Eighteenth Annual Report

of the

Securities and Exchange Commission

Fiscal Year Ended June 30, 1952

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SECURITIES AND EXCHANGE COMMISSION

Headquarters Office

425 Second Street NW.

Washington 25, D. C.

COMMISSIONERS

DONALD C. COOK, *Chairman*
RICHARD B. MCENTIRE
PAUL R. ROWEN
CLARENCE H. ADAMS
J. HOWARD ROSSBACH
ORVAL L. DUBOIS, *Secretary*

LETTER OF TRANSMITTAL

SECURITIES AND EXCHANGE COMMISSION,
Washington, D. C., January 15, 1953.

SIR: I have the honor to transmit to you the Eighteenth Annual Report of the Securities and Exchange Commission, in accordance with the provisions of section 23 (b) of the Securities Exchange Act of 1934, approved June 6, 1934; section 23 of the Public Utility Holding Company Act of 1935, approved August 26, 1935; section 46 (a) of the Investment Company Act of 1940, approved August 22, 1940; section 216 of the Investment Advisers Act of 1940, approved August 22, 1940; and section 3 of the act of April 25, 1949, amending the Bretton Woods Agreements Act.

Respectfully,

DONALD C. COOK,
Chairman.

THE PRESIDENT OF THE SENATE,
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

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FOREWORD

This is the eighteenth annual report of the Securities and Exchange Commission to the Congress, summarizing the work of the Commission during the fiscal year July 1, 1951, to June 30, 1952.

The year has been one of continued intensive activity for the Commission, which has operated under difficult conditions of reduced manpower resulting from a substantial cut in the appropriation to the Commission for the fiscal year amounting to almost 16 percent.

Registrations of securities were the largest amount for any fiscal year since securities have been registered with the Commission, and corporations raised more funds in the United States capital market in fiscal year 1952 than in any 12-month period since 1929. Registrations, totaling $9.5 billion in the fiscal year, brought the average for the post-war fiscal years 1946 to 1952 to $6.7 billion, compared with a $2.1 billion average for the fiscal years 1939 to 1945. Total corporate securities offered for cash sale during the 1952 fiscal year exceeded $9.0 billion. The large volume of securities primarily reflected the greater need for funds by corporations, particularly those in defense industries, to finance their record expenditures for plant expansion and new equipment. The successful flotation of securities of this magnitude was possible because of the prevailing favorable economic conditions, with the financial position of corporations generally satisfactory and the securities market strong.

In addition, the Commission, under the statutes which it administers and under Chapter X of the Bankruptcy Act, is charged with many other important duties, such as the surveillance of the securities markets, the regulation of the activities of brokers, dealers and investment advisers, the direction and supervision of the integration and simplification of public utility holding company systems, and advisory participation in Chapter X reorganizations. The Commission's activities under the Public Utility Holding Company Act of 1935 during the past fiscal year and the early months thereafter have been highlighted by a series of successful compromises among various classes of security holders, effected with the assistance of the staff of the Commission, which have substantially reduced the time necessary to conclude many of the pending reorganization proceedings under section 11 of the Act. The report discusses these and the other activities of the Commission.

A significant development during the fiscal year which will aid in the prevention of securities frauds in connection with the sale in the United States of securities by Canadian brokers and dealers was the signing of a Supplementary Extradition Convention between Canada and the United States. This Convention provides for the rendition of such persons charged with securities frauds.

The Commission has endeavored to maintain a high standard of accomplishment in the face of an increasing work-load, notwithstanding successive drastic reductions in its staff in this and preceding fiscal years made necessary by budget limitations. The number of employees of the Commission today is less than one-half of the average number employed in 1941. Since the end of the 1952 fiscal

year, the over-all staff was reduced from 866 to 793, or by 8.4 percent, as of December 31, 1952, and because of the unavailability of funds a further decrease to about 770 is likely by June 30, 1953. Despite the streamlining of procedures it has been necessary to eliminate or curtail various services valuable to the public, and the reduction in staff seriously hampers the Commission's performance of essential duties and threatens its ability to cooperate promptly and fully in the financing of the defense effort.

During the fiscal year a subcommittee of the House Committee on Interstate and Foreign Commerce, under the chairmanship of the Honorable Louis B. Heller, was engaged in an extensive investigation of all phases of the Commission's activities, and heard testimony by members of the Commission and staff officials. A large amount of material was prepared and submitted at the request of the subcommittee, relating both to specific cases and to the activities of the Commission generally. The Commission cooperated with the subcommittee in every way possible, devoting about 20,000 man-hours to the matter, which was still pending at the end of the fiscal year.

COMMISSIONERS AND STAFF OFFICERS

(As of November 20, 1952)

Commissioners

	Term Expires June 5
DONALD C. COOK, of Michigan, Chairman	1954
RICHARD B. MCENTIRE, of Kansas	1953
PAUL R. ROWEN, of Massachusetts	1955
CLARENCE H. ADAMS, of Connecticut [1]	1956
J. HOWARD ROSSBACH, of New York [2]	1957

Secretary: ORVAL L. DUBOIS

Staff Officers

BYRON D. WOODSIDE, Director, Division of Corporation Finance.

JEROME S. KATZIN, Director, Division of Public Utilities.

ANTHON H. LUND, Director, Division of Trading and Exchanges. SHERRY T. MCADAM, JR., Associate Director.

ROGER S. FOSTER, General Counsel. MILTON P. KROLL, Associate General Counsel.

EARLE C. KING, Chief Accountant.

LEONARD HELFENSTEIN, Director, Office of Opinion Writing.

WALTER C. LOUCHHEIM, JR., Foreign Economic Adviser to the Commission.

GERALD W. SIEGEL, Executive Assistant to the Chairman; Director, Division of Administrative Management.

HASTINGS P. AVERY, Administrative Services Officer.

WILLIAM E. BECKER, Director of Personnel.

JAMES J. RIORDAN, Budget and Fiscal Officer.

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[1] Appointed May 8, 1952, to fill the vacancy created by the resignation of Harry A. McDonald.

[2] Appointed July 9, 1952, during recess of Congress, to succeed Robert I. Millonzi.

REGIONAL AND BRANCH OFFICES

Regional Administrators

Zone 1—Peter T. Byrne, 42 Broadway, New York 4, N. Y.
Zone 2—Philip E. Kendrick, Post Office Square Building (Room 501), 79 Milk Street, Boston 9, Mass.
Zone 3—William Green, Peachtree Seventh Building (Room 350), Atlanta 5, Ga.
Zone 4—Charles J. Odenweller, Jr., Standard Building (Room 1608), 1370 Ontario Street, Cleveland 13, Ohio.
Zone 5—Thomas B. Hart, Bankers Building (Room 630), 105 West Adams Street, Chicago 3, Ill.
Zone 6—Oran H. Allred, United States Courthouse (Room 103), Tenth and Lamar Streets, Fort Worth 2, Tex.
Zone 7—William L. Cohn, New Customhouse, Nineteenth and Stout Streets, Denver 2, Colo.
Zone 8—Howard A. Judy, Appraisers Building (Room 308), 630 Sansome Street, San Francisco 11, Calif.
Zone 9—James E. Newton, Securities Building (Room 202), Third Avenue and Stewart Street, Seattle 1, Wash.
Zone 10—E. Russel Kelly, 425 Second Street, NW., Washington 25, D. C.

Branch Offices

Federal Building (Room 1074), Detroit 26, Mich.
United States Post Office and Courthouse (Room 1737), 312 North Spring Street, Los Angeles 12, Calif.
Pioneer Building (Room 400), Fourth and Roberts Streets, St. Paul, Minn.

COMMISSIONERS APPOINTED SINCE PRECEDING FISCAL YEAR

Clarence H. Adams

Commissioner Adams was born in Wells, Maine, on November 1, 1905, and resides in Bloomfield, Connecticut. In 1925 he moved to Connecticut where he entered the investment banking business. In 1931 he organized the securities division of the Banking Department and became the first Securities Administrator of Connecticut, responsible for the administration of the Connecticut Securities Act, which position he held until 1950. In 1945 he served as President of the National Association of State Securities Administrators. His business background includes membership in an investment banking firm in Hartford, and he headed a lending institution in that city. On May 8, 1952, he was appointed a member of the Securities and Exchange Commission for a term of office expiring June 5, 1956.

J. Howard Rossbach

Commissioner Rossbach was born in New York City on December 19, 1913. He received an A. B. degree from Yale University in 1935 and an LL. B. degree from the Yale Law School in 1938. He was admitted to practice in New York the same year. From 1938 to 1940, he was associated with the law firm of Cook, Nathan, Lehman & Greenman in New York City. After five years of military service, he was associated with the law firm of Guggenheimer & Untermyer in the same city from 1946 to 1950. From September 1950 until he came to the Securities and Exchange Commission, he was Attorney-in-Chief of The Legal Aid Society in New York City. He serves under a recess appointment to the Commission, dated July 9, 1952, Congress having adjourned before acting upon his appointment for a term of office expiring June 5, 1957.

PART I

ADMINISTRATION OF THE SECURITIES ACT OF 1933

The objectives of the Securities Act of 1933 are to provide investors with full disclosure of material facts regarding securities publicly offered for sale through the mails or instrumentalities of interstate commerce, and to prevent misrepresentation, deceit, or other fraudulent practices in the sale of securities. Disclosure is obtained by requiring the issuer of such securities to file with the Commission a registration statement, and related prospectus, containing significant information about the issuer and the offering which meets the standards prescribed by the statute. These documents are available for inspection by the public as soon as they are filed. In addition, the prospectus, which must be furnished to prospective investors at or before delivery of the security, effectually brings the prescribed disclosure directly to the attention of the individual investor.

It is the underlying theory of the Act that an investor equipped with such information will be in a position intelligently to decide for himself whether or not to buy the security offered. Thus, the Commission is not empowered by this legislation to pass upon the merits of the security; and, in order to make this fundamental principle abundantly clear, every prospectus is required by the Act and the Commission's rules and regulations to carry the following statement boldly on its face:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

DESCRIPTION OF THE REGISTRATION PROCESS

The Registration Statement and Prospectus

Any security may be registered with the Commission under the Act by filing a registration statement on the appropriate form. Correspondingly, no security may be sold in interstate and foreign commerce and through the mails unless it has been so registered.[1] Listed below are the various forms prescribed for registration of securities:

Form S–1. General Form for Commercial and Industrial Companies.

Form S–2. For Shares of Certain Corporations in the Development Stage.

Form S–3. For Shares of Mining Corporations in the Promotional Stage.

Form S–4. For Closed-End Management Investment Companies Registered on Form N–8B–1.

Form S–5. For Open-End Management Investment Companies Registered on Form N–8B–1.

Form S–6. For Unit Investment Trusts Registered on Form N–8B–2.

Form S–10. For Oil or Gas Interests or Rights.

[1] There is a limited exemption of securities specified in sec. 3, and of transactions specified in sec. 4 of the Act.

Form S–11. For Shares of Exploratory Mining Corporations.
Form C–2. For Certain Types of Certificates of Interest in Securities.
Form C–3. For American Certificates Against Foreign Issues and for the Underlying Securities.
Form D–1. For Certificates of Deposit.
Form D–1A. For Certificates of Deposit Issued by Issuer of Securities Called for Deposit.
Form F–1. For Voting Trust Certificates.

Each form is designed to disclose appropriately for the class of issuer involved the types of information prescribed in Schedule A of the Act. As provided therein, these disclosures therefore cover such matters as the names of persons who exercise control and direction of the business enterprise; the security holdings, remuneration, options, and bonus and profit-sharing privileges, of each such corporation insider; the character and size of the business; financial statements, certified by independent public or certified accountants, showing the profitableness or unprofitableness of operations; the capital structure; underwriters' commissions; pending or threatened legal proceedings; and the specific detailed purposes to which the proceeds of the offering are to be applied.

The prospectus, which as heretofore stated must be furnished to the purchaser at or before the delivery of the security, and which is an integral part of the registration statement, contains in abbreviated form the more essential items disclosed in the registration statement proper.

Schedule B of the Act specifies the corresponding types of information that must be disclosed in registration statements filed by foreign governments. The Commission has adopted no particular form for the use of Schedule B registrants; hence, foreign governments may employ any form which adequately discloses the specified information.

As a part of its continuing program to make the prospectus a more readable and understandable document, the Commission gave public notice immediately after the close of the fiscal year of a proposal further to change its rules governing the preparation and use of this document, which is so vital to the accomplishment of the objectives of the Act. In view of the importance of the proposed changes, they will be discussed at some length elsewhere in this report.

Examination Procedure

The staff of the Division of Corporation Finance examines each registration statement to determine its compliance with the Act and the Commission's rules and regulations which implement the Act. This analysis of a registration statement is never a simple or routine undertaking for the security analysts, accountants and lawyers who must work together as a coordinated team in completing the examination procedure within the short time limitation imposed by statute. Always comprehensive, the processing frequently is an exacting task. Especially is this so when the staff encounters in the registration statement novel or complex financial problems peculiar to the line of business in which the registrant is engaged, or finds that the registrant has an unusually complicated capital structure, or multiple and far-flung subsidiary companies.

From the outset of its administration of the Act, the Commission has employed various informal techniques which have simplified, speeded-up, and made more effective the examination procedure. Devices used for these purposes have elicited widespread commendation of registrants generally and are continually being improved.

Even before a statement is filed, the registrant's lawyer, accountant or other representative has the opportunity to visit the Commission and engage in an informal prefiling conference freely made available by the Commission's expert staff in any case where such help is desired in solving any problem that has arisen or may be anticipated in the preparation of the proposed registration statement. As a result, types or methods of disclosure appropriate under the circumstances of the particular case are determined in advance of the filing.

Where a statement has been filed and is shown upon examination to be inaccurate or incomplete in disclosure of material information, the registrant is customarily advised by means of an informal letter of comment specifying the information which must be corrected or supplemented in order to meet the prescribed standards of disclosure. The significance of this device lies in the opportunity it affords the registrant to file correcting amendments before the statement becomes effective.

It is not desired by the Commission, the issuer, or the underwriter, that a registration statement should become effective unless it complies with the Act. Often when the staff discovers deficiencies in the statement as filed, or when the issuer or underwriter on its own motion wishes to amend the statement or simply to delay its effectiveness because of swift-moving developments in the highly sensitive and competitive securities market or other business reasons, some risk is created that the registration statement may become effective in defective form or inopportunely for the purposes of the registrant. Accordingly a practice has been developed whereby a registrant facing such a risk may file a delaying amendment which has the sole purpose of starting the statutory 20-day waiting period running anew. During the 1952 fiscal year a total of 678 delaying amendments and 1055 material amendments were filed before the effective date of registration.

The Commission has power to issue a formal order under section 8 of the Act preventing or suspending the effectiveness of a registration statement. The substantial nature of the deficiencies found in a statement against which a stop order was issued under section 8 (d) during the 1952 fiscal year will be discussed elsewhere in this report.

The Commission's vital examination functions face a risk of serious impairment resulting from the continued reductions in appropriations to the Commission in recent years. During the year, budgetary limitations forced the Commission to close its registration unit in the San Francisco Regional Office where registrants located in the Pacific Coast area or in Hawaii could conveniently file their registration statements instead of being required to submit them to the headquarters office of the Commission in Washington. It also became necessary to abolish the small field office in Tulsa in charge of a staff geologist which had made effective contributions in the prevention and punishment of fraud in the sale of registered and exempt oil and gas securities.

Effective Date of Registration Statement

Congress provided for a lapse of 20 days in the ordinary case between the filing date of a registration statement and the time it may become effective. The purpose of the waiting period is to provide investors with an opportunity to become familiar with the proposed security before it may lawfully be offered to them. The possibility of achieving this purpose is greatly enhanced by the fact that immediately upon the filing of a registration statement extra copies of it are made available by the Commission to representatives of financial news services, financial writers, and newspapers generally. These representatives in turn prepare releases covering all information disclosed in the registration statement, or various items selected therefrom as they prefer, and set in motion widespread publicity about the contemplated offering which is immediately put on the wire and distributed to their subscribers scattered from coast to coast.

The Commission is empowered in its discretion to accelerate the effective date so as to shorten the 20-day waiting period where the facts are deemed to justify such action. In exercising this power, the Commission must take into account the adequacy of the information about the security which is already available to the public, the complexity of the particular financing, and the public interest and protection of investors.

Time Required to Complete Registration

The time required to complete the registration process is influenced by certain variable factors, largely beyond the control of the Commission, such as the following: the time required by the staff to examine the registration statement and send its letter of comment; the time required by the registrant to prepare and file a correcting amendment; and finally the time required by the staff to examine such an amendment in the same manner as the original filing—including any extension of time which may have resulted from the filing by the registrant of a delaying amendment. The average time required in each month of the 1952 fiscal year for each of these principal stages as well as for all steps combined in the registration process is shown in the accompanying table. This table shows little change from results achieved during

Time elapsed in registration process—1952 fiscal year

	1951						1952					
	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
Total number of registration statements becoming effective	46	30	37	60	60	44	52	42	74	77	61	53
Number of days elapsed (median):												
From date of filing registration statement to date of first letter of comment	10	10	10	10	10	12	10	10	11	12	12	10
From date of letter of comment to date of filing registrant's first material amendment	6	8	5	5	6	5	8	6	5	6	6	5
From date of filing first material amendment to effective date of registration	6	5	5	5	4	4	6	4	4	5	5	5
Total number of days elapsed (median)	22	23	20	20	20	21	24	20	20	23	23	20

the preceding two fiscal years. The average time required to complete the registration process for the median statement, which amounted to 21 11/12 days in both 1950 and 1951, was 21 1/8 days in 1952. In view of the currently increased work load, aggravated by the acute manpower shortage, this favorable result is attributable in no small part to the loyalty and devotion of the members of the staff, many of whom frequently work a considerable number of hours of overtime without receiving extra compensation therefor.

VOLUME OF SECURITIES REGISTERED

The amount of securities effectively registered during the 1952 fiscal year was $9,500,000,000, the greatest amount for any fiscal year since securities have been registered with the Commission and a third greater than the previous high of $7,073,000,000, the amount for the 1946 fiscal year.[2] This is the seventh consecutive fiscal year for which registrations were in excess of $5,000,000,000. Figures are presented below on the annual volume of effective registrations since 1939 and the extent to which these registrations were for cash sale for account of issuers. More detailed information on registered issues for fiscal year 1952, including monthly figures on the number and volume of registrations, is given in tables 1 and 2 of the Appendix.

Effective registrations [1]

Fiscal year ended June 30	All registrations	For cash sale for account of issuers			
		Total	Bonds	Preferred	Common
1952	$9,500	$7,529	$3,346	$851	$3,332
1951	6,459	5,169	2,838	427	1,904
1950	5,307	4,381	2,127	468	1,786
1949	5,333	4,204	2,795	326	1,083
1948	6,405	5,032	2,817	537	1,678
1947	6,732	4,874	2,937	787	1,150
1946	7,073	5,424	3,102	991	1,331
1945	3,225	2,715	1,851	407	456
1944	1,760	1,347	732	343	272
1943	659	486	316	32	137
1942	2,003	1,465	1,041	162	263
1941	2,611	2,081	1,721	164	196
1940	1,787	1,433	1,112	110	210
1939	2,579	2,020	1,593	109	318

[1] Figures in millions of dollars, rounded to even millions. Bonds include face-amount certificates. Common stock includes certificates of participation and all other equity securities except preferred stock. Earlier years are shown on p. 5 of the Sixteenth Annual Report.

Number of Statements

The amount registered in the 1952 fiscal year was represented by 635 statements covering 881 issues, compared with 487 statements covering 702 issues during the previous fiscal year. The number of statements differs slightly from that shown under "Registration Statements Filed" on a subsequent page, as explained in table 1 of the Appendix, note 2.

Type of Registration

Of the dollar amount of securities registered in the 1952 fiscal year, 79.3 percent was for cash sale for account of issuers, 2.2 percent was for cash sale for account of others than issuers, and 18.5 percent was

[2] A discussion of all securities offerings, including issues registered under the Securities Act of 1933 and unregistered issues, appears on pages 189–91 of this report, while statistical data thereon appear in tables 3, 4, and 5 of the Appendix.

for other than cash sale as itemized in Appendix table 1, part 3. Comparative figures for the 1952 and 1951 fiscal years are as follows:

Registered for	*1952*	*1951*
Cash sale for account of issuers	$7, 529, 287, 000	$5, 169, 092, 000
Cash sale for others than issuers	209, 673, 000	146, 912, 000
Other than cash sale	1, 760, 623, 000	1, 143, 330, 000
Total	9, 499, 583, 000	6, 459, 333, 000

Type of Industry

The industries represented by the securities registered for cash sale for account of issuers were as follows in fiscal years 1952 and 1951:

	1952	*1951*
Electric, gas and water	$2, 246, 560, 000	$1, 692, 604, 000
Manufacturing	1, 819, 300, 000	680, 950, 000
Financial and investment	1, 553, 637, 000	1, 319, 707, 000
Transportation and communication	1, 536, 633, 000	667, 351, 000
Foreign government	166, 141, 000	678, 484, 000
Extractive	131, 993, 000	57, 076, 000
Merchandising	59, 825, 000	64, 239, 000
Service	9, 800, 000	2, 980, 000
Construction	2, 948, 000	0
Real estate	2, 450, 000	5, 700, 000
Total	7, 529, 287, 000	5, 169, 092, 000

From this and similar tables in recent annual reports, it can be ascertained that of approximately $36.6 billion effective registrations for cash sale for account of issuers during the past seven fiscal years, $12.3 billion were electric, gas, and water, $7.6 billion were manufacturing, $7.4 billion were transportation and communication, $7.0 billion were financial and investment, $1.3 billion were foreign government, and all others were somewhat over $1.0 billion. The transportation group does not include issues, primarily railroad securities, subject to Interstate Commerce Commission filings and therefore exempt from registration. Electric, gas, and water company issues were the largest during the past four fiscal years, transportation and communication issues the largest for the 1948 fiscal year, and manufacturing issues the largest for the 1947 and 1946 fiscal years.

Type of Security

Bonds amounted to 44.4 percent of the total registered in the 1952 fiscal year for cash sale for account of issuers, preferred stocks 11.3 percent, and all other equity securities 44.3 percent, as shown by the following comparative figures for fiscal years 1952 and 1951:

	1952	*1951*
Bonds [1]	$3, 345, 696, 000	$2, 838, 001, 000
Preferred stock	851, 432, 000	426, 649, 000
All other equity securities	3, 332, 159, 000	1, 904, 441, 000
	7, 529, 287, 000	5, 169, 092, 000

[1] Bonds include face-amount certificates.

Type of Offering

About 58 percent of the securities registered for cash sale for account of issuers in the 1952 fiscal year were to be sold through investment bankers pursuant to agreements to purchase for resale. Over 18 percent were to be sold on a best-efforts basis. The term "best-efforts" as used here means all offerings through investment bankers other than those pursuant to agreements to purchase for resale. The

remaining 23 percent were to be sold direct by issuers to investors. Comparative figures follow:

	1952	1951
Through investment bankers:		
Under agreements to purchase for resale	$4,373,737,000	$2,547,477,000
On "best-efforts" basis	1,390,517,000	[1] 1,744,573,000
By issuers to investors	1,765,034,000	877,041,000
	$7,529,287,000	$5,169,092,000

[1] Includes $500,000,000 State of Israel bonds.

Investment Companies

Data on securities registered for cash sale by investment companies, although included with data on all securities registered for cash sale, are presented here separately. This group of securities amounted to $1.4 billion in the 1952 fiscal year and $1.2 billion in the 1951 fiscal year. The registrants of these securities are divided into three main categories: (1) Open-end companies, (2) closed-end companies, and (3) issuers of unit and face-amount certificates. Comparative data for the two years are shown:

	1952	1951
Management open-end companies:		
Common stocks and certificates of participation:		
Through investment bankers on "best-efforts" basis	$1,047,620,000	$840,960,000
By issuers to investors	31,641,000	16,082,000
Total	1,079,261,000	857,042,000
Management closed-end companies:		
Common stocks and certificates of participation:		
Through investment bankers:		
Under agreements to purchase for resale	10,200,000	----------
On "best-efforts" basis	1,647,000	5,566,000
By issuers to investors	8,712,000	33,000
Total	20,559,000	5,599,000
Units and face-amount certificates:		
Face-amount certificates:		
Through investment bankers on "best-efforts" basis	151,660,000	254,808,000
By issuers to investors	16,706,000	14,288,000
Common stock and certificates of participation:		
Through investment bankers on "best-efforts" basis	106,150,000	59,731,000
Total	274,515,000	328,828,000

Purpose of Issue

Nearly 73 percent of the net proceeds of the securities registered for cash sale for account of issuers in the 1952 fiscal year were for new money purposes including plant, equipment, working capital, etc. About 4 percent were for retirement of debt and preferred stock. About 21 percent were for the purchase of securities, principally by investment companies. The remaining 2 percent were for use of foreign governments. The figures are shown in detail in Appendix table 1, part 3.

Investment Bankers' Compensation

Commissions and discounts to investment bankers, in the case of new issues effectively registered for cash sale through them to the

general public, have amounted to approximately the following percents of gross proceeds in fiscal years 1943 to 1952:

Fiscal year ended June 30	Bonds	Preferred	Common	Fiscal year ended June 30	Bonds	Preferred	Common
1943	1.7	3.6	9.7	1948	0.6	4.5	10.2
1944	1.5	3.1	8.1	1949	.8	3.8	7.1
1945	1.3	3.1	9.3	1950	.6	2.7	6.4
1946	.9	3.1	8.0	1951	.8	3.6	6.1
1947	.1	2.8	9.3	1952	1.0	3.2	5.8

The above showing is exclusive of investment company securities, offerings through rights to existing stockholders, securities sold to special groups such as officers and employees, and securities registered for other than cash sale. The commissions and discounts shown on bonds in the above table are broken down by quality and size of issue in Appendix table 2 of this report and its predecessors.

REGISTRATION STATEMENTS FILED

The amount of new financing proposed to be offered under the Securities Act during the 1952 fiscal year rose to an all-time high of $9,045,035,056 represented by 665 registration statements filed. The previous record was established in the 1946 fiscal year when the aggregate offering was $7,401,260,809 represented by 752 statements. As shown in the following table, the new high exceeds the amount in the 1951 fiscal year by over 40% and that in the 1950 fiscal year by over 70%.

Registration statements filed—1949–52

Fiscal year—	Number	Amount	Fiscal year—	Number	Amount
1949	455	$5,124,439,119	1951	544	$6,371,827,423
1950	496	5,220,654,010	1952	665	9,045,035,056

These expanding figures deal with proposed offerings and not necessarily sales. Nevertheless they reflect informed underwriters' opinion that the public has a growing ability and willingness to invest in additional securities. Especially significant of the increasing work load carried by the reduced staff available for processing these registration statements is the fact that the 665 statements filed during the 1952 fiscal year represent 22% more statements than the number filed in 1951 and 34% more than the number filed in 1950. It is also significant in this connection that new registrants—those without previous experience in filing registration statements—accounted for 119, or 22%, of all statements filed in 1951. The number and proportion of such new registrants rose in the 1952 fiscal year to 165, or 25% of the total filing statements. In all cases the examination process is necessarily exhaustive and time-consuming; in the case of new registrants it undeniably requires the application of additional man-hours.

Particulars regarding the disposition of all registration statements filed are summarized in the following tables:

Number and disposition of registration statements filed

	Prior to July 1, 1951	July 1, 1951 to June 30, 1952	Total as of June 30, 1952
Registration statements:			
Filed	9,083	665	9,748
Effective—net	7,629	[1] 634	[2] 8,259
Under stop or refusal order—net	183	1	184
Withdrawn	1,202	31	1,233
Pending at June 30, 1951	69		
Pending at June 30, 1952			72
Total	9,083		9,748
Aggregate dollar amount:			
As filed	$69,555,152,582	$9,045,035,056	$78,600,187,638
As effective	65,900,108,254	9,499,583,240	75,399,791,494

[1] This figure does not include two registration statements which were withdrawn after becoming effective.
[2] This figure does not include three registration statements which became effective prior to July 1, 1951, and were withdrawn, and one which became effective prior to this period and was placed under stop order, and these are counted in the number withdrawn.

Additional documents filed in the 1952 fiscal year under the Act

Nature of document:	Number
Material amendments to registration statements filed before the effective date of registration	1,055
Formal amendments filed before the effective date of registration for the purpose of delaying the effective date	678
Material amendments filed after the effective date of registration	683
Total amendments to registration statements	2,416
Supplemental prospectus material, not classified as amendments to registration statements	1,208

EXEMPTION FROM REGISTRATION UNDER THE ACT

The Congress, recognizing the need to encourage small business enterprise, authorized the Commission under section 3 (b) of the Act by its rules and regulations to exempt from the registration requirements security offerings up to $100,000, subsequently raised by statutory amendment enacted May 15, 1945, to $300,000. Acting under this authority the Commission has adopted five types of exemptions of small offerings as identified below:

Regulation A. General exemption for small issues up to $300,000 for issuers (limited to $100,000 for controlling stockholders).
Regulation A–R. Special exemption for notes and bonds secured by first liens on family dwellings up to $25,000.
Regulation A–M. Special exemption for assessable shares of stock of mining companies up to $100,000.
Regulation B. Exemption for fractional undivided interests in oil or gas rights up to $100,000.
Regulation B–T. Exemption for interests in oil royalty trusts or similar types of trusts or unincorporated associations up to $100,000.

By far the most frequent of these exemptions are the ones provided by Regulations A and B, which call for the filing, respectively, of a letter of notification and an offering sheet. These documents call for a disclosure in brief summary of pertinent information regarding the security which is far less complete than what is prescribed by the Act for a registered security. After such filing, little time elapses before the offering may be made—five business days under Regulation A, and eight calendar days under Regulation B. Any sales literature to be used must be filed in advance with the Commission.

Exemption from registration afforded by any of the regulations adopted pursuant to section 3 (b) does not carry exemption from the civil liabilities for material untruths or omissions imposed by section 12 or from the criminal liabilities for fraud imposed by section 17.

Exempt Offerings Under Regulation A

During the 1952 fiscal year 1,494 letters of notification were filed to cover proposed offerings of $210,672,956. While the amount of these offerings does not represent an increase comparable to that shown for the year in offerings of registered securities, it reflects a substantial increase over the 1,358 filings in the amount of $174,277,762 under Regulation A in the preceding year. Comparative figures for the past two years for each regional office are shown below.

Regional office	1951 fiscal year		1952 fiscal year		
	Number of letters of notification filed	Aggregate offering price	Number of letters of notification filed	Aggregate offering price	Percent of increase in aggregate offering price
Atlanta	75	$11,526,403	97	$16,874,175	46
Boston	89	10,844,052	89	12,286,417	13
Chicago	132	18,590,277	149	20,578,110	11
Cleveland	89	12,026,985	106	16,015,445	33
Denver	102	12,650,509	132	19,237,418	52
Fort Worth	80	11,751,293	101	15,506,735	32
New York	372	45,669,680	381	50,855,271	11
San Francisco	208	25,846,180	216	29,673,367	15
Seattle	117	15,649,244	123	17,339,020	11
Washington	94	9,723,139	100	12,306,998	27
Total	1,358	174,277,762	1,494	210,672,956	21

Included in the 1952 fiscal year totals are 196 letters of notification covering stock offerings of $25,531,264 with respect to companies engaged in the oil and gas business.

In connection with the total of 1,494 letters of notification there were also received and examined by the staff during the fiscal year 1,417 amendments, so that roughly speaking the average letter of notification required the filing of one amendment in order to meet the limited applicable standards. Likewise received and examined were 1,831 copies of sales literature to be used to promote these offerings.

Information is available as to 1,488 of the small offerings filed in the 1952 fiscal year to show their relative size; whether made by the issuer or stockholders; and the extent to which and by what class of persons underwritten. As to size, 756 covered offerings of $100,000 or less; 276 over $100,000 and not over $200,000; and 456 over $200,000 but less than $300,000. Issuers made 1,209 of these offerings; stockholders 267; and issuers and stockholders jointly 12. Practically half, or 742 of the offerings were underwritten, mostly by commercial underwriters who handled 568, and otherwise by officers and directors or other persons not regularly engaged in the underwriting business who accounted for the remaining 174.

Exempt Offerings Under Regulation A–M

During the year the Commission received a total of five prospectuses under Regulation A–M covering an aggregate offering price of $203,368 of assessable shares of stock of mining companies. All were filed at the Seattle Regional Office.

Exempt Offerings Under Regulation B—Oil and Gas Securities

The Commission maintains in the Division of Corporation Finance an Oil and Gas Unit dealing especially with the technical and complex problems peculiar to offerings of oil and gas securities. As noted above, it was necessary during the year to abolish the Tulsa office previously maintained as an important outpost to handle this specialized work.

During the 1952 fiscal year the staff of the Oil and Gas Unit examined a total of 93 offering sheets filed with the Commission under Regulation B, and 54 amendments to such offering sheets; 196 of the letters of notification filed under Regulation A which covered stock of companies engaged in the oil and gas business; and 114 of the registration statements, and 101 amendments thereto, filed under the Act by oil, natural gas, or refining companies. A by-product of these examinations was the necessary preparation of 135 memoranda dealing with such technical matters as the accuracy or reasonableness of geological reports, estimates of oil reserves, etc., intended to be used by offerors of registered securities as a part of their registration statements. In addition, as an aid to the Commission's enforcement of the provisions of sections 12 and 17, regional offices submitted to this specialized staff for technical analysis and review 315 exhibits of sales literature proposed to be used by offerors of exempt oil and gas securities.

The following formal actions were taken during the year with respect to the filings under Regulation B.

Action taken on filings under Regulation B

Temporary suspension orders—rule 340 (a)	9
Order terminating proceeding after amendment	1
Order consenting to withdrawal of offering sheet and terminating proceeding	1
Orders consenting to withdrawal of offering sheet (no proceeding pending)	4
Orders terminating effectiveness of offering sheet	5
Orders accepting amendment of offering sheet	40
Total number of orders	60

Confidential reports of sales.—The Commission obtains certain confidential reports of actual sales of securities exempt under Regulation B which are also examined by the staff to assist in determining whether violations of the law have occurred in such sales. During the 1952 fiscal year, 1,322 such confidential written reports of sales on Forms 1–G and 2–G, pursuant to rules 320 (e) and 322 (c) and (d), were received and examined. They covered aggregate sales of $1,508,868.

Oil and gas investigations.—The Commission conducts numerous investigations, which arise largely out of complaints received from individual investors, to determine whether there has been any violation of any other provision of law in the sale of oil and gas securities exempted under Regulation B. Litigation resulting from these investigations is discussed later in this report.

FORMAL ACTION UNDER SECTION 8

As previously indicated, the Commission has power to institute formal proceedings under section 8 (b) to determine whether to issue a stop order to prevent a registration statement from becoming effective when it appears to be inaccurate or incomplete in any material respect; under section 8 (d) to determine whether to issue a stop order to suspend the effectiveness of a registration statement so defective; and under section 8 (e) to make an examination to determine whether to issue a stop order under section 8 (d).

Stop-order Proceedings Under Section 8 (d)

Cristina Copper Mines, Inc.—File No. 2-8487.—During the 1952 fiscal year a stop order was issued under section 8 (d) suspending the effectiveness of the registration statement of Cristina Mines, Ltd., a Delaware corporation organized in 1945. This registration statement became effective August 22, 1950, as to 400,000 shares of 50¢ par value common stock to be offered publicly at $1.00 per share. After the sale of 31,610 shares pursuant to the registration statement, Cristina withdrew the unsold 368,390 shares from registration on June 13, 1951. Between May 23 and 29, 1951, an examination was held under section 8 (e), and after the institution of stop-order proceedings on June 29, 1951, the record of that examination was incorporated in these proceedings. The Commission's findings and opinion resulting in the issuance of a stop order suspending the effectiveness of this registration statement on May 1, 1952, is available as Securities Act Release No. 3439. Certain data relating to Cristina's public offering of unregistered shares, the sale of promoters' holdings, the market price of its shares, and the false and misleading character of relevant financial statements which were held to require the stop order are briefly discussed below.

Cristina holds 37 leases of mining properties covering a total area of about ten square miles in Cuba. It acquired these leases in 1945 from its president and principal promoter, H. Cortez Johnson. The only shipment of ore from the property in the nine years the leases had been held by Cristina or Johnson was of approximately 2,200 tons in 1948 from which proceeds of $41,350.87 were received. The registration statement recited that the proceeds of $340,000 expected from the offering were to be expended, after payment of the expenses of the offering, to explore and develop the present mine area and to extend workings into new areas.

The registration statement represented that Cristina had sold 162,000 shares of its stock "privately" by April 1950 to "eighteen private individuals for investment purposes only and not for distribution." However, the record developed in these proceedings shows that these 162,000 shares were in fact sold to approximately seventy persons, and that an additional 28,000 shares, of which no mention was made in the registration statement, were also sold by Cristina in July and August 1950. The Commission, after reviewing the record, found that the statement that 162,000 shares had been privately offered, and the failure to disclose the offering of the 28,000 shares and the existence of a contingent liability under the Act because of Cristina's failure to register any of these 190,000 shares, rendered the registration statement materially false and misleading.

During the period the registration statement was in effect and the registered shares were being offered at $1.00 per share, at least 28,650 shares of Cristina stock owned personally by individuals who were directors or promoters of Cristina or closely associated with the company were offered and sold by them at prices ranging from 40¢ to 75¢ per share. In addition, beginning about January 1951, there was an active over-the-counter market in Cristina stock at prices substantially lower than the $1.00 offering price of the registered shares, and transactions were effected between January 17 and March 5, 1951, in the total amount of 22,900 shares, at prices ranging from 50¢ to 75¢. Although Cristina filed several amendments to the registration statement after these sales had been made by these individuals and the over-the-counter market had been developed, disclosure of those facts was not made therein. The Commission found that such disclosure should have been made in connection with the continued use of the stated offering price of $1.00 per share, since it would have indicated that such price was considerably higher than the current price on the open market.

The registration statement filed by Cristina disclosed no liabilities. The record in these proceedings showed, however, that as of June 30, 1950, Cristina owed approximately $2,000 for expenses incurred in connection with its operations; around $1,000 to its accountant; approximately $6,000 to one promoter for back commissions; $3,000 to another promoter; and was in default on its royalty payments to the extent of over $9,000. In addition, Cristina owed its attorney an amount that was in dispute, and, as suggested above, it was contingently liable for selling unregistered securities in violation of the statute. Besides the materially misleading omission of liabilities, which exceeded the current assets of the company stated at $6,536.11, the financial data included in the registration statement were found by the Commission to be inaccurate and incomplete in certain other respects.

The Commission concluded that, in view of the substantial nature of the various deficiencies found in this registration statement, the issuance of a stop order was required in the public interest.

DISCLOSURES RESULTING FROM EXAMINATION OF REGISTRATION STATEMENTS

The results of the Commission's work in the examination of registration statements are illustrated below.

Summaries of earnings.—In announcing the adoption on November 1, 1951, of the revised Form S–1 for the registration of securities under the Securities Act, which will be discussed more fully later in this report, the Commission called particular attention to a new provision in the form pertaining to the summary of earnings in the prospectus. Under this provision, if the summary of earnings set forth in the prospectus is certified for the required period and contains the same disclosure as would be contained in conventional profit and loss statements, the summary will be accepted as meeting the requirements for profit and loss statements and such statements will not be required to be included elsewhere in the prospectus or in the registration statement. It was anticipated that this provision for the elimination of unnecessary duplication and the consequent reduction in the length of

the prospectus would appeal particularly to registrants in the public utilities field since it had been customary for such registrants to include practically the same detail in the summaries as was prescribed for the profit and loss statements. Not surprisingly, therefore, the first use of this permissive rule, commencing in December, was made by certain utility registrants. Of course the new rule does not apply solely to public utilities, and it has subsequently been used by various manufacturing and industrial registrants with equally beneficial results.

The summary of earnings is generally considered to be one of the most important parts of the prospectus and as such must be prepared with great care to be sure that no misleading inferences may be drawn from it. The following cases illustrate the results achieved by the staff's examination of the summary.

The registration statement, as originally filed by a company deriving its income principally from long-term contracts, included in the summary of earnings and in the financial statements unaudited interim figures for the 12-week period subsequent to the close of its last fiscal year. The summary, in addition to its figures for ten full fiscal years and the 12-week interim period, also included figures for the 16-week period subsequent to the close of the fiscal year. Comparison of the two interim periods disclosed net income in the last 4 weeks of the 16-week period approximately equal to the net income in the first twelve weeks. In view of the possible interpretation that this comparison indicated a substantial improvement in earnings, which was unwarranted because of the nature of the business, it was agreed in a discussion between members of the staff and counsel for the company to delete the 12-week figures from the summary of earnings and to substitute the 16-week for the 12-week figures in the financial statements.

In another case the prospectus submitted as a part of the registration statement, as originally filed, contained a consolidated summary of earnings for five fiscal years and for an interim period of 5 months. It was noted in the process of examination that a company with approximately equal sales and assets was merged into the registrant near the close of the second fiscal year but was not included in the summary until the year after the merger, which was the third year included in the summary. Under the circumstances, it did not appear to the staff that the information furnished for the first 2 years was fairly comparable to that shown for subsequent periods. Consequently, this registrant, at the staff's request, restated the results of operations for the first 2 years on a combined basis to reflect the effect of the merger, and made corresponding changes in the paragraph in the text which discussed the growth of the company. As originally filed, it was asserted that in 5 years sales increased from $29,000,000 to $206,000,000 and total assets from $24,000,000 to $130,000,000. As amended, it was stated that sales on a combined basis increased from $63,000,000 to $206,000,000 and combined assets from $40,000,000 to $130,000,000.

Accounting for a "pooling of interests."—A foreign company filed with its registration statement a prospectus in which it was stated that the registrant was formed for the purpose of amalgamating a number of existing companies engaged in the oil business. The registrant urged before the Commission that the transaction was a purchase of assets (as distinguished from a business combination and

pooling of interests) and that therefore the assets of the amalgamation should be stated on the basis of an amount, agreed upon by the several constituents, representing the value of the registrant's shares issued in the transaction. On this basis, the consolidated balance sheet would have reported total assets of approximately $14,500,000, and capital surplus in excess of $10,000,000.

The Commission, giving consideration to the nature and effect of the transactions resulting in the formation of the registrant and its absorption of the businesses of its predecessor and subsidiary companies, concluded that the transaction in substance involved a business combination and pooling of interests and that accounting procedures applicable to such a transaction should be followed in setting up the balance sheet of the new company. As a result, the consolidated balance sheet of the registrant reported total assets of approximately $8,400,000 and capital surplus of approximately $4,100,000.

In this connection it may be noted that the prospectus stated that the price at which the shares were offered was in excess of the value per share attributable solely to the company's already proven oil and gas reserves and its equity in subsidiary companies less its and their indebtedness, or solely to earnings of the company and its predecessor and subsidiary companies as shown in the financial statements included in the prospectus. Therefore, the prospectus stated, the offering price already anticipated and reflected the possibility that the company and its subsidiary companies might in the future discover and develop oil and gas reserves greatly in excess of those presently owned.

Independence of accountants.—In connection with the processing of registration statements during the past year evidence was developed by the staff in a number of cases indicating that the financial statements included in the registration statements had been certified by accountants who, under the rules of the Commission, could not be considered independent of the registrant. In several of these cases this situation was revealed early in the examination procedure and new accountants were appointed by registrants without delay. One of these registrants was a new investment company, whose accountant selected to certify the financial statements was shown by the original prospectus to be its treasurer, director and stockholder. Any one of these relationships is sufficient to disqualify an accountant under the Commission's definition of an independent accountant. Other cases involved either director or stockholder relationships on the part of the proposed accountants.

Two other cases in which the accountants were deemed not to meet the Commission's standards of independence were similar in many respects, including the fact that the disqualifying relationships were not revealed until shortly before it was desired to have the registration statements become effective. The determination that the accountants were not independent in these cases resulted in delays and increased expenses which could have been avoided by the registrants if they had made full disclosure of the relevant facts prior to filing. In both cases the accountants had served the client for many years, and during the period for which they certified financial statements included in the registration statements they participated in real estate transactions with officers of the registrants under circumstances which led to the conclusion that the accountants could not be considered as independent of the registrants. However, in both cases

new accountants were appointed, and financial statements certified by them were furnished in amendments to the registration statements. In one of these instances the new accountants found it necessary to restate the income for all years included in the prospectus in order to eliminate the effect of arbitrary reserves used by the management, with the approval of the first accountants, in stating the value of inventories—a practice not considered to be in accordance with generally accepted accounting principles.

Effect of insiders' dealings on offering price.—A mining company incorporated in a foreign country where its common stock is listed on a securities exchange filed a registration statement covering an offering of its shares at a price fixed in relation to the market quotation. In the course of the examination of the registration statement, a study was made by the staff of a number of articles appearing in a widely read mining newspaper over a period of months preceding the filing of the registration statement, during which time there was extensive activity with a substantial rise in the quoted price of the stock. The study showed that the newspaper articles contained statements that were inaccurate and in sharp variance with the information given in the registration statement and that there had been extensive trading in the shares by persons active in the affairs or holding large blocks of stock of the company. In view of the possible influence of these circumstances upon the market price, and consequently upon the offering price of the shares, the following disclosure was added to the prospectus:

> The prices * * * at which the securities are being offered are essentially arbitrary and cannot reasonably be related to any development in the Company's affairs to date. The price of the Company's shares on the * * * Stock Exchange has fluctuated widely, ranging during the past year from a low of $0.60 to a high of $1.95 and closing on March 7th, 1952 at $1.07 per share. These prices bear no discernible relationship to the progress of the Company in the exploration of its mining properties and must be viewed in light of market activities which may have been affected by rumors and the appearance from time to time of inaccurate public press reports. Large stockholders and other persons active in the affairs and management of the Company have engaged in extensive trading in the stock of the Company during the past year.

Distortion of per-share earnings figures corrected.—Per-share earnings figures are often used by investors as a preliminary, rule-of-thumb gauge of the appropriateness of the offering price of new common stock issues, and the revised Form S–1 requires that if common stock is being registered, earnings per share applicable to common stock must be shown when appropriate in connection with the earnings summary. This requirement, however, presupposes that such earnings per share will be calculated on a rational basis.

A manufacturing company was managed and wholly owned by two individuals, one of whom desired to sell out his entire one-half interest and retire from the business, and the other was to retain his equity and his control and management of the company. As a preliminary to this transaction, steps were taken to revamp the capital structure of the company to provide for two classes of stock, called respectively "Common Shares" and "Class B Shares." At the effective date of the registration statement which was then filed to cover the public offering of securities by the selling stockholder, the recapitalization

of the company was to have been completed and all of the common shares (100,000 shares) were to be owned by the selling stockholder and all of the class B shares (150,000 shares) were to be owned by the nonselling stockholder. The 150,000 class B shares were to be convertible into 111,000 common shares at the end of 5 years, were to have voting control of the company, but were not to be entitled to receive dividends until $2 per share non-cumulative annual dividends were paid on the common shares. As a preliminary to the offering, the company entered into a 5-year employment contract with the nonselling stockholder. This contract plus the dividend and conversion provisions of the class B shares issued in the recapitalization accomplished, as a practical matter, simply a temporary waiver by the nonselling stockholder of his right to receive dividends on his 50% stock equity in the company for 5 years, compensated for in substantial part by (a) the contract which entitled him to receive $80,000 per year salary (with other benefits in the event of death or incapacity), (b) the holding by him of an absolute majority voting control of the company during the 5-year period, and (c) at the end of such period his entitlement to 111,000 shares of common stock as compared to the 100,000 shares being issued for the selling stockholder's 50% equity.

The prospectus as originally filed in this case included a per-share earnings table which attempted to attribute to the 100,000 common shares issued for the selling stockholder's 50% share in the business, in one column the entire earnings of the company, and in a second column $2 per share plus 50% of the earnings over that amount. The examining staff took the position that neither of these columns gave earnings properly "applicable" to the stock being offered, and, at the request of the staff, there was substituted in the prospectus a table showing per-share earnings on the basis of the 211,000 shares of common stock ultimately to be outstanding, by virtue of the whole equity in the business. The radical nature of this change is shown below:

As originally filed—

Year ended May 31	Net earnings per share on 100,000 common shares	Net earnings per share on 100,000 common shares, after provision for earnings applicable to class B common shares
1947	$1.69	$1.69
1948	3.47	2.73
1949	4.15	3.07
1950	6.26	4.13
1951	9.72	5.86
8 months ended Jan. 31, 1952	2.11	2.05
2 months ended Mar. 31, 1952	1.20	1.20
10 months ended Mar. 31, 1952	3.31	2.65

As revised—

Year ended May 31	Net earnings per share on 211,000 common shares
1947	$0.80
1948	1.64
1949	1.96
1950	2.96
1951	4.60
8 months ended Jan. 31 1952	1.00
2 months ended Mar. 31, 1952	.57
10 months ended Mar. 31, 1952	1.57

Speculative hazards disclosed.—A corporation organized under the laws of Delaware to acquire all of the stock of a foreign corporation, which had been organized to explore for sulphur under a concession from a foreign government, filed a registration statement covering 400,000 shares to be offered the public at $1.00 per share. The staff insisted that full disclosure be made of material facts concerning the participation of inside promoters. As a result, the registrant incorporated in its amended prospectus an "Introductory Paragraph" which described the basis of the insiders' participation in sharp contrast to the basis upon which public investors were to be offered a share in the venture, as indicated in the following quotation therefrom:

[The registrant] has no operating history, and neither owns nor controls any known sulphur deposits. The offering price of $1.00 per share for the 400,000 shares of Common Stock to be sold was determined arbitrarily and such price does not necessarily have any relation to the value of the shares offered. There is presently no established market for the Common Stock.

The purchasers of such 400,000 shares of Common Stock who will provide all of the cash required for the purposes of this financing as described later in this Prospectus, will acquire only 31.25% of the total Common Stock then outstanding.

[The foreign corporation] and its controlling stockholders who are identified later in this Prospectus as promoters acquired a total of 800,000 shares of Common Stock and will receive in addition $100,000 in cash from the proceeds of this financing and a royalty of $1.00 per short ton of sulphur produced for the assignment of certain rights in concessions of unproven value on which the cost in cash to these promoters has been $12,882.84. The holdings of Common Stock of such promoters will therefore constitute 62.5% of the outstanding stock on completion of this financing.

The directors of [the registrant] who are also later identified in this Prospectus as promoters have received 80,000 shares of Common Stock for services rendered and to be rendered, or 6.25% of the outstanding stock on completion of this financing.

Thus a total of 68.75% of the Common Stock will be held by persons designated as promoters.

CHANGES IN RULES, REGULATIONS AND FORMS

Particularly important changes have been made and others have been proposed by the Commission during the period under review in the rules and forms used in administering the Securities Act. Especially notable are the changes in rules and forms adopted or proposed, as described below, which reflect the Commission's continual efforts to improve the effectiveness of the vital prospectus in achieving the standard of disclosure intended by the statute.

Rule 133—Definition, for purposes of Section 5, of "sale," "offer to

sell," and "offer for sale."—During the year the Commission adopted a new rule, designated as rule 133, which in effect excludes from the operation of section 5 of the Act the issuance of securities in connection with certain types of corporate reclassifications, mergers, consolidations and sales of assets.

The new rule codifies the administrative construction, going back at least to 1935, to the effect that, for purposes of registration, no "sale" to the stockholders of a corporation is deemed to be involved where, pursuant to applicable statutory or charter provisions, the vote of a specified majority of stockholders on a proposed reclassification of securities or merger or consolidation, or on a proposed sale of assets in exchange for the stock of another corporation, will bind all stockholders except for the statutory appraisal rights of dissenters.

Substantially this rule was first promulgated by the Commission in September 1935 as a note to Rule 5 of Form E–1.[3] Form E–1 was the registration form for securities sold or modified in the course of a reorganization, as defined in rule 5 of that form. In April 1947 the Commission rescinded Form E–1 as part of its general form simplification program.[4] Since then the Commission has continued to follow the so-called "no sale theory" administratively in applying section 5 of the Act.

The Commission has never felt, however, that the "no sale theory" necessarily applies in other contexts either under the Securities Act or under any of the other Acts administered by the Commission. As the United States Court of Appeals for the Second Circuit has had occasion to emphasize, section 2 of the Securities Act provides that the terms defined therein, which include the term "sale," shall have the prescribed meanings "unless the context otherwise requires."[5] Thus, under the Public Utility Holding Company Act of 1935 the Commission has uniformly treated the issuance and sale of securities in mergers and analogous transactions as involving sales requiring its prior approval.[6]

The new rule is specifically limited by its terms to section 5 of the Securities Act. Consequently, whether or not a sale is involved for any other purpose will depend upon the particular statutory context applicable, and the question should in no sense be influenced by the rule. As a matter of statutory construction the Commission does not deem the "no sale theory," which is described in the rule, to be applicable for purposes of any of the anti-fraud provisions of the Securities Act, the Securities Exchange Act of 1934, or the Trust Indenture Act of 1939.

Rule 154—Definition of "solicitation of such orders" in Section 4 (2)—The Commission also adopted during the year a new rule, designated as rule 154, which defines the term "solicitation" in connection with the exemption for unsolicited brokerage transactions in section 4 (2) of the Act.

Section 4 (2) exempts from the registration and prospectus requirements of the Act:

> Brokers' transactions, executed upon customers' orders on any exchange or in the open or counter market, but not the solicitation of such orders.

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[3] Securities Act Release No. 493 (Class C).
[4] Securities Act Release No. 3211.
[5] *Schillner* v. *H. Vaughan Clarke & Co.*, 134 F. 2d 875 (1943).
[6] *Rochester Gas & Electric Corp.*, Holding Company Act Release No. 6340 (December 27, 1945).

The interpretation of Section 4 (2) has been the subject of considerable doubt. The purpose of the new rule is to settle some interpretative questions relating to the meaning of the word "solicitation" in that section.

Paragraph (a) of the rule provides that the term "solicitation of such orders" shall be deemed to include "the solicitation of an order to buy a security, but shall not be deemed to include the solitication of an order to sell a security." For reasons set forth by the Commission in *Brooklyn Manhattan Transit Corporation,* 1 SEC 147, 171–2 (1935), if the broker solicits an order to buy a security, Section 4 (2) does not provide an exemption either for the solicitation itself or for the resulting transaction. On the other hand, the mere fact that the broker solicits the seller to sell will not destroy any exemption otherwise available to him under Section 4 (2); this construction is based on the fact that the statute is designed primarily for the protection of buyers rather than for the protection of sellers.

While paragraph (a) of the rule makes it clear that there is no exemption for the solicitation of orders to buy, a question remains as to what constitutes "solicitation" where a broker for a seller approaches a dealer who is bidding for the security or soliciting others to sell it to him. Paragraph (b) of the rule provides that, where the dealer's bid or solicitation is in writing, the broker's inquiry about it is not a "solicitation" within the meaning of section 4 (2), so that it does not destroy any exemption otherwise available. Paragraph (b) recognizes also that, in the over-the-counter market, dealers interested in buying a particular security may not publish a quotation or indication of interest in it every day or every week. To some extent such quotations are published in monthly services, and to allow for the delays incident to such publications the rule provides, in effect, that the broker can rely on bids or indications of buying interest originating as much as 60 days previously as indicating that a dealer is soliciting sell orders, so that the broker, in calling the dealer, would not be deemed to be soliciting him.

Rule 154 is a definition for purposes of Section 4 (2) and is not intended to serve, for example, as a definition of the phrase "solicitation of an offer to buy" which appears in Section 2 (3) of the Act. Nor is it intended to affect the Commission's holding in *Ira Haupt & Co.*, Securities Exchange Act release No. 3845 (August 20, 1946), regarding the applicability of Section 4 (2) to transactions by underwriters.

Amendment of various rules governing preparation and filing of registration statements and prospectuses.—The Commission amended during the year certain of its rules under the Act with respect to the preparation and filing of registration statements and prospectuses. The changes made in the text of these rules are set forth in Securities Act release No. 3424. As explained therein, the Commission had found it necessary, because of budgetary limitations, to provide that in the future all registration statements shall be filed and processed at its headquarters office in Washington. Previously, where issuers or their underwriters had been situated in the Pacific Coast area or in Hawaii, they had been permitted to file registration statements in the Commission's San Francisco Regional Office. As previously noted the registration unit in that office has been abolished.

Some of the other amendments relate to the formal requirements with respect to the preparation and filing of registration statements. For example, rule 402 was amended to provide that where the registration statement is typewritten, one of the copies filed with the Commission shall be the original "ribbon" copy and that such copy shall be signed.

Rule 403 was amended to permit registration statements to be printed, lithographed, mimeographed, typewritten or prepared by any other process which, in the opinion of the Commission, produces copies of the requisite clarity and permanence. Previously, the only processes permitted were printing, mimeographing or typing. The rules relating to legibility of the prospectus were also amended to make it clear that ten-point type is the minimum size of type which may be used in the body of prospectuses and that such type must be at least two points leaded. However, in the case of financial statements and other statistical or tabular data, the use of eight-point type is permitted.

Rule 426 was amended to require a statement in the prospectus not only with respect to proposed stabilization but also with respect to proposed over-allotments. The prospectus is also required thereby to include information with respect to the volume of transactions where stabilization is begun prior to the effective date of the registration statement.

New Rule 494 governing newspaper prospectuses for foreign governments.—On August 2, 1951, the Commission published notice that it had under consideration a proposal for the adoption of a rule under the Act with respect to newspaper prospectuses relating to securities issued by foreign governments. The Commission considered all comments and suggestions received in connection with the proposed rule and adopted the rule in the form set forth in Securities Act release No. 3425 (August 27, 1951).

Revised Form S–1 adopted and subsequently amended.—The Commission adopted on November 1, 1951, a revision of Form S–1, one of the forms for registration of securities under the Act. As announced in the Seventeenth Annual Report at page 22, when this revision was under consideration, the purpose of the revision was mainly to shorten and improve the prospectus (without sacrificing material information) and thereby facilitate its distribution and make it more useful to investors generally.

The revised form permits the omission from the prospectus of certain information which had theretofore been required to be set forth therein but requires such information to be furnished elsewhere in the registration statement so as to be available to investors and others who desire to make a more detailed study of the registrant or its securities. Thus, it is no longer necessary to include in the prospectus a detailed description of the underwriting arrangements. All that is required in the prospectus in this respect are the names of the managing underwriters and a statement as to whether such arrangements constitute what is commonly referred to as a "firm commitment" or whether they are in the nature of an agency or "best efforts" arrangement. Further details with respect to the underwriting and marketing arrangements are required to be otherwise furnished in the registration statement. In other cases, information theretofore required in the prospectus is permitted to be entirely omitted therefrom and set forth elsewhere in the registration state-

ment. This treatment, for example, is accorded information with respect to franchises and concessions and indemnification of directors and officers.

A study was made of a number of prospectuses filed with the Commission, and the items of the new form rearranged in conformity with the more carefully prepared prospectuses reviewed. Wherever possible, the items and instructions were streamlined for the purpose of producing more concise statements in the prospectus without sacrificing essential information. In addition, the instructions as to financial statements were revised for the purpose of reducing the number of statements required, particularly in cases involving reorganizations, successions, and other acquisitions of business. In the draft of the proposed revision of Form S–1 which had previously been circulated for public comment, it was proposed that the summary of earnings would be accepted in lieu of conventional profit and loss statements and that statements of financial position might be furnished in lieu of conventional balance sheets. While the comments received were generally favorable to this proposal, it was the carefully considered opinion of many persons and firms that, in the interest of investors, the disclosure required should be not less than that which would be furnished by conventional financial statements certified by independent accountants.

Accordingly, the revised form as adopted by the Commission provides that if the summary of earnings set forth in the prospectus is certified for the required period and contains, as is now frequently the case, the same disclosure as would be contained in conventional profit and loss statements, the summary of earnings will be accepted as meeting the requirements for conventional profit and loss statements and such statements need not otherwise be included in the prospectus or elsewhere in the registration statement. The revised form makes no reference to statements of financial position, but it should be noted that the Commission's rules and regulations now permit the use of such statements, in appropriate cases, in lieu of conventional balance sheets. Such statements, however, must measure up to the same standards of disclosure as those required for conventional balance sheets. The revised form provides that the financial statements included in the prospectus must be certified to the same extent as previously required by Form S–1.

The Commission believes that the use of the revised form should result in a more concise selling prospectus which can be widely distributed and more easily understood by the average investor. The extent to which this goal is achieved will, however, depend in large measure upon the cooperation of the industry. It will be necessary for the issuer, the underwriters and their lawyers and accountants in the preparation of the prospectus to eliminate duplication, unimportant or mechanical details, and statistical or other information not called for by the form and not material from the standpoint of investors. If the prospectus is to serve its purpose it must not be prepared with a view to making it a detailed book of reference with respect to the issuer and its securities. The Commission and its staff will upon request assist to the fullest extent in pointing out in particular cases the extent to which it is deemed possible to accomplish the desired result and thereby make the prospectus more useful to investors. On January 31, 1952, the Commission amended the revised

Form S–1 in minor respects designed to remove certain ambiguities found in the language of the form.

Proposed revision of Form S–5.—Late in the 1952 fiscal year the Commission announced a proposed revision of Form S–5, and invited comments thereon from all interested persons. This form is used for the registration of securities under the Securities Act by open-end management investment companies which are registered under the Investment Company Act of 1940 on Form N–8B–1.

A registration statement on Form S–5 consists largely of certain of the information and documents which would be required by Form N–8B–1, if a registration statement under the 1940 Act were currently being filed on that form. Registrants using this form are thus permitted to base their registration statements under the 1933 Act upon the information and dockets filed with the Commission in the original registration statement and in subsequent reports under the 1940 Act.

The revision of Form S–5 under the Securities Act was proposed for the purpose of bringing it into line with a currently proposed revision of Form N–8B–1 under the Investment Company Act. It is contemplated that the revision of these forms will simplify registration under both Acts and will result in shorter and simpler prospectuses for open-end management investment companies.

Study of regulations governing prospectuses.—Proposal to adopt Rule 132 and amend Rule 431.—For some years the Commission has been exploring the advisability of recommending appropriate amendment of the Securities Act in order better to achieve its basic purpose of affording investors a maximum of timely disclosure in an understandable form. It seems clear that the two basic problems are (1) devising some means, consistent with the statutory prohibition of selling efforts before the effective date of the registration statement, for achieving more widespread dissemination of information during the waiting period, and (2) obtaining a statutory prospectus which is reasonably concise and readable.

The Commission has tentatively concluded that it would not be justified in recommending new legislation to the Congress until it has done everything possible to achieve these two results under its existing powers. This approach also has the advantage of permitting a degree of flexibility and experimentation. If the suggestions, which the Commission offered for public comment immediately after the close of the year,[7] are adopted, actual experience may indicate modifications from time to time. Moreover, the proposals offered are not necessarily a substitute for new legislation. In the event legislative action seems desirable, all parties concerned should be in a better position to consider statutory amendment in the light of the experience with the administrative changes thus proposed.

These proposals consist partly of new rules and partly of a new statement of policy with reference to acceleration of the registration statement.

In 1950 the Commission announced that it was considering a proposal to amend its rules under the Securities Act to do two things: (a) Permit the circulation to investors of "identifying statements" containing certain limited information taken from registration statements and prospectuses, and (b) facilitate and encourage advance distribution of proposed prospectuses (so-called "red herring pro-

[7] Securities Act release No. 3447 (July 10, 1952).

spectuses").[8] The Commission received comments on the proposal but no amendment was adopted at that time. The latest proposals contain certain modifications. These proposals and the factors prompting their consideration are described in full below making reference to the earlier release unnecessary.

In the absence of an exemption, the Securities Act prohibits the use of the mails or interstate facilities to make any sale or attempt to dispose of a security prior to the effective date of a registration statement, and requires the inclusion of material information in prospectuses used after that date. However, it does not prohibit the dissemination of information as such. Indeed, the concept of the waiting period is based on the premise that information will in fact be disseminated.

The report of the Committee on Interstate and Foreign Commerce on the bill that became the Securities Act (H. Rept. No. 85, 73d Cong., 1st Sess., pp. 12–13) stated that underwriters who wished to inform dealers of the nature of a security to be offered for sale after the effective date of the registration statement would be free to circulate the offering circular (prospectus) itself, if clearly marked in such a manner as to indicate that no offers to buy should be sent or would be accepted until the effective date of the registration statement. This practice is expressly permitted by rule 131 under the Securities Act, relating to the circulation of the so-called "red herring prospectus" before the effective date, and it is not proposed to change this rule.

In releases 464 and 802 under the Securities Act the Commission's General Counsel early expressed the opinion that the definitions of the terms "sale" and "sell" in section 2 (3), and hence the prohibitions of section 5, did not extend to certain summaries of salient information contained in registration statements—provided, among other conditions, that the material did not attempt to dispose of the security in process of registration and was not used after the effective date unless accompanied or preceded by a copy of the statutory prospectus. The proposed action would not affect the status of such summaries.

The proposed rule 132 is designed to permit, under certain conditions, the use of a brief "identifying statement" which would set forth generally the nature of the security to be offered. Certain categories of information would be required and certain additional categories would be permitted. Among other things, the identifying statement would set forth "the general type of business of the issuer," and it is contemplated that this statement regarding the nature of the business would not exceed a line or two. The identifying statement would be intended for use as a screening device to locate persons who might be interested in receiving a "red-herring prospectus" or final prospectus and not to facilitate solicitations in advance of the effective date. The proposed rule would be in the form of a definition of the terms "sale" and "offer" for purposes of section 5. The anti-fraud provisions would not be affected.

The rule would require that the identifying statement include a form for requesting copies of the prospectus. Persons requesting prospectuses before the effective date of the registration statement could be given the "red-herring prospectus" provided for in the present rule 131.

Rule 132 would condition use of the identifying statement upon the filing of a form of such statement as a part of the registration

[8] See Securities Act release No. 3396 (November 14, 1950).

statement ten days in advance of such use, unless the Commission accelerated the period. The identifying statement could be circulated or published by the issuer or by underwriters and dealers either before or after the effective date of the registration statement. Any person using the identifying statement would add to this form his name and (after the effective date) the price of the security. In order to make certain that a form of identifying statement would always be available for use by dealers, the Commission would amend its various registration forms to require that each registration statement be accompanied by a form of identifying statement.

In Securities Act release No. 3177, issued on December 5, 1946, at the time of the adoption of rule 131 on "red herring prospectuses," the Commission referred to its power under section 8 (a) to accelerate the effectiveness of a registration statement where adequate information respecting the issuer has been available to the public. That release states:

> The Commission, in considering requests for acceleration of the effective date of registration statements, will consider whether adequate dissemination has been made of copies of the proposed form of prospectus, as permitted by the Rule. The determination of what constitutes adequate dissemination must, of course, remain a question of fact in each case after consideration of all pertinent factors. It would, however, involve as a minimum the distribution, a reasonable time in advance of the anticipated effective date, of copies of such proposed form of prospectus to all underwriters and dealers who may be invited to participate in the distribution of the security.

In connection with the present proposals, the Commission, in determining whether to grant acceleration, would consider also (1) whether the identifying statement had been made available to all underwriters and dealers who might be invited to participate in the distribution and (2) whether copies of the "red herring prospectus" had been made available in reasonable quantity to such underwriters and dealers, taking into consideration the number of requests that they might expect to receive from customers and the amount of securities that might be available to them for distribution.

In order to facilitate the use of proposed prospectuses in the pre-effective period and to avoid the necessity of duplicating the information contained in them at a later date, it is proposed to amend rule 431 to provide generally that a final prospectus meeting the requirements of the Act may consist of the latest proposed prospectus under rule 131 plus a document containing such additional information that both together contain all the information required by the Act. The amendment would remove a provision which now limits the rule to offerings by an issuer to its existing stockholders.

The proposals outlined above are designed to assist distributors in locating persons interested in receiving the prospectus and to make prospectuses more readily available to prospective investors. A related problem is that a prospectus may not be useful to an investor if it is unduly long and complex. As a part of the present proposal, the Commission is therefore considering the adoption of a policy of refusing acceleration where it is satisfied that there has been no *bona fide* effort to make the prospectus reasonably concise and readable.

The text of the proposed rule and amendment is set forth in Securities Act release No. 3447 (July 10, 1952) which gave public notice of these suggestions.

LITIGATION UNDER THE SECURITIES ACT

Injunctive actions

It is sometimes necessary to resort to the courts to obtain compliance with the Securities Act. Such action is generally taken when it appears that continued violations and resultant damage to the public is threatened. The necessity for injunction has arisen most frequently in connection with violations of the registration and antifraud provisions of the Act.

A substantial number of cases requiring injunctive action are those relating to oil and mining promotions. The "gold brick" aspect of many of these promotions has by now become quite stereotyped. However, some cases vary from the norm sufficiently to be worthy of mention. For instance, injunctions were obtained in the cases of *SEC* v. *Jack Kelly, Inc. and Leo Jack Kelly*,[9] and *SEC* v. *Oil Prospectors, Inc. and Ralph Malone*,[10] where selling pressure was based largely on the stated integrity of Kelly and Malone, the promotors of the ventures. While the usual claims were made concerning the profit possibilities of the investment, the investor was assured that his investment was a sure and safe one because the promotors were men of honor. The Commission's complaints for injunction pointed out that the sellers were omitting to disclose that these individuals had criminal records.

The almost perennial "doodlebug" again made its appearance during the year in the case of *SEC* v. *Ben H. Frank, et al.*[11] Defendants used in their operations a device called a "Magnetic Logger" and the claims made for its efficacy in discovering oil were the usual ones and were false. The claimed existence of oil reserves in the company's acreage was also without basis. There is reason to believe that the injunction obtained by the Commission saved the investing public a substantial sum.

In *SEC* v. *Keystone Petroleum, Inc. and Clyde G. Kissinger*,[12] another oil promotion, the usual misrepresentations concerning fabulous wealth to be obtained from a small investment were being made, as well as that the properties owned by the company were surrounded by commercially producing oil wells. Actually, the nearest commercial producer, a poor one, was located miles away from the Keystone properties. An injunction was granted.

Injunctions involving oil promotions were also obtained by the Commission in *SEC* v. *C. E. Simmons*,[13] *SEC* v. *Sierra Nevada Oil Company* and *Louis A. Sears*,[14] *SEC* v. *E. M. Thomasson*,[15] and *SEC* v. *John G. Perry & Co.*[16] A preliminary injunction was obtained in *SEC* v. *Valentine Company, Inc.* and *Chancey M. Valentine*, which is pending.[17]

In the field of mining promotions the case of *SEC* v. *Frank Lilly, et al.*,[18] presented a somewhat novel approach. There the promotors had acquired a majority of the stock of Gold Valley Mining Com-

[9] Civil Action No. 2299, N. D. Tex.
[10] Civil Action No. 2182, N. D. Tex.
[11] Civil Action No. 5427, W. D. Okla.
[12] Civil Action No. W-417, D. Kans.
[13] Civil Action No. 3476, W. D. La.
[14] Civil Action No. 13056-C, S. D. Calif.
[15] Civil Action No. 3673, D. Colo.
[16] Civil Action No. 3463, D. Colo.
[17] Civil Action No. 142, D. Nebr.
[18] Civil Action No. 993, E. D. Wash.

pany, a corporation which had been dormant for over twenty years. This company was, of course, entirely without assets. The promoters then proceeded to levy an "assessment" on the remaining outstanding shares, notwithstanding that the stock was, by its terms, nonassessable. Upon the failure of other stockholders to pay this assessment, the defendants acquired practically all of the remaining outstanding stock through delinquent assessment sales for virtually little or nothing. The defendants then, without amending the charter, changed the name of the company to Gold Gulch Mining Company, doubled its capitalization and proceeded to sell its shares. They also created an artificial market by extensive over-the-counter trading and by "wash sales" and "matched orders." The Commission obtained an injunction before the distribution had proceeded to any great extent.

The name *U. S. Oil and Development Corp.*,[19] was selected by *Walter A. Falk* and *Carl H. Peterson* for a corporation formed by them, which they falsely represented as being financed by loans from the Federal Government and which, despite its title, purported to be in search of ore rather than oil. An injunction was obtained by the Commission against the promoters.

The Commission also obtained injunctions against *Glacier Mining Company*,[20] together with a number of individual defendants, from further violations of the anti-fraud provisions of the Act and against *Searchlight Consolidated Mining and Milling Company and Homer C. Mills*,[21] from selling securities without registration, but these cases are not sufficiently novel to warrant further comment.

Of course, the Commission's injunctive litigation is not entirely in the oil and mineral promotion field. Frequently it arises in connection with companies engaged in the production of commodities or other types of business. In the case of *SEC* v. *The Fanner Manufacturing Company et al.*,[22] the corporate defendant, a foundry, attempted to acquire Grand Industries, Inc., a stove manufacturer, by offering the shareholders of Grand Industries one share of Fanner for each share of Grand Industries which they held. Representatives of Fanner inquired at the Cleveland Regional Office of the Commission regarding the propriety of such an exchange without registration and were told that it could be accomplished only if the exchange offer was limited to residents of the State of Ohio wherein the Fanner Company was incorporated. The Fanner management determined not to register and employed the assistance of three Cleveland investment houses who began a solicitation ostensibly limited to Ohio residents. When it appeared, however, that solicitations were being made to non-residents, and devious methods and subterfuges were being used to conceal the true situation, a complaint for injunction was filed. Fanner then agreed that it would immediately discontinue its exchange plan, would return all securities submitted for exchange subsequent to the date of the filing of the complaint, and would repurchase from the underwriters the securities which they had "on the shelf." Upon the entry of such a stipulation the Commission agreed to withdraw its complaint.

[19] Civil Action No. 3894, D. Colo.
[20] Civil Action No. 2981, W. D. Wash.
[21] Civil Action No. 1000, D. Nev.
[22] Civil Action No. 29,110, N. D. Ohio.

The Commission obtained an injunction in *SEC* v. *United Insurers Service Company, et al.*,[23] a case interesting because of the novel character of the misrepresentations made in connection with the offering of the stock for sale. The false representations were to the effect that the company was a life insurance company; that investments in its stock were insured up to $5,000 by the United States Government; and that dividends to be paid on the stock would be exempted from Federal income tax.

In February 1952 the Commission filed a complaint against *Chinchilla, Inc.*[24] alleging violations of the registration and anti-fraud provisions of the Securities Act of 1933. The complaint alleged that the defendants had been selling investment contracts relating to the purchase of mated pairs of chinchillas and were misrepresenting the profits to be realized, the mortality rate of chinchillas and their susceptibility to disease, the market for the offspring, and similar matters. The case was pending at the close of the fiscal year.

An injunction was obtained against *Tom G. Taylor & Co.*[25] for misrepresentations concerning the value, holdings and stability of that company; and *Virgil S. Berry and J. Bridges Lenoir*[26] were enjoined because of misrepresentations concerning the stock of Research Manufacturing Corporation, Inc. In the latter case, Berry not only falsely represented that the company had received large orders from the Government, but did not disclose that it was his personally held stock that was being sold and that the proceeds were going into his own pocket instead of the company's treasury.

In *SEC* v. *Homer J. Cox and U. S. Frigidice, Inc.*,[27] Cox obtained a lease to certain property in New Mexico for the purported purpose of drilling a well for the production of carbon dioxide gas. As part of the promotion it was represented to potential investors that Cox would cause a railroad siding to be built to the site and that a dry ice plant, the cost of which would be in excess of $1,000,000, would also be constructed on the tract. Cox failed to tell investors that the securities being sold were not the securities of the corporation but were his own, that for the most part he was using the proceeds obtained from the sale of the securities for his personal purposes and that neither Cox nor the company had in their possession anywhere near the amount of funds necessary to build the proposed dry ice plant. Accordingly, the Commission obtained a final injunction prohibiting the sale of these securities. It might be mentioned that in the course of the investigation it became necessary to obtain a court order to enable the Commission to examine the books and records of the defendants [28] and the Commission even found it necessary to secure a citation against Cox for contempt of that order.

The Commission also had to apply to a court for an order requiring the production of books and records of *Mines and Metals Corporation*[29] and the order was issued in March 1952. An appeal to the Court of Appeals for the Ninth Circuit is pending.[30]

[23] Civil Action No. 7219, W. D. Mo.
[24] Civil Action No. 52C387, N. D. Ill.
[25] Civil Action No. 1339, D. Mont.
[26] Civil Action No. 1016, S. D. Ala.
[27] Civil Action No. 1983, D. N. Mex.
[28] Civil Action No. 1904, D. N. Mex.
[29] Civil Action No. 13891-WB, S. D. Calif.
[30] The order was affirmed on November 20, 1952.

In *SEC* v. *Ralston Purina Company*, the Commission sought an injunction based on alleged violations of the registration provisions of the Securities Act. The company had been selling its stock to more than 500 of its employees, including many in minor positions, and contended that these transactions were exempt from registration under the non-public offering exemption contained in Section 4 (1) of the Act. The district court agreed with this contention and refused to grant a permanent injunction.[30a] On appeal to the Court of Appeals for the Eighth Circuit, this decision was sustained on November 21, 1952.[30b] The Commission has filed a petition for a writ of certiorari in the Supreme Court which is pending.

Participation as Amicus Curiae

Court rulings involving significant interpretations of the Securities Act were handed down during the fiscal year in two cases in which the Commission participated as *amicus curiae*. In *Blackwell* v. *Bentsen*[31] the federal district court for the Southern District of Texas dismissed a complaint seeking relief under sections 12 (a) and 17 (a) of the Act for allegedly fraudulent sales of securities. The court decided that the complaint did not allege facts showing that a "security" had been sold. According to the complaint, defendants sold plaintiffs 20-acre tracts of purported citrus land in an 800-acre development in the Rio Grande Valley of Texas, along with management contracts pursuant to which defendants undertook to cultivate and develop the acreage, and harvest and market the crop. It was alleged that defendants represented that plaintiffs would be getting into an 800-acre unit which would be developed uniformly by defendants' citrus experts for the joint benefit of all investors, that defendants would take care of everything, and that plaintiffs would "only have to sit back and reap the dividends." The court rejected the contention that "investment contracts" had been sold because, it concluded, no "common enterprise" was involved. The following circumstances in this case, the court stated, distinguished it from *SEC* v. *W. J. Howey Company*, 328 U. S. 293 (1946), where the Supreme Court found an "investment contract" in the sale of citrus acreage coupled with a service contract: (1) The failure of the instant promoters to retain any acreage in the development for their own usage, (2) the larger size of the average parcel sold to investors, (3) the cancelability of the management contract, (4) the absence of any provision for pooling the crop of various investors for purposes of marketing, and (5) the absence in the management contract of provisions for joint development comparable to the oral representations made to investors. In its *amicus curiae* brief the Commission had taken the position that these differences did not affect the substance of the transactions as involving "investment contracts." The court ruled also that jurisdiction was lacking under section 12 (2) for the additional reason that, even had a "security" been involved, the misrepresentations complained of had not been transmitted by means of the mails or instruments of interstate commerce as, it concluded, the section required. The Commission had urged in its brief that any use of the mails or interstate facilities in the sale of the security would be sufficient, and that it was not necessary that these instrumentalities be employed to convey the misrepresentations. The Commission took the position

[30a] 102 F. Supp. 964 (E. D. Mo., 1952).
[30b] CCH Fed. Sec. L. Serv., par. 90,603.
[31] CCH Fed. Sec. L. Rep. ¶90,529 (1952).

that the use of the mails to deliver the securities and to collect payments thereon, as alleged in the complaint, was sufficient. A number of other interpretative questions were argued but not decided. An appeal to the Court of Appeals for the Fifth Circuit was pending at the close of the fiscal year.[32]

Wilko v. *Swan*,[33] in which the Commission also participated as *amicus curiae*, likewise involved an action under section 12 (2) of the Act for alleged misrepresentation in the sale of securities. One of the defendants, a New York brokerage house, moved to stay the action under the Federal Arbitration Act in order that the controversy could be determined by arbitration pursuant to a form agreement which the plaintiff customer signed before or contemporaneously with the sale. The United States District Court for the Southern District of New York denied the stay, ruling, in accord with the view of the Commission, that the controversy was not "referable to arbitration" under the Federal Arbitration Act. The purpose of Congress to provide a defrauded purchaser of securities certain litigation advantages under section 12 (2) which may not be afforded or safeguarded in an arbitration proceeding, and the anti-waiver provisions of section 14 of the Act, the court held, precluded giving effect to such an agreement for arbitration. An appeal was pending at the close of the fiscal year.

[32] No. 14127.
[33] 107 F. Supp. 75 (1952).

PART II

ADMINISTRATION OF THE SECURITIES EXCHANGE ACT OF 1934

The Securities Exchange Act of 1934 is designed to insure the maintenance of fair and honest markets in securities transactions both on the organized exchanges and in the over-the-counter markets, which together constitute the Nation's facilities for trading in securities. Accordingly the Act provides in general for the regulation and control of such transactions and of practices and matters related thereto, including solicitations of proxies of stockholders and transactions by officers, directors, and principal stockholders. It requires specifically that information as to the condition of corporations whose securities are listed on any national securities exchange shall be made available to the public; and provides for the registration of such securities, such exchanges, brokers and dealers in securities, and associations of brokers and dealers. It also regulates the use of the Nation's credit in securities trading. While the authority to issue rules on such credit is lodged in the Board of Governors of the Federal Reserve System, the administration of these rules and of the other provisions of the Act is vested in the Commission.

REGULATION OF EXCHANGES AND EXCHANGE TRADING

Registration and Exemption of Exchanges

Section 5 of the Act requires each securities exchange within the United States or subject to its jurisdiction to register with the Commission as a national securities exchange or to apply for exemption from such registration. Exemption from registration may be granted to an exchange which has such a limited volume of transactions effected thereon that, in the opinion of the Commission, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require its registration. During the fiscal year no change occurred in the number of exchanges registered as national securities exchanges or in the number granted exemption from such registration.

At the close of the 1952 fiscal year the following 16 exchanges were registered as national securities exchanges:

Boston Stock Exchange
Chicago Board of Trade
Cincinnati Stock Exchange
Detroit Stock Exchange
Los Angeles Stock Exchange
Midwest Stock Exchange
New Orleans Stock Exchange
New York Curb Exchange
New York Stock Exchange
Philadelphia-Baltimore Stock Exchange
Pittsburgh Stock Exchange
Salt Lake Stock Exchange
San Francisco Mining Exchange
San Francisco Stock Exchange
Spokane Stock Exchange
Washington Stock Exchange

Four exchanges were exempted from registration at the close of the 1952 fiscal year:

Colorado Springs Stock Exchange
Honolulu Stock Exchange
Richmond Stock Exchange
Wheeling Stock Exchange

Information pertinent to the organization, rules of procedure, trading practices, membership requirements and related matters of each exchange is contained in its registration or exemption statement, and any changes which are effected in such information are required to be reported promptly by the exchanges.

During the year the most significant change reported by the exchanges in their rules and trading practices was the extension of their trading session by one half-hour daily. This innovation was initiated by the New York Curb Exchange whose Board of Governors approved a plan which provided for the Curb's session to close at 3:30 P. M. instead of at 3:00 P.M., effective June 2, 1952. The change in hours, which was adopted on an experimental basis, was the first which had been effected in New York in approximately eighty years, and was almost simultaneously adopted by a number of the principal regional exchanges. The New York Stock Exchange subsequently determined to effect a similar change in its trading session commencing on September 29, 1952. These exchanges also adopted a 5-day week and will remain closed on Saturdays throughout the year, extending the practice which has been followed by all exchanges during the summer months in recent years.

Disciplinary Actions by Exchanges Against Members

Each national securities exchange, pursuant to a request of the Commission, reports to the Commission any action of a disciplinary nature taken by it against any of its members, or against any partner or employee of a member, for violation of the Securities Exchange Act or any rule or regulation thereunder, or of any exchange rule. During the year three exchanges reported taking disciplinary action against 26 members, member firms, and partners and employees of member firms.

The nature of the actions reported included fines ranging from $1 to $5,000 in 17 cases with total fines aggregating $16,167; suspension and subsequent expulsion of an individual from exchange membership; cancellation of the registration of three members as specialists; withdrawal of the approval of employment of a registered representative; censure of individuals or firms for infractions of the rules; and warnings against further violations. The disciplinary actions resulted from violations of exchange rules, principally those pertaining to handling of customers' accounts, capital requirements, floor trading, and specialists.

REGISTRATION OF SECURITIES ON EXCHANGES

Disclosure Accomplished by Registration Process

In order to make available currently to investors reliable and comprehensive information regarding the affairs of the issuers of securities listed and registered on a national securities exchange, sections 12 and 13 of the Securities Exchange Act provide for the filing with the Commission and the exchange of an application for registration, and annual, quarterly, and other periodic reports, containing certain specified information. Such applications and reports must be filed on the forms prescribed by the Commission as appropriate to the particular type of issuer or security involved, which forms are designed to disclose pertinent information concerning the issuer, its capital structure and that of its affiliates, the full terms of its securities, war-

rants, rights, and options, the control and management of its affairs, the remuneration of its officers and directors, and financial data, including schedules breaking down the more significant accounts reflected therein.

In general, the Act provides that an application for registration shall become effective 30 days after the receipt by the Commission of the exchange's certification of approval thereof, except where the Commission determines it may become effective within a shorter period of time. It is unlawful under the statute for any member, broker, or dealer to effect any transaction in any security on any national securities exchange unless it is so registered (except where it has been admitted to unlisted trading privileges, or is exempt).

Examination of Applications and Reports

All applications and reports filed under sections 12 and 13 of the Securities Exchange Act are processed in much the same manner by the staff of lawyers, accountants and financial analysts maintained in the Division of Corporation Finance, as documents filed pursuant to the Securities Act and certain other statutes administered by the Commission. This integration of examination functions arising under various acts is designed to achieve the maximum possible degree of uniformity, simplicity and effectiveness in the administration of these inter-related controls.

Thus these documents are processed to determine whether full and adequate disclosure has been made of the specific types of information required by the Securities Exchange Act and the Commission's rules and regulations thereunder. Where examination shows a need for correcting amendments, these are obtained and examined in the same manner as the original documents.

The Act does not provide with respect to annual or other periodic reports a 30-day period after filing before becoming effective, as it does in the case of applications, and the practical necessities imposed upon the Commission's curtailed staff have caused a delay in the examination of these reports.

The results achieved by the Commission's examination of these applications and reports may be illustrated by reference to a few actual cases processed during the 1952 fiscal year.

Property acquired in exchange for stock.—In an application for listing the shares of a foreign oil company on an exchange, it was indicated that certain no par value shares of the registrant had been issued for property, which property was reflected in the financial statements on the basis of an arbitrary value of 50 cents for each of the shares issued. Concurrently, shares of the same issue were sold to yield the registrant 10 and 15 cents per share. Subsequently, the shares were converted into one quarter of their number with a par value of ten cents per share. In order to eliminate the overstatement arising from the use of the arbitrary value, the capital surplus applicable to the shares issued for property, which resulted from the conversion, was required to be applied in part to reduce the property accounts to values comparable to the consideration received for shares sold for cash. This resulted in reducing the original arbitrary value assigned to properties in the amount of $792,500 to a value of $190,677.42.

Effect of events subsequent to balance sheet date.—A registrant engaged in the liquor business included in its annual report to this Commission,

as a note to the financial statements, a disclosure that, within the month subsequent to the balance sheet date, settlement in a substantial amount had been made in respect of claims against it relating to its sale several years ago of investments in certain companies. The accountants' opinion covering the financial statements was signed approximately seven weeks after the settlement date.

On the basis that the accountants had knowledge of the final status of the claims prior to the signing of their opinion, the Division of Corporation Finance requested and obtained the filing of revised financial statements reflecting the settlement.

Provision for employee pension plans.—Regulation S–X, which governs the form and content of financial statements required to be filed as part of registration statements and periodic or annual reports under various Acts administered by this Commission, requires in rule 3–19 (e), as revised, a disclosure of certain information as to pension and retirement plans in the general notes to the balance sheet. A registrant manufacturing certain electrical equipment, with total consolidated assets of $62,000,000 and equity capital of $48,000,000, filed its annual report for the year ended December 31, 1950, with an indication that the information called for by this rule could not be furnished because studies were in progress to obtain such information and that an amendment would be filed when the studies were completed. About eleven months later the annual report for the year ended December 31, 1950, was accordingly amended to set forth in a footnote to the financial statements a brief description of the essential provisions of the plans; a statement that the annual contributions to the trust funds for the benefit of the persons who had retired and for those eligible for pensions would require amounts ranging from approximately $1,000,000 to $1,650,000 during the years 1951 to 1959, inclusive; and that statistical studies made by actuaries to estimate the amounts required to fund potential pensions for those employees not eligible for pensions at December 31, 1950, would approximate $19,100,000 to cover the cost for services rendered prior to December 31, 1950, while the current service cost for 1951 and subsequent years would approximate $1,100,000 annually. It is largely due to the revision of Form S–X that the staff is able to obtain disclosure of such significant information in annual reports filed pursuant to section 13.

Statistics of Securities Registered on Exchanges

At the close of the 1952 fiscal year, 2,192 issuers had 3,588 security issues listed and registered on national securities exchanges. These securities comprised 2,624 stock issues totaling 3,670,855,266 shares, and 964 bond issues totaling $21,410,100,351 in principal amount. These figures reflect net increases for the year of 43 stock issues, 193,290,621 shares, 22 bond issues, and $513,775,782 in principal amount of bonds over the amounts at the close of the 1951 fiscal year.

During the fiscal year 51 new issuers registered securities under section 12 of the Act, while such registration of all securities of 47 issuers was terminated.

The following table shows for the fiscal year the number of applications filed under section 12 and of reports filed under section 13 and, pursuant to undertakings contained in registration statements filed under the Securities Act, under section 15 (d) of the Securities Exchange Act:

Applications for registration of securities on national securities exchanges	673
Applications for registration of unissued securities for "when issued" trading on national securities exchanges	56
Exemption statements for trading subscription rights on national securities exchanges	121
Annual reports	2, 865
Current reports	11, 793
Amendments to applications and annual and current reports	1, 197

Additional statistical information concerning securities registered and traded on national securities exchanges is contained in the appendix tables.

Temporary Exemption of Substituted or Additional Securities

Rule X–12A–5 provides a temporary exemption from the registration requirements of section 12 (a) of the Act for securities issued in substitution for, or in addition to, securities previously listed or admitted to unlisted trading privileges on a national securities exchange. The purpose of this exemption is to enable transactions to be lawfully effected on an exchange in such substituted or additional securities pending their registration or admission to unlisted trading privileges on an exchange.

The exchanges filed notifications of admission to trading under this rule with respect to 151 issues during the year. In numerous instances, the same issue was admitted to trading on more than one exchange, so that the total admissions to such trading, including duplications, numbered 230.

MARKET VALUE OF SECURITIES TRADED ON EXCHANGES

The unduplicated total market value on December 31, 1951, of all securities admitted to trading on one or more of the twenty stock exchanges in the United States was $225,881,951,000:

	Number issues	*Market value Dec. 31, 1951*
Stocks:		
New York Stock Exchange	1, 495	$109, 483, 600, 000
New York Curb Exchange	777	16, 492, 136, 000
All other exchanges	760	3, 243, 023, 000
	3, 032	129, 218, 759, 000
Bonds:		
New York Stock Exchange	918	95, 634, 350, 000
New York Curb Exchange	83	869, 101, 000
All other exchanges	33	159, 741, 000
	1, 034	96, 663, 192, 000
Total stocks and bonds	4, 066	225, 881, 951, 000

New York Stock Exchange and Curb figures are as set forth by those exchanges. There is no duplication of issues between those two exchanges, but many of the issues traded on them are also admitted to trading on one or more of the 18 other exchanges in addition to those shown for such other exchanges. The number of issues includes a few which are suspended or inactive, and whose market value (if any) is not computed. Some of the smaller exchanges automatically admit local state and municipal bonds to trading upon their issuance, but such bonds are rarely traded on the exchanges and are not shown in this presentation.

Market Value of Stocks

Aggregate market values of stocks traded on the exchanges have risen from $82 billion at the close of 1948 to $129.2 billion at the close of 1951. The increase during 1951 was $18.2 billion, compared with an increase of $29 billion during the preceding 2 years 1949–50. The net number of stock issues declined from 3,052 at the close of 1948 to 3,032 at the close of 1951.

Market Value of Bonds

Listed United States Government and subdivision bonds have decreased from 73 issues with $114.6 billion market value at the close of 1948 to 61 issues with $77.3 billion market value at the close of 1951. All other bond issues on the stock exchanges had market value of $18.1 billion at the close of 1948 and $19.4 billion at the close of 1951, despite a moderate decline in number of issues from 998 to 973 during the three years.

New York Stock Exchange

All stocks listed on the New York Stock Exchange as of December 31, 1951, numbered 1,495 and were reported to have a market value of $109.5 billion. An historic record was made when, on March 1, 1951, the market value of the then listed 1,476 stocks was reported to have passed the $100 billion mark. The 1929 peak had been around $90 billion for 1,280 stocks and the subsequent lowest point occurred in 1932, when the 1,253 stocks then listed were reported to have a market value of less than $16 billion. By June 30, 1952, New York Stock Exchange stock listings numbered 1,514 and were reported to have a $114.5 billion market value.

All bonds listed on the New York Stock Exchange as of December 31, 1951, numbered 918 and were reported to have a $95.6 billion market value, or 98.9 percent of the total market value of bonds on all United States stock exchanges. All of the 61 listed United States Government and subdivision bonds with a market value of $77.3 billion and 857 other bond issues having $18.3 billion market value were on this exchange. The latter included 613 domestic company issues with a market value of $16.6 billion, 231 foreign issues with $1.3 billion, and 13 International Bank for Reconstruction and Development issues with $0.4 billion. The figures had increased somewhat by June 30, 1952, when all listed bonds numbered 934 with a reported market value of $96 billion.

The face value of domestic company bonds listed on this exchange as of June 30, 1952, amounting to $18.3 billion, was practically identical with the peak of $18.4 billion established September 1, 1931, and represents a recovery from a low of less than $14 billion in 1945. Face values of foreign government and foreign company bonds on the New York Stock Exchange have declined steadily over the years from $19.7 billion in 1931 (including about $10 billion British Government bonds) to $1.8 billion as of June 30, 1952.

New York Curb Exchange

The New York Curb Exchange reports the number and aggregate market values of the securities admitted to trading thereon annually, commencing December 31, 1936, when it showed 1,050 stocks with $14.8 billion market value. At the close of 1951, it showed 777 stocks with $16.5 billion market value. However, if the holdings of Standard Oil Company (New Jersey) of two stocks traded on the Curb—

Creole Petroleum Corporation and Humble Oil & Refining Company—were subtracted, the remaining market values would have been $14.1 billion at the close of 1936 and $12.7 billion at the close of 1951.[1]

During the three years 1949–1951, inclusive, the New York Stock Exchange listed 37 stocks with a market value of over $2 billion at time of listing, which stocks or their predecessors had theretofore been on the Curb. In the same period, the Curb listed and commenced trading in 74 stocks with about $1 billion market value, some of which had theretofore been on its unlisted trading roster.

The number of bond issues on the Curb was reported at 438 on December 31, 1936, with a $5.4 billion market value. At the close of 1951, the number was 63, with a $0.9 billion market value, and 20 suspended foreign issues for which no value was reported. During the three years 1949–1951, inclusive, the Curb gained 8 new listings of bonds with a $0.3 billion market value and lost 9 bond issues with a $0.2 billion market value to listing on the New York Stock Exchange.

Other Stock Exchanges

Originally, stock exchanges consisted for the most part of local members trading in local securities. There have been over 100 exchanges in this country down the years. At least 30 were functioning in 1929. At present 20 remain, consisting of the two New York and the 18 so-called "regional" exchanges.

The identity of issues on the regional and the New York exchanges has become so extensive that only the smaller regional exchages still accomplish most of their trading in their own local issues.[2]

[1] At the close of 1936, Creole and Humble were collectively worth $1 billion, of which $0.7 billion was owned by Standard. At the close of 1951, their market values aggregated $4.7 billion, of which $3.8 billion was owned by Standard.

[2] This subject was referred to in the 15th Annual Report (fiscal year 1949), p. 37, where, following a table of total market value of all securities on exchanges as of December 31, 1948, the statement was made that "Six of the regional exchanges accounted for over 90 percent of the dollar volume of stock transactions on all 22 such exchanges during 1948. These six exchanges—Boston, Chicago, Detroit, Los Angeles, Philadelphia, and San Francisco—reported aggregate 1948 dollar volume of $858,600,000 in stocks, of which about $750,000,000 was in issues also traded on New York Stock Exchange or Curb." The statement was based on the following calculation:

Exchange	Dollar volume stock sales, year 1948	Sales in issues not admitted to trading on either New York Exchange	Percent of sales not in competition with New York
Philadelphia Stock	$106,614,904	$1,617,227	1.51
Boston Stock	171,094,555	11,894,299	6.95
Detroit Stock	43,755,237	4,129,058	9.44
Chicago Stock	212,024,313	25,504,467	12.02
Los Angeles Stock	141,479,679	24,157,253	17.07
Pittsburgh Stock	17,926,524	3,119,736	17.40
Cincinnati Stock	12,926,769	2,850,113	22.05
San Francisco Stock	183,627,799	49,312,860	26.85
Washington Stock	4,404,054	1,676,056	38.06
St. Louis Stock	8,933,687	3,752,723	42.00
Cleveland Stock	16,055,870	7,913,677	49.29
Wheeling Stock	354,380	216,801	61.18
Spokane Stock	1,930,680	1,580,416	81.86
Salt Lake Stock	2,782,165	2,375,382	85.38
Baltimore Stock	2,217,409	2,012,630	90.76
Richmond Stock	458,648	435,171	94.88
New Orleans Stock	1,122,169	1,081,792	96.40
Honolulu Stock	4,918,986	4,792,432	97.43
Chicago Board of Trade	189,455	185,955	98.15
San Francisco Mining	619,150	612,824	98.98
Colorado Springs Stock	419,775	419,035	99.82
Minneapolis-St. Paul	2,282,400	2,282,400	100.00
Total	936,138,608	151,922,307	16.23

Dollar volume of sales in the issues not admitted to trading on either New York exchange has been figured on a basis of monthly sales times monthly high prices, and is accordingly somewhat greater than actuality. Dollar volume is used in preference to share volume because the large number of low-priced shares on the regional exchanges weight the share volume comparison.

The relationship between the exchanges dates back to events such as the establishment of stations on high points across New Jersey, from which semaphore signals in daytime and light flashes at night were observed by telescopes and information on stock prices was thus conveyed in as short a time as ten minutes between New York and Philadelphia. After 1844, the telegraph succeeded the semaphore. The telephone appeared after 1878, with first cross-continent conversations around 1915. Stock ticker service from New York was extended to Pacific Coast points around 1925. Turret boards and teletype rounded out the communication facilities which have been instrumental in changing the securities business from local to country-wide aspect.

The regional exchanges originally developed local issues to the point where they gravitated to the New York exchanges, and at an early date they also drew issues from the New York exchanges in which to trade locally. On the Boston Stock Exchange, for example, the governing committee was authorized by resolutions adopted prior to 1880 to permit trading in any securities listed on either the New York or Philadelphia stock exchanges. In 1932 the Philadelphia Stock Exchange adopted the rule that no securities could be admitted to unlisted trading which were not listed on the New York Stock Exchange, New York Curb Exchange, Boston Stock Exchange, Pittsburgh Stock Exchange, or Chicago Stock Exchange. By 1928 the Los Angeles and San Francisco stock exchanges (and their curbs) had turned from the "call" to the "post" system, introduced continuous sessions, and installed odd-lot dealer mechanisms, thereby increasing trading in the New York issues.

The consolidation of industry into units of national importance and the growing diffusion of their shares available for trading on both the New York and regional exchanges have brought about a heavy concentration of trading volume in a small proportion of the total available stock issues. At the close of 1951, 158 stocks listed on the New York Stock Exchange were also available for trading on 4 or more of the 8 leading regional exchanges, and the reported volume during 1951 in these 158 stocks constituted over 40 percent of the reported volume on the New York Stock Exchange and over 40 percent of that on the 8 leading regional exchanges. These exchanges included Boston, Cincinnati, Detroit, Los Angeles, Midwest, Philadelphia-Baltimore, Pittsburgh, and San Francisco, whose aggregate dollar volume of stock transactions during 1951 was 98.6 percent of the total for all 18 regional exchanges.

The number of stocks admitted to trading on one or more regional exchanges but not on either New York exchange has dropped from 814 at the close of 1948 to 760 at the close of 1951. During this period, the market value of all stocks on all the exchanges rose from $82 billion to $129.2 billion, while those solely on the regional exchanges remained a little above $3 billion. New single listings in this latter category during 1951 amounted to 12 stocks with an aggregate market value of about $22,000,000. Bond issues only on regional exchanges have dropped during the 3 years from 50 to 33, with a remaining aggregate market value of about $160,000,000.

New listings admitted practically simultaneously on a New York exchange and one or more regional exchanges during 1951 had over $0.5 billion market value for stocks and $0.3 billion for bonds. The

principal component of the latter was an issue of American Telephone & Telegraph 3⅜% convertible debenture bonds due in 1963, which became listed on the New York Stock Exchange and 5 regional exchanges.

During 1951, various regional exchanges obtained listings of stocks already listed on some other exchange (principally the New York Stock Exchange) with an aggregate market value in excess of $4 billion.

The most prolific source of new trading material for the regional exchange lies in the admission to unlisted trading thereon of issues listed on some other exchange (principally the New York Stock Exchange). During 1951, over $10 billion market value of such listed stocks was newly admitted to unlisted trading on one or more of the regional exchanges.

A summary of new issues on the regional exchanges during 1951, showing outstanding shares and market values as of December 31, 1951, is as follows:

Year 1951	Issues	Shares	Market value
New single listings	12	6,600,534	$22,048,616
Simultaneous listings	16	22,726,460	507,977,241
New listings of listed issues	23	96,740,644	4,060,381,504
Admitted to unlisted trading	56	263,607,808	10,675,760,277
	107	389,675,446	15,266,167,638
Less duplication	5	15,973,988	476,649,529
	102	373,701,458	14,789,518,109
		Face	
Simultaneous listings of bonds	5	$271,437,500	308,889,844
All stocks and bonds	107		15,098,407,953
Portion also on New York Stock Exchange			14,932,299,667

The duplication reflected in the above table consists of issues which became listed on some regional exchanges and admitted to unlisted trading on others. This is the only duplication in the table, each issue otherwise being counted but once, whether it appeared on only one, or more than one, of the regional stock exchanges.

A similar showing of new issues admitted to trading on one or more of the regional exchanges during the 6 months ended June 30, 1952, with amounts outstanding and market values as of that date, is as follows:

First half 1952	Issues	Shares	Market value
New single listings	3	316,269	$11,075,393
Simultaneous listings	5	1,112,888	48,982,644
New listings of listed issues	6	10,396,526	166,864,075
Admitted to unlisted trading	63	327,589,714	13,903,658,063
	77	339,415,397	14,130,580,175
		Face	
Simultaneous listings of bonds	4	$124,496,500	131,956,395
All stocks and bonds	81		14,262,536,395
Portion also on New York Stock Exchange			13,930,722,427

No duplication exists in this table, the number of issues being net for the 6 months. However, 13 of the stock issues admitted to unlisted trading during the 6-month period, comprising 76,686,499 shares and $2,469,548,826 market value, duplicate issues which became listed or

admitted to unlisted trading on some other regional exchange or exchanges during the year 1951. The American Telephone & Telegraph Co. 3⅛s of 1964, which were in process of listing on the usual six exchanges as of June 30, 1952, are not included in the above table.

Securities Available for Listing

On January 9, 1950, the Commission transmitted to the Congress a report recommending an amendment to the Securities Exchange Act which would extend to investors in unregistered securities the protections afforded with respect to registered securities by the Act relating to the availability of public information, the provision of data necessary for intelligent exercise of the right to vote, and regulation of insiders' short-term trading. A survey at the time disclosed that there were then about 1,800 domestic issuers with $3 million assets and 300 stockholders as minima, having stocks quoted over the counter with an aggregate market value of approximately $19 billion to which the amendment might apply. The total included unlisted stocks traded on the stock exchanges, which have been a prolific source of new listings, and excluded bank and investment company stocks, which are not usually regarded as listing material. The $19 billion was equivalent to one-quarter of the $76 billion market value of all stocks listed on the New York Stock Exchange on January 1, 1950.

A more recent study indicates that as of August 15, 1951, quoted stocks not listed on any exchange of utility and industrial companies having registrations under the Securities Act and filing reports under section 15 (d) of the Securities Exchange Act, had a market value in excess of $6 billion. In other words, a sizeable fraction of the over-the-counter stock values represents securities of companies reporting the same periodic data as do listed companies. There were close to 500 common stock issues with an aggregate market value of $5 billion, and over 300 preferred stocks with an aggregate market value of $1 billion. Of the common stocks, 170 issues with $3.1 billion market value had over 2,000 reported holders per issue. There were 267 quoted utility stocks with $2.7 billion and 528 quoted industrial stocks with $3.3 billion aggregate market values.

It appears that less than 2 percent of the corporations of this country (principally the larger ones) have stocks which are adequately quoted, and that the "market value" of stocks of the remaining 98 percent or more can be only a statistical abstraction built on ratios and synthesis.

Prospective listings, however, are by no means confined to present actively quoted over-the-counter securities. A prolific source of new listings lies in issues newly coming on the market. These include new issues of already listed companies, initial stock offerings by long-established and theretofore privately owned companies, stocks of operating companies previously owned by holding companies, and stocks in new speculative enterprises, such as Canadian oil fields, among others.

VOLUME OF SECURITIES TRADED ON EXCHANGES

Stock Volume

Fluctuations in the number of shares sold on the exchanges (including stocks, warrants and rights) have been very great. A peak of 962 million shares was reached in 1936, from which there was a year-by-

year decline to 221 million in 1942. There followed a rise to 803 million in 1946, a relapse to an average of 534 million per annum for 1947–49, inclusive, and a rise to 893 million in 1950. In 1951, share sales declined slightly to 864 million, followed by a further shading off to around 382 million during the half year ending June 30, 1952.

The dollar volume of share sales showed corresponding fluctuations. A peak of $23.6 billion in 1936 contrasted with a mere $4.3 billion in 1942. There followed a rise to $18.8 billion in 1946, a decline to an average of $11.8 billion per annum for 1947–49, inclusive, and a rise to $21.8 billion in 1950. In 1951, the dollar volume of share sales declined slightly to $21.3 billion, followed by a further shading off to around $9.2 billion during the half year ending June 30, 1952.

Notwithstanding these great fluctuations in number and dollar volume of share sales, the relative trading as between the two New York exchanges and the remaining regional exchanges has maintained a remarkable constancy:

Year	Percent of share volume		Percent of dollar volume	
	2 New York exchanges	All other exchanges	2 New York exchanges	All other exchanges
	Percent	*Percent*	*Percent*	*Percent*
1935	85.6	14.4	94.5	5.5
1936	89.5	10.5	94.9	5.1
1937	87.9	12.1	95.4	4.6
1938	88.6	11.4	94.8	5.2
1939	89.6	10.4	93.8	6.2
1940	88.6	11.4	92.8	7.2
1941	86.7	13.3	91.6	8.4
1942	88.1	11.9	91.8	8.2
1943	91.3	8.7	93.8	6.2
1944	90.3	9.7	93.4	6.6
1945	87.2	12.8	93.6	6.4
1946	85.4	14.6	93.4	6.6
1947	86.8	13.2	92.8	7.2
1948	87.5	12.5	92.7	7.3
1949	88.0	12.0	92.3	7.7
1950	89.9	10.1	92.8	7.2
1951	89.0	11.0	93.0	7.0
1952 [1]	86.5	13.5	92.5	7.5

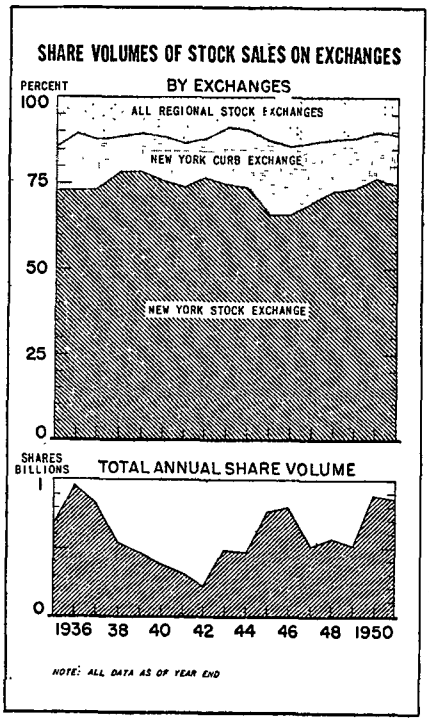
[1] Six months ending June 30, 1952.

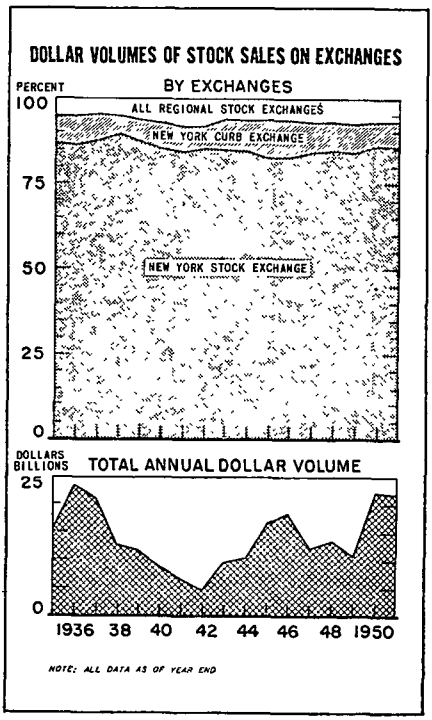
Bond Volume

At times in the past, the New York Curb Exchange and some of the regional exchanges have experienced substantial amounts of bond volume. The New York Stock Exchange, however, has remained the focal point for bond trading on the stock exchanges, showing over 96% of such trading during 1951 in terms of market value.

Additional Data

Market value and volume of sales on all United States stock exchanges for the year 1951 and for the 6 months ending June 30, 1952, are shown in Appendix Table 7. Annual share and dollar volumes since 1935 and the percentages on the various stock exchanges are shown in the following charts and table:





Comparative Share Sales and Dollar Volume on Exchanges from Jan. 1, 1935, to June 30, 1952

Sales of shares, including stocks, warrants and rights, and dollar volume are those reported by all United States exchanges to the Commission, as adjusted. Figures for merged exchanges are included in those of the exchanges into which they were merged. The last column ("Others") includes figures for the smaller exchanges now functioning and for those which have ceased to function during the period covered; fluctuations in activity of low-priced shares on the mining exchanges among them cause greater changes in share than in dollar volume. Exchanges are arranged in order of dollar volume thereon in 1951. Symbols: NYS, New York Stock Exchange; NYC, New York Curb Exchange; MSE, Midwest; SFS, San Francisco Stock Exchange; BSE, Boston; LAS, Los Angeles; PBS, Philadelphia-Baltimore; DSE, Detroit; CIN, Cincinnati; PIT, Pittsburgh.

Year	Share sales	NYS	NYC	MSE	SFS	BSE	LAS	PBS	DSE	CIN	PIT	Others
		Percent	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
1935	681, 970, 500	73. 13	12. 42	1. 91	1. 49	0. 96	1. 20	0. 76	0. 85	0. 03	0. 34	6. 91
1936	962, 135, 940	73. 02	16. 43	2. 18	1. 64	. 72	1. 32	. 68	. 74	. 04	. 32	2. 91
1937	838, 469, 889	73. 19	14. 75	1. 79	1. 60	. 83	1. 63	. 70	. 59	. 03	. 38	4. 51
1938	543, 331, 878	78. 08	10. 55	2. 27	1. 41	1. 03	1. 26	. 78	. 75	. 04	. 25	3. 59
1939	468, 330, 340	78. 23	11. 39	2. 26	1. 35	1. 18	1. 00	. 93	. 76	. 05	. 25	2. 60
1940	377, 896, 572	75. 44	13. 20	2. 11	1. 59	1. 19	1. 19	1. 02	. 82	. 08	. 31	3. 05
1941	311, 150, 395	73. 96	12. 73	2. 72	1. 55	1. 50	1. 14	1. 23	. 87	. 14	. 36	3. 80
1942	221, 159, 616	76. 49	11. 64	2. 70	1. 51	1. 39	1. 11	1. 07	. 90	. 12	. 29	2. 78
1943	486, 290, 926	74. 58	16. 72	2. 20	1. 09	. 76	. 83	. 85	. 64	. 07	. 20	2. 06
1944	465, 523, 183	73. 40	16. 87	2. 07	1. 30	. 81	1. 10	. 78	. 86	. 06	. 26	2. 49
1945	769, 018, 138	65. 87	21. 31	1. 77	1. 27	. 66	1. 71	. 65	. 79	. 05	. 40	5. 52
1946	803, 076, 532	66 07	19 37	1. 74	1. 86	. 84	1. 65	. 68	. 63	. 05	. 28	6. 83
1947	513, 274. 867	69. 82	16. 98	1. 67	2. 10	1. 05	2. 12	. 90	. 66	. 08	. 19	4. 43
1948	571, 107, 842	72. 42	15. 07	1. 63	2. 13	. 76	1. 82	. 73	. 68	. 08	. 18	4. 50
1949	516, 408, 706	73. 51	14. 49	1. 67	2. 00	. 93	1. 72	1. 17	. 73	. 09	. 18	3. 51
1950	893, 320. 458	76. 32	13. 54	2. 16	1. 61	. 65	1. 50	. 73	. 55	. 09	. 18	2. 67
1951	863, 918, 401	74. 40	14. 60	2. 10	2. 12	. 70	1. 42	. 72	. 58	. 08	. 16	3. 12
1952 [1]	381, 731. 870	68. 68	17. 87	2. 21	2. 56	. 62	1. 37	. 72	. 51	. 09	. 16	5. 21

Year	Dollar volume (000 omitted)	NYS	NYC	MSE	SFS	BSE	LAS	PBS	DSE	CIN	PIT	Others
		Percent	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
1935	$15, 396, 139	86. 64	7. 83	1. 32	0. 93	1. 34	0. 46	0. 67	0. 40	0. 04	0. 20	0. 17
1936	23, 640. 431	86. 24	8. 69	1. 39	. 86	1. 05	. 47	. 61	. 31	. 03	. 20	. 15
1937	21, 023, 865	87. 85	7. 56	1. 06	. 82	1. 10	. 43	. 60	. 24	. 03	. 20	. 11
1938	12, 345, 419	89 24	5. 57	1. 03	. 77	1. 51	. 50	. 71	. 37	. 04	. 18	. 08
1939	11, 434, 528	87. 20	6. 56	1. 70	. 87	1. 70	. 50	. 82	. 34	. 06	. 18	. 07
1940	8, 419, 773	85. 17	7. 68	2. 07	1. 00	1. 91	. 52	. 92	. 36	. 09	. 19	. 09
1941	6, 248, 055	84. 14	7. 45	2. 59	1. 06	2. 27	. 61	1. 09	. 33	. 12	. 21	. 13
1942	4, 314, 294	85. 16	6. 60	2. 43	1. 05	2. 33	. 66	. 94	. 34	. 13	. 23	. 13
1943	9, 033, 907	84, 93	8. 90	2. 02	. 85	1. 30	. 58	. 78	. 30	. 07	. 16	. 11
1944	9, 810, 149	84. 14	9. 30	2. 11	1. 05	1. 29	. 65	. 78	. 34	. 07	. 15	. 12
1945	16, 284, 552	82. 75	10. 81	2. 00	1. 14	1. 16	. 64	. 81	. 35	. 06	. 14	. 14
1946	18, 828, 477	82. 65	10. 73	2. 00	1. 22	1. 23	. 65	. 78	. 33	. 07	. 16	. 18
1947	11, 596, 806	84. 01	8. 77	1. 82	1. 39	1. 51	. 87	. 90	. 36	. 11	. 14	. 12
1948	12, 911, 665	84. 67	8. 07	1. 85	1. 43	1. 33	1. 10	. 84	. 34	. 10	. 14	. 13
1949	10, 746, 935	83. 85	8. 44	1. 95	1. 35	1. 43	1. 14	1. 06	. 39	. 12	. 13	. 14
1950	21, 808. 284	85. 91	6. 85	2. 35	1. 18	1. 12	1. 01	. 89	. 39	. 11	. 11	. 08
1951	21, 306, 087	85. 48	7. 56	2. 30	1. 07	1. 06	. 99	. 86	. 36	. 11	. 11	. 10
1952 [1]	9, 166, 391	84. 39	8. 07	2. 58	1. 14	1. 06	1. 04	. 95	. 40	. 12	. 14	. 11

[1] Six months ending June 30, 1952.

SPECIAL OFFERINGS ON EXCHANGES

Rule X–10B–2 under the Securities Exchange Act permits special offerings of comparatively large blocks of securities to be made on a national securities exchange provided such offerings are effected pursuant to a plan which has been filed with and approved by the Commission. A security may be the subject of a special offering when it has been determined that the auction market on the floor of the exchange cannot absorb a particular block within a reasonable period of time without unduly disturbing the current price of the security. A special offering of a security is made at a fixed price consistent with the existing auction market price of the security, and members acting as brokers for public buyers are paid a special commission by the seller which ordinarily exceeds the regular brokerage commission. Buyers of the security are not charged any commission on their purchases and obtain the security at the net price of the offering.

Each of the nine exchanges with a special offering plan in effect has been requested to report certain information to the Commission on each offering effected on the exchange under the plan. These reports show the following data for 1951 and the first six months of 1952:

Special offerings on Stock Exchanges

TWELVE MONTHS ENDED DEC. 31, 1951

Exchange	Number made	NUMBER OF SHARES			Value of shares sold (thousands of dollars)	Aggregate special commission (thousands of dollars)
		In original offer	Subscribed	Sold		
All Exchanges:						
Total	27	329,742	332,403	323,013	10,841	205
Completed	25	307,288	320,248	310,858	10,188	195
Not completed	2	22,454	12,155	12,155	653	10
Midwest Stock Exchange: Total completed	1	5,000	5,000	5,000	184	3
New York Stock Exchange:						
Total	25	309,742	312,403	303,013	10,616	200
Completed	23	287,288	300,248	290,858	9,963	190
Not completed	2	22,454	12,155	12,155	653	10
San Francisco Stock Exchange: Total completed	1	15,000	15,000	15,000	41	2

SIX MONTHS ENDED JUNE 30, 1952

All Exchanges:						
Total	16	245,550	271,951	208,095	5,136	112
Completed	12	197,150	261,006	197,150	4,831	107
Not completed	4	48,400	10,945	10,945	305	5
Midwest Stock Exchange:						
Total	2	14,890	9,890	9,890	338	5
Completed	1	4,890	4,890	4,890	145	2
Not completed	1	10,000	5,000	5,000	193	3
New York Curb Exchange: Total not completed	1	20,000	2,275	2,275	11	1
New York Stock Exchange:						
Total	12	207,590	256,716	192,860	4,678	103
Completed	10	189,190	253,046	189,190	4,577	102
Not completed	2	18,400	3,670	3,670	101	1
San Francisco Stock Exchange: Total completed	1	3,070	3,070	3,070	109	3

SECONDARY DISTRIBUTIONS APPROVED BY EXCHANGES

A "secondary distribution," as the term is used in this section, is a distribution over the counter of a comparatively large block of a previously issued and outstanding security listed or admitted to trading on an exchange. Such distributions are resorted to when it has been determined that it would not be in the best interest of the various parties involved to sell the shares on an exchange in the regular way or by special offering. The distributions generally are made after the close of exchange trading. It is the general practice of exchanges to require members to obtain their approval before participation in such secondary distributions. The following table shows the number and dollar volume of secondary distributions which exchanges have approved for member participation and reported to the Commission for 1951 and the first six months of 1952:

Reported secondary distributions of Exchange Stocks.

TWELVE MONTHS ENDED DEC. 31, 1951

Exchange	Number made	NUMBER OF SHARES			Value of shares sold (thousands of dollars)
		In original offer	Available for distribution	Sold	
All Exchanges:					
Total	88	5,104,200	5,237,950	5,193,756	146,459
Completed	83	4,986,390	5,115,887	5,121,046	143,318
Not completed	5	117,810	122,063	72,710	3,141
Cincinnati Stock Exchange:					
Total	2	50,667	53,820	46,820	1,218
Completed	1	9,000	9,200	9,200	230
Not completed	1	41,667	44,620	37,620	988
Detroit Stock Exchange: Total completed	2	10,480	10,480	10,580	209
Midwest Stock Exchange: Total completed	8	86,053	86,858	86,898	3,541
New York Curb Exchange:					
Total	16	1,586,414	1,666,529	1,647,443	20,673
Completed	15	1,563,814	1,643,929	1,647,118	20,649
Not completed	1	22,600	22,600	325	24
New York Stock Exchange:					
Total	60	3,370,586	3,420,263	3,402,015	120,818
Completed	57	3,317,043	3,365,420	3,367,250	118,689
Not completed	3	53,543	54,843	34,765	2,129

SIX MONTHS ENDED JUNE 30, 1952

All Exchanges:					
Total	34	1,482,698	1,555,887	1,540,258	57,440
Completed	31	1,400,661	1,473,650	1,493,850	56,318
Not completed	3	82,037	82,237	46,408	1,122
Detroit Stock Exchange: Total completed	1	1,500	1,500	1,500	13
Midwest Stock Exchange: Total completed	8	65,200	66,800	66,800	1,352
New York Curb Exchange: Total completed	4	149,948	155,462	155,462	2,480
New York Stock Exchange:					
Total	21	1,266,050	1,332,125	1,316,496	53,595
Completed	18	1,184,013	1,249,888	1,270,088	52,473
Not completed	3	82,037	82,237	46,408	1,122

UNLISTED TRADING PRIVILEGES ON EXCHANGES

Number of Issues Admitted to Unlisted Trading

Securities are said to be traded on an unlisted basis on the stock exchanges when the admission to trading is approved by an exchange without any application for listing and registration by the issuer. Such admissions to unlisted trading are governed by section 12 (f) of the Securities Exchange Act, whose respective clauses are referred to below in the text and accompanying tables.

In the tables, stock issues admitted to unlisted trading on the exchanges prior to March 1, 1934, are designated as "Clause 1." The table divides them into two categories: those listed and registered on a stock exchange other than that where they are admitted to unlisted trading, and those not listed and registered on any exchange. Stock issues designated as "Clause 2" are those admitted to unlisted trading pursuant to grants of applications by stock exchanges, the first of which was in April 1937, which grants are based on an existing listing and registration on some other stock exchange. Stock issues designated as "Clause 3" are those admitted to unlisted trading pursuant to grants of applications by stock exchanges conditioned upon the availability of information with respect to the stocks which is substantially equivalent to that filed in the case of listed issues. The following table, for comparative purposes, also shows the number of listed stock issues on each stock exchange.

Status on each stock exchange June 30, 1952	Number of stock issues available for trading				
	On a listed basis [1]	On an unlisted basis pursuant to the following clauses of section 12 (f) of the Securities Exchange Act			
		Clause 1		Clause 2 [2]	Clause 3 [4]
		Listed on another exchange [2]	Not listed on any exchange [3]		
Boston	105	162	1	131	0
Chicago Board of Trade	10	2	3	0	0
Cincinnati	61	0	0	59	0
Colorado Springs [5]	14	0	0	0	0
Detroit	119	14	0	99	0
Honolulu [5]	57	0	33	0	0
Los Angeles	146	40	1	118	0
Midwest	409	0	0	83	0
New Orleans	3	4	9	2	0
New York Curb	461	60	256	3	3
New York Stock	1,528	0	0	0	0
Philadelphia-Baltimore	111	263	4	126	0
Pittsburgh	54	17	0	54	0
Richmond [5]	27	0	0	0	0
Salt Lake	96	0	3	0	1
San Francisco Mining	41	0	0	0	0
San Francisco Stock	202	69	37	68	0
Spokane	25	1	7	0	0
Washington, D. C.	42	0	0	2	0
Wheeling [5]	16	0	0	3	0
Total [6]	3,527	632	354	748	4

[1] Includes registered issues, issues temporarily exempted from registration, and issues listed on the four exempted exchanges.
[2] In addition to the unlisted status as shown, these issues are listed on one or more of the registered exchanges.
[3] None of these issues has any listed status on any domestic stock exchange, with the exception of 9 of the 37 San Francisco Stock Exchange issues which are also listed on an exempted exchange.
[4] One of the New York Curb issues and the Salt Lake issue have become listed on a registered exchange, leaving only 2 issues with only an unlisted status.
[5] Exempted from registration as a national securities exchange.
[6] Duplication of issues among exchanges increases the total of each column except the last to more than the actual number of issues involved.

Volume of Unlisted Trading in Stocks

The reported volume of stock traded on the stock exchanges on an unlisted basis during the calendar year 1951 was in excess of 60,000,000 shares, or between 7 and 8 percent of the total 1951 share volume on the exchanges. Of this volume, about 27,000,000 shares were in issues listed and registered on some other exchange than that where the unlisted trading occurred, and 33,000,000 shares were in issues

not listed and registered on any exchange. Most of the latter amount was reported with respect to the New York Curb Exchange. This unlisted volume, broken down among exchanges and among issues traded on an unlisted basis pursuant to the first and second clauses of section 12 (f) of the Securities Exchange Act, was as follows:

Unlisted share volumes reported in 1951	Total unlisted	Unlisted pursuant to clauses 1 and 2 of section 12 (f) of the Securities Exchange Act		
		Clause 1 Listed [1]	Clause 1 unlisted [2]	Clause 2 [1]
Boston	3,454,821	2,250,134	16,063	1,188,624
Chicago Board of Trade	0	0	0	0
Cincinnati	286,845	0	0	286,845
Colorado Springs [3]	0	0	0	0
Detroit	1,363,060	189,807	0	1,173,253
Honolulu [3]	50,519	0	50,519	0
Los Angeles	3,081,090	1,141,861	7,974	1,931,255
Midwest	4,929,159	0	0	4,929,159
New Orleans	63,033	1,968	52,229	8,836
New York Curb	38,278,743	7,305,425	30,015,438	928,700
New York Stock	0	0	0	0
Philadelphia-Baltimore	3,365,510	2,312,060	29,779	1,023,671
Pittsburgh	440,228	263,627	0	176,601
Richmond [3]	0	0	0	0
Salt Lake	2,554	0	189	0
San Francisco Mining	0	0	0	0
San Francisco Stock	4,672,142	1,110,415	2,677,091	884,636
Spokane	156,544	3,150	153,394	0
Washington, D. C.	25,226	0	0	25,226
Wheeling [3]	1,419	0	0	1,419
	60,170,893	14,578,447	33,002,676	12,558,225

[1] See note 2 to preceding table.
[2] See note 3 to preceding table.
[3] See note 5 to preceding table.

Included in the 60,170,893 total, but not shown in a separate column by reason of the small number involved, were 31,545 shares in the four "Clause 3" stocks mentioned in the preceding table.

The amounts shown are as reported annually by the stock exchanges or other reporting agencies, and are in some cases less than actual, particularly with respect to the New York Curb Exchange figures, which exclude most odd lots and other items not reported on the stock tickers. All the figures are exclusive of trading in rights, and are subject to adjustments on account of reporting errors and omissions.

Applications for Unlisted Trading Privileges

Pursuant to applications filed by the exchanges under Clause 2 of section 12 (f) and approved by the Commission during the fiscal year, unlisted trading privileges were extended as follows:

Stock exchange:	*Number of stocks*
Boston	13
Cincinnati	14
Detroit	20
Los Angeles	21
Midwest	9
New York Curb	1
Philadelphia-Baltimore	18
Pittsburgh	1
San Francisco	13
	110

The number of different issues involved is less than the total shown in the table because some of the issues were the subject of applications by more than one exchange.

Changes in Securities Admitted to Unlisted Trading Privileges

In the event some minor change occurs in the rights of a security previously admitted to unlisted trading privileges on an exchange, so that the security remains essentially the same security as before, unlisted privileges may be continued upon compliance with the provisions of the Commission's rule X–12F–2.

Clause (a) of that rule merely requires written notification by the exchange to the Commission in the case of any change in the title of a security or in the name of an issuer or in the outstanding amount of the security or in the par value, dividend or interest rate, or maturity date. During the fiscal year the usual large number of notifications of such changes were received by the Commission.

With respect to a change in a security previously admitted to unlisted trading privileges, other than the changes enumerated in the preceding paragraph, Clause (b) of rule X–12F–2 provides for an application to the Commission for a determination whether or not such security is substantially the same after such change as the security previously admitted to unlisted trading privileges. Under this regulation, the New York Curb Exchange filed an application for a determination by the Commission that the new Class A Common Stock, $2.00 Par Value, and the new Class B Common Stock, $2.00 Par Value, of The Parker Pen Company constitute substantially the same security as the single class of $5.00 Par Value Common Stock previously outstanding and admitted to unlisted trading on this exchange. In view of the fact that only the new Class A Stock would have the voting rights previously enjoyed by the single class of stock, and that there were two separate issues instead of one, the Commission held that only the new Class A Common Stock was substantially equivalent to the previously outstanding common stock. As both of the new issues were registered and listed on the Midwest Stock Exchange, the New York Curb Exchange was able to file a separate application for unlisted trading privileges in the Class B Stock under Clause 2 of section 12 (f) of the Act. It is the policy of the Commission to have applications filed under Clause 2 of section 12 (f) rather than paragraph (b) of rule X–12F–2 whenever an application properly can be filed under the former provision.

In another case, the New York Curb Exchange filed an application under Clause (b) of rule X–12F–2 for a determination that voting trust certificates representing no par value common stock of Wagner Baking Corporation, after an amendment extending the voting trust agreement from 1951 to 1961, were substantially equivalent to the voting trust certificates representing the same security prior to the extension of the life of the voting trust agreement. The Commission granted this application, thereby permitting the exchange to continue unlisted trading in these certificates.

A somewhat similar case was an application of the New York Curb Exchange with respect to bonds issued by Guantanamo & Western Railroad Company. In this case the changes involved extension of the maturity date from 1958 to 1970 and reduction of the interest rate from 6% to 4% as well as a provision for annual retirement of

1% of the amount of bonds outstanding. This application was granted by the Commission.

In another case under the same regulation the Commission granted an application of the Boston Stock Exchange for a determination that shares of no par value common stock of St. Louis-San Francisco Railway Company are substantially equivalent to voting trust certificates representing these shares, which certificates had been admitted to unlisted trading privileges upon applicant exchange prior to the termination of the voting trust.

In another case under the same regulation, the New York Curb Exchange made an application for a determination by the Commission that American depositary receipts issued by the Guaranty Trust Company of New York representing Ordinary Shares, Par Value 3s. 6d., of Burma Mines Limited, and other American depositary receipts issued by the same bank, representing ordinary shares, par value 1s., of Non Ferrous Metal Products, Limited, were substantially equivalent to previously outstanding American depositary receipts issued by the same bank and representing capital stock, par value 9 rupees, of Burma Corporation, Limited, the predecessor of the other two corporations. The Commission decided that the new depositary receipts representing the issues of the two new corporations were not substantially equivalent to the depositary receipts representing the old stock of the predecessor corporation. The applicant exchange thereupon made application to withdraw its previous application for substantial equivalence, and obtained an agreement from the new issuers to register and list the new securities on that exchange.

DELISTING OF SECURITIES FROM EXCHANGES

Securities Delisted by Application

During the fiscal year, a number of applications were filed with the Commission by various national securities exchanges and issuers of listed securities, pursuant to section 12 (d) of the Securities Exchange Act and rule X–12D2–1 thereunder, to strike securities from exchange registration and listing.

The Los Angeles Stock Exchange and the San Francisco Stock Exchange each filed such an application with respect to the capital stock of Republic Petroleum Company, which had been dissolved and was in process of liquidation.[3] The Midwest Stock Exchange filed applications to strike the common stock of Horder's, Incorporated, and the common stock of St. Louis Car Company on the ground that the ownership of each of these securities had become so concentrated that there was inadequate public distribution and exchange trading to warrant a public auction market on a national securities exchange.[4] The San Francisco Stock Exchange filed an application with respect to the capital stock of North American Oil Consolidated, asserting that all but 3,000 shares of the approximately 271,000 shares previously outstanding in the hands of the public had been purchased by one shareholder, following which the issuer had sold its properties and approved a voluntary plan of dissolution.[5] The Los Angeles Stock Exchange made application respecting the common stock of Signal Petroleum Company of California, Ltd., stating that the financial

[3] Securities Exchange Act release No. 4667 (1952); Securities Exchange Act release No. 4646 (1951).
[4] Securities Exchange Act release No. 4677 (1952); Securities Exchange Act release No. 4665 (1952).
[5] Securities Exchange Act release No. 4693 (1952).

condition of this company, as disclosed by its annual report to the Commission was so questionable as to require that its exchange trading privileges be terminated for the protection of investors.[6] All of the foregoing applications were granted by the Commission.

The Boston Stock Exchange filed an application to strike from registration and listing the preferred stock of Lamson Corporation of Delaware under the following circumstances. The issuing corporation had reclassified this security by adding the word "prior" to the name of the stock. In the view of the Commission, based on numerous precedents, this small change in the name of the security did not make it a new security for the purpose of registration under the Securities Exchange Act, with the result that the same security under its new name continued to be fully registered on the Boston Stock Exchange. However, that exchange, in accordance with the practice of other national securities exchanges, considered that the change in name of the security constituted it a new security. Since the issuer declined to comply with the listing requirements of the exchange, including payment of a new listing fee, with respect to the changed security, the unusual situation existed of a security which in the view of the Commission was fully registered on the exchange but in the view of the exchange was not. When the issuer declined to initiate proceedings to terminate the registration of this security, the exchange made application to strike it from registration, and the application was granted by the Commission.[7]

Allied Products Corporation filed an application with the Commission to withdraw its common stock from registration and listing on the Midwest Stock Exchange on the ground that no transaction in that stock had been effected on that exchange since 1947. The Commission granted this application with the understanding that the security would continue to be fully registered and listed on the New York Curb Exchange.[8] Hunt Foods of Ohio, Inc. also filed application with the Commission to withdraw its common stock from registration and listing on the Midwest Stock Exchange on the ground that another corporation had acquired 99.47% of the total number of shares outstanding, leaving only 237 other shares outstanding in the hands of only seven shareholders, and that this represented an insufficient number of shares and shareholders to warrant the continuance of exchange trading, which had virtually ceased. On the basis of these facts the Commission granted this application.[9]

A number of companies registered with the Commission as diversified open-end management investment companies under section 8 (a) of the Investment Company Act of 1940 filed applications with the Commission to withdraw securities from exchange registration and listing. The reasons for withdrawal included the fact that the rules of the National Association of Securities Dealers, Inc., as well as provisions of the Investment Company Act of 1940, restricted exchange trading in this type of security to such an extent as to make further registration and listing unwarranted.[10] One of the applications further recited that

[6] Securities Exchange Act release No. 4711 (1952).
[7] Securities Exchange Act release No. 4684 (1952).
[8] Securities Exchange Act release No. 4638 (1951).
[9] Securities Exchange Act release No. 4659 (1951).
[10] *Commonwealth Investment Company*, Securities Exchange Act release No. 4716 (May 29, 1952); *Broad Street Investing Corporation*, Securities Exchange Act release No. 4667 (January 18, 1952); *Affiliated Fund, Inc.*, Securities Exchange Act release No. 4647 (October 12, 1951); *Century Shares Trust*, Securities Exchange Act, release No. 4676 (February 15, 1952).

since all the issuer's shares are redeemable at current liquidating value upon tender to the issuer, substantially all transactions were conducted either with or through the underwriter and no useful purpose was served by the registration and listing of such shares upon an exchange.[11] All of these applications were granted by the Commission.

Securities Delisted by Notification

Securities which have been paid at maturity, redeemed or retired in full, or become exchangeable for other securities, may be removed from listing and registration on a national securities exchange by the exchange filing a notification with the Commission to that effect. The removal of the security becomes effective automatically after the interval of time prescribed by rule X–12D2–2 (a). The exchanges filed notifications under this rule effecting the removal of 115 separate issues. In some instances the same issue was removed from more than one exchange, so that the total number of removals, including duplications, was 142. Successor issues to those removed became listed and registered on exchanges in many cases.

Effective May 26, 1952, amendments were adopted to clarify the provisions of rule X–12D2–2 (a); to prescribe a new Form 25 for notification of removal, simplifying its preparation and assuring that the prescribed information is furnished; and to expand the rule so as to provide for the removal of securities from listing and registration when funds for their redemption, retirement or payment have been deposited with the paying agency, appropriate notice has been given, and the funds have been made available to security holders.

In accordance with the provisions of rule X–12D2–1 (d), the New York Curb Exchange removed 5 issues from listing and registration when they became listed and registered on the New York Stock Exchange.

Securities Removed From Listing on Exempted Exchanges

A security may be removed from listing on an exempted exchange merely upon notification by such an exchange to the Commission setting forth the reasons for such removal. During the fiscal year the Richmond Stock Exchange removed two issues which had been called for redemption, and the Colorado Springs Stock Exchange removed one issue due to the liquidation of the issuer.

MANIPULATION AND STABILIZATION

The Stock Markets

During the fiscal year both the S. E. C. Composite Index of weekly closing prices of common stocks and the Dow-Jones Composite Average advanced from the low of the year during the first week to the high of the year during the last week. The S. E. C. Composite Index was 174.3 (the low) for the week ended June 30, 1951, and was 199.3 (the high) for the week ended July 5, 1952. The Dow-Jones Composite Average was 86.92 (the low) on June 29, 1951, and 106.13 (the high) on June 30, 1952.

The greatest decline in stock prices during the calendar year 1951 occurred in June following the Russian proposal for a cease-fire in Korea. A recovery in prices started on July 2, 1951, and continued until October 15, 1951, when the stock market reached a 21-year high.

[11] *Century Shares Trust, supra.*

The market then declined until late November when a year-end rise began and continued through January 1952. This was followed by a decline in February, a rise in March, a decline in April, and a rise beginning in May, which continued to the end of the fiscal year and brought prices to the highest average reached in 21 years.

During the fiscal year considerable public interest was evidenced in oil and mining shares generated partly by continuing publicity given to reports of discoveries of new oil fields and mineral deposits. Interest in rail stocks also developed in the last few months of the fiscal year.

The international character of the markets was a notable feature. Activity in dual listings on Canadian and United States exchanges increased sharply, and many new securities were so listed. Accordingly, the Commission instituted surveillance over the Canadian as well as the domestic market for these securities. When a spectacular price movement occurred in Molybdenum Corporation of America listed on the New York Curb Exchange, investigation disclosed that Canadian trading (beyond our jurisdiction) was an important factor in this market activity. Other investigations disclosed active trading in other securities originating in European countries.

Manipulation

The manipulation of securities markets by practices which are deceptive or otherwise improper is one of the evils which the Securities Exchange Act was expressly designed to prevent. Section 9 of this Act describes and prohibits certain forms of manipulative activity in securities registered on a national securities exchange, which were extensively used prior to passage of the Act. These include wash sales and matched orders, if effected for the purpose of creating a false or misleading appearance of trading activity or with respect to the market for any such security; a series of transactions in which the price of such security is raised or depressed, or in which the appearance of active trading is created, for the purpose of inducing purchases or sales by others; circulation by a broker, dealer, seller, or buyer, or by a person who receives a consideration from a broker, dealer, seller, or buyer, of information concerning market operations conducted for a rise or a decline; and the making of material false and misleading statements by brokers, dealers, sellers, and buyers, or the omission of material information regarding securities, for the purpose of inducing purchases or sales. Sections 10 and 15 of the Act empower the Commission to adopt rules and regulations to define and prohibit the use of such new forms of manipulative activity in securities, whether registered or unregistered, on an exchange, as the Commission might encounter from time to time.

Pursuant to its statutory authority, the Commission has adopted rules and regulations to aid it in carrying out the expressed will of Congress. The three above-mentioned sections, as augmented by rules and regulations promulgated thereunder, are aimed at freeing our securities markets from artificial influence and maintaining fair and honest markets where prices are established by supply and demand.

Manipulation of securities prices in the years previous to the enactment of the Securities Exchange Act, resulted in loss to the public of millions of dollars annually. Pool operations were rampant. A pool, generally speaking, consisted of a group of men who, acting

in concert, bought stock in the market or secured options to buy for the purpose of later selling the stock at a higher price. To do this they created fictitious market activity and raised prices in a stock to deceive the purchaser into believing that its quoted price represented what investors actually thought the stock was worth. The Senate Banking and Currency Committee in its investigations disclosed that in 1929 alone there were 105 pools in securities listed on the New York Stock Exchange.

In the early days of the Commission's existence, some market operators attempted to continue their manipulative activities. The Commission uncovered these activities and caused the imposition of various penalties upon them including expulsion from exchanges, revocation of broker-dealer registrations, fines and jail sentences. Years of experience have enabled the Commission to improve substantially its techniques of detection and enforcement. It has become increasingly evident that if the public is to receive adequate protection the Commission's enforcement activities, so far as possible, must be preventive rather than punitive. The Commission therefore operates on the premise that manipulation should be, and in most cases can be, suppressed at its inception. Losses suffered by the public are seldom recoverable, even though the perpetrator of the fraud is brought to justice. Accordingly, it is more important to prevent a possible violation than to allow unlawful market operations to continue until it appears that sufficient evidence for a successful prosecution is available.

To carry out the Commission's policy of preventive action against manipulation, any unusual market activity (either in price or volume) of securities traded on the New York Stock Exchange or the New York Curb Exchange is observed as it appears on the stock tickers of these exchanges in the Commission's headquarters. A financial news ticker also enables the staff to keep abreast of spot news items. This close market observation is supplemented by a careful study of the stock exchange quotation sheets and the next day's newspapers. The quotation sheets of regional exchanges and, because of many dual listings, newspaper reports of three Canadian exchanges are similarly reviewed. Activity in over-the-counter issues is examined as it is reported by a national quotation service. Charts are kept on all securities which have a regularly quoted market.

Information assembled concerning all charted securities includes not only data reflecting the market action, but also the latest news items, earnings figures, dividends, options and other facts which might explain price and volume changes in the individual issues as well as of the industry group with which the issue is associated. Trained analysts read the Wall Street Journal, Standard and Poor's, Moody's, and many other financial publications, and record any items that might be reflected in the market price of these securities. Reports required by the acts administered by the Commission from corporations or their officers, directors and 10% stockholders and from registered broker-dealers are reviewed, and important information contained therein is recorded on the security's weekly price and volume record. The dates of public releases of any important news items regarding a company are carefully recorded, since unusual activity in a security prior to the publication of news might indicate

that insiders were using secret information to their own advantage, while the same activity after publication might well be a natural public reaction to the news.

As the 1952 fiscal year began, a weekly review was being made of more than 7,600 charts which were maintained on practically all securities listed on exchanges and the most active issues traded over the counter. Quotations for a varying group of about 3,500 additional less active over-the-counter securities were being reviewed at longer intervals. By the end of the fiscal year, however, budgetary restrictions forced a reduction in the Commission's expert force to such an extent that the number of securities reviewed weekly had to be reduced to some 3,300 with some 4,500 examined on a monthly basis and the balance over longer periods.

The Commission is considerably concerned that such delayed and infrequent review may defeat the Commission's policy of prompt preventive action and reduce the protection against manipulation that the public has come to expect.

At the inception of any unusual market activity in a security all pertinent information is reexamined and a conclusion drawn as to the necessity for an investigation. Once decided upon, the investigation is quickly begun. It has been found that many would-be violators of the regulations prohibiting manipulation have been halted by these prompt inquiries by the Commission. The fact that trading in a given security is under investigation is kept confidential by the Commission. This is done to avoid interference with the legitimate functioning of the markets and to prevent any unfair reflection upon individuals or securities being investigated. So effectively has this confidential approach been maintained that on occasion the Commission has received criticism for failure to investigate a particular case which in fact already was under investigation. However, while the general public is not informed when an investigation is being made, any persons conducting unusual market activity in a security will soon become aware of the Commission's inquiry and discontinue unlawful operations. In its investigations the Commission has received excellent cooperation from the stock exchanges and from brokers and dealers.

When questionable market activity is limited to a brief period during a day's trading, or even an entire day's transactions, a simple inquiry addressed to an exchange or broker by the Commission's nearest Regional Office may result in a satisfactory explanation. If the activity cannot be explained, an investigation is conducted by the Regional Office located nearest the exchange or market in which the transactions were effected.

Investigations take two forms. The "quiz" or preliminary investigation is designed to detect and discourage incipient manipulation by a prompt determination of the reasons for unusual market behavior. When the "quiz" discloses no violations of the anti-manipulative provisions of the securities acts the investigation is closed. If possible violations of the securities acts or violations of other statutes are revealed, the information obtained in the "quiz" is made available to the proper division of the Commission or to the appropriate Federal or State authorities for any action that they might consider necessary. When facts are uncovered which require more intensive investigation, formal orders are issued by the Commission. In a formal investiga-

tion, members of the Commission staff are empowered to subpena pertinent material and to take testimony under oath. In the course of such investigations, data on purchases and sales over substantial periods of time are compiled and trading operations involving large numbers of securities are often scrutinized. The following table shows the number of "quizzes" and formal investigations in the fiscal year 1952, and the number closed or completed during the period:

Trading investigations

	Quizzes	Formal investigations
Pending June 30, 1951	113	10
Initiated in period July 1, 1951–June 30, 1952	139	2
Total to be accounted for	252	12
Closed or completed during fiscal year	135	2
Changed to formal during fiscal year	1	
Total disposed of	136	2
Pending at end of fiscal year	116	10

The markets for securities about to be sold to the public are watched very closely. In this connection the markets for the 1,494 issues in the amount of $210,672,956 offered under Letters of Notification pursuant to Regulation A under the Securities Act were carefully checked for improper pricing or market grooming. Over 450 other securities were kept under special daily observation during the 1952 fiscal year for periods of 10 to 90 days, largely because a public offering under a registration statement was proposed with the right to stabilize reserved by the underwriter or issuer.

Stabilization

While manipulation of securities prices is prohibited by the Securities Exchange Act, certain other transactions that inject artificial activity into the market are permitted. These are permissible only when used to prevent or retard a price change, usually a decline, when securities are being offered. Stabilization means the maintenance of a price independently reached in the market, and any attempt to raise or lower the market, under the label of stabilizing, is prohibited. All stabilizing transactions are kept under careful surveillance by the Commission but here again its enforcement activities are predominantly of a preventive nature. Reports on stabilizing activities are required in most instances, thus enabling the staff to observe violations as they occur as well as to assist the registrant or underwriter both before and during an offering.

The Commission recognizes that the investment industry must necessarily change its methods with changing conditions in order that it may achieve its primary function, which is to supply industry with the capital it needs. Over the years the Commission has considered any new practices in the light of the public interest and has amended its policies to permit those changes which seem desirable.

Of 664 registration statements filed with the Commission during the fiscal year, 438 contained a statement of intention to stabilize in order to facilitate the offerings covered by such registration state-

ments. Each of these latter filings was examined critically as to the propriety of the proposed method of distribution, market support, and full disclosure thereof, and suggestions were made to the issuers before the offering as to any contemplated course of action which might lead to violations of law.

Stabilizing transactions were made in offerings of stock issues aggregating 33,649,899 shares with an aggregate public offering price of $743,651,363. Bonds stabilized had a total face amount of $77,000,000. In connection with these and other offerings, 353 conferences were held by the staff with representatives of issuers and underwriters to assist them to avoid violations of the acts and rules relating to manipulation and stabilization as well as disclosure.

The required stabilizing reports are filed daily and show all stabilizing transactions. During the fiscal year, 11,547 reports of these transactions were received and filed. The Commission's immediate review of these filings made it possible to advise several underwriters that their activities might lead to violations. Thus the underwriters were saved from costly embarrassment and public losses were prevented.

The following table is a summary of the above figures and shows the substantial increase in stabilizing operations in fiscal year 1952 as compared with fiscal year 1951:

	1952	1951
Registration statements filed	664	554
Statements of intent to stabilize	438	231
Stabilizing transaction made in stock issues aggregating—shares	33,649,899	19,461,164
Public offering price of above shares	$743,651,363	$402,878,038
Bonds stabilized—face amount	$77,000,000	$64,500,000
Stabilizing reports received and examined	11,547	9,210

It is the Commission's experience that issuers and underwriters place great value on the immediate service which the Commission is able to render them by being at all times available to give responsible advice as to proper stabilizing techniques in the offerings of securities and to assist in their sincere efforts to avoid violations of the Acts administered by the Commission.

SECURITY TRANSACTIONS OF CORPORATION INSIDERS

Purpose of Regulation

Section 16 of the Securities Exchange Act has two basic objectives: (1) To make available to public stockholders information as to the prospects of their company which may be implicit in the security transactions of insiders; and (2) to prevent insiders from unfairly using inside information in security trading.

Reports of Transactions and Holdings

For the purpose of affording to the public information as to transactions and holdings of insiders, section 16 (a) provides that every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security which is listed and registered on a national securities exchange, or who is an officer or a director of the issuer of such security, shall file with the exchange and the Commission, at the time of the registration of such security or within 10 days after the time he became such beneficial owner, officer or director, a statement of the amount of all equity securities of such issuer of which he is directly or indirectly the beneficial owner, and

within 10 days after the close of each month thereafter in which any change occurs in his beneficial ownership, a statement indicating such changes and his holdings at the close of the month. Sections 17 (a) of the Public Utility Holding Company Act of 1935 and 30 (f) of the Investment Company Act of 1940, respectively require that similar ownership and transaction reports be filed by officers and directors of registered public utility holding companies and officers, directors, principal security holders, members of advisory boards, investment advisers and affiliated persons of investment advisers of registered closed-end investment companies.

Publication of Information Reported by Insiders

In order that the information contained in these reports may be made available to the vast majority of public stockholders who are not in a position to examine the reports at the Commission's office in Washington or at the various exchanges, the Commission summarizes and publishes the data contained in the reports in a monthly Official Summary of Security Transactions and Holdings, which is widely circulated among individual investors, security dealers, investment advisers, newspaper correspondents and other interested persons. Beginning in August 1951 free distribution of this Official Summary was discontinued as a matter of necessary economy. Distribution is now handled by the Superintendent of Documents, Government Printing Office, at a subscription price of $2.50 per year. A substantial number of the persons on the Commission's free list immediately subscribed for the Summary, and the subscription list has been steadily growing since that time.

Coincidentally, various changes were made in the Commission's techniques of copy preparation which greatly improved the appearance and readability of the publication and substantially reduced its printing costs.

Volume of Reports Filed and Examined

By the close of fiscal year 1952 more than 372,000 reports had been filed under the three statutes by over 52,000 persons identified with the control and management of American industrial, utility and investment companies. While over the course of the past 18 years there has been considerable turnover in the identity of these corporation insiders—due to purchases or sales of stock, or death, on the part of principal security holders, and to election, appointment, promotion, resignation or death on the part of directors or officers—approximately 25,000 persons presently have corporate relationships by virtue of which they are subject to the reporting requirements. During the 1952 fiscal year total filings of reports by these persons substantially exceeded 20,000.

These reports are examined for compliance with the statutory standards and the Commission's related rules and interpretative opinions by a specialized group maintained in the Division of Corporation Finance. Procedures employed in doing so are necessarily integrated closely with the Commission's examination of related items of information in documents required to be filed by corporations registered under various Acts administered by the Commission. The stock holdings of nominees for election as director which are disclosed in proxy statements under Regulation X-14 illustrate such related data.

The following table shows the number of reports of different kinds filed under the three Acts during fiscal year 1952:

Number of ownership reports of officers, directors, principal security holders, and certain other affiliated persons filed and examined during the fiscal year ended June 30, 1952

Description of report	Original reports	Amended reports	Total
Securities Exchange Act of 1934: [1]			
Form 4	16,548	748	17,296
Form 5	465	6	471
Form 6	2,228	18	2,246
Total	19,241	772	20,013
Public Utility Holding Company Act of 1935: [2]			
Form U-17-1	56	4	60
Form U-17-2	354	6	360
Total	410	10	420
Investment Company Act of 1940: [3]			
Form N-30F-1	105	0	105
Form N-30F-2	511	12	523
Total	616	12	628
Grand total	20,267	794	21,061

[1] Form 4 is used to report changes in ownership; Form 5, to report ownership at the time any equity security is first listed and registered on a national securities exchange; and Form 6, to report ownership of persons who subsequently become officers, directors, or principal stockholders of the issuer.
[2] Form U-17-1 is used for initial reports and Form U-17-2 for reports of changes in ownership.
[3] Form N-30F-1 is used for initial reports and Form N-30F-2 for reports of changes in ownership.

Enforcement of Reporting Requirements

Rarely does the Commission have to resort to formal action to compel compliance with these reporting requirements. Only twice in the 17 years prior to fiscal year 1952 has it been necessary to seek a court order to enforce these requirements. The third occasion arose in fiscal year 1952 and is discussed below in the section on litigation under the Securities Exchange Act.

Preventing Unfair Use of Inside Information

For the purpose of preventing the unfair use of information which may have been obtained by an insider by reason of his relationship to his company, section 16 (b) of the Act provides for the recovery by or in behalf of the issuer of any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of the company within any period of less than six months. Corresponding provisions are contained in section 17 (b) of the Public Utility Holding Company Act of 1935 and section 30 (f) of the Investment Company Act of 1940. While the Commission is not charged with the enforcement of the civil remedies created by these provisions, which are matters for determination by the courts in actions brought by the proper parties, it is interested in seeing that information with respect to possible profits by insiders is made available to issuers and public stockholders; and it has participated as *amicus curiae* in many of the suits instituted under these provisions where questions of statutory interpretation are involved.

SOLICITATION OF PROXIES, CONSENTS, AND AUTHORIZATIONS

Pursuant to sections 14 (a) of the Securities Exchange Act, 12 (e) of the Public Utility Holding Company Act of 1935, and 20 (a) of the Investment Company Act of 1940 the Commission has adopted

Regulation X-14 which is designed to regulate the solicitation of proxies, consents and authorizations in connection with securities of companies subject to those statutes in order to protect investors by requiring the disclosure of certain information to them at the time their proxies are solicited. The information prescribed for such disclosure is calculated to enable the investor to act intelligently upon each separate matter with respect to which his vote or consent is sought. The regulation also contains provisions enabling security holders who are not allied with the company's management to communicate with other security holders when management is soliciting proxies, either by arranging for the distribution of their own proxy statements or through the inclusion of their proposals in the proxy statements of management.

Statistics Relating to Proxy Statements

During the 1952 fiscal year the Commission received and its staff in the Division of Corporation Finance examined, for its adequacy in meeting the prescribed standards of disclosure, material relating to 1,818 solicitations of security holders' proxies as well as "follow-up" material used in 158 of these cases. In each instance it was necessary under the regulations to receive and process these proxy statements both in their preliminary and definitive forms. These figures compare with 1,788 solicitations and the use of "follow-up" material in 192 instances during the preceding fiscal year.

Much more detailed information about proxy solicitations is available on a calendar year basis. The total number of solicitations made in 1951 was 1,791. Nearly 99% of these, or 1,769 were made by management and the remaining 22 by nonmanagement groups. It should be added that 40 of the proxy statements filed by management included, as provided for under the regulation, 63 proposals of 24 different stockholders who were not connected with the management. The number of management proxy statements including such stockholder proposals shows a drop from the 57 recorded in 1950, while the number of such stockholder proposals shows a drop from the 97 in 1950.

As usual the business of electing directors is the purpose for which proxies are most often sought. In 1951, there were 1,578 stockholders' meetings where such election was an item of business, and 180 meetings not involving such election, while the 33 remaining solicitations sought consents and authorizations which did not involve any meeting or any election of directors.

The wide range and frequency of items of business other than election of directors on which stockholders' action was sought in 1951 are shown below.

Item of business other than election of directors	*Number of proxy statements*
Mergers, consolidations, acquisitions of businesses, and purchases and sales of properties	43
Issuance of new securities, modification of existing securities, recapitalization plans other than mergers or consolidations	272
Employee pension plans	116
Bonus and profit-sharing plans, including stock options	143
Indemnification of officers and directors	11
Change in date of annual meeting	20
Miscellaneous amendments to bylaws and other matters	302
Approval of independent auditors	398

The most striking increase over 1950 is reflected above in the number of proxies seeking stockholder votes on bonus and profit-sharing plans including stock options—a total of 143 compared with 52 in 1950. While the number of proxy statements dealing with employee pension plans, 116, is substantially less than the corresponding 152 proxy statements in 1950, it should be noted that the 1950 total reflected an increase of more than 200 percent over the corresponding total of 49 in 1949.

Examination of Proxy Material

Under the regulation copies of proposed proxy material must be filed with the Commission in preliminary form at least 10 days prior to the date of the proposed solicitation, and in definitive form at the same time definitive copies are furnished to stockholders. The preliminary material is filed for the information of the Commission and to enable the staff to determine the adequacy of the prescribed factual disclosures therein. Thus the examination of this material must be completed in the comparatively brief interval between the filing of the preliminary and definitive material. Even this brief period is frequently shortened, where requested and found practicable, by Commission action accelerating the date of the proxy solicitation. Where preliminary material fails to meet the disclosure standards, the management or nonmanagement group responsible for its preparation is given an opportunity to correct the deficiency before preparing its definitive proxy material. Since the financial statements included in proxy material seeking stockholder approval of the merger, acquisition or recapitalization of corporations frequently present important and complex accounting questions, it is not surprising that such statements in preliminary material often do not meet the prescribed standards of disclosure. Two examples may be noted:

1. Preliminary proxy solicitation material, which was submitted by a food manufacturing company with total assets of approximately $95,000,000, contained a pro forma statement of financial position giving effect to the acquisition of the net assets of a company with total assets of approximately $15,000,000.

The registrant issued 115,000 shares of its common stock, $25 par value, for substantially all of the net assets of the company to be acquired. This represented the issuance of approximately 20 percent additional stock. The sum of $2,296,300, representing the excess of the common stock equity of the company to be acquired over the aggregate par value of registrant's common stock issued therefor, was reflected in the registrant's account, "Accumulated earnings retained and used in the business." The accounting staff in the Division of Corporation Finance took the position that the accumulated earnings of the company to be acquired in excess of the credit to registrant's common stock account, $2,875,000, should be credited to capital surplus instead of to registrant's accumulated earnings account since the transaction appeared to be, and was represented as, a purchase of net assets. Consequently, the pro forma statement of financial position was amended to reduce the accumulated earnings account by $2,296,300 and to credit the capital surplus account with the same amount.

2. The registrant, a manufacturing company, filed preliminary proxy soliciting material to be used in connection with a forthcoming special meeting of stockholders at which it was proposed to effect a

plan of recapitalization of the company in order to eliminate accumulated and unpaid dividends of approximately $8,600,000 on the preferred stock of the company. The proposed recapitalization was to be effectuated through a statutory merger of the company with its wholly owned subsidiary company. The plan contemplated the issuance by the surviving parent company of 5½ percent sinking fund debentures and new common stock primarily to the preferred stockholders in exchange for their preferred stock and in satisfaction of the unpaid dividends on this stock. The preliminary proxy material included a pro forma balance sheet giving effect to the proposed recapitalization of the company. In this balance sheet the earned surplus of the parent company in the amount of $578,740.29 was brought forward in the merger as earned surplus of the surviving company rather than as capital surplus.

In the letter of comment issued by the Division of Corporation Finance it was indicated that because of the substantial accumulated and unpaid dividends on the preferred stock, which far exceeded the amount of earned surplus, this latter amount should be brought forward as capital surplus rather than as earned surplus in the merger and that subsequently accumulated earned surplus should be dated from the date of reorganization. As a result, the pro forma balance sheet in the definitive proxy material as sent to stockholders was changed to reflect the earned surplus of the company as capital surplus after the merger.

REGULATION OF BROKERS AND DEALERS IN OVER-THE-COUNTER MARKETS

Registration

Section 15 (a) of the Securities Exchange Act requires that brokers and dealers using the mails or instrumentalities of interstate commerce to effect transactions in securities on the over-the-counter markets be registered with the Commission pursuant to section 15 (b) of the Act. Brokers and dealers whose business is exclusively intrastate or exclusively in exempt securities are exempt from registration. Certain data with respect to registrations of brokers and dealers during fiscal year 1952 are collected in the following tabulation.

Statistics relating to registrations of brokers and dealers—fiscal year ending June 30, 1952

Effective registrations at close of preceding fiscal year	3,945
Effective registrations carried as inactive	9
Registrations placed under suspension during preceding fiscal year	0
Applications pending at close of preceding fiscal year	26
Applications filed during fiscal year	501
Total	4,481
Applications withdrawn during year	10
Applications canceled during year	0
Registrations withdrawn during year	357
Registrations canceled during year	61
Registrations denied during year	0
Registrations suspended during year	1
Registrations revoked during year	20
Registrations expired by Rule X–15B–3	0
Registrations effective at end of year	3,994
Registrations effective at end of year carried as inactive	[1] 3
Applications pending at end of year	35
Total	4,481

[1] Registrations on inactive status because of inability to locate registrant despite careful inquiry.

Administrative Proceedings

The Commission is empowered, with due regard to the public interest and the protection of investors, to deny or revoke the registration of brokers and dealers pursuant to section 15 (b) of the Act; and to suspend or expel brokers and dealers from membership in a national securities association or exchange pursuant to sections 15A and 19 (a) of the Act, where certain types of misconduct are shown. Data with respect to the type and number of such administrative proceedings instituted by the Commission during the 1952 fiscal year and their disposition are given below:

Record of broker-dealer proceedings to deny registration, proceedings to revoke registration, and proceedings to suspend or expel from membership in a national securities exchange or association instituted pursuant to the Securities Exchange Act of 1934 for fiscal year 1952.

Proceedings pending at start of fiscal year to:	
Revoke registration	11
Revoke registration and suspend or expel from NASD,[1] or exchanges	11
Deny registration to applicant	1
Total proceedings pending	23
Proceedings instituted during fiscal year to:	
Revoke registration	13
Revoke registration and suspend or expel from NASD, or exchanges	5
Deny registration to applicants	2
Total proceedings instituted	20
Total proceedings current during fiscal year	43
Disposition of proceedings	
Proceedings to revoke registration:	
Dismissed on withdrawal of registration	2
Registration revoked	15
Total	17
Proceedings to revoke registration and suspend or expel from NASD, or exchanges:	
Suspended from NASD—registration not revoked	1
Registration revoked and firm expelled from NASD	3
Registration revoked—no action taken on NASD membership	2
Dismissed on withdrawal of registration	1
Total	7
Proceedings to deny registration to applicant:	
Dismissed on withdrawal of application	2
Dismissed—registration permitted	1
Total	3
Total proceedings disposed of	27
Proceedings pending at end of fiscal year to:	
Revoke registration	7
Revoke registration and suspend or expel from NASD or exchanges	9
Deny registration to applicants	0
Total proceedings pending at end of fiscal year	16
Total proceedings accounted for	43

[1] The National Association of Securities Dealers, Inc. is the only national securities association registered with the Commission.

Since 1947 the Commission, in appropriate instances in revocation proceedings, has named as party respondents persons who were not registered as brokers and dealers with the Commission but who were partners, officers or directors or persons controlling or controlled by such brokers and dealers. They are so named in order that they may have a right to present evidence and cross-examine witnesses with respect to any misconduct charged in which they allegedly participated, and, pursuant to section 25 (a) of the Act, to appeal from any order issued by the Commission which aggrieves them.

Proceedings were instituted against Henry P. Rosenfeld, doing business as Henry P. Rosenfeld Company, and three other registered brokers and dealers to determine whether their registrations should be revoked; also named as additional party respondents were 12 nonregistered persons who were employed by the Rosenfeld company as salesmen. The question with respect to them was whether they, as persons "controlled" by a registered broker-dealer within the meaning of Section 15 (b) of the Act, had wilfully violated any of the provisions of the securities acts and whether they individually were causes of any order of revocation which might be issued. Rosenfeld admitted the facts alleged as to himself and consented to revocation of his registration. Hearings, however, were held pursuant to the Commission's order to determine the culpability of all other respondents including the 12 nonregistered persons. The proceeding resulted in an order revoking the registrations of Henry P. Rosenfeld Company and the three other brokers and dealers, and the Commission found that the nonregistered respondents, in the sale of securities, had wilfully violated the antifraud provisions of the securities acts in that they, as well as the other parties, had made false and misleading statements regarding the background of the Rosenfeld company, the operation and prospects of three issuers of securities, their plans to list such securities on a securities exchange, and the necessity of effecting a prompt purchase to secure stock being issued. The Commission also found that they were causes of the order of revocation of Henry P. Rosenfeld Company. Samson Wallach, Sr., one of the nonregistered respondents, appealed to the United States Court of Appeals for the District of Columbia, asserting that the Commission has no jurisdiction under section 15 (b) of the Securities Exchange Act as to persons not registered. The appeal is pending.

Consolidated proceedings against Adams & Co., Bennett, Spanier & Co., Inc., and Ray T. Haas, resulted in an order revoking their registrations and expelling Adams & Co. and Bennett, Spanier & Co., Inc. from membership in the NASD. Haas was not a member. The Commission found that registrants, acting in concert, took down blocks of shares of Mohawk Liqueur Corporation from a person in control of that corporation at successively higher prices and that, in the course of distributing such shares, they maintained and raised the price of the shares by entering increasingly higher bids in the National Daily Quotation Sheets and on the Chicago Board of Trade and effecting purchases at rising prices.

In a proceeding against Frank S. Kelly, against whom the Commission had already obtained an injunction,[12] the Commission revoked his broker-dealer registration. The Commission found that he had solicited customers to buy certain when-issued securities, that as

[12] See 17th Annual Report, p. 59.

their agent he had accepted their orders for such securities and had obtained deposits from them in connection therewith on the representation that the monies obtained would be held and applied to the settlement of the contracts for the securities. He did not disclose to these customers that he intended to use and did use these deposits for his own purposes. In addition he loaned a substantial sum to a private corporation not connected with the securities business, and as a result of such loan, he had insufficient liquid assets to meet his obligations to customers.

In proceedings instituted against Van Alstyne, Noel & Co., it was alleged that the respondent made false and misleading representations in the sale of stock of Expreso Aereo Inter-Americano, S. A., a Cuban airline, concerning, among other matters, its operations and financial condition, its prospects and the probability of higher market prices. The Commission found that the Van Alstyne, Noel firm made certain favorable representations about Expreso's operations and future prospects when it had in its possession information that Expreso's financial condition was unfavorable and was deteriorating, that Expreso had borrowed substantial sums of money, that it had issued stock in Cuba to obtain capital, and that an aviation consultant who studied the company had reported that Expreso's prospects were not too bright unless substantial funds could be raised to purchase new equipment for expansion and acquire control of its only competitor in Cuba. The Commission held that such information was material, the nondisclosure of which rendered the optimistic representations misleading. The registrant contended with respect to the financial statements of Expreso available to it that it was under no duty to disclose to its customers the information contained therein of which it had knowledge because (a) the financial statements were confidential, (b) some of the financial statements were unaudited and therefore inaccurate and incomplete, and (c) the financial statements were stale and were accompanied or immediately followed by optimistic statements by Expreso's officers and directors which negatived or minimized the adverse financial information. The Commission rejected this contention, pointing out that full disclosure could have included any facts affecting the weight to be given to the information, and stating, with respect to the claimed confidential nature of the statements, that:

> Even if it be assumed that registrant owed a duty to Expreso to treat the financial information as confidential, in our opinion when registrant disseminated favorable and optimistic information with respect to Expreso's condition and prospects, it made itself subject to an overriding duty of disclosure to its customers. [Footnote omitted.] Registrant should have appreciated that giving to a customer favorable or optimistic information and withholding unfavorable information which it considered confidential would be misleading and unfair to the customer . . .

The Commission ordered the suspension of Van Alstyne, Noel & Co. from membership in the NASD, New York Stock Exchange, and New York Curb Exchange for a period of 20 days. The registrant appealed from the Commission's suspension order to the United States Court of Appeals for the Second Circuit. The appeal is pending.

Broker-Dealer Inspections

Section 17 (a) of the Securities Exchange Act authorizes the Commission to make reasonable periodic, special, or other examinations of the books and records of brokers and dealers. Under this section,

the Commission has devised an inspection program to determine whether brokers and dealers are complying with the requirements of the securities acts. These examinations are sometimes limited in nature, but the usual inspection is designed to check on all the various activities of brokers and dealers. During the fiscal year, the Commission's regional offices, which conduct the inspections, reported on 827 such inspections, 677 of which were inspections of members of the NASD. As has been the experience in previous years, a substantial number of violations of the rules and regulations were uncovered. These violations included noncompliance with the Commission's capital and hypothecation rules and with Regulation T prescribed by the Board of Governors of the Federal Reserve System. In a limited number of instances, brokers and dealers were taking secret profits. There were a substantial number of transactions in which the reasonableness of the price charged to the customer in relation to the current market price was open to question, and there were miscellaneous violations in large number which would be difficult to classify because of their variety.

The Commission does not necessarily take formal action against a broker or dealer who appears from these inspections to be violating the Acts if the violations appear to be inadvertant or the result of misinformation and are not wilful, the Commission, consistent with accepted standards of administrative procedure, affords the broker-dealer an opportunity to correct his practices if possible or to assure the Commission that he will not persist in them.

Investigations

Generally, investigations of brokers and dealers result from the inspection program, complaints from customers, or information received from sources such as state securities commissions, securities exchanges and associations, and better business bureaus. In connection with such investigations, the Commission may or may not authorize the use of subpena powers. After the completion of an investigation, the staff analyzes the evidence developed and makes recommendations to the Commission for appropriate action in the public interest and for the protection of investors. The recommendation may be for injunctive relief, for administrative action to revoke registration or to suspend or expel from membership in a national securities exchange or association, or, in an appropriate case, for reference to the Department of Justice for criminal prosecution. The following schedule shows the number of such investigations during the fiscal year.

Pending July 1, 1951		164
Commenced during year		135
		[1] 299
Closed during year		118
Pending July 1, 1952		[2] 181
		299

[1] This figure includes 43 administrative proceedings as shown in the schedule set forth under "Administrative Proceedings," *supra*.

[2] This figure includes 16 administrative proceedings pending at the end of the fiscal year as shown in the schedule set forth under "Administrative Proceedings," *supra*, and 15 such proceedings in which the Commission had issued its final determination before the end of the fiscal year, but the investigative files on which had not been closed of record.

Financial Reports

Rule X–17A–5 requires brokers and dealers to file annually reports of their financial condition. During the 1952 fiscal year, 3,797 reports of financial condition were filed. These reports are examined and analyzed by the staff of the Commission to determine whether, as of the date for which the report speaks, the broker-dealer is in compliance with the capital requirements under rule X–15C3–1. If a broker-dealer is found not to comply, he is generally afforded a reasonable time in which to correct his financial condition so that it fully meets the requirements. If he fails to do so, the Commission takes such action as may be necessary for the protection of customers.

SUPERVISION OF ACTIVITIES OF NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Association Membership

Membership in the National Association of Securities Dealers, Inc. (NASD), the only national securities association registered with the Commission, stood at 2,950 at the close of the 1952 fiscal year. This represented an increase of 104 members during the period as a result of 241 admissions to, and 137 terminations of, membership. At the same date there were registered with the NASD as registered representatives 33,053 individuals, including generally all partners, officers, salesmen, traders and other persons employed by or associated with member firms in capacities which involved their doing business directly with the public. The number of persons so registered represented an increase during the fiscal year of 2,131 as a result of 6,168 initial registrations or reregistrations and 4,037 terminations of registrations.

Disciplinary Actions

In the 1952 fiscal year the Commission received from the NASD reports of final action in 21 disciplinary cases in which formal complaints had been filed against members. Four of these complaints had been dismissed by the District Business Conduct Committee of initial jurisdiction on findings that there had been no violations of the Rules of Fair Practice of the association as alleged in the complaints.

In the remaining 17 cases the committees found that the members or the registered representatives of the members cited in the complaints had acted in violation of the Rules of Fair Practice, and the committees imposed various penalties. Of these 17 decisions the complaints in 7 cases were aimed solely against member firms. In these cases one member firm was expelled and 6 other member firms were fined amounts ranging from $100 to $800, and aggregating $1,950.

The remaining 10 decisions involved not only member firms but also their registered representatives. In eight of them the following penalties were imposed: One firm was censured and a representative was fined $500; one firm was fined $500 and it and its representative were each suspended for 30 days; one firm was fined $500 and it and its representative were censured; one firm and its representative were each suspended for 60 days and the representative was fined $500; one firm was censured, as were two of its representatives; one firm was fined $3,000, two representatives were each fined $1,200, a third was fined $600 and the registration of a fourth representative was revoked; and complaints against two member firms were dismissed, although in one instance a representative was fined $100 and in the other the registration of a representative was revoked.

The decisions in the two remaining cases, after affirmance by the Board of Governors, were appealed to the Commission by some of the aggrieved parties pursuant to the provisions of section 15A (g) of the Securities Exchange Act, and at the end of the fiscal year were in process before the Commission. Pending Commission determination such an appeal automatically stays the effectiveness of that part of the NASD decision affecting the appealing person or firm. In the one case, appeals were filed by Albert B. Tyson, who subsequently abandoned his appeal, and Gilbert Parker, registered representatives of Tyson & Co., Inc., from the revocation of their registrations. No appeal was taken from that part of the NASD decision expelling the firm from membership and revoking the registration as a registered representative of Joseph Tyson. In the other case, Standard Bond & Share Co. and its principal officer, William G. Stien, appealed from a decision which imposed a fine of $500 on the firm and also suspended the firm from membership and Stien, as a registered representative, for 30 days.

As is its custom, the Commission referred to the NASD for appropriate action facts concerning the business practices of members which tended to indicate possible violations of the NASD Rules of Fair Practice. This information was obtained in broker-dealer inspections of member firms by the Commission. In the 1952 fiscal year nine such references were made and a similar number had been pending before the NASD at the start of that year. At the end of the period seven cases were under consideration or in process, reports on 11 having been received from the association during the period. In two instances formal complaints were filed, resulting in the imposition of penalties. The remaining nine cases were disposed of by informal means after examination by the association and either the receipt of assurances by the NASD committees of future compliance with relevant rules or the discovery of relevant facts or circumstances such as to persuade the committees that there was no basis for formal disciplinary action.

Commission Review of Disciplinary Action

Under the provisions of section 15A (g) of the Act, any disciplinary action by the NASD against a member is subject to review by the Commission on application by any aggrieved party, or on the Commission's own motion.

As indicated in the Seventeenth Annual Report, there were pending before the Commission at the start of the fiscal year here under review an appeal by Otis & Co. from a 2-year suspension, and by R. H. Johnson & Company from expulsion, and shortly after the start of the year a third appeal was taken by George J. Martin & Co., a member firm which had been expelled, and Irving and Alfred Shayne, whose registration as registered representatives of the Martin firm had been revoked. In addition, as mentioned above, appeals were filed during the year by Tyson & Co., Inc., Albert B. and Joseph Tyson and Gilbert Parker and by Standard Bond & Share Co. and its president, William G. Stien.

The Commission on April 2, 1952, issued its findings, opinion and order in the R. H. Johnson & Company case dismissing the review proceedings;[13] and the remaining four appeals were in process before

[13] Securities Exchange Act release No. 4694.

the Commission at the end of the fiscal year. The R. H. Johnson & Company matter is of considerable significance because the Commission's decision, which in effect affirmed the NASD's action, was subsequently appealed to the courts, the first time such an appeal has been taken.[14] In that case, a complaint was issued by the District Business Conduct Committee of District 14 of the NASD charging violations of Sections 1 and 2 of Article III of the NASD Rules of Fair Practice by R. H. Johnson & Company ("applicant"), by two of its partners, Roland H. Boardman and John D. Freeman, and by a salesman, Caswell Sharpe. The District Committee, after hearing, found that applicant and the others had violated these rules in that, for the purpose of obtaining profits for themselves, they had induced trading activity in a customers' account over a six-year period, which, in view of the financial resources and character of the account, was excessive in volume and in frequency. It ordered the expulsion of applicant from membership in the association and revocation of registration with the association of the others as registered representatives of applicant. Upon review by the NASD Board of Governors, applicant's expulsion and the revocation of Sharpe's registration were affirmed, and the disciplinary action with respect to Boardman and Freeman was reduced to suspension from registration for one year. In addition, the Board found that Rupert H. Johnson, applicant's principal partner, and Boardman, Freeman, and Sharpe were causes of the order expelling applicant from membership in the NASD. Applicant and Johnson sought review by the Commission.

The overtrading was effected in a joint account of an elderly widow and her daughter by the salesman, Sharpe, who had gained their trust and confidence. The customers, neither of whom had any financial or business background, placed with Sharpe for investment a net of $57,776 in cash and securities. With these assets Sharpe effected a total of 648 transactions consisting of 348 purchases and 300 sales, in a gross amount of $1,011,678. The securities acquired in 208 of the purchase transactions were sold within 6 months of acquisition, while those acquired in 68 other purchase transactions were sold within a year. Thus, more than 79% of the purchases were reversed within one year. Only the securities acquired in 35 purchases, of which 20 were effected as recently as 1948 and 1949, remained unsold at the end of the 6-year period.

Another feature of the trading in the account was that almost one-third of the purchases were made between a dividend declaration date and the exdividend date. The customers believed they were receiving extra income, but the dividends were in effect merely a return of capital which had been purchased with the attendant expense of commissions and other costs.

When the customers closed their account, securities worth $31,700 remained of the $57,776 in cash and securities invested, indicating a loss of $26,076, of which $8,733 had been realized. Had these customers, instead of placing their account with applicant, simply continued holding the securities they originally owned, their account on the date it was closed would have shown an increased market value of about $2,663.

Applicant realized commissions and profits on this account totalling

[14] See p. 75, *infra*.

$23,354. Although almost all of the transactions were in listed securities, only $1,852 represented commissions on agency transactions while $21,502 were profits derived from sales to the customers by applicant as principal. Sharpe received 50% of these commissions and profits realized by applicant. Over the 6-year period, 33% of Sharpe's income was derived from this one account, and in one year it provided over 47% of his income.

Applicant conceded that there was substantial overtrading in the account, that the account suffered substantial losses, and that Boardman and Freeman failed adequately to supervise the transactions recommended to the customers by Sharpe. However, applicant contended that responsibility for the overtrading could not be attributed to it, that primary responsibility lay with Sharpe while any derivative responsibility went only as far as Boardman and Freeman who, as resident partners in the Boston office, assertedly had complete control over Sharpe's trading in the account. The NASD, on the other hand, argued that Boardman and Freeman were not actually partners but only supervisory employees, and that while it is immaterial, as far as applicant's responsibility is concerned, whether Boardman and Freeman were partners or not, their subordinate status in the firm was significant with respect to Johnson's duty, as the dominant partner, to supervise the Boston office.

The Commission, in dismissing the review proceedings, found that Johnson, as the dominant partner, must have known that Boardman and Freeman would have little time to devote to supervision of the activities of the salesmen in the Boston office who serviced about two to four thousand accounts. Boardman and Freeman were permitted to handle their own accounts, receiving a commission of 50% thereon like the other salesmen, and they were frequently away from the office on firm business.

Moreover, the record showed that supervision of the salesmen in the Boston office was primarily the function of the New York office where Johnson maintained his headquarters. The accounting system of the firm was such that the only permanent records were in the New York office. The daily sales sheets were prepared in New York showing all transactions for the day in all of the offices, and the customers' ledger was kept in New York. Whenever accurate and complete information as to an account was required by the Boston office, a transcript taken from the customers' ledger in New York would be supplied. To the extent that there was compliance with Section 27 (a) of Article III of the NASD's rules which requires supervision of salesmen including review and approval of all sales by a partner, executive, or branch manager evidenced by written endorsement of sales memoranda, it was carried out in New York. However, such endorsement in applicant's case, in the form of initialing of the sales memoranda, frequently was done by employees rather than a partner or executive and merely purported to indicate that the transactions were accurately set down and that the spread was reasonable. But the endorsement did not purport to signify that the transactions had been approved as being suitable for the customer. The Commission accordingly concluded that, although the New York office was responsible for revising securities transactions, such limited check as was actually made was not designed and was ineffective to detect excessive trading.

Commission Review of Action on Membership

Section 15A (b) (4) of the Act and the bylaws of the NASD provide that except in cases where the Commission approves or directs admission to or continuance in NASD membership as appropriate in the public interest, no broker or dealer may hold such membership if such broker or dealer or any person controlling or controlled by such broker or dealer has been expelled from membership for violation of an association rule prohibiting conduct inconsistent with just and equitable principles of trade or was a "cause" of any such expulsion order.

Pursuant to this authority, and giving due consideration to the affirmative recommendation of the Board of Governors of the NASD, the Commission during the fiscal year approved the admission to membership of LaForge and Co.[15] The firm had previously been expelled from NASD membership for conduct inconsistent with just and equitable principles of trade in that it had paid commissions to the registered representative of another member without the prior knowledge or consent of that member. The firm represented to the NASD, in its effort to regain association membership, that the payments had been made on the instructions of the customer; that no effort had been made to keep secret the fact of these payments; that if association rules had been violated that had not been the intent; and that since its expulsion no similar acts had occurred. The Commission found it appropriate in the public interest to approve the admission of the firm to NASD membership.

The Commission considered somewhat similar applications in approving the continuation in NASD membership of three different member firms employing H. L. Brocksmith,[16] Roland H. Boardman,[17] and John D. Freeman, respectively.[18] Brocksmith's disqualification arose from Commission action in 1942 which resulted in the revocation of the broker-dealer registration of H. L. Ruppert and Co., Inc., of which Brocksmith was vice president, and the expulsion of that firm from the NASD and the St. Louis Stock Exchange. Thereafter, with Commission approval, the NASD continued in membership a firm which employed Brocksmith as its registered representative. Brocksmith subsequently changed his employment to another NASD member firm and this change likewise raised before the Commission the question of continuation in NASD membership of the new employer. On the representation by the NASD that his record while employed by the other member firm was satisfactory and that he was adequately supervised in his new employment, the Commission approved the application.

The Commission, with due regard to the public interest, also approved the continuance of membership in the association of the firms employing Roland H. Boardman and John D. Freeman, who had been co-managers of the Boston branch office of R. H. Johnson and Company, and had been held by the NASD to be causes of the order of expulsion of the Johnson firm and had been suspended from membership in the association as registered representatives for one year.

[15] Securities Exchange Act release No. 4700 (April 8, 1952).
[16] Securities Exchange Act release No. 4689 (March 12, 1952).
[17] Securities Exchange Act release No. 4705 (April 15, 1952).
[18] Securities Exchange Act release No. 4704 (April 15, 1952).

Commission Action on NASD Rules

Section 15A (j) of the Act provides that any change in or addition to the rules of a registered securities association shall be disapproved by the Commission unless such change or addition appears to the Commission to be consistent with the requirements for such rules in section 15A (b) of the Act.

The NASD filed with the Commission, on June 4, 1952, after requisite approval by the Board of Governors and the membership, a proposed amendment to Article III of the Rules of Fair Practice, designated Section 28, providing for notice under limited conditions to a member (the "employer member") before another member (the "executing member") knowingly executes transactions for the purchase or sale of a security for the account of a partner, officer, registered representative, or employee of the employer member. The Commission held that it was unable to find the proposed amendment consistent with section 15A (b), and on June 30, 1952, disapproved the proposed amendment pending further order.[19] At the same time the Commission gave notice that it had under consideration a proposal to adopt rule X–10B–6 under section 10 (b) of the Act. In substance, this rule would make it unlawful for any broker or dealer to effect any securities transaction with or for any partner, officer, director, or employee of another broker or dealer, either on or off an exchange, unless he gives actual notice of the transaction to the other broker or dealer in advance and then promptly sends the other broker or dealer a copy of the confirmation. The Commission pointed out that the proposed rule of the NASD which it had disapproved pending further order was more limited than the Commission's rule in that (1) it would have applied only to members of the association and (2) it would have required notice only under limited conditions.

CHANGES IN RULES, REGULATIONS AND FORMS

Amendment of proxy rules.—In keeping with its policy of revising its rules and regulations from time to time as experience gained from actual administration dictates, the Commission, during the latter part of the 1952 fiscal year, published tentative proposals for the amendment of certain of its proxy rules under Regulation X–14. In announcing these proposals, full details of which are set forth in Securities Exchange Act release No. 4668 (January 31, 1952), the Commission invited all interested persons to submit data, views and comments on the proposals for its consideration. (The Commission, on December 11, 1952, adopted amended proxy rules growing out of these proposals as announced in Securities Exchange Act release No. 4775.)

Rule X–15D–14. Reports by Canadian banks.—On August 27, 1951, the Commission announced the adoption of a rule dealing with reports filed pursuant to section 15 (d) of the Securities Exchange Act by Canadian banks. The rule, designated as rule X–15D–14, permits Canadian banks to file as their annual reports under the Act the information and documents which they are required by the Bank Act of Canada to furnish to their stockholders. The rule further

[19] Securities Exchange Act release No. 4723 (June 30, 1952).

provides that current and quarterly reports need not be filed by such banks.

Proposed Rule X–10B–6.—This rule, which is discussed *supra*, at page 71, would require a broker-dealer to give notice to another broker-dealer of any transaction between the former broker-dealer and the partner, officer, director or employee of the latter broker-dealer, and to give a duplicate copy of the confirmation to such broker-dealer.

Amendment of certain rules with respect to registration and reporting.—Corresponding to similar action taken under the Securities Act of 1933 during the year, the Commission amended the following rules under the Securities Exchange Act dealing with the preparation and filing of applications and reports under the Act:

Rule X–12B–11 was amended to require only three copies of applications and reports to be filed with the Commission unless additional copies are required by the instructions contained in the particular form. Previously the rules required four copies of all such material to be filed with the Commission.

Rule X–12B–12 previously required applications and reports to be printed, mimeographed or typewritten. The amended rule permits them to be lithographed or prepared by any similar process which produces copies of the requisite clarity and permanence. Further amendments clarify the requirements with respect to the size of type to be used.

Rules X–13A–13 and X–15D–13, which relate to the filing of quarterly reports of gross sales and operating revenues, were amended so as to make it clear that such reports are required to be filed by title insurance companies. They previously provided that such quarterly reports need not be filed by "any * * * insurance company." This language has been changed to read "any * * * insurance company (other than title insurance companies)."

Amendment of Form 8–K.—Item 15 of Form 8–K was amended so as to make it clear that registrants under the Securities Act which are required to file current reports on this form need keep up to date only those exhibits which are required to be kept up to date by a company having securities listed and registered on a national securities exchange.

The amended item also provides that where previously filed exhibits are amended or modified, copies of the entire exhibits as amended or modified to date shall be filed where it is practicable to do so. Where that is not practicable, copies of the amendment or modification only may be filed, but in such case the registrant must identify each previous filing in which the original exhibit or any amendment or modification has been filed.

Amendment of specified forms.—During the 1952 fiscal year, the Commission also adopted various amendments to the Instruction Book for Forms 12–K and 12A–K, in order to conform to certain changes made by the Interstate Commerce Commission in its Form A; and adopted an amendment to Form 10–K which further simplifies the filing of reports on this form by electric utility and natural gas companies which file annual reports with the Federal Power Commission on its Forms 1 or 2. The latter issuers are permitted to file copies of such reports in satisfaction of most of the requirements of Form 10–K.

Amendment of Rule X-12D2-2 (a).—This rule, which relates to the delisting of securities by exchanges under certain conditions by notifying the Commission thereof, was amended, effective May 26, 1952, and a new form of notice adopted. The amendment and new form are discussed *supra*, at page 51.

LITIGATION UNDER THE SECURITIES EXCHANGE ACT

Injunctive Actions Against Broker-Dealers

During the fiscal year the Commission filed a complaint charging *J. Arthur Warner & Company,*[20] a registered broker-dealer having offices in New York and throughout New England, with a course of conduct which included the practice of "churning" accounts of customers. As the name implies, churning consists of grossly overtrading an account for the purpose of making large commissions for the dealer at the expense of the customer. To accomplish this, it is generally necessary to find unsophisticated investors who will, for an extended period, remain unaware of what is happening to their accounts. The complaint, which was filed in the United States District Court at Boston, Massachusetts, alleged that J. Arthur Warner & Company dealt largely with the elderly and the uninformed who had come by their existing portfolios through inheritance; that it encouraged these persons to liquidate portfolios of government bonds and conservative securities, and to withdraw funds from savings accounts in order to invest in securities which the Warner Company and its employees would recommend, and that, presumably in an effort to make its service most complete, it would also arrange for bank loans for these customers so that they could buy more of the Warner-recommended shares.

The complaint asked for a temporary restraining order as well as for preliminary and final injunctions, and a temporary restraining order was entered which had the effect of restraining the defendant company from syphoning off its assets during the pendency of the litigation. This was deemed to be necessary for the protection of its customers in event they decided to bring action against it. Later, at the court's request, the defendant stipulated that during the pendency of the action its capital would not be impaired, and the order was vacated.

On November 21, 1951, a preliminary injunction was entered with the consent of the defendant. A hearing on the final injunction had not been held as of the close of the fiscal year.

An injunction was obtained against *Kenneth B. Hill,*[21] a registered broker-dealer, who not only sold, but also printed the securities and forged thereon the names of the proper issuing officials. The complaint also alleged and the court found that Hill had failed to meet statutory requirements as to his financial condition, had filed false and misleading financial statements and had failed to keep required business records.

In an injunctive action against *P. L. Ivey & Co.,*[22] a broker-dealer, it was enjoined from misrepresenting its financial condition to customers and failing to meet statutory financial standards.

[20] Civil Action No. 51-1036, D. Mass.
[21] Civil Action No. 52-8, D. Mass.
[22] Civil Action No. 1313, E. D. Va.

Injunctive Actions Against Others

An action for an injunction was instituted against *L. A. McQueen*,[23] a vice president and director of the General Tire and Rubber Co., to restrain him from further violations of section 16 (a) which requires an officer or a director of a corporation with an equity security registered on a national securities exchange to file with the Commission and the exchange reports reflecting his acquisition or disposition of any of the corporation's equity securities. McQueen filed the required reports and consented to entry of the injunction.

An injunction was also obtained against *Local 291 of the Utility Workers of America*, *Leonard Behr*, president of the Local, *Henry Myers*, secretary and treasurer of the Local, and *Joseph A. Henry*, a stockholder of Kings County Lighting Company,[24] from further solicitation of proxies without first filing their solicitation material with the Commission and furnishing a proxy statement to each person solicited as required by Regulation X-14.

The Commission had filed its complaint for injunction after learning that a so-called "Kings County Lighting Company Independent Stockholders' Committee" had sent two communications to the stockholders of the company urging them not to give their proxies to the management, or to revoke any proxies they might have given, in connection with a special stockholders' meeting. The management, which had filed its own proxy soliciting material under the proxy rules, had called this meeting for the purpose of obtaining authority from the stockholders for certain additional financing, as well as a waiver of preemptive rights. The complaint alleged that the Stockholders' Committee had not filed its material with the Commission, and that this material omitted to state certain information required by the proxy rules and appeared to contain certain false and misleading statements. The evidence showed that Behr and Myers, acting on behalf of the union, had organized the committee, which consisted solely of the defendant Henry, who owns 100 shares of the company's stock and is a brother-in-law of the defendant Behr, and that the letters of the committee had been typed and mimeographed at union headquarters and at the union's expense.

The Commission pointed out that, since the Kings County Lighting Company had been separated from the Long Island Lighting Company system and was thus no longer subject to the Public Utility Holding Company Act of 1935, the Commission had no jurisdiction with respect to the merits of the proposals on which the company had solicited proxies. The Commission emphasized also that it was not concerned with any differences which might exist between the management of Kings County Lighting Company and the union, but that its only interest was to enforce the proxy rules equally against all persons soliciting proxies, whether on behalf of or in opposition to the management.

Occasionally, violations of more than one statute are involved as in the case of the injunction obtained against *Bernard Kantor* and *National Evaluators, Inc.*[25] The complaint alleged violations of sections 5 (a) and 17 (a) (2) and (3) of the Securities Act of 1933.

[23] Civil Action No. 29000, N. D. Ohio.
[24] Civil Action No. 12281 E. D. N. Y.
[25] Civil Action No. 28422, N. D. Ohio.

section 15 (a) of the Securities Exchange Act, and section 203 (a) of the Investment Advisers Act of 1940 in that the defendants, in the sale of stock of National Evaluators, Inc., which had not been registered with the Commission, made false and misleading statements of material facts. Among such statements alleged were that National Evaluators had been retained to locate missing stockholders of a corporation who were entitled to $30,000 in dividends; that the proceeds from the sale of the stock would be paid into the company when, in fact, Kantor appropriated such proceeds to his own use; that a "satisfactory refund" of monies paid by the public to National Evaluators for investigating the value of securities would be made when, in fact, the refund was made in shares of the company, which were worthless. The complaint further alleged that the defendants had engaged in the business of being a broker-dealer and investment adviser without registering with the Commission.

Petitions for Review of Commission Orders

Commission orders in broker-dealer revocation proceedings or on appeal from NASD actions are subject to review by an appropriate Court of Appeals.

In revocation proceedings pursuant to sections 15 (b) and 15A (b) (4) of the Act against *Henry P. Rosenfeld, Samson Wallach, Sr.*, and others,[26] Wallach, one of the nonregistered employee respondents, had been found by the Commission to have violated the antifraud provisions of the securities acts and to have been a cause of the order revoking Rosenfeld's registration. He filed a petition for review[27] contending that the Commission had no jurisdiction to name as respondents persons not registered as broker-dealers. The petition was pending at the end of the fiscal year.

There is also pending an appeal by *Van Alstyne, Noel & Co.* from the order of suspension which is discussed in an earler section.[28]

R. H. Johnson & Co. petitioned for review of the Commission's order sustaining the NASD's order of expulsion.[29] This litigation is of special interest because, as previously mentioned, it is the first NASD disciplinary action to receive judicial attention and review; and the petitioner has challenged the constitutionality of section 15A of the Act under which the NASD was organized.[30]

In *Peck* v. *S. E. C.* the Court of Appeals for the Second Circuit, on April 7, 1952, dismissed for lack of jurisdiction a petition for review of a so-called "order" of the Commission under the Securities Exchange Act. The alleged "order" was a letter of the Commission denying a stockholder's request for an oral hearing on the propriety of the Commission's refusal to institute court action against the management of The Greyhound Corporation to compel it, under rule X–14A–8, to include in its proxy statement a proposal recommending that the management consider the advisability of abolishing the segregated seating system in Greyhound's buses in the South. The Commission had agreed with the management that the proposal was not a "proper subject for action by the security holders" within the meaning of the rule. The Commission contended that it has no power to act by

[26] See p. 63, *supra*.
[27] C. A. D. C., No. 11,295.
[28] C. A. 2, See p. 64, *supra*.
[29] C. A. 2, No. 22353. This case is discussed at p. 68, *supra*.
[30] On July 10, 1952, the Commission's order was affirmed, and on October 20, 1952, certiorari was denied by the United States Supreme Court.

order in such a matter; that it can seek a court order or decree requiring compliance with a proxy rule only if it concludes that the rule is being violated; and that the stockholder can test the correctness of his position by instituting his own court action against the management. At the time of the aforementioned request, the Commission had already had the benefit of the stockholder's written views. The Court of Appeals issued no opinion in dismissing the petition, but its ruling (in view of the issues presented) appears to confirm the Commission's position that the Commission's letter of refusal was not an "order" subject to court review under section 25 (a) of the Securities Exchange Act of 1934, nor was it agency action made reviewable by section 10 (c) of the Administrative Procedure Act.

Participation as Amicus Curiae

Significant interpretations of rule X–10B–5 under section 10 (b) of the Securities Exchange Act were involved in a number of court rulings handed down during the fiscal year in cases in which the Commission participated as *amicus curiae*. In *Speed* v. *Transamerica Corp.*[31] the United States District Court for the District of Delaware, agreeing with the Commission's view, held that rule X–10B–5 had been violated by Transamerica Corporation, the majority stockholder of the Axton-Fisher Tobacco Company, in purchasing the shares of public minority stockholders of that company without disclosing to them material facts in its possession by virtue of its inside position which affected the value of the stock. The court found that Transamerica Corporation bought the minority holdings with the intent (which it effectuated shortly thereafter) of liquidating the company and realizing upon the principal asset, a leaf tobacco inventory whose "average cost" valuation in the company's published financial statements did not reflect an enormous increase in market value of which Transamerica Corporation was cognizant. The court rejected defendant's contention that rule X–10B–5 imposed no duty of disclosure which a corporate insider did not have under state law. The rule, the court held, must be construed so as to give effect to the statutory purpose of protecting investors and redressing wrongs which Congress sought to prevent, and is not limited by the principles of common law fraud and deceit. The court also ruled, in accord with views expressed by the Commission (1) that section 10 (b) does not contain an invalid delegation of rule-making powers, nor does it contravene the due process clause of the Fifth Amendment to the Constitution, (2) that rule X–10B–5 is sufficiently clear and definite, and does not violate the due process clause of the Fifth Amendment, (3) that, in adopting an antifraud rule under section 10 (b), the Commission was not limited to proscribing market manipulations of various types, but could make and properly made unlawful fraudulent or deceptive securities transactions generally, and (4) that section 10 (b) and rule X–10B–5 are not limited to transactions effected upon a national securities exchange or in the organized over-the-counter markets of brokers and dealers, but apply to all fraudulent or deceptive securities transactions in which the mails or instruments of interstate commerce have been used. At the close of the fiscal year a final judgment in the *Speed* case awaited determination of the amount of damages suffered by plaintiffs.

[31] 99 F. Supp. 808 (1951).

In *Northern Trust Company* v. *Essaness Theatres Corp.*[32] the United States District Court for the Northern District of Illinois, in denying defendants' motions for summary judgment, held, in accord with the ruling in the *Speed* case, that section 10 (b) and rule X–10B–5 are applicable to all fraudulent or deceptive securities transactions involving the use of the mails or instruments of interstate commerce. The court rejected a contention that section 10 (b), read in light of the preamble provision of section 2 of the Act, was limited to transactions in securities traded upon exchanges or in the "over-the-counter" markets of brokers or dealers. This holding accords also with the decision in *Robinson* v. *Difford*[33] which is discussed in the 17th Annual Report.[34] A contrary ruling, however, was handed down during the fiscal year by the United States District Court for the Western District of Washington in *Fratt* v. *Robinson*[35] where the complaint was dismissed for lack of jurisdiction. The *Fratt* ruling was made from the bench following oral argument, and no opinion was filed. An appeal in the Fratt case was pending at the close of the fiscal year.[36] In the *Northern Trust Company* case the court also held, in agreement with the Commission, (1) that section 10 (b) and rule X–10B–5 are applicable whether or not the issuer conducts an interstate business, and whether or not the mails were used to transmit the particular misrepresentations complained of, if the mails or instruments of interstate commerce were used in connection with the fraudulent or deceptive transaction, (2) that a private civil action may be maintained by a seller of securities damaged by a violation of rule X–10B–5, and (3) that the applicable statute of limitations for such private action is that of the state of the forum.

The Commission also participated during the fiscal year as *amicus curiae* in a number of cases involving the construction of section 16 (b) of the Act, which accords to a corporation the right to recover profits realized by officers, directors, and 10 percent stockholders from purchases and sales or sales and purchases of the corporation's equity securities during a six months' period. The following cases raised problems of interpretation of language in that section.

In *Carr Consolidated Biscuit Co.* v. *Moore*,[37] the defendant, an officer and director of the plaintiff corporation, realized a profit from transactions completed more than two years before the action was instituted. Since section 16 (b) contains a 2-year statute of limitations he opposed a motion for summary judgment on the ground that the action was barred. The plaintiff took the position, which the Commission supported in its brief as *amicus curiae*, that the statute of limitations was tolled by concealment of the transactions, and that the failure of the defendant to file reports of his transactions as required by section 16 (a) amounted to such concealment. The reports were filed within 2 years preceding commencement of the action. No decision was rendered by the court before the close of the fiscal year.

[32] 103 F. Supp. 954 (1952).
[33] 92 F. Supp. 145 (E. D. Pa., 1950).
[34] Page 60.
[35] Civil Action No. 2765.
[36] C. A. 9, No. 13111.
[37] Civil Action No. 3792, M. D. Pa.

In *Jefferson Lake Sulphur Co.* v. *Walet*[38] five defenses were raised to an action by a corporation to recover the profits realized by its president from short-swing transactions in the stock of the corporation. It was contended (1) that the transactions were consummated without the use of any inside information, (2) that the certificates of stock purchased by the defendant were not used to make delivery upon any of the shares sold, (3) that some of the shares were not "equity securities" within the meaning of the section because they had been treasury stock, (4) that some of the stock acquired was purchased in accordance with the terms of incentive options issued by the corporation and that therefore the corporation was estopped to recover profits made when these shares were sold, and (5) that any computation of profit must be reduced to the extent that the wife of the defendant had a community property interest in the transactions. The court rejected all of these defenses and, in accordance with the position urged by the Commission, granted judgment in the full amount claimed by the plaintiff. An appeal to the United States Court of Appeals for the Fifth Circuit is pending.

In *Stella* v. *Graham-Paige Motors Corp.*[39] a stockholder of the Kaiser-Frazer Corporation instituted an action against Graham-Paige Motors Corporation based upon a purchase of 750,000 shares of common stock of Kaiser-Frazer Corporation and a sale of 150,000 shares within 6 months thereafter. Prior to the purchase, Graham-Paige Motors Corporation was not a 10 percent stockholder of Kaiser-Frazer Corporation, nor did it occupy any other position which might bring it within the scope of section 16 (b). The purchase of 750,000 shares, however, constituted it a holder of over 20 percent of the common stock of Kaiser-Frazer Corporation. Graham-Paige Motors Corporation moved for summary judgment in the action on the ground that section 16 (b) did not apply because it was not a 10 percent owner of the common stock both at the time of the purchase and at the time of the sale. The Commission contended that the Act contemplated that purchases which themselves caused a person to become a 10 percent stockholder should be subject to the liabilities imposed by section 16. The court, in an opinion handed down shortly before the close of the fiscal year, sustained the Commission's contention.

In *Consolidated Engineering Corporation* v. *Nesbit*[40] the United States District Court for the Southern District of California ruled, contrary to the contentions of the Commission, that a corporation which had issued stock options to its officers and assured them that the options could be exercised and the stock sold within 6 months thereafter, was estopped from recovering any profits from these transactions. Subsequent to the court's decision a security holder sought to intervene for the purpose of taking an appeal, but the District Court denied the request for intervention. An appeal was taken from that denial to the United States Court of Appeals for the Ninth Circuit, and the Commission filed a brief as *amicus curiae* urging the Court of Appeals to permit such intervention.[41] The appeal is pending.

Two section 16 (b) cases, discussed in the 17th Annual Report,[42]

[38] 104 F. Supp. 20 (E. D. La., 1952).
[39] 104 F. Supp. 957 (S. D. N. Y., 1952).
[40] 102 F. Supp. 112 (S. D. Cal., 1951).
[41] *Pellegrino* v. *Nesbit* (No. 13220).
[42] Pp. 61–62.

involved further proceedings during the current fiscal year. In *Blau* v. *Hodgkinson*,[43] an application by the attorney for the plaintiff for fees in connection with the litigation was approved in the amount of $2,500. In *Rattner* v. *Lehman*, an appeal was taken from the decision of the United States District Court for the Southern District of New York limiting the recovery of the profits from trading by a partnership, in which one of the partners was a director of the company whose stock was being traded, to the proportion of the profits attributable to the partnership interest of the director-partner. The United States Court of Appeals for the Second Circuit affirmed the decision of the District Court.[44]

The Kaiser-Frazer Investigation and the Litigation With Otis & Co.

Early in 1948 the Commission instituted an investigation into the circumstances surrounding the failure of a stock offering by Kaiser-Frazer Corporation and there ensued a series of administrative and court proceedings which, from the standpoint of sheer volume, have been among the most extensive in the history of the Commission. The early history of these proceedings is discussed in the 15th [45] and 16th [46] Annual Reports of the Commission. At the beginning of the present fiscal year there were still pending before the Commission (1) the Commission's administrative proceeding to determine whether the registration of Otis & Co. as a broker-dealer should be revoked and whether it should be suspended or expelled from the NASD, and (2) the appeal by Otis & Co. from an order of the NASD suspending it from membership for 2 years.

Meanwhile Kaiser-Frazer had instituted a suit against Otis & Co. for breach of contract, which was tried before Judge Clancy in the United States District Court for the Southern District of New York in 1951. On July 2, 1951, Judge Clancy handed down an opinion in which he held for the plaintiff, finding: "That defendant procured and actually, by its agents, instituted the Masterson suit as a means to stop the sale of plaintiff's stock was proved beyond a reasonable doubt." [47] On July 10 Judge Clancy entered judgment in the amount of $3,120,743. Otis & Co. appealed, but since no *supersedeas* bond was filed, Kaiser-Frazer immediately took steps in various parts of the country to execute on the judgment.

Shortly after the opinion was rendered, counsel for Otis & Co. advised the Commission that Otis' "assets available to pay the judgment obtained by Kaiser-Frazer Corporation, if that judgment should be affirmed, are less than the amount of the judgment." The Commission had been informed that, shortly before Judge Clancy entered judgment, Eaton and Daley and members of their families had withdrawn substantial amounts of securities which they had loaned to the firm for use as capital pursuant to agreements whereby the loans had been subordinated to the claims of all other creditors. For these reasons, as well as the refusal of Otis & Co. to permit examination of its books pursuant to the Commission's visitatorial power under section 17 (a) of the Securities Exchange Act, the Commission filed an injunction action in the United States District Court for the

[43] 100 F. Supp. 361 (S. D. N. Y., 1951).
[44] 193 F. 2d 564 (C. A. 2, 1952).
[45] Pp. 73–77.
[46] Pp. 58–59.
[47] *Kaiser-Frazer Corp.* v. *Otis & Co.*, CCH Fed. Sec. L. Serv., par. 90, 510.

Northern District of Ohio [48] and obtained a temporary restraining order from Judge Jones on July 26, 1951, which has been continued in effect by stipulation. This order, in substance, (a) restrained the defendants from effecting transactions with customers without disclosing the firm's financial condition; (b) restrained further withdrawals of assets and securities by the individual defendants; and (c) directed the defendants to permit the Commission to examine the firm's books and accounts pursuant to section 17 (a) and restrained further violations of that section.

Before a motion for a preliminary injunction could be heard, Otis & Co., on August 22, 1951, filed a petition under Chapter X of the Bankruptcy Act in the same court. On December 12, 1951, Judge Freed approved the petition and continued his order in the usual form restraining all persons from commencing or continuing any actions or proceedings against the debtor. The Commission filed a motion to obtain a clarification of this order, or if necessary its modification, so as to preclude any question of the propriety of the Commission's continued prosecution of three proceedings—the injunction action just referred to and the two administrative proceedings mentioned above. In making this motion the Commission appeared specially in its capacity as the agency charged with the administration of the Securities Act of 1933 and the Securities Exchange Act. Because of the lack of any substantial interest on the part of the public as creditors or stockholders of the debtor, the Commission did not seek leave to appear generally in the Chapter X proceeding.

On March 21, 1952, Judge Freed handed down an opinion in which he construed his order of December 12 as being sufficiently broad to prohibit further prosecution of all three actions (the two administrative proceedings and the action for injunction), but modified his order of December 12 only to the extent of permitting further prosecution of the injunction action. Judge Freed's order pursuant to this opinion was entered on April 7.[49]

On the same day the Court of Appeals for the Second Circuit reversed Judge Clancy's judgment in Kaiser-Frazer's action for damages against Otis & Co.[50] Without coming to the question whether the Masterson suit had been inspired by Otis & Co., the court reversed solely on the ground that certain of the earnings figures in the registration statement filed by Kaiser-Frazer under the Securities Act in connection with the 1948 offering were misleading. For this reason the court held that the underwriting contract was unenforceable as violative of the Securities Act. The court noted, however, that the reason assigned by Otis & Co. for refusing to go through with the underwriting contract at the time was the institution of the Masterson suit.

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[48] *S. E. C.* v. *Otis & Co., Daley, and Eaton,* Civil No. 28371.

[49] An appeal from this order was pending at the close of the fiscal year.

[50] *Kaiser-Frazer Corp.* v. *Otis & Co.,* 195 F. 2d 838. A petition to the Supreme Court for a writ of certiorari was denied on October 20, 1952.

PART III

ADMINISTRATION OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

The Public Utility Holding Company Act of 1935 was passed by the 74th Congress following a nine-year study conducted by the Federal Trade Commission and after extensive hearings and debates by both houses. These investigations disclosed many serious abuses in public utility holding company financing and operations, the more significant of which are enumerated in section 1 (b) of the Act: (1) inadequate disclosure to investors of the information necessary to appraise the financial position and earnings power of the companies whose securities they purchase; (2) the issuance of securities against fictitious and unsound values; (3) the overloading of operating companies with debt and fixed charges thus tending to prevent voluntary rate reductions; (4) the imposition of excessive charges upon operating companies for various services such as management, supervision of construction and the purchase of supplies and equipment; (5) the control by holding companies of the accounting practices and rate, dividend and other policies of their operating subsidiaries so as to complicate or obstruct state regulation; (6) the control of subsidiary holding companies and operating companies through disproportionately small investment; (7) the extension of holding company systems without relation to economy of operations or to the integration and coordination of related properties.

The Congress expressly stated that it was the policy of the Act, in accordance with which all other sections of the statute were to be construed, to meet the problems and eliminate the evils described.

To implement this policy, the 33 sections of the statute provide for three separate areas of regulation of holding company systems. The first area embraces those provisions of the Act which require the physical integration of the public utility and related properties of a holding company system and the simplification of intercorporate relationships and financial structures of the system. The latter includes the removal of unnecessary holding company complexities, the correction of inequitable distribution of voting power among security holders, and the strengthening of the financial position of the system. The second area of regulation covers financing operations of holding companies and their subsidiaries, acquisitions and dispositions of properties and securities by such companies, their accounting practices and intrasystem servicing arrangements and other intercompany transactions in holding company systems. The third area encompasses a number of sections of the Act which are designed to insure that newly created holding company or affiliate relationships shall meet certain standards prescribed by the statute, and other provisions of the Act which require a limited degree of surveillance over exempt holding company systems.

The Commission has always regarded the enforcement of the physical integration and corporate simplification provisions of section 11 and related sections of the Act as the most important segment of its responsibilities under the statute, and vigorous administration over the past 17 years has resulted in the liquidation of a large number of unnecessary holding companies with the return of their subsidiaries to independent ownership, and the streamlining of a number of others into compact regional systems affording consumers and investors the benefits of large scale centralized generation and transmission of electric power and of integrated long distance transmission and distribution facilities for natural gas. It is now possible to state that the task of bringing about compliance with section 11 which had its real beginning in 1940 is rapidly nearing completion.

Thus, in what is probably the only instance of its kind in the history of the nation, an entire major industry has been almost completely reorganized in the short space of 12 years and this has been accomplished with a staff which has declined steadily from 175 in 1940 to the present force of 35 employees engaged in this work in the fiscal year 1952.[1] When the work under section 11 is completed in another couple of years there will be no further expense to the taxpayer on this score.

In addition to its duties with respect to integration, provided in section 11, section 30 of the Act directs the Commission to make studies of public utility operations and service areas so as to be able to recommend the "type and size of geographically and economically integrated public utility systems which * * * can best promote and harmonize the interests of the public, the investor and the consumer." This work is expected to encourage a number of acquisitions and combinations of utility properties not otherwise subject to the Act which are consistent with the integration and simplification standards of section 11 and related provisions of the Act. This function will likewise be partially self-liquidating over a period of years.

The other segments of the Commission's regulatory responsibilities under the Act are continuing functions not likely to undergo any significant changes in the future. These embrace: (1) regulation of the regional integrated holding company systems which will have achieved complete compliance with the provisions of section 11; (2) limited surveillance of the holding company systems which enjoy exemption from most provisions of the Act; (3) surveillance of acquisitions of utility securities by affiliates and by organized groups of persons or other devices designed to circumvent regulation of holding company relationships; and (4) surveillance of affiliated service companies and of those servicing organizations which are principally engaged in the performance of services for public utility or holding companies.

[1] The staff of the Division of Public Utilities which assists the Commission in this work declined from 234 in 1940 to 88 in 1952. The figures shown represent estimates of the portions of manpower assigned to the administration of section 11 and related sections of the Act.

INTEGRATION AND SIMPLIFICATION—OVER-ALL SUMMARY

The impact of the enforcement of section 11 since enactment of the Holding Company Act of 1935 is illustrated by the substantial decline in the relative position of holding company systems in the electric and gas utility industries. In the early "thirties," 15 holding companies controlled 80 percent of all electric energy generation; 20 systems controlled 98.5 percent of all transmission of electric energy across state lines; and 11 controlled 80 percent of all natural gas pipeline mileage. On June 30, 1952, electric utility plant owned by registered holding company systems constituted approximately 30 percent of the aggregate dollar amount of plant owned by all private utility companies. Manufactured and natural gas plant (including gas transmission properties) owned by registered systems represented 28 percent of the total for the nation. When the section 11 reorganization program is completed, these percentages will decline to 23 percent and 18 percent, respectively.

However, in addition to the registered systems there are a large number of holding company systems which are exempt from most provisions of the Act with gross utility plant aggregating over $7.8 billion. These exemptions cover situations where the systems are either predominantly intrastate in character, the holding company is predominantly an operating utility, or the system is very small and has assets of $1 million or less. Nevertheless, since the Commission is empowered to revoke exemptions whenever the circumstances which led to granting the status have changed, or in other cases where continuance of the exemption is detrimental to the public interest, the exempt status of all of such systems is subject to periodic reappraisal; and, in a number of situations, various types of corrective measures have become necessary.

At one time or another, a total of 2,197 companies have been subject to the active regulatory jurisdiction of the Commission as components of registered holding company systems. Of this number, 214 were holding companies, 929 were electric or gas utilities and 1,054 were nonutility companies or utilities other than electric or gas. By the close of the past fiscal year, the registered systems included 57 holding companies, 192 electric or gas utilities and 188 other companies. The greatest percentage reduction has occurred in the nonutility group which originally included a wide variety of enterprises many of which had little or no relationship to utility operations and were not retainable under statutory standards.

The following tables summarize these developments and set forth the manner in which subject companies have been released from jurisdiction.

Companies released from active regulatory jurisdiction of the Commission

	Total companies subject to act during period [1]	Divestments by holding companies of nonretainable companies	Dissolutions not parts of divestment transactions	Absorbed by merger or consolidation	Miscellaneous other disposals	Exemption by rule or order [2]	Total released from jurisdiction	Companies subject to act as of June 30
Fiscal year ending June 30, 1952								
Holding companies	65	0	6	0	0	2	8	57
Electric and/or gas companies	199	2	0	4	0	1	7	192
Nonutilities plus utilities other than electric and/or gas companies	200	2	3	2	5	0	12	188
Total companies	464	4	9	6	5	3	27	437
Fiscal year ending June 30, 1951								
Holding companies	68	[3] 2	0	0	0	3	[3] 5	63
Electric and/or gas companies	229	6	5	21	1	1	34	195
Nonutilities plus utilities other than electric and/or gas companies	256	9	11	45	6	0	71	185
Total companies	553	17	16	66	7	4	110	443
Period from June 15, 1938, to June 30, 1952								
Holding companies	214	15	67	25	9	41	157	57
Electric and/or gas companies	929	381	70	172	48	66	737	192
Nonutilities plus utilities other than electric and/or gas companies	1054	365	183	150	103	65	866	188
Total companies [4]	2,197	761	320	347	160	172	1,760	437

[1] Reflects company additions and classification adjustments during period indicated.
[2] Includes companies which have ceased to be registered holding companies by virtue of Commission order under section 5 (d).
[3] Adjusted to reflect divestment of National Power & Light Co. on June 26, 1951.
[4] A few companies have been subject and not subject to the act a number of times. These instances result in some insignificant duplication to the reported company totals.

Divestments of companies or properties no longer subject to Act

A. Electric, gas and nonutility companies and assets divested as not retainable under the Public Utility Holding Company Act of 1935 and which were no longer subject to the act as of June 30, 1952

Type of company	Total to June 30, 1952		July 1, 1951 to June 30, 1952	
	Number of companies	Assets [1]	Number of companies	Assets [1]
Electric utility	240	$8,452,203,845	1	$310,845
Gas utility	141	567,873,894	1	1,480,519
Nonutility	[2] [3] 380	[2] [3] 1,596,165,492	2	64,531,605
Total	761	10,616,243,231	4	66,322,969

Footnotes on p. 85.

B. Divestments by sales of partial segments of properties not retainable under the Public Utility Holding Company Act of 1935 and which were no longer subject to the act as of June 30, 1952

Type of property	Total to June 30, 1952		July 1, 1951 to June 30, 1952	
	Number of divesting companies	Consideration received	Number of divesting companies	Consideration received
Electric utility	[4] 124	[4] $97,657,000		
Gas utility	38	44,886,538	4	$30,160,538
Nonutility	[5] 69	[5] 40,006,501		
Total	231	182,550,039	4	30,160,538

[1] As of year end next preceding date of divestment and before deduction of valuation reserve.
[2] Northern Natural Gas Co. and its subsidiaries, Peoples Natural Gas Co. and Argus Natural Gas Co., were divested by their joint parents, Lone Star Gas Corp., The North American Co. and United Light & Power Co. in 1941–1947, but remained subject to the act as a registered holding company system. Argus was absorbed by Peoples in 1945 and in 1952 Peoples was absorbed by Northern, which then ceased to be a holding company. To reflect this change of status, Northern and its former subsidiaries have been removed from table A below showing divested companies remaining subject to the act, and have been included in the above table. See table 14 in the appendix. The totals have also been adjusted to reflect divestment of National Power & Light Co. on June 26, 1951, with assets of $1,993,991.
[3] Includes 15 holding companies.
[4] Adjusted to reflect divestment of partial segments of properties by Missouri Power & Light Co. on June 30, 1951 for consideration of $650,000.
[5] Adjusted to reflect divestment of partial segments of properties by Birmingham Electric Co. on June 30, 1951, for consideration of $2,012,500, and by Franklin Real Estate Co. on March 15, 1949, for consideration of $1.

In addition to the companies and properties released from active regulatory jurisdiction as components of registered systems, a large number of utilities and nonutilities were divested from one system in the process of integration and simplification but remained under the control of another registered holding company. Several of the 20 regional integrated systems which are now expected to continue operating under the Commission's jurisdiction derived from larger systems in this manner. The aggregate amount of divestments in this category, in terms of companies and assets, is reported in the following table:

Divestments of companies or properties still subject to Act

A. Electric, gas and nonutility companies and assets divested under the Public Utility Holding Company Act of 1935 and still subject to its provisions as of June 30, 1952

Type of company	Total to June 30, 1952		July 1, 1951 to June 30, 1952	
	Number of companies	Assets [1]	Number of companies	Assets [1]
Electric utility	[2] 129	[2] $4,223,697,048		
Gas utility	[3] 42	[3] 1,456,007,687	2	$2,332,746
Nonutility	[4] [5] 88	[4] [5] 535,606,185		
Total	259	6,215,310,920	2	2,332,746

Footnotes on p. 86.

B. Divestments by sales of partial segments of properties under the Public Utility Holding Company Act of 1935 which properties are still subject to the act as of June 30, 1952

Type of property	Total to June 30, 1952		July 1, 1951 to June 30, 1952	
	Number of divesting companies	Consideration received	Number of divesting companies	Consideration received
Electric utility	10	$7,286,147	1	$2,860,147
Gas utility	7	6,718,000		
Nonutility	4	369,000		
Total	21	14,373,147	1	2,860,147

[1] As of year end next preceding date of divestment and before deduction of valuation reserves.
[2] Adjusted to reflect divestment of Holston River Power Co. on June 21, 1948 with assets of $882,048 and Page Power Co., Madison Power Co. and Massanutten Power Corp. on Aug. 30, 1945 with consolidated assets of $2,016,000.
[3] Adjusted to reflect divestment of Boston Consolidated Gas Co. and Old Colony Gas Co. on Jan. 15, 1951, with consolidated assets of $64,621,316. Also corrected to remove two gas utility companies, Peoples Natural Gas Co. and Argus Natural Gas Co., with assets of $6,503,375. See footnote [2] to preceding table.
[4] Adjusted to reflect divestment of Eastern Gas & Fuel Associates and its 14 nonutility subsidiaries on Jan. 15, 1951, with combined assets of $148,993,496. Also adjusted to remove one nonutility company, Northern Natural Gas Co., with assets of $96,142,311. See footnote [2] to preceding table
[5] Includes 12 holding companies, 6 combination holding and utility operating companies and 2 combination holding and nonutility operating companies.

INTEGRATION AND SIMPLIFICATION—SURVEY OF INDIVIDUAL SYSTEMS

Most of the individual system programs undertaken to achieve compliance with the requirements of section 11 are now well advanced toward completion. A number of systems which are expected to continue as regional integrated organizations subject to the Holding Company Act are still faced with residual problems under section 11 (b) (1) involving the retainability of certain utility or non-utility properties. However, the major problems to be resolved are to be found within those systems which are expected to be liquidated or in those which are not expected to continue in the electric or gas utility business.

Working within the framework of section 11 (e) the Commission has consistently followed the policy during the past 15 years of encouraging holding companies to exercise initiative in formulating, developing, and presenting their proposals to achieve compliance with the integration and simplification standards of the Act. Accomplishments reflected in the plans and procedures submitted and approved by the Commission attest to the measure of ingenuity which management has brought to bear upon these problems.

As the following reports indicate, a number of holding companies, including Investment Bond & Share Corporation, American Power & Light Company, Mission Oil Company, New England Public Service Company, Philadelphia Company and Standard Gas and Electric Company have either accomplished the distribution of their portfolio holdings during the past year or are expected to take steps toward this objective as a prelude to final liquidation.

In other systems, the pattern of compliance involves the divestment of all utility properties and the limitation of holding company functions to other business channels. The Cities Service Company, for example, has elected to retain its non-utility business, chiefly oil and gas production and transmission and oil distribution, and to dispose of all of its utility interests. Other holding companies, including

Electric Bond and Share Company and The United Corporation, are seeking to convert themselves into investment companies, after being divested of utility holdings as required by orders of the Commission.

Another alternative is illustrated by the program of the United Gas Improvement Company which has recently received authorization to merge all of its subsidiaries into itself and continue operating as an intrastate operating utility company. Upon consummation of this merger and the disposition of certain portfolio holdings, that company will apply for an order under section 5 (d) declaring that it has ceased to be a holding company.

Activities during the past fiscal year and in the early months thereafter have been highlighted by a series of successful compromises among various classes of security holders which have substantially reduced the time necessary to conclude a number of pending section 11 proceedings. With the assistance of the staff of the Commission, representatives of these security holders have undertaken to resolve existing conflicts in their respective claims to holding company assets and they have formulated amended plans embodying the results of these negotiations. These compromises are very difficult to bring about and in order to approve such a plan the Commission must find that the plan is fair and equitable to all persons affected thereby. However, the resolution of intricate problems of valuation by this method does much to eliminate protracted and expensive litigation and thereby contributes substantially to the benefits accruing to all classes of securities. During the past fiscal year, compromises initiated by or effected with the assistance of the Commission have effected resolution of some or all of the remaining section 11 problems of American & Foreign Power Company, Inc., Cities Service Company, Eastern Utilities Associates, New England Public Service Company, North American Utilities Securities Corporation, Standard Gas and Electric Company and Standard Power and Light Corporation.

American & Foreign Power Company, Inc.

American & Foreign Power Company Inc. is a subholding company in the Electric Bond and Share Company system. Foreign Power, through direct or indirect ownership of securities, controls a large number of electric and gas utility companies operating in Cuba, Mexico and in nine Central and South American countries. Foreign Power and its subsidiaries were granted exemption from certain provisions of the Act in 1939 by reason of the fact that practically all of the system's income was derived from foreign subsidiaries. However, the company's unwieldy capital structure with heavy dividend arrearages, the broad investor interests in the company's securities and the controlling influence over the company exercised by Bond and Share were among the circumstances which made it necessary for the Commission to deny the company the complete exemption which it sought under section 3 (a) (5).[2]

With its parent, Bond and Share, Foreign Power filed a plan for its reorganization pursuant to section 11 (e) in 1944. However, after obtaining approval of the Commission and an enforcement court the company was unable to effectuate the financing necessary to consummate the plan. Subsequently on May 2, 1949, the Commission issued an order pursuant to section 11 (b) (2) requiring Bond and Share and Foreign Power to reorganize the latter company so

[2] 6 S. E. C. 396.

that its capital structure would consist solely of common stock plus such an amount of debt as would meet the applicable standards of the Act.[3]

Foreign Power filed a new reorganization plan in January 1951 and in August of the same year filed an amendment which reflected the terms of a compromise between Bond and Share and the committees representing various classes of outstanding securities of Foreign Power. The amended plan provided for a capital structure of Foreign Power consisting, in addition to then outstanding $10 million of serial bank loans and $50 million of 5 percent Debentures, of $67,564,600 of new 4.8 percent 35-year Junior Debentures and 6,923,932 shares of new common stock without par value. Pursuant to the plan, the new securities were distributed as follows: each share of publicly held $7 Preferred Stock was exchanged for $90 principal amount of 4.8 percent Debentures and 3.75 shares of new common stock; each publicly held share of $6 Preferred Stock was exchanged for $80 principal amount of 4.8 percent Debentures and 3 shares of new common stock; for each share of $7 Second Preferred Stock the holder received 0.85 share of new common stock; and each share of old common stock was exchanged for 0.02 shares of new common. The outstanding Option Warrants and Preferred Stock Allotment Certificates were cancelled. Bond and Share received 3,856,723 shares of new common stock (55.7 percent) for its holdings of Foreign Power securities, which included $49,500,000 of notes due in 1955 and substantial amounts of the various classes of outstanding preferred stock and common stock.[4] The allocations provided in the plan reflected a settlement of intercompany claims by Foreign Power against Bond and Share.

The plan provided for certain changes in the charter and by-laws of Foreign Power designed to give the public stockholders of Foreign Power an effective vote in connection with corporate matters. The plan also provided for public representation on the initial board of directors of Foreign Power and stated that it would be the policy of the company to maintain public representation on its board in the future. In approving the plan on November 7, 1951, the Commission reserved jurisdiction to take such action as may become appropriate in connection with the carrying out of that policy.[5]

Foreign Power's plan was approved and ordered enforced on January 15, 1952, by the United States District Court, District of Maine,[6] and was consummated on February 29, 1952. Appeal was taken on January 17, 1952, to the United States Court of Appeals, First Circuit, and on June 6, 1952, that Court affirmed the order of the District Court. No further appeal was taken.

American Power & Light Company

On August 22, 1942, American Power & Light Company, then a holding company subsidiary of Electric Bond and Share Company, was ordered to dissolve, because its existence constituted an undue and unnecessary complexity in the Bond and Share system.[7] At that time American controlled directly or indirectly 35 subsidiaries,

[3] Holding Company Act release No. 9044.

[4] Under the terms of the plan, public holders of the $7 and $6 Preferred Stocks and Bond and Share for its holdings of these First Preferred Stocks also received additional shares of common stock in compensation for unpaid dividends accumulated on these stocks from October 1, 1950, to the date of consummation of the plan.

[5] Holding Company Act release No. 10870.

[6] *In re American & Foreign Power Company, Inc.*, 102 F. Supp. 331 (D. Me., 1952).

[7] 11 S. E. C. 1146.

16 of which were public utility companies. American's capital structure consisted of long term debt, two classes of cumulative preferred stock with heavy dividend arrearages, and common stock. At the beginning of the fiscal year 1952, American held only two utility subsidiaries, The Washington Water Power Company and Portland Gas & Coke Company, and its capital structure consisted solely of common stock.

In approving the plan pursuant to which American on February 15, 1950, had distributed most of its previously held assets to its stockholders, the Commission permitted it to retain temporarily the stock of Washington so as to have some additional time to work out a sale of this company to public power agencies, which the management of American believed would be more advantageous to its stockholders than distribution.[8] After an attempted sale had been blocked by an order of the Superior Court of the State of Washington on March 28, 1951, prohibiting the public utility districts from acquiring the common stock of Washington, American on July 31, 1951, filed a plan under section 11 (e) proposing a cash distribution of $2.00 per share to each of its common stockholders. In its order setting the matter down for hearing, the Commission specified that certain additional issues should be considered. Those issues included, (1) what further steps should be taken by American in order to comply with the Commission's order of August 22, 1942, directing its dissolution; (2) whether the Commission should apply to an appropriate United States district court pursuant to section 11 (d) to enforce such order; and (3) whether the Commission should approve a plan which would provide, among other things, for the distribution of American's holdings of the common stock of Washington to its stockholders.

In the course of these proceedings Bond and Share and certain other stockholders, as well as certain officials of the States of Idaho and Washington, urged that American should be required to distribute the common stock of Washington. At the hearing, American presented a resolution of its board of directors which stated, in effect, that unless American had received by January 1, 1952, a proposal for the sale of the Washington stock which was susceptible of expeditious consummation, American would distribute the stock to its stockholders. The Commission in its order dated October 15, 1951, approving the cash distribution directed American to file within 20 days a plan in accordance with the resolution of its board providing for the distribution of the Washington stock promptly after January 1, 1952, if American had not filed with the Commission by that date a notification of sale pursuant to rule U–44 (c). The Commission further stated that if such a plan were not filed within 20 days it would immediately apply to a United States district court for the appointment of a trustee, pursuant to section 11 (d).[9]

Thereafter, American filed a plan for the distribution of the Washington common stock. The plan, however, stated, among other things, that it would not be effective and would be deemed withdrawn in the event that American had filed with the Commission by

[8] Holding Company Act release No. 9359.
[9] Holding Company Act release No. 10820.

January 1, 1952, a notification of a proposed sale of the Washington common stock pursuant to rule U–44 (c). That plan was set down for hearing on January 8, 1952,[10] but the hearing date was postponed when American notified the Commission on December 26, 1951, pursuant to rule U–44 (c) of its intention to sell the Washington common stock to certain public utility districts in the State of Washington.

On January 18, 1952, the Commission issued a memorandum opinion and order in which it stated that it would treat American's notice under rule U–44 (c) as a declaration and that a hearing thereon would be held on January 28, 1952.[11] On January 24, 1952, the public utility districts involved filed with the United States Court of Appeals, Ninth Circuit, a petition for review of the Commission's order of January 18, 1952, pursuant to section 24 (a) of the Act and applied for a stay of the Commission action. On January 25, 1952, the court granted petitioners a temporary stay and restrained the Commission from holding any hearings or taking any other action pursuant to its order of January 18, 1952, until further order of the court. On March 14, 1952, the court of appeals dismissed the petition of the public utility districts and vacated the stay.[12]

A new section 11 (e) plan was filed by American on April 7, 1952. Among other things, this plan provided that American deliver to Washington as a capital contribution all of its holdings of the securities of its subsidiary, Washington Irrigation & Development Company and $186,000 in cash. The 2,541,800 outstanding shares of no par value common stock of Washington were to be reclassified into 2,342,411 shares of new common stock without par value and American proposed to distribute to the holder of each share of its capital stock one share of Washington's common stock. The Articles of Incorporation of Washington were to be amended prior to this distribution so as to provide the protective features usually required by the Commission, including preemptive rights for the common stockholders and cumulative voting provisions. The plan also provided that on or after the distribution date, no officer, director, or employee of American or of Bond and Share could serve as an officer or director of Washington.

On June 5, 1952, the Commission issued its findings, opinion and order approving the plan.[13] The plan was ordered enforced by the United States District Court for the District of Maine on July 17, 1952,[14] and was consummated on August 23, 1952.

Portland, the other utility subsidiary of American, amended its plan of reorganization in the manner required by the Commission's findings and opinion dated August 29, 1951, so that holders of the preferred stocks of Portland would be allocated 90 percent of its new common stock and so that American, which owned all of the old common stock of Portland, would be allocated 10 percent of the new shares. The amended plan was approved by the Commission on October 10, 1951,[15] ordered enforced by the United States District

[10] Holding Company Act release No. 10919.
[11] Holding Company Act release No. 11009.
[12] *Public Utility District No. 1* v. *S. E. C.*, 195 F. 2d 727 (C. A. 9, 1952).
[13] Holding Company Act release No. 11301.
[14] *In re American Power & Light Company*, Unreported (D. Maine, No. 731, July 17, 1952).
[15] Holding Company Act releases Nos. 10740 and 10812.

Court, District of Oregon,[16] and it was consummated on December 31, 1951.

Since the end of the fiscal year American has filed with the Commission a final plan providing for the distribution to its stockholders of its holdings of Portland common stock and for other steps necessary to complete its liquidation and dissolution.

Central Public Utility Corporation

Central Public Utility Corporation is a holding company controlled by Voting Trustees who are also registered with the Commission in this capacity as a holding company. The principal assets of Central Public are its holdings of securities in Consolidated Electric and Gas Company, which is also a registered holding company. At the time Central Public and Consolidated registered under the Act, the system had 47 operating subsidiaries located in 19 states and in the West Indies, the Canary Islands, the Balearic Islands and the Philippines.

Prior to fiscal year 1952, the system had consummated three section 11 (e) plans. Two of these were concerned with the liquidation of substantial amounts of system debt and the third provided for retirement of the publicly held preferred stock of Consolidated.[17] Since 1941, 37 operating subsidiaries have been eliminated from the system.

A fourth plan filed pursuant to section 11 (e) was approved by the Commission on June 13, 1952.[18] In substance, it provides that Central Public, which had outstanding income bonds, preferred stock, Class A stock and common stock represented by voting trust certificates, be recapitalized into a company having only common stock outstanding. The new $6 par value common stock is to be distributed to holders of the income bonds in full settlement of their claims. Because the total estate on the basis of earnings and assets was found to be insufficient to satisfy the entire claims of the bondholders, all other security holders were excluded from participation in the allocation. The plan also provides for termination of the Voting Trust, which had existed since 1932, and for the merger of Consolidated into Central Public. The plan was ordered enforced by the United States District Court, District of Delaware, on July 29, 1952.[19]

It has been indicated that the management contemplates the subsequent elimination of two other subsidiary companies and the distribution of the stock, or proceeds from the sale of the stock, of the only remaining domestic utility subsidiary, Central Indiana Gas Company. Thus, ultimately, the Central Public system is expected to consist of a single holding company over utilities operating outside the territorial United States and over two nonutilities within the United States.

Cities Service Company

Cities Service Company, at the time of its registration in 1941, was the top holding company in a system containing 125 companies, of which 49 were electric and gas utility companies. Consolidated assets totaled approximately one billion dollars. This system owned or operated properties in each of the 48 states and in several foreign countries. Utility properties were held by three subholding companies, Cities Service Power & Light Company, Federal Light &

[16] *In re Portland Gas & Coke Co.*, Unreported (D. Oreg., No. 6196, November 13, 1951).
[17] 15 S. E. C. 467, 18 S. E. C. 420, and Holding Company Act release No. 7691.
[18] Holding Company Act release No. 11311.
[19] *In re Consolidated Electric and Gas Co.*, Unreported (D. Del. No. 382, July 29, 1952).

Traction Co. and Arkansas Natural Gas Corporation, each controlling one or more utility systems. In proceedings under section 11 (b) of the Act, the Commission found that Cities should be limited in its operations to a single integrated gas utility system and required the disposition of its other interests.[20] However, Cities expressed a desire to retain instead its nonutility businesses and, accordingly, the Commission modified its section 11 (b) (1) order so as to permit Cities to effectuate compliance by disposing of all of its utility interests.[21]

Two of its former subholding company subsidiaries, Cities Service Power & Light Company and Federal Light & Traction Company, have been liquidated. On February 9, 1949, the Commission instituted proceedings under section 11 (b) (2) and other sections of the Act with respect to Arkansas Natural Gas Corporation. Arkansas Natural subsequently filed a plan to achieve compliance with the requirements of section 11 (b) and hearings were held on the plan in 1950 and 1951.

During the course of the proceedings and after the record of the case had been substantially completed, Arkansas Natural and Cities, on December 3, 1951, after discussions with the staff of the Commission, filed an amended plan which, among other things, contained an offer of settlement of the claims which had been asserted against Cities and on behalf of Arkansas Natural and its public security holders.[22] Under the offer of compromise and settlement, Cities offered to settle all claims against itself by paying approximately $4,000,000 in cash to the public holders of Arkansas Natural's Class A and common stocks (with certain exceptions which would exclude from participation in the settlement those stockholders who, along with Cities, shared the responsibility for the organization and subsequent management of Arkansas Natural). Under the proposed offer of settlement, Cities offered to pay $1.50 per share and $0.25 per share, respectively, to the public holders of Arkansas Natural's Class A stock and common stock not excluded from participation.

Other features of the original plan were essentially unchanged. Following a segregation of the utility and nonutility properties, Arkansas Natural proposed to dispose of its holdings in its utility subsidiary, Arkansas Louisiana Gas Company, as a partial liquidating dividend and to merge with its other and nonutility subsidiary, Arkansas Fuel Oil Company, the surviving company to be known as Arkansas Fuel Oil Corporation. Certain changes in the capital structure of Arkansas Natural and Arkansas Louisiana were also provided for. The plan was approved by the Commission on October 1, 1952,[23] and proceedings are now pending for its approval and enforcement by the Unites States District Court for the District of Delaware. Upon consummation of the plan, Cities will own 51.5% of the common stock of Arkansas Louisiana and Arkansas Fuel, and while it intends to retain its interest in the latter company, it is to dispose expeditiously of its holdings in Arkansas Louisiana.

On December 27, 1951, Cities also consummated the divestment of Spokane Gas & Fuel Company, a gas utility company operating in Spokane, Washington. The entire capital stock of the company

[20] 14 S. E. C. 28, 14 S. E. C. 233.
[21] 17 S. E. C. 5.
[22] Holding Company Act release No. 10954.
[23] Holding Company Act release No. 11511.

10,000 shares of no par common stock, was sold for $300,000 to a group of individuals.[24] At June 30, 1952, the Cities system included 59 corporate entities of which only 6 were utility operating companies.

Eastern Utilities Associates

Eastern Utilities Associates ("EUA") is a Massachusetts voluntary association having three direct public-utility subsidiary companies, Blackstone Valley Gas & Electric Company, Brockton Edison Company and Fall River Electric Light Company, and one indirect generating public-utility subsidiary company, Montaup Electric Company.

On April 4, 1950, the Commission issued an order under section 11 (b) of the Act with respect to EUA and its subsidiary companies which provided in part that EUA within one year terminate its existence and distribute its assets to its shareholders pursuant to a fair and equitable plan, or within one year acquire a minimum of 90 percent of the outstanding common stock of all of its subsidiary companies and reclassify its common and convertible stocks into a single class of stock. This order further provided in effect that in the event of the adoption of the latter alternative, EUA, within the one year period, would sever its ownership or control of the gas utility properties owned by Blackstone.[25]

On May 17, 1950, EUA filed a reorganization plan under section 11 (e) of the Act for the purpose of complying with the Commission's Order of April 4, 1950, and on August 17, 1950, the Commission approved step 1 of the plan.[26] Under this step, EUA acquired 129,882 additional shares of Fall River's capital stock from New England Electric System and now owns in excess of 90 percent of the outstanding common stock of each of its direct subsidiary companies. EUA's reorganization plan has been amended from time to time and extensive hearings have been held thereon. It is replete with complicated legal and factual problems which involve, among other things, a substantial amount of permanent financing and the allocation of new common stock to EUA's common and convertible shareholders. Groups and committees representing such shareholders have vigorously supported their respective conflicting positions.

On May 20, 1952, the Commission in a letter to all of the participants expressed its concern with the progress of the case and requested their cooperation with the time schedule set for the hearings under which it was expected that the record would be closed as quickly as possible. During June 1952, all of the groups and committees representing EUA's common and convertible shareholders conferred among themselves and with the staff of the Commission and, on July 10, 1952, reached a compromise agreement with respect to, among other things, the allocation ratios governing the distribution of new common stock between such shareholders. EUA thereafter submitted its Amended Plan No. 4 to incorporate the substance of this agreement and hearings were reconvened on September 16, 1952. The plan no longer provides for a merger or consolidation of any of the system companies into the newly organized Eastern Edison Company as indicated in the 17th Annual Report, and EUA will continue as top holding company. The plan was approved by the Commission on

[24] Holding Company Act release No. 10961.
[25] Holding Company Act release No. 9784.
[26] Holding Company Act release No. 10040.

December 18, 1952,[26a] and cannot become effective until an appropriate United States district court has issued an order enforcing the terms and provisions thereof.

During the fiscal year, the Commission approved five applications by subsidiaries proposing the issuance of $16,200,000 of short term notes to banks to finance their construction programs and to repay maturing notes.[27]

Electric Bond and Share Company

The Electric Bond and Share Company system was the largest to register under the Act. At the time of its registration in 1938, it controlled 121 domestic subsidiaries including five major subholding companies with combined assets of nearly $3,500,000,000. These subholding companies were American & Foreign Power Company, Inc., American Gas and Electric Company, American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company. Bond and Share has disposed of its holdings in American Gas and National. Electric has been dissolved and the liquidation of American, as described earlier in the report, is nearing completion. Bond and Share retains a substantial interest in Foreign Power whose recent reorganization is described above under a separate heading. It also owns 27 percent of the common stock of United Gas Corporation, the entire equity of Ebasco Services, Incorporated, and other minor holdings.

Bond and Share's holdings in United Gas were acquired in the course of Electric's dissolution and we approved the acquisition subject to a commitment by Bond and Share to dispose of these holdings within 1 year of receipt, with the right reserved to Bond and Share, however, to institute appropriate proceedings for relief from this commitment. On February 6, 1952, the Commission issued its findings, opinion and order which denied Bond and Share's request for relief from its commitment to dispose of its holdings of United Gas. That request was made as part of Bond and Share's application for approval of its Amended Plan III and of its request for exemption from provisions of the Act. The plan had contemplated that Bond and Share would retain its interest in Foreign Power, Ebasco and United Gas and that it would dispose of its other holdings of securities using the proceeds for future risk capital investment. Bond and Share proposed to continue as an exempt holding company and register as an investment company under the Investment Company Act. The Commission limited hearings with respect to Bond and Share's application to the question of whether Bond and Share might retain its holdings of United Gas, and, to the extent relevant to this issue, to a consideration of Bond and Share's application for exemption. The Commission found that there was no basis under the standards of the Act applicable either to acquisitions or exemptions for relieving Bond and Share from its previous commitment to dispose of the United Gas stock. However, the Commission made no findings with respect to the other issues raised by Bond and Share's plan, including its proposal to become an investment company.[28] Bond and Share took an appeal from this order to the United States Court of Appeals, District of Columbia Circuit. However, it has since filed

[26a] Holding Company Act release No. 11625.
[27] Holding Company Act releases Nos. 10770, 10771, 10962, 10964 and 10978.
[28] Holding Company Act release No. 11004.

a motion to withdraw its petition for review which was granted on December 8, 1952.

On June 13, 1952, Bond and Share filed a new plan similar to that described above as Amended Plan III, except that Bond and Share would, during the period 1952 to 1955, reduce its holdings of United Gas stock to less than 5 percent of the total outstanding shares. This is proposed to be accomplished through capital distributions, dividend distributions and rights offerings to the stockholders of Bond and Share of the United Gas stock. Hearings commenced on this plan shortly after the close of the fiscal year.

On July 30, 1952, the Commission issued its memorandum opinion and order approving a plan filed by Bond and Share proposing the disposition of its holdings of the common stock of The Washington Water Power Company which it received as a result of the distribution of such stock by American Power.[29] This plan was submitted pursuant to the terms of the Commission's order dated October 15, 1951,[30] and pursuant to its terms Bond and Share will distribute as a dividend to its stockholders in December 1952 that number of shares of Washington Water Power common stock, the market value of which at the time of the distribution of such dividend will be approximately equal to one-half of Bond and Share's estimated net income for the year 1952. Any remaining shares of such stock not paid out as dividends will be sold.

International Hydro-Electric System

At the time of its registration in 1939, International Hydro-Electric System ("IHES"), a Massachusetts voluntary association, owned 86 percent of the common shares of Gatineau Power Company, a Canadian public utility company, and all the common shares of two wholesale electric utilities operating in the State of New York, which in 1946 were merged into a single company, Eastern New York Power Corporation ("ENYP"). It also owned 88 percent of the common shares (representing 51.5 percent of the voting power) of New England Power Association, which, upon its reorganization in 1947, was renamed New England Electric System ("NEES"). In addition, IHES held the following percentages of the voting power of two minor subsidiaries: 100 percent of Corinth Electric Light & Power Company and 33⅓ percent of Moreau Manufacturing Corporation.

IHES is in process of liquidation and dissolution pursuant to section 11 (d) of the Act. Since 1944 the system has been operated by Bartholomew A. Brickley, as trustee, under appointment by the United States District Court, District of Massachusetts. Earlier steps taken by the trustee toward the eventual liquidation and dissolution of IHES are described briefly in the 15th, 16th and 17th Annual Reports. As of June 30, 1952, IHES held 66 percent of Gatineau's voting power, 100 percent of ENYP, 8 percent of NEES, 100 percent of Corinth, 33⅓ percent of Moreau.

Proceedings are still pending before the Commission on the Trustee's Second Plan for the liquidation and dissolution of IHES. In a supplemental opinion and order dated June 29, 1951, the Commission held that the debentures of IHES, which had been paid off

[29] Holding Company Act release No. 11412.
[30] Holding Company Act release No. 10820.

under Part II of the Plan, were entitled to receive an additional amount of $85,017.60 as interest on delayed interest payments,[31] and this order was sustained on October 29, 1951, by the enforcement court.[32]

On January 21, 1952, the Commission entered its findings, opinion and order authorizing the trustee to make quarterly payments of 87½ cents per share to the preferred stockholders of IHES pending determination of the issues raised by Part III of the Trustee's Plan with respect to the allocation of the remaining assets of IHES between its preferred and Class A stockholders and with respect to the contention made by Class A stockholders that IHES should be permitted to continue in existence as an investment company.[33] The Commission's order was sustained by the enforcement court on April 8, 1952.[34]

On February 14, 1952, the Commission heard oral argument on Part III of the Trustee's Plan. While this matter was under consideration by the Commission, the trustee obtained offers for the purchase of all the properties of ENYP, consisting of electric properties (largely hydro) in the State of New York, and water power properties and undeveloped or partially developed water power sites in the States of New York and Maine; he also obtained an offer for the purchase of IHES' interests in its other subsidiaries, Corinth and Moreau. The highest offers for the several properties totaled $25,600,000. Hearings on the proposals were held in April 1952 and on June 5, 1952, the Commission issued its findings, opinion and order approving the execution by the trustee, upon satisfactorily resolving the tax problems involved, of definitive contracts for the sale of the properties at the amounts specified in the several offers.[35] It is expected that if the sales are consummated as proposed, a reconsideration of the allocation problems may be required. Accordingly, the Commission has withheld action on Part III of the Trustee's Plan.

Investment Bond and Share Corporation

Investment Bond and Share Corporation ("IBS") did not register with the Commission until July 2, 1951, subsequent to an investigation by the staff of the Commission which disclosed that IBS had been a holding company as defined by the statute for a number of years. At the time of registration, IBS had five direct subsidiaries. These included a gas utility company, Jacksonville Gas Corporation, an electric utility company, Eastern Kansas Utilities, Inc. ("EKU") and three nonutility enterprises, including a telephone holding company with six telephone operating subsidiaries.

On August 8, 1951, IBS submitted a plan under section 11 (e) of the Act designed to effect its liquidation and dissolution; the Commission instituted proceedings under section 11 (b) and a hearing on the consolidated proceedings was ordered to be held.[36] After the hearing and numerous conferences with Commission staff, amendments were filed and certain related proposals and commitments were offered by IBS. To accomplish its liquidation, the company

[31] Holding Company Act release No. 10642.
[32] *In re International Hydro-Electric System*, 101 F. Supp. 222 (D. Mass., 1951).
[33] Holding Company Act release No. 11014.
[34] *In re International Hydro-Electric System*, unreported (D. Mass. No. 2430).
[35] Holding Company Act release No. 11299.
[36] Holding Company Act releases Nos. 10865 and 11255.

proposed the payment of all of its debts, the retirement of its Class A stock by the payment of $33 per share plus accrued dividends, and the distribution of its remaining assets pro rata to holders of the Class B stock. Since the Class B stock was held almost entirely by three families which controlled the system, the plan included provisions for subsequent disposition by such parties of the shares of Jacksonville and EKU to be received by them in the distribution of assets. A portion of the common shares of Jacksonville owned by IBS are to be sold to Jacksonville at a price equal to the cost to IBS.

In approving the plan on July 10, 1952, the Commission noted that IBS had acquired control of Jacksonville without its approval. IBS had acquired its holdings of the stock of EKU under the same conditions. This raised legal questions regarding profits realized from such illegal acquisitions and the possible rescission rights of the vendors of such stock. At the suggestion of the Commission's staff, IBS had inserted provisions in the plan to afford vendors of the Jacksonville and EKU stocks an opportunity to assert any claims for rescission they might have under section 26 (c) of the statute. The Commission concluded that the amended plan offered an appropriate resolution of the issues, but withheld its approval pending the filing of an appropriate amendment proposing to increase the payment to the Class A stockholders to $37 per share and to establish a restriction on payment of dividends by Jacksonville out of prior earned surplus.[37] IBS filed such an amendment and the plan was approved.[38] On September 17, 1952, the Commission found that the transactions proposed in the plan had been consummated, and issued its order under section 5 (d) declaring that IBS had ceased to be a holding company and terminating its registration.[39]

New England Public Service Company

At the time of its registration in 1935, New England Public Service Company ("NEPSCO") had five operating utility subsidiaries, of which two operated in Maine, one in New Hampshire and two in New Hampshire and Vermont. It also owned, through an industrial subsidiary, five textile mills, a paper company, and a forest products manufacturing company. The company was heavily overcapitalized with two outstanding classes of preferred stock, on which substantial dividend arrearages had accumulated, and common stock. As a result of simplification proceedings instituted by the Commission under section 11 (b) (2) of the Act, the company was directed in 1941 to reorganize on a one-stock basis or, in the alternative at its election, to liquidate and dissolve.[40] The management of NEPSCO elected to liquidate and subsequent steps have been taken toward this end. NEPSCO's parent is Northern New England Company, which is also a registered holding company under order of the Commission to liquidate.[41]

In addition to the merger and disposition of several of its smaller subsidiaries, NEPSCO has sold its interest in the industrial companies. The proceeds from this sale and a $13,500,000 bank loan provided the funds for the retirement of its prior lien preferred stocks. On June 30, 1952, the bank loan was completely repaid.

[37] Holding Company Act release No. 11380.
[38] Holding Company Act release No. 11381.
[39] Holding Company Act release No. 11486.
[40] 9 SEC 224.
[41] Holding Company Act release No. 8401.

To permit the payment of dividends on the preferred stock still outstanding, an accounting reorganization was consummated and dividends on such stock were resumed on January 15, 1951.[42]

In June 1951, NEPSCO filed a plan providing for the distribution of its remaining assets to the holders of its preferred and common stocks and for its liquidation and dissolution.[43] This plan was designed to effectuate complete compliance with the Commission's order of May 2, 1941. Extensive hearings were held on the plan and, following its request to interested parties for an early settlement of their differences, the Commission was notified in September 1952 that after a conference with the staff of the Commission a compromise agreement had been entered into by counsel for NEPSCO, counsel for Northern, representatives of all of the Committees participating on behalf of the preferred and common stockholders of NEPSCO and shareholders of Northern, and counsel for certain preferred stockholders of NEPSCO. An amended plan embodying the substance of this agreement has been filed. NEPSCO's parent, Northern, which owns approximately one-third of NEPSCO's common stock, is awaiting consummation of the final plan by NEPSCO, in which participation to be afforded the common stock of the latter company will be determined, before taking the steps required to complete its own liquidation.

Pennsylvania Gas & Electric Corporation

Pennsylvania Gas & Electric Corporation ("Penn Corp") registered with the Commission in November 1936 and at that time it had 19 subsidiary companies. Its utility operations were conducted in sections of New York, Pennsylvania, Massachusetts, Rhode Island and Virginia. The system included 15 gas utility companies, three wholesale gas companies and one service company. Three of the utility subsidiaries, North Penn Gas Company, Pennsylvania Gas & Electric Company, name later changed to York County Gas Company, and Saugerties Gas Light Company were also subholding companies.

As described in the 17th Annual Report, Penn Corp has already completed the major steps in accomplishing compliance with the requirements of section 11 (b). Penn Corp's system presently includes two gas utility companies, North Penn Gas Company which is also a registered holding company and Crystal City Gas Company which is a wholly owned subsidiary of North Penn. In addition, there is a small service company. On June 5, 1952, the Commission issued its findings and opinion with respect to a plan filed by Penn Corp to effect its liquidation and dissolution.[44] Under this plan, Penn Corp proposed to distribute to its preferred and Class A stockholders its holdings of the stock of North Penn. For each share of preferred the holder would receive 14 shares of North Penn common stock, and for each share of Class A common, one-fourth share of North Penn common. The plan also provided for a $7 cash payment to the holders of the preferred stock, equivalent to accrued dividends after December 31, 1950, and for a small cash distribution to the holders of Penn Corp's Class B common stock. The remaining assets of Penn Corp would be surrendered to North Penn and the former

[42] Holding Company Act release No. 10087.
[43] Holding Company Act release No. 10704.
[44] Holding Company Act release No. 11298.

company would be dissolved. The Commission found that the proposed allocations were not fair and equitable. It indicated further that the participations proposed for the Class A and Class B common holders were insufficient and concluded that the plan could be approved only if certain modifications, as recited, were provided by amendment. An amended plan embodying the modifications was filed on September 19, 1952.

Mission Oil Company
Southwestern Development Company

At the beginning of the fiscal year, the stock of Southwestern Development Company was owned 47.28 percent by Mission Oil Company, representing virtually the only assets of that company; 51 percent by Sinclair Oil Company, and 1.72 percent by minority interests. Sinclair also held about 4 percent of the stock of Mission. Mission and Southwestern were registered holding companies; Sinclair was primarily engaged in the production and refining of petroleum products and had been granted exemption from certain provisions of the Act.[45]

After numerous conferences with the Commission's staff, Mission and Southwestern in June 1951 filed with the Commission a section 11 (e) plan designed to effectuate compliance with the provisions of section 11 (b). In brief the plan provided for the liquidation and dissolution of Mission, the limitation of the operations of the Southwestern system to a single integrated public utility system and certain nonutility business whose operations are reasonably incidental or appropriate thereto and the divestment by Southwestern of all its other nonutility interests. The plan was approved on December 21, 1951,[46] and, in connection therewith, Sinclair registered under the Act, joined in the plan as amended so as to provide for the divestment of its interests in Mission, Southwestern and their subsidiaries, and was subsequently granted an exemption from the provisions of the Act, excepting sections 11 (b), (c) and (e), and section 9 (a) (2).[47]

One of the important accomplishments of the plan was the elimination of highly complex intrasystem operating and financial relationships between two of Southwestern's nonutility subsidiaries, Canadian River Gas Company and Colorado Interstate Gas Company. Canadian River was engaged in the business of producing, transmitting and selling natural gas at wholesale to system affiliates, including Colorado, and to nonaffiliates. It owned natural gas rights in the Texas Panhandle field subject to the reservation of the prior right to such gas by certain other of Southwestern's subsidiaries to the extent of their requirements. Colorado was a pipeline company selling natural gas at wholesale. Southwestern owned all of the common stock of Canadian River and 42.5 percent of that of Colorado. Colorado purchased the major portion of its gas requirements from Canadian River at cost, excluding any allowance for depreciation, depletion and intangible drilling costs, pursuant to a contract under which it was obligated, as long as it elected to take gas from Canadian River, to furnish Canadian River with the funds

[45] 2 S. E. C. 165, sub nom. Consolidated Oil Corporation.
[46] Holding Company Act release No. 10969.
[47] Holding Company Act release No. 10998.

necessary to meet all expenditures for operations and all capital requirements. However, while Southwestern was the owner of Canadian River, all of the latter's profits, computed on a cash basis, went to Colorado as long as it purchased gas under the contract.

Colorado had supplied substantial sums to Canadian River pursuant to this contract, but because it did not own the company, it could not use Canadian River's property which had a net book value of approximately $12,500,000 as a basis for financing and thus was unable to finance economically and advantageously the development of Canadian River's reserves and needed additional pipeline capacity. Under the plan, this impediment was removed by transferring Canadian River's assets to Colorado in return for which Southwestern received the rights to revenues derived from the sale of natural gasoline extracted from Canadian River's present gas reserves, which revenues under the existing contract had gone to Colorado. The rights to these revenues were given to Southwestern as consideration for its reversionary rights in the assets and earnings of Canadian River which, it was estimated, would mature about 1972 when Colorado would probably find it no longer advantageous to continue to take gas from Canadian River. In addition to the advantages of an improved financing position and of simplified operations, Colorado's acquisition of Canadian River's assets resulted in tax benefits to it, including the advantages of being able to avail itself of the deductions for depreciation, depletion and intangible drilling costs applicable to the acquired assets.

The transfer of Canadian River to Colorado was accomplished under the plan by merging the two companies as of December 31, 1951. Prior to the merger, Canadian River conveyed to a new company, Westpan Hydrocarbon Company, the rights to the natural gasoline "in place" in Canadian River's natural gas reserves. Westpan issued to Canadian River 727,757.05 shares of common stock in exchange for the gasoline rights. It also assured to Colorado the benefits of the intangible and depletion tax credits on account of the gasoline "in place" in the Canadian River natural gas reserves, and entered into an operating contract under which Colorado extracts, processes, and delivers the gasoline to Westpan and receives a portion of the proceeds, estimated to cover Colorado's cost in connection therewith. Canadian River transferred to its parent, Southwestern, as a liquidating dividend, the 727,757.05 shares of Westpan stock on about January 20, 1952.

As steps to facilitate the dissolution of Mission, pursuant to the plan Colorado's 1,250,000 shares of no par common stock were reclassified into 1,710,016.60 shares of $5.00 par value common stock and in connection therewith $6,197,141.83 was transferred from earned surplus to capital stock account, and Southwestern's outstanding 40,806 shares of no par common stock was reclassified into 727,757.05 shares of $5.00 par value common stock and in connection therewith $2,867,432.18 was transferred from earned surplus to capital stock account. Southwestern distributed to its stockholders its holdings of 42½ percent of the new Colorado stock on about March 6, 1952. Thereafter, on April 6, 1952, Sinclair sold to underwriters for public distribution the 371,172.86 shares of the new Colorado stock which it received through the distribution thereof by Southwestern. Southwestern also distributed to its stockholders its holdings of 727,757.05

shares of the $0.10 par value common stock of Westpan. This distribution was made about June 15, 1952.

Mission Oil, on July 7, 1952, commenced the distribution to its stockholders of its holdings of 47.28 percent of the common stock of Southwestern and the common stocks of Colorado and Westpan which it received through the distributions by Southwestern on the basis of one share of the stock of each of these companies for each share of Mission's outstanding stock. Upon completion of this distribution, Mission Oil is to be liquidated and dissolved. Sinclair has disposed through market sales of the common stock of Colorado received through the distribution thereof by Mission Oil and is to dispose of its holdings of the common stock of Southwestern and the common stock of Westpan received through the distributions by Southwestern and Mission Oil under the plan. It is then expected to qualify for an order under section 5 (d) declaring that it has ceased to be a holding company.

All interlocking officer and director relationships between Sinclair, Mission Oil and Southwestern, and those between such companies and Colorado and Westpan, are to be terminated prior to, or at the time of, the respective distributions and dispositions. Southwestern and its remaining wholly owned subsidiaries, consisting of four gas utility companies, a pipeline company, and a production company, are to continue in operation as a registered holding company system.

Standard Power and Light Corporation
Standard Gas and Electric Company

In 1936 the Standard holding company system consisted of 105 active companies operating in 20 States and in Mexico, including the two top holding companies, Standard Power & Light Corporation and its subsidiary, Standard Gas & Electric Company. By June 30, 1952, the system had been reduced to 13 companies of which 6 were utility subsidiaries.

In February 1951, Standard Gas filed a new section 11 (e) plan with the Commission.[48] The plan includes four steps. Step I would effect the retirement of the company's $7 and $6 prior preference stock; Step II is intended to accomplish the liquidation and dissolution of Standard Gas including the delivery to the holders of that company's $4 cumulative preferred stock of shares of Duquesne Light Company common stock, and the delivery to the holders of Standard Gas' common stock of the common stock of Philadelphia Company; Step III would eliminate the minor subsidiaries of Philadelphia, including disposition of Pittsburgh Railways Company; and Step IV proposes the dissolution of Philadelphia and the distribution to its common stockholders of its holdings of Duquesne Light Company.

During the fiscal year 1952, hearings were completed on Step I of the plan and on Step IA, which is a supplement to Step I filed to settle intercompany claims between Standard Gas and its parent Standard Power through the transfer of 31,000 shares of common stock of Duquesne by Standard Gas to Standard Power and the cancellation of Standard Gas' note for $983,930 held by Standard Power.

After the close of hearings on Step I, representatives of Standard Gas, Standard Power and Standard Gas' security holders in response

[48] Holding Company Act release No. 10413.

to the Commission's request for early settlement of their differences, agreed to compromise that step. Pursuant to this compromise agreement, Step I was amended on July 7, 1952 [49] to provide that the holders of each share of Standard Gas' $7 Prior Preference Stock would receive approximately 4.8 shares of common stock of Wisconsin Public Service Corp. (instead of 4.3 shares as previously proposed), 2.9 shares of common stock of Oklahoma Gas and Electric Company and 2.1 shares of common stock of Duquesne. The holders of each share of $6 Prior Preference Stock would receive approximately 4.5 shares of common stock of Wisconsin (instead of 4.0 shares as previously proposed), 2.6 shares of common stock of Oklahoma and 1.8 shares of common stock of Duquesne. A hearing on the amended plan was held on July 24, 1952, and Steps I and IA were approved on October 1, 1952.[50] After the United States District Court for the District of Delaware approved the plan and ordered its enforcement on November 7, 1952,[51] the distributions of securities provided under the plan were made by Standard on December 1, 1952.

The compromise agreement, which expedited the processing of Step I, also covers Step II of the plan. It provided for an amendment to be filed for the retirement of Standard Gas' $4 cumulative preferred stock by the delivery in exchange for each share thereof of four shares of common stock of Duquesne.

In April 1952, the Commission rendered its decision on the plan for the simplification of the corporate structure of the holding company system of Philadelphia.[52] As described in previous annual reports, that plan proposed the retirement of the noncallable 5 percent and 6 percent preferred stocks of Philadelphia and of the 6 percent preferred stock of the Consolidated Gas Company of the City of Pittsburgh, an inactive subsidiary of Philadelphia, on which Philadelphia had guaranteed certain dividends. The Commission indicated that it would approve the plan if modified to increase the allocations as follows: (1) For each share of Philadelphia's 6 percent noncallable preferred stock having a par value of $50 per share, $13 in cash, rather than $3.50 as proposed, plus one share of 4 percent preferred stock (par value of $50 per share) of Duquesne, Philadelphia's only remaining utility subsidiary; (2) for each share of 5 percent preferred stock of Philadelphia (par value of $10 per share), $12 in cash instead of $11 as proposed; and for each share of preferred stock of the Consolidated Gas Company of the City of Pittsburgh, having a par value of $50 per share and guaranteed by Philadelphia as to dividends at the rate of 4 percent per annum, one share of 4 percent preferred stock of Duquesne instead of 85/100 share as proposed. Standard filed amendments to conform to this decision on July 11, 1952, and on August 22, 1952, the Commission approved the plan as amended.[53] Following approval by the enforcement court,[54] the plan was consummated on November 1, 1952.

At the same time the amendments were filed to the plan for retirement of Philadelphia's noncallable securities, Standard filed a plan for the retirement of the junior $5 preference stock of Philadelphia

[49] Holding Company Act release No. 11372.
[50] Holding Company Act release No. 11510.
[51] Civil Action 1497, unreported.
[52] Holding Company Act release No. 11155.
[53] Holding Company Act release No. 11450.
[54] *In re Philadelphia Company*, unreported (W. D. Pa. 10781, October 7, 1952).

by the distribution to the holder of each share thereof of 3.6 shares of common stock of Duquesne. It is anticipated that hearings on this proposal will be held in December 1952.

In the spring of 1952, Philadelphia filed a plan proposing the sale of its office building in Pittsburgh occupied by the Philadelphia system companies.[55] It had been owned by Equitable Real Estate Company, formerly a direct subsidiary of Philadelphia, which was dissolved in 1951. Philadelphia has entered into an agreement, subject to approval of the Commission, to sell this building to the Mellon National Bank & Trust Company, which would lease the building to Duquesne for a period of 35 years. The Commission ordered a hearing on this plan to determine whether competitive conditions were maintained in the proposed sale and lease transaction. The matter is presently pending before the Commission.

Determination of the treatment to be accorded the holders of its $5 preference stock and the sale of the central office building will bring Philadelphia close to its liquidation and dissolution, as required by the Commission's order of June 1, 1948.

The United Corporation

The United Corporation registered as a holding company in March 1938, at which time its portfolio was comprised principally of the common stocks of four holding company subsidiaries. These subsidiaries together with the percentages of voting control held by United, were as follows: The United Gas Improvement Company, 26.2 percent; Public Service Corporation of New Jersey, 13.9 percent; Niagara Hudson Power Corporation, 23.4 percent; and Columbia Gas & Electric Corporation, 19.6 percent. United also had other substantial interests, principally in utility holding and operating companies.

These subsidiary holding companies underwent extensive reorganizations under section 11 and the interests of United in their common stocks, or in the common stocks of their successors, have been substantially reduced. United has effectuated the retirement of all of its outstanding preference stock largely through the exchange of securities of reorganized subsidiaries. Substantial blocks of portfolio securities have also been disposed of through sales in the open market.

In November 1949, United submitted a new proposal, in response to the conditions contained in a previous order of the Commission, which provided a comprehensive and detailed program for effectuating compliance with the provisions of section 11. After successive modifications, the Commission on June 26, 1951, approved the amended plan which provided, among other things, for (1) a limited offer to United's common stockholders permitting them to withdraw from the company and receive cash or shares of Niagara Mohawk Power Corporation common stock for their holdings in United; (2) cancellation of United's option warrants; (3) sale of United's stock holdings in the South Jersey Gas Company; (4) amendment of United's Certificate of Incorporation to provide for cumulative voting and amendment of its bylaws to increase the quorum requirement at stockholders' meetings; and (5) the reduction by United of all of its holdings of voting securities of public utility companies to amounts not to exceed 4.9 percent of the respective outstanding voting securities of each such company. All of these steps were to be taken

[55] Holding Company Act release No. 11188.

with a view to transforming United into an investment company.[56]

In July 1951, United undertook the exchange offer provided by the plan. Holders of 100 or more shares of United's common stock were offered the opportunity to exchange their stock for shares of Niagara Mohawk common stock having an average market value equal to 97 percent of the average net asset value of the United stock surrendered. Holders of less than 100 shares were offered an opportunity to surrender their shares for cash in an amount equal to the average net asset value of the United stock surrendered. Pursuant to this plan, of 14,529,492 shares of United's common stock outstanding, 362,616 shares were exchanged for 69,566.6 shares of Niagara Mohawk's common stock and 95,051 shares were surrendered for cash.

In August 1951, petitions to review certain aspects of the plan were filed in the United States Court of Appeals, District of Columbia, by certain common stockholders. By order dated November 15, 1951, the court directed that the Commission's order approving the plan be stayed pending review, insofar as the order provided for the disposition by United of its shares of Niagara Mohawk's common stock. Proceedings in the court are still pending.

At the time of the approval of the plan by the Commission, United owned 11.9 percent of the voting securities of Niagara Mohawk. As a result of certain sales by United of its holdings of Class A stock of Niagara Mohawk and the public offering in January 1952 of one million additional shares of common stock by Niagara Mohawk, the holdings by United of voting securities of Niagara Mohawk have been reduced to 9.57 percent of the total outstanding amount of such securities as of June 30, 1952. The status of Niagara Mohawk, as a subsidiary of United, has not been determined.

In January 1952, pursuant to authority given to it when the Commission approved the plan, United endeavored to negotiate the sale of its holdings of 154,230 shares of the common stock of South Jersey, representing 28.25 percent of the voting securities of that company. These efforts were unsuccessful and United subsequently proposed to make a public offering of its holdings of such common stock in accordance with the competitive bidding requirements of rule U–50. Three bids were received in response to United's invitation and the stock was awarded at a price of $15.379 per share in July 1952.[57] As a result, United has ceased to hold as much as 5 percent of the voting securities of any public utility company, with the exception of Niagara Mohawk, and its proposed sales of Niagara Mohawk stock to reduce its holdings to less than 5 percent of the outstanding voting securities has been stayed as indicated above by the Court of Appeals, District of Columbia, pending review of the Commission's order approving the plan.

In November 1951, United requested authority during such time as may elapse until it ceases to be a holding company and starts functioning as an investment company, to invest funds in an amount equal in the aggregate to the proceeds derived by it from divestments required by previous orders of the Commission dated August 14, 1943, and June 26, 1951. The only limitation proposed was that acquisitions of securities of public utility companies and holding companies would not exceed 4.9 percent of the total outstanding voting securities

[56] Holding Company Act releases Nos. 10614 and 10643.
[57] Holding Company Act release No. 11376.

of such companies. On May 2, 1952, the Commission issued its findings and opinion, stating that in view of the status of the review proceedings in the court of appeals, United should maintain as to any new investments, sufficient diversification of its portfolio to permit ready disposition thereof. Accordingly, United was not authorized to invest more than $1 million in any one company, or to acquire as much as 10 percent of the outstanding voting securities of any one company, or to acquire more than 1 percent of the voting securities of any public utility company or of any holding company exempt as such from provisions of the Act. Excluded entirely from the scope of the authorized investments are securities of registered holding companies or subsidiaries thereof or securities of any public utility or holding company which is, or has been, a statutory subsidiary of United.[58]

The United Gas Improvement Company

The United Gas Improvement Company is a registered holding company incorporated under the laws of Pennsylvania and having nine subsidiary companies all operating within Pennsylvania. Six of these are gas utility companies, one is a gas and electric utility company and two are nonutilities. At the time of its registration with the Commission in March 1938, the UGI system embraced 55 corporate entities.

On December 29, 1951, UGI filed an application for approval of a comprehensive plan pursuant to section 11 (e) of the Act embodying the following major steps: (1) The conversion of UGI from a holding company to a public utility operating company through the merger into UGI of all of its public utility subsidiaries and the dissolution of its non-utility subsidiaries, such merger being accompanied by exchanges of securities so that all present security holders of UGI and its subsidiaries will become owners of securities in the surviving company; (2) the disposition by UGI of its securities in nonsubsidiary companies, except a note of Delaware Coach Company;[59] and (3) the securing of an order pursuant to section 5 (d) of the Act declaring that UGI has ceased to be a holding company and that its registration under the Act shall cease to be in effect.

Hearings on the company's plan were held and the plan was approved by the Commission on September 18, 1952.[60] The plan was approved and ordered enforced by the United States District Court for the Eastern District of Pennsylvania on November 12, 1952,[61] and its consummation has been set for December 31, 1952. The Commission has reserved jurisdiction to consider entry of an order under section 5 (d) declaring that UGI has ceased to be a holding company.

FEES AND EXPENSES IN REORGANIZATION PROCEEDINGS UNDER SECTION 11

An important and very difficult function of the Commission's over-all responsibility for passing upon reorganization plans of

[58] Holding Company Act release No. 11209.
[59] In accordance with Commission's order of June 15, 1951, Holding Company Act release No. 10624, this would include holdings of securities in Central Illinois Light Co., Consumers Power Co., Delaware Power & Light Co., Niagara Mohawk Power Corp., Philadelphia Electric Co., and Public Service Electric & Gas Co.
[60] Holding Company Act release No. 11495.
[61] Civil Action 12436, unreported.

holding company systems under section 11 of the Act is the determination of the amounts of fees and reimbursements of expenses to be allowed to attorneys, experts, and other persons who have participated in the proceedings as representatives of the affected companies or as representatives of holders of the various classes of securities involved.

Because the determination of the amounts of fees and expenses is predicated primarily upon the benefits conferred in the reorganization proceedings, it is not feasible to process fee applications until the reorganization plan has been consummated. The usual procedure in such matters is for the Commission to insert in its order approving the plan of reorganization a reservation of jurisdiction over fees and reimbursements of expenses claimed. It is for this reason that the volume of work on fee cases has followed a rising trend in recent years, even though the section 11 programs of most systems are rapidly approaching completion. It is likely that the Commission's work load in connection with fee applications may continue at a high level for as long as two years following the termination of other section 11 work.

In considering applications for fees and reimbursements of expenses, the Commission applies principles which are generally similar to those employed by the Federal courts in passing upon fees and expenses claimed in connection with reorganization plans under the Bankruptcy Act, except, of course, that due weight is given to special circumstances inherent in reorganizations under section 11 of the Holding Company Act. It is the basic duty of the Commission to accomplish the statutory objectives as economically as possible and at a minimum expense to the estate. Therefore, two major objectives of the Commission are to protect estates in reorganization from exorbitant charges and at the same time grant fair compensation to those participating in the proceedings so as to afford adequate public representation in the process. In determining the amount of the compensation to be allowed, the primary factor is the amount of benefit conferred upon the estate or the security holders by the services rendered. Among other factors to be considered are the size of the estate and its ability to pay the compensation requested, the necessity of the services and expenditures sought to be reimbursed, avoidance of duplication of efforts, the intricacies and magnitude of the reorganization problems involved, the conflicts between the personal interests of the fee claimants and the interests of the persons whom they represent in the proceedings, the technical ability and experience of the applicants and the reasonable amount of time required to render the services in question.[62]

In the fiscal year 1952 the Commission decided 14 fee cases in which compensation aggregating $3,495,000 was allowed as against total fees and expenses requested in the amount of $5,722,000. These cases arose out of the reorganizations of the following holding company systems:

[62] Holding Company Act releases Nos. 11096, 11145, 10724, 10959, 11175, 11290, and 11330.

Name of system	Holding Company Act release No.
North Continent Utilities Corporation	10677
The United Light and Railways Company, et al	10724, 10908
The United Gas Improvement Company	10896
Sioux City Gas and Electric Company, et al	10959
The Commonwealth & Southern Corporation, et al	10986, 11021
Engineers Public Service Company, et al	11096
American Power & Light Company	11134
Northern States Power Company (Del.), et al	11145
Electric Power & Light Corporation	11175
The United Corporation	11290
The Middle West Corporation, et al	11330
Interstate Power Company, et al	11359

These cases presented a wide range of issues and several of the general principles noted above were applied. The following illustrative cases indicate how these tests were applied, particularly the primary test of whether the services rendered benefited the estate.

In the *Northern States Power Company (Del.)* case,[63] counsel for both the Delaware company and its subsidiary, Northern States Power Company, a Minnesota company, participated actively in the proceedings. However, the efforts of both counsel were devoted in large part to supporting plans which the Commission found unsatisfactory and as a result the laboring oar in carrying through the plan as finally consummated passed to various counsel for the common stockholders of the Delaware company who performed valuable services for which they were compensated. The record also indicated a certain amount of duplication of effort. As a result, the compensation allowed to counsel for the companies was less than that requested. A representative of a preferred stockholders' committee was allowed less compensation than requested because the record showed that, while the committee had rendered constructive assistance, it could not claim credit for any specific feature of the plan which was ultimately adopted. In the same case the representative of another committee for the same class of stockholders stressed as a basis for its claim to compensation the fact that it had secured a high degree of representation. The Commission considered this to be of little significance and only modest compensation was allowed since the committee's participation in the proceedings had been relatively ineffectual. The representative of an unorganized group of security holders, not qualified under the Commission's rule U–62, was also granted substantial compensation because he had served as the leading advocate of the position of the common stock and had contributed important benefits to the reorganization proceedings. Other representatives of the common stockholders whose efforts contributed to the defeat of a plan providing a lower allocation to those stockholders and to the adoption of an increased allocation were awarded compensation, but the representative of another individual security holder was denied compensation in the absence of any showing of demonstrable benefits.

[63] Holding Company Act release No. 11145.

In the *The Middle West Corporation* case, a member of a common stockholders' committee was allowed reduced compensation. He had made important contributions to the defeat of an unsuccessful plan and to the adoption of the plan which was approved by the Commission. However, the record showed that the amount of work and time expended were in excess of those required and there was evidence of some duplication of effort.[64]

In the *Electric Power and Light Corporation* case, the representative of a preferred stockholders' committee applied for fees totaling $500,000. The company opposed the application on the grounds that the efforts of the committee representative were duplicative and some were not of a constructive nature. In evaluating the services of this applicant the Commission considered, among other things, his long experience at the bar and his particular skill in reorganization matters; the fact that he had opposed a plan which failed; and that the plan ultimately approved and consummated accorded the class of securities which he represented a substantially greater participation in the estate than would have been received pursuant to the abandoned plan. The application was granted in the reduced amount of $140,000.[65]

An application filed by a law firm representing an individual preferred stockholder in the reorganization of the *Sioux City Gas & Electric Company* system was denied, the Commission finding that the position advocated, even though conscientiously presented, did not affect the final outcome of the plan and that no compensable benefit had otherwise been conferred upon the estate.[66]

In the *Engineers Public Service Company* case, the representative of an individual common stockholder, while allowed a modest amount for his contribution to an aspect of the plan, was denied the substantial compensation which he sought for the reason that he did not enter the case until the end of the administrative proceeding and his main participation was in the courts where he was ultimately unsuccessful in upsetting the decision of the Commission.[67] The fee claimant has contested the denial of his fee request before the enforcement court, where the matter is pending.

In the *Northern States Power Company (Del.)* case, applications for fees and expenses were also submitted by Standard Gas and Electric Company, the parent of Northern States Power Company (Del.), and its counsel, and by a representative of an unorganized group of Standard's preferred stock and his counsel. The Commission denied these applications pointing out that Standard, as the parent of the Delaware Company, was responsible for the complexities which were required to be eliminated under the Act and that equity demanded that the fees and expenses of its counsel and of persons representing its stockholders should be borne by it alone, and not by the Delaware company.[68] Standard is contesting this decision before the enforcement court.

Similarly, in *Electric Power and Light Corporation*, the Commission denied the application for fees and expenses submitted by the parent of a subsidiary holding company for services rendered in connection

[64] Holding Company Act release No. 11330.
[65] Holding Company Act release No. 11175.
[66] Holding Company Act release No. 10959.
[67] Holding Company Act release No. 11096.
[68] Holding Company Act release No. 11145.

with the reorganization of the latter company. As in the *Northern States Power* case the Commission refused to allow the counsel and experts for the parent holding company and representatives of security holders of the parent holding company compensation from the estate of its subsidiary for services performed in connection with the latter company's reorganization.[69]

The problem of duality and conflict of interests of participants in reorganization proceedings also received attention in two cases during the year. In the *Sioux City Gas and Electric Company* case, the fees and expenses requested by one of the applicants were denied, the Commission pointing out, as one of the reasons for denying the claim, that applicant had purchased securities representing an interest adverse to that of his clients.[70]

In *Electric Power and Light Corporation* the Commission emphasized that it was essential for those who are solving the problems of a company in reorganization under section 11 to concern themselves solely with the interests of the persons or security holders whom they represent and the estate and not to engage personally in the trading in securities of the affected companies and that this principle was no less applicable to management and its counsel then to protective committees and their counsel and expert advisers.[71] The limited trading by certain of the applicants was examined by the Commission and taken into consideration in reaching its determination as to the amount of compensation allowable.

In the proceedings involving the reorganization of *American Light & Traction Company* and its parent, *The United Light and Railways Company*, Allied Chemical & Dye Corporation had expended considerable sums in fees and expenses for counsel and certain experts retained to protect its position as the holder of 43.8 percent of the preferred stock and 4.31 percent of the common stock of American Light. Allied applied for reimbursement of its expenditures. Allied had made important contributions to the defeat of the former liquidation plan and in obtaining fair treatment for the noncallable preferred stock in the integration and simplification plan finally approved under section 11. Allied also produced valuation evidence which was very helpful in determining the amount to be paid for retirement of the preferred stock of American Light. The Commission noted, however, that Allied did not purport to act in a representative capacity for other preferred stockholders, that part of its several counsel's services were duplicative among themselves, and that a considerable portion of Allied's activities were directed solely to protect their own particular situation rather than on behalf of the entire class. The Commission substantially reduced the requested compensation.[72]

ACTIVITY PURSUANT TO SECTION 30

In past years, the Commission's enforcement of section 11 has resulted not only in the divestment of nonretainable utility and

[69] In the *Electric Power and Light Corporation* proceedings, an expert for the parent company is contesting before the enforcement court the jurisdiction of the Commission to pass upon his fee where the plan consummated was filed by the subsidiary alone.
[70] Holding Company Act release No. 10959.
[71] Holding Company Act release No. 11175.
[72] Holding Company Act release No. 10724.

nonutility properties by registered systems, but it has also encouraged exchanges and acquisitions of properties by systems which are to continue as integrated regional organizations. Many of the continuing systems including American Gas and Electric Company, The Southern Company, The West Penn Electric Company, Ohio Edison Company and Middle South Utilities, Inc., have acquired contiguous properties and have made them a part of their interconnected systems.

As activity under section 11 nears completion, this phase of integration assumes increasing importance and is no longer an incidental factor. The emphasis is shifting to the implementation of that portion of section 30 of the Holding Company Act which states:

> The Commission is authorized and directed to make studies and investigations of public-utility companies, the territories served or which can be served by public-utility companies, and the manner in which the same are or can be served, to determine the sizes, types and locations of public-utility companies which do or can operate most economically and efficiently in the public interest, in the interest of investors and consumers, and in furtherance of a wider and more economical use of gas and electric energy; upon the basis of such investigations and studies the Commission shall make public from time to time its recommendations as to the type and size of geographically and economically integrated public-utility systems which, having regard for the nature and character of the locality served, can best promote and harmonize the interests of the public, the investor, and the consumer. * * *

Many reports prepared in earlier years by the staff in connection with section 11 enforcement have embodied the characteristics of the section 30 studies described in the statute. However, the Commission recognizes that this authorization given to it by the Congress is more comprehensive. It is not limited to service areas of registered systems. It rather affords a broad opportunity to assist in achieving a more efficient, economical and independent power supply for the entire nation as well as increased, improved and coordinated facilities for the production, transmission and distribution of natural gas.

During the fiscal year 1952, the Commission initiated its first specific section 30 study. In a sense, this is a pilot model of limited size which is being used to determine the scope of future examinations, sources of data, analytical procedures and other aspects. Shortly after the close of the fiscal year, the Commission shifted some of its existing personnel into a new small section in the Division of Public Utilities to expand this work. While section 30 does not provide the Commission with power to enforce its recommendations for the integration of facilities, it is expected that, in many instances, a demonstration of the benefits to be derived will result in voluntary proposals by the companies or systems concerned.

REGULATION OF CONTINUING HOLDING COMPANY SYSTEMS

Approximately 20 holding company groups with aggregate assets of over $7 billion are expected to emerge, upon completion of the section 11 enforcement program, as permanent integrated utility systems. The other holding companies presently registered with the Commission will either be liquidated or diverted into other fields of endeavor. The permanent systems comprise three distinct types. The first and largest category is made up of electric holding company systems which usually consist of one holding company over a number of functionally related electric utility companies operating in contiguous areas spread over several states. In general, these systems differ

from individual urban utilities in that their service areas are much larger and their operations are characterized by large scale centralized generation coupled with economical long distance transmission facilities. Typical of these are American Gas and Electric Company, The Southern Company, Middle South Utilities, Inc., and The Central & Southwest Corporation. The second type is the natural gas holding company system which usually controls both gas transmission and gas distribution properties. Columbia Gas System, Inc., American Natural Gas Company and Consolidated Natural Gas Company are among the largest in this group. The third type is the operating-holding company system. In these instances, which now occur only in the electric utility field, the holding company, in addition to controlling one or more subsidiary operating companies, derives a substantial proportion of its income from its own utility operations. Ohio Edison Company and the Northern States Power Company (Minn.) are important examples.

Despite the divestment of 240 electric utilities with assets of $8.4 billion, which were found to be not retainable by their former holding company parents, and the exemption of many others, the regional holding company systems which are emerging as permanent, integrated groups represent a vital segment of the public utility industry of the Nation. When all reorganizations under section 11 have been completed, the continuing systems alone will represent 23 percent of the assets and revenues of the entire electric utility industry, and the permanent gas systems will account for 18 percent of that industry. These integrated, regional systems serve some of the most important agricultural and industrial areas of the country. This is graphically illustrated by the following map of the United States showing the approximate service areas of the 16 continuing electric utility systems.

In the regulation of the continuing holding company systems (and, to a lesser extent, other registered systems which have not yet completed their section 11 programs) the Commission and its staff devote a large amount of effort to the processing of financing applications and declarations under sections 6 and 7 of the statute and to numerous applications relating to the acquisition of securities or assets of any other business by system companies. Other important responsibilities include supervision of loans and capital contributions to associate companies, reacquisitions of securities by the issuer thereof, dividend payments out of capital or unearned surplus, solicitations of proxies, and other transactions between associates or affiliated companies. The statute also charges the Commission with responsibility for the regulation of service companies which are components of holding company systems. This includes surveillance of cost allocations among associate companies, and investigations to insure that operating utilities are charged no more than cost for the services rendered, that such services are for the benefit of the operating companies and that the charges paid are reasonable.

Unlike the typical proceeding for reorganization of a holding company system which may require the full time of several technical personnel many months to complete, the task of supervision of the permanent holding company system is essentially a policing function requiring expert attention to a large volume of transactions, comparatively few of which involve lengthy conferences or proceedings. Most of these cases are disposed of by the Commission without the

formality of hearing or argument and the average filing requires less than 30 days for processing, including the required periods for published notice to interested persons. This simple, streamlined procedure is possible only because the Commission has endeavored to maintain a corps of tenchical personnel experienced in this field who are capable of appraising proposed transactions on short notice.

The Commission does not have available separate records showing the workload arising out of supervision of the continuing systems, but an approximate measure of this activity may be derived from the following table showing the numbers of separate questions presented for consideration and passed upon under those sections of the Act which pertain to financing, acquisitions, intercompany transactions and intrasystem servicing arrangements. While some of these matters relate to systems not expected to continue in operation as regional, integrated systems, the amount is believed to be comparatively small in view of the proximity of the section 11 program to final completion.

REGISTERED PUBLIC UTILITY HOLDING COMPANY SYSTEMS

Financing, acquisitions, intercompany transactions and intrasystem servicing arrangements

[Volume of separate questions presented for consideration and disposed of under Public Utility Holding Company Act of 1935. Fiscal years 1950, 1951, 1952]

Description of matters considered under applicable sections of the act	Matters filed, fiscal years—			Matters disposed of, fiscal years—		
	1950	1951	1952	1950	1951	1952
Sections 6, 7: Issuance of securities, assumptions of liability and alterations of rights	319	313	352	337	326	374
Section 12 (b): Loans, extensions of credit, capital donations, etc	37	23	36	40	24	48
Section 12 (c):						
Reacquisitions of securities by issuer	88	47	34	93	54	62
Payments of dividends out of capital	10	9	9	22	9	11
Sections 9, 10: Acquisitions of securities and assets	189	196	231	201	215	203
Section 13: Service company regulation—applications for approval of service arrangements	2	1	-------	7	1	4
Rule U-50: Exemptions from competitive bidding	18	6	-------	17	9	-------
Total	663	595	662	717	638	702

NOTE.—The excess of matters disposed of over matters presented for consideration reflects the disposition of pending matters in the course of completion of reorganization proceedings under section 11 of the Act.

PROGRESS OF INDIVIDUAL CONTINUING HOLDING COMPANY SYSTEMS

As indicated in the following reports, the continuing holding company systems are participating actively in the rapid expansion of facilities, characteristic of both the electric and natural gas utility industries. In sharp contrast with the widespread investor pessimism which blanketed the market for holding company securities in the 1930's, the securities of registered holding companies have since acquired a degree of quality and marketability enabling them to compete for funds on a basis comparable with the independent utility operating companies. New equity financing has been readily available either through the rights offering procedure or by direct sale of additional shares to underwriters for public distribution.

The success of the modern holding company in providing an equity foundation for the financial expansion of its subsidiaries testifies to the wisdom of the framers of the statute in permitting regional, integrated holding company systems to continue in operation under reasonable supervision. However, the financing function is not the only important responsibility of the parent company. It must constantly seek to obtain economic and engineering improvements which derive from the coordinated operation of subsidiaries functionally related to one another. This is not simply physical interconnection; it is unified management and technical development which produce maximum economy of operation.

The following summaries provide a review of the more important actions taken by the Commission in respect to the operations of a number of the continuing systems. As indicated, several of these systems are faced with residual problems under section 11 (b) (1) or 11 (b) (2) of the Act. Some dispositions of properties not retainable under statutory standards were made during the fiscal year. However, pursuant to Commission approval, several systems have also acquired adjacent properties where it was shown that such acquisitions tended towards the economical and efficient development of their respective systems.

American Gas and Electric Company

American Gas and Electric Company is the largest of the regional holding company systems. Its operations extend over a seven-State area from Kentucky to Michigan. Consolidated assets at December 31, 1951, were $769 million, after deduction of valuation reserves. The system, almost wholly electric, serves more than 1,200,000 customers and annual operating revenues aggregate approximately $200 million.

The system operates in a highly industrialized area and is presently engaged in a construction program of unprecedented size. It is estimated that the operating subsidiaries will make construction expenditures of almost $320 million in the period from 1952 to 1954, the largest segment of which will represent the cost of additional generating plant and facilities. Expansion of the American Gas system has been spurred by the heavy power demands arising from defense production activities. Population and industry of its service area are growing rapidly and system companies now have the added responsibility of delivering power in substantial quantities to the Atomic Energy Commission.

Cash requirements for construction have necessitated a heavy program of financing activity, both at the subsidiary and parent level. During the fiscal year 1952, the operating subsidiaries, with Commission approval, sold securities in the following aggregate amounts: mortgage bonds, $32 million; serial notes, $13 million; common stock (sold to parent), $16 million. In December 1951, American Gas received approval to borrow up to $6 million from banks on a short-term basis.[73] In June 1952, American Gas sold $20 million of sinking fund debentures and 170,000 shares of additional common stock.[74] Both offerings were made pursuant to the requirements of Rule U-50. Shortly after the close of the fiscal year American Gas

[73] Holding Company Act release No. 10907.
[74] Holding Company Act releases Nos. 11302, Commissioner McEntire dissenting, and 11345.

invested an additional $18 million in new common shares of two of its subsidiary companies, Appalachian Electric Power Company and The Ohio Power Company.[75] The same subsidiaries also obtained short-term bank loans aggregating $43 million.

On March 25, 1952, the Commission approved the proposal of The Ohio Power Company, a subsidiary of American, to amend its Articles of Incorporation so as to modify the provisions limiting the amount of unsecured debt which may be issued without the consent of stock holders. The change will allow Ohio Power to issue unsecured debt in a total amount not exceeding 20% of the sum of secured debt, capital stock and surplus, of which short-term unsecured debt shall not exceed 10%. Under this provision, long-term unsecured debt would include all debt having an initial maturity of 10 years or more, except that such debt would be regarded as short-term unsecured debt whenever, and to the extent that, any part of it matured within less than 5 years. The Articles of Incorporation were also amended to delete the existing pre-emptive rights of the preferred stockholders in connection with any additional issuance of preferred stock. This change was designed to facilitate future issuances of preferred by eliminating the standby period required to allow for the exercise of pre-emptive rights.[76]

The Commission also approved several amendments to the charter of American Gas in order to bring it into conformity with established standards. The amendments, which were approved April 15, 1952, provided for (1) the annual election of directors in place of the provision under which one-third of the Board is elected each year; (2) limited pre-emptive rights to the common stockholders; and (3) cumulative voting in the election of directors. In addition, American Gas has amended its charter so as to reclassify its authorized but unissued shares of preferred stock into shares of unissued common stock and has deleted from its charter all existing provisions concerning the preferred stock.

On September 14, 1951, the Commission authorized the acquisition by The Ohio Power Company of the complete facilities of the municipally-owned generating plant and distribution system of the village of Columbus Grove, Ohio, for $230,000 cash.[77] The properties so acquired are situated in the general territory served by Ohio Power. The proceeds derived from the transaction by Columbus Grove were used to retire the bonded indebtedness applicable to the properties sold.

Central and Southwest Corporation

Central and Southwest Corporation operates an electric utility system in a four-state area including sections of Arkansas, Louisiana, Oklahoma and Texas. It has aggregate assets of over $327,000,000, annual operating revenues exceeding $80,000,000 and approximately 630,000 customers.

The company undertook new construction requiring expenditures of $35,000,000 in 1951 and has budgeted about $44,000,000 for 1952. To finance a portion of its cash requirements, the company sold 500,000 additional shares of common stock at competitive bidding in

[75] Holding Company Act releases Nos. 11370 and 11371.
[76] Holding Company Act release No. 11131.
[77] Holding Company Act release No. 10774.

October 1951.[78] Net proceeds of the sale, which approximated $7,000,000, were used to purchase additional shares of common stocks of operating subsidiaries. In addition, subsidiaries marketed $24,000,000 of First Mortgage Bonds to support the program.[79]

On December 20, 1951, the Commission approved the acquisition by Central Power and Light Company, a subsidiary of the company, of certain electric utility properties and ice properties located in Port Arkansas, Texas, for a consideration of $215,000. The properties were formerly owned by Mustang Island Utilities Company, all of whose stock was owned by an individual. The electric properties are to be interconnected with the electric transmission system of Central Power and Light Company, but the ice plant is to be closed and the ice storage facilities will be leased to outsiders for independent operation.[80]

Subsequent to completion of a field examination and the filing of a report on original cost of property by the staff of the Commission pursuant to rule U–27, Central Power and Light submitted proposals to reclassify certain items of its utility plant accounts to give effect to recommendations contained in that report. On January 25, 1952, the Commission, upon finding the proposals to be consistent with the requirements of rule U–27, ordered Central to dispose of the amount of $984,779.19 in Account 107 and $1,473.22 in Account 108.47 and to create a reserve in Account 252 for amortization of $1,045,661.65 established in Account 100.5.[81]

Columbia Gas System, Inc.

The Columbia Gas System, Inc. is the parent holding company in a natural gas utility system providing service in seven states. It is engaged in the production, purchase, distribution, and sale of natural gas, obtaining its supplies from the Appalachian and Southwest areas. Its assets, after deduction of valuation reserves, total approximately $500 million and annual system revenues exceed $190 million.

During 1951 Columbia Gas was confronted with an increasing demand for industrial and space heating gas. In order to meet these requirements, $73 million was spent for new construction, representing the largest outlay in any single year. Included in the transmission construction of the system was the 167-mile pipeline built from Clinton County, Pennsylvania, to a point near Pittsburgh. This $12 million line takes gas from the newly developed Leidy Field and passes through other potentially productive territory. The construction program for the calendar year 1952, although dependent to some extent on the availability of materials, is expected to involve expenditures of approximately $75 million. In addition, the gas storage program of the system, both for current inventory and for "cushion" gas, will require an additional cash outlay of approximately $23 million.

In July 1951 Columbia Gas borrowed $12 million from banks on a short-term basis to finance the purchase of gas by subsidiaries for storage inventory purposes. These notes were retired early in 1952.[82] In October 1951 $20 million of short-term borrowing was undertaken to finance construction requirements. Because of material shortages and resultant uncertainty in the rate of completion on new construc-

[78] Holding Company Act release No. 10826.
[79] Holding Company Act releases Nos. 11101, 11108 and 10859.
[80] Holding Company Act release No. 10960.
[81] Holding Company Act release No. 11030.
[82] Holding Company Act release No. 10687.

tion, the financing was undertaken initially on a temporary basis to be replaced by the later issuance of permanent securities. Columbia also obtained over $21 million in November through an offering of new common stock (1,501,826 shares) to its stockholders. Compensation to the underwriters was fixed by competitive bidding and the issue was oversubscribed.[83] In addition, Columbia Gas sold $60 million of 3⅜% Debentures in April 1952, using a portion of the proceeds to retire the $20 million of bank loans incurred in October 1951.[84] All public financing in the Columbia Gas system is undertaken by the parent company. Moneys derived are reinvested, pursuant to Commission approval, in the debt and equity securities of the operating subsdiaries.

During the fiscal year, the Commission approved several transfers of utility properties and assets among the subsidiaries of Columbia Gas.[85] In November 1951 the Commission also approved the purchase by Cumberland and Allegheny Gas Company, one of the gas utility subsidiaries, of certain gas production property located in Preston County, West Virginia, from independent gas producers for a total consideration of $4 million.[86] This property included 8 operating wells, 2 wells in process of drilling, approximately 2,000 feet of 2-inch pipeline, and certain acreages of leaseholds and oil and gas rights.

In the Commission's order dated November 1, 1944, issued pursuant to section 11 (b) (1) of the Act, Columbia Gas was required to dispose of its interests in certain former subsidiaries. However, jurisdiction was reserved with respect to the retainability of certain other companies, including several of Columbia Gas' production and transmission subsidiaries.[87] To date, no determination as to the retainability or nonretainability of these companies has been made by the Commission although the matter is presently under active consideration.

General Public Utilities Corporation

This company is the top holding company emerging from reorganization of the former Associated Gas and Electric Company system. Reference is made to the 15th and 16th Annual Reports which outline briefly the steps taken in earlier years to bring about integration and simplification of this extraordinarily complex structure. In 1938 this system consisted of 164 companies, including 11 subholding companies operating in 26 states and in the Philippine Islands. The present holding company system controlled by General Public Utilities Corporation ("GPU") represents but a segment of the former Associated system. Nevertheless, after giving effect to consummation of the reorganization plan under section 11 (b) (1) as more fully described below, the GPU system will have total assets of approximately $361 million, after deducting valuation reserves, and annual gross revenues of over $100 million.

During the fiscal year 1952, further steps have been taken to resolve the remaining integration problems of the system and to bring it into conformity with the standards of section 11. After hearings on the section 11 (b) (1) problems were concluded, the Commission on December 28, 1951, entered its findings and opinion

[83] Holding Company Act release No. 10882.
[84] Holding Company Act release No. 11157.
[85] Holding Company Act releases Nos. 10658 and 11284.
[86] Holding Company Act release No. 10867.
[87] Holding Company Act release No. 5455.

and order.[88] It determined that the electric facilities of GPU's domestic subsidiaries, except those of Northern Pennsylvania Power Company, constituted a single integrated public utility system, and that such facilities, together with coal mining, water and steam heating properties owned or operated by Pennsylvania Electric Company (other than the minor steam heating properties of Pennsylvania Electric Company located at Clearfield, Pennsylvania) might be retained by GPU or by its subsidiaries under the standards of section 11. In its order the Commission directed GPU to dispose of its interests in: (1) Northern Pennsylvania Power Company and its subsidiary, The Waverly Electric Light and Power Company; (2) the gas properties (including production, transmission, and distribution facilities) of Jersey Central Power & Light Company; (3) the steam heating properties of Pennsylvania Electric Company, located at Clearfield, Pennsylvania; (4) the life insurance business of Employees Welfare Association, Incorporated (Delaware) in so far as it relates to persons other than employees or officials of companies in the GPU holding company system. The Commission's order of December 28, 1951, also annulled and cancelled its prior order of February 9, 1945, which had removed Escudero Electric Service and Manila Electric Company from the list of companies required to be divested by the order of August 13, 1942.

In compliance with the above order with respect to the system's gas properties, Jersey Central Power & Light Company, on June 3, 1952, sold its gas utility properties to New Jersey Natural Gas Company (formerly County Gas Company) for an aggregate amount of $16,027,583.[89]

On December 31, 1951, Dover Casualty Insurance Co., a subsidiary company engaged in casualty reinsurance, was dissolved and its assets amounting to $438,347 were transferred to GPU.[90] Dover had no securities outstanding in the hands of the public.

No program has yet been submitted with respect to compliance by GPU with the remaining aspects of the Commission's order. Upon full compliance therewith, GPU will continue to be a registered holding company and the utility properties of its remaining subsidiaries will constitute a single integrated public utility system. Those subsidiaries are: Jersey Central Power & Light Company (N. J.), Metropolitan Edison Company (Pa.), New Jersey Power & Light Company (N. J.), and Pennsylvania Electric Company (Pa.). The latter in turn controls two relatively minor nonutility subsidiaries, the operations of which are reasonably incidental to the utility operations of the integrated system.

During the past year the requirements of the domestic subsidiaries of GPU made it necessary for GPU to undertake the issue and sale of 531,949 shares of its common stock through a rights offering to its common stockholders. This offering was made on July 1, 1952. Gross proceeds amounted to approximately $11,000,000.[91] These funds, less fees and expenses, are being employed by GPU for investment in the common stocks of its domestic utility subsidiaries to meet their expansion requirements. GPU has also made capital contributions to certain subsidiaries from treasury cash. In addition, its

[88] Holding Company Act release No. 10982.
[89] Holding Company Act release No. 11210.
[90] Holding Company Act release No. 10983.
[91] Holding Company Act release No. 11354.

domestic subsidiaries sold to the public $12,800,000 of mortgage bonds and $7,000,000 of preferred stock. Virtually all of the proceeds derived from these sales have also been applied to meet construction requirements.

Middle South Utilities, Inc.

Middle South Utilities, Inc. controls a utility system serving a three-state area embracing Arkansas, Louisiana and western Mississippi. The company was organized in May 1949 to acquire from Electric Power & Light Corporation the latter's holdings in Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service, Inc. and a small land company.

Middle South is now an integrated regional holding company system deriving the major portion of its revenues from the sale of electricity. The area served by the system has an estimated population of 3,900,000. System assets total $410 million, after deducting valuation reserves, and annual gross revenues aggregate $112 million. The system's generating capacity has been more than doubled in the last six years and is being further increased to meet new peak load requirements. Aggregate construction expenditures programmed for 1952 and 1953 total $137 million.

In May 1952, Middle South sold 600,000 shares of new common stock at competitive bidding and realized approximately $12,800,000 from the offering.[92] Shortly thereafter, the Commission approved a credit agreement under which Middle South may borrow up to $15 million from banks. The approval covers two successive periods extending to December 31, 1957. However, no loan renewal may be made during the second period without further application to the Commission.[93] Proceeds from these financing operations are being used by Middle South to provide subsidiaries with new capital requirements in such manner as to minimize financing costs during the period of the new construction.

On September 25, 1951, the Commission approved the sale by Arkansas of $8 million, 3⅝ percent First Mortgage Bonds at competitive bidding.[94] Another operating subsidiary, Louisiana, received authorization in November 1951 to borrow up to $13 million from banks to meet immediate cash needs for construction. These loans are to be subsequently replaced with permanent financing.[95]

The Middle South system has taken several steps to limit its operations to electric power generation, transmission and distribution. In the fiscal year 1951 Arkansas disposed of its entire gas utility assets with the approval of the Commission.[96] On February 29, 1952, another subsidiary, Mississippi, divested itself of all of its gas properties with the exception of relatively minor facilities used in connection with the fuel supply for Mississippi's electric operations. With the approval of the Commission, the property was sold for a cash consideration of $11,128,151, plus or minus certain closing adjustments. The purchaser was Mississippi Valley Gas Company, a new corporation created for this purpose by Equitable Securities Corpora-

[92] Holding Company Act release No. 11094.
[93] Holding Company Act release No. 11288.
[94] Holding Company Act release No. 10788.
[95] Holding Company Act release No. 10886.
[96] Holding Company Act release No. 10077.

tion.[97] Jurisdiction continues to be reserved by the Commission with respect to the retainability of certain gas and transportation properties of New Orleans Public Service Inc.

National Fuel Gas Company

National Fuel Gas Company, through nine subsidiary companies, operates a natural gas and mixed gas system doing business principally in western Pennsylvania and western New York. Its purchases of natural and manufactured gas aggregate over 80 percent of its total gas supply, with the greatest proportion coming from fields in southwestern United States. System assets aggregate over $100 million, net of reserves for depletion, depreciation and amortization.

The system's construction expenditures for 1952 are estimated at $10,200,000. A sizeable proportion of these expenditures reflect the developmental work going on in the Driftwood area, Cameron County, Pennsylvania. The 1953 estimate of cash requirements for construction is set at $5,500,000.

On May 21, 1952, the Commission issued its order authorizing the issuance and sale by National, pursuant to competitive bidding requirements, of $18 million principal amount of 3¼ percent Sinking Fund Debentures, due 1977.[98] Of the proceeds derived from this offering $11 million was used to repay outstanding bank loans previously incurred to purchase long-term notes of four subsidiary companies. The balance of $7 million derived from the debenture financing is to be used, together with retained earnings, depreciation accruals and funds from other internal sources, to complete the 1952 construction program. All public financing in the National system is undertaken by the parent company which, in turn, provides both debt and equity capital to the subsidiaries.

New England Electric System

New England Electric System ("NEES") and its subsidiary companies constitute the largest utility organization in New England. The system serves a total population of about 2,135,000 at retail and also sells large amounts of energy at wholesale. The system's total revenues from operations for the year 1951 amounted to approximately $105 million, 89 percent of which was derived from the sale of electricity and 11 percent from the sale of gas. Aggregate assets of the system are $438 million, after deducting valuation reserves. The system has 35 active subsidiary companies of which 17 furnish electricity at retail in Massachusetts and Rhode Island. Two generating and transmission companies operating in Massachusetts, New Hampshire and Vermont supply electricity on a wholesale basis.

On July 14, 1951, NEES invited proposals for the purchase of all or part of the system's gas properties located in Massachusetts. As a result, NEES received six proposals for the purchase of these properties, the highest of which bid a base price of $22,780,000. Subsequently, due to a change in money markets, the highest bidder was unable to finance the purchase and efforts to sell the properties were postponed. During the past year, most of the properties have been converted from the use of manufactured gas to natural gas.

During the fiscal year, the Commission approved 39 applications

[97] Holding Company Act releases Nos. 11019 and 11098.
[98] Holding Company Act release No. 11239.

by subsidiary companies to borrow an aggregate of $81,285,000 from commercial banks and 37 applications to borrow $12,060,000 from NEES upon the issuance of short-term notes, some of which was used to repay other short-term notes which were becoming due. Three subsidiaries sold common stock to NEES for $8,100,000 and three subsidiaries sold $16,500,000 principal amount of bonds to the public. In addition to retained earnings, NEES financed its purchases of subsidiary securities by the sale of 920,573 shares of its common stock by means of an underwritten rights offering to its stockholders on the basis of one new share for each eight shares held.[99] The proceeds from this sale exceeded $11 million and the size of the offering reflects recommendations by the staff of the Commission of a 25 percent increase in the number of shares to be issued.

It is estimated that construction expenditures of the NEES system for the years 1952 and 1953 will aggregate approximately $90 million as compared with the $151 million expended during the previous five years. To finance this expansion and to reduce outstanding short-term bank debt, NEES estimates that system companies will sell about $90 million of securities during 1952 and 1953.

NEES has indicated that it contemplates the merger of several electric and gas operating properties into larger units and the merger of its two wholesale generating and transmission companies.

New England Gas and Electric Association

New England Gas and Electric Association ("NEGEA") is a Massachusetts trust holding, directly or indirectly, the common stocks of seven electric and gas utility companies located in Massachusetts, one electric utility company in New Hampshire and one electric utility company in Maine. In addition, it owns the common stock of a steam heating company located in Massachusetts. NEGEA has also acquired 35.82 percent of the common stock of Algonquin Gas Transmission Company, a natural gas pipeline company to be engaged upon completion of its construction in transporting natural gas from New Jersey for sale to distributing companies in New England. Participating with NEGEA as common stock holders of Algonquin are Eastern Gas and Fuel Associates, Texas Eastern Transmission Corporation and Providence Gas Company.

Shortly after the close of the fiscal year, the Commission approved the issuance and sale by Algonquin of $9,734,000 of First Mortgage Pipeline Bonds to a group of three insurance companies which, together with a fourth institutional investor, had previously purchased $27,600,000 of Algonquin's bonds.[1] The sale was exempted from the requirements of rule U–50. Algonquin also sold 48,660 additional shares of common stock, of which 15,610 shares were acquired by NEGEA.

Algonquin will use the $14,600,000 proceeds from the sale of its mortgage bonds and common stock to meet the balance of the cost of its new pipeline estimated at $51,500,000. Since NEGEA will purchase somewhat less than its proportionate share of the new common shares to be issued, its relative stock ownership will be reduced slightly to 34.52 percent.

The operating subsidiaries of NEGEA are continuing the construction program commenced prior to the past fiscal year. Estimated

[99] Holding Company Act release No. 11202.
[1] Holding Company Act release No. 11417.

gross plant additions for the calendar years 1952 and 1953 are expected to aggregate $12,400,000. To finance this construction program the subsidiaries propose to use funds generated from internal sources in the amount of $6,600,000, with the balance to be obtained through bank loans in the amount of $5,800,000, of which $3,700,000 was approved by the Commission in 1952.

In October 1951 the Commission approved the issue and sale by NEGEA, pursuant to competitive bidding, of $6,115,000 principal amount of 20-year sinking fund collateral trust bonds. The proceeds of the issue were utilized to purchase additional common stocks of subsidiary companies. The latter, in turn, used the proceeds to repay bank loans and for other corporate purposes.[2]

In November 1951 the Commission approved the merger of Dedham and Hyde Park Gas Company and Milford Gas Light Company with Worcester Gas Light Company thereby reducing the number of Massachusetts utility subsidiaries from 9 to 7. Virtually all of the gas requirements of the two smaller companies had been supplied by the Worcester company for many years.[3]

Although NEGEA does not presently have any section 11 plan before the Commission, jurisdiction has been reserved with respect to section 11 (b) (1) proceedings originally instituted in September 1942. In approving NEGEA's previous plan of reorganization in 1946 the Commission stated that such approval should not be construed as a determination as to the retainability of properties in the holding company system and its order approving the plan separated for further hearing the proceedings under section 11 (b) (1).[4]

Northern States Power Company

Northern States Power Company (Minnesota) is an operating-holding company engaged, either directly or through subsidiaries, in the electric and gas utility business in the states of Minnesota, Wisconsin, North Dakota and South Dakota. Aggregate system assets, after deduction of depreciation reserves, total over $327 million and annual revenues exceed $90 million, of which 88 percent are derived from sales of electricity.

During the past fiscal year, Northern States and three of its subsidiaries received authorization of the Commission to reclassify certain of their plant accounts on the basis of original cost.[5] In connection therewith, two of the subsidiaries were permitted to recapitalize their security structures in order to remove deficits in their surplus accounts and to simplify and improve the capital structure of the system.[6]

During 1951 the system expended $32,256,000 for construction purposes and it is estimated that expenditures during 1952 will approximate $34,800,000. These amounts are part of an over-all program under which the system expects to expend $143 million during the 5-year period 1952–56. To finance this expansion, Northern States issued with approval of the Commission,[7] $15 million of short-term notes which were subsequently repaid from the proceeds of the issuance of $21,500,000 principal amount of bonds and an under-

[2] Holding Company Act releases Nos. 10813 and 10836.
[3] Holding Company Act release No. 10901.
[4] Holding Company Act release No. 6729.
[5] Holding Company Act releases Nos. 10757, 10758 and 10801.
[6] Holding Company Act release No. 10802.
[7] Holding Company Act release No. 10772.

written offering to the company's stockholders of 1,108,966 shares of common stock producing proceeds in excess of $11,500,000.[8]

On September 22, 1952, proceedings were instituted by the Commission under section 11 (b) (1) looking toward resolution of the system's remaining problems of compliance under the Act.[9]

The North American Company
Union Electric Company of Missouri

Union Electric Company of Missouri is an operating-holding company serving either directly or through its subsidiaries, a large area in the State of Missouri and smaller sections in Illinois and Iowa. It has two utility subsidiaries, Union Electric Power Company and Missouri Power & Light Company, and three non-utility subsidiaries. System assets, after deduction of valuation reserves, total over $369 million, and annual revenues are over $84 million. Union Electric is the sole remaining utility subsidiary of The North American Company which at one time controlled 36 utility and 46 non-utility subsidiaries operating in ten states and in the District of Columbia.

During 1951 Union Electric and its subsidiaries spent $33,388,000 for construction and have embarked upon a program calling for expenditures in excess of $168 million between 1952 and 1955. The only major financing undertaken during the past fiscal year was the sale by Union Electric of $30 million of First Mortgage Bonds at competitive bidding in May 1952.[10]

As reported in the 17th Annual Report, Union Electric is participating with four other utilities in the formation and development of a new corporate enterprise, Electric Energy, Inc., which was organized to supply one half of the power requirements of the Paducah, Kentucky, plant of the Atomic Energy Commission. Union Electric, with a 40 percent interest in the common stock of the company, has the largest single stock interest of all of the five participants.

On April 28, 1952, North American filed a plan with the Commission under section 11 (e) proposing its liquidation and dissolution.[11] Under the plan, immediately upon its approval by the Commission and by a United States district court, North American will distribute to its stockholders as an initial liquidating dividend one share of Union's new $10 par value common for each 10 shares of North American common held. A similar distribution will be made approximately one year after the first distribution and a final distribution made two years after the first distribution on a share-for-share basis. Fractional shares will not be distributed, but will be paid for in cash. The Union Electric common stock to be distributed as liquidating dividends will be a newly created issue of 10,300,000 shares of $10 par value per share. Union Electric's presently outstanding 11,450,000 shares of no par value common stock, all of which is owned by North American, will be reclassified into 10,300,000 shares of no par value common stock. Prior to the distribution of each liquidating dividend by North American, it will exchange the requisite number of shares of new no par common stock of Union for a like number of shares of new $10 par value common stock of Union, which will be distributed. While Union expects to pay cash dividends on the shares of $10 par value stock distributed under the plan, no

[8] Holding Company Act releases Nos. 11275, 11295 and 11317.
[9] Holding Company Act release No. 11498.
[10] Holding Company Act release No. 11187.
[11] Holding Company Act release No. 11222.

dividends will be paid on the reclassified common stock of no par value held by North American except pursuant to permission of the Commission. Commencing with the initial liquidating dividend, North American will cease paying cash dividends. During the two-year distribution period, to the extent feasible, North American will liquidate all of its assets other than its holdings of Union Electric common stock. At the end of the period, the small number of Union Electric's shares remaining undistributed will be delivered to Union Electric for cancellation and any other remaining assets of North American will be transferred to Union Electric for final disposition. Union Electric will assume all of North American's remaining liabilities and the latter company will be dissolved. The plan was approved by the Commission on October 31, 1952.[12]

In addition, North American, as the owner of all of the preferred stock and 376,151 shares of the 466,548 shares of outstanding common stock of North American Utility Securities Corporation, filed an amended plan for the liquidation and dissolution of this subsidiary. The amended plan reflected an agreement reached with the assistance of the staff of the Commission by North American and a committee representing the public holders of Securities Corporation's common stock as to an appropriate settlement of claims raised on behalf of the public security holders that North American's interest in Securities Corporation should be subordinated because of its asserted mismanagement of the company. The plan provides that the public owners of the 90,397 shares of Securities Corporation common will be paid in cash at the rate of $9 per share. North American will receive all of Securities Corporation's remaining assets and assume all of its liabilities. The Commission issued its findings, opinion and order approving this plan on July 23, 1952.[13] It has since been ordered enforced by the United States District Court for the District of Maryland [14] and was consummated on October 1, 1952.

The Southern Company

The Southern Company is the parent holding company of a system which survives the former Commonwealth & Southern Corporation. The integrated system which it controls furnishes service through four electric utility subsidiaries in Georgia, Alabama, Florida and Mississippi. It is the second largest of the continuing systems with $635 million of assets, after deduction of depreciation reserves, and gross annual revenues of $151 million.

Economic development in the territory of The Southern Company has required an impressive expansion of its physical properties. Its program for 1952–53 calls for expenditures aggregating $214 million. Current cash requirements are being financed through the sale of bonds and common stock. In the spring and summer of 1952 approximately $39 million was obtained through the sale of bonds by subsidiaries; $12 million by Alabama Power Company; $20 million by Georgia Power Company and $7 million by Gulf Power Company.[15] An additional $13 million was obtained in July from a rights offering to Southern's common stockholders.[16] This will be supplemented by

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[12] Holding Company Act release No. 11530.
[13] Holding Company Act release No. 11390.
[14] *In re North American Utility Securities Corp.*, unreported (D. Md., No. 5935, September 16, 1952).
[15] Holding Company Act releases Nos. 11168, 11352 and 11312.
[16] Holding Company Act release No. 11294.

cash from retained earnings, depreciation and other internal sources.

Following Alabama Power Company's acquisition of the Birmingham Electric Company and the disposal by Birmingham of its transportation properties, Alabama and Birmingham filed a plan pursuant to section 11 (e) in which it is proposed to merge Birmingham into Alabama Power Company.[17] Under the plan as amended the 8,394 publicly held shares of Birmingham's 4.20 percent preferred stock will be exchanged for an equal number of 4.20 percent preferred shares of Alabama. The public holders of 10,797 shares of common stock of Birmingham may elect to receive for each share of Birmingham stock surrendered 1½ shares of the common stock of Southern Company plus $2.40 in cash or $25.15 in cash. The amended plan was approved by the Commission on October 21, 1952.[18]

The West Penn Electric Company

The West Penn Electric Company is the parent holding company in a utility system deriving about 95 percent of its revenues from sales of electric power and servicing a territory located principally in Pennsylvania, West Virginia and Maryland. Small adjacent sections of Ohio and Virginia are also served. Its principal operating subsidiaries are the Potomac Edison Company and West Penn Power Company, both of which are also registered holding companies. The system covers a territory of 29,000 square miles and serves over 650,000 customers. Total system assets, after deduction of valuation reserves, aggregate over $380 million and the system's gross annual revenues total approximately $100 million. West Penn was formerly a subsidiary of American Water Works & Electric Company, Inc. which was liquidated in January 1948, following divestment of its large water utility holding company system.

The construction program of West Penn system will require expenditures aggregating $94 million in 1952–53. The parent company obtained $12,500,000 through a common stock rights offering of 440,000 shares to its stockholders, who subscribed for approximately 97 percent of the shares, even though no oversubscription privilege was offered. The remaining shares were purchased by underwriters.[19] An additional $12 million was obtained in April through the sale of bonds by a subsidiary company, West Penn Power Company.[20] Additional financing scheduled in 1953 will total $30 million. The balance of cash requirements will be derived from internal sources and from temporary bank loans, if necessary.

In March 1952, the Commission issued its supplemental findings, opinion and order requiring an additional payment of $10, plus compensation for delay, on each share of American Water Works & Electric Company, Inc., $6 cumulative preferred stock.[21] This amount is in addition to the $100 per share liquidation preference plus accrued dividends paid in October 1947. The decision of the Commission was opposed by West Penn and argument was presented before the United States District Court for the District of Delaware which on September 17, 1952, approved the order of the Commisson.[22] The required additional payments were made as of November 12, 1952.

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[17] Holding Company Act release No. 11154.
[18] Holding Company Act release No. 11548.
[19] Holding Company Act release No. 11017.
[20] Holding Company Act release No. 11123.
[21] Holding Company Act release No. 11095.
[22] 107 F. Supp. 350 (D. Del., 1952).

PUBLIC UTILITY FINANCING—REVIEW OF RECENT DEVELOPMENTS

Construction expenditures made during the fiscal year by privately owned electric and gas utilities (exclusive of gas transmission companies) amounted to about $2.8 billion, of which the electric utility companies accounted for about $2.45 billion and gas utilities for about $350 million. This marks a new high in construction expenditures for any one year, and an increase of about $400 million over the previous year. Funds necessary to finance this program were raised principally by the issuance of $2.3 billion of securities, the balance being derived from the retention of earnings and other internal sources. Data from industry sources indicate that construction expenditures by private electric utilities in the fiscal year 1953 will reach $2.8 billion.

The following tabulation, covering the fiscal years 1949 to 1952, includes all security sales for cash, plus refunding exchanges, by electric and gas utility operating companies which have been approved under sections 6 and 7 of the Act or which have been registered with the Commission under the Securities Act of 1933. The table also sets forth data, representing at best rough estimates, with respect to private placements of securities not subject to either the Holding Company Act or the Securities Act. Security sales by gas utilities included in the table cover only those by companies which are engaged in the retail distribution of natural or manufactured gas.

Security issues sold for cash or issued in exchange for refunding purposes by all electric and gas utilities [1] *(excluding gas transmission companies)*

Fiscal years 1949–52

	July 1, 1948, to June 30, 1949	Percent of total	July 1, 1949, to June 30, 1950	Percent of total	July 1, 1950, to June 30, 1951	Percent of total	July 1, 1951, to June 30, 1952	Percent of total
Bonds	$899,434,729	47	$953,782,240	43	$785,947,640	43	$1,085,797,377	47
Debentures	241,238,500	13	104,700,235	5	69,080,740	4	74,762,900	3
Preferred stock	192,779,280	10	362,015,050	16	137,434,438	8	274,040,623	12
Common stock	364,016,666	19	501,460,071	23	413,292,772	23	491,613,590	21
Total sales subject to the 1933, the 1935 Act or both statutes	1,697,469,175	89	1,921,957,596	87	1,405,755,590	78	1,926,214,490	83
Private placements not subject to either act (estimates)	200,000,000	11	300,000,000	13	400,000,000	22	400,000,000	17
Total security sales	1,897,469,175	100	2,221,957,596	100	1,805,755,590	100	2,326,214,490	100

[1] In addition, utility operating companies subject to the Holding Company Act sold notes with maturities of 5 years or more in the following amounts:

1949	$62,090,000
1950	23,200,000
1951	39,934,912
1952	83,691,128

The substantial increase in volume of financing during the fiscal year reflects the increase in cash requirements for construction and a marked improvement in the market for utility debt securities. In the first half of the fiscal year, bond prices generally continued at the depressed levels which prevailed after the Federal Reserve Board withdrew its support from the Government bond market in March 1951. However, in January 1952, investors began paying premiums in the open market for seasoned high grade issues in the absence of

new offerings. The uptrend was confirmed in March when institutional investors, responding to a series of new offerings, absorbed in one day an $80 million inventory of mortgage bonds held by underwriters. Thereafter, until the close of the fiscal year, the market remained relatively stable with yields averaging about 10 to 15 basis points lower than the previous year, in spite of an exceptionally heavy volume of new issues. Corporate financing during this quarter was at one of the highest levels of any quarter on record.

During the 12 months ended June 30, 1952, 352 matters were presented for determination pursuant to sections 6 and 7 of the Act, under which the Commission is required to pass upon the issuance of securities and assumptions of liability and alterations of rights of securities by registered holding companies and their subsidiaries. A total of 374 matters were disposed of during the year, including a few carried over from the latter part of the preceding year. All but 32 of these matters related to issues of securities. In the fiscal year 1951, 326 matters were disposed of under sections 6 and 7. The increase in matters disposed of during the year was mainly accounted for by approximately 75 short term note authorizations granted the several electric and gas utilities in the New England Electric System.

The following tables covering the fiscal years 1951 and 1952 analyze in detail the volume of securities sold for cash, or issued in exchange for refunding purposes by registered holding companies and their subsidiaries pursuant to authorizations of the Commission under sections 6 and 7 of the Act. Portfolio sales and issues in connection with reorganization are excluded.

Sales of securities and application of net proceeds approved under the Public Utility Holding Company Act of 1935 during the fiscal year July 1, 1951, to June 30, 1952

	Number of issues	Total security sales [1]	Application of net proceeds [1]		
			New money purposes	Refinancing short-term loans [2]	Refunding
Sales by electric and gas utilities: [3]					
Bonds	42	$439,195,363	$339,565,417	$94,465,882	----------
Notes [4]	82	41,966,128	35,353,734	6,402,065	----------
Preferred stock	4	27,725,750	25,335,389	1,616,250	----------
Common stock	60	166,697,851	107,231,134	57,579,981	$115,000
Total	188	675,585,092	507,485,674	160,064,178	115,000
Sales by holding companies:					
Bonds (collateral trust)	1	6,176,150	6,090,026	----------	----------
Debentures	4	99,761,480	63,501,477	34,350,000	----------
Common stock	9	111,057,716	105,496,717	2,660,000	----------
Total	14	216,995,346	175,088,220	37,010,000	----------
Sales by nonutility companies:					
Bonds	6	96,440,000	93,689,124	2,500,000	----------
Debentures	2	55,000,000	50,406,375	4,500,000	----------
Notes [4]	46	41,725,000	39,208,426	2,514,514	----------
Common stock	10	6,304,975	6,299,850	----------	----------
Total	64	199,469,975	189,603,775	9,514,514	----------
Grand total	266	1,092,050,413	872,177,669	206,588,692	115,000

[1] Differences between total security sales and total proceeds is represented by flotation costs to the issuing companies.

[2] Notes and bank loans of less than 5 years maturity, usually for construction purposes. The majority of these notes have a maturity of less than 1 year.

[3] Includes sales by registered operating-holding companies which derive a substantial proportion of income from their own operations, but which also may have 1 or more utility subsidiaries.

[4] With maturities of 5 years or more.

NOTE.—Included in the total for the fiscal year 1952 are $300,000,000 of securities purchased by registered holding companies from their subsidiaries.

Sales of securities and application of net proceeds approved under the Public Utility Holding Company Act of 1935 during the fiscal year July 1, 1950, to June 30, 1951

	Number of issues	Total security sales [1]	Application of net proceeds [1]		
			New money purposes	Refinancing short-term loans [2]	Refunding
Sales by electric and gas utilities: [3]					
Bonds	28	$304,014,743	$145,211,511	$123,467,932	$31,507,623
Debentures	2	8,868,900	1,657,773	4,332,203	2,633,147
Notes [4]	35	36,034,912	32,193,016	3,750,000	----
Preferred stock	8	74,402,178	34,402,899	10,500,000	28,285,959
Common stock	59	168,412,304	136,132,165	29,598,631	1,399,230
Total	132	591,733,037	349,597,364	171,648,766	63,825,959
Sales by holding companies:					
Debentures	2	142,827,200	60,207,355	----	81,550,000
Common stock	9	83,971,584	81,074,499	1,000,000	----
Total	11	226,798,784	141,281,854	1,000,000	81,550,000
Sales by nonutility companies:					
Bonds	4	40,779,525	25,480,668	15,000,000	----
Debentures	1	34,000,000	----	----	33,962,100
Notes [4]	7	5,900,000	5,897,405	----	----
Common stock	19	14,980,781	9,767,747	5,150,000	----
Total	31	95,660,306	41,145,820	20,150,000	33,962,100
Grand total	174	914,192,127	532,025,038	192,798,766	179,338,059

[1] Differences between total security sales and total proceeds is represented by flotation costs to the issuing companies.

[2] Notes and bank loans of less than 5 years maturity, usually for construction purposes. The majority of these notes have a maturity of less than 1 year.

[3] Includes sales by registered operating-holding companies which derive a substantial proportion of income from their own operations, but which also may have 1 or more utility subsidiaries.

[4] With maturities of 5 years or more.

NOTE.—Included in the total for the fiscal year 1951 are $202,000,000 of securities purchased by registered holding companies from their subsidiaries.

Virtually all financing during the fiscal year 1952 by electric and gas utilities subject to active regulatory jurisdiction of the Commission under the Act was for the purpose of raising new money.[23] Refunding issues were not in evidence, because the relatively high interest rates which prevailed during the year provided no incentive. The sharp increase in the total number of issues sold under sections 6 and 7 of the Act from 174 in 1951 to 266 in 1952 is primarily due to the large number of long term serial notes sold to holding companies by subsidiaries. These electric and gas utilities issued $481 million of debt securities during fiscal 1952, representing 71 percent of their total security sales. In 1951, $348 million principal amount of debt was issued, amounting to 59 percent of total security sales. This increase of long term debt financing was accompanied by a substantial decrease in preferred stock offerings from 13 percent to 4 percent and, to a lesser extent, a decrease in common equity issues from 29 percent to 25 percent. Market receptivity for both preferred and common stocks continued comparatively strong throughout most of the fiscal year.

Registered holding companies, including several operating-holding companies, in carrying out one of their most important functions of furnishing capital to their subsidiaries, purchased $300 million of subsidiary securities during 1952, in addition to making a substantial

[23] For the purpose of this analysis, the refinancing of short term notes is considered to constitute the raising of new money, since note issues with a maturity of less than 5 years are not included in the tabulation.

number of capital contributions, short term loans and open account advances. Of the securities purchased, $196 million represented debt issues and $104 million common stocks. To raise the capital necessary to provide this assistance, holding companies sold approximately $217 million of securities to the public as shown in the preceding tables and in addition an estimated $150 million was sold for reinvestment in subsidiaries by operating-holding companies. In 1951, holding companies purchased $202 million of subsidiary securities. Cash for these purchases was obtained from the sale of $145 million of holding company securities, and sales by operating-holding companies for this purpose amounting to $42 million.[24] With respect to both years, the sales of debt securities by registered holding companies represent for the most part parent company financing in systems where the subsidiaries have little or no senior securities in the hands of the public, thereby enabling the holding companies to issue senior securities without impairing the consolidated equity position of the system.

Nonutility subsidiaries of registered holding companies, consisting mainly of gas transmission companies, issued almost $200 million of securities during the year, an increase of $105 million over the previous fiscal year. All but 12 percent of these amounts were purchased by parent holding companies, the remainder being sold privately. Long term debt issues comprised 97 percent of the total, common stock the balance.

The rights offering procedure has continued to dominate utility common stock financing under the Act in the fiscal year 1952. Commission policy regarding this method of obtaining equity capital was reiterated in a memorandum opinion issued in March 1950: "* * * It is, and has long been, our opinion that when holding companies and public utility companies subject to our jurisdiction sell additional shares of common stock, their own interests, as well as the interests of their common stockholders are, absent special circumstances, best served by allowing common stockholders the right to purchase their proportionate shares of the new issue * * *".[25]

During fiscal 1952, companies subject to active regulatory jurisdiction under the Act publicly sold a total of $182 million of common stocks, of which 64 percent or $116 million was raised by means of rights offerings and the balance of $66 million was sold directly to the public. In 1951, $117 million of common stock was sold by means of rights and $27 million directly to the public.[26] The amount raised through rights offerings which were not underwritten declined, however, from 64 percent of the total rights offerings in 1951 to 27 percent in 1952. During fiscal 1951, of a total of 14 subscription offerings, nine were made without underwriting, including four issues which received the benefit of dealer solicitation. In fiscal 1952, however, of a total of 10 rights offerings, only two issues were sold without underwriting or dealer solicitation assistance, and the balance were underwritten. Of these 10 issues, six were sold with oversubscription privileges and were well oversubscribed. The other four issues were offered to stockholders without oversubscription privileges, and subscriptions ranged from 4 percent to 94 percent.

[24] There are several reasons accounting for the apparent differences between holding company sales and subsidiary investments, chief among which is the lapse in time from one fiscal year to another while the stages of intrasystem financing are being completed.

[25] Holding Company Act release No. 9730.

[26] These figures are exclusive of sales by subsidiaries to parent companies.

All of these four latter rights offerings were underwritten and, in those cases where the subscription price was set below the then prevailing market price of the shares, the offerings were more than 90 percent subscribed.

Common stock issues registered by electric and gas utilities under the Securities Act of 1933, but not required to be passed upon under sections 6 and 7 of the Holding Company Act, followed virtually the same pattern as common stock financing carried out under our jurisdiction under the 1935 Act. A total of $325 million was raised through common stock issues subject only to the 1933 Act, of which $210 million or 65 percent of the total was raised through 26 issues representing rights offerings. Seventeen issues with a gross sales value of $115 million were sold directly to the public. Similarly, 15 of the rights offerings totalling $150 million were made without the benefit of oversubscription privileges and nearly all of these were underwritten. Furthermore, such of these offerings as were made with subscription prices at a discount below the prevailing market were subscribed more than 80 percent. It is interesting to note that, since 1948, the amount of capital raised by all electric and gas utilities of the United States[27] by means of rights offerings to stockholders has never dropped below 60 percent of total common stock sales by such companies.

Another important development in public utility financing during the fiscal year has been the sharp increase in interest rates on short term loans. Interest rates on prime utility loans maturing up to one year have risen one-half of one percent. In October 1951, the rate was raised from 2½ percent to 2¾ percent and advanced again in December to 3 percent. The rise has been attributed to the tremendous expansion of short term loans by banks and to the tightening money market supply situation traceable to reduced purchases of U. S. Government securities by the Federal Reserve System.

COMPETITIVE BIDDING

Offerings of securities by issuing companies under sections 6 (b) and 7 of the Act and portfolio sales by registered holding companies under section 12 (d) are required to be made at competitive bidding in accordance with the provisions of rule U–50. Certain special types of sales, including issues of less than $1 million, short term bank loans, issues the acquisition of which have been authorized under section 10 and pro rata issues to existing security holders, are automatically exempt under clauses (1) through (4) of paragraph (a) of the rule. In paragraph (a) (5) the Commission retains the right to grant exemptions by order where it appears that competitive bidding is not necessary or appropriate to carry out the provisions of the Act.

Securities sold at competitive bidding under rule U–50 from its effective date, May 7, 1941, to June 30, 1952, total in excess of $7,400,000,000. A tabular presentation showing the various classes

[27] Excluding gas transmission companies.

of securities, number of issues and amounts, for the entire period and for the past fiscal year is set forth below:

Sales of securities pursuant to rule U–50

	May 7, 1941, to June 30, 1952		July 1, 1951, to June 30, 1952	
	Number of issues	Amount [1]	Number of issues	Amount [1]
Bonds	317	$4,983,444,000	33	$390,415,000
Debentures	37	863,938,000	3	98,000,000
Notes	8	69,500,000	2	13,000,000
Preferred stock	86	747,727,700	4	27,000,000
Common stock	84	777,052,201	14	142,360,965
Total	532	7,441,661,901	56	670,775,965

[1] Amounts shown represent principal amount of bonds, debentures and notes; par or stated value of preferred stock; and proceeds of sale of common stock.

As previously indicated, a total of $1,092,050,413 of securities were sold for cash in the fiscal year 1952 by registered holding companies and their subsidiaries, of which amount $670,775,965 were sold at competitive bidding pursuant to rule U-50. The difference of $421 million is largely accounted for by approximately $360 million of securities automatically exempt under the terms of the rule, of which $300 million were sold by subsidiaries to their parents. Also included in that difference were private placements of about $60 million which had been exempted from the competitive bidding requirements of rule U–50 by orders entered in earlier years but which were not sold until this year.

The experience gained in the 11 years of administration of rule U-50 has adequately demonstrated its workability and effectiveness in maintaining competitive conditions in the marketing of securities and in achieving minimum costs in the procurement of capital. However, the Commission has always recognized that flexibility of application was essential and in a number of cases, where unusual circumstances were present, it has granted exemptions by order from the competitive bidding requirements of the rule. During the period of existence of the rule, 201 issues of securities of registered holding companies and their subsidiaries with aggregate proceeds of $1.5 billion have been exempted in this manner. Such sales, of course, do not include the automatic exemptions afforded by the rule.

In the fiscal year 1952 only one issue with proceeds of $2 million was exempted from competitive bidding by order as compared with eight issues with dollar volume of $158.5 million in 1951. Almost all of the securities exempted in the fiscal year 1951 were private placements of standby commitments to finance construction projects extending over comparatively long periods of time.

It is important to note that only 25 percent of the issues representing 28.5 percent of the total dollar volume of exempted issues were sold by means of underwritten transactions. The following table summarizes the exempt security sales and shows the volume and types of securities exempted together with the amounts of securities sold with and without underwriting arrangements.

Sales of securities pursuant to orders of the Commission granting exemptions from competitive bidding requirements under the provisions of paragraph (a) (5) of rule U-50 [1] May 7, 1941, to June 30, 1952

	Underwritten transactions		Nonunderwritten transactions		Total all issues	
	Number of issues	Amount [2]	Number of issues	Amount [2]	Number of issues	Amount [2]
Bonds	4	$27,027,500	58	$611,901,768	62	$638,929,268
Debentures	3	83,425,000	5	36,779,939	8	120,204,939
Notes			19	32,894,158	19	32,894,158
Preferred stock	10	60,868,703	23	257,610,344	33	318,479,047
Common stock	33	278,484,644	46	186,163,716	79	464,648,360
Total	50	449,805,847	151	1,125,349,925	201	1,575,155,772

[1] Exclusive of automatic exemptions afforded by clauses (1) through (4) of paragraph (a) of rule U-50.
[2] Proceeds to seller before expenses.

COOPERATION WITH STATE PUBLIC UTILITY COMMISSIONS

The underlying objective of the Holding Company Act is to free operating electric and gas utility companies from the control of absentee and uneconomic holding companies and to provide effective supervision over regional integrated holding company systems, thereby permitting more effective regulation of the operating companies by the States and municipalities in which they operate. Viewed in the over-all the purpose of the Act is to supplement and strengthen local regulation; a fundamental concept which is inherent in the basic policies set out in the preamble and which also finds direct expression in many other sections of the statute. In the administration of this statute problems are constantly arising which are of special concern to the state commissions, and notices of all proceedings of possible interest to them are automatically sent to state and local regulatory authorities. Aside from the numerous informal discussions between representatives of this Commission and local authorities, there were several instances of cooperation during the past year which may be specifically noted.

An investigation conducted by the staff of the Commission in the spring of 1951 revealed that Investment Bond & Share Corporation had been operating for a number of years as a holding company within the meaning of section 2 (a) (7) (A) of the Act and that the company had taken no steps to effect its registration as a holding company or to apply for such exemption as might have been available to it. As a result, IBS registered with the Commission on July 2, 1951, and in August of that year submitted a plan pursuant to section 11 (e) of the Act for the purpose of effecting its ultimate liquidation in compliance with the physical integration and corporate simplification provisions of section 11 (b) of the Act. In connection with these proceedings members of the Commission's staff conferred at length with the general counsel of the Florida Railroad & Public Utilities Commission regarding certain proposed transactions between IBS and its subsidiary, Jacksonville Gas Corporation. The questions of mutual interest involved such matters as restrictions of surplus against payment of dividends, the right of Jacksonville to recover certain fees

believed to have been illegally paid, the assurance of an independent board of directors for Jacksonville following its divestment of control by IBS, and the reacquisition by Jacksonville of certain shares of its stock which IBS had acquired without proper authorization of the Commission. Arrangements were worked out to the satisfaction of the Florida representatives and members of this Commission's staff agreed to keep the Florida Commission fully informed of all subsequent developments.

In August 1952, representatives of this Commission conferred at length with representatives of the Connecticut Public Utilities Commission and representatives of Derby Gas & Electric Corporation regarding certain of that company's remaining problems under section 11 (b) (1) of the Act. The Connecticut Commission was very helpful in the devising of a program for the ultimate resolution of such problems.

Early in the past year, the Mississippi River Fuel Corporation made application to the Public Service Commission of Missouri for permission to acquire shares of common stock of Laclede Gas Company which serves the city of St. Louis. Subsequently, Mississippi River acquired approximately eight percent of the voting stock of Laclede and thereby became an affiliate of Laclede within the meaning of section 2 (a) (11) of the Act. The Missouri commission was very cooperative in keeping the staff of this Commission advised of important developments in this situation.

The specific instances of cooperation enumerated above are descriptive of only a portion of the cooperative effort of this Commission. Of even greater over-all advantage to the state and local regulatory authorities is the accomplishment of the basic objectives of the Holding Company Act. The operation of section 11, for instance, has had a two-fold effect. Through the divestment of properties not meeting the physical integration standards of section 11 (b) (1), a total of 381 electric and gas utility companies with aggregate assets of $9 billion have been severed from burdensome holding company control and are now operating as independent units or, in a few instances, as intrastate holding company systems. Approximately 20 other holding company systems with assets totaling $7 billion will remain in operation following complete compliance with the physical integration and corporate simplification requirements of section 11 (b) of the Act and the effectiveness of state and local regulation of the operating subsidiaries of these companies will be protected and strengthened by the continuing supplementary jurisdiction of this Commission under the various other sections of the Act.

Of particular interest in this regard are the provisions of section 13 which limit the services to be rendered to operating subsidiaries by service companies controlled by the holding company to only such services as are for the benefit of the operating companies. These services, moreover, must be rendered at cost fairly and equitably allocated among the client companies. Sections 6 and 7 of the Act are designed to assure the maintenance of sound capital structures and adequate protective provisions for security holders. In this connection, an important consequence of the administration of the Act has been the tremendous increase in the participation of investors in the market for public utility securities. Last, but not least, the

provisions of sections 2 (a) (7), 3, 9 (a) (2), and paragraphs (e) and (f) of section 13 afford protection against re-creation of the holding company device through channels more subtle and devious than that of direct ownership of securities.

AFFILIATES, NEW HOLDING COMPANIES AND EXEMPT HOLDING COMPANY SYSTEMS

As previously indicated, the statute embraces more than the integration and simplification of holding company systems and the day-to-day regulation of the continuing holding company systems. It also contains a number of provisions regulating the creation of new holding company and affiliate relationships and requiring a limited degree of surveillance of exempt holding company systems.

The first group of these provisions serve to prevent the circumvention of holding company responsibilities through the employment of unusual types of business organizations or through obscure devices for the control of public utility companies. These are embodied in sections 2 (a) (2), 2 (a) (7) (A), 2 (a) (7) (B), 2 (a) (8) (A) and 2 (a) (8) (B). Twelve informal inquiries concerning the applicability of these provisions to specific proposals for the acquisition of voting securities of public utility companies were received during the year and interpretative opinions were supplied in each instance. It is seldom necessary to engage in formal proceedings in such matters since the transactions proposed are either withdrawn or modified following conferences with interested parties in order to avoid conflicts with statutory requirements. The Commission's functions in administering these provisions are essentially of a policing nature. Most of the cases considered involved natural gas utilities and pipeline companies.

The statute also provides for regulation of certain transactions between affiliates and public-utility or holding companies and for regulation of the creation or extension of affiliate relationships. Probably the most important provision in this category is section 9 (a) (2) of the Act which provides in substance that the acquisition by any person of five percent or more of the voting securities of two or more public-utility or holding companies must be approved by the Commission. Since these provisions have the effect of imposing certain standards upon those acquisitions of voting securities of public-utility or holding companies which fall short of establishing a prima facie holding company relationship (5 percent or more but less than 10 percent), they operate to restrict any tendencies toward the creation of new and unsound holding company relationships.

During the fiscal year 15 applications were filed by persons or companies seeking approval of proposed acquisitions of public-utility securities pursuant to section 9 (a) (2), and approval was granted in all cases. In addition, six other situations have come to the attention of the Commission in which it appears that public-utility securities were acquired in violation of section 9 (a) (2). An application was filed in one of these cases subsequent to the close of the fiscal year to correct the delinquency and preliminary steps have been taken with respect to the others with a view to securing their compliance.

Sections 12 (g) and 13 (e) provide for limited regulation of transactions between affiliates, although, as used in these sections, the

definition of an affiliate of a specified company is not restricted to persons owning 5 percent or more of the outstanding voting securities of two or more public-utility or holding companies as is the case with section 9 (a) (2), but may also include officers or directors of the specified company, or any person whom the Commission determines to stand in such relation to the specified company that there is liable to be an absence of arm's-length bargaining in transactions between them. The provisions of these two sections relate principally to disclosure and maintenance of competitive conditions.

Section 12 (g) was employed during the year in the case of a small gas utility system which had failed to register with the Commission under section 5 of the Act or to seek such exemption as might have been available under the circumstances. Because of the inadequacy of information concerning the system, the imminence of an approaching bond maturity, and to determine the nature and extent of any violations of the provisions of the Act and the action necessary to correct such violations, the Commission entered a confidential order directing a complete investigation of the affairs of the system. The order also directed, pursuant to section 12 (g), that all parties named therein give the Commission advance notice of any proposal to effect certain transactions specified in the order.

Section 13 (e) contains safeguards respecting transactions with affiliated servicing organizations which are similar to those found in section 12 (g). Since the Congress also recognized that service companies which were not affiliated with public-utility companies, but which specialized in doing business with them, could attain positions which would result in an absence of arm's-length bargaining, similar requirements for disclosure and maintenance of competitive conditions were embodied in section 13 (f).

Two complaints alleging violations of the provisions of sections 13 (e) and (f) respectively have been received in recent months and these matters are still pending. In reviewing the exemption status of a holding company system claiming exemption pursuant to rule U–9, another problem has arisen during the fiscal year as to the apparent control of an independent public-utility company by a service company closely affiliated with the claimant holding company system. This case raises complex issues under sections 13 (e) and (f) and section 2 (a) (7) (B) of the Act.

Section 3 (a) of the Act provides that the Commission shall exempt certain specified types of holding company systems from the provisions of the Act, subject to the limitation that the exemption must not be detrimental to the public interest and the interest of investors or consumers. This limitation is commonly known as the "unless and except" clause. The types of holding companies which qualify for this exemption comprise: (1) The predominantly intrastate holding company system; (2) the system whose holding company is predominantly a public-utility operating company; (3) the company which is only incidentally a holding company, being primarily engaged in some other business; (4) the temporary holding company and (5) the holding company with no domestic public-utility subsidiaries.

Exemptions may be granted by rule or order of the Commission to the first two mentioned types of holding companies and by order only to the last three types. Exemptions claimed pursuant to rule U–2, by intrastate holding company systems or by systems where

the holding company is predominantly a public-utility operating company, may be revoked by the Commission on 30 days notice as provided by rule U–6 where it appears that a substantial question of law or fact exists as to whether the claimant is within the exemption afforded by rule U–2, or whether the exemption is detrimental to the public interest or the interest of investors or consumers. Section 3 (c) provides that the Commission shall revoke its order granting exemption under section 3 (a) whenever it finds that the circumstances which led to the granting of the exemption no longer exist.

In section 3 (d) the Commission is empowered by rule or regulation, but not by order, to exempt conditionally or unconditionally any specified class or classes of holding company systems from the provisions of the Act, if and to the extent that it deems such exemptions necessary or appropriate in the public interest or for the protection of investors or consumers and not contrary to the purposes of the Act. Small holding company systems, whose net utility assets did not exceed $1 million on December 1, 1946, or whose annual gross utility revenues do not at the time of filing exceed $350,000, may claim exemption pursuant to rule U–9 which was promulgated under section 3 (d). At the present time no machinery exists for revocation of the exemption claimed by an individual system under rule U–9, although in one case considered during the past year the Commission ruled that exemption would no longer be available pursuant to rule U–2 or rule U–9 to a holding company system previously claiming exemption under rule U–9 which had failed to meet one or more of the conditions prescribed in rule U–9 and where it appeared that the continued availability of such exemption would be detrimental to the public interest and the interest of investors or consumers or would otherwise be contrary to the policies of the statute. This company, Wisconsin Southern Gas and Appliance Corporation, registered with the Commission on May 28, 1952, as a holding company.

For the purpose of administering the revocation provisions of section 3 (c) and rule U–6 and to determine whether there have been any failures of compliance with the conditions contained in rule U–9, it is necessary for the staff of the Commission to review each year the statements filed by holding company systems claiming exemption pursuant to rules U–2 and U–9. Fifty-six of these statements were filed during the fiscal year. It is also essential to follow developments in the public utility industry, and to review the exemption status periodically in order to determine whether any exemptions granted by order pursuant to section 3 (a) need be revoked. There are presently outstanding 29 orders granting exemptions pursuant to sections 3 (a) (1) and 3 (a) (2) which require periodic review. In addition, there are outstanding 62 orders granting exemptions pursuant to section 3 (a) (3), 12 orders granting exemption under section 3 (a) (4) and 27 orders granting exemption under section 3 (a) (5). Because of budgetary limitations it has been possible to review the exemption status of only three holding company systems during the fiscal year. As indicated above, the exemption claimed by Wisconsin Southern Gas and Appliance Corporation was terminated.

During the fiscal year, investigations also revealed 28 other holding company systems which had been operating in violation of the statute. Twenty-five of these systems have taken appropriate steps to comply with the provisions of the Act, three by filing acceptable statements

claiming exemption pursuant to rule U–9, five by filing statements claiming exemption pursuant to rule U–2 and 17 by requesting and receiving orders of the Commission granting exemption pursuant to applications filed under section 3 (a) of the Act. The remaining three systems have not completed the action necessary to effectuate compliance with the statute. Four other applications for exemption pursuant to section 3 (a), which had been filed in the preceding fiscal year, were granted.

Like the administration of sections 2 (a), 9 (a) (2), 12 (g), 13 (e) and 13 (f), the periodic review of the exemption status of exempt holding company systems is also a policing function, and in this work many of the problems presented are settled informally by conferences with industry representatives. The magnitude of the over-all task, however, is of very substantial proportions as indicated by the following summary table:

	Number of systems	Gross utility plant accounts
Holding company systems exempt by orders of the Commission under sections 3 (a) (1) and 3 (a) (2)	29	$3,340,000,000
Holding company systems claiming exemption by filing annual statements with the Commission pursuant to rule U–2	31	4,429,000,000
Holding company systems claiming exemption by filing annual statements with the Commission pursuant to rule U–9	25	20,000,000
Total	85	7,789,000,000

NOTE.—These data do not include exemptions granted under section 3 (a) (4) to companies which were only temporarily holding companies, exemptions granted under section 3 (a) (5) to holding companies which have no domestic public-utility subsidiaries and exemptions granted to large industrial or other companies which are only incidentally holding companies with respect to comparatively small public-utility subsidiaries. The table also excludes data with respect to holding company systems which have pending applications for exemption pursuant to section 3 (a) of the Act. It is estimated that the gross utility plant account of all of these excluded systems aggregates well over $200 million.

Many of the exempt holding company systems included in the above totals were never components of registered holding company systems.

LITIGATION UNDER ACT

In the 17-year period beginning with the effective date of the Act and closing with the past fiscal year, the Commission has participated in 293 judicial proceedings [28] involving issues arising in connection with the administration of the Act. Litigation has been completed in respect to 280 of these cases and the balance of 13 proceedings were pending on June 30, 1952. Of the cases which have been closed, two were terminated adversely to the position of the Commission and in two other matters, in which United States courts of appeals had handed down decisions adverse to the Commission, the decisions were vacated by the United States Supreme Court as moot. In all of the other completed proceedings the position of the Commission was upheld.

During the past fiscal year the Commission has participated in 22 civil and criminal proceedings in which the validity of action in enforcement of the Act was an issue. Eleven of these cases concerned the enforcement of voluntary plans for reorganization filed under section 11 (e) of the Act; two were appeals from orders of United

[28] Exclusive of proceedings involving reorganization under the National Bankruptcy Act.

States district courts entered prior to the fiscal year directing the enforcement of voluntary plans under section 11 (e); five were initiated by petitions to review orders of the Commission pursuant to section 24 (a) of the Act; in one case, the Commission participated as *amicus curiae* and three cases involved proceedings under section 11 (d) of the Act. Nine of the 22 cases were finally adjudicated and in each such instance the position of the Commission was upheld. The remaining 13 cases were pending at the close of the fiscal year.

The Commission's activities in the courts during the past fiscal year are discussed in greater detail below.

Proceedings to Enforce Voluntary Plans Under Section 11 (e)

The following table shows the applications for orders to enforce plans under section 11 (e) which were acted on or were pending during the year:

Applications pending in United States district courts, July 1, 1951	1	
Applications filed in United States district courts, July 1, 1951, to June 30, 1952	10	
Applications approved and plans ordered enforced; no appeals taken	---	3
Applications approved and plans enforced; appeal taken to United States court of appeals—district court order affirmed	---	1
Applications disapproved in part and approved in part; affirmed on rehearing; appeal taken to United States court of appeals—appeal pending	---	1
Applications pending, June 30, 1952	---	6
Total	11	11

The application for enforcement pending at the beginning of the fiscal year was a supplemental application disapproved in part and approved in part by the district court. In this application the Commission petitioned the court to enforce its orders [29] approving and denying certain fees and expenses claimed in connection with the liquidation and dissolution of North American Light & Power Company. One of the fee claimants contested that part of the Commission's order which denied his request for additional compensation. The Commission's order was approved in part and reversed in part and in its opinion the district court indicated that the Commission had failed to give adequate weight to the lawyer-client relationship, and the court awarded the additional compensation requested by the claimant.[30] The district court affirmed its original determination at a rehearing after the close of the fiscal year,[31] and the matter is now pending on appeal by the Commission in the United States Court of Appeals, Third Circuit.

Of the 10 applications for enforcement of voluntary plans which were filed in United States district courts during the fiscal year, three were approved and the plans were ordered enforced without any appeal being taken from such orders. The first of these involved a plan for the liquidation and dissolution of Federal Water and Gas Corporation and provided, among other things, for the distribution to stockholders of assets consisting of cash and 305,796 shares of common stock of Scranton-Spring Brook Water Service Company.[32]

[29] *North American Light & Power Co.*, Holding Company Act releases Nos. 10533 (May 7, 1951) and 10584 (June 1, 1951).
[30] 101 F. Supp. 931 (D. Del., 1951).
[31] *In re North American Light & Power Co., et al.*, unreported (D. Del., No. 1033 (August 15, 1952)).
[32] *In re Federal Water and Gas Corp.*, unreported (D. Del., No. 1142, October 16, 1951).

The second plan involved the recapitalization of Portland Gas and Coke Company, a subsidiary of American Power & Light Company. In this proceeding two plans under section 11 (e) were filed with the Commission, one by Portland Gas & Coke Company and the other by American Power & Light Company. Electric Bond and Share Company, the parent of American prior to February 1950, was made a party to the proceedings for the purpose of determining any claims Portland might have against Bond and Share or any of its subsidiaries. Portland's plan provided for the issuance of new common stock to be exchanged for the company's presently outstanding preferred and common stocks on the basis of 85 percent of the new common stock for the holders of the preferred stocks and 15 percent for the holders of the common stock. American filed an identical plan except that it provided for the allocation of 75 percent of the new common stock to the preferred stockholders and 25 percent to the common stockholders. The Commission refused to approve either plan unless amended so as to provide for an allocation of 90 percent of the new common stock to the preferred stockholders and 10 percent to the common stockholders.[33] An amended plan conforming to this recommendation was subsequently approved by the Commission [34] and was also approved and ordered enforced by a United States district court.[35]

The third application which was approved by a United States district court and not appealed during the fiscal year was a supplemental application in connection with the plan for reorganization of New England Power Association. In furtherance of its policy to give security holders maximum protection for their investments by affording ample opportunity to exchange their old securities for new securities pursuant to reorganizations under section 11 (e) of the Act, the Commission petitioned the district court for a modification of its original order directing enforcement of the plan of NEPA so as to provide security holders with an additional year in which to exchange their securities under the plan. The court approved the supplemental application and granted the requested extension.[36]

Another of the 10 applications filed during the fiscal year was a petition by the Commission to a district court for an order directing the enforcement of a plan for recapitalization of American & Foreign Power Company pursuant to section 11 (e) of the Act. The district court approved the plan and, upon three separate appeals to a United States court of appeals, which were consolidated for argument, the district court order was affirmed and one of the appeals was dismissed.[37] Among other things, the plan provided for the retirement of the outstanding publicly held first preferred stock, second preferred stock, and common stock of Foreign Power through the issuance to the holders of those securities of new debentures and new common stock; the cancellation of Foreign Power's outstanding option warrants and preferred stock allotment certificates; and the settlement and discharge of various claims asserted on behalf of Foreign Power against Bond and Share and certain of its wholly owned and former wholly owned subsidiary companies.[38] Parties opposing the

[33] Holding Company Act release No. 10740 (August 29, 1951).
[34] Holding Company Act release No. 10812 (October 10, 1951).
[35] *In re Portland Gas & Coke Co.*, unreported (D. C. Oreg., No. 6196, November 13, 1951).
[36] Unreported (D. C. Mass., No. 5087, May 29, 1952).
[37] *Kantor* v. *American & Foreign Power Co., et al.*, 197 F. 2d 307 (C. A. 1, 1952) rehearing denied June 22, 1952.
[38] *American & Foreign Power Co.*, Holding Company Act release No. 10870 (November 7, 1951).

plan during proceedings before the Commission, and in hearings in the district court, questioned virtually all aspects of the plan. The district court approved the plan and directed its enforcement.[39] One of the three appellants urged that the $6 preferred stock was entitled to greater participation as compared to the $7 series; that more weight should have been accorded liquidation values expressed in the company's charter than to the current claims to earnings of the two classes of preferred stocks. Another appellant urged that the common stock was entitled to greater participation and objected to cancellation of the option warrants. The third appellant's appeal, based on the claims settlement, was dismissed for the reason that appellant had exchanged his stock for new stock pursuant to the plan.

The remaining 6 of the 10 applications for enforcement orders which were filed during the fiscal year were still pending in United States district courts at the close of the year. Three of these applications related to the allowance and denial of fees and disbursements in connection with the formulation and consummation of plans for the dissolution of Northern States Power Company (Delaware),[40] Engineers Public Service Company [41] and Electric Power & Light Corporation.[42]

The other three pending applications pertain to plans for the dissolution of American Water Works and Electric Company, Inc., Consolidated Electric & Gas Company, and American Power and Light Company. Shortly after the close of the fiscal year the district court approved Amercian Power & Light Company's plan which provided for the distribution of its holdings of the common stock of The Washington Water Power Company, thus bringing to a close a vigorously contested phase of that company's liquidation and dissolution.[43] The application with respect to the American Water Works plan was also approved.[44]

In addition to the above described proceedings, at the beginning of the fiscal year there were pending in United States courts of appeals two appeals from orders previously entered by United States district courts in connection with applications by the Commission for enforcement of two of its orders approving plans for reorganization under section 11 (e).

One of these two pending appeals arose out of two orders of a United States district court in connection with a section 11 (e) plan of liquidation of Market Street Railway Company. The Commission approved the plan finding, among other things, that a settlement embodied in the plan between Market Street and its former parents was fair and equitable, and that the attorney for a stockholders committee, who was instrumental in affecting the settlement, should be denied a fee because he had lost his independence in representing his clients. In the enforcement proceedings on the plan the district court approved the action of the Commission in respect of the substantive provisions of the plan but found that the facts did not war-

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[39] *In re American & Foreign Power Co.*, 102 F. Supp. 331 (D. Maine 1952).
[40] Holding Company Act release No. 11145 (April 8, 1952).
[41] Holding Company Act releases Nos. 10306 (December 21, 1950) and 11096 (March 26, 1952).
[42] Holding Company Act releases Nos. 11175 (April 21, 1952) and 11278 (May 23, 1952).
[43] *American Power & Light Co.*, unreported (D. Maine, No. 731, July 17, 1952).
[44] 107 F. Supp. 350 (D. Del., 1952).

rant a denial in toto of the attorney's fee and remanded the matter to the Commission, *inter alia*, to determine the appropriate amount of such a fee. The Commission appealed from this order. In supplemental proceedings on the plan the district court ordered the substantive provisions enforced. The attorney, on his own behalf and on behalf of an individual stockholder, appealed from this later order. The court of appeals affirmed the action of the district court in ordering the substantive provisions of the plan enforced and reversed that court's findings that the attorney was entitled to some fee.[45] Rehearing was subsequently granted by the court of appeals on the fee question. Reargument has been had but, at the close of the fiscal year, no decision had been rendered.

The other appeal involved a plan for reorganization of Long Island Lighting Company. Appellants had asserted on appeal that the Commission in passing upon the plan of Long Island had not given adequate consideration to earnings which would accrue as a result of the reorganization and that therefore in determining the fairness of the allocation of new securities the Commission had erred. The Commission, following the court's decision sustaining appellant's view, petitioned for a modification of the decision and for approval of the plan on the basis of its supplemental opinion showing that full consideration had been given to such benefits. In a per curiam opinion the Commission was upheld and the court modified its earlier decision and affirmed the order of the district court.[46] Subsequently, however, during the fiscal year, the Common Stockholders' Committee for Long Island Lighting Company and others filed a petition with the court of appeals to reopen the case. They alleged, among other things, that conduct on the part of Long Island, its officers and counsel was "tantamount to fraud" upon the Commission, the district court and court of appeals in that such persons had misrepresented certain accounting figures with respect to depreciation reserves. The court of appeals denied the petition on the ground that no fraud or other basis for relief under rule 60 (b) of the Federal Rules of Civil Procedure had been shown.[47]

Petitions to Review Orders of the Commission Pursuant to Section 24 (a) of the Act

Five petitions to review orders of the Commission under section 24 (a) of the Act were filed in United States courts of appeals during the fiscal year. One was dismissed and the other four cases were still pending at the close of the year.

The petition which was dismissed arose out of a proposal by American Power & Light Company to sell its holdings of the common stock of Washington Water Power Company to four Public Utility Districts in the State of Washington. The Commission treated the notice of this proposal as a declaration pursuant to section 11 (e) and on January 18, 1952, ordered a hearing on the matter.[48] Upon petitions by the utility districts to review this order, the United States court of appeals held that, even though the sale was to be made to public bodies, the provisions of section 2 (c) of the Act did not prevent the Commission from exercising jurisdiction over the proposed sale. A

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[45] *S. E. C.* v. *Cogan*, — F. 2d — (C. A. 9, 1951).
[46] *Common Stockholders Committee of Long Island Lighting Co.* v. *S. E. C.*, 183 F. 2d 45 (C. A. 2, 1950) citation contains both the original and per curiam opinion.
[47] Per curiam opinion, unreported, Case No. 215 (C. A. 2, 1952).
[48] *American Power & Light Co.*, Holding Company Act release No. 11009 (January 18, 1952).

stay order previously entered was vacated and the appeal was dismissed.[49]

Another petition challenged an order of the Commission approving a comprehensive plan for the simplification of the United Corporation system pursuant to section 11 (e).[50] Petitioners had objected to several provisions of the plan and offered numerous amendments all of which were rejected by the Commission. Application for an order enforcing certain provisions of the plan was deferred so as to enable petitioners to appeal directly to a United States court of appeals under section 24 (a) of the Act for a review of their objections to other aspects of the plan. The matter was pending at the close of the year.

In 1944 the Commission had approved a plan for disposition by Central Maine Power Company of the transportation properties of one of its subsidiaries.[51] The company did not request the Commission to apply to a United States district court for enforcement of the order. Petitioners, who were non-assenting stockholders of the transportation subsidiary, applied to the Commission for a rehearing, following an unsuccessful attempt to upset the plan in the Supreme Judicial Court of Maine.[52] The Commission denied rehearing and a petitition to review that order and the 1944 order was then filed. Petitioners contended that the allocations to nonassenting stockholders which were provided by the plan were not fair, and that cancellation of the 66-year lease of the transportation properties by the subsidiary to Central Maine was not necessary to comply with the requirements of section 11 (b). The case was pending in the court of appeals at the close of the fiscal year.

The remaining two petitions for review in which the Commission participated during the fiscal year were filed by Electric Bond and Share Company and by a fee claimant in the dissolution proceeding affecting Northern States Power Company (Delaware). Bond and Share sought review of an order of the Commission denying the company relief from its previous commitment to dispose of its holdings of 2,870,653 shares of the common stock of United Gas Corporation.[53] The case was pending in the United States court of appeals at the close of the fiscal year. Since then Bond and Share has been permitted to withdraw its petition for review.

In the Northern States case, a fee claimant filed a petition in a United States court of appeals on May 21, 1952, for review of an order of the Commission denying his application for compensation for services rendered as representative of preferred stockholders of Northern States in the proceedings relative to the dissolution of that company pursuant to section 11 (e) of the Act.[54] On June 2, 1952, the Commission filed a supplemental application in a United States district court for approval and enforcement of its order denying the petitioner's request for compensation. The court of appeals dismissed the petition for review pursuant to stipulation of the parties dated July 10, 1952.

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[49] *Public Utility District No. 1 v. S. E. C.*, 195 F. 2d 727 (C. A. 9, 1952).
[50] Holding Company Act releases Nos. 7191 (1947), 10614 (1951) and 10643 (June 26, 1951).
[51] Holding Company Act releases Nos. 5506 (December 19, 1944) and 10895 (November 28, 1951).
[52] *Auburn Savings Bank v. Portland Railroad Co.*, 65 Atl. 2d (1949).
[53] Holding Company Act release No. 11004 (February 6, 1952).
[54] Holding Company Act release No. 11145 (April 8, 1952).

Participation as Amicus Curiae

The Commission participated as *amicus curiae* in only one case under the Act during the year. A suit was filed in the United States District Court for the District of Massachusetts by one Frank Sullivan against John J. Burns to recover on a claim for serves alleged to have been rendered to Burns partly in connection with the latter's participation in the proceedings for the reorganization of Eastern Gas & Fuel Associates pursuant to section 11 (e) of the Act. Burns filed a motion for a stay on the ground that the Commission had primary jurisdiction over the fees in question. The Commission filed a memorandum as *amicus curiae*, in which no position was taken with respect to the question of whether the stay should be granted. The matter was pending in the district court at the close of the fiscal year.

Proceedings Under Section 11 (d)

During the fiscal year the Commission participated in three proceedings in a United States district court pertaining to three separate steps in the reorganization of the International Hydro-Electric System pursuant to section 11 (d) of the Act.

Shortly before the close of the preceding fiscal year the Commission had entered an order permitting a distribution to IHES debenture holders of certain funds representing interest at the rate of 6 percent per annum upon deferred partial installments of interest.[55] Opponents of the plan contested the allowance of interest on the deferred interest payments. The Commission found that the covenant in the indenture to pay interest on any defaulted installment of interest would be enforceable under Massachusetts law, and that Federal equitable principles did not preclude the payment of interest on interest by a solvent company in a Holding Company Act reorganization. The district court sustained the position of the Commission on all points.[56] No appeal was taken.

The two other proceedings involved petitions by the Trustee of IHES appointed by the United States district court upon request of the Commission pursuant to section 11 (d) of the Act. One involved an application by the Trustee for authorization to make quarterly payments to preferred stockholders, approved by the Commission [57] and by the district court.[58] The second arose out of an application by the Trustee for authorization to renew for one year the unpaid principal of a $9,500,000 bank loan which was approved by the Commission and by the district court.[59] No appeal was taken from either of these decisions.

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[55] Holding Company Act release No. 10642 (June 29, 1951).
[56] *In re International Hydro-Electric System*, 101 F. Supp. 222 (D. Mass., 1951).
[57] Holding Company Act release No. 11014 (January 21, 1952).
[58] *In re International Hydro-Electric System*, unreported (D. Mass., No. 2430, April 8, 1952).
[59] *International Hydro-Electric System*, Holding Company Act release No. 11161 (April 8, 1952), approved, unreported (D. Mass., No. 2430, May 12, 1952).