

Vorys, Sater, Seymour and Pease

Arthur I. Vorys
1856-1933
Lowry F. Sater
1867-1935
Augustus T. Seymour
1873-1926
Edward L. Pease
1873-1924

52 East Gay Street
Post Office Box 1008
Columbus, Ohio 43216
Telephone (614) 464-6400
Telecopier (614) 464-6350
Rapifax (614) 464-6453
Telex 241348
Cable VORYSATER

In Washington
Suite 1111
1828 L Street, NW
Washington, D.C. 20036
Telephone (202) 822-8200
Telecopier (202) 835-0699
Telex 440693

In Cleveland
2100 East Ohio Building
1717 East Ninth Street
Cleveland, Ohio 44114

Telephone (216) 621-7091
Telecopier (216) 621-8366

Writer's Direct Dial Number

(614) 464-6258

October 26, 1983

Mr. John S. R. Shad
Chairman, Securities and Exchange Commission
450 5th Street, N.W.
Washington, D. C. 20549

Re: Congressional Consideration of
Amendments to Williams Act

CHAIRMAN'S OFFICE
RECEIVED
NOV 01 1983
14062
SEC. & EXCH. COMM.

Dear Chairman Shad:

On behalf of The Ohio Manufacturers Association, which we represent, we are writing with our thoughts concerning the means by which, in our opinion, Congress and the Securities and Exchange Commission should approach the policy issues discussed in the Report of the SEC's Advisory Committee on Tender Offers (July 8, 1983).

As you know, that Report recommended, inter alia, (1) express federal preemption of state regulation of tender offers and control share acquisitions, (2) a speeding up of the tender offer process, especially as to securities tender offers, and (3) a revolutionary federal corporation law governing matters such as high-vote provisions, advisory votes by shareholders, repurchase of shares, and the necessity to proceed by tender offers for acquisitions above a given threshold.

These issues could not be more fundamental. Substantial dissent has already emerged. At its Annual Meeting, held in June, 1983, the National Association of Attorneys General adopted, without a dissenting vote, a resolution which is directly opposed to the thrust of the Report of the Advisory Committee. The resolution of the Attorneys General strongly supports federal legislation to specifically empower state regulation of tender offers and control share acquisitions so long as such regulation does not make it impossible to comply with federal regulation. We understand that the National Association of Attorneys General has supplied to you and the other members of the Securities and Exchange Commission a copy of the resolution, memorandum and draft bill that were before the meeting when the resolution was adopted.

Mr. John S. R. Shad
October 26, 1983
Page 2

One of the many crucial questions in the letter (copy enclosed) of February 1, 1983 to you from members of the Senate Committee on Banking, Housing, and Urban Affairs was, "What should be the involvement of states in regulating corporate take-overs?" This question is important because (1) most corporation law in the United States is state law (aside from financial institutions, the federal government charters only a few corporations), (2) until a few years ago, federal regulation under the federal securities statutes and regulation under state law coexisted nicely--state regulation was always valid so long as it did not make it impossible to comply with federal regulation and (3) it has been state regulation that has provided periods of 50 to 60 days during which tender offers must be open, providing ample time for developing and disseminating adequate information (say, through hearing procedures) to average investors and time for management of the target to best develop competitive bids yielding more money for the shareholders of the target. The Report of the Advisory Committee advocates express preemption of state law and (generally speaking) a period of only 30 days during which offers would be open. Furthermore, securities tender offers would be accelerated. Given the fact that tender offers tend to develop into more complicated forms (e.g., the recently developed two-tier offers, which the Report notes; however, it does not deal with their inherent problems), adequate time for evaluation is, we submit, a crucial shareholder protection. This is especially so since the SEC seldom brings enforcement actions during tender offers. You will note that the draft legislation before the Attorneys General when they acted would effectively deal with two criticisms of state legislation. The draft legislation would limit jurisdiction to the state of incorporation of the target and would decree that any state-imposed hearing or requirement of a shareholder vote be completed within 60 days. In short, the proposal of the Attorneys General promotes both competition and shareholder understanding once a hostile tender offer is launched. Their proposal is fundamentally at odds with the Report of the Advisory Committee.

In addition, Arthur Goldberg, a former Associate Justice of the United States Supreme Court and a member of the Advisory Committee, filed a long dissent to the Report. According to Justice Goldberg, "The Report of the Advisory Committee makes no significant reference to protection of the public interest." Justice Goldberg proposes that, upon the making of a hostile tender offer, there be a "cooling-off" period (applicable to the offeror and the target) and that such an offer should be subject to votes by the offeror and the target. His recommendation is fundamental and is directly opposed to the recommendations of the majority. There were also dissents, all raising basic questions, by three other members of the Advisory Committee.

Mr. John S. R. Shad
October 26, 1983
Page 3

Likewise, the Advisory Committee's recommendations concerning a type of federal corporation law are controversial recommendations going to first-order policies. In our comment letter, dated April 29, 1983, to the Advisory Committee (copy enclosed), we noted the deservedly rocky reception given the American Law Institute's Tentative Draft No. 1 on Principles of Corporate Governance and Structure: Restatement and Recommendations (April 1, 1982), which is widely (and, we believe, properly) regarded as an indirect play for a federal corporations statute.

The Report, moreover, is almost solely "market-oriented", with little consideration of broader issues such as effect of hostile tender offers on productivity, suppliers, workers, customers and communities. The majority state that "we concentrated our work and recommendations on shareholders' interests." Matters of broader concern evidenced by the members of the February 1, 1983 letter of the Senate Committee on Banking, Housing, and Urban Affairs to you were only lightly considered.

In brief, it is our opinion that Congressional consideration of the whole of the Advisory Committee's package in legislation form should precede SEC rulemaking action on the few parts of the package that can validly be implemented by rulemaking. The majority of the Advisory Committee propose numerous changes, which the majority characterize as "designed to be an integrated and cohesive body." Furthermore, Congress has not extensively reviewed fundamental issues in tender offer legislation since 1968. In these circumstances, we submit that it would be a mistake for the SEC to attempt to implement parts of an "integrated and cohesive body" by rulemaking without first obtaining Congressional decisions by legislation on the fundamental issues.

We are sending copies of this letter, with enclosures, to the following members of Congress (the Chairman and ranking minority members of the Committees and Subcommittees in each branch with jurisdiction over securities issues) with the request that hearings on the Report and related counter-proposals be held as soon as reasonably possible for the reasons stated in this letter:

The Honorable James T. Broyhill
The Honorable Alfonse M. D'Amato
The Honorable John D. Dingell
The Honorable Jake Garn
The Honorable William E. Proxmire
The Honorable Matthew J. Rinaldo
The Honorable Paul S. Sarbanes
The Honorable Timothy E. Wirth

Mr. John S. R. Shad
October 26, 1983
Page 4

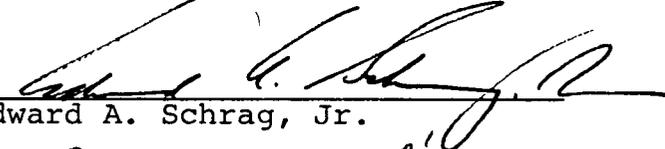
We would hope that the Securities and Exchange Commission would join in this request and in the interim prepare legislation expressing the whole of the Advisory Committee's Report in statutory form and abstain from rulemaking in this area until Congress legislates on the basics.

We are also sending copies of this letter with enclosures to the other members of the Securities and Exchange Commission. The undersigned would be pleased, upon request, to meet with any of you to discuss this matter.

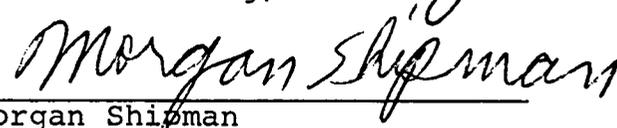
Respectfully,

VORYS, SATER, SEYMOUR AND PEASE

BY


Edward A. Schrag, Jr.

BY


Morgan Shipman