5741 by the General Labor Subcommittee of the House Committee on Education and Labor.

In view of the extensive present and proposed legislation, any extension of this regulatory pattern to reach a peripheral aspect of abuses largely unrelated to the benefit plan area seems unwaranted and unnecessary.

RECOMMENDATIONS

In view of the foregoing considerations, it is unnecessary to extend the legislation and the proposed SEC Rule 10b–10 to purchases of employer securities by employee benefit trusts. We recommend deletion from Section 2 of the pending bills of the proposed subsection (e)(2) of Section 13 of the Securities and Exchange Act of 1934.

If application to employee trusts cannot be entirely eliminated by amending Section 2 of the bills, we recommend that the proposed subsection (e) and proposed SEC Rule 10b–10 be modified as described below to avoid possible adverse effect on the legitimate operations of pension, stock bonus and profit sharing plans. To the extent these modifications cannot be incorporated in the pending legislation, it is suggested that the Report of the Committee clearly delineate the authority intended to be conferred on the SEC so that they may be incorporated in Rule 10b–10 as finally promulgated by the SEC.

(1) *Exemption for Plans Investments of Which Are Not Subject to Control by Management.*—The legislation and the SEC Rules issued thereunder should specifically exempt employee benefit plans in any case where the purchase of employer stock is not subject to manipulation by management. Such an exemption would be perfectly consistent with the following statement regarding the amendment of Section 1(5) of S. 510 filed by the New York Stock Exchange before the Senate Committee on Banking and Currency (Hearings, p. 94):

"The proposed SEC amendment would greatly expand the scope of this provision by including purchases made for bonus, profit sharing, pension and other employee benfit plans.

"As we stated in our testimony, the Exchange believes that the disclosure philosophy of the bill can be served by limiting this requirement to the specific items of information currently set forth in Section 1(5).

"We have no objection to including purchases made for various company benefit plans in the information statement we proposed, but *we would not require truly independent trusts of such plans, who normally make purchases without the knowledge of company management, to file such statements.* The Commission's concern that issuers may use these employee benefit programs for purchasing shares 'under circumstances which have introduced improper influence into the market,' is not applicable to plans administered by independent trustees." (Emphasis added.)

In this connection, reference is again made to the prepared statement filed by Chairman Cohen, a portion of which is quoted on page 2 above, in which he stated that it is plans "subject to the influence of the issuer's management" which give rise to problems similar to those found in purchases by an issuer of its own securities.

Specific examples of where there should be no problem are:

(*a*) Plans in which employee-beneficiaries direct the purchases of employer stock, and will have an investment position in such stock.

(*b*) Plans in which an independent fiduciary (corporate or otherwise), or an independent investment committee, control purchase of employer stock. (The mere fact that the employer corporation retains power to remove a trustee should not be regarded as affecting his independence.)

(*c*) Plans the terms of which specifically require purchase of employer stock, and in which recurrent day to day acquisitions of stock are required to meet plan requirements.

(2) *Exemption for Purchase of a Small Percentage of Average Volume.*—An xemption should be granted for daily purchases that do not exceed some specified nall percentage of average volume. Such an exemption would permit relatively nall purchases for benefit plans of large companies without affecting market havior in any way.

(3) *Modification of Price Requirements.*—The price restrictions of Rule 10b– would severely limit an employer's ability to acquire stock needed to meet commitments in a rising market. Moreover, in some situations—for example, re securities are not actively traded or where purchases are being made in rent places and in different markets by an issuer, its subsidiaries and