June 18, 1937.

Investment Bankers Conference, Inc.,
1010 Vermont Avenue,
Washington, D.C.

Gentlemen:

With regard to the draft of the proxy regulations, I have had these carefully gone over by those men in my office who are most familiar with proxy requirements. Some of the requirements are quite onerous and, in my judgment quite unnecessary. Unless changed, these regulations will make it even more difficult than it is already to obtain necessary quorums for meetings.

It seems to me that the corporations, rather than investment bankers, are the ones most affected and who would, therefore, probably have the most constructive suggestions to make.

The sections which, to this office, seem definitely serious, unless a clarifying interpretation is made, are subdivisions 9(c) and (d) of Rule LA3. These clauses in effect require, where stockholders are asked to authorize the creation of securities, that the notice state the price at which such securities are to be sold or made convertible. Under these clauses it would seem impossible to secure proxies from stockholders where a change in capital structure is contemplated, which involves the issuance of new stock or convertible bonds, since in most such cases it would be impossible to state, prior to shortly before the effective date of a registration statement covering the new securities, either the contemplated offering price of the new shares or the contemplated conversion price of the new bonds. Also as I read these clauses they might prevent the creation of a mortgage under which bonds could be issued in series from time to time by the Board of Directors. This can hardly have been intended.

Another provision which seems to me to be unnecessary and really prejudicial the the best interests of corporations and their stockholders is Rule LA7 which requires the issuer to file a proxy statement with the Commission 15 days before soliciting any proxies. This delay, in addition to the necessary delays involved in the other formalities in connection with the authorization and issue of securities, might well prevent a corporation being able to take advantage of a favorable opportunity to sell its securities.

I am sure there are other provisions with which it may not be practicable for corporations to comply, and I hope the regulations will not be adopted by the SEC without first giving all interested parties a chance to comment.

June 10, 1937.

Investment Bankers Conference, Inc.,
1010 Vermont Avenue,
Washington, D.C.

Gentlemen:

Thank you for your letter of June 2 and the draft of the proposed proxy regulations of the Securities and Exchange Commission which were enclosed.

The proposed rules are, of course, much broader than the existing ones and require a superabundance of information to be furnished to stockholders which is much more likely to confuse than to aid them. Moreover, the expense and work in connection with the preparation and solicitation of proxies under the proposed rules would be enormous and the difficulties of obtaining a quorum, which are already great, especially in the case of large companies, would be tremendously increased.

In most well-run companies, a large part of the information which the proposed rules would require to be furnished to stockholders is already supplied or available to them if they desire it, and there would seem to be grave doubts as to the wisdom and economy of devoting great effort and expense, which must come out of the pockets of the stockholders, in printing and furnishing them material which will only find its way into the waste basket.

In many instances the proposed rules disregard the theories with respect to the functions of management and stockholders embodied in state corporation laws.

More particularly, there are certain of the proposed regulations upon which I have more definite comments or suggestions.

1. The requirement of Rule LA - 7 (b) that in the case of solicitations by the issuer or its management, the proxy statement and related material must be filed with the Commission at least fifteen days prior to the first solicitation seems to me to impose a hardship which is neither necessary nor desirable. I think the same purpose could be served if the requirement were that the material had to be filed at the time of the first solicitation, which must be at least fifteen days, or even twenty days, for that matter, prior to the date on which the proposed action is to be taken. In large companies having thousands of stockholders some thirty or more days are already devoted to the solicitation of proxies for the normal annual meeting.

2. As to paragraph 2 of Rule LA-3, requiring a summary of charter provisions and a reference to the relevant statutory provisions relating to the rights of non-assenting security holders, I think that perhaps equitably some reference should be made to specific rights granted by the charter or other document or by statute, as to such rights, if any, of non-assenting stockholders, but it should be sufficient to make a general reference. Otherwise the corporation

will be assuming the burden of giving legal advice to security holders, when in many cases grave doubts and wide differences of opinion exist with respect to such rights which possibly can only be settled by litigation.

3. Paragraph 4 (c) of Rule LA-3 requires the management to make a statement if any director shall have notified it that he opposes any action to be taken pursuant to the proxy or intends to solicit proxies. Under the proposed rule, it would seem that any differences of opinion between directors might have to be disclosed. Frequently Boards are not unanimous in determining the course of action to be pursued and such differences of opinion should not have to be made public lest free expression of opinion among directors and their functions as managers be seriously disturbed. It should be sufficient to require the management to include a statement only when a director files timely with the corporation a written statement to the effect that he opposes the proposed action or intends to solicit proxies.

4. As to information regarding candidates for directors or officers required by paragraph 6 of Rule LA-3, I wish to point out that since proxy statements are to be filed with the Commission fifteen days prior to the first solicitation and since solicitation may cover a period of thirty days or more after the first mailing, candidates may die, become incapacitated, or withdraw their names from consideration.

As a practical matter, it is difficult to determine who suggests any particular person as a candidate for a director or some office. The proposing of the particular candidate may represent the conclusions of any number of different persons reached independently or after discussion with different people. I suppose the question is designed to elicit information as to who is in control of the corporation and who suggests directors be nominated, but I doubt if in practice the information received will be commensurate with the time, trouble and expense necessary to answer this question. For the same reason a statement as to the securities owned by such a candidate may be as misleading as informative. A large security holder may be valueless as a director of officer, while some who own no securities whatsoever of the particular corporation may be invaluable to the corporation.

5. Paragraph 9 of Rule LA-3, relating to information required to be furnished of any proposed action with respect to the authorization of issuance of any securities otherwise than in exchange for outstanding securities, would apparently require a statement of the complete terms, including interest rate, sinking fund provisions of any bonds, and the dividend rate, conversion privileges, etc., of any stock proposed to be issued. This raises a doubt as to whether solicitations could be made simply for a general consent to a mortgage, with or without limitation as to amount, as permitted by some state statutes, or for a charter amendment authorizing serial preferred stock without specifying the terms of the particular series which the state law may authorize the directors to fix when consented by the stockholders. These elements are determinative of the price or value of a particular security, and the specification of these provisions so far in advance can only work to the detriment of the corporation. The information required by this item should at least be limited to that fixed and determined at the time. Otherwise financing plans will be greatly hampered, at resulting cost to the corporation.

6. The requirement of Rule LA-5 that the proxy provide means whereby the person solicited may specify the action which such person desires to be taken on each specific matter will impose a tremendous and expensive burden on companies in connection with meetings if a number of matters are to be voted on, because of the number of combinations which are possible and the detailed calculations required. Moreover, the number of matters and the number of opportunities for expression of opinion may be varied by the method of proposal. If a number of interrelated matters are proposed, but are set forth separately in a notice, how are split votes to be interpreted?

The proposals with respect to bonus plans, exchanges of securities, mergers, consolidation, etc., seem, in the main, to be reasonable.