26th Annual Report

of the

Securities and Exchange Commission

Fiscal Year Ended June 30, 1960

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SECURITIES AND EXCHANGE COMMISSION

Headquarters Office

425 Second Street NW.

Washington 25, D.C.

COMMISSIONERS

January 3, 1961

EDWARD N. GADSBY, *Chairman*
HAROLD C. PATTERSON[1]
EARL F. HASTINGS
BYRON D. WOODSIDE
DANIEL J. MCCAULY, JR,
ORVAL L. DUBOIS, *Secretary*

[1] Deceased November 29, 1930.

LETTER OF TRANSMITTAL

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., January 3, 1961.

SIR: On behalf of the Securities and Exchange Commission, I have the honor to transmit to you the Twenty-Sixth Annual Report of the Commission covering the fiscal year July 1, 1959, to June 30, 1960, 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 Agreement Act; and Section 11(b) of the Inter-American Development Bank Act.

Respectfully,

EDWARD N. GADSBY,
Chairman.

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

Harold C. Patterson
1897–1960

Harold C. Patterson was serving his second term as a member of the Securities and Exchange Commission at the time of his death on November 29, 1960.

He brought to his high offices in the public service a broad experience and a vast fund of knowledge of the Nation's financial community. Able, forthright and just, he was ever devoted to the objectives for which the Commission was created by the Congress. These qualities made him a stalwart advocate of the cause of investor protection.

His trenchant analysis of the many problems confronting the Commission and the wisdom which characterized his decisions earned the admiration and respect of its members, the staff and the public. His counsel will be sorely missed by those who must continue, as we know he would have desired, with the tasks that lie ahead.

To each of us who had the good fortune to know him his passing leaves a deep personal void as well. Ever a staunch friend, he shared generously of his time, his talents, and his experience.

We here record our profound sorrow at his passing and our deep sympathy for the members of his bereaved family.

Edward N. Gadsby
Earl F. Hastings
Byron D. Woodside
Daniel J. McCauley, Jr.

TABLE OF CONTENTS

PART VIII

PART IX

PART X

PART XI

PART XII

APPENDIX—STATISTICAL TABLES

FOREWORD

This 26th Annual Report of the Securities and Exchange Commission to the Congress for the fiscal year July 1959 to June 30, 1960 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 1960 a record number of registration statements under the Securities Act of 1933 became effective. There were a total of 1,398 such statements as compared with the previous high of 1,055 in fiscal 1959. The dollar amount of issues of securities registered for public sale totalled $14.4 billion, down somewhat from the $15.7 billion in fiscal 1959.

There was further substantial increase in the volume of the Commission's regulatory activities with respect to investment companies, as evidenced by the increase in the number of investment companies registered under the Investment Company Act of 1940. There were 570 such companies as of June 30, 1960, the largest number ever registered and 58 more than were registered at the end of the previous fiscal year. The aggregate market value of assets of all registered investment companies was $23.5 billion as of the same date, a new high and $3.5 billion more than the previous year.

During the fiscal year, following submission of recommendations made by the Commission for amendments to the securities laws, which are described in the Commission's 25th Annual Report, major amendments were enacted to the Investment Advisers Act of 1940. In addition, an amendment was passed to the Trust Indenture Act of 1939. While Congressional action was taken on other bills embodying Commission recommendation, those bills were not enacted.

COMMISSIONERS AND STAFF OFFICERS

(As of November 25, 1960)

Commissioners	*Term expires June 5*
EDWARD N. GADSBY of Massachusetts, *Chairman*	1963
HAROLD C. PATTERSON of Virginia [1]	1965
EARL F. HASTINGS of Arizona	1964
BYRON D. WOODSIDE of Virginia [2]	1962
DANIEL J. MCCAULEY, JR. of Pennsylvania [3]	1961

Secretary: ORVAL L. DUBOIS

Staff Officers

ALBERT K. SCHEIDENHELM, Executive Director.
CHARLES T. KAPPLER, Associate Executive Director.
MANUEL F. COHEN, Director, Division of Corporation Finance [4]
SHARON C. RISK, Associate Director.
JOSEPH C. WOODLE, Director, Division of Corporate Regulation.
W. ALLEN JOHNSON, Associate Director
PHILIP A. LOOMIS, JR., Director, Division of Trading and Exchanges.
RALPH S. SAUL, Associate Director.
WALTER P. NORTH, General Counsel [5]
MITCHELL F. RIEGER, Associate General Counsel.[4]
ANDREW BARR, Chief Accountant.
LEONARD HELFENSTEIN, Director, Office of Opinion Writing.
W. VICTOR RODIN, Associate Director.

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[1] Deceased November 29, 1960.
[2] Succeeded Andrew Downey Orrick on July 15, 1960.
[3] Succeeded James C. Sargent on October 22, 1960 under recess appointment.
[4] Succeeded Byron D. Woodside on July 15, 1960.
[5] Succeeded Thomas G. Meeker on October 29, 1960.
[6] Succeeded Walter P. North on October 31, 1960.

REGIONAL AND BRANCH OFFICES

Regional Administrators

Region 1. New York, New Jersey.—Paul Windels, Jr.; William D. Moran, Associate Regional Administrator, 225 Broadway, New York 7, N.Y.

Region 2. Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, Maine.—Philip E. Kendrick, Federal Building, Post Office Square, Boston 9, Mass.

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, Ga.

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

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, Tex.

Region 6. Wyoming, Colorado, New Mexico, Nebraska, North Dakota, South Dakota, Utah.—Milton J. Blake, 802 Midland Savings Building, 444 17th Street, Denver 2, Colo.

Region 7. California, Nevada, Arizona, Hawaii.—Arthur E. Pennekamp, 821 Market Street, San Francisco 3, Calif.

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

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

Detroit 26, Mich. Federal Building (Room 1074).

Houston 2, Tex. 424 Bettes Building, 201 Main Street.

Los Angeles 28, Calif. Guaranty Building (Room 309), 6331 Hollywood Boulevard.

Miami 32, Fla. Plaza Building (Room 440), 245 South East First Street.

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

St. Paul 1, Minn. 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.

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. He was reappointed effective June 5, 1960, as a member of the Commission for a term expiring June 5, 1965, and served until his death on November 29, 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. He was reappointed, effective June 5, 1959, as a member of the Commission for a term expiring June 5, 1964.

Byron D. Woodside

Commissioner Woodside was born in Oxford, Pennsylvania, in 1908, and is a resident of Haymarket, Virginia. He holds degrees of B.S. in Economics from the University of Pennsylvania, A.M. from George Washington University, and LL.B. from Temple University. He is a member of the bar of the District of Columbia. In 1929 he joined the staff of the Federal Trade Commission, and in 1933, following the enactment of the Federal Securities Act, was assigned to the Securities Division of that Commission which was charged with the administration of the Securities Act of 1933. He transferred to the Securities and Exchange Commission when the Securities Exchange Act of 1934 was enacted. In 1940 he became Assistant Director and in 1952 Director of the Division (now Division of Corporation Finance) responsible for administering the registration and reporting provisions of the Securities Act, Securities Exchange Act, the Trust Indenture Act of 1939, and, in part, the Investment Company Act of 1940. For 14 months commencing in May 1948, he was on loan to the Department of the Army and assigned to duty in Japan as a member of a 5-man Board which reviewed reorganization plans of Japanese companies under the Occupation's decartelization program; and beginning in December 1950 he served 17 months with the National Securities Resources Board and later with the Defense Production Administration as Assistant Deputy Administrator for Resources Expansion. He took office as a member of the Securities and Exchange Commission on July 15, 1960, for a term of office expiring June 5, 1962.

Daniel J. McCauley, Jr.

Commissioner McCauley was born in Philadelphia, Pennsylvania, in 1917. He received a degree of Bachelor of Science from LaSalle College and a degree of Bachelor of Laws from the University of Pennsylvania Law School, and was admitted to the Pennsylvania bar in 1941. Following service in the U.S. Army during the years 1942–46, where he gained the rank of Captain, he engaged in the private practice of law in Philadelphia and was a lecturer in business law at LaSalle College, President of LaSalle College Endowment Foundation, Commander of the Philadelphia County Catholic War Veterans, and a member of the Philadelphia County Board of Law Examiners. During 1954 and 1955 he served as Special Deputy Attorney General of the State of Pennsylvania assigned to the Pennsylvania Securities Commission. In 1956 he became Administrator of the Washington Regional Office of the Securities and Exchange Commission and then served for almost three years as Associate General Counsel of the Commission, following which he served as General Counsel of the Federal Trade Commission. He took office as a member of the Commission on October 22, 1960, under a recess appointment for a term expiring June 5, 1961.

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PART I

CURRENT PROBLEMS BEFORE THE COMMISSION

Previous annual reports have reflected the need for, and the expenditure of, considerable time and money in meeting the challenge of the rising band of promoters and others who attempt to take unlawful advantage of the desire of the investing public to share in the increased prosperity and consequent rising security markets of our nation. These efforts of the Commission, as well as the need to meet a tide of new offerings of securities and increased activity in the trading markets, have deflected certain of the activities and energies of the Commission from other areas necessary to proper development of the securities markets and adequate protection of investors. These other necessary areas of activity include the review and modification of the forms, rules and procedures of the Commission to meet and deal with new and developing patterns of securities distribution; to cope with the problems arising from the growth of important elements in our capital markets such as the investment companies of various types as important investment media to meet the increasing capital requirements of industry; to anticipate the development of newer forms of investment media and channels for the accumulation of savings, such as the variable annuity contract; to reach decisions as to the proper role of the Federal Government in the ever growing area of enforcement; to recruit and to train new personnel to meet as promptly and as effectively as possible these various problems; and to achieve a proper balance as to the time, energies and funds to be allocated to each of these necessary duties within existing budgetary limits.

Unfortunately, the pace of statutory violations of fraudulent distributions and of other malpractices in our security markets has not slowed sufficiently to permit the Commission to divert to these other matters the major segment of our personnel which has been devoted to enforcement activities. Enforcement activities continue and will continue at a high rate; the number of new issuers seeking establishment in our capital markets, and the need for capital by seasoned issuers has not abated—all signs point rather to increased activity in

this area; the variety and increasing important new types of securities created and distributed by the undimmed genius of American issuers continues to grow. All of these factors serve either to intensify old problems or to bring new ones demanding the attention of the Commission and of its staff.

Nevertheless, the Commission has attempted to budget its available resources to continue the programs already in progress and to permit the initiation of studies and other activities designed to meet these newer challenges. We review below some of the more important problems with which the Commission is currently dealing.

Fraudulent Sale of Securities

The fraudulent sale of securities remains a major problem for the Commission and has continued to occupy the time of a large portion of its staff. During the second half of the fiscal year, activity in the securities market generally receded somewhat from its mid-year peak. However, public interest in securities remained at a high level and furnished a fertile field for fraud and manipulation in the sale of securities. Recent publicity in regard to certain successful traders seems to have instilled in the minds of some persons a desire to duplicate their success in the market.

There appears, however, to have been some decrease in the so-called "boiler-room" activity which usually involves high pressure selling of spurious issues by long distance telephone to persons with whom the firm has had no previous contact and by high pressure methods ordinarily accompanied by gross misrepresentations and other fraudulent devices. The decrease in these boiler-rooms is doubtless due, in part at least, to a number of indictments and convictions of the hard core of boiler-room operators and their salesmen which have been handed down as the result of our own activities.

Commission pressure on boiler-rooms located in this country has tended to shift the bases of their operations to Canada. The Commission's restricted list and foreign postal fraud orders have been only partially effective in stopping this activity. In controlling the illegal disposition of Canadian securities in the United States, the Commission is to a large extent still dependent upon the excellent and invaluable cooperation of the Canadian authorities.

Registration of Securities

The past fiscal year has seen a larger number of registration statements filed with us preparatory to making a public offering than any previous year in the Commission's history. During the past year, a

total of 1628 such registration statements were filed, as against 1226 for the 1959 fiscal year. The dollar amount represented by these statements exceeded $15,800 million, which is somewhat less than the $16,600 million covered by registration statements filed in the previous year. In considering our own situation, however, it is necessary to keep in mind that our work is a function of the number of items and not of the amount of money involved.

More than half of the registration statements which became effective during the fiscal year, exclusive of statements of mutual funds filed pursuant to Section 24(e) of the Investment Company Act of 1940, were filed by issuers which had not previously filed a registration statement under the Securities Act. Since there was no background of previously examined material against which these registration statements might be checked and since they were sometimes prepared by persons unfamiliar with the statute, it was necessary to make a careful examination of all aspects of such statements. The examination of these statements, therefore, required a proportionately greater share of the staff's time than is the case with respect to issuers which have previously gone through the registration process on one or more occasions.

The processing of these filings has imposed a tremendous work load upon the Commission's staff which has necessitated some lengthening of the processing period. However, every effort continues to be made to enable registrants to meet their financial schedules. The industry and its representatives have appreciated the heavy work load imposed upon the Commission and have evidenced commendable patience in connection with its work in this field.

Supervision of Broker-Dealer Firms

The development of the securities market during recent years has given rise to some new and troublesome distribution techniques in the industry. The spread of branch offices, the army of part-time salesmen and the methods employed to distribute mutual funds reflect the growth of high-volume impersonal distribution methods. During the period 1950–59, the number of offices of member firms of the New York Stock Exchange increased from 1,661 to 2,936, and the number of registered representatives (i.e., salesmen) increased from 11,409 to 24,898. Similar figures appear in statistics relating to the members of the National Association of Securities Dealers, where the number of branch offices increased from 1,321 to 3,836 and the number of registered representatives increased from 29,824 to 84,648.

The growth in the number of branch offices intensifies the problem of supervision over broker-dealer firms. The physical separation of branch office personnel from the responsible supervisors in the main office makes control by the managements of the firms more difficult. In many cases, the manager of a branch office may not be a partner or an officer of the firm. Registered representatives may be relatively inexperienced in the securities business and the task of supervision may be aggravated by the employment of part-time registered representatives, particularly in the mutual fund field. Some registered representatives may solicit from door to door and they may operate not from offices but from private residences remote from supervisory personnel. Finally, the rising demand for experienced business producers results in a rapid turnover of registered representatives, increasing the difficulties of supervision.

Real Estate Securities

In recent years a new investment program for obtaining capital from public investors has developed under which investors are being offered whole or fractional interests in mortgages or deeds of trust with an arrangement providing various services to the investors. Because of the numerous questions presented to the Commission regarding these types of offerings, the Commission issued a release setting forth its views as to the applicability of the federal securities laws and its opinion that frequently such offerings constitute the sale of "investment contracts", which are securities required to be registered in accordance with these laws.[1]

In 1958 the Commission filed an action to enjoin Los Angeles Trust Deed and Mortgage Exchange and others from violating the registration and anti-fraud provisions of the Securities Act and Securities Exchange Act in the sale of securities of this type. The District Court found that the defendants were offering securities required to be registered and also appointed a receiver.[2] At the close of the fiscal year, the case was pending before the Court of Appeals for the Ninth Circuit. In view of the growing number of investment programs similar to that offered by the defendants in this action, the District Court's decision is of national significance and constitutes additional judicial precedent in aid of the Commission's enforcement activities in this area.

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[1] Securities Act Release No. 3892 (January 31, 1958).

[2] *S.E.C.* v. *Los Angeles Trust D. & M. Exch.*, 186 F. Supp. 830 aff'd. (C.A. 9, Nov. 23, 1960).

Combination Insurance and Investment Contracts

In the past few years, in certain States, there has been an increasing number of stock life insurance companies engaged in offering forms of life insurance by contracts which include an equity investment. Because of the dual character of these offerings, in some instances the contracts may be subject to the requirements of the Securities Act of 1933, the issuer subject to the Investment Company Act of 1940 and the persons engaged in the offer and sale subject to the requirements of the Securities Exchange Act of 1934.

Definitive information is not available to the Commission of the many variants in the form of these contracts, although, generally speaking, it would appear that they all involve the payment of a "premium" in an amount sufficiently large to provide the funds for the equity investment which is unrelated to the conventional insurance aspects of the contracts.

In certain cases the contract guarantees the return of a large portion of the annual "premium" paid, other than in the first year, so that it may be used to purchase shares in a registered mutual fund organized by, or closely related to, the insurance company. Because the sales commission deducted from the total "premium" is applicable to that portion of the "premium" designated for the purchase of these shares, this type of contract raises serious questions of compliance with provisions of the Investment Company Act which limit the amount of sales load that may be charged for investment company shares and the manner in which it may be collected.

Other forms of these contracts provide that a large part of the "premiums" paid will, in effect, be used to purchase an undivided interest in a portfolio of common stocks to be maintained by the company. In some cases, various forms of guarantees are also made to repay this portion of the "premium" plus interest thereon.

The Commission intends to pursue its consideration of the problems raised by these developments.

Variable Annuity Contracts

The decision of the Supreme Court in *S.E.C.* v. *Variable Annuity Life Insurance Company of America*, and *The Equity Annuity Life Insurance Company*, 359 U.S. 65 (1959) determined that the "variable annuity" contracts in question and their issuers are subject to federal jurisdiction under the securities laws. It can now be expected that a large segment of the insurance industry will seek to engage in this activity under various forms of variable annuity contracts and methods of operations, many of which are novel and unique. This will involve problems of harmonizing compliance with the Investment Company Act and local insurance laws and regulation. The ad-

ministrative flexibility which is granted the Commission by the Investment Company Act has made it possible for the the defendant companies, in cooperation with the staff of the Commission, to evolve solutions to some of these problems, and these companies are now actively engaged in this business. Informal discussions with other companies are being pursued.

Resolution of the problems which variable annuities present depends in part upon the nature of state legislation and insurance and security industry practices and regulation. For this reason, the education and cooperation of interested persons is necessary so that all legitimate interests are protected. The Commission through various means is working towards these ends.

Investment Company Size Study and Investigation

Investment companies have achieved tremendous growth since 1940 as media for the investment of their savings by many persons of relatively smaller means. Investment companies as a group have come to represent one of the three principal elements in the securities and capital markets of our nation. As such they may have important effects upon cyclical changes in our markets, on their stability and generally upon the availability and sources of capital for the expansion and growth of American industry. In anticipation of this remarkable growth, Section 14(b) of the Investment Company Act of 1940 authorizes the Commission to make a study and investigation of the effects of size of investment companies on the investment policy of such companies and on security markets, on concentration of control of wealth and industry, and on companies in which investment companies are interested, and to report the results of its study and investigation and its recommendations to Congress. Because of the non-recurrent nature of this overall study and to avail itself of an independent point of view, the Commission contracted with the Wharton School of Finance and Commerce, University of Pennsylvania, to assist it in making such a study and investigation. In 1959 a questionnaire was distributed to all open-end and closed-end investment companies with assets of $1 million or more. The replies to the questionnaire, which included data concerning purchases and sales of certain selected stocks, security holdings, portfolio turnover, investment policy, trading practices and marketing channels employed and control of investment companies over portfolio companies, are being studied by the Wharton School as a basis for the preparation of its report. Other phases of the over all study and investigation will proceed as expeditiously as circumstances permit. When the full report has been completed and transmitted to the Commission by the Wharton School, it is expected that the Commission will be in a position to make a deter-

mination in regard to the various problems involved and to report more fully to Congress.

Investment Advisers

The enactment subsequent to the close of the fiscal year of substantial amendments to the Investment Advisers Act of 1940 vested in the Commission additional responsibilities which will require the devotion of considerable time and energy by the Commission and its staff in the development of revised forms for registration and reporting, special rules as to record-keeping by investment advisers, rules specifically designed to obviate to the extent possible fraudulent practices in this heretofore largely unregulated field, and new procedures for the periodic inspection of the affairs and operations of all registered investment advisers.

PART II

LEGISLATIVE ACTIVITIES

Statutory Amendments Proposed by the Commission

As fully discussed in the Commission's 25th Annual Report,[1] its proposals to the 86th Congress for amendment of the Federal securities laws were introduced in the Senate as S. 1178, S. 1179, S. 1180, S. 1181, and S. 1182, and in the House of Representatives as H.R. 5001, H.R. 2480, H.R. 5002, H.R. 2481, and H.R. 2482. The Commission's proposals were intended to strengthen the safeguards and protections afforded the public by tightening jurisdictional provisions, correcting certain inadequacies revealed through administrative experience and facilitating criminal prosecutions and other enforcement activities. Hearings on the bills were held during the first session of the 86th Congress before the Subcommittee on Securities of the Banking and Currency Committee of the Senate and the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce of the House of Representatives.

On June 28, 1960, the Committee on Banking and Currency of the Senate reported out S. 3769 (relating to the Securities Act of 1933), S. 3770 (relating to the Securities Exchange Act of 1934), S. 3771 (relating to the Trust Indenture Act of 1939), S. 3772 (relating to the Investment Company Act of 1940) and S. 3773 (relating to the Investment Advisers Act of 1940), which were original bills in lieu of S. 1178, S. 1179, S. 1180, S. 1181 and S. 1182 respectively.[2] The bills were introduced in the Senate by Senator Harrison A. Williams Jr., Chairman of the Subcommittee on Securities, who pointed out that because of the modifications made to the original proposals, the Banking and Currency Committee decided to report out clean bills.[3] On July 2, 1960 the bills reported by the Committee were passed by the Senate, without amendment.

On August 26, 1960, the Committee on Interstate and Foreign Commerce of the House of Representatives reported out S. 3771, H.R. 5001 (relating to the Securities Act of 1933), H.R. 2480 (relating to the Securities Exchange Act of 1934), H.R. 2481 (relating to the Invest-

[1] At pp. 9–11.

[2] The bills reported out were accompanied by Senate Reports Nos. 1756 through 1760, respectively.

[3] Congressional Record, July 2, 1960, p. 14500.

ment Company Act of 1940), and H.R. 2482 (relating to the Investment Advisers Act of 1940).[4] Of these bills, S. 3771 was reported out as passed by the Senate, and the others embodied the Committee's amendments to the Commission's proposals. On August 30, 1960, the House of Representatives passed S. 3771, S. 3773 and an amended version of S. 3772.[5] S. 3771 and S. 3773 were signed by the President on September 13 and became Public Law 86–760 and Public Law 86–750, respectively. The Senate, however, did not act on the amended version of S. 3772.[6] Thus amendments were enacted to the Trust Indenture Act of 1939 and the Investment Advisers Act of 1940.

Public Law 86–750 amends the Investment Advisers Act of 1940 by expanding the bases for disqualification of a registrant because of prior misconduct; authorizing the Commission by rule to require the keeping of books and records and the filing of reports; permitting periodic examination of a registrant's books and records; empowering the Commission by rule to define and prescribe means reasonably designed to prevent fraudulent practices; extending criminal liability for a wilful violation of a rule or order of the Commission; making it clear that aiders and abettors may be responsible in injunctive and administrative proceedings; and modifying the definition of the term "control" in the statute and the conditions under which an investment adviser may call himself an "investment counsel."

Public Law 86–760 amends Section 304(c) of the Trust Indenture Act of 1939. Under that section the Commission was required to grant an exemption from the provisions involved if, at the time the application for exemption is filed, securities are outstanding which were outstanding within six months of the enactment of the Act, that is by February 4, 1940, and if compliance would require consent of the holders of outstanding securities, or would impose an undue burden on the issuer, having due regard for the public interest and the interests of investors. As amended, Section 304(c) now requires the Commission to grant the exemption in the same situation if there are securities outstanding which were outstanding either on February 4, 1940 or on January 1, 1959.

In addition an amendment was enacted to Section 4(a) of the Securities Exchange Act of 1934. S. 1965, as amended by the Committee on Interstate and Foreign Commerce of the House of Representatives

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[4] The bills were accompanied by House Reports Nos. 2176 through 2180.

[5] One of the amendments, previously introduced as H.R. 13041, proposed an amendment to Sec. 36 of the Investment Company Act to provide an investigatory power in the board of directors of a registered investment company, or the investment adviser or principal underwriter for such a company with respect to, among other things, securities transactions and loans by an officer, director, employee or agent of the registered investment company or investment advisor.

[6] Congressional Record, August 31, 1960, p. 17308.

and later passed by the Congress and approved by the President,[7] provides that a commissioner, after the expiration of his term, shall continue in office until his successor is appointed and qualified, except that he may not continue beyond the expiration of the next session of Congress subsequent to the expiration of his term in office.[8]

Other Legislative Proposals

The following bills relating to the Securities laws were introduced during the fiscal year 1960. No hearings were held on the bills.

H.R. 12268, introduced by Representative J. Arthur Younger, would, among other things, amend the Securities Exchange Act of 1934 to provide for the assessment and collection of increased fees to cover the cost of operation of this Commission.

S. 3541, introduced (by request) by Senator John J. Sparkman for himself and Senator Homer E. Capehart, and providing for the incorporation of Federal mortgage investment companies, would authorize the Commission by rule to exempt the securities of those companies from the Securities Act of 1933 and the Trust Indenture Act of 1939, and provide a specific exemption from the debt limitations prescribed for registered investment companies in Section 18(a)(1) of the Investment Company Act of 1940.

A substantial amount of time was directed to matters pertaining to other legislative proposals referred to the Commission for comment and to congressional inquiries. A total of 58 legislative proposals were analyzed. In addition, numerous congressional inquiries relating to matters other than specific legislative proposals were received and answered.

Congressional Hearings

Proposals to Increase Registration Fees.—On June 6, 1960, Commissioner Orrick appeared before the Subcommittee on Commerce and Finance of the House Interstate and Foreign Commerce Committee and testified on H.R. 6294, a bill to amend Section 31 of the Securities Exchange Act of 1934. Section 31 now provides an annual fee for the registration of exchanges of one five-hundredth of 1 percent of the aggregate dollar amount of stock exchange sales transactions, equal to 2 cents per $1,000. The bill would increase the exchange registration fee to 5 cents per $1,000, and would impose a similar fee on brokers and dealers on sales transactions effected otherwise than on a national securities exchange. Commissioner Orrick testified that the Commission believed the bill provides an equitable means of substantially increasing the reimbursement to the Treasury for the Com-

[7] Public Law 86-619.

[8] A correcting amendment relating to the salary of the Chairman was subsequently embodied in H.R. 10366 and enacted into law. Public Law 86-771.

mission's cost of operation by spreading the impact of the fees over all of the investing public for whose benefit the various statutes administered by the Commission were enacted.

Small Business Investment Act of 1958.—On February 23, 1960, Chairman Gadsby and members of the staff appeared before the Senate Select Committee on Small Business and testified with respect to the Commission's activities in relation to the Small Business Investment Act of 1958, and in connection with certain matters that had been raised concerning the securities laws administered by the Commission. A similar appearance was made on March 10, 1960 before Subcommittee No. 3 of the House Committee on Banking and Currency.

On both occasions Chairman Gadsby addressed himself to the matter of generally exempting small business investment companies from the operation of the Investment Company Act of 1940. The Commission opposed such exemption because in its opinion there was no sound reason for depriving public investors in such companies of the protections and benefits of the Investment Company Act. The Commission also opposed enactment of a provision which would allow small business investment companies subject to the Investment Company Act to issue stock options.

Ethics, Conflicts of Interest and Administrative Practice.—Various bills were pending during the 86th Congress, 2d Session, dealing with ethics, conflicts of interest and administrative practice.

1. S. 600 and S. 2374.—On November 19, 1959, Chairman Gadsby and other members of the Commission appeared before the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee to testify on S. 600 and S. 2374. S. 600 would create an office of Federal Administrative Practice to study and make recommendations regarding the adequacy of procedures by which agencies carry out their rule-making and adjudicatory functions. The Commission expressed no opinion on the need to establish a new independent agency to perform this function, but suggested that such an office have no veto-power over the rule-making authority delegated to independent agencies.

S. 2374 is designed to prohibit certain off-the-record communications and to assure determinations on the record. The Commission has always attempted to conduct its proceedings consistent with the proposal, and advanced various suggestions in furtherance of the bill's objective.

2. H.R. 2156, H.R. 2157, and H.R. 7556.—The Commission's General Counsel, Thomas G. Meeker, appeared on February 25, 1960, to testify before Subcommittee No. 5 of the House Committee on the

Judiciary concerning H.R. 2156, H.R. 2157, and H.R. 7556, all of which deal, in general, with conflicts of interest of government employees. The Commission fully concurred in the objectives of these bills, but pointed out that, as drafted, they create unnecessary hardships and pose certain other problems. Mr. Meeker made certain proposals to overcome these problems.

3. H.R. 4800 and H.R. 6774.—Chairman Gadsby and other members of the Commission appeared before the House Interstate and Foreign Commerce Committee on March 30, 1960 to testify on H.R. 4800 and H.R. 6774. H.R. 6774 is similar to S. 2374, mentioned above, and H.R. 4800 is intended to eliminate the use of improper methods to influence the action of regulatory agencies, and to assure that parties to an agency proceeding are informed of their adversaries' communications to the agency and that agency action will be founded solely on the merits of each case. Chairman Gadsby informed the Committee that the Commission has bent every effort to achieve these purposes by its rules and general method of operation. However, the Committee was advised that the bills as drafted raise problems which would be detrimental to the effective functioning of government agencies.

PART III

REVISION OF RULES, REGULATIONS AND FORMS

Changing conditions and changing methods and procedures in the fields of business and finance make it necessary for the Commission to maintain a continuing review of its rules, regulations and forms. Certain members of its staff are assigned to this task. Changes are also suggested, from time to time, by other members of the staff engaged in the examination of material filed with the Commission, and by persons outside of the Commission who are subject to the Commission's requirements or who have occasion to work with those requirements in a professional capacity such as underwriters, attorneys, accountants and other representatives. With a relatively few exceptions, provided for by the Administrative Procedure Act, proposed changes in rules, regulations and forms are announced to the public and interested persons are invited to submit their views and comments thereon. These views and comments are carefully reviewed by the staff and by the Commission and are very helpful in revealing the manner in which proposed changes will operate.[1]

A number of changes were made during the 1960 fiscal year in the rules, regulations and forms under the various statutes administered by the Commission. Other changes which the Commission announced in preliminary form and as to which it invited public comments were pending at the end of the fiscal year. The changes made during the fiscal year and those pending at the end of the year are described below.

THE SECURITIES ACT OF 1933

Amendment of Rule 133

Shortly after the beginning of the fiscal year the Commission adopted certain amendments to Rule 133.[2] This rule, in brief, provides that registration of the securities involved is not required for the

[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.

[2] Securities Act Release No. 4115 (July 16, 1959).

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submission to the stockholders of a corporation of a plan for a merger, consolidation or similar transaction does not, under the conditions specified in the rule, involve an offer or sale of securities to such stockholders. The general purpose of the amendments is to indicate the circumstances under which securities distributed by persons receiving them in connection with such transactions may be required to be registered under the Act. This matter had been under consideration for some time and has been described at various stages in previous annual reports of the Commission.[3]

Adoption of Rule 136; Amendment of Rule 140

During the fiscal year the Commission adopted a new Rule 136 and certain amendments to Rule 140.[4] The new Rule 136 defines the term "offer" and "sale" and certain related terms so as to include specifically the levying of assessments on assessable stock. The rule also provides that the offer or sale of assessable stock at public auction or otherwise to realize the amount of an unpaid assessment thereon is not exempt from registration under the Act. The rule further provides that any person who acquires assessable stock at such a sale with a view to its distribution is to be deemed an underwriter of the stock. The amendment to Rule 140 which defines the term underwriter for certain purposes was adopted to make it clear that it applies to the levying of assessments, as well as to other types of offers and sales. References to these proposed rule changes have been made in previous annual reports.[5]

Proposed Rule 155

The Commission during the fiscal year published notice that it has under consideration a proposed new rule which would be designated Rule 155.[6] The purpose of this proposed rule is to make clear that a public offering of an immediately convertible security by persons who purchased such security from an issuer in a "private placement", or a public offering of the underlying security received by such persons upon conversion of the convertible security, may be subject to the registration provisions of the Securities Act.

Consideration of the proposed rule was initiated as a result of the assertion made in a number of situations that the holders of a convertible security, purchased in a private placement may later sell to the public the convertible security, or the security into which it is convertible, free of the prohibitions of Section 5 of the Act because the proposed distribution will not involve a transaction by the issuer

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[3] 23d Annual Report, p. 20; 24th Annual Report, p. 14; 25th Annual Report, p. 15.
[4] Securities Act Release No. 4121 (July 30, 1959).
[5] See 24th Annual Report, p. 16; 25th Annual Report, p. 17.
[6] Securities Act Release No. 4162 (December 2, 1959).

or an underwriter, or because the security to be distributed is "free stock", or because the transaction is otherwise exempt by reason of the provisions of Section 3(a)(9) or 4(1) of the Act. These views, if followed, would tend to deprive public investors of the information necessary to informed investment decisions and might otherwise impair or impede the effectiveness of the Commission's over-all administration and enforcement of the Act.

The time for submitting comments on the proposed rule was twice extended during the fiscal year.[7] At the close of the year the matter was being considered in the light of the views and comments submitted in response to the Commission's invitation.

Rescission of Regulation A–M

During the fiscal year the Commission rescinded Regulation A–M under the Securities Act.[8] This regulation provided an exemption from registration under the Act for assessable stock of certain mining corporations. Regulation A–M was rescinded in view of the adoption by the Commission of certain rule changes relating to assessable securities, particularly Regulation F.[9] However, since Regulation F does not provide an exemption for new issues of assessable securities, Regulation A was amended to make that regulation available for the offering of such new issues.[10]

Amendment of Regulation A

Regulation A, which is a general exemption regulation under the Securities Act for issues not in excess of $300,000, was amended during the fiscal year to make that regulation available for new issues of assessable stock for which an exemption under Regulation A–M was previously available.[11] In view of the rescission of Regulation A–M it appeared desirable to provide an exemption for small issues of assessable securities. Previously Regulation A had expressly excluded assessable securities from any exemption thereunder.

Regulation A was similarly amended during the fiscal year to provide an exemption for securities of the type for which Regulation B–T was previously available. That regulation, as indicated below, was also rescinded during the fiscal year.[12]

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[7] Securities Act Release No. 4173 (December 28, 1959); Securities Act Release No. 4185 (February 10, 1960).

[8] Securities Act Release No. 4149 (October 19, 1959).

[9] See statement with respect to Rules 136 and 140, *supra*, p. 16 and Regulation F, p. 18.

[10] See statement with respect to Regulation A, p. 17.

[11] Securities Act Release No. 4149 (October 19, 1959).

[12] *Infra*, p. 18.

Rescission of Regulation B–T

During the fiscal year the Commission rescinded its Regulation B–T under the Securities Act.[13] This regulation provided an exemption from registration for certain interests in an oil royalty trust or similar type of trust or unincorporated association. Although this exemption was adopted in 1938, no offering was ever made under it and it appeared that there was no present or prospective need for the regulation. However, in order that there might be a comparable exemption in the event that anyone should at some future date wish to offer such securities, Regulation A, as indicated above, was amended to make the exemption provided by that regulation available for securities of the type for which Regulation B–T was previously provided.

Adoption of Regulation F

During the fiscal year the Commission adopted a new exemption regulation, designated Regulation F.[14] The new regulation provides a conditional exemption from registration for assessments on assessable stock and for assessable stock sold at delinquent assessment sales. A condition to the availability of an exemption under the regulation is the filing of a comparatively simple notification giving brief information as to the issuer, its management and its recent and proposed assessments. Any notice or advertisement of the assessment or any delinquent assessment sales must include or be accompanied by a reasonably detailed statement of the purposes for which the proceeds from the assessment or assessment sales are to be used. Any literature used in connection with the levying of the assessment or the delinquent assessment sales must be filed with the Commission. The exemption may be suspended under certain circumstances, such as a finding by the Commission that fraud is involved. Reference to the new regulation was made in the previous annual report.[15]

Amendment to Form S–9

The Commission, during the fiscal year, adopted an amendment to Form S–9 which is used, where certain prescribed conditions are met. for registration under the Securities Act of non-convertible, fixed-interest debt securities of issuers required to file reports with the Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.[16] One of the conditions to the use of Form S–9 is that the registrant shall meet certain tests as to coverage of fixed charges by earnings. The ratio of earnings to fixed charges must also be set forth in connection with the summary of earnings. The definition

[13] Securities Act Release No. 4149 (October 19, 1959).
[14] Securities Act Release No. 4121 (July 30, 1959).
[15] See 25th Annual Report, p. 17.
[16] Securities Act Release No. 4245 (June 30, 1960).

of "fixed charges" contained in the form previously provided that fixed charges shall include "an appropriate portion of rentals under long term leases".

The amendment established a definite formula which may be used in determining an appropriate portion of rentals representing the interest factor in rental payments in order that a prospective registrant may determine with reasonable certainty whether it is qualified to use the form. The amendment changes the test from "an appropriate portion of long term rentals" to one-third of all rentals reported in the appropriate financial schedule or such other portion as can be demonstrated as representative of the interest factor. The limitation of rentals to "long term leases" has been dropped because of the substantial difference of opinion as to the definition of a "long term lease" and because the presence of the interest factor in rentals is not dependent upon the rental contract extending over any given period of time.

Adoption of Form S–14

Shortly after the beginning of the fiscal year the Commission adopted a new registration form under the Securities Act designated Form S–14.[17] The new form is designed to provide a simplified registration procedure for securities issued in a Rule 133 transaction where such registration is required and where the issuer has solicited proxies under the Commission's proxy rules with respect to such transaction. The form provides that the prospectus may consist chiefly of the information set forth in the proxy statement and may be in the form of a proxy statement meeting the requirements of the proxy rules. The information thus supplied must be supplemented by the necessary underwriting and distribution data and pertinent information regarding developments in the registrant's business subsequent to the Rule 133 transaction. Reference to this form has been made in previous annual reports.[18]

THE SECURITIES EXCHANGE ACT OF 1934

Amendment of Rules 16b–2 and 16c–2

Section 16(b) of the Securities Exchange Act provides that any profit realized by a beneficial owner of more than 10 percent of any class of any equity security registered on a national securities exchange or by a director or officer of the issuer of such a security (sometimes referred to herein as "insiders") as a result of any non-exempt short-swing transaction (purchase and sale, or sale and purchase, within six months) may be recovered by the issuer or by any security

[17] Securities Act Release No. 4115 (July 16, 1959).
[18] See 24th Annual Report, p. 15; 25th Annual Report, p. 20.

holder on its behalf. Section 16(c) of the Act makes it unlawful for the "insiders" referred to, directly or indirectly, to sell any non-exempted equity security of such issuer (1) if they do not own the security sold, or (2) if owning it, they do not deliver it within the period specified in the section. Rules 16b–2 and 16c–2 have provided exemptions from the above provisions for certain distributing transactions under specified conditions including, among others, the requirement that persons other than "insiders" be participating in the distribution to an equal extent and on terms at least as favorable as the "insiders".

The above rules were amended during the fiscal year to make it clear that when the conditions of the rules are met, certain other transactions which frequently occur in connection with distributions are also exempted.[19] These include (1) stabilizing transactions, which may involve the purchase of outstanding securities of the same class rather than securities of the block being distributed, or, where a convertible security is being distributed, outstanding securities of the class subject to the conversion right; (2) transactions effected in connection with the various types of rights offerings, e.g. "lay offs" in a Shields Plan type of distribution; and (3) transactions in connection with so-called standby redemptions, i.e., where convertible securities selling above their redemption price are called for redemption and at the same time arrangements are made under which dealers undertake to purchase any such securities tendered at a price slightly higher than the redemption price, to convert them and to distribute the underlying stock.

Rule 16c–2 has also been amended to delete the requirement that the distribution be made on behalf of the issuer or a person in a control relationship with the issuer, a requirement which is not contained in Rule 16b–2. It is believed that where all of the other conditions of the rule can be met the identity of the person on whose behalf the distribution is being made is not a material consideration in determining whether the exemption should be available.

Amendment of Rule 16b–3

Rule 16b–3 provided an exemption from the provisions of Section 16(b) of the Act for shares of stock acquired pursuant to bonus, profit sharing, retirement, thrift, savings or similar plans meeting specified conditions. The rule also exempted the acquisition of non-transferable options and stock acquired under such options pursuant to a plan meeting similar conditions. The exemption for stock so acquired had been the subject of litigation. While decisions of the courts have not

[19] Securities Exchange Act Release No. 6131 (December 4, 1959).

been uniform, doubt had been expressed as to the validity of the rule insofar as it related to the acquisition of shares through the exercise of so-called "restricted" stock options.

Following a study of the rule in the light of these decisions, it was concluded that, as a matter of policy, Rule 16b–3 should be amended to delete the exemption for the acquisition of securities upon the exercise of non-transferable stock options and that the rule should be amended to provide that the selection of persons participating in bonus, profit sharing, retirement, thrift, savings, option or similar plans be made by a board of directors, a majority of whom are disinterested, or by a disinterested committee.

Two drafts of proposed amendments to the rule were published during the fiscal year and a number of comments and suggestions were received as a result of such publications.[20] The amendments to the rule were adopted in the latter part of the fiscal year.[21]

Amendment of Rule 16b–8

Rule 16b–8 exempts from Section 16(b) of the Act, under certain conditions, the receipt from an issuer of shares of stock having general voting power and registered on a national securities exchange upon the surrender of an equal number of shares of stock of the same issuer which do not have such voting power and are not so registered, where the transaction is effected pursuant to the provisions of the issuer's certificate of incorporation for the purpose of making an immediate public sale or a gift of such shares.

One of the conditions to exemption under the rule is that no shares of the class surrendered or any other shares of the class received are acquired by the person effecting the transaction within six months before or after the date of the transactions. The rule was amended during the fiscal year to make it clear that the exemption of transactions under the rule is not affected by prior or subsequent transactions which are also exempt under the provisions of the rule.[22]

Proposed Rule 19a2–1

Section 19(a)(2) of the Securities Exchange Act of 1934 authorizes the Commission, after appropriate notice and opportunity for hearing, by order to deny, to suspend the effective date of, to suspend for a period not exceeding 12 months or to withdraw the registration of a security on a National Securities Exchange if the Commission finds that the issuer of such security has failed to comply with any provision of the Act or the rules and regulations thereunder. The Com-

[20] Securities Exchange Act Release No. 6111 (November 5, 1959); Securities Exchange Act Release No. 6227 (April 6, 1960).

[21] Securities Exchange Act Release No. 6275 (May 26, 1960).

[22] Securities Exchange Act Release No. 6141 (December 10, 1959).

mission is further authorized by Section 21 of the Act to make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of the Act or any rule or regulation thereunder.

From time to time the Commission has encountered difficulty in proceedings under Section 19(a)(2) in obtaining information or documents which would facilitate a determination whether an issuer has failed to comply with the provisions of the Act or the rules and regulations thereunder with respect to disclosure. This difficulty has stemmed from the failure or refusal of certain persons, particularly nonresident persons, to accept service of subpoenas to testify or to produce needed documents or from other efforts designed to obstruct the Commission. Similar difficulties have been encountered in connection with investigations under Section 21 of the Act.

The Commission has invited public comments on a proposed Rule 19a2–1 under the Act which would provide that the failure or refusal of an issuer or its officers, directors, employees or controlling persons to cooperate with the Commission in proceedings under Section 19(a)(2) or investigations under Section 21 of the Act with respect to compliance with Section 12 or 13 of the Act shall be deemed a failure to comply with the provisions of the Act or the rules and regulations thereunder for the purpose of Section 19(a)(2).[23] The proposed rule would provide a basis for the issuance of an order under Section 19(a)(2) denying, suspending or withdrawing the registration of a security in such cases.

Amendment of Form 8–K

The Commission invited public comments on certain proposed amendments to Form 8–K during the last fiscal year.[24] These proposed amendments are designed promptly to bring to the attention of investors information regarding material changes affecting the company or its affairs where it appears that the changes are of such importance that they should be reported promptly and not deferred to the end of the fiscal year. The amendments relate to matters such as the pledging of securities of the issuer or its affiliates, changes in the board of directors otherwise than by stockholder action, the acquisition or disposition of significant amounts of assets and transactions with insiders. Time for submitting such comments on the proposed amendments was twice extended during the fiscal year and the matter was still under consideration at the close of the year.

[23] Securities Exchange Act Release No. 6297 (June 23, 1960).
[24] Securities Exchange Act Release No. 5979 (June 9, 1959).

Amendment of Form 9–K

Form 9–K is used for semi-annual reports required to be filed by certain issuers having securities registered on a national securities exchange and certain issuers which have registered securities under the Securities Act of 1933. The form was amended during the fiscal year to reduce the number of deficiency letters sent by the Commission to registrants with respect to reports filed on the form.[25]

Many of the semi-annual reports filed on Form 9–K have been deficient because of a failure to follow the instructions contained in the form. In order to give greater prominence to the instructions and bring them to the attention of persons preparing the report, the general instructions have been placed ahead of the form and the instructions as to particular captions have been placed under the respective captions to which they apply. In addition, certain minor changes have been made in the form and instructions.

THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Rescission of Rule 9

In 1958 the Commission rescinded Rule 9 which afforded an exemption from the Holding Company Act to holding companies and their subsidiaries with relatively small total net utility assets or gross utility revenues. (See page 21 of the Commission's 24th Annual Report.) The rescission of the rule became effective on June 30, 1959. Unless companies previously claiming an exemption from the Holding Company Act under this rule change their status, secure an exemption on some other basis or register as a holding company under that Act, certain transactions, including the sale of any security, are unlawful. The rescission of Rule 9 is further discussed on page 143 of this report.

Modification of Rule 28

Early in 1960 the Commission promulgated a statement of administrative policy regarding the balance sheet treatment of the credit equivalent to the reduction in income taxes arising from deferred tax accounting.[26] The statement is designed to advise all interested persons of the Commission's view that any financial statements filed with the Commission on and after April 30, 1960, the effective date of the statement of administrative policy, in which the accumulated tax

[25] Securities Exchange Act Release No. 6237 (April 18, 1960).

[26] Holding Company Act Releases Nos. 14173 and 14209; Securities Act Releases Nos. 4191 and 4206; Securities Exchange Act Releases Nos. 6189 and 6233; Investment Company Act Releases Nos. 2977 and 3010; and Accounting Series Releases Nos. 85 and 86 (February 29 and April 12, 1960).

credit is designated as earned surplus (or its equivalent) or in any manner as a part of equity capital (even though accompanied by words of limitation such as "restricted" or "appropriated"), will be presumed by the Commission to be misleading or inaccurate despite disclosure contained in the certificate of the accountant or in footnotes to the financial statements, provided the amounts involved are material. The Commission also modified Rule 28 under the Holding Company Act so as to conform the language of that rule with the policy announced in the statement of administrative policy.[27] Rule 28 provided, in pertinent part, that no registered holding company or subsidiary thereof could publish financial statements inconsistent with its book accounts. The rule as modified provides, in effect, that a registered holding company or subsidiary thereof need not conform its published financial statements with its book accounts where such deviation is authorized or required by the Commission by rule, regulation, order, statement of administrative policy or otherwise.

Interpretation of Rule 50

During 1959 the Commission gave consideration to its existing procedure with respect to exceptions from the competitive bidding requirements of Rule 50 under the Holding Company Act. At that time a registered holding company or a subsidiary thereof planning to apply for such an exception could request, by letter, authorization to negotiate the price and interest or dividend rate as well as other terms of any security contemplated to be sold pursuant to that Act. Such letters were sent prior to a formal application for exception from the competitive bidding rule and were not public. By letter dated September 18, 1959, the Commission advised the chief executive officer of each registered holding-company system that any request for authorization to enter into such negotiations would thereafter have to be made by formal public application and that the Commission would issue a notice giving interested persons an opportunity to be heard thereon and might order a hearing on its own motion. This change in the practice of administering Rule 50 is further discussed on page 146 of this report.

Withdrawal of Proposed Revision of Rule 70

On December 8, 1953, the Commission gave notice that it had under consideration a proposal to revise Rule 70.[28] This rule governs the connections with financial institutions of officers and directors of registered holding companies and subsidiary companies thereof. Since 1953 the Commission has amended this rule three times so as to broaden the exceptions in certain aspects and in view of such action

[27] Holding Company Act Release No. 14172 (February 29, 1960).
[28] Holding Company Act Release No. 12242.

the Commission on March 1, 1960, announced that it had decided to withdraw the above proposal to revise the rule.[29] The most recent amendment to Rule 70 is discussed on page 22 of the 24th Annual Report.

THE INVESTMENT COMPANY ACT OF 1940

Adoption of Rule 3c–2

Section 3(c)(1) of the Act excepts from its operation any issuer which is not making and does not propose to make a public offering of its securities and whose outstanding securities are beneficially owned by not more than one hundred persons and further provides that beneficial owership by a company shall be deemed beneficial ownership by one person, with the exception that if such company owns 10 per centum or more of the outstanding voting securities of the issuer, the beneficial ownership of the issuer shall be deemed to be that of the holders of such company's outstanding securities.

The Commission during the fiscal year adopted a rule which provides that for the purpose of section 3(c)(1) of the Act, beneficial ownership by a company owning 10 per centum or more of the outstanding voting securities of a small business investment company licensed or proposed to be licensed under the Small Business Investment Act of 1958 shall be deemed to be beneficial ownership by one person notwithstanding that such company owning such securities has more than one stockholder, if the value of all securities of small business investment companies owned by such company does not exceed 5 percent of the value of its total assets.[30] The rule also would deem beneficial ownership by a company to be beneficial ownership by one person if the owner is a statewide development corporation created by or pursuant to an act of a State legislature to promote and assist growth and development of the economy of the State, provided that such State development corporation itself is not, or would not become as a result of its investment, an investment company.

Adoption of Rule 14a–1

Section 14(a) provides that no registered investment company and no principal underwriter for such a company, shall make a public offering of securities of which such company is the issuer, unless it has a net worth of not less than $100,000 or unless provision is made in connection with and as a condition of the registration of such securities under the Securities Act of 1933 which in the opinion of the Commission adequately insures (A) that after the effective date of such registration statement such company will not issue any security or receive any proceeds of any subscription for any security until firm

[29] Holding Company Act Release No. 14178.
[30] Investment Company Act Release No. 2909 (September 4, 1959).

agreements have been made with such company by not more than twenty-five responsible persons to purchase from it securities to be issued by it for an aggregate net amount which amount plus the then net worth of the company, if any, will equal at least $100,000; (B) that said aggregate net amount will be paid in to such company before any subscriptions for such securities will be accepted from any persons in excess of twenty-five; (C) that arrangements will be made whereby any proceeds so paid in, as well as any sales load, will be refunded to any subscriber on demand without any deduction, in the event that the net proceeds so received by the company do not result in the company having a net worth of at least $100,000 within ninety days after such registration statement becomes effective.

The Commission adopted a rule during the fiscal year which provides that, for the purpose of Section 14(a) of the Act, notification under Rule 604 of Regulation E under the Securities Act of 1933 is deemed registration under that Act.[31] Before the adoption of such rule an investment company could comply with the provisions of this section of the Act only in connection with registration as required by the Securities Act of 1933. Regulation E promulgated under the Securities Act of 1933 provides, however, that securities issued by any small business investment company operating under the Small Business Investment Act of 1958 which is registered under the Investment Company Act of 1940 shall be exempt from registration under the Securities Act of 1933 (subject to certain exceptions and qualifications set out in that regulation which, among other things, limits the exemption to an offering by an issuer that does not exceed $300,000). Rule 604 under this Regulation provides for filing of a Notification with the Commission in lieu of full registration under the Securities Act of 1933.

Amendment of Rule 20a–1; Adoption of Rules 20a–2 and 20a–3

Section 20(a) of the Investment Company Act of 1940 makes it unlawful to solicit any proxy, consent or authorization in respect of any security of which any registered investment company is the issuer in contravention of such rules and regulations as the Commission may prescribe. Rule 20a–1 makes applicable to such solicitations the Commission's proxy rules adopted under Section 14(a) of the Securities Exchange Act of 1934. Developments in the investment-company field indicated that disclosures required for investment companies by the proxy rules, particularly with reference to the investment adviser and his relationship to, and his dealings with, the investment company, were inadequate. In order to obtain better disclosure, the

[31] Investment Company Act Release No. 3011 (April 13, 1960).

Commission, during the fiscal year, amended Rule 20a–1 and adopted two new rules, Rules 20a–2 and 20a–3.[32]

The amended Rule 20a–1 provides among other things that where a solicitation is made by or on behalf of the management of an investment company, the investment adviser or any prospective investment adviser and its affiliated persons must furnish the investment company the necessary information to enable it to comply with the applicable requirements. Where a solicitation is made on behalf of an investment adviser or prospective investment adviser with its consent, by some person other than the management of the investment company, then the investment adviser or prospective investment adviser and its affiliated persons must furnish to the person making the solicitation the information necessary to enable such person to comply with the applicable requirements.

The new Rule 20a–2 requires that a proxy statement relating to a registered investment company must contain certain information in addition to that required by the proxy rules under the Securities Exchange Act of 1934. Where the solicitation relates to the election of directors of the investment company, information is required in regard to matters such as the investment advisory contract, ownership and control of the investment adviser, interests of the management of the investment company in the investment adviser or persons in a control relationship with it and transactions by certain persons in securities of the investment adviser or its parents. Except where the investment adviser is a bank, a balance sheet of the investment adviser must also be included, unless the Commission, for good cause shown, permits the omission of such balance sheet. Certain information is also required with respect to interests and relationships between the investment company or the investment adviser and the underwriter of the investment company's securities. Where action is to be taken with respect to an investment advisory contract, information must also be included with respect to such contract and with respect to certain collateral arrangements or understandings made in connection therewith.

The new Rule 20a–3 calls for the disclosure in a proxy statement relating to an investment company of information with respect to the material interests of officers, directors and nominees for election as a director of the investment company in material transactions, actual or proposed, to which the investment adviser or any of its parents or subsidiaries was or is to be a party. However, instructions to this requirement permit the omission of information in regard to interests of security holders as such and affiliated persons of the in-

[32] Investment Company Act Release No. 2978 (February 26, 1960).

vestment adviser in transactions which are not related to the business or operations of the investment company and to which neither the investment company nor any of its parents or subsidiaries is a party. The instructions further provide that the proportionate interest of a partner in transactions with the partnership need not be disclosed.

Adoption of Annual Report Form N–5R

Small business investment companies registered under the Investment Company Act of 1940 are required by Section 30(a) of that Act to file annual reports with the Commission. Any such company which has securities listed and registered on a national securities exchange or which has registered or outstanding a certain amount of securities under the Securities Act of 1933 is required to file similar annual reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. During the fiscal year the Commission invited views and comments on a proposed Form N–5R which would be used for annual reports filed by small business investment companies pursuant to both of the above-mentioned Acts.[33] The proposed form, which was adopted after the close of the fiscal year,[34] is a combination form which enables a small business investment company to file with the Commission a single annual report which meets all of the above mentioned annual reporting requirements. This form permits such companies to meet the Commission's requirements as to financial statements by filing copies of the company's annual financial report to the Small Business Administration pursuant to the Small Business Investment Act of 1958.

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[33] Investment Company Act Release No. 3050 (June 22, 1960).
[34] Investment Company Act Release No. 3085 (August 1, 1960).

PART IV

ADMINISTRATION OF THE SECURITIES ACT OF 1933

The Securities Act of 1933 is primarily a disclosure statute designed to provide investors with material facts concerning securities publicly offered for sale by use of the mails or instrumentalities of interstate commerce, and to prevent misrepresentation, deceit or other fraudulent practices in the sale of securities. The issuer of such securities is required 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 making of any written offering 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 securities under the Act is effected by filing with the Commission a registration statement on the applicable form containing the prescribed disclosure. 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 administra-

tion by empowering the Commission to classify issues, issuers and prospectuses, to prescribe appropriate forms, and to increase, or in certain instances vary or diminish, the particular items of information required to be disclosed in the registration statement, as the Commission deems appropriate in the public interest or for the protection of investors.

In general the registration statement of an issuer other than a foreign government must describe such matters as the names of persons who participate in the direction, management or control of the issuer's business; their security holdings and remuneration and the 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 or negligent 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 1960 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. The Act provides that a registration statement shall become effective on the 20th day after it is filed on or the 20th day after

the filing of any amendment thereto. 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 through distribution 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 number of calendar days which elapsed from the date of the original filing to the effective date of registration for the median (average) registration statement with respect to the 1,275 [1] registration statements that became effective during the 1960 fiscal year was 43, compared with 28 days for 925 registration statements in fiscal year 1959 and 24 days for 685 registration statements in fiscal year 1958. The increase in the elapsed time has been due primarily to the cumulative effect of the unprecedented volume of registration statements filed, particularly those filed by issuers that had never before filed under the Act, and the lack of a sufficient number of examining personnel to process such a volume. The number of registration statements filed during fiscal year 1960 was 1,628, as compared with 1,226 and 913 in fiscal years 1959 and 1958, respectively.[2]

The following table shows by months during the 1960 fiscal year the number of calendar days for the registration median statement during each of the three principal stages of the registration process, the total elapsed time and the number of registration statements effective.

[1] Excludes the 157 registration statements of mutual fund companies that became effective during fiscal year 1960 that were filed pursuant to the provisions of Section 24(e) of the Investment Company Act of 1940. The total elapsed time on these 157 registration statements was 31 calendar days for the average registration statement.

[2] These figures include 159, 153 and 134 for fiscal years 1960, 1959, and 1958, respectively, registration statements filed by mutual fund companies pursuant to the provisions of Section 24(e) of the Investment Company Act of 1940.

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Time in registration under the Securities Act of 1933 by months during the fiscal year ended June 30, 1960

NUMBER OF CALENDAR DAYS

Months	From date of original filing to date of staff's letter of comment	From date of letter of comment to date of filing amendment thereafter	From amendment after letter to effective date of registration	Total number of days in registration	Number of registration statements effective [1]
July 1959	24	7	5	36	116
Aug	28	6	5	39	96
Sept	22	7	4	33	87
Oct	22	7	5	34	121
Nov	24	6	5	35	105
Dec	26	9	6	41	90
Jan. 1960	27	11	6	44	88
Feb	29	11	6	46	87
Mar	28	6	6	40	109
Apr	29	8	6	43	114
May	38	9	6	53	118
June	45	8	6	59	144
Fiscal 1960 for median effective registration statement	29	8	6	43	[1] 1,275

[1] See footnote 1, *supra*.

VOLUME OF SECURITIES REGISTERED

The 1,398 statements in the amount of $14.4 billion constitute an unprecedented number of registrations which became fully effective under the Securities Act during fiscal year 1960. This is an increase of one-third over the 1,055 effective registrations for the previous year and almost two-thirds more than the previous high of 860 registrations in fiscal year 1957. Reflecting a large increase in the registration of smaller issues, the volume of $14.4 billion for fiscal year 1960 represented an 8 percent decrease from the $15.7 billion of securities fully effective in fiscal year 1959 and a 13 percent decrease from the record $16.5 billion for fiscal year 1958. The chart on page 33 shows the number and dollar amount of fully effective registrations from 1935 to 1960.

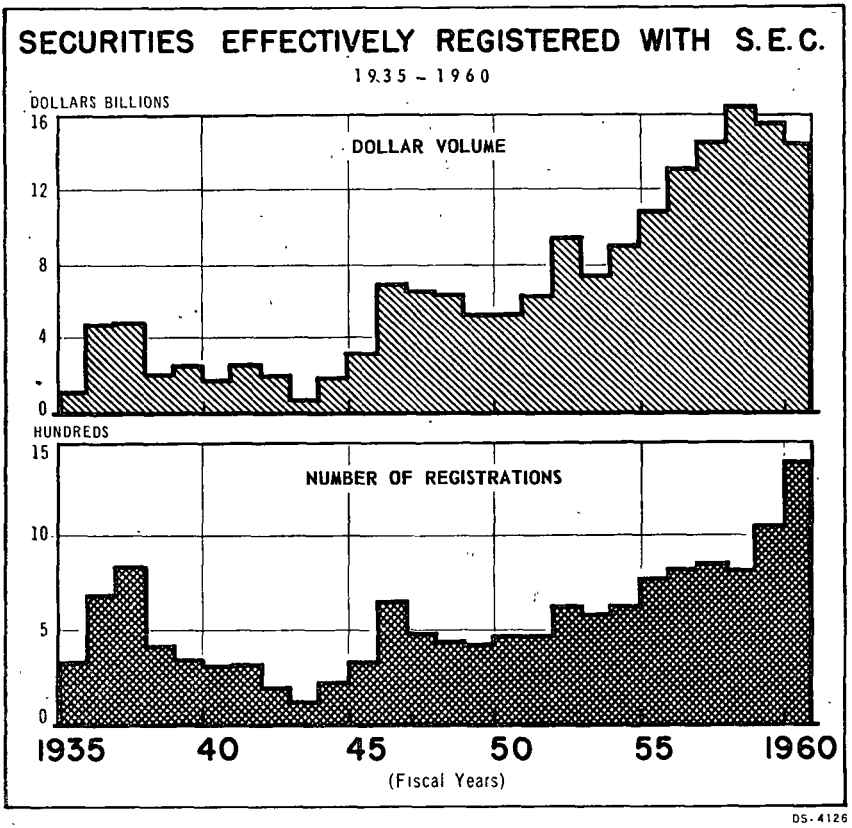
These figures cover all registrations which became fully effective, including new issues sold for cash by the issuer, secondary distributions and securities registered for other than cash sale, such as exchange transactions, issues reserved for conversion and issues reserved for options.

Of the dollar amount of securities registered in 1960, 75.9 percent was for the account of issuers for cash sale, 16.8 percent for account of issuers for other than cash sale and 7.3 percent was for the account of others, as shown below.

Account for which securities were registered under the Securities Act of 1933 during the fiscal year 1960 compared with the fiscal years 1959 and 1958

	1960 in millions	Percent of total	1959 in millions	Percent of total	1958 in millions	Percent of total
Registered for account of issuers for cash sale	$10,908	75.9	$12,095	77.3	$13,281	80.5
Registered for account of issuers for other than cash sale	2,407	16.8	2,746	17.5	3,008	18.3
Registered for account of others than issuers	1,051	7.3	815	5.2	201	1.2
Total	14,367	100.0	15,657	100.0	16,490	100.0

The indicated decrease in the value of securities to be sold for cash for account of the issuer results from a decrease of $1.0 billion (20 percent) in the volume of debt securities and a decrease of almost $200 million in the volume of preferred stock. Debt securities made up $4.2 billion of the 1960 volume, preferred stock $250 million and common stock $6.4 billion. Two thirds of the common stock was registered by 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 is shown for each of the fiscal years 1935 through 1960 in appendix table 1. More detailed information for 1960 is given in appendix table 2.

Securities registered by investment companies amounted to $4.4 billion, an increase of $100 million over the amount for fiscal 1959, comprising 40 percent of the total amount registered for cash sale for the account of issuers in fiscal 1960. Other financial and real estate securities, including employee stock purchase plans, increased to $1.4 billion, 50 percent above the previous year, while securities of manufacturing companies amounted to only $930 million, less than half of the amount for fiscal 1959. A classification by industry is shown below for securities registered for cash sale for account of issuers in each of the last three fiscal years.

	1960 in millions	Percent of total	1959 in millions	Percent of total	1958 in millions	Percent of total
Manufacturing	$932	8.5	$1,974	16.3	$2,239	16.9
Extractive	127	1.2	128	1.1	110	.8
Electric, gas and water	2,313	21.2	2,726	22.5	3,373	25.4
Transportation other than railroads	99	.9	41	.3	52	.4
Communication	1,000	9.2	591	4.9	2,978	22.4
Investment companies	4,437	40.7	4,329	35.8	2,919	22.0
Other financial and real estate	1,354	12.4	880	7.3	1,109	8.4
Trade	169	1.5	543	4.5	34	.2
Service	101	.9	76	.6	29	.2
Construction	8	.1	75	.6	25	.2
Total corporate	10,539	96.6	11,363	93.9	12,868	96.9
Foreign governments	369	3.4	732	6.1	412	3.1
Total	10,908	100.0	12,095	100.0	13,281	100.0

Investment company issues were classified as follows:

	1960 in millions	1959 in millions	1958 in millions
Open-end companies [1]	$4,138	$3,760	$2,784
Closed-end companies	52	140	12
Face amount certificate companies	246	429	123
Total	4,437	4,329	2,919

[1] Including periodic payment plans or their underlying securities.

Of the net proceeds of the corporate securities registered for cash sale for the account of issuers in fiscal 1960, 52 percent was designated for new money purposes, including plant, equipment and working capital, 1 percent for retirement of securities, 46 percent for purchase

of securities, principally by investment companies, and 1 percent for all other purposes.

REGISTRATION STATEMENTS FILED

Although the number of registration statements filed in the 1960 fiscal year increased over the number filed in fiscal 1959 from 1,226 to 1,628, the dollar amount decreased from $16,622,890,371 to $15,816,563,521.

Of the 1,628 registration statements filed in the 1960 fiscal year, 774, or 47.5 percent, were filed by companies that had not previously filed registration statements under the Securities Act of 1933. Comparable figures for the 1959 and 1958 fiscal years were 472, or 39 percent, and 254, or 28 percent, respectively.

A cumulative total of 17,558 registration statements has been filed under the Act by 8,171 different issuers covering proposed offerings of securities aggregating over $183 billion from the effective date of the Securities Act of 1933 to June 30, 1960.

Particulars regarding the disposition of all registration statements filed under the Act to June 30, 1960, are summarized in the following table.

Number and disposition of registration statements filed

	Prior to July 1, 1959	July 1, 1959 to June 30, 1960	Total June 30, 1960
Registration statements:			
Filed	15,930	[a]1,628	17,558
Disposition:			
Effective (net)	13,871	[b]1,422	[c]15,280
Under stop or refusal order	202	[d]5	207
Withdrawn	1,605	131	1,736
Pending at June 30, 1959	252		
Pending at June 30, 1960			335
Total	15,930		17,558
Aggregate dollar amount:			
As filed (in billions)	$167.3	$15.8	$183.1
As effective (in billions)	$162.9	$14.4	$177.3

[a] Includes 159 registration statements covering proposed offerings totaling $4,082,033,911 filed by investment companies under section 24(e) of the Investment Company Act of 1940 which permits registration by amendment to a previously effective registration statement.

[b] Excludes 14 registration statements that became effective during the year but were subsequently withdrawn; these 14 statements are counted in the 131 statements withdrawn during the year. The 1,422 figure does include 4 statements that became effective during the year by lifting of stop orders.

[c] Excludes 13 registration statements effective prior to July 1, 1959, that were withdrawn during the 1960 fiscal year; these 13 statements are counted under withdrawn.

[d] A total of 9 registration statements was placed under stop orders during the 1960 fiscal year; 4 of these stop orders were lifted during the year upon appropriate amendment of the registration statements.

The reasons given by registrants for requesting withdrawal of the 131 registration statements that were withdrawn during the 1960 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	17	13
2. Registrant was advised that statement should be withdrawn or stop order proceedings would be necessary	29	22
3. Change in financing plans	50	38
4. Change in market conditions	7	5
5. Financing obtained elsewhere	14	11
6. Regulation A could be used	1	1
7. Registrant was unable to negotiate acceptable agreement with underwriter	13	10
Total	131	100

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.

The following table indicates the number of proceedings under Section 8(d) of the Act pending at the beginning of the 1960 fiscal year, the number initiated during the year, the number terminated and the number pending at the end of the year.

Proceedings pending at beginning of fiscal year	13	
Proceedings initiated during fiscal year	8	
		21
Proceedings terminated during fiscal year:		
By issuance of stop orders	9	
By withdrawal of registration statement	2	
By dismissal of proceeding	1	
		12
Proceedings pending at the end of the 1960 fiscal year		9

Seven of the nine proceedings in which stop orders were issued during the fiscal year are described below. The other two proceedings, which involved Industro Transistor Corporation and Managed Funds, Inc., were described in the Commission's 25th Annual Report.[3]

Ballard Aircraft Corporation.—The registration statement filed by this Delaware corporation covered a proposed public offering of 300,000 shares of common stock at $3.25 per share. The prospectus

[3] Pp. 38 and 39 respectively. The stop orders in both of these cases were lifted during the fiscal year. See Securities Act Releases 4120 and 4234.

stated that the purpose of the offering was to obtain funds with which to develop, manufacture and sell aircraft designed by Vincent J. Burnelli embodying a "body lift" principle.

After the institution of proceedings pursuant to Section 8(d) of the Securities Act, the registrant admitted that the registration statement was materially deficient and consented to the entry of a stop order. The Commission found that the registration statement was materially incorrect and misleading and issued a stop order suspending its effectiveness.[4]

The prospectus, which is part of the registration statement, stated that the "lifting body principle" involved in the design of registrant's Loadmaster aircraft, wherein lift is developed by the airfoil shape of the fuselage, was established to Burnelli's satisfaction by the construction between 1920 and 1946 of seven airplanes employing this principle. The prospectus further represented that registrant planned to seek contracts for the development, manufacture and sale of the Loadmaster with the Armed Forces or with any other person, firm or Government agency, "although it has no assurance that it will be successful in so doing," and that the Loadmaster offers the possibility of increased pay-load at decreased operating costs because of its design, "the potential of which has never been fully explored by the present aircraft industry, the military or other possible users of the aircraft." It enumerates in some detail nine proposals for contracts with the armed services which it states registrant intended to present.

The Commission found these and other representations in the registration statement relating to the consideration given to the Burnelli design by the aircraft industry and military and other users of aircraft, and to the procurement of military contracts, to be inaccurate or misleading. In particular, it found misleading the failure to disclose the lack of success of repeated attempts to have planes embodying the Burnelli design produced and marketed for military or commercial use.

The description of registrant's business in the prospectus was also found to be deficient in other respects. The statements in the prospectus with regard to the increased pay-load and decreased operating costs of the Loadmaster were misleading in view of the lack of any operational experience to support such statements, and the prospectus was misleading in failing to disclose that claimed advantages of the design of the Loadmaster are for the most part conjectural, that the design possesses disadvantages which may have caused its rejection by past potential users, that the Loadmaster has never been flown with

[4] Securities Act Release No. 4156 (Novemmber 12, 1959).

R-2800 engines and that performance characteristics set forth in the prospectus based on specifications including such engines are speculative in this respect, that the estimates of the cost of manufacture of the Loadmaster II are not based on any experience, and the statement made that the plane can profitably be sold at less than $450,000 was completely speculative.

The Commission also found the prospectus to be deficient or misleading in various other respects; for example, in its failure accurately to describe the registrant's competitive position, to disclose adequately the proposed use of the proceeds from the offering and to include in the forepart of the prospectus a summarization of the speculative factors affecting the registrant's securities. Moreover, the financial statements included in the registration statement were not prepared and certified according with the applicable requirements and the registrant failed to include certain other necessary financial statements.

Cameron Industries, Inc.—A registration statement was filed by this corporation for the purpose of registering (a) 300,000 shares of common stock for sale to the public at $1 per share; (b) 25,000 shares of common stock issued to Robert Grocoff, president of the underwriter of the 300,000-share public offering; (c) three-year purchase warrants for 200,000 shares of common stock exercisable at $1.50 per share to be delivered to the underwriter; and (d) 200,000 shares of common stock underlying the warrants. Registration of the securities would have permitted the underwriter and Grocoff, on their own behalf, to acquire from the registrant and sell to the public 225,000 shares of registrant's common stock after the completion of the public distribution on behalf of the registrant. In addition, the underwriter was to receive a commission of 20 percent of the gross proceeds of the public sale of 300,000 shares and $25,000 in cash for expenses, a total of $85,000 or more than 28 percent of the gross proceeds.

After investigation and following a hearing held pursuant to the provisions of Section 8(d) of the Securities Act, the Commission found that the registration statement was materially false and misleading and issued a stop order suspending its effectiveness.[5]

The registration statement, among other things, failed to disclose that Grocoff played an important part in causing registrant to be organized and in formulating its financing proposal, served as its president until shortly before the statement was filed, kept registrant's books and records, and received and exercised authority to co-sign all checks drawn on registrant's bank account. In addition, the Commission found that of the 316,500 shares of registrant's stock issued and outstanding at the filing of the registration statement, 291,500 had

[5] Securities Act Release No. 4159 (November 30, 1959).

been sold in violation of the registration provisions of the Securities Act, which fact and the resulting balance sheet entries were not set forth in the prospectus.

Central Oils Incorporated.—The registrant, an Oregon corporation, was organized in September 1956 to explore for oil and gas on properties which were acquired from its promoters, A. R. Morris and H. C. Evans, who with one other person constituted the entire personnel of the registrant. The properties were represented to be located on the Hay Creek Anticline in Jefferson County, Oregon. The registrant filed a registration statement on July 30, 1958 proposing a public offering of 1,000,000 shares of 10 cent par value common stock (increased to 3,000,000 shares by amendment dated September 2, 1958) to be offered at the par value. The Commission instituted stop order proceedings with respect to the registration statement in October 1958.

A stipulation of facts was entered into by counsel for the registrant in which the registrant admitted the material deficiencies alleged in the Statement of Matters and consented to the entry of a stop order. Among the material deficiencies found to exist are those described below:

The description of the properties failed to disclose known geological data indicating the unlikelihood of oil and gas being found in commercial quantities; that the location of the proposed test well, chosen without benefit of favorable scientific information, is hundreds of miles from commercial production; that the area is covered with or underlain with igneous rock formations consisting of lava flow or basalt intrusions and that the presence of such formations is such an unfavorable factor as to preclude surface determination of geologic structure, and that maps provided by the registrant failed to substantiate the representation that the proposed drilling site was on the Hay Creek Anticline formation. Although the registration statement disclosed that five dry holes had been drilled in the area, adverse information concerning the area obtained thereby was omitted.

The prospectus included a geological report recommending exploratory drilling. The report contained a misleading favorable comparison between the Central Oregon basin where the registrant's properties are located and the oil fields of California in that it failed to state that while the California formations are highly productive the Central Oregon basin has never yielded oil in commercial quantities. The report further stated that results obtained from a study of drilled samples which the registrant had obtained from a dry hole already drilled in the area were very encouraging although in fact the samples afforded little basis for encouragement.

The Commission also found the registration statement to be misleading in failing to set forth concisely in the forepart of the prospectus the speculative features of the offering; that the offering price was arbitrarily determined; that there is no assurance that the shares would be sold; that as a result of promotional transactions the book equity per share would be substantially less than the 10 cents offering price and that should the registrant be liquidated the promoters by virtue of their proportionally large holdings of stock would receive a substantial portion of the funds paid in by the public.

Other material deficiencies included the failure to disclose that the promoters held oil and gas leases in area contiguous to the registrant's leases and would personally benefit without cost to themselves should exploration of the registrant's properties prove successful; that two Regulation A suspension orders suspending the effectiveness of two prior proposed offerings of the registrant's securities had become permanent and that in addition to the States of Texas, Arizona, and Illinois, the State of Washington also had issued a cease and desist order prohibiting the registrant from selling its securities within the State. The registration statement was filed on an incorrect form, failed to include required copies of a certain escrow agreement and failed to include an opinion of counsel as to the legality of the proposed issue. A stop order was issued.[6]

Hinsdale Raceway, Inc.—The company was incorporated in the State of New Hampshire in April 1958 for the purpose of operating a harness racing track including restaurants and food stands to be operated at the track in Hinsdale, New Hampshire.

In October 1958, a complaint was filed by the Commission seeking to enjoin the registrant and certain individuals from further offers and sales of registrant's securities in violation of the Securities Act of 1933. The Company and its officers and directors consented to the entry of a decree permanently enjoining them from further violations of the Act.

Subsequently the company filed a registration statement covering a proposed public offering of 1 million shares of Capital Trust Certificates with 1 million shares of underlying $1 par value common stock and $1 million of 6 percent Debentures.

In April 1959, the Commission instituted a proceeding to determine whether a stop order should issue. Prior to the commencement of the hearing, the registrant entered into a stipulation of facts, waived a hearing and all post-hearing procedures and admitted that the registration statement contained untrue statements of material facts and omitted to state material facts necessary to make the statements made

[6] Securities Act Release No. 4131 (August 19, 1959).

therein not misleading. Among other matters, it was stipulated that the following facts were not disclosed in the registration statement: that the registrant had suffered a loss of over $44,600 during prior operations; that there was no firm commitment for the purchase of the proposed securities; that a previous distribution of registrant's unregistered stock had been enjoined and that the registrant was contingently liable under the Securities Act for such sales; that the management intends to retain control of the registrant by placing all capital stock in a voting trust for 10 years to be controlled by the voting trustees who are also officers and directors of the registrant; that none of the management had ever had any experience in race track management; that the registrant is committed to a 20-year management contract extendable for an additional 20 years at the option of the management group; that said contract provides a commission of 1 percent of the gross parimutuel handle (i.e. total amount bet) plus a fee of not more than $50,000 for the management group; that substantially all risk capital was to be provided by the public; that the promoters have been granted options to purchase 300,000 shares of registrant's stock; that the registrant omitted under "Earnings" and "Earned Surplus" (deficit) $22,302.00 payable under the management contract; and that the registrant failed to disclose a note payable in the amount of $94,021.04 to Sportservice Corporation. In addition the registrant made materially misleading statements and omissions regarding the estimated gross handle and net earnings; the cost of necessary facilities and the amount already expended; the interest rates, repayment provisions, restrictions and other conditions of the mortgages, liens and other encumbrances; the amount, use and order of expenditures of proceeds from the sale of the proposed registration; the type of construction, capacity and the size of the track; the number of days of proposed operation during the racing season; and the distance from urban areas and the extent, type and location of competition. Moreover, the financial statements were misleading in omitting to disclose certain of the above facts.

In addition to the above, the prospectus failed to furnish adequate information concerning the securities to be offered, the method of distribution, the amount of securities being registered and the amount proposed to be offered to the public. It also failed to disclose that the debentures proposed to be offered were to mature in ten years and that no indenture covering the debentures had been filed in compliance with the Trust Indenture Act of 1939.

Based on the facts set forth in the stipulation the Commission issued a stop order suspending the effectiveness of the registration statement.[7] Thereafter the registrant filed two material amendments

[7] Securities Act Release No. 4145 (October 1, 1959).

to conform with the order and to furnish up-to-date information and the registration statement as amended was declared effective.

Minerals Consolidated, Inc.—The registration statement filed by this Nevada corporation sought to register 1,100,000 shares of common stock, and warrants to purchase 2 million shares of common stock at $1 per share. The securities (except 100,000 shares of common stock) were proposed to be offered for sale to the public in units consisting of one share of common stock and a warrant to purchase two additional shares at a price of $1 per unit. The remaining 100,000 shares of common stock were proposed to be offered for sale to the public without warrants at $1 per share after completion of the unit offering. The proceeds of the unit offering were to accrue to the corporation, but the proceeds of the sale of the remaining 100,000 shares were to be paid to two of the promoters individually.

After a hearing held pursuant to the provisions of Section 8(d) of the Securities Act, the Commission found the registration statement to be deficient and materially misleading and issued a stop order.[8]

The Commission found that the prospectus included in the registration statement failed to meet the statutory standard of disclosure requiring that material facts be presented in such a manner that their significance is readily understandable. Here, information relating to a single subject matter was scattered confusingly throughout various sections of the prospectus with the result that the ordinary investor would have difficulty in ascertaining the essential elements of the corporation's business and the merits of the proposed offering; and the prospectus failed to set forth in summary fashion in one place, under an appropriate heading, an informative statement of the speculative features of the registrant's business and property and its proposed use of the proceeds of the offering. Among the principal facts such a summary statement should have disclosed are that the registrant was a recently organized company with limited operating experience, the registrant's mining properties had no known deposits of commercially mineable ore, the aggregate amount of funds proposed to be raised by the sale of securities to the public was far in excess of the needs of any existing activity or program of the registrant and it had no specific plans for the use of more than half of the net proceeds of the offering.

The Commission also found that the prospectus failed to state material facts concerning transactions between the registrant and its promoters, officers and directors, including the cost to said persons of properties sold by them to the registrant, their stock ownership in the registrant, and the things of value received and to be received by them from the registrant.

[8] Securities Act Release No. 4151 (October 26, 1959).

In addition, the Commission found that the registration statement failed to make adequate disclosure of facts required to be stated or otherwise failed to comply with provisions of the form for registration with respect to eleven other matters. For example, the prospectus stated that certain legal proceedings were pending, but did not adequately identify the defendants nor describe the basis of the actions and the possible consequences to the registrant; and no disclosure was made of the fact that the geologist whose report was referred to in the prospectus was an employee of the registrant at the time he prepared his geological report.

Sports Arenas (Delaware) Inc.—Sports Arenas (Delaware) Inc., a Delaware corporation was organized in September 1957 and through wholly owned subsidiaries engaged in the operation and management of bowling alleys. It filed a registration statement covering a proposed offering by stockholders of 461,950 shares of common stock, 1 cent par value, at the market price of the stock but not less than $6.00 per share, and a proposed offering by registrant of $2 million of 6 percent, 10-year convertible debentures at their face value and 250,000 shares of common stock reserved for conversion of such debentures.

The Commission instituted proceedings under Section 8(d) of the Securities Act to determine whether a stop order should issue suspending the effectiveness of the registration statement. The registrant entered into a stipulation in which it admitted, for the purpose of the proceeding, that the registration statement contained untrue and misleading statements of material facts and omitted material facts required to be stated therein and consented to the entry of a stop order. In the light of the numerous material deficiencies in the registration statement, a stop order suspending the effectiveness of the registration statement was issued.[9]

The registration statement failed to disclose that certain prior distributions of stock by the registrant were made in violation of the registration requirements of Section 5 of the Act and that fact should have been disclosed in the registration statement together with the disclosure of the registrant's contingent liabilities in connection with such distributions. The registration statement also failed to disclose that certain transactions purportedly made at arm's-length with persons not connected with the registrant were in fact made with persons who were associated with the controlling stockholder of the registrant.

The registration statement also failed to disclose the existence of control of the registrant by certain persons and the interests of the

[9] Securities Act Release No. 4153 (October 23, 1959).

management and other "insiders" in certain transactions with the registrant.

The registration statement was also deficient in numerous other respects including the failure to make accurate and complete disclosure with respect to the use of the proceeds from the proposed offering, to make a statement summarizing the speculative factors applicable to the registrant and its securities and to furnish financial statements certified by an independent public accountant as required by the applicable rules. In the latter connection, it was found that the employee of the firm who was in charge of the audit of the registrant's books had purchased stock of the registrant for himself or members of his family and could not therefore be regarded as independent.

Strategic Minerals Corporation of America.—The registrant was organized under the laws of Delaware in 1955 for the purpose of developing and using a process, known as the Bruce Williams Process, for the beneficiation of low-grade ores. The registrant proposed to use such process to beneficiate low-grade manganese ores. It filed a registration statement covering a proposed offering of $1 million principal amount of 6 percent first mortgage bonds at a price of 95 percent of the principal amount and 1,200,000 shares of common stock at $3.00 per share. After the Commission instituted proceedings pursuant to Section 8(d) of the Act, the registrant entered into a stipulation of facts with our Division of Corporation Finance and consented to the entry of a stop order.[10]

Among the deficiencies constituting the grounds for the issuance of the Commission's stop order were: (1) representations that the registrant's proposed production facilities were planned to be located near manganese ore deposits, and stockpiles owned by the United States Government, in Texas, Arkansas, Arizona, and New Mexico, without disclosing that registrant had no assurance of obtaining any ores owned by the government for beneficiation, and that it had no assured source of raw materials and had not examined any stockpiles, mines or mining properties with a view to locating potential sources of raw material for its proposed plants; (2) representations concerning costs of constructing plant facilities and operating cost estimates, which the registrant conceded were inadequate and misleading; (3) the failure to disclose that the registrant had not conducted any market survey to determine whether any user of manganese ores would be interested in purchasing its upgraded produce; (4) the failure to disclose the current world price of manganese ores, and that on the basis of available information and present world prices for manganese, the Bruce

[10] Securities Act Release No. 4202 (April 5, 1960).

Williams Process is not economically feasible; (5) the failure to disclose that there was no market justification at that time for the construction of any beneficiating plants to upgrade manganese ores; and (6) the failure to disclose in a summary fashion in one place in the early part of the prospectus under an appropriate heading the speculative features of the registrant's business and securities. The Commission also found deficiencies, among others, with respect to the disclosures contained in the financial statements, and representations concerning the use of proceeds, securities proposed to be offered and the amount of securities outstanding, compensation to be paid to the underwriter and the underwriter's relationship to the registrant and the debt securities covered by the registration statement.

EXAMINATIONS AND INVESTIGATIONS

The Commission is authorized by Section 8(e) of the Act to make an examination in order to determine whether a stop order proceeding should be instituted under Section 8(d). For this purpose the Commission is empowered to subpoena witnesses and require the production of pertinent documents. The following table indicates the number of such examinations with which the Commission was concerned during the fiscal year.

Examination pending at the beginning of the fiscal year	4	
Examinations initiated during the fiscal year	14	
		18
Examinations in which stop order proceedings were authorized during the fiscal year	1	
Other examinations closed during the fiscal year	7	
		8
Examinations pending at the end of the fiscal year		10

The Commission is also authorized by Section 20(a) of the Act to make an investigation to determine whether any provisions of the Act or of any rule or regulation prescribed thereunder have been or are about to be violated. Investigations are instituted under this section as an expeditious means of determining whether a registration statement is false or misleading or omits to state any material fact. The following table indicates the number of such investigations with which the Commission was concerned during the fiscal year.

Investigations pending at the beginning of the fiscal year	15	
Investigations initiated during the fiscal year	16	
		31
Investigations in which stop order proceedings were authorized during the fiscal year	2	
Other investigations closed during the fiscal year	9	
		11
Investigations pending at the end of the fiscal year		20

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–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 F:
Exemption for assessments on assessable stock and for assessable stock offered or sold to realize amount of assessment thereon, up to $300,000.[11]

Under Section 3(c) of the Securities Act, which was added by Section 307(a) of the Small Business Investment Act of 1958, the Commission is authorized to adopt rules and regulations exempting securities issued by a company which is operating or proposes to operate as a small business investment company under the Small Business Investment Act. Acting pursuant to this authority, the Commission has adopted a Regulation E which exempts upon certain terms and conditions limited amounts of securities issued by any small business investment company which is registered under the Investment Company Act of 1940. This regulation is substantially similar to the one provided by Regulation A adopted under Section 3(b) of the Act.

Exemption from registration under Section 3(b) or 3(c) of the Act does not carry any 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 implements Section 3(b) of the Securities Act of 1933 and permits a company to offer and sell to the

[11] Adopted July 30, 1959, Securities Act Release No. 4121.

public, securities not in excess of $300,000 in any one year without registration, if the company complies with the regulation. Upon complying with the regulation a company is exempt from the registration provisions of the Act. A Regulation A filing consists of a notification supplying basic information about the company, certain exhibits and an offering circular which is required to be used in offering the securities. However, in the case of a company with an earnings history which is making an offering not in excess of $50,000, an offering circular need not be used. A notification is filed with the regional office of the Commission for the region in which the company has its principal place of business.

During the 1960 fiscal year, 1049 notifications were filed under Regulation A, covering proposed offerings of $224,913,982, compared with 854 notifications covering proposed offerings of $170,241,400 in the 1959 fiscal year. Included in the 1960 total were 38 notifications covering stock offerings of $9,412,523 with respect to companies engaged in the exploratory oil and gas business and 37 notifications covering offerings of $7,428,391 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		
	1960	1959	1958
Size:			
$100,000 or less	220	222	231
Over $100,000 but not over $200,000	216	162	165
Over $200,000 but not over $300,000	613	470	336
	1,049	854	732
Underwriters:			
Used	450	318	243
Not Used	599	536	489
	1,049	854	732
Offerors:			
Issuing companies	1,021	797	704
Stockholders	27	31	28
Issuers and stockholders jointly	1	26	0
	1,049	854	732

Most of the offerings which were underwritten were made by commercial underwriters, who participated in 398 offerings in 1960, 251 offerings in 1959, and 185 offerings in 1958. 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. If no hearing is requested within 30 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 1960 fiscal year, temporary suspension orders were issued in 75 cases as compared with 87 cases in the 1959 fiscal year. Of the 75 orders, five were later vacated. Requests for hearing were made in 15 cases. In six of such cases the requests were later withdrawn; in one such case the suspension order was vacated; and as of June 30, 1960, the proceedings in the remaining eight cases were still pending.

Fifteen cases were pending as of June 30, 1959, in which a hearing was requested after a temporary suspension order had been issued. Subsequently, in one of such cases the issuer withdrew its hearing request and consented to the entry of permanent suspension order; in five cases permanent suspension orders were entered by the Commission after hearings; and in one case the Commission vacated the suspension order. The remaining eight cases were still pending on June 30, 1960, making a total of 16 cases pending as of that date as to which hearings have been requested.

Certain of the above cases are summarized below to illustrate the misrepresentations and other noncompliance with the regulation which led to the issuance of suspension orders.

American Reserve Life Insurance Company.—This company mailed to prospective investors a four-page brochure entitled "Through Investments in Good Life Insurance Stock Your Money Can Earn Money For You." The brochure was not filed with the Commission. The Commission found that it constituted sales material used in connection with the offering which was required by Regulation A to be filed with the Commission prior to its use. In addition, the brochure failed to state material facts necessary in order to make the statements made therein not misleading, particularly statements concerning the profits and investment return of stocks of other insurance companies and their relationship to the profits and investment return of the stock of American Reserve. The Commission found that under the circumstances the offer of American Reserve stock was, and its continued offering would be, in violation of Section 17 of the Act. The Commission also found that American Reserve

offered its stock in Idaho and Maryland which were not listed in its notification among the jurisdictions in which the stock was to be offered. Regulation A provides that the offering shall not be made in any jurisdiction not so listed until the Commission has been notified of the issuer's intention to offer the securities in the additional jurisdiction or jurisdictions.

The Commission concluded that a permanent suspension order should be entered.[12]

Arizona Aviation and Missile Corporation.—The issuer is an Arizona corporation formed in 1957 for the purpose of developing and manufacturing safety and electronic components for aircrafts and missiles. At the time of the issuer's offering under Regulation A, it had engaged in manufacturing only three items: a curtain rod, a machine for soldering electrical circuits and an electrical display lighting device.

The issuer delivered to the underwriter for use in the offering copies of a reprint from a technical magazine, the use of which implied that the issuer was active in the field of aviation safety design. This reprint was not filed with the Commission as required by Regulation A. In addition, the issuer sponsored, and its president participated in, two television programs designed to further the sale of the issuer's stock. The issuer also failed to file copies of the scripts of these programs with the Commission as required by Regulation A.

In order to publicize and further the offering and sale of its stock the issuer caused to be published in a newspaper an article purporting to describe the issuer's business. This article contained misleading statements and included a photograph which was misleading in that it purported to show the operations of the issuer but in fact showed those of another company.

In view of the issuer's failure to comply with the terms and conditions of the regulation the Commission entered an order permanently suspending the exemption.[13]

Condor Petroleum Co., Inc.—This corporation, a Delaware corporation, was organized in July 1957 for the purpose of exploring, developing and drilling for oil on certain properties located primarily in California. In its notification filed under Regulation A, the issuer named as an underwriter a firm which was not qualified to so act because it had been enjoined in a suit brought by the Commission for violation of the Commission's net capital rule. When this fact was brought to the issuer's attention, the underwriting contract was cancelled and another underwriting contract was entered into with an-

[12] Securities Act Release No. 4200 (March 29, 1960).
[13] Securities Act Release No. 4135 (August 31, 1959).

other firm. This latter firm then entered into a sales contract with the first named underwriter under which it was agreed that that firm would be allowed certain commissions on all shares that it might sell and a substantial share of the expense money which the issuer agreed to pay in connection with the offering. No amendment to the notification or offering circular was filed to disclose this agreement.

In the suspension proceedings under Regulation A the Commission found that the terms and conditions of the regulation had not been met for the reason that the first underwriter named was not qualified to act as such, the second underwriter named was not the real underwriter and the real underwriter being subject to an injunction was not qualified to act.

The Commission found that the statements in the notification and offering circular with respect to the identity of the underwriter were false and misleading. The Commission also found, upon the basis of evidence produced in the proceedings, that the underwriter had failed to deliver a copy of the offering circular to purchasers of the securities as required by Regulation A.

In view of the foregoing, the Commission entered an order permanently suspending the exemption under Regulation A.[14]

Gold Crown Mining Corporation.—This corporation was a Nevada corporation organized in 1949 for the purpose of exploring, developing and operating certain gold mining properties located in California. The subject proceeding was held to determine whether a temporary suspension order entered in June 1958 should be vacated or made permanent.

Gold Crown's offering circular stated that the offering price of the stock is $5.00 per share. However, during 1957 Gold Crown sold 2,500 shares at a price of $1 per share to five persons including four officers and directors and sold 590 shares to public investors at the stated offering price of $5 per share. The offering circular was not amended to reflect the sale of 2,500 shares at the reduced price of $1 per share or that 2,000 of such shares were sold to officers and directors. The Commission found that the offering circular was materially false and misleading in failing to disclose these significant facts and thereby would operate as a fraud and deceit on subsequent purchasers. The Commission concluded that the assertion by Gold Crown that the sale of securities at $1 per share was an emergency measure to raise funds to meet current operating expenses could not excuse the failure to disclose such sales in the offering circular.

The secretary-treasurer of the company was its controlling stockholder and a director. Her two sons acted as underwriters in connec-

[14] Securities Act Release No. 4152 (October 29, 1959).

tion with the offering. In June 1958, following pleas of guilty, all three of these persons were convicted by a California court of violating the California Corporate Securities Law. Those convictions were based on sales of Gold Crown stock made in California. Rule 223 of Regulation A, as then in effect, provided that the conviction of an issuer or any of its directors, officers or affiliates or any principal underwriter furnishes ground upon which the Commission may suspend the exemption if the conviction was one involving the purchase or sale of a security. The Commission concluded that under all of the circumstances the issuance of an order permanently suspending the exemption under Regulation A was required.[15]

The Haratine Gas and Oil Company, Inc.—The issuer and the underwriter for the offering requested a hearing on the question of vacating a prior temporary suspension order but subsequently stipulated to certain facts, waived a hearing and further procedures, and consented to the entry of an order permanently suspending the exemption. On the basis of the record the Commission made the following findings:

Sales material was used in connection with the offering which had not been filed with the Commission prior to such use as required by Regulation A. Certain of this sales material contained untrue statements of material facts or omitted to state material facts necessary in order to make the statements made not misleading, particularly with respect to statements that the stock being offered had a current market price of $1.50 per share, that Haratine had "substantial holdings near the largest oil strike in the last 40 years east of the Mississippi," that it had sizeable holdings in the vicinity of "the greatest gas well" in a certain area, and that a new well alleged to be in the same area had original rock pressure over ten times greater than a previous big well and "promises a potential production of fabulous statistics."

In view of the nature of the false and misleading statements in the sales material and the failure to file such material in accordance with Regulation A, the Commission concluded that an order permanently suspending the exemption should be entered.[16]

Hart Oil Corporation.—This corporation was organized in the State of Washington in 1957 for the purpose of acquiring and developing oil and gas leases. It issued 921,850 shares of its stock to its president and its counsel in the amounts of 631,850 shares and 290,000 shares respectively. It was stated that these shares were issued for the assignment of certain leases and for legal services.

The offering circular did not reveal the cost of the leases to the company's promoters or that such leases had been acquired by the

[15] Securities Act Release No. 4177 (January 19, 1960).
[16] Securities Act Release No. 4112 (July 14, 1959).

company for stock. The total cash cost of the leases to the promoters was about $8,500 whereas the stock received by the two individuals would have had a total value of $231,185 at the public offering price. If all of the shares in the proposed offering had been sold at the public offering price the public would have owned approximately 52 percent of the outstanding stock at a cost of $250,000 and the promoters would have owned 48 percent of the stock for a cash outlay of approximately $9,000. The Commission found that the failure to disclose these facts in the offering circular was a material omission.

The offering circular was also materially deficient in failing to disclose the existence of landowners' royalty interests in two of the leases and that minority working interests in such leases had been sold to about 17 other persons. Furthermore, one of the leases had expired prior to the filing under Regulation A and there was an undisclosed forfeiture provision in another lease which caused the company to lose the lease by the time of the hearing because of failure to fulfill its drilling commitment.

The offering circular was also false and misleading with respect to the information set forth regarding the production from, and the productivity of, the leases and the quality of the oil obtained therefrom. In addition, the balance sheet filed with the notification was not prepared in accordance with the requirements of Regulation A and no statement of cash receipts and disbursements was furnished as required by the regulation.

The Commission entered an order permanently suspending the exemption under Regulation A.[17]

Illowata Oil Company.—In a previous findings and opinion in proceedings to determine whether a temporary suspension should be vacated or made permanent, the Commission held that the company's notification and offering circular, among other things, contained a materially misleading statement respecting the prospect of oil recovery from a 200-acre oil and gas lease on which the company had an option, but decided to consider a revised offering circular submitted by the company during the proceedings.[18]

It was noted that although the expiration date of the company's option on the lease, which was the company's sole asset, had passed, the revised offering circular did not indicate whether the option had been or could be extended. The issuer, despite the fact that it knew it did not have and probably could not obtain a renewal of the option, failed to disclose such fact to the Commission in oral argument in the proceedings and thereafter stated that the final offering circular would refer to a subsisting option. The Commission was of the

[17] Securities Act Release No. 4147 (October 9, 1959).
[18] Securities Act Release No. 3999 (December 4, 1958).

opinion that the company had not demonstrated such good faith and other mitigating circumstances in connection with the non-disclosure as to warrant vacating the temporary suspension order, and it concluded that the suspension should be made permanent.[19]

Texas-Augello Petroleum Exploration Co.—The issuer was an Alaska corporation organized in 1957 for the primary purpose of acquiring and exploring certain oil and gas leaseholds in Texas. According to the offering circular, the proceeds of the proposed offering were to be used primarily for drilling a well on a specified lease. The Commission found that the offering circular was misleading in including detailed data for drilling to a certain formation on that lease and in failing to disclose that there was only a remote chance of producing from that formation. In this connection, it found that the offering circular should have disclosed that a dry well previously drilled on the lease was not a wildcat well but had been drilled after completion of two producing wells on nearby properties with the benefit of completion records and other information relating to those wells, and could be considered an adequate test for that formation on the issuer's lease.

The Commission also held that the offering circular was misleading in stating that except as disclosed therein the issuer's officers, directors and promoters had no direct or indirect interest in its properties, when in fact the mother of the issuer's principal promoter was the lessor of its primary lease. The Commission further found that the offering circular was misleading in failing to make it clear that there was only a remote chance of obtaining a profitable recovery from one of the company's other leases.

An order denying the issuer's request for withdrawal of its notification and permanently suspending the exemption was entered.[20]

Wey-Do Manufacturing Co., Inc.—The company was a New York corporation incorporated in 1955 for the purpose of merchandising a preparation claimed to be able to control dandruff and excessive hair loss. The notification stated that the securities would be offered for sale only in the State of New York whereas the offering was made in several other states as well. The notification also stated that no offering circular would be used in connection with the offering, although the use of an offering circular was required and one was filed as an exhibit to the notification.

Wey-Do admitted, and the Commission found, that the offering circular was deficient in that it failed to disclose the amount of expenses of the issuer in connection with the offering, the method by

[19] Securities Act Release No. 4127 (August 10, 1959).
[20] Securities Act Release No. 4113 (July 21, 1959).

which the securities were to be offered, the remuneration of the company's officers and directors, the stock holdings and other interests of directors and officers, the percentage of outstanding securities to be held by directors, officers and promoters and by the public, assuming the entire issue were sold or the issuer's contingent liability for sales of unregistered stock during the previous year. The offering circular also failed to include an adequate statement of the purposes for which the proceeds of the offering would be used or to contain the required financial statements.

In view of the extensive and serious deficiencies the Commission refused to permit the withdrawal of the notification as requested by the issuer and entered an order permanently suspending the exemption.[21]

Exempt Offerings Under Regulation B

During the fiscal year ended June 30, 1960, 328 offering sheets were filed pursuant to Regulation B and were examined by the Oil and Gas Section of the Commission's Division of Corporation Finance. During the 1959 fiscal year, 160 offering sheets were filed and during the 1958 fiscal year, 109 were filed. The following table indicates the nature and number of Commission orders issued in connection with such filings during the fiscal years 1958–60. The balance of the offering sheets filed became effective without order.

Action taken on offering sheets filed under Regulation B

	Fiscal years		
	1960	1959	1958
Temporary suspension orders	7	4	9
Orders terminating proceeding after amendment	6	1	1
Orders fixing effective date of amendment (no proceeding pending)	138	87	60
Orders consenting to withdrawal of offering sheet (no proceeding pending)	11	2	3
Orders consenting to withdrawal of offering sheet and terminating proceeding	2	2	2
Total number of orders	164	96	75

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 such securities. 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.

[21] Securities Act Release No. 4142 (September 11, 1959).

Reports of sales under Regulation B

	Fiscal years		
	1960	1959	1958
Number of sales reports filed	4,425	1,689	1,712
Aggregate dollar amount of sales reported	$2,833,457	$1,204,751	$1,093,362

Exempt Offerings Under Regulation F

On July 30, 1959 the Commission adopted Regulation F, which provides an exemption from registration under the Securities Act for assessments and delinquent assessment sales in amounts not exceeding $300,000 in any one year and requires the filing of a simple notification giving brief information with respect to the issuer, its management, principal security holders, recent and proposed assessments and other security issues. The only information which a company is required to send to its stockholders, or otherwise publish, is a statement of the purposes for which the proceeds from the assessment are proposed to be used. This information may be included in the notice of assessment given by mail or otherwise published as required by State law. If the issuer should employ any other sales literature in connection with the assessment, copies of such literature must be filed with the Commission.

During the 1960 fiscal year, 44 notifications were filed under Regulation F, covering assessments of $1,234,000. Regulation F notifications were filed in three of the nine regional offices of the Commission; i.e., the Denver, San Francisco, and Seattle regional offices. Underwriters were not employed in any of the Regulation F assessments and in no case did the assessment exceed $135,000.

The following table sets forth the number and dollar amount of Regulation F filings in each of the three regional offices during each quarter of the 1960 fiscal year:

Quarterly Regulation F filings by regions

	Sept. 30, 1959	Dec. 31, 1959	March 31, 1960	June 30, 1960	Total by Regions
Denver	3	4	3	3	13
San Francisco	0	3	10	5	18
Seattle	3	4	1	5	13
Dollar amount filed (in thousands)	$106	$274	$471	$383	*$1,234

*Aggregate dollar amount filed in fiscal 1960.

Regulation F provides for the suspension of an exemption thereunder, as in Regulation A, where 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.

Two Regulation F filings were temporarily suspended in fiscal 1960 for alleged false and misleading statements in the sales material used. Requests for hearings were made with respect to both of these suspensions shortly after the end of the fiscal year.

LITIGATION UNDER THE SECURITIES ACT OF 1933

The Commission is authorized by the Securities Act to seek injunctions in cases where continued or threatened violations of the Act are indicated, including violations of the registration and anti-fraud provisions of the Act. Some of the more significant cases are described herein. Additional actions in which violations of the Securities Act are present and which also involve violations of other statutes are described under the other statutes.

Three very important decisions involving attempts to evade the registration provisions of the Act were rendered by Courts of Appeals during the fiscal year. In *S.E.C.* v. *Culpepper, et al.*[22] the Court of Appeals for the Second Circuit affirmed the issuance of an injunction by the district court restricting sales of unregistered stock of Micro-Moisture Controls, Inc. This company had exchanged a block of its unregistered stock for the assets of a Canadian company which purportedly distributed the stock to its 31 stockholders; virtually all of whom immediately gave a power of attorney to the same person to sell their stock, and he commenced selling the stock through broker-dealers in the United States. The court held that such brokers were underwriters within the meaning of the Act and not exempt from the registration requirements, notwithstanding that there was no conventional or contractual privity with the issuer, and that one of the brokers was selling for two members of the control group owning only 1½ percent of the stock. The court also reaffirmed the holding in its 1941 decision in *S.E.C.* v. *Chinese Consolidated Benevolent Assn.*,[23] that, even where an individual himself does not come within the definition of an underwriter, his transactions are not exempt if he engages in steps necessary to a distribution by an issuer. The court also made it clear that cessation of illegal activities prior to the institution of an action is no bar to the issuance of an injunction, even in the case of one of the brokers who had gone out of business prior to the trial. The brokers had argued that the granting of the injunction could be used as the basis of revocation of their registrations, but the court held that the possible effect of the injunction in future revocation proceedings was not germane to the court's determination.

[22] 270 F. 2d 241 (September 10, 1959).
[23] 120 F. 2d 738.

In *S.E.C.* v. *Guild Films, et al.*,[24] the Court of Appeals for the Second Circuit affirmed the District Court's order of preliminary injunction restraining two banks from selling to the public unregistered stock which had been "pledged" with them in connection with a loan on which there had been a default. The district court held that in this case there had not been any "pledge" at all; that it had been the intention of both the "pledgor" and "pledgee" that the stock was to be sold to the public. On appeal, in response to the contention by the banks that they were bona fide pledgees and had accepted the stock in "good faith," the Court of Appeals reasserted the principles set forth in its *Culpepper* and *Chinese* decisions, and stated:

> "The 'good faith' of the banks is irrelevant to this purpose. It would be of little solace to purchasers of worthless stock to learn that the sellers had acted 'in good faith.' Regardless of good faith, the banks engaged in steps necessary to this public sale, and cannot be exempted."

In *Hillsborough Investment Corporation et al.* v. *S.E.C.*, the corportation and its General Manager, Roger Mara, had been preliminarily enjoined with respect to certain securities which they had sold assertedly in reliance on the intrastate exemption of the Securities Act. The exemption, however, was unavailable because of out-of-State sales. After the entry of the preliminary injunction, Hillsborough undertook to create "new" securities, which were to be exchanged with its existing shareholders who were residents of New Hampshire, the balance to be offered to residents of that State. The District Court found this to be "an open and calculated attempt to avoid the preliminary enjoining order" and issued a permanent injunction extending to "any of the securities of the Hillsborough Investment Corporation."

The Court of Appeals for the First Circuit affirmed,[25] stating that the sale of these substitute securities would be, in effect, merely a continuation of the sale of the no longer exempt securities, and consequently a violation of the Act. The Court pointed out:

> "An issuer that has lost the exemption as to one issue of securities by a non-resident sale, does not have the opportunity to regain the legal use of interstate facilities or the mails by halting the non-resident sales and confining itself to sales to residents. But this is just what appellants seek by means of the substitute capitalization plan."

An important question as to whether or not a particular transaction involved a "security" arose in *S.E.C.* v. *Los Angeles Trust Deed & Mortgage Exchange*.[26] The District Court, following a 37-day trial, permanently enjoined the corporate defendants and certain of their managing officers from violating the registration and antifraud pro-

[24] May 19, 1960, Docket No. 26039.
[25] 276 F. 2d 665 (1960).
[26] U.S.D.C. S.D. Cal., No. 261–58–TC.

visions of the Securities Act and the Securities Exchange Act in the sale of securities issued in connection with an investment plan and appointed a receiver to carry out the orderly liquidation of the corporate defendants. The investment plan, designated as the Secured 10 Percent Earnings Program, was based upon the sale to the public of discounted real estate trust deeds and mortgages.

The District Court found that the instruments sold by defendants were securities in at least three aspects: (1) a note, secured by a deed of trust and delivered to an investor, was an "evidence of indebtedness"; (2) certain recipts, issued to evidence an investor's deposit of funds pending selection for the investor of a note and deed of trust, were securities; and (3) the instruments issued in connection with the plan and which are accompanied by defendant's services of collection, screening, processing, repurchasing or reselling, were "investment contracts."

The District Court found that to facilitate the sale of these securities the defendants made material misleading statements. While certain of the statements contained in the defendant's sales literature had been characterized by the Court of Appeals as mere "puffing" when the action was before that court on review of the preliminary injunction,[27] the District Court concluded that on the basis of the more extensive proof of fraud and deceit available at the trial, the anti-fraud provisions of the Securities Act and Securities Exchange Act were violated in the sale of these securities.

After the defendants filed notices of appeal, their motion for a stay of the District Court's decree pending appeal was granted in certain respects. The Court of Appeals did not stay, however, the appointment of the receiver who took possession of the assets of the corporate defendants to maintain, conserve and preserve them. At the close of the fiscal year, the case was pending before the Court of Appeals and the receiver was having an audit conducted of the corporate defendants.

The Commission instituted litigation against two Maryland corporations called "savings and loan associations": *First Capitol Savings & Loan Assoc., Inc.* and *American Seal Savings & Loan Assoc., Inc.* These companies were originally operated from New Jersey by one James G. Sorce, Jr. Upon receipt of information indicating that First Capitol was soliciting deposits by fraudulent representations, the Commission filed a complaint against it and Sorce.[28] To avoid complying with a subpoena for examination of their books, defendants

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[27] *Los Angeles Trust Deed & Mortgage Exchange* v. *S.E.C.*, 264 F. 2d 199, 209 (C.A. 9, 1959). For earlier aspects of this case see 24th Annual Report, pp. 51–52, and 25th Annual Report, p. 51.

[28] U.S.D.C. D. Md. No. 12115.

consented to an injunction restraining violations of the antifraud and registration provisions of the Act. Almost immediately thereafter, however, it was discovered that identical advertising was being placed on behalf of American Seal, also operated by Sorce.

A second injunctive action alleging violation of the antifraud provisions[29] was filed and a motion made to examine the books and records of American Seal. The motion was granted but the difficulties encountered in obtaining the records raised questions concerning the soundness of the company's financial condition. Although defendants again offered to consent to an injunction (which would have terminated the litigation), the Commission amended its complaint to allege that the funds of American Seal and First Capitol were being intermingled; that their assets were being wasted and dissipated by defendant Sorce; that their officers and directors had abandoned their responsibilities and that, for the protection of public investors, it was necessary that a receiver be appointed to audit the affairs of both companies. Defendants moved to dismiss the amended complaint on the ground that the Commission had no authority to seek the appointment of a receiver. The Court, relying on prior decisions and the ruling of the Court in the *Los Angeles Trust Deed* case,[30] denied the motion. Thereafter, at the opening of the hearing of the Commission's motion for a receiver, defendants consented to the appointment of a conservator with powers similar to those of a receiver pendente lite and such conservator was directed to have an audit made of the affairs of the two companies. This audit is now in progress.

Lewisohn Copper Corp. v. *S.E.C.*[31] was a petition for review of an order of the Commission dated March 18, 1958, which had suspended a Regulation A exemption, had suspended the effectiveness of a registration statement, and had denied leave to withdraw the registration statement. The petition for review was dismissed for lack of prosecution.

In *S.E.C.* v. *American Dryer Corporation, et al.*[32] the Commission brought suit to enjoin a scheme to sell unregistered shares of American Dryer Corporation by the use of dummies and nominees. Permanent injunctions were entered by consent against all but three of the defendants against whom the action was pending at the close of the fiscal year.

In *S.E.C.* v. *International Planning Inc.*[33] the Commission filed a complaint which sought an injunction against IPI and its officers

[29] U.S.D.C. D. Md. No. 12172.
[30] See *supra*, note 27.
[31] C.A. 9, No. 16,016.
[32] U.S.D.C. S.D. N.Y. No. 60–385.
[33] U.S.D.C. D.C. No. 635–60.

whose specialty was the sale of IPI stock to United States servicemen overseas. The Commission charged that the sales were made in violation of the registration provision of Section 5 and the antifraud provision of Section 17 of the Securities Act. IPI agents sold the stock to service men in Weisbaden, Germany, and at other large concentrations of United States Service personnel. The misrepresentations and misleading statements used to boost the sale of IPI stock caused Air Force officials in Germany to bar IPI solicitations on its installations.

The Commission obtained service on several defendants in the District of Columbia, but failed to reach Robert C. Buffkin, its president, who has remained in Europe with the firm's books. The case is still pending.

In *S.E.C.* v. *Security Credit Corporation, et al.*[34] the defendants were charged with violations of the registration requirements and anti-fraud provisions of the Securities Act. The Commission's complaint alleged that the defendants—Security Credit Corporation, a Nevada corporation, Dow & Company, a Utah corporation, and Eldon C. Harris were making misleading representations with regard to: the declaration of dividends; the consummation of firm underwriting agreements; the maintenance of a primary market for the purchase and sale of securities; the advertising of fictitious bids; representation as a registered broker-dealer and implying registration as a broker-dealer with the Commission; and the maintenance of "mail drops" which are representated as legitimate principal or branch offices.

In *S.E.C.* v. *Fall River Exploration and Mining Company, et al.*[35] the Commission filed a complaint seeking to enjoin defendants from violating Sections 5(b) and 10(a) of the Securities Act in the delivery of the stock of Fall River. Section 10 requires that where a prospectus is used more than nine months after the effective date of the registration statement, the information therein must be as of a date not more than 16 months prior to the date of its use. The complaint alleged that a registration statement relating to the stock of Fall River which became effective on August 13, 1958, contained financial information no more recent than May 31, 1958, and that such a prospectus used after October 1, 1959 did not meet the requirements of Section 10(a) of the Act. The Court entered an order preliminarily enjoining defendants from using a prospectus which does not meet the requirements of Section 10, and from delivering stock of Fall River unless preceded or accompanied by a prospectus which meets the requirements of Section 10.

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[34] U.S.D.C. D. Utah, No. C–87–60.
[35] U.S.D.C. W.D. Colo. No. 6717.

A number of actions involved fraud in the sale of securities of oil, gas and mining companies. In *S.E.C.* v. *Mon-O-Co Corporation*[36] the Commission brought suit to enjoin the corporation, Ben Haugner and Frank LeCocq from further violations of the registration and anti-fraud provisions of the Securities Act. The Commission's complaint charges that the defendants have been selling certificates of interest and fractional undivided interests in oil, gas and other mineral rights in the development and operations of oil and gas wells located in the Fertile Prairie Oil Field situated in Montana, and that the defendants' selling activities included the making of false representations and omissions of material facts, namely: the background, experience and success of Mon-O-Co Oil Corporation, Ben Haugner and Frank LeCocq in the oil and gas business; previous administrative proceedings taken by the Commission in connection with proposed offering of Mon-O-Co's stock because of false and misleading statements and omissions concerning its properties in the Fertile Prairie Field; the rights and obligations of those who purchase interests in the development of a certain oil and gas well; and costs of development of said well; and production to be expected therefrom.[37]

In *S.E.C.* v. *A. R. Rhine, et al.*[38] the Commission's complaint in seeking injunctive relief and the appointment of a receiver, alleged that the defendants were engaged in a fraudulent device in the sale of fractional undivided interests in oil wells to investors by which defendants obtained in excess of $5 million; that in selling these fractional interests they employed what is known as a Ponzi scheme whereby the defendants paid back to purchasers sums which they represented to be returns from the sale of oil from such wells when, in truth, the payments were actually made from the funds which the investors had advanced for the purchase of their interests in the oil wells. By order of the Court, filed November 30, 1959, the defendants were preliminarily enjoined by consent and a receiver was appointed. Following a report of the receiver, a final judgment was entered by consent enjoining the defendants, A. R. Rhine, doing business as Rhine Petroleum Industries, Majestic Petroleum Company, and James M. Paddock from further violations of the antifraud provisions of the Securities Act of 1933. Thereafter, the case was transferred to the Bankruptcy Division of the Court.

Injunctions obtained in other cases involving violations of the registration or anti-fraud provisions or both include: *S.E.C.* v. *Doman*

[36] U.S.D.C. W.D. Wash. No. 5070.
[37] A final decree was entered against respondents, with their consent, on August 1, 1960.
[38] U.S.D.C. D. Colo. No. 6615.

Helicopters,[39] *S.E.C.* v. *Vanco*,[40] *S.E.C.* v. *Haley*, [41] *S.E.C.* v. *Prudential Oil Corporation*,[42] *S.E.C. v. Clinton Mining Co.*,[43] *S.E.C.* v. *Judson Commercial Corp.*,[44] *S.E.C.* v. *Camdale Corporation*,[45] *S.E.C.* v. *American Television & Radio Co.*,[46] *S.E.C.* v. *Belmont Oil Corporation*,[47] *S.E.C.* v. *Globe Securities Corp.*,[48] *S.E.C.* v. *Herbert Rapp, doing business as Webster Securities Co.*,[49] *S.E.C.* v. *Trans-Southern Oil Development Corp.*,[50] *S.E.C.* v. *Trans-Globe Lease and Land Exchange, Inc.*,[51] *S.E. C.* v. *Tidelands Oil and Gas Corporation*,[52] *S.E.C.* v. *Jacwin & Costa, Inc.*,[53] *S.E.C.* v. *Poff*,[54] *S.E.C.* v. *Southwestern Iron & Steel Industries Inc.*,[55] *S.E.C.* v. *Spindletop Petroleum Corp.*,[56] *S.E.C.* v. *Television Industries, Inc.*,[57] *S.E.C.* v. *Barnstable Bay, Inc.*,[58] and *S.E.C.* v. *Platalloy Corp.*[59]

Other cases alleging such violations which are pending include: *S.E.C.* v. *Bost*,[60] *S.E.C.* v. *American Barides and Reduction Co., Inc.*,[61] *S.E.C.* v. *Sterling Mining and Milling Co., Inc.*,[62] and *S.E.C.* v. *Bald Eagle Mining Co.*[63]

Subpoena Enforcement Action under Securities Act of 1933

In *S.E.C.* v. *Dobie*,[64] the United States District Court for the Western District of Virginia entered an order enforcing a subpoena duces tecum issued by the Commission and served upon Arthur F. Dobie in connection with a Commission investigation. Dobie had previously refused to testify in the investigation being conducted by the Commission into possible violations of the registration and anti-fraud provisions of the Securities Act of 1933 by John Milton Addison and others.

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[39] U.S.D.C. S.D. N.Y. No. 150–189.
[40] U.S.D.C. D N.J. No. 737–58.
[41] U.S.D.C. E.D. Mich. No. 19,245.
[42] U.S.D.C. D. Conn. No. 8349.
[43] U.S.D.C. E.D. Wash. No. 1846.
[44] U.S.D.C. S.D. N.Y. No. 60–1713.
[45] U.S.D.C. S.D. Texas No. 13077.
[46] U.S.D.C. D. Minn. No. 3–60–75.
[47] U.S.D.C. S.D. N.Y. Nos. 147–361 and 149–60.
[48] U.S.D.C. S.D. N.Y. No. 132–343.
[49] U.S.D.C. S.D. N.Y. No. 132–344.
[50] U.S.D.C. S.D. N.Y. No. 153–380.
[51] U.S.D.C. D. D.C. No. 3299–59.
[52] U.S.D.C. W.D. Wash. No. 5068.
[53] U.S.D.C. S.D. N.Y. No. 152–211.
[54] U.S.D.C. N.D. Texas No. 4193.
[55] U.S.D.C. D. Ariz. No. 1175T.
[56] U.S.D.C. D. Ore. No. 502–59.
[57] U.S.D.C. S.D. N.Y. No. 60 Civ. 1023.
[58] U.S.D.C. D. Mass. No. 60–197F.
[59] U.S.D.C. S.D. Calif. No. 196–60Y.
[60] U.S.D.C. D. Md. No. 12145.
[61] U.S.D.C. N.D. Ill. No. 60 C 738.
[62] U.S.D.C. N.D. Ill. No. 60 C 739.
[63] U.S.D.C. S.D. Cal. No. 2399.
[64] U.S.D.C. W.D. Va. No. 1003.

In *S.E.C.* v. *Standard Securities Service Corporation and Albert T. Schrader*,[65] the Commission made application for an order to require the defendants to appear and produce certain records of the corporation in the Commission's investigation into the activities of Certified Credit Corporation, Houston Financial Corporation, Daniel E. Armel, Claude L. Alden, Jr., Joseph S. Maniscalco, Richard Lee, Standard Securities Service Corporation and Albert Schrader for possible violation of the registration and anti-fraud provisions of the Securities Act. The matter was dismissed on motion by the Commission after the defendants appeared before an officer of the Commission and produced the requested records.

In *S.E.C.* v. *John A. Noonan*,[66] the Commission applied for an order requiring defendant to appear, produce and identify certain books and records previously subpoenaed. The Court ordered defendant to obey the subpoena.

SUITS AGAINST THE COMMISSION

On January 9, 1960 William Leighton filed a petition for rehearing of a petition for review which had been dismissed by the Court in February 1955 in *William Leighton* v. *S.E.C.*[67] The petition for review had sought review of a Commission determination that it was without jurisdiction to institute an action to compel the American Express Company to register its "travelers checks" under the Securities Act. The Court had held that the determination sought to be reviewed was a matter committed to the Commission's discretion by Section 20 of the Securities Act, and was not reviewable under Section 9(a) of the Act or Section 10 of the Administrative Procedure Act.[68] Certiorari was denied by the Supreme Court.[69] In the petition for rehearing petitioner alleged that J. Sinclair Armstrong, who had been a member of the Commission when the above determination was made in 1954, was biased at the time because he was employed about five years later by the United States Trust Company, a corporation which, petitioner alleged, has a director in common with the American Express Company and another director in a law firm representing the American Express Company. On March 14, 1960 the Court denied the petition.

In 1958 a judgment had been entered by consent in *S.E.C.* v. *Farm and Home Agency, Inc., et al.*[70] permanently enjoining the defend-

[65] U.S.D.C. S.D. Texas Misc. No. 40.
[66] U.S.D.C. D. Mass. No. 60-42MC EBD.
[67] C.A.D.C. No. 12,404.
[68] 221 F. 2d 91.
[69] 350 U.S. 825.
[70] U.S.D.C. S.D. Ind. No. IP 58-C-83.

ants from violating the registration provisions of the Securities Act in the sale of the stock of Farm and Home. Defendants later filed a motion to vacate that decree and a motion seeking to enjoin the Commission from investigating, prosecuting, or presenting any evidence to a grand jury pertaining to the alleged violations of the Securities Act involved in the consent decree. The District Court denied both motions. The defendants appealed, arguing that the McCarran-Ferguson Act of 1945 exempted the securities of insurance companies from the registration requirements of the Securities Act and that, therefore, the prior judgment was void for lack of jurisdiction. The Court of Appeals for the Seventh Circuit affirmed the denial of defendant's motions,[71] and the Supreme Court denied certiorari.[72]

In *Callahan Consolidated Mines, Inc., et al.* v. *S.E.C.*[73] the plaintiffs filed a complaint seeking a judgment declaring Rule 136, an amendment to Rule 140 and Regulation F adopted by the Commission under the 1933 Act to be void and enjoining the Commission from enforcing the same. The action was dismissed by stipulation of the parties.

Gearhart & Otis, Inc. v. *S.E.C.*[74] involved an appeal from an order of the District Court denying the motion of Gearhart & Otis to reinstate and enforce certain subpoenas it was attempting to serve upon a member of the Commission and members of its staff in connection with an administrative proceeding under Section 15 of the Securities Exchange Act. On September 8, 1959 the Court of Appeals dismissed the appeal on the motion of the Commission for failure of the appellant to comply with the rules of the Court.

[71] 270 F. 2d 891.
[72] 362 U.S. 903.
[73] U.S.D.C. D. Idaho No. 2215–N.
[74] C.A.D.C. No. 15064.

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

As of June 30, 1960, 13 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 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

Four exchanges were 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

The New Orleans Stock Exchange ceased activity on October 30, 1959 and withdrew its registration as a national securities exchange on December 31, 1959.

Disciplinary Actions

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

seven exchanges reported 38 cases of such disciplinary action, including imposition of fines aggregating $42,800 in 26 cases; the suspension of two individuals and the expulsion of another individual from allied membership; the suspension of another individual and his firm from membership; the revocation of a specialist registration in one case; and the censure of a number of individuals and firms.

REGISTRATION OF SECURITIES ON EXCHANGES

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

Section 12 of the Exchange Act provides that an issuer may register a class of securities on an exchange by filing with the Commission and the exchange an application which discloses pertinent information concerning the issuer and its affairs. Such 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 of Securities on Exchanges

As of June 30, 1960, a total of 2,307 issuers had 3,894 classes of securities listed and registered on national securities exchanges, of which 2,705 were classified as stocks and 1,189 as bonds. Of these totals, 1,317 issuers had 1,531 stock issues and 1,137 bond issues listed and registered on the New York Stock Exchange. Thus, 57 percent of the issuers, 56 percent of the stock issues and 96 percent of the bond issues were on the New York Stock Exchange.

During the 1960 fiscal year, 165 issuers listed and registered securities on a national securities exchange for the first time, while the registration of all securities of 94 issuers was terminated. The total number of applications for registration of classes of securities on exchanges filed during the 1960 fiscal year was 255.

The following table shows the number of annual, semiannual and current reports filed during the fiscal 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 reports by reason of having publicly offered securities effectively registered under the Securities Act of 1933. The securities of such issuers are traded generally in the over-the-counter markets. As of June 30, 1960, there were 1,818 such issuers, including 275 that were also registered as investment companies 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, 1960

Type of reports	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.	2,241	1,560	3,801
Semiannual reports on Form 9–K	1,749	1,011	2,760
Current reports on Form 8–K, etc.	3,757	1,971	5,728
Total reports filed	7,747	4,542	12,289

MARKET VALUE OF SECURITIES TRADED ON EXCHANGES

The market value on December 31, 1959, of all stocks and bonds admitted to trading on one or more stock exchanges in the United States was approximately $444,799,246,000.

	Number of issues	Market value Dec. 31, 1959
Stocks:		
New York Stock Exchange	1,507	$307,707,698,000
American Stock Exchange	871	26,429,594,000
Exclusively on other exchanges	546	4,213,803,000
Total stocks	2,924	338,351,095,000
Bonds:		
New York Stock Exchange [1]	1,180	105,422,055,000
American Stock Exchange	62	882,714,000
Exclusively on other exchanges	28	143,382,000
Total bonds	1,270	106,448,151,000
Total stocks and bonds	4,194	444,799,246,000

[1] Bonds on the New York Stock Exchange included 51 U.S. Government and New York State and City issues with $78,096,413,000 aggregate market value.

The New York Stock Exchange and American Stock Exchange figures were reported by those exchanges. There was no duplication of issues between them. The figures for all other exchanges were 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 and market value of issues as shown excluded those suspended from trading and a few others for which quotations were not available. The number and market value as of December 31, 1959, of preferred and common stocks separately was as follows:

	Preferred stocks		Common stocks	
	Number	Market value	Number	Market value
Listed on registered exchanges	580	$8,145,661,000	2,045	$315,121,455,000
All other stocks [1]	56	451,684,000	243	14,632,295,000
	636	$8,597,345,000	2,288	329,753,750,000

[1] Stocks admitted to unlisted trading privileges only or listed on exempt exchanges.

The New York Stock Exchange has reported aggregate market values of all stocks thereon monthly since December 31, 1924, when the figure was $27.1 billion. The aggregate market value rose to $89.7 billion in 1929, declined to $15.6 billion in 1932, and was $298.1 billion in June 1960. The American Stock Exchange has reported December 31 totals annually since 1936. Aggregates for stocks exclusively on the remaining exchanges have been compiled as of December 31 annually by the Commission since 1948.

Share values on exchanges, in billions of dollars

December 31 each year	New York Stock Exchange	American Stock Exchange	Exclusively on other Exchanges	Total [1]
1936	$59.9	$14.8		$74.7
1937	38.9	10.2		49.1
1938	47.5	10.8		58.3
1939	46.5	10.1		56.6
1940	41.9	8.6		50.5
1941	35.8	7.4		43.2
1942	38.8	7.8		46.6
1943	47.6	9.9		57.5
1944	55.5	11.2		66.7
1945	73.8	14.4		88.2
1946	68.6	13.2		81.8
1947	68.3	12.1		80.4
1948	67.0	11.9	$3.0	81.9
1949	76.3	12.2	3.1	91.6
1950	93.8	13.9	3.3	111.0
1951	109.5	16.5	3.2	129.2
1952	120.5	16.9	3.1	140.5
1953	117.3	15.3	2.8	135.4
1954	169.1	22.1	3.6	194.8
1955	207.7	27.1	4.0	238.8
1956	219.2	31.0	3.8	254.0
1957	195.6	25.5	3.1	224.2
1958	276.7	31.7	4.3	312.7
1959	307 7	[2] 26.4	4.2	338.4
June 30, 1960 [3]	298.1	25 6	4.1	327.8

[1] Total values 1936–47 inclusive are for the New York Stock Exchange and the American Stock Exchange only.

[2] Removal of Humble Oil & Refining Co. stock from trading in December 1959 accounts for about $5 billion loss of market values on the American Stock Exchange.

[3] As reported by the New York Stock Exchange and estimated for all others.

Fiscal Year Share Values and Volumes

The aggregate market values of all stocks on the exchanges as of June 30 annually, and the volumes of shares traded on the exchanges in years to June 30, have been as follows:

	June 30 values	Volumes in years to June 30	
	($ billions)	Share volume	Dollar volume
1955	$222.8	1,324,383,000	$36,878,540,000
1956	250.0	1,217,935,000	36,226,682,000
1957	262.0	1,210,807,000	32,929,671,000
1958	257.9	1,209,274,000	30,862,129,000
1959	337.6	1,806,810,000	51,577,195,000
1960	327.8	1,456,919,000	47,795,837,000

The values were as reported by the New York Stock Exchange and as estimated for all other exchanges. They reached a peak of approximately $350 billion early in August 1959. Share and dollar volume include shares, warrants and rights. Comprehensive statistics of volumes on exchanges are included among the appendix tables in this Annual Report.

Foreign Stock on Exchanges

The market value on December 31, 1959, of all shares and certificates representing foreign stocks on the stock exchanges was reported at about $12.4 billion, of which $11.1 billion represented Canadian and

$1.3 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 Exchange Statistics

There have been over 100 stock exchanges in the United States, including many short-lived ventures. More than 30 exchanges existed in 1929. Much of the reduction to the present 17 has occurred through mergers of exchanges. The Philadelphia-Baltimore Stock Exchange, Midwest Stock Exchange, and Pacific Coast Stock Exchange together represent 11 former exchanges.

In recent years, the number of stocks on the New York Stock Exchange has increased. The number on the American Stock Exchange has increased after a decline ending with 1951. The number exclusively on other exchanges has consistently declined.

Net number of stocks on exchanges

June 30	New York Stock Exchange	American Stock Exchange	Exclusively on Other Exchanges	Total Stocks on Exchanges
1938	1,264	1,126	1,412	3,802
1939	1,246	1,111	1,378	3,735
1940	1,242	1,079	1,289	3,610
1941	1,240	1,045	1,153	3,438
1942	1,254	1,003	1,113	3,370
1943	1,250	968	1,063	3,281
1944	1,270	928	981	3,179
1945	1,293	895	951	3,139
1946	1,351	860	895	3,106
1947	1,377	836	870	3,083
1948	1,425	819	818	3,062
1949	1,462	804	786	3,052
1950	1,484	779	775	3,038
1951	1,495	765	772	3,032
1952	1,528	783	751	3,062
1953	1,539	807	731	3,077
1954	1,546	811	700	3,057
1955	1,543	815	686	3,044
1956	1,518	855	665	3,038
1957	1,522	867	636	3,025
1958	1,526	859	612	2,997
1959	1,514	871	576	2,961
1960	1,532	931	555	3,018

The decline in the number of stocks traded exclusively on the other exchanges is to a substantial extent attributable to the listing of some of such stocks on the New York exchanges, and the mergers of certain issuers into companies whose stocks are listed on the New York exchanges. For example, in calendar 1959, the regional exchanges gained only three local listings of common stock with less than $10 million aggregate market value and lost 16 common stocks aggregating over $320 million from exclusively local status through listings or mergers as described above.

The regional exchanges have countered the flow to New York to some extent by acquiring unlisted trading privileges in leading New York listings. Their proportion of total share volume on the exchanges has nevertheless tended to decline, although their proportion of total dollar volume of shares traded on the exchanges has held steadily in the vicinity of 7 percent for a considerable number of years.

Annual sales of stock on exchanges [1]

Calendar Year	Percent of Share Volume			Percent of Dollar Volume		
	New York	American	All other	New York	American	All other
1935	73.13	12.42	14.45	86.64	7.83	5.53
1940	75.44	13.20	11.36	85.17	7.68	7.15
1945	65.87	21.31	12.82	82.75	10.81	6.44
1950	76.32	13.54	10.14	85.91	6.85	7.24
1955	68.85	19.19	11.96	86.31	6.98	6.71
1959	65.59	24.50	9.91	83.66	9.53	6.81

[1] Shares, warrants and rights are included. A more complete presentation is contained among the appendix tables in this Annual Report.

At the close of 1934, the total market value of all stocks on the exchanges was estimated at about $54 billion, of which 63 percent was on the New York Stock Exchange. This Exchange's percentage rose to about 82 percent of the $81.9 billion at the close of 1948, and further to about 91 percent of the $338.4 billion at the close of 1959. Similarly, the New York Stock Exchange had about 49 percent of the 2.7 billion shares estimated to be on stock exchanges in 1934, about 61 percent of the 3.3 billion shares in 1948, and about 74 percent of the 7.9 billion shares at the close of 1959. Many New York listings are also listed or traded on an unlisted basis on various regional exchanges.

Comparative Over-the-Counter Statistics

Aggregate domestic over-the-counter share values as computed in the Commission's Annual Reports [1] increased from $59 billion to $66 billion during the calendar year 1959. Aggregate bank stock values rose from $15 billion to $17.5 billion, insurance stocks from $11.5 billion to $11.8 billion, and other stocks (industrial, utility, etc.) from $32.5 billion to $36.7 billion.

About $24.2 billion stocks were of companies reporting pursuant to Section 15(d) of the Securities Exchange Act. Another $3.3 billion

[1] The aggregates include all quoted over-the-counter stocks of all domestic issuers having at least one over-the-counter stock with 300 or more holders, so far as they can be discovered in the standard securities manuals and reports to the Commission. About 3,500 issuers are included. The National Monthly Stock Summary of January 1, 1960, covering the 4th quarter of 1959, shows about 500 additional domestic issuers with actively quoted over-the-counter stocks. Most of the latter are low-price shares, quoted from a few pennies to a few dollars, and apparently would add comparatively little to the figures in billions of dollars shown in our compilation. Registered investment companies are excluded above and are discussed elsewhere in this Annual Report.

was of companies reporting because they had other securities listed on registered exchanges. Thus $27.5 billion of the $48.5 billion domestic over-the-counter values excluding bank stocks was of companies reporting to the Commission. Banks, of course, report to their appropriate regulatory bodies.

Companies reporting pursuant to Section 15(d) had, in addition to the $24.2 billion domestic over-the-counter stocks mentioned above, some $5.1 billion foreign stocks (mostly Canadian) and unlisted stocks on exchanges, bringing the total to about $29.3 billion, an increase of about $3 billion during 1959. The $29.3 billion does not include values for 250 investment companies reporting pursuant to both Section 15(d) and the Investment Company Act, nor values for partnerships, voting trusts duplicative of listed shares, stock purchase plans, bonds and non-quoted shares of issuers required to report pursuant to Section 15(d).

A comprehensive view of the number of over-the-counter securities quoted at any one time and over the years is afforded by the following data supplied by the National Quotation Bureau, which is the principal purveyor of over-the-counter quotations in the United States.

Number of issues in the National Quotation Bureau sheets at approximately January 15, yearly

Year	Bond issues	Stock issues	Year	Bond issues	Stock issues
1925	1,800	700	1947	2,550	5,380
1929	1,900	1,900	1949	2,200	5,300
1933	4,300	1,300	1951	1,900	5,200
1935	6,100	1,800	1953	1,700	5 450
1937	5,700	3,500	1955	1,800	5,700
1939	3,900	3,700	1958	1,765	6,000
1941	4,200	3,900	1959	1,809	6,121
1943	3,100	3 800	1960	1,855	6,551
1945		4,500			

The issues include a considerable number which are on stock exchanges here and in Canada. The number of issues is more than the number of issuers, since some companies have more than one quoted issue. The count of issues may be affected by growth in number of subscribers and the Bureau's rules as to entries in the service.

DELISTING OF SECURITIES FROM EXCHANGES

Applications may be made to the Commission by exchanges to strike any securities or by issuers to withdraw their securities from listing and registration on exchanges pursuant to Rule 12d2–1(b) under Section 12(d) of the Securities Exchange Act.

During the fiscal year ended June 30, 1960, the Commission granted applications by exchanges and issuers to remove 37 stock issues and

4 bond issues from listing and registration pursuant to Rule 12d2–1(b). There were 44 removals, since 3 stocks delisted by the New York Stock Exchange were also delisted by other exchanges. The number of issuers involved was 35. The removals were as follows:

Applications filed by:	*Stock issues*	*Bonds issues*
New York Stock Exchange	20	2
American Stock Exchange	3	0
Boston Stock Exchange	0	2
Midwest Stock Exchange	6	0
Pacific Coast Stock Exchange	4	0
Philadelphia-Baltimore Stock Exchange	2	0
Issuers	5	0
Total	40	4

The applications by the exchanges were based upon the ground that the issues were no longer suitable for exchange trading by reason of reduced public holdings and holders, inconsequential trading volumes on the exchanges, prospective dissolution or merger, or a combination of these factors.

The five applications by issuers were for removal of stocks from various regional exchanges. In three instances the stocks remained listed on other registered exchanges. In one case, the stock had come to have only 56 holders. In the remaining case, the application alleged that the California Commissioner of Corporations conditioned the granting of a permit authorizing sale of additional shares upon withdrawal of the outstanding shares from listing.

Action taken this year by the San Francisco Mining Exchange brings to 7, or a majority of the 13 registered exchanges, the number of these exchanges whose rules provide that an issuer intending to delist may be required to notify its stockholders or obtain their vote before filing an application with the Commission.[2] The other exchanges having such rules include American, Cincinnati, Midwest, New York, Philadelphia-Baltimore and Salt Lake. The requirements for notification or voting have rarely been resorted to. No issuer has applied to the Commission for delisting from the New York Stock Exchange since 1940. Only a few instances of stockholder voting with respect to delisting from other exchanges are on record.[3] The

[2] After the close of the fiscal year, the Pacific Coast Stock Exchange adopted a similar delisting rule.

[3] *Morrison-Knudson Co., Inc.* put delisting to a vote in 1954, at which time the San Francisco Stock Exchange had such a rule. In the same year, *Julian & Kokenge Co.* delisted from the American and Cincinnati stock exchanges, citing approval by unanimous vote of stockholders at a meeting in 1952. *Laclede-Christy Co.* put delisting from the Midwest Stock Exchange to a vote in 1955; *Kingsford Co.* put delisting from the Midwest Stock Exchange to a vote in 1957. Companies putting delisting to a vote of their own volition included *Maine Central R.R. Co.* from the Boston Stock Exchange in 1955, and *Super*

principal benefit of the rule appears to be the notice afforded an exchange of an issuer's intent prior to the filing with the Commission. Opportunity is accordingly afforded an exchange to dissuade an issuer from delisting. If the circumstances are appropriate, an exchange may waive its rule and allow the issuer to proceed with the filing. In such cases the exchange will have had opportunity to discuss the language of the application with the issuer. When the issuers' reasons for delisting are persuasive, the exchanges generally prefer to file the delisting applications as a matter of good public relations, and because they then dictate the language of the applications. During the past two years, there were 75 delistings upon exchange application and only 10 upon issuer application, and eight of the 10 delistings upon issuer application were merely for the purpose of reducing multiple listings, leaving the issues listed on the exchanges where their principal activity occurred.

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. The following table indicates the number of such proceedings with which the Commission was concerned during the 1960 fiscal year.

Proceedings pending at the beginning of the fiscal year	7	
Proceedings initiated during the fiscal year	0	7
Proceedings terminated during the fiscal year:		
By order withdrawing security from registration	4	
By order suspending registration of security	0	4
Proceedings pending at the end of the fiscal year		3

Section 19(a)(4) authorizes the Commission summarily to suspend trading in any registered security on a 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. The Commission has used this power infrequently in the past. However, during the 1960 fiscal year the Commission found it necessary and appropriate in connection with three

Mold Corp. of California from the Pacific Coast Stock Exchange in 1957. Voting in each instance substantially favored the management proposal. In no case did the vote against delisting comprise as much as 6 percent of the outstanding shares or 6 percent of the holders of record.

pending proceedings to use its authority summarily to suspend trading in securities registered on a national securities exchange. Only two of these suspensions remained in effect at the end of the fiscal year.

The four cases in which orders were issued under Section 19(a)(2) during the fiscal year withdrawing securities from registration on a national securities exchange are described below.

Ambrosia Minerals Inc.—The registrant, a Nevada corporation organized in 1926 under another name, registered its common stock on the San Francisco Mining Exchange, a national securities exchange, in 1956.

In its application for registration and in a current report filed subsequently the registrant stated that it had no "parents" as defined in the Commission's Rule 12b–2. The record shows, however, that George A. Mellen, a director, owned beneficially and of record more than 78 percent of the then outstanding shares of the registrant and that his percentage of ownership subsequently increased to more than 87 percent as a result of a reduction in the number of shares outstanding. In view of these facts the Commission found that Mellen clearly was a parent of the registrant and that the application for registration and the current report were false and misleading in failing to so state.

The registration application and certain current reports reported various sales by the registrant of its stock and stated that such sales were exempt from the registration requirements of the Securities Act of 1933 as a private offering within the meaning of Section 4(1) thereof. The Commission found, however, that some of the persons, among whom were included brokers and directors to whom the stock was sold initially, acquired the stock with a view to its distribution to other persons and did, in fact, subsequently resell to other persons. It appeared therefore that these persons were underwriters within the meaning of Section 2(11) of the Securities Act and that the claimed exemption was not available for the stock sold. The Commission accordingly concluded that the registration application and reports were false in stating that these sales of stock were exempt from registration under the Securities Act.

The registrant's income statement filed as a part of its annual report for the fiscal year ending June 30, 1957, included as income profits resulting from the sale of certain properties to insiders. The Commission found that under the circumstances the profits realized constituted a capital contribution rather than income. The income statement also failed to include the registrant's cost of rendering certain services to another company as a deduction against the amount purported to have been paid for such services. After taking the

above items into consideration it was found that the income statement would show a substantial deficit instead of a small earned surplus as reported by the registrant.

During the fiscal year to which the financial statements relate registrant paid dividends without disclosing that such dividends were in the nature of liquidating dividends payable out of paid-in capital, since the registrant had no earned surplus from which such dividends could be paid. The Commission found that the financial statements were false and misleading in that the overstated income and earned surplus had misrepresented the financial conditions and operating results of the company. The Commission also found that the financial statements were not certified by independent accountants as required by its rules and regulations since the accountant had a managerial interest in the registrant.

Under all of the circumstances, the Commission concluded that the protection of investors required that the registration of the registrant's common stock on the exchange be withdrawn and issued an order to that effect.[4]

Consolidated Virginia Mining Company.—The registrant is a Nevada corporation whose common stock, $1 par value, became registered on the San Francisco Mining Exchange in 1936. In 1955, the par value of registrant's stock was reduced to 10 cents per share and the authorized capital was increased from 5,000,000 to 7,500,000 shares.

The registrant filed with the Commission and sent to its stockholders a proxy statement containing a proposal to increase the registrant's authorized common stock from 7,500,000 to 30,000,000 shares in order to make available unissued shares which might be used for the purpose of acquiring additional mining properties or companies. The proxy statement represented that no particular transactions of such character were pending. The record disclosed, however, that the registrant, through its management, had been actively negotiating for the acquisition of another company prior to the time the proxy statement was filed with the Commission and sent to stockholders and that definitive action on the proposed acquisition was merely deferred until after the meeting of stockholders. The acquisition transaction was carried through to completion shortly after the stockholders meeting. The proxy statement also failed to disclose the interest of certain insiders in the transaction.

After completion of the transaction the registrant further failed to file the necessary reports to disclose the issuance of its shares in exchange for those of the company acquired.

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[4] Securities Exchange Act Release No. 6202 (March 8, 1960).

Registrant urged that the registration of its stock on the exchange not be withdrawn, contending that it had made prompt efforts to bring the public record up to date through the filing of all required reports since the institution of the proceeding. It appeared, however, that the registrant had not filed all the required reports particularly with respect to certain litigation which resulted in a subsequent judgment against the registrant. In view of the registrant's failure to comply with its obligations under the Securities Exchange Act and the indications that it had continued to be derelict in its responsibilities, the Commission concluded that it was necessary and appropriate for the protection of investors that the registration of the stock of the registrant on the exchange be withdrawn and an order to that effect was issued.[5]

Operator Consolidated Mines Company.—The registrant, a Nevada corporation, was incorporated in 1924 and its stock was registered on the San Francisco Mining Exchange in 1935. During the period from May through November 1956 the registrant was required to file current reports with respect to the levying of an assessment on its common stock, the sale of stock which was in default for failure to pay this assessment, the execution of an agreement between the registrant and another company, the issuance to the latter of 1,360,000 shares of its stock, the increase in the number of shares of authorized stock and the change of such stock from assessable to non-assessable shares. These reports were required to be filed within 10 days after the close of the month in which each event occurred.

The registrant was required, among other things, to include in such reports (1) a statement that the 1,360,000 shares issued to the company referred to were not registered under the Securities Act, a statement of any exemption from registration claimed therefor and a statement of the facts relied upon to make the exemption available, (2) disclosure that the issuance of such shares effected a change in the control of registrant in that such control was thereby transferred to the other company and indirectly to the controlling stockholders of such company, (3) information regarding the relationship between the other company and registrant and (4) disclosure of the fact that properties proposed to be transferred to the registrant by the other company had been acquired the same day by the other company from certain insiders who had acquired the properties for a nominal consideration. The registrant failed to file the required reports and make the required disclosures.

[5] Securities Exchange Act Release No. 6192 (February 26, 1960).

A current report for the month of December 1956 filed by the registrant contained a number of statements which were false or misleading.

In April 1957, after the institution of these proceedings, the registrant filed its annual report for 1956 which contained the statement that it was designed not only to supply all information required in an annual report but also to supersede the current report previously filed for December 1956 and to provide all of the information required to have been submitted in current reports with respect to transactions occurring during 1956 and 1957 to date. While this annual report made disclosures with respect to the events referred to above, the Commission found that it was inadequate and misleading in a number of material respects.

On the basis of the foregoing, the Commission concluded that the registrant had not fully complied with the reporting requirements of the Act and that its stock should be withdrawn from registration on the San Francisco Mining Exchange. Accordingly, an order to that effect was issued.[6]

Silver Shield Mining and Milling Company.—Registrant, a Utah corporation organized in 1899, registered its common stock on the Salt Lake Stock Exchange in 1935. On December 20, 1956, a new board of directors of registrant was elected by a majority of the existing board pursuant to a plan under which a certain oil property was to be transferred to registrant and the stock in registrant held by the existing board was to be sold by them to a new group. The new board was selected and was controlled by one D. E. Kivett who, registrant concedes, continued in control of registrant's board until January 7, 1958, when a different board was elected.

Registrant failed to file a current report for December 1956 to disclose that Kivett had secured control and thus become a parent of registrant during that month, and its annual reports for the fiscal years ended December 31, 1956 and 1957 falsely stated that it had no parents. Moreover, registrant's current report for January 1958 failed to disclose that Kivett had ceased to be a parent of registrant during that month and to describe the transactions by which his parent relationship was terminated, as required by the current report form.

Registrant's current reports for certain months in 1956, 1957 and 1958 stated that various dispositions made by registrant of its stock were exempt from the registration requirements of the Securities Act of 1933 because the stock was registered on the Exchange. Such registration provided no exemption for the stock and there appeared to be no other basis for such an exemption. The Commission con-

[6] Securities Exchange Act Release No. 6129 (December 9, 1959).

cluded, therefore, that the statement that the stock was so exempt was false and misleading.

The current report for March 1957 stated that registrant's stock was non-assessable, when in fact the stock was assessable, and was so reported in an amendment to that report filed in August 1957.

Under all the circumstances, the Commission was of the opinion that the protection of investors required that the registration of registrant's common stock on the Exchange be withdrawn and an order to that effect was issued.[7]

UNLISTED TRADING PRIVILEGES ON EXCHANGES

Stocks with only unlisted trading privileges on the exchanges continued to decline in number, falling from 248 on June 30, 1959 to 232 on June 30, 1960. Their aggregate market value on December 31, 1959 was $14.5 billion, a sharp reduction from the $21.4 billion reported a year previously. Removal by the American Stock Exchange of Humble Oil and Refining Company common stock, by reason of the company's merger, accounted for $5 billion of the $6.9 billion reduction. Standard Oil Company (New Jersey) held $4.1 billion of the $14.5 billion aggregate, in stocks of Creole Petroleum Corporation, Imperial Oil Limited, and International Petroleum Company Limited. An additional $3.6 billion was of 57 stocks of issuers reporting as fully as though they were listed, by reason of registrations under the Securities Act, the Public Utility Holding Company Act, the Investment Company Act, or because the issuers in some cases had other securities listed on registered exchanges. The residue in public hands of such unlisted stocks accordingly amounted to only about $6.8 billion, and of this amount, about $4.4 billion was of 64 Canadian and other foreign stocks and American Depositary Receipts for foreign shares. The reported volume of trading on the exchanges in stocks admitted to unlisted trading only, for the calendar year 1959, was about 40.6 million shares or about 2.5 percent of the total share volume on all the exchanges. About 89 percent of this 40.6 million share volume was on the American Stock Exchange, 10 percent was on the Pacific Coast Stock Exchange, and six other regional exchanges contributed the remaining 1 percent.

Unlisted trading privileges on some exchanges in stocks listed on other exchanges continued to increase in number, rising from 1,494 on June 30, 1959 to 1,538 on June 30, 1960. These unlisted trading privileges, in stocks listed for the most part on the New York Stock Exchange, provide the regional exchanges with their principal source of new trading material. The reported volume of unlisted trading on

[7] Securities Exchange Act Release No. 6214 (March 18, 1960).

the exchanges in these stocks listed elsewhere, for the calendar year 1959, was close to 47 million shares. About 20 percent of the volume was on the American Stock Exchange in stocks listed on regional exchanges and about 80 percent was on regional exchanges in stocks listed on the New York or American Stock Exchange. The number of unlisted trading privileges is considerably greater than the number of stocks involved, since leading New York listings are traded unlisted on as many as seven regional exchanges. While the 47 million shares amounted to somewhat less than 3 percent of the total share volume on all the exchanges in 1959, it constituted substantial portions of the share volumes on the leading regional exchanges where it occurred, reaching 76.5 percent at Boston, 72 percent at Philadelphia-Baltimore, 62.7 percent at Cincinnati, 43.3 percent at Pittsburgh, 40.3 percent at Detroit, 33.1 percent at Midwest, and 21.8 percent at Pacific Coast stock exchanges. Roughly, the percentages were less as distances from New York were greater, but they were also affected by other factors including high share volumes in local low-price listed shares on some of the regional exchanges, particularly on the West Coast.

Applications for Unlisted Trading Privileges

Applications by exchanges for unlisted trading privileges in stocks listed on other exchanges, made pursuant to Rule 12f–1 under Section 12(f) of the Securities Exchange Act, were granted by the Commission during the fiscal year ended June 30, 1960, as follows:

Stock exchange:	*Number of stocks*
Boston	15
Cincinnati	11
Detroit	12
Midwest	2
Pacific Coast	6
Philadelphia-Baltimore	27
Pittsburgh	2
	75

During the fiscal year, the Commission granted an application by the American Stock Exchange pursuant to Rule 12f–2 of Section 12(f) of the Securities Exchange Act for continuance of unlisted trading in Ford Motor Company of Canada Ltd. common stock on the ground of substantial equivalence to the former Class A and Class B stocks which previously had unlisted trading privileges on that Exchange.

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 plan 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, blocks of listed securities may be distributed to the public by a "Secondary Distribution" on the over-the-counter market, after the close of exchange trading. The exchanges generally 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:

	Number	Shares in offer	Shares sold	Value (thousands of dollars)
	12 months ended December 31, 1959 [1]			
Special offerings	3	40,250	33,500	3,730
Exchange distributions	28	613,941	545,038	26,491
Secondary distributions	148	18,514,194	17,330,941	822,336
	6 months ended June 30, 1960 [1]			
Special offerings	2	52,473	43,663	4,219
Exchange distributions	11	291,464	285,964	5,393
Secondary distributions	46	4,405,871	4,297,837	176,345

[1] Details of these distributions appear in the Commission's monthly Statistical Bulletin. Data for prior years are shown in an appendix table in this Annual Report.

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 American 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 discover 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 1960, the number initiated in fiscal 1960, 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, 1959	77	11
Initiated	88	6
Total	165	17
Closed or completed during fiscal year	73	3
Changed to formal during fiscal year	6	
Total	79	3
Pending at end of fiscal year	86	14

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. Registered offerings numbering 1,398, having a value of over $14 billion, and 1,049 offerings

exempt under Section 3(b) of the Securities Act, having a value of about $215 million, were so observed during the fiscal year. Other offerings numbering 324, such as secondary distributions and distributions of securities under special plans filed by the exchanges, having a total value of $360 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 1960 stabilizing was effected in connection with stock offerings aggregating 52,794,825 shares having an aggregate public offering price of $1,169,737,429 and bond offerings having a total offering price of $181,060,000. In these offerings, stabilizing transactions resulted in the purchase of 1,301,132 shares of stock at a cost of $28,938,359 and bonds at a cost of $4,123,773. In connection with these stabilizing transactions, 9,213 stabilizing reports showing purchases and sales of securities effected by persons conducting the distribution were received and examined during the fiscal year.

INSIDERS' SECURITY HOLDINGS AND TRANSACTIONS

Section 16 of the Act is designed to prevent the unfair use of information by directors, officers and principal stockholders by giving publicity to their security holdings and transactions and by removing the profit incentive in short term trading by them in securities of their company. Such persons by virtue of their position may have information as to the company's condition and prospects which is unavailable to the general public and may be able to use such information to their personal advantage in transactions in the company's securities. Provisions similar to those contained in Section 16 of the Act are also contained in Section 17 of the Public Utility Holding Company Act of 1935 and Section 30 of the Investment Company Act of 1940.

Ownership Reports

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. Increasing interest in this publication is evidenced by the increase in the total circulation from a rate of about 8,000 at the end of the 1959 fiscal year to more than 10,000 at the end of the 1960 fiscal year.

During the fiscal year, 38,821 ownership reports were filed. This represents a slight decrease from the 39,275 reports filed during the 1959 fiscal year but is still substantially greater than the yearly average of 23,472 reports filed during the first 25 years of the reporting requirements. The following table shows details concerning reports filed during the fiscal year ended June 30, 1960.

Number of reports filed during fiscal year 1960

Securities Exchange Act:[1]	
Form 4	32,839
Form 5	1,161
Form 6	3,496
Total	37,496

[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.

Public Utility Holding Company Act:[2]	
Form U–17–1	25
Form U–17–2	415
Total	440
Investment Company Act:[3]	
Form N–30F–1	357
Form N–30F–2	528
Total	885
Grand Total	38,821

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.

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 includes provisions that when the management is soliciting proxies, any security holder desiring to communicate with other security holders for a proper purpose may require the management to furnish him with a list of all security holders or to mail his communication to security holders for him. A security holder may also, subject to reasonable prescribed limitations, require the management to include in its proxy material any appropriate proposal which such security holder desires to submit to a vote

[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.

of security holders. Any security holder or group of security holders may at any time make an independent proxy solicitation upon compliance with the proxy rules, whether or not the management is making a solicitation.

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 1960 fiscal year, 2,089 proxy statements in definitive form were filed under the Commission's Regulation 14 for the solicitation of proxies of security holders; 2,071 of these were filed by management and 18 by nonmanagement groups or individual stockholders. These 2,089 solicitations related to 1,876 companies, some 200 of which had more than one solicitation during the year, generally for a special meeting not involving the election of directors.

There were 1,864 solicitations of proxies for the election of directors, 207 for special meetings not involving the election of directors, and 18 for assents and authorizations for action not involving a meeting of security holders or the election of directors.

In addition to the election of directors, the decisions of security holders were sought through the solicitation in the 1960 fiscal year of their proxies, consents and authorizations with respect to the following types of matters:

Mergers, consolidations, acquisitions of businesses, purchases and sales of property, and dissolutions of companies	170
Authorizations of new or additional securities, modifications of existing securities, and recapitalization plans (other than mergers, consolidations, etc.)	388
Employee pension and retirement plans (including amendments to existing plans)	63
Bonus, profit-sharing plans and deferred compensation arrangements (including amendments to existing plans and arrangements)	27
Stock option plans (including amendments to existing plans)	247
Stockholder approval of the selection by management of independent auditors	676
Miscellaneous amendments to charter and by-laws, and miscellaneous other matters (excluding those involved in the preceding matters)	491

Stockholders' Proposals

During the 1960 fiscal year, 42 stockholders submitted a total of 130 proposals which were included in the 94 proxy statements of 94 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 stock options and their exercise by key employees and management groups, the sending of a post-meeting report to all stockholders, changing the place of the annual meeting of stockholders, and the approval by stockholders of management's selection of independent auditors.

The managements of 22 companies omitted from their proxy statements under the Commission's Rule 14a–8 a total of 48 additional proposals submitted by 32 individual stockholders. The principal reasons for such omissions and the numbers of times each such reason was involved (counting only one reason for omission for each proposal even though it may have been omitted under more than one provision of Rule 14a–8) were as follows:

(a) 11 proposals related to the ordinary conduct of the company's business;

(b) 11 proposals were not a proper subject matter under State law;

(c) 9 proposals concerned a personal grievance against the company;

(d) 5 proposals were resubmitted after not having received sufficient affirmative votes at a previous meeting;

(e) 1 proposal was not timely submitted;

(f) 4 proposals and reasons therefor were deemed misleading;

(g) 1 proposal involved the election of directors; and

(h) 6 proposals were withdrawn by the stockholders.

Ratio of Soliciting to Non-Soliciting Companies

Of the 2,307 issuers that had securities listed and registered on national securities exchanges as of June 30, 1960, 2,030 had voting securities so listed and registered. Of these 2,030 issuers, 46 listed and registered voting securities after their annual stockholders' meeting in fiscal 1960; thus, of the remaining 1,984 issuers with voting securities, 1,607, or 81 percent, solicited proxies under the Commission's proxy rules during the 1960 fiscal year for the election of directors.

Proxy Contests

During the 1960 fiscal year, 25 companies were involved in proxy contests when nonmanagement persons filed detailed statements as participants, or proposed participants, under the requirements of Rule 14a–11 when proxies are to be solicited from stockholders for the election of directors. A total of 382 persons, including both management and nonmanagement, filed such statements in 16 cases for control of the board of directors and 9 cases for representation on the board.

Management retained control in 12 of 16 contests, 1 was settled by negotiation, and 3 were pending as of June 30, 1960. Of the 9 cases

where representation on the board was involved, management retained all places on the board in 7 and in the other 2 cases nonmanagement persons were elected to the board.

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

Registration

Section 15(a) of the Securities Exchange Act requires the registration of all brokers and dealers who use the mails or instrumentalities of interstate commerce to effect or induce transactions in securities in the over-the-counter market. Exemptions from registration are afforded to those brokers and dealers that conduct an exclusively intrastate business or deal only in exempt securities, commercial paper, commercial bills or bankers' acceptances.

The table below sets forth statistics with respect to broker-dealer registrations for fiscal 1960.

Effective registrations at close of preceding fiscal year	4,907
Applications pending at close of preceding fiscal year	87
Applications filed during fiscal year	1,077
Total	6,071
Applications denied	6
Applications withdrawn	22
Applications cancelled	0
Registrations withdrawn	596
Registrations cancelled	33
Registrations revoked	61
Registrations suspended	6
Registrations effective at end of year	5,288
Applications pending at end of year	61
Total	6,073
Less suspended registrations revoked during year	*2
Total	6,071

*27 registrations were in suspension at the close of the fiscal year.

Administrative Proceedings

The power of the Commission to deny or revoke the registration of a broker-dealer is provided by Section 15(b) of the Securities Exchange Act. An order of denial or revocation will issue if the Commission finds that such a sanction is in the public interest and that the applicant or registrant, or any partner, officer, director or other person directly or indirectly controlling or contolled by such applicant or broker-dealer is subject to a specific statutory disqualification. These disqualifications, in general, are:

(1) willful false or misleading statements in the application or documents supplemental thereto;

(2) conviction within 10 years of a felony or misdemeanor involving the purchase or sale of securities or any conduct arising out of business as a broker-dealer;

(3) injunction by a court of competent jurisdiction against engaging in any practices in connection with the purchase or sale of securities;

(4) willful violation of the Securities Act of 1933 or the Securities Exchange Act of 1934 or any of the Commission's rules and regulations thereunder.

Revocation or denial must be preceded by appropriate notice to the named broker-dealer and an opportunity for a hearing before the Commission.

Section 15A of the Securities Exchange Act empowers the Commission to suspend or expel a broker or dealer from membership in a registered securities association [8] upon a finding of violation of the federal securities laws or the regulations thereunder. Section 19(a)(3) gives similar powers with respect to membership in national securities exchanges.

Registration may not be denied without a finding of the misconduct specified by the Act. Therefore, bad reputation or character, or lack of experience in the securities business cannot of itself be a basis upon which a denial or revocation of registration can be ordered. Similarly, a previous conviction for the commission of a felony unrelated to securities transactions does not meet the statutory standards for denial or revocation of registration.

Pursuant to the provisions of 15A(b)(4) of the Securities Exchange Act of 1934, in the absence of Commission approval or direction, no broker or dealer may be admitted to or continued in membership in a registered securities association if the broker or dealer or any partner, officer, director or controlling or controlled person of such broker or dealer was a cause of any order of revocation or suspension or expulsion from membership which is in effect. An individual named a cause often is subject to one or more statutory disqualifications under Section 15(b) and his employment by any other broker-dealer thus could also become a basis for broker-dealer revocation proceedings against the new employer.

Set forth below are statistics dealing with administrative proceedings instituted to deny and revoke registration and to suspend and expel from membership in the National Association of Securities Dealers, Inc. or an exchange.

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

Proceedings pending at start of fiscal year to:	
Revoke registration	53
Revoke registration and suspend or expel from NASD or exchanges	39
Deny registration to applicants	6
Total proceedings pending	98
Proceedings instituted during fiscal year to:	
Revoke registration	46
Revoke registration and suspend or expel from NASD or exchanges	36
Deny registration to applicants	12
Total proceedings instituted	94
Total proceedings current during fiscal year	192

DISPOSITION OF PROCEEDINGS

Proceedings to revoke registration:	
Dismissed on withdrawal of registration	3
Dismissed—registration permitted to continue in effect	3
Registration revoked	39
Total	45
Proceedings to revoke registration and suspend or expel from NASD or exchanges:	
Registration revoked	14
Registration revoked and firm expelled from NASD	8
Dismissed on withdrawal of registration	0
Dismissed—registration and membership permitted to continue in effect	0
Suspended for a period of time from NASD	0
Total	22
Proceedings to deny registration to applicant:	
Registration denied	6
Dismissed on withdrawal of applicant	2
Dismissed—application permitted to become effective	2
Total	10
Total proceedings disposed of	77
Proceedings pending at end of fiscal year to:	
Revoke registration	54
Revoke registration and suspend or expel from NASD or exchanges	53
Deny registration to applicants	8
Total proceedings pending at end of fiscal year	115
Total proceedings accounted for	192

Action was taken this past year in the following administrative proceedings under Section 15(b) of the Securities Exchange Act:

REVOCATION PROCEEDINGS

Hannibal Associates, Inc.—The Commission revoked the broker-dealer registration of Hannibal Associates, Inc. and named Donald M. Boris as a cause of the revocation. The Commission found that registrant willfully violated the registration and anti-fraud provisions of the securities laws in connection with the offer and sale of the common stock of Alaska-Dakota Development Company. Registrant made false and misleading statements concerning registrant's business standing, Alaska's assets and business prospects as well as the ownership of Alaska's stock.[9]

Stratford Securities Co., Inc.—The broker-dealer registration of Stratford Securities Co., Inc. was revoked by the Commission on findings that registrant sold approximately 32,000 shares of the unregistered stock of General Oil and Industries Co., Inc. in violation of the registration provisions of the Securities Act and in connection therewith made false and misleading statements concerning General's assets and prospects, and possible appreciation in the market price of General's stock, and that the United States District Court for the Southern District of New York had issued a preliminary injunction restraining registrant and its officers from further violations of the registration and anti-fraud provisions of the Securities Act in the sale of General's stock.[10]

Rock Frederick Houle, doing business as DeNurf & Co.—The Commission decided that it was necessary and appropriate in the public interest to revoke registrant's broker-dealer registration and to deny his request for withdrawal. Registrant's brother, Louis R. Houle, had acquired unregistered stock of International Copper Development Corporation from a controlling stockholder for the purpose of resale to the public. Registrant participated in this undertaking by selling part of the shares. Houle and his brother were found to be underwriters within the meaning of Section 2(11) of the Securities Act. The Commission found that the sale of the unregistered shares of International was in violation of Section 5 of the Securities Act and also found that in connection with these sales registrant made false and misleading statements concerning, among other things, International's properties, earnings, and possible dividends, and the prospective value of the stock. In addition, Houle was found to have filed a false financial statement with his registration application, to have

[9] Securities Exchange Act Release No. 6223 (March 31, 1960).
[10] Securities Exchange Act Release No. 6229 (April 11, 1960).

failed to file his initial report of financial condition, and to have failed to make his books and records available for inspection.[11]

Ned J. Bowman Company.—Registrant sold shares of unregistered stock of Lavender Uranium Corporation in violation of Section 5 of the Securities Act, and as a result the United States District Court for the District of Utah permanently enjoined it from further violations of Section 5 in connection with the sale of that stock. In rejecting registrant's claim that the offering was exempt from registration as an intrastate offering, the Commission held that an exemption under Section 3(a)(11) of the Securities Act would not be established merely by showing that the initial purchasers were residents of one state. Securities cannot be considered sold exclusively to residents within the meaning of Section 3(a)(11) if the purchasers distribute the securities to persons in other states. Thus, if any person purchasing the securities for resale rather than for investment sells them to a non-resident, the exemption is defeated as to the entire issue. Moreover, the Commission found that registrant did not take any effective steps to restrict the offering to residents of Utah purchasing for investment and in fact a number of shares were resold to public investors in other states. In addition, registrant willfully failed to consummate security transactions promptly in violation of the anti-fraud provisions of the securities laws. Based upon the foregoing, the registration as a broker-dealer of Ned J. Bowman Company was revoked and K. Ralph Bowman and Ramon N. Bowman were each named as a cause of the order of revocation.[12]

Security Investment Corporation.—The broker-dealer registration of Security Investment Corporation was revoked by the Commission and Charles R. Hixon and Wilmer J. Landry were found to be causes of the order of revocation. The Commission found that registrant in the sale of its own securities made false and misleading statements concerning the safety of the investment, the amount invested by its officers, the distribution of the stock, and expansion of its operations. Because the bank in which registrant deposited the checks granted the registrant "immediate solvent credit", registrant contended that the depository bank acted as principal and therefore registrant could not be charged with the use of the mails by the bank in connection with registrant's sale of the securities involved. The Commission stated that even if the depository bank had acted as principal in these transactions registrant would have been chargeable with knowledge that the mails would be used to effect collection, and, under the anti-fraud provision herein involved, any use of the mails related to a fraudulent selling scheme would satisfy the jurisdictional requirements of

[11] Securities Exchange Act Release No. 6231 (April 11, 1960).
[12] Securities Exchange Act Release No. 6257 (May 16, 1960).

the securities laws. Registrant also filed a false and misleading financial statement with its application for registration and failed to file reports of financial condition for the years 1956 through 1958.[13]

Ronald I. Gershen, doing business as R. I. Gershen Co., and R. I. Gershen & Co., Inc.—The Commission found that Ronald I. Gershen while employed by another broker-dealer offered and sold the common stock of Belmont Oil Corporation by means of false and misleading statements concerning, among other things, the return of the purchase price, future increases in price, issuance to stockholders of warrants to acquire shares at less than market price, and the value of Belmont's oil reserves. The Commission revoked Gershen's broker-dealer registration and also denied the application for registration of R. I. Gershen & Co., Inc., naming Gershen as a cause of the order of denial.[14]

Earl L. Robbins, doing business as Robbins & Company.—Robbins sold stock of Delta Oil Company of Utah (Delta) to 80 public investors and to a number of broker-dealers in various parts of the United States in violation of the registration requirements of the Securities Act of 1933. Also, the registrant had fraudulently engaged in the securities business without disclosing that he was insolvent, extended credit in violation of Regulation T, failed to comply with the net capital requirements and did not keep required books and records. Based upon the foregoing, the broker-dealer registration of Earl L. Robbins was revoked by the Commission.[15]

Frederic R. Mayo, doing business as The Bristol Securities Company.—The Commission revoked the registration as a broker-dealer of Frederic R. Mayo and found John P. Hanley, a salesman and office manager for registrant, to be a cause of the revocation. Registrant offered and sold bonds of National Finance Company by means of false and misleading representations that they would be redeemed by National at any time at full face value, while omitting to state that the bonds, which matured in ten years, would have to be held to maturity and that there was no obligation on the part of National to redeem said bonds at any time prior to maturity. Registrant also failed to file reports of financial condition for the years 1956 through 1958.[16]

H. Carroll & Co.—The Commission revoked the broker-dealer registration of H. Carroll & Co., naming Howard P. Carroll as a cause of the revocation. Registrant sold to customers 300,000 unregistered shares of Comstock Limited stock which it had acquired from controlling persons. The purported reliance upon advice of counsel was

[13] Securities Exchange Act Release No. 6259 (May 16, 1960).
[14] Securities Exchange Act Release No. 6249 (May 2, 1960).
[15] Securities Exchange Act Release No. 6246 (April 26, 1960).
[16] Securities Exchange Act Release No. 6210 (March 18, 1960).

not sufficient to preclude a finding by the Commission of a willful violation of the registration provisions of the Securities Act. A finding of willfulness does not requires that the Commission find an intent to violate; it is sufficient that there was an intent to do the act which constitutes the violation. In connection with the sales, registrant made false and misleading statements concerning, among other things, Comstock's properties, dividends, and prospects, and increases in the price of Comstock stock.[17]

Robert W. Wilson.—The Commission found that Wilson violated the registration and anti-fraud provisions of the securities laws in that he sold unregistered stock of Wyoming Oil Company at prices not reasonably related to the then prevailing market price and falsely represented to customers that it was a good investment at the selling price. In addition, pursuant to a complaint filed by the Commission, the United States District Court for the District of Colorado permanently enjoined Wilson from making false or misleading statements in the offer or sale of Wyoming stock. As a result, his broker-dealer registration was revoked by the Commission.[18]

W. T. Anderson Company, Inc.—Louis Payne and W. T. Anderson were named by the Commission as causes of the order of revocation of the broker-dealer registration of W. T. Anderson Company, Inc. Registrant, in connection with the purchase and sale of stock in five mining companies, made false and misleading statements and engaged in a course of business which operated as a fraud and deceit upon customers in willful violation of anti-fraud provisions of the securities laws. Registrant followed the practice of making purchases from one group of customers and contemporaneously selling shares of the same stock to other customers at substantial mark-ups. usually 100 percent over the prices registrant was paying. Payne registrant's salesman, gave inconsistent advice to different customers urging one customer to sell shares to registrant at half the price he was simultaneously urging another customer to pay for the same shares. In these transactions Payne did not disclose to either customer that the advice being given was inconsistent with the advice contemporaneously being given to others, or that the prices paid and received had no reasonable relation to registrant's contemporaneous costs or resale prices and generally represented mark-ups or mark-downs of 100 percent. The Commission was not precluded by the alleged dissolution of the registrant from finding that the public interest required that the registration be revoked and making findings with respect to registrant and associated persons.[19]

Valley State Brokerage, Inc.—The Commission revoked the broker-dealer registration of Valley State Brokerage, Inc. upon finding that

[17] Securities Exchange Act Release No. 6221 (March 31, 1960).
[18] Securities Exchange Act Release No. 6205 (March 11, 1960).
[19] Securities Exchange Act Release No. 6177 (February 9, 1960).

registrant filed a false financial report for 1955, did not file a financial report for 1957, and failed to correct its application for registration to show changes in its business address, resignation of certain officers and directors and changes in ownership of its stock. Although Eugene D. Eyre, registrant's president was not served with a notice of hearing, the Commission held that it was not precluded from finding that he aided and abetted registrant's willful violations, insofar as such finding was relevant to issue of revocation of registrant's broker-dealer registration.[20]

Dominick J. Lambert, doing business as D. J. Lambert & Co.—The Commission found that registrant had sold securities to customers at prices not reasonably related to the prevailing market prices in willful violation of anti-fraud provisions of the securities laws. In addition Lambert failed to make and keep current books and records in violation of Section 17(a) of the Exchange Act and Rule 17a–3 thereunder. The Commission revoked the registration as a broker-dealer of Dominick J. Lambert and expelled him from membership in the National Association of Securities Dealers, Inc.[21]

Arkansas Securities Corporation.—The Commission revoked the broker-dealer registration of Arkansas Securities Corporation, naming Russell Neville Keith and Archibald Eugene Crow causes of the order of revocation. Registrant sold and delivered to 51 investors residing in six states the unregistered common stock of Creswell-Keith Mining Trust at $1 per share and misappropriated part of $7,397 given in payment for the securities. In addition, registrant solicited and effected securities transactions without disclosing it was insolvent, failed to maintain the required books and records, and filed a false statement of financial condition. Registrant, Keith and Crow also had been permanently enjoined on February 14, 1958, by the United States District Court for the Western Division of Arkansas from further violations identical to those referred above.[22]

Sterling Securities Company, Marc Sterling & Co. and Columbia Securities Company, Inc. of Wyoming.—The broker-dealer registration of Sterling Securities Company was revoked by the Commission and it was expelled from membership in the National Association of Securities Dealers, Inc., with Marc Sterling and William Benjamin Feinberg being named as causes of the revocation and expulsion. The Commission found that registrant, at least during the week of May 15, 1956, dominated and controlled the market in the common stock of Mio Dio Uranium Corporation and, in concert with Columbia Securities Company, Inc. of Wyoming, fixed the prices for such stock.

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[20] Securities Exchange Act Release No. 6130 (December 9, 1959).
[21] Securities Exchange Act Release No. 6073 (September 23, 1959).
[22] Securities Exchange Act Release No. 6116 (November 16, 1959).

Registrant was found to have failed to disclose to investors that it established the market price of Mio Dio stock in a noncompetitive market which it dominated and controlled. The Commission held, "It is well established that a dealer, in quoting prices to customers and selling at such prices, impliedly represents that the sales price bears some relation to the price prevailing in a free and open market. Such representation is false where, as here, the dealer dominates and controls the market and fixes the prices of the stock." The Commission found that Feinberg and Sterling, then president and secretary-treasurer, respectively, of the registrant were responsible for the failure to disclose. In addition, registrant was found to have failed to disclose in its application for registration the identity of a beneficial owner of more than 10 percent of its stock and to amend such application to disclose a change in the beneficial ownership of its stock. The Commission also decided that the public interest required revocation of the broker-dealer registrations of Marc Sterling & Co.[23] and Columbia Securities Company, Inc. of Wyoming, which were controlled respectively by Sterling and Feinberg. Sterling was named a cause of the revocation of Marc Sterling & Co. and Feinberg a cause of the revocation of Columbia.[24] The Commission, on January 5, 1960, denied the petition of Feinberg and Columbia for rehearing.[25]

Harvey H. Shields, Jr., doing business as H. H. Shields & Co.—The Commission revoked this broker-dealer's registration upon a finding that registrant committed fraud by reason of having solicited and effected securities transactions without disclosing that it was insolvent. Registrant was also found to have failed to comply with the net capital and bookkeeping requirements of the Securities Exchange Act of 1934.[26]

Milton R. Aronson, doing business as Aronson & Co.—This broker-dealer's registration was revoked by the Commission upon a finding that registrant was permanently enjoined by a decree of the United States District Court for the Southern District of California, Central Division, from effecting securities transactions by means of false and misleading statements concerning his financial condition and his ability to deliver securities and funds to others and from doing business while insolvent or unable to meet current liabilities, or while in violation of the Commission's net capital or bookkeeping requirements. In addition, the Commission found that registrant effected securities transactions without disclosing insolvency, issued a check for the purchase of securities without having sufficient funds, failed to comply with

[23] In 1958 Marc Sterling & Co. changed its name to National Investment Securities, Inc.
[24] Securities Exchange Act Release No. 6100 (November 2, 1959).
[25] Securities Exchange Act Release No. 6157 (January 5, 1960).
[26] Securities Exchange Act Release No. 6148 (December 23, 1959).

the net capital requirements and bookkeeping requirements and did not file a report of financial condition for 1958.[27]

Fred T. Garner, doing business as Fred T. Garner Investments.—In connection with the offer and sale of the common stock of Rangely Oil & Gas Company, registrant sent through the mail letters to customers and prospective customers in which he made false and misleading statements as to purchases of Rangely stock by Rangely's president, the president's expectations as to possible dividend payments and increases in the market value of the stock. By reason of the above, registrant was found to have engaged in a course of conduct which operated as a fraud upon customers. Garner also failed to keep proper books and records and to make them available for examination and did not file a certified report for the year 1958. His broker-dealer registration was revoked on the basis of these violations.[28]

George Wales Allen, doing business as G. W. Allen & Company.—The registration of George Wales Allen was revoked by the Commission upon findings that registrant failed to keep accurate books and records, did not file amendments correcting his registration application, sold securities at excessively high mark-ups and failed to furnish customers with proper confirmations of transactions. The fact that the dollar amount of profit to the registrant was not large did not negate the finding that he violated the standard of fair dealing to which the Commission holds broker-dealers, since the fraud lay not in the amount of profit realized but in the inherent misrepresentation as to the current value of the securities.[29]

Albert & Company, Inc. (a New York corporation), Albert & Company, Inc. (a New Jersey corporation).—These broker-dealer registrations were revoked by the Commission and Eli D. Albert, officer and controlling stockholder of both companies, was named as a cause of the orders of revocation. The Commission found that a permanent injunction has been issued by the Supreme Court of the State of New York, New York County, barring the New York registrant from engaging in the securities business in the State of New York. A complaint filed in the State action alleged that the registrant sold a million shares of the common stock of Mohawk Business Machines for approximately a million dollars by means of fraudulent representations. Pursuant to a complaint filed by the Commission, the United States District Court for the District of New Jersey had permanently enjoined the New Jersey registrant and Eli D. Albert from making false and misleading representations in the offer and sale of the common stock of Vari-Pac Corporation. In addition, the New Jersey

[27] Securities Exchange Act Release No. 6241 (April 21, 1960).
[28] Securities Exchange Act Release No. 6166 (January 26, 1960).
[29] Securities Exchange Act Release No. 6019 (July 22, 1959).

registrant failed to file a report of financial condition for the year 1958.[30]

Southern States Securities Corporation.—The Commission revoked the broker-dealer registration of Southern States Securities Corporation and expelled it from membership in the National Association of Securities Dealers, Inc., naming Robert E. Sherwood as a cause of the revocation and expulsion. The Commission found that the registrant had made false and misleading statements in the offer and sale of the securities of Asco, Inc. and Continental Underwriters, Inc. and had misappropriated customers' checks and various things of value including appliances, automobiles, real estate, and shares of stock in other companies, which were given in payment for such securities. In connection with the sales of Continental stock and the disposition of other securities received in settlement of such sales, registrant failed to send customers confirmations of the transactions involved. Registrant, in addition, was found to have made false statements in its application for registration and violated the Commission's net capital and bookkeeping requirements.[31]

Best Securities, Inc.—The Commission revoked the broker-dealer registration of Best Securities, Inc. and expelled it from membership in the National Association of Securities Dealers, Inc. Morton Livenston, Ludwig J. Kabian, and Judah Cohen, also known as Judd Cohen, were named as causes of the revocation and expulsion. Using long-distance telephone calls registrant sold approximately 115,000 shares of the common stock of North Carolina Telephone Company to nearly 300 investors in various parts of the United States, by means of false and misleading statements concerning the future market price of the stock, dividend payments and possibilities of merger with other telephone companies. Registrant's activities violated the anti-fraud provisions of the securities laws which also contemplate that recommendations of a security to a prospective purchaser shall have a reasonable basis and be accompanied by disclosure of known or easily ascertainable facts bearing upon the justification of the recommendations. The sales methods of registrant were classified by the Commission as of a type customarily used to place a customer in a position where he is asked to make a hasty decision to buy securities of a speculative nature on the basis of oral and undocumented representations promising quick profits by an unseen and unknown person skilled in high-pressure selling techniques and inaccessible to complaints. Registrant also failed to amend its registration application to disclose an injunction against one of its salesmen.[32]

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[30] Securities Exchange Act Release No. 6267 (May 18, 1960).
[31] Securities Exchange Act Release No. 6200 (March 4, 1960).
[32] Securities Exchange Act Release No. 6282 (June 3, 1960).

A. J. Grayson & Co., Incorporated, A. J. Grayson & Co. of New Jersey, Inc., A. J. Grayson & Co. Inc.—The Commission found that A. J. Grayson & Co., Incorporated, a New York corporation, and Albert J. Grayson sold and delivered 226,550 shares of the unregistered common stock of Micro-Moisture Controls, Inc. The United States District Court for the Southern District of New York permanently enjoined Grayson and the New York registrant, among others, from offering and selling Micro-Moisture stock in violation of the registration provisions of the Securities Act of 1933. The Commission revoked the broker-dealer registration of the New York registrant, expelled it from membership in the National Association of Securities Dealers, Inc., and, on the basis of the permanent injunction against Grayson and his position as president, principal stockholder and director of both the Maryland and New Jersey registrants, revoked the registrations of those registrants as broker-dealers, naming Grayson as a cause of all three revocations and the expulsion.[33]

Paul Carroll Ferguson, doing business as Paul C. Ferguson & Co.—This broker-dealer's registration was revoked by the Commission upon the findings that registrant had engaged in an interstate securities business while not registered as a broker-dealer, sold and delivered unregistered securities, failed to send proper confirmations, sold securities for customers without accounting for the entire price, made material misrepresentations, solid stocks at excessive mark-ups and failed to maintain required books and records.[34]

James J. Snoddy, doing business as James J. Snoddy, Investment Securities.—The registration was revoked upon findings that registrant, within ten years, had been convicted in the United States District Court for the Southern District of Texas of violations of the antifraud provisions of the securities laws and the mail fraud provision of the United States Criminal Code, and had failed to file reports of financial condition for the years 1955 through 1957.[35]

James J. Wilensky & Co.—The Commission revoked the broker-dealer registration of Joseph J. Wilensky & Co. and expelled it from membership in the National Association of Securities Dealers, Inc. Registrant had been permanently enjoined by the United States District Court for the Southern District of Florida from engaging in the securities business in violation of the net capital rule. Registrant was found also to have misappropriated $3,431 received from customers for the purchase of securities, failed to disclose to his customers that he was doing business while insolvent, violated the net capital rule and failed to amend its application to disclose the injunction and

[33] Securities Exchange Act Release No. 6242 (April 22, 1960).
[34] Securities Exchange Act Release No. 6009 (July 7, 1959).
[35] Securities Exchange Act Release No. 6020 (July 16, 1959).

other matters. Registrant in addition failed to make and keep required books and records. Joseph J. Wilensky was named a cause of the revocation and expulsion.[36]

Dennis Securities Corporation.—The registrant sold and delivered unregistered stock of Tyrex Drug & Chemical Corporation and failed to disclose to its customers the common control of itself and Tyrex. In addition, registrant extended credit in violation of Regulation T and failed to make and keep required books and records. The Commission revoked this broker-dealer's registration and expelled registrant from membership in the National Association of Securities Dealers, Inc., naming Anne Egenes, C. Edward Scott and Ivor Jenkins as causes of the revocation and expulsion.[37]

Kimball Securities, Inc.—A permanent injunction was entered by consent against the registrant, Frank S. Kimball, Joseph C. Kimball and Michael M. Ackman by the United States District Court for the Southern District of New York enjoining them from further violations of the anti-fraud provisions of the securities laws in connection with the sale of the common stock of Perry Oil Company, Inc. Under all the circumstances, including the serious nature of the conduct which the injunction prohibits, and finding it to be in the public interest, the Commission revoked the registration of Kimball Securities, Inc. as a broker-dealer and named the Kimballs and Ackman as causes of the revocation. The application of Frank S. Kimball to dismiss the proceedings as to him on the grounds that he was not properly served was denied by the Commission upon findings that Kimball had actual notice of the proceedings, and had an opportunity to participate therein fully and did join with registrant in filing proposed findings, exceptions and briefs without waiving his position on his application and that therefore the requirements of due process and of the Exchange Act and the rule thereunder regarding appropriate notice were satisfied.[38]

Edna Campbell Markey, doing business as E. C. Markey.—Edna Campbell Markey, doing business as E. C. Markey, was found to have made a false statement in her registration application regarding the identity of a controlling person and failed to file an amendment to the registration application to show a change in the name under which the business was to be conducted. Robert Michael Schulster was found to be a cause of the order of revocation.[39]

Jefferson Associates, Inc.—The registration of Jefferson Associates, Inc., as a broker-dealer was revoked by the Commission and Donald Dunklee was named as a cause of the order of revocation upon find-

[36] Securities Exchange Act Release No. 6032 (July 31, 1959).
[37] Securities Exchange Act Release No. 6055 (August 31, 1959).
[38] Securities Exchange Act Release No. 6274 (May 27, 1960).
[39] Securities Exchange Act Release No. 6015 (July 10, 1959).

ings that registrant had made a false statement in an amendment to its registration application regarding the identity of its principal stockholder and failed to file an amendment to disclose the person who actually controlled registrant.[40]

Talmage Wilcher, Incorporated.—The Commission revoked the broker-dealer registration of Talmage Wilcher, Incorporated upon a determination that the registrant filed a false statement of financial condition with its registration application, had violated the Commission's net capital and bookkeeping rules, and had filed a false financial report for the year 1959. Talmage S. Wilcher was named as a cause of the revocation.[41]

William Newman, doing business as Wm. Newman Company.—The registration of William Newman as a broker-dealer was revoked by the Commission upon findings that registrant was permanently enjoined by the Supreme Court of the State of New York from engaging in securities transactions in New York, had failed to amend his application for registration to indicate the existence of the injunction and the change of his business address, and failed to file reports of financial condition for 1956 and 1957.[42]

First Maryland Securities Corp.—The Commission determined that Samuel Nagle, an officer and director of First Maryland Securities Corp., is permanently enjoined by a decree of the Supreme Court of the State of New York, County of New York, from engaging in the securities business in that State and that registrant failed to file its initial required report of financial condition. Accordingly, the registration of First Maryland Securities Corp. as a broker-dealer was revoked by the Commission and Samuel Nagle was named as a cause.[43]

Edward J. Carroll, doing business as Carroll Securities Company.—The Commission revoked the registration of Edward J. Carroll upon a finding that registrant was subject to a permanent injunction issued by the United States District Court for the District of Massachusetts enjoining him from further violations of the anti-fraud, net capital, and bookkeeping provisions of the Securities Exchange Act and the rules thereunder. Registrant was also found to have been convicted within ten years by a Massachusetts State court of larceny of securities from one of the customers whose transactions formed the basis for the injunctive proceeding.[44]

R. G. Williams & Co., Inc.—The registration of R. G. Williams & Co., Inc. as a broker-dealer was revoked by the Commission and Robert G. Williams was named as a cause of the revocation. Regis-

[40] Securities Exchange Act Release No. 6008 (July 10, 1959).
[41] Securities Exchange Act Release No. 6286 (June 13, 1960).
[42] Securities Exchange Act Release No. 6014 (July 10, 1959).
[43] Securities Exchange Act Release No. 6199 (March 3, 1960).
[44] Securities Exchange Act Release No. 6220 (March 30, 1960).

trant was found to have violated the Commission's net capital and bookkeeping rules and engaged in the securities business while insolvent without disclosing its insolvency. Registrant and Williams were also permanently enjoined by the United States District Court for the Southern District of New York from hypothecating customers' securities without their consent, effecting securities transactions while insolvent without disclosing the insolvency, and violating the Commission's net capital rule.[45]

First Lewis Corporation.—The revocation of the registration of the First Lewis Corporation as a broker-dealer was based upon a finding that registrant was permanently enjoined by the United States District Court for the District of Massachusetts from engaging in the securities business while failing to make its required books and records available for inspection. In addition, registrant was found to have failed to amend its registration application to disclose the resignation of certain of its officers and directors and abandonment of its principal place of business and to file a report of financial condition for 1958. Fred T. Lewis was named as a cause of the revocation.[46]

Maxwell M. Sacks.—Sacks falsely stated in his application for registration that he had never previously been found to have violated the Securities Exchange Act when, in fact, the Commission had revoked his prior registration as a broker-dealer for violations of that Act. He also failed to answer Item 6 of the application, as to whether any other person directly or indirectly controlled his business. The Commission revoked his registration as a broker-dealer.[47]

Universal Securities of Buffalo.—Registrant's partners, George T. Argeros, Christ P. Argeros, James Kahris, and Frank P. Aronica, were named as causes of the order of revocation of its broker-dealer registration. The revocation was based upon findings that registrant and its partners are permanently enjoined by the United States District Court for the Western District of New York from violating the anti-fraud, net capital, and bookkeeping provisions of the Securities Exchange Act, and that registrant failed to amend its registration statement to indicate the existence of the injunction.[48]

World Wide Investors Corporation.—The Commission found that registrant is permanently enjoined by the United States District Court for the Southern District of New York from offering or selling unregistered shares of the common stock of Micro-Moisture Controls, Inc. The registrant also failed to file a report of financial condition for 1957. Accordingly, the Commission revoked its registration as a broker-dealer.[49]

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[45] Securities Exchange Act Release No. 6276 (May 27, 1960).
[46] Securities Exchange Act Release No. 6252 (May 2, 1960).
[47] Securities Exchange Act Release No. 6066 (September 10, 1959).
[48] Securities Exchange Act Release No. 6056 (September 1, 1959).
[49] Securities Exchange Act Release No. 6260 (May 13, 1960).

Intermountain Securities, Inc.—The broker-dealer registration of Intermountain Securities, Inc. was revoked by the Commission and Lamarrr Carlysle Bailey, Sr., and Lamarr Carlysle Bailey, Jr., were named as causes of the revocation. Registrant failed to amend its registration application to show changes in its officers, ownership of its stock, and location of its offices, did not keep its books and records in an accessible place, and failed to file a financial report for 1957.[50]

Abraham Rosen, doing business as Al Rosen & Co.—The Commission revoked the registration of Abraham Rosen as a broker-dealer and expelled him from membership in the National Association of Securities Dealers, Inc. upon findings that registrant engaged in the securities business while insolvent without disclosing such insolvency, failed to make and keep required records, and is enjoined by the United States District Court for the District of Massachusetts from further similar violations.[51]

George B. Wallace & Co.—The Commission revoked the broker-dealer registration of George B. Wallace & Co. upon findings that registrant and its partners, George B. Wallace and August G. Fuchs, are permanently enjoined by the United States District Court for the District of New Jersey from further violations of the Commission's net capital requirements and are also permanently enjoined by State courts in New York and New Jersey from engaging in the securities business within those States. George B. Wallace and August G. Fuchs were each named a cause of the revocation.[52]

Williams & Associates.—The Commission revoked the broker-dealer registration of Williams & Associates and named William Angelo, Jr. as a cause of the revocation upon findings that registrant violated the Commission's net capital rule, and that the United States District Court for the District of New Jersey enjoined it and Angelo from further violations of the rule.[53]

John F. McBride & Co., Inc.—The Commission found that John F. McBride & Co., Inc. and its president, John F. McBride, are subject to a permanent injunction entered with their consent by the United States District Court for the Southern District of New York barring them from offering or selling stock of Wyoming-Gulf Sulphur Corporation or any other securities in violation of the registration provisions of the Securities Act of 1933. Registrant also failed to file annual reports of financial condition for the years 1954 through 1957. In revoking this registration the Commission named John F. McBride as a cause.[54]

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[50] Securities Exchange Act Release No. 6178 (February 9, 1960).
[51] Securities Exchange Act Release No. 6010 (July 9, 1959).
[52] Securities Exchange Act Release No. 6024 (July 23, 1959).
[53] Securities Exchange Act Release No. 6270 (May 23, 1960).
[54] Securities Exchange Act Release No. 6023 (July 23, 1959).

Tanya Kaye, doing business as Kaye Investing Co.—The Commission determined that Tanya Kaye, doing business as Kaye Investing Co., failed to comply with the Commission's net capital and bookkeeping requirements and is permanently enjoined by the United States District Court for the Eastern District of New York from further violations of these provisions. Based on such findings her registration as a broker-dealer was revoked.[55]

Alexander Dvoretsky, doing business as Dennis & Company.—The broker-dealer registration of Alexander Dvoretsky was revoked by the Commission upon findings that registrant failed to amend his application for registration to show that three of his salesmen had been enjoined by State courts for securities violations; and that the registrant violated the Commission's net capital rule and failed to make and keep current his books and records.[56]

Filosa Securities Company.—The Commission revoked the broker-dealer registration of Filosa Securities Company naming Frank Robert Filosa as a cause of the revocation. This action was based upon findings that the registrant purchased and sold securities while insolvent without disclosing its financial condition, misappropriated customers' funds and securities, violated the net capital and record keeping rules, failed to file reports of financial condition for 1957 and 1958, and failed to amend its application for registration to disclose the resignation of one of its officers and directors.[57]

Blaise D'Antoni & Associates, Inc., Blaise D'Antoni.—Based upon a finding of net capital rule violations the Commission revoked the broker-dealer registration of Blaise D'Antoni & Associates, Inc., naming Blaise D'Antoni as a cause of the revocation and denied the application of Blaise D'Antoni for registration as a broker-dealer.[58]

K. Medann & Co., Inc.—The Commission revoked the broker-dealer registration of K. Medann & Co., Inc., and named Jack Kissel as a cause of the revocation upon a finding that registrant violated the bookkeeping requirements of the Securities Exchange Act.[59]

The revocation of the broker-dealer registration of **Kramer & Company, Incorporated** was based upon findings that registrant had violated Regulation T and the Commission's net capital rule. Thomas Anthony Kramer was named a cause.[60]

The broker-dealer registrations of **Gulf States Underwriters, Inc.,**[61] **John S. Hughes, doing business as John S. Hughes Co.,**[62] **Angelo**

[55] Securities Exchange Act Release No. 6033 (August 5, 1959).
[56] Securities Exchange Act Release No. 6147 (December 22, 1959).
[57] Securities Exchange Act Release No. 6266 (May 19, 1960).
[58] Securities Exchange Act Release No. 6238 (April 19, 1960), petition for review (C.A. 5 No. 18416), pending at close of fiscal year.
[59] Securities Exchange Act Release No. 6078 (September 25, 1959).
[60] Securities Exchange Act Release No. 6007 (July 9, 1959).
[61] Securities Exchange Act Release No. 6183 (February 16, 1960).
[62] Securities Exchange Act Release No. 6067 (September 10, 1959).

Plomatos, doing business as Hellene Securities,[63] **and John M. Irving** [64] were revoked by the Commission upon a determination that they failed to file financial reports as required by Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a–5 thereunder. The Commission found that **Daniel Hoffman,**[65] **W. E. Leonard & Company, Inc.**[66] **and John Munroe,**[67] registered broker-dealers, also willfully violated the reporting requirements of the Securities Exchange Act; however, after considering all of the circumstances of these cases, the Commission decided no sanctions were necessary in the public interest.

Denial Proceedings

Peoples Securities Company.—The application for registration as a broker-dealer of Peoples Securities Company was denied by the Commission. L. B. Hartgrove, Sr., Robert Macy Compton, and Clifford Bryant Renegar, officers, directors and controlling stockholders of Peoples, and Union Trust Company, a stockholder and securities dealer controlled by Hartgrove, were named as causes of the denial. The Commission found that Peoples made and failed promptly to correct false and misleading statements in its registration application and the amendments thereto. The application for registration and the first two amendments failed to show that Hartgrove occupied a similar position as an officer or director. In addition, Hartgrove, Union and Sequoyah Securities Company, a former registered broker-dealer controlled by Union, had offered, sold and delivered the unregistered stock of American Founders Life Insurance Company and its successor, United Founders Life Insurance Company. In connection with the sale of American stock the Commission found that Hartgrove, Compton and Sequoyah had made false and misleading statements concerning the effect of the insurance laws of Oklahoma, the safety of the investment, and the profit that might be made. Hartgrove was also found to have violated the antifraud provisions of the Securities Act in connection with the offer and sale of the stock of Capital National Life Insurance Company and Capital National Trust Company. In addition, Union, aided and abetted by Hartgrove was found to have engaged for over a 3-year period in an interstate securities business without being registered as a broker-dealer.[68]

Freeman Securities, Inc.—The Commission denied the application for registration of Freeman Securities, Inc. and named Sam Freeman

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[63] Securities Exchange Act Release No. 6289 (June 14, 1960).
[64] Securities Exchange Act Release No. 6165 (January 19, 1960).
[65] Securities Exchange Act Release No. 6156 (January 5, 1960).
[66] Securities Exchange Act Release No. 6197 (March 3, 1950).
[67] Securities Exchange Act Release No. 6026 (July 24, 1959).
[68] Securities Exchange Act Release No. 6176 (February 10, 1960); petition for review of Commission order filed April 7, 1960 (C.A. 5, No. 18300), pending at close of fiscal year.

as a cause of denial upon findings that registrant failed to list in the application, as required, an owner of 10% of its securities, and grossly overstated its assets in a financial statement filed as a supplement thereto. The statement showed as of December 15, 1958, total assets of $17,500, no liabilities, and a net worth of $17,500. The Commission found, however, that as of that date applicant's assets totaled only $1,000.[69]

Chester Richard Koza, doing business as Chester R. Koza & Co.—Koza, who had an Indiana license to engage in the securities business, had also effected interstate securities transactions without being registered with the Commission. The Commission found that during the period from January 1958 until May 1959 the books which applicant kept for his broker-dealer business reflected securities sales totaling $21,000, all of which were intrastate transactions. However, during the same period of time, applicant had also entered into additional securities transactions totaling over $237,000, some of which were interstate transactions. These transactions were entered on the books of a food brokerage business, also a sole proprietorship, from which applicant derived most of his income. The Commission rejected applicant's contention that the interstate transactions could be considered "individual" rather than as part of his securities business, reaffirming the rule that in the case of a sole proprietorship there is no valid basis for making such distinction. In denying this application, the Commission also found that Koza is permanently enjoined by the United States District Court for the Southern District of Indiana, Indianapolis Division, from further violations of the registration provisions of the Securities Act in connection with sale of securities of Farm and Home Agency, Inc.[70]

The Ramey Kelly Corporation.—This application for registration as a broker-dealer was denied by the Commission and Robert L. Ramey was named as a cause. The Commission found that Ramey made false and misleading statements in the sale of securities to an investor concerning the safety of the investments, the income the purchaser would receive, and commissions paid in connection with the sales.[71]

Suspension Proceedings

Section 15(b) authorizes the Commission to suspend the registration of any broker-dealer pending final determination of whether the registration should be revoked. An order suspending the registration may be entered only after an opportunity for hearing and a finding by the Commission such suspension appears to be necessary or appropriate in the public interest or for the protection of investors. During

[69] Securities Exchange Act Release No. 6046 (August 19, 1959).
[70] Securities Exchange Act Release No. 6298 (June 28, 1960).
[71] Securities Exchange Act Release No. 6209 (March 17, 1960).

the past fiscal year the Commission suspended the registrations of several broker-dealers after hearings at which evidence was produced that serious misconduct was currently being engaged in by the respondents. To prevent further harm to investors the Commission determined that it was in the public interest to suspend those registrations pending a full hearing on the question of revocation. The entry of an order of suspension is not determinative of the ultimate questions of whether willful violations have been committed and an order of revocation should be entered which are resolved only after a further hearing at which additional evidence may be presented by all parties to the proceeding.

International Investments, Inc.—Registrant consented to suspension of its broker-dealer registration. The Commission found suspension was appropriate in the public interest and for the protection of investors. The Commission determined that John K. Gibbs, president, director, and controlling stockholder of the registrant, was permanently enjoined on June 11, 1959 by the United States District Court for the District of Columbia from further violations of the registration and anti-fraud provisions of the Securities Act of 1933 in connection with the offer and sale of the common stock of International Corporation, a non-existent corporation. Prompt action prevented any substantial fraud on the public. At the close of the fiscal year, revocation proceedings were pending against registrant.[72]

Phoenix Securities Corp.—Registrant admitted for the purposes of the hearing on the question of suspension of registration that it offered and sold the unregistered common stock of General Oil Industries Co., Inc., and in connection therewith made materially false and misleading statements concerning, among other things, the issuer's assets, stock, and prospects. The violations and record so far made were deemed a sufficient showing to require suspension of this registration, which order was entered by consent. At the end of the fiscal year, revocation proceedings were pending.[73]

Peerless-New York, Incorporated.—The Commission found that registrant is subject to two preliminary injunctions entered by the United States District Court for the Southern District of New York on December 11, 1959, enjoining it from further violations of the registration and anti-fraud provisions of the Securities Act of 1933 in connection with the offer and sale of the stock of Belmont Oil Corporation. On February 3, 1958, the same court had issued an injunction temporarily restraining registrant from further violations of the Commission's net capital rule. The Commission deemed the injunctions and the accompanying findings of fraud and other violations of the

[72] Securities Exchange Act Release No. 6036 (August 6, 1959).
[73] Securities Exchange Act Release No. 6186 (February 17, 1960).

securities laws a sufficient showing to require the suspension of this registration in the public interest and for the protection of investors.[74]

Milton R. Aronson, doing business as Aronson & Co.—The Commission found, on the basis of stipulation and a consent to suspension entered into by Aronson, that he is permanently enjoined by a decree of the United States District Court for the Southern District of California, Central Division, from engaging in securities transactions in violation of the anti-fraud, net capital, bookkeeping, and reporting provisions of the Securities Exchange Act of 1934, and that he violated the net capital rule and record-keeping provisions of the Securities Exchange Act, made false entries in his books and records, and failed to file a report of financial condition for 1958. The Commission entered an order suspending his broker-dealer registration [75] and subsequently revoked his registration.[76]

George H. Hildebrand, doing business as Hildebrand & Co., Atlas Securities, Inc.—Atlas Securities, Inc., succeeded to the business of George H. Hildebrand & Co. on October 1, 1958. The registrants consented to suspension of their broker-dealer registrations and admitted for purposes of this proceeding that Atlas had engaged in securities transactions while insolvent and in violation of the Commission's net capital rule. The Commission concluded that suspension was appropriate in the public interest and for the protection of investors. Revocation proceedings against the registrants were pending at the end of the fiscal year.[77]

Other Sanctions

Reynolds & Co., Reynolds & Company, Incorporated.—The Commission suspended Reynolds & Co. from membership in the National Association of Securities Dealers, Inc. upon findings that willful violations of the securities laws occurred in Reynolds' branch offices in Carmel, Berkeley and San Francisco, California, and Chicago, Illinois, and that Reynolds and certain of its partners and supervisory personnel failed to exercise proper supervision over branch office employees.

The Commission analyzed transactions of Patrick H. Coleman, Jr., a salesman in the Carmel Office, in four discretionary investment accounts of customers and concluded that all four accounts were grossly overtraded in light of the character of the accounts. In one account, an average investment of $57,310 was turned over 29 times in a 46-month period, with purchases totalling $1,664,572 and sales totalling $1,651,907. Of 318 "in-and-out" transactions in this account, about 158 were completed within 30 days, with 22 being completed on the same day

[74] Securities Exchange Act Release No. 6193 (February 26, 1960).
[75] Securities Exchange Act Release No. 6075 (September 23, 1959).
[76] Securities Exchange Act Release No. 6241 (April 21, 1960).
[77] Securities Exchange Act Release No. 6150 (December 29, 1959).

or the following day. William R. Rice, the managing partner of Reynolds' West Coast branch offices, and Wilfred C. Aldous, the manager of the Carmel Office, were found to have failed to exercise proper supervision over Coleman's activities although they were aware of the large volume of trading in the accounts and his confidential relationship to the customers.

The violations in the Chicago Branch Office involved unauthorized transactions in customers' accounts and forgery of a customer's name by an employee of that office. In one case as many as 18 unauthorized transactions were effected in a period of less than four months. In another case, securities which were purchased without authorization in one customer's account were, after complaints by the customer, transferred to the account of another customer pursuant to his purported authorization which was forged by the salesman. The price charged to the second customer was some $1,800 more than the market price at the time of the transaction. Elmer J. Stefany, head cashier and office manager of the Chicago Office, Robert B. Whittaker, the resident manager, and John G. White, the resident partner, approved this transfer of securities. The Commission characterized their conduct as "a reckless failure to inquire into the highly questionable circumstances as well as active participation in an improper transfer of a loss to another customer." Despite discovery of these facts by the firm, the salesman was permitted to continue his activity without restriction. The record further showed 40 violations of Regulation T in the handling of 14 accounts by the salesman. The Commission found that Reynolds had, in fact, exercised no control or supervision with respect to compliance with Regulation T in the Chicago Office and that the three supervisors involved failed also to perform their responsibilities in this respect.

The violations which occurred in the San Francisco and Berkeley Offices involved false and misleading statements made by Wesley S. Roland, assistant manager of the Berkeley Office, and other employees of registrant to induce the purchase by customers of stock in six mining companies whose principal assets were six million shares of U & I Uranium Inc. stock. Roland told customers, among other things, that the stock was the "hottest thing" he had ever seen or handled, that it was "going up tomorrow" and that "the sky was the limit." The U & I claims were falsely represented to customers to be worth from 50 to 100 million dollars. Roland did not disclose to customers to whom he was recommending the purchase of these securities that at the same time he was selling his own shares of such securities (a total of 377,500 shares were sold by him for his own account at a profit of $100,000).

The execution of customers' buy orders was deliberately withheld until the market price of the stocks had increased as a result of the

inclusion, on request of Reynolds' employees, of increasingly higher bids in the over-the-counter quotations then published by members of the Spokane Stock Exchange. Such orders were then funneled into the Spokane Market despite the fact that at least some of the shares could have been obtained at lower prices from securities dealers in New York. The employees also participated in a publicity campaign which resulted in the publication of newspaper articles which were materially false and misleading. Registrant and its supervisory personnel knew that Roland and other employees were recommending the shares of mining company stocks to their customers despite registrant's stated policy discouraging customer investment in low-price speculative securities and were aware of the large volume involved. Under the circumstances, the Commission felt that registrant and its supervisory personnel failed to make an investigation regarding these securities and the information disseminated, including reprints of news articles, used by its employees. In fact, even after being put on notice in November 1954 that the Commission was investigating Roland's activities, so far as appears from the record, the registrant failed to make an effort to determine the facts or the reasons for such investigation. The Commission determined that Rice and Wilson M. Dodd, manager of the Berkeley Office, had failed to exercise their duties of supervision over these activities.

The Commission further noted that from September 1955 to December 1956 a salesman in Reynolds' Minneapolis office sold shares of a non-existent company on his own account, without any recording thereof on Reynolds' books, to the firm's customers and others. The salesman had the firm's cashier issue and give to him ten checks payable to various customers amounting to over $9,900 which he appropriated for his own use after forging the endorsements of the customers. The Commission observed that the practices engaged in by this salesman would not have been possible under an effective system of internal control and supervision.

The Commission concluded that the aforesaid activities in the registrant's branch offices demonstrated serious and extensive misconduct by employees in those offices and grave deficiencies in the supervision and internal control exercised by registrant over such employees. It reiterated the doctrine that brokers and dealers are under a duty to supervise the actions of employees and that in large organizations it is imperative that the system of internal control be adequate and effective and that those in authority exercise the utmost vigilance whenever even a remote indication of irregularity reaches their attention. The Commission felt that the circumstances of this case illustrate vividly the necessity for this doctrine and called for further consideration of its implications, particularly under the present conditions of active markets, increased interest in securities buying, inexperienced

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customers and the rapid growth and broadened operations of certain large securities firms of which registrant, Reynolds, is one. The Commission held that all of these conditions increase the importance of maintaining and enforcing adequate standards of supervision, and that where failure of a securities firm and its responsible personnel to maintain and diligently enforce a proper system of supervision and internal controls results in the perpetration of fraud upon customers or in other misconduct and willful violation of the Securities Act, for the purposes of applying the sanctions provided under the securities laws, such failure constitutes participation in such conduct and willful violations are committed not only by the person who performed the misconduct but also by those who did not properly perform their duty to prevent it.

The Commission found certain mitigating circumstances, including the action taken by Reynolds against all of the individuals involved, the payment of nearly $300,000 in settlement of claims, the representations by Reynolds that it had settled and will continue to endeavor in good faith to settle on an equitable basis all claims of customers in addition to adjusting all unauthorized transactions, and the establishment by Reynolds of additional procedures for supervision and internal control in order to prevent the repetition of the aforesaid activities. In addition, Reynolds asserted that as a result of the adverse publicity it has suffered substantial losses. The Commission concluded that, under all the circumstances, an appropriate sanction was to suspend Reynolds and Reynolds & Company, Incorporated, the stock of which is wholly owned by Reynolds and several of its partners, from membership in the National Association of Securities Dealers, Inc. for a period of 30 days. Rice, White, Whittaker, Dodd, Aldous, Roland, Stefany, and Coleman were each named as a cause of the suspension with respect to Reynolds.[78]

Perkins & Company, Inc.—The Commission found that the registrant willfully violated the record-keeping provisions of the Securities Exchange Act and is enjoined by the United States District Court for the District of Massachusetts from further similar violations of the Act. After considering all of the circumstances of the case, however, including the agreement of Ralph Leroy Perkins, registrant's controlling stockholders, that the stipulated facts as to the violation and injunction may be used in any future broker-dealer denial proceedings involving him, and his intention to limit future activities in the securities business to employment as a salesman, the Commission concluded that withdrawal of the registration was consistent with in the public interest and the protection of investors.[79]

[78] Securities Exchange Act Release No. 6273 (May 25, 1960).
[79] Securities Exchange Act Release No. 6152 (December 31, 1959).

Net Capital Rule

The basic purpose of Rule 15c3–1 promulgated by the Commission under Section 15(c)(3) of the Securities Exchange Act is to safeguard funds and securities held in the accounts of customers by registered broker-dealers. This rule, commonly known as the net capital rule, limits the quantum of indebtedness which may be incurred by a broker-dealer in relation to its capital. It provides that the "aggregate indebtedness" of a broker-dealer may not exceed 20 times the amount of its "net capital" as computed in accordance with the provisions of the rule.

When it appears from an examination of reports filed by a registered broker-dealer with the Commission, or through inspection of his books and records, that the permitted ratio is exceeded, the Commission generally notifies the offending broker-dealer of its deficiency and affords an opportunity for compliance. Unless the capital situation is promptly remedied, injunctive action may be taken by the Commission, and, in addition, proceedings may be instituted to determine whether the broker-dealer registration should be revoked. During the past fiscal year, violations of the net capital rule were charged in injunctive actions filed against 28 broker-dealers and in revocation proceedings instituted against 31 broker-dealers.

A registered broker-dealer who participates in "firm commitment" underwritings must maintain sufficient capital to permit participation provided by the underwriting contract without impairing the allowable capital-debt ratio prescribed by the rule. For the protection of issuers and customers of the broker-dealer, the staff of the Commission carefully scrutinizes the latest available information concerning the capital position of the participants to determine whether they will comply with the net capital rule. Acceleration of the effective date of registration statements filed under the Securities Act will be denied where underwriting commitments may engender violations of the net capital rule by any participating underwriter.

Once a participant is determined to be undercapitalized, he is notified and given an opportunity to adjust his financial position so as to meet the requirements of the rule without reducing his commitments. If he is unable to meet the rule, he must decrease his "firm commitment" until compliance with the rule is reached. If necessary, he may have to withdraw from the underwriting or participate on a "best efforts" basis only.

Financial Statements

Rule 17a–5, promulgated under Section 17(a) of the Securities Exchange Act, requires registered broker-dealers to file reports of financial condition with the Commission. These reports must be filed annually, except that successive reports cannot be as of dates within

four months of each other. Upon the initial registration of a broker-dealer, the registrant's first financial report must be as of a date during the period between the expiration of the first and fifth months following the effective date of the registration. In all cases, reports must be filed within 45 days after the date as of which the report speaks.

The rule requires financial reports to be certified by a certified public accountant or by a public accountant who is in fact independent. The certification requirement does not apply where it does not appear necessary for the protection of private investors. Pursuant to this policy, the rule states specific conditions by which members of national securities exchanges are exempt from the necessity of certification. An exemption is also afforded a broker-dealer, who, since his last previous report, has confined his securities transactions to the solicitation of 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. Certification is not required if since the previous report, a broker-dealer has bought and sold only evidences of indebtedness secured by liens on real estate, and has not carried margin accounts, credit balances, or securities for any customers.

These reports furnish one means by which the Commission and the public can periodically evaluate the financial liquidity and responsibility of broker-dealers. The reports further provide the staff of the Commission with information to determine compliance with the net capital rule.

Should a broker-dealer fail to file a required report of financial condition, the Commission will notify him of this fact and usually give him an opportunity to file the report immediately. If immediate compliance is not forthcoming, the Commission may institute revocation proceedings.

During the fiscal year, 4,569 reports of financial condition were filed. This compares to the 1959 total of 4,560.

Broker-Dealer Inspections

The Commission continued to place great emphasis on its program of broker-dealer inspections. The authority for the program is contained in Section 17(a) of the Securities Exchange Act which requires the making and keeping of appropriate books and records and provides for regular and periodic inspection of such records. Inspections have developed into one of the principal means for the protection of investors for they go a long way to assure compliance with the securities laws and the rules and regulations promulgated thereunder. Experience has shown that they not only serve to expose violations which have already occurred, but, in addition, they often detect conditions which if not corrected may result in harm to customers.

The process of inspection generally includes: (1) a determination of the broker-dealer's financial condition; (2) a thorough review of his pricing practices; (3) a careful evaluation of the safeguards employed in his handling of customers' funds and securities; and (4) a determination of the adequacy and accuracy of disclosures made to customers relating to their transactions.

Inspections afford protection to the public by determining whether broker-dealer activities conform with the standards of federal securities statutes. They reveal failures to keep proper books and records. Violations of the margin and credit provisions of Regulation T, prescribed under the Securities Exchange Act by the Federal Reserve Board, may be uncovered. Inspectors examine individual trading accounts to inquire if there is evidence of excessive trading or switching. Inspections have disclosed the use of improper and fraudulent sales techniques, and the sales of unregistered securities. The inspection program has also assisted the Commission in its administration of the short sale and stabilization rules.

During the fiscal year, the number of completed inspections totalled 1,499. It is anticipated that with the steady increase in broker-dealer registrations and the benefits derived from the inspection program, the Commission will continue its policy of increasing the number of inspections in the future.

Violations uncovered by an inspection do not necessarily provoke Commission action. In determining whether to institute proceedings against a broker-dealer, the Commission gives consideration to a great number of factors. It considers the seriousness of the violation and whether loss has been or is likely to be sustained by the public. It looks at the history of the broker-dealer with respect to prior infractions. It seeks to determine whether the broker-dealer is aware of his misconduct and, if so, whether it has taken steps to abate it. Generally, if these issues are resolved in the broker-dealer's favor, he is given an opportunity to achieve compliance. If it appears that the violations were willful, and that the protection of investors and the public interest can best be served by disciplinary proceedings, the Commission promptly institutes such proceedings.

The following table shows the various types and number of violations disclosed as a result of 1,499 inspections during the fiscal year:

Type	*Number*
Financial difficulties	139
Hypothecation rules	43
Unreasonable prices for securities purchases and sales	194
Regulation T of the Federal Reserve Board	180
"Secret profit"	7
Confirmations and bookkeeping rules	967
Other	371
Total indicated violations	1,901

The principal stock exchanges, the National Association of Securities Dealers, Inc., and some of the States have inspection programs that are somewhat similar to but not identical with that of the Commission. Each agency conducts its inspections, examinations or audits in accordance with its own procedures and with particular reference to its own regulations and jurisdiction. Inspections by other agencies cannot be adequate substitutes for Commission inspections since they are not primarily concerned with the detection and prevention of violations of the Federal securities laws and the Commission's regulations thereunder. However, the inspection programs of these other agencies do afford added protection to the public. For this reason, the Commission and certain other inspecting agencies maintain a program of coordinating inspection activities to obtain the widest possible coverage of brokers and dealers and to avoid unnecessary duplication of inspections. Under this program, each inspecting agency advises the other agencies that it has started a particular inspection, but does not report its findings to them. Information discovered in the course of such inspections or examinations indicating serious violations of regulations administered by another agency may, however, be called to the attention of such other agency. The program does not prevent the Commission from inspecting any firm recently inspected by another agency and such inspections are made whenever good cause exists.

The stock exchanges now participating in this coordination program include the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange, the New York Stock Exchange, the Pacific Coast Stock Exchange, the Philadelphia-Baltimore Stock Exchange, and the Pittsburgh Stock Exchange.

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 the Maloney Act 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 price concessions, discounts and similar allowances may properly be granted by members only to other members. Loss or denial of membership due to expulsion or suspension, or other ineligibility due to a statutory disqualification or the failure to meet the standards of qualification established in NASD rules, thus imposes a severe economic sanction.

Membership in the NASD reached an all-time high of 4,372 at June 30, 1960. During the year membership increased by 354, as a result of 680 admissions to, and 326 terminations of, membership. At the same time, there were registered with the NASD as registered representatives 90,180 individuals, including generally all partners, officers, traders, salesmen and other persons employed by or affiliated with member firms in capacities which involved their doing business directly with the public. The number of registered representatives increased by 12,263 during the year as a result of 22,949 initial registrations, 10,972 re-registrations, and 21,658 terminations of registrations. At May 31, 1960, registered representatives totalled 90,536, an all-time high figure.

NASD Disciplinary Actions

During the fiscal year the Commission received from the NASD reports of final disciplinary decisions in 249 formal complaints cases against members.[80] There is often more than a single decision in a particular case as all decisions of District Business Conduct Committees are appealable to, or reviewable on its own motion, by the Board of Governors. On review, the Board may affirm, modify or reverse such decisions or remand them for further consideration. At times, two or more complaints against a single member are consolidated and disposed of in a single decision.

Each formal complaint must be based on allegations that a member has violated specified provisions of the NASD's Rules of Fair Practice, although registered representatives of members, or persons controlling or controlled by members, may also be cited for violations or with having been a cause of violation. Of the 249 final decisions so reported, 177 were based on complaints solely against member firms and 72 others on allegations that both members and registered repre-

[80] In addition to the 249 final decisions, the Commission received reports of 66 other decisions that were preliminary in nature in that final decisions were subsequently received or the matters were awaiting final action by the Board of Governors at the end of the fiscal year.

sentatives had violated applicable rules. Of the 177 complaints directed solely against members, 28 were dismissed on findings that the allegations had not been sustained, and in the remaining 149 cases findings of one or more violations resulted. Of the 72 complaints against both members and registered representatives, eight were dismissed as to all parties; ten were dismissed as to members but not representatives; and two were dismissed as to the representatives but not the members. Findings of violations by one or more of the respondents resulted in the remaining cases brought against members and representatives. These cases involved complaints against 130 registered representatives, 119 of whom were found to have committed violations.

Where violations were found, one or more sanctions were imposed. The available sanctions include expulsion or suspension of the member, or revocation or suspension of registration of the registered representative, fine and censure. In some instances an individual was found a cause of an expulsion, revocation or suspension. In many cases, more than a single penalty was imposed, expulsion, revocation or suspension being accompanied by a fine, and a fine being usually accompanied by censure.

During the fiscal year, 27 members were expelled; twelve were suspended for periods ranging from 15 days to two years; the registration of 34 registered representatives was revoked and of 12 such representatives were suspended for periods ranging from 30 days to one year; and 27 individuals were found a cause of an expulsion or revocation of registration. Moreover, fines ranging from $20 to $25,000 were imposed on 120 members, two of whom were also expelled. Only the minimum penalty of censure was imposed on 18 members. Fines ranging from $25 to $25,000 were imposed on 68 representatives, including 13 whose registrations were also revoked and two whose registrations were suspended. Three representatives were sanctioned only to the extent of censure. In a substantial majority of the cases, some or all of the costs of the proceedings were assessed against the parties found to have been in violation. Fines or costs imposed on an expelled member or a revoked registered representative are rarely paid but in the fiscal year the NASD collected total fines of $86,811.43, and costs of $15,766.28.

During the year the NASD also reported to the Commission the disposition of 12 cases by Minor Violation Procedure, a procedure used exclusively where the facts are not in dispute and where the matter involves only minor or technical violations of the rules with no significant damage to customers or others. Under this procedure, a member may waive a hearing, admit the allegations of violations and accept a penalty which cannot exceed a fine of $100. The member's right of appeal or to formal complaint treatment, and the right of the Board of Governors and of the Commission to review, are pre-

served. The 12 cases disposed of by this method resulted in nine fines aggregating $625, and censure in the remaining three cases.

Commission Review of NASD Disciplinary Action

Section 15A(g) of the Act provides that disciplinary actions by the NASD are subject to review by the Commission on its own motion or on the timely application of any aggrieved person. This section also provides that the effectiveness of any penalty imposed by the NASD is automatically stayed pending such review. Section 15A(h) of the Act defines the scope of the Commission's review in proceedings to review disciplinary action of the NASD. If the Commission finds that the disciplined person engaged in such acts or practices, or has omitted such acts as found by the NASD, and that such acts, practices, or omissions to act are in violation of such rules of the Association as have been designated in the determination, and that such conduct was inconsistent with just and equitable principal of trade, the Commission must dismiss such review proceedings. However, if the Commission finds that the penalties imposed are excessive or oppressive, having due regard to the public interest, it must cancel or reduce such penalties. At the beginning of the fiscal year seven review proceedings were pending before the Commission. During the year seven additional applications for review were filed, five were disposed of, and one was rejected as untimely,[81] leaving eight review proceedings pending at the close of the fiscal year.[82]

The Commission dismissed an application filed by Raymond G. Chalikian for review of an order of the NASD revoking his registration as a registered representative of Reynolds & Co.[83] The Commission's opinion sustained the finding of the NASD that Chalikian had deceived a customer as to the status of his account and had forged the customer's signature to a margin account, and that by such conduct Chalikian had violated specified NASD rules of fair practice. The Commission also held that the penalty of revocation was not oppressive or excessive.

The Commission also ruled on an application by A. J. Grayson and Co., Inc. for a Commission review of an Association order which expelled it from membership and revoked the registration of Albert

[81] The Commission rejected as untimely an application for review filed on behalf of A. L. Pennock Smith some 20 days after the expiration of the period within which appeal is a matter of right. An opportunity to explain why a timely application could not have been filed was ignored. Smith's registration as a registered representative was revoked for unsuitable recommendations to a customer which constituted conduct inconsistent with just and equitable principals of trade. File 16–1A96.

[82] Review proceedings were pending in Sterling Securities Co., Marc Sterling, et al. (File 16–1A77); Whitney & Co., Inc. (File 16–1A83); J. Logan & Co., et al. (File 16–1A86); Boren & Co. and Irving N. Boren (File 16–1A87); Bennett-Gladstone Manning Co. (File 16–1A88); Ernest F. Boruski, Jr. (File 16–1A90); Midland Securities, Inc. and Ben Degaetano (File 16–1A92); and Maryland Securities Co., Inc. (File 16–1A95).

[83] Securities Exchange Act Release No. 6086 (Oct. 12, 1959) and File 16–1A79.

J. Grayson, its president and sole stockholder, as a registered representative upon findings that the member had transacted business while unable to meet its current liabilities and while in violation of the Commission's net capital rule.[84] In an independent action, described elsewhere in this report, the Commission revoked the broker-dealer registration of A. J. Grayson and Co., Inc., expelled it from NASD membership, and found Grayson a cause of such action.[85] In view of this direct Commission action, the review proceeding was dismissed as moot.

A review petition filed on behalf of L. C. Fisher Company raised a novel question.[86] The NASD found that the firm violated applicable rules by effecting transactions in mutual fund shares which were not suitable for the customers involved. The NASD suspended the firm from membership for 90 days, censured it, fined it $500 and assessed costs. Following an appeal to the Commission, the firm produced and sought to introduce newly discovered evidence consisting of correspondence in which the firm advised particular customers that, because of the sales charge involved, they should not engage in "switching" between mutual funds, and in which it refused to sell the customers out of one fund and reinvest the proceeds in another fund. The NASD and the firm joined in a request that the Commission remand the matter to the NASD for further consideration. This request was granted. This decision was consistent with Commission policy as expressed in its Rule 15ag–1(d) that a person aggrieved by any NASD disciplinary action is not entitled to adduce additional evidence on review before the Commission, except up on a showing that such additional evidence is material and that there were reasonable grounds for failure to adduce it before the NASD. Upon reconsideration, the Board of Governors dismissed the complaint against the firm, which in effect nullified the findings of violations by the firm and expunged the penalties.

The question of the introduction of additional evidence on Commission review of NASD disciplinary action also arose in connection with applications for review filed by Gerald M. Greenberg and Robert Leopold, registered representatives formerly associated with H. Carroll & Co. The NASD held that the member, Howard Carroll, its president, Greenberg, its treasurer, and Leopold, its vice president, had violated NASD rules of fair practice. The violations found included the sale of securities to customers at unfair prices, unsuitable recommendations to customers, failure to register a branch office and individuals required to be registered as registered representatives, and failure to comply with the prompt-payment provisions of Regulation

[84] Securities Exchange Act Release No. 6243 (April 22, 1960) and File 16–1A80.
[85] Securities Exchange Act Release No. 6242 (April 22, 1960) and File 8–4889.
[86] File 16–1A82.

T. The member was expelled from membership and the registrations of the three individuals as registered representatives were revoked.

Greenberg and Leopold, who held about ten percent and thirty percent, respectively, of the member's outstanding stock filed a motion to present evidence before the Commission as to their lack of control over the member, a move opposed by the NASD on grounds that there had been no showing of reasonable grounds for failure to produce such evidence before it. The Commission denied the motion on the ground that movants had stipulated before the NASD as to their responsibilities for violations by the member and had been given repeated opportunities to present additional evidence, but had not done so.[87]

In considering the merits of the applications for review, the Commission sustained NASD findings that its rules had been violated in the respects indicated; held that Greenberg and Leopold must share in the responsibility therefor; concluded that the penalties imposed were not excessive or oppressive; and dismissed the appeal.[88]

The Commission dismissed another application for review filed by Franz Bachmann who had been expelled from membership by the NASD on admitted violations of NASD rules by conversion of customer's funds, failure to record the details of such transaction in his books and the destruction of documents descriptive of the transaction. The Commission held that, notwithstanding unfortunate circumstances confronting Bachmann at the time of the conversion, and the fact that restitution was subsequently made, the penalty of expulsion was not excessive or oppressive.[89]

Commission Review of NASD Action on Membership

Section 15A(b) of the Act and the by-laws of the NASD provide that, except where the Commission finds it appropriate in the public interest to approve or direct to the contrary, no broker or dealer may be admitted to or continued in membership if he, or any controlling or controlled person, is under any of the several disabilities specified in the statute or the bylaws. By these provisions Commission approval is a condition to the continuance in Association membership of any broker-dealer who, among other things, controls a person whose registration as a broker-dealer has been revoked, who has been expelled from Association membership, who was found to have been a cause of such an effective order or whose registration as a registered representative has been revoked by the NASD.

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 gen-

[87] Securities Exchange Act Release No. 6140 (Dec. 16, 1959) and File 16-1A81.
[88] Securities Exchange Act Release No. 6320 (July 21, 1960) and File 16-1A81.
[89] Securities Exchange Act Release No. 6198 (March 2, 1960) and File 16-1A85.

erally entered only after the matter has been submitted initially to the Association by the member or applicant for membership. 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 reviews the record and documents filed in support of the application and, where appropriate, obtains additional relevant and pertinent evidence. At the beginning of the fiscal year, four such petitions were pending before the Commission; during the year, five petitions were filed, five were ruled on by the Commission, and one was withdrawn by the petitioner prior to determination. Three such applications were pending at the year end.

The Commission found it appropriate in the public interest to approve five applications sponsored by the NASD for the continuance of firms in Association membership while employing disqualified persons. The disqualified persons so approved were:

(1) Charles J. Thornton, formerly president and only active stockholder of Thornton and Co., to be employed by L. H. Rothchild and Co.[90] The Commission had in 1948 revoked the broker-dealer registration of Thornton and Co.[91] for various manipulative activities, and the Commission's approval for Thornton's employment was granted on representations that he would be closely supervised and would not engage in trading with public customers.

(2) Paul T. Phiambolis, to be employed by Taussig, Day and Co., Inc.[92] In 1955 the NASD had revoked Phiambolis' registration as a registered representative for inducing excessive trading and for selling securities at prices not reasonably related to the market. The Commission, in giving approval, considered the time which had elapsed since the events on which the disqualification was based, the fact that the misconduct had been effected with the approval of the prior employer and representations that responsible officers of the proposed employer would closely supervise Phiambolis' activities.

(3) Giles E. MacQueen, Jr., who had been expelled from membership by the NASD in 1953 on findings that he had improperly used customers' funds and securities and had failed to maintain required books and records. The application which was filed on behalf of Carlson and Co., the proposed employer, referred to the fact that after the disqualification was established another NASD member firm had been approved for continuance in membership while employing MacQueen on representations that all securities had been returned to customers and on the understanding that MacQueen

[90] Securities Exchange Act Release No. 6035 (Aug. 5, 1959) and File 16-1A75.
[91] Thornton & Co., 28 SEC 208 (1948).
[92] Securities Exchange Act Release No. 6079 (Oct. 1, 1959) and File 16-1A84.

would have limited duties and would operate under close supervision.[93] Ownership of this previous employer having changed, approval of the new employment was required and was granted by the Commission, consideration being given to the prior approval, the continued supervision and the limitation of his activities.[94]

(4) Daniel N. Silverman, Jr., formerly president and controlling stockholder of D. N. Silverman Co., Inc. which had been expelled from membership by the NASD in 1958 upon findings that it had engaged in business while insolvent and had failed to maintain required books and records. During the fiscal year, the Commission approved two different applications permitting Silverman's employment by NASD member firms. The first application approved the continuance in membership of T. J. Feibleman and Co.,[95] and the second, of Dorsey and Co., Inc.[96] The first approval was granted because Silverman owed no money or securities to any broker or dealer and he stated that he would make continued efforts to reimburse his company's stockholders and that his activities as a supervised registered representative would be of a different character than those which caused the disqualifying violations. After this approval was issued, T. J. Feibleman and Co. withdrew its broker-dealer registration, resigned from the NASD, and Feibleman became associated with Dorsey and Co., Inc., as a principal stockholder and vice president. The circumstances surrounding the initial approval having changed, re-approval was necessary and was granted by the Commission in view of the earlier approval, Silverman's employment record with Feibleman and Co. and the supervision under which he was to operate in the future.

(5) Emanuel Bisgeier, who had been one of several principals in Churchill Securities Corp., to be employed by Jacwin and Costa, Inc. The Commission revoked the broker-dealer registration of Churchill Securities Corp. on February 10, 1959, and found Bisgeier a cause of that order of revocation.[97] The application was withdrawn prior to a Commission determination.[98]

LITIGATION UNDER THE SECURITIES EXCHANGE ACT OF 1934

For the protection of the public, the Commission is authorized to institute actions when violations of the Securities Exchange Act are present or threatened. A large proportion of such actions involve unlawful activities by broker-dealers. During the past year such illegal activities consisted primarily of violations of the anti-fraud sections and of the provisions concerning financial responsibility and the main-

[93] Life Insurance Fund Management Co. Inc., 37 SEC 376 (1956) and File 16–1A61.
[94] Securities Exchange Act Release No. 6034 (Aug. 5, 1959) and File 16–1A76.
[95] Securities Exchange Act Release No. 6011 (July 13, 1959) and File 16–1A74.
[96] Securities Exchange Act Release No. 6215 (March 18, 1960) and File 16–1A89.
[97] Securities Exchange Act Release No. 5871 (Feb. 10, 1959).
[98] File 16–1A91.

tenance of net capital and bookkeeping requirements. Frequently the firms involved have violated two or more of the protective provisions of the Act. Generally, also violations of the anti-fraud provisions involve violations of the registration and anti-fraud provisions of the Securities Act of 1933. In several of the cases, it developed that the broker-dealer was insolvent, and on motion of the Commission, receivers were appointed by the court.

In *S.E.C.* v. *William Douglas Bradford*, the United States District Court for the Southern District of California had entered an order permanently enjoining Bradford from conducting his brokerage business in interstate commerce or by use of the mails without complying with Commission rules which require the making and keeping current of books and records and the filing of reports of current financial condition. Bradford's books and records consisted merely of two suitcases containing loose and unassembled papers without intelligible organization. The Court of Appeals for the Ninth Circuit affirmed on May 5, 1960.[99]

In *S.E.C.* v. *Jack R. Dick* [100] the defendant was charged with placing orders with brokers under an assumed name when he had neither the means nor the intention to cover such orders, and when he knew that if he gave his correct name to the brokers they would have declined to execute them without satisfactory arrangements for payment. A permanent injunction was issued.

In *S.E.C.* v. *Gibbs & Co.*[101] on June 7, 1960, a permanent injunction was entered enjoining violations of the margin restrictions, the anti-fraud section, the net capital requirements and the bookkeeping requirements.

In *S.E.C. v. Scott Taylor & Co., Inc.*,[102] the Commission brought an action to enjoin the broker-dealer and others from violating the anti-fraud provisions in connection with the sale of stock of Anaconda Lead & Silver Company. The court entered a preliminary injunction on the basis of findings that customers of the defendant broker-dealer were told false and untrue statements concerning the financial worth of the company. The assertion by the defendants that they had ceased selling the securities and did not intend to continue selling them did not preclude the court from finding that a preliminary injunction was necessary. The court also rejected as not germane the argument that the injunction might result in revocation of the defendant's broker-dealer registration. One aspect of the Commission's action involved the question as to what information obtained by the Commission through its investigatory process was subject to disclosure under the

[99] No. 16,570.
[100] U.S.D.C. S.D. N.Y. No. 60–1578.
[101] U.S.D.C. D. Mass. No. 60–247–N.
[102] U.S.D.C. S.D. N.Y. Nos. 149–299 and 142–167.

provisions of the Federal Rules of Civil Procedure. One of the salesman-defendants served interrogatories on the Commission demanding the number and copies of all questionnaires received from investors by the Commission. The Commission disclosed the number of questionnaires it received but refused their production, except as to those of any witnesses it would call at the time of trial. The court sustained the Commission's objection that the questionnaires sought by the defendant were irrelevant and would lead to the discovery of no admissable evidence, and that no good cause was shown to require production.

S.E.C. v. *Arkansas Business Development Corp.*[103] was an action for violation of the anti-fraud provisions. It was charged that defendants falsely stated to investors that the entire proceeds of the sale would go to the treasury of the company. Other fraudulent statements concerned the safety and prospects of the investment, and the financial condition of the company. A temporary restraining order was obtained and is still in force pending final disposition by the court.

In *S.E.C.* v. *Sherburn J. Dodge* [104] and *S.E.C.* v. *Smith Holly Co.*,[105] the Commission charged defendant brokerage firms with accepting customers' orders and deposits of money and securities upon the representation that they were ready and able to meet all obligations, when in fact they were insolvent. Injunctions were entered and, in the *Dodge* case, a receiver was appointed to take charge of the remaining assets.

Other cases involving violations of the anti-fraud provisions or of the financial responsibility, net capital, or bookkeeping requirements in which injunctions were obtained included: *S.E.C.* v. *Aldrich Scott & Co.*,[106] *S.E.C.* v. *Security Adjustment Corp.*,[107] *S.E.C.* v. *Hayden Securities, Inc.*,[108] *S.E.C.* v. *Burka*,[109] *S.E.C.* v. *W. T. Anderson Company, Inc.*,[110] *S.E.C.* v. *Kevin*,[111] *S.E.C.* v. *Loewe*,[112] *S.E.C.* v. *Anaconda Lead & Silver Co.*,[113] *S.E.C* v. *First Securities Company*,[114] *S.E.C.* v. *Dayton Co.*,[115] *S.E.C.* v. *Robert Bialkin*,[116] *S.E.C. Arthur C. Costello and Investment Services, Inc.*,[117] *S.E.C.* v. *D. Earle Hensley Co.*,[118] *S.E.C.* v. *Investment Brokers of New Jersey, Inc.*,[119] *S.E.C.* v. *York*

[103] U.S.D.C. E.D. Ark. No. 3776.
[104] U.S.D.C. E.D. Wis. 59–C–210.
[105] U.S.D.C. S.D. N.Y. 60–231.
[106] U.S.D.C. S.D. N.Y. No. 153–202.
[107] U.S.D.C. E.D. N.Y. No. 60C 153.
[108] U.S.D.C. D. Del. No. 2127–59.
[109] U.S.D.C. DC 1379–60.
[110] U.S.D.C. E.D. Wash. No. 1517.
[111] U.S.D.C. S.D. N.Y. No. 154–68.
[112] U.S.D.C. S.D. N.Y. No. 154–115.
[113] U.S.D.C. D. Colo. No. 6819.
[114] U.S.D.C. D. Mass. No. 59–819–J.
[115] U.S.D.C. S.D. Fla. No. 9481–M.
[116] U.S.D.C. S.D. N.Y. No. 152–319.
[117] U.S.D.C. E.D. Mo. No. 59 C 226.
[118] U.S.D.C. W.D. Wash. No. 4882.
[119] U.S.D.C. D. N.J. No. 230–60.

Securities, Inc.,[120] *S.E.C.* v. *Alan Associates Securities Corp.*,[121] *S.E.C.* v. *Allen Investment Co.*,[122] *S.E.C.* v. *Heft, Kahn & Infante, Inc.*,[123] *S.E.C.* v. *Investment Bankers of America*,[124] *S.E.C.* v. *Luckhurst & Co.*,[125] *S.E.C.* v. *John P. Angelson*,[126] *S.E.C.* v. *Williams & Associates*,[127] *S.E.C.* v. *R. G. Williams & Co.*,[128] *S.E.C.* v. *E. J. Quinn & Co.*,[129] *S.E.C.* v. *Empire State Mutual Sales, Inc.*,[130] *S.E.C.* v. *Fred L. Carvalho dba Capital Investment Co.*,[131] *S.E.C.* v. *First Lewis Corp.*,[132] *S.E.C.* v. *Sidney Miller, et al.*,[133] *S.E.C.* v. *T. C. Corwin & Co.*,[134] *S.E.C.* v. *Read, Evans & Co.*,[135] *S.E.C.* v. *Harold Gersten*,[136] *S.E.C.* v. *William Greenwald, et al.*,[137] *S.E.C.* v. *Peerless-New York, Inc.*,[138] *S.E.C.* v. *DiRoma*,[139] *S.E.C.* v. *Robert H. Davis, dba Colonial Investors*,[140] *S.E.C.* v. *Pinkser & Co., Inc.*,[141] *and S.E.C.* v. *American Programming Corp.*[142]

Similar actions now pending include *S.E.C.* v. *C. H. Abrahams & Co., Inc.*[143] and *S.E.C.* v. *Benjamin Zwang & Co., Inc.*[144]

When a broker-dealer refuses to make his books and records available to the Commission for inspection, the Commission seeks the aid of the courts. Such a mandatory injunction was issued during the past year in *S.E.C.* v. *J. Grant Donahue & Co.*[145]

The action of *S.E.C.* v. *Howard W. McKinney* [146] was to enjoin the defendant from engaging in the brokerage business without being registered. A preliminary injunction was entered prohibiting him from doing business as a broker unless and until registered under Section 15(b) of the Securities Exchange Act.

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[120] U.S.D.C. S.D. N.Y. No. 60–2228.
[121] U.S.D.C. S.D. N.Y. No. 151–139.
[122] U.S.D.C. D. Col. No. 6578.
[123] U.S.D.C. E.D. N.Y. No. 60–C87.
[124] U.S.D.C. D.C. No. 378–60.
[125] U.S.D.C. S.D. N.Y. No. 60 C 433.
[126] U.S.D.C. E.D. Va. No. 3114.
[127] U.S.D.C. D. N.J. No. 887–59.
[128] U.S.D.C. S.D. N.Y. No. 153–101.
[129] U.S.D.C. S.D. N.Y. No. 60 Civ. 251.
[130] U.S.D.C. S.D. N.Y. No. 142–295.
[131] U.S.D.C. O.D. N.J. No. 417–60.
[132] U.S.D.C. D. Mass. No. 59–479–F.
[133] U.S.D.C. S.D. N.Y. No. 60 C 2063.
[134] U.S.D.C. S.D. N.Y. No. 60 C 1378.
[135] U.S.D.C. S.D. Cal. No. 230–60K.
[136] U.S.D.C. S.D. Cal. No. 77–60 BH.
[137] U.S.D.C. S.D. N.Y. No. 60–1022.
[138] U.S.D.C. S.D. N.Y. No. 60–607.
[139] U.S.D.C. D. Mass. No. 60–357–S.
[140] U.S.D.C. D. D.C. No. 2649–59.
[141] U.S.D.C. S.D. N.Y. No. 60–339.
[142] U.S.D.C. S.D. Calif. No. 350–60 MC.
[143] U.S.D.C. S.D. N.Y. No. 60 C 1476.
[144] U.S.D.C. S.D. N.Y. No. 113–192.
[145] U.S.D.C. S.D. N.Y. No. 60–623.
[146] U.S.D.C. N.D. Ind. No. 2638.

In *S.E.C.* v. *Monte Cristo Uranium Corp.*[147] and *S.E.C.* v. *Flo Mix Fertilizers Corporation*[148] the Commission obtained final orders directing the companies to file delinquent annual reports as required by the Act.

Participation as Amicus Curiae

As noted in previous annual reports, the Commission had filed briefs *amicus curiae* in support of the validity of Rule X–16B–3, insofar as it exempts the exercise of certain stock options from the provisions of Section 16(b) allowing recovery by the issuer of profits realized by officers, directors and 10 percent stockholders in transactions in the securities of the issuer. In *Van Aalten* v. *Hurley*[149] the trial judge held that it was unnecessary to decide the validity of the rule and declined to express an opinion. In *Cosden Petroleum Corporation* v. *M. M. Miller*[150] and *Cosden Petroleum Corporation* v. *R. L. Tollett*[151] the district court granted summary judgment for the defendants upholding the rule and stated that said rule exempts the defendants from liability under Section 16(b). The judge specifically approved the Commission's position in *Continental Oil Co.* v. *Perlitz*, 176 F. Supp. 219 and stated his agreement with the position taken by Circuit Judge Lumbard in *Greene* v. *Dietz*.

In *Standard Fruit and Steamship Company* v. *Midwest Stock Exchange*[152] the Commission filed a brief amicus curiae in support of the Midwest Stock Exchange which was defendant in a suit brought by Standard Fruit to enjoin Midwest from trading its stock on an unlisted basis under Section 12(a) of the Securities Exchange Act. Midwest claimed to have succeeded to the unlisted trading rights of Standard's stock by virtue of the absorption by Midwest of the New Orleans Stock Exchange, where Standard had previously had unlisted trading privileges. Standard objected to the transfer of unlisted trading in its stock from the New Orleans to the Midwest exchange on the ground that such trading would be unauthorized under Section 12(f)(1) of the Securities Exchange Act.

The Commission argued that Rule X–12–f–6 supported the continuance of unlisted trading in that Midwest had absorbed the New Orleans exchange. However, the court indicated that if the rule was construed to cover this transaction it might exceed the authority conferred under Section 12(f)(1) of the Securities Exchange Act and granted a preliminary injunction.

The Commission filed a brief amicus curiae in *Hooper* v. *Mountain States Securities Corp.* which involved an appeal by a trustee in bank-

[147] U.S.D.C. D. Utah No. C 78 60.
[148] U.S.D.C. E.D. La. No. 9678.
[149] 176 F. Supp. 851 (S.D.N.Y. 1959).
[150] U.S.D.C. N.D. Texas No. 1948.
[151] U.S.D.C. N.D. Texas No. 1949.
[152] 178 F. Supp. 669 (D.C. ND. Ill. 1959).

ruptcy from the district court's dismissal of his action under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b–5 thereunder. The trustee had brought suit on behalf of a corporation that had been allegedly fraudulently induced to issue its own unissued securities in exchange for worthless assets. The Court of Appeals reversed and remanded,[153] holding that a private action may be based upon a violation of Rule 10b–5 and that a corporation which is injured thereby is within the class entitled to seek redress for injury resulting from a violation of the rule. The Court also held that venue for such a suit was proper in the district where representatives of the corporation received an interstate telephone call from the architect of the fraudulent scheme in furtherance thereof.

In *Dann, et al.* v. *Studebaker-Packard Corp., et al.*[154] the plaintiffs appealed from an order dismissing a complaint which sought to set aside past action and enjoin future action pursuant to certain contractual arrangements between the defendant and other corporations. The complaint alleged that defendants had violated the Commission's proxy rules in soliciting the vote of shareholders to approve those arrangements, and sought relief under Section 14(a) of the Securities Exchange Act, and under State law. The Commission filed a brief *amicus curiae.* The brief took no position on questions of State law raised by the appeal, but argued that (1) a private right of action may flow from a violation of Section 14 of the Securities Exchange Act and the Commission's proxy rules thereunder, and (2) in a "spurious" class action for violation of the federal securities laws, the test of "adequate representation" should be liberally applied. The case was pending at the close of the fiscal year.

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[153] C.A. 5 July 12, 1960, No. 18218.
[154] C.A. 6 No. 13,940.