

February 13, 1939.

Mr. William O. Douglas, Chrm.,
Securities and Exchange Commission,
1778 Pennsylvania Ave., N. W.,
Washington, D. C.

Dear Mr. Chairman:

Upon leaving your office today, it was understood that I should send you, for your examination and suggestions, a re-draft of Article V, as proposed by the Commission, which I thought might possibly help to bring the minds of the Commission and the Governing Committee more closely together. I am accordingly enclosing such a re-draft marked "Draft No. 1."

You will note that in this re-draft the Governing Committee is given the power to elect all officers (as distinguished from employees) who are to receive compensation. The Governing Committee and Advisory Council at the New York meeting felt very strongly that all paid officers of the Corporation (as distinguished from its employees) should be elected by and responsible to the Governing Committee rather than to the chief executive officer, irrespective of his title. In the Commission's draft, the chief executive officer (the President), subject to the approval of the Governing Committee, appointed all such officers as well as employees, except the Secretary, and could dismiss them at his pleasure and without the approval of the Governing Committee.

As I understand it from our discussions, one of the principal reasons for the desire of the Commission that there should be a paid chief executive officer is that there should be at all times available to the Commission for consultation a responsible officer of the association, one whose duty it would be to expedite the exchange of views between the Governing Committee and the Commission. With this view, I am in entire accord, and I think the Governing Committee is also, but the language used in the Commission's original draft to convey this idea that "the President * * shall be the official representative of the Corporation in all public matters * *" was interpreted to mean much more than that. To clarify this situation, therefore, and also the

relative positions of the Chairman and such chief executive officer, Section 2 has been added in the re-draft and when read with Sections 3 and 4, I think it accomplishes this objective.

You will note in Section 3 that I have substituted the words "chief executive and administrative officer" for the word "President." I am told that this makes for "inartistic draftsmanship" in Sections 4 and 5, but as I told you today, I am concerned at the moment with substance and not form, and I think this is vital and essential.

The changes in Section 4 are designed to indicate more clearly that the chief executive officer is not to be a czar, that the Governing Committee is to be the policy-making body, and that the executive is to be the chief executive and administrative officer but responsible to the Governing Committee.

The rest of the provisions are substantially identical with the Commission's draft.

You will appreciate, of course, in the light of our discussions, that what I have just said and enclosed Draft No. 1 is just a personal attempt on my part to bring the minds of the Commission and the Governing Committee more closely together on the Commission's draft, but that even as changed, this re-draft contains provisions sufficiently different from the views and wishes expressed by the Governing Committee and Advisory Council at the New York meeting as to require that it be presented to them again before anyone can say that it would be approved by them.

At our meeting yesterday you also very generously agreed to receive and consider a draft of Article V which in my judgment reflected the views and wishes of the Governing Committee and Advisory Council, on the assumption that they could write Article V as they thought best. That I am doing in the enclosed draft of Article V marked "Draft No. 2."

Now I realize that when you examine Draft No. 2, you will find that it raises again certain points which have been discussed and tentatively agreed to by the Commission and the Drafting Committee. I nevertheless want to point out that prior to the New York meeting, these points had not been formally presented to or discussed or approved by the full Governing Committee and Advisory Council. I think it is fair to say that at the New York meeting, Article V, and particularly its provisions with regard to a chief executive officer, was the subject of more discussion than any other provision in any of the documents considered. Twenty out of twenty-one members of the Governing Committee were present, and ten of the fourteen District Chairmen, who make up the Advisory Council. The Drafting Committee, of course, was also present. These men came from all sections of the country, were representative of all types and sizes of firms, and many of them, just prior to coming to the meeting, had held or attended meetings in their respective localities and had there discussed with other dealers the

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problem of the executive from the point of view of national and local organization, expense, selling the plan to the country, and the ultimate success of the whole idea. I think their judgment, therefore, was a representative cross-section of the views of the entire business with respect to this problem. As a matter of fact, each member present was asked to express his views individually at the meeting and did so. Without going again into the reasons given, the meeting was unanimously of the opinion that the By-Laws should not contain a provision requiring either a president or a chief executive officer, but that the Governing Committee should rather be authorized to elect a chief executive officer and such other executive and administrative officers as it deemed necessary, and thus enable it to meet the necessities of the situation with respect to officers in the light of all the circumstances existing at the time the decision had to be made. And may I say again that after listening to the full argument, I was and still am in entire accord with the general viewpoint there expressed. I think that the enclosed Draft No. 2, therefore, would unquestionably be acceptable to the Governing Committee and the business as a whole.

Just one other word about Draft No. 2. You will note that I have underscored the word "may" in Section 2. If the Commission, after a consideration of both drafts, finds it impossible to accede to the wishes of the Governing Committee and Advisory Council as reflected in this Draft No. 2, I think I ought to say, again in the interest of bringing about a meeting of the minds, that in my judgment Draft No. 2, with the word "may" in Section 2 changed to "shall" would be more readily acceptable to the Governing Committee and to the business as a whole than Draft No. 1.

After receiving your suggestions, therefore, on the foregoing and the enclosures, I will see that appropriate steps are taken at once to make any necessary canvass of the Drafting Committee and the Governing Committee.

Let me again repeat my embarrassment in this effort to bring about an understanding. I have too often suffered the fate of an individual under such circumstances not to realize that he usually incurs the disfavor of both sides. Yet the fundamental principle of the Maloney Act and the structure to be erected under it seem to me to promise so much good for the country and the business, and to entail so much progress toward the end which we are all seeking, that I think it would be most unfortunate if we should find either disagreement or failure to obtain the necessary membership at the end of the trail.

Very truly yours,

B. Howell Griswold, Jr.

Encs.