With respect to the other two proposals, referred to in (a) and (b) above, it is the general view of our Committee that both proposals seem to go beyond any demonstrated need for additional statutory regulation of the kind of transactions to which such proposals relate.

The proposals appear to have been induced primarily by the fact of recent increases in activities in the "tender offer" and "take-over" fields, rather than by any substantial evidence that such activities are undesirable or involve any real threat of injury to investors. The absence of need for a major new statutory scheme of regulation in the areas covered by the proposals would seem to be evidenced by the fact that, in large part, the proposals merely grant to the Commission in a specific context regulatory powers which the Commission already has under more general provisions of the Act, particularly the so-called anti-fraud provisions of the Act. The suggestion sometimes made that the proposals merely fill "a gap in the provisions of" the Act in the area of planned acquisitions of controlling blocks of securities of publicly owned companies is, therefore, not entirely accurate.

We recognize, however, that the desirability of additional statutory regulation in the areas covered by the proposals raises questions of public policy which may not be within the purview of our Committee. Accordingly, except for the foregoing comment, our Committee does not express any view as to the merits of either of these proposals.

We hope that these comments will be helpful in your consideration of the proposals.

Respectfully submitted,

THOMAS A. HALLERAN, *Chairman.*

(The following additional correspondence was subsequently submitted by SEC:)

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., July 9, 1968.

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

DEAR MR. CHAIRMAN: This is in reply to your letter of June 20 with respect to the acquisition and subsequent sale by Crane Co. of a block of American Standard Inc. in connection with Crane's unsuccessful takeover bid. There have been a number of situations of this type in recent months. Essentially, the pattern is that a company accumulates more than ten per cent of the stock of another corporation as a result of a takeover bid, whereupon the company sought to be acquired negotiates what is referred to as a "defensive merger" with a third party, and the unsuccessful takeover bidder acquires shares of the third party in the merger and sells them. This presents the question referred to in your letter as to whether there is liability under Section 16(b) of the Securities Exchange Act, assuming that the original takeover bid and the merger occur within six months, or the sale occurs within six months after the merger, whether or not it is within six months after the original tender offer. There are a number of cases under Section 16(b) pending in district courts in various parts of the country which involve this question, but so far as we know, none of them has as yet been decided. The legal issues are two: First, whether the merger constitutes a purchase or a sale, or both, for purposes of Section 16(b), or, alternatively, whether the purchase of securities in a takeover bid may be matched against the sale of securities of a different company following a merger, for purposes of Section 16(b).

As you know, under the existing provisions of Section 16(b), actions thereunder may be brought only by the company whose securities are involved, or a stockholder of that company suing derivatively on its behalf, and the proceeds recovered go to the company. In most of the takeover bid situations, the dollar amount of potential recovery is quite large and there is thus adequate incentive for the corporation or a stockholder to bring an action. Since relationships between the unsuccessful takeover bidder and the management of the company whose securities were the subject of the bid are usually somewhat unfriendly, there is, if anything, a greater likelihood that the company itself will bring an action than is generally true in the case of trading by "insiders" in the stock of their own companies.