

to others. This is a facet of this type of industrial warfare. Really it is the hard economic facts which make them possible. They see what the market is and what the price is and they know pretty well what is going on if they have the information necessary to arrive at a judgment.

I don't think that is that kind of problem. I want to emphasize that this is not a problem for the company. If it is a problem, it is for the offeror, and, therefore, I sympathize with any proposal which would equalize that situation. But, I think that, in trying to take care of either the company or the offeror, we have to remember that the exercise here is to protect the investor. I used the word pawn. Maybe that was injudicious but he does become the person to which this whole game is directed and he is the one who should have a fair opportunity to make a choice.

Mr. STUCKEY. Mr. Chairman, I think we are doing this but I also think we have an obligation to the corporations of the United States.

Mr. COHEN. I could not agree with that more.

Mr. STUCKEY. I think that really we could be working with a long extension of time to where it works to a disadvantage to the person making the offer, the tender.

Mr. COHEN. I think there is a cutoff point of 60 days in any event.

Mr. STUCKEY. I think with 60 days you have some problems but this is just a matter of opinion.

Mr. COHEN. I don't want to belabor the point but I want to re-emphasize as I stated at the very beginning that although we have some difficulties with the Senate bill the legislation is important from the point of view of the investor that if the committee decided to adopt S. 510 in lieu of H.R. 14475, and there is one change that I understand no one has objected to and that relates to the closed end investment company which was an inadvertence, certainly there would be no problem from the Commission.

Mr. MOSS. Mr. Keith would like to have your views, Mr. West.

Mr. WEST. I think we should keep in mind that this bill is intended to cover in principle cash tender offers, not exchanges of securities that might take place and be registered under the 1933 act, although there is a provision here to cover that as well. With a cash tender offer that means we are talking in terms of millions of dollars—that the corporation, or whoever is making this tender offer, must be prepared to put up that cash, because it is a firm commitment. And since it is a cash tender offer, the regulations will be fairly simple under the circumstances. I feel certain that any corporation that is going to make a cash tender offer will have the regulation that is going to very much in mind when it puts out an announcement. The only thing we are speaking of is this 5-day confidential treatment, you might say which, undoubtedly, if it passes, is going to have an effect on the market. Therefore, since all that represents is the possibility of embarrassment, as Chairman Cohen indicated, to the company making the cash tender offer—the Commission has to go after him because he did not disclose something—I think that immediate publicity of the tender offer is preferable to any embarrassment to the person making the offer. With the registration under the 1933 act, in practically every offer that I have seen, the terms of the exchange offer have been publicly stated before any registration statement is filed with the Commission, so that the public is on notice. And it has been disclosed what