Ant

The Signal Companies, Inc.

11255 North Torrey Pines Road
La Jolla, California 92037
Telephone 619 • 457-3555

Michael D. Dingman
President

March 3, 1983

Linda Quinn, Esq.
Associate Director
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street N.W. - #3140
Washington, DC 20549

RE: SEC Advisory Committee on Tender Offers

Dear Ms. Quinn:

In response to Chairman Shad's letter of February 18, I enclose an overview of my preliminary views on the matters discussed in the Outline of Issues.

The Outline seems to me an excellent starting point for the work of our Committee. The only issue I might suggest for addition is whether a bidder should be allowed, as he now is, to go above 5% during the ten days before he files his 13D.

I am a businessman, not a lawyer or accountant. The areas in the Outline which interest me most are business issues: the problem of unequal treatment of shareholders of the target (II, B, 2 of the Outline) and the difficulty of communicating directly with the beneficial holders of shares (II, B, 1, d, 4 of the Outline). I also have an interest in target company responses (II, B, 6).

I very much look forward to working with you and with the other members of the Committee.

Yours sincerely,

Michael D. Dingman

Enclosure

March 3, 1983

Brief Summary of My Present Views as to Tender Offer Regulation

Michael D. Dingman

I am not a lawyer or an accountant or an arbitrageur. I approach the subject of tender offer regulation not as a technician, but as a businessman with some practical experience of acquisitions.

Here are my preliminary views on the subject:

Tender offers can be a good thing. Takeovers can (but do not necessarily) result in greater efficiencies. I like to think this is what happened in the case of Wheelabrator-Frye's tender offer for Pullman. Not all tender offers, however, have either the purpose or the result of increasing target company earnings, and I would not prohibit reasonable defensive measures.

The present system needs improvement. I am not generally in favor of increased regulation. I would strongly resist, for example, any suggestion that the SEC or some other governmental agency be required to pass on whether a tender offer is "fair." I am also acutely aware that if you tinker with one aspect of something as complex as tender offer regulation, you can produce totally unexpected distortions and possibilities for abuse.

This said, let me mention areas in which existing regulation of tender offers could be significantly improved.

Shareholders should be treated equally. At present, some bidders acquire working control through purchases in the market with no premium being paid, or through tender offers for 51%, and then leave the remaining shareholders dangling in an after-market with no depth and no prospects. There really isn't any effective defense against a creeping market purchase program, other than putting the company up for sale or buying out the bidder, a la Icahn. Other bidders structure two-tier offers: $75 cash for 51%, $50 face amount of deeply subordinated, non-cumulative, unsecured, low interest paper for the back end.

The nimble and the well-advised (the arbitrageurs) may benefit; the average shareholder all too often does not.

One approach to solve these problems, which I believe resembles the British approach, would be to require all purchases by a bidder who exceeds a threshold such as 20% to be by a formal tender offer for all the remaining shares, at the highest price

and the same kind of consideration the bidder paid in buying up to the threshold amount.

This approach:

-- Treats shareholders equally--arbitrageurs and non-arbitrageurs alike.

-- Treats similarly all takeover attempts, regardless of their form. Why should a massive market purchase program not be regulated like a tender offer, with a fixed price for all, withdrawal rights, and a minimum expiration period?

-- Would eliminate the need for shark repellents such as staggered boards and greater-than-majority voting requirements on mergers. (Indeed, I think such shark repellents could properly be prohibited, if the laws were changed to require a follow-on offer by a bidder who goes north of 20%.)

-- Would allow a bidder to buy enough stock to serve as an effective base from which to launch a proxy contest to oust a target company management which was demonstrably corrupt or incompetent.

The 10-day sneak should be outlawed. There is no reason why a bidder, having bought 5% of a target, should be free to gallop as far as he can (subject to Hart-Scott limits) in the 10 days before a 13D must be filed.

To require shareholder authorization of tender offers is unworkable and unnecessary. Unworkable, because of the complexities and inequities which would ensue. While the bidder's shareholders are considering an offer, would the target's management be free to engage in all manner of defensive maneuvers? Or would new complicated regulation of defensive measures be required to prevent this? And wouldn't a requirement of shareholder authorization give an undue advantage to a private bidder, or a foreign bidder, which would not need to obtain shareholder approval? Or to a first bidder, who might be able to proceed while a second bidder was still awaiting shareholder approval?

Unnecessary, because there are other checks against imprudent and excessive tender offers by would-be empire-builders: the threats of shareholder suits, proxy fights, investor disaffection, and loss of respect and face in the business community. Some or all of these checks, in my view, have operated to cool bidder enthusiasms since the Bendix-Martin Marietta frenzy.

Not all defensive measures are reprehensible. Just as not all tender offers are bad, not all defenses should be outlawed. The propriety of particular measures depends on the facts. Employment contracts can be reasonable. An option to a white knight may well be necessary to induce a bidder at a higher price, for the benefit of all shareholders. The sale of a substantial asset may be the best way of realizing the value of the asset for the shareholders. (Besides, if the asset is important enough, state law will require a shareholder vote).

Instead of prohibition of defensive measures, I would look to directors to exercise reasonable business judgment (tempered by the likelihood of shareholder suits based on excesses). As I understand it, courts in reviewing defensive measures look--as I think they should--to see whether the target's board has truly independent (non-management) directors, and whether the particular defensive measure was approved by such outside directors. I have long been a proponent of having boards which are largely made up of independent outsiders, to provide a disinterested review of corporate action.

Communication with shareholders should be improved. Both bidders and targets have trouble reaching the ultimate beneficial owners of shares. These difficulties have increased with the increase in nominee ownership and the use of depositaries. While this problem is certainly not limited to the tender offer area, it is one which the SEC should address.

M. D. D.