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ADDRESS

OF

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Commissioner, Securities and Exchange Commission

before

AMERICAN SOCIETY OF CORPORATE SECRETARIES, INC.

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Your Secretary has suggested that I talk to you this afternoon about the proxy rules administered by the Securities and Exchange Commission. The entire subject of proxies is one in which I am sure you have a keen interest. As corporate secretaries, you, along with the company's lawyers and accountants, have most to do with the preparation of your companys' proxy materials. It is a subject in which I have long had a personal interest, both as a stockholder in various corporations and as an officer or director. In these various capacities I have had personal experience with the operation of the Commission's proxy rules. While I have been with the Commission only a short time and therefore cannot hope to be an expert in the detailed application and interpretation of the Rules, I can speak from practical experience with their operation.

I have gathered from various sources several of the more significant problems which currently confront the Commission, and you as well, under the proxy rules. It is of these problems that I should like to talk to you, in the hope that through an understanding of existing difficulties, corporations may assist the Commission in eliminating as many of them as is possible in connection with our planned proxy revision program.

The Commission's proxy powers are derived from Section 14 of the Securities Exchange Act of 1934, which authorizes the Commission to promulgate proxy rules and prohibits the solicitation of proxies in connection with securities listed on national securities exchanges in contravention of rules prescribed by the Commission. It is important to note that the Commission's proxy powers do not extend to unlisted

securities. However, by other statutes, they now cover all securites of registered public utility holding companies and their subsidiaries, and securities of registered investment companies. About a year ago, after an extensive study, the Commission made certain recommendations to Congress, which if adopted, would extend the proxy rules to companies whose size and dispersion of ownership, in the Commission's opinion, make the application of the proxy rules highly desirable in the interest of the security holders of those companies. No action has been taken on this recommended legislation.

The reasons which prompted the decision of Congress in 1934 to give the Commission proxy powers are fairly obvious. The stockholder is the owner of the enterprise - his money has financed it and his investment is at risk. The large corporation has come to be an important characteristic of American economic life. It represents a huge aggregation of capital, derived for the most part from the individual investments of many thousands of security holders. It is impossible, as a practical matter, for stockholders because of their number and wide dispersion over the country to direct the operation of the corporation. Accordingly, the stockholders have delegated to the directors and to the officers the task of management, which includes the formulation of policy and the direction of operations of the business, but have retained the authority to make many important decisions, such as the election of directors, authorization of securities, and the determination of certain other corporate matters. Here again, because of the impracticability of having all stockholders meet in person to make these decisions, machinery had to be created which

would permit each to express his individual preference. The proxy has been developed as a device for securing this expression of the stockholder's will. When the proxy is misunderstood by the shareholder, or is abused by the management, this purpose is frustrated.

The proxy powers which Congress has given the Commission, and Regulation X-14 which the Commission has promulgated pursuant to that grant of power, are both predicated on the idea that management is a stewardship which must be directed by the informed judgment of the owners of the enterprise. In accordance with the basic philosophy of full disclosure which underlies all the Securities Acts, the proxy rules are designed to assure that the vote of stockholders on corporate matters is based on adequate and truthful information. One must always appraise the proxy rules and their operation with that in mind. You and I know from experience that it is difficult, if not at times impossible, to inform shareholders fully, but all data and information available and relevant must be made available to them.

Over the years, the Commission has gathered experience with the operation of the proxy rules. In the light of that experience, several changes have from time to time been made in the rules. Initially, the rules were little more than a prohibition against falsehood. Experience with this type of rule showed that it was inadequate. Directors were voted on without a disclosure of their names - an experience, I might say, which I have had myself as a shareholder in certain corporations. Important corporate action was proposed on the basis of sketchy information or none at all. In 1938 the rules were revised, and for the

first time affirmative, specific disclosure was required for the general run of corporate action requiring votes. After working with these rules for several years, clarifying and simplifying revisions were made in 1940. At that time the 10 day rule was adopted, requiring the advance filing with the Commission of the soliciting materials.

The last major changes in Rule X-14 were adopted in 1942. In that version, many important changes were made, including the adoption of the specific requirement that stockholders' proposals be set forth in the management's soliciting material. We have now had several years' experience with the present rules. In the main, this experience has been satisfactory. Much of the criticism that was heard when the rules were being considered has proven unfounded. On the other hand some problems have come up which suggest the desirability of revising the present rules. Your suggestions in this connection will not only be appreciated, but are solicited.

A source of great discontent with the proxy rules is in the requirements for disclosure of compensation. Prior to the 1942 revisions if a nominee for director received one of the three highest aggregate remunerations paid by the company or any subsidiary to any officer, director or employee, that compensation had to be stated in the proxy statement. In addition a statement was required of the aggregate remuneration paid during the year to directors, officers and others in a management capacity. It soon became apparent to the Commission that its requirement did not obtain a sufficient disclosure of the individual salaries of the policy making officials of the corporation. In letters to the Commission, stockholders had evidenced a great interest in this type of disclosure.

Because of this, the Commission in 1942 adopted the present rule. In this revision, requirements were added for information as to compensation of officers and others earning over $20,000 per annum, and as to the compensation of individual directors and nominees. It has been urged by many companies that the coverage of the rule is too broad. For example, it requires disclosure of payments to many minor executives and non-policy making officers, salesmen and independent contractors, such as tool designers, architects, attorneys, accountants, advertising agencies and investment bankers. It may be doubted in many cases that a useful purpose is served by such disclosure and, in addition, there may be considerable merit to the argument that in many cases disclosure of the disparity in remuneration paid to various minor executives gives rise to serious intra-corporate personnel problems. This entire matter will be reexamined, and I am informed that our staff is preparing to recommend some change in the requirements to eliminate the necessity of disclosing information not material to stockholders. In this connection it may be of interest to note that in the revision of our basic Securities Act registration Form S-1, adopted on January 15, 1947, disclosure is required only of (1) the remuneration paid to each director, executive officer, or stockholder owning more than 10% of the stock of the registrant, who receives in excess of $20,000 or 1% of the total assets of the registrant, whichever is smaller and (2) the aggregate paid to all directors and officers.

Some criticism continues of the rule requiring the inclusion of 100 word statements on behalf of stockholder proposals in the management soliciting materials. This requirement is in addition to the requirements for circularizing of stockholder proposals and for making available facilities for mailing stockholder soliciting material. It is my view that the 100 word statement requirement is proper, for it does no more than add a privilege of explaining the stockholder's position if the management proposes to vote against it. It was widely charged when this new requirement was adopted that it would provide a "field day for crackpots". Experience has proved that these claims were entirely unfounded.

We have found that for the most part stockholder proposals are thoroughly pertinent to corporate activities and proper steps for stockholder action. In many cases they have been proposals already adopted by other companies. They have related to such matters as the place of holding meetings, the institution of bonus plans, the expansion of informational reports to stockholders, and the election of independent auditors. In the four years of operation of the proxy rules from 1943 to the close of the year 1946, managements have filed 6,204 proxy statements and during that period there were only 153 one hundred word statements permitted by the Rule, or slightly more than 2%.

Another difficulty noted in our present rules relates to follow-up materials. Such material need not be filed in advance of mailing but must be sent to the Commission only when it is mailed to stockholders. As a consequence, we find that in the heat of a close contest those soliciting proxies frequently go beyond the limits of excusable partisan comment into the realm of misstatement. The advantages derived from the

Commission's review of the original material are lost in the flood of misleading unreviewed follow-up material. The Commission is also placed in the position of having to apply for a court injunction to secure a postponement of the meeting and correction of the material in question. This remedy is an extreme one. A better method would be an arrangement for advance perusal, a practice many now use informally.

As you know, all registration statements filed with the Commission under all the Acts which it administers are public from the moment of filing. This is also true of proxy filings under the Public Utility Holding Company Act, but at the present time it is not the practice as to other proxy soliciting material. Comment received from interested persons during the examining period as to material omissions or misstatements has been so helpful in other instances that it may be that a change in the rules making proxy soliciting material public during the 10 day advance filing should be adopted, with resultant benefit to the Commission and to all concerned.

I want to mention one more situation which requires the special consideration of those who prepare proxy materials. Item 5 (1) (4) requires the disclosure of all obligations of a director or officer to the corporation. Under Section 16 (b), a director who makes short term trades in the stocks of the company is liable for his profits. Not infrequently such a profit is realized by a director or an officer without his appreciating that under the law such profit inures to the benefit of the corporation and that the liability to the corporation must be disclosed in the proxy statement. Our experience has been that when we discover from our records that such a situation exists and call it to the attention of the company, the profit is usually turned over to

the company by the director or officer. Under such circumstances disclosure in the proxy statement is not required.

As I have indicated, the basic requirement of the proxy rules is that the solicitation of the proxy shall be accompanied by a proxy statement designed to inform the stockholder of the material facts necessary for the exercise of prudent judgment. The proxy itself is viewed by us as a sort of ballot. As a result of the Rules, the stockholder is given a place to vote for or against each proposal. A forward step has thus been taken in the direction of giving reality in the field of corporate affairs to the fundamental democratic principle of the right to vote. The proxy is no longer a one way ballot, where the only choice is between voting "yes" or not voting at all. But in some instances, we find the proxy has come to resemble a sample ballot of a political party, rather than a straight ballot. Various devices are used to attract the stockholder's "X" into the desired box - oversized boxes, colored type, arrows and explanatory material. These methods seem highly objectionable. The arguing should have been done in the proxy statement. The proxy itself should simply register the stockholder's vote, it should not contain argumentative material.

In our review of the proxy rules we will also give consideration to such matters as the solicitation of proxies for stock held in street names, the activities of professional solicitors, problems arising in proxy contests, duties of issuers to send out opposition material pursuant to Rule X-14A-6, what constitutes new as contrasted to follow-up material, the meaning of "interest in any matter to be acted upon" as used in Item 4 (b), what constitutes an arrangement or understanding for

the election of any person as a director, the definition of a material transaction by a director under Item 5 (H), what constitute "related matters" not requiring separate boxes in the proxy form, and other items of less general interest.

I have tried to give you some of the highlights of the problems which arise under the proxy rules. As I am not an expert in the application of the Rules, I hesitate to answer any specific questions concerning them. However, I would be interested in hearing your views on the subject, and I have here with me Mr. Edward T. McCormick, of the Commission's staff, who will endeavor to answer some of your questions. I want to caution you, though, that neither of us is prepared to give any interpretative opinions "off the cuff".

In closing I want to say that we of the Commission believe that the staff and the Commission itself should do all in its power to simplify and accelerate all corporate clearances with the Commission. You may be sure that I shall have that in mind at all times.

It has been a pleasure to appear before you at your first annual meeting. Your organization can perform an important function in American corporate affairs, and I wish you every success.

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