beverage Co	Oct. 14, 1968	685,200				
0-2408	Julian & Kokenge Co	Amadac Industries, Inc	June 19, 1969	119,800	56,250.0	47.0	56,250.0	47
0-3760	Industrial Air Products Co	American Cryogenics, Inc	July 18, 1969	1,224,000				
0-3089	Chubb Corp	American Finance Corp	Oct. 1, 1969	4,694,240	230,944.0	5.0	230,944.0	5
0-202	Consolidated Water Co	Apache Corp	Sept. 11, 1968	338,300				
0-3689	Dudley Sports Co., Inc	Athlone Industries	Oct. 1, 1969	376,800				
1-1247	Sinclair Oil Corp	Atlantic Richfield Co	Dec. 11, 1968	12,563,400				
0-2991	Aircraft Acceptance Corp	AVEMCO Corp	Dec. 10, 1968	92,100				
0-1115	Wyandotte Chemical Corp	BASF Overzee N.V	Oct. 7, 1969	2,914,900	417,996.0	14.0		
0-1115	do	do	Dec. 31, 1969	2,934,900	2,903,926.0	99.0	474,722.0	16
0-2010	Harley Davidson Motor	Bangor Punta Corp	Nov. 12, 1968	713,554	118,000.0	17.0		
1-3999	Alan Wood Steel Co	Bauer International (Europa) GMBH	Dec. 22, 1969	753,100	76,800.0	10.0	53,400.0	7
0-2991	Aircraft Acceptance Corp	Capital Leasing Co	Dec. 3, 1968	92,100				
0-2495	Standard Knitting Mills, Inc	Chadbourn, Inc	Nov. 17, 1969	4,371			1,325.0	30
0-1525	South Dakota Corp	Charles A. Roth et al	Jan. 24, 1969	2,893,000	511,553.0	18.0	4,600.0	
1-3216	Piper Aircraft Corp	Chris Craft Industries, Inc	Jan. 23, 1969	1,640,000	200,500.0	12.0	200,500.0	12
1-3216	do	do	May 19, 1969	1,640,000	556,206.0	34.0	9,190.0	
811-932	Wisconsin Securities Co. of Delaware	Clement Construction Co	Aug. 6, 1969	63,573	15,000.0	24.0		
1-3994	Diners Club, Inc	Continental Instrument Co	Feb. 6, 1970	[1] 3,541,000	[1] 1,910,090.0	54.0		
0-567	Crescent Niagara Corp	Cooper Industries, Inc	Aug. 28, 1968	625,300				
0-1657	C. G. Conn, Ltd	Crowell, Collier & MacMillan, Inc	Oct. 16, 1968	665,000				
0-2764	Foamland USA, Inc	Daryl Industries, Inc	Aug. 27, 1968	427,800				
0-729	Denver Union Stockyards	Denver Union Associates	Nov. 4, 1968	49,300	12,133.0	25.0	12,133.0	25
0-2581	Insley Manufacturing Corp	Desa Industries, Inc	Aug. 28, 1969	257,453				
0-968	National Development Corp	E. F. Middleton	July 14, 1969	834,500	289,589.0	35.0		
1-3061	Chemtorn Corp	Elgin National Industries	Apr. 25, 1969	3,714,000	100,100.0	3.0	100,100.0	3
1-5377	Furman-Wolfson Trust	FWA Realty Corp	Feb. 24, 1969	4,633,600	728,006.0	16.0		
1-1371	Richman Bros., Inc	F. W. Woolworth Co	Jan. 28, 1969	1,886,100				
0-973	Victor Products Corp	Funkhouser Industries, Inc	Dec. 6, 1968	725,745	348,913.0	48.0	150.0	.02
0-3966	Roosevelt Raceway, Inc	G. & W. Land & Development Corp	Sept. 24, 1969	1,304,600	127,173.0	10.0	127,173.0	10
0-1488	Commonwealth, Inc	General Acceptance Corp	Oct. 14, 1968	861,000				
0-776	Ex Lax, Inc	General Cigar	Dec. 31, 1969	[2] 60,575	[2] 43,013.0	71.0	1,327.0	2
0-2534	American Vitrified Products Co	General Waterworks Corp	Oct. 24, 1968	475,000	384,782.0	81.0		
0-2350	Technibilt Corp	Gleason Corp	Oct. 28, 1968	359,200	197,908.0			
0-2216	Leeds Shoes, Inc	Goodbody & Co	Sept. 18, 1968	1,358,000				
1-4405	Armour & Co	Greyhound Food Management, Inc	Jan. 27, 1969	6,095,200				
1-5778	Magnetics, Inc	Hale Bros. Associates, Inc	Nov. 1, 1968	1,181,544	35,500.0	3.0	35,500.0	3.0
1-5268	Simplex Wire & Cable Co	Harbill Associates	Feb. 7, 1969	861,000	4,000.0		4,000.0	

1–1204	Amerada Petroleum Corp	Hess Oil & Chemical Corp	Mar. 18, 1969	12, 823, 000	1, 243, 824. 0	10. 0		
0–3473	National Car Rental Systems, Inc	Household Finance Corp	Aug. 18, 1969	11, 744, 900	6, 672, 503. 0	57. 0	3, 323, 040. 0	28. 00
0–1525	South Dakota Corp	Independent Investors Group	May 23, 1969	2, 893, 000	632, 345. 0	22. 0	94, 000. 0	3
0–1156	Scholz Homes, Inc	Inland Steel Co	Dec. 19, 1969	3, 332, 000				
1–4240	Electronic Specialty	International Controls Corp	Aug. 16, 1968	1, 850, 000	38, 100. 0	2. 0		
1–4519	C. Brewer & Co., Ltd	International Utilities Investment Corp	Jan. 9, 1969	2, 260, 014	583, 918. 0	26. 0	166, 172. 0	7
0–157	Cap Roc, Inc	Iroquois Industries, Inc	Oct. 4, 1968	486, 700	14, 100. 0	3. 0	14, 000. 0	3
0–1447	Waltham Watch Co	Iseca, Inc	Sept. 3, 1968	407, 300	283, 976. 0	70. 0	283, 976. 0	70
0–2393	Bayly Manufacturing Co	J. C. Wood	June 2, 1969	373, 200				
0–2676	G. T. Corp	Jack M. Bass, Jr	May 12, 1969	309, 100	7, 804. 0	3. 0	200. 0	
0–2984	Vail Associates, Inc	James A. Krentler	Sept. 20, 1968	871, 200	71, 200. 0	8. 0	10, 000. 0	1
0–2165	Iowa National Investment Co	John J. Marget	Feb. 25, 1970	1, 195, 900	18, 233. 0	2. 0		
1–643	International Salt Co	KZO	Sept. 9, 1969	1, 919, 200				
1–4867	Bowser Inc	Keene Corp	Aug. 29, 1968	634, 150	499, 275. 0	79. 0	499, 275. 0	79
0–1469	Churchill Downs	Kentucky Derby Protective Group	Mar. 10, 1969	383, 200	6, 500. 0	2. 0		
0–1657	C. G. Conn Ltd	Kernal Co	Nov. 9, 1968	665, 000	82, 500. 0	12. 0	82, 500. 0	12
1–1521	Western Air Lines, Inc	Kirk Kerkorian	Dec. 9, 1968	4, 908, 000				
1–4202	UMC Industries, Inc	Liquidonics Industries	Feb. 4, 1969	5, 128, 700	941, 300. 0	18. 0	14, 000. 0	
1–1315	Youngstown Sheet & Tube Co	Lykes Corp	Dec. 16, 1968	10, 708, 324				
0–407	Automobile Banking Corp	Martin J. Whitman & Martin Hoffinger	Aug. 1, 1968	444, 000	1, 700. 0	4. 0		
1–4149	Heli Coi. Corp	Mite Corp	Nov. 26, 1969	1, 396, 650	508, 058. 0	36. 0	507, 958. 0	36
0–1469	Churchill Downs	National Industries, Inc	Feb. 25, 1969	383, 200	600. 0		600. 0	
0–2924	Montana Flour Mills Co	Nebraska Consolidated Mills Co	Dec. 24, 1968	144, 000				
1–5155	Lau Blower Co	Norteck Inc,	Aug. 22, 1968	786, 800	14, 500. 0	2. 0		
0–1711	Rock of Ages Corp	do	Dec. 11, 1968	304, 200				
1–5022	Miehle Goss Dexter, Inc	North American Rockwell	Nov. 19, 1968	5, 000, 000	251, 000. 0	5. 0	115, 600. 0	2
0–499	Boss Linco Lines, Inc	Novo Industries Corp	Nov. 18, 1968	332, 500	181, 119. 0	54. 0		
0–1893	Honeggers & Co., Inc	Petroleum Resources Corp	Nov. 12, 1968	312, 300				
1–3374	Canadian Breweries, Ltd	Philip Morris, Inc	May 20, 1969	21, 762, 000				
1–850	Bastian Blessing Co	Pioneer Astro Industries, Inc	Sept. 5, 1968	819, 800	8, 616. 0	1. 0		
1–4950	Kissel Co	Pittsburgh National Bank	Nov. 3, 1969	934, 600				
1–4052	U.S. Borax & Chemical Corp	Pyrites Co., Inc	Dec. 6, 1968	4, 228, 000	3, 100, 000. 0	73. 0		
0–3288	Applied Dynamics, Inc	Reliance Electric Co	July 3, 1969	556, 000				
1–1609	Coro Inc	Richton International Corp	July 24, 1969	426, 200	161, 122. 0	38. 0	161, 122. 0	38. 00
0–182	Tyler Pipe	Saturn Industries	Aug. 26, 1968	1, 104, 580				
0–272	Riley Stoker Corp	Scam Instrument Corp	Apr. 28, 1969	394, 100	85, 811. 0	22. 0	85, 811. 0	22
0–357	Yosemite Park & Curry Co	Shasta Telecasting Corp	June 5, 1969	1, 050, 000	217, 072. 0	21. 0	44, 995. 0	4
0–357	do	do	Aug. 1, 1969	1, 050, 000	337, 817. 0	32. 0	120, 745. 0	12
1–5470	Superior Coach Corp	Sheller-Globe Corp	Aug. 12, 1968	1, 375, 500				
0–1773	Pacific Vegetable Oil Corp	Sidney Hoffman	Aug. 27, 1968	640, 100	28, 800. 0	5. 0		
0–2773	General Laboratory Associates, Inc	Simmonds Precision Products, Inc	Sept. 25, 1968	441, 600				
0–745	Morris Plan	Sirrom Partners	Jan. 8, 1969	765, 000	6, 094. 0		6, 094. 0	
1–2094	Thor Power Tool Co	Stewart Warner Corp	Aug. 22, 1968	727, 603	452, 333. 0	62. 0		
0–4319	Pan American Sulfur Co	Susquehanna Corp	Nov. 25, 1968	4, 751, 342	300. 0			
1–5052	API Instruments Co	Technology, Inc	June 2, 1969	536, 100	52, 368. 0	10. 0	27, 400. 0	5
1–2677	Ryan Aeronautical Co	Teledyne, Inc	Nov. 5, 1968	2, 571, 000				
1–4443	Transwestern Pipeline Co	Texas Eastern Transmission Corp	Nov. 4, 1968	6, 026, 000	5, 876, 437. 0	98. 0	3, 257. 0	
1–2500	Metro-Goldwyn Mayer, Inc	Tracy Investment Co	July 22, 1969	5, 874, 500				
1–2500	do	do	Sept. 10, 1969	5, 874, 500	1, 263, 950. 0	22. 0		
1–4502	Alside, Inc	USS, Inc	Dec. 11, 1968	2, 114, 000	1, 373, 795. 0	65. 0		

See footnotes at end of table, p. 96.

TENDER OFFERS FILED UNDER THE WILLIAMS BILL IN ALPHABETICAL ORDER BY BIDDER COMPANIES—Continued

File No.	Target	Bidder	Date filed	Shares of target outstanding (approximate)	Shares of target held by bidder prior to offer	Percent	Shares of target acquired by bidder within 60 days prior to offer	Percent
0-2924	Montana Flour Mills Co	VWR United Corp	Dec. 20, 1968	144,000				
0-42	Waddell & Reed	CWR (subsidiary of Continental Investment Corp).	June 3, 1969	[2] 912,900 [3] 113,900				
1-3436	Benrus Watch Co., Inc	White Weld & Co. et al	Nov. 1, 1968	614,000	237,748.0	39.0	200,600.0	33
0-2924	Montana Flour Mills Co	White Dulany Co	Dec. 23, 1968	144,000	200.0			
0-3272	Dynasciences Corp	Whittaker Corp	June 4, 1969	1,655,000	1,304,004.0	80.0	1,304,004.0	80
0-3042	First Executive Corp	Wolfe Wilder et al	Jan. 9, 1969	880,100	177,494.0	20.0	148,295.0	17
0-1297	Southdown, Inc	Zapata Norness, Inc	Feb. 24, 1969	1,336,600				

[1] On fully converted basis.
[2] Class A.
[3] Class B.

TENDER OFFERS FILED UNDER THE WILLIAMS BILL IN CHRONOLOGICAL ORDER

File No.	Target	Bidder	Date filed	Shares of target outstanding (approximate)	Shares of target held by bidder prior to offer	Percent	Shares of target acquired by bidder within 60 days prior to offer	Percent
0-407	Automobile Banking Corp	Martin J. Whitman & Martin Hoffinger	Aug. 1, 1968	444,000	1,700.0	4.0		
1-5470	Superior Coach Corp	Sheller-Globe Corp	Aug. 12, 1968	1,375,500				
1-4240	Electronic Specialty	International Controls Corp	Aug. 16, 1968	1,850,000	38,100.0	2.0		
1-5155	Lau Blower Co	Nortek, Inc	Aug. 22, 1968	786,800	14,500.0	2.0		
1-2094	Thor Power Tool Co	Stewart Warner Corp	do	727,603	452,333.0	62.0		
0-182	Tyler Pipe	Saturn Industries	Aug. 26, 1968	1,104,580				
0-1773	Pacific Vegetable Oil Corp	Sidney Hoffman	Aug. 27, 1968	640,100	28,800.0	5.0		
0-2764	Foamland USA, Inc	Daryl Industries	do	427,800				
0-567	Crescent Niagara Corp	Cooper Industries, Inc	Aug. 28, 1968	625,300				
1-4867	Bowser, Inc	Keene Corp	Aug. 29, 1968	634,150	499,275.5	79.0	499,275.5	79
0-1447	Waltham Watch Co	Iseca, Inc	Sept. 3, 1968	407,300	283,976.0	70.0	283,876.0	70
1-850	Bastia Blessing Co	Pioneer Astro Industries, Inc	Sept. 5, 1968	819,800	8,616.0	1.0		
0-482	Jones Motor Co	Alleghany Corp	do	616,000				
0-202	Consolidated Water Co	Apache Corp	Sept. 11, 1968	338,300				
0-2216	Leeds Shoes, Inc	Goodbody & Co	Sept. 18, 1968	1,358,000				
0-2984	Vail Associates, Inc	James A. Krentler	Sept. 20, 1968	871,200	71,200.0	8.0	10,000.0	1
0-2773	General Laboratory Associates, Inc	Simmonds Precision Products, Inc	Sept. 25, 1968	441,600				
0-157	Cap Roc, Inc	Oroquois Industries, Inc	Oct. 4, 1968	486,700	14,100.0	3.0	14,000.0	3
0-1657	C. G. Conn, Ltd	Kernal Co	Oct. 9, 1968	665,000	82,500.0	12.0	82,500.0	12
0-395	Arrowhead & Puritas Waters, Inc	Allegheny Beverage	Oct. 14, 1968	685,200				
0-1488	Commonwealth, Inc	General Acceptance Corp	Oct. 14, 1968	861,000				
0-1657	C. G. Conn, Ltd	Crowell, Collier & MacMillan, Inc	Oct. 16, 1968	665,000				
0-2534	American Vitrified Products Co	General Waterworks Corp	Oct. 24, 1968	475,000	384,782.0	81.0		
0-2350	Technibilt Corp	Gleason Corp	Oct. 28, 1968	359,200	197,908.0			
1-5778	Magnetics Inc	Hale Bros. Associates, Inc	Nov. 1, 1968	1,181,544	35,500.0	3.0	35,500.0	3
1-3436	Benrus Watch Co., Inc	White Weld & Co., et al	Nov. 1, 1968	614,000	237,748.0	39.0	200,600.0	33
0-729	Denver Union Stockyards	Denver Union Associates	Nov. 4, 1968	49,300	12,133.0	25.0	12,133.0	25
1-4443	Transwestern Pipeline Co	Texas Eastern Transmission Corp	Nov. 4, 1968	6,026,000	5,876,437.0	98.1	3,257.0	
1-2677	Ryan Aeronautical Co	Teledyne, Inc	Nov. 5, 1968	2,571,000				
0-2010	Harley Davidson Motor Co	Bangor Punta Corp	Nov. 12, 1968	713,554	118,000.0	17.0		
0-1893	Honeggers & Co., Inc	Petroleum Resources Corp	do	312,300				
0-499	Boss Linco Lines, Inc	Novo Industries Corp	Nov. 18, 1968	332,500	181,119.0	54.0		
1-5022	Miehle Goss Dexter, Inc	North American Rockwell	Nov. 19, 1968	5,000,000	251,000.0	5.0	115,600.0	2
1-4175	Polymer Corp	ACF Industries, Inc	Nov. 22, 1968	525,049				
0-4319	Pan American Sulphur Co	Susquehanna Corp	Nov. 25, 1968	4,751,342	300.0			
0-2991	Aircraft Acceptance Corp	Capital Leasing Co	Dec. 3, 1968	92,100				
1-4052	U.S. Borax & Chemical, Inc	Pyrites Co., Inc	Dec. 6, 1968	4,228,000	3,100,000.0	73.0		
0-973	Victor Products Corp	Funkhouser Industries, Inc	do	725,745	348,913.0	48.0	150.0	
1-1521	Western Air Lines, Inc	Kirk Kerkorian	Dec. 9, 1968	4,908,000				

See footnotes at end of table, p. 99.

TENDER OFFERS FILED UNDER THE WILLIAMS BILL IN CHRONOLOGICAL ORDER—Continued

File No.	Target	Bidder	Date filed	Shares of target outstanding (approximate)	Shares of target held by bidder prior to offer	Percent	Shares of target acquired by bidder within 60 days prior to offer	Percent
0-2991	Aircraft Acceptance Corp	AVEMCO Corp	Dec. 10, 1968	92,100				
1-1247	Sinclair Oil Corp	Atlantic Richfield Co	Dec. 11, 1968	12,563,400				
0-1711	Rock of Ages Corp	Nortek, Inc	do	304,200				
1-4502	Alside Inc	USS, Inc	do	2,114,000	1,373,795.0	65.0		
1-1315	Youngstown Sheet & Tube Co	Lykes Corp	Dec. 16, 1968	10,708,324				
0-2924	Montana Flour Mills Co	V W R United Corp	Dec. 20, 1968	144,000				
0-2924	do	White Dulany Co	Dec. 23, 1968	144,000	200.0			
0-2924	do	Nebraska Consolidated Mills Co	Dec. 24, 1968	144,000				
0-745	Morris Plan	Sirrom Partners	Jan. 8, 1969	765,000	6,094.0		6,094.0	
1-4519	C. Brewer & Co., Ltd	International Utilities Investment Corp	Jan. 9, 1969	2,260,014	583,918.0	26.0	166,172.0	7
0-3042	First Executive Corp	Wolfe Wilder et al	do	880,100	177,494.0	20.0	148,295.0	17
1-3216	Piper Aircraft Corp	Chris Craft Industries, Inc	Jan. 23, 1969	1,640,000	200,500.0	12.0	200,500.0	12
0-1525	South Dakota Corp	Charles A. Roth et al	Jan. 24, 1969	2,893,000	511,553.0	18.0	4,600.0	
1-4405	Armour & Co	Greyhound Food Management, Inc	Jan. 27, 1969	6,095,200				
1-1371	Richman Bros., Inc	F. W. Woolworth Co	Jan. 28, 1969	1,886,100				
1-4202	UMC Industries, Inc	Liquidonics Industries, Inc	Feb. 4, 1969	5,128,700	941,300.0	18.0	14,000.0	
1-5268	Simplex Wire & Cable Co	Harbill Associates	Feb. 7, 1969	861,000	4,000.0		4,000.0	
0-1297	Southdown, Inc	Zapata Norness, Inc	Feb. 24, 1969	1,336,600				
1-5377	Furman-Wolfson Trust	FWA Realty Corp	do	4,633,600	728,006.0	16.0		
0-1469	Churchill Downs	National Industries, Inc	Feb. 25, 1969	383,200	600.0		600.0	
0-1469	do	Kentucky Derby Protective Group	Mar. 10, 1969	383,200	6,500.0	2.0		
1-1204	Amerada Petroleum Cyrp	Hess Oil & Chemical Corp	Mar. 18, 1969	12,823,000	1,243,824.0	10.0		
1-3061	Chemtron Corp	Elgin National Industries	Apr. 25, 1969	3,714,000	100,100.0	2.7	100,100.0	2.7
0-272	Riley Stoker Corp	Scam Instrument Corp	Apr. 28, 1969	394,100	85,811.0	22.0	85,811.0	22
0-2676	G. T. Corp	Jack M. Bass, Jr	May 12, 1969	309,100	7,804.0	3.0	200.0	
1-3216	Piper Aircraft Corp	Chris Craft Industries	May 19, 1969	1,640,000	556,206.0	34.0	9,190.0	
1-3374	Canadian Breweries, Ltd	Philip Morris, Inc	May 20, 1969	21,762,000				
0-1525	South Dakota Corp	Independent Investors Group	May 23, 1969	2,893,000	632,345.0	22.0	94,000.0	3
1-5052	API Instruments Co	Technology, Inc	June 2, 1969	536,100	52,368.0	10.0	27,400.0	5
0-2393	Bayly Manufacturing Co	J. C. Wood	do	373,200				
0-42	Waddell & Reed	CWR (subsidiary of Continential Investment Corp.).	June 3, 1969	[2] 912,900 [3] 113,900				
0-3272	Dynasciences Corp	Whittaker Corp	June 4, 1969	1,655,000	1,304,004.0	80.0	1,304,004.0	80
0-357	Yosemite Park & Curry Co	Shasta Telecasting Corp	June 5, 1969	1,050,000	217,072.0	20.7	44,995.0	4.3
0-2408	Julian & Kohenge Co	Amadac Industries, Inc	June 19, 1969	119,800	56,250.0	47.0	56,250.0	47
0-3288	Applied Dynamics, Inc	Reliance Electric Co	July 3, 1969	556,000				
0-968	National Development	EF Middleton	July 14, 1969	834,500	289,589.0	35.0		
0-3760	Industrial Air Products Co	American Cryogenics, Inc	July 18, 1969	1,224,000				
1-2500	Metro-Goldwyn-Mayer, Inc	Tracy Investment Co	July 22, 1969	5,874,500				
1-1609	Coro, Inc	Richton International Corp	July 24, 1969	426,200	161,122.0	38.0	161,122.0	38

0–357	Yosemite Park & Curry Co	Shasta Telecasting Corp	Aug. 1, 1969	1,050,000	337,817.0	32.2	120,745.0	11.5
811–932	Wisconsin Securities Co. of Deleware	Clement Construction Co	Aug. 6, 1969	63,573	15,000.0	24.0		
0–3473	National Car Rental Systems, Inc	Household Finance Corp	Aug. 18, 1969	11,744,900	6,672,503.0	57.0	3,323,040.0	28
0–2581	Insley Manufacturing Corp	Desa Industries, Inc	Aug. 28, 1969	257,453				
1–643	International Salt Co	KZO	Sept. 9, 1969	1,919,200				
1–2500	Metro-Goldwyn-Mayer, Inc	Tracy Investment Co	Sept. 10, 1969	5,874,500	1,263,950.0	22.0		
0–3966	Roosevelt Raceway, Inc	G. & W. Land & Development Corp	Sept. 24, 1969	1,304,600	127,173.0	10.0	127,173.0	10
0–3629	Dudley Sports Co., Inc	Athlone Industries	Oct. 1, 1969	376,800				
0–3089	Chubb Corp	American Finance Corp	do	4,694,240	230,944.0	5.0	230,944.0	5
0–1115	Wyandotte Chemical Corp	BASF Overzee N.V	Oct. 7, 1969	2,914,900	417,996.0	14.0		
1–4950	Kissel Co	Pittsburgh National Bank	Nov. 3, 1969	934,600				
1–2495	Standard Knitting Mills, Inc	Chadbourn, Inc	Nov. 17, 1969	4,371			1,325.0	30
0–4149	Heli Coil Corp	Mite Corp	Nov. 26, 1969	1,396,650	508,058.0	36.0	507,958.0	36
0–1156	Scholz Homes, Inc	Inland Steel Co	Dec. 19, 1969	3,332,000				
1–3999	Alan Wood Steel Co	Bauer International (Europa) GMBH	Dec. 22, 1969	753,100	76,800.0	10.0	53,500.0	7
0–776	Ex Lax, Inc	General Cigar	Dec. 31, 1969	[2] 60,575	[2] 43,013.0	71.0	1,327.0	
				[3] 18,558	[3] 16,440.0	89.0		
				[4] 1,000	[4] 3.0		2.0	
0–115	Wyandotte Chemical Corp	BASF Overzee N.V	do	2,934,900	2,903,926.0	99.0	474,722.0	16
0–2053	International Investment Co., Inc	Allan Gittleson & Sidney Harman	Jan 15, 1970	248,100	10,050.0	4.0		
1–3994	Diners Club, Inc	Continental Instrument Co	Feb. 6, 1970	3,541,000	[1] 1,910,090.0	54.0		
0–2165	Iowa National Investment Co	John J. Marget	Feb. 25, 1970	1,195,900	18,233.0	2.0		

[1] On fully converted basis.
[2] Class A.
[3] Class B.
[4] Preferred.

TENDER OFFERS FOR INSURANCE COMPANIES

Name of bidder	Name of target company	Approximate date of offer	Description of transaction
Continental Insurance Co., U.S. Fidelity & Guaranty Co.	Glens Falls Insurance Co.[1]	June 1968	Continental Insurance Co. made a tender offer of $60 per share to top a previous offer of $52.50 by U.S. Fidelity & Guaranty Co. for control of Glens Falls Insurance Co. As of June 18, 1968, Continental Insurance Co. had acquired 85 percent of Glens Falls outstanding shares.
Fidelity Corp	Monumental Life Insurance	November 1968	Fidelity Corp. made a tender offer of $47 per share to acquire up to 1,000,000 shares of common stock of Monumental Life Insurance. As of Jan. 14, 1969, Fidelity Corp. had received only 150,000 shares which they disposed of upon termination of the tender offer.
National General Corp	Republic Indemnity Co. of America.[2]	Early 1969	As of April 1969 National General Corp. reported that it owned or had tendered to it more than 95 percent of the outstanding shares of Republic Indemnity Co. of America as a result of a $15 per share tender offer.
State Mutual Life Assurance Co. of America.	Hanover Insurance Co. [1]	June 1968	In June 1968, State Mutual Life Assurance Co. announced that it had received 311,700 Hanover shares sought under a $53 per share tender offer. Including shares previously owned by State Mutual Life Assurance Co., State Mutual owned approximately 30 percent of the outstanding Hanover shares.
Associates Investment Co. (controlled by Gulf & Western Industries, Inc.).	Providence Washington Insurance Co.[1]	September 1968	In November 1968 Associates Investment Co. acquired over 95 percent of Providence's common stock as a result of a tender offer of $39 per share of common and $50.70 per share of preferred.
Teledyne, Inc	United Insurance Co. of of America.[1]	October 1967, May 1968.	As a result of an October 1967 tender offer, Teledyne, Inc., acquired approximately 23 percent of the outstanding stock of United Insurance Co. of America. In May of 1968 Teledyne, Inc. made another offer at $35 per share to acquire an additional 28 percent of the outstanding stock. As a result of these tender offers, Teledyne, Inc. acquired 51 percent of United Insurance Co. of America which is now represented by a 51 percent interest in Unicoa Corp., a holding company.
Phoenix Assurance Co. of New York (subsidiary of Phoenix Assurance Co. Ltd., Britain).	Pacific Insurance Co. of New York	June 1968	Pursuant to a tender offer of $85 per share, Phoenix Assurance Co. acquired 97 percent of the outstanding shares of Pacific Insurance Co. of New York. It appears that the offer was contested in that a group including Hambros Bank, London and Emmett J. Blot made a competitive offer at $100 per share.
Phoenix Assurance Co. of New York (subsidiary of Phoenix Assurance Co. Ltd., Britain).	Bankers & Shippers Insurance Co. of New York [3] (Pacific Insurance Co. of New York owns 38 percent of Bankers & Shippers Insurance Co.).	June 1968	Pursuant to a tender offer of $72.50 per share, Phoenix Assurance Co. of New York acquired 97 percent of the outstanding shares of Bankers & Shippers Insurance Co. of New York.
Phoenix Assurance Co. of New York (subsidiary of Phoenix Assurance Co. Ltd., Britain).	Jersey Insurance Co. of New York [3] (Pacific Insurance Co. owns 38 percent of Jersey Insurance Co.).	June 1968	Pursuant to a tender offer of $48.25, Phoenix Assurance Co. of New York acquired 97 percent of the outstanding shares of Jersey Insurance Co.
First Executive Corp	Citizens Life Insurance Co.[4]	October 1968	First Executive Corp made a tender offer of $20 per share for all the outstanding shares of Citizens Life Insurance Co. As a result of the tender offer, 74 percent of Citizens outstanding shares were acquired.
First Executive Corp	Thomas Jefferson Life Insurance Co.[4]	October 1968	First Executive Corp. made a tender offer of 1 share of First Executive Corp. common stock for each share of Thomas Jefferson Life Insurance Co. or $13 cash for each share of Thomas Jefferson Life Insurance. As a result of the tender offer, First Executive Corp. acquired 99 percent of the outstanding shares of Thomas Jefferson Life Insurance Co.[5]

See footnotes at end of table, p. 101.

TENDER OFFERS FOR INSURANCE COMPANIES—Continued

Name of bidder	Name of target company	Approximate date of offer	Description of transaction
Pennsylvania Life Co.	Massachusetts Indemnity and Life Insurance Co.[1]	January 1969	As of Jan. 28, 1969 Pennsylvania Life Co. announced that it had acquired 98 percent of the outstanding shares of Massachusetts Indemnity and Life Insurance Co. pursuant to a $66 per share tender offer.
American General Insurance Co.	California-Western States Life Insurance Co.[1]	November 1968	On November 4, 1968 American General Insurance Co. made a tender offer of $30 per share for a maximum of 702,563 shares of California-Western States Life Insurance Co. The tender offer was over subscribed and American General Insurance Co. increased its holdings in California-Western States Life Insurance Co. from 20 percent to approximately 33 percent.
Security Corp.	Fidelity & Deposit Co. of Maryland.[1]	February 1969	Security Corp. offered to buy a minimum of 400,000 shares and a maximum of 1,000,000 shares of Fidelity & Deposit Co. of Maryland at $65 per share. Upon expiration of the offer less than the minimum 400,000 shares were tendered.

[1] But for the exemption provided by sec. 12(g)2(G), the target company would be required to register under sec. 12 of the Securities Exchange Act of 1934, as amended, and subject to the provisions of the Williams Bill.
[2] The target company had less than 500 shareholders but had assets in excess of $1,000,000
[3] Information as to the number of shareholders is not readily available.
[4] The target company is either controlled by or affiliated with another company and therefore would probably not meet the shareholder test of sec. 12(g).
[5] First Executive Corp. did not register under the Securities Act of 1933 its offer to shareholders of Thomas Jefferson Life Insurance Co. in reliance upon the exemption provided by sec. 3(a)(1) of the Securities Act of 1933, as amended.

Senator WILLIAMS. Our next witnesses represent the New York Stock Exchange, Mr. Phillip West, vice president of the exchange, and Mr. Donald L. Calvin, also a vice president of the New York Stock Exchange.

Mr. Calvin, we have a statement submitted by you in advance.

Mr. CALVIN. Yes, and I will read that statement if that is in order.

STATEMENT OF DONALD L. CALVIN, VICE PRESIDENT, NEW YORK STOCK EXCHANGE

Mr. CALVIN. My name is Donald L. Calvin. I am a vice president of the New York Stock Exchange, 11 Wall Street, New York, N.Y. Phillip L. West, also vice president of the exchange and director of the department of stock list, is with me. We appear here today to present the views of the exchange on Senate bill 3431.

The New York Stock Exchange supports this bill as we supported the earlier takeover bids bill, S. 510, and its predecessor, S. 2731, dating back to 1966. Senator Harrison Williams, as the sponsor of this legislation, is to be commended on his foresight as the developments since the passage of the Corporate Takeover Act (Public Law 90–439) have clearly shown that there was a need for legislation relating to corporate takeovers and that the Corporate Takoever Act has met that need, and we think it has worked well.

The exchange testified in favor of the earlier takeover bids bill before this committee, and its counterpart in the House of Representatives, in 1967. In that testimony we made suggestions which were adopted by this subcommittee which supported the objectives of the bill to provide full and timely disclosure to stockholders whose

companies are the subject of takeover bids. As you know, the exchange has for many years required disclosure of material information which would affect investment decisions, including takeovers.

Our comments today, which are really only two in number, are of the same nature. Succinctly stated, the exchange takes the following positions:

First, the exchange does not object to changing the standard to require that anyone acquiring as much as 5 percent, rather than the present 10 percent, of a company's common stock must comply with the disclosure requirements of the Corporate Takeover Act. But, we suggest that the committee consider—and I will underline the word "consider"—imposing the 5 percent standard only for companies with assets in excess of (say) $250 million. Also, the exchange suggests that specialists on the exchange or market makers in over-the-counter stocks be exempted from the requirements of the Corporate Takeover Act if the 5 percent standard is adopted.

Second, the exchange does not object to the elimination of the exemption for tender offers registered under the Securities Act of 1933 but we suggest that the 7-day privilege of withdrawal should not be applied to 1933 act registered offerings.

The proposed bill would require anyone acquiring as much as 5 percent of a company's common stock to comply with the disclosure requirements of the Corporate Takeover Act. This is a change in the present standard of 10 percent and a return to the standard originally proposed in S. 2731 which dates back to 1966. The exchange does not oppose this change.

However, the objections which were voiced when the 5 percent standard was first proposed in S. 2731 in 1966 continue to have merit in some cases. The principal objection was that the 5 percent standard may impose the burden of filing notification statements and reports upon investors who do not intend to attempt to control or take over a company.

To mitigate this burden and still meet the legitimate need for disclosure, possibly the proposed 5 percent standard could be applied only to acquisitions of stock of "larger" corporations. In your statement, Mr. Chairman, on the floor preceding the introduction of S. 3431 on February 10, 1970, attention was drawn to the fact that large corporations have been the subject of takeover bids with increasing frequency. The statistics quoted dealt with corporations whose assets exceeded $250 million.

It might be helpful if I would read into the record the remarks that you made at that time since I refer to them, and I mention this because we think that those comments were persuasive ones. What you said, simply stated, was that there have been a substantial increase in takeovers for companies whose assets exceeded $250 million. Therefore, the subcommittee might consider applying the proposed standard of 5 percent only to large corporations with assets of (say) $250 million or some other appropriately high level. In this way, the 5 percent standard might not impose a burden on investors but would reach takeover bids for those corporations where 5 percent of the stock would be a substantial dollar amount. For smaller corporations, the present 10 percent standard would, of course, continue to apply.

The proposed 5 percent standard may also present problems for the specialists on the exchange in their specialty stocks and market makers in over-the-counter stocks. The specialist on the floor of the exchange purchases and sells shares to maintain an orderly market. In periods of active markets, a specialist may acquire a substantial position, possibly in excess of 5 percent of the common stock of the corporation.

Parenthetically, I would say at this point that I do not want to overstate that point because we are not aware of any situation in the past where a specialist has acquired 5 percent or more of his specialty stock. Our point being that we see no reason—should this occur—that the specialist be required to make the reports and disclosures required under the Corporate Takeover Act because they are just totally inappropriate, and specialists' activities are closely surveyed by the exchange with oversight by the SEC.

This will probably be more of a problem for market makers in smaller companies whose stock is traded over-the-counter. Further, compliance with the disclosure requirements of the Corporate Takeover Act by specialists or market makers in the over-the-counter stocks achieves, in our opinion, no useful purpose.

Accordingly, we suggest that the bill be amended to include an exemption for specialists and for market makers in over-the-counter stocks.

The second area of our comment runs to section 3 of the bill. That section will delete clause (A) of paragraph (8) of subsection (d) of of section 14 of the Securities Exchange Act of 1934. In effect, this deletion removes the exemption which is now accorded to tender offers which are registered under the Securities Act of 1933. This change must be considered in light of other requirements of the Corporate Takeover Act.

Presently section 14(d)(5) of the Corporate Takeover Act permits persons who have tendered shares to withdraw them at any time within 7 days after the tender offer is made. This is intended to give persons who have tendered shares the right to withdraw in the first 7 days in the event that further disclosures concerning the details of the offering are required by the SEC since there is no advance filing with the SEC of a cash tender prior to the announcement of the offering.

The situation in connection with exchange offers registered under the 1933 act is entirely different in that the offering is not made until the registration statement is reviewed by the SEC. To allow the withdrawal of the tendered shares after the registration statement become effective would disrupt the market in the shares subject to the exchange offering. Further, to permit such a withdrawal gives to the shareholder the option of holding or withdrawing shares, depending on the market reaction to the tender offer. Tendering by a shareholder could thus become a speculative tool, and an unnecessary one.

Another reason given for permitting withdrawal in cash tenders is to allow shareholders to take advantage of subsequent offers. However, share for share exchanges are not normally the subject of counter offers.

Accordingly, if the exemption for registered tenders is eliminated, the 7-day withdrawal privilege should not be applied to 1933 act registered offerings.

A further problem in this area is the possibility of duplicate filings with the SEC. If the exemption is removed, filings would be required under both the Securities Act of 1933 and the Corporate Takeover Act for the same offering. I would think the Commission would, in all probability, coordinate these filings at the Commission, but it may be advisable that this be done in the bill itself.

The exchange, as stated at the outset, supports this bill, subject only to the foregoing comments. We have no problem with the other section of the bill which bring insurance companies under the act and broaden the SEC's rulemaking authority.

We have no suggestions at the moment to further strengthen the Corporate Takeover Act, as it has, in our opinion, worked well in that it has improved the disclosures made in connection with takeovers and has not impeded legitimate corporate takeovers.

Senator WILLIAMS. What are the differences between the disclosures in the 1933 act and the tender offer disclosures?

Mr. CALVIN. I think it is basically the requirement under the Corporate Takeover Act that the plans of the offeror concerning the company, if he wins control—in other words, under the 1933 act the disclosure must speak as of the time of the registration statement as of the facts as of that time and it may very well be that a factual statement could not be made as to future plans. So I think there is a valid reason for requiring the disclosure of this particular item in connection with an exchange offer, as there is in connection with a tender offer, and that is impeded by the existence of this exemption.

That is the basic difference that I would understand. Would you agree, Phil?

Mr. WEST. Yes.

Senator WILLIAMS. This will have to be clarified for me. Would not the exemption which you suggest impede disclosure?

Mr. CALVIN. The exemption we suggest is only as it relates to specialists and market makers on the 7-day withdrawal privilege. It has nothing to do with the disclosure, Mr. Chairman. In other words, we are not objecting to eliminating the 1933 act registered offering exemption from the bill. We are not objecting to that. All we are saying is that the 7-day withdrawal privilege which applies now to cash tender offers should not be applied to exchange offers where you are exchanging stock for stock, because that offering will be registered under the 1933 act and will continue to be and there is no reason to have a shareholder who has tendered his shares in exchange for the shares being offered to have the right to withdraw the shares during the 7-day period.

We supported, as you may recall, the 7-day withdrawal privilege in connection with cash tender offers because there the situation is different. In other words, the offer is announced at the same time it is filed with the SEC and the Commission in its review may require further material facts to be disclosed and further disclosures to be made and the person who tenders these shares during that 7-day period should have an opportunity to consider that further disclosure and then withdraw his shares that he has previously tendered if that is his decision.

But the situation under an exchange for shares is different.

(The following information was received from the Securities and Exchange Commission:)

PROPOSAL THAT SEVEN DAY WITHDRAWAL PRIVILEGE NOT APPLY TO REGISTERED EXCHANGE OFFERS

We do not agree that offers for exchange of securities proposed to be made by means of a registration statement under the Securities Act of 1933 should be exempted from Section 14(d)(5) of Public Law 90–439. The subsection provides, in part, that securities deposited pursuant to a tender offer or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time until the expiration of seven days after the time definitive copies of the offer or request or invitation are first published or sent or given to security holders. The filing of the registration statement does not provide assurance that security holders will be furnished, in advance of the invitation to deposit their securities, either the preliminary prospectus or information equivalent to that required in a notice of tender invitation. Where the seven day withdrawal period is not necessary for the protection of investors, appropriate relief could be provided through the Commission's rule making authority.

We do feel that the provisions of the mentioned subsection that securities may be withdrawn after sixty days from the date of the original offer, except as the Commission may otherwise prescribe, should be applicable to registered exchange offers. We feel that lengthy deposit periods are unfair to security holders.

Senator WILLIAMS. That clarifies it for me. Your statement has not addressed itself to regulation A.

Mr. CALVIN. The exchange has no position on that. We have no real involvement with regulation A. Mr. West only lists companies that are a little larger than that.

Senator WILLIAMS. Do you have anything to add Mr. West?

Mr. WEST. Not a thing, thank you.

Senator WILLIAMS. Senator Packwood.

Senator PACKWOOD. No questions.

Senator WILLIAMS. Senator Bennett.

Senator BENNETT. No questions.

Senator WILLIAMS. Gentlemen, thank you. Before we continue I would like to insert some information in the record at this point.

(The material follows:)

U.S. SENATE,
Washington, D.C., April 9, 1970.

Senator HARRISON A. WILLIAMS, Jr.,
Chairman Securities Subcommittee, Banking and Currency Committee,
Washington, D.C.

DEAR SENATOR: I would appreciate it if this letter could be included in the Subcommittee's proceedings on increasing limits from $300,000 to $500,000 under Regulation A. I had this with me the day that we held hearings on this legislation and inadvertently did not have it included at that time.

Cordially,

BOB PACKWOOD.

DEPARTMENT OF COMMERCE,
CORPORATION DIVISION,
Salem, Oreg., March 12, 1970.

Hon. ROBERT W. PACKWOOD,
Senate Office Building
Washington, D.C.

DEAR BOB: You will recall that in the past few years we have had a particularly active market in this state for securities issued by local companies. We have felt this demonstrated that financing could be obtained in Oregon by Oregon companies, which would contribute to the economic growth of our state.

You will note from the enclosed copy of a letter which I wrote to Chairman Budge of the Securities and Exchange Commission last April that one of the

problems encountered in local financing is the maintenance by established brokers of an after-market in these local issues. Under the present situation, many of the brokers will not trade issues that are registered only on an intrastate basis, since there are considerable risks of liability under the Federal laws for possible violations of the "intrastate exemption".

As an alternative to the intrastate offering, it is possible for brokers to comply with both State and Federal laws by making filings with the regional offices of the Securities and Exchange Commission under that Commission's Regulation A. This avoids the expense and delay of a full registration. One of the disadvantages, however, of Regulation A is its present limitation, originally set in 1946, which restricts the amount which may be raised annually in a securities offering thereunder to $300,000. You can appreciate that $300,000 in 1946 is no longer a realistic financing program for an industry at the present time.

I understand that Senator Sparkman has introduced a bill in the United States Senate seeking to raise the Regulation A limit from $300,000 to $500,000. It is my opinion that it would be much more realistic for the limit to be set at $1,000,000, with an important additional requirement of certified financial statements for a one-year period. If such changes were made, I am sure the established brokers will remain interested in and will provide an orderly and proper market for such securities. I have discussed this matter with the brokers and dealers in our area and have found all of them to be enthused concerning such a proposed expansion of the Regulation A exemption. Such an expansion of the Regulation A limitation has been supported by a resolution adopted at the last meeting of the State Securities Administrators Association. I am hopeful that you will lend your influence toward such changes and possibly initiate such action by your Committee.

Should you desire any assistance from this office, I would appreciate your letting me know.

Sincerely yours,

FRANK J. HEALY,
Corporation Commissioner.

APRIL 29, 1969.

Hon. HAMER H. BUDGE,
Chairman, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. BUDGE: In the past three years, there has been sold in the State of Oregon approximately $50,000,000 of securities issued by local companies. The bulk of this amount was marketed on intrastate registrations only. This is a substantial figure, considering the size of the economy of this state. It demonstrates that, in these past few years, there has been a great deal of interest on the part of local investors in local securities issues. As a result of this investor interest, many of the established N.A.S.D. broker-dealers have participated in the marketing of these local issues and have actively maintained a secondary market in many of the issues. This participation by these broker-dealers has been a real encouragement, both to our office and, I think, to Jim Newton's office, since this means that these issues will receive much more professional attention and the trading markets will be much more orderly.

There is inherent in this condition a very serious problem which involves the perils of non-compliance with the intrastate exemption under the Federal Act. Our office, together with Jim Newton and his staff, have had several meetings with local broker-dealers amd their attorneys and local issuers and their attorneys. Both our office and your Seattle Regional Office have urged these issuers and broker-dealers to utilize either a Regulation A Notification or a full registration. We are advised py the attorneys that they favor this course of action; however, the issuers in many instances have not been able to utilize the S.E.C. procedures for several reasons: (1) The Regulation A exemption of $300,000 does not permit the raising of sufficient capital; (2) the additional expense—it is our information that a full registration will involve costs ranging from $30,000 to $50,000; (3) the delay that is generally experienced in the full registration process which, as we understand, presently requires from six months to a year; and (4) most of the local issues are businesses which have been operated on a relatively small scale and do not have sophisticated or certified financial statements available; therefore, they cannot furnish the required certified statements for the prior three years. Consequently, these issuers and their broker-dealers are forced to rely on the intrastate exemption. This whole subject was extensively reviewed and discussed

at our last Cooperative Enforcement Conference held in Portland in January of this year, which was attended by Commissioner Hugh Owens and Charles Shreve.

An additional factor which is worthy of consideration is the relief in the backlog of your Corporation Finance Division. This could be accomplished by distributing a greater number of S.E.C. filings throughout the Regional Offices by revising the Regulation A exemption as hereinafter proposed.

It is my belief that the S.E.C. has a major responsibility to foster and encourage the growth of the capital markets, and significant progress could be made, particularly in these regional problems, if the Regulation A exemption were increased from the $300,000 to a more meaningful figure, in light of today's costs—we would suggest raising this to $1,000,000; and, in addition, change the financial requirements for a Regulation A filing to require certified financials for the last year. This change in the financial requirements would be a major assistance to those states which would like to require certified financials for all filings but feel that they cannot impose this more stringent requirement, in view of the present Regulation A provisions.

Another progressive step that the S.E.C. could take would be to delineate more clear and specific guidelines relating to the intrastate exemption, particularly the interpretation of the "Come to Rest" doctrine. The broker-dealers and the attorneys recognize that there are factual considerations in each case; however, what they are asking is that the S.E.C. give a clear outline as to the circumstances under which they would initiate an action for violation of the intrastate exemption.

Unless these two steps are taken, it means in our area that the established N.A.S.D. dealers will cease to participate in these local issues because of the substantial risks of the intrastate exemption. This will then force those issues to be marketed by itinerant securities salesmen. We are all aware of the very serious enforcement problems that result from this type of selling and the fact that there is no orderly or meaningful secondary trading market for such issues. It has been my position that registration with the S.E.C., and the consequent avoidance of the risks of the intrastate exemption, should be fostered and encouraged and is rapidly becoming necessary under regional securities marketing.

It is my hope that the Commission, under your Chairmanship, will take a new look into the areas suggested, and that such action will do much to promote improved state-federal cooperation. This will constitute a very positive contribution to an important segment of the economy of this nation.

In view of the fact that the Wheat Report made no recommendation, we are apprehensive that the Commission may not perceive, and hence fail to respond to, the seriousness of this situation which, as a practical matter, is forcing substantial numbers of issuers and underwriters into the intrastate posture with its disadvantages, and denying that industry, as well as the investing public, the obvious advantages afforded by an expanded Regulation A procedure.

Sincerely yours,

FRANK J. HEALY,
Corporation Commissioner.

INVESTMENT COMPANY INSTITUTE,
Washington, D.C., April 7, 1970.

Hon. HARRISON A. WILLIAMS, Jr.,
Chairman, Subcommittee on Securities, Senate Banking and Currency Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Investment Company Institute is the national association of open-end investment companies ("mutual funds"), their investment advisers and underwriters. Our mutual fund members have about 5 million shareholders and their assets are over 90% of the assets of all mutual funds in this country. We naturally are interested in legislative and regulatory developments that affect the mutual fund industry.

We take this opportunity to express for the record our views on S. 3431, now pending before the Subcommittee on Securities of the Senate Banking and Currency Committee, which would amend the Securities Exchange Act of 1934 with respect to the disclosure of ownership of corporate equity securities. Our comments are restricted to the proposed amendment to Section 13(d)(1) of the Exchange Act to reduce from 10 percent to 5 percent the level of beneficial ownership of securities at which the reporting provisions of the section come into operation. We have no comment on the other proposals of S. 3431 nor on S. 336 which would increase the Regulation A exemption from $300,000 to $500,000.

The purpose of the 1968 amendments to the Exchange Act was to require the disclosure of pertinent information to stockholders where persons seek to obtain control of a corporation by (1) a cash tender offer and (2) through open market or privately negotiated purchases of securities. The legislation sought to close the gap in the Exchange Act disclosure provisions in the corporate takeover situation.

It is clear that the additional disclosure requirements imposed by Section 13(d)(1) were not directed at securities acquisitions by investment companies. Open-end investment companies are registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and are regulated by the provisions of that Act and the rules and regulations thereto. Registered investment companies are required by Section 30 of the 1940 Act and applicable rules and regulations, to file annual, semi-annual and quarterly reports with the Commission and to issue periodic reports to shareholders. The reports require current information on the amount and value of portfolio holdings as well as portfolio turnover. These requirements were in effect long prior to the adoption of the 1968 amendments to the Exchange Act. However, the disclosure requirements of Section 13(d)(1) for 10 percent beneficial owners were imposed on all persons including investment companies.

The 10 percent standard has not generally been a burden on investment companies. A 5 percent standard, however, would trigger the operation of the section as to many more investment company portfolio acquisitions made in the ordinary course of business. It is far more common for investment companies in the normal course of investing shareholder funds to acquire 5 or 6 percent of the securities of an issuer than it is to acquire 10 or more percent. The proposed change thus poses a very real and practical problem for investment companies expecially in view of the type of information that must be filed. Such information as the background and identity of the persons for whom the purchases are effected, the source and amount of the funds for the purchases, and the plans for a sale, liquidation or merger seems particularly inappropriate in the context of investment company portfolio purchases.

The basic function of open-end investment companies is to invest the monies of their shareholders in securities so as to achieve a stated investment objective through broad diversification of investments under professional management. The registration statement for management investment companies under the Investment Company Act of 1940 (Form N–8B–1, Item 5(d)) requires a statement by the registrant with respect to its policies of investing "for the purpose of exercising control or management." It should be pointed out that the term "control" under the Investment Company Act is defined in Section 2(a)(9) as "the power to exercise a controlling influence over the management or policies of a company . . ." Almost all the mutual fund members of the Institute have stated investment policies which negate specifically any intent to acquire or hold portfolio securities for the purpose of controlling a portfolio company. In view of this practical limitation upon the rights of most investment companies, it seems unnecessary to include investment companies in the coverage of Section 13(d)(1).

There is another practical problem for investment companies posed by this amendment. Mutual funds as institutional investors, by their very nature, make purchases of securities in sizeable quantities. A buying program may well take longer than ten days to complete without disrupting the market in the particular security. Section 13(d)(1) requires the beneficial owner of the securities to send the information specified in that section to, among others, the issuer of the security within 10 days after the acquisition. Under the proposed amendment, there would be frequent instances where a mutual fund, which held less than 5 percent of the securities of a company and while subsequently engaged in acquiring a larger portion for purposes of investment only, would be compelled to notify the issuer of its buying activity at the 5 percent level. Under these circumstances, the fund would be revealing its presence of buying power in the market for the security in the very midst of its buying program. The effect of this revelation might artificially raise the market for the security, thereby disrupting the fund's investment program to the detriment of the thousands of fund shareholders and perhaps others.

For these reasons, we request that S. 3431 incorporate a specific exemption from the disclosure requirements of Section 13(d)(1) of the Exchange Act for any investment company whose registration statement under the Investment Company

Act of 1940 contains a statement of policy to the effect that the investment company does not invest for the purposes of management or control. We suggest that a new paragraph be added to Section 13(d)(5) to exempt:

"Any acquisition of a security by a registered open-end investment company whose stated investment policies negate specifically any intent to exercize control or management over the issuer of the security."

We would welcome the opportunity to furnish any information that would be helpful to the Committee or its staff.

Respectfully yours,

ROBERT L. AUGENBLICK, *President.*

STATEMENT OF AMERICAN LIFE CONVENTION AND LIFE INSURANCE ASSOCIATION OF AMERICA

This statement is submitted on behalf of the American Life Convention and the Life Insurance Association of America. These two associations have an aggregate membership of 355 United States and Canadian companies, accounting for about 92 percent of the total life insurance in force in the United States. We appreciate this opportunity to comment on S. 3431.

This bill would amend the Securities Exchange Act of 1934 to extend the protection of the so-called "Corporate Take-Over Act" (Public Law 90–439) to publicly held stock insurance companies. It would also provide that anyone acquiring as much as 5 percent (instead of 10 percent) of a company's stock must comply with the disclosure requirements of Public Law 90–439. We support this bill.

Public Law 90–439 now applies only to securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, and to the equity securities of closed-end investment companies registered under the Investment Company Act of 1940. Therefore it does not apply to the securities of most stock insurance companies, which are exempt from registration under the 1934 Act by virtue of Section 12(g)(2)(G) of that Act. This section exempts any security issued by an insurance company if the company is regulated by its domiciliary state in the following respects:

1. The insurance company must be required to, and must in fact, file an annual statement with the state insurance commissioner. This statement must conform to that prescribed by the National Association of Insurance Commissioners (NAIC).
2. The insurance company must, in respect of its securities, be subject to proxy regulation which conforms to that prescribed by the NAIC.
3. After July 1, 1966, purchases and sales of the insurance company's securities by its officers, directors and beneficial holders must be subject to regulation in substantially the same manner as that provided in Section 16 of the 1934 Act.

The exemption provided by Section 12(g)(2)(G) of the Act is based upon the fact that wholly adequte regulation in these areas is administered at the state level. Experience to date has indicated that state regulation has, in fact, been successfully applied.

S. 3431 would not be inconsistent with the Section 12(g)(2)(G) exemption. It would merely extend the protection of the "Corporate Takeover Act" to insurance companies. When Securities and Exchange Commission Chairman Hamer Budge testified before this Subcommittee on March 6, 1969 with respect to a number of questions arising under the federal securities laws, he stated that the omission of insurance companies from Public Law 90–439 was an inadvertence. In recommending that the statute be broadened to cover insurance companies, he added that this should be done in such a way that it would not interfere with the exemption contained in Section 12(g)(2)(G). Thus he said:

"The securities of most insurance companies are not registered pursuant to Section 12(g), because of the exemption contained in Section 12(g)(2)(G) for insurance company securities which are subject to specified state regulation. We would not wish to disturb the Congressional decision in 1964 to leave reporting, proxy solicitation and regulation of insider trading with respect to the securities of insurance companies to the state insurance commissioners."

We are in agreement with this position of the Securities and Exchange Commission. Moreover, S. 3431 is consistent with that position. We believe that the bill is in the public interest and will provide important protection against takeovers to stock life insurance companies, their stockholders, and their policyholders. We therefore favor the enactment of S. 3431 in its present form.

Senator WILLIAMS. Mr. Richard B. Walbert, president of the National Association of Securities Dealers, and I understand Mr. Lloyd Derrickson, the Association's general counsel, accompanies Mr. Walbert.

Mr. Walbert, we are pleased to have you with us this morning and you may proceed as you wish.

STATEMENT OF RICHARD B. WALBERT, PRESIDENT, NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Mr. WALBERT. Thank you, sir. Mr. Chairman and members of the subcommittee, I am Richard B. Walbert, president of the National Association of Securities Dealers, Inc. I am here at your invitation to testify on S. 3431 and S. 336. Accompanying me is Lloyd J. Derrickson, vice president and general counsel of the association, and also, John McCarthy, counsel for the NASD.

The National Association of Securities Dealers, Inc., often referred to as the NASD, is registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 as a registered national securities association. It is the only association so registered and has adopted and must enforce rules of conduct among its 4,389 broker/dealer members with a view to encouraging and fostering just and equitable principles of trade. The association also provides a vehicle through which its members' views may be expressed to the Congress and other law-making bodies.

I am pleased to appear today and testify on S. 3431 which will amend the provisions of the Securities Exchange Act of 1934 relating to tender offers and S. 336 which will amend section 3(b) of the Securities Act of 1933.

On the matter of S. 3431, I first wish to express our support for the aims and objectives embodied in S. 3431. The association has long supported the general philosophy of full disclosure and supported the specific extension of this philosophy to tender offers before this subcommittee when such extension was originally proposed.

We favor the adoption of the provisions in S. 3431 which extend the coverage of the tender offer provisions to insurance companies. We believe that there is no logical distinction to be made between the securities of insurance companies and other issuers with respect to tender offers. Making the protections afforded by the present tender offer provisions available to shareholders of insurance companies is a beneficial enlargement of the coverage of the Federal securities laws.

In the interest of increased disclosure to the investor, we also support in principle the proposal in S. 3431 to lower the percentage of securities required for the operation of sections 13(d) and 14(d) from 10 percentum to 5 percentum. It is our impression that evidence has been accumulated by the Securities and Exchange Commission from its administration of the tender offer provisions which demonstrates

the need for this reduction. If no such factual support for the reduction has been shown, it may be a better policy to gain further experience before expanding the coverage of these provisions.

We wish to propose an addition to S. 3431 to provide an exemption from the disclosure provisions of section 13(d) of the Securities Exchange Act of 1934 for broker/dealers acquiring the specified percentage of securities in the course of normal market-making activities. Such an exemption would become of even greater necessity should the relevant percentage of securities be reduced to five. Since the disclosure provisions are aimed at one who seeks control or is in control, we believe it appropriate to exempt the broker/dealer who has acquired this amount of securities in the ordinary course of his trading or market-making activities with no intention to control the activities of the issuer.

In addition, we question the need for the proposed amendment to S. 3431 eliminating the exemption from the tender offer provisions for acquisitions made by means of a registration statement under the Securities Act of 1933. The enactment of this amendment would impose a burden of additional filings on a company making a tender offer without any substantial benefit to the investing public. It appears that most of the disclosures required by the tender offer provisions would normally be included in a registration statement and, with its broad power to require appropriate disclosure in particular offerings, we believe that the Securities and Exchange Commission can achieve the results intended by the tender offer provisions under their current authority.

Finally, we support the provision giving the Securities and Exchange Commission general antifraud rule-making authority in connection with tender offers as a necessary tool for the regulation of these offers.

Senator, that concludes our remarks on S. 3431. We would be happy to answer any questions that you have.

Senator WILLIAMS. I wonder if you do have any examples where market-makers have acquired 5 percent of a company's securities solely as a part of their market-making activities? A prior witness indicated that it has not happened although it is a theoretical possibility.

Could you address yourself to the situation where market-makers would——

Mr. WALBERT. We do not have any specific examples, Senator.

Senator WILLIAMS. That would be a dark day on the street, would it not?

Mr. WALBERT. It would be unusual for this to happen. It just occurred to us, particularly in view of the reduction to 5 percent, that it could happen and that if it did it would be unfair to ask the market-maker in just the normal course of his business activities to file the procedures of this requirement.

Senator WILLIAMS. Where it did occur, I would think it would be a crisis situation, would it not?

Mr. WALBERT. Oh, no, not necessarily. It might be the availability of a very—admittedly, a very substantial block, which a market-maker might in the course of his activities want to take into his inventory for a presumably very short time until he then distributed that stock.

Senator WILLIAMS. But again, it is not a frequent occurrence?

Mr. WALBERT. It would be very infrequent, I am sure.

Senator BENNETT. May I ask a question here, Mr. Chairman?

Senator WILLIAMS. Certainly.

Senator BENNETT. Would you object if the bill were amended to provide that in the event of such an acquisition the dealer is required to notify the Commission in a simple letter after, say, 5 days that he had it?

Mr. WALBERT. I think that would be very appropriate.

Senator BENNETT. Mr. Chairman, did you get my question?

Senator WILLIAMS. I was distracted.

Senator BENNETT. I asked him whether he would consider supporting an amendment to the bill which would require such a dealer or—a dealer in the event of such an acquisition—to notify the SEC after 5 days by a simple letter that he had, in fact, acquired more than 5 percent. That would not put any particular burden on the dealer and it might take care of any questions that might arise about the purpose of the dealer in acquiring the stock.

Mr. WALBERT. I think it would answer any possible questions that would arise and, as I answered it, it would be I think very appropriate. It would be a very appropriate addition as far as we are concerned.

Senator BENNETT. And probably a second letter notifying the Commission that you had then disposed of your more than 5 percent interest, just to show that it was in and out.

Mr. WALBERT. Yes, sir.

Senator WILLIAMS. And that it was a market-making transaction.

Senator BENNETT. Yes.

Senator WILLIAMS. It sounds to me like a significant and worthy contribution, Senator Bennett.

Mr. WALBERT. I think this would answer any conceivable concern that I could think of.

Senator WILLIAMS. Yes. Do you have anything, Senator Packwood?

Senator PACKWOOD. No.

Senator WILLIAMS. As an alternative, would you prefer the committee to consider deleting the dollar amount in S. 336? We discussed this with Chairman Budge, having the Commission establish the ceiling based on economic conditions rather than a ceiling that is fixed by Congress; giving the Commission the authority to fix ceilings under regulation A.

Mr. WALBERT. My own offhand feeling about it would be that $500,000 in our minds, and certainly in my mind, is a very minimum amount, and that if anything it should be higher. I would think the setting of a flexible amount might make for a lot of difficulties in the future in determining what was right and what was wrong and this might be very burdensome. But I personally would like to think in terms of somewhat higher than $500,000 but consider that as a minimum goal as far as we are concerned.

Senator BENNETT. On that one point. I would imagine this would give the Commission considerable trouble, depending on the type of offering they were considering. $500,000 would be pretty high for—or high enough for a particular offering, but in a particular industry or for a particular purpose I would think the Commission would con-

stantly be under pressure to vary its amounts even from offering to offering if it were left with the responsibility of setting the ceiling.

Mr. WALBERT. I would think it would be a terrible burden.

Senator WILLIAMS. Gentlemen, thank you very much.

Mr. WALBERT. Did you want us to comment on S. 336?

Senator WILLIAMS. Yes.

Mr. WALBERT. It is a very short comment and if you would prefer to just have it entered——

Senator WILLIAMS. Yes.

Mr. WALBERT (continuing). On S. 336, I also wish to express our support for S. 336 which will raise the exemption under section 3(b) of the Securities Act from $300,000 to $500,000. In view of inflation, a $500,000 offering now is regarded as a "small issue," as a $300,000 offering was at the time of its adoption. It is hoped that this may contribute in some measure to the reduction of the workload in the Commission's main office and permit more expeditious handling of registration statements. In supporting this proposal, we are not unmindful of the speculative issuers which have relied on the section 3(b) exemption and the possible pitfalls to investors resulting from the less complete disclosure in regulation A filings. However, we are sure that, as a result of its experience in administering regulation A, the Commission will be in a position to make certain filings under the expanded section 3(b) are given the review necessary to provide the investing public with the highest degree of protection.

That concludes our prepared statement.

(The following letter was received for the record:)

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC,
Washington, D.C., March 31, 1970.

Hon. SENATOR HARRISON A. WILLIAMS, Jr.,
Chairman of the Subcommittee on Securities,
Committee on Banking and Currency,
Washington, D.C.

DEAR SENATOR WILLIAMS: In our testimony on the above referenced bill, we indicated that we believed it necessary that an exemption from the provisions of the bill should be proved for market-makers in their normal market-making activity. In the course of the testimony we acknowledged that the acquisition of 5% or more of the outstanding securities of an issuer would be unusual. Nonetheless, it is quite possible that such an acquistion could take place. In the event such a situation were to occur, the disclosure of such a position to other market-makers or to the financial community in general could and most probably would result in financial loss to the dealer involved. This loss would flow from the fact that traders in the over-the-counter market are given a substantial competitive advantage when they are aware that a market-maker has accumulated an exceptionally large position in a particular security. Furthermore, the fear on the part of a market-maker that disclosure may be required can lead him to restrict his purchases at the precise time that the market support provided by his purchases would be most important, leading to an unnecessarily volatile market.

For these reasons we believe that the statute of any regulations thereunder should protect against disclosure of such a position so as not to disrupt normal market-making activities particularly where there is no intention to acquire control or to otherwise influence the actions of the issuer.

Should you require any additional information on this point, we would be pleased to supply it.

Sincerely yours,

RICHARD B. WALBERT, *President.*

Senator WILLIAMS. Thank you very much, gentlemen.

Our next witness is Mr. Craig Severance, chairman of the Investment Bankers Association's Legislative Committee, and Mr. Otto Lowe, Jr., vice chairman of the Investment Bankers Association's Legislative Committee, and Mr. Gordon Calvert, executive director and general counsel of the IBA. Welcome to the committee.

STATEMENT OF CRAIG SEVERANCE, CHAIRMAN OF THE FEDERAL SECURITIES ACTS COMMITTEE, INVESTMENT BANKERS ASSOCIATION AND OTTO LOWE, VICE CHAIRMAN OF THE FEDERAL SECURITIES ACTS COMMITTEE, INVESTMENT BANKERS ASSOCIATION, ACCOMPANIED BY GORDON L. CALVERT, EXECUTIVE DIRECTOR AND GENERAL COUNSEL, IBA.

Mr. SEVERANCE. Mr. Chairman, we are delighted to have this opportunity to attend this hearing and express our views.

I am Craig Severance, chairman of the Federal Securities Acts Committee of the Investment Bankers Association and a partner of New York Securities Co. With me are Otto Lowe, Jr., vice chairman of the IBA Federal Securities Acts Committee and a partner of Goodbody & Co. and Gordon L. Calvert, general counsel of the IBA.

Mr. Chairman, we have submitted to your committee our complete statement. With your permission, I would like to read excerpts from the statement and then we will be glad to try to answer any questions that you might have.

Senator WILLIAMS. We will include your full statement in the record (see p.120).

Mr. SEVERANCE. I would like first to address my remarks to S. 336, to increase the regulation A exemption from $300,000 to $500,000.

Although regulation A is referred to as an exemption, it actually provides a simplified registration with four basic safeguards: (1) Detailed information must be filed with the SEC, (2) an offering circular containing specified information must be delivered to all purchasers, (3) an issue cannot be offered until 10 days after the notice is filed with the SEC unless authorized sooner by the SEC, and (4) the SEC may issue an order suspending the exemption on grounds specified in rule 261.

The regulation A exemption was designed primarily to permit small businesses to obtain capital with a minimum of expense. The statute originally imposed a maximum limitation of $100,000 on the size of an issue which may be exempt under section 3(b). In 1945 the maximum on the size of an issue was increased to $300,000. Obviously, the cost of plant facilities has increased tremendously in dollar amounts since the original adoption of the $300,000 provision, so that a much larger dollar amount would now be necessary to obtain equivalent plant facilities.

Subsequent to adoption of the $300,000 provision in 1945 there have been repeated unsuccessful attempts to increase the amount to $500,000.

The Investment Bankers Association is dedicated to assisting business in obtaining needed capital, and we are particularly concerned that small business may obtain needed capital. We currently are actively involved in efforts to assist minority business enterprises obtain needed capital, and are encouraging the development of minor-

ity enterprise small business investment companies. However, the IBA also is dedicated to protecting investors against fraud in the purchase of securities and we have carefully studied the protection afforded under regulation A.

A high percentage of the small issues sold under regulation A are extremely speculative partly because they are issued by small companies where there is a high mortality rate.

Since the public offering of highly speculative issues is where investors most need the protection afforded by registration under the Federal Securities Act, the Investment Bankers Association does not support an increase in the exemption for a class of issues which includes a large percentage of highly speculative issues. There is strong belief that highly speculative small issues are more suitable for private placement with small groups of sophisticated investors who understand and can afford the risk involved, than for distribution to the general public. Since private placements are exempt from the registration requirements of the Federal Securities Act, such financing can be handled in any dollar amount without resorting to the regulation A exemption.

Mr. Chairman, by saying we do not support the proposed increase to $500,000, we do not oppose it, either; but we feel that, on balance, we cannot actively recommend it for the reasons I have stated.

I would now like to address myself, with your permission, to S. 3431, to amend the act on disclosure of ownership of corporate equity securities.

We commend the chairman of the subcommittee for his interest in sponsoring S. 510 in 1967 which led to the adoption in 1968 of Public Law 90–439, to provide for full disclosure of corporate equity ownership of securities under the Securities Exchange Act of 1934.

Officers of the Investment Bankers Association testified at hearings before this subcommittee in April 1967 supporting adoption of that legislation. Our position today is to support adoption of S. 3431, supporting one of the proposed changes if the need for that change is demonstrated, and urging inclusion of a provision clarifying the application of the act.

Section 1 of the bill would amend paragraph (1) of subsection 13(d) of the Securities Exchange Act to eliminate an exemption for securities of an insurance company. Section 2 of the bill would make the same change in paragraph (1) of subsection 14(d) of the Securities Exchange Act. We support these proposals.

Section 1 of the bill would change 10 percent to 5 percent in section 13(d)(1); and section 2 of the bill would change 10 percent to 5 percent in section 14(d)(1). We believe that it has not been demonstrated that ownership of less than 10 percent of the equity securities of any company constitutes "control" of the company in any way, even in the case of large corporations where the value of 9 percent of the equity securities would be many millions of dollars. However, since we fully support the intent of the legislation to provide certain basic disclosure with respect to persons who plan to acquire control of the issuer, we support these proposals to reduce the standard from 10 percent to 5 percent if it is demonstrated that there are situations where ownership of less than 10 percent of equity securities of a company amounts to control.

Section 3 of the bill would amend paragraph 8 of subsection 14(d) of the Exchange Act by striking clause (A) which exempts from the requirements of that section any offer for, or request or invitation for tenders of any security "proposals to be made by means of a registration statement under the Securities Act of 1933." We believe that this proposal should be eliminated because it would require a filing under section 14(d)(1) of the Exchange Act with respect to an offer of securities which was already subject to a registration statement under the Federal Securities Act of 1933.

For example, company A proposes to acquire control of company B by offering its shares to shareholders of B in exchange for their shares of B. Company A must register under the Securities Act of 1933 its shares to be offered to shareholders of B and a prospectus regarding the offering must be delivered to each shareholder of B to whom the exchange offering is made. We believe that the desired disclosure is made under this registration and that it would be an unnecessary burden to require additionally—as proposed in section 3(d) of S. 3431—that A comply with the filing requirements of section 14(d)(1) of the Exchange Act.

Section 4 of the bill would amend section 14(e) of the Exchange Act to add a sentence to direct the SEC for the purposes of this subsection, by rules and regulations to define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative. We support this provision as in accord with the purposes of the Exchange Act to enable the Commission to prevent fraudulent, deceptive or manipulative acts or practices; but we strongly urge that the committee report include language making it clear that this provision is not intended to authorize the Commission in any way to delay an offer or to pass on the merits of a particular offer if the required disclosure is made.

Finally, we believe that a provision is needed to clarify the applicability of section 13(d)(1) of the Exchange Act. This requires filing of the specified statement by any person who acquires directly or indirectly the beneficial ownership of more than 10 percent of any equity securities of a class registered pursuant to section 12 of the Exchange Act. This clearly was not intended to apply to an underwriter who holds a block of securities solely for distribution or to a trader who holds a block of securities solely in the normal course of buying and selling securities. Accordingly, we urge that a new paragraph (E) be added to section 13(d)(5) to exempt: "(E) Any acquisition of a security by a broker-dealer in securities in the ordinary course of buying and selling securities as an underwriter or dealer in such securities."

We hope that the foregoing comments and suggestions have been helpful, and we would welcome the opportunity to furnish any further information that would be helpful to the committee or its staff.

Senator WILLIAMS. Thank you very much.

Senator BENNETT. I would like to ask you what your reaction is to the question that I addressed to Mr. Walbert: Instead of making a complete exemption, would you accept an idea that such a dealer or underwriter could, after say 5 days, just notify the SEC by simple letter that he had, in fact, acquired more than 5 percent in his capacity as broker-dealer?

I got the impression from the chairman this morning that he would like to know if and when a dealer actually acquired more than 5 percent.

Mr. SEVERANCE. The first part of your question I would like Mr. Otto Lowe to answer.

Mr. LOWE. Senator Bennett, the public interest is a very broad concept. One of the objectives, for instance, of the proposed increase in the regulation A exemption to $500,000 would be to make it possible for small companies to secure capital at a lower cost. This is a worthy objective.

Another important thing for every company is to have the availability of a liquid trading market. If a market maker in an over-the-counter company, for example, must also keep records of the float of that stock in order to determine whether or not he has acquired 5 percent, this may diminish market liquidity.

Senator BENNETT. On the other hand—and this may not be an example that fits exactly the small company—a foundation comes into the market and attempts to unload a big block and the only way it can be handled without completely destroying the market is to have the market maker step in and buy what may be 6, 7 percent, and in that case he is not diminishing the market; he is protecting the market.

Mr. LOWE. Your analogy, Senator, would apply to both large and small companies. For example, if a dealer acquires positions solely to make markets and not to control companies, the additional burden of being aware for each stock at all times of whether he is acquiring the 5 percent requiring registration under the Williams bill, might in itself discourage the dealer from maintaining markets.

Senator BENNETT. My proposal would give him 5 days in which to handle a float and would not require him to register. He simply notifies SEC and, of course, says, "In the course of my business I have acquired more than 5 percent," and he does not have to notify anybody else.

It may be an impossible—this may be something that I am trying to imagine, but I think if you give this man a complete exemption on the basis of his dealership, somebody will figure out a way to use him as part of the process of acquiring control and I think that is what is concerning the chairman. He would like to know whenever anybody gets 5 percent.

Mr. LOWE. We feel that is a most legitimate concern, but if the market maker participated in an effort to acquire control and he were to obtain 5 percent of the stock, he would be subject to the Williams bill as it now stands.

Mr. CALVERT. May I amplify the reason for our concern with the 5-day letter, and that is that this would not be a one-shot or occasional requirement. In the case of a market maker who frequently was near 5 percent, he might be 1 week above the 5 percent and file the letter and then go below it——

Senator BENNETT. That is why we give him 5 days to float before he has to file the letter. Make it 10 days. I just want to clear up the accident of a day's market or 2 or 3 days' market.

Mr. CALVERT. Let me pursue this. Our concern is that a week later, he will again go above 5 percent and have to file another letter and again 10 days later. He might have a succession of letters if he is actually making a large market in large blocks of securities.

Senator BENNETT. This is interesting because all the testimony thus far is that nobody knows of any dealer that has acquired 5 percent.

Senator WILLIAMS. That is the point that concerns me. It is a most unusual situation that we are talking about. As you gentlemen are representing it, it sounds as though it is almost a daily affair, which it is not.

Mr. LOWE. We do not conclude either that it is a daily or not a daily affair. We have made no study of this particular issue. Our major point here is to question the desirability of legislation which might impair the liquidity of markets or the ability of companies to sell their shares.

Senator BENNETT. I do not see how this impairs it at all. This is not public knowledge. This is simply a notice to SEC that this man has acquired more than the legal limit under this bill of a particular share, and notify them again—I think maybe the amendment could be written to provide that if he is a specialist in this particular stock and is apt to acquire an amount over the limit today and next Tuesday and a week from Friday, that that kind of a notification to the SEC could be adequate.

We have not attempted to write the language yet. What I was trying to do was to find the middle ground between the requirements of registration and complete freedom from any notification, and the chairman indicated that he was interested and the SEC was interested.

Now, it seems to me offhand that a simple letter is the easiest way and would impose the least burden on the dealer. I would think that after 5 or 10 days he would know whether he is holding more than 5 percent of a particular stock, not in and out today and tomorrow, but over a period of time.

Mr. SEVERANCE. Senator, there is another area in which this would affect the securities business in the normal course of being a broker-dealer. In this area I cannot see why a letter 5 days after the stock had been sold would not be appropriate. That is in the area of nonregistered secondaries which are underwritten. For example, let us assume company A has 600,000 shares of stock outstanding of which 300,000 shares are in the hands of the public. Five percent of that 300,000 shares would be an offering of 15,000 shares. Usually these offerings are larger. Being an underwritten nonregistered secondary, there is a point in time where the underwriters having made a firm commitment, are actually the owners of the shares before they are distributed.

Now in that case, I would think that 5 days after the offering had been made there would be no reason why the managing underwriter should not submit a letter saying that at some particular point in time the underwriting group "X" amount of shares of the company.

But in the course of everyday trading, it is a little different. Positions fluctuate. It is conceivable that a block trader, for example, might run over the 5 percent limit, in the normal course of conducting his business.

The thrust of the act about which we are talking is toward the take-over of other corporations and we are simply trying to provide an

exemption here whereby we in our business, in the course of our daily conduct of our business, do not come under the provisions of the act.

Senator BENNETT. You and I may not be talking the same language. You talk about notifying 5 days after they have sold it. My concept was that the man could hold it for 5 days without any requirement of notice and it is only after he has had it that period of time that he makes the notice. Did you misunderstand that?

Mr. SEVERANCE. Yes.

Senator BENNETT. OK. Now, do you feel better, that now you understand it?

Mr. SEVERANCE. Yes.

Senator BENNETT. Because it seemed a little strange to me that the dealers were perfectly happy to work on this system but the investment bankers suggest that it would not work.

Mr. SEVERANCE. Mr. Chairman, may we give this further consideration and submit a letter to your committee covering this point?

Senator WILLIAMS. Certainly.

Senator PACKWOOD. I do not quite understand the reasoning whereby you first are in opposition to increasing from $300,000 to $500,000 limit and then I sense that you say but it really does not make any difference anyway because most of these are subject to private placement and therefore are exempt from registration requirements of the Federal Securities Act. Do I understand—explain to me first what you mean by private placement.

Mr. SEVERANCE. A private placement is where either the company directly or through an agent such as an investment banker places securities normally with an institutional holder. These securities may not have been registered, which means that a registration statement has not been filed and they are what we call investment letter stock.

Senator PACKWOOD. What determines whether it is a public offering or a private placement?

Mr. CALVERT. There was a Supreme Court decision several years ago in the *Ralston Purina* case on what constitutes a private placement. Up to that time there had been some attempts to follow a rule of thumb based on the number of offerees, that you could offer to perhaps 25 or 40 people as a private placement.

The Supreme Court in the *Ralston Purina* case said that a private placement is an offering to a limited group of people who do not need the protection intended to be afforded by the Securities Act.

A private placement may be to an institution or it may be to a small group of sophisticated people, and it is this latter type that we are primarily talking about. I want to make it clear, as Mr. Severance did, that we are not opposing this proposal to raise the $300,000 to $500,000. We simply think on balance we should take no position, either favoring it or opposing it. A number of the members of our executive committee and board pointed out that their partners know groups of wealthy people who are interested in a speculative investment and can afford to take the risk, understanding the risk. Several times a year they are willing to invest on a private placement basis, and these are knowledgeable people to whom a private placement exemption would apply.

The distinction we are making is between a private placement which does not have to be registered, but provides capital for small business, and a public offering. It is because of this concern about the public offering of highly speculative small issues, balanced against our recognition that small business needs the capital, that we prefer not to be on record as actively supporting an increase in the regulation A exemption.

Senator BENNETT. May I comment, Mr. Chairman?

Senator WILLIAMS. Certainly.

Senator BENNETT. You never have a private placement and a public offering of the same stock at the same time?

Mr. SEVERANCE. This would be unlikely.

Senator BENNETT. You have to make a choice.

Mr. CALVERT. The private placement is exempt from registration. The public offering must be registered.

Senator BENNETT. That is right. No further questions.

Senator WILLIAMS. Thank you very much. We will look forward to your other comments.

(The full prepared statement of Mr. Severance follows:)

STATEMENT OF CRAIG SEVERANCE, CHAIRMAN, FEDERAL SECURITIES ACTS COMMITTEE, INVESTMENT BANKERS ASSOCIATION OF AMERICA

I am Craig Severance, Chairman of the Federal Securities Acts Committee of the Investment Bankers Association and a partner of New York Securities Company. With me are Otto Lowe, Jr., Vice Chairman of the IBA Federal Securities Acts Committee and a partner of Goodbody and Co., and Gordon L. Calvert, General Counsel of the IBA.

The Investment Bankers Association of America (IBA) has a membership of approximately 665 firms in the United States and Canada. These firms have about 2400 registered branch offices located in all parts of the United States. They underwrite, deal in and act as brokers in all types of corporate and state and municipal securities.

S. 336—TO INCREASE THE REG. A EXEMPTION FROM $300,000 TO $500,000

Section 3(b) of the Securities Act of 1933 authorizes the Securities and Exchange Commission, by its rules and regulations and subject to such terms and conditions as it may prescribe therein, to exempt any class of securities from the Act if it finds that the enforcement of the provisions of the Act with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue shall be exempted under this provision where the aggregate amount offered to the public exceeds $300,000.

Acting under this authority the Commission adopted Regulation A which permits a company to obtain needed capital not in excess of $300,000 (including underwriting commissions) from a public offering of its securities without registration, provided specified conditions are met.

Although Regulation A is referred to as an exemption, it actually provides a simplified registration with four basic safeguards:

1. Detailed information must be filed with the SEC.
2. An offering circular containing specified information must be delivered to all purchasers.
3. An issue cannot be offered until 10 days after the notice is filed with the SEC unless authorized sooner by the SEC.
4. The SEC may issue an order suspending the "exemption" on grounds specified in Rule 261.

The Regulation A exemption was designed primarily to permit small businesses to obtain capital with a minimum of expense. The statute originally imposed a maximum limitation of $100,000 on the size of an issue which may be "exempt" under section 3(b). In 1945 the maximum on the size of an issue was increased to $300,000. Obviously the cost of plant facilities has increased tremendously in

dollar amounts since the original adoption of the $300,000 provision, so that a much larger dollar amount would now be necessary to obtain equivalent plant facilities.

Subsequent to adoption of the $300,000 provision in 1945 there have been repeated unsuccessful attempts to increase the amount to $500,000. In 1954 the package of securities acts amendments included a proposal to increase the Regulation A exemption to $500,000 and this proposal passed the Senate (S. 2836) but was eliminted by the House Committee on Interstate and Foreign Commerce.) The report of the committee (House Report 1542, 83rd Congress, 2nd Session) expressed sympathy for any provision to facilitate the enlistment of capital by small business with a minimum of expense, but concluded that the offering of securities to the public without registration under Securities Act "is attended without the full protection and the substantial remedies to the investor which the Act was designed to afford", and that "a sufficient case has not been made for the need for the increase in the amount of the exemption to offset the decrease in the protection to investors which would flow therefrom". The committee stated that regardless of the processing which the Commission may give to the offering circular filed with it under Regulation A, the remedies available to the investor are limited under Section 12 of the Act, namely that they apply only against the specified individual who may have sold the security to him and that the investor does not receive the protection under Section (11) which provides that he may have remedies against the issuer, his officers and directors every underwriter, controlling persons and every accountant, engineer or other expert involved.

In 1957, a bill to increase the maximum for Regulation A to $500,000 (supported by the Commission) passed the Senate but there was no action by the House.

The Investment Bankers Association is dedicated to assisting business in obtaining needed capital, and we are particularly concerned that small business may obtain needed capital. We currently are actively involved in efforts to assist minority business enterprises obtain needed capital, and are encouraging the development of minority enterprise small business investment companies (MESBICS). However, the IBA also is dedicated to protecting investors against fraud in the purchase of securities and we have carefully studied the protection afforded under Regulation A.

A high percentage of the small issues sold under Regulation A are *extremely speculative* partly because they are issued by small companies where there is a high mortality rate.

Since the public offering of highly speculative issues is where investors most need the protection afforded by registration under the Federal Securities Act, the Investment Bankers Association does not support an increase in the exemption for a class of issues which includes a large percentage of highly speculative issues. There is strong belief that highly speculative small issues are more suitable for private placement with small groups of sophisticated investors who understand and can afford the risk involved, than for distribution to the general public. Since private placements are exempt from the registration requirements of the Federal Securities Act, such financing can be handled in any dollar amount without resorting to the Regulation A exemption.

S. 3431—To Amend the Act on Disclosure of Ownership of Corporate Equity Securities

We commend the Chairman of the Subcommittee (Senator Harrison Williams) for his interest in sponsoring S. 510 in 1967 which led to the adoption in 1968 of Public Law 90-439, to provide for full disclosure of corporate equity ownership of securities under the Securities Exchange Act of 1934. At hearings by this Subcommittee on S. 510 in March, 1967 Senator Williams summarized the general purpose of the present law:

"The Securities Acts of 1933 and 1934 with their full disclosure requirements have provided sound protection to millions of American stockholders. These laws have worked well in bringing to purchasers of securities full and accurate information on which to make investment decisions. They have encouraged the growth of our Nation's securities markets so that today all are able to invest with confidence knowing that pertinent facts are available.

"At present, however, some areas remain where full disclosure is necessary for investor protection but not required. The legislation before the subcommittee today will close what I consider to be a significant gap in these last remaining

areas. It requires the disclosure of pertinent information to stockholders where persons seek to obtain control of a corporation by: (1) a cash tender offer and (2) through open market or privately negotiated purchases of securities."

Officers of the Investment Bankers Association testified at hearings before this Subcommittee in April 1967 *supporting* adoption of that legislation. Our position today is to support adoption of S. 3431, supporting one of the proposed changes if the need for that change is demonstrated, and urging inclusion of a provision clarifying the application of the Act.

(*a*) Section 1 of the bill would amend paragraph (1) of sub-section 13(d) of the Securities Exchange Act to eliminate an exemption for securities of an insurance company. Section 2 of the bill would make the same change in paragraph (1) of sub-section 14(d) of the Securities Exchange Act. We support these proposals in the belief that shareholders and investors need the same disclosure with respect to acquisition of controlling interests in insurance companies that shareholder and investors need with respect to other companies.

(*b*) Section 13(d)(1) of the Securities Exchange Act requires any person who is the beneficial owner of 10% or more of an equity security registered pursuant to Section 12 of the Exchange Act to send to the issuer and file with the SEC within 10 days after such acquisition a statement containing specified information. Section 14(d)(1) of the Exchange Act makes it unlawful for any person to make a tender offer for any class of equity security registered pursuant to Section 12 of that Act, if after consummation such person would be the beneficial owner of 10% of more of such class, unless such person has sent or given to securities holders and has filed with the SEC a statement containing specified information. Section 1 of the bill would change 10% to 5% in Section 13(d)(1); and Section 2 of the bill would change 10% to 5% in Section 14(d)(1). We believe that it has not been demonstrated that ownership of less than 10% of the equity securities of any company constitutes "control" of the company in any way, even in the case of large corporations where the value of 9% of the equity securities would be many millions of dollars. However, since we fully support the intent of the legislation to provide certain basic disclosure with respect to persons who plan to acquire control of the issuer, we support these proposals to reduce the standard from 10% to 5% if it is demonstrated that there are situations where ownership of less than 10% of equity securities of a company amounts to control.

(*c*) Section 3 of the bill would amend paragraph 8 of sub-section 14(d) of the Exchange Act by striking clause (A) which exempts from the requirements of that section any offer for, or request or invitation for tenders of any security "proposals to be made by means of a registration statement under the Securities Act of 1933". We believe that this proposal should be eliminated because it would require a filing under Section 14(d)(1) of the Exchange Act with respect to an offer of securities which was already subject to a registration statement under the Federal Securities Act of 1933. For example, Company A proposes to acquire control of Company B by offering its shares to shareholders of B in exchange for their shares of B. Company A must register under the Securities Act of 1933 its shares to be offered to shareholders of B and a prospectus regarding the offering must be delivered to each shareholder of B to whom the exchange offering is made. We believe that the desired disclosure is made under this registration and that it would be an unnecessary burden to acquire additionally (as proposed in section 3(d) of S. 3431) that A comply with the filing requirements of section 14(d)(1) of the Exchange Act.

We believe that such separate filings with the SEC for the same offerings serve *no* useful purpose and impose an unnecessary burden on legitimate transactions.

(*d*) Section 4 of the bill would amend Section 14(e) of the Exchange Act to add a sentence to direct the SEC for the purposes of this subsection, by rules and regulations to define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative". We support this provision as in accord with the purposes of the Exchange Act to enable the Commission to prevent fraudulent, deceptive, or manipulative acts or practices; but we strong urge that the Committee report include language making it clear that this provision is not intended to authorize the Commission in any way to delay an offer or to pass on the merits of a particular offer if the required disclosure is make.

(*e*) Finally, we believe that a provision is needed to clarify the applicability of Section 13(d)(1) of the Exchange Act. This requires filing of the specified statement by any person who acquires directly or indirectly the beneficial ownership of more than 10% of any equity securities of a class registered pursuant to Section 12 of the Exchange Act. This clearly was not intended to apply to an

underwriter who holds a block of securities solely for distribution or to a trader who holds a block of securities solely in the normal course of buying and selling securities. Accordingly, we urge that a new paragraph (E) be added to Section 13(d)(5) to exempt:

"(E) Any acquisition of a security by a broker-dealer in securities in the ordinary course of buying and selling securities as an underwriter or dealer in such securities."

We hope that the foregoing comments and suggestions have been helpful, and we would welcome the opportunity to furnish any further information that would be helpful to the Committee or its staff.

Senator WILLIAMS. Mr. Jordan Harlan Eskin, attorney at law, from New York. Mr. Eskin, we appreciate your being here.

If I might make a personal observation, your materials that were submitted earlier to the committee were more than duly noted and were duly read last evening. However, if you want to proceed we have your full statement, if you wish to submit that for the record, with your highlighting it, that would be all right. You tell us how you would like to proceed.

(The full prepared statement of Mr. Eskin may be found at p. 140).

STATEMENT OF JORDAN HARLAN ESKIN, ATTORNEY AT LAW, NEW YORK

Mr. ESKIN. Well, I do not know, Mr. Chairman, if I should be happy or sad that you read the statement, however——

Senator WILLIAMS. I will say that I even read the exhibits, and I was a little sad about them.

Mr. ESKIN. Mr. Chairman and members of the subcommittee, I am happy to have the honor to submit my views on S. 3431.

We are gathered here supposedly to protect investors. We have heard from learned men in the field, the Honorable Hamer H. Budge of the SEC, and he represents its interest as it may appear; Mr. West of the New York Stock Exchange represents the New York Stock Exchange; Mr. Walbert, the NASD; Mr. Severance, the Investment Bankers. Now, who is going to represent the stockholders, the 20-some-odd million stockholders in this country that that legislation is alleged to protect?

Senator WILLIAMS. Well, I am.

Mr. ESKIN. In all fairness, since I am the witness and you gentlemen are the members of the committee, I will try to speak a little for them unless someone else in the room would like to.

I would also like to talk about and represent the interests of men who try to take over a public corporation in a proxy contest.

All I can say, gentlemen, is those people I think should cry, "Help." I do believe that S. 510 and this bill are honest, good faith attempts to protect the investors; however, in my humble opinion—they backfired.

Senator WILLIAMS. Mr. Eskin, I wish to announce that we were notified that there is a live quorum and our attendance is required. I will stay but Senator Bennett and Senator Packwood must leave.

Mr. ESKIN. Mr. Chairman, shall I defer my remarks until they come back?

Senator WILLIAMS. We will pause one moment.

The situation is this, Mr. Eskin. My colleagues are going over to the Senate floor. I will stay here and it is possible that they will have to remain there, so rather than postpone, our hearings, we will continue.

Mr. ESKIN. It would not be unduly burdensome on me to wait until they come back, if it suits your convenience.

Senator WILLIAMS. The way it is developing, they probably will have to remain at the Capitol. So we had better continue.

Mr. ESKIN. I, alone, will be left to represent all the stockholders in the country and that might be dangerous.

Senator WILLIAMS. All right, we will proceed. Do you want that in the record, your last statement?

Mr. ESKIN. I leave it to your discretion. I withdraw it from the record.

Senator WILLIAMS. I do not think it will be too dangerous.

Mr. ESKIN. Thank you, Mr. Chairman.

In lieu of favorably reporting this bill out of subcommittee, the conclusion of the subcommittee should be:

(A) A study be made and hearings held for the purpose of recommending legislation that will restore to investor-shareholders voting and property rights.

(B) A study be made and hearings held for the purpose of recommending legislation with criminal penalties for managements which take action to protect themselves and their positions at the expense of the welfare of their company in takeover situations.

(C) A bill be presented to amend the Securities Exchange Act of 1934 so as to eliminate section 13(d).

(D) A study be made to analyze and determine each of the following so as to promote and recommend meaningful legislation: (1) The number of public companies as of date; and (2) The number of takeover bids and proxy contests during the past 20 years, successful versus unsuccessful.

Such study shall incorporate an analysis of the plans and proposals of the takeover company or insurgents, whether or not they were implemented and whether in the long run such plans were beneficial or injurious to the companies involved and/or their shareholders.

I have been the chairman of the Stockholder's Committee for Better Management of Boston & Maine Corp., the securities of which were listed on the New York Stock Exchange. As such chairman, I conducted a proxy contest, with a number of other persons, to secure control of Boston & Maine at the April annual meeting in 1966, at which time the committee's nominees received approximately 46 percent of the votes cast. At the April 1967 meeting, the committee solicited proxies to prevent management from securing a quorum and to prevent the election of management's nominees, and for a period of almost 1 week, management was unable to secure a quorum. By February 1968, the stockholder's committee, with the aid of friendly interests, designated 50 percent of the board of directors of Boston & Maine.

Having participated in two former proxy contests, I believe that I am duly qualified to present some new ideas on this complex subject. I have adequate knowledge as to why and how they are conducted, as well as to the problems involved. I imagine, Mr. Chairman, parenthetically, I am the only one in the room who actually participated in two proxy fights. If there is anyone else, please speak up.

Before the Subcommittee on Securities of the Committee on Banking and Currency of the U.S. Senate is S. 3431, which proposes to amend section 13(d) of the Securities Exchange Act of 1934 so that, among

other items, persons acquiring 5 percent ownership of equity securities registered pursuant to section 12 of the Securities Exchange Act, and so forth, shall have to report such ownership, rather than after 10 percent, as under the current section 13(d). Additionally, such persons would have to submit the information, which is presently required under section 13(d), which is more informative if the purpose of the purchases is to acquire control of the issuer.

This bill, along with S. 510, which essentially has been incorporated as the present section 13(d) of the Securities Exchange Act of 1934, represents one more step in depriving investor stockholders of their rights. And in all fairness, I think it was a good, honest attempt to solve the problem, but that really backfired.

At the outset, the bill is misleading—the purpose is not as stated—"to provide additional protection for investors," but to provide tection for managements.

I must rightly ask, "Et Tu, U.S. Senate?"

Gentlemen, Congress must not stand accused of putting the dagger to the rights of the American stockholder.

When H.R. 54475 and S. 510, providing for full disclosure of corporate equity ownership of securities under the Securities Exchange Act of 1934, were proposed, they were scheduled for hearings by the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce of the House of Representatives. I wrote to Mr. Williamson, clerk of the committee, on September 27, 1967, requesting that I be notified of public hearings on these matters so that I could have the opportunity to appear as a witness.

Unfortunately, the notification of public hearings from the Committee on Interstate and Foreign Commerce was dated June 27, 1968, and arrived in my office late in the afternoon of June 28, 1968, Friday. Public hearings on H.R. 14475 and S. 510 were to be held on Monday, July 1, 1968, and I was given 48 hours before the committee meeting to submit five written copies of my statement and 75 additional copies for use by the subcommittee. In light of the notice given, it should be apparent that it was impossible for me to comply.

The hearings were held on Monday, July 1, 1968, and I believe that by Tuesday, July 2, 1968, the bill was favorably reported out of subcommittee. Although I did submit a statement dated July 8, 1968, which was eventually printed as part of the record, I do not believe that adequate consideration was actually given to it at that time. A copy of that statement is annexed hereto as "exhibit A," along with "exhibit B," a copy of my letter, dated July 8, 1968, to Hon. Harley O. Staggers, chairman, Committee on Interstate and Foreign Commerce, House of Representatives.

These two documents are as accurate today as when written and apply with the same force and effect to the current hearing.

Section 13(d) has helped to sign the death warrant for changes of control, (which can effect more good than harm) as was predicted.

Let us review what I said in my statement then. I am now going back to exhibit A.

Before your committee for consideration is S. 510 which deals with three areas or types of transactions:

I. Where any person acquires or obtains the right to acquire beneficial ownership of 10 percent or more of any class of equity

securities registered under the Securities Exchange Act of 1934.

II. Where an issuer proposes to make purchases of its own registered equity securities.

III. So-called Tender Offers.

I intend to deal only with area I. There have been many spokesmen who have discussed the other facets of the proposed legislation. I discuss area I because it contains the provisions that relate to acquisitions of stock on the open market which may lead to the seeking of control probably through a proxy contest.

As S. 510 is presently constituted it calls for amending section 13 of the Securities Act of 1934 by requiring every person who acquires beneficial ownership of more than 10 percent of any class of equity security within 7 days to send to the management and to each exchange where the security is traded and file with the Commission a statement containing the following information: (i) the background and identity of all persons involved in the purchases; (ii) the source and amount of funds to be used in making the purchases, and if the purchase involved borrowed funds, a description of the transaction and the names of the parties, except with respect to loans made in the ordinary course of business by a bank; (iii) if the purchasers are to acquire control of the business of the company, any plans which such persons may have to liquidate the business or to sell the assets or to merge it or to make any other major change in its business or corporate structure; (iv) the number of shares of such security which every such person (including his associates) owns and which he has a right to acquire; (v) information as to any contracts, arrangements or understandings with any person with respect to any securities of the issuer. When two or more persons act as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of securities of an issuer, such syndicate or group is to be deemed a "person" for the purpose of the subsection.

It is my opinion, given at that time, that if the foregoing provisions of this bill are passed by the House of Representatives, and the proposed legislation is enacted and becomes law, such action will sound the death knell for proxy contests. The provisions place additional obstacles in the path of the insurgent and give management even more weapons than it already has with which to fight.

Let us review the specific information required when a person or group has acquired more than 10 percent of any class of securities and its effect:

(i) In compelling the insurgent to state the background and identity of all persons involved in the purchases, management will have more time, with its greater monetary resources, to analyze and disparage the foe. The 10-percent figure in stockownership might be reached by an insurgent many months before the annual meeting, while the filing of a 14B proxy contest form might be effected shortly before an annual meeting. An insurgent, generally with limited resources, is forced into a prolonged war rather than a short contest. Is it not sufficient that this information as regards proposed directors and participants in the fight must now be submitted when the insurgent actually elects to conduct a proxy contest? Furthermore, the average Wall Street broker will avoid helping an insurgent, as they already do, because they dislike any filings with the Securities

and Exchange Commission. Thus, the vital help from Wall Street will disappear.

(ii) Should the insurgent reveal his source of funds to give management time to pressure the suppliers of such funds to withdraw the aid? That just happened in the MGM fight with Kirk Kerkorian where he had to refinance his entire acquisition and he had to go to German banks at a greater interest cost because management interfered with his financing relationships.

(iii) It is difficult for the insurgent to set out specifically plans to liquidate, sell assets, or merge, et cetera when not in a policymaking position. Such a revelation may impair the corporation's tax planning. The stockholder is protected in any event because any contemplated major change must generally be submitted for his approval under corporate law. This information only helps management which can set up more stumbling blocks for the new group. Management, on the other hand, does not have to reveal its plans in these areas.

(iv) By compelling the new group to reveal its stockholders, management is enabled to assess the strength of the group and to attempt to divide it.

(v) By requiring the new group to reveal, many months before the annual meeting, information with respect to contracts and understandings between the persons with respect to the securities, all of which is required on the 14B form when the group elects to fight management is again afforded the opportunity to harass the insurgents for a lengthy period of time.

I fail to see how any of the foregoing revelations at the time when a group acquires 10 percent ownership aids the stockholder whom everyone is trying to protect. Such revelations hurt him because they materially impair a change in control through a proxy contest.

Anyone contemplating the acquisition of control, which may require or result in a proxy contest, must firmly believe that the securities to which he has committed his funds, his time and his efforts are undervalued and that the present management of the company has not been able to bring out, for the benefit of the stockholder, the true values of the company. It is relatively impossible to go forward in any such enterprise unless the prime mover is convinced of this and unless he is able to convince many other people of the wisdom and advisability of this action.

I take the firm position that allowing and even encouraging proxy contests is vital to corporate vitality. Instead of making the task of the insurgent more difficult, legislation should rather make the road easier.

The flow of new ideas and new men into public companies can be achieved by existing Boards of Directors and officers if they recognize the need and act on it. However, public companies often have been lax in doing this. There is frequently tremendous internal resistance to changes.

The other approach is for new men with new thinking to acquire control of a public company. This can be very beneficial to security holders. The term "raider" as sometimes applied to insurgents is a word behind which many incompetent managements have ducked to preserve the security of their own positions. Too often, incompetent and corrupt chief executives have been retained in office in order to preserve the security of other management personnel.

Parenthetically, in the Boston and Maine Corp., in 1966, the President after being convicted of misappropriating B. & M. corporate property was given a raise in salary and an extension of his employment contract at the time extensions of employment contracts were given to other officers and directors.

Within reason, the average stockholder can do nothing about it unless someone conducts a proxy fight to change the board of directors.

There are certain fundamental principals in proxy contests:

1. In almost all instances, in order to conduct a successful proxy contest, new men with new ideas and vitality must purchase the required stock to gain control. Such a group will not commit money to the enterprise unless it is thoroughly convinced that it can do a better job than the current management and it can reasonably expect to succeed in gaining control.

2. For an insurgent to wage a proxy contest in which he can hope to prevail, generally at least 35 to 40 percent of the stock of the company must be purchased by individuals friendly to him. This is extremely difficult for a private group to accomplish. The independent stockholder's vote cannot be relied on generally.

Proxy contests are extremely difficult and costly. The number of proxy contests conducted compared to the number of public companies is minuscule. Successful contests result in only a small fraction of those conducted. The reason is not that the existing managements are performing so capably, but that the task is onerous and expensive.

It is a problem of the insurgent to equalize management's initial big head start. Management can generally rely on the vote of almost all the existing stockholders since the American investor habitually signs management's proxy almost without reading it, even though (a) the insurgent's plans and action may be in the best interests of the stockholders, and (b) the new group, to evidence its faith in its plans and people, is prepared to purchase millions of dollars in stock and expend tremendous sums in connection with the expenses of acquiring control to improve the security values. The insurgent must use his own funds. He and his volunteer workers receive no salaries for long, difficult work. Management can use the corporate treasury and receive salaries during the fight. It can also use the corporate employees to help its cause.

The bill calls for the insurgent to reveal all of his plans to management. These plans can be very valuable. Under the proposed legislation, management can claim the plans, or a modification thereof, as its own, defeat the insurgent, and never carry them out, thereby preventing new people with new ideas from actively proceeding with them and directing the affairs of the public company. Although the insurgent's plans may be beneficial for the company and its stockholder, management will do everything within its power to stop the insurgent from getting control.

In a football contest is one team compelled to give its playbook to the coach of the other team in advance of the game? Is this a way to conduct the contest?

At some point in a corporation's life, changes should be made which can benefit the stockholders. Does corrupt or inefficient management have the right to run down a company during its tenure and not expose itself to loss of control and positions?

I submit that the job of the insurgent is tremendous and can result in substantial benefits to the stockholder of a company which is the subject of a proxy contest. I point to the few successful ones in the past few years; U.S. Smelting, Sunshine Mining, Penn-Dixie.

I do not intend here to detail all of the ways in which a management could defeat an insurgent once it knew that control was in jeopardy when the insurgents reached 10 percent of the stock. The ways are myriad and management's ingenuity endless (with corporate funds) in preserving its own power, even though it may have limited managerial competence.

The corporate proxy fight starts the football game with management ahead 90 to 10, and the insurgent is on his own 10-yard line. The proposed legislation then compels the insurgent to give his secret plays to the management and to grant management months to watch the insurgent in practice, time to break up the insurgent team and cut off the sources of supply from the training table. Obviously. no football coach would take on the job of coaching the insurgent team under these conditions. If you wish by legislation to end proxy fights, then this legislation should do it. If you wish to give incumbent management the green light to do anything with corporate assets, this will do it. If you wish to keep vested interests perpetually vested, this will do it.

Certainly, most investors who have held their stock through a proxy contest have benefited by virtue of the work, efforts, and money of the insurgents. Managements have no monopoly on doing right. The scale should be somewhat balanced so the insurgent has a chance.

Passing this legislation will stop the flow of new ideas into corporations from the outside through proxy fights. I doubt if any self-respecting attorney, after examining the significance of the proposed legislation, would in his professional judgment advise a client who seeks control of a public company through a proxy contest to proceed to purchase stock on the open market. The risk is too great to justify the commitment of time, money, and effort. This new legislation would effectively eliminate any possibility of success.

Mr. Chairman, these were my remarks that were not considered when S. 510 was passed.

I say, in all candor, that this crushing flow of legislation, cloaked under the holy mantle of "full disclosure," allegedly to protect the interest of the stockholders, is actually doing the reverse; it is destroying his property and voting rights. Furthermore, the system is impairing the vital flow of new ideas into public companies.

If country B management and country small stockholder are on the brink of war, does the U.N. order that both countries reveal their caches of arms, establish fair terms on which to conduct the war? Of course not. It merely sets country small up for the slaughter by country B.

Should we not question the false god of full disclosure? There is no proof that he ought to be the god. Should not the SEC be put to its proof that he should be the god in these situations?

Furthermore, full disclosure as set forth under 13(d) does not operate evenhanded but is full disclosure against the stockholders and for the management? The stockholder must reveal his stock at

10 percent or 5 percent under the proposed legislation. Management does not have to reveal whose backing management except those people on the board. Should not management have to reveal what stock is committed to management? The shareholder has to reveal all his plans to management, but does management have to reveal all of its plans to the shareholder? What is fair about that? Management has the corporate treasury. The shareholders have to do it out of their own pocket. What is fair about that? Management has the control of the corporation employees to use as it sees fit. The shareholder does not.

Management has the stockholder who is customarily accustomed to voting for a one-party company management. The insurgent has to buy the stock to get the stockholder to vote for him.

If full disclosure is the answer in corporate life, why do not all companies reveal trade secrets and patent techniques to everyone, if that is the answer, to their competitors?

I submit that stockholders would trade 90 percent of the full disclosure required under 13(d) for one more buyer for their stock which 13(d) currently prevents. If full disclosure were the panacea for all ills, we would all ride around without any clothes on because that would solve all our problems.

Let us analyze the legislation as it works, together with other laws, in practice, because in my opinion, the system is impairing the vital flow of new ideas into public companies.

A stockholder purchases 100 shares of a public company "Gold-Uranium, Inc.," at $20 per share on the advice of a "bright" broker who claims that the security offers lucrative rewards. Shortly, thereafter, however, Gold-Uranium starts to incur losses. The broker's glowing reports of managerial competence and ability, coupled with favorable business prospects, become tarnished. By this time, however, the market value of Gold-Uranium has plummeted to $5 per share.

Let us add a new dimension to this hypothetical situation. Assume that our investor is actually an enterprising young man, fortified with an expert's knowledge of the gold and uranium industries. Believing that he has beneficial plans in the merger and acquisition field, which can be good for the company, he approaches what appears to be, at best, a rather ineffective management. He informs management that the implementation of certain plans could benefit the company. Management listens readily, but refuses to offer adequate compensation, if any, for the privilege of using his information. The stockholder, not surprisingly, declines to reveal his ideas. He recognizes that once such information is disclosed, it then becomes public property, and he loses any protection he might otherwise have had. Moreover, as human nature would have it, had he disclosed his information without payment, management might well have tended to disregard their value.

He proceeds to discuss his dilemma with an attorney who advises him to conduct a proxy fight for control of the company's board of directors as a final means of implementing his plans. Through control, our shareholder's ideas might be acted upon, thereby providing benefits to all concerned.

Assume the shareholder accepts this advice. Where does he begin? Assume, further, that his liquid assets amount to only $5,000. A proxy contest, if it is to be successful, might require $75,000 to

$1 million in expenses. Gold-Uranium has 2 million common shares outstanding commanding a market value of $5 per share. Following his attorney's advice, he seeks monied individuals to form a group, for the purpose of acquiring 800,000 shares (40 percent of the outstanding). The cost: Probably $8 million, assuming that the stock will probably appreciate in value to an average price of about $10 per share as a direct result of the proxy challenge.

The stockholder recognizes that the intelligent course of action in developing a buying group is to approach potentially large buyers of, or holders of, the stock. Records of mutual fund holdings are readily available. Through a friend, he approaches a portfolio manager of a large mutual fund. While discussing the merits of his plan with the fund manager, he is informed of the labyrinth of legal roadblocks with which he must comply to pursue his further goals. Without any financial assistance from the funds, such compliance could be costly. Our investor would find it necessary to obtain expert counsel to study the company's corporate charter and bylaws, as well as to analyze the corporate laws of the State in which the corporation is organized.

The most serious roadblock to the fund's participation, however, would be compliance with the Securities Exchange Act of 1934 and in particular, section 13(d). The fund manager explains that his organization would be required to file a notice with the SEC and with management of its proposed intent of acting with the buying group. Under the new restrictions presented by section 13(d), the manager believes, after careful deliberation, that it would not be in the best interest of his organization or clients to place itself in this position.

Frankly, Mr. Chairman, the funds are scared silly of the SEC in these situations and of any requirement that they have to comply with. They will not invest in it. You are preventing them from going into good situations.

The investor then discovers, after further evaluation of the new SEC statute, that even smaller investors, if they are part of a group that obtains 10 percent of the outstanding securities, must also file and be identified in the same manner as the larger mutual funds. Not only must these holders be identified, but they must also reveal their plans to management. This presents a particularly severe hindrance, since the plans developed by the principals in the buying group may be used by management without legal recourse available to the group. Furthermore, in a contest, management remains salaried and may apply the corporate funds to defray the expenses involved. This obstacle appears almost unsurmountable, particularly to individuals with limited resources.

The investor sees one remaining glimmer of hope. He approaches another corporation, "Mr. Takeover, Inc.", whose corporate philosophy in recent years has been the acquisition of companies in difficulty. The investor describes his plan and suggests that Gold-Uranium could be acquired at a set price per share above the present market. Like the mutual funds and buying groups, however, the acquiring corporation would also be obligated to file under section 13(d) with all of the onerous implications that presents. Furthermore, with prospective success jeopardized by the revelations it would be required

to provide management, the risks appear too great for such a sizable investment. Again, despite the fact that the corporation recognizes the merits of the plan, it must refuse to participate.

After some further investigation, the investor discovers some revealing statistics which had appeared with respect to proxy contests in the 1952–60 period. The discouraging figures are shown below: 17,559 X–14 filings, 310 nonmanagement filings, 141 proxy contests resulted, 26 insurgents were victorious, 10 settled, 105 management victories.

These figures, Mr. Chairman, I submit, are staggering. It is evident from these figures that successful challenges during that period amounted to about one-tenth of 1 percent and these statistics are prepassage of section 13(d) and its additional impediments.

At this stage, the investor recognizes that his chances of success are so slim that further pursuit would be reckless at best. Lack of financial resources and full-time involvement could result in severe personal stress. As a result of this law therefore, he is forced to terminate the endeavor. Not only this law, in all fairness, Mr. Chairman, but the existing facts, because 13(d) just added to an existing condition that is something to be deprecated and not honored.

He has a paper loss on his investment and has limited chance of recovery of same. In the final analysis he and the company's other stockholders have been severely penalized by these unwarranted restrictions. Under the proposal bill, these restrictions would be further tightened. The only winner: a tired and ineffectual management which has been perpetuated in office.

Gentlemen, the final loser in this situation, which is not at all hypothetical, is the U.S. Government, which has been deprived of the higher taxes which would apply to the new earnings of the company if this investor's plans had merit. Potential capital gains tax are reported as losses with all of the obvious implications.

Good ideas—which are the foundation of the future of this country—have gone to waste. This story can be repeated in thousands of public companies.

The management of Gold-Uranium and all public corporations is a one-party system—a management party—and the stockholders are at mercy of the tune it dictates. How would you honorable gentlemen, who are politicians by training and background, appreciate it if you knew as you grew within your respective parties that you had one-tenth of 1 percent of a chance to being elected.

How can we so protect and cloak management inefficiency, incompetency, lack of imagination, and sometimes outright dishonesty? Management has just too many weapons: money, employees, the charter, bylaws, proxy rules and section 13(d), to protect itself from good ideas and good people who may help the company.

The question is—how are you going to balance the scales for the investor; not how are you going to further protect entrenched managements.

Does the fact that the insurgent rarely succeeds mean that the other 99.90 percent of the managements are doing a good job for the stockholders? I submit that it does not.

Who has benefited from incompetent management? Do we not have to face the facts that section 13(d) and many of the proxy rules actually benefit incompetent management at the expense of over 20 million stockholders?

Existing laws dealing with proxies—section 13(d) and so forth—to say nothing of the charter, bylaws, and State laws, are effectively interfering with a free market, personal ingenuity and corporate profits; thus minimizing the investor dollar.

The term "raider," as applied by management to insurgents, is nothing more than a public relation's attempt to preserve management's own vested interests.

I cite two recent incidents, and I am sure there are many more, where entrenched managements used unbelievable tactics to perpetuate themselves in office. Boston & Maine Corp. is a prime example and I refer to it because of my familiarity with the subject.

Senator WILLIAMS. The Boston & Maine Railroad?

Mr. ESKIN. Boston & Maine Railroad which became Boston & Maine Corp. which became a wholly owned subsidiary of Boston & Maine Industries, Inc.

Management caused the first mortgage bond indentures to be amended during the proxy fight so that if the insurgents gained control the bonds would be in default, unless the directors were satisfactory to the insurance company holders. Consequently, management gained the votes of those frightened stockholders who believed that the success of the insurgents would lead to the bankruptcy of the Boston & Maine Corp.

The second subject to which I allude is the proposed acquisition of mammoth B. F. Goodrich by the upstart conglomerate-insurgent, Northwest Industries, Inc. In this situation, to protect this entrenched position, Goodrich's management arranged to have the company's bank loans mature if the insurgents succeeded in gaining control. Through this ploy, bankruptcy would have been the actual result.

Gentlemen, this conduct is unconscionable. Do we want this caliber of management to be further protected?

I submit as exhibit C hereto an article that appeared on the front page of the financial publication, Barrons, on October 23, 1967, written by Dr. Henry G. Manne, then noted professor of law at the George Washington University, Washington, D.C. Exhibit D, also submitted for your perusal, is an article that appeared in the financial section of the New York Times of September 25, 1969, with respect to comments of Lawrence Tisch, president of Loew's Theatres, Inc. I also annex as exhibit E a letter I just received from Dr. Henry G. Manne. These leading authorities in their respective fields hold views similar to mine on various issues. They represent only a few of the many prominent spokesmen with sympathetic views on some of the points presented here.

I am sorry to say that this whole area of law is a travesty of justice on the American scene and I cannot believe that this August subcommittee will do nothing to rectify it. Intelligent, farsighted legislation could encourage entrepreneurs to develop the inherent values in many public corporations and in their securities to the benefit of all.

It seems to me that in order to secure information upon which to base sensible and meaningful legislation that testimony should be sought from groups actually representing stockholders throughout the country, nonpartisan groups, experts, nonaffiliated stockbrokers, as well as those officers and directors of public companies, stock exchanges and brokers, who may owe allegiance to major companies. The latter groups have traditionally had a public forum on which to express their views.

In connection with any study—and I am going to read now from about a page from exhibit E and I am almost finished, Mr. Chairman, and I think you for your courtesy, and I read from exhibit E a letter dated March 23, 1970 from Prof. Henry G. Manne to me:

EXCERPT OF LETTER FROM PROF. HENRY G. MANNE

Here then are some of the questions to which the SEC should be required to give full answers. First, I shall mention a number of economic considerations though most of these are adequately covered in the existing literature. Then a series of questions should be raised about the so-called defensive tactics commonly used by incumbent managers. Finally, the implications of some of the more legal questions should be raised.

First, who are the target companies; what has been happening to their earnings, their dividends and their stock price? What happens to a target company's stock when a takeover is announced; what happens before the expiration of the offer; what is the subsequent course of its stock price?

How can cash tender offers compare to proxy fights and share exchange offers in terms of numbers of attempts and successes, both prior to and after P.L. 90–439 became law? What happens to the target company and its share price when the tender offer fails?

What defensive strategies have target companies adopted; are defensive mergers desirable; to what extent do managers fighting takeovers get attractive personal arrangements with a new merger partner? Are the courts being used in what amounts to an abuse of judicial process by litigation aimed solely at delay; does regulation of tender offers encourage political intervention in what should be private, competitive affairs; are the antitrust laws being abused by being used as tactical weapons in cases not raising significant antitrust questions at all?

Should defensive strategies like acquisitions of small companies in competition with offeror companies (thus posing a possible antitrust violation if the tender offer succeeds) be allowed; how often are companies amending voting rights, classification of boards and cumulative voting provisions merely to forestall takeovers which would probably enure to the benefit of the shareholders? How often have companies made unwarranted dividend payments, mergers or stock issues merely to serve the management's interest in holding their positions?

How frequently have rules on control persons, insider trading and registration provisions of other securities laws been used, not as originally intended, but as tactical devices in a control fight? In general, what other devices have corporate managers utilized in their own personal interests that cannot readily be attacked in shareholders' suits either because of substantive legal provisions or difficulties of proof?

Finally, the SEC should be required by Congress to furnish, at a minimum, answers to the questions following. Full disclosure after all has some merit at this level too. First, does the SEC have any evidence that required disclosure of the identity of takeover principals, sources of funds, special share arrangements, etc. has benefited shareholders in any significant fashion? Has the SEC any evidence that the "fairness" gained by the pro-rata rule, the same-price-to-all rule, and the no-open-market-purchase rule has been worth the predictably higher cost of takeover fights resulting from these rules?

Have incumbent managers been required to make comparable disclosures to those required of the offerors; has the disclosure of business plans required by the statute been of more interest to public shareholders, competitors or potential derivative suit plaintiffs; have outside offerors expressed sincere misgivings about being asked to formulate legally enforceable management plans even before they have gained control; what has been the real cost of the seven-day free "put"

tender offerors are required to give all shareholders; what is the economic effect of putting this and other additional costs onto competitors in the market for corporate control?

I respectfully submit that the proposed section 13(d) amendment under S. 3431 is further destroying that which is already dead—the stockholder's rights. I suggest that, in lieu of favorably reporting this bill out of subcommittee, the conclusion of the subcommittee should be recommendation that:

A. A study be made and hearings held for the purpose of recommending legislation that will restore to investor-shareholders voting and property rights.

B. A study be made and hearings held for the purpose of recommending legislation with criminal penalties for managements which take action to protect themselves and their positions at the expense of the welfare of their companies in takeover situations.

C. A bill be presented to amend the Securities Exchange Act of 1934 so as to eliminate section 13(d), notwithstanding in all fairness that it was an attempt to solve the problem.

D. A study be made to analyze and determine each of the following so as to promote and recommend meaningful legislation: (1) The number of public companies as of date; and (2) the number of takeover bids and proxy contests during the past 20 years, successful versus unsuccessful.

Such study shall incorporate an analysis of the plans and proposals of the takeover company or insurgents, whether or not they are implemented and whether in the long run such plans were beneficial or injurious to the companies involved and/or their shareholders.

Mr. Chairman, I respectfully appreciate the time and courtesy of this committee in allowing me to present my views.

Senator WILLIAMS. Thank you very much, Mr. Eskin. I do have some questions that Senator Brooke, who has to be on the floor, wanted me to ask.

But before that, I wonder if—you made many, many observations and have given us the benefit of your analysis and opinion in a multitude of areas—in your practice, have you been involved in any situations where your client or clients were required to file under the provisions of the law that we are now considering amending?

Mr. ESKIN. I have been close to it. I have not—I am currently in a situation where it might be a requirement; yes.

Senator WILLIAMS. I was just wondering if you had been personally involved or professionally involved in these situations where you could take us through the practical problems involved?

Mr. ESKIN. Yes; I am very close to that problem at this point and I say——

Senator WILLIAMS. You are close to it. I was wondering if there was any historical situation, and I gather there is not, where you could give us the benefit of what it is like right on the scene and what you had to do.

Mr. ESKIN. Mr. Chairman, you are now touching on a confidential area.

Senator WILLIAMS. I wanted it to be historical.

Mr. ESKIN. It cannot be historical at this point. It is merely confidential at this point, in all fairness, Mr. Chairman.

Senator WILLIAMS. I certainly do not want to deal with privileged situations.

Mr. ESKIN. We are wrestling with 13(d) at this instant on behalf of people and it poses tremendous problems.

Senator WILLIAMS. This is an observation I will make. I recall, early in the evolution of the legislation that is now law, that many people expressed in the most general way certain of the apprehensions that you have stated—more than apprehensions, really fear for the shareholders in situations where management had become entrenched and sedentary in its ways. Many of these people now recognize that the law has been of considerable benefit in the marketplace and to the shareholders of the corporation.

Mr. ESKIN. Mr. Chairman, I will tell you, I have discussed 13(d) for months with stockholders, with people who understand the situation, who are not the Stock Exchange, not the SEC, and not the other interests represented. And while I know there are some benefits to full disclosure, I will tell you that I am convinced that you tried to do somcthing that was right and that it is just so backfiring in protecting management that it is hurting the stockholder dramatically.

I meant every word of what was printed there. I have lived it. I am currently advising in a situation. If you had an organized stockholder group that existed and was paid by stockholders, which you do not have as such in this country—yes, you gentlemen are, but you represent the Government and we have other gentlemen representing their various interests—a paid stockholder group, in my opinion, would scream at this, and the statistics on successful proxy contests and proxy contests are staggering, Mr. Chairman.

How can we let this go on? Are 99 percent of the managements doing a good job? I will tell you they are not blind, because that is too close to perfection. We have rampant poor management. We have rampant inefficiency and rampant dishonesty and the average shareholder, Mr. Chairman, can do nothing, absolutely nothing.

You have to be a superpro in this field to entertain a project of this nature, and the average shareholder just has not—he is busy at his job. He has no one to protect him. I think that if this subcommittee came down with a recommendation that a study be made to restore to the investor shareholder's rights—how do we do it? There must be a better way. How do we do it? How do we give them some rights?

Maybe at 5 or 10 percent—if there is a group with 5 or 10 percent, the corporation should play the proxy fight both ways. Maybe the management should reveal the plans. I am not sure, in all fairness.

Senator WILLIAMS. You are swimming against the tide. There is a tide that is running very heavily in this country that the consumer must be protected by disclosure. We see it in many, many areas.

Mr. ESKIN. I will tell you, but I have pointed out some examples where full disclosure could be very disastrous, can it not?

Senator WILLIAMS. You are an advocate for a very select group of individuals who want to be the new management. That is who you are speaking for.

Mr. ESKIN. I think I said at the start I was speaking for, or trying to speak, Mr. Chairman, on behalf of two groups. I am trying to wear two hats. The stockholder and the new management. All right? That is very hard.

Senator WILLIAMS. It is hard.

Mr. ESKIN. It is hard, and I am going to admit it right at the start.

On the other hand, if a man has stock in a company which has poor management, if he is lucky, the management by mistake will get him out, something will happen in the company. They will find gold or they will find sulfur, if I may be facetious. Or he is protected by another buyer coming in to buy him out.

Now, if that buyer is stimulated by a takeover bid and you impair takeover bids, then within reason you do not have that buyer.

Two, if that buyer is stimulated by a proxy contest, by a group that thinks the management is poor, and the proxy fight buyer is impeded, then that poor stockholder is stuck because I will tell you—you have so few proxy fights anyway in the country, you are impeding the last few under 13(d). How many successful proxy fights have we had since 13(d)? Are there figures on this?

Senator WILLIAMS. I do not have any figures. We have the tenders.

Mr. ESKIN. I am not an expert on the tender offer, Mr. Chairman.

Senator WILLIAMS. But that is what this bill deals with.

Mr. ESKIN. But it also deals with proxy fights.

Senator WILLIAMS. It might have an indirect effec .

Mr. ESKIN. Well, when it is 10 or five, we have one that is direct and we have to tell the plans. I think proxy contests should be eliminated from the requirements of 13(d).

Senator WILLIAMS. Of course, this bill does not deal with the proxy contest.

Mr. ESKIN. You do not think it covers it? In other words, is it your opinion, Mr. Chairman, that under 13(d), if there is a proxy contest, we don't have to comply with 13(d)?

Senator WILLIAMS. This bill does not disturb the laws and regulations affecting proxies.

Mr. ESKIN. But that does not answer my question, Mr. Chairman. Is it your counsel's opinion that if a group as a group—as a group, I say—acquires 10 percent with the purpose of changing control in a proxy contest, it does not have to file under 13(d)?

Senator WILLIAMS. In a proxy contest you usually do not acquire stock. It is a vote of the existing shareholders.

If you acquire stock, then of course you are under this bill. But in a proxy contest you have a vote of the existing shareholders.

Mr. ESKIN. Are you going to eliminate the stockholders? I respectfully suggest that it is very, very difficult to win any proxy contest where you have bought no stock. I have never seen it.

Senator WILLIAMS. Then you are getting into an acquisition.

Mr. ESKIN. I said where the purpose is to acquire control, because you have the situation where you have an undervalued security, a group goes to acquire the stock, and then they start a proxy contest. You couldn't completely rely on the existing shareholders.

I would say in one case out of a hundred you can, where the stock is so depressed by virtue of the conduct of management, that that is possible, and that does happen. And we are in one of those situations. But I will tell you 50 percent of the time the group has to acquire the stock.

Senator WILLIAMS. And then in the acquisition the provisions of this amendment would apply.

Now I will turn to the questions which Senator Brooke has asked me to submit to you, Mr. Eskin.

On page 3 of your statement, you indicate that the corporate take-over provisions which were enacted in 1968 and the provisions which we are presently considering deprive the American stockholder of certain rights and insulate management from legitimate challenges. Much of your discussion appears to be premised on the fact that challenges to management are necessarily beneficial to both the corporation and its shareholders. However, this is not necessarily true. What information in your opinion should be provided to uninformed shareholders in order to permit them to make an intelligent decision on whether to tender their shares?

There you have a statement of Senator Brooke and a question.

Mr. ESKIN. In all fairness, I will tell you, a tender offer I am going to bypass.

On the proxy aspect, I will say that the information presently required by the proxy rules is sufficient. There is no additional information in my opinion that is required at that point.

Under the old proxy rules you couldn't even give your plans for the company because that was only a promise and a hope and an expectation of what the insurgent might do. I am not sure under 13(d), if a proxy group has to comply with 13(d), that they wouldn't have to give their plans. I don't see why the insurgents have to give their plans at all. Does management give its plans as to what it plans to do in the future?

I think you have to be evenhanded. If the insurgent has to give plans, then I think management has to give plans. I do not think either should be forced to give the plans because it could hurt the corporation rather than help.

And furthermore, if a new group wins control and does something in the merger and acquisition field, or sale of assets or buying another business, does it not have to go back to the stockholders with a full prospectus on the issue? It certainly does.

Senator WILLIAMS. The question did inquire about the uninformed shareholder and how he can be made knowledgeable in order to decide whether to tender his shares.

I gather from your answer that you would rather have him uninformed for the reasons that you suggest. That is the balance which we have to weigh, and we balance it in favor of an informed decision rather than an uninformed decision.

Mr. ESKIN. But I am saying—I am not talking about——

Senator WILLIAMS. By the way, I am speaking for myself, not for Senator Brooke, in these areas.

Mr. ESKIN. Let me say this much, Mr. Chairman. That the proxy fight approach to control does not—frequently does not result in a tender offer, or it is a tender offer for cash where they are buying control. If after the buying group is in control they plan to do anything with the corporate structure, on any reorganization they have to go back and ask the stockholder with a full prospectus at that time as to what they are going to do and whether or not the stockholder approves. The shareholder's rights have not been injured at all in that situation. He has his right to choose.

I am merely talking about, for the moment, director elections in a proxy contest which result in a change in control.

Now, the management is not telling its plans, and I do not see any reason why, after 10 percent ownership, an insurgent group should tell its plans. Management is already 90 percent ahead of the ball game, and management will do everything—they couldn't care less—to injure an insurgent group, notwithstanding the motives of the insurgent group might be the best. The motives might also be the worst.

I recommend in the study that where there has been a change in control through the operation of a takeover or a proxy fight that we study, we determine whether it is good or bad long term for the stockholder. I do not just say it was bad someone took over the company, whether it was a proxy fight group or a takeover company. It is a guess. Maybe it was good all the time. It is conceivable. Maybe it also was bad. I do not believe it though. I do not believe where people spend—sophisticated people—millions and millions of dollars to buy companies that they are out to injure the companies. I do not go for that.

I believe if they went in and plunked down their $10 million, they are hoping to make $50 million out of it for the purpose of the good of the company. I think the term "raider" has been misused.

Senator WILLIAMS. Now turning to Senator Brooke's other questions:

On page 11 of your statement, there you indicate that corporate management might take certain steps such as amending mortgage bond indentures in an attempt to frustrate those attempting to effectuate a corporate takeover. This was done in the Boston & Maine example that you cited. Is it not true, however, that such action on the part of management is subject to class action suits by stockholders as a breach of management's fiduciary duty to the shareholder?

Mr. ESKIN. I do not want to give an opinion, Mr. Chairman, on that. I think there may be some grounds to that position. And I think it is a good point, in all fairness. But within reason, if management has done this at the time, if they win the fight by doing tactics like this, what happens afterward is that they have a 5-year derivative suit and it is settled for payment of the lawyer's fees, which comes out of the corporate treasury, and so nothing happens, and they are still in control. So as a practical matter, they won. They were not hurt at all. That is what is the real story.

Senator WILLIAMS. Amending mortgage bond indentures, that is a complicated situation that you have raised, and we could have long questions and much illumination on that.

Mr. ESKIN. Mr. Chairman, I have tried to cover in too long a time a tremendous subject and I think you know it. We are talking about the welfare of the country and the operations of all its corporations.

Senator WILLIAMS. This is Senator Brooke's final question. You indicate that shareholders desiring to effectuate changes in management policies are at a disadvantage vis-a-vis the officers of the company who are able to use corporate funds to oppose insurgents. Nevertheless, is it not true that if the insurgents are successful, they may be reimbursed for the expenses of their corporate takeover activities under the laws of some States? Is the question clear?

Mr. ESKIN. Oh, yes, I agree with this one. The system works as follows.

Senator WILLIAMS. There is an ominous ring in your voice, I will tell you that.

Mr. ESKIN. Yes, there is, Mr. Chairman. The system works as follows: During the course of the fight, management can use the entire corporate treasury of $1 million or $50 million to pay everyone to work on it, to pay the secretaries, to pay the printing, to pay the proxy fight solicitor, to pay the lawyers. But the stockholders lay it out of their own pocket. And that money is very hard money to raise, I might add; having raised it, Mr. Chairman, I know. It is high-risk money in view of the statistics of who wins and loses. The stockholder's theory is that he has lost the money, and I will tell you they assume they have. But people do not like to put much money in a losing cause, and if they win, in the one-tenth of 1 percent of the cases where they win, they then have the right to submit it back to a vote of the stockholders in some States only, and get the stockholders' approval to getting it back.

I would say the scales are not quite weighed evenly there. Why do we not do something about the law in that field?

Senator WILLIAMS. Senator Brooke has submitted no further questions. I think we had better adjourn now because it is 1 p.m. but we have appreciated your statements here this morning, Mr. Eskin.

Mr. ESKIN. I appreciate, Mr. Chairman, your courtesy and consideration and the time and attention you have devoted to listening to me and hearing me out. I hope you realize I have my heart in the subject matter.

Senator WILLIAMS. Very good. When they get after me for being marked "absent" on the Senate floor, I will tell them it was worthwhile being here in attendance and listening to you.

Thank you very much.

The hearing is adjourned.

(Whereupon, at 1 p.m., the subcommittee was adjourned.)

(The full prepared statement of Mr. Eskin and attachments follow:)

STATEMENT OF JORDAN H. ESKIN

My name is Jordan H. Eskin. I am a financial consultant and an attorney at law practicing in New York City, with offices at 230 Park Ave., New York, N.Y. 10017.

My Recommendations Are: In lieu of favorably reporting this bill out of Subcommittee, the conclusion of the Subcommittee should be:

A. A study be made and hearings held for the purpose of recommending legislation that will restore to investor-shareholders voting and property rights.

B. A study be made and hearings held for the purpose of recommending legislation with criminal penalties for managements which take action to protect themselves and their positions at the expense of the welfare of their company in take-over situations.

C. A bill be presented to amend the Securities Exchange Act of 1934 so as to eliminate Section 13d.

D. A study be made to analyze and determine each of the following so as to promote and recommend meaningful legislation:

1. The number of public companies as of date; and
2. The number of take-over bids and proxy contests during the past twenty years, successful versus unsuccessful.

Such study shall incorporate an analysis of the plans and proposals of the take-over company or insurgents, whether or not they were implemented and whether in the long run such plans were beneficial or injurious to the companies involved and/or their shareholders.

I have been the Chairman of the Stockholder's Committee for Better Management of Boston and Maine Corporation ("Boston and Maine"), the securities of which were listed on the New York Stock Exchange. As such Chairman, I conducted a proxy contest, with a number of other persons, to secure control of Boston and Maine at the April annual meeting in 1966, at which time the Committee's nominees received approximately 46% of the votes cast. At the April 1967 meeting, the Committee solicited proxies to prevent management from securing a quorum and to prevent the election of management's nominees, and for a period of almost one week, management was unable to secure a quorum. By February 1968, the Stockholder's Committee, with the aid of friendly interests, designated 50% of the Board of Directors of Boston and Maine.

Having participated in two former proxy contests, I believe that I am duly qualified to present some new ideas on this complex subject. I have adequate knowledge as to why and how they are conducted, as well as to the problems involved.

Before the Subcommittee on Securities of the Committee on Banking and Currency of the United States Senate is S. 3431, which proposes to amend Section 13(d) of the Securities Exchange Act of 1934 so that, among other items, persons acquiring 5% ownership of equity securities registered pursuant to Section 12 of the Securities Exchange Act, etc. shall have to report such ownership, rather than after 10%, as under the current Section 13(d). Additionally, such persons would have to submit the information, which is presently required under Section 13(d), which is more informative if the purpose of the purchases is to acquire control of the issuer.

This Bill, along with S. 510, which essentially has been incorporated as the present Section 13(d) of the Securities Exchange Act of 1934, represents one more step in depriving investor stockholders of their rights.

At the outset, the Bill is misleading—the purpose is not as stated—"to provide additional protection for investors," but to provide additional protection for managements.

I must rightly ask, "et tu, United States Senate?"

Gentlemen: Congress must not stand accused of putting the dagger to the rights of the American stockholder.

When H.R. 14475 and S. 510, providing for full disclosure of corporate equity ownership of securities under the Securities Exchange Act of 1934, were proposed, they were scheduled for hearings by the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce of the House of Representatives. I wrote to Mr. Williamson, Clerk of the Committee, on September 27, 1967, requesting that I be notified of public hearings on there matters so that I could have the opportunity to appear as a witness.

Unfortunately, the notification of public hearings from the Committee on Interstate and Foreign Commerce was dated June 27, 1968 and arrived in my office late in the afternoon of June 28, 1968, Friday. Public hearings on H.R. 14475 and S. 510 were to be held on Monday, July 1, 1968, and I was given forty-eight hours before the Committee meeting to submit five written copies of my statement and seventy-five additional copies for use by the Subcommittee. In light of the notice given—it should be apparent that it was impossible for me to comply.

The hearings were held on Monday, July 1, 1968, and I believe that by Tuesday, July 2, 1968, the bill was favorably reported out of Subcommittee. Although I did submit a statement dated July 8, 1968, which was eventually printed as part of the record, I do not believe that adequate consideration was actually given to it at that time. A copy of that statement is annexed hereto as "Exhibit A," along with "Exhibit B," a copy of my letter, dated July 8, 1968, to Hon. Harley O. Staggers, Chairman, Committee on Interstate and Foreign Commerce, House of Representatives.

These two documents are as accurate today as when written and apply with the same force and affect to the current hearing.

Section 13(d) has helped to sign the death warrant for changes of control (which can effect more good than harm) as was predicted.

I say, in all candor, that this crushing flow of legislation, cloaked under the holy mantle of "full disclosure," allegedly to protect the interest of the stockholders, is actually doing the reverse; it is destroying his property and voting rights. Furthermore, the system is impairing the vital flow of new ideas into public companies. Let us analyze the legislation as it works, together with other laws, in practice.

A stockholder purchases 100 shares of a public company "Gold-Uranium, Inc.," at $20.00 per share on the advice of a "bright" broker who claims that the security offers lucrative rewards. Shortly, thereafter, however, Gold-Uranium starts to incur losses. The broker's glowing reports of managerial competence and ability, coupled with favorable business prospects, become tarnished. By this time, however, the market value of Gold-Uranium has plummeted to $5.00 per share.

Let us add a new dimension to this hypothetical situation. Assume that our investor is actually an enterprising young man, fortified with an expert's knowledge of the gold and uranium industries. Believing that he has beneficial plans in the merger and acquisition field, which can be good for the company, he approaches what appears to be, at best, a rather ineffective management. He informs management that the implementation of certain plans could benefit the company. Management listens readily, but refuses to offer adequate compensation, if any, for the privilege of using his information. The stockholder, not surprisingly, declines to reveal his ideas. He recognizes that once such information is disclosed, it then becomes public property, and he loses any protection he might otherwise have had. Moreover, as human nature would have it, had he disclosed his information without payment, management might well have tended to disregard their value.

He proceeds to discuss his dilemma with an attorney who advises him to conduct a proxy fight for control of the company's Board of Directors as a final means of implementing his plans. Through control, our shareholder's ideas might be acted upon, thereby providing benefits to all concerned.

Assume the shareholder accepts this advice. Where does he begin? Assume, further, that his liquid assets amount to only $5,000.00. A proxy contest, if it is to be successful, might require $75,000.00 to $1,000,000.00 in expenses. Gold-Uranium has 2,000,000 common shares outstanding commanding a market value of $5.00 per share. Following his attorney's advice, he seeks monied individuals to form a group, for the purpose of acquiring 800,000 shares (40% of the outstanding). The cost: probably $M8, assuming that the stock will probably appreciate in value to an average price of about $10.00 per share as a direct result of the proxy challenge.

The stockholder recognizes that the intelligent course of action in developing a buying group is to approach potentially large buyers of, or holders of, the stock. Records of mutual fund holdings are readily available. Through a friend, he approaches a portfolio manager of a large mutual fund. While discussing the merits of his plan with the fund manager, he is informed of the labyrinth of legal requirements with which he must comply to pursue his further goals. Without any financial assistance from the funds, such compliance could be costly. Our investor would find it necessary to obtain expert counsel to study the company's corporate charter and by-laws, as well as to analyze the corporate laws of the state in which the corporation is organized. The most serious roadblock to the fund's participation, however, would be compliance with the Securities Exchange Act of 1934 and in particular, Section 13(d). The fund manager explains that his organization would be required to file a notice with the S.E.C. and with management of its proposed intent of acting with the buying group. Under the new restrictions presented by Section 13(d), the manager believes, after careful deliberation, that it would not be in the best interest of his organization or clients to place itself in this position.

The investor then discovers, after further evaluation of the new S.E.C. statute, that even smaller investors, if they are part of a group that obtains 10% of the outstanding securities, must also file and be identified in the same manner as the larger mutual funds. Not only must these holders be identified, but they must also reveal their plans to management. This presents a particularly severe hindrance, since the plans developed by the principals in the buying group may be used by management without legal recourse available to the group. Furthermore, in a contest, management remains salaried and may apply the corporate funds to defray the expenses involved. This obstacle appears almost unsurmountable, particularly to individuals with limited resources.

The investor sees one remaining glimmer of hope. He approaches another corporate whose corporate philosophy in recent years has been the acquisition of companies in difficulty. The investor describes his plan and suggests that Gold-Uranium could be acquired at a set price per share above the present market. Like the mutual funds and buying groups, however, the acquiring corporation would also be obligated to file under Section 13(d) with all of the onerous implications that presents. Furthermore, with prospective success jeopardized by the revelations it would be required to provide management, the risks appear too great for such a sizeable investment. Again, despite the fact that the corporation recognizes the merits of the plan, it must refuse to participate.

After some further investigation, the investor discovers some revealing statistics * which had appeared with respect to proxy contests in the 1952–1960 period. The discouraging figures are: 17,559, X–4 filings; 310, nonmanagement filings; 141, proxy contests resulted; 26, insurgents won; 10, settled; 105, management victories.

It is evident from these figures that successful challenges during that period amounted to about 1/10 of 1% and these statistics are pre-passage of Section 13(d) and its additional impediments.

At this stage, the investor recognizes that his chances of success are so slim that further pursuit would be reckless at best. Lack of financial resources and full-time involvement could result in severe personal stress. As a result of this law therefore, he is forced to terminate the endeavor. He has a paper loss on his investment and has limited chance of same recovery. In the final analysis he and the company's other stockholders have been severely penalized by these unwarranted restrictions. Under its proposal bill, these restrictions would be further tightened. The only winner: a tired and ineffectual management which has been perpetuated in office.

Gentlemen, the final loser in this situation, which is not at all hypothetical, is the U.S. Government, which has been deprived of the higher taxes which would apply to the new earnings of the company if this investor's plans had merit. Potential capital gains tax are reported as losses with all of the obvious implications.

Good ideas—which are the foundation of the future of this country—have gone to waste. This story can be repeated in thousands of public companies.

The management of Gold-Uranium and all public corporations is a one party system—a management party—and the stockholders are at mercy of the tune it dictates. How would you honorable gentlemen, who are politicians by training and background, appreciate it if you knew as you grew within your respective parties that you had 1/10 of 1% of a chance to being elected.

How can we so protect and cloak management inefficiency, incompetency, lack of imagination and sometimes outright dishonesty. Management has just too many weapons: money, employees, the charter, by-laws, proxy rules and Section 13(d), to protect itself from good ideas and good people who may help the company.

The question is—how are you going to balance the scales for the investor; not how are you going to further protect entrenched managements:

Does the fact that the insurgent rarely succeeds mean that the other 99.99% of the managements are doing a good job for the stockholders? I submit that it does not.

Who has benefited from incompetent management? Don't we have to face the facts that Section 13(d) and many of the proxy rules actually benefit incompetent management at the expense of over twenty million stockholders?

Existing laws dealing with proxies—Section 13(d) etc.,—to say nothing of the charter, by-laws, and state laws, are effectively interfering with a free market, personal ingenuity and corporate profits; thus minimizing the investor dollar.

The term "raider," as applied by management to insurgents, is nothing more than a public relation's attempt to preserve management's own vested interests.

I cite two recent incidents, and I am sure there are many more, where entrenched managements used unbelievable tactics to perpetuate themselves in office. Boston and Maine Corporation is a prime example and I refer to it because of my familiarity with the subject. Management caused the first mortgage bond indentures to be amended during the proxy fight so that if the insurgents gained control the bonds would be in default, unless the directors were satisfactory to the insurance company holders. Consequently, management gained the votes of those frightened stockholders who believed that the success of the insurgents would lead to the bankruptcy of the Boston and Maine Corporation.

The second subject to which I allude is the proposed acquisition of mammoth B. F. Goodrich by the upstart conglomerate-insurgent, Northwest Industries, Inc. In this situation, to protect its entrenched position, Goodrich's management arranged to have the company's bank loans mature if the insurgents succeeded in gaining control. Through this ploy, bankruptcy would have been the actual result.

Gentlemen, this conduct is unconscionable. Do we want this calibre of management to be further protected?

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* Proxy Fights As Managerial Revolution, Harold L. Wattel, Hofstra University Yearbook of Business, Series 3, Volume 1, p. 410.

I submit as "Exhibit C" hereto an article that appeared on the front page of the financial publication, Barrons, on October 23, 1967, written by Dr. Henry G. Manne, then noted Professor at Law at the George Washington University, Washington, D.C. "Exhibit D," also submitted for your perusal, is an article that appeared in the financial section of the New York Times of September 25, 1969 with respect to comments of Lawrence Tisch, President of Loew's Theatres, Inc. I also annex as "Exhibit E" a letter I just received from Dr. Henry G. Manne. These leading authorities in their respective fields hold views similar to my own. They represent only a few of the many prominent spokesmen with sympathetic views on some of the points presented here.

I am sorry to say that this whole area of law is a travesty of justice on the American scene and I can not believe that this august Subcommittee will do nothing to rectify it. Intelligent farsighted legislation could encourage entrepreneurs to develop the inherent values in many public corporations and in their securities to the benefit of all.

It seems to me that in order to secure information upon which to base sensible and meaningful legislation that testimony should be sought from groups actually representing stockholders throughout the country, non-partisan groups, experts, non-affiliated stockbrokers, as well as those officers and directors of public companies, stock exchanges and brokers, who may owe allegiance to major companies. The latter groups have traditionally had a public forum on which to express their views.

The proposed Section 13(d) amendment, under S. 3431, is further destroying that which is already dead—the stockholder's rights. I suggest that, in lieu of favorably reporting this bill out of Subcommittee, the conclusion of the Subcommittee should be recommendations that:

A. A study be made and hearings held for the purpose of recommending legislation that will restore to investor-shareholders voting and property rights.

B. A study be made and hearings held for the purpose of recommending legislation with criminal penalties for managements which take action to protect themselves and their positions at the expense of the welfare of their companies in take-over situations.

C. A bill be presented to amend the Securities Exchange Act of 1934 so as to eliminate Section 13(d).

D. A study be made to analyze and determine each of the following so as to promote and recommend meaningful legislation:

1. The number of public companies as of date; and
2. The number of take-over bids and proxy contests during the past twenty years, successful versus unsuccessful.

Such study shall incorporate an analysis of the plans and proposals of the take-over company or insurgents, whether or not they were implemented and whether in the long run such plans were beneficial or injurious to the companies involved and/or their shareholders.

Exhibit A

Statement of Jordan H. Eskin

My name is Jordan H. Eskin. I am an attorney at law practicing in New York City. I have been the Chairman of the Stockholders' Committee for Better Management of the Boston and Maine Corporation, the securities of which are listed on the New York Stock Exchange. As such Chairman, I conducted a proxy contest with a number of other persons to secure control of the Boston and Maine Corporation ("B&M") at the April 1966 annual meeting, at which time the Committee's nominees received approximately 46% of the vote cast. At the April 1967 meeting the Committee solicited proxies to prevent management from securing a quorum and to stop the election of management's nominees, and for a period of almost one week management was unable to secure a quorum. By February of 1968 half of the Board of Directors of B&M was chosen by me and persons friendly to me.

I am making this statement after having experienced two proxy contests and with knowledge of why they are conducted and the problems involved. I have the scars to prove it.

Before your Committee for consideration is S. 510 which deals with three areas or types of transactions:

I. Where any person acquires or obtains the right to acquire beneficial ownership of 10% or more of any class of equity securities registered under the Securities Exchange Act of 1934. [Section 1 adding new subsections (1)–(4) inclusive to Section 13 of that Act.]

II. Where an issuer proposes to make purchases of its own registered equity securities [Section (1) adding new subsection (5) to Section 13 of the Act]; and

III. So-called "Tender Offers" [Section 2, adding new subsections (1)–(7) to Section 14 of the Act.]

I intend to deal only with Area I. There have been many spokesmen who have discussed the other facets of the proposed legislation. I discuss Area I because it contains the provisions that relate to acquisitions of stock on the open market which may lead to the seeking of control probably through a proxy contest.

As S. 510 is presently constituted it calls for amending Section 13 of the Securities Act of 1934 by requiring every person who acquires beneficial ownership of more than 10% of any class of equity security within seven days to send to the management and to each Exchange where the security is traded and file with the Commission a statement containing the following information: (i) the background and identity of all persons involved in the purchases; (ii) the source and amount of funds to be used in making the purchases, and if the purchase involved borrowed funds, a description of the transaction and the names of the parties, except with respect to loans made in the ordinary course of business by a bank; (iii) if the purchasers are to acquire control of the business of the company, any plans which such persons may have to liquidate the business or to sell the assets or to merge it or to make any other major change in its business or corporate structure; (iv) the number of shares of such security which every such person (including his associates) owns and which he has a right to acquire; (v) information as to any contracts, arrangements or understandings with any person with respect to any securities of the issuer. When two or more persons act as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of securities of an issuer, such syndicate or group is to be deemed a "person" for the purpose of the subsection.

It is my opinion that if the foregoing provisions of this bill are passed by the House of Representatives, and the proposed legislation is enacted and becomes law, such action will sound the death knell for proxy contests. The provisions place additional obstacles in the path of the insurgent and give management even more weapons than it already has with which to fight.

Let us review the specific information required when a person or group has acquired more than 10% of any class of securities and its effect:

(i) In compelling the insurgent to state the background and identity of all persons involved in the purchases, management will have more time, with its greater monetary resources, to analyze and disparage the foe. The 10% figure in stock ownership might be reached by an insurgent many months before the annual meeting, while the filing of a 14B proxy contest form might be effected shortly before an annual meeting. An insurgent, generally with limited resources, is forced into a prolonged war rather than a short contest. Isn't it sufficient that this information as regards proposed directors and participants in the fight must now be submitted when the insurgent actually elects to conduct a proxy contest? Furthermore, the average Wall Street broker will avoid helping an insurgent, as they already do, because they dislike any filings with the Securities and Exchange Commission. Thus, the vital help from Wall Street will disappear.

(ii) Should the insurgent reveal his source of funds to give management time to pressure the suppliers of such funds to withdraw the aid.

(iii) It is difficult for the insurgent to set out specifically plans to liquidate, sell assets or merge, etc. when not in a policy making position. Such a revelation may impair the corporation's tax planning. The stockholder is protected in any event because any contemplated major change must generally be submitted for his approval under corporate law. This information only helps management which can set up more stumbling blocks for the new group. Management, on the other hand, does not have to reveal its plans in these areas.

(iv) By compelling the new group to reveal its stockholders, management is enabled to assess the strength of the group and to attempt to divide it.

(v) By requiring the new group to reveal, many months before the annual meeting, information with respect to contracts and understandings between the persons with respect to the securities, all of which is required on the 14B form when the group elects to fight, management is again afforded the opportunity to harass the insurgents for a lengthy period of time.

I fail to see how any of the foregoing revelations at the time when a group acquires 10% ownership aids the stockholder whom everyone is trying to protect. Such revelations hurt him because they materially impair a change in control through a proxy contest.

Anyone contemplating the acquisition of control, which may require or result in a proxy contest, must firmly believe that the securities to which he has committed his funds, his time and his efforts are undervalued and that the present management of the company has not been able to bring out, for the benefit of the stockholder, the true values of the company. It is relatively impossible to go forward in any such enterprise unless the prime mover is convinced of this and unless he is able to convince many other people of the wisdom and advisability of this action.

I take the firm position that allowing and even encouraging proxy contests is vital to corporate vitality. Instead of making the task of the insurgent more difficult, legislation should rather make the road easier.

The flow of new ideas and new men into public companies can be achieved by existing Boards of Directors and officers if they recognize the need and act on it. However, public companies often have been lax in doing this. There is frequently tremendous internal resistance to changes.

The other approach is for new men with new thinking to acquire control of a public company. This can be very beneficial to security holders. the term "raider" as sometimes applied to insurgents is a word behind which many incompetent managements have ducked to preserve the security of their own positions. Too often incompetent and corrupt chief executives have been retained in office in order to preserve the security of other management personnel.* Within reason, the average sockholder can do nothing about it unless someone conducts a proxy fight to change the Board of Directors.

There are certain fundamental principles in proxy contests:

1. In almost all instances, in order to conduct a successful proxy contest, new men with new ideas and vitality must purchase the required stock to gain control. Such a group will not commit money to the enterprise unless it is thoroughly convinced that it can do a better job than the current management and it can reasonably expect to succeed in gaining control.

2. For an insurgent to wage a proxy contest in which he can hope to prevail, at least 35% to 40% of the stock of the company must be purchased by individuals friendly to him. This is extremely difficult for a private group to accomplish. The independent stockholder's vote cannot be relied on.

Proxy contests are extremely difficult and costly. The number of proxy contests conducted compared to the number of public companies is minuscule. Successful contests result in only a small fraction of those conducted. The reason is not that the existing managements are performing so capably, but that the task is onerous and expensive.

It is a problem of the insurgent to equalize management's initial big headstart. Management can generally rely on the vote of almost all the existing stockholders since the American investor habitually signs management's proxy almost without reading it, even though (a) the insurgent's plans and action may be in the best interests of the stockholders, and (b) the new group, to evidence its faith in its plans and people, is prepared to purchase millions of dollars in stock and expend tremendous sums in connection with the expenses of acquiring control to improve the security values. The insurgent must use his own funds. He and his volunteer workers receive no salaries for long difficult work. Management can use the corporate treasury and receive salaries during the fight. It can also use the corporate employees to help its cause.

The bill calls for the insurgent to reveal all of his plans to management. These plans can be very valuable. Under the proposed legislation, management can claim the plans, or a modification thereof, as its own, defeat the insurgent, and never carry them out, thereby preventing new people with new ideas from actively proceeding with them and directing the affairs of the public company. Although the insurgent's plans may be beneficial for the company and its stockholders, management will do everything within its power to stop the insurgent from getting control.

In a football contest is one team compelled to give its playbook to the coach of the other team in advance of the game? Is this a way to conduct the contest?

* In the Boston and Maine Corporation, in 1966, the President after being convicted of misappropriating B&M corporate property was given a raise in salary and an extension of his employment contract at the time extensions of employment contracts were given to other officers and directors.

At some point in a corporation's life, changes should be made which can benefit the stockholders. Does corrupt or inefficient management have the right to run down a company during its tenure and not expose itself to loss of control and positions?

I submit that the job of the insurgent is tremendous and can result in substantial benefits to the stockholder of a company which is the subject of a proxy contest. I point to the few successful ones in the past few years: U.S. Smelting, Sunshine Mining, Penn-Dixie.

I do not intend here to detail all of the ways in which a management could defeat an insurgent once it knew that control was in jeopardy when the insurgents reached 10% of the stock. The ways are myriad and management's ingenuity endless (with corporate funds) in preserving its own power, even though it may have limited managerial competence.

The corporate proxy fight starts the football game with management ahead 90 to 10, and the insurgent is on his own 10 yard line. The proposed legislation then compels the insurgent to give his secret plays to the management and to grant management months to watch the insurgent in practice, time to break up the insurgent team and cut off the sources of supply from the training table. Obviously, no football coach would take on the job of coaching the insurgent team under these conditions. If you wish by legislation to end proxy fights, then this legislation should do it. If you wish to give incumbent management the green light to do anything with corporate assets, this will do it. If you wish to keep vested interests perpetually vested, this will do it.

Certainly, most investors who have held their stock through a proxy contest have benefited by virtue of the work, efforts and money of the insurgents. Managements have no monopoly on doing right. The scale should be somewhat balanced so the insurgent has a chance.

Passing this legislation will stop the flow of new ideas into corporations from the outside through proxy fights. I doubt if any self-respecting attorney, after examining the significance of the proposed legislation, would in his professional judgment advise a client who seeks control of a public company through a proxy contest to proceed to purchase stock on the open market. The risk is too great to justify the commitment of time, money and effort. This new legislation would effectively eliminate any possibility of success.

Consequently, the proposed bill should not be enacted into law, or subsections (1)–(4) to be added to Section 13 of the Securities Exchange Act of 1934, as contained on line 6 of page 1 to line 22 of page 5 of S. 510 should be limited to tender offers and invitations for tenders.

I trust that these views are helpful to the Committee and I am glad that I have had this opportunity of expressing them.

EXHIBIT B

JORDAN HARLAN ESKIN,
New York, N.Y., July 8, 1968.

Re H.R. 14475 (Moss, Calif.), S. 510, and similar bills, providing for full disclosure of corporate equity ownership of securities under the Securities Exchange Act of 1934.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

HONORABLE SIR: I am taking the liberty of writing you with respect to the above since I understand that S. 510 has just been reported on favorably by the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce and it will be before your Committee for action this week. Only two witnesses testified before the Subcommittee.

On September 22, 1967, I wrote Mr. Williamson, Clerk of the Committee, that I wished to be notified of public hearings on the above matters because I may request the opportunity to appear as a witness and was in turn informed that I would be notified of the hearings.

A notice of public hearings before the Subcommittee on Commerce and Finance was sent out dated June 27, 1968 (Thursday) with respect to hearings to commence the following Monday, July 1, 1968 at 10 a.m. By virtue of an office move I received the notice in the second mail on Monday, July 1, 1968, just when I was leaving town. Upon my return on Wednesday, July 3rd, I called Mr. Williamson and was informed that the hearings were over.

I believe that I received inadequate notice and that the enclosed statement (although hurriedly prepared because of limited time and the holiday weekend) should be accepted as if I had appeared as a witness at the hearings.

If you wish to end the limited corporate democracy in public companies afforded by the present proxy process, then this bill should be reported favorably; but if you wish to preserve a semblance of corporate democracy in proxy contests, then there should be eliminated from the legislation the portions of the bill which further regulate, and require additional disclosures from, persons who make acquisitions of stock on the open market which may lead to the seeking of control, probably through a proxy contest.

An examination of the Hearings before the Subcommittee on Banking and Currency, United States Senate (90th Congress) First Session on S. 510, reveals that almost none of the independent witnesses dealt with this portion of the legislation—since the main thrust of the legislation was further to regulate tender offers. The one independent person who analyzed the sections of the legislation, to which I address myself, was Carlos Israels, partner in the New York law firm of Berlach, Israels & Liberman (at Hearings, pages 65–67), a renowned authority on corporate law, and his position was similar to mine.

Furthermore, well known insurgents of the past did not testify (probably since their fights were over) and insurgents of the future of course did not testify. Basically (aside from the Securities and Exchange Commission) the reasons for and problems of, and necessity for, the insurgent were not presented at the Hearings by anyone with a real stake in that role. Managements, of course, were adequately represented at the Hearings.

Consequently, masses of stockholders who may benefit from future proxy contests were actually not represented by persons with a deep interest in their welfare. It is difficult to believe, if the interests of these stockholders are to be considered, that this legislation should pass in its current form. I am writing for these stockholders. I am also writing for the persons who have yet to wage proxy contests as insurgents.

After passage of S. 510 by the Senate, Dr. Henry G. Manne, professor of law at George Washington University, a noted corporate law authority, wrote an article on it in Barron's, that well known financial journal, in which he took a position similar to mine on the portions of the legislation I have placed in question. I am enclosing a copy of that article.

I respectfully request that either you do not report favorably on S. 510 or limit its effect to tender offers or invitation for tenders so that the numberless stockholders of public companies are not injured.

I would be glad to discuss this with you at your convenience.

Respectfully yours,

JORDAN H. ESKIN.

EXHIBIT C

[From Barron's, Oct. 23, 1967]

SALUTE TO "RAIDERS"

THEIR ACTIVITIES, ARGUES ONE AUTHORITY, SHOULD NOT BE HOBBLED

The accompanying critique was written by Dr. Henry G. Manne, professor of law at George Washington University, and author of "Insider Trading and the Stock Market.")

Under the tutelage of the Securities and Exchange Commission, the U.S. Senate recently passed a bill the chief results of which will be the protection of inefficient corporate managers and the financial injury of American shareholders. Introduced by Senator Harrison Williams of New Jersey, the bill, S. 510, was supported by the New York Stock Exchange, the American Stock Exchange, the Investment Bankers Association and the National Association of Securities Dealers. It would require the disclosure of a variety of information when anyone acquires 10% or more of any class of equity securities; when a corporation purchases any of its own shares; when a change in the board of directors is to occur without a shareholders' vote; and when anyone makes a cash tender offer for 10% or more of a class of stock.

The growing use of cash tender offers gave real impetus to the bill, and it is regulation of this activity which may have the most severe impact on shareholders. To understand why, one must examine some legal and economic aspects of the

U.S. corporate system. It is generally thought that small, individual shareholders are powerless to protect their interests against the selfish proclivities of entrenched managers and other villains of the financial community. Adolf Berle long ago popularized this notion under the rubric, "the separation of ownership and control." Various schemes have been advanced to correct the imagined helplessness of shareholders. For instance, the much-heralded proxy regulations under the Securities Exchange Act of 1934 were adopted to make "shareholder democracy" a reality. But today, except for mavericks like Lewis Gilbert and a few diehards at the SEC, the idea of shareholder democracy has been largely discredited.

Democracy failing, other theories in aid of the poor shareholder have been championed. The venerable derivative suit for waste of corporate assets has its proponents. But it is effective primarily in cases of blatant wrongdoing and cannot be used practically to correct managerial inefficiency. Then there is the somewhat old-fashioned notion that the stock market disciplines managers who must come to it for new capital. This argument must have some validity, though it is probably most applicable to corporations already in extremis and with no internal (or government) source of funds. By and large, however, it is still plain, old-fashioned market forces, not democracy and not the SEC, which have made our corporate scheme the miraculously efficient system that it is. S. 510, if it became law, would weaken the very market forces which today make this system function so well.

Briefly, these market forces operate in substantially the followihg manner: if an existing corporation with publicly traded shares is poorly managed, holders of such shares will respond by selling. This will drive the price down to the point indicated by the quality of management which the corporation is receiving. As the market valuation of any corporation gets low relative to the price that could be generated by more efficient managers, the stage is set for the critical functioning of the market for corporate control. Outsiders, whether we call them "raiders" or more polite names, will respond to the opportunity to make substantial capital gains (not necessarily in the tax sense) by acquiring control, managing the company efficiently (including liquidation, if that is indicated), and then perhaps disposing of the shares. They need not remain permanently to manage the business for this scheme to function properly.

The critical thing—perhaps basic to the entire American system of corporate capitalism—is the fantastic protection which noncontrolling shareholders enjoy thanks to the corporate control market. In the long run it is only this market which guarantees the identity of interests between numerous small shareholders and managers who may own few or no shares at all. This market guarantees, as no other method can, precisely what we want from the capitalist system: efficiency, automaticity and incentive to benefit the shareholders.

Needless to say, if the economic costs of taking over control are artificially raised by government regulations, there will be fewer changes in corporate control and, a fortiori, less protection of shareholders' interests. Similarly, if the cost of using one of several alternate methods of gaining control is raised, that method will be relatively less used than others. Thus, the present system of regulation of proxy solicitations must, in part at least, explain the continued decline in its popularity relative to mergers and tender offers.

Mergers, of course, offer tremendous tax advantages, and even though a merger generally requires the full disclosure of a 1933 Act securities registration, it is still the most popular device for shifting corporate control. But the merger is of little avail if the incumbent management is determined to retain control, since a merger must generally be negotiated. Thus, the unregulated cash tender offer provides some important advantages to competitors in the market for corporate control, as well as significant protection for small shareholders. However, it is not hard to see why many corporate executives and investment bankers have actively supported this legislation. Perhaps their consciences are not too strong; or perhaps they really believe that they were supporting "ethical practices," and fail to notice that this "anti-raider bill," as some call it, protects them from unwanted competition for corporate control.

Chairman Manuel F. Cohen of the SEC and other backers of the bill have offered a variety of reasons why regulation of the cash tender offer is necessary. Chairman Cohen and Senator Williams have both stated that the bill is necessary to close a "gap" in the present system of protecting investors by requiring disclosure. Serious reappraisal of the whole disclosure philosophy is long overdue, but for now it is sufficient to notice that the existence of this "gap" tells us nothing whatsoever about the desirability of closing it. Only one who has accepted the

disclosure notion as received doctrine could think this states a reason for adopting this legislation. As Professor George Stigler has reminded us, the SEC has displayed a stubborn unwillingness to substitute economic analysis and testing for ts preconceptions and beliefs.

Chairman Cohen also has said that "this (bill) is necessary if public investors are to stand on an equal footing with the acquiring person in assessing the future of the company and the value of its shares." But it is clear that public investors should not be on an equal footing with individuals who have created new information and are performing a function which necessarily benefits everyone. If we put the completely passive shareholder on the same footing, the latter will have scant incentive to take control of a poorly run company and thereby protect noncontrolling shareholders from bad management. Chairman Cohen's aspiration for equality in the securities markets, as is true in other economic areas, runs afoul of the ancient forces of motivation and incentive.

Chairman Cohen elaborated his thesis with an example of a tender offer of six dollars for shares currently selling for five, but which would be worth 15 dollars on liquidation. He avers: "It is argued by some that the basic factor which influences shareholders to accept a tender offer is the adequacy of the price. But, I might ask, how can an investor evaluate the adequacy of the price if he cannot assess the possible impact of a change in control? Certainly, without such information, he cannot judge its adequacy by the current market price."

But shareholders, like any economically rational human being, will compare alternatives in order to make economic decisions. Thus, if one option (selling shares at six dollars) is worth more than a second (holding shares valued by the market at five dollars), then, it makes sense to pick the first. This is the kind of decision shareholders regularly must make, but they are not injured merely because they would rather have 15 than six dollars, for that is not the choice offered them. Indeed, the 15 dollar comparison becomes totally irrelevant if the disclosure required would cause the tender offer not to be made at all. In many cases, that is exactly what would happen. The point which Chairman Cohen is actually disputing is that shareholders would rather have six dollars than five, and that is strange indeed.

The more appropriate question for Chairman Cohen is why the present management in his example does not consider liquidating the company. Under the conditions posed, that would seem to be part of their fiduciary obligation. But liquidation is often avoided by an existing management group simply to protect its own position. Management will always allege, of course, that its "business judgment" dictates the company's continued operation, and, without very special reasons, few courts will disagree. Only the market for corporate control, functioning through private decision-making, offers a solution.

In its misconceived effort to aid shareholders' choice, the Williams bill requires disclosure at the time the tender offer is made public of such matters as the background and identity of the real parties in interest behind the offer; the source, amount and conditions of any financing for the offer; future plans for running the business, including plans to liquidate or make other major changes; the number of shares held or on option by the tender bidder; information on any contract with the bidder concerning securities of the issuer; and, finally, the ubiquitous and ominous "such additional information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors."

To eliminate alleged unfairness, the bill gives shareholders the option to withdraw their shares at any time before seven days and after 60 days from the time the offer is made. The bill also requires that if insufficient shares are tendered and the offeror raises his bid, the higher price must be paid shareholders who tendered at the lower one. If more shares are tendered than need be accepted, they must be taken up pro rata. A brief look at each of these provisions will make it clear that S. 510 is better designed to protect incumbent management and to enhance the powers of the SEC than it is to protect the legitimate interests of shareholders.

For example, disclosure of the identity of tender offer principals seems innocent enough, yet the Canadian Act, on which S. 510 was allegedly modeled, omitted this provision. But who is protected by this disclosure? Presumably, in the case of sales to "good guys," existing shareholders would be protected against selling the shares too cheaply. But clearly we want to encourage more efficient managers to take over from the less efficient. Making them share the information that they are efficient managers with the shareholders will simply raise the price they would have to offer, and thereby decrease the number of desirable tender opportunities.

This bit of disclosure is thus detrimental to the functioning of the corporate system, and, it would seem, in many cases to the very shareholders who would otherwise gain by tendering shares.

In the case of sales to "bad guys," it would seem at first glance that disclosure would protect shareholders. But this cannot be true for those who sell their stock. Having sold at a price above the market, presumably they are satisfied with their transaction and are indifferent to the quality of management. By hypothesis, they are better off out of this company that in it. The answer must be that such disclosure is designed to protect those shareholders who decide not to sell, because they did not know that dishonest or poor managers were taking over their business.

But no shareholder has a guarantee against a management change or against a change in the quality of existing management; by not selling on the tender offer or in a regular transaction, these shareholders have shown that they would prefer remaining with some new management to staying with the old one. Furthermore, it should be noted, this problem could arise only if the less efficient, or even dishonest, tender bidders want fewer than all the shares. With disclosure, presumably everyone would want to sell, and shares would be taken up pro rata. In that case disclosure would merely cause a different allocation of shareholdings to result, but with no apparent justification for the change. Under existing disclosure provisions, the shareholders will be told the identity of the corporate managers within a year. But the whole illustration is a bit farfetched, and this provision is not likely to give shareholders any additional protection. It seems well-designed, however, to aid the SEC in spotting those whom it considers undesirable and lending its not inconsiderable weight to any effort to stop them from gaining control.

Apart from the dangers of abuse of such power by government officials, the scheme is wrongly conceived. A vigorous and unhampered market for corporate control will be far more effective in protecting shareholders than requiring millions of unsophisticated shareholders to make decisions about the relative qualities of opposing management groups. Generally, above-market tender bids will be made only by groups who assume their own managerial superiority over the incumbents. Not surprisingly, the SEC could not muster any significant evidence of wrongdoing via tender offers. In fact, the evidence is overwhelming that tender offers generally suceed only when the price of the company's shares is already depressed because of poor management.

The requirement for disclosure about source of funds looks suspiciously like a backdoor approach by the SEC to something it has failed to achieve directly, a legal wedge into the mysteries of Swiss banks. No disclosure is required about "loans in the ordinary course of business" from domestic banks. But details are required about loans from foreign banks, insurance companies and other corporations or individuals. Anyone familiar with the history of the SEC will realize that requiring disclosure of such a matter is not innocuous. This provision would considerably enhance the SEC's powers over foreign banks and domestic non-bank sources of funds.

On the surface, the disclosure requirement for "special arrangements," including options, guaranties, and proxies, also seems innocent enough. If truthful and full disclosure is made, there seems to be no substantive "punch" to the provision. Unfortunately, this view overlooks the myraid ways in which both government and private lawyers discover new grounds for litigation. If an embattled management can find any superficially reasonable basis for going to court, based on this or any other matters disclosed, it may be able to delay the tender offer and consolidate its own control. The bill under consideration if filled with disclosure requirements for material that could serve as the basis for law suits, most of which in fact would serve as tactical devices for delay.

The requirement for disclosure of future business plans is perhaps the most questionable of all. First, there is a subtle implication that liquidation is an undesirable policy from the shareholders' point of view. This, of course, is nonsense; it may be the most desirable course. It should not be treated differently or more harshly in this context than any other management policy.

More disturbing, such a provision could be used as the basis for an injunction against management decisions alleged to contravene the business policy specified in the tender offer. And, if the value of shares declined, a shareholder could sue management for violating the policy previously announced.

Significantly, this provision, which is bound to be a restraint on imaginative management, applies only to successful tender offerors. There is no comparable requirement for incumbent managers. Generally, they may change their policies at will without fear of liability. No reason has been offered why successful bidders

should operate under such a handicap. Potential managers are in an especially bad position to formulate policy of this kind, and they should not be compelled to do so. The bill would allow amendments to be made in these statements, as the SEC sees fit to allow. The SEC would thus be put squarely in the business of approving or disapproving changes in business plans previously disclosed. How much will outsiders pay to get themselves into that situation?

We turn next to the provisions alleged to gain fairness and equality for shareholders. First is the seven-day withdrawal right, or, as it might be viewed, a free seven-day "put" which the law would require tender offerors to give all shareholders. The SEC had also proposed a confidential, five-day pre-offer notification provision. This failed of adoption because of complaints that leaks were bound to occur. Securities industry spokesmen hastened to assure the Senate committee that they did not mean that the leaks would be from the SEC. A listener was not impressed by the sincerity of their disclaimers.

Chairman Cohen justifies the seven-day provision on the ground that management should have an opportunity to make its case after the tender offer. Again, we find the SEC placing its confidence in naive notions of full disclosure and informed choice by millions of small shareholders. But there is still a paradox, since Chairman Cohen's statement implies that the market price for the shares under the old management has been too low all along, and that even the outsider is not raising it high enough. However, if the current price is indeed incorrect, then the stock market, with all the existing disclosure rules, is not functioning properly to determine the price of securities.

In fact, there are no indications that the market is not correctly performing its pricing function, though the reasons for this success continue to elude the SEC. To say that existing management should be given an opportunity to make its case—when confronted by a tender offer in excess of the present market price—suggests that the SEC is taking sides and assisting incumbent managers in what should be a hands-off fight. Paradoxically, the SEC has recently taken steps to police company efforts to raise stock prices through publicity or market activity when there was no evident fight for control.

The requirement that shares tendered in the first 10 days be taken up pro rata if more are tendered than requested is substantially the present rule of the New York Stock Exchange, though it is no more clearly desirable there than in the bill. First, the administrative task involved in pro rating can be quite costly, thus lessening the incentive of outsiders to compete in the market for corporate control. The bill's goal of equality of treatment may still be unattainable because of the advent of "short tendering," by sophisticated shareholders who thus get a larger percentage of their shares taken up than do other shareholders. This is, of course, merely a variant of arbitrage, but the Commission promises to police the practice through a regulation.

Under the present scheme, a tender bidder may decide not to include a pro rata provision in his offer. And a shareholder may decide that he wants to tender his shares on an all-or-nothing basis. He is only required then to tender in timely fashion. But under the bill, in the name of equality for the dilatory tenderer, this shareholder no longer can choose to tender on an all-or-nothing basis. How did the SEC decide that one of these situations was fairer than the other? We are not told.

Finally, the bill requires that if a second tender offer is made at a higher price than the first, before the first one expires, all shareholders must receive the higher price, even if their shares have been taken up under the first offer. Again, the quest for equality, but the result is injury to the better-informed shareholder and a reward for ignorance.

To illustrate, suppose a bid is made for 75% of a company's outstanding shares at a price of 35, when they are selling in the market for 30. The offeror, of course, is always trying to peg the price at just the point where he will get the desired number of shares and no more. A well-informed trader, however, may believe that a price of 35 will only elicit 50% of the shares. Thus, he will not tender because he realizes the likelihood of a better offer. The bill would, in effect, require the tender bidder to guess again on the price required to obtain 75% of the shares, even though a two-step strategy might be simpler and less costly.

It is difficult to compute how much harm this newest effort to hamper a free securities market would do to American shareholders. It would undoubtedly be substantial. But the SEC continues to talk in terms of disclosure and fairness with no effort to analyze economic effects or measure the impact of its proposals. Hopefully, the House of Representatives will decline the offer to sacrifice shareholders' interests to an unholy alliance of regulators and inefficient corporate managers.

EXHIBIT D

[The New York Times, Thursday, Sept. 25, 1969]

(By Robert Metz)

Tanned, paunchy executives of old-line companies with unexciting earnings records are probably considerably more relaxed these days.

Golf dates and three-hour lunches with old cronies no doubt dot some of their calendars, and there is just generally more time for gazing out the window.

The view is more restful, too. Those long black limousines bearing corporate big-game hunters no longer pull into the parking lots, carrying their passengers to eyeball-to-eyeball confrontations and threats of takeovers.

And that, says astringent Laurence A. Tisch, president of Loew's Theatres, Inc., is what's wrong with the American business scene today.

Now that tender offers are out of style, there is no way for the shareholders to bring pressure on a recalcitrant management.

Mr. Tisch made the observation in an impromptu speech Monday evening after receiving the annual award given by New York University's chapter of Beta Gamma Sigma, an honorary business fraternity Mr. Tisch belonged to while at the university.

Mr. Tisch regarded the tender offer by outside interests as the only effective stockholder tool in cases of management indifference or incompetence. He elaborated on his remarks in a telephone interview yesterday:

"Shareholders are supposed to own the business. But do they? Do they exercise the control that is supposed to go with ownership?

"In most cases, the answer is no. Their only right is to sell their stock. This may mean a big loss even though the company, under aggressive management, would have great potential.

"Through the thirties, forties and fifties, dissident shareholders often got together to wage proxy fights against managements that didn't deliver.

"This approach became obsolete in the 1960's for a lot of reasons — primarily because of high cost."

Mr. Tisch said that to mount a proxy fight against a major company — say, one with sales in the hundreds of millions — could cost a million dollars or more these days. Too much to make the effort profitable in most cases.

What is more, the institutions frequently control most of the stock and they fear possible new regulation too much to vote against management in a proxy fight.

"The mutual funds and other institutions would rather sell their stock than be criticized from attempting to control management," Mr. Tisch said.

Mr. Tisch said that he thought the possibility of a tender offer had kept managements on their toes during the period when the conglomerates and others were actively seeking acquisitions through this device.

Forces against tenders have grown "tremendously," Mr. Tisch noted—forces in the press, in the Federal Government and in both Federal and state agencies.

Meanwhile, companies that feel threatened have persuaded shareholders to water down their vote even further by seeking approval of staggered boards and a requirement that would prevent a take-over unless it is approved by 80 per cent of the shares.

Mr. Tisch concluded: "With the continuation of this trend, poor managements will remain in power, our competitiveness in world markets will be diminished and profitability at home will go down.

"Unfortunately, I see no new forms on the horizon. I wish I did. I think the shareholder's rights should be kept alive. He sholud have the choice whether he wants to tender or not."

IT'S JUST PAPER

Offbeat indicators: Ralph K. Davies took a $2,569,443.50 paper loss in the stock market yesterday, but the chances are it didn't faze him.

Mr. Davies is chairman of the Natomas Company, which has struck oil off Indonesia. Natomas stock slipped 3¼ points yesterday after Indonesian oil officials said the potential market for that country's oil in the United States had been diminished by the Alaskan North Slope potential.

But don't feel too sorry for Mr. Davies. With 790,598 shares of Natomas, he was still worth $69,572,624 as of yesterday's closing price of 88. Two years ago, the stock was as low as 12. Recent speculative interest had carried Natomas as high as 130½.

Mr. Davies sold 27,000 of his shares in August.

EXHIBIT E

THE UNIVERSITY OF ROCHESTER, *March 23, 1970.*

JORDAN HARLAN ESKIN, Esq.,
New York, N.Y.

DEAR MR. ESKIN: You have asked me to comment for your information on that part of S3431 which would make the provisions of present tender offer legislation (P.L. 90–439) operative in cash tender offers and proxy fights when 5%, rather than the presently provided 10%, of a corporation's equity securities were purchased. I am happy to give you my thoughts on this important subject, and you may use these remarks however you see fit.

As you may know, I have written about and closely followed the subject of control fights for some time. As a matter of fact when the present legislation, then S510, was before the Subcommittee of the Senate Committee on Banking and Currency, I was the author of three of the most widely cited articles on this then rather unfamiliar subject. (See particularly my "Cash Tender Offers for Shares: A Reply to Chairman Cohen" in 1967 *Duke Law Journal* 231. Two prior articles laid what I believe is the theoretical foundation for most of the discussions which have occurred since. "Mergers and the Market for Corporate Control," 73 *Journal of Political Economy* 110 (1965) and "Some Theoretical Aspects of Share Voting," 64 *Columbia Law Review* 427 (1964).) I was not invited to testify at that time, though I am told that others had recommended my name to the staff counsel. My views were well known at that time to officials at the SEC.

My basic view, now as then, is that this innocent, even laudible sounding legislation is extremely damaging to the interests of public shareholders in American corporations. Their interest is best served by an open, competitive market for the control of corporations, while the legislation under discussion, in spite of various denials and protestations, serves primarily to insulate incumbent management groups against this very competition. If someone privately secured the kind of restraint of trade in some other goods that P.L. 90–439 gives them in corporate control, they would be in violation of the Sherman Antitrust Act. No clear reason has ever been offered by proponents of the Act for a different policy in this market than in the market for other valuable goods.

Briefly, the market for corporate control in our system operates in the following manner: if an existing corporation with publicly traded shares is poorly managed, holders of those shares will respond by selling. This will drive the price down to the point indicated by the quality of management which the corporation is receiving. As the price of securities of any corporation is thought to be low relative to the price that would be generated by more efficient managers, the stage is set for the critical functioning of the market for corporate control. Outsiders will respond to the opportunity to make substantial capital gains (not necessarily in the tax sense) by buying control, managing the company efficiently, and then perhaps disposing of the shares. It is not necessary that they remain permanently to manage the business, though generally they do. The interests of the American shareholder have obviously been superbly protected by the functioning of this market. No alternative theory even begins to explain the continued investment of billions and billions of dollars with almost completely insignificant losses resulting from malfunctioning in the system.

Since the appearance of my somewhat theoretical works, there have been several serious empirical studies of the market for corporate control and the effects of regulating that market. Not one of these studies has been performed by the staff of the SEC, though clearly this sort of continuing analysis of federal legislation is an important part of the Commission's responsibility. Incidentally, no significant evidence was offered by or demanded of the SEC at the earlier hearings on this legislation, and I would be curious to know whether spokesmen for the Commission will discuss these new findings in the pending hearings to broaden the coverage of this regulation. (See particularly Austin and Fishman, "The Tender Take-Over" 4 *Mergers and Acquisitions*, no. 3 p. 4 (May–June 1969), probably the most complete empirical study of the take-over phenomenon. There are others as well, all reaching approximately the same conclusions.)

The conclusions of these studies almost perfectly verify the conclusions I reached earlier on theoretical grounds. Actually this is not too surprising since fundamental market phenomena are involved, and it would certainly be surprising to learn that someone had reversed the basic law of demand. Nonetheless, it is satisfying to be independently proved correct in one's estimations on a new and relatively unknown development.

Fundamentally I made three points which have been overwhelmingly substantiated. The first was that a market for corporate control actually existed and that control tended thereby to move into relatively more efficient managerial hands. This simply illustrates the basic economic postulate that, under free exchange, assets will always move into the hands of those for whom they have the highest utility. Thus this process, by which individuals seek only to make gains for themselves, automatically aids all shareholders. It provides a stronger incentive to managerial efficiency than is attainable either by good motives or government regulation.

The second point was that, compared to other non-negotiated methods of changing control in corporations, the unregulated cash tender offer was the most efficient and least costly device. Thus it provided the most protection to shareholders measured in terms of the return on their capital investment. There are indications that the merger is an even more attractive device for changing control, but that of course requires negotiation with the incumbent management.

The third point involved my prediction that if S510 became law it would operate to the detriment of outsiders trying to gain control of a company and indirectly, by discouraging these salutary activities, to the detriment of all shareholders. Briefly the argument was that disclosure was not a free good and that to require more of it added a cost which could only serve to unduly discourage some tender offers. There were, in addition, other restrictive aspects of S510 which were not based on the idea of full disclosure and were not adequately justified.

There were, I thought in 1967, a number of suspicious circumstances about the original legislation. The precursor bill to the one finally adopted made no pretense of being in favor of public disclosure. It required simply that 20 days advance notice of an intended take-over be given to the incumbent management. The obvious purport of this bill probably explains why S510 was substituted for it, this time with the SEC's influential support. And there was an ungainly lack of parity between the requirements, costs and potential liabilities the bill put on outsiders compared to those on incumbent managers. Even today the disclosure provisions for a cash tender offer under P.L. 90–439 are considerably more stringent than those for a tender offer using an exchange of shares subject to registration under the Securities Act of 1933. The only logical inference, even now, why no one presses to tighten up on the latter regulation is that the lesser amount of disclosure there is not really significant to anyone. Registration under the 1933 Act publicizes the take-over attempt so far in advance of actual tendering as to make this method unusable as a tactical device in most strongly opposed take-overs.

But the justification offered in 1967 for S510 was that there was a "disclosure gap" which had to be filled. Since proxy fights and share exchange offers were each regulated, "obviously" cash tender offers should be as well. And it was clear that the system of proxy regulation was to provide the model for this scheme. Perhaps it was felt that the philosophy of full disclosure was beyond reexamination, or perhaps the matter seemed self-evident to the SEC. But for whatever reason they offered no real argument for the general scheme of regulation implicit in S510 other than that it was not presently being done.

The situation now is certainly different. There is no question about a disclosure gap, and there is parity and more between the disclosure provisions for cash take-overs and those using other methods. Thus the SEC's logic at the earlier hearings is inapposite today. Now for even this innocent sounding change, moving from 10% to 5% stock ownership as the basis for coverage, the SEC should be put on its mettle. This time legislation, or the strengthening of it, should not be allowed to pass on the basis of platitudes about full disclosure. Specific, hard, significant questions in this area should be asked of the SEC by the Subcommittee, and no one should be satisfied until answers are forthcoming. It is time to stop injuring small shareholders either in the interest of some unanalyzed philosophy called full disclosure or in the interests of incumbent managers whose regard for the benefits of full, fair and open competition stops when they have to compete.

Here then are some of the questions to which the SEC should be required to give full answers. First I shall mention a number of economic, considerations, though most of these are adequately covered in the existing literature. Then a series of questions should be raised about the so-called defensive tactics commonly used by incumbent managers. Finally, the implications of some of the more legal questions should be raised.

First, who are the target companies; what has been happening to their earnings, their dividends and their stock price? What happens to a target company's stock when a take-over is announced; what happens before the expiration of the offer; what is the subsequent course of its stock price?

How have cash tender offers compared to proxy fights and share exchange offers in terms of numbers of attempts and successes, both prior to and after P.L. 90–439 became law? What happens to the target company and its share price when the tender offer fails?

What defensive strategies have target companies adopted; are defensive mergers desirable; to what extent do managers fighting take-overs get attractive personal arrangements with a new merger partner? Are the courts being used in what amounts to an abuse of judicial process by litigation aimed solely at delay; does regulation of tender offers encourage political intervention in what should be private, competitive affairs; are the antitrust laws being abused by being used as tactical weapons in cases not raising significant antitrust questions at all?

Should defensive strategies like acquisitions of small companies in competition with offeror companies (thus posing a possible antitrust violation if the tender offer succeeds) be allowed; how often are companies amending voting rights, classifications of boards and cumulative voting provisions merely to forestall take-overs which would probably enure to the benefit of the shareholders? How often have companies made unwarranted dividend payments, mergers or stock issues merely to serve the management's interest in holding their positions?

How frequently have rules on control persons, insider trading and registration provisions of other securities laws been used, not as originally intended, but as tactical devices in a control fight? In general what other devices have corporate managers utilized in their own personal interests that cannot readily be attacked in shareholders' suits either because of substantive legal provisions or difficulties of proof?

Finally, the SEC should be required by Congress to furnish, at a minimum, answers to the questions following. Full disclosure after all has some merit at this level too. First, does the SEC have any evidence that required disclosure of the identity of take-over principals, sources of funds, special share arrangements, etc. has benefited shareholders in any significant fashion? Has the SEC any evidence that the "fairness" gained by the pro-rata rule, the same-price-to-all rule, and the no-open-market-purchase rule has been worth the predictably higher cost of take-over fights resulting from these rules? (See, on all these matters, my article in the Duke Law Journal mentioned above, or most other major law review articles on these issues.)

Have incumbent managers been required to make comparable disclosures to those required of the offerors; has the disclosure of business plans required by the statute been of more interest to public shareholders, competitors or potential derivative suit plaintiffs; have outside offerors expressed sincere misgivings about being asked to formulate legally enforceable management plans even before they have gained control; what has been the real cost of the seven-day free "put" tender offerors are required to give all shareholders; what is the economic effect of putting this and other additional costs onto competitors in the market for corporate control?

No intelligent decisions can be made in this field until these questions can be answered with some degree of accuracy. Systematic study and hard data on these questions should be forthcoming before this legislation is advanced. That is, after all, one reason why administrative agencies comprised of experts in the field were established.

There is an interesting historical footnote to the current episode. Around the turn of the century J. P. Morgan himself refused to allow his companies to sell voting shares to the public for fear that a sentimental, emotional or uninformed public would elect non-Morgan directors to control the company. It is clear that J. P. Morgan was no unalloyed champion of free markets. Of course he was wrong on all scores. The public, operating in open markets, has managed over and over again to act rationally and intelligently. But apparently now, in 1970, of all times the successors to J. P. Morgan are succeeding, with the help of the federal government, in doing exactly what Morgan wanted to do—prevent public companies from falling into the hands of the public.

Yours very truly,

HENRY G. MANNE,
Kenan Professor of Law and Political Science.

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