

M E M O R A N D U M

June 11, 1983

TO: Advisory Committee on Tender Offers
FROM: Edward L. Hennessy, Jr.
RE: Comment on Advisory Vote Recommendations

After thinking over last Friday's discussion, I would like to record a change of view on one issue. This is the matter of advisory votes.

Advisory votes, both for change of control provisions generally and for change of control compensation, would inject a novel and far reaching element into shareholder voting and proxy solicitation. Upon reflection, I doubt whether the abuses we have identified call for so drastic a remedy.

The Committee's recommendation (42), which would require appropriate levels of support for supermajority charter provisions and require their submission for periodic shareholder ratification, will protect against abuses in the adoption and perpetuation of supermajority provisions. Submitting these matters to advisory votes as required in recommendation (43) should not be necessary. As for the remaining issues referred to in the advisory voting recommendation - disenfranchisement, standstill agreements and golden parachutes - protection against abuses in these areas will still flow from the provisions of recommendation (43) requiring "change of control" disclosure in the proxy statement and from the

shareholders' existing access to the proxy machinery. The proposed advisory votes would involve shareholders and management in a cumbersome new process which, apart from its implications for changing the nature of corporate governance, is out of proportion to the benefit it seems likely to achieve.

cc: Mr. David Martin
Ms. Linda C. Quinn