

June 8, 1987

To Our Clients:

The Proxmire Takeover Bill

The Proxmire Bill goes a long way toward eliminating the most serious takeover abuses. At the same time it is balanced and cannot be said to entrench management.

The Bill does not deal with the leverage problem. It does not do anything to retard the accelerating trend to dangerous levels of leverage resulting from junk bond, bust-up takeover raids and the defensive restructurings they engender.

The Bill does not prohibit the abusive partial tender offer. It permits the present ability of raiders to bid for control and then squeeze out the remaining public shareholders. The Bill should be amended to require a bid for all outstanding shares at the Bill's 15% threshold for cutting off open market purchases.

The Bill lengthens the tender offer period from 20 to 35 business days. This is much too short a period in which to realize the objective of fair treatment of all parties and to enable a shareholder vote if such is required in connection with a tender offer defense. The Bill should be amended to provide a tender offer period of at least 90 days and preferably 120 days.

The Bill does not deal with the critical problem of effective control of American business by institutional investors. The Bill recognizes part of the problem in that it amends ERISA to provide that pension fund managers do not violate their fiduciary duties in not accepting a tender offer when they conclude that long-term values warrant holding the investment. This is a very welcome recognition of the short-term, long-term problem that threatens us, but it does nothing to solve the problem. Given the self interest of investment managers and the competitive pressures they face, the only effective legislation would be a bill that substantially penalizes short-term investment. Institutional investors have been encouraging and aiding corporate raiders in maintaining the takeover frenzy. The national interest demands that Congress curb these activities.

The official summary of the Bill is attached.

M. Lipton

Elements of a Corporate Takeover Reform Bill

I. Improved Disclosure under 13(d):

- A. Lower the disclosure threshold from 5% to 3% stock ownership;
- B. Reduce the ten day filing period to 1 day;
- C. Prohibit further stock acquisitions until after the purchaser has filed a statement with the Commission and has publicly disseminated an announcement containing such information as the Commission may provide;
- D. Expand disclosures to:
 - 1. identify persons with whom plans for control were discussed within the last 90 days;
 - 2. include fees paid to lenders or others in connection with the stock purchases;
 - 3. list the source of financing;
 - 4. specify whether the purpose of the acquisition is for investment or control. If investment is specified, the person is precluded from making a tender offer for six months;
- E. Tighten the definition of a group required to make 13D disclosures.

II. Tender Offer Procedures:

- A. Extend the tender offer period from 20 to 35 business days; and
- B. Restrict "creeping tender offers" by prohibiting acquisitions of more than 15% unless pursuant to a tender offer.

III. Management Defenses:

- A. Prohibit greenmail;
- B. Prohibit golden parachutes during a takeover contest unless approved by a majority of stockholders;
- C. Prohibit the adoption of poison pills during a takeover contest unless approved by a majority of stockholders.

IV. Enforcement Provisions:

A. Allow a private right of action against disclosure violations under section 13 and margin requirements under section 7;

B. Increase insider trading criminal penalties from a maximum of five years to ten years and increase the maximum fine from \$100,000 to \$1,000,000;

C. Require a minimum one year penalty for perjury or obstruction of justice in connection with an insider trading investigation;

D. Require the registration of risk arbitrageurs not currently subject to SEC regulation.

V. Pension Funds:

A. Allow managers of pension funds to take into account long term investment prospects without violating their fiduciary responsibilities under ERISA;

B. Prohibit pension funds surpluses from being used to repay takeover incurred debt for five years following the takeover.

VII. Role of States

The role of states in the internal affairs and governance of corporations is affirmed.