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PROXY CONTESTS:
 COMPETITION FOR MANAGEMENT THROUGH PROXY
 SOLICITATION

By Frank D. Emerson and Franklin C. Latham†*

THE 1954 "proxy season,"¹ highlighted by the titanic struggle between Robert R. Young and the former management of the New York Central Railroad, doubtless occasioned far more reports and comments in the public press regarding proxy contests than ever before. Shortly after the close of the New York Central contest one newspaper columnist wrote that Mr. Young proposed next to enter the oil industry, inferentially by means of another proxy contest.² Still another columnist, following announcement of the defeat of the former New York Central Railroad management, asserted that a contest for the Pennsylvania Railroad may be expected in the wake of the proxy contest defeats of the former managements of the New York Central, the New York, New Haven & Hartford, and the Minneapolis & St. Louis railroads.³ Currently, the public press is carrying news stories concerning the opening efforts of Louis E. Wolfson, president and chairman of the world's largest marine construction firm, Merritt-Chapman and Scott, to take over the billion-dollar a year mail order house of Montgomery Ward & Co. and to oust its chairman, Sewell Avery.⁴

Examination of the proxy contests that took place during the

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¹ The "proxy season" is March through May, and so called for the reason that approximately two-thirds of the proxy statements filed with the Securities and Exchange Commission are filed during that period.

² Winchell, *Oil Is Next on List for Robert Young*, Cleveland News, June 22, 1954, p. 13, cols. 7 and 8.

³ *Sullivan's Broadway*, Cincinnati Times-Star, August 31, 1954, p. 17, col. 1.

⁴ See for example, *Business Struggle Is Launched—Challenge Faced by Ward*, Cincinnati Enquirer, August 27, 1954, p. 34, col. 1.

first half of 1954 and the year 1953 therefore appears timely, and should afford additional insight into the matter of whether the Securities and Exchange Commission's Regulation X-14 governing the solicitation of proxies⁵ is in general continuing to operate effectively in stimulating corporate or shareholder democracy.⁶ More specifically, is there substantial reason to believe that the Regulation is inspiring present management to provide, or affording a medium for obtaining elsewhere, the vigorous and faithful leadership so essential to the growth and survival of our capitalistic democracy.⁷ At this writing, moreover, material from the writer's prior survey of 1951 and 1952 proxy contests is available for the purpose of comparing aggregate and individual figures respecting the 1953 and 1954 contests with the contests that took place in 1951 and 1952.⁸ In addition, comparable data relating to 1953 and 1954 contests provides, of course, a more precise index than publicity for measuring the statistical scope and the implications of the recently concluded Young-New York Central contest.

To facilitate comparison with the prior survey the writers propose in this article to present generally parallel background and solicitation material on the 1953 and 1954 contests, and at the same time to note especially novel further developments. This approach should furnish an adequate basis for comment and conclusions addressed to the questions already posed with reference to the impact of Regulation X-14 during 1953 and the first half of 1954.

⁵ The SEC's Regulation X-14 and its Schedule 14A are applicable only with respect to the solicitation of proxies for securities listed and registered on a national securities exchange, securities of companies registered under the PUBLIC UTILITY HOLDING ACT OF 1935, and securities of companies registered under the INVESTMENT COMPANY ACT OF 1940.

⁶ See EMERSON AND LATCHAM, *SHAREHOLDER DEMOCRACY: A BROADER OUTLOOK FOR CORPORATIONS* (1954) and *CORPORATE DEMOCRACY*, 4 VA. L. WEEKLY DICTA COMPILATION (1953).

⁷ Emerson and Latcham, *Proxy Contests: A Study in Shareholder Sovereignty*, 41 CALIF. L. REV. 393 (1953).

⁸ *Ibid.*

BACKGROUND DATA

Initial orientation will again sought to be provided by presentation of such comparative background data as (1) number of non-management proxy statements filed, (2) assets in dollars of the companies involved, (3) sales in dollars of the companies, (4) industries in which the companies operated, (5) states of incorporation and cumulative voting rights, (6) number of shareholders of record of companies affected, and whether an annual or special meeting was involved.

Number of Non-management Proxy Statements

During 1953 only 21 non-management proxy statements were filed, a relatively substantial decline from the 26 and 28 non-management proxy statements filed in 1951 and 1952, respectively.⁹ Except for 1946 when 21 filings were also effected, the 1953 figure represents the lowest number of filings at any time since 1943.¹⁰ While 23 non-management proxy statements were filed during the first six months of 1954, no ultimate substantial increase in non-management filings for 1954 is suggested when it is considered that the first six months of the year include the "proxy season" and that the largest number of filings in any year since 1943 was 32 in 1947, when, incidentally, the total number of proxy statements, management and non-management, recorded by SEC was only 1,645. Contrary, therefore, to comments that continue to be made, it would not appear from the 1953 and 1954 figures that opposition groups are using X-14 in any substantial measure as an instrument for harassment generally of companies subject to SEC proxy regulation. The increased coverage of proxy contests in newspapers and magazines probably is due to the cir-

⁹ *Id.* at 398-99. The prior article reports the filing of 25 and 27 non-management proxy statements during 1951 and 1952 based on data obtained from the SEC and elsewhere. It has since been learned, however, that a non-management proxy statement was also filed in 1951 with respect to Trans-Lux Corporation and that in 1952 a non-management proxy statement was filed as to Pennsylvania Coal & Coke Corporation. The previous figures have therefore been adjusted to 26 filings for 1951 and 28 for 1952.

¹⁰ *Id.* at 399.

cumstance that the contests by their nature are often spectacular, and therefore "good copy" for the public and business press.

Assets in Dollars of the Companies Involved

The 1953 non-management proxy statements filed with SEC related to 18 different companies,¹¹ while those filed during 1954's first six months were submitted with reference to 20 individual companies. The comparable figures for 1951 and 1952, as adjusted, were 25 companies during each of the two years.

Although a 1953 decline in the number of companies affected by non-management proxy statements is reflected, there was at the same time an increase in the dollar amount of assets involved, and also a further asset increase in the first half of 1954. The total assets figures for 1952 and 1953 companies, with AT&T's more than ten billion dollars in assets removed for each year, were quite close, namely, \$2.7 and \$2.9 billion, respectively.¹² Total assets affected for filings during the first six months of 1954 were already slightly higher than 1952 and 1953, excluding AT&T, and stood at \$3.0 billion.

With the number of companies decreasing and assets increasing, it is of course apparent that somewhat larger companies were involved in the 1953 filings, and moreover the same trend continued in 1954. This result in turn is due in large part to the presence of a relatively high number of large railroads among the 1953 and 1954 companies.¹³

Insight into the proportions of the Young-New York Central contest is suggested by the fact that, while average assets for the 1953 and 1954 companies, AT&T excluded, amount to about \$162 million, as compared to the 1951 and 1952 asset average of \$64

¹¹ The figure 18 excludes a non-management proxy statement relating to the American Woolen Company which was filed on December 29, 1953, but pertained to the annual meeting to be held on April 20, 1954. Four other non-management proxy statements with reference to the same annual meeting were filed in 1954.

¹² *Op. Cit. supra*, note 7, at 400. Footnote 7 at 400.

¹³ *Infra*, notes 21 and 22.

and \$114 million,¹⁴ New York Central's assets alone were \$1.9 billion at the close of 1953.

Sales in Dollars of the Companies

Total sales of the companies involved in proxy contests covered by Regulation X-14 were successively substantially higher during each of the three years following 1951. For 1951 the total sales or revenue dollars, as adjusted, amounted to \$702 million, while the comparable figures, with AT&T omitted from 1952 and 1953 totals, were: 1952, \$934 million; 1953, \$1,321; and the first six months of 1954, \$1,613 million. In our prior survey-article it was pointed out that, with gross national product at \$284.2 and \$329.2 billion and profits for manufacturing firms after taxes at 7.1% and 4.8% of sales in 1950 and 1951, respectively, it was most unlikely that more than .01% and .06% of 1950 and 1951 gross national product were affected by the 1951 and 1952 non-management proxy solicitations under Regulation X-14.¹⁵ Gross national product and profits after taxes to sales for manufacturers in 1952 were about \$348.0 billion and 4.3%, with the result that even with the 1953 increase in sales dollars affected, not more than .01% of gross national product was involved in 1953 X-14 solicitations.¹⁶ Inasmuch as gross national product for 1953 has been placed at \$367.0 billion, it again remains unlikely that the 1954 solicitations may be validly regarded as having any noticeable affect on the nation's productive capacity.

With average sales for the 1953 and 1954 companies, AT&T excluded, at about \$77 million, as compared to the 1950 and 1951 sales averages of \$29 and \$39 million, respectively, for the 1951 and 1952 companies,¹⁷ the stature of the New York Central solicitation becomes more apparent. Central's sales or 1953 revenue was approximately \$807 million dollars.

¹⁴ *Op. cit. supra* note 7, at 400.

¹⁵ *Op. cit. supra* note 7, at 403-4.

¹⁶ 1952 gross national product is reported in the ECONOMIC REPORT OF THE PRESIDENT (JANUARY 1954), p. 167, table G-1. 1952 profits after Federal taxes to sales are shown *id.*, p. 216, table G-46. Table G-1 also places 1953 gross national product at \$367.0 billion.

¹⁷ *Op. cit. supra* note 7, at 402.

Industries in Which the Companies Operated

During both 1951 and 1952 50% of the companies involved in non-management proxy solicitations under X-14 were manufacturing companies.¹⁸ Approximately the same relationship was maintained during 1953 and the first six months of 1954, for in 1953 half of the companies affected were manufacturers and in the first six months of 1954 manufacturing accounted for 45% of the companies.

In 1951 manufacturing assets, however, were only 12% and in 1952 only 4% of total assets, while 1951 manufacturers' sales were 57% and in 1952 their sales were 15% of totals, excluding AT&T.¹⁹ Again in 1953 and 1954 there was a generally similar relationship. 1953 manufacturing assets represented 6% of the total assets involved, and in 1954 they were 11%. 1953 sales amounted to 12% of all sales affected by X-14 solicitations, and 1954 sales, 28%.

As was shown by the results of the 1951-1952 survey, transportation companies, principally railroads, constituted about one-third of the companies involved, 86.5% of total assets, and 62% of total sales or revenue. These relationships also continued during 1953 and 1954. In 1953 33% of the companies were either railroads or electric railways, their assets amounted to 91%, and their sales 73% of the year's totals.²⁰ During the first six months

¹⁸ *Id.* at 406.

¹⁹ *Id.* at 406-7.

²⁰ 1953 manufacturing companies and 1953 railroads and electric railways involved in X-14 non-management proxy solicitations were:

Manufacturing:

Altes Brewing Company

Atlantic Oil Corp.

Bishop Oil Co.

Follansbee Steel Corporation

Gobel, Inc., Adolph

Hoe & Hoe, Inc., R.

Indiana Steel Products Co.

Lanston Monotype Machine Co.

Twentieth Century-Fox Film Corporation

Railroads and electric railways:

Atchison, Topeka & Santa Fe Railway Company

Missouri-Kansas-Texas Railroad Co.

Missouri Pacific Railroad Co.

Philippine Railway Company

Hudson & Manhattan Railroad Company

Pittsburgh Railways Co.

of 1954 railroads and electric railways accounted for 30% of all companies, and their assets and sales 88% and 65% of the respective totals,²¹ the figures being exclusive of one actual and another nominal steamship company.²²

Depressed industries, therefore, continued to have heavy representation among companies involved in non-management solicitations, with the railroads predominating. While, contrary to 1951-1952, no airlines were among the 1953-1954 companies, their places were taken by steamship companies, another generally depressed industry.

States of Incorporation and Cumulative Voting Rights

Delaware, not unexpectedly, continued in 1953 and the first half of 1954 as the most frequently recurring state of incorporation. But as in 1951 and 1952 there was a wide representation of states of incorporation among the 38 1953 and 1954 companies, namely, 16 different states.²³

²¹ 1954 manufacturing companies and 1954 railroads and electric railways involved in X-14 non-management proxy solicitations were:

Manufacturing:

Advance Aluminum Castings Corp.	Decca Records, Inc.
Amer. Car & Foundry Company	Great American Industries, Inc.
Amer. Woolen Co.	Hoe & Co., Inc., R.
Baker-Raulang Company	Michigan Steel Tube Products Co.
Cornell-Dubilier Electric Corp.	

Railroads and electric railways:

Central of Georgia Ry. Co.
Chicago, South Shore & South Bend Railroad
Minneapolis & St. Louis Railway Co.
New York Central Railroad Company
New York, New Haven & Hartford Railroad Company
Pittsburgh Railways Co.

²² The steamship companies were: Detroit & Cleveland Navigation Company, a nominal steamship, but more in the nature of an investment, company, and American Hawaiian Steamship Co.

²³ The 1953 states of incorporation, with number of companies incorporated, were:

Calif.	1	Ind.	1	Mo.	2	Va.	1
Conn.	1	Kans.	1	N. Y.	4		
Del.	5	Mich.	1	Pa.	1		

The 1954 states of incorporation, with number of companies incorporated, were:

Conn.	1	Ind.	1	N. J.	2
Del.	4	Mass.	1	N. Y.	3
Ga.	1	Mich.	2	Ohio	1
Ill.	2	Minn.	1	Pa.	1

Of the 16 states in which the 38 companies were incorporated, three had no provisions for cumulative voting,²⁴ six had permissive cumulative voting,²⁵ and only seven had mandatory cumulative voting requirements.²⁶ As in 1951 and 1952, there was therefore no basis in the 1953 and first half of 1954 solicitations for concluding that mandatory cumulative voting provisions are a major factor in the occurrence of proxy contests. Rather the chief background component continued to be operation in a depressed industry.²⁷

Number of Shareholders of Record and Type of Meeting

The 1951 and 1952 figures for average number of shareholders of record, excluding AT&T, were 6,010 and 7,995, respectively.²⁸ Shareholders of record in the companies effected by non-management solicitation in 1953 and the first half of 1954 were, excluding again AT&T, remarkably close; the 1953 average being 5,369 and the 1954 average, 6,199. The magnitude of the Young-New York Central contest is once more indicated by the circumstance that at the close of 1953 Central had 44,641 shareholders of record.

While 1951 and 1952 presented four instances of solicitations for special meetings at the call of non-management groups, there were only two such solicitations in 1953 and the first half of 1954, one having taken place each year. In 1953 there was a non-management solicitation for a special shareholders meeting for the purpose of reinstating the discharged president of R. Hoe & Co. and removing his successor and the successor's associates.²⁹ In 1954 there was a non-management solicitation by Graham-Newman Corporation, a registered investment company, seeking a

²⁴ The states with no provision for cumulative voting were: Conn., Ga., and Mass.

²⁵ States with permissive cumulative voting were: Del., Ind., Minn., N. J., N. Y., and Va.

²⁶ Cumulative voting is mandatory in Calif., Ill., Kans., Mich., Mo., Ohio, and Pa.

²⁷ *Op. Cit. supra* note 7, at 434.

²⁸ *Id.* at 409.

²⁹ See R. Hoe & Co., Inc., non-management proxy filings for 1953.

special meeting of shareholders of American Hawaiian Steamship Company for the purpose of affording an opportunity to vote on resolutions dealing with matters of policy.³⁰

SOLICITATION DATA

Matters to be examined here include: (1) security holdings and occupations of the non-management soliciting groups, (2) volume and timing of soliciting material, (3) objectives, (4) personal solicitation and solicitation expenses, (5) results of voting by security holders, and (6) contest summary.

Security Holdings and Occupations

Non-management groups' security holdings remained low, but not infrequently were in excess of management's. In 12 instances 1953 and 1954 non-management holdings were less than 1% of the outstanding stock,³¹ and in another 12 they were less than 10%.³² The only occasion in which a non-management group held more than 17% was the 1953 Atlantic Oil Corp. solicitation which was unopposed. Six groups had holdings of from 10 to 17%, the 17% group being the Alleghany-Young-Kirby Ownership Board which opposed the New York Central management.³³

³⁰ American Hawaiian Steamship Co. non-management proxy material filed by Graham-Newman Corporation in 1954.

³¹ Security holdings under 1%:

Altes Brewing Company
Atchison, Topeka & Santa Fe
AT&T
Bishop Oil Co.
Gobel, Inc., Adolph
Missouri Pacific Rr.

Rexall Drug
Amer. Car & Foundry
Amer. Woolen Co.
Cornell-Dubilier Elect.
Lehigh Valley Coal Co.
Mich. Steel Tube Prod.

³² Security holdings under 10%, but 1% or more:

Follansbee Steel
Hoe & Co., Inc., R.
Hudson & Manhattan Rr.
Missouri-Kansas-Texas Rr.
Twentieth Century-Fox
American Hawaiian SS.

Baker-Raulang
Chicago, S. Shore & S. Bend
Decca Records, Inc.
Minneapolis & St. Louis Ry.
Pittsburgh Rys.

³³ The other five of the six groups holding from 10 to 17% of the securities outstanding were:

Ind. Steel Products Co.	14%
Pig'n Whistle Corporation	15%
Associated Gen. Utilities	12%
D & C Navigation	16%
N. Y., New Haven & Hartford	15%

In the 1953 and first half of 1954 non-management solicitations, as in 1951 and 1952, business men, attorneys, and securities broker-dealers accounted occupationally for two-thirds or more of the non-management nominees for directorships or security holders' committee members.³⁴ Again in 1953 a labor union representing AT&T employees filed a proxy statement in connection with solicitation of proxies in support of its proposal that social security benefits should not be deducted from company pension benefits payable to rank and file employees.³⁵ In 1954 an investment company, Graham-Newman Corporation, filed a non-management proxy statement with respect to the American Hawaiian Steamship Co. in connection with its solicitation in favor of a special meeting of security holders and its advocacy of a policy of no further investment by the management in shipping ventures and management adoption of a program permitting each shareholder to obtain direct control over his full share of the company's non-shipping assets.³⁶ Another 1954 instance of the filing of a non-management proxy statement by a corporation was Textron, Inc.'s filing with reference to the American Woolen Co.³⁷

³⁴ Occupation	Year	%	Year	%
Business men	1953	55	1954	40
Attorneys	1953	18	1954	21
Securities brokers-dealers	1953	12	1954	8

³⁵ For a synopsis of the labor unions' 1952 solicitation, see *op. cit. supra*, note 7 at 422-3. The union did not solicit in 1954, the SEC having held that AT&T inclusion of the union proposal in its 1954 management proxy statement would not be required under a 1954 amendment to the shareholder proposal rule. See in this connection Bayne, Caplin, Emerson and Latcham, *Proxy Regulation and the Rule Making Process: The 1954 Amendments*, 40 VA. L. REV. 387, 428-29 (1954).

³⁶ Graham-Newman Corporation also filed a non-management proxy statement in 1948 relating to the New Amsterdam Casualty Co. However, none of the nation's 32 largest open and closed end investment companies filed any non-management proxy soliciting material. See Emerson, *The Shareholder Proposal Rule: A System for Shareholder Checks and Corporate Balance*, ANALYSTS JOURNAL, 87, 91 (November 1953).

³⁷ Textron, Inc., also offered to exchange its shares for shares of American Woolen Co., and therefore likewise filed with the SEC a registration statement covering its shares. See prospectus of Textron, Inc., dated March 1, 1954, with March 5, 1954, and April 5, 1954, supplement.

Volume and Timing of Soliciting Material

In 1953 ten of the non-management solicitations were made by means of only one mailing to security holders, the single mailing averaging slightly more than 3½ pages. Five other solicitations in the same year used from two to eight mailings consisting of on the average of 17 pages.³⁸ While single mailings averaging somewhat more than three and a half pages were employed in eight of the 1954 solicitations, nine sent out from three to seven mailings which averaged 26 pages.³⁹ Elapsed time from the first mailing to the meeting date ranged from 8 to 48 days in 1943 and from 6 to 53 days in 1954.

Objectives

Eight of the 1953 solicitations by non-management groups were in support of proposals. One of the eight sought authorizations to representation in a reorganization proceedings under Chapter X of the National Bankruptcy Act.⁴⁰ In connection with three other of the eight proposals the shareholders had also availed themselves of the provisions of the shareholder proposal rule with the result that their proposals were also carried in the management proxy statement.⁴¹ 1953 brought 11 non-management solici-

³⁸ The 1953 multiple mailing non-management solicitations related to:

Atchison, Topeka & Santa Fe
 Hoe & Hoe, Inc., R.
 Ind. Steel Products Co.
 Missouri-Kansas-Texas Rr.
 Twentieth Century-Fox Film Corp.

³⁹ The 1954 multiple mailing non-management solicitations related to:

Amer. Hawaiian SS. Co.
 Amer. Woolen Co.
 Decca Records, Inc.
 D. & C. Navigation Co.
 Hoe & Co., Inc., R.
 Lehigh Valley Coal Co.
 Minneapolis & St. Louis Ry.
 New York Central Rr. Co.
 New York, New Haven & Hartford

⁴⁰ See 1953 non-management proxy statement filed with reference to Adolph Gobel, Inc.

⁴¹ The three 1953 companies whose management proxy statement reflected use of the shareholder proposal provisions of Rule X-14A-8 were Atchison, Topeka & Santa Fe, Follansbee Steel, and Twentieth Century-Fox Film Corp.

tations for the purpose of electing directors, representation only and less than a majority of directors having been involved in six instances⁴² and control or a majority desired in five solicitations.⁴³ During the first half of 1954 five solicitations in support of proposals took place, only one reflecting use of the shareholder proposal provisions of Rule X-14A-8.⁴⁴ In the same period there were 14 efforts to elect directors, six with only representation in issue⁴⁵ and eight being contests for control.⁴⁶

Personal Solicitation and Solicitation Expenses

In almost every 1953 and 1954 solicitation personal solicitation was carried on. Solicitation expenses averaged \$2,829 for 12 of the 1953 non-management solicitations, while the average for 11 of the first half of 1954 solicitations amounted to \$4,412. Other expenses besides those directly attributable to solicitation may run very high. It was reported that both sides in the New York Central

⁴² The 1953 solicitations for representation were:

Altes Brewing Company
Bishop Oil Co.
Missouri-Kansas-Texas Ry.
Pig'n Whistle Corporation
Pittsburgh Rys. Co.
Twentieth Century-Fox Film Corp.

⁴³ The 1953 solicitations for control involved:

Atlantic Oil Corp. (unopposed)
Hudson & Manhattan Ry.
Ind. Steel Products Co.
Missouri Pacific Ry.
Rexall Drug, Inc.

⁴⁴ The company referred to was Amer. Woolen Co.

⁴⁵ The 1954 solicitations for representation were:

Advance Aluminum Castings Co.
Amer. Woolen Co.
Baker-Raulang Co.
Cornell-Dubilier Electric Co.
Michigan Steel Tube Products Co.
Pittsburgh Rys. Co.

⁴⁶ First half of 1954 solicitations for control pertained to:

Chicago, South Shore & South Bend Rr.
Decca Records, Inc.
D. & C. Navigation Co.
Hoe & Co., Inc., R.
Lehigh Valley Coal Co.
New York Central Railroad Co.
New York, New Haven & Hartford Rr. Co.

contest spent over a half a million dollars, about \$300,000 being devoted in each instance to newspaper advertisements alone.⁴⁷ The expense of conducting a non-management solicitation therefore continues to be a major obstacle.

Results of Voting

None of the proposals, in connection with which non-management proxy statements were filed, carried in either 1953 or the first half of 1954. They did, however, continue to draw substantially more votes in most cases than proposals not supported by non-management solicitation. All but one of the 1953 solicitations for minority representation elected a minimum of one director,⁴⁸ and in not less than three instances the 1954 solicitations for representation elected at least one director.⁴⁹ While there were no successful 1953 non-management control solicitations, the results of the 1954 efforts to gain control were almost phenomenal, at least 75% of the eight groups having achieved their objective and defeated the incumbent management.⁵⁰

Contest Summary

Certain aspects of the non-management solicitations in the 18 months period are noteworthy. There was the 1953 decline in filings, followed, however, by the increase indicated for 1954.

⁴⁷ See Brooks, *A Reporter at Large: The Great Proxy Fight*, THE NEW YORKER, p. 28 (July 3, 1954). The article also presents a detailed account of the contest for the New York Central. See also, *How Young Got the Votes*, FORTUNE, p. 87 (August 1954).

⁴⁸ The exception was the Twentieth Century-Fox opposition solicitation and see *supra* footnote 42. In addition, the management resolution to repeal cumulative voting carried. The opposition was lead by Charles Green, who had participated in the Twin City Rapid Transit Co. and the United Cigar-Whelan Stores Corp. proxy contests.

⁴⁹ At least one director was elected in 1954 contests involving Advance Aluminum Castings Co., Baker-Raulang Co., and Amer. Woolen Co.

⁵⁰ The six successful 1954 control contests pertained to:

Hoe & Co., Inc., R.
Lehigh Valley Coal Co.
Minneapolis & St. Louis Ry. Co.
New York Central Rr. Co.
New York, New Haven & Hartford Ry
D. & C. Navigation Co.

In 1953 no contests for control attempted by non-management groups were successful, but in 1954 at least six or 75% were victorious. Proxy contests continued to be relatively few in number, the head of a paid proxy soliciting firm having stated that "What surprises me, in view of how easy it is to start a proxy fight these days, is not how many there are, but how few."⁵¹ Far from feeling that proxy contests are always harmful, as had in the past been asserted, another commentator said, "I can't think offhand where the stockholder was not better off, in dividend yield or in market value, after the fight than he was before."⁵²

Depressed industries continued to be heavily represented among companies involved in proxy contests, and individual companies with low or no earnings reoccurred.⁵³ Two new solicitations techniques that were employed were the use in the New York Central contest by both the opposition and the management of full page newspaper advertisements in daily papers, and publications presented in the form of shareholder newspapers in the New York Central and R. Hoe & Co., Inc. contests. It was most encouraging to note that in two contests, R. Hoe & Co., Inc., in 1954 and Twentieth Century-Fox in 1953, The Value Line Investment Survey, which is affiliated with the Value Line Funds, took a definite position on issues involved.⁵⁴

Although mandatory cumulative voting requirements in certain states continued not to be a significant factor from the standpoint

⁵¹ J. C. Perham, *Revolt of the Stockholder*, BARRON'S, p. 3, April 26, 1954, quoting George R. Squires of Squires & Co.

⁵² *Id.* at 22.

⁵³ One of the companies, Lehigh Valley Coal Co., is one of the 10 companies whose stock has paid no dividends since its listing on the New York Stock Exchange. Three such companies were involved in the 1951-52 non-management solicitations. *Op. cit. supra* note 7 at 408.

⁵⁴ After the close of the R. Hoe & Co., Inc. contest THE CORPORATE DIRECTOR, published by the American Institute of Management carried comment on the Hoe solicitation. See THE CORPORATE DIRECTOR (May 1954). For an account of the Hoe contest, a successful effort by the ousted president to regain control, see *He Fought His Way Back*, BUSINESS WEEK, p. 70 (May 1, 1954). For a contest in which a company president, as leader of a minority group, was unsuccessful in fighting his way back, see 1953 Indiana Steel Products Proxy material.

of companies incorporated in these states not being subject to more proxy contests than companies chartered in states with permissive or no cumulative voting provisions, two attacks on cumulative voting developed in 1954. *Business Week*, in an article subsequently adverted to in Georgeson & Co.'s *Trends*, made reference to "trickiness" in cumulative voting as employed in the New York, New Haven & Hartford Rr. contest by the successful opposition group.⁵⁵ Yet analysis of the actual manner of cumulative voting by the opposition indicates that they merely voted in accordance with the widely cited formula for cumulative voting.⁵⁶ The other inroad on cumulative voting was a bill to amend mandatory cumulative voting out of the National Banking Act.⁵⁷

CONCLUSION

Competition is the prime requisite of a free enterprise society. Price, product, and other components of democratic capitalism are compelled to compete. No reason for exempting management is apparent, and, moreover, competition for management through proxy solicitation continues to give promise of stimulating present management to provide, or affording a medium for obtaining elsewhere, the vigorous and faithful leadership so essential to the growth and survival of our capitalistic democracy.⁵⁸

⁵⁵ BUSINESS WEEK, p. 68, May 1, 1954, for article entitled *A Handbook to Cumulative Voting*. See also Georgeson & Co., *TRENDS* (June 1954).

⁵⁶ WILLIAMS, *CUMULATIVE VOTING* (1951) 40-42.

⁵⁷ S. 3158, 83D Congress (1954) and Report No. 1629 (Senate) 83D Congress, 2d Session (1954).

⁵⁸ Proxy contest expenses continued to be a substantial burden to opposition groups. For proposals to equalize treatment of non-management and management groups, see Footnote 7 at 435-36 regarding proportional and minimum percentage reimbursements. See also Gilbert, *The Real Meaning of Proxy Battles*, INVESTOR, p. 45, 46-47 (July 1954).