24th Annual Report

of the

Securities and Exchange Commission

Fiscal Year Ended June 30, 1958

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON : 1959

For sale by the Superintendent of Documents, U. S. Government Printing Office
Washington 25, D. C. - Price 75 cents (paper cover)

SECURITIES AND EXCHANGE COMMISSION

Headquarters Office

425 Second Street, N.W.

Washington 25, D. C.

COMMISSIONERS

January 5, 1959

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 5, 1959.

SIR: On behalf of the Securities and Exchange Commission, I have the honor to transmit to you the Twenty-Fourth Annual Report of the Commission covering the fiscal year July 1, 1957, to June 30, 1958, 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.

TABLE OF CONTENTS

PART VIII

PART IX

PART X

PART XI

PART XII

APPENDIX—STATISTICAL TABLES

FOREWORD

This 24th Annual Report of the Securities and Exchange Commission to the Congress for the fiscal year July 1, 1957 to June 30, 1958 describes the Commission's activities during the year in discharging its duties under the statutes which it administers. These include supervision of the registration of securities for sale to the public by the use of the mails and in interstate commerce, enforcement of the anti-fraud provisions of the federal securities laws, surveillance of the exchange and over-the-counter markets in securities, regulation of the activities of brokers and dealers and investment advisers, and regulation of registered public utility holding company systems and investment companies.

In the fiscal year 1958 new issues of securities registered for public sale totalled $16.5 billion, the largest amount in the Commission's history. The amount of such issues has increased at least $1.5 billion in each year since 1953, when the total amount registered was $7.5 billion, less than half the present amount.

With a continued high level of financial activity in the security markets, the Commission has continued an intensified enforcement program of discovering, preventing and punishing fraudulent and other illegal activities in securities transactions. An important aspect of this enforcement program during the fiscal year was an increase of approximately 20% in the number of inspections conducted of securities brokers and dealers registered with the Commission.

During the fiscal year the Commission submitted to the Congress proposals for a comprehensive revision of various of the acts which it administers. These proposals were described in the Commission's 23rd Annual Report. Additional legislative proposals of the Commission, as well as other bills affecting the Commission, are discussed in this report.

All phases of the Commission's activities have been under study during the fiscal year by the Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce. The Commission has endeavored to cooperate fully with the Subcommittee in its work. At its request, the Chairman, members of the Commission and members of the staff have appeared before it and a substantial amount of information requested by the Subcommittee has been supplied.

COMMISSIONERS AND STAFF OFFICERS

(As of October 15, 1958)

Commissioners	*Term expires June 5*
EDWARD N. GADSBY of Massachusetts, *Chairman*	1963
ANDREW DOWNEY ORRICK of California	1962
HAROLD C. PATTERSON of Virginia	1960
EARL F. HASTINGS of Arizona	1959
JAMES C. SARGENT of New York	1961

Secretary: ORVAL L. DUBOIS

Staff Officers

ALBERT K. SCHEIDENHELM, Executive Director.
CHARLES T. KAPPLER, Associate Executive Director.[1]
BYRON D. WOODSIDE, Director, Division of Corporation Finance.
SHARON C. RISK, Associate Director.
JOSEPH C. WOODLE, Director, Division of Corporate Regulation.
JOHN E. LOOMIS, Associate Director.
PHILIP A. LOOMIS, Jr., Director, Division of Trading and Exchanges.
RALPH S. SAUL, Associate Director.[2]
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.

[1] Designated Associate Executive Director, July 1, 1958.
[2] Designated August 4, 1958.

REGIONAL AND BRANCH OFFICES

Regional Administrators

Region 1. New York, New Jersey.—Paul Windels, Jr.; Edward Schoen, Jr., Associate Regional Administrator, 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, Suite 138, 1371 Peachtree Street, NE., Atlanta 9, 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, 802 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, Courts Building, 310 6th Street, NW., Washington 25, D. C.

Branch Offices

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

Detroit, Michigan. Federal Building (Room 1074).

Houston, Texas. First National Bank Building (Room 324), 201 Main Street.

Los Angeles, California. Guaranty Building (Room 309), 6331 Hollywood Boulevard.

Miami, Florida. Plaza Building (Room 440), 245 South East First Street.

St. Louis, Missouri. Arcade Building (Room 1025), 812 Olive Street.

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

Salt Lake City, Utah. Newhouse Building (Room 1119), 10 Exchange Place.

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. He was reappointed effective June 5, 1958 for a term expiring June 5, 1963 and was again designated as Chairman.

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 and was separated from the service 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 25, 1955, when he was sworn in as 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. During the periods from May 27, 1957 to June 6, 1957 and from June 12, 1957 to August 20, 1957 he was designated as Acting Chairman of the Commission.

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 South-

west Pacific. He was separated to inactive duty in January 1946 with the rank of captain. 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

CURRENT ENFORCEMENT PROBLEMS AND PROGRAM

A stated purpose of Congress in enacting the Federal securities laws was to provide full and fair disclosure with respect to securities sold in interstate and foreign commerce and to prevent fraud and inequitable and unfair practices in the securities markets. Under present conditions, the enforcement program of the Commission is an essential instrument in attaining these objectives. That program has been carried out, under the day-to-day direction of the Commission, by its operating divisions in Washington and by its nine regional and eight branch offices in principal cities throughout the country.

Recent years have witnessed a continuing surge of interest and activity in the securities markets without parallel under the depressed conditions of the thirties or under the circumstances of war and reconversion. Despite recent fluctuations in business volume, the dollar amount of new securities registered with the Commission in fiscal 1958 totaled $16.5 billion—the largest amount in the history of the Commission. This compares with $7.5 billion of new financing during fiscal 1953 and $6.4 billion in fiscal 1948. The aggregate market value of all stock on all stock exchanges, which never exceeded $100 billion between 1933 and 1945, was $250 billion at June 30, 1956, $262 billion at June 30, 1957 and $258 billion at June 30, 1958.

The increased activity in the securities markets has reflected in part the extraordinary increase in the number of holders of shares in publicly owned corporations. The number of holders of shares of publicly owned corporations was estimated by the New York Stock Exchange to have increased from 6,490,000 in early 1952 to 8,650,000 at the end of 1955 and has further increased since then.

The size of the securities markets is reflected in the fact that there were on June 30, 1958, 4,752 broker-dealers and 1,562 investment advisers registered with the Commission, 2,997 stock issues traded on stock exchanges and approximately 4,500 stock issues (excluding investment company issues) each having more than 300 stockholders which are traded over-the-counter. There are also thousands of smaller issues which trade to some extent in the over-the-counter market.

Conditions such as these have now persisted for several years and produced enforcement problems of the first magnitude for the Com-

486867—59——2

mission. These conditions have attracted into the securities field a fringe element of confidence men who are determined to take whatever advantage they can of the American public. The operations of these confidence men have been encouraged by the expectations of a substantial segment of the public that it is possible for the unsophisticated investor to reap large and quick profits in the securities markets. Uninformed investors are often willing to purchase unknown and speculative securities which are represented as offering unusual opportunities for gain.

Indeed, somewhat paradoxically, declines in the prices of seasoned securities may increase the public appetite for such speculative offerings. Conditions in the capital market have been favorable for mergers, acquisitions and programs of expansion, including not only the great majority which result from legitimate economic forces, but also a substantial number which appear to be designed largely to reap profits for promoters and speculators at the expense of the public. Opportunities for illicit profit by the illegal or fraudulent sale of securities have multiplied, and inevitably the number, resources and ingenuity of violators seeking to capitalize upon these opportunities have likewise multiplied.

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

THE PROBLEM OF "BOILER ROOMS"

The term "boiler room", which unfortunately has become quite familiar in the last few years, refers to 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 and fraud. Such organizations generally 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 misrepresentations are necessary to make a sale.

The "boiler room" continues to raise difficult enforcement problems but these have recently taken a somewhat different form. Most of the larger "boiler rooms" have disappeared due to the vigorous enforcement program of the Commission and state agencies. In the place of the old-fashioned "boiler room" has appeared a group of small firms which spring up suddenly, sell one or two spurious issues quickly and then disperse, their fraudulent purpose accomplished. This method of operation has made speed and alertness on the part of the Commission and its staff essential to enforcement activities.

The operators of these small "boiler rooms" have recently shown a tendency to operate not only in the large financial centers but also in other locations around the country. There has been a noticeable

increase, for example, in migratory operators moving from state to state, particularly in the Western part of the country. Not infrequently, long-distance telephone salesmen work out of hotel rooms, apartments and alleged business offices. Extensive use is made of intermediaries, often in foreign countries, to conceal the nature of transactions and the identity of individuals. Payments are often made in cash rather than by check.

The Commission has utilized all available enforcement techniques to meet the problem. It has found, however, that resort to the civil injunction and administrative proceeding, no matter how vigorously employed, is not completely effective in halting the operation of "boiler rooms". The Commission believes that imposition of the sanctions resulting from a criminal prosecution is necessary to stop effectively this "cancerous diffusion". In carrying out its statutory duties, the Commission will continue to press for criminal prosecution of violators of the Federal securities laws where the facts warrant such prosecution.

In addition to its enforcement powers the Commission has sought through the dissemination of information to alert the investing public to the risks involved in the purchase of securities from unknown high-pressure telephone salesmen. In the last resort the problem of "boiler rooms" can be eliminated only if the investing public in dealing with unknown stock salesmen evaluate their representations with an attitude of hard-headed skepticism.

SALES OF UNREGISTERED SECURITIES BASED ON CLAIMED EXEMPTIONS

It appears that a substantial but undetermined number of securities have been sold in violation of the registration, prospectus and anti-fraud provisions of the Securities Act of 1933 pursuant to claimed exemptions from registration which in fact were not available. These sales have been made, in the main, under claims to exemption based upon the intrastate exemption of section 3 (a) (11) and the so-called "private offering" exemption of section 4 (1) of the Act. The improper use of these exemptions to evade registration requirements usually occurs where an issue, or the sales procedures to be employed, would not stand the light of the full disclosure requirements of registration. 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. The staff of the Commission is now studying measures for remedying this situation, some of which may involve legislative proposals to the 86th Congress.

Various devices have been employed in an effort to evade registration by abuse of the intrastate exemption under section 3 (a) (11) of the Securities Act of 1933. The issuer may attempt to use a resident of the state as a nominee for non-resident beneficial owners, or the alleged sales to residents may be merely a step in a planned distribution in interstate commerce.

One of the most frequently used devices to bring a distribution within the "private offering" exemption is the use of the so-called "investment intent" letter given by purchasers. In some cases an attempt is made to evade the basic policy of registration under the Securities Act by the technique of mechanically obtaining "investment intent" letters from successive groups of purchasers when, in fact, these purchasers buy with a view to distribution.

Further complicating the Commission's problems in this area has been the fact that an increasingly large number of securities claimed to have been issued pursuant to these exemptions have been transferred to United States citizens through Canadian, Swiss, Lichtenstein and other foreign financial institutions. When this occurs the Commission has been handicapped in tracing transactions and determining the facts upon which the proof of availability or non-availability of the claimed exemption depends, particularly where the laws of a particular foreign country preclude disclosure of the 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 enforcement effort although there is no evidence of complicity on the part of foreign banks which may be involved.

The Commission ordinarily receives no notice of a distribution for a foreign account unless and until the matter comes to its attention either as a result of a complaint from a public investor or in the course of its inspection or investigation work.

In order to cope with illegal distributions made through the use of such foreign devices, the Commission has recently proposed a rule requiring members of national securities exchanges and brokers and dealers to report to the Commission orders received from non-resident persons to purchase a significant amount of a security as well as purchases of a significant amount of a security from a foreign source, if the purchase is made for the account of the member, broker or dealer or is made for the account of any other person who, to the knowledge of the member, broker or dealer, proposes to sell or is selling the securities in the United States.[1] A rule of this nature would give the Commission prompt notice of significant transactions for foreign accounts, insofar as brokers and dealers in the United

[1] Securities Exchange Act Release No. 5774.

States are involved in the transactions, and this in turn should facilitate the efforts of the Commission to deal more effectively with illegal distributions of securities through foreign sources.

EVASION OF REGISTRATION REQUIREMENTS THROUGH THE "NO-SALE" THEORY

Under Rule 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 is not deemed to constitute a "sale" of securities to stockholders of corporate parties to the transactions. This rule has the effect of exempting issues of securities in these transactions from the registration requirements of the Securities Act. It has been relied upon in a very large number of corporate transactions consummated without registration of the securities involved. A substantial number of transactions ostensibly entered into under the rule may, in fact, involve violations of the registration requirements.

The Commission considers that Rule 133 provides no exemption from the registration and prospectus requirements of the Securities Act with respect to any public distribution of securities received in such a transaction by a security holder who may be deemed to be a statutory underwriter. Recently the staff of the Commission proposed an amendment to Rule 133 designed to restate the purpose and effect of that rule and to clarify its application and limitations.[2] The Commission has published the proposed amendment for comment by all persons having an interest in the matter. The staff of the Commission also is preparing a proposed form for registration of securities publicly distributed following transactions of the character referred to in the rule, in order to simplify compliance with the registration requirements in such cases. Such a form may permit the use of a prospectus in the form of a proxy statement meeting the requirements of Regulation 14 under the Securities Exchange Act of 1934 where such proxy statement has been employed in connection with the transaction under Rule 133 supplemented by certain necessary additional information.

PROMOTIONAL STOCKS

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

[2] Securities Act Release No. 3965.

distributed interstate either through registration or under 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 antifraud and other provisions of the Securities Act or the Securities Exchange Act, which require extensive investigation. The large number of these promotions and the rapidity with which they have increased has placed most serious burdens on the Commission's field enforcement personnel charged with the conduct of such investigations.

MANIPULATION OF THE SECURITIES MARKETS

Increased activity on the Nation's securities markets has tempted some to engage in manipulation of these markets. Devious schemes may be employed to conceal both the fact of a manipulation and the identity of the persons actually responsible. These include schemes to increase the quoted over-the-counter prices for relatively obscure issues being distributed without registration in reliance upon some exemption, or the creation of fictitious markets for such issues. Such schemes are not uncommon in connection with distributions effected by "boiler rooms". These activities when conducted with ingenuity through numerous intermediaries are difficult to detect. Persons engaged in, or proposing, a distribution of a security not outstanding in the hands of the public may place orders for the purchase and sale of small amounts of a security with numerous brokers and dealers, or arrange to have others do this, with the result that such brokers and dealers will publish quotations for the security at prices specified in the orders, thus creating the appearance of an active over-the-counter market for the security, when in fact no such market exists except as generated by the distributors. When the distribution is completed the orders are withdrawn and the "market" disappears.

Other apparent manipulations have occurred in issues in which there is a substantial public stockholder interest, particularly issues of companies engaged in expansion and diversification programs designed largely to reap profits for promoters and speculators at the expense of the public. Here the motive is to facilitate the financing of such programs, or to make the issuer's stock more attractive as a mechanism of payment for other businesses, by creating the appearance of an active and rising market in such stock. The techniques employed are various, including the dissemination of favorable information, the placing of buy orders at strategic moments and prices so as to have the stock close each day with a rise, and encouraging others to buy by giving them assurances against loss or lending money to finance the purchase. Efforts are, of course, made to conceal the identity of the persons ultimately responsible for the activity.

The investigation and prosecution of a manipulation case requires careful and painstaking work usually over a period of many months. Investors must be identified and interviewed. Books and records of brokers, dealers and others must be examined and analyzed. The information thus obtained then has to be developed in a form which would permit its introduction in evidence in legal proceedings. That this is a difficult matter is illustrated by the fact that one of the Commission's experienced investigators has been engaged for almost a year in assisting the United States Attorney in preparing one of these cases for trial.

With the increasing tempo of activities in the securities markets, the Commission has noted a growing number of instances of unusual or unexplained market activity in particular securities. In some of these cases a preliminary investigation has revealed that no violations of law had occurred but in others the Commission has found it necessary to obtain an injunction or recommend criminal prosecution. The Commission is much concerned with the increase in manipulative activities and it is expected that it will be required to devote more of its enforcement effort to this area.

STOP ORDER AND SUSPENSION PROCEEDINGS FOR NEW ISSUES

There continue to be numerous 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 in this way to prevent the public sale of certain securities under circumstances likely to involve fraud upon the investing public.

BROKER-DEALER INSPECTIONS

Increased activity in the securities markets has also resulted in a significant increase in the number of brokers and dealers. There were 4,752 registered broker-dealers on June 30, 1958 and the Commission presently estimates that at the end of the fiscal year 1959 there will be 4,900 registered broker-dealers. It is estimated that this number will increase to 5,100 at the close of the fiscal year 1960. The Commission's concern with this increase in the number of registered brokers and dealers arises from the fact that many of them are inexperienced

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

and unfamiliar with the ethical and legal obligations owed to their customers and that, therefore, there is a greater risk that injury may result to public investors dealing with such persons. In order to protect investors against possible abuses the Commission has intensified its broker-dealer inspection program. In the fiscal year 1958, 1,452 inspections were completed—the greatest number since the Commission was organized.

SUMMARY

The Commission believes that an adequate and effective enforcement program is necessary not only to the discharge of its statutory responsibilities but also, and perhaps more important, to the preservation of that investor confidence in the capital formation process which is so necessary to the continued progress and prosperity of an economy based on the free enterprise system. To that end the Commission has vigorously employed, and will continue to employ, all of its enforcement weapons to protect the investing public.

PART II

LEGISLATIVE ACTIVITIES

Statutory Amendments Proposed by the Commission

In July and August 1957 the Commission submitted to the Congress its 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. These proposals, together with requests for hearings thereon, were submitted to the Committee on Banking and Currency of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives, to which Committees was assigned the duty of exercising watchfulness over the execution of the securities laws by section 136 of the Legislative Reorganization Act of 1946. The proposals were introduced in the Senate by Senator Frank J. Lausche of Ohio, the then Chairman of the Subcommittee on Securities of the Committee on Banking and Currency, as S. 2544, S. 2545, S. 2546, S. 2547 and S. 2796. Subsequently, they were introduced in the House of Representatives by Representative Oren Harris of Arkansas, 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 on these bills by either Committee.

The overall purpose of the Commission's proposals was 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. A discussion of the more significant of these proposals is contained in the Commission's 23rd Annual Report, pp. 10–12.

On March 18, 1958, the Commission also submitted to Congress proposals to amend various sections of the Bankruptcy Act in the form of nine draft bills filed with the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.[1] These proposals are concerned with Chapters X and XI

[1] For a discussion of the Commission's duties under Chapter X of the Bankruptcy Act see Part VII of this report.

of the Bankruptcy Act. Chapter XI affords a means of effecting a composition of unsecured debts of debtors, including corporations. Chapter X, on the other hand, affords a means for the reorganization of corporations alone and has special safeguards to protect the interests of public security holders which are not provided in Chapter XI. The more significant of the proposed amendments would permit the Commission to appeal in a Chapter X proceeding if leave to appeal is granted by the appropriate Court of Appeals; make Chapter XI of the Bankruptcy Act unavailable to corporations whose outstanding securities are beneficially owned by more than 100 persons; permit the district judge to transfer proceedings brought under Chapter XI of the Bankruptcy Act to Chapter X upon application of a party in interest or the Commission, if the judge finds that the interest of creditors and stockholders would best be served by a Chapter X proceeding; and allow the judge in a Chapter X proceeding to approve a plan of reorganization which provides for less than full compensation to certain types of creditors, other than public investors, as is now permitted in a proceeding under Chapter XI.

These proposals were introduced in the House of Representatives by Representative Emanuel Celler of New York, Chairman of the Committee on the Judiciary as H. R. 11585, H. R. 11586, H. R. 11587, H. R. 11588, H. R. 11589, H. R. 11590, H. R. 11591, H. R. 11592, and H. R. 11593 and were referred to the Committee on the Judiciary. They were referred to the Judicial Council of the United States Courts for review and a conference was held by the Commission with the Council in August, 1958, at Denver, Colo. No further action was taken on these bills by the Congress.

The Commission expects to request further consideration of these or similar proposals during the 86th Congress.

Other Legislative Proposals

H. R. 11050, introduced by Representative Abraham Multer of New York, would remove the exemption provided by section 3 (a) (11) of the Securities Act for a security offering confined to the residents of the state within which the issuer is both incorporated and doing business. The Commission has not submitted its views on this proposal. No hearings have been held on the bill.

H. R. 7671, which was introduced by Representative John Flynt of Georgia and enacted into law, amends Section 116 (4) of Chapter X of the Bankruptcy Act by depriving the district judge of power to enjoin a lessor or conditional seller of aircraft equipment from commencing a foreclosure action against an air carrier operating pursuant to a certificate of convenience and necessity issued by the Civil Aeronautics Board. Since the assets of air lines consist principally of equipment, the practical effect of the bill is to make reorganization

under Chapter X unavailable to certified corporate airline carriers which lease their equipment or purchase it under conditional sales contract. The Commission therefore filed a comment with the Congress opposing this bill, as well as a companion bill, S. 2205, introduced in the Senate by Senator John Butler of Maryland. The Commission pointed out that the primary purpose of Chapter X is to maintain the debtor as a going concern in order to protect the public security holders, and that this is accomplished in part by empowering the judge to restrain efforts to dismember the business while the reorganization is in process.

The Commission devoted a substantial amount of time to matters pertaining to other legislative proposals referred to it for comment. During the fiscal year, a total of fifty-eight legislative proposals were analyzed, as compared with thirty-three during the preceding fiscal year. In addition, numerous congressional inquiries relating to matters other than specific legislative proposals were received and answered.[2]

Congressional Hearings

Small Business Subcommittee of the Senate Committee on Banking and Currency.—On April 28, 1958, Chairman Gadsby and other members of the Commission appeared before the Small Business Subcommittee of the Senate Committee on Banking and Currency which was considering a number of bills designed to furnish financial assistance to small business.[3] The Commission had previously furnished the Committee with comments on S. 2160, S. 2185, S. 2286 and S. 3191 and consequently the Chairman restricted his comments to S. 3643 and S. 3651 which were the focal point of the hearings. The latter bills provided for the establishment of small business investment companies for the purpose of providing financial assistance to small business concerns, and for the regulation of certain aspects of the organization and management of such proposed investment companies. Under both S. 3643 and S. 3651 the small business investment companies would be authorized to purchase convertible debentures of small business concerns and would obtain funds with which to make the purchase by issuing their own securities to the public and by borrowing funds from the Federal government.

S. 3643 provided an outright exemption from the Securities Act and the Investment Company Act for the proposed small business investment companies. S. 3651 granted the Commission authority to

[2] No action was taken in the second session of the 85th Congress with respect to the proposals to increase the registration fees under the Securities Exchange Act of 1934 and to increase to $500,000 the exemptive limit of Section 3 (b) of the Securities Act of 1933 which were passed by the Senate and are discussed at pages 12–13 and 15 of the 23rd Annual Report.

[3] Hearings before a Subcommittee of the Committee on Banking and Currency, United States Senate, 85th Congress, 2d Session, April 21, 22, 23, 24, 25, 28, 29, 30; May 1, and 2, 1958, pp. 195–233.

exempt, by rule or regulation, from the provisions of the Securities Act and the Trust Indenture Act, securities issued by the small business investment companies. The Commission opposed the exemptions granted by S. 3643, pointing out the need for disclosure to investors of information necessary for the formulation of an informed judgment as to the investment merit of the securities of the small business investment companies offered to the public. With respect to S. 3651, it was pointed out that the bill did not establish any definitive standards to guide the Commission in the exercise of its discretionary exemptive powers. The Commission was of the further view that the proposed small business investment companies should be subject to the provisions of the Investment Company Act, which provides needed additional protections for investors (see Part IX infra). As S. 3651 was reported out by the Committee on Banking and Currency and later passed by the Congress, it made the small business investment companies subject to the provisions of the Investment Company Act, except for section 18 of that Act, relating to asset coverage for indebtedness. Authority to grant exemptions from the provisions of the Securities Act and the Trust Indenture Act remained unchanged in the final draft.

Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce.—Since June 1957, all phases of the Commission's activities have been under study and investigation by the Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce. The Subcommittee was organized in 1957, after Speaker Rayburn had recommended that the Committee on Interstate and Foreign Commerce set up a Subcommittee with authority to go into the administration of the laws by agencies subject to the oversight of the House Committee on Interstate and Foreign Commerce, "to see whether or not the law as we intended it is being carried out or whether a great many of these laws are being repealed or revamped by those who administer them." [4]

The Chairman and members of the Commission, as well as several members of the Commission's staff, appeared before the Subcommittee during January and June of 1958. In addition, the Commission has furnished the Subcommittee with answers to several detailed questionnaires. At least one attorney from the Subcommittee's staff has been working on matters involving this Commission on a full-time basis since September 1957, and the Commission has furnished working space to the Subcommittee for the convenience of its staff. The Commission has cooperated with the Subcommittee in every possible way, devoting approximately 10,000 man hours to the inquiry, which was still pending at the end of the fiscal year.

[4] Congressional Record, February 5, 1957, p. 1383.

During its investigation the Subcommittee has inquired into various matters including questions whether certain inadequacies exist in the Acts administered by the Commission and budgetary limitations upon the Commission's ability to act, its conduct of particular cases, its internal administrative policies, and its relationships with other branches of government. During June and July of 1958, the Subcommittee conducted lengthy hearings on the conduct of the Commission in the case of *S. E. C.* v. *The East Boston Company* (reported at page 124 of the Twenty-Second Annual Report). The Commission appeared only once during these hearings.[5]

[5] Since the end of the fiscal year the Commission made three additional appearances before the Subcommittee on September 16, 17 and 18 to complete its testimony in the *East Boston Company* case and to discuss other matters.

PART III

REVISION OF RULES AND FORMS

The Commission maintains a continuous program of reviewing its rules and forms under the various statutes administered by it in order to determine whether any changes are appropriate in the light of changes in techniques and conditions in the securities field. Certain members of the staff are assigned the task of maintaining an overall review of rules and forms, and the need for changes therein are brought to the attention of the Commission. Changes are also suggested, from time to time, by other members of the staff who are engaged in the examination of material filed with the Commission, as well as by persons outside of the Commission, such as issuers and underwriters and their attorneys, accountants or other representatives. With a few exceptions provided for by the Administrative Procedure Act, proposed new rules and forms and proposed changes in existing rules and forms, are published in preliminary form for the purpose of obtaining the views and comments of interested persons, including issuers and various industry groups. During the 1958 fiscal year, the Commission published a number of proposed changes for comment and adopted certain other changes in its rules and forms. These are described below.[1]

THE SECURITIES ACT OF 1933

Proposed Revision of Rule 133

Rule 133 provides in general that for the purpose of determining the application of the registration and prospectus provisions of Section 5 of the Securities Act, no "offer" or "sale" shall be deemed to be involved so far as stockholders of a corporation are concerned, where, pursuant to provisions of a statute or the certificate of incorporation there is submitted to the vote of such stockholders a plan involving a statutory merger, consolidation, reclassification of securities or

[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 of that Code:

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.

transfer of assets of the corporation in consideration of the issuance of securities of another corporation.

On October 2, 1956, the Commission invited comments on a proposal, the effect of which would have been to rescind rule 133 and to provide that transactions of the character referred to in the rule involve an "offer" and "sale" of a security subject to the registration and prospectus provisions of the Act.[2] The Commission received numerous comments and a public hearing was held on January 17, 1957. On March 15, 1957, the Commission announced that it was deferring action on the proposal pending further study of the problem and questions raised and that any future modification of the rule would be undertaken only after opportunity for further public comment thereon.

On September 15, 1958 the Commission issued a release [3] which recited that its staff had been engaged in a comprehensive review of all relevant legislative and other statutory materials, prior Commission and staff actions, and the views expressed by those who appeared at the Commission's public hearing on the 1956 proposal or had otherwise commented on the question, and that on the basis of this study the staff had recommended that the Commission abandon the 1956 proposal for revision of Rule 133, restate the purpose and effect of Rule 133, and adopt rules designed to clarify the applications and limitations of the rule.

The release invited comment on a proposed amendment of the rule designed to implement the recommendations of the staff. This amendment would retain the existing rule but would incorporate into it certain additional provisions which would make clear that registration is required in certain cases where a public distribution of securities initially required in transactions exempted by the rule is subsequently made by a person defined as a statutory underwriter. The release stated that there was in preparation a proposed form which could be used for registration of securities issued in distribution transactions of the character referred to in the proposed amended rule.

Amendment of Rules 134 and 433

Rule 134 specifies the information required and the information permitted to be included in an advertisement which is not deemed to be a prospectus with respect to a security when published or transmitted to any person after a registration statement has been filed. Rule 433 relates to the use of preliminary prospectuses prior to the effective date of the registration statement. Both of these rules re-

[2] Securities Act Release No. 3698.
[3] Securities Act Release No. 3965.

quire the inclusion of legends calling attention to the fact that a registration statement has been filed and cautioning the reader that offers or sales may not be made until there has been compliance with State and Federal requirements. These rules were amended during the fiscal year to make minor verbal changes in the required legend to avoid conflict with the wording of the legend required by State securities administrators and make possible the use in such advertisements and preliminary prospectuses of a single legend meeting both Federal and State requirements.[4]

Proposed Rule Changes Relating to Assessable Stock

During the fiscal year the Commission invited public comments on a proposed new Rule 136 and a proposed amendment of Rule 140 with respect to assessable stock and the levying of assessments thereon.[5] In connection with these proposals the Commission is also considering further changes in its exemption rules under the Act so that the levying of small amounts of assessments may be effected pursuant to an exemption, upon appropriate terms and conditions, from registration under the Act. Action on the proposed new Rule 136 and the proposed amendment of Rule 140 has been deferred pending the publication of proposed rule changes to provide such exemption and consideration of comments thereon.

The proposed new Rule 136 would operate to make the levying of assessments on assessable stock subject to the disclosure requirements of the Act, either by way of registration under the Act or through compliance with the terms and conditions of an appropriate exemption which is presently under study by the staff. The amendment to Rule 140 is intended to clarify its application and specifically define as an underwriter any company which is chiefly engaged in levying assessments on its assessable stock in order to purchase the securities of another issuer or of two or more affiliated issuers.

The above proposals are being considered because of continuing complaints received by the Commission from the public as to the existence of abuses in connection with the levying of assessments by various companies on their outstanding assessable stock. Certain companies having assessable stock outstanding continue to levy assessments against their stockholders without disclosing the status of the company or the purpose for which the proceeds are to be used. In some instances stockholders who seek to obtain information from their companies receive very little information or even meet with a flat refusal by company officials to furnish any information whatever. It appears that in some cases proceeds received from the assessments will not be

[4] Securities Act Release No. 3885 (January 7, 1958).
[5] Securities Act Release No. 3903 (March 5, 1958).

productive of any present or potential benefit to the stockholders against whom they are levied. In fact, some such companies appear to be operated largely, if not solely, for the personal benefit of insiders. There are indications that some companies having assessable stock outstanding are being used as vehicles for raising funds for other companies which are unable or unwilling to seek funds directly from the public.

Amendment of Rule 161

Rule 161 provides that securities offered in conformity with the rules and regulations under section 3 (b) of the Act may continue to be offered in accordance with the rules and regulations in effect at the time the offering commenced, notwithstanding subsequent amendments to such rules and regulations. This rule was amended during the fiscal year to provide that it shall not apply to offers after January 1, 1959 of securities under Regulation D, which was rescinded July 23, 1956, or under Regulation A as in effect prior to its revision on July 23, 1956.[6] The purpose of the amendment was to require any offerings under the previously existing Regulation A or D to comply with the revised Regulation A if the offering is continued after January 1, 1959.

Amendments to Regulation A

Regulation A provides an exemption from registration for issues of securities not in excess of $300,000 which are offered in accordance with the terms and conditions of the regulation. A number of amendments to this regulation were adopted during the fiscal year.[7] One of these amendments provides that where the securities to be offered are interests in an unincorporated real estate syndicate there need not be included in computing the amount of securities which may be offered, the amount of interests in other unincorporated real estate syndicates affiliated with the issuer. Another amendment to the regulation provides procedures for the filing of amendments to notifications and for the withdrawal of such notifications. There was also added a requirement that underwriters must furnish a certification that the information given in the notification and in the offering circular with respect to underwriters, their directors, officers or partners is accurate and complete and does not omit any required information or any information necessary to make the statements made not misleading. The remaining amendments were chiefly of a technical or clarifying nature.

[6] Securities Act Release No. 3935 (June 11, 1958).
[7] Securities Act Release No. 3935 (June 11, 1958).

Revision of Forms S–2 and S–3

During the fiscal year revisions of Forms S–2 and S–3 were adopted.[8] Form S–2 is used for registration under the Securities Act of securities of commercial and industrial companies in the promotional and development stage. Form S–3 is a similar form for mining companies in the exploratory or development stage. The revisions were for the purpose of bringing the forms up-to-date in the light of the Commission's experience and current administrative practice. Form S–11, another form for mining companies in the exploratory stage, was merged into Form S–3 so that there is now only one form for use by this type of mining company.

Amendment of Forms S–4 and S–5

These forms are used for registration under the Securities Act of securities of investment companies registered under the Investment Company Act of 1940. A registration statement on either of these forms includes 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. Forms S–4 and S–5 were amended during the fiscal year to adapt the requirements of these forms to the Commission's amended Form N–8B–1, described below, which is the corresponding basic form for registration under the Investment Company Act.[9]

THE SECURITIES EXCHANGE ACT OF 1934

Amendment of Rule 15b–8

Rule 15b–8 requires every broker-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 of such filing, the nature and amount of his assets, liabilities and net worth. The amendment, effective September 15, 1957, deleted from the rule an exemption from this requirement formerly available to a partnership succeeding to and continuing the business of another partnership registered as a broker-dealer at the time of such succession.[10]

Adoption of Rule 15d–20

During the fiscal year the Commission adopted a new rule, designated rule 15d–20, which provides for the granting of an exemption from the reporting requirements of section 15 (d) of the Act to certain issuers.[11]

---

[8] Securities Act Releases Nos. 3828 and 3829 (August 19, 1957).
[9] Securities Act Release No. 3854 (October 30, 1957).
[10] Securities Exchange Act Release No. 5560.
[11] Securities Exchange Act Release No. 5692 (May 6, 1958).

Section 15 (d) requires each issuer of securities registered under the Securities Act of 1933 to include in its registration statement an undertaking to file annual and other periodic reports corresponding to those required to be filed pursuant to section 13 by issuers having securities listed and registered on a national securities exchange, if the aggregate offering price of the issue covered by the registration statement plus all of the outstanding securities of the same class, computed on the basis of the offering price, amounts to $2,000,000 or more. The obligation to file reports is suspended under certain conditions not pertinent here.

The new rule provides that the Commission may, upon application and subject to appropriate terms and conditions, exempt an issuer from the duty to file such reports if the Commission finds that all of the outstanding securities of the issuer are held of record, that the number of such record holders does not exceed 50 persons and that the filing of such reports is not necessary in the public interest or for the protection of investors.

The exemption expires if any of the issuer's securities cease to be held of record, if the number of record holders increases to more than 50 persons, or if the issuer fails to comply with any of the terms or conditions upon which the exemption was granted. Provision is also made for termination of the exemption by the Commission, after an opportunity for a hearing, if the Commission finds the termination to be necessary or appropriate in the public interest or for the protection of investors.

Amendment of Rule 17a–3

Rule 17a–3 specifies the books and records required to be maintained and kept current by certain members, brokers and dealers. The amendment, effective July 1, 1958,[12] requires such persons to prepare and maintain a record of the proof of money balances of all ledger accounts in the form of trial balances currently at least once a month.

Amendment of Rule 17a–5

Rule 17a–5 designates the members, brokers and dealers required to file reports of financial condition containing the information called for by Form X–17A–5, specifies the time when such reports must be filed, and provides certain other requirements with respect to such reports. Prior to the amendment, paragraph (a) required each member, broker and dealer subject to the rule to file the report within each calendar year, except that reports for any two consecutive years could

[12] Securities Exchange Act Release No. 5705.

not be filed within less than four months of each other. As amended, this paragraph requires the report to be filed *as of a date* within each calendar year, except that the first report (by others than successors) must be as of a date not less than one nor more than five months after the member, broker or dealer becomes subject to the rule. It also provides that a member, broker or dealer who succeeds to and continues the business of a predecessor need not file a report as of that year if the predecessor has filed the required report as of that year.

Paragraph (b) (1) of the rule describes the circumstances under which a report must be certified. Prior to the amendment, there was an exemption from the certification requirements for a member, broker or dealer who was not required to file a certified financial statement with any State agency or any national securities exchange and who, during the preceding calendar year, had not made a practice of extending credit to or holding funds or securities for customers except as an incident to transactions promptly consummated by payment or delivery. The amendment to this paragraph provides that every Form X–17A–5 report must be certified by an independent accountant unless one of three limited exemptions is available. The first exemption is for a member of a national securities exchange who, from the date of his previous report, has not transacted business with the public, has not carried any margin account, credit balance or security for any person other than a general partner, and has not been required to file a certified financial statement with any national securities exchange. The second exemption is 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. The third exemption is for a broker or dealer whose securities business has been limited to buying and selling evidences of indebtedness secured by liens on real estate and who has not carried margin accounts, credit balances or securities for securities customers.[13]

Amendments to Form 8–C

Form 8–C is used for registration under the Act of a class of securities on a national securities exchange on which the registrant has no securities registered, if such class is already listed and registered on another national securities exchange. An application on Form 8–C consists chiefly of copies of applications, reports and proxy statements filed with the original exchange, together with copies of the required exhibits. This form was amended during the fiscal year to provide for a considerable reduction in the amount of material required to be filed in cases where the issuer intends to continue list-

[13] Securities Exchange Act Release No. 5560.

ing and registration of the securities on the original exchange.[14] Certain other changes in wording were also made in the form in the interest of clarity.

Proposed Amendments to Form 8–K

During the fiscal year the Commission invited public comments on certain proposed amendments to Form 8–K which is the form prescribed for current reports filed pursuant to sections 13 and 15 (d) of the Act.[15] The proposed amendments relate to Item 11 of the form which requires information in regard to matters submitted to a vote of security holders either at a meeting of such security holders or otherwise. The purpose of the proposed amendments is to clarify the item and the instructions thereto in certain respects. The matter was still under consideration at the end of the fiscal year.[16]

Amendment to Form X–17A–1

Form X–17A–1 is the form required to be used under rule 17a–2 by a "manager" of a distribution of securities and by other persons subject to the rule who have a participation in an account for which stabilizing purchases are effected. The amendments to the form consist of a restatement of the instructions for use of the form, to simplify and clarify its use, and of a requirement that the totals of certain reported transactions be shown.[17]

THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Rescission of Rule 9

On March 14, 1957 the Commission issued notice of a proposal to rescind rule 9, which provides for the exemption of holding company systems having gross utility revenues not over $350,000 for the preceding calendar year or having net utility assets not over $1,000,000 currently or at December 31, 1946.[18] After careful consideration of all the data, views and comments received in response to its notice, the Commission concluded that adequate legal basis for such exemption was lacking, and, on February 5, 1958, announced the rescission of the rule.[19] The effective date of the rescission, initially fixed at September 30, 1958, was postponed to December 31, 1958.[20]

---

[14] Securities Exchange Act Release No. 5701 (May 26, 1958).
[15] Securities Exchange Act Release No. 5699 (May 20, 1958).
[16] The amendments were adopted shortly after the end of the fiscal year. See Securities Exchange Act Release No. 5734 (July 16, 1958).
[17] Securities Exchange Act Release No. 5638.
[18] Holding Company Act Release No. 13414.
[19] Holding Company Act Release No. 13670.
[20] Holding Company Act Release No. 13833.

Amendment of Rule 70

During the fiscal year, the Commission amended rule 70 promulgated under the Public Utility Holding Company Act of 1935. Section 17 (c) of that Act prohibits any registered holding company, or any subsidiary company thereof from having as an officer or director any executive officer, director, 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 or situations to which the Commission has granted exception from section 17 (c). Prior to the adoption of the amendment the rule provided in effect that no holding company or subsidiary could have as many as one-half of its directors persons with financial connections within the scope of section 17 (c). After issuing a notice of proposal to amend the rule and requesting comments thereon,[21] the Commission adopted the amendment as circulated for comment.[22] As amended, the rule exempts from the "less than one-half" limitation a person whose only financial connection is that of a director, and who is not an officer or employee, of one or more commercial banks each having combined capital and surplus not in excess of $2,500,000 and who proposes to act as a director, but not as an officer or employee, of a registered holding company or subsidiary which is a public utility company. In no event, however, may the number of directors with financial connections proscribed by section 17 (c) exceed two-thirds of the total.

THE INVESTMENT COMPANY ACT OF 1940

Amendment of Rule 5

On October 25, 1957, the Commission adopted a clarifying amendment to rule 5 under the Act.[23] This rule provides a simplified general procedure designed to expedite the disposition of proceedings, initiated by application or upon the Commission's own motion, pursuant to any section of the Act or any rule or regulation thereunder except in cases involving sections of the Act where specified rules prescribe a different procedure. Paragraph (c) of the rule prior to the amendment was subject to the interpretation that the Commission was required to order a hearing on a matter upon the request of any interested person whether or not it appeared that a hearing was necessary or appropriate. The amended rule makes it clear that the Commission will order a hearing only if it determines that such is

[21] Holding Company Act Release No. 13530 (August 19, 1957).
[22] Holding Company Act Release No. 13585 (November 4, 1957).
[23] Investment Company Act Release No. 2620.

necessary or appropriate in the public interest or for the protection of investors.

Proposal to Adopt Rule 10F–3

In a proposed rule considered during the fiscal year the Commission sought, among other things, to alleviate the problems and administrative burdens involved in processing applications for exemptions under section 10 (f), particularly in view of the tight time schedules usually present in these cases. Notice of this proposal was issued on July 15, 1958.[24]

Section 10 (f) of the Act provides that an investment company, unless exempted by rule, regulation or order, is prohibited from purchasing a security during the existence of an underwriting syndicate, if any of the principal underwriters are affiliated persons of the investment company. As a consequence, in such cases investment companies must either first obtain an exemptive order of the Commission or purchase the securities conditioned on obtaining such exemptive order within such periods of time as a particular underwriter might be willing to grant even though extending beyond the date of the public offering. The proposed rule would permit the investment company to make such purchases under certain conditions without having to obtain an order of exemption.

The experience of the Commission in its consideration of requests for orders of exemption under its exemptive authority over the years indicates that the protection of investors in such situations may be adequately insured by the conditions and safeguards specified in the rule. These include limitations with respect to the consideration paid, as related both to the amount of the offering and the assets of the investment company, the amount of underwriters' commissions, purchases from an affiliated underwriter, and effective registration of the offering under the Securities Act of 1933. These conditions are designed to permit purchases where the circumstances are such as to make it unlikely that such purchases would not be consistent with the protection of investors.

Comments received on the proposal unanimously favored adoption of the rule although they included a number of suggestions for modification of the conditions and prerequisition contained therein.

The Commission has taken the various comments under advisement.[25]

Proposal to Adopt Rule 22D–1

On May 28, 1958, the Commission issued notice of a proposal to adopt Rule 22D–1 relating to permissible variations in the sales charge

[24] Investment Company Act Release No. 2744.

[25] The Commission adopted Rule 10F–3 on December 2, 1958. Investment Company Act Release No. 2797.

made upon the sale of redeemable securities of registered investment companies.[26] This action followed a comprehensive review of the legislative history of section 22 (d) of the Act, and all past administrative interpretations and exemptive orders issued under that section.

Section 22 (d) prohibits a registered investment company, its principal underwriter or a dealer in its shares from selling such shares to any person except at a current public offering price described in the prospectus. Its purpose is to prevent discrimination among purchasers and to provide for the orderly distribution of such shares by preventing their sale at a price less than that fixed in the prospectus.

One objective of the proposed rule is to lessen the burden on the Commission and the industry of preparing and processing exemption applications under section 6 (c) in cases identical to those where such relief had been previously granted. An equally important objective of the rule is to codify and make public the Commission's interpretation of section 22 (d), made on a case-by-case basis over the past years, with such changes as believed necessary, and thus ensure uniform compliance with its provisions.

The proposed rule would require some changes in current industry practices, particularly with respect to the availability of so-called "quantity discounts" for group purchases. The Commission in 1941 determined that section 22 (d) permitted the sale of an investment company's redeemable securities to be made to "any person" on the basis of a scale of reducing prices dependent upon the quantity of shares purchased at a single time. Thereafter, the term "any person" was construed to include a trustee or other fiduciary, or a custodian or agent purchasing for more than one account. It was particularly noted that the prohibitions of the statute apply only to an investment company, its underwriters, and dealers in its shares, and not to individuals who might form a group, such as members of a medical society or college faculty, to purchase through an agent in a quantity sufficient to entitle them to a discount.

A review of industry practices and complaints, showed a growing tendency on the part of investment companies, underwriters and dealers to organize, promote or solicit the formation of such groups. Such activity raises a serious question as to whether these persons were not in fact creating a favored "class" of individuals to effect sales at a price less than that generally available to other members of the public purchasing a like number of shares, contrary to the purpose and intent of section 22 (d).

[26] Investment Company Act Release No. 2718.

In addition, such sales made to the group's agent or representative, as opposed to a fiduciary with investment discretion, involve the danger that prospectuses will not be furnished to all members of the group, contrary to the requirements of the Investment Company Act of 1940 and the Securities Act of 1933.

The proposed rule would limit the granting of a quantity discount to (i) a single individual purchasing shares with his own funds for himself or as a gift to others, or (ii) a trustee or other fiduciary purchasing for a single trust estate, although there may be more than one beneficiary.

Another change in current practices which the proposed rule would require relates to the use of so-called "letters of intent" pursuant to which a purchaser is entitled to receive the discount applicable to the total quantity of shares purchased within a stated period, usually 13 months. The proposed rule does not sanction this method of pricing, and the Commission stated that it was tentatively of the opinion that the mere intent to purchase shares in the future would not be a sufficient basis for computing a quantity discount.

The proposed rule also does not include any provision permitting sales at reduced sales loads to officers and employees of an investment company, its principal underwriter, and its investment adviser. The Commission in the past has issued orders exempting such sales where made for investment purposes, on the ground that they promoted employee incentive and good will. The Commission's release announcing the proposed rule stated that upon reconsideration of this matter it was tentatively of the opinion that the business purposes to be served by reduced sales loads to such persons are insufficient to warrant continuation of this practice in the light of the policy and intent of section 22 (d).

Over forty-five comments were received in response to the Commission's notice. Most of the comments favored adoption of the rule, although there was strenuous objection to its failure to sanction use of letters of intent and a number of suggestions were made for changes in language. Some comments also contended that the Commission should continue to sanction sales to employees of investment companies at a reduced sales load.

The Commission heard oral argument on the proposed rule on July 23, 1958, and took the matter under advisement.[27]

---

[27] Upon reconsideration, the Commission determined to include provisions in the rule permitting sales at a reduced sales load pursuant to letters of intention and to officers and employees of an investment company, its underwriter and investment adviser subject to appropriate safeguards. The Commission adopted Rule 22D–1 on December 2, 1958. Investment Company Act Release No. 2798.

Amendments to Form N–8B–1

Form N–8B–1 is prescribed for registration statements filed under the Act by all management investment companies except those which issue periodic payment plan certificates. This form was amended during the fiscal year to require the furnishing of a table which in effect shows on a per-share basis a ten-year comparative summary of earnings and capital changes together with certain ratios.[28] It is the purpose of the new requirement to provide for investors a more informative presentation of the operations of the registrant than was provided by the table required previously.

OTHER MATTERS

Amendments to Statement of Policy Relating to Investment Company Sales Literature

The Commission, during the 1958 fiscal year, adopted certain amendments to its Statement of Policy relating to sales literature used by investment companies registered under the Investment Company Act of 1940.[29] The Statement of Policy 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 anti-fraud provisions of section 17 of the Securities Act of 1933. It was adopted in 1950 and was amended in 1955. The amendments adopted during the past fiscal year were published in preliminary form and a public hearing was held thereon. The amended Statement of Policy permits a more liberal use of charts and tables, provided they meet certain standards of disclosure and arrangement.

Proposed Amendment of Rules Regarding Incorporation by Reference

The rules of the Commission permit filings with the Commission to incorporate by reference rather freely papers and documents previously filed with the Commission under the same statute or under different statutes administered by the Commission. This practice, however, has interfered with the Commission's disposal of out-of-date records since many filings made in recent years incorporate by reference papers and documents filed in earlier years. As a necessary step to conforming the Commission's Records Program to the overall Federal Records Legislation, the Commission, during the 1958 fiscal year, published for comment certain proposed amendments to its rules regarding incorporation by reference.[30] The effect of the proposed amendments would be to limit incorporation by reference to documents which have been in the Commission's files not more than

[28] Investment Company Act Release No. 2618 (October 30, 1957).
[29] Securities Act Release No. 3856 (October 31, 1957).
[30] Securities Act Release No. 3867 (December 2, 1957).

10 years, and to require reference to specific prior filings. This time limit would remove one of the conditions which now prevent the final disposition of many original records, and the specific filing reference would substantially reduce the research now necessary to assemble previously filed documents for consideration in connection with current filings. A number of letters of comment were received in regard to the proposed amendments which pointed out certain practical difficulties which such amendments might create. At the end of the fiscal year, the staff was preparing for the Commission's consideration a revised proposal which would accomplish the objective desired and would also obviate the mechanical problems indicated in the comments.

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. Its action in permitting a registration statement to become effective does not constitute approval of the securities, and any representation to a prospective purchaser of securities to the contrary is made unlawful by Section 23 of the Act.

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. When a registration statement relates, generally speaking, to a security issued, by a corporation or other private issuer, it must contain the information, and be accompanied by the documents, specified in Schedule A of the Act; when it relates to a security issued by a foreign government, the material specified in Schedule B must be supplied. Both schedules specify in considerable detail the disclosure which should be made available to an investor 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 ap-

propriate 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 those 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. In certain cases, such as where a registration statement is so deficient as to indicate a willful failure to make adequate disclosure, no letter of comment is sent and the Commission either institutes an investigation to determine whether stop-order proceedings should be instituted or immediately institutes stop-order proceedings. Information about the use of this "stop-order" power during 1958 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 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 securities to be registered, and their relationship to the capital structure of the issuer, and the public interest and the protection of investors. The note to Rule 460 under the Act indicates, for the information of interested persons, some of the more common situations in which the Commission feels that the statute generally requires it to deny acceleration of the effective date of a registration statement.

The median time which elapsed between the date of filing and the effective date with respect to 685 [1] registration statements that became effective during the 1958 fiscal year was 24 days, compared with 23 days for the 1957 and 1956 fiscal years. This time was divided among the three principal stages of the registration process, approximately as follows:

(a) From the date of filing the registration statement to the date of the letter of comment, 14 days;

(b) From the date of the letter of comment to the date of filing the first material amendment, 6 days; and

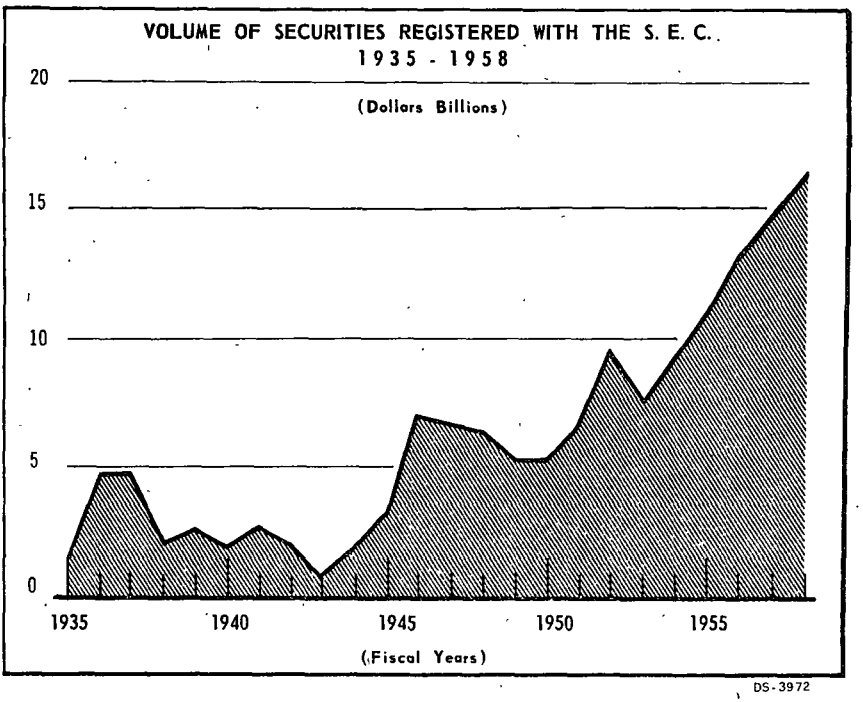
(c) From the date of filing the first amendment to the date of filing the final amendment and effective date of registration, 4 days. All of these periods include Saturdays, Sundays and holidays.

This increased average lapsed time is a matter of concern to the Commission. It is being carefully watched, and all appropriate steps are being taken to reduce the time lapse as much as possible, including steps to cure personnel shortages.

VOLUME OF SECURITIES REGISTERED

Securities effectively registered under the Securities Act during fiscal 1958 totalled $16.5 billion, the highest volume for any fiscal year in the 24-year history of the Commission. Registrations have more than doubled since 1953, when $7.5 billion of securities were registered, reflecting annual increases of at least $1.5 billion. The chart below shows the dollar amount of effective registrations from 1935 to 1958.

[1] Does not include 130 registration statements of investment companies filed and effective as post-effective amendments to previously effective registration statements pursuant to section 24 (a) of the Investment Company Act of 1940. The median elapsed time for these 130 registration statements was 23 calendar days.



These figures cover all securities effectively registered, 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 1958, 80.5 percent was for the account of issuers for cash sale, 18.3 percent for account of issuers for other than cash sale and 1.2 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 1958 compared with the fiscal years 1957 and 1956

	1958 in millions	Percent of total	1957 in millions	Percent of total	1956 in millions	Percent of total
Registered for account of issuers for cash sale	$13,281	80.5	$12,019	82.2	$9,206	70.3
Registered for account of issuers for other than cash sale	3,008	18.3	2,225	15.2	2,819	21.5
Registered for account of others than the issuers	201	1.2	380	2.6	1,071	8.2
Total	16,490	100.0	14,624	100.0	13,096	100.0

The most important category of registrations, issues to be sold for cash for account of the issuer, amounted to $13.3 billion in 1958, an increase of about 10 percent over the previous year. Most of the difference was due to the large volume of debt securities, $6.9 billion as compared with $5.7 billion in 1957. There was little change in the amount of either common or preferred stock registered. Of the

1958 volume, 52 percent was made up of debt securities, 45 percent common stock and 3 percent preferred stock. Close to half of the total for common stock represented securities of investment companies.

The number of statements, total amounts registered, and a classification by type of security for issues to be sold for cash for account of the issuing company in each of the fiscal years 1935 through 1958 are shown in appendix table 1. More detailed information for 1958 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:

	1958 in millions	Percent of total	1957 in millions	Percent of total	1956 in millions	Percent of total
Manufacturing	$2,239	16.9	$2,674	22.2	$1,788	19.4
Mining	110	.8	283	2.4	148	1.6
Electric, gas and water	3,373	25.4	2,951	24.5	1,802	19.6
Transportation, other than railroads	52	.4	112	.9	118	1.3
Communication	2,978	22.4	2,030	16.9	1,294	14.1
Investment companies	2,919	22.0	2,614	21.8	2,890	31.4
Other financial and real estate	1,109	8.4	952	7.9	852	9.2
Trade	34	.2	84	.7	73	.8
Service	29	.2	33	.3	41	.4
Construction	25	.2				
Total corporate	12,868	96.9	11,733	97.6	9,006	97.8
Foreign governments	412	3.1	286	2.4	200	2.2
Total	13,281	100.0	12,019	100.0	9,206	100.0

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

	1958 in millions	1957 in millions	1956 in millions
Open-end companies [1]	$2,784	$2,361	$2,675
Closed-end companies	12		42
Face amount certificate companies	123	253	173
Total	2,919	2,614	2,890

[1] Periodic payment plans or their underlying securities are included.

Of the net proceeds of the corporate securities registered for cash sale for the account of issuers in 1958, more than 70 percent was designated for new money purposes, including plant, equipment, and working capital, close to 3 percent for retirement of securities, and 27 percent for other purposes, principally the purchase of securities by investment companies.

REGISTRATION STATEMENTS FILED

During the 1958 fiscal year, 913 registration statements were filed for offerings of securities aggregating $16,913,744,964, compared with 943 registration statements filed during the 1957 fiscal year covering offerings amounting to $14,667,282,319.

Of the 913 registration statements filed in 1958, 254, or 28 percent, were filed by companies that had not previously filed any registration statement under the Securities Act of 1933, compared with 305, or 32 percent, of the corresponding total during the 1957 fiscal year and 415, or 42 percent, for the 1956 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 4-year increase in 1958 of 88 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	619	$8,983,572,628	1957	943	$14,667,282,319
1955	849	11,009,757,143	1958	913	16,913,744,964
1956	981	13,097,787,628			

A cumulative total of 14,704 registration statements has been filed under the Act by 6,925 different issuers covering proposed offerings of securities aggregating almost $151 billion during the 25 years from the date of the enactment of the Securities Act of 1933 to June 30, 1958.

Particulars regarding the disposition of all registration statements filed under the Act to June 30, 1958 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, 1957	July 1, 1957 to June 30, 1958	Total as of June 30, 1958
Registration statements:			
Filed	13,791	[1] 913	14,704
Disposition:			
Effective-net	12,024	[2] 810	[3] 12,823
Under stop or refusal order-net	193	3	196
Withdrawn	1,469	71	1,540
Pending at June 30, 1957	105		
Pending at June 30, 1958			145
Total	13,791		14,704
Aggregate dollar amount:			
As filed	$133,757,747,284	$16,913,744,964	$150,671,492,248
As effective	$130,759,374,732	$16,489,735,521	$147,249,110,254

[1] Includes 134 registration statements covering proposed offerings totalling $2,601,069,370 which were filed by investment companies under section 24 (e) of the Investment Company Act of 1940.
[2] Excludes 5 registration statements that became effective during the year but were withdrawn; these 5 statements are counted in the 71 statements withdrawn during the year.
[3] Excludes 11 statements that were effective prior to July 1, 1957 but were withdrawn; these 11 statements are counted in the 71 statements withdrawn during the year.

The reasons for requesting withdrawal of the 71 registration statements withdrawn during the 1958 fiscal year are shown in the following table:

Reason for registrant's withdrawal request	Number of statements withdrawn	Percent of total withdrawn
1. Withdrawal requested after receipt of staff's letter of comment	13	19
2. Registrant advised that statement should be withdrawn or stop order proceedings would be necessary	13	19
3. Change in financing plans	16	22
4. Change in market conditions	14	20
5. Financing was obtained elsewhere	3	4
6. Regulation A could be used	3	4
7. Insufficient funds raised under an escrow agreement	5	7
8. Registrant could not comply with the Trust Indenture Act of 1939	1	1
9. Registrant unable to negotiate acceptable underwriting agreement	3	4
Total	71	100

RESULTS OBTAINED BY THE REGISTRATION PROCESS

As the result of the staff's examination of registration statements, numerous significant changes were effected in the disclosures made to the investing public. Among these results were changes in accounting presentation, as illustrated by the following examples:

Stock Issued in Exchange for Partnership Assets.—Several partners organized a corporation to which they transferred certain partnership assets in exchange for some 1,900,000 shares of $1 par value common stock of the new company. The number of shares issued was based principally on appraised values assigned to the assets transferred.

A registration statement was filed by the new corporation in which its assets were stated at such appraised values. In view of the absence of an arm's length relationship between the partners and the corporation the registrant was requested to amend its financial statements so that the assets would be stated on the basis of the cost to the partners.

As a result of this request the assets were restated and the equity section of the balance sheet showed as a deduction from the aggregate par value of shares outstanding about $1,400,000 representing the excess of par value of shares issued and other consideration over incorporators' cost of assets acquired at or since incorporation. This change reduced the total assets of the corporation from $2,700,000 to $1,300,000.

Subsequently the company was recapitalized, with the 1,900,000 shares of $1 par value common stock being converted into 425,000 shares of $1 par value Class A stock, a reduction in capital more than sufficient to eliminate the excess item from the equity section of the balance sheet.

Pooling of Interests vs. Purchase Accounting.—The principle of "pooling of interests" accounting permits the combining of the earned surplus accounts of companies involved in a merger or combination and avoids the recording of goodwill or an upward revaluation of other assets as would be required in many purchase or acquisition transactions under "acquisition" accounting.

In a recent registration statement in which an exchange offer was described, acquisition accounting was proposed for the combination of two companies, of which the proposed parent company was one-fifth the size of the company being acquired. The smaller company, which had some 400,000 shares of stock outstanding, was to issue 1,600,000 shares of its $.25 par value common stock for the entire outstanding stock of the larger company, assigning to its own shares a value of $2 per share. The prospectus also carried a public offering of 250,000 shares at a price to net the company $2.10 per share.

As originally proposed in the registration statement, $2,600,000 of the excess of the ascribed value of the new shares was to be assigned to certain undeveloped real estate owned by the larger company. After reviewing the terms of the proposed combination, our staff objected to the use of acquisition accounting and the resulting substantial write-up in the value of the land. Certain unusual features of the plan prompted this position. The registrant's previously outstanding common shares were redesignated as Class A convertible stock which was convertible into debentures until a specified date, after which it automatically became common stock. Both Class A stock and the debentures had voting rights for the election of five directors, and the new common stock to be issued under the plan of exchange was limited to the right to elect five directors, making a total of ten directors. Two members of the new group in the organization were to become president and secretary of the parent company.

After discussions, an amended registration statement was filed in which the pooling of interests concept was applied to the combination and the investment in the subsidiary was recorded on the books of the parent at the underlying book value based on cost, and hence no revaluation of the real estate emerged.

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 1958 fiscal year, 8 new proceedings were authorized by the Commission under section 8 (d) of the Act and 7 such proceedings were continued from the preceding year. Two of such cases were thereafter consolidated. In connection with these 14 proceedings 5 stop orders were issued during the year, one of which was subsequently vacated when the registration statement was appropriately amended. In 2 other cases the registration statement was withdrawn. The remaining 7 cases were pending as of June 30, 1958.

A proceeding in which a stop order was issued with respect to a registration statement filed by Republic Cement Corporation was described in the 23rd Annual Report.[2] The other 4 proceedings which resulted in the issuance of stop orders during the fiscal year are described below as well as 1 proceeding in which a stop order was issued shortly after the end of the fiscal year.

Horton Aircraft Corporation.—This registrant, a Nevada corporation, was organized for the purpose of manufacturing and selling a so-called Horton Wingless Airplane. The company filed two registration statements with the Commission. The first statement, filed in 1955, covered a proposed offering of 500,000 shares of no par value common stock of which 400,000 shares were to be offered by the registrant and 100,000 shares by the president, William E. Horton, at $1.00 per share or the market price, whichever was higher. The other registration statement, filed in 1956, covered 100,000 shares of common stock of the registrant held by Horton which was to be offered at $25.00 per share. A consolidated hearing was held as to both registration statements and the Commission issued a stop order suspending the effectiveness of both statements.

The Commission found the registration statements false and misleading in the following material respects, among others.[3]

The representation in the registration statements that Horton had assigned to the registrant a patent with respect to the wingless airplane was materially misleading in view of the fact that Horton had previously assigned all of his right, title and interest in his "invention" to another person. The description in the registration statements of the Horton Wingless Airplane, the aeronautical principles involved, and the coverage of the patent obtained by Horton, was also materially false and misleading. False and misleading statements were also made with respect to the performance of Horton's model of the wingless plane. The registration statements also contained false and misleading statements with respect to the use of the proceeds from the

[2] Pp. 46–47.
[3] Securities Act Release No. 3855 (October 29, 1957).

previous sale of unregistered securities, the price of the securities being registered and the proposed use of the proceeds therefrom.

In addition, the Commission found that while the second registration statement disclosed the entry of an injunction against registrant and Horton based on false and misleading claims and the return of an indictment against Horton based on fraud, registrant nevertheless omitted to disclose the nature of the false and misleading statements and the fraud involved.

Columbia General Investment Corporation.—The registrant, a Texas corporation organized for the purpose of engaging in the investment business, filed a registration statement covering 100,000 shares of its common stock, $1 par value, to be offered to its stockholders at $4.50 per share. The Commission, finding that the registration statement contained materially misleading statements, denied a request for withdrawal of such statement and issued a stop order.

The registration statement stated, among other things, that 42,000 shares of the common stock of Columbia General Life Insurance Company, acquired from the promoters of the insurance company and registrant in exchange for 210,000 shares of registrant's common stock, and representing a substantial portion of registrant's assets, had an "estimated fair value" of $420,000. The $420,000 value was stated to be based on the fact that at and prior to such acquisition, shares of such stock had been sold at prices of $10 and more by the insurance company in the course of a public offering and by one of the promoters through a company established for the purpose of maintaining and stabilizing the market in that stock. However, the Commission held that the prices paid in such sales could not be considered a true reflection of the market or fair value of the stock at such time in view of the materially misleading statements employed in connection with the sales. The Commission found that the failure to disclose the facts surrounding the insurance company offering rendered the statements regarding the value of the 42,000 shares misleading.

The Commission further found that registrant had sold 53,059 of its own shares to stockholders of the insurance company at $9 per share, and 10,077 shares to the general public at $12 per share, without disclosing that such prices had been arbitrarily determined, that there had been recent sales of such stock at $2 per share to insiders and others, and that registrant's capital and surplus figures included the misleading $420,000 valuation attributed to the 42,000 shares of insurance company stock. As a result of such sales, the Commission ruled, a contingent liability to the purchasers was created which should have been disclosed in the registration statement.[4]

[4] Securities Act Release No. 3901 (March 5, 1958). A petition for review of the Commission's order has been filed in the United States Court of Appeals for the Fifth Circuit.

Lewisohn Copper Corporation.—This registrant, a Delaware corporation, was organized for the purpose of exploring, developing and operating mining properties in Arizona. Prior to the filing of its registration statement, the company had, commencing in October 1955, sold 200,000 shares of its common stock at a stated public offering price of $1.50 a share under claim of exemption from registration under Regulation A. The registration statement, filed in March 1956, covered a proposed offering of 100,000 shares at a price to be determined prior to the effective date of the registration statement and which had tentatively been estimated at at least $10 a share. Stop order proceedings, instituted in August 1956, with respect to the registration statement were consolidated with proceedings under Regulation A, instituted in June 1956, with respect to suspension of the exemption thereunder of the earlier 200,000 share offering.

More than half of the 200,000 share offering was sold to a few broker-dealer firms, including one firm closely connected with the underwriter, for their own accounts, or for the accounts of members or their families, at the stated offering price of $1.50 a share. Such firms and persons in turn resold a large part of the stock, mostly at prices in excess of $1.50 and ranging as high as $9.50 or more. The Commission found the offering circular used in connection with the offering false in stating that the public offering price was $1.50 a share and deficient in failing to disclose that profits would be received by the various firms and individuals, upon the resale of the stock by them at higher prices. The Commission found that such resales constituted part of the public distribution of the stock. Since most of the resales were at prices in excess of $1.50, the aggregate offering price to the public exceeded the $300,000 maximum prescribed by section 3 (b) of the Act and Regulation A and accordingly no exemption under the regulation was available. On this and other grounds, including misleading publicity circulated by the issuer and underwriter in connection with the offering, the Commission permanently suspended the exemption of the offering under Regulation A.

With respect to the registration statement, the Commission issued a stop order, finding the prospectus deficient in failing to disclose the facts as to the 200,000 share offering referred to above and the contingent liability resulting from the sale of the 200,000 shares when no exemption from registration was available. The Commission further found the prospectus misleading in failing to disclose the activities of the issuer, the underwriter and others having a tendency to influence the market price of the company's stock. These activities included market activities by the underwriter and others and publicity circulated by the company and the underwriter, which

gave the misleading impression that there had been an immediate public demand for and acceptance of the stock and which contained optimistic and misleading statements about the company's drilling program, results of assays, possible tonnages of ore on its properties and an application for a certificate of tax necessity on a large concentrating mill, and did not disclose that the existence of a mineable ore body had not been established. Additional deficiencies found in the prospectus included the failure to disclose the underwriter's profit in the resale of 33,000 shares of the issuer's stock purportedly purchased by the underwriter for investment and the contingent liability of the issuer for the sale of these shares without registration.

In view of the serious nature of the deficiencies in the registration statement the Commission denied the registrant's request to be allowed to withdraw it. The Commission indicated that the fact that the company had a substantial amount of stock outstanding in the hands of investors distinguished the situation presented in this case from that involved in *Jones* v. *S. E. C.*, 298 U. S. 1 (1936) where withdrawal was required.[5]

The Fall River Exploration and Mining Company.—The registrant, a Colorado corporation, then named The Fall River Power Company, filed a registration statement covering a proposed public offering of 500,000 shares of its no par value common stock at $2.00 per share. After hearings instituted pursuant to section 8 (d) of the Act, the Commission ordered suspension of the effectiveness of the registration statement. The company consented to the entry of the stop order.[6]

Among the deficiencies constituting the grounds for the issuance of the Commission's stop order were: (1) representations that the registrant's business was in part that of a public utility, notwithstanding the fact that there was no demand for power from the long-idle hydro-electric plant owned by the registrant, (2) the use of an appraisal of the hydro-electric plant, based on estimated replacement cost, where the appraisal was not prepared in accordance with accepted standards and failed, among other things, to consider the lack of demand for power, (3) the use of an appraisal of water rights not founded on a basis sufficient to sustain it, (4) the representation that a portion of the proceeds from the sale of the stock would be applied toward the purchase of milling facilities, without disclosing that there were no known ore bodies and no present need for milling facilities, and (5) the inclusion in the financial statements of an appraisal, at present day cost, of tunnels represented as development work on min-

[5] Securities Act Release No. 3907 (March 18, 1958). A petition for review of the Commission's order has been filed in the United States Court of Appeals for the Ninth Circuit.

[6] Securities Act Release No. 3932 (June 4, 1958).

ing claims, which were constructed by predecessors of the registrant in large part to transport ore from mines which were no longer being worked.

Shortly after the close of the fiscal year under review the registration statement was amended. In its amended form, the statement disclosed that the registrant's name, which in its original form suggested the company was an operating public utility, had been changed to indicate that the business was exploration and mining. Since the amended statement had been revised to meet the various objections previously cited, the Commission vacated the stop order, and the registration statement was ordered effective.[7]

Woodland Oil & Gas Co., Inc.—The registrant, a Delaware corporation, filed a registration statement covering a proposed public offering of 700,000 shares of its common stock at $1.50 per share, of which 600,000 shares were to be offered on behalf of the registrant and 100,000 shares were to be offered on behalf of the principal promoter and general manager of the registrant. The company was organized for the purpose of exploring, developing and operating oil and gas properties. Its assets consisted of interests in certain partially developed Pennsylvania properties, and an interest in some wildcat acreage in Western Kentucky. The proceeds of the issue were intended for drilling and testing on both properties.

After examination of the registration statement and hearings, pursuant to section 8 (d) of the Securities Act, the Commission found that the registrant had failed to make adequate disclosures with respect to (1) its poor production record which had resulted in sustained operating losses, (2) its recoverable reserves and the extent to which they could be produced profitably, (3) the remote possibilities of investors realizing income from or a return of their investment, (4) unsuccessful drilling tests on the Kentucky property, and (5) certain underwriting agreements. The Commission found that misleading statements were contained in (1) the statements regarding use of the proceeds, (2) references to large quantities of oil in the Western Kentucky general area, and (3) the geologist's report. The Commission found that in order to make the speculative features of the enterprise "plainly evident" to the ordinary investor, they had to be set forth in summary fashion in one place in the early part of the prospectus under an appropriate heading.

A stop order was issued by the Commission shortly after the close of the fiscal year under review.[8]

---

[7] Securities Act Release No. 3957 (August 15, 1958).
[8] Securities Act Release No. 3942 (July 11, 1958).

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 subpena witnesses and require the production of pertinent documents. Four such examinations were initiated during the 1958 fiscal year and one examination was pending from the previous fiscal year. In two cases the examination led to proceedings under section 8 (d) of the Act, in two others the registration statements were withdrawn and in the fifth the registration statement was amended and the examination closed. No examinations under section 8 (e) of the Act were pending at the end of the fiscal year.

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 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 1958 fiscal year 16 such investigations were instituted. Eight such investigations were pending from the previous fiscal year. Five investigations resulted in the institution of stop order proceedings under section 8 (d) of the Act, five were closed, in one the registration statement was withdrawn and in the remaining case a permanent suspension order was entered under Regulation A. Twelve investigations were pending at the end of the 1958 fiscal year.

EXEMPTION FROM REGISTRATION OF SMALL ISSUES

Under section 3 (b) of the Securities Act, the Commission is empowered to exempt, by its rules and regulations and subject to such terms and conditions as it may prescribe therein, any class of securities from registration under the Act, if it finds that the enforcement of the registration provisions of the Act with respect to such 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 the size of the issues which may be exempted by the Commission in the exercise of this power.

Acting under this authority the Commission has adopted the following exemptive regulations:

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 association up to $100,000.

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

Exempt Offerings Under Regulation A

The Commission's Regulation A 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 without registration if the company complies with the regulation. Regulation A requires the filing of a notification with the appropriate Regional Office of the Commission, supplying basic information about the company, certain exhibits, and except in the case of a company with an earnings history which is making an offering not in excess of $50,000, an offering circular which is required to be used in offering the securities.

During the 1958 fiscal year, 732 notifications were filed under Regulation A, covering proposed offerings of $133,889,109, compared with 919 notifications covering proposed offerings of $167,269,900 in the 1957 fiscal year. Included in the 1958 total were 71 notifications covering stock offerings of $14,433,379 with respect to companies engaged in the exploratory oil and gas business and 69 notifications covering offerings of $14,257,615 by mining companies.

The following table sets forth various features of the Regulation A offerings during the past three fiscal years:

Offerings under Regulation A

	Fiscal year		
	1958	1957	1956
Size:			
$100,000 or less	231	307	481
Over $100,000 but not over $200,000	165	163	246
Over $200,000 but not over $300,000	336	449	736
	732	919	1,463
Underwriting:			
Used	243	328	630
Not used	489	591	833
	732	919	1,463
Offerors:			
Issuing companies	704	865	1,389
Stockholders	28	52	62
Issuers and stockholders jointly	0	2	12
	732	919	1,463

Most of the offerings which were underwritten were undertaken by commercial underwriters, who participated in 185 offerings in 1958, 252 in 1957, and 528 in 1956. The remaining cases where commissions were paid were handled by officers, directors, or other persons not regularly engaged in the securities business.

Suspension of Exemption

Regulation A provides for the suspension of an exemption thereunder where, in general, 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 conditions of the regulation or in accordance with prescribed disclosure standards. Following the issuance of a temporary suspension order by the Commission, the respondents may request a hearing to determine whether the temporary suspension should be vacated or made permanent. In the case of filings made under Regulation A as revised in July 1956, if no hearing is requested within thirty days after the entry of the temporary suspension order, and none is ordered by the Commission on its own motion, the temporary suspension order becomes permanent.

During the 1958 fiscal year, temporary suspension orders were issued in 88 cases as compared with 132 in the 1957 fiscal year. Of the 88 orders, 3 were later vacated. Requests for hearing were made in 18 cases and in 7 of such cases the requests were later withdrawn; proceedings in the remaining 11 cases are pending. The names of the companies involved in the orders issued during the 1958 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.

Washington Planning Corporation of Maryland.—In its order temporarily suspending the Regulation A exemption, the Commission alleged that the offering circular contained untrue statements of material facts and failed to disclose required information concerning the net loss sustained from the issuer's business operations. There was also a failure to disclose that the offering of securities was being made on an installment payment basis, that commissions were paid for the sale of the securities despite statements in the offering circular to the contrary, and that part of the proceeds from the offering were used to pay expenses and make advances to companies other than the issuer. The Commission's order further alleged that the use of the offering circular without appropriate disclosure had been and would be in violation of section 17 of the Securities Act of 1933. In addition, the terms and conditions of Regulation A were not complied with in that the issuer failed to file a complete and accurate report

of the sales of its securities. No hearing was requested and the suspension order became permanent.

Seaboard Drug Company, Inc.—The Commission temporarily suspended the exemption because the terms and conditions of Regulation A were not complied with since the aggregate offering price of shares sold by stockholders in the market and shares sold on behalf of the issuer exceeded the $300,000 ceiling. The Commission also stated that the offering circular operated as a fraud and deceit upon the purchasers and contained untrue statements of material facts and omitted to state certain material facts with respect to the issuer's assumption of expenses of certain affiliates and predecessor companies, and the utilization of proceeds of the offering for a personal loan to an officer, director and principal security holder of the issuer. No hearing has been requested and the suspension order remains in effect.

Tejanos Mining Corporation.—In its order temporarily suspending the exemption, the Commission alleged that the notification failed to disclose the issuance of certain shares within one year prior to the subject filing, and failed to disclose the identity of the underwriter. The Commission further alleged that the Regulation A exemption was not available since the president of the issuer had been indicted for selling unlicensed securities and selling securities without registering as a dealer in the State of Texas. The order also alleged that misleading statements were made concerning the use of proceeds and the interests of the officers, directors and promoters in the issuer. No hearing was requested and the suspension order became permanent.

Microveer, Incorporated.—The Commission's temporary suspension order alleged that the offering circular was misleading and contained untrue statements of material facts with respect to statements made concerning the physical properties of the issuer's product, a thin wood veneer, the existence of potential purchasers of the company's product and the amount of funds needed to equip the issuer's plant adequately with machinery. No hearing was requested and the suspension order became permanent.

Central Oils, Incorporated.—The Commission suspended the Regulation A exemption for an offering of the above company because of misleading, inaccurate and incomplete statements in the offering circular concerning, among other matters, the interests of the directors and promoters in the company's properties, the past and prospective productivity of the company's oil properties, and the misleading nature of the geological materials. A request for hearing was filed and later withdrawn, and the suspension became permanent.

Gem State Securities Corporation.—In its order temporarily suspending the Regulation A exemption, the Commission alleged that the Regulation A exemption was unavailable because securities were

sold prior to the time permitted by the regulation, at a different price from that stated in the offering circular, and without delivery of an offering circular. No hearing was requested and the suspension order became permanent.

Garner Aluminum Corporation.—The Commission temporarily suspended the Regulation A exemption because it had reasonable cause to believe that oral misrepresentations were made in the sale of securities under the offering which operated as a fraud and deceit upon the purchasers, particularly with respect to statements made concerning the refunding of investors' money, the amount of securities already sold, and the use of proceeds received therefrom. No hearing has been requested and the suspension order remains in effect.

The Commission is given discretionary authority in rule 252 (f) of Regulation A to determine upon a showing of good cause that certain disabilities, arising in general from past conduct of the issuer, underwriter or others associated with them in the purchase or sale of securities, and which ordinarily have the effect of making the Regulation A exemption unavailable, shall not operate to bar an exemption under the regulation. During the 1958 fiscal year, 14 applications for relief from various disabilities were granted under rule 252 (f) by the Commission.

Exempt Offerings Under Regulation B

During the fiscal year ended June 30, 1958, 109 offering sheets were filed pursuant to Regulation B and were examined by the Oil and Gas Unit of the Commission's Division of Corporation Finance. During the 1957 fiscal year, 133 offering sheets were filed and during the 1956 fiscal year, 114 were filed. The following table indicates the nature and number of Commission orders issued in connection with such filings during each of the fiscal years referred to:

Action taken on offering sheets filed under Regulation B

	Fiscal years		
	1958	1957	1956
Temporary suspension orders	9	12	5
Permanent suspension orders			1
Orders terminating proceeding after amendment	1	7	5
Orders accepting amendment of offering sheet (no proceeding pending)	60	72	60
Orders consenting to withdrawal of offering sheet (no proceeding pending)	3	3	4
Orders consenting to withdrawal of offering sheet and terminating proceeding	2		
Order terminating effectiveness of offering sheet			1
Total number of orders	75	94	76

Reports of sales.—The Commission requires persons who make offerings under Regulation B to file reports of the actual sales made pursuant to that regulation. The purpose of these reports is to aid

the Commission in determining whether violations of law have occurred in the marketing of securities offered under the regulation. The following table shows the number of sales reports filed under Regulation B during the past three fiscal years and the aggregate dollar amount of sales during each of such fiscal years:

Reports of sales under Regulation B

	Fiscal years		
	1958	1957	1956
Number of sales reports filed	1,712	1,318	1,419
Aggregate dollar amount of sales reported	$1,093.362	$1,154,792	$1,234,541

LITIGATION UNDER THE SECURITIES ACT OF 1933

The Commission is authorized by the Securities Act to seek injunctions in cases where the continued or threatened violations of the Act may result in damage to members of the public. Many such actions were brought by the Commission during the year in cases involving violations of the registration and anti-fraud provisions of the Act.

Litigation Involving Violations of Registration and Anti-fraud Provisions

The Commission obtained injunctions against further violations of the registration provisions in actions in which it was found that the defendants were selling fractional interests in oil leases or in oil and gas properties without registration. Permanent injunctions were obtained in *S. E. C.* v. *Gerald L. Reasor and John O. Karstrom, Jr.*,[9] *S. E. C.* v. *Horace E. Watkins, doing business as Watkins Oil Co. et al.*,[10] both referred to in the 23rd Annual Report,[11] and *S. E. C.* v. *Edward J. Preston.*[12] In *S. E. C.* v. *Ben Franklin Oil and Gas Corporation, et al.*,[14] a preliminary injunction was obtained prohibiting the sale of shares of Ben Franklin Oil and Gas Corporation without registration.

Sales of unregistered securities in mining companies also required Commission action within the year. In *S. E. C.* v. *Tannen and Co., Inc., et al.*[15] a permanent injunction was obtained against 8 defendants to prevent further sales of unregistered stock. Similar injunctions were obtained in *S. E. C.* v. *Cataract Mining Corporation, et al.*,[16]

[9] N. D. Illinois, No. 56–C–2038 (December 4, 1956).
[10] D. Colorado No. 5533 (November 9, 1956).
[11] P. 54.
[12] D. Montana No. 765 (December 20, 1957).
[14] D. New Jersey, No. 601–57 (June 19, 1957).
[15] S. D. New York No. 123–115 (August 2, 1957).
[16] S. D. New York No. 126–173 (October 30, 1957).

S. E. C. v. *Columbus-Rexall Oil Company, et al.*,[17] *S. E. C.* v. *Creswell-Keith Mining Trust, et al.*,[18] *S. E. C.* v. *Dawn Uranium and Oil Company, et al.*,[19] *S. E. C.* v. *William J. Owen and Leonard S. Fox, doing business as Uinta Basin Oil and Gas Leasing Company, et al.*,[20] and *S. E. C.* v. *Strategic Minerals Corporation of America, et al.*[21] Injunctions were entered by consent in the last four of the above cases. A preliminary injunction was obtained in *S. E. C.* v. *Royal Drift Mining Company, et al.*[22]

Final judgments were also entered in *S. E. C.* v. *Arkansas Securities Corp. et al.*,[23] *S. E. C.* v. *Great Fidelity Life Insurance Co., et al.*,[24] *S. E. C.* v. *Oregon Timber Products Co., Inc., et al.*,[25] *S. E. C.* v. *Farm and Home Agency, Inc., et al.*,[26] *S. E. C.* v. *Television and Radio Broadcasting Corporation* and *James D. Asher*[27] and *S. E. C.* v. *Francis Distributing Co., Inc., et al.*,[28] enjoining further sales of unregistered shares. The injunctions were entered by consent in the *Farm and Home*, *Great Fidelity Life* and *Television and Radio* cases.

In *S. E. C.* v. *Backers Discount and Finance Company* and *James Sorce, Jr.*[29] the defendant, who was in the business of purchasing installment notes received by contractors, offered to investors participating certificates in these installment notes guaranteeing 12% net return on the investment and purportedly assigning a mortgage to the investor. The amount invested had in fact no relation to the face amount of the mortgage assigned, and if the mortgagor defaulted, another mortgage was substituted. In some instances no mortgage was assigned to the investor but rather a participation in general portfolio holdings of Backers. These "guarantee saving certificates" were found not to be guaranteed by any outside independent guarantor, but merely secured by Backers. Notwithstanding assurances by Backers that it would discontinue interstate sales until such time as it had complied with the registration requirements of the Act, over $10,000 of the certificates were sold to residents of 6 states. A final injunction was entered by the Court to enjoin further sales of these securities.

---

[17] D. Utah, No. C-167-57 (October 9, 1957).
[18] W. D. Arkansas No. 733 (January 9, 1958).
[19] E. D. Washington No. 1395 (June 1, 1956).
[20] D. Colorado No. 5749 (July 24, 1957).
[21] N. D. Texas No. 7889 (June 6, 1958).
[22] N. D. California No. 7706 (March 5, 1958).
[23] W. D. Arkansas No. 734 (January 9, 1958).
[24] S. D. Indiana No. IP-58-C19 (January 16, 1958).
[25] D. Nevada No. 1280 (October 3, 1956).
[26] S. D. Indiana No. IP 58 C83 (April 16, 1958).
[27] D. Massachusetts No. 57-640 A (July 1, 1957).
[28] D. Massachusetts No. 58-424-S (April 22, 1958).
[29] D. New Jersey No. 14-58 (January 7, 1958).

In *S. E. C.* v. *Micro-Moisture Controls, et al.*[30] 16 defendants, including 7 registered broker-dealer firms, were permanently enjoined from further violations of the registration requirements of the Act in the offer and sale of common stock of Micro-Moisture Controls, Inc. This action, which was also referred to in the 23rd Annual Report,[31] involved an increased number of outstanding shares resulting from an exchange of assets of Converters Acceptance Corporation of Canada for stock of Micro-Moisture. A subsequent public distribution by certain controlling stockholders of Micro-Moisture was made through the defendant broker-dealer firms and 2 residents of Canada, also named as defendants.

In *S. E. C.* v. *Land Development Company of Nevada, et al.*,[32] the complaint charged, among other things, that the defendants had been offering and selling the capital stock of Land Development Company of Nevada and certain evidences of indebtedness, investment contracts and profit sharing agreements when no registration statement was in effect as to such securities. The defendants consented to the entry of a preliminary injunction.

Violations of the registration provisions of the Securities Act were also charged in *S. E. C.* v. *Roy B. Kelly, et al.*,[33] *S. E. C.* v. *Truckee Showboat, Inc.*,[34] *and S. E. C.* v. *Doctors' Motels, Inc.*[35] In the *Kelly* case the complaint was dismissed by agreement of the parties, subject to a stipulation effectively preventing sale of the stock without registration. In the *Truckee Showboat* case the application for a preliminary injunction was denied, the court indicating that it was convinced that the defendant was not threatening to violate the law and that an injunction was therefore unnecessary. In the *Doctors' Motels* case the complaint was dismissed by stipulation of the parties subsequent to the filing of a registration statement.

A final injunction was obtained by consent in *S. E. C.* v. *Edward L. Elliott, et al.*[36] to prevent distribution of unregistered securities of Crowell-Collier Publishing Company. The related administrative proceedings are discussed in this report under the Securities Exchange Act of 1934.[37]

Sales of unregistered mining stock, which also violated the antifraud provisions of Section 17 of the Securities Act in that false and misleading statements were used in such sales, brought about the entry

---

[30] S. D. New York No. 116–190 (January 9, 1957). Notice of appeal from this injunction was filed by four corporate defendants and five individual defendants before the end of the fiscal year.

[31] P. 54.

[32] D. Nevada, No. 224 (September 27, 1957).

[33] District of Columbia, No. 2635–57 (October 18, 1957).

[34] S. D. California, No. 901–57 WB (July 23, 1957).

[35] D. Kansas, No. KC907 (June 27, 1957).

[36] S. D. New York No. 123–234 (August 12, 1957).

[37] *Infra,* page 83.

of a final injunction in *S. E. C.* v. *Triumph Mines, Ltd., et al.*[38] and resulted in a preliminary injunction in *S. E. C.* v. *Alan Russell Securities, Incorporated, et al.*[39] Preliminary injunctions to prevent further violations of Section 5 and 17 of the Securities Act were also entered in *S. E. C.* v. *Franklin Atlas Corp., et al.*,[40] and *S. E. C.* v. *American Founders Life Insurance Company of Denver, Colorado, et al.*[41] In the latter case an injunction was entered against the corporate defendants, American Founders Life Insurance Company of Denver, Colorado and Colorado Management Corporation. Among other statements found to be misleading by the Court were the omission to disclose the intercorporate relationships existing between the corporate defendants; for example, that Colorado Management Corporation entered into a management contract with American Founders for a consideration equal to at least 5% of the gross income of the insurance company for a 10-year period.

A permanent injunction was entered against Judson I. Taggart in *S. E. C.* v. *Adams Bond and Share, Inc. and Judson I. Taggart.*[42] The complaint alleged that Taggart as vice president of defendant company had, in the sale of stock in that company, made false and misleading statements by, among other things, omitting to state to purchasers that another company, whose business his company was purchasing, had been continually operating at substantial losses, amounting to over $46,000 within a specified six-month period. In *S. E. C.* v. *Evergreen Memorial Park Association, et al.*,[43] the defendants consented to the entry of an injunction restraining further violations of Section 17 of the Securities Act.

False and misleading statements in violation of Section 17 of the Securities Act as well as sales in violation of the registration provisions were alleged in the Commission's complaint in *S. E. C.* v. *Crusader Oil and Uranium Company, et al.*[44] In that case, the Commission alleged that in connection with the offer and sale of unregistered common stock of the Wyoming Oil Company (Delaware) the defendants had represented that the selling price of 20¢ to 50¢ per share was a special price offered to a few stockholders, whereas in fact it was far in excess of the market price, and the offering was not limited to a few stockholders. A final judgment was entered by consent permanently enjoining Crusader Oil and Uranium Company and James R. Macon, president and controlling person, from further vio-

[38] W. D. Washington No. 4555 (March 18, 1958).
[39] S. D. New York No. 130–358 (March 7, 1958).
[40] S. D. New York No. 120–172 (September 4, 1957).
[41] D. Colorado No. 6021 (April 1, 1958).
[42] D. Idaho No. 3413 (January 11, 1958).
[43] E. D. Pennsylvania No. 24, 424 (April 3, 1958).
[44] D. Colorado No. 5769 (August 19, 1957).

lations of Sections 5 (a) and (c) and 17 (a) of the Act, and Robert W. Wilson, a broker-dealer, from further violating Section 17 (a) of the Act.

In *S. E. C.* v. *Southwest Securities, Inc., et al.*[45] a permanent injunction was entered enjoining General Insurance Investment Company, Harvey E. Smith, Margaret Brand Smith, and Bennie L. Dean from further violations of the registration provisions of the Securities Act. At the same time the Court entered an order extending until further order the effectiveness of a temporary restraining order which had been previously entered against Southwest Securities, Inc., Allen Goldsmith and Faye Goldsmith, restraining them from further violations of the registration and anti-fraud provisions of the Securities Act, as well as of the broker-dealer registration requirements of the Securities Exchange Act of 1934.

S. E. C. v. *Robinson Development Corporation, Skid Control Corporation, et al.*[46] also involved violations of Section 5 (a) and (c) and Section 17 (a) of the Securities Act. The Commission's complaint alleged, in addition to the fact that the securities being offered and sold were unregistered, that the defendants employed a scheme to defraud by means of displaying a false and misleading motion picture and made false and misleading statements regarding, among other things, the identity of the inventor, the guarantee against competition, acceptance of the skid-control device by trucking and taxicab companies, profits to result, success of tests and future value of dividends. The court granted a final injunction against the defendants, Robinson Development Corporation, Louis M. Robinson, Skid-Control Purchasing, Inc., Robinson Skid-Control Associates, Inc. and Cedar-Vale Development Corporation.

Universal Service Corporation had been the subject of a Commission stop order issued February 5, 1957 following the filing of a false and misleading registration statement and prospectus. The stop order was lifted when Universal filed amendments purportedly correcting the original filings. However, the Commission found it necessary to institute action to enjoin Universal Service Corporation and its officers from proceeding to sell under the amended filing. The Commission's complaint in *S. E. C.* v. *Universal Service Corporation, et al.*[47] alleged that the registration statement and prospectus of the defendant contained untrue statements of material facts and that they omitted to state facts required to be stated, in violation of the anti-fraud and registration provisions of the Act. As an example, Universal had asserted ownership of 253 mining claims in the State of Texas, when in fact the claims had been forfeited to the State of Texas

[45] E. D. Arkansas No. 3566 (May 19, 1958).
[46] W. D. Pennsylvania No. 16203 (September 11, 1957).
[47] S. D. Texas No. 11608 (March 6, 1958).

for failure to pay rentals. A final injunction was entered against Universal and its board chairman Bert Thompson, and the temporary restraining order already in effect was continued against the remaining defendants.

In *S. E. C.* v. *Mississippi Valley Portland Cement*,[48] the defendant was permanently enjoined from further violation of Sections 17 and 23 of the Securities Act. One of the allegations of the Commission's complaint was that the defendant had falsely stated that the fact that a registration statement had become effective meant that the Commission and its "cement consultant" had determined that cement could be economically produced from materials owned by the defendant near Vicksburg, Mississippi.

The defendant was also enjoined in *S. E. C.* v. *James C. Graye, doing business as J. C. Graye Co.*,[49] from further violations of Section 17 of the Securities Act. He had been selling stock of Atlas Gypsum Corporation, Ltd. largely on the strength of an untrue and misleading statement announcing a proposed merger between Atlas Gypsum Corporation, Ltd. and Johns-Manville. Another permanent injunction was obtained at about the same time against the same defendant as a broker-dealer in an earlier action charging violation of the Commission's net capital rule.[50]

In *S. E. C.* v. *Los Angeles Trust Deed and Mortgage Exchange, et al.*[51] the defendants sold securities described in the complaint as evidences of indebtedness, investment contracts, and receipts for or guarantees of such securities arising out of the sale of promissory notes secured by deeds of trust covering real estate in California. The complaint alleged violations of the registration provisions of the Securities Act as well as violations of the anti-fraud provisions of that Act and of the Securities Exchange Act of 1934. Charges were made in the complaint that the advertising and selling literature contained incomplete, ambiguous, flamboyant, misleading, untrue and deceptive statements of material facts, such as a statement to the effect that the plan affords investors an opportunity to buy an income for life without reducing their principal and that the plan constitutes a safe and secure method of realizing rapid capital appreciation through the "magic of compound interest", omitting to disclose, among other things, the speculative nature of investments in second trust notes, and the differences between trading securities listed and registered on national securities exchanges and the open-market trading in deeds of trust conducted by the defendants. After the close of the fiscal year a temporary injunction was obtained against all but one of the

[48] D. C. No. 3187-57 (December 20, 1957).
[49] S. D. New York No. 129-145 (January 23, 1958).
[50] S. D. New York No. 126-144 (October 29, 1957).
[51] S. D. California No. 261-58 TC (March 24, 1958).

defendants and a receiver appointed. The Court of Appeals for the Ninth Circuit subsequently granted a stay pending appeal.

The Commission has been very much concerned in recent years with the high-pressure tactics of broker-dealer firms which use long distance telephone calls to prospective investors to sell unregistered securities. The salesmen for these securities firms frequently make claims of a spectacular future for the security they are attempting to sell.

During the fiscal year, the Commission secured preliminary injunctions in *S. E. C.* v. *Globe Securities Corporation, et al.*[52] and in *S. E. C.* v. *Herbert Rapp, doing business as Webster Securities Corporation, et al.*[53] These broker-dealer firms were offering and selling unregistered common stock of Taylorcraft, Inc. to United States residents by means of long distance telephone calls. They made many misleading and extravagant claims as to the present and future merits of an investment in Taylorcraft, Inc. stock; among them, (1) that Taylorcraft, Inc. had received a multi-million dollar government contract for guided missiles research, (2) that Taylorcraft, Inc. had enough government contracts to keep them busy three to five years, (3) that they anticipated an annual volume for Taylorcraft, Inc. in excess of $5 million and (4) that Taylorcraft, Inc. stock, at the time selling for $1 a share would rise to $3, $4, $8 or $15 per share in short periods of time.

The defendants in *S. E. C.* v. *J. H. Lederer Co., Inc., et al.*[54] consented to the entry of a permanent injunction restraining them from further violations of the registration provisions of the Securities Act in the offer and sale of unregistered common stock of Continental Mining Exploration, Ltd., a Canadian corporation. The Commission had alleged that practically all of the shares of Continental acquired by J. H. Lederer Co., Inc. were sold by means of long distance telephone calls to thousands of residents of the United States.

In *S. E. C.* v. *Mono-Kearsarge Consolidated Mining Company, Jean R. Veditz Co., Inc., et al.*[55] the Commission's complaint alleged that the individual defendants, who were persons closely connected with the corporate defendants, acted as conduits to facilitate the public distribution of nearly a million unregistered shares of Mono-Kearsarge stock. It was further alleged that 380,000 of such shares had already been offered and sold to U. S. residents by means of long distance telephone calls and the United States mails. After the close of the fiscal year certain of the defendants consented to the entry of a

[52] S. D. New York No. 132–343 (April 29, 1958).
[53] S. D. New York No. 132–344 (April 29, 1958).
[54] S. D. New York No. 135–81 (June 25, 1958).
[55] D. Utah No. C–58–58 (June 2, 1958).

permanent injunction, and permanent injunctions were entered against other defendants, including the companies named above.

The Commission filed a complaint near the close of the fiscal year in *S. E. C.* v. *Lincoln Securities Corporation, et al.*[56] charging that defendants had been offering and selling by means of long distance telephone solicitations unregistered shares of Shoreland Mines, Ltd. The complaint further charged that the defendants in order to induce sales of Shoreland Mines, Ltd. used false and misleading statements, among others, (1) that the company had iron ore claims adjacent to iron mines actually in operation by one or more large steel corporations (2) that Shoreland Mines, Ltd. was engaged in the exploration and development of newly discovered resources, and (3) that the price of Shoreland Mines, Ltd. would substantially increase in the near future. The affidavits filed in support of the Commission's motion for preliminary injunction stated that there had been no exploration work on the claims allegedly owned by Shoreland Mines, Ltd.; that Shoreland Mines, Ltd. had no working capital; that no mines are in operation adjacent to Shoreland Mines property; and that the claims of Shoreland Mines, Ltd. were not owned outright but subject to a payment of $15,000 to the president of the company. A temporary restraining order was entered and the action is still pending.

The Commission's complaint and supporting affidavits in *S. E. C.* v. *Alan Russell Securities, Inc.*[57] charged that the defendants had been offering International Ceramics Mining, Limited stock, which is listed on the Canadian Stock Exchange in Montreal, to residents of the United States by means of long-distance telephone calls. The defendants in these telephone calls had falsely represented to prospective investors that International Ceramics had large government contracts; that it was producing a product for use in the guided missile and rocket field; and that individuals associated with the Office of the President of the United States had invested in the stock. In addition to asserting the falsehood of such representations and others, the affidavits averred that International Ceramics for the past ten years had been a pilot operation and operated at a deficit. A permanent injunction was entered restraining the defendants from further antifraud violations.

Subpoena Enforcement

During the past fiscal year the Commission on several occasions was obliged to resort to the courts to seek enforcement of subpoenas issued in connection with investigations of violations of the Securities

[56] S. D. New York No. 135–79 (June 25, 1958).
[57] *Supra*, p. 49.

Act. In *S. E. C.* v. *Linda Lord* [58] the Commission applied for an order to require obedience to the subpoena issued in an investigation of defendant's activities in the sale, by telephone, of the stock of Shoreland Mines, Ltd. An order to show cause was issued on June 2, 1958 to which defendant failed to respond. On July 30, 1958 a criminal information was filed against the defendant for violation of Section 19 (b) of the Securities Act and Section 21 (b) of the Exchange Act for willful failure to respond to the subpoena. She is presently a fugitive and a bench warrant has been issued for her arrest. The injunctive action initiated subsequent to the investigation is described at page 53, *supra*.[59]

In *S. E. C.* v. *Doeskin Products, Inc., et al.*,[60] the Commission sought court enforcement of a subpoena duces tecum calling for the production of certain records of Doeskin Products, Inc., charging that the refusal to produce the information was impeding the Commission's investigation of whether the Securities Act had been violated in the issuance and sale of securities of Swan-Finch Oil Corporation and Doeskin Products, Inc. This action was subsequently dismissed by consent, the records having been produced after the action was commenced. For an account of related litigation, see pp. 54–55, *infra*. In *S. E. C.* v. *Dudley P. South*,[61] the District Court ordered the production of certain books and records of the Surinam Corporation in obedience to the Commission's subpoena duces tecum.

Other Litigation

In *S. E. C.* v. *Doeskin Products, Inc.*,[62] the Commission's complaint was dismissed against two of the seven defendants, final judgment having been entered by consent against the other five. This litigation, which involved violations of Section 5 of the Securities Act, is discussed, together with the related proceedings in *S. E. C.* v. *Swan-Finch Oil Corporation, et al.*, on pages 52–3 of the 23rd Annual Report. In addition to the subpoena enforcement proceedings discussed above on this page, there arose, in connection with the proceedings, a civil suit against the Commission and various members of the Commission's staff. In that action Doeskin Products, Inc., filed a complaint in the New York Supreme Court,[63] claiming damages of $1,000,000 as a consequence of the alleged unwarranted interference by the Commission and its staff with the sale and transfer of plaintiff's common stock in connection with the Commission's investigation in this case and the related *Swan-Finch* case.

---

[58] S. D. New York No. M–18–304 (May 28, 1958).
[59] *S. E. C.* v. *Lincoln Securities Corporation, et al.*
[60] S. D. New York (March 18, 1958).
[61] S. D. Texas No. 11, 517 (February 5, 1958).
[62] S. D. New York, No. 119–301 (April 11, 1957).
[63] *Doeskin Products, Inc.* v. *Windels, et al.*, New York Supreme Court, New York County, (December 17, 1957).

Upon petition by the Commission and individual defendants the case was removed to the Federal District Court for the Southern District of New York.[64] Defendants subsequently filed a motion to dismiss, on the ground that the complaint failed to state a claim upon which relief could be granted as against the individual defendants, in that the acts complained of were performed in discharge of their duties as governmental officials and consequently no liability attached, and further as against the Commission, in that the Court lacked jurisdiction over the subject matter. The motion to dismiss was granted and a notice of appeal was filed but subsequently withdrawn.

The Commission has been alert to the need to use all possible means to protect investors from fraudulent promotions originating in foreign countries. To this end a Foreign Fraud Order was obtained against several companies and individuals engaged in a fraudulent distribution from Cuba into the United States of Latin American Exploration Company stock. The fraud order was based upon evidence supplied by the Commission that the United States mails were being used in the conduct of the scheme to obtain money by means of false and fraudulent representations concerning the geological nature of the area in which the companies' property was located; the likelihood of bringing in profitable oil production from wells to be drilled on such properties; anticipated increases in the value of stock; the probability of a big strike in oil on the property of the company and various other similar representations. The fraud order, which is directed to all postmasters authorized to dispatch mail to Cuba, instructs them to stamp "FRAUDULENT" on all mail directed to any of the companies or persons listed in the order, and to return the same to the sender.

In *Comico Corporation* v. *S. E. C.*,[65] a petition was filed for review of the Commission's order denying petitioner's application for withdrawal of the registration statement. The Commission moved to dismiss the petition on the ground that the court lacked jurisdiction. A per curiam order was subsequently entered dismissing the petition.

---

[64] *Doeskin Products, Inc.* v. *Windels, et al.*, S. D. New York, No. 128-271.
[65] C. A. D. C. No. 14,344.

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 1958, 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 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

Disciplinary Actions

Each national securities exchange reports to the Commission disciplinary actions taken against their members for violation of the Securities Exchange Act of 1934 or of exchange rules. During the year

7 exchanges reported 44 cases of such disciplinary action. The actions taken included the imposition of fines aggregating $18,430 in 10 cases; the suspension of 1 individual and 2 firms from exchange membership; cancellation of the registration of 1 individual as a specialist; and censure of a number of individuals and firms.

Commission Rate Study

Section 19 (b) of the Exchange Act imposes on the Commission certain responsibilities and duties with respect to the rules of national securities exchanges including rules in respect of such matters as the fixing of reasonable rates of commission and other charges. Under an amendment to its Constitution, effective May 1, 1958, the New York Stock Exchange provided for an increase in the minimum commission rates to be charged by members and member firms. On April 14, 1958, the Commission announced that it had directed its staff to conduct a study of such commission rates and to report to the Commission whether such commission rates and other charges are reasonable and in accord with the standards contemplated by applicable provisions of the Exchange Act.[1] Pursuant to the directive of the Commission the staff is now making a comprehensive study of commission rates on the New York Stock Exchange.

Nine other registered national securities exchanges, including the American Stock Exchange, have recently adopted schedules of commission rates identical with that of the New York Stock Exchange.

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 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

[1] Securities Exchange Act Release No. 5678.

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, semi-annual reports, and current reports. The principal annual report form is Form 10–K which is designed to keep up-to-date the information furnished in Form 10. Semi-annual 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.

Statistics Relating to Registration

As of June 30, 1958, a total of 2,236 issuers had 3,795 classes of securities listed and registered on national securities exchanges of which 2,663 were classified as stocks and 1,132 as bonds. Of the total 2,236 issuers, 1,282 had 1,526 stock issues and 1,087 bond issues listed and registered on the New York Stock Exchange. On a percentage basis, the New York Stock Exchange had listed 57% of the issuers, 57% of the stock issues and 96% of the bond issues.

During the 1958 fiscal year, a total of 54 issuers listed and registered securities for the first time on a national securities exchange and the listing and registration of all securities of 74 issuers was terminated during the year. The number of applications filed during the fiscal year for registration of classes of securities on national securities exchanges was 207.

The following table shows the number of annual, semi-annual 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 filed and effective under the Securities Act of 1933 for the public offering of securities. As of June 30, 1958, there were 1,365 such issuers, including 184 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, 1958

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.	2,269	1,270	3,539
Semiannual reports on Form 9-K	1,884	886	2,770
Current reports on Form 8-K	3,427	1,405	4,832
Total reports filed	7,580	3,561	11,141

MARKET VALUE OF SECURITIES TRADED ON EXCHANGES

The market value on December 31, 1957, of all stocks and bonds admitted to trading on one or more stock exchanges in the United States was approximately $331,277,155,000 as reported below.

	Number of issues	Market value Dec. 31, 1957
Stocks:		
New York Stock Exchange	1,522	$195,570,176,000
American Stock Exchange	855	25,545,238,000
Exclusively on other exchanges	584	3,097,925,000
Total stocks	2,961	224,213,339,000
Bonds:		
New York Stock Exchange [1]	1,106	106,071,744,000
American Stock Exchange	59	860,410,000
Exclusively on other exchanges	28	131,662,000
Total bonds	1,193	107,063,816,000
Total stocks and bonds	4,154	331,277,155,000

[1] Bonds on the New York Stock Exchange included 54 U.S. Government and New York State and City issues with $80,795,454,000 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 number and market value as of December 31, 1957, of stock issues alone are shown below:

	Preferred stock issues		Common stock issues	
	Number	Market value	Number	Market value
Listed on registered exchanges	580	$7,948,896,000	2,053	$197,177,312,000
Unlisted on all exchanges	50	542,204,000	207	18,133,145,000
Listed on exempted exchanges [1]	13	16,975,000	58	394,807,000
Total stocks	643	8,508,075,000	2,318	215,705,264,000

[1] Excluding issues also traded on registered exchanges.

Reported market values for all stocks on the New York Stock Exchange and estimated unduplicated market values for all stocks on the other exchanges on June 30 of each year commencing in 1949, in billions of dollars, have been as follows:

June 30 each year	New York Stock Exchange	American Stock Exchange	All other exchanges	Total
1949	$63.9	$12.0	$3.0	$78.9
1950	80.7	13.0	3.2	96.9
1951	97.9	15.2	3.2	116.3
1952	114.5	16.7	3.1	134.3
1953	113.3	16.1	3.0	132.4
1954	139.2	18.7	3.2	161.1
1955	194.4	24.6	3.8	222.8
1956	218.6	27.6	3.8	250.0
1957	227.9	30.5	3.6	262.0
1958	224.9	30.0	3.0	257.9

No deductions have been made from the market values in the three preceeding tables for intercompany investments tending toward duplication of values. The leading example of this duplication is the Standard Oil (New Jersey) ownership of more than $10 billion market value of shares of Creole Petroleum Corp., Humble Oil & Refining Co., Imperial Oil Ltd., and International Petroleum Co., Ltd. This ownership comprises well over half of the total value of all unlisted shares admitted to trading on the American Stock Exchange. It is reflected, of course, in the market value of the Standard Oil shares on the New York Stock Exchange.

The number of shares admitted to trading on the stock exchanges on December 31, 1957, was approximately 6,773,000,000, compared with 6,334,500,000 on December 31, 1956. Some 6,246,900,000 shares, or 92.2% of the total, were listed on registered exchanges, and included 170,500,000 preferred and 6,076,400,000 common shares.

Assets of Companies With Listed Common Stocks

As shown above, there were 2,053 common stock issues with an aggregate market value of about $197 billion listed on registered

exchanges as of December 31, 1957. The assets of the issuers involved were about $273 billion, based on a showing of $255.2 billion by the New York Stock Exchange and an estimate as to issuers represented on other exchanges. The figures represent a conglomerate of individual and consolidated company reports and various treatments of such matters as reserves for depreciation.

Foreign Stock

The market value on December 31, 1957, of all shares and certificates representing foreign stocks on the stock exchanges was reported at about $9.7 billion, of which $8.9 billion represented Canadian and $0.8 billion represented other foreign stocks. The market values of the entire Canadian stock issues were included in these aggregates. Most of the other foreign stocks were represented by American Depositary Receipts or American Shares, only the outstanding amounts of which were used in determining market values.

Comparative Over-the-Counter Statistics

Section 15 (d) of the Securities Exchange Act of 1934 requires that registration statements filed pursuant to the Securities Act of 1933 contain undertakings by the issuers to file the reports required by section 13 of the Securities Exchange Act when the class of securities offered and outstanding exceeds $2,000,000. The number of issuers required to file these reports increased from 1,086 to 1,151 during the fiscal year, excluding issuers also filing under the Investment Company Act of 1940. These issuers had securities outstanding with a market value in excess of $20 billion on June 30, 1958.

The number of issuers registered under the Investment Company Act of 1940 increased from 432 to 453, and their aggregate assets increased roughly from $15 billion to $17 billion during the fiscal year. Of the 453 issuers, 37, having assets totalling about $1.8 billion, had their stocks listed on an exchange and the stocks of 3 whose assets totalled about $56 million, were traded on an exchange on an unlisted basis. The securities of the remaining 413 issuers were traded exclusively in the over-the-counter market.

The number of active domestic issuers of over-the-counter stocks (exclusive of registered investment companies) reporting 300 or more holders appears not to have changed materially in recent years from the estimated total of 3,500 mentioned in previous annual reports. The numerous annual additions have been substantially offset by removals due to listing, merger or other causes. The growth in issuers of over-the-counter stocks appears more with respect to assets, market values and number of shares outstanding and shareholders, than in number of companies. In this respect they resemble issuers having securities listed and registered on exchanges, whose number was 2,210

on June 30, 1953 and 2,236 on June 30, 1958, but whose aggregate assets, market values, shares outstanding and shareholders have greatly increased. The aggregate market value on December 31, 1957 of the over-the-counter domestic stocks with 300 or more reported holders, was about $44 billion or about 20% of the $224.2 billion market value for all stocks on the exchanges on that date. The approximate number of issuers and the aggregate market values of their over-the-counter stocks were: for 700 bank issuers, $12 billion; for 275 insurance issuers, $8 billion; for 300 utility issuers, $6 billion; and for 2,225 industrial and miscellaneous issuers, $18 billion. The principal estimate in the above amounts is the inclusion of about $1 billion in stock values for 500 issuers not found in the standard securities manuals nor reporting to the Commission. The data are exclusive of issuers registered under the Investment Company Act of 1940 and of foreign issuers.

The principal dollar volume in bonds of the United States and its political subdivisions, in high-grade corporate bonds and preferred stocks, and in bank, insurance, and investment trust shares is consummated in the over-the-counter market. The principal dollar volume in stocks, other than those noted above, is consummated on the exchanges.

DELISTING OF SECURITIES FROM EXCHANGES

Pursuant to Section 12 (d) of the Securities Exchange Act a security registered on a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission.

During the fiscal year 1958, the Commission granted applications by exchanges and issuers to remove 42 securities from listing and registration pursuant to section 12 (d) and rule 12d2–1(b) thereunder, as follows:

Applications filed by:	*Stock issues*	*Bond issues*
New York Stock Exchange	10	2
American Stock Exchange	8	0
Midwest Stock Exchange	1*	0
Pacific Coast Stock Exchange	2	0
Philadelphia-Baltimore Stock Exchange	5	0
Salt Lake Stock Exchange	2	0
San Francisco Mining Exchange	3	0
Issuers	10	0
Total removals	41	2

*This stock was also delisted by New York Stock Exchange.

The New York Stock Exchange has adopted a revised policy with respect to delisting. It has stated that it will consider initiation of a

delisting application where the size of a company has been reduced to $2,000,000 or less in aggregate market value of the common stock outstanding or net tangible assets applicable to common stock and the average net earnings after taxes for the last three years is below $200,000; or where distribution of the listed issue is limited to such an extent that, in the case of common stock, there are 250 or fewer stockholders of record discounting holders of odd lots, or the stock outstanding exclusive of concentrated holdings amounts to 30,000 shares or less or has a market value of $500,000 or less, or, in the case of other listed securities, the issue outstanding exclusive of concentrated holdings has a market value of $200,000 or less or totals 2,000 shares or less in the case of stock or $200,000 or less of principal amount in the case of bonds. The exchange has also stated that it will consider initiation of a delisting application in instances, among others, where stockholders have authorized liquidation or where sale of assets has been made without authorizing liquidation. All of the delisting applications filed by the New York Stock Exchange were initiated in accordance with this policy. The revised policy with respect to delisting of securities on the New York Stock Exchange was at issue in two cases described on p. 96 of last year's Annual Report.[2]

The 8 delistings by the American Stock Exchange included 4 closely-held stocks, 3 stocks suspended for failure to meet reporting requirements among other reasons, and 1 stock following upon distribution of the company's principal assets. The 13 delistings by the regional exchanges included 6 stocks with small volumes on the exchanges, and 7 stocks of issuers (including 5 mining companies) failing to meet reporting requirements among other things.

Of the 10 delistings upon applications by issuers, 5 were for the purpose of reducing multiple listings, 3 were by mining companies of uncertain financial condition, 1 was for long absence of exchange transactions, and 1 followed a stockholder vote heavily in favor of delisting.

During the fiscal year 1958 the Salt Lake Stock Exchange and the San Francisco Mining Exchange adopted rules providing for suspension of trading in issues of companies which have not filed the annual reports required under section 13 of the Securities Exchange Act within 60 days after such reports are required to be filed, and for the filing of delisting applications with the Commission if the failure is not cured within 90 days after suspension. There were 8 delistings upon application of these exchanges and issuers of securities listed thereon during fiscal 1958, based principally on failure or

[2] *Exchange Buffet Corporation* v. *New York Stock Exchange, and S. E. C.*, 244 F. 2d 507 (C. A. 2, 1957); *Atlas Tack Corp.* v. *New York Stock Exchange, et al.*, 246 F. 2d 311 (C. A. 1, 1957).

inability to comply with the new rule. The Spokane Stock Exchange also adopted a similar rule during the fiscal year.

The Philadelphia-Baltimore Stock Exchange on April 9, 1958, established a rule similar to that of the New York Stock Exchange and several other exchanges, providing that, in the absence of special circumstances, there must be a vote of security holders on delisting proposals by issuers. In such cases, proxy statements must be cleared through the Commission in accordance with its proxy rules. The Salt Lake Stock Exchange adopted a substantially similar rule on August 2, 1957.

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.

Seven cases were pending under section 19 (a) (2) at the beginning of the fiscal year and two cases were initiated during the fiscal year. One case was closed during the fiscal year and eight cases were pending at the end of the year. The case which was closed during the year and six cases which were closed shortly after the end of the year are described below.

In the past the Commission has used the power under section 19 (a) (4) infrequently. However, during the year it found it necessary and appropriate in connection with proceedings under section 19 (a) (2) involving Bellanca Corporation to use its authority summarily to suspend trading in that corporation's securities registered on the American Stock Exchange.

Bellanca Corporation.—Bellanca Corporation, a Delaware corporation, was a small manufacturer of aircraft parts until February 1955 when Sydney L. Albert, a buyer and liquidator of failing businesses, acquired over 80% of its stock. Soon after Albert's acquisition the market price of Bellanca stock rose to a peak of 30½, but in early June, 1956, the market price of the stock broke sharply and continued to decline through 1956 to about $2.00 per share. The Commission instituted proceedings under section 19 (a) (2) of the

Act to determine whether the common stock of Bellanca should be suspended or withdrawn from registration on the American Stock Exchange.

In ordering the withdrawal of the registration of the common stock of Bellanca on the American Stock Exchange, the Commission found that the company violated sections 13 and 14 of the Act which require, respectively, the filing of reports with the Commission and the exchange, and the filing of preliminary proxy soliciting material with the Commission.[3] The Commission ruled that Bellanca's failure to file certain required information as well as its filing of false information with respect to a number of securities transactions reflected a "flagrant disregard for its responsibilities to public investors."

The Commission found that beginning in March, 1955, and continuing until June, 1956, Bellanca through Albert, who had become its president, and others engaged in a program of acquiring interests in other companies by means of a series of complex transactions many of which resulted in benefits to the insiders rather than to Bellanca. It was held that the reports that were filed through June, 1956, served only to mislead the public and obscure the facts by failing to disclose unfavorable aspects of Bellanca's transactions and related financing arrangements.

Among the reporting deficiencies discussed by the Commission were those relating to N. O. Nelson Company and Automatic Washer Company. According to the decision, Bellanca failed to report that its purchase of N. O. Nelson Company in 1955 was accomplished by means of a $4,000,000 loan for which a premium of $500,000 was paid in addition to interest of 6%, nor was the subsequent refinancing of the Nelson purchase disclosed. Bellanca exchanged its Nelson stock for a controlling block of stock of Automatic Washer Company, at a time when Bellanca's president was in a controlling position with respect to Automatic. The Commission found that Bellanca should have filed a current report to disclose the agreement with Automatic, and that a subsequently filed current report was misleading and inadequate in failing to disclose the interest of Bellanca's president and others in the transactions. In addition, the Commission found that the financial statements in the annual report for 1956 and in preliminary proxy soliciting material filed with the Commission in 1957 were misleading and inadequate with respect to the value placed on Bellanca's shares of Automatic stock.

The Commission further found that securities owned or held by Bellanca or a subsidiary were used by the president for his own personal benefit and that such information should have been disclosed

[3] Securities Exchange Act Release No. 5706 (June 2, 1958).

in the company's annual report for 1956 and in the preliminary proxy soliciting material, as required under the Commission's rules. Although all such shares were eventually returned or replaced, it was noted that in some instances the market value of the shares when they were returned was considerably lower than at the time they were taken.

The Commission held that the evidence showed a "course of conduct over an extended period involving flagrant violations of the reporting and proxy provisions of the Act. The purpose of the reporting provision is to inform existing and potential investors of material corporate activities as they occur and the purpose of the proxy provisions is to enable stockholders to exercise their voting rights upon the basis of an informed judgment." The Commission concluded that the record established that the protection of investors required the withdrawal of the registration of Bellanca's securities on the Exchange and pointed out that such withdrawal would conform with the Congressional intent reflected in section 19 (a) (2) as well as the Commission's previous decision in the *Great Sweet Grass Oils* case.[4]

Eureka Company.—In the *Eureka Company* case, the Commission found that reports filed by the company with the San Francisco Mining Exchange and the Commission during 1956 and 1957 pursuant to section 13 of the Securities Exchange Act were false and misleading. In addition, the company failed to file an annual report for 1955 and semi-annual reports for the periods ending June 30, 1955 and June 30, 1956, and filed a false and misleading proxy statement with respect to its annual meeting of stockholders for November 14, 1955.

The reports filed, some of which were filed late, were found to contain false and misleading statements concerning the acquisition of significant amounts of oil, gas and mining properties and other physical assets. Morover, the reports misrepresented that certain securities sold and issued by the company in exchange for various assets were exempt from the registration requirements of the Securities Act of 1933 pursuant to the provision of section 4 (1) of the Act which exempts "transactions by an issuer not involving any public offering."

The Commission found that in a series of transactions from January to February, 1957, the company issued a substantial amount of its common stock in exchange for various interests in oil, gas and mining properties and related machinery and equipment. Current reports required to be filed to reflect these transactions were filed late, and no reports were filed with respect to certain acquisitions of assets. Fur-

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

thermore, the reports which were filed did not furnish required information regarding the date and manner of acquisition, a description of the assets involved, the nature and amount of consideration given therefor, the identity of the persons from whom the assets were acquired and the nature of the material relationships which existed between such persons and the company, its directors and officers, and associates thereof.

Each of the current reports filed concerning the issuance of common stock in exchange for assets stated that such securities were not registered under the Securities Act and that such "securities were taken for investment by the purchaser." In this connection, the Commission held that representations by a purchaser that he is acquiring securities for investment or that he will not transfer them for a certain period are not of themselves sufficient to establish a private offering exemption pursuant to section 4 (1) of the Securities Act. In this case the Commission found that the number and nature of the purchasers and the manner of distribution were such as to clearly involve a public offering. The stock issued by the company in 1956 for properties and services were distributed to about 35 original purchasers. By February 1957, a large number of shares issued to the original recipients were transferred to 70 other persons or firms, including more than 15 broker-dealer firms. A substantial number of such shares eventually were widely distributed to the public.

The Commission found that the transfers and distributions were known or should have been known to Eureka, and held that the current reports were false and misleading in representing that the shares listed in such reports were exempt from registration under the Securities Act and were taken for investment by the purchasers. Such reports should have disclosed that the shares were sold in violation of section 5 of the Act.

The Commission stated that use of the facilities of a national securities exchange by an issuer is a privilege involving important responsibilities under the Securities Exchange Act, including compliance with the reporting and proxy solicitation requirements. It pointed out that Congress has specified that when violations occur, such privilege may be withdrawn if necessary or appropriate for the protection of investors, and decided that under the circumstances of the case, the protection of investors required that the registration of the common stock of Eureka on the San Francisco Mining Exchange be withdrawn.[5]

Nev-Tah Oil and Mining Company.—In the case of Nev-Tah Oil and Mining Company the Commission found that the company had failed to file current reports giving information as to acquisition of

[5] Securities Exchange Act Release No. 5729 (July 7, 1958).

certain interests and the subsequent loss thereof and also as to a judgment for $100,000 in connection with one of the transactions. Moreover certain current reports represented that large issues of stocks were registered under the Securities Act of 1933 whereas, in fact, such shares were not registered and were offered to the public in violation of the Act. Neither the sales of such shares nor an injunction obtained by the Commission by consent in the United States District Court for the District of Nevada enjoining the registrant and certain officers from further sales, were disclosed in current reports. A vigorously contested issue in this case was whether control was exercised by the principal promoter who was the manager and generally the largest single stockholder, who selected the president, two directors and the general counsel, who controlled the finances and operations, negotiated most of the acquisitions and dispositions and determined the prices and participated in a substantial way at board meetings although not a director. The Commission found that such person in fact controlled and was the parent of the registrant and that the required reports not only failed to disclose such control but also falsely denied it existed. The registrant asked for a 90-day delay of the Commission's determination so as to permit it to submit a plan of rehabilitation, but the Commission found that the record did not indicate any basis on which such a plan could be achieved and ordered that the registration of the common stock on the Salt Lake Stock Exchange be withdrawn.[6]

Nevada Monarch Consolidated Mines Corporation.—In the Nevada Monarch case, the company had not filed annual reports for the years 1951 through 1956. Its report for 1956 was ultimately filed some five months after it was due. In addition, the company failed to file until March, 1958, (after institution of delisting proceedings by the Commission) a current report due in July, 1957, reporting that in June, 1957, it had executed a three-year lease on all its properties coupled with an option to the lessee to purchase the properties. Moreover, the annual report finally filed for 1956 contained a balance sheet which stated that proceeds of $50,000 from a government loan had been expended by the lessee for the development of a tungsten ore body, when as a matter of fact the lessee received only $4,875 from such a loan and in addition expended a maximum of $18,000 "in connection with" such loan.

In reaching the conclusion that the protection of investors required the withdrawal of registration from the Salt Lake Stock Exchange, the Commission pointed out that the purpose of the reporting provisions of the Act is to inform existing and potential investors of ma-

[6] Securities Exchange Act Release No. 5738 (July 22, 1958).

terial corporate activities and the corporation's financial condition, and found that the registrant had ignored its obligations under these provisions. The Commission also pointed out that the company's asserted belief that the loan had been granted in its full amount could not absolve the company of responsibility for the substantial overstatement of assets in its financial statement.[7]

Intermountain Petroleum, Inc.—In the Intermountain Petroleum, Inc. case the Commission found that reports filed by the company with the Salt Lake Stock Exchange and the Commission pursuant to section 13 of the Securities Exchange Act were not filed within the prescribed time and, when filed, were false and misleading. These reports were found to contain false and misleading statements regarding the availability of exemptions from registration under the Securities Act, the recipients of stock issues and the value of mining and oil claims.

The Commission in its opinion held that the record did not establish that the claimed exemption under section 4 (1) of the Securities Act was available for the issuance of about 1,400,000 shares to approximately 90 persons in one transaction and the issuance of 274,500 shares to about 58 persons in another transaction. The opinion points out that in the proceedings, and in amended reports for the months in question, the company abandoned its contention that private offering exemptions under section 4 (1) of the Securities Act were available and instead urged that registration was not required because no sale of the securities occurred within the meaning of Rule 133 under the Securities Act. The Commission, in holding that this position was without substance, stated that the theory of Rule 133 is that no sale of securities to stockholders is involved where the distribution of securities to them results from the authorization by them, voting as a group, of a corporate act such as a transfer of assets for stock of another corporation, a merger or a consolidation, because in such situations there is not present the element of individual consent ordinarily required for a "sale" of securities in the contractual sense. However, it was found in this case that the conditions of Rule 133, including the requirement of a vote of stockholders, were not met. It was further stated that, even if the terms and conditions of that rule had been literally met, no exemption would have been available under that rule if a vote by the shareholders of the acquired company would have been merely a formal act due to its affairs being controlled by a single individual who negotiated the exchange.

The Commission also found that the reports in question were misleading with respect to mining and oil claims which had not been the

[7] Securities Exchange Act Release No. 5746 (July 30, 1958).

subject of geological appraisals or exploratory drillings. The Commission stated that the use of the terms "appraised value" and "valued" in connection with unexplored and undeveloped mining and oil prospects was misleading since such terms carried with them an implication that value had been determined by a scientific method. Moreover, it was especially important that there be no misleading implications as to the "value" of the claims covered by one of the reports, since those claims were sold to the company by an officer and controlling person of the company.

The company asserted that there was no intent to mislead or withhold information and that the deficiencies were the result of a lack of understanding of the requirements and the failure to consult counsel. The Commission concluded that while the company's asserted lack of understanding of applicable law and regulations and its lack of legal counsel did not condone the violations which it had found, it appeared that such violations did not stem from any plan or intent to defraud investors and that the company now fully appreciates its obligations and exhibited a willingness to file accurate information. Under all the circumstances, the Commission concluded, the protection of investors would be satisfied without withdrawal of the registration of the company's stock on the exchange if complete and accurate reports were filed. Accordingly, the registration of the company's stock on the exchange was suspended shortly after the end of the fiscal year for a period of 60 days, with the provision that if within such time the company filed corrected current reports, an order terminating the suspension and discontinuing the proceedings would be entered. If no such reports were filed within the stated period, an order withdrawing the registration on the exchange of the company's stock would be entered.[8]

Verdi Development Company.—The Commission found that the company had failed to file current reports required to be filed pursuant to section 13 of the Act and the rules and regulations thereunder and to report material dispositions of the company's assets, defaults on its debt securities, the institution and termination of material litigation and the granting by the company of stock options. In addition, the Commission found that annual reports filed by the company after the institution of proceedings against the company failed to include required financial statements, and concluded that the company's stock should be withdrawn from registration on the San Francisco Mining Exchange.[9]

North American Resources Corp.—The North American Resources Corp. case involved the question of misrepresentations in a proxy

[8] Securities Exchange Act Release No. 5753 (August 11, 1958). Subsequently in October, 1958, the company filed corrected reports and the suspension proceedings were discontinued.

[9] Securities Exchange Act Release No. 5754 (August 14, 1958).

statement. The company filed a proxy statement with the Commission, which was mailed to stockholders, indicating that one of the matters to be acted on at the meeting was a proposal to increase the amount of authorized common stock from 2,000,000 shares to 10,000,000 shares and that a portion of the new shares would be traded or exchanged for oil and gas leases, royalties and mining properties. In this connection it stated: "However no negotiations in this respect have been undertaken and the Board of Directors does not presently have in mind any specific properties for acquisition. In addition, there have been no plans, agreements or discussions concerning the present program of expansion or acquisitions in which the company or its officers and directors or any prospective officer or director have been or are now engaged."

The Commission found, however, that the evidence adduced at the hearing established that at the time the proxy statement was issued, the company's controlling person did in fact have in mind specific properties for acquisition, and that there had been plans and negotiations with respect thereto. The Commission concluded that the proxy statement was materially false and misleading and that the company in its use of such proxy material violated section 14 (a) of the Act and rule X-14a-9 thereunder. This fact, plus the failure to file a current report on Form 8-K in connection with the issuance of 6,750,000 shares of the company's stock for assets acquired, led the Commission to find that it was necessary and appropriate for the protection of investors to withdraw the registration of the company's common stock on the Salt Lake Stock Exchange.[10]

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 without action on the part of the issuers, if it finds such admissions are necessary or appropriate in the public interest or for the protection of investors. 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 continuation of unlisted trading privileges existing on the exchanges prior to March 1, 1934. The number of unlisted trading privileges under Clause (1) in issues listed on other exchanges has declined from 75 bond and 991 stock admissions on December 31, 1935, to 2 bond and 536 stock admissions on June 30, 1958. The number of unlisted trading privileges in

[10] Securities Exchange Act Release No. 5756 (August 20, 1958).

issues not listed on other exchanges has declined from 496 bond and 817 stock admissions to 20 bond and 246 stock admissions during the same period.[11]

Clause (2) of section 12 (f) provides for granting by the Commission of applications by exchanges for unlisted trading privileges in securities listed on other exchanges. There were 926 unlisted trading privileges in effect under Clause (2) on June 30, 1958, of which 925 involved stocks and 1 a bond issue.

Clause (3) of section 12 (f) provides for granting by the Commission of applications for unlisted trading privileges conditioned, among other things, upon the availability of information substantially equivalent to that required to be filed by listed issuers. On June 30, 1958, unlisted trading privileges existed pursuant to clause (3) in only 12 bond and 4 stock issues, 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 1957 included approximately 28.8 million shares in stocks admitted to unlisted trading only and 29.2 million shares in stocks listed on exchanges other than where unlisted trading occurred. These amounts were respectively about 2.69 and 2.73 percent of the total share volume reported on all exchanges. Appendix table 9 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 stock listed on other exchanges, unlisted trading privileges were extended during the year ended June 30, 1958, as follows:

Stock Exchange:	*Number of stocks*
Boston	19
Detroit	2
Philadelphia-Baltimore	13
Pacific Coast	3
Total	37

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

[11] Trading privileges may exist in the same issue on numerous stock exchanges. Accordingly, the number of trading privileges is greater than the net number of issues concerned. Exempted exchanges are excluded.

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 fiscal year, the Commission granted an application by the Pacific Coast Stock Exchange for continuance of unlisted trading in a stock under this rule.

BLOCK DISTRIBUTIONS REPORTED BY EXCHANGES

Rule 10b–2 under the Securities Exchange Act of 1934 in substance prohibits any person participating or otherwise financially interested in the primary or secondary distribution of a security from paying any other person for soliciting a third person to buy any security of the same issuer 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 rule 10b–2 exempts transactions 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. The Commission in its declaration may impose such terms and conditions upon such plan as it deems necessary or appropriate in the public interest or for the protection of investors.

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 by the exchange 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 on the over-the-counter market. 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 December 31, 1957 [1]

	Number	Shares in offer	Shares sold	Value (thousands of dollars)
Special offerings	5	68,016	63,408	1,845
Exchange distributions	33	448,394	390,832	15,855
Secondary distributions	99	9,327,228	9,324,599	339,062
	6 months ended June 30, 1958 [1]			
Special offerings	5	93,445	88,152	3,286
Exchange distributions	15	347,605	347,315	10,686
Secondary distributions	60	4,464,850	4,544,297	199,592

[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 any security 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 in, 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 actual or apparent active trading is created for the purpose of inducing purchases or sales of such security 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 in the price of such security; and the making of any false and misleading statement of material information by a broker, dealer, seller, or buyer regarding such security 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 any security 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 tickertape quotations of securities listed on the New York Stock Exchange and on the Ameri-

can Stock Exchange, 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 to discover rapidly 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 by a broker-dealer are discovered, the Commission may institute administrative proceedings to determine whether or not to revoke his registration or to suspend or expel him from membership in the National Association of Securities Dealers, Inc., or from a national securities exchange. The Commission may also seek an injunction against any person violating the Act and it may refer information obtained in its investigation to the Department of Justice recommending that persons 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 pending at the beginning of fiscal 1958, the number initiated in fiscal 1958, 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, 1957	66	9
Initiated during fiscal year	66	1
Total	132	10
Closed or completed during fiscal year	85	2
Changed to formal during fiscal year	1	
Total	86	2
Pending at end of fiscal year	46	8

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 nine registered offerings having a value of $16,489,700,000 and 732 offerings exempt under section 3 (b) of the Securities Act, having a value of about $134 million were so observed during the fiscal year. One hundred and ninety seven other offerings, such as secondary distributions and distributions of securities under special plans filed by the exchanges, having a total value of $446 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 1958 stabilizing was effected in connection with stock offerings aggregating 18,221,647 shares having an aggregate public offering price of $453,580,132 and bond offerings having a total offering price of $201,138,350. In these offerings, stabilizing transactions resulted in the purchase of 316,945 shares of stock at a cost of $8,335,724 and bonds at a cost of $3,755,794. In connection with these stabilizing transactions, 4,445 stabilizing reports showing purchases and sales of securities effected by persons conducting the distribution were received and examined during the fiscal year.

INSIDERS' SECURITY TRANSACTIONS AND HOLDINGS

A corporate "insider," by virtue of his position, may have knowledge of the company's condition and prospects which is not available to the general public and may be able to use such information to advantage in transactions in the company's securities. Section 16 of the Securities Exchange Act of 1934 and similar provisions contained in section 17 of the Public Utility Holding Company Act of 1935 and section 30 of the Investment Company Act of 1940 were designed to provide other stockholders and investors with information as to the transactions and holdings of insiders and to prevent the unfair use of confidential information by insiders to profit from in-and-out trading in a company's securities.

Section 16 (a) of the Securities Exchange Act requires every person who is a direct or indirect beneficial owner of more than 10 percent of any class of equity securities (other than exempted securities) which is registered on a national securities exchange, or who is a director or officer of the issuer of such securities, to file reports with the Commission and the exchange disclosing his ownership of the issuer's equity securities. This information must be kept current by filing subsequent reports for any month in which a change in his ownership occurs. Similar reports are required by section 17 (a) of the Public Utility Holding Company Act of officers and directors of public utility holding companies and by section 30 (f) of the Investment Company Act of officers, directors, principal security holders, members of advisory boards and investment advisers or affiliated persons of investment advisers of registered closed-end investment companies.

All ownership reports are available for public inspection as soon as they are filed at the Commission's office in Washington and reports filed pursuant to section 16 (a) of the Securities Exchange Act may also be inspected at the exchanges where copies of such reports are filed. In addition, for the purpose of making the reported information available to interested persons who may not be able to inspect the reports in person, the Commission summarizes and publishes such information in a monthly "Official Summary of Security Transactions and Holdings," which is distributed by the Government Printing Office on a subscription basis. The increasing interest in this publication is evidenced by the increase of more than 1,000 in subscriptions during the past year. The total circulation is now nearly 6,000.

The number of ownership reports filed continued at a high level—33,126 for the fiscal year. This is a decline from the record high of 34,443 reports filed during the 1957 fiscal year. The following table shows the number of such reports filed during each of the last five fiscal years.

Number of ownership reports filed during the last five fiscal years

Fiscal year:	*Number of reports filed*
1958	33,126
1957	34,443
1956	32,001
1955	28,975
1954	23,199

The following table shows details concerning reports filed during the fiscal year ended June 30, 1958.

Number of reports filed during fiscal year 1958

Securities Exchange Act of 1934: [1]	
Form 4	28,524
Form 5	633
Form 6	3,133
Total	32,290
Public Utility Holding Company Act of 1935: [2]	
Form U-17-1	29
Form U-17-2	332
Total	361
Investment Company Act of 1940: [3]	
Form N-30F-1	159
Form N-30F-2	316
Total	475
Grand Total	33,126

[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 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 Issuer

In order to prevent insiders from making unfair use of information which may have been obtained by reason of their relationship with a company, section 16 (b) of the Securities Exchange Act, section 17 (b) of the Public Utility Holding Company Act, and section 30 (f) of the Investment Company Act provide for the recovery by or on behalf of the issuer of any profit realized by insiders from certain purchases and sales, or sales and purchases, of securities of the company within any period of less than six months. The Commission has certain exemptive powers with respect to transactions not comprehended within the purpose of these provisions, but is not charged with the enforcement of the civil remedies created thereby. The Commission has, however, filed briefs as *amicus curiae* in several suits instituted by private parties where the construction of applicable statutory provisions or rules was involved.

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 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 distributing 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 1958 fiscal year a total of 1,929 proxy statements in definitive form were filed under the Commission's Regulation 14 for the solicitation of the proxies of security holders; 1,897 of these were filed by management and 32 by non-management groups or individual stockholders. These 1,929 solicitations related to 1,769 companies, some 110 of which had more than one solicitation during the year, generally for a special meeting not involving the election of directors.

Of the 1,929 proxy statements filed during the 1958 fiscal year, 1,780 involved the solicitation of proxies for the election of directors, 134 were for special meetings not involving the election of directors and 15 solicited assents and authorizations for actions 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 1958 fiscal year with respect to the following types of matters:

Mergers, consolidations, acquisitions of businesses, purchases and sales of property and dissolutions of companies	107
Authorizations of new or additional securities, modifications of existing securities and recapitalization plans (other than mergers, consolidations, etc)	208
Employee pension and retirement plans (including amendments to existing plans)	79

Bonus, profit-sharing plans and deferred compensation arrangements (including amendments to existing plans and arrangements)	30
Stock option plans (including amendments to existing plans)	183
Stockholder approval of the selection by management of independent auditors	574
Miscellaneous amendments to charters and by-laws and other matters (excluding those involved in the preceding matters)	402

Stockholder Proposals

During the 1958 fiscal year, 39 stockholders submitted a total of 165 proposals which were included in the 95 proxy statements of 95 companies under rule 14a–8 of Regulation 14.

Typical of such stockholder proposals submitted to a vote of security holders were resolutions relating to amendments to charters or by-laws to provide for cumulative voting for the election of directors, limitations on the granting of options to and their exercise by key employees and the management group and limitations on salaries and pensions. Other resolutions related to such matters as the sending of a post-meeting report to all stockholders and the approval by stockholders of the selection by management of the independent accountants.

The management of 24 companies omitted from their proxy statements, under the conditions specified in rule 14a–8, a total of 51 additional proposals submitted by 32 individual stockholders. The principal reasons for such omission and the number of times each such reason was involved were as follows: (a) eight proposals were not a proper subject matter under state law; (b) twelve proposals related to the ordinary conduct of the company's business; (c) twelve proposals involved a personal grievance; (d) six proposals were not timely submitted to the company; (e) three proposals did not receive sufficient votes at the previous stockholders' meeting; (f) two proposals involved the nomination of particular candidates for election as directors; (g) two proposals were based on reasons considered to be misleading; (h) the company determined not to solicit proxies after receipt of one proposal; and (i) five proposals were withdrawn by the stockholder.

Ratio of Soliciting to Non-soliciting Companies

Of the 2,236 issuers which had securities listed as of June 30, 1958, 2,001 had voting securities so listed. Of these 2,001 issuers, 1,551 or 78 per cent solicited proxies under the Commission's proxy rules for the election of directors during the 1958 fiscal year.

Proxy Contests

During the 1958 fiscal year, 34 companies were involved in proxy contests for the election of directors, 22 of which contests were for

control of the company and 12 for representation on the board of directors. In these contests a total of 968 persons filed detailed statements as participants, or proposed participants, under the requirements of rule 14a–11.

Of the 22 contests where control was involved, the management won control in 14, the opposition in 3, 3 were settled prior to the meeting of stockholders, and 2 were pending at June 30, 1958. Of the 12 contests where representation on the board of directors was involved, the management won control in 8, the opposition in 1, 1 was settled, and 2 were pending at June 30, 1958.

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. Set forth below are certain data with respect to registration of brokers and dealers and applications for such registration during the fiscal year 1958:

Effective registrations at close of preceding fiscal year	4,771
Applications pending at close of preceding fiscal year	69
Applications filed during fiscal year	704
Total	5,544
Applications denied	5
Applications withdrawn	15
Applications cancelled	0
Registrations withdrawn	609
Registrations cancelled	65
Registrations revoked	38
Registrations effective at end of year	4,752
Applications pending at end of year	60
Total	5,544

Administrative Proceedings

Under section 15 (b) of the Securities Exchange Act of 1934, the Commission shall deny broker-dealer registration to an applicant or revoke such registration if, after appropriate notice and opportunity for hearing, it finds that such action 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 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. Bad reputation or 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.

Below are set forth statistics respecting 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:	
Proceedings to revoke registration	22
Proceedings to revoke registration and suspend or expel from NASD or exchanges	25
Proceedings to deny registration to applicants	9
Total proceedings pending	56
Proceedings instituted during fiscal year:	
Proceedings to revoke registration	33
Proceedings to revoke registration and suspend or expel from NASD or exchanges	20
Proceedings to deny registration to applicants	4
Total proceedings instituted	57
Total proceedings current during fiscal year	113
Proceedings disposed of:	
Proceedings to revoke registration:	
Registration revoked	23
Dismissed on withdrawal of registration	8
Registration cancelled, proceedings discontinued	3
Dismissed—registration permitted to continue in effect	1
Total	35

Proceedings disposed of—Continued	
Proceedings to revoke registration and suspend or expel from NASD or exchanges:	
Registration revoked and firm expelled from NASD	15
Dismissed on withdrawal of registration	1
Dismissed—registration and membership permitted to continue in effect	1
Suspended for a period of time from NASD	3
Total	20
Proceedings to deny registration to applicant:	
Registration denied	5
Dismissed on withdrawal of application	1
Dismissed—application permitted to become effective	2
Total	8
Proceedings pending at end of fiscal year:	
Proceedings to revoke registration	20
Proceedings to revoke registration and suspend or expel from NASD or exchanges	25
Proceedings to deny registration to applicants	5
Total proceedings pending at end of fiscal year	50
Total proceedings accounted for	113

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

The distribution to the public of unregistered securities of Crowell-Collier Publishing Company led to proceedings by the Commission in which the broker-dealer firm of Elliott & Company was suspended from the National Association of Securities Dealers, Inc. for a period of twenty days,[12] and the firms of Gilligan Will & Co.[13] and Dempsey & Company [14] were similarly suspended for periods of five days each. Elliott & Company had sold convertible debentures on behalf of Crowell-Collier to a small group, including Gilligan, Will & Co. and Dempsey & Company, and had obtained from these purchasers statements of intention to hold the securities for investment. However, a number of the original purchasers, including those two firms, shortly thereafter resold portions of their purchases to additional persons, who also furnished statements of investment intent. Elliott & Company claimed the exemption from registration provided by the Securities Act of 1933 for private offerings, and the other two firms in addition claimed that they were not underwriters and were

[12] Securities Exchange Act Release No. 5688 (May 7, 1958).

[13] Securities Exchange Act Release No. 5689 (May 7, 1958); petition for review of Commission Order filed May 14, 1958, CA–2 No. 25, 171; pending at close of fiscal year.

[14] Securities Exchange Act Release No. 5690 (May 7, 1958).

therefore exempt. The Commission ruled that these exemptions were not available. Although Elliott & Company denied that it had had knowledge of the resales, the Commission stated that actual knowledge of resale was not essential to a finding of violation of section 5 of the Securities Act, there being many factors sufficient to put persons experienced in securities matters on notice of the probability of further sales, including the speculative nature of the securities, the fact that the debentures were issued in bearer form and in small denominations, the establishment of a conversion price below the market price of the common stock and the listing of the common stock on the American Stock Exchange. The Commission also held that the basic policy of registration under the Securities Act could not be frustrated by the technique of mechanically obtaining so-called "investment intent" letters from successive groups of purchasers.

The firm of *Batkin & Co.*[15] was found by the Commission to have practiced fraud in the purchase and sale of securities, failed to comply with bookkeeping and net capital requirements, and sold unregistered securities. The registration of Batkin & Co. as a broker-dealer was revoked and it was expelled from the National Association of Securities Dealers, Inc.

The application of *Gregory & Company, Inc.*,[16] a Canadian broker-dealer, for registration as a broker-dealer was denied by the Commission and Kenneth H. Gregory, president, director and controlling stockholder, was found to be the cause of the denial. The Commission found that Gregory & Company, Inc. had made false and misleading statements in its application for registration and had been effecting transactions in interstate commerce in unregistered securities while it was not registered as a broker-dealer. The Commission also found a violation of the anti-fraud provisions of section 17 of the Securities Act of 1933 in that the applicant and Gregory offered securities to customers at prices substantially higher than, and bearing no reasonable relationship to, the market price.

The application for broker-dealer registration of *P. J. Gruber & Co., Inc.*[17] was denied where it was found that the applicant used the mails and interstate facilities in the sale of 49,500 shares of Acoustica Associates, Inc. stock when no registration statement was in effect. In addition, false and misleading entries were found in the blotters and ledgers maintained by the Gruber office. The Com-

[15] Securities Exchange Act Release No. 5709 (June 9, 1958).

[16] Securities Exchange Act Release No. 5680 (April 18, 1958).

[17] Securities Exchange Act Release No. 5627 (January 15, 1958); petition for review of Commission order filed March 17, 1958, C. A. D. C. No. 14,381; pending at close of fiscal year.

mission found Peter J. Gruber, controlling stockholder, and Phil Sacks, president, to be the cause of such denial.

The registrations of four broker-dealer firms were revoked by the Commission on the basis of injunctions issued against each of these firms for selling unregistered securities. The broker-dealers so revoked were *Harold L. Nielsen*, doing business as *Nielsen Investment Co.*,[18] *Battery Securities Corporation*,[19] *W. & M. Oil Company*,[20] and *Percy Dale Lanphere*, doing business as *Dale Lanphere*.[21] Battery Securities Corporation was also expelled from the National Association of Securities Dealers, Inc.

In a number of cases the Commission revoked broker-dealer registrations on the basis of injunctions against further violations of the Commission's net capital rule which requires that a broker-dealer maintain for the protection of customers a prescribed ratio between aggregate indebtedness and net capital. Revocations were based on such injunctions in the following cases: *Milton J. Shuck*, doing business as *M. J. Shuck Company*,[22] *Quintin Securities, Inc.*,[23] *A. J. Gould & Co., Inc.*,[24] *Foster-Mann, Inc.*,[25] and *W. L. Mast & Co.*[26] The last named broker-dealer firm was also expelled from the National Association of Securities Dealers, Inc. The broker-dealer registration of *Stein, Botwinick & Company, Inc.*[27] was revoked by the Commission on a finding that the broker-dealer firm was enjoined from engaging in the securities business for effecting securities transactions while insolvent and making false statements in the purchase and sale of securities.

The broker-dealer registration of *Wendell Elmer Kindley*, doing business as *Wendell E. Kindley Co.*[28] was revoked for failure to keep books and records and to comply with the net capital requirements, as well as for doing business while insolvent. It was found by the Commission that in eight transactions in one month the registrant had purchased securities from broker-dealers through the use of the mails and other means of interstate commerce when he was not in a position to

[18] Securities Exchange Act Release No. 5545 (July 10, 1957).
[19] Securities Exchange Act Release No. 5592 (October 25, 1957).
[20] Securities Exchange Act Release No. 5622 (January 13, 1958).
[21] Securities Exchange Act Release No. 5546 (July 10, 1957).
[22] Securities Exchange Act Release No. 5574 (September 13, 1957); petition for review of Commission order filed November 12, 1957, C. A. D. C. No. 14,208; pending at close of fiscal year.
[23] Securities Exchange Act Release No. 5654 (March 13, 1958).
[24] Securities Exchange Act Release No. 5606 (November 25, 1957); petition by William Fisher to review Commission order in which petitioner was found to be a cause of the revocation of broker-dealer registration of *A. J. Gould & Co., Inc.*, filed December 26, 1957, CA–2 No. 24957; pending at close of fiscal year.
[25] Securities Exchange Act Release No. 5613 (December 12, 1957).
[26] Securities Exchange Act Release No. 5632 (January 27, 1958).
[27] Securities Exchange Act Release No. 5542 (July 8, 1957).
[28] Securities Exchange Act Release No. 5559 (August 7, 1957).

pay for such securities, that he was unable to pay for them upon delivery, and that some sellers suffered losses because of his failure to consummate the purchases.

The broker-dealer registration of *Roberts Securities Corporation*[29] was revoked on the grounds that its president and controlling stockholder had been enjoined by the Supreme Court of the State of New York from engaging in the securities business in that state, and that the firm had failed to disclose the issuance of the injunction by amendment to its application.

The Commission revoked the registration of *Branch Carden & Co., Inc.*[30] and found Branch J. Carden, Jr., its president, to be the cause of such revocation. The firm and its president had been permanently enjoined by the U. S. District Court for the Western District of Virginia from engaging in and continuing certain conduct in connection with the purchase and sale of securities. The decree entered with the consent of both defendants enjoined violations of the anti-fraud, net capital, and bookkeeping provisions of the Act. Following pleas of guilty, both defendants had been convicted by the same court of violations of these provisions of the Act.

C. J. Montague, Inc.[31] was enjoined by the Supreme Court of the State of New York from engaging in the securities business in that state, on the basis of a complaint alleging the firm's insolvency, fraudulent concealment of such insolvency, and misappropriation of customer's funds and securities. The Commission revoked the firm's registration as a broker-dealer on the basis of the injunction, false and misleading statements in the application for registration, fraud in the purchase and sale of securities, and failure to comply with the net capital and bookkeeping rules under the Securities Exchange Act.

Revocations of the broker-dealer registrations of *Harry B. Simon*, doing business as *H. B. Simon Co.*,[32] *William T. Bowler*, doing business as *William T. Bowler & Company*,[33] a sole proprietorship, *William T. Bowler and Company*,[34] a partnership, and *Christopulos & Nichols Brokerage Company, Inc.*[35] were based on convictions in connection with securities transactions. Simon had been convicted on April 30, 1957 in the Federal District Court for the Southern District of New York on his plea of guilty of violating section 17 (a) of the Securities Act of 1933 and the mail fraud and conspiracy provisions of the United States Criminal Code by making fraudulent representa-

[29] Securities Exchange Act Release No. 5569 (August 27, 1957).
[30] Securities Exchange Act Release No. 5722 (June 26, 1958).
[31] Securities Exchange Act Release No. 5717 (June 17, 1958).
[32] Securities Exchange Act Release No. 5614 (December 12, 1957).
[33] Securities Exchange Act Release No. 5675 (April 11, 1958).
[34] Securities Exchange Act Release No. 5675 (April 11, 1958).
[35] Securities Exchange Act Release No. 5703 (May 27, 1958).

tions in connection with the sale of common stock of Bostona Mines Company between January 1, 1952 and October 1, 1956.

On September 4, 1957 William T. Bowler had pleaded guilty and was convicted in the Court of Quarter Sessions of McKean County, Pennsylvania, of (1) embezzlement of a customer's securities; (2) larceny in failing to return securities held by him as bailee; (3) fraudulent failure to disclose to the Pennsylvania Securities Commission that he sold certain securities without informing purchasers that neither he nor the issuer had any authorization from that Commission to sell them; (4) sale of certain securities without filing a notice of intention to sell such securities with that Commission; and (5) participation and assistance in the sale of certain securities by salesmen who were not registered with that Commission. It was also found that both the sole proprietorship and the partnership had violated the record-keeping requirements of the Securities Exchange Act of 1934 and the rules thereunder.

Christopulos & Nichols Brokerage Company, Inc., had been enjoined from improperly extending credit, failing to send confirmations of transactions to customers and failing properly to record transactions, in violation of sections 7, 15, and 17 of the Securities Exchange Act of 1934, and had also been convicted of criminal contempt of that injunction.

The revocations of the broker-dealer registrations of *Horace Linson Michener*[36] and *Cobb and Company, Inc.*,[37] were based on findings of misappropriation of customers' funds and the Commission found that Michener had bought and sold securities without delivering the securities sold or paying for the securities purchased, in violation of sections 10 (b) and 15 (c) (1) of the Securities Exchange Act and the rules thereunder. Cobb and Company, Inc., induced certain persons in 68 transactions to order securities and to make payment therefor, but, instead of purchasing the securities ordered, appropriated such payments to its own use. In connection with six of these transactions Cobb and Company falsely represented that it had purchased the securities ordered. 21 of the 68 transactions took place when the firm was insolvent. In these transactions, registrant accepted monies and securities upon the false representation that it was able to execute the orders and appropriated such monies and securities to its own use.

McInnes & Co., Inc.,[38] a registered broker-dealer, was also found to have accepted customers' funds and securities without disclosing its insolvency. The Commission also found, among other things, that in the sale of securities of Alabama General Insurance Co., the firm made

[36] Securities Exchange Act Release No. 5605 (November 25, 1957).
[37] Securities Exchange Act Release No. 5621 (January 7, 1958).
[38] Securities Exchange Act Release No. 5552 (July 23, 1957).

false and misleading statements, with respect to the return on the investment in such securities and the government contracts of a subsidiary of that company, and that it sold unregistered securities of that company. The Commission revoked the broker-dealer registration of McInnes & Co., Inc. expelled it from the National Association of Securities Dealers, Inc. and further found Raymond McInnes to be a cause of such revocation and expulsion.

The Commission denied the application of *F. W. Horne & Co., Inc.*[39] for registration as a broker-dealer because of the methods it utilized to effect purchases and sales of securities of First New Hampshire Corporation. The Commission found that violations of the anti-fraud provisions had been committed and that the firm had effected securities transactions while not registered.

Looper and Company[40] was found to have induced customer transactions which were excessive in volume and frequency in view of the character of the accounts, and took secret profits and improperly extended and arranged for credit in cash accounts, in willful violation of the Securities Act and Securities Exchange Act and the rules thereunder. Its broker-dealer registration was revoked.

The application of *Indiana State Securities Corporation*,[41] for registration as a broker-dealer was denied by the Commission upon a finding that applicant had willfully violated the anti-fraud provisions of the Securities Exchange Act and the Securities Act in sales of stock of Insurance Corporation of America. Applicant's sales were made with the use of a prospectus which indicated that the stock was offered by the issuer at a public offering price of $6.00 per share, but applicant failed to disclose that there was an over-the-counter market for the stock at a substantially lower price and that some of the stock so offered was owned by the applicant and the proceeds of its sale would not be received by the issuer. The Commission further found Charles E. Johnson, Marvin H. Weisman, and Rudy Klapper, officers and directors of subject corporation, to be the causes of the denial.

The application of *The Whitehall Corporation*[42] for registration as a broker-dealer was also denied by the Commission upon a finding that the applicant had been selling unregistered securities, had used false and misleading statements in connection with such sales, had submitted as part of its application a misleading financial statement and had engaged in interstate transactions in securities without being registered. A petition for rehearing filed by The Whitehall Corporation was denied.

---

[39] Securities Exchange Act Release No. 5597 (November 7, 1957).
[40] Securities Exchange Act Release No. 5676 (April 15, 1958).
[41] Securities Exchange Act Release No. 5602 (November 18, 1957).
[42] Securities Exchange Act Release No. 5667 (April 2, 1958).

False and misleading statements on the part of a broker-dealer representing the prices charged for certain securities to be the market price and failure to disclose that the market for the securities was maintained and dominated by it was the basis for the revocation of the broker-dealer registration of *Daniel & Co., Ltd.*[43] and its expulsion from the National Association of Securities Dealers, Inc.

The registration of *Allen E. Beers Company*[44] was revoked and Allen E. Beers, the controlling partner, was found to be a cause of the revocation. The Commission found in part that the company's salesmen sold stock of Minerals Processing Company to customers by means of false and misleading representations that, among other things, the company's profits would be substantial because of the discovery of rich mica and beryl, there would be increases in the company's production, profits and earnings, and the value of its stock and that the company and its stock would be the object of favorable magazine and television publicity. Registrant was also found to have unlawfully extended credit in violation of section 7 (c) (1) of the Securities Exchange Act and Regulation T adopted thereunder.

The broker-dealer registrations of *Alfred D. Laurence & Co.*,[45] *Kenneth E. Goodman & Co.*,[46] *Cornelis de Vroedt*, doing business as *Cornelis de Vroedt Company*[47] and *Cornelis de Vroedt, Inc.*[48] were revoked and the broker-dealers were expelled from the National Association of Securities Dealers, Inc. for failure to comply with the Commission's net capital rule and because of false entries or omissions of material facts in records or in papers filed with the Commission.

The broker-dealer registration of *Charles R. Morgan*[49] was revoked for failure to file financial reports with the Commission as required under section 17 (a) of the Securities Exchange Act.

The broker-dealer registrations of *Utah Uranium Brokers, Inc.*[50] and *Joseph Ernest Murray*, doing business as *Murray & Company*,[51] were revoked and they were expelled from the National Association of Securities Dealers, Inc. for failure to make and keep current books and records.

The broker-dealer registration of *Bryan Halbert Kyger, Jr.*, doing business as *Kyger & Co.*,[52] was revoked upon findings that it had filed

[43] Securities Exchange Act Release No. 5549 (July 18, 1957).
[44] Securities Exchange Act Release No. 5558 (August 7, 1957).
[45] Securities Exchange Act Release No. 5655 (March 14, 1958).
[46] Securities Exchange Act Release No. 5684 (April 23, 1958).
[47] Securities Exchange Act Release No. 5628 (January 17, 1958).
[48] Securities Exchange Act Release No. 5628 (January 17, 1958).
[49] Securities Exchange Act Release No. 5565 (August 13, 1957).
[50] Securities Exchange Act Release No. 5579 (September 23, 1957).
[51] Securities Exchange Act Release No. 5717 (June 13, 1958).
[52] Securities Exchange Act Release No. 5712 (June 6, 1958).

a false financial report and had failed to deliver securities for which customers had paid, to comply with net capital requirements and to maintain required books and records.

The Commission also found it to be in the public interest to revoke the broker-dealer registration of *Harold L. Nielsen*, doing business as *Nielsen Investment Co.*[53] on the basis of an injunction entered against the registrant prohibiting him from further net capital and bookkeeping violations as well as from selling unregistered securities and engaging in business while insolvent. The broker-dealer registration of *Michael Raymond Co., Inc.*[54] was revoked following a New York State injunction restraining it from further engaging in security transactions while insolvent, making fraudulent representations and defrauding customers.

During the year, the broker-dealer registrations of *William Malcolm Ellsworth*,[55] *Elmer Allen Haley*, doing business as *Elmer A. Haley*,[56] *Maxwell M. Sacks*, doing business as *Maxwell Brokerage Co.*,[57] and *Tasch & Co., Inc.*[58] were revoked for failure to file the annual reports of financial condition required by rule 17a–5.

Net Capital Rule

Rule 15c3–1 adopted under section 15 (c) (3) of the Securities Exchange Act, commonly known as the net capital rule, provides safeguards for funds and securities of customers dealing with broker-dealers. This rule restricts the amount of indebtedness which may be incurred by a broker-dealer 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 forthwith to correct any capital deficiency found to exist either by inspection or by reports filed with the Commission, injunctive action may be taken and proceedings instituted to determine whether or not the broker-dealer registration should be revoked. During the fiscal year, violations of the net capital rule were alleged in injunctive actions filed against 15 broker-dealers and in revocation proceedings instituted against 12.

Where a broker-dealer participates in "firm commitment" underwritings, a careful check, based upon latest available information, is

[53] Securities Exchange Act Release No. 5545 (July 10, 1957).
[54] Securities Exchange Act Release No. 5543 (July 9, 1957).
[55] Securities Exchange Act Release No. 5719 (June 19, 1958).
[56] Securities Exchange Act Release No. 5719 (June 19, 1958).
[57] Securities Exchange Act Release No. 5719 (June 19, 1958).
[58] Securities Exchange Act Release No. 5719 (June 19, 1958).

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 underwriters.

Financial Statements

During the year the Commission adopted an amendment to rule 17a–5 under the Securities Exchange Act requiring brokers and dealers to file reports of financial condition. The amendment became effective on November 15, 1957 and was deemed necessary (1) to eliminate administrative difficulties which arose from the requirement that a report be filled *within each calendar year*, but that reports for two consecutive years could not be filed within less than 4 months of each other and (2) to provide more protection to customers by requiring that more reports be certified. As amended, the rule now requires a report to be filed as follows: (A) as of a date within each calendar year, except that the first report (other than in the case of successors) must be as of a date not less than one, nor more than five months after the broker or dealer becomes subject to the rule, and a broker or dealer who succeeds to and continues the business of a predecessor is not required to file a report if the predecessor has filed one as of that year; (B) reports may not be as of dates within four months of each other; and (C) a report must be filed not more than 45 days after the date of the report.

Under the amended rule, every report must be certified by a certified public accountant or a public accountant who is in fact independent except a report filed by (1) a member of a national securities exchange who, from the date of his previous report, has not transacted business in securities directly with or for others than members, has not carried any margin account, credit balance or security for any person other than a general partner and has not been required to file a certified financial statement with any national securities exchange; (2) a broker who, from the date of his previous report, has limited his securities business to soliciting subscriptions as an agent for issuers, has transmitted funds and securities promptly and has not otherwise held

funds or securities for or owed monies or securities to customers; and (3) a broker or dealer who, from the date of his last report, has limited his securities business 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.

The reports of financial condition filed under rule 17a–5 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. Revocation proceedings are brought against registrants who fail to make the necessary filing. During the year 4,473 reports of financial condition were filed, representing an increase of 145 over fiscal 1957.

Broker-Dealer Inspections

During 1958, the Commission continued to place increased emphasis upon its inspection program. Regular and periodic 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 for the protection of investors. The purpose of these inspections is to assure compliance by broker-dealers with the Federal 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 inspectors also determine whether the required books and records of the broker-dealers 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 excessive trading in customers' accounts involving "churning" and "switching," sale of unregistered securities, use of improper sales literature or sales methods and other fraudulent practices. Inspections frequently discover situations which, if not corrected, might result in losses to customers.

The policy inaugurated in fiscal year 1956 of increasing the number of inspections was continued in fiscal year 1958. Inspections completed during the year numbered 1,452, an increase of more than 19% over the previous year.

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 discovered 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 usually 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 or the protection of investors 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 1958:

Type	*Number*
Financial difficulties	130
Hypothecation rules	108
Unreasonable prices for securities purchases	226
Regulation T of the Federal Reserve Board	163
Secret profits	8
Confirmation and bookkeeping rules	1,016
Miscellaneous	86
Total indicated violations	1,737
Total number of inspections	1,452

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 because of budget limitations for the Commission to rely to a considerable extent

upon the inspection programs of the major exchanges, such as the New York Stock Exchange.

Inspecting agencies now participating in the coordination program include the New York Stock Exchange, the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange, the Pacific Coast Stock Exchange, the Philadelphia-Baltimore Stock Exchange, the Pittsburgh 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. The statute requires that the rules of such associations must be designed, among other things, to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market. Such associations serve as a medium for the cooperative self-regulation of over-the-counter brokers and dealers. They operate under the general supervision of this Commission, which is authorized to review disciplinary actions and decisions which affect the membership of members or applicants for membership and to consider all changes in the rules of associations. The National Association of Securities Dealers, Inc. (NASD) is the only association registered with the Commission 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 and for price concessions. Discounts and similar allowances may properly be granted by members only to other members.

On June 30, 1958, there were 3,820 NASD members, a decrease of 36 during the year as a result of 419 admissions to and 455 terminations of membership. There were also registered with the NASD as registered representatives on that same date, 65,314 individuals, including all partners, officers, traders, salesmen and other persons employed by or affiliated with member firms in a capacity which involve their doing business directly with the public. The number of registered representatives increased by 8,211 during the year as a result of 15,278 initial registrations, 7,246 re-registrations and 14,313 terminations of registrations.

Disciplinary Actions

The Commission receives from the NASD summaries of decisions on all disciplinary actions against members and registered representatives of members. Each such decision is reviewed 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 Association's files on particular cases. Where the facts appear to indicate actionable violations of the Commission's rules or statutes, independent Commission enforcement inquiry or action is initiated through the appropriate Regional Office.

During the fiscal year the Association reported to the Commission final action on 116 formal complaint cases. Each such action involved charges that a member firm had violated specified rules of fair practice. In addition, however, 48 of these complaints included charges that 75 different registered representatives had also violated one or more such rules.

Of the 116 complaints on which final Association action was taken, 10 were withdrawn or dismissed on findings that the allegations in the complaints had not been sustained. In the remaining cases, one or more violations were found as alleged in the complaint and the members and registered representatives found to have committed the violations were subjected to penalty. The penalties imposed covered a wide range of available sanctions and in many cases more than a single penalty was imposed on a firm or registered representative. Thus, 32 firms were expelled and six were suspended for periods ranging from 30 days to 3 years; 48 firms were fined amounts ranging from $50 to $8,240 and aggregating $28,765; and 13 were censured. Moreover, the registrations of 37 registered representatives were revoked; one representative was suspended for six months; nine representatives were fined sums ranging from $50 to $5,000 and aggregating $9,400; and 16 representatives were censured. In 56 of the complaints, costs were assessed in amounts aggregating $16,349.61 during the year.

In addition to disciplinary action by formal complaint procedure as described above, action was also taken against members pursuant to a minor violation procedure as specified in the NASD Code of Procedure and as described in the last annual report. Under this procedure, in a disciplinary action where the facts are not disputed and the matter involves only minor or technical violations of the rules and no significant damage to customers, other parties or the public interest, the member may waive a hearing and accept a penalty not to exceed censure and a fine of $100. The respondent is not required to accept this procedure and may elect to have a hearing as in the case of a complaint involving more serious violations.

In all, reports were received from the Association descriptive of 47 cases handled by the minor violation procedure. One case was subsequently remanded by the Board of Governors to the District Business Conduct Committee of initial jurisdiction for consideration pursuant to the ordinary complaint procedure. The remaining 46 cases resulted in censure in 29 instances, fines in 2 instances, and censure and fines in 15 instances. The fines ranged from $25 to $100 and aggregated $1,175.

Commission Review of NASD Disciplinary Action

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 timely application of any aggrieved party. The effectiveness of any penalty imposed by the Association is automatically stayed pending determination of any matter before the Commission on review. At the beginning of the fiscal year, three such review cases were pending before the Commission, and during the year three other applications for review were filed. One such application, filed by G. Wayne Gibbs, doing business as Gibbs & Company, was withdrawn prior to determination. Another application, filed by Daniel M. Sheehan, Jr., doing business as Sheehan & Company, was considered unacceptable by the Commission as it had not been filed within sixty days of the date the action was taken and because there were then pending against the firm administrative proceedings under section 15 (b) of the Act to determine whether the Commission should find it in the public interest to revoke the firm's registration as a broker-dealer. In rejecting this application the Commission advised the firm that it would reconsider accepting the case for review after completion of the section 15 (b) proceedings should the firm then decide to file a new petition. Two review cases were decided by the Commission during the year and two were pending at the end of the fiscal year.[59]

The Commission set aside disciplinary action taken by the Board of Governors of the Association against Samuel B. Franklin & Co. for alleged violation of the NASD rule of fair practice that requires a member to observe high standards of commercial honor and just and equitable principles of trade in the conduct of his business.[60] The case was an outgrowth of a dispute between Franklin & Co. and Pledger & Co., Inc., the complainant, and involved a transaction in stock of Western Oil Fields sold by Franklin & Co. to Pledger & Co.,

[59] The pending cases concerned applications filed by Batkin & Co. (File 16–1A67) and Churchill Securities Corp. (File 16–1A71). The Batkin appeal was dismissed as moot shortly after the close of the fiscal year. Securities Exchange Act Release No. 5763 (August 22, 1958).

[60] Securities Exchange Act Release No. 5603 (November 18, 1957) and File 16–1A65.

Inc. at $2.70 per share. After delivery and payment, Pledger returned the shares on the grounds that the shares delivered were certificates which had been the subject of a 1 for 4 reverse stock split. Pledger refused to cancel the original transaction since the price of the stock had advanced to 3⅛ per share. Franklin suggested the purchase of new shares and agreed to pay the attendant loss of about $225, but Pledger advised against such a purchase at that time since it believed the price would go down. However, the price of the stock continued to advance. Pledger subsequently bought the stock in at 4⅞ and requested that Franklin make good an asserted loss to Pledger of $1,282.50. Pledger first accepted the suggestion of Franklin that the matter be arbitrated, but then withdrew its consent and filed a complaint before the NASD. The Board of Governors affirmed a decision of the District Business Conduct Committee that Franklin had violated the NASD rule by failing to make a good delivery of the stock and failing to reimburse the buyer for damages. The Board of Governors censured Franklin, assessed costs in the amount of $441.22 and directed the firm to make good the loss sustained by Pledger.

In its opinion the Commission observed that it was not its function, nor that of the NASD, in applying the rule, to decide private contract rights between the parties, and that "not every failure to perform a contract violates the NASD rule; it must appear that such failure was unethical or dishonorable." The Commission concluded that the facts here present did not justify a finding that Franklin had violated the NASD rule. In support of this conclusion, it pointed out that there was no evidence of an intention to mislead Pledger or that the delivery of the old certificates was anything but an unintentional error. Nor could the Commission find that Franklin sought to evade responsibility arising from the delivery of the old certificates, as evidenced by its immediate acceptance of the return of the old certificates and its refund to Pledger of the purchase price, its prompt offer to buy in shares of the new stock and accept the $225 loss resulting from the increase in the market price thereof, its reliance on Pledger's advice in not making delivery of new stock at that time, and its offer to submit to arbitration after Pledger had bought in new stock at a much higher price some six months after the return of the old certificates. The Commission noted that its action reversing the NASD action was in no way a determination regarding the validity or the amount of Pledger's claim against Franklin.

In the other decided case, the Commission affirmed a six-month suspension, $3,000 fine and censure imposed by the National Association of Securities Dealers, Inc., upon Graham & Co., of Pittsburgh,

Pennsylvania, and the censure of E. W. Sterling Graham, its only active partner, for violation of NASD rules requiring the maintenance of high standards of commercial honor and just and equitable principles of trade.[61]

The NASD's disciplinary action was based largely upon sales of securities of Texas Adams Oil Co. by Graham & Co. to its customers at a price which was "unfair and not reasonably related to the current market price." The Commission also sustained the additional rulings of the NASD that Graham & Co. have violated its rules (1) by failure to register salesmen employed at its Birmingham, Alabama branch office in 1955, (2) by failure to disclose, in the sale of Bassett Press & Mailing Co. stock, that that company and Graham & Co. were under common control and (3) by failure to endorse the records of salesmen's transactions to show approval of such transactions.

Commission Review of NASD Action on Membership

Section 15A (b) of the Act provides 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 Association membership if he, or any controlling or controlled person, is under any of the several disabilities specified in the statute. The disqualifications included in the statute are repeated in the Association's by-laws which, however, also include other disqualifications permitted by, but not explicitly set out in, the statute. Among other things, the statutory disabilities include an outstanding order of revocation by the Commission of a broker-dealer registration and the Association's by-laws include conviction within the preceding 10 years of a felony found by the Association to have involved abuse or misuse of a fiduciary relationship.

A Commission order approving or directing admission to or continuance in Association membership, notwithstanding a disqualification under section 15A (b) (4) of the Act or under an effective Association rule adopted under that section or section 15A (b) (3), is generally entered only after the matter has been submitted by the member of, or applicant for membership to, the Association. Where, after consideration, the Association is favorably inclined, it ordinarily files with the Commission an application on behalf of the petitioner. A broker-dealer refused Association sponsorship, however, may file an application directly with the Commission. The Commission carefully reviews the record and documents filed in support of the application and, if considered necessary, obtains additional evidence bearing on the matter. At the beginning of the fiscal year, three such petitions were pending before the Commission; during the year one was filed

[61] Securities Exchange Act Release No. 5687 (May 1, 1958) and File 16–1A66.

and three were disposed of; and one was pending at the year end.

The Commission approved an application filed by the NASD permitting the continuance of Clayton Securities Corporation in Association membership with Harold S. Goldberg as an employee and registered representative.[62] Goldberg had been convicted on May 3, 1955, following a plea of guilty, of violations of the anti-fraud provisions of the Securities Act of 1933 and the mail fraud statute based on failure adequately to supervise the activities of salesmen who had induced excessive trading in the accounts of customers to obtain excessive commissions. In granting the approval requested by the Association, the Commission recognized that none of the charges concerned Goldberg's own dealings with customers, that he would not be employed in a supervisory capacity and that he would be subject to close supervision by officers of the employing firm.

The Commission also approved applications sponsored by the NASD for the continuation in the Association membership of two firms each with a revoked person employed as a registered representative. In approving the employment of Leonard H. Whitaker by an NASD member firm, the Commission stated: "While the misconduct which led to revocation of Whitaker's registration was serious in nature, we do not think it should constitute a permanent bar from the securities business. Upon the basis of our review of the entire record and giving due consideration to the lapse of time since the revocation, the close supervision to be exercised over him, and the favorable recommendation of the NASD, we conclude that we may approve the application of the NASD in the public interest provided that Whitaker is bonded so as to afford additional investor protection against possible loss as a result of any misconduct by him." [63]

In granting similar approval for the employment of David Gordon, the Commission observed that Gordon's conduct resulting in the revocation and expulsion of Gordon & Company did not involve his conduct as a salesman but his activities in directing the affairs of his firm, and that in his employment as a salesman of the member firm he will be under close supervision, including supervision of the type of security he sells, that he will not have custody of funds or securities of customers and that he will be bonded.[64]

LITIGATION UNDER THE SECURITIES EXCHANGE ACT OF 1934

As a protective measure for the public, the Commission is authorized to institute actions to enjoin broker-dealers and other persons from

[62] Securities Exchange Act Release No. 5554 (July 26, 1957) and File 16-1A63.
[63] Securities Exchange Act Release No. 5581 (September 23, 1957) and File 16-1A64.
[64] Securities Exchange Act Release No. 5698 (May 19, 1958) and File 16-1A69.

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 statutes administered by the Commission.

Anti-Fraud Litigation

In discharging its responsibility to protect the investing public by preventing frauds by broker-dealers, the Commission, during the fiscal year, obtained injunctions in *S. E. C.* v. *T. G. Anderson, Inc.*,[65] *S. E. C.* v. *J. Arthur Warner & Co., Inc., et al.*[66] and *S. E. C.* v. *Louis E. Wolfson.*[67] In the *Anderson* case the complaint alleged, among other things, 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. In the *Warner* case, an injunction was obtained against violations of the anti-fraud provisions of the Securities Exchange Act, as well as violations of numerous other sections of that Act and various provisions of the Securities Act of 1933. Its dominant aspect was the overtrading or "churning" of customers' accounts. The criminal prosecution arising out of the transactions is described in detail at page 109 of the 21st Annual Report.

In the *Wolfson* case, a temporary restraining order was obtained to enjoin further violation of the anti-fraud and anti-manipulative provisions of the Securities Exchange Act in the purchase and sale of common capital stock of American Motors Corporation, listed on the New York Stock Exchange. The Commission's complaint alleged that Louis E. Wolfson and other persons whose identities are unknown to the Commission, engaged in acts, practices and courses of business which operated and would operate as a fraud and deceit upon the public. The complaint and underlying affidavits allege and state, among other things, that Wolfson had sold over 200,000 shares of American Motors stock at a time when an article in a widely circulated financial newspaper quoted him to the effect that he and his associates owned about 460,000 shares of that stock and were "perfectly satisfied" with the company's progress. Wolfson and his agents were also alleged to have later caused a statement to be published, in a widely circulated newspaper, to the effect that the stock of American Motors looked fully priced on the basis of the immediate outlook and that he (Wolfson) was "about one-quarter of the way

[65] E. D. Washington No. 1517 (April 8, 1957).

[66] D. Massachusetts No. 51–1036. (A final injunction against the last remaining defendant was obtained on February 20, 1958.)

[67] S. D. New York No. 135–30 (June 24, 1958). Subsequent to the end of the fiscal year a permanent injunction was obtained on consent.

home" in disposing of the 400,000 shares of American Motors stock that he and his immediate family owned, and that the remaining shares would be disposed of probably in the open market and "should be cleaned up completely well before the end of the summer." The complaint further charged that in connection with the last mentioned statement Wolfson omitted to disclose that he had sold or otherwise disposed of all of his holdings in American Motors, and that he, together with his associates, had a very substantial short position in the stock and was, at the time of the publication of the newspaper article, engaged in purchasing stock of American Motors to cover the short position. The complaint also charged that the anti-manipulative provision of the Act was violated in that the statements made were false and misleading and Wolfson knew or had reasonable grounds to believe that such statements were false and misleading.

Cases Involving the Net Capital Rule

As indicated earlier, section 15 (c) (3) of the Securities Exchange Act and rule 15c3–1 thereunder are designed to provide protection against loss of customers' securities and monies by reason of financial difficulties broker-dealers may encounter by requiring registered broker-dealers to maintain a prescribed ratio between net capital and aggregate indebtedness.

In numerous cases the Commission resorts to injunctive relief when broker-dealers are conducting their business in violation of this financial requirement. During the fiscal year injunctions were sought by the Commission to enjoin broker-dealers from further violations of this net capital rule in *S. E. C.* v. *J. D. Creger and Co.;*[68] *S. E. C.* v. *Tadao I. Watanabe, doing business as Honolulu Securities & Investment Co.;*[69] *S. E. C.* v. *Sanders Investment Company;*[70] *S. E. C.* v. *Owens and Company;*[71] *S. E. C.* v. *Joseph J. Wilensky & Co.;*[72] *S. E. C.* v. *William H. Keller, Jr., doing business as W. H. Keller, Stockbroker;*[73] *S. E. C.* v. *A. J. Gould & Co., Inc., et al.;*[74] *S. E. C.* v. *Lynne B. Fenner and The Fenner Corporation;*[75] *S. E. C.* v. *First Jersey Securities Corp. and Mortimer L. Schultz;*[76] *S. E. C.* v. *William Whitehead;*[77] *S. E. C.* v. *Tanya Kaye, doing business as The Kaye*

[68] S. D. California No. 369–57 WB (March 21, 1957).
[69] D. Hawaii No. 1585 (October 15, 1957).
[70] D. New Mexico No. 3685 (December 12, 1957).
[71] D. Colorado No. 5935 (January 21, 1958).
[72] S. D. Florida No. 8559–M (June 13, 1958).
[73] S. D. Indiana No. IP–58–C–46 (March 30, 1958).
[74] S. D. New York No. 113–87 (September 18, 1956).
[75] S. D. New York No. 128–355 (January 8, 1958).
[76] D. New Jersey No. 979–56 (December 21, 1956).
[77] D. New Jersey No. 1255–57 (December 31, 1957).

Investing Co.;[78] *S. E. C.* v. *Peerless-New York, Inc.*;[79] *S. E. C.* v. *Securities Distributors, Inc. and Rolf Wurtz*;[80] *S. E. C.* v. *Alfred D. Laurence & Co.*,[81] and *S. E. C.* v. *Jean R. Veditz Co., Inc.*[82] In the first eleven named cases the appropriate district court in each instance granted a permanent injunction. The remaining cases were pending at the close of the fiscal year with preliminary injunctions granted against Peerless-New York, Inc. and Securities Distributors, Inc.

Operations of broker-dealers while in violation of the net capital rule, and while insolvent without disclosing such insolvency to customers, thus representing that they were ready and able to execute customers' orders and to meet their liabilities in connection therewith, were the basis for the actions in *SEC* v. *Laurence W. L. Barrington, doing business as Barrington Investments*,[83] *SEC* v. *F. R. Chatfield Company, Inc.*,[84] *S. E. C.* v. *Thompson and Sloan, Inc., et al.*[85] and *SEC* v. *George T. Argeros, et al.*[86] The complaints in the latter two cases also included allegations that the defendants had failed to make and keep the books and records required under section 17 (a) of the Act and rule 17a–3 thereunder. Permanent injunctions were granted in all of these cases.

Delisting Cases

In *Great Sweet Grass Oils, Ltd.* v. *S. E. C.*[87] the Court of Appeals for the District of Columbia Circuit, in a *per curiam* opinion, affirmed an order of the Commission withdrawing the registration on the American Stock Exchange of the capital stock of the petitioner, Great Sweet Grass Oils, Ltd. The Commission "delisted" the securities under section 19 (a) (2) of the Securities Exchange Act of 1934 because it found that petitioner had made false and misleading statements in reports required to be filed pursuant to section 13 of that Act. The Commission found the reports to be deficient *inter alia* in that they overstated oil and gas reserves, falsely claimed exemption from the registration requirements of the Securities Act of 1933 in purported reliance upon rule 133 and failed to indicate contingent liabilities resulting from the sales of unregistered securities. Petitioner contended unsuccessfully that the Commission had abused its discretion in delisting the securities without setting forth conditions upon which listing could be regained, and had erred in holding that

[78] E. D. New York No. 18,445 (February 6, 1958).
[79] S. D. New York No. 126–292 (November 7, 1957).
[80] S. D. New York No. 127–136 (November 25, 1957).
[81] S. D. Florida No. 7780–M (August 5, 1957).
[82] S. D. New York No. 125–393 (October 18, 1957).
[83] D. Massachusetts No. 57–1010 (October 17, 1957).
[84] D. Massachusetts No. 57–945–S (September 25, 1957).
[85] S. D. California No. 192–58Y (March 3, 1958).
[86] W. D. New York No. 7892 (June 20, 1958).
[87] 256 F. 2d 893 (C. A. D. C., 1958).

petitioner's transactions were not entitled to the exemption provided by rule 133. The Court of Appeals found no error in the Commission's opinion.

The Commission delisted the securities of Kroy Oils Limited in the same proceeding in which it delisted those of Great Sweet Grass. Kroy brought a separate petition for review of the Commission's order and withdrew its petition on December 10, 1958, just before oral argument.[88] The issues involved in both cases were substantially identical.

Litigation Involving Broker-Dealer Registration and Reporting Requirements

In *Peoples Securities Company* v. *Gadsby, et al.*,[89] the plaintiff sought a preliminary and permanent injunction restraining the members of the Commission from conducting a hearing to determine whether Peoples' application for registration as a broker-dealer should be denied or permitted to become effective, and a permanent injunction requiring the defendants to enter an order cancelling Peoples' application for registration on the ground that it has ceased to do business. Upon denial of the preliminary injunction, plaintiff applied to the Court of Appeals for the District of Columbia Circuit for an injunction pending appeal, which application was denied.[90] The complaint was ultimately dismissed on defendant's motion, the District Court finding that it had no jurisdiction.

A petition for review of the Commission's order revoking petitioner's registration as a broker-dealer was filed in *M. J. Shuck Co.* v. *S. E. C.*,[91] claiming that the Commission erred in finding that petitioner's violations of the net capital rule were wilfull and that the Commission failed to comply with the requirements of section 9 (b) of the Administrative Procedure Act. The case was argued before the Court of Appeals and that Court affirmed the Commission's decision on December 4, 1958.

Section 17 (a), and Rule 17a–3 adopted thereunder, require the keeping of books and records by registered broker-dealers and others. Failure to comply with these requirements led to permanent injunctions being entered, upon the Commission's application, in *S. E. C.* v. *Perkins & Company, Inc.*,[92] *S. E. C.* v. *Sherwood & Company, et al.*,[93] and *S. E. C.* v. *William Rex Cromwell, doing business as Cromwell & Company*.[94] In a similar action, *S. E. C.* v. *William Douglas Bradford*,[95] a preliminary injunction was entered during the year.

[88] *Kroy Oils, Limited* v. *Securities and Exchange Commission*, C. A. D. C. No. 13920.
[89] District of Columbia No. 574–58 (March 5, 1958).
[90] *Peoples Securities Company* v. *Gadsby et al.*, CA DC No. 14380.
[91] CA DC No. 14208.
[92] D. Massachusetts No. 57–1164A (December 3, 1957).
[93] N. D. California No. 37–116 (March 18, 1958).
[94] N. D. Texas No. 7798 (April 4, 1958).
[95] S. D. California No. 179–58 PH (February 26, 1958).

Proxy Litigation

The Commission intervened as a plaintiff in *Barker* v. *McPhail*,[96] and filed a complaint against the defendants McPhail and certain other officers and directors of Transue & Williams Steel Forging Corporation. The Commission's complaint alleged in essence that defendants in violation of the proxy rules engaged in the solicitation of proxies without having previously or concurrently furnished the stockholders with a proxy statement, without having filed prior thereto certain information with respect to the identity, background and interest of the participants in the solicitation and without identifying on the forms of proxies the persons on whose behalf they were to be used. Further, the complaint charged that McPhail in violation of the proxy rules had sent out soliciting material without having first filed preliminary copies with the Commission and that such material contained false and misleading statements and omissions. The Court granted a temporary restraining order, to which the parties consented, enjoining the defendants from voting proxies already obtained and directing that the stockholders' meeting be adjourned, to give opportunity for a proper resolicitation to be made, including material correcting misrepresentations in previous soliciting material. At the adjourned meeting McPhail and other management nominees were elected directors over the slate of Harold O. Barker, President and Chairman of the Board, and the Stockholders' Committee Against Control of Transue & Williams Steel Forging Corporation by Russell McPhail.

Subsequent to the end of the fiscal year a motion for summary judgment was filed by the Commission requesting that defendants be permanently enjoined from further violations of the proxy rules. Argument was had and the Court has not as of December 1st rendered an opinion.

In *Hott et al.* v. *Ostergren et al.*[97] an appeal was taken from the judgment of the District Court enjoining appellants and one Josiah Kirby from soliciting and voting proxies with respect to the common stock of Lakey Foundry Corporation.[98] The District Court had found, *inter alia*, that Kirby was a "participant" in the solicitation by the defendants, whose proxy statement had not included the required information with respect to Kirby, and that Kirby had not filed with the Commission the information required by Schedule 14B. The appeal from the District Court's judgment was subsequently dismissed upon stipulation of the parties, the Commission agreeing to the dismissal since the injunction issued by the District Court remained in full effect.

[96] S. D. New York No. 131–139 (March 19, 1958).
[97] C. A. 6, No. 13310.
[98] N. D. Ohio 33393 (February 15, 1957).

In *S. E. C.* v. *Sidney Gondelman, et al.*,[99] the Commission took action to enjoin Gondelman and other shareholders of the Central Foundry Company from voting proxies at the annual meeting of shareholders of the Corporation unless they furnished the shareholders an opportunity to revoke their proxies after furnishing information needed to correct misstatements which had been made in previous proxy soliciting material. The Commission's complaint alleged that the defendants had made misrepresentations about the status of efforts by Gondelman, a disbarred lawyer, to obtain reinstatement to the New York Bar. The Commission's action was joined, for purposes of trial, with a suit brought by the Management of the Central Foundry Company alleging several violations of the proxy rules and requesting the complete invalidation of all proxies obtained by Gondelman prior to the suit. Since the close of the fiscal year, the United States District Court for the Southern District of New York held that the defendant stockholders had violated the proxy rules and invalidated the proxies which they had obtained. The Court also ordered the correction of misleading statements.

For proxy litigation under the Public Utility Holding Company Act of 1935 involving Union Electric Co., see p. 119, *infra*.

Participation as Amicus Curiae

In *Greene, et al.* v. *Dietz, et al.*[100] the United States Court of Appeals for the Second Circuit in June, 1957, handed down a decision in which it expressed doubt as to the Commission's power to promulgate Rule X–16B–3, which exempts certain bonus, profit sharing, retirement and similar plans from the provisions of section 16 (b) allowing recovery by the issuer of profits realized by officers, directors and controlling persons in transactions in the securities of the issuer. The Commission promptly moved for leave to file a brief *amicus curiae* and for a clarification of the opinion and a rehearing. In a *per curiam* decision, one of the three judges dissenting, the Court denied the petition for rehearing, stating that ". . . [the] Commission understands, without further clarification, the content of our opinion . . ." and that pending modification of the rule, any reliance upon it by persons entitled to exercise options under plans substantially similar to the one in issue "would be ill-advised."[101]

---

[99] S. D. New York No. 133–314 (May 19, 1958).

[100] 247 F. 2d 689 (C. A. 2, 1957).

[101] In *Emerson Electric Manufacturing Company* v. *O'Neill, et al.* (E. D. Mo. No. 58C 307 (2)), the Court held, on November 10, 1958; that officers and directors who relied on the Rule after the *per curiam* decision in *Greene* v. *Dietz* could do so without liability. The case involved officers who were not familiar with the decision in *Greene* v. *Dietz*, and the Court did not consider the question of the validity of the Rule or liability of persons familiar with the *Greene* v. *Dietz* opinion.

Since the end of the fiscal year, the Commission has filed briefs *amicus curiae* in support of the validity of Rule X–16B–3 in *Van Aalten* v. *Hurley, et al.* and *Perlman* v. *Timberlake, et al.*, both arising in the United States District Court for the Southern District of New York. Both cases are presently under consideration by the Court.

In addition, since the end of the fiscal year the Commission has obtained permission to participate *amicus curiae* in *Ellerin* v. *Massachusetts Mutual Life Insurance Company, et al.* (C. A. 2 No. 25352), a case arising under section 16, and its office of the General Counsel is studying the record in *Ferraiolo* v. *Ashland Oil Company*, 259 F. 2d 342 (C. A. 6, 1958) to determine whether to recommend participation in the plaintiff's petition for *certiorari* to the Supreme Court.