

By HAND TO LINDA QUINN, Esq

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
RECEIVED

JUN 21 1983

MEMORANDUM

OFFICE OF ASSOCIATE DIRECTOR
DIVISION OF CORPORATION FINANCE

June 15, 1983

TO : Advisory Committee Members
FROM : Linda C. Quinn
RE : Recommendations of the Committee Concerning
Timing Provisions for Tender Offers

DEAR LINDA - I
HAVE NOTED MY OWN
INTERPRETATION. HOWEVER
I FEAR WE ARE A MONSTER.
A SHOULD BE I THINK ALL BIDS
DEPENDS ON 30 OR 60 DAYS
WITH PRORATING AND PARTIAL
WITHDRAWAL THE SAME AS THE
ETC WITH THE ONLY EXTENDERS
EXCEPTION BEING IN A
CLEAN UP IN A
NON COMPETITIVE
SITUATION.
Sincerely
Marty

In the interests of assuring that the draft report being prepared accurately reflects the Committee's recommendations with respect to the minimum offering, prorationing and withdrawal periods, I have outlined our understanding of Friday's actions. Please advise me as soon as possible if the outlined provisions do not correctly reflect the decisions reached on Friday.

Minimum Offering Period

Initial Bid. The initial bid for a target is to be open at least 30 calendar days if the offer is for all the shares ("full bid") and 44 days if the offer is for less than all the shares ("partial bid"). ^{1/} A 40 day offering period for partial bids has not been used as this can result in only a 5 business day difference between full and partial bids.

YES

Subsequent Bids. The minimum offering period required of a subsequent bidder will vary dependent on the nature (partial/full) of the subsequent bid, the nature of the initial bid, and the date of commencement of the subsequent bid.

a. Subsequent Full Bid Following Initial Full Bid.

The minimum offering period for the subsequent full bid is 20 calendar days except that in no event will the subsequent bid expire prior to the 30th day from

YES

1/ Full bids will not be deemed to include two-tier bids with a "cram-down" feature but will be deemed to include partial bids where a second step acquisition of the remaining shares at substantially equivalent per share consideration is promised.

commencement of the initial bid. It seems to me that you have to reference the 30th day rather than the expiration date of the initial offer, assuming that you do not intend to require the subsequent bid's offering period to be lengthened by the initial bidder's voluntary use of a longer period. i.e. If the initial bidder had an offering period of 50 days, I assume that you do not want the subsequent bidder to be required to use a 30 day minimum offering period or the same expiration date as the initial bidder.

Thus, any subsequent bid commenced within the first 10 days of the initial bid will have a minimum offering period of 20 days plus the number of days remaining in the initial bidder's first 10 days. A subsequent bid commencing on the 10th day of the initial bid will have a minimum offering period that expires on the same date as the initial bid expires (assuming the initial bid uses the minimum period). A subsequent bid commencing after the 10th day will have a minimum offering period of 20 calendar days.

YES

b. A Subsequent Partial Bid Following an Initial Full Bid.

The minimum offering period for a subsequent partial bid following an initial full bid is 34 days.

I am not certain that is what you intended, as the 14 day disincentive for partials would be reduced for partials commencing within the first 10 days of the initial full bid. However, you should also note that even with the 34 day period (as opposed to the 44 day period), partial tender offers commencing after the 10th day of the initial bid can be required to be open significantly past the expiration of the initial bid. E.g. a partial bid commencing on the 20th day of the initial bid cannot close for 24 days from the expiration of the initial bid.

YES

Note, further that I have not included a provision that would assure that the expiration date of the subsequent full bid could not precede that of the initial partial bid. I thought to do so (i) would be inconsistent with the two week shorter offering period incentive for full bids, and (ii) would increase the offer period for the full bid, which is just the opposite result of the "tailgating" principle the Committee has adopted.

c. A Subsequent Full Bid Following an Initial Partial Bid.

The minimum offering period for a subsequent full bid following an initial partial will be 20 calendar days. Note that the full bid will expire more than 14 days prior to the initial partial bid, if the subsequent offer commences within the first 9 days of the initial offer.

YES

I assume that you did not intend to require a 30 day offer period for a subsequent full bid, which seems to be inconsistent with the "tailgating" theory.

d. A Subsequent Partial Bid Following an Initial Partial Bid.

The minimum offering period for the subsequent partial bid will be 34 days 2/ except that in no event will the subsequent partial bid expire prior to the initial partial bid.

YES

Prorating Period

The prorating period will be required to be the equivalent of the applicable minimum offering period. Thus, if a bidder voluntarily uses a longer offering period, it need not have a coterminus prorating period.

Prorating will be required for the five days from announced increases in price or shares sought. Multiple pools are to be permitted. I assume that the only way you could create a second pool is to voluntarily extend the offer beyond the minimum offering period and after the extension, announce a price increase.

YES

Note that if a bidder uses the minimum offering, prorating and withdrawal period, all periods are in fact coterminus.

YES

2/ Parallels the minimum offering period for the subsequent bid in paragraph (b).

Withdrawal Period

The withdrawal period will be required to be the equivalent of the applicable minimum offering period; thus, if a bidder voluntarily uses a longer offering period, the withdrawal period will terminate prior to the expiration date.

YES

No extension of withdrawal rights is proposed to be required. Thus, withdrawal rights can expire prior to prorating and expiration.

YES

One possible problem with the single withdrawal period that has not yet been addressed by the Committee is the protracted offer. Do you want to let a bidder hold shares tendered, if the offer is extended significantly beyond the applicable minimum offering period? 3/ The most common instances of the protracted offer are those where regulatory approval (typically banking or insurance agencies) of changes in control is required; litigation and antitrust delays are not uncommon. Moreover, if there is no withdrawal extension, bidders would seem to have less incentive to take down shares as soon as they are able and could be more inclined to extend a less than successful offer and hold shares already tendered.

I WOULD
KEEP
60 DAYS

Of course, if withdrawal rights are extended or reopened, the problems of termination of prorating prior to withdrawal may reemerge.

3/ Currently withdrawal rights resume on the sixtieth day from commencement.