Belas
7/1/87

TALKING POINTS ON SMALL BUSINESS ISSUES

- WE ALL TAKE PRIDE IN THE STEREOTYPE OF THE CAN-DO, ENTERPRISING AMERICAN -- MAN OR WOMAN -- WHO HAS A GOOD IDEA AND TURNS THAT IDEA INTO A SUCCESSFUL BUSINESS. OF COURSE, NOT EVERYONE SUCCEEDS, BUT OUR COUNTRY ALWAYS HAS BEEN THE KIND OF PLACE WHERE A GOOD IDEA AND A LOT OF HARD WORK CAN LEAD TO SUCCESS, EVEN WITHOUT INHERITED WEALTH OR SPECIAL CONNECTIONS.

- IF WE WANT TO REKINDLE THE ENTREPRENURIAL SPIRIT TO MAKE US ONCE AGAIN THE ECONOMIC MODEL FOR OTHER COUNTRIES, WE WILL HAVE TO RELY ON THE SMALL BUSINESS COMMUNITY -- JUST AS WE ALWAYS HAVE IN THE PAST.

- YOU KNOW THE STATISTICS BETTER THAN I DO. THAT, OF THE NEARLY 13 MILLION NEW JOBS CREATED SINCE 1980, OVER 70 PERCENT OF THE NET GAIN HAS BEEN IN FIRMS WITH 100 OR FEWER EMPLOYEES. OF THAT NUMBER, 70 PERCENT OF THE INCREASE IS IN FIRMS WITH FEWER THAN 20 EMPLOYEES.

THE VALUE OF A FREE MARKET SYSTEM

- ONE OF THE BASIC REASONS WHY WE HAVE HAD A STRONG, SMALL BUSINESS COMMUNITY IS THAT WE HAVE GIVEN OUR CITIZENS THE FREEDOM TO COMPETE IN THE MARKETPLACE. SOMETIMES WE HAVE IMPOSED TOO MUCH REGULATION. SOMETIMES WE HAVE BEEN JUSTIFIED IN SETTING RULES TO PROTECT THOSE WHO TRULY NEEDED HELP. SOCIAL SECURITY WITH ITS RELATED PAYROLL TAXES AND SUPERFUND IMMEDIATELY COME TO MIND.

CONTINUED THREAT OF OVERREGULATION

- HOWEVER, I AM INCREASINGLY CONCERNED ABOUT PROPOSALS THAT PUT AT RISK THE ABILITY OF SMALL BUSINESSES TO PROSPER OR EVEN SURVIVE.

- I DON'T WANT TO OVERSTATE THE CASE, BUT IT SEEMS TO ME THAT PROPOSAL SUCH AS MANDATING EMPLOYER-PROVIDED HEALTH INSURANCE, MANDATING PARENTAL LEAVE BENFITS, MANDATING A HIGHER MINIMUM WAGE, AND TRYING TO PROHIBIT BUSINESSES FROM OPERATING NONUNION SUBSIDIARIES ARE NOT DESIGNED TO IMPROVE THE ECONOMIC VIABILITY OF SMALL BUSINESSES.

- IT ISN'T THAT I OPPOSE HEALTH INSURANCE, PARENTAL LEAVE, HIGHER WAGES OR UNIONS, BUT I WONDER WHAT EVER HAPPENED TO THE FREE MARKET?

- WHEN YOU LOOK AT THE FACTS, YOU FIND THAT THERE IS LESS JUSTIFICATION FOR THESE PROPOSALS THAN YOU MIGHT THINK -- CERTAINLY NOT ENOUGH TO RISK THE ADVERSE IMPACT ON THE ECONOMY THAT MIGHT RESULT.

MANDATED HEALTH BENEFITS

- LET ME GIVE JUST ONE EXAMPLE. TED KENNEDY ARGUES THAT WE NEED TO REQUIRE EMPLOYERS TO PROVIDE THEIR EMPLOYEES WITH HEALTH INSURANCE. HE JUSTIFIES THIS BY TELLING PEOPLE THAT 24 MILLION EMPLOYEES AND THEIR FAMILIES DO NOT HAVE HEALTH INSURANCE.

- WHAT HE DOES NOT SAY IS THAT 170 MILLION EMPLOYEES ARE COVERED BY EMPLOYER-SPONSORED HEALTH INSURANCE PLANS. THE MARKETPLACE, AIDED BY GENEROUS TAX INCENTIVES, HAVE WORKED.

- IN FACT, THE SUCCESS OF PRESENT LAW SHOULD CAUSE US TO WONDER WHY SOME EMPLOYEES DO NOT HAVE HEALTH INSURANCE PROVIDED BY THEIR EMPLOYER. COULD IT POSSIBLY BE THAT SOME EMPLOYEES WOULD RATHER HAVE THEIR PAY IN CASH?

MANDATED BENEFITS ARE NOT FREE OF COST

- EVEN WITH TAX INCENTIVES, NO ONE SHOULD FORGET THAT HEALTH INSURANCE, JUST AS ANY OTHER FORM OF COMPENSATION, HAS A COST. IT MAY COME IN LOWER CASH WAGES, IT MAY COME IN LOWER PROFITS, OR IT MAY COME IN HIGHER PRODUCT PRICES. BUT THERE IS AN IMPACT ON THE ECONOMY.

- SOME PEOPLE, AT LEAST IN WASHINGTON, FORGET THAT THESE BENEFITS ARE NOT FREE, EVEN IF THEY MAY NOT DIRECTLY INCREASE THE FEDERAL DEFICIT. BUT I BELIEVE THE FREE MARKET SYSTEM MORE EFFICIENTLY DECIDES WHAT COSTS SHOULD BE INCURRED THAN CONGRESS.

LIABILITY INSURANCE

- I KNOW YOU ARE ALSO CONCERNED ABOUT THE AVAILABILITY AND COST OF LIABILITY INSURANCE. IT IS AN UNDERSTANDABLE CONCERN AND ONE THAT IS JUSTIFIED. ALTHOUGH THE AVAILABILITY PROBLEM HAS EASED UP SOMEWHAT OVER THE LAST YEAR, PROBLEMS STILL EXIST IN A NUMBER OF AREAS.

- AND, ALTHOUGH PREMIUMS HAVE STABILIZED SOMEWHAT, THEY HAVE STABILIZED AT MUCH HIGHER LEVELS THAN EXISTED JUST A FEW YEARS AGO. IN FACT, MUCH OF THE STABILIZATION IN PREMIUMS HAS COME FROM HIGHER DEDUCTIBLES, LOWER COVERAGE LIMITS, AND ADDITIONAL POLICY LIMITATIONS AND EXCLUSIONS. THAT REALLY IS NOT A STABILITY IN THE WAY THAT MOST PEOPLE UNDERSTAND THE TERM.

- I KNOW THAT SOME IN THE SMALL BUSINESS COMMUNITY THINK THAT THE LAWS GIVING THE STATES THE JURTISDICTION OVER INSURANCE REGULATION SHOULD BE REVIEWED AND, PERHAPS, REPEALED. I AM NOT SURE THAT THESE LAWS HAVE HAD MUCH OF AN EFFECT ON INSURANCE AVAILABILITY OR PRICING, BUT WE CERTAINLY SHOULD EXPECT THE INSURANCE INDUSTRY TO PROVIDE PRODUCTS ON A FAIR BASIS AND FAIR PRICE.

COMPETITION WITH TAX-EXEMPT ORGANIZATIONS

- I ALSO UNDERSTAND THAT THERE IS CONCERN THAT INCREASING COMPETITION FROM TAX-EXEMPT ORGANIZATIONS WILL CUT INTO AREAS WHICH HAVE BEEN TRADITIONALLY THE REALM OF SMALL, FOR-PROFIT COMPANIES. AS YOU MAY KNOW, THE WAYS AND MEANS COMMITTEE HAS BEEN HOLDING HEARINGS ON THIS ISSUE. OBVIOUSLY, YOUR EFFORTS TO BRING THE ISSUE TO THE ATTENTION OF CONGRESS HAVE HAD SOME SUCCESS. I WILL BE INTERESTED IN SEEING WHETHER THE WAYS AND MEANS COMMITTEE WILL BE WILLING TO ADDRESS THE ISSUE IN LEGISLATION THIS YEAR.

- YOU KNOW THAT ANY PROPOSED CHANGE WILL BE CONTROVERSIAL AND THE TAX-EXEMPT LOBBY IS A STRONG ONE. HOWEVER, YOU CAN BE SURE THAT THERE WILL ALWAYS BE MEMBERS WHO ARE WILLING TO MAKE CHANGES IF THEY ARE CONVINCED THERE IS UNFAIR COMPETITION WORKING TO YOUR DETRIMENT.

GENERAL AGRICULTURAL TALKING POINTS

1985 FARM BILL

- I HAVE FOUND IN MY TRAVELS THAT PEOPLE ASK AS MANY QUESTIONS ABOUT AGRICULTURE IN NEW HAMPSHIRE AS THEY DO IN IOWA.

- THE GENERAL CONCENSUS SEEMS TO BE THAT THE 1985 FARM BILL IS WORKING. OTHER COUNTRIES ARE BEGINNING TO PLANT LESS ACREAGE AS THE U.S. HAS BECOME MORE COMPETITIVE, TOTAL U.S. EXPORTS SHOULD BE MORE THAN UP 15% (THE FIRST INCREASE IN SEVEN YEARS), NET CASH FARM INCOME WILL BE A RECORD $48 BILLION THIS YEAR AND FARM EXPENSES, AFTER HAVING DECLINED $7 BILLION IN 1986, WILL BE DOWN AGAIN, BY ABOUT $5 BILLION THIS CALANDER YEAR.

- HOWEVER, THE LOW FARM PRICES HAVE RESULTED IN HIGH PROGRAM COSTS -- $25.6 BILLION IN FY 86; ESTIMATED $25.2 BILLION IN FY 87.

FOOD VALUE

- I'VE POINTED OUT THAT AMERICANS RECEIVE ONE OF THE BEST FOOD BARGAINS IN THE WORLD. TOTAL EXPENDITURES FOR FOOD HAVE GONE DOWN 12% IN THE LAST DECADE, FROM 16.5% OF AMERICANS' DISPOSABLE INCOME TO 14.7 PERCENT. AT HOME EXPENDITURES HAVE GONE DOWN EVEN MORE -- 23 PERCENT -- FROM 12.3 PERCENT TO ONLY 10 PERCENT. AND WE'RE SPENDING 1/3 LESS THAN A QUARTER OF A CENTURY AGO.

- SO EVEN THOUGH THE FARM BILL HAS BEEN EXPENSIVE, THE PERCENTAGE OF DISPOSABLE INCOME SPENT ON FOOD HAS GONE DOWN, NOT UP. THIS LEAVES MORE INCOME TO SPEND ON OTHER ITEMS, WHICH INDICATES A RISING STANDARD OF LIVING FOR THE U.S.

- I'D ALSO POINT OUT THAT FARMERS RECEIVE ONLY 25% OF THE FOOD DOLLAR. LABOR RECEIVES 34 PERCENT, AND THE REST GOES FOR PACKAGING, TRANSPORTATION, ENERGY AND OTHER COSTS. THAT MEANS THAT LABOR RECEIVES 40% MORE OF THE FOOD DOLLAR THAN DO FARMERS.

BUDGET REDUCTIONS

- IT APPEARS THAT AGRICULTURE WILL BE TARGETED FOR ABOUT $1.2 BILLION IN CUTS TO MEET THE BUDGET NUMBERS.

- SEVERAL OPTIONS ARE BEING DISCUSSED. CONGRESSMAN GLICKMAN WANTS TO FREEZE LOAN RATES AND THEN RAISE THEM GRADUALLY.

- THIS WOULD BE A SHORT SIGHTED APPROACH. WE ARE FINALLY GETTING OTHER COUNTRIES TO LOOK AT REFORMING THEIR POLICIES BECAUSE FLEXIBLE LOAN RATES HAVE ADDED TO THEIR BUDGET PRESSURES. TO REVERSE THIS TREND WOULD DELAY ANY MEANINGFUL RESOLUTION OF INTERNATIONAL TRADE CONFLICTS.

- FCS PROPOSAL - SYSTEM OFFICIALS HAVE ASKED CONGRESS FOR A $6 BILLION LINE OF CREDIT. THEIR PLAN WOULD CREATE A SPECIAL SEVEN MEMBER BOARD TO ALLOCATE FEDERAL ASSISTANCE TO THE 12 DISTRICTS.

- ADMINISTRATION PLAN - INCLUDES A "DECENTRALIZATION" APPROACH. THE PROPOSAL IS DESIGNED TO GUARANTEE BORROWER STOCK, KEEP LOCAL CONTROL AND RETAIN ACCESS TO THE CREDIT MARKETS WHILE MINIMIZING DIRECT GOVERNMENT ASSISTANCE.

- A $5 BILLION RESERVE FUND WOULD BE ESTABLISHED, WITH A 10 YEAR LINE OF CREDIT, TO GUARANTEE SYSTEM-WIDE BONDS AND NOTES. THE MONEY WOULD HAVE TO BE REPAID WITH INTEREST IF DRAWN UPON.

- AGRICULTURE COMMITTEES - IN BOTH THE HOUSE AND SENATE HAVE HELD HEARINGS AND ARE TRYING TO DEVELOP LEGISLATION. SENATE AG COMMITTEE MAY BEGIN BEGIN MARKUP SOON.

- FARM GROUP PROPOSAL - FARM ORGANIZATIONS -- THE FARM BUREAU, CORN GROWERS, PORK PRODUCERS, COTTON COUNCIL, CATTLEMEN, AND OTHERS -- HAVE TRIED TO REACH A "MIDDLE GROUND" AND HAVE PROPOSED A PACKAGE WITH STRONG BORROWER ORIENTATION.

CCC FUNDING

0 THE SENATE SENT TO THE PRESIDENT THE SUPPLEMENTAL APPROPRIATIONS BILL ON THURSDAY WHICH CONTAINED FUNDS FOR THE CCC. I INTRODUCED LEGISLATION OVER A WEEK AGO TO IMMEDIATELY PROVIDE THE $6.7 BILLION IN FUNDING TO THE COMMODITY CREDIT CORPORATION.

0 THE CCC HAS BEEN WITHOUT MONEY SINCE MAY 1. CCC HAS BEEN UNABLE TO MAKE STORAGE PAYMENTS, LOAN DISBURSEMENTS OR ANY OTHER CASH PAYMENTS. CERTIFICATE PAYMENTS, SUCH AS 1986 CROP DISASTER PAYMENTS, HAVE NOT BEEN AFFECTED.

TIMELY PAYMENTS

0 SEVERAL OF MY COLLEAGUES AND I VOTED FOR LEGISLATION WHICH WILL CHANGE THE WAY CCC FUNDS ARE APPROPRIATED IN THE FUTURE. WE HAVE FACED DELAYS 5 TIMES IN THE LAST 2 YEARS.

0 FARMERS HAVE BEEN UNNECESSARILY FRUSTRATED BY NOT GETTING PAYMENTS ON TIME. THE FINAL PORTION OF THE 1986 FEEDGRAIN DEFICIENCY PAYMENTS ARE DUE OCTOBER 1.

0 I WILL URGE SECRETARY LYNG TO HAVE THE PAYMENTS READY TO GO WHEN THE PRESIDENT SIGNS THE BILL..

HAYING AND GRAZING

0 TWENTY-THREE STATES HAVE RECEIVED AUTHORITY FROM USDA TO APPROVE COUNTY-BY-COUNTY REQUESTS TO HAY AND GRAZE 1987 ACREAGE CONSERVATION RESERVE ACRES. COUNTIES MUST DOCUMENT A SHORTAGE OF HAY CAUSED BY A NATURAL DISASTER, INCLUDING ANY UNUSUAL HERD LIQUIDATIONS OR INCREASED FEEDING.

PIK N ROLL FOR CATTLEMEN/FEEDLOTS

0 UNDERSTAND CATTLEMEN WOULD LIKE TO "PIK N ROLL" AT THE FEEDLOT AS WELL AS BEING ABLE TO DO SO AT CERTIFIED ELEVATORS.

0 CATTLEMEN WERE ABLE TO "PIK N ROLL" ON HIGH MOISTURE CORN LAST YEAR DUE TO A SPECIAL WAIVER GRANTED. UNDER CURRENT RULES, THIS PROCEDURE DOESN'T APPLY TO OTHER STORED GRAINS.

0 A PROBLEM USDA CITES IS THE POTENTIAL TO LOSE THE IDENTITY OF THE GRAIN WHEN FARMERS GO THROUGH FEEDLOT SCALES.

0 MAY WANT TO LOOK CLOSER AT THIS ISSUE.

DOLE/GRASSLEY STUDY RESOLUTIONS

- MARKETING LOAN - WE ATTACHED AN AMENDMENT TO THE WHEAT DISASTER BILL REQUIRING THE SECRETARY TO REPORT BY JULY 1ST WHY HE HAS NOT USED HIS AUTHORITY TO IMPLEMENT A MARKETING LOAN FOR WHEAT, FEED GRAINS AND SOYBEANS. THE REPORT HAS NOT BEEN RECEIVED FROM THE SECRETARY, BUT HE HAS RESPONDED THAT STAFF ARE CONTINUING TO STUDY THE ISSUE.

- WE ARE ALSO ASKING FOR AN EXPLANATION OF WHY A MAKETING LOAN FOR THESE COMMODITIES WOULD NOT BE AS EFFECTIVE AS THE ONES IN PLACE FOR COTTON AND RICE. I UNDERSTAND RICE EXPORTS ARE PROJECTED TO INCREASE 36%, WHILE UPLAND COTTON EXPORTS ARE EXPECTED TO TRIPLE. SURPLUSES HAVE BEEN REDUCED FOR THESE COMMODITIES AND PRICES HAVE REBOUNDED.

- WE'VE ALSO ASKED THE DEPARTMENT TO ANALYZE IF AN EFFECTIVE GENERIC PIK CERTIFICATE PROGRAM COULD HAVE THE SAME EFFECT IN GRAIN EXPORT PRICING AS A MARKETING LOAN DOES.

ETHANOL

0 ETHANOL STUDY - WE ALSO ATTACHED AN AMENDMENT TO THE WHEAT DISASTER BILL TO SET UP A SEVEN MEMBER PANEL TO DO A NEW ETHANOL STUDY.

0 FOUR MEMBERS WOUD REPRESENT THE ETHANOL INDUSTRY DIVIDED BETWEEN FEED GRAIN PRODUCERS, PROCESSORS, ASSOCIATIONS INVOLVED IN THE PRODUCTION AND MARKETING OF ETHANOL AND OTHER COMPETENT INDUSTRY OR UNIVERSITY OFFICIALS.

0 USDA RELEASED THE NAMES OF THE PANEL FRIDAY. INDUSTRY REPRESENTATION APPEARS GOOD:

LARRY JOHNSON - NAT'L CORN GROWERS V-PRES. (MINN.)

BILL SWANK - OHIO FARM BUREAU

SHIRLEY BALL - WIFE (MONTANNA)

DENNIS SHARP - UNIVERSITY OF MISSOURI

TODD SNELLER - NEBRASKA GASAHOL COMMISSION

RICH WILSON - EPA

EARL GAVITT - USDA, DEP'T OF ENERGY

BOB DOLE
KANSAS

United States Senate

OFFICE OF THE REPUBLICAN LEADER
WASHINGTON, DC 20510-7020

June 18, 1987

M E M O R A N D U M

TO: SENATOR DOLE

FROM: RICH BELAS
DAVID TAYLOR

SUBJECT: CORPORATE TAKEOVERS/INDSIDER TRADING ISSUES

Background:

As you know, investigations by the SEC have resulted in a record number of insider trading cases. The size of the transactions involved are also unprecedented (e.g., Boesky). According to testimony provided by the SEC to the Senate Banking Committee earlier this year, there is a strong correlation between the increasing number of insider trading cases and the growth in the number of takeovers in recent years. Of more direct concern are the so-called "hostile takeovers" in which a bidder ("corporate raider") attempts to buy out a target company over the objections of its management.

Most of the press accounts of insider trading and hostile takeovers released over the past few months do not adequately separate the two issues. Although insider trading and corporate takeovers are related in the sense that inside information can give an investor an opportunity to make tremendous profits in a short time, the issues are quite distinct.

Trading on inside information is essentially a fairness and investor confidence issue. Investors trading on information that is not available to the general public arguably have an unfair advantage in the marketplace. Although there are now restrictions on such trading and disclosure requirements on purchases of over 5% of a company's securities, a number of bills have been submitted which would tighten these rules. The Administration is also considering proposals which would reportedly alter these rules. The goal of each of these proposals is apparently be to increase the information available to the general public regarding these transactions.

The major issue involved in takeovers centers on whether these transactions are causing target corporations to become too leveraged (have too much debt) in an effort to either make a takeover bid less attractive, buy out a potential "raider," or finance a successful takeover.

Those opposing the proposed changes in the law in this area, argue that the threat of a takeover makes management more responsive to shareholders interests. Secretary Brock testified to this effect last Monday in the House.

A number of experts and economists have suggested that hostile takeovers could have an impact on the U.S. economy. Their arguments deserve consideration. Of primary concern is the contention that the rapid increase in corporate debt fueled by these transactions is damaging to the economy.

The statistics supporting their arguments are noteworthy, American corporations sold $263 billion worth of debt in 1986, double the 1985 figure and five times that for 1982. Of this debt, $177 billion was spent in hostile raids (which constituted only 4.8% of the mergers in 1986), much of that was in the form of new debt. The debt incurred as a result of these raids was greater than the amount spent on acquisitions of new plant and equipment.

Those who are concerned about takeovers argue that the corporate debt generated by hostile takeovers represents a tremendous diversion of funds which could have been used for capital acquisition or long-term investment expenditures. A diversion of this magnitude hinders the prospects for future growth; of course, this argument could also apply to friendly takeovers.

The debt-burden of the target company increases dramatically regardless of whether the bidder successfully gains control. This debt-load can create market instability in the short-term, making the companies involved more vulnerable in a recession.

Others argue that, although we should be concerned about the increasing reliance on debt financing, as opposed to equity financing (issuing stock), takeovers are only a small part of the problem. Alan Greenspan took this position in Senate testimony earlier this year. The concern is that equity financing gives a corporation more flexibility than debt financing. A corporation an reduce or suspend a dividend on stock if profits are not as high as management expected, but interest payments must be made or the debt must be refinanced.

Legislative Proposals:

A number of legislative proposals which address the issues of insider-trading and corporate takeovers have already been proposed this year. At this point, all appear to share two common goals: 1) ensure that all shareholders are treated fairly in the takeover (tender offer) process and 2) require full and timely disclosure of basic information about a tender offer.

Senators D'Amato, Specter, Proxmire and Sanford have each introduced fairly comprehensive bills which are designed to limit

the opportunities for abuse of the securities exchange laws. Each includes a number of provisions which would increase disclosure requirements and expand protective mechanisms. The Banking Committee staff expects Senator Proxmire's bill, S. 1323, to be reported out of committee some time this summer.

In addition, a new legal definition of insider-trading put together by a task force from the ABA (many of whom have served on the SEC) was released this week during a hearing of the Senate Banking Committee. One possible reason for releasing a definition of insider-trading is that virtually all of the bills introduced on this issue contain severe penalties for violations of insider-trading and disclosure rules.

SECURITIES INDUSTRY ISSUES

INSIDER TRADING

- If there is one positive aspect of the ongoing insider trading scandal, it is that current law works. The prosecutions are not a good thing for the securities industry in the short run. Obviously, investor confidence will be affected. But, over the long term, investors should be satisfied that their interests are being protected.

- Insider trading legislation has been introduced in both houses of Congress this year. The most noteworthy of these, S. 1380, introduced this past week by Senator Riegle (Chairman of the Senate Banking Committee's Subcommittee on Securities) and cosponsored by Senator D'Amato, contains a statutory definition of insider trading as an attempt to clarify the law in this area.

- Clarification of the law is a worthy goal; however, any statutory definition of what constitutes insider trading must be flexible. Charles Cox, Chairman of the SEC, commented to this effect in testimony before the Senate Banking Committee this week. In the SEC's view, the definition contained in the Riegle bill is inadequate. The SEC will submit its own definition of insider trading to the Senate Banking Committee in early August.

TAKEOVERS

- The issue of hostile takeovers is a different issue and should not be confused with the insider trading issue. Although the takeover phenomenon has received a lot of press over the last few years, debate continues about whether this activity has had a net positive or negative effect. Certainly, at least in the beginning, it had a positive impact in making corporate management less complacent. It probably is accurate to say that at least some senior managers have not paid adequate attention to the fact that they work for their shareholders.

- On the other hand, it may be that the emphasis on leveraged buyouts and debt-financed takoevers may cause companies to be more vulnerable to an economic downturn. When a corporation is primarily equity-financed, it can reduce dividends if economic conditions dictate. However, a company that is primarily debt-financed does not have the luxury of reducing interest payments when it might be economically convenient.

- Legislation dealing with corporate takeovers has been introduced in both houses of Congress this year. Each of these would increase the disclosure requirements for a takeover bid in an attempt to ensure that all shareholders are treated fairly in the takeover process. It appears that S. 1323 introduced by Senator Porxmire, Chairman of the Senate Banking Committee, will be the likely vehicle out of committee.

- However, respected economists such as Alan Greenspan and others, have pointed out that, while excessive debt-financing may be a problem, debt related to takeovers represents a very small part of corporate indebtedness.

- In summary, we should be more concerned about the excessive emphasis on short-term profits and more sensitive to assuring that our corporations are flexible enough to be profitable over the long term.

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United States Senate

OFFICE OF THE REPUBLICAN LEADER
WASHINGTON, DC 20510-7020

June 18, 1987

M E M O R A N D U M

TO: SENATOR DOLE

FROM: RICH BELAS
DAVID TAYLOR

SUBJECT: Summary of Senator Proxmire's Securities Regulations Bill (S. 1323)

I. Closing the 10-day Window

Present Law.

Under the Williams Act (1968), any person who acquires more than 5% of a registered security must disclose his holdings and the purpose of the transaction within 10 business days. During the 10-day window period the individual may acquire additional securities without public disclosure.

Problem.

The SEC Advisory Committee on Tender Offers has found that this 10-day period represents a "substantial opportunity for abuse" according to a 1983 SEC Advisory Committee report. The report recommended that the 10-day window be closed.

Proxmire Bill.

Requires disclosure by "close of business the following day" for purchase of greater than 3% of a registered security. This disclosure must include the intent of the purchase ("investment" or "control"), the identity of people with whom the acquisition was discussed within the last 90 days, the terms and source of financing, and the fees paid. The individual (or group) may not purchase additional shares until this information has been made public. If the buyer discloses that his purchase was made for "investment" purposes, the buyer is prohibited from purchasing additional shares for 6 months.

II. Tender Offers

A. Present Law.

Once a tender offer has been made, it must be left open for a minimum of 20 days.

Problem.

Many in the business community have argued that this is not enough time for shareholders to make an informed decision on a reasonably complex transaction. The 1983 SEC report (mentioned in section I above) suggested that the offering period be extended to 30 days. A number of business executives have suggested that the offer be extended for 60 or 90 days.

Proxmire Bill.

Extends the offer response period to 35 days.

B. Present Law.

Under present law "creeping tender offers" gradual acquisition of control through small increments in shares held are possible.

Problem.

A number of individuals have suggested that "control" is an asset of a corporation that should only change hands in the light of day. Concentration of a large block of stock in relatively few hands permits the acquisition of control through open market purchases which generally do not provide the average shareholder with the benefits associated with tender offers. Most of those involved appear to agree that establishing a threshold is necessary, although there is considerable disagreement over what the appropriate level should be.

Proxmire Bill.

Sets threshold at 15%.

III. Greenmail Restrictions

Present Law.

A target company may buy out the raider's stock at a premium that is not offered to the average shareholder. This practice can be used as an offensive tactic by a raider which would allow target management to retain control or as a

defensive maneuver to thwart an actual takeover.

Problem.

Some argue that all shareholders should be allowed to benefit from the premium offered to the raider. The target management should not be allowed to pay a premium for this stock to the eventual detriment of the shareholders. Because greenmail can dramatically increase the debt burden of the company, shareholders should arguably have a voice in this process.

Proxmire Bill.

Greenmail is outlawed; companies may not pay a premium for stock that is not offered to all shareholders.

(Note*: The current disparate treatment between open market and negotiated purchases or tender offers places the tender offer bidder at a competitive disadvantage in the control contest. The proposals listed above attempt to equalize the treatment of tender offers and open market purchases.)

IV. Target Management Abuses

Present Law.

A number of target management tactics may be used to fend off a hostile takeover. "Golden parachutes" provide target management with large separation windfalls. "Poison Pills" typically provide for the issuance of stock purchase rights to target company shareholders which automatically, upon transfer of control, allow the them to purchase the securities of an acquiring company, usually at a substantial discount. The target management also has access to any surplus pension funds to help fend off a raider (these pension funds may also be used by a raider to help finance the actual takeover).

Problem.

These practices are usually detrimental to the long-term health of the corporation whether or not the takeover bid succeeds.

Proxmire Bill.

Prohibits each of the practices listed above once a tender offer has been filed.

V. Increased Penalties for Insider Trading, Perjury and Obstruction of Justice

Problem.

The sanctions provided in the Insider Trading Sanctions Act of 1984 have apparently provided minimal deterrence.

Proxmire Bill.

The bill would provide fines of up to $1,000,000 and sentences of up to 10 years for any willful insider trading. The bill would also provide additional 1 year sentences for intentional obstructions of justice and perjury in connection with any investigation of alleged insider trading.

VI. State vs. Federal Jurisdiction

Present Law.

States currently have jurisdiction over the management operations of licensed corporations while Federal law applies to the actions of bidders.

Problem.

With an increasingly national market should there be Federal preemption in these cases to assure uniform treatment of these transactions.

Proxmire Bill.

The role of the state governments in the internal affairs of governance of corporations is reaffirmed.

VII. Private Right of Action

Present Law.

Private right is not uniformly recognized at present for intentional disclosure violations or for violation of the margin requirements in connectin with tender offer financing.

Problem.

Many suggest that a uniform rule is required.

Proxmire Bill.

Private right of action is provided in these cases barring a bona fide error by the filer.

VIII. A number of contentious issues were excluded from the bill. They include:

Regulation of the Financing of Takeovers, esp. "junk" bonds.
Possible requirements that the bidder "tender" the entire company once a certain threshold is reached.
Multi-service form limitations on simultaneous arbitrage and merger-and-acquisition activity.
Increased management liability for employee misconduct.
further extension of tender offer period (beyond 35-day proposal).
Requirement the bidders file an "economic impact statement."
Regulations defending the rights of corporate bondholders.
Increased disclosure requirements for institutional investors.