

Information Memo



New York
Stock Exchange, Inc.

Member Firm Regulation

20 Broad Street
New York, NY 10005

Number 01-27
September 28, 2001

ATTENTION: CHIEF EXECUTIVE OFFICER, MANAGING PARTNERS,
COMPLIANCE AND LEGAL DEPARTMENTS

TO: ALL MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: DISSEMINATION OF MINI-TENDER OFFER MATERIALS

The Securities and Exchange Commission (“SEC”), in its July 24, 2001 letter to the Securities Industry Association’s Corporate Action Division, (see Exhibit A) reiterated its concerns in connection with mini-tender offers.

Background

Mini-tender offers are offers made to an issuer’s shareholders usually for a small percentage of the shares outstanding (generally less than 5%). Because the offers are for less than 5% of an issuer’s outstanding shares, the mini-tender bidder is not required to comply with the filing, disclosure and dissemination requirements imposed upon such offerors pursuant to the tender offer rules of the Securities Exchange Act of 1934. The role of broker-dealers that hold customers’ securities is to decide whether to forward mini-tender offer information to such customers, and what, if any, information should accompany this material.¹

The SEC’s letter to SIA provides guidance to broker-dealers in determining whether to disseminate mini-tender offer information to shareholders as well as the method and content of such notifications. The SEC letter notes that: some mini-tender offers have been used by bidders to the detriment of shareholders; there have been a number of mini-tender offers for shares at below market prices and investors may have tendered their shares in the mistaken belief that the tender offer price included the usual premium found in traditional tender offers.

The SEC highlighted the following mini-tender offer practices as potentially problematic for shareholders:

(1) inadequate dissemination of offering documents to security holders;

¹ NYSE Information Memo No. 99-11 advises members and member organizations that it would be a prudent practice to review mini-tender offer material prior to dissemination.

- (2) inadequate disclosure of offer price (below market value offers, and offers made slightly above current market value but extended past the initial expiration date until the market price rose above the tender price);
- (3) the stated offering price is reduced by fees or distributions, or interest received after a particular date;
- (4) offers on a first come, first purchase basis without providing withdrawal rights;
- (5) offers without the financial ability by bidder to consummate the offers, and structure of the offer so the bidder gains control of tendered securities without making payment; and
- (6) offers to exchange liquid securities for illiquid securities.

In light of the above, the SEC suggests as a best practice that broker-dealers review information received from issuers to see if it is appropriate to forward to shareholders, determine an appropriate method for forwarding and what disclosures regarding the offer should be made in the best interests of shareholders (see Exhibit B).

Questions concerning this Memorandum may be directed to William Jannace at 212-656-2744.

Salvatore Pallante
Executive Vice President

Attachments