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Investment Bankers Conference, Inc.,
1010 Vermont Ave., N. W.,
Washington, D. C.

Gentlemen:

It would expand this letter unduly if I attempted a critical analysis of the proposed SEC Proxy Rules. I shall, therefore, limit myself to a very brief discussion of the high points.

1. Rule LA1 (b). Under this definition there may be an "implied" request for a proxy. It seems to me that there should be no room for doubt as to the occasions on which a proxy statement with all the information required thereby should be submitted to a stockholder, and the management of a corporation should not be left speculating as to what the SEC, or some court, may determine to be an implied request for a proxy. Many favorable statements sent out by the management to its stockholders during the course of the year might be construed as an implied request for a proxy for the annual meeting to be held after the close of that year.

2. Rule LA2 (b). Subdivision (ii) of this subdivision might prove difficult for a broker. Assume that a broker, immediately after the record date, sends all of the soliciting material to all of his customers who are long on a particular stock. One or two of those customers fails to forward the proxy and the issuing company sends additional material or an additional request to the broker. Does that additional material or additional request also have to go to those customers who have already forwarded their proxies? And, at this point, would it not require a lot of additional correspondence by the broker to ascertain those of its customers who have failed to send in their proxies?

3. Rule LA3 (ii). This would seem to place a great burden upon the issues. Quite aside from charter provisions and the provisions of other documents, there might be numerous statutes which may have more or less bearing upon the rights of a stockholder. Lawyers might very well be in disagreement as to the application of some of these statutory provisions. Take a simple illustration: Suppose a proxy is requested merely for the election of directors, what are the rights of a stockholder who dissents from the action to be taken? In some cases, of course, the directors merely hold over. If a stockholders' meeting is not held and no directors elected, a special election may be held at the instance of a stockholder. Do we have to spread all this stuff out, despite the circumstance that the failure of a few stockholders to return their proxies will not affect the election of the directors in any event? Incidentally, it is to be noted that the proposed rule says, "a citation to any provisions". This might be satisfied by merely giving the stockholder the chapter and section of the law. While this might be a great help to us lawyers, I do not think it would greatly enlighten the stockholder himself.

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4. Rule LA3, 4 (b). A great many questions will necessarily arise out of this subdivision. What is a substantial interest, and what is a substantial interest direct or indirect? What is the interest of a director who would like to have himself reelected as a director? What is the interest of an officer who would like to have his whole Board of Directors continue?

5. Rule LA3, 4 (c). This should make for a good deal of wrangling. Boards of Directors are supposed to act as a Board by a majority or by some other vote. I suppose that some directors vote against some proposals because they represent some particular interest, or in certain cases because of some other reason which does not bear upon the merits of the proposal. The bare statement of such notification, without a statement of the reasons, might not be fair to the issuing company or to the directors.

6. Rule LA3, 6. I take it that under this subdivision, a director is an officer. It might be difficult at the time at which the material is to be gotten out to name all of the directors in favor of whom the proxy is to be voted. Under this subdivision also, the remuneration, etc. of the directors is to be stated. In most cases, of course, this information has been filed with the SEC on Form 10 or 10K, and if it has not been filed on those forms, it has been filed with the Internal Revenue Department and has been published in the newspapers. It is interesting to note that if some stockholder, or group of stockholders, desires to substitute some other directors by reason of a solicitation under Subdivision 5 of this rule, he is not required to state what the substituted directors or officers expect to receive by way of compensation or otherwise. Incidentally, why is it necessary to go back two years under Subdivision 2 and five years under Subdivision 4 when, if this proposed rule goes into effect, the stockholders will have voted once in one case and four times in the other case with the information before them?

7. Rule LA4 (b). The information may have been included in a document previously furnished to the stockholders generally because of the difference in the record dates. Some of the stockholders of record at the later date may not have been stockholders at the earlier date and thus may not have received the material. Even though a company has circularized its stockholders as of the earlier date, is it necessary for a large company to go back and pick out the new stockholders for further circularization?

8. Rule LA5. This, in my opinion, is likely to lead to a great many difficulties administrative and otherwise. Supposing a particular proposal requires the stockholders to vote upon, let us say, four different steps. Unless Steps 1, 2 and 3 are taken, Step 4 may not be taken. Supposing an astute stockholder, knowing nothing about the legal propositions involved, votes "no" as to the first three steps and "yes" as to the fourth step, what good is his proxy? Again, supposing he votes "yes" in favor of 1 and 3, but "no" in the case of 2 and 4, does the poor secretary have to go through thousands of proxies to determine how the thousands of stockholders have voted on the individual propositions?

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9. LA7 (b). It seems to me that in a good many cases it would be difficult, having in mind the necessity of a record date twenty, thirty or forty days before the meeting, to have all this material in completed form with the SEC fifteen days before the first solicitation. It is true that amendments are allowed, but this means additional filing and additional circularization.

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Memorandum re - Propc . rules of the Securities and E ·'ange Commission covering the solicitation of proxies pursuant to Section 14(a) of the Securities & Exchange Act of 1934.

It is important to note that these rules apply only to companies whose issues are listed, or traded in, on a national securities exchange. They appear to represent a compilation of all of the ideas that have been presented during the period between the enactment of the act of 1934 and the present time. In fact, many of our corporations whose securities are both listed and unlisted do supply much of the information when they are soliciting proxies that will be required under these rules. However, the rules do go further by requiring full disclosure to the "Nth" degree. An attempt to standardize the forms is apparent especially since the rule even provides the size type that must be used in the printing of the proxy.

To the average broker or investment dealer, the adoption of these rules will mean little or nothing. To those firms who specialize in underwriting, or whose partners or officers have a substantial interest in the company, the rules will act to curtail an active participation in the management of the company. This statement is used advisably because in the ordinary course of business there should be no objections to active management participation by investment firm employees in a company to which an underwriting house has identified itself by the sale of the securities to the public.

While there is no quarrel with the right of a stockholder to solicit proxies in opposition to the management, the door is left open to "unconscientious objectors" to step into a picture and confuse the issue without having any substantial interest at stake. In the case of the larger corporations where the expense of mailing proxies is prohibitive, this will not be of great importance, but many of the companies whose stockholders may number 1,000 to 1,500 the "unconscientious objector" might well spend a few dollars in order to receive the attendant publicity and to further selfish motive. The question is raised as to the advisability of limiting those persons who can avail themselves of item 5 of rule LA3 and rule LA9 to holders of not less than a certain percentage of the security involved. The fact that they must disclose their stock interest in the company does not do away with the objections referred to above.

Usually a corporation soliciting proxies for its annual stockholders' meeting will have to include all of the information required under items 1, 2, 3, 4, 6 and 14. On the average, other matters will be brought up especially with respect to compensation for officers and employees which will require other detailed information.

In addition, rule LA5 requires that a person solicited must be given an opportunity to specify his approval or disapproval of certain matters to be taken up at the meeting. Thus, when the form of proxy and the information required to be contained therein has been finally determined, it will be quite lengthy and will be more likely to be thrown aside without attention by the stockholder. Under our present corporate setup, quorums must be obtained if corporate business is to be carried out. Full disclosure is necessary, but the thought is advanced that the detailed information required can be further simplified so that

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confusion will not be the result. For example, it is possible to incorporate some information by reference to a registration statement. As a practical matter, I can well vision numerous letters being received by the management of a company asking that this particular information be sent to them.

Primarily, the above points are problems of management rather than of investment houses. It is assumed that the practical problems presented by these rules insofar as corporations are concerned have been studied and passed upon by leading corporations.

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