Therefore, until Congress has made its final pronouncement, it is impossible to rationally evaluate the potential effects of the amendment on the securities industry. The ramifications of this issue go far beyond the question of who is to own the securities depositories. It is clear that the securities transaction process will eventually be controlled nationally by a single integrated organization.[44] Such a monolith could be extremely profitable to the interests which controlled it,[45] and its effective regulation would be essential to a healthy securities industry. The securities depositories, and especially the proposed CSDS, are critical in this area. The CSDS represents a crucial first step and its formation may soon become a *fait accompli.*

The immediacy of the need for a rational evaluation of the issues surrounding securities depositories is clear. The determination of their ownership and control, once made, must inevitably create a tenacious vested interest which would strongly color all future decisions. This determination should be made only upon the rational weighing of all alternatives.

Immediate revision of the UCC may make such a rational weighing impossible. Possible federal action represents a critical and unpredictable element at this time. Also, an immediate amendment clears the way for immediate action. This action, however, has perhaps not been fully considered,[46] and may have certain detrimental and irreversible effects. At the very least, until a "back office" bill is made public law, the proposed amendment should be held in abeyance.

The magnitude of the "paper" problems in the securities industry and the pressing need for reform are apparent. These very facts, however, militate most clearly for only the most well-considered action. Precipitate, unilateral and unreasoned action, rather than leading to timely improvements, can only serve to exacerbate the problem.

RICHARD A. MALM

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[44] Such as was proposed in the National Securities Act, S. 2551, 92d Cong., 1st Sess. (1971).

[45] *See, e.g.*, the discussion of investment and return in a letter from the President of NASD to the President of NYSE. *House Hearings* at 1428.

[46] There has, for example, been no affirmative counter proposal as of yet representing the interests other than BASIC.

CONSTITUTIONAL LAW—EQUAL PROTECTION—A PRIMARY ELECTION FILING FEE SYSTEM UNDER WHICH CANDIDATES BEAR THE COST OF CONDUCTING THE PRIMARY ELECTIONS AND WHICH PROVIDES FOR NO REASONABLE ALTERNATIVE MEANS OF ACCESS TO THE BALLOT, VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.—*Bullock v. Carter* (U.S. Sup. Ct. 1972).

Texas law required candidates in the state's primary election to pay a filing fee as an absolute prerequisite to the candidate's particiaption in the election.[1] Candidates were assessed a portion of the cost of the primary election at fees ranging as high as $8,900. No alternative procedure was provided for potential candidates unable to pay the required fee to appear on the primary ballot by petition or otherwise. Write-in votes were not permitted in primary elections for public office.[2] In a consolidated action by several excluded candidates unable to pay the required fees, several parties intervened as voters desiring to vote for the excluded candidates. A three-judge federal district court declared the filing fee system unconstitutional.[3] On direct appeal, the United States Supreme Court *Held*, affirmed. A filing fee system which requires candidates to finance the cost of conducting primary elections and provides no reasonable alternative means of access to the ballot contravenes the equal protection clause of the fourteenth amendment by establishing a system which utilizes the ability to pay as a criterion for appearing on the ballot. Such a system thereby excludes otherwise qualified candidates who cannot meet the required pecuniary standard and deprives a portion of the voters of the opportunity to vote for candidates of their choice. *Bullock v. Carter*, 405 U.S. 134 (1972).

The constitutionality of state primary election filing fees[4] has in the past been challenged and upheld in state courts as a reasonable exercise of the states' power to regulate elections.[5] The cases turned on the reasonableness of the fees imposed. More recent election cases[6] in federal courts have more

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[1] *See* TEX. REV. CIV. STAT. art. 13.07(a), 13.08, 13.08(a), 1315 (Vernon Election Code 1967).

[2] TEX. REV. CIV. STAT. § 13.09(b) (Vernon Election Code Supp. 1972-73).

[3] Carter v. Dies, 321 F. Supp. 1358 (N.D. Tex. 1971).

[4] For a short historical account of the development of filing fees as a part of the Progressive Movement see Note, *The Constitutionality of Candidate Filing Fees*, 70 MICH. L. REV. 558, 558-59 (1972). It is suggested that filing fees have come under increasing attack because of a change in prevailing national values. Whereas the Progressives were concerned with restriction of the ballot to achieve voting rationality—the filing fees being a means to that end—the thrust of recent electoral reforms has been to increase access to the ballot. This conflict has been translated into constitutional litigation.

[5] *See, e.g.*, Socialist Party v. Uhl, 155 Cal. 776, 103 P. 181 (1909); Keane v. Lawrence, 30 Pa. D. & C. 235 (C.P. Dauphin County 1937); *accord*, Bodner v. Gray, 129 So. 2d 419 (Fla. 1961). *Contra*, Adair v. Drexel, 74 Neb. 776, 105 N.W. 174 (1905); Johnson v. Grand Forks County, 16 N.D. 363, 113 N.W. 1071 (1907).

[6] *See, e.g.*, Evans v. Cornman, 398 U.S. 419 (1970); Williams v. Rhodes, 393 U.S.

closely scrutinized the respective election laws involved for their impact upon the rights of citizens and the equal protection of the laws.[7]

While the filing fees required were limited to primary elections, the creation of the primary election machinery was a matter of state legislative choice and is "state action" within the meaning of the fourteenth amendment.[8] The broad powers of the states to set voting requirements and regulate the conduct of elections are now subject to review as to their consistency with the fourteenth amendment's equal protection clause.[9] Where state action touches a fundamental right,[10] it will be subject to a stricter standard of review requiring a showing of compelling state interest or necessity.[11] Thus, the standard of stricter scrutiny and a higher level of justification of state interests arises where the state action complained of sufficiently impairs the fundamental rights involved.

The United States Supreme Court held in 1944 that a candidate's right to be a candidate in state elections was a right of state and not national citizenship, and because it was derived from the state only, was not subject to the equal protection clause of the fourteenth amendment.[12] While the Court had extended the protection of the fourteenth amendment to the right to vote in state elections,[13] the Court had not, prior to this case, extended such protection to the right to be a candidate in state elections.[14] *Carter* did not attach such fundamental status to the right to candidacy. Rather the Court once again based its decision on the infringement of the right to vote in violation of equal protection.[15]

It was clear that the states must exercise their broad powers in a manner consistent with the equal protection proviso of the fourteenth amendment.[16] The Court was faced in the instant case with the question of which test was to be applied in determining the constitutionality of the filing fee statute. If the Court had adopted the "rational basis" standard of review, the statute may

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23 (1968); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Reynolds v. Sims, 377 U.S. 533 (1964).

[7] *See*, Note, *The Constitutionality of Candidate Filing Fees*, 70 MICH. L. REV. 558, 562-70 (1972); Comment, *The Constitutionality of Qualifying Fees for Political Candidates*, 120 U. PA. L. REV. 104, 109-12 (1971). Comment, *The Primary Filing Fee: Reasonable Regulation or Equal Protection Violation*, 9 SANTA CLARA LAW. 169, 169-70 (1968).

[8] Gray v. Sanders, 372 U.S. 368 (1963); Nixon v. Herndon, 273 U.S. 536 (1927).

[9] Evans v. Cornman, 398 U.S. 419 (1970); Williams v. Rhodes, 393 U.S. 23 (1968); Carrington v. Rash, 380 U.S. 89 (1965).

[10] Shapiro v. Thompson, 394 U.S. 618 (1969); Reynolds v. Sims, 377 U.S. 533 (1964).

[11] Kramer v. Union Free School Dist., 395 U.S. 621 (1969); Cipriano v. City of Houma, 395 U.S. 701 (1969).

[12] Snowden v. Hughes, 321 U.S. 1 (1944).

[13] *See, e.g.*, Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Smith v. Allwright, 321 U.S. 649 (1944).

[14] *Cf.* Turner v. Fouche, 396 U.S. 346 (1970); Snowden v. Hughes, 321 U.S. 1 (1944). *But see* Comment, *The Emerging Right to Candidacy in State and Local Elections*, 17 WAYNE L. REV. 1543 (1971).

[15] See the later comment on the Court's treatment of the right to candidacy in *Wilson v. Moore*, 346 F. Supp. 635 (N.D. W. Va. 1972).

[16] *See* note 6 *supra*.

well have been upheld as a reasonable exercise of the states' power to regulate elections.[17] However, under the application of the more rigid standard of "reasonable necessity or compelling state interest" the statute could not pass constitutional muster.[18]

The Court's opting for the more rigid standard of review can be better understood by a recognition of the convergence of several areas of the law of equal protection: (1) the right to vote, (2) access of political parties to the ballot, and (3) economic access to the ballot. Though these areas have had different lines of development, each at its present stage has had an input in this result.

The Court held in 1944 that the right to vote in a primary election for the nomination of candidates without discrimination by the state, like the right to vote in a general election, was a right secured by the United States Constitution and could not be abridged on account of race.[19] The Court has also dealt with other forms of invidious discrimination in voting rights, such as military status,[20] or place of residence.[21]

In *Harper v. Virginia Board of Elections*,[22] a 1966 case, the Court dealt with the constitutional validity of a state poll tax for voting in state elections. Those affected by a poll tax were not as readily definable as a class as had been the case in previous decisions. The tax was, nevertheless, found to be invidiously discriminatory since wealth or payment of a tax have no relation to voter qualifications.[23] The Court refused to discuss the basis for the right to vote in state elections saying it is enough that once the franchise has been granted, lines may not be drawn which are inconsistent with the equal protection clause of the fourteenth amendment.[24] Voter qualifications as to wealth or the payment or non-payment of a tax introduce irrelevant factors which discriminate by drawing a line excluding those unable or unwilling to pay a voting fee. Thus, a state violates the equal protection clause of the fourteenth amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard.[25]

Two years later the Court invalidated undue restrictions in the second area of input, the access of political parties to the ballot. An Ohio statute severely limiting third party access, and thus their candidate's access to the ballot in a *federal* election was held constitutionally invalid in *Williams v.*

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17 *See* 405 U.S. at 147-49.

18 *See* Note, *The Constitutionality of Candidate Filing Fees*, 70 MICH. L. REV. 558, 576-77 (1972). Of the seven federal district court cases decided prior to this United States Supreme Court case the four that struck down the fees used the "compelling interest" standard while the three that upheld the fees applied the traditional balancing test.

19 Smith v. Allwright, 321 U.S. 649 (1944).

20 Carrington v. Rash, 380 U.S. 89 (1965).

21 Evans v. Cornman, 398 U.S. 419 (1970); Reynolds v. Sims, 377 U.S. 533 (1964).

22 383 U.S. 663 (1966).

23 *Id.* at 666, 668, 670.

24 *Id.* at 665.

25 *Id.* at 666.

Rhodes[26] as a violation of the first and fourteenth amendments. The Court found that the Ohio statute burdened two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes *effectively*.[27] The "compelling state interest" test was applied to these first amendment rights to find the statute invalid.[28] However, the court had specifically declined in the *Harper* case to discuss the first amendment as a basis for the right to vote in a *state* election.[29]

The *Williams* case is particularly important for having established the principle that citizens have more than a right to cast a ballot in a state election. They also have a right to vote for candidates of their choice, and the state may not unconstitutionally burden that right by unduly restricting ballot access to political parties and their candidates. This may logically be extended to candidates in a party's primary such that voters have an effective choice among candidates as well as parties as in the *Williams* case.

Attacks on economic access to the ballot constituted a third area of development in equal protection law which converged in *Carter*. It was not until 1969 that the strict standard of "compelling state interest or necessity" was applied by the Court to non-federal elections to strike down the validity of state statutes limiting the right to vote on the basis of property. The state statutes had restricted the right to vote to owners or lessees of taxable property or parents or guardians of public school children in school district elections,[30] and to property taxpayers[31] or property owners[32] in municipal bond elections. This series of cases[33] established that a "compelling state interest or necessity" will be required to justify limiting access to the ballot by voters on a property basis. The differing interests of property holders and non-property holders are not a sufficiently valid basis for differentiation since both are substantially affected by the results, and cannot justify such an exclusion.[34]

These recent holdings may be construed to prohibit state action which establishes wealth as an absolute requirement to appear on a primary ballot, and therefore limits the voting effectiveness of a segment of voters whose favorite candidates are unable to meet the established pecuniary standard. Such state action has a real and substantial effect upon the exercise of the right to vote and must therefore be shown to be reasonably necessary to the accomplishment of a legitimate state interest. This is essentially the holding of the Court as to primary filing fees. That the Court should have opted for the

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26 393 U.S. 23 (1968).
27 *Id.* at 30 (emphasis added).
28 *Id.* at 31.
29 Harper v. Virginia Bd. of Elections, 383 U.S. 663, 665 (1966).
30 Kramer v. Union Free School Dist., 395 U.S. 621 (1969).
31 Cipriano v. City of Houma, 395 U.S. 701 (1969).
32 City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970).
33 *See* notes 30, 31 & 32 *supra*.
34 City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970); Cipriano v. City of Houma, 395 U.S. 701 (1969).

stricter standard was to have been anticipated as a logical extention of prior case law. However, the practical effect of the *Carter* decision is still in doubt.

The Court was struck in the *Carter* case by the size of the fee required *and* the absence of any reasonable alternative means of access to the ballot. However, it clearly states that no doubt is cast on the validity of reasonable candidate fees in other contexts.[35] The standard of reasonableness for fees and alternative means of access must still be set.

Several writers have argued that filing fees are unconstitutional per se as a violation of equal protection.[36] However, the Court cannot be expected to hold all filing fees invalid as it did the poll tax, since it found that, unlike the poll tax, filing fees do not result in invidious discrimination. Rather, the Court found that the fees per se do have a rational relationship to certain valid state interests to which the "compelling state interest or necessity" test is applied.[37] The most common state interests argued for in support of filing fees are (1) to raise revenue, (2) to limit the size of the ballot, and (3) to prevent spurious candidates from appearing on the ballot. No rational relationship was found between fees or poll taxes and the right to vote.[38]

By holding fees per se valid the Court has opened up a new area of litigation in determining what constitutes a reasonable fee in any particular situation *if* the Court relies upon fees to achieve valid state interests. This is added to the already developing body of law on reasonable standards for nominating petitions.[39] Because it is the function of the states to set election requirements, the Court cannot set precise standards governing fees designed to achieve state interests. Rather the Court's province is one of review of election requirements set by the states. Yet it is difficult to conceive of an equal protection standard that could be applied with any degree of uniformity to state filing fee requirements for achieving state interests. The problem of comprehensively dealing with filing fee requirements set by the states is exacerbated by the diverse filing fee systems among the states. The types of filing fee systems and their effects vary so greatly among states that each must be measured individually under the "compelling state interest or necessity" standard.[40]

This initial thrust by the Court into the area of filing fees represents the extreme situation. Only an absolute fee system has been struck down.[41] The

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[35] 405 U.S. at 149.
[36] *See* note 7 *supra.*
[37] 405 U.S. at 145-47.
[38] Harper v. Virginia Bd. of Elections, 383 U.S. 663, 666, 668, 670 (1966).
[39] *See, e.g.,* Jenness v. Fortson, 403 U.S. 431 (1971); Williams v. Rhodes, 393 U.S. 23 (1968).
[40] The various state election requirements are collected in Comment, *The Constitutionality of Qualifying Fees for Political Candidates,* 120 U. PA. L. REV. 104, 136-42 (1971). *See also* Comment, *The Emerging Right to Candidacy in State and Local Elections,* 17 WAYNE L. REV. 1543, 1561-78 (1971).
[41] Texas has altered its statute in response to the *Carter* case. *See* TEX. REV. CIV. STAT. § 13.07(a) (Vernon Election Code Supp. 1972-73).

applicability to systems imposing lesser restrictions is as yet unlitigated. The *Carter* decision seems to provide little guidance as a practical matter for such future litigation.

The decision stressed two aspects of the Texas filing fee system which rendered it defective: the presence of a requirement that candidates bear the entire cost of the primary election thus resulting in the required payment of unreasonably high fees, *and* the absence of a reasonable alternative means of access to the ballot. Consequently, will a fee that is reasonable be valid even though there is no reasonable alternative provided? And if so, what is a reasonable fee? Or will a fee which is unreasonably high be invalid despite a provision for alternative means of access? Or as the conjunctive "and" implies, will the fees be invalid only where they are unreasonable *and* no alternative means of access is provided?

A number of federal district court cases have held that fees are constitutionally invalid unless a reasonable alternative is provided to candidates.[42] That is, as long as a reasonable means of access is provided, the imposition of a reasonable fee is a valid exercise of a state's power to regulate elections. This approach seems compatible with a holding that filing fees per se are valid as long as they do not impinge upon the fundamental rights of voters to choose effectively among candidates. This is essentially the *Carter* holding.

The *Carter* case seems to cloud rather than clarify this line of cases. However, it can easily be reconciled by placing emphasis on alternative means rather than fees. A fee which covers the actual cost of processing a candidate's application for ballot placement and the actual printing of his name on the ballot would be clearly permissible. The actual cost of this to the state can be easily estimated and would be nominal. The accomplishment of valid state interests can be met by alternative means which do not impinge upon the interests of candidates or upon the interests of voters.

This approach is suggested by the line of district court cases and by the *Carter* decision itself. The Court states that no doubt is cast on the validity of reasonable candidate filing fees or licensing fees *in other contexts*.[43] In other words, taken out of the context of revenue raising, limiting ballot size, and recruiting serious candidates, reasonable fees are not to be challenged. The imposition of a fee is not per se invidious discrimination and thus invalid. Fees become invalid when they create a pecuniary standard in pursuit of state interests which imposes undue restraint upon fundamental rights. Equal pro-

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[42] *See* Carter v. Dies, 321 F. Supp. 1358, 1362 (N.D. Tex. 1970), *aff'd. sub. nom.*, Bullock v. Carter, 405 U.S. 134 (1972); Thomas v. Mims, 317 F. Supp. 179, 182 (S.D. Ala. 1970); Georgia Socialist Workers Party v. Fortson, 315 F. Supp. 1035, 1041 (N.D. Ga. 1970), *aff'd. on other grounds sub. nom.* Jenness v. Fortson, 403 U.S. 431 (1971); Jenness v. Little, 306 F. Supp. 925, 929 (N.D. Ga. 1969), *appeal dismissed sub. nom.* Matthews v. Little, 397 U.S. 94 (1970). *Cf.* Jenness v. Miller, 346 F. Supp. 1060 (S.D. Fla. 1972). *See also* Socialist Workers Party v. Welch, 334 F. Supp. 179, 182-85 (S.D. Tex. 1971) for a summary of cases in the area. *Contra*, Fowler v. Adams, 315 F. Supp. 592 (M.D. Fla. 1970); Wetherington v. Adams, 309 F. Supp. 318 (N.D. Fla. 1970).

[43] 405 U.S. at 149 (emphasis added).

tection does not require that everyone have a chance to get his or her name on the ballot. It requires that standards which impose restrictions upon fundamental rights be reasonably necessary to the achievement of a compelling state interest. Nominal fees to cover actual costs arising solely because a particular candidate chooses to run, and *not* because a state holds an election, and which are held within easily definable limits, do not run afoul of equal protection standards. A candidate can reasonably be expected to bear the direct costs of a decision to run as long as no pecuniary standard is required[44] in much the same way as one choosing to marry bears the cost of a marriage license.[45] This approach is also suggested by the Court's language in examining the compelling nature or necessity of fees in achieving the state interests of controlling ballot size and insuring the seriousness of candidates placed on the ballot. The Court refers to the fees as extraordinarily ill-fitted to the goal of insuring the seriousness of candidates and states that other means are available to protect valid state interests.[46] Such an approach has two major strengths. First, it avoids any development of a pecuniary standard because allowable fees are held within a reasonable range and other means are used to achieve valid state interests. Second, other means, such as a petition system are more directly and rationally related to the states' interests because the standard established has a more direct relationship to the goals the state seeks to achieve.

The Court recognized three state interests as valid in the *Carter* case:[47] (1) regulating the number of candidates on the ballot,[48] (2) insuring that candidates placed on the ballot are serious and not frivolous or fraudulent[49] and (3) covering the cost to the state of holding elections by raising revenue.[50]

The raising of revenue to cover election costs, while recognized as a valid state interest, cannot justify incursion upon the voters' fundamental rights.[51] The cost of elections as a part of the democratic process is a burden to be born by the taxpayers generally.[52] As a state interest it is clearly secondary to voter rights.

The other two state interests are a more integral part of the states' role in the electoral process and its power to set election standards. But as the Court points out, other means are available to protect those interests. The

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[44] *Cf.* Jenness v. Miller, 346 F. Supp. 1060 (S.D. Fla. 1972).

[45] See the Court's language in 405 U.S. at 148, n. 29 where it states that a different case for the Texas fees would be made if the fees approximated the cost of processing a candidate's application for a place on the ballot, a cost resulting from the candidate's own decision to enter the primary. In this sense the term filing fee covers the cost of filing, *i.e.*, placing a document on the public record.

[46] 405 U.S. at 146.

[47] *Id.* at 145, 147.

[48] Jenness v. Fortson, 403 U.S. 431, 442 (1971); Williams v. Rhodes, 393 U.S. 23, 32 (1968).

[49] Jenness v. Fortson, 403 U.S. 431, 442 (1971).

[50] *Cf.* Harper v. Virginia Bd. of Elections, 383 U.S. 663, 674 (1966) (dissenting opinion).

[51] 405 U.S. at 147-49; Jenness v. Miller, 346 F. Supp. 1060 (S.D. Fla. 1972).

[52] 405 U.S. at 148.

petition system, the most widely used means,[53] establishes a standard of public support to be shown as a prerequisite to ballot placement rather than a pecuniary standard. Such a standard is more directly related to restricting the ballot to serious candidates and is more equally applicable to all citizens whatever their status. Requiring a showing of support will restrict the ballot and insure seriousness both on the part of the candidate and on the part of the voters who give such support.

Applying the principle that a state's interest in employing a particular means of achieving valid state interests will not be necessary or compelling if there is available a viable alternative to achieve substantially the same result and place a lesser burden upon fundamental rights,[54] it is clear that a fee system must yield to alternative means of access. This approach to the reconciliation of filing fees and fundamental rights is practical, logical and consistent with current case development. It should provide adequate guidelines for further development in the area.[55]

DEAN POWELL

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[53] *See* note 40 *supra.*

[54] *See* Boddie v. Connecticut, 401 U.S. 371, 381-82 (1971); Wormuth & Mirkin, *The Doctrine of the Reasonable Alternative,* 9 UTAH L. REV. 254 (1964); *Developments in the Law—Equal Protection,* 82 HARV. L. REV. 1065, 1102 & n. 154 (1969); Note, *Discriminations Against the Poor and the Fourteenth Amendment,* 81 HARV. L. REV. 435, 442 (1967).

[55] For an application of *Carter* principles see Jenness v. Miller, 346 F. Supp. 1060 (S.D. Fla. 1972).

SECURITIES—AN ACQUIRING CORPORATION'S LIABILITY FOR MISLEADING STATEMENTS CONTAINED IN THE ACQUIRED CORPORATION'S PROXY STATEMENT: WILL S.E.C. RULE 145 ABANDON THE "CONTROL" TEST OF BEATTY V. BRIGHT?—*Beatty v. Bright* (S.D. Iowa 1972).

An acquiring corporation has hitherto not been liable for misleading statements contained in the acquired corporation's proxy statement in a stock-for-assets reorganization under most circumstances.[1] However, with the adoption of SEC Rule 145,[2] an acquiring corporation will be liable for such misstatements even though it has no effective control over the acquired corporation.

In consummating a merger of Gains Guaranty Corporation (hereinafter Gains) and Life Investors, Inc. (hereinafter Life), the management of Gains sent proxy solicitation materials to its shareholders to secure approval of the transfer of Gains' assets to Life in return for stock in Life. While these and other instruments were being prepared, there were two shareholders' derivative suits pending against Gains' officers and directors. In a series of letters between officers, accountants, and attorneys for both corporations, Gains informed Life of the details of the pending litigation. At all times Life was kept informed as to the development of the proxy materials. The reorganization agreement, in essence, provided that Gains warranted that the consummation of the transfer would not violate any law, that the agreement would be validly authorized by Gains' corporate action, and that the instruments furnished by Gains would not contain any material misstatements or omissions. The obligations of Life were conditioned upon the truthfulness of Gains' representations. In addition, the merger agreement and other instruments were subject to the approval of Life's counsel "as to legal form, content, and sufficiency." The proxy statements sent to the Gains shareholders, however, failed to disclose the nature and extent of the two pending derivative suits. Plaintiffs contended that, as a matter of law, the approval control held by Life was sufficient to render it liable for the misleading proxy statement prepared and sent by Gains. In denying plaintiffs' motion for summary judgment against Life, the United States District Court, Southern District of Iowa, *held, inter alia,* that the contract provision and Life's activities under it did not establish such control over the Gains' proxy statement as to render Life liable for misleading statements contained therein. *Beatty v. Bright,* 345 F. Supp. 1188 (S.D. Iowa 1972).

In *Beatty*, the degree of control of the acquiring corporation over the acquired corporation was a significant factor in determining the liabilities for misstatements or omissions in proxy statements prepared by the acquired corporation.[3] However, in light of recent developments in the area of securities

[1] Beatty v. Bright, 345 F. Supp. 1188 (S.D. Iowa 1972).
[2] SEC Securities Act Release No. 5316 (October 6, 1972).
[3] 345 F. Supp. 1188, 1192 (S.D. Iowa 1972).