

In this particular situation we are troubled with the Senate bill for the following reason. We had urged that the deposit be revocable, as Mr. Calvin indicated, for a substantial period of time, for a number of reasons, including those Mr. Stuckey pointed out. This goes to another point, and I will deal with it, if you wish.

The rumors with regard to the possibilities become rife long before anything happens and there are situations where people, knowing that negotiations are going on between two parties, will run in with a bid in the hope that, under this bill, for example, if the 7 days expire, they have an automatic profit because when the other fellow comes in they pick up the shares deposited even though the other fellow is offering twice as much. It doesn't even require going to the bank to make a profit. That has happened.

That is why we felt that it ought to be open because the shareholder is the fellow who is caught. That is why we think the 10-day period also compels people to rush and deposit before they have the benefit of information with regard to competing offers.

The history in this area has been that there have been competing offers and it is more so all the time. On this problem about rumors, as I indicated earlier, many offers are made by stock for stock exchanges, which are subject to registration under the Securities Act.

They have to file a registration statement at least 20 days before it becomes effective. The price is usually determined the day before effectiveness in the ordinary offering.

I think Mr. Stuckey is right. The sooner there is information about a prospective offer, the better, but that doesn't mean that they couldn't submit the information to us ahead of time even without the price as they do in registration and proxy statements today and in many other areas of the Commission's work.

We have enough flexibility to allow them to come in at the very last second with the price. We have permitted them to put the price in the material after they file it with us. I don't see any problem here. But we are seriously concerned that these things would work to the disadvantage of the investor rather than to his advantage.

I must say that I am sure my colleagues on both sides of me (Mr. Calvin and Mr. West of the New York Stock Exchange) believe just as firmly and sincerely that the 10-day limitation is in the best interests of the shareholders. I don't think they have any other motive. There is just a difference in our experience and attitude toward what is in fact possibly in the best interests of the investor.

Mr. STUCKEY. This also could work a disadvantage to the corporation making the tender.

Mr. COHEN. That is exactly right. This is exactly why we want to keep this bill completely free of any influence by the Government or otherwise or by action of the Congress so that the forces in contention can have full play. Anybody who feels he would like to make an offer can do so with full information and the shareholder will have a fair opportunity to consider them all and to arrive at an informed decision.

As it is right now, and as it may be under this bill in this respect, the poor shareholder may become a pawn. That is what we are worried about, I am sorry.

Mr. STUCKEY. Thank you, sir.