CAHILL GORDON & REINDEL

EIGHTY PINE STREET
NEW YORK, N.Y. 10005

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ROGER ANDRUS
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R. ANTHONY ZEIGER

JERROLD G. VAN CISE
COUNSEL
FREDDY DRESSEN**
EUROPEAN COUNSEL

WASHINGTON, D.C. OFFICE
1990 K STREET, N.W.
WASHINGTON, D.C. 20006

EUROPEAN OFFICE
19 RUE FRANÇOIS IER
75008 PARIS, FRANCE

TELEPHONE 212-825-0100
TELEX 127068
TELECOPIER 212-269-4102

*ADMITTED D.C. ONLY
**ADMITTED FRANCE ONLY

February 28, 1983

Re: SEC Advisory Committee on Tender Offers

Dear Ms. Quinn:

As requested by Chairman Shad in his letter dated February 18, 1983, I set forth below a preliminary overview of some tender offer issues. I am looking forward to studying the views of other members of the Committee and the material to be developed in the course of the study.

I believe that tender offer regulation should be minimal, neutral and seek fairness.

By minimal, I mean that interference with the securities markets should be undertaken, if at all, only to enhance realization of the objectives of neutrality and fairness.

By neutral, I mean that tender offers should neither be encouraged nor deterred by regulations. Further, the rules of the game should not favor either the management of bidders or the management of targets. As discussed below, it may be that certain regulations should be adopted to bring bidders and targets under the same regime.

By fairness, I mean fairness to the stockholders of bidders and targets and other constituencies such as employees, customers, communities, etc.

DISCUSSION:

Front-end loaded offers result in apparent unfairness to those bought out in the second step.

This apparent unfairness results in demands for restrictions on arbitrage activities (i.e., restricting short, hedge and double tendering) because of the value of being included in the first step and because professionals are perceived to have better ways of insuring inclusion in the first step than public shareholders.

Restrictions on arbitrage activities don't necessarily help the public stockholder because such restrictions interfere with the ability of the market place to approach the tender offer price and thus to provide public stockholders protection against pro ration.

Accordingly, the questions raised by front-end loaded offers should be considered. I don't believe the British system of requiring an offer for all shares is necessary or desirable. However, if a tender offeror does desire to acquire 100% of a target, it may be desirable to consider the second step, regardless of how accomplished, as part of the tender offer at least insofar as price is concerned.

Other activities subject to question are the responses of the management of targets to a tender offer. I don't think it fruitful to approach this question from the point of view of state law.* I do believe that defensive activities taken during or in anticipation of a tender offer without stockholder approval should be considered.

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* Requiring stockholders of a target to vote on certain matters in the face of a tender is not feasible because of the delay involved. The same is true of requiring shareholders of a bidder to vote before the tender offer is made.

It may be desirable to restrict such activities to the extent that they interfere with the ability of the market place to operate effectively and to see to it that the rules of the game as they relate to bidders and targets are neutral.

In summary, the Committee should consider whether some restrictions on front-end loaded offers and defensive tactics undertaken in the face of a tender offer are desirable. If restrictions are imposed, the Committee should consider whether restrictions on short, hedge or multiple tendering are necessary in view of their negative effect on depth and liquidity in the securities market.

Consistent with the foregoing, my particular areas of interest would be Section II of the "Very Preliminary Outline of Issues," particularly Subsection B.

I have no particular comment on the Outline except to say that it is very complete. I hope the Committee will be able to consider all the issues within the time allotted. I do have thoughts on many of the other issues but I will save those for another day.

Sincerely,

Irwin Schneiderman

Ms. Linda C. Quinn
Associate Director
Corporation Finance Division
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549