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July 20, 1937.

Investment Bankers Conference, Inc.,
1010 Vermont Ave., N. W.,
Washington, D. C.

Gentlemen:

I have glanced over the draft of regulations regarding solicitations of proxies. While I ought to learn by experience, it is even more complicated than I imagined. I am asking others here to read it.

In the meantime, may I call your attention to the following:

So far as our recent experience goes, even when there is no opposition, we have found it much more difficult to locate stockholders so that a company may obtain a majority vote, or even a quorum, than any other single problem in connection with the whole proxy question. Where there is a row or dispute, the matter takes care of itself pretty well as both sides air their views and that does arouse some interest on the part of securityholders. But, in other cases, the securityholders simply won't be bothered. Worse, yet, the only people who might stir them up (the Stock Exchange houses who know the stockholders and who are perhaps acting as their nominees) are reasonably indifferent - and I can't very well blame them. They practically never get paid for it. The rules of the Stock Exchange (which, as you know, were applied before the SEC came into being) have increased the risk of breaking Stock Exchange rules on a job for which a Stock Exchange house is not paid. On top of all, the increased cost of doing business (due partly to Government regulation) leaves very little incentive for a Stock Exchange house to "drop its knitting" and chase people to see how they want to vote on some proxy question.

I know of one case recently where a company, in desperation, hired a specialty outfit - not a Wall Street crowd - and are paying it substantial compensation just to try to locate the stockholders. In this particular instance, there is, so far as I know, no controversial question involved.

The reason I am writing you about this is because I do not understand the exact meaning of Section 5 of Rule LA(3). It states "If the solicitation is made otherwise than by the issuer or its management directly or indirectly ..." I suppose that this would apply to us and (if we were trying to help a friendly company) to every Stock Exchange house we called asking for help in procuring proxies. Even if there were no controversy, the mere request that a stockholder be invited to drop his inertia and sign a proxy and mail it would come within the definition "solicitation".

If I am right in this assumption, then, under Section 5 - on top of the existing Stock Exchange rules - we and the other Stock Exchange houses must make sure that the proxy statement which we are transmitting includes:

- a). the names of the partners of our firm;
- b). a statement of the amount of each class of securities which we or they happen to own either actual or as of record; and
- c). more information which I don't exactly understand - according to whether we happen to be "with the management or agin 'em".

If I have analyzed this correctly, it seems to me that the SEC will practically eliminate what remains of the voluntary work which has been done by Wall Street in the past in connection with these matters. It seems to me that it will increase the field for independent agencies to "shake down" corporations for compensation. I am not at all sure that most Wall Street houses would do the work even for compensation because of the seeming responsibility and seeming liability involved. The man who could do this best is the man whose organization is nearest under his hat and has the least to lose.

I, or others here, will probably have other comment for you but, in the meantime, I am making the suggestion that if a Stock Exchange house chasing proxies is a "solicitor" then it will eliminate that function from its list as promptly as it can after these rules are promulgated.