

area of increasing significance in recent years and is to be distinguished from planned offerings of blocks of securities—dealt with primarily by the Securities Act of 1933, as well as ordinary trading of securities in the secondary markets which is the primary focus of existing provisions of the Securities Exchange Act.

The bills have a much closer relationship to existing provisions of the Exchange Act regulating solicitation of proxies, since acquisitions of blocks of voting securities are typically alternatives to proxy solicitations, as methods of capturing or preserving control. In either case there is involved a form of industrial warfare in which the stakes are high, and two or more groups are attempting to manipulate the public security holder to their own advantage. A proxy fight, as such, is an attempt to ruin the public security holder's vote, leaving him in a position to share with other security holders the advantages or disadvantages of the outcome of the struggle for control. The special problems of the block acquisition result from attempts to cause, or resist, a substantial shift of ownership away from existing security holders.

The bills before you deal with stock acquisitions in three specific contexts—first, the acquisition by means of a cash tender offer of more than ten percent of any class of stock of a publicly-held company; second, other acquisitions by any person or group of more than ten percent of any class of stock of a publicly-held company; and third, the repurchase by a corporation of its own outstanding shares. Each of these situations presents its own unique problems.

The Commission agrees that there is need for further protection of the public security holders in this area. We do not wish to imply, however, that block acquisitions should be encouraged or discouraged, or that the Commission should have power or responsibility to pass on the merits of a particular acquisition or proposal. As in most other areas entrusted to it, the Commission's responsibility should be limited to requiring appropriate disclosures, to guarding against deceptive and unfair devices designed to coerce or prevent action, and it should be provided with adequate tools to deal effectively with the various techniques that have been developed, and are continuing to be devised, to seek or to prevent takeover bids and other matters dealt with in the bill. Finally, adequate authority must be accorded to deal with the violations of these precepts—all designed to give the investor the fairest possible opportunity to make his own investment decisions.

TENDER OFFERS

I turn now to tender offers. Statistics recently published show that the aggregate of cash tender offers has grown from less than \$200 million in 1960 to almost a billion dollars in 1965, surpassing stock-for-stock tender offers, which aggregated about half a billion dollars in each of those years.

In this area the bills are designed first, to provide those who receive a tender offer with information adequate to an informed decision whether or not to accept; and second, to eliminate conditions surrounding the offer which discriminate unfairly among those who may desire to tender their shares or unreasonably restrict their freedom of action with respect to deposited shares at a time when there is no assurance that the tender of their shares will be accepted.

A tender offer is quite different from the ordinary market transaction with which the average investor is familiar. In so far as it is an offer at all it is subject to complex and sometimes deceptive conditions. Rather it is an invitation to the public security holder who "tenders" his security to give the other party an option—to be exercised only if certain minimum shares are tendered within a specified time and perhaps specifying a maximum which the original "offeror" is prepared to take—but giving him discretion to accept a lesser or larger amount or to extend the time limits. Tendering in response to such an offer involves deposit of the public security holder's shares or obtaining a guarantee from a stock exchange member or other financially responsible person that they will be deposited. Some conditions of this character may well be a practical necessity. Otherwise there would be no inducement to the originator of the tender offer to pay above the current market price.

But what has developed is a one-sided document. An early response may prevent the unwary investor from taking advantage of a later and better offer—or put him in the position of having given an option on his shares for a substantial period of time without any assurance that the deal will go through, or, if it does, that there will be no unfair discrimination in the acceptance of shares. Sometimes the offeror promises acceptance on a first-come first-served basis, which has the effect of increasing the pressure for a hasty deposit—so that those who respond do not have a chance to take advantage of later and better offers,