ADDRESS

of

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before the

AMERICAN SOCIETY OF CORPORATE SECRETARIES, INC.

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Remembering my very pleasant experience in meeting twice before with your Midwestern colleagues in Chicago I am especially pleased to have this opportunity to talk with you of the Association's Eastern Group.

The first of the two meetings I attended in Chicago occurred not so very long after the Association had been organized. Since then, I understand, you have grown greatly in numbers. Moreover you have achieved, remarkably quickly, a notable effectiveness as an instrument for collating and expressing common views as corporate officers on matters of regulation which directly affect your official functions.

In talking with Ted Turney and a few of your Midwestern group after the Chicago meeting two years ago I suggested to them that the Commission would welcome your suggestions on questions arising under the Securities Acts which affect your operations. I said that we want to do all that we can to make the regulations under those Acts as simple as possible, and to free them from unnecessary burdens that do not increase their effectiveness to carry out the purposes for which the laws were passed. It seemed likely that your ideas might be very helpful to us in doing that. I promised that we would give them careful and sympathetic consideration. I did not promise that we would accept them all.

I think our experience has borne out the forecast of that talk. You have made many very helpful suggestions. You have made them in an atmosphere of constructive collaboration. I believe you know that they have been cordially received and fairly considered. A good many of them have been adopted. Others have not.

It is the Commission's function to balance the advantages in simplicity of the proposals you and others make as officers or representatives of corporate management against possibly countervailing interests of the general body

of stockholders. We attempt to reach, as nearly as we can, results which will make the rules as easy to comply with and as easy to administer as it is possible to make them without impairing their effectiveness to provide what, fundamentally, these rules are intended to provide -- machinery whereby stockholders who do not directly participate in the corporation's management can know what has been done and what is proposed to be done by the company that is using their money, and can have a fair and unimpeded opportunity to express their approval or disapproval.

Before I commence discussing details of the changes recently announced I think it might be useful to recall briefly what these proxy rules are all about anyway. It requires only a sketchy survey of some relatively recent business history to recollect how they came into being.

In the 19th century the typical corporation consisted of a group of neighbors who had pooled their resources to develop a local enterprise. They met periodically to discuss the corporation's affairs and to formulate its policy. Once a year they elected, usually from their own number, managers whose job it was to carry out that policy. The stockholders actively directed the corporation's destiny. It was the rule rather than the exception that stockholders took an active part in the physical operation of the enterprise.

In the period of economic change following the Civil War, our first great financial empires began to evolve. It became widely apparent that a corporation was a handy sort of gadget to have around in a business deal. During the last part of the 19th century and continuing into this one, corporate ownership extended into one aspect of our economic life after another. Corporations increased rapidly in number, size and power.

Accompanying this growth came ever broader dispersion of stock ownership. American Telephone and Telegraph is an outstanding example. In 1901 it had about 10,000 stockholders. Today I understand it has around 700,000. General Motors now has more than 400,000. General Electric has approximately a quarter of a million.

It seems obvious that broad distribution of stock is usually necessary to the devlopment of very large corporate enterprise. There's much to be said for widespread ownership of shares in nationally important corporations. But it does present the management with some problems.

One of the problems it creates is what to do about those fellows, the stockholders, who put up the money. For example, how do you go about holding a stockholders' meeting. If you could ever get the stockholders all assembled you might have on your hands as many people -- or even two, three or four times as many -- as the crowd at a Kentucky Derby, or at one of the Indianapolis Speedway races. Where would you find a hall to house such a meeting? And what kind of deliberation would you get? Obviously it couldn't possibly serve the same purpose as the old-fashioned kind of stockholders meeting. It would probably be the convention to end all conventions.

Long before the Securities Exchange Act was passed in 1934 this increasing growth of absentee corporate ownership had revolutionized the relation of ownership to management. The absentee owner here wasn't a tyrant, as absentee landowners have been at times in the World's history. Frequently he was the fall guy.

Because of the mere size and dispersion of corporate ownership stockholders came to be faced with the practical alternative of remaining passive or appointing someone to cast their votes by proxy. This proxy scheme was designed to provide absent stockholders a voice in corporate affairs. But it wasn't long before some sharp fellows began to use it as an instrument by which the management largely took over from the stockholders their formerly independent authority and participation. The proxy machinery was in the management's hands. The management could solicit proxies at the expense of the corporation. Other stockholders had to pay their own expenses. Often the proxy a stockholder was

asked to sign contained blanket authority to vote his shares for wholly undisclosed directors or for any other unspecified subject that might be raised at a meeting. Often it included a wholesale ratification of past acts, without any information about what had been done.

By a combination of such methods practical control of many corporations became fixed in a management group which perpetuated itself, formulated and executed all policy, and used the annual metting merely as a rubber stamp to give ostensible approval to whatever it did.

Even under those handicaps proxy fights sometimes developed. On rare occasions groups in opposition to the management were successful. There have been some notorious examples. They got a lot of publicity. But if they had been common they wouldn't have been news.

The general tendency was for the main body of ordinary stockholders to grow apathetic, There wasn't much they could do about effective participation in corporate affairs. So many of them didn't bother. It was quite natural in these circumstances that where the immediate personal interests of the management came into conflict with the long range interests of the corporation, the corporation and the general body of its stockholders frequently came out with the short end of the stick.

By 1934, the situation had gotten to the point that Congress -- whose attention had been directed at that time to a number of things of this sort -- made the following findings:

> "Managements of properties owned by the investing public should not be permitted to perpatuate themselves by the misuse of corporate proxies. Insiders having little or no substantial interest in the properties they manage have often retained control without an adequate disclosure of their interest and without an adequate explanation of the management policies they intend to pursue. Insiders have at times solicited proxies without fairly informing the stockholders of the purpose for which the proxies are to be used and have used such proxies to take from the stockholders for their own selfish advantage valuable property rights." H. Rept. No. 1383; 73rd Congress, 24 Sess. (1934), Pp. 13-14.

Pursuant to that finding -- to ensure what it described as "fair corporate suffrage" -- Congress enacted Section 14 of the Securities Exchange Act of 1934.

That section authorized the S. E. C. to promulgate rules for the regulation of proxy solicitations. It was limited to securities listed on a national securities exchange. Later the same authority was extended to registered holding companies and their subsidiaries and to registered investment companies. The corporations falling within these categories have assets exceeding 50% of the corporate assets of the country, excluding financial institutions.

Now that legislation gave a pretty broad authority to the Commission. But its objective was quite clear. It amounted to a direction to the Commission to establish suitable machinery to keep the ordinary public stockholder from being taken with loaded dice. It was based on the idea that the investor having put up his money, he ought to have a genuine chance to see what's being done with it, to say whether he likes what he sees, and if he doesn't, to propose changes either in the management or in its general policies.

What apparently was intended was that all stockholders should be fully informed about the policies of the corporation, that they should be told plainly and fairly what's going to take place at the stockholders' meeting, and that they should then have a reasonable opportunity to express their approval or disapproval. That's what we have tried to provide through the proxy rules.

The facts available to the Commission indicate that in the relatively limited time these rules have been operative they have been increasingly affective for the purposes for which they were issued.

Corporate managements generally appear to have accepted with good grace, and in some cases with enthusiasm, their re-established responsibility to their electorate. In general there has been an excellent degree of compliance.

Discussions with representatives of corporate managements and correspondence from stockholders indicate that one effect of the rules has been to stimulate a renewed interest by stockholders in the affairs of their corporations and to increase their participation in the active consideration of questions stockholders are supposed to decide.

Another development might be worth mentioning. Since the rules have been effective the total number of proxy solicitations subject to the rules has increased steadily year by year. The number of solicitations by persons other than the management has just as steadily decreased. Perhaps that's because these have been prosperous, profitable years. But it may be too that it's because the rules have established a regular method for making effective what previously existed only as a matter of legal theory, effective reporting by the management to stockholders and a routine procedure by which the stockholders could express an informed point of view.

One by-product of the public disclosure required by the proxy statement can't be overlooked and yet is difficult to evaluate. That is the constant improvement in the evident fairness of proposals and plans submitted to stockholders under the rules. The fact that any proposal made is subject to disclosure according to these rules and is likely to be studied critically by stockholders, by potential investors in the corporation and by anyone else who may be interested, apparently creates a natural reluctance to try anything too fancy. That fact is becoming increasingly evident in the character of the proposals that are coming through in proxy statements.

One further point I want to make in this general discussion of the basic purpose and utility of the proxy rules -- and that is this; that the rules themselves have been the instrument by which these results have come about.

It would be pleasant to believe that these things have happened not because of regulations but as the result of a general and spontaneous increase in the sensibility of corporate managers to the rights and interests of the people who have supplied them with money to carry on the enterprise. Apparently that isn't so.

A couple of years ago the Commission made a study of the proxy material sent out in the two preceding years by a sample group of large companies. That study showed that generally, where these rules were not applicable the corporate practice had not substantially changed from that which had prevailed among listed companies before the rules were made applicable to them. The proxy material sent to stockholders was not notably different from the sort of thing that listed companies used to send to stockholders before the proxy rules required them to give the whole picture. Where the statute and the rules under it do not apply the same things are going on now that impelled Congress to adopt Section 14 of the Exchange Act in the first place. For example, among the companies studied we found these facts:

(1) the proxy material sent out in connection with 89% of the annual meetings covered by the study failed to name the persons proposed to be elected as directors,

(2) in only one case were the security holdings of directors and nominees for directorates shown, either individually or in the aggregate,

(3) not a single proxy statement disclosed the remuneration of the management either individually or in the aggregate,

(4) in 42% of the annual meetings one of the items of business was the approval and ratification of all acts of the management since the preceding annual meeting. In none of these was there any indication of the nature of the acts to be approved and ratified,

(5) in only one out of 152 cases studied was the interest of officers and directors or their associates in any matters to be acted upon described in the proxy material,

(6) only about 5% of the companies gave the stockholders an opportunity to vote yes or no on specific items of business,

(7) in connection with 28 out of 142 annual meetings studied, the annual report was not available to stockholders until after the meeting had been held.

That's the sort of thing listed companies, now subject to the proxy rules, used to do. That's the sort of thing a good many companies not subject to the proxy rules continue doing. It seems perfectly clear that these rules are largely responsible for providing stockholders in the corporations to which they apply with the sort of information they need to have if they are to understand what's being done with their money and with the machinery to enable them to vote sensibly on those corporate matters which stockholders are entitled to decide.

As you know the Commission did not jump blindly into wholesale regulation of proxy solicitations.

The first rules, issued in 1935, did little more than prohibit false statements in proxy solicitations.

In 1938 for the first time specific information concerning the subject of solicitation was required, as well as a means by which a stockholder could specify the action he wanted taken pursuant to his proxy.

In 1940 the rules were amended to require the filing of proxy material with the Commission ten days ahead of the time it was to be used, so that it might be checked independently for accuracy beforehand. That requirement has virtually eliminated the embarrassment and expense of correcting deficient statements by wholesale circulation of follow-up material.

The rules were amended further in January 1943, and again in 1947. Only last week we approved additional changes. It is these last changes which we shall discuss together this evening.

But as background for that discussion I have wanted to bring the rules generally into perspective, to recall the condition they were intended to meet, and to bring back to mind what their real purpose is. It's easy to forget, after a few years, what rules like these are for. The broad discussion of principal and method that attend their birth comes to an end shortly after they are issued. The bother involved in complying with them goes on year after year. After a while, especially in cases where no serious conflicts develop over several years, the annoyances of compliance sometimes seem to outweigh the possibility of benefit. They may come to be regarded as merely a chore that has to be performed to satisfy the caprice of an officious government bureau. After a while we begin to hear complaints about the cumbrous futility of sending out a lot of stuff like this to stockholders who aren't interested anyway. When that begins to happen it is doubtless time to look the situation over and see to what extent such complaints are justified. That's what the Commission has tried to do.

The result has been to convince us that these rules are a good thing and that they are doing the job that Congress intended they should do. But we have found many ways to improve them, to make them simpler, easier to comply with, easier to administer, and at the same time more effective. We expect to continue that process. We have welcomed your help in carrying out a policy of continuous and progressive refinement and improvement. We shall continue that policy and we shall continue to welcome your help in carrying it out.

And now let's turn to its most recent manifestations.

The changes made in 1947 reflected our accumulated experience over a period of almost five years following the adoption of the last previous revision. In addition, in 1947, the revised rules were completely rearranged and a number of mechanical changes made in their presentation. One purpose

of that rearrangement was to make them more easily understood. A second purpose was to make it easier in the future to incorporate specific amendments currently without having to wait for a substantial accumulation of proposals and then revise the rules generally. Thus we hoped progressively to improve the rules without requiring everyone periodically to familiarize himself with a complete new set of rules. The changes made this year are the first fruit of that rearrangement.

After one "proxy season's" experience with the revised rules issued in 1947, the Commission last July published for comment certain proposed amendments. The comments received have been carefully considered by the staff and the Commission. The amendments, considerably revised as a result of the comments, have now been adopted and published. I shall refer briefly to those which appear to be the most important and try to give you a summary of the considerations which led to their adoption in their final form.

At various places the proxy rules refer to the "last fiscal year." [1/] That term was intended to refer to the fiscal year of the issuer ending immediately before the date of the meeting for which proxies are to be solicited. Some issuers have believed, however, that the term referred to the preceding fiscal year. That interpretation would result in some cases in the inclusion in proxy statements of information so dated as to be practically useless. A definition of the term has been inserted in the rules in order to remove the ambiguity. [2/]

It sometimes happens that because of the nature of the subject matter of a particular solicitation stockholders are able to solicit proxies before the management can get its proxy material ready. Various suggestions were

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1/ E.g., rule X-14A-3 (b); Schedule 14A, item 7
2/ Rule X-14A-1

made for amendments to permit the management to publish statements in response to solicitations in opposition before the management's material is ready. It was also proposed to permit the management to omit from its proxy material any information not available at the time the solicitation is begun by the opposition. Beyond this it was suggested that where the opposition has begun soliciting, the rules should be amended to reduce the waiting period applicable to the management's proxy material.

None of these suggestions have been adopted. If the first two were adopted the practical result would be that the management's solicitation would be virtually accomplished before all the facts pertinent to its solicitation had been filed with the Commission or made available to security holders. That would be in direct conflict with the main purpose of the rules to see that the security holder has the facts to support the position he is asked to take. As to the third suggestion that the waiting period be shortened, the present rules provide for acceleration by the Commission where good cause is shown. That provides a procedure for meeting special situations which is more flexible, and we believe, more practical than a rigid rule. The Commission's practice has been freely to grant acceleration in cases where there is a contest.

In connection with solicitations in opposition to the management, it has not always been clear from the proxy statement or the form of proxy that the proxy was not being solicited by the management. Consequently security holders may have been misled in some instances into believing that they were giving the management their proxy when in fact they were giving it to the opposition. The rules have now been amended to require that the form of proxy must state in bold face type whether or not it is solicited on behalf of the management.[3/] In addition, the proxy statement too must contain a similar statement.[4/]

3/ Rule X-14A-4 (a).
4/ Schedule 14 A, item 3 (b).

A number of proxies filed with the Commission during the past proxy season contained various statements or devices on the form of proxy designed to influence the security holder's choice in regard to matters to be acted upon pursuant to the proxy.

The Commission feels that the form of proxy is in essence a ballot by which the stockholder exercises his franchise and should not be used as campaign literature. Consequently we believe that any recommendations the management wants to make should be set forth in the proxy statement rather than in the form of proxy. The draft of the amendments sent out for comment contained a specific prohibition against including in the form of proxy recommendations as to the manner in which stockholders should vote on particular matters.

Many of the comments opposed this prohibition on the ground that the security holders want to know the management's position and accordingly urged that the prohibition be eliminated from the rules. Your Society joined in that opposition.

After considering the question fully in the light of the comments received the Commission agreed that in all likelihood it would be at least a convenience to stockholders and perhaps advantageous to them to have the management's position identified on the instrument by which they cast their vote, The Commission felt that if the prohibition in the rules against including recommendations in the form of proxy would be construed as prohibiting that identification it would exceed its intended purpose. Consequently the Commission determined to delete the specific prohibition.

At the same time we have not altered our conviction that the form of proxy is essentially the ballot by which the stockholder exercises his right to vote and that as such it is not the appropriate place for electioneering for

or against particular proposals. Hereafter, as before, the matters to be acted upon are required to be set forth on the form of proxy clearly and impartially. Consequently the release accompanying the revision of the rules attempts to make it completely clear that the deletion of this proposed prohibition does not alter the previous administrative practice except to permit a simple statement of the fact that the management favors or opposes a particular proposal. The form of proxy may not contain text designed to influence the security holder to one position or another. Nor may it contain trick devices or arrangements of the ballot designed to direct his attention more readily towards voting one way rather than another. It is quite essential that the deletion of this proposed provision should not be misconstrued. The Commission has not acquiesced in the suggestion that the form of proxy should be susceptible to use as an instrument for persuading stockholders to vote in any particular way. We believe that the place for that sort of material is in the proxy statement and it remains there under the revised rules.

The proposed rules recently circulated for comment would have provided that certain statements, heretofore either required or permitted to be set forth in the form of proxy, should, in future, be set forth only in the proxy statement.

These statements were: (1) a statement in bold face type telling how the proxy will be voted if the security holder does not specify a choice, and (2) a statement that the persons making the solicitation are not aware that any other matters will be presented for action at the meeting. Such a statement was previously required as a matter of administrative practice where the proxy confers discretion with regard to matters which may arise unexpectedly at the meeting.

The proposal that these statements be made only in the proxy statement was based on the idea that that was the proper place for all representations or recommendations on the part of the management. I think that in this instance some confusion existed between what constitutes recommendation and persuasion and what amounts in substance to information incidental and essential to the mechanics of voting.

After considering the comments received from your Society and a number of other persons and groups, the Commission determined that these proposals should be modified.

The amendments finally adopted provide that the statement in bold face type telling how the proxy will be voted where the security holder does not specify a choice shall continue as heretofore to be in the form of proxy. 5/ The other statement (that the person making the solicitation is not aware of other matters to be presented at the meeting) is required to be made under the amendment finally adopted when discretion is conferred as to such matters, but it may be placed either in the form of proxy or in the proxy statement as the person making the solicitation may choose. 6/

The proxy rules have provided heretofore that where the security holder is entitled to specify a choice as to any matter to be acted upon, the form of proxy must contain a statement that the proxy will be voted in accordance with the choice specified. Some people have interpreted that to permit the proxy holder a discretion to refrain from voting the proxy at all if he should deem it advisable to do so. That was not the intent of the rule.

The proposed amendments circulated for comment would have provided that the form of proxy should contain a representation that the proxy <u>will be voted</u> and that where the security holder is entitled to specify a choice, it will be <u>voted in accordance with the choice specified.</u>

5/ Rule X-14A-4(b)
6/ Rule X-14A-4(c)

Your Society and others objected to this proposal on the ground that the security holder would understand it to be an absolute undertaking by the management to vote the proxy even though it is not returned in proper form. Your comments raised only one phase of the problem that would be created by the proposed provision. A further difficulty is that if the undertaking were unqualified, the management's hands might be tied if, subsequent events should make it unwise to carry through on the proposal.

For this reason the amended rule finally issued does not require the absolute undertaking but provides that the undertaking to carry out the security holder's directions may be made subject to reasonable conditions, which shall be specified.[7/]

You are all familiar, of course, with the provision of the proxy rules which permits a security holder to submit to the management proposals for inclusion in the management's proxy soliciting material.[8/] You are also aware, of course, that in a few cases managements have been badgered by proposals which apparently were not submitted in good faith, or were submitted for the purpose of achieving some ulterior personal objective unrelated to the interests of the corporation. This provision of the proxy rules was designed to promote the interests of security holders generally and was not intended to be used as an instrument whereby individuals might harass managements to attain purely personal ends.

The Commission has amended the rule to provide that under certain specified circumstances, proposals submitted by security holders to the management may be omitted from the management's proxy material.[9/]

7/ Rule X-14A-4 (e)
8/ Rule X-14A-8
9/ Rule X-14A-8 (c) and (d)

The Commission has not made the rule as stringent as was suggested by your Society and by a number of other commentators. To have done so would have resulted in virtually nullifying the security holders' right to submit proposals. Only in rare instances could the conditions suggested have been met.

In approving the amendments we did issue the Commission was motivated by a wish to eliminate clear abuses of this provision without, however, infringing upon the legitimate right of security holders to participate in the management of their companies by initiating proposals. I hope that it will have that effect and that the possibilities of infringment upon the security holders' proper franchise can be avoided without involving the Commission in a series of decisions turning upon slippery questions of motive. I assume we may reasonably expect that the provision will be fairly and objectively applied by corporate managements and that it will thereby forestall crackpot propositions without impeding consideration of opposition proposals that have at least debatable merit and are proper subjects for stockholders action.

The Society raised the point that if a proposal is omitted pursuant to the provision I have just discussed and security holders nevertheless introduce the proposal at the meeting, the management could not exercise discretionary authority in the matter because it was aware that the matter was to be presented for action. Since this would operate to defeat the purpose of the new provision regarding the omission of proposals, the Commission has followed the Society's suggestion and has inserted express provisions that the proposals so omitted need not be mentioned in the form of proxy and that the management may exercise discretionary authority with respect to such proposals if they are presented for action at the meeting. 10/

10/ Rule X-14A-4(a) and (c)

The recent amendments have rearranged and revised somewhat the requirements as to information regarding remuneration to be included in the proxy statement.[11/] The amount of individual remuneration which must be shown has been raised from $20,000 to $25,000. The Commission intends to make the remuneration requirements uniform in the proxy rules and in the registration and reporting forms under the Securities Act of 1933 and the Securities Exchange Act of 1934. The rearrangement and revision of the requirements in the proxy rules was a further step in this direction. As you know corresponding amendments to Form S-1 under the 1933 Act have been submitted for public comment and are now being considered by the Commission.

Proxy statements heretofore have been required to show information as to the indebtedness to the issuer of directors, officers and nominees. This provision has now been amended to extend the requirement to the associates of directors, officers and nominees.[12/]

Your Society objected to this extension. You also suggested that the requirement should exclude indebtedness arising from stock purchase plans whereby executives and key employees are given the right to increase their stock ownership in the enterprise.

Stock purchase plans not infrequently amount in substantial effect to a form of option. A contract of purchase is made but the stock is not taken down unless or until it reaches a point marketwise where it is to the pecuniary advantage of the participating executive to do so. If the market goes the wrong way and he elects not to take the stock there is usually no difficulty in cancelling the contract and the indebtedness incident to it. It was because the Commission believes that stockholders are entitled to have the facts with regard to arrangements of that kind and other equally material

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11/ Schedule 14A, item 7 (a), (b), and (f).
12/ Schedule 14A, item 7 (d).

transactions with associates that the original item and the recent amendment extending it were adopted.

There are some other changes but these appear to be the principal ones. I suspect that we can best cover any others and fill in the details on these through informal discussion of questions and answers.

But before closing my formal remarks I want to assure you that these rules are not fixed or immutable. The Commission's staff is continuously observing their operation. We fully expect that further proposals for their improvement will be published from time to time for public consideration. The Commission has greatly appreciated the cooperation which you of the Society of Corporate Secretaries have shown in connection with both the complete revision rules last year and again in connection with the recent amendments. We shall welcome any further suggestions you may have at any time and you may be sure that they will receive our most careful consideration.