

MINUTES
CABINET COUNCIL ON ECONOMIC AFFAIRS

June 28, 1984

8:45 a.m.

Roosevelt Room

Attendees: The Vice President, Messrs. Regan, Block, Baldrige, Porter, Abrams, Ford, Lighthizer, Niskanen, DeMuth, Gibson, Halpert, Healey, Leshner, Platt, McCormack, Neal, Prendergast, Wallison, Ms. McLaughlin and Ms. McCaffrey.

1. Tender Offer Legislation

Mr. DeMuth briefed the Council on corporate tender offer and takeover legislation scheduled for markup later today in the House Energy and Commerce Subcommittee on Telecommunications, Consumer Protection, and Finance. Related provisions are contained also in the Garn bill recently approved by the Senate Banking Committee. Mr. DeMuth explained that he prepared a draft letter to Representative Wirth, chairman of the House subcommittee, opposing H.R. 5693, H.R. 5694, and H.R. 5695.

Mr. DeMuth explained the general economic benefits resulting from takeovers, including the effects of encouraging market discipline on management and greater market efficiencies. He stated that legislation restricting further the actions of corporate bidders and targets would unwisely discourage takeovers, reduce economic efficiency, and ultimately harm shareholders.

Specifically, the legislation would prohibit by Federal statute certain defensive techniques such as "golden parachute" management compensation agreements, self tender offers, "greenmail," and new stock issues by a target company during a takeover attempt. It would also require earlier disclosure of bidders' intentions to acquire significant portions of a company's shares.

He noted that State corporate law already deals with such practices and that there is no compelling reason for Federal preemption. Moreover, he added, this legislation could easily lead to further Federal legislation in this area culminating in Federal corporate chartering. Any requirement that management show their actions were "prudent and fair" would inevitably result in a vast increase in litigation.

The Council's discussion focused on the economic results of tender offers, the potential for management abuses in takeover

battles, and the economic effects of specific management practices used to avert takeovers, particularly the practice of "greenmail" where a target corporation agrees to buy back, at a premium, stock from a hostile bidder. Some members observed that "greenmail" may be harmful to shareholders when management assumes increased debt in order to preserve itself and protect its position. Others noted that "golden parachutes" are discouraged through provisions in the recently passed Deficit Reduction Act of 1984. The Council also discussed whether private sector associations, such as stock exchanges, have the capacity to discourage abusive corporate behavior.

Mr. DeMuth agreed to monitor the Wirth subcommittee markup today and incorporate the points made during the Council meeting in the letter. He will also discuss the Administration's concerns with the Chairman of the Securities and Exchange Commission and report back to the Cabinet Council.

2. U.S. Agricultural Outlook

Assistant Secretary of Agriculture William Lesher presented an update on the domestic agricultural outlook. He reported that most grain and meat prices will give farmers a satisfactory return on investment over the summer months. While consumers will face higher food prices, food prices are expected to rise more slowly than the consumer price index for the rest of 1984.