

either from the same or a different source. Any tender proposal requires a security holder to make an investment decision and to do so under pressure. Typically, the price proposed is somewhat above the current market, and announced under conditions designed to leave the impression that immediate response is necessary. Typically, there is also no disclosure of the motives or plans of the person making the offer, or of the consequence to the particular investor of failing to tender his shares if a substantial percentage of the other security holders do so. Nor is there any explanation offered of any special pressures generated in the security markets as a result of the tender offer.

Information about a potential change in control can be particularly essential to an informed decision. A change in control brings with it the possibility of different operating results and different investment results, or perhaps the possibility of realizing on a company's liquidation value. This may be either good, or bad, depending on the facts and circumstances involved. But investors and their advisers cannot reach informed conclusions on the possible effects of a change in control until facts are available to them.

It is argued by some that the basic factor which influence shareholders to accept a tender offer is the adequacy of the price. But, I might ask, how can an investor evaluate the adequacy of the price if he cannot assess the possible impact of a change in control? Certainly without such information he cannot judge its adequacy by the current or recent market price. That price presumably reflects the assumption that the company's present business control and management will continue. If that assumption is changed, is it not likely that the market price might change? An example will show why. Assume that a company's stock sells for \$5 per share—its going concern value as assessed by investors. Its earnings are poor; its prospects dim; its management uninspired. Is a cash tender offer of \$6 per share adequate? Or do we need more information? Suppose a person believes that with control he can liquidate the company and realize \$15 per share, or maybe more. Certainly the company's shareholders would want to know about liquidation plans. Indeed, it is the plan to liquidate which makes the bidder willing to pay more than \$5 per share. Whether or not the company's liquidation value is generally known is not important, for without someone to carry out the liquidation, this value is unobtainable. If the company's shareholders, at the time of the tender offer, know of the plan to liquidate, would they consider \$6 per share adequate?

Where competing offers are made, at different prices, stockholders may have even more difficulty in making any sort of rational decision, and the confusion that develops in these situations can have a very serious adverse effect on public confidence in the integrity and openness of the securities markets. In one recent example, a small manufacturing company was the subject of a takeover bid by another company formed specifically for the purpose of making the tender offer by a group of persons whose identity was not disclosed. Two other companies made competing tender offers at the same time, a fourth corporation made an exchange offer and a fifth made an offer of merger. In these circumstances the shareholders were in no position to judge the significance of these competing offers or to compare the impact on the company of the cash offers with that of the exchange offer or the merger proposal. It is important to note that under existing law the proposed technique in at least two of the offers could have produced adequate information, but it would not have been possible to obtain comparable information with respect to the other offers.

One important potential protection to security holders is an opportunity for management to furnish any information at its disposal pertinent to the merits of the offer before the security holder responds to it. At the same time protection is needed against any management efforts designed to resist bids when the information furnished may be given in the context in which the desire to obtain existing emoluments may make difficult impartial and complete disclosure of relevant facts.

It would be naive to assume that tender offers are not, at times, opposed by managements motivated by their own interests in staving off a change in control. It would, however, be as much an unfair overstatement to suggest that management, in opposing bids, is motivated solely by self-interest as to suggest that takeover bids are always improper or dangerous to the interests of investors. It may be of interest to note that attempts to discourage shareholders from accepting tender offers take a variety of forms. Recently, in order to block a takeover bid, the management of one company hurriedly called a stockholders' meeting to obtain authorization to make a competing offer to buy its own shares