

Parenthetically, I would say, after reading this sentence again, it is not totally accurate. There were changes made in H.R. 14475 that paralleled many of the changes that were made in S. 510, as amended. We are really talking about the two provisions that we will get to in a minute.

These amendments were adopted after hearings on the bill in March 1967. The amendments removed features which the hearings showed to be highly objectionable.

The two major differences between the two bills are: one, the timing of the filing with the SEC; and two, the period for pro rata acceptance of tender offers.

1. Timing of filing with the SEC

Both bills require that a statement disclosing pertinent information be filed with the SEC, an objective with which the exchange agrees. S. 510 requires that the statement be on file with the SEC at the time the tender offer is announced to the public. H.R. 14475 would require the filing on a confidential basis with the SEC 5 days prior to public announcement.

Some background on how tender offers are conducted is important to explain the problems created by the 5-day advance filing requirement. Tender offers are invitations to shareholders to sell all or part of their shares at a price which is usually substantially above current market levels. Corporate management is bypassed, and shareholders are asked directly to sell their shares to the offeror.

The course of a typical tender offer is somewhat as follows:

(1) The offeror makes a public announcement that it is willing to purchase a specified number of a company's shares at a price above the current market.

(2) The offer is open for a specific period, usually 10 days or more.

(3) The offer usually requires that the shares must be irrevocably deposited by the specific expiration date.

(4) The offeror is not obligated to purchase any shares, if the number sought is not received.

(5) If more shares are received, the offeror need not purchase the excess.

(6) Some offers provide that the period may be extended. If so, the shares previously tendered are still irrevocably deposited.

Obviously, a company intending to make a tender offer strives to keep its plan secret. If word of the impending offer becomes public, the price of the stock will rise toward the expected tender price. Thus, the primary inducement to stockholders—an offer to purchase their shares at an attractive price above the market—is lost, and the offeror may be forced to abandon its plans or to raise the offer to a still higher price. The cost of an offer to purchase hundreds of thousands of shares might prove prohibitive if the price had to be increased only a few dollars per share.

A legislative requirement that increases the chance of premature disclosure of an impending offer can only serve to discourage the use of tender offers. These offers may be of great benefit both to the shareholders whose stock is being sought, and those of the company making the offer.

To insure secrecy and avoid leaks and rumors, and because of the relationship between the tender price and the market price is