

shares in street name or any other nominee name is not any basis for exclusion from or exemption from the statute.

Mr. STUCKEY. But your interpretation would revolve around the term of what was beneficial?

Mr. COHEN. Yes, sir.

Mr. STUCKEY. So that a person could actually under a street name purchase 9 percent and go to another firm and purchase 9 percent?

Mr. COHEN. Under the present law he could, yes.

Mr. STUCKEY. Is that needed to be clarified in this bill?

Mr. COHEN. Up to 10 percent the present law doesn't require anything, but if he goes beyond 10 percent under the present law, he would be required to file a report with the Commission that he now owns more than 10 percent of the stock.

Mr. STUCKEY. But a person could get around it through this method, right?

Mr. COHEN. No, because beneficial ownership is the test. He might try to get around it, and that would be a violation of law, but the legal requirement is beneficial ownership.

Mr. STUCKEY. So it revolves around that?

Mr. COHEN. Yes, sir.

Mr. STUCKEY. Secondly, would there be any strong objections from the Commission as to the size of the corporation that this would apply to because I could see where this could be some type of handicap to a small firm.

Mr. COHEN. I think that perhaps when you are dealing with small firms, they might need more protection, talking about the shareholders, than a large firm because they don't have the financial or other resources to deal with some of the big fellows that come along and try to gobble up some of the smaller firms.

So that, if you had to make a judgment, it seems to me that you need the protection more there than with the big firms that have all the sophisticated counsel and finance that are necessary in this form of industrial warfare.

My position is that all shareholders, whether in small or large or medium-sized companies, need this protection.

Mr. STUCKEY. So you all would have objections?

Mr. COHEN. Yes, sir.

Mr. LOOMIS. Could I add that this bill applies only to shares which are registered under the Exchange Act so that the really small companies are not subject to it.

Mr. COHEN. These are companies with a public interest. That is made clear in the statute.

Mr. STUCKEY. One final question: Do you think that 5 days is sufficient time?

Mr. COHEN. Well, actually I said earlier, Mr. Stuckey, that under our proxy rules which have evolved over a considerable period of time and with the assistance of industry and the bar associations and such, we now have a requirement that material be filed with the Commission 10 days before it is to be released, but we also provide that that period can be shortened by the Commission and we frequently do where that seems to be important and particularly in proxy contests we frequently will clear material filed in the morning within 2 hours