

critical, tender offers are normally made to shareholders immediately after a decision to make the offer is reached and a price has been determined. In spite of all precautions, there have been cases where tender offers have been preceded by leaks and rumors, which caused abnormal market problems. We believe the 5-day prefiling requirement will lead to the premature disclosure of impending tender offers and, therefore, result in market disruptions. We base our opinion on our experience with tender offers and our related market surveillance.

I would add, at this point that, if the committee would like, at the conclusion of this statement, Mr. West can recite some examples of where market disruptions have occurred in comparable situations.

Let us examine some practical problems which would result from this 5-day advance filing requirement. Suppose a company listed on our exchange wishes to acquire 10 percent or more of another listed company's stock by a tender offer. Its board of directors must authorize the filing of the advance statement with the SEC.

Presently, under the disclosure policy of the exchange, the company should make a public announcement of its intention as soon as the board of directors has acted. In order to maintain a market fair to all investors, the exchange can then temporarily halt trading in the stocks concerned, pending a public announcement of the offer. If, however, the prefiling requirement in the House bill is enacted a company would be prohibited from providing this information to the public, since to do so prior to the expiration of the 5-day period would be a violation of the Securities Exchange Act of 1934.

Since the advance statement must be held in confidence by the SEC, the Commission would paradoxically prohibit a public announcement informing shareholders that within a few days there may be an offer to purchase their shares at a price in excess of the current market. This would work to the disadvantage of investors.

For example, a small shareholder anywhere in the country may decide to sell 100 shares of his stock on the fourth day after a statement is filed with the SEC. The next day the tender offer is announced at a price of \$7 a share above where this small investor sold his stock. His shares were sold for \$700 less than he would have received as a result of the offer. Thus, because of the prefiling requirement, the shareholder is prevented for 5-days from learning of the desire of another to buy his stock at a premium.

In some situations, insiders having the benefit of advance information during the 5-day period could take advantage of shareholders who sell their shares unaware of the impending offer.

No matter how diligent a company may be, it cannot guarantee that news of its approaching offer will be held in confidence for 5-days. We cannot escape the fact that people talk. Their motives may be innocent. Nonetheless, purchases by persons knowing of the imminent tender offer might drive the price of the stock up to the tender price. This could have the effect of forcing the abandonment of a tender offer which would have been beneficial to shareholders.

During these 5 days, market activity would be taking place while the SEC was reviewing the information statement. The SEC could accelerate its review. Nevertheless, it would have to accelerate in every