

December 5, 1934.

Judge John J. Burns, General Counsel,
Securities and Exchange Commission,
1778 Pennsylvania Avenue,
Washington,
D.C.

Dear Judge Burns:

On November 15th you acknowledged a letter which I had written to Mr. Kennedy on November 5th, containing draft of a letter we proposed sending to the Presidents of listed corporations in regard to certain matters connected with the securing of proxies. The letter in question has since gone out.

In the course of your letter of the 15th instant, you said that you would be interested in hearing how our circular letter was received and whether it was carried out, and would be glad to receive any further suggestions which we might have to make.

I regret that other matters have prevented my replying earlier to your letter.

In your letter you also said that you had been considering the desirability of a rule which would require a broker to obtain, before sending to a proxy committee any proxy in respect of any security held by him for the account of any customer, the written consent of such customer after the broker had sent or given to such customer the information sent out with proxy solicitations. We should question the desirability of such a rule, for the reason that, in the case of the great majority of proxies solicited, there is no contest or controversy, and such a rule would tend to make even more difficult the present very difficult situation as to the securing of sufficient proxies to transact the proper business of a company. This is particularly so in cases of

non-dividend paying stock, where the holder of record, in many instances, is not the actual owner of the stock.

This Committee now proposes to circularize the Members of the Stock Exchange by sending to them a copy of the letter to the Presidents of listed corporations included in such circular letter, a draft of which is enclosed for your inspection. We believe that this circular letter to Members will meet the points which your Commission evidently has had in mind in securing the written consent of a customer in cases of controversy, while, on the other hand, leaving the Membership of the Exchange free in non-controversial cases to aid corporations as much as is practicable in the transaction of such of their business as requires proxies for meetings.

The various rules and letters bearing upon the situation which the Stock Exchange has issued in recent years may be summarized as follows:-

From Chapter XIV, Section 10, Rules of the Governing Committee:

“No Member of the Exchange or a firm registered thereon shall sign or give a proxy to vote on the stock of a corporation or association registered in the name of such member or firm, except to the actual owner thereof upon demand therefor, unless such stock is in the possession of such member or firm or unless such member or firm or a customer thereof is the owner of or has an interest in such stock at the time such proxy is given.”

The foregoing Section was amended into its present form on January 9th, 1929.

On January 14th, 1929, Members were circularized to the effect that the foregoing rule prohibits a Member or his firm from giving a proxy to vote on stock which is not in his or his firm's possession and in which neither he nor a customer has any interest, but that the rule does not prohibit a Member or firm from giving proxies to vote on stock standing in his name or that of his firm. The interpretation given was as follows:

(a) If stock is in the possession of the Member or his firm, a proxy may be given to vote such stock by such Member or his firm; and it is not necessary that the Member or his firm should have any interest in or lien upon the stock of which he or his firm has possession.

(b) If a Member or his firm has any interest in or lien upon the stock of a customer or other person, a proxy may be given to vote such stock by such Member or his firm.

(c) If the customer of a Member or his firm is the owner of or has any interest in the stock, a proxy may be given to vote such stock by such Member or his firm.

If in any of the above three cases the owner of the stock in question has specifically expressed his desire to vote on such stock himself, the proxy must be given by such Member or his firm to such owner or to such person or persons as may be designated by him.

(d) A proxy may in all cases be given to the owner of stock standing in the name of a Member or his firm or to any person or persons designated by such owner upon his request, although the stock is not in the possession of such Member or his firm.

In this circular of January 14th, 1929, Members were asked to co-operate with corporations and associations endeavoring to trace stock for the purpose of obtaining proxies.

On July 19th, 1934, a circular of the Committee on Securities requested Members, insofar as might be possible without involving additional expense, to transfer certificates of stock which they hold in names of persons or firms over whom they have no control into their own names or the names of persons over whom they have control sufficiently in advance of a stockholders' meeting to afford opportunity for convenient solicitation and the collection of proxies.

On November 1st, 1934, Members were circularized calling their attention to the relatively small number of Members who appeared to be complying with the request for co-operation, calling attention to the difficulty of obtaining sufficient proxies to secure quorums of

stockholders at meetings, and urging Members to give this matter serious and continued attention.

We should be glad if you would consider this as a reply to that portion of your letter asking for suggestions, and recommend that any rules which may be adopted by the Commission in this respect conform to the intent and meaning of the rules of this Exchange and of the various circulars explaining them, all as herein set forth. We make this suggestion in the belief that it is in the best interest of both majority and of minority stockholders.

The only thing in this proposed circular about which it seems that there could be a difference of opinion is as to what a Member should do upon learning of an existing controversy after he has signed his proxy and sent it to his client to be forwarded to the company. It would appear to us that, as to this, reliance should be placed upon the client rather than upon the broker. The client has already, by the fact of receiving the signed proxy from the Member, had his attention called to the necessity for furnishing proxies. In the event of a contest, he has, of course, the right to ask the Member to revoke the proxy given and to give another one in accordance with his (the client's) desire.

Detailed instructions upon this point would, we fear, complicate the matter unduly and lead to misunderstanding, so that it seems to us better to leave it as it is left in the circular letter.

We shall await further word from you before sending to the Members the proposed additional circular, copy of which is enclosed.

Yours very truly,

Executive Assistant.

JMBH:K