

## MEMORANDUM

TO: Senate Banking Committee

FROM: Patrick A. Mulloy and Steven B. Harris

DATE: January 22, 1987

SUBJECT: Corporate Takeovers

The Committee will hold the first in a series of hearings on the need for reform of the procedures, practices and financing of hostile takeovers as well as the effects of hostile takeovers on the economy and international competitiveness on January 28, 1987.

### Background

Front page press accounts of battles for corporate control which have upon occasion allegedly involved investment banks, raiders, arbitrageurs and inside traders, have heightened public and Congressional awareness of hostile takeovers.

Since 1968, with the passage of the Williams Act, the Federal securities laws have provided a framework for the regulation of corporate takeovers in the national marketplace. The Williams Act was initially designed to be neutral favoring neither bidder nor target. State corporation laws have regulated "internal" corporate affairs, including many activities that affect the conduct of corporations in takeover battles. However, the tactics and strategies used by both bidders and targets in recent years have raised serious questions about the adequacy of current law to regulate takeovers.

At the same time concern has been expressed regarding whether or not hostile takeovers, as currently conducted, are in the long-term national interest.

### Committee Focus

The Committee will be examining the impact of hostile corporate takeovers on corporate debt as well as on capital investment, research and development, international competitiveness, and employment.

The financing of tender offers will be reviewed with particular attention being paid to the use of junk bonds in these deals, margin regulations, the role played by "highly confident letters," investment banker bridge loans, and bank loans.

Insider trading cases such as those involving Dennis Levine and Ivan Boesky have raised serious questions about the relationship, in some instances, between the investment banking

community, raiders and arbitrageurs. The Committee will look into possible cooperation and exchange of information between these groups, any relationship or cooperation regarding their financing commitments, and any breakdown of the “Chinese Wall” which is supposed to separate the various research, sales, trading, arbitrageur and other activity of the financial community.

The issue of whether or not takeovers in the aggregate are good for the economy is not a subject of controversy. The hearings will focus primarily on hostile takeovers, their consequences, and their regulation and to what extent the procedures, practices and financing of this activity should be modified.

### Arguments

Typical arguments in favor and opposed to current hostile takeover practices are as follows:

(1) Proponents argue that hostile takeovers are, in the aggregate, beneficial for stockholders and for the economy as a whole and that these takeovers can perform several valuable functions. In particular, takeovers can allocate resources to higher valued uses, promote economies of scale and scope, increase the return from investing in the stock of publicly traded companies, reinforce market incentives that require management to compete effectively, free up capital for new investment opportunities, and move assets to smaller, more focused companies.

(2) Opponents believe that while such hostile takeovers may serve useful purposes, many loot corporate treasuries; undermine our ability to compete in world markets; force management to sacrifice long-term strategy and the development of new products and services for short-term gains; inhibit innovation; lead to the misuse of capital; cheat shareholders; and cause losses and economic upheaval that disrupt the lives of communities and employers. There is also increasing concern that pools of investors may be “putting companies into play” for their own enrichment without any real intention of running those companies, that the financing of some recent takeover attempts may have been based on less than solid financing and that some takeover entrepreneurs may have been manipulating the market.

The witness list is attached.

Witness List

Hearing on Corporate Takeovers  
January 28, 1987

Panel 1

Dr. Alan Greenspan, Chairman, Townsend-Greenspan

Mr. Nicholas F. Brady, Chairman, Dillon Read & Company, Inc.

Mr. Felix Rohatyn, Senior Partner, Lazard Freres & Company

Lloyd Cutler, Esq., Partner, Wilmer, Cutler & Pickering

Panel 2 (Former SEC Commissioners)

Roderick M. Hills, Esq., Chairman & Managing Director, The Manchester Group, Ltd.

A. A. Sommer, Esq., Morgan, Lewis & Bockius

Francis M. Wheat, Esq., Gibson, Dunn & Crutcher