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REMARKS ON NEW PROXY RULES

An Address By

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Securities and Exchange Commission

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REMARKS ON NEW PROXY RULES

Many of you may be aware of an increasing tendency on the part of security holders in recent years to submit proposals to companies for inclusion in their proxy materials.

We had hoped that last year's development in the use, and sometimes the misuse, of the proxy machinery would show a more responsible performance for the 1972 proxy season. We noted then the by now familiar phenomenon whereby an individual purchases one share of stock in several companies, submits multiple proposals to each of them, and then fails to appear at the annual meetings to sponsor his proposals. This practice does not appear to be in the best interest of, nor does it promote, corporate democracy. It does not tend to promote serious and significant consideration of serious and significant questions relative to the affairs of the corporation. What it does promote is a lot of trouble and expense for companies and a lot of time wasted by our Division of Corporation Finance.

The most active multiple proponent submitted proposals to 29 companies in 1971. In the 1972 proxy season, however, he selected 40 corporations for attention. Perhaps following in his path, we found more than 76 different proponents this proxy season submitting proposals to a total of about 130 companies, as opposed to 45 proponents and 61 companies in the 1971 season. The number of proposals has risen from 294 in 1970, to 602 in 1971, of which over 100 were attributable to one same shareholder, the multiple proposal champion for 1971 and 1972. In 1972, there were 869 proposals with over 200 from the champ.

This increase in stockholder interest in the activities of their corporations can be a productive development. Both managements and stockholders can benefit from the views of the persons who submit proposals. However, as a result of this expanded activity, we have become aware of the need for revising certain of our rules relating to shareholder proposals.

Last December we proposed revisions in the rules, and the Commission has voted to adopt certain of these proposals in final form tomorrow, so that they will be in effect for the 1973 proxy season. We have decided for the moment that we do not need specific limitations to avoid abuse because the experience even with expanded volume does not indicate a further expansion in the abuses. Therefore, in our revision of the proxy rules, we have refrained from adopting the recommendations that the right to submit proposals be denied stockholders who have not held shares a long enough period of time to demonstrate the seriousness of their interest or to those who own a minimum number of shares or shares having a minimum investment value. We have also refrained from setting a ceiling on the number of proposals which an individual may submit. We hope the changes we have made benefit both management and stockholders.

Perhaps the most significant change is that which we think clarifies and makes more operable the provision which allows the omission of proposals that are submitted

primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes. The existing provision has caused difficulties in interpretation. It sometimes can be construed to provide a basis for eliminating a proposal which can be significant to the business and by which the company might be able to do something. To correct this the new rules provide that the omission of these proposals must be on the basis that they are either not significantly related to the business of the issuer or that the proposal is beyond the power of the issuer to effectuate. This revision hopefully will make proxy statements more meaningful by assuring that all proposals included therein are appropriate for shareholder consideration. The most useful change for proponents is an increase in the 100-word limitation on the statement that may be made in support of each proposal. In many cases, the 100-word limit has not been sufficient for an adequate explanation of the reasons for adopting a proposal. Consequently, we have increased the limit to 200 words in the hope that security holders can more fully present their views on behalf of their proposals.

The Commission has also made a change which is designed to close a loophole in the provision which allows the omission of proposals which are submitted primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the issuer or its management. Formerly, the provision did not permit the omission of proposals which involved a personal claim or grievance against someone other than the issuer or its management. Since we don't believe that the proxy machinery should be used as a forum for airing personal disagreements or differences, we have amended the provision so that all proposals relating to a personal claim or grievance against any person may be omitted from an issuer's proxy material.

Certain other changes of a "housekeeping" nature have also been made in our rules relating to shareholder proposals, but I don't think it is necessary to discuss them in detail at this luncheon. In addition, we are again reminding shareholders that they must in good faith indicate that they will attend the corporate meetings at which their proposals are scheduled to be considered. The attendance of the shareholder-proponent often is necessary

to assure that his proposals will be presented and explained for appropriate action. Since little useful purpose is served if a proposal is included in an issuer's proxy material but not thrashed out at the meeting, we are emphasizing as strongly as possible the need for shareholder-proponents to have good faith in their intention to follow through by participating in the meeting.

During the 1972 proxy season, the staff issued no action letters with respect to proposals submitted by persons having a record of buying a share of stock in several companies, submitting multiple proposals to those companies, and not following through with a serious effort to have the proposals considered and debated. Thus by taking this administrative action, the Commission conserved its own resources and made it easier for companies to protect themselves from unnecessary cost and trouble.

The right to go to court is of course always a protection against abuse of this administrative discretion. Indeed, consideration has been given to pass the whole matter of what proposals should be included in the proxy statements over to the courts. What is involved is usually a question

of state corporation law which the courts are particularly expected to resolve. The Commission felt that to abdicate the role which it has historically played in the proxy process would cause great confusion in the organization, scheduling and conduct of annual meeting. We hope that the new rules will make it possible for the Commission to continue its historic role without finding itself swamped. This in large measure will depend on good faith efforts on the part of both management and stockholder proponents to address themselves to the real problems of the corporation which are appropriate to and which can be resolved in the forum of the annual meeting. It is impossible to draft a perfect set of proxy rules which will meet every condition and circumstance. In the final analysis the operability of any rules will depend on management not seizing upon every pretext to eliminate a meaningful proposal and on stockholder proponents not drowning the machinery with proposals which are not really meaningful in terms of what is possible and appropriate for the corporation to accomplish.

Overall, we believe that the changes we have made in the proxy rules represent a reasonable balance between the competing interests in this area. They should result in a more responsible use of the proxy machinery by shareholders and we are hopeful that they will give greater meaning to the concept of corporate democracy.

RULE 144 CLARIFICATION

I am also happy to announced that the Commission will put out early next week an interpretative release on the ramifications of certain problems arising under our famous Rule 144. The rule has generated more comment, more hair tearing, more law review articles, and more PLI conferences than any other rule in the history of the Commission. We hope that by answering some of the more persistent questions in the release we will free up some of the staff of our Corporation Finance Division to work on Rules 145, 146 and 147. As the interpretations are given in question and answer form, I've been told we ought to entitle the release "Everything you wanted to know about Rule 144 but were afraid to ask". All I know is that I won't try to answer any Rule 144 questions for you myself -- I couldn't bring my lawyer to this luncheon!