

now be submitted when the insurgent actually elects to conduct a proxy contest? Furthermore, the average Wall Street broker will avoid helping an insurgent, as they already do, because they dislike any filings with the Securities and Exchange Commission. Thus, the vital help from Wall Street will disappear.

(ii) Should the insurgent reveal his source of funds to give management time to pressure the suppliers of such funds to withdraw the aid.

(iii) It is difficult for the insurgent to set out specifically plans to liquidate, sell assets or merge, etc. when not in a policy making position. Such a revelation may impair the corporation's tax planning. The stockholder is protected in any event because any contemplated major change must generally be submitted for his approval under corporate law. This information only helps management which can set up more stumbling blocks for the new group. Management, on the other hand, does not have to reveal its plans in these areas.

(iv) By compelling the new group to reveal its stockholders, management is enabled to assess the strength of the group and to attempt to divide it.

(v) By requiring the new group to reveal, many months before the annual meeting, information with respect to contracts and understandings between the persons with respect to the securities, all of which is required on the 14B form when the group elects to fight, management is again afforded the opportunity to harass the insurgents for a lengthy period of time.

I fail to see how any of the foregoing revelations at the time when a group acquires 10% ownership aids the stockholder whom everyone is trying to protect. Such revelations hurt him because they materially impair a change in control through a proxy contest.

Anyone contemplating the acquisition of control, which may require or result in a proxy contest, must firmly believe that the securities to which he has committed his funds, his time and his efforts are undervalued and that the present management of the company has not been able to bring out, for the benefit of the stockholder, the true values of the company. It is relatively impossible to go forward in any such enterprise unless the prime mover is convinced of this and unless he is able to convince many other people of the wisdom and advisability of this action.

I take the firm position that allowing and even encouraging proxy contests is vital to corporate vitality. Instead of making the task of the insurgent more difficult, legislation should rather make the road easier.

The flow of new ideas and new men into public companies can be achieved by existing Boards of Directors and officers if they recognize the need and act on it. However, public companies often have been lax in doing this. There is frequently tremendous internal resistance to changes.

The other approach is for new men with new thinking to acquire control of a public company. This can be very beneficial to security holders. The term "raider" as sometimes applied to insurgents is a word behind which many incompetent managements have ducked to preserve the security of their own positions. Too often incompetent and corrupt chief executives have been retained in office in order to preserve the security of other management personnel.* Within reason, the average stockholder can do nothing about it unless someone conducts a proxy fight to change the Board of Directors.

There are certain fundamental principals in proxy contests:

(1) In almost all instances, in order to conduct a successful proxy contest, new men with new ideas and vitality must purchase the required stock to gain control. Such a group will not commit money to the enterprise unless it is thoroughly convinced that it can do a better job than the current management and it can reasonably expect to succeed in gaining control.

(2) For an insurgent to wage a proxy contest in which he can hope to prevail, at least 35% to 40% of the stock of the company must be purchased by individuals friendly to him. *This is extremely difficult for a private group to accomplish.* The independent stockholder's vote cannot be relied on.

Proxy contests are extremely difficult and costly. The number of proxy contests conducted compared to the number of public companies is minuscule. Successful contests result in only a small fraction of those conducted. The reason is not that the existing managements are performing so capably, but that the task is numerous and expensive.

In the Boston and Maine Corporation, in 1966, the President after being convicted of misappropriating B&M corporate property was given a raise in salary and an extension of his employment contract at the time extensions of employment contracts were given to other officers and directors.