N.Y. STOCK EXCHANGE

REGIONAL FIRMS ADVISORY COMMITTEE
TO THE NYSE BOARD OF DIRECTORS

August 13, 1984

Honorable John S. R. Shad
Commissioner
Securities and Exchange Commission
450 Fifth Street, N. W.
Washington, D. C. 20549

File No. S7-954

Dear John:

In view of the Commission's session on August 17th, I am writing on behalf of my colleagues to reiterate our support for deferral of the effective date of SEC Rule 14b-1(c) which was adopted in July 1983, and is scheduled to take effect on January 1, 1985.

Under this rule, broker/dealers would be required to furnish corporate issuers, at cost, with the names of non-objecting beneficial owners of "street-name" securities. Since banks, associations and other financial institutions are not subject to equivalent regulation, we believe it would be unfair and discriminatory to broker/dealers and their customers to impose these new disclosure requirements on a single segment of the financial services industry. Accordingly, we urge the Commission to delay the January 1, 1985 implementation date for these rules until Congress enacts legislation giving the SEC the same authority to regulate the proxy processing activities of banks and other intermediaries that it now has with respect to broker/dealers.

The fact that the SEC has regulatory authority over the proxy dissemination and voting activities of broker/dealers only is a severe hindrance to its ongoing efforts to facilitate effective communications between issuers and beneficial owners of securities, since banks hold the majority of securities registered in nominee name. Furthermore, it places broker/dealers at a distinct disadvantage since it allows them to be subject to certain requirements with regard to their treatment of shares held in nominee name while banks remain unencumbered by equivalent obligations. This problem

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is highlighted by the imminent requirement of broker/dealers to provide the names, addresses and securities positions of consenting beneficial owners to issuers requesting such information. The costs, which will ultimately be borne by customers, and theoretical reduced confidentiality that will result from this obligation will have a direct unfair impact on brokers' customers, and, thus, will no doubt greatly enhance the ability of banks to attract customers desiring to maintain securities accounts in nominee name.

Subjecting broker/dealers to this competitive burden is unreasonable when considered in relation to the likely effectiveness of the results it will achieve. Until banks can be brought under the SEC's proxy processing authority, the effect of any steps taken by the Commission to improve communications between issuers and beneficial owners of securities will be so limited as to be practically useless. To initiate such efforts without their being applicable to banks -- which, by far, hold the majority of securities registered in nominee name -- would bring about results that would not even justify the tremendous cost and other administrative burdens confronting broker/dealers for implementing them.

The Commission itself has alluded to the ultimate inadequacy of the new requirements should the impossibility of subjecting banks to them not be dealt with. In fact, upon announcing its adoption of the rules, the Commission stated its intention to pursue a legislative initiative to correct the discrepancy, and expressed the strong belief that until such action can be taken, banks should voluntarily adopt similar procedures.[1]

We also believe that the Commission should take into consideration that a program of identifying non-objecting beneficial owners of securities is, by its very nature, severely limited. Three random surveys conducted by the Securities Industry Association's Operations Committee found that only 40%, 44% and 54% of the responding clients objected to disclosing their names to corporate issuers. Thus, the entities subject to Rule 14b-1(c) would be required to devote a vast amount of their limited financial and other resources to an effort that, on final analysis, would not achieve its intended objectives.

In addition, the costs of providing this information to corporate issuers appear to be significant. A survey of six SIA member firms and the Independent Election Corporation of America suggests implementation cost of 69.6 cents per shareowner. Moreover, the lists of consenting beneficial owners that will have to be maintained to assure prompt compliance with the rules upon request from an issuer will require continuous updating. However, that task is made virtually impossible, since there is no feasible way to ensure that broker/dealers will regularly be kept aware of such key information as changes in address and the acquisition of shares through another nominee. Since there is no evidence of the number of corporations that would request

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[1] See Release No. 34-20021 (July 28, 1983) [48 FR 35,082], f.n. 13.

the names of shareowners, it is difficult to allocate the actual implementation and maintenance costs of the new rules. At a minimum, due to the high rate of shareowner objection, it is likely that corporations would pay even more per shareowner than the survey figure cited above.

In sum, we believe that Rule 14b-1(c), if implemented, would place the broker-nominee at a severe competitive disadvantage to the banks and will provide little useful information to corporate issuers. As a result, we urge the Commission to delay the effective date of the new rules until the SEC's proxy processing authority can be extended to banks, associations and other financial intermediaries.

Respectfully yours,

F. Barton Harvey

F. Barton Harvey, Jr.

cc: Honorable James C. Treadway
Honorable Charles C. Cox
Honorable Charles L. Marinaccio
Honorable Aulana Peters
Mr. John J. Huber ✓