NEW YORK STOCK EXCHANGE
11 WALL STREET
NEW YORK 5, N. Y.

March 22, 1957

Honorable J. Sinclair Armstrong
Chairman
Securities & Exchange Commission
Washington, D. C.

Dear Chairman Armstrong:

I have given considerable thought to the problem involving proxy contests and foreign stock holdings which have been the subject of your recent testimony before the Senate Banking and Currency Committee. I have also been concerned with respect to the manner in which some proxies, in effect, are being sold. I am fearful that unless some constructive suggestions are made in the near future to take care of these obvious abuses that the swelling Congressional and public discussion will cause the public to lose a measure of confidence in the entire securities industry.

First of all, I believe that any requirement that the names of all beneficial owners be disclosed in a proxy contest is an unwarranted and unnecessary invasion of the right of individual privacy and that the present S.E.C. requirements for full disclosure by participants and other persons active in a contest form an adequate basis upon which shareowners can exercise an informed vote. In my opinion, the public interest requires that the privacy of nominee holdings be pierced only in the case of a contest and even then only as it pertains to participants in the dispute. Within this framework, the following is a suggestion as to a practicable solution to this problem.

In any case where the Commission believes that a participant in a proxy contest is not complying with the Commission's disclosure requirements, it could be empowered by legislation to ask a court to restrain temporarily the voting of any particular block of stock in which it has reason to believe a participant has an undisclosed interest until it is proven to the satisfaction of the court that no participant has an interest in that stock. Even in the case of stock held in the name of a Swiss bank such an order would not be an absolute bar to the vote of the stock since a beneficial owner could come forward and by affidavit or other evidence satisfy the court of his ownership without violating the Swiss law, which applies only to prohibit the nominee from disclosing the identity of the beneficial owner.

Such a procedure would be more effective in ascertaining real beneficial ownership than a blanket requirement that all beneficial ownership be disclosed, because the restraining order would not be lifted until the court was satisfied that no participant had an interest in the stock. This would prevent concealment by the use of such devices as multiple corporations which could be used under a blanket provision to screen the ultimate owner.

The second broad question involved in the proxy contest area has to do with the buying of votes. While no specific legislation has been proposed in this area, I believe that there may be a need for legislation to curb the practice of buying and selling proxies in election contests. Some states, including New York, have declared the sale of proxies to be illegal. I believe that similar Federal legislation should be encouraged. Since contracts or options can be made which give the buyer the right to vote the stock, legislation should perhaps be enacted which would deny the vote to any stock under option or contract which transaction has not been consummated by payment in full to the seller on or before the record date.

Of course, it goes without saying that we believe that any legislation in the proxy area should include provisions to extend these requirements to cover publicly owned unlisted companies as provided in the Fulbright Bill S.1168. It seems to us that the public needs to be protected against proxy abuses in unlisted companies fully as much, if not more, than in listed companies.

I know that the Commission is actively considering these problems and I am sending you my views in the hope that they might be helpful to you. Perhaps we will have a chance to talk about this when we meet with you in Washington an April 1st.

Sincerely yours,

(Signed: G. Keith Funston)