23rd Annual Report

of the

Securities and Exchange Commission

Fiscal Year Ended June 30, 1957

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SECURITIES AND EXCHANGE COMMISSION

Headquarters Office

425 Second Street NW.

Washington 25, D. C.

COMMISSIONERS

January 7, 1958

EDWARD N. GADSBY, *Chairman*
ANDREW DOWNEY ORRICK
HAROLD C. PATTERSON
EARL F. HASTINGS
JAMES C. SARGENT

ORVAL L. DUBOIS, *Secretary*

LETTER OF TRANSMITTAL

SECURITIES AND EXCHANGE COMMISSION,
Washington, D. C., January 7, 1958.

SIR: On behalf of the Securities and Exchange Commission, I have the honor to transmit to you the Twenty-Third Annual Report of the Commission covering the fiscal year July 1, 1956, to June 30, 1957, 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 June 29, 1949, amending the Bretton Woods Agreements Act.

Respectfully,

EDWARD N. GADSBY,
Chairman.

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

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FOREWORD

The 23rd Annual Report of the Securities and Exchange Commission to the Congress for the fiscal year July 1, 1956, to June 30, 1957, describes the Commission's activities during the year under the statutes which it administers. These include supervision of the registration of securities for sale to the public by use of the mails and in interstate commerce, the surveillance of the exchange and over-the-counter markets in securities, regulation of the activities of brokers and dealers, regulation of registered public utility holding company systems and investment companies, and litigation in the courts.

In the fiscal year 1957 new issues of securities registered for public sale totaled $14.6 billion, the largest amount in the Commission's history. The number of brokers and dealers registered with the Commission at the end of the year was 4,771, representing some 200 more than in any previous fiscal year.

In recent years the Commission has vigorously pursued an intensified Enforcement Program of discovering, preventing and punishing fraudulent and other illegal activities in connection with transactions in securities. Administrative and legal actions taken under this Enforcement Program have exceeded those of any prior year. During the year there were 132 suspensions of offerings for which an exemption provided for small issues of securities was claimed, 10 stop-order proceedings were commenced to suspend the effectiveness of registration statements covering new issues of securities, 1,214 inspections of brokers and dealers were conducted which uncovered 1,722 violations of the securities laws and the rules thereunder, 74 revocation and denial proceedings were instituted against brokers and dealers, 71 injunctive actions were instituted in the courts and 26 cases were referred to the Department of Justice for criminal prosecution.

The Commission has submitted to the Congress proposals for a comprehensive revision of various of the acts which it administers, which proposals are now pending before the appropriate Congressional Committees. These proposals, as well as other pending bills affecting the Commission, are discussed in detail in this report.

COMMISSIONERS AND STAFF OFFICERS

(As of December 15, 1957)

Commissioners	*Term expires June 5*
EDWARD N. GADSBY of Massachusetts, *Chairman*[1]	1958
ANDREW DOWNEY ORRICK of California[2]	1962
HAROLD C. PATTERSON of Virginia	1960
EARL F. HASTINGS of Arizona	1959
JAMES E. SARGENT of New York	1961

Secretary: ORVAL L. DUBOIS

[1] Assumed office on August 20, 1957. Succeeded J. Sinclair Armstrong who resigned on May 27, 1957.

[2] Served as Acting Chairman from May 27, 1957, to June 5, 1957, and from June 13, 1957, to August 20, 1957.

Staff Officers

ALBERT K. SCHEIDENHELM, Executive Director.

RAY GARRETT, JR., Associate Executive Director.[1]

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

SHARON C. RISK, Associate Director.[2]

JOSEPH C. WOODLE, Director, Division of Corporate Regulation.[3]

PHILIP A. LOOMIS, JR., Director, Division of Trading and Exchanges.

JOHN E. LOOMIS, Associate Director.

THOMAS G. MEEKER, General Counsel.

DANIEL J. MCCAULEY, Jr., Associate General Counsel.

ANDREW BARR, Chief Accountant.

LEONARD HELFENSTEIN, Director, Office of Opinion Writing.

W. VICTOR RODIN, Associate Director.

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[1] Designated Associate Executive Director, September 26, 1957. Formerly Director, Division of Corporate Regulation.

[2] Designated October 14, 1957.

[3] Designated Director, Division of Corporate Regulation, November 3, 1957. Formerly Associate Director, Division of Corporate Regulation.

REGIONAL AND BRANCH OFFICES

Regional Administrators

Region 1. New York, New Jersey.—Paul Windels, Jr., Edward Schoen, Jr., Associate Regional Administrator,[1] 225 Broadway, New York 7, New York.

Region 2. Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, Maine.—Philip E. Kendrick, United States Post Office and Courthouse, Post Office Square, Boston 9, Massachusetts.

Region 3. Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, and that part of Louisiana lying east of the Atchafalaya River.—William Green, Peachtree-Seventh Building (Room 350), Atlanta 23, Georgia.

Region 4. Illinois, Indiana, Iowa, Kansas City (Kansas), Kentucky, Michigan, Minnesota, Missouri, Ohio, Wisconsin.—Thomas B. Hart, Bankers Building (Room 630), 105 West Adams Street, Chicago 3, Illinois.

Region 5. Oklahoma, Arkansas, Texas, that part of Louisiana lying west of the Atchafalaya River, and Kansas (except Kansas City).—Oran H. Allred, United States Courthouse (Room 301), 10th and Lamar Streets, Fort Worth 2, Texas.

Region 6. Wyoming, Colorado, New Mexico, Nebraska, North Dakota, South Dakota, Utah.—Milton J. Blake, 822 Midland Savings Building, 444 17th Street, Denver 2, Colorado.

Region 7. California, Nevada, Arizona, Hawaii.—Arthur E. Pennekamp, Pacific Building (Room 339), Fourth and Market Streets, San Francisco 3, California.

Region 8. Washington, Oregon, Idaho, Montana, Alaska.—James E. Newton, 905 Second Avenue Building (Room 304), Seattle 4, Washington.

Region 9. Pennsylvania, Maryland, Virginia, West Virginia, Delaware, District of Columbia.—William J. Crow, 425 Second Street NW. (Room 105), Washington 25, D. C.

Branch Offices

Cleveland, Ohio. Standard Building (Room 1628), 1370 Ontario Street.

Detroit, Michigan. Federal Building (Room 1074).

Los Angeles, California. United States Post Office and Courthouse (Room 1737), 312 North Spring Street.

St. Paul, Minnesota. Main Post Office and Courthouse (Room 1027), 180 East Kellogg Boulevard.

Salt Lake City, Utah. Boston Building (Room 201).

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[1] Designated Associate Regional Administrator, October 21, 1957.

COMMISSIONERS

Edward N. Gadsby, Chairman

Chairman Gadsby was born in North Adams, Mass., on April 11, 1900. He received an A. B. degree from Amherst College in 1923 and a J. D. degree from the New York University School of Law in 1928. From 1929 to 1937 he was associated with the law firm of Mudge, Stern, Williams & Tucker of New York City. From 1937 to 1947 he practiced law in North Adams, Mass. In 1947 he was appointed a Commissioner of the Massachusetts Department of Public Utilities and held that position until 1952, serving as Chairman from 1947 to 1949. From 1952 to 1956 he served as General Counsel of the Massachusetts Department of Public Utilities and thereafter was a member of the law firm of Sullivan & Worcester of Boston, Mass. On August 20, 1957, he took office as a member of the Securities and Exchange Commission for a term expiring June 5, 1958 and was designated Chairman of the Commission.

Andrew Downey Orrick

Commissioner Orrick was born in San Francisco, Calif., on October 18, 1917. He received his B. A. degree from Yale College in 1940 and an LL. B. degree from the University of California (Hastings College of Law) in 1947. From 1942 to 1946 he was on active duty with the United States Army as a captain in the Transportation Corps. After being admitted to practice in California in 1947 he was associated with the law firm of Orrick, Dahlquist, Herrington & Sutcliffe, in San Francisco, until February 1954, when he became Regional Administrator of the San Francisco Regional Office of the Securities and Exchange Commission. He served in that capacity until May 24, 1955, when he was appointed a member of the Commission for a term of office expiring June 5, 1957. On June 12, 1957, he was reappointed as a member of the Commission for a term of office expiring June 5, 1962.

Harold C. Patterson

Commissioner Patterson was born in Newport, R. I., on March 12, 1897, and attended public schools in Massachusetts and Maryland. He attended George Washington University after graduating from Randolph Macon Academy. In 1918 he enlisted in the United States Naval Reserve for service in World War I, was commissioned ensign,

United States Naval Reserve, in 1918; in June 1919 commissioned ensign United States Navy; and resigned in 1923. Prior to 1954, he had for many years been a partner of Auchincloss, Parker & Redpath, members of the New York Stock Exchange, in Washington, D. C. He resigned from the firm June 1, 1954. He served as a Board Member of the National Association of Securities Dealers, Inc., and was active over the years in its securities industry policing work. On June 15, 1954, he was appointed Director of the Division of Trading and Exchanges of the Securities and Exchange Commission and served in that capacity until August 5, 1955, when he took office as a member of the Commission for a term of office expiring June 5, 1960.

Earl F. Hastings

Commissioner Hastings was born in Los Angeles, Calif., on April 27, 1908, and resides in Glendale, Ariz. He attended Texas Western University and the University of Denver. He is a registered professional engineer. During the years 1932 to 1941 he served as a consulting engineer with mining and industrial firms. From 1941 to 1942 he worked with Hawaiian constructors on a military installation on Oahu, T. H. From 1942 to 1947 he served in various engineering and managerial capacities. At that time he became a general partner of the firm, Darlington, Hastings & Thorne, which served as industrial consultants and managers. In 1949 he was appointed Director of Securities, Arizona Corporation Commission, Phoenix, and he served in that capacity until March 1, 1956, when he was appointed a member of the Securities and Exchange Commission for a term of office expiring June 5, 1959.

James C. Sargent

Commissioner Sargent was born in New Haven, Conn., on February 26, 1916, and holds degrees of B. A. and LL.B. from the University of Virginia. He was admitted to the New York Bar in 1940 and became associated with the firm of Clark & Baldwin, New York City. From January 1941 to July 1951, except for military service, he was employed as a trial attorney by Consolidated Edison Company of New York. He enlisted in the United States Army Air Force in 1942 and served in this country as an Air Intelligence school instructor and as a combat and special intelligence officer in the Southwest Pacific. He was separated to inactive duty in January 1946 with the rank of captain and holds that rank in the organized reserve. In the fall of 1948, he served as an Assistant Attorney General of the State of New York in the Election Frauds Bureau in New York City. From July 1951 to August 1954 he was employed as law

assistant to the Appellate Division, First Department, Supreme Court, State of New York. He was associated with the firm of Spence & Hotchkiss, New York City, from August 1954 until November 1955. In November 1955 he was appointed Administrator of the Commission's New York Regional Office. He served in that capacity until June 29, 1956, when he was sworn in as a member of the Commission for a term of office expiring June 5, 1961.

PART I

ENFORCEMENT PROGRAM

The most significant aspect of the Commission's activities during 1957 in providing protection to public investors under conditions then existing and foreseen has been its Enforcement Program.

The Enforcement Program, under the day-to-day direction of the Commission, has been carried out by the Commission's operating divisions in Washington and by its 14 regional and branch offices in principal cities throughout the Nation.

The Commission believes that there can be no substantial question as to the desirability, indeed the necessity, for the effective enforcement of the Federal securities laws. Furthermore, it is the policy of the Commission that its enforcement activities should include such efforts and such measures as are necessary to accomplish that objective under the conditions which exist. The Federal securities laws were enacted by the Congress for the stated purpose of providing full and fair disclosure of the character of securities sold in interstate and foreign commerce, preventing frauds in the sale thereof, preventing inequitable and unfair practices in the securities markets and for other important purposes.

Conditions at present require a more vigorous and accelerated program including new measures of enforcement. At no time in the Commission's experience have activity and public participation in the securities markets been so great.

The dollar volume of securities effectively registered under the Securities Act of 1933 increased by 94 percent from $7.5 billion in the fiscal year 1953 to $14.6 billion in the fiscal year 1957. In the postwar years 1945 to 1950 it was $4.5 billion on the average and in the 1930's averaged about $2.5 billion. The increase for the fiscal years 1951 to 1957 is graphically illustrated in a chart appended to this part of the report.

The aggregate market value of all stock on all stock exchanges, which never exceeded $100 billion before 1946, except briefly in 1929, increased from $111 billion at December 31, 1950, to over $262 billion at June 30, 1957. The dollar volume of securities traded on stock exchanges rose to $34 billion in the fiscal year 1957 as compared with about $17 billion in 1953.

The number of holders of shares in publicly owned corporations was estimated by the New York Stock Exchange to have increased

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from 6,490,000 in early 1952 to 8,650,000 at the end of 1955 and has probably further increased since then.

Markets such as these are accompanied by enforcement problems unprecedented in the Commission's experience. These problems were not encountered in the relatively quiet and disillusioned markets of the 1930's or under the conditions of war and reconversion. By reason of recent economic and market conditions, it appears that a substantial segment of the public again believes that it is possible for the unskilled to reap large and quick profits in the securities markets and has available funds which may be used for that purpose. As a result, there is an increase in the number of uninformed and unsophisticated investors and an increase in their willingness to purchase unknown and speculative securities, which are represented as offering unusual opportunities for gain.

These public attitudes, in turn, increase substantially the opportunities for illicit profit in the illegal or fraudulent sale of securities and increase also the premium upon successful evasion of the investor safeguards provided in the Federal securities laws. As in any field of law enforcement, the number, ingenuity, and resources of violators increase when the potential rewards of successful violations increase, and the potential rewards of a successful securities fraud may be measured in the millions of dollars.

Illustrative of the enforcement problems now confronting the Commission are the matters briefly summarized below.

THE PROBLEM OF "BOILER ROOMS"

The term "boiler room" means an organization engaged in the sale of securities primarily over the telephone, particularly the long distance telephone, by high pressure methods ordinarily accompanied by misrepresentation, deception or fraud. Such organizations commonly concentrate on the distribution of one or a few issues of speculative securities at a time, seeking to sell these issues in quantity by whatever representations are necessary to make a sale.

To detect and prove fraud in telephone sales of securities is a difficult undertaking involving the painstaking collection and verification of evidence from widely scattered sources throughout the United States.

The Commission has utilized all available enforcement techniques to meet the problem. As a result, it is believed that most of the larger "boiler rooms" whose activities created such concern in the past year are no longer in operation. In lieu thereof, there are appearing a great number of smaller firms using the "boiler room" techniques with only a few high pressure salesmen. This cancerous diffusion

makes the enforcement work of the Commission more difficult and requires continued emphasis upon this phase of the enforcement program.

SALES OF UNREGISTERED SECURITIES BASED ON CLAIMED EXEMPTIONS

The Commission believes that a large but undetermined number of securities have been sold in violation of the registration and prospectus and in some cases the anti-fraud provisions of the Securities Act of 1933 pursuant to claimed exemptions which, in fact, were not available. The Commission believes that these sales have been made, in the main, under claims of exemption pursuant to the so-called "private offering" exemption and the intrastate exemption. This is particularly applicable where an issue, or the sales procedures to be employed, would not stand the light of the full disclosure requirements of registration. In such cases, there is incentive to attempt avoidance of these requirements through purported reliance upon an exemption where the limitations of the exemption are not in fact observed. The Commission ordinarily learns of these offerings only after they have been commenced and has no means of ascertaining whether or not the exemption is available except by initiating an investigation.

Recently there have been a number of instances where securities claimed to have been issued pursuant to these exemptions were transferred through channels in Canada, Switzerland, Liechtenstein, and other foreign countries. When this occurs, the Commission has been handicapped in tracing the transactions and determining the facts upon which proof of the availability or nonavailability of the claimed exemption depends, particularly where the laws of the particular foreign country preclude disclosure of pertinent information. There is reason to believe that in many instances these channels are utilized for the deliberate purpose of complicating or frustrating the Commission's investigative effort. Every effort must be, and is being, made to discover the facts in such cases and to prevent evasion of statutory duties by such means.

EVASION OF REGISTRATION REQUIREMENTS THROUGH THE "NO SALE" THEORY

By Commission rule No. 133, which embodies an interpretation of long standing, the issue of securities in connection with certain types of corporate mergers, consolidations, reclassifications of securities and acquisitions of corporate assets has been deemed not to constitute a "sale" of securities to stockholders of corporate parties to the trans-

actions. This rule has the effect of exempting issues of securities in these transactions from the registration requirements of the Act. It has been relied upon in a very large number of corporate transactions consummated without registration. A substantial number of transactions allegedly exempted under the rule in fact involve violation of the registration provisions. The enforcement problem involved is essentially similar to that in connection with the exemptions of private offerings and intrastate sales and there is evidence that this rule also has been abused in deliberate efforts to evade compliance with the registration provisions.

Last year the Commission invited comment upon a proposal which in effect would have repealed the rule and made the transactions covered by it subject to registration.[1] A public hearing was held on the proposal in January 1957. In March the Commission announced that it was deferring action on this proposal pending further study of the problems and questions which had been raised.[2] The staff of the Commission is continuing its study of the proposal and related matters.

The enforcement problem of keeping transactions subject to the rule within legitimate bounds remains and will require continued investigative and enforcement effort. Furthermore, substantial revision of the rule may ultimately prove necessary to prevent its being used as a loophole for evasion of the registration requirements. If this occurs, a substantial increase in the number of registration statements filed under the Securities Act and in reports filed under the Securities Exchange Act is anticipated. In this connection, the administrative burden upon the Commission and upon corporations may be minimized, in part, by coordinating such registration requirements with the proxy statement requirements of the Commission's rules under section 14 of the Securities Exchange Act.

CERTAIN PROBLEMS OF PROMOTIONAL STOCK

Recent economic conditions have been relatively favorable for the sale of promotional stocks of new ventures, particularly in fields in which the securities of established enterprises have shown marked gains. For example, many new insurance and finance ventures have been promoted, particularly in the South Central, Southwestern, and Southeastern parts of the country, and their securities have been distributed either through registration or Regulation A, or more commonly, in reliance upon the intrastate exemption. Many of these issues and the sales techniques employed in their distribution appear to involve abuses and possible violations of the anti-fraud and other provisions of the Securities Act or the Securities Exchange Act, which

[1] Securities Act Release No. 3698 (October 2, 1956).
[2] Securities Act Release No. 3761 (March 15, 1957).

require extensive investigation. The large number of these promotions and the rapidity with which they have increased has placed a most serious burden on the Commission's field enforcement personnel charged with the conduct of such investigations.

STOP ORDER AND SUSPENSION PROCEEDINGS FOR NEW ISSUES

There has been a substantial increase in instances where issuers filing either under the registration requirements of the Securities Act or under the Commission's exemptive Regulation A do not appear to be making an effort to comply in good faith with the disclosure and other standards required for such filings. Consequently, it is necessary that the Commission, for the protection of investors, institute stop-order proceedings or suspension orders. Each of these has been preceded by an investigation and in many instances has required a formal administrative hearing. While the collection, presentation and analysis of evidence imposes a substantial burden on the Commission's enforcement staff, nevertheless it has been possible to prevent the public sale of securities under circumstances likely to involve fraud upon the investing public.

BROKER-DEALER INSPECTIONS

The chart appended to this part of the report shows the results of the Commission's program of increased emphasis upon broker-dealer inspections. The number of registered brokers and dealers increased from 4,053 on June 30, 1953, to 4,771 on June 30, 1957. The Commission presently estimates that at the end of the fiscal year 1958, there will be 5,000 registered brokers and dealers. It is estimated that this number will increase to 5,200 at the close of the fiscal year 1959. The Commission is concerned with the increase in numbers of registered brokers and dealers. Many of the new brokers and dealers are inexperienced and unfamiliar with the obligations owed to their customers. The Commission has intensified its broker-dealer program. In the fiscal year 1957 1,214 inspections were completed, the greatest number since the Commission was organized.

STATISTICAL SUMMARY OF ENFORCEMENT ACTIVITIES

The effectiveness of an enforcement program cannot be measured simply by statistics as to the number of investigations undertaken and the number of formal legal and administrative proceedings commenced. Such a "yardstick" does not differentiate between the relatively simple case and the complex and time-consuming cases, which have become increasingly prominent. The effectiveness of an enforcement program in the last analysis is measured only by the degree

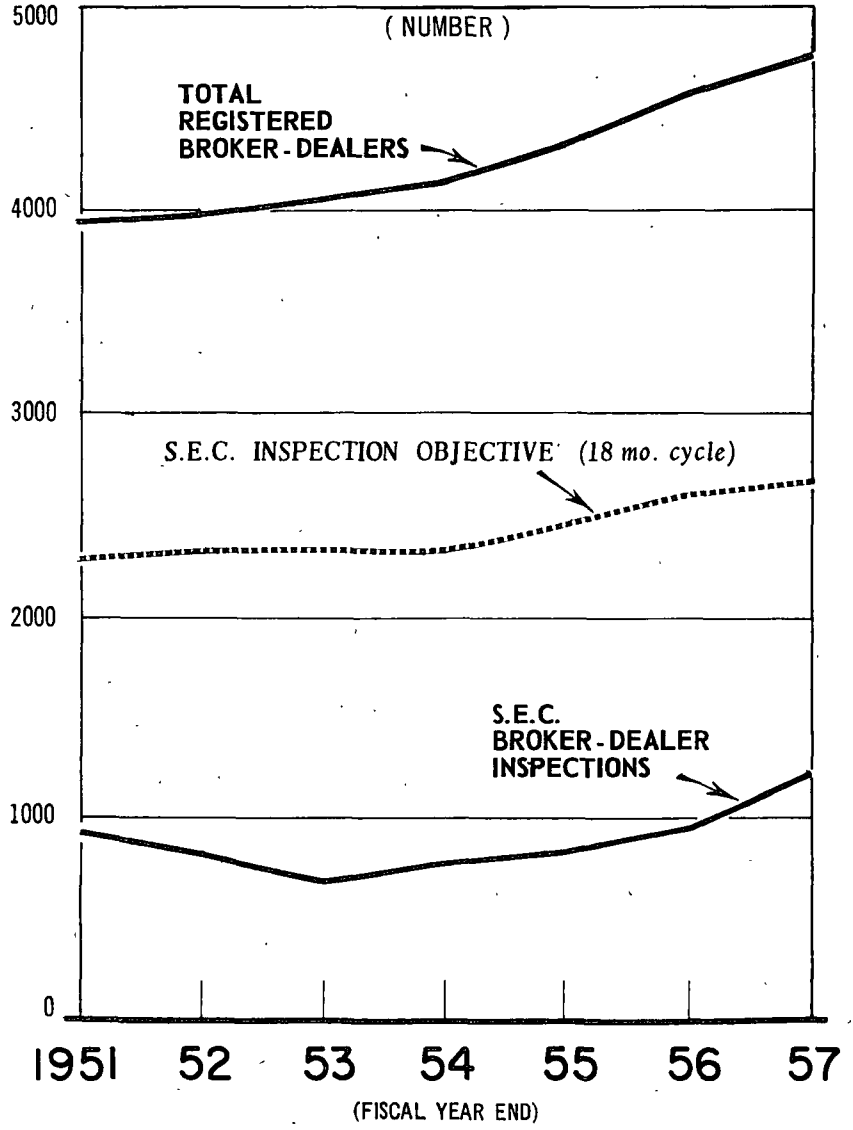
of compliance with the law to be achieved and this in turn, depends in large measure on making certain that suspected violations will be investigated and that appropriate action will be taken either to correct or to punish violations which are discovered. Nevertheless, certain enforcement statistics of recent years illustrate, to some degree, the progress achieved by the Commission, aided by the increased appropriations in the fiscal years 1957 and 1958. There follows a comparative table of certain enforcement actions covering the fiscal years 1956 and 1957.

Comparative table of certain enforcement actions

Type of action	1956	1957
A. Investigations of Violations of the Securities Acts:		
Pending at beginning of period	644	813
Opened during period	362	512
	1,006	1,325
Closed during period	193	347
Pending at end of period	813	978
B. Broker-Dealer Inspections	952	1,214
C. Administrative Proceedings to Deny or Revoke Registrations of Broker-Dealers Instituted	44	73
D. Stop-Order Proceedings respecting Registration Statements under the Securities Act Instituted	8	10
E. Suspension Orders respecting Regulation A Filings Instituted	95	132
F. Injunctive Actions Filed	33	68
G. Cases Referred to Department of Justice for Criminal Prosecution	17	26
Number of Possible Defendants Named in such References	43	132

If the confidence and faith of the American public in the capital markets are to be maintained so that the essential supply of capital can be continued to meet the high rate of demand anticipated by present estimates of industrial production with the resultant high standard of living, it is essential that this agency continue its Enforcement Program by supervising the capital markets in accordance with the standards established by the Congress in the Federal securities laws.

S.E.C. BROKER-DEALER INSPECTION PROGRAM



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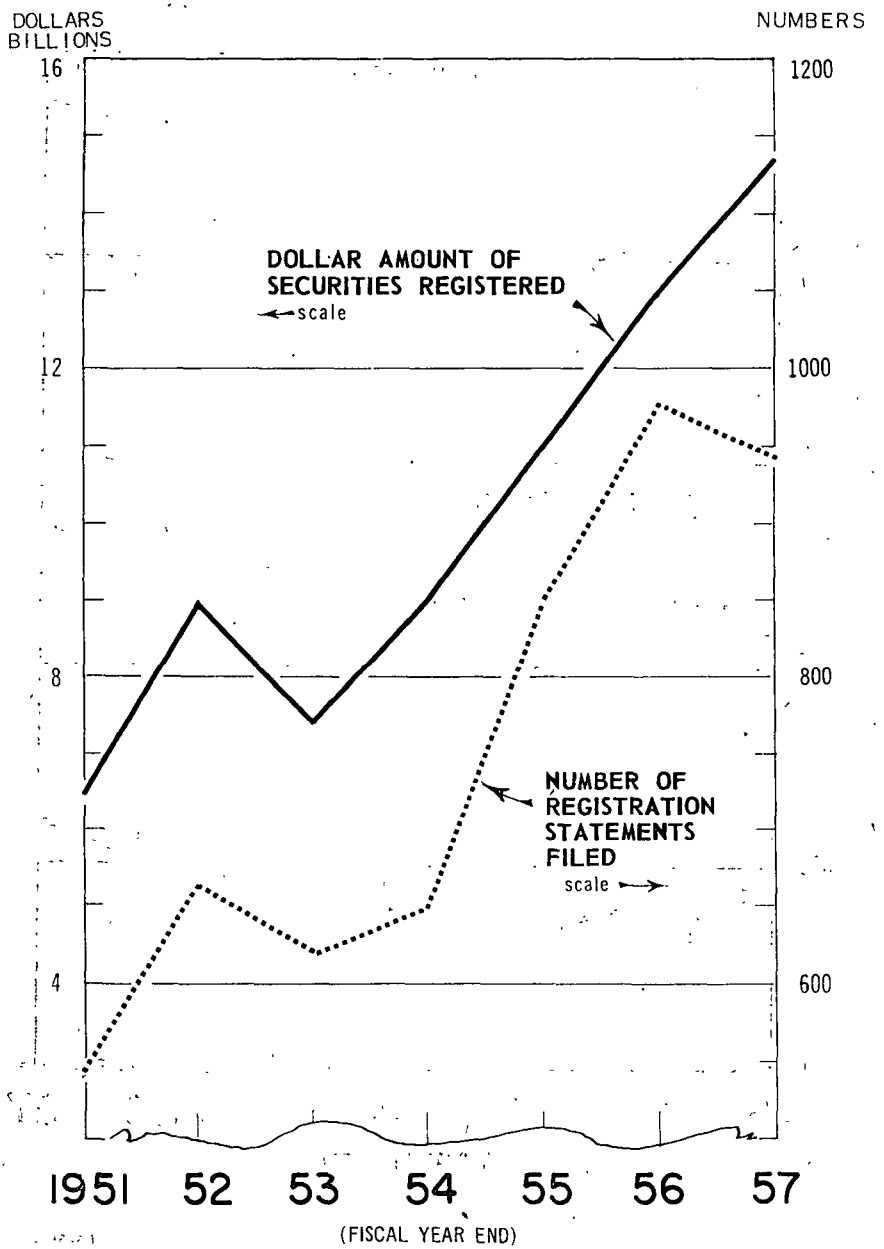
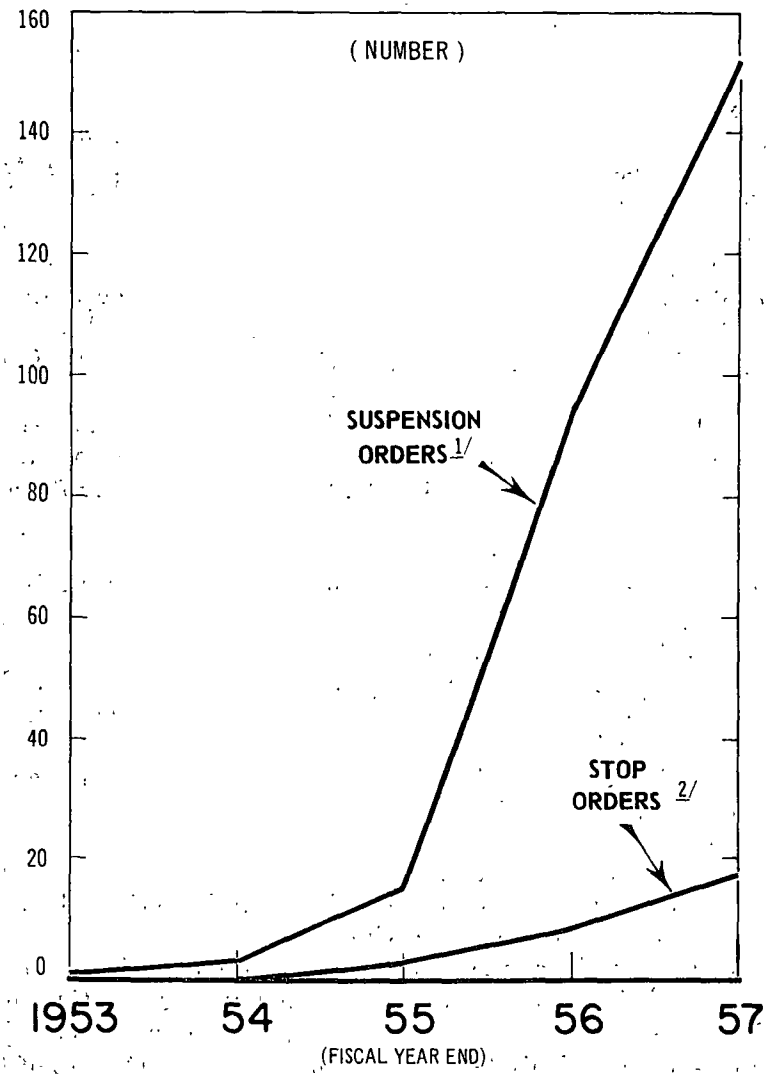
PAUL GONSON
SECURITIES AND EXCHANGE COMM'N
WASHINGTON, DC 20549

SECURITIES REGISTERED WITH S.E.C.



CERTAIN ENFORCEMENT ACTIONS UNDER THE SECURITIES ACT OF 1933



1/ **SUSPENSION ORDERS** - Orders denying exemptions from registration under Regulation A.

2/ **STOP ORDERS** - Number of registration statements on which orders were issued authorizing stop orders.

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PART II

LEGISLATIVE ACTIVITIES

Statutory Amendments Proposed by the Commission

During 1957 the Commission submitted to the Committee on Banking and Currency of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives, which Committees have the duty of exercising watchfulness over the execution of the securities laws pursuant to section 136 of the Legislative Reorganization Act of 1946, proposals to amend an aggregate of 87 provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940 and the Investment Advisers Act of 1940.[1] These proposals were introduced in the Senate by Senator Frank J. Lausche, then Chairman of the Subcommittee on Securities of the Committee on Banking and Currency, as S. 2544, S. 2545, S. 2546, S. 2796 and S. 2547. Subsequently, they were introduced in the House of Representatives by Representative Oren Harris, Chairman of the Committee on Interstate and Foreign Commerce, as H. R. 9326, H. R. 9327, H. R. 9328, H. R. 9329 and H. R. 9330. The Senate bills were referred to the Committee on Banking and Currency and the House bills to the Committee on Interstate and Foreign Commerce. No action was taken by either Committee during the remainder of the first session of the Congress.

The overall purpose of the Commission's proposals, the more significant of which are briefly described below, is to strengthen the safeguards and protections afforded the public by tightening the jurisdictional provisions, correcting certain inadequacies revealed through administrative experience and facilitating criminal prosecutions and other enforcement activities.

While the Commission was formulating its proposals, Senator J. W. Fulbright, Chairman of the Committee on Banking and Currency, and Representative Oren Harris agreed that there would be no objection to the Commission's discussing them with representatives of the securities industry. On January 24, 1957, the Commission circulated a draft of proposed amendments, and a public conference was held on February 25 and 26, 1957, at which interested persons

[1] The Commission submitted these legislative proposals to the Congress in July and August 1957.

were heard. Further conferences were then held with representatives of interested industry groups, and the comments made at the public hearing were further explored. The Commission reexamined its program in the light of all the comments it had received, and prepared a revised draft of amendments, which was circulated on June 17, 1957. Thereafter, another conference was held with interested industry representatives. Conferences were also held with representatives of the Department of Justice. In addition, the Commission received and considered written comments on both drafts which it had circulated.

The proposals under the Securities Act of 1933 would provide a more workable procedure in stop order proceedings relating to pre-effective registration statements; clarify the jurisdictional basis of the civil liability provisions of the statute; extend civil and criminal liability to documents filed with the Commission in connection with offerings exempt under section 3 (b);[2] increase to $500,000 the size of offerings which may be exempted from registration pursuant to section 3 (b);[3] make explicit that a registrant may withdraw his registration statement except where the statement is subject to a stop order or a stop order proceeding; make it clear that a showing of past violations is a sufficient basis for injunctive relief;[4] and make it clear that aiders and abettors may be liable in civil and administrative proceedings.[5]

The proposed amendments to the Securities Exchange Act of 1934 would establish as a basis for Federal jurisdiction the status of a person as an exchange member, or a broker or dealer doing business through a member, or a registered broker or dealer; clarify and strengthen the statutory provisions relating to manipulation and to the financial responsibility of brokers and dealers; authorize the Commission to regulate by rule the borrowing, holding or lending of customers' securities by a broker or dealer; make it clear that attempts to purchase or sell securities are covered by the anti-fraud provisions of the statute; make unlawful under the Act the misappropriation of money or securities of, or entrusted to the care of, an exchange member or a registered broker or dealer; implement the provisions relating to the denial or revocation of broker and dealer registration with respect to the basis on which such action may be taken, the sanction which may be imposed, the conditions under which an application for registration may be withdrawn, and

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[2] The proposed amendment for the extension of civil liability in connection with documents filed under sec. 3 (b) was also embodied in H. R. 173.

[3] See p. 15 *infra*.

[4] Also proposed with respect to the Securities Exchange Act of 1934.

[5] Also proposed with respect to the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940.

the postponement of the effectiveness of an application for registration; authorize the Commission to suspend or withdraw the registration of a securities exchange when the exchange has ceased to meet the requirements of original registration; and provide for adjudication of an insolvent broker or dealer as a bankrupt in an injunctive proceeding instituted by the Commission.

Changes are proposed in the Trust Indenture Act of 1939 to conform certain provisions of that statute to certain of the recommendations made in connection with the Securities Act.

The proposals with reference to the Investment Company Act of 1940 would require an investment company to state as a matter of fundamental policy, which generally could not be changed without the consent of its stockholders, the extent to which it intends to invest in particular types of securities and such other basic investment objectives it represents it will emphasize; strengthen the provisions requiring that there be a minimum number of independent or nonmanagement directors; limit the extent to which a face amount investment company may include preferred and common stocks in its "qualified investments"; make clear the application of the statute to an "advisory board"; and clarify the exceptions for companies engaged in banking, insurance, small loan, factoring, discount or real estate businesses.

The proposals under the Investment Advisers Act of 1940 would expand the basis for disqualification from registration because of prior misconduct; authorize the Commission by rule to require the keeping of books and records and the filing of reports; permit periodic examinations of books and records; empower the Commission by rule to define, and prescribe means reasonably designed to prevent, fraudulent practices; extend criminal liability for a willful violation of a rule or order of the Commission; and implement the provisions relating to the postponement of effectiveness and withdrawal of applications for registration.

Many minor amendments are also proposed.

Proposal to Increase Registration Fees

In response to various inquiries made of the Commission by the Chairman of the Committee on Banking and Currency of the Senate, by the Chairman of the Committee on Interstate and Foreign Commerce of the House of Representatives, by the Chairman of the Independent Offices Subcommittee of the Committee on Appropriations of the House of Representatives, and by the Bureau of the Budget, the Commission on April 5, 1957, submitted to the Chairman of the Committee on Interstate and Foreign Commerce of the House of Representatives a proposal for an amendment of section 31 of the

Securities Exchange Act of 1934, which would increase the statutory fees provided by that section. The Commission recommended introduction of this bill, stating that if the Congress desired to increase the receipts to the Treasury of the fees provided by the Federal securities laws this proposal would be an appropriate and feasible method of so doing. It would spread the impact of the fees over all of the investing public for whose benefit the various acts the Commission administers were enacted, without imposing any undue burden upon any securities industry or group or class of investors.

Under existing law the fee for the registration of exchanges provided by section 31 of the Securities Exchange Act of 1934 is one five-hundredths of 1 percent of the aggregate dollar amount of stock exchange transactions (equal to 2 cents per $1,000). The Commission proposed that the exchange registration fee under the Securities Exchange Act be increased to a rate of 5 cents per $1,000 and that there be a similar registration fee for brokers and dealers of 5 cents per $1,000 on transactions effected otherwise than on a national securities exchange. If the proposed fees had been in effect during the 1956 fiscal year, these, together with receipts from other fees which the proposal does not contemplate changing, would have resulted in receipts by the Commission of approximately $4,250,000, as against total fees actually received of $2,053,932.

On May 27, 1957, Congressman Harris, as Chairman of the House Interstate and Foreign Commerce Committee, introduced the Commission's proposal as H. R. 7778, which was referred to that Committee. Subsequently, on July 11, 1957, Senator Lausche, as Chairman of the Subcommittee on Securities of the Senate Committee on Banking and Currency, favorably reported to the Senate an identical bill (with two minor exceptions), as S. 2520.[6] The Senate passed S. 2520 on August 8, 1957, and sent it to the House on the same date, where it was referred to the Committee on Interstate and Foreign Commerce. The House Committee had taken no action on either H. R. 7778 or S. 2520 at the close of the first session of the Congress.

Registration of Unlisted Securities of Certain Companies Having Large Public Investor Interest

On February 11, 1957, Senator J. W. Fulbright, Chairman of the Committee on Banking and Currency, introduced S. 1168, a bill to amend the Securities Exchange Act of 1934 to extend the reporting provisions of sections 12, 13 and 16 and the provisions of section 14 relating to the solicitation of proxies to certain corporations whose securities are publicly held but are not listed and registered on a national securities exchange. As originally introduced, the bill ap-

[6] S. Rept. 605, dated July 11, 1957.

plied to corporations having more than 750 stockholders or debt securities of more than $1 million outstanding in the hands of the public, and $2 million of assets. It would have required such corporations to register with the Commission and file with it annual and other periodic reports now required only of corporations with listed and registered securities. The bill would have also subjected such corporations to the Commission's proxy rules and the insider-trading provisions of the Act.

S. 1168, as originally introduced, was, with one exception, identical with the August 5, 1955, print of S. 2054, introduced by Senator Fulbright in the 84th Congress, which had been favorably reported by the Subcommittee on Securities to the Senate Committee on Banking and Currency.[7] The exception was that the exemption for insurance companies contained in the August 5, 1955, print of S. 2054 was not contained in the original draft of S. 1168. No final action on S. 2054 was taken by the Committee during the 84th Congress. However, before that Congress adjourned, Senator Fulbright, as Chairman of the Committee, requested the Commission to extend a study it had previously made of those corporations which would come within the scope of S. 2054 to include insurance companies. The study the Commission had previously submitted to the Committee did not cover insurance companies because they were expressly exempted from S. 2054. In compliance with the Committee's request, the Commission sent questionnaires to more than 530 insurance companies to obtain the data necessary for making an objective, factual appraisal of the financial, reporting and proxy practices of insurance companies. The Commission's study showed that deletion of the insurance company exemption from the bill would extend the bill's coverage to approximately 169 insurance corporations having total assets of about $24 billion. Shortly after the 85th Congress convened, the Commission submitted the supplemental report to the Committee on Banking and Currency,[8] and expressed the opinion that it would be consistent with the purposes of the Federal securities laws and of the proposed bill that the insurance company exemption be deleted.

The Commission in general supported the original draft of S. 1168 both in written comments and in hearings held before the Subcommittee on Securities. The Commission, however, urged two amendments: (1) That the applicability of the provisions of existing section 16 (b) to the corporations subject to the bill be eliminated pending further study by the Commission, and (2) that section 15 (d) not be repealed as provided in the bill. Subject to these amendments, the

[7] For the background and history of S. 2054, 84th Cong., see the 22nd Annual Report of the Securities and Exchange Commission, pp. 9–11.

[8] Committee Print, Supplementary Report of SEC on S. 2054, February 11, 1957.

Commission expressed the opinion that the bill would provide additional protection to investors in corporate securities in which there is a broad public investor interest and which are sold and traded in the interstate securities markets by requiring disclosure of the business and financial facts pertaining to the corporations issuing them, and that it would strengthen the protections against fraud afforded to investors.[9]

The Committee reported the bill out to the Senate with amendments reducing its application to companies having $10 million of assets and more than 1,000 stockholders of record and deleting the debt security test.[10] Also the same exemption for insurance companies as was provided in S. 2054 was added to the bill. The Commission's suggestions with respect to sections 15 (d) and 16 (b) were adopted.

No action was taken by the Senate during the first session of the 85th Congress.

Proposals To Amend the Exemption From Registration for Small Issues

S. 810, introduced by Senator Edward F. Thye, and S. 843, by Senator John J. Sparkman, would each amend section 3 (b) of the Securities Act of 1933 to increase to $500,000 the $300,000 maximum limit presently authorized by this exemptive provision.

In written comments to the Senate Committee on Banking and Currency, and in testimony before the Subcommittee on Securities, the Commission supported both bills, pointing out that the proposed amendment to section 3 (b) would be in the public interest generally and that its own proposed legislative program contained a provision substantially similar to that of these bills.[11]

On June 14, 1957, the committee favorably reported S. 2299, a bill substantially similar to S. 810 and S. 843.[12] Subsequently, on June 26, 1957, the Senate passed S. 2299, and it was sent to the House of Representatives where it was referred to the Committee on Interstate and Foreign Commerce. At the request of this Committee, the Commission submitted written comments in which it urged enactment of the bill. Hearings had not yet been scheduled by the House Committee at the close of the first session of the Congress.

Reporting Requirement of Beneficial Owners of Registered Securities

S. 594, a bill to amend section 16 (a) of the Securities Exchange Act of 1934 to require beneficial owners of more than 5 percent (instead of the present 10 percent requirement) of any class of any

[9] Hearings before a Subcommittee of the Committee on Banking and Currency, U. S. Senate, 85th Cong., 1st sess., on S. 594, S. 1168 and S. 1601, May 21–29, p. 61 *et seq.*

[10] S. Rept. 700, dated July 24, 1957.

[11] Hearings before a Subcommittee of the Committee on Banking and Currency, U. S. Senate, 85th Cong., 1st sess., on S. 810 and S. 843, May 20–29, pp. 4–6, 9–15.

[12] S. Rept. 438, dated June 14, 1957.

equity security registered on a national securities exchange to file with the Commission reports of their holdings and transactions, was introduced by Senator Homer E. Capehart on January 14, 1957.

In written comments and in hearings held by the Subcommittee on Securities of the Senate Committee on Banking and Currency, the Commission raised no objection to the bill, pointing out that disclosure of 5 percent ownership might serve to permit management or any other group to determine whether substantial beneficial holdings were being accumulated and the identity of beneficial holders accumulating them.[13]

The Committee had taken no action on the bill at the close of the first session of the Congress.

Disclosure of Beneficial Ownership of Registered Securities in Election Contests

On March 14, 1957, Senator Capehart introduced S. 1601, a bill directed to identifying beneficial owners in proxy contests. The bill would add to section 14 of the Securities Exchange Act of 1934 a provision making it unlawful for any person to give or to attempt to give a proxy to vote a security registered on a national securities exchange at any meeting for the election or removal of directors, with respect to which meeting proxies are solicited by opposing nominees, unless (1) such person is the beneficial owner of the security, or (2) the name and last known address of the beneficial owner appear on the proxy. In addition, the bill would make it unlawful for any person knowingly to exercise or attempt to exercise any proxy in violation of this provision.

In a memorandum and in hearings before the Subcommittee on Securities of the Senate Committee on Banking and Currency in May 1957, the Commission opposed S. 1601, expressing the views that (1) there was a substantial question as to whether the bill would actually obtain disclosure of beneficial ownership; (2) in any event, the bill would not provide investors at the time of the execution of their proxies with any additional information as to the beneficial ownership of other security holders; and (3) the bill's enactment might well impede the conduct of corporate meetings.[14]

Other Bills Introduced in the Congress To Amend the Federal Securities Laws

The Commission also prepared written comments, at the request of appropriate committees of the Congress, on the following bills to amend the Federal securities laws.

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[13] Hearings before a subcommittee of the Committee on Banking and Currency, U. S. Senate, 85th Cong., 1st sess., on S. 594, S. 1168, and S. 1601, May 21–29, pp. 11–12.

[14] *Id.* at p. 12 *et seq.*

S. 2197, introduced by Senator Olin B. Johnston, would amend section 3 (a) (2) of the Securities Act of 1933 to exempt from registration any security secured by mortgages insured or guaranteed by the Veterans' Administration or the Federal Housing Administration.

H. R. 137, introduced by Representative Leonard Farbstein, would provide for civil liability on the part of those responsible for untrue statements of material facts or omissions to state material facts in any statement or document filed with the Commission in connection with an offering pursuant to an exemption under section 3 (b) of the Securities Act. This proposal is also embodied in the Commission's legislative program.[15] H. R. 4744, introduced by Representative John B. Bennett, would make applicable to exempt offerings under section 3 (b) the strict civil liabilities now pertaining solely to registered offerings.[16]

H. R. 810, introduced by Representative Abraham J. Multer, would amend section 16 (a) of the Securities Exchange Act of 1934 to require officers and directors to report to the Commission pledges, hypothecations and loans of securities registered on national securities exchanges.

H. R. 2456, introduced by Representative Edna F. Kelly, would amend section 11 of the Securities Exchange Act of 1934 to require the Commission to prescribe regulations, embodying insofar as practicable the principles of the Federal Deposit Insurance Act, which would require brokers to maintain insurance for the protection of customers' funds intrusted to them.

All of these bills were still in committee at the close of the first session of the 85th Congress.

Other Legislative Proposals

The Commission devoted a substantial amount of time to matters pertaining to other legislative proposals referred to it for comment and to congressional inquiries. During the fiscal year 1957, a total of thirty-three legislative proposals were analyzed at the request of appropriate congressional committees, as compared with nineteen during the preceding fiscal year. In addition, numerous congressional inquiries relating to matters other than specific legislative proposals were received and answered.

Congressional Hearings

Senate Internal Security Subcommittee of the Committee on the Judiciary.—In April 1957, former Chairman Armstrong and other members of the Commission appeared before the Internal Security

[15] See p. 11, supra.

[16] H. R. 173 and H. R. 4744 are identical with H. R. 11308 and H. R. 9319, respectively, introduced in the 84th Cong. The background of the latter bills are discussed in the 22nd Annual Report of the Commission, pp. 11–12.

Subcommittee of the Senate Committee on the Judiciary. The Chairman presented a detailed discussion of the enforcement problems arising out of the purchase and sale of securities in the United States by or on behalf of persons and institutions in foreign countries. Particular attention was called to the problems arising in connection with proxy regulations, insider-trading, manipulative practices and other related matters. The General Counsel of the Commission presented a statement dealing with the obtaining of information from foreign sources, particular attention being directed to provisions of the Swiss Banking Act and the Swiss Espionage Act.

In response to the request of the Subcommittee, the General Counsel testified in a hearing held in New York City during June, 1957. As a matter ancillary to the main inquiry, namely the possibility of acquisition of control of domestic corporations by anonymous foreign interests, the Subcommittee was interested in the experience of the Commission in its attempts to detect the identities of those who make use of foreign devices to circumvent the operation of the Federal securities laws. At the request of the Subcommittee, the General Counsel prepared and submitted a memorandum pointing out that substantial investigatory problems are created due to the difficulty of eliciting information from foreign sources, but indicating that the Commission has secured desired information through other means.

Senate Subcommittee on Welfare and Pension Funds of the Committee on Labor and Public Welfare.—On May 29, 1957, Commissioner Andrew Downey Orrick, then Acting Chairman of the Commission, testified before the Subcommittee on Welfare and Pension Funds of the Senate Committee on Labor and Public Welfare concerning S. 1122, S. 1813, and S. 2137.[17] These bills, which designate the Commission as the administering agency, provide for the registration of employee welfare and pension funds. Similar bills are being studied by the Committee which name other agencies to administer them. In addition to registering, certain funds would be required annually to report changes respecting portfolios, officers, trustees, and other matters. The persons administering the funds would be charged with the responsibility for filing these reports, and the bills prescribe both civil and criminal penalties for failure to file registrations or reports or for the violation of fiduciary duties specifically described therein.

Previously, on March 8, 1957, the Commission had submitted a memorandum of comments on several Welfare and Pension Plan Disclosure bills, including S. 1122. This memorandum contained techni-

[17] Hearings before the Subcommittee on Welfare and Pension Funds of the Committee on Labor and Public Welfare, U. S. Senate, 85th Cong., 1st sess., May 27–July 1, 1957, p. 99 *et seq.*

cal suggestions concerning the bills as well as an estimate of the cost which would be incurred if the Commission were to administer S. 1122.[18] At the request of the Subcommittee, the Commission prepared two supplemental memoranda. The first, submitted on June 21, 1957, expressed the Commission's views that it was not the appropriate agency to administer the legislation, compared S. 1122 and S. 2175 and discussed the need for such legislation and its probable impact upon the capital markets.[19] The second supplemental memorandum compared a portion of the proposed legislation with provisions of the Investment Company Act.[20]

No action has been taken on these bills.

Subcommittee on Securities of the Senate Committee on Banking and Currency.—In March and again in May 1957 former Chairman Armstrong, the other Commissioners, and several staff members appeared before the Subcommittee on Securities of the Senate Committee on Banking and Currency. At each of these hearings Chairman Armstrong presented a statement and answered inquiries concerning the Commission's position with respect to certain proposed securities legislation under consideration. Of particular concern were the provisions of Senate bills S. 594, S. 810, S. 843, S. 1168 and S. 1601. These bills and the Commission's position thereon are discussed *supra* at pages 13 to 16.

Other Hearings.—In addition to the hearings mentioned heretofore, the Commission and staff members presented to the House Interstate and Foreign Commerce Committee a general discussion of the Commission's activities and the particular problems currently facing the Commission. The Commission and various members of its staff also appeared before the Anti-Monopoly Subcommittee of the Senate Committee on the Judiciary. In addition, various members of the Commission and staff members testified in executive sessions of the Internal Security Subcommittee of the Senate Committee on the Judiciary, the Permanent Investigation Subcommittee of the Senate Committee on Government Operations and the Subcommittee on Securities of the Senate Committee on Banking and Currency.

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[18] *Ibid.*, p. 62.
[19] *Ibid.*, p. 119.
[20] *Ibid.*, p. 122.

PART III

REVISION OF RULES AND FORMS

The Commission maintains a continuous program of reviewing its rules, regulations and forms under the various acts in order to keep abreast of constantly changing conditions in the securities industry. Apart from the periodic review conducted by certain staff members specifically assigned to this task, the need for changes is brought to the attention of the Commission in several different ways. In some instances, changes are requested or suggested by investors or by issuers, underwriters or their attorneys, accountants, or other representatives. Within the Commission, changes may be suggested by members of the staff as a result of reviews of the operation of the rules and regulations and the examination of material filed with the Commission. In accordance with the Administrative Procedure Act, most proposed new rules and forms are published prior to their adoption in order to obtain the views of all interested persons, including issuers and various industry groups. During the 1957 fiscal year, the Commission published for comment or adopted a number of proposed changes in its rules and forms which are described below.[1]

Proposed Revision of Rule 133 Under the Securities Act of 1933

This rule, which is in the form of a definition of the terms "sale," "offer," "offer to sell" and "offer for sale," operates to make the registration and prospectus requirements of the Securities Act of 1933 inapplicable to securities issued in connection with certain mergers, consolidations, reclassifications and transfers of assets between corporations. The statutory construction embodied in this rule was developed in the early days of the Commission.[2] A review of the operation of this rule led the Commission to conclude that the rule should be reconsidered. Accordingly, in the latter part of 1956 the Commission invited views and comments on a proposed revision of the rule which

[1] The rules and regulations of the Commission are published in the Code of Federal Regulations, the rules adopted under the various Acts administered by the Commission appearing in the following parts of Title 17:

Securities Act of 1933, part 230.
Securities Exchange Act of 1934, part 240.
Public Utility Holding Company Act of 1935, part 250.
Trust Indenture Act of 1939, part 260.
Investment Company Act of 1940, part 270.
Investment Advisers Act of 1940, part 275.

[2] See 22nd Annual Report, Securities and Exchange Commission, p. 45.

would have the effect of rescinding the existing rule and substituting therefor one which would define the above terms to include the solicitation of a vote, consent or authorization of stockholders of a corporation in favor of such mergers, consolidations, reclassifications and transfers of assets.[3] A public hearing was held on the proposed revision in January, 1957 [4] and in March the Commission announced that it would not adopt the proposed rule as published but would give the matter further study and consideration.[5] The matter was still pending at the end of the fiscal year.

Adoption of Rule 434A and Amendment of Forms S–1 and S–9 Under the Securities Act of 1933

Section 10 (b) of the Securities Act as amended in 1954 [6] authorizes the Commission to adopt rules and regulations permitting the use of a prospectus which omits in part or summarizes information set forth in the more complete prospectus required to be used in connection with the sale of securities. Acting pursuant to this authority, the Commission on November 26, 1956, adopted rule 434A which permits the use of a summary prospectus in the offering of securities registered on Forms S–1 or S–9 by registrants which are required to file annual and other reports under section 13 or 15 (d) of the Securities Exchange Act of 1934.[7] Summary prospectuses provided for by this rule are not intended to supplant the complete prospectuses which must be furnished to purchasers of securities registered under the Securities Act. The purpose of such prospectuses is to furnish prospective investors with a condensed or summarized statement of some of the more important information contained in the registration statement so as to enable them to determine whether they would be interested in receiving more complete information in regard to the securities being offered. Summary prospectuses thus facilitate the dissemination of information in regard to registered securities and also serve as a screening device which enables issuers, underwriters and dealers to ascertain who is and who is not interested in receiving the complete prospectus.

Forms S–1 and S–9 were amended in connection with the adoption of rule 434A so as to authorize the use of summary prospectuses in connection with the offering of securities registered on these forms. The amended instructions superseded the instructions as to newspaper prospectuses previously contained in these forms since under the amended instructions the two types of prospectuses are combined.

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[3] Securities Act Release No. 3698 (October 2, 1956).
[4] Securities Act Release No. 3728 (December 17, 1956).
[5] Securities Act Release No. 3761 (March 15, 1957).
[6] Public Law 577, 83d Cong.
[7] Securities Act Release No. 3722 (November 26, 1956).

Thus a summary prospectus may be published in a newspaper or other periodical or printed in a form suitable for distribution in the form of a circular, letter or otherwise.

Adoption of Note to Rule 460 Under the Securities Act of 1933

The Commission is authorized by section 8 (a) of the Securities Act to accelerate the effective date of a registration statement, having due regard to the adequacy of the information respecting the issuer theretofore available to the public, the facility with which investors can understand the nature of and rights attaching to the securities to be registered and their relationship to the capital structure of the issuer, and to the public interest and the protection of investors. Historically, the Commission has passed upon requests for acceleration on a case-by-case basis after consideration of all the pertinent facts. However, with the passage of time, certain of the principal areas in which the Commission has refused acceleration have formed a pattern. Accordingly, the Commission submitted to the public a proposed codification of certain of these bases upon which acceleration might be denied.[8] After a public hearing,[9] the Commission adopted as a note to rule 460 a codification of the principal grounds upon which it would ordinarily deny acceleration of the effective date of a registration statement.[10] The note gives notice of the Commission's policy against acceleration in certain cases where provision is made for indemnification by the registrant of its officers, directors, or controlling persons against liabilities arising under the Securities Act, where the registrant, a controlling person, or an underwriter is being investigated for possible violation of the statutes administered by the Commission, where an underwriter who is committed to purchase securities does not meet certain standards of financial responsibility, and where there have been transactions by persons connected with the offering which may have artificially affected the market price of the security being offered.

Rescission of Rules 132, 151, and 414 Under the Securities Act of 1933

Rule 132 was adopted prior to the 1954 amendments to the Securities Act of 1933[11] to provide for the use of so-called identifying statements in connection with securities registered or in the process of registration under that Act. Section 2 (10) (b) of the Act as amended in 1954 gave the Commission explicit authority to adopt rules providing for the use of substantially the same type of ad-

[8] Securities Act Release No. 3672 (August 9, 1956).
[9] Securities Act Release No. 3729 (December 18, 1956).
[10] Securities Act Release No. 3791 (May 28, 1957).
[11] Public Law 577, 83d Cong.

vertisements as those previously provided by rule 132. Acting pursuant to this authority the Commission adopted rule 134 in 1955.[12] Inasmuch as this rule superseded rule 132, the latter was rescinded.[13]

Rule 151 was adopted by the Commission not long after the enactment of the Securities Act of 1933. It defined for certain transactions the term "issuance" as used in the former section 4 (3) of the Act as in effect prior to July 1, 1934. Since the rule applied only to offerings commenced prior to that date, it had become obsolete and was rescinded.[14]

Rule 414 was adopted in connection with rule 132. It required the filing with the registration statement of identifying statements proposed to be used pursuant to rule 132. With the rescission of that rule, rule 414 no longer served any purpose and was rescinded.[15]

Amendment of Rules 100, 170, and 426 Under the Securities Act of 1933

In the latter part of 1956, the Commission reprinted its General Rules and Regulations under the Securities Act of 1933 using the "section" designations of such rules in the Code of Federal Regulations.[16] In order to avoid possible confusion between sections of the Act and sections of the Code, rule 100 was amended by deleting therefrom the definition of the term "section" which defined the term as meaning a section of the Act.[17]

Rule 170 was adopted some years ago to prohibit the use of pro forma financial statements which give effect to the receipt and application of any part of the proceeds from the sale of the securities being offered unless the entire issue is firmly underwritten. The rule was amended to make it clear that it is intended to permit the use of such financial statements not only where there is a firm commitment to take the issue but also where there is no such commitment, provided the underwriters have agreed to take all of the securities, if any are taken, or to refund to public investors all subscription payments made, if the underwriters elect not to take the issue.[18]

Rule 426 requires the inclusion in a prospectus for registered securities of certain statements and information in regard to stabilizing activities. The rule was amended to require, in the case of a rights offering to existing security holders, that the prospectus used in connection with any reoffering of the unsubscribed securities to the general public shall contain information in regard to trans-

[12] Securities Act Release No. 3568 (August 29, 1955). See 21st Annual Report, p. 4.
[13] Securities Act Release No. 3692 (September 20, 1956).
[14] Id.
[15] Id.
[16] For example, the Code of Federal Regulations designation of rule 100 is § 230.100.
[17] Securities Act Release No. 3692 (September 20, 1956).
[18] Id.

actions effected by the issuer or the underwriters during the rights offering period. The amendment merely codified previous administrative practice in this respect.[19]

Revision of Regulation A Under the Securities Act of 1933 and Withdrawal of Proposed Amendments Thereto

Shortly after the beginning of the 1957 fiscal year, the Commission adopted a revised regulation A which provides, subject to certain terms and conditions, a general exemption for certain issues of securities not in excess of $300,000. A similar exemption provided by regulation D for Canadian securities was merged into regulation A, so that the regulation as currently in effect provides a general exemption for both domestic and Canadian securities.[20] The revised regulation A was described in some detail in the 22nd Annual Report.[21]

When the Commission adopted the revised regulation A, it announced that it had under consideration certain further amendments of regulation A in addition to those contained in the revised regulation.[22] These further amendments would have had the effect of making the exemption provided by that regulation available only to issuers and offerings meeting specific standards based either upon the existence of a record of net earnings by the issuer or upon a limitation of the number of securities which might be issued pursuant to the exemption. After further consideration of the matter, the Commission determined not to adopt these amendments. It also determined not to adopt a proposed amendment published in December 1955, which would have required the certification of financial statements filed under regulation A.[23]

With respect to the proposals which would restrict the use of regulation A to seasoned companies and offerings of a limited number of units, the Commission concluded that there is no public investor need for the imposition of such restrictions at the present time. This conclusion was reached after considering the comments received in regard to the proposed amendments, most of which were opposed to such amendments, and the Commission's experience in the administration of regulation A following its revision in July 1956. There has been a reduction in the filings under regulation A and this fact plus the Commission's stepped-up enforcement program led the Commission to believe that the problems to which these proposals related are effectively dealt with by regulation A as presently in effect.

With respect to the proposal to require certified financial statements, the Commission concluded that, in view of the nature of the

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[19] Id.
[20] Securities Act Release No. 3663 (July 23, 1956).
[21] P. 28 ff.
[22] Securities Act Release No. 3664 (July 23, 1956).
[23] Securities Act Release No. 3783 (May 9, 1957).

disclosure requirements of regulation A and taking into account the limited financial information which is available with respect to promotional companies as well as the added expense which certified financial statements would impose on small businesses which use that regulation, such requirement should not be imposed.

Withdrawal of Proposal To Amend Form S–1

This proposed amendment related to the registration of securities under the Securities Act of 1933 for the purpose of making a rights offering to existing security holders by certain large, established foreign enterprises.[24] The amendment would have permitted such issuers, with the exception of North American and Cuban issuers, to furnish uncertified financial statements if certain conditions were met. The proposed amendment was withdrawn when the Commission concluded that there appeared to be no present need for it.[25]

Proposed Revisions of Forms S–2 and S–3

Form S–2 is used for registration under the Securities Act of 1933 of securities of commercial and industrial companies in the promotional or developmental stage. Form S–3 is a similar form for mining companies in the exploratory or developmental stage. Revisions were proposed to bring the forms up to date in the light of the Commission's experience and current administrative practice.[26] In connection therewith, Form S–11, another form for mining companies in the exploratory stage, would be merged into Form S–3 so that there would be only one form for use by this type of mining companies. The proposed revisions were still under consideration at the end of the fiscal year.[27]

Amendment of Forms S–4, S–5 and S–6

These forms are used for registration under the Securities Act of 1933 of securities of investment companies registered under the Investment Company Act of 1940. A registration statement on any of these forms consists of certain of the information and documents which would be required in a registration statement under the Investment Company Act of 1940 if such a statement were currently being filed. Registrants on this form are thus permitted to base their registration statements under the 1933 Act in large part upon the information and documents filed with the Commission in the original registration statement under the 1940 Act and in subsequent reports filed thereunder. Such data are supplemented by information and

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[24] Securities Act Release No. 3735 (December 21, 1956).

[25] Securities Act Release No. 3782 (April 30, 1957).

[26] Securities Act Release No. 3668 (August 2, 1956), and Securities Act Release No. 3700 (October 4, 1956).

[27] Revised Forms S–2 and S–3 were adopted August 19, 1957, effective September 19, 1957. See Securities Act Releases Nos. 3828 and 3829.

documents required for registration under the 1933 Act which have not been previously furnished under the 1940 Act.

Form S–4, which is used for registration of securities of closed-end management companies, was revised during the fiscal year to bring it into line with a revision of the corresponding basic Form N–8B–1 under the Investment Company Act.[28] A further amendment of this form and of Form S–5 was, at the end of the fiscal year, being considered in connection with the Commission's consideration of certain proposed amendments to its Statement of Policy with respect to sales literature used in the sale of investment company securities.[29] The Commission also has under consideration a proposed revision of Form S–6 which is used for registration of securities of unit investment trusts and securities of certain unincorporated management investment companies.[30]

Proposed Amendments to Statement of Policy Relating to Investment Company Sales Literature

The Commission continued during the fiscal year its consideration of certain proposed amendments to its Statement of Policy relating to sales literature used by investment companies registered under the Investment Company Act of 1940. The Statement of Policy was adopted in 1950 and was amended in January 1955. It is designed to serve as a guide for issuers, underwriters and dealers in the preparation of such sales literature so as to avoid violation of the antifraud provisions of section 17 of the Securities Act of 1933. A public hearing on the proposed amendments was held November 15, 1956. After considering the testimony and after further consultation with industry representatives, a revised draft of the proposed amendments was published in May 1957.[31] At the close of the year the Commission was considering the comments received as a result of the publication of this draft and was continuing its discussion with industry representatives.[32]

Amendment of Rule 12b–35 and Form 10–K Under the Securities Exchange Act of 1934

During the fiscal year the Commission took under consideration a revision of rule 12b–35 of its General Rules and Regulations under the Securities Exchange Act of 1934.[33] This rule permits registrants under the Securities Act of 1933 to file an application for registration of securities on a national securities exchange consisting principally

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[28] Securities Act Release No. 3711 (October 29, 1956).

[29] Securities Act Release No. 3789 (May 27, 1957). These amendments were adopted after the end of the fiscal year; see Securities Act Release No. 3854 (October 30, 1957).

[30] Securities Act Release No. 3690 (August 27, 1956).

[31] Securities Act Release No. 3790 (May 27, 1957).

[32] The amendments were adopted on October 31, 1957. Securities Act Release No. 3856.

[33] Securities Exchange Act Release No. 5471 (March 11, 1957).

of its registration statement under the Securities Act and any annual, semiannual or current reports filed pursuant to section 15 (d) of the Securities Exchange Act. The principal purpose of the revision is to conform the rule to the requirements of the Commission's existing forms and to provide that the rule may not be used unless the registration statement filed as a part of the application for registration contains substantially all of the information which would be required by the appropriate application form.[34]

The Commission also considered a proposed amendment to its Form 10–K.[35] This form is the principal form used for annual reports by listed companies and Securities Act registrants which are subject to the reporting requirements under sections 13 and 15 (d) of the Securities Exchange Act. The proposed amendment would require extractive enterprises to furnish such material information in regard to their production, reserves, and other matters as might be necessary to keep reasonably current the information previously reported in regard thereto.[36]

Amendment of Forms 4, U–17–2 and N–30F–2

These forms are used by directors, officers and principal stockholders for monthly reports of their security transactions and holdings pursuant to the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935 and the Investment Company Act of 1940. On November 29, 1956, the Commission amended these forms to require persons reporting thereon to identify purchases made through the exercise of options and in private transactions. The purpose of the amendment is to enable persons studying these reports to distinguish between such purchases and purchases made on the open market.[37]

Amendment of Forms N–8B–1 and N–30A–1

These forms are used respectively for registration statements and annual reports of management investment companies registered under the Investment Company Act of 1940. The Commission adopted similar amendments to each of these forms governing the computation of certain required ratios.[38] At the close of the year the Commission also had under consideration a further amendment to Form N–8B–1 which would require the registrant to supply certain summarized income and expense data and certain percentage ratios

[34] Revised rule 12b–35 was adopted on August 19, 1957, effective September 19, 1957. See Securities Exchange Act Release No. 5566.

[35] Securities Exchange Act Release No. 5471 (March 11, 1957).

[36] The proposed amendment to Form 10–K was withdrawn August 19, 1957. See Securities Exchange Act Release No. 5566.

[37] Securities Exchange Act Release No. 5410 (November 29, 1956).

[38] Investment Company Act Release No. 2430 (October 29, 1956).

for the past 10 years.[39] As mentioned above, this information would also be furnished in registration statements under the Securities Act of 1933 by management investment companies registering securities under that Act.[39a]

Amendment of Rule 17d–1 Under the Investment Company Act of 1940

During the fiscal year the Commission adopted amended rule 17d–1 designed to adapt the rule more closely to the language of section 17(d) of the Investment Company Act, which grants the Commission regulatory powers with respect to profit sharing and joint venture relationships between investment companies and their affiliates.[40] The prior rule had required Commission approval of pension and bonus plans whether or not such plans involved profit sharing. The amended rule applies only to profit-sharing arrangements.

Proposed Revision and Consolidation of Forms N–8B–2 and N–8B–3

This proposed revision and consolidation would result in a single form for registration statements filed under the Investment Company Act of 1940 by unit investment trusts which are currently issuing securities and by unincorporated management investment companies which are issuing periodic payment plan certificates.[41] The proposed revision is the first general revision of these forms since they were adopted in 1942. As a result of the experience gained over the intervening years and in view of the fact that the form is now used chiefly by newly organized companies, it is proposed that these forms be simplified. Much of the historical information relating to the operations of companies which were in existence at the time of the passage of the Act is no longer of importance and hence the requirement for furnishing such information would be omitted under the proposed revision. Inasmuch as the requirements for this form serve as a basis for furnishing information required in registration statements under the Securities Act of 1933, the proposed new form is being considered with registration under that Act particularly in mind.

Adoption of Rule 17a–7 Under the Securities Exchange Act of 1934

Rule 17a–3 under the Securities Exchange Act of 1934 requires all registered brokers and dealers to make and keep current specified books and records relating to their business. Rule 17a–4 provides that such books and records shall be maintained in an easily accessible place during specified periods. These books and records are subject to inspection by representatives of the Commission under section 17

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[39] Investment Company Act Release No. 2536 (May 27, 1957).

[39a] This amendment was adopted October 30, 1957, Investment Company Act Release No. 2618.

[40] Investment Company Act Release No. 2472 (January 10, 1957).

[41] Investment Company Act Release No. 2401 (August 27, 1956).

(a) of the Act. The above rules, however, were not specifically designed to make accessible to the Commission the books and records of foreign brokers and dealers registered with the Commission.

On July 16, 1956, the Commission adopted rule 17a–7 requiring each nonresident broker or dealer, as defined in the rule, to maintain in the United States, at a place designated by him in a written notice filed with the Commission, complete and current copies of the books and records he is required to maintain under any rule adopted under the Securities Exchange Act of 1934, unless he files with the Commission a written undertaking, in substantially the form provided for in the rule, to furnish to the Commission upon demand copies of any, all or any part of his books and records specified in the demand.[42]

Amendment of Rule 15c2–3 Under the Securities Exchange Act of 1934

Rule 15c2–3 was adopted on January 11, 1954,[43] after validation procedures for German bonds were established, to prohibit trading in invalid West German securities. This rule made it unlawful for any broker or dealer to effect any transaction in the over-the-counter market in any security required to be validated under any applicable law of the Federal Republic of Germany unless (*a*) such security was duly validated, and (*b*) if such security was a dollar security, there was attached a document of the Validation Board for German Dollar Bonds certifying to the validation of such security. The rule was amended on March 19, 1954,[44] to make it possible for brokers and dealers to trade in interest coupons detached from German bonds which had been duly validated. Subsequently information available to the United States indicated that a considerable number of interest coupons detached from unvalidated German bonds were in the possession of lawful holders. It appeared that these bonds had been duly repurchased or acquired by the German issuers, that the interest coupons were lawfully detached when the holders sold the bonds, and that many of the bonds were among those which were stolen in Berlin after the end of World War II. After the German Government passed an ordinance providing for validation of such coupons, the Validation Board for German Dollar Bonds undertook to issue to each registrant one instrument with respect to all such coupons of the same issue since, because of administrative difficulties, it was not possible for the Validation Board to issue separate validation instruments for each coupon. In order to legalize trading in such coupons and to protect purchasers the Commission amended its rule 15c2–3 to provide that when a broker-dealer effects a transaction in a validated

[42] Securities Exchange Act Release No. 5336.
[43] Securities Exchange Act Release No. 4983.
[44] Securities Exchange Act Release No. 5011.

interest coupon detached from an unvalidated German dollar bond he must deliver with the coupons the document of the Validation Board certifying to the validation of such coupons.[45]

Amendment of Rule 12f–2 Under the Securities Exchange Act of 1934

Rule 12f–2 provides for the continuation of unlisted trading privileges granted to a security pursuant to section 12 (f) of the Act when certain changes occur with respect to the security. Before the amendment, the rule provided that a security admitted to unlisted trading privileges would still be deemed to be the security theretofore admitted to such privileges even though certain specified changes occurred, including changes in the par value, the number of shares authorized, or the number of shares outstanding, and that in other cases the exchange could file an application requesting the Commission to find that, notwithstanding such change, the security was substantially equivalent to such security.

On November 23, 1956, the Commission amended the rule [46] so that if any change occurs with respect to a security which is not fully listed and registered on another exchange and such change is accompanied by a major change in the capitalization of the issuer the unlisted trading privileges will continue only if the Commission finds, after application by the exchange that, notwithstanding the change, the security is substantially equivalent to the security theretofore admitted to unlisted trading privileges. A "major change in the capitalization of the issuer" is defined in the rule to mean one where, by reason of one or more mergers, consolidations, acquisitions of assets or securities, or similar transactions, not including a sale of securities for cash, a stock dividend or a stock split, the number of outstanding shares of stock of the issuer has been increased by more than 100 percent within any 12 consecutive calendar months.

Proposal to Amend Rules 15b–8 and 17a–5 Under the Securities Exchange Act of 1934

On May 10, 1957 the Commission published its proposal to amend rules 15b–8 and 17a–5 under the Securities Exchange Act of 1934.[47] Paragraph (a) of rule 17a–5 requires each member, broker, and dealer subject to the rule to file a report of financial condition furnishing the information required on Form X–17A–5 within each calendar year, but reports for any two consecutive years cannot be filed within less than 4 months of each other. The proposed revision of this paragraph of the rule would require reports to be filed as of

[45] Securities Exchange Act Release No. 5370 (September 24, 1956).
[46] Securities Exchange Act Release No. 5405.
[47] Securities Exchange Act Release No. 5515.

a date within each calendar year, except that: (*a*) The first report (for others than successors) would have to be as of a date not less than one nor more than 5 months after the broker or dealer becomes subject to the rule, (*b*) reports could not be as of dates within 4 months of each other, and (*c*) a member, broker, or dealer who succeeds to and continues the business of a predecessor would not have to file a report if the predecessor had filed a report as of that year.

Paragraph (b) (1) of the rule exempts from the certification requirements a member, broker, or dealer who is not required to file a certified financial statement with any State agency or any national securities exchange and who, during the preceding year, has not made a practice of extending credit or holding funds or securities of customers except as an incident to transactions promptly consummated by payment or delivery. In December 1955 the Commission published a proposal to amend paragraph (b) of this rule to require all members, brokers, and dealers subject to the rule to file certified reports.[48] Many comments were received on this proposal suggesting that exemptions should be available to certain members, brokers, and dealers. Under the Commission's revised proposal, three limited exemptions from the requirement to file certified reports would be available. The first exemption would be available to members of national securities exchanges who do not transact business with the public, do not carry margin accounts, credit balances, or securities for persons other than general partners and are not required to file certified financial statements with the exchange. The second would be available to a broker whose securities business is so limited that he has been exempt from the Commission's aggregate-indebtedness-net-capital-ratio rule 15c3–1 by paragraph (b) (1) thereof. The third exemption would be available to a broker or dealer whose securities business is limited to buying and selling evidences of indebtedness secured by liens on real estate and has not carried margin accounts, credit balances, or securities for securities customers.

Rule 15b–8 requires every broker or dealer who files an application for registration to file with his application duplicate original statements of financial condition disclosing, as of a date within 30 days, the nature and amount of his assets, liabilities and net worth. However, a partnership succeeding to and continuing the business of another partnership registered as a broker or dealer at the time of such succession is exempt from this requirement. Since the proposed revision of rule 17a–5 would exempt successor broker-dealers from filing Form X–17A–5 reports for any calendar year as of which

[48] Securities Exchange Act Release No. 5264.

a predecessor filed a report, it is proposed to amend rule 15b–8 to delete the above exemption from rule 15b–8 and to require every broker-dealer filing an application for registration to file the financial statement required by the rule. This financial statement does not have to be certified by an independent accountant.[49]

[49] These amendments to rules 17a–5 and 15b–8 were adopted in substantially this form on August 8, 1957. See Securities Exchange Act Release No. 5560.

PART IV

ADMINISTRATION OF THE SECURITIES ACT OF 1933

The Securities Act of 1933 is designed to provide disclosure to investors of material facts concerning securities publicly offered for sale by use of the mails or instrumentalities in 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. These documents are available for public inspection as soon as they are filed. The registration statement must become "effective" before the securities may be sold to the public. In addition the prospectus must be furnished to the purchaser at or before the sale or delivery of the security. The registrant and the underwriter are responsible for the contents of the registration statement. The Commission has no authority to control the nature or quality of a security to be offered for public sale or to pass upon its merits or the terms of its distribution, and its action in permitting a registration statement to become effective does not constitute approval of the securities.

DESCRIPTION OF THE REGISTRATION PROCESS

Registration Statement and Prospectus

Registration of any security proposed to be publicly offered may be effected by filing with the Commission a registration statement on the applicable form containing prescribed disclosures. A registration statement must contain the information and be accompanied by the documents specified in Schedule A of the Act, when relating to a security issued, generally speaking, by a corporation or other private issuer, or those specified in Schedule B, when relating to a security issued by a foreign government. Both schedules specify in considerable detail the disclosure which an investor should have available in order that he may make an informed decision whether to buy the security. In addition, the Act provides flexibility in its administration by empowering the Commission to classify issues, issuers and prospectuses, to prescribe appropriate forms, and to increase or in certain instances vary or diminish the particular items of information required to be disclosed in the registration statement as the Commission deems appropriate in the public interest or for the protection of investors.

In general the registration statement of an issuer other than a foreign government must describe such matters as the names of persons who participate in the direction, management, or control of the issuer's business; their security holdings and remuneration and options or bonus and profit-sharing privileges alloted to them; the character and size of the business enterprise, its capital structure, past history and earnings, and its financial statements, certified by independent accountants; underwriters' commissions; payments to promoters made within two years or intended to be made; acquisitions of property not in the ordinary course of business, and the interest of directors, officers, and principal stockholders therein; pending or threatened legal proceedings; and the purpose to which the proceeds of the offering are to be applied. The prospectus constitutes a part of the registration statement and presents the more important of the required disclosures.

Examination Procedure

The staff of the Division of Corporation Finance examines each registration statement for compliance with the standards of accurate and full disclosure and usually notifies the registrant by an informal letter of comment of any material respects in which the statement appears to fail to conform to these requirements. The registrant is thus afforded an opportunity to file a curative amendment. In addition, the Commission has power, after notice and opportunity for hearing, to issue an order suspending the effectiveness of a registration statement. Information about the use of this "stop order" power during 1957 appears below under "Stop Order Proceedings."

Time Required To Complete Registration

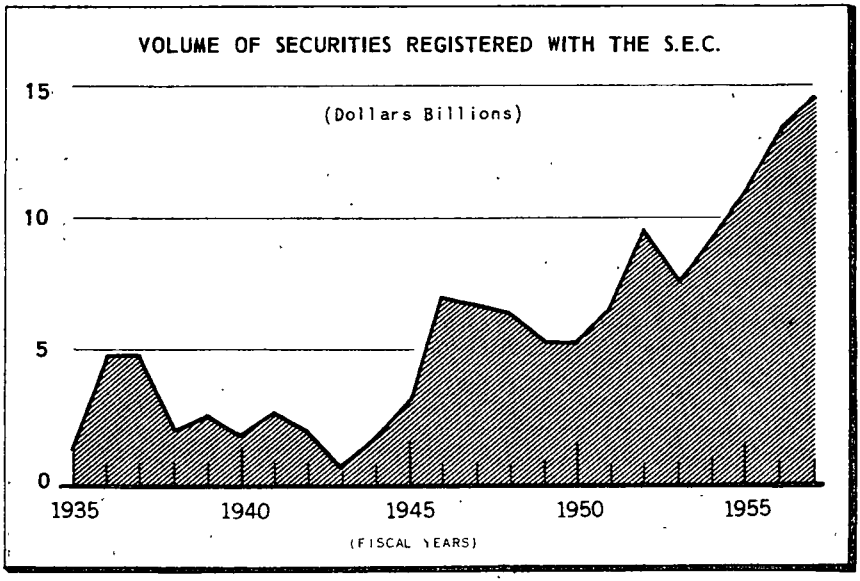
Because prompt examination of a registration statement is important to industry, the Commission completes its analysis in the shortest possible time. Congress provided for 20 days in the ordinary case between the filing date of a registration statement or of an amendment thereto and the time it may become effective. This waiting period is designed to provide investors with an opportunity to become familiar with the proposed offering. Information disclosed in the registration statement is disseminated during the waiting period by means of the preliminary form of prospectus. The Commission is empowered to accelerate the effective date so as to shorten the 20-day waiting period where the facts justify such action. In exercising this power, the Commission is required by statute to take into account the adequacy of the information respecting the issuer theretofore available to the public, the facility with which investors can understand the nature of and the rights conferred by the se-

curities to be registered, and their relationship to the capital structure of the issuer, and the public interest and the protection of investors.

The median time which elapsed between the date of filing and the effective date with respect to 766 registration statements that became effective during the 1957 fiscal year [1] was 23 days, the same period as in the preceding year. This time was divided among the three principal stages of the registration process approximately as follows: (*a*) From date of filing registration statement to date of letter of comment, 13 days; (*b*) from date of letter of comment to date of filing first material amendment, 6 days; and (*c*) from date of filing first amendment to date of filing final amendment and effective date of registration, 4 days. All these days are calendar days, including Saturdays, Sundays, and holidays.

VOLUME OF SECURITIES REGISTERED

Securities effectively registered under the Securities Act during 1957 totaled $14.6 billion, the highest volume for any fiscal year in the 23-year history of the Commission. Registrations have almost doubled since 1953, when $7.5 billion of securities were registered, reflecting annual increases of at least $1.5 billion over the 4-year period. The chart below shows graphically the dollar amount of effective registrations from 1935 to 1957.



[1] Exclusive of 120 registration statements of investment companies filed as post-effective amendments to previously effective registration statements under sec. 24 (e) of the Investment Company Act of 1940.

These figures cover all securities, including new issues sold for cash by the issuer, secondary distributions, and securities registered for other than cash sale, such as exchange transactions and issues reserved for conversion of other securities.

Of the dollar amount of securities registered in 1957, 82.2 percent was for the account of issuers for cash sale, 15.2 percent for account of issuers for other than cash sale and 2.6 percent was for account of others, as shown below.

Account for which securities were registered under the Securities Act of 1933 during the fiscal year 1957 compared with the fiscal years 1956 and 1955

	1957 in millions	% of total	1956 in millions	% of total	1955 in millions	% of total
Registered for account of issuers for cash sale	$12,019	82.2	$9,206	70.3	$8,277	75.5
Registered for account of issuers for other than cash sale	2,225	15.2	2,819	21.5	2,312	21.1
Registered for account of others than the issuers	380	2.6	1,071	8.2	372	3.4
Total	14,624	100.0	13,096	100.0	10,961	100.0

The most important category of registrations, new issues to be sold for cash for account of the issuer, amounted to $12.0 billion in 1957 as compared with $9.2 billion in 1956. For 1957, 47 percent of the total volume was made up of debt securities, 49 percent common stock and 4 percent preferred stock. Approximately 40 percent of the volume of common stock represented securities of investment companies.

Figures showing the number of statements, total amounts registered, and a classification by type of security for new issues to be sold for cash for account of the issuing company for 1935 to 1957 appear in appendix table 1. More detailed information for 1957 is given in appendix table 2.

The classification by industries of securities registered for cash sale for account of issuers in each of the last 3 fiscal years is as follows:

Classification by industries of securities registered for cash sale during the fiscal year 1957 compared with the fiscal years 1956 and 1955

	1957 in millions	% of total	1956 in millions	% of total	1955 in millions	% of total
Manufacturing	$2,674	22.2	$1,788	19.4	$1,779	21.5
Mining	283	2.4	148	1.6	106	1.3
Electric, gas, and water	2,951	24.5	1,802	19.6	2,127	25.7
Transportation, other than rail	112	.9	118	1.3	12	.1
Communication	2,030	16.9	1,294	14.1	837	10.1
Investment companies	2,614	21.8	2,890	31.4	2,236	27.0
Other financial and real estate	952	7.9	852	9.2	789	9.5
Trade	84	.7	73	.8	27	.3
Service	33	.3	41	.4	100	1.2
Construction					160	1.9
Total corporate	11,733	97.6	9,006	97.8	8,173	98.7
Foreign governments	286	2.4	200	2.2	104	1.3
Total	12,019	100.0	9,206	100.0	8,277	100.0

The investment company issues referred to in the table above were classified as follows:

Classification of registered issues of investment companies according to type of organization during the 1957 fiscal year compared with the fiscal years 1956 and 1955

	1957 in millions	1956 in millions	1955 in millions
Management open-end companies	$1,791	$2,267	$1,853
Management closed-end companies		42	28
Unit and face amount certificate companies	823	582	355
Total	2,614	2,890	2,236

Of the net proceeds of the corporate securities registered for cash sale for the account of issuers in 1957, 72 percent was designated for new money purposes, including plant, equipment and working capital, 1 percent for retirement of securities, and 27 percent for other purposes, principally the purchase of securities by investment companies.

REGISTRATION STATEMENTS FILED

During the 1957 fiscal year, 943 registration statements were filed for offerings of securities aggregating $14,667,282,319, compared with 981 registration statements covering offerings of $13,097,787,628 in the 1956 fiscal year.

Of the 943 statements filed in 1957, 305, or 32 percent, were filed by companies that had not previously registered any securities under the Securities Act of 1933, compared with 415, or 42 percent, of the corresponding total during the previous fiscal year.

The growth in the volume of proposed financing under the registration provisions of the Securities Act of 1933 is shown by the following tabulation, which reflects a 3-year increase in 1957 of 63 percent over 1954 in the aggregate dollar amount of offerings as stated in the registration statements filed.

Fiscal year	Number of statements filed	Aggregate dollar amount	Fiscal year	Number of statements filed	Aggregate dollar amount
1954	649	$8,983,572,628	1956	981	$13,097,787,628
1955	849	11,009,757,143	1957	943	14,667,282,319

A cumulative total of 13,791 registration statements have been filed under the Act by 6,671 different issuers covering proposed offerings of securities aggregating nearly $134 billion during the 24 years from the date of the enactment of the Securities Act in 1933 to June 30, 1957.

Particulars regarding the disposition of all registration statements filed under the Act to June 30, 1957, and the aggregate dollar amounts

of securities proposed to be offered which were reflected in the registration statements both as filed and as effective, are summarized in the following table.

Number and disposition of registration statements filed

	Prior to July 1, 1956	July 1, 1956, to June 30, 1957	Total as of June 30, 1957
Registration statements:			
Filed	12,848	[1] 943	13,791
Disposition:			
Effective—net	11,147	[2] 884	[3] 12,024
Under stop order—net	187	6	193
Withdrawn	1,399	70	1,469
Pending at June 30, 1956	115		
Pending at June 30, 1957			105
Total	12,848		13,791
Aggregate dollar amount:			
As filed	$119,090,464,965	$14,667,282,319	$133,757,747,284
As effective	$116,135,795,262	$14,623,579,470	$130,759,374,732

[1] Includes 120 registration statements covering proposed offerings of securities aggregating $2,532,126,208 which were filed by investment companies under sec. 24 (e) of the Investment Company Act of 1940, which permits registration of additional amounts of investment company securities by posteffective amendments to previously effective registration statements.
[2] Excludes 2 statements that became effective but were later withdrawn; these 2 statements are counted in the 70 statements withdrawn during the year.
[3] Excludes 7 statements that became effective prior to July 1, 1956, but were withdrawn during the year; these 7 statements are counted in the 70 statements withdrawn during the year.

The reasons for requesting withdrawal of the 70 registration statements withdrawn during the fiscal year ended June 30, 1957, are shown in the following table:

Reason for withdrawal request	Number of statements withdrawn	Percent of total withdrawn
Registration statement materially deficient and staff's letter of comment requested amendment	10	14
Registration statement materially deficient and registrant advised that unless statement was withdrawn stop order proceedings would be necessary	17	25
Change in financing plans	23	33
Change in market conditions	16	23
Registrant's inability to obtain acceptable underwriting terms	3	4
Determination by registrant to utilize Regulation A exemption for offerings not in excess of $300,000	1	1
Total	70	100

RESULTS OBTAINED BY THE REGISTRATION PROCESS

Results obtained by the staff's examination of registration statements during 1957 are illustrated by the following examples.

Adjustments made because of differences in determination of income for tax and corporate reporting purposes.—As a general principle, income for corporate reporting purposes is determined by allocating revenues and related costs to the same accounting periods. Certain provisions of the income tax laws depart from this concept. The differences in treatment of various items of income and expense for tax and reporting purposes continue to present problems in the

financial statements filed with the Commission. For example, a company claiming depreciation measured by the declining-balance method for tax purposes included lesser amounts calculated by the straight line method in its income statements included in a registration statement. The staff was of the view that as presented the improvement in earnings shown in the statements over a 3-year period could be seriously misleading. After amendment the earnings per share for the most recent 2 years, the only years affected, were reduced to 70 percent for the last year and 87 percent for the preceding year of the corresponding figures prior to amendment.

In another case preoperating expenses had been taken as a deduction for income tax purposes, as permitted under the Internal Revenue Code, but were treated as deferred charges to future operations for purposes of reporting and therefore omitted as a current charge in determining earnings per share. The issuer was required to reduce the reported earnings by setting aside a reserve for income taxes related to these expenditures to be charged to income in future years but no longer available as a deduction for taxes. The effect of this revision was to reduce the reported net income for the year 1956 to $584,426 or $1.22 a common share, from $710,426 or $1.49 a common share. Net for the quarter ended March 31, 1957, was reduced to $63,232 from $213,232 as previously reported.

Restatement of earnings per share.—It is a common practice to refer to earnings on a per share basis and it is essential that an appropriate method of calculation be used and that the method used be clearly stated. In one case a summary of earnings as originally filed showed net income per share as $0.99 and $1.43 on corporate and consolidated bases, respectively, for the most recent fiscal year as compared with $0.03 and $0.39 for the preceding year. The registration statement was revised so as to show the consolidated amount for the last year as $0.45 per share in the summary table. The corporate amount was not shown in the summary table, but a note referred to in the table in respect of the last year stated that net income per share excluded a special credit, gain on sales of securities, amounting to $0.99 per share, based on shares outstanding at the end of the fiscal year, or amounting to $0.64 per share based upon shares to be outstanding as of the time of the public offering of additional shares (i. e., giving effect to conversion of certain debentures into common shares). The note also disclosed that giving effect to conversion of debentures as though effective at the beginning of the year, with adjustment for interest on the debentures and related income tax effect, the $0.45 consolidated net income per share would have declined to $0.34 per share, and on a corporate only basis would have been $0.05 per share. In summary, the investor obtained a picture of $0.34 net income per

share plus $0.64 special credit gain on sales of securities per share for the last year, as compared with a net income per share figure of $1.43 as originally presented.

Adjustments in provision for depletion of oil and gas properties.—A filing under the Securities Act by a Canadian oil and gas company included summaries of earnings which showed that the registrant and subsidiaries, and an acquired company and its subsidiaries, had substantially higher net income in 1956 than in 1955. In fact, substantial losses were reported for 1954 and 1955 and substantial profits for 1956. A study of the items in the summary indicated that the improvement reported was in large measure due to the fact that the registrant's statement showed a negative or credit provision for depletion in 1956 of $62,000 compared with a charge of $220,000 in 1955, and the acquired group's statement showed 1956 depletion charges of approximately 30 percent of the 1955 charges. It was ascertained by the staff, that, because in 1956 estimates of recoverable oil were materially increased by new discoveries, the companies considered that provisions for depletion in prior years had been excessive and the cumulative adjustment was reflected in the 1956 income statements. The staff took the position that annual depletion charges should be based upon known reserves, and that additional reserves discovered thereafter should be made the basis for determining future depletion charges as oil is recovered therefrom, based upon adjusted costs. The financial statements were amended in accordance with the staff's view. As a result the registrant's originally reported consolidated net income of $132,000 was converted to a loss of $93,000 and the net income of the acquired group was reduced from the originally reported $447,000 to $300,000. As originally filed the pro forma combined summary of earnings showed net income of 8.33 cents per share. As adjusted, earnings were 2.98 cents per share.

STOP ORDER PROCEEDINGS

Section 8 (d) provides that, if it appears to the Commission at any time that a registration statement contains an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may institute proceedings looking to the issuance of a stop order suspending the effectiveness of the registration statement. Where such an order is issued, the offering cannot lawfully be made, or continued if it has already begun, until the registration statement has been amended to cure the deficiencies and the Commission has lifted the stop order. During the 1957 fiscal year 10 new proceedings were authorized by the Commission under section 8 (d) of the Act and 7 such proceedings were continued from the

preceding year. In connection with these 17 proceedings 8 stop orders were issued during the year, one proceeding was terminated and the registration statement permitted to become effective, and one proceeding was terminated by withdrawal of the registration statement. The remaining seven cases were pending as of June 30, 1957.

Two proceedings in which stop orders were issued with respect to registration statements filed by American Republic Investors, Inc., and Uranium Properties, Ltd., were described in the 22d Annual Report.[2] The other six proceedings which resulted in the issuance of stop orders during the year are described below, as well as a seventh proceeding in which a stop order was issued shortly after the end of the fiscal year.

Wyoming Gulf-Sulphur Corporation.—This corporation filed a registration statement with the Commission relating to a proposed public offering by the corporation of 700,000 shares for its own account and 226,000 shares for the account of two stockholders. After hearings the Commission issued an order pursuant to section 8 (d) of the Securities Act of 1933 suspending the effectiveness of the registration statement on the basis of findings that, among other things, the corporation failed to disclose in the registration statement the limited experience of management in marketing its product and the limited nature of the potential market for its product.[3]

The corporation proposed to produce and market "soilaid," which was obtained by treating the sulphur-bearing ores on the properties containing about 16 percent sulphur so as to increase the sulphur content to not less than 25 percent. This product can be used on certain soils in the western part of the United States for the purpose of causing them to become friable and permeable to water. Gypsum, in abundant supply in the west, is also used for this purpose. Although the corporation's stated plans were to produce 400 tons a day in one of its plants and 1,000 tons a day in a plant proposed to be constructed with part of the funds obtained from the proposed financing, only a very limited amount of sulphur-bearing ore had been treated and in the year 1954 only 18,221 tons of sulphur were used for soil-treatment purposes in the entire United States. This information and the fact that because of transportation costs it would be cheaper for a purchaser residing in the west to obtain sulphur from the Gulf Ports of Texas than to purchase the product from the corporation were either not disclosed in the registration statement or inadequately presented.

[2] Pp. 75–77.

[3] Securities Act Release No. 3690 (September 18, 1956).

The Commission also found that the proposed method of distribution of the securities was misleading. Since the bid and asked price of the securities at the time the registration statement was filed was around $1 and the proposed offering price was to be not less than $2 a share, the Commission found that "it seems clear that the stock could not be sold at $2 a share except by misrepresentations or other fraudulent means, unless the market rose appreciably." In this connection, the Commission cited the fact that a few days before the registration statement was filed with the Commission, a broker-dealer firm with which a vice president of the corporation was associated circulated a grossly false and misleading "special report" recommending the purchase of the registrant's stock.

Other areas in which the corporation either failed to disclose material information or inadequately presented information, included the use of the proceeds from the offering, transactions with promoters, and the history of the unsuccessful operation of the properties.

Beta Frozen Food Storage, Inc.—This registrant was organized in Maryland in April 1956 for the purpose of constructing and operating a frozen food storage warehouse near Baltimore. It proposed to offer through its officers, directors, employees and stockholders, and possibly also through selected brokers and dealers, $1,750,000 principal amount of debentures at $100 per debenture. The debentures were to be convertible into preferred stock. After deduction of $15 per debenture, or $262,500, as selling commission, and expenses of $50,000, net proceeds to the registrant were estimated to be $1,437,500. Registrant was virtually without assets and was looking entirely to the proceeds of this financing for its capital requirements.

In connection with the proceedings brought under section 8 (d) it was alleged that the registration statement failed to provide adequate disclosure of the registrant's position and plans in case proceeds were inadequate to make its projected warehouse a reality since there was no firm commitment by an underwriter or any person to purchase all or any part of the securities and hence no assurance as to what amount of proceeds might be received; that registrant minimized or ignored competitive conditions in the industry in which it was about to embark, falsely claiming a large demand for its specific services based upon a nonexistent "survey," and grossly misrepresenting its outlook even to the point of predicting with little or no basis except optimism "a gross profit of over $500,000 per year after all salaries, wages, and maintenance and costs of operations"; that the registration statement failed to disclose that all of the common stock equity in the corporation was to be sold to officers and directors for an amount not in excess of $2,500; and that the registration state-

ment misrepresented the business experience of the officers and directors.

After testimony was taken at a hearing registrant consented to the entry of a stop order suspending the effectiveness of its registration statement and such an order was entered.[4] Subsequently registrant filed an amendment to the registration statement purporting to correct the inadequacies and misrepresentations therein. After consideration of the amendment the Commission found that inadequacies and misrepresentations still existed, and the stop order continues in effect.

Freedom Insurance Company.—This registrant was organized in California in 1954 for the purpose of selling all types of insurance except life, title, and mortgage insurance. Under a registration statement which became effective December 22, 1955, 500,000 shares of common stock were offered at $22 per share. On July 12, 1956, proceedings pursuant to section 8 (d) were instituted. Included in the allegations made with respect to the registration statement were questions as to the adequacy and accuracy of disclosure therein of the financial resources of a corporation controlled by the promoters of the registrant which was to perform selling and service functions for the registrant, and the amount of the commission to be received by such corporation under a sales and service contract on insurance written by the registrant.

After hearings were commenced and testimony was taken, the registrant submitted a written stipulation and consent to the entry of an order by the Commission pursuant to section 8 (d) suspending the effectiveness of its registration statement and such order was entered on the basis of findings and an opinion by the Commission.[5] The registration statement was subsequently amended in accordance with the order and the stop order was lifted.[6]

Ultrasonic Corporation.—At the close of the previous fiscal year, the Commission had under advisement the record in the matter of the stop order proceedings pursuant to section 8 (d) relating to a registration statement filed by Ultrasonic Corporation (now named Advance Industries, Inc.), as described in the 22d Annual Report, pages 79–80. The filing covered a public offering of 200,000 shares of common stock at $12.75, with net proceeds to the Company of approximately $2,300,000, in addition to common stock issuable on the exercise of warrants and the conversion of certain outstanding bonds and debentures. The registration statement became effective on July 22, 1954, the shares offered for cash were sold and the com-

[4] Securities Act Release No. 3699 (October 2, 1956).
[5] Securities Act Release No. 3707 (October 18, 1956).
[6] Securities Act Release No. 3759 (March 6, 1957).

pany received the net proceeds from the underwriters. An amendment relating to the offering and exercise price of certain warrants was filed on August 23, 1954, and was declared effective on August 25, 1954.

On January 18, 1957, a stop order was issued.[7] The record of the proceedings showed that numerous improper adjustments on the Company's books and omissions to make necessary adjustments produced completely unrealistic financial statements, and were the result of a deliberate design to present optimistic figures. It was found that the statement of income for the 6 months ended March 31, 1954, which was furnished unaudited in the registration statement, was substantially inaccurate and misleading in that the $49,715 profit reported for that period was at least $900,000 in excess of the amount that should have been shown. Among adjustments which should have been made for that period were provisions for reserves to reduce income by $317,435 for redetermination of profits on a Government contract, for profit adjustments downward on other Government contracts, and for losses. Also cost of sales of goods manufactured by one of the divisions of the company was reflected in the income statement for the 6 months ended March 31, 1954, on a percentage of sales basis which was entirely unjustified. There did not appear to be actual recent support in the experience of the company for the selection of the percentage amount of 77.3 percent used in estimating the ratio of cost of sales to sales. The cost of sales for the 6 months' period as computed on the improper formula of 77.3 percent of sales of the division for the period amounted to $744,175, as compared to $936,436, as determined by the comptroller of the company from the cost books. Additional items questioned included inventory items not written off, expense items improperly capitalized, and expense liabilities not entered.

The registration statement was also deficient in failing to disclose operating losses incurred after March 31, 1954. Profit and loss data compiled by the accounting department of the company available prior to the time the registration statement became effective July 22, 1954, indicated operating losses for the months of May and June 1954 aggregated $485,805. A later profit and loss statement showing losses for May, June, and July 1954 totaling $800,182 was given to the management on August 19, 1954, before the post-effective amendment to the registration statement was filed. The management was chargeable with knowledge that registrant was incurring large operating losses during this period.

Universal Service Corporation, Inc.—This company, a Texas corporation, filed a registration statement covering a proposed public

[7] Securities Act Release No. 3742 (January 18, 1957).

offering of 500,000 shares of its 2-cent par value common stock at $2.50 per share, for the purpose of financing the exploration and, if warranted, the mining of uranium, quicksilver, and other minerals, as well as gas and oil. The Commission issued a stop order for the reasons indicated below.[8]

The disclosures respecting the existence of minerals in the registrant's property consisted primarily of reports by a consulting engineer and geologist which were included in exhibits to the registration statement and were quoted at length in the prospectus. The Commission found that the reports were essentially misleading and the use of the information therein in the prospectus was deceptive to investors. The survey made by the geologist covered 68 square miles and only a small area in a certain section was further explored. The few samples taken from the explored area were handpicked and showed no evidence warranting a reasonable belief that minable uranium existed. The references to the relatively high uranium content of the selected samples, and to ore bodies and ore stockpiling were unjustified. The reports also referred to the existence of oil-bearing boulders and claimed that they are direct evidence that oil-bearing strata exist at depth. This conclusion appeared to be wholly unwarranted.

The Commission also found the registration statement deficient in other respects. It stated that the registrant might retain an underwriter and pay a commission not to exceed 20 percent but failed to disclose who the underwriter would be. In respect of the application of proceeds, the registration statement set forth a rough itemization of the manner in which the proceeds of the offering were to be spent but failed to indicate a basis for considering that so large a sum as $1,250,000 could reasonably be expended in connection with further work on the property. The registration statement also failed to disclose possible civil liabilities resulting from the sale of its securities in violation of the Securities Act.

American Investors Corporation.—The registrant, a Tennessee insurance company holding corporation, filed a registration statement covering 4,962,500 shares of $1 par common stock to be offered at $2, of which 962,500 shares were reserved for issuance upon exercise of options to be granted by registrant. Deficiencies constituting grounds for issuance of the stop order cited in the Commission's opinion included failure to disclose (1) the plan and terms of the proposed distribution by five promoters, four of whom were undisclosed, and the commssions to be reallowed to sub-agents; (2) that the purpose in setting up the holding company was to allow management greater latitude in the investment of funds than would be permitted to an

[8] Securities Act Release No. 3748 (February 5, 1957).

insurance company under state law; (3) that registrant had no present need for the total anticipated proceeds of $7,200,000 sought, and no present plans for the use of such proceeds other than to use $300,000 to organize an operating insurance company subsidiary and to invest in debentures, high grade securities, and nonadmitted assets for the subsidiary; (4) that none of the persons presently associated with registrant had any experience in the management of an investment portfolio or in the management of insurance companies; and (5) that options covering from 5,000 to 25,000 shares had been promised to prominent persons without cost in order to secure their association with registrant for the major purpose of facilitating the sale of its securities to the public.[9]

Republic Cement Corporation.—This registrant was a Delaware corporation organized for the purpose of constructing and operating a cement plant of 1 million barrel annual capacity near the town of Drake, Ariz. The registration statement covered a proposed offering of 1,050,000 shares of $10 par value capital stock at $10 per share.

After hearings the Commission found that the registrant had failed to disclose that its proposed annual output of gray cement combined with that of a presently producing plant in its market area would far exceed any past or present market demand and that the existing plant had not been operating at full capacity. It further found that the registrant's proposed output of white cement exceeded 25 percent of the annual consumption of that product in the entire United States. The company's plant construction cost figures were determined to be much lower than those of its competitors because certain installations which are normally part of a cement plant were to be eliminated, and the registrant had not provided for sufficient storage capacity for its finished product. The Commission also found that despite the representation in the prospectus that the registrant had on its properties 1,851,300,000 tons of limestone suitable for the production of cement, only the most rudimentary type of exploration had been performed on the properties, and no systematic core drilling or sampling was used to test the continuity, depth, and quality of the limestone.

The Commission further found that approximately 60 stockholders who were designated as "promoters" were not in fact promoters as they had not rendered any promotional services, and that the sales of stock to them were not exempt under section 4 (1) as claimed and were in violation of section 5 of the Securities Act.

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[9] Securities Act Release No. 3771 (April 5, 1957). The registration statement was subsequently amended in accordance with the Commission's stop order and the order was lifted. See Securities Act Release No. 3810 (July 9, 1957).

A stop order was issued by the Commission shortly after the close of the fiscal year.[10]

EXAMINATIONS AND INVESTIGATIONS

The Commission is authorized by section 8 (e) of the Act to make an examination in order to determine whether a stop-order proceeding should be instituted under section 8 (d). For this purpose the Commission is empowered to subpoena witnesses and require the production of pertinent documents. During the 1957 fiscal year the Commission authorized four private examinations pursuant to this section of the Act. One additional private examination was pending from the previous fiscal year. As of June 30, 1957, one of the examinations was still pending, one had resulted in the withdrawal of the registration statement after the institution of stop-order proceedings under section 8 (d), two had resulted in the issuance of stop orders, and one had been closed and the registration statement concerned was permitted to become effective.

The Commission is also authorized by section 20 (a) of the Act to make an investigation to determine whether any provisions of the Act or of any rule or regulation prescribed thereunder have been or are about to be violated. The Commission has instituted investigations under this section as an expeditious means of determining whether a registration statement is false or misleading or omits to state any material fact. During the 1957 fiscal year twelve such investigations were instituted. Two of such proceedings resulted in the institution of stop-order proceedings under section 8 (d) of the Act, one was closed and the registration statement involved became effective, one resulted in the registration statement being withdrawn, and the other eight were pending at the end of the fiscal year.

EXEMPTION FROM REGISTRATION OF SMALL ISSUES

Under section 3 (b) of the Securities Act, the Commission is empowered from time to time by its rules and regulations, and subject to such terms and conditions as it may prescribe therein, to add any class of securities to the securities specifically exempted by section 3 (a) of the Act, if it finds that the enforcement of the registration provisions of the Act with respect to such additional securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering. The statute imposes a maximum limitation of $300,000 upon any exemption provided by the Commission in the exercise of this power.

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[10] Securities Act Release No. 3816 (July 26, 1957).

Acting under this authority the Commission has by various regulations adopted the following exemptions:

Regulation A:
General exemption for United States and Canadian issues up to $300,000.
Regulation A–M:
Special exemption for assessable shares of stock of mining companies up to $100,000.
Regulation A–R:
Special exemption for first lien notes 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.

The exemption for securities of Canadian issuers, formerly provided by regulation D, was merged into the Commission's revised regulation A effective July 23, 1956.[11]

Exemption from registration under section 3 (b) of the Act does not carry exemption from the civil liabilities for material misstatements or omissions imposed upon any person by section 12 (2) or from the criminal liabilities for fraud imposed upon any person by section 17.

Exempt Offerings Under Regulation A

The Commission's regulation A implements section 3 (b) of the Securities Act of 1933 and permits a company to obtain not exceeding $300,000 (including underwriting commissions) of needed capital in any one year from a public offering of its securities if the company complies with the regulation. Upon complying with the regulation, a company is exempt from the registration provisions of the Act. A regulation A filing consists of a notification supplying basic information about the company, certain exhibits, and an offering circular which is required to be used in offering the securities except in the case of a company with an earnings history which is making an offering not in excess of $50,000.

During the 1957 fiscal year, 919 notifications were filed under regulation A, covering proposed offerings of $167,269,900, compared with 1,463 notifications covering proposed offerings of $273,471,548 in the 1956 fiscal year. Included in the 1957 total were 74 notifications covering stock offerings of $14,133,702 with respect to companies engaged in the exploratory oil and gas business, and 106 notifications covering offerings of $18,955,358 by mining companies. The 106 filings by mining companies included 59 by uranium companies with proposed offerings aggregating $10,324,192 and 47 offer-

[11] See 22nd Annual Report, p. 28.

ings by other mining companies aggregating $8,631,166. The reduction in the number of regulation A filings during the 1957 fiscal year was primarily due to substantially fewer filings by highly speculative mining companies, particularly uranium companies.

Certain facts regarding regulation A offerings during the past three fiscal years are set forth in the following table:

Offerings made under regulation A during the last 3 fiscal years

Description	Number of offerings		
Fiscal year	1957	1956	1955
Size:			
$100,000 or less	307	481	544
Over $100,000 but not over $200,000	163	246	312
Over $200,000 but not over $300,000	449	736	772
	919	1,463	1,628
Underwriting:			
Used	328	630	785
Not used	591	833	843
	919	1,463	1,628
Offerors:			
Issuing companies	865	1,389	1,517
Stockholders	52	62	109
Issuers and stockholders jointly	2	12	2
	919	1,463	1,628

Most of the underwritings were undertaken by commercial underwriters, who participated in 252 offerings in 1957, 528 in 1956, and 671 in 1955. The remaining cases where commissions were paid were handled by officers, directors, or other persons not regularly engaged in the securities business, who received remuneration therefor.

Exempt Offerings Under Regulation D

From July 1, 1956, to August 27, 1956, the last date on which a filing under regulation D could be made, 6 notifications were filed under that regulation by Canadian issuers covering proposed offerings of $1,049,000. Three of these filings were made by uranium companies. In the 1956 fiscal year there were 15 notifications filed under regulation D covering proposed offerings of $3,367,735. After the adoption of the revised regulation A there were, during the remainder of the 1957 fiscal year 6 notifications filed by Canadian issuers for offerings aggregating $1,488,000. These figures are included in the regulation A totals.

Denial or Suspension of Exemption

Regulation A provides for the denial or suspension of an exemption thereunder, generally speaking, where the exemption is sought for securities for which the regulation provides no exemption or where the offering is not made in accordance with the terms and con-

ditions of the regulation or in accordance with prescribed disclosure standards. Regulation D, prior to its consolidation with regulation A, contained a similar provision.

During the 1957 fiscal year, denial or suspension orders were issued in 132 cases. During the 1956 fiscal year, 100 such orders were issued. The names of the companies involved in the orders issued during the 1957 fiscal year are set forth in table 6 of the appendix. A few cases are summarized below to illustrate the misrepresentations and other noncompliance with the regulation which led to the issuance of suspension orders.

Backers Discount & Finance Co., Inc.—The Commission temporarily suspended the regulation A exemption because of misleading statements in the notification, offering circular and sales literature, and the failure to file sales literature and reports of sales. It was asserted in the suspension order that, among other matters, an announcement of the declaration of a quarterly dividend to stockholders which was used in connection with the offering was misleading in that there was a failure to state that the issuer's officers, directors, and insiders had agreed to forego dividends on their holdings in order that a dividend could be paid on shares sold under the filing and that the available earnings and surplus were insufficient to pay the entire dividend.

Electronic Micro-Ledger Accounting Corp.—The temporary suspension order entered in this case alleged, among other things, that the offering circular and other sales literature did not accurately describe the license agreement that the issuer claimed to have, the market price for the issuer's stock, the uses to which the proceeds of the offering were to be put, or the issuer's proposed operations and plans.

Glory Hole, Inc.—In its order temporarily suspending the issuer's offering, the Commission stated that it had reasonable cause to believe that the use of the offering circular would operate as a fraud and deceit upon purchasers. Among the matters asserted in the order were the failure to disclose the background and record of the promoter, the past activities of the promoter and his associates in predecessor companies, and the results of other attempts to operate the same properties which were represented to be under purchase contract by the issuer.

North Country Uranium & Minerals, Ltd., and Hawker Uranium Mines, Ltd.—The Commission issued its findings, opinion and order during the 1957 fiscal year in consolidated proceedings under regulation D making permanent its orders temporarily suspending and denying, respectively, exemptions from registration with respect to

public offerings by North Country and Hawker.[12] It found that the two issuers were under common control and therefore the exemption was not available for the two offerings since the applicable $300,000 limitation within one year was exceeded. The Commission also found the notifications and offering circulars of the two issuers to be materially misleading in failing to disclose the common control and the status and activities of the president and controlling stockholder of Hawker in promoting North Country, in the acquisition and transfer of the North Country claims, in the formation and financing of that company and in the conduct of its business.

Underwriters Factors Corp.—In its order temporarily suspending the exemption, the Commission alleged that in addition to failing to comply with the requirements of the regulation by not disclosing all the jurisdictions in which the securities were to be offered and making use of unfiled sales literature, the offerors of the securities made use of false and misleading literature and oral statements. The misrepresentations related to the company's profits, the safety of investments in the factoring business, the dividend record of such businesses and the changes in the market price for the issuer's securities that could be expected.

Universal Petroleum Exploration & Drilling Co.—In its order temporarily suspending the exemption, the Commission alleged that the material filed under regulation A was false and misleading and failed to disclose required information concerning the creation and promotion of another corporation having the same principal promoter, officers, and directors as the issuer, for the purpose of constructing and exploiting the same device as the issuer. In addition the filed material contained misleading statements concerning the marketability of the stock, the undertaking of the president to devote his services to the issuer, the issuer's rights to construct certain drilling rigs and the cost of constructing such rigs.

U–H Uranium Corp.—On the basis of a stipulated record, the Commission permanently suspended the exemption from registration after finding that the issuer had commenced the offering prior to the time permitted by the regulation, delivered offering circulars which differed from the circular on file, and made false and misleading statements concerning, among other things, the value of the issuer's properties, the nature of uranium deposits, and the qualifications of its geologist. In addition the Commission found that the offering was advertised in newspapers, by pamphlets, post cards and over television without copies of such material having been first filed with the Commission as required by the regulation.[13]

[12] Securities Act Release No. 3758 (March 5, 1957).
[13] Securities Act Release No. 3691 (September 21, 1956).

Exempt Offerings Under Regulation B

During the 1957 fiscal year 133 offering sheets were filed under regulation B compared with 114 during the fiscal year 1956 and 71 in the fiscal year 1955. These filings, relating to exempt offerings of oil and gas rights, were examined by the Oil and Gas Unit of the Division of Corporation Finance which assists the Commission on the technical and complex problems peculiar to oil and gas securities. Action was taken with respect to certain of these filings as shown in the following table:

Action taken on offering sheets filed under regulation B during the 1957 fiscal year as compared with the 1956 and 1955 fiscal years

	Fiscal years		
	1957	1956	1955
Temporary suspension orders	12	5	6
Permanent suspension orders		1	
Orders terminating proceeding after amendment	7	5	3
Orders accepting amendment of offering sheet (no proceeding pending)	72	60	21
Orders consenting to withdrawal of offering sheet (no proceeding pending)	3	4	1
Order terminating effectiveness of offering sheet		1	
Total number of orders	94	76	31

Reports of sales.—As an aid in determining whether violations of law have occurred in the marketing of securities exempt under regulation B, the Commission requires the filing of reports of actual sales made pursuant to that regulation. Sales reports were filed under regulation B during the past 3 fiscal years as follows:

Reports of sales under regulation B during the 1957 fiscal year compared with the 1956 and 1955 fiscal years

	Fiscal years		
	1957	1956	1955
Number of sales reports filed	1,318	1,419	1,076
Aggregate dollar amount of sales reported	$1,154,792	$1,234,541	$549,951

LITIGATION UNDER SECURITIES ACT OF 1933

The Securities Act empowers the Commission to apply to the courts for injunctions when necessary to protect the public from damage which may result from continued or threatened violations of the Act. As in former years, threatened violations of the registration provisions of the Securities Act have required considerable attention in the enforcement efforts of the Commission.

One of the most significant cases in recent years involving the registration provisions of the Securities Act was *S. E. C.* v. *Swan-*

Finch Oil Corporation, et al.[14] The Commission's complaint alleged that the defendants had violated and were about to violate section 5 of the Securities Act by offering and selling common stock of Swan-Finch Oil Corp. to members of the public without having a registration in effect with the Commission as required by the Act. Affidavits filed in support of the Commission's motion for a temporary restraining order, which was entered by the court, indicated that since 1954, when defendant Lowell M. Birrell apparently acquired control of Swan-Finch, the number of Swan-Finch common shares outstanding increased from approximately 94,000 to approximately 2,800,000 as of January 31, 1957. The original shares had been registered and listed on the American Stock Exchange. The affidavits recited that the shares representing the increased capitalization were purportedly issued in exchange for the assets of various corporations. These additional shares, the Commission alleged, were then distributed to the public through various American and Canadian broker-dealers and financial firms. It was the contention of the defendants that section 4 (1) of the Securities Act or rule 133 as promulgated by the Commission exempted these transactions from the registration requirements of the Act. Out of the 24 defendants in this proceeding all but 3 consented to the entry of a final injunction prior to the close of the fiscal year.

In the related proceedings of *S. E. C.* v. *Doeskin Products, Inc., et al.*,[15] the Commission charged a similar unlawful distribution of Doeskin stock. Five of the seven defendants in that case consented to the entry of a permanent injunction prior to the close of the fiscal year.

In *S. E. C.* v. *The Sire Plan Inc., and Albert Mintzer*,[16] the Commission's complaint charged the defendants with offering and selling approximately $325,000 in face amount of 9-month, 8-percent Sire Plan Funding Notes without having a registration in effect as required by section 5 of the Securities Act, and with having offered the notes by means of untrue statements of material facts and omissions to state material facts. The offers and sales were purportedly made under the exemption from registration provided in section 3 (a) (3) of the Act for short-term notes arising from current transactions, but it was the Commission's contention that Congress did not intend to permit the widespread sale of securities to the investing public in order to provide capital for business ventures without compliance with the full and fair disclosure requirements of the Securities Act of 1933. The complaint also charged that in offering notes the defendants referred, among

[14] S. D. New York No. 119-232 (April 15, 1957).
[15] S. D. New York No. 119-301 (April 18, 1957).
[16] S. D. New York No. 116-291 (January 18, 1957).

other things, to "security" and "collateral" when in fact the notes had no collateral and were not secured.[17]

In *S. E. C.* v. *Micro-Moisture Controls, Inc., et al.*,[18] another injunctive action instituted by the Commission dealing with violations of the registration provisions, 7 registered broker-dealer firms as well as 9 other persons and companies were named as defendants. The affidavits filed by the Commission in support of its complaint recited, among other things, that originally, in January 1953, Micro-Moisture had an authorized capital of 2 million shares of common stock with a par value of 1 cent per share. In January 1957, it had an authorized capitalization of 7 million shares of common stock, of which 5 million were outstanding. Except for 2 filings under the regulation A exemption from the registration provisions which covered a total of 310,000 shares, none of the corporation's shares were registered with the Commission. The increased number of outstanding shares, according to the affidavits, resulted from an exchange of assets of Converters Acceptance Corp. of Canada for stock of Micro-Moisture, and a subsequent public distribution by certain controlling stockholders of Micro-Moisture through the defendant broker-dealer firms and two residents of Canada who were also named as defendants. The defendants claimed that each of these transactions was exempt from the registration requirements of the Securities Act by virtue of the provisions of section 4 (1) or rule 133. The court entered a preliminary injunction as to all 16 defendants.

A public distribution without registration in violation of the Securities Act through residents of Canada and others was also alleged in the complaint and affidavits filed by the Commission in *S. E. C.* v. *Ben Franklin Oil and Gas Corporation, et al.*[19] A temporary restraining order was issued by the court on motion of the Commission.

A complaint was filed in the United States District Court for the Northern District of Illinois, seeking to enjoin *Gerald L. Reasor* and *John D. Karstrom, Jr.*,[20] from selling fractional undivided interests in oil and gas rights on properties located in more than 10 States when no registration statement with respect to such securities was in effect. The matter was pending at the end of the fiscal year. An injunction was obtained upon similar charges in *S. E. C.* v. *Horace E. Watkins, doing business as Watkins Oil Company, et al.*[21]

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[17] Shortly after the close of the fiscal year Sire Plan registered its securities with the Commission and offered rescission to all persons who had purchased its securities prior to registration.

[18] S. D. New York No. 116–190 (January 9, 1957).

[19] D. New Jersey No. 601–57 (June 19, 1957).

[20] N. D. Ill. No. 56–C–2038 (December 21, 1956).

[21] D. Colo. No. 5533 (November 9, 1956).

Injunctions were obtained in two cases involving investment contracts or profit-sharing arrangements. In one of these cases, *S. E. C.* v. *J–T–J Company, Inc.*,[22] the defendants had been offering and selling, without registration, investment contracts relating to automobile trailers sold by the company under an arrangement by which the company would operate and service the trailers for purchasers under a profit-sharing arrangement. In the second case, *S. E. C.* v. *Mortgage Clubs Inc. and Charles I. Hershman*,[23] the complaint and affidavits filed in conjunction with it alleged that the defendants had offered and sold, without registration, investment contracts evidenced by participations as club members in the placing of funds ranging from $100 to $500 into secured small second mortgage loans through Mortgage Clubs, Inc. In each case the defendants consented to the entry of final judgment.

In *S. E. C.* v. *Oregon Timber Products Co., Inc., et al.*[24] the defendants had made a filing under regulation A in connection with the proposed offering but had used sales material in the solicitation mailings which was not filed as required by the regulation. The Commission alleged, among other things, that the defendants mailed brochures and other material to 23,000 corporate executives and directors in 18 States, soliciting the purchase of shares of the defendant corporation, without filing such material with the Commission. A preliminary injunction has been entered as to the company and Hubert I. O'Rourke, its president.

In *S. E. C.* v. *J. Tom Grimmett*,[25] the Commission alleged that Grimmett, president of American States Oil Co., received 5,391,666 of the company's 6 million authorized shares, and, since organization of the company, sold to and through various securities dealers and otherwise disposed of, without registration, approximately 4 million shares of his personally owned stock. A final judgment by default enjoining the defendant from further violations of the registration provisions of the Securities Act of 1933 was issued by the Court.

Final judgments permanently enjoining further violations of the registration provisions of the Securities Act were also entered in actions instituted by the Commission in *S. E. C.* v. *Uni-insurance Service Company, et al.*;[26] *S. E. C.* v. *Operator Consolidated Mines Company, et al.*;[27] *S. E. C.* v. *Robert Rodman and Sidney Newman*;[28] and *S. E. C.* v. *Battery Securities Corporation*.[29] In each case the defendant consented to the entry of the final judgment.

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[22] N. D. Texas No. 6809 (November 6, 1956).
[23] D. Mass. No. 57–385–W (April 17, 1957).
[24] D. Nevada No. 1280 (October 3, 1956).
[25] S. D. New York No. 110–243 (June 14, 1956).
[26] N. D. Calif. No. 35,644 (July 9, 1956).
[27] S. D. Calif. No. 330–57–BH (March 12, 1957).
[28] S. D. New York No. 118–265 (March 18, 1957).
[29] S. D. New York No. 119–25 (March 28, 1957).

The Commission had one of its busiest years in connection with its enforcement of the anti-fraud provisions of the Securities Act. Many of the cases brought by the Commission to stop further fraudulent activities also involved violations of the registration provisions of the Act.

The brokerage firm of *Burd, Jacwin & Costa, Inc.*, [30] was charged by the Commission with fraud in the sale and distribution of stock of Sergeant Marty Snyder Foods, Inc. According to the complaint, the defendant had been falsely representing, among other things, that President Eisenhower would do everything in his power to see that Sergeant Marty Snyder's beef stew would be used by the armed services, that President Eisenhower had endorsed it and that the beef stew was the only product President Eisenhower had ever endorsed. The complaint also alleged that the defendant had made several misrepresentations concerning the present and prospective market for the Sergeant Marty Snyder products. The court entered a preliminary injunction with the consent of the defendant.

In *S. E. C.* v. *Kaiser Development Corporation Limited and E. David Novelle*,[31] the Commission charged violations of the anti-fraud and registration provisions of the Securities Act in connection with the offer and sale of the capital stock of a Canadian corporation to United States residents. It was alleged, among other things, that, in connection with the offer and sale of the defendant company's unregistered stock, false and misleading statements were made by means of flamboyant bulletins, sales letters, reports, and brochures, and long-distance telephone calls from Regina, Canada. The statements concerned a guarantee to refund investments, the listing of the stock on a Canadian stock exchange, the present and future market for the shares, the results of exploration on the company's properties and the company's practice of acquiring proven properties.[32]

In other cases, the Commission again sought the assistance of the courts to restrain fraud in the offer and sale of interests in oil and gas rights to the public. In *S. E. C.* v. *Mansfield Petroleum and Development Corporation and William C. Snowden*,[33] the defendants were enjoined from making false representations and omitting to state material facts concerning the escrowing of funds received from investors pending the drilling of an oil well in a nonproducing oil and gas tract in Nebraska.

In *S. E. C.* v. *Wyoming Oil Company, et al.*,[34] the use of fraudulent representations in the offer and sale of capital stock, promissory notes,

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[30] S. D. New York No. 115-376 (December 18, 1956).

[31] W. D. Wash. No. 4359 (April 9, 1957).

[32] Subsequent to the end of the fiscal year, an injunction decree was entered by consent against E. David Novelle and by default against Kaiser Development Corp., Ltd.

[33] D. Colo. No. 5513 (November 19, 1956).

[34] D. Nebr. No. 66L (February 16, 1957).

and undivided fractional interests in oil, gas and other mineral rights of the defendant company was enjoined. It appeared that the defendants had, among other things, made misrepresentations concerning the market price of its stock. A final judgment was also obtained by the Commission, permanently enjoining *Eldon L. Jewett* and *Perr Oil Company* [35] from further violating the anti-fraud and registration provisions of the Securities Act in connection with the offer and sale of interests in oil leases. Additional details of this proceeding are contained in the 22nd Annual Report. In each case, the defendants consented to the entry of the judgment. In the last two cases, the defendants were also enjoined from further violations of the registration provisions of the Act.

The Commission took steps in *S. E. C.* v. *Dealers Discount and Investment Company, et al.*,[36] to stop the offer and sale of securities through the use of misleading comparisons. The defendants had been comparing the capitalization, management, past operations, and type and extent of the business of the issuers of the offered securities with that of well-known established companies. The court permanently enjoined the defendants, who consented to the decree, from further use of such comparisons in violation of the anti-fraud provisions of the Act.

Threatened fraud in connection with the sale of securities of insurance companies was the subject of *S. E. C.* v. *Southern Christian Corporation, C. L. Edmonds, Earl E. Holliday and James T. Southerland* [37] *and S. E. C.* v. *Professional Investors, Inc., Insurance Corporation of America, Ray C. Vaughn and Mark H. Kroll.*[38] In the *Southern Christian* case, the Commission filed a complaint alleging, among other things, that the defendants had been offering and selling subscriptions and interim certificates for shares of common stock in Southern Christian Life Insurance Co., a proposed Oklahoma corporation, and, in connection therewith, had been making untrue statements concerning the company's income prospects, the requirements of the insurance laws, and the success records of other life-insurance companies. A final judgment permanently enjoining such conduct was entered by the court. The defendants in the *Professional Investor's* case were permanently enjoined from selling the common stock of the defendant Insurance Company of America without disclosing to prospective purchasers that the same stock could be obtained in the market from broker-dealers at prices which were less than that at which the defendants had been offering and selling such stock.

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[35] W. D. Wash. No. 1989 (February 16, 1956).
[36] N. D. Georgia No. 5895 (January 21, 1957).
[37] W. D. Okla. No. 7448 (March 23, 1957).
[38] S. D. Ind. No. IP–56–C–152 (June 22, 1956).

Other court actions instituted by the Commission in which it was charged that untrue statements of material facts in the offer and sale of securities to the public were made as to the nature and quality of the offered investment were *S. E. C.* v. *National Society of Music and Art, Inc.*[39] and *S. E. C.* v. *Franklin Atlas Corporation, et al.*[40] A final injunction by default was entered in the first case and the second is pending with a temporary restraining order in effect against the defendants.

With respect to *S. E. C.* v. *John Robert Fish and Fish Carburetor Corporation*[41] and *S. E. C.* v. *Colotex Uranium and Oil, Inc., et al.*,[42] which were referred to in the 22nd Annual Report, the Commission obtained permanent injunctions against the defendants in each case as a measure to prevent further violations of the registration and antifraud provisions of the Securities Act.

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[39] S. D. New York No. 112-210 (August 22, 1956).
[40] S. D. New York No. 120-172 (May 9, 1957).
[41] S. D. Florida No. 3400-J (April 2, 1956).
[42] D. Colo. No. 5371 (May 15, 1956).

PART V

ADMINISTRATION OF THE SECURITIES EXCHANGE ACT OF 1934

The Securities Exchange Act of 1934 provides for the registration and regulation of securities exchanges, and the registration of securities listed on such exchanges and it establishes, for issuers of securities so registered, financial and other reporting requirements, regulation of proxy solicitations, and requirements with respect to trading by directors, officers and principal security holders. The Act also provides for the registration and regulation of brokers and dealers doing business in the over-the-counter market, contains provisions designed to prevent fraudulent, deceptive and manipulative acts and practices on the exchanges and in the over-the-counter markets and authorizes the Federal Reserve Board to regulate the use of credit in securities transactions. The purpose of these statutory requirements is to ensure the maintenance of fair and honest markets in securities.

REGULATION OF EXCHANGES AND EXCHANGE TRADING

Registration and Exemption of Exchanges

At the close of 1957, 14 stock exchanges were registered under the Exchange Act as national securities exchanges:

American Stock Exchange.
Boston Stock Exchange.
Chicago Board of Trade.
Cincinnati Stock Exchange.
Detroit Stock Exchange.
Midwest Stock Exchange.
New Orleans Stock Exchange.
New York Stock Exchange.
Pacific Coast Stock Exchange.
Philadelphia-Baltimore Stock Exchange.
Pittsburgh Stock Exchange.
Salt Lake City Stock Exchange.
San Francisco Mining Exchange.
Spokane Stock Exchange.

The following 4 exchanges have been exempted from registration by the Commission pursuant to section 5 of the Act:

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

In the latter part of 1956 the Los Angeles Stock Exchange and the San Francisco Stock Exchange, registered national securities exchanges, entered into an agreement providing for the consolidation of their membership and operations into the Pacific Coast Stock Exchange but maintaining the Los Angeles and San Francisco trading floors as separate Divisions of the new exchange. The consolidation

became effective December 31, 1956, on which date the registrations of the other two exchanges were withdrawn.

Disciplinary Actions

Each national securities exchange reports to the Commission disciplinary actions taken against members for violations of the Securities Exchange Act or exchange rules. During the year 8 exchanges reported 42 cases of such disciplinary action. The actions taken included fines in 12 cases, expulsion of 2 individuals from exchange membership, suspension of 5 individuals and censure of individuals and firms.

REGISTRATION OF SECURITIES ON EXCHANGES

It is unlawful for a member of a national securities exchange or a broker or dealer to effect any transaction in a security on such exchange unless the security is registered on that exchange under the Securities Exchange Act or is exempt from such registration. In general the Act exempts from registration obligations issued or guaranteed by a State or the Federal Government or by certain subdivisions or agencies thereof and authorizes the Commission to adopt rules and regulations exempting such other securities as the Commission may find it necessary or appropriate to exempt in the public interest or for the protection of investors. Under this authority the Commission has exempted securities of certain banks, certain securities secured by property or leasehold interests, certain warrants, and, on a temporary basis, certain securities issued in substitution for or in addition to listed securities.

Section 12 of the Exchange Act provides that an issuer may register a class of securities on an exchange by filing with the Commission and the exchange an application which discloses pertinent information concerning the issuer and its affairs. An application requires the furnishing of information in regard to the issuer's business, capital structure, the terms of its securities, the persons who manage or control its affairs, the remuneration paid to its officers and directors, the allotment of options, bonuses and profit-sharing plans, and financial statements certified by independent accountants.

Form 10 is the form used for registration by most commercial and industrial companies. There are specialized forms for certain types of securities, such as voting trust certificates, certificates of deposit, and securities of foreign governments.

Section 13 requires issuers having securities registered on an exchange to file periodic reports keeping current the information furnished in the application for registration. These periodic reports include annual reports, semiannual reports, and current (monthly) reports. The principal annual report form is Form 10–K which is

designed to keep up to date the information furnished on Form 10. Semiannual reports required to be furnished on Form 9–K are devoted chiefly to furnishing mid-year financial data. Current reports on Form 8–K are required to be filed for each month in which any of certain specified events have occurred. A report on this form deals with matters such as changes in control of the registrant, important acquisitions or dispositions of assets, the institution or termination of important legal proceedings, and important changes in the issuer's capital securities or in the amount thereof outstanding.

As of June 30, 1957, a total of 2,256 issuers had 3,730 classes of securities listed and registered on national securities exchanges of which 2,667 were classified as stocks and 1,063 as bonds. Of the 2,256 issuers, 1,278 had 1,520 stock issues and 1,019 bond issues listed and registered on the New York Stock Exchange. On a percentage basis, the New York Stock Exchange had 57 percent of the total of both issuers and stock issues and 96 percent of the total bond issues.

During the fiscal year 1957, a total of 83 issuers listed and registered securities for the first time on a national securities exchange and the listing and registration of all securities of 80 issuers was terminated during the year. The number of applications filed for registration of various classes of securities on exchanges during the year was 232.

The following table shows the number of annual, semiannual, and current reports filed during the year by issuers having securities listed and registered on national securities exchanges. The table also shows the number of such reports filed under section 15 (d) of the Securities Exchange Act of 1934 by issuers obligated to file such reports by reason of their undertaking contained in one or more registration statements effective under the Securities Act of 1933 for the public offering of securities. As of June 30, 1957, there were 1,274 such issuers, including 188 also registered under the Investment Company Act of 1940.

Number of annual and other periodic reports filed by issuers under the Securities Exchange Act of 1934 during the fiscal year ended June 30, 1957

Type of report	Number of reports filed by—		Total reports filed
	Listed issuers filing reports under sec. 13	Over-the-counter issuers filing reports under sec. 15 (d)	
Annual reports on Form 10–K, etc.	2,178	1,159	3,337
Semiannual reports on Form 9–K	1,466	633	2,099
Current reports on Form 8–K	3,575	1,299	4,874
Total reports filed	7,219	3,091	10,310

MARKET VALUE OF SECURITIES TRADED ON EXCHANGES

The market value on December 31, 1956, of all stocks and bonds admitted to trading on one or more stock exchanges in the United States was approximately $353,915,500,000, as reported below.

	Number of issues	Market value Dec. 31, 1956
Stocks:		
New York Stock Exchange	1,502	$219,175,881,000
American Stock Exchange	849	31,020,099,000
Exclusively on other exchanges	618	3,821,820,000
Total stocks	2,969	254,017,800,000
Bonds:		
New York Stock Exchange [1]	1,043	99,022,076,000
American Stock Exchange	68	768,875,000
Exclusively on other exchanges	25	106,749,000
Total bonds	1,136	99,897,700,000
Total stocks and bonds	4,105	353,915,500,000

[1] Bonds on the New York Stock Exchange included 55 U. S. Government and New York State and city issues with $76,317,759,000 aggregate market value.

The New York Stock Exchange and American Stock Exchange figures were reported by those exchanges. There is no duplication of issues between them. The figures for all other exchanges are for the net number of issues appearing only on such exchanges, excluding the many issues on them which were also traded on one or the other of the New York exchanges. The number of issues as shown excludes those suspended from trading and a few others for which quotations were not available. The stocks divided into categories as follows, with market value as of December 31, 1956, in millions of dollars:

	Preferred issues		Common issues	
	Number	Stock values	Number	Stock values
Listed on registered exchanges	586	$8,240.6	2,044	$222,991.6
Unlisted on all exchanges	52	553.7	217	[2] 21,803.6
Listed on exempted exchanges [1]	12	15.7	58	412.6
Total stocks	650	8,810.0	2,319	245,207.8

[1] Excluding issues also traded on registered exchanges.
[2] No deductions have been made for the holdings of Standard Oil Co. (New Jersey), an aggregate of $12.5 billion market value of shares of Creole Petroleum Corp., Humble Oil & Refining Co., Imperial Oil Ltd., and International Petroleum Co., Ltd.

The market value of all stocks on the New York Stock Exchange on June 30, 1957, was $227.9 billion. It is estimated that, as of such date, the market value of all stocks on all the exchanges was about $262 billion, compared with about $250 billion on June 30, 1956.

The number of shares admitted to trading on the stock exchanges on December 31, 1956 was approximately 6,334,500,000, an increase of over 850 million since December 31, 1955. Some 5,852,439,000

shares, or 92.4 percent of the total, were listed on registered exchanges, and included 163,339,000 preferred and 5,689,100,000 common shares.

Assets of Companies With Listed Common Stocks

As shown above, there were 2,044 common stock issues with an aggregate market value of about $223 billion listed on registered exchanges as of December 31, 1956. The assets of the 2,027 issuers involved were in the vicinity of $250 billion. Figures published by the New York Stock Exchange covering 1,071 companies with 1,077 common stock issues, and with assets of about $234.2 billion are used in this compilation, the amount of assets being revised slightly upward because they were stated to be for the year-end 1955 for the most part. Data for the remaining exchanges are from fiscal year reports on or near December 31, 1956, and assets are compiled as shown in the balance sheets, using company rather than consolidated assets when both are shown. Companies whose common stocks have only unlisted trading privileges on exchanges or are listed only on exempted exchanges are excluded from this computation.

Foreign Stock

The market value on December 31, 1956, of all certificates representing foreign stocks on the stock exchanges was reported at about $12.7 billion, of which $11.7 billion represents Canadian and about $1.0 billion other foreign stocks. However, the values of the entire Canadian stock issues are included in these figures, and a substantial deduction would have to be made to determine the amounts held in the United States. Most of the other foreign stocks were represented by American Depository Receipts or American Shares, only the outstanding amounts of which were used in determining market values. The American Depository Receipts and American Shares substantially measured the domestic investment in the foreign issues so represented. The market value of the entire foreign stock issues represented in part by American certificates was about $9.0 billion.

Comparative Over-the-Counter Statistics

Section 15 (d) of the Securities Exchange Act of 1934 requires that registrations filed pursuant to the Securities Act of 1933 contain undertakings by the issuers to file the reports required by section 13 of the Exchange Act, when the class of securities offered and outstanding exceeds $2 million. The number of issuers required to file these reports, exclusive of issuers also filing under the Investment Company Act of 1940,[1] was 971 on June 30, 1956, and 1,086 on June 30, 1957. The

[1] Registrants under the Investment Company Act of 1940 are subject to the reporting and other requirements of that Act. On June 30, 1957, about 188 registrants under the Investment Company Act also had registrations under the Securities Act of 1933 requiring reporting pursuant to sec. 15 (d) of the Securities Exchange Act of 1934, which is accomplished by filing on a single form available under both Acts.

1,086 issuers had quoted stocks with an aggregate market value on December 31, 1956, of approximately $20 billion, including $17 billion domestic and $3 billion foreign, mostly Canadian. About $1.5 billion of the domestic and $1.8 billion of the foreign stocks were admitted to unlisted trading on stock exchanges and the remaining $15.5 billion domestic and $1.2 billion foreign stocks were traded only in over-the-counter markets in the United States.

The number of issuers registered under the Investment Company Act of 1940 increased from 399 to 432, and estimated aggregate assets increased from $14 billion to $15 billion, during the fiscal year ending June 30, 1957, as shown below in the discussion of that Act in this Annual Report. Of the 432 issuers, 36 had listings on registered stock exchanges and 3 had stocks with unlisted trading privileges on an exchange, all but 2 of the 39 issuers being of the "closed-end" type. The assets of these 39 issuers were approximately $2 billion. The remaining 393 registrants, with about $13 billion of estimated aggregate assets, had exclusively over-the-counter markets for their securities. The use of investment company totals in computing overall securities aggregates is duplicative to a very great extent in that the holdings of investment companies consist of other securities, principally listed stocks.

The aggregate market value of all domestic stocks, exclusive of investment company issues, with 300 or more reported holders, traded exclusively in over-the-counter markets, appears to have changed from about $45 billion to about $46 billion during the calendar year 1956. Many issues make their appearance in the over-the-counter markets each year, while many other issues are no longer traded in such markets because of listings on stock exchanges, mergers, sales of assets, liquidations and other reasons. The number of domestic issuers reporting 300 or more holders of over-the-counter stocks does not appear to have increased materially from the 3,500 mentioned in previous Annual Reports.

As stated above, of the $46 billion domestic over-the-counter stocks, $15.5 billion were of issuers reporting pursuant to section 15 (d) of the Securities Exchange Act of 1934, and a further $2.5 billion consist of over-the-counter stocks of issuers complying with provisions of the Exchange Act by reason of having other issues listed and registered on stock exchanges. Thus, $18 billion, or about two-fifths of the $46 billion domestic over-the-counter stocks (excluding investment companies) were of issuers reporting pursuant to the Securities Exchange Act.

DELISTING OF SECURITIES FROM EXCHANGES

During the fiscal year 1957 the Commission granted 26 applications filed by stock exchanges and 13 applications filed by issuers, pursuant to rule 12d2–1 (b) under section 12 (d) of the Securities Exchange Act of 1934, to remove securities from listing and registration.

The applications by stock exchanges covered 4 bond issues and 19 stock issues. Since 3 stock issues were delisted from 2 exchanges and 1 from 3 exchanges, the total number of removals was 24. The applications by issuers covered 13 stock issues, one of which was also included among the 19 stocks delisted upon stock exchange application.[2] Thus the net securities delisted were 4 bond issues and 31 stock issues, accounting for 41 removals in all.

The New York Stock Exchange delisting applications granted during the current fiscal year covered 3 bond issues and 14 stocks. That exchange has recently revised its policy so that delisting will be considered in instances among others where the size of a company has been reduced to below $2 million in net tangible assets or aggregate market value of the common stock and the average net earnings after taxes for the last three years is below $200,000, and certain instances where the stockholders have authorized liquidation or where sales of assets have been made without liquidation being authorized. The first applications under these revised standards were made by the exchange in January 1956, with respect to the common stocks of Atlas Tack Corp., Exchange Buffet Corp., and Kalamazoo Stove & Furnace Co. Pursuant to requests, hearings on the Atlas Tack and Exchange Buffet applications were held by the Commission. No hearing was held on the Kalamazoo application, since the single request for a hearing was subsequently withdrawn and the stock remained listed on another stock exchange. All three applications were granted in September 1956. The orders with respect to Atlas Tack and Exchange Buffet were subsequently upheld by United States Courts of Appeals, as described below under Litigation Under the Securities Exchange Act of 1934. Additional delisting applications by the New York Stock Exchange included 4 where liquidation was authorized and the initial liquidating dividend had been paid,[3] 4 where public holdings became negligible following exchange offers made by other companies, 1 preferred stock issue which had been re-

[2] The common stock of Jaeger Machine Co. was removed from the Cincinnati Stock Exchange pursuant to exchange application and from the Midwest Stock Exchange pursuant to application by the issuer. It remained listed on the New York Stock Exchange.

[3] In each case, payment of the initial liquidating dividend left only small amounts for further payment.

duced to a small amount by conversion into other issues of the same issuer, 1 where there was a sale of assets and no liquidation, and 1 where the survivor to a merger failed to meet the exchange standards for listing. In the last two cases, the stocks became listed and registered on the American Stock Exchange. The 3 delisted bond issues were residues of offers to exchange into other securities.

With one exception, where the issue remained listed on another exchange, the delisting applications by other stock exchanges were all based on virtual disappearance of the issues by reason of exchange offers and liquidations.

The delisting applications filed by issuers covered 7 stocks which remained listed on other stock exchanges, 2 stocks which had never been admitted to trading because of inadequacies in the disclosures made in connection with listing and registration, 1 closely held preferred stock, 1 stock of a liquidating company, and 2 stocks of companies registered under the Investment Company Act of 1940.

From July 1, 1936, through June 30, 1957, delistings pursuant to rule 12d–1 (b) have aggregated 464 upon application by stock exchanges and 264 upon application by issuers, counting each removal from each exchange in the totals. The net numbers of issues delisted were 440 upon application by stock exchanges and 249 upon application by issuers. Thus the total removals under rule 12d–1 (b) during the period mentioned were 728, including duplication among exchanges, and resulted in a net delisting of 688 issues.[4]

Delisting Proceedings Under Section 19 (a)

Section 19 (a) (2) authorizes the Commission to suspend for a period not exceeding twelve months, or to withdraw, the registration of a security on a national securities exchange if, in its opinion, such action is necessary or appropriate for the protection of investors, and after notice and opportunity for hearing, the Commission finds that the issuer of the security has failed to comply with any provision of the Act or the rules and regulations thereunder. Section 19 (a) (4) authorizes the Commission summarily to suspend trading in any registered security on any national securities exchange for a period not exceeding ten days if in its opinion such action is necessary or appropriate for the protection of investors and the public interest so requires.

At the beginning of the year, there were no cases pending under section 19 (a) (2). During the year, however, nine proceedings were instituted by the Commission under subsection 19 (a) (2), of which

[4] These totals are aggregates of the data presented and analyzed yearly in the Annual Reports of the Commission. The issue mentioned in footnote 2 is included in the separate counts of net issues delisted upon stock exchange application and upon issuer application, but is counted only once in the 688 issue total.

two were concluded and seven were pending at the end of the year.

Traditionally, the Commission has used its power under subsection 19 (a) (4) sparingly. However, during the year it found it necessary and appropriate, in connection with three proceedings brought by it under subsection 19 (a) (2), to apply its authority summarily to suspend trading in three securities registered on the American Stock Exchange. Two of these proceedings, *Great Sweet Grass Oils Limited* and *Kroy Oils Limited*, resulted in the issuance of orders withdrawing the registration of the securities on that exchange.[5] The other proceeding, which involved *Bellanca Corporation*, was pending at the end of the fiscal year.

In the *Great Sweet Grass* and *Kroy* cases, the Commission found that reports filed by the companies with the American Stock Exchange and the Commission pursuant to section 13 of the Securities Exchange Act were false and misleading. These reports were found to contain overstatements of oil and gas reserves in their properties. Moreover, the reports misrepresented that certain securities issued and sold by the companies in exchange for oil and gas properties were exempt from the registration requirements of the Securities Act of 1933 pursuant to the so-called "no sale" rule (rule 133) under that Act.

The Commission in its opinion held that where there is a preexisting plan, as in this case, to use stockholders merely as a conduit for distributing a substantial amount of securities to the public, rule 133 cannot be relied upon by the issuer and that the rule is not applicable to an "exchange" of assets for stock which is "but a step in the major activity of selling stock." The theory of rule 133, as described in the Commission's opinion, is that no sale to stockholders is involved where the vote of stockholders as a group authorizes a corporate act such as a transfer of assets for stock of another corporation, a merger or a consolidation, because there is not present the element of individual consent ordinarily required for a "sale" in the contractual sense. However, this does not mean that the stock issued under such a plan is "free" stock which need not be registered insofar as subsequent sales are concerned. Unless the Securities Act provides an exemption for a subsequent sale of such nonregistered stock, registration would be required.

The Commission found that Sweet Grass and Kroy were chargeable with knowledge of the plan of distribution and such knowledge required each company to register the securities if it wished to avoid violations of section 5 of the Securities Act. In any event, the opinion stated, where the persons negotiating an exchange, merger or similar transaction have sufficient control of the voting stock to make

[5] Securities Exchange Act Release No. 5483 (April 8, 1957).

a vote of stockholders a mere formality, rule 133 does not apply. In such case the transaction is not corporate action in a real sense, but rather is action reflecting the consent of the persons in control, and consequently results in a "sale" as to them.

The Commission found that no bona fide reliance on rule 133 was or could have been intended in this case and that the distribution of the unregistered shares created a contingent liability against Sweet Grass and Kroy to purchasers, pursuant to section 12 (1) of the Securities Act, which should have been disclosed in the reports filed with the Commission. The deliberate efforts disclosed by the record to evade the registration requirements of the Securities Act by creating corporate entities and effecting transactions meeting the requirements of the rule in appearance only were strongly condemned.

The Commission concluded that the use of the facilities of a national securities exchange by an issuer is a privilege involving important responsibilities under the Act, including compliance with the reporting requirements. It stated that "when those responsibilities are abused, the integrity of the exchange market is vitiated," and it decided that under the circumstances of the case, the protection of investors required that the registrations of the securities of Sweet Grass and Kroy on the American Stock Exchange should be withdrawn.

UNLISTED TRADING PRIVILEGES ON EXCHANGES

Unlisted Trading Categories

Under the provisions of section 12 (f) of the Securities Exchange Act of 1934, the Commission may approve applications by national securities exchanges to admit securities to unlisted trading privileges thereon without action on the part of the issuers. Such admissions impose no duties on issuers beyond any they may already have under the Act. Section 12 (f) provides for three categories of unlisted trading privileges.

Clause (1) of section 12 (f) provides for the continuation of unlisted trading privileges which existed on the exchanges prior to March 1, 1934. On December 1, 1935, unlisted trading privileges under clause (1) in effect consisted of 496 bond and 817 stock admissions of issues not listed on other exchanges, and 75 bond and 991 stock admissions of issues listed on other exchanges.[6] By June 30, 1957, the number of admissions to unlisted trading privileges under clause (1) remaining in effect had fallen from 2,379 to 834, consisting of 25 bond and 265 stock admissions of issues not listed on other ex-

[6] The 1935 data are taken from a "Report on Trading in Unlisted Securities Upon Exchanges" issued by the Commission in 1936. Exempted exchanges are excluded. The number of admissions to unlisted trading privileges is greater than the number of issues involved because some issues are admitted on more than one exchange.

changes and of 2 bond and 542 stock admissions of issues listed on other exchanges.

Clause (2) of section 12 (f) provides for the granting by the Commission of applications by exchanges for unlisted trading privileges in securities which are listed on other exchanges. The first such applications were granted in 1937, and there were 908 admissions of stock issues to unlisted trading privileges under clause (2) in effect on June 30, 1957.[7] There have been 8 admissions of bond issues, and 7 removals, leaving a single bond issue remaining admitted under clause (2).

Clause (3) of section 12 (f) provides for the granting by the Commission of applications for unlisted trading privileges conditioned, among other things, upon the availability of information substantially equivalent to that filed in case of listed issuers. There have been 45 bond and 11 stock admissions to unlisted trading privileges under clause (3), of which only 12 bond and 4 stock issues remained on June 30, 1957, and 2 of the stock issues have also become listed on other exchanges. There have been no applications under clause (3) since 1949.

Volume of Unlisted Trading in Stocks on Exchanges

The reported volume of shares traded on an unlisted basis on the stock exchanges during the calendar year 1956 included approximately 33.9 million shares in stocks admitted to unlisted trading only and 30.2 million shares in stocks listed and registered on exchanges other than those where the unlisted trading occurred. These amounts were respectively about 3.1 and 2.8 percent of the total share volume reported on all exchanges. Appendix table 8 shows the distribution of share volume among the various categories of unlisted trading privileges on exchanges.

Applications for Unlisted Trading Privileges

Pursuant to applications filed by exchanges with respect to stocks listed on other exchanges, unlisted trading privileges were extended during the year to June 30, 1957, as follows:

Stock exchange:	*Number of stocks*
Boston	8
Cincinnati	11
Detroit	2
Los Angeles	17
Midwest	14
Philadelphia-Baltimore	26
San Francisco	2
Total	80

[7] The reduction from 1,025 unlisted stock trading privileges under clause (2) on June 30, 1956 to 908 on June 30, 1957 was caused primarily by ending of duplications upon the merger of the Los Angeles Stock Exchange and the San Francisco Stock Exchange into the Pacific Coast Stock Exchange on December 31, 1956.

The Commission's rule 12f–2 provides that when a security admitted to unlisted trading privileges is changed in certain minor respects it shall be deemed to be the security previously admitted to unlisted trading privileges, and if it is changed in other respects the exchange may file an application requesting the Commission to determine that notwithstanding such change the security is substantially equivalent to the security theretofore admitted to unlisted trading privileges. During the year to June 30, 1957, the Commission granted 3 applications by the American Stock Exchange for determination that one bond issue and two stock issues were the substantial equivalent of the securities previously admitted to unlisted trading.

BLOCK DISTRIBUTIONS BY EXCHANGES

Rule 10b–2 under the Securities Exchange Act of 1934 in substance prohibits any person participating or interested in the distribution of a security from paying any other person for soliciting or inducing a third person to buy the security on a national securities exchange. This rule is an anti-manipulative rule adopted under section 10 (b) of the Act which makes it unlawful for any person to use any manipulative or deceptive device or contrivance in contravention of Commission rules prescribed in the public interest or for the protection of investors. Paragraph (d) of the rule provides an exemption from its prohibitions where compensation is paid pursuant to the terms of a plan, filed by a national securities exchange and declared effective by the Commission, authorizing the payment of such compensation in connection with the distribution.

At the present time two types of plans are in effect to permit a block of securities to be distributed through the facilities of a national securities exchange when it has been determined that the regular market on the floor of the exchange cannot absorb the particular block within a reasonable time and at a reasonable price or prices. These plans have been designated the "Special Offering Plan," essentially a fixed price offering based on the market price; and the "Exchange Distribution Plan," which is a distribution "at the market." Both plans contemplate that orders will be solicited off the floor but executed on the floor. Each of such plans contains certain anti-manipulative controls and requires specified disclosures concerning the distribution to be made to prospective purchasers.

In addition to these two methods of distributing large blocks of securities on national securities exchanges, a third method is commonly employed whereby blocks of listed securities may be distributed to the public over the counter. This method is commonly referred to as a "Secondary Distribution" and such a distribution usually takes place after the close of exchange trading. It is generally the

practice of exchanges to require members to obtain the approval of the exchange before participating in such secondary distributions.

The following table shows the number and volume of special offerings and exchange distributions reported by the exchanges having such plans in effect, as well as similar figures for secondary distributions which exchanges have approved for member participation and reported to the Commission.

Total sales—12 months ended Dec. 31, 1956 [1]

	Number	Shares in offer	Shares sold	Value (thousands of dollars)
Special offerings	8	143,880	131,755	4,557
Exchange distributions	17	169,351	156,481	4,645
Secondary distributions	146	11,526,079	11,696,174	520,966
	6 months ended June 30, 1957 [1]			
Special offerings	5	68,016	63,408	1,845
Exchange distributions	20	230,514	221,322	11,255
Secondary distributions	66	7,211,258	7,211,463	255,160

[1] Details of these distributions appear in the Commission's monthly Statistical Bulletin. For data for prior years see appendix table.

MANIPULATION AND STABILIZATION

Manipulation

The Exchange Act describes and prohibits certain forms of manipulative activity in securities registered on a national securities exchange. The prohibited activities include wash sales and matched orders 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 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, or buyers, or the omission of material information regarding securities for the purpose of inducing purchases or sales. The Act also empowers the Commission to adopt rules and regulations to define and prohibit the use of these and other forms of manipulative activity in securities whether or not such securities are registered on an exchange or traded over the counter.

The Commission's market surveillance staff in its Division of Trading and Exchanges in Washington and in its New York Regional Office and other field offices observes the ticker-tape quotations

of the New York Stock Exchange and the American Stock Exchange securities, the sales and quotation sheets of the various regional exchanges, and the bid and asked prices published by the National Daily Quotation Service for about 6,000 unlisted securities to observe any unusual or unexplained price variations or market activity. The financial news ticker, leading newspapers, and various financial publications and statistical services are also closely followed.

When unusual or unexplained market activity in a security is observed, all known information regarding the security is examined and a decision made as to the necessity for an investigation. Most investigations are not made public so that no unfair reflection will be cast on any persons or securities and the trading markets will not be upset. These investigations, which are conducted by the Commission's regional offices, take two forms. A preliminary investigation or "quiz" is designed rapidly to discover evidence of unlawful activity. If no violations are found, the preliminary investigation is closed. If it appears that more intensive investigation is necessary, a formal order of investigation, which carries with it the right to issue subpenas and to take testimony under oath, is issued by the Commission. If violations are discovered, the Commission may revoke the registration of a broker-dealer or it may suspend or expel him from the National Association of Securities Dealers. Similarly, a member of a national securities exchange may be suspended or expelled from the exchange. The Commission may also seek an injunction against any person violating the Act and it may recommend to the Department of Justice that any person violating the Act be criminally prosecuted. In some cases, where State action seems likely to bring quick results in preventing fraud or where Federal jurisdiction may be doubtful, the information obtained may be referred to State agencies for State injunction or criminal prosecution.

The following table shows the number of quizzes and formal investigations initiated in 1957, the number closed or completed during the same period, and the number pending at the end of the fiscal year:

Trading investigations

	Quizzes	Formal Investigations
Pending June 30, 1956	100	7
Initiated during fiscal year	37	4
Total	137	11
Closed or completed during fiscal year	67	2
Changed to formal during fiscal year	4	
Total	71	2
Pending at end of fiscal year	66	9

When securities are to be offered to the public, their markets are watched very closely to make sure that the price is not unlawfully raised prior to or during the distribution. Eight hundred and sixty registered offerings having a value of $14,623,600,000 and 925 offerings exempt under section 3 (b) of the Securities Act, having a value of about $168 million were so observed during the fiscal year. About 200 other small offerings, such as secondary distributions and distributions of securities under special plans filed by the exchanges, which had a total value of about $500 million, were also kept under surveillance.

Stabilization

Stabilization involves open-market purchases of securities to prevent or retard a decline in the market price in order to facilitate a distribution. It is permitted by the Exchange Act subject to the restrictions provided by the Commission's rules 10b–6, 7 and 8. These rules are designed to confine stabilizing activity to that necessary for the above purpose, to require proper disclosure and to prevent unlawful manipulation.

During 1957 stabilizing was effected in connection with stock offerings aggregating 28,585,236 shares having an aggregate public offering price of $706,538,755. Bond issues having a total offering price of $223,483,150 were also stabilized. To accomplish this, 970,942 shares of stock were purchased in stabilizing transactions at a cost of $20,870,422 and bonds costing $4,688,610 were also bought. In connection with these stabilizing transactions 7,341 stabilizing reports which show purchases and sales of securities effected by persons conducting the distribution were received and examined during the fiscal year.

INSIDERS' SECURITY TRANSACTIONS AND HOLDINGS

Under section 16 (a) of the Securities Exchange Act of 1934 every person who becomes a direct or indirect beneficial owner of more than 10 percent of any class of equity security (other than an exempted security) which is listed and registered on a national securities exchange, or who becomes a director or an officer of the issuer of any such security, is required to file with the Commission and the exchange a statement of his ownership of the issuer's equity securities and to keep such information current by filing a report for each month in which any subsequent change in his ownership occurs, showing the transactions involved. Officers and directors of public utility holding companies and officers, directors, principal security holders, members of advisory boards, investment advisers or affiliated persons of investment advisers of registered closed-end investment companies are required to file similar reports with the Commission

under section 17 (a) of the Public Utility Holding Company Act of 1935 and section 30 (f) of the Investment Company Act of 1940.

These reports are available for public inspection at the Commission's office and at the exchanges. In order to make available to interested persons throughout the country the information contained in these reports, it is summarized and published in the Commission's monthly "Official Summary of Security Transactions and Holdings," which is distributed on a subscription basis by the Government Printing Office. The circulation of this publication now exceeds 4,500 copies a month.

The number of reports filed has continued to increase during the last 5 fiscal years, reaching a new high of 34,443 for the 1957 fiscal year. The following table shows the number of reports filed for each of the last 5 years.

Number of ownership reports filed during the last 5 fiscal years

Fiscal year:	*Number of reports filed*
1957	34,443
1956	32,001
1955	28,975
1954	23,199
1953	22,333

The following table shows details concerning the reports filed during the fiscal year 1957:

Number of ownership reports of officers, directors, principal security holders, and certain other affiliated persons filed during the fiscal year ended June 30, 1957

Securities Exchange Act of 1934:[1]	
Form 4	29,348
Form 5	823
Form 6	3,315
Total	33,486
Public Utility Holding Company Act of 1935:[2]	
Form U-17-1	21
Form U-17-2	275
Total	296
Investment Company Act of 1940:[3]	
Form N-30F-1	272
Form N-30F-2	389
Total	661
Grand total	34,443

[1] Form 4 is used to report changes in ownership; Form 5 to report ownership at the time an equity security of an issuer 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 of ownership.

[3] Form N-30F-1 is used for initial reports and Form N-30F-2 for reports of changes of ownership.

Recovery of Short Swing Trading Profits by or on Behalf of Issuer

For the purpose of preventing the unfair use of information which may have been obtained by an officer, director or 10-percent stockholder by reason of his relationship to his company, sections 16 (b) of the Securities Exchange Act, 17 (b) of the Public Utility Holding Company Act, and 30 (f) of the Investment Company Act provide for the recovery by or on behalf of the issuer of any profit realized by the officer, director or 10-percent stockholder from certain purchases and sales, or sales and purchases, of securities of the company within any period of less than 6 months. 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.

REGULATION OF PROXIES

Scope of Proxy Regulation

Under 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 requiring the disclosure in a proxy statement of pertinent information in connection with the solicitation of proxies, consents and authorizations in respect of securities of companies subject to those statutes. The regulation also provides means whereby any security holders so desiring may communicate with other security holders when management is soliciting proxies, either by arranging for the independent distribution of their own proxy statements or by including their proposals in the proxy statements sent out by management.

Copies of proposed proxy material must be filed with the Commission in preliminary form prior to the date of the proposed solicitation. Where preliminary material fails to meet the prescribed disclosure standards, the management or other group responsible for its preparation is notified informally and given an opportunity to avoid such defects in the preparation of the proxy material in the definitive form in which it is furnished to stockholders.

Statistics Relating to Proxy Statements

During the 1957 fiscal year 1,991 solicitations were made pursuant to regulation X–14; 1,968 were conducted by management and 23 by nonmanagement groups. These 1,991 solicitations related to 1,755 companies, some 160 of which had more than one solicitation during the year, generally for a special meeting not involving the election of directors.

Of the 1,991 proxy statements filed during the year, 1,726 involved the solicitation of proxies for the election of directors, 239 were for

special meetings not involving the election of directors, and 26 solicited assents and authorizations not involving a meeting of security holders or the election of directors.

In addition to the election of directors, stockholders' decisions were sought in the 1957 fiscal year with respect to the following types of matters:

Nature of proposals	*Number of proxy statements*
Mergers, consolidations, acquisitions of businesses, purchases and sales of property, and dissolutions	112
Issuance of new or additional securities, modifications of existing securities and recapitalization plans other than mergers or consolidations	297
Employee pension and retirement plans (including amendments to existing plans)	86
Bonus and profit-sharing plans, including deferred compensation arrangements	40
Stock option and employee stock purchase plans (including amendments to existing plans)	216
Approval of selection by management of independent auditors	516
Amendments to charters and bylaws and miscellaneous other matters (excluding those involved in the preceding items)	461

Stockholders' Proposals

During the 1957 fiscal year, 33 stockholders submitted a total of 127 proposals which were included in the 78 proxy statements by the management of 77 companies under the provisions of rule 14a–8 of regulation X–14.

Typical of such stockholders' proposals submitted to a vote of security holders were resolutions relating to amendments to charters and bylaws to provide for regional meetings of stockholders, cumulative voting for the election of directors, preemptive rights for stockholders, a requirement that directors own a minimum amount of stock, limitation of the authority of the directors to issue securities for property without specific approval by stockholders and the annual election of all directors. Other resolutions of stockholders included in managements' proxy statements related to limitations on executive salaries, pensions, and options to purchase stock of the company, the sending to all stockholders of a report of the annual meeting and the approval by stockholders of the selection by management of the independent auditors.

The management of 21 companies omitted from their proxy statements, under the conditions specified in rule 14a–8, a total of 39 additional stockholder proposals submitted by 24 individual stockholders. The reasons why these 39 proposals were omitted from managements' proxy statements are given below with the number of times each reason

was involved shown in parentheses: (*a*) The proposal was not a proper subject matter under state law (15); (*b*) the proposal was not submitted to the company within the prescribed time limit (4); (*c*) the proposal involved a personal grievance (7); (*d*) the same proposal did not receive sufficient votes at a previous meeting of stockholders (4); (*e*) the subject matter related to the ordinary conduct of business of the company (3); and (*f*) the proposal was withdrawn by the stockholder (6).

Ratio of Soliciting to Nonsoliciting Companies

Of the 2,256 issuers that had securities listed and registered on national securities exchanges as of June 30, 1957, 2,004 had voting securities so listed and registered.[8] Of these 2,004 issuers, 1,532, or 76.4 percent, solicited proxies under the Commission's proxy rules for the election of directors during the 1957 fiscal year while the remaining 472, or 23.6 percent, did not file proxy statements.

Proxy Contests

During the 1957 fiscal year there were 20 companies involved in proxy contests for the election of directors, 11 of which were for control of the company and 9 for representation on the board of directors. In these contests 265 persons filed detailed statements as participants under the requirements of rule 14a–11. Of the 11 contests for control, management won 7, the opposition won 2, 1 was settled by negotiation, and 1 was pending in court as of June 30, 1957. Of the 9 contests for representation on the board of directors, management won 5, the opposition won places on the board in 3 cases, and in the other case the opposition was given a place on the board by negotiation.

REGULATION OF BROKER-DEALERS AND OVER-THE-COUNTER MARKETS

Registration

Section 15 (a) of the Securities Exchange Act of 1934 requires registration of brokers and dealers using the mails or instrumentalities of interstate commerce to effect transactions in securities on the over-the-counter market, except those brokers and dealers whose business is exclusively intrastate or exclusively in exempt securities. The tabulations below reflect certain statistical data with respect to

[8] Not included in the 2,004 issuers were 11 companies that listed and registered voting securities on an exchange for the first time subsequent to their 1957 annual meeting of stockholders.

registration of brokers and dealers and applications for such registration during the fiscal year 1957.

Effective registrations at close of preceding fiscal year	4,591
Applications pending at close of preceding fiscal year	53
Applications filed during fiscal year	776
Total	5,420
Applications denied	6
Applications withdrawn	17
Applications cancelled	0
Registrations withdrawn	477
Registrations cancelled	58
Registrations revoked	22
Registrations effective at end of year	4,771
Applications pending at end of year	69
Total	5,420

Administrative Proceedings

Under section 15 (b) of the Securities Exchange Act of 1934, the Commission may deny broker-dealer registration to an applicant or revoke such registration if it finds that it is in the public interest and that the applicant or registrant or any partner, officer, director or other person directly or indirectly controlling or controlled by such applicant or broker-dealer is subject to one or more of the disqualifications set forth in the Act. These disqualifications, in general, are (1) willful false or misleading statements in the application or documents supplemental thereto, (2) conviction within ten years of a felony or misdemeanor involving the purchase or sale of securities or of any conduct arising out of the business as a broker-dealer, (3) injunction by a court of competent jurisdiction from engaging in any practices in connection with the purchase or sale of securities, and (4) willful violation of the Securities Act of 1933 or the Securities Exchange Act of 1934 or any of the Commission's rules or regulations thereunder. In addition, brokers and dealers may be suspended or expelled by the Commission from membership in the National Association of Securities Dealers, Inc., and national securities exchanges for participating in violations of the various federal securities laws or the regulations thereunder. The Commission may not deny registration to any person who applies therefor absent evidence of misconduct of the specified types enumerated in the Act. Reputation, character, lack of experience in the securities business or even conviction of the registrant of a felony not involving the sale of securities do not constitute statutory bars to registration as a broker-dealer.

The Commission's vigorous enforcement program and a greater number of broker-dealer inspections during the fiscal year resulted in

a substantial increase in the number of proceedings under section 15 (b) of the Securities Exchange Act as compared with prior years. A tabulation reflecting these proceedings for the fiscal year follows.

Statistics of administrative proceedings to deny and revoke registration and to suspend and expel from membership in a national securities association or an exchange

Proceedings pending at start of fiscal year to:	
Revoke registration	22
Revoke registration and suspend or expel from NASD or exchanges	11
Deny registration to applicants	4
Total proceedings pending	37
Proceedings instituted during fiscal year to:	
Revoke registration	27
Revoke registration and suspend or expel from NASD or exchanges	31
Deny registration to applicants	15
Impose terms and conditions on withdrawal	1
Total proceedings instituted	74
Total proceedings current during fiscal year	111

Disposition of proceedings

Proceedings to revoke registration:	
Dismissed on withdrawal of registration	13
Dismissed—registration permitted to continue in effect	1
Registration revoked	13
Total	27
Proceedings to revoke registration and suspend or expel from NASD or exchanges:	
Registration revoked and firm expelled from NASD	9
Dismissed on withdrawal of registration	1
Dismissed—registration and membership permitted to continue in effect	3
Suspended for a period of time from NASD	4
Total	17
Proceedings to deny registration to applicant:	
Registration denied	6
Dismissed on withdrawal of application	2
Dismissed—application permitted to become effective	2
Total	10

Disposition of proceedings—Continued

Proceedings to impose terms and conditions on withdrawal:	
Dismissed—withdrawal of registration permitted	1
Total	1
Total proceedings disposed of	55
Proceedings pending at end of fiscal year to:	
Revoke registration	22
Revoke registration and suspend or expel from NASD or exchanges	25
Deny registration to applicants	9
Impose terms and conditions on withdrawal	0
Total proceedings pending at end of fiscal year	56
Total proceedings accounted for	111

Proceedings in which action was taken during the year included the following:

Registration as a broker-dealer in securities was denied to *John Raymond Lucas, doing business as Lucas and Company* [9] upon a finding that while not so registered with the Commission the applicant had effected securities transactions involving $8,900,000 with 116 customers located in 6 states and with 36 other brokers and dealers. A substantial number of transactions had been effected by Lucas after he had been advised of the broker-dealer registration requirements of the Securities Exchange Act of 1934. In addition, it was found that the sworn financial statement filed with his application for registration was false in failing to disclose a large amount of liabilities and that Lucas had engaged in transactions with customers while insolvent without disclosing such information to his customers. Subsequently Lucas was tried and convicted in a state court on charges of grand larceny and embezzlement and was sentenced to five years in the state penitentiary.

In *The Western Trader, Inc.*,[10] the Commission denied an application for registration as a broker-dealer upon a finding that the applicant had been previously registered as a broker-dealer and in an action instituted by the Commission was permanently enjoined by a decree entered in a United States District Court in which it was adjudged, among other things, that the applicant sold unregistered stock in a uranium company by means of misrepresentations concerning the company and its properties, and had effected principal and agency transactions with customers without sending proper confirmations as required. The Commission also found that Clifford A. Greenman,

[9] Securities Exchange Act Release No. 5470 (March 8, 1957).
[10] Securities Exchange Act Release No. 5514 (May 13, 1957).

president and controlling stockholder of applicant, was a cause of the order of denial. Greenman was also a registered investment adviser operating under the name The Western Trader and Investor. Proceedings resulting in revocation of that registration are discussed in the section of this report relating to Investment Advisers Act of 1940.

The broker-dealer registration of *The Lewellen-Bybee Company*[11] was revoked upon a finding that the firm had offered and sold the common stock of Venezuelan National Diamond Co. and Powder River Uranium Co., Inc., and the common and preferred stock of Hemisphere Productions, Ltd., when no registration under the Securities Act of 1933 was in effect with respect to any of these securities. In connection with the offer of stock of Venezuelan National Diamond Co., the firm made false and misleading representations concerning the incorporation of the issuer and the return to be expected from an investment in the security. In the offer and sale of the securities of Hemisphere Productions Limited the firm made false representations concerning the issuer's repurchase of its preferred stock, the soundness of an investment in the securities, and their future price. In addition, it was found that a predecessor of the firm had offered and sold unregistered securities of another issuer, and in doing so had made various false and misleading statements. The Commission determined that Rollo Lee Lewellen, president of Lewellen-Bybee, was a cause of the revocation.

C. Herbert Onderdonk, doing business as C. Herbert Onderdonk Co.,[12] had been permanently enjoined by a United States District Court, upon a complaint filed by the Commission, from engaging in business as a broker-dealer unless his books and records were made current and made available for inspection by a representative of the Commission, and a true and correct report of his financial condition filed. It appeared that his books and records and his financial report filed with the Commission failed to reflect certain liabilities to customers and that New York State had obtained an injunction based upon a finding that Onderdonk was insolvent and had misappropriated funds and securities of customers. The Commission entered an order revoking Onderdonk's registration. Onderdonk received a sentence of from 5 to 10 years' imprisonment upon a plea of guilty to charges of forgery and grand larceny brought in a state court.

The Commission suspended the membership of *Brereton, Rice & Co., Inc.*[13] in the National Association of Securities Dealers, Inc., for 30 days upon a finding that the firm had prepared and inserted in a

[11] Securities Exchange Act Release No. 5401 (November 23, 1956).
[12] Securities Exchange Act Release No. 5532 (June 17, 1957).
[13] Securities Exchange Act Release No. 5477 (March 25, 1957).

mining newspaper an advertisement which represented that the firm offered to sell the unsold balance of an issue of 200,000 shares of Leadville Lead and Uranium Corporation stock at the original public offering price of $1.25 per share; that a survey of Leadville's mining properties by a certain eminent mining engineer indicated large bodies of gold, silver, lead, zinc, and copper ore; and that the mining engineer after completing his survey bought a substantial block of Leadville stock at $1.25 per share.

The Commission determined that the offer to sell the unsold balances of the Leadville issue was materially misleading in that Brereton, Rice & Co., Inc., intended to fill orders received in response to the advertisement with outstanding rather than original issue stock, and consequently none of the proceeds of such sales would be received by the issuer. With regard to the survey indicating large bodies of certain minerals, it was found that the conclusions were based upon certain anomalies which did not necessarily indicate the existence of any ore bodies. It was also found that the claim that the mining engineer had purchased a block of stock in Leadville was misleading since the engineer was given the stock as partial compensation before beginning his surveys. Prompt action by the Regional Office caused a discontinuance of the offering before any sales were effected.

An order was entered denying the application for registration as a broker-dealer of *George W. Chillian, doing business as George W. Chillian & Company* [14] based upon violations of the registration provisions of the Securities Act and the Securities Exchange Act. The Commission found that the applicant had participated in the distribution of more than a quarter of a million shares of capital stock of New Metalore Mining Co., Ltd., a Canadian mining company, to residents of the United States in eight states. The shares were not registered under the Securities Act and Chillian was not registered as a broker-dealer under the Exchange Act. It was found that he also effected transactions in other Canadian securities for residents of Minnesota.

The Commission revoked the registration of *L. D. Friedman & Co., Inc.*,[15] as a broker-dealer when it was found that the firm had made false statements in its application for registration, and made false statements that an offering of North Pacific Exploration, Ltd., stock was almost completed and that only a few shares were left, that the price of the stock would go up substantially in the near future, that the firm had made large purchases of the stock, that oil had been discovered on North Pacific's properties and that North Pacific compared favorably with another well-known successful company. In addition,

[14] Securities Exchange Act Release No. 5368 (September 26, 1956).
[15] Securities Exchange Act Release No. 5518 (May 17, 1957).

it was found that the firm had failed to meet the net capital requirements and to keep the books and records required by the Securities Exchange Act of 1934 and had sold securities not registered under the Securities Act of 1933. The Commission found Louis D. Friedman and Leo Raymond, president and former vice president, respectively, of L. D. Friedman & Co., to be causes of the revocation.

Proceedings against *Coburn and Middlebrook, Incorporated* [16] were based upon violations of section 7 (c) of the Securities Exchange Act of 1934 and regulation T promulgated by the Federal Reserve Board thereunder relating to the extension of credit to customers by broker-dealers who transact business through the medium of a member of a national securities exchange. The registrant maintained 14 branch offices and employed about 100 salesmen. Its business largely involved dealings in securities traded in the over-the-counter market. Section 4 (c) (2) of regulation T provides that a broker or dealer shall promptly cancel or otherwise liquidate the transaction where a customer purchases a security in a special cash account and does not make full cash payment within 7 business days. Section 4 (c) (8) of the regulation provides that unless funds sufficient for the purpose are already in the account, no security shall be purchased for or sold to a customer in a special cash account if during the preceding 90 days the customer had purchased another security in that account and sold it before he paid for it in full. Section 4 (c) (1) (a) of regulation T permits a broker or dealer to effect bona fide cash transactions involving the purchase of a security by a customer in a special cash account which does not have sufficient funds for the purpose only if he does so in reliance upon an agreement accepted by him in good faith that the customer will promptly make full cash payment for the security and that he does not contemplate selling the security prior to making such payment. The Commission found that registrant had violated section 7 (c) of the Act and each of the foregoing provisions of regulation T and suspended registrant from membership in the National Association of Securities Dealers, Inc., for a period of 30 days.

Another case involving charges of violation of section 7 (c) of the Securities Exchange Act and regulation T was *In the Matter of Denton & Company, Incorporated.*[17] In this case the Commission found that the registrant did not promptly cancel or otherwise liquidate transactions of customers in special cash accounts when the customer did not make full cash payment within 7 business days in violation of section 4 (c) (2) of regulation T. At least one of these transactions also violated section 4 (c) (8) of the regulation in that a customer was permitted to purchase a security in a special cash account without hav-

[16] Securities Exchange Act Release No. 5454 (February 27, 1957).
[17] Securities Exchange Act Release No. 5493 (April 22, 1957).

ing sufficient funds in the account for that purpose when within the previous 90 days the customer had purchased another security in that account and sold it before he paid for it. In addition to the regulation T violations, the Commission found that the registrant had failed to keep current certain books and records as required. The Commission suspended the firm from the National Association of Securities Dealers, Inc., for 30 days and found three officers of the firm to be causes of the suspension order.

The broker-dealer registration of *Gill, Pope Co.*[18] was revoked upon a finding that the registrant's books and records and its report of financial condition filed with the Commission failed to reflect a liability for an advance by Paleo Oil & Gas Corp. for expenses in connection with a "best efforts" underwriting. Had the liability been shown, it would have revealed that the firm was doing business with customers while in violation of the net capital rule and while insolvent. Jesse S. Gill and Frank I. Pope were found to be causes of the revocation order.

The Commission revoked the registration of *Bartlett and Weikel*[19] as a broker-dealer based upon a finding that the firm had engaged in a distribution of Acteon Gold Mines, Ltd., a Canadian security, in the United States when no registration statement was in effect for the securities under the Securities Act of 1933. In connection with such sales the firm made false and misleading statements by overstating the value of Acteon's properties, orders held by Bartlett and Weikel for Acteon stock and the indicated market price of the stock. Further, it was found that the firm had failed to keep certain books and records, had made fictitious entries in other books and records and had filed a false annual financial statement with the Commission. The Commission also found Malcolm H. Biddle Weikel and Paul Henry Kroger, partners in Bartlett and Weikel, to be causes of the revocation.

The broker-dealer registration of *Mitchell Securities, Inc.*,[20] was revoked by the Commission, based upon an injunction entered in a United States District Court in which it was adjudged that the firm had sold its own debentures to the public by means of misrepresentations about its financial condition, its history of unprofitable operations, and commissions paid in connection with the sale of its debentures. The Commission also determined that C. Benjamin Mitchell and Russell P. Dotterer, who were officers and directors of Mitchell Securities, were causes of the revocation.

The broker-dealer registration of *Paul Scarborough, Jr.*,[21] was revoked by the Commission following his conviction in United States

[18] Securities Exchange Act Release No. 5340 (July 19, 1956).
[19] Securities Exchange Act Release No. 5357 (August 31, 1956).
[20] Securities Exchange Act Release No. 5498 (April 23, 1957).
[21] Securities Exchange Act Release No. 5507 (April 30, 1957).

District Court on charges of violating the anti-fraud provisions of the Securities Act and the Securities Exchange Act involving conversion by Scarborough of customers' funds and securities. The Commission earlier had obtained an injunction in the same court to restrain further violations of the anti-fraud provisions of the Securities Exchange Act and from continuing to effect transactions in securities as a broker-dealer without making and keeping current the books and records required under the Act. The injunction was also a basis for the Commission's order of revocation.

Net Capital Rule

To provide safeguards for funds and securities of customers dealing with broker-dealers, the Commission has adopted rule 15c3–1 under the Securities Exchange Act, commonly known as the net capital rule. This rule restricts the amount of indebtedness that may be incurred by a registrant in relation to his capital. Under the rule, no broker-dealer subject thereto may permit his "aggregate indebtedness" to exceed 20 times his "net capital" as those terms are defined in the rule.

Prompt action is taken by the Commission whenever it appears that any broker-dealer fails to meet the capital requirements prescribed by the rule. Unless the broker-dealer takes necessary steps promptly to correct any capital deficiency found to exist either by inspection or by reports filed with the Commission, injunctive action may be taken or proceedings instituted to determine whether the broker-dealer registration should be revoked. During the fiscal year violations of the net capital rule were alleged in injunctive actions filed against 34 broker-dealers, and in revocation proceedings instituted against 20.

Where a broker-dealer participates in "firm commitment" underwritings careful check, based upon latest available information, is made to determine whether he has adequate net capital to be in compliance with the rule. Acceleration of effectiveness of registration statements under the Securities Act is not permitted if it appears that any underwriter would as a result of his commitment be in violation of the net capital rule. In a number of instances during the past year broker-dealers who were named as underwriters appeared to be inadequately capitalized to take down their commitments in conformity with the rule. The broker-dealers were informed of the situation and the effect it would have on a pending registration statement, and they thereupon obtained sufficient capital so that full compliance with the rule could be had, reduced their commitments to the extent to which they could be undertaken without violating the rule or withdrew entirely as an underwriter.

Financial Statements

A report of financial condition is required to be filed with the Commission once each calendar year by every registered broker-dealer. These reports serve to inform the Commission and the public as to the financial responsibility of broker-dealers, and they are analyzed by the staff to determine whether the registrant is in compliance with the Commission's net capital rule. If the analysis discloses that the registrant is not in compliance with the net capital requirements an opportunity is usually afforded for compliance, particularly where the situation appears to be inadvertent or of a temporary nature. However, the Commission, for the protection of customers, insists that registrants be in compliance and, where the public interest would be better served, appropriate action is taken. Revocation proceedings are brought against registrants who fail to make the necessary filing. During the year 4,328 reports of financial condition were filed.

Broker-Dealer Inspections

Inspections of registered broker-dealers as provided for in section 17 (a) of the Securities Exchange Act are a vital part of the Commission's activities to provide maximum protection of investors. The purpose of these regular and periodic inspections is to assure compliance by broker-dealers with the securities acts and the rules and regulations promulgated by the Commission and to detect and prevent violations.

An inspection ordinarily includes, among other things, (1) a determination of the financial condition of the broker-dealer; (2) review of pricing practices; (3) review of the treatment of customers' funds and securities; and (4) a determination whether adequate disclosures are made to customers. The inspection process also determines whether the required books and records are adequate and currently maintained, and whether broker-dealers are conforming with the margin and other requirements of regulation T, as prescribed by the Federal Reserve Board. They also check for "churning," "switching," sale of unregistered securities, use of improper sales literature or sales methods, and other fraudulent practices. These inspections frequently discover situations which, if not corrected, would result in losses to customers.

The policy inaugurated in the previous year of increasing the number of inspections was carried forward in the fiscal year 1957. The 1,214 inspections completed during the year represent an increase of more than 25 percent over the previous year. Since the number of registered broker-dealers continued to increase during the year from 4,591 to 4,771 at the end of the year, it is proposed that the inspection program will be further expanded to keep pace with the increased number of persons engaged in the securities business.

While an inspection may disclose violations of the Commission's statutes or rules, formal action is not taken against every broker-dealer found to be in violation. In determining whether to institute action against a broker-dealer found as a result of an inspection to be in violation, consideration is given to the nature of the violation and to the effect it has upon members of the public. Inspections usually reveal a number of inadvertent violations which are caught before they become serious and before they jeopardize the rights of customers. In such situations, where no harm has come to the public, the matter is called to the attention of the registrant and arrangements made to correct the improper practices. Where, however, the violation appears to be willful and the public interest is best served by instituting proceedings against the broker-dealer, such action is promptly taken.

The following table shows the various types of violations disclosed as a result of the inspection program during the fiscal year 1957.

Type	*Number*
Financial difficulties	121
Hypothecation rules	26
Unreasonable prices for securities purchases	234
Regulation T of the Federal Reserve Board	218
"Secret profits"	8
Confirmation and bookkeeping rules	950
Miscellaneous	165
Total indicated violations	1,722
Total number of inspections	1,214

In addition to the Commission's inspection program, the National Association of Securities Dealers, Inc., and the principal stock exchanges also conduct inspections of their members and some of the States also have inspection programs. Each inspecting agency conducts inspections in accordance with its own procedures and with particular reference to its own regulations and jurisdiction. Consequently, inspections by other agencies are not an adequate substitute for Commission inspections since the inspector will not be primarily concerned with the detection and prevention of violations of the Federal securities laws and the Commission's regulations thereunder. The Commission and certain other inspecting agencies, however, maintain a program of coordinating inspection activities for the purpose of avoiding unnecessary duplication of inspections and to obtain the widest possible coverage of brokers and dealers. This seems appropriate in view of the limited number of inspections which it is possible for the Commission to make. The program does not prevent the Commission from inspecting any person recently inspected by another agency, and such an inspection by the Commission

is made whenever reason therefor exists, but it has been necessary for the Commission to rely to a considerable extent upon the inspection programs of the major exchanges, such as the New York Stock Exchange.

Agencies now participating in the coordinated program include the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Philadelphia-Baltimore Stock Exchange, the Pacific Coast Stock Exchange, and the National Association of Securities Dealers, Inc.

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

Section 15A of the Securities Exchange Act of 1934 ("the Maloney Act") provides for registration with the Commission of national securities associations and establishes standards for such associations. The rules of such associations must be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices and to meet other statutory requirements. Such associations serve as a medium for the co-operative self regulation of over-the-counter brokers and dealers and operate under the general supervision of this Commission. The National Association of Securities Dealers, Inc. (NASD) is the only association registered under the Act.

In adopting legislation to authorize the formation and registration of such associations, Congress provided an incentive to membership by permitting such associations to adopt, and the NASD has adopted, rules which preclude a member from dealing with a non-member, except on the same terms and conditions as the member affords the general public. As a consequence, membership is necessary to the profitable participation in underwritings and over-the-counter trading in general, for price concessions, discounts and similar allowances may properly be granted only to members.

On June 30, 1957, there were 3,856 NASD members, an increase of 222 during the year, as a result of 456 admissions to and 234 terminations of membership. There were also registered with the NASD as registered representatives 57,103 individuals, including, generally, all partners, officers, salesmen, traders and other persons employed by or affiliated with member firms in capacities which involved their doing business directly with the public. The number of registered representatives increased by 8,537 during the year, as a result of 15,014 initial registrations, 5,861 re-registrations and 12,338 terminations of registration.

Disciplinary Actions

The NASD sends the Commission summaries of decisions on all final disciplinary actions taken against members and the registered representatives of members. Each such decision is considered by the Commission's staff to determine whether the underlying facts indicate conduct violative of the statutes administered by the Commission or the rules adopted thereunder. This consideration often includes an examination of the NASD's file on a particular case. Where the available facts appear to indicate violations of the Commission's rules or statutes, independent Commission enforcement action is initiated, unless, of course, such action had already been commenced before receipt of notice from the NASD.

During the year here under review, the NASD reported to the Commission on 140 final disciplinary actions against 141 members, one complaint having been directed against two different members, and 61 registered representatives of members. In 97 cases complaints were directed solely against member firms, and in 44 additional cases complaints were directed against both members and representatives of such members. In all, 135 member firms and 51 registered representatives were found to have violated various NASD rules as specified in the underlying complaints and were subjected to penalty. The penalties imposed on members and registered representatives covered a wide range of available sanctions and in several instances more than a single penalty was imposed on a firm or representative. Thus, 38 member firms were expelled and 1 was suspended for 2 weeks; 58 firms, including 1 suspended and 2 expelled firms, were fined amounts ranging from $50 to $5,500 and aggregating over $37,500; and 38 other firms were either censured or required to file a statement pledging future observance and compliance with the rules of fair practice and the bylaws. In addition, the registrations of 27 registered representatives were revoked, the registrations of 6 representatives were suspended for periods ranging from 15 days to three years, five representatives were fined amounts ranging from $50 to $2,700 and aggregating $4,850, 7 representatives were censured, and 6 representatives were found to have been the cause of some penalty imposed on the controlling or controlled member firm. Costs were also imposed on 38 members and on 1 representative in amounts ranging from $12.50 to slightly over $1,600 and aggregating approximately $11,500.

Commission Review of NASD Disciplinary Actions

Section 15A (g) of the Act provides that disciplinary actions of the NASD are subject to review by the Commission on its own motion

or on the application of any aggrieved person. The statute also provides that the effectiveness of any penalty imposed by the NASD is automatically stayed pending determination of any matter brought before the Commission on review. At the beginning of the fiscal year, two such review cases were pending before the Commission and during the year three other such applications were filed. Two cases were disposed of during the year and at the year's end three cases were pending before the Commission.[22]

The Commission sustained in part, and set aside in part, certain fines and assessments imposed by the NASD upon Managed Investment Programs, of San Francisco, and upon Nathaniel S. Chadwick, the principal partner, and Richard O. Atkinson, a salesman.[23] All three parties joined in a petition bringing this matter before the Commission on appeal. The NASD Board of Governors had imposed fines of $2,000 upon Programs, $1,000 upon Chadwick, and $300, plus censure, upon Atkinson, and it also assessed Programs for costs in the amount of $2,000. These disciplinary actions were based upon violations of the NASD rules of fair practice, involving sales of securities to customers at prices not reasonably related to current market prices, permitting a salesman who was not at the time Program's registered representative to transact business for the firm and failing to maintain and preserve certain records.

Upon review of the NASD decision, the Commission affirmed the NASD finding that Programs and Chadwick had violated the NASD rules in the respects indicated and the Commission further held that such conduct was inconsistent with just and equitable principles of trade. The Commission sustained the $2,000 fine against Programs and the $1,000 fine against Chadwick. However, it set aside the action taken against Atkinson on the ground that this action of the Board of Governors was beyond the scope of its power to review the prior ruling of the NASD district business conduct committee, which had not found a violation by Atkinson on this count. In addition, the Commission set aside the $2,000 assessment of costs against Programs, without prejudice to the right of the NASD to reassess costs in an amount not in excess of $2,000 provided such costs are itemized and without prejudice to the right of Programs to seek further Commission review thereof.[24]

In another decision the Commission set aside disciplinary action of the NASD against one of its members, Louis C. Lerner, of Boston, doing business under the name Lerner & Co.[25] The case arose out

[22] The three pending cases concern applications filed by Samuel B. Franklin & Co. (File 16–1A65); Graham & Co. (File 16–1A66); and Batkin & Co. (File 16–1A67).

[23] Securities Exchange Act Release No. 5509 (May 8, 1957).

[24] Information subsequently supplied by the NASD indicates that the fines as sustained by the Commission, and the costs as reassessed in the amount of $2,000, have been paid.

[25] Securities Exchange Act Release No. 5538 (June 28, 1957).

of a controversy between Lerner and Ball, Burge & Kraus, of Cleveland, over the purchase of stock of Morgan Engineering Co. of Alliance, Ohio. The conduct of both firms was reviewed by the NASD, which censured Ball Burge and imposed a $500 fine and costs upon it. The NASD also censured Lerner for its failure to accept delivery of and pay for a 6,100 share block of Morgan stock acquired by Ball Burge for Lerner, and ordered that unless Lerner paid for the stock within 30 days, he be suspended from NASD membership until he did so. Lerner appealed to the Commission from this action.

The Commission found that in February 1955, Lerner began acquiring Morgan stock from various brokers, including Ball Burge, who was the most active dealer in Morgan stock. Lerner talked with Paul Gaither, a Ball Burge partner, about his interest in Morgan and Gaither indicated that he could supply Lerner with a great deal of Morgan stock over a period of time. Lerner testified that in view of the substantial number of shares available through Gaither, he decided to seek representation on Morgan's board, that he told Gaither of this purpose, and that Gaither assured him that he would obtain proxies on all the shares purchased for use on Lerner's behalf at Morgan's annual meeting of stockholders scheduled for March 22. By March 18, 1955, Lerner had agreed to buy from Ball Burge a total of 27,010 shares of Morgan stock (at an aggregate price of $694,352), which would have been more than enough to elect one director on a cumulative voting basis. Gaither did not obtain proxies for all the shares sold to Lerner, nor did he attend the Morgan meeting to vote on Lerner's behalf such proxies as he had obtained. Lerner strongly protested to Gaither that he had breached the contracts relating to the purchase of Morgan stock by not delivering proxies for stock so acquired and not using his influence to obtain representation for Lerner on Morgan's board, and refused to accept the 6,100 shares tendered in delivery by Ball Burge on March 23, 1955.

The Commission noted that, as the NASD itself had stated, the NASD is not the proper forum to decide private contract rights between parties, but should only determine whether a member's conduct is unethical. It stated that in the absence of justifying or extenuating circumstances a member's failure to live up to contract obligations would constitute improper conduct under the NASD's rules. However, the Commission found that even assuming, as the NASD found, that deliveries of proxies was not an integral part of the contracts, Lerner's refusal to accept the 6,100 shares did not under all the circumstances represent unethical or dishonorable conduct. The Commission found that Lerner considered the delivery of proxies to be a vital part of its agreement to purchase the Morgan shares and that he honestly and reasonably believed that upon Gaither's failure to

procure and vote the proxies he was no longer legally or morally obligated to accept the undelivered shares and concluded that Lerner's conduct was not inconsistent with "just and equitable principles of trade" within the meaning of the rule, and that accordingly the action taken by the NASD against Lerner must be set aside.

Commission Review of Action on Membership

Section 15A (b) of the Act and the bylaws of the NASD provide that, except where the Commission finds it appropriate in the public interest to approve or direct to the contrary, no broker or dealer may be admitted to or continued in membership if he, or any controlling or controlled person, is under any of the several disabilities specified in the statute or the bylaws. Effective expulsion from the NASD for violation of a rule prohibiting conduct inconsistent with just and equitable principles of trade is one such disability. At the beginning of the fiscal year, four such cases were pending before the Commission, two petitions were filed during the year and one was withdrawn prior to a determination of the issues. Two cases were disposed of during the year and three were pending at the year end.

The Commission approved applications permitting two firms to be continued in membership while employing persons who had been expelled by the NASD for action inconsistent with just and equitable principles of trade. In one case, the Commission, on application of the NASD, approved the continuance in membership of a firm while employing Marvin E. Fowler. In its opinion, the Commission considered, among other things, specified limitations on Fowler's proposed duties, which were to be in the real estate mortgage loan department of his employer, and the fact that his activities would be subject to close supervision of the president of the employing member.[26]

In the other case, the Commission approved the continuance in membership of Life Insurance Fund Management Co., Inc., while employing Giles E. MacQueen, Jr. The Commission noted that MacQueen's activities were to be limited to those of a statistician or bookkeeper and would not involve handling of money or dealing with the public or other dealers, and that he would be subject to close supervision by officers of the employer. The Commission also observed that MacQueen had made restitution to customers whose securities he had improperly used in the incident which resulted in his expulsion and that his conduct during the 3 years subsequent to his expulsion had been good.[27]

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[26] Securities Exchange Act Release No. 5376 (October 22, 1956) and File 16–1A60.
[27] Securities Exchange Act Release No. 5367 (September 19, 1956), and File No. 16–1A61.

Commission Action on NASD Rules

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

During the fiscal year the NASD adopted, without Commission disapproval, an integrated series of amendments to the Code of Procedure for Handling Trade Practice Complaints. The basic amendment would permit a District Business Conduct Committee to offer a respondent what is called "minor violation procedure" pursuant to which a respondent would be permitted, but not required, to admit the allegations specified in a complaint, waive a hearing and accept a penalty not to exceed censure and a fine of $100. The program is designed to reduce the time of staff and committee representatives and other costs involved in handling disciplinary actions where the facts are not in question and indicate only minor or technical rule violations with no significant damage to customers, other parties or the public interest. Controls included in this program preserve to a respondent every right accorded by statute, including review by or appeal to the Board of Governors and this Commission. A respondent may refuse to admit the allegations in the complaint and require the ordinary complaint procedure, including a hearing and the right to representation by counsel.

Other amendments to various rules adopted by the Association during the year appear to concern only internal administration or to be of a nature not requiring comment or description in this report.

LITIGATION UNDER THE SECURITIES EXCHANGE ACT OF 1934

The Commission is authorized to institute actions in the courts to enjoin broker-dealers and other persons from engaging in conduct which violates the provisions of the Securities Exchange Act of 1934. Some of the actions brought as a result of such violations also alleged violations of other acts administered by the Commission.

Anti-Fraud Litigation

During the year, the Commission, pursuant to its responsibility to prevent fraud by broker-dealers, filed a complaint for an injunction against W. T. Anderson Co., Inc., Waldorf Theodore Anderson,[28] an officer, director and controlling stockholder of the company, and Louis

[28] *S. E. C.* v. *W. T. Anderson Company, Inc., et al.* E. D. Wash. No. 1517 (April 8, 1957).

Payne, a securities salesman for the company. The complaint alleged that the defendants induced customers, by false representations and omissions of material facts, to sell securities of one mining company and buy securities of another, and at the same time induced other customers to effect contra transactions in the same securities, marking up the prices charged the customers for the securities acquired by them as much as 100 percent in the process. The defendants were also alleged to have made fraudulent statements concerning the market price of the securities, the business properties and operations of the issuers of the securities, and the dividends to be paid.

In *S. E. C.* v. *Paul Scarborough, Jr.*,[29] the Commission secured an injunction against the defendant broker-dealer who, the Commission charged, induced and effected the sale of securities by means of manipulative, deceptive and fraudulent devices in that he caused customers to deliver the securities to him upon the representation that he would sell the securities and remit the proceeds to said customers, when, in fact, the defendant converted the proceeds to his own use. The court, in addition, enjoined further violations of the Commission's rules concerning confirmation of transactions and maintenance of books and records relating to a broker-dealer's business. The defendant consented to the entry of the final judgment. He was convicted in a criminal action and sentenced to seven years imprisonment and his registration as a broker-dealer was revoked.

In *S. E. C.* v. *Branch Carden & Company, Inc. and Branch J. Carden, Jr.*,[30] the fraudulent mishandling of customers' funds was the dominant aspect of the action. In that case the Commission alleged that the defendants had converted to their own use and benefit funds deposited with them by customers for the purchase of securities. Further, defendants commingled and hypothecated customers' securities in violation of the Commission's rules. The defendants consented to the entry of a decree by which the court enjoined further illegal conduct of this nature and also restrained defendants from further violations of the net capital requirements and the transaction of business while insolvent without disclosing this fact to its customers.

Cases Involving the Net Capital Rule

As indicated above the "net capital rule," rule 15c3–1 under the Act, provides an important protection against loss to customers that may occur by reason of financial difficulties that broker-dealers may encounter by requiring, with certain exceptions, that no broker or

[29] E. D. Virginia No. 523 (October 18, 1956).
[30] W. D. Virginia No. 847 (May 16, 1957).

dealer shall permit his aggregate indebtedness to all other persons to exceed 2,000 per centum of his net capital. The Commission obtained injunctions against broker-dealers who failed to maintain in their business the required ratio between their net capital and aggregate indebtedness in *S. E. C.* v. *Coombs and Company;* [31] *S. E. C.* v. *Utah General Securities, Inc.;* [32] *S. E. C.* v. *Cayias, Larson, Glaser, Emery, Inc.;* [33] *S. E. C.* v. *Golden-Dersch & Co., Inc.;* [34] *S. E. C.* v. *W. L. Mast & Co., Inc.;* [35] *S. E. C.* v. *George B. Wallace & Co.;* [36] *S. E. C.* v. *Rutledge Irvine & Co., Inc.;* [37] *S. E. C.* v. *Foster-Mann, Inc., et al.;* [38] *S. E. C.* v. *Jackson and Company, Inc.;* [39] *S. E. C.* v. *First Jersey Securities Corp.;* [40] *S. E. C.* v. *A. J. Gould & Co., Inc., et al.;* [41] *S. E. C.* v. *M. J. Shuck, doing business as M. J. Shuck Company;* [42] *S. E. C.* v. *First Investment Savings Corporation;* [43] *S. E. C.* v. *Churchill Securities Corporation, et al.;* [44] *S. E. C.* v. *J. D. Creger & Co.;* [45] *S. E. C.* v. *Jean R. Veditz Co., Inc.;* [46] and *S. E. C.* v. *Zwang and Company, et al.*[47] In the *Coombs* and *Golden-Dersch* cases the courts, at the request of the Commission, appointed receivers of the assets of the defendants as a further measure to insure the safety of customers' funds and securities.

In several instances, broker-dealers not only violated the net capital rule, but also were insolvent. By continuing to do business without informing their customers of their precarious financial condition, they engaged in acts and practices which operated as a fraud or deceit upon customers. The courts entered final judgments permanently enjoining such conduct in *S. E. C.* v *Barrett, Herrick & Co., Inc. and Frederick L. Chapman;* [48] *S. E. C.* v. *The Lawrence & Murray Co., Inc. and Murray Ramoy;* [49] *S. E. C.* v. *Martin M. Swirsky, Bess Swirsky and Milton Cohen, individually and doing business as Seaboard Securities;* [50] *S. E. C.* v. *Edward B. Clark, doing business as Edward*

[31] District of Columbia No. 3437–56 (August 17, 1956).
[32] D. Utah No. C–119–56 (July 26, 1956).
[33] D. Utah No. C–127–56 (August 17, 1956).
[34] S. D. New York No. 112–377 (September 7, 1956).
[35] D. Nevada No. 197 (January 17, 1957).
[36] D. New Jersey No. 932–56 (November 30, 1956).
[37] S. D. New York No. 114–150 (October 26, 1956).
[38] S. D. New York No. 118–383 (March 26, 1957).
[39] D. Mass. No. 57–504 S (May 21, 1957).
[40] D. New Jersey No. 979–56 (December 21, 1956).
[41] S. D. New York No. 113–87 (September 18, 1956).
[42] S. D. New York No. 112–267 (August 28, 1956).
[43] N. D. Alabama No. 8670 (March 3, 1957).
[44] S. D. New York No. 117–196 (February 11, 1957).
[45] S. D. California No. 369–57 WB (March 21, 1957).
[46] S. D. New York No. 118–378 (March 25, 1957).
[47] S. D. New York No. 113–192 (September 27, 1956).
[48] S. D. New York No. 112–396 (September 11, 1956).
[49] S. D. New York No. 113–143 (September 21, 1956).
[50] E. D. New York No. 16,993 (October 15, 1956).

B. Clark & Co.;[51] and *S. E. C.* v. *Seaboard Securities Corp. and Marshall I. Stewart.*[52]

In the Clark case, the Commission also charged that the defendant appropriated customers' monies and securities to his own use for various periods of time, hypothecated customers' securities without their knowledge or consent, failed to make, keep and preserve books and records in accordance with Commission rules and made false statements in reports and documents filed with the Commission. The court also enjoined such violations of the law. In the *Barrett, Herrick & Co.* case the defendants consented not only to the issuance of an injunction, but also to the appointment of a receiver.

Delisting Cases

In *Exchange Buffet Corporation* v. *New York Stock Exchange* and *S. E. C.*,[53] and *Atlas Tack Corp.* v. *New York Stock Exchange, et al.*,[54] the petitioners sought to have set aside the Commission's orders granting applications by the New York Stock Exchange, pursuant to the provisions of section 12 (d) of the Securities Exchange Act, to strike petitioners' capital stock from listing and registration on the New York Stock Exchange. In both of these cases the Commission found that the rules of the New York Stock Exchange relating to delisting had been complied with and that the applications should be granted without the imposition of any terms or conditions. The Board of Governors of the New York Stock Exchange, following a public hearing after notice to issuers of listed securities, including Exchange Buffet and Atlas Tack, had amended its rule governing the delisting of securities, spelling out specific standards as guides for continued listing of the securities on the New York Stock Exchange. The amended rule provided that delisting would be considered where:

> * * * the size of a company whose common stock is listed has been reduced, as a result of liquidation or otherwise, to below two million dollars in net tangible assets or aggregate market value of the common stock, and the average net earnings after taxes for the last three years is below $200,000.

Exchange Buffet, which was notified of this change in policy, did not meet the revised standards, and a resolution was adopted by the Board of Governors directing that an application to delist be filed with the Commission. In denying the petition to set aside the Commission's order, the Court of Appeals for the Second Circuit agreed with the Commission that, where the Commission has permitted an amended rule to become effective without requesting changes or instituting a proceeding under section 19 (b), it is not authorized to deny

[51] D. Idaho No. 3267 (July 17, 1956).
[52] District of Columbia No. 2358–56 (June 6, 1956).
[53] 244 F. 2d 507 (C. A. 2, 1957).
[54] 246 F. 2d 311 (C. A. 1, 1957).

an application to delist a security under section 12 (d) in accordance with the amended rule of the Exchange.

In the Atlas Tack Corp. case the United States Court of Appeals for the First Circuit under similar facts, also agreed with the Commission in affirming its order, that the Commission's power with respect to section 12 (d) proceedings is limited to the imposition of terms where the Exchange has complied with its delisting rules, and that the Exchange's rules cannot be attacked as objectionable in a section 12 (d) action.

Proxy Litigation

The Commission appeared as plaintiff-intervenor in *Ostergren* v. *Kirby* [55] and obtained a preliminary injunction which enjoined Kirby and certain other shareholders of Lakey Foundry Corp. from voting proxies at the annual meeting of shareholders of the corporation, or any adjournment thereof, unless Kirby filed the material required by the Commission's proxy rules and unless he furnished to the shareholders whose proxies he had solicited the material required by these rules. The Commission's complaint alleged that the defendant Kirby, acting in concert with other defendants, had persuaded a large number of persons to purchase stock of the corporation by lending or offering to lend funds to purchase such stock, whereby the stock would be held in the name of Kirby's nominee and thus assure Kirby the right to vote the stock. In its opinion, the United States District Court for the Northern District of Ohio upheld the Commission's contentions that, by virtue of these activities, Kirby was a participant in the proxy solicitation within the meaning of the term in rule 14a–11, that Kirby was therefore in violation of regulation X–14 in that he failed to file a proxy statement as required by rule 14a–3 and in that he failed to file the information prescribed in Schedule 14B as required of participants in a proxy solicitation. An appeal from the District Court's decision is pending in the Court of Appeals for the Sixth Circuit (No. 13310).

Litigation Involving Registration and Reporting Requirements

In *S. E. C.* v. *Red Bank Oil Company, et al.*,[56] the Commission obtained a decree enjoining Red Bank Oil Co., its officers and directors, from failing to file the reports required of it under section 13 of the Securities Exchange Act by virtue of the registration of its capital stock on the American Stock Exchange, from failing to correct deficiencies in such reports after receiving notice of such deficiencies from the Commission and from failing to make timely filings with

[55] N. D. Ohio No. 33393 (February 15, 1957).
[56] S. D. Texas No. 10414 (December 12, 1956).

the Commission and with the American Stock Exchange. The decree also directed that within 60 days from the date of service of the decree, Red Bank Oil Co., its officers and directors, file all past due annual reports. The defendants consented to the entry of the decree.

Another case in which the Commission found it necessary to seek the remedy of injunction in order to enforce the broker-dealer registration requirement of the Securities Exchange Act was *S. E. C.* v. *Pacific Investment, Inc. and Norman Hays, individually and doing business as Pacific Investment Company.*[57] The Commission's complaint and the affidavits filed in support of its motion for preliminary injunction recited that the defendants had been for some time selling substantial amounts of securities without registration as a broker and dealer under the Act. The defendant Norman Hays had submitted an application for registration as a broker-dealer but it was returned as not acceptable for filing due to certain deficiencies. Notwithstanding the return of his application he continued doing business in securities. The defendants consented to the entry of a permanent injunction.

In *John Pierce* v. *S. E. C.*,[58] the Court of Appeals for the Ninth Circuit affirmed the Commission's denial of petitioner's application for registration as a broker-dealer. The petitioner in this appeal had previously been named as defendant in an action brought by the Commission to enjoin him from doing business as a broker-dealer without registering with the Commission pursuant to the provisions of section 15 (a) of the Act.[59]

In addition to the instances previously mentioned, the Commission's rules relating to the maintenance of books and records were enforced by court action in other cases. In *S. E. C.* v. *P. J. Gruber & Co., Inc.*[60] a preliminary injunction was secured restraining the defendant broker-dealer and two of its officers from making false and fictitious entries in its books and records. Affidavits filed by the Commission in that action were to the effect that registrant's records showed confirmations for purported purchases of securities to prospective customers when in fact such customers had not ordered any securities and had refused to buy securities when offered.

S. E. C. v. *Christopulos & Nichols Brokerage Company*,[61] and *S. E. C.* v. *Wendell E. Kindley, doing business as Wendell E. Kindley Co.*,[62] resulted in permanent injunctions against the defendants for

[57] D. Utah No. C–104–57 (May 17, 1957).
[58] 239 F. 2d 160 (1956).
[59] D. Nevada No. 70 (October 7, 1954).
[60] S. D. New York No. 114–281 (November 7, 1956).
[61] D. Utah No. C–178–56 (November 6, 1956).
[62] D. Oregon No. 8903 (November 23, 1956).

failing to make and keep current their books and records. Preliminary injunctions were also issued in the cases of *S. E. C.* v. *Keith Richards Securities Corporation*[63] and *S. E. C.* v. *R. G. Worth & Co., Inc.*,[64] registered broker-dealers who the Commission had alleged were engaging in similar violations.

The defendant in *S. E. C.* v. *C. Herbert Onderdonk, doing business as C. Herbert Onderdonk*,[65] was enjoined by court decree from doing business as a broker-dealer until he made his books and records current in accordance with Commission rules and made them accessible to the Commission for examination.

Other Litigation

The constitutionality of section 19 (a) (4) of the Securities Exchange Act was challenged in *Great Sweet Grass Oils Limited* v. *S. E. C., et al.*[66] and *Kroy Oils Limited* v. *S. E. C. et al.*[67] In these cases the plaintiff contended that section 19 (a) (4), which provides that the Commission may summarily suspend trading in any registered security on any national securities exchange for a period not exceeding 10 days, if in its opinion such action is necessary or appropriate for the protection of investors and the public interest so requires, deprived plaintiffs of property without due process of law and failed to prescribe adequate standards to guide the exercise of administrative discretion. The plaintiffs further alleged that the Commission's successive summary suspension orders were an unauthorized exercise by the Commission of the authority conferred upon it by section 19 (a) (4) of the Act. During the pendency of this action the Commission on April 8, 1957, issued an order permanently suspending trading in Kroy and Great Sweet Grass stock. Both Kroy and Great Sweet Grass have filed an appeal from the Commission's order. These appeals were pending in the District of Columbia Circuit at the close of the fiscal year.[68]

The Commission's enforcement of certain provisions of the Federal Reserve Board's regulation T relating to margin requirements in securities transactions resulted in the entry of injunctions directing future compliance with that regulation in *S. E. C.* v. *Western States Investment Company, Inc.*;[69] *S. E. C.* v. *Provincial American Securities, Inc. and Stanley I. Younger*[70] and the *Christopulos & Nichols* case, *supra*.

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[63] S. D. New York No. 114-45 (October 17, 1956).
[64] S. D. New York No. 116-210 (January 11, 1957).
[65] S. D. New York No. 113-356 (October 9, 1956).
[66] District of Columbia No. 4170-56 (October 20, 1956).
[67] District of Columbia No. 4324-56 (November 3, 1956).
[68] CA-DC Nos. 13,920 and 13,921.
[69] D. Utah No. C-5-57 (January 3, 1957).
[70] S. D. New York No. 120-338 (May 23, 1957).

Participation as Amicus Curiae

In *Speed, et al.* v. *Transamerica Corp.*,[71] in which the Commission appeared as *amicus curiae*, the Court of Appeals for the Third Circuit modified judgments entered by the District Court of Delaware in favor of the plaintiffs[72] by increasing the rate of interest allowed prior to judgment and affirmed the modified judgments. For a discussion of the Commission's views with respect to the issues raised by this litigation, see page 124 of the 22nd Annual Report.

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[71] 235 F. 2d 369 (1957).
[72] 135 F. Supp. 176 (1955).

PART VI

ADMINISTRATION OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

The Public Utility Holding Company Act of 1935 provides for three separate areas of regulation of holding company systems which control electric utility companies and companies engaged in the retail distribution of natural or manufactured gas. The first embraces those provisions of the Act, principally those in section 11 (b) (1), which require the physical integration of public utility and functionally related properties of holding company systems, and those provisions, principally section 11 (b) (2), which require the simplification of intercorporate relationships and financial structures of holding company systems. The second area of regulation covers financing operations of registered holding companies and their subsidiaries, acquisitions and dispositions of securities and properties, accounting practices, servicing arrangements and intercompany transactions. The third area includes the provisions of the Act providing for exemptions, and those regulating the right of a person who is affiliated with a public utility company to acquire securities resulting in a second such affiliation.

COMPOSITION OF REGISTERED HOLDING COMPANY SYSTEMS—SUMMARY OF CHANGES

During the fiscal year 1957, one registered holding company system, the trustee of International Hydro-Electric System and its subsidiaries, which had ceased to have any public utility subsidiaries operating in the United States, was granted an exemption by the Commission pursuant to section 3 (a) (5) of the Act.[1] As a result, there remained on June 30, 1957, 22 public utility holding company systems which are subject to the regulatory provisions of the Act as registered systems. Of these 22, four systems comprising 130 companies do not own as much as 10 percent of the voting securities of any public utility company operating within the United States.[2] The aggregate assets

[1] Holding Company Act Release No. 13509 (June 24, 1957).

[2] The four registered holding company systems which do not own as much as 10 percent of the voting securities of any public utility company operating within the United States are (*a*) Central Public Utility Corporation, (*b*) Cities Service Company, (*c*) Electric Bond & Share Co., and (*d*) Standard Shares, Inc .

at December 31, 1956, less valuation reserves, of the 18 systems which had public utility subsidiaries operating within the United States amounted to $9 billion. The numbers and types of companies comprising each such system at June 30, 1957, and the total assets of each at December 31, 1956, are set forth in the following tabulation:

Classification of companies as of June 30, 1957

System	Solely registered holding companies	Registered holding operating companies	Electric and gas utility subsidiaries	Non-utility subsidiaries	Total companies	Aggregate system [1] assets, less valuation reserves at Dec. 31, 1956 (000,000 omitted)
1. American Gas and Electric Co.	1		12	12	25	$1,159
2. American Natural Gas Co.	1		2	4	7	642
3. Central and South West Corp.	1		6	0	7	[2] 534
4. Columbia Gas System, Inc., The	1		8	6	15	772
5. Consolidated Natural Gas Co.	1		4	1	6	536
6. Delaware Power & Light Co.		1	2	0	3	163
7. Eastern Utilities Associates	1		5	0	6	80
8. General Public Utilities Corp.	1		9	3	13	721
9. Granite City Generating Co. (Voting Trust)	1		1	0	2	[3] 1
10. Middle South Utilities, Inc.	1		7	1	9	613
11. National Fuel Gas Co.	1		3	6	10	168
12. New England Electric System	1		23	2	26	[4] 527
13. Ohio Edison Co.		1	3	0	4	486
14. Philadelphia Electric Power Co.		1	1	0	2	44
15. Southern Company, The	1		5	3	9	[5] 932
16. Union Electric Co.		1	3	1	5	490
17. Utah Power & Light Co.		1	1	0	2	196
18. West Penn Electric Co., The	1	1	12	6	20	464
Subtotals	13	6	107	45	171	8,528
Less: Adjustment to eliminate duplication in count resulting from 5 companies being subsidiaries, as defined in the Act, in 2 systems and 2 companies being subsidiaries, as defined in the Act, in 3 systems [6]			−7	−2	−9	
Add: Adjustment to include the assets of these 7 jointly owned subsidiaries and to remove the parent companies' investments therein which are included in system assets above						569
Total companies and assets in active systems	13	6	100	43	162	9,097

[1] Represents the consolidated assets, less valuation reserves, of each system as reported to the Commission on Form U5S, except as otherwise noted.

[2] Central and South West Corp. has 1 foreign subsidiary with assets, less valuation reserves, of $9 million which are not included in consolidation. The parent's investment in this company is carried at one dollar.

[3] Represents the corporate assets of Granite City Generating Co. Assets of the Voting Trustees of Granite City Generating Co., the holding company parent of the Generating Co., have not been reported.

[4] New England Electric System owns 30 percent of the voting securities of Yankee Atomic Electric Co. which had assets of $1 million. The parent's investment therein was carried at $300,000.

[5] The Southern Co. system has 3 nonconsolidated subsidiaries (including Southern Electric Generating Co.) with aggregate assets of $1 million. The system's investments in these companies totals $851,000. This does not include $261,000 carried as other security investment, i. e., in Mississippi Valley Generating Co.

[6] These 7 companies are: Beech Bottom Power Co. and Windsor Power House Coal Co. which are indirect subsidiaries of American Gas & Electric Co. and The West Penn Electric Co.; Ohio Valley Electric Corp. and its subsidiary, Indiana-Kentucky Electric Corp., which are owned 37.8 percent by American Gas & Electric Co., 16.5 percent by Ohio Edison Co., 12.5 percent by The West Penn Electric Co., and 33.2 percent by 7 electric utility companies not associated with registered holding company systems; Electric Energy, Inc., which is owned 10 percent by Middle South Utilities, Inc., 40 percent by Union Electric Co., and 50 percent by 3 electric utility companies not associated with registered systems; Mississippi Valley Generating Co. which is owned 79 percent by Middle South Utilities, Inc., and 21 percent by The Southern Co.; and Arklahoma Corp. which is owned 32 percent by the Central & South West Corp. system, 34 percent by the Middle South Utilities, Inc., system and 34 percent by an electric utility company not associated with a registered system.

On June 30, 1956 there were 19 registered systems.[3] Included in these 19 systems were 21 registered holding companies, of which 15 functioned solely as holding companies and 6 functioned also as operating electric utility companies, 105 electric and gas utility subsidiaries and 47 nonutility subsidiaries, a total of 173 companies. In each of 2 systems there were 2 registered holding companies.

During the fiscal year 1957, registered systems divested themselves of 2 nonutility companies with aggregate assets, less valuation reserves, of approximately $5 million. Five companies were released from the jurisdiction of the Act as a result of the exemption granted during the year to International Hydro-Electric System, 8 companies were absorbed by merger and 1 was dissolved. Registered systems incorporated 2 new subsidiaries during the year to take over the properties of certain associated companies and they acquired 3 companies as going concerns with aggregate assets of more than $22 million. These changes brought about a net decrease during the fiscal year of 11 in the number of companies encompassed within registered systems.

The maximum number of companies subject to the Act as components of registered holding company systems at any one point of time was 1,620 in 1938. Since that time additional systems have registered and certain systems have organized or acquired additional subsidiaries, with the result that 2,334 companies have been subject to the Act as registered holding companies and subsidiaries thereof during the period from June 15, 1938, to June 30, 1957. Included in this total were 216 holding companies (solely holding companies and operating-holding companies), 1,008 electric and gas utility companies and 1,110 nonutility enterprises. From June 15, 1938, to June 30, 1957, 2,042 of these companies have been released from the active regulatory jurisdiction of the Act or have ceased to exist as separate corporate entities. Of this number 921 companies with assets aggregating approximately $15.3 billion as at their respective dates of divestment have been divested by their respective parents and are no longer subject to the Act as components of registered systems.[4] The balance of 1,121 companies includes 773 which were re-

[3] Excluding the four registered holding company systems which do not own as much as 10 percent of the voting securities of any public utility company operating within the United States named in footnote 2 supra.

[4] The 921 companies consist of 284 electric utility companies with assets as at their respective divestment dates of $10.9 billion, 180 gas utility companies with assets of $2.0 billion and 457 holding companies and nonutility enterprises with assets of $2.4 billion. These totals include companies which remained subject to the Act as components of registered systems immediately following their divestment and which subsequently were released from the regulatory jurisdiction of the Act as a result of exemption, deregistrations, or other changes in status.

leased from the regulatory jurisdiction of the Act as a result of dissolutions, mergers and consolidations[5] and 348 companies which ceased to be subject to the Act as components of registered systems as a result of exemptions granted under sections 2 and 3 of the Act and deregistrations pursuant to section 5 (d) of the Act.[6]

DEVELOPMENTS IN INDIVIDUAL REGISTERED SYSTEMS

Among the significant corporate developments in active registered systems have been the incorporation of new companies to accomplish certain realignments of properties, divestments of subsidiaries, dispositions of nonretainable properties by operating subsidiaries, acquisitions by systems of additional subsidiaries, all of the assets of an electric utility, and segments of properties, and, as previously indicated, the exemption of one registered holding company system. Following is a discussion of each active system in which there occurred during the fiscal year 1957 significant corporate changes other than recurrent financing transactions. Most active systems undertook substantial bank borrowings and permanent financing during the year to meet continuously rising construction expenditures. Those developments are treated in a separate section of this report on page 131 below.

American Gas and Electric Co.

American Gas and Electric Co. ("AG&E") functions solely as a registered holding company and controls the largest holding company system subject to the provisions of the Act. It has 24 direct and indirect subsidiaries which render electric service to 1,331,000 customers in 2,328 communities in the States of Virginia, West Virginia, Kentucky, Tennessee, Ohio, Indiana, and Michigan, having an aggregate population of approximately 4,974,000. At December 31, 1956, the system had consolidated assets, less valuation reserves, of $1,159 million and net dependable generating capacity of 3,973,000 kw. In addition, AG&E owns 37.8 percent of the voting securities of Ohio Valley Electric Corp. ("OVEC") which, with its wholly owned subsidiary, Indiana-Kentucky Electric Corp., furnish electric power to an installation of the Atomic Energy Commission near Portsmouth, Ohio. There is pending before the Commission the issue of whether the acquisition of OVEC's stock by AG&E and other sponsoring companies meets the standards of section 10 of the Act. This issue and the organization and financing of OVEC and Indiana-Kentucky Electric Corp. are discussed at page 126 of this report.

[5] Includes 104 holding companies (solely holding companies and operating-holding companies), 289 electric and gas utility companies and 380 nonutility companies.

[6] Includes 71 holding companies (solely holding companies and operating-holding companies), 109 electric and gas utility companies and 168 nonutility companies.

On September 18, 1956, Public Service Co. of Indiana, Inc. ("PSI"), an independent public utility company engaged in the distribution of electricity in the north central, central and southern portions of the State of Indiana, filed a petition with the Commission requesting it to institute an investigation to determine whether the proposed construction by Indiana & Michigan Electric Co. ("I&M"), a subsidiary of AG&E, of a 450,000-kilowatt steam electric generating station on the Wabash River in western Indiana, violated the integration standards of section 11 (b) (1) of the Act. PSI charged, among other things, that the site of the new generating station was about 130 miles from the nearest generating station of I&M and a considerable distance from its distribution service area, and that it would be interconnected with other I&M generating stations by means of 330,000-volt transmission lines which would cross existing PSI transmission lines. It also charged that the proposed construction would materially enlarge the present AG&E system and cause operations beyond the limits permissible by an integrated public utility system under the standards of the Act.

The Commission held separate administrative conferences with officials of AG&E and PSI and with a member of the Public Service Commission of Indiana, which has regulatory jurisdiction over both PSI and I&M, and a member of the State Corporation Commission of Virginia, which has regulatory jurisdiction over another electric utility subsidiary of AG&E. Both State commissions opposed the request of PSI. A formal resolution adopted by the Indiana Commission stated, among other things, that the request of PSI was not proper or desirable and requested this Commission not to make the investigation. The president of AG&E, who is also president of I&M, advised the Commission that the proposed construction on the Wabash River and the associated transmission facilities for bringing power to I&M's service area "have as their purpose the supplying of electric power requirements to take care of the load growth in the area now served by I&M and neither I&M nor the AG&E system has any intention of using such facilities to provide electric service in any other territory than that presently served by our system."

On October 26, 1956, the Commission announced that it would not conduct an investigation stating, among other things, that it observed no basis for concluding that the construction of the facilities would constitute an expansion of AG&E's integrated public utility system beyond the limits previously found permissible by the Commission.[7]

On September 13, 1956, the Commission approved a proposal permitting AG&E to acquire the outstanding common capital stock of Seneca Light and Power Company, a nonaffiliated public-utility com-

[7] Holding Company Act Release No. 13292.

pany.[8] Seneca is an Ohio corporation whose service area is surrounded by the service areas of subsidiaries of AG&E and purchases all its electric energy from Ohio Power Co., a subsidiary of AG&E. In connection with this acquisition the Commission also approved the issuance by AG&E of not in excess of 13,000 shares of common stock having a market value of $500,000 which it proposed to offer in exchange for the stock of Seneca. The transaction was consummated on September 17, 1956, with 12,800 shares of AG&E stock being used to effectuate the exchange.

During the fiscal year the Commission approved the acquisition by Ohio Power Co. of all the capital stock of Captina Operating Company, a newly formed subsidiary company,[9] which will supervise and operate a generating plant near Cresap, W. Va., having three units of 225,000 kilowatts rated capacity each, on behalf of Ohio Power Co. and a nonaffiliated company, Olin Revere Generating Corp., a wholly owned subsidiary of Olin Revere Metals Corp.[10] One of the three units is to be owned by Ohio Power Co. and the other two by Olin Revere Generating Corp. Ohio Power Co. and Olin Revere Generating Corp. will reimburse Captina for all its expenses in the operation of the plant in proportion to the power and energy used by each.

The Commission also approved the transfer by AG&E to Appalachian Electric Power Co., as a capital contribution, of all of the authorized and outstanding common stock of Kanawah Valley Power Co.[11] As a result, Kanawah became a direct subsidiary of Appalachian.

Central Public Utility Corp.

Central Public Utility Corp. ("CENPUC") functions solely as a registered holding company and controls 13 direct and indirect subsidiaries. The system renders transportation, ice, coal, fuel oil, water and miscellaneous services in the States of North Carolina, South Carolina, Virginia, Delaware and Maryland. The system's only remaining public utility subsidiaries, as defined in the Act, operate in Puerto Rico, Haiti, the Canary Islands and the Philippine Islands. At December 31, 1956, the consolidated assets of the system, less valuation reserves, amounted to $26 million.

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[8] Holding Company Act Release No. 13264.

[9] Holding Company Act Release No. 13382 (February 12, 1957).

[10] All the voting securities of Olin Revere Metals Corp. are to be owned jointly by Olin Mathieson Chemical Corp. and Revere Copper and Brass, Inc. As a result of acquiring its interest in an electric utility company, Olin Revere Metals Corp. became a holding company as defined in section 2 (a) (7) of the Act. It requested and the Commission granted an exemption pursuant to sec. 3 (a) (3) (A) of the Act, which exempts companies which are, among other things, only incidentally holding companies. Holding Company Act Release No. 13426 (March 20, 1957).

[11] Holding Company Act Release No. 13413 (March 11, 1957).

On June 1, 1955, CENPUC filed an application requesting modification of an outstanding section 11 (b) (2) dissolution order directed against its wholly owned intermediate holding company, The Islands Gas & Electric Co., and exemption pursuant to section 3 (a) (5) of the Act. Shortly thereafter a large block (about 30 percent) of CENPUC's common stock was acquired by certain new investors, thereby creating several additional tiers of holding companies in the system's structure. With the company's approval, the determination of CENPUC's application for exemption was delayed pending a resolution of these complications. Numerous conferences relating to the problem were held by representatives of CENPUC, the Division of Corporate Regulation, and the new investors.

On May 2, 1957, CENPUC filed an amendment to its application renewing its request for exemption and stating that the ownership of the large block of CENPUC's stock had been transferred from domestic to foreign investors. The Commission, pursuant to rule 6, issued a notice to the new stock owners terminating the automatic exemption provided them by rule 10. The new holders of the controlling block of CENPUC's common stock thereupon, on May 10, 1957, filed applications pursuant to sections 3 (a) (4) and 3 (a) (5) of the Act for exemption from the obligations of a holding company. At the request of the new holders of the stock, and with the consent of CENPUC, the proceedings relating to the various exemption applications have been temporarily suspended pending the filing of further amendments. In the meantime, in order to preserve the status quo with respect to the management of CENPUC, the annual meeting of CENPUC's stockholders scheduled for May 28, 1957, was postponed.

Central and South West Corp.

Central and South West Corp. functions solely as a registered holding company. Its 6 subsidiaries render electric service to 762,000 customers in 766 communities with a total population of 2,697,000 in the States of Arkansas, Louisiana, Oklahoma, and Texas. At December 31, 1956, the system had consolidated assets, less valuation reserves, of $534 million and aggregate generating capacity with effective capability of 1,739,000 kw. Central and South West Corp. has one Mexican subsidiary with assets, less valuation reserves, of $9 million and through a subsidiary owns 32 percent of the capital stock of Arklahoma Corp., a jointly owned transmission facility,[12] which had assets, less valuation reserves, of $3 million at December 31, 1956.

[12] Middle South Utilities, Inc., another registered holding company, owns 34 percent of Arklahoma Corp.'s capital stock and the remaining 34 percent is owned by an electric utility company not affiliated with any registered holding company system.

Public Service Co. of Oklahoma ("Public Service"), an electric utility subsidiary of Central and South West Corp., utilizes natural gas as fuel in its electric generating stations. In 1955 Public Service entered into an arrangement with Transok Pipe Line Co., a newly created nonaffiliated company, whereby Transok agreed to construct a natural gas pipeline to supply the natural gas requirements of Public Service. Transok financed the construction of its pipeline facilities principally through the issuance of bonds in the aggregate principal amount of $17,500,000. The gas purchase contract entered into between Public Service and Transok contained provisions whereby, in the event of default by Transok, Public Service agreed, at the option and upon the demand of the Trustee under the indenture securing the Transok bonds, to either lease or purchase the pipeline facilities, and to pay either as rental or purchase price therefor all sums then due and thereafter becoming due upon the then outstanding bonds of Transok. Public Service filed a declaration requesting approval of the gas purchase contract between it and Transok to the extent that the provisions of the Act were applicable to the transactions therein contemplated. The Commission concluded that the obligation of Public Service to pay, under the conditions stated, the interest on and the amortization payments of the Transok bonds in the event of a Transok default constituted a guaranty of payment of Transok's bonds, and that therefore Public Service had issued a security requiring approval. After analyzing the financial effect of the transaction, the Commission permitted the declaration to become effective as satisfying the standards of section 7 of the Act.[13]

Cities Service Co.

Cities Service Co. and 46 of its 47 subsidiaries constitute a fully integrated oil producing, refining and marketing organization. At December 31, 1956, the company and its subsidiaries had consolidated assets, less valuation reserves, of $1,198 million. The company's only remaining public utility subsidiary, as defined in the Act, is Dominion Natural Gas Co., Ltd., which had assets at December 31, 1956, of $14 million and serves a population of 548,000 in 94 communities in Ontario, Canada.

Consolidated proceedings involving an exemption application filed by Cities pursuant to section 3 (a) (5) of the Act and a section 11 (b) (2) proceeding pertaining to the existence of a publicly held 48.5 percent minority interest in its subsidiary, Arkansas Fuel Oil Corp., are described at page 57 of the 21st Annual Report and pages 130–131 of the 22nd Annual Report. On July 15, 1957, the United States Court of Appeals for the Second Circuit filed its opinion

[13] Holding Company Act Release No. 13328 (December 5, 1956).

affirming the Commission's action denying the exemption on the ground that the existence of the public minority interest constitutes an inequitable distribution of voting power contrary to the standards of the Act, thereby precluding the granting of the exemption.[14]

With reference to the proceedings described at page 131 of the 22nd Annual Report, involving the acquisition by W. R. Stephens Investment Co., Inc., from Cities of its holdings of 51.5 percent of the common stock of Arkansas-Louisiana Gas Co. and the exemption granted the Stephens Co. under section 3 (a) (4) of the Act, the Stephens Co. has disposed of all of its holdings of such common stock by means of certain private sales and a public distribution. Among the private sales was one to Union Securities Corp. (now Eastman Dillon, Union Securities & Co.) of 807,070 shares, which the latter subsequently disposed of through a public distribution.

The Columbia Gas System, Inc.

The Columbia Gas System, Inc., functions solely as a registered holding company and controls 13 operating subsidiaries and a subsidiary service company. The system sells gas at retail to 1,345,000 customers in 1,293 communities and at wholesale to other distributing companies servicing 1,700,000 customers in the States of Ohio, Pennsylvania, West Virginia, Kentucky, New York, Maryland, and Virginia. The total population of the service area is 12,500,000. The system operates 37,536 miles of distribution, field gathering and transmission pipelines, and also sells gasoline, oil, and other hydrocarbons. The system purchases 80 percent of its gas requirements from southwest suppliers and the balance is produced and purchased in the Appalachian area. Columbia and its subsidiaries had consolidated assets, less valuation reserves, of $772 million at December 31, 1956.

In accordance with a systemwide realignment program, during the fiscal year Columbia requested authorization to effect a series of intrasystem property transfers. The ultimate objective of this program is to transfer to a single operating company all production and interstate transmission properties subject to the jurisdiction of the Federal Power Commission, and to consolidate the distribution facilities within each State in a single company subject to the jurisdiction of the appropriate State commission. Columbia anticipates that consummation of these transactions will, among other things, produce greater economy by minimizing the problems with respect to rate and other proceedings before local and Federal regulatory agencies.

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[14] *Cities Service Company* v. *S. E. C.*, 247 F. (2d) 646. Subsequently, Cities Service Co. filed a petition for certiorari with the United States Supreme Court.

The proposals approved by the Commission in the past fiscal year to effectuate the realignment program included: (1) the transfer by Central Kentucky Natural Gas Co. of its assets and properties used in wholesale operations for the transmission and storage of natural gas together with reserves, liabilities and obligations applicable thereto to a newly formed Delaware corporation, Kentucky Gas Transmission Corp.;[15] (2) the sale and conveyance by Natural Gas Co. of West Virginia and the acquisition by an associate company, Manufacturers Light and Heat Co., of certain gas facilities located in the Ohio-Pennsylvania border area which were already integrated with Manufacturers' eastern Ohio operations;[16] (3) the merger of Natural Gas Co. of West Virginia into Ohio Fuel Gas Co., the assumption by Ohio Fuel, as the surviving corporation, of all the liabilities of Natural Gas including promissory notes in the principal amount of $4,026,000 owing to Columbia, and the making of a capital contribution by Columbia to Natural Gas equal to its earned surplus deficit of $1,731,938;[17] and (4) the consolidation of the Keystone Gas Co., Inc., with Binghamton Gas Works, both New York corporations, with the name of the surviving corporation changed to Columbia Gas of New York, Inc.[18] After the close of the fiscal year the Commission also approved the transfer by United Fuel Gas Co., for cash estimated at $2,916,747, to Central Kentucky Natural Gas Co., both of Charleston, W. Va., of all properties which United uses in connection with the retail distribution of natural gas in Kentucky, together with accounts receivable and other assets related to such distribution operations.[19]

In addition to the realignment program, the Commission approved the acquisition by Home Gas Co. of gas production facilities located in portions of Schuyler, Yates, and Steuben Counties, N. Y., from the Wayne Gas Co., a nonaffiliated company, for a cash consideration of $131,500.[20] In taking jurisdiction over the acquisition by Home Gas Co., the Commission observed that "Since the properties which Home proposes to acquire will not be used in the distribution at retail of natural gas and therefore are not utility assets, the exemption afforded by section 9 (b) (1)[21] is not available to Home; and since such properties constitute an interest in a business within the meaning of section 9 (a) (1) of the Act, Home's proposed acquisitions are

[15] Holding Company Act Release No. 13302 (November 6, 1956).
[16] Holding Company Act Release No. 13299 (November 22, 1956).
[17] Holding Company Act Release No. 13353 (December 28, 1956).
[18] Holding Company Act Release No. 13435 (March 28, 1957).
[19] Holding Company Act Release No. 13607 (November 22, 1957).
[20] Holding Company Act Release No. 13252 (August 30, 1956).
[21] Sec. 9 (b) (1) provides that the provisions of sec. 9 (a), which requires generally that acquisitions of securities, utility assets and interests in other business by companies subject to the Act must be approved by the Commission, shall not apply to "the acquisition by a public-utility company of utility assets the acquisition of which has been expressly authorized by a State commission."

subject to the jurisdiction of this Commission." The Commission further stated that "It is immaterial that part of the properties was heretofore included within a public utility distribution system under the jurisdiction of the New York Commission, and that such Commission has approved the transfer thereof to Home."

With respect to another proposal, the Commission determined that the acquisition by The Manufacturers Light and Heat Co., pursuant to an exchange agreement with Carnegie Natural Gas Co., a nonaffiliated public utility company, of certain gas utility assets located in Marshall and Wetzel Counties, W. Va., and in Greene County, Pa., was exempted from the Commission's jurisdiction pursuant to section 9 (b) (1), since the acquisition had been expressly authorized by the Pennsylvania Public Utility Commission and the Public Service Commission of West Virginia. However, the sale and conveyance under the exchange agreement by Manufacturers to Carnegie of gas utility assets, consisting of oil and gas leases, wells and pipelines located in Washington and Greene Counties, Pa., was approved pursuant to section 12 (d) of the Act.[22]

A motion filed by Columbia, discussed at page 132 of the 22nd Annual Report, requesting that the Commission find Columbia and its subsidiaries to be in conformity with the standards of section 11 (b) (1) of the Act, was pending for decision at the close of the fiscal year. The Commission has approved a post-hearing schedule for the filing of proposed findings and conclusions by the parties.

Eastern Utilities Associates

Eastern Utilities Associates ("EUA") functions solely as a registered holding company and is a voluntary association formed under the laws of Massachusetts. It has three direct subsidiaries, Blackstone Valley Gas and Electric Co., Brockton Edison Co., and Fall River Electric Light Co., which furnish electric service to 173,000 customers in northern Rhode Island and in Brockton and Fall River, Mass., and adjacent communities. The total population of the area served is 494,000. Natural gas is sold by Blackstone at retail in Rhode Island to 48,000 customers in an area with a total population of 189,000. These three subsidiaries of EUA in turn own all of the outstanding securities of Montaup Electric Co., an electric generating company supplying the major portion of the system's energy requirements. The combined electric generating capability of the system aggregates 282,950 kilowatts, and 350 miles of gas mains are in service. At December 31, 1956, the consolidated assets of the system, less valuation reserves, amounted to $80 million.

[22] Holding Company Act Release No. 13287 (October 19, 1956).

On April 4, 1950, the Commission, with the company's consent, ordered EUA to cause the disposition of the gas properties owned by Blackstone.[23] On July 10, 1951, a year's extension was granted.[24] At the request of EUA the Commission by letter dated July 17, 1952, advised the company that it did not intend to insist upon the disposition of the Blackstone gas properties prior to January 1, 1955, if the earnings from such property were necessary to enable EUA to continue to pay dividends of $2 per share on its common stock.

The Rhode Island Legislature has adopted a special Act permitting the creation of a new company to hold the gas properties presently owned by Blackstone. On February 18, 1957, EUA filed a program designed to accomplish the disposition of the Blackstone gas properties by July 1, 1960. The proposal involves a series of transactions including the issuance of collateral trust bonds by EUA. A hearing on this matter was held in May and July 1957 and post-hearing procedures have been agreed upon.

General Public Utilities Corp.

General Public Utilities Corp. ("GPU") functions solely as a registered holding company controlling nine public utility subsidiaries, as defined in the Act, and three nonutility subsidiaries. Seven of the public utility subsidiaries render electric service to 963,289 customers in the States of Pennsylvania and New Jersey. The other two sell electricity to 283,710 customers in the Philippine Islands. The effective electric generating capability of the seven domestic utility subsidiaries amounts to 1,861,000 kilowatts and the effective capability of the Philippine subsidiaries totals 222,000 kilowatts. The consolidated assets of the system, less valuation reserves, amounted to $721 million at December 31, 1956.

On May 14, 1957, the Commission authorized GPU to acquire from Eastern Gas & Fuel Associates, a nonaffiliate, all of the outstanding securities of Colver Electric Co., consisting of 245 shares of Colver's $100 par value common stock, for approximately $257,400.[25] Colver serves the area in the township of Cambria, Cambria County, Pa., which is surrounded by that of Pennsylvania Electric Co., a subsidiary of GPU, and as soon as feasible Colver will be merged with Pennsylvania Electric. Colver was also authorized to purchase from Eastern certain property owned by Eastern for Colver's utility operations. After acquisition of its stock by GPU, Colver purchased all of its electric energy requirements directly from Pennsylvania Electric.

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[23] 31 S. E. C. 329.
[24] Holding Company Act Release No. 10663.
[25] Holding Company Act Release No. 13474.

On March 24, 1957, the Commission issued its findings and opinion and order approving a proposal by GPU to make cash advances to its foreign subsidiary, Manila Electric Co., from time to time during the period ending December 31, 1958, in amounts aggregating $3,750,000.[26] Manila proposes to use the funds for the installation of an additional 25,000-kilowatt unit to its utility plant, the total cost of which was estimated at $5 million and the sums advanced by GPU are to supply the dollar component needed to purchase certain of the necessary equipment in the United States. Particular consideration was given by the Commission to the effect of currency control in the Philippines. Since the proposed construction of the additional unit and method of financing it involved the matter of future repayments in dollars by Manila Electric to GPU, Manila Electric applied to the Central Bank of the Philippines for approval of the program. Such approval was granted, subject to a provision that such future dollar repayments would be subject to governing Philippine regulations at the time when the repayments were due. Under present regulations, the repayments of the loan would be permissible at the rate of 20 percent per annum beginning 5 years from the date the new 25,000-kilowatt unit commences operation.

In approving the proposal the Commission had to be satisfied that the consideration was fairly related to the amounts invested in or the earning capacity of the utility assets underlying the advances in terms of the local peso currency. These requirements appeared satisfactory as to the GPU loan, but as indicated, the ultimate dollar repayment of the advances would be subject to conditions and circumstances outside the control of Manila Electric and GPU. The Commission noted that GPU's board of directors had determined that the proposed transaction was appropriate. The Commission also observed that Congress, in its enactment in 1956 of a private law which, in effect, exempted GPU from compliance with a previous order of the Commission directing that GPU divest itself of its interest in Manila Electric, appeared to have given considerable weight to the financial aid which GPU, as the parent company, is to render to Manila Electric.

On October 19, 1956, the Commission issued an order authorizing GPU to dispose of its wholly owned nonutility subsidiary, Employees Welfare Association, Inc. ("EWADEL"), a Delaware corporation, with respect to which the Commission had issued a section 11 (b) (1) order in 1951 requiring GPU to dispose of that part of the company's business relating to the servicing of the insurance policies of employees of those companies which were no longer a part of the system.[27] Based

[26] Holding Company Act Release No. 13431.
[27] Holding Company Act Release No. 13288.

upon the conclusion that it would not be economically or administratively feasible to attempt to reduce the scope of EWADEL's activities to the servicing of employees' policies of the present system, GPU decided to divest itself of its entire interest therein, retaining temporarily, however, EWADEL's wholly owned subsidiary, Employees Welfare Association, Inc. ("EWANJ"), a New Jersey corporation, consisting of 1,000 shares of common stock of $1 par value per share. GPU proposed to hold EWANJ as a direct subsidiary pending the latter's liquidation. Apart from certain nominal administrative functions in respect of pension trusts which are in the process of liquidation, EWANJ is inactive and has no income or expenses. Its only assets consist of an interest in a pension trust agreement stemming from its original deposit of $1,000 with the pension trustee.

International Hydro-Electric System

International Hydro-Electric System ("IHES"), a registered holding company, had only one remaining subsidiary at the beginning of the fiscal year, Gatineau Power Co., which in turn had two subsidiaries, Gatineau Transmission Co. and St. John River Storage Co. Gatineau Power and its subsidiaries operate entirely in Canada. The consolidated assets of Gatineau and its subsidiaries, less valuation reserves, amounted to $113 million at December 31, 1956, and system generating capacity totaled 814,094 kilowatts.

The Commission by its Findings and Opinion [28] and Order [29] approved the section 11 (d) plan [30] of the Interim Board of Directors of IHES for modification of a 1943 order requiring liquidation and dissolution of the company,[31] and for the continuance of IHES as an investment company. The plan was approved by the enforcement court on April 23, 1956, and was subsequently consummated.[32]

On June 24, 1957, the Commission entered an order approving an application of the Interim Board to permit IHES to restate the ledger values of its portfolio securities on the basis of market values at December 31, 1956, and the substitution on a share for share basis of common stock of the par value of $1 per share for the outstanding 856,718 shares of class A stock of the par value of $25 per share.[33] As thus revalued, the system assets (including cash and cash items in the amount of $12,990,345) were restated at an aggregate amount of $29,677,378.

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[28] Holding Company Act Release No. 13045 (November 25, 1955).

[29] Holding Company Act Release No. 13083 (January 13, 1956).

[30] IHES is the only registered holding company system reorganized pursuant to section 11 (d) of the Holding Company Act up to the present time.

[31] For a summary of prior proceedings in this matter, see 21st Annual Report, p. 62; 22nd Annual Report, p. 135.

[32] In re International Hydro-Electric System, unreported Dist. Mass. Civil Action No. 2430; aff'd sub nom. *The Equity Corporation* v. *Brickley*, 237 F. 2d 839 (C. A. 1, October 26, 1956); certiorari denied, 352 U. S. 989 (January 28, 1957).

[33] Holding Company Act Release No. 13508.

On the same date the Commission also entered an order, pursuant to section 3 (a) (5), granting exemption to IHES and its subsidiary companies.[34] The exempted holding company, under its new name of Abacus Fund, thereupon filed a notification of registration as a closed-end, nondiversified investment company pursuant to section 8 (a) of the Investment Company Act of 1940.

On September 17, 1957, subsequent to the close of the fiscal year, the Court approved the application of the Court Trustee to turn over to the Abacus Fund all but $1,500,000 of the assets remaining in the Trustee's hands. The $1,500,000 has been retained for the purpose of satisfying such claims and final allowances as may be awarded against the estate of IHES for services rendered during the final stages of the reorganization proceedings. On October 1, 1957, final claims aggregating $904,905 for fees and expenses requested to be paid by the IHES estate were filed with the Commission. Any allowance awarded by the Commission constitutes the maximum amount which may be awarded by the Court. After the payment of the final allowances, only the question of the discharge of the Court Trustee will remain before the proceedings are terminated.

Middle South Utilities, Inc.

Middle South Utilities, Inc., functions solely as a registered holding company and controls 4 operating subsidiaries which furnish electric utility service to 837,522 customers in 1,700 communities and adjacent rural areas in Arkansas, Louisiana, and Mississippi with a total population of approximately 4 million. The system also sells natural gas at retail to 241,353 customers in 70 communities in Louisiana. Transit service is furnished in the city of New Orleans and adjacent communities. The system's net electric generating capability totals 2,165,000 kilowatts and it operates 2,162 miles of gas mains. In addition, the system owns 79 percent of the voting securities of Mississippi Valley Generating Co., an inactive company, and all of the securities of another inactive subsidiary, Louisiana Gas Service Corp. One of Middle South's operating subsidiaries, Arkansas Power and Light Co., owns 34 percent of the securities of Arklahoma Corp., an electric transmission line company with assets, less valuation reserves, of $3 million at December 31, 1956.[35] Middle South owns 10 percent of the voting securities of Electric Energy, Inc., which operates a large electric generating station furnishing power to an installation of the Atomic Energy Commission. A proposal filed with the Commission by Middle South to sell its interest in Electric Energy, Inc., to Kentucky Utili-

[34] Holding Company Act Release No. 13509 (June 24, 1957).

[35] The balance of the capital stock of Arklahoma is owned 32 percent by a subsidiary of Central and South West Corp., another registered holding company, and 34 percent by an electric utility company not affiliated with a registered holding company system.

ties Co., a nonaffiliate, is discussed at page 128 of this report. There is still pending before the Commission the issue of whether the acquisitions of the stock of Electric Energy, Inc., by Middle South and others meet the standards of section 10 of the Act. This issue and the organization and financing of Electric Energy, Inc., are discussed at page 126 of this report.

A proposal filed by Middle South and its subsidiary, Louisiana Power & Light Co. in the previous fiscal year to divest themselves of their interests in the nonelectric properties of Louisiana in compliance with a 1953 section 11 (b) (1) order of the Commission, and the litigation thereon, are described at page 139 of the 22d Annual Report. During the past fiscal year the Supreme Court, after granting the Commission's petition to review the decision of the Court of Appeals for the Fifth Circuit,[36] reversed the Court of Appeals, holding that the Commission's order denying Louisiana Public Service Commission's petition to reopen the divestment proceeding was not a reviewable order.[37] Subsequently, on November 22, 1957, the Commission approved a section 11 (e) plan filed by Louisiana Power & Light Co. to transfer its gas and water properties to Louisiana Gas Service Co. as a step in compliance with the section 11 (b) (1) order.[37a] Upon the request of the company the Commission has filed an application with the United States District Court for the Eastern District of Louisiana for an order approving and enforcing the plan. The Court has fixed January 14, 1958 as the date for hearing.

National Fuel Gas Co.

The National Fuel Gas Co. functions solely as a registered holding company and controls 3 gas utility subsidiaries and 6 nonutility subsidiaries. The system furnishes retail gas service to 497,888 customers in the States of New York, Ohio, and Pennsylvania in an area with a total population of 1,700,000. The system operates 12,797 miles of distribution, transmission, gathering and storage pipelines. Ten percent of the system's natural gas requirements are produced and the balance is purchased through major pipeline companies, principally from southwest fields. At December 31, 1956, the consolidated assets of the system, less valuation reserves, totaled $168 million.

On September 28, 1956, the Commission issued an order approving the purchase by Iroquois Gas Corp., a subsidiary of National Fuel Gas Co., of the natural gas properties of Reservation Gas Co. and Finance Gas Co., both nonutilities located in western New York, consisting primarily of 49 producing wells, approximately 45 miles of

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[36] 352 U. S. 924 (December 3, 1956).

[37] *S. E. C.* v. *Louisiana Public Service Commission;* 353 U. S. 368 (May 13, 1957); petition for rehearing denied, 354 U. S. 928 (June 17, 1957).

[37a] *Louisiana Gas Service Co., et al.,* Holding Company Act Release No. 13606.

pipelines, 2 compressor stations, various parcels of real estate and gas producing and storage leaseholds covering approximately 27,850 acres for a consideration of $450,000.[38]

On April 22, 1957, the Commission authorized Iroquois Gas Corporation to sell its natural gas distribution facilities in western New York, together with an intrastate gas transmission line, to a nonaffiliate company, New York State Electric & Gas Corp.[39]

The merger of Republic Heat, Light & Power Co., Inc., into Iroquois Gas Corp., was approved by the Commission on December 26, 1956.[40] The Commission's order therein pointed out that the service area of both companies, which are located in the western part of New York, are for the most part contiguous and that both companies operated with substantially the same executive personnel and the common use of many services and facilities.

New England Electric System

New England Electric System ("NEES"), a voluntary association created under the laws of Massachusetts, functions solely as a registered holding company. It controls 23 electric and gas subsidiaries and 2 nonutility subsidiaries. Electric utility service is furnished to 142 communities in Massachusetts, 27 in Rhode Island, 21 in New Hampshire and 4 in Connecticut with an aggregate population of 2,200,000. The net electric generating capability of the system is 1,060,000 kilowatts. The system sells gas at retail to customers in 40 communities in Massachusetts, 3 in Rhode Island and 1 in Connecticut. Gas is purchased from 2 nonaffiliated transmission companies. At December 31, 1956, the consolidated assets of the system, less valuation reserves, totaled $527 million.

NEES also owns, indirectly, 30 percent of the voting securities of Yankee Atomic Electric Co., organized in 1954 for the purpose of constructing and operating an atomic nuclear power plant of approximately 134,000-kilowatt capacity. The plant is to be located in Rowe, Mass., and is scheduled for completion in 1960. The output of the plant will be sold to the 12 New England electric utility companies which are stockholders of Yankee.[41]

NEES has from time to time initiated and consummated various proposals that have resulted in a material reduction in the number of subsidiary companies in the system, the elimination of minority interests in the corporate structure of several of the subsidiaries and the segregation of the electric and gas operations of certain of the subsidiaries into separate companies. During the fiscal year NEES ob-

[38] Holding Company Act Release No. 13273.
[39] Holding Company Act Release No. 13455.
[40] Holding Company Act Release No. 13348.
[41] See Holding Company Act Release No. 13048 (November 25, 1955).

tained Commission approval of the merger (and related financing transactions) of five of NEES' electric utility subsidiaries—Amesbury Electric Co., Essex County Electric Co., Haverhill Electric Co., Lawrence Electric Co. and Lowell Electric Light Corp.,[42] and the acquisition by NEES of about 95 percent of the voting securities of Lynn Gas and Electric Co., a nonaffiliated public-utility company, whose operations were closely related to and conducted within the area served by subsidiaries of NEES.[43]

The principal problems remaining to be resolved by the NEES system under section 11 (b) of the Act pertain to the elimination of the publicly held minority interest in the common stock of certain of the subsidiaries in the system, and a determination by the Commission of the permissible limits of the operations by the system under the standards of section 11 (b) (1) of the Act. NEES has submitted a formal commitment to file a plan or plans to eliminate the minority interests in its subsidiaries. On August 5, 1957, the Commission issued a notice of and order for hearing pursuant to section 11 (b) (1) of the Act for the purpose of determining the status of the NEES system under the geographical integration provisions of the Act.[44]

Ohio Edison Co.

Ohio Edison Co. is an operating utility company and is also a registered holding company by virtue of its ownership of Pennsylvania Power Co., an electric utility company. The electric facilities of Ohio Edison and Pennsylvania Power constitute an integrated electric utility system serving 610,000 customers in 588 communities and rural areas in Ohio and 133 communities and rural areas in Pennsylvania. The total population of the system's service area is 1,855,000. The combined capability of Ohio Edison and Pennsylvania Power is 1,688,500 kilowatts. The consolidated assets of the system, less valuation reserves, totalled $486 million at December 31, 1956.

Ohio Edison owns a 16.5 percent interest in Ohio Valley Electric Corp. which, with its wholly owned subsidiary, Indiana-Kentucky Electric Corp., furnishes electric power to an installation of the Atomic Energy Commission. There is pending before this Commission the issue of whether the acquisitions of Ohio Valley Electric Corp.'s stock by Ohio Edison and other sponsoring companies meet the standards of section 10 of the Act. This issue, along with the

[42] Holding Company Act Release No. 13480 (May 23, 1957).

[43] Holding Company Act Release No. 13456 (April 22, 1957). A petition for review of the Commission's order approving the acquisition of the Lynn stock filed in the United States Court of Appeals for the First Circuit was dismissed for lack of prosecution in *John F. Cremens* v. *S. E. C.* No. 5264, October 4, 1957.

[44] Holding Company Act Release No. 13525.

organization and financing of Ohio Valley Electric Corp. and Indiana-Kentucky Electric Corp. are discussed at page 126 of this report.

During the past fiscal year the Commission approved five applications for the acquisition of utility assets from certain municipalities and an electric cooperative all located in the State of Ohio. These acquisitions included a generating plant from the village of Plain City for $410,000;[45] the municipal electric distribution system of the city of Huron for $335,000;[46] the electric distribution system of the village of Leroy for $78,500;[47] utility assets from the city of Galion consisting of a distribution line approximately 1.2 miles long for $2,784;[48] and a 2.7-mile transmission line from Delaware Rural Cooperative, Inc., for $14,700.[49] The assets acquired under the foregoing orders are located within Ohio's service area and will be operated as a part of the company's integrated system.

The Southern Co.

The Southern Co. functions solely as a registered holding company. It controls 5 electric utility subsidiaries which furnish electric service to 1,372,000 customers in 1,406 communities and rural areas with aggregate population of 6,405,000 in Alabama, Florida, Georgia, and Mississippi. The system also has 2 nonutility subsidiaries and a mutual service company. Two of the electric utility subsidaries, Alabama Power Co. and Georgia Power Co., each own 50 percent of the capital stock of Southern Electric Generating Co., which is building a generating plant to furnish power to its two parent companies. The Southern system has installed generating capacity of 3,288,380 kilowatts and at December 31, 1956, had consolidated assets, less valuation reserves, of $932 million.

On February 27, 1957, the Commission issued an order approving the acquisition by Georgia Power Co. of all the assets, properties and business of Georgia Power and Light Co., a nonaffiliated electric utility company and a subsidiary of Florida Power Corp. The Commission also approved the purchase by Georgia Power Co. of a 110-kilowatt transmission line from Florida Power Corp. and the arrangements to finance the acquisitions.[50] The aggregate consideration for the properties amounted to approximately $18,500,000 of which $7,705,000 represented the assumption of Georgia Power and Light Co.'s first mortgage bonds with the balance paid in cash.

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[45] Holding Company Act Release No. 13259 (September 5, 1956).
[46] Holding Company Act Release No. 13270 (September 28, 1956).
[47] Holding Company Act Release No. 13354 (December 31, 1956).
[48] Holding Company Act Release No. 13424 (March 20, 1957).
[49] Holding Company Act Release No. 13320 (November 26, 1956).
[50] Holding Company Act Release No. 13398.

Two regulatory commissions, the Georgia Public Service Commission and the Florida Railroad and Public Utilities Commission, urged approval of the acquisition.

In finding the transactions consistent with the standards of the Act, particularly section 2 (a) (29) (A) thereof, the Commission, in commenting upon the fact that the acquisition would result in Georgia Power Co. serving virtually the entire State of Georgia, stated among other things, that: "In some circumstances it might give us cause for concern in connection with the effectiveness of regulation that a registered holding company system should absorb one of the only two other electric distribution companies in the State with which its rates and other practices might be compared. In this particular case, however, the differences in relative size and type of system operation between Georgia [Power Co.] and [Georgia Power and] Light [Co.] are so marked as to lead us to the conclusion that absorption of [Georgia Power and] Light [Co.] will not have a discernible effect upon the effectiveness of regulation." The Commission also found that the acquisition would not in any material sense extend the Southern system to a new area or region and that economically the service area of the company being acquired is part of the area or region already serviced by the Southern system.

Standard Shares, Inc.
Standard Gas and Electric Co.
Philadelphia Co.

Standard Shares, Inc., formerly known as Standard Power and Light Corp., is the top holding company of a system which no longer has any public utility subsidiaries, as defined in the Act. At June 30, 1957, Standard Shares owned 45.59 percent of the voting securities of Standard Gas, a registered holding company, which in turn owned all of the voting securities of Philadelphia Co., a registered holding company. These holdings reflect the consummation of a reorganization plan approved by the Commission under section 11 (e) of the Act and ordered enforced by the United States District Court for the District of Delaware. Pursuant to another provision of this plan Standard Shares is in the process of conversion into a closed-end nondiversified investment company.[51]

At June 30, 1957, Standard Shares owned 50.89 percent of the voting securities of Pittsburgh Railways Co., a transit system serving the city of Pittsburgh, which had assets, less valuation reserves, of $43 million at December 31, 1956. On that date Standard Shares owned 4.58 percent and Standard Gas owned 1.20 percent of the common stock of Duquesne Light Co., an electric utility company

[51] Holding Company Act Release No. 13101 (February 16, 1956). *In re Standard Power and Light Corporation* (unreported (D. Del. Civil Action No. 1793, March 13, 1956)).

serving the Pittsburgh area which formerly was a subsidiary in the Standard system. The corporate assets of Standard Shares amounted to $29 million at June 30, 1957.

During the fiscal year, all of Philadelphia's approximately 51 percent interest in the common stock of Pittsburgh Railways Co. was sold under a rights offering to the Standard Gas common stockholders, including Standard Shares, and substantially all of Philadelphia's interest in the common stock of Duquesne was distributed to the stockholders of Standard Gas, including Standard Shares.[52] Later in the fiscal year, Standard Shares sold to the public 265,000 shares of Duquesne common stock.[53] In addition, the Commission released jurisdiction over the selection and composition of Duquesne's board of directors.[54] Subsequent to the close of the fiscal year Standard Shares filed an application under section 5 (d) of the Act seeking an order by the Commission declaring that it has ceased to be a holding company, subject to such terms and conditions as the Commission finds as necessary for the protection of investors.

As indicated in the 22nd Annual Report, page 143, and in the 21st Annual Report, page 71, uncertainties with respect to certain unresolved tax difficulties arising from a dispute between Standard Gas, Philadelphia and Duquesne on the one hand and the Department of the Treasury on the other hand as to their Federal income liabilities for the years 1942 through 1950 have been impediments to compliance by Standard Gas and Philadelphia with the orders of the Commission requiring their liquidation and dissolution. Although the income tax difficulties remain unresolved, during the fiscal year and with the approval of the Commission and the United States District Court for the District of Delaware the then existing tax cutoff agreement between Philadelphia and Duquesne was canceled and another tax cutoff agreement substituted therefor.[55] The effect of this action was to reduce the need by Standard Gas and Philadelphia to retain assets to cover their potential tax liabilities. This permitted the divestment by Standard Gas of the Duquesne and Pittsburgh Railways common stock referred to above.

Union Electric Co.

Union Electric Co., formerly known as Union Electric Co. of Missouri, is an electric utility operating company and also a registered holding company. The company and its public utility subsidiaries, Missouri Power and Light Co. and Missouri Edison Co., furnish elec-

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[52] Holding Company Act Release No. 13376 (February 4, 1957). *In re Standard Gas and Electric Company* (unreported (D. Del. Civil Action No. 1459, March 14, 1957)).

[53] Holding Company Act Release No. 13505 (June 18, 1957).

[54] Holding Company Act Release No. 13501 (June 12, 1957).

[55] Holding Company Act Release No. 13376 (February 4, 1957).

tric service to approximately 642,000 customers in the city of St. Louis and in 123 other communities in eastern and central Missouri, 2 communities in Illinois and 1 in Iowa. As at December 31, 1956, the consolidated assets of the system, less valuation reserves, totalled $457 million. The system also owns certain gas utility properties and nonutility assets, and Union Electric Co. owns 40 percent of the common stock of Electric Energy, Inc., which operates a large generating plant which furnishes power to an installation of the Atomic Energy Commission near Paducah, Ky. There is still pending before the Commission the issue of whether the acquisitions of the stock of Electric Energy, Inc., by Union Electric and other sponsoring companies meet the standards of section 10 of the Act. This issue and the organization and financing of Electric Energy, Inc., are discussed at page 126 of this report.

During the fiscal year Union Electric disposed of its interest in Poplar Ridge Coal Co., a wholly owned nonutility coal company subsidiary.

In November, 1956, the Commission instituted a private investigation to determine whether Union Electric and certain of its officers and employees had violated certain provisions of the Act. The inquiry related particularly to the question whether payments aggregating $35,000 made by Union Electric ostensibly to a Chicago lawyer violated the prohibition of section 12 (h) of the Act against direct or indirect contributions by a registered holding company in connection with the candidacy, nomination, election, or appointment of any person for or to any office or position in the Federal or State government or in support of any political party or any committee or agency thereof. In addition, the investigation concerned the question whether any such payments had been properly recorded on the books and records of Union Electric and whether financial statements and reports filed by Union Electric with the Commission correctly accounted for and reported such payments.

The Commission's investigation was prompted by newspaper disclosures that Union Electric had issued $35,000 in checks payable to the lawyer which had been found in a so-called "envelope account" maintained at a bank by Orville Hodge, formerly State auditor of the State of Illinois, who was convicted of various State and Federal offenses. The possible violation of the Act was also the subject of a simultaneous inquiry by a Federal grand jury in Springfield, Ill. The Commission and the United States attorney's office in Springfield cooperated in this matter. During the course of the Commission's investigation some 40 individuals were interviewed and considerable research involving the inspection of documents and other material was undertaken.

The Commission referred the evidence which its investigation disclosed to the Department of Justice. The Department concluded that the facts developed did not come within the reach of the Act. On May 24, 1957, the grand jury before which this inquiry was conducted was discharged without voting any indictments. In view of the foregoing, the Commission discontinued its investigation.

Union Electric was also involved in a proxy controversy with two of its common stockholders in regard to its annual meeting held on April 20, 1957. Union Electric informed the Commission that it was prepared to spend corporate funds to engage in a proxy contest with the two stockholders, and the Commission pursuant to section 12 (e) of the Act issued an order on February 27, 1957, prohibiting any person from soliciting the security holders of Union Electric Co. unless such person had first filed a declaration with the Commission which had been permitted to become effective.[56] Upon the filing of such a declaration by Union Electric, the Commission ordered a hearing thereon [57] at which the complaining stockholders were given leave to participate. At the conclusion of the hearing the Commission issued its order permitting Union Electric's declaration to become effective.[58] The two interested stockholders filed a petition to review the order with the United States Court of Appeals for the Eighth Circuit and simultaneously requested the Court to stay the execution of the order. The stay was denied. The Findings and Opinion of the Commission was issued subsequently [59] and the petition for review was pending at the end of the fiscal year. The Commission also sought an order from the United States District Court for the Eastern District of Missouri enjoining the stockholders from sending out certain solicitation material in violation of the Commission's order of February 27, 1957. This action was in the process of litigation at the end of the fiscal year.

On March 6, 1956, Union Electric filed an application requesting an exemption from the Act pursuant to section 3 (a) (2) thereof [60] on the ground that it is predominantly a public-utility company whose operation as such does not extend beyond the State in which it is organized and States contiguous thereto. The application also requested that the Commission release the jurisdiction previously reserved over the question of the retainability of the gas systems of Union Electric and its subsidiaries. Due to the relevance and importance of the outcome of the proceeding concerning Electric Energy, Inc., to this application, the Commission has taken no action on the application, and it was still pending at the close of the fiscal year.

[56] Holding Company Act Release No. 13399 (February 27, 1957).
[57] Holding Company Act Release No. 13410 (March 8, 1957).
[58] Holding Company Act Release No. 13429 (March 21, 1957).
[59] Holding Company Act Release No. 13450 (April 17, 1957).
[60] Holding Company Act File No. 31-635.

The West Penn Electric Co.

The West Penn Electric Co. ("West Penn") functions solely as a registered holding company and controls 13 electric utility subsidiaries, one of which is a registered holding company, and 6 nonutility subsidiaries. The system also owns some small water properties, coal mines, and transportation facilities. The system's consolidated assets, less valuation reserves, totaled $464 million at December 31, 1956.

West Penn owns a 12.5 percent interest in Ohio Valley Electric Corp. which, with its wholly owned subsidiary, Indiana-Kentucky Electric Corp., furnishes electric power to an installation of the Atomic Energy Commission. There is still pending before this Commission the issue of whether the acquisitions of OVEC's stock by West Penn Electric and the other sponsors meet the standards of section 10 of the Act. This issue and the organization and financing of OVEC and IKEC, are discussed at page 126 of this report.

During the past fiscal year the Commission approved a proposal regarding the dissolution of one inactive nonutility company, the Braddock Heights Water Co.,[61] and authorized West Penn Railways Co., also an inactive nonutility company, to pay its parent, West Penn, a liquidating dividend of $1,100,000.[62] The application by West Penn Railways Co. to pay a liquidating dividend indicated that Railways is ultimately to be liquidated and dissolved. Of the $1,100,000 to be distributed, $766,317 was in the hands of a trustee which amount represented an accumulation of the proceeds of the sale of certain property subject to the lien of the mortgage under which there is outstanding $3,897,000 principal amount of 5 percent noncallable bonds due June 1, 1960, issued by West Penn Railways Co.'s predecessor, West Penn Traction Co. The proposal further provided that the Trustee of the Traction bonds was to be requested to use such funds to purchase Traction bonds on the open market or at private sales, at current prices, through requests for tenders or otherwise, as determined by the Trustee and West Penn.

Other Holding Companies

On June 30, 1956, there were five companies in addition to those listed above which were subject to the provisions of the Act as registered holding companies, but which as a result of having completed nearly all steps required for compliance with outstanding orders of the Commission under section 11 (b) of the Act, were in the final stages of either dissolution or of conversion to some status other than that of a registered holding company.[63] All of these companies have

[61] Holding Company Act Release No. 13265 (September 17, 1956).
[62] Holding Company Act Release No. 13506 (June 21, 1957).
[63] New England Public Service Co., Northern New England Co., Engineers Public Service Co., The United Corp. and United Public Service Corp.

completed divestments of former subsidiaries and all but one are in the final stages of liquidation.

One of these companies, Engineers Public Service Co., is a registered holding company in the final stages of liquidation and dissolution. During the past fiscal year the Commission approved an amendment to Engineers' section 11 (e) plan, providing for, among other things, the payment of certain fees and expenses to counsel for Engineers and counsel for the escrow agent under the plan and an order directing the escrow agent to turn over to Engineers certain funds held by it in escrow. The amendment also provided that the Commission request the Court which had previously enforced other aspects of the plan to fix a bar date for the filing of claims against Engineers. The amendment further provided that a bar date be fixed after which the right to exchange securities in accordance with the plan of Engineers shall terminate. The application was approved by the Commission on November 13, 1956,[64] and enforced by the United States District Court of Delaware on December 20, 1956.[65] The bar date terminating the period for exchange of securities was set at February 18, 1962.

Pending litigation involving The United Corp., formerly a registered holding company and now a registered investment company, at the close of fiscal year 1956 is described at pages 147–148 of the 22d Annual Report. An appeal filed by Randolph Phillips, a stockholder of United, to the United States Circuit Court of Appeals for the Second Circuit, requesting a review of the Commission's order granting United's application to be declared not to be a holding company pursuant to section 5 (d) of the Act, was dismissed for lack of prosecution.[66] During the fiscal year appeals were taken by Randolph Phillips and Joseph B. Hyman from an order of the United States District Court of Delaware dated October 31, 1956,[67] enforcing the Commission's order approving, among other things, the payment of $50,000 to Phillips and $7,000 to Hyman, for fees and expenses in connection with United's 1951 Amended Investment Company Plan.[68] The amounts awarded to Phillips and Hyman by the Commission and the District Court were substantially lower than the amounts requested by these applicants.

On October 22, 1957, subsequent to the end of the fiscal year, the Court of Appeals for the Third Circuit reversed the District Court and held that Phillips should receive $50,000 as a fee and $26,925 for expenses, and that Hyman should receive $12,000 as a fee. A petition for rehearing filed by the Commission was denied by the Court on December 3, 1957.

[64] Holding Company Act Release No. 13305.
[65] *In re Engineers Public Service Co.*, unreported (D. Del., Civil Action No. 995).
[66] *Phillips* v. *S. E. C.*, unreported (C. A. 2, No. 24041, April 1, 1957).
[67] In re *The United Corp.*, unreported (D. Del., No. 1650).
[68] Holding Company Act Release No. 13194 (June 28, 1956).

ACQUISITIONS BY PERSONS OTHER THAN REGISTERED HOLDING COMPANIES

The provisions of the Act do not pertain solely to the organization and activities of registered holding companies and their subsidiaries. Certain sections of the statute regulate transactions between other persons and any electric or gas utility company and the acquisition by other persons of voting securities of such public utility companies. One of these provisions is section 9 (a) (2) of the Act, which requires that the acquisition by any person of 5 percent or more of the voting securities of two or more public utility or holding companies satisfy specified statutory standards.

Central Vermont Public Service Corp. is a holding company claiming exemption pursuant to rule 2, and thus is required to obtain approval of the Commission under section 9 (a) (2) in respect of acquisitions creating additional affiliate relationships. The Commission approved the acquisition by Central Vermont Public Service Corp. of 1,730 shares (86.5 percent) of the initial 2,000 shares of capital stock issued by Vermont Electric Power Co., Inc.[69] Central Vermont Public Service Corp., Green Mountain Power Corp., and Citizens Utilities Co., the latter two of which are not subject to the Act, organized Vermont Electric Power Co., Inc., for the purposes of constructing, owning and operating the necessary transmission facilities and receiving, at various points on the New York-Vermont State line, power generated on the St. Lawrence River and purchased by the State of Vermont pursuant to a contract with the Power Authority of the State of New York, and to transmit such power to the points of delivery to various electric distribution companies and agencies within the State of Vermont, in accordance with allocations thereof made by the Public Service Commission of Vermont. The total cost of such new transmission facilities is estimated at between $10 million and $15 million and it is presently contemplated that its capital structure will consist of between 5% and 15% in equity securities with the balance represented by debt securities.

ELECTRIC GENERATING COMPANIES DEVELOPING ATOMIC POWER OR SUPPLYING ELECTRIC ENERGY TO INSTALLATIONS OF THE ATOMIC ENERGY COMMISSION

Electric Energy, Inc., Ohio Valley Electric Corp. and Indiana-Kentucky Electric Corp.

Three large electric generating companies sponsored by certain registered holding company systems in cooperation with a number of nonaffiliated electric utility operating companies were organized in 1950 and 1952 to furnish electric power in large quantities to installations of the Atomic Energy Commission.

[69] Holding Company Act Release No. 13461 (May 2, 1957).

The first of these companies, Electric Energy, Inc. ("EEI"), was organized under the laws of Illinois late in 1950 by five sponsor public-utility or holding companies to erect and operate an electric generating station at Joppa, Ill., to supply power to the Atomic Energy Commission in connection with the operation of its new uranium processing plant located near Paducah, Ky. EEI had total assets, less valuation reserves, of $182 million at December 31, 1956, and net electric generating capability of 1,003,800 kilowatts.

The sponsor companies and their proportionate holdings of the 62,000 outstanding shares of EEI's common stock are: Union Electric Co., an electric-utility company and a registered holding company, 40 percent; Middle South Utilities, Inc., a registered holding company, 10 percent; Kentucky Utilities Co., an electric-utility company and a holding company heretofore granted exemption pursuant to section 3 (a) (2) of the Act, 10 percent; Illinois Power Co., an electric-utility company, 20 percent; Central Illinois Public Service Co., an electric-utility company, 20 percent.

Ohio Valley Electric Corp. ("OVEC"), an Ohio corporation, and its wholly owned subsidiary, Indiana-Kentucky Electric Corp. ("IKEC"), an Indiana corporation, were organized in 1952 by 10 public-utility and public-utility holding companies to construct and operate two large generating stations, one near Cheshire, Ohio, and the other near Madison, Ind., together with the requisite transmission facilities, to supply power to the Atomic Energy Commission in connection with the operation of its new uranium processing plant located near Portsmouth, Ohio. The consolidated assets of OVEC and IKEC, less valuation reserves, totalled $374 million at December 31, 1956, and the combined proven electric generating capacity of the two companies amounted to 2,365,000 kilowatts.

The sponsor companies and their proportionate holdings of the 100,000 shares of outstanding common stock of OVEC are: American Gas and Electric Co., a registered holding company, 37.8 percent; The Ohio Edison Co., an electric-utility company and a registered holding company, 16.5 percent; The West Penn Electric Co., a registered holding company, 12.5 percent; The Cincinnati Gas & Electric Co., an electric-utility company claiming exemption as a holding company pursuant to rule 2, 9 percent; Louisville Gas and Electric Co., an electric-utility company heretofore granted exemption as a holding company pursuant to section 3 (a) (2) of the Act, 7 percent; The Dayton Power and Light Co., an electric-utility company, 4.9 percent; Columbus and Southern Ohio Electric Co., an electric-utility company, 4.3 percent; The Toledo Edison Co., an electric-utility company, 4 percent; Kentucky Utilities Co., an electric-utility company heretofore granted exemption as a holding company pursuant to section 3

(a) (2) of the Act, 2.5 percent; and Southern Indiana Gas and Electric Co., an electric-utility company, 1.5 percent.

As described at page 102 of the 17th Annual Report and at page 129 of the 22nd Annual Report, the acquisitions of the capital stocks of EEI and OVEC by their respective sponsor companies and the plans for the financing of these two generating companies and of OVEC's subsidiary, IKEC, were tentatively approved by the Commission in the interest of national defense, reserving until a later hearing the determination of whether the acquisitions of the capital stocks of EEI and OVEC by the sponsor companies is consistent with the standards of section 10 of the Act and the status of the sponsor companies under section 2 (a) (7) of the Act.[70] On November 19, 1956, the Commission ordered that hearings be held in respect of these reserved issues.[71] Hearings were held on the EEI matter in March and April of 1957. Hearings were held on the OVEC and IKEC reserved issues in March, May, August, October, and December of 1957. The matters are still pending before the Commission.

In May, 1957, Middle South entered into a contract to sell its 10 percent stock interest in EEI to another sponsor company, Kentucky Utilities Co., and the latter company agreed to acquire such additional interest in EEI subject to the condition that the status of Kentucky Utilities under the Act would not be altered as a result of such acquisition. A hearing on these proposals was held on June 24, 1957, and this proceeding was consolidated with the section 10 proceeding involving EEI which had been commenced on November 19, 1956.

EEI undertook no new financing in the past fiscal year. The earlier financing of OVEC and its wholly owned subsidiary, IKEC, is described at pages 86–87 of the 20th Annual Report and page 84 of the 21st Annual Report. OVEC increased its Subordinated Note indebtedness to its sponsor companies by $1,502,000 during the past fiscal year. In that same period, the Commission authorized an increase in the principal amount of Subordinated Notes of OVEC from $8 million to $9,102,000, the additional $1,102,000 to be taken down by sponsor companies with funds which they received from OVEC as a cash dividend on its common stock.[72] Of the $8 million principal amount of Subordinated Notes authorized in prior fiscal years, $400,000 was taken down by sponsor companies during the fiscal year 1957.

In the fiscal year 1955, the Commission approved allowances of fees and expenses totaling $1,026,532 for services rendered up to December 31, 1953, in connection with the organization and financing of OVEC

[70] As to EEI see 32 S. E. C. 202 (1951); and 34 S. E. C. 586 (1953). As to OVEC and IKEC see 35 S. E. C. 255 (1953); Holding Company Act Release No. 12752 (December 21, 1954); 36 S. E. C. 304 (1955) and 34 S. E. C. 323 (1952).

[71] Holding Company Act Release Nos. 13312, 13313, and 13342.

[72] Holding Company Act Release No. 13293 (October 29, 1956).

and IKEC.[73] During the past fiscal year the Commission approved allowances of $753,318 for services rendered in this connection from January 1, 1954, to June 30, 1955,[74] and $401,257 for services rendered from July 1, 1955, to June 30, 1956.[75]

Power Reactor Development Co.

The Commission has also had occasion in recent years to consider important cases pertaining to the development and financing of experimental projects for the employment of fissionable materials as sources of heat energy for the generation of electric power. In 1956, the Commission published for comment a proposed amendment to its rule 7, promulgated under the Act, which was designed for the specific purpose of facilitating the development of nuclear power projects. This amendment, which was adopted by the Commission on July 13, 1956,[76] and the circumstances leading up to its proposal, are described at pages 164–166 of the 22nd Annual Report.

One of the first cases which followed the adoption of this amendment related to the creation of Power Reactor Development Co. ("PRDC"). In August, 1955, a group of public-utility and industrial companies participated in the formation of this company as a nonprofit membership corporation organized for the purpose of advancing the art and technology of producing electric power by the use of fissionable materials. During the past fiscal year PRDC filed an application with this Commission pursuant to section 2 (a) (3) of the Holding Company Act requesting that it be declared not to be an electric utility company. After a hearing, the Commission found that PRDC will be engaged, at least until December, 1959, in the construction of an atomic reactor and in research and development in connection therewith. Thereafter, the reactor will be operated experimentally to ascertain the technical and economic problems of operation, and to provide its sponsors with the technical knowledge and experience needed for the construction of other atomic reactors. In addition, the company will not sell any electric energy, and will sell only steam to Detroit Edison Co. and plutonium to the Atomic Energy Commission, with the sale of plutonium expected to produce the larger portion of PRDC's revenues. Since it appeared that PRDC will be engaged primarily in the business of research and development, a business other than that of an electric-utility company, the Commission concluded that PRDC was entitled to the exemption provided in section 2 (a) (3) of the Act.[77]

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[73] Holding Company Act Release No. 12764 (December 29, 1954).
[74] Holding Company Act Release No. 13297 (October 31, 1956).
[75] Holding Company Act Release No. 13519 (July 24, 1957).
[76] Holding Company Act Release No. 13221.
[77] Holding Company Act Release No. 13364 (January 17, 1957).

In its opinion the Commission noted that PRDC would be entitled to be deemed not an electric utility company, if it elected to claim this status, under subparagraph (b) of rule 7, as amended on July 13, 1956. It also pointed out that this rule does not prohibit the filing of an application pursuant to the provisions of section 2 (a) (3) for an order declaring the company, which meets the standards set forth therein, not to be an electric utility company. However, in harmony with this rule, PRDC stipulated in its application and the Commission conditioned its order granting PRDC's application on the representation that PRDC, on or before May 1 of each year, would make a filing indicating whether or not there had been any changes in its business in the following respects: (*a*) That its only connection with the generation, transmission or distribution of electric energy is the ownership or operation of facilities used for the production of steam from special nuclear materials, which steam is used by another in the generation of electric energy, (*b*) that it is not organized for profit, and (*c*) that it is engaged primarily in research and development activities. Additionally PRDC agreed and the Commission ordered that there be attached to such statements as exhibits statements showing any changes in its charter, bylaws and licenses issued by the Atomic Energy Commission and any change in its members or in the relative voting powers of its members, and a statement of its receipts and disbursements for the preceding calendar year and of its financial status at the end of such year.

Yankee Atomic Electric Co.

The Commission was called upon during the past year to consider further developments in respect of another nuclear power project, Yankee Atomic Electric Co. On November 25, 1955, the Commission approved the initial financing of Yankee and the acquisition of its voting securities by certain of its 12 sponsoring companies, two of which were subsidiaries of registered holding companies and two of which were electric utility companies which were also holding companies exempt from the provisions of the Act. These transactions are described in detail at pages 162–164 of the 22nd Annual Report.

Yankee was organized to construct and operate a nuclear power plant which it is proposed will be of the pressurized water type, cooled and moderated by ordinary water and using slightly enriched uranium as fuel. At the time of the company's organization, representatives of Yankee indicated that it was too early to formulate with any degree of certainty the company's ultimate financing program or to provide more than a rough estimate of the total capital cost of the proposed plant. It was estimated at that time that the entire plant would require an investment of approximately $33,400,000. It was also represented that the investment would be financed by means of

conventional public utility financing arrangements with a minimum of 35 percent of the total cost of the plant to be provided by the common stock equity investments of the sponsoring companies. Recently the estimate of the ultimate construction cost of the Yankee project has been increased to about $55 million.

In May, 1956, the Commission granted the company's request to enter into preliminary discussions with representatives of financial firms for the purpose of formulating its overall financing program. Such authorization was subject to the understanding that no discussions as to price or other terms of any securities to be sold would be undertaken. In the closing weeks of the past fiscal year the company requested authorization of the Commission to commence active negotiations with prospective purchasers of its securities. In support of its request, Yankee contended that it was an unusual type of company having no assets, earnings history or credit rating. It was also urged that the unusual circumstances of Yankee's contemplated operations made it desirable that its securities be sold to knowledgeable buyers who have the means of acquiring a complete understanding of the company's problems. The Commission authorized Yankee to initiate negotiations as to price and other terms and conditions of the securities to be sold with the prospective purchasers. However, it reserved complete freedom of action to consider Yankee's formal application for exemption from the competitive bidding requirements of rule 50 when it is filed and stated that the application would be granted only upon a sufficient showing that such exemption is warranted.

FINANCING OF REGISTERED PUBLIC UTILITY HOLDING COMPANY SYSTEMS—TRENDS IN ELECTRIC AND GAS UTILITY INDUSTRIES

During the fiscal year 1957, registered holding companies and their subsidiaries sold to the public and to institutions 39 issues of their securities totaling $637 million. As in the preceding fiscal year, all of this money was used to provide new capital. In 1956 registered systems sold 45 issues totaling $589 million.[78] The increase in the volume of external financing of $48 million, or 8.1 percent, in 1957 occurred despite the cumulative effect of divestments of recent years and the absence from 1957 totals of any large scale financing by the two large electric generating companies serving Atomic Energy Commission plants. In 1956 one of these companies, Ohio Valley Electric Corp., sold $107 million of debt securities to institutions pursuant to construction loan authorizations obtained from the Commission in earlier years, as described at page 162 of the 22nd Annual Report. This company sold only $99,000 of securities in 1957. The other large

[78] The difference between the total of $589 million reported for 1956 in this report and the amount of $565 million reported for 1956 at page 148 of the 22nd Annual Report represents a correction based upon receipt of subsequent information.

generating company, Electric Energy, Inc., sold no securities in 1956 and 1957. If the sales of securities by Ohio Valley Electric are deducted from the totals for both years, the volume of external financing by all other companies in registered systems would reflect an increase of 32 percent in 1957 over 1956.

Included in the above total were 32 issues with total sales value of $590 million which were sold by registered systems in 1957 to the public and to institutions by public distribution or directly to stockholders. The remaining 7 issues totaling $47 million were placed privately with institutional investors.

In addition to passing upon the 39 issues amounting to $637 million which were sold outside of their respective systems by registered holding companies and their subsidiaries in the fiscal year 1957, the Commission authorized the issuance and sale of 78 issues of securities totaling $219 million by subsidiaries to their parents. In 1956 subsidiaries of holding companies in registered systems sold 76 issues with a volume of $199 million to their parents.

The types of securities included in the foregoing totals, the classes of companies in registered systems which sold the securities, and the types of sales employed are shown in the following table.

Sales of securities for cash or pursuant to exchange offers authorized pursuant to sections 6 and 7 of the Public Utility Holding Company Act of 1935 for the fiscal year ended June 30, 1957

(Securities issued in exchange for other securities in connection with reorganizations are excluded)

[Dollar amounts in millions]

	Type of sales				Total external financing		Sales by subsidiaries to their parents	
	Sales to public and outside stockholders		Private placements					
	Gross sales value	Number of issues	Gross sales value	Number of issues	Gross sales value	Number of issues	Gross sales value	Number of issues
Electric and gas utilities:								
Bonds	$243	15	------	------	$243	15	$2	1
Debentures	------	------	------	------	------	------	------	------
Notes	------	------	$1	2	1	2	38	19
Preferred stock	10	2	------	------	10	2	------	------
Common stock	------	------	------	------	------	------	165	47
Total	$253	17	$1	2	$254	19	$205	67
Holding companies:								
Bonds	$41	1	------	------	$41	1	------	------
Debentures	86	4	------	------	86	4	------	------
Common stock	179	9	------	------	179	9	------	------
Total	$306	14	------	------	$306	14	------	------
Nonutility companies:								
Bonds	$3	1	$20	2	$51	3	------	------
Debentures	------	------	------	------	------	------	------	------
Notes	------	------	26	3	26	3	$4	2
Common stock	------	------	------	------	------	------	10	9
Total	$31	1	$46	5	$77	6	$14	11
Grand total	$590	32	$47	7	$637	39	$219	78

Excluding the companies in registered systems, the electric and gas utility and natural gas pipeline companies in the electric and gas utility industries sold $2,923 million of securities to the public and to financial institutions in the fiscal year 1957. All but about $24 million of this amount was for new money purposes. The total for 1957 represented an increase of $943 million, or 47.6 percent, over the volume of such financing completed in 1956.

The table on the following page sets forth the amounts of various types of securities sold in the fiscal years 1957 and 1956 by registered holding companies and their subsidiaries and by all other companies in the electric and gas utility industries.

As shown by the data in that table, 28.1 percent of the total dollar volume of external financing completed by registered holding company systems in the fiscal year 1957 was in the form of common stock. The corresponding ratio for registered systems in the preceding year was 20.9 percent. All other companies in the electric and gas utility industries sold common stock issues in 1957 accounting for 17.0 percent of their total financing as compared with 16.3 percent in 1956. Bonds, debentures and long term notes accounted for 70.2 percent of the total volume of financing of registered systems in 1957 as compared with 71.2 percent for all other companies in the electric and gas utility industries. In 1956 these debt securities represented 73.5 percent of the total financing of registered systems and 67.6 percent of the total financing of all other companies in the electric and gas utility industries. There was a sharp increase in debenture financing from 6.6 percent of the total by all other companies in the electric and gas utility industries in 1956 to 15.7 percent in 1957. There were virtually no changes in the proportionate amounts of debenture financing employed by registered systems in those 2 years. It will also be noted from the table that registered systems in both years showed much less interest in preferred stock financing than did other companies in the two industries.

The increase in the volume of new money financing in 1957 over 1956 by registered holding companies and by other companies in the electric and gas utility industries was caused by the sharp upturn in expenditures for new plant and equipment which began in the last quarter of the fiscal year 1955. In that 3-month period expenditures by electric, gas, and water utilities were equivalent to a seasonally adjusted annual rate of $4,090 million. The comparable adjusted annual rate for the last quarter of the fiscal year 1957 amounted to $5,930 million and estimates for the first half of the fiscal year 1958 indicate that a seasonally adjusted annual rate of $6,480 million may be reached by the second quarter of that year.[79]

[79] The water utility and sanitation component of these amounts is estimated to average only about 2 percent of the total.

Sales of securities for cash and issuances in connection with refunding exchanges to members of the public and to financial institutions by registered holding companies and their subsidiaries and by all other electric and gas utility companies, holding companies, and gas pipeline companies in the electric and gas utility industries, fiscal years 1957 and 1956

[Dollar amounts in millions]

	Fiscal year 1957						Fiscal year 1956					
	Registered holding company systems		All other companies, electric and gas utility industries		Total companies, electric and gas utility industries		Registered holding company systems		All other companies, electric and gas utility industries		Total companies, electric and gas utility industries	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
Bonds	$335	52.6	$1,582	54.1	$1,917	53.8	$332	56.4	$1,171	59.1	$1,503	59.1
Debentures	86	13.5	460	15.7	546	15.3	81	13.7	131	6.6	211	8.3
Notes (due 5 years or longer)	26	4.1	40	1.4	66	1.9	20	3.4	38	1.9	58	2.2
Preferred stock	11	1.7	344	11.8	355	10.0	33	5.6	318	16.1	351	13.8
Common stock	179	28.1	497	17.0	676	19.0	123	20.9	322	16.3	422	16.6
Total	$637	100.0	$2,923	100.0	$3,560	100.0	$589	100.0	$1,980	100.0	$2,545	100.0

Actual expenditures for plant and equipment by the electric and gas utility industries, exclusive of the water and sanitation companies, totaled $5,360 million in the fiscal year 1957, reflecting an increase of $933 million, or 21 percent, over the amount expended in 1956. In the calendar year 1956, the funds required by these industries to finance their plant and equipment outlays were derived approximately 33.6 percent from depreciation accruals and retained earnings, 45.4 percent from sales of new securities and 21.0 percent from temporary commercial bank borrowings.

Sales of securities by registered holding companies and their subsidiaries pursuant to sections 6 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 50. Certain specified types of security issuances are automatically excepted from the competitive bidding requirement of the rule by clauses (1) through (4) of paragraph (a) thereof. These include issues with proceeds of less than $1 million; private borrowings from financial institutions with maturities of 10 years or less; issues the acquisition of which have been approved by the Commission under section 10 of the Act; and pro rata issues to existing security holders, such as nonunderwritten common stock rights offerings to stockholders.

Of the 32 issues of securities totaling $590 million sold by registered systems in 1957 to the public and to outside shareholders, as shown by the table at page 132 of this report, 29 issues aggregating $554 million were sold at competitive bidding pursuant to rule 50. The following table shows the number of issues and the amounts of each class of securities sold by this method in the fiscal year 1957 and during the period from the effective date of the rule to June 30, 1957.

Sales of securities at competitive bidding pursuant to rule 50

[Dollar amounts in millions]

	Fiscal year 1957		May 7, 1941 [1] to June 30, 1957	
	Number of issues	Volume	Number of issues	Volume
Bonds	17	$315	417	$6,339
Debentures	4	86	51	1,297
Notes			9	75
Preferred stock	1	8	117	997
Common stock	7	145	117	1,297
Total	29	$554	711	$10,005

[1] Effective date of rule 50.

In addition to the 29 issues sold at competitive bidding, 3 issues aggregating $36 million were also sold to the public or to existing shareholders but at prices and terms determined by the issuers or

set by negotiation with underwriters. These consisted of (1) a nonunderwritten offering by New England Electric System, a registered holding company, of $12.7 million of its common stock in exchange for shares of common stock of Lynn Gas and Electric Co., a nonaffiliated public utility company, which transaction is described at page 118 of this report; (2) a nonunderwritten rights offering to its shareholders of $21.1 million of common stock by General Public Utilities Corp., a registered holding company; and (3) a negotiated underwritten public offering of $2.5 million of preferred stock by Blackstone Valley Gas and Electric Co., a public utility subsidiary of Eastern Utilities Associates, a registered holding company. The Commission granted exemption from the competitive bidding requirements of rule 50 pursuant to paragraph (a) (5) thereof with respect to the Blackstone Valley Gas preferred stock sale and the New England Electric exchange offering. Blackstone Valley Gas previously had attempted to sell its shares at competitive bidding and had received no bids.[80] In the New England Electric case, the Commission determined that competitive bidding was not an appropriate means of effectuating the exchange of New England stock for the shares of Lynn Gas and Electric.[81] In connection with the proposed rights offering of common stock by General Public Utilities Corp., it could not be determined in advance of consummation of the transaction whether the provisions of clauses (1) through (4) of paragraph (a) of rule 50 would afford automatic exemption from the competitive bidding requirement to all parts of the proposed financing. Accordingly the Commission granted the company an exemption from the provisions of rule 50, to the extent such rule was applicable to the transaction.[82]

The only other securities sold by registered holding companies and their subsidiaries in the fiscal year 1957 through channels other than competitive bidding were the 7 issues of debt securities amounting to $47 million shown in the table at page 132. Included in this total were 2 issues of subordinated notes in the amount of $449,000 sold by Ohio Valley Electric Corp. to the 12 participating companies, which sponsored its organization and which own all of its capital stock,[83] and 3 issues of notes aggregating $26 million placed privately with institutional investors by American Louisiana Pipeline Co., a subsidiary of American Natural Gas Co., a registered holding com-

[80] Holding Company Act Release No. 13319 (November 20, 1956).
[81] Holding Company Act Release No. 13456 (April 22, 1957).
[82] Holding Company Act Release No. 13408 (March 7, 1957).
[83] Holding Company Act Release No. 13293 (October 29, 1956). Ohio Valley was authorized to issue and sell $1,102,000 of these notes to the participating companies. See pp. 126–129 of this report for a discussion of this transaction and the organization and financing of the company.

pany.[84] These sales were automatically exempt from the provisions of rule 50 pursuant to clauses (1) through (4) of paragraph (a) thereof. American Louisiana Pipeline also placed privately with institutions during the fiscal year 2 issues of mortgage bonds totaling $20 million pursuant to an exemption from the requirements of rule 50 granted by the Commission in the preceding fiscal year.[85]

During the period from May 7, 1941, the effective date of rule 50, to June 30, 1957, a total of 241 issues of securities with an aggregate sales value of $2,215 million have been sold pursuant to orders of the Commission granting exemption from the competitive bidding requirements of the rule under paragraph (a) (5) thereof. Included in these amounts are 188 issues with a dollar value of $1,715 million which were sold without underwritings. These totals compare with 711 issues with a sales value of $10,005 million sold at competitive bidding under the rule as shown in the table at page 135. The numbers of issues and the amounts of various classes of securities which have been sold pursuant to exemptions granted under paragraph (a) (5) of rule 50 are set forth in the following table.

Sales by registered holding companies and their subsidiaries of securities exempted from competitive bidding requirements pursuant to the provisions of paragraph (a) (5) of rule 50 by orders of the Commission entered from May 7, 1941,[1] to June 30, 1957

[Dollar amounts in millions]

	Underwritten		Nonunderwritten		Total	
	Number of issues	Amount	Number of issues	Amount	Number of issues	Amount
Bonds	4	$27	76	$1,087	80	$1,114
Debentures	3	83	5	37	8	120
Notes			29	83	29	83
Preferred stock	13	111	25	265	38	376
Common stock	33	279	53	243	86	522
Total	53	$500	188	$1,715	241	$2,215

[1] Effective date of rule 50.

Competitive bidding also has been used extensively by electric and gas utility and gas pipeline companies which are not associated with registered systems. During the fiscal year 1957, these companies sold $2,923 million of securities, of which $1,060 million, or 36.3 percent, were sold at competitive bidding. Negotiated public offerings were employed for the sale of $1,250 million, or 42.7 percent, and the balance of $613 million, or 21.0 percent, was placed privately with institutional investors. Natural gas pipeline and distributing companies accounted for the major portion of the debt securities which

[84] Holding Company Act Release No. 13245 (August 21, 1956).
[85] Holding Company Act Release No. 12953 (July 29, 1955).

were sold through channels other than competitive bidding. Electric and gas companies participated about equally in the negotiated public offerings of preferred and common stocks not subject to the Act.

The following table shows the amounts and percentages of each class of security which were sold by means of competitive bidding, negotiated public offering and private placement by electric and gas utility and gas transmission companies not associated with registered holding company systems.

Sales of securities for cash and issuances of securities in connection with refunding exchanges to members of the public[1] and to financial institutions by electric and gas utility companies, holding companies, and gas pipeline companies not subject to the Act as registered public utility holding companies or subsidiaries thereof, fiscal year 1957

[Dollar amounts in millions]

Type of security	Total amounts of securities issued and sold		Securities sold by competitive bidding		Securities sold by negotiated public offering		Securities placed privately with institutional investors	
	Amounts	Percent	Amounts	Percent	Amounts	Percent	Amounts	Percent
Bonds	$1,582	100 0	$881	55.7	$190	12.0	$511	32.3
Debentures	460	100.0	92	20.0	314	68.3	54	11.7
Notes	40	100.0			2	5.0	38	95.0
Preferred stock	344	100.0	9	2.6	327	95.1	8	2.3
Common stock	497	100.0	78	15.7	417	83.9	2	.4
Total	$2,923	100.0	$1,060	36.3	$1,250	42.7	$613	21.0

[1] Includes rights offerings to shareholders and issuances of securities in exchange for properties or securities of other companies.

The rights offering to shareholders continued to predominate in the common equity financing of registered holding company systems in the fiscal year 1957, accounting for 80 percent of the total in that year as compared with 91 percent in 1956. The device seemed to be less popular with other companies in the electric and gas utility industries. These companies employed the rights offering technique to effect 43 percent of their common stock financing in 1957 as compared with 77 percent in 1956. The numbers of issues and aggregate sales value of common stocks sold by means of rights offerings, public offerings and other methods by registered systems and by all other companies in the electric and gas utility industries are shown in the table on the following page.

The types of rights offerings employed by registered holding company systems in the fiscal year 1957 differed substantially from those used by other companies in the electric and gas utility industries. In 1957, 85.5 percent of the dollar volume of rights offerings of common stocks undertaken by registered systems were underwritten by investment bankers. Electric and gas utility companies, holding companies and gas pipeline companies not associated with registered

Common equity financing during the fiscal year 1957 by registered holding company systems and by all other electric and gas utility companies, including holding companies, and gas transmission companies, secondary offerings and intercompany transactions excluded

[Dollar amounts in millions]

Type of offering	Registered holding company systems		All other electric and gas utilities		Total electric and gas utility industries	
	Number of issues	Volume	Number of issues	Volume	Number of issues	Volume
Rights	7	$144	31	$212	38	$356
Public	1	22	18	164	19	186
Miscellaneous	[1] 1	13	[2] 18	121	19	134
Total sales of common stock	9	$179	67	$497	76	$676

[1] This issue was the exchange offering made by New England Electric System to the holders of Lynn Gas and Electric Co. common stock which is described at pp. 118 and 136 of this report.
[2] 15 of these issues were small offerings made pursuant to regulation A, promulgated under the Securities Act of 1933. 1 sale was an exchange offering by El Paso Natural Gas Co. to the holders of common stock of Pacific Northwest Pipeline Corp. The other 2 were small private sales.

systems had 70.3 percent of the dollar volume of their rights offerings underwritten. Only 14.5 percent of the common stock rights offerings of registered systems were made without underwriting commitments. The comparable percentage for other companies in the electric and gas utility industries in 1957 was 29.7. In the fiscal year 1956 both categories of companies employed underwriters to support about 90 percent of their common stock rights offerings.

Companies not associated with registered systems provided their stockholders with the privilege of subscribing to additional shares over those obtainable upon exercise of their primary warrants in 28.2 percent of the dollar volume of their underwritten rights offerings in 1957 and in 71.4 percent of their nonunderwritten offerings. The oversubscription privilege was omitted by these companies in the case of 71.8 percent of their underwritten rights offerings in that year and in 28.6 percent of their nonunderwritten offerings.

Registered systems provided oversubscription privileges in 65.3 percent of the dollar volume of their underwritten rights offerings in 1957 and in 42.2 percent of such offerings in 1956. These companies used the feature in all nonunderwritten offerings undertaken in both years. The oversubscription privilege was omitted from 34.7 percent of the underwritten rights offerings of registered systems in 1957 and from 57.8 percent of the dollar volume of such offerings in 1956.

The following table shows the numbers of issues and aggregate sales value of underwritten and nonunderwritten common stock rights offerings, with and without oversubscription privileges, which were undertaken in 1957 and 1956 by registered holding company systems and by all other companies in the electric and gas utility industries.

Rights offerings of common stocks during the fiscal years 1956 and 1957 by all electric and gas utility companies, including holding companies and gas transmission companies, secondary offerings and intercompany transactions excluded.

[Dollar amounts in millions]

	Underwritten offerings								Non-underwritten offerings							
	With oversubscription privileges				Without oversubscription privileges				With oversubscription privileges				Without oversubscription privileges			
	Issues		Volume		Issues		Volume		Issues		Volume		Issues		Volume	
	1956	1957	1956	1957	1956	1957	1956	1957	1956	1957	1956	1957	1956	1957	1956	1957
Companies in registered holding company systems	1	4	$35	$81	3	2	$48	$43	1	1	$8	$21	----	----	----	----
All other electric and gas utilities and gas transmission companies	4	11	9	42	20	14	213	107	2	4	22	45	2	2	$3	$18
Total	5	15	$44	$123	23	16	$261	$150	3	5	$30	$66	2	2	$3	$18

PROTECTIVE PROVISIONS OF FIRST MORTGAGE BONDS AND PREFERRED STOCKS OF PUBLIC UTILITY COMPANIES

During the fiscal year 1956, the Commission adopted Statements of Policy regarding first mortgage bonds [86] and preferred stocks [87] of public utility companies which represent substantially a codification of certain principles or policies prescribed for the protective provisions of these securities announced on a case-by-case basis over a period of years, as modified in the light of experience and a reappraisal of those principles and policies and in the further light of comments received from various interested persons who had been invited to submit their views. From April 1, 1956, when the Statements of Policy became applicable, to June 30, 1957, applications or declarations were filed by public-utility companies under the Act with respect to 20 first mortgage bond issues aggregating $339,500,000 principal amount and 3 preferred stock issues with total par value of $19,500,000.

Of the 20 first mortgage bond issues, 12 issues, with a total principal amount of $212,500,000, included provisions, as set forth in the Statement of Policy, placing additional restrictions on the distribution of earned surplus to the common stockholders, thereby assuring the investing bondholders of a greater degree of safety of their investment through the maintenance of an appropriate common stock equity. In respect of the other 8 issues with a total principal amount of $127 million, no additional restrictions were required since the indentures already conformed in this regard to the Statement of Policy. The additional restrictions on earned surplus distributions were proposed by the companies themselves or were inserted as a result of informal discussions between the staff of the Commission and representatives of the issuing companies.

One of the more important provisions contained in the Statement of Policy regarding first mortgage bonds is that relating to the renewal and replacement fund requirement which is frequently referred to as a minimum depreciation requirement. Essentially, it requires that the issuer construct additions to its property, or else deposit cash or bonds with the indenture trustee, in an amount which on a cumulative basis will provide for the replacement in cash or property of the dollar equivalent of the cost of the depreciable mortgaged property during its estimated useful life. The Statement of Policy provides that the requirement be expressed as a percent of the book cost of depreciable property. This is subject to the qualification that if the existing indenture provision expresses the requirement on a different basis as, for example, in terms of a percent of operating revenues, no change will be required if the company can demonstrate that the existing pro-

[86] Holding Company Act Release No. 13105 (February 16, 1956).
[87] Holding Company Act Release No. 13106 (February 16, 1956).

vision provides an amount at least equal to a requirement based on the book cost of depreciable property.

In a number of instances the determination of an appropriate rate of depreciation for indenture purposes occasioned differences of opinion between the staff of the Commission and representatives of the issuing companies. In all cases, however, after exchange of views and data between the staff and the companies, the differences were resolved. In some cases where the issuing company agreed to insert a provision that the requirement be expressed in terms of a percent of depreciable property, rather than a percent of operating revenues, an additional provision was inserted, in the interest of flexibility, that the percent could be changed with the Commission's approval upon application by the company. Of the 20 issues of first mortgage bonds, the indentures of 8, having an aggregate principal amount of $142,500,000, incorporated for the first time a percent of property requirement. Of the remaining 12 bond issues, indentures of 8, having a principal amount of $125,500,000, already contained a percent of property requirement; the indentures of 3 issues, with a principal amount of $31,500,000, did not require any modification of their existing percent of revenues provisions since such provisions were deemed adequate; and the indenture of 1 issue, filed prior to July 1, 1956, which was also on a percent of revenues basis, was not required to conform in this respect to this provision since the requirement did not become operative under the Statement of Policy until July 1, 1956.

Another of the provisions of both the bond and the preferred stock Statements of Policy requires that the securities be redeemable at the option of the issuer at any time upon reasonable notice upon the payment of a reasonable redemption premium, if any. The purpose of this provision is to assure that public-utility companies subject to the Act shall be in a position, if money rates decrease materially, to refund their bonds or preferred stock. This is deemed to be consistent with the intent of the Act, as expressed in section 1 (b) (5), to ensure economies in the raising of capital. While the Statements of Policy do not define what is meant by a reasonable redemption premium, the working policy of the Commission has been that the initial redemption price shall not exceed the sum of the initial public offering price plus the coupon rate on the bonds or the dividend rate on the preferred stock.

The Commission informally received a number of requests from issuing companies to relax its requirements so as to permit bonds to be nonrefundable for a period, after issuance, generally five years, or to permit the initial redemption price to be higher than that provided by the working formula. No showing was made that higher premiums on refunding would noticeably reduce the cost of financing

so as to warrant the loss of future financing flexibility. In addition, the Commission has noted that issues subject to its jurisdiction continue to attract a healthy number of bids. Accordingly, to date the Commission has not acceded to such requests, although it has advised the issuing companies that it will continue to consider each case as it comes before it in the light of all the relevant circumstances of the case at the time and under the then existing market conditions.

Because of the wide importance of this question of redemption prices for refunding purposes in periods of high interest rates such as the present, the Commission authorized a member of the staff of its Division of Corporate Regulation to serve as a member of a committee organized by the Wharton School of Finance and Commerce of the University of Pennsylvania, which is now making a comprehensive study of redemption provisions. The study is under the sponsorship of the Life Insurance Association of America.

The three issues of preferred stock having an aggregate par value of $19,500,000 had charter protective provisions conforming substantially to the provisions of the Statement of Policy, except that in one case, involving an issue of $8 million par value, the Commission, with the consent of the issuer, conditioned its order permitting the issue to provide, among other things, for limitations on unsecured indebtedness, limitations on the acquisition of its outstanding preferred stock which may become in arrears and limitations on the issuances of any prior preferred stock.

RULES, FORMS AND STATEMENT OF POLICY

Proposal to Amend Rule 9

On March 14, 1957, the Commission issued notice of a proposal made by its Division of Corporate Regulation to rescind rule 9 providing for the exemption of any holding company system whose net utility assets did not exceed $1 million at December 31, 1946. Eleven comments were received, all favoring retention of the present rule or some modification thereof. The Commission had the matter under advisement at the end of the fiscal year.

Amendments of Rule 70

Section 17 (c) of the Act prohibits any registered holding company or subsidiary thereof from having as an officer or director any "executive officer, partner, appointee or representative of any bank, trust company, investment banker, or banking association or firm" except as permitted by rules and regulations of the Commission "as not adversely affecting the public interest or the interest of investors or consumers." Rule 70 defines those persons to whom the Commission has granted exemptions from the prohibitions of section 17 (c).

After receiving comments on a proposed amendment, the Commission on April 23, 1957, adopted an amendment to rule 70 to permit a person whose only financial connection is that of a director of a commercial bank, as defined in the rule, to be a director, but not an officer, of a registered holding company which has no public-utility subsidiaries within the United States and either is in the process of converting into an investment company in compliance with a final order under section 11 of the Act, or is subject to an order entered under section 11 (b) (1) of the Act which has become final requiring it to divest itself of all its interests, direct or indirect, in any public utility company.[88]

Proposed Statement on Capitalization Ratios

During the fiscal year 1957, the Division of Corporate Regulation of the Commission commenced a study of capitalization ratios for registered holding companies and their subsidiary operating companies subject to the Act. The purpose is to determine the advisability of recommending that the Commission issue for comment a proposed Statement of Policy regarding capitalization ratios. The Division considers that such a Statement of Policy may be a desirable means of informing issuers subject to the Act and investors and consumers of the standards respecting capitalization ratios which the Commission would generally apply in deciding whether to impose terms and conditions in granting applications under section 6 (b) or to make adverse findings in respect of declarations under section 7 (d) of the Act.

To obtain the benefit of the views and comments of as large a number of interested and informed persons as possible, the Division sent a questionnaire on September 5, 1956, to Federal and State regulatory agencies, utility companies, insurance companies, investment companies, banks, underwriters, text book writers, educators in finance, security analysts, and other interested persons. Copies were also mailed to a large number of persons on the Commission's general mailing lists inviting them to submit their views and comments.[89] Over 200 public replies, plus an additional number of replies which the writers requested not be made public, have been received and are being carefully considered by the staff. Upon completion of its study of the replies, it is expected that the Division will submit a report to the Commission regarding the advisability of promulgating for comment a proposed Statement of Policy.

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[88] Holding Company Act Release No. 13454.

[89] Holding Company Act Release No. 13255 (September 5, 1956).