

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF INVESTMENT
CN 180
TRENTON, N.J. 08658-0290

August 12, 1993

Ms. Elisse Walter
Deputy Director
Division of Corporate Finances
Securities and Exchange Commission
Room 3009
450 Fifth Street
Washington, D.C. 20549

Dear Ms. Walter:

I am writing you to express the views and concerns of a special committee of the Council of Institutional Investors. The Council has 86 members whose funds control over \$500 billion of assets. Our committee is concerned with the logistics of proxy voting, and especially the role of firms which transmit proxy materials to investors and then return the completed proxies to the companies. This is a function which has been the primary responsibility of bank custodians, but in recent years the banks have turned this function over to independent agencies, who appear to be compensated by the companies.

The experience of the New Jersey Division of Investment is illustrative of the experiences of members of the Council. In 1989, our custodian banks in New Jersey contracted with IECA to handle the transmittal of proxies from the companies and the return of our completed form. It then appears that the banks subsequently asked IECA to contract directly with the companies to provide this service. We immediately encountered many problems which indicated that these communications were not efficiently handled, in large part because initially all of our communications had to be directed through the custodian bank. We discussed these issues with IECA, and agreed to establish a direct "hot line" between investors such as ourselves and IECA, which eliminated the custodian bank as an intermediary in the lines of communication. This new procedure was effective, and the New Jersey Division of Investment was pleased that IECA was able to deliver a large number of corporate proxies to us and to acknowledge receipt of our completed proxies.

However, in 1992 IECA was acquired by ADP, and we immediately saw a sharp decline in the efficiency of voting proxies. In the early part of the 1993 proxy voting season proxies were delayed, and completed proxies were not voted or were voted erroneously. The concerns of shareholders were shared by corporate secretaries, who in a number of instances had difficulty in

raising a quorum for annual shareholder meetings. It is my observation that proxy voting procedures were modified by ADP, and that by the end of the proxy season the process had become more efficient.

Other members of the Council had also expressed specific concerns with the proxy process. For instance, in the case of Paramount, a number of institutions had found their proxies had not been voted at all. ADP has taken responsibility for all of these specific failures, which they attribute to a computer conversion and improperly structured communications channels. ADP states that it has improved staffing for direct communications with institutions, has corrected its computer shortcomings, has invested in more efficient facilities, has developed new flow charts and has initiated a user group for better communications. For all of these reasons, it is likely that the service will return at a high level. ADP has also contracted with Fidelity Funds to provide the necessary software to institutional investors for direct electronic voting.

Nevertheless, there are a number of further concerns that Council members have expressed, issues which may also be concerns of other investors. In summary form, these are as follows:

To whom is ADP accountable? The firm is compensated by the custodian banks, who appear to be reimbursed by the corporations. Custodian banks now take no responsibility for delivery of proxies and investors no longer have an independent third party to deliver the proxies. If ADP is paid by the companies, how can they be accountable to investors, as the banks previously were? Should the banks or ADP be subject to further supervision and liability?

Do ADP and Fidelity have a monopoly on the proxy voting process? If they do, should they be regulated to assume fair pricing and adequate delivery of this service?

Should ADP be in the position of setting its own rules for investors? At one point ADP announced rules requiring a grace period prior to an annual meeting date in order to assure delivery of a vote. This condition was rescinded when investors complained, but should any such rules be subject to approval by a user group or governmental agency? In another instance, ADP mailed proxies at bulk mailing rates in order to save money for corporations. This practice put much greater pressure on investors and materially shortened the time available for investors to review proxy materials. ADP has changed this practice with regard to institutional investors, but smaller investors may be at a disadvantage. Should any and all such rules be approved by an independent third party?

Are there potential conflicts of interests? Is ADP in a position to engage in separate transactions with the companies or third parties? Such transactions might include disqualifying or misplacing votes, disclosure of voting results, etc. Should there be an audit procedure which could preserve the proxy voting system against the fact or appearance of conflict?

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Is it possible for shareholders to receive confirmations? Shareholders may wish to receive confirmations from companies that their shares have been voted. They may also be willing to waive any confidentiality and may wish to receive confirmation from the company that individual issues have been voted according to instructions. Is this possible?

These are some of the concerns that have been voiced by our group of institutional investors. We are still reviewing these issues and possible solutions. In the meanwhile, we wanted to share these concerns with your office, where you may also be hearing from other investor groups.

Very truly yours,

Roland M. Machold

RMM:cae/orb