

We oppose the inclusion of "any bonus, profit sharing, pension, retirement, thrift, savings, incentive, stock purchase, or similar plan of the issuer" in the new subsection (e) (2). This subsection was not included in the original Senate Bill (S. 510) and is not pertinent to the purposes of the bill.

This statement emphasizes the harmful effects of subsection (e) (2) on employee benefit plans and summarizes briefly some of the existing law that is already applicable. We recommend that the phrase "any bonus, profit sharing, pension, retirement, thrift, incentive, stock purchase, or similar plan of the issuer" be eliminated. If this phrase of the subsection is not eliminated, then we recommend that the Bill exclude from regulation by the Commission, through its rules or otherwise, the purchase of stock by employee benefit trusts by a trustee that is independent of the employer, such as a corporate trustee, and where the trustee performs the function of purchasing the stock at its discretion without any direction or instructions of the employer.

HARMFUL EFFECTS OF SUBSECTION (e) (2) ON EMPLOYEE BENEFIT PLANS

The Securities Exchange Commission has already drafted rules and regulations (Rule 10b-10) which it proposes to apply under this legislation. The indiscriminate application of such rules and regulations and the general application of private letter rulings, which the SEC has already issued without the authorization of Congress as set forth in S. 510, would interfere with the orderly accumulation of stock for employees in many profit sharing, savings and stock purchase plans. In addition, the rules and regulations could tend to increase the price of the stock paid by the employees and the price that a pension trust may have to pay for stock.

Employees savings plans best illustrate the harmful effects to which we refer. The employee savings plan is currently one of the fastest growing types of employee benefit plans. These savings plans are very popular with both union and non-union employees. The employer contributions have given employees a very real incentive to save and to accumulate funds which are available at retirement, or for disability, family emergencies, or death, and for other personal circumstances. This growing and valuable employee benefit is good for the employee, the employer and the economy.

The plans usually make available employer stock as one of the investments for the employees' account. Incidentally, if any employee contributions are invested in the employer stock the plan is registered with the SEC and the employee is periodically given a detailed prospectus.

It is estimated that savings and similar plans that make available employer stock as one investment medium cover over 3,000,000 employees. The employee funds and the company contributions are usually turned over to the trustee from time to time throughout each month and the purchase of the employer stock that is required is bought on a dollar averaging basis throughout the month. The price paid by an employee for his stock for the month is the average cost of all stock purchased during the month.

The effect of SEC's proposed rule 10b-10 and of SEC's private letter rulings on the savings plans used for this illustration is as follows:

1. The amount of employer's stock which a plan purchases in any week may not exceed 10% of average weekly volume in the four calendar weeks preceding the current week, and the amount of employer's stock purchased in one day may not exceed 15% of the average daily volume in the four calendar weeks preceding the current week. This is an undesirable arrangement, since it limits the stock that the trustee may purchase in two ways: both by the percentage rule applying to total purchases and by the amount of employer purchases.
2. In addition, all purchase orders of the employer and the trustee in any day must be placed with the same broker or dealer. This means that the trustee can lose control of the executions. It can deprive the trustee of the ability of supervising the buying of stock throughout the day and of using his discretion in an effort to obtain the stock at the best price for the trust. It also raises questions as to potential discrimination by the broker both as to amount and price in the allocation of shares to the employer and the trustee.
3. The price limitations in the proposed rules also create problems. The trustee should have discretion to purchase the required amount of stock at such price as he regards as reasonable. In a rising market, the proposed rules on price might prevent the trustee from buying any stock or, at least, reduce materially