

15% of the average daily volume on such exchange for the same period. In addition, the broker must be instructed to endeavor not to purchase more than 10% of the current week's, and 15% of the current day's volume. If the purchase is made other than on a national exchange, from or through a broker or dealer:

(a) if the principal market for the security is a national exchange, then total purchases in any market may not exceed 10% of average weekly, or 15% of average daily, volume for the previous four weeks on all exchanges; or

(b) if the principal market is other than a national exchange, then total purchases in any market may not exceed 10% of the average weekly volume transferred in the preceding four calendar weeks, as determined from transfer records of the issuer.

Presumably, for purposes of computing the volume limitations, acquisitions by parent and subsidiary groups and their benefit trusts must all be included.

(4) *Use of Brokers or Dealers.*—Purchases on a national exchange may be under the supervision and control of no more than one broker on one day. Purchases not on an exchange must be made by no more than one broker on one day, and from no more than one dealer on one day, unless the issuer establishes that such purchases were not solicited.

(5) *Purchase by Solicitation of Tenders.*—Notwithstanding the foregoing provisions, no purchase of a security by solicitation of tenders would be permitted unless: (a) the same offer is made to all holders of the security or all holders of less than a specified number of shares of the security, (b) the formula for price and number of shares to be purchased is uniform, (c) no special advantages are given to specific holders, and (d) no securities are purchased other than by such tender for a period before and after solicitation and purchase.

CONSIDERATIONS PARTICULARLY APPLICABLE TO EMPLOYEE BENEFIT TRUSTS

In many respects, some of which are hereinafter noted, the proposed rule would have impractical and unduly restrictive effects on any purchases by an issuer of its own securities. We wish to emphasize, however, considerations that are particularly applicable to purchases for employee benefit plans and trusts. Among such considerations are the following:

(1) *Purchases by an Independent Fiduciary or at the Direction of Employee-Beneficiaries.*—In many instances the trustee of an employees' trust is an independent fiduciary, often a corporation. In many other cases employees, who will have an investment position in the stock when purchased, direct the purchases. In either case there may be almost complete independent control over the methods, timing, prices and other conditions for purchase of the employer's stock and no opportunity for the improper influence of management in determining the need and conditions for such acquisitions.

(2) *Large or Recurrent Purchases under Established Policy.*—The terms of many employee benefit plans require the acquisition of large volumes of employer securities in order to carry out their purposes. Although these purchases would be seriously affected by the proposed restrictions, such purchases are not in fact adaptable to the *ad hoc* manipulation that the rule attempts to prevent.

(3) *Multiplication of Regulatory Power.*—The grant of power to regulate the terms and conditions for purchase of an employer's securities would vastly increase the presently somewhat limited SEC control over personnel and retirement policy, without sufficient justification. Employee pension plans that are qualified under the Internal Revenue Code already meet stringent requirements under the tax law. Any investment by a qualified employee benefit trust must be for the "exclusive benefit" of the employees covered. Accordingly, the administrator of a plan would risk loss of the favorable tax benefits for qualified plans if unwise investments were made in employer securities, or if artificially inflated prices were paid. In addition, employee trusts currently are required to disclose their operations, pursuant to the Welfare and Pension Plans Disclosure Act.

Any proposed new legislation that has such far-reaching effects upon the basic operations of benefit plans must deal directly with the complex problems in this area and receive thorough study and discussion in that context. For example, such consideration is now being given to the Administration's recommendations embodied in H.R. 5741 and S. 1024 for establishing Federal fiduciary standards by amendment to the Welfare and Pension Plans Disclosure Act. If those recommendations are enacted, they would also limit investment in securities of employer corporations by certain kinds of plans. Hearings have been held on