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Overtaking Stat Take-Over Statutes: Great Western United Corp. v. Kidwell

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NOTES

Overtaking State Take-Over Statutes: Great Western United Corp. v. Kidwell

On March 21, 1977, Great Western United, a Delaware corporation with its principal executive offices in Texas, having complied with the Williams Act,[1] announced its tender offer[2] for 2,000,000 shares[3] of stock of Sunshine Mining Company, a Washington corporation with its corporate headquarters and over fifty percent of its assets located in Idaho. That same day Great Western attempted to comply with the disclosure provisions of the Idaho take-over law[4] by filing a registration statement for the offer. Pursuant to the Idaho statute, after submission of a registration statement, the state commissioner has a twenty-day time period within which he may call for a hearing on the offer. The Idaho Commissioner determined, however, that the information disclosed in the statement was inadequate and that the twenty-day time period would not begin to run until a complete statement was submitted.[5] Great Western then brought an action for declaratory and injunctive relief against the state officials of Idaho to prevent enforcement of the take-over statute, alleging that this state law was preempted by federal legislation and placed an undue burden on interstate commerce.[6] *Held*: The Idaho take-over statute is preempted by the Williams Act and constitutes an undue burden on interstate commerce, and should therefore

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1. 15 U.S.C. §§ 78m(b)-(e), 78n(d)-(f) (1976).

2. A "tender offer" is a term of art that describes an offer to buy a substantial or controlling block of securities of a publicly held company usually at a price above the current market value. *See generally* E. ARANOW & H. EINHORN, TENDER OFFERS FOR CORPORATE CONTROL 65 (1973). The Idaho statute incorporates tender offer in its definition of "take-over offer":

> The offer to acquire or the acquisition of any equity security of a target company, pursuant to a *tender offer* or request or invitation for tenders, if after the acquisition thereof the offeror would be directly or indirectly a beneficial owner of more than five percent (5%) of any class of the outstanding equity securities of the issuer.

IDAHO CODE § 30-1501(5) (Supp. 1977) (emphasis added). Neither the Williams Act nor the rules adopted by the SEC attempt to define the term "tender offer." This has caused additional litigation and much confusion. E. ARANOW & H. EINHORN, DEVELOPMENTS IN TENDER OFFERS FOR CORPORATE CONTROL 1 (1977).

3. The offer was for 35% of Sunshine's outstanding shares at $15.75 per share. This offer was characterized as "unfriendly" because Sunshine's board of directors had refused to recommend to their shareholders Great Western's "friendly offer" of $16.75 per share.

4. IDAHO CODE §§ 30-1501 to -1513 (Supp. 1977).

5. *Id.* § 30-1503(5). Sunshine was denied injunctive relief in a prior suit against Great Western's offer for failure to show irreparable harm. Sunshine Mining Co. v. Great W. United Corp., [1977] FED. SEC. L. REP. (CCH) ¶ 96,049 (D. Idaho 1977).

6. Great Western joined the states of Maryland and New York in the suit, fearing they would also apply their take-over statutes to the offer. *See* MD. CORP. & ASS'NS CODE ANN. §§ 11-901 to -908 (Supp. 1977); N.Y. BUS. CORP. LAW §§ 1600-1613 (McKinney Supp. 1977). When these two states declined to assert jurisdiction of their statutes over the take-over offer, the court found that Great Western lacked standing to sue Maryland and the case against New York was moot.

be enjoined from enforcement. *Great Western United Corp. v. Kidwell,* 439 F. Supp. 420 (N.D. Tex. 1977).

I. FEDERAL AND STATE REGULATION OF TENDER OFFERS

A. *The Williams Act*

During the 1960's there was a growing use of the cash tender offer as a means for achieving corporate take-overs. Congress reacted to this phenomenon in 1968 by enacting the Williams Act, which required the tender offeror to file a disclosure statement with the SEC immediately prior to the announcement of a tender offer.[7] Congress's motives for enacting the Williams Act have been the source of some confusion. In *Rondeau v. Mosinee Paper Corp.*[8] the Supreme Court noted that Congress designed the Williams Act "to avoid tipping the balance of regulation either in favor of management or in favor of the person making the take-over bid."[9] The Supreme Court, however, modified this interpretation of congressional intent in *Piper v. Chris-Craft Industries, Inc.*[10] The *Piper* Court stated that while Congress approached the problem with the goal of achieving even-handed regulation, this was not the *purpose* of the legislation; "neutrality is but one characteristic directed towards a different purpose: the protection of investors."[11] Pursuant to this purpose, the timing provisions of the Williams Act require that the offer remain open for at least ten days after it becomes effective.[12] This post-effective waiting period[13] gives the shareholders time to consider other options[14] which might subsequently become available.

B. *State Securities Regulation*

Beginning in 1968,[15] many states enacted statutes regulating corporate take-overs.[16] These statutes, unlike their federal counterpart, not only re-

7. 15 U.S.C. § 78m(a) (1976); *see* Hayes & Taussig, *Tactics of Cash Takeover Bids*, 45 HARV. BUS. REV., Mar.-Apr. 1967, at 135, 144; E. ARANOW & H. EINHORN, TENDER OFFERS FOR CORPORATE CONTROL 2-10 (1973).

8. 422 U.S. 49 (1975).

9. *Id.* at 58-59 (the Court held that a showing of irreparable harm was a prerequisite to permanent injunctive relief).

10. 430 U.S. 1 (1977) (the Court held that a defeated tender offeror did not have standing to sue for damages under the Williams Act).

11. *Id.* at 29.

12. 15 U.S.C. §§ 78m-78n (1976). Large companies must also meet the requirements of antitrust laws which include a 15-day post-effective waiting period before a merger can be consummated. Rodino-Hart-Scott Antitrust Improvements Act of 1976, 15 U.S.C. § 18(a) (1976).

13. Advance disclosure requirements were included in the original bill, but were later excluded by Congress in response to positions expressed by the New York Stock Exchange and the SEC. 439 F. Supp. at 436.

14. The shareholder may either accept the offer, sell his shares in the market, or wait for a better offer from the same or another source.

15. While the *Kidwell* court noted that states enacted their laws *after* the Williams Act, this statement is not entirely accurate, for the Virginia take-over statute became effective on Mar. 5, 1968, prior to the effective date of the Williams Act. VA. CODE §§ 13.1-528 to -541 (1973 & Supp. 1977).

16. ALASKA STAT. §§ 45.57.010-.120 (Supp. 1977); COLO. REV. STAT. §§ 11-51.5-101 to -108 (Supp. 1976); CONN. GEN. STAT. §§ 36-347a to -347m (Supp. 1976); DEL. CODE tit. 8, § 203 (Supp. 1977); GA. CODE ANN. §§ 22-1901 to -1915 (Supp. 1977); HAWAII REV. STAT. §§ 417E-1 to

quire greater disclosure of information, but also require that such disclosure be made well in advance of the offer's effective date.[17] Some statutes additionally provide for hearings to determine the fairness of the offer.[18] State "blue sky" laws have long been upheld by the Supreme Court as valid exercises of state power,[19] as they tend to concentrate on transactions occurring within the regulating state's borders.[20] These state take-over laws, in contrast, may cover solicitations made anywhere in the world as long as the target company has substantial contacts with the regulating state.[21] The broad effect of these state statutes on the national securities market has resulted in intense scrutiny by numerous commentators, many of whom have questioned their constitutionality.[22]

II. CONSTITUTIONAL PROBLEMS

A. *Preemption*

One ground for constitutional challenge of state take-over statutes is that federal regulation preempts conflicting state regulation.[23] The preemption doctrine is broad in scope, and may be used to invalidate state law which acts as an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[24] The Supreme Court's standards for determining preemption have gone through three phases. During the 1930's

-15 (1976); IDAHO CODE §§ 30-1501 to -1513 (Supp. 1977); IND. CODE ANN. §§ 23-2-3-1 to -12 (Burns Supp. 1977); KAN. STAT. §§ 17-1276 to -1285 (1974); KY. REV. STAT. §§ 292.560-.630 (Baldwin Supp. 1976); LA. REV. STAT. ANN. §§ 51:1500-:1512 (West Supp. 1978); MD. CORP. & ASS'NS CODE ANN. §§ 11-901 to -908 (Supp. 1977); MASS. ANN. LAWS ch. 110C, §§ 1-13 (Michie/Law. Co-op Supp. 1977); MICH. STAT. ANN. §§ 21-293(1)-(17) (Supp. 1977); MINN. STAT. ANN. §§ 80B. 01-.13 (West Supp. 1978); MISS. CODE ANN. §§ 75-72-1 to -23 (Supp. 1977); NEV. REV. STAT. §§ 78.376-.3778 (1973); N.Y. BUS. CORP. LAW §§ 1601-1613 (McKinney Supp. 1977); OHIO REV. CODE ANN. § 1701.041 (Page Supp. 1977); PA. STAT. ANN. tit. 70, §§ 71-85 (Purdon Supp. 1977); S.D. COMPILED LAWS ANN. §§ 47-32-1 to -47 (Supp. 1976); TENN. CODE ANN. §§ 48-2101 to -2114 (Supp. 1977); UTAH CODE ANN. §§ 61-4-1 to -13 (Supp. 1977); VA. CODE §§ 13.1-528 to -541 (1973); WIS. STAT. ANN. §§ 552.01-.25 (West Spec. Pam. 1977); [1977] 1 BLUE SKY L. REP. (CCH) ¶¶ 7151-67 (Ark.); [1977] 2 BLUE SKY L. REP. (CCH) ¶¶ 33,151-71 (N.J.). The Securities Commission of Texas, by administrative guidelines, recently promulgated a similar regulatory framework. [1977] 3 BLUE SKY L. REP. (CCH) ¶ 46,615. Moreover, the Council of State Governments will likely propose a model state take-over act. Wall St. J., June 24, 1976, at 1, col. 5.

17. *See, e.g.*, IDAHO CODE § 30-1503(1) (Supp. 1977); MINN. STAT. ANN. § 80B.03, subd. 4 (West Supp. 1978); VA. CODE § 13.1-531(a) (Supp. 1977); WIS. STAT. ANN. § 552.05(4) (West Spec. Pam. 1977).

18. *See, e.g.*, IDAHO CODE § 30-1503(4) (Supp. 1977); MINN. STAT. ANN. § 80B.03, subd. 4 (West Supp. 1978); VA. CODE § 13.1-531(a) (Supp. 1977); WIS. STAT. ANN. §§ 552.05(3)-(5) (West Spec. Pam. 1977).

19. Merrick v. N.W. Halsey & Co., 242 U.S. 568 (1917); Caldwell v. Sioux Falls Stock Yard Co., 242 U.S. 559 (1917); Hall v. Geiger-Jones Co., 242 U.S. 539 (1917).

20. Langevoort, *State Tender-Offer Legislation: Interests, Effects, and Political Competency*, 62 CORNELL L. REV. 213, 215 (1977).

21. 439 F. Supp. at 439; *see* Langevoort, *supra* note 20.

22. *See, e.g.*, Wilner & Landy, *The Tender Trap: State Take-Over Statutes and Their Constitutionality*, 45 FORDHAM L. REV. 1, 23 n.129 (1976); Note, *Commerce Clause Limitations upon State Regulation of Tender Offers*, 47 S. CALIF. L. REV. 1133 (1974).

23. The preemption doctrine was developed to give effect to the supremacy clause which states that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof. . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST. art. VI, cl. 2.

24. Hines v. Davidowitz, 312 U.S. 52, 67 (1941). This traditional test of preemption was established in *Hines* and Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947), and was reaffirmed by the Court in City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624, 633 (1973), and more recently in Jones v. Rath Packing Co., 430 U.S. 519, 526 (1977).

the Court would invalidate state legislation only upon a showing that Congress expressly intended to occupy the field.[25] Starting in the 1940's, the Court began to infer the congressional intent to preempt state law from the pervasiveness of the federal legislation in the area.[26] The trend of recent Supreme Court decisions has been somewhat of a return to the requirement of a clear showing of congressional intent to preempt state action.[27] In making this determination of intent, however, the Court looks not only for words indicating exclusivity, but also to the statute and its legislative history from which intent may be inferred.[28]

In the area of securities regulation the Supreme Court has recognized that Congress did not intend to occupy the field completely.[29] As a result securities regulation has been implemented on both the federal and state level for over forty years. Additionally, the Security Exchange Act of 1934 unequivocally declares that concurrent state securities regulation will be allowed so long as it does not conflict with federal law.[30] Thus, any constitutional challenges to state take-over statutes based on federal preemption must show that the state law conflicts with the federal legislation.

B. Burden on Commerce

State take-over statutes additionally have been challenged as placing an undue burden on interstate commerce. The commerce clause[31] was designed to promote commercial intercourse among the states[32] and to create an area of free trade.[33] The interstate market for securities is clearly included within this protected area of trade. The state's power to police such transactions is therefore limited by the commerce clause, and the court's task is to define the extent of that limitation.[34] The question of determining whether a state law places an impermissible burden on interstate commerce, however, has been one shrouded with confusion.[35] At times the Supreme Court has ap-

25. *See, e.g.*, Maurer v. Hamilton, 309 U.S. 598, 614 (1940); H.P. Welch Co. v. New Hampshire, 306 U.S. 79, 85 (1939); Mintz v. Baldwin, 289 U.S. 346, 350 (1933).

26. *See, e.g.*, Pennsylvania v. Nelson, 350 U.S. 497, 502 (1956); Hines v. Davidowitz, 312 U.S. 52, 73-74 (1941).

27. *See, e.g.*, Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Ware, 414 U.S. 117 (1973); Goldstein v. California, 412 U.S. 546 (1973); Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 146-52 (1963). For further discussion of this trend, see Freeman, *Dynamic Federalism and the Concept of Preemption*, 21 DE PAUL L. REV. 630 (1972); Wilner & Landy, *supra* note 22, at 24 n.135.

28. City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973); Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132 (1963).

29. SEC v. National Sec., Inc., 393 U.S. 453, 464 (1969); *see* note 19 *supra*.

30. 15 U.S.C. § 78bb(a) (1976).

31. "The Congress shall have Power . . . [t]o regulate Commerce . . . among the several States . . . ." U.S. CONST. art. I, § 8, cl. 3.

32. National Bellas Hess, Inc. v. Department of Revenue, 386 U.S. 753, 760 (1967); Gibbons v. Ogden, 22 U.S. 1 (1924); Dowling, *Interstate Commerce and State Power*, 27 VA. L. REV. 1 (1940); Stern, *The Commerce Clause and the National Economy*, 59 HARV. L. REV. 645, 833 (1946).

33. Hughes v. Alexandria Scrap Corp., 426 U.S. 794, 803 (1976); McLeod v. J.E. Dilworth Co., 322 U.S. 327, 330 (1944).

34. Boston Stock Exch. v. State Tax Comm'n, 429 U.S. 318, 329 (1977) (state law which imposed greater tax liability on out-of-state sales than on in-state sales impermissibly burdened interstate commerce); *see* Freeman v. Hewit, 329 U.S. 249 (1946).

35. For discussion of the evolution of the commerce clause, see D. ENGDAHL, CONSTITUTIONAL POWER 260-94 (1974); Note, *The Petaluma Decision: Another Indication that Federal Courts Want to Avoid Land Use Litigation*, 30 SW. L.J. 794, 796 (1976).

plied a two-step "reasonableness" test to ascertain whether the state legislature has acted in pursuance of a legitimate end and, if so, whether the statute was reasonably adapted to that end.[36] In other cases the Court has additionally balanced the state's interest in regulation against the effect of such regulation on interstate commerce.[37] In *Pike v. Bruce Church, Inc.*[38] the Court embodied this approach into a three-part test. A state law challenged as unduly burdensome on interstate commerce will be upheld if the Court determines that it promotes a legitimate local interest, its burden on commerce is incidental, and any burden it does impose on commerce does not outweigh the local interest. Regardless of the approach taken, the threshold question remains whether the state is pursuing a legitimate local interest. The Supreme Court has traditionally invalidated laws that favor local enterprises at the expense of out-of-state business as such favoritism invites "a multitude of preferential trade areas" destructive of the free trade which the commerce clause protects.[39] Thus, the legitimate local interest standard is of particular importance in determining whether state take-over regulation unconstitutionally interferes with interstate commerce.

III. GREAT WESTERN UNITED CORP. V. KIDWELL

In *Great Western United Corp. v. Kidwell* the substantive issues[40] before the court were whether Idaho's take-over statute was preempted by the Williams Act, and whether the state statute placed an impermissible burden on interstate commerce.

As to the question of preemption, the court concluded that a state law will be preempted if either Congress intended to occupy the field,[41] a dominant federal interest in sole regulation exists, or the state law conflicts with the federal scheme. The court determined that the take-over statute was not preempted under the first two tests as Congress had not intended to occupy the field, evidenced by traditional acceptance of concurrent federal and state regulation in the securities area.[42] Further, there is no dominant federal interest in sole regulation of this field, as the states also have a valid interest in regulating securities transactions. The court, however, held the state law was preempted because it conflicted with the federal scheme.[43]

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36. *See, e.g.*, South Carolina State Highway Dep't v. Barnwell Bros., 303 U.S. 177, 190 (1938).

37. *See, e.g.*, Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520 (1959); Southern Pac. v. Arizona, 325 U.S. 761 (1945); Parker v. Brown, 317 U.S. 341 (1943).

38. 397 U.S. 137 (1970).

39. Boston Stock Exch. v. State Trade Comm'n, 429 U.S. 318, 329 (1977); Dean Milk Co. v. City of Madison, 340 U.S. 349, 356 (1951). The Supreme Court has viewed with particular suspicion state laws which require business operations to be performed in the home state which could more efficiently be performed elsewhere. "This particular burden on interstate commerce has been declared to be virtually *per se* illegal." Pike v. Bruce Church, Inc., 397 U.S. 137, 145 (1970).

40. Although the defendants raised a panoply of defenses in avoidance of Great Western's suit, the court found that jurisdiction, venue, and service were proper against the state of Idaho. 439 F. Supp. at 430-34.

41. *Id.* at 435.

42. *Id.*

43. *Id.* at 437.

Such conflict was found to exist on two levels. First, while the Williams Act merely requires disclosure immediately before the offer becomes effective, the Idaho statute requires disclosure of financial information well in advance of the offer's effective date.[44] The target company may thereafter request a hearing[45] on the offer which will further delay the offer, giving management who oppose the tender offer time to mount defensive action to defeat the offer. The court held this delay destroyed the delicate balance between incumbent management and tender offeror specifically designed by the Williams Act, and created an undue advantage for management.[46] The court held such favoritism frustrates the congressional policy of the Williams Act, and is therefore preempted.[47]

Secondly, the Idaho statute was found to conflict with the stated purpose of the Williams Act: protection of the shareholder.[48] The primary design of the state law was to protect management rather than shareholders and to preserve corporate assets within the state.[49] The law could be invoked only if the target company had substantial assets[50] within the state without regard to whether there were resident shareholders to protect. The statute made no attempt to protect the resident shareholders of companies which did not have substantial assets within the state. The court also pointed out that all shareholders would be denied the protection of the statute if the target corporation accepted the tender offer.[51] The court thus held that the Idaho statute frustrated the purpose of the federal law and must yield to the federal scheme established in the Williams Act.

Having decided the preemption question, the court analyzed the question of whether the statute imposed an undue burden on interstate commerce. In making this determination, the court applied the three-part test of *Pike*.[52] The first criterion of a legitimate local interest was not satisfied as the state was pursuing an illegitimate economic interest. The state law was designed to protect incumbent management by delaying tender offers and to safeguard the local economy by preventing removal of the target company's assets.[53] Nor was the second criterion under *Pike* satisfied because the Idaho

44. IDAHO CODE § 30-1503 (Supp. 1977).
45. *Id.* § 30-1503(4).
46. 439 F. Supp. at 437.
47. *Id.* Prior courts have noted that speed is essential to a tender offer while delay is the target company's strongest ally. "Delay also breeds uncertainty in the market place and that possibility leaves the security holder who *does* want to tender [his shares] in a precarious position." Cooperweld Corp. v. IMETAL, 403 F. Supp. 579, 608 (W.D. Pa. 1975) (emphasis in original). Moreover, delay costs money for the offeror who is paying interest or commitment fees, premiums, and attorneys' fees.
48. *See* text accompanying notes 8-11 *supra*.
49. 439 F. Supp. at 437.
50. IDAHO CODE § 30-1502(1) (Supp. 1977).
51. The court stated that the Idaho Act does not require compliance if the target company agrees to accept the tender offer, IDAHO CODE § 30-1501(5)(e) (Supp. 1977), thus denying the shareholders any protection the Act purports to give. 439 F. Supp. at 438.
52. 397 U.S. 132 (1970). Actually, the court's analysis of the commerce clause issue was unnecessary as the statute had already been invalidated on preemption grounds.
53. The court properly looked beyond the stated purpose of the state law and determined its true purpose. 439 F. Supp. at 438; *see* Foster-Fountain Packing Co. v. Haydel, 278 U.S. 1, 10 (1928); Locoste v. Department of Conservation, 263 U.S. 545, 550 (1924); Heisler v. Thomas Colliery Co., 260 U.S. 245, 259 (1922). Commentators have also noted that state take-over statutes are actually "special interest" legislation flying under the color of shareholder protec-

law had more than an incidental effect on commerce. The requirements of the state take-over statute in effect precluded Great Western from making its tender offer anywhere else in the country until the state requirements had been satisfied.[54]

Additionally, the court balanced the contingent benefit to the shareholders secured by the state statute against the burden the statute created on commerce.[55] The court reasoned that the state's extensive pre-effective delay might thwart tender offers, cause lower offers to be made to the shareholders, or disrupt the market price of the target company's stock. The court concluded that if an offeror were forced to comply with numerous state take-over statutes, an onerous burden would be placed on commerce. Thus, the Idaho take-over statute failed the constitutional test and was held to impose an undue burden on interstate commerce.

While this writer agrees with the court's holding in this case, some questions as to the court's analysis should be raised. As the state law would allow management to delay the tender offer and thus take defensive action against the take-over, the court properly concluded that the state regulatory statute would disrupt commerce. The court suggested that the target company as a defense could appeal to the shareholders not to tender their shares. It is entirely possible, however, that shareholders actually benefit by receiving management's evaluation of the offer, particularly since any information given is required to be "true and correct."[56] It is likewise doubtful that the target company could repurchase its own shares, as the court suggests, if such a practice would be "manipulative or deceptive."[57]

While the court reasoned that the delay may have a disruptive effect on the stock of the target company, there is, as a rule, always a disruptive effect at the announcement of a tender offer. Such activity on the market is caused by risk abritrageurs,[58] professional speculators who purchase the target stock with the sole purpose of tendering large blocks to the offeror for a quick profit. This disruption on the market may, in fact, benefit the shareholder by creating a higher market price for the sale of his shares should he not wish to wait to tender them to the tender offeror. While pre-effective delay may at times work to the advantage of the offeror because the arbitrageur can purchase shares during the delay and later tender them in a block to the offeror, usually the delay frustrates the offer because the

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tion in order to protect incumbent management from attack. Sommer, *The Ohio Take-Over Act: What Is It?*, 21 CASE W. RES. L. REV. 681, 720 (1970). *See also* Note, *Commerce Clause Limitations Upon State Regulations of Tender Offers*, 47 S. CALIF. L. REV. 1133, 1161-62 (1974).

54. 439 F. Supp. at 439. The Idaho statute provides that tender offers may not be made to non-Idaho shareholders without also being made to Idaho shareholders. IDAHO CODE § 30-1056(1) (Supp. 1977).

55. Having failed the threshold test, there was no reason to apply the final test.

56. Management statements are subject to the fraud provisions of the Securities and Exchange Act of 1934, § 14(e), 15 U.S.C. § 78n(e) (1976). *See* Piper v. Chris-Craft Indus., Inc., 430 U.S. 1, 25 (1977).

57. 15 U.S.C. § 78n(e) (1976).

58. Bromberg, *Tender Offers: Safeguards and Restraints--An Interest Analysis*, 21 CASE W. RES. L. REV. 613, 615-16 (1970). For a complete discussion on the role of the risk arbitrageur, see Henry, *Activities of Arbitrageurs in Tender Offers*, 119 U. PA. L. REV. 466 (1971).