PHOENIX SECURITIES CORPORATION

15 EXCHANGE PLACE
JERSEY CITY, N.J.

September 14, 1942

Securities and Exchange Commission
Offices of the General Counsel
Philadelphia, Pennsylvania

Attention: Mr. Milton V. Freeman

Gentlemen:

Under date of August 26 you forwarded us a draft of amendments to proxy rules, and requested any comment. This letter is in response thereto.

Rule X-14A-2(a). Our experience indicates that a provision limiting the proxy to the specification made by the stockholder is undesirable and imposes an undue burden on the corporation. For many years I have participated in proxy solicitations of various corporations. Where the opportunity is provided to vote for or against, it is surprising how large is the percentage of those who make no mark. My experience also is that in such cases the intention of the stockholder is invariably to vote "yes". In our own case, our proxies have provided "If no instruction is indicated with respect to such proposal to ratify the selection of auditors, the undersigned's vote is to be cast in favor thereof". We certainly urge that we be permitted to continue this practice.

Rule X-14A-2(b). The proposal to permit stockholders to nominate twice as many nominees as there are directors of the issuer confers, in our opinion, a specious right and altogether too liberal a one. Again, my experience over many years with this corporation and other corporations leads me to believe that this right will be availed of, if at all, almost exclusively by professional troublemakers and by those interested particularly in bringing "strike" litigation. The great difficulty in most corporations these days is to secure competent directors who will assume the very onerous responsibilities and liabilities now entailed in the assumption of the position of director. I cannot recall a case where any of the corporations with which I have been connected have had suggested to them the names of additional nominees where that action has not been connected with some effort to make trouble, and I mean by this to make trouble for the corporation, not just to make trouble for the incumbents. It is our recommendation that the number of independent nominees for directorship be at least restricted to the number of directors to

be elected, and that the method of so restricting the independent nominees be more clearly specified than is at present provided; and it is also our recommendation that the proxy be permitted to make it quite clear which of the names submitted are the nominees of the management, and which are the nominees of independent stockholders.

Rule X-14A-7. This proposal is again extremely liberal. Again I cannot recall any instances where we have received suggestions as to matters necessary to be submitted except where such suggestions have been produced by genuine trouble-makers and professional litigants. It is not hard to envisage a situation where such people could, under the new rule, provide an almost unlimited number of proposals which would hopelessly clutter up the proxy.

Schedule 14A-5(A)(1). The proposal that information shall be supplied containing "material litigation involving the issuer or its subsidiaries or any director or officer of the issuer or its subsidiaries" is unquestionably much too broad. This corporation has a number of subsidiaries (as defined); these subsidiaries all have litigation; officers of the issuer sometimes have personal litigation; officers of the subsidiaries have personal litigation; this litigation may be material to them but have no relation or materiality whatever to Phoenix Securities Corporation. We see no reason why litigation material to Phoenix should not be divulged, whether it involves Phoenix or its subsidiaries or its officers and directors, or even the officers and directors of its subsidiaries. It is altogether too broad and cannot possibly be in the public interest to divulge to Phoenix stockholders that a director of Phoenix is being sued for $100,000 by someone who was run over on the road; nor can it be in the interest of the Phoenix stockholder to know that Mr. X is suing Pepsi-Cola Company (a subsidiary) for damage suffered in the loss of a bottling franchise; nor can it be of any interest to Phoenix stockholders that Mr. Y, a director of United Cigar-Whelan Stores Corporation is being sued for $500,000 damages for an alleged improvident sale of assets in his capacity as a director of the Z corporation (not a subsidiary of Phoenix). It is our suggestion, therefore, that the words "material litigation" be changed to "litigation material to the issuer involving, etc.", or something of that nature.

I should be less than frank if I did not point out my personal belief that these revisions of the proxy rules mark an undesirable extension of Government supervision and interference into the field of business. By and large, business morality is very high, even though there are occasional shocking instances of abuse in a small minority of cases. Nothing in human experience seems to indicate that you can create morality by legislation. It appears that any extension of Government regulation must be confined to those situations where the need for regulation is very real, rather than to attempt to cover all possible situations where any instances of misconduct, however few in number, may have occurred in the past.

It is particularly hard at this time, when everyone is involved in endless complicated war problems and is subject to a mass of Government reports and regulations, to require further compliance with regulations which will do little more than add to the corporation's difficulties in connection with annual meetings. It is hard

enough, where so many stockholders are in the armed services, and in Government employ, and are not living where they used to live, to get necessary quorums, without having regulations which require that each ballot square be accurately checked. I cannot but take very firm issue with the statement that the new rules will in any way simplify corporate procedure. They will make it much more difficult and considerably more complicated.

This corporation has always felt that it was in the forefront of those which disclose fully everything which should reasonably be required to be reported to stockholders. We do not now object to anything further which is reasonable and really necessary. We urge, however, that regulations be limited, as far as possible, to a minimum.

Very truly yours,

Edward A. Le Roy, Jr.
Treasurer

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