

MEMORANDUM TO SEC ADVISORY COMMITTEE ON TENDER OFFERS



At the June 2 meeting of the Committee Orestes Michaly, the Assistant Attorney General in charge of the New York Bureau of Investor Protection and Securities and Chairman of the Tender Offer Committee of the North American Administrators Association, indicated that if a tender offer were kept open for 60 days most of the concerns otherwise expressed by NASAA could be substantially eliminated. NASAA's recommendations in addition to the 60 day offering period include some rather extreme suggestions including a pre-offer filing requirement.

NASAA cooperation will be required if the desire to put securities offers on a parity with cash offers is to be realized. Clearly, "blue sky" jurisdiction exists in the states with respect to securities offerings. Mr. Michaly seemed to indicate in his testimony that a 45 day period would be satisfactory. I suggest that serious consideration be given to adopting this period. It would not appear dramatically to tip the balance in favor of targets.

I believe, with Marty Lipton, that with the equalization of cash and securities tender offers, front-end loaded tender offers should be proscribed or restricted.

The Subcommittee recommends that the issuance of stock during a tender offer representing more than 15% of the outstanding shares should be subject to shareholder approval. I agree and believe that shareholder approval should be extended to the sale of assets under these circumstances as well.

Irwin Schneiderman

cc: David B. H. Martin, Jr., Esq. ✓
Linda C. Quinn, Esq.