Comptroller of the Currency
Administrator of National Banks

Washington, D. C. 20219

March 29, 1977

Dear Mr. Chairman:

This is in reply to your request for our comments on S.305, a bill to amend the Securities Exchange Act of 1934 to require issuers of securities registered pursuant to section 12 of such Act to maintain accurate records, to prohibit certain bribes, and for other purposes.

Title I, the Foreign Corrupt Practices Act of 1977, has two main features. Section 102 would amend §13(b) of the Securities Exchange Act of 1934 (15 U.S.C. §78(b)) to require "reporting companies" to maintain accurate records which reflect fairly all transactions and dispositions of assets. A reporting company would, in addition, be required to develop accounting controls sufficient to insure that access to a company's assets is permitted only in accordance with management's general or specific authorization.

This section also would make it unlawful for any person to falsify documents of a reporting company which are required to be made for any accounting purpose or to make materially false or misleading statements or omissions to an accountant.

Section 103 would add a new section 30A to the 1934 Act to prohibit any reporting company from offering, paying, or authorizing the payment of money or anything of value, for a corrupt purpose, to three classes of persons:

1. to an official or instrumentality of a foreign government,

2. to a foreign political party or political official, and

3. to any other person where the issuer knows or has reason to know that anything of value will be offered to any of the entities listed in #1 and #2.

Section 104 would prohibit "domestic concerns," as defined by section 105 of the bill, who would not be covered by new section 30A, from engaging in any of the acts which would be prohibited by that section.

Title II, the Domestic and Foreign Investment Improved Disclosure Act of 1977, would amend the 1934 Act (15 U.S.C. §78c, et seq.) to improve the availability and accuracy of information about the ownership of U.S. corporations. (The Securities Exchange Act is incorrectly cited as Title 14 of the U.S. Code on page 8, line 17 of the bill.)

This Title would amend the 1934 Act to expand its disclosure requirements to include the residence, nationality and nature of the beneficial ownership of a person who acquires more than 5 percent of a public company's stock. A new section 13(g) would be added to the Act under which any person having an interest in 2 percent or more of any class of equity securities described in section 13(d)(1) of the Act of 1934 would be required to disclose that interest to the SEC. This 2 percent cut off figure would be reduced by this proposed legislation to 1 percent on September 1, 1978 and to 1/2 of 1 percent on September 1, 1979. The SEC would be granted the authority to shorten or extend these periods upon a finding that a change is consistent with the public interest.

The Comptroller's Office shares the view recently expressed in many fora that government and business must take effective measures to insure that American corporations adhere to standards of morality which preclude secret funds for the payment of bribes either at home or abroad. Perhaps nowhere is the importance of integrity in business dealings more important than in the operation of our banking system.

It is in this spirit that we offer our support to the Committee in its effort to legislate an end to these unsavory business practices. While this Office supports the imposition of criminal penalties for such acts, we are concerned with the potential enforcement problems which may arise from the adoption of S.305 as presently drafted.

As the Committee is aware, our bank examination responsibilities encompass the overseas operations of a great number of American-based multinational banks. Our experience in this area has underscored, for us, the importance that citizens of other countries--as well as American businessmen operating abroad--be certain of the effect of American law on foreign business practices. For this reason, we believe that the definition of "domestic concern" contained in section 104(c)(1) should be clarified to improve notice to persons potentially affected by this proposed legislation.

As presently drafted, a "domestic concern," would include a corporation which is owned or controlled by individuals who are citizens or nationals of the U.S. We suggest that the definition be amended to specify the degree of control which is needed to subject a foreign corporation controlled by U.S. citizens or nationals to the provisions of the law. The definition of "domestic conern" would also include certain entities owned or controlled by U.S. individuals. (Emphasis added.) It is unclear whether this term is intended to include U.S. corporations.

We do not object to section 102 of Title I which concerns accounting records and dealings with accountants.

This Office has traditionally supported the concept of increased disclosure where it would help investors and serve public policy. We do not think that Title II meets this test; while it seeks to increase disclosure of shareholders in positions of potential control, we think that present law and implementing regulations already go far toward achieving this goal. In our opinion, the present requirement that beneficial owners of 5 percent or more disclose their identities already is effective in revealing those owners with the potential for exercising real control over the corporation.

Moreover, we are concerned with the possible effects of this lowered reporting level on foreign portfolio investment in the U.S. Any actions which might reduce the inflow of foreign capital to the United States during this post-recession period should be studied carefully.

Another reservation reflects our concern with the added paperwork burden which this title of the bill would impose upon the business community. The recent broadening of the definition of "beneficial ownership" by the SEC will produce more disclosure. This Office will then be required to conform our securities regulations, contained in 12 C.F.R. Part 11, to conform with those of the SEC. We believe that before new regulations requiring more documentation are imposed, the need should be clearer and the costs of compliance understood.

While we oppose the present language of Title II, in the event it is adopted we would support the proposed requirement contained in new subsection (g)(6) of section 12 of the Act of 1934. The SEC would be required to consult with appropriate regulatory agencies, including the Comptroller of the Currency, to achieve uniform reporting of information to help minimize the

compliance burden on persons required to report.

In the event that this or similar legislation is enacted, we shall continue to cooperate fully with all agencies given enforcement responsibility to insure that national banks, operating both at home and abroad, do so in full conformity with the law.

Sincerely,

Robert Bloom
Acting Comptroller of the Currency

The Honorable
William Proxmire, Chairman
Committee on Banking, Housing and
Urban Affairs
United States Senate
Washington, D.C. 20510