SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

OFFICE OF
THE CHAIRMAN

August 22, 1974

HAND DELIVERED

Honorable Howard Metzenbaum
United States Senate
Washington, D. C. 20510

Dear Senator Metzenbaum:

Last Monday evening you asked me for my views on legislation you are preparing regarding foreign ownership of voting securities of publicly-owned U.S. companies. I had hoped before replying that I might see a preliminary draft of your bill, but absent that, I can give you some general views.

I believe you are already familiar with the basic provisions presently in the laws that we administer. You may not be familiar with the Research Report on Member Firms Foreign Activity, prepared by the New York Stock Exchange, and I enclose a copy of the latest report, dated August 7, 1974.

In general, I think any legislation aimed at producing more disclosure of investments held by foreigners must balance several conflicting considerations. The problem of compelling the disclosure of the beneficial ownership and voting power of shares is one which we have not yet solved, or even tried very hard to solve, with respect to U.S. citizens below the 5% or "control" situations. The difficulties lie both in the fact that the issuer corporation has direct access only to record ownership, and we do not compel broker-dealers, banks or other fiduciaries or nominees to disclose for whom they hold stock or who has power to vote it. Senator Metcalf is working on legislative proposals to produce more disclosure than we now get, but I doubt that it will run to all shareholders.

When you add to the many means of obscuring ownership the foreign factor, and especially the bank secrecy laws of certain foreign countries, the enforcement problem becomes very frustrating. We have much trouble trying to discover whether our present laws are being complied with by foreigners. The problem would be compounded many times if we sought to get disclosure of all foreign shareholdings.

I understand that our national policy generally favors the free flow of capital between nations. The necessity to file some form with each purchase or sale would surely act as some deterent, unless, perhaps, the foreign investor learned that he could ignore it with impunity. The burden of reporting could, of course, be placed on the U.S. broker in the transaction. He could report transactions for foreign customers, but he could only report what he knows -- perhaps the name of a Swiss bank. This, in the aggregate, might provide some useful information. We would know that stock was being bought or sold by apparent foreigners even though we would not know their identity.

It would not reach foreign investors purchasing through a U.S. agent, such as a bank, because the broker would not know that the order was for a foreigner unless the bank were forced to tell him. Here, again, of course, the U.S. bank might report only that its principal was a Swiss bank.

Compulsory disclosure by U.S. brokers and U.S. nominees or agents would probably produce order of magnitude data as to aggregate foreign ownership in U.S. corporations. Whether this would be worth the additional burden on our brokers, who are presently hard pressed financially, is the difficult question.

In summary, because of the current financial difficulties facing U.S. broker-dealers and general market conditions, the cost-benefit aspect of this proposal appears doubtful. Nevertheless, if anything is to be done in this direction, I believe that I would place the reporting burden on the U.S. broker-dealer, and require U.S. agents, etc. to disclose to broker-dealers when a transaction is for a foreigner. If this is to be done, it would be a natural

adjunct to the Securities Exchange Act of 1934, with the reports coming to us, since brokers already file many reports with us.

I hope these hasty ideas are helpful.

Sincerely yours,

Ray Garrett, Jr.
Chairman

Enclosure

cc: L. William Seidman
The White House