

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., July 1, 1968.

Hon. JOHN E. MOSS,
*Chairman, Subcommittee on Commerce and Finance, Committee on Interstate
and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. MOSS: As I indicated to you at the hearing on H.R. 14475 and S. 510 this morning, persons making cash tender offers are not required to file any statements with the Commission. After a review of our records, I find that we have no information on the total number of tender offers made during any recent period, on the spread between the tender prices and the market prices at the time the offers were made, on the number of offers which were successful during any recent period, or on the number of persons who made tender offers and thereafter sold their holdings to persons making counter offers.

As far as we are aware, the study by Professors Samuel L. Hayes III and Russell A. Taussig, published in the April 1967 issue of the Harvard Business Review and included as Appendix 2 to the Senate hearings on S. 510, covering the period from January 1, 1965 to December 31, 1966, contains the most complete compilation of information currently available concerning cash and stock tender offers. We know of no comparable compilation of data for more recent periods.

Sincerely,

MANUEL F. COHEN, *Chairman.*

Mr. Moss. Do you have any data showing the price at which the acquiring person is ready to accept tenders? If so, what is the spread between this price and the quoted market price?

Mr. COHEN. I don't have any specific information. I am sorry to sound so disorganized in this area, but we just don't have the information since there is no requirement that we be informed. But experience indicates that the price offered is usually a substantial premium over the market price, and this has been pointed to as enough to satisfy any shareholder. The problem that I have with that argument is that if someone is willing to pay, let's assume, 5 percent more than the market price, obviously he thinks it is worth more than 5 percent or else he would not offer it; and offers are made for a variety of reasons. I should go back a minute. Very often these offers are not for all of the shares. Therefore, a shareholder has a number of questions to decide:

One, does he want to remain with the company under the new and inspiring leadership which is sometimes offered; two, does he think that, in any event, even if he tenders all of his shares and they are not all taken he is going to continue as a member of that company. This raises the question whether he should sell his shares in the market which sometimes adjusts to these offers. Thirdly, he is not in a position to make the kind of analysis as among competing offers that he needs to make.

It is for all of these reasons that I think this bill, which would provide the Commission with a modicum of rulemaking authority, would permit us to develop appropriate rules.

If I may again go back to the analogy of the proxy rules, it should be recalled that we do have an elaborate scheme of proxy regulation which springs from a single sentence in the 1934 act, which, paraphrased in very plebian terms, merely says: "Mr. Commissioner, please adopt a scheme of regulation in the public interest."

Now, since we first started in this area we have had seven major revisions of the proxy rules with the assistance and cooperation of industry generally, the securities industry in particular and of the bar associations and other interested groups. I am repeating myself, but I