

official over a period not longer than 30 months after the change in circumstances which caused the person's service to become prohibited (but if the loss of management officials is the result of more than one change in circumstances, the 30-month period is measured from the first change in circumstances). Other conditions in addition to or in lieu of the foregoing may be imposed by the Federal supervisory agency. In evaluating written statements submitted pursuant to this subparagraph, the Federal supervisory agency will presume that a director who also is a paid, full-time employee of the depository organization, absent unusual circumstances, will not resign from the position of director with that depository organization. This presumption may, however, be rebutted by a showing that such unusual circumstances exist.

(c) *Diversified savings and loan holding company.* Notwithstanding § 711.3, a person who serves as a management official of a depository organization and of a nondepository organization (or any subsidiary thereof) is not prohibited from continuing the interlocking service when the nondepository organization becomes a diversified savings and loan holding company as that term is defined in Section 408(a)(1)(F) of the National Housing Act (12 U.S.C. 1730a(a)(1)(F)), and may continue to serve until November 10, 1988, despite the occurrence of any subsequent changes in circumstances.

5. Paragraphs (a) and (b) of § 711.6 are proposed to be revised to read as follows:

§ 711.6 Changes in circumstances.

(a) *Non-grandfathered interlocks.* If a person's service as a management official is not grandfathered under § 711.5 of this Part, the person's service must be terminated if a change in circumstances causes such service to become prohibited. Such a change may include, but is not limited to, an increase in asset size of an organization due to natural growth, a change in SMSA or community boundaries or the designation of a new SMSA, an acquisition, merger or consolidation, the establishment of an office, or a disaffiliation.

(b) *Grace period.* If a person's non-grandfathered service as a management official becomes prohibited under paragraph (a) of this section, the person may continue to serve as a management official of all organizations involved in the prohibited interlocking relationship until 15 months after the date on which the change in circumstances that caused

the interlock to become prohibited occurred, unless the appropriate Federal supervisory agency or agencies take affirmative action in an individual case to establish a shorter period.

Dated: October 12, 1982.

Rosemary Brady,
Secretary, National Credit Union
Administration Board.

[FR Doc. 82-29290 Filed 10-25-82; 8:45 am]

BILLING CODE 7535-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Monthly and Confirmation Statements

AGENCY: Commodity Futures Trading Commission.

ACTION: Petition for rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has received a petition for rulemaking filed pursuant to § 13.2 of its regulations (17 CFR 13.2) requesting that the Commission amend § 1.33(a) of its regulations (17 CFR 1.33(a)) to provide that futures commission merchants ("FCMs") no longer be required to furnish monthly statements to those commodity customers and option customers whose accounts have no open positions at the end of the statement period and no activity since the prior statement period.¹ The Commission has decided to request comment on the rule amendment suggested by the petitioner as modified by this Federal Register release.

DATE: Comments must be submitted on or before November 28, 1982.

ADDRESS: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Bruce A. Beatus, Esq., Legal Section, Division of Trading and Markets, at the address above. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION: Section 1.33(a) of the Commission's regulations relates to the monthly statements that FCMs must furnish their customers.

¹The Commission notes that it is also proposing to amend § 1.33 in connection with its proposal to expand the three-year commodity option pilot program to permit and govern the trading of options on physicals on domestic exchanges. While most of these proposed changes are technical in nature, in addition to the amendments affecting options, the Commission is proposing to amend § 1.33 to specify that FCMs must provide to their futures customers information relating to financial charges and credits to the customer's account during the preceding month. 47 FR 28401, 28411 (June 30, 1982).

Subparagraph (a)(1) requires each FCM to furnish to each commodity futures customer a monthly statement showing the open contract, net unrealized profit or loss and funds deposited for margin in the customer's account. Subparagraph (a)(2) requires each FCM to furnish to each option customer a monthly statement showing all commodity options purchased, sold, exercised, or expired identified by underlying futures contract, strike price, transaction date and expiration date; all open commodity option positions carried as of the end of the monthly reporting period; all open commodity option positions marked to the market and the amount each such position is in-the-money, if any;² any customer funds carried in the account; and a detailed accounting of all financial charges and credits to the account. Exemptions from certain of the requirements contained in subparagraph (a)(1) are set forth in paragraph (c).

The petitioner is requesting that the Commission amend § 1.33(a) of its regulations to provide that FCMs no longer be required to furnish monthly account statements to those commodity futures or options customers whose accounts have no open positions at the end of the statement period and no trading activity since the prior statement period. The petitioner states that the cost of compliance with § 1.33(a) in regard to accounts which have experienced no trading activity during the previous reporting period is substantial and that, in its view, amending the rule as requested would result in streamlining the reporting requirements for FCMs while not diminishing customer protection.

Excerpts from the petition are set forth below:

Reasons for Petition

Of the * * * accounts carried by [Petitioner], 36% during the period January through July, 1982 had credit balances but did not engage in any commodity trading activity. However, pursuant to the Commission's Regulation § 1.33(a) as stated above, [Petitioner] was required to provide these customers with statements. The cost of providing [these statements] was substantial.

Pursuant to Rule 15c3-2 [17 CFR 240.15c3-2 (1982)] of the Securities Exchange Act of 1934, a registered broker/dealer is required to provide a customer with a statement of the amount due the customer whenever the statement is sent but not less frequently than once every three months. Thus, if there was

²This in-the-money amount is the amount by which the market price of the underlying futures contract exceeds the strike price in the case of a call option, or the amount by which the market price of the underlying futures contract is less than the strike price in the case of a put option. See 46 FR 54500, 54509 (November 3, 1981).

no activity in an account that had a credit balance, then the broker/dealer would only be required to provide a quarterly statement of the balance. If activity occurred in the account then a statement of account would be sent out at the end of the month. This provision is similar to Rule 409 of the New York Stock Exchange which provides that:

* * * member organizations shall send to their customers statements of account showing security and money positions and entries at least quarterly to all accounts having an entry, money or security position during the preceding quarter.

[Petitioner] submits that Regulation § 1.33(a) in its current form creates a substantial burden on FCMs by causing the generation of a monthly statement where there is no activity in an account and does not serve any regulatory purpose. Further, * * * changing the regulations to provide that the monthly statement does not have to be sent out if there is no activity in an account during the month, would be an important step in an effort to streamline the reporting requirements for FCMs and would not injure or otherwise harm public customers.

The Commission agrees that its recordkeeping requirements for FCMs should be designed to provide meaningful information on a timely basis to the Commission and to customers and should not impose unwarranted burdens. Therefore, the Commission believes that, as there may be merit to the petition, interested persons should have an opportunity to comment upon the amendment to § 1.33(a) of the Commission's regulations suggested by the petitioner. The Commission, however, also believes that the petitioner's proposal may be too broad, as, for example, credit charges or other entries may be made on a monthly basis, independent of the occurrence of trading activity and as the customer may otherwise need to be routinely advised as to the status of its account. As a consequence, the Commission is publishing the petitioner's proposal with a modification designed to address this and other similar concerns which are discussed below.

One of the principal purposes of § 1.33(a) is to enable a commodity futures or commodity options customer to appraise its market positions more effectively.³ As a consequence, the Commission is not convinced that completely eliminating the obligation to provide statements of the type required by § 1.33(a) with respect to accounts wherein no trading activity has occurred since the last statement period would not adversely affect a customer's ability to keep routinely informed as to the current status of its open account. The Commission, is, therefore, proposing an

addition to the petitioner's amendment, the purpose of which is to make certain that in the event a customer account has neither open positions at the end of the statement period nor any credits or debits to the account balance since the prior statement period, such customer would still receive, at least once every three months, a statement containing the information prescribed in § 1.33(a).

The Commission is proposing this modification because it believes that it is important that customers be periodically informed as to the status of their accounts. The receipt of an account statement as specified in § 1.33(a) on at least a quarterly basis enables customers to verify the accuracy of the FCM's accounting and to inform themselves of any balance which the FCM might be carrying in their accounts. In addition, this Modification will conform the Commission's monthly statement requirements to those currently existing in the securities industry.⁴ Of course, the proposed amendment to § 1.33(a) would not interfere with a customer's ability to detect unauthorized trading in its account because the Commission's proposal does not alter the existing requirement contained in paragraph (b) of § 1.33 that FCMs promptly confirm all commodity futures or option transactions affected for customers.

Moreover, the Commission wishes to point out that its modification of petitioner's rule proposal is intended to clarify that the rule encompasses not merely trading activity, but also any other debit or credit entries in the customer's account occurring during the prior monthly statement period. For example, a customer may agree that its commodity account may be debited to transfer funds for securities trading. In such a case debits would occur within a statement period even though no commodity futures or option trading activity had taken place. The Commission would expect such debit items to be reported to the customer on a monthly, not quarterly, basis, as is presently required by § 1.33(a).

³See, e.g., Rule 15c3-2 of the Securities and Exchange Commission's regulations which provides that, in connection with customers' free credit balances, statements of account be sent not less frequently than once every three months. 17 CFR 240.15c3-2 (1982).

This proposal also reflects a continuation of previous efforts made by the Commission to minimize, to the extent practicable, inconsistent regulatory requirements on Commission registrants which are also subject to regulation by the Securities and Exchange Commission, such as FCM/broker-dealers.

Recode Regulatory Flexibility Act

The Commission has previously determined that registered futures commission merchants are not "small entities" for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). 47 FR 18618 (April 30, 1982). The requirements of the Regulatory Flexibility Act do not, therefore, apply to these entities. Moreover, this proposed rule amendment, if adopted, would reduce existing requirements.

Accordingly, and for the reasons set forth above, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b), that the rule proposed herein, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Section 1.33(a) of the Commission's regulations has previously been issued a control number, 3038-0024, pursuant to the Paperwork Reduction Act of 1980, Pub. L. 896-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*). As noted above, rather than increasing a paperwork burden, this amendment would reduce an existing recordkeeping obligation. The Office of Management and Budget has been notified of that fact, and a copy of this Federal Register notice has been provided to that agency.

List of Subjects in 17 CFR Part 1

Records, Futures commission merchants.

PART 1—[AMENDED]

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 2(a)(1), 4b, 4c, 4g and 8a, thereof, 7 U.S.C. 2, 6b, 6c, 6g and 12a, the Commission hereby proposes to amend Chapter 1, Part 1 of Title 17 of the Code of Federal Regulations by revising § 1.33 introductory text to read as follows:

§ 1.33 Monthly and confirmation statements.

(a) Monthly Statements. Each futures commission merchant must promptly furnish in writing to each commodity customer and to each option customer, as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period, but in any event not less frequently than once every three

³See 39 FR 24235 (July 1, 1974).

months, a statement which clearly shows:

* * * * *

Issued in Washington, D.C., on October 13, 1982 by the Commission.

Jane K. Stuckey,
Secretary of the Commission.

[FR Doc. 82-29384 Filed 10-25-82; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34-19135; 35-22666; IC-12734; S7-946]

Proposed Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is requesting public comment on a wide variety of questions relating to the security holder proposal process. Comment is requested with respect to the appropriate nature of security holders' access to an issuer's proxy statement. To this end comments also are being solicited with respect to three alternative proposals for the regulation of security holder proposals.

DATE: Comments must be received on or before February 24, 1983.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-946 and all comments received will be available for public inspection and copying in the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: William E. Morley, (202) 272-2573 or John J. Gorman, (202) 272-2573, Office of the Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

Executive Summary

The Commission today is requesting public comment on a wide variety of issues relating to the federal regulation of the security holder proposal process. The issues posed and the three proposals set forth in the release are a part of the Commission's Proxy Review Program designed, in part, to reduce the

burdens of compliance with the Commission's proxy rules consistent with investor protection.

Initially, the Commission is asking for the public's views with respect to the fundamental question of whether security holder access to the issuer's proxy statement should be provided under the Securities Exchange Act of 1934 or left to regulation under state law. Further, assuming that the Commission concludes that federal regulation is appropriate, the Commission is inviting comment on three specific proposals for such regulation, which are outlined in Section II of this release and set forth in the appendix hereto.

Proposal I would retain the framework of the current rule with certain revisions proposed to its specific terms, various interpretations thereunder and some of the staff procedures followed in administering the rule. Such revisions are intended to remove those procedural provisions that are not required to further the purpose of the rule as well as to clarify and to simplify the application of the rule.

Proposal II would permit the issuer, with the approval of its security holders, to vary the procedures specified in the Commission's security holder proposal rule. Under Proposal II, issuers would be permitted to formulate eligibility criteria and bases for exclusion of proposal more or less restrictive than those set forth in the Commission's rule.

Proposal III reflects a view that security holders should have relatively unfettered access to the issuer's proxy statement. Proposal III would require inclusion of a proposal so long as it is proper under state law and does not involve an election of directors, subject to a numerical limit on the aggregate number of proposals required to be included in any proxy statement. Such limitation is based on a recognition of the costs involved and therefore is proposed to vary depending on the number of the issuer's security holders.

Finally, the Commission recognizes that some commentators may feel that none of the three proposals would provide a satisfactory mechanism for dealing with security holder proposals. Accordingly, the Commission is asking those persons for any suggestions they may have for a different approach to the issue. Also set forth in the appendix to this release is statistical information concerning the operation of current Rule 14a-8, which information may be of some interest to those persons responding to the Commission's request for comments on the security holder proposal process.

Over the past several years, the Commission has been engaged in a number of major rulemaking initiatives designed to simplify, in a manner consistent with the protection of investors, the complex disclosure systems that have evolved during the more than forty years since the enactment of the federal securities laws. Application of similar themes in other areas produced, among other things, the Integrated Disclosure System, which streamlines and harmonizes two of the three major disclosure systems—the system for the registration of securities under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a et seq.] and the continuous reporting system under the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a et seq.]. In addition, the Commission recently examined the registration requirements and exemptive scheme under the Securities Act and adopted new Regulation D¹, intended to achieve uniformity between state and federal exemptions and to facilitate capital formation.²

The Commission now is involved in an extensive program in connection with the third major disclosure system—the rules, forms and schedules relating to the solicitation of proxies. This Proxy Review Program is designed to reduce disclosure burdens, to streamline requirements and to promote proxy statement readability. In furtherance of this program, the Commission has determined to undertake a re-examination of the present regulatory framework governing the security holder proposal process.³

I. Background

Recognizing that, with the increased dispersion of security holdings in public companies, the proxy solicitation process rather than the shareholder's

¹ 17 CFR 230.501 et seq.

² Release No. 33-6389 (March 8, 1982) [47 FR 11251].

³ In addition to a re-examination of the security holder proposal process, the program will entail: (1) The revision of rules relating to the disclosure of conflict of interest transactions and relationships between directors and issuers. See Release No. 33-8416 (July 9, 1982); (2) the simplification of the provisions contained in Item 402 of Regulation S-K relating to disclosure of management remuneration; (3) the simplification of Form S-14—the merger proxy statement; (4) review of the rules concerning proxy contests; and (5) evaluation of the recommendations of the Advisory Committee on Shareholder Communications concerning the process by which issuers communicate with the beneficial owners of their securities. See U.S. Securities and Exchange Commission, "Improving Communications Between Issuers and Beneficial Owners of Nominee Held Securities," Report of The Advisory Committee on Shareholder Communications, June 1982.

meeting itself had become the forum for shareholder suffrage, the Commission, since 1942,⁴ has provided security holders of public companies subject to its proxy regulations a right to have their proposals presented to the issuer's security holders at large and to have proxies with respect to such proposals solicited at little or no expense to the security holder. This right has been provided by Rule 14a-8 and its predecessors which have required issuers to include in their proxy statements appropriately submitted proposals that were proper for security holder action. In providing this right the Commission intended:

To place stockholders in a position to bring before their fellow stockholders matters of concern to them as stockholders in such corporation; that is, such matters relating to the affairs of the company concerned as are proper subjects for stockholders' action under the laws of the state under which it was organized.⁵

Since its adoption in 1942, the security holder proposal rule has undergone a number of revisions, generally directed at better defining and refining the bases for exclusion of such proposals from the proxy statement and assuring the goal of security holder communication. Each of these revisions assumed the desirability of continuing the basic regulatory framework reflected in Rule 14a-8.

Fundamental to the Commission's present re-examination of the security holder process, however, is a reevaluation of the need for and desirability of providing a right of security holder access to the issuer's proxy statement under the Exchange Act, and if such right of access is to be continued, what the nature of such right should be. Accordingly, the Commission invites comments on this threshold issue, along with comments on the specific proposals described in the balance of the release. Persons

supporting the proposition that there should be no right of access provided under the Exchange Act also should address what disclosure would be required pursuant to Rule 14a-9 under the Exchange Act [17 CFR 240.14a-9] of an issuer that has been advised that certain proposals will be presented at the meeting and that is soliciting discretionary authority which it intends to use to vote against such proposals.⁶

II. Alternatives to Current Rule 14a-8

Assuming that the Commission concludes that a right of access to an issuer's proxy statement should continue to be assured under the Exchange Act, the Commission is inviting comment on three specific proposals for such regulation. In this regard, the Commission is soliciting comment on all of the concepts and rule and interpretive revisions discussed in this release and those reflected in the appendix. Comments also are invited from those persons who believe that security holders should have a right of access to an issuer's proxy statement under the federal securities laws but that there is a preferable regulatory approach to those reflected in current Rule 14a-8 or Proposals I, II or III.

Proposal I

The first alternative approach to the security holder proposal process is to continue regulation based on the concepts underlying current Rule 14a-8. If the Commission adopts that approach, certain changes to the current rule, interpretations thereunder and staff procedures relating thereto will be considered.⁷ Such changes are specifically discussed in Section II of the appendix to this release, and a number of such changes are reflected in Proposal I set forth in that section.

The major revisions being proposed to existing Rule 14a-8 include the following. A proponent to be eligible to submit a proposal would have to have been a record or a beneficial owner of at least 1% or \$1,000 in market value of the issuer's securities entitled to be voted at the meeting on the proposal for a period of at least one year. Proponents who engage in a general, written solicitation of proxies with respect to a meeting of security holders would be ineligible to use the provisions of Rule 14a-8 for the inclusion of a proposal in the issuer's proxy material for the same meeting.

⁴ See Rule 14a-4(c)(1) under the Exchange Act [17 CFR 240.14a-4(c)(1)].

⁵ In addition, as discussed in Part II, if the Commission adopts Proposal II, it will retain a security holder proposal rule to regulate those issuers that do not elect to adopt their own plan. Thus, Proposals I and II might be adopted.

Proponents would only be permitted to submit one proposal per issuer. The deadline for submission of proposals would be revised from 90 to 120 days. Issuers would be required to submit materials to the Commission 60 days before filing preliminary proxy material rather than 50 days.

It is proposed to revise the definition of personal grievance found in Rule 14a-8(c)(4) in line with existing interpretations of that provision. Paragraph (c)(5) of Rule 14a-8 is proposed to be amended to provide that if the issuer demonstrates that the matter involved in the proposal does not meet certain economic criteria or is not otherwise significantly related to the issuer's business, the proposal may be omitted. The Commission also is proposing that paragraph (c)(12) be revised. The revision would change the provision from permitting the omission of a proposal if it is "substantially the same as a proposal previously submitted to security holders" to permitting omission of a proposal if it "deals with substantially the same subject matter as a proposal previously submitted to security holders."

In addition, the Commission is proposing changes in two existing interpretive positions. The first would reverse the existing interpretation that a proposal that either requests the issuer to prepare and to disseminate a special report to shareholders or recommends that a special committee be formed to examine a particular area of the issuer's business may not be excluded under Rule 14a-8(c)(7) as relating to the issuer's ordinary business. Second, the Commission is requesting comment on the adoption of an interpretive position under Rule 14a-8(c)(10) which would permit the exclusion of a proposal as "moot" if the issuer has "substantially" implemented the action requested by the proposal.

The Commission also is considering the discontinuance of the issuance of no-action letters under Rule 14a-8, or certain provisions thereof.

These changes, both in the rule and the interpretations thereunder, reflect in large part, criticisms of the current rule that have increased with the pressure placed upon the existing mechanism by the large number of proposals submitted each year and the increasing complexity of the issues involved in those proposals, as well as the susceptibility of certain provisions of the rule and the staff's interpretations thereunder to abuse by a few proponents and issuers. In this regard, it has been suggested that the staff's interpretations of some of the existing provisions are "formalistic" and

⁶ Prior to adoption of Rule X-14a-7 (predecessor of Rule 14a-8) the Commission administratively required disclosure of security holder proposals that the issuer had reason to believe would be proposed at the meeting. This position was based upon the inadequacy of disclosure in connection with the solicitation of discretionary authority that the issuer intended to use to vote on those security holder proposals which state law would permit to be raised at the shareholders' meeting. See Hearings on SEC Proxy Rules before the House Committee of Interstate and Foreign Commerce, 78th Cong. 1st Sess. pp. 169-170 (1943). Management would often state that it was unaware of any other business to come before the meeting and that it would vote in its judgment on such matters if any came up for a vote. In some cases, management had been advised that a shareholder intended to present a proposal; thus, the solicitation of discretionary authority had been false and misleading. See Release No. 34-2376 (January 12, 1940) [5 FR 174].

⁷ Release No. 34-3638 (January 3, 1945) [11 FR 10988].

more restrictive than is necessary to achieve the purposes of the rule and have contributed to the abuse of its provisions.⁸

Proposal II

The Commission also is considering a more fundamental change in the security holder proposal process. Under this approach, the Commission would continue to have a rule that specifies the procedures governing the submission and inclusion of security holder proposals, but would adopt a supplemental rule that would permit an issuer and its security holders to adopt a plan providing their own alternative procedures to govern the process. The proposed approach would allow an issuer's board of directors and security holders, rather than the Commission, to make judgments as to what proposals should be included in the issuer's proxy statement at the company's expense. The plan would be required to be approved, and periodically reapproved, by the issuer's security holders. Such reapproval requirement recognizes that the composition of the security holder body changes over time and that new members of the corporate body should be assured some part in defining the parameters of their access to the issuer's proxy statement. The alternative plan or any amendments thereto could be proposed by either the issuer's board of directors or the security holders,⁹ and subject to certain minimum requirements discussed in the following paragraph, the provisions of the plan could be as liberal or restrictive as the security holders are willing to approve.

In the event that the Commission were to adopt such an approach, it expects that the rule providing for the plan would contain some minimum limitations on the eligibility criteria and the bases for exclusion of proposals that could be incorporated in the plan. For example, the rule might provide that no such plan could include eligibility

criteria that would preclude person(s) holding more than a specified percentage or value of the securities eligible to vote on the matter from submitting a proposal. With respect to the bases for excluding a proposal, the rule might set forth the general bases for exclusion of proposals which an issuer and its security holders could include in the plan. The Commission invites comment on whether it is necessary to provide such limitations on the provisions of the plan, since security holders would have the ability to reject the plan in the event they judge it to provide too limited access to the issuer's proxy statement. Those favoring such limitations are requested to provide specific suggestions as to the appropriate requirements of the rule.¹⁰

The Commission staff generally would not be involved in determining the includability of specific proposals under the issuer's plan. Disagreements between an issuer and a proponent as to the includability of a proposal pursuant to the plan would be resolved as provided in the plan, and in the last resort, by the courts. The Commission anticipates at least one exception to the foregoing; if the plan permitted under such a rule excludes proposals involving a personal grievance, the Commission staff would continue to be involved in reviewing such proposals to the same degree as it would under its own procedures.¹¹ The Commission is interested, however, in the commentators' views as to the need to have some form of no-action procedure with respect to other aspects of such plan. The Commission also solicits comments with respect to the practicality and feasibility of relying on the courts as the arbiter of disagreements between proponents and issuers arising under the plan.

This regulatory approach, while continuing to recognize the appropriateness of assuring that security holders have a right of access to the issuer's proxy statement, reflects the view that an issuer's security holders at large have a role to play in defining the

scope of that access and the costs that they are willing to have the issuer bear to provide individual security holders the opportunity to communicate with the security holders at large.¹² The Commission also recognizes that commentators' views on this approach may vary significantly depending on the provisions of Rule 14a-8 adopted by the Commission. The Commission therefore invites specific comment on the utility of permitting adoption of such a plan if the Commission were to adopt Proposal I or Proposal III. The Commission also is requesting specific comment on the anticipated cost of such system.

This concept of permitting each issuer and its security holders to determine the extent of access to the issuer's proxy statement and to adopt procedures reflecting such determination is discussed further in Section III of the appendix to this release and incorporated in Proposal II set forth therein.

Proposal III

Another alternative approach to the current security holder proposal process has been suggested recently.¹³ Under this approach, all proposals that are proper under state law and that do not involve the election of directors would be included in an issuer's proxy statement, subject to a numerical maximum. The rule would be self-executing and the Commission staff would no longer "adjudicate" disputes concerning the includability of contested proposals. This approach would require a far greater variety of proposals to be included in the issuer's proxy statement than is required under the current rule. However, the number of proposals an issuer would have to include in any particular proxy statement would be specifically limited by a numerical formula, the maximum being a function of the size of the issuer's shareholder body. While this approach would remove the Commission staff from its role as referee in routine interpretive matters, the Commission would still intervene in the process in those rare instances where necessary to redress the most egregious of conduct. This approach is more fully discussed in Section IV of the appendix to this release and incorporated in Proposal III set forth therein.

⁸ It has been suggested that under current construction of the rule, a few proponents have been able to use the rule as a publicity mechanism to further personal interests that are unrelated to the interests of security holders as security holders and that certain sophisticated proponents, who submit proposals annually to a variety of issuers, are able to require the inclusion of a proposal which has generated little security holder interest by simply changing its form or minimally varying its coverage. The rule was not designed to burden the proxy solicitation process by requiring the inclusion of such proposals.

⁹ It should be noted that under Proposal II as set forth in Section III of the appendix the submission of an alternative plan would not be subject to the eligibility criteria applicable to the submission of other proposals and, as a result, such a plan could be proposed by a single shareholder owning one share of the issuer's voting securities.

¹⁰ For example, under Proposal II as drafted, such plans could limit the number of proposals to one per proponent, could require proponents to pay a processing fee to the issuer, or could include exclusion penalties for noncompliance with procedural provisions, so long as such plan provisions would not result in the exclusion of a proposal of a holder of more than 1% of the issuer's securities entitled to be voted at the meeting on the proposal or \$5,000 in market value of such securities.

¹¹ Thus, if the Commission should determine, in response to public comment, to discontinue the issuance of no-action letters with respect to requests relating to personal grievances, see p. 55, *infra*, of the appendix, then the proviso to Rule 14a-8A(c)(3) set forth in Section III of the appendix would not be adopted.

¹² From time to time, shareholders have complained directly to the Commission concerning what they have considered the inordinate cost the current rule has placed on the issuers in which they have invested.

¹³ See Longstreth, The S.E.C. and Shareholder Proposals: Simplification in Regulation, Remarks to National Association of Manufacturers, Denver, Colorado (December 11, 1981).

In addition to seeking comments on this approach, the Commission solicits specific comment with respect to the costs of this approach alone or in tandem with Proposal II as compared to the costs of adopting either Proposal I or a combination of Proposals I and II.¹⁴

Those favoring this approach start from four basic premises. The first is that the security holder proposal process serves the public interest and should be preserved as an important element of shareholder democracy. A number of commentators believe that the security holder proposal process serves to validate the larger corporate system itself which is based on the notion of shareholder ownership and control. This belief is based upon the notion that the security holder proposal process introduces a level of accountability on management in making them respond to the questions of their security holders concerning certain major corporate decisions, and therefore the process, at its best, can be an opportunity for a more effective dialogue between management and the security holders and a stimulant for a reappraisal of existing management positions.

The second premise of the proponents of this approach is that the burden of the security holder proposal process on issuers is minimal in comparison to the benefits. While the available information on the actual economic costs of dealing with security holder proposals is limited, it appears to these proponents that those costs are largely within the control of management. On the other hand, these proponents believe that the benefits inherent in having management give careful consideration to legitimate questions raised by the security holders are substantial. While in most cases these benefits are difficult to quantify, these proponents cite numerous instances where management has made changes or taken action in response to proposals which received limited security holder support or where a proposal has been withdrawn after consultation between the proponent and the issuer's management.

Third, these proponents believe that both issuers and proponents will be better served by a simpler and more predictable regulatory process. The process of rendering informal advice concerning disputes about the eligibility of particular proposals for inclusion in the issuer's proxy materials involves difficult factual and legal judgments. As a result, there necessarily have been complaints about certain of the staff interpretations of the exclusionary provisions under existing Rule 14a-8.

These complaints focus on the imprecise concepts involved in certain of those exclusionary provisions. Rather than attempting to redefine those exclusionary provisions, these proponents suggest that it is preferable simply to remove the exclusionary provisions altogether since there may be no way to revise the rules with sufficient precision to reach the problems without opening up new avenues of abuse and creating new uncertainties. Those favoring such an approach believe the drawbacks of requiring inclusion of a clearly objectionable proposal are greatly outweighed by the proposed simplification of the process.

Finally, this approach would eliminate the staff's participation in the process and thus relieve one demand on the Commission's limited resources. While the amount of staff time allocated to processing security holder proposals is not larger in absolute terms, it has been growing every year.¹⁵

III. Impact on Competition

In addition to the issues raised by the aforementioned revisions to Rule 14a-8, the Commission requests written comment on whether any of the proposals, if adopted, would have an adverse effect on competition or would impose a burden on competition which is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry should include, to the extent feasible, detailed empirical and evidentiary material in support of any conclusions, opinions or positions. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a)(2) of the Exchange Act.

IV. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposals herein will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

List of Subjects in 17 CFR Part 240

Reporting requirements, Securities.

Authority

The Commission is proposing the amendments to Rule 14a-8 and interpretations thereunder that are discussed herein pursuant to Sections

14(a) and 23(a) of the Exchange Act, Sections 12(e) and 20(a) of the Public Utility Holding Company Act of 1953, and Sections 20(a) and 38(a) of the Investment Company Act of 1940.

(Sec. 14(a) and 23(a), 48 Stat. 895 and 901; sec. 12(e) and 20(a), 49 Stat. 823 and 833; sec. 20(a) and 38(a), 54 Stat. 822 and 841; 15 U.S.C. 78n(a), 78w(a), 79(e), 79t(a), 80a-37(a))

By the Commission.

George A. Fitzsimmons,

Secretary.

October 14, 1982.

APPENDIX

I. Statistics Concerning Operation of Current Rule 14a-8

The following presents certain statistical information concerning the operation of current Rule 14a-8 which the Commission believes may be of use to commentators in responding to the Commission's requests for comment concerning the security holder proposal process.

A. Issuers Affected and Costs of Compliance

Rule 14a-8 is applicable to any issuer subject to the proxy rules under Section 14 of the Exchange Act. However, the available information indicates that only a limited number of the approximately 9,000 companies whose securities are registered with the Commission under the Exchange Act actually receive proposals in any year. Statistics compiled by the American Society of Corporate Secretaries show that in the year ended June 30, 1981, 991 proposals were submitted to 376 companies.¹⁶ Preliminary figures for the year ended June 30, 1982 indicate that approximately 850 proposals were submitted to 300 companies. Typically, the issuers receiving proposals are the larger and more widely followed corporations in the country. These companies also tend to receive the bulk of the proposals submitted. In the year ended June 30, 1982, approximately 43 companies received 5 or more proposals, accounting for approximately 350 of the 850 proposals submitted during that period.

To determine the appropriate regulatory approach to the security holder proposal process, the Commission seeks information concerning the cost to these issuers of

¹⁶ The American Society of Corporate Secretaries has approximately 2800 members representing about 1800 companies. The information included in their statistics is obtained from their members, from the Commission's no-action letters under Rule 14a-8 and from information provided by the Interfaith Center on Corporate Responsibility and the Investor Responsibility Research Center.

¹⁴ Proposals II and III might both be adopted.

¹⁵ The Commission staff spent approximately 1 staff year (1206 hours) in processing materials submitted to it pursuant to Rule 14a-8 during the 1982 season.

complying with the current rule. In 1976, in response to a similar request for cost information, the Commission received only one response. American Telephone & Telegraph Company ("AT&T") indicated that the cost of including 5 proposals in its proxy statement was \$22,450 per proposal while the cost for the 11 proposals excluded from its proxy material was \$3,740 per proposal.¹⁷ The Commission is again requesting issuers to provide information relating to the cost of compliance with the current Rule 14a-8. The Commission also is interested in commentators' assessment of the relationship of such costs to the benefit afforded the security holders at large by the rule.

B. Commission Staff Treatment of Contested Proposals

In the year ended June 30, 1981, 173 issuers submitted letters to the staff of the Division of Corporation Finance contesting 387 proposals, and in the year ended June 30, 1982, 182 issuers contested 487 proposals. The following chart summarizes the staff disposition of these proposals.

	1981	1982
Contested proposals	387	487
Included	145	156
Excluded	211	278
No position expressed	0	5
Withdrawn	31	48
Letters issued by the Division of Corporation Finance	285	313
Disposition of contested proposals		
Included:		
A. Division could not give a no-action letter	90	121
B. Division allowed proponent to revise proposal to cure defect	55	35
Total	145	156
Excluded:		
Division took a no-action position for the following reasons (see detailed breakdown below)		
Substantive	133	201
Procedural	78	77
Total	211	278

¹⁷ These figures were computed as follows:

	Proposals included in proxy	Proposals excluded from proxy
Postage	\$13,800	\$0
Printing	\$60,000	\$0
Employee remuneration	\$38,450	\$38,450
Outside counsel	\$0	\$2,700
Total	\$112,250	\$41,150
Number of proposals	5	11
Estimated average cost per proposal	\$22,450	\$3,740

The costs of postage and printing depend on the number of shareholders. AT&T had approximately 2,903,000 common shareholders as of the record date for the annual meeting in question. Postage costs were based on third class bulk mailing rates.

	1981	1982
No Position Expressed:		
The Division declined to express any view with respect to management's reason for exclusion	0	5
Not Acted Upon:		
Withdrawn	31	48
Total contested proposals	387	487
Reasons for no action positions:		
Substantive:		
A. Not a proper subject for action—14a-8(c)(1)	0	0
B. Proposal would require issuer to violate any law—14a-8(c)(2)	11	4
C. Proposal is contrary to any of the Commission's proxy rules, including Rule 14a-9—14a-8(c)(3)	12	15
D. Personal claim or grievance—14a-8(c)(4)	9	42
E. Not significantly related to the issuer's business—14a-8(c)(5)	4	5
F. Matters beyond the issuer's control—14a-8(c)(6)	1	2
G. Matters relating to the issuer's ordinary business operations—14a-8(c)(7)	51	73
H. elections to office—14a-8(c)(8)	11	9
I. Counter proposals—14a-8(c)(9)	4	5
J. Mootness—14a-8(c)(10)	12	34
K. Duplicate proposals from two shareholders, one of which will be included—14a-8(c)(11)	6	2
L. Same proposal failed to receive minimum vote on last submission—14a-8(c)(12)	9	8
M. Proposals for specific amounts of dividends—14a-8(c)(13)	3	2
Procedural:		
A. Proponent not voting shareholder—14a-8(a)(1)	6	11
B. Lack of proper notice—14a-8(a)(2)	22	19
C. Not timely—14a-8(a)(3)	48	33
D. Number and length of proposals—14a-8(a)(4)	0	14
Total excluded proposals	211	278

¹The significant increase in the number of proposals excludable under Rule 14a-8(c)(4) is attributable to twenty proposals submitted by one proponent to Uniroyal, Inc. and to an identical proposal submitted to ten companies by one proponent, The Gold Bondholders Protective Council, Inc. ²Proposals excludable under Rule 14a-8(a)(4) are attributable to two letters, one involving 8 proposals and the other involving 6. In each instance, the letter involved a person who had been a frequent proponent under the security holder proposal rule who appeared to be employing a new tactic to submit additional proposals by having individuals or organizations over which he had control submit proposals on his behalf.

II. Revisions of Current Rule 14a-8—Proposal I

Among the various alternatives to regulating security holder proposals being considered by the Commission is a revised version of current Rule 14a-8 as discussed in this Section.

A. Procedural Requirements for Proponents

Paragraphs (a) and (b) of Rule 14a-8 are concerned primarily with the eligibility of a proponent to rely on Rule 14a-8 and the procedural requirements that such a proponent must follow in submitting his proposal. Paragraph (a)(1) provides that the proponent must be a record or beneficial owner of a security entitled to be voted on his proposal and that he must continue to own the security through the date of the meeting. Paragraph (a)(2) provides that the proponent must state that he intends to appear personally at the meeting to present his proposal for action, and

paragraph (a)(3) requires that a proposal be received by the issuer "not less than 90 days in advance of a date corresponding to the date set forth on the management's proxy statement [for] * * * the last annual meeting of security holders." Paragraph (a)(4) limits each proponent to a maximum of two proposals of not more than 300 words each. Paragraph (b) provides that if management opposes a proposal, the proponent is entitled to have a supporting statement of up to 200 words included in management's proxy materials.

1. Rule 14a-8(a)(1)—Eligibility.

Rule Changes Under Consideration

The Commission has received a number of suggestions from the public concerning the imposition of additional eligibility requirements for proponents. The most consistently urged criteria are that a proponent be required to meet "minimum investment" and/or "minimum holding period" thresholds. Suggestions for a "minimum investment" vary from a low of 25 shares to a high of 5% of the issuer's securities. An alternative suggestion is that the minimum investment be defined as a specific dollar amount of all the issuer's securities, such as \$1,000. With respect to the "minimum holding period" requirement, commentators generally have specified one year as an appropriate period. The Commission is considering a revision to Rule 14a-8(a)(1) that would provide that to be eligible to submit a proposal, a proponent must own at least 1% or \$1,000 in market value of a security entitled to be voted at the meeting on the proposal and have held such securities for no less than one year prior to the date on which he submits the proposal.

The Commission is considering an additional modification to paragraph (a)(1) that would provide that persons who already have solicited, or will solicit an issuer's security holders through the use of a widespread distribution of written proxy soliciting materials with respect to the same meeting of the issuer's security holders, would be ineligible to include a proposal in the issuer's proxy material pursuant to Rule 14a-8. When a security holder undertakes the cost of communicating with other security holders, it may be unnecessary to impose on an issuer and its shareholders the additional costs associated with inclusion of the security holder proposal in the issuer's proxy material.

If Rule 14a-8 is retained, the reference to business days will be changed to a

comparable number of calendar days. This technical change is intended to make the deadline consistent with others in the rule that are set forth in terms of calendar days and still provide a proponent with sufficient time to furnish the requisite documentary support.

2. Rule 14a-8(a)(2)—Notice.

Rule Changes Under Consideration

Upon a re-examination of this provision, the Commission believes that requiring the proponent to notify the issuer of his intention to appear personally at the meeting serves little purpose. Accordingly, as part of its continuing effort to streamline the rules it administers and to eliminate unnecessary requirements, the Commission is considering a revision to paragraph (a)(2) that would delete this requirement.

Consistent with the proposed elimination of the notice requirement, the Commission also is considering a revision to the rule which would permit the proponent to arrange, from the outset, to have any person who is permitted under applicable state law, present the proposal for action at the meeting.¹⁸ It is the Commission's view that such change should provide greater assurance that the proposal will be presented at the meeting and that the proposal will be presented by a well-informed person.¹⁹ It must be emphasized, however, that it would continue to be the proponent's responsibility, not his representative's, to insure that the proposal is presented. In the event that the proponent or his representative fails, without good cause, to present the proposal for action at the meeting, the rule would continue to permit the issuer to exclude proposals submitted by the proponent from its proxy soliciting materials relating to any meeting held in the following two years.

In addition, the Commission is considering a revision of the current rule to require a proponent to notify the issuer at the time he submits the proposal of his name, address, the number of the issuer's securities that he holds of record or beneficially and the dates upon which he acquired such securities. This revision would provide the issuer with a means for determining

whether the proponent satisfies the new minimum holding period requirement of Rule 14a-8(a)(1) and would facilitate implementation of certain amendments to paragraph (b) of the rule that would change the procedure for advising security holders of the proponent's identity.²⁰

Interpretive Change Under Consideration

The Commission is not currently considering any other changes to paragraph (a)(2), but notes that it is also considering changing an existing staff interpretation under Rule 14a-8(a)(2). In a letter to *Atlas Corporation*, dated July 25, 1978, the staff indicated that attendance at another shareholders' meeting was good cause for failure to present a proposal. The Commission believes this position may be inconsistent with the provisions of the rule that are designed to assure that the proposal will be presented for action at the meeting. It would appear that a proponent who is unable to attend a particular meeting because of conflicting meeting dates should make arrangements to have an appropriate representative present the proposal at the meeting or forfeit the right to submit proposals to the issuer for the next two years.

3. Rule 14a-8(a)(3)—Timeliness.

Rule Changes Under Consideration

The Commission is considering the extension of the deadline for submission of proposals to be included in annual meeting proxy material from 90 to 120 days. The 30 day advance in the deadline for annual meeting proxy material is being proposed in conjunction with a 10 day advance in the deadline under paragraph (d) of Rule 14a-8 for the filing by the issuer of the reasons why it believes specific proposals may properly be excluded from its proxy materials.²¹

The Commission believes such changes could benefit both issuers and proponents and make the staff's processing of no-action requests under the rule more efficient. One of the most frequently voiced complaints from issuers is that with the increased number and complexity of security holder proposals and the longer lead time necessary for printing proxy materials, issuers frequently have as little as 10 days between the last date

for submission of proposals and the filing date specified in Rule 14a-8(d) for submitting objections to proposals.²² This limited period of time is proving inadequate for issuers to consider the security holder submissions and to prepare objections where appropriate. Moreover, the increased number of proposals and reductions in the Commission staff available to process contested security holder proposals have made it difficult for the staff to provide timely responses to issuers' letters submitted pursuant to Rule 14a-8(d). The Commission believes that advancing the filing requirements under paragraphs (a)(3) and (d) largely would eliminate the significant timing problems encountered under the current rule.

4. Rule 14a-8(a)(4)—Number and Length of Proposals.

Rule Changes Under Consideration

In 1981,²³ the Commission proposed to amend paragraph (a)(4) to permit a proponent to use an aggregate of 500 words for the proposal and a supporting statement, which would be allocated at the discretion of the proponent.²⁴ The proposal was intended to give proponents more flexibility in the presentation of their proposals and would not have increased the aggregate number of words available to proponents with respect to their proposals. The Commission is resoliciting comment on this change to Rule 14a-8(a)(4).

A number of persons commenting on the 1981 Release also raised issues with respect to aspects of Rule 14a-8 not the subject of the specific proposals addressed therein. The suggestion most frequently made was to reduce the number of proposals permitted security holders from two to one. These commentators suggested that such a change was one way to limit the increasing cost of proposals being received by some issuers. The Commission is requesting comment as to the appropriateness of such a change.

As noted above in the discussion of paragraph (a)(1), the time periods that would apply to all the provisions of a revised Rule 14a-8 would be stated in terms of calendar days. Accordingly, the reference to "10 business days" in paragraph (a)(4) would be changed to "14 calendar days".

¹⁸ The rule currently provides that a proponent may only arrange to have another person present the proposal if, after he furnishes the notice of his intent to appear personally at the meeting, he determines that he will be unable to appear. The existing rule also provides that the person selected by the proponent to represent him at the meeting must be a security holder.

¹⁹ Letter to Will Maslow, American Jewish Congress dated, December 21, 1978.

²⁰ For a discussion of such changes see p. 33, *infra*.

²¹ Currently, paragraph (d) requires that the issuer file such reasons, as well as any related materials, at least 50 days prior to the filing of its preliminary proxy materials unless the Commission permits them to be filed within a shorter period.

²² See p. 58, *infra*, for further discussion of the similar change to paragraph (d).

²³ Release No. 34-17517 (February 5, 1981) [46 FR 12011].

²⁴ See p. 33, *infra*, for a discussion of the related change to paragraph (b)'s provision relating to the supporting statement. Currently, the supporting statement is limited to 200 words.

Other Issues

The Commission also is requesting comment on requiring that the proponent, like any other person filing soliciting material with the Commission, pay a fee to the Commission for processing the proposal. The fee initially would be given to the issuer at the time the proposal is submitted to it and paid by the issuer to the Commission.²⁶ If a proposal does not come before the Commission for review, for example, where it is withdrawn prior to the filing of the issuer's preliminary proxy material and prior to any submission by the issuer pursuant to Rule 14a-8(d), the fee would not be payable to the Commission and therefore would be required to be returned by the issuer to the proponent. The Commission is requesting public comment on the appropriateness and advisability of such a requirement.

5. Rule 14a-8(b)—Supporting Statements for Proposals.

Rule Changes Under Consideration

In the 1981 Release, the Commission proposed certain amendments to Rule 14a-8(b). With one exception, the Commission is resoliciting comment on these amendments. The changes proposed in the 1981 Release would have: (1) Permitted proponents to include a supporting statement whether or not the issuer opposed the proposal; (2) in conjunction with the change to paragraph (a)(4), allowed the proponent to submit a proposal and supporting statement totalling not more than 500 words allocated at the discretion of the proponent; and (3) required the issuer to include the name and address of the proponent, as well as the number of shares held by the proponent, in the proxy statement.

The Commission is no longer considering requiring disclosure of the proponent's name and address, but rather is considering deleting the issuer's option of providing such information to the Commission for its dissemination to security holders upon request. The staff has not been able in all cases to respond in a timely fashion to security holders' requests for the name and address of any particular proponent. When proxy materials containing uncontested proposals have not been reviewed by the staff in accordance with the Commission's

selective review procedures, such materials have been forwarded to the files before the request arrives. Reordering these materials for the purpose of ascertaining the names and addresses of proponents has in some instances proved to be time consuming. The Commission believes it would be more efficient and a better use of its limited resources to require that this information be included in the proposal or provided by the issuer upon request.

B. Substantive Grounds for Omission of Security Holder Proposals

Rule 14a-8(c) currently sets forth thirteen substantive grounds for omitting security holder proposals from the issuer's proxy material. The thirteen bases are designed to permit exclusion from an issuer's proxy materials of those proposals that are not proper for security holders' action²⁶ and those that constitute an abuse of the security holder proposal process.²⁷ Although the Commission has not received any serious suggestions for additional exclusions to be incorporated into the rule, it has become increasingly aware of interpretative difficulties that exist under paragraph (c) of the rule. In order to minimize these problems without impairing reasonable access to the rule, the Commission believes that certain of the exclusionary grounds as well as some of the staff interpretations thereunder may need to be revised. As noted above, the Commission is requesting comment not only on the specific issues herein addressed, but on any additional revisions commentators deem necessary or appropriate. The changes to paragraph (c) and the interpretations thereunder indicated in this Section as under consideration by the Commission are reflected in Proposal I.

²⁶ (c)(1)—the proposal is not a proper subject for action by security holders under the laws of the issuer's domicile; (c)(2) a proposal that, if implemented, would violate federal, state, or foreign law; (c)(5)—a proposal dealing with matters that are not significantly related to the issuer's business; (c)(6) a proposal dealing with matters beyond the issuer's power to effect; (c)(7)—a proposal dealing with matters relating to the conduct of the ordinary business of the issuer; (c)(12)—a proposal that is substantially the same as proposals voted on at a meeting of the issuer's security holders in the last five years and did not receive the required vote at those meetings; (c)(13)—a proposal relating to a specific amount of cash or stock dividends.

²⁷ (c)(3)—a proposal which is contrary to the Commission's proxy rules; (c)(4)—a proposal relating to the enforcement of a personal claim or grievance; (c)(8)—a proposal relating to an election to office; (c)(9)—a proposal that is counter to a proposal submitted by the issuer at the meeting; (c)(10)—a proposal that has been rendered moot; (c)(11)—a proposal which is substantially duplicative of a proposal previously submitted by another security holder for the same meeting.

1. Rule 14a-8(c)(3)—Contrary to the Commission's Proxy Rules, including Rule 14a-9. The most common basis for asserting the right to exclude a proposal pursuant to Rule 14a-8(c)(3) is that either the proposal or its supporting statement is false or misleading in contravention of Rule 14a-9. A proponent's submission may violate Rule 14a-9 in its entirety or it may contain only certain statements that are violative of the rule. As with any preliminary proxy material, the proponent is given the opportunity to amend his submission to correct the Rule 14a-9 problems, except where it is clear that the proposal and supporting statement in their entirety are false or misleading or otherwise are so vague and ambiguous that the issuer and its security holders would not be able to determine what action the proposal is contemplating. Some issuers have been critical of this practice, since, in their view, the staff too frequently allows proponents the opportunity to amend statements. These issuers would prefer the omission of the entire proposal and supporting statement if any information contained therein is misleading. In the Commission's view, however, the staff's practice has worked well and is consistent with the treatment of other proxy soliciting material and has aided issuers and proponents alike in complying with its proxy rules. Thus, the Commission is not currently considering any changes to Rule 14a-8(c)(3) or in the staff's interpretations thereunder.

2. Rule 14a-8(c)(4)—Personal Claim or Grievance. Rule 14a-8 is intended to provide security holders a means of communicating with other security holders on matters of interest to them as security holders. It is not intended to provide a means for a person to air or remedy some personal claim or grievance or to further some personal interest. Such use of the security holder proposal procedures is an abuse of the security holder proposal process, and the cost and time involved in dealing with these situations do a disservice to the interests of the issuer and its security holders at large. Thus, Rule 14a-8(c)(4) specifically permits the omission of proposals that relate to the enforcement of personal claim or the redress of a personal grievance.²⁸

²⁸ The substance of paragraph (c)(4) was incorporated into the security holder proposal rule in 1948. Release No. 34-4185 (November 5, 1948) [13 FR 6680]. In that release, the Commission noted:

"... that in a few cases security holders have abused this privilege [the right to submit shareholder proposals] by using the rule to achieve personal ends which are not necessarily in the common interest of the issuer's security holder generally. In order to prevent such abuse of the rule,

²⁵ Such a change would require amendment of Rule 14a-6(i) [17 CFR 240.14a-6(i)] to provide that in addition to the fees set forth therein, issuers would be required to pay a fee for each security holder proposal included in its proxy material and for any other proposal that the issuer pursuant to Rule 14a-8(d) notifies the Commission it intended to omit from its proxy material.

Perhaps the most subjective provision and definitely the most difficult for the staff to administer, Rule 14a-8(c)(4) requires the staff to make determinations essentially involving the motivation of the proponent in submitting the proposal. In an effort to reduce the subjectivity inherent in paragraph (c)(4), the staff initially interpreted the provision very narrowly and required that the issuer, in order to justify the application of the provision, clearly demonstrate that the proposal under scrutiny relates to a personal claim or grievance. This gave rise to a requirement that the issuer show a direct relationship between the subject matter of a proposal and the proponent's personal claim or grievance. The staff determined that this requirement was met in those instances where the proposal or its supporting statement indicated on its face that a personal grievance existed. However, increasingly sophisticated proponents and their counsel began to draft proposals in broad terms so that they might be of general interest to all security holders, rather than in narrow terms reflecting the personal interests that motivated their submission. A contemporaneous development was the increased use of the security holder proposal process as a tool to bring pressure upon issuers to serve some personal interest of the proponent. These developments limited the efficacy of the staff's efforts to establish an objective test for determining the applicability of the rule and, consequently, a more subjective analysis has resulted. This more subjective analysis has been reflected in letters which indicated that a proposal, despite its being drafted in such a way that it might relate to matters which may be of general interest to all security holders, properly may be excluded under paragraph (c)(4), if it is clear from the facts presented by the issuer that the proponent is using the proposal as a tactic designed to redress a personal grievance or further a personal interest.

Rule Changes Under Consideration

The Commission has noted the complaints of issuers and proponents that the grounds for omission provided by paragraph (c)(4) are not sufficiently precise in the typical case as to be meaningful. To clarify the ambit of the Rule 14a-8(c)(4) exclusion, the Commission is considering a possible

but without unduly restricting the privilege which it grants to security holders, the amendment places reasonable limitations upon the submission of such proposals.

revision of the provision which would read as follows:

If the proposal relates to the redress of a personal claim or grievance against the issuer or any other person, or represents an attempt to further a personal interest or if it is designed to result in a benefit to the proponent not shared with the other security holders at large.

Such a revision is intended to insure that the process will not be abused by proponents' attempting to achieve personal ends which are not necessarily in the common interest of the issuer's security holders generally. The discussion that follows addresses each of the separate provisions of the revised paragraph.

a. *Redress of a Personal Claim or Grievance.* In recent years, the staff has issued an increasing number of no-action letters with respect to the omission of proposals from proxy materials on this ground. Situations in which the staff has issued a no-action position under this provision include: (1) where the proposal directly related to the proponent's personal grievance;²⁹ and (2) where the proposal is of general interest to all security holders but the issuer demonstrated that it was submitted to redress a personal grievance.³⁰ In determining the availability of this portion of paragraph (c)(4) for omitting a proposal, it is incumbent upon an issuer to possess sufficient facts which demonstrate that the proposal was submitted in an attempt to redress a personal claim or grievance.

b. *Personal Interest.* Although this provision is not expressly included in the current version of the paragraph, the staff has recognized it as a basis for excluding a proposal under the rule. The history of the security holder proposal rule clearly indicates that proposals which attempt to further personal goals may be excluded from an issuer's proxy materials. Examples of proposals that the Commission has seen in the past which would be excluded under this provision include a request that the shareholders authorize the prosecution of all claims against the issuer raised in

a complaint filed by the proponent,³¹ requests to the issuer that it support certain litigation in which the proponent was involved,³² and recommendations that shareholders of a utility pay the costs of nuclear power plant construction, rather than consumers, where the proponent was engaged in a campaign designed to reduce consumer rates.³³

c. *Benefit to the Proponent Not Shared with Other Security Holders.* There has been an increase in the number of proposals used to harass issuers into giving the proponent some particular benefit or to accomplish objectives particular to the proponent. For example, there have been instances where the proponent appeared to be using the security holder proposal rule to force the issuer to buy back his securities at a premium price³⁴ or to subscribe to the proponent's publication.³⁵

3. *Rule 14a-8(c)(5)—Not Significantly Related to the Issuer's Business.* Rule 14a-8(c)(5) permits issuers to omit from their proxy materials security holder proposals dealing with matters that are "not significantly related to issuer's business."³⁶ In interpreting the prior versions of this provision, the Commission and its staff have attempted to establish a viable objective standard for determining the circumstances under which the subject matter of a proposal would be deemed "significantly related."³⁷ The standard eventually developed by the staff based on economic significance of the subject matter of the proposal, however, gave

²⁹ Letter to C. I. Mortgage Group, dated March 13, 1981.

³⁰ Letter to American General Corporation, dated February 12, 1982, Connecticut General Corporation, dated February 12, 1982, and Equitable of Iowa Companies, dated February 2, 1982.

³¹ Letters to Long Island Lighting Company, dated February 2, 1981 and February 24, 1982.

³² Letters to Cummings Inc., dated February 6, 1980, and Ingersoll-Rand, dated February 23, 1978.

³³ Letter to Armco Inc., dated January 29, 1980, and reconsidered March 5, 1980.

³⁴ The origin of this provision can be traced to Release No. 34-4775 (December 11, 1952) [17 FR 11431] wherein Rule 14a-8 was amended to provide that a security holder proposal may be omitted from an issuer's proxy material if it was submitted "primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes." This provision became paragraph (c)(2)(ii) of Rule 14a-8 in 1973 and provided for the omission of any security holder proposal which "[c]onsists of a recommendation, request or mandate that action be taken with respect to any matter, including a general economic, political, racial, religious, social, or similar cause, that is not significantly related to the business of the issuer or is not within the control of the issuer." Release No. 34-9784 (September 22, 1972) [37 FR 32179].

³⁵ In absolute numbers, however, the provision was only considered in a limited number of cases in the period from 1973 through 1976.

²⁹ See letter to Eastman Kodak, dated January 18, 1978, where the proposal requested that the issuer reimburse the proponent for expenses incurred in the filming of a documentary which was allegedly lost by the company.

³⁰ In letters to Time Inc., dated February 8, 1979, RCA Corporation, dated February 9, 1979, Times Mirror, dated February 28, 1979 and Cox Broadcasting, dated April 9, 1979, the staff issued no-action letters where the facts indicated that the proponent was using the security holder proposal process to redress a personal grievance it had against the issuers for adverse publicity that the proponent had received.

rise to a great deal of controversy. That controversy began in 1976 in connection with the activities of the American Jewish Congress ("AJC"). The AJC submitted resolutions to more than 150 companies requesting reports on company policy regarding compliance with the Arab nations' economic boycott of Israel. In responding to the numerous no-action requests of companies who received the AJC proposals, the staff, after consulting with the Commission, utilized for the first time an economic significance test. In a series of letters, the staff agreed to the omission of these proposals where issuers would establish that their business with Arab countries and Israel constituted less than one percent of the company's sales, assets and earnings (the so-called "one percent test").³⁸ Many persons argued, however, that the one percent which may have a significant impact on the corporation, and because, in effect, it prevented security holders from raising questions if the corporation had a large sales volume.³⁹

On the other hand, many other persons favored the one percent test and sought to have the Commission incorporate the standard in Rule 14a-8. It was their view that the Commission should revise the provision to permit omission of matters which did not have a significant economic relationship to the issuer's business. As part of its revisions to Rule 14a-8 in 1976, the Commission considered such an amendment and, in deciding not to add the word "economic" to the existing provision, stated:

In this regard, the Commission does not believe that (c)(5) should be hinged solely on the economic relativity of a proposal, since there are many instances in which the matter involved in a proposal is significant to an issuer's business, even though such significance is not apparent from an economic viewpoint. For example, proposals dealing with cumulative voting rights or the ratification of auditors in a sense may not be economically significant to an issuer's business but they nevertheless have a significance to security holders that would preclude their being omitted under this provision. And proposals relating to ethical issues such as political contributions also may be significant to the issuer's business,

when viewed from a standpoint other than a purely economic one.⁴⁰

The Commission, however, did go on to say that it "recognized that there are circumstances in which economic data may indicate a valid basis for omitting a proposal under this provision."⁴¹

These statements in the 1976 Release foreshadowed the end of the one percent test and laid the foundation for the current position of the Commission and its staff in interpreting rule 14a-8(c)(5).⁴² Under current construction, where the subject matter of a proposal bears no economic relationship to the issuer's business, the staff has permitted the exclusion of the proposal under paragraph (c)(5).⁴³ In those situations, however, where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the staff has not issued a no-action letter with respect to the omission of the proposal pursuant to paragraph (c)(5).

Rule Changes Under Consideration

Although the Commission believes that a totally objective standard for determining the availability of paragraph (c)(5) for the omission of a proposal is not feasible, it does appear that the staff's existing interpretation of Rule 14a-8(c)(5) may unduly limit the exclusion. Recognizing that economic data is useful in determining the significance of a matter to the issuer's business in many cases, the Commission is considering revising Rule 14a-8(c)(5) to incorporate economic factors.

For example, under this approach, Rule 14a-8(c)(5) might read as follows:

If the proposal relates to operations which account for less than 5% of the issuer's gross assets at the end of its most recent fiscal year, and for less than 5% of its gross earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the issuer's business.

³⁸Release No. 34-12999 (November 22, 1976)[41 FR 52994].

³⁹*Id.*

⁴⁰In 1978, Citicorp and Motorola, Inc. each requested a no-action position with respect to shareholder proposals relating to their activities in South Africa. In each case, the issuer provided information in support of the fact that their business activities in South Africa amounted to less than one percent of their business. In rejecting the companies' reliance on Rule 14a-8(c)(5), the staff, with the concurrence of the Commission, cited the consideration raised in the 1976 release. See letters to Citicorp and Motorola, Inc., dated February 23, 1978.

⁴¹See, e.g., letter to Arvin Industries, Inc., dated February 8, 1979, wherein the staff permitted the exclusion of a proposal which sought information on sales to South Africa and the company had no such sales.

Under such a revised paragraph (c)(5) a proposal would not be excludable, notwithstanding its failure to reach the specified economic thresholds, if a significant relationship to the issuer's business is demonstrated on the face of the resolution or supporting statement. Historically, the Commission staff has taken the position that certain proposals, while relating to only a small portion of the issuer's operations, raise policy issues of significance to the issuer's business.⁴⁴ Where the significant relationship is not immediately apparent on the face of the proponent's submission, the proponent, as in the past, could demonstrate the significant relationship supplementally. For example, the proponent could provide information that indicates that while a particular corporate policy which involves an arguably economically insignificant portion of an issuer's business, the policy may have a significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities.

The Commission invites specific comment on such a revision to the rule as well as on an appropriate level of the percentage test to be used therein.

4. Rule 14a-8(c)(7)—Ordinary Business Operations. Under paragraph(c)(7) an issuer is permitted to omit a security holder proposal relating to the conduct of the "ordinary business operations of the issuer."⁴⁵ This

⁴⁴See, e.g., letters to Long Island Lighting Company, dated February 11, 1980 (cease further development, planning and construction of nuclear power plants); Owens-Illinois Inc., dated February 15, 1980 (liquidate the assets of the company that are located in the Republic of South Africa); and American Home Products Corporation, dated February 13, 1978 (changes in the company's marketing and distribution of infant formula products).

Note, however, that when the proposal relates to an area in which the issuer has no involvement, the proposal is omissible under paragraph (c)(5).

⁴⁵Former SEC Chairman J. Sinclair Armstrong explained the reasons underlying the provision as follows:

"The policy motivating the Commission adopting the rule . . . is basically the same as the underlying policy of most State corporation laws to confine the solution of ordinary business problems to the board of directors and place such problems beyond the competence and direction of the shareholders. The basic reason for this policy is that it is manifestly impracticable in most cases for stockholders to decide management problems at corporate meetings."

See Hearing on SEC Enforcement Problems Before the Subcommittee of the Senate Committee on Banking & Currency, 85th Cong., 1st Sess. part 1, at 119 (1957).

⁴⁶Prior to 1954, many of the proposals included in proxy statements related to ordinary business operations, despite the presence of state laws which generally provided that the business and affairs of corporations shall be managed by their board of

³⁸See, e.g., letters to American Home Products dated May 4, 1975 and International Business Machines Corporation, dated May 4, 1975.

³⁹Still other persons believed that the one percent test contravened *Medical Committee for Human Rights v. SEC*, 432 F.2d 659, 800 (D.C. Cir. 1970), vacated for mootness, 404 U.S. 403 (1971), which such persons suggest indicates that shareholders are entitled to be concerned about social policy questions which have little economic impact on the issuer.

provision is based on the requirements of most state laws that the business affairs of the corporation be conducted "by" or "under the direction of" the board of directors.⁴⁶ State law precedent, however, is rarely conclusive as to what is or is not ordinary business, and the staff generally has had to make its own determination as to whether a proposal involves an activity relating to the issuer's ordinary business.

Interpretive Changes Under Consideration

The major objection to the current interpretations under paragraph (c)(7) relates to the staff's refusal to apply the exclusion to a proposal that either requests that the issuer prepare and disseminate a report to shareholders or recommends that a special committee be formed to examine a particular area of the issuer's business where the subject matter of the report or of the examination is a matter involving the "ordinary business of the issuer." The basis for the staff's position rests on the premise that issuers do not prepare and issue reports on specific matters to shareholders or form committees to study particular aspects of its business as part of their ordinary business operations.⁴⁷ A number of commentators, however, have objected to this interpretation as raising form over substance. The Commission is considering whether it would be more appropriate to consider in each instance whether the type of information sought by the proposal involves the ordinary business operations of the issuer and to disregard whether a proposal requests the preparation and distribution of a report or the formation of a special committee.

5. *Rule 14a-8(c)(10)—Mootness.* A security holder proposal may be omitted from an issuer's proxy materials pursuant to paragraph (c)(10) if it has been rendered moot. Whether a proposal is moot involves a factual

question. In an effort to provide more guidance in this area, the Commission amended the security holder proposal rule to permit the exclusion of proposals relating to ordinary business. Release No. 34-4979 (January 6, 1954) [19 FR 246].

⁴⁶For example, the staff, in a letter to *Castle & Cooke*, dated December 12, 1978, agreed with the company that a proposal requesting that it alter its food production methods in underdeveloped countries could be excluded under Rule 14a-8(c)(7) since the proposal specified the steps management should take to implement the action requested by the proposal. In 1980, however, the proponent instead asked the company to appoint a committee to review foreign agricultural operations with emphasis on the balance between labor and capital intensive production. The staff refused to apply the rule to this provision because the appointment of a special committee to study the company's foreign agricultural operations is a matter of policy. See letter to *Castle & Cooke*, dated December 14, 1979.

determination to be made on a case-by-case basis.

Interpretive Changes Under Consideration

The staff has granted no-action requests pursuant to paragraph (c)(10) only in those circumstances where the action requested by the proposal already had been "fully" effected. As a result of this interpretation proponents have argued successfully on numerous occasions that a proposal may not be excluded as moot in cases where the company has taken most but not all of the actions requested by the proposal because the proposal has not been "fully" effectuated.

As a means of eliminating this problem, the Commission is considering revising its interpretation of paragraph (c)(10) to permit the omission of a proposal as moot if the issuer has "substantially" implemented the action requested by the proposal. While the subjectivity of such an interpretation of paragraph (c)(10) may raise further interpretive problems, the Commission believes that the current interpretation may not serve the interests of the issuer's security holders at large and may lead to an abuse of the security holder proposal process.

Other Issues

A further interpretative issue has been raised under paragraph (c)(10) as to whether a precatory resolution requesting that the issuer's board of directors consider a certain action should be deemed to be rendered moot if the board, in good faith, considers and rejects the subject matter of the proposal. The Commission invites comments on the appropriateness of introducing such an interpretation.

6. *Rule 14a-8(c)(12)—Resubmission of Proposals Included in Prior Years.* Paragraph (c)(12) provides that a proposal submitted by a security holder may be omitted from an issuer's proxy soliciting materials for three years following the inclusion in the issuer's proxy material of a proposal that is substantially the same and that failed to receive a specified minimum percentage of the votes cast in regard thereto.⁴⁸ A proposal may be so omitted if it received less than 3 percent of the vote the first time it was considered, less than 6

⁴⁸A requirement that substantially the same proposal may not be resubmitted to an issuer unless the proposal received a specified minimum percentage of votes upon its most recent submission was initially adopted in 1948. See Release No. 34-4114 (July 6, 1948) [13 FR 3973]. In 1953, the provision was amended to its current format and designated as Rule 14a-8(c)(4). See Release No. 34-4950 (October 9, 1953) [18 FR 6646].

percent the second time, or less than 10 percent thereafter. The purpose of the provision is to provide issuers with a means to avoid having to continue to bear the cost of including proposals that have generated little interest when previously presented to the security holders.

This has been and continues to be one of the more controversial provisions of the rule. Historically, the staff has interpreted the phrase "substantially the same proposal" to mean one which is virtually identical (in form as well as substance) to a proposal previously included in the issuer's proxy materials. Issuers have complained that as a result of this interpretation, the provision has not accomplished its stated purpose. Critics of the staff's interpretation argue that proponents are able to evade the strictures of paragraph (c)(12) by simply recasting the form of the proposal, expanding its coverage, or by otherwise changing its language in a manner that precludes one from saying that the proposal is identical to a prior proposal. In recognition of this problem, the Commission proposed, in 1976, to revise Rule 14a-8(c)(12) to change the test for excluding a proposal under the provision from "substantially the same" to "substantially the same subject matter." After considering extensive public comment,⁴⁹ the Commission determined not to adopt the proposed revision at that time.

While rejecting the proposed revision of paragraph (c)(12), the Commission expressed concern about possible abuses of the rule. As a result, a second test for exclusion was announced as an interpretative matter. This test allows the omission of a proposal that, although not substantially the same as any one proposal submitted in a prior year, is composed essentially of the elements of two or more proposals that were submitted for a vote in prior years and failed to receive the percentage of total vote specified in the rule. The second test has been the subject of a number of no-action requests.⁵⁰ As with the first

⁴⁹The commentators expressed the following views: (1) abuses of the existing provision have been rare and do not justify the type of radical revision proposed; (2) that the new standard would be almost impossible to administer because of the subjective determinations that would be required under it; and (3) that it would unduly constrain shareholder suffrage because of its possible "umbrella" effect (i.e., it could be used to omit proposals that had only a vague relation to the subject matter of a prior proposal that received little shareholder support). See 1976 Release.

⁵⁰For examples of instances where proposals were considered to be excludable under the alternate test, see *Texaco Inc.*, dated January 31, 1980; *Standard Oil of California*, dated February 12, 1980; *Mobil Corporation*, dated March 2, 1981; and

test, however, the staff has been criticized for its restrictive application.

Rule Changes Under Consideration

Despite the fact that the alternative test has proved effective in controlling some of the more flagrant abuses of Rule 14a-8(c)(12), the incidence of abuse of the existing provision and the existing interpretations thereunder continues to grow. It is the Commission's perception that, contrary to the rule's stated objective, security holders of a number of issuers are being called upon to vote over and over again on issues in which they have shown little interest. Accordingly, the Commission is considering amendment of Rule 14a-8(c)(12).

The revision being considered is identical to the one proposed by the Commission in 1976 and would provide for the omission of a proposal if it "deals with substantially the same subject matter as a proposal previously submitted to security holders * * *." While the Commission is well aware of the arguments advanced in opposition to the proposal in 1976, it is concerned about the increase in the abuse of existing provision.

The Commission is not currently considering any change in the alternative interpretative test for exclusion.

Other Issues

From time to time, the Commission has received suggestions from proponents and issuers alike that the percentage tests reflected in Rule 14a-8(c)(12) should be revised. The Commission is requesting comment on the question of the appropriate levels for the percentage tests.

7. No-Action Procedures. The Commission also is requesting comment on the advisability of eliminating the Commission staff's administrative role in the current process and discontinuing the issuance of no-action letters under Rule 14a-8. Under such revision in the process, an issuer would proceed wholly at its own risk if it chose to delete a proposal. In the event a proposal was inappropriately excluded, the issuer could be sued by either the proponent or the Commission.

An alternative to eliminating the no-action letter procedure with respect to the entire rule could be to discontinue their issuance with respect to

paragraphs (c)(1)⁵¹ and (c)(2)⁵² as to which the Commission staff requires an opinion of counsel and paragraphs (a)(4)⁵³ and (c)(4)⁵⁴ which generally require an investigation of the underlying facts. The applicability of paragraphs (c)(1) and (c)(2) to a particular proposal is a matter entirely based on the state, federal or foreign law cited by counsel for the issuer or the proponent in connection with the proposal. It has been suggested that because the Commission's staff may have no particular expertise with respect to the statutory provisions cited by counsel, it is the court, and not the staff, that are the appropriate forum for resolving disputes as to the legality under state, federal (other than securities laws) and foreign law of an action that is the subject of a security holder proposal.

The problems for the staff in dealing with paragraphs (a)(4) (c)(4) are of a different nature from those involved in interpreting paragraphs (c)(1) and (c)(2). The applicability of paragraphs (a)(4) and (c)(4) depends almost entirely upon a factual determination that in most cases requires an investigation of the surrounding facts and circumstances which the Commission staff is not a position to undertake. Accordingly, it has been suggested that these are areas better left to the issuer and the proponent, and where necessary to the courts, to resolve.

The Commission requests specific comment as to whether, if Rule 14a-8 is retained, it would be appropriate and in the public interest to discontinue to issue no-action letters with respect to: (1) all exclusions of proposal, whatever the basis cited for exclusion; or (2) only exclusions based on paragraphs (a)(2), (c)(1), (c)(2), and (c)(4). In requesting comment on the advisability of the use of this procedure, the Commission is particularly interested in commentators' views with respect to the practicality of resorting to the courts to resolve disputes and the cost to proponents and issuers of such a change in the Commission's procedures.

The Commission also also requests commentators' views as to whether, if the staff were to discontinue issuance of such letters, it would be appropriate to discontinue requiring issuers to furnish the Commission with the Rule 14a-8(d) information with respect to exclusions

as to which the Commission staff has discontinued issuing no-action letters.⁵⁵

C. Procedural Requirements for Issuers

Paragraph (d) of Rule 14a-8 specifies the procedural requirements applicable to issuers that intend to omit security holder proposals from their proxy materials. The provision requires the issuer to notify the Commission and the proponent at least 50 days prior to the date that its preliminary proxy materials will be filed of its intention to omit a proposal and/or supporting statement.

Rule Changes Under Consideration

The Commission is considering whether to revise paragraph (d) to increase the deadline for issuers to submit materials from 50 days in advance of the filing date for preliminary materials to 60 days prior to such date. As previously noted in the discussion of paragraph (a)(3) relating to the timeliness requirement for proponents, this change is being considered in conjunction with a 30-day advance in the deadline date for proponents' submission of proposals in order to give issuers and the Commission staff more time to deal with the increased number and complexity of the security holder proposals being submitted.

Text of Alternative Revised Rule 14a-8

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as set forth below:

List of Subjects in 17 CFR Part 240

Reporting requirements; Securities.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

PART 240—[AMENDED]

1. By revising Rule 14a-8, § 240.14a-8, to read as follows:

Note.—Brackets indicate deletions and arrows indicate additions.

Proposal I

§ 240.14a-8. Proposals of security holders.

(a) If any security holder of an issuer notifies the issuer of his intention to

⁵⁵ Pursuant to Rule 14a-8(d), the issuer must provide the Commission with five copies of: (1) the proposal; (2) the proponent's supporting statement; (3) a statement of the reasons why the issuer deems omission to be proper; and (4) where such reasons are based on matters of law, a supporting opinion of counsel.

Under either approach, the issuer still would be required to provide the information specified by subparagraph (d), including the opinion of counsel, to the proponent.

⁵¹ Exclusion of proposals not proper for security holder action.

⁵² Exclusion of proposals requiring issuer to violate state, federal or foreign law.

⁵³ Limitation of number of proposals per proponent.

⁵⁴ Exclusion of proposals relating to a personal grievance.

American Home Products, dated March 4, 1982. For examples of instances where the staff disagreed with the issuers' intention to omit a proposal under the alternative test, see *Newmont Mining Corp.*, dated March 29, 1977; *Del Monte Corporation*, dated February 26, 1981; and *Abbott Laboratories*, dated March 3, 1982.

present a proposal for action at a forthcoming meeting of the issuer's security holders, the issuer shall set forth the proposal in its proxy statement and identify it in its form of proxy and provide means by which security holders can make the specification required by Rule 14a-4(b) [17 CFR 240.14a-4(b)]. Notwithstanding the foregoing, the issuer shall not be required to include the proposal in its proxy statement or form of proxy unless the security holder (hereinafter, the "proponent") has complied with the requirements of this paragraph and paragraphs (b) and (c) of this Section:

(1) *Eligibility.* (i) At the time he submits the proposal, the proponent shall be a record or beneficial owner of [a security] ▶ at least 1% or \$1,000 in market value of securities ◀ entitled to be voted at the meeting on his proposal, ▶ and have held such securities for at least one year at the time he submits the proposal ◀, and he shall continue to own such securities through the date on which the meeting is held. If the issuer requests documentary support for a proponent's claim that he is a beneficial owner of ▶ at least \$1,000 in market value of ◀ such voting securities of the issuer ▶ or that he has been a beneficial owner of the securities for one or more years ▶, the proponent shall furnish appropriate documentation within [10 business days] ▶ 14 calendar days ◀ after receiving the request. In the event the issuer includes the proponent's proposal in its proxy soliciting materials for the meeting and the proponent fails to comply with the requirement that he continuously hold such securities through the meeting date, the issuer shall not be required to include any proposals submitted by the proponent in its proxy materials for any meeting held in the following two calendar years.

(ii) ▶ Proponents who participate in a general proxy solicitation through the use of written proxy soliciting materials with respect to the same meeting of security holders will be ineligible to use the provisions of Rule 14a-8 for the inclusion of the proposal in the issuer's proxy soliciting materials. In the event the issuer includes a proponent's proposal in its proxy materials and the proponent thereafter engages in a proxy solicitation with respect to such meeting, the issuer shall not be required to include any proposals submitted by that proponent in its proxy soliciting materials for any meeting held in the following two calendar years. ◀

(2) *Notice ▶ and Attendance at the Meeting ◀.* [The proponent shall notify the issuer in writing of his intention to appear personally at the meeting to

present his proposal for action. The proponent shall furnish the requisite notice at the time he submits the proposal, except that if he was unaware of the notice requirement at that time, he shall comply with it within 10 business days after being informed of it by the issuer. If the proponent, after furnishing in good faith the notice required by this provision, subsequently determines that he will be unable to appear personally at the meeting, he shall arrange to have another security holder of the issuer present his proposal on his behalf at the meeting.] ▶ At the time he submits a proposal, a proponent shall provide the issuer in writing with his name, address, the number of the issuer's voting securities that he holds of record or beneficially and the dates upon which he acquired such securities. A proposal may be presented at the meeting either by the proponent or his representative who is qualified under state law to present his proposal on the proponent's behalf at the meeting. ◀ In the event that the proponent or his representative fails, without good cause, to present the proposal for action at the meeting, the issuer shall not be required to include any proposals submitted by the proponent in its proxy soliciting material for any meeting held in the following two calendar years.

(3) *Timeliness.* The proponent shall submit his proposal sufficiently far in advance of the meeting so that it is received by the issuer within the following time periods:

(i) *Annual Meetings.* A proposal to be presented at an annual meeting shall be received at the issuer's principal executive offices not less than [90] ▶ 120 ◀ days in advance of the date of the issuer's proxy statement released to security holders in connection with the previous year's annual meeting of security holders, except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date contemplated at the time of the previous year's proxy statement, a proposal shall be received by the issuer a reasonable time before the solicitation is made.

(ii) *Other Meetings.* A proposal to be presented at any meeting other than an annual meeting ▶ specified in paragraph (a)(3)(i) of this section ◀ shall be received a reasonable time before the solicitation is made.

Note.—In order to curtail controversy as to the date on which a proposal was received by the issuer, it is suggested that proponents submit their proposals by Certified Mail—Return Receipt Requested.

(4) *Number and Length of Proposals.* The proponent may submit a maximum of [two proposals of not more than 300 words each] ▶ one proposal and an accompanying supporting statement ◀ for inclusion in the issuer's proxy materials for a meeting of security holders. If the proponent [fails to comply with either of these requirements or if he fails to comply with the 200-word limit on supporting statements mentioned in paragraph (b)] ▶ submits more than one proposal, or if he fails to comply with the 500 word limit mentioned in paragraph (b) of this section, ◀ he shall be provided the opportunity to reduce [within 10 business days] the items submitted by him to the limits required by this rule, ▶ within 14 calendar days of notification of such limitations by the issuer. ◀

(b) ▶ (1) *Supporting Statement.* ◀ [If the issuer opposes any proposal received from a proponent, it should also, at the request of the proponent, include in its proxy statement a statement of the proponent of not more than 200 words in support of the proposal, which statement shall not include the name and address of the proponent.] ▶ The issuer, at the request of the proponent, shall include in its proxy statement a statement of the proponent in support of the proposal, which statement shall not include the name and address of the proponent. A proposal and its supporting statement, in the aggregate shall not exceed 500 words. ◀ The supporting statement shall be furnished to the issuer at the time that the proposal is furnished, and the issuer shall not be responsible for such statement and the proposal to which it relates.

▶ (2) *Identification of Proponent.* ◀ The proxy statement shall also include either the name and address of the proponent ▶ and the number of shares of the voting security held by the proponent ◀ or a statement that such information will be furnished by the issuer [or by the Commission] to any person, orally or in writing as requested, promptly upon the receipt of any oral or written request therefor. [If the name and address of the proponent are omitted from the proxy statement, they should be furnished to the Commission at the time of filing the issuer's preliminary proxy material pursuant to Rule 14a-6(a) [17 CFR 240.14a-2(a).]

(c) The issuer may omit a proposal and any statement in support thereof from its proxy statement and form of proxy under any of the following circumstances:

(1) If the proposal is, under the laws of the issuer's domicile, not a proper subject for action by security holders.

Note.—A proposal that may be improper under the applicable state law when framed as a mandate or directive may be proper when framed as a recommendation or request.

(2) If the proposal, if implemented, would require the issuer to violate any state law or federal law of the United States, or any law of any foreign jurisdiction to which the issuer is subject, except that this provision shall not apply with respect to any foreign law compliance with which would be violative of any state law or federal law of the United States.

(3) If the proposal or the supporting statement is contrary to any of the Commission's proxy rules and regulations, including Rule 14a-9 [17 CFR 240.14a-9], which prohibits false or misleading statements in proxy soliciting materials;

(4) If the proposal relates to the [enforcement of a personal claim or the redress of a personal grievance against the issuer or any other person.] ▶ redress of a personal claim or grievance against the issuer of any other person, or represents an attempt to further a personal interest, or if it is designed to result in a benefit to the proponent not shared with the other security holders at large; ◀

(5) [If the proposal deals with a matter that is not significantly related to the issuer's business.] ▶ If the proposal relates to operations which account for less than 5% of the issuer's gross assets at the end of its most recent fiscal year, and for less than 5% of its gross earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the issuer's business; ◀

(6) If the proposal deals with a matter that is beyond the issuer's power to effectuate;

(7) If the proposal deals with a matter relating to the conduct of the ordinary business operations of the issuer;

(8) If the proposal relates to an election to office;

(9) If the proposal is counter to a proposal to be submitted by the issuer at the meeting;

(10) If the proposal has been rendered moot;

(11) If the proposal is substantially duplicative of a proposal previously submitted to the issuer by another proponent, which proposal will be included in the issuer's proxy material for the meeting;

(12) [If substantially the same proposal has previously been.] ▶ If the proposal deals with substantially the

same subject matter as a prior proposal ◀ submitted to security holders in the issuer's proxy statement and form of proxy relating to any annual or special meeting of security holders held within the preceding 5 calendar years, it may be omitted from the issuer's proxy materials relating to any meeting of security holders held within 3 calendar years after the latest such previous submission;

Provided, That

(i) If the proposal was submitted at only one meeting during such preceding period, it received less than 3 percent of the total number of votes cast in regard thereto; or

(ii) If the proposal was submitted at only two meetings during such preceding period, it received at the time of its second submission less than 6 percent of the total number of votes cast in regard thereto; or

(iii) If the prior proposal was submitted at three or more meetings during such preceding period, it received at the time of its latest submission less than 10 percent of the total number of votes cast in regard thereto; and

(13) If the proposal relates to specific amounts of cash or stock dividends.

(d) Whenever the issuer asserts, for any reason, that a proposal and any statement in support thereof received from a proponent may properly be omitted from its proxy statement and form of proxy, it shall file with the Commission, not later than [50] ▶ 60 ◀ days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to Rule 14a-6(a) [17 CFR 240.14a-6(a)], or such shorter period prior to such date as the Commission or its staff may permit, five copies of the following items: (1) the proposal; (2) any statement in support thereof as received from the proponent; and (3) a statement of the reasons why the issuer deems such omission to be proper in the particular case; and (4) where such reasons are based on matters of law, a supporting opinion of counsel. The issuer shall at the same time, if it has not already done so, notify the proponent of its intention to omit the proposal from its proxy statement and form of proxy and shall forward to him a copy of the statement of reasons why the issuer deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel.

(e) If the issuer intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall, not later than ten calendar days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to Rule 14a-6(a), or, in the

event that the proposal must be revised to be includable, not later than five calendar days after receipt by the issuer of the revised proposal promptly forward to the proponent a copy of the statement in opposition to the proposal.

In the event the proponent believes that the statement in opposition contains materially false or misleading statements within the meaning of Rule 14a-9 and the proponent wishes to bring this matter to the attention of the Commission, the proponent should promptly provide the staff with a letter setting forth the reasons for this view and at the same time promptly provide the issuer with a copy of such letter.

Security Holder Proposal Plans— Proposal II

The rule set forth as Proposal II would be in addition to whatever rule the Commission adopts specifying the procedures generally applicable to security holders' proposals, and would permit an issuer and its security holders to adopt their own procedures governing security holders' access to the issuer's proxy statement. As noted in the release, the Commission believes that even under such approach, it would be appropriate to provide certain limitations on the provisions permitting omission of security holder proposals. While Proposal II includes certain such limitations, it does so principally by way of example, and commentators are invited to provide suggestions as to other limitations to be incorporated in such a rule. The Commission specifically requests the views of the commentators as to whether the size of the proponent's investment in the issuer should be a basis upon which to delimit permissible eligibility criteria.

Text of New Rule 14a-8A

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By adopting a new Rule 14a-8A, § 240.14a-8A, to read as follows:

§ 240.14a-8A. Proposals of security holders.

(a) An issuer's security holders may adopt a written plan that specifies the procedures to be followed by a security holder (hereinafter the "proponent"), who intends to present a proposal for action at a forthcoming meeting of the issuer's security holders and who requests the issuer to set forth the

proposal in its proxy statement and identify it in its form of proxy and provide means by which security holders can make the specification required by Rule 14a-8(b) [17 CFR 240.14a-4(b)], and the procedures to be followed by the issuer with respect to such request:

(1) Such plan must be approved by at least a majority of the outstanding voting securities of the issuer prior to its adoption by the issuer.

(2) Changes to the plan must be approved by at least a majority of the outstanding voting securities of the issuer prior to their adoption.

(3) Continuation of the plan must be approved by at least a majority of the outstanding voting securities of the issuer not less than once every five calendar years from its initial adoption.

(4) Security holders entitled to vote on the plan may initiate such plan or any amendments thereto, which plan or amendment shall be effective if approved by at least a majority of the outstanding voting securities of the issuer.

(b) Subject to the following limitations, the plan may establish procedural requirements for the submission of proposals:

(1) The plan may require that a proponent own of record or beneficially at least a specified number of, or value of, voting securities of the issuer, and/or have held such securities for at least a specified period of time, provided that no such criteria shall have the effect of precluding the submission of a proposal by a proponent(s) who owns at least 1% or \$5,000 in market value (as of the close of any day in the 60 days preceding submission of the proposal) of securities entitled to be voted at the meeting on the proposal. The plan may include reasonable provisions for documentation by proponents of their eligibility under the plan to submit a proposal.

(2) The plan may establish deadlines and procedures for the submission to the issuer of security holder proposals. The plan shall not require the submission of a proposal more than 120 days prior to the annual meeting, nor more than 15 days prior to the filing with the Commission of the preliminary proxy statement relating to a special meeting of security holders.

(3) The plan shall provide a proponent with at least 500 words for each proposal and statement in support thereof to be included in the issuer's proxy statement.

(c) The plan may provide that a proposal may be omitted from the issuer's proxy statement and form of proxy under any one or more of the

following circumstances, and the plan may include reasonable definitions and criteria to govern the application of these bases for omission:

(1) If the proposal is, under the laws of the issuer's domicile, not a proper subject for action by security holders;

(2) If the proposal, as implemented, would require the issuer to violate any state law or federal law of the United States, or any law of any foreign jurisdiction to which the issuer is subject, except that this provision shall not apply with respect to any foreign law compliance with which would be violative of any state law or federal law of the United States;

(3) If the proposal relates to a personal grievance, provided that if an issuer plan contains such a provision before a security holder proposal is omitted on such basis the issuer must comply with the provisions of Rule 14A-8(d) in connection with such proposal;

(4) If the proposal deals with a matter that is not significantly related to the issuer's business; the plan may include a reasonable definition of "significantly related" that may include economic criteria;

(5) If the proposal deals with a matter that is beyond the issuer's power to effectuate;

(6) If the proposal deals with a matter relating to the conduct of the ordinary business operations of the issuer;

(7) If the proposal relates to an election to office;

(8) If the proposal is counter to a proposal to be submitted by the issuer at the meeting;

(9) If the proposal has been rendered moot;

(10) If the proposal is substantially duplicative of a proposal previously submitted to the issuer by another proponent, which proposal will be included in the issuer's proxy material for the meeting;

(11) If the proposal deals with substantially the same subject matter as a prior proposal submitted to security holders in the issuer's proxy statement and form of proxy relating to any meeting of security holders held within the preceding 5 calendar years, which prior proposal failed to be approved by security holders; or

(12) If the proposal relates to specific amounts of cash or stock dividends.

(d) The plan shall provide that the issuer shall notify the proponent(s), at least 10 days prior to the date of filing with the Commission of its preliminary proxy statement and form of proxy pursuant to Rule 14a-6(a) [17 CFR 240.14a-6(a)], of its intention to omit the proposal from its proxy statement and that such notification shall include a

statement of the reason the issuer deems such omission to be proper in the particular case and where such reasons are based on matters of law, a supporting opinion of counsel.

(e) An issuer that has not adopted a plan pursuant to paragraph (a) of this section or that fails to have the plan reapproved as provided in paragraph (a) of this section, shall comply with Rule 14a-8 with respect to proposals submitted by security holders for inclusion in the issuer's proxy statement.

IV. Simplification in Regulation—Proposal III

As noted in the release, if the Commission determines that there should continue to be a right of access to an issuer's proxy statement under the Exchange Act, it is interested in considering alternatives to its current rule. As further noted, one such alternative would be to require all companies subject to Section 14 of the Exchange Act to include in their proxy material any security holder proposal that is proper under state law for action by security holders so long as such proposal did not relate to the election of the issuer's directors. The Commission anticipates that the elimination of eleven of the thirteen existing bases for omission would have the result that few proposals would be excludable on substantive grounds. The limited disputes with respect to the applicability of the remaining two grounds for exclusion generally would not be resolved by the Commission staff, but by the courts.

The principal limitation on the proposals to be incorporated would be numerical. For example, the rule could provide that an issuer would not be required to include more than five resolutions plus one additional proposal for each 100,000 record holders entitled to vote at the meeting in excess of 500,000, subject to a maximum of twelve proposals to be included. The order of receipt of the proposals would be irrelevant and duplicative proposals would be considered as one.

Where the proposals submitted exceed the maximum required to be included, preference would be given to the proposals submitted by proponents who have not had a proposal included in any of the issuer's proxy statements sent to security holders in the previous three years. Thus, if proposals submitted by these "new" proponents exceed the maximum required to be included, proposals would be selected by lot from those submitted by such "new" proponents. If the proposals of the

"new" proponents were less than the maximum required to be included then all such proposals would be included, and the remaining proposals would be selected by lot from those submitted by proponents who had had a proposal presented in the proxy statement in the prior three years.⁵⁶ Appropriate disclosure would be required in the proxy statement as to the mechanism of selection.

The proposed approach also would include a number of self-executing procedural requirements relating to the number and length of proposals and eligibility of proponents. One variation in the eligibility criteria should be noted. Under Proposal III, the number or value of voting securities required of the proponent(s), would be decreased in the event that a majority of an issuer's security holder each owned, of record, less than the amount specified in the rule. The amounts would be required to be decreased to the number and value that would permit at least a majority of the issuer's security holders to meet such criteria.

Text of Alternative Revised Rule 14a-8

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revising Rule 14a-8, § 240.14a-8 to read as follows:

Proposal III

§ 240.14a-8 Proposals of security holders.

(a) If any security holder of an issuer ("proponent") notifies the issuer of his intention to present a proposal for action at a forthcoming meeting of the issuer's security holders, the issuer shall set forth the proposal in its proxy statement and identify it in its form of proxy and provide means by which security holders can make the specification required by Rule 14a4(b) [17 CFR 240.14a-4(b)], subject to the limitations contained in this paragraph and paragraphs b and c of this section;

⁵⁶ For example, an issuer with less than 500,000 record owners would be required to include five proposals in its proxy statement. If it received three includable proposals from new proponents and four proposals from repeat proponents, the three proposals from new proponents would be required to be included and the issuer would then select the remaining two proposals required to be included to meet the maximum by lot from among the four proposals submitted by repeat proponents.

(1) At the time he submits the proposal, the proponent shall be a record or beneficial owner of at least 1% or \$1,000 in market value of securities entitled to be voted at the meeting on his proposal, and have held such securities of the issuer for at least one year at the time he submits the proposal, and he shall continue to own such securities through the date on which the meeting is held, provided, however, if a majority of the issuer's security holders each own less than such amount of securities, the criteria contained in this section shall be decreased so that at least a majority of the security holders would be eligible to submit proposals. If the issuer requests documentary support for a proponent's claim that he meets the eligibility criteria, the proponent shall furnish appropriate documentation within 14 calendar days after receiving the request. In the event the issuer includes the proponent's proposal in its proxy soliciting materials for the meeting and the proponent fails to comply with the requirement that he continuously hold such securities through the meeting date, the issuer shall not be required to include any proposals submitted by the proponent in its proxy materials for any meeting held in the following five calendar years.

(2) At the time he submits a proposal, a proponent shall provide the issuer in writing with his name, address, the number of the issuer's voting securities that he holds of record or beneficially and the dates upon which he acquired such securities. A proposal may be presented at the meeting by either the proponent or his representative who is qualified under state law to present his proposal on the proponent's behalf at the meeting. In the event that the proponent or his representative fails, without good cause, to present the proposal for action at the meeting, the issuer shall not be required to include any proposals submitted by the proponent in its proxy soliciting materials for any meeting held in the following five calendar years.

(3) The proponent shall submit his proposal sufficiently far in advance of the meeting so that it is received by the issuer within the following time periods:

(i) A proposal to be presented at an annual meeting shall be received at the issuer's principal executive offices not less than 120 days in advance of the date of the issuer's proxy statement released to security holders, except that if no annual meeting was held in the previous year or the date of the annual

meeting has been changed by more than 30 calendar days from the date contemplated at the time of the previous years' proxy statement, a proposal shall be received by the issuer a reasonable time before the solicitation is made.

(ii) A proposal to be presented at any meeting other than an annual meeting specified in paragraph (a)(3)(i) of this section shall be received a reasonable time before the solicitation is made.

Note.—In order to curtail controversy as to the date on which a proposal was received by the issuer, it is suggested that proponents submit their proposals by Certified Mail—Return Receipt Requested.

(4) (i) The proponent may submit one proposal and an accompanying supporting statement for inclusion in the issuer's proxy materials for a meeting of security holders. If the proponent submits more than one proposal, or if he fails to comply with the 500 word limit mentioned in paragraph (b) of this section, he shall be provided the opportunity to reduce the items submitted by him to the limits required by this rule, within 14 calendar days of notification of such limitations by the issuer.

(ii) An issuer will not be required to include in its proxy materials for any meeting more than five security holder proposals plus one additional proposal for each 100,000 record holders entitled to vote at the meeting in excess of 500,000 subject to a maximum of twelve proposals to be included.

(iii) If the issuer receives more than the maximum number of proposals required to be included under paragraph (a)(4)(ii) of this section, the selection of those proposals to be included in the issuer's proxy statement will be made in the following manner:

(A) The issuer shall separate the proposals received into two groups; the first will include proposals received from proponents who have not had a proposal included in the issuer's proxy statements sent to security holders in the previous three years, and the second group will include all other proposals;

(B) If the number of proposals in the first group exceeds the maximum number of proposals required to be included under paragraph (a)(4)(ii) of this section, the proposals to be included will be determined by lot from among the proposals in such group;

(C) If the number of proposals in the first group is less than the maximum number of proposals required to be included under paragraph (a)(4)(ii) of

this section, then all such proposals will be included and an additional number of proposals will be selected by lot for inclusion from the second group to reach the required maximum.

(b)(1) The issuer, at the request of the proponent, shall include in its proxy statement a statement of the proponent in support of the proposal, which statement shall not include the name and address of the proponent. A proposal and its supporting statement, in the aggregate, shall not exceed 500 words. The supporting statement shall be furnished to the issuer at the time that the proposal is furnished, and the issuer shall not be responsible for such statement and the proposal to which it relates.

(2) The proxy statement also shall include either the name and address of the proponent and the number of voting securities of the issuer held by the proponent or a statement that such information will be furnished by the issuer to any person, orally or in writing as requested, promptly upon the receipt of any oral or written request therefor.

(c) The issuer may omit a proposal and any statement in support thereof from its proxy statement and form of proxy if:

(1) The proposal is, under the laws of the issuer's domicile, not a proper subject for action by security holders; or

Note.—A proposal that may be improper under the applicable state law when framed as a mandate or directive may be proper when framed as a recommendation or request.

(2) The proposal relates to the election of directors.

(d) Whenever the issuer asserts, for any reason, that a proposal and statement in support thereof received from a proponent may properly be omitted from its proxy statement and form of proxy, it shall notify the proponent, not later than 30 days prior to the date the preliminary copies of the proxy statement and form of proxy are filed with the Commission pursuant to Rule 14a-6(a) [17 CFR 240.14a-6(a)], a statement of the reasons why the issuer deems such omission to be proper and where such reasons are based on matters of law, a supporting opinion of counsel.

(e) If the issuer intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall, not later than ten calendar days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to Rule 14a-6(a), or, in the event that the proposal must be revised to be includable, not later than five calendar days after receipt by the issuer

of the revised proposal, promptly forward to the proponent a copy of the statement in opposition to the proposal.

In the event the proponent believes that the statement in opposition contains materially false or misleading statement within the meaning of § 240.14a-9 and the proponent wishes to bring this matter to the attention of the Commission, the proponent should promptly provide the staff with a letter setting forth the reasons for this view and at the same time promptly provide the issuer with a copy of such letter.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments published in Release No. 34-19135 (October 14, 1982) "Proposed Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 (the '1934 Act') Relating to Proposals by Security Holders," will not, if promulgated, have a significant economic impact on a substantial number of small entities. The first reason for such certification is that only a limited number of entities directly affected by the proposed amendments will be a "small business" or a "small organization" as defined in 17 CFR 240.0-10 because pursuant to 240.12g-1 issuers meeting the definition of "small business" or "small organization" are exempt from the registration requirement of Section 12(g)(1) of the 1934 Act and, thus, the rules and regulations under Section 14(a) of such Act are not applicable. In addition, it is not expected that a substantial number of small entities will be proponents of security holder proposals. A review of the contested security holder proposals processed by the Commission's staff in the period from October 1, 1980 to the present indicates that only two of the two hundred and sixty-two issuers making submissions under Rule 14a-8 would be classified as a "small business" as that term is defined in 17 CFR 240.0-10, and that only eight of the three hundred and nine proponents of those contested security holder proposals would be considered to be a "small business" or a "small organization" as defined in 17 CFR 240.0-10.

Dated: October 14, 1982.

John S. R. Shad,

Chairman.

[FR Doc. 82-29012 Filed 10-25-82; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 81N-0312]

β-Carotene; Proposed Affirmation of GRAS Status as a Direct Human Food Ingredient

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm that β-carotene is generally recognized as safe (GRAS) as a direct human food ingredient. The safety of this ingredient has been evaluated under a comprehensive safety review conducted by the agency. The proposal would take no action on the listing of this ingredient as a GRAS substance for use in dietary supplements.

DATE: Comments by December 27, 1982.

ADDRESS: Comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: FDA is conducting a comprehensive review of human food ingredients classified as GRAS or subject to a prior sanction. The agency has issued several notices and proposals (see the Federal Register of July 26, 1973 [38 FR 20040]) initiating this review, under which the safety of β-carotene has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the agency proposes to affirm the GRAS status of this ingredient for use as a nutrient supplement in conventional food¹ and infant formula.

The GRAS status of the use of β-carotene in dietary supplements (i.e., over-the-counter vitamin preparations in forms such as capsules, tablets, liquids, wafers, etc.) is not affected by this proposal. The agency did not request consumer exposure data on dietary supplement uses when it initiated this review. Without exposure data, the agency cannot evaluate the safety of using this ingredient in dietary supplements. The use of this ingredient in dietary supplements will continue to

¹ FDA is using the term "conventional food" to refer to food that would fall within any of the 43 categories listed in § 170.3(n) (21 CFR 170.3(n)).