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NOMINATION OF DAVID S. RUDER

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

THE NOMINATION OF

DAVID S. RUDER, OF ILLINOIS, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR THE TERM OF FIVE YEARS EXPIRING JUNE 5, 1991, VICE JOHN S.R. SHAD, RESIGNED

JULY 22, 1987

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NOMINEE

NOMINATION OF DAVID S. RUDER TO BE CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION

WEDNESDAY, JULY 22, 1987

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The committee met at 10 a.m., in room SD-538, Dirksen Senate Office Building, Senator William Proxmire (chairman of the committee) presiding.

Present: Senators Proxmire, Riegle, Sarbanes, Dixon, Sanford, Shelby, Graham, Garn, Heinz, D'Amato, Hecht, Bond, Chafee, and Karnes.

The CHAIRMAN. Mr. Ruder, will you rise and raise your right hand.

[Whereupon, the witness was duly sworn.]

The CHAIRMAN. Thank you, sir.

Senator DIXON. Mr. Chairman, may I have the privilege of introducing David Ruder?

The CHAIRMAN. Go right ahead.

Senator DIXON. Thank you, Mr. Chairman. You're in a very nice mood this morning.

OPENING STATEMENT OF SENATOR DIXON

Senator DIXON. Mr. Chairman, I want to take this opportunity to introduce David Ruder, a highly respected Illinoisan.

He has been a distinguished professor at Northwestern University School of Law since 1961 and was dean of the school between 1977 and 1985.

Mr. Ruder has a strong securities background. He's published over 40 articles on corporate and securities issues and has significant securities litigation experience. He's been a member of the Securities Law Committees of the American and Chicago Bar Associations, the Legal Advisory Committee of the New York Stock Exchange, and the Group of Consultants to the American Law Institute's Federal Securities Law Project.

In short, Mr. Chairman, David Ruder is well qualified for the position as Chairman of the Securities and Exchange Commission. He has the experience, the expertise, and the qualities of judgment that are needed to succeed in this very difficult post. He has an excellent reputation in Illinois and in legal circles generally and, Mr. Chairman, I can say without hesitation that everyone in Illinois

I've talked to about David Ruder enthusiastically supports his nomination.

I share the view that he will make a first-rate Chairman and, Mr. Chairman, I'm delighted to be able to introduce him to my colleagues and friends on this committee this morning.

I thank the chair for giving me this privilege and for once again showing his friendship and his support.

The CHAIRMAN. Well, thank you very much, Senator Dixon, but I must disagree with you in one very important respect. That important respect is that Mr. Ruder is no more a citizen of Illinois than I am. In fact, he's less. Mr. Ruder was born in Wausau, WI. He went to the University of Wisconsin. He went to work for a law firm in Wisconsin. Late in his life he came down for a few short years to Illinois.

Senator DIXON. Mr. Chairman, I was going to say, on the other hand, you were born in Illinois, raised in Illinois, nurtured in Illinois. [Laughter.]

The CHAIRMAN. Well, having settled that, Mr. Ruder——

Senator DIXON. Still support the Chicago Cubs.

The CHAIRMAN. And the Milwaukee Brewers. [Laughter.]

OPENING STATEMENT OF CHAIRMAN PROXMIRE

The CHAIRMAN. Mr. Ruder, what should be the principal duty of the new Chairman of the Securities and Exchange Commission? The SEC has over the years served this country brilliantly to provide capital markets that until recently were viewed as the most honest and efficient in the world. The SEC from the days of William Douglas and Joe Kennedy has recognized the temptation to make money and lots of it quickly and easily sometimes overwhelms the ethical conscience of the trader to operate honestly or even legally.

If this were not the case, there would be much less need for the SEC. In a world without greed or the rich temptations and fat rewards of dishonesty and deception, the Congress would not have created the SEC more than 50 years ago.

But in the past 50 years and especially in the past 5 or 6 years, the temptations and the money to be made has hugely increased.

On the other hand, it takes centuries for human ethics to improve. Indeed, many observers consider the present an age of moral and ethical decline in politics, in religion, on Main Street, and especially on Wall Street.

I think that's too harsh. We are, in my judgment, no worse but almost certainly no better morally than Americans have been throughout the years, but as we know from recent experience there's a lot more money to be made. Our securities laws, including the laws that established the SEC are more than 50 years old.

All this means we need a tough-minded, no-nonsense Securities and Exchange Commission Chairman. We need the kind of ethics in the capital market that Judge Landis brought to baseball when corruption threatened to destroy our national pastime.

The question before this committee and the Senate in the nomination of David Ruder is not simply does he bring a high standard of integrity. You certainly do. It's not simply whether you have

written wisely and well and shown your understanding of securities law. You have.

It is whether you bring an understanding of the serious threat that insider trading and manipulative hostile takeovers represent to the capital markets of our country.

The dimensions of this plague stretch from antitrust policy to unemployment to fundamental shareholder rights. It is not too much to say that our capital markets are awash in securities crime. The question on Mr. Ruder's nomination is, does he bring the will to act and act vigorously to clean up our capital markets?

Now many in the Congress and I'm sure in the public have concluded what we need now in the SEC chairmanship is a strong enforcer. The administration was reported at one point to have their eye on Rudolph Guiliani, the U.S. attorney for the Southern District of New York. Mr. Guiliani has a remarkable record as a brilliant and successful enforcer. There are other successful enforcement officials in this country in both political parties and representing conservative as well as liberal ideologies or no ideology at all, who if appointed at the SEC could reassure the country that the Federal Government means business about acting to clean up the mess.

Many of us feel that Boesky and Levine and the others who have been arrested represent only the tip of the iceberg in wholesale insider trading and fraud.

The administration did not send up Mr. Guiliani for Chairman of the SEC. It didn't send up an enforcer. It sent up a good and decent man, a fine scholar. David Ruder, as I say, comes from my State. He was born in the very heart of Wisconsin, in Wausau. He graduated from the University of Wisconsin Law School. He was hired by one of our State's finest firms, Quarles & Brady. He has written a large number of articles on securities law, very thoughtful articles. They show an impressive understanding of securities law.

But what do the Ruder articles say? Mr. Ruder, your articles criticize the courts and the SEC for the zealous—that's right, zealous—use of rule 10b–5. And what is 10b–5? It is the principal legal tool used to attack securities fraud. Vigorous enforcement is an act of choice with the SEC. The SEC may decide to be vigorous or it may decide to be passive. Which will it be under you, Mr. Ruder?

As a legal scholar, you have chosen to criticize vigorous enforcement efforts. We need scholars who will do that and do it well, and you've done exactly that. You have argued that enforcement efforts have exceeded the bounds of congressional intent. Fine. We in Congress generally applaud the experts who call our attention to prosecution that goes beyond our intention.

But where is there in your writing any admonition to the Congress to strengthen our enforcement measures? Perhaps, Mr. Ruder, you can point them out to us.

Mr. Ruder, I hope you can correct and instruct this Senator. I hope you can show us how you will bring the kind of tough, vigorous enforcement of the securities laws that the country so urgently needs and needs now.

I hope you can also assure us that you won't hesitate to help us in the Congress to see how we can strengthen the laws to provide the legislative framework that will assure us that our capital mar-

kets are as clean and honest and ethical as you and the fine talent you have at the SEC can make it.

Senator Garn.

OPENING STATEMENT OF SENATOR GARN

Senator GARN. Thank you, Mr. Chairman.

Mr. Ruder, I would certainly like to welcome you to what will likely be the first of many appearances before the Senate Banking Committee.

You have been nominated by the President to succeed John Shad as Chairman of the Securities and Exchange Commission. I certainly believe that a review of your academic and professional accomplishments recommend you very highly to this position to which the President has nominated you.

The issues confronting the SEC at this time are numerous and complex, as the chairman has pointed out. This committee, like the SEC, must also grapple with these problems. In the upcoming months, Congress will address legislative proposals that will affect battles for corporate control, corporate governance, insider trading, and a host of other very highly publicized issues. The decisions made by the Commission are vitally important to our Nation's economic well-being.

I hope and fully expect, Mr. Ruder, that you will provide Congress with the input that it needs to carefully enact legislation. We won't overreact, and we will provide the SEC the leadership that it needs to ensure that the American capital markets are the safest, soundest, and also the most liquid in the world.

I believe we are fortunate to have a man of your caliber make a commitment to public service, and I certainly look forward to your confirmation and working with you in the future with this committee. Thank you, Mr. Ruder.

The CHAIRMAN. Senator Riegle.

OPENING STATEMENT OF SENATOR RIEGLE

Senator RIEGLE. Dr. Ruder, welcome to the committee today. I enjoyed the opportunity we had yesterday to talk at some length in advance of this hearing.

It seems to me, as others have already said, that you come to the witness table and to the prospect of taking on this job at an absolutely critical time in terms of what's happening in the securities industry, and serving in this Congress, as I do, as chairman of the Securities Subcommittee, I am keenly interested in what goes on at the SEC and the kind of leadership that you would bring, assuming you are confirmed.

Certainly, you have very good friends speaking in your behalf when Senators like Senator Dixon and others recommend you to us.

We have been told many times earlier this year in hearings here by former SEC Chairman Shad and by the U.S. attorney in New York that more shoes are expected to drop this summer as a result of the current securities law violations and investigations that are being conducted by the Government and I'm sure you are aware of

those statements having been made because they were widely reported.

I agree with the chairman of the full committee that we now need a Chairman at the SEC who is committed to a strong enforcement program, and I mean really committed to it. I'll be very interested to hear what you say today when you have the opportunity to tell us your view on that.

We have a major investigation going on with respect to the purchase and sales of municipal securities. I think we need a Chairman who can review the laws governing the municipal securities business and advise us whether they are sufficient. That's not an area yet that we have really focused on.

Another significant issue that you and I have spoken about is the internationalization of the securities markets. We will be conducting hearings on this subject later in the year.

The issues of program trading and the introduction of many complex new financial instruments are also raising significant questions for consideration under the oversight responsibilities of this committee.

Takeover legislation, which ten of us on this committee have cosponsored, is a very important issue. It's crucial that we understand your views and the kind of approach you would take in that area.

Senator D'Amato and I, along with a distinguished group of outside securities law experts, have introduced a revised definition of insider trading. We think that there are gains to be had all around if we have a clearer sense of exactly when and how insider trading violations arise.

So we hope to be able to move that legislation forward and your thoughts and leadership in that area would, of course, be important as well.

I think we need a Chairman now that recognizes that the working conditions of the staff at the Commission need to be dramatically improved in a number of ways; including better automation, so that the Commission staff can be given a better chance to perform their very substantial responsibilities adequately. The Senate has just passed a budget reauthorization for the SEC with the first substantial budget increase in many years. The Commission, and the committee is strongly of the view that the Commission must be able to function properly with all of the resources which it needs. We cannot afford any shortfall in regulatory performance by the Commission as the securities industry moves into new direction—particularly with this overhang of major problems and illegal activities that have already been brought to light.

So these are some of the issues that you will face, assuming you are confirmed as the new Chairman, and these are things that I'm going to want to ask you about today.

I also hope that you will indicate to us why you expect to submit your resignation, assuming you are confirmed, in January 1989 after the new President is inaugurated. I would like to know if you were asked by a new President to stay at that point, if you would consider doing so or if there's some reason that prompts you now to view this as essentially an 18-month assignment.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Riegle.
Senator Heinz.

OPENING STATEMENT OF SENATOR HEINZ

Senator HEINZ. Mr. Chairman, thank you.

I would like to welcome Dave Ruder to the committee. Mr. Ruder, let me say that you are going to have, if confirmed, a formidable job. You will be thrown headlong into the role of Wall Street's chief cop in the wake of the Commission's uncovering and obtaining the convictions of some of the history's biggest inside traders. I'm convinced, for my part that the SEC has only uncovered the tip of a very large iceberg.

Therefore, your responsibility, among others, will be to continue with full energy and total commitment the enforcement efforts which in the past—at least up until 1976—fell woefully short. It's only been with the discovery of the Dennis Levine and Ivan Boesky matters that the SEC really produced some enforcement against insider trading within the last 18 months.

The sale and purchase of insider information on a widespread basis has also revealed to this committee abuses in the corporate takeover game itself. I am not sure which spawned which, but this committee will address the range of abusive tactics by both the corporate raiders seeking control and the target companies seeking to remain independent. I think we will do our job carefully in this regard because we recognize that we must be sensitive to the long-term effects that our actions might have on the capital markets and on the economy. We don't want to entrench incompetent corporate management and we don't want to encourage irresponsible attempted takeovers that have no justice in reality.

I would have to add on that point that I don't see, although I'm optimistic of it, a consensus having been reached between, say, Senator Riegle and Senator D'Amato and Senator Proxmire, myself and others. I anticipate, however, that we will reach such a consensus and ultimately produce legislation.

I am sure we will want to turn to you for advice on how to draft that legislation, but I also hope that, as you give us advice, you recognize it is our job to make those laws. In this vein, it is not appropriate for the SEC to lobby for or against them.

I am going to have some questions for you on a number of matters, but I welcome you to the committee. I anticipate that it will be the first of only many times you will be with us.

The CHAIRMAN. Thank you, Senator Heinz.

Senator Dixon.

Senator DIXON. Thank you, Mr. Chairman. I have already had the privilege of indicating my warm support for David Ruder and I am delighted to see him here this morning and I think he will be a great credit to our State as the Chairman of the SEC, and I must confess, Mr. Chairman, in the careful evaluation of his entire lifetime I found only two stains on his record. He was born and raised and educated in Wisconsin and he admits in his form here to being a registered Republican. [Laughter.]

The CHAIRMAN. Senator Bond.

OPENING STATEMENT OF SENATOR BOND

Senator BOND. Thank you very much, Mr. Chairman.

I, too, join with my colleagues in welcoming and congratulating you, Professor Ruder. I know that you come to this responsibility with distinguished credentials in academia and elsewhere. Certainly you come at a time when the SEC is faced with a broad array of challenges and opportunities to improve the confidence in the securities market and the overall management of financial investments in our country.

We do need and will welcome your advice on such matters as insider trading and corporate takeovers, which are the subject of discussion for legislation in the committee at the current time. When the questioning period comes around, however, I also am concerned about a number of other areas which will be within your jurisdiction—the Washington Public Power Supply System is one. Another issue I will seek your views on is consumer complaints about improper and unauthorized trades, and churning.

But I just want to join the welcome and congratulations. I know that you bring a great deal of ability and dedication to this job and we are very pleased to welcome you and wish you the best in the coming months.

The CHAIRMAN. Thank you, Senator Bond.

Senator Shelby.

OPENING STATEMENT OF SENATOR SHELBY

Senator SHELBY. Thank you, Mr. Chairman.

Mr. Ruder, we are all aware of your excellent academic and professional credentials and I am impressed with your theories and your ideas concerning the regulation of securities trading.

There's always a significant gap, as you well know, between theory and practice. The question before the committee, or one of the questions, would be whether or not you will be able to turn some of your theories into reality here and guide the Securities and Exchange Commission with a firm and steady hand, having had no previous experience in government. I believe you will succeed.

Your technical grasp of the issues in the areas of securities trading I believe is indeed sound. You must seek to apply this knowledge in a responsible and, as you well know, an effective manner in order to ensure the most productive, yet sensible, securities trading policies.

The current problems with insider trading and the one-share-one-vote issue will require your full attention as head of the SEC. I trust that you will continue the vigorous enforcement of insider trading violations, as former Chairman Shad did. You stated previously that you strongly support the efforts against insider trading and I hope that you will stand by your statement. The insider trading problem could worsen should the SEC relax its enforcement efforts. I think you would agree that the perpetuation of insider trading will be detrimental, if not disastrous, for our Nation's economy.

The next Securities and Exchange Commission Chairman, which will be you, will face a number of challenges, given the potential volatility of today's stock market. We will have to bring the insider

trading problem under control and prevent the ruinous trading practices which have wreaked havoc on the economy in the past.

Certainly the SEC will have to be the dominant force in keeping the country's stock exchange stable and, as Chairman, you will be in a position to guide and shape the policy of this Commission. I certainly wish you well in your strong endeavor to succeed Mr. Shad and I believe you will find it will be interesting and, as Senator Heinz said, you will be before this committee on a lot of other occasions.

The CHAIRMAN. Thank you, Senator Shelby. Senator Karnes.

OPENING STATEMENT OF SENATOR KARNES

Senator KARNES. Thank you, Mr. Chairman. I am pleased to be able to play a role in the confirmation of Mr. Ruder as Chairman of the Securities and Exchange Commission.

I have reviewed his experience and credentials and am confident that Mr. Ruder will do a superb job in this most important position.

As this committee and as the Congress as a whole debate and deliberate on numerous issues of significant importance to the business community, your input, as the new Chairman of the SEC, will be critical to the outcome of those deliberations.

I am anxious to hear your opinion on the various issues we have been discussing, specifically including establishing a new definition or a reclarification of insider trading, corporate takeover legislation and options trading on equity securities.

I look forward to your testimony today and to working with you [illegible] in the future. I wish you well and encourage your [illegible] communication in the future with you and your staff [illegible].

[illegible] Thank you.

[illegible] Thank you, Senator Karnes. Senator Sarbanes.

[illegible] STATEMENT OF SENATOR SARBANES

[illegible] Senator SARBANES. Thank you very much, Mr. Chairman. Mr. [illegible] am pleased to join with my colleagues in welcoming you [illegible] committee. You clearly bring a very impressive professional record with you, and it is obviously one for which we have a great respect.

I also must say to you that I am struck by the degree of your community involvement, and I regard that as a very strong positive. I mean, I think you have reflected a citizen's responsibilities, and I think that is important in our democracy.

And finally, I may address later some of the substantive issues, but I particularly noted the concluding paragraph in your statement of qualifications to serve in the position to which you have been named, and I simply quote it.

"I have long admired the excellence, independence and integrity of the Securities and Exchange Commission, and I believe myself able vigorously to continue its fine traditions in enforcing the Federal securities laws."

Now there are many of us here on this committee and in the Congress who share that view about the excellence, about the inde-

pendence and the integrity of the SEC. We are anxious to sustain and enhance it. We hope you will come to us with a request for resources, if they are inadequate. Some of us feel that there have been instances in which perhaps the SEC leadership has not pressed as hard as it might have for adequate resources with which to do the job at hand. We realize they face the budget constraints which OMB seeks to impose on anyone, everyone, but if the SEC is to maintain its independence and its excellence and its integrity, I think it has to, in effect, fight for its budget, and I would hope, as Chairman, that you would be prepared to do that. I think you would find a good deal of support in the Congress on both sides of the aisle, Democrats and Republicans, who perceive that a strong SEC, helping to ensure strong capital markets, is vital to the vitality and growth of our economy.

I think one of the reasons the American economy has been the wonder of the world over an extended period of time is because of our strong capital markets. That is one of the reasons, and I think the SEC has contributed to that, and we look forward to you continuing, as you have stated, the fine tradition of the Commission.

I am pleased to have you here.

The CHAIRMAN. Thank you, Senator Sarbanes. Senator Chafee.

OPENING STATEMENT OF SENATOR CHAFEE

Senator CHAFEE. Thank you, Mr. Chairman.

I want to join in welcoming Mr. Ruder. I must say, this is what you call complete disclosure, going back to your membership in the Cub Scouts in 1937. [Laughter.]

I am sorry you dropped out of the Saddle and Cycle Club. [Laughter.]

But your academic record is truly outstanding. Phi Beta Kappa at Williams and first in your class at law school.

I think what I find most helpful anyway from the heads of organizations that committees I serve on have oversight on is to receive constructive—I look on it as a two-way street. I look on it as our committee, take this committee, as regards the SEC, is here to be helpful to the SEC, to help you achieve laws, passage of laws or funding, so that you can do your job better. It is not a confrontational relationship. At the same time, we look to you, as Chairman of the SEC, for lots of advice on issues, because you are on the front lines, and you are out there wrestling with it, and several of those, of course, have been mentioned, the insider trading and the corporate takeover issues that are right before us now.

So I would hope that you would be prepared to give us assistance on those two particular matters very, very quickly, particularly the corporate takeover legislation that is before us.

I look forward to a very—a mutually agreeable relationship between you and this committee in the years ahead. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Chafee. Senator Graham.

OPENING STATEMENT OF SENATOR GRAHAM

Senator GRAHAM. Mr. Chairman, I apologize for the late arrival. I have been attending a meeting of the Environment and Public

Works Committee. I share the positive impression of the quality of nominee which has been made by the President. Professor Ruder, you will bring an unusual combination of academic and professional skills to this important position. I would like to second the remarks made by Senator Sarbanes that the Securities and Exchange Commission represents that unique American blend of Government and private responsibility, essentially, our capital markets, in terms of Federal regulation are premised on disclosure and the ability of the individual investor, if given uniform, accurate information to make a judgment and accept the economic consequences of that judgment.

So the SEC plays the central role in that theory being a functioning reality. It is an agency which has received increasing public attention, as a result of recent occurrences. It is entering a challenging new period of its history, and I am pleased that it is going to have leadership of your quality in meeting those challenges.

Thank you for accepting this new responsibility.

The CHAIRMAN. Thank you, Senator Graham.

Senator SHELBY. No, I've made it.

The CHAIRMAN. I thought so.

Is there any member of the committee who has not had an opportunity to make their opening statement? I do have a statement from Senator Sasser who wishes it be placed in the record.

STATEMENT OF SENATOR JIM SASSER

Senator SASSER. Mr. Chairman, this morning we consider another important nomination. David S. Ruder is clearly a man of substantial qualifications for the position of Chairman of the Securities and Exchange Commission. He is a learned lawyer and academician. He has published numerous extensive, scholarly articles in the field of securities law.

Mr. Chairman, it seems to me that our job this morning is to ensure that this nominee is in full support of the SEC's mandate to police our securities markets.

We are faced today with a massive and unprecedented insider trading scandal. This scandal threatens to ruin the confidence of the investing public in our securities markets—the foundation of our Nation's capital raising process.

Moreover, we have witnessed a wave of corporate takeovers over the past few years. These mergers and acquisitions have saddled our corporations with debt and caused an estimated 500,000 lost jobs. Indeed, the takeover craze appears to have been facilitated by abuses of our securities laws and by collusive activities among certain players in the securities arena.

Mr. Chairman, I cannot think of a time since the SEC was established when rigorous enforcement of our securities laws will be so important, as it will be in the coming year. I am looking forward to the testimony of Mr. Ruder this morning.

Senator SHELBY. I knew you were generous, Mr. Chairman, I didn't know you would give us a second round on our opening statements. [Laughter.]

The CHAIRMAN. I didn't think so either, but it is one of the very few times our superb staff made a mistake. [Laughter.]

Senator SARBANES. Let's hope it doesn't happen to Mr. Ruder at the SEC! [Laughter.]

The CHAIRMAN. Mr. Ruder, would you like to make an opening statement, sir?

DAVID S. RUDER, OF ILLINOIS, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR THE TERM OF 5 YEARS, EXPIRING JUNE 5, 1991, VICE JOHN S.R. SHAD, RESIGNED

Mr. RUDER. I have some brief remarks, Mr. Chairman.

Mr. Chairman, and members of the committee, it is an honor and privilege to be considered as the nominee for the position of Chairman of the Securities and Exchange Commission.

I thank the chairman for expeditious scheduling of this hearing on my nomination.

Several factors underlie my enthusiasm for involvement at the Securities and Exchange Commission, some of which have been referred to by the Senators in their remarks.

First, since I have devoted much of my career as a lawyer and law teacher to the study of the Federal securities laws, the opportunity to administer those laws would be a unique privilege for me.

Second, the high levels of integrity, dedication and competence of the Commissioners and staff of the Securities and Exchange Commission make it well known as one of the best administrative agencies in Washington, and I would be pleased to join an agency which is so well respected.

Third, there are so very many important subjects which demand close attention, if our capital markets are to continue to be the best in the world. Many of those subjects have been identified by Senators in their remarks, and I find the complexity and importance of the markets and their regulation to be something that demands extreme and close attention.

Finally, I do consider it a great honor that President Reagan has nominated me as Chairman of the Securities and Exchange Commission and, if confirmed, I will seek to carry out the congressional policies set forth in the Federal securities laws. That will include vigorous enforcement of the insider trading laws.

I stand ready to answer any questions which the committee members may have.

The CHAIRMAN. Thank you, Mr. Ruder, and I greatly appreciate your statement on vigorous enforcement of insider trading laws.

If confirmed, do you agree to appear before the duly constituted committees of the Congress to present testimony when requested to do so?

Mr. RUDER. Yes, I do.

The CHAIRMAN. Do you pledge to this committee to abide by the recusal statement and commitment to avoid conflicts of interest that you have filed with the White House Office of Government Ethics as well the agency you are nominated to serve?

Mr. RUDER. Yes, I do.

The CHAIRMAN. Mr. Ruder, how do you respond to concerns that a number of people have expressed to us, that you are likely to be weak in the enforcement area?

Mr. RUDER. I have difficulty in knowing the source of those concerns. As an academic administrator, while I was Dean of the Law School at Northwestern, my reputation was that I was quite vigorous in my administration. I further believe that the Federal securities laws have a strong enforcement element in them, a strong police function, if you will, and I simply can tell you that I do intend and will intend to enforce those laws vigorously.

THE CHAIRMAN. Has any person associated with any firm under investigation or representatives of such person or firm spoken to you about your appointment? To the best of your knowledge, within the last 9 months, have you spoken to any officials from Drexel Burnham or any other firm currently under investigation?

Mr. RUDER. Not that I know of, sir.

The CHAIRMAN. Mr. Ruder, hostile takeovers have wrenched the economy, leading to new debt, massive dislocation of workers and clouded the long-term outlook for our everyday managers. Many of these raids are acts of perverse gamesmanship, where companies are put into play for the profit of manipulators and greenmailers. Those of us who aim to put a stop to this manipulation, however, are warned that we shouldn't tinker with tender offer law, because it would impair the efficiency of our capital markets.

What is more, the battle for corporate control, they say, is healthy.

Now among the critics is the Reagan administration. You were nominated by that administration. Did you make any pledges to the White House that you would work to discourage any congressional effort to reform tender offer law? And what are your views on tender offer law?

Mr. RUDER. I made no pledges to the White House that I would work to discourage changes in tender offer law. I did disclose to the White House, in general terms, my views on tender offer law, which I will describe to you. I don't know how much time you want me to spend on it, but I will speak until you want to interrupt me.

My view about tender offers and takeover activities starts with my firmly held belief that the shareholders own America's corporations, and I believe that the shareholders should be the chief beneficiaries of takeover legislation. I believe that view to be consistent with the Williams Act as presently in existence. There is much in the legislative history of the Williams Act and much in the court interpretations of the Williams Act which points in the direction that shareholders are the proper protected group in takeover legislation. And what I am viewing in the takeover environment is a circumstance in which the shareholders of the target companies are receiving premiums over present market values of approximately 50 percent in many of the takeover situations.

I regard that as beneficial for them, and I have no studies to support this view, but it is my impression that the funds which they receive are then made available in the capital markets for further investment and for further support of our capital structure.

With regard to takeover legislation, generally, I have read the testimony of Acting Chairman Cox of the Securities and Exchange Commission, when he appeared here to report on the bills which were introduced by many members of this Committee, and I am in general agreement with it. However, I would like to say, with

regard to my views concerning tender offer legislation and, indeed, my views regarding almost every issue that I will be discussing today, that I have not had the privilege and benefit of hearing extensively from the Commission staff or of participating in Commission deliberations regarding these measures. It may be that upon further consideration and further understanding of the issues, some of the positions I take here will change.

The CHAIRMAN. Well, I hope so. [Laughter.]

Senator Heinz.

Senator HEINZ. First, I would like to note that Senator D'Amato, who was here at the beginning of this hearing, had to go to the floor to speak during morning business, and I ask unanimous consent that his statement appear at the appropriate point in the record.

The CHAIRMAN. Without objection, so ordered.

STATEMENT OF SENATOR ALFONSE M. D'AMATO

Senator D'AMATO. The President has nominated David Ruder to succeed John Shad as Chairman of the SEC at the critical juncture in that agency's history. He will come to the SEC at a time when insider trading cases are threatening public confidence in Wall Street and Congress is considering new legislation that would impede corporate takeovers. He will also be asked to provide leadership during the Commission's consideration of a myriad of complex regulatory matters including, among others, one share/one vote, the internationalization of the securities markets and the structure of our own securities and options markets.

While the Commission will face many issues during Mr. Ruder's tenure, the Commission's most important function is to maintain investor confidence and safe and sound securities markets. These twin goals can be best accomplished through vigorous enforcement of the antifraud provisions of the Federal securities laws rather than through the promulgation of new rules and regulations. The vigorous prosecution of the antifraud sections of the securities laws—especially insider trading—was the hallmark of the SEC under John Shad's stewardship. I hope you share his strong commitment to come down with hobnail boots on fraudulent activity because John Shad's boots will be hard to fill.

I stress the enforcement aspects of the SEC because, quite frankly Mr. Ruder, your detractors have been critical of you for seeming to less than a regulatory Rambo. Incidentally, these same critics voiced the same concerns about John Shad prior to his confirmation. I think such criticisms may be a bit unfair in light of your distinguished academic and professional careers. I believe a fair reading of your prolific legal writings would lead any reasonable reader to conclude that you will be tough on those who seek to undermine the securities markets of this country. Hopefully you will continue to promote the "tough cop" image of the SEC.

I hope that in your remarks to the committee this morning you will allay those concerned about your commitment to the vigorous enforcement of the securities laws. I look forward to your testimony and to working with you in the future.

Thank you, Mr. Chairman.

Senator HEINZ. To continue, Mr. Chairman, I have four questions, two of which relate to corporate takeovers, one of which relates to one-share-one-vote, one of which relates to enforcement issues generally. To the extent that they are not covered by other people's questions here today, I would like permission to submit them to Mr. Ruder for response in writing.

The CHAIRMAN. Fine. Without objection, that will be done.

Senator HEINZ. Mr. Ruder, I want to direct your attention at this point to an issue that will be quite timely when you become, as I assume you will, Chairman of the SEC, and I am referring to a rulemaking procedure that will be initiated, starting with hearings this September that flows from two 1986 staff studies having to do with the multiple trading options.

The reason for my bringing this to your attention is that the staff studies were done by economists—we have nothing against economists, in principle, we want you to know—but were done by economists in the SEC's Department of Economic and Policy Analysis. During the consideration of the SEC authorization earlier this month, this committee, following from the work of the Security Subcommittee, issued a report dated July 9, to which I direct your attention, Mr. Chairman, I ask unanimous consent that the relevant parts of page 11 through 13 be put into the record.

The CHAIRMAN. Without objection, so ordered.

Economic and Policy Analysis

At the February 24, 1987 hearing, Milton H. Cohen, a distinguished securities attorney and principal author of the 1963 Special Study of the Securities Markets, testified before the Subcommittee regarding his concerns over the quality of economic advice provided to the Commission and the present role of economists in its policy making. Mr. Cohen noted that the current staff economists "primarily rely on econometric approaches based on quantitative data, rather than on broader analytic approaches using non-quantifiable data," and that their uniform philosophy in providing economic advice is to rely on the market as the best regulator. (Statement of Milton H. Cohen before the Securities Subcommittee of the Committee on Banking, Housing, and Urban Affairs of the United States Senate, February 24, 1987, pages 5 and 6.)

In recent years, the Commission has published a number of econometric studies prepared by its staff dealing with various aspects of our capital markets and Federal and State regulation of those markets. Because of the Commission's status, those studies have had a significant impact on public perceptions of those markets and their regulation. In addition, it appears that the Commission has relied on those studies to an increasing degree as determinants of policy direction and regulatory outcomes in carrying out its responsibilities under the federal securities laws.

Economic analysis is a useful regulatory tool but one with inherent dangers and limitations. The Subcommittee is concerned that, first, the Commission does not have in place procedures that assure the integrity and soundness of its staff's economic studies, and that, second, the Commission may have allowed the limitations inherent in an econometric approach to regulatory matters to erode its willingness to use the authority conferred by the federal securities laws to address problems that are not amenable to econometric measurement.

The Subcommittee believes that economic studies prepared by the Commission's staff should be subjected to at least the same degree of discipline that is imposed on studies authored by other economists before publication—i.e., to peer review as to methodology and content by independent economists of high professional standing. Indeed, given the importance that economic studies authorized by the Commission's staff have assumed, the Subcommittee believes that the Commission should do more than that by adopting procedures that will ensure participation by the public in the design and evaluation of those studies, all in a manner analogous to the notice and comment process contemplated by the Administrative Procedure Act for agency rulemaking proceedings.

In particular, the Subcommittee believes that the Commission should begin providing advance public notice of its staff's intention to undertake economic studies relating to particular Commission policies or regulatory issues and should solicit public comment on their design before they proceed. Such notices should describe in detail, and should encourage interested persons to comment on, such matters as the relevance of the study to the policy or issue being examined, the reliability and completeness of the data to be examined, and the appropriateness of the analytical techniques to be employed. Summaries of all comments received and a discussion of the points raised by commentators (especially concerning scope and methodology) should be included in each staff economic study published by the Commission.

Finally, the Subcommittee believes that all raw data examined by the Commission's staff in connection with studies conducted for regulatory purposes should be made available to the public as a matter of general practice (in some cases, of course, it may be necessary to strip from such data material identifying the particular person or entity from whom the data was received or whose activities are reflected in the data.) Availability of this information without the need to invoke the provisions of the Freedom of Information Act to obtain it should encourage interested persons to subject the staff's data to further analysis and, in appropriate cases, to provide additional comments to the Commission concerning the policy or regulatory issue examined.

The Subcommittee believes that adherence to procedures of the kind outlined above would increase public confidence in staff economic studies published by the Commission, would enable the Commission to better evaluate the weight that should be given to such studies in formulating policy or resolving particular regulatory issues, and would help assure that such studies are conducted in the manner best calculated to produce meaningful and reliable results.

The Subcommittee does not intend that any of the additional funds authorized by the bill beyond the SEC request should be allocated to the operations of Economic and Policy Analysis. Absent significant movement by the Commission, as described above, in the management and operation of functions currently executed by Economic and Policy Analysis, the Subcommittee will consider specifically declining to authorize any funds for the operations of this program in the next budget authorization.

Senator HEINZ. This report's conclusions are as follows: "The subcommittee does not intend that any of the additional fund authorized by the bill beyond the SEC request should be allocated to the operations of the Economic Policy Analysis Department, and absent significant improvement by the Commission," et cetera, "the subcommittee will consider specifically declining to authorize any funds for the operations of this program in the next budget authorization."

The committee is waiving a red flag.

Now, one of the reasons I think the committee is waving a red flag may have to do with the SEC's proposed rulemaking procedures regarding the multiple trading of options. And one of the things I would specifically ask of you is that there be a very careful study of these things before this rulemaking proceeds any farther.

The first is that there be a study of the technology needed to implement any kind of national market system for trading in options and the time and the cost of implementing such a system.

The second is, bearing in mind that when multiple trading of options on many exchanges was taking place prior to 1977, there were a lot of problems and abuses that led to the creation of a moratorium, with some small exceptions, on the multiple trading of options, that there is also an analysis done of the regulatory requirements and regulatory risks, and most specifically, what safeguards there will be for public orders.

It was the lack of safeguards prior to 1977 that caused problems, and there is considerable doubt as to whether there have been any additional safeguards developed.

And third, drawing on the first two analyses that I have requested, that there be an analysis of the costs and risks, measured against the supposed benefits identified in the November 1986 study.

Would you be in a position to tell the committee that you will insist on those issues being carefully studied prior to getting down the track on this rulemaking?

Mr. RUDER. Yes, I will, Senator. I think the multiple trading issue is very important and deserves extensive study. And if confirmed, I would be sure that those studies were made along the lines you've suggested.

Senator HEINZ. Mr. Ruder, I thank you.

My time is expired.

The CHAIRMAN. Thank you, Senator Heinz.

Senator Riegle.

Senator RIEGLE. Mr. Chairman, I'm going to have a number of specific questions that will go beyond the time that we'll have this morning that I'd like to have the nominee answer in writing. And so I'll submit the ones that I'm not able to raise orally today.

The CHAIRMAN. Without objection.

Senator RIEGLE. As you know, several States have acted recently to change corporate governance statutes in those States to deal with what is seen as the problem of hostile takeovers.

When you and I talked privately, I mentioned the case recently of Dayton-Hudson in Minnesota, and we've got the the Supreme Court's decision on the Indiana law which has become something of a centerpiece case.

I'd like to hear your thought as to where you think State authority begins and ends with respect to the ability to set the legal standard for corporate governance and what you think the reach is and should be of Federal securities laws.

Mr. RUDER. Senator, you should be a member of my class. That question you posed is very delicate and difficult. Let me respond this way.

It is my firm belief that the governance of internal affairs of corporations should be at the State level.

It is also my firm belief that the Securities and Exchange Commission has an obligation to maintain a fair and active market in the trading of securities.

The problem arises when State laws tend to interfere with the market for trading in securities. I would want to look very carefully at the way in which these State laws are causing interference with the market for securities in the United States, and urge the Commission to take whatever action is necessary to make sure that the market for securities continues to exist, even if that should eventually mean some interference with internal governance of corporations.

Senator RIEGLE. Have you seen any cases yet in terms of actions taken by States that cause you concern professionally or that you think may impede the national trading and market in securities?

Mr. RUDER. Concern is a relative word. The recent *CTS* case in the Supreme Court represented an effort by Indiana to control in some sense the takeover activity in that State, and without regard to whether or not the Supreme Court decision was one which I would favor, I can say that there is a significant difference in the Indiana situation from what may exist in others.

And that is that there was a fairly substantial nexus in the statute between the corporations which were covered and the State.

That is, the statute covers corporations which have significant activities in Indiana.

I would be disturbed if such laws were passed in which there were no such nexus of activity within the State.

Senator RIEGLE. Seems to me, if my recollection of the facts are right, that while the Supreme Court upheld the right of Indiana to take the steps that it did, the SEC filed an amicus brief asserting that what Indiana proposed to do was unconstitutional.

So the Commission clearly found itself on the losing side of that proposition. Would you tend to support the view that the SEC itself put forward in that case?

Mr. RUDER. I would have approved the filing of the brief in the *CTS* case, which I have read.

Senator RIEGLE. But, by the same token, now that the Supreme Court has ruled, you are quite prepared to follow the law of the land?

Mr. RUDER. That's correct. I must follow the Supreme Court.

Senator RIEGLE. Yes, we've had some problems with that recently in this town, some extensive hearings about obeying the law. We just want to make sure that we've got people who are going to obey the law whether they like it or not.

I take it that you're prepared to do that.

Mr. RUDER. Yes, I'm prepared to say that.

Senator RIEGLE. Some people question the strategy of the government's crackdown recently on parking of securities while others argue that after the Boesky case revelations, parking has clearly become a tool that tends to corrupt the whole takeover process. There are really two schools of thought here.

I want to know how you view the issue of parking and securities violations of law arising from this practice. Do you see this as a major problem? What's your view on it?

Mr. RUDER. Senator, I am not fully familiar with the facts of that investigation, and it is now underway. And it very well may be that I will be called upon to make some decisions in cases which are in the aftershock of the Boesky investigation.

But I will say generally that I understand parking to be illegal under the securities laws, and if it's illegal, steps should be taken to enforce the law.

Senator RIEGLE. My time is up, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Riegle.

Senator Bond is next.

Senator BOND. Thank you, Mr. Chairman.

As I indicated in my opening statement, Professor Ruder, Chairman Dingell of the House Energy and Commerce Committee, has written to the SEC asking for information on the Washington Public Power Supply System default, WPPSS as it's called, which you'll remember involved some 70,000 bondholders and $2.25 billion in principal.

I've been very much concerned about this. And it appears that a default of this magnitude would warrant some active investigation by the SEC.

What do you feel the role of the SEC should be in this matter, and would you look into the matter when you were Chairman of the SEC?

Mr. RUDER. Senator Bond, it has been my long-held feeling that the quality of disclosures in the municipal market can be increased. And I understand that the Commission is currently investigating the disclosures in the WPPSS situation. That investigation is underway, and I would of course want it to continue through to a conclusion which would give us some indication as to whether the law was violated.

Senator BOND. I think the question is how prompt that conclusion is. The SEC has been mulling it over for a good, long time. And I think there are a lot of bondholders who would like to see something done more——

Mr. RUDER. Well, I just don't have that information, sir. But if I were confirmed, I would ask the Enforcement Division to tell me why the investigation hasn't gone forward more promptly.

Senator BOND. Let me move to the other subject I indicated I was going to talk about. Yesterday's Wall Street Journal had an article entitled "Regulation of Brokers By Securities Industry Seems To Be Faltering."

That article mentioned that there were a significantly higher number of complaints both to the self-regulatory organizations and, I gather, to the SEC about churning and unauthorized trades.

Obviously, you don't have information on what's going on within the SEC now. But, what do you think generally about holding securities firms or their directors and officers responsible for actions?

Do you have specific ideas on how to improve the self-regulatory mechanisms in the securities industry?

Mr. RUDER. My view is that it's very important for the average investor, the retail investor, to feel that steps are being taken to protect his or her interests. And I'm hopeful that a current program, which I understand is now underway at the Commission, will be continued. That is a program which encourages the self-regulatory organizations to engage in more vigorous activities to ensure that the member firms are supervising their registered representatives in connection with their securities sales activities.

I believe it would be an important program for the SEC to follow.

Senator BOND. I would concur with your feeling about the need to protect the smaller retail investors. And I would encourage you to exert your leadership in that area.

Mr. Chairman, I yield back whatever time I have left.

The CHAIRMAN. Well, bless you. Thank you, Senator Bond.

Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman.

Mr. Ruder, you made a statement earlier that I won't elaborate on because I have to agree with that. You said basically that your view was the shareholders own the corporation. That's a basic principle of corporate law, isn't it?

Mr. RUDER. It is as far as I understand.

Senator SHELBY. And that's why people create them. You know, people create them as an entity and the stockholders own them.

That's basic. You're a former law professor, and still are.

Mr. RUDER. I've been teaching that subject for 25 years, and that's what I believe.

Senator SHELBY. And if they're created basically for the benefit of the stockholder, what's wrong when the stockholders benefit from a takeover?

If the stock goes up because someone is interested in buying it, as long as it's honest and, you know, legal and done forthrightly, what's wrong with somebody coming into the marketplace and saying:

"This stock's trading at $40 a share; we believe it's worth more. You know, you've put the parts together, we've evaluated it and we'll offer $60 a share."

Then the stockholders will benefit, will they not?

Mr. RUDER. That is essentially my view, although it's tempered by a lot of "ifs" and "buts".

Senator SHELBY. Sure it is. Whether it's short-range, long-range or other things.

Now, is it your view basically that the stockholders or shareholders, whatever you want to call them, have benefited in a lot of instances where you've had takeovers in recent years by the run-up of the stock? And the LBO's?

Mr. RUDER. Yes, I believe that the stockholders have benefited. I think it's important that, in connection with those offers, the fiduciary obligations of the officers and directors to act in the best interests of the shareholders are followed.

Senator SHELBY. You've looked at, I'm sure, some of the legislation that's been introduced by Chairman Proxmire and others. I don't know if you've studied it in detail, or had a chance to.

But, it's been said by people that have problems with that legislation that this is a piece of legislation that would basically perpetuate old, stale and incompetent management in a lot of situations if this proposed legislation became law.

In other words, it would be harder and harder to take out the entrenched.

Have you got any views on that?

Mr. RUDER. I really don't have a view on the specifics of the legislation in that regard except to say that my view of the tender offer game, if you will, over the years has been that whatever tactics seem to be adopted by management, or shareholders in some instances, there seems to be ample flexibility in the capital markets and on the part of the people who are interested in making purchases to go around and complete the purchases in any event.

What I think is necessary——

Senator SHELBY. So, just basic creativity and being persistant in their goal?

Mr. RUDER. Yes, and one of the reasons you've had such ingenious defensive maneuvers and again followed by ingenious offensive maneuvers has been that—I don't want to sound like someone in some other hearing—you've had a lot of smart lawyers. And the capital markets people are also trying to figure out ways to accomplish something in the market.

Senator SHELBY. Maybe you taught some of those lawyers at Northwestern.

Mr. RUDER. I don't know of any. [Laughter.]

Senator SHELBY. One other question.

What's your basic view on the golden parachute syndrome?

Mr. RUDER. I think the golden parachute is something that basically should be regulated by State law. I think severence contracts, as they're sometimes called in nonpejorative terms, are sometimes useful and sometimes not.

Senator SHELBY. Are they useful sometimes to keep quality management figures? Would that be your reference point there?

Mr. RUDER. The assertion is made that severance contracts will help to induce quality management to come to corporations.

Senator SHELBY. But, then the other side of it is that it's also been abused and you're abusing the stockholder that way because you're enhancing someone financially in the future and taking care of them at the expense of the stockholder.

Mr. RUDER. That's the view that is expressed on the other side, that's right.

Senator SHELBY. Mr. Ruder, my time is up. We appreciate you coming to the hearing.

The CHAIRMAN. Thank you, Senator.

Senator Hecht.

Senator HECHT. Thank you, Mr. Chairman. I have an opening statement which I'd like to put in for the record.

The CHAIRMAN. Without objection, it will be printed in full.

STATEMENT OF SENATOR HECHT

Senator HECHT. Thank you Mr. Chairman. I would like to join in welcoming Mr. Ruder, Cobb, and Martin before us this morning. I think we have three very qualified candidates, all of whom I support.

I urge Mr. Ruder to stay the course of his predecessor in actively pursuing those in your industry who engage in illegal activities. We have given you the necessary resources, and I think by effective enforcement, you can preclude some of the legislative proposals before this committee.

One final note, I want to thank the chairman for the timely manner in which he has held nomination hearings in this committee.

And I would just like to make some comments about these three gentlemen—Mr. Ruder, Mr. Cobb and Mr. Morton. This is my fifth year in serving on the Banking Committee, and I don't know when we've had three more highly qualified individuals to act upon.

I think that these men have the background and there is no question they are very, very highly-qualified to each individual position.

I think we Americans owe these type of people a debt of gratitude to make the financial readjustment in order to administer government.

And I would also like to state in closing I think the Administration has done a wonderful job on the selection of these three individuals.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman.

Mr. Ruder, in some previous hearings on the issue of corporate takeover, the statement's been made and, in some cases, supported by studies of respected academics that the corporations which have been the principal target of takeovers have not been those characterized by stale, lethargic management, but rather have been some of the best-run corporations, which had large amounts of assets, cash or otherwise, that made them attractive for takeovers.

If you have done any personal or academic evaluation of that, would you concur that that's a fair statement?

Mr. RUDER. From my reading in the academic studies, yes.

Senator GRAHAM. If that is the case, the question that I have pondered is:

Why have the marketplaces not recognized the inherent value of those corporations until they were brought to the attention of the investment community through the acquisitive activity of a hostile takeover?

Is there some systemmic defect in the way in which the general investment community is being informed as to the economic value of corporation that is at fault?

Mr. RUDER. I will give you an opinion. It isn't fact. But my opinion is that when we have takeovers, the difference in market valuation between the current market and the takeover price represents what is known as the control premium. That is, that there is

a payment being made by the buyers for the right to deal with the corporation in any way that they may please.

And frequently, in today's market, that has included selling off pieces of the acquired corporation and realizing values which exist, but could not be realized when they were part of the company being acquired.

Senator GRAHAM. Why is that control value only factored into the underlying value of the securities during a takeover period? Why is that not an inherent incident of the value of the corporation which would be embedded?

Mr. RUDER. Well, it's my understanding that when one buys shares in the market, one buys minority positions in a corporation, and does not buy a controlling position.

Indeed, in a long line of jurisprudence in the United States, the question has arisen:

To whom does the control premium belong?

And I think, when you and I go out and buy a share of stock in the market, we're not buying the right to control in the sense that we have anything other than our aliquot vote.

If we were to buy a majority of shares in the market, the cost of buying that majority would probably drive the price up to reflect the control premium.

That's my opinion. It's not factually based.

Senator GRAHAM. It has been suggested that one of the reasons for this gap between the general market price and the price when a corporation comes into play is that current reporting procedures, and particularly generally accepted accounting procedures as they value assets inadequately reflect the underlying economic value of the corporation.

Do you feel that's part of the explanation for this differential?

And, if so, is there a role for the SEC in revisiting its reporting standards?

Mr. RUDER. Sir, I think the SEC's reporting standards are excellent. I think the problem that you're describing is that the so-called GAAP accounting procedures do not reflect value in terms of underlying assets, but reflect only historical cost.

It would be possible to construct a system of reporting in which current values are reported. But that system has not been widely urged even by the most sophisticated members of the accounting profession because of the difficulty of making accurate appraisals of properties which have not recently been purchased or sold.

Senator GRAHAM. Thank you, Mr. Ruder.

The CHAIRMAN. Thank you, Senator Graham.

Senator Sanford.

Senator SANFORD. Dean, I'm glad to have an opportunity to visit with you again.

Have you had an opportunity to study the two bills now before this committee, S. 1323 and S. 1324, dealing with takeovers?

Mr. RUDER. I have read them. Study may not be the right word for it, but I am familiar with most of their provisions and I have reviewed, as I indicated earlier, Acting Chairman Cox's testimony with regard to them. So I am prepared to answer questions to the extent of my knowledge.

Senator SANFORD. Well, I must say that I have been a little bit disturbed by your answers. You seem to take a rather narrow view of the market and takeovers. You've given the impression it seems to me that if the stockholder gets more money, well, then everything is all right. And I don't think that view is quite broad enough for the kind of regulation we need today.

Mr. RUDER. Well, Senator, I may say that I fully understand the position that takeovers in some cases cause dislocations in the companies which are acquired. I know that happens and I think that it's a legitimate concern of a legislature that some of the acquisitions will cause severe disruptions in local communities and severe disruptions for employees.

I am not sure, however, that it is a concern which ought to be expressed in terms of interfering with the market for corporate control.

Senator SANFORD. Well, you know, the truth of the matter is, in the corporate world there's not a chief executive that doesn't feel almost every morning as if he were walking on the back street of the east side at midnight expecting to be mugged at any time. And we've seen countless examples of corporations devastated for no good just to satisfy the greed of the raider.

Burlington Mills has just gone through that. They warded off the raider but at a tremendous price. To save the corporation they threw it into debt, diminishing its opportunity to be competitive in the world and diminishing its ability to perform the basic research needed to assure its future. There's just got to be something wrong with a set of rules and regulations that permits that kind of devastation and I am disturbed that you don't think it's a serious problem.

Mr. RUDER. Oh, I do think it's a serious problem, Senator. The problem is that I don't know what the proper solution is.

If we look at all of the takeover activities going on in the United States and we come to the conclusion that the takeover activities are going to cause restructuring in the American economy, I don't have enough information—it may be available from sources that I am not familiar with—but I don't have enough information to know which takeovers are going to produce good results and which takeovers are going to produce bad results.

Senator SANFORD. Well, I think what we want to do is to make it more difficult to buy up companies without any money up front. The situation is such now that almost anybody can come in with a little bit of bridge financing, and conditional bank debt, and just take over a company.

There's not a company in the country today that's not vulnerable if it's owned by public stockholders.

So it's a very, very serious problem. We talked about three studies—Herman and Lowenstein, and Ravenscroft and Scherer, and Meggenheim and Mueller. Have you had an opportunity to read those?

Mr. RUDER. No, I have not, Senator, if those are the ones based upon accountants' approach to the effects of takeovers.

Senator SANFORD. No, they are much broader than that.

Well, just in keeping with the academic setting that you and I are both familiar with, I would like for you to take a look at those studies and I brought copies for you provided by my staff members.

Mr. RUDER. Well, I'd be very happy to take a look at them.

Senator SANFORD. And I would appreciate very much, Mr. Chairman, if we could ask Dean Ruder to look at S. 1323 and S. 1324 and give us his opinion, not Mr. Cox's opinion, of those two bills, and I've got copies of those two bills, too.

Thank you very much.

The CHAIRMAN. Thank you, Senator Sanford. I would second what you say and the excellent questioning by Senator Graham.

I think we have to keep in mind that there's more than stockholders at stake here. The stockholders do have an interest, but the community has an interest as well. Bondholders have an interest. The employees have an interest.

It's interesting that a Louis Harris study shows that even stockholders overwhelmingly, said that the ones who have the greatest interest in takeovers were the employees. I think we have to keep this in mind in providing a framework for takeovers.

Now I would agree with what's been said before. I think that takeovers can provide a very useful function and I think that we should do nothing to prevent them, and I don't think our bill does. But I hope you will look at it and recognize that the main thrust of our bill is disclosure. Making information available to the general stockholders at the same time it is to the raider or the takeover people. Once they get 3 percent under our bill, then the same day they have to file their statement with the SEC and with the public and they can't buy another share of stock until the public is aware of it. It's much better than having a 10-day window in which the arbitrageurs and the takeover people can make a killing.

That's the kind of thing it seems to me that we are working for and I think that the studies that were referred to by Senator Sanford, the Lowenstein study, a study of 6,000 mergers over a period of years in which he found that the firms taken over had a return on equity of 16 percent compared to 12 percent for other firms generally in the market, and the Scherer study that showed that after they are taken over—the efficiency, productivity of the takeover product diminishes.

I think that we have to keep this in mind. One dramatic example of that was Unocal of California where they went from a $1.2 billion debt to a $5.2 billion debt.

Then Mr. Fred Hartley testified that he has to spend $3 million every day in interest, $3 million that can't go into research and development, $3 million that cannot go into manpower training or new equipment, loaded with debt, and therefore slowing down their productivity.

So I hope that you will look at this in the same unbiased way I have. [Laughter.]

And reconsider your position. You're an eminent scholar, a very able man, with a fine mind, and I hope you will use that good Wisconsin ethical background you have to come to the right decision.

Mr. RUDER. Sir, if I just might make one comment, I don't want it to be understood that I have not looked at the bills.

The CHAIRMAN. I know you have.

Mr. RUDER. Or studied them. I have indeed looked at them closely. Perhaps the word "study" threw me off, as an academic, but I have looked at them closely and I am in general agreement with the Commission's positions. I am also aware that the Commission has some rulemaking and disclosure positions which are contained in that testimony and I would try to make sure that those positions are carried forward.

The CHAIRMAN. Now, Mr. Ruder, you've chosen to invest considerable legal talent deriding the efforts of the SEC in using rule 10b-5 to snare securities crooks.

Does that mean that our securities policies have been overzealous?

Mr. RUDER. Sir, the characterization of my deriding the SEC in connection with Rule 10b-5 is not what I understand to be my view.

My law review article written in 1963 took the position that the legislative history of the 1933 and 1934 acts did not provide for a private right of action to enforce rule 10b-5. I wrote a long article at the end of which I said Congress apparently came to the conclusion that it is better for the Securities and Exchange Commission to enforce rule 10b-5 rules under section 10(b) because it is the Securities and Exchange Commission which has the expertise and the administrative discretion.

So my writings in that area should not be understood as being against administrative enforcement. They were based upon an examination of legislative history which led me to believe that the courts weren't following the congressional intent.

I must say I was wrong because the Supreme Court and all of the circuit courts have said I was wrong.

The CHAIRMAN. Senator Riegle.

Senator RIEGLE. Dr. Ruder, the more time we spend together, the more I find myself liking you personally; and yet, I've got a problem in one area and I want to be very blunt with you today and get it out on the record so we all know where we are staffing from.

I think you have given weak answers to Senator Graham, to Senator Sanford, to Senator Proxmire and me on this question of hostile takeovers. Your position in this area relates to the background around which your nomination has taken place.

I said to you in our private conversation, and I will repeat it here for the record, that it took some time before the administration decided upon a nominee for the SEC chairmanship. There were other candidates who were in the running and who were thought to be about to receive the nomination and then, at the last minute, were sort of knocked out of contention. The general rumor that's moved through the town is that they were knocked out because they were thought to be a little too tough on hostile takeovers. This was seen as critical deficiency by the selectors in the White House, and so the list kept getting thinned down and eventually you were selected.

I don't think I violate our discussion when I say that even you were somewhat surprised that you received this nomination when it eventually came.

So that's the context and the background by which we are trying to determine exactly how the selection process took place and what kind of an SEC Chairman you will make.

Now you are obviously a distinguished scholar and I think an engaging person as well. I look at six pages of written articles here—and I'm not even sure this is a complete list, but you have been a very prolific writer and scholar in securities law. Yet, when you are asked a very fundamental question by Senator Sanford and others on one of the hottest issues that faces the country, you basically don't seem to be particularly well informed in that area or imply that's not been a principal area of study for you.

Mr. RUDER. That's not true, sir.

Senator RIEGLE. Well, then, perhaps I misheard what you said to Senator Sanford. I'm going to go down through the list here, time permitting, on specific things that are in the takeover reform bill S. 1323 because I sense that you have a strong philosophic view on these matters. But when you have been pressed on details you have tended to back off and say that this is not an area that you are intimately familiar with or that you have studied at length or that——

Mr. RUDER. Well, I don't want to be misunderstood about my response to Senator Sanford.

Senator RIEGLE. Fine.

Mr. RUDER. I have been studying this area. I taught a seminar on takeovers in the spring semester last year. I had 20 student papers written and I am fully familiar with the issues.

Senator RIEGLE. Good. All right. Because I don't want your views to be mischaracterized. I want them nailed down just crystal clear here for everybody to see.

I'd like to explore not just your philosophic view on hostile takeovers and so forth, but I'd like to hear your detailed thinking on some of the specific items that are in the legislative proposal and let's go down through the list.

In terms of more rapid disclosure, when we talk about the filings of people who are beginning to accumulate blocks of stock, would you favor closing the 10-day window and, if not, why not?

Mr. RUDER. The Commission's position is that closing the window to 5 days would be——

Senator RIEGLE. I'm asking your opinion.

Mr. RUDER. I agree with that, and I think the Commission's solution to the reporting requirement is a good one. The Commission has suggested that once someone obtains 5 percent there be an immediate standstill and that person will not be able to acquire more shares until filing takes place.

That means that there will be a holdup on further purchases until there is full disclosure. I think that's a very much disclosure oriented approach and one which will be beneficial.

Senator RIEGLE. Now in terms of the bill that ten of us on this committee have cosponsored, we have taken the view that it would be better to lower that disclosure threshold to 3 percent. Could you support that?

Mr. RUDER. No, I do not support the 3-percent threshold at the current time, although I don't know what I would conclude if I were to study that particular issue further. It's my impression that

lowering the 5 percent to 3 percent will increase the disclosure obligations of a great number of purchasers who do not intend to engage in tender offer activities and that it will significantly increase the regulatory burden at the Commission.

Therefore, at this time I would think that the gains from lowering from 5 percent to 3 percent would not be useful enough.

Senator RIEGLE. You've put so much emphasis on the primacy of the shareholders' interest here, would it not be in the interest of the shareholders to have more time to consider an offer that's being made, particularly if it's a hostile takeover? We also propose extending the time period in which shareholders can get the information, evaluate it, allow other rivals that may want to come in and so forth.

I assume, then, you would support that?

Mr. RUDER. No, sir. At least at this point I have to assume that the conclusion which the Securities and Exchange Commission reached some 3 years ago after several months of intensive consideration, maybe more intensive consideration, that the 20 business-day period is a sufficient time period.

We are talking about 20 business days. There will be at least 4 weeks and perhaps more if there are holidays involved. I think that is certainly enough time for the investment community certainly to absorb the information and, in my view, any reasonable shareholder will be consulting with his or her broker and should be able to get that kind of information within a 20-day period.

Senator RIEGLE. You saw the article on the front of the Wall Street Journal yesterday about some of the problems we're having with brokers in the country?

Mr. RUDER. Yes, I did.

Senator RIEGLE. I hope to get to that too in due course here.

Mr. Chairman, my time is up here, but I want to say again—and I hope we can pursue this a little further—that Dr. Ruder has been very forthcoming in indicating one of the few substantive areas about which you were asked questions in your discussions at the White House—you said it here today—was on this subject of takeover reform.

Mr. RUDER. That is correct.

Senator RIEGLE. It was on this subject and so I think that makes it an important issue. It sounds to me as if that was clearly a critical criterion in the selection process in the mind of the selectors at the White House. I think we have to understand precisely where you're coming from in this area.

Mr. RUDER. Well, I would like it to be clear that I did not commit to anyone in the White House as to what my views would be on this or in connection with any bill and, as I indicated at the outset, I have to reserve the right, if I should be fortunate enough to be confirmed, to look at this in great detail and come to some different position than I may be stating here.

The CHAIRMAN. Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman.

Dr. Ruder, I want to commend you again for your being forthright and being honest. You know we disagree here in the Senate on this committee and I like the way you are coming forth and stating your views. Because you might disagree with me on a piece

of legislation might not cost you any respect from me. I might respect you more. You might have more.

Concerning shareholders and stockholders—I mentioned that earlier and I think I said that I agreed with a basic rule that I was taught in law school and have experienced in the marketplace that the shareholders do indeed own the corporations and that we should look after the shareholders.

But concerning this insider trading legislation that's been mentioned, proposed legislation, do you agree or disagree that Congress should legislatively create a private right of action here? Should this private right of action be extended to reach brokers or dealers where there's been abuse and misuse here on insider trading?

Mr. RUDER. Well, Senator Shelby, there already is a private right of action in the securities laws under rule 10b–5.

Senator SHELBY. And how broad is that and do you think that's sufficient?

Mr. RUDER. It is an extremely broad private right of action which——

Senator SHELBY. There are suits going on right now under it, aren't there?

Mr. RUDER. Oh, yes. There are problems with it and I don't mean to foreclose further consideration, but there are problems in terms of private ability to receive full compensation for insider trading wrongs.

Senator SHELBY. Sure.

Mr. RUDER. But the Insider Trading Sanctions Act gives the Commission the power to seek up to three times the damages when the Commission acts and I think that's a very important and good sanction. Indeed, I do remember one of the few times that I was interviewed by the media in this regard and I took the position before the adoption of that act that the provision was good.

Senator SHELBY. Dr. Ruder, if you are confirmed and become Chairman of the Securities and Exchange Commission, regardless of your personal views, do you plan to vigorously enforce the law, whatever it is?

Mr. RUDER. Yes, sir. I told my 14- and 15-year-old sons when I came here that I was going to stop being the "principal of the school" and become the "top cop", and that's what I intend to do and intend to be.

Senator SHELBY. And as long as that's the law you intend to vigorously carry it out?

Mr. RUDER. Absolutely.

Senator SHELBY. Thank you.

The CHAIRMAN. Senator Graham.

Senator GRAHAM. Dean Ruder, I believe that a person who sits in a regulatory position—and moving from principal to chief cop will underscore that responsibility—is in the best position to be evaluating the policy that they are implementing and to be able to make recommendations as to how the law should be improved in order to better carry out public purposes.

With your academic background, you are especially well equipped to merge those functions of regulator and policy adviser.

What would be some of the areas that you would be most likely to give your attention to that maybe 6 or 12 months from now

when you next come before this committee we might ask you about in terms of your recommendations of congressional initiatives to enhance the capital market system of America?

Mr. RUDER. Senator, I can't tell you exactly that it will be a legislative initiative, but I consider questions of computerization of trading in the United States, of the developments of disclosure through computers, and of the problems involved in the internationalization of the securities markets to be of very great importance to the United States and I would expect that my efforts would be quite strongly devoted to understanding those areas, to asking what kinds of regulatory initiatives are necessary and, if necessary, coming to Congress to seek legislation to assist in regulation in those areas.

Senator GRAHAM. Thank you, Mr. Ruder.

The CHAIRMAN. Senator Sanford.

Senator SANFORD. Dean, I hope you take seriously the feeling that I have that we would like very much to have you give us a written response, in effect, testimony on these two bills. I am especially interested in the financing side of the takeover process and particularly the so-called "highly confident" letter that probably is not worth 15 cents but it represents conditional financing and it enables a great many takeover artists to buy into operations without having any money at risk. It also allows financial institutions to get in the financing line without having any money at risk.

Just a recent example, First Boston committed $1.8 billion to finance Campo's acquisition of Allied Stores at a time when First Boston's holding company balance sheet had $1.1 billion of equity. By using its parent company and not its broker-dealer affiliate, First Boston avoided the margin rule of broker-dealer net capital rules.

Now this type of activity seems to me to raise serious regulatory concerns. Do you see any steps that ought to be taken about that?

Mr. RUDER. I certainly expect to look at that kind of activity carefully, particularly——

Senator SANFORD. I just want to raise that as another problem. I'm really trying to focus on the fact that this isn't a simple stockholder problem.

Mr. RUDER. Oh, I understand there are many, many elements of this which are quite complicated and need to be looked at.

Senator SANFORD. Let me tell you what the effect of that is on Wall Street. It's the LBO and you can now, if you're a chief executive, expect a visit from a banker almost every other day to explain to you how great it is to have an LBO.

Well, I think a lot of examples have been in the record now where managements have taken companies private on a leveraged buyout and then, relatively shortly thereafterward, taken the company public again at tremendous profits. Now there's something about that that's not quite fair to the stockholders, not quite fair generally, because it's engineered from an inside position.

Now they have to have a fairness opinion, but anybody can pay a fee and get a fairness opinion. We have a position stated in one of these pieces of legislation that calls for an independent opinion by an appraiser appointed by a court before an LBO goes forward and that the public must have an opportunity to examine that, includ-

ing the shareholders who presumably might have some cause of action.

How do you feel generally about regulating LBO's?

Mr. RUDER. I think LBO's are and should be regulated under state law. I think that there are tremendous fiduciary duty problems which are raised immediately once management is on both sides of the transaction and the State courts, as I understand it, are looking quite closely at those kinds of transactions.

Delaware law certainly would point to the necessity of having fairness opinions by independent parties.

Senator SANFORD. Well, we've seen how those fairness opinions operate and so we are trying to put a little teeth in it in the form of some Federal statutory law to help the State law.

Mr. RUDER. I understand that, sir, and it's——

Senator SANFORD. And I would hope that we could have your opinion, which is part of the bill that we've asked you to comment on.

Mr. RUDER. I will be glad to answer those questions.

Senator SANFORD. Well, I've got a number of other questions—the debt financing, the bridging, but I think all of that is in the legislation, so I'll just spare you now commenting on it since I hope you will later.

Mr. RUDER. Thank you.

The CHAIRMAN. Thank you, Senator Sanford.

Mr. Ruder, the SEC launched a massive investigation into the alleged misuse of as much as $12 billion in municipal bonds. It promises to be the biggest case of this kind dwarfing the collapse of the WPPSS bonds in Washington or even New York's problems.

Review for me, if you will, your understanding of that case.

Mr. RUDER. Are you talking about the WPPSS case, sir?

The CHAIRMAN. No. I'm talking about the alleged misuse of as much as $12 billion in municipal bonds. As I say, this dwarfs the WPPSS situation.

Mr. RUDER. I think that what you're talking about is a Commission inquiry into various muncipal bond offerings by municipalities in which the municipalities have either not used the proceeds for the purpose for which they were offered or have not used the proceeds promptly. And I understand that investigation to be going forward.

It is a continuing investigation and I am not familiar with it in any detail, so I cannot comment in any more detail than to say, as I would always say, that full disclosure is one of the important ingredients in the offering and sale of securities and that the Commission should be vigorously seeking full disclosure.

The CHAIRMAN. Well, let me ask you this then. As specific legislation, some urge that municipalities register securities with the SEC. That involves serious constitutional issues.

You're a legal expert. What's your reaction?

Mr. RUDER. I just don't have a view on the constitutional questions. Certainly the registration of municipal bond offerings would require legislation. It would require a large addition to Commission staff.

The CHAIRMAN. Mr. Ruder, you're a constitutional expert. I don't think we've had any witness before us who is as well-versed on this

issue or who has had the opportunity to study it as you have. It seems to me you ought to have some kind of a view on the constitutionality of requiring municipalities to register their securities with the SEC.

Mr. RUDER. Sir, the legal teaching profession is divided in terms of subject matter and constitutional law has not been one of my specialties.

The CHAIRMAN. This is securities law.

Mr. RUDER. I can, as a securities lawyer, look at constitutional questions and I will, if you ask me to, come back with an opinion, particularly after my confirmation.

The CHAIRMAN. Well, perhaps you could do that in writing then. We would appreciate that.

Mr. RUDER. If I am confirmed, I would expect to have the advice of the General Counsel's Office on that issue.

The CHAIRMAN. Now while hostile takeover and insider trading dominate public attention—some of the most vicious shams take place right between a customer and their broker.

Last year the Securities and Exchange Commission received 10,392 complaints from customers about brokers. That's a 121-percent increase from 1982 according to the Wall Street Journal. So it's a serious problem.

People can lose their life's savings because of brokers. What do you propose to do to make sure that brokers act ethically and professionally?

Mr. RUDER. Sir, I believe that the self-regulatory organizations should be more vigorous in insisting that the member firms have compliance programs and enforce their compliance programs.

The CHAIRMAN. Well, that's the self-regulatory organizations. How about the more failure to supervise cases brought by the SEC. Wouldn't that be one way of coping with that?

Mr. RUDER. That would be one way of coping with it. I understand the problems of the brokerage industry and the problems of regulating matters at the customer level. But what we're talking about is a matter of allocation of Commission resources and there simply, as I understand it, is not enough staff for the Commission itself to engage in this kind of action in very many cases.

There is plenty of staff within the brokerage offices and I think that there's a great deal of leveraging that can go on if the SRO's force the brokerage firms themselves to do this policing.

The CHAIRMAN. Let me ask you just one more question.

Your predecessor, John Shad, used to come before the Congress and tell us how he was doing much more with less. The fact remains, however, that less than 15 percent of corporate filings were reviewed last year and less than 5 percent of broker-dealers were inspected.

What assurances can you give us that you will be more forthcoming with the Congress regarding the true state of affairs at the Commission?

Mr. RUDER. Well, sir, I'm not sure that Chairman Shad wasn't forthcoming regarding the filings. The percentage figure that you've given us is apparently a percentage figure which includes all filings at the Commission. The Commission has, as I understand it, been reviewing filings selectively. A very large percentage of ini-

tial public offerings are reviewed and a very large percentage of contested takeover and proxy matters are reviewed. So that I don't think the characterization is right. But I will say, in addition, that I will be as forthcoming as I can be in giving the Congress information as to what the Commission's reviewing processes are.

The CHAIRMAN. Under the leadership of Senator Riegle, who is chairman of our Securities Subcommittee, this committee has recommended a 30-percent increase in the funding for the SEC and he had to take the initiative in pushing that, but he succeeded in doing it. As you know, the taxpayer doesn't pay for that really. It's paid for by fees and it means more vigorous enforcement.

Mr. RUDER. I understand that and hopefully, if I'm confirmed, I will have the benefits of the additional resources at the Commission and I hope to use them wisely.

The CHAIRMAN. Senator Karnes.

Senator KARNES. Thank you, Mr. Chairman.

Most of the questions that I had have already been asked, but I would like to ask if Congress should sharpen the definition of insider trading or wait until the Supreme Court's decision in the *Winans* case? Have you had a chance to give that some thought?

Mr. RUDER. Well, as you know, the Commission is in the process of presenting a definition of insider trading to the Congress.

My view on the definition is that I can't really comment on the definition until I see it and it might be that it would be better not to do anything about a definition until the Supreme Court has ruled in *United States* v. *Carpenter* which is otherwise known as the *Winans* case.

It would be at that time that one would know whether the definition suggested by the Commission was better or worse than the definition which derives from court interpretation.

I will say that I don't think that any definition should be adopted which would in any way reduce the Commission's enforcement power over insider trading.

Senator KARNES. The definition I believe is to be completed at the Commission level the first week in August?

Mr. RUDER. August 3 is the date on which the definition is due and I understand there will be some hearings on August 7 on the matter.

Senator KARNES. This may be something that you may have to confer with staff after you've been approved and confirmed. Do you have any idea how soon Siegel and Boesky will be sentenced at the Commission?

Mr. RUDER. Well, I'm loathe to discuss this, but in terms of sentencing I know that the investigations are underway and that one does not want to sentence anybody while one is still seeking one's cooperation from that person since sentencing provides some inducements toward cooperation. After one is sentenced those inducements may disappear.

Senator KARNES. I have no further questions, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Riegle.

Senator RIEGLE. Senator D'Amato and I have drafted an insider trading definition with the help of the so-called Pitt Commission. I

know that the SEC is now preparing its response and will have that by August 3.

I would like your own independent assessment of that legislation for the record. In other words, I would like you to take a look at it and let us have in writing your thoughts on it.

Now to go back to what we were discussing earlier—and I may have gone through your list of publications too quickly—have there been any articles that you've written or speeches that you've given that we either have or can have that address directly the issue of hostile takeovers and tender offers as such? Have you gotten into that subject and expressed your views in writing in the last 3 years?

Mr. RUDER. No, sir. I have not written or publicly spoken on that issue. The tender offer work that I have done has been in my classroom study and teaching.

Senator RIEGLE. And in terms of your private consulting, have you done any tender offer work for any private clients of any consequence?

Mr. RUDER. During the period from 1971 to 1976 in which I was counsel to a Chicago law firm, that firm represented private clients in the tender offer area and I gave legal advice in connection with several takeovers.

Senator RIEGLE. That would have been sometime ago, but in the last 3, 4, 5 years, I take it you have not been active in that area?

Mr. RUDER. No, sir.

Senator RIEGLE. Your response earlier was that this is an area that you are familiar with from your recent teaching work. Is that correct?

Mr. RUDER. Yes, sir.

Senator RIEGLE. Have you taught an entire course in this area or has this been just part of a course? I'm trying to understand in terms of this recent period of time, the last 3 or 4 years, your degree of involvement in that subject.

Mr. RUDER. During the time in which I was Dean of the law school and after I returned to teaching last year, I taught a course in securities regulation in which approximately 3 weeks of that course—that is, three weeks in which classes were taught—were addressed to the tender offer area. In that study we dealt with the detailed regulatory rules.

Last spring, at the law school at Northwestern, my only teaching assignment was a seminar in takeovers. I had approximately 20 students in that seminar and we examined the takeover phenomenon from start to finish as far as I was concerned.

Senator RIEGLE. Good. That tells me what I need to know. My question is, what changes in tender offer law do you think are needed or would be desirable on either the offensive or the defensive side?

Mr. RUDER. Well, I believe that closing the 10-day window to 5 days would be an appropriate change.

I believe that the Commission's approach toward requiring a standstill from the time that the acquirer acquires 5 percent until disclosure is made is an appropriate forward step.

But I think, by and large, that there are not a great many other changes which are needed at this time. If I may say, I would have

to look directly at each kind of proposal and with as much additional background as I can before I could be firm on that.

Senator RIEGLE. Can you give us a yes or no on outlawing greenmail?

Mr. RUDER. I think greenmail should be covered at the state law level.

Senator RIEGLE. Not at the Federal level?

Mr. RUDER. Not at the Federal level.

Senator RIEGLE. And are there any other defensive tactics that you would think that the Federal law should touch or are you prepared to just leave that all to the State level?

Mr. RUDER. Well, I think we talked about this a little earlier. At such time as State corporate defensive tactics cause the market for securities to deteriorate, I think it's time for the Federal Government to step in. I am aware of the one-share one-vote proceedings going on at the Commission and there are hearings going on today and I don't want to speak directly to that issue, but I think it's an important aspect of this same problem.

Senator RIEGLE. How about defining and clarifying the definition of a group in terms of a takeover effort?

Mr. RUDER. I think the legislation which has been introduced goes too far in that direction. The definition of a group as it exists in the Federal securities law in *GAF Corp.* v. *Milstein* is adequate to cover real group activities.

Senator RIEGLE. You are aware I'm sure of the testimony of John Shad not very long ago. We did not probe this because we didn't feel it was appropriate to do it until cases are brought, but his clear answer to the committee was that there is a major problem in group activity as the Commission would see it, and that there is a very good likelihood that major cases are likely to be brought shortly in that area.

Have you written anything on that or given any talks on that in the last 2 or 3 years? Is there any declarative information that we could have on your views in that area?

Mr. RUDER. I have not discussed the group concept, but I do believe that the present law regarding groups is sufficient to support law enforcement activities against groups.

Senator RIEGLE. I'll come back in a moment. My time is up.

The CHAIRMAN. Do you have more questions?

Senator RIEGLE. Let me ask just two or three other things as quickly as I can.

We've talked about internationalization of the markets. I know this is a keen interest of yours. It is of mine. It's a major new problem.

I know you're determined to press ahead in that area, and that we're going to be having hearings later in the year and we'll have the chance after confirmation to hear from you on that.

But, just for the record, I would like to have you state that that is a strong interest, and that that is an area that you intend to give some principal effort to.

Mr. RUDER. It is a strong interest. A question was posed indirectly as to whether, if I were confirmed, would be willing to remain as Chairman after the 18-month period.

Whether or not I remain, I think it's important for the Commission to be positioned to deal with problems which will arise in this area. And I would expect to be very interested and make it a priority matter for me.

Senator RIEGLE. Let me go back to the insider trading issue. This administration has taken the view time and time again that the courts ought not to write the law, that the Congress ought to write the law. Yet the administration position on insider legislation is that we should wait for the Supreme Court decision in the *Winans* case.

In a sense, if we wait on the *Winans* case, and there's some question as to how that may go and a lot of concern that it may go against the Government, isn't that really sort of moving in a backward fashion?

Why shouldn't the law, as it defines "insider trading" be written where it's supposed to be written: by lawmakers, with the signature of the President?

Mr. RUDER. I believe an appropriate definition of insider trading through legislation would be excellent. And I don't think it's necessary to wait for the *Winans* case. But what I would like to see is that the insider trading definition does not reduce the Commission's power.

I have some concerns along those lines.

Senator RIEGLE. Now, on self-regulatory efforts, yesterday, this article in the Wall Street Journal—I know you've been busy preparing for today, but I assume you saw the article in terms of some of the abuses that have been placed——

Mr. RUDER. I did read that article.

Senator RIEGLE. The self-regulatory agencies really do not have the legal authority to move aggressively in cases like that, do they? Doesn't that have to reside elsewhere?

Aren't we maybe at a point where the SEC ought to take a look when you see these extraordinary increases in the complaint level?

You talk about the importance of the shareholder, and I feel very strongly, as you do, about the importance of the shareholder.

But, I don't want people being fleeced and then having no serious way of being able to recover.

Mr. RUDER. I share your——

Senator RIEGLE. I want the SEC to prevent the fleecing before it occurs.

Mr. RUDER. I share your concern with that, Senator. I was prepared to deal with the result of the Supreme Court's decision in the *Shearson* case regarding arbitration of securities claims at the customer level. And I think that the Commission should be investigating the efficacy of arbitration procedures and urging the self-regulatory organizations to make those procedures as fair as they can to the customer.

Senator RIEGLE. Do you believe that this committee should retain the Glass-Steagall limitations that have carried forward since the thirties?

Mr. RUDER. I'm aware of the Commission's position and I——

Senator RIEGLE. I'm more interested in your position.

Mr. RUDER. Well, I think that any securities activity which is conducted by any entity, no matter whether it's a bank, insurance

company or securities firm, should be conducted in an affiliate so that the regulation of that securities-related activity can be equal and can be under the Commission's jurisdiction.

So, in that regard, I think my position is quite clear.

Senator RIEGLE. Do we still need the Glass-Steagall law?

Mr. RUDER. The question of whether banks should be prohibited from engaging in underwriting activities is one to which I am not able to respond in any way until I give it more study. So I do not have a present opinion about Glass-Steagall.

Senator RIEGLE. Is it that you just don't want to get into that issue right now, or that you really don't have an opinion?

Mr. RUDER. No, it's because it has so many banking overtones and questions of protection for depositors that at this point, I'm not ready to make the distinctions that may be necessary in order to determine whether and how depositors can be protected.

That's a banking issue, not a securities issue.

Senator RIEGLE. Well, I would think though that a person whose a specialist in securities law must have thought about Glass-Steagall at some point.

Mr. RUDER. Surely, I have. But you must understand that I'm a lawyer, and not always concerned with the policy. The question that I've been interested in is whether or not Glass-Steagall does or does not prevent certain kinds of activities by banks.

And I have reviewed some of those cases prior to my nomination. And I think that is a question of great interest.

Senator RIEGLE. But you have no conclusion on it whatsoever?

Mr. RUDER. I have not reached a conclusion as to whether Glass-Steagall should or should not be repealed.

Senator RIEGLE. Mr. Chairman, I can think of a hundred other questions I would ask, but the witness has been very patient. I will make a number of questions available to you to answer for the record.

The CHAIRMAN. Thank you, Mr. Ruder.

Mr. Ruder, as you know, you will have a number of questions submitted to you by members who said they would do that.

You're a very impressive witness as well as a man of superlative background. I haven't made up my mind, frankly, once again, how I'm going to vote. I had the same problem yesterday with a very able and fine man, Mr. Greenspan.

But I'm sure you'll have no trouble with the committee and with the Senate. We will act on your nomination very promptly in committee. And I'm sure that the democratic leader on the floor will do likewise.

Senator RIEGLE. Mr. Chairman, might I make one additional comment along that line?

The CHAIRMAN. Sure.

Senator RIEGLE. Mr. Ruder, I've asked some blunt questions today, but my intention is to support your nomination. I think that you bring the kind of capacity to this job that it's going to require.

I know it's an enormously demanding task. I think you see it as that and I hope that you do have an open mind. I don't think you're a person who comes in with a fixed view of these things.

As I've talked with you and listened to you today and yesterday, that's my view. And so barring some extraordinary circumstance, it will be my intention to support your nomination.

I do want to read very carefully the answers that you'll give to the written questions that I'll submit. But I think we have a tremendous responsibility and we're going to have to do the job together.

As chairman of the Securities Subcommittee, I want to work with you as the new chairman of the SEC. We may all have to adjust our thinking as we go along because there are a lot of new problems to deal with.

So I want you to understand the spirit in which I put some of the very direct questions I did today.

Mr. RUDER. Senator Riegle, I understand the spirit of those questions and I look forward, should I be confirmed, to working with you.

The CHAIRMAN. Thank you very, very much, Mr. Ruder.

Senator D'Amato has come, but Senator D'Amato has graciously permitted us to move ahead. We have two more witnesses this morning. It's after 12 o'clock now.

Senator D'AMATO. Well, Mr. Chairman, I'd just simply like to say this, and I have put my statement in the record. I am tremendously impressed with David Ruder. And I know the other members on the committee are, and I look forward to working with you.

It's a great Commission. I know our Chairman takes great pride in it. He really does. He, over the years, has prided the SEC as being one of the finest, if not the finest, independent organizations in our great Federal system.

And I think that you will add to that great strength. And so we look forward to working with you.

Mr. RUDER. Thank you very much, Senator.

Thank you, Senator Proxmire, for your courtesy and attention.

The CHAIRMAN. Thank you very much, Mr. Ruder.

(Whereupon, the committee proceeded to other business.)

[Response to written questions and a biographical sketch of the nominee follow:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Ruder (LAST) David (FIRST) Sturtevant (MIDDLE) (middle)

Position to which nominated: Chairman, Securities and Exchange Commission

Date of nomination: July 7, 1987

Date of birth: 25 (DAY) 05 (MONTH) 1929 (YEAR) Place of birth: Wausau, Wisconsin

Marital status: Married Full name of spouse: Susan Small Ruder aka Susan Frankel

Name and ages of children: Victoria Chesley Ruder - 27
Julie Larson Ruder - 24
David Sturtevant Ruder II - 15
John Coulter Ruder - 14

Stepchildren:
Elizabeth Marsha Frankel - 25
Rebecca Susan Frankel - 21

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Wausau Jr. High School	1941-1944		
Wausau High School	1944-1947		
Williams College	1947-1951	B.A.	
University of Wisconsin Law School	1954-1957	J.D.	

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Law Review Scholarship, University of Wisconsin

Order of the Coif, University of Wisconsin

Salmon W. Dalberg Prize, University of Wisconsin

Phi Beta Kappa, Williams College

Williams College - Cum Laude

University of Wisconsin Law School - with Honors

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
See Schedule A		

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

See Schedule B

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Central Intelligence Agency - July 1951 to October 1951

U.S. Army - 1951 - 1954

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

See Schedule C

Political affiliations and activities: List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years

Registered Republican

Political contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

No political contributions of $500 or more.

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

See Schedule D

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

If confirmed, I will have a two-year leave of absence from my position as Professor of Law at Northwestern University. At the end of that period, I may apply for an additional two-year leave.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

My present intention after completing government service is to resume my position as Professor of Law at Northwestern University.

3. Has anybody made you a commitment to a job after you leave government?

Yes. Northwestern University (see above).

4. Do you expect to serve the full term for which you have been appointed?

I presently expect to submit my resignation as Chairman of the Securities and Exchange Commission to the President of the United States who will be inaugurated in January of 1989. I am uncertain whether I also will submit my resignation as a Commissioner of the Securities and Exchange Commission.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None, except an interest in a fully vested, qualified pension fund, TIAA-CREF.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

All investments and liabilities are reflected in the attached financial statement. See Schedule L for my explanation of how I plan to resolve any conflicts of interest that may exist.

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

See separate answer on Schedule E.

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None

Schedule A

Organization	Office Held	Dates
Wausau, Wisconsin Organizations		
Cub Scouts of America	Member	1937-1938
Wausau YMCA	Member	1938-1947
Dun Plant Hi Y Club	Member	1943-1947
Murray Machinery Company	Member, Board of Directors	1976-1984
Williams College Organizations		
Zeta Psi Fraternity	Member; Treasurer (1949-50)	1947-1951
Williams Record	Staff Member; Editor-in-Chief (1950-51)	1947-1951
Williams Outing Club	Member	1949-1951
Purple Key	Member	1949-1951
Gargoyle Society	Member	1950-1951
University of Wisconsin Organizations		
Phi Delta Phi Fraternity	Member	1954-1957
Univ. of Wisconsin Law Review	Editor-in-Chief (1957)	1955-1957
Milwaukee, Wisconsin Organizations		
State Bar of Wisconsin	Member	1957-present
Milwaukee Junior Bar Association	Member	1957-1961
Milwaukee Art Institute	Member	1957-1961
Milwaukee Country Club	Member	1959-1961
Rainbow Investors (Investment Club)	Member; President (1959-60)	1959-1961
Chicago, Illinois and Other Organizations		
Charitable Organizations		
Art Institute of Chicago	Member	1962-present
Chicago Symphony Orchestra Association	Member	1970-present
Lincoln Park Zoological Society	Member	1978-present
Museum of Science and Industry	Member	1979-present
President's Council	Member	1981-1985
Lyric Opera Association of Chicago	Member	1982-present
Museum of Contemporary Art	Member	1982-present
Alliance Francaise	Member	1982-present
Terra Museum of Art	Member	1987-present
Newberry Library Association	Member	1955-present
Chicago Volunteer Legal Services Foundation	Member, Advisory Board	1978-1982
Ponte dell Arte	Director (1971-72)	1968-1972

Organization	Office Held	Dates
Professional Organizations		
American Bar Association	Member, Council of Section of Corporation, Banking and Business Law (1970-1974) and of various committees, e.g.: Public Interest Issues, Legal Education, Corporate Laws, Federal Regulation of Securities, Ad Hoc Committee on the American Law Institute Corporate Governance Project	1957-present
Chicago Bar Association	Member	1962-present
Illinois State Bar Association	Member	1966-present
American Law Institute	Member	1975-present
University of California Securities Regulation Institute	Member	1975-present
Association of American Law Schools	Member of various committees	1977-present
Committee on Professional Responsibility of the Illinois Supreme Court	Member	1978-present
Fellows, American Bar Foundation	Member	1981-present
Fellows, Illinois State Bar Foundation	Member	1984-present
Center for Public Resources	Member, Executive Committee Legal Program	1985-present
Illinois Institute for Continuing Legal Education	Member, Board of Directors	1975-1979
Legal Advisory Committee to the Board of Directors, New York Stock Exchange	Member	1978-1982
American Bar Foundation	Member, Board of Directors	1984-1986
Alumni Organizations		
Univ. of Wisconsin Law Alumni Association	Member	1957-present
Williams Alumni Assoc. of Chicago	Member	1962-present
Salzburg Seminar Alumni Association	Member	1970-present
Northwestern University Organizations		
John Henry Wigmore Club	Member	1974-present
John Evans Society	Member	1979-present

Organization	Office Held	Dates
Miscellaneous Organizations		
Phi Beta Kappa	Member	1951-present
Order of the Coif	Member	1957-present
University Club of Chicago	Member	1970-present
Glen View Club	Member	1973-present
Law Club of Chicago	Member	1977-present
Legal Club of Chicago	Member; President (1983-84)	1977-present
Chicago Council on Foreign Relations	Member	1977-present
Chicago Committee of the Council on Foreign Relations	Member	1977-present
Stockholders of America	Member	1978-present
Chicago Motor Club	Member	1985-present
AARP	Member	1986-present
Parents League Playground	Member	1963-1968
Wapsi Valley Tennis Club	Member; President (1966-67)	1964-1968
Racquet Club of Chicago	Member	1966-1973
Midtown Tennis Club	Member	1966-1976
Saddle and Cycle Club	Member	1968-1973; 1980-1982
McClurg Court Sports Center	Member	1978-1982

Schedule B

	Employer	Address	Type of Work
1963 to present	Northwestern University School of Law	Chicago, IL	Law Professor Dean (1977-85)
1971 to 1976	Schiff, Hardin & Waite	Chicago, IL	Consultant
Jan. 1971 to May 1971	University of Pennsylvania	Philadelphia, PA	Law Professor
1957 to 1961	Quarles & Brady	Milwaukee, WI	Lawyer (Associate)
1955 to 1956	Roberts, Roe, Boardman, Sahr & Brork	Madison, WI	Student Clerk
1951 to 1954	United States Army	Pennsylvania, Georgia, Kansas & Washington, D.C.	Highest Rank 1st Lieutenant
July 1951 to Oct. 1951	Central Intelligence Agency	Washington, D.C.	Training

From time to time, I have performed legal services for law firms, individuals, and entities as part of a legal consulting business I operate as a sole proprietor.

Schedule C

DAVID S. RUDER

Legal Publications

Books: Editor: The Proceedings of the Corporate Counsel Institute (Northwestern University) 1962-1966.

1962: Book review of Feuer, "Personal Liabilities of Corporate Officers and Directors," 57 Nw. U. L. Rev. 257 (1962).

1963: "Civil Liability Under Rule 10b-5: Judicial Revision of Legislative Intent?" 57 Nw. U. L. Rev. 627 (1963).

1964: "Pitfalls in the Development of a Federal Law of Corporations by Implication Through Rule 10b-5," 59 Nw. U. L. Rev. 185 (1964).

"Dealings with Outside Stockholders," 37 Wis. Bar Bulletin 36 (April 1964); Reprinted: 6 Corporate Practice Commentator 285 (1964).

1965: "Public Obligations of Private Corporations," 114 U. Pa. L. Rev. 209 (1965).

1966: "Corporate Disclosures Required by the Federal Securities Laws: The Codification Implications of Texas Gulf Sulphur," 61 Nw. U. L. Rev. 872 (1967); Proceedings of the Fifth Annual Corporate Counsel Institute 314 (Northwestern University 1966); Reprinted: Corporate Counsel's Annual, 193 (Matthew Bender 1968); Selected Articles on Federal Securities Laws 901 (Wander and Grienenberger, American Bar Association 1968).

1967: "Dangers in a Corporation's Purchase of Its Own Shares," 13 Practical Lawyer 75 (May 1967) Reprinted: The Corporate General Counsel Workshop, 551 (Practising Law Institute New York City, 1969).

1968: "A Suggestion for Increased Use of Corporate Law Departments in Modern Corporations," 23 Business Lawyer 341 (1968); also printed in Le Juriste D'Entreprise 281 (Universite de Liege, Belgium 1968). Reprinted: The Corporate General Counsel Workshop, 39 (Practising Law Institute, New York City, 1969).

"Liabilities of Officers and Directors for Securities Law Violations Involving Their Corporations," Liabilities of Corporate Officers and Directors, 50 (Indiana Continuing Legal Education Forum, Indianapolis 1968).

DAVID S. RUDER

Legal Publications

1968: (Continued)

"Texas Gulf Sulphur -- the Second Round: Privity and State of Mind in Rule 10b-5 Purchase and Sale Cases," 63 Nw. U. L. Rev. 423 (1968). Reprinted: 11 Corporate Practice Commentator 107 (1969).

1969: Remarks as Panelist on "The BarChris Case: Prospectus Liability," 24 Business Lawyer 565 (1969).

"Guidelines to Solution of the Corporate Disclosure Dilemma," printed in Nordin, Emerging Federal Securities Law: Potential Liability, pp. 83-104 (The Institute on Continuing Legal Education, Ann Arbor, Michigan 1969).

"Damages in Securities Cases," 2 Review of Securities Regulation, 817 (Nov. 19, 1969).

"Challenging Corporate Action under Rule 10b-5," 25 Business Lawyer 75 (1969).

"Business Regulation: Corporations," one of a series of papers prepared by the Constitution Research Group for the delegates to the 1969-70 Illinois Constitutional Convention. Published by the Legislative Service Unit of the Illinois Legislative Council (Ranney Ed., October, 1969), also printed in Con Con, Issues for the Illinois Constitutional Convention at p. 382 (Ranney, Ed., University of Illinois Press, 1970).

Remarks as Moderator, "Howard Stores, Inc., Goes Public," 4 Real Property, Probate and Trust Journal 509 (Winter 1969).

1970: Review of Painter, "Federal Regulation of Insider Trading," 70 Col. L. Rev. 557 (1970).

"Current Developments in Corporate Regulation under the Federal Securities Laws -- 1969-70," Proceedings of the Ninth Annual Corporate Counsel Institute at 309 (1970).

1971: "Current Developments in the Federal Law of Corporate Fiduciary Relations -- Standing to Sue Under Rule 10b-5," 26 Business Lawyer 1289 (1971).

DAVID S. RUDER

Legal Publications

1972: "Standards of Conduct Under the Federal Securities Acts," 27 Business Lawyer 75 (1972).

"Multiple Defendants in Securities Law Fraud Cases: Aiding and Abetting, Conspiracy, In Pari Delicto, Indemnification, and Contribution," 120 U. Pa. L. Rev. 597 (1972).

"Rule 10b-5 Remedies," Ch. 23, pp. 401-423 in Third Annual Institute on Securities Regulation (Practising Law Institute 1972 - Mundheim and Fleischer - Editors).

"Federal Restrictions on the Sales of Securities," 67 Nw.U. L. Rev. 1 (Supp. 1972).

"Increasing Danger of Loss for Financial Institutions Under the Federal Securities Laws," VIII The Forum 323 (Winter, 1972) (The Forum is published by the Section of Insurance, Negligence and Compensation Law of the American Bar Association).

"Limitations on Civil Liability Under Rule 10b-5," 1972 Duke L.J. 1125 (1972), with Neil S. Cross.

1973: "Securities Law Risks in Trust Portfolio Management," 112 Trusts and Estates 36 (January 1973).

"Brief of Plaintiff-Appellee-Appellant Anna Smith" and transcription of oral argument in a moot court appeal in the case of Smith v. Absolute Zero Corporation, 28 Business Lawyer 414-425, 451-457 (1973).

"Federal Regulation of Insider Trading," The Reporter, 15 (Winter, 1972-1973, Northwestern University School of Law).

"Resolution of Class Actions Without Extended Litigation," printed under the title "Panel on Class Actions, Scher, Coombe, Henson, Dole, Ruder and Lerman," 28 Business Lawyer 151 (Special Issue, March, 1973)entitled "Proceedings ABA National Institute Corporations Under Attack Response to New Challenges, October 26, 27, 28, 1972."

"Securities Law, Review of the Law of the United States Court of Appeals for the Seventh Circuit," 50 Chicago-Kent Law Review 362 (1973) with Allan Horwich.

DAVID S. RUDER

Legal Publications

1974: "Civil Liability for Corporate Financial Forecasts--A View from the Legal Profession," pp. 129-159 in Public Reporting of Corporate Financial Forecasts (Commerce Clearing House, Inc. 1974).

"Disclosure of Financial Projections--Developments, Problems and Techniques," Ch. 2, pp. 5-46 in Fifth Annual Institute on Securities Regulation (1974 - Mundheim, Fleischer and Schupper - Editors).

"Aiding and Abetting," 7 Review of Securities Regulation, 882 (1974).

1975: "The Case Against the Lawyer-Director," Proceedings of the ABA National Institute, Advisors to Management, Responsibilities and Liabilities of Lawyers and Accountants, 30 Business Lawyer 51 (Special Issue 1975).

"Current Problems In Corporate Disclosure," 30 Business Lawyer 1081 (1975).

"Factors Determining the Degree of Culpability Necessary For Violation of the Federal Securities Laws in Information Transmission Cases," 32 Wash. & Lee L. Rev. 571 (1975).

1976: Remarks as Discussant of Jennings, Federalization of Corporation Law: Part Way or All the Way 31 Bus. Law. 1025-1027 (1976)

"Shareholder Suits Against Directors, " Directorship pp. 1 and 5 (February, 1976).

"Reliance in Market Fraud Cases, " 9 Review of Securities Regulation, 923-926 (May 27, 1976).

"Indemnification: A Director's First Line of Defense," Directorship pp. 1 and 7 (August, 1976).

"Judicial Developments Under Rule 10b-5: Standing, Scienter, Reliance, Materiality and Implied Rights of Action," Chapter 13, pp. 303-337 in Seventh Annual Institute on Securities Regulation (1976 - Mundheim, Fleischer, and Vandegrift, Editors).

DAVID S. RUDER

Legal Publications

1976: (Continued)

"Corporate Director's Guidebook", 32 Bus. Law. 5-52, (November, 1976), joint author as part of the Subcommittee on Functions and Responsibilities of Directors, Committee on Corporate Laws of the American Bar Association.

1977: "The Role and Composition of the Board of Directors of a Large Publicly Held Corporation", a report on a symposium sponsored by the Business Roundtable held at the Harvard Business School on May 12-14, 1977.

"Secondary Liability Under the Securities Acts", Chapter 13, pp. 353-377 in Eighth Annual Institute on Securities Regulation (Practising Law Institute - 1977 - Mundheim, Fleischer and Vandegrift - Editors).

"The Role of the Shareholder in the Corporate World", testimony delivered before the Subcommittee on Citizens and Shareholders Rights and Remedies of the Committee on the Judiciary , United States Senate, Washington,D.C., June 27, 1977, as published in the Hearings before the Subcommittee on Citizens and Shareholders Rights and Remedies (The Metzenbaum Committee) of the Committee on the Judiciary, United States Senate, 95th Congress, First Session, June 27,28, 1977, pp. 47-65.

1978: "Corporate Director's Guidebook", 33 Bus. Law. 1591-1644, (April, 1978), joint author of the Revised Edition as part of the Subcommittee on Functions and Responsibilities of Directors, Committee on Corporate Laws of the American Bar Association.

"Corporate Governance Under Attack: Survival Through Self-Examination", published in the Fall, 1978, issue of The Reporter, pp. 13-15, the Northwestern University School of Law alumni magazine.

1979: "Corporate Governance: An Analysis of Duties, Attacks, and Responses" 4 Del. J. of Corp. Law 741-759 (February, 1979), a symposium issue on the Seminar on Delaware Corporation Law and Some Federal Considerations delivered at the Delaware Corporation Law Conference, February 16, 1979, Wilmington, Delaware.

"The Corporate Law Department in Today's Corporation", 34 Bus. Law. 819-823 (February , 1979).

1980: "Disqualification of Counsel: Disclosures of Client Confidences, Conflicts of Interest, and Prior Government Service",35 Bus. Law. 963-985 (1980).

DAVID S. RUDER

Legal Publications

1981: "Current Issues Between Corporations and Shareholders: Private Sector Responses to Proposals for Federal Intervention into Corporate Governance," in Proceedings of Corporate Law Department Forum, April 24-25, 1980. 36 Business Lawyer 771 (1981).

"Reconciliation of the Business Judgment Rule with the Federal Securities Laws," 6 Del. J. Corp. L. 529 (1981).

"Express and Implied Remedies and Secondary Liability Under the Federal Securities Laws," in Twelfth Annual Institute On Securities Regulation 339 (1981 - Mundheim, Fleischer, Lipton and Santoni - Editors).

"Regulation of Corporate Internal Affairs: An Overview," in Standards for Regulating Corporate Internal Affairs (The Ray Garrett, Jr. Corporate and Securities Law Institute, 1981).

"John Henry Wigmore: A Great Academic Leader," 75 Nw. U.L. Rev. 1 (1981).

1982: "In Memory of Harold Canfield Havighurst," 77 Nw. U.L. Rev. 247 (1982).

1983: "In Memoriam: Nathaniel L. Nathanson," introductory remarks, 78 Nw. U.L. Rev. 911 (1983).

"Securities Law Secondary-Liability Theories," in Fourteenth Annual Institute on Securities Regulation (1983 - Friedman, Nathan, Pitt and Santoni - Editors).

"Protections for Corporate Shareholders: Are Major Revisions Needed?," 37 U. Miami L. Rev. 243 (1983).

1984: "In Memoriam: Ronald E. Kennedy," 79 Nw. U.L. Rev. 487 (1984).

1985: "Duty of Loyalty--A Law Professor's Status Report," 40 Business Lawyer 1383 (1985).

Schedule D

Qualifications:

State fully your qualifications to serve in the position to which you have been named.

As a law teacher and practicing lawyer, I have since 1957 concentrated upon the corporate and securities law field. I have taught courses in securities regulation and corporations which have included topics such as: the registration and exemptions from registration under the Securities Act of 1933; anti-fraud provisions, including insider trading; broker-dealer and exchange regulations; S.E.C. enforcement; investment companies; and the national market system.

My securities law background is strong. I have published more than 40 articles on corporate and securities matters and I have been a speaker or panel participant in approximately 150 continuing legal education programs in the corporate and securities area. My law practice experience has included participation in securities litigation matters, investment company regulation, securities exchange regulations, and other securities law related matters. I have been an active participant in many securities law committee activities, including service as a member of: securities law committees of the American and Chicago Bar Associations; the Legal Advisory Committee of the New York Stock Exchange; and the group of Consultants to the American Law Institute's Federal Securities Law Project.

My administrative experience has been successful. As Dean of Northwestern University School of Law from 1977 to 1985, I successfully administered a complex organization, fulfilling responsibilities to the administration of Northwestern University, and to law students, law faculty, and law alumni, while successfully supervising the staff of the School. During my tenure as Dean I participated in the recruitment of many strong new faculty members; a successful $25,000,000 Law School Capital Campaign; successful negotiations to attract the headquarters of the American Bar Association and the American Bar Foundation as tenants in a

new University building which also houses a new Law School addition; the design and construction of that new addition, which doubled the size of the School's physical facilities; creation of a program to automate the Law School library's catalogue; and the establishment of a Corporate Counsel Center to examine contemporary legal issues in corporate law.

My academic background is good. I am a Phi Beta Kappa, Cum Laude, graduate of Williams College (1951) where I served as editor-in-chief of the college newspaper, the Williams Record, and was a member of Gargoyle, the senior honorary society. I am an honors graduate of the University of Wisconsin Law School, where I ranked first in the June 1957 graduating class, served as editor-in-chief of the University of Wisconsin Law Review, and received the Salmon W. Dalberg Prize, awarded to the outstanding graduating student.

I have long admired the excellence, independence, and integrity of the Securities and Exchange Commission, and I believe myself able vigorously to continue its fine traditions in enforcing the Federal Securities Laws.

Schedule E

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

a. If confirmed, I will obtain a leave of absence from Northwestern University School of Law for the period in which I serve as a Commissioner. During that leave I will have no obligations to Northwestern.

b. I will recuse myself from all specific matters in which Northwestern University, the law firm Schiff, Hardin & Waite of Chicago, Roy Adams, a member of that firm, the accounting firm Grant Thornton, William Blair & Co. of Chicago, or Harris Associates of Chicago is a party.

c. All but a few securities held by my wife and me will be placed in Qualified Diversified Trusts. To the extent required by the SEC's regulations or applicable law, I will recuse myself from matters involving companies whose securities are held by me or my wife or which are held for the benefit of myself or my wife, unless such securities are not considered to raise conflicts of interest because they have been placed in trusts qualified under the Ethics in Government Act, or unless waivers of disqualification under the law have been received from the appropriate authority.

d. I will recuse myself on a case-by-case basis from other matters as necessary to avoid the appearance of impropriety, despite the lack of actual conflict.

e. In order to discharge effectively the obligations of my office, I will not recuse myself from Commission deliberations involving general policy issues, legislation or rule-making proceedings, except as required by law.

Responses by Professor David S. Ruder on July 27, 1987, to questions posed for the record by Senators Proxmire, Riegle, Sasser, Sanford, D'Amato and Heinz following the hearing on July 22, 1987 regarding Professor Ruder's nomination to be Chairman of the Securities and Exchange Commission.

I. Timing and Complexity

Set forth below are answers to 67 questions delivered to me in order to complete the hearing record in connection with my hearing before the Committee on Banking, Housing and Urban Affairs on my confirmation as Chairman of the Securities and Exchange Commission.

In view of the complexity of some of the questions and my lack of detailed information concerning some subjects, the answers will not be as complete as might be expected. My answers should be considered as subject to change based upon further information and upon discussion with Commissioners and staff of the Securities and Exchange Commission following my confirmation, if that event occurs.

II. General Statement

Taken together the questions seem to call for some general statements regarding my views. Set forth below are some responses which are general in nature and which may also be useful as reference points for answers to specific questions.

A. Regulatory View. I believe the Federal Securities Laws should be enforced with vigor. Disclosure, antifraud, industry regulation, and other provisions should be utilized by the Commission and its staff for the general purpose of protecting investors and preserving the capital markets. Although vigorous regulatory action is desirable, fairness should also be a consideration in Commission action. I do not regard myself as a "conservative," if that phrase means refraining from strong and positive regulatory initiatives.

B. Dealings with Congress. Although acting as the head of an independent regulatory agency, the Chairman of the Securities and Exchange Commission has the responsibility for interacting with the relevant appropriations and oversight committees of Congress. As Chairman, I would seek to establish a cordial and cooperative relationship with Congress, while recognizing that there inevitably will be differences in view.

C. Commission Resources. As a general and preliminary response based upon the information currently available to me, I believe the Securities and Exchange Commission needs substantial additional resources if it is to meet its increasing regulatory

obligations. My preliminary conclusion is that most of the Commission's activities would be enhanced if additional staff were available. More particularly, my observations, which may be subject to change based upon additional information, are the following:

1. The Division of Corporation Finance needs additional staff to cope with its increased review responsibility due to increases in number of filings and to the transition problems which will be associated with the implementation of EDGAR (Electronic Data Gathering, Analysis, and Retrieval).

2. The Division of Enforcement, which received staff increases during the budget year 1987 and will receive additional staff increases under the proposed budget for 1988, will need still further increases in the budget year 1989 if it is to continue its strong enforcement program in the large case area without sacrificing its capabilities in smaller cases.

3. The Division of Market Regulation needs substantial staff increases in order to increase its surveillance of self regulatory organizations, increase its direct regulation of broker-dealers, investigate and plan for developments in computerized trading, and develop regulatory initiatives for internationalization of the securities markets.

4. The Division of Investment Management needs additional staff in order to cope with a dramatic increase in the volume of investment company filings and to meet the transition problems which will be associated with the implementation of EDGAR. If regulation of investment advisers is increased, still additional resources will be required.

5. The Office of the General Counsel needs additional staff in order to become more active in important litigated cases, to meet the increasingly more complicated and numerous appellate level issues being contested by parties to Commission proceedings, to litigate the increasing number of administrative proceedings against accountants that follow from Enforcement's investigations of financial fraud, and to assist in the coordination and drafting of responses to requests by Congress and various government agencies for information, reports, legislative drafting, and testimony.

III. Responses to Senator Proxmire's Questions

Question 1. The Commission Budget Authorization Report recently issued by this Committee requested that the Commission address various issues prior to its next year's budget submission. What do you intend to do to assure that the concerns expressed therein are addressed?

Response to Question 1. I reviewed the Commission Budget Authorization Report issued by the Committee prior to my nomination hearings. The concerns raised by the Committee involve significant policy issues. If confirmed, I would, along with the other Commission members, review the issues raised to determine the most appropriate responses. My views on some of the subjects contained in that Report appear elsewhere in answers to various questions (See also General Statement C, Commission Resources).

Question 2. Your addition to the Commission makes this body possibly the most conservatively oriented Commission within the past 30 years. At the same time our markets are undergoing vast and unprecedented changes and there are numerous regulatory gaps. In recent years the Commission's efforts have been greatly directed at deregulation in the disclosure and regulatory areas. What do you intend to do to assure that the Commission is an activist regulator protecting the public and acting in the public interest?

Response to Question 2. I do not accept the characterization that my addition to the Commission would make the Commission possibly the most conservatively oriented Commission within the past 30 years. If confirmed, I would undertake to assure that the Commission continue its vigorous enforcement policies, continue to require substantial disclosures in order to protect the investing public, and otherwise act in the public interest.

Question 3. There has been concern expressed that the SEC Enforcement Division does not currently have adequate resources to fulfill its mission. In this connection, the Committee is particularly concerned that the SEC have sufficient resources to enable the Enforcement Division to fully litigate various enforcement actions in court.

Are you committed to expand the Enforcement Division to assure that it is fully able to do its work and to advise Congress of the necessity to add additional resources?

Response to Question 3. I understand that concern has been expressed about the adequacy of staff resources in the Commission's Division of Enforcement. I certainly would advise the Congress if additional resources are necessary for the Division of Enforcement to carry out an effective enforcement program (See General Statement C, Commission Resources).

Question 4. In defending his restraint on Commission resources, former Chairman Shad argued that the SEC is not the sole defense in enforcing full disclosure. He contended that false or misleading disclosures will be subjected to attack by the private bar in the form of class action suits (Wall Street Journal, 12/16/85). What is your view on the Commission shifting the burden of enforcing full disclosure to individual investors?

Response to Question 4. The Commission should not shift the burden of enforcing the disclosure statutes to individual investors. Nonetheless, it is true that private causes of action provide effective assistance to augment the Commission's enforcement efforts.

Question 5. A number of securities law practitioners, including former SEC general counsel Harvey Pitt, have noted that the practice of the Commission to define the limits of the securities laws through trial and error on a case-by-case basis suffers from a number of drawbacks. In particular, the targets of test prosecutions are victimized, the market in general operates with uncertainty as to the limits of legality, and, when the Commission does not prevail, the resulting decisions can create difficult hurdles in subsequent prosecutions. What is your view on developing the securities laws through test enforcement cases?

Response to Question 5. In my view, rulemaking is the primary method that should be employed to develop the Federal Securities Laws. Nevertheless, there are circumstances where it is appropriate and necessary to bring test enforcement cases to aid in the development of the law.

Question 6. Have you ever expressed an opinion that insider trading cases cannot be brought under section 10b-5? Do you believe that insider trading cases can and should be brought under 10b-5?

Response to Question 6. In a 1963 article entitled "Civil Liability Under Rule 10b-5: Judicial Revision of Legislative Intent?," I expressed the view that Congress did not intend to create an implied private cause of action under Rule 10b-5. Subsequently, the Supreme Court held that there is a private right of action under Section 10(b) and Rule 10b-5. I did not express the view that the Commission should not bring cases, including insider trading cases, under Section 10(b). To the contrary, I expressed the view that the Commission should bring insider trading cases. I believed then, and continue to believe, that insider trading cases can and should be brought under Rule 10b-5.

Question 7. The Commission has been criticized for being unduly influenced by the Chicago school of economic thought. That school of thought believes that the market is the best regulator, which is in substantial measure contrary to the SEC's historic mission. Recently, the Commission's economic studies have been criticized as political documents rather than thoughtful economic studies. Do you follow the Chicago school of economic thought? What will you do to assure that the Commission does not remain overly influenced by a public policy which erodes the application of the Federal Securities Laws?

Response to Question 7. Economic analysis is a useful regulatory tool. I do not place exclusive reliance on the Chicago school of economic thought, and if confirmed I would seek input from economists with various views where appropriate.

Question 8. Over the years your legal writings have reflected a rather restrictive view regarding the application of the Federal Securities Laws. Do you believe that the viewpoints reflected in these writings will impair your ability to objectively consider matters in your capacity as Chairman of the SEC?

Response to Question 8. I would not characterize my legal writings as reflecting a restrictive view regarding application of the federal securities laws. In any event I do not believe the viewpoints reflected in my writings would in any way impair my ability to be objective regarding matters that come before me in my capacity as Chairman of the Commission should I be confirmed.

Question 9. Is it your understanding that the Commission, as an independent agency is directly accountable to Congress? Are you willing to provide the Committee and the Subcommittee with such material and responses to inquiries as these Committees deem appropriate?

Response to Question 9. I have always understood that the Commission is an independent regulatory agency and I understand that Congress exercises an appropriations and an oversight function. Should I be confirmed, I would be willing to provide the Committee and the Subcommittee with materials and responses to inquiries in keeping with the agency's independence.

Question 10. The surge in well publicized instances of fraudulent activities by persons associated with savings and loans and other financial institutions raises serious questions. An enhanced governmental enforcement presence is clearly warranted. Does the SEC intend to step up its activities in this area? How will the SEC coordinate with interested bank regulatory agencies to address this serious issue?

Response to Question 10. The Commission is not the agency charged with regulating the fiscal soundness of savings and loans and other financial institutions. I understand, however, that the Commission has cooperated with the appropriate regulatory agencies with respect to current issues. If confirmed, I would continue to support this cooperative effort.

Question 11. One particularly egregious takeover practice seems to be the use of so-called "street sweeps." Street-sweeps are a method of obtaining control of a target by purchasing controlling share positions within a very short time frame without affording shareholders the protections of the Williams Act. The recent "Pay 'N Pak Stores" transaction which involved a broker-dealer

utilizing an unusual one day cash settlement practice to get shares into the hands of a corporate raider is an example. What are your suggestions for dealing with this recurring problem?

Response to Question 11. "Street sweeps" or "market sweeps" have raised concerns at the Commission. The Commission has asked for comment on ways to respond to the "market sweep" issue. I also understand that the Commission staff is preparing rule proposals for the Commission to consider within the next several weeks which would address this problem. I believe that this problem can be addressed in the rulemaking forum.

Question 12. Do you believe that the ability of individuals to bring private rights of action under the securities laws should be expanded? If so, why? If not, why not?

Response to Question 12. Yes, I believe it would be appropriate to expand the ability of private litigants to institute actions under the securities laws in certain circumstances to supplement Commission enforcement actions. However, careful analysis would be necessary to determine where additional private rights of action would be appropriate.

Question 13. The Commission has been investigating the Washington Public Power Supply System 4 and 5 bond default for over three years now. What is the status of this investigation? Do you agree this investigation has taken an overly lengthy period? Will you commit that those studies undertaken during your tenure will be completed expeditiously? When will the Commission submit a report to Congress on this default?

Response to Question 13. I do not know the status of the Commission's investigation concerning the Washington Public Power Supply System, nor do I have the information to evaluate whether the investigation has been unduly extended. Should I be confirmed, I would attempt to have the Commission conduct its inquiries in a timely fashion, taking into consideration resource allocations and enforcement priorities. I do not know when the Commission will submit the report to Congress on the bond default. I am advised by the Commission's staff that it plans to complete its report shortly.

Question 14. In its 1988 budget submission, the SEC notes that the assets under the control of registered investment advisers grew to about $1.5 trillion in 1986, amounting to about 15% of all financial assets owned by Americans. Despite the explosive growth in this industry and the magnitude of assets under its control, the SEC declined to increase the staff for this program between 1986 and 1987 and plans only a token increase in 1988. Do you believe that adequate regulatory oversight is in place for investment companies and investment advisers? What initiatives would you consider to enhance regulatory oversight in this area?

Response to Question 14. I do not have sufficient information to evaluate whether there is adequate regulatory oversight over investment companies and investment advisers. I understand that oversight is conducted by staff of the Division of Investment Management and staff in the regional offices as well. If confirmed, I will seek to determine whether there is adequate oversight in these areas and what steps can be taken to improve it (See General Statement C, Commission Resources).

Question 15. In light of recent press reports that the SEC and IRS are conducting a major investigation of billions of dollars of bond sales for projects that may not have been built, or may never be built, do you believe that the SEC should be given additional regulatory authority over the registration, disclosure and filing statements of municipal bonds?

Response to Question 15. I would favor additional regulation of the municipal bond market, contingent on two factors. First, the question of the constitutionality of the federal government requiring registration of municipal bond offerings would have to be resolved. Second, the Commission could not undertake additional responsibilities unless it were also given commensurate additional resources.

Question 16. Recently a prominent takeover lawyer was charged by the Securities and Exchange Commission with violating the disclosure rules of the securities laws.

* Do you support the Commission's bringing this case?

* Do you believe that takeover lawyers and their firms should be held accountable in certain instances, for securities law violations by their clients?

* Is there any question in your mind that if the advice a securities lawyer gives to his client is contrary to the securities laws the lawyer may be held responsible?

Response to Question 16. I do not have sufficient facts to make a judgment concerning the Commission's institution of the administrative proceeding to which the question refers. I do believe that takeover lawyers can be held accountable for securities law violations by their clients, depending on the facts and circumstances of the particular case. Additionally, if a securities lawyer deliberately gives advice to a client that he or she knows to be contrary to the securities laws, the lawyer may be held responsible.

Question 17. A number of witnesses for the securities industry have recently appeared before the Subcommittee to stress the paramount importance of maintaining the integrity and fairness of the securities markets. They point with concern to the rising apprehension of the individual investor faced with massive securities trading scandals, increasingly complex securities products, and alarming short-term market volatility. What is your response to the arguments that the individual investor is not getting a fair shake in today's marketplace, for example, that he/she is being left behind with respect to program trading, protection from insider trading, and enforcement of full disclosure?

Response to Question 17. I understand that there may be apprehension by individual investors as a result of the insider trading cases and the increasing complexity of financial products being offered to the public. Nevertheless, I believe that, for the most part, the system is working. For example, individual investors may have ready access to professional investment advice and can invest through institutional funds.

Question 18. Minority enrollment at Northwestern's law school dropped precipitously during your tenure. The year before you took control, minority enrollment accounted for 19 percent of the law school

student body. Your first year, it dropped to 14 percent. By 1980, it was down to 10 percent, and in 1984, it slipped to 9 percent. Did you make any decisions that led to this drop in minority enrollment?

Response to Question 18. No. I helped initiate Northwestern Law School's minority enrollment program in the early 1970's. The subsequent loss in minority enrollment was caused in part by competition from other law schools emulating Northwestern's example and in part by a reduction in the total number of minority applicants seeking admission to law schools.

Question 19. During the last three years, the SEC has grown impatient with the business judgment rule with respect to management defensive tactics during a hostile tender, despite the fact that the courts have upheld this long tradition. What are your views on the applicability of the rule, and what role the SEC should play in circumventing it?

Response to Question 19. The business judgment rule is not applicable if a conflict of interest exists. The Commission should urge that courts carefully consider whether management entrenchment motives in a hostile tender offer constitute a conflict of interest.

Question 20. In our tender offer reform legislation, we required greater disclosure so as to inform shareholders about the pendency of a takeover. However, we do not detail what penalties should be paid in the case of disclosure violations. What do you think those penalties should be?

Response to Question 20. There are already numerous legal consequences for failure to comply with disclosure obligations. These include civil actions for injunctive and other equitable relief; administrative proceedings to require corrective disclosure; criminal actions which provide for fines and jail terms; and private causes of action. I do agree, however, with the Commission's position, expressed in the recent testimony of Acting Chairman Cox, that monetary penalties for Section 13(d) violations would be useful in addition to existing remedies. The amount of the penalty in a particular case should depend upon the degree of culpability involved.

Question 21. At a conference of investment attorneys, I understand you participated in a debate regarding liability for corporation filings. The debate has been described as holding the outside directors to a standard of negligence or reckless disregard. You advocated the laxer standard. Could you comment on this debate, and your reasoning?

Response to Question 21. I believe that holding directors monetarily liable for negligence in corporate filings would be unwise because it would discourage people from becoming directors. My view is the same as that of Congress as set forth in Section 18(a) of the Securities Exchange Act. With respect to false documents filed under the Exchange Act, Section 18(a) provides a defense for a director who proves that "he acted in good faith and had no knowledge that such statement was false or misleading."

IV. Responses to Senator Riegle's Questions

Question 1. In the statement submitted to us, you indicate that you expect to submit your resignation as SEC Chairman in January of 1989 after the new President is inaugurated. What specific priorities have you set for yourself during the next 18 months should you be confirmed as Chairman and what kind of legacy would you hope to leave as Chairman?

Response to Question 1. I hope to leave a legacy as an active, innovative regulator who created a cooperative and efficient regulatory environment, while heeding the need to prepare for future developments and problems. My goals include the following (but not necessarily in priority order):

a. Vigorous enforcement of insider trading regulation;

b. Increased protection for broker-dealer customers;

c. Vigorous enforcement of tender offer laws and regulations in order to maintain an equitable balance between bidders and target management as a principal means of protecting shareholders of the target;

d. Continuation of a strong and effective disclosure system, including implementation of EDGAR;

e. Development of initiatives to meet program trading problems; and

f. Preparation for regulatory initiatives to meet problems associated with internationalization of the securities markets.

Question 2. As Chairman of the SEC what legislative changes, if any, would you recommend be made to the securities laws and what legislative initiatives do you think should be undertaken by the Securities Subcommittee?

Response to Question 2. At present I have not formulated my views regarding any extensive legislative initiatives. In general I would tentatively favor extending

Commission jurisdiction over securities activities of banks and over sales practices associated with the sale of municipal obligations.

Question 3. In the past the Commission, in arguing for a streamlined budget, has defended its position by saying that the self-regulatory organizations should do more in the areas of enforcement and self-regulation and pick up much of the slack resulting from the SEC's budget restraints. But isn't it a fact that the self-regulatory organizations are hamstrung by not having the legal authority to do much more than they are currently doing? What new powers, if any, do you believe should be given to the self-regulatory organizations? What do you think the self-regulatory organizations should be doing which they are not currently doing? In other words, where if at all, are they falling down in their responsibilities, and what improvements, if any, do you believe should be made in the self-regulatory process?

Response to Question 3. The self-regulatory organizations have substantial power over their members. They should be encouraged to insist that broker-dealer compliance procedures regarding relations with customers be improved. They should also insist that adequate separation exist between activities of trading departments and activities of mergers and acquisition departments. They should improve their market surveillance activities.

Question 4. A number of people have suggested to us that Congress and the Commission should prohibit "third market" trading and initiate trading halts by broker-dealers in any security when the primary market for that security has suspended trading for the purpose of facilitating dissemination of material information concerning the issuer of the security. What is your view on this subject? Isn't third market trading essentially an institutional and arbitrageur phenomenon and, in the case of a trading halt, doesn't it disadvantage the small investor?

Response to Question 4. The proposed "third market" trading halt presents complicated questions about which I need additional information. It is my understanding that the third market is an institutional and professional market, and not one in which the small investor normally trades.

Question 5. During the past year, the Committee has received numerous complaints from individual investors criticizing the current arbitration system where their claims are heard before a panel composed largely of representatives from the industry. Do you believe there is any merit to these complaints and what steps, if any, do you believe should be taken to make these arbitration proceedings fairer to the individual investor? Why shouldn't complaints be heard by an impartial non-industry oriented panel?

Response to Question 5. The system for arbitration of customer disputes with brokerage firms should be reviewed for fairness. I understand the Commission staff is conducting such a review.

Question 6. What is your view of legislation which has been introduced in the Congress on the subject of one-share/one-vote? Specifically, do you think legislation should be adopted providing that a company's shares may not be traded on a national securities exchange or through a national securities association unless each share of the company's stock has one vote?

Response to Question 6. Since the one share/one vote question is currently the subject of a Commission rulemaking proceeding, I do not believe I should comment in detail. In general I believe that removal from shareholders of the power to elect management is a dramatic change in corporate structure which should be reviewed caretully before being implemented.

Question 7. Concern has been expressed recently about market volatility, proliferation of new financial instruments, portfolio insurance and the fluctuations resulting from program trading and surrounding triple-witching hours. Many small investors increasingly feel left behind as a result of ever-more sophisticated trading techniques. To what extent, if at all, are you concerned about any of these new phenomena and, more specifically:

A. What do you see as the evolving role of the institutional as opposed to the individual investor?

B. What steps do you think should be taken, if any, to curb excessive market volatility and speculation?

C. Do you see any risk that as a result of some of these new trading techniques we might someday soon be headed toward a market meltdown?

Response to Question 7. The general subject of program trading is important and very complicated and is the subject of continuing study by the Commission staff. That study should continue. The institutional investor seems to be dominating the program trading. Excessive market speculation combined with new trading techniques may yield market volatility, but I have not yet seen convincing evidence that a "market meltdown" (presumably a program trading induced dramatic fall in market prices) is imminent.

Question 8. During his tenure as Chairman, John Shad actively restrained the resource growth at the Commission and often claimed that he was doing more with less at the SEC. However, during the budget authorization hearings for the Commission this past spring, a number of witnesses expressed serious reservation about the adequacy of the SEC's resources and raised questions about whether productivity data cited by Mr. Shad actually showed that the Commission was doing more under his growth restraints. Do you think that the SEC has been provided with sufficient resources to meet its current regulatory responsibilities? What do you anticipate your approach will be in administering the SEC's budget, particularly regarding growth at the Commission during this time of change and expansion in the securities markets?

Response to Question 8. I believe Commission resources should be increased (See General Statement C, Commission Resources).

Question 9. In its 1988 budget submission, the SEC notes that the assets under the control of registered investment advisers grew to about $1.5 trillion in 1986, amounting to about 15% of all financial assets owned by Americans. The Commission notes that this surpasses the total deposits held by banks or savings and loans and is also greater than the assets of life insurance companies. There is neither government insurance for these assets nor a self-regulatory organization in operation. The sole regulatory oversight is provided by the SEC's Investment Management Division with an annual budget of around $12

million and a staff of about 200 people. Despite the explosive growth in this industry and the magnitude of assets under its control, the SEC declined to increase staff for this program between 1986 and 1987 and plans for only a token increase in 1988. Do you believe that adequate regulatory oversight is in place for investment companies and investment advisers? What initiatives would you consider to enhance regulatory oversight in this area?

Response to Question 9. I believe the staff of the Division of Investment Management should be increased. I do not have sufficient information to evaluate whether there is adequate regulatory oversight in place over investment companies and investment advisers. Additional regulation of investment advisers and financial planners who control the assets of others would be desirable. At present I am uncertain where regulatory oversight responsibility should be located. If confirmed I will seek to determine whether there is adequate oversight and what steps can be taken to improve it (See General Statement C, Commission Resources).

Question 10. The SEC has recently operated with fee revenues exceeding its appropriated budget by over 100%. Former Chairman Shad and others often complained of the difficulty in attracting and retaining qualified professionals to the Commission due to government salary restraints which compare poorly with opportunities in the private sector. Because of the existing fee revenue structure and the chronic personnel turnover problems, it has been suggested that the Commission be converted to a self-funding status and exempted from many of the restrictions imposed on appropriated agencies. The Subcommittee has requested that the Commission prepare a study and make recommendations on a change to self-funding status. What is your view on this proposal and what alternative approaches would you propose to the staffing problems which have plagued the SEC?

Response to Question 10. A study of the possibility of self-funding would be useful. Self-funding legislation, if enacted, should include provisions assuring that Commission resources will be adequate in times of market weakness, which might result in a decrease in fee revenues, as well as in times of market strength when fee revenues are high.

Question 11. In testimony before the Securities Subcommittee earlier this year, Donald Marron, Chairman and CEO of Paine Webber Group, testified concerning insider trading abuse that, "I reluctantly conclude that Wall Street cannot solve this problem alone. The stakes are too high. The impact is too broad. It will require the joint efforts of Wall Street and Washington." As Chairman of the SEC, how would you respond to Mr. Marron's call to Washington for assistance to Wall Street on insider trading abuse?

Response to Question 11. A revived sense of integrity is needed throughout the securities markets. I would respond by making it clear that insider trading by market professionals will be dealt with harshly, including use of the Insider Trading Sanctions Act, criminal penalties, and limitations on participation in the industry.

Question 12. As you know, Senator D'Amato and I have asked a group of outstanding securities lawyers, including Harvey Pitt and John Olson, to work with the Securities Subcommittee to clarify the laws on insider trading. They submitted a proposal to us in May and the Commission will be submitting its own proposal early next month. If confirmed as Chairman of the Securities and Exchange Commission, will you work with the Congress, the Pitt-Olson group, which represents a broad array of interests, as well as with Mr. Giuliani and the SEC Division of Enforcement, to come up with insider trading legislation which the Commission will support?

Response to Question 12. If confirmed I will participate in the attempt to define insider trading, but I am uncertain whether that definition should be legislative, by rule, or by increased rulemaking power. My concerns would be that the reach of the law as it currently exists not be reduced but rather be expanded in certain respects, and, that fairness considerations be included.

Question 13. Testimony last month from the SEC on proposed insider trading legislation indicated that the Commission staff is solidly behind the misappropriation theory as a basis for pursuing impermissible insider trading. However, some of your recent comments indicate that you have an opposite view in this area. What is your opinion of the misappropriation theory, and to the extent that you do not share the historical SEC position, how would you reconcile the difference as Chairman?

Response to Question 13. The misappropriation theory has developed as a result of concurring and dissenting opinions in a United States Supreme Court case. It has been criticized because: 1) it is based upon a duty to a party not necessarily trading in the securities market; 2) it does not reach those cases in which an employer permits an employee to use non-public information; 3) it has its roots in private transactions rather than in transactions affecting the securities markets; and 4) it creates considerable uncertainty. I believe a definition can be constructed which will be more meaningfully related to the protection of investors. Nevertheless, if I were Chairman I would urge the use of the theory in enforcement activities.

Question 14. At the Subcommittee's February hearing, witnesses from the securities industry and securities law practitioners discussed several areas for possible legislative action regarding the SEC's enforcement authority. What is your opinion on the need for legislation in the following areas:

1. Cease-and-desist powers for the Commission;

2. Granting the SEC authority to impose fines as a general enforcement tool;

3. Clarifying the scope of equitable remedies that the Commission may seek in Federal district court to confirm the SEC's authority to seek a whole range of equitable remedies such as disgorgement of ill-gotten gains, the appointment of receivers, and the requirement that institutional violators of the Federal securities laws be directed to implement prophylactic measures to ensure against a repetition of the violative conduct;

4. Clarifying the SEC's disciplinary authority over broker-dealers, so that there will be no dispute concerning the agency's power to suspend errant professionals for a period exceeding twelve months but less than a lifetime bar; and,

5. Bolstering sanctions, which may currently be inadequate, for violations of the law stemming from fraudulent financial reporting, including the specific authority to bar such violators from corporate office.

Response to Question 14. My opinions regarding the need for greater Commission enforcement authority are not well formulated at this time. With regard to the specific suggestions: 1) the Commission has power to seek injunctions, and has other power under Sections 15 and 21 of the Securities Exchange Act; 2) it might not be useful to impose fines instead of imposing limitations on conduct; 3) the Commission has been quite successful in obtaining ancillary remedies as part of injunctive proceedings; 4) I am uncertain regarding the nature of the dispute concerning power to bar professionals; and 5) authority to bar those engaged in fraudulent financial reporting from corporate office may already exist.

Question 15. The SEC has made a concerted effort to regulate certain securities activities of financial institutions and has pressed for Congress to legislate "functional regulation" into place, granting to the Commission securities regulatory authority now held by Federal financial regulatory agencies. This SEC effort has taken place despite widespread questions concerning the adequacy of the Commission's resources to respond to the expanding regulatory demands of its existing jurisdiction. What is your opinion of functional regulation and what do you think the resource implications of such a change would be for the SEC?

Response to Question 15. I favor functional regulation. Increased responsibilities for the Commission would require additional resources (See General Statement, Commission Resources).

Question 16. It is widely believed that the most important function performed by the Commission's Division of Corporate Finance is the responsibility to thoroughly scrutinize and comment on disclosure materials filed with the Commission. It has been reported that in recent years the number of filings receiving full review has diminished and the level of comments has been superficial in many cases. The Form 10-K Annual Reports are the core document in the review process under the integrated disclosure system. Yet such filings, according to a recent GAO report, appear to have received low Commission priority in terms of review. The proper function of the comment and review process requires the direction and commitment of the Commission. It is important for you

to assure us that you intend to look into this aspect of the Commission's administrative processes to assure that the appropriate resources of the Division of Corporation Finance are dedicated to the review process. Will you look into this area?

Response to Question 16. Yes, of course. The staff of the Division of Corporation Finance is excellent and responsible. My understanding is that although only approximately 17% of Form 10-K Annual Reports are currently reviewed, the Division employs useful criteria in the initial screenings of filings to select those for review. I am further told that in the budget year 1988 there will be approximately 35 additional persons available in the Commission's Washington office to review filings.

Question 17. There has been some concern expressed recently that because of the abuses involving so-called insider trading cases the Commission has not devoted sufficient enforcement resources to fraudulent financial reporting cases and addressing deficient audits by accounting firms. Are you committed to assure that the Commission maintains a vigorous presence in this vitally important area?

Response to Question 17. Fraudulent financial reporting is a significant area of concern. I will hope to assure a vigorous Commission presence in this area, resources permitting (See General Statement C, Commission Resources).

Question 18. The recent National Commission on Fraudulent Financial Reporting issued an important private sector study into the causes and prevention of fraudulent financial reporting which made very specific recommendations concerning increased remedies and sanctions for the SEC as well as changes in certain SEC regulatory requirements. What do you intend to do as Chairman of the SEC to help implement these recommendations?

Response to Question 18. I have read, but have not studied in detail, the report of the National Commission on Fraudulent Financial Reporting. I will support initiatives directed toward peer review for accountants and I will seek to implement such other recommendations as I believe desirable.

Question 19. What do you see as the most pressing issues for the SEC in responding to the internationalization of the securities markets and how would you handle these issues as Chairman?

Response to Question 19. The most pressing issues regarding internationalization include disclosure problems, enforcement problems, and securities markets problems. The Commission's staff is preparing a lengthy report on these subjects and others, and the staff will be suggesting various regulatory initiatives. As Chairman I would review the report, respond to initiatives, and seek consideration of such other methods of dealing with internationalization problems as seem desirable. I understand that some dispute exists regarding whether regulation should precede or follow market developments.

Question 20. Do you think that legislation should be enacted to encourage foreign governments to enter into formal cooperative ventures with U.S. law enforcement authorities, similar to the memoranda of understanding between the U.K. and the U.S. and between Switzerland and the U.S., to ensure mutual evidentiary assistance in cases of national importance? Do you have an opinion on the suggestion that the securities exchanges should review their listing requirements with the goal of eliminating unnecessary restrictions on foreign listings? Should the Commission eliminate the short-sale rule since it does not exist on the London and Tokyo exchanges?

Response to Question 20. My current understanding is that good progress is being made regarding mutual understandings on evidentiary problems. Some relaxation of listing standards for foreign issuers might be appropriate, even though some inequities might exist between U.S. and foreign issuers. I have no current opinion on the short sale rule.

Question 21. In recent years, the Commission has greatly relaxed the disclosure standards for foreign issuers wishing to sell securities in the U.S. While we commend the opening of our markets to foreign issuers, it is critical that we not create a system that undermines investor protection or a two-tier level of disclosure. A recent "no action" letter to the College of

Retirement Equities Fund has appeared to provide a loophole whereby offerings of securities are made abroad and simultaneous distributions are permitted in the U.S. Prior to relaxing the disclosure requirements any further with respect to foreign issuers, it would appear that a complete review at the Commission level of actions in this area is warranted. Will you conduct such a review?

Response to Question 21. I will seek review of disclosure standards for foreign issuers but I am uncertain whether a "complete review at the Commission level of actions in this area is warranted."

Question 22. Several securities industry professionals have advised the Subcommittee at recent hearings that the SEC must take much more aggressive action to develop automated market surveillance systems if the Commission hopes to keep regulatory pace with expanding market volume and product complexity. Would you support new SEC initiatives to develop automated market surveillance systems?

Response to Question 22. My understanding is that the recently created Intermarket Surveillance Group will have access to good automated market surveillance systems. I will support initiatives to see that such systems are keeping pace with expanding market volume and product complexity.

Question 23. According to Saturday's Washington Post, you and your wife have held more than 50 stocks in the past year. What advice would you offer to the small investor in today's financial environment based upon your own extensive experience in the market? Do you believe that owning stock is still a good long-term investment?

Response to Question 23. The small investor should utilize professional financial management, either through a well qualified broker or through an investment fund. I believe that buying and holding a high quality stock is a good form of long term investment.

Question 24. Are you at all concerned about the amount of speculation that seems to be taking place in our domestic markets, and internationally these days and, if so, what do you think should be done about it?

Response to Question 24. Speculation is a part of the securities markets. Monitoring that speculation is part of the Commission's responsibility.

Question 25. A number of witnesses at our February hearings, including Milton Cohen, the principal author of the 1963 Special Study of the Securities Markets, suggested that this may be an appropriate time for a study to be conducted by an independent committee commissioned by, and under the jurisdiction of Congress, with a view toward comprehensive recommendations for new legislation and improved regulations. What is your opinion of such a special study and what issues do you think it should encompass?

Response to Question 25. Market changes are taking place so fast that I am uncertain whether a major study at this time would be effective. Perhaps I will be able to give a more definite answer to this question at a later date.

Question 26. The municipal securities market has grown tremendously since 1975 when Congress, in the Securities Acts Amendments of 1975, mandated registration of municipal securities dealers and the formation of the Municipal Securities Rulemaking Board. The following questions deal with the adequacy of municipal securities regulation in three specific areas: issuer disclosure, transfer agent activities, and call notification.

(A) In contrast to the corporate securities market, issuers of municipal securities are not required either to prepare disclosure documents or, if such documents are prepared, to file them with the SEC. The SEC's authority over municipal securities issuers is limited to post hoc enforcement of the antifraud provisions of the federal securities laws. During the last ten years, the SEC has been involved in three major investigations regarding the municipal securities market. In 1979, it issued a report on its investigation of transactions in securities of the City of New York. For the last four years, the SEC has been investigating the July 1983 default of $2.25 billion of the Washington Public Power Supply System ("WPPSS") Bonds, Projects 4 and 5. Recently, newspaper reports have mentioned an SEC investigation,

along with Justice Department and FBI investigations, of a number of recent municipal securities issues. Do you believe that disclosure in the municipal securities market is adequate to alert investors to the material features of these issues? In addition, do you believe that disclosures are being made available in a timely way so that investors are able to make informed decisions concerning their purchases of municipal securities? Do you have any suggestions for improvements in this area?

(B) Transfer agents that process only municipal securities and municipal issuers that perform their own transfer functions are not regulated by the SEC. Most transfer agents for corporate securities, however, must register with the SEC and are required to comply with certain performance standards with respect to their transfer activities. In addition, any registered transfer agent that also performs transfer functions for municipal securities must comply with these SEC requirements for municipal as well as corporate securities transfers. Do you believe that registered transfer agents that perform transfer functions for municipal securities issues are complying with the SEC standards? Are you aware of complaints that a number of registered, as well as unregistered, transfer agents are not transferring municipal securities in a timely fashion which increases the costs and delays settlement of municipal securities transactions? Do you believe that there should be such a regulatory discrepancy between registered and unregistered transfer agents in the processing of municipal securities? Should all municipal securities transfer agents be subject to SEC regulation?

(C) As you are aware, in December 1986, the SEC published recommended standards to improve call notification procedures in the municipal securities market. The SEC became involved with this issue when it was apprised of a number of complaints by bondholders, dealers and depositories concerning inadequate call notification. Late receipt

Question 26. Continued

by holders of call notices delays redemption of the securities and causes the loss of interest on the investment from the redemption date. In addition, bondholders who do not receive notice of partial calls may experience failed transactions, short trading positions and other clearance and settlement problems. Since the publication of the SEC notice, are you aware of improvements in the call notification process for municipal securities? Has the reaction to issuers, trustees and paying agents to this release been positive or do you believe that further action, including possible legislative action, may be needed to remedy the situation?

Response to Question 26. The municipal securities market.

A. My knowledge of selling practices in the municipal securities market is not extensive. My tentative belief is that disclosures regarding complicated municipal revenue bonds are probably not adequate. My guess is that if steps are taken to require greater disclosure at the time of initial sale there should be some distinctions made between revenue bonds and general obligation bonds. Some questions might also be raised regarding the proper role of underwriters in assuring disclosure.

B. I am unaware of complaints about transfer agents for municipal bonds and I have no opinion on this subject.

C. I have not followed the call notification problems and I have no opinion on this subject.

V. Responses to Senator Sasser's Questions

Question 1. What is your view of the role of the states versus the role of the Federal Government in the securities laws -- in other words do you favor greater Federal preemption; more authority for the States; or the status quo?

Response to Question 1. The balance of Federal-state regulation is about right. I favor Federal preemption in the tender offer area in appropriate situations.

Question 2. On December 1, 1986 the cover story of U.S. News and World Report was entitled "How the Stock Market is Rigged Against You." The story dealt in part with the Boesky scandal and the first paragraph began as follows: "Wall Street is under siege. The scandal . . . reinforces suspicions long held by individual investors: They are being cheated in a game rigged by insider traders, corporate raiders, greenmailers, arbitrageurs, 'junk bond' dealers and stock-churning brokers." I have two questions:

A. Do you believe that there is in fact something wrong going on on Wall Street and, if so, what do you think should be done about it?

B. What do you believe should be done to bolster the confidence of individual investors in the integrity of our markets?

Response to Question 2. A. Obviously there is "something wrong" on Wall Street when market professionals engage in blatant violations of the securities laws. I do not know the extent of the wrong-doing, but I favor strong enforcement activities in the market area, including strong enforcement efforts by self-regulatory organizations.

B. The case for lack of individual confidence in the integrity of our markets has not yet been made. Nevertheless, I believe that encouraging compliance with disclosure requirements and close attention to customer complaints will bolster confidence in the integrity of the markets.

Question 3. As you know, legislation to reform the Williams Act to end abuses in the tender offer process is pending before this Committee. We have heard

much testimony on this issue. I am particularly interested in Alan Greenspan's testimony yesterday concerning the debt which is accruing largely as a result of corporate takeovers. (Almost $400 billion in the last two years.) Dr. Greenspan believes that this debt will leave many companies and the economy extremely vulnerable in the next business downturn. Dr. Greenspan also indicates that many of the companies that have been subject to takeovers have been very well run. Not inefficient companies, whose management is entrenched, as some would have you believe. Now the argument that takeovers get rid of entrenched management is a primary argument in favor of takeovers. But here we have the probable next Chairman of the FED disputing this theory and pointing out serious economic fallout from the takeover trend. Do you agree with Dr. Greenspan's assessment? What actions would you take at the SEC to curb abuses in the takeover process? Will you support S. 1323, introduced by Senators Proxmire and Riegle and many of the members of the Committee, which will eliminate many of the abuses that have facilitated takeovers?

Response to Question 3. Congress adopted the Williams Act in an effort to create relatively equal conditions for the bidder and the target primarily for the purpose of protecting target shareholders. With regard to S. 1323, I am in substantial agreement with the views presented by Acting Chairman Cox on behalf of the Commission. Regarding the theory that the debt incurred in connection with takeovers will leave many companies and the economy extremely vulnerable, I do not believe the burden to prove that the debt level is injurious has been met. I do not believe tender offer legislation is the appropriate vehicle for regulating corporate debt levels in the United States, and in any event I do not believe there should be an attempt to regulate debt levels of individual companies.

Question 4. U.S. Attorney Giuliani testified before this Committee a few months ago and emphasized what he considered to be a deterioration in the ethical standards of many people working on Wall Street today. Mr. Giuliani believes that this deterioration is pervasive and may be traceable back into our educational system. I am inclined to agree with his point of view. A lot of what we have witnessed in the current insider trading scandal

is uncontrolled greed. Mr. Giuliani spoke of the need for self-policing by the securities industry, including better ethics training and oversight within the industry. He also favors improved internal auditing and control mechanisms by securities firms. Do you agree with this assessment? Do you think so-called Chinese walls actually work? What role should the SEC play in oversight of securities firms operations in this area?

Response to Question 4. My experience as a law teacher informs me that greed and lack of ethical standards will always exist. Nevertheless, I support better ethics training and oversight within the securities industry and improved internal auditing and control mechanisms by securities firms. Based upon my current information, I believe Chinese Walls can work. The Commission should encourage greater oversight of securities firms by self-regulatory organizations.

Question 5. U.S. Attorney Giuliani and others have noted to the Committee that the chances of apprehension and the possible penalties even if prosecuted for violations of the securities laws are not in balance with the enormous gains possible from these crimes. Thoughtful and informed critics have asserted that the extent of recent trading scandals may be seen as a commentary on the markets' perception of a lack of regulatory deterrence. Are the penalties stiff enough? Are there other ways we can make people pay attention to the securities laws? I note that S. 1323 raises the money penalty for violations to $1,000,000 and doubles the jail sentence to ten years -- is this sufficient?

Response to Question 5. A criminal sentence of five years is a long sentence by white collar crime standards. I believe a great deal can be accomplished by encouraging judges to impose jail sentences of longer duration. I am not sure whether larger money penalties will be successful deterrents.

Question 6. At our hearings in May on securities trading scandals, U.S. Attorney Giuliani revealed that an investigation was underway relating to possible collusion in the manipulation of securities by a group of otherwise unrelated securities industry players. The activities of investment bankers, law firms, brokers, and arbitrageurs to collusively manipulate corporate takeovers and acquisitions

has become a very real issue. What response do you believe is required from the SEC and/or Congress to this type of collusive manipulation?

Response to Question 6. The Federal Securities Laws contain ample provisions making the conduct you describe unlawful. The Commission should be vigorous in enforcing the law and seeking substantial penalties from the perpetrators of such wrongdoing.

VI. Responses to Senator Sanford's Questions

Question 1. I introduced legislation (S. 1324) on June 4, 1987 related to corporate takeovers. I would like your specific comments on certain aspects of that bill.

(a) The legislation establishes a 20% "all or none" requirement that anyone owning 20% of the shares of a corporation must purchase any additional shares by a tender offer for all remaining shares on the same terms. This provision is designed to end the so-called two-tiered or creeping tender offer that both the business groups and the capital markets group of the securities industries have stated can be abusive.

Do you think two-tiered or creeping tender offers have been abusive? Do you think any reforms are needed to curb such two-tiered offers? Please list the pros and cons that you see in the 20% all or none provision I have proposed?

(b) S. 1324 also prohibits "highly confident" letters and requires that financing be in place before a tender offer is commenced. This provision is intended to stop a manipulative tender offer where the offeror has no real intention of going forward with the tender; such offerors generally use contingent loan agreements to put a company in play without risk to themselves. The prohibition on the use of contingent funding agreements to support tender offers will require future offerors to assume some risk when they make frivolous tenders for arbitrage purposes.

What specific pros and cons do you see in the requirement that financing be in place before a tender offer is filed?

(c) In order to limit the practice where an offeror uses a target company's assets as collateral for a takeover loan facility, I have placed a requirement in my bill that for hostile takeovers of a significant

size, no more than 25% of the debt used to finance the takeover can be secured by the assets of the target. I feel that this will reduce the ability of poorly backed buyers to buy up and subsequently break up companies for short term gain purposes.

Please list the pros and cons that you see in this 25% limitation on debt collateralized by the target corporation's assets?

(d) Another provision of my bill requires that if a person makes a tender offer, or threatens to make a tender offer, then all profits (less reasonable expenses) earned by the offeror from the sale of the issuer's securities within six months of such an event would be returned to the issuer. This provision would remove the incentive that currently motivates market manipulators to make frivolous offers or threats to offer at the expense of other shareholders.

Please list the pros and cons that you see attached to this provision.

(e) I feel that our communities and the members of ESOP's have a right to know how any proposed takeover might affect them so that they may make well informed decisions as to whether they should support any particular tender offer. For this reason I have proposed that an offeror compile an economic impact statement summarizing the effects that a takeover would have on plant closings, job levels, existing collective bargaining agreements, etcetera.

Please list the advantages and disadvantages of enacting such a requirement.

(f) My bill proposes that an independant appraisal be performed before any LBO proceed to closing. It also requires a sixty day minimum waiting period between the public announcement of a leveraged buyout and closing of the same buyout. I perceive a need here for better public information to the tenderer as the inherent conflict of interest between directors/ management wanting to close an LBO and

directors/management needing to recommend a course of action to shareholders can create problems of objectivity on whether a deal is well structured from the shareholder's perspective.

Please list the pros and cons of such a requirement.

Response to Question 1. Corporate takeover legislation (S. 1324):

(a) A two-tiered tender offer is a tender offer in which the bidder usually offers cash to acquire 50% control of a corporation while simultaneously announcing that those who do not tender will receive securities in a forced merger after the first part of the transaction is complete. The two-tier offer is sometimes labelled "abusive" when the consideration to be given in the second phase is of lesser value per share than that offered in the first phase. A better term for such an offer might be "coercive," since shareholders will in a sense be coerced into accepting the first part of the offer in order to avoid receiving the lower consideration for all of their shares in the second part of the offer. Even though labelled "coercive," the better question is whether the blended price (the combination of the first stage and second stage price per share) is different than what would have been offered through a single stage "any and all" offer. My understanding is that the premiums currently offered in two-tier tender offers are not substantially different that those contained in any and all offers. It is further my understanding that the number of two-tier tender offers has been substantially reduced in the recent past. Consequently I do not think reforms are needed to curb two-tier tender offers.

The 20% "all or none" provision which you have proposed will interfere with the ability of a minority shareholder to acquire a 20 to 50% position in a company for the purpose of acquiring control through a proxy contest.

(b) In general I believe that market risks will adequately regulate loan agreements. Further, I see nothing inherently wrong in attention being drawn to the fact that a company may be a tender offer target. The result of the event will usually be beneficial to the real owners of the corporation, the shareholders, due to a rise in price for their shares. Therefore, I would not add a provision that financing be in place before a tender offer is commenced.

(c) A requirement limiting the activities of an acquiring company regarding an acquired company seems to me to be misplaced. A 25% limitation on debt collateralized by the target shareholder's assets will in effect limit the ability of the acquiring company to change the financial structure of the acquired firm. Not only will this restriction inhibit tender offers and thereby prevent shareholders from realizing greater value for their holdings, but it will amount to an arbitrary judgment regarding the amount of debt which can be carried by a corporation. Additionally, at times it may be wise to encourage the break up of a company which has mismatched divisions.

(d) The provision requiring a person making a tender or threatening to make a tender offer to return all profits made within a six month period is also apparently aimed at preventing companies from being identified as takeover targets. I see no reason why monetary gain should not be available to persons who identify undervalued companies. Nevertheless I share your concern for those who make misrepresentations about their intent, and would urge Commission action against those persons under relevant Federal Securities Laws, including Section 14(e) of the Securities Exchange Act.

(e) As I understand it, the Commission's policy over the years has been to avoid requiring disclosure of information other than that relevant to the value of a company's security. An economic impact statement falls within the category of information about which the Commission has not sought disclosure in the past. I believe such a statement would impose a cost on a bidder for the purpose of protecting interests other than those of shareholders, with the result that tender offers would be discouraged and shareholder opportunities for profits diminished.

(f) Your concern that an independent appraisal be available in leveraged buyouts is one which I share. However, I believe that state law, particularly in Delaware, makes it very likely that such an appraisal will be utilized in any event. Regarding a waiting period in a leveraged buyout there are significant restrictions on LBO activities through state and Federal proxy regulations and through Rule 13e-3 (the going private rule). An LBO in the form of a tender offer would of course be regulated by current tender offer provisions. Consequently I do not think the delay provision is necessary. If a delay were required, I would suggest the 20 business day period now utilized by the Commission in connection with tender offers.

Question 2. The recent device of so-called Bridge Financing provided by affiliates of registered broker-dealers to finance large takeovers raises various regulatory concerns for the Commission. For example, First Boston committed $1.8 billion to finance Campeau's acquisition of Allied Stores at a time when First Boston's holding company balance sheet had $1.1 billion of equity. By using its parent company and not its broker-dealer affiliate, First Boston avoided the margin rules and broker-dealer net capital rules. This type of activity appears to raise serious regulatory concerns. What steps to you intend to take to deal with this issue?

Response to Question 2. If Bridge Financing techniques of the type you describe violate either the margin regulations or broker-dealer net capital rules I would urge enforcement action.

Question 3. Recently a well-known leveraged buyout firm was reported to be raising $5 billion for future buyout activity.

I am wondering to what extent, if at all, you are concerned about so much capital being raised for this type of activity as opposed to being put to other, arguably more productive purposes?

At what point does money that is used for this purpose result in money for other purposes becoming more expensive?

Response to Question 3. My concern regarding capital being raised for acquisition activities centers on adequate disclosures being made to those from whom the capital is raised. I do not believe I have the expertise to decide which capital is being raised for productive purposes and which is not. I believe that liquidity is a vital ingredient of our capital markets, and I would have great difficulty supporting legislation which reduced liquidity by attempting to designate which uses of capital are better than others.

Question 4. At one point in his Chairmanship, John Shad expressed considerable concern about the "leveraging of corporate America." Indeed, in the last fifteen years, the average ratio of corporate long-term debt to equity has increased from 46.7 percent in 1971 to 71.4 percent in 1986.

To what extent, if at all, do you share this concern about the additional leveraging of our corporations?

Response to Question 4. The problem with concern over "leveraging" is that of identifying the "correct" level of leveraging for particular companies, particular industries, and at particular times. Leveraging may produce good profits or may cause losses, depending upon interest rates and profitability levels. In view of the inherent inability to know the long term effects of leveraging, I do not share former Chairman Shad's concerns.

VII. Responses to Senator D'Amato's Questions

Question 1. Another issue related to corporate takeovers is the proper role of the states vis-a-vis the federal securities laws in regulating corporate takeovers. This issue was somewhat complicated by the Supreme Court's decision in the CTS v. Dynamics Corp. case. Do you think the court properly decided that case and what do you think the proper role of the states should be in regulating corporate takeovers? Should the federal regulation of takeover activity preempt state regulation?

Response to Question 1. In CTS v. Dynamics Corp., the Supreme Court reached a conclusion contrary to the view expressed by the Commission. I believe the Commission's view was the correct one. To the extent that state regulation conflicts with the Federal Securities Laws, it should be preempted by the Federal law. I believe states have a legitimate role in regulating internal corporate affairs, but I do not believe states should utilize control over corporate internal affairs to inhibit a free market in securities.

Question 2. The Commission has recently instituted a rulemaking proceeding (proposed Rule 19c-4) in which it will attempt to address the issue of the one share/one vote listing standard. Without addressing the merits of that proposal:

(1) Do you believe that the Commission has the rulemaking authority to impose listing standards upon the stock exchanges and the NASD?

(2) Will the continued movement away from the one share/one vote standard have an adverse impact on the principle of shareholder democracy and further insulate managements from their shareholders?

Response to Question 2. One share/one vote listing standard:

(1) The question of Commission rulemaking authority to impose listing standards upon Stock Exchanges and the NASD is a matter of significant contention in the Rule 19c-4 hearings. I believe it best not to comment on the question.

(2) I am concerned that a permanent disenfranchisement of shareholders will have a significantly negative effect on management accountability and therefore intend to examine the 19c-4 issues with great care.

Question 3. Lost in all the publicity surrounding insider trading and corporate takeovers has been the issue of program trading. Some argue that program trading could lead to a 1929-style crash while others claim that it provides more long term stability to the market. What are your views concerning the shortcomings or benefits of program trading and what regulation, if any, is needed to prevent any manipulative use of program trading?

Response to Question 3. My present understanding is that program trading provides significant opportunity for portfolio protection and long run market stability, and that evidence of its contribution to uncorrected volatility has not yet been produced. I believe program trading should be monitored carefully.

Question 4. Some of my colleagues have been concerned about the increase in the issuance of high yield non-investment grade securities, commonly referred to as junk bonds.

A) Do these securities serve any purpose other than to finance takeovers?

B) Should limitations be placed on the amount of funds federally insured depository institutions, insurance companies and pension funds can invest in junk bonds?

Response to Question 4. High yield non-investment grade securities:

A) It is my understanding that the high yield non-investment grade debt market plays a significant and positive role in the financing of small and growing companies. These companies frequently must utilize such debt because they cannot raise equity capital and cannot secure funds from banks. This market also includes debt of companies whose investment ratings have declined from investment grade to below investment grade.

B) Limitations on the amount of high yield non-investment grade debt that can be held by certain institutions might be appropriate, but such regulation should probably not be part of the Federal Securities Laws.

Question 5. In the recent past, the members of this Committee have expressed concerns about the ability of the SEC staff to cope with its ever increasing workload. How concerned are you about the disparity between our growing markets and the SEC's relatively shrinking workforce? Are self-regulatory organizations and industry participants doing enough to police the securities markets and, if not, what more they be doing?

Response to Question 5. I believe Commission resources should be increased (See Statement C, Commission Resources). Self-regulatory organization and industry participants should increase their market surveillance capabilities, encourage separation of trading activities from merger and acquisition activities, and become more concerned with protection of customers.

Question 6. Recently, members of the Committee have received criticism that the proxy process is skewed in favor of incumbent managements and does not provide adequate information concerning the issues which shareholders must consider through the proxy process. How can the proxy process be improved and should these improvements be accomplished through amendments to existing law or through the SEC's use of its rulemaking authority?

Response to Question 6. Concerns about the adequacy of the proxy process are of long standing and have been the subject of Commission investigation on several occasions without identifying significant ways in which the proxy process can be improved. Recent voting activities of institutional investors suggest that changes in shareholder voting attitudes may be taking place which will have an effect on management concern for shareholder welfare. I believe the proxy process should continue to be monitored by the Commission.

VIII. Responses to Senator Heinz' Questions

Question 1. Critics of corporate takeovers claim that they are merely "paper transactions" that create no wealth. They allege that shareholders and corporations realize no net economic gain and that the economy suffers as a result.

- Do these transactions create value or do they redistribute wealth from one stockholder group to another?

- Would these same claims apply to negotiated mergers and leveraged buyouts as well as hostile takeovers?

Response to Question 1. I would disagree with such critics because the shareholders of target corporations usually benefit from tender offers due to a rise in price for their shares. Whether or not similar benefits would accrue to shareholders in negotiated mergers and leveraged buyouts would depend upon the specific transaction involved.

Question 2. What are your views on the recent CTS decision and states' enactment of various anti-takeover statutes?

Should there be a federal preemption of these statutes?

Response to Question 2. In CTS v. Dynamics Corp., the Supreme Court reached a conclusion contrary to the view expressed by the Commission. I believe the Commission's view was the correct one. To the extent that state regulation conflicts with the Federal Securities Laws, it should be preempted by the Federal law. I believe states have a legitimate role in regulating internal corporate affairs, but I do not believe states should utilize control over corporate internal affairs to inhibit a free market in securities.

Question 3. The New York Stock Exchange has proposed to abandon its one-share one-vote rule by permitting NYSE-listed firms to issue a non-voting class of stocks. The reasons for the proposal include: (1) protecting its competitive position; (2) ensuring that control of major corporations remain in friendly hands; (3) other nations permit listed firms to offer non-voting classes of stock.

The SEC intends to rule on this issue in the fall. Obviously, if confirmed, you will have substantial input on the topic.

What are your views on the issue? Should the SEC or the Congress resolve the question?

Response to Question 3. Since the one share/one vote question is currently the subject of a Commission rulemaking proceeding, I do not believe I should comment in detail. In general I believe that removal from shareholders of the power to elect management is a dramatic change in corporate structure which should be reviewed carefully before being implemented. To the extent possible under current law, I believe the Commission should resolve the one share/one vote question.

Question 4. The SEC has been criticized for not aggressively pursuing, until recently, violations of the securities laws including insider trading and manipulation of stock prices. The Committee has recently authorized a substantial increase in the agency's budget, which would provide it the necessary resources to undertake more investigations. However, your attitude on the subject will tend to control the activity of the agency on these matters. Do you intend to continue and increase the investigations of perceived violations of the laws or instead rely on the so-called "self-regulatory" approach taken by your predecessor?

Response to Question 4. Although I believe certain aspects of a "self-regulatory" approach are appropriate, I must emphasize my commitment, if confirmed, to vigorous investigative and enforcement efforts by the Commission. Accordingly, I would intend to continue and to increase, as necessary, the investigations of possible violations.