



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December 4, 1980

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1980-118

Mr. Alvin J. Helfgot  
Exchange International Corporation  
LaSalle and Adams  
Chicago, Illinois 60690

Dear Mr. Helfgot:

This is in response to your letter of September 23, 1980, supplemented by your letter of November 18, 1980, requesting an advisory opinion on behalf of Exchange Community Action II Political Action Committee ("the Committee"), the separate segregated fund of Exchange International Corporation ("EIC"), regarding the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the Committee's solicitation of certain shareholders of EIC.

Specifically, you ask:

Whether stockholders of EIC who have given certain limited, irrevocable proxies have sufficient "power to direct how that stock shall be voted" to be considered "stockholders" under 11 CFR 114.1(h) such that the Committee may solicit them without limit pursuant to 2 U.S.C. 441b.

Your request sets forth the following facts:

In July of 1979, one Ira J. Kaufman acquired a total of 250,000 shares of authorized and newly issued convertible preferred stock from EIC. These shares were immediately converted into a total of 1,250,000 shares of previously authorized but unissued common stock. Of such shares, 1,016,114 were immediately distributed by Mr. Kaufman to various other investors. Mr. Kaufman is the holder of limited irrevocable proxies representing all of the 1,250,000 shares

acquired by Mr. Kaufman and the other investors, which proxies are effective until September 1, 1984. \*

The proxies, a sample copy of which is attached to your request, were executed on February 3, 1979 by individual investors who joined with Mr. Kaufman to acquire control of EIC. In order to become an investor, it was necessary to execute the proxy. The proxies, which cover a conversion from preferred to common stock, were executed in contemplation of such acquisition in February of 1979. However, the actual acquisition did not occur until July, 1979 because of litigation over the contract to purchase the corporation.

The proxies grant Mr. Kaufman the right to attend annual meetings of the stockholders and to vote all such shares for the election or removal of members of the Board of Directors, as well as for all procedural matters submitted to a vote of the stockholders in the course of such meetings. The proxies are not valid for any other purpose, including, but not limited to, approval of any plan of merger, consolidation or reorganization of EIC, any amendment to the Restated Certificate of Incorporation, the disposal of any assets or the incurring of any obligations of the issuer other than in the ordinary course of business.

As you note in your request, the Act does not limit the frequency with which a separate segregated fund established by a corporation may solicit the stockholders of that corporation. See 2 U.S.C. 441b(b)(4); 11 CFR 114.5(g) and 114.6(a). The term "stockholder" is defined at 11 CFR 114.1(h) to mean:

a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if is voting stock, and has the right to receive dividends. [emphasis added].

The stock involved in the present case is voting stock. As to all matters generally submitted to a shareholder vote, other than those expressly delegated by the proxy, the stockholders in question have retained the authority to exercise their right to vote. Assuming that these stockholders meet the other requirements set forth in 11 CFR 114.1(h), then they constitute "stockholders" for the purposes of the Act. The Committee may, therefore, solicit these stockholders without limit pursuant to 2 U.S.C. 441b(b)(4) and 11 CFR 114.5(g); also, see 11 CFR 114.6(a).

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\* Since it appears that Mr. Kaufman retained 233,886 shares of such common stock the question of whether he could be solicited solely by virtue of his status as holder of the proxies is not reached or addressed in this opinion.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Max L. Friedersdorf  
Chairman for the  
Federal Election Commission