file S.E.C.

naa
NEWSLETTER ASSOCIATION OF AMERICA

Suite 603
Colorado Building
1341 G St NW,
Washington, DC 20005
202-347-5220

March 11, 1983

Task Group on Regulation of Financial Services
Department of the Treasury, Room 1060
15th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Gentlemen:

These comments are submitted in response to the request for comments by the Office of the Vice President, as set forth in the Federal Register on February 7, 1983.

The Newsletter Association of America represents more than 750 newsletter publishers throughout the United States, and is the only national organization of newsletter publishers. Our members publish newsletters on a wide variety of subjects. A substantial number of them covers various aspects of the securities industry.

The Securities and Exchange Commission in recent years has taken the position that it is empowered to license, regulate, and censor stock market newsletters under provisions of the Investment Advisers Act of 1940.

The Investment Advisers Act of 1940 specifically excludes "the publisher of any bona fide newspaper, news magazine, or business or financial publication of regular circulation" from the definition of an "investment adviser." However, the Securities and Exchange Commission, on a selective and arbitrary basis, has determined that certain newsletters are not entitled to that exclusion, and has required them, under threat of criminal prosecution, to register with it as investment advisers.

Newsletters are forced to register with the Commission despite the fact that they are not engaged in any type of investment advisory business, do not have custody of, or control over, any investor's assets, and do not render any type of personalized or individualized investment advice.

Once registered with the Securities and Exchange Commission, newsletter publishers are subject to SEC censorship, financial bookkeeping requirements, and an extensive set of rules and regulations designed for money managers and investment counselors that have custody of, or control over, the assets of individuals and organizations to whom they render personal and individualized investment advice.

The SEC's claimed power to license and regulate financial newsletters is based solely on editorial content. It is no more appropriate for the SEC to regulate newsletters about the stock market than it would be for the Department of Energy to license and censor newsletters about oil drilling, or for the Department of the Treasury to license newsletters about interest rates, silver, and gold.

SEC licensing, regulation, and censorship of the newsletter industry is clearly a violation of First Amendment protections for freedom of the press. In the only case (SEC vs. Lowe — F.Supp.—, CCH Fed.Sec.Law Rpts.Para.99,075) that has ever directly addressed the question of freedom of the press, the court held that the SEC cannot prevent a nonregistrant from publishing. The SEC has ignored this decision and continues to threaten publishers with criminal prosecution if they do not obtain a publishing license from the Commission.

The SEC has persistently refused to disclose any details of its costs of regulating newsletters. The SEC claims the total cost of its newsletter regulation and censorship program is only $58,000 per annum. That claim is, to put it bluntly, a lie, made all the more offensive by the fact that it emanates from the government agency charged with assuring truthful financial disclosure by the private sector.

Based on information obtained under the Freedom of Information Act, we estimate that upwards of $2,000,000 a year is spent on all phases of the Commission's newsletter regulation and censorship program.

Based upon analysis of the costs of our own members, we estimate that every dollar spent by the SEC on newsletter regulation and censorship causes the private sector to incur in excess of $10 of needless expense.

To give but one example, SEC rules define a coupon clipped out of a newspaper and used to enter a newsletter trial subscription — for perhaps as little as one dollar — as an "investment advisory contract." Newsletter publishers compelled to register as investment advisers are required by Securities and Exchange Commission rules to retain these "investment advisory contracts" on file in perpetuity. The consequence is that some large newsletter publishers have accumulated files with tens of thousands,

and in a few cases hundreds of thousands, of coupons that are five, ten, fifteen, or even twenty years old.

SEC regulation of newsletters is a classic example of excessive regulatory control that imposes costs far exceeding any hypothetical benefit derived from the regulation.

A potentially enormous benefit to consumers would be the increased competition and improved services that would be available to newsletter subscribers as new publishers entered the stock market newsletter field once SEC licensing requirements were abolished.

Newsletter publishers are subjected to differential treatment as a result of the SEC regulatory scheme. Those newsletter publishers that have been excused from registration with the SEC, either through oversight, influence, or politics, obviously have unfair competitive advantages over those that have been required to be licensed.

The most cogent reason for abolishing the SEC power to regulate newsletters is that there is ample evidence that the Commission has egregiously abused that power to serve its own ends.

Because its pernicious regulation and censorship of newsletters has gone unchecked, the SEC is now attempting to expand its authority over another segment of the press — magazines. The most serious apparent offense of the magazine it has targeted as a test case was to publish an article that contained criticism of the Securities and Exchange Commission.

That is but the latest in a series of instances where clearly exempt publications were suddenly ordered to register as investment advisers after publishing articles or editorials critical of either the policies of the SEC or actions of its staff. There is evidence in at least one case that the SEC used its regulatory power over a newsletter to seek an editorial change of personal benefit to a commissioner.

In at least two other cases, SEC "enforcement action" against newsletter publishers apparently had its genesis in political stands taken by the newsletter publishers. The SEC's gestapo-like attempt to regulate the financial publishing industry, including determining who is permitted to publish and what they are permitted to publish, has no place in a free society.

It is extraordinary that the SEC's interference with the free press has grown more intense during an administration dedicated to deregulation and individual freedoms. A regulatory scheme that has been characterized by a former SEC commissioner as "regulation by prosecution" should not be imposed on the press in a nation that preaches to the rest of the world about freedom and human rights.

We respectfully submit that in a supposed era of deregulation, no useful purpose is served by continuing Securities and Exchange Commission licensing, regulation, and censorship of the newsletter industry at ever escalating cost to both the public and private sectors, all in direct contravention of the First Amendment.

We respectfully submit, as well, that any objective and meaningful program of regulatory relief for the financial services industry must include a complete deregulation of all segments of the press that reports on that industry.

Very truly yours,

NEWSLETTER ASSOCIATION OF AMERICA

Glen King Parker, Chairman
Freedom of the Press Committee

GKP:vb

cc: C. Blyden Gray, Esq.
Hon. Morton C. Blackwell

File SEC

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

CHAIRMAN'S OFFICE
MAILED
MAY 28 1982

Signed by:_____

Mr. Carl Olson
4623 San Feliciano Drive
Woodland Hills, CA 91364

Dear Mr. Olson:

I am responding to your letter of March 28, 1982 addressed to Mr. Morton Blackwell, Special Assistant to the President, concerning the staff's determination not to recommend enforcement action to the Commission if the Occidental Petroleum Corporation ("Company") omitted one of your proposals from its proxy materials for the 1982 annual meeting of security holders. The subject proposal, if adopted, would have required the Company to amend its by-laws to provide that all shareholder meetings commence with the pledge of allegiance.

In a letter dated April 9, 1982, the staff advised you that the Company had determined to include the subject proposal in its proxy materials. We understand that the proposal received less than 6% of the total number of votes cast in regard thereto.

It may be of interest to you to know that this Division has announced its intention to reevaluate the proxy rules, including the shareholder proposal rule. As part of the reexamination of the shareholder proposal process, we intend to review the position expressed by the staff with respect to your proposal. A copy of the release announcing any proposed changes to the rule or in the staff interpretations thereunder will be sent to you as soon as it is prepared and approved by the Commission.

If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

John J. Huber
Deputy Director

cc: Ms. Sally Kelley
Director of Agency Liaison
Presidential Correspondence
The White House Office
Room 91
Washington, D.C. 20500

THE WHITE HOUSE OFFICE

REFERRAL

MAY 19, 1982

TO: SECURITIES AND EXCHANGE COMMISSION

ACTION REQUESTED:
DIRECT REPLY, FURNISH INFO COPY

DESCRIPTION OF INCOMING:

ID: 078438

MEDIA: LETTER, DATED MARCH 28, 1982

TO: MORTON BLACKWELL

FROM: MR. CARL OLSON
CHAIRMAN
STOCKHOLDERS AGAINST THE
GOVERNMENT BURDEN
POST OFFICE BOX 140
WOODLAND HILLS CA 91365

SUBJECT: STOCKHOLDER SOVEREIGNTY SOCIETY IS UPSET AT THE SECURITY AND EXCHANGE COMMISSION REFUSING TO ALLOW THEM TO VOTE ON WHETHER PLEDGE OF ALLEGIANCE SHOULD BEGIN THEIR MEETINGS

CHAIRMAN'S OFFICE
RECEIVED
MAY 18 1982
9674
SEC. & EXCH. COMM.

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, PLEASE TELEPHONE THE UNDERSIGNED AT 456-7486.

RETURN CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO:
AGENCY LIAISON, ROOM 91, THE WHITE HOUSE

SALLY KELLEY
DIRECTOR OF AGENCY LIAISON
PRESIDENTIAL CORRESPONDENCE

ID # 078438

FE004

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 820501

CHAIRMAN'S OFFICE
RECEIVED
MAY 18 1982
9674
SEC. & EXCH. COMM.

Name of Correspondent: Carl Olson

☐ MI Mail Report User Codes: (A) _____ (B) _____ (C) FE

Subject: Stockholder Sovereignty society is upset at SEC refusing to allow them to vote on whether Pledge of Allegiance should begin their meetings

ROUTE TO: Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
PL/BLAC	ORIGINATOR	82/04/30	CS		/ /
SEC	Referral Note: R	82/05/19	CS	A	82/05/28
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /
	Referral Note:	/ /			/ /

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

Stockholders
Against
The Government Burden

Post Office Box 140
Woodland Hills, CA 91365

28 March 1982

Mr. Morton Blackwell
Special Assistant to the President
The White House
Washington, D.C. 20500

Dear Morton:

I thought our new Administration was interested in promoting a new sense of patriotism in the country. I guess the S.E.C. does not think so, nor are they interested in letting stockholders conduct their own business. Could you put in an inquiry about this?

Best regards,

Carl

Carl Olson
Chairman

Stockholder Sovereignty Society

4623 SAN FELICIANO DRIVE
WOODLAND HILLS, CALIFORNIA 91364

NEWS RELEASE
For immediate relea
24 March 1982

Contact:
Carl Olson
213-883-1675

SECURITIES AND EXCHANGE COMMISSION REFUSES TO ALLOW STOCKHOLDERS TO VOTE ON PLEDGE OF ALLEGIANCE FOR THE ANNUAL MEETING OF OCCIDENTAL PETROLEUM

Declaring that stockholders cannot vote on whether to open their annual meeting with the pledge of allegiance to the flag, the Securities and Exchange Commission staff has created a questionable precedent for corporate America, it was revealed by stockholder rights advocate Carl Olson of Woodland Hills, California. "I call the S.E.C. ruling as not only an unexpected unpatriotic display, but also a trampling of stockholders' rights to determine how to run their own meetings."

This astounding ruling came up when Olson proposed that the stockholders of Occidental Petroleum Corporation, in which he owns stock, be allowed to vote on having the pledge of allegiance to open the stockholder meetings. He cited, among other things, the fears that many stockholders have had in the entanglements Occidental has gotten into amounting to billions of dollars with the dictatorships of the Soviet Union, Red China, and Libya, under the direction of Chairman Armand Hammer. Olson's proposal pointed out that at the 1981 annual meeting, Chairman Hammer himself stated, in response to a the suggestion from a stockholder, that the question of having the pledge should be brought up at this year's annual meeting. Various other corporation stockholders, including those at Fluor Corporation, routinely have the pledge of allegiance at their meetings.

Olson's proposal was in the form of a by-law amendment to be included in the proxy materials for the May annual meeting. Oxy's management objected by claiming only they, and not the stockholders, could determine such matters of conduct. Olson countered by quoting the California Corporation Code (Oxy is a California corporation headquartered in Los Angeles), which plainly states the by-laws may cover "The time, place and manner of calling, conducting, and giving notice of shareholders', directors', and committee meetings". (Sec. 212-b-2).

The S.E.C.'s staff position was stated in a letter dated 19 March from Mr. Michael Kargula, Special Counsel of the Division on Corporation Finance. He ruled the proposed by-law was merely "a matter relating to its ordinary business operations" and thus not a subject that the stockholders were able to vote on themselves.

"I find this a crazy interpretation of the law, and a surprising stance of the S.E.C. which is supposed to be protecting the interest of the stockholders in the corporations they own," declared Olson.

Olson plans to appeal this ruling and possbily be forced to take the matter to Federal court.

The Stockholder Sovereignty Society encourages stockholders to introduce resolutions to assert rights in the ownership of their corporations. Model resolutions and directions are available upon request. A quarterly newsletter will be sent for $15 annual dues. Address is P.O. Box 140, Woodland Hills, CA. 91364. 213-883-1675.

RESOLUTION TO OPEN STOCKHOLDER MEETINGS WITH PLEDGE OF ALLEGIANCE

Be it resolved to amend the by-laws of the corporation by adding the following section:

"All stockholder meetings shall commence with the pledge of allegiance to the flag of the United States of America, led by the presiding officer or his designee. This section may be amended only by a majority vote of the stockholders."

SUPPORTING STATEMENT TO APPEAR IN PROXY STATEMENT

Chairman Hammer suggested that this issue would be a good one to bring up at this meeting. A lady stockholder at the 1981 annual meeting had recommended that the stockholder meetings ought to start with the pledge of allegiance as a patriotic gesture for our country and its leadership.

I heartily agree that a strong America is a basic tenet for the well-being of our personal and corporate lives. We are an American corporation, incorporated in the state of California. We should all be proud to stand up and be counted as loyal Americans

It will be quite a reassurance to us stockholders who are concerned at the billions of dollars of business going to what I believe to be the sworn enemies of America, free enterprise, and individual freedoms--that is, the Communist Bloc dictatorships--to know that our management's first loyalty stays with us and the American ideals. Any foreign nationals at the stockholder meetings can, of course, politely stand and observe the rest of us for these few moments of dedication.

Proposal 7

The first Olson proposal, the text of which is set forth in an enclosure to your letter, would require that all shareholder meetings commence with the pledge of allegiance. It is your opinion and that of your counsel that this proposal is excludable from the Company's proxy material under paragraphs (c)(4), (c)(5) and (c)(7) of Rule 14a-8 and certain reasons are cited in support of that opinion. Mr. Olson, however, for the reasons stated in his letter on the matter does not agree with your position.

There appears to be some basis for your opinion and that of your counsel that the proposal may be omitted from the Company's proxy material under Rule 14a-8(c)(7), since the proposal would require the Company to take action with respect to a matter relating to its ordinary business operations (i.e., whether or not the pledge of allegiance should commence the meeting of shareholders). Under the circumstances, this Division will not recommend any enforcement action to the Commission if the Company omits this proposal from its proxy material.

Excerpt from letter dated 19 March 1982, page 6,
from Michael R. Kargula, Special Counsel,
Division on Corporation Finance,
Securities and Exchange Commission
to Paul C. Hebner, Executive Vice President
and Secretary, Occidental Petroleum Corporation

(g) Subject to the provisions of Section 315, assume obligations, enter into contracts, including contracts of guaranty or suretyship, incur liabilities, borrow and lend money and otherwise use its credit, and secure any of its obligations, contracts or liabilities by mortgage, pledge or other encumbrance of all or any part of its property, franchises and income.

(h) Participate with others in any partnership, joint venture or other association, transaction or arrangement of any kind, whether or not such participation involves sharing or delegation of control with or to others.

208. (a) No limitation upon the business, purposes or powers of the corporation or upon the powers of the shareholders, officers or directors, or the manner of exercise of such powers, contained in or implied by the articles or by Chapters 18, 19 and 20 or by any shareholders' agreement shall be asserted as between the corporation or any shareholder and any third person, except in a proceeding (1) by a shareholder or the state to enjoin the doing or continuation of unauthorized business by the corporation or its officers, or both, in cases where third parties have not acquired rights thereby, or (2) to dissolve the corporation or (3) by the corporation or by a shareholder suing in a representative suit against the officers or directors of the corporation for violation of their authority.

(b) Any contract or conveyance made in the name of a corporation which is authorized or ratified by the board, or is done within the scope of the authority, actual or apparent, conferred by the board or within the agency power of the officer executing it, except as the board's authority is limited by law other than this division, binds the corporation, and the corporation acquires rights thereunder, whether the contract is executed or wholly or in part executory.

(c) This section applies to contracts and conveyances made by foreign corporations in this state and to all conveyances by foreign corporations of real property situated in this state.

209. For all purposes other than an action in the nature of quo warranto, a copy of the articles of a corporation duly certified by the Secretary of State is conclusive evidence of the formation of the corporation and prima facie evidence of its corporate existence.

210. If initial directors have not been named in the articles, the incorporator or incorporators, until the directors are elected, may do whatever is necessary and proper to perfect the organization of the corporation, including the adoption and amendment of bylaws of the corporation and the election of directors and officers.

211. Bylaws may be adopted, amended or repealed either by approval of the outstanding shares (Section 152) or by the approval of the board, except as provided in Section 212. Subject to subdivision (a) (5) of Section 204, the articles or bylaws may restrict or eliminate the power of the board to adopt, amend or repeal any or all bylaws.

212. (a) The bylaws shall set forth (unless such provision is contained in the articles, in which case it may only be changed by an amendment of the articles) the number of directors of the corporation; or that the number of directors shall be not less than a stated minimum nor more than a stated maximum (which in no case shall be greater than two times the stated minimum minus one), with the exact number of directors to be fixed, within the limits specified, by the board or the shareholders in the manner provided in the bylaws, subject to subdivision (a) (5) of Section 204. The number or minimum number of directors shall not be less than three; provided, however, that the bylaws (or the articles) may provide any one or more of the following: that (1) before shares are issued, the number shall be one, (2) so long as the corporation only has one shareholder, the number shall be one, (3) so long as the corporation has only one shareholder, the number shall be two, (4) so long as the corporation has only two shareholders, the number shall be two. After the issuance of shares, a bylaw specifying or changing a fixed number of directors or the maximum or minimum number or changing from a fixed to a variable board or vice versa may only be adopted by approval of the outstanding shares (Section 152); provided, however, that a bylaw or amendment of the articles reducing the number or the minimum number of directors cannot be adopted if the votes cast against its adoption at a meeting or the shares not consenting in the case of action by written consent would be sufficient to elect at least one director if voted cumulatively at an election at which all of the outstanding shares entitled to vote were voted and the entire number of previously authorized directors were then being elected.

(b) The bylaws may contain any provision, not in conflict with law or the articles for the management of the business and for the conduct of the affairs of the corporation, including but not limited to:

(1) Any provision referred to in subdivision (b), (c) or (d) of Section 204.

(2) The time, place and manner of calling, conducting and giving notice of shareholders', directors' and committee meetings.

(3) The manner of execution, revocation and use of proxies.

(4) The qualifications, duties and compensation of directors; the time of their annual election; and the requirements of a quorum for directors' and committee meetings.

(5) The appointment and authority of committees of the board.

(6) The appointment, duties, compensation and tenure of officers.

(7) The mode of determination of holders of record of its shares.

(8) The making of annual reports and financial statements to the shareholders.

213. Every corporation shall keep at its principal executive office in this state, or if its principal executive office is not in this state at its principal business office in this state, the original or a copy of its bylaws as amended to date, which shall be open to inspection by the shareholders at all reasonable times during office hours. If the principal executive office of the corporation is outside this state and