

Mr. MOSS. Thank you, Mr. Cohen.

Mr. CALVIN. May I make one very brief comment?

Mr. MOSS. Certainly.

Mr. CALVIN. We agree with Chairman Cohen, obviously, that there is a need for the legislation. We have an honest disagreement as to approach. In our experience—and Phil West has been with the New York Stock Exchange for 40-some years, and has been head of the Department of Stock List and active in this area for most of that time—you have to have immediate disclosure. This is basic. This is a cardinal principle of the New York Stock Exchange. Even though the price was not filled in in the information statement, if the word got out that it had been filed, everyone knows it is going to be at a higher price than the current market. Whether it is \$2 more or \$5 more is not going to be that important. They know it is going to be more.

What we want and what we are interested in is in the Senate bill. It is in accord with our basic disclosure philosophy.

With that, I will continue with the statement.

Mr. COHEN. Mr. Chairman, may I interrupt?

Mr. MOSS. If there is no objection.

Mr. COHEN. If it is merely disclosing that they have filed something with the Commission, we would certainly have no objection to that.

Mr. CALVIN. But that isn't the problem. I say that it isn't sufficient to disclose the filing. You will know that these people cannot act in response to the offer. They know that it is going to be at a price higher than the current market price. The only thing to do is make the offer immediately, and file with the SEC at that time.

That is our disagreement. I think it is obvious to the committee.

If I may go on, Mr. Chairman.

Mr. MOSS. Certainly you may.

STATEMENT OF DONALD L. CALVIN—Resumed

Mr. CALVIN. In addition, all statements filed with the SEC would be subject to current provisions of State and Federal securities laws, which would protect those shareholders whose shares are being solicited by a tender offer from fraudulent and deceptive practices. These penalties should, in our opinion, normally be sufficient to insure that the information statements filed with the SEC will be accurate and complete in the first instance.

2. *Period for pro rata acceptance of tender offers*

Another of the exchange's suggestions to the Senate Banking and Currency Committee was that the period during which an offeror was required to prorate his acceptance should be limited to 10 days. This requirement was adopted and is now incorporated in S. 510, H.R. 4475, however, requires that the offeror must purchase on a pro rata basis for the full period of the offer. I would add, in the interests of full disclosure, it does give the Commission rulemaking authority, as pointed out this morning. We urge the subcommittee to adopt the limitation embodied in section 2 of S. 510, requiring pro rata acceptance of shares offered for the first 10 days of the offer period.