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## Book Reviews

Alfred Hill

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## BOOK REVIEW

SHAREHOLDER DEMOCRACY. By Frank D. Emerson and Franklin C. Latham. Cleveland, Ohio: The Press of Western Reserve University, 1954. 242 pp. \$4.00.

The authors, one of them with a background of experience as an SEC attorney, have in the past contributed to legal periodicals a searching series of articles on the use of the proxy device in the modern corporation, with particular emphasis on the operation of the SEC's proxy rules. Now the substance of these articles, revised to some extent with a view to reaching the corporate executive and general reader, is available in *Shareholder Democracy*, a lively and readable little book with sufficient documentation collected in appendices to make it useful to the practicing lawyer as well. The book should have particular interest for the student of corporation finance, for probably nowhere else has there been as extensive an examination of the impact of the SEC's proxy rules upon the modern corporation.

These rules as they have finally evolved would have been startling indeed had they represented the original plan for Government control in this area. The first rules provided simply that stockholders solicited for their proxies should be told what the voting was about. Later it was felt that the information was not too helpful if the only alternatives available to the stockholders were to vote for or against the management proposals in toto, so the rules were amended to provide that the stockholders be given an opportunity, on the form of proxy, to vote for or against each specific management proposal. If the management knew of an impending proposal of a minority stockholder and intended to vote against it, the SEC view was that stockholders solicited for their proxies should be informed of this management intention; and as a next step it seemed appropriate to permit the stockholders to vote for or against this proposal too. Later it seemed only fair to amend the rules to provide that the proponent of such a proposal be given an opportunity to state his point of view briefly in his own words — all in the management's proxy-soliciting material.

Thus the SEC's proxy rules evolved to the point where, general attendance at the annual meeting no longer being feasible under modern conditions, it became possible for the minority stockholder, at company expense, to address his fellow stockholders through the mails in somewhat the same manner that he could address them at the meeting if they attended the meeting. The result? Minority stockholders have availed themselves of this privilege on extremely rare occasions; when a minority stockholder does present such a proposal for action by his fellow stockholders it is ordinarily quite sane and moderate even by conservative standards; and almost invariably his fellow stockholders vote it down in overwhelming numbers. It may be added that almost invariably the management's proposals are adopted by the same preponderance of votes.

The authors counsel patience. They see the history of shareholder participation as a golden age of self-government, followed by a period of decline during which the means to effective self-government were taken away, followed by a struggle under the aegis of the SEC to restore to the stockholders what was thus lost — and they argue that time must necessarily be allowed for overcoming the apathy that took hold during the decline. The practices of the golden age emerge but dimly; in any event it should be clear that the large public corporation of today is a unique phenomenon and that analogies to the earlier corporate scene and to the political scene are of limited value. The authors are more realistic and more knowing when they discuss the tactical problems of the proxy battlefield: the problems of timing in solicitation of proxies, of getting the stockholders' list, of neutralizing the brokers who hold large quantities of stock in street names, of equalizing the financial burdens and advantages of the "ins" and the "outs". Here the authors are on their own ground. Of special interest is their story of particular proxy battles and of generalship successful and unsuccessful. Their book should be enlightening and useful to a wide audience.

*Alfred Hill.\**

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\*Associate Professor, Southern Methodist University School of Law.