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PHILADELPHIA

March 15, 1943

Honorable John Taber
House of Representatives
Washington, D. C.

My dear Congressman Taber:

Receipt is acknowledged of your letter of March 1 in which you state that several persons have spoken to you of a provision of the proxy rules which they understand requires that any solicitation of proxies must be accompanied by any statement a stockholder wishes to make. They are particularly concerned over the possibility that under this provision the management of a corporation might be compelled to circulate libelous matter in its proxy statement.

I can readily understand your indignation over the adoption of any rule that would have such an effect. Your informants' concern, however, is clearly based upon a misunderstanding of the rules now actually in effect. Not only is the circulation of libelous matter not required of managements, but it is definitely prohibited by another section of the regulation.

I enclose a copy of the rules for your convenient reference. The rule to which they refer is X-14A-7. It permits a stockholder to have included in the management's proxy statement any proposal which is a proper subject of stockholders' action. It also permits the stockholder making the proposal to have included in the proxy soliciting material a one-hundred word statement in support of it. Your informants apparently considered this last provision alone and assumed that it compelled the management to include libelous matter in its proxy statement if a stockholder chose to draft his hundred-word statement in a libelous fashion. They have overlooked rule I-14A-5 which provides that no proxy soliciting material shall contain untrue or misleading statements. This latter provision of the rules is enforced vigorously regardless of whether the statements in question are made by the management or by an individual stockholder. I am glad to have the opportunity of clearing up this misunderstanding.

I may add that the right of a stockholder to have proper proposals included in proxy solicitations has been in the rules for several years. Our observation is that on the whole it has been used by stockholders with restraint and has not imposed any undue hardship on management.

You inquire as to the source of the Commission's authority to adopt the proxy regulations. The Commission was required by Congress to adopt rules regulating the solicitation of proxies. The Public Utility Holding Company Act of 1935, the Investment Company Act of 1940 and the Securities Exchange Act of 1934 all contain substantially similar provisions in this regard. Section 14(a) of the last named Act reads as follows: "It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of

any facility of any national securities exchange or otherwise to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered on any national securities exchange in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." You will note that this provision makes the rules applicable to solicitations in respect of listed securities only. The corresponding provisions of the Investment Company Act and the Holding Company Act make them also applicable to solicitations in respect of securities of investment companies and of public utility holding companies and their subsidiaries.

You ask for a detailed statement of the time spent by the staff and by the Commissioners in preparing the regulations. I regret that I am unable to give you such figures because we have never kept detailed records showing the time spent by each member of the staff on each particular piece of work. I know of no way in which even a fair estimate could be made.

I believe that you will be interested in the enclosed speech which Commissioner O'Brien recently delivered before the National Industrial Conference Board in New York. In it you will find some discussion of the history and purpose of the rule which is the subject of your letter.

If you have any further questions about the rules, I shall be glad to attempt to answer them.

Sincerely yours,

Ganson Purcell,
Chairman

Enclosures:

Proxy rules

Comm. O'Brien's speech

ANDREW JACKSON:LP