The aggregated material below is brought together from several reference books written during the 1960s. This shows that opportunities were abundant even 50 years ago. Categories of special situations will wax and wane depending on corporations expanding, acquiring, and merging to consolidate their industries so ***tender offer*** *opportunities will increase. After a merger wave, the inevitable urge to refocus, correct mistakes, and purge will increase spin-offs, split-offs, divestitures, and liquidations.*

TRADING PROCEDURES: WHY PROFIT POTENTIALS EXIST (Source: *Investors' Guide to Special Situations in the Stock Market* by Maurece Schiller (1966)

Profit potentials in Trading Procedures exist not only from technicalities such as arbitraging/hedging but from (a) price differences due to time of issuance of securities, (b) a decision to dispose of interest in as situation (other use for the money may be needed) rather than await termination, and (c) general public's ignorance and indifference to full importance of Corporate Action creating the trading opportunities.

ANALYTICAL STEPS

The analytical approach to Trading Procedure Corporate Actions differs from other special situation areas in that securities prices are the main interest rather than the quality of the investment. Since we deal with a "way" of investing, our analysis deals with methods used rather than subject matter.

We want to know what is involved when we created a hedge, arbitrage or short position. Thus, our analysis, when selling short, deals primarily with availability of stock for borrowing, dividend payments, and likelihood of stock splits. And we analyze costs of creating the situation. In as hedge/arbitrage situation, we want to know characteristics of the basic security. For example, in a convertible bond, we check length of time conversion privilege is effective and whether it graduated over the years to maturity. It is helpful to know sinking fund provisions and redemption prices.

When we deal with "when-issued" securities and "contracts" we want to know how long the issues will be in existence. Furthermore, are there contingencies that may prevent consummation of the Corporate Action? In the case of "contracts," are they negotiable? This is a most important factor.

Fundamental analysis of the securities would be made in the early stage of corporate action in most Trading Procedure situations. Where hedging is used in a merger/acquisition, there are established prices for all securities. Therefore, our analysis is mainly concerned with possible impediments to consummation. Keep in mind that quality analysis of securities involved in merger/acquisition would be made when considering the situation. Thus the hedge position is the ultimate step.

When Trading Procedure opportunities are available, the investor's concern is mainly status of Corporate Action in relation to consummation. This in itself indicates Corporate Action is well on its way to realization. Consequently, analysis of the company at this stage is not significant. Arbitrage/hedge, 'when-issued," and "contract" situations deal primarily with price spreads reflecting technical conditions in the securities market. Capital gains lie in taking advantage of prevailing conditions. At the Trading Procedure stage, little remains unknown about the companies and the securities involved.

Tenders

A Tender is a way of offering securities for sale. It is also a way of acquiring substantial amounts of securities at one time. The procedure differs from conventional selling in that the price offered for securities is usually a premium over prevailing market trends. Further, a Tender invitation is limited in duration, and terms of the Tender may require a deposit of a minimum amount of securities to consummate the transaction.

WHERE TO FIND CAPITAL GAINS?

Tenders are a favored means of securities trading because capital gains are obtainable from the Tender per se, while additional investing and trading potentials can develop as a result of the Tender invitation. Invitations to Tender securities create capital gain opportunities in the following circumstances:

1. The fundamental principle of Tenders is the offering of a premium over market price for the designated securities. An illustration of this basic approach is seen in *KERN COUNTY LAND COMPANY'S* bid for control of *J. I. CASE COMPANY. KERN COUNTY* invited Tenders for CASE's common stock at $14.50 a share in its preferred stock at $120 a share. At the time of the offer, CASE common was priced around $12.25 a share and the preferred at $90.75 a share. Prices offered through the Tender were substantially above current market prices of the respective shares.

   The Tender offer of $120 a share for the preferred was realistic in view of the arrearages amounting to $21 a share. Clearance of this debt was indicated, particularly in the light of the strong financial position of *Kern County Land*. The Premium paid for the common was to *assure* control of the company. In this instance *Kern County Land* acquired 56% of the outstanding shares of *CASE* common and 65% of the preferred. The investors familiar with Tenders found this a profitable medium.

2. Securities sought through Tender invitations may rise substantially above the level of offers. *GreatAmerica Corp.'s* bid for *BRANIFF AIRWAYS* common stock is an example of this trading aspect.

   the time *GREATAMERICA* extended its bid of $75 a share, *BRANIFF* Common was priced at $69.875. However, *Braniff* common had moved up to $81 when the Tender invitation expired.

   GREATAMERICA was the owner of a majority of *Braniff* stock and was seeking a minimum of 470,000 shares to give it 80% control, but wanted 520,000 shares in all. This would enable the company to file a consolidated income tax return. The reduced amount of outstanding common, no doubt, influenced the price of the stock. Since *GREATAMERICA* was able to buy only 482,000 shares of the 520,000 desired, the offer was extended for a period of time. This, too, would support higher price levels for the shares.

   The *Pennzoil United Gas Corp.*'s Tender invitation proved to be unique as well as profitable, and for many educational. While *Pennzoil's* bid of $41 a share for a minimum of 1 million shares was a surprise, it offered opportunity to participate since the stock could have been purchased at $38.5 subsequent to announcement.

A feature of the Tender was that the 42.5 cent dividend, payable January 1, would accrue to sellers of the stock. Thus about $3 (equal to 8%) a share gross could be estimated at that time. Since Tenders are short-lived transactions, the potential profit would show a substantial rate of return if one's stock were accepted. An additional feature permitted *Pennzoil* to accept all stock above 1 million shares if so desired. Within a few days, *United Gas* stock moved to $42.75 reflecting possible merger of the two companies mentioned in news releases. At the same time, *Pennzoil* announced it had been tendered five million shares.

Since Tender offerings are irrevocable, investors should submit their securities as close to the expiration date as is physically possible. United Gas illustrates this point. The stock had penetrated the Tender level of $41 on the 10th of the month while the offer expired on the 14th at 5 p.m. Investors who purchased United common around $38 1/2, at the time of announcement, could have established the capital gain of 10% within a few weeks without resorting to the Tender. Since the stock had risen to the $42.5 level, it could be sold in the market in the regular way.

3. The Tender price may be raised to expedite consummation of the buyer's objective. *Bangor Punta Allegre Sugar Corp.* raised its Tender offer for *Smith and Wesson Inc.* to $80 per share from $75. In this instance, a significant factor was the small amount of closely-held outstanding stock. Sweetening the offer occurs frequently since it is the best way to obtain desired amount of stock.

4. A Tender invitation may indicate the true worth of a security. A classic illustration of this is the *Franco Wyoming Oil Company* stock. A Tender invitation of $55 a share was extended to *Franco Wyoming* common stockholders. The time the stock was slightly under $55. However, president of *Franco Wyoming* disclosed an asset value of the stock in excess of $80 a share. In this instance, the Tender invitation brought to light the undervalued price level at which the shares were being traded in the stock market. It also alerted stockholders that "something was brewing" in the situation.

   To special situation investors, the indicated high asset value of the stock afforded a price objective with substantial capital gain possibilities. The immediate effect the Tender invitation stimulated interest in the situation and substantially improved the price of the shares. The Tender invitation ultimately resulted in liquidation of the company around the $90 a share level.

5. The stock may decline subsequent to expiration date of Tender invitation. *Dressler Industries* had purchased, through Tender, 350,000 shares of its stock at $47 a share. However, the company revealed it had been Tendered substantially more than the 350,000 shares it had offered to purchase. The result was that the company accepted 25.26% of the stock offered. Consequently, when the Tender expired, the stock declined to $41.25. There are various opportunities for traders in situations of this type. One approach would be to bypass the Tender invitation, but sell short on the effective date of Tender while price is high. Then cover at a lower price after announcement of small percentage of total stock had been accepted. In another

variation trading against a Tender, it was possible in the *Schenley Industries* Tender to estimate that half of one's holdings would be accepted by the Tender. Thus a stockholder could sell in the market at or close to Tender price his remaining half and be assured of a profit on 50% of his holdings.

6. The Tender may disclose a battle for control of a company. This interesting corporate struggle took place for control of *Standard Products Company*. Tender invitations were extended by *American Steel and Pump Corp.* to *Standard Products* stockholders at $13.50 a share. Extensive maneuvering by both sides eventually brought this price up to $17.25 offered by *Standard Products* for its own shares. This successfully bested the campaign by *American Steel and Pump*, for control of the company.

   In another type of fight for control, *Mueller Brass Company* was the sought-after prize. While officials of *Mueller Brass* had agreed to sell their holdings to *Eltra Corp.* for $40 a share, a higher bid of $42 a share was made by *US Smelting, Refining and Mining*. At that point the shares were priced around $38 and it moved up about $3 during the week. Nevertheless, there remained $4 a share that could be made through the *U.S. Smelting* invitation.

7. **Sinking Fund** operations harbor capital gain potentials. Bonds and preferred stocks frequently have sinking fund provisions. The sinking funds require a company to use annually <u>fixed</u> amounts of money for retiring a portion of an issue. With this in mind, investors purchase of these bonds or stocks have a two-fold objective. One is to receive a fair return from the security in either interest or dividends. The other is to obtain capital gain through Tender of security to the company at some time for the sinking fund. Since sinking fund action generally occurs yearly, if the security is not accepted one-year, it may be in another. Of course, the investor’s cost price should be below the sinking fund price. This investing approach affords an opportunity for long-term capital gain.

Capital gains potentials arise from clues disclosed by Tender invitations. Companies that have resorted to Tender procedures to acquire either their own or other company’s securities often repeat the process at a <u>subsequent</u> time. This has been particularly noted where companies seek to recapitalize to eliminate high dividend cost non-callable preferred issues. In this area, an investor purchases the preferred stock in anticipation of an exchange offer. The tabulation below shows a dwindling list of *high dividend non-callable preferreds* reflecting use of Tender procedure to eliminate this type of issuance.

Issue	**Rate**	**Par Value**	**Outstanding Shares**	**1965 – Early 1966 Price Range**		**Approximately**	
				High	**Low**	**Price**	**Yield**
American Bank Note	6%	$50	26	74.5	71	$72	4.1%
American Can Co.	7%	25	1662	43	36	37	4.7
Liggett & Myers	7%	100	154	164.5	147	147	4.7
Montgomery Ward Cl. A.	7%	No	139	168.5	143	143	4.9
Proctor & Gamble	$8	100	23	186	178	178	4.4
U.S. Gypsum	7%	100	78	171.5	161	161	4.3
U.S. Rubber	$8	100	642	184.5	156	156	5.0
Universal Leaf Tob.	8%	100	44	185	162	162	4.7

USES OF TENDERS

Tender invitations are used in many corporate actions. There is great interest today *(1966)* in the use of Tenders to expedite mergers/acquisitions and control of companies.

National Union Electric used the Tender procedure to acquire a substantial interest in *Emerson Radio and Photograph Company* at $18 a share. Some time later, *National Union* repeated its use of the Tender procedure by offering $24 a share for additional shares in *Emerson Radio*. The objective of the second Tender was to acquire sufficient shares to give it 80% control or possibly merger. *Gulf & Western's* use of Tenders is understood to have merger in view. *Pennsylvania RR's* purchase of *MACCO REALTY* completed an acquisition. And *Power Corp. of Canada* gained control of *CONGOLEUM NAIRN* through use of Tenders.

Liquidations of companies are expedited by the use of Tenders. *Avisco* extended an invitation to its stockholders to sell their shares to the liquidating company as the first step in its liquidation.

Divestitures resort to the Tender procedure. This is seen in the *El Paso Natural Gas* plan to exchange shares of *Northwest Pipeline* for the own stock through Tender.

Large blocks of stock are more readily purchased through use of Tenders than in the conventional market. Companies repurchasing their own shares use the Tender invitation since it facilitates purchase of substantial holdings of individuals which otherwise might be offered in the market. *Curtiss-Wright* used the Tender invitation to shrink its capitalization from 7.5 million shares to 6.5 million. To accomplish this, the company initiated a bid four points above the market price, which in turn had moved up a few points upon rumors of an impending Tender.

To eliminate minority interest in situations where one company has obtained control of another. This move simplifies balance sheet construction and also administration of activities. *American Water Works* used the Tender invitation to eliminate subsidiary preferred stock while *Island Creek Coal Company* found the Tender invitation a good vehicle for completing ownership of *West Kentucky Coal Company.*

Companies resort to the Tender offer to eliminate small stockholders from their list. Shareholders owning fewer than 10 shares even as few as 24 shares are invited to sell their holdings. To encourage acceptance of the offer, a premium above the market price is usually extended. *(This was seen recently in 2006/2008 for micro-cap companies* ***Going Private.*** *By eliminating the number of shareholders below a certain figure, the company would no longer have to file financial statements with the SEC and thereby reduce its administrative costs. The high costs of Sarbanes Oxley have caused a going private trend in the recent years-2009)*

Recapitalizations and reorganizations find the Tender a useful procedure. This is evident in *Universal Leaf Tobacco Company's* endeavor to purchase its outstanding 8% callable preferred stock. The company had a unique approach in this instance in that they asked shareholders to name their own price. The Company will accept all shares offered at or below a maximum price (to be set,) retaining the right to reject all offers exceeding the maximum price. The company accepted all tendered stock at $185 a share.

General Baking Company completed a recapitalization that eliminated its $8 preferred stock by way of exchange for a new callable $6 preferred plus $24 in cash. The cash represented total dividend arrearage on the $8 preferred.

U.S. Steel voted to eliminate its 7% preferred through Tender, offering exchange of the preferred for a new debenture to effect a completed recapitalization.

Sinking Fund requirements are processed by use of Tenders. Money earmarked for redemption of securities usually comes from earnings. However, the security issue's indenture provisions may prescribe that proceeds from the sale of an asset underlying the security issue be used for the specific bond or preferred stock. This is an important factor in securities you may hold and especially important should a company participate in sales of assets, or limit use of the proceeds as described above. Where funds must be used to redeem specific securities, capital gains potentials may be present.

Information about indenture provisions of a security can be found in statistical manuals and financial reports.

ADVANTAGES OF TENDERS

Both the securities holder and the Principal extending the Tender invitation benefit by the use of this medium. The investor as a seller of securities gets better a price than would be available in the market. Moreover, holders of large blocks of securities may consummate the sale without depressing the market. The seller of a block of stock can complete the deal in one transaction rather than offer the securities piecemeal in the market. For the securities trader, the Tender invitation offers possibility of a quick trade. Also, both traders and investors have an opportunity to replace the stock at lower levels after expiration of the Tender.

For the Principal extending the Tender invitation, this procedure offers immunity from price fluctuations that would arise if a purchase were attempted in the open market. It also offers protection against an unwanted stock position that could occur if only a portion of the desired number of shares were obtained. By use of the Tender, the buyer acquires all the stock he *(she)* needs or if insufficient shares are tendered, he may exercise the escape clause that usually requires a minimum amount. This valuable tool protects the Principal from being a minority shareholder in a company, and safeguards him from the hazards of selling a block of unwanted shares in the open market. An additional advantage, too, is that the Principal may solicit the stockholders directly for deposit of the Tender.

DISADVANTAGES OF TENDERS

From the **investor's view**, Tenders have the following disadvantages:

1. Upon deposit of securities for Tender, his position in that issue is blocked until expiration of the Tender invitation.

2. When stock is accepted by Tender, he may lose a desirable investment position.

3. If all his stock is not accepted, he may incur a loss on the residual.

4. If none of his stock is accepted, he may incur a loss since the stock may very well decline in price.

5. If stock moved up sharply on Tender invitation, he must decide whether to sell prior to Tender expiration or speculate on the chance of having his stock accepted. The latter event, a loss of market is possible.

From the **Principals view**, the disadvantages are:

1. He discloses his objective when he extends the Tender invitation. This makes achievement difficult, as noted in frequent sweetening of Tenders to make them attractive.

2. The Tender invitation often arouses opposition either by incumbent management or competing interests who desire control of the company.

ANALYSIS AND PROCEDURES

Unlike special situations analyses where we delve into the structure of a company, Tender invitations are approached firstly through study of the Tender itself. The most pertinent question is **"Why is the Tender invitation extended?"** The answer to this plays an important role in determining the investor's course of action.

We examined the Tender invitation for prospects of improvement of the bid. This would arise where a fight for voting control is being waged, and when a company is attempting to retire a non-redeemable security. As mentioned earlier in this chapter, a characteristic of this phase of Tenders is repetition of the invitation offer and improvement of bids for securities. Securities holders in these instances are in a favorable position to ride with the situation while the battle is on. When a battle for control is in progress, knowing the strength of the contenders will aid in making a decision. Conflicts for control of a company are usually reported in news and financial publications, while additional information can be obtained from the Principals or the *Securities and Exchange Commission.*

When a company is offering to purchase its non-callable preferred stock, a guiding motivation for acceptance will most frequently be the premium offered over the existing money rates.

A corollary to this stage of the analysis is to examine the situation for possibility of subsequent Tender. This would be indicated where company would seek eventual merger or control of 80% of company for tax purposes. A recent occurrence of the repeated Tender is *National Union's* second invitation for shares of *Emerson Radio*. The first Tender invitation took place at $18 a share and resulted in *National Union* gaining a majority interest in *Emerson*. The second Tender at $24.50 share is aimed at obtaining at least 80% of the outstanding Emerson common.

Company reacquiring its own shares to shrink its capitalization—self-tenders--is approached on a conventional financial analysis at first. At the same time, a pro forma picture of the impact of the reduced number of outstanding shares is most helpful.

For example: *Curtiss Wright Corp.* extended a Tender invitation for 1 million shares of its *own* stock at $32 a share. When the Tender was announced the stock was priced around $27, subsequently moving to the $29 level. On the reduced capitalization, the company's earnings would've amounted to $1.37 a share compared with $1.01 reported for the same year. At $32 a share (the Tender price), this is equal to 23-times earnings basis. However, a month earlier the stock had been priced around 20-times earnings. If we use 20-times earnings as our index, then, based on the higher per share net of $1.37, the stock would command a price around $27 a share. Thus the $32 a share bid by the company would appear to be a generous offer. This means that the company will probably receive Tenders for more than the desired 1 million shares.

Tender invitations having **liquidation** as its objective suggest financial analysis of asset values as a guide for evaluation of securities. Bear in mind that in a liquidating situation, shares repurchased by the company for less than its true asset value increase the value of the remaining shares. This happens because there will be fewer remaining shares to participate in a greater amount of assets.

A most pertinent question is **"Will my securities be accepted?"** In this respect our first approach is to know what percentage of outstanding securities (stocks or bonds) have been invited to be Tendered. Are there restrictions from participation in respect to large holders, management, family or any type security holder? If so, the floating supply is reduced, thus increasing the percentage of outstanding securities that could be accepted.

The Tender invitation may offer to purchase a specific number of shares or consume a set amount of money. In either event, we want to know whether the Tender is large or small in relation to the company's capitalization. If the Tender invitation is for a major portion of the available security issue, then probability is favorable for acceptance of securities either in full or in large part of the amount submitted.

When the number of shares (or amount of securities) invited to Tender is relatively small in relation to the outstanding issue, then probability is slim of having all that you submit accepted. For example: the *Curtiss-Wright* invitation for Tender of 1 million shares at $43 a share represents about 13% of outstanding stock, a small percentage of the total. Since the stock had moved up sharply in anticipation and upon release of the Tender invitation, it would not be surprising to see a substantial amount of shares Tendered. It would not be unexpected for the stock to <u>decline</u> following the expiration of the Tender.

A noteworthy occurrence in this type of situation is that the market action gives a clue to percentage of deposits to be accepted. A gap of 2 to 3 points, or 10% or more, from the Tender price suggests that acceptance will be on a limited pro rata basis. Therefore, stockholders might Tender their shares with intent to purchase the equivalent amount that would be accepted when stock dipped to lower levels at termination of Tender. Late purchasers of the stock, on the other hand, would have to consider the possibility of loss on stock not accepted.

When indications point to a pro rated or partial acceptance of securities, an opportunity may be present for a hedge position. This happened during the *Schenley* Tender of $32 a share for approximately 25% of the floating supply. News releases indicated to stockholders that approximately half of their stock would be accepted. With this in mind, stockholders could hedge by selling short half of their holdings at $29 and the other half would be sold at $32 through the Tender. In this instance, the investor could afford to purchase stock at the market price of $29 a share. The trading procedure would work out as follows:

Purchase 200 shares at $29 each…….
Tender 200 shares at $32. …………..
Sell short 100 shares at $29…………

At expiration of Tender invitation and upon notification that 84 shares have been accepted, we deliver 100 shares against the short sale at $29, and sell the 16 residual shares at $29.

A net profit of $252 was created through sale of 84 shares through the Tender. The 16 shares were sold at $29. Expenses for commissions and taxes amounted to $110 (approximately), leaving a net profit on the Tender situation of $142.

<u>Opposition to Tenders</u> can be favorable and adverse. Thus we want to know the nature of the opposition. Is the opposition realistic and purposeful, or merely legalistic? Bear in mind that opposition could reduce available supply of securities might be tendered. This would increase probability of securities being accepted. However, strong opposition could defeat the Tender by withholding an adequate number of securities to meet minimum requirement.

Is the Tender invitation a competitive, lowest-priced bid? In this type, the Principal will purchase a specified amount of securities at the lowest offerings. A procedure for meeting this is:

Assume you hold 500 shares in a company inviting Tenders on lowest offering basis, up to $75 a share. Submit your 500 shares in the following manner: 100 shares at $74.24; 100 shares at $74.73; 100 shares at $74.98. The belief is that *uneven* amounts may be accepted ahead of even prices or standard fractions.

Another type of Tender the first come, first served invitation. In this case, you do not know whether you're securities will be accepted until presented for payment. This has an appeal for the security holder who might be concerned about failure of having his securities accepted. For instance, holders of issues having Sinking Fund provisions and non-callable preferred stocks would offer securities for Tender, but are willing to hold the securities until accepted upon a favorite basis, at a later date.

Conclusion

"Tenders" are in effect a **procedure for acquiring and disposing of securities**. Opportunities for capital gains are present for securities holders whose ownership predates Tender invitations and for purchases made during a Tender's existence. Tenders give clues to possible future actions such as mergers, liquidations, majority control, and recapitalizations. The Tender procedure offers protection to

Principals from influences of large orders in the market and hazard of being a large minority holder in an undesired situation. The Investor, on the other hand, benefits by premium prices paid for his securities while giving up marketability of the securities during the life of the Tender.

Review of Tender Offers

Sometimes a company will make a tender offer of cash or securities for the shares of another company. This is because either they want to have a controlling interest in the company or they want to make a substantial investment in the company. For example, they may be willing to pay $30 per share for every share of Company A that is tendered. Company A is currently trading at 25 per share. Therefore, they are willing to pay a five dollar premium (20%) to get control of the company or the targeted number of shares. Generally, in a tender situation the company making the tender is willing to pay a premium to get the shares. The company that the shares are being tendered for may send out notices advising their clients not to accept the tender because they do not want to lose control of the company. The Tender itself may be for a fixed number of shares, which can be troublesome for the Corporate Actions Department.

Let's say the Tender is for 1,000,000 shares of the company. A tender is normally voiced in such a way that the first 1,000,000 shares submitted are accepted. Therefore, the firms try to get their notices to DTC as soon as possible. In SF&R, the stockbrokers are notified of the tender offer and begin to alert clients who own the stock, asking whether or not they want to tender their securities. They explain to the customers that the Tender might not be totally accepted. The Corporate Actions Department surrenders their stock and finds that of, say 500,000 shares that SF&R submitted, only 300,000 were accepted because the total amount that various broker-dealers tendered to the agent reached 1,000,000 shares. Therefore, *SF&R* must go back to their clients and explain to them that all of their shares were not accepted. As these Tender offers are usually made at a premium, clients may become very disappointed and think that *SF&R* is not doing a good job in submitting their shares. Actually, all of the firms who submitted shares were prorated by DTC once the 1,000,000 shares were obtained by the agent. The agent will tell DTC what percentage has been accepted. DTC than prorates the tender among the firms participating in the offer. *SF&R's Corporate Actions Department* must now make adjustments to the customers' accounts, putting back in the stock that was not accepted in the tender and making the corresponding money adjustments.

After The Trade Is Made, Processing Securities Transactions by David M. Weiss, revised third edition, pages 384-385.

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A Clue to Value

The so-called "tender," a corporate action of inviting offer of securities for acceptance, is often clearly an *indication* of values existing in the securities being sought. It also acts as clues to other possibilities. A complete liquidation may be under consideration. A merger or acquisition may be in the offing. A move for control of a company may be under way. If any of such moves should occur, values greater than the current price of the security would be very likely, especially if the shares are being sought by outside interests, indicating that a management fight is incubating. One symptom is increasing activity in the securities of the company.

A prospective purchaser offers to buy a specified security subject to the terms of the "tender" invitation. By this procedure a security holder a security holder may offer stock and/or bonds to the prospective purchaser at a *stated time and price*. More often then not the *seller* can obtain a better price for his securities than prevails in the market. Also, he can use a tender offer as a vehicle for disposal of a substantial amount of securities. The tender removes the downward pressure resulting from large blocks of securities overhanging the market.

On the other hand, the tender offers immunity to market fluctuations for the buyer. The tender bypasses the influence of a substantial buying order which creates upward pressure while it is being processed.

Sometimes the security in question would rise immediately to the price being tendered. More often, however, the security is available at a price sufficiently below tender price. You buy it with the expectation that it will move to or above the tender price prior to its expiration, thus permitting you to sell at a profit. The price spread is due to the possibility that the tender may not materialize. This would happen if the required minimum amount were not offered. In that event the purchaser could withdraw his offer. In such cases, the stock generally would decline to a level around the pre-tender time.

While the above capital risk is real, you can minimize it by evaluating the security you intend to buy on its own merit. Is the stock worth the price you intend to buy on its merit? If the answer is yes, then it should profit an extra protection to your purchase. In this way you are getting into a situation which would be worth the risk of non acceptance of your offer. **If value is there, often another tender may be forthcoming at a subsequent date.**

A much practiced way for investors is to find out the success of previous tenders *(You will see the importance of this from the Teledyne Case Study)*. This would serve as a clue—to the probabilities of your stock being accepted. Many companies have made recurrent use of the tender to reduce the outstanding number of high-dividend rate preferred shares. More often than not they failed to obtain the desired amount of shares presented for sale. If previous tenders were not met in full, the next might also fall short of company expectations. This would indicate that your chances of having stock accepted would be good.

The potential for capital gains is often limited if you buy the security being sought after a "tender" has already been announced. Larger capital gains can be obtained from anticipating the use of a tender. If you know that there are the common reasons for the use of tenders, you would be in a better position to anticipate such corporate action.

Here are some of the reasons:

- To reacquire shares by a corporation,
- To facilitate mergers and acquisitions,
- To accumulate securities by corporations and/or individuals.
- To facilitate redemption of shares during a partial liquidation of a corporation,
- To facilitate sinking fund operations.

One of the most widely known and oldest uses of the tender is for corporate **sinking funds**. In such funds money is specifically earmarked to meet expenditures or debt. The objective of the sinking fund is to reduce the amount of outstanding or eliminate the particular security from the capital structure. Through the use of tenders, a corporation may purchase its non redeemable securities. In this way it would reduce the amount outstanding and possibly eliminate entirely an undesirable security such as a high dividend or high interest rate preferred stock or bond.

Illustrating the appreciation potentiality in "tender" situations was the offer in April 1964 by *Lazard Freres & Company*. To buy *Franco Wyoming Oil Company* shares at $55 a share against the prevailing market price of $48.50.

Case Study: Franco Wyoming Oil Company "Tender" Offer Relative to True Value

Acting as agent of *Franco European Investment N.V., Midhurst Properties, Inc.*, and *Western Properties Corp., Lazard Freres & Co.* invited tenders of 820,000 shares of *Franco Wyoming* stock at a premium of 13.4% over the market price. In a letter to stockholders, *Franco Wyoming's* management called for rejection of the offer, regarding it "as grossly inadequate in relation to the true value" of *Franco* shares. The management said that if it were decided that it was in the best interests of the stockholders to dispose of the company's properties, a substantially higher valuation could be obtained through negotiation.

In a published advertisement the management said that "a physical valuation of all our assets, including estimate reserves below the ground, would, on a conservative basis, be in excess of $80.00 per share.: "At March 31, 1964," said the *Franco* management, "the market value of the Company's security investments alone amount to over $40 per share. "The tender offer accordingly values all of our other assets at only about $17,000,000 or less than $15.00 per share. These other assets consist primarily of interests in oil and gas properties which in 1963 produced gross revenues of $5,150,547—a gain of over 12% above the previous year."

The management said it looked forward to further increases in oil and gas reserves and production. In addition, said the management, the company's French subsidiaries own a 75% interest in two tankers and a 34% interest in eight others plus other valuable assets.

During the past several years many major oil companies have sought to increase their own production and reserves through the acquisition of independent companies. During the past two years, according to revelation by the management, several of these companies had indicated an interest in acquiring *Franco's* oil and gas properties. The management said it had not entered into negotiation, in the belief that the value of the company's oil and gas properties would continue to increase.

Book Value and Earnings Potential as Determinants

Another interesting case story was *Purolator's* "tender" offer to *Tung-Sol Electric* stockholders for shares at $22 a share following a merger offer at a higher price. In calling for rejection of the offer, the Tung-Sol management cited its *inadequacy* relative to book value and earnings potential. *(In other* *words, the offer was below the current replacement value and earnings power value in the opinion of management).*

On June 25, 1964, *Purolator* directors proposed to acquire *Tung-Sol* on the basis of one share of a new $100 par 4.5% cumulative preferred stock for each four shares of *Tung-Sol* common. This offer amounted to about $25 a share. The merger negotiations broke off in august when a new management took over. On Sept. 4, 1964, *Purolator* made a "tender" offer to *Tung-Sol* stockholders to purchase 200,000 shares at $22 per share against the market price of 17.25—a 27.55% premium.

Tung-Sol's new management termed the *Purolator* offer as **"grossly inadequate in view of *Tung-Sol's* book value and earnings potential"** and charged the offer as "an attempt to purchase effective control of *Tung-Sol* at a bargain price, even below the previous offer made before merger negotiations were terminated."

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