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June 25, 1937

Mr. Harold H. Neff, Director,
Forms and Regulations Division,
Securities and Exchange Commission,
1778 Pennsylvania Ave.,
Washington, D. C.

Dear Mr. Neff:

I regret that Mr. Berle's memorandum was not enclosed with my letter of June 19th, and I enclose it herewith. In response to your request for the comment resulting from my detailed study of the proposed proxy regulations, you will find it below. This is, as you state, sent with the understanding that the submission of these comments should not be understood as an approval of the issuance of further Rules, excepting as indicated in my letter of the 19th.

If the form of this comment seems dogmatic, it is only so to avoid the constant repetition of explanatory or apologetic phrases, and I am sure that you know that you can rely upon my respect for your opinions, whether or not in particular cases mine may differ.

RULE LA1:

There is no objection to any definition in this Rule, except to the extent that it may be possible that the matter in subsequent Rules suggested for deletion might render a particular definition unnecessary.

RULE LA2:

There is no objection to Paragraph (a).

Paragraph (b):

It is not clear to me under what circumstances a person

would solicit proxies in respect of securities carried in his name if the phrase "carried in his name" relates to the date of record. To this extent my objection is merely due to the fear that others may likewise not understand the meaning of this.

In regard to the exception reading "if no commission or remuneration is paid to such person, directly or indirectly, for such solicitation", I do not see what bearing upon the matter the payment of a commission for solicitation can have. Such a payment, under any circumstances that I can think of, unless extravagant as to amount, appears wholly ethical, and the question as to whether or not the commission is paid should have no bearing upon whether or not the rules are applicable.

Paragraph (c):

No objection.

Paragraph (d):

I do not understand the language of this, and others may have like difficulty. How can the solicitation of a proxy be evidenced by a certificate of deposit or by a registered security?

Paragraph (e):

No objection.

RULE LA3:

SECTION (A):

Paragraph (1):

No objection.

Paragraph (2):

No objection.

SECTION (B):

The information demanded by this Section seems immaterial and to have no bearing upon whether or not a stockholder would wish to sign the proxy. To the extent that it is immaterial, it is confusing, and tends to make it more difficult for the stockholder to reach a wise decision. If there be dissent from this view, it is still submitted that the names of the persons by whom compensation has been or is to be paid are totally immaterial and therefore confusing.

SECTION (C):

Paragraph (4a):

No objection.

Paragraph (4b):

No objection.

Paragraph (4c):

No objection.

Paragraph (5a):

No objection.

Paragraph (5b):

The amount of securities of any class held by a solicitor of proxies other than the issuer or management does not seem to have any possible bearing upon the willingness of the stockholders solicited to sign or to refuse to sign the proxy. If it does have any influence, it should not, inasmuch as such questions should be determined upon logical grounds only. This paragraph seems not only harmful because in any event it is immaterial and therefore confusing, as so much surplus matter, but it may be more directly harmful if any attention is paid to it by the recipient.

Paragraph (5c):

No objection.

SECTION (D):

Paragraph (6a):

No objection.

Paragraph (6b):

I do not think this should be required. The right of nomination should be left open as long as possible, and persons exercising the proxy, even if originally in favor of a particular candidate or set of candidates, should be free to change their minds.

Paragraph (6c)(1) and (2):

If the names of the candidates for the respective offices are omitted, then of course paragraph (6c)(1) and paragraph (6c)(2) would necessarily be omitted likewise. Upon the assumption that the names of candidates will be required in spite of what seem to me to be the strong objections thereto, I would still suggest that Section (6c)(1) be omitted as having no proper bearing upon the action of the stockholder, being an unwarranted intrusion upon the private affairs of the candidate and as being directly harmful to the stockholder on two grounds, (a) it is questionable whether the average stockholder has the broad information as to responsibilities of those in conduct of large businesses to be otherwise than misled to his detriment by the information if received by him, and (b) that it tends to prevent responsible candidates from seeking re-election.

Paragraph (6c)(2):

This information appears to be utterly immaterial, and it does not seem possible to see how its possession could influence the action of the stockholder. It will be confusing and to that

extent will be harmful. It is also harmful in that it will tend to prevent men of ability and with a sense of personal dignity from being candidates.

Paragraph (6c)(3):

This information appears entirely immaterial and will have no effect upon the stockholder's decision excepting to confuse him with the quantity of irrelevant matter.

Paragraph (6c)(4):

This information would be entirely immaterial excepting that it might possibly cause some stockholder to feel that the statement of the connection of the candidate with any principal underwriter was a reason against his selection, in which case the action of the stockholder would be apt to be adverse to his own interest.

Paragraph (6c)(5):

This appears to be of no possible value to the stockholder but of potential harmfulness, for the same reasons as those given in the discussion of the other subdivisions of this paragraph.

All of the provisions of paragraph (6c) will, I believe, be seriously harmful, and I can conceive no possible benefit to any one under any circumstances from the inclusion of this information. I urge its re-examination with a view to its entire deletion. There seems to be nothing in it that will help the stockholder to choose his representatives wisely, and much that will tend to prevent this.

Paragraph (7a)(1):

There is no objection to this as regards the identification of any class of persons eligible to participate in a plan providing for remuneration or compensation. There is, however, strong

objection to giving any identification of individuals eligible to participate in such a plan. If the entire personnel is to participate, such a statement is sufficient. If less than the entire personnel is to participate, disclosure of identities will cause, as it has already caused, if I am correctly informed, in many cases, dissension within the organization, leading to lower efficiency without compensating advantage.

Paragraph (7a)(2):

No objection.

Paragraph (7a)(3):

No objection, but no real advantage, so that on the whole it would appear to be better out than in.

Paragraph (7a)(4):

No objection.

Paragraph (7a)(5):

No objection.

Paragraph (7a)(6):

This seems to be unnecessary detail of no advantage to the stockholder but apt to be confusing to him, and therefore to that extent harmful.

Paragraph (7b)(1) to (5), inclusive:

This paragraph and all of its sub-paragraphs seem to be entirely harmful and of no conceivable advantage to the stockholder. Commenting in detail upon the sub-paragraphs:

Paragraph (7b)(1):

This is objectionable for the same reasons as paragraph (7a)(1).

Paragraph (7b)(2):

This is harmful for the same reasons given in the comment upon

paragraph (6c)(1).

Paragraph (7b)(3):

This appears utterly immaterial, of no conceivable advantage to the stockholder, and therefore of necessity confusing and harmful.

Paragraph (7b)(4):

The pertinent information required by this paragraph is already required under paragraph (7a)(2), and a statement of the effect of the plan upon individuals may be harmful for the reasons given in the comment upon (7a)(1).

Paragraph (7b)(5):

This is subject to the same objections as other paragraphs requiring disclosure of compensation paid to individuals. Theoretically, of course, the owner of a property is entitled to know the compensation which he pays to those whom he has delegated to manage it for him. Practically, it is believed that the matter can not be wisely handled otherwise than through the process of selecting representatives carefully and trusting them fully unless the results obtained are unsatisfactory in view of prevailing conditions.

Paragraph (8):

No objection.

Paragraph (9a):

No objection.

Paragraph (9b):

This is objectionable only to the extent that it is unnecessary, adds to the number of words in the proxy statement, and therefore makes the thing as a whole more difficult to un-

derstand.

Paragraph (9c):

I think that this will often be impracticable for the reason that the information will not be available at the time that the question of authorization or of issuance is before the stockholders. In any event, it would seem that the paragraph should distinguish between an increase in the total authorized amount of securities requiring additional action before issuance and authorization for the present issuance of securities. In the latter case a brief statement of the general reason for the contemplated issuance, without description of the transaction or the nature and amount of the consideration to be received, would be of some advantage.

Paragraph (9d):

No objection.

Paragraph (9e):

There is no objection and very little advantage to this, in so far as the financial statements of the issuer are concerned. In so far as information as to the security holdings of its directors and officers should be set forth, this appears to be entirely immaterial as bearing upon the authorization or issuance of additional securities, and thus by the unnecessary amount of printed matter to tend to confuse the stockholder and to prevent his wise action upon the proxy.

Paragraph (10a):

No objection.

Paragraph (10b):

No objection.

Paragraph (10c):

No objection.

Paragraph (10d):

No objection.

Paragraph (10e):

No objection.

Paragraph (10f):

Information as to the security holdings of directors and officers should be omitted for the same reasons as those given in the comment upon paragraph (9e) above.

Paragraph (10g):

No objection.

Paragraph (11)(opening statement):

It is believed that in a majority of all cases directors act in the first instance upon plans involving the acquisition of another business and plans involving the acquisition of securities of any other issuer, and that in some instances the directors take initial action as to the acquisition by a class of security holders of the issuer of securities of any other issuer. It would appear that to the extent that directors have the power within the law to accomplish these purposes the observance of any onerous conditions as to information to be given in the proxy statement may tend to keep directors from referring to stockholders matters which might otherwise be so referred. Comments upon the sub-paragraphs should be considered in the light of this possibility.

Paragraph (11a):

No objection.

Paragraph (11b):

Omit information as to the security holdings of directors

and officers for reasons set forth in comment upon paragraph (9e).

Paragraph (11c)(1):

No objection.

Paragraph (11c)(2):

No objection.

Paragraph (11c)(3):

It is believed that more often than otherwise it will be impossible to secure financial statements of businesses to be acquired in the detail required by regulations which have been issued pursuant to Section 13 of the Act, and it is known that in many instances it is impossible to secure any financial statements whatsoever in regard to properties to be acquired and as to which there is no reasonable room for doubt as to the advisability of the acquisition. Moreover, the inclusion of lengthy financial statements would appear to be likely to tend to confuse the stockholder when considered in connection with the mass of other information required. It is suggested that this requirement be modified so as to require, when available, a condensed balance sheet and income statement for the last fiscal year of the person whose business or securities are to be acquired. Although full reports can more easily be obtained in the event of merger, it is still felt that condensed financial statements would be more advantageous even for this purpose.

Paragraph (11c)(4):

No objection.

Paragraph (11d):

No objection.

Paragraph (12):

The only objection to this paragraph as a whole is that

any requirements for a statement on the subject in the proxy statement will tend to make directors refrain from presenting such plans to stockholders for approval. Ordinarily this would be quite all right, but occasionally there may be an exception. Paragraph (12) as a whole would probably better be left out, but if put in there is no specific objection to any of its sub-paragraphs.

Paragraph (13a):

This paragraph is objectionable or unobjectionable to the same extent as indicated in the specific comment above upon paragraphs (6) to (12) of this Section.

Paragraph (14a):

No objection.

Paragraph (14b):

The appropriateness of this sub-paragraph is governed by the same considerations as the foregoing comment on the appropriate item or items of this Rule.

SECTION (E):

Paragraph (15):

In view of the comments made in regard to Rule LA5, it is suggested that this paragraph be stricken.

RULE LA4:

Paragraph (A):

No objection.

Paragraph (B):

No objection.

Paragraph (C):

No objection.

Paragraph (D):

This paragraph is objectionable to the same extent as the applicable items of Section (D) of Rule LA3 have been found objectionable.

RULE LA5:

This Rule is good as far as it goes, but I think it should go further, to the extent of requiring that the proxy should contain a statement to the effect that it is void and of no effect as a whole if the holders of the proxy fail to take action as directed in any specific instance. If paragraph (15) of Section (E) of Rule LA3 is deleted as suggested, provision should be made here for a statement of action intended to be taken by holders of the proxy in exercise of authority given in case no specification as to action shall be made. This Rule seems to cover the only matter as to which there is any urgency that there should be Rules regulating the form and use of proxies. I think that in any event such a provision, if lawful, should be included and I believe that, if included, all of the proposed Rules, from LA1 to LA10, may be advantageously omitted, leaving to the laws of the various States the determination of the matters which must be referred to stockholders for action. The only real abuse that I have seen of the proxy situation is the expense and difficulty to which a stockholder is put if he wishes to vote in opposition to the desires of the management or other parties soliciting the proxy in making his dissent effective.

RULE LA6:

No objection.

RULE LA7:

Paragraph (A)(1):

No objection.

Paragraph (A)(2):

No objection.

Paragraph (A)(3):

No objection.

Paragraph (B):

No objection.

Paragraph (C):

No objection.

Paragraph (D):

No objection.

Paragraph (E):

No objection.

RULE LA8:

No objection.

RULE LA9:

There is no objection to any of the provisions of this Rule, but it is doubtful if there is any necessity for the Rule if Rule LA5, amended and strengthened as suggested, and as much further as may be practicable, is promulgated.

RULE LA10:

If the amendment suggested to Rule LA5 is adopted, invalidating the proxy as a whole in case of failure of the holders of proxies to vote as directed, an exception should be made in this

Rule permitting invalidation in such case or providing that nothing in the Rule shall prevent the invalidation of a proxy for failure of the holders of the proxies to vote as directed in Rule LA5.

Yours very truly,

Executive Assistant.

JMBH-K