

Mr. CALVIN. Yes.

Mr. KEITH. Now, Mr. Cohen.

Mr. COHEN. I testified this morning that although we think that is wrong the legislation is important and, if this committee decided in its wisdom to adopt S. 510, we would do our darndest to make it work. Therefore, we would not interpose any objection. But I do want to point to one thing that I think was probably not intended, which is an inconsistency. Mr. Calvin suggested that having this pro rata situation for a longer period of time can have an effect on the market because stock would be locked up so to speak. I think those are the words.

Well, if a tender can be revocable at all times it is not locked up and if the market price adjusts, as it does, the shareholder will have a choice whether or not he wants to wait until the end of the tender period or sell, whereas with the provision that after 10 days you are locked up there is no question about it that the offeror can keep that stock locked up and not available to the market for as long as his underlying provision permits him to.

In other words, he says, "I will make an offer for 30 or 60 days with the right to extend it," and he could look it up for months.

Mr. STUCKEY. Would the gentleman yield.

Mr. KEITH. Certainly.

Mr. STUCKEY. While I think your responsibility goes to protect the investor I think you are really putting a heck of a hardship on a corporation under the assumption of even 20 or 30 days.

Mr. COHEN. Not on the corporation. The problem would be on the offeror if there is one.

Mr. STUCKEY. However, you want to put it. If he makes a tender and does not have some cutoff point then he does not know whether he has the stock to go ahead with it or not and it puts him in a bad situation and you are talking about some price fluctuations. In fact, I would love for someone to make an offer every 30 days for our corporation with no intention of purchasing it because I can assure you I would benefit from it or know how to.

Mr. COHEN. I suppose the fellow who did it for that purpose would probably wind up in some jail.

Mr. STUCKEY. What I am saying is we are leaving this open for this to happen.

Mr. COHEN. No, sir. I don't quite agree. As I indicated earlier, and this deals with both points, and I want to repeat what I said earlier, many more offers are made by stock for stock exchanges which require the filing of a registration statement with the Commission.

Mr. STUCKEY. And you have 20 days.

Mr. COHEN. That is right, and sometimes a little longer unfortunately. Then the offer is out for a specified period which is specified in the prospectus. During the first 20-day period no price is fixed at all in the sense that the terms of the security are not firmed up. Usually it is fixed at the very end of the 20-day period.

I don't see the distinction between the cash tender offer and the stock for stock exchange offer and yet the rules are different. Nor do I see that the situation of the company or the offeror, or, say, proxy contestant is different than exists in the proxy contest. You are giving votes and you do get proxies but you don't know how many have been rejected or torn up or replaced by later dated proxies given