February 14, 1935.

John J. Burns, Esq.,
General Counsel,
Securities and Exchange Commission,
Washington, D.C.

Dear Mr. Burns:

I have your kindly letter of February eleventh together with the proposed regulations.

I should not presume to give an opinion as to the legality of the regulations: you are infinitely more familiar with that problem than I. Such thoughts as I have are directed to the workability and desirability of the proposed regulation. The first question is as to timing. It might be strategic to hold up this regulation until after registration of companies listed on Stock Exchanges is pretty well forward. The idea would be not to frighten too many people off Exchanges while registrations are still in process. I think I am right in saying that the practicable line of control here is to have everyone on Exchanges wherever possible: it is far simpler to deal with an exchange problem than an unlisted problem.

Leaving the time factor aside, the following things occur to me:

1. I have no comment on Section (1) which I believe to be excellent.

2. Regarding paragraph (2) you will probably have to amplify, perhaps by separate regulation, the words "persons initiating the solicitation". My point is that the solicitation would usually be for a group. The individual who is acting may not be disclosing that fact.

3. No comment. This is all right.

4. This is the heart of the matter. The words should include not only actions or transactions "presented to the meeting", but also "or to be ratified" at the meeting; but you might consider whether in lieu of full disclosure of matters to be ratified, the management (if it initiates the solicitation) might not waive any estoppel by the stockholder in respect of any matter voted on by proxy not set out in the statute.

5. No comment.

I may as well frankly state some degree of cynicism as to the effectiveness of the result. Of course, stockholders ought to form a view as to the matters on which they vote; and they cannot do this without information. As a practical matter they probably will not even if they have the information, except in a spectacular fight. That nut has never been satisfactorily

cracked by anyone so far as I know, and as a practical matter you could initiate half the corporations of the country by simply having a rule that if the stockholder did not go himself the government could exercise his proxy right. Many stockholders, of course, are quite unable to understand a clear statement when they see it. Above all, the regulations have to be so drawn that the matter is not stated in too great detail. The more detailed, the less likely it is to "get over".

The one fear that I have is lest the legal talent of New York and Chicago will interpret (4) as requiring the sending of a vast deal of information which they will allege is an intolerable burden on business and which, if they comply with it, will be so involved that it will do the stockholder little good. The real solution, I imagine, would be to have disinterested proxies who would actually do what a proxy is supposed to do – acting as a fiduciary representative and guarding the interests of the stockholders as best they know how. But, of course, this lies outside the bounds of your Commission and in the long run I rather imagine that the regulations will do more to bring the problem under discussion than to solve the question.

With kind regards and congratulations on a brilliant job done to date, I am,

Faithfully yours,