Section 16 of
the Exchange Act.

P.O. Box 19367
Washington, D.C. 20036

December 2, 1983

Mr. John M. Fedders
Director of Enforcement
Securities and Exchange Commission
Washington, D.C.

Dear Mr. Fedders:

When the Securities and Exchange Act was passed in 1934, Congress evidenced its concern for insider trading by including section 16, whose purpose was to discourage trading by corporate insiders based on material non-public information. Section 16(a) requires that any person must, upon becoming an officer or director of the corporation or the beneficial owner of more than ten percent of any class of equity security, file with the Securities and Exchange Commission (SEC) and the exchange on which the corporation's stock is listed a report stating the number of shares of the corporation's stock owned by such person. In any month in which there is a change in the number of shares of the corporation's stock owned by such officer, director, or owner of ten percent of the corporation's stock, a new report must be filed with the SEC and the stock exchange. The reports filed under 16(a) must disclose the price paid for any stock sold and the amount paid for any new shares acquired.

According to the Securities and Exchange Act, such reports must be filed within "ten days after the close of each calendar month thereafter." The SEC receives upward of 300 such reports every day. But according to a recent survey conducted by our office, a large percentage of those who file, file late, in violation of the statute. Of the 11,818 stock transactions reported to the SEC by officers and directors and owners of more than 10% during the reporting period July 12, 1983 to August 12, 1983, 5089, or 43%, reported late. Some reported a few weeks late, some reported a few months late, some reported a few years late, and one reported ten years late. Gulf Oil, General Motors, Exxon, Citicorp, Monsanto and IBM were among the corporations with officers and directors filing late.

More importantly, our survey of 148 members of the board of directors of 20 Dow Jones Industrial corporations found that 50% (74 out of 148) failed to file reports with the SEC to reflect changes in the stock holdings of the corporations they govern, as required by the Securities and Exchange Act. (This figure should be considered conservative (low) to reflect conservative survey techniques. A director of corporation x, for example, who reveals, through the corporation's 1981 proxy statement, a holding of 1000 shares of stock of corporation x on 1/1/81, and further reveals, through the corporation's 1982 proxy statement holding 2000 shares of corporation x on 1/1/82. If the executive files a report with the SEC reporting a purchase of 500 shares on 1/2/81, then the director was, for the purposes of this study, considered to have filed lawfully, despite the fact that the director has not accounted for the remaining 500 shares.)

Directors from some corporations fared better than others. During the period surveyed, according to SEC records, all of the directors from Procter and Gamble who were required to file, filed with the SEC. On the other hand, during the survey period, none of the directors from Bethlehem Steel who were required to file, filed with the SEC. (see appendix) In 55% of the corporations surveyed (11 out of 20), more than half of the directors required to file, failed to file.

The directors surveyed represent the most visible strata of American business. With only 50% of them filing at all, and with a large percentage of the remainder filing late, one may assume that the record of thousands of other officers and directors is in need of examination.

During your tenure as SEC enforcement chief, you have moved the enforcement division decisively away from corporate accountability program pursued by your predecessor, and have concentrated your resources to curtail insider trading. You have called insider trading "a sophisticated form of stealing," and have asked Congress to enact new legislation that would provide stronger sanctions to aide the SEC in controlling this problem.

But in regard to the enforcement of section 16(a), the division's enforcement program falls far short of your words. You have failed to bring enforcement actions to stem this tide of executive law breaking. One year ago, he enforcement division dropped its program of sending warning letters to those directors <u>who filed late</u>. We have learned from an SEC staff person that a version of this program was reactivated six weeks ago only after our inquiries were made to the SEC. The SEC still remains without a program to identify those <u>who fail to file</u>. This failure by the SEC to enforce section 16(a), coupled with the numbers cited above, reflects a dismal enforcement record that will further breed disrespect for laws governing corporations and their executives.

You wrote recently that "trading on material nonpublic information is both deception and fraud. Simply put, it is stealing. The fact that it is accomplished in a professional environment without broken windows and physical abuse does not make it harmless." Given the state of disrepair in which we found your program of enforcing what you believe to be a very important section of the law, it seems only appropriate that you take a number of minimal steps to reimpose authority in this area. A good first step would be to reinstate a regular monitoring program of the 16(a) filings and to reinstate the routine sending of warning letters to those who fail to file and to those who file late. The costs of making these needed changes will be outweighed by the resulting deterrent effect in the corporate executive community and renewed confidence in the SEC's enforcement efforts.

Sincerely,

Ralph Nader

Appendix

Directors of Major Corporations, Required to File Under 16(a), but Failed to File

Corporation	# of Directors Required to File	# (%) who Failed to File
ALCOA	4	2 (50%)
Allied	6	5 (83%)
American Brands	13	8 (62%)
American Can	5	4 (80%)
ATT	10	10 (100%)
Bethlehem Steel	3	3 (100%)
DuPont	18	12 (67%)
Exxon	19	14 (74%)
General Electric	5	3 (60%)
General Foods	4	1 (25%)
Goodyear	6	1 (17%)
International Harvester	2	0 (0%)
Owens Illinois	5	1 (20%)
Procter and Gamble	8	0 (0%)
Sears	10	0 (0%)
Standard California	9	0 (0%)
3M	4	3 (75%)
US Steel	5	4 (80%)
United Technologies	9	1 (11%)
Westinghouse	3	2 (67%)
Total	148	74 (50%)