

SECURITIES AND EXCHANGE COMMISSION

Washington

Jan 21-36

Securities Exchange Act of 1934  
Release No. 461 (Class \_\_\_\_\_)

The Securities and Exchange Commission today made public an opinion of John J. Burns, General Counsel, relating to certain aspects of the rules pertaining to the solicitation of proxies, consents and authorizations, promulgated under Section 14(a) of the Securities Exchange Act of 1934, and published in Release No. 378. The opinion follows:

“1. Although the rules and regulations promulgated under Section 14(a) of the Securities Exchange Act are generally applicable to any solicitation of consents or authorizations, as well as of proxies, in respect of any security (other than an exempted security) registered as a listed security on any national securities exchange, the present rules, in my opinion, do not apply to the usual solicitation of approvals or assents that are a part of proceedings under Section 77B of the Bankruptcy Act; nor do they apply to solicitations by a protective committee of the deposit of securities under a deposit agreement pursuant to the terms of which certificates of deposit are issuable, which certificates are securities within the meaning of the Securities Act and must therefore be registered under that Act, unless specifically exempted from such registration.

“2. Rule LA3(a)(1) provides that if a proxy, consent or authorization is being solicited by or on behalf of the management, a notice of meeting or accompanying statement must include a specific statement to that effect. In my opinion, the text of the solicitation in such

a case must clearly indicate that the solicitation is being made by or on behalf of the management. However, where this is clearly apparent from the context, a specific statement to that effect, though desirable, does not appear to be absolutely necessary. For example, where, in an instrument soliciting a proxy, it is plainly indicated that the management urges the security holder to sign the proxy in order to effectuate a program favored by the management, the requirement of Rule LA3(a)(1) would presumably be met. On the other hand, the mere statement that a meeting is being called by order of the board of directors would not be a sufficient indication that the management is soliciting the proxy in question.

“3. Rule LA3(a)(5) requires that a person from whom a proxy, consent or authorization is solicited receive a “brief description” of the various matters to be presented or considered in the exercise of the proxy. The question has been presented whether this requirement is met by the inclusion in a notice of stockholders’ meeting of a statement that the stockholders will be asked to approve and ratify the minutes of the directors and acts of the officers during the preceding year.

“The ‘brief description’ required by paragraph (5) of Rule LA3(a) should include, in my opinion, a concise description of the substance of each of the various matters which, at the time of solicitation, it is intended shall be considered by the meeting at which the proxy is to be exercised. It follows that a mere statement that stockholders will be requested to ratify the minutes of the directors and acts of the officers does not meet this requirement. However, for such of the acts or matters involved as are of a class calling for recurrent consideration or are of a routine nature, a general description or enumeration of each of the various types of acts, contracts or proceedings, would ordinarily appear to be sufficient. Where it is desired to submit to the stockholders the question of ratification of all the acts of the directors and officers taken

during the preceding year, the notice, or accompanying statement or report, should therefore include not only a general description or enumeration of the acts or matters of a recurrent or routine nature, as indicated above, but also a specific, although brief, description of any other acts or matters in respect of which approval or ratification is to be proposed.

“Frequently the annual report of a company or the minutes of prior meetings of stockholders will be presented to stockholders for approval. Where such approval is merely an approval of the form of the report or minutes, as a satisfactory description of the company’s affairs or of past stockholders’ action, it would not appear to be necessary that the contents of such report or of such minutes be described in the notice of meeting. However, where such approval is sought as a ratification of the acts of the officers and directors of the company described in the annual report, or of the action taken at earlier meetings of stockholders, the substance of such action should be described in the same manner as suggested where ratification of directors’ and officers’ acts is proposed.

“4. Attention is called to the fact that the receipt by the Commission of solicitations filed with it pursuant to Rule LA5 will not be acknowledged except where acknowledgment is specifically requested, and only in such cases if a duplicate of the solicitation is enclosed in order that such duplicate may be returned to the sender with notation of receipt of a copy thereof.”