

August 6, 2010

Via Electronic Transmission

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: File No. S7-14-10 (Concept Release on the U.S. Proxy Voting System)

Dear Ms. Murphy:

Dechert LLP is an international law firm with clients from many different segments that are affected by the current rules and regulations of the Securities and Exchange Commission (“Commission”) addressing proxy voting and shareholder communications. Our clients include public companies, broker-dealers, advisers, registered and unregistered funds, fund boards, independent directors, custodians, transfer agents and other service providers. We are very pleased that the Commission has chosen to reexamine our current proxy communications system.

In connection with the Commission’s solicitation of comments on proxy reform we would like to introduce into the public record the two reports attached to this letter. These historical documents, referenced below, often are cited in connection with proxy reform discussions but may be difficult for some commenters to locate. The two reports describe the conditions within the securities industry in the late 1970s and early 1980s and reveal some of the reasoning behind the Commission’s decision to adopt specific reforms at that time which resulted in our current regulatory system for proxy communications.

- Report of the Advisory Committee on Shareholder Communications, Improving Communications Between Issuers and Beneficial Owners of Nominee Held Securities (1982) (often referred to as the “Advisory Committee Report”); and
- Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in other than the Name of the Beneficial Owner of Such Securities, House Comm. on Interstate and Foreign Com. (Comm. Print 1976) (often referred to as the “Street Name Study”).

The issues raised in the Concept Release are very important to many of our clients. We look forward to participating further in the public dialogue regarding potential improvements to our current proxy voting system. Please feel free to contact Edward L. Pittman at (202) 261-3387 or Anthony H. Zacharski at (860) 524-3937 with any questions about this submission.

Sincerely,

Dechert LLP

Attachments

IMPROVING COMMUNICATIONS
BETWEEN ISSUERS AND
BENEFICIAL OWNERS OF REGISTERED
FIELD SECURITIES

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

United States Securities and Exchange Commission

(IMPROVING COMMUNICATIONS
BETWEEN ISSUERS AND BENEFICIAL OWNERS
OF NOMINEE HELD SECURITIES)

Report of the Advisory Committee on Shareholder Communications

June 1982

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June 10, 1982

Mr. Lee B. Spencer, Jr.
Director, Division of Corporation Finance
Securities and Exchange Commission
Washington DC 20549

Dear Mr. Spencer:

As Chairman, and on behalf of the Advisory Committee on Shareholder Communications, I am pleased to present to you its Report.

This Report reflects the extensive expertise brought to bear on the issues through the varied backgrounds of the Committee members, the presentations and studies of numerous outside individuals and organizations, the invaluable assistance of the Commission's staff, and perhaps most of all, the enlightened debate and sharpening of issues within the Committee itself by its members, who often sacrificed what might have been perceived as in the best economic interests of their organizations for the achievement of what emerged as the best overall approach or solution for particular issues.

As you are well aware, the problem of issuers sending or receiving communications to and from their shareholders when the underlying stock is held in the record name of a nominee is one that the Commission and others have been concerned with for many years. Issuers who ultimately have to live within, comply with and pay for the present system are almost unanimous in their unhappiness with at least some of its aspects. The Committee was made fully aware of these feelings, and those of others involved in the system, through the large number of letters it received in response to its public request for comments.

The Committee believes that two paramount facts stand out which should be kept in mind when reading the full Report and its Recommendations. First, the phenomenon of nominee registration of securities has been growing and the economics of the securities industry, as well as modern technology, give every indication that it will continue to grow. Second, substantially more than 50% of the time that nominee registration occurs the nominee is a bank, and in this area of bank regulation, the Commission has no jurisdiction. Nevertheless, the Committee does not view either of these developments with undue alarm, because it believes that through implementation of the Recommendations contained in this Report, as well as other efforts already under way or planned, shareholder communications will be timely received and acted upon by substantially more shareholders than is now the case, corporate democracy will be enhanced, and cost efficiencies may emerge. Moreover, the continuing attention the issues will now receive from government agencies, self-regulatory organizations, professional associations and the media, should also substantially improve the situation for both issuers and shareholders. We believe that the real key to success lies in what happens now in the way of follow-up by those entities.

Mr. Lee B. Spencer, Jr.
June 10, 1982
Page Two

I can assure you that while the Committee is happy to have achieved one of its goals in having disbanded, its members are not disinterested. As individuals they will continue to be watching and working to see that the goals of the Committee are realized.

We are all appreciative to the Commission for having had the opportunity to contribute to this Report and to work with you and your excellent staff.

Respectfully submitted,

A handwritten signature in cursive script that reads "Paul D. Weiser". The signature is written in dark ink and is positioned above the printed name.

Paul D. Weiser

MEMBERS OF THE SEC ADVISORY COMMITTEE ON SHAREHOLDER COMMUNICATIONS

of its
duals,
he

Paul D. Weiser, Chairman
Senior Vice-President,
Secretary & Corporate Counsel
Dataproducts Corporation

to

Kenneth W. Akeson
President
Independent Election Corporation
of America

James H. Lynch, Jr.
Executive Vice President
and Secretary
Spears, Leeds & Kellogg

W. Kenneth Bonds
Chairman, Trust Committee and
Executive Vice President
Liberty National Bank and
Trust Company

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Continental Stock Transfer
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ACKNOWLEDGMENTS

The Committee wishes to express its appreciation to the professional and secretarial staff of the Commission for their contributions in helping to bring this Report to fruition. The Committee especially wishes to thank Amy L. Goodman, Deputy Associate Director and Gregory H. Mathews, Special Counsel in the Division of Corporation Finance, who used considerable skill, ingenuity and plain hard work to guide the Committee along the path that led to resolution of internal differences and the efficient completion of this Report in record time for a Commission Advisory Committee.

The Committee also wants to thank the individuals and their organizations who donated their time and expertise in assisting the Committee with presentations and outside studies, as well as the employers of the Committee members who contributed to this effort by providing the means by which the Committee members could serve.

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SUMMARY OF RECOMMENDATIONS

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A. To improve the existing proxy distribution process, the Committee recommends that	
1. Rule 14a-3(d) under the Securities Exchange Act of 1934 ("Exchange Act") be amended to require issuers to provide the Commission and brokers, banks and other nominees with a notice of the record date of each annual or special meeting of security holders.	25
2. Rule 14a-3(d) be further amended to provide that the issuer's inquiry of brokers, banks and other nominees be mailed first class at least twenty days prior to the record date for the meeting of security holders.	25
3. Rule 14b-1 under the Exchange Act be amended to require brokers to respond to the issuer's inquiry within seven days of receipt of the inquiry.	26
4. The Commission revise its internal procedures and publicly state that unless an issuer has been advised by the staff prior to the seventh day following the filing date that comments may be issued, no comments will be issued on the preliminary proxy statement.	26
5. Rule 14a-3(b) be amended to excuse an issuer from disseminating the annual report and proxy statement to any shareholder of record where at least two consecutive annual meeting solicitations mailed to the shareholder's address of record have been returned undelivered, unless state law requires otherwise.	27
6. A rule be adopted, pursuant to Section 17A of the Exchange Act, providing that depositories require banks, as a condition for their participation in the depository system, to agree to disclose to issuers, upon their request, the identities of banks for whom they hold securities in nominee name.	28

Page		Page
	7. Rule 14b-1(b) be amended to require that proxy materials be forwarded by brokers to beneficial owners by the close of business four business days after their receipt.	29
	8. Legislation be enacted which would give the Commission authority to promulgate rules imposing responsibilities on bank nominees comparable to those imposed on broker-dealers pursuant to Section 14 of the Exchange Act.	29
25	9. Issuers distribute proxy materials to shareholders at least thirty days prior to the meeting date.	31
25	10. Issuers forward to nominees their requested sets of proxy materials concurrently with issuers' dissemination of proxy material to shareholders of record.	32
26	11. Issuers take appropriate steps to assure that a sufficient quantity of proxy material is printed in a timely manner so that there will not be production shorts in deliveries of requested materials to intermediary record owners.	32
26	12. For the purpose of distributing proxy solicitations more evenly throughout the year, issuers consider revising the date of their annual meeting of security holders so that the meeting is not convened during the proxy season (March, April or May).	33
27	13. The American Stock Exchange ("AMEX"), New York Stock Exchange ("NYSE"), and National Association of Securities Dealers ("NASD") develop uniform billing procedures which include information on the broker's date of receipt of proxy materials from the issuer and date of mailing such material to its customers.	33
28	14. The federal bank regulatory agencies and the American Bankers Association ("ABA") urge banks to revise their internal procedures so that the following records are maintained with respect to proxy handling procedures:	
	a. Issuer search card receipt and return dates;	
	b. Mailing dates of the bank's search cards to correspondent banks;	
	c. Receipt dates of proxy materials; and	
	d. Mailing dates to beneficial owners.	33
	15. Banks urge their customers to mark, sign and return their proxies.	34

B. To improve the existing proxy voting process, the Committee recommends that

1. The Commission not abrogate the 10-day and 15-day proxy voting rules of the exchanges. 43
2. The AMEX and NYSE (the "exchanges") codify their informal interpretive rulings with respect to the 10-day rules in order to better inform broker-dealers and issuers of transactions requiring specific customer instructions. 43
3. The exchanges reemphasize to listed companies the importance of timely submission of preliminary proxy material for review by the exchanges whenever substantive matters are to be voted upon by security holders. 44
4. The NASD assume responsibilities similar to those assumed by the exchanges with respect to the voting of shares held in broker name, both in terms of providing guidance to nonlisted companies and to nonmember firms. 44
5. The NASD conduct an education program to inform companies participating in the NASD's automated quotation system ("NASDAQ") of the applicable proxy processing procedures. 45
6. The exchanges review for clarity the language currently used in their model client letters. 45
7. The exchanges consider whether the following provisions in the 10-day rules should be modified in line with current corporate practices while remaining aware of the need to maintain desirable checks and balances on corporate action to protect shareholders' interests: 45
 - a. developing a percentage limitation in place of the blanket prohibition of NYSE Item 6 (authorizes or creates indebtedness or increases the authorized amount of indebtedness); 45

43	b. raising the percentage limitation in NYSE Item 12 from 5 percent to 10 percent (authorizes issuance of stock, or options to purchase stock, to directors, officers or employees in an amount which exceeds 5 percent of the total amount of the class outstanding);	46
43	c. establishing a materiality standard in NYSE Item 17 (authorizes a transaction not in the ordinary course of business in which an officer, director or substantial security holder has a direct or indirect interest).	46
44	8. The exchanges and the NASD facilitate the preparation of a brochure to be supplied to brokerage customers explaining proxy voting procedures.	46
44	9. The ABA prepare a similar brochure on voting practices for bank custody account customers.	47
44	C. To improve dissemination of interim reports and other shareholder communications, the Committee recommends that	
45	1. Issuers disseminate interim reports to shareholders.	52
45	2. Issuers send the same shareholder communications to beneficial owners that they send to record owners.	52
45	3. The self-regulatory organizations (the exchanges and the NASD) amend their existing rules to require members to make timely distribution of shareholder communications other than proxy material. "Timely" would be construed as five business days after substantial receipt of materials with prior notice to nominees, and seven business days after substantial receipt of materials with no prior notice to nominees.	53
45	D. To provide a means for issuers to identify beneficial owners, the Committee recommends that	
45	1. The Commission adopt a rule requiring broker-dealers to determine whether customers with securities registered in street or other nominee name consent to disclosure of their identity to issuers, and, upon request and assurance of appropriate reimbursement, to promptly provide issuers with a list of the names, addresses and shareholdings of consenting beneficial owners as of the record date of each meeting of security holders.	70
	2. The Commission reinstate the requirement that investment companies report quarterly changes in their securities' positions on Form N-1Q.	72

Introduction

The Advisory Committee on Shareholder Communications ("Advisory Committee" or "Committee") was established by the Securities and Exchange Commission ("Commission") in April 1981, for the purpose of exploring the possibilities for improving the process by which issuers communicate with the beneficial owners of securities registered in the name of a broker-dealer ("street name"), bank or other nominee. Creation of the Committee follows several actions taken by the Commission in recent years to preserve and improve the opportunities for corporate-shareholder communications while implementing Section 17A of the Securities Exchange Act of 1934 ("Exchange Act"), 1/ which calls for the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities 2/ and an end to the physical movement of securities certificates among broker-dealers. 3/

A. Previous Commission Activities

In 1974, the Commission adopted Rule 14a-3(d) under the Exchange Act, requiring that, if an issuer knows that securities subject to the Commission's proxy solicitation rules (Regulation 14A) are held of record by a broker, bank or other nominee for other persons who actually own the securities, the issuer must consult such intermediaries and supply them with sets of proxy materials sufficient for distribution to each beneficial owner. 4/ Rule 14a-3(d) also obligates the issuer to pay the reasonable expenses

1/ 15 U.S.C. 78q (1976).

2/ 15 U.S.C. 78q(a)(2).

3/ 15 U.S.C. 78q(e).

4/ Release No. 34-11079 (October 31, 1974) [39 FR 40766].

incurred by the intermediary in mailing proxy material to beneficial owners.

In 1976, pursuant to a Congressional directive contained in the Securities Acts Amendments of 1975, 5/ the Commission completed an extensive investigation of the practice of recording the ownership of securities in other than the name of the beneficial owner (the "Street Name Study"). 6/ While endorsing the practice of registering stock in nominee name, 7/ the Street Name Study suggested that several actions be taken to improve the way in which proxy material is distributed to beneficial owners. In response, the Commission tightened the requirements of existing Rule 14a-3(d) and adopted Rule 14b-1 under the Exchange Act, which requires broker-dealers to forward proxy material in a timely manner to beneficial owners. 8/

The staff of the Division of Corporation Finance received additional information about the effects of street name stock practices on corporate governance as part of the broad re-examination, begun in late 1977, of the Commission's rules relating to shareholder communications, shareholder participation in the corporate electoral process and corporate governance generally. The results of the staff analysis were presented in the Staff

5/ See Section 12(m) of the Exchange Act, 15 U.S.C. 78l(m) (1976).

6/ Securities and Exchange Commission, Final Report on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other Than the Name of the Beneficial Owner of Such Securities (Comm. Print 1976) (Committee on Interstate and Foreign Commerce of the U.S. House of Representatives).

7/ Specifically, the Street Name Study concluded that "the existing issuer-shareholder communications system is, on the whole, effective in transmitting materials to shareowners in a timely manner and in providing an effective mechanism for the solicitation of proxies. . . . While problems exist, they are not evidence of systemic weaknesses but result from failures by individual brokers and issuers." Id. at 3-4.

8/ Release No. 34-13719 (July 5, 1977) [42 FR 35953].

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Report on Corporate Accountability, published in September 1980. 9/ Finding that "there is dissatisfaction with the present process of communicating with the beneficial owners of street or nominee name stock," the staff concluded that the time was ripe for a thorough re-thinking of the process by which issuers communicate with beneficial owners 10/ and recommended that the Commission establish an Advisory Committee for this purpose. 11/

The Commission proceeded to establish the Advisory Committee and requested it to consider the following issues:

1. Delays in the dissemination of proxy material to beneficial owners within the existing system.
2. Practices relating to the voting of street and nominee held securities within the existing system.
3. Inconsistent practices relating to the dissemination of non-proxy corporate communications to beneficial owners of nominee held securities.
4. The feasibility of providing a means for issuers to identify the beneficial owners of street or other nominee name securities.

In order to facilitate the development of consistent positions with respect to these issues by all affected federal agencies, the Commission also requested the active involvement of the federal bank regulatory agencies. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation each responded by designating a staff person to attend Committee meetings and participate in the discussion of issues related to bank nominees.

9/ Securities and Exchange Commission, Staff Report on Corporate Accountability (Comm. Print 1980) (Comm. on Banking, Housing and Urban Affairs of the U.S. Senate).

10/ Id. at 362.

11/ Id. at 374.

B. Advisory Committee Activities

The Advisory Committee met for a total of twelve days during its nine meetings between May 1981 and May 1982. Through the facilities of the Commission, the Committee solicited public comment on these issues and on a number of different proposals which had been suggested by various persons or groups to improve the communication process. 12/ In response to its request, the Committee received letters from 249 commentators, an unusually large number of responses for this type of proceeding. These letters provided the Committee with valuable information and opinion, and further demonstrated the depth of public interest in this subject. 13/ In addition, two trade associations conducted surveys and provided the Committee with their results. 14/ The Committee also received three presentations on the feasibility of a system of direct communication. 15/

12/ Release No. 34-18195 (October 21, 1981) [46 FR 52470].

13/ A highlight of the comment letters, prepared by the Commission staff, has been placed in File No. 4-242.

14/ A survey on interim report dissemination practices was conducted by the National Investor Relations Institute. A survey on the cost of direct communication to bank nominees was conducted by the American Bankers Association. These submissions have been placed in File No. 4-242.

15/ Presentations were made by (1) the Securities Transfer Association of New York represented by Mr. Tom Stanley, Senior Vice President, and Mr. John Schmidlin, Vice President, Morgan Guaranty Trust Company; Mr. William Skinner, Vice President, Bank of New York, and Mr. Michael Foley, Assistant Vice President, Chemical Bank; (2) Mr. Michael Paulk, Senior Marketing Representative, Informatics, Inc.; and (3) Mr. Robert J. Victor, Manager, Management Advisory Services, Deloitte Haskins and Sells. Outlines and texts of the presentations have been placed in File No. 4-242.

Other presentations addressed the role of the depositories, 16/ self-regulatory oversight of broker voting, 17/ recent experience with respect to quorum voting, 18/ and an education program on proxy handling procedures developed for bank nominees. 19/

The Committee believes that the information it has gathered provides a sound basis for the conclusions and recommendations presented in this Report. Some of the data submitted to the Committee addressed other issues, but the Committee devoted its attention to the items described in its Charter, which relate to improving the process by which issuers communicate with shareholders whose stock is held in street or nominee name.

While the Commission has the authority to regulate the distribution of proxy material by broker-dealers to the beneficial owners of securities registered in street or other nominee name, the Commission does not have similar jurisdiction over banks. Since bank nominee holdings are large and growing, as noted elsewhere in this Report, the Committee was especially attentive to this aspect of the process of communicating with beneficial owners.

16/ The presentation was made by Mr. Conrad Ahrens, President of the Depository Trust Company.

17/ The presentation was made by Mr. Frank Kroha, Manager, Regulation and Surveillance, and Mr. Gary Tuttle, Manager, Corporate Services Division, New York Stock Exchange.

18/ The presentation was made by Mr. John Schmidlin, Vice President, Morgan Guaranty Trust Company, File No. 4-242.

19/ The presentation was made by Mr. Frank Gibbs, Vice President, Personal Trust, Manufacturers Hanover Trust Co.

CHAPTER I

THE NOMINEE SYSTEM AND CREATION OF THE BENEFICIAL
OWNER RELATIONSHIP

A. The Nominee System

A nominee is an entity formed for the purpose of holding record title to securities. Brokers, banks, trust companies, and other institutions often utilize a nominee name rather than their own name to register securities purchased by their customers — the beneficial owners of such stock. Institutions also may have their own investments held in nominee name. The Advisory Committee has focused on practices related to nominee name securities held in non-discretionary customer accounts, that is, accounts for which the broker, bank or other intermediary does not have total voting authority, since it concluded that securities held in discretionary accounts do not present significant problems.

At the end of 1981, there were approximately 9,500 nominees in the United States holding securities for other persons. ^{20/} The nominees holding the largest numbers of shares are those of the three major securities depositories — The Depository Trust Company, ("DTC"), the Midwest Securities Trust Company, ("MSTC"), and the Pacific Securities Depository Trust Company ("PSDTC"). The depositories act as custodians

^{20/} American Society of Corporate Secretaries, Nominee List (1982).

of securities deposited by hundreds of participating institutions for their own accounts or the accounts of others. Many institutions, particularly banks, participate in a depository indirectly through a correspondent relationship established with a participant. This practice, known as "piggybacking," has increased in recent years. The number of indirect bank participants in UTC reached at least 362 by year-end 1981, up from 266 in 1980. 21/

The nominee system has taken on increasing importance since enactment of the Securities Acts Amendments of 1975, a goal of which was the immobilization of stock certificates. 22/ The Senate Report on the bill stated that, in the future, investors who preferred the traditional tangible evidence of ownership would be responsible for "asking for and receiving certificates as proof of ownership of their shares." 23/

Due in part to the growth in institutional holdings, the number of shares immobilized has increased enormously since 1975. The trend in share deposits at DTC is indicative of this growth. In 1976, approximately four billion equity shares were on deposit at DTC. By the end of 1981, DTC held nineteen billion shares. 24/ Its shareholdings expanded by 40 percent between 1980 and 1981. 25/ The other depositories

21/ Depository Trust Company, 1981 Annual Report (1982) [Hereinafter cited as DTC 1981 Annual Report].

22/ See Section 17A(e) of the Exchange Act, 15 U.S.C. 78q(e).

23/ S. Rep. No. 94-75, 94th Cong., 1st Sess. 58-9 (1975).

24/ DTC 1981 Annual Report at 9.

25/ Id.

have experienced similar growth in securities on deposit. 26/

The growth in depository holdings has produced corresponding increases in the percentage of issuers' securities that are registered in nominee name. Over sixty corporations that responded to the Advisory Committee's Release provided information on the extent to which their securities are held by nominees. The majority of these commentators had at least 50 percent of their securities in street or nominee name. Some major corporations, such as IBM, indicated that nominees now hold between 60 and 70 percent of their stock. The comments also revealed that the increase in nominee holdings has been unusually significant for certain issuers. For example, Indiana National Corporation's nominee holdings rose from less than 20 percent five years ago to over 60 percent by 1981.

Substantially more than a majority of nominee name securities are held by banks. At DTC, the accounts of bank participants represent eleven of the nineteen billion shares on deposit. 27/

26/ Securities on deposit at the MSTC increased by 42 percent during the twelve months of 1980 and by an additional 50 percent by the end of 1981. MSTC, "Report of the Chairman and President" (1982).

27/ DTC 1981 Annual Report at 7.

B. Creating the Beneficial Owner Relationship

At the end of 1980, broker-dealers maintained approximately ten million customer accounts. 28/ While no figures are available as to the street name holdings in these accounts, the Committee believes that a substantial percentage of these accounts have at least a portion of their securities registered in street name. For example, with respect to margin accounts, registration in nominee name is required by broker-dealers. 29/ Moreover, if customers do not indicate a preference, brokers usually choose the convenience of street name registration. Still other brokerage customers may request street name registration of their securities to prevent disclosure of their ownership to the issuer.

The Committee reviewed account opening procedures of a number of brokerage firms in order to better understand the manner in which the beneficial owner relationship is created. None of these firms has a policy requiring registered representatives to explain to their customers the process of street name registration or its effects on voting rights.

28/ The 1981 annual reports of registered broker-dealers on Form X-17A-5 indicate that there were 9,744,242 public customer accounts at the end of 1980.

29/ Rule 17A-3(a)(9) under the Exchange Act [17 CFR §240.17a-3(a)(9)] provides that the broker must obtain the signature of the beneficial owner of each margin account to document his consent to this arrangement.

The subject of the name in which the securities will be registered and all related information is left to the representative and the individual customer. Some account opening forms provide space for the representative to indicate how the securities are to be registered, but other forms do not. The written agreement the customer must sign in order to establish a margin account does not contain provisions addressing the effects on voting rights of pledging the stock or registering it in street name. 30/

In contrast, bank custody accounts are customarily established by means of a written agreement between the bank and the customer. Custody agreements, however, generally do not address voting rights related to the securities left with the bank for safe-keeping. 31/

C. Conclusion

The Committee believes that there will continue to be substantial growth in the nominee system during the 1980's. The number of institutions, particularly banks, that participate directly or indirectly in the depository system is expected to continue to grow. Moreover, increases in the securities holdings of these financial institutions will further add to the proportion of all outstanding securities registered in the name of a depository or other nominee.

30/ It should be noted that brokerage firms provide beneficial owners of street name stock with an explanation of proxy voting procedures in a letter which accompanies proxy material.

31/ For a discussion of bank procedures related to the voting of securities held in custody accounts, see pp. 35-6 infra.

The Committee believes the results of present trends will assure the immobilization of most certificates, which Congress sought to achieve through Section 17A of the Exchange Act as implemented by the Commission. The Committee believes that adoption of its recommendations should enhance public confidence in this evolving system by improving the corporate-shareholder communication process. Two of the Committee's recommendations are pertinent to account opening procedures. ^{32/} The Committee believes that implementation of all its recommendations should minimize any possible disruption of the communication process as a consequence of nominee registration.

^{32/} See recommendation for preparation of a brochure, pp. 46-7 and the recommendation for identification of beneficial owners, described at pp. 70-1, infra.

CHAPTER II

IMPROVING THE EXISTING PROXY DISSEMINATION PROCESS

A. The Existing Distribution Process

The existing proxy distribution process is governed by a panoply of requirements, including state corporate law, the federal securities laws and self-regulatory organization rules. The provisions of state law regulate commencement of the proxy distribution process. Typically, state law provides that whenever a matter will be voted upon at a meeting of security holders, the corporation must provide each shareholder of record with written notice of the meeting not less than ten nor more than sixty days before the date of the meeting. ^{33/} State law also designates the date on which the corporation must determine the shareholders entitled to vote at the meeting — the record date. ^{34/}

Under state law, the notice of meeting must be provided only to shareholders of record, ^{35/} but, in many cases, the majority of an issuer's securities will be owned of record by nominees. The federal securities laws contain requirements for communicating with such nominees. The Commission's proxy rules require issuers to solicit beneficial as well as record owners. With respect to shares known by the issuer to

^{33/} E.g., 8 Del. Code §222(b) (1979); Cal. Gen. Corp. Law Ann. §173(a) (1980).

^{34/} See, e.g., Cal. Gen. Corp. Law Ann. §604(a).

^{35/} Henn, Law of Corporations 328 (1970).

be owned of record by a broker, dealer, bank, voting trustee or other nominee, Rule 14a-3(d) 36/ requires the issuer to make an inquiry of such intermediaries at least ten days in advance of the record date in order to ascertain the number of sets of proxy material needed to provide each beneficial owner with the proxy material. In addition, broker-dealers are required by Rule 14b-1 to respond to this inquiry by "promptly" giving the issuer an estimate of the number of sets of material needed for the customers that beneficially own the stock and, upon receipt of the requested sets of material from the issuer, to forward the material "promptly" to its customers. 37/ Issuers are obligated by Rule 14a-3(d) to provide the requested sets of materials "in a timely manner" in the form and at the location designated by the intermediary. 38/

A note to Rule 14a-3(d) instructs issuers that if their stock list reveals that securities are registered in the name of a registered clearing agency, such as Cede & Co. (the nominee of DTC), the issuer must begin its inquiry with the depository in order to identify the participants whom it must contact to obtain information about the number of sets of materials the participant needs. Rule 17Ad-8 39/ requires the depositories to promptly furnish issuers with a list of the identities and shareholdings of each participant with a position in the issuer's

36/ 17 CFR §240.14a-3(d).

37/ 17 CFR §240.14b-1.

38/ 17 CFR §240.14a-3(d).

39/ 17 CFR §240.17Ad-8.

securities. The depository prepares the position listing as of the record date for the meeting of shareholders. For this reason, the depositories attempt to discover the record dates of issuers at an early point in time.

Some banks, brokers and their representatives exceed the minimum requirements of these rules. For example, Merrill Lynch and the Independent Election Corporation of America ("IECA"), which acts as proxy processing agent for over three hundred subscribing intermediaries, maintain sophisticated records systems on most actively traded corporations indicating each company's customary record and meeting date, the number of sets of materials requested in the past, the date of receipt of the issuer's inquiry, the response date by the brokerage firm and related information. Such systems permit brokers to initiate contact with the issuer if no inquiry has been received by the customary record date.

The New York Stock Exchange ("NYSE") and American Stock Exchange ("AMEX") (sometimes collectively referred to as "the exchanges") require their listed companies to give them advance notice of their record dates. 40/ Each exchange publishes a list of record and meeting dates in its weekly bulletin.

After the broker has responded to the issuer's inquiry, the issuer must supply the requested material in a timely manner. 41/ When the

40/ N.Y.S.E. Company Manual at A-131; American Stock Exchange, Company Guide, Listing Form L, 12(b).

41/ Merrill Lynch and the IECA indicate that they keep track of the time the issuer takes to fill the order, placing a follow-up request if necessary.

requested materials arrive, the broker customarily forwards them to beneficial owners on a first in first out basis. During the height of the proxy season, however, some brokers give priority processing to materials received less than twenty days before the issuer's meeting. Brokers generally are able to forward the proxy material to beneficial owners only a few days after it has been received from the issuer. The rules of the NYSE and AMEX require brokers to forward proxy statements to all beneficial owners, including customers who have instructed the broker not to send them such information. 42/

No federal or state regulation prescribes the procedures for bank nominees to follow. Nevertheless, many banks adhere to procedures similar to those followed by brokerage firms. For bank participants in depositories who hold securities piggybacked from other banks or institutions, an additional step is required at each stage of the distribution process. For example, in responding to the issuer's inquiry made pursuant to Rule 14a-3(d), such banks must not only count the number of their individual custody accounts, but also must ask each of their piggybacked institutions how many sets of materials it will need in order to provide each of its account holders with the proxy material. Unlike the broker-customer relationship, there is generally a written agreement between the bank and the customer for whom it holds securities, and the terms of the agreement can affect the bank's processing of shareholder communications. For example, the Committee has

42/ New York Stock Exchange Guide ¶2451.60 (1980); American Stock Exchange Guide ¶9528.60 (1976).

been told that custody account customers sometimes ask not to receive proxy material, which request is honored by the bank. 43/

B. Bottlenecks in the distribution process

The Committee has identified a number of factors which can impede the process of disseminating proxy material to beneficial owners within the existing system.

1. Noncompliance with the requirements of Rule 14a-3(d)

Information submitted to the Committee and, previously to the Commission staff, indicate that there is considerable non-compliance with the existing requirement that issuers make an inquiry of intermediaries at least ten days in advance of the record date. Some issuers neglect to make any such inquiry. 44/ Failure to comply with the ten day advance notice requirement slows down the entire proxy solicitation process. Without sufficient advance inquiry, issuers can not obtain the intermediaries' estimated proxy needs before placing their orders for proxy material with printers. Moreover, issuers are not as likely to be able to supply nominees in a timely manner with all their requested

43/ Although some brokerage customers also may make such requests, they cannot be honored because, as noted in the text accompanying note 42, broker-dealers must transmit proxy material to all beneficial owners within the United States pursuant to NYSE and AMEX rules.

44/ The IECA has informed the Committee that, despite the inquiries it sends to all subject issuers in January of each year, 40 percent of issuers are "off record date" in making their inquiry. It should be noted that some companies followed by IECA may not be subject to the requirements of Rule 14a-3(d) or may have other reasons for not providing this information. See also Release No. 34-17424 (January 7, 1981) [46 FR 3204].

materials, so that they, in turn, may promptly mail to beneficial owners.

2. Lack of centralized record date information

Under present arrangements, broker-dealers and other nominees must determine each issuer's record date. Often the issuer's inquiry made pursuant to Rule 14a-3(d) indicates the issuer's record date, but this is not required by the present Rule.

In an effort to provide an alternative source of such information, the NYSE and the AMEX maintain and publish their own lists of upcoming record and meeting dates. Although the exchanges require that issuers provide them with advance notice of record dates, compliance is not universal. Furthermore, the National Association of Securities Dealers ("NASD") does not keep track of the record dates of companies participating in NASDAQ.

Record date information is critical to the intermediary's efficient dissemination of proxy material. With advance notice, the intermediary is better able to identify owners as of the record date and promptly produce mailing labels.

3. Bank nominees and the piggyback phenomenon

Bank nominees hold securities for several different types of accounts. Distribution difficulties arise only with respect to accounts in which voting authority is not held by the bank. For such accounts, the bank must deliver the proxy material to the account holder in order for the affected shares to be voted. Until recently, this area of bank operations had, for the most part, received little attention.

In the past, while some banks forwarded proxy material, others did not.

The comment letters from banks suggest that some banks have assumed, rightly or wrongly, that beneficial owners as a group are insufficiently interested in the affairs of the corporations in which they invest to warrant forwarding the proxy material to them. While this institutional attitude may be changing, it still persists to some degree, particularly among smaller banks. 45/

In addition to such institutional obstacles, the piggy-backing phenomenon creates substantial delays that impede distribution. The majority of the securities held by depositories derive from bank nominees. Between 1980 and 1981, the number of bank participants in DIC grew by 20 percent and, as noted previously, the number of banks known to be participating indirectly increased by 36 percent. 46/ A DIC publication concluded that "although correspondent relationships have frequently constituted a barrier to shareholder communications, never before have these relationships included so high a percentage of voting shares." 47/

Each intermediary layer between the issuer and the beneficial owner lengthens the time required for dissemination. The issuer cannot make an

45/ The letter of the American Society of Corporate Secretaries cites "the apparent failure of some banks at the lower level to forward to beneficial owners." The Provident National Bank commented that it "does not currently forward routine proxy materials" because "most of our clients are not interested." Letters in File No. S7-911.

46/ DIC 1981 Annual Report at 3.

47/ DIC, Shareholder Communications and the Depository Trust Company 18 (1982).

inquiry of bank participants until it has received the position listing from the depository. Once it has asked the participant bank for the number of sets of proxy material it requires, a delay can result if the bank participant must survey and collate the counts from each bank with which it has a correspondent relationship. Still more delay can occur where there are multiple layers of correspondent relationships; for instance a local bank may place its customer's securities with a regional bank which, in turn, establishes a correspondent relationship with a direct participant in a depository.

There is layering among broker-dealers as well, but it is both less common and less significant in terms of the number of shares involved. Furthermore, in most cases where one broker-dealer acts as clearing agent for other brokerage firms, it knows, without consultation, the number of customers represented by the securities it clears for the other firms.

4. Production Problems

Distribution cannot begin until the proxy material is available from the printer. Production of this material is complicated by several factors. First, it is often difficult to estimate the proper quantity of material to be printed. Even when the issuer has kept detailed records of the number of sets of proxy material used the previous year and assumes an increased number will be required, there can be no assurance that the number of sets of material ordered by the issuer will be adequate to meet the current year's needs.

Second, if production falls short of the demand for proxy materials, nominees are the group most likely to absorb the shortage. Yet, if the quantity delivered to a nominee is substantially less than it requires, the nominee, in order to avoid multiple production runs for the same

issuer, customarily will not make any distribution to beneficial owners until it has requested and received substantially all of its order. Short supplying of nominees thus can cause a gap in the intermediary's current work schedule and, later, when the additional material finally arrives, it may overload the distribution operation.

Finally, a problem of coordination arises when the annual report to shareholders and the proxy statement are published by different printers or printed at different times. Rule 14a-3(b) requires that the annual report to security holders accompany or precede the proxy statement, but the printing and mailing of the annual report and proxy statement must be carefully coordinated in order to meet this requirement if different printers are used.

5. Late delivery to nominees

When proxy material is available from the printer for mailing, the prevailing practice is for the issuer or its agent to forward the proxy material to all shareholders of record before furnishing any nominees with their requested sets of materials. This mailing sequence occurs, in part, because the printer initially may deliver only a part of the issuer's order. In such a situation, issuers may be reluctant to provide nominees with information which some argue would give material information to institutions prior to its more public dissemination to all shareholders of record. Another consideration to some issuers is that requests for materials are sometimes not submitted promptly, and it may be more efficient to fill all nominees' requests at the same time. Regardless of the reasons, the effect is to further delay distribution to beneficial owners.

6. Compressed proxy season

All the delays associated with the distribution of proxy material are greatly exacerbated by the fact that most public companies convene their annual meetings of security holders during the period between March and May, known as the "proxy season." 48/ Companies schedule their meetings to be held shortly after their audited financial statements become available. 49/

The practice of holding shareholders' meetings during the proxy season results in the processing of such a large volume of materials as to almost overwhelm the system. 50/ Notwithstanding such burdens, companies that submitted comment to the Committee doubted that they would reschedule their meetings to other times of the year. Shareholders also may oppose extending the proxy season. 51/

48/ Continental Bank, for example, commented that 80 percent of the companies for which it acts as transfer agent hold meetings within an eight week period. See File S7-911.

49/ With respect to a meeting of security holders at which directors are to be elected, Commission Rule 14a-3(b) requires that an annual report containing audited financial statements accompany or precede dissemination of the proxy statement.

50/ IECA, which is highly automated, estimates that in the height of the proxy season it processes as many as 200 different companies each day.

51/ One individual investor stated: "improvement in distribution (from such a change) would be inversely proportional to losses suffered by the corporate governance process" because unaudited quarterly reports would not provide an adequate basis for exercising ownership rights. Comment letter of Richard Shemtob, File No. S7-911.

7. General lack of knowledge about the distribution process

The task of disseminating proxy material through intermediaries to beneficial owners is perceived as both complex and time-consuming by many persons involved in the process. One major problem is the extent to which issuers and nominees fail to understand fully the operation of the system and to avail themselves of methods and procedures that are readily available to substantially improve performance. Companies complying with the Commission's proxy rules for the first time and companies suddenly experiencing a dramatic increase in the percentage of their securities registered in street or nominee name are particularly likely to be less well informed about the existing process. Smaller banks which utilize another bank to register and hold the securities of their custody account customers also may know little, if anything, about the process.

8. Mail delays

The existing distribution system is almost totally dependent upon the postal service. The issuer's inquiry to nominee holders and depositories; the responses from these entities back to the issuer; and the actual distribution of proxy materials by issuers, transfer agents, brokers, banks, and other nominees or their agents are all conducted almost exclusively through the mails. Many issuers utilize a private parcel service to deliver the largest orders of proxy materials to the New York brokerage firms and major bank nominees. Unfortunately, during recent years in which the percentage of all solicitations subject to this distribution network has burgeoned, many believe that the postal service

performance during the proxy season has not kept pace with such increased demands. ^{52/} _____

9. Non-uniformity of proxy material

The Commission's proxy rules do not regulate the size or shape of a form of proxy, proxy statement, or annual report. Accordingly, the documents come in all shapes and sizes. In some cases, nominees are not able to machine process off-sized materials. In others, the automated equipment must be shut-down and recalibrated to handle such materials.

The Commission's Street Name Study found in 1976 that, "most brokers, banks, and issuers agree that the use of standard forms and procedures could significantly improve the communication process." The only step in this direction since that time has been the development, by the IECA, of a standardized, machine-readable proxy card which it distributes, in lieu of the issuer's form of proxy.

C. Conclusions

The Committee's analysis of the existing system for transmitting proxy material to beneficial owners has revealed that it can work well when all parties follow all the required procedures. It is, however, vulnerable to disruption and delay due to a variety of factors. Some potential bottlenecks, such as the necessity for two-step mailings ^{53/} and the

^{52/} See, e.g. the conclusion of the American Society of Corporate Secretaries, in conjunction with a number of other organizations, in Manual For Proxy Solicitation of Stock in Broker, Bank or other Nominee Names I (1982) [hereinafter cited as Proxy Solicitation Manual]. See also the comment letters of GCA Corporation and Merck & Co., File No. S7-911.

^{53/} For street and nominee held securities, the issuer must first forward the material to intermediaries, which then re-mail it to their customers who beneficially own the securities.

layering phenomenon, are intrinsic to the interpositioning of entities, other than the depositories, between the issuer and the beneficial owners of its securities. Nonetheless, the initiatives undertaken in recent times by individual issuers, brokers, banks, and the IECA, as well as by professional and trade associations, such as the American Society of Corporate Secretaries ("ASCS"), the Stock Transfer Association ("STA"), and the American Bankers Association ("ABA"), demonstrate that this distribution system also can function much more efficiently. The Committee has been particularly impressed by the potential for improving operational productivity by individual issuers, brokers, banks, and their agents. Some of the lessons learned by individual organizations may be applicable to the activities of all intermediaries or all issuers. The ABA, ASCS, the STA and the Securities Industry Association have undertaken educational programs which should be extremely beneficial in this regard.

Beyond these initiatives, the Committee believes that the greatest opportunities for further improvement within the existing system will be found in two areas. First, current procedures should be modified so that some existing steps in the process, such as the notice, inquiry and response sequence required for each layer of intermediaries, can be consolidated or eliminated. Such restructuring should shorten the time required for distribution of material. Second, procedures and practices should be standardized to the maximum extent possible. Standardization will not only simplify the process, but also produce additional time savings by eliminating the dislocations associated with variations in procedures. The Committee believes that adoption of the following recommendations will result in the restructuring and standardization required

to optimize distribution within the existing framework.

D. Recommendations.

1. Recommendations for Commission action

- a. It is recommended that Rule 14a-3(d) under the Exchange Act be amended to require issuers to provide the Commission and brokers, banks and other nominees with a notice of the record date of each annual or special meeting of security holders.

Centralization of all record date information would permit intermediaries to look to a single source for comprehensive information concerning the record dates of companies regardless of whether the securities are listed on an exchange or traded in the over-the-counter market. In implementing this amendment, the Commission should do whatever is necessary to assure that a cumulative list of record dates is published and updated daily. Ideally, such publication would be handled by a private vendor which would make the list available to all interested persons. Dissemination of a cumulative listing of record dates would notify all layers of intermediaries concurrently to commence the process of developing and conveying estimates of the number of sets of the issuer's proxy material they require. The filing requirement also might improve compliance by issuers with the other provisions of Rule 14a-3(d).

- b. It is recommended that Rule 14a-3(d) be further amended to provide that the issuer's inquiry of brokers, banks and other nominees be mailed first class at least twenty days prior to the record date for the meeting of security holders.

The Committee believes that the existing requirement that issuers inquire of such record holders at least ten days prior to the record date does not provide adequate advance notice to intermediaries in light of the number of subsequent actions that must precede actual delivery of proxy

material to beneficial owners. ^{54/} The Committee's recommendation that the inquiry "be mailed first class" would not foreclose the use of means other than a first class mailing so long as the same degree of timeliness would be achieved.

- c. It is recommended that Rule 14b-1 under the Exchange Act be amended to require brokers to respond to the issuer's inquiry within seven days of receipt of the inquiry.

The Committee believes that the existing reference to the broker's obligation to respond "promptly" is ambiguous. The Committee determined that a requirement to respond within seven days was not only manageable for subject broker-dealers but also could be met by bank nominees which voluntarily elect to adhere to the same standard. With the adoption of a central record date system which gives notice to all layers of intermediaries simultaneously, it should be possible to receive and collate responses from all layers of intermediaries within the proposed seven day time frame.

- d. The Commission should revise its internal procedures and publicly state that unless an issuer has been advised by the staff prior to the seventh day following the filing date that comments may be issued, no comments will be issued on the preliminary proxy statement.

Existing Rule 14a-6 requires that preliminary proxy material must 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." In the past, the staff regularly took ten days or more to review all proxy

^{54/} The Proxy Solicitation Manual recommends that issuers provide intermediaries with at least 15 days advance notice, at 7.

statements filed and to issue any comments it might have. Under the staff's selective review procedures, if companies are not alerted within ten days of filing that comments may be issued, they are free to mail without further consultation with the staff. 55/ These actions taken by the Commission staff already have expedited the processing of proxy material. The Committee believes, however, that a shortened period, initially seven days and eventually perhaps five days, would provide a reasonable period for the staff to sort proxy statements and identify the ones on which comments may be issued. The three day time saving for most issuers would greatly expedite the printing and dissemination of definitive proxy material. 56/

- e. It is recommended that Rule 14a-3(b) be amended to excuse an issuer from disseminating the annual report and proxy statement to any shareholder of record where at least two consecutive annual meeting solicitations mailed to the shareholder's address of record have been returned undelivered, unless state law requires otherwise.

The Committee believes that adoption of this recommendation would satisfy the obligation of the issuer to make a good faith effort to provide each security holder with a proxy statement and annual report in connection with a solicitation for an annual meeting of security

55/ Securities and Exchange Commission, Press Release No. 80-60 (November 17, 1980).

56/ Pursuant to this recommendation, if a company were notified by the Commission staff within the seven day period that the staff may issue comments, the company still would be able to request that the staff review and pre-clear the company's proxy card so that it could be printed.

holders at which directors will be elected. At the same time, it would relieve issuers of the expense of printing and transmitting proxy material that cannot be delivered for reasons beyond the control of the issuer. The operation of state law would continue to assure that security holders receive adequate notice of meetings.

- f. It is recommended that pursuant to Section 17A of the Exchange Act, a rule be adopted, providing that depositories require banks, as a condition for their participation in the depository system, to agree to disclose to issuers, upon their request, the identities of correspondent banks for whom they hold securities in nominee name.

Prior to the existence of the depository system and the piggybacking of securities into it, issuers were better able to identify the banks that established correspondent relationships with major banks for the purpose of holding the securities of their customers. Now, issuers have ceased to be able to easily communicate with an important group of intermediaries holding their stock. Restoring the ability of issuers to deal directly with such intermediaries should speed up the process of proxy distribution and solicitation.

The Committee is aware that a number of large New York banks are voluntarily disclosing this information to issuers upon their request. This recommendation builds upon their initiative by making such disclosure mandatory for all bank participants. The Committee does not believe that adoption of this recommendation would deter banks from becoming participants in a depository in view of the extensive benefits derived from participation in the depository system.

- g. It is recommended that Rule 14b-1(b) be amended to require that proxy materials be forwarded by brokers to beneficial owners by the close of business four business days after their receipt.

The Committee believes that replacing the existing reference to "promptly" forwarding materials with a specified turnaround time would add significant certainty to the Rule's operation. Specifying the number of days will permit issuers to better estimate the lead time required in order to provide beneficial owners with proxy material a reasonable time in advance of the meeting date. Setting a definite time frame for the forwarding of material also should assist brokers in scheduling their processing of issuers' materials and would put issuers on notice that brokers may have to take a certain amount of time to forward their material.

The Committee concluded that the proposed standard, which calls for completing the mailing to beneficial owners by the close of business on the fourth business day after receipt of the material, would provide brokers with ample time to process materials for all sizes of companies. The business day standard employed in this recommendation, though establishing a short turnaround time, takes into account weekends and other days on which work may not be performed. Nevertheless, material should be processed and forwarded at the earliest possible time. The Committee also believes that the standard is one with which bank nominees could voluntarily comply.

2. Recommendation for legislation

It is recommended that legislation be enacted which would give the Commission authority to promulgate rules imposing responsibilities on bank nominees comparable to those imposed on broker-dealers pursuant to Section 14 of the Exchange Act.

In view of the fact that the majority of nominee and depository held securities are held by banks, the Committee concluded that there must be a means to assure that banks are following proxy processing procedures similar to those imposed upon broker-dealers. However, neither the Commission nor the federal bank regulatory agencies have statutory authority to promulgate such rules. The Committee believes that investors holding securities in a bank custody account are entitled to receive proxy statements and other shareholder communications as promptly as investors whose securities are held in the name of a brokerage firm.

The Committee is aware that the Trust Division of the ABA has recently undertaken an educational program designed to improve the distribution of proxy material by bank nominees. While the Committee applauds this effort, it is too early to determine the impact of such an undertaking, and, in any case, the Committee believes that there should be a means available, if needed, to assure an adequate level of performance by all types of nominees. Accordingly, the Committee urges that enabling legislation be enacted as soon as possible. Such legislation would give the Commission authority to promulgate rules which would subject bank nominees to standards no higher than those with which broker-dealers must comply. The Committee believes that such legislation should make the federal bank regulatory agencies responsible for enforcing any such requirements in the same manner that Congress allocated responsibility among agencies in Section 17A of the Exchange Act.

Pending enactment of such legislation, it is the Committee's desire and expectation that the following factors will prompt banks to adopt policies that create a system as uniform as reasonably possible for shareholder communications:

- (i) ABA sponsored initiatives which already are underway;

- (ii) encouragement from the federal bank regulatory agencies;
- (iii) the weight of the Committee's recommendations in this Report and the Commission's final action on those recommendations; and
- (iv) the force of public opinion arising from successful implementation of such recommendations and final actions that will affect issuers, broker-dealers, transfer agents, depositories and other involved in shareholder communications.

3. Recommendations to issuers

- a. It is recommended that issuers distribute proxy materials to shareholders at least thirty days prior to the meeting date.

The Committee does not believe it is appropriate to adopt a regulatory requirement that issuers distribute proxy materials a fixed number of days in advance of the meeting, because there are too many variables over which the issuer has little or no control. Nevertheless, the Committee is convinced that the single greatest key to improving the transmission of proxy material is the issuer's commencing distribution at the earliest possible point in time. For this reason, it is absolutely essential that issuers develop a detailed plan of their activities in preparation for mailing the proxy material, including a definite commitment to begin distribution at least thirty days before the meeting date. The Securities Transfer Association of New York ("STANY") provided the Committee with data on the practices of 484 companies for which members of the association tabulated votes during the 1961 proxy season. Approximately 30 percent of the companies mailed their proxy material less than thirty days before the meeting date. Experience demonstrates that failure to commence mailing by at least thirty days before the meeting can create problems that reduce share representation or voting at the meeting.

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The exchanges currently recommend a thirty day lead time to their listed companies. In practice, many listed companies begin distribution forty days or more in advance of the meeting. The Committee urges companies to begin the process as early as possible.

- b. It is recommended that issuers forward to nominees their requested sets of proxy materials concurrently with issuers' dissemination of proxy material to shareholders of record.

The Committee is concerned about any lag time between the issuer's mailing of proxy material to shareholders of record and its delivery to brokers and other nominees of the sets of proxy material to be forwarded to beneficial owners. Since it necessarily takes more time to provide beneficial owners with proxy material than to provide such material to owners of record, the Committee believes it is critical that issuers disseminate the material for nominees and record holders concurrently. 57/

- c. It is recommended that issuers take appropriate steps to assure that a sufficient quantity of proxy material is printed in a timely manner so that there will not be production shorts in deliveries of requested materials to intermediary record owners.

The inability of many issuers to provide intermediaries with all the sets of proxy material they have requested is a major shortcoming of the existing distribution system. As noted previously, intermediaries seek to avoid multiple production runs for the same issuer during the proxy season. Therefore, production shortages often delay distribution of the proxy material until the intermediary's request has been substantially filled.

57/ The NYSE, in 1975, urged the Commission to "encourage issuers, to the extent possible, to forward material to brokers and other fiduciaries in a manner that would permit the mailing to their beneficial owners at about the same time that direct mailing from the issuer occurs." Comment letter, File No. S7-581.

The Committee believes that it is essential for issuers to pinpoint the causes of any shortage in the production of proxy material and take steps to assure all requested materials are delivered in a timely manner to brokers and other nominees.

- d. For the purpose of distributing proxy solicitations more evenly throughout the year, it is recommended that issuers consider revising the date of their annual meeting of security holders so that the meeting is not convened during the proxy season (March, April or May).

Scheduling the meeting of security holders outside the proxy season should improve dissemination of an issuer's proxy material, because the competing demands upon intermediaries are substantially less at other times of the year. Issuers which reschedule their annual meetings should be able to rely on their certified financial statements unless there had been a material change in the company's financial condition since the date of the auditors' report.

4. Recommendation to self-regulatory organizations

It is recommended that the self-regulatory organizations (exchanges and NASD) develop uniform billing procedures which include information on the broker's date of receipt of proxy material from the issuer and the date of mailing such material to its customers.

The Committee believes that inclusion of the broker's date of receipt of proxy material and the date of mailing such material to beneficial owners will provide issuers with meaningful information about the performance of brokers in the distribution process.

5. Recommendations to bank nominees

- a. It is recommended that the federal bank regulatory agencies and the ABA urge banks to revise their internal procedures so that the following records are maintained with respect to proxy handling procedures:

1. Issuer search card receipt and return dates;
2. Mailing dates of the bank's search cards to correspondent banks;
3. Receipt dates of proxy materials; and
4. Mailing dates to beneficial owners.

The Committee believes that the retention of such information by bank nominees would enable them to better evaluate and to improve their performance in transmitting proxy material to their customers on a timely basis. They also will be able to better respond to questions from issuers and customers regarding dissemination of proxy material. The rules of the exchanges already require member broker-dealers to keep detailed records covering the solicitation of proxies and to retain such records for three years. 58/

The Committee urges the ABA to encourage its member banks to retain such records and to continue its efforts to educate banks about appropriate procedures for disseminating proxy material. The Committee also asks the federal bank regulatory agencies and the ABA to urge banks to retain such records for three years for the reasons set forth by the Committee.

- b. It is recommended that banks urge their customers to mark, sign and return their proxies.

Some bank nominees have developed model letters which can be used to urge bank customers to mark, sign and return their proxies. Bank nominees which have disseminated the letters to customers along with the proxy material report a resulting increase in the percentage of their customers who vote. The Committee endorses these model letters and urges each layer of banks to utilize them. 59/

58/ New York Stock Exchange Guide ¶2452.16. American Stock Exchange Guide ¶9529.16.

59/ The model letters are set forth as Appendix D.

Chapter III

IMPROVING THE EXISTING PROXY VOTING PROCESS

A. Existing Voting Arrangements

Under state law the legal rights relating to security ownership, including the right to vote, reside in the owner of record. ^{60/} In practice, however, the registered owners of street and other nominee name securities vote, if at all, according to stringent standards designed to protect the interests of the beneficial owners of such stock.

Most street and nominee name securities are registered in the name of one of the depositories. Shortly after the record date for the issuer's meeting of security holders, each depository sends an omnibus proxy to the issuer which assigns the depository's voting rights to its participants in accordance with the number of securities held for each participant's account as of the record date. Thereafter, the depositories cease to be a factor in the voting process.

Bank participants handle voting differently for their discretionary and nondiscretionary accounts. With respect to securities held in discretionary accounts, the bank usually possesses voting authority pursuant to a written

^{60/} See, e.g., 8 Del. Code §213 (1979).

agreement between the bank and the customer. For custody accounts, the bank rarely, if ever, possesses voting authority. Therefore, with respect to custody accounts, banks generally sign the proxy in blank and forward it to the beneficial owner so that the beneficial owner can mark the proxy and return it directly to the issuer. This procedure must be repeated by each layer of banks whose customers' securities are held in custody accounts.

Voting by brokers, however, is subject to both regulatory and self-regulatory supervision. Section 14(b) of the Exchange Act makes it unlawful for any registered broker or dealer to give or to refrain from giving a proxy, consent or authorization with respect to the securities of its customers in contravention of rules the Commission determines to prescribe as necessary or appropriate in the public interest or for the protection of investors. The Commission has exercised its authority under Section 14(b) only to the extent of regulating proxy distribution.

The NYSE and the AMEX have adopted rules governing the voting of shares held for beneficial owners. The rules of the exchanges forbid member firms to vote shares registered in their name or the names of their nominee except in accordance with the exchange's proxy rules. ^{61/} Member firms may adopt one of the following specific voting procedures: (1) tabulate voting instructions (in the form of the issuer's proxy card or a special voting instruction form) from beneficial owners

^{61/} New York Stock Exchange Guide ¶2450; American Stock Exchange Guide ¶9527.

and submit one or more signed proxies in its capacity as the registered holder of record; or (2) pass voting authority through to the beneficial owners by signing proxies in the member firm's or its nominee's name and forwarding them to the beneficial owners for voting and return to the proxy tabulator. It is the general practice of brokers and their proxy agents, with a few exceptions, to follow the first procedure as outlined above. 62/

According to staff of the NYSE, its original rule relating to voting by brokers was adopted in July 1927. The rule prohibited a member firm from voting a proxy unless the stock was in the physical possession of such member. At that time, many transactions were settled via the assignment of securities and delays in transfer were common. Thus, in order for proxies to be voted, the stock had to be traced. As a result, it was very difficult to obtain a quorum for a stockholders' meeting.

In November 1934, policies, as distinguished from a rule, were adopted by the NYSE to permit member firms to obtain proxies from listed companies, pre-sign the proxies and send them on to customers for voting and return to the issuer. This procedure also was not very successful and resulted in many companies failing to obtain a quorum.

62/ See generally, New York Stock Exchange Guide ¶2450, et seq.; American Stock Exchange Guide ¶9526 et seq., and NASD Manual ¶2151.05.

In December 1937, the NYSE established rules requiring member firms to transmit proxy material to beneficial owners that also permitted a member to vote on the tenth day prior to the meeting whenever a non-material matter was being considered at the particular meeting and instructions were not received from beneficial owners. The history of developments in this area at the AMEX has been substantially similar.

Under the exchanges' current rules, a member firm must vote shares held in its own or its nominee's name in accordance with instructions received from the beneficial owners. 63/ Provided the matter being presented to shareholders for consideration is uncontested, adequately disclosed, and "does not include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock," a member firm may vote any uninstructed shares "at its discretion" as a record owner of the stock. These rules affect unlisted as well as listed companies since they derive from the exchanges' regulation of member broker-dealers rather than issuers.

The rules provide that if the proxy material is transmitted to beneficial owners at least twenty-five days before the meeting, the broker can vote the uninstructed shares fifteen days prior to the meeting. 64/ If the material is transmitted at least fifteen days before the meeting, 65/ then the broker can vote uninstructed shares ten days before the meeting. If the proxy material is mailed less than fifteen days in advance of the meeting, member

63/ New York Stock Exchange Guide ¶2452; American Stock Exchange Guide ¶9529.

64/ See, e.g., American Stock Exchange Guide ¶9528.

65/ Id.

organizations are not permitted to vote on any matter without instructions from the beneficial owners. ^{66/} The Rules of Fair Practice of the NASD permit its members, who may not be members of one of the exchanges, to vote customer shares if they comply with the pertinent rules of one of the exchanges. ^{67/} These self-regulatory rules permitting broker-dealer voting are referred to as the "ten-day" rules. Under the present system, when broker-dealers exercise their right to vote shares without instructions, they almost always vote "for" the issuer's director nominees and positions. There is no rule or practice similar to the ten-day rules used by banks.

The exchanges' rules list a number of specific proposed transactions on which brokers may not vote without specific customer instructions. ^{68/} When action is to be taken at the meeting of security holders on matters which are contested or may affect substantially the rights or privileges of the stock, the exchanges encourage listed companies to submit their preliminary proxy material to the exchange for review. ^{69/} Such review permits the exchange staff to determine, among other things, whether brokers are permitted to vote uninstructed customer shares on the matter and to set forth their conclusions in their weekly bulletin.

Upon receipt of requested sets of proxy material, brokers consult the exchanges' bulletins to classify the issuer's proxy statement. Brokers provide beneficial owners with a letter explaining voting procedures which is known as the client letter. The content of the broker's

^{66/} Id.

^{67/} NASD Manual ¶2151.

^{68/} New York Stock Exchange Guide ¶2452.11. American Stock Exchange Guide ¶9529.11.

^{69/} See, e.g., N.Y.S.E. Company Manual at A-132.

client letter varies depending upon whether the broker is permitted to vote on all, some or none of the proposals without customer instructions. Thus, the proxy statement cannot be forwarded to beneficial owners until it has been properly classified and the appropriate client letter inserted.

B. Current Voting Practices

The best test of whether the existing system is adequately functioning is the percentage of shares represented at issuers' meetings and the voting rates at such meetings. The Committee has gathered information on quorum representation, voting on substantive matters and voting by foreign shareholders.

With respect to quorum voting, the Committee received information from several sources. In the spring of 1979, the ASCA surveyed over 700 companies about several matters, including the percentage of shares represented at the last annual meeting. According to the results, only 8 percent of issuers had less than 70 percent of their shares represented at the meeting. 70/ STANY provided the Committee with information about changes in quorum representation between 1980 and 1981 for 484 companies. Of those responding, 237 companies had higher quorum representation in 1981 and 189 had lower quorum voting, with 58 companies indicating no change.

In its Release soliciting public comment, the Committee sought information about the recent experience of issuers regarding quorum voting rates and voting rates on the substantive matters for which broker-dealers cannot vote without customer instructions. Seven companies indicated they had experienced a decline in quorum voting,

70/ ASCS, Corporate Communications Report 26 (1979).

ranging from one percent to seven percent. On the other hand, six companies stated there had been no decline, or an increase, in quorum representation. The comments submitted with respect to voting rates on substantive matters also were mixed. 71/

The Committee also requested comment on the question of whether foreign shareholders in American corporations are reluctant to vote, and, if so, whether non-voting by this group posed a problem. Nonvoting by foreign holders was viewed as a possible problem by several commentators. 72/ First National Bank of Boston believed that only about 20 percent of the shares owned by foreign beneficial owners was voted. It was asserted that part of the unresponsiveness of foreign shares may be due to the unreliability of international mail service. 73/ Most companies indicated, however, that few of their shares were owned by foreign beneficial owners and that their voting response was not adversely affected by the extent of foreign investment in their company.

Undoubtedly, there are a variety of reasons why foreign beneficial owners may be reluctant to vote. Several major bank nominees have informed the Committee, however, that they have met with moderate success

71/ Ten commentators reported a decline in substantive voting or difficulty in achieving necessary votes; five reported no change and two reported an increase in voting rates for substantive matters.

72/ Comment letters of Westinghouse, Maryland National Corporation, Allied, GCA Corporation, First National Bank of Boston, File No. S7-911.

73/ Comment letters of Maryland National Corporation and GCA Corporation, File No. S7-911.

in urging foreign holders to mark the proxy at least for quorum purposes and to abstain on particular voting items on which they do not wish to cast a vote. 74/

C. Conclusions

The Committee believes that street and nominee stock registration has had only a minor affect upon the ability of companies to achieve a quorum of shares at their annual meetings. The Committee is aware that there are isolated instances where one company or another has failed to achieve a quorum, but, the Committee believes that once a company has experienced a quorum problem, steps are taken to assure that the problem does not recur. The Committee is unaware of any case where this problem has recurred.

The Committee believes that there are potentially greater problems relating to voting on the substantive matters on which brokers cannot vote without customer instructions. At least some companies have reported a slow, steady decline in voting on major questions over the past few years and express serious concern about the future. A company's commitment to actively solicit votes and follow-up on unvoted shares is a necessary precondition to satisfactory voting rates, but even such actions may not always be sufficient. The Committee has a number of recommendations that should help address perceived problems relating to declining voting rates.

74/ Presentation by Mr. Frank Gibbs, Vice President, Manufacturers Hanover Trust Co.

D. Recommendations:

1. Recommendation to the Commission

It is recommended that the Commission not abrogate the 10-day and 15-day proxy voting rules of the exchanges.

The Staff Report on Corporate Accountability expressed concern about certain practices related to the 10-day rules of the exchanges. ^{75/} The Committee believes that it is important to preserve the ability of brokers to vote the uninstructed shares of their customers so long as those customers have been given an adequate explanation of the voting practice and a reasonable opportunity to vote. ^{76/} Without this ability, the Committee believes that many business matters requiring a shareholder vote will either fail for lack of the requisite vote or cost issuers unnecessary expense in order to achieve their passage.

2. Recommendations to the self-regulatory organizations

- a. It is recommended that the exchanges codify their informal interpretive rulings with respect to the 10-day rules in order to better inform broker-dealers and issuers of transactions requiring specific customer instructions.

The exchanges' provisions that prohibit member brokers from voting uninstructed shares on any matter that may substantially affect the rights and privileges of the listed securities are not self-operative. Each proxy season the staff of the exchanges are frequently asked to analyze matters being put to a vote and to decide whether or not broker

^{75/} The staff expressed "serious concerns about permitting brokers to vote stock held in street or nominee name in the absence of specific voting instructions from the stock's beneficial owners." Staff Report on Corporate Accountability, supra note 9 at 352-59.

^{76/} To accomplish these, the Committee is recommending preparation of a brochure on voting procedures for beneficial owners and is recommending review of the exchanges' model client letters for possible clarification.

voting is permitted. The purpose of the recommendation is to make these informal interpretive rulings rendered each year by the exchanges readily available to all issuers and intermediaries.

- b. It is recommended that the exchanges re-emphasize to listed companies the importance of timely submission of proxy material for review by the exchanges whenever substantive matters are to be voted upon by security holders.

Some listed companies do not submit their preliminary proxy material to the exchanges for review. When this occurs, the exchange is not always able to rule upon the applicability of the 10-day rules and publish its ruling in the weekly bulletin prior to the time the broker receives its requested sets of proxy material from the issuer. Because brokers utilize the information in the bulletins to determine which form of client letter to include with the proxy mailing, the issuer's failure to submit preliminary proxy material to the exchange can delay the distribution process. The Committee's recommendation to the exchanges is intended to rectify this situation.

- c. It is recommended that the NASD assume responsibilities similar to those assumed by the national exchanges with respect to the voting of shares held in broker name, both in terms of providing guidance to nonlisted companies and to nonmember firms.

The NASD has indicated to the Committee its willingness to participate in improving the process by which issuers communicate with their beneficial owners. The Committee believes that communication between NASDAQ companies and their beneficial owners would be greatly improved if the NASD assumed responsibilities, such as the development of model client letters, which are similar to those assumed by the NYSE and AMEX.

- d. It is recommended that an education program be conducted by the NASD to inform NASDAQ companies of the applicable proxy processing procedures.

The Committee believes that many NASDAQ companies are not aware that the NASD's Rules of Fair Practice only permit member firms to vote uninstructed shares pursuant to the 10-day rules of the exchanges. The proposed education program should address both the operation of the 10-day rules and describe appropriate proxy handling procedures for NASDAQ companies.

- e. It is recommended that the exchanges review for clarity the language currently used in their model client letters.

The Committee believes that the exchanges' model letters can be made more informative and meaningful to beneficial owners without unduly increasing their length. With greater clarity, the client letters might help increase voting by beneficial owners.

- f. It is recommended that the exchanges consider whether the following provisions in the 10-day rules should be modified in line with current corporate practices while remaining aware of the need to maintain desirable checks and balances on corporate action to protect shareholders' interests:

- (1) developing a percentage limitation in place of the blanket prohibition of NYSE Item 6 (authorizes or creates indebtedness or increases the authorized amount of indebtedness);

The Committee does not believe that a blanket prohibition is necessary for the protection of shareholders.

- (2) raising the percentage limitation in NYSE Item 12 from 5 percent to 10 percent (authorizes issuance of stock, or options to purchase stock, to directors, officers or employees in an amount which exceeds 5 percent of the total amount of the class outstanding);

Raising the threshold seems appropriate to the Committee in view of the fact that a wide range of employees typically participate in such plans and the average number of shares authorized in such plans has increased.

- (3) establishing a materiality standard in NYSE Item 17 (authorizes a transaction not in the ordinary course of business in which an officer, director or substantial security holder has a direct or indirect interest).

The Committee believes that the standard should be revised so that voting is prohibited only where the substantive rights of shareholders may be affected, because of the nature of the insider's interest or the nature of the transaction.

- g. The exchanges and the NASD should facilitate the preparation of a brochure to be supplied to brokerage customers explaining proxy voting procedures.

The Committee believes that beneficial owners will be more likely to participate in the corporate electoral process, and better prepared to do so, if they are well informed about the process by which shares held in street or other nominee name are voted. Providing an explanation of proxy voting procedures is an important part of the process of registering securities in other than the name of the beneficial owner. The self-regulatory organizations should promptly arrange for the preparation

of such a brochure. 77/ The self-regulatory organizations should take appropriate measures to ensure that each beneficial owner is provided with a brochure containing such information.

3. Recommendation to the banking industry

It is recommended that the ABA prepare a similar brochure on voting practices for bank custody account customers.

The Committee believes it is equally important that the beneficial owners of custody accounts be provided voting procedures information. The ABA is urged to work with the securities self-regulatory organizations to develop a brochure, cognizant that the different voting procedures of banks will affect the content of a bank brochure.

77/ In view of the fact that a similar recommendation made in the 1976 Street Name Study has not yet produced the brochure, prompt action is needed in order to achieve the statutory purpose of Section 14 of the Exchange Act.

CHAPTER IV

IMPROVING DISSEMINATION OF INTERIM REPORTS AND OTHER
SHAREHOLDER COMMUNICATIONS

A. Current Requirements and Practices

The New York, American and Midwest stock exchanges currently require that quarterly financial results of listed companies be published. 78/ Further, the NYSE and AMEX urge their listed companies to disseminate quarterly financial reports to shareholders. 79/ At present, however, there is no regulatory or self-regulatory requirement that public corporations disseminate interim reports or corporate communications, other than proxy statements, to shareholders.

The rules of the NYSE and the AMEX do require member broker-dealers to assist in the transmission of all types of shareholder communications, not simply proxy materials. Specifically, a NYSE rule requires member firms to transmit interim reports and other material to each beneficial owner of street or nominee held securities when requested to do so by an issuer and assured that it will be reimbursed for all its out-of-pocket expenses. 80/ The AMEX has a similar rule. 81/

78/ N.Y.S.E. Company Manual, "Timely Disclosure", §A-2; American Stock Exchange Guide ¶10044; Midwest Stock Exchange Guide ¶1879.

79/ New York Stock Exchange, "Recommendations and Comments on Financial Reporting to Shareholders and Related Matters: A White Paper" 17 (1973); American Stock Exchange, Company Guide §625 (1979).

80/ New York Stock Exchange Guide ¶2465.

81/ American Stock Exchange Guide ¶9537.

B. Problems

The Committee solicited information about any impediments encountered by issuers, broker-dealers and beneficial owners in connection with the dissemination of interim reports and other shareholder communications. The Charter of the Advisory Committee directed it to investigate, in particular, inconsistent practices by issuers with respect to the dissemination of interim reports to owners of record and to beneficial owners. The Committee reviewed the results of a survey of approximately 750 companies conducted by the ASCS. ^{82/} The results indicated that 98 percent of the responding companies issued interim reports to shareholders, but 5 percent of the companies had a policy of providing interim reports only to record shareholders. Only 36 percent of those disseminating interim reports stated that they requested brokers and nominees to forward interim reports to beneficial owners, ^{83/} as opposed to merely responding to unsolicited requests from such brokers and other nominees.

To assist the Committee in obtaining additional information, the National Investor Relations Institute surveyed a sample of 1660 companies in the Fall of 1981 and received responses from 465. All the respondents stated that they published interim reports. Ninety-seven percent mailed such reports to record shareholders and 89 percent also distributed interims to beneficial owners. For those mailing to beneficial owners, 50 percent stated they did so only in response to a

^{82/} Corporate Communications Report, supra note 70, at 36 et seq.

^{83/} Id. at 39.

specific request for material from the broker or other nominee. In interpreting the results, Mr. John Fuller, who conducted the survey, opined that many companies relying solely on requests from brokers probably are not aware that the stock exchange rules require brokers to transmit interim reports to beneficial owners if requested to do so by the issuer.

The comments submitted in response to the Committee's Release also suggest that a number of companies only send interim reports to record owners. The comments make it clear that most companies do provide additional copies to nominees upon their request for distribution to beneficial owners.

The Committee identified a second obstacle to dissemination of interim reports to beneficial owners. It was noted that the efficient distribution of material by broker-dealers depends, in part, upon their receipt of advance notice from the issuer that it wishes to have the broker transmit interim reports or other material at a later point in time. When materials to be forwarded to beneficial owners are delivered with no advance warning, the broker's operations may be disrupted resulting in a delay in forwarding such material.

A third obstacle identified by the Committee was the fact that it is not unusual for some brokerage firms to treat the dissemination of interim reports or other non-proxy communications as a low priority. On some occasions, a broker-dealer may take a month or more to forward such material to beneficial owners. Several corporate commentators

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took the position that unwarranted delays by nominees and the layering of shareholdings made it difficult or impossible to deliver interim reports to beneficial owners in a timely manner.

C. Conclusions

The Committee finds that there is a clear need to improve the process of distributing interim reports and other communications to beneficial owners since it is presumed that most beneficial owners have as great a need and desire to receive interim financial information as record shareholders. Brokers and issuers share responsibility for the present shortcomings. For example, if a broker's needless delay in forwarding material convinces an issuer that timely delivery of material to beneficial owners is impossible, the issuer may be induced to adopt a policy of mailing interims only to record holders. On the other hand, issuers that do not consult with intermediaries in advance to arrange for distribution are inviting avoidable delay in the delivery of the material to beneficial owners. A significant factor is lack of knowledge by issuers that brokers are obligated to distribute interim reports if requested to do so and assured of reimbursement. 84/

The Committee sought public comment on suggestions that issuers be required to disseminate non-proxy material to beneficial owners or to disclose to shareholders their procedures for dissemination of such materials. The Committee concluded that it did not wish to burden

84/ New York Stock Exchange Guide §2465; American Stock Exchange Guide §9537.

issuers with additional requirements in this area. The Committee also concluded that it would not be appropriate to recommend that there be mandatory disclosure by issuers of their dissemination procedures. The immediate effect of a disclosure requirement would be to embarrass companies, which the Committee believes is an improper method of regulation. Of course, issuers are free to include a statement in their annual report to shareholders, or elsewhere, which explains how beneficial owners can obtain the issuer's interim reports.

The Committee has the following recommendations to facilitate the timely distribution of interim reports and other communications to all beneficial owners without imposing additional burdens on participants in the process.

D. Recommendations

1. Recommendations to issuers

- a. It is recommended that issuers disseminate interim reports to shareholders.

The Committee believes it is in the interest of all companies to provide their shareholders with up-to-date financial information throughout the year. Since there is no assurance that the interim financial results of all issuers will be published or widely available to the investing public, the Committee urges issuers to distribute such reports directly to shareholders.

- b. It is recommended that issuers send the same shareholder communications to beneficial owners that they send to record owners.

The Committee can find no legitimate public policy grounds for distinguishing between beneficial and record owners in this respect,

particularly since such a large percentage of all shares is owned by beneficial owners. Issuers should make an advance inquiry with intermediaries to determine the number of sets of interim reports or other material needed for distribution to all beneficial owners unless they already have obtained this data as a result of other recent mailings. This step, together with adoption of the following recommendation, should ensure that any material sent to beneficial owners will be received by them in a timely manner.

2. Recommendation to self-regulatory organizations

It is recommended that the self-regulatory organizations (the exchanges and the NASD) amend their existing rules to require their members to make timely distribution of shareholder communications other than proxy material. "Timely" would be construed as five business days after substantial receipt of materials with prior notice to nominees, and seven business days after substantial receipt of materials with no prior notice to nominees.

The recommendation is intended to provide greater assurance that interim financial results and other communications are delivered in a timely manner to beneficial owners.

CHAPTER V

THE FEASIBILITY OF PROVIDING A MEANS FOR ISSUERS
TO IDENTIFY BENEFICIAL OWNERS

It has long been asserted that corporate-shareholder communications would improve demonstrably if issuers were provided with the identities of beneficial owners for the purpose of directly communicating with them. ^{85/} The Commission has given consideration to this possibility in the past. ^{86/} Moreover, regulatory bodies in other countries with systems of nominee stock registration have pursued beneficial owner identification to the issuer as a means of overcoming the effects of nominee registration on shareholder communication. ^{87/}

The issue of shareholder identification and direct communication generated the most intense debate and deliberation by the Committee. The Committee's discussion centered on developing answers to three questions:

1. Should issuers have access to the identities of beneficial owners?

^{85/} See, e.g., the statement of C.V. Wood, Jr. on behalf of the Committee of Publicly Owned Companies; comment letters of Alpha Industries, Inc., American Business Products, Inc., Universal Container Corporation, Aspro Inc., and others in File No. 4-175 (Public Fact Finding Investigation in the Matter of Beneficial Ownership) (1974).

^{86/} See, e.g., Street Name Study pp. 39-44; See also Release No. 34-13719 (July 5, 1977) [42 FR 35955].

^{87/} Kanzaki, "Immobilization of Stock Certificates: The Position of the Beneficial Shareholder", 3 J. of Comp. Corp. L. and Sec. Reg. 115 (1981).

2. What evidence of consent by the beneficial owner should be required before a nominee discloses the identity of the beneficial owner to the issuer?
3. What types of shareholder communications (e.g., proxy statements, interim reports) should issuers be permitted to mail directly to consenting beneficial owners as opposed to mailing through nominees?

Resolving the question of whether issuers should have access to beneficial owner information turned on the extent to which issuers need, desire or could use such information. The Committee's effort to agree upon appropriate indicia of consent raised philosophical as well as legal concerns. In considering the third question, the Committee took into account the recommendations set forth earlier in this Report which, if adopted, should enable the existing systems of proxy distribution and voting to operate with a high degree of effectiveness. Thus, the Committee determined that shareholder identification need not be linked to distribution of proxy material. Nevertheless, in order to evaluate whether or not it might be desirable for issuers to have the option of combining shareholder identification with direct proxy distribution, the Committee considered in depth two alternative approaches — one which incorporated the possibility of direct distribution by the issuer of all types of shareholder communications and the other which permitted direct distribution only of shareholder communications other than proxy material.

A. Existing Sources for Identifying Beneficial Owners

With an increasing proportion of all shares registered in street and nominee name, many issuers have taken steps to improve their ability to communicate with the beneficial owners of such stock. The most obvious way to identify beneficial owners is to ask them to identify themselves

to the company if they wish to receive interim reports or other communications directly. Some companies have included a simple statement to this effect in their proxy statement or in the annual report. Others have gone further by, for example, attaching a postage paid, perforated request card to annual reports mailed through intermediaries. Response rates have generally been low — less than 10 percent. ^{88/} In the past, it appears that some broker-dealers removed this type of card before mailing the related material.

Other issuers obtain information about their beneficial owners through reports filed with the Commission. Pursuant to the federal securities laws, certain persons must publicly disclose their beneficial ownership of an issuer's securities. Under Section 13(d) of the Exchange Act, any person beneficially owning more than 5 percent of a class of registered securities must file detailed ownership reports with the Commission and the issuer, and also must report any subsequent material changes in such reports. The purpose of Section 13(d) is to provide information to issuers and investors regarding rapid accumulations of securities by persons who would be capable of changing or influencing control of the issuer. ^{89/} Section 13(g) of the Exchange Act requires similar disclosures by persons who, prior to the adoption of the section, were not subject to disclosure pursuant to Section 13(d). In addition,

^{88/} See, e.g., Comment letters of Evans Products Company and Boise Cascade, File No. S7-911.

^{89/} S. Rep. No. 550, 90th Cong., 1st Sess. 7 (1967).

rules adopted under Section 13(f) of the Exchange Act require disclosure of the nature and extent of the beneficial ownership interest of institutional investment managers who manage accounts with \$100 million or more in applicable securities within the last twelve months. 90/

Until recently, Commission Form N-1Q required investment companies to include changes in their portfolio securities as part of their quarterly report of material occurrences. Many issuers used this information in determining the identity of their major shareholders. In December 1981, however, the Commission eliminated the requirement to report quarterly changes in securities positions. 91/

Despite these existing requirements to disclose all significant beneficial owners, commentators expressed extensive interest in obtaining information about all beneficial owners regardless of the size of their shareholdings. 92/ The vast majority of issuer commentators noted that identification of all beneficial owners would be helpful for a variety of reasons and would permit issuers to address business and industry issues directly with their shareholders. Beyond the perceived practical benefits,

90/ It should be noted that some information filed with the Commission pursuant to Section 13(f) may not be publicly disclosed due to the application or approval of confidential treatment requests of subject persons made pursuant to Rule 24b-2 under the Exchange Act. Release No. 34-15979 (June 28, 1979) [44 FR 39386].

91/ Release No. 34-18337 (December 16, 1981) [46 FR 62246]. The Committee's recommendation with respect to this issue appears on p. 72 infra.

92/ Approximately 130 commentators responding to the Committee's Release supported the idea of shareholder identification and direct communication, while 60 commentators were opposed. File No. S7-911.

several commentators saw strong philosophical reasons for identifying all beneficial owners to issuers. As BayBanks explained:

Corporate issuers who are better informed as to their ownership constituency and are able to communicate with their holders directly will be better equipped to manage a corporation on their behalf. The disclosure process must work in both directions if business is to be responsive to its public and protective of its franchise [T]hird parties who have no interest in the issuer's business or the beneficial holder's investment . . . have gained control of the communications process to an extent which serves neither the issuer nor the stockholder well. 93/

B. Alternative Methods of Identifying Beneficial Owners for the Purpose of Direct Communication

The Committee studied in depth two alternative methods of identifying beneficial owners to issuers. The primary difference between the two was that under the first proposal the issuer would be able to by-pass nominees and distribute proxy material directly to consenting beneficial owners, while the second proposal did not contemplate that the issuer would distribute proxy material in the stead of the broker-dealer. Under both proposals, the issuer would be able to distribute other types of shareholder communications directly to consenting beneficial owners. The first proposal was described in full in the Release of the Advisory Committee:

Under this system, nominees would be required to inquire of their beneficial owners as to whether they would object to the release of their identities to issuers for the specific purpose of direct communication between the issuer and the beneficial owner. Inquiry of new accounts would be made by including a statement authorizing release of ownership information in the agreement the customer

93/ Comment letter, File No. S7-911.

signs as part of the account opening procedures. Inquiry of existing accounts would be made by mail. The inquiry of existing accounts would provide for a yes or no response and would indicate that unless a no response was received by the intermediate record owner, identity and ownership position information would be provided to the issuer for so long as the beneficial owner continued to not object. All inquiries would include a representation of confidentiality which would preclude the use, by the issuers or their agents, of this information for any purpose other than corporate communications.

Nominees would be required to maintain a list of all beneficial owners coded or separated into objecting and non-objecting groups and to make the list of non-objecting beneficial owners available to issuers at the appropriate time.

Prior to the record date for their shareholders' meeting, issuers would be able, by use of a search card similar to the one presently used (see Rule 14a-3(d) of the Securities Exchange Act), to request from such nominees a list of the identities of their non-objecting beneficial owners and their share balances. The search card would set forth the issuer's responsibility for communicating with the non-objecting beneficial owners and its obligation to otherwise safeguard the confidentiality of the information received. The search card would indicate the record and meeting dates and to whom the information should be delivered. The search card also would request information as to the number of sets of material the nominee required in order to distribute proxy material to the objecting beneficial owners. The nominee would be required to respond by providing, within five business days after the record date, the required information in at least two uniform formats - one hard copy and one set of labels. Issuers wishing to receive the information by other means, or in other formats, could make such arrangements with individual nominees, where possible.

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Where an intermediary maintains other intermediate record owners, such as correspondent banks, on its list of beneficial owners, the first intermediary would be responsible for forwarding the issuer's search card to the other intermediary, so that the latter could provide a list of its beneficial owners directly to the issuer.

Issuers, or their agents, would receive the lists and labels of the beneficial owners from the various intermediaries beginning approximately five days after their record date. The issuers would be responsible for collecting, collating and maintaining these lists in the manner best suited to their efficient use for the purpose of direct communication with shareholders. Each issuer would then mail its proxy material directly to the beneficial owners who would return their marked proxies directly to the issuer, or its agent. In some cases, such as those involving objecting beneficial owners or other exceptions to the rules, proxy communications would continue to be handled in the present manner. 94/

A second approach, suggested by the Listed Company Advisory Committee of the American Stock Exchange ("LCAC"), also was carefully evaluated by the Committee. The LCAC urged the Commission to adopt a rule requiring broker-dealers, banks, voting trustees and other nominees to provide the issuer, or its designated agent, with identities and ownership positions of their non-objecting beneficial owners, at least once per year as of the record date for the issuer's annual meeting. The LCAC proposal would create the mechanism for collecting and collating the ownership information and transmitting it to the issuer, but the present method of distributing proxy material through intermediaries would be retained. As the LCAC explained in its comment letter to the Committee:

94/ The Release appears as Appendix B of this Report.

If companies were informed regarding the names and addresses of their beneficial shareowners they could communicate with them to assure that they have received the proxy soliciting material from their brokers, or the brokers' forwarding agent, and could urge such shareowners to instruct their brokers in regard to the manner in which the shareowners desire their shares to be voted. Under this arrangement the brokers would continue to handle the dissemination of proxy material and the voting of proxies — and a company's efforts would be limited to a follow-up procedure with the customer (1) to assure that his broker has furnished him with the proxy material and (2) to urge him to instruct his broker how he wished to have his shares voted. 95/

The list also could be used to mail interim reports and other non-proxy communications directly to beneficial owners.

C. Evaluation of Alternative Systems

The Committee's evaluation of these two proposals concentrated on four areas of concern: technical feasibility, cost feasibility, practicality and legal and other considerations.

1. Technical feasibility

The Committee was concerned about the extent to which there currently exist automated systems for the collection, storage and transmission of beneficial ownership information. Two of the three presentations to the Committee on this subject expressed the view that existing data systems were adequate or could readily be adapted to this purpose. 96/

95/ Comment letter, File No. S7-911.

96/ This was the position taken by Mr. Michael Pulk of Informatics, Inc., and Mr. Robert Victor, of Deloitte, Haskins & Sells.

It was noted that all broker-dealers keep customer records on a daily basis and that these records generally are maintained in a data processing format. Each customer account also is maintained on a balance sheet basis. It was stated that bank trust departments maintain similar records which also are automated to a large degree. 97/

Most commentators agreed that the two proposed formats for response (hard copy and labels) would be technically feasible. 98/ Several commentators insisted, however, that unless a format were selected that could be machine processed, use of the data would be very time consuming. 99/ A consensus of the commentators and speakers believed it would be preferable to utilize a standardized means of transmitting lists of beneficial owners, with magnetic tape being the most frequently cited mode. 100/

The technical issue of greatest concern was the assimilation of lists from numerous nominees. Morgan Guaranty Trust Company, which acts as transfer agent for 450 issuers, pointed out that there potentially would be thousands of beneficial owner lists submitted to each issuer from a plethora of nominees. Morgan Guaranty feared that the task of absorbing

97/ Although there are over 4,000 bank trust departments, according to a 1981 report of the Federal Financial Institutions Examination Council, the top seventy bank trust departments account for approximately 66 percent of all trust holdings, and all of these banks are, to a large extent, automated.

98/ See, e.g., the comment letters of Manufacturers Hanover, National Investor Relations Institute, Marine Midland Bank, Maryland National Corporation, Westinghouse Electric Corporation and Modine Manufacturing Co., File No. S7-911.

99/ Comment letter of Chemical Bank and the Southern Company, File No. S7-911.

100/ See, i.e., comment letter of Union Oil Company of California, First Trust Company of St. Paul, Fischer and Porter Company, Continental Illinois National Bank, International Business Machines Corporation, and Westinghouse, File No. S7-911.

so many lists, even if they were conveyed electronically, would be impossible within the time constraints of the proxy season, and might disrupt the existing system since a dual distribution system would be required. Other commentators believed that assimilation of incoming lists would be manageable. In this regard, Union Oil Company opined that

[a]lthough information in theory could come from hundreds of sources, our experience is that a relatively few banks and broker-dealers hold a high proportion of the shares. 101/

The Committee believes that reality lies somewhere in between, but if the incoming lists had to be used for actual proxy distribution, the majority of issuers probably would have substantial difficulty assimilating the lists for at least several years. These problems would be less severe, but still considerable, in the case of those very large issuers who act as their own transfer agent and only have to solicit for themselves.

To avoid overwhelming issuers and their transfer agents with ownership lists, the Committee's release requested comment on whether issuers should be permitted to use an intermediary service bureau to collate the lists from nominees and to provide a single final list of beneficial owners to the issuer or to its transfer agent. The Committee concluded that the service bureau approach would not solve the assimilation problem because no service bureau currently exists and its future existence is problematical. Service bureaus also would be subject to time constraints during the height of the

101/ Comment letter, File No. S7-911. The Corporate Transfer Agents Association estimates that approximately 33 percent of the holdings of Cede & Co. are owned by four New York City banks and banks with which they have correspondent relationships. Trends (May 1981).

proxy season, 102/ and the Committee further concluded that the use of service bureaus might make the entire distribution process more, not less, dependent than the existing system upon timely delivery of beneficial owner lists by intermediaries.

2. Cost feasibility

Although the Committee's Release requested estimates of the increase or decrease in costs that would result from development and operation of a system of beneficial owner identification and direct communication, most of the comments received were of a general nature.

Those favoring direct communication believed that, in the long run, costs would be decreased. Several issuers, for example, conceded that considerable reprogramming would be necessary, but opined that they would experience savings in distribution that would exceed the cost of maintaining such lists. 103/ This group of commentators stated several reasons why costs might be reduced, including the possibility that issuers could process the material at actual costs below the reimbursement rates set by the exchanges. Fewer mailings, fewer repeat solicitations, and electronic production of information also could minimize costs.

For a number of commentators opposing direct communication, cost was a significant factor. STANY opined that the cost of conversion, account maintenance, account reconciliation and the maintenance and

102/ This point was raised in the comment letters of Marine Midland Bank and Maryland National Corporation, among others, File No. S7-911.

103/ See, e.g., comment letters of International Business Machines Corporation, Pfizer Inc., Instrument Systems Corporation, Southern Company and Electronics, Missles, Communications, Inc., File No. S7-911.

support of the existing system for non-consenting shareholders would be overwhelming. Others also believed that the costs would be prohibitive. 104/

A third group of commentators urged caution in view of the general lack of knowledge about the cost of such a communication system. Marine Midland Bank stated that until specifications have been developed, "it would be extremely hard to determine costs . . . in changing existing systems." The American Bar Association stated that before attempting to implement such a system, "costs should be identified with more particularity so that a cost-benefit analysis can be made."

Several commentators attempted quantification although their cost estimates varied over a wide range. The primary component in the cost of manual assimilation would be labor, but commentators differed regarding the time required to input the data manually. 105/

104/ See, e.g., comment letter of Maryland National Corporation, File No. S7-911.

105/ For example, Marine Midland Bank stated that a "very rough estimate" of the cost of manually inputting information by issuers or agents would be .50 to \$1.00 per name and address. Continental estimated that manual assimilation would involve a cost of between .75 and \$1.00 per label, including mailing costs, while computer-generated lists of names and addresses generally cost between .02 and \$.05 per name. The ASCS quoted a bank transfer agent's estimate that it would take 1,236 man hours to manually input 30,000 accounts. Union Carbide believed that it would only take 600 hours of keypunch time to input all 30,000 names and related information into its shareholder files. Northwestern National Bank of Minneapolis contended that, "if they were required to receive responses back from beneficial owners, tabulate them and then vote accordingly, costs could be in the range of \$10-20 per beneficial holder."

A survey conducted by the ABA attempted to quantify the automation, operational and administrative costs to bank nominees. The ABA's instructions directed respondents to include the cost of identifying consenting and non-consenting beneficial owners, adapting automated systems to categorize consenting and non-consenting beneficial owners, producing a list of consenting owners, and maintaining this system in tandem with the existing system for distribution of shareholder communications to consenting beneficial owners. Estimates of both start-up costs and ongoing costs were requested. Estimates were submitted from eighteen banks. The range of their estimates was enormous. For example, assuming that all issuers participated, Bank of California, with 8,000 accounts holding securities of 2,500 issuers, estimated start-up costs at \$44,000 and annual operating costs at \$58,300. AmeriTrust Company, with 6,000 accounts holding securities of 3,000 issuers, estimated start-up costs at \$331,000 and annual operating costs at \$233,000. It was impossible to resolve the disparities among the estimates.

3. Practicality

Because of the foregoing uncertainties, the Committee's subcommittee on direct communication formulated a broad outline of a pilot program that might help resolve these questions and determine the practicality of a direct communication system for use in connection with proxy distribution. The program would have been administered under the auspices of the Commission, which would have adopted a temporary rule requiring all registered broker-dealers and transfer agents to participate in the pilot for one full year, with the option to extend the rule for a second

year. The subcommittee recommended that fifty issuers, constituting a representative sample of all issuers, be permitted to participate on a voluntary basis. The pilot program would have operated in a manner similar to the proposal described in the Committee's release, except that service bureaus would have been needed to collate information received from nominees and to transmit one final list to the issuer or its agent in the desired format.

An important issue that would have been analyzed during the pilot program is the effect upon the existing distribution system if a majority but not all mailings to beneficial owners were made by issuers or their agents instead of intermediaries. The Street Name Study found, for example, that when all direct and indirect costs are considered, broker-dealers must send 500,000 proxies per year before breaking even. Therefore, reduced mailings by broker-dealers could substantially raise the per item distribution cost necessitating an increase in the per item reimbursement rates suggested by the exchanges.

The Committee concluded, however, that a pilot program would not be able to demonstrate how well the existing distribution system and a full-blown alternative direct communication system would function together within the time constraints of the proxy season. Moreover, since as noted above, the Committee had concluded that the existing proxy distribution system, as modified, would function effectively, it decided that the issue of shareholder identification might be best resolved outside of the proxy distribution system and that the pilot program would not justify the related effort and expense.

4. Legal and other considerations

Fundamental to a direct communication system is identification of the procedures whereby beneficial owners would make known their preferences with respect to disclosure of their identities to issuers. The Release stated that inquiry of new accounts would be made by including a statement authorizing release of ownership information with the information presented to customers as part of the account opening procedures. For existing accounts, failure to give written or verbal objection would constitute consent. 106/

During the course of its deliberations, the Committee recognized that, in all likelihood, there would be some beneficial owners who would prefer to conceal their identities. The Street Name Study in 1976 surveyed over 97,000 beneficial owners and received responses from 23,600. Approximately 12 percent of those with securities held by a bank or broker indicated that they would object to disclosure of their identity to the issuer for purposes of direct communication. 107/ The remaining 88 percent indicated they would not object. 108/

There was considerable discussion as to what might be the legal requirements in connection with evidencing the consent of a beneficial

106/ In 1975, the brokerage firm of Bear, Stearns & Co. agreed to disseminate to all customers holding securities of Glosser Bros., Inc. a letter from that company which stated that "unless you notify [the brokerage firm] within ten days after receiving this that you don't want" your name and address disclosed to the company, Bear Stearns intended to provide such information to Glosser Bros. No customers objected then or later, and Bear Stearns provided the ownership information to Glosser Bros.

107/ Street Name Study at 41.

108/ Id.

owner to the release of his name, address and shareholdings to an issuer. 109/

s. The Committee was of the view that written consent clearly would provide
legal basis for disclosure of the identities of beneficial owners,
lth but believed that the law was not clear on whether a beneficial owner's
failure to object in response to a written notice would suffice. Moreover,
there were philosophical objections to any system that did not rely on an
affirmative act by the beneficial owner.

l 9. Conclusions

uld The Committee finds that there is very substantial interest on the
part of issuers and others in creating a means to identify beneficial
owners and communicate directly with them. This interest transcends
questions of quorum representation and voting rates. At the same time,
the Committee finds that there remain substantial questions about the
workability and cost of direct communication in connection with proxy
7/ distribution. Therefore, the Committee has concluded to recommend that
a system be adopted whereby issuers will have access to the names,
l addresses and shareholdings of their beneficial shareholders whose stock
is held by broker-dealers and who consent to the release of such infor-
mation to the issuer. Such a system should neither disrupt the existing
s- system of proxy distribution, nor burden the corporate and financial
Inc. communities with additional unnecessary costs. Since issuers will be
you r using these lists only to augment the proxy distribution system and for
so other incidental purposes throughout the year, the time constraints,

109/ In this regard, the Committee received a memorandum from the Commission's
Office of General Counsel and a legal opinion from the firm of Fulbright
& Jaworski, which have been placed in File No. 4-242.

noted above, relating to the assimilation of the lists and related matters should not be a problem. As noted in the introduction of this report, it is the Committee's strong belief that banks should voluntarily or otherwise adopt identical or analogous procedures.

E. Recommendations

1. It is recommended that the Commission adopt a rule requiring broker-dealers to determine whether customers with securities registered in street or other nominee name consent to disclosure of their identity to issuers, and, upon request and assurance of appropriate reimbursement, to promptly provide issuers with a list of the names, addresses and shareholdings of consenting beneficial owners as of the record date of each meeting of security holders.

The recommendation is intended to provide issuers with beneficial ownership information without disrupting the existing system of proxy distribution and voting. With such information, issuers should be able to follow-up on unvoted proxies and to mail interim reports and other shareholder communications directly to each consenting beneficial owner.

The Committee believes that the method of obtaining consent from beneficial owners must safeguard the privacy interests of brokerage customers but not be so burdensome as to deter beneficial owners who do not object from responding. The procedure for obtaining consent need not be the same for existing accounts as for new accounts. The Committee is of the view that the most prudent course of action would be for the nominee to obtain written instructions from each beneficial owner regarding his or her willingness to be identified to the issuer. Such consent would relate to a customer's entire account so that broker-dealers would not be burdened with segregating the customer's preferences

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on a security by security basis. Accordingly, account opening forms and procedures should be modified so that all broker-dealers record whether or not each new customer consents to being identified to issuers for the purpose of receiving direct communications from issuers relating to timely receipt of proxy material and other information bearing upon the investment. With respect to existing accounts, procedures should be established which assure that, within a reasonable period of time, all broker-dealers obtain written or verbal instruction as to whether or not each customer consents to being identified to issuers for this purpose. With respect to existing accounts, the exact procedures selected should be designed, through the use of prestamped cards or otherwise, to minimize the effort required in order to respond. Issuers will be free to prepare their own letters to their beneficial owners urging them to respond. Broker-dealers are, of course, required to forward such letters to beneficial owners under existing rules. Through follow-up mailings and other means, a response eventually should be obtained from all existing beneficial owners.

The Committee believes that issuers which obtain the lists should reimburse broker-dealers for their expenses incurred in obtaining consent, which will relate primarily to a one time survey of existing account holders. There should be little additional cost to broker-dealers from capturing this information as part of account opening procedures. The Committee also believes that requesting issuers should also reimburse broker-dealers and banks for the expense of preparing lists of beneficial owners.

2. It is recommended that the Commission reinstate the requirement that investment companies report quarterly changes in their securities positions on Form N-1Q.

The Committee believes that rescinding this quarterly reporting requirement deprived issuers of a valuable means for identifying and communicating with this important group of shareholders. The Committee, therefore, urges the Commission to reverse its recent action in this regard. The slight burdens that would be imposed upon investment companies by this requirement would be greatly outweighed by the benefits that would result if issuers were once again able to identify and communicate on a quarterly basis with some of their largest shareholders.

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A P P E N D I C E S

- A. Release No. 34-17707 (April 10, 1981) Announcing Establishment of the Committee
 - B. Release No. 34-18195 (October 12, 1981) Soliciting Public Comment on Issues Being Addressed by the Committee
 - C. List of Commentators
 - D. Model Letters for Bank Nominees
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APPENDIX A

SECURITIES EXCHANGE ACT OF 1934
Release No. 17707/April 10, 1981

ADVISORY COMMITTEE ON SHAREHOLDER COMMUNICATIONS ESTABLISHMENT AND MEETING

ACTION: Notice of establishment of the Securities and Exchange Commission Advisory Committee on Shareholder Communications.

SUMMARY: The Acting Chairman of the Commission, with the concurrence of the other members of the Commission, has established the Securities and Exchange Commission Advisory Committee on Shareholder Communications, which is to advise the Director of the Division of Corporation Finance on various difficult, complex and technical questions relating to development of a better means for issuers to communicate with the beneficial owners of securities registered in the name of a broker-dealer, bank or other nominee.

DATE: April 10, 1981

FOR FURTHER INFORMATION CONTACT:
Gregory H. Mathews, Securities and Exchange

Commission, 500 North Capitol Street, Washington, D.C. 20549 (202) 272-2589.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. I, and the regulations thereunder, the Commission has ordered publication of this notice that Acting Chairman Philip A. Loomis, Jr., with the concurrence of the other members of the Commission, has established an advisory committee, under the Federal Advisory Committee Act, which is designated the Securities and Exchange Commission Advisory Committee on Shareholder Communications. Acting Chairman Loomis certifies that he has considered carefully the establishment of this Committee and, with the concurrence of the other members of the Commission, has found the creation of this Committee to be in the public interest in that it will assist the Commission in the performance of its responsibilities under the Federal securities laws.

The Advisory Committee's objectives are to advise the Director of the Division of Corporation Finance on various difficult, complex and technical questions relating to development of a better means for issuers to communicate with the beneficial owners of securities registered in the name of a broker-dealer, bank or other nominee. Issues to be considered by the Advisory Committee include: (1) the feasibility of providing a means for issuers to identify the beneficial owners of street or other nominee name securities; (2) delays in proxy distribution and voting with respect to securities held by a participant in a depository on behalf of non-participants; (3) delays in proxy distribution and voting with respect to securities held in the "street" name of broker-dealers, or in the name of a bank nominee; (4) and inconsistent practices relating to the dissemination of non-proxy corporate communications to the beneficial owners of nominee held securities. The Committee may consider other related matters coming to the attention of the Director of the Division of Corporation Finance.

The Advisory Committee shall conduct its operations in accordance with the provisions of the Federal Advisory Committee Act.

The duties of the Committee shall be solely advisory and shall extend only to submitting reports and recommendations to the Director of the Division of Corporation Finance who has sole respon-

sibility for determining appropriate actions to be recommended to the Commission.

The Securities and Exchange Commission shall provide any necessary support services required by the Advisory Committee.

The estimated annual operating costs in dollars and staff years of the Advisory Committee are as follows:

Dollar costs: \$30,000 for travel, per diem, and miscellaneous expenses for committee members and Commission personnel.

Staff Years: 1 staff-year, per year, for Commission personnel on a continuing basis.

The Advisory Committee shall meet at such intervals as are necessary to carry out its functions. It is estimated that the meetings of the full committee generally will occur no more frequently than monthly.

The Advisory Committee shall terminate at the end of eighteen months from the date of its establishment unless, prior to such time, its charter is renewed in accordance with the Federal Advisory Committee Act, or unless the Chairman, with the concurrence of the other members of the Commission, determines that continuance of the Advisory committee no longer is in the public interest.

Fifteen days after this notice has been published in the FEDERAL REGISTER, notice of the establishment of the Committee will be filed with the Chairman of the Commission, the Senate Committee on Banking, Housing, and Urban Affairs, and the House of Representatives Committee on Interstate and Foreign Commerce. A copy of the Notice and the Charter also will be furnished to the Library of Congress and to the Office of Public Information of the Commission and will be available for public inspection.

The members of the Advisory Committee are:

1. Mr. Paul D. Weiser, Chairman
Senior Vice-President
Secretary & Corporate Counsel
Dataproducts Corporation

2. Mr. Kenneth Akeson, President
Independent Election Corporation
of America

3. Mr. W. Kenneth Bonds
Chairman, Trust Committee and
Executive Vice President
The Liberty National Bank and
Trust Company

4. Mr. Steven E. Fry
Corporate Secretary
Valero Energy Corporation

5. Mr. William L. Glosser
Secretary
Glosser Brothers

6. Mr. Earle J. Grimm, Jr.
Secretary
Esmark Corporation

7. Mr. John Hetherington
Secretary
Westvaco Corporation

8. Mr. Donald Heterich
Senior Vice President
Manufacturers Hanover Trust
Company

9. Mr. James H. Lynch, Jr.
Executive Vice President
and Secretary
Spears, Leeds & Kellogg

10. Mr. Michael Nelson
President
Continental Stock Transfer
and Trust Co.

11. Mr. J. William Robinson
Principal
Georgeson & Co.

12. Mr. William Smith
Manager, Proxy Operations
Merrill Lynch & Co. Inc.

13. Mr. John R. Worthington
Senior Vice President and
General Counsel
MCI Communications Corporation

14. Mr. J. Paul Wyciskala
Managing Director
Corporate Services Department
New York Stock Exchange

By the Commission.

George A. Fitzsimmons
Secretary

APPENDIX B

**SECURITIES EXCHANGE ACT OF 1934
Release No. 18195/October 21, 1981**

**REQUEST FOR COMMENTS ON ISSUES TO BE
ADDRESSED BY ADVISORY COMMITTEE ON
SHAREHOLDER COMMUNICATIONS**

**ACTION: REQUEST FOR COMMENTS BY ADVI-
SORY COMMITTEE.**

SUMMARY: The Advisory Committee on Shareholder Communications, through the facilities of the Commission, is soliciting public comment on several specific issues to be addressed by the Committee in connection with its consideration of ways to improve the process by which issuers communicate with the beneficial owners of securities registered in the name of a broker-dealer ("street name"), bank or other nominee.

DATE: Comments should be received by the Commission on or before December 5, 1981.

ADDRESSES: All comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-911. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Gregory H. Mathews, Office of Disclosure Policy, Division of Corporation Finance, Securities Exchange Commission, Washington, D.C. 20549, (202) 272-2589.

SUPPLEMENTARY INFORMATION: At the request of the Advisory Committee on Shareholder

Communications (the "Committee"), the Securities and Exchange Commission today published the Committee's request for public comments on several issues it is addressing. The Commission wishes to note that this solicitation is being made solely by the Committee and that the Commission merely is providing its facilities to assist the Committee in soliciting public comment from the widest possible public audience.

On April 10, 1981, the Securities and Exchange Commission announced the appointment of the Committee whose charter is to consider: (1) delays in proxy distribution and voting with respect to securities held by a participant in a depository on behalf of non-participants; (2) delays in proxy distribution and voting with respect to securities held in the name of broker-dealers ("street name") or in the name of a bank nominee; (3) the feasibility of providing a means for issuers to identify the beneficial owners of street or other nominee name securities; and (4) inconsistent practices relating to the dissemination of non-proxy corporate communications to the beneficial owners of nominee held securities. The Committee believes it is important that it be apprised of the viewpoints on these subjects of all persons and entities associated with, and affected by, the shareholder communications process, including members of the general public, individual shareholders whose stock is held in street or nominee name, issuers, banks, broker-dealers and transfer agents.

This release describes, among other things, a number of specific suggestions for improving the processes by which issuers communicate with their beneficial owners. The Committee is raising these suggestions for public discussion and is not, at this time, endorsing any of them. In view of the nature of these suggestions, the Committee strongly encourages persons and organizations with practical experience and expertise in these matters to comment upon the technical feasibility and costs of the proposals and to present alternatives which might better accomplish the same objectives. Comments should include, to the extent feasible, detailed empirical and experiential material in support of any conclusions, opinions or positions. Accordingly, the Committee hereby invites all interested parties to submit their views, in writing, on any or all of the issues set forth below or on any other matter relating to the process by which issuers and beneficial security owners of street or nominee held stock communicate.

ISSUES TO BE ADDRESSED

I. Improving Existing Procedures Relating to Distribution of Proxy Materials and Annual Reports

A. What aspects of the existing process for disseminating proxy material and annual reports (hereinafter referred to as proxy material) to the beneficial owners of street and nominee held securities cause the greatest problems for: (1) beneficial owners, (2) issuers, and (3) broker-dealers, banks, voting trustees or other nominees? In order to place any such problems in their proper context, please indicate, if possible, the percent of the securities of public corporations which is registered in street or other nominee name.

B. How can broker-dealers, banks and other nominees respond more promptly to issuer inquiries about the number of their customers who beneficially own street or nominee held securities?

C. How can issuers shorten the time currently taken to provide broker-dealers, banks or other nominees with the sets of proxy material they have requested?

D. How can broker-dealers, banks and other nominees shorten the time currently taken to mail the sets of proxy material they have received from issuers?

E. Existing Rule 14a-3(d) requires that if the issuer knows that securities of a class entitled to vote at a meeting are held of record by broker-dealers, banks, or other nominees, the issuer shall inquire of such record holders ten days prior to the record date for the shareholders' meeting in order to determine the number of sets of proxy material needed for such nominees to distribute the materials to their customers who beneficially own the securities registered in street or nominee name. Issuers currently must supply the requested sets of proxy material "in a timely manner."

Existing Rule 14b-1 requires brokers to respond promptly to issuer inquiries made pursuant to Rule 14a-3(d). Upon receipt of the proxy material and assurance that its reasonable expenses will be paid by the issuer, the broker must forward such materials promptly to customers with securities held of record by the broker or its nominee.

The Committee has under study the following preliminary proposals to improve the operation of existing Rule 14a-3(d) and Rule 14b-1:

1. A requirement that issuers make the inquiry of nominee record owners twenty or thirty days (or some other appropriate number of days) in advance of the record date for the shareholders' meeting instead of the present ten day advance notice standard;
2. A requirement that issuers send proxy materials to broker-dealers, banks, voting trustees or other nominees no less than thirty days (or some other appropriate number of days) prior to the meeting of shareholders;
3. Assuming issuers have sent proxy materials to nominees at least thirty days (or some other appropriate number of days) prior to the meeting date, a requirement that broker-dealers mail the proxy materials to beneficial owners twenty days (or some other appropriate number of days) prior to the shareholders' meeting;
4. A requirement that broker-dealers send proxy material to beneficial owners by first class mail;
5. A requirement, pursuant to Section 17A of the Securities Exchange Act or otherwise, that depositories require banks, as a condition for their participation in the depository system, to agree to disclose to issuers, upon their request, the identities of correspondent banks for whom they hold securities in nominee name, so that issuers will have the same level of information that they had prior to the advent of the layering of bank nominee ownership through depositories. Are these proposals practical, what are their advantages and disadvantages, and would they expedite the distribution of proxy materials?

What should the penalty be for failure to comply with such existing or amended rules?

F. What additional steps can the stock exchanges and the National Association of Securities Dealers ("NASD") take to improve the way in which issuers and/or broker-dealers disseminate proxy materials?

G. The great majority of nominee held securities are held by banks. The Committee believes that a significant amount of such holdings represent securities placed in custody (safekeeping) accounts by correspondent banks and other bank customers. Banks do not vote the uninstructed shares of their custody account holders. Moreover, banks are not currently subject to any regulatory requirements regarding the dissemination of issuer proxy material to beneficial owners. Presently initiatives are being undertaken within the banking community to improve their proxy soliciting performance. If such efforts do not succeed, should legislation be recommended in order to require that bank nominees report to issuers the number of bank customers beneficially owning the issuer's securities and, upon receipt of the requisite number of sets of proxy material, to disseminate proxy material to all beneficial owners of securities held in the name of bank nominees?

H. Should internal bank procedures be revised in order that the following records be kept with respect to proxy handling procedures:

1. Search card mailing dates;
2. Receipt dates of proxy materials, and
3. Mailing dates to beneficial owners?

I. It has been suggested that a major reason why annual meetings are held between March and June is the existing requirement that proxy material relating to an annual meeting at which directors are to be elected must be accompanied or preceded by an annual report containing certified financial statements. If this requirement were amended to permit distribution of such an annual report along with interim unaudited quarterly reports covering the period since the end of the last fiscal year, would issuers prefer to hold their shareholders' meeting at some time other than

during the period between March and June? Would such changes in the dates of annual meetings improve the process of distributing proxy materials?

II. Improving Existing Proxy Voting Procedures

A. Existing rules of the stock exchanges permit member organizations to vote the nominee-held securities of their customers without instructions on any matter which is uncontested, adequately disclosed and does not involve authorization for a merger, consolidation or any other matter which may substantially affect the rights or privileges of shareholders. The rules provide that if the proxy material is transmitted to beneficial owners at least twenty-five days before the meeting the broker can vote the uninstructed shares fifteen days before the meeting. If the proxy material is transmitted at least fifteen days prior to the meeting, then the broker can vote uninstructed shares ten days before the meeting. If the proxy material is mailed less than fifteen days in advance of the meeting, then member organizations are not permitted to vote on any matter without instructions from the beneficial owners. The Rules of Fair Practice of the NASD permit its members to vote customer shares if they comply with the pertinent rules of one of the exchanges. These self-regulatory rules permitting broker-dealer voting collectively are referred to as "the ten-day rules." Under the present system, when broker-dealers exercise their right to vote shares without instructions, they vote "for" the issuer's nominees and positions.

1. Should the uninstructed shares of beneficial owners be voted for quorum purposes only?
2. Should the existing restrictions as to the matters on which broker-dealers are permitted to vote uninstructed customer proxies be eliminated or relaxed?
3. Should broker-dealers establish procedures whereby the beneficial owners of securities held in the name of such broker-dealers can more readily avail themselves of the opportunity to designate their broker-dealer to be their voting fiduciary? Such Fiducia-

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ries would have responsibility for voting shares in a manner that serves the interests of the beneficial owners when proxy materials have been distributed, but voting instructions from the beneficial owners have not been received, by a specified number of days in advance of the shareholders' meeting?

4. The Committee has under study a preliminary proposal to recommend amendment of the proxy rules of the stock exchanges. It is proposed that in order for issuers to obtain the requisite yes or no vote on various substantive business matters, such as recapitalizations, mergers and stock options, which at present often fail for lack of the required number of voted shares, member organizations be required to vote the uninstructed shares of beneficial owners proportionately. Unvoted shares of beneficial owners would be voted only in the same percentages on various questions as the vote of certain other proxies that had been recorded.

a. Under this proposal, should broker-dealers be required to give a proxy to the issuer which states that the uninstructed shares of their customers shall be voted in the same portion as the votes cast by all other security holders voting either by proxy or at the meeting of security holders? or

b. Should broker-dealers be required to give a proxy to the issuer which states that the uninstructed shares portion as the votes cast by all beneficial owners providing instructions to nominees? or

c. Should each broker-dealer be required to vote uninstructed shares in the same proportion as the votes cast by his customers who provide voting instructions?

d. Under this proposal should there be restrictions on the type of voting

questions or issues (e.g., proxy contests, shareholder proposals) for which this procedure should be permitted?

e. Should banks revise their standard custody account agreements in a manner which gives bank nominees authority to vote uninstructed shares proportionately, as outlined above, where the bank has mailed proxy material to account holders at least twenty days in advance of the meeting date and has received no voting instructions by the tenth day before the meeting date?

5. Should the present or expanded ten-day rules, and related proxy voting mechanisms, be more explicitly explained to beneficial owners at the time they make the decision not to be the record owner of the securities? If so, how should this be accomplished in the case of broker-dealers and in the case of other nominees?

B. What is the experience of issuers in recent years with respect to: (1) the percent of shares voted for quorum purposes and (2) the percent of shares voting on substantive matters for which broker-dealers are not permitted to vote, pursuant to the ten-day rules, without customer instructions?

C. Are foreign shareholders in American corporations reluctant to vote? If so, does this pose a problem for (1) quorum purposes, and (2) routine or substantive matters to be acted on at shareholders' meetings?

III. Improving Existing Procedures Relating to Distribution of Non-Proxy Corporate Communications (i.e. interim reports, letters, surveys)

A. The existing rules of the stock exchanges require listed companies to publish interim financial statements, but do not require that such information be distributed to shareholders, although such distribution is encouraged. However, the rules of the stock exchanges require that such information be distributed to beneficial owners by member organizations upon request from the issuer and as-

insurance that their reasonable expenses will be reimbursed.

1. Do some issuers disseminate certain non-proxy corporate communications only to record security holders and not to beneficial owners of street or other nominee held securities? Should issuers be required to disclose their procedures in this regard?
2. Should issuers be required to send the same non-proxy communications to beneficial owners that they send to other security holders of record?
3. Should issuers be required to disseminate interim reports to shareholders pursuant to a rule similar to Rule 14a-3(d)?
4. Should there be a distinction between larger and smaller companies in connection with any requirements for the dissemination of non-proxy corporate communications?

If so, what should be the basis for any such distinction?

B. Are issuers aware that beneficial owners of street or nominee held securities normally will not receive the issuer's interim reports and other non-proxy corporate communications unless the issuer makes an inquiry of all nominees in a manner similar to the inquiry issuers undertake in connection with the dissemination of proxy materials?

C. What other aspects of the existing system for conveying non-proxy communications from issuers to beneficial owners of street or nominee held securities cause the greatest problems for: (1) beneficial owners, (2) issuers, and (3) broker-dealers, banks, voting trustees or other nominees?

IV. Feasibility of a Direct Communication System

In response to a number of comments and complaints from shareholders of issuers, the Committee has under study a preliminary proposal which would recommend that broker-dealers, banks, voting trustees and other nominees be required to provide the identities and ownership positions of

their non-objecting beneficial owners to the issuers of such stock, or their designated agent, at least once per year as of the record date for the issuer's shareholders' meeting. There are a variety of views within the committee itself as to the ultimate feasibility and cost-effectiveness of any such system of direct communication. The presentation of this preliminary proposal is not to be taken as an endorsement by the Committee, at this time, of any such system.

Under this system, nominees would be required to inquire of their beneficial owners as to whether they would object to the release of their identities to issuers for the specific purpose of direct communication between the issuer and the beneficial owner. Inquiry of new accounts would be made by including a statement authorizing release of ownership information in the agreement the customer signs as part of the account opening procedures. Inquiry of existing accounts would be made by mail. The inquiry of existing accounts would provide for a yes or no response and would indicate that unless a no response was received by the intermediate record owner, identity and ownership position information would be provided to the issuer for so long as the beneficial owner continued to not object. All inquiries would include a representation of confidentiality which would preclude the use, by the issuers or their agents, of this information for any purpose other than corporate communications.

Nominees would be required to maintain a list of all beneficial owners coded or separated into objecting and non-objecting groups and to make the list of non-objecting beneficial owners available to issuers at the appropriate time.

Prior to the record date for their shareholders' meeting, issuers would be able, by use of a search card similar to the one presently used (see Rule 14a-3(d) of the Securities Exchange Act), to request from such nominees a list of the identities of their non-objecting beneficial owners and their share balances. The search card would set forth the issuer's responsibility for communicating with the non-objecting beneficial owners and its obligation to otherwise safeguard the confidentiality of the information received. The search card would indicate the record and meeting dates and to whom the information should be delivered. The search card also would request information as to the number of sets of material the nominee re-

quired in order to distribute proxy material to the objecting beneficial owners. The nominee would be required to respond by providing, within five business days after the record date, the required information in at least two uniform formats—one hard copy and one set of labels. Issuers wishing to receive the information by other means, or in other formats, could make such arrangements with individual nominees, where possible.

Where an intermediary maintains other intermediate record owners, such as correspondent banks, on its list of beneficial owners, the first intermediary would be responsible for forwarding the issuer's search card to the other intermediary, so that the latter could provide a list of its beneficial owners directly to the issuer.

Issuers, or their agents, would receive the lists and labels of the beneficial owners from the various intermediaries beginning approximately five days after their record date. The issuers would be responsible for collecting, collating and maintaining these lists in the manner best suited to their efficient use for the purpose of direct communication with shareholders. Each issuer would then mail its proxy material directly to beneficial owners who would return their marked proxies directly to the issuer, or its agent. In some cases, such as those involving objecting beneficial owners or other exceptions to the rules, proxy communications would continue to be handled in the present manner.

In connection with this proposal, commentators are urged to consider the following questions:

A. Are the two formats for response (hard copy and labels) described above technically practicable? Would the means of transmitting beneficial owner information have to be standardized and, if so, in what manner? If not, could issuers adequately assimilate into their computer systems the variety of formats (tape, paper, etc.) in which the information might be received from hundreds of nominees? Would some issuers have to process these lists by hand? Would it be practical to require that each nominee supply a printout of names and shareholdings and, if so, could this format be more easily assimilated?

B. In analyzing costs, the Committee believes it

would be useful to take the following factors into account:

1. The availability of existing automated systems for transmission of beneficial owner data;
2. The amount of work required to restructure existing automated systems;
3. Cost calculations should assume certain cost-benefits resulting from electronic media transmission of beneficial owner data, even though the proposal suggests only labels and hard copy as a requirement;
4. To the extent automated transmission systems from nominees are not available, the cost of conversion of labels and hard copy to a form which can be utilized by large issuers.

Taking into account these factors, what would be the increased or decreased cost of developing and operating the system described above to all participants, including issuers, transfer agents, banks, broker-dealers and other nominees?

C. If adopted, should the direct communication system be mandatory on all issuers or voluntary? What increased costs, if any, would be incurred on account of some issuers opting out? Should only issuers of a certain size be allowed to opt out?

D. How should the burden of any increase in costs, or the savings of any decrease in costs, resulting from the system be allocated?

E. What sort of "omnibus proxy" would have to be provided to issuers by the nominees in order to correctly match received proxies with record ownership so that the proxies will be voted in the proper record account?

F. Is it practical to expect all the lists from first and lower tier nominees to be timely received by issuers so that a timely mailing can be made?

G. What steps could be taken to avoid, and what actions could be taken to solve, "double counting"?

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and votes in excess of 100%, which could occur if nominees inadvertently also made mailings to one or more persons who were non-objecting beneficial owners?

H. What reprogramming and list maintenance steps will have to be taken by transfer agents in order to permit their computer system to tabulate the additional individual proxies? Would the names have to be entered into such systems for mailing and tabulation purposes?

I. Are there any state or federal laws or regulations which would preclude a broker-dealer, bank, voting trustee or other nominee from providing the identity of the beneficial owner to the issuer? If so, please identify. If so, would they apply if beneficial owners had been given an opportunity to object to the release of their identities to the issuer and had failed to respond in writing within a specified period of time; or would it be necessary to have an affirmative written consent?

J. Should issuers be permitted to utilize an intermediary entity to collect from broker-dealers, banks, voting trustees or other nominees, the identities of non-objecting beneficial owners and to compile a list of such beneficial owners as of the issuer's record date for the purpose of disseminating proxy materials?

K. Should the list of beneficial owners be available, at the request of the issuer, on a more frequent basis than annually? If so, should the issuer bear the cost? Should the list be updated by making additions and or deletions from time to time?

L. Should the system be used only for distribution of proxy material or should it be available to be used for all corporate-shareholder communications (i.e. interims, shareholder surveys, etc.)?

M. If there are other possible ways to structure a direct communication system, what specific structure would be best?

N. In view of the possible problems associated with a dual mailing system for objecting and non-objecting beneficial owners, should such lists of non-objecting beneficial owners only be made available to issuers for shareholder identification purposes and communications not related to proxy solicitation?

Would the furnishing of such lists of only non-objecting beneficial owners for only this purpose be of practical value to issuers?

By the Commission.

George A. Fitzsimmons
Secretary

APPENDIX C

List of Commentators
Release No. 34-18195

A. Corporations (170)

ACMAT Corporation
Advertising Unlimited, Inc.
Aegis Corporation
Aetna Life & Casualty
Allied Corporation
Aluminum Company of America
Amalgamated Sugar Company (The)
American Bankers Insurance Group
American Can Company
American Hoist & Derrick Company
American Leisure Corporation
American Telephone & Telegraph Co.
Anchor Hocking Corporation
Angelica Corporation
ASARCO, Inc.
Autodynamics, Inc. (2 letters)
Bairnco Corporation
Beverly Enterprises (2 letters)
Bluewater Oil & Gas Corporation
Binney & Smith Inc.
Bio-Rad Laboratories
Birtcher Corporation
Boise Cascade Corporation
Bomaine Corporation
Burson-Marsteller
Cabot Corporation
CBT Corporation
Charles E. Campbell & Assoc.
Cleveland Electric Illuminating Company
Communications Industries, Inc.
Computer Directions Advisors, Inc.
Computervision Corporation
Conrac Corporation
Consolidated Edison Company
Consolidated Papers, Inc.
Cram Exploration Corporation
Crutcher Resources Corporation
Dayco Corporation
Delta Drilling Company
Dietrich Resources Corporation

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Dorchester Gas Corporation
Doremus & Co.
Dresser Industries, Inc.
Dyco Petroleum Corporation
Eaton Corporation
Edison Sault Electric Company
E.I. DuPont DeNemours & Company
Electronics, Missiles, Communications, Inc.
Evans Products Company
Exxon Corporation
Federal National Mortgage Association
Federal Signal Corporation
Ferrofluidics Corporation
Fischer & Porter Company
Florida Cypress Gardens, Inc.
Foremost-McKesson, Inc.
Foxboro Company (The)
GCA Corporation
General Electric Company
Genisco Technology Corporation
Geosource, Inc.
Gradison & Company Inc.
Great Western Financial Corporation
Gulf Oil Corporation
Hazleton Laboratories Corporation
Heights Finance
Heizer Corporation
Hellenbrand Industries, Inc.
Hi-Shear Industries, Inc.
Holly Corporation
Houston Industries, Inc.
Huffy Corporation
Hughes Tool Company
Intelligent Systems
Instrument Systems Corporation
Inter-Continental Energy Corporation
International Business Machines Corporation
International Proteins Corporation
International Telephone and Telegraph Corp.
Iowa Resources, Inc.
J.C. Penney Company
Kaman Corporation
Keystone Portland Cement Company
Killearn Properties, Inc.
Kuhlman Corporation

Life Investors, Inc.
Lockheed Corporation
Lone Star Industries
Long Island Lighting Company
Lukens Steel Company
Madison Gas and Electric Company
Martin Marietta Corporation
Maryland National Corporation
Mayflower Corporation
MGIC Investment Corporation
Merck & Co. Inc.
Metpro Corporation (2 letters)
Michigan General Corporation
Modine Manufacturing Co.
Montana Power Company
Moran Energy, Inc.
Narragansett Capital Corporation
NBI, Inc.
New England Electric System
Nicklos Oil & Gas Company.
Northwest Airlines, Inc.
Numerax, Inc.
Object Recognition System, Inc.
Oilgear Company (The)
Omark Industries
Oklahoma Natural Energy Company
Ormand Industries
Otter Tail Power Company
PACCAR, Inc.
Pacific Gas and Electric Company
Parker Pen Company (The)
Petrolite Corporation
Petro-Silver, Inc.
Pfizer, Inc.
Phillip Morris, Inc.
Phone-a-gram System
Photo Control Corporation
Piper Hydro Inc.
Prairie Producing Company
Procter & Gamble Company
Ransburg Corporation.
Rayrock Resources Limited
Restaurant Associates Industries, Inc.
Robbins & Myers Inc.
RPM, Inc.
Santa Fe Industries, Inc.

Schonfeld & Associates, Inc.
Schorr and Howard Co.
Sears Roebuck and Company
Servicemaster Industries, Inc.
Sheldahl, Inc.
SI Handling Systems, Inc.
Silvey Companies
South Carolina National Corporation
Sorg Paper Company (The)
Southern Company
Southwest Gas Corporation
Standard Oil Company of California
Starwick Corporation (The)
Stewart & Stevenson Services, Inc.
Sykes Datatronics, Inc.
Target Oil & Gas Incorporated
TEC, Inc.
Templeton Energy, Inc.
Texas American Energy Corporation (2 letters)
Texas Instruments, Inc.
Transco Companies, Inc.
Trans-Lux Corporation
Tyrex Oil Company
3M
Union Carbine Corporation
Union Oil Company of California
United Michigan Corporation
Union Pacific Corporation
United States Gypsum Company
United Technologies Corporation
Varco International
Warner Lambert Company
Western Company of North America
Westinghouse Electric Corporation
Wilson Foods Corporation
Wisconsin Electric Power Company
Wisconsin Power & Light Company
Wurzburger, Morrow & Keough, Inc.
Zentec Corporation

B. Banks (50)

American National Bank and Trust Company
Barnett Banks of Florida
BayBanks, Inc.

Chemical Bank
Citibank
City Federal Savings and Loan Association
Continental Illinois National Bank
Connecticut Bank and Trust Company (The)
Dominion Bankshares Corporation
Equitable Trust Company (The)
Federal National Mortgage Association
Fifth Third Bank, The
First Atlanta Corporation
First National Bank of Tuscaloosa
First National Bank of Warsaw
First Trust Company of Saint Paul
First Wichita National Bank
Frost National Bank
Girard Bank
Great Western Financial Corporation
Heritage Bank
Heritage Bancorporation
Hospital Trust Corporation
Indiana National Bank
Manufacturers Hanover Trust Company
Marine Midland Bank
Mercantile Trust Company N.A
Morgan Guaranty Trust Company of New York
National Bank of Jackson
Northwestern National Bank of Minneapolis
Pacesetter Bank & Trust-Southwest
Planters National Bank and Trust Company (The)
Provident National Bank
Puget Sound National Bank
Republic National Bank of Dallas
Seattle Trust & Savings Bank
Security Pacific National Bank
Shawmut Bank of Boston
State Street Bank and Trust Company
The Bank of New York
The Fidelity Bank
The First National Bank of Boston
The First National Bank of Chicago
The Provident Bank (2 letters)
Union Trust Bank
Union Trust Company of Maryland
United Missouri Bank
United States National Bank of Oregon
Valley National Bank of Arizona
Wilmington Trust Company

C. Securities Industry (8)

Depository Trust Company
Howard, Weil, Labouisse, Friedrichs, Inc
Langill & Co.
Merrill Lynch & Co., Inc.
Q & R Clearing Corporation
Schwab, Charles Co., Inc.
Securities Industry Association Proxy Division
Viner, Edward A. & Co. Inc. -

D. Law Firms and Associations (1)

Miller, Nash, Yerke, Wiener & Hager

E. Trade and Professional Associations (15)

American Bankers Association
American Bar Association, Subcommittee
on Proxy Solicitations and Tender Offers
American Society of Corporate Secretaries,
Securities Industry Committee
Corporate Advisory Committee of the National
Association of Securities Dealers
Corporate Transfer Agents Association
Foundation For the Study of Philanthropy, Inc.
Listed Company Advisory Committee to the
American Stock Exchange
Listed Company Advisory Committee to the
Board of Governors of the New York Stock Exchange
National Association of OTC Companies
National Investors Relations Institute
New York County Lawyers' Association
Ohio Bankers Association, Trust Division
Securities Transfer Association of New York
Stockholder Sovereignty Society
Stock Transfer Association, Inc. (2 letters)

F. Individuals (5)

Berdan, Janet G.
McKeown, E. S.
Parsons, Gerald A.
Shemtob, Richard
Stern, Henry

APPENDIX D



MANUFACTURERS HANOVER TRUST COMPANY

600 FIFTH AVENUE, NEW YORK, N. Y. 10020

A. WARD IVES
VICE PRESIDENT

January, 1982

AN IMPORTANT MESSAGE TO OUR CORRESPONDENT

BANK CUSTOMERS

Many companies for which we mail proxy material have expressed growing concern with a declining vote at their annual meetings in recent years. Among the reasons cited for this decline is the "layering" of nominees caused by "piggy-backing" securities into Depository Trust Company or registering your stock in one of our nominees. Companies need a quorum of stockholder shares, represented in person or by proxy, before they can conduct their annual meetings.

You may have already received proxy material on some of the stocks we hold for you. Because the height of the "proxy season" normally occurs in April, you may receive more material from us. We hope you will urge your clients to exercise their voting responsibilities promptly. If a client does not wish stock voted at a shareholders' meeting, we suggest that the "abstain" boxes be checked, and the proxy card returned to the corporation so the shares can be counted toward a quorum.

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MANUFACTURERS HANOVER TRUST COMPANY

600 FIFTH AVENUE, NEW YORK, N. Y. 10020

A. WARD IVES
VICE PRESIDENT

January, 1982

AN IMPORTANT MESSAGE TO OUR CLIENTS

Early in 1980 and 1981, we sent many of you a letter urging you to vote the proxies we forward for the stocks we hold in your accounts. Your response has been extremely positive, both in the increased vote received by your companies, and in the interest you have shown about the way we forward proxy material to you.

As you know, many companies are concerned about the decline of stockholder voting in recent years. Companies require a quorum of stockholder shares, in person or represented by proxy, before they can conduct their annual meetings. Recent amendments in proxy rules now give stockholders the option to withhold a vote from any or all candidates for election to a Board of Directors and to abstain from voting on any or all proposals, as well as the option to vote specifically for or against directors and proposals. If you do not want your stock voted at an annual meeting, we suggest you check the "abstain" boxes and return the proxy card to your corporation so that your shares can be counted for quorum purposes.

Last year, we adopted the policy of forwarding each company's annual report with its proxy card and proxy statement. We believe this additional material is informative, and hope it will assist you in making judgements about the increasingly complex issues presented at your companies' meetings.

L. Ward Ives

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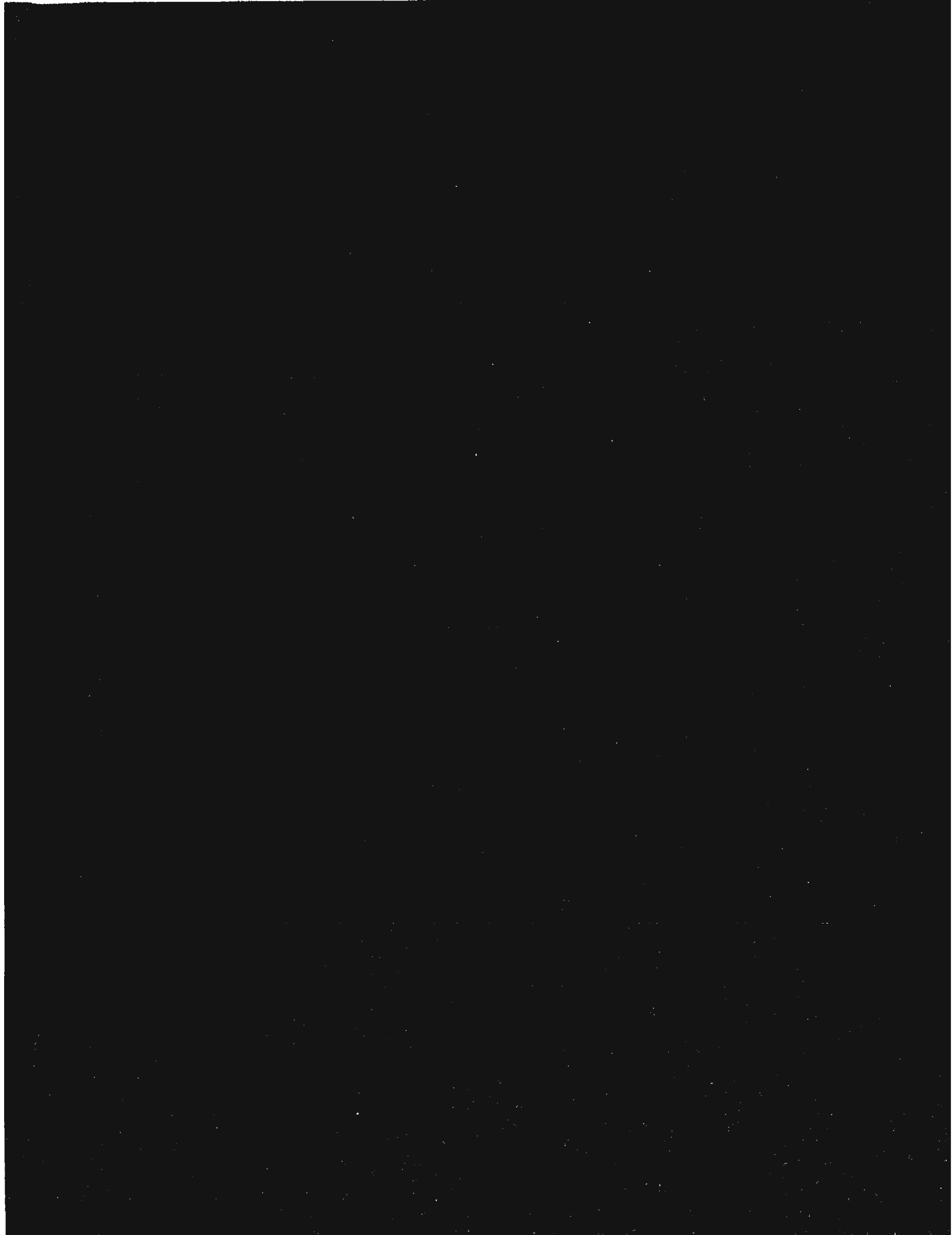
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[COMMITTEE PRINT]

FINAL REPORT
OF THE
SECURITIES AND EXCHANGE COMMISSION
ON THE PRACTICE OF RECORDING THE OWNERSHIP OF
SECURITIES IN THE RECORDS OF THE ISSUER IN OTHER
THAN THE NAME OF THE BENEFICIAL OWNER OF SUCH
SECURITIES

Pursuant to Section 12(m) of the
Securities Exchange Act of 1934



DECEMBER 3, 1976

Printed for the use of the
Committee on Interstate and Foreign Commerce

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1976

80-014

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20540 - Price (\$1.40) cents

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LETTER OF TRANSMITTAL

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., December 8, 1976.

HON. NELSON A. ROCKEFELLER,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT:

HON. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: I have the honor to transmit herewith the Final Report of the Securities and Exchange Commission pursuant to Section 12(m) of the Securities Exchange Act of 1934 (the "Act") which authorizes and directs the Commission to make a study and investigation of the practice of recording the ownership of securities in other than the name of the beneficial owner—commonly referred to as "street" and "nominee" name registration—to determine whether the practice is consistent with the purposes of the Act, with particular reference to Sections 12(g), 13, 14, 15(d), 16 and 17A and whether steps can be taken to facilitate communications between issuers and the beneficial owners of their securities while retaining the benefits of the practice.

In carrying out the Study, the Commission made an extensive survey of issuer-shareowner communications during the 1976 proxy season and developed comprehensive data concerning the operation of the current system of issuer-shareowner communications and its relationship to, and impact on, securities processing. On the basis of these data, the Commission has concluded that the continued use of street and nominee name arrangements is fundamental to the operation of existing securities processing systems and that, in general, issuer-shareowner communications are being effectively carried out within the current framework. The Commission has identified certain problems in the system, however, which can be mitigated through improved performance by issuers and brokers and has made recommendations to accomplish this. In addition, the Commission has identified and made recommendations concerning ways in which the existing system could more fully satisfy Congressional expectations with respect to public disclosure of information regarding beneficial owners whose holdings may enable them to influence corporate management or affect the market in an issuer's stock.

In light of the data obtained during the course of the Study, the Commission believes that, in conjunction with its ongoing regulatory programs, implementation of the recommendations made in the Final Report will facilitate the establishment of a national clearing and settlement system at an early date and make significant contributions to achievement of other of the Act's objectives.

Very truly yours,

RODERICK M. HILLS, *Chairman.*

ACKNOWLEDGMENTS

Subject to the overall responsibility of Lee A. Pickard, Director of the Division of Market Regulation, the work of this Study was headed by Robert J. Millstone, Senior Special Counsel. The staff for the Study was comprised of attorneys Dennis E. Carlton, D. Kevin Dolan, Phillip M. Huston, Jr., and C. Eston Singletary. Anthony C. J. Nuland, Associate Director of the Division of Market Regulation, provided substantial guidance and editorial assistance. Assistant Director Le Manh Tri, James P. Burgess, and Jeffry L. Davis of the Directorate of Economic and Policy Research performed much of the analysis of the data collected during the Study.

Mention should be made of the following members of the Commission's Office of Data Processing who processed the statistical data generated by the Study: Branch Chief Richard T. Redfearn, Albert Madeoy, Kenneth R. Brown, Richard L. Hooper, and Marvin C. Perry. Mention should be made also of the members of the staff of the Office of Securities Processing Regulation of the Division of Market Regulation who read the drafts of the Final Report and of Terry M. Chuppe, Senior Economics Officer for the Division, and financial analyst Daniel L. Bateman who advised on statistical matters.

Special recognition must be given to the Division's Administrative Officer, Sandra V. Reilly, for her patient and constant support and to the clerical and secretarial staff, particularly Regina M. Budd, Carla King, Valerie L. Krohn, Janice M. Merkle, E. Carol Niedzialek, Tiscia Pal, Kimberly A. Soibel and Kitty L. Welsh, without whose skill and dedication the Study could not have been completed.

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CHAPTER I INTRODUCTION

A. Background

The practice of registering securities in the records of issuers in other than the name of the beneficial owner is commonly referred to as "nominee" and "street" name registration. Nominee name registration refers to arrangements used by institutional investors (insurance companies and investment companies among others) and financial intermediaries (brokers, banks and trust companies) for the registration of securities held by them for their own account or for the account of their customers who are the beneficial owners of the securities.¹ Street name registration, a specialized type of nominee name registration, refers to the practice of a broker registering in its name, or in the name of its nominee, securities left with it by customers or held by it for its own account.

American institutions first began extensively to register securities in nominee name in the 1930's² in an effort to escape onerous transfer requirements placed on corporations and fiduciaries by issuers seeking to protect themselves from judicially imposed liability for improper transfers.³ Customarily, issuers required the submission of all supporting documents⁴ before transferring stock held by fiduciaries and required corporate investors to demonstrate the authority and incumbency of the individual officer or employee acting on their behalf.⁵ The use of the nominee as the registered holder of stock eliminated from the issuer's records any evidence of a fiduciary relationship and made the recordholder a non-corporate entity. Thus nominees could transfer securities without meeting the requirements placed on corporate or fiduciary shareholders.⁶

¹ A nominee is, typically, a partnership formed exclusively to act as the recordholder of securities. Each of the nominee's general partners is an employee of the professional fiduciary or corporate institutional investor and legally is empowered to make transfers of nominee stock. As employees depart or assume other duties, they retire from the partnership, and new partners are admitted so that the partnership continues as a creature of the parent entity. Often, the partnership name is short, is derived from the name of a partner or former partner, and includes at the end "& Co.," the traditional indication of a partnership. The name may have no relation to the name of the fiduciary or institution for which the nominee acts.

² Brokers at that time employed street name registration primarily as a convenient method of holding securities pledged by customers in connection with margin transactions and as a means of avoiding transfer taxes. S. Rep. No. 1455, 73d Cong., 2d Sess. 76 (1934).

³ An issuer transferring record ownership of its securities was obligated to protect equitable, or beneficial, interests, as well as legal, or record, interests. If the character of a transfer made in breach of trust were discoverable on reasonable inquiry, failure to make that inquiry rendered the issuer liable to the beneficial owner. This doctrine was established in *Lowry v. Commercial and Farmers' Bank*, 15 F. Cas. 1040 (No. 8381) (C.C. Md. 1846), which held that corporations were responsible for the propriety of transfers of their stock by fiduciaries. A corporation was "the custodian of the shares of stock, and clothed with power sufficient to protect the rights of everyone interested, from unauthorized transfers; it is a trust placed in the hands of the corporation for the protection of individual interests, and like every other trustee it is bound to execute the trust with proper diligence and care, and is responsible for any injury sustained by its negligence or misconduct." *Id.* at 1047.

See also Ballantine, *Corporations* § 323 (rev. ed. 1946); Christy, *The Transfer of Stock* § 2 (5th ed. 1972); Levy, *Private Corporations and Their Control* 21-26 (1950).

⁴ For example, a certified copy of the will, trust instrument, or court order of sale.

⁵ See Christy, "Responsibilities in the Transfer of Stock," 33 Mich. L. Rev. 701 (1955); Conrad, "Simplifying Securities Transfers," 30 Rocky Mt. L. Rev. 33 (1957); Note, "Corporate Liability for Registration of Unauthorized Fiduciary Transfers of Stock," 43 Yale L. J. 92 (1933).

⁶ For an extended discussion of the historical development of the practice of using street and nominee names in the records of the issuer, see the Securities and Exchange Commission's *Commission on the Practice of Incorporating the Name of the Issuer in the Records of the Issuer in Other than the Name of the Beneficial Owner of Such Securities* (December 4, 1970) ("Preliminary Report").

Nominee registration still serves to facilitate transfers, but today it provides other important benefits to the securities industry as well. The widespread use of nominee registration, however, has collateral effects which may be disadvantageous. First, it makes communications between issuers and their shareowners more circuitous due to the interpositioning of intermediaries. Second, it tends to complicate regulation by masking beneficial owners of securities. Third, since the jurisdiction of certain sections of the Securities Exchange Act of 1934 (the "Act") is based upon a shareholder-of-record standard, the concentration of securities ownership in nominees may have the effect of inappropriately removing or excluding issuers from the jurisdiction of the Act.

Because of concern regarding these consequences, Congress, in June 1975, enacted Section 12(m) of the Act. Section 12(m) authorized and directed the Commission to undertake a study and investigation of the practice of recording the ownership of securities in the records of the issuer in other than the name of the beneficial owner of such securities and to determine (1) whether the practice is consistent with the purposes of the Act, with particular reference to Sections 12(g), 13, 14, 15(d), 16 and 17A thereof, and (2) whether steps can be taken to facilitate communications between issuers and the beneficial owners of their securities while at the same time retaining the benefits of such practice. Section 12(m) directed the Commission to report its preliminary findings to Congress within six months after enactment of the section and its final conclusions and recommendations within one year.

In December 1975, the Commission filed its Preliminary Report with Congress. The Preliminary Report set forth a history of the practice of registering securities in street and nominee name and discussed generally the impact of the practice on the purposes of the Act. Thereafter, it presented seven possible approaches to shareowner communications and standards for evaluating them.

In order to make this evaluation, the Commission determined to develop an empirical model of the issuer-shareowner communications system based upon a survey of shareowners, brokers, banks and issuers. Issuer-shareowner communications, however, tend to be seasonal. Since most issuers have their annual meetings in the spring and early summer, the transmittal of the bulk of proxies and annual reports takes place during March, April, May and June (referred to as "proxy season"). The survey, therefore, was designed to reflect the activities of issuers and intermediaries⁷ and the concerns of shareowners during proxy season, when the system is under the greatest stress.⁸

Accordingly, in April 1976, the Commission sought from Congress a six-month extension to December 4, 1976, of the deadline for filing the final report of the Study. On June 7, 1976, the House of Representatives passed H.R. 13246, a bill granting the extension. S. 3471, comparable legislation in the Senate, was not acted upon. Because the data to be derived from the survey were essential to permit the Commission to make the thorough and decisive determinations

⁷ As used herein, "intermediaries" means brokers and banks which hold securities in their name or the name of their nominee for the benefit of others.

⁸ The Commission considered a survey which would have focused upon one or more past proxy seasons, but numerous interviews led the Commission to conclude that much of the necessary information would not be available on an historical basis or would be available only in permanent files and would require significant manual effort to retrieve.

required by Section 12(m), the Commission decided to complete the survey and to submit its report to Congress at the earliest possible date.

B. Data Sources for the Study

The Study has drawn the information presented herein from a number of sources. Almost 100,000 questionnaires were distributed to shareowners and over 23,000 were returned. Detailed questionnaires were completed by 159 issuers, 118 brokers, and 149 banks.⁹ Interviews were conducted throughout the country with representatives of issuers, brokers, banks, and other organizations.

In addition, the American Society of Corporate Secretaries surveyed 422 of its members concerning the approaches to shareowner communications set forth in the Preliminary Report and supplied the results to the Commission. Useful information was provided also by the American Bankers Association and several regional bankers' associations, the American Telephone and Telegraph Company, the Committee of Publicly Owned Companies, the Corporate Transfer Agents Association, Inc., Merrill Lynch, Pierce, Fenner & Smith Inc., the Securities Industry Association, the Western Stock Transfer Association, Inc., and many other commentators.

C. Organization of the Final Report

The Final Report is divided into five chapters. Following this introductory chapter, each chapter consists of a discussion, conclusions, and recommendations. Chapter Two discusses the benefits of the practice; Chapter Three considers the impact of the practice on shareowner communications; Chapter Four considers the effect of the practice on the disclosure and dissemination of information about the identity and holdings of beneficial owners of securities; and Chapter Five reviews the effect of the practice on the jurisdictional provisions of the Act.

D. Summary of Conclusions and Recommendations

1. Benefits of the Practice of Registering Securities in Nominee and Street Name

The Commission has concluded that the practice of registering securities in the records of the issuer in other than the name of the beneficial owner of such securities is consistent with the purposes of the Act, with particular reference to Sections 12(g), 13, 14, 15(d), 16 and 17A. The practice benefits investors and the securities industry by facilitating the transfer of record ownership and the clearance and settlement of securities transactions. In addition, it is integral to the operation of securities depositories. At the same time, the widespread use of nominee and street name registration causes certain problems. The Commission has found, however, that established procedures have overcome many of these problems, and the Commission believes that the problems which remain can be mitigated within the framework of the current system.

⁹ Hereinafter referred to as the "responding issuers," the "responding brokers," and the "responding banks," respectively. Selected data from the questionnaires are summarized in Appendix B. As to the sampling technique used in these surveys, see Appendix D.

~~The Commission, therefore, recommends that no steps be taken which would discourage the use of nominee and street name registration or diminish the benefits which the practice provides.~~

2. The Practice as It Affects Issuer-Shareowner Communications

Empirical data demonstrate that the existing issuer-shareowner communications system is, on the whole, effective in transmitting materials to shareowners in a timely manner and in providing an effective mechanism for the solicitation of proxies. Moreover, most issuers perceive the system as meeting their needs, and all but a small percentage of shareowners, whether they hold stock directly or through a broker or bank, are satisfied with the service they receive. Brokers and banks strongly favor retention of the current system.

While problems exist, they are not evidence of systemic weaknesses but result from failures by individual brokers and issuers. In general, legislative or regulatory action does not appear to be necessary to correct these problems. Rather, improved compliance with self-regulatory rules and industry-wide implementation of generally accepted standard procedures for the distribution of annual reports and the solicitation of proxies would resolve most of them.

In regard to the voting of securities, Congress has been concerned that large institutions, particularly banks, may exercise undue influence in the affairs of publicly-held companies by voting securities held by such institutions for the benefit of others. Banks normally vote securities held pursuant to custody and trust arrangements which empower the banks to exercise voting discretion. Several years ago it was also common for banks to vote securities over which they did not have a specific written grant of voting authority from the beneficial owner. In response to Congressional and other criticism, all but a small percentage of the nation's banks appear to have ceased that practice.

In the brokerage community, most members of national securities exchanges, acting pursuant to the rules of those exchanges, vote securities without written authorization on certain non-controversial matters. The Commission considered whether this voting resulted in brokers exercising undue influence on corporate affairs or impinged on customers' voting rights. After reviewing the matter, the Commission has concluded that because of requirements and limitations in those rules, such voting is not improper. At the same time the Commission has found certain problems with those rules which could lead to inappropriate voting in some situations.

~~The Commission has concluded that none of the alternative approaches to shareowner communications presented in the Preliminary Report, at this time, could effect improvements in issuer-shareowner communications at an acceptable cost while preserving the advances made in recent years in the processing of securities transactions. The transfer agent depository concept ("TAD")¹⁰, however, appears to exhibit promise as a long-term means for streamlining shareowner communications. In rejecting the other alternatives, the Commission considered carefully the strong desire of many issuers for direct communications with their shareowners. Each method considered for~~

¹⁰ The TAD concept is discussed in/78 p: 41a

effecting direct communications would have seriously disrupted the securities markets or would have imposed financial and recordkeeping burdens on brokers, banks, or issuers. Imposition of these burdens cannot be justified absent a finding, which the Commission was unable to make, that the existing communications system is seriously deficient.

In view of the foregoing, the Commission recommends that the established issuer-shareowner communications system be retained. Certain steps should be taken to improve the operation of the system, however. Specifically, the Commission will review the recommendation of the Study that there be a rule requiring issuers to announce record dates for annual meetings in a more timely and effective manner. The Commission has under consideration adoption of pending rules which would require issuers to send search cards to intermediaries at least ten days prior to the record date and would require brokers to respond promptly to issuers' inquiries. The Commission also will evaluate the recommendation of the Study that brokers be required to forward all communications which an issuer supplies and for the forwarding of which the issuer reimburses the broker's reasonable expenses.

The Commission will ask several of the national securities exchanges to review with their members the procedures under their rules for voting stock held in street name and to amend those rules where necessary in order to correct certain misinterpretations of the procedures. In addition, the Commission will ask the self-regulatory organizations jointly to prepare a brochure for distribution to members' customers to help them better understand the benefits and effects of leaving securities with a broker in street name.

Finally, the Commission will propose an advisory committee drawing representatives from the issuer, bank, and brokerage communities to focus on developing self-regulatory approaches to implementing greater standardization in the system for transmitting shareowner communications. If the self-regulatory approach proves unsuccessful, the Commission will consider exercising its rulemaking power to effect standardization.

3. The Practice as It Affects Disclosure of Beneficial Ownership

The practice of registering securities in nominee and street name limits the amount of information readily available to the public regarding beneficial owners of substantial amounts of an issuer's securities. Congress has determined that such information is relevant to the investment and voting decisions of the public and is necessary to the fulfillment of regulatory responsibilities by federal agencies. Accordingly, Congress has established a policy of requiring substantial beneficial owners whose holdings place them in a position potentially to control or influence significantly the management of an issuer to report certain information about those holdings. Congressional policy also requires that such information be made available to the public.

The legislative history of the disclosure provisions of the Act indicates that Congress considered ownership by any person or group of more than five percent of any class of an issuer's equity securities to be sufficient to create the possibility of influence or control. In the case of large institutions which have investment discretion over securities they hold, Congress established special reporting requirements.

The Commission believes that the Act and the rules thereunder may not fully achieve the scope of disclosure contemplated by Congress. In particular, certain persons whose ownership interest exceeds five percent are not required to report their ownership. Implementation of Section 13(f) of the Act, requiring reporting by large institutions, has not been completed. Furthermore, information about persons who are required to report is not as widely disseminated as may be desirable. Finally, the Commission's powers need to be clarified in order to assure effective enforcement of the disclosure provisions, particularly against foreign persons.

Accordingly, the Commission concludes that a comprehensive system for disclosure of ownership interests should be established which would:

- a. require disclosure by all persons owning more than five percent of an issue;
- b. require issuers to include in their registration statements, proxy and information statements, and annual reports the information collected under (a);
- c. require information from large institutions pursuant to Section 13(f) of the Act and provide an effective means for dissemination of that information; and
- d. assure that the Commission has enforcement powers sufficient to detect any evasion of the reporting requirements.

In order to accomplish this, the Commission seeks legislation to require ownership reports from those persons owning more than five percent of an issuer's securities who are not currently required to report under the Act. The Commission has adopted "Item X," proposed in August 1975, which will require issuers to publish information about persons owning more than five percent of their securities in registration statements, proxy and information statements, and annual reports. In addition, the Commission will complete implementation of Section 13(f) to require reporting by large institutions and will take steps to make such information publicly available. Finally, the Commission seeks legislation to clarify its enforcement powers particularly with regard to persons who hold securities through the nominees of foreign institutions.

4. The Practice as It Affects the Jurisdictional Standards of Sections 12(g) and 15(d)

The Commission concludes that the practice of registering securities in nominee and street name has not had an adverse effect on the jurisdictional requirements of Sections 12(g) and 15(d) of the Act. Those requirements are based, in part, on shareholder-of-record standards which Congress employed on the assumption that there is a substantial correlation between the number of recordholders and the number of underlying beneficial owners. No significant evidence exists to indicate that this assumption has become invalid. Since enactment of the jurisdictional standards of Sections 12(g) and 15(d) in 1964, there has been only modest growth in the total percentage of securities held in nominee name. It is therefore unlikely that any issuers have been removed or excluded from the operation of those sections of the Act because of an increase in nominee registration.

The Commission, in carrying out its responsibilities to foster a national clearance and settlement system, has encouraged and will continue to encourage the expanded use of depositories. Depositories, however, tend to reduce the number of shareholders of record by concentrating in a single nominee name the holdings of many nominees. Accordingly, to assure that the provisions of Sections 12(g) and 15(d) are not affected, the Commission believes steps should be taken to remove depositories from the chain of ownership for purposes of those sections.

The Commission, therefore, will consider the recommendation of the Study that it use its power under Section 12(g)(5) to define the "shareholder of record" of securities held by a depository to be the person on whose behalf the securities are so held. The Commission seeks legislation to enable it similarly to define "shareholder of record" for purposes of Section 15(d). In connection with this, the Commission will also consider the recommendation of the Study that each securities depository be required to send periodically to each issuer whose securities the depository holds a list of the persons on whose behalf the depository holds the securities.

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CHAPTER II

BENEFITS OF THE PRACTICE OF REGISTERING SECURITIES IN NOMINEE AND STREET NAME

A. Discussion

Registration of securities in nominee name initially served as a method of facilitating transfers by fiduciaries and corporate institutional investors, a function which it still performs. As the practice became more common, it provided other important benefits to the nation's securities markets.

The practice allows brokers and banks to combine the interests of many customers into a single "jumbo" certificate. This greatly reduces the number of certificates which must be maintained, eliminating the need for expensive safekeeping space. The use of jumbo certificates also decreases and simplifies the paperwork associated with servicing customer accounts. Moreover, registration of securities in nominee or street name permits brokers, banks and institutions to move securities among in-house accounts without transfer of record ownership.

In addition to facilitating the internal operations of intermediaries, street and nominee name registration is central to arrangements which expedite the clearance and settlement of securities transactions among intermediaries.¹ For example, street name registration eliminates many of the routine, time-consuming transfers which were a major factor in the paperwork crisis that crippled the industry in the late 1960's.² Under industry practice, a buying broker will accept from a selling broker delivery of securities registered in street name (though not necessarily in the selling broker's street name), and the buying broker in turn may redeliver such securities to another broker, in each case without the need to transfer record ownership prior to delivery.

Today an increasing number of securities transactions are being settled through the use of securities depositories which, by registering and holding their participants' securities in nominee name, are able to effect deliveries among participating intermediaries by computerized book-entry without movement of certificates or transfer of record ownership.³ The ability to complete transactions in this manner is the

¹ "Clearance and settlement" of securities transactions encompasses the processes by which the parties to a transaction exchange money and securities. Clearance and settlement traditionally have been performed by subsidiaries of the national securities exchanges and of the National Association of Securities Dealers, Inc. ("NASD").

² See Securities and Exchange Commission, *Study of the Unsafe and Unsound Practices of Brokers and Dealers*, H.R. Doc. No. 92-231, 92d Cong., 1st Sess. 37-39, 165 et seq. (1971).

³ Currently, for example, over 95 percent of the transactions in common stock on the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange, Inc. ("Amex") are settled by book entry delivery through The Depository Trust Company ("DT").

foundation of a national system for the clearance and settlement of securities transactions and is dependent upon the registration of securities in the nominee name of the depository.⁴

B. Conclusions

In Section 17A of the Act Congress directed the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the practice of registering securities in other than the name of the beneficial owner is essential at this time to the establishment and refinement of such a system and is consistent with the purposes of the Act, with particular reference to Section 17A.

C. Recommendation

In view of the foregoing, steps taken to improve shareowner communications, to effect disclosure of beneficial ownership, or otherwise to provide information about the ownership and control of publicly-held companies should not discourage the use of nominee and street name registration or diminish the benefits such registration provides.

⁴ The results of the increased use of depositories in conjunction with highly automated clearing corporations have been dramatic. In contrast to the period of the paperwork crisis in the late 1960's, when daily trading volumes on the NYSE of 11 to 12 million shares overwhelmed securities processing systems, the securities industry was able to handle average NYSE daily volumes of 16 million shares in 1972, 19 million shares in 1975, and 31 million shares in January 1976.

CHAPTER III
THE PRACTICE AS IT AFFECTS ISSUER-SHAREOWNER
COMMUNICATIONS

A. Discussion

1. Profile of the Current System of Transmitting Shareowner
Communications

The transmission of communications to shareowners who hold securities of record is a straightforward procedure. Typically, the issuer or its transfer agent prepares a list of recordholders and from this list generates mailing labels; the communication then is packaged, labeled, and distributed. The rules, procedures and practices governing issuer-shareowner communications have been developed not primarily to facilitate communication with shareholders of record, but rather to assure timely transmission of communications from issuers to unknown beneficial owners whose securities are held of record by intermediaries. It is the system for transmitting shareowner communications through intermediaries with which this section is concerned.

A. THE ROLE OF BANKS

Although it is common practice to refer to the distribution of shareowner communications through intermediaries "such as brokers and banks," the Commission has found that banks do not participate as intermediaries in the distribution of materials to the extent generally assumed. The Study surveyed 179 banks of which 149, or 83 percent, responded. Among the respondents, only 13, or approximately nine percent, indicated that they distribute proxy materials and other shareowner communications as a matter of course.¹

Participation by banks in the communications process is limited because, outside of the major financial centers, banks hold in nominee name few securities over which they do not have voting authority and do not forward shareowner communications with regard to securities over which they have voting authority. Moreover, many of the banks stated that customers who retain voting authority often request that shareowner communications not be forwarded and indicated that they comply with such requests.

¹ These banks are hereinafter referred to as the "distributing banks." The distributing banks generally are located in the major financial centers. Of the responding banks which indicated that they forward shareowner communications as a matter of course, only those having at least 250 custodial accounts have been treated, for purposes of analysis, as distributing banks.

B. THE ROLE OF BROKERS

Between 900 and 1200 brokers are involved to some degree in transmitting issuer-shareowner communications.² These brokers handle the vast percentage of the shareowner communications transmitted through intermediaries,³ but the range of their involvement and sophistication varies greatly. At one end of the spectrum is a highly automated broker which can print proxies, proxy statements and even annual reports in-house if an issuer fails to provide an adequate supply. At the other end, the Study interviewed several small brokers who package and address materials manually.

C. TRANSMISSION OF PROXY MATERIALS AND SOLICITATION OF PROXIES⁴

(i) *Transmission of proxy materials*

Prior to the annual meeting of shareholders, the board of directors of an issuer establishes a record date for purposes of determining the shareholders entitled to notice of, or to vote at, the meeting. Under the law of most states, the record date must be not more than 50 nor less than ten days prior to the meeting of shareholders.⁵ Shortly before the record date, the issuer sends known intermediaries a "search letter" or "search card" inquiring as to the number of sets of proxy materials⁶ needed for transmission to shareowners.⁷

The typical search card consists of two parts. Half is a postcard addressed to the intermediary which provides information about the issuer's record date and meeting date and advises the intermediary of the materials to be supplied. The other half is a tear-off form addressed to the issuer which provides space for the intermediary to indicate the number of sets of materials which will be needed. The search card advises the broker of the number of pieces and the dimensions of the material to be mailed, provides the broker with the name and address of the proper person in the issuer's organization from

² This estimate is based on the assumption that brokers engaged in the issuer-shareowner communication process carry customer accounts and clear other than on a fully disclosed basis. In general, a broker may use three types of clearing arrangements: (1) he may do his own clearing; (2) he may clear on a fully disclosed basis; or (3) he may clear on an omnibus basis. In a fully disclosed arrangement, customer accounts are introduced to a clearing broker who services the accounts thereafter. In an omnibus arrangement, the clearing broker holds the introducing broker's securities for the account of the introducing broker and is not aware of which securities belong to a particular customer.

If a broker clears directly, he will forward communications to his customers. If a broker clears on a fully disclosed basis, it is the clearing broker and not the introducing broker who is involved in the shareowner communications process. In an omnibus arrangement, the introducing broker must either supply to the clearing broker a list of the names of his customers so that the clearing broker may forward communications, or order materials from the issuer and distribute them to his customers.

³ The 118 responding brokers forwarded approximately 20 million sets of proxy materials in 1973, while the 149 responding banks forwarded about 800,000. Of the sets forwarded by the responding brokers, over 15 million were forwarded by five brokers; of the 800,000 sets forwarded by the responding banks, almost 200,000 were forwarded by three banks.

⁴ Exhibit 1, p. 11, depicts the process described in this section.

⁵ Model Business Corporation Act § 50 (rev. 1969).

⁶ Proxy materials generally consist of an annual report, a proxy statement and a proxy card. Section 14 of the Act and the rules thereunder regulate the content of proxy statements, proxy cards, and annual reports and their transmission by issuers to shareowners. If proxies are not solicited, Section 14-c) of the Act requires the issuer to transmit to shareowners an information statement containing substantially the same information as would be contained in a proxy statement.

⁷ The procedure of sending search cards to known intermediaries is regulated by Rules 14a-3(d) and 14c-7 under the Act. 17 C.F.R. 240.14a-3(d) and 240.14c-7. Under the rules, an issuer must send an inquiry to any broker, bank or voting trustee which is known to hold of record shares of any class of an issuer's securities entitled to vote at a meeting of shareholders. Notes to Rules 14a-3(d) and 14c-7 require the issuer to make an appropriate inquiry of a depository as to the participants in such depository who may hold the issuer's securities on behalf of a beneficial owner. Thereafter, the issuer must send an inquiry to such participants.

Frequently, the issuer also will send search cards to brokers and banks which it believes may have become intermediary holders of its stock since the last solicitation but do not appear as recordholders. This blind mailing of search cards is employed because, for example, brokers purchasing stock often leave it in the street name of another broker until the record date for a dividend. In an effort to reach all intermediaries, many issuers send far more search cards than are expected to be returned.

whom materials should be ordered, and permits the broker to advise the issuer of the address to which materials are to be sent. Moreover, the distinctive blue color of the search card facilitates its processing in busy mail rooms during proxy season.⁸

Upon receipt of the return portion of the form, the issuer forwards materials, usually in bulk, to the intermediary. In addition to proxy materials, issuers may supply mailing envelopes, return envelopes and other stationery needs. The intermediary breaks down the materials into individual sets and may supplement the materials with various inserts relating to the customer's account with the intermediary.⁹ The intermediary packages the materials, addresses the envelopes to the shareowners and distributes them. The shareowner is instructed to return the enclosed proxy card either directly to the issuer or to the intermediary depending on the intermediary's procedures for voting securities.

(ii) *Solicitation of proxies*

(a) *General.*—A shareowner cannot give a proxy with respect to securities held of record by an intermediary since the shareowner does not appear on the issuer's records as a shareholder entitled to vote. There are, basically, three procedures used to vote securities of non-record shareowners through an intermediary: (1) the intermediary advises the shareowner of the matters to be voted on and requests voting instructions which the intermediary carries out; (2) the intermediary signs a blank proxy card and forwards it to the shareowner who then votes and forwards the card to the issuer; or (3) the intermediary is given voting discretion by the shareowner and votes thereafter without consulting the shareowner.

(b) *Voting by banks.*—Banks have voting discretion with regard to most securities they hold in nominee name and generally exercise it.¹⁰ When they do not have voting discretion, fifteen percent of the responding banks send unsigned proxy cards to their customers and request voting instructions; 50 percent of the responding banks send signed but unvoted proxy cards to their customers and instruct them to return the proxy directly to the issuer; and the other responding banks use a combination of these procedures.

(c) *Voting by brokers.*—The rules of most national securities exchanges provide that under certain circumstances a broker may vote securities which it holds for a customer if the customer fails to give voting instructions.¹¹ If the broker forwards proxy materials to the customer at least 15 days prior to the meeting, the broker may give a proxy during the ten days prior to the meeting on certain non-controversial matters if no voting instructions are received.¹² The

⁸ This description is based on the procedures outlined in the *Manual for Proxy Solicitation of Stock in Brokers' Names* (1976), a manual of standardized procedures published as a joint report of the American Society of Corporate Secretaries, Inc., the Amex, the NASD, the NYSE, and the Securities Industry Association. It is reproduced in Appendix II.

⁹ For example, many brokers include a letter which discusses the broker's procedure for giving a proxy when the customer fails to indicate his voting preference.

¹⁰ Only six banks indicated that they do not vote securities when they have discretion to do so. When they lack voting discretion, the banks either forward materials, register the securities directly in the customer's name, or dually register the stock, giving the shareowner's address for the receipt of proxies and other communications and the bank's for the receipt of dividends.

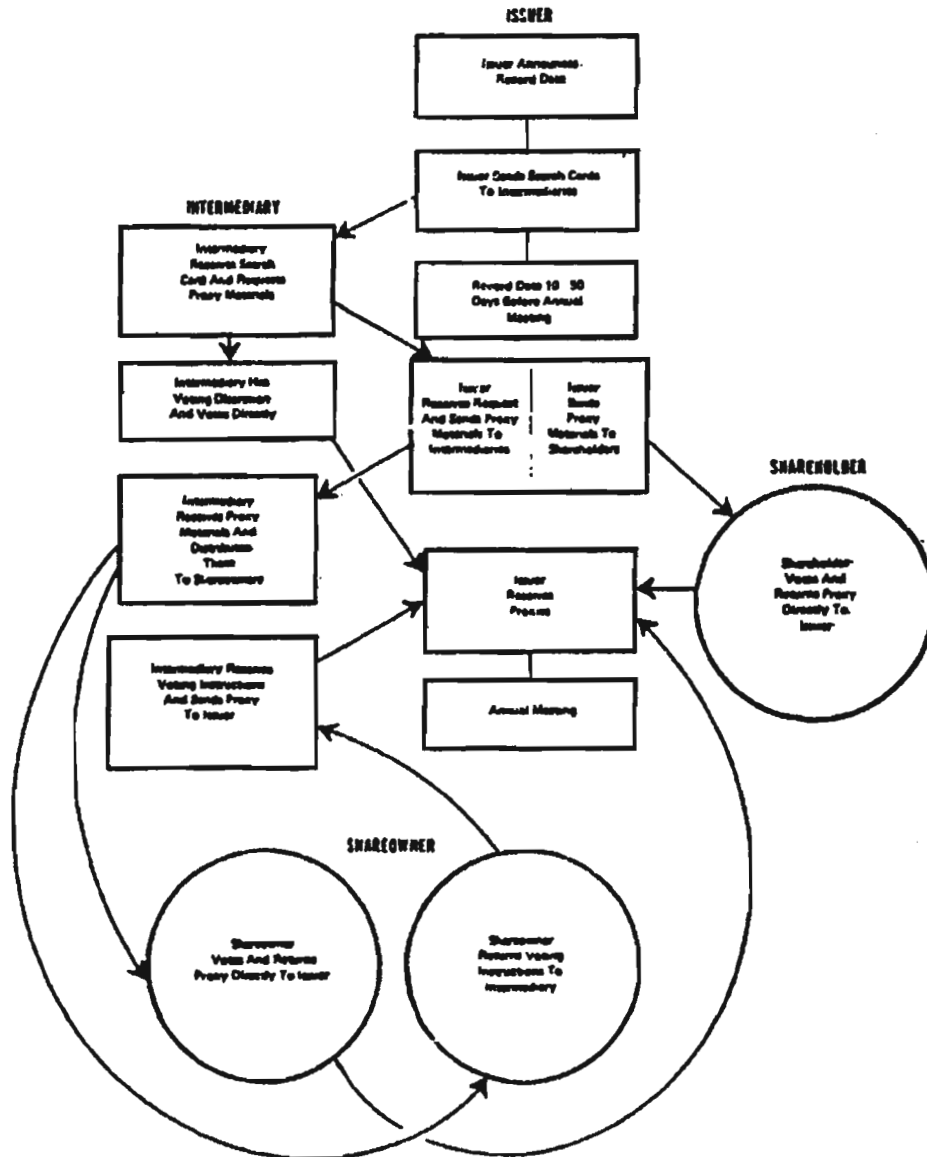
¹¹ NYSE Rules 451, 452; Amex Rules 578, 577; Midwest Stock Exchange Rules, Art. XXX, Rules 2, 3; Boston Stock Exchange Rules, Ch. XXVI, §§ 2, 3. The Pacific Stock Exchange and the NASD permit a member to vote customers' securities only if the procedure is permitted pursuant to the rules of an exchange to which the member belongs. Pacific Stock Exchange Rule X, § 4; NASD Rules of Fair Practice, Art. III, § 1.05. The description which follows is based upon the NYSE rule.

¹² Most notably the appointment of auditors and the election of directors. The rule is commonly referred to as the "ten-day rule."



EXHIBIT 1

TRANSMISSION OF PROXY MATERIALS AND SOLICITATION OF PROXIES



rule further provides that the broker may give a proxy only if he has no knowledge of any contest as to the action to be taken at the meeting and if the action does not involve a merger or consolidation or any other matter which may "affect substantially the rights or privileges of such stock."¹³ Under the NYSE and Amex rules, a customer may still give voting instructions less than ten days before the meeting, in which case the broker must submit a revised proxy to the issuer if the customer's instructions countermand the first proxy.¹⁴

If a broker intends to give a proxy pursuant to a ten-day rule,¹⁵ he encloses with the proxy materials sent to his customers a letter explaining generally the provisions of the ten-day rule and advising each customer that the broker will give a proxy for his shares under the ten-day rule if the customer does not provide voting instructions. As voting instructions are received, the broker tabulates the vote and, within ten days of the meeting, gives a proxy for his entire position. Shares unvoted by customers are voted for management.¹⁶

Brokers who do not vote pursuant to a ten-day rule generally sign a blank proxy and forward it to their customers.

(d) *Voting through depositories.*—Originally, the Central Certificate Service ("CCS"), the first depository and the predecessor of DTC, solicited voting instructions from its participants on receipt of issuers' proxy materials. The participants, in turn, solicited instructions from their customers. This procedure was inefficient because CCS was designed to provide computer-oriented services to its participants and consequently employed a minimum of full time clerical personnel. As a result, each year during proxy season CCS had to hire and train temporary personnel to process a great volume of material. If participants were late in providing voting instructions, the depository had to send out follow-up letters.

~~When DTC was formed, it instituted a new system which involved forwarding signed proxy cards to participants. Although an improvement, this procedure was still inefficient.~~

~~In 1975 DTC developed what is known as the omnibus proxy procedure. Under this procedure, the depository prepares a computer generated list of the names and holdings of participants that have depository positions in an issuer's securities as of the record date. The list is forwarded to the issuer along with an "omnibus proxy" which authorizes each participant, to the extent of the participant's position, to act as the depository's proxy and to vote the securities. The procedure is used today by the three major securities depositories¹⁷ and has largely removed depositories from the shareowner communications process.~~

¹³ NYSE Rule 452.

¹⁴ To avoid this, many brokers submit a proxy for 95 percent of their position, holding five percent in reserve to accommodate subsequent customer instructions. The rules of the Boston and Midwest Stock Exchanges are unclear on this point.

¹⁵ Of those responding brokers who are members of an exchange having a ten-day rule, 75.5 percent indicated that they vote customers' shares pursuant to a ten-day rule if the customers fail to exercise their voting rights.

¹⁶ All of the responding brokers who vote under the ten-day rule indicated that they always vote their position for management.

¹⁷ The three major depositories are DTC, the Midwest Securities Trust Company, and the Pacific Securities Depository Trust Company. The above description is based on the procedure of DTC.

D. TRANSMISSION OF QUARTERLY REPORTS AND OTHER ROUTINE COMMUNICATIONS

The transmission of quarterly reports and other routine communications is not accompanied by a solicitation of proxies and is therefore less complicated than the transmission of proxy materials and annual reports. In transmitting quarterly reports, some issuers send search cards to intermediaries and fill orders as in the case of annual reports. More often, however, issuers distribute the materials without prior notice to the investment community.¹⁸ In that case, the issuer either will try to anticipate each intermediary's needs based on prior orders or will send one copy to each recordholder. In the latter situation, intermediaries will order additional materials if they intend to forward them to shareowners.

E. SPECIAL SITUATIONS

A few issuers each year become involved in a proxy contest, have an item which requires a two-thirds vote or become the subject of a tender offer. In those instances, special procedures are used to distribute communications and, other than in the tender offer situation, to solicit proxies. Many issuers employ a proxy solicitation firm to handle these special situations.¹⁹

Proxy solicitation firms provide a variety of services suited to the needs of the particular issuer. Typically, the proxy solicitation firm will speed distribution of materials by hand delivering them to intermediaries across the country and will obtain proxies by writing or telephoning intermediaries and individual customers. In addition, the firm may provide consulting services with regard to strategy in fighting the tender offer or proxy contest and may play a role in overseeing the preparation, design, and printing of materials.

F. REIMBURSEMENT OF EXPENSES

After distributing an issuer's materials to their customers, most brokers, seek reimbursement from the issuer for their expenses.²⁰ The amount of reimbursement sought is normally based upon guidelines established by the major securities exchanges and the NASD.²¹ Eight of the 13 distributing banks routinely seek reimbursement for expenses, while one bills only in certain cases. The other four distributing banks, as well as most of the other responding banks, refrain from seeking reimbursement.²²

¹⁸ Unless the issuer has declared a dividend to be paid simultaneously with the distribution of the quarterly report or other communication, there is no concurrent record date.

¹⁹ Thirty-eight percent of the responding issuers indicated that they have utilized the services of a proxy solicitation firm. Most of these issuers stated that they employed a proxy solicitor only in special situations.

²⁰ Eighty-four percent of the responding brokers indicated that they seek reimbursement for the forwarding of proxy materials.

²¹ The rules of several of the national securities exchanges and the NASD provide schedules suggesting appropriate reimbursement of distribution expenses. For example, see NYSE Rule 451, Amex Rule 576, and Article III, Section 1.05 of the Rules of Fair Practice of the NASD.

²² Several banks advised us that they do not seek reimbursement because, in their opinion, to do so might violate state trust laws which prohibit fiduciaries from profiting from the administration of a trust.

2. Adequacy of the Current System

The adequacy of the current system for transmitting shareowner communications may be measured in two ways; whether empirical data indicate that the system provides an effective mechanism for the timely transmittal of shareowner materials at a reasonable cost; and whether the participants in the system perceive the system to be fulfilling their needs.

A. EMPIRICAL ANALYSIS OF THE DISTRIBUTION OF PROXY MATERIALS AND THE SOLICITATION OF PROXIES

(i) *Time frames*

Based on responses of issuers and shareowners to the Commission's survey, an empirical model of the proxy transmission process was developed. The Commission sought to identify weak links in the communications process by measuring the amount of time required to complete the various steps in the transmission of materials to shareowners.

(a) *Receipt of proxy materials by shareowners.*—The most critical time-span is the period between the receipt of the proxy material by the shareowner and the date of the annual meeting. If the shareowner is not given sufficient response time before the meeting date, the entire process has failed. A distribution of the number of days between the receipt of proxies by shareowners and the date of the issuer's annual meeting is shown in Exhibit 2. The exhibit segregates the responding shareowners between those who received their proxy materials directly from an issuer and those who received their proxy materials via an intermediary. The latter group of responding shareowners is further divided into those who received their proxy materials from banks and those who received them from brokers.

Shareowners who receive materials directly from issuers generally receive their proxies earlier (relative to the meeting dates) than do shareowners whose proxies are routed through intermediaries, but the time differences do not appear to be significant. Although 90.1 percent of the proxies mailed directly by issuers were received more than 20 days prior to the meeting dates, as compared with 70.9 percent of those transmitted through banks and 78.3 percent of those sent through brokers, the percentage of proxies received at least eleven days before the meeting date is roughly equivalent for all three groups: 96.8 percent of the proxies mailed directly by issuers; 93.6 percent of those routed through banks; and 95.1 percent of those routed through brokers.

While the foregoing indicates that the proxy transmission process performs adequately in the sense that the receipt of proxy materials by shareowners is timely, a further analysis of the intermediate steps in the process is still appropriate. If there were a significant failure rate, then the intermediate steps which tended unduly to slow down the transmission of materials would be critical.

EXHIBIT 2

TIMELINESS OF PROXY RECEIPT BY SHAREOWNERS: COMPARISON OF INTERMEDIARY DISTRIBUTION WITH DIRECT DISTRIBUTION

	Percent of shareowner responses		
	Sent directly to shareowner	Sent through banks	Sent through brokers
Received on or after meeting date.....	1.2	1.3	1.5
Received 1 to 5 days before meeting.....	.5	2.2	.8
Received 6 to 10 days before meeting.....	1.6	2.8	2.5
Received 11 to 15 days before meeting.....	1.8	6.2	6.8
Received 16 to 20 days before meeting.....	4.9	16.5	10.0
Received more than 20 days before meeting.....	90.1	70.9	78.3
Total number of responses.....	6,647	2,532	11,071

Source: SEC 1976 proxy season questionnaires, Office of Securities Industry and Self-Regulatory Economics, Directorate of Economic and Policy Research.

(b) *Intermediate steps in the communications process.*—The first column of Exhibit 3 indicates that, as expected, issuers generally announce their record dates 10 to 50 days in advance of those dates. The median time-span between the announcement and the record date for the responding issuers was between 21 and 25 days. Contrary to the expected pattern, however, 24 percent of the responding issuers allowed less than 11 days between announcement and record date, and 11 percent announced their record date after the fact.

While the lag between announcement and record date is not, of itself, important, most issuers do not send search cards to intermediary recordholders until after the announcement. Thus, a short time-span between announcement and record date generally indicates insufficient time before the record date during which the issuer can transmit search cards. The issuer can continue the search procedure after the record date, but this practice extends the dates for completion of subsequent steps in the solicitation process and requires intermediaries to reconstruct their record date positions.

The second column of Exhibit 3 shows the distribution of time lags between the commencement of the issuer's search procedure and the record date. This distribution is skewed more toward the shorter time lags than is the announcement-to-record date distribution because the search procedure normally begins after the announcement of the record date. The median time-span for this sequence falls between 11 and 15 days; 39 percent of the responding issuers indicated less than 11 days between the two dates.

The third column of Exhibit 3 shows that for nearly two-thirds of the issuers for which time lags were calculated²³ the intermediaries' requests for proxy materials were received by the issuer less than eleven days after the mailing of a search card,²⁴ and for nearly 89 percent of the matched issuers the requests were received within 20 days of their

²³ Since the distributions in columns three and four are derived by matching the responses from issuers and intermediaries, only 61 of the 150 issuers are represented. Nevertheless, the data are sufficient. Where more than one intermediary was matched with a particular issuer, the mean time lag was computed for inclusion in the exhibit. Issuers for which time lags were calculated are hereinafter referred to as "matched issuers."

²⁴ Part of this quick response is attributable to intermediaries taking the initiative to request proxies without waiting for search cards; hence the eight issuers who received requests before the scheduled mailing of search cards.

search card mailings. These time periods appear to be adequate, although it is desirable for intermediaries to minimize the response time.

EXHIBIT 3

TIME SEQUENCE DISTRIBUTION OF PROXY TRANSMISSIONS VIA INTERMEDIARIES

Number of days	Number of issuers falling into time sequence categories			
	From announcement of record date to record date	From search date to record date ¹	From search date to request for proxies from intermediaries ²	From request to receipt of proxies by intermediaries ³
Less than zero ¹	16	16	8	0
Zero.....	5	4	2	0
1 to 5.....	3	14	17	0
6 to 10.....	12	22	13	3
11 to 15.....	18	31	8	8
16 to 20.....	16	18	6	8
21 to 25.....	4	13	0	11
26 to 30.....	11	10	3	15
31 to 35.....	15	3	1	5
36 to 40.....	5	4	2	5
41 to 45.....	17	2	0	3
46 to 50.....	8	2	0	2
More than 50.....	17	5	1	1
Not reported.....	12	15	98	98
Total.....	159	159	159	159

¹ Based on earliest date of mailing of search cards to intermediaries.

² Based on responses relating to designated intermediaries on the issuer survey and matched to responses relating to the corresponding issuers on the bank/broker survey.

³ In some cases the issuer indicated that, for example, the record date occurred before the announcement of the record date. Since this is the reverse of the expected chronology, the number of days between the two dates is represented as a negative number.

Source: SEC 1976 proxy season questionnaires, Office of Securities Industry and Self-Regulatory Economics, Directorate of Economic and Policy Research.

The next step in the procedure is for issuers to fill the intermediaries' requests for proxies. By showing the distribution of time lags between the dates the issuers receive requests and the dates the intermediaries receive the materials, the fourth column of Exhibit 3 helps to assess the issuers' performance. Half of the matched issuers filled the intermediaries' requests within 25 days of receipt of the requests, and 90 percent of the matched issuers filled the requests within 40 days. The time lags are in part attributable to the fact that most issuers hold search card requests until materials are distributed to record-holders generally. All intermediaries' requests received before that date are filled at that time and subsequent requests are filled as they are received.

The performance of issuers and intermediaries reflected in Exhibits 2 and 3 demonstrates that the overall process of proxy transmission via intermediaries is substantially successful in achieving its goal.

(ii) *Voting efficiency of the system*

The efficiency of the shareowner communications process can also be measured in terms of its success in eliciting proxies. Even if the system fully achieves its distribution objective, issuers will be frustrated if a sufficient voting percentage is not attained. The Com-

mission therefore sought to determine whether there is any relationship between the vote received by issuers and the extent to which their securities are held in street or nominee name.

Exhibit 4 displays the cross-distribution of issuers arrayed by their voting percentages (percent of shares voted at the 1976 annual meeting) and by the concentration of their outstanding shares in the hands of intermediaries. Since more than 79 percent of the issuers attained voting percentages of at least 75 percent at their 1976 annual meetings, there is little variation among issuers to attribute to the presence of intermediaries in the communications process. Furthermore, an examination of the data revealed no discernible pattern to the distribution²⁵ so that the variation which does exist does not appear to be related to the concentration of intermediary shareholdings.

²⁵ A regression equation testing the relationship between the percentage of shares voted and the percentage of shares held by intermediaries confirmed the lack of any statistically significant relationship.

EXHIBIT 4

CROSS-DISTRIBUTION OF REPORTING ISSUERS BY PERCENTAGE OF SHARES VOTED AND PERCENTAGE OF VOTING SHARES HELD BY INTERMEDIARIES
 (Percent of issuers falling into each cell)

Percentage of shares voted in 1976 annual meeting	Voting shares held by intermediaries as a percent of shares outstanding											Total	Number of issuers	
	None	0.1 to 9.9	10 to 19.9	20 to 29.9	30 to 39.9	40 to 49.9	50 to 59.9	60 to 69.9	70 to 79.9	80 to 89.9	90 or greater			
Less than 50.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
50 to 54.9.....	0	.7	0	0	0	0	0	0	0	0	0	0	.7	1
55 to 59.9.....	0	0	0	0	0	0	.7	0	0	0	0	0	.7	1
60 to 64.9.....	0	.7	1.3	0	.7	.7	0	0	0	0	0	0	3.3	5
65 to 69.9.....	0	0	.7	1.3	.7	1.3	0	0	0	0	0	0	4.0	6
70 to 74.9.....	2.0	2.7	1.3	2.7	1.3	.7	0	0	0	.7	0	0	12.0	18
75 to 79.9.....	3.3	3.3	2.0	4.0	2.7	2.0	2.7	1.3	.7	0	0	0	22.0	33
80 to 84.9.....	2.7	6.7	2.0	2.0	2.7	5.3	3.3	4.0	.7	0	0	0	29.3	44
85 to 89.9.....	3.3	4.7	2.7	2.0	2.7	4.7	2.7	2.0	1.3	0	0	0	26.0	39
90 to 94.9.....	0	0	0	0	0	1.3	0	0	.7	0	0	0	2.0	3
95 or greater.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total.....	11.3	18.7	10.0	12.0	10.7	16.0	10.0	7.3	3.3	.7	0	100.0	150	
Number of issuers.....	17	28	15	18	16	24	15	11	5	1	0	150		
Average voting percentage....	79	80	77	77	79	81	80	82	85	73	0	79		

1 Nine of the 159 reporting issuers are not included here due to insufficient data.

Source: SEC 1976 proxy season questionnaires, Office of Securities Industry and Self-Regulatory Economics, Directorate of Economic and Policy Research.

Nevertheless, the regression technique was utilized to test the "explanatory" power of several variables. First, since the intermediaries used in Exhibit 4 are not a homogeneous group, they were disaggregated into bank and broker sub-groups. This procedure did not reveal any relationship between voting efficiency and the concentration of shares in the hands of brokers, but the banks exhibited a pattern tending to support the existence of a relationship.

Exhibit 5 demonstrates that an increased concentration of an issuer's shares in banks is associated with increased voting percentages.²⁶ Both the average voting percentage and the overall distribution tend to support this positive relationship.²⁷ The reason that an increased concentration of bank shareholdings tends to increase an issuer's voting percentage while broker shareholdings appear to have no effect may be that banks have voting discretion with regard to most securities they hold in nominee name and exercise their voting authority to a greater extent than does the average shareowner, including other institutions.

None of the other relationships tested revealed a single factor, or combination of factors, which was able to account for a material proportion of variation in the percentage of shares voted. Only one other, the average number of shares per recordholder, was consistently significant in the statistical sense. Together, this and the percentage of shares held by banks were able to explain less than 15 percent of the observed variation in voting percentages. The above analysis leads the Commission to conclude that variation in voting percentages among issuers is traceable to factors other than the proxy distribution system.

(iii) Cost data

The Commission examined: (1) the average cost of sending proxy materials directly to recordholders in comparison with sending proxy materials through intermediaries for transmission to beneficial owners; (2) whether there exist substantial economies of scale in the transmission of proxy materials; and (3) whether the current methods of issuer reimbursement to intermediaries are reasonable.

(a) *Cost structure of issuer proxy operations.*—It is apparent from the cost data submitted in the various questionnaires that numerous respondents either did not have sufficient information to complete the cost questions or did not understand the instructions. Because of these problems, a sub-sample of 71 issuers which appeared to have reported reliable cost data was selected.²⁸ In order to insure that the cost data were reliable, most of the issuers were contacted for explanation of the method they used to determine cost. Among these 71 issuers, 37 sent their proxies and annual reports as one package while 34 sent their proxies separately from their annual reports. These two groups were segregated for purposes of analysis of the cost data. In addition, the issuers were ranked in ascending order by the number of sets of proxy materials sent directly to shareholders and placed into five groups based on the number of sets sent.

²⁶ The regression equation revealed a statistically significant positive relationship between the percentage of shares voted and the percentage of shares held by banks, but was able to explain only a very small proportion of the statistical variation in voting percentage among issuers.

²⁷ The latter of these observations can be verified by noting that the "weight" within each column tends to shift slightly toward the greater voting percentages as the percentage of bank shareholdings increases.

²⁸ These 71 issuers accounted for approximately 85 percent of all proxies sent directly to recordholders by the 159 reporting issuers.

CROSS-DISTRIBUTION OF REPORTING ISSUERS BY PERCENTAGE OF SHARES VOTED AND PERCENTAGE OF VOTING SHARES HELD BY BANKS
 [Percent of issuers falling into each cell]

Percentage of shares voted in 1976 annual meeting	Voting shares held by banks as a percent of shares outstanding											Total	Number of issuers	
	None	0 to 9.9	10 to 19.9	20 to 29.9	30 to 39.9	40 to 49.9	50 to 59.9	60 to 69.9	70 to 79.9	80 to 89.9	90 or greater			
Less than 50.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
50 to 54.9.....	0	.7	0	0	0	0	0	0	0	0	0	0	.7	1
55 to 59.9.....	0	.7	0	0	0	0	0	0	0	0	0	0	.7	1
60 to 64.9.....	0	1.3	.7	0	1.3	0	0	0	0	0	0	0	3.4	5
65 to 69.9.....	0	1.3	2.0	.7	0	0	0	0	0	0	0	0	4.0	6
70 to 74.9.....	2.7	5.4	1.3	.7	.7	.7	0	0	0	0	0	0	11.4	17
75 to 79.9.....	4.0	8.1	2.0	0	4.7	1.3	.7	1.3	0	0	0	0	22.1	33
80 to 84.9.....	4.0	9.4	2.7	2.7	3.4	4.0	1.3	1.3	.7	0	0	0	29.5	44
85 to 89.9.....	4.0	5.4	3.4	3.4	.7	4.7	3.4	1.3	0	0	0	0	26.2	39
90 to 94.9.....	0	.7	.7	0	0	.7	0	0	0	0	0	0	2.0	3
95 or greater.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total.....	14.8	32.9	12.8	7.4	10.7	11.4	5.4	4.0	.7	0	0	0	100.0	149
Number of issuers.....	22	49	19	11	16	17	8	6	1	0	0	0	149
Average voting percentage.....	76	78	78	82	77	83	84	82	83	0	0	0	79

† 10 of the 199 reporting issuers are not included here due to insufficient data.

Source: SEC 1976 proxy season questionnaires, Office of Securities Industry and Self-Regulatory Economics, Directorate of Economic and Policy Research.

EXHIBIT 6

COST TO ISSUERS OF SENDING PROXY MATERIALS DIRECTLY TO RECORDHOLDERS

Proxy size class (number of proxies sent to recordholders)	Number of issuers	Number of proxies sent	Total direct cost	Per unit direct cost	Per unit postage cost	Per unit direct cost minus per unit postage cost
A. Issuers which send proxies and annual reports as one package:						
Less than 2,000.....	11	14,840	\$13,200	\$0.89	\$0.65	\$0.24
2,000 to 4,999.....	11	38,618	29,400	.76	.52	.24
5,000 to 9,999.....	8	49,408	42,488	.86	.72	.14
10,000 to 99,999.....	3	75,946	75,800	1.00	.90	.10
100,000 and over.....	4	3,637,578	1,234,000	.34	.29	.05
Total.....	37	3,816,391	1,394,800	.37	.31	.05
B. Issuers which send proxies and annual reports in separate packages:						
Less than 5,000.....	5	15,970	11,277	.71	.60	.11
5,000 to 9,999.....	6	47,351	30,776	.65	.57	.08
10,000 to 99,999.....	13	397,688	164,023	.41	.31	.10
100,000 and over.....	10	2,170,704	763,196	.35	.30	.05
Total.....	34	2,631,713	969,272	.37	.30	.07

Note: These data are based on a sub-sample of 71 issuers reporting reasonably accurate information concerning costs of proxy operations.

Source: SEC 1976 proxy season questionnaires, Office of Securities Industry and Self-Regulatory Economics, Directorate of Economic and Policy Research.

Exhibit 6 summarizes the cost information for these two groups. As can be seen from this table, the per unit direct cost of sending proxy materials directly to shareholders by issuers which send proxies and annual reports as one package ranged from \$1.00 for issuers in the 10,000-99,999 category to 34 cents for issuers in the over 100,000 category. Postage accounted for approximately 84 percent of the total direct cost of sending these materials. When postage is subtracted from the per unit direct cost, the per unit internal cost ranges from 24 cents for issuers in the less than 2,000 category to five cents in the category of over 100,000 proxies.²⁹ Thus the per unit cost of proxy operations falls as the number of sets of materials sent by the issuer increases. Statistically, for every one percent increase in the number of proxies sent, the per unit internal cost falls, on the average, by 0.3 percent.³⁰ Because postage accounts for a high percentage of the

²⁹ For all 37 issuers, the per unit internal cost was six cents; this figure, however, is heavily weighted by the issuers with over 100,000 proxies, which accounted for 85 percent of all proxies sent by the 37 sample companies.

³⁰ A simple empirical model was tested on this cross-section of 37 issuers. For this purpose, only direct cost other than postage was analyzed. With the existence of economies of scale, the per unit internal direct cost will fall as the number of proxies sent increases. It is unlikely, however, that the relationship would be linear, meaning that with every increase of a thousand proxies, the per unit internal cost would decline by a fixed amount. Instead, it was hypothesized that the relationship would be curvilinear, meaning that for every percentage increase in the number of proxies sent, the per unit internal cost would decline by a certain percentage. This latter concept can be derived by using logarithmic transformations of the data. The simple model tested was:

$$\text{Log}(Ic) = a + b_1 \text{Log}(\text{Proxies})$$

Where: $\text{Log}(Ic)$ = the logarithmic transformation of the per unit direct cost minus postage per unit (also called per unit internal cost).

$\text{Log}(\text{Proxies})$ = the logarithmic transformation of the number of sets of proxy materials sent by each issuer.

For the 37 issuers sending proxies and annual reports as one package the following equation was derived:

$$\text{Log}(Ic) = .6207 - .3132 \text{Log}(\text{Proxies})$$

(2.96) T-ratio

$$R^2 = .20 \quad F = 8.753$$

total cost of proxy operations, however, the method of mailing the proxy materials and the weight of the combined package of the proxy and annual report is a more important factor in determining per unit cost than the number of proxies sent by the issuer.

EXHIBIT 7

COST TO ISSUERS OF SENDING PROXY MATERIAL THROUGH INTERMEDIARY RECORDHOLDERS

Proxy size class (Number of proxies sent to beneficial owners)	Number of proxies sent through intermediaries	Total direct cost	Per unit direct cost	Per unit postage cost	Per unit total cost minus per unit postage cost	Estimated total payment to intermediaries	Per unit payment	Total per unit cost of sending proxies through intermediaries
A. Issuers which send proxies and annual reports as one package:								
Less than 2,000.....	11,445	\$7,577	\$0.67	\$3.41	\$0.26	\$15,113	\$1.33	\$2.00
2,000 to 4,999.....	17,297	8,116	.47	.28	.19	22,711	1.31	1.78
5,000 to 9,999.....	21,823	15,512	.71	.22	.49	36,532	1.67	2.38
10,000 to 99,999.....	43,173	18,534	.43	.35	.08	68,383	1.58	2.01
100,000 and over.....	325,660	36,903	.12	.08	.04	493,371	1.52	1.64
Total.....	419,338	88,642	.21	.13	.08	636,110	1.52	1.73
B. Issuers which send proxies and annual reports in separate packages:								
Less than 5,000.....	7,753	7,099	.92	.33	.59	11,217	1.45	2.37
5,000 to 9,999.....	17,521	11,154	.64	.40	.24	24,658	1.41	2.05
10,000 to 99,999.....	128,408	44,683	.35	.26	.09	179,650	1.40	1.75
100,000 and over.....	432,097	75,264	.17	.13	.04	515,203	1.19	1.36
Total.....	585,779	138,200	.24	.17	.07	730,720	1.25	1.49

Note: These data are based on a sub-sample of 71 issuers reporting reasonably accurate information.

Source: SEC 1976 proxy season questionnaires, Office of Securities Industry and Self-Regulatory Economics, Directorate of Economic and Policy Research.

The results for issuers which send proxies separately from annual reports are similar. Surprisingly, the per unit direct cost of sending these materials separately is the same as when sent as one package, but the postage per unit decreases by one cent and per unit internal cost increases by one cent.³¹

The cost data indicate that the per unit cost of sending proxy materials to beneficial owners through intermediaries is substantially higher than the per unit cost of sending these materials directly to shareholders. Exhibit 7 presents those costs for the same two groups of issuers represented in Exhibit 6. Before reimbursement to intermediaries, the per unit direct cost to issuers of sending proxies and annual reports as one package was only 21 cents compared to 37 cents when mailing directly to shareholders. The difference is primarily due to lower postage when sending materials in bulk to intermediaries. The per unit postage cost to issuers of sending proxies and annual reports as one package to intermediaries was 13 cents compared with 31 cents to send materials directly to shareholders. On the average, however, the per unit reimbursement to intermediaries was \$1.52 so that the total per unit cost of sending materials through intermediaries for these issuers averaged \$1.73 compared with only 37 cents when

³¹ A regression equation on the average cost to these issuers was also tested; however, the coefficient was not statistically significant. The lack of a significant relationship is probably due more to allocational problems than to the absence of scale economies.

materials were sent directly to shareholders.³² When proxies and annual reports are sent separately, the per unit reimbursement to intermediaries was \$1.25 compared to \$1.52 for materials sent as one package. The lower average reimbursement probably results from the intermediaries' ability to send the annual report by other than first class mail when the materials are not combined in the same package.

EXHIBIT 8

BROKER-DEALER COST AND REIMBURSEMENT OF SENDING PROXY MATERIALS

Proxy size class (number of proxies sent to beneficial owners)	Number of brokers	Number of proxies sent	Direct cost ¹	Per unit direct cost ¹	Per unit mailing cost	Per unit direct cost minus per unit mailing cost	Per unit reimbursement	Per unit direct cost minus per unit reimbursement
Less than 1,000	10	4,328	\$17,618	\$4.07	\$1.08	\$2.99	\$2.66	\$1.41
1,000 to 4,999	12	31,450	89,865	2.86	.55	2.31	1.40	1.46
5,000 to 9,999	9	56,797	103,605	1.82	.60	1.22	1.16	.66
10,000 to 19,999	10	153,049	351,988	2.30	.72	1.58	1.48	.82
20,000 to 49,999	11	368,892	426,772	1.18	.48	.70	1.02	.16
50,000 to 99,999	6	425,959	511,456	1.20	.58	.62	1.09	.11
100,000 to 199,999	6	810,002	934,832	1.15	.75	.40	1.17	(.02)
200,000 to 499,999	5	1,599,271	1,583,894	.99	.66	.33	1.14	(.15)
500,000 and over ³	5	19,168,305	7,807,498	.41	.29	.12	.53	(.12)
Total	74	22,550,053	11,827,448	.52	.35	.17	.63	(.11)

¹ Excludes allocation of overhead for management, buildings, and depreciation of equipment.

² The data as to the numbers of proxies sent by this category of broker-dealers are overstated somewhat because certain of the broker-dealers were unable to separate the number of proxies mailed from the number of quarterly reports and other pieces of "informational" material mailed. As a result, the per unit reimbursement is understated because the reimbursement for informational materials is usually substantially less than the reimbursement which is customary for proxy materials.

Note: These data are based on a subsample of 74 broker-dealers reporting reasonably accurate information concerning cost of proxy operations.

Source: SEC 1976 proxy season questionnaires, Office of Securities Industry and Self-Regulatory Economics, Directorate of Economic and Policy Research.

(b) *Cost structure of intermediary proxy operations.*—Of the 118 responding brokers, 74 submitted data which appeared to reflect reasonable estimates of costs.³³ The 74 brokers are concentrated among the larger firms and accounted for 99.7 percent of all the proxy materials sent by the responding brokers. Exhibit 8, which displays summary information for those 74 brokers ranked according to the number of proxies sent to shareowners, shows that, as the number of proxies sent increases, the per unit direct cost declines, indicating potential economies of scale.³⁴

Comparing the per unit direct cost of distributing proxy materials to shareowners as between brokers and issuers, it appears more

³² The per unit reimbursement assumes that issuers are billed for all proxy materials sent through intermediaries. While a number of intermediaries reported that they did not request reimbursement, the number of sets of proxy materials handled by these intermediaries was small.

³³ The cost information for brokers was collected on the basis of their last fiscal year rather than the current proxy season.

³⁴ It should be noted that the per unit direct cost for all 74 firms (\$0.52) is somewhat low when used as an estimate for the universe of brokers. This is due to the disproportionately high volume for the 500,000 and over group. As with the issuers, a regression equation was tested to measure the average relationship of brokers' per unit direct cost (with postage subtracted) to the number of proxies sent by brokers. The following resulted:

$$\log(\hat{I}_c) = 1.898 - .222 \log(\text{Proxies})$$

(4.85) — T-ratio

R² = .25 F = 23.549

Where \hat{I}_c represents per unit direct cost for brokers.

This equation indicates that, on the average, a one percent increase in the number of proxies mailed by broker-dealers reduces the per unit direct cost (with postage subtracted) by 0.2 percent.

economical for the issuer to mail directly to its shareholders. It costs the issuer 37 cents per unit while it costs the brokers approximately 52 cents per unit. Even when mailing costs are eliminated from the analysis, it costs brokers 17 cents per unit to forward proxy materials to shareowners compared to six to seven cents per unit for the issuers. The difference in per unit mailing cost is due primarily to the increase in postage rates between the periods involved in the two surveys.

It is interesting to note that when only direct costs are considered, brokers forwarding fewer than 100,000 proxies per year can expect to lose money on their proxy operations.³⁵ When all costs are considered, the brokerage firms must send 500,000 proxies per year before breaking even. Exhibit 9 portrays this for 13 of the 74 firms in Exhibit 8 which supplied allocations of detailed overhead costs associated with proxy operations. The overhead costs for these firms accounted for 13 percent of total cost. Using this relationship to adjust total costs in Exhibit 8 reduces to three cents the excess of per unit reimbursement received by the 74 firms in Exhibit 8 (63 cents) over per unit cost.³⁶

EXHIBIT 9

BROKER-DEALER COST AND REIMBURSEMENT OF SENDING PROXY MATERIALS

[Sample of broker-dealers reporting detailed allocation of overhead cost]

Proxy size class (number of proxy materials sent to beneficial owners)	Number of broker- dealers	Number of proxies sent	Total cost	Per unit total cost	Per unit direct cost ¹	Per unit allocated overhead cost ²	Per unit reim- burse- ment	Per unit total cost minus per unit reim- burse- ment
Less than 80,000.....	4	159,536	\$348,948	\$2.14	\$1.88	\$0.26	\$1.71	\$0.43
80,000 to 199,999.....	3	407,436	668,779	1.62	1.34	.28	1.52	.10
200,000 to 499,999.....	3	1,036,471	1,196,484	1.14	.99	.15	1.10	.04
500,000 and over.....	3	18,040,655	6,887,469	.38	.34	.04	.46	(.08)
Total.....	13	19,644,098	9,075,680	.46	.40	.06	.53	(.07)

¹ Includes mailing and other direct cost (mostly wages and salaries).

² Includes allocated cost for depreciation of machinery, overhead cost of buildings, and overhead cost in terms of high level management.

Source: SEC 1976 proxy season questionnaires, Office of Securities Industry and Self-Regulatory Economics, Directorate of Economic and Policy Research.

As previously discussed,³⁷ banks do not usually request reimbursement from issuers for forwarding proxy materials but rather include this cost in the service charge to their customers. Exhibit 10 shows summary data for the 14 responding banks which request reimbursement from issuers. Per unit direct cost for banks is higher than for brokers principally because of the small scale of their proxy operations, but economies of scale in proxy operations are evident in the bank

³⁵ The per unit direct cost and the per unit reimbursement for each of the nine proxy-size classes are also provided in Exhibit 8. The eleven cent excess of per unit reimbursement over per unit direct cost should not be considered representative of the industry due to the high number of brokers in the 500,000 and over category.

³⁶ The per unit reimbursement which brokers represented in Exhibit 8 indicated they received (63 cents) was lower than the per unit reimbursement which issuers represented in Exhibit 7 indicated they paid (\$1.52 for issuers which sent proxies and annual reports as one package and \$1.25 for issuers which sent proxies and annual reports separately). This disparity is attributable, in part, to the disproportionate number of large brokers represented in Exhibit 8 (see *supra* p. 26 and Appendix D, p. 82). As noted in Exhibit 8, the per unit reimbursement cost for the largest brokers is understated; also those brokers experience economies of scale in the mailing of proxy materials to their customers. Smaller brokers, which are less represented in the sample, often charge the minimum fee for mailing materials which increases the per unit reimbursement. (For example, NYSE Rule 451 specifies a minimum charge for all sets mailed of \$3.00 plus postage.)

³⁷ *Supra* p. 10.

EXHIBIT 10

BANK COST AND REIMBURSEMENT OF SENDING PROXY MATERIALS

Proxy size class (number of proxy materials sent to beneficial owners)	Number of banks	Number of proxies sent	Total direct cost ¹	Per unit direct cost ¹	Per unit mailing cost	Per unit cost minus average mailing cost	Per unit reim- bursement	Per unit cost minus per unit reim- bursement
Less than 5,000.....	4	8,843	\$38,833	\$4.40	\$0.39	\$4.01	\$0.27	\$4.13
5,000 to 9,999.....	3	28,777	84,256	4.06	.59	3.47	.93	3.13
10,000 to 49,999.....	3	50,532	97,115	1.92	.30	1.62	.43	1.49
50,000 and over.....	4	321,791	526,804	1.64	.51	1.13	1.01	.63
Total.....	14	401,943	747,208	1.86	.49	1.37	.92	.94

¹ Excludes allocation of overhead for management and building and depreciation of equipment.

Note: Based on a sample of 14 banks which sought and received reimbursement for handling proxy materials. These banks account for approximately 66 percent of all the proxies mailed by banks in the SEC survey.

Source: SEC 1976 proxy season questionnaires, Office of Securities Industry and Self-Regulatory Economics, Directorate of Economic and Policy Research.

cost data. For banks sending less than 5,000 sets of proxy materials, the per unit direct cost was \$4.40 compared with \$1.64 for banks sending more than 50,000 sets of proxy materials. Information as to the collection of fees from customers for handling proxy materials proved unobtainable because banks do not segregate the proxy solicitation function in their fee schedules.

B. ANALYSIS OF THE PERCEPTIONS OF ISSUERS, BROKERS, BANKS, AND SHAREOWNERS REGARDING THE ADEQUACY OF THE CURRENT SYSTEM

The opinions and experience of the banks, brokers, issuers, and shareowners surveyed by the Commission reinforce the empirical data gathered by the Commission's survey. Seventy-four percent of the issuers, 73 percent of the brokers, and 78 percent of the banks stated that in their experience the existing communications system is satisfactory for the transmission of annual reports and proxies.³⁸ The survey also indicates that institutional and individual shareowners are satisfied with the service they receive, regardless of the size of their holdings or their geographic location. Of the more than 23,000 responding shareowners, only 7.5 percent indicated some complaint about the issuer-shareowner communications system.³⁹

Other surveys also indicated a general satisfaction with the current communications system. For example, in a survey conducted by the American Society of Corporate Secretaries,⁴⁰ a plurality (31.8 percent) of the 422 issuers responding ranked retention of the present system

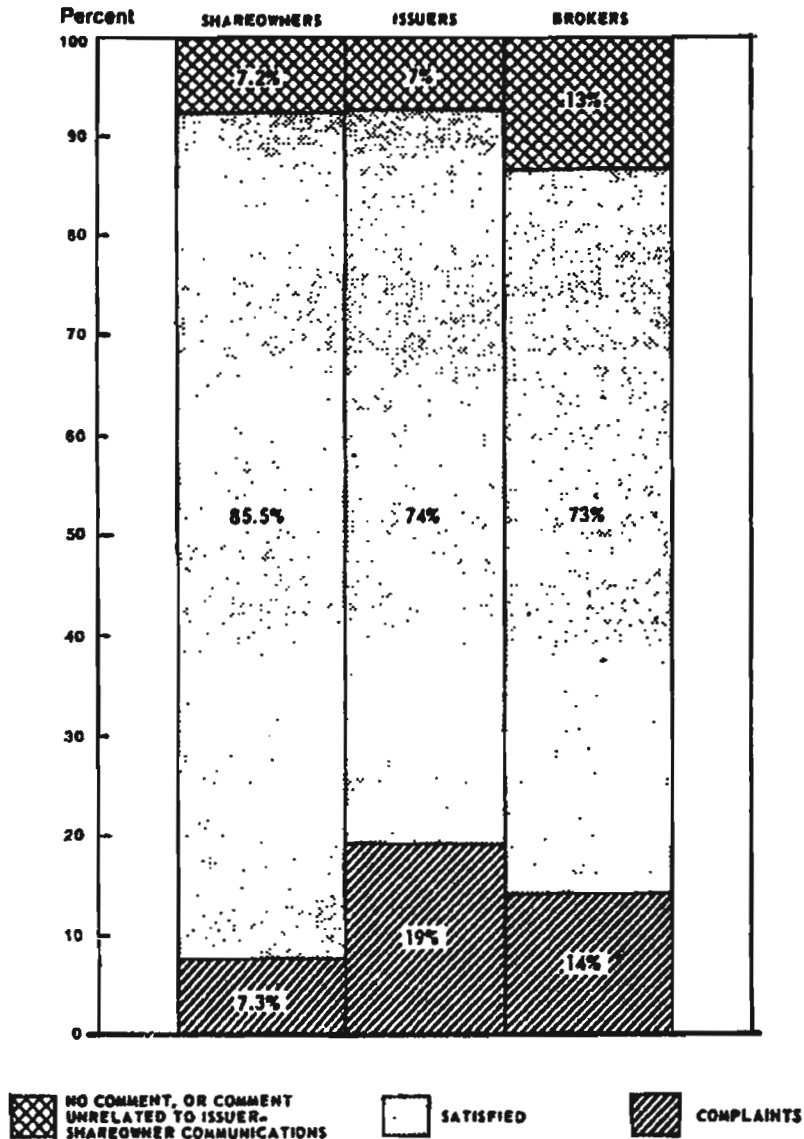
³⁸ Among the thirteen distributing banks, eleven indicated satisfaction with the current communications system, one indicated that it would prefer direct communications between issuers and shareowners, and one failed to comment.

³⁹ The survey question inquired: "Do you have any complaints regarding the transmission of proxy materials, annual reports or other shareholder communications?" Twenty-one percent of the respondents left this question blank. Because the question was phrased in terms of "do you have any complaints," these blanks were presumed to be negative answers rather than failures to respond. Sixty-five percent stated that they had no complaints about issuer-shareowner communications. Thus, 66 percent of the respondents fell into these two categories. Five and six-tenths percent of the respondents had a complaint about issuers in general but not about the communications process. These were complaints such as "issuers spend too much money on fancy annual reports" or "the president of the company is paid too much." Finally, 1.2 percent of the respondents took the opportunity to express their dissatisfaction with the federal government.

⁴⁰ See Appendix I.

EXHIBIT 11

1976 PROXY SEASON:
RELATIVE SATISFACTION WITH THE
ISSUER-SHAREOWNER COMMUNICATIONS SYSTEM



SOURCE : U.S. SECURITIES AND EXCHANGE COMMISSION
1976 PROXY SEASON SURVEY

first among the seven approaches to communications outlined in the Preliminary Report; 62 percent ranked it among the first three.⁴¹

Although the participants in the shareowner communications process generally are satisfied with the system for transmitting proxies and annual reports, many suggested that the system is not without flaws. Nineteen percent of the issuers responding to the Commission's survey indicated some dissatisfaction with the system.⁴² When asked what steps might be taken to improve the current shareowner communications system, 23 percent of the issuers indicated that no improvements were necessary, 32 percent had no opinion or gave no response, and 45 percent offered specific suggestions for improving the system. The improvement most frequently mentioned (favored by 68 percent of those offering suggestions) was direct communications between issuers and shareowners. Only slightly fewer, 27 percent, suggested that better cooperation was needed from intermediaries. A third suggestion (favored by twelve percent) was to increase the standardization of procedures.

Of the responding brokers, only 14 percent indicated dissatisfaction with the system for transmitting proxies and annual reports.⁴³ When asked what steps might be taken to improve the current shareowner communications system, 18 percent of the brokers indicated that no improvements were necessary, 28 percent had no opinion or gave no response, and 54 percent offered specific suggestions for improving the system. The most frequent suggestion (mentioned by 45 percent of those offering suggestions) was that more lead time was needed. These brokers complained that issuers often delay materials so long that brokers cannot forward them to their customers in time for the customers to vote.⁴⁴

None of the distributing banks had complaints about the system for transmitting proxies and annual reports, although one bank suggested that direct communications between issuers and shareowners might be preferable.

As noted, only 7.5 percent of the shareowners responding to the survey had a complaint about the distribution of proxy materials.⁴⁵ The shareowner complaints were categorized to pinpoint the most common problems: 58.5 percent of the complainants stated that proxy materials were late in arriving; 19 percent stated that they would prefer to communicate directly with the issuer; 14.8 percent stated that they were sometimes unable to vote due to late arriving proxy statements; 5.6 percent cited the receipt of duplicate proxy materials;

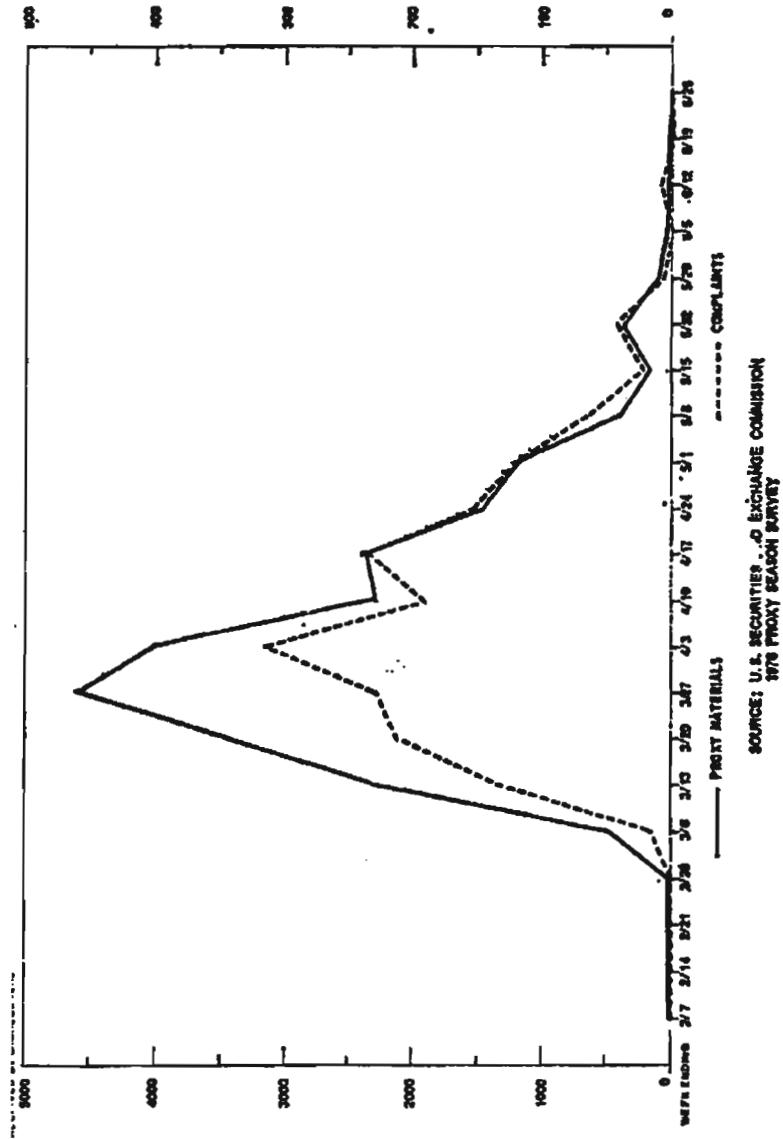
⁴¹ Respondents were asked to rank the approaches in order of preference from 1 ("most favored") to 7 ("most opposed").

⁴² As previously noted, 74 percent of the issuers indicated satisfaction with the system and seven percent had no opinion or gave no response. The problems most frequently mentioned were slow transmission of materials (cited by approximately two-thirds of the dissatisfied issuers), the expense (cited by approximately one-quarter of the dissatisfied issuers), and the inability to know if the material actually reached the shareowner (cited by approximately one-sixth of the dissatisfied issuers). Throughout the broker, bank, and issuer questionnaire, respondents were given the opportunity to state all of their reasons for advocating a particular position. Accordingly, the statistics cited herein may reflect more than one opinion by a respondent.

⁴³ Over one-third of the dissatisfied brokers indicated that they believe the communications process places an undue burden on brokers. Approximately one-quarter indicated that some issuers fail to follow standardized procedures or fail in other ways to carry out their obligations in the communications process.

⁴⁴ Other suggestions were the need for greater standardization and the need to enforce rules regulating the transmission of materials by issuers. Some brokers also stated that they would like to drop out of the communications process and allow issuers to deal directly with shareowners.

⁴⁵ Exhibit 12 demonstrates that the number of shareowner complaints rose and declined in relation to the volume of proxy material being distributed but does not show the existence of a disproportionate rise during the height of proxy season which would suggest a breakdown of the system.



and 2.1 percent said they did not want to be bothered with proxy materials.⁴⁶

C. CRITIQUE OF THE CURRENT SYSTEM

(i) *Problems in the transmission of proxy materials and the solicitation of proxies*

(a) *Transmission of proxy materials.*—The primary problem in the system for the transmission of proxies and annual reports is the failure of some issuers to send search cards as required by Commission Rule 14a-3(d)⁴⁷ or to send them in a timely manner. The search card procedure initiates the communications process and helps to assure that subsequent steps are carried out efficiently. Of the responding issuers who stated they send search cards, however, twenty, or 13.7 percent, commence their search card procedure on or after record date. An additional 23 percent begin mailing search cards within ten days of record date.

Brokers and banks uniformly stated that they depend on the receipt of search cards for notification of annual meetings and record dates but many complained that they do not receive search cards from a substantial segment of the issuer community.⁴⁸ Absent some collateral method for timely notification of record date, if an intermediary receives a search card after record date, it must reconstruct its record date position in the issuer's security in order to determine the shareholders entitled to vote.

Collateral notification depends on issuers announcing record dates in a manner which effectively communicates the information to intermediaries. If brokers and banks are informed of record dates, they can order materials even if a search card is not received.⁴⁹ The survey data indicate, however, that ten percent of the responding issuers announced the record date for their 1976 annual meeting on or after record date, while approximately 24 percent announced the record date between one and ten days before record date.

Many of the issuers which were interviewed or which submitted comments suggested that, in some instance, intermediaries do not respond to search cards or do not respond in a timely manner. The survey data show that such instances are infrequent. Eighty-nine percent of the responding issuers which provided information concerning intermediaries' requests for proxy materials stated that they received

⁴⁶ A disproportionate number of complaints came from brokerage firm customers. Specifically, 56.1 percent of the respondents indicated that they had received the proxy materials with which the questionnaires were included from a broker. (For a complete description of the distribution of the questionnaires, see Appendix D.) Brokerage firm customers, however, accounted for 78.6 percent of the shareholder complaints. By contrast, although issuers distributed 32.5 percent of the returned questionnaires directly to shareholders, only 9.7 percent of the complaints came from persons who had received the questionnaire directly from issuers. Banks distributed 11.4 percent of the questionnaires, and 11.6 percent of the complaints were received from bank customers. The disproportionate number of complaints from brokerage firm customers does not necessarily indicate that brokers were at fault in those instances.

⁴⁷ 17 CFR 240.14a-3(d).

⁴⁸ Twenty-nine percent of the responding brokers and 22 percent of the responding banks stated that they received search cards from less than half of the issuers whose securities they hold, while 37 percent of the responding brokers and 26 percent of the responding banks indicated that they received search cards from between half and three-quarters of the issuers whose securities they hold. In interviews, smaller over-the-counter issuers were cited as those most frequently failing to send search cards. The survey data lend some support to that assertion. Thirteen of the 159 responding issuers, or eight percent, indicated that they do not send search cards. Of those, nine are over-the-counter issuers, or 28 percent of the responding over-the-counter issuers. Although the survey data cannot be extrapolated to indicate the extent to which over-the-counter issuers generally may be failing to send search cards, it should be noted that sixty-five percent of the nation's publicly-held issuers are not listed on an exchange.

⁴⁹ Eighty-one percent of the responding brokers indicated that they order materials even if a search card is not received. Other brokers, especially the larger firms, order proxy materials prior to the receipt of search cards.

the intermediaries' requests no more than 20 days after search cards were first mailed out.⁵⁰

Finally, problems are created by the failure of brokers, banks and issuers to use standardized procedures. Every person interviewed by the Study agreed that the use of standard forms and procedures could significantly improve the efficiency of the communications process.

(b) *Solicitation of proxies.*—One of the purposes of the Act is to assure to shareowners voting control over the corporations in which they invest. In 1934 Congress was particularly concerned that voting of securities by brokers might deprive shareowners of their voting control and enable brokers to assume a position of influence which rightfully belongs to the beneficial owners.⁵¹ In recent years, Congress has been concerned as well with the ability of large institutions potentially to dominate shareowner voting.⁵²

The Commission examined the possibility that intermediaries may exercise undue influence because of the securities they hold. Only eight percent of the responding banks, however, vote securities held for the accounts of customers without customer instructions or specific written voting authority. Banks that vote pursuant to a written grant of authority act as fiduciaries and legally represent the interests of their customers.⁵³

Under the ten-day rule, a broker may vote a customer's securities without instructions if the broker advises the customer of the broker's intention and the customer fails to provide voting instructions. Although the broker's vote is not made pursuant to written authorization, brokers assert that the customer's silence confers tacit authorization. Brokers do not, however, recognize a fiduciary obligation to their customers when voting under a ten-day rule and always vote their position for management.⁵⁴ Many brokers assert that if a broker disagrees with management, his obligation is to advise customers to sell the issuer's securities rather than to attempt to change management by voting.

The Commission attempted to assess the impact of broker voting under the ten-day rule. Since brokers cannot vote on any matter which may affect substantially the rights or privileges of a customer's securities,⁵⁵ their sphere of influence is necessarily limited. On the other hand, many brokers assert that without their vote some issuers could not achieve a quorum at their annual meeting. To determine the proportionate share of proxies representing broker voting pursuant to a ten-day rule, the Commission surveyed issuers as to the vote obtained on ten-day rule matters and the vote obtained on non-ten-day rule matters. The vote on non-ten-day rule matters should be lower

⁵⁰ See *supra* p. 18.

⁵¹ The Senate Report accompanying the Act stated: "The rules and regulations [promulgated by the Commission under Section 14(b)] will . . . render it impossible for brokers having no beneficial interest in a security to usurp the franchise power of their customers and thereby deprive the latter of their voice in the control of the corporations in which they hold securities." S. Rep. No. 1455, 73d Cong., 2d Sess. 77 (1934).

⁵² A recent report detailing institutional holdings in the securities of United States corporations commented: "At this stage, . . . it seems fair to conclude that the stocks held in nominee accounts of banks' trust departments and in other institutions do in fact put these institutions in a position where they can exert significant influence, through voting and otherwise, on corporate decisions and policies." Subcommittee on Intergovernmental Relations and Budgeting, Management and Expenditures of the Senate Committee on Government Operations, *Disclosure of Corporate Ownership*, S. Doc. No. 93-62, 93d Cong., 2d Sess. 137 (1974).

⁵³ If an intermediary acts pursuant to a customer's instruction or as a fiduciary legally representing the customer's interests, the effect of that intermediary on corporate affairs may be significant, but it arises out of a contract or other legal relationship between intermediary and shareowner and not as a side effect of nominee and street name registration of securities.

⁵⁴ *Supra* p. 15.

⁵⁵ *Supra* p. 15.

than the vote on ten-day rule matters, since the former represents only the vote of shareowners entitled to vote, while the latter reflects, in addition, shares voted by brokers without specific customer authorization. For all issuers surveyed, the average differential was 5.3 percent, with issuers having 5,000 to 10,000 recordholders experiencing the greatest drop (10.2 percent), and issuers having more than 500,000 recordholders experiencing the smallest drop (two percent).⁵⁶

In all but two of 163 instances reported in the survey the non-ten-day rule vote would have been sufficient to constitute a quorum.⁵⁷ In addition, only 14 percent of the issuers surveyed by the Commission were concerned that they might have problems in obtaining a quorum without the ten-day rule vote. While these data cannot be extrapolated to prove that issuers would not experience difficulty in obtaining a quorum if ten-day rule voting were proscribed, they do indicate that broker voting under the ten-day rule is not as important in obtaining a quorum as some brokers suggest. The Commission is not aware of any significant shareowner dissatisfaction with broker voting pursuant to a ten-day rule.

The Commission has found a rather widespread misinterpretation of the ten-day rule, however, which may infringe shareowners' rights. Under the ten-day rules of the NYSE and Amex, although a broker may give its proxy ten days before the meeting with regard to securities not voted by customers, the broker is obligated to change its proxy if, within the ten-day period, a customer gives voting instructions in a manner which countermands the proxy given by the broker. Over 24 percent of the NYSE and Amex members responding to the survey which vote under the ten-day rule stated that they establish a time prior to an issuer's annual meeting after which voting instructions received from customers are not given effect.⁵⁸ The ten-day rules of the Midwest and Boston Stock Exchanges do not specifically require members to change their vote if customers' voting instructions are received within ten days of an issuer's meeting.

(ii) *Transmission of quarterly reports and other routine communications*

The system for distributing quarterly reports is less efficient than the system for distributing annual reports and proxies. Many issuers do not send a search card in connection with the distribution of quarterly reports, but simply distribute the report to those who are shareholders of record on the mailing date.⁵⁹ When the broker-recordholder receives a copy of the quarterly report in the mail, he requests from the issuer an appropriate number of copies for forwarding to shareowners.⁶⁰ This haphazard ordering process frequently delays the receipt of materials by shareowners. To avoid such delays, some issuers send the interme-

⁵⁶ In several instances, the expected differential did not appear. One issuer stated that broker intermediaries never vote its shares pursuant to the 10-day rule. Another suggested that brokers were not confining their 10-day rule voting to routine matters but were voting on all matters. The Commission has found no evidence to support this contention.

⁵⁷ Presumed to be 50 percent plus one. The survey did not inquire whether the issuers undertook special efforts to solicit proxies on non-ten-day rule matters. Furthermore, shareowners may be more inclined to vote on non-ten-day rule matters since they are non-routine matters.

⁵⁸ Over half of those brokers do not give effect to customers' voting instructions received less than a week before the meeting.

⁵⁹ The distribution of quarterly reports is not governed by the Act, and the sending of search cards is not required.

⁶⁰ In general, the financial community is unaware in advance of the distribution because there is no record date.

diary as many copies of the quarterly report as it requested of the last annual report.⁶¹

Brokers also are responsible for the lower efficiency of the system. While virtually all brokers state that they forward proxy materials and annual reports, only 77 percent indicated that they normally forward quarterly reports to customers. Other routine communications, principally press releases, are forwarded by less than 60 percent of the brokers.

(iii) Transmission of non-routine communications

Few issuers have been involved in a tender offer or counter solicitation of proxies. As a result, 84 percent of the responding issuers had no opinion as to the effectiveness of the current system for transmitting non-routine communications; seven percent were satisfied; and nine percent were dissatisfied. Brokers on the other hand, because they hold securities of many issuers, frequently are involved in transmitting non-routine communications. Only 15 percent of the brokers had no opinion or gave no response as to the current system's efficacy. Seventy-two percent were satisfied with the system, and 13 percent indicated dissatisfaction.

The Commission has released for public comment proposed rules regarding tender offers and has recently adopted amendments to rules concerning dissident shareowner proposals.⁶² Furthermore, the Commission is continuing to study this area. Accordingly, the Commission has made no judgments about the transmission of non-routine communications at this time.

(iv) Reimbursement of expenses

The cost to issuers of forwarding materials through intermediaries is substantially greater than the cost of mailing materials directly to their shareholders.⁶³ Nevertheless, only 30 percent of the responding issuers indicated that they believe the current system entails costs which should be reduced or eliminated. Strikingly, only 25 percent of the issuers maintained that the costs of the current system should be reallocated among issuers, brokers, banks and shareowners.⁶⁴

Brokers generally are satisfied with the cost and cost allocation of the current system. Only 23 percent of the responding brokers consider the current system to have excessive costs. Seventy percent of the responding brokers do not believe that the costs of the current system should be reallocated among issuers, intermediaries, and shareowners.

⁶¹ Thirty-four percent of the responding brokers were dissatisfied with the system for forwarding quarterly reports, generally for one of three reasons: (a) issuers do not send search cards; (b) issuers are more casual about quarterly reports, failing to fill orders promptly or to send materials; or (c) issuers do not reimburse brokers for forwarding quarterly reports and other routine communications. Although brokers frequently complained about non-reimbursement, ninety-four percent of the responding issuers indicated that they reimburse intermediaries for forwarding quarterly reports.

⁶² Securities Exchange Act Release No. 12676 (August 2, 1976) and Securities Exchange Act Release No. 12909 (November 23, 1976).

⁶³ See *supra* pp. 25-27.

⁶⁴ There is one matter over which many issuers are concerned, however. They state that frequently they are billed for the forwarding of communications by persons who are not shareholders of record and who do not otherwise represent beneficial owners of the issuers' securities. According to the issuers, such persons either order and bill for materials which they do not distribute, submit a fraudulent bill, or bill for the distribution of materials to persons who are not shareowners, such as libraries or publishing services. The American Society of Corporate Secretaries has published a list of persons it alleges have engaged in incorrect billing. The list is widely used in the issuer community in reviewing billings, but some issuers continue to express concern over the practice. The Commission believes that measures should be taken against persons who fraudulently engage in this practice. Accordingly, the Commission has discussed the matter with the American Society of Corporate Secretaries and the North American Securities Administrators Association, the organization of state securities administrators. The Society and the Association have agreed to establish a liaison with the objective of determining ways to eradicate this practice.

3. Alternatives to the Current System

Although the evidence developed by the Study indicates that the current system is performing adequately, the Commission carefully considered the six alternatives set forth in the Preliminary Report to determine whether any of them might produce a significant improvement in shareowner communications. The Commission considered also whether the alternatives could be achieved at a reasonable cost and would carry forward the improvements made in recent years in securities transaction processing which depend upon nominee arrangements and the use of depositories. None of the alternative approaches appears to meet those criteria.

In examining the alternative approaches, the Study found that one problem common to each was the lack of an industry-wide system for the effective transmittal of records and information. Since the paperwork crisis of 1969, the securities industry increasingly has turned to the use of computers to maintain and process records and information. The development of computerized recordkeeping systems in the securities industry, however, has been characterized by the design of systems to fit individual needs and methods of recordkeeping; little standardization has developed. As a result, different computer systems often use different media and codes.⁶⁵

In addition, there is no standard format for records and information in computer programs. For example, a broker may program his records so that the account number appears first, the name of the customer second and the customer's address third. An issuer, on the other hand, may format its records so that the shareowner's name appears first, his address second and the size of his holding third. They may employ different abbreviations.

Each of the alternative approaches to shareowner communications would produce a substantial increase in the flow of records and information among the various participants in the securities industry or would rechannel that flow and require the development of new lines of communication. The development of an industry-wide system for the rapid transmission of records and information would entail significant costs which must be measured against the potential benefits of each alternative.

A. REGISTRATION IN THE NAME OF THE BENEFICIAL OWNER

Under this approach, securities held by banks in custody accounts and securities held by brokers would be registered in customers' names. Securities held by a bank as trustee or executor or in a similar capacity would be registered in "same name" registration, for example, in the name of "First National Bank as Trustee for John Doe," or as trustee under a specific trust agreement or will.⁶⁶

⁶⁵ Records and information are transferred among different computer systems by the use of various devices, or "media." Among the more common types of media are cards, tapes, discs, drums and direct wire connections. Data are represented on these media by different codes. In order to transfer the information between computer systems, the receiving system first must have the proper equipment to extract or "read" the information contained on a medium, and second, must be able to decode what it has read and convert that information into the code that the system is using. The more sophisticated computer systems today have reading devices for most or all of the more commonly used media, and there exist a number of standardized codes. Some systems have pre-established programs for converting data from one standardized code to another.

⁶⁶ Preliminary Report 23-24.

Support for this approach came from a number of issuers who believe that the advantages of full disclosure of beneficial ownership and direct issuer-shareowner communications outweigh the impact of this approach on the securities transaction processing system and on the operations of brokers, banks and issuers. Over one-fifth of the issuers responding to the American Society of Corporate Secretaries' survey (21.3 percent) ranked this first among the seven approaches,⁶⁷ while 17.3 percent rated it second, and 12.3 percent rated it third.⁶⁸ At the same time, 20.6 percent of the issuers responding to the Society's survey were "most opposed" to this alternative, more than for any other approach. The dichotomy in issuers' responses to this approach apparently arises from a desire to know the names of beneficial owners on one hand,⁶⁹ and a concern that transaction processing economies would be lost on the other.

Other commentators also were concerned that recent improvements in securities transaction processing which depend on nominee name arrangements would be lost if this alternative were adopted. One broker stated that "while the method would provide greater disclosure, the problems created for securities processing would be enormous." The Committee of Publicly Owned Companies, in commenting on the Preliminary Report, stated that although it supported modifications of the current shareowner communications process, it remained "committed to the principle of not wishing to disturb the processing and transfer benefits accruing from the system of street name or nominee registrations * * *." The California Bankers Association considered the elimination of nominees to be "a drastic, unwarranted step." A number of brokers and banks also were concerned that this alternative would invade their customers' right to privacy.

A problem for intermediaries under this approach is that they would have to discontinue the use of jumbo certificates (certificates representing the combined interests of many customers) and replace them with a significantly larger number of certificates registered in their customers' individual names. The maintenance of this larger number of certificates would require additional recordkeeping and expanded safekeeping facilities. Moreover, the advances made in securities transaction processing since the paperwork crisis of the late 1960's depend upon the use of nominee name arrangements. Wholesale registration of securities in the name of the beneficial owner would, under current practice, require that the completion of transactions be accompanied by certificate delivery and transfer of record ownership. Under such conditions and at current volume levels, the securities industry could not effect transactions in a timely manner.

B. MULTIPLE NAME REGISTRATION

Under this approach, issuers would maintain their registration records in more than one name. Multi-level registration would permit

⁶⁷ That is, the six alternatives and retention of the present system.

⁶⁸ Some issuers responding to the Society's survey suggested that this alternative was the "most practical and useful manner in which a company could get to know who were the beneficial owners of its stock." The results of the survey are reproduced in Appendix I.

⁶⁹ Sixty-five percent of the respondents to the Society's survey indicated that they would look favorably on some system which would effect disclosure of the names of beneficial owners to issuers. The Society stated that a "pervasive" attitude among the members responding to its survey was "the belief that the issuer should have a right to know who are the beneficial owners of its stock, and that regardless of the system adopted, disclosure of a company's stock [sic] must be required."

securities to be registered in the name of the broker or institution for the purpose of negotiating transfer and in the name of the beneficial owner for the purpose of receiving issuer communications and disclosing beneficial ownership information.⁷⁰

As with each approach requiring disclosure, the brokers and banks felt it would impinge upon their customers' right to privacy. This approach received little support from issuers or transfer agents who commented that it would be costly and would impose significant recordkeeping burdens. Transfer agents would be required to maintain sub-accounts on their books, a service which many advised the Commission they could not provide without an extensive and costly reprogramming of their computers.⁷¹ Only 1.9 percent of the American Society of Corporate Secretaries' respondents rated this alternative first. In terms of mean response to the Society's survey, this alternative ranked sixth; in terms of median response it ranked fifth.

This approach also would have an adverse impact on the current system for clearing and settling securities transactions because the completion of each securities transaction would have to be accompanied by a transfer of record ownership.

C. CENTRAL MAILING CONCEPT

This approach contemplates the mailing of proxies and the processing of other shareowner materials through a centralized system involving securities depositories. Prior to a meeting of stockholders, on notice sent by the issuer, brokers would forward to the depository their customer positions in the issuer's securities as of the record date. The depository would create a master list for each security and promptly thereafter advise the issuer of the number of sets of materials required. The issuer would forward the materials to the depository which would mail them to shareowners; proxies could be returned to the depository for tabulation or mailed directly to the issuer.⁷²

One large New York broker strongly supported this approach but suggested the creation of a new entity to carry out the function rather than employing the securities depositories. This commentator suggested that "[t]he problem all lies in the physical handling and distribution of materials. . . . One must personally view the horrendous amount of bulk that is received during the proxy season at brokerage firms to recognize the chaos that it causes." [Emphasis deleted.] The commentator felt that a new central mailing entity would simplify and facilitate the entire procedure.

Other commentators did not view the approach as favorably. One broker stated that "the cost of establishing [a central mailing entity] would be far out of proportion to the benefits [to be] derived from this service." Two of the major securities depositories stated that they were ill-equipped to carry out the role proposed for them,⁷³

⁷⁰ Preliminary Report 25.

⁷¹ The Western Stock Transfer Association, Inc. stated: "This alternative is fraught with problems of economics and expanded communications. Procedures now in use by most of our members' firms do not provide for sub-accounts; so most of our programs for handling shareholder records would have to be revised, incurring considerable cost and time for re-programming. Changes in beneficial ownership of street name or nominee shares would cause greatly increased notices and confirmations between brokers and nominees and transfer agents, to say nothing of the additional clerical work to update files. WSTA must ask the Commission to give this alternative a very low priority."

⁷² Preliminary Report 28.

⁷³ The third major depository was not interviewed.

since depositories are most effective in performing computer-oriented functions and least effective in performing manual ones. As evidence of this, they cited the experience of depositories prior to the omnibus proxy procedure⁷⁴ and suggested that central mailing would be an unfortunate step backward. They also felt that it would be inappropriate for depositories to service individual shareowner accounts.

A number of commentators thought that this approach would delay shareowner communications by adding an additional layer to the communications process or pointed out the danger of overcentralization with the resultant vulnerability of the system. Also mentioned as a deterrent to this approach was the need for a separate system for securities not eligible for inclusion in a depository. Among the respondents to the American Society of Corporate Secretaries' survey, only 2.4 percent rated this alternative first, and only 17.3 percent listed it as one of their top three choices.

D. CENTRAL ORDER PROCESSING

Under this approach, the depository would order proxy and other shareowner materials on behalf of its participants and perform certain accounting services but would not mail the materials.⁷⁵

The depositories had the same objection to this approach as to the central mailing concept, and the approach received little support from the bank, broker, or issuer communities. The American Society of Corporate Secretaries reported that less than one percent of its responding issuers listed this as a most favored alternative, while almost 60 percent rated it in the bottom three categories. Most commentators felt this approach would be more costly than the present communications system and would not produce better results.

E. DISCLOSURE OF BENEFICIAL OWNERSHIP FOR PURPOSES OF SHAREOWNER COMMUNICATIONS⁷⁶

Under this alternative, brokers and banks would disclose to issuers the names of customers for whom the intermediaries act as custodian. Issuers then would distribute communications and dividends directly to shareowners.⁷⁷

This alternative was proposed to the Commission during the Beneficial Ownership Hearings in 1974,⁷⁸ and in August 1975 the Commission proposed Rule 14b-1(b) which would permit brokers to fulfill their obligations in transmitting shareowner communications by voluntarily disclosing customers' names.⁷⁹ Subsequently, the Preliminary Report suggested disclosure as an alternative for improving the communications system.

⁷⁴ See *supra* p. 15.

⁷⁵ *Preliminary Report* 27.

⁷⁶ In this Report, disclosure of beneficial ownership as a means of implementing direct issuer-shareowner communications is distinguished from disclosure as a means of identifying and monitoring beneficial ownership of securities. Disclosure for purposes other than shareowner communications is discussed *infra* pp. 49 et seq.

⁷⁷ *Preliminary Report* 24-25.

⁷⁸ Hearings in the Matter of Beneficial Ownership, Takeovers and Acquisitions of Securities by Foreign and Domestic Persons Before the Securities and Exchange Commission, File No. 4-175 (1974).

⁷⁹ Securities Exchange Act Release No. 11817 (August 25, 1975).

Disclosure is supported by a substantial segment of the issuer community,⁸⁰ but the bases of that support vary. Some issuers supported it as a means of facilitating direct issuer-shareowner communications; others wanted the names to monitor investment in the company; still others wanted the names available as an alternative for times when they believe the communications system is not operating effectively.⁸¹

Strong support for disclosure came from smaller issuers who argued that in their experience the current communications system is not working well. Larger issuers feared the operational difficulties which would be created if they were required to communicate directly with all of the shareowners now represented by brokers and banks. One issuer, in commenting on proposed Rule 14b-1(b), stated: "Should the Commission promulgate a rule which would require the issuer to assume the burden of direct communication with beneficial owners, we would be constrained to administer at least 10,500 additional mailings on an individual basis without the benefit of a computer listing. The cost of such a burden in terms of additional staff, time limitations and the orderly administration of our stock transfer office would far eclipse the amount for which we would otherwise expend [sic] to reimburse brokers for their having communicated directly with their customers."⁸²

Support for disclosure also came from some members of the banking and brokerage community. These intermediaries believe that the operation of the proxy department is a burdensome and unproductive segment of their business that is at best marginally profitable. As a result, they would be willing to disclose the names of their customers to issuers if it would allow them to drop out of the communications process.⁸³ Generally, however, intermediaries were opposed to disclosure of beneficial ownership. They argued that disclosure would constitute an unwarranted invasion of their customers' privacy unless it could be demonstrated that the communications system has grave deficiencies.⁸⁴

⁸⁰ Among the respondents to the American Society of Corporate Secretaries' survey, 22.5 percent listed this as the most favored alternative, while 29.8 percent ranked it second, and 14.9 percent ranked it third. In terms of both mean and median response, the Society's survey respondents ranked this alternative first among the seven approaches listed in the Preliminary Report. Analyzing the responses to the American Society's survey according to size of issuer, the disclosure alternative ranked first, in terms of mean and median response, among issuers with 10,000 or fewer recordholders, and second (to retention of the present system) among issuers with more than 10,000 recordholders. Of the issuers responding to the Commission's survey, 57 percent favored disclosure of beneficial ownership, while 26 percent did not, and 17 percent had no response or no opinion.

⁸¹ A number of brokers and banks suggested that the primary motive of smaller issuers in seeking disclosure is a desire to combat tender offers and adverse takeovers rather than to improve communications. Some issuers confirmed that this was their motivation in part but argued that their interest in communicating effectively with their shareowners was paramount.

⁸² Another issuer estimated that it would receive an additional 20,000 names from brokers for each annual meeting and recited the problems that would be created:

"This raw data [names received from brokers] could not be added to the master list of records as it would create confusion with the current list. . . . Thus a new computer program would have to be created, tested, and put into use.

"For each beneficial owner, a minimum of five items of information must be encoded. For 20,000 names, 100,000 items must be encoded. Thereafter the encoded material must be keypunched, transferred to the new computer tape and then balanced to correct errors."

⁸³ A number of these intermediaries have in the past voluntarily disclosed their customers' names to issuers.

⁸⁴ Brokers were concerned about the confidentiality of their customer lists and argued that disclosure could result in the loss of customers to competitors. In response to this concern, many issuers suggested that access to information regarding the identities of beneficial owners could be restricted. Brokers, however, disagreed emphatically, arguing that once disclosure were made, it would be impossible, as a practical matter, to preserve the confidentiality of their customer lists. In addition, many banks feared that disclosure would violate state banking laws which prohibit fiduciaries from disclosing the aspects of a trust. Another of their concerns was that the complexities of trust arrangements would make it difficult in some situations to determine the name to be disclosed.

The Commission's survey indicates that shareowners as a group are less concerned than intermediaries about the disclosure of their names to issuers. Almost 88 percent of the responding shareowners whose securities are held in street or nominee name indicated that they would not object to disclosure for purposes of direct communication. Those who objected tended to be larger shareowners or bank customers. Among those owning 100 shares or less, 5.2 percent were opposed; among those owning 501 to 1,000 shares, 10.2 percent were opposed; and among those owning more than 10,000 shares, 19.3 percent objected. Almost 21 percent of the bank customers responding to the survey objected to disclosure while only 8.2 percent of the brokerage customers raised an objection.⁸⁵

Because of the strong support for this approach from many issuers, the Commission sought to determine whether the problems associated with it could be overcome. Both proponents and opponents agreed that unless disclosure were mandatory, little would be accomplished. Issuers argued that a voluntary system would be worse than complete disclosure because they would have to maintain a dual operation, reprogramming their computers to accept additional names but continuing to forward communications through intermediaries as well.⁸⁶ Most brokers and banks indicated they would not disclose their customers' names unless required.

To deal with intermediaries' concerns about privacy and the confidentiality of their customer lists, some commentators suggested interposing depositories between intermediaries and issuers. The depositories would receive the customers' names, alphabetize them, standardize the format, and remove any information relating customers to particular intermediaries. The depositories asserted, as with central order processing, that they are not organized to perform this role. Other commentators suggested that issuers can already obtain a measure of disclosure by sending cards through intermediaries asking the shareowners to contact the issuer if they wish to receive communications directly. This approach does not impose any burdens on intermediaries, but the list of names obtained by the issuer cannot be used to determine persons entitled to vote.

Disclosure of the names of shareowners by intermediaries to issuers would not interfere with those functions of the securities and banking industries which depend on nominee name arrangements. It would, however, impose substantial recordkeeping burdens on intermediaries and many issuers, and does not appear feasible absent the development of a compatible industry-wide computer system for the transmission of names and the development of a standard format.

F. TRANSFER AGENT DEPOSITORY CONCEPT

The transfer agent depository ("TAD") would replace the certificate with computerized stockowner lists, maintained by the transfer agent, which would serve as both the issuer's stock records and the share-

⁸⁵ This statistic may result from the tendency of large shareholders to leave securities with bank custodians rather than with brokers.

⁸⁶ One suggested approach was to have intermediaries poll customers as to whether they would object to having their names disclosed. Customers desiring privacy could continue to have shareowner communications sent through the intermediaries; others could receive communications directly. In addition to the problem of maintaining dual operations, issuers suggested that this would make planning difficult since they would be uncertain in any year how many intermediaries would forward customers' names. Intermediaries expressed concern that they would have to bear the initial and continuing expense of polling customers, which several large brokers argued would be substantial.

owner's evidence of ownership. Following a trade, upon the instruction of a selling customer or his broker, the TAD would transfer securities by book entry from the selling customer's account to the buying customer's account and would notify the customers and their brokers of completion of the transfer. The transfer would be performed by means of a message-switching center interposed between the customer or broker and each transfer agent.⁸⁷

To the extent the stock certificate were eliminated, the interpositioning of a computer switching center between the transfer agent and the broker and banking communities would permit multiple high speed transfers of record ownership. Therefore, securities could be held in the name of the beneficial owner without disrupting the system for clearing and settling securities transactions. Customers wanting to maintain privacy or owning securities through arrangements requiring the intervention of an intermediary could continue to register the securities in the name of the intermediary.

The TAD concept received support from various elements of the issuer, banking and brokerage communities. The survey of the American Society of Corporate Secretaries indicated that 17.5 percent of the responding issuers rated the transfer agent depository concept first, 15.4 percent rated it second, and 9.5 percent rated it third. In general, it ranked in the middle of the various alternatives in terms of mean and median response.

The principal concern regarding TAD, even among those commenting favorably, was the belief that problems involved in its implementation were too significant to make TAD a short-term alternative. One issuer stated, "[a]ssuming that a 'Certificateless Society' was an immediate possibility, this alternative could be very beneficial. * * * However, in reality, because of time and standardization costs, we feel that there would not be an immediate enough benefit from further consideration of this alternative." A large broker commented that, "[a]lthough this alternative is attractive and will probably be a necessary development in the goal of a certificateless society, we believe that there are other steps which need to be taken * * * before we can use such a system for the distribution of proxy material." A major west coast bank stated: "The transfer agent depository concept * * * may have some long run promise, but it would seem to presuppose a highly integrated national computerized 'book entry' system which simply doesn't yet exist. High costs of implementation plus lack of compatible systems among users indicate that this alternative is unrealistic at this time."

B. Conclusions

The current system for transmitting issuer-shareowner communications through intermediaries is functioning reasonably well. Empirical data developed by the Commission show that while transmission through intermediaries is more circuitous, materials are received by shareowners in a timely manner whether they are transmitted directly by an issuer or through an intermediary. The problems in transmission which do occur appear to be traceable to failures on the part of individual issuers or intermediaries rather than to weaknesses in the system. In particular, a number of issuers fail to announce their

⁸⁷ Preliminary Report 27-28.

record dates or to send search cards in a timely manner. In general, however, the data do not reveal any intrinsic weak links which portend future breakdowns.

The Commission has not found any apparent relationship between measures of intermediary activity in the proxy distribution process and issuers' success in soliciting proxies. Rather, issuers' ability to obtain a sufficient voting response appears to be dependent upon factors other than the extent to which their securities are held in nominee and street name.

Most of the participants perceive the system to be adequate to meet their needs. Shareowners have little concern about the manner in which communications are now handled. While issuers and intermediaries raised some problems, they generally can be mitigated without significant revision of the current system.

The Commission has concluded that no alternative approach would facilitate shareowner communications without disrupting the current system of clearance and settlement, imposing significant costs and recordkeeping requirements on participants, or involving major computer development. In view of the Commission's conclusion that the current system is adequate, the Commission believes that imposition of the substantial burdens involved in implementing an alternative system is not justified.

The TAD concept exhibits promise as an important long-term alternative. It is not, however, a system for streamlining communications but rather an approach to a national clearance and settlement system which, as a by-product, would improve issuer-shareowner communications. Development of TAD, therefore, must be integrated with other developments in clearance and settlement. The Commission will continue to encourage consideration of the TAD system in carrying out the Commission's responsibilities under Section 17A of the Act.

In view of the foregoing, the Commission concludes that the practice of registering securities in other than the name of the beneficial owner is consistent with the purposes of the Act regarding issuer-shareowner communications, with particular reference to Section 14 relating to the solicitation of proxies. Nevertheless, there are a number of steps which can be taken to improve issuer-shareowner communications while retaining the benefits of the practice of registering securities in nominee and street name.

C. Recommendations

1. The Commission will review the recommendation of the Study that issuers be required to announce any annual or special meeting of shareholders at least ten days prior to the record date and to specify in that announcement the record date, meeting date and other pertinent information.

2. The Commission has under consideration adoption of proposed Rule 14b-1(a) and related amendments to Rule 14a-3(d) with minor changes.⁸⁸

Proposed Rule 14b-1(a) would require brokers to respond by means of a search card or otherwise to an inquiry from an issuer made in accordance with Rule 14a-3(d) with respect to how many of the

⁸⁸ Securities Exchange Act Release No. 11617 (August 25, 1975).

broker's customers are beneficial owners of the issuer's securities which are held of record by the broker or its nominee. Upon receipt of a sufficient number of proxies and annual reports, and assurances that its reasonable expenses would be paid by the issuer, the broker would be required to forward such materials to its customers.

Amended Rule 14a-3(d) would require issuers to carry out their obligation in distributing materials in a manner which would reflect the complementary obligation imposed on brokers by proposed Rule 14b-1(a). Specifically, it would require issuers to make inquiry of brokers at least ten days prior to their record dates and to supply requested materials promptly.

The rules would not add any new procedures to the issuer-shareowner communications process. Rather, they would formalize the distribution process already employed by most brokers and issuers. Nevertheless, the Commission is considering adoption in view of the data gathered by the Study which indicate that some brokers and issuers are unfamiliar with the search card procedure or do not follow it.

3. The Commission will evaluate the recommendation of the Study that brokers be required to forward all shareowner communications which the issuer supplies to the broker in sufficient quantities and for the forwarding of which the issuer is willing to reimburse the brokers' reasonable expenses. Brokers often do not forward shareowner communications even when issuers are willing to supply the materials and provide reimbursement. The decision of those brokers as to what materials should be forwarded generally is based on the broker's assessment of the "importance" of the communications. The Commission deems it inappropriate, in general, for brokers to determine whether communications from issuers should be forwarded to shareowners. Decisions as to the scope, relevance, or frequency of communications to be transmitted to shareowners should rest with the issuer.

4. The Commission has under consideration withdrawal of proposed Rule 14b-1(b) and related amendments to Rule 14a-3(d).¹⁴ Rule 14b-1(b) would permit brokers to satisfy their obligation to forward communications to their customers by providing to the issuer a list of the shareowners, their addresses and their holdings. Issuers would then be required under the proposed amendments to Rule 14a-3(d) to communicate directly with their shareowners. The withdrawal of these rules is being considered on the basis of the Study's finding that the procedures suggested for effecting direct issuer-shareowner communications would significantly disrupt the present system for clearing and settling securities transactions or would place undue regulatory and economic burdens on issuers and brokers.

5. To make clear that customers' voting instructions, received any reasonable length of time prior to an issuers' meeting, must be given effect, the Boston and Midwest Stock Exchanges should amend their rules, and the New York and American Stock Exchanges should undertake a program to review their ten-day rules with their members. Failure to give effect to such instructions may interfere unduly with the ability of shareowners to vote their securities.

¹⁴ 14.

6. An advisory committee will be proposed by the Commission (a) to focus on the development of standard forms and procedures for the transmission of shareowner communications and the solicitation of proxies and (b) to seek ways to implement such forms and procedures throughout the securities industry on a voluntary basis.

Most brokers, banks, and issuers agree that the use of standard forms and procedures could significantly improve the efficiency of the communications process. They would prefer, however, that such standards be implemented through self-regulation. The Commission concurs in the belief that a self-regulatory approach is appropriate. In the past, progress in this area has been slow because there is no single body which represents all of the participants in the communications process or which has the authority or influence to institute industry-wide standards. The Commission believes a federal advisory committee could perform this role.

If the self-regulatory approach proves unsuccessful, the Commission will consider exercising its rulemaking power to achieve standardization in shareowner communications. In making this determination, however, the Commission will consider carefully the apparent general satisfaction of brokers, banks, issuers and shareowners with the existing communications system. The Commission will seek to balance the potential benefits of any such changes against the regulatory and financial burdens which would be imposed.

7. The national securities exchanges and the NASD jointly should prepare a brochure for distribution to brokers' customers explaining the benefits and consequences of leaving securities in street name. The Commission's survey data indicate that many customers do not realize that securities left with a broker will be registered in the broker's name, that communications will be sent to them indirectly through the broker, and that dividends will be credited by the broker to their account. This sometimes results in customer dissatisfaction even where brokers have adhered to high standards in transmitting communications.

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CHAPTER IV

THE PRACTICE AS IT AFFECTS DISCLOSURE OF BENEFICIAL OWNERSHIP FOR PURPOSES OTHER THAN ISSUER-SHAREOWNER COMMUNICATIONS

A. Discussion

The practice of registering securities in nominee and street name interposes between the issuer and the beneficial owner an intermediary which may effectively mask the identity of the beneficial owner from the issuer and the public. Although it is possible, in most cases, to identify brokers or banks which hold securities through a depository or institutional nominee,¹ brokers and banks have been generally unwilling to make available to issuers or to the public information about the individuals or institutions on whose behalf the securities are held.

During the past several years, the Senate Committee on Government Operations and its subcommittees have conducted extensive hearings and issued several reports on the lack of readily accessible coordinated information regarding substantial beneficial owners. Congress has voiced concern that nominee and street name registration may deprive the investing public of ownership information which is relevant to their investment and voting decisions and may make it more difficult for governmental entities to carry out their regulatory responsibilities.

The Commission has examined the impact of the practice on the existing disclosure requirements of the Act to determine (1) whether additional legislation should be sought in order to assure public availability of information regarding substantial beneficial owners and (2) whether the practice impedes effective enforcement of existing disclosure requirements.

1. Disclosure Requirements of the Securities Exchange Act and the Rules Thereunder

A. DISCLOSURE BY BENEFICIAL OWNERS

Section 16(a), the Act's only beneficial ownership disclosure provision of general application, requires any person who becomes the beneficial owner of more than ten percent of any class of equity security of a publicly-held company² (or who is a director or officer of the company) to file with the Commission a statement listing the amount of that issuer's equity securities so owned. Thereafter, any change in ownership must be reported within ten days after the close of the calendar month in which such change occurs.

¹ If the securities are held in the nominee name of a depository, the depository will make available to the issuer a listing of each participant's holdings in the issuer's securities. If securities are held in the nominee name of a bank or other institution, the bank or institution can usually be readily identified by consulting the *Nominee List* which is published annually by the American Society of Corporate Secretaries.

² A "publicly-held" company, as used hereafter, is any issuer whose securities are registered pursuant to Section 12 of the Act.

Section 13(d) requires any person (or group) who, after acquiring ownership of certain equity securities,³ is the beneficial owner of more than five percent of any class of such securities to disclose, among other things, that person's name, address, occupational background, source of funds, and purpose in effecting the acquisition, as well as the number of shares of the subject security which are beneficially owned by such person and each associated person. Thereafter, any material change in ownership must likewise be reported.

Section 14(d) requires a person (or group) who, after consummation of a tender offer, would be the beneficial owner of more than five percent of any class of a Section 13(d) security, to disclose the information specified in Section 13(d) and certain additional information which the Commission has prescribed.

Sections 13(d) and 14(d) are not disclosure provisions of general application. Neither Section requires reporting of any acquisition which, together with all other acquisitions of the same class during the preceding twelve months by the same person or group, does not exceed two percent of that class.⁴ Moreover, the provisions do not require disclosure by five percent beneficial owners who acquired their ownership interest prior to the enactment of the five percent disclosure threshold in 1970. Congress sought to treat what it considered to be, at the time of enactment, an immediate manifestation of the broader problem of the potential ability of substantial shareholders to dominate shareholder voting or to influence significantly corporate management. Underlying Congress' solution was a determination that five percent ownership in a publicly-held company is often sufficient to influence management.⁵

After enactment of Sections 13(d) and 14(d), Congress focused increased attention on the role of large institutional shareholders. Concerned, among other things, about the potential ability of such shareholders to influence corporate management⁶ and to affect the market for a corporation's stock because of the amount of securities over which they exercise investment discretion,⁷ Congress enacted Section 13(f) as part of the Securities Acts Amendments of 1975. Upon implementation by Commission rule, Section 13(f) will require institutional investors to file with the Commission information with respect to their holdings in Section 13(d) securities for accounts over which they exercise investment discretion.⁸

³ Hereinafter referred to as "Section 13(d) securities." In addition to securities registered pursuant to Section 12, Section 13(d) securities include insurance company securities exempted by Section 12(g)(2)(1) and securities issued by closed-end investment companies registered under the Investment Company Act of 1940, exempted by Section 12(g)(2)(B).

⁴ Sections 13(d)(6)(B) and 14(d)(3)(A) of the Act.

⁵ Senator Williams, a sponsor of the legislation, stated: "Stockholdings of between 5 and 10 percent in [large] . . . companies are in many instances a controlling interest. Here . . . the full disclosure requirements of the Securities Exchange Act are necessary for adequate investor protection." 116 Cong. Rec. 3024 (1970).

⁶ The Senate Report accompanying the legislation stated: "An investment of between 5 and 10 percent of the securities of a company can have a significant impact on the public market for that company's stock." S. Rep. No. 1125, 91st Cong., 2d Sess. 3 (1970).

⁷ See *supra* note 52, p. 32.

⁸ The right to exercise investment discretion over securities may constitute one aspect of beneficial ownership. In the federal securities laws, however, "beneficial ownership" is not defined generally and is used in several different contexts.

⁹ Institutional investors subject to the reporting requirements of Section 13(f) are those which use the mails or any means or instrumentality of interstate commerce and which exercise investment discretion over Section 13(d) securities having an aggregate market value on the last trading day in any of the preceding twelve months of at least \$100,000,000 or such lesser amount (not less than \$10,000,000) as the Commission may determine. Section 13(f)(1). The information required to be disclosed includes the name of each issuer whose securities are held on the last day of the reporting period in accounts over which the institutional investment manager exercises investment discretion and the title, class, number, and aggregate fair market value of shares so held.

B. DISCLOSURE BY ISSUERS

Section 14(a) authorizes the Commission to adopt rules relating to the solicitation of proxies by publicly-held companies. The Commission's rules require each issuer to transmit to recordholders, prior to a shareholders' meeting, a proxy statement which, among other things, identifies any person who owns beneficially or of record more than ten percent of its voting securities.⁹ If proxies are not solicited, Section 14(c) requires issuers to forward to recordholders an information statement containing substantially equivalent information. The Commission's rules adopted pursuant to Sections 12 and 13 of the Act require each reporting issuer, at the time of registering its shares and in subsequent periodic reports, to identify each person who is a recordholder of, or is known by the registrant to own beneficially, more than ten percent of any class of voting securities of the issuer.¹⁰

In addition to these generally applicable reporting provisions, the Commission administers disclosure provisions applicable to particular types of issuers, including registered investment companies, registered public utility holding companies, voting trusts, and registered broker-dealers.¹¹

2. The Need for a Comprehensive Reporting and Publication System

During the 94th Congress, a number of bills were considered which would have (a) expanded the information to be disclosed by beneficial owners subject to the Act's disclosure provisions, (b) lowered the threshold at which reporting by beneficial owners would begin, and (c) established related reporting systems.¹² Although this legislation was not enacted, in assessing the impact of the practice of registering securities in nominee and street name on the purposes of the Act, the Commission has attempted to consider the Congressional concerns behind such legislation as well as the interests of the issuer and financial communities.

Many issuers are not satisfied with the present disclosure provisions. Fifty-seven percent of the issuers responding to the Commission's survey and 65 percent of the issuers responding to the American Society of Corporate Secretaries' survey indicated that they favored some system which would provide them with more information about the beneficial owners of their securities. At the same time, the brokerage and banking communities generally objected to disclosing the names of customers for whom they hold stock in street or nominee name.

The interests of brokers, banks, and issuers must be balanced against the national policy considerations expressed by Congress regarding the right to privacy of individuals on one hand, and the need to have certain information available to regulators and the public on the other. In enacting Sections 13, 14, and 16, Congress sought to strike that balance and determined that disclosure should be required

⁹ Item 5(d), Schedule 14A, 17 CFR 240.14a-101. The Commission's rules specify that disclosure is not required when the information is not known to the issuer and is not reasonably within its power to ascertain or procure. 17 CFR 240.14a-5(b).

¹⁰ Item 5(a), Form 10, 17 CFR 249.210; Item 11, Form 10K, 17 CFR 249.310.

¹¹ See Securities and Exchange Commission, Reporting of Securities Ownership (1975).

¹² See, e.g., S. 426 and S. 963, 94th Cong., 1st Sess. (1975); S. 3084, H.R. 11463 and H.R. 14750, 94th Cong., 2d Sess. (1976).

of persons who, because of the size of their ownership interest, may be able to affect the market in an issuer's securities or significantly influence management by voting or otherwise.

The touchstone of the national disclosure policy in this area is the concept of control or potential control.¹³ Control is, however, an elusive concept. Because shareholder influence is seldom exercised in an open fashion, its incidence and effect are not readily subject to empirical determination. The result is that the appropriate threshold or disclosure is essentially a matter of judgment.

In enacting the Williams Act Amendments in 1970,¹⁴ Congress determined that persons who own more than five percent of an issuer's securities are in a position potentially to exercise control over the issuer and that, accordingly, this represents the appropriate threshold of disclosure. The Commission concurred in this judgment in determining recently to add to a number of Commission forms and reports a new Item X to require issuers to disclose information regarding persons owning more than five percent of their securities.¹⁵ In enacting Section 13(f), Congress adopted a different approach for large institutions, but again an underlying Congressional concern was the disclosure of potential influence or control.

In addition to requiring disclosure, Congress has provided for the public availability of pertinent information to investors and others. Congress particularly emphasized the need for public availability of information in enacting Section 13(f), which requires the Commission to make reports filed pursuant thereto available in a way "which will * * * maximize the usefulness of the information to other Federal and State authorities and the public."¹⁶

The Commission believes that the Act and the rules thereunder currently may not achieve fully the scope of disclosure or range of dissemination contemplated by Congress. Existing disclosure requirements do not appear to reach all persons who own more than five percent of a Section 13(d) security.¹⁷ The Commission has not yet completed implementation of Section 13(f). And information gathered under existing Commission rules is not disseminated as widely as might be desirable. Moreover, because of the use of street and nominee names, issuers frequently do not know the identity of large shareowners.¹⁸ In addition, Congress has been concerned that issuers sometimes fail to report institutional holdings correctly because they do not aggregate an institution's holdings which are distributed among several of the institution's nominees¹⁹ or because one institution (such

¹³ The issuer and financial communities recognize the importance of control in defining a national disclosure policy. Many issuers favoring disclosure desire primarily to know the identities of substantial shareowners who may have the ability to initiate a takeover of the corporation or otherwise affect management's control of the corporation. At the same time, most brokers and banks agree that when a shareowner has an investment which may enable him to exercise control, that shareowner's right to privacy is limited by the public nature of his investment.

¹⁴ Public Law No. 91-567 (1970).

¹⁵ As adopted, Item X would be added to certain registration and reporting forms and to proxy and information statements. It would require issuers to disclose the name, address and holdings of any person (or group) known to be the beneficial owner of more than five percent of any class of certain of the issuer's securities. Item X as adopted has not yet been published.

¹⁶ Section 13(f)(3).

¹⁷ Sections 13(d) and 14(d) do not apply to any person who acquires less than two percent of a security in a 12-month period; nor do they apply to any person who acquired his ownership interest prior to the enactment of the current thresholds in 1970.

¹⁸ Accordingly, Commission rules do not require issuers to disclose ownership information which is not known to them or is not within their power to ascertain. See *supra* p. 48.

¹⁹ See Subcommittee on Reports, Accounting, and Management of the Senate Committee on Government Operations, 94th Cong., 3d Sess., *Corporate Ownership and Control 2-3* (Comm. Print 1976). Some issuers have even listed "Code & Co.," the nominee of The Depository Trust Company, in their ownership reports. *Disclosure of Corporate Ownership*, *supra* note 52, at 131-33.

as a mutual fund) holds securities through another institution (a bank).²⁰

3. The Need for Additional Enforcement Powers

The practice of registering securities in nominee and street name may impede Commission efforts to detect attempts by shareowners to evade the Act's disclosure requirements. In recent years, the Commission has experienced difficulty in enforcing Sections 13(d), 14(d), and 16(a) with regard to persons who own securities held in nominee accounts of foreign institutions.²¹ In Congressional testimony on June 28, 1976, Chairman Hills related specific instances of evasion of the Act's disclosure provisions²² and concluded: "[W]e do have reason to believe that foreign financial institutions, intentionally or unintentionally—and probably there are examples of both—permitted substantial ownership or control of U.S. corporations to be accumulated without complying with the disclosure requirements of the U.S. securities laws."²³

The principal impediment to the effective enforcement of the disclosure provisions against persons utilizing foreign institutions has been the inability of the Commission to use its subpoena powers to obtain from foreign financial institutions information essential to the investigation of disclosure violations. Accordingly, Chairman Hills recommended during his Congressional testimony that:

"[Legislation] should be enacted to spell out the powers of the Federal courts to grant ancillary relief in cases of refusal to comply with subpoenas of the Commission. Such relief would permit a court to restrict transfer of shares, to revoke or suspend the right to vote shares, to prohibit payment of or impound dividends, or to require public sale of the securities involved—obviously only with court order and only in the case where an alleged violation had occurred."²⁴

The Chairman also asked that Congress restore the Commission's authority to censure foreign financial institutions engaged in securities laws violations.²⁵

²⁰ *Corporate Ownership and Control*, supra note 19, at 11-12.

²¹ In Congressional testimony in July 1975, Chairman Garrett stated:

"We have had a great deal of difficulty enforcing any disclosure requirements with respect to persons who are not residents of the United States and who hold through foreign fiduciaries, particularly in countries that have so-called bank secrecy laws. Our efforts to pierce this veil, so to speak, of the Swiss bank secrecy laws is [sic] of long standing, and we are still way behind." *Hearings on S. 125, Amendment No. 24 Thereto: S. 965, S. 966, and S. 1305 Before the Subcommittee on International Finance of the Senate Committee on Banking, Housing and Urban Affairs, 94th Cong., 1st Sess. 140 (1975).*

²² For example, the Commission is presently inquiring into a situation where a foreign bank, holding in excess of 5 percent of the stock of a U.S. company, sought to sell what it claimed was effective control of the company to several potential purchasers. American shareholders were unaware of the attempt to sell control of the company because the bank had not made the required disclosure of its ownership interest or its negotiations to sell that ownership interest.

²³ In another case, . . . the Commission charged that a foreign individual had concealed a substantial ownership interest amounting to more than 10 percent of the stock of a New York Stock Exchange listed company, and that a major Swiss bank had aided and abetted this violation by breaking up the stock into smaller blocks to evade the U.S. disclosure requirements." *Oversight Hearings into the Operations of the IRS (Administration of Bank Secrecy and Reporting Act) Before the Subcommittee on Commerce, Consumer and Monetary Affairs of the House Committee on Government Operations, 94th Cong., 2d Sess. 1 (1976).*

²⁴ *Id.*

²⁵ *Id.* at 6.

²⁶ The Securities Act Amendments of 1975 (Pub. L. No. 94-29) removed such authority previously granted by Section 15(b)(7) (now Section 15(b)(6)).

B. Conclusions

The Commission has concluded that the practice of registering securities in nominee or street name is consistent with the purposes of the Act, with particular reference to Sections 13, 14, and 16 regarding disclosure of beneficial ownership.

The Commission has concluded, however, that the following four steps should be taken to unify the present reporting requirements into a comprehensive system for gathering and disseminating information about ownership interests in publicly held companies: (a) all persons owning more than five percent of a Section 13(d) security should be required to report such ownership to the Commission and to the issuer;²⁸ (b) issuers should be required to include such information in reports and shareowner communications; (c) implementation of Section 13(f) should be completed, and the information obtained should be made publicly available; and (d) the Commission's authority to assure compliance with the Act's disclosure provisions should be clarified.

C. Recommendations

1. Legislation should be enacted to require any person owning beneficially more than five percent of any class of a Section 13(d) security who is not currently required to report under Section 13(d) of the Act to file with the Commission a short statement detailing relevant ownership information and to transmit such ownership statement to the issuer and to any exchange on which the security in question is listed. The Commission has determined, by adopting Item X, to require reporting issuers to publish information regarding beneficial owners of more than five percent of their securities in proxy and information statements, certain registration statements, and annual reports.

2. The Commission will complete implementation of Section 13(f) to require information from institutions. The Commission will study ways to make this information publicly available and will consider whether benefits would be derived from formatting this information to detail the holdings and voting rights of all reporting institutions in each issuer.

3. The Act should be amended to make clear that the Commission has available to it specific ancillary remedies in instances in which it is unable to obtain information in furtherance of its investigations. In addition, Congress should consider broadening Section 15(b)(6) to grant to the Commission authority to proceed administratively against foreign financial institutions for violations of the Act.

²⁸ Such reports would also be required to be filed with any exchange on which the securities in question are listed.

CHAPTER V

THE PRACTICE AS IT AFFECTS THE JURISDICTIONAL STANDARDS OF SECTIONS 12(g) AND 15(d)

A. Discussion

Sections 12(g) and 15(d) of the Act make certain issuers whose securities are traded otherwise than on a national securities exchange subject to the Act. Section 12(g) requires such issuers to register with the Commission each class of equity security held of record by at least 500 persons, provided the issuer has total assets exceeding \$1,000,000.¹ An issuer of a security registered pursuant to Section 12(g) ceases to be subject to the Act if the security comes to be held by fewer than 300 shareholders of record. Section 15(d) requires an issuer which distributes securities pursuant to a registration statement filed with the Commission under the Securities Act of 1933 to meet the same continuing reporting requirements as issuers of securities registered pursuant to Section 12 so long as the security to which the statement relates is held of record by at least 300 persons.

The shareholder-of-record criteria were intended to provide a certain and easily applied measure of public investor interest and to avoid the difficulties inherent in a standard based on the number of beneficial owners. Congress enacted Sections 12(g) and 15(d) on the assumption that there was a significant correlation between the number of recordholders and the number of underlying beneficial owners.² A substantial increase in the use of nominee and street name registration, however, would attenuate this correlation by combining the holdings of many shareholders into a single nominee of record and could thereby exclude or remove from the jurisdiction of the Act issuers which, in the contemplation of Congress, properly should be subject to the Act.

The Commission does not have available evidence to indicate that any issuer actually has been excluded or removed from the operation of the Act because of the increased use of nominee and street name registration. Moreover, the modest increase in the percentage of securities held in nominee and street name since the enactment of the shareholder-of-record standards in 1964 makes it unlikely that the correlation between the number of recordholders and the number of beneficial owners of an issuer has been significantly affected. In 1965, 23.7 percent of the securities of publicly-owned companies was held in nominee and street name; in 1975, 28.6 percent was held in nominee and street name.³

¹ Section 12(g)(2) contains exemptions for specified types of securities.

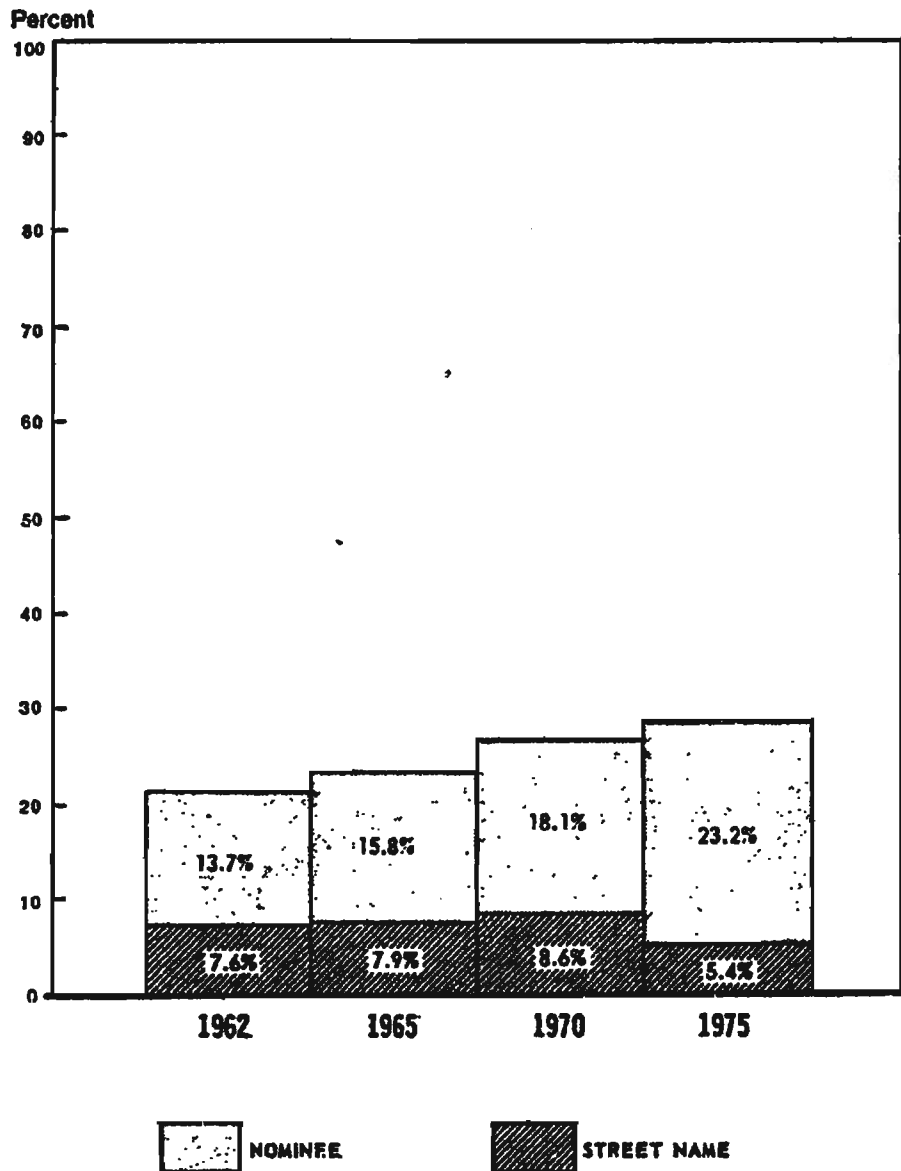
² *Hearings on S. 1642 Before the Senate Committee on Banking and Currency, 88th Cong., 1st Sess. 395 (1963); S. Rep. No. 279, 89th Cong., 1st Sess. 19-20 (1965).*

³ *New York Stock Exchange, Shareownership U.S.A. 35 (1965); New York Stock Exchange, Shareownership 1975 20 (1975).* Publicly-owned companies for purposes of the 1975 NYSE survey were issuers with more than \$1 million in assets and 300 recordholders; publicly-owned companies for purposes of the 1965 NYSE survey were those whose securities were traded on an exchange or otherwise available to the general public and held by at least 300 stockholders of record. In most instances, brokers' depository positions were attributed to brokers' holdings, and the remaining depository positions were attributed to nominee holdings. Exhibit 13, p. 64, depicts the change since 1962 in the percentage of shares of publicly-owned companies held in nominee and street name.

EXHIBIT 16

PUBLICLY-HELD EQUITY SECURITIES IN NOMINEE AND STREET NAME

(PERCENT OF SHARES ISSUED AND OUTSTANDING)



SOURCE : NEW YORK STOCK EXCHANGE SHAREOWNER SURVEYS
U.S. SECURITIES AND EXCHANGE COMMISSION

Even without an increase in the percentage of securities held in nominee and street name, depositories may influence the correlation between the number of recordholders and the number of beneficial owners of an issuer by combining the holdings of many nominees into a single nominee of the depository. Depositories have grown substantially since 1968,⁴ and the Commission considers the continued growth of depositories to be an important step in the development of a national system for the clearance and settlement of securities transactions. This growth should not, however, be permitted to affect the jurisdictional standards of Sections 12(g) and 15(d).

B. Conclusions

It is doubtful that the growth of street and nominee name holdings since 1974 has significantly attenuated the correlation between the number of recordholders and the number of underlying beneficial owners. The level of nominee and street name ownership should be periodically monitored, however, to assure that this does not occur. At the same time, the Commission believes that steps should be taken to anticipate further growth of securities depositories.

The Commission concludes that the practice is consistent with the purposes of the Act, with particular reference to Sections 12(g) and 15(d) regarding jurisdiction over certain over-the-counter issuers.

C. Recommendations

1. The Commission will consider the recommendation of the Study that it use its power under Section 12(g)(5) of the Act to propose a rule defining the term "held of record" to mean that securities held by a depository or its nominees are held of record by the depositor of the securities. Section 15(d) should be amended to clarify the Commission's power to define "held of record" for purposes of that Section.

2. In connection with this, the Commission will consider the recommendation of the Study that, pursuant to Section 17A, each depository be required to transmit periodically to each issuer whose securities the depository holds of record a list of the persons on whose behalf the depository holds the securities.

⁴ Between 1968 and 1976, the number of shares evidenced by certificates maintained in securities depositories increased from approximately 400 million to over 4 billion.

APPENDICES

- A. Shareholder Questionnaire, 1976 Proxy Season Survey—Summary of Responses
 - B. Broker, Bank, and Issuer Questionnaires, 1976 Proxy Season Survey—Summaries of Responses to Selected Questions
 - C. Shareholder, Broker, Bank and Issuer Questionnaires and Related Instructions, 1976 Proxy Season Survey
 - D. Sampling Methodology, 1976 Proxy Season Survey
 - E. Broker Respondents, 1976 Proxy Season Survey
 - F. Bank Respondents, 1976 Proxy Season Survey
 - G. Issuer Respondents, 1976 Proxy Season Survey
 - H. Manual for Proxy Solicitation of Stock in Brokers' Names
 - I. Survey of the American Society of Corporate Secretaries, Inc.
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APPENDIX A

SUMMARY OF RESPONSES TO SHAREHOLDER QUESTIONNAIRE

Number of Questionnaires Distributed to Issuers: 97,100.
 Number of Questionnaires Returned by Shareholders: 23,600.
 Number of Issuers Distributing Questionnaires: 95.

A. In what city and state do you reside? [by ZIP code]

[a=1st two digits of ZIP code]
 [b=number of questionnaires received from shareowners in that area]

a.....	00	01	02	03	04	05	06	07	08	09
b.....	553	281	601	105	98	73	648	942	395	12
a.....	10	11	12	13	14	15	16	17	18	19
b.....	1,772	1,285	227	181	506	243	102	111	154	496
a.....	20	21	22	23	24	25	26	27	28	29
b.....	494	274	301	163	86	42	40	213	195	182
a.....	30	31	32	33	34	35	36	37	38	39
b.....	235	60	309	1,121	3	81	66	107	94	42
a.....	40	41	42	43	44	45	46	47	48	49
b.....	87	19	25	247	616	292	240	62	711	182
a.....	50	51	52	53	54	55	56	57	58	59
b.....	88	29	57	321	148	501	83	44	31	40
a.....	60	61	62	63	64	65	66	67	68	69
b.....	913	116	83	224	94	42	99	57	106	16
a.....	70	71	72	73	74	75	76	77	78	79
b.....	145	46	62	70	78	141	66	291	130	63
a.....	80	81	82	83	84	85	86	87	88	89
b.....	227	19	44	87	67	260	17	62	24	63
a.....	90	91	92	93	94	95	96	97	98	99
b.....	483	323	527	204	771	292	135	171	370	76

¹ The 00 Zip code prefix indicates questionnaires returned from residences in Puerto Rico, the Virgin Islands, and foreign countries, as well as questionnaires from shareowners whose cities and States of residence were not stated.

B. Are you an institution (including a trust or an estate) or an individual?

1. Institutions—2,268.
2. Individuals—21,143.
- No entry—189.

E. Was the proxy material accompanying this questionnaire forwarded to you by:

1. The corporation whose shares you own?—7,673.
2. A broker?—13,238.
3. A bank?—2,689.

F. If your securities are held by a broker or bank, would you object to having your broker or bank disclose your name and mailing address to the corporation whose shares you own, so that the corporation could communicate with you directly?

1. Yes—1,055.
2. No—13,953.

G. Do the instructions accompanying this proxy material call for you to return the proxy card to:

1. The corporation whose shares you own?—9,746.
2. A broker?—12,554.
3. A bank?—643.
4. Other?—250.
- No entry—407.

(59)

I. Has it been your practice to vote shares which you own?

1. Always—16,467.
2. Sometimes—5,463.
3. Never—1,417.
- No entry—253.

J. Do you have any complaints regarding the transmission of proxy materials, annual reports or other shareholder communications?

1. Blank—4,889.
2. No complaint—15,339.
3. Complaint regarding federal government—282.
4. Complaint regarding shareowner communications—1,762.
5. Other complaints—1,323.

APPENDIX B

BROKER, BANK AND ISSUER QUESTIONNAIRES, 1976 PROXY SEASON SURVEY— SUMMARIES OF RESPONSES TO SELECTED QUESTIONS

TECHNICAL NOTES

1. In Tables 1-16, the number of accounts carried by brokers is based on the number of customer accounts having positions in voting securities held in nominee or street name.

2. The bank responses set forth in Tables 1-13 reflect only the responses of the distributing banks (see Final Report, *supra* p. 11).

TABLE 1.—WHO FORWARDS ISSUERS' PROXY MATERIALS TO YOUR CUSTOMERS?

	Brokers			Total	Banks
	Number of accounts				
	1 to 250	251 to 5,000	Over 5,000		
Total respondents.....	24	52	42	118	13
Response:					
Yourself.....	24	51	40	115	13
A subsidiary.....	0	0	2	2	0
An independent contractor.....	0	1	1	2	0
Other:					
Correspondent broker.....	1	1	0	2	0
Sister broker.....	1	1	0	1	0

Note: 3 broker respondents gave more than 1 response.

Source: 1976 proxy season broker and bank questionnaires, U.S. Securities and Exchange Commission.

TABLE 2.—WHICH OF THE FOLLOWING ISSUER-SHAREOWNER COMMUNICATIONS DO YOU FORWARD AS A
MATTER OF COURSE TO YOUR CUSTOMERS?

	Brokers			Total	Banks
	Number of accounts				
	1 to 250	251 to 5,000	Over 5,000		
Total respondents.....	24	52	42	118	13
Response:					
All materials ¹	14	27	27	68	4
Proxy materials.....	10	25	13	48	7
Annual reports.....	6	23	13	42	6
Quarterly reports.....	3	11	10	24	3
Information regarding mergers, tender offers, and reorganizations.....	9	22	10	41	7
Press releases.....	0	0	3	3	0

¹ Respondents giving this response were instructed to give no other.

Note: Due to multiple responses, total responses exceed total respondents.

Source: 1976 proxy season broker and bank questionnaires, U.S. Securities and Exchange Commission.

TABLE 3.—IF A CUSTOMER PROVIDES INSTRUCTIONS THAT PROXY MATERIALS AND OTHER COMMUNICATIONS ARE NOT TO BE FORWARDED, DO YOU COMPLY WITH SUCH INSTRUCTIONS?

	Brokers			Total	Banks
	Number of accounts				
	1 to 250	251 to 5,000	Over 5,000		
Total respondents.....	24	52	42	118	13
Response:					
Yes.....	18	16	4	38	11
No.....	4	27	33	64	0
Sometimes.....	0	0	0	0	2
No response.....	0	3	4	7	0
N/A—Have never received such an instruction.....	2	6	1	9	0

Source: 1976 proxy season broker and bank questionnaires, U.S. Securities and Exchange Commission.

TABLE 4.—HOW DO YOU BECOME AWARE OF ISSUERS' RECORD DATES AND ANNUAL MEETING DATES?

	Brokers			Total	Banks
	Number of accounts				
	1 to 250	251 to 5,000	Over 5,000		
Total respondents.....	24	52	42	118	13
Response:					
Stock exchange bulletins.....	8	33	37	78	4
Clearing agency bulletins.....	6	27	36	69	3
Commercial bulletin services.....	4	16	18	38	1
Issuers' search cards.....	20	40	41	101	13
Other:					
Receipt of proxy material.....	2	5	13	20	7
Internal records.....	0	3	2	5	1
Proxy solicitor contact.....	0	7	10	17	1
Transfer agent contact.....	0	1	3	4	0
Notice from correspondent broker.....	1	5	0	6	0
News media.....	0	0	2	2	0
Telephone contact with issuer.....	0	1	4	5	2
Own search card.....	0	0	1	1	0

Note: Due to multiple responses, total responses exceed total respondents.

Source: 1976 proxy season broker and bank questionnaires, U.S. Securities and Exchange Commission.

TABLE 5.—HOW DO YOU OBTAIN ANNUAL REPORTS AND PROXY MATERIALS TO SEND TO YOUR CUSTOMERS?

	Brokers			Total	Banks
	Number of accounts				
	1 to 250	251 to 5,000	Over 5,000		
Total respondents.....	24	52	42	118	13
Response:					
Do you request proxy materials from the issuer without waiting to receive a search card?.....	3	33	36	72	1
or					
Do you wait to request proxy materials until the issuer sends you a search card?.....	21	19	9	49	12
No response.....	0	1	0	1	0

Note: Four broker respondents indicated that the procedure they use depends upon the particular issuer.

Source: 1976 proxy season broker and bank questionnaires, U.S. Securities and Exchange Commission.

TABLE 6.—IF YOU NORMALLY WAIT UNTIL ISSUERS SEND YOU SEARCH CARDS, IS THERE SOME PERIOD AFTER WHICH YOU REQUEST PROXY MATERIALS FROM THOSE FROM WHOM NO SEARCH CARD HAS BEEN RECEIVED?

	Brokers				Banks
	Number of accounts			Total	
	1 to 250	251 to 5,000	Over 5,000		
Total respondents.....	24	52	42	118	13
Response:					
Yes.....	6	13	5	24	7
No.....	14	6	4	24	5
No response.....	1	0	0	1	0
N/A—Do not normally wait for search card.....	3	33	33	69	1

Source: 1976 proxy season broker and bank questionnaires, U.S. Securities and Exchange Commission.

TABLE 7.—WHAT IS YOUR PROCEDURE FOR FORWARDING ISSUERS' PROXY MATERIALS TO CUSTOMERS FOR WHOM YOU HOLD SECURITIES IN NOMINEE AND STREET NAME?

	Brokers				Banks
	Number of accounts			Total	
	1 to 250	251 to 5,000	Over 5,000		
Total respondents.....	24	52	42	118	13
Response:					
Do you send unsigned proxy cards to your customers and instruct them to return the cards to you?.....	6	36	37	79	0
or					
Do you sign and send proxy cards to your customers and ask them to return the cards directly to the issuer?.....	14	14	2	30	10
or					
Do you use another procedure? Procedure used varies depending upon particular issuer or customer.....	0	2	3	5	1
Request customers' voting instructions.....	1	0	0	1	2
Proxy is given to issuer pursuant to power of attorney.....	1	0	0	1	0
No response.....	2	0	0	2	0

Source: 1976 proxy season broker and bank questionnaires, U.S. Securities and Exchange Commission.

TABLE 8.—DO YOU SEEK REIMBURSEMENT FROM ISSUERS FOR FORWARDING PROXY MATERIALS?

	Brokers				Banks
	Number of accounts			Total	
	1 to 250	251 to 5,000	Over 5,000		
Total respondents.....	24	52	42	118	13
Response:					
Yes.....	11	46	42	99	8
No.....	12	2	0	14	4
Varies.....	0	1	0	1	1
No response.....	1	3	0	4	0

Source: 1976 proxy season broker and bank questionnaires, U.S. Securities and Exchange Commission.

TABLE 9.—WHAT PERCENTAGE OF ISSUERS, WHOSE ISSUES YOU HOLD IN NOMINEE OR STREET NAME, SENT SEARCH CARDS TO YOU INQUIRING WHETHER YOU REPRESENT BENEFICIAL OWNERS OF THEIR SECURITIES?

	Brokers				Banks
	Number of accounts			Total	
	1 to 250	251 to 5,000	Over 5,000		
Total respondents.....	24	52	42	118	13
Response:					
More than 95 percent.....	7	6	0	13	1
75 to 95 percent.....	6	14	4	24	4
50 to 74 percent.....	2	14	28	44	6
Less than 50 percent.....	7	17	10	34	2
Unable to determine—no record.....	1	0	0	1	0
No response.....	1	1	0	2	0

Source: 1976 proxy season broker and bank questionnaires, U.S. Securities and Exchange Commission.

TABLE 10.—WHAT PERCENTAGE OF ISSUERS FAILED TO SEND PROXY MATERIALS TO YOU AFTER YOU NOTIFIED THEM THAT YOU REPRESENTED BENEFICIAL OWNERS OF THEIR SECURITIES AND ORDERED PROXY MATERIALS?

	Brokers				Banks
	Number of accounts			Total	
	1 to 250	251 to 5,000	Over 5,000		
Total respondents.....	24	52	42	118	13
Response:					
Less than 5 percent.....	15	32	6	53	11
5 to 10 percent.....	5	13	23	41	1
11 to 25 percent.....	1	4	13	18	1
More than 25 percent.....	1	1	0	2	0
Unable to determine—no record.....	1	1	0	2	0
No response.....	1	1	0	2	0

Source: 1976 proxy season broker and bank questionnaires, U.S. Securities and Exchange Commission.

TABLE 11.—ISSUER MAILING OF PROXY MATERIALS TO INTERMEDIARIES

	Brokers				Banks
	Number of accounts			Mean response	
	1 to 250	251 to 5,000	Over 5,000		
Of those issuers who did send you sets of proxy materials, what percentage sent the materials so that you received them:					
Less than 5 days before their annual meeting.....	2.9	3.8	2.6	3.1	1.8
5 to 10 days before their annual meeting.....	18.1	11.7	5.7	11.8	8.5
11 to 15 days before their annual meeting.....	35.0	26.3	17.5	26.3	18.1
16 to 25 days before their annual meeting.....	32.6	40.1	54.0	42.4	34.9
More than 25 days before their annual meeting.....	10.7	16.9	18.2	15.3	35.6
After their annual meeting.....	.7	1.2	1.4	1.1	1.1

Note: Each percentage represents an average of the responses in the respective category.

Source: 1976 proxy season broker and bank questionnaires, U.S. Securities and Exchange Commission.

TABLE 12.—DID YOU FIND IT NECESSARY TO REQUEST ADDITIONAL PROXY MATERIALS FROM AN ISSUER AFTER YOUR INITIAL REQUEST WAS FILLED?

	Brokers					Banks
	Number of accounts			Total		
	1 to 250	251 to 5,000	Over 5,000			
Total respondents.....	24	52	42	118		13
Response:						
Yes.....	5	24	40	69		12
No.....	19	26	2	47		1
No response.....	0	2	0	2		0
If "yes," what percentage of issuers filed your order properly and in a timely manner?						
More than 95 percent.....	1	13	9	23		6
75 to 95 percent.....	3	7	15	25		4
50 to 74 percent.....	0	2	12	14		2
Less than 50 percent.....	1	2	4	7		0

Source: 1976 proxy season broker and bank questionnaires, U.S. Securities and Exchange Commission.

TABLE 13.—DO YOU AS A MATTER OF COURSE ESTABLISH A TIME PRIOR TO AN ISSUER'S ANNUAL MEETING AFTER WHICH VOTING PREFERENCES RECEIVED FROM YOUR CUSTOMERS ARE NOT VOTED?

	Brokers					Banks
	Number of accounts			Total		
	1 to 250	251 to 5,000	Over 5,000			
Total respondents.....	24	52	42	118		13
Response:						
Yes.....	3	12	9	24		1
No.....	5	24	30	59		3
N/A—Customers do not send their voting preferences to you or your agent.....	15	15	3	33		3
No response.....	1	1	0	2		6
If "yes," is that policy communicated to your customers?						
Yes.....	3	7	7	17		1
No.....	0	5	2	7		0

Source: 1976 proxy season broker and bank questionnaires, U.S. Securities and Exchange Commission.

TABLE 14.—IF YOUR CUSTOMERS FAIL TO EXERCISE THEIR VOTING RIGHTS, DO YOU VOTE THEIR SHARES PURSUANT TO, AND TO THE EXTENT PERMITTED BY, THE RULES OF A SELF-REGULATORY ORGANIZATION?

	Brokers				Total
	Number of accounts				
	1 to 250	251 to 5,000	Over 5,000		
Total respondents.....	24	52	42		118
Response:					
Yes.....	6	33	38		77
No.....	3	6	2		11
NA—Customers do not send their voting preferences to you or your agent.....	15	13	2		30
If "yes," do you as a matter of course vote your entire position for management?					
Yes.....	6	33	38		77
No.....	0	0	0		0

Source: 1976 proxy season broker questionnaire, U.S. Securities and Exchange Commission.

TABLE 15.—DO YOU EVER ORDER PROXY MATERIALS FROM AN ISSUER BEFORE THE RECORD DATE?

	Brokers			Total
	Number of accounts			
	1 to 250	251 to 5,000	Over 5,000	
Total respondents.....	24	52	42	118
Response:				
Yes.....	8	16	30	54
No.....	16	36	12	64
If "yes," on what basis do you determine how many sets of materials to order?				
Customer account records.....	7	16	28	51
Estimate based on last order to issuer.....	0	0	2	2
No response.....	1	0	0	1

Source: 1976 proxy season broker questionnaire, U.S. Securities and Exchange Commission.

TABLE 16.—DO YOU HAVE ANY ACCOUNTS FOR WHICH YOU HOLD A POWER OF ATTORNEY ENTITLING YOU TO VOTE THE SECURITIES CONTAINED IN SUCH ACCOUNTS?

	Brokers			Total
	Number of accounts			
	1 to 250	251 to 5,000	Over 5,000	
Total respondents.....	24	52	42	118
Response:				
Yes.....	2	7	2	11
No.....	22	45	40	107

Source: 1976 proxy season broker questionnaire, U.S. Securities and Exchange Commission.

TABLE 17.—DURING THE 1976 PROXY SEASON, PROXY MAILINGS TO YOUR VOTING COMMON SHAREHOLDERS WERE UNDERTAKEN BY WHICH OF THE FOLLOWING?

	Issuers				Total
	Number of recordholders				
	Under 5,000	5,000 through 10,000	10,001 through 50,000	Over 50,000	
Total respondents.....	67	36	34	22	159
Response:					
Your corporation.....	27	8	12	16	63
A bank transfer agent.....	43	25	20	6	94
A nonbank transfer agent.....	2	1	0	0	3
A proxy solicitation firm.....	4	10	2	7	29
Other.....	3	4	8	5	20
No response.....	0	0	0	0	0

Note: Due to multiple responses, total responses exceed total respondents.

Source: 1976 proxy season issuer questionnaire, U.S. Securities and Exchange Commission.

TABLE 18.—IF THE MAILING OF PROXY MATERIAL TO YOUR VOTING COMMON SHAREHOLDERS WAS UNDERTAKEN BY AN ENTITY OTHER THAN YOUR CORPORATION, PLEASE INDICATE YOUR REASONS.

	Issuers				Total
	Number of recordholders				
	Under 5,000	5,000 through 10,000	10,001 through 50,000	Over 50,000	
Total respondents.....	67	36	34	22	159
Response:					
Less costly.....	8	11	10	4	33
More efficient.....	38	26	22	9	95
A greater shareholder vote.....	4	5	4	4	17
Other:					
Shareholder records with transfer agent or computer service.....	3	1	2	3	9
Inadequate staff and/or equipment.....	1	5	5	1	12
Factor.....	1	0	0	0	1
Mailings to nominees.....	0	1	0	0	1
Proxy contest.....	0	1	0	0	1
No response.....	1	0	1	0	2

Note: Due to multiple responses, total responses exceed total respondents.

Source: 1976 proxy season issuer questionnaire, U.S. Securities and Exchange Commission.

TABLE 19.—IF YOU DO NOT EMPLOY A PROXY SOLICITATION FIRM ON A REGULAR BASIS, HAVE YOU EMPLOYED SUCH FIRMS FOR PARTICULAR PURPOSES?

	Issuers				Total
	Number of recordholders				
	Under 5,000	5,000 through 10,000	10,001 through 50,000	Over 50,000	
Total respondents.....	67	36	34	22	159
Response:					
Yes.....	16	17	18	10	61
No.....	50	16	16	11	93
No response.....	1	3	0	1	5

Source: 1976 proxy season issuer questionnaire, U.S. Securities and Exchange Commission.

TABLE 20.—HOW WAS THE INVESTMENT COMMUNITY INFORMED OF YOUR RECORD DATE?

	Issuers				Total
	Number of recordholders				
	Under 5,000	5,000 through 10,000	10,001 through 50,000	Over 50,000	
Total respondents.....	67	36	34	22	159
Response—the information was transmitted to:					
A national securities exchange(s).....	38	29	29	21	117
The National Association of Securities Dealers, Inc.....	20	4	8	2	34
A clearing corporation or depository.....	17	10	14	14	55
A financial news service(s) or publishing service(s).....	19	10	11	9	49
Other.....	25	18	19	16	78
No response.....	6	3	0	1	10

Note: Due to multiple responses, total responses exceed total respondents.

Source: 1976 proxy season issuer questionnaire, U.S. Securities and Exchange Commission.

TABLE 21.—IF AN INTERMEDIARY DOES NOT PROMPTLY RESPOND TO YOUR SEARCH CARD, DO YOU CONTACT THE INTERMEDIARY?

	Issuers				Total
	Number of recordholders				
	Under 5,000	5,000 through 10,000	10,001 through 50,000	Over 50,000	
Total respondents.....	67	36	34	22	159
Response:					
Yes.....	24	21	20	10	75
No.....	40	14	14	12	80
No response.....	3	1	0	0	4

Source: 1976 proxy season issuer questionnaire, U.S. Securities and Exchange Commission.

TABLE 22.—WHAT PERCENTAGE OF YOUR TOTAL COMMON VOTING SHARES ISSUED AND OUTSTANDING WAS VOTED AT YOUR ANNUAL MEETING IN THE FOLLOWING YEARS?

	Issuers				Total
	Number of recordholders				
	Under 5,000	5,000 through 10,000	10,001 through 50,000	Over 50,000	
Total respondents.....	67	36	34	22	15
Response:					
1976 (percent).....	78	77	80	78	78.2
No response.....	3	0	1	0	4
1975 (percent).....	78	77	79	78.7	78.2
No response.....	4	2	1	0	7
1974 (percent).....	77	76	81	79	78.2
No response.....	6	1	2	0	9
1973 (percent).....	79	77	81.5	81	79.6
No response.....	10	2	2	0	14
1972 (percent).....	79	76	82.5	81.7	79.8
No response.....	12	6	2	0	20

Note: Each percentage represents an average of the responses in the respective category.

Source: 1976 proxy season issuer questionnaire, U.S. Securities and Exchange Commission.

TABLE 23.—REIMBURSEMENT OF INTERMEDIARIES

	Issuers				Total
	Number of recordholders				
	Under 5,000	5,000 through 10,000	10,001 through 50,000	Over 50,000	
Total respondents.....	67	36	34	22	159
Do you reimburse intermediaries for forwarding proxy materials and annual reports:					
Yes.....	67	36	34	22	159
No.....	0	0	0	0	0
Do you reimburse intermediaries for forwarding quarterly reports:					
Yes.....	63	35	33	18	149
No.....	3	1	1	3	8
No response.....	1	0	0	1	2
Do you reimburse intermediaries for forwarding all other shareholder communications:					
Yes.....	60	34	33	20	117
No.....	7	1	1	2	11
No response.....	0	1	0	0	1

Source: 1976 proxy season issuer questionnaire, U.S. Securities and Exchange Commission.

TABLE 24.—REQUESTS FOR REIMBURSEMENT FROM NON-RECORDHOLDERS IN CONNECTION WITH FORWARDING OF ANNUAL REPORTS OR PROXY MATERIALS FOR 1976 ANNUAL MEETING

	Issuers				Total
	Number of recordholders				
	Under 5,000	5,000 through 10,000	10,001 through 50,000	Over 50,000	
Total respondents.....	67	36	34	22	159
Were you billed for the forwarding of annual reports or proxy materials in connection with this year's annual meeting by any persons or entities who were not recordholders:					
Yes.....	35	13	16	10	74
No.....	30	23	18	11	82
No response.....	2	0	0	1	3
How many such bills did you receive:					
Average.....	8.6	9.6	9.9	17.7	10.3
Total.....	302	125	158	177	762
Did you decline to pay any such bills:					
Yes.....	16	10	12	9	47
No.....	21	8	6	2	37
Not applicable.....	30	18	16	11	75

Source: 1976 proxy season issuer questionnaire, U.S. Securities and Exchange Commission.

TABLE 25.—SEARCH CARDS

	Issuers				Total
	Number of recordholders				
	Under 5,000	5,000 through 10,000	10,001 through 50,000	Over 50,000	
Total respondents.....	67	36	34	22	159
How many search cards did you mail:					
Number mailed.....	6,602	9,124	28,264	36,587	80,577
Average number mailed.....	124.6	294.3	856.5	1,663	579.7
Respondent issuers who did not send cards:					
Yes.....	8	1	0	0	9
No response.....	6	4	1	0	11
How many search cards were returned:					
Number returned.....	3,224	3,678	7,099	10,421	24,422
Average number returned.....	62	126.8	215.1	473.7	179.6
Respondent issuers who did not send cards:					
Yes.....	8	1	0	0	9
No response.....	7	6	1	0	14
Percentage of search cards mailed that were returned.....	48.8	40.3	25.1	29.3	30.3

Source: 1976 proxy season issuer questionnaire, U.S. Securities and Exchange Commission.

TABLE 26.—ORDERING OF PROXY MATERIALS BY INTERMEDIARIES

	Issuers				Total
	Number of recordholders				
	Under 5,000	5,000 through 10,000	10,001 through 50,000	Over 50,000	
Total respondents.....	67	36	34	22	159
How many intermediary recordholders requested proxy materials other than by returning your search card:					
Number of intermediaries.....	1,426	1,267	2,087	1,815	6,595
No response.....	8	9	2	2	21
How many intermediary recordholders requested more than one set of proxy materials:					
Number of intermediaries.....	4,249	4,974	8,924	7,535	25,682
No response.....	6	3	2	0	11
What was the total number of sets of proxy materials requested by intermediaries:					
Number of sets.....	78,902	119,412	289,249	883,794	1,371,357
No response.....	6	3	2	0	11

Source: 1976 proxy season issuer questionnaire, U.S. Securities and Exchange Commission.

TABLE 27.—HOW MANY PERSONS OTHER THAN RECORDHOLDERS REQUESTED MORE THAN ONE SET OF PROXY MATERIALS?

	Issuers				Total
	Number of recordholders				
	Under 5,000	5,000 through 10,000	10,001 through 50,000	Over 50,000	
Total respondents.....	67	36	34	22	159
Response:					
Number of persons.....	750	402	680	443	2,275
No response.....	13	12	12	7	44

Source: 1976 proxy season issuer questionnaire, U.S. Securities and Exchange Commission.

APPENDIX C

SHAREHOLDER, BROKER, BANK AND ISSUER QUESTIONNAIRES AND RELATED INSTRUCTIONS, 1976 PROXY SEASON SURVEY

Questionnaire for Shareholders

Instructions to Issuers for Distributing Shareholder Questionnaire

1. DISTRIBUTION TO INTERMEDIARIES AND INDIVIDUAL SHAREOWNERS

You have received a total of _____ shareholder questionnaires. Please distribute _____ to individual shareowners and _____ to intermediary banks and brokers in accordance with the instructions below.

2. INTERMEDIARIES

You should randomly select 25 percent of the total number of intermediaries (that is, brokers and banks) requesting proxy materials from you, but at a minimum 30 intermediaries should be selected (if the number requesting materials is smaller, please distribute to all). Among the selected intermediaries try to allocate the questionnaires on the basis of the number of sets of proxy material requested by each. Avoid sending any single intermediary more questionnaires than half the number of sets of proxy materials it requests. A set of "Instructions to Brokers and Banks" should be sent to each intermediary selected. These instructions have been supplied by the Commission with the questionnaires.

In the situation where some intermediaries have not yet forwarded requests for materials to you, you may find it necessary to estimate the total number of intermediaries who will request materials on the basis of prior years' experience. The number of sets of proxy materials requested by any single intermediary also may have to be estimated on the basis of past years' requests. (See the example below.)

The purpose of requesting a "random" selection of intermediaries is to achieve a good mix of banks and brokers and to avoid a sample drawn only from the largest or the smallest, only from one geographic area, or a sample concentrated on any other basis. Please record the names of the intermediaries you select.

Probably the best method by which to achieve a random sample is to work from an alphabetic list and select every fourth intermediary. (Selection of every fourth intermediary will provide the requested 25 percent sample.) You may, however, choose another method if you find it more convenient. Please record your method of selection, however, so that we may be advised of it at a later date.

Example

Issuer X receives 2,500 questionnaires from the SEC. Last year issuer X received requests from 200 banks and brokers for more than one set of proxy materials. From these 200 banks and brokers, issuer X randomly selects 50 (25 percent of 200) to receive questionnaires along with proxy materials. Last year these 50 selected banks and brokers requested a total of 10,000 sets of proxy materials.

Along with the 2,500 questionnaires the issuer receives instructions to distribute 2,000 to intermediaries and 500 to individual shareowners. Issuer X should send to each of the 50 selected banks and brokers one questionnaire for every five requested sets of proxy materials. This one-to-five ratio is derived by dividing the number of questionnaires to be sent to the selected intermediaries by the estimated number (using last year's 10,000 as an estimate) of sets of proxy materials requested by these selected intermediaries. In this example, we divide 2,000 by 10,000. Estimates should be checked against actual orders as they are received, if possible.

Suppose Bank A is one of the 50 selected intermediaries and that it requests 500 sets of proxy materials. Then Bank A should be sent 100 questionnaires (one questionnaire for every five sets).

NOTE.—Issuer *X* uses last year's requests for proxy materials to select the intermediaries who will be sent questionnaires and also to determine how many questionnaires each selected intermediary will receive because the issuer endeavors to process each request for proxy material as it is received. If issuer *X* chooses instead to wait until all or nearly all requests are received and process them all at the same time, then it could use this year's requests as a basis for allocating questionnaires.

3. INDIVIDUAL SHAREOWNERS

As with the selection of intermediaries, the selection of individual shareowners to receive questionnaires should be made on a random basis. Again, the purpose of randomization is to avoid concentrations which will bias the sample.

If an alphabetic list is readily available or can be compiled without too much difficulty, then we would recommend using such a list to achieve randomization. For example, if you have 5,000 individual shareowners who will be sent proxy materials and 500 questionnaires to distribute among them, then you could send a questionnaire to every tenth name on the list.

If you cannot work from an alphabetic list, then the same method could be applied to any other list as long as it is reasonable to assume that the resulting sample is not concentrated with any identifiable segment of the population (that is, the largest or smallest shareholders, shareholders from a particular area of the country, etc.).

4. FOR ASSISTANCE

If you have any questions or problems as to the proper sampling technique, please contact either James Burgess—or Jeff Davis—. Any other questions or problems should be directed to Robert J. Millstone.

Instructions to Brokers and Banks Regarding Distribution of Shareholder Questionnaires to Beneficial Owners of Securities on Behalf of the Securities and Exchange Commission

Pursuant to subsection 12(m) of the Securities Exchange Act of 1934 the Securities and Exchange Commission is conducting a study of the practices of recording the ownership of securities in other than the name of the beneficial owners.

The Commission requests your cooperation in the distribution of the enclosed questionnaires to shareholders in the manner described hereinafter. Specific questions or problems should be directed to the issuing company from which you have received these questionnaires.

Instructions

The enclosed shareholder questionnaires are to be included with the proxy materials of the issuing company sending you these questionnaires and sent to a random sample of beneficial owners of the issuing company. In order that the results of the survey will truly represent the universe of beneficial owners it is essential that the questionnaires are sent to the owners in a random manner. While it is not possible for the Commission to prescribe the exact sample methodology to be used by each bank or broker due to differences in record keeping, the examples discussed below should provide general guidelines on the methods to be used.

Example "A"

Intermediary "A" (either bank or broker) requests 2,000 sets of proxy materials from Issuer "X". Along with the 2,000 sets of proxy materials, Intermediary "A" receives 200 shareholder questionnaires. Intermediary "A" keeps its records of beneficial owners on a computer list which ranks all accounts by size of account. In order to insure that the questionnaires are distributed to a stratified sample of shareholders, Intermediary "A" encloses one questionnaire in every tenth (200 ÷ 2,000 = 1 ÷ 10) set of proxy material mailed.

Example "B"

Intermediary "B" also receives 200 questionnaires and 2,000 sets of proxy materials from Issuer "X". However, Intermediary "B" keeps its beneficial owner

records by type of account (institutional or retail) and by zip code. For the common stock of Issuer "X", Intermediary "B" has 200 beneficial owners which are classified as institutional accounts and 1,800 classified as retail accounts. Under this situation, Intermediary "B" would send 20 (one tenth of the 200) of the questionnaires to institutional accounts and 180 (one tenth of the 1,800) to retail accounts. As with the previous example Intermediary "B" would enclose one questionnaire to every tenth set of proxy materials mailed to insure that the questionnaires are distributed to each zip code in a manner representative of all the beneficial owners' addresses.

In brief, all intermediaries should attempt to randomize the distribution of the shareholder questionnaires in a manner which is the most practical and least burdensome in terms of the methods used to keep beneficial owner records. Because records will be kept on the number of shareholder questionnaires being sent, it is requested that every intermediary return any undistributed questionnaires to the issuing company.

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C.

DEAR SHAREHOLDER: The Securities and Exchange Commission, the Federal agency which regulates and oversees the securities markets, is involved in a Congressionally mandated study concerning, among other things, the method by which proxy materials, annual reports and other shareholder information are distributed.

Through the voluntary survey set out on the reverse side, the Commission invites your participation in the study. The questions are intended to obtain your views on the effectiveness of communications between corporations and their shareholders and to assist the Commission in determining what measures are needed to improve those communications. We urge your thoughtful response and thank you for your participation in this survey. A postage paid envelope has been provided for return of the questionnaire.

In addition, if you wish, please feel free to submit any further comments or suggestions on a separate sheet of paper.

Sincerely,

RODERICK M. HILLS, *Chairman.*

REQUEST FOR SHAREHOLDER INFORMATION

A. In what city and state do you reside?

_____ city _____ State _____ zip code

B. Are you an institution (including a trust or an estate) or an individual? (check one)

1. Institution
2. Individual

C. On what date did you receive the proxy material accompanying this questionnaire?

_____/_____/_____
mo. day year

D. What company is the subject of the proxy material that you received with this questionnaire?

E. Was the proxy material accompanying this questionnaire forwarded to you by (check one):

1. the corporation whose shares you own?
2. a broker? _____ (name)
3. a bank? _____ (name)
4. other? _____ (please specify)

- F. If your securities are held by a broker or bank, would you object to having your broker or bank disclose your name and mailing address to the corporation whose shares you own, so that the corporation could communicate with you directly? (check one)
1. I would object to having my name and address disclosed.
 2. I would not object to having my name and address disclosed.
- G. Do the instructions accompanying this proxy material call for you to return the proxy card to (check one):
1. the corporation whose shares you own?
 2. a broker?
 3. a bank?
 4. other (please specify)? _____
- H. How many shares does the enclosed proxy card entitle you to vote?

- I. Has it been your practice to vote shares which you own? (check one)
1. Always
 2. Sometimes
 3. Never
- J. Do you have any complaints regarding the transmission of proxy materials, annual reports or other shareholder communications? Please be as specific as possible.

Questionnaire for Issuers

Securities and Exchange Commission Questionnaire for Issuers

General instructions

A. Except where otherwise indicated, the information requested in this questionnaire relates to the 1976 proxy season (March, April, May and June, 1976).

B. If your answer to any of the following questions requires information for which you do not have precise statistics, answer the question with your best estimate, and write "ESTIMATE" in the right hand margin next to your answer.

C. If there is insufficient room for any answer, please continue your answer on a separate sheet of paper and attach it to the completed questionnaire.

D. (1) As used in this questionnaire, the term "intermediary" means brokers, banks, and trust companies which hold securities in their name or in the name of a nominee for their own account or for the accounts of customers who are the beneficial owners of such securities.

(2) As used in this questionnaire, the term "ten day rule" refers to rules promulgated by registered national securities exchanges, which permit broker-dealers, under certain circumstances, to vote securities held in street or nominee name on behalf of customers. In general, these rules require that brokers vote only on certain non-controversial issues. For example, see New York Stock Exchange Rules 451 and 452.

E. Unless otherwise indicated, the term "proxy materials" as used in this questionnaire includes the proxy statement, annual report, and any other materials distributed by an issuer in connection with its annual meeting.

F. If you have difficulty in completing any of the questions or if any of the questions are unclear to you, please contact:

Robert J. Millstone
Senior Special Counsel
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Le Manh Tri
Branch Chief
Directorate of Economic and Policy Research
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Approved by GAO, B-180231 (S76020), Expires 12-31-76.

Issuer Questionnaire

Issuer's Name——.
Address of Principal Place of Business——.
City, State, and Zip Code——.

1. (a) During the 1976 proxy season, proxy mailings to your voting common shareholders were undertaken by which of the following:

- (i)——Your corporation.
- (ii)——A bank transfer agent (Please identify.)
- (iii)——A non-bank transfer agent (Please identify.)
- (iv)——A proxy solicitation firm (Please identify.)
- (v)——Other (Please identify.)

(b) If the mailing of proxy material to your voting common shareholders was undertaken by an entity other than your corporation, please indicate your reasons. (Check all applicable.)

- (i)——Less costly.
- (ii)——More efficient.
- (iii)——A greater shareholder vote.
- (iv)——Other (Please specify.)

2. (a) If you do not employ a proxy solicitation firm on a regular basis, have you employed such firms for particular purposes?

——Yes. ——No.

(b) If "yes," under what circumstances did you employ such a firm, and what services did the firm perform for you?

3. (a) Briefly describe your classes of voting stock and indicate if each class is common or preferred.

(b) What is the total number of recordholders for each class of your voting stock?

(c) What is the total number of shares issued and outstanding for each class of your voting stock?

4. (a) What was the meeting date for this year's annual shareholders' meeting?——
Month——Day——.

(b) What was the record date for this year's annual shareholders' meeting?
Month——Day——.

5. How was the investment community informed of your record date? The information was transmitted to: (Check all applicable.)

(a)——A national securities exchange(s). (Please specify.)——On what date?
Month——Day——.

(b)——The National Association of Securities Dealers, Inc. Month——
Day——.

(c)——A clearing corporation or depository. (Please specify.) Month——
Day——.

(d)——A financial news service(s) or publishing service(s). (Please specify.)——
Month——Day——.

(e)——Other. (Please specify.)——Month——Day——.

6. As of your record date, how many of your recordholders of voting common stock were in the following groups of intermediaries?

- (a) Banks or trust companies——.
- (b) Brokers——.
- (c) Other institutional holders——.

7. As of your record date, how many shares of your voting common stock were held of record by the following groups of intermediaries?

- (a) Banks or trust companies _____.
- (b) Brokers _____.
- (c) Other institutional investors _____.

8. How do you determine which recordholders are intermediaries to whom you send a search card?

9. (a) During what period were your search cards mailed to intermediary recordholders? From: Month _____ day _____ to Month _____ day _____.

- (b) How many search cards did you mail?
- (c) How many search cards were returned?
- (d) How many intermediary recordholders requested proxy materials other than by returning your search card?
- (e) How many intermediary recordholders requested more than one set of proxy materials?
- (f) What was the total number of sets of proxy materials requested by intermediaries?

(g) How many persons other than recordholders requested more than one set of proxy materials?

(h) How many of the persons in category (f) above sought reimbursement for distributing proxy materials?

10. (a) How many broker intermediaries ordered proxy materials:

- (i) Before your mailing of search cards?
- (ii) Within 10 days after your mailing of search cards?
- (iii) 10 days to 21 days after your mailing?
- (iv) More than 21 days after your mailing?

(b) How many bank and trust company intermediaries ordered proxy materials:

- (i) Before your mailing of search cards?
- (ii) Within 10 days after your mailing of search cards?
- (iii) 10 days to 21 days after your mailing?
- (iv) More than 21 days after your mailing?

(c) How many institutional holders other than banks, trust companies and brokers ordered proxy materials:

- (i) Before your mailing of search cards?
- (ii) Within 10 days after your mailing of search cards?
- (iii) 10 days to 21 days after your mailing?
- (iv) More than 21 days after your mailing?

11. (a) If an intermediary does not promptly respond to your search card, do you contact the intermediary? — Yes; — No.

(b) If "yes,"

(i) Please describe your follow-up procedure.

(ii) How many days after the mailing of the search card do you contact the intermediary?

12. (a) In your distribution of proxy materials to non-intermediaries do you mail annual reports and proxy materials together as a unit? — Yes. — No.

(b) If "no" do you mail the annual reports by:

- First class mail?
- Third class bulk mail?
- Private distributor?
- Other? (Please specify.)

(c) If "yes," how are the materials packaged?

(d) If "yes," do you mail the proxy material and annual reports by:

- First class mail?
- Third class bulk mail?
- Private distributor?
- Other? (Please specify.)

13. In your mailings of proxy materials to intermediaries:

(a) Do you:

— Mail proxy materials to intermediaries as soon as a request is received?

or

— Accumulate a substantial number of requests before mailing proxy materials?

(b)(i) Do you request the intermediary to distribute annual reports and proxy materials separately? — Yes. — No.

(b) For each year's annual meeting for which your answer in (a) above was "some," please indicate:

(i) As to each matter which could be voted on by a broker-intermediary pursuant to a "10-day rule," what percentage of your total shares issued and outstanding was voted in:¹ 1976? —. 1975? —. 1974? —. 1973? —. 1972? —.

(ii) As to each other matter, what percentage of your total shares issued and outstanding was voted in:¹ 1976? —. 1975? —. 1974? —. 1973? —. 1972? —.

23. How many complaints have you received since January 1, 1975, from your beneficial owners regarding the solicitation of proxies, the transmittal of proxy materials, or any other matters relating to issuer-shareholder communications?

Please describe in detail the nature of the complaints. If the number is large, indicate the general categories of complaints and the number of complaints in each category, and attach as an exhibit to the completed questionnaire copies of complaints which are representative of the general categories of complaints which you received.

24. (a) (i) Do you reimburse intermediaries for forwarding proxy materials and annual reports? — Yes. — No.

(ii) If "no," please explain.

(b) (i) Do you reimburse intermediaries for forwarding quarterly reports? — Yes. — No.

(ii) If "no," please explain.

(c) (i) Do you reimburse intermediaries for forwarding all other shareholder communications? — Yes. — No.

(ii) If "no," please explain.

25. (a) How many requests for reimbursement did you receive from intermediary recordholders for the forwarding of proxy materials to your beneficial owners in connection with this year's annual meeting?

(b) Did you decline to pay any bills from intermediaries who sought reimbursement? (If so, please explain your reasons.)

(c) How many intermediaries who requested sets of materials did not seek reimbursement for forwarding such materials?

26. (a) Were you billed for the forwarding of annual reports or proxy materials in connection with this year's annual meeting by any persons or entities who were not recordholders? — yes. — no.

(b) How many such bills did you receive?

(c) (i) Did you decline to pay any such bills? — yes. — no.

(ii) If "yes," please explain your reasons.

27. (a) Please indicate the highest and lowest per unit charge billed by intermediary recordholders for forwarding this year's proxy materials and the average per unit charge of all such billings:

(i) Where the proxy material and annual report were forwarded together as a unit. — Highest. — Lowest. — Average.

(ii) Where the proxy material and annual report were forwarded separately. — Highest. — Lowest. — Average.

(b) For the highest and lowest per unit charge in a(i) and a(ii) above, please attach as an exhibit to this questionnaire the bills seeking the highest and lowest per unit charge and indicate on those bills the number of sets of proxy materials sent to the intermediaries who sought the highest and lowest per unit charge.

(c) (i) How many bills received from intermediary recordholders were itemized to show the cost of postage (or shipment if done otherwise than through the postal service). — Bills.

(ii) With respect to those bills, please indicate the highest and lowest per unit charge and the average per unit charge for postage (or shipment if done otherwise than through the postal service). Please attach copies of the bills which sought the highest and lowest per unit charge for postage or shipment and indicate on those bills the number of sets of proxy materials sent to intermediaries who sought the highest and lowest per unit charge. — Highest. — Lowest. — Average.

28. (a) (i) What was your average per unit postage or shipping cost of sending annual reports and proxy materials to non-intermediary recordholders this year?

¹ In answering this question do not restrict your answer to the number of shares voted by brokers pursuant to a 10-day rule but rather answer with the total vote, whether by brokers or other recordholders entitled to vote.

(ii) What was your average per unit postage or shipping cost of sending annual reports and proxy materials to intermediary recordholders this year (that is, excluding charges by intermediaries for forwarding the materials to beneficial shareholders of your securities)?

(b) (i) Exclusive of design, printing, and materials costs, what was the total cost and total per unit cost of packaging, handling and sending annual reports and proxy materials to non-intermediary recordholders this year? Include a brief explanation of what costs were included in your computation, and how such costs were allocated. — Total cost. — Total per unit cost.

(ii) Exclusive of design, printing, and materials costs, what was the total cost and total per unit cost of packaging, handling, and sending annual reports and proxy materials to your beneficial shareowners through intermediary recordholders this year? Include a brief explanation of what costs were included in your computation, and how such costs were allocated. — Total cost. — Total per unit cost.

(iii) Do the figures given in (b)(i) and (b)(ii) above include the following costs incurred in packaging, addressing and otherwise preparing the annual reports and proxy materials for mailing or shipment? If so, please indicate the amount of each of these costs for the mailing or shipment of annual reports and proxy materials to intermediaries and non-intermediaries this year.

(a) Mailing costs: Intermediary—; nonintermediary—.

(b) Other direct costs (including wages and salaries): Intermediary—; nonintermediary—.

(c) Depreciation of machinery: Intermediary—; nonintermediary—.

(d) Overhead cost of building: Intermediary—; nonintermediary—.

(e) Other overhead costs: (Please specify.) Intermediary—; nonintermediary—.

29. In your experience, does the current system of transmitting issuer communications to beneficial owners through intermediaries operate satisfactorily for the transmission of proxy statements and annual reports? (Please explain your answer.)

30. In your experience, does the current system of transmitting issuer communications to beneficial owners through intermediaries operate satisfactorily for the transmission of quarterly reports? (Please explain your answer.)

31. In your experience, does the current system of transmitting issuer communications to beneficial owners through intermediaries operate satisfactorily for the transmission of other routine shareholder communications? (Please explain your answer.)

32. In your experience, does the current system of transmitting issuer communications to beneficial owners through intermediaries operate satisfactorily in the event of a tender offer or a counter-solicitation of proxies? (Please explain your answer.)

33. What problems, if any, would you encounter if brokers were unable to vote securities pursuant to a 10 day rule? (Please explain your answer.)

34. In your experience, has the issuer-shareholder communications system been affected favorably or adversely by the interposition of securities depositories? (Please explain your answer.)

35. What steps do you believe should be taken to improve the current system of transmitting proxy materials through intermediaries? (Please explain your answer.)

36. (a) In your experience, does the current system of transmitting proxy material through intermediaries entail costs which should be reduced or eliminated? (Please explain your answer.)

(b) If so, please indicate the nature of these costs and how they might be reduced or eliminated.

37. (a) Do you believe the costs of the current system of transmitting proxy material through intermediaries should be reallocated among issuers, intermediaries and beneficial owners? (Please explain your answer.)

(b) If so, please indicate which costs should be reallocated, the reasons for the reallocation and the method of reallocation.

38. Instead of issuers sending search cards to intermediaries, do you believe intermediaries should be required to take the initiative in contacting issuers regarding the number of sets of proxy materials needed? (Please explain your answer.)

39. (a) Do you believe that under certain circumstances the identities of beneficial owners should be disclosed to issuers?

(b) (i) If so, under what circumstances should this information be disclosed?

(ii) Should this disclosure be extended to all beneficial owners or only to certain categories? (Please explain your answer.)

(iii) What steps should be taken to effect the disclosure of beneficial ownership that you believe appropriate? (Please explain your answer.)

(iv)(a) Should the identity of beneficial owners be disclosed to other issuers? (b) If so, to whom should this information be made available?

(v) If the identities of beneficial owners are disclosed, what steps, if any, should be taken to protect the privacy of such beneficial owners?

(vi) If you had access to the names and addresses of all shareowners both beneficial and of record, would you modify either the frequency of your communications with shareowners or the types of communications? If so, what changes would you make?

40. Please provide the name of the person in your organization with overall responsibility for your proxy department. Name——. Mailing Address——. Phone Number——.

Exhibits

41. Please attach a sample of the search card which you sent to intermediaries.

42. (a) Please enclose a copy of your annual report, proxy materials and all other materials sent to your non-intermediary shareholders in connection with this year's annual meeting, packaged as they were sent, if possible.

(b) Please attach a copy of any materials, instructions, or other communications sent to intermediary recordholders (other than SEC questionnaires).

43. Please attach a copy of the invoice for the forwarding of proxy materials received from each of the intermediaries listed in Questions 14-17.

44. During this year's proxy season, at the request of the Commission, you distributed questionnaires to a selected number of your shareholders who held directly in their own name and to a number of intermediaries who represented beneficial owners of your securities. On a separate sheet of paper, please describe the method used to distribute the questionnaires. In particular, please provide the following information:

(a) How did you determine which intermediaries were to receive questionnaires?

(b) To what intermediaries were questionnaires sent and how many questionnaires were sent to each intermediary?

(c) How did you determine which of your shareholders holding directly in their own name were to receive questionnaires?

(d) How were the questionnaires packaged for distribution to individual shareholders of record. For example, were the questionnaires included with your proxy materials or sent with the annual report; was the questionnaire attached to the annual report or included loose in an envelope?

Questionnaire for Brokers

Securities and Exchange Commission Questionnaire

General Instructions

1. Except where otherwise indicated, the information requested on this questionnaire relates to the 1976 proxy season. (March, April, May and June, 1976).

2. Questions which discuss your proxy forwarding procedures relate to the procedures used to forward proxy materials to customers who are entitled to exercise voting rights with respect to securities held in nominee or street name.

3. As used in this questionnaire, "nominee name" refers to arrangements used by institutional investors (e.g., banks or trust companies) for the registration of securities held by them for their own account or for the accounts of their customers who are the beneficial owners of the securities. "Street name" refers to a specialized type of nominee name registration whereby a broker registers in its name, or in the name of its nominee, securities left with it by its customers or held by it for its own account.

4. If your answer to any question requires information for which you do not have precise statistics, answer the question with your best estimate, and write "ESTIMATE" in the right hand margin next to your answer.

5. If there is insufficient room for any answer, please continue your answer on a separate sheet and attach it to the completed questionnaire.

6. Unless otherwise indicated, the term "proxy materials" as used in this questionnaire includes an issuer's proxy statement, annual report, and any other materials forwarded by an issuer in connection with its annual meeting.

7. If you experience difficulty in completing any of the questions or if any of the questions are unclear, please contact:

Robert J. Millstone
Senior Special Counsel
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

I.e. Manh Tri
Branch Chief
Directorate of Economic and Policy Research
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Approved by GAO, B-180231 (S76020), Expires 12-31-76.

Questionnaire for Brokers

Broker's Name—

Address of Principal Place of Business—

City, State, and Zip Code—

1. Who forwards issuers' proxy materials to your customers?
 - i. Yourself.
 - ii. A subsidiary (Please specify name of entity).
 - iii. An independent contractor (Please specify name of entity).
 - iv. Other (Please specify name of entity).
2. In what city(ies) and state(s) are your proxy forwarding functions performed?
3. Which of the following issuer-shareholder communications do you forward as a matter of course to your customers? (Check all applicable answers.)
 - i. All materials (If you check this answer, please do not check any other responses).
 - ii. Proxy materials.
 - iii. Annual reports.
 - iv. Quarterly reports.
 - v. Information regarding mergers, tender offers, and reorganizations.
 - vi. Press releases.
4. If you do not forward all issuer-shareholder communications, what is your basis for deciding what material to withhold and what material to forward to your customers?
5. If a customer provides instructions that proxy materials and other communications are not to be forwarded, do you comply with such instructions?
 - i. Yes.
 - ii. No.
 - iii. Sometimes (Please explain).
6. How do you become aware of issuers' record dates and annual meeting dates? (Check all applicable answers.)
 - i. Bulletins of the stock exchanges (Please specify.)
 - ii. Bulletins from clearing corporations or depositories (Please specify.)
 - iii. Commercial bulletin services (Please specify.)
 - iv. Search cards from issuers.
 - v. Other (Please specify.)
7. In order to obtain annual reports and proxy materials to send to your customers,
 - i. do you request proxy materials from the issuer without waiting to receive a search card? or
 - ii. do you wait until the issuer sends you a search card to request proxy materials?
8. If you normally wait until issuers send you search cards, is there some period after which you request proxy materials from those from whom no search card has been received?
 - i. Yes. (Please describe your procedure.)
 - ii. No.
9. In forwarding issuers' proxy materials to customers for whom you hold securities in nominee and street name:
 - i. Do you send unsigned proxy cards to your customers and instruct them to return the cards to you? or
 - ii. Do you sign and send proxy cards to your customers and ask them to return the cards directly to the issuer? or
 - iii. Do you use another procedure? (Please describe.)
10. Do you seek reimbursement from issuers for forwarding proxy materials?
 - i. Yes.
 - ii. No.
 - iii. Varies (Please explain).

11. (a) Do you have written policies and procedures regarding the transmission of issuer-shareholder communications to your customers?

i. Yes. ii. No.

(b) If so, please attach a copy of such policies and procedures as an exhibit to the completed questionnaire.

12. On what date does your fiscal year end?

13. On May 28, 1976, how many customer accounts did you have which held voting securities in nominee or street name?

i. Less than 50. ii. 50 to 250. iii. 251 to 1,000. iv. 1,001 to 5,000. v. 5,001 to 25,000. vi. 25,001 to 100,000. vii. Over 100,000.

14. How many issues were represented in your nominee or street name holdings of voting securities as of May 28, 1976?

i. Less than 100. ii. 101 to 500. iii. 501 to 1,500. iv. 1,501 to 8,000. v. Over 8,000.

15. (a) Do you ever order proxy materials from an issuer before the record date?

i. Yes. ii. No.

(b) If you order proxy materials before an issuer's record date, how do you determine how many sets of materials to order?

16. What percentage of issuers, whose issues you hold in nominee or street name, sent search cards to you inquiring whether you represent beneficial owners of their securities?

i. More than 95%. ii. 75 to 95%. (iii) 59 to 74%. iv. Less than 50%.

17. What percentage of issuers failed to send proxy materials to you after you notified them that you represented beneficial owners of their securities and ordered proxy materials?

i. Less than 5%. ii. 5% to 10%. iii. 11% to 25%. iv. More than 25%.

18. Of those issuers who did send you sets of proxy materials, what percentage sent the materials so that you received them:

a. Less than 5 days before their annual meeting? _____%

b. 5 to 10 days before their annual meeting? _____%

c. 11 to 15 days before their annual meeting? _____%

d. 16 to 25 days before their annual meeting? _____%

e. More than 25 days before their annual meeting? _____%

f. After their annual meeting? _____%

19. (a) Did you find it necessary to request additional proxy materials from an issuer after your initial request for proxy materials for your beneficial shareowners was filled? i. Yes. ii. No.

(b) If you found it necessary to request additional proxy materials from an issuer, why was the additional order necessary (e.g., order improperly filled the first time, customer purchases before record date, etc.)?

(c) If you found it necessary to request additional proxy materials, what percentage of issuers filled your orders for additional proxy materials properly and in a timely manner?

i. More than 95%. ii. 75% to 95%. iii. 50% to 74%. iv. less than 50%.

20. Please indicate on a per unit basis the reimbursement you sought for the items below and the basis (e.g., "100% of postage costs," "guidelines of NYSE," "cost plus 5%," etc.) for determining reimbursement sought. The matter of what unit basis you use in responding to this question is left for your definition; use whatever unit basis you find manageable in responding. However, describe in the space provided the unit that you have used (e.g., "per ounce," "per mailing," "per 100 envelopes," etc.).

If you did not seek reimbursement for any item listed, please write "Not Sought" where applicable. Each item requires a response; if an item is not applicable, please write "N/A" and state the reason.

(a) Service fee:

i. \$ _____ per _____ (Define unit.) _____.

ii. Basis for seeking reimbursement:

(b) Postage:

i. \$ _____ per _____ (Define unit.) _____.

ii. Basis for seeking reimbursement:

- (c) Envelopes for mailing proxy materials to your customers:
 i. \$ — per — (Define unit.) —.
 ii. Basis for seeking reimbursement:
- (d) Return Postage:
 i. \$ — per — (Define unit.) —.
 ii. Basis for seeking reimbursement:
- (e) Envelopes for return of proxies from customers:
 i. \$ — per — (Define unit.) —.
 ii. Basis for seeking reimbursement:
- (f) Other (Please specify.):
 i. \$ — per — (Define unit.) —.
 ii. Basis for seeking reimbursement:
21. (a) How many complaints related to the area of issuer-shareholder communications did you receive in the last 12 months?
 (b) Please describe in detail the nature of the complaints. If the number is large, indicate the general categories of complaints and the number of complaints in each category, and attach as an exhibit to the completed questionnaire copies of complaints which are representative of the general categories of complaints which you received.
22. What was the total number of sets of proxy materials that you mailed during your last fiscal year?
23. What were the gross costs allocated to the following items in your proxy operations during your last fiscal year?
 a. Mailing costs \$ —.
 b. Other direct costs (including wages and salaries) \$ —.
 c. Depreciation cost of machinery \$ —.
 d. Overhead cost of the building \$ —.
 e. Other overhead cost \$ —. (Please specify.)
24. For your last fiscal year, what was the percentage of your expenditures listed in question 23 allocated to proxy operations during March, April, May and June?
 a. Mailing costs — %.
 b. Other direct costs (including wages and salaries) — %.
 c. Depreciation cost of machinery — %.
 d. Overhead cost of the building — %.
 e. Other overhead cost — %. (Please specify.)
25. During your last fiscal year, what was the total reimbursement you received from issuers for your proxy operations? \$ —.
26. During your last fiscal year, what was the total amount of fees which you received from customers for administrative and bookkeeping services relating to maintaining securities in nominee or street name accounts? (Please attach as an exhibit to the completed questionnaire a copy of your schedule of fees for such services.) \$ —.
27. (a) How many employees, including supervisory personnel, work in your proxy department on a full-time, year-round basis?
 (b) How many additional employees, including supervisory personnel, worked in your proxy department during all or most of this year's proxy season (March, April, May and June)? Full-time? —. Part-time —.
 (c) How many work hours (i.e., the total number of hours worked, whether by part-time or full-time, supervisory or non-supervisory personnel) were devoted to your proxy operations in this year's proxy season (March, April, May and June)? — hours.
 (d) How many employees, including supervisory personnel, worked in your proxy department during all or most of last year's proxy season (March, April, May and June 1975)? Full-time —. Part-time —.
 (e) How many work hours (i.e., the total number of hours worked, whether by part-time or full-time, supervisory or non-supervisory personnel) were devoted to your proxy operations in last year's proxy season (March, April, May and June 1975)? — hours.
 (f) How many hours are in your normal work day? — hours.
- Questions 28 through 34 call for information regarding the transmission of specific issuers' proxy material to customers for whom you hold voting securities in nominee and street name. If you did not hold any securities of an enumerated issuer in nominee or street name during the 1976 proxy season (March through June), so indicate by using the designation "N/A" for the answer to question 28 and leave blank the answer spaces for questions 29 through 34.

38. In your experience, does the current system of transmitting issuer-shareholder communications through intermediaries operate satisfactorily for the transmission of proxy statements and annual reports? (Please explain your answer.)

39. In your experience, does the current system of transmitting issuer-shareholder communications through intermediaries operate satisfactorily for the transmission of quarterly reports? (Please explain your answer.)

40. In your experience, does the current system of transmitting issuer-shareholder communications through intermediaries operate satisfactorily for the transmission of other routine shareholder communications? (Please explain your answer.)

41. In your experience, does the current system of transmitting issuer-shareholder communications through intermediaries operate satisfactorily for the transmission of a tender offer or a counter-solicitation of proxies? (Please explain your answer.)

42. What problems, if any, would occur if brokers were unable to vote securities pursuant to a 10 day rule of a national securities exchange? (Please explain your answer.)

43. In your experience, has the current issuer-shareholder communications system been affected favorably or adversely by the interposition of securities depositories? (Please explain your answer.)

44. What steps do you believe can or should be taken to improve the current system of transmitting proxies through intermediaries? (Please explain your answer.)

45. (a) In your experience, does the current system of transmitting proxies through intermediaries entail costs which should be reduced or eliminated?

(b) If so, please indicate the nature of these costs and how they might be reduced or eliminated.

46. (a) Do you believe the costs of the current system of transmitting proxy material through intermediaries should be reallocated among issuers, brokers, and beneficial shareowners?

(b) If so, please indicate which costs should be reallocated, the reasons for the reallocation and the method of reallocation.

47. Instead of issuers sending search cards to brokers, do you believe brokers should be required to take the initiative in contacting issuers regarding the number of sets of proxy materials needed? (Please explain your answer.)

48. (a) Do you believe that under certain circumstances the identities of your customers who hold securities in street or nominee name or such customers of other brokers should be disclosed to issuers? (Please explain your answer.)

(b)(i) If so, under what circumstances should this information be disclosed? (Please explain your answer.)

(ii) Should this disclosure be extended to all beneficial owners or only to certain categories? (Please explain your answer.)

(iii) What steps should be taken to effect the disclosure of beneficial ownership that you believe appropriate? (Please explain your answer.)

(c)(i) Should the identity of beneficial owners be disclosed to other than issuers? (Please explain your answer.)

(ii) If so, to whom should this information be available? (Please explain your answer.)

(d) If the identities of beneficial owners are disclosed, what steps if any, should be taken to protect the privacy of such beneficial shareowners?

49. (a) Have you read the Securities and Exchange Commission's Preliminary Report to Congress on nominee and street name ownership of securities? i. () Yes. ii. () No.

(b) If so, please indicate any comments which you have.

(c) If not, would you like to receive a copy of the Preliminary Report? i. () Yes. ii. () No.

50. Please provide the name of the person in your organization to contact for further information concerning your responses to this questionnaire. Name ——. Title ——. Address ——. Telephone Number ——.

Exhibits

I. Please attach a copy of your written policies and procedures, if any, regarding the transmission of issuer-shareholder communications to your customers.

II. Please attach copies of complaints representative of the categories given in response to question 21.

III. Please attach a copy of your schedule of fees for administrative and book-keeping services relating to maintaining securities in nominee and street name accounts.

Questionnaire for Banks

Securities and Exchange Commission Questionnaire

General Instructions

1. Except where otherwise indicated, the information requested on this questionnaire relates to the 1976 proxy season (March, April, May and June, 1976).
2. The questions relate to procedures used to forward proxy materials to customers whose securities are held in nominee name.
3. As used in this questionnaire, "nominee name" registration refers to the arrangement whereby a bank registers securities held pursuant to a custodial or trust arrangement in its name or the name of its nominee.
4. If there is insufficient room for any answer, please continue your answer on a separate sheet and attach it to the completed questionnaire.
5. If an answer to any of the following questions requires information for which you do not have precise statistics, answer the question with your best estimate and write "ESTIMATE" in the right hand margin next to your answer.
6. Unless otherwise indicated, the term "proxy materials" as used in this questionnaire includes the proxy statement, annual report, and any other materials forwarded by an issuer in connection with its annual meeting.
7. If you experience difficulty in completing any of the questions or if any of the questions are unclear, please contact:

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Washington, D.C. 20549

Le Manh Tri
Branch Chief
Directorate of Economic and Policy Research
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Approved by GAO, B-180231 (S76020), Expires 12-31-76.

Questionnaire

Name ——. Address of Principal Place of Business ——. City, State, and Zip Code ——.

1. Who forwards issuers' proxy materials to your customers?
 - i. Yourself
 - ii. A subsidiary (Please specify name of entity.) _____
 - iii. An independent contractor (Please specify name of entity.) _____
 - iv. Other (Please specify name of entity.) _____
2. In what city(ies) and state(s) are your proxy forwarding functions performed?
3. Which of the following issuer-shareholder communications do you forward as a matter of course to your customers? (Check all applicable answers.)
 - i. All materials (If you check this answer, please do not check any other response).
 - ii. Proxy materials.
 - iii. Annual reports.
 - iv. Quarterly reports.
 - v. Information regarding mergers, tender offers, and reorganizations.
 - vi. Press releases.
4. If you do not forward all issuer-shareholder communications, what is your basis for deciding what material to withhold and what material to forward to your customers?
5. If a customer provides instructions that proxy materials and other communications are not to be forwarded, do you comply with such instructions?
 - i. Yes.
 - ii. No.
 - iii. Sometimes (Please explain).
6. How do you become aware of issuers' annual meeting dates? (Check all applicable answers.)
 - i. Bulletins of the stock exchanges (Please specify).
 - ii. Bulletins from clearing corporations or depositories (Please specify).
 - iii. Commercial bulletin services. (Please specify.)
 - iv. Search cards from issuers.
 - v. Other (Please specify).

7. In order to obtain annual reports and proxy materials to send to your customers,

- i. do you request proxy materials from the issuer without waiting to receive a search card? or
 ii. do you wait until the issuer sends you a search card to request proxy materials?

8. If you normally wait until issuers send you search cards, is there some period after which you request proxy materials from those from whom no search card has been received? i. Yes. (Please describe your procedure.) ii. No.

9. In forwarding issuers' proxy materials to customers for whom you hold securities in nominee name:

- i. Do you send unsigned proxy cards to your customers and instruct them to return the cards to you? or
 ii. Do you sign and send proxy cards to your customers and ask them to return the cards directly to the issuer? or
 iii. Do you use another procedure? (Please describe.)

10. Do you seek reimbursement from issuers for forwarding proxy materials? i. Yes. ii. No. iii. Varies (Please explain).

11. (a) Do you forward proxy materials to all custodial customers for whom the bank holds, in nominee name, securities for which the bank does not have voting discretion? i. Yes. ii. No.

(b) Do you forward proxy materials to all custodial customers for whom the bank holds, in nominee name, securities for which the bank has voting discretion? i. Yes. ii. No.

(c) Do you forward proxy materials to co-trustees where the bank has sole voting discretion for securities held in nominee name in trust accounts? i. Yes. ii. No.

(d) Do you forward proxy materials to co-trustees where the bank has shared voting discretion for securities held in nominee name in trust accounts? i. Yes. ii. No.

12. (a) Do you have written policies and procedures regarding the transmission of issuer-shareholder communications to your customers? i. Yes. ii. No.

(b) If so, please attach a copy of such policies and procedures as an exhibit to the completed questionnaire.

13. On what date does your fiscal year end? Month ——. Day —.

14. On May 28, 1976, how many trust and custodial accounts do you have holding voting securities in nominee name?

	Trust accounts	Custodial accounts
i. Less than 50.....	()	()
ii. 50 to 250.....	()	()
iii. 251 to 1,000.....	()	()
iv. 1,001 to 5,000.....	()	()
v. 5,001 to 25,000.....	()	()
vi. More than 25,000.....	()	()

15. How many issuers are represented in your trust and custodial nominee name holdings of voting securities as of May 28, 1976?

	Trust accounts	Custodial accounts
i. Less than 100.....	()	()
ii. 100 to 500.....	()	()
iii. 501 to 1,500.....	()	()
iv. 1,501 to 8,000.....	()	()
v. More than 8,000.....	()	()

16. What percentage of issuers, whose issues you hold in nominee name, sent search cards to you inquiring whether you represent beneficial owners of their securities? i. more than 95%. ii. 75 to 95%. iii. 50 to 74%. iv. less than 50%.

17. What percentage of issuers failed to send proxy materials to you after you notified them that you represented beneficial owners of their securities and ordered proxy materials? i. () less than 5%. ii. () 5% to 10%. iii. () 11% to 25%. iv. () more than 25%.

18. Of those issuers who did send you sets of proxy materials, what percentage sent the materials so that you received them:

- a. Less than 5 days before their annual meeting? — %.
- b. 5 to 10 days before their annual meeting? — %.
- c. 11 to 15 days before their annual meeting? — %.
- d. 16 to 25 days before their annual meeting? — %.
- e. More than 25 days before their annual meeting? — %.
- f. After their annual meeting? — %.

19. (a) Did you find it necessary to request additional proxy materials from an issuer after your initial request for proxy materials for your beneficial shareholders was filled? i. () Yes. ii. () No.

(b) If you found it necessary to request additional proxy materials from an issuer after receiving an initial shipment, why were additional orders necessary (e.g., order improperly filled the first time, customer purchases before record date, etc.)?

(c) If you found it necessary to request additional proxy materials, what percentage of issuers filled your order for additional proxy materials properly and in a timely manner?

- i. () more than 95%.
- ii. () 75% to 94%.
- iii. () 50% to 74%.
- iv. () less than 50%.

20. Please indicate on a per unit basis the reimbursement you sought for the items listed below and the basis (e.g., "100% of postage costs," "cost plus 5%," etc.) for determining reimbursement sought. The matter of what unit basis you use in responding to this question is left for your definition; use whatever unit basis you find manageable in responding. However, describe in the space provided the unit that you have used (e.g., "per ounce," "per mailing," "per 100 envelopes," etc.).

If you did not seek reimbursement for any item listed, please write "Not Sought" where applicable. Each item requires a response; if an item is not applicable, please write "N/A" and state the reason.

- (a) Service fee:
 - i. \$ ___ per ___ (Define unit.) ___.
 - ii. Basis for seeking reimbursement: _____.
- (b) Postage:
 - i. \$ ___ per ___ (Define unit.) ___.
 - ii. Basis for seeking reimbursement: _____.
- (c) Envelopes for mailing proxy materials to your customers:
 - i. \$ ___ per ___ (Define unit.) ___.
 - ii. Basis for seeking reimbursement: _____.
- (d) Return Postage:
 - i. \$ ___ per ___ (Define unit.) ___.
 - ii. Basis for seeking reimbursement: _____.
- (e) Envelopes for return of proxies from customers:
 - i. \$ ___ per ___ (Define unit.) ___.
 - ii. Basis for seeking reimbursement: _____.
- (f) Other (Please specify.):
 - i. \$ ___ per ___ (Define unit.) ___.
 - ii. Basis for seeking reimbursement: _____.

21. (a) How many complaints related to the area of issuer-shareholder communications did you receive in the last 12 months?

(b) Please describe in detail the nature of the complaints. If the number is large, indicate the general categories of complaints and the number of complaints in each category and attach as an exhibit to the completed questionnaire copies of complaints which are representative of the general categories of complaints you received.

22. What was the total number of sets of proxy materials that you mailed in your last fiscal year?

23. What were the gross costs allocated to the following items in your proxy operations during your last fiscal year?

- a. Mailing costs \$_____.
- b. Other direct costs (including wages and salaries) \$_____.
- c. Depreciation cost of machinery \$_____.
- d. Overhead cost of the building \$_____.
- e. Other overhead cost \$_____ (Please specify.)

24. For your last fiscal year, what percentage of your expenditures listed in question 23 was allocated to proxy operations during March, April, May and June?

- a. Mailing costs _____%.
- b. Other direct costs (including wages and salaries) _____%.
- c. Depreciation cost of machinery _____%.
- d. Overhead cost of the building _____%.
- e. Other overhead costs _____% (Please specify.)

25. During your last fiscal year, what was the total reimbursement you received from issuers for your proxy operations? \$_____.

26. During your last fiscal year, what was the total amount of fees which you received from customers for administrative and bookkeeping services relating to maintaining securities in nominee or street name accounts? (Please attach as an exhibit to the completed questionnaire a copy of your schedule of fees for such services.) \$_____.

27. (a) How many employees, including supervisory personnel, work in your proxy department on a full-time, year-round basis?

(b) How many additional employees, including supervisory personnel, worked in your proxy department during all or most of this year's proxy season (March, April, May and June, 1976)? Full-time _____. Part-time _____.

(c) How many work hours (i.e., the total number of hours worked, whether by part-time or full-time, supervisory or non-supervisory personnel) were devoted to your proxy operations in this year's proxy season (March, April, May and June)? _____ hours.

(d) How many employees, including supervisory personnel, worked in your proxy department during all or most of last year's proxy season (March, April, May and June 1975)? Full-time _____. Part-time _____.

(e) How many work hours (i.e., the total number of hours worked, whether by part-time or full-time, supervisory or non-supervisory personnel) were devoted to your proxy operations in last year's proxy season (March, April, May and June 1975)? _____ hours.

(f) How many hours are in your normal work day? _____ hours.

Questions 28 through 34 call for information regarding the transmission of specific issuers' proxy material to custodial customers for which you held voting securities in nominee name and to those persons who share or have sole voting discretion for securities held in nominee name in trust accounts. If you did not hold any securities of an enumerated issuer in nominee name during the 1976 proxy season (March through June), so indicate by using the designation "N/A" rather than by leaving the answer space blank. (*"c" denotes custodial accounts and "t" denotes trust accounts).

THE ISSUERS TO WHICH QUESTIONS 28-34 RELATE ARE THOSE AT THE RIGHT.

28. What was the number of accounts with record date positions in the voting common stock of each issuer? - - - - -	c																			
	t																			
29. What was your total record date position in the voting common stock of each issuer?	c																			
	t																			
30. Of these accounts set out in question 28, how many accounts held:																				
(a) less than 100 shares?	c																			
	t																			
(b) 101 to 500 shares?	c																			
	t																			
(c) 501 to 1,000 shares?	c																			
	t																			
(d) more than 1,000 shares?	c																			
	t																			
31. On what date did you receive a search card from each issuer?																				
32. On what date did you request proxy materials from each issuer?																				
33. On what date did you receive proxy materials from each issuer?																				
34. After receipt of proxy materials, on what date did you forward proxy materials to your customer?																				

If your custodial customers do not send their voting preferences to you, or to your agent for tabulation and forwarding to the issuer, omit question 35.

35. (a) Do you as a matter of course establish a time prior to an issuer's annual meeting after which voting preferences received from your customers are not voted? i. () Yes. ii. () No.
- (b) If you have such a policy, briefly describe it:
- (c) If you have such a policy, is it communicated to your customers? i. () Yes. ii. () No.
36. (a) Do you ever vote custodial shares without customer instructions? i. () Yes. Please explain under what circumstances: ii. () No.
- (b) If "yes," do you as a matter of course cast for management all the shares you vote? i. () Yes. ii. () No.
- (c) If you do not cast for management all the shares you vote, under what circumstances do you vote against management?
37. (a) When you possess sole voting discretion on behalf of trust accounts, do you vote the shares held in the trust account? i. () Yes. ii. () No.
- (b) If "yes," do you, as a matter of course, cast for management all the shares your vote? i. () Yes. ii. () No.

(c) If you do not cast for management all the shares you vote, under what circumstances do you vote against management?

38. In your experience, does the current system of transmitting issuer-shareholder communications through intermediaries operate satisfactorily for the transmission of proxy statements and annual reports? (Please explain your answer.)

39. In your experience, does the current system of transmitting issuer-shareholder communications through intermediaries operate satisfactorily for the transmission of quarterly reports? (Please explain your answer.)

40. In your experience, does the current system of transmitting issuer-shareholder communications through intermediaries operate satisfactorily for the transmission of other routine shareholder communications? (Please explain your answer.)

41. In your experience, does the current system of transmitting issuer-shareholder communications through intermediaries operate satisfactorily for the transmission of a tender offer or a counter-solicitation of proxies? (Please explain your answer.)

42. In your experience, has the current issuer-shareholder communications system been affected favorably or adversely by the interposition of securities depositories? (Please explain your answer.)

43. What steps do you believe can or should be taken to improve the current system of transmitting proxies through intermediaries? (Please explain your answer.)

44. (a) In your experience, does the current system of transmitting proxies through intermediaries entail costs which should be reduced or eliminated?

(b) If so, please indicate the nature of these costs and how they might be reduced or eliminated.

45. (a) Do you believe the costs of the current system of transmitting proxy material through banks should be reallocated among issuers, banks and beneficial shareowners?

(b) If so, please indicate which costs should be reallocated, the reasons for the reallocation and the method of reallocation.

46. Instead of issuers sending search cards to banks, do you believe banks should be required to take the initiative in contacting issuers regarding the number of sets of proxy materials needed? (Please explain your answer.)

47. (a) Do you believe that under certain circumstances the identities of your customers whose securities are held in nominee name or such customers of other intermediaries should be disclosed to issuers? (Please explain your answer.)

(b) (i) If so, under what circumstances should this information be disclosed? (Please explain your answer.)

(ii) Should this disclosure be extended to all beneficial owners or only to certain categories? (Please explain your answer.)

(iii) What steps should be taken to effect the disclosure of beneficial ownership that you believe appropriate? (Please explain your answer.)

(c) (i) Should the identity of beneficial owners be disclosed to persons other than issuers? (Please explain your answer.)

(ii) If so, to whom should this information be available? (Please explain your answer.)

(d) If the identities of beneficial owners are disclosed, what steps, if any, should be taken to protect the privacy of such beneficial shareowners?

48. (a) Have you read the Securities and Exchange Commission's Preliminary Report to Congress on nominee and street name ownership of securities? i. () Yes. ii. () No.

(b) If so, please indicate any comments which you have.

(c) If not, would you like to receive a copy of the Preliminary Report? i. () Yes. ii. () No.

49. Please provide the name of the person in your organization to contact for further information concerning your responses in this questionnaire. Name ---. Title ---. Address ---. Telephone Number ---.

Exhibits

- I. Please attach a copy of your standard trust agreement.
- II. Please attach a copy of your standard custodial agreement.
- III. Please attach a copy of your written policies and procedures, if any, regarding the transmission of issuer-shareholder communications to your customers.
- IV. Please attach copies of complaints representative of the categories given in response to question 22.
- V. Please attach a copy of your schedule of fees for administrative and book-keeping services relating to maintaining securities in nominee accounts.

APPENDIX D

SAMPLING METHODOLOGY, 1976 PROXY SEASON SURVEY

It was determined that specific data needed to study the practice of recording the ownership of securities in street or nominee name would best be obtained through a survey of the experiences of shareowners, issuers, brokers and banks during the 1976 proxy season. Therefore, four questionnaires were designed to solicit information from those groups.¹ The task of drawing samples of banks, brokers, and issuers that would be adequately representative of the populations and provide a basis for valid conclusions was initiated by developing appropriate lists from which to select the samples. The lists from which the samples were drawn were stratified by variables related to the issues in the Study.

BANK QUESTIONNAIRE

The information for selecting the sample of banks was derived from source data compiled by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency. The sample was stratified by size of trust department assets.

Table 1 is the population table for the bank sample which shows the number of insured commercial banks, the value of their total trust department assets at the end of 1974, and the total assets in personal trusts and estates of these banks. The percentages in this table indicate that about 66 percent of the trust assets are held by 1.5 percent of the population.

In selecting a sample of banks, the goal was to survey banks which potentially would have a large percentage of shares in nominee name, and it was therefore decided to survey a disproportionate share of larger banks. An attempt was made, however, to obtain a reasonable sample of smaller banks in order to determine if the size of the bank affected any of the results.²

The adequacy of the selected sample of banks is reflected in Table 2. The 149 responding banks accounted for 36.8 percent of trust assets and 32.8 percent of personal trust and estate assets of the population.

TABLE 1.—TRUST ASSETS OF INSURED COMMERCIAL BANKS BY SIZE OF TRUST DEPARTMENT, 1974
[Dollar amounts in thousands]

Size of trust department (millions)	Banks	Trust assets		Personal trust and estate assets	
		Dollar value	Percent of total	Dollar value	Percent of total
Over \$1,000.....	60	\$215,582,381	66.3	\$77,526,280	55.4
\$500 to \$999.9.....	40	27,460,369	8.4	14,505,465	10.2
\$250 to \$499.9.....	33	22,674,737	7.0	13,154,386	9.3
\$100 to \$249.9.....	159	24,744,176	7.6	14,036,933	9.8
\$50 to \$99.9.....	187	13,361,299	4.1	8,138,930	5.7
\$25 to \$49.9.....	267	9,425,083	2.9	6,585,800	4.6
\$10 to \$24.9.....	418	6,748,451	2.1	4,627,627	3.2
\$5 to \$9.9.....	356	2,568,445	.8	1,804,036	1.3
Less than \$5.....	2,449	2,703,501	.8	2,135,139	1.5
Total.....	3,999	325,328,392	100.0	142,614,596	100.0

Source: Derived from data of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, Office of Securities Industry and Self-Regulatory Economics, Directorate of Economic and Policy Research.

¹ The questionnaires are reproduced in Appendix C.

² Due to the potential burden of the reporting requirement, no bank with under \$5 million in trust assets was selected for the survey.

TABLE 2.—TRUST ASSETS OF RESPONDING BANKS COMPARED TO POPULATION OF INSURED COMMERCIAL BANKS
[Dollar amounts in thousands]

Size of trust department (millions)	Reporting banks	Trust assets		Personal trust and estate assets	
		Dollar value	Percent of population class	Dollar value	Percent of population class
Over \$1,000.....	23	\$94,563,100	43.9	\$32,223,091	41.5
\$500 to \$999.9.....	13	9,448,076	34.4	5,074,547	35.0
\$250 to \$499.9.....	19	6,744,949	29.8	3,946,248	29.9
\$100 to \$249.9.....	31	5,517,156	22.3	3,166,359	22.6
\$50 to \$99.9.....	31	2,442,346	18.3	1,624,911	20.0
\$25 to \$49.9.....	19	740,131	7.9	544,159	8.3
\$10 to \$24.9.....	6	140,189	2.1	112,430	2.4
\$5 to \$9.9.....	7	61,083	2.4	46,134	2.6
Less than \$5.....					
Total.....	149	119,657,030	36.8	46,737,329	32.8

Source: Derived from data of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, Office of Securities Industry and Self-Regulatory Economics, Directorate of Economic and Policy Research.

BROKER-DEALER QUESTIONNAIRE

The population of brokers for this study was all brokers that were required to file Form X-17A-20 with the Commission in 1975, which are those with gross revenues of more than \$500,000 in 1973 or 1974.

The NYSE member brokers were drawn from a sub-population composed of 218 full-clearing member firms carrying customer accounts.³ For purposes of stratification, the number of customer accounts carried by each broker was utilized. As with the sample of banks, a greater proportion of larger brokers was selected in order to obtain the maximum coverage of broker proxy operations. Non-NYSE member brokers were selected on the same basis as NYSE member firms.

The adequacy of the coverage of the selected sample of brokers is reflected in the response of 118 brokers shown in Table 4. The 87 responding NYSE brokers have 87.3 percent of the customer accounts of all NYSE members. The 31 non-NYSE brokers reported 37.5 percent of their sub-population's customer accounts.

TABLE 3.—CUSTOMER ACCOUNTS OF CARRYING BROKERS, 1975

Customer accounts	NYSE carrying brokers			Non-NYSE carrying brokers		
	Firms	Accounts	Percent of total	Firms	Accounts	Percent of total
100,000 or more.....	9	2,696,098	67.0	0	0	0
50,000 to 99,999.....	3	219,918	5.5	0	0	0
25,000 to 49,999.....	6	210,527	5.2	2	64,098	16.7
10,000 to 24,999.....	36	555,670	13.8	5	71,148	18.5
5,000 to 9,999.....	22	162,758	4.0	12	96,477	25.1
2,500 to 4,999.....	27	99,192	2.5	21	75,562	19.7
1,000 to 2,499.....	38	64,253	1.6	32	49,703	12.9
500 to 999.....	13	10,243	.3	23	15,243	4.0
100 to 499.....	25	6,802	.2	41	10,913	2.9
0 to 99.....	39	863	0	25	842	.2
Total.....	218	4,026,134	100.0	161	384,084	100.0

Source: Joint Regulatory Reports and X-17A-20 Reports, Office of Securities Industry and Self-Regulatory Economics, Directorate of Economic and Policy Research.

³ See Table 3.

TABLE 4.—NUMBER OF CUSTOMER ACCOUNTS OF RESPONDING BROKERS COMPARED TO POPULATION OF CARRYING BROKERS

Customer accounts	NYSE firms			Non-NYSE firms		
	Number of firms	Number	Percent of population	Number of firms	Number	Percent of population
100,000 or more.....	9	2,696,898	100.0	0	0	0
50,000 to 99,999.....	2	184,390	74.8	0	0	0
25,000 to 49,999.....	6	216,527	100.0	1	28,598	44.6
10,000 to 24,999.....	18	293,318	52.8	3	34,350	48.3
5,000 to 9,999.....	10	76,227	46.8	4	35,159	38.4
2,500 to 4,999.....	11	46,754	41.1	8	28,134	37.2
1,000 to 2,499.....	16	27,939	42.3	7	12,829	25.8
500 to 999.....	5	4,153	40.5	5	3,729	24.4
100 to 499.....	10	2,965	44.9	3	1,171	10.7
Total.....	87	3,516,271	87.3	31	143,961	37.5

Source: Joint Regulatory Reports and X-17A-20 Reports, Office of Securities Industry and Self-Regulatory Economics, Directorates of Economic and Policy Research.

ISSUER QUESTIONNAIRE

For the non-homogeneous population of issuers, a sample stratified by the number of common shares outstanding was expected to yield a more reliable indication of proxy operations than a random sample of issuers.⁴ The source for compiling data for the population and sample of issuers was Standard & Poor's Investor Statistical Laboratory (ISL) which provided data for 2,500 corporations listed on the NYSE or Amex. The NASD was the source for the data on issuers whose securities are unlisted and quoted on NASDAQ.⁵ Included among the 159 respondents are 127 NYSE and Amex listed corporations and 32 companies quoted on NASDAQ. The 32 NASDAQ companies, which were selected by using a random number table, account for a total of 163 thousand recordholders and 199 million common shares outstanding. The common shares of the 127 reporting NYSE and Amex issuers account for eleven percent of the common shares listed on the two exchanges.

The adequacy of the sample is supported by the stratification variables. For example, when the 127 listed issuers are compared with the population, it can be seen that the sample captured 25 percent of the issuers with over 100 million listed shares and 36 percent of the common shares outstanding. Among the sub-population of issuers with 70-100 million shares outstanding, the sample captured 12 percent of the issuers and eleven percent of the common shares outstanding. While the sample captured a lesser percentage of the common shares outstanding in the lower range of the common share-size classes, it nevertheless captured a reasonable proportion of the issuers in these classes for analysis of the effects of issuer size on proxy operations (see Table 5).

SHAREOWNER QUESTIONNAIRE

The distribution of questionnaires to shareowners was accomplished by routing the questionnaires through participating issuers who distributed them in conjunction with the distribution of their annual reports and proxies. Ninety-seven issuers were asked to distribute shareowner questionnaires and 95 actually distributed them. The issuers were provided with a quantity of shareowner questionnaires proportional to the number of their recordholders. Along with the questionnaires the issuers received instructions as to the method of allocating their supply both to a sample of their intermediary recordholders and to a sample of their individual shareholders. (The instructions are reproduced in Appendix C.) Those intermediaries which received a supply of questionnaires from issuers were also given instructions (reproduced in Appendix C) as to the method of selecting a sample of shareowners to receive questionnaires. About 100,000 questionnaires were distributed and almost 20,000 shareowners responded. Approximately 2,000 questionnaires were not used for statistical purposes due to insufficient data.

⁴ It would have been preferable to stratify the sample by the number of recordholders, but this information was not available in a machine-readable format. On the basis of the sample of reporting issuers, the correlation coefficient between the number of recordholders and shares outstanding was .975, indicating that shares outstanding was virtually as good a stratification variable as the number of recordholders.

⁵ NASDAQ is an acronym for the NASD Automated Quotations System.

TABLE 5.—COMMON SHARES ISSUED AND OUTSTANDING OF RESPONDING ISSUERS BY CLASS SIZE COMPARED TO POPULATION OF NYSE AND AMEX LISTED COMMON SHARES

[In thousands]

Common shares outstanding (thousands)	NYSE and AMEX issuer population			Responding sample of NYSE and AMEX issuers		
	Number of issuers	Number of shares outstanding (thousands)	Percent of total	Number of issuers	Number of shares outstanding (thousands)	Percent of population
100 to 499.....	26	9,657	0	1	263	2.7
500 to 999.....	184	145,366	.6	6	4,228	2.9
1,000 to 4,999.....	1,294	3,226,213	13.6	59	153,305	4.8
5,000 to 9,999.....	435	3,021,101	12.7	20	148,520	4.8
10,000 to 19,999.....	284	4,065,296	17.1	19	296,675	6.6
20,000 to 29,999.....	121	2,994,294	12.6	7	179,514	8.0
30,000 to 39,999.....	75	1,894,816	8.0	0	0	0
40,000 to 49,999.....	27	1,226,813	5.2	4	177,774	14.6
50,000 to 59,999.....	24	1,332,429	5.6	2	115,617	8.5
60,000 to 69,999.....	12	770,888	3.3	2	122,320	15.9
70,000 to 79,999.....	11	834,875	3.5	2	154,154	18.4
80,000 to 89,999.....	3	252,189	1.1	0	0	0
90,000 to 99,999.....	3	284,368	1.2	0	0	0
100,000 and over.....	20	3,672,638	15.5	5	1,332,265	36.3
Total.....	2,500	23,709,780	100.0	127	2,652,733	11.2

Note: Included in these numbers are only issuers whose common stock was clearly indicated as having full voting authority.

Source: Standard and Poor's Investor Statistical Laboratory, Office of Securities Industry and Self-Regulatory Economics, Directorate of Economic and Policy Research.

In general, the selection of individual shareowners was made on a systematic sampling basis, as opposed to a random sampling basis. For example, if an issuer or intermediary had 5,000 individual shareowners who would receive proxy materials and 500 questionnaires to distribute among them, the issuer or intermediary was asked to send a questionnaire to every tenth name on an alphabetical list of shareowners. The same sampling method was to be applied to any other type of listing as long as the resulting sample did not create a concentration of shareowners associated with any identifiable segment of the population, such as the smallest or largest shareowners or shareowners from a particular region of the country.

Control procedures

Each of the bank, broker and issuer samples was divided into two sub-samples. One sub-sample of each group received advance notice of the survey in order to obtain their cooperation and to advise them generally as to what data would be requested. The other sub-sample of each group was designed to serve as a control group. These "non-notified" sub-samples were composed of the same number of entities as the "notified" sub-samples, and their members were selected so as to mirror as nearly as practicable the distributions represented by the notified sub-samples. There were no major differences in the response rates between the notified and the non-notified sub-samples. Of the responding banks, 46 percent were non-notified; 52 percent of the responding brokers were non-notified; and 43 percent of the responding issuers were non-notified. With regard to the timeliness of transmittal of shareowner communications, there were no significant statistical differences in the responses of the notified and non-notified sub-samples.

APPENDIX E

BROKER RESPONDENTS¹

Adams, Harkness & Hill, Inc.
American Pacific Securities Corporation.
Advest
Bache Halsey Stuart Inc.
Bacon, Whipple & Co.
Baker, Watts & Co.
J. S. Barr & Co., Inc.
George K. Baum & Company, Incorporated.
Becker Securities Corporation
Beckman & Co., Inc.
Bellamah, Neuhauser & Barrett, Inc.
Birr, Wilson & Co., Inc.
William Blair & Company.
Blyth Eastman Dillon & Co., Incorporated.
Bosworth, Sullivan & Company, Inc.
J. C. Bradford & Co.
Brown, Lisle & Marshall, Incorporated.
Burbank & Company, Inc.
Buys-MacGregor & Company.
Cantor, Fitzgerald & Co., Inc.
Collin, Hochstin Co.
Conning & Company.
Cowen & Company.
Craig-Hallum, Inc.
Davenport & Co. of Virginia, Inc.
R. G. Dickinson & Co.
Dillon, Read & Co., Inc.
Doft & Co., Inc.
Drexel Burnham & Company, Incorporated.
A. G. Edwards & Sons, Inc.
Effress, Goldman & Pagel, Inc.
Eppler, Guerin & Turner, Inc.
Fahnestock & Co.
Faulkner, Dawkins & Sullivan, Inc.
Ferris & Company, Inc.
The First Boston Corporation.
Foster Bros., Weber & Co., Inc.
Frost, Johnson, Read & Smith, Inc.
Goldman, Sachs & Co.
Granger & Co.
Gruntal & Co.
Hanifen, Imhoff & Samford, Inc.
Haas Securities Corporation.
Hazlett, Burt & Watson, Inc.
Heine, Fishbein & Co., Inc.
Henderson, Harrison & Co.
Hill & Co.
Hinkel Northwest Inc.
Hopper Soliday & Co., Inc.
Hornblower Weeks Hemphill Noyes Inc.
E. F. Hutton & Company, Inc.
The Illinois Co. McCormick, Incorporated.
Ingalls & Snyder.
Interstate Securities Corporation.

¹ As a result of technical difficulties, the information submitted by several of the respondents was not included in the survey data.

Investors Financial Services, Inc.
 Janney Montgomery Scott Inc.
 Jefferies & Company, Inc.
 Josephthal & Co.
 Keefe, Bruyette & Woods, Inc.
 Kidder Peabody & Co., Incorporated.
 H. S. Kipnis & Co.
 Kirkpatrick, Pettis, Smith, Polian Inc.
 Kuhn, Loeb & Co.
 Laidlaw-Coggeshall Inc.
 Lazard Freres & Co.
 Lehman Brothers Incorporated.
 B. J. Leonard & Company.
 Leperey, DeNeuffize & Co., Incorporated.
 Loeb, Rhoades & Co.
 Mahon, Nugent & Co.
 May, Cullum, Rugland & Brittain, Inc.
 Merrill Lynch, Pierce, Fenner & Smith, Inc.
 Mesrow & Company.
 Midsouthwest Securities, Inc.
 Mitchell, Hutchins Inc.
 Moors & Cabot.
 Morgan Olmstead Kennedy & Gardner Inc.
 Moseley Hallgarten & Estabrook, Inc.
 Neuberger and Berman.
 W. H. Newbold's Son & Co., Inc.
 The Ohio Company.
 Olde & Co., Incorporated.
 Oppenheimer & Co., Inc.
 Paine, Webber, Jackson & Curtis, Incorporated.
 H. M. Payson & Co.
 H. O. Peet & Co., Inc.
 Pershing & Co., Inc.
 Prescott, Ball & Turben.
 Prince-Covey & Company, Inc.
 Quincy Cass Associates, Inc.
 Raffensperger, Hughes & Co., Inc.
 Raymond, James & Associates, Inc.
 W. H. Reaves & Co., Inc.
 J. W. Redmond & Company.
 Reynolds Securities Inc.
 The Robinson-Humphrey Company, Inc.
 Rotan Mosle Inc.
 Salkin, Welch & Co., Incorporated.
 Scharff & Jones Inc.
 Scott & Stringfellow, Inc.
 J. & W. Seligman & Co.
 Shearson Hayden Stone, Inc.
 Shields Model Roland Incorporated.
 Stern, Lauer & Co.
 Stillman, Maynard & Co.
 Stix & Co., Inc.
 Sutro & Co. Incorporated.
 Henry F. Swift & Co.
 Thomson & McKinnon Auchincloss Hohlmeier Inc.
 Traub and Company, Inc.
 Troster, Singer & Co.
 Trusteed Funds, Inc.
 Tucker Anthony & R. L. Day, Inc.
 Burton J. Vincent, Chesley & Co.
 H. C. Wainwright & Co.
 Waters Parkerson & Co., Inc.
 Wayne Hummer & Co.
 Wellington & Co.
 White, Weld & Company Incorporated.
 Wilson-Davis & Co.
 Dean Witter & Co. Incorporated.
 Young, Smith & Peacock, Inc.

APPENDIX F

BANK RESPONDENTS¹

Akron National Bank and Trust Company.
Alamo National Bank of San Antonio.
American Bank and Trust Company.
The American National Bank of Denver.
The American National Bank of St. Joseph.
The American National Bank and Trust Company of Chicago.
American National Bank and Trust Company of Waukegan, Illinois.
American Security and Trust Company, N.A.
Amoskeag National Bank & Trust Co. of Manchester.
Ann Arbor Trust Company.
The Atlantic National Bank of Jacksonville.
Attleboro Trust Co.
BancOhio/Ohio National Bank.
Bank of America, N.T. & S.A.
Bank of Clarkedale.
Bank of Delaware.
Bankers Trust Company—New York.
Barclays Bank of New York.
BayBank Merchants, N.A.
Berkshire Bank & Trust Company.
Broward National Bank of Fort Lauderdale.
California Canadian Bank.
California First Bank.
Central Carolina Bank and Trust Company.
The Central National Bank of Richmond.
Century First National Bank.
The Charleston National Bank.
Citibank.
The Citizens and Southern National Bank.
Citizens Bank & Trust Company.
Citizens National Bank.
City National Bank of Detroit.
Commerce Bank of Springfield.
Commerce Union Bank.
Commercial Bank & Trust Company.
Commercial National Bank.
Commercial National Bank of Peoria.
Concord National Bank.
Conrad National Bank.
Continental Bank.
Continental Illinois National Bank and Trust Company of Chicago.
Crocker National Bank.
Depositors Trust Company.
Easton National Bank and Trust Company.
Ellis Sarasota Bank and Trust Company.
Equibank N.A.
The Farmers Bank.
The Fidelity Bank.
First-Citizens Bank & Trust Company.

¹ As a result of technical difficulties, the information submitted by several of the respondents was not included in the survey data.

First City National Bank.
 First Kentucky Trust Company.
 First National Bank and Trust Company of Lincoln.
 The First National Bank and Trust Company of Tulsa.
 First National Bank in Dallas.
 First National Bank in Grand Forks.
 First National Bank in Wichita.
 First National Bank of Allentown.
 The First National Bank of Atlanta.
 The First National Bank of Boston.
 First National Bank of Central Jersey.
 The First National Bank of Chicago.
 The First National Bank of Colorado Springs.
 First National Bank of Commerce.
 First National Bank of Dona Ana County.
 First National Bank of Duluth.
 The First National Bank of Eastern Pennsylvania.
 First National Bank of Fort Worth.
 First National Bank of Jackson.
 The First National Bank of Kansas City.
 First National Bank of Maryland.
 The First National Bank of Mount Dora.
 First National Bank of Pompano Beach.
 First National Bank of Toledo.
 First National Bank of Topeka.
 First Security National Bank of Beaumont.
 First Seneca Bank and Trust Company.
 First Trust Bank.
 First Union National Bank of North Carolina.
 First Wisconsin National Bank of Madison.
 Fort Wayne National Bank.
 Fulton Bank.
 Garden State National Bank.
 Hartford National Bank and Trust Company.
 Houston National Bank.
 Irving Trust Company.
 Jasper County Savings Bank.
 Kellogg-Citizens National Bank of Green Bay.
 Kingston Trust Company.
 La Grange State Bank.
 La Salle National Bank.
 Liberty National Bank and Trust Company of Louisville.
 Lincoln National Bank and Trust Company.
 Louisville Trust Bank.
 M & I American Bank and Trust Company.
 Malden Trust Company.
 Manufacturers Hanover Trust Company.
 Manufacturers National Bank of Detroit.
 Marine Midland Bank.
 Maryland National Bank.
 Mercantile National Bank of Chicago.
 Mercantile National Bank of Dallas.
 Mercantile-Safe Deposit & Trust Company.
 Merchants National Bank and Trust Company.
 The Merchants National Bank of Muncie.
 National Bank and Trust Company of Columbus, Georgia.
 National Bank and Trust Company of South Bend.
 National Commercial Bank and Trust Company.
 National Savings and Trust Company.
 North Carolina National Bank.
 Northeast Bank and Trust Company.
 Northern Central Bank.
 The Northern Trust Company.
 Northwestern Union Trust Company.
 The Ohio Citizens Trust Company.
 Old Kent Bank and Trust Company.

Old National Bank in Evansville.
Pacific National Bank of Washington.
Peoples Banking and Trust Co.
Peoples National Bank of Washington.
Peoples Trust Bank.
The Philadelphia National Bank.
Pittsburgh National Bank.
Republic National Bank of Dallas.
San Diego Trust & Savings Bank.
Sears Bank and Trust Company.
Security Bank & Trust Co.
Shawmut Bank of Boston, N.A.
Society National Bank of Cleveland.
South Carolina National Bank.
South Shore National Bank.
Southern Ohio Bank.
State National Bank.
Sterling National Bank and Trust Company of New York.
Suburban Trust Company.
Sun First National Bank of Leesburg.
Trust Company Bank.
Union Bank.
Union Bank and Trust Company, N.A.
Union First National Bank of Washington.
The Union National Bank of Pittsburgh.
United Bank of Arizona.
United Bank of Denver, N.A.
United Bank & Trust Company.
United Penn Bank.
United States Trust Company.
United Virginia Bank.
Valley Fidelity Bank.
Virginia National Bank.
Walker Bank & Trust Company.
Wells Fargo Bank N.A.

APPENDIX G

ISSUER RESPONDENTS¹

ACF Industries, Incorporated.
Alaska Interstate Company.
Allied Thermal Corporation.
Ambac Industries, Incorporated.
AMCO Energy Corporation.
American Biltrite, Inc.
American Business Products, Inc.
American Express Company.
American Sterilizer Company.
American Telephone and Telegraph Company.
American Underwriters, Inc.
Anchor Hocking Corporation.
Andersen Laboratories, Inc.
Anheuser-Busch, Incorporated.
The Babcock & Wilcox Company.
Barber Oil Corporation.
Bausch & Lomb Incorporated.
Beacon Photo Service, Inc.
The Bethlehem Corporation.
The Boeing Company.
Bonanza International, Inc.
Boston Edison Company.
Castle & Cooke, Inc.
Celanese Corporation.
Central Maine Power Company.
Certain-teed Products Corporation.
Chemetron Corporation.
Chicago Milwaukee Corporation.
Chicago Pneumatic Tool Company.
Chilton Corporation.
Chrysler Corporation.
Cincinnati Financial Corporation.
Commerce Group Corporation.
Community Public Service Company.
Consolidated Accessories Corporation.
Consolidated Edison Company of New York, Inc.
Continental Materials Corporation.
Conwood Corporation.
Cordon International Corporation.
Deere & Company.
Delmarva Power & Light Company.
Dellwood Foods, Inc.
DEN-TAL-EZ, Inc.
Diamond International Corporation.
Diamond Shamrock Corporation.
Downe Communications, Inc.
Duke Power Company.
E. I. du Pont de Nemours and Company.
EASCO Corporation.
Eazor Express, Inc.
Electronic Associates, Inc.
Fansteel Inc.
Ferro Corporation.
FlightSafety International, Inc.
Gamble-Skogmo, Inc.

¹ As a result of technical difficulties, the information submitted by several of the respondents was not included in the survey data.

General Cable Corporation.
General Electric Company.
General Shale Products Corporation.
Georgia-Pacific Corporation.
The C. R. Gibson Company.
Gleason Works.
The Golden Cycle Corporation.
Graco Inc.
Graniteville Company.
Great Western Financial Corporation.
Guardian Chemical Corporation.
Hazeltine Corporation.
HIMW Industries, Inc.
Hoffman Electronics Corporation.
Holly Sugar Corporation.
Homestake Mining Company.
Imperial Corporation of America.
INA Corporation.
Inland Steel Company.
Instron Corporation.
International Business Machines Corporation.
International Proteins Corporation.
Interstate Brands Corporation.
Iowa Public Service Company.
Johnson & Johnson.
Keystone Foods Corporation.
King Radio Corporation.
KRM Petroleum Corporation.
The Lamson & Sessions Co.
Leesona Corporation.
The LTV Corporation.
Lydall, Inc.
Lykes Corporation.
Madison Gas and Electric Company.
Martin Processing, Inc.
Michigan Gas Utilities Company.
The Miller-Wohl Company, Inc.
Minnesota Mining and Manufacturing Company.
Minnesota Power & Light Company.
Mirro Aluminum Company.
Molycorp, Inc.
Montana-Dakota Utilities Co.
Samuel Moore and Company.
Mor-Flo Industries, Inc.
Montana Fuel Supply Company.
Moxie Industries, Inc.
Nationwide Homes, Inc.
NCR Corporation.
Nortek, Inc.
Northwest Energy Company.
Northwestern Financial Corporation.
Northwestern National Life Insurance Company.
Ohio Edison Company.
Old Fort Industries, Inc.
Overmyer Corporation.
Pacific Power & Light Company.
Pan American World Airways.
Park Electrochemical Corporation.
PASCO, Inc.
Peerless Tube Company.
Pennsylvania Power & Light Company.
Perini Corporation.
Phelps Dodge Corporation.
Phillips-Van Heusen Corporation.
Portec, Inc.
Potomac Electric Power Company.

Raymond International, Inc.
RCA Corporation.
Revere Copper and Brass Incorporated.
R. J. Reynolds Industries, Inc.
Roblin Industries, Inc.
Rochester Gas and Electric Corporation.
Rochester Telephone Corporation.
Rockower Brothers Inc.
Rowan Companies, Inc.
Rubbermaid Incorporated.
Safeway Stores, Incorporated.
Soovill Manufacturing Company.
Season-all Industries, Inc.
Simplex Industries, Inc.
Skaggs Companies, Inc.
Solid State Technology, Inc.
South Carolina Electric & Gas Company.
Southern Airways, Inc.
The Southern Connecticut Gas Company.
Stepan Chemical Company.
Sterling Stores Company, Inc.
Sun Oil Company.
Super Valu Stores, Inc.
Sybron Corporation.
Tenneco Offshore Company, Inc.
Tenney Engineering, Inc.
The Toledo Edison Company.
Topps Chewing Gum Incorporated.
Transcon Lines.
Trans Union Corporation.
Triangle Industries, Inc.
Turf Paradise, Inc.
Union Bancorp, Inc.
United Park City Mines Company.
United Refining Company.
United States Filter Corporation.
United States Gypsum Company.
Ward Foods, Inc.
The Warner & Swasey Company.
The Weatherhead Company.
Werner Continental, Inc.
The West Company, Inc.
Western Air Lines, Inc.
Willamette Industries, Inc.
F. W. Woolworth Co.
Xerox Corporation.

APPENDIX H

MANUAL FOR PROXY SOLICITATION OF STOCK IN BROKERS' NAMES

(Prepared as a joint report of the following organizations: American Society of Corporate Secretaries, Inc.; The American Stock Exchange, Inc.; The National Association of Securities Dealers, Inc.; The New York Stock Exchange, Inc.; Securities Industry Association, February 1976.)

INTRODUCTION

The purpose of this Manual is to promote the use of standard forms and practices in order to facilitate solution of the problems arising in the handling of proxy solicitations, create better financial public relations, and realize a maximum representation of shares in brokers' and other nominee names at meetings of stockholders.

This Manual has been prepared as a joint report by the American Society of Corporate Secretaries, Inc., The American Stock Exchange, Inc., The National Association of Securities Dealers, Inc., The New York Stock Exchange, Inc., and the Securities Industry Association.

I. PUBLICITY

Immediate newspaper publicity should be given to the calling of a meeting of stockholders for the purpose of acting upon any matter affecting in any way the rights or privileges of stockholders or any other matter not of routine nature. Such publicity should, of course, describe the matter to be acted upon. It is recommended that a *minimum of thirty days be allowed between the record date and the meeting date* so as to give ample time for the solicitation of proxies.

II. NOTICE TO EXCHANGES OR NASD RE: STOCKHOLDER MEETINGS OR CONSENTS

A. Stockholder meetings.—The Exchanges or the NASD should be given prompt notice, in writing, of the calling of any meeting of stockholders. Such notice should be received by the Exchanges or the NASD not later than the tenth calendar day prior to the date of record (or the closing of the transfer books) for determination of stockholders entitled to vote at the meeting. Such notice should indicate the date of the meeting, the date of record for determination of stockholders entitled to vote, and describe the matters to be voted upon at the meeting.

If the transfer books are to be closed in lieu of the taking of a record of stockholders, the notice shall state the date of reopening of the books as well as the date of their closing.

B. Consents.—Should a corporation desire to utilize consents in lieu of holding a special meeting of stockholders, the Exchanges require the following criteria to be observed:

1. A record date must be used.
2. "Consent" material must be sent to all shareholders.
3. Corporate action is not to be taken until the solicitation period has expired, even if the required vote is received earlier.
4. A 30-day solicitation period is recommended and a minimum of 20 days required.
5. "Consent" material should conform to normal proxy statement disclosure standards.

It must be remembered that the exchanges require a corporation to hold an annual meeting. Should consents be utilized instead of a special meeting, they may only be used with prior approval of the exchanges.

III. NOTIFICATION TO BROKERS

The standard forms recommended in this Manual have been designed to—

A. Be readily recognized as proxy soliciting material

B. Be easily understood by proxy departments of brokerage firms.

"RECOGNITION" of material relating to proxy solicitation is important. Thus, it is urged that the color **BLUE** be used for all suggested forms. The use of standard forms will insure that proxy material will be processed more expeditiously.

IV. RECORD DATE

Brokers should be notified of meetings as far in advance of the record date as possible. Ten days should be deemed an absolute minimum, although longer notice is desirable. (Notifying the brokers of a record date does not relieve the corporations of any responsibility they may have for also notifying the respective Exchanges or the NASD.)

Brokers should be notified of this record date by the use of a search form which also serves to provide a method for brokerage firms to order proxy material and annual reports. (See Exhibits A and B)

Also a summarization of an amendment (December 1974) to SEC Rule 14a-3 and 14c-7 of the Securities Exchange Act of 1934 follows for your information: ". . . if an issuer knows certain of its securities are held of record by a broker, dealer, bank, voting trustee, or their nominees, the issuer must inquire as to whether such record holder is holding on behalf of one or more beneficial owners and, if so, the number of copies of the proxy and proxy soliciting materials (or of the information statement) and, in the case of the annual meeting at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such material to the beneficial owners. The issuer must then furnish such record holders with an appropriate number of copies assembled in such a form, and at such a place as each such record holder may reasonably request, and must pay the reasonable expenses of each such record holder, if so requested, for mailing such material to the beneficial owners."

DESCRIPTION OF SEARCH FORM

(See Exhibits A and B in back of booklet. These can be used as a sample for your printer.)

It is recommended that corporations use a *blue double postal card* (perforated to facilitate separation by broker) approximately 6½" x 8½" for each half. The oversized card lends itself to instant identification as proxy material. The double card should meet the needs of most corporations and brokers in connection with ordering proxy material and in advising brokers about the timetable. The information thus received will enable delivery of proxy soliciting material to brokers in adequate time. Of course, the wording of the suggested forms will not fit all situations. For example, some corporations may have nonvoting stock, whereas others will have all classes of stock entitled to vote, similarly, in some cases, a bank or proxy soliciting firm will furnish the proxy material, whereas in others, the Secretary's office or the printer may do so. The wording has been drafted to cover most cases but obviously may need revision in order to meet a specific situation, e.g., if a corporation plans a second mailing, it should be so stated, together with the proposed date of mailing.

Under "Delivery of Material to Brokers", please show under "Scheduled Date" your best estimate of the dates you expect to deliver the material. In order to comply with Securities and Exchange Commission and the Exchanges' rules, it is necessary for the corporation to furnish to the broker, for distribution to clients who are beneficial owners, all of the proxy material that the corporation is sending to stockholders, including the proxy and annual report. The columns headed "Date Received" and "Date Mailed" are for the use of the brokers.

The information to be shown under "Shares Entitled to Vote" is to be furnished by the corporation, following the record date.

Mailing instructions must be complete. Brokers must know whether the annual report is to be mailed *with* the proxy material or whether it is to be mailed *separately*; also how the annual report and the proxy material are to be mailed (First Class or Third Class). Also, furnish as much advance information as possible about "follow-up mailings".

The name and phone number of an individual designated by the corporation must be listed for inquiries concerning requests for additional proxy material, annual reports, etc. This information is essential where a corporation uses the facilities of a bank for soliciting proxy material, the corporation must furnish on the "search card" the name and telephone number of the individual at the bank in charge of the solicitation of proxies.

Some corporations do not accept telegraphic proxies. If so, please indicate. However, if they are acceptable, list the proper address for their receipt.

Further, if the voting of foreign holdings may be of importance to a corporation, the corporation should give consideration to making a statement to brokers as to how the material should be sent to foreign holders, such as by airmail or regular mail.

The other part of the double card would be for the use of the broker to indicate its soliciting requirements. (Brokers have expressed concern that during a busy proxy season clerical omissions may occur. Therefore, particularly when important blocks of stock are involved, it may be advisable to maintain a procedure whereby a telephone call is made at or about the record date to any broker from whom a response has not then been received, to make absolutely sure of his requirements.) A booklet, *List of Brokers and Banks (with names of proxy contacts)*, has been distributed. It lists names and telephone numbers of proxy contacts at brokerage firms and certain banks. It is available from any of the sponsoring firms listed on the last page of this publication.

V. NOTIFYING BROKERS OF SHARES OF RECORD

As soon as the record has been taken and stockholder accounts are posted, it is important to send each broker a notice (Exhibit C) of the number of shares registered in its name at the close of business on the record date. This assists the broker in checking its records because stock may be out on loan or assigned to another firm. By knowing how many shares of stock are registered in its name, the broker can make a more accurate tally and give a maximum vote.

VI. DELIVERY OF MATERIAL TO BROKERS

Packages of annual reports, proxy statements, proxies, etc. should be plainly labeled to indicate they contain proxy material and are for inside delivery. In addition, the label should show the name of the corporation and the meeting date. This will assist the broker in locating material and alert the broker to the time available for soliciting.

Proxy material should not be assembled prior to distribution to the broker. Envelopes should be the right size to hold the proxy soliciting material to be sent to the brokers' clients.

It is very important, to facilitate prompt handling by brokers, that delivery of annual reports and proxy soliciting material to brokers occur on the same day, and the supplementary or additional material and follow-up material should be identified as such.

The suggested form of label is set forth as Exhibit D. The color should be blue. The preferred minimum size is $5\frac{1}{2}'' \times 6\frac{1}{4}''$.

Soliciting material should be delivered to broker: as early as possible to ensure its mailing to clients at the same time the corporation makes its direct mailing to stockholders. It cannot be too strongly stressed that the timely delivery of proxy soliciting material to brokers is of prime importance.

VII. BILLING PROCEDURES

Invoices from brokers must set forth individually the number of sets of proxy soliciting material forwarded by the broker to its clients, the service fee incident thereto, the postage expense, and total charge. Also, the name of the brokerage firm and its membership, i.e., AMEX, NYSE, NASD, etc. must be set forth on the bill itself (See Exhibit E). It is recommended that bills from brokers not be paid until these items of information are specifically furnished.

The following are the rates of reimbursement of member-brokerage organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations and in mailing interim reports or other material pursuant to the rules of the Exchanges:

50 cents for each set of proxy material for those meetings that do not include a proposal which requires beneficial owner instructions, plus postage, with a minimum of \$3.00 for all sets mailed;

60 cents for each set of proxy material for those meetings which include a proposal requiring beneficial owner instructions, plus postage, with a minimum of \$3.00 for all sets mailed;

10 cents for each copy, plus postage, for interim reports or other material with no minimum.

The National Association of Security Dealers, Inc. has also adopted these rates of reimbursement.

Member-brokerage organizations are required to mail out such material as provided by the Rules when satisfactory assurance is received of reimbursement of expenses at such rates; provided, however, that a member organization may request reimbursement of expenses at lower rates than those mentioned above or, if agreed to by the person soliciting proxies or the company at higher rates. Follow up mailings shall be at the rate of 10 cents per set. A charge for envelopes may be made only if envelopes are not furnished by the person soliciting proxies or distributing material. The 60 cent rate will apply for proxy material covering those meetings which include one or more proposals requiring beneficial owner instructions.

VIII. DEPOSITORY TRUST COMPANY (CEDE & CO.) "OMNIBUS PROXY PROCEDURE"

This procedure is designed to remove the Depository completely from the communication link between issuer and Depository Participant. In essence, the procedure entails the reassignment of Cede voting rights to its Participants through the execution of an "Omnibus Proxy" which is mailed to the issuing company.

Briefly stated, as of the record date for a stockholders' meeting, DTC will produce a Dividend/Proxy Take-Off listing which identifies the Participants to the accounts of which shares are credited and designates the number of shares credited to each account. The listing is machine-printed and attached to an Omnibus Proxy which assigns the voting rights to the Participant's name thereon for the amounts shown, and authorizes these Participants to vote the issues in their firm or corporate name. In addition, each Participant having shares of the relevant security credited to its account receives a Proxy Record Date Notice advising it of the delivery of the Omnibus Proxy and listing to the issuer and the number of shares it is entitled to vote. Thus, the Participants named on the listing may obtain proxy cards, appropriately complete and execute them and return them directly to the issuer.

In the event that subsequent adjustments are necessary in order to accurately reflect a Participant's position a corrected Omnibus Proxy and listing will be produced and forwarded to the issuer. Each Participant whose account is affected by such adjustment is advised of its new record date position by means of a corrected Proxy Record Date Notice. Identical procedures will be followed in the event of adjournments which result in a new record date.

The complete Omnibus Proxy procedure may be obtained by contacting Val Stevens (212) 623-2096, The Depository Trust Company, 55 Water St., New York, NY 10041.

MISCELLANEOUS

1. To assist brokers and their clients in analyzing proposals and voting, the numbering of the proposals in the notice of meeting, proxy statement, and on the proxy must be coordinated by number or other designation. For example, if a proposal is numbered "1" in the notice of meeting and proxy statement, then it is important that the same proposal be numbered "1" on the proxy form; and similarly where a proposal is designated as "A", "B", etc.

2. The Exchanges require at least *four complete sets* of definitive proxy material as soon as possible after material has been cleared by the Securities and Exchange Commission. Proxy material for OTC issues should be sent to the NASD in the same manner.

3. As a part of normal brokerage transactions, stock is often delivered back and forth between stock exchange firms without having the change of ownership recorded on stock transfer books. A request by the Exchanges that members

transfer such shares into their own names prior to the record date may make proxy solicitation more effective. (For further information consult with the respective Exchanges.)

4. On request, the Exchanges will advise the corporation whether a particular matter appears to be "controversial" within the meaning of their rules concerning voting of stock by members. (For a detailed explanation of the procedure, consult the appropriate section of the "Company Guide" of The American Stock Exchange and the "Company Manual" for The New York Stock Exchange.) To obtain early consideration, it is suggested that a copy of the proxy material in preliminary form be submitted to the Exchanges for review. Any proxy statement with a proposal(s) other than the election of directors and selection of auditors should be sent to the Exchanges in preliminary form.

5. When a broker may vote without instructions under the Exchanges' rules, it may give a proxy at its discretion no earlier than ten days before the meeting provided the proxy soliciting material is mailed to beneficial owners at least 15 days before the meeting. Corporations should keep these instructions in mind to forestall needlessly contacting brokers before they legally can execute the firm's proxy.

6. Upon receipt of definitive proxy material, the Exchanges show an appropriate symbol in their "Meetings Section" of their Weekly Bulletin to guide members in the voting of proxies. Prompt delivery to the Exchanges of the definitive proxy material will permit publication of this information in time to be of most benefit to Exchange members.

7. Payment of bills from brokers should be made as promptly as possible and should be accomplished within 90 days following receipt.

In conclusion

Those responsible for drafting this Manual have leaned heavily on the experience and practice of those brokers and corporations whose procedures have appeared to work satisfactorily. In some cases, adoption of certain of the suggested procedures may require changes in what has become established practice. It is the hope of those responsible for developing this Manual that *all corporations* will conform their soliciting practice to that suggested. Ideas for improved procedures will be welcome and may be forwarded to any of the sponsoring organizations.

American Society of Corporate Secretaries, Inc.
One Rockefeller Plaza—New York, N. Y. 10020

The American Stock Exchange, Inc.
86 Trinity Place—New York, N. Y. 10006

The National Association of Securities Dealers, Inc.
Two Broadway—New York, N. Y. 10004

The New York Stock Exchange, Inc.
20 Broad St., Floor 18—New York, N. Y. 10005

Securities Industry Association
20 Broad St.—New York, N. Y. 10005

(Exhibit A)
 -- Name of Company --

SHARES ENTITLED TO VOTE -- FOR BROKER'S USE --			
Date of Meeting	CLASS OF STOCK	IN NAME OF BROKER	IN NAME OF CEDE & CO.
_____	_____	_____	_____
Record Date _____	_____	_____	_____
Location _____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

DELIVERY OF MATERIAL TO BROKERS -- FOR BROKER'S USE --			
	Scheduled Date	Date Received	Date Mailed
Envelopes (9 x 12)	_____	_____	_____
Annual Reports	_____	_____	_____
Proxy Material	_____	_____	_____

MAILING INSTRUCTIONS			
	Initial Mailing	Item	Follow-up Mailing
Domestic Owners	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
Foreign Owners	_____	_____	_____
	_____	_____	_____
	_____	_____	_____

FOR RETURN OF SIGNED PROXIES	
_____	(Company name)

Att: _____	

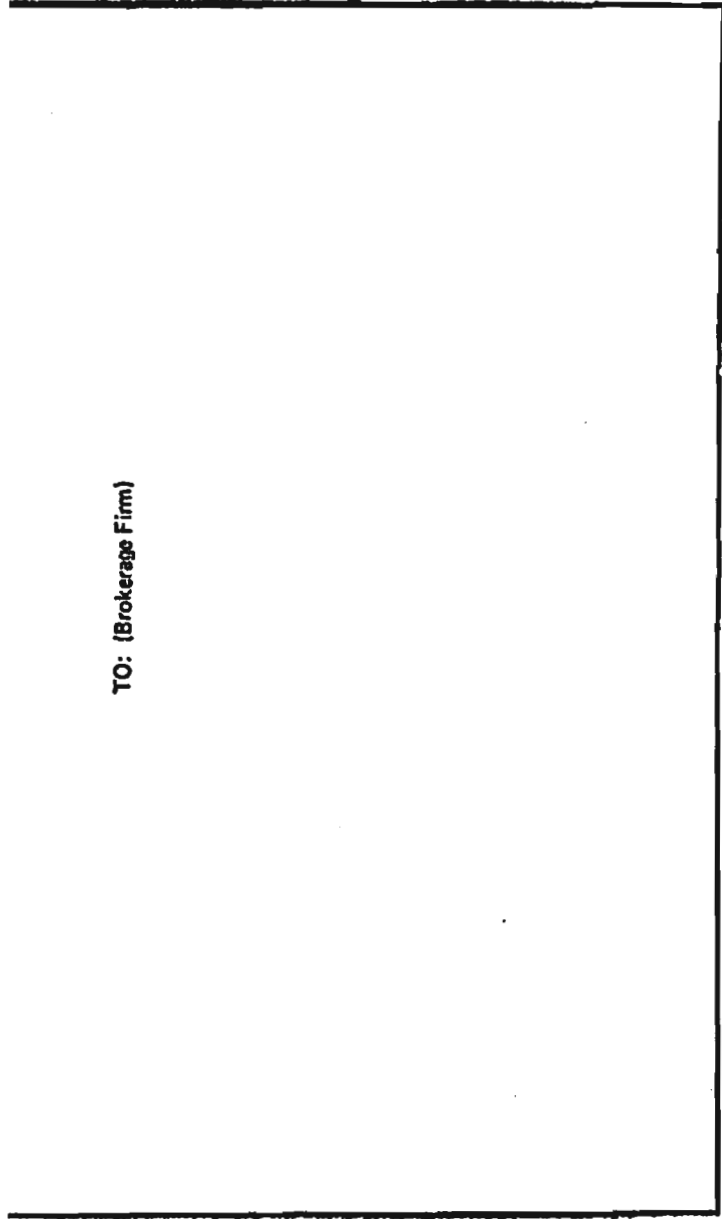
FOR TELEGRAPHIC PROXIES	
_____	(Company name)

Att: _____	
Telephone: _____	

Please mail all material upon receipt in accordance with the above instructions. You will be reimbursed at the rate of _____ per set plus postage, with minimum of \$3 including postage in accordance with the rules of the Exchanges.

No. of sets required _____ Date requested _____

PLEASE COMPLETE THE ATTACHED CARD AND MAIL IT WITHOUT DELAY
 For information about your order call _____ at _____
(New York) (Phone Number)



TO: (Brokerage Firm)

6

4
5

(Exhibit B)

Date _____

(Name and address of company)

Attn: _____

Please furnish the following material for use in connection with your company's next meeting of stockholders:

- (1) _____ Annual reports
- (2) _____ Notice of Meeting & Proxy Statement
- (3) _____ Proxies
- _____ Class of Stock
- _____
- _____
- _____

- (4) _____ 9 x 12 plain envelopes
- (5) _____ Postage paid envelopes for return of signed proxies to company.
- (Please cross out material not needed)

Please send the above material to the following:

(Firm name) (Exchange members: e.g. AMEX, NYSE, NASD)

Attn: _____ Room No. _____

(Name of Proxy Dept. Mgr.) (Telephone)

NOTE: Broker-client solicitation letter is to be furnished by broker.

BUSINESS REPLY MAIL
No postage necessary if mailed in the U.S.

NAME OF CORPORATION

ATTN:

(EXHIBIT C)

.....
(Name of Company)
.....
(Date)

.....
.....
(Name and Address of Broker)

Attention:

The following information is as of the record date for the next meeting of stockholders of this Company.

Class of Stock	Shares Entitled to Vote	
	In Name of Broker	In Name of Cust & Co.
.....
.....
.....
.....

Please record this information on the card, certificate form used by the Company.

(EXHIBIT D)

<h1 style="margin: 0;">FROM:</h1>	[Name of Soliciting Corporation] Street..... City..... State..... Zip Code..... RETURN POSTAGE GUARANTEED
<p style="text-align: center; margin: 0;">NOTE TO ADDRESSEE:</p> <p style="text-align: center; margin: 0;">CONTENTS PROXY MATERIAL</p> <p style="text-align: center; margin: 0;">NOTE TO TRUCKERS:</p> <p style="text-align: center; margin: 0;">INSIDE DELIVERY</p>	<h1 style="margin: 0;">TO:</h1>
<p>DATES RELATING TO [Name of Soliciting Corporation] ANNUAL MEETING</p> <p>RECORD DATE [Month, Date] ANNUAL MEETING DATE [Month, Date] PROXY MATERIAL MAILING COMMENCING [Month, Date]</p>	

(EXHIBIT E)

BILL FORM

TO.		DATE:		
FROM: (Brokerage Firm)				
MEMBERSHIP: (i.e., AMEX, NYSE, NASD, etc.)				
Expenses incurred in connection with mailing of following material:	No. Sets Mailed	Service Fee	Postage Expense	Total Charges
ANNUAL REPORT				
PROXY SOLICITING MATERIAL				
INTERIM REPORT				
POST MEETING REPORT				
STOCKHOLDER LETTER				
OTHER:				
FOR CORPORATION				
RECORDS				
DATE PAID				
CHECK NO.				

APPENDIX I

SURVEY OF THE AMERICAN SOCIETY OF CORPORATE SECRETARIES

AMERICAN SOCIETY OF CORPORATE SECRETARIES, INC.,
New York, N.Y., May 19, 1976.

Mr. ROBERT J. MILLSTONE,
Senior Special Counsel, Division of Market Regulation, Securities and Exchange
Commission, Washington, D.C.

DEAR MR. MILLSTONE: On behalf of the Joint Subcommittee on Street Name Study Questionnaire of the Securities Law Committee and the Securities Industry Committee of the Society, I am pleased to furnish to you herewith the following materials concerning the results of the questionnaire which the Society circulated among its members soliciting comments with respect to the alternatives contained in the Commission's Preliminary Report of December 4, 1975:

- (a) A Report of the Joint Subcommittee containing each of the questions contained in the questionnaire and summaries of the responses thereto, including an analysis of the written comments received in response to certain of the questions;
- (b) a copy of the questionnaire, the letter forwarding it, and the attachment thereto setting forth the alternatives;
- (c) a copy of all the written comments received in response to certain of the questions;
- (d) the raw data, including print-out sheets, covering the responses; and
- (e) the summaries of the responses prepared by the Society dated May 5th and May 11th.

If you have any questions concerning the enclosures, please do not hesitate to contact me care of J. C. Penney Company, Inc., 1301 Ave. of the Americas, New York, N.Y. 10019, telephone: (212) 957-4881.

I would appreciate your receipt for this letter and the other enclosures on the enclosed copy of this letter.

Very truly yours,

J. D. SILVERS,
Chairman of the Subcommittee.

Enclosure.

AMERICAN SOCIETY OF CORPORATE SECRETARIES, INC.,
New York, N.Y., March 17, 1976.

DEAR MEMBER: As you probably know, on December 4, 1975, the Securities and Exchange Commission issued to Congress its Preliminary Report pursuant to Subsection 12(m) of the Securities Exchange Act of 1934, which authorized and directed the Commission to undertake a study and investigation of the practice of recording the ownership of securities in other than the name of the beneficial owner. In his letter forwarding the Preliminary Report to Congress, Commission Chairman Hills stated that the Commission intended to continue to gather data on the subject and will present its final conclusions and recommendations to Congress by June 4, 1976.

Following the issuance of the Preliminary Report, the Society suggested to the SEC Commissioners that the Society poll its members with a questionnaire which would solicit the views of the members with respect to the various alternatives (including the present system) which are summarized in the Commission's Preliminary Report (and discussed more fully below). The Commissioners reacted enthusiastically and expressed the hope that the Society would share the results with the Commission so that it will have the benefit of those views in preparing its final conclusions and recommendations.

Accordingly, attached to this letter is a Street Name Study Questionnaire, which we request that you complete and return to us at your earliest convenience. The Society is attempting to take a more active role on major issues and problems

of this type that are being studied by the SEC and Congress. To do this effectively, we need the assistance and support of each member of the Society. *Therefore, we urge you to respond promptly to this important Questionnaire.* Action in this area by Congress and the SEC can affect every issuer in the country.

Questions 1 through 4 of the Questionnaire are intended to solicit your views of the various alternatives and certain information concerning your company's own practices and experience regarding securities registration. Questions 5 through 12 are intended to solicit your views as to particular concerns which we perceive regarding the various alternatives; your views on those subjects should, in our opinion, be of particular interest to the Commission in preparing its final report. Accordingly, we would like to receive your responses to *all* the questions contained in the Questionnaire, if possible. Even if, however, you do not consider yourself to be in a position to answer some of the questions at this time, *please, in any event, answer as many of the questions as you can*, so that we may provide to the Commission as much of a sampling as possible of the views of the Society's members on the matters covered by the Questionnaire. In completing the Questionnaire your responses should to the extent practicable reflect your understanding of the views of your company's management.

The alternatives contained in the Commissioners' Preliminary Report are set forth on pages 23 through 29 of the Report,¹ and a copy of those pages is attached to facilitate your response to the Questionnaire. You will note that the alternatives were proposed to the Commission by members of the securities industry or by commentators for consideration as a result of the dependency of the industry on nominee arrangements. While the Report states the alternatives as totaling four in number, you will note that there is actually a total of seven alternatives (the first three and second two such alternatives being grouped by the Commission under the headings "1. Variations in Registration or Disclosure" and "2. Centralized Communications," respectively), entitled in the Report as follows:

- A. Registration of Securities in the Name of the Beneficial Owner.
- B. Disclosure of Beneficial Ownership to Issuers.
- C. Multiple Name Registration.
- D. The Central Mailing Concept.
- E. Centralized Order Processing for Proxy and Other Materials.
- F. The Transfer Agent Depository Concept.
- G. Retention of the Present System.

In the Questionnaire, the letters referring to the various alternatives correspond in each case to those set forth above.

Please return the completed Questionnaire to the Society by April 17, 1976, so that we may tabulate the results and furnish them to the Commission in time for its use. We expect to advise the members of the Society of the results of the Questionnaire in due course.

We thank you in advance for your efforts in completing the Questionnaire.
Sincerely,

J. DAVID SILVERS,
Chairman,
EUGENE J. T. FLANAGAN,
JOHN H. GRADY,
MATTHEW F. KANE.

AMERICAN SOCIETY OF CORPORATE SECRETARIES

STREET NAME STUDY QUESTIONNAIRE

(Reminder: Letters "A" through "G," when used to refer to particular alternatives, are keyed to the list contained in the covering letter and in Question 2 below.)

1. (a) During the past twelve months, has your company generally received from its stockholders many, few, or an average number of complaints under the present system? Many Few Average

(b) Approximately how many stockholders of record does your company have? _____

(c) Does your company maintain its own stockholder records? Yes No

(d) Does your company act as its own transfer agent? Yes No

(e) What percentage of your voting common stock is held in street or nominee (banks and brokers) name? _____ %

(Your Company Name)

¹ CCH Federal Securities Law Reports No. 619 (December 11, 1975).

Please answer the following questions concerning your company's practices and experience:

2. Using a system of numbers (1—most favored to 7—most opposed), please rank the seven alternatives proposed by the Securities and Exchange Commission, as identified in the attached letter, and to the left below, in accordance with the order of your preference. (Please do not rank two proposals equally.)

- A. Registration of Securities in the Name of the Beneficial Owner. _____
 B. Disclosure of Beneficial Ownership to Issuers. _____
 C. Multiple Name Registration. _____
 D. The Central Mailing Concept. _____
 E. Centralized Order Processing for Proxy and Other Materials. _____
 F. The Transfer Agent Depository Concept. _____
 G. Retention of the Present System. _____

3. Please describe below any clarifications or changes which you consider desirable, and any suggestions or problems which you wish to note, with respect to one or more of the alternatives, identifying the particular alternative which you are addressing in each case (Attach a rider if necessary).

4. Please describe below any additional alternative or alternatives which you believe that the Commission should consider (Attach a rider if necessary).

5. How would your company view any system for the registration of securities which would involve their registration in the names of their beneficial owners (see alternatives A and C), or disclosure to the issuer of all beneficial ownerships (see alternative B), particularly in the light of existing and future legal requirements for their public disclosure? Favorably Unfavorably

6. Specifically, would your company be willing to bear the cost of establishing and maintaining the additional registration records or lists which would be required under alternatives A, B, and C? Yes No

7. As you know, the continued use of stock and other certificates has been under study by various interested groups for some time.¹ Advantages of their elimination would include improved clearance and transfer and reduced company costs, and its disadvantages would include loss of the evidentiary benefits of certificates for various purposes. How would your company view any system which would probably involve the elimination of the use of stock and other certificates, as would probably be the case under alternatives A, C, and F? Favorably Unfavorably

8. Would your company be willing under any circumstances to bear a proportionate share of the following costs of the systems involved in each of the following alternatives (bearing in mind that under one or more of the systems there may be a saving in costs over a period of time):?

- a. Cost incurred by banks and brokers under alternative B Yes No
 b. Cost of the central mailing system under alternative D Yes No
 c. Costs incurred by depositories under alternative E Yes No
 d. Costs of maintaining the transfer agent depository concept, including a message-switching center, under alternative F Yes No

9. Should the definition of "beneficial ownership" for the purposes of any of the proposed alternatives or any other alternative which may be proposed for improved issuer-shareholder communications be clearly restricted to the right to vote the respective securities (as distinguished from, for example, the right to exercise investment discretion or to receive economic benefits)? Yes No

10. Should any proposed alternative expressly assure protection to companies against liabilities which might arise from the acts or omissions of central mailing depositories, centralized ordering depositories, transfer agent depositories, or the like, including, for example, any challenge to the validity of a stockholder's meeting or of any stockholder vote? Yes No

11. Should any proposed alternative include adequate assurance that no disclosure of beneficial ownership will be required thereunder which might involve any violation of a beneficial owner's right or privacy or which might otherwise involve violation of any other legal requirement that the information be kept confidential? Yes No

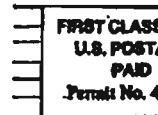
12. May we cite your company as a respondent to this questionnaire when its results are published? Yes No

Date _____

Member _____

¹ See e.g., the American Bar Association Report cited in note 64 on page 28 of the Report.

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REPORT OF THE SECURITIES LAW COMMITTEE AND SECURITIES INDUSTRY COMMITTEE JOINT SUBCOMMITTEE ON STREET NAME STUDY QUESTIONNAIRE

(By J. David Silvers, Chairman, Eugene J. T. Flanagan, John H. Grady, Matthew F. Kane)

From mid-March to mid-April 1976, the American Society of Corporate Secretaries, Inc. ("Society"), through its Securities Law Committee and Securities Industry Committee Joint Subcommittee on Street Name Study Questionnaire ("Subcommittee"), conducted a poll of the membership of the Society to ascertain the views of the members on the alternatives summarized by the Securities and Exchange Commission ("Commission") in its Preliminary Report, dated December 4, 1975, pursuant to Subsection 12(m) of the Securities Exchange Act of 1934, on the practice of recording the ownership of securities in other than the name of the beneficial owner. The questionnaire, which was formulated by the Subcommittee and circulated among the Society's membership, was designed to solicit the members' views of the various alternatives and information concerning their own companies' experience, as well as their views as to particular concerns which the Subcommittee perceived to be of substantial importance. A copy of the questionnaire, the letter forwarding it, and the attachment thereto, all as circulated, are appended to this report.

Responses were received from 422 of the Society's members, and many of the responses contained specific comments concerning some or all of the alternatives. These responses were tabulated, and a summary thereof, including a summary of the comments, follows. In some cases, companies did not respond to all questions; these are indicated as "No answer."

Question 1(a): During the past twelve months, has your company generally received from its stockholders many, few, or an average number of complaints under the present system?

Response: Many—6 (1.4%); Few—351 (83.2%); Average—49 (11.6%); no answer—16 (3.8%).

Question 1(b): Approximately how many stockholders of record does your company have?

Response: Under 5,000—122 (29%); 5,000—10,000—72 (17%); 10,000—20,000—72 (17%); 20,001—50,000—67 (16%); 50,001—100,000—38 (9%); Over 100,000—34 (8%); No Answer—17 (4%).

Question 1(c): Does your company maintain its own stockholder records?

Response: Yes—114 (27%); No—303 (71.8%); No answer—5 (1.2%)

Question 1(d): Does your company act as its own transfer agent?

Response: Yes—64 (15.2%); No—355 (84.1%); No Answer—3 (0.7%).

Question 1(e): What percentage of your voting common stock is held in street or nominee (banks and brokers) name?

Response: Under 10%—25 (6%); 10—19%—38 (9%); 20—29%—76 (18%); 30—39%—76 (18%); 40—49%—68 (16%); 50—59%—59 (14%); 60—85%—42 (10%); Over 85%—0 (0%); No Answer—38 (9%).

Question 3: Using a system of numbers (1-most favored to 7-most opposed), please rank the seven alternatives proposed by the Securities and Exchange Commission, as identified in the attached letter, and to the left below, in accordance with the order of your preference. (Please do not rank two proposals equally.)

Response: Alternative A, Registration of Securities in the name of Beneficial Owner, received the following responses:

Most favored (#1): 90—21.3%; Strongly favor (#2): 73—17.3%; Favor (#3): 52—12.3%; Neutral (#4): 29—6.9%; Oppose (#5): 32—7.6%; Strongly Oppose (#6): 48—11.4%; Most Opposed (#7): 87—20.6%; No Answer: 11—2.6%.

Alternative B, Disclosure of Beneficial Ownership to Issuers, received the following responses:

Most favored (#1): 95—22.5%; Strongly favor (#2): 125—29.6%; Favor (#3): 63—14.9%; Neutral (#4): 50—11.8%; Oppose (#5): 33—7.8%; Strongly Oppose (#6): 35—8.3%; Most Opposed (#7): 11—2.6%; No Answer: 10—2.4%.

Alternative C, Multiple Name Registration, received the following responses:

Most favored (#1): 8—1.9%; Strongly favor (#2): 31—7.3%; Favor (#3): 67—15.9%; Neutral (#4): 61—14.5%; Oppose (#5): 93—22.0%; Strongly Oppose (#6): 75—17.8%; Most Opposed (#7): 72—17.1%; No Answer: 15—3.6%.

Alternative D, The Central Mailing Concept, received the following responses:

Most favored (#1): 10—2.4%; Strongly favor (#2): 14—3.3%; Favor (#3): 49—11.6%; Neutral (#4): 91—21.6%; Oppose (#5): 78—18.6%; Strongly Oppose (#6): 85—20.1%; Most Opposed (#7): 80—19.0%; No answer: 15—3.6%.

Alternative E, Centralized Order Processing for Proxy and Other Materials, received the following responses:

Most favored (#1): 3—0.7%; Strongly favor (#2): 32—7.6%; Favor (#3): 84—19.9%; Neutral (#4): 45—10.7%; Oppose (#5): 87—20.6%; Strongly Oppose (#6): 110—26.1%; Most Opposed (#7): 46—10.9%; No answer: 15—3.6%.

Alternative F, The Transfer Agent Depository Concept, received the following responses:

Most favored (#1): 74—17.5%; Strongly favor (#2): 65—15.4%; Favor (#3): 40—9.5%; Neutral (#4): 76—18.0%; Oppose (#5): 53—12.6%; Strongly Oppose (#6): 45—10.7%; Most Opposed (#7): 57—13.5%; No answer: 12—2.8%.

Alternative G, Retention of the Present System, received the following responses:

Most favored (#1): 134—31.8%; Strongly favor (#2): 73—17.3%; Favor (#3): 53—12.6%; Neutral (#4): 55—13.0%; Oppose (#5): 31—7.3%; Strongly Oppose (#6): 10—2.4%; Most Opposed (#7): 56—13.3%; No answer: 10—2.4%.

The alternatives rank in the order of the mean response as follows: Alternative B—2.81; Alternative G—3.0; Alternative F—3.70; Alternative A—3.71; Alternative E—4.54; Alternative C—4.58; Alternative D—4.76.

The alternatives rank in the order of the median response as follows: Alternative B—2.34; Alternative G—2.41; Alternative A—3.21; Alternative F—3.76; Alternative C—4.81; Alternative E—4.86; Alternative D—4.91.

The alternatives rank in the order of the mode response as follows: Alternative G—134 (#1); Alternative A—90 (#1); Alternative B—125 (#2); Alternative D—91 (#4); Alternative F—76 (#4); Alternative C—93 (#5); Alternative E—110 (#6).

Question 3: Please describe below any clarifications or changes which you consider desirable, and any suggestions or problems which you wish to note, with respect to one or more of the alternatives, identifying the particular alternative which you are addressing in each case.

Question 4: Please describe below any additional alternative or alternatives which you believe that the Commission should consider.

Response: Copies of the responses to questions 3 and 4 are attached as an appendix to this report. Set forth below, however, is a overview of the more frequent comments.

Pervasive in the comments received was the belief that, with some minor modifications or stricter enforcement, the present system should be retained.

Similarly pervasive was the belief that the issuer should have a right to know who are the beneficial owners of its stock and that regardless of the system adopted, disclosure of beneficial owners of a company's stock must be required. Many companies pointed out that the problem was not with the system, but rather that brokers and other nominees did not promptly forward materials including quarterly and annual reports, proxies, and 1099 information, to the beneficial owners. Many also noted that use of street names and nominees was important not only to provide anonymity to those who desire it, but also to facilitate the trading of stock. A number of companies pointed out that some means for providing certificates for those holders who wished them should be available.

With regard to alternative A, many companies cited the greatly increased costs for recordkeeping and certificates as a result of the increased need for transfers. However, many companies also noted that this was the most practical and useful manner in which a company could get to know who were the beneficial owners of its stock. A number of companies, however, noted that this alternative should provide a means to allow those holders who so wished to retain the anonymity available under the present system. This alternative, a number of companies noted, would only be successful if the use of the present form of certificate was largely eliminated or at least a computer card was substituted.

With regard to alternative B, many companies stressed the need for the information to be presented to them in an easily used form, compatible with their existing systems. Many also pointed out that regular updating (more frequently than quarterly) should be required and that no company should be held responsible for the accuracy of the data submitted to it. Some companies suggested that disclosure under this alternative could be limited to those beneficial owners who held in excess of a certain percent, and that the list of beneficial owners should be required to be maintained separate from the stockholders' list to protect the beneficial owner from disclosure. Many companies felt that the costs of implementing this system would not be commensurate with the benefits to be gained.

With regard to alternative C, many companies noted that multiple name registration was too complex, would greatly increase costs, and would create many difficulties in reconciling records.

With regard to alternative D, many companies pointed out that this alternative would most likely increase the delay¹ inherently involved in mailings which are not made directly by the issuer. In addition, many companies pointed out that companies and brokers were better equipped, and had sufficient trained personnel able, to handle the mailings.

Many companies believed that the added costs would not be commensurate with the benefits to be gained by the system.

With regard to alternative E, many companies commented that this alternative was more costly than the present system and would not produce better results.

With regard to alternative F, a number of companies supported this alternative in theory and believed that it would have long range benefits largely due to the elimination of most stock certificates, however, some companies were concerned that the added costs were excessive, especially for the message switching center, and that it would not result in achieving the goal of enhancing issuer-shareholder communication.

With regard to alternative G, many companies believed that the problems with the present system were not sufficient to warrant change and that most, if not all problems, could be solved with better enforcement of the present rules.

Question 5: How would your company view any system for the registration of securities which would involve their registration in the names of their beneficial owners (see alternatives A and C), or disclosure to the issuer of all beneficial ownerships (see alternative B), particularly in the light of existing and future legal requirements for their public disclosure?

Response: Favorably—275 (65.2%); unfavorably—127 (30.1%); uncertain—12 (2.8%); no answer—8 (1.9%).

Question 6: Specifically, would your company be willing to bear the cost of establishing and maintaining the additional registration records or lists which would be required under alternatives A, B, and C?

Response: Yes—236 (55.9%); No—168 (39.8%); uncertain—10 (2.4%); No answer—8 (1.9%).

Question 7: As you know, the continued use of stock and other certificates has been under study by various interested groups for some time. Advantages of their elimination would include improved clearance and transfer and reduced company

costs, and its disadvantages would include loss of the evidentiary benefits of certificates for various purposes. How would your company view any system which would probably involve the elimination of the use of stock and other certificates, as would probably be the case under alternatives A, C, and F?

Response: Favorably—280 (86.4%); Unfavorably—128 (30.3%); Uncertain—8 (1.9%); No answer—6 (1.4%).

Question 8: Would your company be willing under any circumstances to bear a proportionate share of the following costs of the systems involved in each of the following alternatives (bearing in mind that under one or more of the systems there may be a saving in costs over a period of time)?

a. Cost incurred by banks and brokers under alternative B

Response: Yes—238 (56.4%); No—172 (40.8%); Uncertain—3 (0.7%); No answer—9 (2.1%).

b. Cost of the central mailing system under alternative D

Response: Yes—137 (32.5%); No—264 (62.6%); Uncertain—3 (0.7%); No answer—18 (4.3%).

c. Costs incurred by depositories under alternative E

Response: Yes—138 (32.7%); No—264 (62.6%); Uncertain—3 (0.7%); No answer—17 (4%).

d. Costs of maintaining the transfer agent depository concept, including a message-switching center, under alternative F

Response: Yes—201 (47.6%); No—202 (47.9%); Uncertain—5 (1.2%); No answer—14 (3.3%).

Question 9: Should the definition of "beneficial ownership" for the purposes of any of the proposed alternatives or any other alternative which may be proposed for improved issuer-shareholder communications be clearly restricted to the right to vote the respective securities (as distinguished from, for example, the right to exercise investment discretion or to receive economic benefits)?

Response: Yes—290 (68.7%); No—105 (24.9%); Uncertain—5 (1.2%); No answer—22 (5.2%).

Question 10: Should any proposed alternative expressly assure protection to companies against liabilities which might arise from the acts or omissions of central mailing depositories, centralized ordering depositories, transfer agent depositories, or the like, including for example, any challenge to the validity of a stockholder's meeting or of any stockholder vote?

Response: Yes—410 (97.2%); No—6 (1.4%); Uncertain—1 (0.2%); No answer—5 (1.2%).

Question 11: Should any proposed alternative include adequate assurance that no disclosure of beneficial ownership will be required thereunder which might involve any violation of a beneficial owner's right of privacy or which might otherwise involve violation of any legal requirement that the information be kept confidential?

Response: Yes—344 (81.5%); No—62 (14.7%); Uncertain—3 (0.7%); No answer—13 (3.1%).

Question 12: May we cite your company as a respondent to this questionnaire when its results are published?

Response: Yes—315 (74.6%); No—105 (24.9%); No answer—2 (0.5%).

AMERICAN SOCIETY OF CORPORATE SECRETARIES' SURVEY, ISSUER RESPONSES BY ISSUER SIZE

(Number of recordholders)

	Under 5,000	5,000 through 10,000	10,001 through 20,000	20,001 through 50,000	50,001 through 100,000	Over 100,000
Registration in name of beneficial owner:						
Mean.....	3.5	3.0	4.2	3.9	4.5	3.9
Median.....	2.9	2.1	3.8	3.8	4.5	4.0
Mode.....	1.0	1.0	7.0	7.0	7.0	2.0
Disclosure of beneficial owner:						
Mean.....	2.8	2.5	2.9	2.9	2.9	3.3
Median.....	2.3	2.3	2.5	2.4	2.4	3.1
Mode.....	2.0	2.0	1.0	2.0	2.0	2.0
Multiple-name registration:						
Mean.....	4.5	4.6	4.8	4.5	5.2	4.6
Median.....	4.6	4.7	5.0	4.8	5.7	4.8
Mode.....	5.0	7.0	5.0	5.0	7.0	5.0
Central mailing concept:						
Mean.....	4.3	4.7	4.8	4.5	5.0	4.7
Median.....	5.0	4.8	4.8	4.8	5.2	5.0
Mode.....	5.0	4.0	4.0	7.0	4.0	6.0
Centralized order processing:						
Mean.....	4.6	4.9	4.4	4.3	4.4	4.5
Median.....	5.0	5.4	4.6	4.6	4.6	4.5
Mode.....	6.0	6.0	3.0	3.0	3.0	3.0
Transfer agent depository:						
Mean.....	4.0	3.5	3.3	3.8	3.1	3.9
Median.....	4.0	3.7	3.0	4.0	2.9	3.9
Mode.....	7.0	2.0	1.0	4.0	2.0	1.0
Retention of present system:						
Mean.....	3.3	3.3	2.9	2.8	2.0	2.7
Median.....	2.9	2.0	2.1	2.1	1.4	2.1
Mode.....	1.0	1.0	1.0	1.0	1.0	1.0