

I would like to speak to the No. 4 item. The House bill applies to tender offers for the securities of closed end investment companies registered under the Investment Company Act of 1940. The Senate bill does not. We believe that this difference is merely an oversight for which we are, in part if not wholly, responsible. Both bills apply to securities registered under the Securities Exchange Act of 1934. In drafting this provision, the fact that closed end investment companies are exempt from registration under the Securities Exchange Act because they are subject to comparable, and indeed somewhat more detailed, disclosure requirements under the Investment Company Act of 1940 was overlooked. But there is no reason why shareholders of closed end investment companies should not enjoy the same protections to be provided by this legislation.

While, as I have indicated, we prefer the provisions of the House bill to those of the Senate bill, insofar as the two differ, we regard these points as of lesser significance compared with the importance of enacting this needed legislation at this session of Congress. If this committee accepts the Senate version, we believe we could live with it. If experience demonstrated that there were serious problems, we could and would come back to you.

In closing, I should like to point out that the need for this legislation has increased rather than diminished since the Senate acted last year. The pace of tender offers accelerates and we have received from numerous Members of Congress, many businessmen, lawyers, and State and local officials expressions of serious concern with respect to various takeover bids which have been attracting so much attention. Allegations of fraudulent or improper practice are frequent. In fact, they are usual, and litigation alleging fraud by one side or the other in a contested tender offer occurs almost weekly. It is almost standard operating procedure.

We have had to respond that we will investigate allegations of fraud to the extent that they fall within our jurisdiction, and indeed we have. But, owing to the time required for such investigations, it may be that the tender offer will be all over before the investigation is completed.

We have had difficulty in some situations in reaching a decision that we could mount a fraud case. While I would not like to convey the impression that enactment of this legislation would cure all of these problems, it would certainly help. If there were an orderly, supervised process of disclosure and if some ground rules were laid down, not only would investors be better protected but everyone would know where he stands.

I think I should add one further point which is found in my written statement. When we appeared before the Senate we referred to a practice which had developed, called short tendering, which resulted in some disadvantage to investors and substantial advantage to certain people in the securities business.

The Senate committee thought that this was a matter within the anti-fraud authority of the Commission and that the Commission should deal with it. We have. We have adopted a rule which deals with that problem.

Thank you, Mr. Chairman.

Mr. Moss. Thank you. I would like to ask just a few questions here. Has the Commission collected data regarding the number of character offers made within any recent given period.