SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., June 26, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of June 20 with further reference to the activity in the stock of Chicago and North Western Railway Company on August 7 and August 8, 1967.

Without expressing a conclusion as to whether anyone was guilty of improper conduct in the particular case, I agree with you that situations of this kind are extremely disturbing. The tremendous drop in the price of this stock dramatically illustrates the harm which could be done by inadequate or misleading disclosures with respect to mergers and takeover bids.

I also believe that existing controls in this area are inadequate. In the first place, it was held in *Mills* v. *Sarjem Corp.*, 133 F. Supp. 753 (D. N.J., 1955), that a person making a tender offer has no affirmative duty to disclose to the people from whom he is buying, material information known to him and unknown to them, this on the ground that a takeover bidder is not an "insider." In the second place, the law with respect to misleading corporate announcements is unsettled if, as is commonly the case, the corporation making the misleading announcement has not itself been trading in securities. A majority of the district courts which have considered the question have concluded that the antifraud provisions of the Securities Exchange Act do not apply because the misleading announcement was not issued "in connection with" trading in securities by the corporation. We believe that this is too narrow a construction and have taken that position in connection with appeals in three cases now pending in the Court of Appeals for the Second Circuit. It appears that the Court is having some difficulty with the question, since two of these cases were argued 15 months ago and are still undecided.

Enactment of S. 14475 or S. 510, both pending in your Committee, would result in a substantial improvement in this situation. These bills would impose certain affirmative duties of disclosure on the part of persons making takeover bids. They would also prohibit any person from making false or misleading statements or engaging in fraudulent, deceptive, or manipulative acts or practices in connection with tender offers, or solicitations for or against tender offers. This would resolve the existing unsettled state of the law in connection with corporate announcements in this field. I believe, and have testified in the Senate, that there is a need to correct the existing gap in investor protection in this area. Your letter illustrates the possible operation of this gap in a particular case.

Sincerely,

MANUEL F. COHEN, *Chairman.*

(The following material was submitted for the record:)

STATEMENT OF RALPH W. HEMMINGER,[1] REPRESENTING THE CHAMBER OF COMMERCE OF THE UNITED STATES

The Chamber of Commerce of the United States appreciates the privilege of presenting this statement to the Subcommittee on Commerce and Finance as its studies proposed amendments to the Securities Exchange Act of 1934. The National Chamber is the largest association of business and professional organizations in the United States, and is the principal spokesman for the American business community. The Chamber represents 3,700 trade associations and local chambers of commerce. It has a direct membership of over 33,000 business firms and an underlying membership of approximately 5 million individuals and firms.

This statement is directed solely to a discussion of one proposed subsection of the bill (H.R. 14475–S. 510). The bill contains a new subsection (e) to be added to Section 13 of the Securities Exchange Act of 1934. Paragraph (1) of new subsection (e) provides that it "shall be unlawful for an issuer, to purchase any equity security which it has issued in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors or in order to prevent such acts and practices as are fraudulent, deceptive, or manipulative." Paragraph (2) thereof, however, would define a purchase by the issuer of its own securities to include a purchase by "any bonus, profit sharing, pension, retirement, thrift, savings, incentive, stock purchase, or similar plan of the issuer."

[1] Ralph W. Hemminger, Senior Vice President of Bankers Trust Company of New York.