

FROM: ATTORNEY GENERAL ROBERT ABRAMS  
TWO WORLD TRADE CENTER  
NEW YORK, N.Y. 10047

FOR FURTHER INFORMATION CONTACT:  
Timothy Gilles (212) 488-3334  
(212) 965-3730 (Home)

FOR IMMEDIATE RELEASE: April 3, 1979

ABRAMS APPLAUDS S.E.C. PROPOSAL IN SECURITIES TAKEOVER AREA

Attorney General Robert Abrams has sent a letter of comment to the Securities and Exchange Commission concerning the Commission's proposed rules relating to tender offers. He called the proposals "a step in the right direction to assure fair treatment to shareholders in tender offers."

Specifically, the Attorney General applauded the proposal to lengthen the period of time for a stockholder to consider a tender offer. He said this would help alleviate the problem of "Saturday Night Specials," which have created panic among subject company shareholders.

Mr. Abrams also commented on the issue of withdrawal rights which is dealt with by the proposed rules. On the basis of the experience of the Securities Bureau of the Department of Law, Mr. Abrams suggested that:

". . . withdrawal rights should be extended to those times after the commencement of an offer during which the offeror is prevented, by operation of law or by order of a court of competent jurisdiction, from purchasing securities which had been tendered.

"The problem of shareholder lock-ins by action of the government was recently highlighted by a matter before (the Attorney General's) office for review pursuant to the registration requirements of New York's Security Takeover Disclosure Act: Tiger International's tender offer for shares of Seaboard World Airlines, Inc. Tiger announced its offer on January 18, 1979. By the terms of the offer, tendering shareholders had the right to withdraw until the date originally set for its expiration, February 8, 1979. On February 9, 1979 Seaboard was successful in obtaining an order in the United States District Court for the Southern District of New York enjoining Tiger's purchase of the tendered shares and prohibiting the continuing of the offer. Tiger appealed and on March 9, 1979 the United States Court of Appeals for the Second Circuit reversed the order of the District Court permitting the tender offer to proceed. For the shareholders who had tendered approximately 373,000 shares prior to February 8, 1979, however, the result of the District Court's action had been to lock them into a position in which they could neither withdraw nor be paid for their shares until the reversal.

"A similar situation can occur where agencies of government attempt to enjoin the consummation of a tender offer. The Federal Trade Commission or the Department of Justice, for example, can sue to enjoin on antitrust grounds the acquisition of the shares by the offeror after the commencement of the offer but prior to the purchase of the shares. If successful in obtaining a preliminary injunction, tendering shareholders are locked, under the present statute, into their positions until the sixtieth day after the offer commenced."

The Attorney General feels that it is unfair to deny shareholders the right to withdraw under these circumstances. He therefore urged that, during such periods, shareholders ought to be able to exercise, at their option, a right to withdraw previously tendered securities.

Attorney General Abrams also noted that argument is scheduled before the U.S. Supreme Court for April 17 in the matter of Great Western United v. Kidwell, where the Supreme Court will be asked to rule on the constitutionality of the Idaho corporate take-over statute. Representatives of his office will argue as amicus curiae on behalf of New York State and several other states.