

at a higher price. In another situation, after a tender offer was announced, management proposed a stock split and shareholders were led to believe, contrary to fact, that approval of the stock split was an alternative to accepting the tender offer. Frequently the takeover bidders, and management opposing a tender offer, resort to extensive newspaper advertisements, or other forms of communication, not subject to the explicit disclosure requirements of the securities laws, with the result that shareholders are inundated by a rash of charges and countercharges not easily, or in reasonable time, susceptible to control under the antifraud provisions of the statutes. The plain fact is that shareholders are not in a position to make informed decisions concerning the terms of the tender offer.

To meet this problem, the bills would require a person making a tender offer for more than 10 per cent of a company's securities to file a statement with the Commission disclosing his identity and background, his shareholdings in the company, the source and amount of the funds to be used and any loans he has made to obtain the funds, any plans he may have for major changes in the company's business, and any arrangements he may have with any other person with respect to the company's securities.

Consistent with the existing pattern where the takeover is subject to the proxy rules or registration provisions of the securities acts, the Commission would be given rule-making authority to require additional information in the statement, to prescribe the minimum information required in advertisements and to develop appropriate rules with respect to the techniques employed to make the statutory scheme effective. Thus, these provisions would assure that material information was effectively brought to the attention of shareholders and, in cases of opposition or competing tenders, would prevent certain types of high-pressure appeals and procedures possible when no restraints, other than the antifraud provisions of the securities laws, relate to these activities.

The procedures provided by the bills in the case of contested tender offers are analogous to those now followed when contending factions solicit proxies under the Commission's proxy rules. These rules, which were developed entirely from a simple delegation to the Commission of rule-making authority and responsibility, are under continuous scrutiny and review in the light of experience and are generally accepted as having been successful in providing adequate and accurate information to shareholders in contests for control of their companies. While there are obvious differences between tender offers and proxy contests, there is in both situations the common element of concern with the future management and control of the company. Adequate material information is equally important to a shareholder who is faced with a decision whether to sell his securities or retain his investment in the company. We believe that the bills provide a suitable framework for providing that information without unduly hindering tender offers which are or may be beneficial to the stockholders.

The second objective of these bills is to assure fair treatment of all shareholders who decide to accept a tender offer. Often takeover bids are made under circumstances which place undue pressure on shareholders to act hastily and to accept before management or any other group has an opportunity to present opposing arguments or competing offers. On occasion because of management's advice to its shareholders that their stock was worth more than the amount offered or as a result of competing offers, tender prices have been substantially increased.

In one instance, shares that had been deposited in response to a cash offer for \$36 a share on a first-come first-served basis were promptly taken up by the offeror, even after a second bid at \$50 a share had been made by another offeror. Furthermore, under existing circumstances, shareholders are not assured that all, or any, of their shares will be taken up if tendered.

The Senate bill contains three substantive provisions designed to assure that all stockholders who tender their shares are treated fairly. First, it provides that deposited securities may be withdrawn at any time during the first seven days after the date of the original offer, or at any time after 60 days from the date of the original offer, except as the Commission may otherwise prescribe. Second, it provides that where a greater number of shares are tendered than the offeror is willing to accept, the shares accepted must be taken pro rata from each stockholder in proportion to the securities deposited during the first ten days. Third, when the terms of an offer are changed to raise the price, the higher