PUTNEY, TWOMBLY & HALL
COUNSELORS AT LAW
165 BROADWAY

HENRY B. TWOMBLY
LOUIS H. HALL
WALTER H. GRIFFIN
LEMUEL SKIDMORE
EDWARD B. TWOMBLY
CHARLES B. HESTER
FREDERIC R. SANBORN
FRANK PAINE REILLY
WILLIAM B. PUTNEY 3rd
LOUIS H. HALL, JR.

CHARLES J. STAPLES
COUNSEL

NEW YORK
September 14, 1942.

General Counsel
Securities and Exchange Commission
Philadelphia, Pa.

Dear Sir:

In response to your communication of August 26th enclosing a proposed draft of amendments to the Commission's proxy rules, I beg to submit the following comments.

The proposed amendments have many theoretical arguments in their favor, but these amendments and the theoretical arguments in support of them are, in general, predicated on the false premise that corporate management is customarily corrupt, self-seeking and dishonest. The basic assumption of the proponents of these changes appears to be that corporation executives act only in their own interests and without regard for their stockholders.

It is generally recognized that most stockholders do not bother to read through the lengthy material which the SEC even now requires a company to send to them and often cannot and do not understand it. Consequently, the net result of the increased burden which the amendments would place on proxy solicitations is a greater waste of executives' time and a greater waste of corporate funds with little practical benefit to anyone. What is really needed, as a practical matter, is simplification of proxy statements so that stockholders will read and can understand them.

The principal objections to the proposed amendments are that:

1. Under the guise of regulating proxies, they would indirectly give the SEC the power, not conferred upon it by Congress, to regulate annual reports to stockholders.

Congress did not confer upon the SEC authority to regulate annual reports to shareholders of ordinary business corporations. The Commission has asked Congress for an amendment to the law which would confer such authority upon it and which is now under consideration by the House Interstate and Foreign Commerce Committee. The prospect of Congressional action on this subject is remote. Consequently, that power is now being sought indirectly through the SEC's power to regulate proxy solicitations.

2. Under the guise of regulating proxies, the SEC would be interfering with the internal management of corporations and attempting to regulate, through the device of publicity, executives' salaries and their transactions with their corporations. This is an attempt to usurp a power of control over business practices beyond the proper scope of the Commission authority.

It is significant that the information which would be required concerning officers and directors exceeds that required by the Commission in applications for registration under the Exchange Act and even that required in an offering prospectus under the Securities Act for the sale of securities.

The proposed requirement that all salaries over $25,000. be set forth is probably an effort to discourage the payment of salaries in excess of that amount. Whatever the merits of this social theory may be, there is nothing in the law which authorizes the SEC to use its authority to promote such a theory or to attempt to regulate and control corporate salaries.

There appears to be no rational basis for requiring disclosure only of salaries of over $25,000. Salaries over that amount may not be excessive for one company or one executive, while salaries well under that amount may be excessive for another company or another executive. It may be far better for a company to pay a few top-notch men high salaries than to pay a large number of mediocre men low salaries, aggregating far more, to do the same work. The proposal would thus expose high grade executives to unfavorable publicity while sheltering mediocre and less able executives from publicity.

3. The amendments would serve to facilitate the heckling of corporate managements by professional troublemakers and blackmailers without affording any substantial protection or rights to minority stockholders which they do not now have. The requirement that any proposal of any stockholder be set out in the proxy material would be a boon to the professional heckler. Many an unscrupulous shareholder might exact substantial sums from his corporation for withdrawing statements of proposals intended for no other purpose than to embarrass the management and to extort such a payment.

The change would be of little benefit in most cases because stockholders usually have confidence in the management of corporations in which they own stock and hence would not vote for proposals opposed by the management. When stockholders lose confidence in the management they usually sell their stock. The suggestion that these changes would "enable stockholders themselves to control the actions of management" is without foundation in experience.

The requirement that stockholders' proposals be set out in the proxy material should, if adopted, specifically exonerate the company and its management from liability under Rule X-14A-5 for false and misleading statements made by the stockholders. At present the proposals contain no such exemption from liability therefor.

4. The amendments would accelerate the trend towards not soliciting proxies, thus serving to disfranchise stockholders and to perpetuate existing managements. As the proxy regulations apply only to the solicitation of proxies, the nuisance of complying with them may be avoided by the simple expedient of refraining from any solicitation of proxies. So many companies have done this even under the less onerous rules now in force that the Commission has asked Congress to amend the law so as to compel companies to solicit proxies.

5. The amendments would increase the already excessive burdens on listed companies, while unlisted companies bear no such burdens, and are, therefore, grossly discriminatory.

One of the reasons so few companies are listing stocks today is that they do not wish to subject themselves to this type of SEC regulation. For the same reason, a substantial number of companies have delisted their stocks. This, of course, has seriously weakened the exchange markets. The adoption of the proposed amendments, which would aggravate the discrimination between listed and unlisted companies, will accelerate this trend which is destructive of the organized markets of the country.

6. The amendments are ill-conceived in that they further complicate regulations which should be materially simplified.

7. The requirement that the shareholders must specify in their proxies the action they desire to have taken is impractical and will probably lead to there being insufficient valid proxies at many meetings.

8. The proposals, if adopted, would distract corporate officials from giving their full time and attention to the production of war materials by requiring them to waste time and energy in fruitless efforts to comply with intricate administrtive red tape.

9. Attention should be directed to the drastic simplification of current proxy rules rather than to the complication of the same.

Respectfully submitted,

Edward A. Gourley

EBT:RC