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THE ROLE OF THE SECURITIES AND EXCHANGE COMMISSION IN PROXY CONTESTS OF LISTED COMPANIES

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of the

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It gives me great pleasure to appear before the Section on Corporation, Banking and Business Law of the American Bar Association at this, the 78th Annual Meeting of the Association, to discuss the role of the Securities and Exchange Commission in proxy contests of listed companies. I know of no group, unless it might be a Congressional Committee, before whom I would rather discuss the work of our Commission in this important area of Federal regulation of securities.

When your Chairman, Ray Garrett, first talked to me about my speaking to you here today, we considered the possibility of my describing various phases of the processing of proxy soliciting material filed with the Commission. I explained to him, as I must now say to you before beginning, that the preliminary proxy material filed by listed companies and others with the Commission is regarded as confidential as between the party filing it and the Commission itself, so I cannot discuss preliminary proxy material in a manner that would identify particular companies or individuals. The illustrative material, which I will refer to during the course of my talk, must not be regarded by you as being material of any particular company or person.

The Commission and its staff are extremely careful not to discuss the proxy material filed by a company or person with the other party to a proxy contest, or with anyone else, for that matter. Perhaps this has led to some misunderstanding of the work of the Commission in processing proxy material. Often a party to a proxy contest complains that we are favoring the other side, not knowing, as we do because we have seen the other side's material, that we are in fact being completely neutral and impartial in administering the proxy rules.

I must emphasize at the beginning that the Commission does not take sides in proxy contests. It administers the rules impartially. It is not concerned with which side wins. Its only concern is the fulfillment of its statutory duty imposed on it by the Securities Exchange Act of 1934, and the rules adopted by the Commission under the Act, of assuring that full, fair and adequate disclosure of the basic facts pertaining to the proxy solicitation are made available to the security holders whose proxies are being solicited.

Also, since Mr. Garrett invited me early in May to give this talk, there have been developments of major importance in the proxy

field and, accordingly, I am going to expand the scope of my remarks and not limit them to specific proxy contests. Rather, I propose to discuss three major phases of the over-all proxy soliciting problems under the Securities Exchange Act.

The first phase is legal. I want to describe the statutory groundwork for the processing of proxy soliciting material by the Commission.

The second is economic. I will discuss briefly the economic impact of proxy contests on listed companies.

The third is regulatory. I will discuss the problems of proxy contests which lie at the root of the proposed revision of the proxy rules which the Commission announced yesterday.

I will also indicate my personal view as to a legislative change which I would hope would be considered in the second session of the 84th Congress, commencing next January. So, first, let us turn to the law.

The law, as it pertains to proxy solicitations in listed companies, is a very broad grant of power by the Congress to the Commission. Section 14(a) of the Exchange Act provides as follows:

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

Notice a couple of points about that statute. In the first line it says "It shall be unlawful for any person. . ." It doesn't say it shall be unlawful for the management, or for directors, or for controlling persons. It says it shall be unlawful for "any person" to solicit proxies in contravention of the Commission's rules.

Notice that it says "in contravention of such rules and regulations as the Commission may prescribe." There is no indication of

any restriction, any limitation on the rules and regulations the Congress intended the Commission to prescribe. Nor is there an indication of the type of regulation the Congress intended the Commission should devise and promulgate. But, notice that whatever rule or regulation the Commission should prescribe under this broad Congressional mandate was to be a regulation which the Commission should "prescribe as necessary or appropriate in the public interest or for the protection of investors." This last, I think, is of major importance. Throughout all of the statutes the Securities and Exchange Commission administers there flows the thread, expressed in section after section and clause after clause, that the regulation contemplated by the Congress should be that which in the determination of the Commission is necessary or appropriate in the public interest or for the protection of investors.

The Congressional committee reports shed some light on the conditions the Congressional committees had in mind as needing correction, when the Exchange Act was adopted. They mentioned solicitation of proxies by management concealing secret options and interests in underwriting arrangements. They mentioned insiders retaining control without adequate disclosure of their interest and without adequate information about management policies. They mentioned managements using proxies to take from stockholders valuable property rights for their own selfish advantage. They also stated "that the rules and regulations promulgated by the Commission will protect investors from promiscuous solicitation of their proxies, on the one hand, by irresponsible outsiders seeking to wrest control of a corporation away from honest and conscientious corporate officials; and, on the other hand, by unscrupulous corporate officials seeking to retain control of the management by concealing and distorting facts." But these reports are merely part of the legislative history, and under familiar principles are hardly to be relied on heavily in construing statutory language which on its face is clear. The breadth of the grant of authority can hardly be questioned, considering the wording of the Exchange Act.

Let me contrast for a mement this broad grant of rule-making power with a different legislative approach, the legislative approach which was used by the Congress when it wrote the Securities Act of 1933.

Both the Securities Act and the Exchange Act are thought of as "disclosure" statutes. By that is meant that in addition to providing civil and criminal sanctions against misrepresentation and fraud, they were designed so as to assure to the public and to investors disclosure of certain pertinent financial and business information by companies coming into the public market with new issues of securities, in the case of the Securities Act, and by companies whose shares were listed on national securities exchanges, in the case of the Exchange Act.

But in the Securities Act the basic information which the Congress deemed should be disclosed was clearly set forth in the statute.

Section 7 of the Securities Act provides that a registration statement must contain the information and be accompanied by the documents specified in Schedule A to the Act, when relating to a security issued, generally speaking, by a corporation, or the information and documents specified in Schedule B, when relating to a security issued by a foreign government. And then in Schedules A and B to the Securities Act the Congress specified in considerable detail the types of information, both business and financial, which in furtherance of the basic legislative purpose of full disclosure, it deemed should be made available to the public and the investor. Then, having specified what disclosure should be required, the Congress wisely, in my opinion, added flexibility to the administration of the statute by giving the Commission power to increase or in certain instances vary or diminish the particular items of information required to be given. Similar legislative treatment is accorded the prospectus for new issues of securities, additional Commission discretion being granted by the 1954 amendments adopted by the 83rd Congress.

Thus, the Commission, in administering the Securities Act, has available in considerable detail an outline of that which the Congress intended should be the basis of its registration forms, prospectus requirements and rules. Section 12 of the Exchange Act provides the Commission with a comparable guide as to the information to be included in registration statements for issues of securities to be listed on exchanges and reports of listed companies filed under that Act.

Contrast this legislative treatment with Section 14 of the Exchange Act where no such statutory guide lines are available for the Commission to follow.

Another difference should be observed. In the Securities Act, the Congress granted the Commission full administrative power with respect to permitting a registration statement for a new issue of securities

to become effective so that sale of the securities to the public might lawfully be made. Power to prevent a registration statement from becoming effective, or after effectiveness of a registration statement to suspend such effectiveness, is granted to the Commission in Section 8 of the Securities Act. Administrative proceedings are provided for and appropriate review of the Commission's administrative actions may be had by appeal to the United States Court of Appeals. Similar provisions are contained in Section 19 of the Exchange Act with respect to registration statements and reports under that Act.

The administrative processing of proxy soliciting material, on the other hand, had evidently not so clearly been considered when the Exchange Act was written. There is no specific administrative power in the Commission to prevent the use of proxy soliciting material thought by us to be misleading or fraudulent. Our only recourse, provided in Section 21(e) of the Exchange Act, is to seek to enjoin the use of misleading or false proxy soliciting material by suit in the United States District Court. This means that the only real administrative grip the Commission has on proxy material, short of going into Court, is the gentle art of persuasion.

Historically, in the intervening twenty years since the Exchange Act was enacted, the Commission has felt its way along. There have been five major revisions since the first rudimentary proxy rules were adopted in 1935. Each of these revisions, based on the analogy of Schedules A and B of the Securities Act and Section 12 of the Exchange Act, was designed to elicit and bring into focus the types of information which the Commission felt should be furnished to security holders by persons, be they management or others, seeking security holders' proxies.

Generally speaking, the type of information required under the proxy rules as they exist today provides the security holder with a broad basis of financial information about the company and specific information about the persons seeking to be elected directors, their business experience, their remuneration and contractual relations with the company, if any, their bonuses, stock options and other emoluments of office. The information prescribed for such disclosure is calculated to enable the average "prudent" investor to act intelligently upon each separate matter for which his vote or consent is sought. The annual financial report must precede or accompany management's proxy soliciting material.

I think within a very broad grant of power the Commission, through years of experience, has devised proxy soliciting regulations which work well in the vast majority of cases to which they apply and which have provided an enormous base for the thing called "corporate democracy."

So much for the law. Now let me turn for a minute to the economic impact of the proxy rules, both as applied to listed companies generally and as applied to companies involved in proxy contests. On April 30, 1955, the staff report of the Senate Banking and Currency Committee entitled "Factors Affecting the Stock Market" was released. This report includes the estimate that (eliminating intercorporate holdings) the total market value of outstanding stock in all American business corporations at the end of 1954 was about $268 billion. The number of corporations whose securities are registered under the Exchange Act and listed on national securities exchanges has been about 2,100 in the past two or three years.

I am not aware that there have been any serious administrative difficulties -- difficulties of the kind that could not be worked out by the registered companies with the staff, or occasionally, by the registered companies with the Commission -- except in the case of the companies, a comparative few, in which proxy contests for control were carried on, and another handful in which shareholder proposals under the "shareholder proposal" rule (Rule X-14A-8) were involved.

In terms of the impact of the proxy rules on the economy of the country, this is a pretty good indication that the proxy rules are working well. The value of listed common stock of corporations in which proxy contests have occurred was $414 million in 1954 and $724 million this 1955 proxy season. For comparative purposes the value of all common stocks listed on national securities exchanges was $169 billion at the end of 1954 and $194 billion during the 1955 proxy season. Thus the value of listed stock of companies involved in proxy contests in 1954 was 1/4 of 1% and in 1955 3/8 of 1% of the value of all listed stock.

In 1954 twenty-one listed companies were involved in proxy contests for control of management or places on the board of directors. In the first seven months of 1955 eleven companies were so involved. While some of these concerned some of the larger companies, most of them related to companies of smaller size.

In view of the relatively limited number of companies which have been involved, the direct economic impact of proxy contests on the national economy is comparatively small. Not so the indirect economic impact. It radiates out among other companies, large and small, listed and unlisted. Think for a moment just what a proxy contest is. A proxy contest is a struggle for control of a corporate enterprise. The struggle takes place in the forum of a shareholders' meeting. The shareholders have the right to vote and this means that it is the shareholders, the owners of the business, who exercise their judgment as to which contesting group, be it management or outsider, shall direct the policies and fortunes of their company for the ensuing year.

No one can really measure the extent of the indirect economic effect of a few hard fought contests for control of some of the well known companies. The Commission, of course, cannot and does not pass on the merits of contestants and their causes. Publication of charges and counter-charges by opposing sides on subjects pertaining to corporate management, financial policies and management practices and the publication of owners' reactions to the debates at the shareholders' meetings inevitably have an indirect economic impact upon the economy by producing a greater awareness of public interest in corporate affairs and corporate stewardship. It is reasonable to expect that the encouragement and studied stimulation of widespread ownership of corporate equities which has been a mark of recent years will produce eventually closer scrutiny of the achievements and policies of professional management. This is an example of the basic principles of democratic representative government applied to corporate organizations. The two groups compete for the shareholders' favor. After all, competition is in the American tradition, and this includes competition among men for control of corporate enterprises.

So much for the law, so much for the economics -- now what are the regulatory problems?

The basic theory of the Commission's rules, which were designed primarily for the typical uncontested proxy solicitation, is that if the material facts are fairly, accurately and clearly presented to the shareholder, he will be able to vote intelligently. And, as in the case of the publication of the other information and reports required by the statute, the information in the proxy statement contributes to the fund of public knowledge which fosters confidence in the security of listed companies. The selection of management is of vital interest

to shareholders because, in the last analysis, the ability, background and experience of management is a cornerstone for investors' judgments as to the value of the company's securities. To aid investors in reaching an informed judgment, the proxy rules provide that investors be furnished information in the form of a "proxy statement" which identifies the nominees, describes their relationships with, and interests in, the issuer, their business experience, their compensation, and their past and prospective transactions with the company. Beyond this the rules simply require that there be no misleading statements of fact and no omission of material facts necessary to make the facts stated not misleading in the circumstances. The rules also require that misleading statements in or omissions from statements previously made be corrected in subsequent soliciting material.

As I mentioned a few minutes ago, the Commission has no administrative procedure to prevent the use of misleading proxy material. At present its only recourse is to seek an injunction in the courts to prevent the use of misleading material and to prevent the use of proxies obtained by improper soliciting material or methods. In practice this drastic remedy has been rarely used. The administrative processing by the staff, and the availability to each party of the processes of the courts, in the past have been felt by the Commission to be sufficient to compel correction or other appropriate action without recourse to the courts.

However, the experience of the last two years has indicated that the rules themselves need revision to spell out more specifically than they have in the past the requirements of the Commission to assure full, fair and adequate disclosure to the security holders in the context of contests for corporate control. Also, the Commission's statutory power needs strengthening.

Let me list briefly a few of the types of problems which have been difficult, and at times impossible, for the Commission to deal with administratively. Here are a few:

First, there is the question when solicitation in a proxy contest begins. The rules now provide that no solicitation shall be made until a proxy statement is furnished to the person being solicited. But when a person or group announces publicly, far in advance of a scheduled annual meeting date, that he will seek to oust management or to secure

representation on the board of directors, even though no formal request for a proxy is then being made, it is clear that any public utterances or statements are intended to influence stockholder opinion in a campaign ultimately intended to result in the request for a proxy. The Commission has dealt with this problem administratively by requiring such advance statements to be filed and treated as proxy soliciting material, but has not insisted that the formal proxy statement be on file during this early stage.

The Commission's position traditionally has been that such preliminary activities in anticipation of a contest involve solicitations within the meaning of the Act and are subject to the Commission's proxy rules. The courts have held that any writings, whether or not they expressly request a proxy, which "are part of a continuous plan ending in solicitation and which prepare the way for its success" are subject to the Commission's authority under the Act. 1/

Second, there is a problem as to what type of communication actually constitutes a solicitation to which the Federal regulatory power should apply. The Commission's position has been that all statements, written or oral, relative to the contest should meet the standards of accuracy, materiality and fairness provided by the rules. As a result of public relations techniques in recent proxy fights, or indeed in some cases in an effort to evade the rules, or in others perhaps accidentally and spontaneously, statements have been made, promises broadcast and accusations hurled which do not meet the tests of fairness and truthfulness and which result in the person making such statements gaining unfair advantage. The Commission's rules need revision more specifically to require that all statements used in the solicitation of proxies, whether written or oral, constitute proxy material and must comply with the Commission's standards.

Third, let me emphasize the standards which do govern the content of proxy soliciting material. The Commission has up to now administratively applied the proxy rules to embrace the following general principles or standards of conduct and disclosure:

(a) to secure a degree of adherence to a factual presentation or a presentation based upon facts which can be established and supported;

1/ S.E.C. v. Okin, 132F 2d 784 (C.A. 2, 1943).

(b) to eliminate or minimize confusing or misleading irrelevancies;

(c) to prevent the use of unsupportable predictions as to the future in terms of specific business and financial results;

(d) to prevent the use of the various techniques utilized to discredit a person, to impugn character, integrity and reputation or to hold a person or group up to ridicule and contempt in the absence of facts which support the statements being made or implications of dishonesty or criminal connections or tendencies sought to be conveyed;

(e) generally to free proxy material of half truths, distortions, exaggerations, falsehoods and unsupported or unsupportable opinions and accusations;

(f) to seek clarity and fairness in the literature of opposing sides.

Let me give a few instances which highlight the application of these standards. Patterns of misrepresentation occur and reoccur in proxy contests which focus upon the primary issue of the comparative managerial ability and integrity of the two groups. Arguments are made from complex financial statistics and other data the analysis of which is not too familiar to most investors. Statistical comparisons are made purporting to show superiority or inferiority of management to other groups or other companies supposed to be engaged in the same general line of business. In short, statistics can be used to distort.

In a recent campaign for the control of the board of directors of a railroad, the group opposing management sought to illustrate the existing management's lack of ability by means of an income account which included a sinking fund payment as a charge against income, an accounting procedure totally opposed to acceptable accounting practice. The result of this was to indicate a loss in railroad operations for six years when, in fact, if the income account was depicted in accordance with accepted accounting principles, losses occurred in only two of such years. The Commission objected to this improper presentation.

In another case, misleading comparisons were sought to be made by an opposition group in a contest for control of a railroad that the company's stock had sold in 1929 at $250 a share in contrast to its

then market price of about $25 per share. This statement was coupled with the assertion that if the opposition group succeeded in its efforts the stock would go to $100 and pay an $8 dividend. In view of the pronounced changes that have occurred in our economy since 1929, particularly in the growth of strongly competitive forces in the transportation industry such as automobiles and trucks, plus the fact that the company had earned $8 a share only three times in its history, the Commission insisted upon the deletion from the solicitation material of these comparisons.

In addition to the use of distorting statistics, two other misleading devices have been attempted. These devices are totally at variance with the tradition of the common law, with its insistence over the centuries on a requirement of probative evidence subjected to intense and objective tests as to veracity and accuracy. One is that of imputing guilt by association -- often the most remote type of association. The other, a corollary device, is the rhetorical question based on an assumption for which there is no foundation in fact laid. This is the "When did you stop beating your wife" question.

For example, a magazine which had published articles favorable to the management was sought to be disparaged by the opposition group, not on the ground of any illegal or immoral act which the magazine had committed but on the ground that it employed a law firm, one of the partners of which had been accused, although never convicted, of bribery of a Federal court. Similarly, an opposition group soliciting requests for authority to call a special meeting to elect directors was attacked because two of the stockholders signing the request who owned insignificant amounts of shares and who had no connection with the formation and activities of the opposition group, had been indicted for alleged tax violation. Similarly, a member of an opposition group has been attacked because he allegedly joined with certain other persons of whom the management was critical in contributing large sums to the political campaign of a candidate for a public office.

The Commission, as a governmental body charged with the responsibility of preventing misleading statements, is obligated to object to such misrepresentations.

The rhetorical question framed with clear implication of guilt, without presentation of any probative evidence of the existence of guilt, is illustrated by the following:

> "Hasn't the present management milked the company by holding onto cash while such cash lost its earning power, buying power and value?"

"Can you name one worse managed company among comparable companies in this country?"

"Hasn't the present management milked stockholders by holding cash instead of investing it in the operations of the business?"

"Isn't the principal executive of the company raiding the company's treasury with a blank check from a "yes-man" board of directors which has given him freedom to spend any amount of the shareholders' money any way he pleases to try to keep from being unseated?"

If there were a basis for asking such questions, that would be one thing, but when there is no basis for asking them, they are obviously misleading and unfair.

To these examples, let me add this general comment. The standard by which statements in a proxy soliciting material should be judged is not whether the most astute investor would be misled. Statements are not necessarily adequate just because a lawyer or a skilled financial analyst could recognize the falsity and not be misled by it. Soliciting material would presumably not make misleading representations if it were not intended that the deception would be successful. It has been the position of the Commission that if an uninformed investor could reasonably be deceived, the manner of the fraud is immaterial, whether it takes the form of a direct lie, or a half-truth, or a question, or an innuendo. This has been sustained by the courts. For example, the Court of Appeals for the Second Circuit has held that even the expression of an opinion in proxy soliciting material can be a violation of the rules where the opinion is groundless. 1/ The Supreme Court, albeit in another context, said:

"The fact that a false statement may be obviously false to those who are trained and experienced does not change its character, not take away its power to deceive others less experienced. There is no duty resting upon a citizen to suspect the honesty of those with whom he transacts business. Laws are made to protect the trusting as well as the suspicious." 2/

1/ S.E.C. v. Okin, 137 F. 2d, 862, 864 (C.A. 2. 1943).

2/ F.T.C. v. Standard Education Society, 302 U.S. 112, 116 (1937).

The fourth problem is what the Commission can do about it if, upon examination by the staff or upon complaint of the opposing side, proxy material appears to be incomplete or misleading. As I mentioned, the Commission has attempted to use persuasion to secure revision and correction by the parties, but in very bitter recent contests some material has been submitted for which the Commission simply could take no administrative responsibility at all. I refer to material scandalous and libelous in its nature. In such cases the Commission has advised the parties that responsibility for the material is theirs and that, in the event of its use, the Commission reserves the right to take such action as may be appropriate. Also, in recent cases where the parties have indicated a lack of good faith in dealing with the staff, the Commission has considered going into the Federal courts for an injunction. Within the past month a Federal district court issued a preliminary injunction against the use of false and misleading material and proxies obtained by such use. 1/

A fifth problem is the disclosure of interest by opposition groups. This problem has many ramifications which time does not permit me to discuss in detail. Suffice it to say that our rules need revision to reflect our existing administrative policy of requiring full disclosure of the persons and financial interests of those associated with any person or group, be it management or opposition.

A sixth and most difficult problem is material submitted dealing with character and reputation. The ability, background and experience of management, or of persons seeking to supplant management is of vital importance to investors in deciding how they will vote. Bitter personal animosities that have been developed in some proxy contests have brought forth unsupported attacks on personal integrity or libelous or slanderous material. Our rules need revision to require specifically that attacks on personal integrity be supported by proper documentary evidence and, as I mentioned above, we will not even process libelous or slanderous material.

Another problem that develops in the course of a contest is the problem of negotiations and deals between opposing sides. Usually an effort is made to keep them secret. Because of the personal interest of individual members of both management and opposition groups, our rules should specifically require full disclosure of these transactions.

1/ S.E.C. v May, D.C., S.D.N.Y., August 16, 1955.

Finally, in contested elections of directors a problem has developed in regard to the use of the annual report to shareholders. Up to now, the annual report has been excluded from the category of soliciting material for reasons totally unrelated to proxy contests, and the annual report itself does not subject a company to the civil liability provisions of Section 18 of the Exchange Act. Some companies in contests have taken advantage of the fact that the annual report to shareholders is not required to be filed with and processed by the Commission as soliciting material, and have used it as a vehicle for representations, argumentation and accusations which do not meet the standards of the rules. This needs correction.

I invite the cooperation of this Section of the American Bar Association to give us your best judgment, your clearly thought-out suggestions, criticisms, and comments on the revision of the proxy rules which we released yesterday for public comment. The views of you lawyers who are experienced in practice under the securities laws, and who, representing this Association, stand for the finest traditions of the bar, can be of enormous help to the Commission and the staff in formulating its revised proxy rules.

Let me again emphasize that the preparation of proxy soliciting material is properly a job for lawyers with, of course, the assistance of competent accounting and financial analytical advice. Lawyers, by their professional training and high standards of ethics, are best qualified to detect the misleading and the unfair statement or omission and to represent their clients in a proper presentation of material to the public under the standards prescribed by a Government agency seeking a fair administration of a Federal law. Whatever may be the merits of public relations and other soliciting techniques, they should be subjected to the close scrutiny of the bar, which has, in my opinion, the ultimate responsibility for their clients' compliance with the proxy solicitation rules and regulations of the Commission. I am sure that if this is done, many of the types of misrepresentation which have been attempted in past proxy contests can be eliminated.

Finally, what of legislation? The Commission is considering whether, in view of the problems that have developed, its administrative procedures under Section 14 of the Act are adequate. In testimony which I gave before the Senate Banking Committee in June, the Chairman of the Subcommittee posed the problem whether, rather than compelling the Commission to seek an injunction in a Federal District Court, the Congress should grant the Commission more specific administrative power to deal with violations of the proxy rules. The Commission is considering this. But I say to you members of the bar

that, in my own view, it would be sound for the Commission to have available administrative procedures under Section 14 of the Exchange Act to prohibit the use of misleading proxy soliciting material whether or not it has been filed or used, and to prohibit its further use after it has actually been used, similar to the procedures the Commission possesses with respect to registration statements, both before and after effectiveness, under Section 8 of the Securities Act and Section 19 of the Exchange Act. I say this after long and earnest thought. I am not one of those who believes in the extension for its own sake of Federal regulatory power. I have reached this conclusion because, on the basis of my experience as a member of the Commission over the last two years, I am convinced that some of the material filed in proxy contests, particularly the material submitted by others than lawyers, has not been submitted in good faith, has imposed an unreasonable burden on our reduced administrative staff and on the Commission.

I want to emphasize the unreasonable administrative burden on the Commission. Our staff has been reduced from 825 to less than 700 people in the last two years. Most of the reduction took place in Washington, because of the obvious need to strengthen our enforcement work in the field offices. Neither our Division of Corporation Finance nor the Commission, at a time of the greatest activity in the securities markets in the history of our country, can afford the time to clean up improper proxy material, often not prepared by lawyers or filed in good faith. For example, in one contest last year over 200 pieces of proxy soliciting material were filed but only 80 were used after processing by the staff and the Commission. People submitting such deficient material overlook the fact that the basic responsibility for truth and accuracy is on the person filing it, not on the Commission. Material of this character cannot be dealt with effectively by the Commission from the standpoint of the public interest and the protection of investors without more specific administrative authority in the Commission to prohibit and prevent its use.

Finally, whatever changes of rules are adopted by the Commission or amendments of the Exchange Act are enacted by the Congress must be made in the light of the statutory objectives of fair disclosure to security holders of basic facts about the companies in which the public's savings are invested.