

before the new directors take office, the issuer must file with the Commission and furnish to its stockholders information substantially equivalent to that which would be required if the new directors were being elected at a meeting of the stockholders.

CORPORATE REPURCHASES OF THEIR OWN SHARES

Another phenomenon of increasing importance is the growing tendency of corporations to repurchase their own securities. According to a recent study, corporations listed on the New York Stock Exchange spent more than \$1,300,000,000 during 1963 to purchase over 26,600,000 of their own shares. The amount expended for this purpose exceeded the amount of capital raised by these companies by selling new shares. An indication of the extent of the increase in the volume of corporate purchases of their own shares may be obtained by comparing the data for 1963 with the data for 1954, when the number of shares purchased by New York Stock Exchange listed companies was 5,800,000.

These purchases may be made for perfectly legitimate corporate purposes. A corporation may simply wish to reduce its outstanding capital stock, particularly when it has sold operating divisions or subsidiaries and has excess cash available. If the market price of its shares is less than book value or otherwise at a depressed level, the company's shares may be viewed by management as a good investment. Or the company may wish to have shares available for options, acquisitions or other purposes without increasing the total number of shares outstanding.

However, purchases by a corporation of its own shares can be used to affect the control of the corporation. The management may cause the corporation to repurchase shares for the purpose of preserving or improving the management's control position, or to counteract a tender offer or other takeover bid.

Whatever the purpose, such purchases may also have a significant effect on the market price of the shares. We have recently dealt, under existing antifraud provisions of the Exchange Act, with situations in which repurchases of shares were timed to increase the market price for such shares, while the company was negotiating to acquire other companies in exchange for such stock. In the case of one company, a repurchase program was actually used on a number of occasions to reduce the number of shares deliverable under existing contracts for acquisition of other companies.

But even where the management has no improper motive in repurchasing securities, substantial repurchase programs will inevitably affect market performance and price levels. That is why we believe that the rule-making authority contained in the bills would be a valuable adjunct to our authority under the existing antifraud provisions of the Act.

The provisions of the bills would make it unlawful for an issuer to purchase its own securities in contravention of rules or regulations which the Commission adopts because they are necessary or appropriate in the public interest, or to protect investors, irrespective of the question whether, or our ability to prove that, such activity is or may be fraudulent, deceptive or manipulative. The language, for this reason, is broader in its scope than presently applicable provisions of the Exchange Act.

The bills deal not only with purchases by the issuer itself but apply also to purchases by a parent or subsidiary of the issuer, or by a welfare or pension fund subject to the influence of the issuer's management. We have found that these give rise to similar problems.

Mr. COHEN. As the members of the committee are undoubtedly aware, one of the most striking economic and business developments in recent years has been the tremendous increase in corporate acquisitions and mergers. Every day, in the Wall Street Journal, and other publication of general circulation, one reads of two or three or more of these and often they involve the acquisition of corporations of substantial size and importance. One result of this trend has been the recent rise of the so-called "conglomerate corporation," which conducts numerous, separate and, most frequently, unrelated types of business.

Mr. KEITH. You have changed your statement there, Mr. Chairman.

Mr. COHEN. If I did it was inadvertent.

Mr. KEITH. You said in the statement "most frequently."