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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, D.C. 20510

February 1, 1983

CHAIRMAN'S OFFICE

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SEC. & EXCH. COMM.

The Honorable John S.R. Shad
Chairman
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Dear Chairman Shad:

We welcome the announcement that the Securities and Exchange Commission will shortly begin a full-scale study of the federal tender offer regulations, with an eye to proposing new legislation in Congress.

Commentators have suggested that the most feasible approach to current problems with tender offer law would be for Congress to revisit the program it began a decade ago, expanding the provisions of the Williams Act to deal with tender offer abuses, providing the judiciary with guidelines for determining the validity of challenges to bidder or management conduct during the course of an offer, and clarifying the respective rules of federal and state regulation.

The proliferation of contested take-overs over the past few years and the corresponding publicity has resulted in considerable Congressional interest in this subject. It would be most helpful to us if the Commission would address, among others, the following issues in its study:

What should be the role of the government in hostile take-overs?

What is a corporation's obligations to its shareholders, its employees, consumers, and the community in a take-over situation?

What abuses have occurred under current tender offer law?

Chairman Paul A. Volcker, of the Federal Reserve, has expressed concern "about take-overs distorting banking judgments or the credit markets." How might such distortions be prevented?

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What should be the involvement of states in regulating corporate take-overs?

Should shareholders of a corporation be given the right to vote on proposed tender offers within a specific period of time of the offer, and should a shareholder majority be required to approve acquisitions and take-overs?

Are "golden parachute" provisions guaranteeing executives salaries and other compensation after any change of control of a company in the best interests of shareholders of that company? Should federal securities law require shareholder approval of golden parachutes or that their provisions be spelled out in detail in companies' proxy materials?

Should interest on money borrowed specifically to buy the common stock of another corporation in a take-over situation be tax deductible?

Should retained earnings used to acquire other companies be subject to a minimum merger tax?

Should additional time for competing bids be provided under a rule of auctioneering?

Should a federally imposed period of advance notice be established requiring a bidder to file registration materials with both the SEC and subject company management prior to the implementation of a tender offer?

Are individual shareholders currently receiving adequate and timely notice and information about take-overs (including competing offers)?

Do target corporations currently have sufficiently direct access to all their individual shareholders to conduct a responsible and reasonable defense against a hostile take-over?

It has been suggested that tender offers serve as an effective mechanism to discipline incompetent management and to permit the transfer of productive assets to the control of more efficient management. On the other hand, it has been agreed that the fear of hostile take-overs tends to focus management's efforts on short-run profits while giving less attention to longer term investments needed for economic growth. What role, if any, should federal regulation play in striking the proper balance between these conflicting concerns?

The Chairman and Chief Executive Officer of a company which was a major and successful player in a recent multibillion dollar acquisition contest has embraced the view that "Maybe there's something wrong with our system when companies line up large amounts of money in order to purchase stock, when it doesn't help build one new factory, buy one more piece of equipment, or provide even one more job." How, if at all, should federal regulation address this widespread frustration?

We recognize that a number of these issues are outside the direct jurisdiction of the Commission. However, it is our understanding that the Advisory Panel being put together by the Commission to study tender offers will be made up of outside professionals, including economists.

We believe that the public interest and the Congress would be best served by a broad study of the many issues surrounding tender offers and particularly hostile take-overs, and, therefore, we encourage the Commission panel to be comprehensive in both its approach and charter.

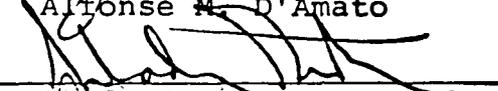
On July 13, 1979, the Banking Committee requested the Commission to review 7 specific questions concerning coverage of the Williams Act. The Commission provided its response on February 15, 1980. It would also be helpful if the Advisory Panel could review the questions and answers and provide any updating which the Panel may deem necessary.

To assist us in considering this subject, we would appreciate receiving the study and recommended legislation from the Advisory Panel by July 31, 1983.

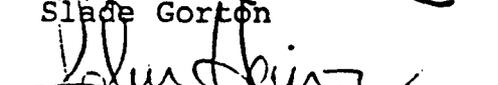
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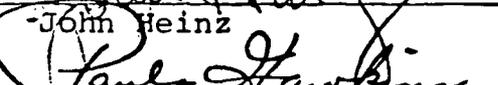
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Slade Gorton



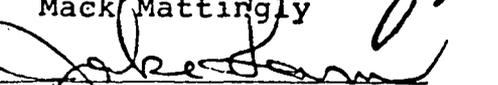
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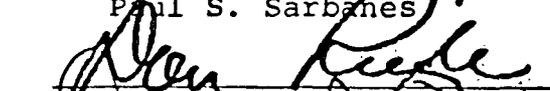
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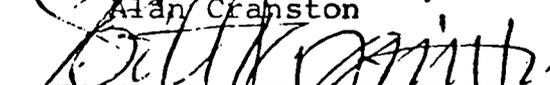
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