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FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C. 20429

OFFICE OF THE CHAIRMAN

March 24, 1977

Honorable William Proxmire
Chairman
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your March 11, 1977 request for a report on S. 305, 95th Congress, the "Foreign Corrupt Practices Act of 1977."

Title I of the bill makes it a crime for any U.S. national or any business entity organized or headquartered in the United States and controlled by U.S. nationals to bribe foreign government officials or politicians in order to obtain business or influence foreign governmental legislation or regulations. Title I also would require any issuer of securities registered under section 12 of the Securities Exchange Act of 1934 to keep records accurately reflecting all its transactions and to establish adequate internal controls to that end and would make it unlawful to falsify such records or to make materially false or misleading statements with respect thereon.

We fully support the objectives of Title I and favor, in principle, criminalizing the bribery of foreign officials. As to whether Title I is the best method of achieving this objective and whether its provisions are technically adequate for this purpose, we defer to the Administration's law enforcement experts and to the Securities and Exchange Commission.

Title II of S. 305 would change section 13 of the Securities Exchange Act (15 U.S.C. 78m) in two general respects. First, it would amend section 13(d)(1) to require beneficial owners of five percent or more of a class of equity securities registered under section 12 of that Act to make additional disclosures as to their residences and nationality, background and nationality of their associates, and the nature of their beneficial ownership. Secondly, the bill would add a new section 13(g)

to the 1934 Act requiring persons having an interest in two percent or more of any class of securities registered under section 12 to report such interest and such other information, in such form and at no less than quarterly intervals as the SEC may prescribe. The two percent threshold would be reduced to one percent on September 1, 1978 and to one-half of one percent on September 1, 1979, subject to extension of such deadlines by the SEC, which would also have authority to grant exemptions from the new disclosure requirements contained in section 13(g). The bill would also require the SEC to report to Congress on the feasibility of lowering the reporting cut-off to one-tenth of one percent. As to securities issued by insured banks, the SEC's powers, functions and duties under section 13 are vested in the Federal bank regulatory agencies pursuant to section 12(i) of the 1934 Act.

While we have no serious problem with the amendments to section 13(d)(1) which would require disclosure of foreign beneficial ownership, we do question whether such a requirement would be fully consistent with the United States' long-standing policy of encouraging the free flow of investment capital across national boundaries. Be that as it may, we do have serious difficulties with the proposed new section 13(g) which the banking agencies would be administering as to bank-issued securities.

It seems to us that requiring reports by any person owning as little as two percent of an issuer's stock -- particularly in the case of smaller issuers -- would not only impose an unnecessary reporting burden on such holders, but would also generate a volume of paper that would be grossly incommensurate with the potential benefits to be derived therefrom. Indeed, the sheer magnitude of such a paper flow might defeat the very purpose of this requirement -- viz., to shed light on who actually controls major U.S. corporations. In any event, we doubt that two percent would represent effective control in any but a very few instances, and one-half or one-tenth of one percent would probably never represent effective control in and of itself. While we realize that these lower figures are designed to catch those holders who hide their aggregate ownership behind various nominee and "street" registrations and by other similar devices, we believe

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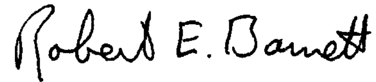
that better methods of dealing with such subterfuges could be devised which would be equally as effective and much less burdensome than requiring reporting of such extremely low percentages of equity ownership. For these reasons, we would strongly recommend that the proposed new section 13(g) be deleted from Title II.

Very truly yours,



Robert E. Barnett
Chairman