

NEW YORK STOCK EXCHANGE  
COMMITTEE ON STOCK LIST

June 15, 1937.

Mr. A. A. Berle, Jr., Member,  
Sub-Committee on Proxies,  
Committee on Stock List,  
New York Stock Exchange,  
New York City.

Dear Mr. Berle:

If time serves at the meeting of the Sub-Committee on Proxies to be held tomorrow afternoon, the following matter should be considered:

On May 12, 1937 Messrs. Winthrop, Mitchell & Company wrote to the Committee on Business Conduct, stating that to co-operate with corporate managements in the desire of the Securities and Exchange Commission to facilitate the obtaining of proxies upon stock standing in Street names, they propose sending to their customers a letter reading as follows:

“TO OUR CUSTOMERS:

“We are, in behalf of our customers, record holders of corporate securities.

Without a customer’s specific authority we have always refused to execute proxies as to securities held by the customer.

“Many corporations find it exceedingly difficult to get a quorum for annual and other meetings because of the great number of shares standing of record in brokers’ names.

“We should be glad at any time to grant a proxy as to your shares directly to you or as you may from time to time direct. It would, however, greatly facilitate the problem that confronts corporations in which you are interested if you granted to us general consent to execute proxies except when you may otherwise direct.

“If you agree, would you please sign the enclosed general consent card?

“(Form of Card):

“Withrop, Mitchell & Co.,

New York. Chicago.

“Unless from time to time the undersigned shall otherwise direct, you may sign and forward to the corporation proxies covering any stocks held for the undersigned but standing in your name. The undersigned reserves the right to terminate or cancel this authority in whole or in part at any time as to any security, or as to all securities held by you for undersigned’s account.

“Dated \_\_\_\_\_

\_\_\_\_\_”

This letter was referred to the Law Committee by the Committee on Business Conduct, and on June 3, 1937 was referred by the Law Committee to the Committee on Stock List, together with a copy of letter drafted by Counsel asking whether the Sub-Committee on Proxies was ready to suggest a final revision of proxy rules, in which case the matter might be

held up until after such revision, or whether it would take so long to revise the rules that it would be desirable to reply to Messrs. Winthrop, Mitchell & Company without awaiting such revision.

The letter drafted by Counsel itself suggested delay because of the fact that new proxy rules might be formulated facilitating the securing of proxies.

The Securities and Exchange Commission has not yet promulgated any rules under Section 14(b), which governs the giving of proxies by Members of Exchanges, but in the draft of rules pursuant to Section 14(a) which are now under consideration, it is provided that the rules and regulations promulgated by the Commission pursuant to Section 14(a) of the Act, other than Rule LA8, shall not apply to solicitation of a proxy by a person in respect of securities carried in his name or held in his custody (ordinarily this would mean a broker) if, among other things, such person furnished to the person solicited, at or before the time of the solicitation, a copy of all soliciting material received by him from any source relating to any solicitation of a proxy with respect to the same class of securities and the same subject matter or meeting.

I conclude that it follows from the proviso in this exception to the rules that if a broker solicits his customer's consent to give a proxy, that such consent is itself a proxy within the meaning of Rule LA1, paragraph A, and therefore that, if he does not furnish him with copies of all soliciting material received, such solicitation by him is subject to the necessity for compliance in each individual case with the provisions of Rule LA3.

The above, if correct, would mean that solicitation of consents of customers to give proxies would, whether excepted from the rules or not, require the submission to the customer of copies of all soliciting material received, including the voluminous proxy statements. The expense of this might be considerable, and unless borne by the corporation it seems doubtful as to whether any brokerage firm would care to assume it. I say this because it

seems to me quite possible that in some instances the proxy statements in their entirety, as required by the proposed rules, may be nearly as voluminous as the prospectus required under the Securities Act of 1933.

I therefore suggest that I be authorized to reply to Messrs. Winthrop, Mitchell & Company as follows:

“Messrs. Winthrop, Mitchell & Company,  
26 Broadway,  
New York City.

“Gentlemen:

“Your letter of May 12, 1937, addressed to the Committee on Business Conduct, has been referred to this Committee for attention, inasmuch as, for some time, there has been in existence a Sub-Committee of this Committee known as the Sub-Committee on Proxies, and it was thought that it might be desirable to inform you as to the probable date of release of any rules that may be adopted by the Stock Exchange on the subject of the giving of proxies by Members.

“Unfortunately, we are not in a position to do this, but for quite another reason we would suggest the advisability of deferring the sending out of a letter such as you have drafted to your customers. This is because the Securities and Exchange Commission is very actively engaged in drafting proxy rules under Section 14(a) of the Securities Exchange Act of 1934. While Section 14(a) does not by its terms affect the giving of proxies by brokers, which matter is covered by Section 14(b) of the Act, nevertheless it is entirely possible that there may be certain provisions of the rules to be issued by the Commission on this subject which might render the sending out of such a letter as you have in mind inadvisable, and we would think it advisable in

your own interest to withhold action on the matter until the proposed rules to be issued pursuant to Section 14(a) have been promulgated.

“While we can not speak with any definiteness as to the length of time which will elapse before such rules are adopted, we have reason to believe that the consideration of them is far advanced.”

I trust that it may be possible at the meeting tomorrow to secure approval of this or a similar letter, as the reply to Messrs. Winthrop, Mitchell & Company has been unduly delayed.

Yours very truly,

COMMITTEE ON STOCK LIST

J.M.B. Hoxsey

Executive Assistant.

JMBH-K/k