The First Boston Corporation
Park Avenue Plaza
New York, New York 10055
Telephone: 212/909-2598

First Boston

Bruce Wasserstein
Managing Director

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

Dear Miss Quinn:

This letter is in response to the request for comments on your "Outline of Issues". These thoughts are personal and do not necessarily represent those of my firm.

1. Procedure & Methodology

In approaching a topic this broad, a sense of modesty about the ability of a Committee such as this to find panaceas seems most appropriate. It can be argued that recent well intentioned reforms have only necessitated further changes and created greater confusion. Yet, the temptation is that there is much which can be constructively accomplished. Therefore, it is imperative to prioritize the focus of the Committee. It is also important that the work of the Committee be based on realistic empirical analysis. For example, are two-step transactions really harmful? What data is there? If a remedy to a "real" problem is proposed, the benefits and costs of each remedy should be calibrated.

2. Premises

a. Objectives: The objective of regulatory neuturality is integral to preserving a free flow of capital within the constraint of fundamental fairness to shareholders. Among the key tests of the efficacy of our regulatory system are the following:

- o Does it serve to entrench management and directors?
- o Does it provide for adequate opportunity for informed shareholder response?
- o Does it permit the maximization of price to the shareholder in a takeover auction situation?
- o Does it act to encourage responsible corporate management and directors?
- o Does it encourage corporate redeployment?
- o Are the rules and procedures by which it operates clear, predictable, easy to implement, and even handed?

- o Does this system prevent unfair advantages favoring either raiders or management?

b. Context: To regulate tender offers effectively, they must be viewed within the context of the overall regulatory system regarding changes in corporate control. Tender Offers, statutory mergers, exchange offers, open market purchases and proxy fights are inextricably intertwined. To place an undue burden on one vehicle, merely increases the vitality of the other tactics. For example, the vitiation of the tender offer by undue time requirements just makes open market purchase a more potent tool. Banning two-tier offers without limiting partial bids is inconsistent.

3. Substantive Issues

The theme underlying most of these issues is whether the SEC has a legitimate role in making sure the tactical pendulum doesn't swing too far. What is the proper regulatory balance between management's business judgement and shareholder rights?

a. Charter Provisions - Taken to their extreme, does a public company have a right to have a state charter that specifies that it won't be taken over? How much deterrence is permissible? If state laws cannot constitutionaly, in effect, block the sale of a company, is it appropriate to be able to do it by charter provision? Specifically, should there be a limitation on the "shark repellent" provisions such as super majority clauses. Do they protect minority shareholders or deter bids? What are the responsibilities of directors to a majority shareholder when protected by such provisions? Should any protective provisions such as fair price clauses be waivable merely at management's discretion?

b. Golden Parachutes - Anyone involved in takeovers must have a deep sympathy for the personal difficulties created by acquisitions. However, even if the concept of protecting corporate management against loss of employment or diminution of responsibility is a legitimate concept, are golden parachute arrangements which are activated solely because of a change in control justifiable? Are such arrangements outside the normal reach of employment contracts, and therefore, should they be subject to shareholder approval?

c. Open-Market Purchases - Are open market purchases of what can be a control position - which can be accomplished without the premium, the disclosures, or the proration protections of a tender offer - indirectly manipulative and not in the interests of shareholders? Should a ceiling on open market purchases be set of, say, 20% of voting securities, above which a tender offer would be required? Should the offer have to be for all shares?

d. Corporate Kidnapping - Should sales back to a company of shares purchased through open market transactions be permitted without shareholder approval or offering the same terms to other shareholders. Does allowing premium buybacks encourage further kidnappings?

e. Partial Tender Offers - Should partial offers by third parties, be permitted? Should an arbitrary level of, say, 20% be established above which an offer for all outstanding shares would be required (the British system). If partial offers are permissible, how can any limit be placed on front end loaded deals? Isn't a partial offer inherently front end loaded?

f. Lock-ups versus Leg-ups - Are lock-ups, as distinct from leg-ups, indirectly manipulative and do they act to discourage the auction process? Should options to purchase, or purchases themselves, more than a specified percentage of a company's securities or assets (say, 20%) be subject to shareholder approval (the British system)? Do "leg-ups" actually encourage maximizing shareholder value? Should the NYSE guidelines become an SEC rule?

g. State Takeover Statutes - Is regulating takeovers of national companies inherently the exclusive jurisdiction of the federal Securities laws and the SEC? More fundamentally, do state laws act to further entrench corporate management and directors by complicating and delaying the process for a change in control? Do we get a further balkanization and complication of the securities markets by a series of conflicting state laws?

h. Tender Offer Rules - An imperative for the Committee is to make the SEC rules actually work. Experience suggests that existing rules provide adequate time for informed shareholder response to two-tier, front-end loaded transactions. (For instance, the Phillips Petroleum/General American Oil transaction) Rule 14D, however, is still a logistical maze. For example, the practical implication of the rule is that shares tendered in a partial offer cannot be counted effectively until the tender offer ends. Yet, with no basis for counting, it's difficult to tell if a required minimum number of shares have been tendered. The key problem relating to shareholder information has been the inability for a bidder to get direct access to shareholder lists and to break through nominee and street name problems. Have frequent changes in the SEC rules created more, rather than less, confusion?

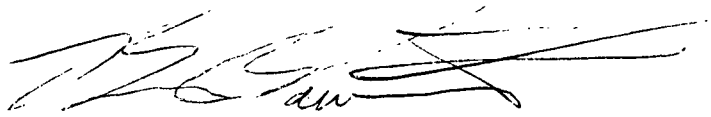
i. Exchange Offers - Should exchange offers be permitted to proceed as quickly as cash tender offers to put them on an equal footing as an alternative, especially in the new environment which facilitates the speedy registration and issuance of securities?

j. Short Tenders - Have short tenders become a serious problem in tender offers?

k. Disclosures - Are the requirements regarding the usage of projections in tender offer documents effective?

To summarize, the tender offer should prevail as an even-handed device for accomplishing changes in control and retaining fluidity of assets in our economic system. The Committee should have a priority focus on first making the current system work and then curbing the most common abuses with particular emphasis on corporate charter provisions, open market purchases, corporate kidnapping, tender offer proration rules, short tenders and shareholder list availability. In the longer term, study should be made of whether modifications incorporating certain features of the British system setting limits on open market purchases and partial offers should be adopted.

Yours,



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