

ECONOMIC FORUM ON TENDER OFFERS

OPENING STATEMENT
JOHN SHAD

THIS ECONOMIC FORUM ON TENDER OFFERS
IS AN OPEN MEETING
UNDER THE GOVERNMENT IN THE SUNSHINE ACT.

THE RAPID INCREASE IN THE SIZE AND NATURE
OF TENDER OFFERS OVER THE PAST THREE YEARS,
HAS RAISED MAJOR ISSUES
THAT ARE BEING DEBATED IN CONGRESS,
THE BUSINESS AND FINANCIAL COMMUNITIES AND ACADEMIA.

THE SEC AND OTHER STATE AND FEDERAL AGENCIES,
HAVE JURISDICTION OVER THE LAWS
THAT REGULATE SUCH TRANSACTIONS,
WHICH ARE SUBJECT TO INTERPRETATION
BY BOTH STATE AND FEDERAL COURTS.

THE ISSUES ARE FURTHER COMPLICATED
BY THE FACT THAT BIDDERS' TACTICS
ARE PRINCIPALLY REGULATED UNDER FEDERAL LAW;
WHEREAS, TARGET CORPORATIONS' DEFENSES
ARE PRINCIPALLY REGULATED UNDER THE LAWS OF THE 50 STATES.

LAST YEAR,

SENATE AND HOUSE HEARINGS

WERE HELD ON PROPOSED TENDER OFFER LEGISLATION,
AND ADDITIONAL HEARINGS

ARE SCHEDULED OR EXPECTED THIS YEAR.

THERE HAS BEEN MUCH RHETORIC,

BUT LIMITED FACTUAL STUDIES AND ANALYSES

BROUGHT TO BEAR ON THESE COMPLEX ISSUES.

THE PURPOSE OF TODAY'S ECONOMIC FORUM

IS TO DISCUSS THE BEST AVAILABLE FACTUAL STUDIES AND ANALYSES
OF THESE CRITICAL ISSUES.

I WOULD, THEREFORE, LIKE TO SUGGEST

THE FOLLOWING ORDER OF PRIORITIES

OF THE ISSUES TO BE DISCUSSED TODAY.

FIRST, THE EVIDENCE IN SUPPORT AND OPPOSITION

TO THE PROPOSITION THAT

THE INCREASING INSTITUTIONALIZATION OF THE EQUITY MARKETS
AND THE THREAT OF HOSTILE TENDER OFFERS

IS INDUCING CORPORATIONS TO PURSUE SHORT TERM RESULTS
AT THE EXPENSE OF RESEARCH AND DEVELOPMENT

AND OTHER LONG RANGE PROJECTS
OF CRITICAL IMPORTANCE

TO INVESTORS AND THE NATION.

SECOND, THE EVIDENCE IN SUPPORT AND OPPOSITION
TO THE PROPOSITION THAT
IN RESPONSE TO THE THREAT OF HOSTILE TENDER OFFERS,
SHAREHOLDERS ARE BEING "DISENFRANCHISED"
THROUGH CORPORATE CHARTER AND BYLAW AMENDMENTS,
STATE STATUTES, SO CALLED "POISON PILL" SECURITIES
AND OTHER CORPORATE DEFENSIVE TACTICS
WHICH INHIBIT OR PREVENT TAKEOVERS.

INCREASING NUMBERS OF CORPORATIONS ARE AMENDING
THEIR CHARTERS AND BYLAWS
TO REQUIRE THAT CHANGES IN CORPORATE CONTROL
BE SUBJECT TO APPROVAL BY THE HOLDERS
OF 80 TO 90% OF THE SHARES
AND/OR THAT THE HIGHEST PRICE PAID
FOR ANY OF THE SHARES
BE PAID FOR ALL OF THE SHARES.

IN 1983, OVER 200 CORPORATIONS ADOPTED SUCH PROVISIONS.

OVER 400 CORPORATIONS LAST YEAR.

AND OVER 500 COMPANIES ARE EXPECTED TO DO SO THIS YEAR.

EIGHT STATES HAVE RECENTLY ENACTED STATUTES,
THE EFFECTS OF WHICH ARE ALSO
TO PERMIT THE HOLDERS OF A SMALL PORTION OF THE SHARES
TO PREVENT CHANGES IN CORPORATE CONTROL.

THE PROPONENTS OF SUCH

ANTI-TAKEOVER CHARTER AND BYLAW AMENDMENTS

POINT-OUT THAT THEY ARE SUBJECT TO APPROVAL
BY THE SHAREHOLDERS UNDER STATE LAW,

AND THAT THEY PERMIT CORPORATE EXECUTIVES
TO MANAGE COMPANIES IN THE BEST INTEREST

OF ALL THEIR SHAREHOLDERS,

AS WELL AS THEIR EMPLOYEES,

CUSTOMERS, SUPPLIERS AND COMMUNITIES.

PROTAGONISTS CONTEND THAT IF THESE TRENDS

ARE PERMITTED TO PERSIST

TO THE END OF THE DECADE,

A SIGNIFICANT SEGMENT OF THE INVESTING PUBLIC

WILL BE DEPRIVED OF THE OPPORTUNITY

TO DECIDE WHETHER TO ACCEPT OR REJECT OFFERS

FOR THEIR SHARES AT SIGNIFICANT PREMIUMS

OVER THEIR CURRENT MARKET PRICES.

THEY ALSO CONTEND

THAT THE LATEST VARIATIONS

OF SO CALLED "POISON PILL" DEFENSES

DO NOT AFFORD SHAREHOLDERS ANY VOICE

IN THE DECISION TO ACCEPT OR REJECT TENDER OFFERS.

STILL OTHERS, EXPRESS GREATER CONFIDENCE
IN THE FREE MARKETPLACE -
THAN IN STATE AND FEDERAL REGULATIONS -
TO RESPOND AND ADJUST TO THESE RAPIDLY EVOLVING,
MULTI-FACETED TRENDS AND ISSUES.

TO AMPLIFY THESE ISSUES,
WE ARE VERY PLEASED TO HAVE WITH US TODAY,
DISTINGUISHED ECONOMISTS FROM THE ACADEMIC AND BUSINESS COMMUNITY.

PROFESSOR MICHAEL BRADLEY FROM THE UNIVERSITY OF MICHIGAN.

PROFESSOR HAROLD DEMSETZ FROM UCLA.

PROFESSOR MICHAEL JENSEN FROM THE HARVARD BUSINESS SCHOOL.

ROGER KUBARYCH (KU-BAR-SH),
THE CHIEF ECONOMIST OF THE CONFERENCE BOARD.

AND PHILLIP O'CONNELL, THE VICE PRESIDENT AND CORPORATE SECRETARY
OF CHAMPION INTERNATIONAL,
REPRESENTING THE BUSINESS ROUNDTABLE.

SENIOR MEMBERS OF THE SEC STAFF,

WHO WILL PARTICIPATE IN TODAY'S FORUM ARE -

DR. GREGG JARRELL, THE SEC'S CHIEF ECONOMIST,

DR. KEN LEHN OF THAT OFFICE,

JOHN HUBER, DIRECTOR OF THE DIVISION OF CORPORATION FINANCE,

LINDA QUINN, EXECUTIVE ASSISTANT TO THE CHAIRMAN,

AND _____,"

WILL PARTICIPATE IN TODAY'S FORUM.

THE COMMISSION IS ALSO PLEASED TO WELCOME

THOSE IN THE AUDIENCE,

REPRESENTING CONGRESSIONAL COMMITTEES AND THE ADMINISTRATION.

NEIL LEVIN AND STEVE HARRIS

FROM THE SENATE BANKING COMMITTEE STAFF;

CONSUELA WASHINGTON

FROM THE HOUSE ENERGY AND COMMERCE COMMITTEE;

DOUGLAS GINSBURG AND JOHN ROBINSON

FROM THE OFFICE OF MANAGEMENT AND BUDGET;

AND JOSEPH GRUNDFEST

FROM THE COUNCIL OF ECONOMIC ADVISERS TO THE PRESIDENT.

THIS MORNING WILL BE DEVOTED

TO PRESENTATIONS BY THE DISTINGUISHED PROFESSORS.

WE WILL BREAK FOR LUNCH AT 12:30

AND RECONVENE AT 2:00 P.M.

FOR PRESENTATIONS BY REPRESENTATIVES
OF THE BUSINESS COMMUNITY.

WE WILL ADJOURN AT 5:00 P.M.

EACH PANELIST WILL HAVE 15 TO 20 MINUTES

TO DEVELOP HIS VIEWS,

FOLLOWED BY QUESTIONS FROM THE COMMISSIONERS,
AND IF TIME PERMITS, THE SENIOR STAFF AND AUDIENCE.

QUESTIONS OR STATEMENTS

BY THE COMMISSIONERS AND OTHERS

DO NOT NECESSARILY REFLECT
THEIR VIEWS ON THE SUBJECT -

BUT RATHER - ARE MERELY INTENDED
TO ELICIT ADDITIONAL INFORMATION
OR FULLY VENTILATE THE ISSUES.

PROFESSOR DEMSETZ,

WOULD YOU PLEASE START US OFF.