Some pro rata period is essential to permit shareholders to consider the offer and still have time to tender their shares.

A lengthy pro rata period works to the disadvantage of both the offeror and the tendering shareholder. The offeror cannot determine the percentage of shares which will be accepted. The tendering shareholder's entire holdings may be "locked in" for months only to have a major portion returned at the end of the pro rata period.

In other words, there is no certainty for either side. Our argument is that you have to cut it off at some point in time.

We believe that a combination of a 10-day pro rata period, followed by a first-come first-served period, is fair to all concerned. This has been the policy of the exchange which has stood the test of time in practical use.

Under this method, the original offer provides that if the number of shares tendered during the 10-day pro rata period is fewer than the number sought, shares will be purchased thereafter in the order in which they are received.

Market disruptions would also be more likely under a requirement that all tender offers must be made on a pro rata basis for the entire period.

Had there been such a requirement in the past, it would have increased both the length of tender offers and the time in which large blocks of stock would have been tied up. Withdrawing a sizable amount of a company's outstanding securities from the market for an extended period can drastically reduce the supply of stock available for trading. A limited supply of stock can produce abnormal price fluctuations.

We believe that the minimum 10-day pro rata procedure, as provided in S. 510, is fair to all concerned, while the unlimited pro rata period in H.R. 14475 will work to the detriment of the investing public.

In conclusion, the exchange supports S. 510 but opposes H.R. 14475. Again for these two basic reasons: Accordingly we suggest that the committee report out S. 510.

Thank you, Mr. Chairman.

Mr. Moss. Mr. Keith.

Mr. Keith. Suppose that we go along with H.R. 14475. Would you rather have no bill than H.R. 14475?

Mr. Calvin. May I give you my opinion first. That is a tough question because there is a need for legislation in this area. I would say, however, that we feel that the 5-day advance filing period is going to be very, very disruptive to the maintenance of a fair and orderly market. For that reason, we would rather have no bill at this time, and then try to get a bill that we think is workable. S. 510 provides for the 10-day pro rata period that we think is a workable procedure and that we have had for years. We think everyone agrees that it should not be pro rata for the whole period of the offering. The SEC does have rulemaking authority in the provision in H.R. 14475, but we think that some degree of certainty would be more desirable, like the S. 510 provision. But our problem with H.R. 14475 is basically the 5 days' advance filing with the SEC.

Mr. Keith. So that in the absence of compromise you would set if you got one of your two objectives.

Mr. West. I think so.

Mr. Keith. Particularly if you get the 5-day provision.