4-15-1961

Corporate Proxies

Lyle A. Anderson
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CORPORATE PROXIES

By

Lyle A. Anderson

A Thesis
submitted in partial fulfillment of the requirements for the degree of
Master of Science

Division of Graduate Instruction

Butler University

April 15, 1961
In this paper, I shall discuss the requirements of obtaining valid proxies under the various state laws and the regulations of the Securities and Exchange Commission. Because of the many state jurisdictions involved, it is not possible to define exactly the requirements of each. However, I shall follow the general practice and attempt to point out the significant variations therefrom. I shall also point out how several recent proxy contests were waged and make some recommendations for changes in SEC regulations and state laws to secure a greater voice for the independent stockholder.

The writer is greatly indebted to the University of Kansas City for the use of its law library, without which this paper would not have been possible.
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INTRODUCTION

Definition. The legal definition of a proxy is: A person who is substituted or deputized by another to represent him and act for him particularly in some meeting. Also the instrument containing the appointment of such person.¹

The piece of paper commonly called a "proxy" has been defined by a court as nothing more than the evidence of the relationship of principal and agent, as regards the right to vote at a stockholders' meeting.²

Historical Development. The right of a stockholder to vote by proxy at corporate meetings has not automatically followed the rise of the business corporation. At common law a stockholder has no right to vote by proxy at corporate meetings, in the absence of special authorization such as by corporate charter or article of incorporation or by by-law.³

Express clauses permitting proxy voting were to be found in the charters of companies organized in the United States in the late 1700's and the early decades of the nineteenth century.⁴

⁴Ibid., p. 41.
Inasmuch as many of the early governing statutes and corporate charters were silent on the subject of proxy voting, stockholders resorted to the use of by-laws to secure the right to cast their votes by proxy. The courts generally held that the authority of a by-law, even in the absence of legislative sanction, was sufficient to confer the right to vote by proxy. The question of the power of proxy voting by by-law is one of historical interest only, however, because every state but one, viz., Iowa, now has a statute authorizing proxy voting.

The fact that the right to vote by proxy is well settled at law does not imply, however, that the requirements and procedures of so voting are uniform and equally well-defined. Statutes have been enacted by the various states which govern the procedures of voting in corporations chartered by the respective states. The Securities Exchange Act of 1934 gave the Securities and Exchange Commission the authority to regulate the proxy voting process for those securities which are registered and "listed" on a national securities exchange. The SEC also regulates proxies of electric or gas public utility holding companies which are registered under the Public Utility Holding Company Act of 1935 and proxies of investment companies which are registered under the Investment

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5 Ibid., pp. 42-46.

6 See Tables A and B for a tabulation of significant state statutory requirements.


Company Act.\(^9\)

Prior to the regulation of proxies by the SEC, the stockholder typically received once a year a finely printed proxy card which he was asked to sign and return. Loss describes the practice at the time:

Ordinarily the proxy authorized one or more persons to vote the stockholder's shares to elect directors and take any other action which was considered desirable. This was the sum and substance of the corporate owner's solemn right of suffrage. Too frequently the owner of the shares was given no assurance that the items mentioned in the notice of the meeting were the only ones which the management expected to bring up for consideration at the meeting. The stockholder was merely invited to sign his name and return his proxy without being furnished the information essential to the intelligent exercise of his right of franchise.\(^10\)

The primary evil that required correction was the ease with which corporate management could perpetuate itself in office by misuse of the corporate proxy and by concealment of important information from the stockholders. This evil was made possible by the rapid growth in the size of corporations and the number of stockholders, and by the widespread distribution of the stock ownership.\(^11\)

To eliminate some of these abuses and to make it possible for the stockholder to intelligently exercise his vote, the SEC, under section 14 of the Securities Exchange Act\(^12\) promulgated a set of rules designated as Regulation X-14, commonly referred


\(12\)Appendix I.
to as the SEC "Proxy Rules." As Regulation X-14 now stands, it consists of eleven rules together with Schedules X-14A and X-14B.

Schedule X-14A specifies in twenty-one items the information required to be included in a "proxy statement" which must be given to each person whose proxy is solicited. In addition to the proxy statement, the proxy rules require that a copy of the annual report to stockholders accompany or precede the proxy statement and that management must include in its proxy solicitation material a one hundred word statement in support of any proposal of a security holder which it opposes.

Schedule X-14B specifies certain information which must be included in the proxy statement for all director nominees, rather than merely for the management nominees, if the election is to be a contest.

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14 See Appendix for the proxy rules and Schedules X-14A and X-14B.
I. THE CORPORATE PROXY

Nature and Effect. The form necessarily provides for the appointment of a person or persons, usually officers of the corporation, with powers of substitution of others, to cast the stockholder’s vote at a meeting of the corporation’s stockholders to be held at a stated time and place for specifically enumerated purposes. The effect of the appointment is that the vote of the stockholder is heard with the same force and effect as though he were personally present at the meeting.

No particular form of words is necessary to constitute a proxy. The instrument should, however, show an intention on the part of the stockholder to empower the person to whom it is given to act in voting the stock, and that it is free from all reasonable grounds of suspicion of its genuineness and authenticity.

Generally the form lists in abbreviated terms the business expected to be transacted and provides an opportunity for the stockholder to direct his vote for or against certain proposals.

The proxy, as has been pointed out, constitutes evidence of the appointment of an agent or attorney for a special purpose and for a limited period of time. It gives the stockholder an oppor-

15 Gentry-Futch v. Gentry, 90 Fla. 595, 106 So. 473 (1925); Smith v. San Francisco & N.P. Ry., 115 Cal. 584, 47 P. 582 (1897).

16 In re St. Lawrence Steamboat Co., 44 N.J. L. 529 (1882).
tunity to give his voting representative special instructions on specific matters.

The proxy is a necessary instrument for the expedition of corporate business because of the widespread distribution of corporate securities and the separation of ownership and management. Because of their wide dispersion, stockholders cannot conveniently attend corporate meetings in person and the present-day stockholders' meeting depends upon the proxy instrument to obtain a quorum.

It has been pointed out that no particular form of words is necessary to constitute a proxy. However, some formal requirements are necessary.

State Jurisdictions. The only requirement imposed by most state statutes as to the form of the proxy instrument is that it must be in writing. Some of the states have statutes governing the duration of the proxy. The various states restrict the validity of proxies to periods of from eleven months to three years from the date of execution, unless the stockholder specifies in the proxy the length of time for which the proxy is to continue in force. Maine, Massachusetts and New Hampshire require that a proxy be valid for a specified meeting only, whereas North Carolina and Virginia permit proxies to be valid up to ten years from their date of execution. See Tables A and B for a tabulation of some of the significant requirements of the states in regard to the form of proxies and the voting of proxies.

Almost all of the states permit a corporation to set a record date, at some specified maximum number of days prior to the date of the stockholders' meeting, upon which date determination is
Proxy must be in writing.

Duration of proxy after execution unless the period is specified therein (months).

Proxy valid for specified meeting only.

Maximum statutory validity of proxies (years).

Maximum number of months from execution to date of use.

Authority of the proxy holder is not revoked by the death or incapacity of the grantor unless written notice of such is given the corporation.

Written notice of termination of the authority of a proxy holder must be given to the secretary of the corporation by the stockholder.

Cumulative voting permissive.

Cumulative voting mandatory.

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Table A: State Statutes Relating to Proxy Voting.

Maximum number of days prior to meeting at which a corporation is permitted to set a record date. Stock shall not be voted if transferred on the stock books within the specified number of days preceding the meeting unless a record date has been set.

Fiduciaries may vote by proxy (usually provided that their names appear on the books).

A majority of fiduciaries present at corporate meetings may vote the stock where two or more persons are designated as fiduciaries.

Pledgor of stock may vote it regardless of name appearing as owner of record.

A receiver may vote stock without a transfer of stock to his name if his authority is granted by an appropriate court order.

An administrator, executor, guardian, or conservator may vote stock without transfer of stock to his name.

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Table B. State Statutes Relating to Proxy Voting.

made as to the stockholders entitled to vote by reference to the stock records. Some of the states provide that, in absence of such a record date set by the corporation, stock shall not be voted if it has been transferred on the books of the corporation within a specified number of days preceding the stockholders' meeting.

Almost all of the states have statutes dealing with cumulative voting for directors—many of them make cumulative voting mandatory and many of them make it permissible if it is provided for in the corporation's by-laws.

SEC Jurisdiction. The SEC Proxy Rules impose specific requirements. These are illustrated by the proxy example in Table C, which meets the SEC requirements. The Proxy Rules will be discussed in Chapter II in the order in which they affect the items in the sample proxy in Table C.

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17 See Appendix II for the SEC Proxy Rules.
THE XYZ COMPANY

Proxy Solicited by Management
(bold face type)

The undersigned hereby constitutes and appoints Thomas Able, Richard Baker, and Harry Charles, or any one or more of them acting in the absence of the others, with full power of substitution, the true and lawful attorneys and proxies of the undersigned, to attend the Annual Meeting of the Stockholders of The XYZ Company to be held at Room 200, 355 North Meridian Street, Indianapolis, Indiana, on April 15, 1961 at 10:00 AM, and any adjournments thereof, to vote the shares of said corporation standing in the name of the undersigned with all the powers the undersigned would possess if personally present at such meeting:

(1) For the election of directors.

(2) FOR □ or AGAINST □ the proposal that the by-laws be amended to provide for cumulative voting on all elections of directors. (Management recommends a vote AGAINST this proposal.)

(3) At their discretion upon such other business as may properly come before the meeting.

If no specific direction is given, this proxy will be voted against the proposal for an amendment to the by-laws to provide for cumulative voting for directors. (bold face type)

At the time of preparation of this proxy, management knows of no other business which will be presented for action at the meeting.

Dated _______________________

Signed ______________________

[John J. Doe
123 Easy Street
Indianapolis, Indiana] Please sign exactly as name appears to the left. When signing as executor, administrator, attorney, trustee or guardian, please give full title as such. If a corporation, please sign in full corporate name by president or other authorized officer. If a partnership, please sign in partnership name by authorized person.

No postage is required if returned in enclosed envelope and mailed in the U.S.

Stockholders who are present at the meeting may withdraw their proxy and vote in person if they so desire.

Table C. Sample Form of Proxy
II. FORM OF PROXY

Since the states impose few requirements as to the form of proxies, this chapter will concern itself primarily with the requirements of the SEC Proxy Rules. However, where state laws do exist, comment will be made as to their effect. Because of the few state requirements as to form, the writer believes that a corporation should, as a practical matter of ease of preparation and uniformity from meeting to meeting, and as an evidence of its fair-minded approach to stockholder relations, generally conform its proxies to the SEC requirements even though this is not required. Certainly such a practice would eliminate some possible misunderstandings between management and the stockholders and in some cases possibly ward off proxy contests by disgruntled stockholders.

Party Soliciting the Proxy. SEC Rule X-14A-4(a) requires that the form of proxy shall indicate in bold face type whether or not the proxy is solicited on behalf of management. The identifying statement can appear on any part of the proxy form, so long as it is in bold face type. No particular form of expression is required.

Since the requirement is only that the soliciting party identify itself as to whether or not it is soliciting on behalf of management, it would appear that, in the case of the non-management proxy, the rule would be complied with by the simple assertion, "This proxy is not being solicited on behalf of management."
However, it is common practice to identify the soliciting party, e.g.: "This proxy is being solicited by and on behalf of John Doe in opposition to the management," or, "This proxy is solicited by the Stockholders' Protective Committee of the XYZ Company. It is not solicited by management."\(^\text{18}\)

The SEC has permitted the use of a proxy form which merely gave the name of the soliciting group without asserting its opposition to management.\(^\text{19}\)

The states make no requirements that the soliciting party identify itself, although it is generally necessary to do so if the proxies are really needed and any follow-up is to be made to secure them.

Proxy Agents. It is customary to name two or three proxy agents. In the case of a management solicitation, the proxy agents are usually officers or directors of the company.\(^\text{20}\) However, unless the state statute, articles of incorporation, or by-laws require it, it is not essential that the person who is appointed to act as proxy holder should himself be a stockholder.\(^\text{21}\) The proxy holder may be an entire stranger to the corporation.\(^\text{22}\) It is important that the proxy instrument expressly endow the proxy agents with two powers.\(^\text{23}\) The first of these two powers is that in the absence

\(^\text{18}\) Ibid., pp. 142-3.
\(^\text{19}\) Ibid., p. 143.
\(^\text{20}\) Ibid., p. 142.
\(^\text{22}\) Ibid.
\(^\text{23}\) Aranow and Einhorn, op. cit., pp. 142-3.
of any of them, the other or others attending the meeting have
full power to vote the proxy. This will eliminate the possibility
of a challenge to a ballot not signed by all the proxy agents
named in the proxy form. The second power which should be expressly
conferred is the power of substitution. This permits a named
proxy agent who is unable for any reason to attend the meeting to
name another person to fill his role. The power of substitution
protects against unanticipated situations which might arise between
the time of solicitation and the meeting.

The proxy agent or proxy holder is an agent for the grantor
of the proxy, and is under a duty to vote in the best interests of
his principal. In the exercise of the authority conferred by the
proxy instrument, the proxy holder must comply with the instructions
given him by the grantor of the proxy. The stockholder who is
being represented by the proxy agent is not bound where the agent
acts in bad faith. The grantor of the proxy is justified in re-
voking the authority granted in the proxy if the proxy holder
intends to use the proxy to promote an iniquitous project of his
own and the stockholder is not committed to an act performed by
the proxy holder solely for his own benefit. Neither does the

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24 Willoughby v. Port, 132 F. Supp. 496 (1960); Hauth v. Giant
Portland Cement Co., 96 A. 2d 233 (1953); State ex rel Weede v.
Bechtel, 239 Iowa 1298, 31 N.W. 2d 653 (1948); Mutual Reserve Fund
27 Reed v. Bank of Newburgh, 6 Paige (N.Y. 337) (1837).
28 Rice & Hutchins v. Triplex Shoe Co., 16 Del. Ch. 298,
147 A. 317 (1929).
proxy agent have the authority to perform any act which his principal, the proxy grantor, could not perform if he were personally present at the meeting. For example, the proxy agent cannot vote upon a proposal which is illegal or contrary to public policy since the grantor could not vote upon such a matter.

**Date and Place of Meeting.** For solicitations which are subject to the SEC Proxy Rules, it is necessary to identify the meeting at which the proxy will be exercised because of the Rule X-14A-4(d) requirement that "No proxy shall confer authority... to vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders." At the conclusion of that meeting, the agency relationship is automatically terminated. Aranow and Einhorn note that just because the SEC speaks only of an annual meeting, this should not be taken to mean that a special meeting of stockholders can create an agency relationship which will exist beyond the particular meeting. This would be a violation of the spirit of the Proxy Rules and they conclude that the SEC probably would not allow it.

If the form of proxy is subject to the laws of Maine, Massachusetts or New Hampshire it is also necessary that the date and place of meeting be specifically identified since these states' statutes restrict the validity of proxies to one specific meeting only. Whenever the proxy is restricted to one meeting, the phrase

30Aranow and Einhorn, op. cit., p. 144.
"and any adjournments thereof" should always follow the date of the meeting.\textsuperscript{31} It is considered desirable to make express the authority to vote at any adjournments of the specified meeting to avoid the possibility of a later challenge.

If the proxy is regulated only by state law, other than the three above-named states, it is permissible to use a form which confers authority on the proxy holder to vote the stock without limiting the authority to any one meeting or any one period of time. In such a case, the authority conferred exists until revoked by the grantor or for a length of time prescribed by a state statutory provision on the duration of proxies, generally eleven months.

Scope of the Authority Conferred. The proxy instrument should authorize the proxy holder described therein to attend and vote at the meeting with all the powers the grantor of the proxy would possess if he were personally present. In the case of a proxy subject only to state laws, general language similar to the above probably would be sufficient to authorize the proxy holder to vote for directors and on proposals and resolutions or any business properly before the meeting.\textsuperscript{32} The courts have held, however, that there is no authorization under such a general proxy to vote for unusual and important actions such as the sale of all corporate assets.\textsuperscript{33}

\textsuperscript{31}Ibid.

\textsuperscript{32}Gow v. Consolidated Coppermines Corp., 19 Del. Ch. 172, 165 A. 136 (1933); Farish v. Cieneguita Copper Co., 12 Ariz. 235 at 241, 100 P. 761 (1909); McKee v. Home Savings & Trust Co., 122 Iowa 731 at 735, 96 N.W. 609 (1904); Atterbury v. Consolidated Coppermines Corp., 26 Del. Ch. 1, 20 A. 2d 743, 747 (1941).

the reorganization of the existing corporation into another corporation of a different state, \(^\text{34}\) the abandonment or surrender of the charter of the company, \(^\text{35}\) the voluntary liquidation of the corporate affairs, \(^\text{36}\) or the dissolution and winding up of the corporation.\(^\text{37}\)

However, if the stockholder executing the proxy had notice that such unusual matters were to be considered, or was aware of the financial status of the company and knew that definite action was necessary if the company were to continue to operate, there should be no inherent obstacle to a general authorization similar to the one described above covering these extraordinary transactions, \(^\text{38}\) for such propositions are within the contemplation of the stockholder when he executes the proxy. \(^\text{39}\)

For those proxies which are subject to SEC regulation, no such general language will suffice since the Proxy Rules impose certain specific requirements. Rule X-14A-4(a) requires that the form of proxy "shall identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the management or by security holders." Thus the proxy must specifically state that the proxy holder is to be authorized to vote for the

\(^{34}\) Parish v. Cieneguita Copper Co., op. cit.

\(^{35}\) Smith v. Smith, 3 Desaus. Eq. (S.C.) 557 (1813).

\(^{36}\) McKee v. Home Savings & Trust Co., op. cit.


\(^{38}\) Axe, op. cit., p. 248.

election of directors, to vote on specific proposals before the meeting, and to vote on other matters which may come before the meeting. The SEC requirements in these three areas are discussed separately below.

Election of Directors. As was pointed out above, the Proxy Rules require that the form of proxy specifically list the matters to be acted upon.

Rule X-14A-4(d) states that "No proxy shall confer authority (1) to vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement...." This rule was intended to eliminate the practice by the management of certain corporations of soliciting proxies for the election of directors without making any disclosure of the persons who would be nominated and for whom the proxy would be voted. This practice is still widespread among companies whose proxy solicitations are not subject to the SEC Proxy Rules.40

Of interest, here, is the SEC requirement that the proxy statement contain certain important background information with respect to each person nominated for election as a director. It is not necessary that the proxy instrument refer to the nominees listed in the proxy statement, although it may be advisable. It appears to be sufficient merely to state that the stock will be voted for the election of directors.

Under cumulative voting the soliciting group may want to allocate its voting strength among less than all of the nominees who

40 Aranow and Einhorn, op. cit., p. 145.

41 Ibid.
were named in the proxy statement. This would appear to be a deviation from the authority granted to vote for all the nominees named in the proxy statement. It can be argued logically that, where the cumulative voting right exists, the signing stockholder must be deemed to realize that the mechanics of cumulative voting, in order to achieve maximum results, may necessitate concentrating on fewer than all of the nominees. However, Aranow and Einhorn conclude that it is advisable to eliminate the possibility of a challenge to the proxy agents' authority if they undertake to vote cumulatively by modifying the language of the proxy form to state that the proxy will be voted cumulatively for any or all of the nominees.42

Proposals. The Proxy Rule X-14A-4(a) requirement of clear and impartial identification of each matter intended to be acted upon requires specific and separate mention of proposals and resolutions to be voted upon at the meeting.

Rule X-14A-4(b) requires that "Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of each matter or group of related matters referred to therein as intended to be acted upon, other than elections to office." Usually the matters to be acted upon are listed on the proxy form and next to each matter two boxes are placed—one labeled "for" and the other "against." By checking the appropriate box, the stockholder can indicate the way his proxy is to be voted.

The meaning of the term "clearly and impartially" in Rule X-14A-4(a) has been interpreted by the SEC as prohibiting the use

42 Ibid., p. 146.
of the proxy form to electioneer for or against propositions to be voted upon by the stockholders. The Commission has taken the position that it is acceptable to include in the form of proxy a simple statement of the fact that the management favors or opposes any of the matters to be acted upon pursuant to the proxy. However, the Commission regards as contrary to the rule any statement or devise which advocates any proposal, obscures the presentation of any proposal, misleads or confuses the security holder, brings pressure to bear upon him in the exercise of his right of choice or makes it mechanically more difficult for him to vote one way rather than another. Among the devices which the Commission will regard as contrary to the rule are "arguments or recommendations as to the merits of proposals, emphasis upon the management's position beyond the mere statement of the fact that management favors or opposes a proposal, the use of arrows or any other visual device designed to direct the shareholder's attention to the place on the proxy for voting one way and away from the place for voting the contrary, and the switching of boxes in order to procure the result desired by management."  

Aranow and Einhorn cite occasional placement of the "against" box preceding the "for" box in connection with proposals to which the soliciting groups were opposed. They conclude that these variations are possibly due to changes in the Commission's staff or policy. Such a use of the proxy is an exception, not the rule, they believe.

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43 Ibid., p. 147.
44 Ibid.
45 Ibid.
46 Ibid., p. 148.
To meet the "clearly and impartially" requirement, then, the soliciting group must consider carefully the presentation of the proposals so that they do not influence the decision of the stockholders or make it more likely that they will vote in the way advocated by the soliciting group. Some of the items to be considered are the arrangement of the boxes to be checked for or against, the manner of the listing of the proposals, and the size and weight of type used.

The SEC has provided for the granting of discretionary authority to the proxy holder if the stockholder executes the proxy but does not indicate how his proxy is to be voted. Rule X-14A-4(b) provides such authority if "the form of proxy states in bold face type how it is intended to vote the shares represented by the proxy in each such case." The proxy should always take advantage of this provision and include in bold face type a statement as to how it is intended to vote for each proposal in the event the stockholder does not indicate his choice. Some stockholders will fail to check the boxes supplied either through inadvertence, because they entrust the decision to management, or because they agree with one side or other in a proxy contest. The inclusion of the required statement would avoid a challenge as to the right of the proxy holder to vote such a proxy.

Other Business. In most cases the only business which will be transacted at the meeting is that which is indicated on the proxy form. The SEC Proxy Rules are aimed at eliminating the elements of surprise and sharp practices from proxy contests. However, an alert soliciting group should adopt the attitude that anything can
happen at the meeting. To be prepared for unexpected matters coming up for vote, the proxy form should confer the discretionary authority permitted by Rule X-14A-4(c). This Rule requires that, to obtain such discretionary power, the soliciting group must not be "aware a reasonable time prior to the time the solicitation is made that any such other matters are to be presented for action at the meeting and provided further that a specific statement to that effect is made in the proxy statement or in the form of proxy." A typical wording of this statement is contained in the sample proxy in Table C.

Date of Execution. As was previously pointed out, many states restrict the validity of a proxy to a specified period of time from the date of its execution. In such cases, the presence of the date of execution would not be necessary to the validity of the proxy, but it would be highly desirable from a practical standpoint, since, if contested, proof would have to be given as to the date of execution. Also, the date of execution is important when it is necessary to determine which of two or more proxies executed by the same stockholder is to be accepted by the inspectors of election as the valid one. Since a later proxy revokes all earlier ones, the date on which the proxy was executed becomes vital information.

In the case of proxies subject to the Proxy Rules, no such option exists because Rule X-14A-4(a) requires that the proxy form "shall provide a specifically designated blank space for dating the proxy." Furthermore, the SEC recognizes the importance of the date of execution in determining the validity of proxies in Rule X-14A-10, which reads: "No person making a solicitation which is subject to this regulation shall solicit (a) any undated or post-dated proxy;
or (b) any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder."

Aranow and Einhorn point out that "If it were possible to solicit a proxy which was already dated the day of the meeting, or which provided that it shall be deemed to be dated as of the day of the meeting, or was undated and the day of the meeting could be written in as its execution date, then the faction which secured such a proxy would have no concern about the stockholder's subsequently changing his mind and giving a proxy to the opposing faction."

Rule X-14A-10, of course, prohibits such a form of proxy and thereby guarantees to the stockholder that he can change his mind at any time prior to the meeting and have his decision effectively expressed at the meeting.

**Signature of the Stockholder.** The signature of the stockholder is, of course, essential to the validity of the proxy.

The proxy normally contains a statement asking the stockholder to sign exactly as his name appears on the stock records, which should be the way his name is printed on the proxy form. This is especially important in the event of a proxy contest since the opposing faction will probably look for every possible technical basis for challenging the validity of proxies. One of the most frequent grounds for a challenge is that the signature of the stockholder deviates from the way his stock is registered on the company books.

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47 Ibid., p. 151.
48 Ibid., p. 155.
However, not all deviations of signatures from the exact manner of recording in the stock book are fatal to the validity of the proxy, as will be pointed out in Chapter IV. The use of an initial instead of spelling out of the christian name is not enough to require the inspectors to reject the proxy.49

A stockholder may authorize a third party to sign the stockholder's name to a proxy, and the mere fact that the signature on the proxy is not in the handwriting of the stockholder does not invalidate the proxy.50

In a recent case, the court held that the use of a stamped facsimile signature is sufficient to cloak the proxy with the presumption of authenticity and, where there was no showing that such a signature was not authorized, proxies signed in a such a manner were properly counted at the meeting.51

The signature directions should also advise executors, administrators, attorneys, trustees and guardians to give their full title when signing the proxy. The requirements of the states vary as to the authority granted to such fiduciaries and agents to sign proxies. In some jurisdictions an administrator, executor, guardian or conservator may sign proxies without the transfer of the stock to their names on the books of the corporation. Most states grant fiduciaries the right to execute proxies; however, in most cases the stock must be transferred on the stock books to the name of the

49 Atterbury v. Consolidated Coppermines Corp., op. cit.


fiduciary. See Table B for requirements by state.

The last two statements in the sample proxy in Table C, i.e., no return postage required and the right of stockholders who attend the meeting to withdraw their proxies, are not necessary under either the Proxy Rules or state law. They do, however, frequently appear on proxies for whatever aid they may be in getting stockholders to sign and return their proxies. Some stockholders may be reluctant to execute a proxy unless they will still be free to attend the meeting and vote in person.

Frequently proxy forms carry the statement that all prior proxies are thereby revoked. Whether or not such a statement is made, a later proxy revokes an earlier one. The only reason for including such a statement is to overcome any doubts that may exist in the mind of the stockholder who has already given a proxy to an opposing faction. This statement on the form of proxy would appear to be unnecessary since the proxy statement would normally inform the stockholder of his ability to revoke any proxy he has already executed by the execution of a later one.
III. STOCKHOLDERS' MEETING

Generally the stockholders are asked to vote on questions which are reserved to them by statute, articles of incorporation or by-law. As a general rule, stockholders cannot act on the ordinary business of the corporation. The board of directors and the corporate officers set company policy and see that it is carried out. The major responsibility of the stockholders, thus, is the periodic election of the board of directors, who in turn elect the officers. Indeed, the right to vote is an essential of ownership of stock.

Statutes may require an annual meeting, but the statutes frequently provide that either the certificate of incorporation or by-laws may determine the manner of calling and conducting meetings and the method of voting. Annual meetings generally deal with organization for the ensuing year. The directors are elected at that time and other matters may also be considered.

Frequently matters other than the election of directors are considered at special meetings of the stockholders. Special meetings are appropriate for the consideration of matters which require stockholder decisions between regular annual meeting dates such as merger proposals or changes in the capital structure of the company.


Other than the matters to be considered, there is no difference between the requirements for obtaining proxies for annual and special meetings.

Except for statutory requirements or provisions in the by-laws, all stockholders registered as owners at the time of the meeting are entitled to vote. In modern times, with ownership of stock in many corporations fairly widespread, this arrangement makes holding of a meeting on the date specified very difficult because of last minute changes in the ownership of shares which would not be recorded at the date of the meeting.

At the present time, thirty-six of the states have passed statutes permitting a corporation to set a "record date" prior to the date of the meeting to allow the corporation time to prepare a list of stockholders of record and to tabulate proxies. Any transfers of stock after the record date set may not be considered for purposes of determining the right to vote at the stockholders' meeting. Such a record date may be set by the corporation, under the terms of the typical state statute, at any date up to a maximum number of days before the date of the stockholders' meeting. 54

The same result is obtained by a statute providing that no stock shall be voted which has been transferred on the stock records of the company within a specified number of days prior to the meeting. Such a statute exists in seven states, although six of the states provide for its use only in the absence of a record date set by the company. The use of such a law would disenfranchise both the transferor and transferee of any shares within the specified period.

54 See Table B for a listing of the state statutes.
Cumulative Voting. Cumulative voting theoretically gives minority stockholders representation on boards of directors proportional to their stockholdings, as contrasted with straight voting where the minority stockholder could elect no one since he commands less than a majority of the total vote.

Under the cumulative voting system, a stockholder may multiply the number of shares registered in his name by the number of directors to be elected and cast all these votes for one director or distribute them as he wishes among several nominees. At the present time, twenty-five states guarantee by statute the right of the stockholder to vote cumulatively. Another eighteen states make cumulative voting permissible if the corporation by-laws provide for it.55

As previously pointed out, where the right of cumulative voting exists, it is advisable to modify the language of the proxy form to state that it will be voted cumulatively for any or all of the nominees. This notice should avoid a later challenge from a proxy giver that the proxy holder did not vote the proxy in accordance with the authority conferred.

Inspectors of Elections. Statutes, charters, or by-laws may provide for the appointment of inspectors of election. No special qualifications are necessary for inspectors but they are usually laymen selected to exercise good business judgment.56 Inspectors are not necessary unless statutes, charters, or by-laws require them.57

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55See Table A.
If they are required, and authority for their selection is not given to the stockholders, directors, or presiding officer, then the common law applies and appointment is made by the stockholders. At least two inspectors should be chosen.

The duties of the inspectors of election consist primarily of the tabulation of ballots and the certification of the result. They are essentially ministerial rather than judicial officers. For example, the court ruled that they should not have taken cognizance of an alleged variance between proxies in absence of proof given by the person whose signature was allegedly forged, since the process of determining whether a forgery exists is judicial and not ministerial.

However, the inspectors do make decisions which carry judicial connotations. For example, they take note of defects on the face of the proxy such as the signature of a trustee, if the state statutes do not authorize trustees to vote by proxy, since the inspectors are presumed to know that fiduciaries cannot grant their discretionary powers to others.

The inspectors may, upon occasion, be required to decide issues of fact, although they generally must accept proxies which have the appearance of prima facie authenticity and whose genuineness is not contested.

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58 State v. Chute, 34 Minn. 135, 24 N.W. 353 (1885).
62 Atterbury v. Consolidated Coppermines Corp., op. cit.
They are judicial officers to the extent that their decisions are valid until set aside by a competent court. This is necessary in order to avoid undue delay in the tabulation of proxies for the corporate meeting. The alternatives would be either a new election or a review by court action, both of which would incur expense and delay.

The rule appears to be that if a summary investigation and determination may be made, the inspectors should take steps to settle the question, but in doing so act honestly and in a reasonable manner. This rule appears to be a practical approach to the resolution of questions of validity of proxies, since, when proof sufficient to overcome the initial presumption of the validity of a proxy is presented, the inspectors should be permitted to investigate even though the defect is not apparent on the face of the proxy if it can be done summarily and without undue delay to the election. However, if no objection is made within a reasonable time after the ballot is cast, the inspectors must accept it.

In an apparent desire to affirm corporate elections, the courts have frequently upheld the decisions of the inspectors of election. The burden of proof rests upon the person who challenges the regu-


64 Comments--Judicial Actions of Inspectors of Election, op. cit.


66 Pope v. Whitridge, op. cit.

67 Coolbaugh v. Herman, 221 Pa. 496, 70 A. 830 (1903).
larity of a proxy and the decision must be made whether or not the proof offered is sufficient to overcome the presumption that a proxy regular on its face and apparently the act of the stockholder is valid and should be accepted.

If there are challenges to votes and the acceptance of certain proxies, the inspectors must record them and the reasons therefor and announce at the meeting the rulings made thereon by the inspectors.

When the inspectors have completed the examination of proxies, and tabulated the votes represented by the proxies, they report to the presiding officer of the meeting by affidavit the results of their work. In the event of an opposition vote, the report sets forth the number of shares voted for and against proposals.

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69 Ibid.


71 Aranow and Einhorn, op. cit., p. 362.
IV. WHO MAY VOTE

With the increasingly widespread ownership of stock has come a multitude of problems in determining whether to accept or reject proxies executed by the many owners and representatives of the owners.

In addition to individual holdings, corporation stock lists show corporations, partnerships, various kinds of trusts, tenancies, and fiduciary accounts. The corporation must also deal with the representatives of deceased stockholders and persons under legal disability.

All the shares represented by these accounts are entitled to be heard in the exercise of stockholder business. If they are to be represented at meetings, who will execute the proxies and how should the proxies be signed? These questions are discussed in this chapter.

Conclusiveness of the Stock Book. Theoretically, the owner of stock at the time of the election has the right to vote. But the appearance at the meeting of various persons claiming to be stockholders would result in confusion and uncertainty.72 To avoid such a situation, most states have made it permissible for a corporation to designate a date prior to the meeting upon which the list of eligible voters is determined.73 Some states permit a corporation to close

72 Aranow and Einhorn, op. cit., p. 343.
73 See Table B for certain provisions as to stock records.
its transfer books a specified number of days prior to the meeting.

Thus the primary qualification for voting is that one's name is on the stockholder list. But the question arises as to whether this is the only determinant of the right to vote. Some states have made the stock book conclusive, the only evidence of the right to vote. Other states provide that the stock book is only prima facie evidence of the right to vote. In either jurisdiction, the stockholder list is conclusive as to the inspectors of election since the inspectors are not judicial officers and cannot look behind the records. In prima facie jurisdictions, however, a court of review can look behind the stock records to investigate facts or circumstances concerning the right of shares to be voted and the proper person to vote it.

In the following discussion of the rights of various types of security holders to vote, the significance of these statutory differences should be apparent.

Agents and Attorneys-in-Fact. A person serving as an agent or attorney-in-fact should sign a proxy in the name of his principal exactly as it appears on the stock book followed by his own signature and his title. For example, the proxy should be signed, "John J. Doe, by XY, Agent," or, "John J. Doe, by XY, Attorney-in-fact."

It is advisable to include proof of the agent's authority to execute the proxy in order to avoid a possible challenge to the validity


of the proxy. 76

In a case in which there was no indication of representative capacity on the executed proxy, but the stock record bore an address in care of the agent, the court held that the proxy should be accepted. 77 If the election is not contested, it would seem that the inspectors would be justified in accepting a proxy signed by an agent or attorney-in-fact in the name of the stockholder of record, even though no evidence of the agent's authority was submitted, since the inspectors are not responsible for findings of fact. The courts frequently refer to prima facie authenticity, meaning that the inspectors must generally use only what is placed before them and make decisions without suspiciousness of mind and any necessity to inquire unless there is a well-founded challenge.

Brokers and Nominees. Many shares are held in a "street name," the name of the broker, so that the stock books indicate the broker as registered owner of the stock, whereas he may have no actual interest in the shares or only a minor interest, i.e., the amount of any margin extended to the actual owner. Since only owners of record may vote, 78 proxies signed by brokers or nominees must be accepted.

The broker should sign his firm name or individual name exactly as it is carried on the stock books as required for any other proxy. See the "Corporations" and "Partnerships" sections, as the case may be, for more detailed discussions of the requirements for proxies executed by brokerage firms.

76 Axe, op. cit., p. 58.

77 Atterbury v. Consolidated Coppermines Corp., op. cit.

It has been said that nominees normally have the power to vote without obtaining the consent of the beneficial owner and that the corporation will recognize the nominees as the true owners, even though they have no beneficial interest. It is the province of a reviewing court to reject a vote which was found to be in violation of the equitable rights of another. It is presumed from the conduct of brokers' customers that it is by the customers' instructions that their shares are so registered; thus it is presumed that the broker has obtained the authority to vote the shares and that the act performed expresses the will of the owner.

Notwithstanding the fact that the courts have assumed that a nominee-executed proxy is an expression of the beneficial owner's will, the proxy rules of the New York Stock Exchange prescribe that no member firm shall execute a proxy for stock registered in its name unless the firm is either the beneficial owner also or is directed to do so by the beneficial owner. The various regional stock exchanges as a matter of practice and custom ordinarily follow the policy expressed in the rules of the New York Stock Exchange unless they have adopted rules of their own. In a recent case, the court took judicial notice of the stock exchange regulations cited

79Atterbury v. Consolidated Coppermines Corp., op. cit.


above,\textsuperscript{84} so these regulations assume quasi-legal status.

Normally brokers and banks administering nominee accounts will obtain instructions from the beneficial owner before executing the proxy, even though the stock exchange proxy rules may not be applicable. An exception to this is permitted by the proxy rules of the New York Stock Exchange which allow a member broker to vote the shares if instructions from the beneficial owner to the broker are not received by a certain number of days before the meeting.

Because of the problems involved in a broker getting instructions from all the beneficial owners of a particular security, the possibility exists that he may execute a proxy or proxies for a total of fewer than the total number of shares held. Such a proxy should be counted.\textsuperscript{85} The broker may, after tabulating instructions from various beneficial owners, execute a proxy or proxies in excess of the total number of shares held due to error or duplication in response or error in tabulation of the responses. Such a proxy should probably be accepted for the total number of shares held since the inspectors could not reasonably disenfranchise a stockholder. A proxy form on which the number of shares being voted is omitted may be voted for all the shares recorded in the name of the owner.\textsuperscript{86} Corporations. As a general rule, a corporation owning stock in another corporation is entitled to vote it by proxy.\textsuperscript{87} A few states

\textsuperscript{84} Schott v. Climax Molybdenum Co., op. cit.


\textsuperscript{86} Wick v. Youngstown Sheet & Tube Co., 46 Ohio App. 253, 188 N.E. 514 (1932).

have specifically sanctioned it by statute.

It has been held that proxies manually signed with the corporate name of the registered owner are valid. To avoid challenges, however, it is probably better practice to have the corporate name signed by an officer who adds his signature and title. The latter type of signature would certainly seem more desirable if any discretionary authority is granted to the proxy agent.

As has been observed before, there is a presumption of regularity when a proxy is signed as the name appears on the stock records. This is no less true in the case of a corporation. As a judge stated, "I can see no reason for requiring the execution of a proxy in such case to be attended with all the formalities required for the execution of solemn corporate acts."89

A troublesome question arises when proxies are signed by a corporation in a fiduciary capacity. Normally such a proxy may be accepted unless there is evidence of disagreement between the fiduciaries. See "Executors, Administrators and Guardians" or "Trustees" sections for a discussion of proxies of fiduciaries.

Escrow. The fact that stock may be held by a person other than the registered owner under an escrow agreement does not affect the voting right of the owner. The stockholder has retained title and is entitled to notice of stockholder proceedings and to vote.90

Executors, Administrators and Guardians. Executors, administrators and guardians have the right to vote in the name of the stockholder.

88 Gow v. Consolidated Coppermines Corp., op. cit.

89 Ibid.

stock standing on the corporation books at the time of his death. 91

Twelve states have specifically provided that such persons may vote stock without a transfer of name on the corporation's books (See Table B). In such cases the evidence of the authority of the executor, administrator or guardian to sign a proxy should accompany the proxy. Such evidence is generally a certificate signed by a judge, clerk or other officer of the court which appointed him.

The proxy should be signed in a manner similar to the following:

"AB, executor under the will of CD, AB, administrator of the estate of CD," or, "AB, guardian for CD." 92

Perhaps the most common practice is to register the stock as:

"AB and First Bank, executors, care of First Bank." In such cases, and indeed in almost every case in which a bank is one of the executors, it is the general business practice to accept a proxy signed only by the bank. 93 Courts have held that inspectors of elections are not justified in rejecting proxies signed by only one of two or more executors. 94

An old court case held that a proxy signed by heirs or next of kin of a decedent rather than by his executor or administrator is void. 95 In the case of a small estate or small holdings, and in the absence of a proxy contest or a challenge, it is unlikely that


92 Axe, op. cit., p. 58.

93 Ibid.


95 Schoharie Valley R.R. Case, 12 Abb Pr. (N.S.) (N.Y.) 394 (1872).
a corporation would reject a proxy signed by an heir or next of kin if he also indicates his capacity. To do so would be to deny the vote to the party who has the property interest in the stock involved.

While it is generally agreed that an executor may give a proxy where it contains express directions as to the manner in which the vote is to be cast, courts have questioned the right of a person acting in a fiduciary capacity to give discretionary authority by proxy. This problem is discussed in the "Trustees" section.

If stock is registered in the name of a person adjudged to be insane, a presumption is raised that the insanity continues until the contrary is proved. The guardian, and not the incompetent, has the right to vote.

Individuals. One of the most frequent problems in the determination of the validity of proxies is the variance of stockholder signatures from the way in which the stock is recorded on the corporation books. Frequently the stockholder signs his full name when the corporation books show only initials in place of the Christian name, or vice versa. Other minor variations occur. In one court case, stock registered in the name of "James J. Borman" was represented by a proxy signed "J. H. Borman." Both of these variations should not render the proxy invalid, the court ruled, on the theory that since the proxy was mailed to the stockholder as his name and address appeared on the books, and the same proxy was received back by the corporation, the difference in names was not enough to require the inspectors to reject the proxy.

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96 Cow v. Consolidated Coppermines Corp., op. cit.
97 Atterbury v. Consolidated Coppermines Corp., op. cit.
There are many reasons why a corporation record may carry the wrong or misspelled name of the stockholder and he will sign his correct name or initial and make no attempt to have it corrected on the books since he suffers no inconvenience by the error.

**Joint Owners.** A very common registration of stock, and one frequently advocated by brokers for a husband and wife, is the phrase, "A and B, as joint tenants with right of survivorship, and not as tenants in common." A less common registration is that of "Tenants in common." The effect of these two is very different and they will be considered separately.

Proxies executed by tenants in common must contain the signatures of all such owners because the interest of each is separate and one cannot represent another tenant in common except under a power of attorney. If one tenant in common is deceased, the remaining tenant or tenants should be joined in signed by the executor or administrator of the estate of the decedent.98

Joint tenants, on the other hand, may execute valid proxies over the signature of one of them, if there is no objection by any of the other joint owners.99 It is desirable, however, that the proxy be signed by both joint tenants.100 The fact that both names are apparently signed in the same handwriting does not affect the validity of the proxy.101 It is presumed that the non-signing joint owner either authorized the other owner to sign his name, or that

98 Axe, op. cit., p. 58.


100 Aranow and Einhorn, op. cit., p. 394.

the non-signer has adopted such act.102

If one of the joint tenants is deceased, the proxy should be
signed by the survivor, or survivors, e.g., "AB, surviving joint
tenant," and, if available, evidence of the death of the other
tenant should accompany the proxy.103

Married Women. The courts unanimously agree that a married woman
may confer the authority to vote her stock by proxy, even though
she is voting stock registered in her maiden name.104 Where a woman
signs her married name to a proxy, and the stock is registered in
her maiden name, the inspectors should accept the proxy if there
is anything in the signature which indicates the identity of the
signer with the registered owner.105 For example, if stock is regis-
tered in the name of Jane Jones, and the proxy is signed "Jane Jones
Brown," or "Mrs. Jane Brown," it should be accepted. If no such
connecting feature is present, the inspectors should accept written
evidence that the signer was the same person as the holder of record.106

Minors. The right of an infant to vote stock registered in his own
name is not clear. In the absence of a statute, the general rule
seems to be that an infant can not vote stock held in his name, either
in person or by proxy.107 Courts have held that the property rights

102Ibid.; Atterbury v. Consolidated Coppermines Corp., op. cit.;
Stephens Fuel Co., Inc. v. Ray Parkway National Bank, 109 F. 2d 186
(2d Cir. 1940).

103Axe, op. cit., p. 58.

104Lawrence v. I. N. Parluer Estate Co., op. cit.; Capitol
Hill Undertaking Co. v. Render, 149 Okla. 132, 299 P. 884 (1931).

105Aranow and Einhorn, op. cit., p. 379.

106Ibid. p. 380.

107State ex rel. Voight v. Voight, 2 Ohio App. 145 (1913).
of a minor should be exercised through a guardian and the right of a stockholder to vote is a property right.\textsuperscript{108} One writer has criticized this conclusion.\textsuperscript{109}

The fact that the stockholder is an infant may not be disclosed on the stock records. In such cases the corporation is likely to accept the illegal votes of infants. In cases where an infant holds a substantial interest, it is likely that he will be represented by a duly appointed guardian.

One of the large brokerage firms follows the practice of registering as a "custodian" a person making a gift of securities to a minor.\textsuperscript{110} The custodian is given the right to vote by proxy. This practice is apparently indicative of the policy of major corporations in accepting such proxies.

**Oral Proxies.** To determine the validity of oral proxies, each case must be considered on its own merits. The difficulty in the handling of oral proxies is demonstrated by the fact that most jurisdictions require that proxies be written. The difficulty is in the proof that an agency exists.

It would seem that the inspectors should accept an oral proxy offered by a person who is accompanied by a witness who will certify under oath or by a notarized deposition of the witness. If the person purported to represent the principal is one who has represented the stockholder on other occasions it would also seem that the inspectors should accept the vote, in the absence of a challenge.

\textsuperscript{108}Aranow and Einhorn, \textit{op. cit.}, p. 379.

\textsuperscript{109}Axe, \textit{op. cit.}, p. 226.

\textsuperscript{110}Merrill, Lynch, Pierce, Fenner and Smith.
Partnerships. One partner of a firm has the power to vote stock registered in the name of the partnership at meetings of the corporation.\(^{111}\) The recommended form for signing the proxy is, "The ABC Company, by XY, partner."\(^{112}\) However, the proxy may be signed in the partnership name only and it should be accepted by the inspectors as prima facie valid even though the signature does not indicate that it was signed by a partner.\(^{113}\)

If there is disagreement between the partners as to how the vote shall be cast, the stock cannot be voted.\(^{114}\)

If one or more partners are deceased, the surviving partner has the right to possession and control of the personal property and to represent the stock owned by the partnership. He may vote at meetings until the affairs of the firm are finally closed up.\(^{115}\)

**Pledged Stock.** The general rule is that so far as the corporation is concerned no one has the right to vote except the person in whose name the stock is recorded, in the absence of any agreement to the contrary.\(^{116}\) This is as it should be because the pledgee is not the owner of the stock; he merely holds it as collateral security. However, the inspectors of election cannot look beyond the books.

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\(^{111}\)McLain v. Iona Corporation, 28 Del. Ch. 176, 39 A. 2d 209 (1944); Cow v. Consolidated Coppermines Corp., op. cit.

\(^{112}\)Aranow and Einhorn, op. cit., p. 384.

\(^{113}\)Cow v. Consolidated Coppermines Corp., op. cit.


of the corporation. Thus if the record shows a transfer to the pledgee, his proxy will be accepted by the inspectors unless there is evidence to indicate that he is merely holding the stock as collateral and who the actual owner is.\textsuperscript{117} However, a court can look beyond the stock records to determine the real owner.\textsuperscript{118}

It should be pointed out that in those jurisdictions in which the courts have held that the stock books are conclusive evidence of the right to vote, the pledgee will be given the vote if his name appears on the books as registered owner. In those states in which the stock books are merely prima facie evidence of title the general rule set out above would apply.

Arizona, Maine and Missouri presently have statutes which provide that the pledgor of stock is entitled to vote his stock regardless of who is registered as owner. Many other states have laws which deal with the circumstances under which the pledgor or pledgee may vote.

Receivers and Trustees in Bankruptcy. A receiver has the right to vote stock placed in his care by court order\textsuperscript{119} and the court may direct the giving of a proxy to the receiver to enforce his right to vote.\textsuperscript{120} Nine states provide that a receiver may vote without a transfer of the stock to his name if his authority is granted by an appropriate court order.\textsuperscript{121} However, a bankrupt may have the

\textsuperscript{117}\textit{Wentworth v. French}, 176 Mass 442, 57 N.E. 789 (1900).
\textsuperscript{119}\textit{Strang v. Edson}, 198 Fed. 613 (8th Cir. 1912).
\textsuperscript{120}\textit{Atkinson v. Foster}, 134 Ill. 472, 25 N.E. 528 (1890).
\textsuperscript{121}See Table B.
right to vote stock registered in his name on the transfer books even though his property has vested in a trustee under the Bankruptcy Act, if there has been no notice of bankruptcy.\textsuperscript{122}

Transferor-Transferee. The general rule, in the absence of statutory provisions to the contrary, is that a person to whom stock has been transferred is entitled to vote the stock irrespective of whether or not the stock has been transferred to his name on the stock books.\textsuperscript{123} However, the common law rule is rarely applicable because most state statutes permit corporations to set a record date prior to the meeting, on which date the list of stockholders eligible to participate in the meeting is determined.\textsuperscript{124}

The laws of seven states provide that shares shall not be voted if they have been transferred on the books of the corporation within a specified number of days preceding the meeting, unless a record date has been specified.\textsuperscript{125} Such laws disenfranchise both the transferor and the transferee.

In a jurisdiction in which the stock books are conclusive evidence of the rights of ownership, any stock transferred after the record date but before the meeting could be voted by the transferor.\textsuperscript{126} If the statute recognized the record book as prima facie evidence only, the transfer of shares after record and before the

\begin{footnotes}
\item[122]Kresel v. Goldberg, 111 Conn. 475, 150 A. 693 (1930).
\item[123]People ex rel. Pickering v. Devin, 17 Ill. 84 (1855); Commonwealth ex rel Morris v. Stevens, 165 Pa. St. 582, 32 A. 111 (1895).
\item[124]See Table B.
\item[125]Table B.
\item[126]Wick v. Youngstown Sheet & Tube Co., op. cit.
\end{footnotes}
meeting revokes a proxy given at a prior time.\textsuperscript{127} Also, the transferor cannot execute a valid proxy even though he was the holder of record on the record date since the courts can look beyond the books of record. Under either type of law, it should be pointed out, the inspectors of election would be obliged to accept the proxy of the registered owner since the inspectors are not judicial officers and must accept as bona fide what appears to be bona fide.

In a conclusive statute area, the transferee of stock can gain the vote of stock transferred after the record date and prior to the meeting by simply obtaining a proxy from the seller, i.e., a proxy which names the buyer as the proxy agent for the seller.

Trustees. Trustees holding stock for the benefit of others are entitled to vote that stock at corporate meetings either in person or by proxy.\textsuperscript{128} Twenty-eight states have statutes which permit fiduciaries to vote by proxy.\textsuperscript{129} While it is generally agreed that a fiduciary may give a proxy which contains an express direction as to the manner in which the stock is to be voted, courts have held that a proxy which delegates to the proxy holder the authority to vote as he sees fit is void.\textsuperscript{130} Such a proxy would constitute a delegation by the trustee of authority which was vested for his personal judgment. It should be pointed out that such discretionary proxies are not being solicited by corporations under the SEC proxy rules.

It has been held that, although it is preferable that the

\textsuperscript{127}In re Giant Portland Cement Co., (Del. Ch. 1941) 21 A. 2d 697.


\textsuperscript{129}See Table B.

\textsuperscript{130}Glahe v. Arnett, 38 Idaho 736, 225 P. 796 (1924); Noremac, Inc. v. Centre Hill Court, 164 Va. 151, 178 S.E. 877 (1935); State ex rel. Voight v. Voight, op. cit.
trustees attach evidence of their authority to the proxy, such evidence is not a legal requirement.131

When there are two or more trustees, all of them should sign the proxy.132 This may not be required if fewer than all of the trustees are empowered by the other trustees to sign for all, and the inspectors should accept a proxy signed by only one of a number of co-fiduciaries in the absence of oral or written objection by another co-fiduciary.133 When all names are apparently signed by the same person, the proxy is prima facie valid until it is shown that the person signing was not authorized to do so by the others.134

The signature of all the trustees indicates that they agree upon the manner in which the stock is to be voted. If it comes to the attention of the inspectors, where fewer than all of the trustees have signed, that the trustees are in disagreement, the proxy cannot be accepted.135 However, this rule has been modified by twenty-three states to permit the majority of fiduciaries present at corporation meetings to vote the stock where two or more persons are designated as fiduciaries.136 This would appear to permit a majority of trustees to override objections of a minority and vote the stock.

Revocation and Termination of Proxies. The duration of the authority given to a proxy holder by a proxy may be specified in the proxy

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132 In people ex reI. Courtney v. Botts, 376 Ill. 476, 34 N.E. 2d 403 (1941).
133 Aranow and Einhorn, op. cit., p. 382.
135 Ibid.
136 See Table B.
instrument or it may be restricted by statute to a specified period of time after execution, most commonly eleven months.⁴³⁷ In the absence of a restriction in the proxy form or statute, the proxy is generally valid until the purpose for which it is granted is accomplished or until it is revoked by the grantor.

Ordinarily a proxy cannot be irrevocable.⁴³⁸ However, a proxy which is coupled with an interest which the receiver of the proxy has in the shares he is to vote can be irrevocable.⁴³⁹ Generally an interest which will support an irrevocable proxy need not be in the stock itself but any property interest of the proxy holder for which stock is held as security.⁴⁴⁰ Some instances in which proxies have been held to be irrevocable because of a coupled interest are: Reciprocal proxies to joint owners,¹⁴¹ proxies to vote stock for a specified period given in order to secure a change of management and new capital,¹⁴² to carry out a contract for the acquisition of stock by the majority stockholders from the minority stockholders over a period of twenty years during which time the stock was to be held by the majority stockholders as depositaries,¹⁴³ to secure creditors

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¹³⁷See Table A.

¹³⁸Fletcher, Cyc. of Corp. (Perm. Ed.), sec. 2062 (1952).

¹³⁹In re Chilson, 19 Del Ch. 398, 168 A. 82 (1933); State v. Rushe, 219 Ind. 559, 39 N.E. 2d 433 (1942).


¹⁴¹Hey v. Dolphin, op. cit.


whose claims were secured by debentures,\textsuperscript{144} and to carry out the
terms of a contract for the acquisition of control of a corporation.\textsuperscript{145} The SEC requires that all proxy statements required under its jurisdic-
tion must specifically state whether or not the grantor of a proxy has the power to revoke it.\textsuperscript{146}

In the absence of controlling provisions of a statute or corpo-
rate by-laws, a proxy need not be revoked in any particular manner.\textsuperscript{147} If the stockholder changes his mind after he delivers a proxy and he
wants to revoke the proxy given, he may do so by notifying the com-
pany either formally or informally.\textsuperscript{148} He can also attend the meeting
and vote his shares in person, which revokes any proxy given.\textsuperscript{149}

The sale of stock after a record date is a technical revocation,
but where both the buyer and seller are content with the control of
the voting power, the seller need not give the buyer a new proxy\textsuperscript{150}
and the inspectors of election may properly count shares which had
been sold after the record date and before the date of the meeting.\textsuperscript{151}

Frequently a stockholder will give more than one proxy for the

\textsuperscript{144}Mobile & O.R.R. v. Nicholas, 98 Ala. 92, 12 So. 723 (1893).

\textsuperscript{145}Smith v. San Francisco & N.P. Ry., 115 Cal. 584, 47 P. 582 (1897).

\textsuperscript{146}Schedule 14A, item 1.

\textsuperscript{147}Bache v. Central Leather Co., 78 N.J. Eq. 484, 81 A. 571 (1911); In re Schwartz & Gray, 77 N.J.L. 415, 72 A. 70 (1909).

\textsuperscript{148}Axe, op. cit., p. 259.


\textsuperscript{150}Thompson v. Blaisdell, 93 N.J.L. 31, 107 A. 405 (1919).

\textsuperscript{151}Wick v. Youngstown Sheet & Tube Co., op. cit.
same meeting. The last proxy given revokes all previous proxies, but if it cannot be determined which proxy was last given or if both bear the same date, both should be rejected. In a recent case in which two proxies executed by one stockholder of record were not, in toto, in excess of the total shares registered in the stockholder’s name, the court said that both proxies should be counted. This problem arises largely from broker-given proxies by which the brokers are expressing the varying wishes of beneficial owners.

Ten states have a statutory provision requiring that written notice of termination of authority of the proxy holder be given to the secretary of the corporation by the stockholder.

As under the rules of agency, the death of the principal, the grantor, will terminate the proxy. However, seven states provide by statute that the authority of a proxy holder is not revoked by the death or incapacity of the grantor unless written notice of such is given to the corporation.

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153 Pope v. Whitridge, op. cit.


155 See Table A.


157 See Table A.
V. SOLICITATION OF PROXIES

As has been pointed out, the ownership of stock not only entitles the stockholder to a share in the profits of the corporation, but it also entitles him to a voice in the selection of its management. This franchise, however, would be an empty right unless the stockholder was fairly and fully informed of the management policies and actions and had available to him an instrument by which he could effectively express his personal judgments. 158

It follows that the keystone of the regulation of proxy solicitation is disclosure. The SEC proxy rules were evolved in 1935 with the objective of stimulating the early stockholders' meeting through proxy solicitations that make mandatory the furnishing of pertinent data to shareholders. In a large measure, the proxy regulation takes the meetings, that the stockholders can now rarely hope to attend, to the stockholders. The proxy rules not only effectively restore the right to an informed vote, but as will be seen, discussion and the exchange of ideas among stockholders is again encouraged through the stockholder communication and proposal rules. 159

On September 24, 1935, the SEC adopted the first set of proxy rules under the authority granted by Section 14 (a) of the Securities

158 Aranow and Einhorn, op. cit., p. 82.
159 Emerson and Latcham, op. cit., p. 16.
and Exchange Act of 1934. The present proxy rules, designated as Regulation X-14, consist of eleven rules and Schedules X-14A and X-14B. Schedule X-14A sets out the information required to be included in the proxy statement in regard to twenty-one matters. Schedule X-14B extends many of the requirements of Schedule X-14A to all participants in contested elections.

Coverage of the Regulation. "Basically, the proxy regulation's principal impact is in its Rule X-14A-3(a) requirement that proxy solicitors deliver to shareholders a proxy statement of prescribed content." Section 14(a), and therefore Regulation X-14 as well, have as almost their sole test for determining whether a proxy statement must be used in soliciting proxies the answer as to whether or not the security for which the solicitation is to be made is registered and "listed" on a national stock exchange. If the security is registered and "listed," the proxy rules and the proxy statement provision apply, unless the security is an "exempted security," which will be discussed later.

The manner of solicitation does not affect the jurisdiction of the proxy rules because neither Section X-14 nor Rule X-14A-3 limits its jurisdiction to solicitations by use of the mails, through interstate commerce, or by the facilities of a national securities exchange. However, the regulation applies only to solicitations

160 Appendix I.
161 Appendix II.
162 Appendix III.
163 Appendix IV.
164 Emerson and Latcham, op. cit., p. 23.
in respect of the particular class of a company's securities which are listed on a national securities exchange. Non-listed classes of securities are not covered and are outside of the regulation's proxy statement requirement even if they are convertible to "listed" securities. Coverage vests when the security becomes listed, and this occurs when the registration application filed under Section 12 of the Exchange Act becomes effective.\textsuperscript{165}

Rule X-14A-2 lists seven types of solicitation which are exempt from the coverage of the proxy rules. The exemptions of particular interest are:

(a) Non-management solicitations of ten or fewer persons. This means that a non-management group as a whole gets ten solicitations; the individual members of such a group do not each have ten attempts. The ten includes not merely each person who gives his proxy, but each person who is solicited either orally or in writing irrespective of whether he gives, refuses or withholds a proxy.\textsuperscript{166}

(b) Solicitations made by brokers or bankers who are listed on the company books as owners of record and who actually hold the stock in their names for the benefit of their customers.

(c) Solicitations already regulated. The protection already afforded in such cases as the filing of a Securities Act registration statement, a plan of reorganization under the National Bankruptcy Act or solicitation under the Public Utility Holding Company Act is deemed to obviate the necessity for further

\textsuperscript{165}\textsuperscript{Ibid.}

\textsuperscript{166}\textsuperscript{Emerson and Latcham, op. cit., p. 26.}
controls through the proxy rules.\(^{167}\)

(d) The "tombstone" advertisement. Such an advertisement is limited to an uncolored presentation of a few essential, noncontroversial facts\(^ {168}\) and is frequently used to inform stockholders of a source from which they may obtain copies of a proxy statement.

What is Solicitation? The terms "solicit" and "solicitation" are specifically defined by Rule X-14A-1. The definition makes no distinction between written or oral solicitation.

But a difficult problem in the definition of "solicitation" is the determination of what communications are a part of a solicitation, and therefore subject to the filing, disclosure, and anti-fraud provisions of the proxy rules.

Rule X-14A-1 includes as a solicitation any "communication ... reasonably calculated to result in the procurement, withholding or revocation of a proxy." This raises the question as to intent of the party issuing a communication. If he intends to follow it up by actually soliciting proxies, the sender has performed a first step in a plan ending in solicitation in the interpretation of the courts.\(^ {169}\)

Not infrequently in a proxy contest, the first communication sent out to a stockholder by an opposition group will be an attack on certain policies of management, with a request to stockholders who agree with the opposition to sign and return attached post cards

\(^{167}\)Ibid., p. 28.

\(^{168}\)Aranow and Einhorn, op. cit., p. 242.

expressing their agreement. To answer the charges made in such a letter, management may send a letter of rebuttal. Both of these letters may contain no reference to a future intention of soliciting proxies. 170

Whether any given activity carried on without having filed and delivered a proxy statement is a "first step" in a solicitation appears to depend upon a twofold test applied by the SEC, according to Aranow and Einhorn. 171 This test is: (1) does the sender ultimately intend to solicit proxies? and (2) is the communication made under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy?

The application of this test is often difficult because the SEC must guess from the communication itself and the surrounding circumstances what will be the follow-up to the particular communication. The surrounding circumstances would include, among other things, the identity, position, security holdings, and reputation of the sender. 172 Because of the uncertainty of determination as to whether a particular communication constitutes a solicitation, if there is any doubt, it is generally advisable to "play it safe" and follow the filing requirements of rules X-14A-6 and X-14A-11. 173

The distribution of any material deemed to be a solicitation, if made prior to the Commission's authorization to mail the proxy statement, would constitute a violation of the proxy rules.

170 Aranow and Einhorn, op. cit., p. 89.
171 Ibid., p. 91.
172 Ibid.
173 Ibid.
The furnishing of a proxy form to a security holder upon the unsolicited request of such security holder is not a solicitation, by specific provision of rule X-14A-1.

SEC Filing Requirements. One of the primary purposes for the regulation of proxy solicitations is to insure that the stockholders receive full and accurate information concerning the affairs of the company and of its officers. Machinery to achieve this objective is provided by proxy rules X-14A-6 and X-14A-11.

Rule X-14A-6(a) imposes upon the soliciting group the duty of filing with the Commission preliminary copies of its proxy statement, form of proxy and other soliciting material. This preliminary filing must be made at least ten days prior to the date "definitive copies" of such material are first sent or given to security holders. The rule states that the preliminary copies are "for the information of the Commission only;" thus, any opposing group is not given access to the contents and thereby given the opportunity of countering in advance.

The purpose of the ten-day period is to allow the Commission time to review the soliciting material and make comments and specify any appropriate revisions in the material.

Definitive copies are required by rule X-14A-6(c) to be filed with the Commission not later than the date such material is first sent or given to security holders. At the same time copies must be filed with each national securities exchange upon which any security of the company is listed and registered. "Definitive copies" are described by the proxy rule as being "in the form in which such material is furnished to security holders."
Advertisements are included in the filing requirements. Press releases and radio and television scripts are required to be filed in definitive form not later than the date they are used; they need not be filed in preliminary form, although such filing is permissible if the Commission's comments are desired before the material is used.

The Proxy Statement. As previously stated, the proxy regulation's principal impact is in its rule X-14A-3(a) requirement that proxy solicitors furnish each person solicited with a written proxy statement. The statement must be furnished prior to or concurrent with the solicitation and it must contain the information specified in Schedule 14A.174

In view of the fact that the Commission and the courts have defined the term "solicitation" so broadly that it frequently includes preliminary communications to the stockholders as "first steps" in a solicitation, a literal interpretation of the rule would require the sending of a proxy statement with or prior to such a preliminary communication. However, in practice these preliminary letters have been used by both management and non-management groups and the Commission has not required that they be preceded or accompanied by a proxy statement.175

The current practice is to send the proxy statement to the stockholders at the same time that the form of proxy is furnished to the stockholders. This may or may not be the first communication which the stockholders receive.176

174Appendix III.
175Aranow and Einhorn, op. cit., p. 157.
176Ibid., p. 158.
To achieve one of the primary objectives of the regulation of proxies, that of adequate disclosure, rule X-14A-3(b) imposes an additional obligation upon groups soliciting on behalf of management. For any annual meeting at which directors are to be elected, and for which proxies are solicited for management, the proxy statement must be accompanied or preceded by annual financial statements. Management is permitted to solicit prior to furnishing the financial statements if the statements are not ready at the time of solicitation and an opposition group is soliciting. However, in such a case, management must indicate in its proxy statement that such statements are to be furnished when available. In such a case, the annual report must be supplied at least twenty days before the meeting.

The annual report is not deemed by the Commission to be "soliciting material," unless the issuer specifically requests that it be so considered or incorporates it in the proxy statement by reference, and thus it need not be "filed" with the SEC. However, copies must be supplied to the Commission for its information.

Schedule 14A. The proxy statement is the stockholders' principal source of information concerning the nominees, directors and matters to be acted upon at the forthcoming meeting.

The information requirements of Schedule 14A, which must be incorporated into the proxy statement, are so voluminous and dependent upon the circumstances that we shall not examine them in detail. However, the requirements may be summarized briefly. Items 1 through 5 comprehend general disclosures in all proxy statements regarding revocability of the proxy form, dissenters' rights of appraisal, identity of the actual solicitor and the source of the funds used to pay the costs of the solicitation, interest of the solicitor and
others in the matters to be acted upon, and ownership of the corporation’s voting securities.

All other items of Schedule 14A are applicable only to particular proxy statements depending upon the specific circumstances or proposals.

Schedule 14B. To provide information concerning the persons responsible for and having an interest in proxy contests, which often has a bearing on the accuracy of statements made to stockholders by soliciting groups, the SEC in 1956 adopted proxy rule X-14A-11 and related Schedule 14B.177

Rule X-14A-11 defines "participants" in a contest very broadly and requires that each participant, upon his entrance into the contest, must file a statement containing the information called for by Schedule 14B with the Commission and the national securities exchanges upon which any security of the company is listed. Further, a summary of the major portions of Schedule 14B are required to be incorporated in the proxy statement furnished to the stockholders.

Information required by Schedule 14B includes the identity and background of each participant, his present principal occupation, his employment during the past ten years, and criminal convictions during the past ten years. Also required is the amount of each class of the corporation’s securities owned beneficially or of record by the participant, acquisitions of such securities during the previous two years and funds borrowed for such acquisitions, beneficial ownership of securities of affiliated corporations, and agreements with regard to future employment or transactions with the corporation.

177Appendix IV.
The information required of the participants will be observed to parallel that required by Schedule 14A, item 6, in regard to nominees for election as directors. The effect of Schedule 14B is to require all participants, whether or not they are nominees, to disclose their interest. It is designed to discourage the use of "front men" acting in the place of real participants whose identity, interest and background are not disclosed.\(^{178}\)

Obviously, the information required by Schedule 14B should give an indication of the background and motivation behind a proxy contest and provide a basis for examining the proxy soliciting material.

Aranow and Einhorn point out that the necessity for filing and thereby disclosing the information required by Schedule 14B, as well as the burden of compiling the information, may well, in some cases, deter certain groups from initiating a proxy contest.\(^{179}\)

**Stockholders Proposals.** In order to make the management of a corporation responsible to the will of the stockholders, rule X-14A-8, frequently referred to as the proposal rule, provides the machinery whereby a security holder can require management to include in its proxy statement a proposal submitted by the stockholder. The proposal must be a proper subject for action by the stockholders. If management opposes the proposal, it must also include in its proxy statement a statement of, at least one hundred words by the submitting stockholder in support of his proposal. In addition, management must provide in its form of proxy a means whereby the stockholders

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\(^{178}\) Aranow and Einhorn, *op. cit.*, p. 170.

may indicate approval or disapproval of the proposal.

The proposal rule privilege is expressly given to "any security holder entitled to vote at a meeting of security holders of the issuer." The determination of who may qualify to submit a proposal, then, seems to be simple. But not all owners are recorded as such on the corporate books. For example, if the stockholder has transferred his voting rights to a voting trustee, the trustee, and not the beneficial owner, would be entitled to present a proposal.180

Another question arises when stock is held in the name of a nominee of a beneficial owner. Such beneficial owners who are not record owners may nevertheless present proposals, but they must furnish management with reasonable proof, such as a letter signed by the record owner, that they are the beneficial owners of voting securities and are entitled to receive a proxy form from the record owner.181

The rule states that a proposal submitted with respect to an annual meeting more than sixty days prior to the date on which the management first released proxy soliciting material in connection with the last annual meeting shall "prima facie be deemed to have been submitted a reasonable time before the solicitation" as required by the rule. However, the rule simply establishes a prima facie test, and does not state that notice within the sixty-day period may not in a given case be reasonable. Emerson and Latcham cite examples of cases in which no exception was taken to a shorter notice.182

They further point out that if a proposal submitted within the sixty-

180 Emerson and Latcham, op. cit., p. 97.
181 Ibid., p. 98.
182 Emerson and Latcham, op. cit., pp. 93-94.
day period materially involves information not made available to stockholders until after the sixtieth day, as for example information initially communicated to stockholders in the annual report, such circumstances should be considered in determining whether the sixty-day test should operate to bar inclusion of the particular proposal. It will also be observed that the sixty-day rule applies only to proposals to be presented at annual meetings. The timeliness of notice of proposals to be made at special stockholders' meetings is left open for determination on a case-by-case basis.

The proposal rule does not apply to elections to office. Thus, a stockholder cannot compel the management to include as a proposal the nomination of a slate of opposition directors. It may, however, be used to propose as to the method of electing directors.

The determination of what constitutes a "proper subject for action" by security holders is the most difficult question posed by the proposal rule. The SEC has taken the position that the law of the state in which the corporation is domiciled is the determinant of whether a particular proposal is a proper subject for action by security holders. The rule places the burden of proof upon the management to show that a particular security holder's proposal is not a proper one for inclusion in management's proxy material. If management contends that a proposal may be omitted because it is not proper under state law, management must refer to the applicable statute or case law and furnish a supporting opinion of counsel. The determination that state law is the applicable standard leads to many problems because many statutes do not delineate the division of authority between the stockholders and the directors. Emerson
and Latcham have concluded: 183

(a) If it is clear from the state statute or common law that a given subject is one exclusively for the directors, a proposal for the amendment of the by-laws in the particular area would be barred.

(b) If the corporate charter, articles of incorporation, or by-laws specifically restrict a subject matter to director action, stockholder proposals in the area would be barred.

(c) However, a stockholder proposal that the charter, articles or by-laws be amended to permit stockholder action in the area would certainly be permissible.

(d) If under state law the given subject matter is exclusively one for director action, a proposal that the security holders recommend or suggest that the directors consider, or actually take, a desired action would appear well within the permissible area, provided that its subject is not day-to-day business operations of the company.

The management is also permitted to exclude the proposal from its proxy statement and form of proxy for any of several specific reasons. Such reasons are that the proposal is designed to redress a personal grievance, that it has been included in the proxy statement previously but never introduced at the meeting, or that a similar proposal has previously failed to achieve a specified percentage of the total vote.

Mailing of the Opposition Proxy Material. As a further attempt to facilitate communication between fellow stockholders, the SEC in

rule X-14A-7 provides a means whereby stockholders can obligate the management to either mail a stockholder's proxy statement or furnish him a list of the stockholders if management intends to solicit itself. This rule does not obligate the management to provide a list of stockholders. Such a list is one of the most valuable aids to an opposition group—and one of the most difficult to obtain. The right to secure a stockholder list depends upon state law. The proxy rule merely gives the opposition group a means of getting its proxy statement into the hands of the other stockholders if the management refuses to furnish the stockholder list and either cannot be forced to do so under the particular state law or such a list cannot be obtained by operation of law in time for effective use. For many reasons the insurgent group would prefer a stockholder list with its many uses in addition to being a means for mailing material. For just this reason, management would generally prefer to mail the proxy material rather than furnish the opposition such a list.

It has been pointed out that rule X-14A-7 is inadequate to a group of challenging stockholders because the management will generally elect to mail the proxy material rather than furnish the opposing group a stockholder list. By so doing the management will furnish the opposing group little information that is not obtainable otherwise. In return the management will be able to control to a very great extent the timing of the proxy contest by delaying the mailing of the opposition's material until it is ready to mail its own.

In order to avail himself of this mailing privilege, the stockholder must be one entitled to vote at the meeting, he must request

18th Aranow and Einhorn, op. cit., p. 35.
in writing certain data concerning the number of stockholders and the estimated cost of mailing a proxy statement, and he must defray the "reasonable" expenses to be incurred by the corporation in the performance of the acts requested.

False or Misleading Statements. Rule X-14A-9 prohibits solicitation by means of any communication, written or oral, which is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements made not misleading. This rule is at the very heart of the regulation of proxies and it has been to court more frequently than any of the other sections of the proxy rules. The experience under the rule is discussed below.

Enforcement of the Proxy Rules. The most significant tool of the SEC in securing compliance with proxy rules has been its informal methods, centering on its "letter of comments." This letter is the means of elimination of false and misleading information and the inclusion of sufficient accurate information in the proxy materials before they reach the stockholders. It is presented to the soliciting group after the group has filed the preliminary copies of soliciting material required by the proxy rules and before the distribution of the final soliciting materials. In most cases, the Commission has thus been able to secure compliance.

In the event a soliciting group either refuses to revise its materials as suggested by the Commission or fails to file its proposed materials at all or otherwise violates the proxy rules, the

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185 Emerson and Latcham, op. cit., p. 31.
186 Aranow and Einhorn, op. cit., p. 404.
Commission may resort to court action. The Securities Exchange Act expressly empowers the Commission to obtain a federal court injunction. In practice, the courts have enjoined the use of proxies improperly obtained and restrained the holding of annual meetings until a later date which would enable those stockholders whose proxies were thus invalidated to execute new and valid proxies.\textsuperscript{187}

The courts have also compelled soliciting groups to perform positive acts required by the proxy rules such as the mailing of stockholder communications or the furnishing of a stockholders list and the inclusion in its proxy material of stockholder proposals.\textsuperscript{188} Other parties have been compelled to send corrective statements to stockholders\textsuperscript{189} and to resolicit in conformity with the proxy rules.\textsuperscript{190}

Beyond the civil remedies available to the Commission, the Securities Exchange Act also provides criminal penalties, a fine and/or imprisonment, for willful violations of any regulation adopted under the Act.\textsuperscript{191} Such a remedy appears to be of secondary interest to the Commission since it apparently has not undertaken any such prosecution in enforcing the proxy rules. But certainly a criminal suit could be instituted in a flagrant situation.


\textsuperscript{188}SEC v. Transamerica Corp., op. cit.

\textsuperscript{189}SEC v. Okin, op. cit.

\textsuperscript{190}SEC v. Transamerica Corp., op. cit.

VI. PROXY CONTESTS

"A number of myths and misconceptions have clouded consideration of the position and potential of proxy contests in our economic democracy. Not the least of these is the commonly expressed feeling that there are too many proxy contests." 192 The number of non-management solicitations is not large. During 1951 there were filed with the SEC 1,791 proxy statements, of which twenty-five or 1.39% were non-management proxy statements; during 1952 there were filed 1,803 proxy statements of which twenty-seven or 1.49% were non-management. 193 These percentages of non-management filings vary only slightly from the average percentages that have obtained over the ten year period 1943-1952. 194 In 1954 there were twenty-one contests and in 1955 seventeen contests. 195 Moreover, the number of actual contests for control is a small proportion of all contests. Thus it simply is not true that non-management groups are using the provisions of the SEC proxy rules as an instrument for proxy contest harassment of management.

Contrary to the feeling that there are too many proxy contests and that proxy contests are necessarily harmful, Emerson and Latcham

192Emerson and Latcham, op. cit., p. 138.
193Ibid., p. 119.
194Ibid.
195Aranow and Einhorn, op. cit., p. 3.
cite a survey of the non-management proxy solicitations filed with the SEC during 1951 and 1952. The survey reveals that proxy contests are almost invariably the result of "poor or decadent management if not actual mismanagement." To the extent that contests are successful in ridding a corporation of such a management, they could hardly be considered anything but beneficial.

Karr describes the kind of company around which a proxy fight might develop. He points out that it will likely be a "conservative" company, one whose management is more concerned about possible bad times ahead than the opportunities of future profit through expansion. It may well be a rich company in terms of its assets, but a poor company in terms of its annual earnings and its dividend payments. More often than not it will be a company whose competitive position has been declining over the last few years, or, in a growing market, a company which is content to maintain past levels of production and profit. Typically, he points out, management will have failed in the duty of keeping stockholders informed of the company's goals, prospects and achievements. If the salaries and expense accounts of management are out of line in comparison to those of its competitors a proxy fight is all the more likely. Finally, Karr says that it will usually be a company in which management owns or controls less than fifteen percent of the stock. Any outside group must think twice before attempting to gain control of a company, no matter how poorly managed, when they need to win an extra fifteen percent of the

196 Emerson and Latchem, op. cit., p. 139.

uncommitted proxies to offset management holdings.

It has been charged that some proxy contests are "deliberately plotted attacks by ambitious men who are looking around for vulnerable and potentially lucrative situations." 198 Certainly improperly ambitious men are to be deplored. Emerson and Latcham point out, however, that ambition to be directed at so-called "vulnerable and potentially lucrative situations" would seem highly apt to be aimed at poor or decadent management, one of the prime motivations for proxy contests. 199 Even if the insurgent group should actually include a person bent on his own enrichment, it may well be that his initiative may be at least as desirable as, if not somewhat preferable to, an incumbent management operating the company at a loss, or with profits too small to permit reasonable dividends. Even if the newcomers prove to be incompetent managers the contest may still be beneficial in that it operated to rid the company of a stifling, decadent management. 200

Most proxy contests, which usually mark a high in shareholder activity, have resulted in increased dividends. In fact, the Wall Street Journal, after the New York, New Haven & Hartford proxy fight, quoted a broker who declared he did not know of a single case in which shareholders did not benefit on a dollars and cents basis as the result of shareholder activity incident to proxy fights. 201

The case histories of three of the recent prominent proxy

199 Emerson and Latcham, op. cit., p. 140.
200 Ibid., p. 139.
201 Gilbert, op. cit., p. 5.
contests are presented below to illustrate the issues involved and the techniques employed. No attempt will be made to assess the motives of the participants of either side.

The Sparks-Withington Company (1950). While there have been a number of repeated instances in recent years of proxy contests initiated by stockholders with relatively large holdings seeking management control of various corporations, the Sparks-Withington contest marked the first occasion on which a "grass roots" or rank-and-file stockholders' committee of an industrial company listed on the New York Stock Exchange has been able to oust management in a proxy contest.

This fight tells the amazing story of how in only six weeks a young, small-town accountant gained control of a multi-million dollar television, radio and auto parts firm through organizing and leading a stockholders committee.

The company, just prior to the proxy contest, had assets of nearly nine million dollars. While annual net sales averaged approximately 16 3/4 million dollars during the five post-World War II years, common stock dividends during the same period had averaged only eight cents a share, and in three of the five years, 1946, 1947, and 1949, the common stockholders had received no dividends whatever.

The company's record annoyed John J. Smith of the accounting firm of Smith & Skutt, Jackson, Michigan, where four of the Sparks-Withington manufacturing plants were located. Smith owned 2,200 common shares of the company's stock. After some investigation he concluded that the management was "inefficient and decadent," that the officers owned too little stock, and that they had too many out-

202 Emerson and Latcham, op. cit., pp. 51-70.
side business interests. Smith conferred with another stockholder and they formed the Protest Committee of independent and non-management stockholders.

The committee studied the SEC proxy rules carefully with a view to using them to the fullest extent possible in forcing the company to circulate in its own proxy statement the committee's proposals and to mail the committee's proxy material.

Smith made his first step under the proxy rules by writing a letter on August 29, 1950, to Harry A. Sparks, company president. Smith informed Sparks that, as a stockholder, he was submitting three proposals as "proper subjects for action" by the stockholders at the approaching October 25, 1950, annual meeting.

In brief, the proposals were that (1) the by-laws be amended to provide that the stockholders rather than directors select at each annual meeting the firm of independent public accountants, (2) the directors be authorized to limit officers' salaries to $25,000 per year, unless the officer owned at least two thousand common shares, or the company's net consolidated earnings after taxes exceeded six percent of its combined capital, surplus and surplus reserves, and (3) the stockholders elect a three-man committee to investigate and report on eight specified matters. Smith's letter further advised that he intended to present his three proposals at the annual meeting and asked that they be set forth in the management proxy statement.

By means of this letter, Smith obligated the management under proxy rule X-14A-8 to do three things: (1) to set forth his proposals in management's own proxy statement, (2) to identify his proposals in management's proxy form, and (3) to provide a means in the management proxy form by which a security holder might vote either for or
against each of his proposals.

In order to fully utilize the provisions of rule X-14A-8(b), Smith in his letter inquired whether management would oppose the proposals. In addition, he requested that if management opposed the proposals, the management proxy statement include his name and address and one hundred words of reason advanced by him in support of each of his three proposals. As a result, the 1950 management proxy material gave the stockholders an opportunity to vote for the Protest Committee's proposals or, of course, for management's own material prepared in an effort to defeat the proposals.

Thus the Protest Committee accomplished its first objective, that of having the company circulate in its own proxy statement the committee's proposals. But the company did not mail the committee's soliciting material under rule X-14A-7, the committee's second objective. Smith had asked management in his letter to mail the committee's proxy material or advise him if the management elected to furnish him with a list of stockholders' names and addresses in lieu of mailing the committee's proxy material. For several weeks Smith received no reply and finally on September 13, he obtained, as a matter of state law and apart from the SEC proxy rule, a list of stockholders.

The Protest Committee armed with the list of stockholders was in a position to solicit proxies after management disseminated its proxy statement. Smith had $6,000 in savings which were wiped out by the cost of solicitation. Smith, his wife, brother, friends and neighbors surged all over Jackson and the Midwest in their search for votes. Smith owned a small airplane and did a lot of flying in
his solicitation of proxies but flying was expensive.

Management's solicitation was being made by one of the country's well-known professional solicitors, Georgeson and Company, who had access to banks and brokers holding stock whose beneficial owners they alone knew. But what the Protest Committee lacked in funds and experience, they made up in ardor.

The insurgents' proxy statement was very effective. It began, "Have you been keeping score on Sparks-Withington?" Another question asked, "Do you wonder why other companies had their largest profit per sales year in 1949 while Sparks-Withington had its smallest?" Tables showing the poor earnings were followed by the comment, "your Protest Committee can't resist the conclusion that management has gone stale and fearful and that your company is static and therefore liable to 'die on the vine!"

The contest grew more bitter day by day. Management sent out several follow-up solicitations and used some personal solicitation. One of the last efforts was a 146-word collect telegraphic form of proxy to management which was designed to be sent by the stockholder. The committee attempted to counter the management barrage by two penny post card mailings.

When the meeting finally convened, the proxy battle was not yet finished. The meeting lasted four days because the committee had entered the meeting with proxies for 40,000 more shares than management had secured.

Gilbert describes the meeting:

As the meeting dragged on hour after hour and day after day, solicitors scoured Ohio and Michigan attempting to change minds and votes. Now Smith and his friends were in the meeting and now they were out of it, off and about the countryside working on shareholders who
had signed for the committee only to change their minds after listening to the silver words of Georgeson's professionals. 203

When exhaustion finally terminated the meeting, Smith and his Protest Committee allies were in control of Sparks-Withington by 13,962 votes. Management's solicitation expenses totaled $51,165 versus Smith's expenditure of approximately $6,000.

This case illustrates that the rank-and-file shareholders can win on their own without the aid of fortunes if they have enough drive and organization.

The New York Central Railroad (1954). 204 The fight for control of the New York Central Railroad which Robert R. Young waged in 1954 was perhaps the most publicized proxy fight in American history. Young put on a campaign that combined gaudy high-pressure Hollywood-type publicity with the finesse of well-planned Madison Avenue advertising. The scope of the publicity barrage is indicated by the fact that Young's newspaper advertising alone cost $296,000 and management's newspaper bill came to $332,000.

Young had gained a reputation as a flamboyant railroader and captured the imagination of the public years before he tackled the Central. As chairman of the Alleghany Corporation, a holding company which controlled the Chesapeake and Ohio Railroad, he sponsored a series of advertisements entitled: "A Hog Can Cross America Without Changing Trains--But You Can't."

In 1947, Young released another spread of advertisements paid for by the C. & O. advising the Central how to operate its business


204 Karr, op. cit., pp. 9-40.
with the title: "Memo From The C. & O. to The New York Central."

A year later, he followed this with a "Thank You Memo From C. & O. to The New York Central." This advertisement stated, "The C. & O., largest owners of the Central, have publicly made three recommendations for improving the Central's service. All three have been acted on or promised." Thus Young was established as a man to be reckoned with in the public mind. Unhappy train passengers and stockholders, disturbed by shrinking railroad earnings, were intrigued by Young's new ideas. His railroading ideas—some realistic, others considered slightly far-fetched—included roller bearing freight cars, mechanically refrigerated cars, and low, light-weight, high-speed passenger trains, all aimed at arresting the inroads of busses and airplanes.

Young and his partner, Allan P. Kirby, president of Alleghany, viewed the Central as a major vehicle for putting these new ideas into practice. The Interstate Commerce Commission put a damper on merger overtures by the C. & O. toward the Central. The I.C.C. also barred Young from taking a seat on the New York Central board of directors, which was offered him after the C. & O. had acquired several hundred thousand shares of Central by 1947. The I.C.C. ruled that such a move would violate the anti-trust laws.

By January, 1954, the C. & O. owned 800,000 shares of Central and Young and Kirby owned another 200,000 shares. By contrast, the Central board held a small number of shares, the chairman of the board 60,000 shares and the president only 1,000 shares.

Young and Kirby started their campaign by resigning from the C. & O. Young then demanded that he be named chairman and a director
of the Central. He also demanded that Kirby be appointed a director. This the board turned down on the grounds that it would be "inimical to the best interests of the company."

Despite the fact that the Central, under president William S. White, had in two years increased its earnings more than thirty-seven percent on a 2.3 percent increase in gross revenues and doubled the dividend rate, Young was not satisfied.

As soon as the Central made known its rejection of his demands, Young jumped into action. He made numerous radio and television appearances and granted interviews to any reporter who asked regardless of the time of day. Both camps set up high-powered propaganda forces. The Young publicity forces were commanded by Thomas Deegan, Jr., a former vice-president of the C. & O. and former newspaperman. Press conferences were held daily.

Management's story was spread by the Central's public relations department, Robinson-Hannagan Associates, Inc., a national public-relations firm, and the Foote, Cone and Belding advertising agency. By contrast, the Young forces made much of the fact they prepared their own advertising without the aid of an advertising agency.

Young's first fusillade was aimed at the bankers of the Central board, especially the chairman of the J. P. Morgan Company and the presidents of the Mellon National Bank and Trust Company, the First National Bank of New York, and the Chase National Bank. Young charged that these men controlled the Central for their own purposes without owning more than a token number of shares. At the time these men owned a total of only 2,600 shares of Central stock, although the institutions they represented controlled more than twenty billion dollars in assets. Asked Young, "The directors and officers of
these four banks interlock with fifty other industrial companies and fourteen other railroads having assets of more than $107,000,000,000. How much of the undivided loyalty of these four men do you think your Central enjoys?"

Almost from the beginning it seemed that Young was able to turn many of management's thrusts into assets. Central's White called attention to the fact that the Central's net income had increased thirty-seven percent over 1952 figures, while the C. & O. under Young increased its net by only 6.9 percent. Young countered, "The last thing we did for our stockholders before our departure on February 1st, was to turn in a net income for January, 1954, of $2,375,000, when Mr. White was rolling up a $2,760,000 deficit for the New York Central." White charged that Train X, the low-cost, low-slung, super streamliner proposed by Young, was a figment of Young's imagination. To this Young replied that White's own operating, research and traffic men had recommended the installation of a similar type train on the Central. He produced a year-old letter from White to the C. & O. which purportedly proved this. James A. Farley, a nationally known Democratic politician and a director of the Central signed full-page advertisements in newspapers across the country in which he voiced his confidence in the moves of the board for the stockholders and his conviction that a Young victory would be disastrous to the Central. Despite all his faith, however, it was reported that Mr. Farley owned only one hundred shares of stock. Deegan pointed out that Farley, as president of the GMC truck dealership in the New York area, was in "direct conflict with the interests of the New York Central shareholders."

Because Young was afraid the Chase National Bank, who held in
trust the C. & O.'s 800,000 shares of Central stock, might vote them against him, he engineered a deal whereby Texas Millionaires Clint Murchison and Sid Richardson purchased the stock from the C. & O. with loans they obtained from the Alleghany Corporation, from Allan Kirby and from the Central National Bank of Cleveland. The Central unsuccessfully fought through legal channels and the I.C.C. to keep the shares from being voted.

Every move by the Young side was geared to catch the public eye through easy-to-understand wordage. By contrast, the Central management seemed to be muttering under its breath. It harped on obscure points and seemingly sputtered at the audacity of its tormentor and challenger. One clue to management thinking that smacked of looking down its nose was contained in a letter from fourteen of the fifteen directors, released shortly before the end of the contest.

"We do not consider," the directors wrote, "that he (Young) is qualified in experience or in temperament or in standing..." Many stockholders were antagonized by this statement. The stockholders were more readily able to identify themselves with Young's cause than that of the Central's banker-directors. That was the way they voted.

Robert R. Young assumed control of the Central by 1,067,273 votes. So complete was his victory that less than five percent of the votes cast in the next year's annual election opposed his slate's bid for re-election.

Young's forces spent in excess of $1,300,000 and management $859,000 in the battle. It is rumored that management's aides cut their bills after Young's victory became known and the management figures also do not include the salaries of Central employees and other expenses borne by the railroad. Later the stockholders voted
to authorize the Central to reimburse the Alleghany Corporation for the cost to the Young forces of the proxy fight.

Montgomery Ward & Company (1955). Only a year after the Robert Young-New York Central spectacle, the public was again treated to proxy pyrotechnics, but this time the victor was not so evident. Louis Wolfson waged a nationwide campaign to unseat the entrenched Montgomery Ward chairman, Sewall Avery, and his board of directors. When the fight was over, Wolfson had gained only three seats on the board out of a total of nine. But seventeen days after the annual meeting, Avery stepped down from the chairmanship and the president resigned, which Wolfson hailed as the "first fulfillments of the Wolfson platform."

Both Avery and Wolfson were successful and wealthy businessmen but there the similarity ended. Avery had deep-rooted beliefs in absolutism and hefty bank balances and perennially looked for the "depression around the corner." Wolfson, on the other hand, was a man of quick decision and strength with a national reputation as a "slick operator."

Sewall Avery went to work for Montgomery Ward in 1931 at the request of a partner of J. P. Morgan & Co., when the company was incurring heavy losses because of poor management. Avery took an intense interest in everything that went on at the company and nursed it back to sound financial health. However, his stubborn desire to keep a hand in everything that went into the company's vast network of stores was more than many of his subordinates could take. Over the years, four presidents of Ward and more than thirty vice-presi-

\[205^\text{Karr, op. cit., pp. 145-168.}\]
dents left the company. Many of the departing executives complained that Avery's refusal to delegate authority made it impossible for the executives to perform their tasks.

At the end of World War II, Avery, who began his career in one depression and took over at Ward during another, got ready for a third. He kept a tight lid on inventories and reduced the Ward chain from 648 stores in 1940 to 567.

Meanwhile Sears Roebuck & Co., Ward's leading competitor, had embarked on an extensive expansion program that increased sales and profits threefold by 1953. During this same period, Ward's sales and profits fell short of doubling.

Over the years, Avery's cautious approach had angered many people. But certainly Avery was correct in saying that the company was in the strongest financial condition of its history. When Wolfson in 1954 announced his intention to fight for the control of Ward, the company had cash and current assets of approximately $293 million, with no outstanding debts.

Louis Wolfson by contrast was associated with many companies. His first major deal came after World War II when he and his associates bought the St. Johns River Shipyard at Jacksonville from the government. They bought the property with a bid of $1,900,000 and later made a $2,000,000 profit on the resale.

His next move put him in the headlines. He bought the Capital Transit Company of Washington, D.C. for $2 million. The company had cash assets in the amount of $7 million. Wolfson then put his associates into office and handed out some startling dividend payments.

Because of his dealings at Capital Transit and other dealings at Merritt-Chapman and Scott Corporation, Devoe, and the New York
Shipbuilding Corporation, Wolfson was brought under investigation by various government committees and commissions. He was given a clean bill of health by these investigations but he nevertheless acquired the reputation of a "slick operator" which stuck.

Wolfson's fight for Ward was not a hastily conceived plan. Sometime in 1951 he decided that Ward was worth close inspection. The company showed all the earmarks of vulnerability. Once Wolfson set his sights on a company, months and years would be spent by his associates in checking the company's vital statistics. The research on Ward filled filing cabinets to overflowing in a twelve by fifteen foot room.

The decision to start the move on Montgomery Ward was made in July 1954. Using "street names," Wolfson and his friends began buying as many Ward shares as they could without arousing suspicion. The Wolfson group took a big chance with the company's annual meeting still nine months away. If word leaked prematurely that Wolfson was on the prowl, the price of the stock would jump and cut into his trading profits. Of more importance would be the notice to management, for they would have time to fight back.

This is exactly what happened. One day a brokerage clerk neglected to use a street name and Wolfson's name was recorded for a purchase of ten thousand shares. Avery, who had been closely watching the flush of activity on the transfer books, noted Wolfson's name. Just prior to this, the buying activity had shot the price of the stock from $66 7/8 to $74 1/2. After the disclosure of Wolfson's name, the stock leaped to $85. On August 26, Wolfson called in reporters and confirmed what Wall Street already suspected: Wolfson was out to unseat the Avery dynasty.
Avery and President Krider called it a raid. They charged that he smelled their money and wanted to spend it. The "raid" charge cropped up again and again to haunt Wolfson later in the campaign.

In 1945, foresighted Sewall Avery had pushed through without consulting the stockholders the so-called "stagger system" of electing directors. This system, aimed against the sort of move Wolfson was attempting, provided that directors were elected for three-year terms and only three came up for election in any one year.

One of Wolfson's first moves was to institute court action to have the "stagger system" declared unconstitutional. This move was successful and cleared the way for the assault on the whole slate of incumbents.

Wolfson made plans to tour the country to drink coffee with Ward's stockholders. "I want to see them, I want them to see me," he said. The Allied Public Relations firm handled arrangements for Wolfson's road show. Near the end of the campaign, he mailed out approximately sixteen thousand invitations to stockholders in the New York City area to meet him at the Astor Hotel ballroom for coffee. More than three thousand stockholders appeared for the meeting, presided over by Frank Leahy, former Notre Dame football coach.

Initially the Ward forces stayed out of the public eye as much as possible. Instead of holding colorful rallies they quietly and effectively went to work ringing doorbells of stockholders with a task force of two thousand proxy solicitors. Most of their workers were selected from Ward's roster of employees. President Krider set forth on a grass-roots tour of fourteen cities to see small groups of shareholders and influential people.
The difference between the two camps was sharply illustrated when Krider and Wolfson crossed paths in San Francisco. Television stations gave full coverage of Wolfson's meetings and offered Krider similar treatment. Said Krider, "...they just couldn't understand why I refused; they just couldn't understand that Ward is not conducting a public entertainment."

Wolfson said he "would welcome a chance to appear at any time, any place with Mr. Avery and Mr. Krider to discuss all questions about the Montgomery Ward picture." This invitation, and the others that followed, were turned down flat.

Avery did not remain completely silent, however. When Wolfson's "coffee-cup" crew pulled into Chicago, Avery's home ground, it was met by hostile full-page newspaper advertisements. Avery charged that the security of Ward's stockholders would be destroyed if Wolfson gained control, that Wolfson had milked Capital Transit of its cash surplus, and that Wolfson had allowed the family-owned companies he controlled to make money selling supplies to the publicly-owned companies he controlled.

Montgomery Ward's 1954 annual report was little more than another blast at Wolfson. Only about twenty-five lines of type dealt with the business of the company. This revealed a drop in earnings from $6.12 a share to $5.20 a share.

Wolfson's forces countered Avery by their own full-page advertisements which warned stockholders, "You Can't Afford Present Management." They invited stockholders to compare the earnings of companies operated by Wolfson with Ward's earnings record.

The last few weeks of the contest was marked with invective as both sides sought to influence the uncommitted stockholders. But a
week before the April 22 meeting, Krider announced that management had enough proxies to retain majority control. The feeling in financial circles was that Krider was not bluffing. Even Wolfson's proxy solicitor admitted "the impression is out that Avery will win."

There were also rumors that Avery had been able to obtain decisive support only on condition that he would step down as chairman once the proxy threat was over. Avery, however, vigorously denied that he had any intention of retiring.

Meantime it became clear that Wolfson had also revised his plans. He now maintained that his strategy all along had been to obtain four of the directorships and then wait for a vacancy which would set the stage for a switch in his favor. The fact that five of the management's directors were over seventy-five years of age indicates a degree of soundness in the idea.

The meeting itself was calm in comparison to the proxy fight. Wolfson conceded before the balloting that he had lost the fight for control. The vote was 1,793,398 for Wolfson's committee against 4,033,481 for management.

Normally, the developments that followed the meeting would have been anti-climactic. But this was not the case in the Ward story. As noted earlier, Avery stepped down seventeen days later as chairman of the board and Krider resigned from the firm. Throughout the campaign, Wolfson had attacked Ward's retail set-up; in July it was disclosed that a retailing consultant had been engaged to analyze the chain's retail operations. The Wolfson forces had also pecked away at management for refusing to expand; the new chairman, John Barr, announced in September that Ward would open one hundred new catalog stores before the end of 1956.
In January, 1956, Wolfson resigned from the board of directors, and the other two Wolfson directors followed suit soon after. Announced Wolfson, "I feel I can truthfully claim, so far as Montgomery Ward is concerned, my mission has been accomplished."

Expenses of Proxy Fights. The examples of proxy contests cited have shown that the cost of printing and mailing solicitation material and fees of lawyers, accountants, security analysts, public relations experts, professional proxy solicitors, etc., may require the outlay of very substantial sums of money. Management has always had an advantage in regard to financing such solicitations for ordinarily they are permitted to pay for such expenses out of the corporate treasury. Outside groups, on the other hand, have had to use their own resources to cover the costs of canvassing fellow security holders. 206

A number of cases have settled the right of management to charge the corporate treasury for the cost of soliciting proxies. Most American cases which have considered the right to use corporate funds in a proxy contest have adopted the requirement that the contest involve corporate policy rather than a struggle for personal power or position. 207 Emerson and Latcham argue convincingly that unless opposing directors are men of no ideas or policies at all, this limitation has no meaning and might as well be forgotten by the courts. 208

206 Emerson and Latcham, op. cit., p. 71.


208 Emerson and Latcham, op. cit., p. 72.
All authorities agree that management may incur reasonable expenses in connection with giving notice of the meeting and informing the stockholders, by proxy statement or otherwise, with respect to the corporation's affairs and the issues to be considered. The requirement of "reasonableness," as to both nature and amount of expenditures, is imposed by most courts. The burden of going forward to prove unreasonableness is on the plaintiff. Thus it appears that a stockholder who undertakes to challenge the reasonableness of expenses incurred by management in a proxy contest must be fully prepared to go forward with clear, detailed, and persuasive evidence in support of his position.

Writers on the subject appear to agree in viewing the expenses of professional proxy solicitors as being unreasonable. The basis upon which the courts have permitted management to charge the corporate treasury for solicitation expenses has been that the dissemination of information to stockholders is necessary for their intelligent decision. If the use of such professional solicitors is to retain incumbents in office, or to justify existing policies, their hire should not be allowed as a corporate expense. Such a use goes

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209 Aranow and Einhorn, op. cit., p. 499.
210 Ibid., p. 506.
211 Rosenfeld v. Fairchild Engine and Airplane Corp., op. cit.
212 Aranow and Einhorn, op. cit., p. 507.
213 Emerson and Latcham, op. cit., p. 73; Friedman, op. cit., pp. 954-5.
214 Emerson and Latcham, op. cit., p. 75.
far beyond the courts' justification for permitting solicitation expenses to be charged against the corporation. However, to the extent that the professional solicitors are used merely to obtain a quorum or a specified percentage of the stockholders to vote on an issue, the expense involved should be a proper charge against the corporation.

No case has specifically decided the propriety of employing professional proxy solicitors. Aranow and Einhorn believe that the courts, in New York at least, would feel obliged to recognize corporate realities and permit expenditure of "reasonable sums" for such a purpose. Certainly the practice of charging such expenses against corporate treasuries by managements is commonplace.

Since the courts have permitted management to disseminate information to the stockholders at the expense of the corporation, should opposition groups have to continue to meet their own expenses for a similar purpose? It seems that the same argument should apply to them. However, the rights of successful insurgents to be reimbursed for their reasonable expenses in a proxy contest has been decided in only two cases. In both instances, reimbursement of the insurgents' expenses was ratified by a majority of the stockholders, and in each case the court upheld the reimbursement.

The first of these cases, Steinberg v. Adams, was decided in 1950 by a federal court on the basis of Delaware law. This case

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215 Emerson and Latcham, op. cit., p. 73.
216 Ibid., p. 75.
217 Aranow and Einhorn, op. cit., pp. 503-4.
218 Ibid., p. 504.
resulted from a 1947 contest for control of the Thompson-Starret Corporation, which was won by the insurgent group. During the contest, the management group spent slightly over twenty thousand dollars of corporate funds for its expenses. After the insurgents took control, they reimbursed themselves out of corporate funds for something over twenty-seven thousand dollars. This reimbursement was ratified by a majority vote of the stockholders.220

A stockholder then brought a derivative action in the name of the corporation against both the old and the new directors for the total proxy contest expenses incurred by both sides. The court reasoned:

Once we assert that incumbent directors may employ corporate funds in policy contests to advocate their views to the stockholders even if the stockholders ultimately reject their views, it seems permissible to me that those who advocate a contrary policy and succeed in securing approval from the stockholders should be able to receive reimbursement, at least where there is approval by both the board of directors and a majority of the stockholders.221

The second case dealing with the right of successful insurgents to reimbursement is the Rosenfeld v. Fairchild Engine222 case, decided in 1955 on the basis of New York law. The facts are similar to those of the first case. The new board of directors voted to reimburse the successful insurgent group for their expenses of over twenty-seven thousand dollars, and the reimbursement was subsequently ratified by the stockholders. A stockholder derivative suit challenged the reimbursement of both sides' expenses and argued that ratification by stockholders, unless unanimous, was immaterial.

220 Aranow and Einhorn, op. cit., p. 508.
221 Steinberg v. Adams, op. cit.
222 Rosenfeld v. Fairchild Engine and Airplane Corp., op. cit.
The court stated that where a majority of the stockholders chose to reimburse the successful contestants "for achieving the very end sought and voted for by them as owners of the corporation, we see no reason to deny the effect of their ratification nor to hold the corporate body powerless to determine how its own monies shall be spent."

It appears, then, that under the laws of Delaware and New York, and likely under the laws of some other states, successful insurgents may be reimbursed out of corporate funds for their expenses in a proxy contest, provided that such reimbursement is ratified by a majority of the stockholders and provided that such expenses were reasonable, both as to nature and amount. Both as to the management and insurgent groups, it may be argued that the corporate purpose served is that of informing the stockholders and thereby facilitating a more intelligent exercise of judgment on their part. It may also be argued that if reimbursement of successful insurgents serves a corporate purpose and is lawful, then ratification by the stockholders is unnecessary and the board of directors alone may authorize such an expenditure. However, as yet no court has so held.

If successful insurgents may be reimbursed, what of partially successful groups? By cumulative voting, a group may succeed in electing certain of its director nominees, who may constitute a minority or even a majority of the board. Or the insurgents may fail to elect any directors but have some of its propositions adopted.

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223 Aranow and Einhorn, op. cit., p. 511.

224 Ibid., p. 512.
court case has decided the right of such a group to be reimbursed for any of its expenses. It would seem, however, that the considerations favoring reimbursement to wholly successful groups should apply also to partially successful groups.\(^{225}\) Various writers have suggested that such reimbursement could be conditioned on the insurgents' obtaining a specified minimum percentage of the votes\(^{226}\) or on a proportional basis such as:\(^{227}\)

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\text{Management expenses allowed} = \frac{X \times \text{Votes secured by management}}{\text{Votes secured by non-management}}
\]

(X represents non-management expenses to be reimbursed, but not to exceed actual expenses.)

What of the unsuccessful contestants? If a non-management group has honestly proposed an intelligent course of conduct, and has received the support of a substantial number of stockholders, does it not have a reasonable basis for reimbursement? Certainly there would seem to be as much ground for reimbursing such a group as there is for justifying the use of corporate funds by a defeated management. It would seem that payments to both groups could be justified on the grounds of informing the stockholders of both sides of the question. As pointed out above, such reimbursement could be conditioned on the non-management group's receiving a fixed percentage of the vote or on a proportional basis.\(^{228}\)

It has been said that if both sides know that their own expenditures as well as those of the opposition may be met out of corporate

\(^{225}\text{Ibid.}, \text{pp. 513-4.}\)
\(^{226}\text{Friedman, op. cit., p. 958.}\)
\(^{227}\text{Emerson and Latcham, op. cit., p. 142.}\)
\(^{228}\text{Ibid., pp. 76-7.}\)
funds, there should be some reluctance on the part of both sides to spend an unreasonable amount.\textsuperscript{229}

\textsuperscript{229}Ibid., p. 80.
VII. CONCLUSIONS AND RECOMMENDATIONS

Not long ago concrete knowledge of a corporation's policies and condition was almost a state secret—certainly not for the eyes or ears of stockholders who owned the corporation. Theirs was not to know but to approve. They were allowed to invest but not to participate. 230

All this has been changing since the advent of the Securities and Exchange Act of 1934. But the automatic signing over of votes or proxies to management, regardless of the issues involved or the policies proposed, still continues on a wholesale scale. The Act's provisions apply to little more than half of the country's corporations, those listed on a national stock exchange. 231 Even listed companies can and do find means of circumventing the law if they so desire, commonly by the simple expedient of not soliciting proxies for the annual meeting.

Although the New York Stock Exchange has made it obligatory for all new listings to pledge that they will solicit proxies annually, the companies already listed and those listed on other exchanges are under no obligation to solicit. One writer has stated that eight percent of the stocks listed on the New York Stock Exchange still fail to solicit. 232 Not only does failure to solicit deny the

230 Gilbert, op. cit., p. 8.
231 Ibid.
232 Ibid.
stockholders the right to receive information under the SEC Act, it also denies him any voice on all subjects. Because proxies were not sought, a quorum may not be present at the meeting. Under the by-laws, therefore, the directors and officers continue in office until a quorum is present at a meeting—which may be a long time. Congressional action is needed to require corporations presently subject to the proxy rules to solicit in an attempt to hold bona fide annual meetings. In addition, Congress should broaden the coverage of the proxy regulation by requiring all publicly owned corporations with any substantial amount of stock held by "outsiders" to solicit regularly. This would secure the guarantee of being heard for the independent stockholders of thousands of corporations not listed on any national securities exchange.

It has been frequently suggested that independent nominations, of either a single candidate for the board of directors or an entire insurgent slate, should be carried in the so-called management proxy statement.233 There is no reason why management should be able to use the corporation's proxy statement as an instrument of propaganda since it is paid for by all the stockholders, including the insurgents who must now also pay for their own proxy statement when challenging management. The inclusion of opposing nominations in the corporation's proxy statement and form of proxy would make them resemble a political ballot with opposing candidates. This would merely be an extension of the present proxy proposal rule.

Admittedly, the inclusion of opposing candidates in the manage-

233Gilbert, op. cit., p. 166; Emerson and Latchem, op. cit., p. 79; Mortimer Caplin, Proxies, Annual Meetings and Corporate Democracy, 37 Va. L. Rev. 653 (1951).
ment proxy material could result in a great deal of harassment of management. To prevent irresponsible attacks it has been variously suggested that only holders of a prescribed minimum number of shares should be permitted to nominate non-management directors or that persons making such nominations be required to make a deposit which would be forfeited in the nominee received less than a specified percentage of the vote. It would seem that this reform could be attained by an additional proxy rule. The SEC apparently has the authority under the present Act to institute this requirement.

The writer believes that stockholder democracy requires the extension of the right of cumulative voting. Cumulative voting has been a much-debated issue. The division of opinion is shown by the fact that only one half of the states presently make the right of cumulative voting mandatory. Opponents have pointed out that a strong minority can actually elect a majority of the directors by cumulating its vote if the majority group does not cumulate. However, if cumulative voting were mandatory or if advance notice of the intention to cumulate votes were required, there seems to be no reason why the majority should fail to secure its proportional representation. The right of minority stockholders to be represented proportional to their holdings should justify guaranteeing the cumulative voting right. This requires action by the states to guarantee the right by statute.

In addition to cumulative voting, the extension of stockholder democracy requires an elimination of the stagger system of electing

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234 Emerson and Latcham, op. cit., p. 79.

235 Gilbert, op. cit., p. 167.

236 Table A.
directors, whereby only part of the board is elected at any one election since the directors' terms of office are staggered. State statutes should prohibit such a practice which permits a group to maintain control over a corporation even though an insurgent group should win an overwhelming victory in an election in any one year.

The spending of corporate funds by management for proxy contests does not seem to be justified. Expenditures beyond those necessary to present the required proxy information and inform the stockholders are made for the purpose of continuing the management group in control, regardless of the group's performance. Thus the expenditures are largely political and have no corporate purpose, but, rather, should be considered personal expense of the management group. The recent cases in which successful insurgents were reimbursed for their expenses puts the corporation in the position of paying for both sides of a political contest. But the insurgents have as much right to reimbursement of their political expenses as does management. The writer believes that reasonable expenses of contests of both the management and insurgents who get a substantial vote should be paid by the corporation on the grounds that both groups perform the stockholders a service in offering alternative policies and leaders. Excessive expenditures should be borne by the group incurring them. The powers of the SEC appear to be sufficiently broad to enable them to regulate under the proxy rules the expenditures in corporate elections.

Since the so-called management proxy is not really the property of the management group, but the property of all the stockholders, there is no justification for permitting management to vote unmarked proxies in accordance with their preferences in a proxy contest. Either such unmarked proxies should not be voted on any issue for
which no decision is indicated or the votes of unmarked proxies should be divided in the same proportion as the votes cast before the unmarked proxies have been counted. The discretionary authority is conferred by sanction of the present proxy rules. This change could be achieved by incorporation into the proxy rules by the Commission.

One of the most important advantages which management has over the opposition in a proxy contest is access to the stockholder list. The present proxy rule requires only that management furnish the names and addresses of stockholders if it does not desire to mail proxy material for insurgents. Information as to the holders of stock and amounts held is invaluable to any group considering any action in opposition to management. Recent contests have seen instances in which management who owns very few shares is in the position of denying to a group owning considerably more shares access to the list of other stockholders. Such a situation can hardly be justified on any grounds. Many state statutes which guarantee the right of the stockholder to inspect the stockholder list are difficult to invoke in time to make them effective in use. In lieu of state action to guarantee actual access, the SEC could probably make provision whereby the information could be secured since the Securities and Exchange Act has been rather broadly interpreted by the courts.

In addition to its access to the complete list of stockholders, management has had an unequal access to the beneficial owners of stock held in the name of their nominees. Such access is gained by contacts among the securities dealers and fiduciaries. Equity would require that such nominees not be permitted to reveal the names and addresses of the beneficial owners or to personally solicit the beneficial owners unless equal treatment is afforded to all soliciting
groups. This could be accomplished through the rules regulating the brokers and securities exchanges.

The SEC proxy regulation has been effective in securing for stockholders of covered companies full and truthful information through the proxy statement. It has also been potent in preventing fraud in the solicitation of proxies by use of misleading statements or omission of material facts. It has been less effective in giving stockholders an opportunity to communicate with fellow stockholders and to vote on non-management proposals and director nominees. Certainly it has been a desirable step. It appears that the chances of legislation by the states to further stockholder democracy are dim, due both to the broad jurisdiction of the federal government and to the inclination of the state legislatures. The hopes of achieving the substance of corporate democracy depend almost exclusively upon Congressional action and attendant regulation by the SEC.
APPENDIX I

SECTION 14 OF THE SECURITIES EXCHANGE ACT OF 1934

(a) It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of any national securities exchange or otherwise to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered on any national securities exchange in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) It shall be unlawful for any member of a national securities exchange or any broker or dealer who transacts a business in securities through the medium of any such member to give a proxy, consent, or authorization in respect of any security registered on a national securities exchange and carried for the account of a customer in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.
APPENDIX II

SEC REGULATION X-14--THE PROXY RULES

Rule X-14A-1. Definitions. Unless the context otherwise requires, all terms used in this regulation have the same meanings as in the Act or elsewhere in the General Rules and Regulations thereunder. In addition, the following definitions apply unless the context otherwise requires:

Associate. The term "associate" used to indicate a relationship with any person, means (1) any corporation or organization (other than the issuer or a majority owned subsidiary of the issuer) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (3) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the issuer or any of its parents or subsidiaries.

Issuer. The term "issuer" means the issuer of the securities in respect of which a proxy is solicited.

Last fiscal year. The term "last fiscal year" of the issuer means the last fiscal year of the issuer ending prior to the date of the meeting for which proxies are to be solicited.

Proxy. The term "proxy" includes every proxy, consent or authorization within the meaning of Section 14(a) of the Act. The consent or authorization may take the form of failure to object or to dissent.

Proxy statement. The term "proxy statement" means the statement required by Rule X-14A-3(a), whether or not contained in a single document.

Solicitation. The terms "solicit" and "solicitation" include--(1) any request for a proxy whether or not accompanied by or included in a form of proxy; (2) any request to execute or not to execute, or to revoke, a proxy; or (3) the furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

The terms do not apply, however, to the furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder, the performance by the issuer of acts required by Rule X-14A-7, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.
Rule X-14A-2. Solicitation to Which Rules Apply. The rules contained in this regulation apply to every solicitation of a proxy with respect to securities listed and registered on a national securities exchange, whether or not trading in such securities has been suspended, except the following:

(a) Any solicitation made otherwise than on behalf of the management of the issuer where the total number of persons solicited is not more than ten.

(b) Any solicitation by a person in respect of securities carried in his name or in the name of his nominee (otherwise than as voting trustee) or held in his custody, if such person—

(1) receives no commission or remuneration for such solicitation, directly or indirectly, other than reimbursement of reasonable expenses,

(2) furnishes promptly to the person solicited a copy of all soliciting material with respect to the same subject matter or meeting received from all persons who shall furnish copies thereof for such purpose and who shall, if requested, defray the reasonable expenses to be incurred in forwarding such material, and

(3) in addition, does no more than impartially instruct the person solicited to forward a proxy to the person, if any, to whom the person solicited desires to give a proxy or impartially request from the person solicited instructions as to the authority to be conferred by the proxy and state that a proxy will be given if no instructions are received by a certain date.

(c) Any solicitation by a person in respect of securities of which he is the beneficial owner.

(d) Any solicitation involved in the offer or sale of a certificate of deposit or other security registered under the Securities Act of 1933.

(e) Any solicitation with respect to a plan of reorganization under Chapter X of the Bankruptcy Act, as amended, if made after the entry of an order approving such plan pursuant to Section 174 of said Act and after, or concurrently with, the transmittal of information concerning such plan as required by Section 175 of said Act.

(f) Any solicitation which is subject to Rule U-62 under the Public Utility Holding Company Act of 1935.

(g) Any solicitation through the medium of a newspaper advertisement which informs security holders of a source from which they may obtain copies of a proxy statement, form of proxy and any other soliciting material and does no more than (1) name the issuer, (2) state the reason for the advertisement, and (3) identify the proposal or proposals to be acted upon by security holders.

Rule X-14A-3. Information to Be Furnished Security Holders. (a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Schedule 14A.

(b) If the solicitation is made on behalf of the management of the issuer and relates to an annual meeting of security holders at which directors are to be elected, each proxy statement furnished pursuant to paragraph (a) shall be accompanied or preceded by an annual report to such security holders containing such financial statements for the last fiscal year as will, in the opinion of the management, adequately reflect the financial position and operations of the issuer. Such annual report, including financial statements, may be in any
form deemed suitable by the management. This paragraph shall not apply, however, to solicitations made on behalf of the management before the financial statements are available if solicitation is being made at the time in opposition to the management and if the management's proxy statement includes an undertaking in bold face type to furnish such annual report to all persons being solicited, at least twenty days before the date of the meeting.

(c) Four copies of each annual report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies of solicitation material are filed with the Commission pursuant to Rule X-14A-6(a), whichever date is later. The annual report is not deemed to be "soliciting material" or to be "filed" with the Commission or otherwise subject to this regulation or to the liabilities of Section 18 of the Act, except to the extent that the issuer specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement by reference.

Rule X-14A-4. Requirements as to Proxy.  (a) The form of proxy (1) shall indicate in bold face type whether or not the proxy is solicited on behalf of the management, (2) shall provide a specifically designated blank space for dating the proxy and (3) shall identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the management or by security holders. No reference need be made, however, to proposals as to which discretionary authority is conferred pursuant to paragraph (c).

(b) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of each matter or group of related matters referred to therein as intended to be acted upon, other than elections to office. A proxy may confer discretionary authority with respect to other matters which may come before the meeting, provided the persons on whose behalf the solicitation is made are not aware a reasonable time prior to the time the solicitation is made that any such other matters are to be presented for action at the meeting and provided further that a specific statement to that effect is made in the proxy statement or in the form of proxy. A proxy may also confer discretionary authority with respect to any proposal omitted from the proxy statement and form of proxy pursuant to paragraph (c) of Rule X-14A-6.

(d) No proxy shall confer authority (1) to vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement, or (2) to vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders.

(e) The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the shares represented by the proxy will be voted and that where the person solicited specifies by means of a ballot provided pursuant to paragraph (b) a choice with respect to any matter to be acted upon, the shares will be voted in accordance with the specifications so made.

(a) The information included in the proxy statement shall be clearly presented and the statements made shall be divided into groups according to subject matter and the various groups of statements shall be preceded by appropriate headings. The order of items and sub-items in the schedule need not be followed. Where practicable and appropriate, the information shall be presented in tabular form. All amounts shall be stated in figures. Information required by more than one applicable item need not be repeated. No statement need be made in response to any item or sub-item which is inapplicable.

(b) Any information required to be included in the proxy statement as to terms of securities or other subject matter which from a standpoint of practical necessity must be determined in the future may be stated in terms of present knowledge and intention. To the extent practicable, the authority to be conferred concerning each such matter shall be confined within limits reasonably related to the need for discretionary authority. Subject to the foregoing, information which is not known to the persons on whose behalf the solicitation is to be made and which it is not reasonably within the power of such persons to ascertain or procure may be omitted, if a brief statement of the circumstances rendering such information unavailable is made.

(c) There may be omitted from the proxy statement any information contained in any other proxy soliciting material which has been furnished to each person solicited in connection with the same meeting or subject matter if a clear reference is made to the particular document containing such information.

(d) All printed proxy statements shall be set in roman type at least as large as ten-point modern type except that to the extent necessary for convenient presentation financial statements and other statistical or tabular matter may be set in roman type at least as large as eight-point modern type. All type shall be leaded at least two points.

Rule X-14A-6. Material Required to Be Filed. (a) Three preliminary copies of the proxy statement and form of proxy and any other soliciting material to be furnished to security holders concurrently therewith shall be filed with the Commission at least ten days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor.

(b) Three preliminary copies of any additional soliciting material, relating to the same meeting or subject matter, furnished to security holders subsequent to the proxy statement shall be filed with the Commission at least two days (exclusive of Saturdays, Sundays or holidays) prior to the date copies of such material are first sent or given to security holders, or such shorter period prior to such date as the Commission may authorize upon a showing of good cause therefor.

(c) Four definitive copies of the proxy statement, form of proxy and all other soliciting material, in the form in which such material is furnished to security holders, shall be filed with, or mailed for filing to, the Commission not later than the date such material is first sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing
to, each national securities exchange upon which any security of the issuer is listed and registered.

(d) If the solicitation is to be made in whole or in part by personal solicitation, three copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with the Commission by the person on whose behalf the solicitation is made at least five days prior to the date copies of such material are first sent or given to such individuals, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor.

(e) All copies of material filed pursuant to paragraph (a) or (b) shall be clearly marked "Preliminary Copies" and shall be for the information of the Commission only, except that such material may be disclosed to any department or agency of the United States Government and the Commission may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Commission. All material filed pursuant to paragraph (a), (b) or (c) shall be accompanied by a statement of the date upon which copies thereof are intended to be, or have been, released to security holders. All material filed pursuant to paragraph (d) shall be accompanied by a statement of the date upon which copies thereof are intended to be released to the individuals who will make the actual solicitation.

(f) Copies of replies to inquiries from security holders requesting further information and copies of communications which do no more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to this rule.

(g) Notwithstanding the provisions of paragraphs (a) and (b) of this rule and of paragraph (e) of Rule X-14A-11, copies of soliciting material in the form of speeches, press releases and radio or television scripts may, but need not, be filed with the Commission prior to use or publication. Definitive copies, however, shall be filed with or mailed for filing to the Commission as required by paragraph (c) not later than the date such material is used or published. The provisions of paragraphs (a) and (b) of this rule and of paragraph (e) of Rule X-14A-11 shall apply, however, to any reprints or reproductions of all or any part of such material.

Note: Where preliminary copies of material are filed with the Commission pursuant to this rule, the printing of definitive copies for distribution to security holders should be deferred until the comments of the Commission's staff have been received and considered.

Rule X-14A-7. Mailing Communications for Security Holders. If the management of the issuer has made or intends to make any solicitation subject to this regulation, the issuer shall perform such of the following acts as may be duly requested in writing with respect to the same subject matter or meeting by any security holder who is entitled to vote on such matter or to vote at such meeting and who shall defray the reasonable expenses to be incurred by the issuer in the performance of the act or acts requested.

(a) The issuer shall mail or otherwise furnish to such security holder the following information as promptly as practicable after the
receipt of such request:

(1) A statement of the approximate number of holders of record of any class of securities, any of the holders of which have been or are to be solicited on behalf of the management, or any group of such holders which the security holder shall designate.

(2) If the management of the issuer has made or intends to make, through bankers, brokers or other persons any solicitation of the beneficial owners of securities of any class, a statement of the approximate number of such beneficial owners, or any group of such owners which the security holder shall designate.

(3) An estimate of the cost of mailing a specified proxy statement, form of proxy or other communication to such holders, including insofar as known or reasonably available, the estimated handling and mailing costs of the bankers, brokers or other persons specified in (2) above.

(b) (1) Copies of any proxy statement, form of proxy or other communication furnished by the security holder shall be mailed by the issuer to such of the holders of record specified in (a) (1) above as the security holder shall designate. The issuer shall also mail to each banker, broker, or other person specified in (a) (2) above a sufficient number of copies of such proxy statement, form of proxy or other communication as will enable the banker, broker, or other person to furnish a copy thereof to each beneficial owner solicited or to be solicited through him.

(2) Any such material which is furnished by the security holder shall be mailed with reasonable promptness by the issuer after receipt of a tender of the material to be mailed, of envelopes or other containers therefor and of postage or payment for postage. The issuer need not, however, mail any such material which relates to any matter to be acted upon at an annual meeting of security holders prior to the earlier of (i) a day corresponding to the first date on which management proxy soliciting material was released to security holders in connection with the last annual meeting of security holders, or (ii) the first day on which solicitation is made on behalf of management. With respect to any such material which relates to any matter to be acted upon by security holders otherwise than at an annual meeting, such material need not be mailed prior to the first day on which solicitation is made on behalf of management.

(3) Neither the management nor the issuer shall be responsible for such proxy statement, form of proxy or other communication.

(c) In lieu of performing the acts specified above, the issuer may, at its option, furnish promptly to such security holder a reasonably current list of the names and addresses of such of the holders of record specified in (a) (1) above as the security holder shall designate together with a statement of the approximate number of beneficial owners solicited or to be solicited through each such banker, broker or other person and a schedule of the handling and mailing costs of each such banker, broker or other person, if such schedule has been supplied to the management of the issuer. The foregoing information shall be furnished promptly upon the request of the security holder or at daily or other reasonable intervals as it becomes available to the management of the issuer.

Rule X-14A-8. Proposals of Security Holders. (a) If any security holder entitled to vote at a meeting of security holders of the
issuer shall submit to the management of the issuer a reasonable time before the solicitation is made a proposal which is accompanied by notice of his intention to present the proposal for action at the meeting, the management shall set forth the proposal in its proxy statement and shall identify the proposal in its form of proxy and provide means by which security holders can make the specification provided for by Rule X-14A-4(b). A proposal so submitted with respect to an annual meeting more than 60 days in advance of a day corresponding to the first date on which management proxy soliciting material was released to security holders in connection with the last annual meeting of security holders shall prima facie be deemed to have been submitted a reasonable time before the solicitation. This rule shall not apply, however, to elections to office.

(b) If the management opposes the proposal, it shall also, at the request of the security holder, include in its proxy statement the name and address of the security holder and a statement of the proposal in not more than one hundred words in support of the proposal. The statement and request of the security holder shall be furnished to the management at the same time that the proposal is furnished. Neither the management nor the issuer shall be responsible for such statement.

(c) Notwithstanding the foregoing, the management may omit a proposal and any statement in support thereof from its proxy statement and form of proxy under any of the following circumstances:

(1) If the proposal as submitted is, under the laws of the issuer's domicile, not a proper subject for action by security holders; or

(2) If it clearly appears that the proposal is submitted by the security holder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the issuer or its management, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes; or

(3) If the management has at the security holder's request included a proposal in its proxy statement and form of proxy relating to either of the last two annual meetings of security holders or any special meeting held subsequent to the earlier of such two annual meetings and such security holder has failed without good cause to present the proposal, in person or by proxy, for action at the meeting; or

(4) If substantially the same proposal has previously been submitted to security holders, in the management's proxy statement and form of proxy relating to any annual or special meeting of security holders held within the preceding five calendar years, it may be omitted from the management's proxy material relating to any meeting of security holders held within the three calendar years after the latest such previous submission, provided that--

(i) If the proposal was submitted at only one meeting during such preceding period, it received less than 3% of the total number of votes cast in regard thereto; or

(ii) If the proposal was submitted at only two meetings during such preceding period, it received at the time of its second submission less than 6% of the total number of votes cast in regard thereto; or

(iii) If the proposal was submitted at three or more meetings during such preceding period, it received at the time of its latest
submission less than 10% of the total number of votes cast in regard thereto.

(5) If the proposal consists of a recommendation or request that the management take action with respect to a matter relating to the conduct of the ordinary business operations of the issuer.

(d) Whenever the management asserts that a proposal and any statement in support thereof may properly be omitted from its proxy statement and form of proxy, it shall file with the Commission, not later than 20 days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to Rule X-14A-6 (a), or such shorter period prior to such date as the Commission may permit, a copy of the proposal and any statement in support thereof as received from the security holder, together with a statement of the reasons why the management deems such omission to be proper in the particular case, and, where such reasons are based on matters of law, a supporting opinion of counsel. The management shall at the same time, if it has not already done so, notify the security holder submitting the proposal of its intention to omit the proposal from its proxy statement and form of proxy and shall forward to him a copy of the statement of the reasons why the management deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel.

Rule X-14A-9. False or Misleading Statements. No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting, or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

Note. The following are some examples of what, depending upon particular facts and circumstances, may be misleading within the meaning of this rule:

(a) Predictions as to specific future market values, earnings, or dividends.

(b) Material which directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation.

(c) Failure to so identify a proxy statement, form of proxy and other soliciting material as to clearly distinguish it from the soliciting material of any other person or persons soliciting for the same meeting or subject matter.

(d) Claims made prior to a meeting regarding the results of a solicitation.

Rule X-14A-10. Prohibition of Certain Solicitations. No person making a solicitation which is subject to this regulation shall solicit--

(a) Any undated or post-dated proxy; or

(b) Any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder.

(A) Solicitations to Which This Rule Applies.

This rule applies to any solicitation subject to this regulation by any person or group of persons for the purpose of opposing a solicitation subject to this regulation by any other person or group of persons with respect to the election or removal of directors at any annual or special meeting of security holders.

(B) Participant or Participant in a Solicitation.

For purposes of this rule the terms "participant" and "participant in a solicitation" include the following:

1. the issuer;
2. any director of the issuer, and any nominee for whose election as a director proxies are solicited;
3. any committee or group which solicits proxies, any member of such committee or group, and any person whether or not named as a member who, acting alone or with one or more other persons, directly or indirectly, takes the initiative in organizing, directing or financing any such committee or group;
4. any person who finances or joins with another to finance the solicitation of proxies, except persons who contribute not more than $500 and who are not otherwise participants;
5. any person who lends money or furnishes credit or enters into any other arrangements, pursuant to any contract or understanding with a participant, for the purpose of financing or otherwise inducing the purchase, sale, holding or voting of securities of the issuer by any participant or other persons, in support of or in opposition to a participant; except that such terms do not include a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant;
6. any other person who solicits proxies;

provided, however, that such terms do not include (i) any person or organization retained or employed by a participant to solicit security holders, or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties; (ii) any person employed by a participant in the capacity of attorney, accountant, or advertising, public relations or financial advisor, and whose activities are limited to the performance of his duties in the course of such employment; (iii) any person regularly employed as an officer or employee of the issuer or any of its subsidiaries who is not otherwise a participant; or (iv) any officer or director of, or any person regularly employed by, any other participant, if such officer, director, or employee is not otherwise a participant.

(C) Filing of Information Required by Schedule 14B.

1. No solicitation subject to this rule shall be made by any person other than the management of an issuer unless at least five business days prior thereto, or such shorter period as the Commission may authorize upon a showing of good cause therefor, there has been filed, with the Commission and with each national securities exchange upon which any security of the issuer is listed and registered, a statement in duplicate containing the information specified by Schedule 14B.
(2) Within five business days after a solicitation subject to this rule is made by the management of an issuer, or such longer period as the Commission may authorize upon a showing of good cause therefore, there shall be filed, with the Commission and with each national securities exchange upon which any security of the issuer is listed and registered, by or on behalf of each participant in such solicitation, other than the issuer, a statement in duplicate containing the information specified by Schedule 14B.

(3) If any solicitation on behalf of management or any other person has been made, or if proxy material is ready for distribution, prior to a solicitation subject to this rule in opposition thereto, a statement in duplicate containing the information specified in Schedule 14B shall be filed by or on behalf of each participant in such prior solicitation, other than the issuer, as soon as reasonably practicable after the commencement of the solicitation in opposition thereto, with the Commission and with each national securities exchange on which any security of the issuer is listed and registered.

(4) If, subsequent to the filing of the statements required by subparagraphs (1), (2), and (3) above, additional persons become participants in a solicitation subject to this rule, there shall be filed, with the Commission and each appropriate exchange, by or on behalf of each such person a statement in duplicate containing the information specified by Schedule 14B, within three business days after such person becomes a participant, or such longer period as the Commission may authorize upon a showing of good cause therefor.

(5) If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to such statement shall be filed promptly with the Commission and each appropriate exchange.

(6) Each statement and amendment thereto filed pursuant to this paragraph (c) shall be part of the official public files of the Commission and for purposes of this regulation shall be deemed a communication subject to the provisions of Rule X-14A-9.

(D) Solicitations Prior to Furnishing Required Written Proxy Statement.

Notwithstanding the provisions of Rule X-14A-3(a), a solicitation subject to this rule may be made prior to furnishing security holders a written proxy statement containing the information specified in Schedule 14A with respect to such solicitation, provided that:

(1) The statements required by paragraph (c) of this rule are filed by or on behalf of each participant in such solicitation.

(2) No form of proxy is furnished to security holders prior to the time the written proxy statement required by Rule X-14A-3(a) is furnished to security holders. Provided, however, that this subparagraph (2) shall not apply where a proxy statement then meeting the requirements of Schedule 14A has been furnished to security holders.

(3) At least the information specified in Items 2(a) and 3(a) of the statement required by paragraph (c) to be filed by each participant, or an appropriate summary thereof, is included in each communication sent or given to security holders in connection with the solicitation.

(4) A written proxy statement containing the information specified in Schedule 14A with respect to a solicitation is sent or given to security holders at the earliest practicable date.
(E) Solicitations Prior to Furnishing Required Written Proxy Statement—Filing Requirements.

Three copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of the written proxy statement required by Rule X-14A-3(a) shall be filed with the Commission in preliminary form, at least five business days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period as the Commission may authorize upon a showing of good cause therefor.

(F) Application of This Rule to Annual Report.

Notwithstanding the provisions of Rule X-14A-3(b) and (c), three copies of any portion of the annual report referred to in Rule X-14A-3(b) which comments upon or refers to any solicitation subject to this rule, or to any participant in any such solicitation, other than the solicitation by the management, shall be filed with the Commission in preliminary form at least five business days prior to the date copies of the report are first sent or given to security holders.

(G) Application of Rule X-14A-6.

The provisions of paragraphs (c), (d), (e), (f) and (g) of Rule X-14A-6 shall apply, to the extent pertinent, to soliciting material subject to paragraphs (e) and (f) of this Rule X-14A-11.

(H) Use of Reprints or Reproductions.

In any solicitation subject to this rule, soliciting material which includes, in whole or part, any reprints or reproductions of any previously published material shall:

(1) State the name of the author and publication, the date of prior publication, and identify any person who is quoted without being named in the previously published material.

(2) Except in the case of a public official document or statement, state whether or not the consent of the author and publication has been obtained to the use of the previously published material as proxy soliciting material.

(3) If any participant using the previously published material, or anyone on his behalf, paid, directly or indirectly, for the preparation or prior publication of the previously published material, or has made or proposes to make any payments or give any other consideration in connection with the publication or republication of such material, state the circumstances.
APPENDIX III

SCHEDULE 14A. INFORMATION REQUIRED IN PROXY STATEMENT

Note. Where any item calls for information with respect to any matter to be acted upon and such matter involves other matters with respect to which information is called for by other items of this schedule, the information called for by all applicable items shall be given. For example, if action is to be taken with respect to any merger, consolidation or acquisition, specified in Item 14 which involves the election of directors, Items 6 and 7 shall also be answered.

Item 1. Revocability of Proxy.

State whether or not the person giving the proxy has the power to revoke it. If the right of revocation before the proxy is exercised is limited or is subject to compliance with any formal procedure, briefly describe such limitation or procedure.

Item 2. Dissenters' Rights of Appraisal.

Outline briefly the rights of appraisal or similar rights of dissenters with respect to any matter to be acted upon and indicate any statutory procedure required to be followed by dissenting security holders in order to perfect such rights. Where such rights may be exercised only within a limited time after the date of the adoption of a proposal, the filing of a charter amendment or other similar act, state whether the person solicited will be notified of such date.

Item 3. Persons Making the Solicitation.

(A) SOLICITATIONS NOT SUBJECT TO RULE 14A-11.

(1) If the solicitation is made by the management of the issuer, so state. Give the name of any director of the issuer who has informed the management in writing that he intends to oppose any action intended to be taken by the management and indicate the action which he intends to oppose.

(2) If the solicitation is made otherwise than by the management of the issuer, so state and give the names of the persons by whom and on whose behalf it is made.

(3) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by especially engaged employees or paid solicitors, state (i) the material features of any contract or arrangement for such solicitation and identify the parties, and (ii) the cost or anticipated cost thereof.

(4) State the names of the persons by whom the cost of solicitation has been or will be borne, directly or indirectly.
(B) SOLICITATIONS SUBJECT TO RULE X-14A-11.

(1) State by whom the solicitation is made and describe the methods employed and to be employed to solicit security holders.

(2) If regular employees of the issuer or any other participant in a solicitation have been or are to be employed to solicit security holders, describe the class or classes of employees to be so employed, and the manner and nature of their employment for such purpose.

(3) If specially engaged employees, representatives or other persons have been or are to be employed to solicit security holders, state (i) the material features of any contract or arrangement for such solicitation and identify the parties, (ii) the cost or anticipated cost thereof, and (iii) the approximate number of such employees or employees of any other person (naming such other person) who will solicit security holders.

(4) State the total amount estimated to be spent and the total expenditures to date for, in furtherance of, or in connection with the solicitation of security holders.

(5) State by whom the cost of the solicitation will be borne. If such cost is to be borne initially by any person other than the issuer, state whether reimbursement will be sought from the issuer, and, if so, whether the question of such reimbursement will be submitted to a vote of security holders.

Instruction. With respect to solicitations subject to Rule X-14A-11, costs and expenditures within the meaning of this Item 3 shall include fees for attorneys, accountants, public relations or financial advisors, solicitors, advertising, printing, transportation, litigation and other costs incidental to the solicitation, except that the issuer may exclude the amounts of such costs represented by the amount normally expended for a solicitation for an election of directors in the absence of a contest, and costs represented by salaries and wages of regular employees and officers, provided a statement to that effect is included in the proxy statement.

Item 4. Interest of Certain Persons in Matters to be Acted Upon.

(A) SOLICITATIONS NOT SUBJECT TO RULE X-14A-11.

Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

(1) If the solicitation is made on behalf of management, each person who has been a director or officer of the issuer at any time since the beginning of the last fiscal year.

(2) If the solicitation is made otherwise than on behalf of management, each person on whose behalf the solicitation is made. Any person who would be a participant in a solicitation for purposes of Rule X-14A-11 as defined in paragraph (b) (3), (4), (5) and (6) thereof shall be deemed a person on whose behalf the solicitation is made for purposes of this paragraph (a).

(3) Each nominee for election as a director of the issuer.

(4) Each associate of the foregoing persons.

Instruction. Except in the case of a solicitation subject to this regulation made in opposition to another solicitation subject to this regulation, this sub-item (a) shall not apply to any interest arising from the ownership of securities of the issuer where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.
(B) SOLICITATIONS SUBJECT TO RULE X-14A-11.

(1) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each participant as defined in Rule X-14A-11(b) (2), (3), (4), (5) and (6), in any matter to be acted upon at the meeting, and include with respect to each participant the information, or a fair and adequate summary thereof, required by Items 2(a), 2(d), 3, 4(b) and 4(c) of Schedule 14A.

(2) With respect to any person named in answer to Item 6(b), describe any substantial interest, direct or indirect, by security holdings or otherwise, that he has in any matter to be acted upon at the meeting, and furnish the information called for by Item 4(b) and (c) of Schedule 14A.

Item 5. Voting Securities and Principal Holders Thereof.

(a) State as to each class of voting securities of the issuer entitled to be voted at the meeting, the number of shares outstanding and the number of votes to which each class is entitled.

(b) Give the date as of which the record of security holders entitled to vote at the meeting will be determined. If the right to vote is not limited to security holders of record on that date, indicate the conditions under which other security holders may be entitled to vote.

(c) If action is to be taken with respect to the election of directors and if the persons solicited have cumulative voting rights, make a statement that they have such rights and state briefly the conditions precedent to the exercise thereof.

(a) If to the knowledge of the persons on whose behalf the solicitation is made, any person owns of record or beneficially more than 10 percent of the outstanding voting securities of the issuer, name such person, state the approximate amount of such securities owned of record but not owned beneficially and the approximate amount of such securities owned of record but not owned beneficially and the approximate amount owned beneficially by such person and the percentage of outstanding voting securities represented by the amount of securities so owned in each such manner.

Item 6. Nominees and Directors.

(a) If action is to be taken with respect to the election of directors, furnish the following information, in tabular form to the extent practicable, with respect to each person nominated for election as a director and each other person whose term of office as a director will continue after the meeting:

(1) Name each such person, state when his term of office or the term of office for which he is a nominee will expire, and all other positions and offices with the issuer presently held by him, and indicate which persons are nominees for election as directors at that meeting.

(2) State his present principal occupation or employment and give the name and principal business of any corporation or other organization in which such employment is carried on. Furnish similar information as to all of his principal occupations or employments during the last five years, unless he is now a director and was elected to his present term of office by a vote of security holders at a meeting for which proxies were solicited under this regulation.

(3) If he is or has previously been a director of the issuer
state the period or periods during which he has served as such.

(h) State, as of the most recent practicable date, the approximate amount of each class of equity securities of the issuer or any of its parents or subsidiaries, other than directors' qualifying shares, beneficially owned directly or indirectly by him. If he is not the beneficial owner of any such securities, make a statement to that effect.

(5) If more than 10% of any class of securities of the issuer or any of its parents or subsidiaries are beneficially owned by him and his associates, state the approximate amount of each class of such securities beneficially owned by such associates, naming each associate whose holdings are substantial.

(b) If any nominee for election as a director is proposed to be elected pursuant to any arrangement or understanding between the nominee and any other person or persons, except the directors and officers of the issuer acting solely in that capacity, name such other person or persons and describe briefly such arrangement or understanding.

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**Item 7. Remuneration and Other Transactions with Management and Others.**

Furnish the information called for by this item if action is to be taken with respect to (i) the election of directors, (ii) any bonus, profit sharing or other remuneration plan, contract or arrangement in which any director, nominee for election as a director, or officer of the issuer will participate, (iii) any pension or retirement plan in which any such person will participate, or (iv) the granting or extension to any such person of any options, warrants or rights issued to security holders, as such, on a pro-rata basis. However, if the solicitation is made on behalf of persons other than the management, the information required need be furnished only as to nominees for election as directors and as to their associates.

(a) Furnish the following information in substantially the tabular form indicated below as to all direct remuneration paid by the issuer and its subsidiaries during the issuer's last fiscal year to the following persons for services in all capacities:

1. Each director, and each of the three highest paid officers, of the issuer whose direct aggregate remuneration exceeded $30,000, naming each such person.
2. All directors and officers of the issuer as a group, without naming them.

| (A) Name of individual or identity of group | (B) Capacities in which remuneration was received | (C) Aggregate remuneration |

Instructions. 1. This item applies to any person who was a director or officer of the issuer at any time during the period specified. However, information need not be given for any portion of the period during which such person was not a director or officer of the issuer.

2. The information is to be given on an accrual basis if practicable. The tables required by this paragraph and paragraph (b) may be combined if the issuer so desires.

3. Do not include remuneration paid to a partnership in which
any director or officer was a partner, but see paragraph (f) below.

(b) Furnish the following information, in substantially the tabular form indicated, as to all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, but the issuer or any of its subsidiaries to each director or officer named in answer to paragraph (a) (1):

<table>
<thead>
<tr>
<th>(A)</th>
<th>(B)</th>
<th>(C)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of individual or identity of group</td>
<td>Amount set aside or accrued during issuer's last fiscal year</td>
<td>Estimated annual benefits upon retirement</td>
</tr>
</tbody>
</table>

Instructions. 1. The term "plan" in this paragraph and in paragraph (c) includes all plans, contracts, authorizations or arrangements, whether or set forth in any formal document.

2. Column (B) need not be answered with respect to payments computed on an actuarial basis under any plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

3. The information called for by Column (C) may be given in a table showing the annual benefits payable upon retirement to persons in specified salary classifications.

4. In the case of any plan (other than those specified in instruction 2) where the amount set aside each year depends upon the amount of earnings of the issuer or its subsidiaries for such year or a prior year, or where it is otherwise impracticable to state the estimated annual benefits upon retirement, there shall be set forth, in lieu of the information called for by Column (C), the aggregate amount set aside or accrued to date, unless it is impracticable to do so, in which case there shall be stated the method of computing such benefits.

(c) Describe briefly all remuneration payments (other than payments reported under paragraph (a) or (b) of this item) proposed to be made in the future, directly or indirectly, by the issuer or any of its subsidiaries pursuant to any existing plan or arrangement to (i) each director or officer named in answer to paragraph (a) (1), naming each such person, and (ii) all directors and officers of the issuer as a group, without naming them.

Instruction. Information need not be included as to payments to be made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits. If it is impracticable to state the amount of remuneration payments proposed to be made, the aggregate amount set aside or accrued to date in respect of such payments shall be stated, together with an explanation of the basis for future payments.

(d) Furnish the following information as to all options to purchase securities, from the issuer or any of its subsidiaries, which were granted to or exercised by the following persons since the beginning of the issuer's last fiscal year: (i) each director or officer named in answer to paragraph (a) (1), naming each such person; and (ii) all directors and officers of the issuer as a group, without naming them:

(1) As to options granted, state (i) the title and amount of
securities called for; (ii) the prices, expiration dates and other material provisions; (iii) the consideration received for the granting thereof; and (iv) the market value of the securities called for on the granting date.

(2) As to options exercised, state (i) the title and amount of securities purchased; (ii) the purchase price; and (iii) the market value of the securities purchased on the date of purchase.

Instructions. 1. The term "options" as used in this paragraph (d) includes all options, warrants or rights other than those issued to security holders as such an a pro rata basis.

2. The extension of options shall be deemed the granting of options within the meaning of this paragraph.

3. (i) Where the total market value on the granting dates of the securities called for by all options granted during the period specified does not exceed $10,000 for any officer or director named in answer to paragraph (a) (1), or $30,000 for all officers and directors as a group, this item need not be answered with respect to options granted to such person or group. (ii) Where the total market value on the dates of purchase of all securities purchased through the exercise of options during the period specified does not exceed $10,000 for any such person or $30,000 for such group, this item need not be answered with respect to options exercised by such person or group.

4. The information for all directors and officers as a group regarding market value of the securities on the granting date of the options and on the purchase date, may be given in the form of price ranges for each calendar quarter during which options were granted or exercised.

(e) State as to each of the following persons who was indebted to the issuer or its subsidiaries at any time since the beginning of the last fiscal year of the issuer, (i) the largest aggregate amount of indebtedness outstanding at any time during such period, (ii) the nature of the indebtedness and of the transaction in which it was incurred, (iii) the amount thereof outstanding as of the latest practicable date, and (iv) the rate of interest paid or charged thereon:

(1) Each director or officer of the issuer;
(2) Each nominee for election as a director; and
(3) Each associate of any such director, officer or nominee.

Instructions. 1. See instruction 1 to paragraph (a). Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. This paragraph does not apply to any person whose aggregate indebtedness did not exceed $10,000 or 1% of the issuer’s total assets, whichever is less, at any time during the period specified. Exclude in the determination of the amount of indebtedness all amounts due from the particular person for purchases subject to usual trade terms, for ordinary travel and expense advances and for other transactions in the ordinary course of business.

(f) Describe briefly, and where practicable state the approximate amount of, any material interest, direct or indirect, of any of the following persons in any material transactions since the beginning of the issuer’s last fiscal year, or in any material proposed transactions, to which the issuer or any of its subsidiaries was or is to be a party:
(1) Any director or officer of the issuer;
(2) Any nominee for election as a director;
(3) Any security holder named in answer to item 5(d); or
(4) Any associate of any of the foregoing persons.

Instructions. 1. See instruction 1 to paragraph (a). Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

2. As to any transaction involving the purchase or sale of assets by or to the issuer or any subsidiary, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and the cost thereof to the seller if acquired by the seller within two years prior to the transaction.

3. The instruction to item 4 shall apply to this item.

4. No information need be given under this paragraph as to any transaction or any interest therein where:
   (i) The rates or charges involved in the transaction are fixed by law or determined by competitive bids;
   (ii) The interest of the specified person in the transaction is solely that of a director of another corporation which is a party to the transaction;
   (iii) The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or other similar services;
   (iv) The interest of the specified person does not exceed $30,000; or
   (v) The transaction does not involve remuneration for services, directly or indirectly, and (A) the interest of the specified persons arises from the ownership individually and in the aggregate of less than 10% of any class of equity securities of another corporation which is a party to the transaction, (B) the transaction is in the ordinary course of business of the issuer or its subsidiaries, and (C) the amount of such transaction or series of transactions is less than 10% of the total sales or purchases, as the case may be, of the issuer and its subsidiaries.

6. Information shall be furnished under this paragraph with respect to transactions not excluded above which involve remuneration, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10% of any class of equity securities of another corporation furnishing the services to the issuer or its subsidiaries.

7. This paragraph (f) does not require the disclosure of any interest in any transaction unless such interest and transaction are material.

Item 8. Selection of Auditors.

If action is to be taken with respect to the selection or approval of auditors, or if it is proposed that particular auditors shall be recommended by any committee to select auditors for whom votes are to be cast, name the auditors and describe briefly any direct financial interest in the issuer or any of its parents or subsidiaries, or any connection during the past three years with the
issuer or any of its parents or subsidiaries in the capacity of promoter, underwriter, voting trustee, director, officer or employee.

**Item 9. Bonus, Profit Sharing, and Other Remuneration Plans.**

If action is to be taken with respect to any bonus, profit sharing, or other remuneration plan, furnish the following information:

(a) Describe briefly the material features of the plan, identify each class of persons who will participate therein, indicate the approximate number of persons in each such class and state the basis of such participation.

(b) State separately the amounts which would have been distributable under the plan during the last fiscal year of the issuer (1) to directors and officers and (2) to employees if the plan had been in effect.

(c) State the name and position with the issuer of each person specified in item 7(a), who will participate in the plan and the amount which each such person would have received under the plan for the last fiscal year of the issuer if the plan had been in effect.

(d) Furnish such information, in addition that required by this item and item 7, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing or other remuneration or incentive plans for (i) each director or officer named in answer to item 7(a) who will participate in the plan to be acted upon; (ii) all directors and officers of the issuer as a group; and (iii) all employees.

(e) If the plan to be acted upon can be amended otherwise than by a vote of stockholders, to increase the cost thereof to the issuer or to alter the allocation of the benefits as between the groups specified in (b), state the nature of the amendments which can be so made.

**Instructions.** 1. The term "plan" as used in this item means any plan as defined in instruction 1 to item 7(b).

2. If the plan is set forth in a formal plan, contract or arrangement, three copies thereof shall be filed with the Commission at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (a) of Rule X-14A-6.

**Item 10. Pension and Retirement Plans.**

If action is to be taken with respect to any pension or retirement plan, furnish the following information:

(a) Describe briefly the material features of the plan, identify each class of persons who will be entitled to participate therein, indicate the approximate number of persons in each such class and state the basis of such participation.

(b) State (1) the approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period, (2) the estimated annual payment to be made with respect to current services and (3) the amount of such annual payments to be made for the benefit of (i) directors and officers and (ii) employees.

(c) State (1) the name and position with the issuer of each person specified in item 7(a) who will be entitled to participate in the plan, (2) the amount which would have been paid or set aside by the issuer and its subsidiaries for the benefit of such person for
the last fiscal year of the issuer if the plan had been in effect, and (3) the amount of the annual benefits estimated to be payable to such person in the event of retirement at normal retirement date.

(d) Furnish such information, in addition to that required by this item and item 7, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing or other remuneration or incentive plans for (i) each director or officer named in answer to item 7(a) who will participate in the plan to be acted upon; (ii) all directors and officers of the issuer as a group; and (iii) all employees.

(e) If the plan to be acted upon can be amended otherwise than by a vote of stockholders to increase the cost thereof to the issuer or alter the allocation of the benefits as between the groups specified in (b)(3), state the nature of the amendments which can be so made.

Instructions. 1. The term "plan" as used in this item means any plan as defined in instruction 1 to item 7(b).

2. The information called for by paragraph (b)(3) or (c)(2) need not be given as to payments made on an actuarial basis pursuant to any group pension plan which provides for fixed benefits in the event of requirement at a specified age or after a specified number of years of service.

3. If the plan is set forth in a formal plan, contract or other document, three copies thereof shall be filed with the preliminary copies of the proxy statement and form of proxy at the time copies thereof are filed with the Commission pursuant to paragraph (a) of Rule X-14A-6.

Item 11. Options, Warrants, or Rights.

If action is to be taken with respect to the granting or extension of any options, warrants or rights to purchase securities of the issuer or any subsidiary, furnish the following information:

(a) State (i) the title and amount of securities called for or to be called for by such options, warrants or rights; (ii) the prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised; (iii) the consideration received or to be received by the issuer or subsidiary for the granting or extension of the options, warrants or rights; and (iv) the market value of the securities called for or to be called for by the options, warrants or rights, as of the latest practicable date.

(b) State separately the amount of options, warrants or rights received or to be received by the following persons, naming each such person: (i) each director or officer named in answer to item 7(a); (ii) each nominee for election as a director of the issuer; (iii) each associate of such directors, officers or nominees; and (iv) each other person who received or is to receive 5% or more of such options, warrants or rights. State also the total amount of such options, warrants or rights received or to be received by all directors and officers of the issuer as a group, without naming them.

(c) Furnish such information, in addition to that required by this item and item 7, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing or other remuneration or incentive plans for (i) each director or officer named in answer to item 7(a) who will participate in the plan to be acted upon; (ii) all directors and officers of the issuer as a group;
and (iii) all employees.

Instruction. Paragraph (b) and (c) do not apply to warrants or rights to be issued to security holders as such on a pro rata basis.


If action is to be taken with respect to the authorization or issuance of any securities otherwise than for exchange for outstanding securities of the issuer, furnish the following information:

(a) State the title and amount of securities to be authorized or issued.

(b) Furnish a description of the securities such as would be required to be furnished in an application on the appropriate form for their registration on a national securities exchange. If the securities are additional shares of common stock of a class outstanding, the description may be omitted except for a statement of the preemptive rights, if any.

(c) Describe briefly the transaction in which the securities are to be issued, including a statement as to (1) the nature and approximate amount of consideration received or to be received by the issuer, and (2) the approximate amount devoted to each purpose so far as determinable, for which the net proceeds have been or are to be used.

(d) If the securities are to be issued otherwise than in a general public offering for cash, state the reasons for the proposed authorization or issuance, the general effect thereof upon the rights of existing security holders, and the vote needed for approval.

Item 13. Modification or Exchange of Securities.

If action is to be taken with respect to the modification of any class of securities of the issuer, or the issuance or authorization for issuance of securities of the issuer in exchange for outstanding securities of the issuer, furnish the following information:

(a) If outstanding securities are to be modified, state the title and amount thereof. If securities are to be issued in exchange for outstanding securities, state the title and amount of securities to be so issued, the title and amount of outstanding securities to be exchanged therefor and the basis of the exchange.

(b) Describe any material differences between the outstanding securities and the modified or new securities in respect of any of the matters concerning which information would be required in the description of the securities in an application on the appropriate form for their registration on a national securities exchange.

(c) State the reasons for the proposed modification or exchange, the general effect thereof upon the rights of existing security holders, and the vote needed for approval.

(d) Furnish a brief statement as to arrears in dividends or as to defaults in principal or interest in respect to the outstanding securities which are to be modified or exchanged and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(e) Outline briefly any other material features of the proposed modification or exchange. If the plan of proposed action is set
forth in a written document, file copies thereof with the Commission in accordance with Rule X-14A-6.

Furnish the following information if action is to be taken with respect to any plan for (i) the merger or consolidation of the issuer into or with any other person or of any other person into or with the issuer, (ii) the acquisition by the issuer or any of its security holders of securities of another issuer, (iii) the acquisition by the issuer of any other going business or of the assets thereof, (iv) the sale or other transfer of all or any substantial part of the assets of the issuer, or (v) the liquidation or dissolution of the issuer:

(a) Outline briefly the material features of the plan. State the reasons thereof, the general effect thereof upon the rights of existing security holders, and the vote needed for its approval. If the plan is set forth in a written document, file three copies thereof with the Commission at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to Rule X-14A-6(a).

(b) Furnish the following information as to each person (other than totally-held subsidiaries of the issuer) which is to be merged into the issuer or into or with which the issuer is to be merged or consolidated or the business or assets of which are to be acquired or which is the issuer of securities to be acquired by the issuer in exchange for all or a substantial part of its assets or to be acquired by security holders of the issuer.

(1) Describe briefly the business of such person. Information is to be given regarding pertinent matters such as the nature of the products or services, methods of production, markets, methods of distribution and the sources and supply of raw materials.

(2) State the location and describe the general character of the plants and other important physical properties of such person. The description is to be given from an economic and business standpoint, as distinguished from a legal standpoint.

(3) Furnish a brief statement as to dividends in arrears or defaults in principal or interest in respect of any securities of the issuer or of such person, and as to the effect of the plan thereon and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(c) As to each class of securities of the issuer, or of any person specified in paragraph (b), which is admitted to dealing on a national securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the plan, state the high and low sale prices (or, in the absence of trading in a particular period, the range of the bid and asked prices) for each quarterly period within two years. This information may be omitted if the plan involves merely the liquidation or dissolution of the issuer.

Item 15. Financial Statements.

(a) If action is to be taken with respect to any matter specified in items 12, 13, or 14 above, furnish certified financial statements of the issuer and its subsidiaries such as would currently be required in an original application for the registration of securities of the issuer under the Act. All schedules other than the schedules of supplementary profit and loss information may be omitted.
Instruction. Such statements shall be prepared and certified in accordance with Regulation S-X.

(b) If action is to be taken with respect to any matter specified in Item 14(b), furnish financial statements such as would currently be required in an original application by any person specified therein for registration of securities under the Act. Such statements need not be certified and all schedules other than the schedules of supplementary profit and loss information may be omitted. However, such statements may be omitted for (i) a totally-held subsidiary of the issuer which is included in the consolidated statement of the issuer and its subsidiaries, or (ii) a person which is to succeed to the issuer or to the issuer and one or more of its totally-held subsidiaries under such circumstances that Form 8-B would be appropriate for registration of securities of such person issued in exchange for listed securities of the issuer.

(c) Notwithstanding paragraphs (a) and (b) above, any or all of such financial statements which are not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted if the reasons for such omission are stated. Such financial statements are deemed material to the exercise of prudent judgment in the usual case involving the authorization or issuance of any material amount of senior securities, but are not deemed material in cases involving the authorization or issuance of common stock, otherwise than in exchange.

(d) The proxy statement may incorporate by reference any financial statements contained in an annual report sent to security holders pursuant to Rule X-14A-3 with respect to the same meeting as that to which the proxy statement relates, provided such financial statements substantially meet the requirements of this item.

Item 16. Acquisition or Disposition of Property.

If action is to be taken with respect to the acquisition or disposition of any property, furnish the following information:

(a) Describe briefly the general character and location of the property.

(b) State the nature and amount of consideration to be paid or received by the issuer or any subsidiary. To the extent practicable, outline briefly the facts bearing upon the question of the fairness of the consideration.

(c) State the name and address of the transferor or transferee, as the case may be, and the nature of any material relationship of such person to the issuer or any affiliate of the issuer.

(d) Outline briefly any other material features of the contract or transaction.

Item 17. Restatement of Accounts.

If action is to be taken with respect to the restatement of any asset, capital, or surplus account of the issuer, furnish the following information:

(a) State the nature of the restatement and the date as of which it is to be effective.

(b) Outline briefly the reasons for the restatement and for the selection of the particular effective date.

(c) State the name and amount of each account (including any reserve accounts) affected by the restatement and the effect of
the restatement thereon.

(d) To the extent practicable, state whether and the extent, if any, to which, the restatement will, as of the date thereof, alter the amount available for distribution to the holders of equity securities.

Item 18. Action with Respect to Reports.

If action is to be taken with respect to any report of the issuer or of its directors, officers or committees or any minutes of meeting of its stockholders, furnish the following information:

(a) State whether or not such action is to constitute approval or disapproval of any of the matters referred to in such reports or minutes.

(b) Identify each of such matters which it is intended will be approved or disapproved, and furnish the information required by the appropriate item or items of this schedule with respect to each such matter.

Item 19. Matters Not Required to Be Submitted.

If action is to be taken with respect to any matter which is not required to be submitted to a vote of security holders, state the nature of such matter, the reasons for submitting it to a vote of security holders and what action is intended to be taken by the management in the event of a negative vote on the matter by the security holders.

Item 20. Amendment of Charter, By-Laws, or Other Documents.

If action is to be taken with respect to any amendment of the issuer's charter, by-laws or other documents as to which information is not required above, state briefly the reasons for and general effect of such amendment and the vote needed for its approval.


If action is to be taken with respect to any matter not specifically referred to above, describe briefly the substance of each such matter in substantially the same degree of detail as is required by items 5 to 20, inclusive, above.
APPENDIX IV

SCHEDULE 14B. INFORMATION TO BE INCLUDED IN STATEMENTS FILED BY OR ON BEHALF OF A PARTICIPANT (OTHER THAN THE ISSUER) IN A PROXY SOLICITATION PURSUANT TO RULE X-14A-11(c)

Answer every item. If an item is inapplicable or the answer is in the negative, so state. The information called for by Items 2(a) and 3(a) or a fair summary thereof is required to be included in all preliminary soliciting material by Rule X-14A-11(d).

ITEM 1. ISSUER.
State the name and address of the issuer.

ITEM 2. IDENTITY AND BACKGROUND.
(a) State the following:
(1) Your name and business address.
(2) Your present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is carried on.
(b) State the following:
(1) Your residence address.
(2) Information as to all material occupations, positions, offices or employments during the last ten years, giving starting and ending dates of each and the name, principal business and address of any business corporation or other business organization in which each such occupation, position, office or employment was carried on.
(c) State whether or not you are or have been a participant in any other proxy contest involving this or other issuers within the past ten years. If so, identify the principals, the subject matter and your relationship to the parties and the outcome.
(d) State whether or not, during the past ten years, you have been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case. A negative answer to this sub-item need not be included in the proxy statement or other proxy soliciting material.

ITEM 3. INTERESTS IN SECURITIES OF THE ISSUER.
(a) State the amount of each class of securities of the issuer which you own beneficially, directly or indirectly.
(b) State the amount of each class of securities of the issuer which you own of record but not beneficially.
(c) State with respect to the securities specified in (a) and (b) the amounts acquired within the past two years, the dates of acquisition and the amounts acquired on each date.
(d) If any part of the purchase price or market value of any of the shares specified in paragraph (c) is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding such securities, so state and indicate the amount of the indebtedness as of the latest practicable date. If such funds were borrowed or obtained otherwise than pursuant to a margin account or bank loan in the regular course of business of a bank, broker or dealer, briefly describe the transaction, and state the names of the parties.

(e) State whether or not you are a party to any contracts, arrangements or understandings with any person with respect to any securities of the issuer, including but not limited to joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. If so, name the persons with whom such contracts, arrangements, or understandings exist and give the details thereof.

(f) State the amount of securities of the issuer owned beneficially, directly or indirectly, by each of your associates and the name and address of each such associate.

(g) State the amount of each class of securities of any parent or subsidiary of the issuer which you own beneficially, directly or indirectly.

ITEM 4. FURTHER MATTERS.

(a) Describe the time and circumstances under which you became a participant in the solicitation and state the nature and extent of your activities or proposed activities as a participant.

(b) Furnish for yourself and your associates the information required by Item 7(f) of Schedule 14A.

(c) State whether or not you or any of your associates have any arrangement or understanding with any person--

(1) with respect to any future employment by the issuer or its affiliates; or

(2) with respect to any future transactions to which the issuer or any of its affiliates will or may be a party.

If so, describe such arrangement or understanding and state the names of the parties thereto.

ITEM 5. SIGNATURE.

The statement shall be dated and signed in the following manner:

I certify that the statements made in this statement are true, complete and correct, to the best of my knowledge and belief.

(Date)  (Signature of participant or authorized representative)

Instruction. If the statement is signed on behalf of a participant by the latter's authorized representative, evidence of the representative's authority to sign on behalf of such participant shall be filed with the statement.
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