

Rule
14a-8

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OFFICE OF THE DIRECTOR
CORPORATION FINANCE

MEMORANDUM

November 16, 1983

TO : John Huber
Linda Quinn

FROM : Bill Morley *WGM*

SUBJECT : Shareholder Proposals

As in the past years, we have prepared a statistical summary of the contested shareholder proposals processed by the Chief Counsel's office. A copy of that summary is attached.

Attachment

SUMMARY OF CONTESTED SHAREHOLDER PROPOSAL STATISTICS FOR THE
YEAR ENDED SEPTEMBER 30, 1983

	<u>Fiscal 1983</u>	<u>Fiscal 1982*</u>
CONTESTED PROPOSALS	414	495
Included	104	162
Excluded	242	283
No Position Expressed	15	6
Withdrawn	53	44
PROPOSERS**	210	205
COMPANIES***	184	186
LETTERS ISSUED BY THE DIVISION	328	315

DISPOSITION OF CONTESTED PROPOSALS

Included:

A. Division did not believe management could rely on its stated reason	77	127
B. Division allowed proponent to revise proposal to cure defect	27	35
	<u>104</u>	<u>162</u>

Excluded:

Division took a no-action position for the following reasons (see detailed breakdown below)

Substantive	188	206
Procedural	54	77

* For the purpose of comparison the Fiscal 1982 figures are also included.

** See Appendix A for a profile of the types of proponents.

*** See Appendix B for a list of companies receiving multiple proposals.

	<u>Fiscal 1983</u>	<u>Fiscal 1982</u>
<u>No Position Expressed</u>		
The Division declined to express any view with respect to management's reason for exclusion	15*	6
<u>Not Acted Upon</u>		
Withdrawn	<u>53</u>	<u>44</u>
Total Contested Proposals	414	495

Reasons for No-Action Positions

Substantive:

A. Not a proper subject for action - 14a-8(c)(1)	2	0
B. Proposal would require issuer to violate any law - 14a-8(c)(2)	6	3
C. Proposal is contrary to any of the Commission's proxy rules, including Rule 14a-9 - 14a-8(c)(3)**	5	15
D. Personal claim or grievance - 14a-8(c)(4)	9	44***
E. Not significantly related to the issuer's business - 14a-8(c)(5)	5	5

* The increase in no-position letters resulted from the decision to express no-view with respect to the ten letters relating to the American Jewish Congress proposal on corporate lobbying activities in support of AWACS sales to Saudi Arabia.

** In addition to the five proposals excluded in their entirety under Rule 14a-8(c)(3), that Rule was cited and relied upon in almost all of the twenty-seven cases where proposals were required to be revised before they could be included.

*** The number of proposals excluded under Rule 14a-8(c)(4) in fiscal 1982 was substantially higher than normal because of one letter relating to twenty proposals all of which were excluded because they related to a personal grievance.

	<u>Fiscal 1983</u>	<u>Fiscal 1982</u>
F. Matters beyond the issuer's control - 14a-8(c)(6)	3	2
G. Matters relating to the issuer's ordinary business operations - 14a-8(c)(7)	127*	72
H. Elections to office - 14a-8(c)(8)	13	8
I. Counter proposals - 14a-8(c)(9)	2	10
J. Mootness - 14a-8(c)(10)	7**	34
K. Duplicate proposals from two shareholders, one of which will be included - 14a-8(c)(11)	2	3
L. Same proposal failed to receive minimum vote on last submission - 14a-8(c)(12)	2	9
M. Proposals for specific amounts of dividends - 14a-8(c)(13)	5	1
	<u>188</u>	<u>206</u>

* The significant increase in the number of proposals excluded pursuant to Rule 14a-8(c)(7) is attributable in part to forty-two proposals dealing with anti smoking which were submitted to twenty-one airlines by one organization. All of those proposals were omitted under paragraph (c)(7).

** There is no readily apparent reason for the reduction in the proposals dealt with under Rule 14a-8(c)(10). It should be pointed out that the reduced number is more in line with prior years statistics on that provision.

	<u>Fiscal 1983</u>	<u>Fiscal 1982</u>
<u>Procedural:</u>		
A. Proponent not voting shareholder - 14a-8(a)(1)	4	11
B. Lack of proper notice - 14a-8(a)(2)	11	18
C. Not timely - 14a-8(a)(3)	21	34
D. Number and length of proposal - 14a-8(a)(4)	17	14
E. Length of Supporting Statement - 14a-8(b)	<u>1</u>	<u>0</u>
	242	283

Rule 14a-8(e)

The staff received seventeen responses from shareholders pursuant to Rule 14a-8(e). Discussions with shareholders and representatives of issuers show that the rule led to far greater interaction between issuers and shareholder proponents than is indicated by the number of letters set forth above. It appears that quite a few shareholders took the approach of contacting companies directly to voice their thoughts about the companies statements in opposition. In most of those instances, the parties were able to work out a mutually acceptable response without having to submit the matter for staff consideration. It should be noted that except for isolated instances this Rule continues to be used only by experienced proponents such as the church groups, acting through Professor Neuhauser, and the Corporate Gadflys like Lewis Gilbert and Evelyn Davis.

APPENDIX A

PROPOSENTS PROFILE

A. Individuals

There were 158 individuals who submitted proposals to one or occasionally two companies.

B. Religious Organizations

There were 23 religious organizations that submitted proposals singly or in groups, often under the umbrella of the Interfaith Center for Corporate Responsibility. These religious organizations were involved in 49 of the letters relating to contested proposals.

C. Conservative Issues

Mr. Andrew Duncan and an organization in which he is a principal shareholder were the proponents of proposals contested by 8 companies. The proposals related to the Companies charitable contributions and research grants to educational institutions which harbored Communists or other "radicals" on their faculties.

The Young Americans for Freedom submitted proposals to 5 companies calling for an end to trade with Communist countries and for a ban on the holding of annual meetings in states that do not support a constitutional amendment calling for a balanced federal budget.

D. Single Issue Proponents

1. An organization called Action on Smoking and Health submitted two proposals each to 21 airlines requesting the establishment of non-smoking flights and non-smoking areas in airport lounges. All of the proposals were omitted as relating to the companies ordinary business. The staff's determination was appealed to the Commission and the Commission declined to review.

2. The American Jewish Congress and persons affiliated with that organization submitted a proposal to twenty-five companies concerning the companies efforts to lobby in support of the sale of AWACS planes to Saudi Arabia. Eleven companies contested the proposals. In one case the letter was withdrawn, in the remaining 10 cases the staff declined to express a view. The Division provided an advice memorandum to the Commission prior to informing the companies that it would express no view.

3. Rabbi Barry Kallenberger submitted proposals to six companies requesting that they minimize dilution of shareholders' equity and that they pay regular quarterly dividends.

4. Carl Olson and Fred Catalano and members of their families submitted numerous proposals to Occidental Petroleum and Trans World Airlines, respectively, in continued vendettas by those individuals against the companies involved. Mr. Olson is opposed to Occidental's involvement in Russia and Mr. Catalano is a disgruntled former employee of TWA.

E. Corporate Gadflies

The following individuals are responsible for a large number of proposals every year, however, they are not involved in a great many of the contested proposals because their continued use of the process has resulted in their being able to frame proposals which are proper for inclusion under Rule 14a-8.

1. Lewis and John Gilbert
2. Evelyn Y. Davis
3. Edward Calvert
4. George Sitka
5. Henry Korba
6. Henry Wright
7. Wilma Soss

APPENDIX B

COMPANY PROFILE

Total Number of Companies Contesting Proposals - 184 Companies

1 Proposal Letter - 120 Companies

2 Proposal Letters - 35 Companies

3 Proposal Letters - 16 Companies

Bendix Corporation
Boeing Company
Baltimore Gas & Electric Company
Capital Cities Communications
Corning Natural Gas
Dravo Corporation
International Telephone & Telegraph Company
Long Island Lighting Company
Middle South Utilities Company
Pacific Gas & Electric Company
RCA Corporation
Southern Company
Texaco Inc.
Union Oil Company
United Technologies Corporation
Westinghouse Corporation

4 Proposal Letters - 6 Companies

GTE Corporation
Gulf Oil Corporation
General Dynamics Corporation
General Public Utilities
Pacific Electric Company
Pan American World Airways Corporation

5 or More Proposal Letters - 7 Companies

American Telephone & Telegraph Company - 14
Standard Oil Company of California - 7
Consolidated Edison Company - 6
General Electric Company - 6
International Business Machines Inc. - 6
Occidental Petroleum Company - 6
Trans World Airlines Corporation - 6

APPENDIX C

SUBJECT MATTER OF PROPOSALS

The following list indicates those subjects which were raised most frequently in proposals contested under Rule 14a-8(d).

1. General Corporate Activities	
A. Procedures for Issuance of Securities	- 4
B. Repurchase or Redemption of Outstanding Securities	- 8
C. Dividends	- 7
D. Dilution of Shareholder Equity	- 8
E. Accounting Matters	- 5
F. Legal Matters	- 5
G. Content of and Procedures for Distribution of Corporate Reports to Shareholders	- 23
H. Labor Relations and Hiring Practices	- 12
I. Anti Smoking Proposals	- 44
J. Corporate Research Activities	- 6
K. Corporate Charitable Contributions	- 11
L. Dividend Reinvestment Plans	- 6
M. Day to Day Corporate Activities	- 26
2. Compensation	
A. Level of Executive Salaries	- 11
B. Remuneration Plans	- 14
C. Pension Plans	- 10
3. Corporate Political Activities	- 14
4. Corporate Mergers, Acquisitions and Liquidations	
A. Procedures for Dealing with Mergers and Tender Offers	- 8
B. Dissolve and Liquidate Business	- 6
5. Corporate Governance	
A. Nominating Procedure	- 12
B. Specific Requirements for Nominees	- 18
C. Removal of Specific Directors	- 6
D. Conduct of Annual Meeting and Selection of Meeting Date	- 14
E. Cumulative Voting	- 3
F. Elimination of Staggered Board	- 4

6. Nuclear Power

- A. Cease Building or Operations of a Plant - 13
- B. Procedures for Dealing with Nuclear Waste - 5
- C. Alternate Energy Plans - 6
- D. Evacuation Planning - 3
- E. Other Nuclear Related - 5

7. Other Social Issues

- A. Operations in South Africa - 13
- B. Operations in Communist Countries - 5
- C. Military Contracts and Weapons Production - 9
- D. Infant Formula - 4
- E. Human Rights in Developing Countries - 6