

STATEMENT OF JORDAN H. ESKIN, ATTORNEY, NEW YORK, N.Y.

My name is Jordan H. Eskin. I am an attorney at law practicing in New York City. I have been the Chairman of the Stockholders' Committee for Better Management of the *Boston and Maine Corporation*, the securities of which are listed on the New York Stock Exchange. As such Chairman, I conducted a proxy contest with a number of other persons to secure control of the Boston and Maine Corporation ("B&M") at the April 1966 annual meeting, at which time the Committee's nominees received approximately 46% of the vote cast. At the April 1967 meeting the Committee solicited proxies to prevent management from securing a quorum and to stop the election of management's nominees and for a period of almost one week management was unable to secure a quorum. By February of 1968 half of the Board of Directors of B&M was chosen by me and persons friendly to me.

I am making this statement after having experienced two proxy contests and with knowledge of why they are conducted and the problems involved. I have the scars to prove it.

Before your Committee for consideration is S. 510 which deals with three areas or types of transactions:

I. Where any person acquires or obtains the right to acquire beneficial ownership of 10% or more of any class of equity securities registered under the Securities Exchange Act of 1934. [Section 1 adding new subsections (1)-(4) inclusive to Section 13 of that Act.]

II. Where an issuer proposes to make purchases of its own registered equity securities [Section (1) adding new subsection (5) to Section 13 of the Act]; and

III. So-called "Tender Offers" [Section 2, adding new subsections (1)-(7) to Section 14 of the Act.]

I intend to deal only with Area I. There have been many spokesmen who have discussed the other facets of the proposed legislation. I discuss Area I because it contains the provisions that relate to acquisitions of stock on the open market which may lead to the seeking of control probably through a proxy contest.

As S. 510 is presently constituted it calls for amending Section 13 of the Securities Act of 1934 by requiring every person who acquires beneficial ownership of more than 10% of any class of equity security within seven days to send to the management and to each Exchange where the security is traded and file with the Commission a statement containing the following information: (i) the background and identity of all persons involved in the purchases; (ii) the source and amount of funds to be used in making the purchases, and if the purchase involved borrowed funds, a description of the transaction and the names of the parties, except with respect to loans made in the ordinary course of business by a bank; (iii) if the purchasers are to acquire control of the business of the company, any plans which such persons may have to liquidate the business or to sell the assets or to merge it or to make any other major change in its business or corporate structure; (iv) the number of shares of such security which every such person (including his associates) owns and which he has a right to acquire; (v) information as to any contracts, arrangements or understandings with any person with respect to any securities of the issuer. When two or more persons act as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of securities of an issuer, such syndicate or group is to be deemed a "person" for the purpose of the subsection.

It is my opinion that if the foregoing provisions of this bill are passed by the House of Representatives, and the proposed legislation is enacted and becomes law, such action will sound the death knell for proxy contests. The provisions place additional obstacles in the path of the insurgent and give management even more weapons than it already has with which to fight.

Let us review the specific information required when a person or group has acquired more than 10% of any class of securities and its effect:

(i) In compelling the insurgent to state the background and identity of all persons involved in the purchases, management will have more time, with its greater monetary resources, to analyze and disparage the foe. The 10% figure in stock ownership might be reached by an insurgent many months before the annual meeting, while the filing of a 14B proxy contest form might be effected shortly before an annual meeting. An insurgent, generally with limited resources is forced into a prolonged war rather than a short contest. Isn't it sufficient that this information as regards proposed directors and participants in the fight must