

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECTS 86/2

893 SCOM32: AK GENERAL STOCK OWNERSHIP CORP. 1979-80

for Federal Credit Unions, they may not be withdrawn until credited to members' accounts.

(c) No member may withdraw shareholdings that are pledged as required security on loans without the written approval of the credit committee or a loan officer, except to the extent that such shares exceed the member's total primary and contingent liability to the credit union. "Required security" as used in this subsection refers to shares which are in existence at the time the application is made and specifically required to be pledged as security as part of a secured transaction.

(d) No member may withdraw any shareholdings below the amount of his/her primary or contingent liability to the credit union if he/she is delinquent as a borrower, or if borrowers for whom he/she is comaker, endorser, or guarantor are delinquent, without the written approval of the credit committee or loan officer; except that shares issued in an irrevocable trust as provided in section 6 of this article are not subject to restrictions upon withdrawal except as stated in the trust agreement.

(e) The share account of a person whose membership is terminated in accordance with article II, section 5, of these bylaws may be continued until the close of the dividend period in which the membership terminated, after which it shall be transferred to an account payable. The share account of a deceased member (other than one held in joint tenancy with another member) may be continued until the close of the dividend period in which the administration of the deceased's estate is completed, but not to exceed a period of two years."

Article III of the bylaws shall be amended by adding a new section to read as follows:

"SECTION 6. Shares may be issued in a revocable or irrevocable trust, subject to the following:

(a) When shares are issued in a revocable trust, the settlor must be a member of this credit union in his/her own right, and the name of the beneficiary must be stated.

(b) When shares are issued in an irrevocable trust, the settlor or the beneficiary must be a member of this credit union in his/her own right, and the name of the beneficiary must be stated. For purposes of this section, shares issued pursuant to a pension plan authorized by the rules and regulations shall be treated as an irrevocable trust unless otherwise indicated in the rules and regulations.

(c) Trust accounts established prior to the effective date of this section shall not be affected. Trusts may be established pursuant to this section, provided such trusts, their terms and conditions are in accordance with the laws of this jurisdiction."

Article VII, Section 7, of the bylaws shall be amended to read as follows:

"If a director or a credit committee member fails to attend regular meetings of the board or credit committee, respectively, for 3 consecutive months, or otherwise fails to perform any of the duties devolving upon him/her as a director or a credit committee member, his/her office may be declared vacant by the board and the vacancy filled as herein provided. The board may remove any executive officer from office for failure to perform the duties thereof, after giving the officer reasonable notice and opportunity to be heard.

"When any executive officer, membership officer, executive committee member or investment committee member is absent, disqualified, or otherwise unable to perform the duties of his/her office, the board may by resolution designate another member of this credit union to act temporarily in his/her place. The board may also, by resolution, designate another member or members of this credit union to act on the credit committee when necessary in order to obtain a quorum."

Article VIII, Section 5(d), of the bylaws shall be amended to read as follows:

"Within 7 days after the close of each month, prepare and submit to the board financial statements showing the condition of this credit union as of the end of the month. He/She shall promptly post copies of such statements in a conspicuous place in the office of this credit union where they will remain until replaced by the financial statements for the next succeeding month."

Article VIII, Title and Sections 9, 10, 11, and 12 of the bylaws shall be amended to read as follows:

"Article VIII. Executive Officers, Executive Committee, Investment Committee and Management Staff (*italics*)

SECTION 9. The board may appoint an executive committee of not fewer than three directors, to act for it with respect to specifically delegated functions and subject to such limitations as prescribed by the board.

SECTION 10. The board may appoint one or more membership officers from among the members of this credit union to approve applications for membership under such conditions as the board and these bylaws may prescribe. Such membership officer or officers may not be a person authorized to disburse funds.

SECTION 11. The board may appoint an investment committee composed of not less than two to have charge of making investments under rules and procedures established by the board.

SECTION 12. No member of the executive committee, or investment committee, or membership officer may be compensated as such. Members of the executive committee, investment committee and membership officers shall serve at the pleasure of the board of directors."

Article IX, Sections 4, 6, 7, and 8 of the bylaws shall be amended to read as follows:

"SECTION 4. The credit committee may, by majority vote of its members, appoint one or more loan officers to serve at its pleasure, and delegate to him/her or them the power to approve application for loans or lines of credit, share withdrawals, releases and substitutions of security, within limits specified by the committee and within limits of applicable law and regulations. Not more than one member of the committee may be appointed as a loan officer. Each loan officer shall furnish to the committee a record of each transaction approved or not approved by him/her within 7 days of the date of the filing of the application or request, and such record shall become a part of the records of the committee. All applications or requests not approved by a loan officer shall be acted upon by the committee. No individual may disburse funds of this credit union for any application or share withdrawal which he/she has approved as a loan officer.

SECTION 6. The credit committee or loan officer shall inquire into the character and financial condition of each applicant for a loan or line of credit and his/her sureties, if any, to ascertain their ability to repay fully and promptly the obligations incurred by them and to determine whether the loan or line of credit will be of probable benefit to the borrower. The credit committee and its appointed loan officers shall endeavor diligently to assist applicants in solving their financial problems.

SECTION 7. No loan or line of credit shall be made unless approved by the committee or a loan officer in accordance with applicable law and regulations.

SECTION 8. Subject to the limits imposed by applicable law and regulations, these bylaws, and the general policies of the board, the credit committee, or a loan officer, shall determine the security if any required for each application and the terms of repayment. The security furnished shall be adequate in quality and character and consistent with sound lending practices. When funds are not available to make all the loans and lines of credit for which there are applications, preference shall be given, in all cases, to the smaller applications if the need and credit factors are nearly equal."

Article XII, Title and Sections 2, 3, 4, 5, and 6 shall be amended and Sections 3, 4, 5, 6, and 7 shall be renumbered to read as follows:

"Article XII. Loans to Members and Lines of Credit to Members (*italics*)

SECTION 2. Within the limitations prescribed by applicable law and regulations, the board shall fix from time to time the interest rates on loans, the rate of interest refund, if any, to be made to members, the maximum maturities and terms of payment or amortization of loans to members, the security, and the maximum amount which may be loaned. When

by action of the board, the interest rates on future loans are reduced, similar action may be taken with regard to interest rates on unpaid balances of existing loans.

SECTION 3. Lines of credit may be extended to members in accordance with applicable law and regulations. The board shall fix from time to time the interest rates, the maximum maturity, terms of payment or amortization, the security, and the maximum amount which may be loaned under a line of credit agreement within the limitations prescribed by applicable law and regulations.

SECTION 4. The aggregate amount of loans and lines of credit to any one member and the terms and conditions of such loans and lines of credit shall not exceed the limits permitted by applicable law and regulations.

SECTION 5. Any loan or line of credit made to a director or member of the credit or supervisory committees shall be in compliance with the Act and regulations. Directors or members of the credit or supervisory committees may act as comaker, endorser or guarantor for borrowers from this credit union, subject to the provisions of the Act and regulations.

SECTION 6. A borrower may repay his/her loan prior to maturity, in whole or in part, on any business day without penalty.

SECTION 7. Applications for loans or lines of credit shall be on forms prepared and furnished by the credit committee and shall in each case set forth the security, if any, and such other data as may be required by the committee or by applicable law and regulations.

SECTION 8. Subject to the limitations of applicable law and regulations, any member whose loan is delinquent for a period of 1 week or more may be required by the board to pay a late charge of 20 percent of the interest due, with a minimum of not less than 5 cents."

Article XIII, Section 1, of the bylaws shall be amended to read as follows:

"All amounts as required by the Act and regulations, shall be set aside as a regular reserve: Provided; however, (*italics*) That when the regular reserve thus established shall reach the minimum balance required by the Act and regulations, no further transfers shall be required except up to such amounts permitted by law and as may be needed to maintain such minimum balance. Amounts in excess of the above requirements may be transferred to the regular reserve by authorization of the board. The regular reserve shall be used only for losses as authorized by applicable law and regulations."

Article XIV, Sections 1 and 2 of the bylaws shall be amended (Section 3 shall be deleted) to read as follows:

"SECTION 1. The board shall establish dividend periods and declare dividends as permitted by the Act and applicable regulations.

SECTION 2. No dividend shall be declared or paid at a rate in excess of:

- (a) 7 percent per annum on share accounts,
- (b) 7 3/4 percent per annum on share certificate accounts."

Article XVII, Section 1, of the bylaws shall be amended to read as follows:

"Shares may be issued in the name of a minor."

Article XVIII, Section 1, of the bylaws shall be amended by adding a new subsection (i) to read as follows:

"(i) "Share" or "shares" means all classes of shares and share certificates that may be held in accordance with applicable law and regulations."

Article XIX, Section 2, of the bylaws shall be amended to read as follows:

"The officers, directors, members of committees and employees of this credit union shall hold in confidence all transactions of this credit union with its members and all information respecting their personal affairs, except to the extent deemed necessary by the board in connection with the making of loans and the collection thereof and extending lines of credit."

"Notwithstanding the above, the board of directors may authorize participation in a credit reporting agency if it has determined that use of such an agency is essential in the making of loans and extending lines of credit and that information supplied by the credit union concerning its members will be made available only to legitimate lenders belonging to that agency."

That notice of the above meeting was given to board members in accordance with Article XXI, Section 1, of the bylaws:

That the foregoing resolution, together with the names of directors voting for the amendments, those voting against the amendments, and those absent from the meeting have been entered in full in the minutes of the board of directors of this Federal credit union.

President

Secretary

(This certification is to be executed in triplicate. The original is to be filed with the official bylaws. Two copies are to be sent to the regional office, NCUA)

MEMORANDUM

TO: Frances Ulmer, Director
Division of Policy
Development & Planning

DATE: March 19, 1979

FILE NO:

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Policy & Legal Issues
Surrounding AGSOC Legislation
(SSSB 170 and SSHB 240)

By: *Joseph K. Donohue*
Joseph K. Donohue
Assistant Attorney General

You have requested a brief outline of the various issues which the Administration should review in the context of the analysis of the AGSOC legislation presently before the legislature (SS for B 170 and SS for HB 240). The following is an outline of those issues from the Department of Law's perspective:

I. TAXATION

The Revenue Act of 1978 added Subchapter U to the Internal Revenue Code 1954, 26 U.S.C. §1391 through §1397. This legislation provides for the creation of a general stock ownership corporation (GSOC) and it authorizes special tax treatment for those corporations which qualify. The federal legislation requires that all GSOCs be chartered by an act of the State Legislature or by a referendum and further requires that each state charter provide as follows:

1. That the charter provide for the issuance of only one class of stock;
2. That the charter provide for the issuance of shares only to eligible individuals; "eligible individuals" are further defined as those who are residents of the State as of the date specified in the State's enabling legislation and who continue to be residents of the State as of the date of the issuance of the shares;
3. That the charter provide for the issuance of at least one share of stock for each eligible individual;

4. That the charter provide that no share of stock shall be transferred by the shareholder other than by will or by intestate succession, until after five years from the date of issuance (except where the shareholder ceases to be a resident); that no share of stock be transferred to a person other than a resident; and that no share of stock be transferred to any individual who would as a result of the transaction acquire more than ten shares of the GSOC.

In addition, the GSOC may not acquire more than twenty percent of the shares of any other existing corporation; the GSOC may not acquire property through the right of eminent domain; the GSOC's charter must mandate that it qualify as a GSOC under the Internal Revenue Code; and finally, the GSOC must be chartered and organized between December 31, 1978, and before January 1, 1984.

Thus, AGSOC (Alaska GSOC) as set out by Louis Kelso's proposal in SSSB 170 would create a corporation whose shareholders consisted of every resident of the State of Alaska as of the time the State charter goes into effect who remain a resident until the date of the first issuance of the AGSOC shares. The AGSOC is treated as a private corporation and not as a governmental unit for purposes of the Internal Revenue Code, except that a qualifying AGSOC is not subject to federal corporate income taxes. Instead, AGSOC's "taxable income" which is calculated in accordance with the Internal Revenue Code (with minor exceptions not relevant here) would be attributed directly to the shareholders in proportion to the number of shares held and would be taxed as individual income to those shareholders. This dividend income does not qualify for the exclusion from gross income normally associated with the first \$100.00 of dividend income. See 26 U.S.C. §116.

The AGSOC is required to distribute at least ninety percent of its "taxable income" for any tax year. 26 U.S.C. §1396(a). The failure of an electing AGSOC to make the required ninety percent distribution would subject it to a penalty of twenty percent of the excess amount required to be distributed over that amount actually distributed. The federal scheme is intended to give the AGSOC a significant competitive advantage since the corporation can operate free of corporate income taxes at the federal level. On the other hand, this ten percent maximum on retained earnings

However, they have also indicated that there was a significant probability (about 75%) that AGSOC would have to return to the Administration and to the legislature, and ultimately to the people at the polls, for approval of a major extension of State credit or guarantees to secure loans of sufficient size to enable AGSOC to invest in TAPS, construct a gas line, etc.

SSSB 170 presently contains only one financing device--AS 10.50.100. The bill proposes the creation of a loan guarantee fund which will be a special fund segregated from all other funds of the State. It purports to be a trust fund for the uses and purposes of this section, but no uses and purposes are set forth in that section. As proponents of the measure have stated that the sole purpose is to guarantee loans for startup or organizational costs of the corporation, they have agreed to both clarify the uses to which the monies can be put and to a statement of a definite limit on the appropriations into the fund (\$5,000,000.00). In addition, this section charges the Commissioner of Revenue with reviewing applications for loan guarantees (for the purpose of guarding against fraud and misrepresentation). It is suggested that the Commissioner of Revenue be given broader review powers such as the ability to disapprove a loan on the basis of its general inadvisability.

To accommodate these various concerns, the following substitute for AS 10.50.100 contained in SSSB 170 is submitted for consideration:

A) There is a special fund of the State known as the Alaska General Stock Ownership Corporation Loan Guarantee Fund, which shall not exceed \$5,000,000.00. and which shall be completely segregated from all other funds of the State. This fund is a trust for the uses and purposes of this section.

B) The Commissioner of Revenue shall use the fund to guarantee loans solely for startup costs (and not to include major investment financing) made to the corporation by lenders other than the State. In guaranteeing loans, the Commissioner of Revenue shall review the loans for the purpose of ascertaining the general soundness of the proposed loan and for the purpose of guarding against fraud

may, indeed probably will, prohibit a corporation's expansion into major new investment areas on the basis of these earnings alone. New investment opportunities which arise in the future would require AGSOC to again obtain significant debt financing which may, in turn, require multiple state guarantees.

The first question which arises is whether or not the policy evidenced by the federal legislation (i.e., freedom from corporate income taxation) should be paralleled at the State level. The present SS for SB 170 would operate to exempt the AGSOC from the State's corporate income tax levied pursuant to AS 43.20. See AS 43.20.021, which incorporates by reference subchapter U of Chapter 1 of subtitle A of the Code. AS 43.20.021 provides for a delayed incorporation of tax exemptions. Those provisions of the Code adopted after 1975 "which change or modify exemptions from tax or credits against tax are not adopted by reference as a part of this chapter until the second January 1 following the effective date of the federal law". Here GSOC's exemption would go into effect at the State level on January 1, 1980. The AGSOC, however, would be subject to state severance taxes (AS 43.55), state oil and gas property taxes (AS 43.56), as well as the state's new oil and gas corporate income tax (AS 43.21.010) should the AGSOC invest in oil and gas production or pipeline transportation property. The investment opportunity presently recommended by Kelso's group is that the new AGSOC purchase BP's share of TAPS.

AGSOC's investment in the oil and gas arena would present several important policy questions which should be analyzed prior to the Administration's endorsement of the present legislation. By purporting to give each resident of the State a direct interest in the development of the State's natural resources, it would become an independent voice for more rapid exploitation of those resources. Because the dividends to the residents would, as presently proposed, be directly affected by the nature and extent of the State oil and gas tax policy, it would likely become a lobbying force for lower State taxes. Obviously, lots of tradeoffs are involved, but the political and economic issue reduces itself to the following: Would it be better to expedite resource development and lower State taxes in such a case in order to allow AGSOC's shareholders to benefit directly (albeit by only a marginal increase in their dividend) and at the same time deprive the State treasury of potentially enormous revenues which could be devoted to various social welfare programs? These programs would ultimately return greater proportionate benefits to those in the lower income brackets in the State and possibly lesser benefits (than AGSOC) to those in the upper income brackets.

and misrepresentation. The guarantee of a loan may not be for an amount in excess of the unobligated balance in the fund at the time the guarantee is made.

Whereas the above minor technical changes can clarify or limit the general purpose of the loan guarantee fund as originally proposed, the manner in which AGSOC would approach the State and apply for an appropriation or legislation which would enable them to utilize the public credit of the State of Alaska to guarantee a major investment in the future is not treated in this bill. Senator Gravel has testified that such an extension of public credit would be in accordance with the procedures which pertain to the issuance of general obligation bonds which require the ratification of the voters at the polls. Thus, Senator Gravel has argued that no major extension of public credit would occur without the ultimate participation of all the voters of the State who would, of course, include most of the AGSOC shareholders.

Senator Gravel is basing his procedural argument on Article IX, §8, State Constitution, which states:

"No state debt shall be contracted unless authorized by law for Capital improvements and ratified by the majority of the qualified voters of the State who vote on the question."

Although the issue deserves further review by this department, it is suggested that this provision on its face does not apply to the type of guarantee contemplated by Senator Gravel and the proponents of the AGSOC, since the investment would not qualify as a capital improvement authorized by law under this section. See City of Juneau v. Hickson, 373 P2d 743 (Alaska 1962).

Rather, it would appear that Article IX, §6, applies in this context:

"No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose."

Under this provision, all that would be required for an extension of credit to the AGSOC would be legislation appropriating a sufficient amount of money to guarantee AGSOC's commitment. Thus, it appears that something on the order of a loan guarantee fund on a vaster scale would in fact be required but such legislation would not be subject to voter ratification at a subsequent general election. Since Kelso's investment consultants have based their advice on the assumption that there could be a call on the general credit of the State without a significant appropriation to back up any guarantees, the ability of the State treasury to make such an appropriation and its fiscal impact on other State programs has never been carefully analyzed.

Thus, three questions need to be considered: (1) Whether there is any constitutional mechanism for extending the State's credit without the necessity of a large appropriation which may not be fiscally sound or economically feasible; if not, whether AGSOC's proponents who have assumed the availability of access to the State's credit have any alternative suggestions for the financing of the corporation which should be statutorily treated at this time; (2) Whether this statute should incorporate a statutory procedure or requirement for voter ratification of any major investment proposal, funded by direct appropriation into a guarantee loan fund; and (3) Whether a constitutional amendment would be required to allow the State to guarantee AGSOC's loans. (7) (7) (7)

III. DEPOLITICIZING THE AGSOC

The proponents of the AGSOC have conceived of this entity as operating as a private corporation subject to the very few qualifications imposed on it by federal law. Thus, the corporation is subject to the standard provisions of the Alaska Business Corporation Act, AS 10.05, except where inconsistent with the state or federal enabling legislation. The proponents have argued that AGSOC stands the best chance of being a success, (i.e., operating at a profit which will be shared in by most Alaskan residents) if it is structured as a completely private corporation. However, it should be noted that there is nothing in the federal legislation which would preclude the AGSOC's establishment as a state agency or public corporation. ★ ★

No matter how the AGSOC is ultimately designed, it would be foolhardy to believe that this entity would not quickly become highly politicized and ultimately, if it is successful, become an extremely powerful political force in

the State. Assuming it is established as a private corporation, it would present the following issues:

A) AGSOC: A Fourth Branch of Government

A successful AGSOC, representing as it would the residents of the State of Alaska would in essence, become a fourth branch of government. It will be a fourth forum in which State environmental, social, economic and tax questions will be vigorously debated. The Governor's control over this, corporation is limited to appointing the first board of directors. After that the corporation will, as presently designed, operate completely independent of any state agency, albeit it will be subject to all applicable state regulatory provisions. Given the composition of the corporation, it would become quickly susceptible to the pressures of any cohesive organized group of residents within the State, such as large labor unions, native corporations, etc. That is, any private organization containing a large number of resident votes could well form a block in the nature of a voters' trust, which could be used to gain control, or at least to form an influential minority on the board of directors.

The board, and indirectly management, would be subject to election by the same or a similar constituency as the Governor of the State. Thus, the chairman of the board could conceivably end up representing a larger number of Alaskan residents than the Governor of the State. The Governor would be put in the somewhat anomalous position of dealing with a more popular, albeit apolitical, leader representing the fourth estate, i.e., AGSOC.

Although one could argue that AGOSC violates the fundamental political theory of the State Constitution which established only three branches of government, this objection is more of a philosophical one than a legal one, and it is not anticipated that any such challenge could be successfully formulated and presented to the State courts. Finally, under this general category of concerns relating to its impact on the present institutional balance of power as contemplated by the State Constitution, it should be noted that

management of the corporation, members of the board of directors of the corporation, could, and very well might, utilize their position as a forum for criticism of the Administration's economic policies and ultimately as a launching pad for State elective office.

B) Specific Constraints: Lobbying and Political Contributions. Since AGSOC will purport to represent the people of the State of Alaska, it could be argued that since that function is also served by the Governor of the State and by the legislature in the political arena, AGSOC should be prohibited from participating in that same arena, or at least be made subject to stringent restrictions. It is suggested that AGSOC should be prohibited from lobbying, from making political contributions to candidates for State offices, and that strict proxy review mechanisms should be added to the bill to ensure that the board of directors act in a politically neutral fashion. For instance, AGSOC's board, in its annual report, would be allowed to analyze the impact of State taxes on its percapita dividends. However, the board would not be able to affirmatively encourage the shareholders to write their legislators and call for a lower rate of taxation. The shareholders would have to draw their own conclusions. Obviously, the shareholders would then be allowed to contact their legislators and express their opinion on the subject.

Furthermore, a AGSOC endorsement of a political candidate would obviously be a cherished one. Even though AGSOC's proponents at present claim that this corporation is merely another private corporate entity, we have absolutely no guarantees that management in future years will not take full advantage of its position as representative of the residents of Alaska and try to see its political and economic policy preferences implemented by vigorous participation in the political arena. AGSOC endorsements and political contributions might therefore best be prohibited.

C) Litigation With The State. AGSOC, just like any other major corporate entity, would become subject to various State regulatory laws, and the

possibility for confrontation is obvious. For instance, should AGSOC become the vehicle for financing the gas line, AGSOC would have a corporate interest in raising the tariff on the pipeline which would be assessed against the State, and the State as producer and shipper would have an interest in lowering the tariff in order to maximize State royalty and severance tax revenues to the treasury.

In addition, the proponents of AGSOC have stated on several occasions that in order for it to result in tangible benefits to the individual Alaskan shareholder, it must invest in vast development projects which will involve vast returns (hopefully). Thus, there is every likelihood that AGSOC would become a major force for concentration of economic power in the State and might ultimately develop or acquire monopoly control over one or more economic sectors. This, in turn, would present anti-trust problems, both under state and federal law, and the following scenarios are possible: 1) Since AGSOC is not a State agency, it would not enjoy the "state action" exemption from the federal anti-trust laws and it would likewise be subject to treble damage actions for any economic injuries arising out of violations of the Sherman or Clayton Anti-Trust Acts, 15 U.S.C., §1, et seq., and (2) The State could find itself litigating at great expense against AGSOC in order to require it to divest itself of various interests, or to require it to cease and desist from some specific anti-competitive practice.

The anti-trust example is one of many. It could occur in the environmental sector, the banking and securities area, the tax area, or in any other area of commercial endeavor. The State and AGSOC, if engaged in litigation with each other, would be drawing on resources which ultimately affect the same individuals, i.e., the taxpayers versus the shareholders. Should the State prevail and obtain a fine, such a fine would, itself, seem counterproductive.

Some suggestions for mitigating the underlying irony of the State litigating against the people of the State, i.e., AGSOC, and the potential for enormous waste of common resources which is inherent in any extensive litigation such as a protest of a pipeline tariff, might be as follows:

- 1) When a dispute arises between the State and AGSOC, the matter could be held in abeyance until the next legislature to allow the latter to determine by legislation the proper resolution of the matter; or the matter could be submitted to an arbitration panel established by statute.
- 2) Other means of controlling litigation between AGSOC and the State would be to create a disincentive to any litigation. One such disincentive would be a modification of the court rules relating to the award of costs and attorney's fees to provide that the State would always be entitled to receive its actual costs and attorney's fees incurred in the litigation of any action involving AGSOC. In addition, AGSOC's right to costs and attorney's fees would arise only in those cases where the court makes an express finding that the State's prosecution or defense was frivolous or lacking in good faith.

IV. CORPORATE DEMOCRACY

One of the most important policy questions which must be addressed in any analysis of AGSOC is whether or not resident shareholders' right to participate in and to influence corporate decision making is adequately protected or assured by the normal corporate procedures set forth in AS 10.05. The following is a list of specific issues which the administration and the legislature should address in its analysis of the AGSOC legislation:

- 1) Classified Directors. The present sponsor substitute provides for a board of directors consisting of nine members divided into three classes of three members each. Three directors will therefore be eligible for an election during any one year. See AS 10.50.030. A highly classified

board of directors such as this would limit the ability of minorities within the State to obtain representation on the board of directors. Every shareholder has one vote, and if all nine directors were elected at the same time, there is a greater opportunity for minorities such as native organizations, etc., to elect at least one board member. A highly classified board would tend to heavily favor urbanized Alaska.

2) Cumulative Voting. AS 10.05.162 presently provides that shareholders may, at an election for directors, cumulate their votes by giving one candidate as many votes as the number of directors to be elected, multiplied by the number of that shareholder's shares. However, a corporation may provide in its bylaws (modified by board of directors' resolutions) that shareholders cannot cumulate their votes but must vote shares held by them on an election-by-election basis. Cumulative voting is another device to help ensure minority representation on the board of directors. By leaving it optional, as stated in AS 10.05.162, the board of directors could amend the bylaws to prohibit cumulative voting. It is suggested that it might be desirable for the AGSOC legislation to expressly state that cumulative voting cannot be prohibited by shareholder or by director action.

3) Voting Trusts. In accordance with AS 10.05.171, voting trusts may be created by any number of shareholders who wish to confer upon a trustee the right to vote or otherwise represent the shareholders for a period not exceeding ten years. The existence or toleration of voting trusts within the AGSOC context is a question which should be carefully analyzed. At this point in time, it is suggested that their prohibition might be advisable or at least a limitation imposed on the number of years that they can remain in existence. For instance, AGSOC proponents indicate that the original AGSOC will be coming back to the legislature for each major investment proposal. Thus, within a ten-year period, two or three major investment schemes may have been considered and acted upon, and a ten-year voting trust would allow a trustee undue amount of influence over any of these decisions.

4) Amendment of The Articles of Incorporation. AS 10.05.276 presently provides that the board of directors shall adopt a resolution setting out a proposed amendment directing that it be submitted to a vote at the annual or special meeting of the shareholders. Thus, it appears that the initiative to amend the articles must come from the board, and it may be desirable to provide for an amendment which would allow the shareholders to propose amendments to the articles of incorporation that can be taken up and voted on at annual meetings:

5) Quorum of Shareholders. AS 10.05.153 presently provides that, unless otherwise provided in the articles of incorporation, the majority of the shares entitled to vote constitutes a quorum in a meeting of shareholders. (The section provides for a minimum of one-third of the shares.) The quorum requirement is something that the legislature may wish to mandate by statute. Here, of course, the higher the quorum requirement, the greater the difficulty the corporation will have in holding an annual meeting. However, a high quorum requirement would necessitate vigorous promotional and educational programs to ensure the presence of the quorum at each annual meeting and might indirectly spur the corporation to greater efforts to include or request the participation of all shareholders of the State in corporate decision making.

6) Notice of Meetings of Shareholders. AS 10.05.138 presently provides that meetings of shareholders may be held at the place (either inside or outside the State) as may be provided in the bylaws. In addition, an annual meeting of the shareholders shall be held at the time provided in the bylaws. Special meetings of the shareholders may be called by the president, the board of directors, and holders of not less than one-tenth of all the shares entitled to vote at the meeting.

AS 10.05.141 in addition requires written or printed notice of all meetings, such notice shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail.

Obviously, together these rules operate to favor incumbent management. Annual meetings could

be rescheduled by a change in the bylaws which requires a vote of the board of directors. The board could, on short notice, i.e., as little as ten days, present the shareholders with any major issue it chose, such as the election of new directors or consideration of a major investment proposal.

The legislature might well wish to consider statutory safeguards which would ensure adequate notice of the time, place and purpose of any meeting which would preclude manipulation of the timing of any meeting to the advantage of the incumbents.

7) Bylaws. AS 10.05.135 presently provides that the board of directors shall have the power to alter, amend or repeal the bylaws unless it is reserved to the shareholders by the articles of incorporation. Again, it is suggested that the amendment of the bylaws might be a power which should be reserved to the shareholders in order to ensure adequate public review of any change in the management's approach to the conduct of the corporation's business.

8) Financing of Proxy Fights, Access to Voting Lists and Mailing Machinery. Several commentaries concerning modern corporate battles note the inherent advantage which incumbent management has through its control of the corporate machinery for sending out mailings, soliciting support, and arguing its cause before the shareholders. This is done at corporate expense, whereas opposing or dissenting shareholders frequently have to finance such efforts from private sources. Amendments might well be considered which would allow shareholders who can obtain a certain number of qualified signatures to utilize the corporation's mailing machinery at the corporation's expense. This procedure should be especially encouraged in the context of elections for the board of directors. Candidates who can either obtain a nomination by the board of directors or the support of a predetermined percentage of the shareholders should be entitled to publish information concerning themselves, their experience, their policy preferences and their criticisms of existing management at the corporation's expense.

V. PRIVATE CORPORATION: CLOSED CLASS OF
SHAREHOLDERS

Two other constitutional issues should be mentioned briefly in this context. First, the federal legislation authorizing the creation of GSOC mandates that the shareholder group be made up of a closed class (i.e., those residents who satisfy the eligibility requirements imposed by state law as of the date of the state charter, and who remain residents as of the date of the issuance of the shares). Thus, future residents would be ineligible for one of the free shares of AGSOC. Under Kelso's present plan, AGSOC shareholders who leave the state and become nonresidents would be entitled to retain their dividends and voting rights in AGSOC. Persons leaving the state who wish to sell their shares could, of course, sell to new residents who wish to participate in the AGSOC. In addition, oldtime residents could acquire as many as ten shares in AGSOC through purchase or inheritance.

These two factors, when combined, could lead to the following scenario: The initial one hundred percent of the AGSOC shares could be concentrated in as few as ten percent of the original shareholders. Those shareholders, in turn, could become residents of other states, and thus it is theoretically possible that ten or twenty years from the original issuance, AGSOC shareholders could be composed of a select group of resident Alaskans and nonresident former Alaskans. Ironically, it may be at this very time that the state may be called upon to honor its guarantee, and thus the state's credit rating and ability to issue bonds at favorable interest rates would be adversely affected, and the people who would be called upon to bear the burden of AGSOC adventures would be the taxpaying class of Alaskans at that time. This potential for a sharp dichotomy between the shareholder class of AGSOC and the resident population of the state deserves closer analysis. Kelso's report contains no estimates of the transiency rates of the Alaskan population and no projections as to the future composition of its AGSOC.

The legal issue which overlaps this general policy question is whether or not the closed class nature of the AGSOC offends the equal protection provisions of the state or federal constitutions. Wilmer, Cutler & Pickering, in their memorandum of December 15, 1978, on the constitutional issues, felt that such a provision might be successfully

defended against a federal constitutional challenge. A closer question is presented under the state constitutional provision which has been interpreted somewhat more stringently than its federal counterpart. See Isakson v. Richey, 550 P2d 359 (Alaska 1976). Under this provision, a substantial question is raised as to whether or not the AGSOC arbitrarily discriminates against future residents of the state.

Secondly, a derivative issue is whether or not the use of the public credit for the direct benefit of a private corporation whose shareholders will, over time, form a distinct class within the state (possibly a minority class) qualifies under the "public purpose" requirement of Article IX, §6 of the Alaska State Constitution.

QUESTIONS ON AGSOC FOR THE HOUSE STATE AFFAIRS COMMITTEE

1. How could AGSOC be structured so as not to create unnecessary conflicts between the public interest in business regulation and taxation and the shareholder's interest in higher dividends?

yes 2. Would it be generally advisable to make attempts to depoliticize the AGSOC?

Should the AGSOC be allowed to lobby, make political contributions or come out with endorsements for particular candidates?

3. Do normal state corporation statutes provide sufficient protection for minority shareholders?

- Is it inevitable the AGSOC would become an urban dominated corporation, given the population of the state?
- How would rural members be able to participate other than by proxy given the expenses involved in travelling to meetings?
- Should the board be classified, i.e. only a subset of the board coming up for election at one time
- Should cumulative voting be mandatory?
- Should voting trusts be prohibited?
- Who should have the authority to amend articles of incorporation and bylaws?
- How should proxy fights and shareholder-management disputes be financed - should both incumbents and challengers be financed by corporation money?

STILL TO BE DECIDED 4. Should exemption from federal income taxation be extended to state taxation in general?

5. What are the probabilities that AGSOC will need no other state assistance beyond start-up costs? Can AGSOC really operate as a purely private corporation?

- Which particular investments would not require state financial aid?
- Which particular investments would require state financial aid?
- * Ask Kelso representative to detail the mechanism whereby AGSOC requests state financial assistance.
- What kind of impact on the state's credit rating would the potential access to state support and/or guarantees have? Is it fair that all residents bear the risk to the state's credit rating which benefits only the subset of residents who are shareholders?

6. What are the pros and cons of setting up the AGSOC up as a public corporation versus a private corporation, assuming it would be legal?
7. Is there further information which can be made available to the state which will help us to make a prudent decision on the AGSOC. Can such information be gathered before the end of this session?

Possible questions to be answered:

- Do Alaskan's want an AGSOC? Perhaps this issue needs an airing similar to that given to Alaska, Inc. via the Public Forum. Since AGSOC is to be a people's corporation, should the people deserve more involvement than has yet been provided?
- What are the political implications of a corporation whose shareholders comprise the voting public? Are there any existing situations which are similar elsewhere, and from which lessons can be drawn?
- What will be the impact on the state's credit rating if AGSOC requires different kinds of state financial assistance? If there is an impact, how much will non-shareholding residents be paying to benefit the shareholders?
- If AGSOC had been incorporated five or ten years ago, how many residents would be shareholders today? Or conversely, how many shareholders would still be residents? What can we expect for the future? Taxpayer turnover data is available to answer this question.

① — VOTE OF PEOPLE ~~FOR~~ REQUIRED
FOR \$'s / Guarantee,

② — CAN'T TRANSFER

③ — ALL DIRECTORS ALASKANS

④ — UNDECIDED: # of Directors from out of state?
1 from each of 5 areas?

⑤ — Chairman MUST Be Alaskan

⑥ — DIR. Cannot Be officer / employee



ABEL BELTRAN-DEL-RIO
Director -- Latin American Projects

March 22, 1979

Mr. Milton Barker
State of Alaska
Division of Legislative Finance
Room 411 Capitol Bldg., Pouch WF
Juneau, Alaska 99811

Dear Mr. Barker:

After a first reading of the material you kindly sent me, I have some initial comments to make, most of which I would like to pose in the form of questions:

- 1) After five years, how is the secondary market going to be organized for the sale of the GSOC stock?

One concern I have on this score relates to the underpricing of this stock vis-a-vis the price it will command on the stock market. It seems indispensable to keep the stock out of the regular valuation which would be given to it if sold on the regular market. Otherwise, its price will tend to go up until its rate of return falls to the level of the normal returns on the stock market. I have expressed this concern to Senator Gravel in various meetings and letters. Presumably, however, if the GSOC assets do not proliferate in the U.S., it would be easy to maintain the separation of the markets. But if they do, leakages would probably take place, which would tend to drive these prices up and also tend to lower the price of the other stock, tending to equalize their rates of return, as normally happens on any free market.

- 2) Is GSOC going to get preferential interest rates from lenders?

If this is the case, the undervaluation of the GSOC stock would be even higher, leading to the problem we mentioned before.

- 3) What is the size in dollars of the first issue of GSOC stock?

I was unable to find these numbers in the material I got.

Mr. Milton Barker
March 22, 1979
2.

WHARTON EFA, INC.



- 4) What would be the incentive of the beneficiaries, the residents of Alaska, to participate in raising the productivity in the GSOC?

One of the most forceful arguments of Mr. Kelso for his proposals of capital diffusion has been to provide incentives for harder work and more productivity in the firms. How will this efficiency operate in the case of GSOC?

- 5) Would GSOC tend to diminish excessive (beyond the rate of labor productivity) wage labor demands?

This has been another argument in favor of capital diffusion made by Mr. Kelso.

- 6) What is the size of the dividends that are expected from the stock and how frequently would they be paid out to the "new capitalists"?

As you can see, my main questions relate to the quantities involved in the project. I think it would be very useful, if these estimations are available, to distribute them in order to better understand the project.

Aside from these questions, I would like to express my enthusiasm for the splendid accomplishment that the GSOC Bill represents. Since the publication of The Capitalist Manifesto in 1958, I have been following the work of Mr. Kelso and I am very happy to see that with the drive and dedication of Senator Gravel, the law is being changed to introduce the capital diffusion tool to the kit of economic policy in the U.S. This may represent a turning point in the history of economic policy making in this country and abroad.

Finally, I would like to ask you for ten copies of the material, to distribute them among my colleagues here at Wharton EFA, who are also very much in sympathy with the project and would like to know more about it.

Cordially yours,

A handwritten signature in dark ink, appearing to read 'Abel Beltran del Rio', written in a cursive style.

Abel Beltran del Rio

ABR/as

(2) The purpose for which the purchase is to be made and whether the securities are to be retired, held in the treasury of the issuer or otherwise disposed of, indicating such disposition; and

(3) The source and amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto; and

(b) The issuer has at any time within the past 6 months sent or given to its equity security holders the substance of the information contained in the statement required by paragraph (a) of this section: *Provided, however*, That any issuer making such purchases which commenced prior to July 30, 1968 shall, if such purchases continue after such date, comply with the provisions of this rule on or before August 12, 1968.

[33 FR 14110, Sept. 18, 1968, as amended at 34 FR 6101, Apr. 4, 1969]

REGULATION 14A: SOLICITATION OF PROXIES

§ 240.14a-1 Definitions.

Unless the context otherwise requires, all terms used in §§ 240.14a-1 to 240.14a-10 and in Schedule 14A have the same meanings as in the act or elsewhere in the general rules and regulations thereunder. In addition, the following definitions apply unless the context otherwise requires:

(a) *Associate*. The term "associate" used to indicate a relationship with any person, means (1) any corporation or organization (other than the issuer or a majority owned subsidiary of the issuer) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (3) any relative

or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the issuer or any of its parents or subsidiaries.

(b) *Issuer*. The term "issuer" means the issuer of the securities in respect of which a proxy is solicited.

(c) *Last fiscal year*. The term "last fiscal year" of the issuer means the last fiscal year of the issuer ending prior to the date of the meeting for which proxies are to be solicited.

(d) *Proxy*. The term "proxy" includes every proxy, consent or authorization within the meaning of section 14(a) of the act. The consent or authorization may take the form of failure to object or to dissent.

(e) *Proxy statement*. The term "proxy statement" means the statement required by § 240.14a-3(a), whether or not contained in a single document.

(f) *Solicitation*. (1) The terms "solicit" and "solicitation" include:

(i) Any request for a proxy whether or not accompanied by or included in a form of proxy;

(ii) Any request to execute or not to execute, or to revoke, a proxy; or

(iii) The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

(2) The terms do not apply, however, to the furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder, the performance by the issuer of acts required by § 240.14a-7, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

[17 FR 11431, Dec. 18, 1952, as amended at 21 FR 578, Jan. 26, 1956]

§ 240.14a-2 Solicitations to which §§ 240.14a-1 to 240.14a-11 apply.

Sections 240.14a-1 to 240.14a-11 apply to every solicitation of a proxy with respect to securities registered pursuant to section 12 of the Act, whether or not trading in such securities has been suspended, except the following:

(a) Any solicitation made otherwise than on behalf of the management of the issuer where the total number of persons solicited is not more than ten.

(b) Any solicitation by a person in respect to securities carried in his name or in the name of his nominee (otherwise than as voting trustee) or held in his custody, if such person:

(1) Receives no commission or remuneration for such solicitation, directly or indirectly, other than reimbursement of reasonable expenses;

(2) Furnishes promptly to the person solicited a copy of all soliciting material with respect to the same subject matter or meeting received from all persons who shall furnish copies thereof for such purpose and who shall, if requested, defray the reasonable expenses to be incurred in forwarding such material; and

(3) In addition, does no more than impartially instruct the person solicited to forward a proxy to the person, if any, to whom the person solicited desires to give a proxy, or impartially request from the person solicited instructions as to the authority to be conferred by the proxy and state that a proxy will be given if no instructions are received by a certain date.

(c) Any solicitation by a person in respect of securities of which he is the beneficial owner.

(d) Any solicitation involved in the offer and sale of securities registered under the Securities Act of 1933: *Provided*, That this paragraph shall not apply to securities to be issued in any transaction of the character specified in paragraph (a) of § 240.145 of this chapter.

(e) Any solicitation with respect to a plan or reorganization under Chapter X of the Bankruptcy Act, as amended, if made after the entry of an order approving such plan pursuant to section 174 of said act and after, or concurrently with, the transmittal of information concerning such plan as required by section 175 of said act.

(f) Any solicitation which is subject to Rule U-62 under the Public Utility Holding Company Act of 1935.

(g) Any solicitation through the medium of a newspaper advertisement which informs security holders of a

source from which they may obtain copies of a proxy statement, form of proxy and any other soliciting material and does no more than (1) name the issuer, (2) state the reason for the advertisement, and (3) identify the proposal or proposals to be acted upon by security holders.

(15 U.S.C. 77 b, d, e, s. 78 1-n, 80a-20, 80a-37)

(17 FR 11431, Dec. 18, 1952, as amended at 30 FR 4753, Apr. 14, 1965; 37 FR 23637, Nov. 7, 1972)

§ 240.14a-3 Information to be furnished to security holders.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Schedule 14A (§ 240.14a-101).

(b) If the solicitation is made on behalf of the management of the issuer, and relates to an annual meeting of security holders at which directors are to be elected, each proxy statement furnished pursuant to paragraph (a) of this section shall be accompanied or preceded by an annual report to security holders as follows:

(1) The report shall contain, in comparative columnar form, such financial statements for the last two fiscal years, prepared on a consistent basis, as will in the opinion of the management adequately reflect the financial position of the issuer at the end of each such year and the results of its operations for each such year: *Provided, however*, That investment companies registered under the Investment Company Act of 1940 need include such financial statements only for the last fiscal year. Consolidated financial statements of the issuer and its subsidiaries shall be included in the report if they are necessary to reflect adequately the financial position and results of operations of the issuer and its subsidiaries, but in such case the individual statements of the issuer may be omitted even though they are required to be included in reports to the Commission. Such financial statements and the notes thereto shall be in roman type at least as large and as

legible as 10-point modern type except that to the extent necessary for convenient presentation financial statements, but not the notes thereto, may be in roman type at least as large and as legible as 8-point modern type. All such type shall be headed at least 2 points. The Commission may, upon the request of the issuer, permit the omission of financial statements for the earlier of such two fiscal years upon a showing of good cause therefor.

(2) Any differences, reflected in the financial statements included in the report to security holders, from the principles of consolidation or other accounting principles or practices, or methods of applying accounting principles or practices, applicable to the financial statements of the issuer filed or proposed to be filed with the Commission, which have a material effect on the financial position or results of operation of the issuer, shall be noted and the effect thereof reconciled or explained in the financial statements or the notes thereto in such report. Financial statements included in the report may, however, omit such details or employ such condensation as may be deemed suitable by the management: *Provided*, That such statements, considered as a whole in the light of other information contained in the report shall not by such procedure omit any material information necessary to a fair presentation or to make the financial statements not misleading under the circumstances.

(3) The financial statements for the last two fiscal years required by paragraph (b)(1) of this section shall be certified by independent public or certified accountants, unless (i) the corresponding statements included in the issuer's annual report filed or to be filed with the Commission for the same fiscal years are not required to be certified, or (ii) the Commission finds in a particular case that certification would be impracticable or would involve undue effort or expense.

(4) The report shall include a summary of the issuer's operations containing the information required by Item 2 of Form 10-K (§ 240.308a) except for the reconciliations, exhibits

and supplemental information required by the instructions thereto.

NOTE 1: Subparagraph (b)(10) permits the information required by this subparagraph to be set forth in any form deemed suitable by management.

NOTE 2: Guide 1 of the Guides for the Preparation and Filing of Reports and Registration Statements Under the Act (Release 34-10961, August 14, 1974) (39 FR 31894) and any other guides subsequently published by the Commission relating to Item 2 of Form 10-K (§ 240.308a) apply to annual reports to security holders.

(5) The report shall contain a brief description of the business done by the issuer and its subsidiaries during the most recent fiscal year which will, in the opinion of management, indicate the general nature and scope of the business of the issuer and its subsidiaries.

(6) The report shall contain information relating to the issuer's industry segments, classes of similar products or services, foreign and domestic operations and export sales furnished in accordance with the provisions of paragraphs (b), (c)(1)(i) and (d) of Item 1 of Regulation S-K, 17 CFR 229.20.

NOTE: Subparagraph (b)(10) permits the information required by this subparagraph to be set forth in any form deemed suitable by management.

(7) The report shall identify each of the issuer's directors and executive officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed.

NOTE: The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs similar policy making functions for the issuer.

(8) The report shall identify the principal market in which securities of any class entitled to vote at the meeting are traded, and shall state the high and low sales prices for such securities (or, in the absence of such information, the range of bid and asked quotation) and the dividends paid on such securities for each quarterly

period during the issuer's two most recent fiscal years.

(9) Management's proxy statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type to provide without charge to each person solicited, on the written request of any such person, a copy of the issuer's annual report on Form 10-K (§ 249.310) including the financial statements and the schedules thereto, required to be filed with the Commission pursuant to Rule 13a-1 (§ 240.13a-1) under the Act for the issuer's most recent fiscal year and shall indicate the name and address of the person to whom such a written request is to be directed. In the discretion of management, an issuer need not undertake to furnish without charge copies of all exhibits to its Form 10-K (§ 249.310) provided that the copy of the annual report on Form 10-K (§ 249.310) furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the issuer will furnish any exhibit upon the payment of a specific reasonable fee which fee shall be limited to the issuer's reasonable expenses in furnishing such exhibit.

NOTE: Pursuant to the undertaking required by the above paragraph (b)(9), an issuer shall furnish a copy of its annual report on Form 10-K (§ 249.310) to a beneficial owner of its securities upon receipt of a written request from such person. Such request must set forth a good faith representation that, as of the record date for the annual meeting of the issuer's security holders, the person making the request was a beneficial owner of securities entitled to vote at such meeting.

(10) Subject to the foregoing requirements, the report may be in any form deemed suitable by management and the information required by paragraphs (b)(4) to (b)(9) of this section may be presented in an appendix or other separate section of the report, provided that the attention of security holders is called to such presentation.

NOTE: Issuers are encouraged to utilize tables, schedules, charts, and graphic illustrations to present financial information in an understandable manner. Any presentation of financial information must be con-

sistent with the data in the financial statements contained in the report and, if appropriate, should refer to relevant portions of the financial statements and notes thereto.

(11) Paragraphs (b)(4) through (b)(10) of this section shall not apply to an investment company registered under the Investment Company Act of 1940. Subject to the requirements of paragraphs (b)(1) through (b)(3) of this section, the annual report to security holders of such investment company may be in any form deemed suitable by management.

(12) This paragraph (b) of this section shall not apply, however, to solicitations made on behalf of the management before the financial statements are available if solicitation is being made at the time in opposition to the management and if the management's proxy statement includes an undertaking in bold face type to furnish such annual report to all persons being solicited, at least 20 days before the date of the meeting.

(c) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies of solicitation material are filed with the Commission pursuant to Rule 14a-6(a) (§ 240.14a-6(a)), whichever date is later. The report is not deemed to be "soliciting material" or to be "filed" with the Commission or subject to this regulation otherwise than as provided in this rule, or to the liabilities of section 18 of the Act, except to the extent that the issuer specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement by reference.

NOTE: To assist the staff, managements of issuers are requested to indicate in a letter transmitting to the Commission copies of their annual reports to shareholders or in a separate letter at or about the time the annual report is furnished to the Commission, whether the financial statements in the report reflect a change from the preceding year in any accounting principles or practices or in the method of applying any such principles or practices.

(d) If the issuer knows that securities of any class entitled to vote at a meeting with respect to which the issuer intends to solicit proxies, consents or authorization are held of record by a broker, dealer, bank or voting trustee, or their nominees, the issuer shall inquire of such record holder at least 10 days prior to the record date for the meeting of security holders (or at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown) whether other persons are the beneficial owners of such securities and, if so, the number of copies of the proxy and other soliciting material and, in the case of an annual meeting at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply such material to beneficial owners. The issuer shall supply such record holder in a timely manner with additional copies in such quantities, assembled in such form and at such a place, as the record holder may reasonably request in order to address and send one copy of each to each beneficial owner of securities so held and shall, upon the request of such record holder, pay its reasonable expenses for completing the mailing of such material to security holders to whom the material is sent.

NOTE 1: If the issuer's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to Section 17A of the Act, an issuer shall make appropriate inquiry of the agency and thereafter of the participants in such agency who may hold on behalf of a beneficial owner, and shall comply with the above paragraph with respect to any such participant.

NOTE 2: The requirement for sending an annual report to security holders of record having the same address will be satisfied by sending at least one report to a holder of record at that address provided that those holders of record to whom a report is not sent agree thereto in writing. This procedure is not available to issuers, however, where banks, broker-dealers, and other persons hold securities in nominee accounts or "street names" on behalf of beneficial owners, and such persons are not relieved of any obligation to obtain or send such annual report to the beneficial owners.

NOTE 3: The attention of issuers is called to the fact that broker-dealers have an obligation pursuant to 240.14b-1 and applicable self-regulatory requirements to obtain and forward annual reports and proxy soliciting materials to beneficial owners for whom such broker-dealers hold securities.

(Sec. 6, 7, 8, 10, 19(a), 48 Stat. 78, 70, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 893, 901; secs. 205, 209, 48 Stat. 900, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 98 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 563-565, 569, 570-574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 80 Stat. 117, 118, 119, 121, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78n, 78(o), 78w(a).)

129 FR 40768, Nov. 20, 1974, as amended at 42 FR 26664, May 12, 1977; 42 FR 35955, July 12, 1977; 42 FR 85560, Dec. 30, 1977]

§ 240.14a-4 Requirements as to proxy.

(a) The form of proxy (1) shall indicate in bold-face type whether or not the proxy is solicited on behalf of the management (2) shall provide a specifically designated blank space for dating the proxy and (3) shall identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the management or by security holders. No reference need be made, however, to proposals as to which discretionary authority is conferred pursuant to paragraph (c) of this section.

(b) (1) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of each matter or group of related matters referred to therein as intended to be acted upon, other than elections to office. A proxy may confer discretionary authority with respect to matters as to which a choice is not so specified provided the form of proxy states in bold-face type how it is intended to vote the shares represented by the proxy in each such case.

(2) A form of proxy which provides both for the election of directors and for action on other specified matters shall be prepared so as clearly to provide, by a box or otherwise, means by which the security holder may withhold authority to vote for the election

of directors. Any such form of proxy which is executed by the security holder in such manner as not to withhold authority to vote for the selection of directors shall be deemed to grant such authority, provided the form of proxy so states in bold-face type.

Instruction. Subparagraph (2) of this paragraph does not apply (1) in the case of a merger, consolidation or other plan if the election of directors is an integral part of the plan and is not to be separately voted upon or (2) if the only matters to be acted upon are the election of directors and the election, selection or approval of other persons such as clerks or auditors.

(c) A proxy may confer discretionary authority to vote with respect to any of the following matters:

(1) Matters which the persons making the solicitation do not know, a reasonable time before the solicitation, are to be presented at the meeting, if a specific statement to that effect is made in the proxy statement or form of proxy;

(2) Approval of the minutes of the prior meeting if such approval does not amount to ratification of the action taken at that meeting;

(3) The election of any person to any office for which a bona fide nominee is named in the proxy statement and such nominee is unable to serve or for good cause will not serve.

(4) Any proposal omitted from the proxy statement and form of proxy pursuant to § 240.14a-3 or § 240.14a-9.

(5) Matters incident to the conduct of the meeting.

(d) No proxy shall confer authority (1) to vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement, or (2) to vote at any annual meeting other than the next annual meeting for any adjournment thereof to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders. A person shall not be deemed to be a bona fide nominee and he shall not be named as such unless he has consented to being named in the proxy statement and to serve if elected.

(e) The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the shares represented by the proxy will be voted and that where the person solicited specifies by means of a ballot provided pursuant to paragraph (b) of this section a choice with respect to any matter to be acted upon, the shares will be voted in accordance with the specifications so made.

(Sec. 14, 48 Stat. 895; 15 U.S.C. 78n)

[17 FR 11432, Dec. 15, 1952, as amended at 31 FR 212, Jan. 7, 1966; 32 FR 20963, Dec. 20, 1967]

§ 240.14a-5 Presentation of information in proxy statement.

(a) The information included in the proxy statement shall be clearly presented and the statements made shall be divided into groups according to subject matter and the various groups of statements shall be preceded by appropriate headings. The order of items and sub-items in the schedule need not be followed. Where practicable and appropriate, the information shall be presented in tabular form. All amounts shall be stated in figures. Information required by more than one applicable item need not be repeated. No statement need be made in response to any item or sub-item which is inapplicable.

(b) Any information required to be included in the proxy statement as to terms of securities or other subject matter which from a standpoint of practical necessity must be determined in the future may be stated in terms of present knowledge and intention. To the extent practicable, the authority to be conferred concerning each such matter shall be confined within limits reasonably related to the need for discretionary authority. Subject to the foregoing, information which is not known to the persons on whose behalf the solicitation is to be made and which it is not reasonably within the power of such persons to ascertain or procure may be omitted, if a brief statement of the circumstances rendering such information unavailable is made.

(c) There may be omitted from the proxy statement any information con-

tained in any other proxy soliciting material which has been furnished to each person solicited in connection with the same meeting or subject matter if a clear reference is made to the particular document containing such information.

(d) All printed proxy statements shall be in roman type at least as large and as legible as 10-point modern type, except that to the extent necessary for convenient presentation financial statements and other tabular data, but not the notes thereto, may be in roman type at least as large and as legible as 8-point modern type. All such type shall be leading at least 2 points.

(e) All proxy statements shall disclose on the first page thereof the complete mailing address, including ZIP code, of the principal executive offices of the issuer and the approximate date on which the proxy statement and form of proxy are first sent or given to security holders.

[17 FR 11432, Dec. 18, 1952, as amended at 34 FR 9295, May 15, 1971, as amended at 37 FR 23179, Oct. 31, 1972]

§ 240.14a-6 Material required to be filed.

(a) Five preliminary copies of the proxy statement and form of proxy and any other soliciting material to be furnished to security holders concurrently therewith shall be filed with the Commission at least 10 days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor. In computing the 10-day period the filing date of the preliminary material is to be counted as the first day and the 11th day is the date on which definitive material may be mailed to security holders.

NOTE: The officials responsible for the preparation of the preliminary material should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary material should be filed with the Commission at the earliest practicable date. It should be accompanied by a letter, over the signature of an officer of the company or its counsel, stating whether the current preliminary material merely reflects an updating of the prior year's material (e.g.,

changes in the board of directors or nominees for election to the board) or includes changes of a material nature. All changes from the previously filed material should be identified in an accompanying marked copy of the proxy statement. If a change is material, the letter should include any explanatory comment which may be of assistance in the expeditious processing of the material.

(b) Five preliminary copies of any additional soliciting material, relating to the same meeting or subject matter, furnished to security holders subsequent to the proxy statement shall be filed with the Commission at least 2 days (exclusive of Saturdays, Sundays, and holidays) prior to the date copies of such material are first sent or given to security holders, or such shorter period prior to such date as the Commission may authorize upon a showing of good cause therefor.

(c) Eight definitive copies of the proxy statement, form of proxy and all other soliciting material, in the form in which such material is furnished to security holders, shall be filed with, or mailed for filing to, the Commission not later than the date such material is first sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the issuer is listed and registered.

NOTE: The definitive material filed with the Commission should be accompanied by a letter indicating any material changes which have been made therein, other than those made in response to the staff's comments and, whenever possible, should also be accompanied by a marked copy of the definitive material indicating all changes made therein.

(d) If the solicitation is to be made in whole or in part by personal solicitation, three copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with the Commission by the person on whose behalf the solicitation is made at least five days prior to the date copies of such

material are first sent or given to such individuals, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor.

(e) All copies of material filed pursuant to paragraph (a) or (b) of this section shall be clearly marked "Preliminary Copies" shall be for the information of the Commission only and shall not be deemed available for public inspection before definitive material has been filed with the Commission except that such material may be disclosed to any department or agency of the United States Government and to the Congress and the Commission may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Commission. All preliminary material filed pursuant to paragraph (a) or (b) of this section shall be accompanied by a statement of the date on which definitive copies thereof filed pursuant to paragraph (c) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies of such material have been released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (d) of this section shall be accompanied by a statement of the date on which copies thereof are intended to be released to the individuals who will make the actual solicitation.

(f) Copies of replies to inquiries from security holders requesting further information and copies of communications which do no more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to this section.

(g) Where preliminary copies of material are filed with the Commission pursuant to paragraph (a) or (b) of this section, the printing of definitive copies for distribution to security holders should be deferred until the comments of the Commission staff have been received and considered.

(h) Notwithstanding the provisions of paragraphs (a) and (b) of this section and of § 240.14a-11(e), copies of

soliciting material in the form of speeches, press releases and radio or television scripts may, but need not, be filed with the Commission prior to use or publication. Definitive copies, however, shall be filed with or mailed for filing to the Commission as required by paragraph (c) of this section not later than the date such material is used or published. The provisions of paragraphs (a) and (b) of this section and of § 240.14a-11(e) shall apply, however, to any reprints or reproductions of all or any part of such material.

(h) Where any proxy statement, form of proxy or other material filed pursuant to this section is amended or revised, two of the copies of such amended or revised material filed pursuant to this section (or in the case of investment companies registered under the Investment Company Act of 1940, three of such copies) shall be marked to indicate clearly and precisely the changes effected therein. If the amendment or revision alters the text of the material the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

(i) At the time of filing the preliminary proxy solicitation material, the persons upon whose behalf the solicitation is made, other than companies registered under the Investment Company Act of 1940, shall pay to the Commission the following applicable fee: (1) For preliminary proxy material which solicits proxies for election of directors or other business for which a stockholder vote is necessary, but apparently no controversy is involved, a fee of \$125; (2) for proxy material where a contest as set forth in Rule 14a-11 is involved a fee of \$500 from each party to the controversy; and (3) for proxy material involving acquisitions or mergers, a fee of \$1,000. Where both companies involved in the acquisition or merger must file proxy material with the Commission, each shall pay \$500 of the fee. There shall be no refunds.

(j) Notwithstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registra-

tion statement filed under the Securities Act of 1933 on Form S-14 (§ 239.23 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (i) of this section. However, any additional soliciting material used after the effective date of the registration statement on Form S-14 shall be filed in accordance with this section but separate copies of such material need not be filed as an amendment of such registration statement.

(16 U.S.C. 77 b, d, e, s. 781-n, 80a-20, 80a-87) 117 FR 11432, Dec. 18, 1952, as amended at 21 FR 578, Jan. 29, 1956; 26 FR 3619, May 3, 1961; 30 FR 4753, Apr. 14, 1965; 32 FR 1036, Jan. 28, 1967; 32 FR 26963, Dec. 29, 1967; 37 FR 1472, Jan. 29, 1972; 37 FR 22637, Nov. 7, 1972; 41 FR 52794, Dec. 9, 1976

§ 240.14a-7 Mailing communications for security holders.

If the management of the issuer has made or intends to make any solicitation subject to §§ 240.14a-1 to 240.14a-10, the issuer shall perform such of the following acts as may be duly requested in writing with respect to the same subject matter or meeting by any security holder who is entitled to vote on such matter or to vote at such meeting and who shall defray the reasonable expenses to be incurred by the issuer in the performance of the act or acts requested.

(a) The issuer shall mail or otherwise furnish to such security holder the following information as promptly as practicable after the receipt of such request:

(1) A statement of the approximate number of holders of record of any class of securities, any of the holders of which have been or are to be solicited on behalf of the management, or any group of such holders which the security holder shall designate.

(2) If the management of the issuer has made or intends to make, through bankers, brokers or other persons any solicitation of the beneficial owners of securities of any class, a statement of the approximate number of such bene-

ficial owners, or any group of such owners which the security holder shall designate.

(3) An estimate of the cost of mailing a specified proxy statement, form of proxy or other communication to such holders, including insofar as known or reasonably available, the estimated handling and mailing costs of the bankers, brokers or other persons specified in subparagraph (2) of this paragraph.

(b)(1) Copies of any proxy statement, form of proxy or other communication furnished by the security holder shall be mailed by the issuer to such of the holders of record specified in paragraph (a)(1) of this section as the security holder shall designate. The issuer shall also mail to each banker, broker, or other person specified in paragraph (a)(2) of this section a sufficient number of copies of such proxy statement, form of proxy or other communication as will enable the banker, broker, or other person to furnish a copy thereof to each beneficial owner solicited or to be solicited through him.

(2) Any such material which is furnished by the security holder shall be mailed with reasonable promptness by the issuer after receipt of a tender of the material to be mailed, of envelopes or other containers therefor and of postage or payment for postage. The issuer need not, however, mail any such material which relates to any matter to be acted upon at an annual meeting of security holders prior to the earlier of (i) a day corresponding to the first date on which management proxy solicited material was released to security holders in connection with the last annual meeting of security holders, or (ii) the first day on which solicitation is made on behalf of management. With respect to any such material which relates to any matter to be acted upon by security holders otherwise than at an annual meeting, such material need not be mailed prior to the first day on which solicitation is made on behalf of management.

(3) Neither the management nor the issuer shall be responsible for such

proxy statement, form of proxy or other communication.

(c) In lieu of performing the acts specified in paragraphs (a) and (b) of this section, the issuer may at its option, furnish promptly to such security holder a reasonably current list of the names and addresses of such of the holders of record specified in paragraph (a)(1) of this section as the security holder shall designate, and a list of the names and addresses of such of the bankers, brokers or other persons specified in paragraph (a)(2) of this section as the security holder shall designate together with a statement of the approximate number of beneficial owners solicited or to be solicited through each such banker, broker or other person and a schedule of the handling and mailing costs of each such banker, broker or other person if such schedule has been supplied to the management of the issuer. The foregoing information shall be furnished promptly upon the request of the security holder or at daily or other reasonable intervals as it becomes available to the management of the issuer.

[17 FR 11423, Dec. 19, 1952, as amended at 21 FR 378, Jan. 26, 1956]

§ 240.14a-8. Proposals of security holders.

(a) If any security holder of an issuer notifies the management of the issuer of his intention to present a proposal for action at a forthcoming meeting of the issuer's security holders, the management shall set forth the proposal in the proxy statement and include 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 management shall not be required to include the proposal in its proxy statement or form of proxy unless the security holder thereinafter, the "proponent") has complied with the requirements of this paragraph and paragraphs (b) and (c) of this section.

(1) *Eligibility.* At the time he submits the proposal, the proponent shall be a record or beneficial owner of a security entitled to be voted at the meeting on his proposal, and he shall con-

tinue to own such security through the date on which the meeting is held. If the management requests documentary support for a proponent's claim that he is a beneficial owner of a voting security of the issuer, the proponent shall furnish appropriate documentation within 10 business days after receiving the request. In the event the management 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 be a voting security holder through the meeting date, the management shall not be required to include any proposals submitted by the proponent in its proxy soliciting materials for any meeting held in the following two calendar years.

(2) *Notice.* The proponent shall notify the management 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 management. 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. In the event the proponent or his proxy fails, without good cause, to present the proposal for action at the meeting, the management shall not be required to include any proposals submitted by the proponent in its proxy soliciting materials 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 management within the following time periods:

(i) *Annual Meetings.* A proposal to be presented at an annual meeting shall be received by the management at the issuer's principal executive offices not less than 90 days in advance

of a date corresponding to the date set forth on the management'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 of the previous year's annual meeting a proposal shall be received by the management a reasonable time before the solicitation is made.

(ii) *Other Meetings.* A proposal to be presented at any meeting other than an annual meeting 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 management, 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 200 words each for inclusion in the management'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) of this section, he shall be provided the opportunity by the management to reduce, within 10 business days, the items submitted by him to the limits required by this rule.

(b) If the management opposes any proposal received from a proponent, it shall 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 statement and request of the proponent shall be furnished to the management at the time that the proposal is furnished, and neither the management nor the issuer shall be responsible for such statement. The proxy statement shall also include either the name and address of 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 shall be furnished to the Commission at the time of filing the management's preliminary proxy material pursuant to Rule 14a-6(a) (17 CFR 240.14a-6(a)).

(c) The management 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) 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 would, if implemented, 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, its management, or any other person;

(5) If the proposal deals with a matter that is not 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 management 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 management by another proponent, which proposal will be included in the management's proxy materials for the meeting;

(12) If substantially the same proposal has previously been submitted to security holders in the management'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 management'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 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 payments of cash or stock dividends.

(d) Whenever the management 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 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 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; (3) a statement of the reasons why the management 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 management 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 management deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel.

(Sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 133 (15 U.S.C. 77n(a), 77w(a)); secs. 12(e), 20(a), 49 Stat. 312, 322 (15 U.S.C. 79(e), 79u(a)); secs. 20(a), 23(a), 54 Stat. 822, 841 (15 U.S.C. 80a-25(a), 80a-37(a)).

(41 FR 53300, Dec. 3, 1976)

§ 240.14a-9 False or misleading statements.

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

(b) The fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Commission shall not be deemed a finding by the Commission that such material is accurate or complete or not false or misleading, or that the Commission has passed upon the merits of or approved any statement contained therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

Note: The following are some examples of what, depending upon particular facts and

circumstances, may be misleading within the meaning of this section.

(a) Predictions as to specific future market values or dividends.

(b) Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation.

(c) Failure to so identify a proxy statement, form of proxy and other soliciting material as to clearly distinguish it from the soliciting material of any other person or persons soliciting for the same meeting or subject matter.

(d) Claims made prior to a meeting regarding the results of a solicitation.

(31 FR 212, Jan. 7, 1956, as amended at 41 FR 19332, May 14, 1976)

§ 240.14a-10 Prohibition of certain solicitations.

No person making a solicitation which is subject to §§ 240.14a-1 to 240.14a-10 shall solicit:

(a) Any undated or postdated proxy; or

(b) Any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder.

(17 FR 11434, Dec. 18, 1952)

§ 240.14a-11 Special provisions applicable to election contests.

(a) *Solicitations to which this section applies.* This section applies to any solicitation subject to §§ 240.14a-1 to 240.14a-11 by any person or group of persons for the purpose of opposing a solicitation subject to §§ 240.14a-1 to 240.14a-11 by any other person or group of persons with respect to the election or removal of directors at any annual or special meeting of security holders.

(b) *Participant or participant in a solicitation.* For purposes of this rule the terms "participant" and "participant in a solicitation" include the following:

(1) The issuer;

(2) Any director of the issuer, and any nominee for whose election as a director proxies are solicited;

(3) Any committee or group which solicits proxies, any member of such committee or group, and any person

whether or not named as a member who, acting alone or with one or more other persons directly or indirectly takes the initiative, or engages, in organizing, directing, or arranging for the financing of, any such committee or group;

(4) Any person who finances or joins with another to finance the solicitation of proxies, except persons who contribute not more than \$500 and who are not otherwise participants;

(5) Any person who lends money or furnishes credit or enters into any other arrangements, pursuant to any contract or understanding with a participant, for the purpose of financing or otherwise inducing the purchase, sale, holding or voting of securities of the issuer by any participant or other persons, in support of or in opposition to a participant; except that such terms do not include a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant; and

(6) Any other person who solicits proxies. The foregoing terms do not, however, include (i) any person or organization retained or employed by a participant to solicit security holders and whose activities are limited to the performance of his duties in the course of such employment; (ii) any person who merely transmits proxy soliciting material or performs other ministerial or clerical duties; (iii) any person employed by a participant in the capacity of attorney, accountant, or advertising, public relations or financial adviser, and whose activities are limited to the performance of his duties in the course of such employment; (iv) any person regularly employed as an officer or employee of the issuer or any of its subsidiaries who is not otherwise a participant; or (v) any officer or director of, or any person regularly employed by, any other participant, if such officer, director or employee is not otherwise a participant.

(c) *Filing of information required by Schedule 14P.* (1) No solicitation subject to this section shall be made by any person other than the manage-

ent of an issuer unless at least five business days prior thereto, or such shorter period as the Commission may authorize upon a showing of good cause therefor, there has been filed, with the Commission and with each national securities exchange upon which any security of the issuer is listed and registered, by or on behalf of each participant in such solicitation, a statement in duplicate containing the information specified by Schedule 14B.

(2) Within five business days after a solicitation subject to this section is made by the management of an issuer, or such longer period as the Commission may authorize upon a showing of good cause therefor, there shall be filed, with the Commission and with each national securities exchange upon which any security of the issuer is listed and registered, by or on behalf of each participant in such solicitation, other than the issuer, a statement in duplicate containing the information specified by Schedule 14B.

(3) If any solicitation on behalf of management or any other person has been made, or if proxy material is ready for distribution, prior to a solicitation subject to this section in opposition thereto, a statement in duplicate containing the information specified in Schedule 14B shall be filed by or on behalf of each participant in such prior solicitation, other than the issuer, as soon as reasonably practicable after commencement of the solicitation in opposition thereto, with the Commission and with each national securities exchange on which any security of the issuer is listed and registered.

(4) In subsequent to the filing of the statements required by paragraphs (1), (2), and (3) of this section, additional persons become participants in a solicitation subject to this section, there shall be filed, with the Commission and each appropriate exchange, by or on behalf of each such person a statement in duplicate containing the information specified by Schedule 14B, within three business days after such person becomes a participant, or such longer period as the Commission

may authorize upon a showing of good cause therefor.

(5) If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, and appropriate amendment to such statement shall be filed promptly with the Commission and each appropriate exchange.

(6) Each statement and amendment thereto filed pursuant to this paragraph shall be part of the official public files of the Commission and for purposes of this regulation shall be deemed a communication subject to the provisions of § 240.14a-9.

(d) *Solicitations prior to furnishing required written proxy statement.* Notwithstanding the provisions of Rule 14a-3(a) (§ 240.14a-3(a)), a solicitation subject to this section may be made prior to furnishing security holders a written proxy statement containing the information specified in Schedule 14A (§ 240.14a-101) with respect to such solicitation: *Provided, That—*

(1) The statements required by paragraph (c) of this section are filed by or on behalf of each participant in such solicitation.

(2) No form of proxy is furnished to security holders prior to the time the written proxy statement required by Rule 14a-3(a) (§ 240.14a-3(a)) is furnished to security holders: *Provided, However, That* this paragraph (2) shall not apply where a proxy statement then meeting the requirements of Schedule 14A (§ 240.14a-101) has been furnished to security holders by or on behalf of the person making the solicitation.

(3) At least the information specified in Items 2(a) and 2(c) of the statement required by paragraph (c) of this section to be filed by each participant, or an appropriate summary thereof, is included in each communication sent or given to security holders in connection with the solicitation.

(4) A written proxy statement meeting the requirements of this regulation is sent or given to security holders at the earliest practicable date.

(e) *Solicitations prior to furnishing required written proxy statement; filing requirements.* Three copies of any soliciting material proposed to be

sent or given to security holders prior to the furnishing of the written proxy statement required by § 240.14a-3(a) shall be filed with the Commission in preliminary form, at least five business days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period as the Commission may authorize upon a showing of good cause therefor.

(f) *Application of this section to annual report.* Notwithstanding the provisions of § 240.14a-3 (b) and (c), three copies of any portion of the annual report referred to in § 240.14a-3(b) which comments upon or refers to any solicitation subject to this section, or to any participant in any such solicitation, other than the solicitation by the management, shall be filed with the Commission as proxy material subject to §§ 240.14a-1 to 240.14a-11. Such portion of the annual report shall be filed with the Commission in preliminary form at least five business days prior to the date copies of the report are first sent or given to security holders.

(g) *Application of § 240.14a-6.* The provisions of paragraphs (c), (d), (e), (f) and (g) of § 240.14a-6 shall apply to the extent pertinent, to soliciting material subject to paragraphs (c) and (f) of this section.

(h) *Use of reprints or reproductions.* In any solicitation subject to this section, soliciting material which includes, in whole or part, any reprints or reproductions of any previously published material shall:

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

(2) Except in the case of a public official document or statement, state whether or not the consent of the author and publication has been obtained to the use of the previously published material as proxy soliciting material.

(3) If any participant using the previously published material, or anyone on his behalf, paid, directly or indirectly, for the preparation or prior publication of the previously pub-

lished material, or has made or proposes to make any payments or give any other consideration in connection with the publication or republication of such material, state the circumstances.

(Sec. 14, 48 Stat. 895; 15 U.S.C. 78n)

[21 FR 579, Jan. 28, 1956, as amended at 31 FR 212, Jan. 7, 1966; 32 FR 20984, Dec. 29, 1967; 33 FR 2993, Feb. 15, 1968]

§ 240.14a-12 Solicitation prior to furnishing required proxy statement.

(a) Notwithstanding the provisions of Rule 14a-3(a) (§ 240.14a-3(a)), a solicitation (other than one subject to Rule 14a-11 (§ 240.14a-11)) may be made prior to furnishing security holders a written proxy statement containing the information specified in Schedule 14A (§ 240.14a-101) with respect to such solicitation if—

(1) The solicitation is made in opposition to a prior solicitation or an invitation for tenders or other publicized activity, which if successful, could reasonably have the effect of defeating the action proposed to be taken at the meeting;

(2) No form of proxy is furnished to security holders prior to the time the written proxy statement required by Rule 14a-3(a) (§ 240.14a-3(a)) is furnished to security holders: *Provided, however, That* this paragraph (a)(2) shall not apply where a proxy statement then meeting the requirements of Schedule 14A (§ 240.14a-101) has been furnished to security holders by or on behalf of the person making the solicitation;

(3) The identity of the person or persons by or on whose behalf the solicitation is made and a description of their interests direct or indirect, by security holdings or otherwise, are set forth in each communication sent or given to security holders in connection with the solicitation, and

(4) A written proxy statement meeting the requirements of this regulation is sent or given to security holders at the earliest practicable date.

(b) Three copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of the written proxy statement required by Rule 14a-3(a)

§ 240.14a-3(a)) shall be filed with the Commission in preliminary form at least 5 business days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period as the Commission may authorize upon a showing of good cause therefor.

Sec. 14, 48 Stat. 895; 15 U.S.C. 78n)

31 FR 214, Jan. 7, 1956]

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

Notes: A. Where any item calls for information with respect to any matter to be acted upon and such matter involves other matters with respect to which information is called for by other items of this schedule, the information called for by such other items shall also be given. For example, a merger, consolidation, or acquisition or disposition of assets specified in Item 14, in which the security holders to be solicited will become or continue to be security holders of the surviving or acquiring company, shall be deemed to involve the election of directors if any person who will serve as a director of such company was not elected to such office by security holders of the issuer of the securities in respect of which proxies are to be solicited. In such case, Items 5 and 7 shall be answered with respect to each such person who will serve as a director of the surviving or acquiring company.

B. Where any item calls for information with respect to any matter to be acted upon at the meeting, such item need be answered in the management's soliciting material only with respect to proposals to be made by or on behalf of the management of the issuer.

C. Except as otherwise specifically provided, where any item calls for information for a specified period in regard to directors, officers or other persons holding specified positions or relationships, the information shall be given in regard to any person who held any of the specified position or relationships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or relationship provided a statement to that effect is made.

Item 1. Representability of proxy. State whether or not the person giving the proxy has the power to revoke it. If the right of revocation before the proxy is exercised is limited or is subject to compliance with any formal procedure, briefly describe such limitation or procedure.

Item 2. Dissenters' rights of appraisal. Outline briefly the rights of appraisal or

similar rights of dissenters with respect to any matter to be acted upon and indicate any statutory procedure required to be followed by dissenting security holders in order to perfect such rights. Where such rights may be exercised only within a limited time after the date of adoption of a proposal, the filing of a charter amendment or other similar act, state whether the persons solicited will be notified of such date.

Instruction. Indicate whether a security holder's failure to vote against a proposal will constitute a waiver of his appraisal or similar rights and whether a vote against a proposal will be deemed to satisfy any notice requirements under State law with respect to appraisal rights. If the State law is unclear, state what position will be taken in regard to these matters.

Item 3. Persons Making the Solicitation—(a) Solicitations not subject to § 240.14a-11 (Rule X-14A-11). (1) If the solicitation is made by the management of the issuer, so state. Give the name of any director of the issuer who has informed the management in writing that he intends to oppose any action intended to be taken by the management and indicate the action which he intends to oppose.

(2) If the solicitation is made otherwise than by the management of the issuer, so state and give the names of the persons by whom and on whose behalf it is made.

(3) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state (i) the material features of any contract or arrangement for such solicitation and identify the parties, and (ii) the cost or anticipated cost thereof.

(4) State the names of the persons by whom the cost of solicitation has been or will be borne, directly or indirectly.

(b) **Solicitations subject to § 240.14a-11 (Rule X-14A-11).** (1) State by whom the solicitation is made and describe the methods employed and to be employed to solicit security holders.

(2) If regular employees of the issuer or any other participant in a solicitation have been or are to be employed to solicit security holders, describe the plan or plans of employees to be so employed, the manner and nature of their employment for such purpose.

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

ees of any other person (naming such other person) who will solicit security holders.

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

(5) State by whom the cost of the solicitation will be borne. If such cost to be borne initially by any person other than the issuer, state whether reimbursement will be sought from the issuer, and, if so, whether the question of such reimbursement will be submitted to a vote of security holders.

Instruction. With respect to solicitations subject to § 240.14a-11 (Rule X-14A-11), costs and expenditures within the meaning of this Item 3 shall include fees for attorneys, accountants, public relations or financial advisers, solicitors, advertising, printing, transportation, litigation and other costs incidental to the solicitation, except that the issuer may exclude the amount of such costs represented by the amount normally expended for a solicitation for an election of directors in the absence of a contest, and costs represented by salaries and wages of regular employees and officers, provided a statement to that effect is included in the proxy statement.

Item 4. Interest of Certain Persons in Matters To Be Acted Upon—(a) Solicitations not subject to § 240.14a-11 (Rule X-14A-11). Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise of each of the following persons in any matter to be acted upon, other than elections to office:

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

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

Any person who would be a participant in a solicitation for purposes of § 240.14a-11 (Rule X-14A-11) as defined in paragraph (b) (2), (4), (5) and (6) thereof shall be deemed to be on whose behalf the solicitation is made for purposes of this paragraph and (1) and (2) above.

(3) Each one date of the foregoing persons.

Instruction. Except in the case of a solicitation subject to this regulation, the 48 in opposition to another solicitation subject to the regulation, this subsection (a) will not apply to the interest arising from the ownership of a share of the issuer where the ownership is acquired no extra or special

benefit not shared on a pro rata basis by all other holders of the same class.

(b) **Solicitations subject to § 240.14a-11 (Rule X-14A-11).** (1) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each participant as defined in § 240.14a-11 (b) (2), (3), (4), (5) and (6) (Rule X-14A-11), in any matter to be acted upon at the meeting, and include with respect to each participant the information, or a fair and adequate summary thereof, required by Items 2(a), 2(d), 3, 4(b) and 4(c) of Schedule 14B.

(2) With respect to any person named in answer to Item 6 (b), describe any substantial interest, direct or indirect, by security holdings or otherwise, that he has in any matter to be acted upon at the meeting, and furnish the information called for by Item 4(b) and (c) of Schedule 14B.

Item 5. Voting Securities and Ownership Thereof By Certain Beneficial Owners and Management. (a) State as to each class of voting securities of the issuer entitled to be voted at the meeting, the number of shares outstanding and the number of votes to which each class is entitled.

(b) Give the date as of which the record of security holders entitled to vote at the meeting will be determined. If the right to vote is not limited to security holders of record on that date, indicate the conditions under which other security holders may be entitled to vote.

(c) If action is to be taken with respect to the election of directors and if the persons solicited have cumulative voting rights, make a statement that they have such rights and state briefly the conditions precedent to the exercise thereof.

(d) Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, with respect to any person (including any "group" as that term is used in section 13(d)(3) of the Act) who is known to the persons on whose behalf the solicitation is made to be the beneficial owner of more than five percent of any class of the issuer's voting securities. Show in Column (3) the total number of shares beneficially owned and in Column (4) the percent of class so owned. Of the number of shares shown in Column (3), indicate, by footnote or otherwise, the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership as specified in Rule 13d-3(a)(1) under the Act (17 CFR 240.13d-3(a)(1)).

(1)	(2)	(3)	(4)
Title of class	Name and address of beneficial owner	Amount beneficially owned	Percent of class

(e) Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of voting securities of the issuer or of its parent, other than directors' qualifying shares beneficially owned by all directors and officers of the issuer as a group, without naming them. Show in Column (2) the total number of shares beneficially owned and in Column (3) the percent of class so owned. Of the number of shares shown in Column (2), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to exercise beneficial ownership as specified in Rule 17c-3(d)(1) (§ 240.17c-3(d)(1)) under the Act.

(1)	(2)	(3)
Title of class	Amount being initially paid	Percent of class

[illegible]

The authors thank the two anonymous referees for their constructive comments and suggestions.

2. In particular, we have the following
 (a) $\mathcal{M}(\mathcal{A})$ is a $\mathcal{M}(\mathcal{A})$ -module and
 (b) $\mathcal{M}(\mathcal{A})$ is a $\mathcal{M}(\mathcal{A})$ -module.

respect to election of directors or other matters should be described.

(g). Describe any contractual arrangements, including any pledge of securities of the issuer, or any of its parents, known to the persons on whose behalf the solicitation is made, the operation of the terms of which may at a subsequent date result in a change in control of the issuer.

Instructions. 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the issuer or its subsidiaries; however, such calculations may be made on the basis of outstanding securities plus securities deemed outstanding pursuant to Rule 17d-3(d)(1) (17d-3(d)(1)) under the Act provided appropriate disclosure is made as to the method of calculation.

2. For the purposes of this item, beneficial ownership shall be determined in accordance with Rule 13d-3 under the Act (§ 240.13d-3).

3. Persons on whose behalf the solicitation is made shall be deemed to know the contents of any statements filed with the Commission pursuant to section 13(d) of the Act. Such persons may rely upon information set forth in such statements unless they know or have reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to sub-paragraph (c), the source and date of such information may be indicated.

5. Where more than one beneficial owner is known to be entitled for the purposes of paragraph 4, appropriate checks are shall be made to avoid contention.

4. Paragraph (d) does not require a description of ordinary default provisions contained in the loan instrument or other agreement, comments relating to security, or other matters.

Part C. Nominees and directors. (a) If action is to be taken with respect to the election of directors, furnish the following information, in tabular form: to the extent practicable, with respect to each person nominated for election as a director and director of the company as a director or officer, or director or officer of the company, the following information:

The Nation said: "But, please, state when his term of office — the term of office for which he is a member of Congress, and all other positions and offices — in the paper presently held by him, and indicate which persons are for him, for whatever Congress there may be."

(2) Where the use and principal consideration or consideration is for a vegetable and other crops, garden, orchard, nursery or other agricultural or horticultural purposes, is not a trade or business.

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to all of his principal occupations or employments during the last five years, unless he is now a director and was elected to his present term of office by a vote of security holders at a meeting for which proxies were solicited under this regulation.

(3) If he is or has previously been a director of the issuer state the period or periods during which he has served as such.

(4) State, as of the most recent practicable date, the approximate amount of each class of equity securities of the issuer or any of its parents or subsidiaries, other than directors' qualifying shares, beneficially owned directly or indirectly by him. If he is not the beneficial owner of any such securities, make a statement to that effect.

(5) If more than 10 percent of any class of securities of the issuer or any of its parents or subsidiaries are beneficially owned by him and his associates, state the approximate amount of each class of such securities beneficially owned by such associates, naming each associate whose holdings are significant.

Instruction. For purposes of this item, beneficial ownership shall be determined in accordance with Rule 13d-3 under the Act (15 C.F.R. 13d-3).

(b) If any nominee for election as a director is proposed to be elected pursuant to any arrangement or understanding between the nominee and any other person or persons, except the directors and officers of the issuer acting solely in that capacity, name each other person or persons and describe fully the such arrangement or understanding.

(a) Furnish the following information in substantially the tabular form indicated below as to all direct remuneration paid by the issuer and its subsidiaries during the issuer's last fiscal year to the following persons for services in all capacities:

(1) Each director of the issuer whose aggregate direct remuneration exceeded \$40,000 and each of the three highest paid officers of the issuer whose aggregate direct remuneration exceeded that amount, naming each such director and officer.

(2) All directors and officers of the Issuer as a group, stating the number of persons in the group without naming them.

Name of individual or number of persons in group	Capacities in which remuneration was received	Aggregate direct re- muneration
(A)	(B)	(C)

Instructions. 1. Paragraph (a)(1) of this item does not apply to any person who was not named as a director or officer of the issuer in answer to Item 7 of Form 10 in the first registration statement filed on that form for the registration of a class of securities pursuant to section 12 of the Act, provided (i) such person has not been a director or officer of the issuer since the filing of such statement and (ii) the same information is not otherwise required to be disclosed in material filed with the Commission.

2. The information is to be given on an accrual basis if practicable. The tables required by this paragraph (a) and paragraph (b) below may be combined if the issuer so desires.

3. Do not include remuneration paid to a partnership to which any director or officer was a partner, but see paragraph (f) below.

(b) Furnish the following information in substantially the tabular form indicated as to all annuity, pension, or retirement benefits proposed to be paid to the following persons in the event of retirement at normal retirement date pursuant to any existing plan provided or contributed to by the issuer or any of its subsidiaries:

(1) Each director or officer named in answer to paragraph (a)(1), naming each such person.

(2) All directors and officers of the issuer who are eligible for such benefits, as a group, stating the number of persons in the group without naming them.

titles of that class sold during the period by such named person and by such named person and such other directors and officers as a group. The information called for by this Instruction 2(c) is in lieu of the information. Once the beginning of the issuer's last fiscal year called for by Item 7(d)(1) and (2). If employees may participate in the plan to be acted upon, state the aggregate amount of securities called for by all options granted to employees during the 5-year period and, if the options were other than "described" or "qualified" stock options or options granted pursuant to an "employee stock purchase plan", as the quoted terms are defined in Sections 422 through 424 of the Internal Revenue Code, state that fact and the weighted average option price per share. If the information called for by this instruction may be furnished in the form of the table illustrated in Appendix A § 240.14a-103. See Instruction 1 to Item 7(d).

4. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the Commission at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (a) of Rule 14a-5 (§ 240.14a-5).

Item 12. Plan to be acted upon. If action is to be taken with respect to any plan to be acted upon, furnish the following information:

(a) Describe briefly the material features of the plan. Identify each class of persons who will be entitled to participate therein. Indicate the approximate number of persons in each such class and state the basis of such classification.

(b) State (i) the approximate total amount of securities to be issued pursuant to the plan with respect to each class, the period over which such amount is to be paid and the estimated amount of securities to be issued to each class, (2) the estimated amount of securities to be paid with respect to each class, and (3) the amount of such securities to be paid for the benefit of each class of directors and officers and (iii) employees.

(c) State (i) the name and position with the issuer of each person appointed in Item 7(a) who will be entitled to participate in the plan, (ii) the amount which would have been paid to each class of the issuer and its subsidiaries for the benefit of such person for the plan to be acted upon, and (3) the amount of the award to be paid to each person to be payable to each person in the event of retirement or death or termination of service.

(d) Furnish such information, in addition to that required by the plan Item 7, as may be necessary to describe adequately the plan to be acted upon, including, but not limited to, all matters relating to bonus, pension, retirement,

stock option, stock purchase, deferred compensation or other remuneration or incentive plans, now in effect or in effect within the past five years, for (i) each director or officer named in answer to Item 7(a) who may participate in the plan to be acted upon; (ii) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan, and (iii) all employees, if employees may participate in the plan.

(e) If the plan to be acted upon can be amended otherwise than by a vote of stockholders to increase the cost thereof to the issuer or alter the allocation of the benefits as between the groups specified in (b)(3), state the nature of the amendments which can be so made.

Instructions. 1. The term "plan" as used in this item means any plan as defined in Instruction 1 to Item 7(b). Instruction 2 to Item 9 shall apply to this item.

2. The information called for by paragraph (b)(2) or (b)(3) need not be given as to payments made on an actuarial basis pursuant to any group pension plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

3. Instruction 3 to Item 9 shall apply to paragraph (d) of this item.

4. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the Commission at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (a) of Rule 14a-5 (§ 240.14a-5).

Item 11. Options, warrants or rights. If action is to be taken with respect to the granting or extension of any options, warrants or rights to purchase securities of the issuer or any subsidiary, furnish the following information:

(a) State (i) the title and amount of securities called for or to be called for by such options, warrants or rights; (ii) the prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised; (iii) the consideration received or to be received by the issuer or subsidiary for the granting or extension of the options, warrants or rights; (iv) the market value of the securities called for or to be called for by the options, warrants or rights as of the latest practicable date, and (v) in the case of options, the Federal income tax consequences of the issuance and exercise of such options to the recipient and to the issuer.

(b) State separately the amount of options, warrants or rights received or to be received by the following persons, naming each such person: (i) each director or officer named in answer to Item 7(a); (ii) each employee for election as a director of the

issuer; (iii) each associate of such directors, officers or nominees and (iv) each other person who received or is to receive 5 percent or more of such options, warrants or rights. State also the total amount of such options, warrants or rights received or to be received by all directors and officers of the issuer as a group, without naming them.

(c) Furnish such information, in addition to that required by this item and Item 7, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past 5 years, for (i) each director or officer named in answer to Item 7(a) who may participate in the plan to be acted upon; (ii) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan, and (iii) all employees, if employees may participate in the plan.

Instructions. 1. The term "plan" as used in this item means any plan as defined in Instruction 1 to Item 7(b).

2. Paragraphs (b) and (c) do not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

3. Instruction 3 to Item 9 shall apply to paragraph (a) of this item.

4. If the options described in answer to this item are issued pursuant to a plan which is set forth in a written document, three copies thereof shall be filed with the Commission at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (a) of § 240.14a-5.

Note: The Commission should be informed, as supplemental information, when the proxy statement in preliminary form is filed, as to when the options, warrants or rights and the shares called for thereby will be registered under the Securities Act of 1933, or if such registration is not contemplated the action of the Act or rule of the Commission under which exemption from such registration is claimed and the facts relied upon to make the exemption available.

Item 12. Authorization or issuance of securities otherwise than for exchange. If action is to be taken with respect to the authorization or issuance of any securities otherwise than for exchange for outstanding securities of the issuer, furnish the following information:

(a) State the title and amount of securities to be authorized or issued.

(b) Furnish a description of the securities such as would be required to be furnished in an application on the appropriate form for their registration on a national securities

exchange. If the terms of the securities cannot be stated or estimated with respect to any or all of the securities to be authorized, because no offering thereof is contemplated in the proximate future, and if no further authorization by security holders for the issuance thereof is to be obtained, it should be stated that the terms of the securities to be authorized, including dividend or interest rates, conversion prices, voting rights, redemption prices, maturity dates, and similar matters will be determined by the board of directors. If the securities are additional shares of common stock of a class outstanding, the description may be omitted except for a statement of the preemptive rights, if any. Where the statutory provisions with respect to preemptive rights are so indefinite or complex that they cannot be stated in summarized form, it will suffice to make a statement in the form of an opinion of counsel as to the existence and extent of such rights.

(c) Describe briefly the transaction in which the securities are to be issued, including a statement as to (1) the nature and approximate amount of consideration received or to be received by the issuer, and (2) the approximate amount devoted to each purpose so far as determinable for which the net proceeds have been or are to be used. If it is impracticable to describe the transaction in which the securities are to be issued, state the reason, indicate the purpose of the authorization of the securities, and state whether further authorization for the issuance of the securities by a vote of security holders will be solicited prior to such issuance.

(d) If the securities are to be issued otherwise than in a general public offering for cash, state the reasons for the proposed authorization or issuance and the general effect thereof upon the rights of existing security holders.

Item 13. Modification or exchange of securities. If action is to be taken with respect to the modification of any class of securities of the issuer, or the issuance or authorization for issuance of securities of the issuer in exchange for outstanding securities of the issuer, furnish the following information:

(a) If outstanding securities are to be modified, state the title and amount thereof. If securities are to be issued in exchange for outstanding securities, state the title and amount of securities to be so issued, the title and amount of outstanding securities to be exchanged therefor and the basis of the exchange.

(b) Describe any material differences between the outstanding securities and the modified or new securities in respect of any of the matters concerning which information would be required in the description of the securities in an application on the ap-

appropriate form for their registration on a national securities exchange.

(c) State the reasons for the proposed modification or exchange and the general effect thereof upon the rights of existing security holders.

(d) Furnish a brief statement as to arrears in dividends or as to defaults in principal or interest in respect to the outstanding securities which are to be modified or exchanged and any other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(e) Describe briefly any other material features of the proposed modification or exchange. If the plan of proposed action is set forth in a written document, file copies thereof with the Commission in accordance with § 240.14a-4 (Rule X-14A-6).

Instruction. If the existing security is presently listed and registered on a national securities exchange, state whether it is intended to apply for listing and registration on the N.Y. or regulated security on such exchange or any other exchange. If it is not intended to make such application, state the effect of the termination of such listing and registration.

Item 14. Mergers, consolidations, acquisitions and similar matters. (Blue Note A at the heading of this section.) Furnish the following information if action is to be taken with respect to any plan for (i) the merger or consolidation of the issuer into or with any other person or of any other person into or with the issuer, (ii) the acquisition of the issuer or any of its securities by one or more persons, (iii) the acquisition of securities of another person by the issuer or any of its securities, (iv) the sale or other transfer of all or any substantial part of the assets of the issuer, or (v) the liquidation or dissolution of the issuer.

(a) Outline briefly the material features of the plan, state the reasons therefor and the general effect thereof upon the rights of existing security holders. If the plan is set forth in a written document, file three copies thereof with the Commission at the time the preliminary copies of the proxy statement in form of proxy are filed pursuant to §§ 240.14a-4 (1) (C) and 240.14a-5(a).

(b) Furnish the following information as to the issuer and each person which is to be merged into the issuer or into or with which the issuer is to be merged or consolidated or the issuer or assets of which are to be acquired or which is the issuer of securities to be acquired by the issuer in exchange for all or a substantial part of its assets or to be acquired by security holders of the issuer. Where it is required in interpretation essential to an investor's understanding of the following information:

(1) Describe briefly the business of such person. Information is to be given regarding pertinent matters such as the nature of the products or services, methods of production, markets, methods of distribution and the sources and supply of raw materials.

(2) State the location and describe the general character of the plants and other important physical properties of such person. The description is to be given from an economic and business standpoint, as distinguished from a legal standpoint.

(3) Furnish a brief statement as to dividends in arrears or defaults in principal or interest in respect of any securities of the issuer or of such person, and as to the effect of the plan thereon and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(4) Furnish a tabulation in columnar form showing the existing and the pro forma capitalization.

(5) Furnish in columnar form for each of the last 5 fiscal years a historical summary of earnings and show per share amounts of net earnings, dividends declared for each year and book value per share at the end of the latest period.

(6) Furnish in columnar form for each of the last 5 fiscal years a combined pro forma summary of earnings, as appropriate in the circumstances, reflecting the aggregate and per share earnings for each such year and the pro forma book value per share at the end of the latest period. If the transaction establishes a new basis of accounting for assets of any of the persons included therein, the pro forma summary of earnings shall be furnished only for the most recent fiscal year and interim period and shall reflect appropriate pro forma adjustments resulting from such new basis of accounting.

(7) To the extent material for the exercise of prudent judgment in regard to the matter to be acted upon, furnish the historical and pro forma earnings data specified in (4) and (5) above for interim periods of the current and prior fiscal years, if available.

(8) The financial information relating to the issuer's industry segments, classes of similar products or services, foreign and domestic operations and export sales shall be furnished in accordance with the provisions of paragraphs (b), (c) (1) (i) and (ii) of Item 1 of Regulation S-X, 17 CFR 229.2.

Instructions. 1. The earnings per share and dividends per share amounts required by paragraphs (4) (b) and (6) shall be presented in tabular form where appropriate and equated to a common basis in exchange transactions.

2. Include comparable data for any additional fiscal years necessary to keep the summary from being misleading. Subject to appropriate variation to conform to the

nature of the business or the purpose of the offering, the following items shall be included: net sales or operating revenues; cost of goods sold or operating expenses (or gross profit); interest charges; income taxes; net income; special items, and net income and special items. The summary shall reflect the retroactive adjustment of any material items affecting the comparability of the results.

3. In connection with any unaudited summary for an interim period or periods between the end of the last fiscal year and the balance sheet date, and any comparable unaudited prior period, a statement shall be made that all adjustments necessary to a fair statement of the results for such interim period or periods have been included. In addition, there shall be furnished in such cases, as supplemental information but not as a part of the proxy statement, a letter describing in detail the nature and amount of any adjustments, other than normal recurring accruals, entering into the determination of the results shown.

4. Paragraph (b) shall not apply if the plan described in answer to paragraph (a) involves only the issuer and one or more of its totally held subsidiaries.

(c) As to each class of securities of the issuer, or of any person specified in paragraph (b), which is submitted to dealing on a national securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the plan, state the high and low sale prices for, in the absence of trading in a particular period, the range of the bid and asked prices for each quarterly period within two years. This information may be omitted if the plan involves merely the liquidation or dissolution of the issuer.

Item 15. Financial statements.

(a) If action is to be taken with respect to any matter specified in Item 12, 13, or 14 above, furnish certified financial statements of the issuer and its subsidiaries such as would currently be required in an original application for the registration of securities of the issuer under the Act. All schedules other than the schedules of supplementary profit and loss information may be omitted.

Instructions. 1. Such statements shall be prepared and certified in accordance with Regulation S-X (Part 210 of this chapter). One copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's certificate.

2. Such statements may be omitted with respect to a plan described in answer to Item 14(a) if the plan involves only the issuer and one or more of its totally held subsidiaries.

(b) If action is to be taken with respect to any matter specified in Item 14(b), furnish

for each person specified therein, other than the issuer, financial statements such as would currently be required in an original registration statement for registration of securities of such person pursuant to section 12 of the Act. Such statements shall be certified if practicable. Notwithstanding the foregoing, the following may be omitted: (1) All schedules other than schedules of supplementary profit and loss information; (2) statements for any totally held subsidiary of the issuer which is included in the consolidated statement of the issuer and its subsidiaries, and (3) statements for a person which is to succeed to the issuer, or to the issuer and one or more of its totally held subsidiaries, provided the capital structure and balance sheet of the successor immediately after the succession will be substantially the same as those of the issuer or the combined capital structures and balance sheets of the issuer and its totally held subsidiaries, as the case may be.

Instructions. 1. Such statements shall be prepared in accordance with Regulation S-X (Part 210 of this chapter) and, if certified, shall be certified in accordance with that regulation and one copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's certificate.

2. Instruction 2 to paragraph (a) shall apply to this paragraph.

(c) The Commission may, upon the request of the issuer, permit the omission of any of the statements herein required where such statements are not necessary for the exercise of prudent judgment in regard to any matter to be acted upon, or may permit the filing in substitution thereof of appropriate statements of comparable character. The Commission may also require the filing of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise material for the exercise of prudent judgment in regard to any matter to be acted upon. In the usual case, financial statements are deemed material to the exercise of prudent judgment where the matter to be acted upon is the authorization or issuance of a material amount of senior securities, but are not deemed material where the matter to be acted upon is the authorization or issuance of common stock, otherwise than in an exchange, merger, consolidation, acquisition or similar transaction.

(d) The proxy statement may incorporate by reference any financial statements contained in an annual report sent to security holders pursuant to § 240.14a-3 (Rule X-14A-3) with respect to the same meeting as

that to which the proxy statement relates, provided such financial statements substantially meet the requirements of this item.

Item 18. Acquisition or disposition of property. If action is to be taken with respect to the acquisition or disposition of any property, furnish the following information:

(a) Describe briefly the general character and location of the property.

(b) State the nature and amount of consideration to be paid or received by the issuer or any subsidiary. To the extent practicable, outline briefly the facts bearing upon the question of the fairness of the consideration.

(c) State the name and address of the transferor or transferee, in the case may be, and the nature of any material relationship of such person to the issuer or any affiliate of the issuer.

(d) Outline briefly any other material features of the contract or transaction.

Item 19. Restatement of accounts. If action is to be taken with respect to the restatement of any asset, capital, or surplus account of the issuer, furnish the following information:

(a) State the nature of the restatement and the date as of which it is to be effective.

(b) Outline briefly the reasons for the restatement and for the selection of the particular date of effect.

(c) State the nature and amount of each account (including any reserve accounts) affected by the restatement and the effect of the restatement thereon. Tabular presentation of the accounts shall be made when appropriate, particularly in the case of restatements.

(d) To the extent practicable, state whether or not the extent, if any, to which the restatement will, as of the date thereof, alter the amount available for distribution to the holders of equity securities.

Item 20. Officers with respect to reports. If action is to be taken with respect to any report of the issuer or of its directors, officers or subsidiaries, or any minutes of meeting of its stockholders, furnish the following information:

(a) State whether or not such action is to constitute approval or disapproval of any of the matters referred to in such reports or minutes.

(b) Identify each of such matters which it is intended will be approved or disapproved, and furnish the information required by the appropriate item of this schedule with respect to each such matter.

Item 21. Matters not required to be submitted. Matters not required to be submitted to any matter which is not required to be submitted to a general meeting of security holders, state the nature of each matter, the reasons for submission to a vote of the security holders, and the action thereon as recommended by the issuer.

the management in the event of a negative vote on the matter by the security holders.

Item 22. Amendment of charter, bylaws or other documents. (No change in the text of the item; the following new instruction is added to the item.)

Instruction. Where the matter to be acted upon is the classification of directors, state whether vacancies which occur during the year may be filled by the board of directors to serve only until the next annual meeting or may be so filled for the remainder of the full term.

Item 23. Other proposed action. If action is to be taken with respect to any matter not specifically referred to above, describe briefly the substance of each such matter in substantially the same degree of detail as is required by Items 5 to 20, inclusive, above.

Item 24. Vote required for approval. As to each matter which is to be submitted to a vote of security holders, other than elections to office or the selection or approval of auditors, state the vote required for its approval.

(Secs. 8, 7, 9, 10, 10(a), 49 Stat. 79, 79, 81, 85; secs. 12, 13, 14, 15(d), 22(a), 48 Stat. 622, 624, 601; secs. 203, 205, 49 Stat. 906, 908; sec. 222(a), 49 Stat. 704; secs. 1, 7, 8, 49 Stat. 1273, 1277, 1279; sec. 201, 54 Stat. 837; secs. 3, 202, 49 Stat. 805, 806; sec. 7, 4, 8, 6, 72 Stat. 555-556, 556, 570-571; sec. 1, 72 Stat. 1851; secs. 1, 2, 3, 92 Stat. 454, 455; secs. 1, 2, 3-5, 22(a), 84 Stat. 1435, 1437; sec. 105(b), 83 Stat. 1509; sec. 8, 9, 10, 11, 13, 83 Stat. 117, 119, 119, 121, 153; 15 U.S.C. 707, 770, 773a, 771, 773(a), 701, 704, 706, 734(d), 734(a). 117 FR 11424, Dec. 19, 1952, as amended at 31 FR 213, Jan. 7, 1956; 31 FR 473, Jan. 14, 1956; 31 FR 2592, Feb. 10, 1956; 32 FR 29772, Dec. 23, 1957; 32 FR 26924, Dec. 29, 1957; 33 FR 2993, Feb. 15, 1958; 34 FR 7574, May 10, 1959; 35 FR 2260, Feb. 15, 1970. Re-designated, 39 FR 16946, Nov. 3, 1965; 39 FR 3220, Jan. 20, 1974; 40 FR 1012, Jan. 6, 1975; 42 FR 2425, Jan. 25, 1977; 42 FR 12354, Mar. 3, 1977; 42 FR 15309, Mar. 21, 1977; 42 FR 35506, Dec. 30, 1977.)

Effective Date Note: In § 240.14a-101, Items 5 and 6 of Schedule 14A were amended at 42 FR 12354, and Item 5 was corrected at 42 FR 15309, effective August 31, 1977. For a document describing the effective date until April 30, 1978, see 42 FR 31458, Aug. 10, 1977. For the commencement of the item, the superseded text is set forth as follows:

Item 5. Voting securities and principal holders thereof.

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

Item 5. Voting securities and principal holders thereof.

(a) ***

(d) If to the knowledge of the persons on whose behalf the solicitation is made, any person owns of record or beneficially more than 10 percent of the outstanding voting securities of the issuer, name such person, state the approximate amount of such securities owned of record but not owned beneficially and the approximate amount owned beneficially by such person and the percentage of outstanding voting securities represented by the amount of securities so owned in each such manner.

(e) If to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the issuer has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person, or persons, the basis of the control, the date and a description of the transaction(s) which resulted in the change of control and the percentage of voting securities of the issuer now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was acquired. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to Section 13(d)(1)(B) of the Act by the person(s) who acquired control. In that event, the material shall indicate that the identity of the bank has been so omitted and filed separately with the Commission.

Instruction 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters should be described.

(f) If there are any contractual arrangements, including any pledge of securities of the issuer or any of its parents, known to the persons on whose behalf the solicitation is made, the operation of the terms of which may at a subsequent date result in a change in control of the issuer.

Instruction. Paragraph (f) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the issuer.

Item 6. Sources and Directors.

(a) ***

(5) If more than 10 percent of any class of securities of the issuer or any of its parents or subsidiaries are beneficially owned by him and his associates, state the approximate amount of each class of such securities beneficially owned by such associates, naming each associate whose holdings are substantial.

§ 240.14a-102 Schedule 14B. Information to be included in statements filed by or on behalf of a participant (other than the issuer) pursuant to § 240.14a-11(c) (Rule 14a-11(c)).

Instructions. 1. The item numbers and captions of the items shall be included but the text of the items may be omitted if the answers thereto are so prepared as to indicate clearly the coverage of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state. The information called for by Items 2(a) and 2(a) or a fair summary thereof is required to be included in all preliminary soliciting by Rule 14a-11(d)(3).

2. If the participant is a partnership, corporation, association or other business entity, the information called for by Item 2, 3 and 4(b) and (c) shall be given with respect to each partner, officer and director of such entity, and each person controlling such entity, who is not a participant.

Item 1. Issuer. State the name and address of the issuer.

Item 2. Identity and background. (a) State the following:

(1) Your name and business address.

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

(b) State the following:

(1) Your residence address.

(2) Information as to all material occupations, positions, offices or employments during the last ten years, giving starting and ending dates of each and the name, principal business and address of any business corporation or other business organization in which each such occupation, position, office or employment was carried on.

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

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

answer to this sub-item need not be included in the proxy statement or other proxy soliciting material.

Item 3. Interests in securities of the issuer.
(a) State the amount of each class of securities of the issuer which you own beneficially, directly or indirectly.

(b) State the amount of each class of securities of the issuer which you own of record at or near the date.

(c) State with respect to all securities of the issuer purchased or sold within the past year, the dates on which they were purchased or sold and the amount purchased or sold of each such date.

(d) If any part of the purchase price or proceeds of any of the shares specified in (b) or (c) is represented by funds borrowed or otherwise obtained for the purpose of purchasing or holding such securities, state and indicate the amount of the indebtedness of the latest practicable date. If such funds were borrowed or obtained through a loan agreement to a margin account or similar account in the regular course of business with a broker or dealer, briefly describe the transaction, and state the name of the parties.

(e) State whether or not you are, or were within the past year, a party to any contract, arrangement or understanding with any person with respect to the securities of the issuer, which is not limited to joint selling, buying or option agreements, purchase or sale of securities, receipt of loans or guarantees of loans, or loans of loans or proceeds, or is similar to the selling of proxies. If so, state the terms of such contracts, arrangements or understandings and give the details of each.

(f) State the amount of securities of the issuer which you hold of record, directly or indirectly, as of the date of the filing of the proxy statement and the amount of each such amount.

(g) If you are a party to any contract, arrangement or understanding with any person with respect to the securities of the issuer, state the details of each.

Instructions. For purposes of this item, "securities" includes any debt, evidenced in writing, or any other security under the Act 240.14a-102.

Item 4. Other matters. (a) Describe the material circumstances under which you have been asked to act as a director and state the date and amount of your salary or other compensation as a director.

(b) State whether or not you or any of your family have any relationship, or interest, with the issuer or its affiliates.

(c) State whether or not you have any relationship, or interest, with the issuer or its affiliates.

(2) With respect to any future transactions to which the issuer or any of its affiliates will or may be a party.

If so, describe such arrangement or understanding and state the names of the parties thereto.

(d) State the total amount contributed and proposed to be contributed by you in furtherance of the solicitation, directly or indirectly. If such amount exceeds or will exceed \$500 in the aggregate.

Item 5. Signature. The statement shall be dated and signed in the following manner:

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

(Signature of participant or authorized representative)

(Date)

Instruction. If the statement is signed on behalf of a participant by the latter's authorized representative, evidence of the representative's authority to sign on behalf of such participant shall be filed with the statement.

(Secs. 12, 13, 14, 15(d), 23, 48 Stat. 892, 894, 895, 896; sec. 103(b), 49 Stat. 704; secs. 1, 3, 2, 48 Stat. 1275, 1277, 1279; sec. 202, 49 Stat. 688; sec. 3, 4, 5, 6, 10, 70 Stat. 805-806, 809, 810-811, 812; sec. 1, 2, 3, 42 Stat. 154, 155; sec. 1, 2, 3-4, 42 Stat. 1433, 1479; sec. 107(b), 52 Stat. 1503; sec. 2, 3, 10, 10, 59 Stat. 117, 118, 119, 120; 15 U.S.C. 78a, 78b, 78c, 78d(4), 78e.)

(1) FR 350, Jan. 22, 1977, as amended at 42 FR 215, Jan. 7, 1977; 42 FR 20945, Dec. 21, 1977. Redesignated at 42 FR 14002, Nov. 6, 1977, and amended at 42 FR 12354, Jan. 7, 1977.

Revisive Date Note: In § 240.14a-102, Item 3 was amended at 42 FR 12354, effective August 31, 1977. For a document defining the effective date until April 30, 1978, see 42 FR 11704, Apr. 17, 1977. For the convenience of the user, the amended text is set forth as follows:

§ 240.14a-102 Schedule 14C. Information to be included in statements filed by or on behalf of a participant other than an issuer pursuant to § 240.14a-101(c)(1)-(3).

Item 3. Interests in securities of the issuer.

(a) State the amount of each class of securities of any parent or subsidiary of the issuer which you own beneficially, directly or indirectly.

§ 240.14a-103 Appendix A (to Schedule 14A (§ 240.14a-101)).

The table set forth below is an illustration of the presentation in tabular form of the information required (in § 240.14a-101), by Item 7(d) and instruction 3(c) to Item 9(d), which also applies to Items 10(d) and 11(c). If only Item 7(d) applies and Items 9, 10, and 11 are inapplicable, information need only be furnished for the period specified in Item 7(d), information as to shares sold may be omitted, and the reference at the foot of the table to options granted to employees may be omitted. See instruction 4 to Item 7(d). Other tabular presentations are, of

course, acceptable if they include the necessary data. Tabular presentation may not be needed if only a very few options have been granted.

"The following tabulation shows as to certain directors and officers and as to all directors and officers as a group (i) the amount of options granted since the beginning of the fifth previous full fiscal year, (ii) the amount of shares acquired since that date through the exercise of options granted since that date or prior thereto, (iii) the amount of shares sold during such period of the same class as those so acquired, and (iv) the amount of shares subject to all unexercised options held as of ——— (insert date)."

Common shares ¹	John Jones	James Smith	Richard Roe	All directors and officers as a group
Granted—196— to date:				
Number of shares				
Average per share option price	\$	\$	\$	\$
Exercised—196— to date:				
Number of shares				
Aggregate option price of options exercised	\$	\$	\$	\$
Aggregate market value of shares on date options exercised	\$	\$	\$	\$
Sales—196— to date:				
Number of shares				(²)
Unexercised at 196—:				
Number of shares				
Average per share option price	\$	\$	\$	\$
In addition, during the period employees were granted options for — share at an average option price per share of \$—:				

¹All common share figures have been adjusted in accordance with the terms of the options to reflect the stock split in 19— and, where applicable, to give effect to share dividends.

²As determined by directors and officers who exercised options during the period 19— to date.

(Sec. 14, 48 Stat. 895; 15 U.S.C. 78n)

132 FR 20947, Dec. 21, 1977

240.14b-1 Obligation of registered brokers in connection with the prompt forwarding of certain communications to beneficial owners.

A broker registered under Section 15 of the Act shall:

(a) Respond to an inquiry made in accordance with § 240.14a-3(d) by or on behalf of an issuer whose management is soliciting proxies, consents or authorization by promptly indicating, by means of a search card or otherwise, the approximate number of its customers who are beneficial owners of the issuer's securities that are held of record by the broker or its nominee; and

(b) Upon receipt of the proxy, other proxy soliciting material, and/or annual reports to security holders and

of assurances that its reasonable expenses shall be paid by the issuer, forward such materials promptly to such customers.

(Secs. 14(a), 14(b) and 22(a) (15 U.S.C. 78n(a), 78n(b), 78w(a)))

[42 FR 35955, July 13, 1977]

REGULATION 14C; DISTRIBUTION OF INFORMATION PURSUANT TO SECTION 14(c)

Source: Sections 240.14c-1 to 240.14c-101 appear at 31 FR 262, Jan. 2, 1965, unless otherwise noted.

§ 240.14c-1 Definitions.

Unless the context otherwise requires, all terms used in this regulation have the same meanings as in the Act or elsewhere in the general rules and regulations thereunder. In addi-

KELSO & CO.
INCORPORATED
INVESTMENT BANKERS

GREENSBORO, N.C.

SAN FRANCISCO

LOS ANGELES

March 30, 1979

Frances A. Ulmer
Director
Division of Policy Development
and Planning
Pouch AD
Juneau, Alaska 99811

Dear Fran:

We want to correct a statement made recently to you in a memorandum from Avrom M. Gross, Attorney General, by Joseph K. Donohue, Assistant Attorney General. The date of the memorandum is March 19, 1979, and the subject is "Policy and Legal Issues Surrounding AGSOC Legislation". On Page Three, at the end of the first paragraph, there is the following statement:

"The investment opportunity presently recommended by Kelso's group is that the new AGSOC purchase BP's share of TAPS."

This statement is not accurate.

Our contract with the Alaskan Legislature specifically prohibited investigation into potential investments. See Page Two of the attached proposal which became part of the final contract.

Subsequently, Amendment I to the contract provided for:

"(F) The contractor shall provide an analysis demonstrating how a direct investment in a pipeline would be made by an Alaskan General Stock Ownership Corporation."

We are quite sure that our oral testimony before various legislative committees has never indicated a recommendation for purchase of BP's interest in TAPS or any other investment opportunity.

In commenting on the urgency, as we see it, of getting the legislation enacted in the present legislative year, we have noted only that rapidly shifting world politics could affect the availability of an investment like the BP interest in TAPS, should the Board of AGSOC and the legislature conclude that particular acquisition to be of interest. That comment was not intended to be a recommendation, nor were recommendations requested of us.

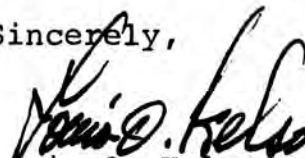
Frances A. Ulmer
March 30, 1979
Page Two

We have not yet seen the text of the memorandum by Mr. Donohue, and we may well have other comments when we do.

We hope that this will help to clarify our interest.

With best regards,

Sincerely,



Louis O. Kelso



John A. Miskimen

LOK/JAM:ch
Encls.

KELSO & CO.
INCORPORATED
INVESTMENT BANKERS

GREENSBORO, N.C.

SAN FRANCISCO

LOS ANGELES

CONTRACT BETWEEN

STATE OF ALASKA
LEGISLATIVE FINANCE DIVISION

AND

KELSO & CO., INCORPORATED
111 Pine Street
San Francisco, California 94111

The parties to this agreement are (1) the LEGISLATIVE FINANCE DIVISION, hereinafter referred to as the "State", and (2) KELSO & CO., INCORPORATED, hereinafter referred to as the "Contractor".

THE PURPOSE OF THIS AGREEMENT is to provide the consulting services described herein to the Alaska State Legislature.

IT IS THEREFORE MUTUALLY AGREED THAT:

CLAUSE I - STATEMENT OF WORK

- (A) The Contractor shall provide a design study for a General Stock Ownership Plan in the manner described in the Contractor's proposal to the State of Alaska, dated July 10, 1978, as amended by the deletions indicated on the attached copy of said proposal.
- (B) The Contractor shall provide draft proposals of the State and Federal legislation necessary to implement the General Stock Ownership Plan developed in the design study.
- (C) The Contractor shall provide an analysis of the possible adverse effect upon the flow of Federal aid due to the successful establishment of an Alaskan General Ownership Plan and recommendations for dealing with this potential problem.

- (D) The Contractor may purchase the services and provide for the expenses of other consultants or professionals selected with the written approval of the Project Director.
- (E) In the event of any conflict between the amended proposal and this agreement, this agreement shall govern.

CLAUSE II - PERIOD AND DATES OF PERFORMANCE

- (A) The Contractor shall submit the study and proposed legislation on or before February 1, 1979. The report shall be submitted in duplicate in a form suitable for offset printing to the Project Director.
- (B) The period of this contract shall begin on the date it is executed by all parties and terminated on February 1, 1979 unless extended or terminated by written agreement.

CLAUSE III - PROJECT DIRECTOR

The Project Director shall be _____
c/o Legislative Finance Division, Pouch WF, Juneau, Alaska 99811.

CLAUSE IV - COMPENSATION AND METHOD OF PAYMENT

- (A) Contractor's total compensation, including all expenses for the work described in Clause I, shall be \$180,000, and shall be payable to the Contractor as follows:
 - (1) On the date this contract is executed, August 25, 1978: - \$30,000.
 - (2) The payment of the balance in monthly installments of \$30,000 each, the first to be paid on the last day of the first full month subsequent to the acceptance of this proposal and the remaining installments in consecutive monthly payments.
 - (3) Out-of-pocket expenditures approved in advance by the State of Alaska will be billed monthly and due within 15 days of billing therefor by Kelso & Co.

CLAUSE V - PROGRESS REPORTS

The Contractor shall keep the Project Director informed as to the progress of the work performed under this agreement.

CLAUSE VI - RECORDS, DOCUMENTS, AUDIT

All documents, reports and writings produced in the course of the work performed under this contract are, upon delivery to the Agency or at the termination of this agreement, whichever occurs first, the property of the Agency.

CLAUSE VII - ALL WRITINGS CONTAINED HEREIN

This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind either of the parties to this agreement. Contractor understands that State shall have an unlimited license, without further compensation, to reproduce and use all materials containing any claims of copy-right by Contractor.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates indicated below.

KELSO & CO., INCORPORATED
111 Pine Street
San Francisco, CA 94111

THE STATE OF ALASKA

Louis O. Kelso
President & Chief
Executive Officer

Sen. Mike Colletta
Chairman, Legislative
Budget & Audit Committee

Date

Date

Sen. John Sackett
Chairman, Senate
Finance Committee

Date

Rep. Steve Cowper
Chairman, House
Finance Committee

Date

KELSO & CO.

INCORPORATED

INVESTMENT BANKERS

GREENSBORO, N.C.

SAN FRANCISCO

LOS ANGELES

PROPOSAL TO THE STATE OF ALASKA
TO PROVIDE A DESIGN STUDY FOR A
GENERAL STOCK OWNERSHIP PLAN FOR USE IN
FINANCING THE ACQUISITION AND/OR DEVELOPMENT
OF SELECTED ENTERPRISES INVOLVED IN THE
DEVELOPMENT OR EXPLOITATION OF THE RESOURCES
OF THE STATE OF ALASKA IN SUCH MANNER AS TO
MINIMIZE THE COSTS THEREOF AND TO BUILD THE
OWNERSHIP OF SUCH ENTERPRISE, OR SIGNIFICANT
INTERESTS THEREIN, INTO EVERY ALASKAN CITIZEN

July 10, 1978

INTRODUCTION

This proposal is a revision of our proposal of May 10, 1978 to the State of Alaska, forwarded in its original form under a cover letter addressed to The Hon. Steve Cowper, Chairman of the House Finance Committee of the State of Alaska. By this reference, our cover letter to Mr. Cowper of May 10, 1978, our proposal included therein and its enclosures (collectively referred to herein as the "May 10, 1978 Proposal") are incorporated herein for background purposes only, and without any intent thereby to enlarge the scope or proposed compensation contemplated by this proposal.

After conferences between representatives of the State of Alaska and officers of our firm, it has been concluded that the initial step in the overall project contemplated by the May 10, 1978 proposal should be the development of the economic and financial design characteristics, together with an analysis of the legislative, legal and economic requirements for enabling the State of Alaska and its citizens to take advantage of the resulting device, which we refer to in our proposal of May 10, 1978, and refer to in this proposal as "Alaska General Stock Ownership Corporation", or "AGSOC" for short. We understand that the State of Alaska will be under no obligation to implement the plan thus developed, or any variation of it that may, in the future, recommend itself.

The Hon. Mike Colletta, Senator
The Hon. John Sackett, Senator
The Hon. Steve Cowper, Member of the House of Representatives
State of Alaska
July 10, 1978
Page 2

The thrust of the work proposed to be undertaken pursuant hereto is the development of the design characteristics of an institution capable of being used by the State of Alaska to build into its citizens individually the equity ownership of some predetermined portion of the capital facilities developed or constructed from time to time to exploit and to realize the economic value of the resources of the State of Alaska. In this initial phase, we are not to concern ourselves with particular potential investments nor with specific activities designed to educate or test the opinion of particular groups of people on any of the aspects of the design which it is the purpose of our study to develop and recommend to the State of Alaska. The focus is to be upon design, and upon the identification and solution of legislative (state and federal), legal, accounting, tax, business, economic and finance problems foreseeably incidental to the implementation of the design so to be recommended.

In our work, we are to make the fullest feasible use of the facilities and talents that may be available to us through the Legislative Research Division and its staff of technicians, presently under the directorship of Mr. Greg Erickson.

PROPOSED FEE FOR OUR SERVICES IN THE ACCOMPLISHMENT OF THIS PROPOSAL

We propose as a fee for our services in developing and perfecting the design of an Alaskan General Stock Ownership Corporation, the sum of \$180,000. This sum would cover not only our services and all of our out-of-pocket expenditures, but the services and expenses of consultants, selected with advance approval by the State's representatives, to participate in the project.

We propose that the fee would be payable as follows:

1. An initial retainer of \$30,000 upon the execution on behalf of the State of Alaska of this proposal memorandum, thus establishing an agreement between our firm and the State of Alaska.
2. The payment of the balance in monthly installments of \$30,000 each, the first to be paid on the last day of the first full month subsequent to the acceptance of this proposal and the remaining installments in consecutive monthly payments.

The Hon. Mike Colletta, Senator
The Hon. John Sackett, Senator
The Hon. Steve Cowper, Member of the House of Representatives
State of Alaska
July 10, 1978
Page 3

An increase in a particular monthly fee (thus shortening the overall payment period) will be considered by the State of Alaska in the event approved out-of-pocket expenditures, combined with compensation for the ongoing efforts of our firm, for a particular month are materially higher than the average contemplated over the performance period.

COMPLETION OF THE DESIGN STUDY

Completion of our design study contemplated by this proposal and the delivery of a final report embodying the results thereof and our recommendations thereon to you will be made on or before February 1, 1979, assuming this proposal or any variation of it that we may negotiate is accepted by August 1, 1978. Otherwise, our completed report and recommendations would be delivered to you on or before 180 days from the date of acceptance of this proposal or of some variation of it.

Specialized consultants and subcontractors employed with the approval of whomever the State of Alaska may designate as the proper person or agency to supervise the project, would be paid by us from monies received from the State of Alaska hereunder. We anticipate that these consultants would include persons or organizations having the highest qualifications in their fields, and that, among others, these would include legal counsel skilled in the interpretation of the Alaskan and U. S. Constitutions, municipal bond counsel (who in this case would be entering a new field of counseling with respect to the use of a State agency to facilitate the distribution of stock representing private capital), State tax counsel, Federal tax counsel, accountants and lawyers skilled in the particular disciplines pertaining to problems developed by the design analysis (some of which may well be available within the State government), and other specialized talents. We assume that in every case, where the necessary talents can be found within the State government, that these would be used to minimize costs.

LEGAL PROBLEMS

A number of critical legal problems will require at least preliminary examination by the most highly qualified available experts. These will include the design characteristics of AGSOX as an agency of the State of Alaska, though intended for use to build the private and individual

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ownership of productive capital into every Alaskan citizen. While the Legislature of the State can, and doubtless will for reasons of efficiency, confer exemption from State corporate income taxes and all State property and excise taxes upon AGSOC, and exemption from income taxes upon stockholders on account of dividends used to pay for stock subscribed to, careful attention in the legal and financial design of AGSOC and its relationship to its stockholders and stock subscribers will be required in order to bring such dividends within the mantle of protection of the State itself from federally imposed taxes. The theory behind the preliminary plan itself is the universally accepted financing strategy of business corporations that a sound and feasible investment is one that will pay for itself within a reasonable period of time and then, protected by good management, a sound research and development program to keep its products and services relevant to the available markets, and depreciation adequate to restore its capital instruments as they wear out, the investments will go on throwing off income virtually indefinitely. Obviously, however, capital will pay for itself much more efficiently if the buyer of capital receives the entire yield, after depreciation and operating reserves (including liquidity reserves, if necessary), than if a governmental body or bodies carve out, through corporate or personal income taxation or otherwise, income that could be used to enable the stock subscriber to pay for his stock. While it is both fair and equitable that Alaskan citizens who receive income from AGSOC stock that has already paid its acquisition costs should be taxed upon dividends they receive as spendable income, it is both rational and desirable that the rate of amortization of their non-recourse stock subscriptions not be delayed or retarded either by State or Federal income taxation. Opinions of qualified legal counsel on any relevant aspect of the Constitution of the State of Alaska or the U. S. Constitution, so far as such provisions may affect the legal or financial design of AGSOC would be obtained. Similarly, opinions of qualified tax experts on the steps needed to create a temporary immunity from Federal personal income taxation on dividends declared by AGSOC but applied by it to the payment of the subscription price on each subscriber's stock will be obtained.

It seems at the outset reasonably clear that at the most, exemption from Federal personal income taxation on dividends declared by AGSOC on its stock can be achieved only so long as neither the stock nor the dividend income itself is available for personal disposition by the subscriber or stockholder. Beyond that point, Federal legislation will be required, but it is submitted, an excellent foundation has been made for such Federal exemption. It is necessary to effectively broaden the capital ownership base of the American economy, and the Joint Economic Committee

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has already officially recommended, in its 1976 Annual Report to Congress, that the rate of new capital formation be accelerated and that the base of ownership be broadened. It should be pointed out that the availability or non-availability of the Federal personal income tax exemption would not necessarily affect the feasibility of the plan itself, but rather, the length of time required for each stockholder's stock to pay its purchase price out of its dividends.

MEANS OF IMPROVING THE PROBABILITY OF FAVORABLE FEDERAL PERSONAL
INCOME TAX EXEMPTION ON DIVIDENDS USED TO PAY THE PURCHASE
PRICE OF STOCK

The likelihood of obtaining Federal legislation within a period of four or five years, at most, during which, it is our preliminary opinion, such exemption can be achieved through the design of AGSOC as an agency of the State of Alaska, will be significantly increased if circumstances are such that similar legislation would be needed by and beneficial to the citizens of the other 49 states. Ideally, this requisite would be accomplished by the enactment by Congress of S.3223, introduced into the 95th Congress, Second Session, by the Hon. Mike Gravel, United States Senator from Alaska, on June 22, 1978 (see Congressional Record, volume 124, number 96).

SPECIFIC ADDITIONAL FEATURES TO BE ANALYZED IN THE DESIGN STUDY,
WITH RECOMMENDATIONS THEREON IN THE FINAL REPORT

The definitive structure of AGSOC and the design of its trust division, within which the escrow accounts of all subscribers to its stock would be established, should be planned and analyzed. On the assumption that the General Stock Ownership Plan Trust of AGSOC would function as the exclusive, or perhaps primary market for the stock of AGSOC as it may be transferred because of the succession of generations, or for whatever reasons, then careful consultation with the best available expert on stockholder relations would be held in order to foresee and, so far as possible, to avoid functional problems. Advice of counsel on the implications of Alaskan inheritance laws and inheritance tax laws would be sought.

All steps necessary to acquaint the blue sky commission of the State of Alaska with the details of operation of AGSOC and to arrange in advance for compliance with the applicable requirements of that agency should be made.

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The Securities and Exchange Commission would be brought into consultation to acquaint all interested divisions fully with the nature of AGSOC and its proposed operations to obtain, so far as possible, understandings as to the applicability of the securities laws under its jurisdiction to the activities of AGSOC and its stockholders. While there is not much precedent for ascertaining in advance the questions which may arise, the general interest of the Securities and Exchange Commission in investors, as distinguished from speculators, and its interest in broad-based capital ownership, provide assurances that these problems will be satisfactorily solved.

The full details of the GSOP itself must be delineated. These would include the drafting of a body of regulations acceptable to the representatives of the State with respect to the definition of "eligible citizens" under varying circumstances of residence, time of birth, change of residence, period of years of eligibility to bring about full vesting, the conditions of forfeiture of vested interests, the provisions for transfer of ownership through sale, gift, descent and distribution, or otherwise, must be included in such regulations, and their legal soundness tested from every standpoint. The question of whether such stock, until released from the GSOP trust, would be subject to "spend-thrift" restrictions must also be covered by regulations. Rights of first refusal, or provisions for calls or puts with respect to the stock by the GSOP trust under various circumstances, should be considered, and the resulting decisions embodied in regulations duly adopted by the Board of Directors of AGSOC.

The design study would include an analysis of any special rights or privileges that may be necessary or appropriate between AGSOC and the native tribes or their corporations.

We will, of course, be pleased to respond to any and all questions. If you decide to proceed with the Economic Design Study as outlined in this proposal, please provide authorization for Kelso & Co., Incorporated's services by execution of the acceptance hereof through signature by officers authorized to obligate the State hereunder and returning a copy of this memorandum to us with a check payable to our firm as our retainer hereunder for the sum of \$30,000.

KELSO & CO., INCORPORATED

By _____
Louis O. Kelso, President and
Chief Executive Officer

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

AMENDMENT I

to the

CONTRACT BETWEEN

STATE OF ALASKA
LEGISLATIVE FINANCE DIVISION

AND

KELSO & CO., INCORPORATED

The Legislative Finance Division and Kelso & Co., Incorporated hereby amend the contract to which they are parties as follows:

1. CLAUSE I - STATEMENT OF WORK is amended by adding the following paragraph:

"(F) The contractor shall provide an analysis demonstrating how a direct investment in a pipeline would be made by an Alaskan General Stock Ownership Corporation."

2. CLAUSE II - PERIOD AND DATES OF PERFORMANCE is amended by:

(a) deleting "February 1, 1979"; and

(b) inserting "February 15, 1979" in both paragraphs (A) and (B).

3. CLAUSE IV - COMPENSATION AND METHOD OF PAYMENT is amended
by:

(a) deleting "\$180,000" and inserting "205,000"; and

(b) adding the following sentence to subparagraph (1):

"On the date that Amendment I is executed - \$25,000."

IN WITNESS WHEREOF, the parties have executed this amendment
on the dates indicated below.

KELSO & CO., INCORPORATED
111 Pine Street
San Francisco, CA 94111

Louis O. Kelso
Louis O. Kelso
President & Chief Executive
Officer

January 15, 1979
Date

STATE OF ALASKA

Mike Colletta
Senator Mike Colletta
Project Director

Jim Duncan
Rep. Jim Duncan
Project Director

1/12/79
Date

CHUGACH ELECTRIC ASSOCIATION, INC.

BY-LAWS

As Amended April 18, 1973

ARTICLE I

MEMBERSHIP

SECTION 1. Requirements for Membership. Any person, firm, association, corporation, or body politic, or subdivision thereof, may become a member of CHUGACH ELECTRIC ASSOCIATION, INC. by:

- (a) Making a written application for membership therein;
 - (b) Agreeing to purchase from the Association electric energy as hereinafter specified;
 - (c) Agreeing to comply with, and be bound by, the articles of incorporation and by-laws of the Association, and any rules and regulations adopted by its board of directors; and
 - (d) Paying the membership fee hereinafter specified;
- provided, however, that no person, firm, association, corporation, or body politic, or subdivision thereof, shall become a member unless and until he, or it, has been accepted for membership by the board of directors or the members. No person may hold more than one membership in the Association, and no membership in the Association shall be transferable, except as provided in these by-laws.

At each meeting of the members held subsequent to the expiration of a period of six months from the date of incorporation of the Association, all applications received more than ninety days prior to such meeting which have not been accepted, or which have been rejected by the board of directors, shall be submitted by the secretary to such meeting and, subject to compliance by the applicant with the requirements hereinabove set forth, any such application may be accepted by vote of the members. The secretary shall give each such applicant at least ten days written notice of the date of the members' meeting to which his application will be submitted, and such applicant shall be entitled to be present and heard at the meeting.

SECTION 2. Membership Certificates. Membership in the Association shall be evidenced by a membership certificate, which shall be in such form and shall contain such provisions as shall be determined by the board of

directors. No membership certificate shall be issued for less than the membership fee fixed in these by-laws, nor until such membership fee has been paid. In case a certificate is lost, destroyed or mutilated, a new certificate may be issued therefor upon such uniform terms and indemnity to the Association as the board of directors may prescribe.

SECTION 3. Joint Membership. A husband and wife may apply for a joint membership and, subject to the compliance with the requirements set forth in Section 1 of this Article, may be accepted for such membership. The term "member" as used in these by-laws shall be deemed to include a husband and wife holding a joint membership, and any provisions relating to the rights and liabilities of membership shall apply equally with respect to the holders of a joint membership. Without limiting the generality of the foregoing, the effect of the hereinafter specified actions by, or in respect to, the holders of a joint membership shall be as follows:

- (a) The presence at a meeting of either or both shall be regarded as the presence of one member and shall have the effect of constituting a joint waiver of notice of the meeting;
- (b) The vote of either separately, or both jointly, shall constitute one joint vote;
- (c) A waiver of notice signed by either or both shall constitute a joint waiver;
- (d) Notice to either shall constitute notice to both;
- (e) Expulsion of either shall terminate the joint membership;
- (f) Withdrawal of either shall terminate the joint membership;
- (g) Either, but not both, may be elected or appointed as an officer or director, provided that both meet the qualifications for such office.

SECTION 4. Conversion of Membership. (a) A membership may be converted to a joint membership upon the written request of the holder thereof, and the agreement by such holder, or his or her spouse, to comply with the articles of incorporation, by-laws, and rules and regulations adopted by the board of directors. The outstanding membership certificate shall be surrendered, and shall be reissued by the Association in such manner as shall indicate the changed membership status.

- (b) Upon the death of either spouse who is a party to

the joint membership, such membership shall be held solely by the survivor. The outstanding membership certificate shall be surrendered, and shall be reissued in such manner as shall indicate the changed membership status; provided, however, that the estate of the deceased shall not be released from any debts due the Association.

SECTION 5. Membership and Service Connection Fees. The membership fee shall be five dollars, upon the payment of which fee, the member shall be eligible for one service connection; provided, the board of directors may, as a condition to service, require the payment of a consumer deposit or the furnishing of other acceptable security in lieu thereof.

SECTION 6. Purchase of Electric Energy. Each member shall, as soon as electric energy shall be available, purchase from the Association all electric energy used on the premises specified in his application for membership, and shall pay therefor monthly at rates which shall from time to time be fixed by the board of directors; provided, however, that the board of directors may limit the amount of electric energy which the Association shall be required to furnish to any one member. Each member shall pay to the Association such minimum amount per month, regardless of the electric energy consumed, as shall be fixed by the board of directors from time to time. Each member shall also pay all amounts owed by him to the Association as and when the same shall become due and payable.

SECTION 7. Termination of Membership. (a) Any member may withdraw from membership upon compliance with such uniform terms and condition as the board of directors may prescribe. The board of directors of the Association may, by the affirmative vote of not less than two-thirds of all the directors, expel any member who fails to comply with any of the provisions of the articles of incorporation, by-laws, or rules or regulations adopted by the board of directors, but only if such member shall have been given written notice by the secretary of the Association that such failure makes him liable to expulsion, and such failure shall have continued for at least ten days after such notice was given. Any expelled member may be reinstated by vote of the board of directors, or by vote of the members at an annual or special meeting. If it appears that the best interest of the Association would be thereby served, the board of directors may, by resolution, cancel the membership of a member:

- (1) who has ceased to purchase energy from the Association for a period of six (6) months;
- (2) who had a disconnect order in effect for thirty (30) days without signing an order to reconnect; or
- (3) to whom electric utility service has been discontinued because of the nonpayment of any moneys due the Association; provided, that such delinquency shall have continued for at least thirty (30) days after the discontinuance of such service.

(b) Upon the withdrawal, death, cessation of existence or expulsion of a member, the membership of such member shall thereupon terminate, and the membership certificate of such member shall be surrendered forthwith to the Association. Termination of membership in any manner shall not release a member or his estate from any debts due the Association.

(c) In case of withdrawal or termination of membership in any manner, the Association shall repay to the member the amount of the membership fee paid by him; provided, however, that the Association shall deduct from the amount of the membership fee the amount of any debts or obligations owing from the member to the Association.

ARTICLE II

RIGHTS AND LIABILITIES OF MEMBERS

SECTION 1. Property Interest of Members. Upon dissolution, after paying, or discharging, or adequately providing for the payment or discharge of all its debts, obligations and liabilities, other than those to patrons arising by reason of their patronage, the Association shall distribute any remaining sums, first to patrons for the pro rata return of all amounts standing to their credit by reason of their patronage, and second, to members for the pro rata repayment of membership fees. Any sums then remaining shall be distributed among its members and former members in proportion to their patronage, except as participation in such distribution may have been legally waived. In the event of the lawful liquidation, through transfer or sale of all the property and assets of the Association, the proceeds of such liquidation, transfer or sale shall be distributed in the same manner as hereinabove provided for in the case of dissolution.

SECTION 2. Non-liability for Debts of the Associa-

tion. The private property of the members shall be exempt from execution or other liability for the debts of the Association, and no member shall be liable or responsible for any debts or liabilities of the Association.

ARTICLE III

MEETINGS OF MEMBERS

SECTION 1. Annual Meeting. The annual meeting of the members shall be held at such convenient date, on or after the 1st day of April, and on or before the 1st day of May of each year, at such place or building in the Anchorage Precinct, Third Judicial District, State of Alaska, as shall be designated by the board of directors on the notice of meeting, for the purpose of electing directors, passing upon reports for the previous fiscal year, and transacting such other business as may come before the meeting. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Association.

SECTION 2. Special Meetings. Special meetings of the members may be called by resolution of the board of directors, or upon a written request signed by any three directors to the president, or by a written request made to the president and signed by a sufficient number of members to constitute a quorum as defined in Section 5, Article III, and it shall thereupon be the duty of the secretary to cause notice of such meeting to be given as hereinafter provided. Special meetings of the members may be held at any place within the Anchorage Precinct specified in the notice of the special meeting.

SECTION 3. Notice of Members' Meetings. Written or printed notice, stating the place, day and hour of the meeting and, in case of a special meeting, or an annual meeting at which business requiring special notice is to be transacted, the purpose or purposes for which the meeting is called, shall be delivered not less than thirty days before the date of the meeting, either personally or by mail, by or at the direction of the secretary, or upon a default in duty by the secretary, by the persons calling the meeting, to each member. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid. The failure of any member to receive notice of an annual or special meeting of the members shall not

invalidate any action which may be taken by the members at any such meeting.

SECTION 4. Waiver of Notice. Any person entitled to notice of a meeting may waive such notice in writing, either before or after such meeting. If any such person shall attend such meeting, such attendance shall constitute a waiver of notice of such meeting, unless such person participates therein solely to object to the transaction of any business because the meeting has not been legally called or convened.

SECTION 5. Quorum. So long as the number does not exceed five hundred, ten per centum of the total number of members present in person shall constitute a quorum. If the total number of members shall exceed five hundred, fifty members, or three per centum of the members, whichever is the greater number, present in person, shall constitute a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice. If a meeting is called, but not held for lack of a quorum, the total number of members being in excess of five hundred, fifty members, or two per centum of the members, whichever is the greater number, shall constitute a quorum for each meeting subsequent thereto, whether convened by action of the members or otherwise, until a quorum is present and a meeting can be held, after which the quorum for the meeting next following shall revert to fifty members, or three per centum of the members, whichever is the greater number. The minutes of each meeting shall contain a list of the members present in person.

SECTION 6. Voting. Each member shall be entitled to only one vote upon each matter submitted to a vote at a meeting of the members. All questions shall be decided by a vote of a majority of the members voting thereon in person, except as otherwise provided by law, the articles of incorporation, or these by-laws.

SECTION 7. Order of Business. The order of business at the annual meeting of the members and, insofar as possible, at all other meetings of the members, shall be essentially as follows:

1. Report on the number of members present in person in order to determine the existence of a quorum.
2. Reading of the notice of the meeting and proof of

the due publication or mailing thereof, or the waiver or waivers of notice of the meeting, as the case may be.

3. Reading of unapproved minutes of previous meetings of the members and the taking of necessary action thereon.
4. Presentation and consideration of reports of officers, directors and committees.
5. Election of directors.
6. Unfinished business.
7. New business.
8. Adjournment.

ARTICLE IV

DIRECTORS

SECTION 1. General Powers. The management of the business and the affairs of the Association shall be vested in a board of seven directors who shall exercise all of the powers of the Association, except such as are by law, the articles of incorporation, or by these by-laws conferred upon or reserved to the members.

SECTION 2. Election and Tenure of Office. The persons named as directors in the articles of incorporation shall compose the board of directors until the first annual meeting, or until their successors shall have been elected and shall have qualified. Directors shall be elected by secret ballot at annual meetings of the membership, by and from the members, to serve for a three-year term, or until their successors have been elected and qualified; provided, that directors elected to fill vacancies as provided in Article IV, Section 8 of these by-laws, as amended, shall serve only for the unexpired portion of the term vacated. At the first such election under this provision, members of the board shall be elected as follows: three members to one-year terms; two members to two-year terms; and two members to three-year terms. At each subsequent annual meeting, members shall be elected to fill the seats on the board which become vacant under the schedule hereby set forth, or which become vacant as contemplated by Article IV, Section 8 of these by-laws, as amended. If any election of directors shall not be held on the day designated herein for the annual meeting, or at any adjournment thereof, a special meeting of the members shall be held within a reasonable time thereafter for the purpose of electing directors. Directors may be

elected by a plurality vote of the members.

SECTION 3. Qualifications. No person shall be eligible to become or remain a director, or to hold any position of trust in the Association, who:

- (a) Is not a member and bona fide resident for at least one year in the area served or to be served by the Association; or
- (b) Is in any way employed by, or financially interested in, a competing enterprise, or a business selling electric energy or supplies to the Association, or a business primarily engaged in selling electrical or plumbing appliances, fixtures or supplies to the members of the Association.

Upon establishment of the fact that a director is holding office in violation of any of the foregoing provisions, the board of directors shall remove such director from office.

Nothing contained in this section shall affect in any manner whatsoever the validity of any action taken at any meeting of the board of directors.

SECTION 4. Nominations. It shall be the duty of the board of directors to appoint, not less than sixty days before the date of a meeting of the members at which directors are to be elected, a committee on nominations, consisting of not less than five nor more than seven members, who shall be selected from different sections so as to insure equitable representation. No member of the board of directors may serve on such committee. The committee, keeping in mind the principle of geographical representation, shall prepare and post at the principal office of the Association, at least twenty days before the meeting, a list of nominations for directors, which may include a greater number of candidates than are to be elected. Any fifteen or more members, acting together, may make other nominations by petition not less than fifteen days prior to the meeting, and the secretary shall post such nominations at the same place where the list of nominations made by the committee is posted. The secretary shall mail with the notice of the meeting, or separately, but at least seven days before the date of the meeting, a statement of the number of directors to be elected and the names and addresses of the candidates, specifying separately the nominations made by the committee on nominations and the nominations made by petition, if any.

SECTION 5. General Manager. The board of directors

may appoint a general manager, who may be, but who shall not be required to be, a member of the Association. The general manager, together with such other staff, agents, and employees as he may select with the consent of the board of directors shall perform such duties and shall exercise such authority as the board of directors may from time to time vest in him.

SECTION 6. Rules and Regulations. The board of directors shall have power to make, adopt and enforce such rules and regulations, not inconsistent with law, the articles of incorporation, or these by-laws, as it may deem advisable for the management of the affairs and business of the Association, for the protection of its investment, and for the interest and welfare of the members thereof.

SECTION 7. Removal of Directors by Members. Any member may bring charges against a director and, by filing with the secretary such charges in writing, together with a petition signed by at least a sufficient number of members to constitute a quorum as defined in Section 5, Article III, may request the removal of such director by reason thereof; provided, however, that the signatures of members shall be acceptable only when affixed to a sheet on which the petition therein is fully set forth; and, provided further, that the person who solicited the signatures affixed to such petition shall acknowledge thereon before a person authorized to take acknowledgments of deeds that he had read the petition and the said charges against such director to each of the members prior to the latter subscribing their names thereto. Such director shall be informed in writing of the charges at least ten days prior to the meeting of the members at which the charges are to be considered, and shall have an opportunity at the meeting to be heard in person, or by counsel, and to present evidence in respect of the charges; and the person or persons bringing the charges against him shall have the same opportunity. The question of the removal of such director shall be considered and voted upon at the meeting of the members, and any vacancy created by such removal may be filled by vote of the members at such meeting without compliance with the foregoing provisions with respect to nominations.

SECTION 8. Vacancies. Vacancies caused by the removal of directors by the members shall be filled as provided in Article IV, Section 7, above, subject, however, to the provisions of Article IV, Sections 2 and 3. Any other vacancy occurring in the board shall be filled by the

affirmative vote of the majority of the remaining directors, and the member so elected to the board shall serve until the next annual meeting of the members, or until his successor has been elected and qualified. At the annual meeting next following the existence of such vacancy, the members shall elect one of their number to serve as director during the unexpired portion of the term vacated, subject, however, to the provisions of Article IV, Sections 2, 3, and 4 of these by-laws.

SECTION 9. Compensation. Directors shall not receive any salary for their services as directors, except that, by resolution of the board of directors, a fixed per diem and travel expenses of attendance, if any, may be allowed for attendance at each meeting of the board of directors, or a meeting of a committee thereof, or when a director is otherwise representing the Association in an official capacity. No director shall receive compensation for serving the Association in any other capacity, nor shall any close relative of a director receive compensation for serving the Association, unless the payment and amount of compensation shall be specifically authorized by a vote of the members, or the service by such director or close relative shall have been certified by the board of directors as an emergency measure.

ARTICLE V

MEETINGS OF DIRECTORS

SECTION 1. Regular Meetings. A regular meeting of the board of directors shall be held without notice immediately after, and at the same place as, the annual meeting of the members. A regular meeting of the board of directors shall also be held monthly at such time and place in the Anchorage Precinct, Third Judicial District, State of Alaska, as the board of directors may provide by resolution. Such regular monthly meetings may be held without notice other than such resolution fixing the time and place thereof.

SECTION 2. Special Meetings. Special meetings of the board of directors may be called by the president, or by any three directors, and it shall thereupon be the duty of the secretary to cause notice of such meeting to be given as hereinafter provided. The president or the directors calling the meeting shall fix the time and place, which shall be in the Anchorage Precinct, Third Judicial District, State of Alaska, for the holding of the meeting.

SECTION 3. Notice of Directors' Meetings. Written notice of the time, place and purpose of any special meeting of the board of directors shall be delivered to each director not less than five days previous thereto, either personally or by mail, by or at the direction of the secretary, or upon a default in duty by the secretary, by the president or the directors calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the director at his address as it appears on the records of the Association, with postage thereon prepaid.

SECTION 4. Quorum. A majority of the board of directors shall constitute a quorum; provided, that if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time; and, provided further, that the secretary shall notify any absent directors of the time and place of such adjourned meeting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors.

SECTION 5. Attendance at Meetings. If a director is absent from three successive regular board meetings, such absences may, for good cause shown, be excused by the board. If such absences are not excused by the board, or if the director is absent from four successive regular board meetings, with or without good cause, he shall be deemed to have resigned from the board of directors, and the vacancy thereby resulting will be filled as provided in Article IV, Section 8, of these by-laws.

ARTICLE VI

OFFICERS

SECTION 1. Number. The officers of the Association shall be a president, vice-president, secretary and treasurer, and such other officers as may be determined by the board of directors from time to time. The offices of secretary and treasurer may be held by the same person.

SECTION 2. Election and Term of Office. The officers shall be elected annually by ballot, by and from the board of directors, at the meeting of the board of directors held immediately after the annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon there-

after as conveniently may be. Each officer shall hold office until the first meeting of the board of directors following the next succeeding annual meeting of the members, or until his successor shall have been elected and shall have qualified. A vacancy in any office shall be filled by the board of directors for the unexpired portion of the term

SECTION 3. Removal of Officers and Agents by Directors. Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the Association will be served thereby. In addition, any member of the Association may bring charges against an officer and, by filing with the secretary such charges in writing, together with a petition signed by at least a sufficient number of members to constitute a quorum as defined in Section 5, Article III, may request the removal of such officer by reason thereof; provided, however, that the signatures of members shall be acceptable only when affixed to a sheet on which petition therein is fully set forth; and, provided further, that the person who solicited the signatures affixed to such petition shall acknowledge thereon before a person authorized to take acknowledgments of deeds that he had read the petition and the said charges against such officer to each of the members prior to the latter subscribing their names thereto. The officer against whom such charges have been brought shall be informed in writing of the charges at least ten days prior to the board meeting at which the charges are to be considered and shall have an opportunity at the meeting to be heard in person, or by counsel, and to present evidence in respect of the charges; and the person or persons bringing the charges against him shall have the same opportunity. In the event the board does not remove the officer, the question of his removal shall be considered and voted upon at the next meeting of the members.

SECTION 4. President. The president shall:

- (a) Be the principal executive officer of the Association and, unless otherwise determined by the members or the board of directors, shall preside at all meetings of the members and the board of directors;
- (b) Sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the board of directors to be executed, except in cases in which the signing and execution thereof

shall be expressly delegated by the board of directors or these by-laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and

- (c) In general, perform all duties incident to the office of president and such other duties as may be prescribed by the board of directors from time to time.

SECTION 5. Vice-President. In the absence of the president, or in the event of his inability or refusal to act, the vice-president shall perform the duties of the president, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the president. The vice-president shall also perform such duties as from time to time may be assigned to him by the board of directors.

SECTION 6. Secretary. The secretary shall:

- (a) Keep the minutes of the meetings of the members and of the board of directors in one or more books provided for that purpose;
- (b) See that all notices are duly given in accordance with these by-laws, or as required by law;
- (c) Be custodian of the corporate records and seal of the Association, and affix the seal of the Association to all documents, the execution of which on behalf of the Association under its seal is duly authorized in accordance with the provisions of these by-laws;
- (d) Keep a register of the names and post office addresses of all members;
- (e) Have general charge of the books of the Association;
- (f) Keep on file at all times a complete copy of the articles of incorporation and by-laws of the Association containing all amendments thereto, which copy shall always be open to the inspection of any member, and at the expense of the Association, forward a copy of the by-laws and of all amendments thereto to each member; and
- (g) In general perform all duties incident to the office of secretary, and such other duties as from time to time may be assigned to him by the board of directors.

SECTION 7. Treasurer. The treasurer shall:

- (a) Have charge and custody of, and be responsible

for, all funds and securities of the Association;

- (b) Be responsible for the receipt of, and the issuance of receipts for, all moneys due and payable to the Association, and for the deposit of all such moneys in the name of the Association in such bank or banks as shall be selected in accordance with the provisions of these by-laws; and
- (c) In general, perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the board of directors.

SECTION 8. Delegation of Duties. In the absence of an officer, or in the event of his inability or refusal to act, the board of directors will appoint one of their number to perform the duties of his office; provided, that the offices of president and vice-president may not be combined with any other office; and, provided further, nothing herein shall limit the right and duty of the vice-president to perform the duties of the president in the event that the president is absent, is unable to act, or refuses to act. The board of directors may provide for the delegation of one or more of the duties of the secretary and treasurer to the general manager, or to the general manager's designee.

SECTION 9. Bonds of Officers. The treasurer, and any other officer or agent of the Association charged with responsibility for the custody of any of its funds or property, shall give bond in such sum, and with such surety, as the board of directors shall determine. The board of directors, in its discretion, may also require any other officer, agent or employee of the Association to give bond in such amount and with such surety as it shall determine.

SECTION 10. Compensation. The powers, duties and compensation of officers, agents and employees shall be fixed by the board of directors, subject to the provisions of these by-laws with respect to compensation for directors and close relatives of directors.

SECTION 11. Reports. The officers of the Association shall submit, at each annual meeting of the members, reports covering the business of the Association for the previous fiscal year. Such reports shall set forth the condition of the Association at the close of such fiscal year.

ARTICLE VII

PATRONAGE CAPITAL

SECTION 1. Patronage Capital. The Association shall at all times be operated on a cooperative, nonprofit basis for the mutual benefit of its patrons. The Association's operations shall be so conducted that all patrons, members and non-members alike, will through their patronage furnish capital for the Association, subject to the provisions for sinking funds and reserves as provided by Article VIII of these by-laws.

In order to induce patronage and to assure that the Association will operate on a nonprofit basis, the Association is obliged to account on a patronage basis to all its patrons, members and non-members alike, for all amounts received from the furnishing of electric energy in excess of operating costs and expenses properly chargeable against the furnishing of electric energy. All such amounts in excess of operating costs and expenses, at the moment of receipt by the Association, are received with the understanding that they are furnished by the patrons, members and non-members alike, as capital. The Association is obligated to pay all such amounts in excess of operating costs and expenses to the patrons by credits to a capital account for each patron. The books and records of the Association shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each patron, is clearly reflected and credited in an appropriate record to the capital account of each patron, and the Association shall within a reasonable time after the close of the fiscal year notify each patron of the amount of capital so credited to his account. All such amounts credited to the capital account of any patron shall have the same status as though they had been paid to the patron in cash in pursuance of a legal obligation to do so, and the patron had then furnished the Association corresponding amounts for capital. In the event of dissolution or liquidation of the Association, after all outstanding indebtedness of the Association shall have been paid, outstanding capital credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of members. If, at any time prior to dissolution or liquidation, the board of directors shall determine that the financial condition of the Association will not be impaired thereby, the capital then credited to patrons accounts may be retired in full or in part. Any such retirements of capital shall be made in

order of priority according to the year in which the capital was furnished and credited, the capital first received by the Association being first retired. Capital credited to the account of each patron shall be assignable only on the books of the Association pursuant to written instructions from the assignor, and only to successors in interest or successors in occupancy in all or a part of such patron's premises served by the Association, unless the board of directors, acting under policies of general application, shall determine otherwise. All other amounts received by the Association from its operations in excess of costs and expenses shall, insofar as permitted by law, be:

- (a) Used to offset any losses incurred during the current or any prior fiscal year; and
- (b) To the extent not needed for that purpose, allocated to its patrons on a patronage basis, and any amount so allocated shall be included as part of the capital credited to the accounts of patrons, as herein provided.

In the event that a non-member patron shall elect to become a member of the Association, the capital credit to the account of such non-member patron may be supplied by the Association toward the payment of membership fee on behalf of such non-member patron.

Notwithstanding any other provision of these by-laws, the board of directors, at its discretion, shall have the power at any time, upon the death of any patron, if the legal representatives of his estate shall request in writing that the capital credited to any such patron be retired prior to the time such capital would otherwise be retired under the provisions of these by-laws, to retire capital credited to any such patron immediately upon such terms and conditions as the board of directors, acting under policies of general application, and the legal representatives of such patron's estate shall agree upon, provided, however, that the financial condition of the Association will not be impaired thereby.

ARTICLE VIII

FISCAL MANAGEMENT AND ACCOUNTING

SECTION 1. Revenues and Expenditures. The board of directors shall adopt and maintain a system of accounting for receipts and expenditures in conformance with the laws of the United States and of the State of Alaska applicable to cooperative associations and corporations,

which system shall at all times provide the proper reserves for payments of interest and principal on outstanding indebtedness, reserves for taxes, insurance, depreciation, replacement of capital plant and facilities, and such other reserves and accounts as the board of directors shall deem proper.

SECTION 2. Accounting System and Reports. The accounting system adopted and maintained by the board of directors shall conform to such rules and regulations applicable to accounting systems, their establishment and operation, as may from time to time be promulgated by the Administrator, Rural Electrification Administration, United States Department of Agriculture, and which may be established by any applicable laws, rules and regulations of the United States, the State of Alaska, or any regulatory agency thereof of competent jurisdiction. The board of directors shall also, after the close of each fiscal year, cause to be made a full, complete and independent audit of the accounts, books, and financial condition of the Association as of the end of such fiscal year. Such audit reports shall be submitted to the members at the annual meeting next following.

ARTICLE IX

DISPOSITION OF PROPERTY

SECTION 1. Disposition of Property. (a) The board of directors shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages, or a deed or deeds of trust, of any and all of the property, rights, privileges, licenses, franchises and permits of the Association, whether acquired or to be acquired, and wherever situated, as well as the revenues therefrom, all upon such terms and conditions as the board of directors shall determine, to secure any indebtedness of the Association.

(b) The Association may not sell, lease, or otherwise dispose of all or a substantial portion of the Association's property unless such sale, lease or other disposition is authorized by the affirmative vote of not less than the majority of all the members of the cooperative; provided, however, the board of directors may, upon the authorization of the majority of those members of the Association present at a meeting of its members, sell, lease, or otherwise dispose of all or a substantial portion of its property to another cooperative or to the holder or holders of any notes, bonds, or other evidence of indebted-

edness issued to the United States of America or any agency or instrumentality thereof.

ARTICLE X

SEAL

The corporate seal of the Association shall be in the form of a circle and shall have inscribed thereon the name of the Association and the words "Corporate Seal, State of Alaska."

ARTICLE XI

FINANCIAL TRANSACTIONS

SECTION 1. Contracts. Except as otherwise provided in these by-laws, the board of directors may authorize any officer or officers, agent or agents, to enter into any contract, or execute and deliver any instrument, in the name and on behalf of the Association, and such authority may be general or confined to specific instances.

SECTION 2. Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, and all notes, bonds or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents, employee or employees of the Association, and in such manner, as shall from time to time be determined by resolution of the board of directors.

SECTION 3. Deposits. All funds of the Association shall be deposited from time to time to the credit of the Association in such bank or banks as the board of directors may select.

SECTION 4. Change in Rates. Written notice shall be given to the Administrator of the Rural Electrification Administration of the United States of America not less than ninety days prior to the date upon which any proposed change in the rates charged by the Association for electric energy becomes effective.

SECTION 5. Fiscal Year. The fiscal year of the Association shall begin on the first day of January of each year and shall end on the thirty-first day of December of the same year.

ARTICLE XII

MISCELLANEOUS

SECTION 1. Membership in Other Organizations. The

Association shall not become a member of, or purchase stock in, any other organization without an affirmative vote of the members at a fully held meeting, the notice of which shall specify that action is to be taken upon such proposed membership or stock purchase; provided, however, that the Association may, upon the authorization of the board of directors, purchase stock in or become a member of any corporation or organization organized on a nonprofit basis for the purpose of engaging in or furthering the cause of rural electrification, or with the approval of the Administrator of REA, of any other corporation for the purpose of acquiring electric facilities.

SECTION 2. Waiver of Notice. Any member or director may waive in writing any notice of a meeting required to be given by these by-laws. The attendance of a member or director at any meeting shall constitute a waiver of notice of such meeting by such member or director, except in case a member or director shall attend a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

ARTICLE XIII

AMENDMENTS

SECTION 1. These by-laws may be altered, amended or repealed by the members at any regular or special meeting, provided the notice of such meeting shall have contained a copy of the proposed alteration, amendment or repeal.

SECTION 2. By-Laws Committee. It shall be the duty of the board of directors to appoint, not less than sixty days before the annual membership meeting, a committee on by-laws, consisting of not less than five nor more than seven members, who shall be selected from different sections of the service area of the Association so as to insure equitable representation. No member of the board of directors may serve on such a committee. The committee shall review the by-laws of the Association, consider any recommendations for revisions thereof which may be made by the board of directors or any member, and report their recommendations concerning the by-laws to the annual membership meeting. Nothing herein shall be interpreted to limit the authority of the board of directors to propose changes in the by-laws, or the right of the members to call a special meeting for any proper purpose pursuant to Article III, Section 2, herein.

MEMORANDUM

TO: Representative Jim Duncan, Chairman
Budget and Audit Committee
Alaska State Legislature

FROM: Arlon R. Tussing

RE: Questions about an Alaska General Stock
Ownership Corporation (GSOC)

I am submitting these preliminary comments at the request of Mr. Milt Barker of the Division of Legislative Finance. They are based upon my review of the following materials:

1. Louis O. Kelso, et al, Design of an Alaskan General Stock Ownership Plan, Volume I. (February 15, 1979);
2. Kelso & Co., (untitled) documents on British Petroleum's interest in TAPS (December 7, 1978);
3. Alaska House of Representatives, Sponsor Substitute for House Bill No. 240 (March 6, 1979);
4. Wilmer, Cutler & Pickering, Federal Constitutional Issues Presented by Alaska's GSOC (December 15, 1978);
5. Senator Mike Gravel, various speeches, Congressional Record citations on GSOCs (1978 & 1979).

MEMORANDUM
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I regret that I was not able to present these comments in person to the House State Affairs Committee on March 20, 1979, but I hope that they will be of use to you. Please let me know if you have any further questions.

QUESTIONS ABOUT AN ALASKA GENERAL STOCK
OWNERSHIP CORPORATION

1. GSOCs in General. Louis Kelso's concept of the General Stock Ownership Corporation (GSOC) has much in common with socialist and welfare state programs for redistributing wealth.* Instead of directly expropriating or taxing away property for redistribution, however, Kelso's approach would use the government's credit to finance specially created corporations, whose shares would be dealt out to eligible citizens. The individual shareholder in GSOC thus could regard any dividends he received as earnings from his ownership of private capital rather than as a government handout.

Like confiscation or condemnation, GSOCs would create no new wealth for society. The money used to create the GSOC would have to be bid away from private investors who did not have the same access to the government's power to tax (or, in the case of a federally-sponsored GSOC, to print money) in order to make good on their obligations. Because

* Kelso's accusations against present-day capitalism could well have come from a handbook of revolutionary Marxism. His program, it appears, is a remedy for "endemic poverty . . . misuse of technology, resource waste, despoilation of the environment, declining personal freedom, increasing lawlessness and civil disorder, the waning of liberal education, the civil rights impasse, the youth revolt, urban concentration, rising public and private debt, public loss of confidence in leadership and the seemingly irreversible advance toward a totalitarian society." [Kelso, et al, p. 16].

the "losers" would be widely scattered and possible to identify individually, however, we could expect this kind of property redistribution to be less painful and less socially disruptive than more traditional socialist schemes.

There is nothing novel or radical in this aspect of the GSOC. Private individuals and corporations already benefit from a wide variety of federal and state loan and guarantee programs: each of them reallocates resources and redistributes wealth as surely (if not as visibly) as would taxation or government ownership of industry. GSOCs would no more revolutionize or redeem the capitalist system than do the existing programs of government credit for housing, agriculture, shipbuilding, rural electrification or education. The value of the GSOC concept to Alaska must be judged not by the sweeping claims of its inventors, but rather by whether specific proposals are properly tailored to the state's specific problems.

2. GSOCs in Alaska. The GSOC concept (like that of "Alaska, Inc.") appeals to legislators and other Alaskans because it may be a Constitutional way to use the state's petroleum revenue to increase the wealth of present resident Alaskans without permanently swelling the size of state government or attracting a host of immigrants to share in the windfall. In my opinion, something like a GSOC as contemplated in H.B. 240 may indeed be the best way to give

Alaskans a personal stake in the state's natural resource income. But the GSOC concept is still a very rough one, and there are a number of reservations and cautions even apart from technical legal issues, that I would like to raise here. As the Legislature deliberates further on the GSOC concept, I would expect to raise other problems and perhaps to offer some suggestions for improving the pending legislation.

3. Widely distributed ownership vs. broad-based control. GSOCs may very well be a means of widening ownership in Alaska industry, but widely distributed ownership is not the same thing as broadly-based control. It is a truism that corporations with widely dispersed share ownership are the easiest for small groups of insiders to control. They are practically immune both to stockholder revolts and to hostile takeover attempts (which are often the only way in which an ineffective management can be replaced).

Small shareholders normally do not take an interest in corporate affairs, and it is usually not worth their time to do so. Most shareholders express any dissatisfaction with management by selling their stock, not by becoming active in corporate politics. Otherwise, they routinely give their proxies to management, or simply decline to vote at the annual meeting. This experience in ordinary business corporations is duplicated in "non-profit" economic enterprises

with widely spread ownership, such as cooperatives, credit unions, savings and loan associations, and mutual insurance companies.

By limiting any person's interest to ten shares of GSOC stock, the proposed legislation assures that shareholders generally will not have a large enough stake to warrant their taking an active part in the corporation's affairs on the basis of economic self-interest. This limitation on individual share ownership, the absence of cumulative voting and the staggered terms of office for directors, almost guarantee a self-perpetuating management.

In this setting, the alternative of vigorous controversy among the shareholders is hardly more attractive, however. Any activists, apart from the insider group itself, are likely to be more concerned with personalities and politics than with prudent business management. Alaska can already offer a few prominent examples of broadly-based corporations with such a malady.

4. Motivations of the Directors. Since the officers and directors of a GSOC will not be selected on the basis of a substantial ownership position, and may not obtain such a position, the legislature should consider in advance just what kind of people will constitute this self-perpetuating insider group, and what their motivations are likely to be. Such a group is more likely to be moved by considerations

other than profitability than a board and management representing large shareholders, for example:

Their outside business interests;

Officers' salaries, directors' fees, and other perquisites;

Size and prestige of the organization;

Their social and business philosophies, ideals and ideologies; and

The approval of other businessmen, the media, or the community at large.

These are on the whole the considerations that motivate the boards of many "charitable" enterprises: "non-profit" hospitals, for example, are notorious for bad management, inefficiency, and petty corruption. None of the foregoing motives is necessarily reprehensible, and they are not always at odds with the interest of the shareholders in maximizing profits or capital gains. But as a small shareholder I would prefer to have a few large shareholders on the board looking at the bottom line, and, in their own self-interest looking askance at inefficiency, empire-building or gold-

plating.

5. Vulnerability to speculative promotions. Alaska is a fertile field for promotional schemes, and GSOCs may be just made to order for them. The big private gains in industrial development projects are not made on the operating profits of ownership (Kelso's theories notwithstanding), but from promotional and organizational expenses: land speculation and sales; engineering, consulting, legal and underwriting fees; and the purchase and sale of corporate assets --- all of which can be capitalized into a GSOC's initial "investment."

The Board of Directors of GSOCs will almost inevitably be made up of people who make their living, or at least many of whose friends make their living, by such pursuits. Those who were strangers to that way of life when they were appointed or elected as Directors would not remain so for long. It is likely that an Alaska GSOC of the kind presently contemplated would be tempted to invest in projects that sophisticated profit-motivated capitalists would shun, and for which the legislature would not have been willing to appropriate public funds.

6. State Loan Guarantees. One seeming advantage of the GSOC concept is that the state money backing GSOC credit would bring a double return to Alaska --- once from the investment earnings the government earns on money in the

guarantee fund, and once again from the citizens' GSOC dividends. But state funds needed to back GSOC debt would be considerable (in the case of the proposed BP Pipeline purchase, over \$1 billion), they would be immobilized for any other purpose, and they would truly be at risk --- particularly if GSOCs were capitalized with 100 percent debt, as seems to be necessary if the corporations are to be created without an appropriation of equity capital from the general fund.

The proposed legislation is not clear who is to propose and approve state loan guarantees for the purchase of GSOC assets. There seems to be a Constitutional question whether such a guarantee could be authorized by the Legislature, or even by a popular referendum, but that is an issue outside my area of competence.

7. Investment in TAPS. A share in TAPS is one of the worst investments an Alaska GSOC could possibly make. If something went wrong at the Prudhoe Bay field, with the pipeline or terminal, or in the world petroleum market --- the state could simultaneously be faced with (1) a drastic decline in the oil revenues that support state government and underpin the Alaska economy, (2) an obligation to make good on defaulted pipeline bonds (either out of a guarantee fund or out of reduced general fund revenues), and (3) loss of the value of GSOC stock in the hands of individual Alaskans.

The fact that such a scenario is even imaginable makes it very unlikely that the present holders of pipeline bonds would agree to their assumption by an Alaska GSOC, or that they take any state loan guarantee seriously. As some big lenders have stated about state backing for gas pipeline debt, they would justifiably expect Alaska to try to recover any loss by means of higher taxes on oil and gas production, thereby further undermining the soundness of the lenders' other loans to the owners of TAPS. The same considerations apply, with only slightly less force, to GSOC investments in other facilities for transporting North Slope hydrocarbons.

If the Legislature were to authorize creation of a GSOC, however, there will surely be a clamor (which may well become irresistible) for it to finance or buy into the Alaska Highway gas pipeline, a North Slope gas conditioning plant, the Alpetco refinery, a Fairbanks petrochemical plant, or a natural gas liquids pipeline on terms that no rational private investor would accept. This is my own main concern about GSOCs today. But, for some Alaskans, it may well be a point in their favor.

ALASKA
GENERAL STOCK OWNERSHIP CORPORATION

BILL SUMMARY

Federal law requires state authorization of general stock ownership corporations receiving special tax treatment under Subchapter "U" of the Internal Revenue Code. The bill creates the Alaska General Stock Ownership Corporation (AGSOC). This corporation is a completely private for profit corporation which will operate under the Alaska Business Corporations Act to the extent consistent with the AGSOC act. The shares of the AGSOC will be owned and voted by the citizens of Alaska with each resident holding a share of stock.

The bill directs the Governor to appoint incorporators to form the AGSOC and sets forth the following:

- 1) Board membership limitations assuring Alaskan control;
- 2) Federal requirements for corporate articles;
- 3) Stock distribution to all Alaska residents;
- 4) Penalties for fraudulent acquisition of AGSOC stock;
- 5) One year statute of limitations on AGSOC challenges;
- 6) Financing for AGSOC startup costs; and,
- 7) Technical amendments required to Alaska statutes.

The corporation is designed to have as its shareholders existing Alaskan residents. Stock will be distributed to eligible individuals without cost. Investments by the AGSOC will be made through the use of borrowed funds and the earnings from those investments used to retire the loan and distribute dividends to the shareholders. Except for minor exemptions the AGSOC will be subject to the same rules as all other Alaska corporations.

ANALYSIS: SECTION 1

Section 1 of the bill constitutes the primary legislative section. It creates a new chapter, Chapter 50, of the Alaska Statutes, Title 10, setting forth technical requirements for the Alaska General Stock Ownership Corporation. The Chapter is divided into nine sections dealing with creation of the AGSOC, federally required charter limitations, board of directors, notification of shareholders' eligibility, limitations on corporate liability, restrictions on application for shares, fraud penalties, corporate dividends and definitions. A section by section analysis of Chapter 50 follows.

50.010. ALASKA GENERAL STOCK OWNERSHIP CORPORATION CREATED.

This section directs the Governor to appoint nine people as the incorporators and initial board members of the Alaska General Stock Ownership Corporation. These nine people, a majority of whom must be Alaskans, will adopt corporate articles and by-laws and file with the state to create the corporation as required under the Alaska Business Corporations Act. The bill allows the appointment of some non-Alaskan directors to provide flexibility in obtaining special expertise.

The status of the general stock ownership corporation is made clear by this section. AGSOC is not and may not be considered to be an agency, instrumentality or political subdivision of the State of Alaska. This parallels the federal statute which provides that a GSOC shall be treated as a private corporation and not as a governmental unit. The section also clarifies AGSOC status in relation to other statutes by requiring that it comply with the provisions of Subchapter U of the Internal Revenue Code and the Alaska Business Corporations Act. To the extent that the AGSOC authorizing legislation is not inconsistent with Chapter 5 of Alaska Statutes Title 10, AGSOC will be subject to all the rules applicable to any other Alaska business corporation.

Subsection 4 provides for limitations on the transferrability of the stock so that shares may not be sold or used as security for a loan during the first five years unless the shareholder dies or moves out of the state. Shares may only be transferred to another Alaska resident and then only if that person would not own more than ten shares of AGSOC stock after the transfer. Corporations and other artificial persons may not be shareholders. Finally, in order to protect minors, shares may not be transferred until the shareholder reaches 18.

Subsection 5 provides that the corporation shall qualify as a general stock ownership corporation subject to the special tax provisions of Subchapter U of the Internal Revenue Code.

Subsection 6 provides for a limitation on investments which the corporation may purchase. The corporation may not invest in assets acquired by it or for its benefit through the power of eminent domain. This is not to imply that the AGSOC has the power of condemnation since that power may be exercised only by the government. The limitation is designed to prevent the AGSOC from acting in collusion with an agency or local government to acquire a going business from an unwilling seller. It is not intended to prevent the purchase at arm's length of a business where a portion of the seller's assets may have been acquired by condemnation. The AGSOC would not be prevented from investing in a project where some minor portion of the assets must be acquired through eminent domain if the State or local government determines that the exercise of its condemnation power is appropriate. Such a situation might occur should the AGSOC become involved in the construction of a major pipeline.

50.040. NOTIFICATION OF ELIGIBLE SHAREHOLDERS.

Since stock is to be distributed free of charge all Alaska residents must be notified of its availability. This section sets out the minimum notice requirements of weekly broadcast and publication for at least three months before stock distribution and monthly broadcast and publication for eleven months after distribution. These are minimum requirements only and the board of directors may determine that the corporation should take other steps to identify and notify potential shareholders. The AGSOC might want to compile mailing lists from various sources to develop a list of potential shareholders while in the bush it might be appropriate for it to hire census personnel to locate and identify eligible Alaskans.

50.050. CORPORATION NOT LIABLE TO SHAREHOLDERS.

This section makes it clear that although the AGSOC is required to take reasonable steps to notify potential shareholders of their right to stock the burden of applying for stock lies with the resident and the corporation is not liable for failure to notify or issue stock to a potential shareholder. If a resident makes application for stock after the distribution of one or more dividends he loses his right to those dividends and is entitled to receive only those dividends declared and paid after the date upon which his stock was issued to him.

50.060. LATE APPLICATION FOR SHARES.

The legislation provides that stock is to be issued to all qualifying residents and the corporation directed to use reasonable efforts to identify potential shareholders. The burden of application is upon the resident. Those residents who are identified or who identify themselves will have one year in which to elect not to receive stock. To protect against those eligible residents who are not identified and fail to identify themselves hoping to see how the corporation fares before applying for their stock, a final cutoff date is provided after which distributions of stock will be made only upon payment to the corporation of book value.

SUMMARY OF TESTIMONY

Robert D. Hamrin

In 1976, the Joint Economic Committee recommended to Congress that it "be made national policy to pursue the goal of broadened capital ownership" and a follow-up staff study concluded that "serious consideration should be given to plans that are open to all individuals."

I wish to congratulate the state of Alaska for taking the first bold steps toward implementing such a plan. I also wish to emphasize that a primary virtue of the proposed AGSOC is its simplicity in dealing with one class of stock distributed equally to all citizens. It is most likely that refinements will be made over time but for now, it is important that a track record begins to be established and people's reactions gauged. I firmly believe that the AGSOC, if established, will long be heralded as the first move toward "economic democracy."

As an economist who has examined all the major ideas for broadening capital ownership, I feel the AGSOC is the right step at the right time. The current national policy for broadening capital ownership, ESOPs and TRASOPs, is good so far as it goes, but that is not far enough since the majority of individuals would not significantly benefit from such employee-centered plans.

The AGSOC would benefit every citizen; it would allow all Alaskans to share directly in their highly productive economy; it should establish a stronger foundation for future economic growth due to the increased consumption demand flowing from the augmented incomes of consumers; it is the best plan for providing a more equitable distribution of income and wealth without disturbing present holdings; and by enabling all citizens to "participate" in production through capital ownership, they should gain a better understanding of the workings of the private enterprise system.

The full text of my prepared statement presents a critique of the Kelso study which focuses on a number of inaccurate statements made in the "economic reasoning" section. My statement also contains some specific comments regarding the AGSOC bill: I question whether an emigrating shareholder, particularly in the first few years, should be allowed to take stock with him; there should be provisions for how the stock shares from future major investments would be distributed as well as for repayment of the loan; the question of who the beneficiaries should be in the future and whether shares should be equally distributed needs to be examined.

Testimony for Division of Legislative Finance
regarding
Alaska General Stock Ownership Corporation (AGSOC)

Robert D. Hamrin

The Right Step at the Right Time

In its 1976 Annual Report, the Joint Economic Committee made the following recommendation to Congress:

To provide a realistic opportunity for more U.S. citizens to become owners of capital, and to provide an expanded source of equity financing for corporations, it should be made national policy to pursue the goal of broadened capital ownership.

Four months later, the Committee published a staff study which after examining numerous means by which to achieve broadened capital ownership concluded:

Since this is a goal for all Americans and not just employees of corporations, serious consideration should be given to plans that are open to all individuals...

Three years later, the state of Alaska is to be congratulated for taking the first bold steps toward implementing such a plan. Talk, especially in Washington, D.C., comes cheap and there is much talk regarding the ills of our society and even a fair amount regarding possible remedies. But 95% of talk ends there. Of the 5% that does result in new policies or actions, 90-95% is simply a replay of old ideas, perhaps slightly modified. Rare, extremely rare, is the example of a bold, creative new solution actually being implemented. This is the primary point that should be remembered in the midst of the specific details which follow.

In the same vein, although a few "complicating" suggestions are offered below, a primary virtue of the proposed plan is its simplicity. It deals with one class of stock distributed equally to all citizens. This is as it should be for the initial general plan for broadened capital ownership.

If, for example, a choice of stocks from a diversified portfolio were offered to households, wise or simply early recipients could quickly deplete the supply of "choice stock" and individuals who are not knowledgeable and perhaps have never owned stock would be handicapped in making wise choices on a diversified portfolio.

The ACSOC, if established, will be long remembered as the first concrete step towards "economic democracy." The intent of this phrase has been incisively portrayed by Winnett Boyd:

If a country in which only a few men and women are citizens is politically unjust, the remedy is not to abolish citizenship but to make all men and women citizens. If an industrialized country in which only a few own all the capital is economically unjust, the remedy is not to abolish private capital but to make it possible for all to become owners of some of it.

An Economic Perspective

Statistics show that in the early 1970s, nearly one out of every eight American families had essentially no financial net worth and the majority had a financial net worth of less than \$10,000. This illustrates the fragile, debt-underwritten affluence of American households and the fact that the economic democracy spoken of above is far from a reality.

If economic democracy is to be the goal, then ESOPs and TRASOPs which constitute the current national policy for broadening capital ownership cannot be the final answer. Because the majority of individuals would not significantly benefit from such employee-centered plans, there is a lack of interest and support for them. This again points to the need for a plan that reaches everyone. There is much to be said for the excitement stemming from a commonly shared experience among all Alaskan citizens that such a plan is likely to generate.

The ACSOC has many attractive features. It can benefit everyone or be targeted to whatever groups may be desired. It does not favor corporate

officers or executives, or persons employed by the most successful or most capital-intensive corporations. It does not force a rift between a worker and his or her union nor does it create a climate in which union leaders might take control of corporations. It does not depend, as ESOPs and TRASOPs do, upon tax subsidies, tax benefits, or the loss of tax revenues.

What the ACSOC does do is most important. It allows all Alaskans to share directly in their highly productive economy, thus increasing purchasing power as more dollars flow as dividends to lower and middle income households. Relatedly, it should establish a stronger foundation for future economic growth which would be stimulated by the increased consumption demand flowing from the augmented incomes of consumers. It also does more in terms of providing a more equitable distribution of income and wealth without disturbing present holdings than any other plan that has been suggested to date. A final important non-economic benefit is that by enabling all citizens to "participate" in production not only through their labor but also through capital ownership, the ACSOC will lead to a better understanding by Alaskans of the workings of the private enterprise system.

Basically, the ACSOC is recognizing that some portion of the state's immense "public wealth" should be distributed directly to the people. The state government can facilitate this by providing a mechanism whereby all individuals have equal access to credit in order to obtain stock on the basis of its anticipated future earnings.

Critique of the Kelso Study

My general reaction to the Kelso study was one of disappointment. In specifying the legal and financial design of the ACSOC, it did not go much