

MEMORANDUM

May 9, 1983

TO : Advisory Committee on Tender Offers

FROM : David Martin

RE : Meeting with Representatives of Reorganization
Departments

On Thursday, May 5, 1983, Linda Quinn and I met with 14 representatives of reorganization departments and of other entities involved in the securities processing industry. The meeting, which was hosted by The First Boston Corporation, was also attended by Robert Case of Morgan Stanley, and Jeffrey Rosen and Kathy Kelly of First Boston. (A list of attendees is attached).

The purpose of the meeting was to gather informal views on current problems with communication procedures during tender offers between reorganization departments and shareholders whose shares are held in street or nominee name. (See attached agenda.) The discussion at the meeting revolved generally around two topic areas: communications downstream between reorganization departments and beneficial holders, and the processing of tender offer documents upstream to bidders. It is anticipated that the Advisory Committee will receive formal written comments presenting the views and associated recommendations expressed at the meeting.

A. Communications with Beneficial Holders

Reorganization departments differ in function from firm to firm, but as a rule they handle mergers, acquisitions, conversions, tender offers, and other transactions that result in a change in form of security. Reorganization departments generally do not handle routine purchasing and selling of securities or proxy solicitations. Representatives at the meeting indicated that the reorganization department of a firm views its role as more than just the distribution to and processing from shareholders of tender offer documents. The reorganization department recognizes a responsibility to communicate and explicate all terms of all tender offers to beneficial owners of affected securities. Further, the reorganization department sees its function as assisting the customer in responding effectively to

a tender offer and any competing bids. It is in connection with these functions that the representatives encounter communications problems.

The representatives voiced concerns with the length and complexity of tender offer documents. As examples, they particularly mentioned such documents as the letter of transmittal and the notice of withdrawal. These forms, which reorganization departments must be able to reproduce and summarize for beneficial holders in a short period of time, are typically of such a length as to impede reproduction and distribution and of such complexity as to frustrate summarization. Various representatives are on a committee that is in the process of formulating a standardized and simplified form that will address these concerns. It was noted that along with standardizations another improvement would be to require these documents to be included physically within the prospectus.

Beyond the complexity of tender offer documents, many representatives expressed frustration with the various and frequently non-uniform time periods and deadlines that are applicable in tender offers. These not only are complicated to explain to customers but are also difficult to comply with, particularly when changes in offers are announced at the last minute and agents for competing bidders are in different cities. The group generally believed that there was not enough time in the system for beneficial holders to receive and react to the rapid changes that attend tender offers with more than one bidder. This ultimately favors the market professional who understands the complexities of tender offers and is better equipped to react to late breaking changes.

The group was exposed to the suggestion of a system where the applicable time period for the first offer would not be effected by subsequent bids. This was not well received because of the prediction that there would be too many last minute communications for shareholders to receive and digest. Many representatives expressed the opinion that it takes 10 days for any material change in the terms of any offer to be disseminated and acted upon by beneficial holders. In this regard, the group seemed to favor a system that would automatically extend the time period of an offer if there was a material amendment to its terms, i.e. a change in price, number of shares or major conditions. Some representatives also recommended that announcements of changes in offers be made only in the morning.

In terms of disclosure, the representatives voiced concern with both length and complexity of disclosure documents. One suggestion was to require a summary cover page. Another recommended more complete tombstone advertisements of the offer.

B. Processing of Tender Offer Documents

The other topic that the group discussed involved the difficulties in processing tender offer documents upstream to bidders. This discussion ultimately digressed to a specific review of mechanical timing problems. There seemed to be a general consensus that these problems would be eliminated with respect to shares not held by individuals by a book-entry delivery system. The representatives were aware and generally supportive of the Commission's proposed rulemaking in this area (see Release No. 34-19678 (April 15, 1983)), and many indicated their intention to submit comments on that proposal.

There were several interesting points with respect to processing. The representatives of depositaries generally agreed that they could come up with a preliminary count of the number of shares tendered within 10 hours of the expiration of the offer. These same representatives said it takes at least 48 hours from the time of receipt of a withdrawal to the time of mailing the securities back to the security holder. That time can be shorter where there is a window ticket stub, which is true of most tenders made by the reorganization departments. However, the representatives reiterated that the problems experienced by individuals in the mechanics of tendering and withdrawing were shared by professionals where depositaries were located out of town and, particularly, where the depositaries for competing offers were located in different cities.

ATTENDEES

<u>Name</u>	<u>Affiliation</u>
Nicholas Baldino	Chemical Bank; President, Stock Transfer Association
Joseph Bernava	Oppenheimer
Robert Case	Morgan Stanley
Angelo Cordaro	Morgan Guaranty Trust Company of New York
Salvatore DiBlasi	Paine, Webber, Jackson & Curtis, Inc.
Elef Fitrakis	Paine, Webber, Jackson & Curtis, Inc.
Michael Foley	Chemical Bank; Stock Transfer Association
Gary Hall	The First Boston Corporation
Kathy Kelly	The First Boston Corporation
David Martin	SEC
Vincent Negrì	Prudential Bache Securities Inc.
Jeffrey Rosen	The First Boston Corporation
Linda Quinn	SEC
John Schmidlin	Morgan Guaranty Trust Company of New York
Neil Sherron	Morgan Stanley
Emil Solpati	Asiel and Co.
John Vahoves	Merrill Lynch Pierce Fenner & Smith Inc.
Cal Van DeGiesen	Bankers Trust Company
Barry Weiss	Goldman Sachs & Co.

SEC Advisory Committee on Tender Offers

Meeting with Representatives

of

Reorganization Departments

Thursday, May 5, 1983

at

The First Boston Corporation

SEC Representatives:

Linda Quinn

David Martin

First Boston Representatives:

Jeffrey Rosen, Vice President

Kathy Kelly

Morgan Stanley Representative:

Robert Case

Purpose of Meeting: To discuss procedures and related matters associated with communications during a tender offer between reorganization departments and shareholders whose shares are held in street name.

Agenda of Items for Discussion:

1. What is the role of a reorganization department in communicating with shareholders during a tender offer? Is it confined to disseminating documents to shareholders whose shares are held in street name or does it extend as well to communicating with shareholders or their brokers with respect to the time periods, terms, and conditions and other details of an offer, assistance in completing tenders and advice on a course of action? How are shareholders kept informed of new developments (e.g. competing offers, changes in time periods, changes in the terms and conditions) during the period of an offer?
2. What is the experience of reorganization departments with the time periods for tender offers? Are there bottlenecks associated with disseminating information and advice on offers and new developments to shareholders and receiving a response? How are reorganization departments organized to react to changes in the terms of offers and to competing offers, and how quickly are shareholders able to respond?
3. How could communications with shareholders be improved during a tender offer? What could be done to improve and speed up communications (e.g. simplification of tender offer documents, changes in advertisements, prompt availability of shareholder lists to bidding companies, disclosures of beneficial holders of shares held in nominee name)?