

For the 34 years of its existence, Section 13 has dealt only with the reporting of investment and corporate management information about publicly held companies. Subsection (e) would depart from this concept and expand Section 13 to confer authority on the Commission to forbid employee benefit plans (including plans such as the Sears Profit Sharing Fund) to continue in the future with the investment policy which, for example, the Sears Fund has followed for more than 50 years, and for which, in fact, it was organized.

Subsection (e) would do two things. One, it would authorize the Commission to adopt rules which would make it unlawful for any company (whether or not a publicly held company in the sense of Section 12 of the Act) to employ any deceptive or manipulative practice in the purchase of shares of its outstanding stock. This proposal should not cause concern to any company or any employee profit sharing fund even though subsection (e) provides that a purchase of an issuer's stock by an affiliated employee plan shall be considered a purchase of such stock by the issuer. It may be well, however, to note in passing that this proposal does not seem to add anything to the existing authority of the Commission under Sections 9 (prohibiting manipulation) and 10 (prohibiting the use of deception in the purchase or sale of securities) of the Securities Exchange Act. Two, subsection (e) would confer authority on the Commission to forbid entirely (or place quantity restrictions on) the purchase of outstanding shares of stock by the company issuing it or by any employee benefit plan in which that company's employees participate even though such purchases do not involve any acts or practices which are "fraudulent, deceptive, or manipulative" or any of the non-investment management purposes which the Commission's Chairman has mentioned such as "preserving or improving the management's control position" or counteracting "a tender offer or other take-over bid."

To date the only basis advanced before the Congress for this additional authority is the Commission Chairman's assertion that "even where the management has no improper motive in repurchasing securities, substantial repurchase programs will inevitably affect market performance and price levels." This is all, nothing more, no offer of factual information; not even a claim that such market effect is bad or improper, or that purchases by an employee plan of the securities of the employer causes more harm than good and should in the public interest be subordinated to the purchases of other investors, including institutional investors (mutual funds, banks, insurance companies, foundations, or employee plans of other employers) whose substantial purchase programs could also be considered as programs which "will inevitably affect market performance and price levels."

There are many employee profit sharing plans with the basic policy of investing in employer stock for *bona fide* investment management and personnel policy objectives. Yet the proposed subsection (e) would confer authority upon the SEC to adopt rules which would put them out of business in the absence of drastic transformation of investment policy and abandonment of personnel policies deemed desirable. This the Commission could do by stating that such action was in the public interest, presumably without any more supporting evidence than the assertion of the Commission's Chairman quoted above.

Today is the 52nd anniversary of the founding of the Sears Profit Sharing Fund on July 1, 1916 "for the three-fold purpose (i) to permit eligible employees to share in profits, (ii) to encourage the habit of saving, and (iii) to furnish a means for such employees to accumulate their own savings, the employers' profit sharing contributions, and the earnings thereon, to provide themselves with retirement income." Today more than 192,000 employees are participants in the Fund. Throughout the years the Rules of the Fund have provided that the Fund was to be invested so far as practicable and advisable in the Company's stock to the end that participants "may, in the largest measure, share in the earnings of the Company." At December 31, 1967, the Fund held 36,040,698 of the Company's common shares representing 23% of the outstanding stock. Ten years ago, it held 26% of the outstanding stock. To date the operation of the Fund has been of substantial benefit to employees and as a factor facilitating the recruitment and retention of superior individuals as employees has been beneficial to the stockholders who now number more than 257,000 in addition to the 192,000 members of the Fund. Without any effort to show that operation over the years of the Sears Fund and other similar employee plans has, by way of impact on the securities markets, adversely affected the stockholders of the sponsoring employers, the Commission urges that it be given broad authority to in effect terminate drastically alter these plans.