

NOV 5 1971

MEMORANDUM

140-2-14

*Robert H. Hocker*  
*Neal M. Coy*

TO: The Commission

FROM: The Division of Corporation Finance

SUBJECT: Suggested alternative courses of action for dealing with a specific development relating to shareholder proposals. (See the preliminary statement for a description of this development).

Recommendation:

The Commission should deal with the development by:

- 1) promulgating a rule limiting to three the number of proposals that any person or group may submit to any one company; and
- 2) stating in a Release that there is an implicit requirement in Rule 14a-8 that proposals be submitted in good faith (i.e., with the intention that they will be presented at the corporate meeting).

I

Preliminary Statement

Pursuant to the Commission's direction on October 27, 1971, the Division is submitting this memorandum in order to set forth various alternative courses of action available to the Commission for dealing with the situation in which a person purchases one share of stock in a relatively large number of companies, submits numerous proposals for inclusion in the proxy materials of these companies, but does not appear at the respective shareholder meetings to present the proposals so that they may be voted upon.

For the Commission's information in regard to the above-described situation, the Division has attached the following: 1) samples of shareholder proposals submitted by a person (viz., Mr. Rodney B. Shields) who engaged in the type of activity mentioned above during the past proxy season; 2) a summary of certain information obtained by the staff from the companies

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involved in that situation; and 3) a recent letter on the matter from the shareholder-proponent involved.

## II

### Alternative Courses of Action

The development whereby an individual submits multiple proposals to a relatively large number of companies by buying one share of stock in each is a recent one, and the Division has no evidence at this time as to a trend in this regard. The attachments indicate that one such person (viz., Mr. Rodney B. Shields) submitted 189 proposals to 29 companies during the past proxy season but personally appeared at the meeting of only one such company to present his proposals. The following courses of action are available to the Commission to deal with this situation:

1) It may promulgate a rule, as previously suggested by the Division, limiting to three the number of proposals that any person or group may submit to any one company;

2) It may issue a statement in a Release that the person who submits proposals to a company for shareholder action must be acting in good faith when he represents, in accordance with Rule 14a-8(a), that he intends to present the proposals at the meeting of shareholders;

3) It may make a determination that the subject development is an abuse of the existing rules and direct the staff to issue no-action letters to those companies which object to including this person's proposals in their proxy materials; or

4) It may promulgate a rule establishing any or all of the following as minimum requirements for submitting shareholder proposals:

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(a) a minimum holding period for one's securities (e.g., one year);

(b) a minimum dollar investment interest in the company (e.g., voting securities having a market value of \$500); or

(c) a minimum percentage investment interest in the company (e.g., securities representing one-half of one percent of the total voting securities).

### III

#### Discussion

The Division believes that by adopting the courses of action suggested in Items 1 and 2 above, the Commission will be able to deal effectively with the situation presented by this one person, without running the risk inherent in alternatives 4(a), (b) and (c) of unduly restricting the rights of all shareholders who seek to submit proposals. That is, by promulgating a rule limiting to three the maximum number of proposals which a person could submit to one company, the Commission would prevent this person, as well as all others who are so inclined, from submitting an unreasonable number of proposals to an issuer. And, by stating in a Release the "good faith" standard which the Division considers to be implicit in the shareholder proposal rule, the Commission would put all persons, including Mr. Shields, on notice that a failure to exercise such good faith will provide a basis for omitting all of their proposals.

If the Commission should desire to take action in addition to that recommended by the Division, it may also adopt alternative 3 suggested above, with the result that the staff would be authorized to issue no-action

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letters to each of the companies who receive proposals from Mr. Shields. The basis for the issuance of the letters would be that he has been engaging in an activity that represents a general abuse of the shareholder proposal rule. In addition, the Division could state, where applicable, that Mr. Shields has failed to demonstrate good faith in submitting proposals in the past to the particular company, and therefore that company may omit his proposals.

The Division strongly recommends that the Commission not adopt at this time any of the alternatives set forth in Item 4 above. We do not believe that any of them are necessary in order to deal effectively with this single development. But beyond that, it is the Division's opinion that the various alternatives in Item 4 each have negative features which militate against their adoption in rule form at this time. That is, they would have such a limiting effect on the right of all shareholders in general to submit proposals that none of them should be adopted unless they are absolutely necessary to combat a trend of abuse. Since no such trend has evidenced itself, the Division does not believe any of these alternatives should be adopted at this time.

As an example of the limiting effect these alternatives could have, the Division notes that both of the minimum investment requirements (i.e., minimum dollar or minimum percentage of voting stock) would necessarily deprive certain small security holders of the right to submit proposals. Theoretically, the small security holder is just as capable of formulating a worthwhile proposal as a large security holder, and, perhaps for that reason, the Commission has never deemed it appropriate to establish a minimum investment requirement. Moreover, it is questionable whether all

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small security holders should be prevented from submitting proposals solely because of the activities of one such shareholder.

As for the minimum holding period requirement, it is the Division's opinion that such a requirement would not effectively prevent a person such as Mr. Shields from continuing to abuse the right to submit proposals. Certainly, such a requirement would make it somewhat more difficult for him to comply with Rule 14a-8, but, at best, it would simply inconvenience him by making him hold his single shares somewhat longer than he may have originally intended. Thus, not only would such a requirement not accomplish the purpose for which it was intended, but also it could have a harmful effect in that a person who had recently acquired a substantial investment interest in a company would be prevented, solely because of his short holding period, from submitting proposals to a company.

#### IV

#### Recommendation

In summary, it is the Division's opinion that the infringements on the right of shareholders to submit proposals that would result from the adoption of the alternatives discussed in Item 4 outweigh the benefit that would result from them. Accordingly, the Division recommends that the situation presented by Mr. Shields be dealt with by adopting a rule limiting the number of proposals a shareholder may submit to one company, and by issuing a statement in a Release concerning the "good faith" requirement implicit in Rule 14a-8.

Peter Romeo

Statistics Relating to Proposals by Rodney Shields

The following information was obtained by canvassing the various companies to which Mr. Shields submitted proposals during the past proxy season.

Mr. Shields submitted a total of 189 proposals to 29 companies. The number per company varied from one to ten. A list of these companies and the number of proposals which each received from Mr. Shields is attached hereto.

The disposition of the various proposals was as follows:

- 148 - included in proxy material and voted upon by shareholders
- 11 - included in proxy material but not voted upon because they were not presented for action at the meeting
- 30 - omitted from proxy material pursuant to Rule 14a-8

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The range of the vote received on the various proposals was as indicated below. In this regard, it should be noted that only one of his proposals was supported by a management, and that particular proposal received over 98 percent of the vote cast.

<u>Pctge.</u>	<u>No. of Proposals</u>
0 - 3	93
3 - 6	48
6 - 10	5
10 --	<u>2</u>

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With respect to the presentation of Mr. Shields' proposals at the various corporate meetings, the following information was obtained:

<u>Total Proposals</u>	<u>Presented By</u>	<u>No. of Meetings</u>
5	Shields (in person)	1
21	Proxy for Shields	4
107	Management (voluntarily)	19
15	Others not affiliated with either Shields or management	3
<u>148</u>		<u>27</u>

At two meetings, no one presented the proposals (eight were involved) of Mr. Shields which had been included in the proxy materials of the respective companies. Thus, the proposals were not voted upon in those instances. At the meeting of another company, a shareholder not affiliated with either Mr. Shields or management presented only four of the seven proposals of Shields for action, with the result that the other three were not voted upon.

List of Companies Which Received Proposals  
From Rodney Shields

<u>Company</u>	<u>Proposals Received</u>
American Smelting and Refining Company	8
Anaconda Company	8
Arizona Public Service Company	6
Atlas Chemical Industries, Inc.	7
Carolina Power & Light Company	7
Chromalloy American Corporation	5
Cudahy Company	7
Delmarva Power & Light Company	8
Del E. Webb Corporation	6
Dr. Pepper Company	1
E. I. duPont deNemours & Company	9
Duke Power Company	7
Ethyl Corporation	6
Hercules Inc.	3
Holly Sugar Corporation	10
Inspiration Consolidated Copper Company	7
Kennecott Copper Corporation	9
Mountain States Telephone & Telegraph Company	8
Newmont Mining Corporation	3
Pacific Telephone & Telegraph Company	9
Phelps Dodge Corporation	9
Potomac Electric Power Company	5
Ramada Inns, Inc.	9
San Diego Gas & Electric Company	5
Seaboard Coast Line Industries, Inc.	7
Sperry Rand Corporation	6
Tucson Gas & Electric Company	1
Virginia Electric and Power Company	5
Western Bancorporation	8

Rodney B. Shields  
18711-3 Walkers Choice Road  
Gaithersburg, Maryland 20760  
25 October 1971

CHAIRMAN'S OFFICE  
RECEIVED

The Honorable William J. Casey, Chairman  
Securities and Exchange Commission  
Washington, D. C. 20549

OCT 26 1971

Dear Mr. Chairman:

SEC. & EXCH. COMM.

I have read newspaper accounts of the speech which you delivered to a section of the American Bar Association in New York on 21 October. I believe that I am the only person who buys one share of stock in issuers and submits multiple proposals while being unable to attend shareholder meetings. I am in the full-time employ of the federal government as an attorney.

You should understand the dimension of my one share investments. They now aggregate in excess of \$5,000. My one share of International Business Machines Corporation alone cost \$300. In addition, in the area of real estate investment trusts where I will be becoming active, I hold \$62,000 in principal amount of convertible debentures.

I urge the Commission not to take steps to silence advocates such as me. By submitting standardized proposals that respond flexibly to emerging developments such as wage-price controls, I am able to bring the message of corporate democracy, full disclosure, and corporate responsibility to indeed a large number of issuers. Standardization of proposals using legal draftsmanship sharply reduces the burden on your Division of Corporation Finance when staff review is necessary.

You have been an advocate of full disclosure. I am able to use information disclosed by submitting proposals that focus on potential conflicts of interest through management self-dealing. Focused before the shareholders of McDonald's Corporation next year will be a consulting contract for one honorary director who will receive \$100,000 per year for life. The attention of stockholders in Levitz Furniture Corporation will be drawn to the renting of officer-owned aircraft to the corporation.

Among my minor accomplishments to date has been the discovery that most issuers ignore Item 22 of your Schedule 14A calling for disclosure of the vote necessary to adopt proposals.

We have a new area of collective activity known as real estate investment trusts. I am moving heavily into this area in the absence of public regulation of the trusts. The REITs must avoid the abuses inflicted upon mutual funds by their closely-controlled management companies and share distributors.



The Honorable William J. Casey

25 October 1971

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The likelihood exists that an issuer will face inquiry from me only once in any three year period. Additionally, I feel that the total number of proponents who will become active will always be limited.

Great uncertainty surrounds the question as to whether or not the flesh and blood of a proponent or his nonhostile proxy must attend the stockholder meeting at which his proposals are to be voted upon. Delaware law permits the taking of shareholder action without the actual convening of meetings (8 Del. C. 228). I know of only one issuer which has bylaws that expressly set forth detailed procedures by which proposals are to be presented for shareholder action.

I submit that once management solicits my proxy and I return it to them executed, they undertake a duty to go through any motions deemed technically necessary to present my proposals for action. The real forum here is the proxy statement, not some small room in Corporation Trust's offices in Wilmington, Delaware.

I presume that the Commission will hold public hearings, invite comment, and submit a draft proposal prior to implementing any amendments to Rule 14a-8. And, naturally, you should not amend the rule until new guidelines come forth from the Supreme Court in Medical Committee for Human Rights.

Please advise me when public hearings will be held and send me a copy of the speech which you delivered in New York on 21 October.

Yours very truly,

A handwritten signature in cursive script that reads "Rodney B. Shields". The signature is written in dark ink and is positioned above the typed name.

Rodney B. Shields

MEMO ROUTING SLIP		SECURITIES AND EXCHANGE COMMISSION				
TO: _____ <small>(Office)</small>		Room No.	Initials	Date		
1. _____ <small>(Name)</small>						
2. _____						
3. _____						
4. _____						
5. _____						
<b>FOR:</b>	Approval _____	File _____	Signature _____	Necessary Action _____	Note and return _____	Note and pass on _____
Recommendation _____	Per conversation _____	See me _____	Call me _____	Your comment _____	Your information _____	Your concurrence _____
Prepare reply for signature of: _____				Answer or acknowledge before: _____		
<b>SUBJECT:</b> Memorandum to the Commission dated 11/5/71						
<p>Remarks: Attached hereto are copies of sample shareholder proposals submitted by Mr. Rodney Shields during the past proxy season. These copies were inadvertently omitted from the attachments to this office's memorandum to the Commission dated November 5, 1971.</p>						
<b>FROM:</b> Peter J. Romeo, Corp. Fin.				<b>DATE</b> 11/8/71		

SEC-8 8-59 ext. 51240

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PROPOSAL NO. 1

Proposal

RESOLVED, That the Stockholders of Del E. Webb Corporation hereby request that the Board of Directors promptly take such steps as are required of the Board prior to submitting, for any further stockholder action necessary, an amendment to the Articles of Incorporation providing expressly that the name of this corporation shall be WEBB CORPORATION.

SUPPORTING STATEMENT

The company's present name is unwieldy. This proposal seeks to adopt formally the name used even by management in company publications.

While it is appropriate to honor the company's founder, it must not be forgotten that Webb Corporation is now publicly owned, and its purposes do not include the memorialization of any one individual. Webb exists to serve an international market, its success has depended and will increasingly depend on the efforts of many persons other than the company's founder.

By voting FOR this proposal, shareholders will bring the image of this company solidly into the decade of the seventies.