DRAFT

Mr. James M. Landis, Chairman,
Securities and Exchange Commission,
1778 Pennsylvania Avenue,
Washington, D. C.

Dear Mr. Landis:

In July of 1927, the Exchange adopted, at the suggestion of Mr. Samuel Untermyer, a rule which read as follows:

> "No member of the Exchange or a firm registered thereon shall sign or give a proxy to vote on the stock of a corporation or association registered in the name of such member or firm, except to the actual owner thereof upon demand therefor, unless such stock is in the possession of such member or firm or unless such member or firm or a customer thereof is the owner of or has an interest in such stock at the time such proxy is given.
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> "In all cases in which a proxy shall be given by a member of the Exchange or a firm registered thereon to vote on stock registered in the name of such member or firm, such proxy shall state the actual number of shares of stock for which the proxy is given."

In bringing this matter to the attention of the Exchange at that time, Mr. Untermyer alleged that the practice by which members of the Stock Exchange give proxies upon stock standing in their names, but which was not in their possession and in which neither they nor their customers had any interest, tended to prevent the control of corporations by those having an actual interest in its ownership and to place such control in the hands of a relatively small number of persons who would have no interest in the properties and who might be under inducement to act in a manner not conducive to the best interests of the stockholders.

One effect of this rule has been to make it increasingly difficult for corporations not paying dividends to secure a quorum for the transaction of their affairs and has led, in one or more cases, to the adoption of 25% of the outstanding stock as a quorum for the transaction of all

business, unless a larger percentage is required by law, and to pending proposals to reduce this percentage to 10%.

In November of 1934, there was correspondence between Judge Burns and this office, informing him of certain plans then in mind to aid in getting in proxies without altering the foregoing rule. No objection was made by the Commission to these plans, but they have not helped the situation in practice, to any material extent. Copies of this correspondence are enclosed for reference.

The net effect up until the present time of the following of the suggestions made in 1927 for the purpose of enabling a majority of those at interest alone to control a company, seems to have been in the opposite direction and to have tended toward placing such control in the hands of a small minority through Charter amendments as to the size of a quorum. The existence of the present rule may even provide an excuse for throwing control to a small minority when there is no actual difficulty in getting a quorum.

This matter has been considered by the Committee on Stock List and by a Sub-Committee of that Committee. It appears to the Committee that a change in procedure is necessary, for the present tendency is against public interest, and that, with some slight changes, the practice which was in vogue prior to July 7, 1927, was better.

The Committee has examined at length many suggestions for meeting the situation, including the suggestion which has been frequently made and which was made by Mr. Untermyer in the correspondence above referred to, that members should be required to register in their names the shares of stock transferred to them within a reasonable time after such transfer. This attempted solution does not seem practical for several reasons; among them the fact that the

cost of transferring a certificate of stock is a material one, ranging from around 55¢ to 65¢, not including the annual maintenance cost of from 25¢ to 40¢ for each name in which a certificate is registered.

The registered certificate, transferable by delivery when properly endorsed, is generally regarded as a combination of safety and flexibility unequalled by any other form of evidence of ownership of stock. Through its use, Americans are able to avoid the harassing and annoying system of "oppositions", which is prevalent and necessary in Europe with the use of "Bearer Certificates", and, at the same time, while safeguarding the certificate by the signatures of both a Transfer Agent and a Registrar, to avoid excessive costs which would be involved if non-dividend paying stock certificates were transferred at each sale.

It does not seem right to put corporations to the expense of making transfers any more frequently than is absolutely necessary. Quite apart from this, there is a question as to how effective such a plan of transfer would be for the reason that as to the vast mass of existing securities registered in brokers' names, a large but unknown number are reposing in the safe deposit boxes of individual investors awaiting the time when the individual may desire to dispose of them. These could not be reached and transferred in the names of the owners by any known means.

The Stock Exchange has been successful in requiring listed corporations to bear the cost of transfer. It is not believed that this record could be maintained if regulations of the Stock Exchange caused transfer expense to corporations which was unnecessary from their point of view.

A further suggestion has been made that members of the Stock Exchange should be directed by a rule to transfer, shortly before the date of record for annual meetings, all securities then being carried for them for their own account or that of their customers to their own names. This would involve much less expense to the corporations, but would still be a material item, and it would be ineffective because of the delivery during the year to customers of fully paid for stock standing in a Street name, while, on the other hand, if such stock were registered in the customer's name before being delivered, the increase in cost would be material.

The Committee will, therefore, subject to any representations which the Securities and Exchange Commission may desire to make in reference thereto, submit to the Governing Committee for its consideration a rule substituting for the existing Section 10 of Chapter XIV, the following:

"Chapter XIV, Section 10:

> "No member of the Exchange or a firm registered thereon shall sign or give a proxy to vote on the stock of a corporation or association registered in the name of such member or firm, but in which such member or firm has no interest, earlier than ten days prior to the date of the meeting for which such proxy is valid, nor then, in the event that any contest is known to such member or firm to be in progress, unless such stock is in the possession of such member or firm at the time such proxy is given.
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> "Proxies should be given to the actual owner of stock at any time upon demand therefor.
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> "Subject to the foregoing, members should, unless opposed to action proposed to be taken at the meeting, give proxies on stock standing in their names, whether in their possession or control or otherwise, in all cases where requested to do so by corporation management.
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> "In all cases in which a proxy shall be given by a member of the Exchange or a firm registered thereon to vote on stock registered in the name of such member or firm, such proxy shall state the actual number of shares for which the proxy is given."

The Committee on Stock List has directed me to lay before you the foregoing description of the situation which exists, and of the proposed remedy therefor, and to ask, before such rule is recommended by it to the Governing Committee, whether it will conflict with any policy which the Securities and Exchange Commission has adopted or is believed to be likely to adopt in the near future.

Yours very truly,

Executive Assistant.

JMBH:hm