

For RELEASE in MORNING Newspapers of Tuesday, August 23, 1955

SECURITIES AND EXCHANGE COMMISSION
Washington 25, D. C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 5212

PROPOSED AMENDMENT OF PROXY RULES

Notice is hereby given that the Securities and Exchange Commission has under consideration certain proposed amendments to Regulation X-14 under the Securities Exchange Act of 1934. The principal purpose of the proposed amendments is to clarify the applicability of the regulation to proxy contests. The proposed action would be taken pursuant to Sections 14(a) and 23(a) of the Act.

The definitions contained in the regulation would be expanded and their applicability to proxy contests clarified. The rules would be clarified to permit specifically, in the case of a contest or threatened contest, certain solicitations, subject to specified conditions, prior to furnishing security holders with a formal proxy statement.

All participants in a proxy contest would be required to file with the Commission statements setting forth their identity, interests, and connections having a bearing upon the solicitation or the contest. Certain of this information would be required to be included in any pre-proxy statement material and all of it would be required to be included in the subsequent proxy statement.

At the present time, the management is required to furnish an opposing security holder or group of security holders with a list of security holders or mail the proxy material for the opposing person or group. The existing rules provide that such material need not be mailed until the management mails its own material. This provision would be changed to require the management to mail the material promptly after its receipt, provided it is received not more than four months prior to the date of the proposed meeting.

Rule X-14A-9, which prohibits the use of false or misleading statements in proxy material, would be expanded to specify certain types of statements which would be deemed misleading within the meaning of the rule.

Schedule 14A, which specifies the information required to be included in a proxy statement, would be amended to specify more adequately and clearly the information to be included in the case of a proxy contest.

The text of the proposed amendments is attached hereto.

All interested persons are invited to submit views and comments on the above-mentioned proposal in writing to the Securities and Exchange Commission, Washington 25, D. C., on or before September 30, 1955. Views or comments will be available for public inspection except in cases where the person submitting them requests that they shall not be made public.

By the Commission.

Orval L. DuBois
Secretary

The definition of the term “solicitation” in Rule X-14A-1 would be revised as follows:

Solicitation. The terms “solicit” and “solicitation” include –

- (1) any request for a proxy whether or not accompanied by or included in a form of proxy;
- (2) any request to execute or not to execute, or to revoke, a proxy;
- (3) the furnishing of a form of proxy to security holders under circumstances reasonably calculated to result in the procurement of a proxy or the revocation of a proxy;
or
- (4) any statement made or used by or on behalf of any participant in a solicitation (i) in support of or in opposition to any matter to be acted upon by security holders of an issuer, including an election of directors, whether addressed directly to security holders, or to a group of persons or the general public or (ii) which may facilitate, influence, aid, or obstruct the giving or revoking of proxies by security holders.

Without limiting the scope of this definition, the term “solicitation” shall include the dissemination, distribution or publication by or on behalf of a participant for the purposes specified in (1) through (4) above of letters, releases, advertisements, scripts, speeches, addresses and reprints of other material whether such material was originally prepared or issued by a participant in a solicitation or otherwise. The term “solicitation” shall not apply, however, to the furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder, the performance by the issuer of acts required by Rule X-14A-7, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

The following new definition would be added after the definition of “Last fiscal year” in Rule X-14A-1.

Participant or Participant in a Solicitation. The terms “participant” or “participant in a solicitation” include any person who solicits proxies; any nominee for whose election as a director proxies are solicited; the officers or directors of an issuer who designate or who are authorized to designate a nominee; any person who joins with another to solicit proxies by permitting his name to be used in such activities or otherwise; any committee or group organized to solicit proxies and any person who, acting alone or in conjunction with one or more other persons, directly or indirectly, takes the initiative in organizing, directing or financing any such committee or group; any person who finances or joins with another to finance the solicitation of proxies or the acquisition of securities in connection with a solicitation; any person who, on behalf of any participant solicits the purchase or sale of securities for the purpose of supporting or securing support for a participant; and any person who is a party to any joint venture or any other contract, arrangement or understanding with a participant, for the purpose of buying, selling, holding or voting securities, or of making a profit or preventing a loss in such securities, during or in connection with the activities of the person or persons on whose behalf proxies are

solicited. The term does not include (1) a bank, broker or dealer who does no more than lend money, execute orders or transmit proxy soliciting material in the ordinary course of business as a bank or broker or dealer, (2) any person retained or employed by a participant to, and who does no more than, request security holders to execute a proxy, or (3) any person employed by a participant in the capacity of attorney, accountant, public relations or financial adviser and whose activities are limited to the performance of his duties in the course of such employment.

The first paragraph of Rule X-14A-2 would be amended as follows. The new material is underlined.

The rules contained in this regulation apply to every solicitation of a proxy with respect to securities listed and registered on a national securities exchange, whether or not trading in such security has been suspended, except the following.

A new paragraph (d) would be added to Rule X-14A-3.

(d) Any soliciting material which includes, in whole or in part, any reprints or reproductions of any previously published material shall:

(1) State the name of the author and publication, the time, the date of prior publication, and identify any person who is described or quoted without being named, in the previously published material.

(2) State whether or not the consent of the author and publication has been obtained to the use of the material as proxy soliciting material.

(3) If the person using the material, or anyone on his behalf, prompted, requested or induced or paid, directly or indirectly, for the preparation or prior publication of the material previously published, state the circumstances.

(4) If any person using the material, or any one on his behalf, has made or proposes to make any payments or give any other consideration in connection with the publication or republication of such material, state the circumstances.

The following new paragraph (e) would be added to Rule X-14A-5.

(e) There shall be set forth on the outside front cover page of every proxy statement the following statement in capital letters printed in bold-face roman type at least as large as 10-point modern type and at least 2 points leaded.

THE SECURITIES AND EXCHANGE COMMISSION HAS NOT IN ANY WAY PASSED UPON THE MERITS OF, OR GIVEN APPROVAL TO, ANY MATTER DESCRIBED HEREIN, NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROXY STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Paragraph (b) of Rule X-14A-7 would be amended to read as follows:

(b) Copies of any proxy statement, form of proxy or other communication furnished by the security holder shall be mailed by the issuer to such of the holders of record specified in (a)(1) above as the security holder shall designate. The issuer shall also mail to each banker, broker or other person specified in (a)(2) above a sufficient number of copies of such proxy statement, form of proxy or other communication as will enable the banker, broker or other person to furnish a copy thereof to each beneficial owner solicited or to be solicited through him. Any such material furnished by the security holder within 120 days prior to an annual meeting date or proposed special meeting date shall be mailed by the issuer with reasonable promptness after receipt of a tender of the material to be mailed, of envelopes or other containers therefor and of postage or payment for postage. Neither the management nor the issuer shall be responsible for such proxy statement, form of proxy or other communication.

Paragraph (a) of Rule X-14A-9 would be revised and a new paragraph (b) would be added as follows:

Rule X-14A-9. False or Misleading Statements.

(a) No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting, or other communication, written or oral, containing any statement which at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which is false or misleading.

(b) Specifically but without limiting the general scope of paragraph (a), the following are deemed misleading within the meaning of this rule:

- (1) Predictions of specific future business and financial results.
- (2) Irrelevant statements which confuse or mislead.
- (3) Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, unless factual data supporting such assertions are filed with the Commission prior to such use.
- (4) Unsupported or unsupportable accusations, questions or innuendoes.
- (5) Material purporting to be factual but not based upon facts which can be established by data available to the Commission.

A new Rule X-14A-11 would be adopted as follows:

Rule X-14A-11. Identification of Proxy Material.

The name and identity of the issuer or other persons or group, for or on whose behalf it is sent or published, shall be clearly stated on the facing or front page of every proxy statement, notice of meeting, form of proxy and each communication or other proxy material sent or given to security holders or otherwise published and on the envelope or other wrapper thereof. Such identification shall be clearly distinguishable from the material of any other issuer, person or group engaged in a solicitation of security holders for the same meeting or subject matter.

A new Rule X-14A-12 would be adopted as follows:

Rule X-14A-12. Special Provisions Applicable to Proxy Contests.

(a) To what this rule applies.

This rule applies to all solicitations subject to this regulation with respect to any election of directors or any other matter which is to be acted upon by security holders (i) in opposition to the management of the issuer or to some other person or group of persons, and (ii) to all solicitations by or on behalf of the management of an issuer or any other person or group of persons in response to or in anticipation of an opposition solicitation, except that this rule shall not apply to proposals submitted pursuant to Rule X-14A-8 where there otherwise is no solicitation with respect to such proposals.

(b) Filing requirements.

(1) No solicitation subject to this rule shall be made or continued by any person unless there has been filed with the Commission, in conformity with the provisions of this rule, by or on behalf of each participant in such solicitation a statement in duplicate containing the information specified by Schedule 14B. If any solicitation on behalf of management or of any other person has been made prior to a solicitation in opposition thereto, a statement for each participant in behalf of management or such other person shall be filed with the Commission within five business days after notice of the opposition solicitation. If additional persons subsequently become participants, a statement containing the information specified in Schedule 14B for each such person shall be filed with the Commission within two business days after such person becomes a participant. Upon any material change in the facts reported in any statement filed by or in behalf of any participant, an appropriate amendment to such statement shall be filed with the Commission within two business days after the occurrence of the event representing the change. All statements filed pursuant to this paragraph shall be part of the official public files of the Commission.

(2) Three copies of any soliciting material proposed to be sent or furnished to security holders or published prior to the furnishing of a written proxy statement specified by Rule X-14A-3(a) shall be filed with the Commission in preliminary form, at least five business days prior to the date definitive copies of such material are first sent or given to security holders or published, or such shorter period as the Commission may authorize upon a showing of good cause therefor.

(3) Notwithstanding the provisions of Rule X-14A-3(b) and (c), three copies of the annual report referred to in Rule X-14A-3(b) shall be filed with the Commission, as proxy material subject to this regulation, whenever any solicitation subject to this rule in opposition to the management has occurred prior to the time such report is distributed to security holders or otherwise published. Such report shall be filed with the Commission in preliminary form at least ten days prior to the date definitive copies of the report are first sent or given to security holders or otherwise published. Definitive copies of the report shall be filed as required by Rule X-14A-6(c).

(c) Preliminary solicitations.

Notwithstanding the provisions of Rule X-14A-3(a), solicitations subject to this rule may be made prior to the furnishing to security holders of a written proxy statement containing the information specified in Schedule 14A provided that –

(1) the statements required by paragraph (b)(1) of this rule have been filed by or on behalf of each participant in such solicitation;

(2) the information specified in Schedule 14A is not at the time available;

(3) no form of proxy is furnished to security holders prior to the time the written proxy statement required by Rule X-14A-3(a) is furnished to security holders;

(4) At least the information specified in Items 2(a), 2(b)(1), 3(a) and 3(c) of each statement required to be filed by each participant in such solicitation pursuant to Schedule 14B, or an appropriate summary thereof, is furnished to security holders or published not later than the first solicitation permitted by this rule and is thereafter included in each communication sent or given to security holders or published in connection with the solicitation;

(5) the information specified in Schedule 14A is sent or given security holders at the earliest practicable date.

Item 3 of Schedule 14A would be revised as Item 3(a) and a new paragraph (b) would be added as follows:

Item 3. Persons Making the Solicitation.

(a) Solicitations not subject to Rule X-14A-12.

(1) If the solicitation is made on behalf of the management of the issuer, so state. Give the name of any director of the issuer who has informed the management in writing that he intends to oppose any action intended to be taken by the management and indicate the action which he intends to oppose.

(2) Unless the election of directors is the only matter to be acted upon, state the estimated total cost of the solicitation to the issuer. If any portion of the estimated costs are to be paid by any person other than the issuer, describe the arrangements and identify such persons.

(3) If the solicitation is to be made otherwise than by the use of the mails, state the method to be used. If the solicitation is to be made by specially engaged employees or other paid solicitors, state (i) the material features of any contract or arrangement for such solicitation, (ii) the cost or anticipated cost thereof, and (iii) the approximate number of specially engaged employees of the issuer or employees of any other person (name such other person) who will solicit proxies.

(4) If the solicitation is made otherwise than by or on behalf of the management of the issuer, so state and give the names of the persons by whom and on whose behalf it is made and furnish with respect to such solicitation the information called for by subparagraphs (2) and (3) of this item.

(b) Solicitations subject to Rule X-14A-12.

Each issuer, person or group making a solicitation subject to Rule X-14A-12 shall furnish the following information:

(1) Describe the methods employed and to be employed to solicit security holders.

(2) If regular employees of the issuer have been or are to be employed to solicit security holders, describe the class or classes of employees to be so employed, the manner and nature of their employment for, and time to be devoted to, such purpose and an estimate of the cost to the issuer of such employment.

(3) If specially engaged employees, representatives or other persons have been or are to be employed to solicit security holders, state (i) the material features of any contract or arrangement for such solicitation, (ii) the cost or anticipated cost thereof, and (iii) the number of such employees or employees of any other person (naming such other person) who will solicit security holders.

(4) The total amount estimated to be spent and the total expenditures to date for, in furtherance of, or in connection with the solicitation of security holders.

(5) The names of the person or persons who have paid the amounts so far spent or committed for and the amounts paid or committed for by each.

(6) The names of the person or persons who will pay any amounts to be expended in the future for, in furtherance of, or in connection with the solicitation of security holders.

(7) A specific statement whether it is intended that (a) the issuer will be requested to pay the costs of the solicitation and (b) whether the payment of such costs will be submitted to a vote of security holders.

Instruction: Costs and expenditures within the meaning of this Item 3 shall include fees for counsel, public relations consultants, advisers, solicitors, advertising, printing, transportation, litigation and other costs incidental to the solicitation.

Item 4 of Schedule 14A would be revised to add a new paragraph (b) as follows:

Item 4. Interest of Certain Persons in Matters to be Acted Upon.

(a) Where the Solicitation is not Subject to Rule X-14A-12.

Describe briefly any substantial interest, direct or indirect (by security holdings or otherwise) of each of the following persons in any matter to be acted upon, other than elections to office:

(1) If the solicitation is made on behalf of the management, each person who has been a director or officer of the issuer at any time since the beginning of the last fiscal year.

(2) If the solicitation is made otherwise than on behalf of the management, each person on whose behalf the solicitation is made.

(3) Each nominee for election as a director of the issuer.

(4) Each associate of the foregoing persons.

Instruction. This item does not apply to any interest arising from the ownership of securities of the issuer where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(b) Where the Solicitation is Subject to Rule X-14A-12.

(1) If the matters to be acted upon include an election of directors, describe any interest, direct or indirect, in the securities of the issuer, and its affiliates of each of the following persons:

(A) If the solicitation is made by the management, each person who has been a director of the issuer at any time since the beginning of the last fiscal year and who participated in or was consulted concerning the designation of the proposed nominees;

(B) Each participant in the solicitation as defined in Rule X-14A-1;

(C) Each nominee for election as a director of the issuer;

(D) Each associate of the foregoing persons.

(2) As to any matters to be acted upon, including an election of directors, describe any substantial interest, direct or indirect, (by security holdings or otherwise) of the persons specified in (i) in such matter.

(3) With respect to any such solicitation include the information, or a fair and adequate summary thereof, required to be included in the statements filed or required to be filed with the Commission pursuant to Rule X-14A-12 by or on behalf of each participant in the solicitation by the management, or by any other person or group not otherwise described under subsections (1) and (2) of this paragraph (b).

Item 7(c) of Schedule 14A would be revised as follows:

(c) Describe briefly all remuneration payments (other than payments reported under paragraph (a) or (b) of this item) proposed to be made in the future, directly or indirectly, by the registrant or any of its subsidiaries pursuant to any existing plan or arrangement to (i) each director or officer named in answer to paragraph (a)(1), naming each such person, and (ii) all directors and officers of the registrant as a group, without naming them.

Instruction. Information need not be included as to payments to be made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits. If it is impracticable to state the amount of remuneration payments proposed to be made, the aggregate amount set aside or accrued to date in respect of such payments should be stated, together with an explanation of the basis for future payments.

The following would be added to Regulation X-14 following Schedule 14A:

SCHEDULE 14B

Information to be Included in Statements
Filed by a Participant in a Proxy Solicitation Pursuant to Rule X-14A-12(b)(1)

1. Issuer. State name and address of issuer.

2/ Identity and Background.

*(a) State your name, residence and business addresses.

*(b) State the following:

(1) Your present principal occupation or employment and give name, principal business and address of any corporation or other organization in which such employment is carried on;

(2) Similar information as to all principal occupations or employments during the last ten years giving starting and ending dates of each.

(c) State whether or not you presently hold or during the past ten years have held any positions or offices with the issuer, its subsidiaries or affiliates, and if so, give the dates and nature of such positions and offices.

(d) State whether or not, during the past ten years you have held any positions or offices with any business enterprise other than the positions and offices stated in answer to (b) and (c) above, and if so, give the dates, names, principal businesses and addresses of such enterprises, and the nature of the positions and offices held.

(e) State whether or not you are or have been a participant in any other proxy contest involving this or other issuers within the past ten years. If so, identify the principals, subject matter and your relation to the parties and the outcome.

(f) State whether or not, during the past ten years, you have been convicted in a criminal proceeding (excluding minor traffic violations or similar misdemeanors) and if so, give dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

3. Interests in Securities of the Issuer.

*(a) State the amount of each class of securities of the issuer or of any of its parents or subsidiaries you own beneficially, directly or indirectly, the amounts owned of

record but not beneficially, and, with respect to securities acquired within the past two years, the dates of acquisition, and the amount acquired on each date.

- (b) If any of the securities specified in paragraph (a) are held in a margin account with a registered broker-dealer or hypothecated for payment of any debt to a bank, in the regular course of business of such broker-dealer or bank, indicate this fact and the amount of the indebtedness as to the latest practicable date. If any part of the aggregate purchase price or market value of any of the shares specified in paragraph (a) is represented by funds borrowed or otherwise obtained or supplied for the purpose of acquiring or holding such securities other than pursuant to a margin account or bank loan in the regular course of business of a bank or broker, state the amount so borrowed or obtained, describe the transaction, state the name of the parties and state whether any of the securities are hypothecated or otherwise subject to a lien or charge as security for the transaction, giving the details of any such arrangements.
- *(c) State the amount of securities of the issuer owned beneficially, directly or indirectly, by each of your associates (as defined in Rule A-14A-1) and the name and address of each such associate.
- (d) State whether or not you are a party to or participant in any contracts, arrangements or understandings with any person with respect to the securities described under paragraph (a) or any other securities of the issuer, including but not limited to joint ventures or any other contracts, arrangements and understandings regarding the purchase or sale of securities, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. If so, name the persons with whom such contracts, arrangements, or understandings exist and give the details thereof.

4. Further Matters.

- (a) Describe the time and circumstances under which you became associated with the solicitation.
- (b) State the nature and extent of your activities or proposed activities in organizing, conducting or financing the solicitation including the solicitation or proposed solicitation of the purchase or sale of securities of the issuer for the purpose of supporting or securing support for a participant.
- (c) Furnish for yourself and your associates, the information required by Item 7(f) of Schedule 14A.
- (d) State whether or not you have any arrangement or understanding with any person on your own behalf or on behalf of any of your associates:

- (i) with respect to any future employment by the issuer or its affiliates;
- (ii) with respect to any future transactions to which the issuer or any of its affiliates will or may be a party.

If you have any such arrangement or understanding with any person, state the name of such person and describe the arrangement or understanding.

5. Signature.

The statement shall be dated and signed in the following manner:

I certify that the statements made in this statement are true, complete, and correct, to the best of my knowledge and belief.

(Date)

(Signature)

* This information would be required to be included in all preliminary soliciting material by proposed Rule X-14A-12(c).