

April 30, 1987

MEMORANDUM

TO: Senator Donald W. Riegle, Jr.

FR: Steven B. Harris

RE: Background Material Regarding Issues Under Consideration for
Tender Offer Legislation

Attached are summaries of the issues which are being considered at the staff level regarding tender offer legislation.

At this time I would take the position that you are listening to all interested parties.

Proxmire has publicly advocated:

1. Tightening the margin rules on debt for corporate takeovers.
2. Extending the minimum offering period from 20 business days to 90 business days.
3. Requiring bidders to tender for the entire company once a bidder reaches a certain threshold -- 15 to 20%.
4. Prohibiting a multi-service firm from engaging in both risk arbitrage and merger and acquisition activity at the same time.
5. Increasing the liability of firms and their senior management for the misconduct of their employees.

You might make clear that you do not share Senator Proxmire's view on a number of these issues and are working to moderate some of Proxmire's positions.

Tender Offer Legislation

Issues Under Consideration

1. Close the 10-day period.

Currently raiders can accumulate 5% of a company's stock but then they don't have to disclose the fact for 10 days. Considering closing the 10-day period completely and reducing the threshold to 1, 2, or 3%.

2. Lengthen the tender offer period anywhere from 20 to 90 business days.

3. Prohibit creeping tenders.

(a) Require anyone increasing his ownership to over 15% of an issuer's stock to do so in a public tender offer.

(b) Require anyone increasing ownership above a certain threshold -- say 20% -- to tender for all the outstanding shares.

4. Require firmer financing of takeovers.

(a) Apply more sweeping margin rule that would restrict the use of junk bonds or other borrowings to finance the purchase of large equity blocks for control purposes. Require those who seek to acquire control of a corporation through the tender offer process to finance at least half the deal with their own assets.

(b) Prohibit institutions which are subject to federal and state regulations, including pension funds, from investing in below-investment grade paper (junk bonds).

(c) Require 100% financing commitments before allowing a tender offer to commence.

5. Require fuller and more timely public disclosure of stock holdings and transactions which can materially affect a stock's price movement.

6. Amend the definition of the term manipulation to prohibit practices which result in companies being put into play as a speculative exercise.

7. Address the practice of "sweeping the street" by requiring that a party dropping a tender offer be required to observe a two-week cooling off period before re-entering the market.

8. Prohibit Greenmail, Golden Parachutes, and Poison Pills in the context of a takeover.

9. Additional penalties for violations of the tender offer laws, such as creating an explicit private right of action for violations of Section 13(d) -- which governs tender offer disclosures.

10. Risk arbitrage.

(a) Preclude brokerage firms and their employees from investing in, or owning any securities issued by, third party risk arbitrage operations.

(b) Require all risk arbitrageurs to register with the SEC as risk arbitrageurs.

(c) Prohibit risk arbitrage and merger and acquisition activity in same firm.

11. Require fuller disclosure regarding blind acquisition pools and investment trusts.

12. Make it legal for pension fund managers to consider the long-term benefits of stock ownership as well as short-term factors in a contest for control as part of their fiduciary responsibility.

13. Increase firm liability for misconduct of employees including senior management.

14. Increase penalties for violations of insider trading as well as for obstruction of justice and perjury in an SEC investigation.

15. Restrict use of a pension fund surplus by management or a bidder in a takeover contest.

Basic Principles Underlying Legislation Being Considered by staff and Senator Proxmire

1. Full disclosure
2. Equal treatment of shareholders
3. Firm financing