At this time the only indication we have of what the Commission could be expected to do under the proposed subsection (e) is the Commission's "draft Rule 10b–10" which apparently received some limited circulation for comment among representatives of the organized securities markets in February 1967. Under this draft rule an employe plan's weekly purchases of the employer's stock on the stock exchanges and from other sources through brokers and dealers could not, in substance, exceed 10% of the average weekly volume on the exchanges on which such stock is listed.

Enactment of proposed subsection (e) to Section 13 and adoption of Rule 10b–10 would on the basis of information presented to the Commission's Division of Trading and Markets in 1966 require substantial modification of the dominant historical investment policy of the Sears Profit Sharing Fund. It is believed that the investment management of many other employe plans would be similarly affected.

It would seem appropriate that action on subsection (e) be deferred until the Congress is presented in hearings before the Subcommittee on Commerce and Finance with evidence concerning:

(i) the number, nature, and importance of the employe plans which will be affected or might be affected by the proposed legislation;

(ii) the existence of adverse, undesirable or improper effects, if any, on securities markets or on investors attributable to the existence and operation of employee plans purchasing the securities of their employers;

(iii) the facts, if any, which tend to show that it would be in the public interest to subordinate the investment rights of employe plans to those of other institutional purchasers;

(iv) the extent to which appropriate and practical disclosure requirements should be considered in lieu of quantity restrictions;

(v) the factual basis for the Commission's assertion that the problems of market impact in this area cannot be met by a simple disclosure requirement;

(vi) a detailed analysis and identification of "the problems of market impact in this area";

(vii) the need for quantity restrictions for issuers not making public offerings of stock or using stock for acquisition purposes; and

(viii) the need for such legislation prior to completion, and Congressional review of, the projected study of institutional investors.

Respectfully,

LEO H. ARNSTEIN.

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,
COMMITTEE ON SECURITIES REGULATION,
New York, June 28, 1968.

Hon. JOHN E. MOSS,
Chairman, Subcommittee on Commerce and Finance, Interstate and Foreign Commerce Committee, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN: This letter is submitted by the Committee on Securities Regulation of the Association of the Bar of the City of New York in connection with the consideration by your Subcommittee of the legislative proposals referred to above. We appreciate the opportunity to present our views.

While their common title suggests a more limited scope, all of the proposals would amend Sections 13 and 14 of the Securities Exchange Act of 1934 ("the Act") so as to provide regulation in situations involving:

(*a*) the acquisition (other than by an issuer) of more than 10% or, subject to certain exceptions, increasing an existing holding of more than 10% of any equity security which is registered under Section 12 of the Act;

(*b*) so-called "Tender Offers"; and

(*c*) acquisitions by issuers of equity securities issued by them (whether or not registered under Section 12 of the Act).

Our discussion will be directed largely to S. 510, H.R. 14475, and H.R. 15567 which are in most respects identical. H.R. 12210 corresponds to S. 510 before it was amended by the Senate.

Our principal comments relate to the proposal, referred to in (c) above, to add new Subdivision (e) (Subsection 5 in the case of H.R. 12210) to Section 13 of e Act. In our view, this proposal represents an unnecessary and unwarranted parture from the concepts of investor protection which the Federal regulatory wer has been traditionally designed to provide. Under it, the power and re-