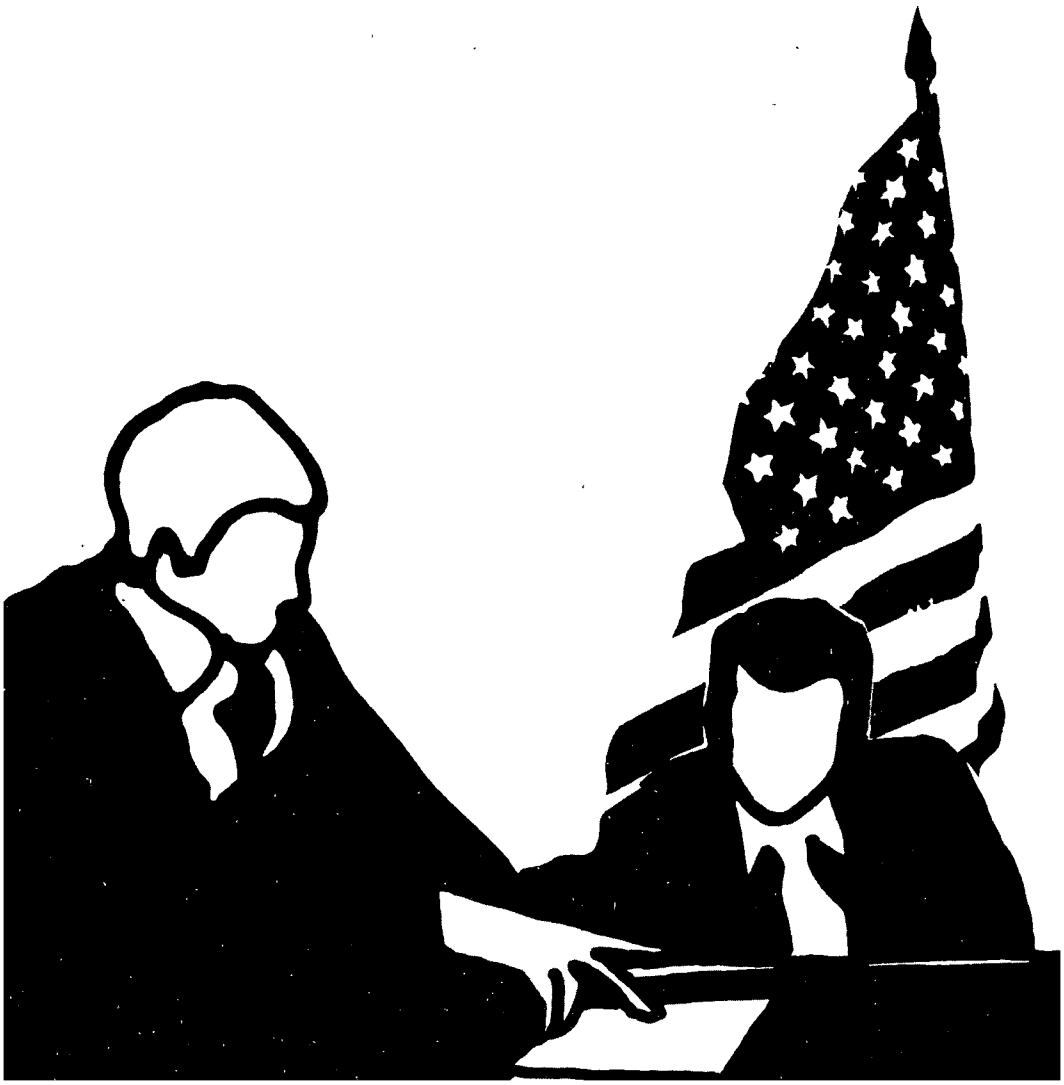
Part 4
Enforcement



Part 4
Enforcement

The Commission's enforcement activities, which are designed to combat securities fraud and other illegal conduct, continued at a high level during the past year. These activities encompass civil and criminal court actions, as well as administrative proceedings. Where violations of the securities laws are established, the sanctions which may result range from censure by the Commission to prison sentences imposed by a court.

The enforcement program is designed to achieve as broad a regulatory impact as possible within the framework of resources available to the Commission. In view of the capability of self-regulatory and state and local agencies to deal effectively with certain securities violations, the Commission seeks to promote effective coordination and cooperation between its own enforcement activities and those of other agencies.

DETECTION

Complaints

The Commission receives a large volume of communications from the public. These consist mainly of requests for information and complaints against broker-dealers and other members of the securities community as well as complaints concerning the market price of particular securities. During the past year, approximately 4,000 complaints against broker-dealers were received, analyzed and answered. Most of these complaints dealt with operational problems, such as the failure to deliver securities or funds promptly, or the alleged mishandling of accounts. In addition, there were about 9,100 complaints received concerning investment advisers, issuers, banks, transfer agents, mutual funds or similar matters.

The Commission seeks to assist persons in resolving complaints and to furnish requested information. Thousands of investor complaints are resolved through staff inquiries of the firms involved. While the Commission does not itself maintain an arbitration program to resolve disputes between brokerage firms and investors,[1] a complaint may lead to the institution of an investigation or an enforcement proceeding, or it may be referred to a self-regulatory or local enforcement agency.

Market Surveillance

The Commission's staff has devised procedures to identify possible violative activities in the securities markets through surveillance of listed securities. This program is coordinated with the market surveillance operations of the New York, American and

regional stock exchanges, as well as the various options exchanges.

In this regard, the Commission's market surveillance staff maintains a continuous watch of transactions on the stock and options exchanges and reviews reports of large block transactions to detect any unusual price and volume variations. It also monitors financial news tickers, financial publications and statistical services. In addition, the staff has supplemented its regular reviews by receiving daily and periodic market surveillance reports from the exchanges and the NASD which provide in-depth analysis of information developed by them. To augment its surveillance capabilities, the staff is using various data processing services so that irregular trading activity will be promptly detected and effectively investigated.

For those securities traded by means of the NASDAQ system, the Commission has also developed a surveillance program, which is coordinated with the NASD's market surveillance program, through a review of weekly and special stock watch reports.

For those over-the-counter securities not traded through NASDAQ, the Commission uses automated equipment to provide an efficient and comprehensive surveillance of stock quotations distributed by the National Quotation Bureau. This is programmed to identify, among other things, unlisted securities whose price movement or dealer interest varies beyond specified limits in a pre-established time period. When a security is so identified, the equipment prints out current and historic market information. Other programs supplement this data with information concerning sales of securities pursuant to Rule 144 under the Securities Act, ownership reports, and periodic company filings such as quarterly and annual reports. These data, combined with other available information, are analyzed for possible further inquiry and enforcement action.

The staff also oversees tender offers, exchange offers, proxy contests and other activities involving efforts to change control of public corporations. Such oversight includes review not only of trading markets in the securities involved, but also, of filings with the Commission of required schedules, prospectuses, proxy material and other information.

TRADING SUSPENSIONS

The Exchange Act authorizes the Commission summarily to suspend trading in a security traded either on a national securities exchange or in the over-the-counter market for a period of up to ten days if, in the Commission's opinion, such action is in the public interest.

During fiscal 1977, the Commission suspended trading in the securities of 111 companies, compared with 126 companies in fiscal 1976 and 113 companies in fiscal 1975. In most instances the trading suspension was ordered because of a delinquency in filing required reports with the Commission, substantial questions as to the adequacy, accuracy or availability of public information concerning the company's financial condition or business operations, or because of transactions in the company's securities suggesting possible manipulation or other violations.

Of the 111 companies whose securities were the subject of trading suspensions in fiscal 1977, 25 were related to the Penn Central Transportation Company (Penn Central). On December 13, 1976, the Commission suspended trading in the securities of Penn Central, Penn Central Company (Penn Central's parent) and

the securities of 23 of its leased lines companies and other affiliates at the request of the companies pending announcement by Penn Central of its proposed plan of reorganization.

On May 4, 1977, the Commission again suspended trading in the securities of Penn Central, Penn Central Company, and the securities of 28 other companies affected by the plan at the request of these companies' pending announcement by Penn Central of certain amendments to its proposed plan of reorganization.

ENFORCEMENT PROCEEDINGS

The Commission has available a wide range of possible enforcement remedies. It may, in appropriate cases, refer its files to the Department of Justice with a recommendation for criminal prosecution. The penalties upon conviction are specified in the various statutes and include imprisonment for substantial terms as well as fines.

The securities laws also authorize the Commission to file injunctive actions in the Federal district courts to enjoin continued or threatened violations of those laws and applicable Commission rules. In injunctive actions, the Commission frequently has sought to obtain other equitable relief under the general equity powers of the Federal district courts. The power of the Federal courts to grant such relief has been judicially recognized. The Commission often has requested the court to appoint a receiver for a business where investors were likely to be harmed by continuance of the existing management. It also has requested court orders which, among other things, restrict future activities of the defendants, require that rescission be offered to securities purchasers, or require disgorgement of the defendants' ill-gotten gains.

The Commission's primary function is to protect the public from fraudulent and other unlawful practices and not to obtain damages for injured individuals. Thus, a request that disgorgement be required is predicated on the need to deprive defendants of profits derived from their unlawful conduct and to protect the public by deterring such conduct by others.

If the terms of any injunctive decree are violated, criminal contempt proceedings may be filed as a result of which the violator may be fined or imprisoned.

The Federal securities acts also authorize the Commission to impose remedial administrative sanctions. Administrative enforcement proceedings involve alleged violations of the securities acts or regulations by firms or persons engaged in the securities business. Generally speaking, if the Commission finds that a respondent willfully violated a provision of or rule under the securities acts, failed reasonably to supervise another person who committed a violation, or has been convicted of or enjoined from certain types of misconduct, and that a sanction is in the public interest, it may revoke or suspend the registration of a broker-dealer or investment adviser, bar or suspend an individual from the securities business or from association with an investment company, or censure a firm or individual. Proceedings may also cover adequacy of disclosure in a registration statement or in reports filed with the Commission. Such a case may lead to an order suspending the effectiveness of a registration statement or directing compliance with reporting requirements. The Commission also has the power to suspend

trading summarily in a security when the public interest requires.

INVESTIGATIONS

Each of the acts administered by the Commission authorizes investigations to determine if violations have occurred. Most of these are conducted by the Commission's regional offices. Investigations are normally carried out on a confidential basis, consistent with effective law enforcement and the need to protect persons against whom unfounded charges might be made. Thus, the existence or results of a nonpublic investigation are generally not divulged unless they are made a matter of public record in proceedings brought before the Commission or in the courts. During the fiscal year 1976, a total of 400 investigations were opened, as against 413 in the preceding year.

ADMINISTRATIVE PROCEEDINGS

Summarized below are some of the administrative proceedings which were instituted or concluded in the fiscal period.

In the Matter of Plotkin, Yolles, Siegel & Turner[2]—The Commission instituted administrative proceedings under Rule 2(e) of its Rules of Practice against the Michigan law firm of Plotkin, Yolles, Siegel & Turner and three of its individual partners, Marcus Plotkin, Murray Yolles and Robert W. Siegel. On accepting offers of settlement from the respondents, the Commission censured the law firm and accepted the resignations of the three individual partners from appearance or practice before the Commission, provided that after eighteen months, they may apply to the Commission for reinstatement. In addition, the three partners were ordered to consult with competent securities counsel in connection with the preparation of any documents that may reasonably be expected to be delivered to public investors, until such time as these respondents demonstrate to the satisfaction of the Commission that they are familiar with the disclosure provisions of the securities laws.

On the basis of the Commission's order for private proceedings, to which the respondents consented without admitting or denying the allegations, the Commission found that respondents had been retained by an issuer of securities to advise prospective investors as to tax consequences of investing in oil and gas leases. The respondents did counsel and advise client-investors about these investments, and in some cases favorably recommended the investments and distributed documents concerning such investments to some of the clients. The respondents received payments from the issuers of such securities based, at least in part, on the fact of, or on the amount of, monies invested by clients of the law firm; which payments may not have been disclosed to some of the client-investors. In addition, the respondents failed to reveal to client-investors that two of the partners in the law firm owned common stock in one of the issuers of such securities. Under the circumstances, the Commission found that the respondents did not possess the requisite qualifications to represent others before the Commission.

In the Matter of Revere Management Company, Inc. et al. — On January 5, 1977, an order for public administrative proceedings was entered by the Commission for the purpose of hearing evidence on allegations of violations of the antifraud provisions of the Federal securities laws by Revere Management Co., Inc. (Management), a broker-dealer registered with the Commission and located in Philadelphia, Pennsylvania, William M. Hess (Hess) of

Philadelphia, Pennsylvania, president and director of Revere Fund, Inc. (Revere), an open-end, diversified investment company registered with the Commission pursuant to Section 8(a) of the Investment Company Act of 1940; American Fund Services, Ltd. (AFS), a broker-dealer located in Dusseldorf, Germany; and Albert Kuhn (Kuhn), a German national who was the principal operator of AFS.[3] Management has been the principal underwriter for Revere since its inception in 1959. Kuhn, as Revere's "exclusive representative," distributed shares of Revere throughout Germany from 1967 through 1969; from 1969 through 1974 Kuhn was Management's "general representative" in Germany.

In December 1975, Kuhn was found by a German court to have converted, from 1972 continuing into 1974, redemption checks from 37 Revere shareholders totalling approximately $239,000. In the Commission's order for proceeding, it was alleged that from June 1972 through December 1973, Management, Hess, Kuhn and AFS willfully violated and willfully aided and abetted violations of Section 10(b) (the antifraud provisions) of the Exchange Act of 1934 and Rule 10b-5 thereunder in redeeming and effecting transactions in the redeemable shares of Revere. In this regard, the order for proceedings alleged, among other things, that the respondents generally engaged in acts, practices, and a course of conduct that operated as a fraud and deceit upon shareholders in connection with (1) the redemption procedures employed by Revere, (2) the failure of the Revere shareholders to receive their redemption proceeds, and (3) the processing of improperly guaranteed redemption requests.

A public hearing on the alleged violations was held in Philadelphia, Pennsylvania, on April 12–15, 1977, and May 2–6, 1977, before Administrative Law Judge Ralph Hunter Tracy. Decision had not yet been entered at the end of the fiscal year.

In the Matter of Touche Ross & Company, et al. — On September 2, 1976, the Commission ordered the institution of a public administrative proceeding under Rule 2(e) of the Commission's Rules of Practice against Touche Ross & Co., and three auditors of the firm.[4]

The charges involved in the proceeding stem from Touche's examination of an Annual Report on the financial statements of Giant Stores Corp. (Giant) for the fiscal year ended January 29, 1972, and of Ampex Corporation (Ampex) for the fiscal year ended May 1, 1971.

The order alleged that Touche's April 18, 1972, report on the Giant financial statements and its June 21, 1971 report on the Ampex financial statements, were materially false and misleading as to its statements that Touche's examination was made in accordance with generally accepted auditing standards and accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary under the circumstances. In addition it was charged that Touche did not have a reasonable basis for opining, as it did, that the financial statements of Giant and Ampex as of January 29, 1972, and May 1, 1971, respectively, fairly presented (1) the consolidated positions of Giant and Ampex and their subsidiaries; (2) the results of their operations; or (3) the changes in their financial position, all in conformity with generally accepted accounting principles.

The Order further alleged that Giant materially overstated net income in its financial statements and that the re-

spondents, in performing the examination of Giant's financial statements, failed to follow generally accepted auditing standards, permitted the use of accounting principles which were not in accordance with generally accepted accounting principles and did not have a reasonable basis for the expression of an unqualified opinion on Giant's financial statements.

Touche filed suit in the United States District Court for the Southern District of New York to enjoin the Commission's proceedings against it. In December, 1976, the Commission filed a motion to dismiss. This motion is now pending before the court.[5]

In the Matter of Investors Diversified Services, Inc., et al. — On July 19, 1977, the Commission ordered two public administrative proceedings under the Securities Exchange Act of 1934, the Investment Advisers Act of 1940 and the Investment Company Act of 1940 against William H. Langfield (Langfield), Investors Diversified Services., Inc., (IDS), 26 broker-dealers and 22 individuals employed by the broker-dealers.[6]

As alleged in the proceedings, the case stemmed from Langfield's personal trading activities during the period between 1971 and 1973 while he was employed as an over-the-counter (OTC) securities trader for IDS, which served as investment adviser to several registered investment companies (the IDS Funds). Langfield, during 1971–1973, executed approximately $1.8 billion in purchases and sales of OTC securities for the IDS Funds. Langfield had discretion to choose which OTC market-makers would receive orders to purchase or sell securities on behalf of the IDS Funds. The Commission's orders alleged that during the period from August 1969 to April 1974, Langfield was placing orders with OTC market-makers on behalf of the IDS Funds and negotiating trades and placing orders for his personal account directly with many of the same market-makers with whom he placed IDS Fund orders.

Although Langfield traded directly with the market-makers' personnel, the Commission's orders alleged that he did not maintain an account with each market-maker but, instead, had his personal transactions confirmed to another broker-dealer where he did maintain an account which he used exclusively to clear the trades he made with the market-makers with whom he also placed IDS Fund orders. The records of the market-makers reflected that Langfield's orders had been placed by the broker-dealer with whom Langfield maintained his personal account, when in fact Langfield negotiated and effected those trades directly with the market-makers.

According to the Commission's orders, from October 1970 to about April 1974, Langfield executed approximately 1,850 trades in OTC stocks for his personal account, 83 percent of which involved purchases and sales of the same securities within two days time or less. Langfield, who received a salary of about $25,000 from IDS, netted, in addition to his salary, in excess of $300,000 as a result of his trading with the various OTC market-makers for his personal account.

The Orders also alleged that certain of the market-makers and several of their employees gave Langfield preferential price treatment when he executed trades with them for his personal account. The alleged preferential treatment consisted of, among other things, giving Langfield: (1) direct access to the market-makers' trading personnel for personal trades; (2) the use of price and volume quotations that would only be given in some instances to preferred institutional cus-

tomers; and (3) prices on OTC securities which were inconsistent with and more advantageous than the prevailing market prices as represented by the market-makers' bid and ask quotations or which were inconsistent with other purchases and sales executed by those market-makers at the same time or immediately before or after Langfield's trade.

The Commission found that thirteen of the broker-dealer respondents involved wilfully violated the bookkeeping provisions of the Exchange Act and, with the consent of those respondents, ordered those broker-dealers to adopt and maintain new procedures to prevent any recurrence of this type of conduct in the future.[7] The Commission also found that IDS failed reasonably to supervise Langfield and that James Murray (Langfield's immediate supervisor at IDS for whose account Langfield also traded) wilfully violated the antifraud provisions of the Securities Act, Exchange Act and Investment Advisers Act, the section of the Investment Company Act forbidding agents from accepting outside compensation, and failed reasonably to supervise Langfield.[8] The Commission, upon consent, censured IDS and Murray and suspended Murray from being associated with a broker-dealer, investment adviser, or investment company or affiliate thereof for 45 days and from being associated in any supervisory capacity therewith for one year.

The Commission further found that Langfield wilfully violated and aided and abetted violations of the antifraud provisions of the Securities Act, Exchange Act and Investment Adviser's Act and violated the section of the Investment Company Act making it unlawful for agents of an investment company to accept outside compensation. Langfield, with his consent, was barred from association with any broker or dealer, investment adviser, investment company or affiliate thereof.

The Commission also found that ten of the broker-dealers and eight of their employees wilfully violated and/or aided and abetted violations of the antifraud provisions of the Securities Act and Exchange Act and that ten of the broker-dealers and nine of their employees failed reasonably to supervise persons who committed such violations. The Commission, with the consent of the subject respondents, ordered these respondents to adopt procedures designed to prevent a recurrence of this type of conduct and imposed various other sanctions ranging from censures to suspensions for periods of time up to 20 business days. In lieu of imposition of the ordered suspensions, the various broker-dealers agreed to pay amounts ranging from $10,000 to $40,000 each to the appropriate IDS investment companies for whom Langfield effected transactions.

The proceedings are still pending as to two broker-dealers and four employees or officers of broker-dealers.

In the Matter of Frank S. Arko, et al.[9]—The Commission instituted public administrative proceedings against Frank S. Arko, a Bellevue, Washington investment adviser, and William M. Mitchell, a salesman employed by a registered broker-dealer in Seattle, Washington. Arko's business involves mailing, nationally and internationally, a report in which he recommends investments in coins and valuable metals, and in securities of companies involved in mining such metals. The proceedings are based on allegations by the Commission that Arko, in violation of the Exchange Act and Advisers Act antifraud provisions, engaged in a prac-

tice commonly known as "scalping" with respect to securities of QC Explorations, Ltd. and Lion Mines, Ltd., Canadian corporations whose stock is traded on Vancouver, B. C. Exchange, and Galaxy Oil Company, a Texas corporation whose stock is traded in the over-the-counter market.

Specifically, it is alleged that Arko advanced information to Mitchell on recommendations to be made in the report prior to its distribution to Arko's subscribers and that Mitchell traded for his own account in QC Explorations, Lion and Galaxy securities based on this advance knowledge. Mitchell is alleged to have aided and abetted Arko by taking positions in these securities in his firm's trading account prior to the distribution of Arko's recommendation, then selling shares from the trading account to Arko's personal account. On occasion, Arko and Mitchell split the sale from the trading account to their personal accounts, then sold at the market for a substantial profit. Arko and Mitchell were previously enjoined by the U. S. District Court for the Western District of Washington from further violations of the Exchange Act and Advisers Act antifraud provisions for the same conduct alleged in the administrative proceeding.[10]

In the Matter of S. D. Leidesdorf & Co. et al. — On February 16, 1977, the Commission issued an Opinion and Order under Rule 2(e) of the Commission's Rules of Practice which set forth the findings of an investigation and imposed sanctions against S. D. Leidesdorf & Co. (Leidesdorf) and a partner and audit manager of that firm.[11] Leidesdorf and the individual respondents submitted offers of settlement in which they consented to the issuance of the Opinion and Order without admitting or denying any of the statements or conclusions set forth therein.

The Commission's Opinion focused upon Leidesdorf's examination of financial statements issued by Tidal Marine International Corporation (Tidal) in 1971 and 1972. The Commission found that those financial statements were materially false and misleading and that Leidesdorf and the individual respondents had failed to conduct their examinations in accordance with generally accepted auditing standards.

The Commission ordered Leidesdorf to submit to an examination by an outside committee of the manner in which the firm conducts its audit practice with respect to publicly held companies. The Commission also suspended Leidesdorf from accepting new Commission audit clients for a period of two months and ordered the firm to comply with certain undertakings set forth in its offer of settlement.

In the Matter of Seidman & Seidman, et al. — In September 1976, the Commission issued an Opinion and Order pursuant to Rule 2(e) of the Commission's Rules of Practice that set forth findings of four Commission investigations and imposed sanctions against Seidman & Seidman and certain partners and employees in connection with its combination of practices in February 1972 with the Los Angeles Office of Wolfson, Weiner, Ratoff & Lapin.[12]

The Commission's Opinion focused on the auditing deficiencies in Seidman & Seidman's examinations of the financial statements of three former Wolfson/Weiner clients—Equity Funding Corporation of America, Omni-Rx Health Systems and SaCom and certain of the audits of financial statements of Cenco, Inc.

The Commission found that the audits of the financial statements of Equity, Omni-Rx, SaCom and Cenco involved serious deficiencies in Seid-

man & Seidman's audit performance, review, supervision and, except with respect to Cenco, its professional independence. The Commission noted that the financial statements of these issuers were not prepared in conformity with generally accepted accounting principles and the audits were not conducted in accordance with generally accepted auditing standards as was represented by Seidman & Seidman in its reports.

Pursuant to an offer of settlement submitted by Seidman & Seidman, the Commission ordered implementation of certain measures to provide assurance of the quality of the firm's practice before the Commission including a comprehensive examination by an independent committee of Seidman & Seidman's audit practice and a subsequent review to determine whether reasonable recommendations of the independent committee have been implemented. The review has been completed, and a committee report has been filed with the Commission. Temporary restrictions were also placed on mergers and combinations of practice and on the acquisition of new clients involving filings with the Commission.

In the Matter of Laventhol & Horwath, et al. — In September 1977, the Commission issued an Opinion and Order pursuant to Rule 2(e) of the Commission's Rules of Practice that set forth findings of three Commission investigations and imposed sanctions against Laventhol & Horwath, (Laventhol) and three former partners of that firm.[13] Laventhol and the individual respondents submitted offers of settlement in which they consented to the issuance of the Opinion and Order and certain other relief without admitting or denying the Commission's allegations.

The Commission's Opinion focused on the auditing deficiencies in connection with Laventhol's examination of certain financial statements of Western Properties Limited Partnership, Co-Build Companies Inc., and Cosmopolitan Investors Funding Co. The Commission concluded that Laventhol failed to conduct these audits in accordance with generally accepted auditing standards.

As part of the Order, Laventhol agreed to submit to an examination of the manner in which it conducted its accounting practices with respect to publicly-held companies. The examination is to be made by an independent committee, and a report submitted to the Commission and disseminated to the public as a result of this examination. Laventhol also agreed not to accept new Commission audit clients for a period of 60 days beginning September 1, 1977.

In the Matter of Government Employees Insurance Company, et al.—On October 27, 1976, the Commission instituted proceedings pursuant to Sections 15(c) (4) and 21(a) of the Exchange Act as well as Findings of Fact and an Order of the Commission with respect to Government Employees Insurance Company (GEICO), Norman Lawrence Gidden (Gidden), formerly the chairman of GEICO's board of directors and Ralph Clark Peck (Peck), formerly president of GEICO.[14]

The respondents submitted offers of settlement and statements pursuant to Section 21(a) of the Exchange Act in which they, without admitting or denying the findings, consented to the Findings and Order of the Commission.

The Commission found with respect to GEICO that during 1975 the company filed quarterly reports with the Commission on Form 10-Q which failed in material respects to disclose its deteriorating financial condition, changes in the accounting

treatment of deferred acquisition costs and loss reserves, the effect of such changes on earnings and the uncertainty of the operating results which it did report due to these changes. Had such changes in accounting treatment not been undertaken, GEICO would have reported pretax losses for the first nine months of 1975 of $823 million instead of $50.7 million of pretax losses actually reported. The Commission also found that Peck and Gidden in their respective capacities as officers of GEICO failed in material respects to comply with the reporting provisions of Section 15 of the Exchange Act. In addition, the Commission found that Gidden sold 15,045 shares of GEICO common stock in November 1975 while in possession of material non-public information concerning the deteriorating financial condition of the company.

The Commission ordered GEICO to comply fully with the provisions of the Exchange Act and accepted undertakings from GEICO contained in the company's offer of settlement to: accept the resignations of Peck and Gidden, maintain certain newly instituted procedures with respect to establishment of loss reserves and select a qualified individual for the board of directors. The Commission accepted the undertakings of Gidden and Peck to: comply with the provisions of the Exchange Act, terminate their employment relationships with GEICO and refrain from accepting employment as officers or directors of any publicly held company for three years. In addition, the Commission accepted an undertaking from Gidden to establish a $35,000 fund for the compensation of any party who may be judged by a court to have been damaged by his sale of GEICO stock in November 1975.

In the Matter of Hinkle Northwest, Inc., et al. — The Commission instituted public administrative proceedings against Hinkle Northwest, Inc. (Hinkle), a registered broker-dealer and investment adviser located in Portland, Oregon, its principals, Ernest Hinkle, Kenneth LaMear, and Dennis Reiter, and three salesmen, Bernard Molinari, Fred Hogg, and Patrick McGinnis.[15] The Commission alleged violations of the recordkeeping, net capital, and antifraud provisions of the Exchange Act in connection with Hinkle's purchase of U.S. treasury securities financed by repurchase agreements. Also named as a respondent in the proceedings is John Wied, formerly vice-president and treasurer of Benjamin Franklin Federal Savings and Loan Association (the Association), a Federally chartered savings and loan association in Portland, Oregon. In 1975, Wied facilitated Hinkle's purchase of $25 million of U.S. Treasury notes from First Pennco Securities and of $100 million of U.S. Treasury bills from Blyth Eastman Dillon Capital Markets, Inc. Both Pennco and Blyth relied upon the credit and credibility of the Association in executing the transactions.

Wied was recently found guilty in the United States District Court for the District of Oregon, in a 15 count indictment which alleged misapplication of the Association's assets, personal benefit from transactions of the Association, and making of false entries in the books and records of the Association relating to the Pennco and Blyth transactions.[16] In activities unrelated to the treasury transactions, Hinkle is alleged to have transmitted documents improperly offering for sale the securities of R. L. Burns Corporation, Pacific Power & Light Co., and Super-Valu Stores, Inc., to members of the public at a time when registration statements had not yet become effec-

tive with respect to such securities. Further, in April 1976, while trading was suspended in securities of Presley Companies, it is alleged that Hinkle mailed an article and business card inducing transactions in Presley securities in violation of Section 12(k) of the Exchange Act.

CIVIL PROCEEDINGS

During the fiscal year, the Commission instituted a total of 166 injunctive actions. Many Commission proceedings resulted in wide-ranging ancillary relief and remedies which the Commission sought according to the needs of the particular case. Such relief reflects the Commission's intent to carry out to the fullest extent its mandate to protect the public from future violations of the securities laws. Some of the more noteworthy proceedings and significant developments in actions instituted in earlier years are reflected below.

SEC v. Century Mortgage Company, Ltd. — This is a civil action filed in the United States District Court for the District of Utah, in which the complaint, in substance, alleged that the defendants violated the registration and antifraud provisions of the Federal securities laws in the offer and sale of notes, investment contracts and evidence of indebtedness of Century Mortgage Company, Ltd. (Century Mortgage) and Gateway Valley Estates, Inc. (Gateway).[17]

The complaint further alleged that the defendants made untrue statements of material facts, including, among others, that money obtained from the sale of securities would be used to purchase real estate instruments of conveyance and debt securities at discounts; that Century Mortgage could earn enough profits in its business operations to enable it to pay to persons purchasing its two-year notes an effective rate of annual interest of 16.23 percent on notes of $2,500 face value or more, and effective annual interest rates from 10.8 percent to 12.8 percent on notes of lesser face value; that contracts receivable (i.e., real estate contracts and debt securities) held by Century Mortgage were "fully collectible"; and that the total market value of the contracts and properties purchased by Century Mortgage was nearly double their purchase cost.

The complaint further alleged that the defendants omitted to disclose, among other things, that they used and dissipated monies obtained by Century Mortgage from public investors for their own personal use; that proceeds of the public offering would be used to fund affiliated corporations and business ventures of promoters of the issuer; and that Century Mortgage's certified financial statements included in prospectuses did not present fairly the financial position of Century Mortgage.

A receiver was appointed by the Court and was ordered, among other things, to take possession and custody of all business assets of Century Mortgage and Gateway and a temporary restraining order was entered against the defendants. Thereafter, preliminary and permanent injunctions were entered against certain of the defendants. The hearing on the Motion for Preliminary Injunction as against some of the defendants has been consolidated with the trial on the merits and is scheduled for hearing in February 1978.

SEC v. Penn Central Co., et al. — In May 1974, the Commission instituted an action for injunctive and other relief against the Penn Central Co.[18] and others alleging violations of the antifraud provisions of the securities laws.

In December 1976 the District Court for the Eastern District of Pennsylvania denied certain motions made by several

defendants to dismiss the complaint and/or for summary judgment. With respect to one such defendant, however, the judge dismissed the Commission's complaint with respect to injunctive relief, based on a finding of the absence of any reasonable likelihood of future violations, but granted the Commission leave to amend its complaint with respect to the Commission's request for disgorgement. The court determined that the Commission's request for ancillary relief survived the denial of the request for injunctive relief.[19] A motion to reconsider the denial of the motions for summary judgment and/or dismissal is pending.

By orders entered on February 18 and March 14, 1977, the Court vacated a previous preliminary injunction freezing assets of certain Liechtenstein entities in the United States and provided for payment to the Trustees of the Penn Central Transportation Co. of $1,250,000 by those entities whose assets were subject to the preliminary injunction. Fiedel Goetz, the defendant who the Commission alleged controlled the Liechtenstein entities whose assets were frozen, died while residing in Switzerland in December 1976. The complaint alleged that Goetz had improperly received funds from a subsidiary of the Penn Central Transportation Co. prior to its bankruptcy in 1970.

In July 1977 the Court ordered reentry of a Stipulation and Order between the Commission and three defendants who were non-management directors of the Penn Central Transportation Co. prior to its bankruptcy in 1970. The three directors undertook not to become associated with the Penn Central Transportation Co., its parents, its affiliates or successors in the future and, upon becoming a director of a corporation subject to the Federal securities laws in the future, to set forth in writing the manner in which each would discharge his duties as director and to submit the document to the general counsel of the corporation. The Court also entered a Final Judgment of Permanent Injunction against David Bevan, the former chief financial officer of the Penn Central Transportation Co. Bevan consented to the injunction without admitting or denying the allegations of the complaint.[20]

SEC v. SCA Services, Inc., et al. — In August, 1977 the Commission filed a complaint for injunctive and other relief charging SCA Services, Inc. (SCA); Christopher P. Recklitis (Recklitis), SCA's former President, Treasurer and Director; Berton Steir (Steir), founder and former Chief Executive Officer and President of SCA; Carlton Hotel Corporation (Carlton), a privately held corporation owned primarily by Recklitis; and four other persons with violations of certain of the antifraud, reporting and proxy solicitation provisions of the federal securities laws.[21]

The complaint charged that from approximately January 1972 through July 1975, Recklitis, while an officer of SCA and aided and abetted by Steir and others, diverted nearly $4 million of SCA's assets to his personal and Carlton's use and benefit through cash advances to Recklitis and Carlton and vendors of Carlton, which advances were not in the ordinary course of SCA's business, and through three fraudulent land transactions whereby he used nominees to acquire properties located in Amesbury, Massachusetts and Utica, New York. Ricklitis then caused the properties to be resold to SCA at values inflated by approximately $2.5 million. Further, the complaint charged that Recklitis used the funds improperly obtained to pay Carlton debts and personal debts and expenses. The complaint further alleged that the receivable due SCA

from Carlton was misrepresented in SCA's financial statements and that material facts concerning the alleged activities were omitted from SCA's reports, proxy materials and registration statements and prospectuses.

The complaint further charged that loans, advances and guarantees were given to employees which were either not properly authorized by SCA's board of directors or were not in the ordinary course of business and, thus, contrary to SCA's public representations. In addition, the Commission alleged that SCA made an improper political contribution in Massachusetts and paid gratuities and bribes to obtain contracts and to obtain necessary permits to use property owned by SCA for landfill purposes.

The Commission also charged that a former vice president and director of SCA, who was not charged with the above activities, withdrew, without proper authorization, $65,000 from a wholly owned subsidiary of SCA, applied approximately $53,000 of such funds owed to pay an outstanding personal debt to SCA and retained the balance. Certain of SCA's reports, proxy materials and registration statements and prospectuses did not disclose such misuse of SCA's assets.

Simultaneously with the filing of the complaint, SCA consented, without admitting or denying the allegations, to the entry of a Judgment of Permanent Injunction enjoining it from violating the above-mentioned provisions of the federal securities laws and ordering certain other relief. Recklitis, Carlton and one other defendant also consented, without admitting or denying the allegations, to the entry of a Judgment of Permanent Injunction enjoining them from violating the federal securities laws. The remaining defendants are currently in litigation with the Commission.

SEC v Basic Food Industries, Inc., et al. — On September 15, 1977, the Commission filed a complaint for injunctive and other relief charging Basic Food Industries, Inc. (BFI); Allan H. Applestein (Applestein), BFI's former Chairman of the Board and Chief Executive Officer; Gilbert Pasquet (G. Pasquet), formerly a director of BFI; Alix Pasquet (A. Pasquet) and Haitian Equities, S.A. with violations of certain of the antifraud, reporting, proxy solicitation and stock ownership reporting provisions of the Federal securities laws.[22]

The complaint charged that, since about 1971, Applestein caused BFI to make cash advances and other payments aggregating in excess of $217,000 for his personal benefit. During this period, according to the complaint, Applestein utilized at least $182,000 of such funds for, among other things, personal and family travel, personal entertainment expenses, personal legal expenses, personal office-related expenses and personal telephone expenses. The Commission also charged Applestein with engaging in undisclosed transactions with G. Pasquet and A. Pasquet, who are Haitian nationals, and Haitian Equities, S.A., a Haitian company controlled at the time of the transactions by the Pasquets. The complaint alleged that the defendants concealed material aspects of the underlying transactions in materials filed with the Commission and disseminated to the public.

The Commission also alleged that Applestein, on or about February 4, 1975, assertedly sold his control block of 450,000 shares of BFI common stock to Haitian Equities, a company not yet formed, for $100,000, substantially below the market value of the stock. The complaint charged that Applestein and the Pasquets planned

to pledge all or part of the stock for a bank loan, the proceeds of which were to be used to compensate Applestein for the stock and to acquire several of Applestein's privately-held companies. According to the complaint, by November 1975, Applestein purportedly rescinded the "sale" of his stock. It is alleged that Applestein, G. Pasquet, A. Pasquet and Haitian Equities filed false and misleading reports on Schedule 13D with the Commission concerning both the purported sale and reacquisition inasmuch as these reports, among other things, failed to disclose the conditions of and circumstances surrounding the events, including the extent and nature of business transactions between Applestein and the Pasquets and Haitian Equities. This case is currently in litigation.

SEC v. Petrofunds Inc., et al. — As previously reported, on May 26, 1976, the Commission instituted an action in the U.S. District Court for the Southern District of New York for injunctive and other relief against defendants Petrofunds, Inc. (Petrofunds); McRae Oil Corporation (McRae Oil); McRae Consolidated Oil and Gas, Inc. (Consolidated); James A. McRae (J.A. McRae); David Kelly (Kelly); J. Frank Benson (Benson); Osias Biller (Biller); Louisiana Gas Purchasing Corporation (LGP); Louisiana Gas Intrastate, Inc. of Shreveport (LGI); Sunny South Oil and Gas, Inc. (SSOG); Houston National Bank; Bromley DeMeritt, Jr. (DeMeritt); Henry Becton; Sidney Raphael (Raphael); Edmund D'Elia (D'Elia); the law firm of Raphael. Searles, Vischi, Scher, Glover and D'Elia; Thomas Leger & Co. (Leger & Co.); Thomas Leger (Leger); Judge Edward Coulson (Coulson); Bennett J. Roberts, Jr. (Roberts); and Edward C. Dorroh (Dorroh).[23] In its complaint the Commission charged these defendants with failing to comply with certain of the antifraud and other provisions of the Securities Act and the Exchange Act. The Commission's motion for a preliminary injunction against the above-named defendants was denied by the Court in June 1976. On June 23, 1976 the Court approved a stipulation entered into by the Commission and Houston National Bank providing for the dismissal of the Commission's action against the bank without prejudice. Subsequent to such ruling, certain of the defendants entered a Demand for a Jury Trial. By an order dated October 13, 1976, the court granted the Commission's motion to strike the defendants' Demand for a Jury Trial.

In May 1977, the Court entered a Final Order terminating the Commission's action against the defendant Henry Becton and requiring him to "take all reasonable actions including all reasonable and appriate inquiry and investigation to assure himself that" he complies with Rule 10b–5 "in connection with any securities offering, by any company of which he is an officer or director or any partnership of which he is a general partner, or any issuer controlled by such company or partnership, of interests in any oil or gas drilling fund, program or venture, or in which the solicitation of investments is based in substantial part on the affording to investors of tax deductions, credits or losses arising from the proposed method of operation . . . " Such Final Order was entered pursuant to an agreement by Stipulation between the Commission and Henry Becton by the provisions of which Becton neither admitted nor denied the allegations of the complaint.

Subsequent to the completion of discovery and the submission of proposed pre-trial orders by the Commis-

sion and the defendants, eighteen of the nineteen remaining defendants agreed by Stipulation to the entry of certain Final Orders without admitting or denying the allegations of the complaint. On June 28, 1977, the Court entered such Final Orders. The action as to the remaining defendant was terminated by the Commission on the basis of an exchange of letters between the Commission and that defendant.[24]

The Final Orders respecting fourteen of these defendants, Petrofunds, McRae Oil, Consolidated, J.A. McRae, Kelly, Benson, DeMeritt, Leger & Co., Leger, SSOG, Dorroh, LGP, LGI, and Biller prohibit them from engaging in conduct violative of the antifraud provisions of the Exchange Act.

In addition to the Final Order, Consolidated, which is the parent company of McRae Oil and Petrofunds, in its Stipulation, has undertaken to establish and maintain an Audit Committee, consisting of certain named individuals, to perform certain specified functions. The Final Order directs compliance with all of the terms of the Stipulation including this undertaking. The Audit Committee is to review, among other things, all proposed dealings between Consolidated, its subsidiaries or affiliates and oil and gas drilling funds controlled by any of them to assure they are fair; is to make recommendations to Consolidated's board of directors with respect to such dealings; and is authorized to consult outside auditors and would review at least twice a year all expenses charged to each of the drilling funds and make appropriate recommendations and reallocations. The Audit Committee also is to make recommendations regarding disclosure in offering documents employed in connection with the offering of interests in any new drilling fund.

The Final Order with respect to Biller includes a representation by Biller that he has not actively practiced before the Commission, does not intend to practice before the Commission, and will give the Commission thirty days notice in advance of his practicing before it. By letter, the Commission has agreed to refrain from instituting a proceeding against Biller under Rule 2(e) of its Rules of Practice based on the allegations in the complaint or the entry of the Final Order so long as he complies with the above stated representations.

In addition to the Final Order, Leger & Co. and Leger agreed to the Commission's issuing an Order and an Opinion pursuant to Rule 2(e) of its Rules of Practice pursuant to which Leger & Co. and Leger are to submit to a review, by an individual acceptable to the Commission and its Office of the Chief Accountant, of its current policies, practices, and procedures in accordance with the AICPA Technical Standards Review Program to determine any weaknesses therein and adopt and implement any reasonable recommendations of the reviewer made in his final report. The report of the reviewer which was expected to be completed within 90 days from the date of the Commission's Opinion and Order is to be submitted to the Office of the Chief Accountant. A follow-up review is to be conducted one year after the issuance of the above stated report to determine the extent to which Leger & Co. and Leger have adopted and implemented the recommendations made in such report. These defendants will not accept engagement by any new public clients until one month after the above described report is submitted to the Office of the Chief Accountant. (For further information, see Accounting Series Release No. 223).

In addition, the Court entered Final Orders against the law firm of Raphael, Searles, Vischi, Scher, Glover and D'Elia and two of its partners, Raphael and D'Elia. The Final Order entered with respect to Raphael requires him to take all reasonable and appropriate measures and actions including all reasonable and appropriate inquiry and investigation to assure himself that the following contain full and fair disclosure of all material facts: (a) any offering document filed with the Commission pursuant to the Securities Act on behalf of the issuer or sponsor of any oil and gas drilling fund, program or venture, or tax incentive investments, for which issuer or sponsor he is registration counsel; (b) any offering document filed with the Commission on behalf of any issuer of securities of which he is or shall become an officer, director or control person.

In addition, by a separate letter undertaking, Raphael agreed not to practice before the Commission for a period of sixty days immediately following the entry of the Final Order with respect to him and thereafter to submit for review by a partner of the law firm (who has seniority at least equal to his and did not work on such filing) any offering document prepared by Raphael in whole or part which is to be filed with the Commission. Such review is to be conducted for the purpose of ensuring that such filing complies with the provisions of the 1933 and 1934 Acts. By letter, the Commission agreed not to institute any proceeding under Rule 2(e) of its Rules of Practice against Raphael based upon the above-described Final Order or the allegations in the amended complaint so long as he abides by such commitments. The Commission's Division of Enforcement advised Raphael by letter that, in its view, breach of any of the above-stated undertakings would constitute an independent ground for the institution of a proceeding under Rule 2(e), but that such a proceeding would not involve the facts alleged in the Commission's complaint.

The Final Order with respect to D'Elia and Raphael, Searles, Vischi, Scher, Glover & D'Elia requires these defendants to take all reasonable actions to assure themselves that full and fair disclosure of all material facts is made in any registration statement or offering circular filed with the Commission for any issuer or sponsor of participation units in oil and gas drilling funds, programs, ventures, or tax incentive investments for which they act as counsel. In addition, in a letter undertaking, the firm agreed to review its procedures and practices respecting preparation of registration statements and offering circulars during the 60 days following the entry of the Final Order. The firm also agreed that a partner of equal seniority in the firm would review any registration statement or offering circular prepared in whole or in part by Raphael to assure its compliance with the 1933 and 1934 Acts. By letter the Commission agreed that if D'Elia and the firm comply with the terms of the Final Order and undertakings the Commission will not institute proceedings under Rule 2(e) based on the matters alleged in the complaint or the entry of the Final Order. Such letter also states that the Commission's Division of Enforcement views a breach of any of the above stated undertakings or the Final Order as constituting an independent ground for the institution of a proceeding under Rule 2(e) but that such proceeding would not involve the facts

alleged in the Commission's complaint.

A Final Order with respect to Roberts requires him "to take all reasonable actions including all reasonable and appropriate inquiry and investigation to assure himself that, in connection with any securities offering by any company of which he is an officer, director or counsel or any partnership of which he is a general partner or counsel, or any issuer controlled by such company or partnership," no violation of the antifraud provisions of the Exchange Act occurs. In addition, such Order requires Roberts, an attorney, to conduct a review of his policies, practices, and procedures during the sixty days immediately following the entry of the Final Order. In a separate letter to the Commission, Roberts undertook that he would not practice before the Commission during the above stated review. The Commission, in a letter to Roberts, stated that it would not institute any proceedings under Rule 2(e) of its Rules of Practice against Roberts based on the allegations in the Commission's complaint or the entry of the Final Order so long as he complies with his representations and undertakings.

The Commission terminated its action against the one remaining defendant, Judge Edward C. Coulson, on the basis of an exchange of letters between the Commission and Judge Coulson. In his letter to the Commission, Judge Coulson stated that, in view of the Code of Judicial Conduct of the State of Texas, which prohibits the private practice of law, he commits that he will not represent Petrofunds Inc., or its affiliated companies, and he will not practice as an attorney before the Commission. He further stated that if he should desire to practice before the Commission, which would be inconsistent with his commitment, he will notify the Commission in writing. The Commission in its letter to counsel for Coulson stated that in reliance on the commitment contained in the letter it would not institute a proceeding under Rule 2(e) based upon the allegations in the Commission's complaint, but that in the view of the Commission any action by Judge Coulson inconsistent with that commitment might constitute a basis for a decision regarding his right to practice before the Commission.

SEC v. Solon Automated Services, Inc. et al. – On April 25, 1977, a complaint for injunctive and other relief was filed by the Commission in the United States District Court for the District of Columbia against Solon Automated Services, Inc. (Solon), a supplier of coin-operated laundry equipment throughout the United States with principal offices in Washington, D.C.[25] The complaint also named various officers, directors and employees of Solon and charged all defendants with violating certain of the antifraud provisions of the Federal securities laws.

The complaint alleged that from the 1940's to the present, the defendants variously caused Solon to enter into lease agreements with lessors whereby Solon, in exchange for the right to install and maintain coin-operated laundry equipment, agreed to pay the lessors "commissions," in the form of an agreed upon percentage of the gross proceeds from the machines, an agreed upon flat rate, or some other form of agreed upon amount. Generally on a monthly basis, employees of Solon would collect the gross proceeds from the machines, and commission checks would be pre-

pared and delivered to the lessors. The defendants, in calculating the commissions owing to certain of the lessors, generally to those on a percentage rate basis, would take "deductions" from the commissions due and owing to the lessors. Certain of these deductions were not permitted by the lease agreements and were taken without the knowledge or consent of the lessors. The practice of taking deductions from commissions originated in the 1940's at the time of Solon's inception, and grew to the extent that deductions of approximately $225,000 were taken during fiscal year ending in 1974, deductions of approximately $350,000 were taken during fiscal year ending in 1975, and deductions of approximately $350,000 were taken during the fiscal year ending in 1976.

The complaint further alleged that the practice of taking unauthorized deductions, the amount of monies deducted, and contingent liabilities which Solon may have as a result of the practice of taking unauthorized deductions were not disclosed in Solon's financial statements or other public filings, or to purchasers, sellers, or prospective purchasers or sellers of Solon's securities, or to Solon's customers.

The Honorable William B. Bryant, United States District Judge, entered judgments on April 25, 1977 against the defendants permanently enjoining them from violating the antifraud provisions of the Federal securities laws in connection with the offer and sale of Solon common stock or any other securities. The judgment further ordered the defendants in Solon to pay to the benefit of its customers (the lessors) the sum of $900,000 in accordance with a "Plan of Distribution" filed with the Court and ordered all defendants to institute new policies, practices and procedures with respect to the payment of commissions owing to the lessors of Solon in accordance with a "Statement of Policy Concerning the Payment of Commissions" filed with the Court. The defendants consented to the entry of these judgments without admitting or denying the allegations of the complaint.

SEC v. First Pittsburgh Securities Corporation, et al. — On January 31, 1977, the Commission filed a complaint in the United States District Court for the Western District of Pennsylvania, seeking to enjoin First Pittsburgh Securities Corporation, a registered broker-dealer, and others from further violations of the securities registration, antifraud and books and records provisions of the Federal securities laws.[26] The Commission alleged that the defendants fraudulently offered and sold approximately 1.7 million dollars in unregistered securities to certain of the insolvent defendant corporations. The Commission also alleged that investor monies obtained by the defendants through the sale of the unregistered securities were disbursed to certain of the defendants through interest free loans.

Extensive ancillary relief affecting certain of the defendants in this matter was granted and lengthy litigation ensued. Relief included the issuance of a restraining order, a preliminary injunction, the freezing of assets and the issuance of protective orders. A hearing on the merits

took place on June 10, 1977. The Commission is currently awaiting a decision.

SEC v. Diplomat National Bank, et al. — On September 28, 1977, the Commission filed a complaint for permanent injunction in the U.S. District Court for the District of Columbia against the Diplomat National Bank (Diplomat), Charles C. Kim (Kim), Bo Hi Pak (Pak), Tongsun Park (Park), and Spencer Robbins (Robbins), charging them with violations of the antifraud provisions of the securities laws in connection with offer, sale and purchase of Diplomat common stock.[27]

The complaint alleged that in 1975, during the initial offering of Diplomat common stock, the defendants variously participated in a scheme whereby Pak and Park, through undisclosed nominees, respectively purchased in excess of 43 percent and 10 percent of Diplomat's outstanding stock. The purchases were in direct violation of stock ownership limitations established by the Comptroller of the Currency for Diplomat and contrary to express representations regarding maximum stockholdings by investors in Diplomat's disclosure document used in the offering. The complaint further alleged that, during the resales of Diplomat stock by Diplomat on behalf of Pak, Park and others, defendants variously made misrepresentations and omissions of material fact regarding, among other things: (1) the existence of shareholders who owned in excess of Diplomat's previously established maximum limitation on stock ownership; (2) Diplomat's financial condition; (3) risks attendant to an investment in Diplomat; (4) the existence of a substantial demand deposit at Diplomat which was controlled by Pak; (5) the number of shares of stock which had been tendered to Diplomat for resale; and (6) that a letter from the Comptroller of the Currency, concluding that there were no improprieties by Diplomat in connection with its initial stock offering, was obtained as a result of misrepresentations to that agency by Kim, who was at the time Diplomat's chairman.

On September 28, 1977, the Honorable John Pratt of the U.S. District Court for the District of Columbia entered Judgments of Permanent Injunction restraining and enjoining Diplomat and Kim from violating the antifraud provisions of the securities laws. The defendants consented to the entry of the Court's Final Judgment and Order without admitting or denying the allegations in the Commission's complaint. Additionally, the Court ordered Diplomat to institute additional safeguards to prevent a recurrence of violations.

On September 30, 1977, Judge Pratt entered Judgments of Permanent Injunction restraining and enjoining defendants Robbins, Park and Pak from violating the antifraud provisions of the Federal securities laws. The defendants consented to the entry of the Court's Final Judgement and Order without admitting or denying the allegations in the Commission's complaint. Additionally, the Court ordered that Park and Pak shall not directly or indirectly exercise voting rights or solicit proxies in connection with Diplomat's stock.[28]

SEC v. Gamble-Skogmo, Inc., Herbert B. Nelson, Samuel Luftig — On September 14, 1977, the Commission filed an injunctive action in the United States District Court for the Northern District of Illinois against Gamble-Skogmo, Inc. (G–S), a Delaware corporation primarily engaged in retail op-

erations; Herbert B. Nelson (Nelson), former president of Gamble Import Corporation (GIC), a subsidiary of G–S; and Samuel Luftig (Luftig), former senior vice president of GIC.[29]

The complaint alleged that defendant G–S violated the proxy solicitation and reporting provisions of the Exchange Act in that G–S failed to disclose certain kickbacks and rebates in various annual reports and proxy statements. It was alleged that these kickbacks and rebates were paid to GIC by various foreign ocean carriers and Japanese television manufacturers.

The complaint further alleged that defendants Nelson and Luftig, officers of GIC during this period of time, caused the company to enter into the kickback and rebate agreements. It was alleged that these actions by Nelson and Luftig aided and abetted the proxy solicitation and reporting violations of G–S and constituted violations of the antifraud provisions of the Exchange Act.

Without admitting or denying the allegations of the complaint, defendant G–S consented to the entry of a Judgment of Permanent Injunction enjoining it from further violations of the reporting and proxy provisions of the securities laws. The action is still pending against Nelson and Luftig.

SEC v. Fisco, Inc., et al. — The Commission filed a civil injunctive action against FISCO, Inc. (FISCO), a Pennsylvania automobile insurance holding company; William Rush (Rush), a founder, director and former president of FISCO; Robert J. Reilly (Reilly), a director and former officer of FISCO, Leonard P. Connolly (Connolly), a former officer of FISCO and its sole employee; Robert K. Greenfield (Greenfield), formerly FISCO's Chairman of the Board and a member of a law firm which represented FISCO; and Lawrence J. Lee (Lee), also a former member of that law firm. The injunctive action involves allegations of violations of the antifraud and reporting provisions of the Federal securities laws.[30]

The Commission's complaint alleged that, during periods in which it was reporting substantial increases in earnings, in fact, FISCO should have been reporting substantial losses. As a result, all of FISCO's filings with the Commission during these periods were materially false and misleading.

The Commission's complaint also alleged that a FISCO prospectus, as well as other public statements of FISCO, was materially false and misleading as a result of failing to disclose the true state of facts in connection with the transfer of liability for a substantial block of insurance to FISCO's wholly-owned insurance subsidiary, Gateway Insurance Company, on September 30, 1971. According to the complaint, the reserves for claims attributable to such insurance, as audited by an independent certified public accounting firm, were materially deficient. As a result, FISCO's income for the current period reflected in the prospectus was overstated by approximately $4 million.

The complaint further alleged that, in order to report income improperly, FISCO used a variety of devices, primarily the understatement of reserves for losses. The methods by which FISCO understated loss reserves ranged from management orders to reduced reserves to deliberate adoption of computer programs designed to prohibit reserve increases.

The complaint alleged that Lee prepared and Greenfield reviewed opinions with respect to FISCO's acquisition of Prestige Casualty Company, an Illinois insurance company. The opinions con-

tained certain statements which Lee and Greenfield knew or should have known were factually false. According to the complaint, the opinions were one of the bases upon which FISCO's accountants permitted FISCO wrongfully to include in its financial statements material amounts of Prestige's income. As a result, FISCO's income for the year 1972 was materially overstated.

Simultaneously with the filing of the Commission's complaint, each of the defendants consented to the entry by the District Court for the District of Columbia of Judgments of Permanent Injunction enjoining them from violations of the antifraud and reporting provisions of the Securities Act and the Exchange Act.

In addition to the Judgments of Permanent Injunction, the Court ordered that, except with respect to FISCO, Rush, Reilly and Connolly shall not act as officers or directors or make any significant policy decision or prepare or be responsible for the preparation of financial statements of any publicly held company. The Court also ordered that Mitchell shall not act as an officer or director of any publicly held company.

Lee and Greenfield represented, in stipulations filed with the Court, that they do not practice before the Commission. They agreed to give prior written notice to the Commission in the event that they intend to practice before the Commission and that, in the event that such prior written notice is given within three (Greenfield) or two (Lee) years, the Commission may use the entry of the Judgment as the sole basis for a proceeding pursuant to Rule 2(e) of the Commission's Rules of Practice.

SEC v. General Dynamics Corporation and Lester Crown – In July 1977, the Commission filed a complaint against General Dynamics Corporation and Lester Crown to enjoin them from further violations of the proxy provisions of the Federal securities laws and from making and causing to be made certain false and fictitious entries in the books and records of General Dynamics Corporation.[31] The complaint alleged that General Dynamics' proxy materials for 1974, 1975, and 1976, in which Crown was nominated as a director of General Dynamics, failed to disclose that Crown provided funds to others to make payments intended to influence certain members of the General Assembly of the State of Illinois in connection with proposed legislation and that he directed officers and employees of Material Services Corporation, wholly-owned subsidiary of General Dynamics, to submit and receive payment on expense accounts which included false expenses pursuant to a plan to reimburse Crown for the aforementioned payments. The defendants, simultaneously with the filing of the complaint, and without admitting or denying the allegations, consented to the entry of a Final Judgment of Permanent Injunction against further violations of the proxy provisions of the Federal securities laws and against making false and fictitious entries in the books and records of Material Service Corporation, General Dynamics Corporation or any other issuer.

In addition, the order required that General Dynamics correct and amend its proxy statements for 1974, 1975 and 1976 to detail the information concerning the aforementioned payments. The defendants also were required to cause General Dynamics and its subsidiaries to issue to their officers and appropriate employees intracorporate guidelines

for the proper use in disbursement of corporate funds.

SEC v. Mexletter Business & Investment Service, et al. — On September 7, 1976, the Commission filed a complaint in the United States District Court for the District of Columbia seeking injunctive relief against Mexletter-Mexican Business and Investment Service (Mexletter), a registered investment adviser with the Commission located in Mexico City, Mexico and Eugene C. Latham (Latham), controlling shareholder and president of Mexletter.[32]

The Commission's complaint alleged that, from 1967 until the filing of the complaint, Mexletter and Latham offered for sale and sold to U.S. investors unregistered securities, including promissory notes, certificates of deposits, "financial bonds" and "financial certificates" issued by certain Mexican investment banks (financieras), in violation of the registration provision of the Securities Act.

The complaint further alleged violations of the antifraud provisions of the Securities Act and the Exchange Act in that the distribution of unregistered securities was effected by means of promotional materials containing numerous false and misleading statements of material fact and omissions to state material facts necessary to enable investors to make informed investment decisions. As part of the alleged violations, the complaint alleged that Mexletter and Latham made false and misleading statements regarding the risks of investment in securities of Mexican financieras and failed to disclose certain risks of investment in such securities.

The complaint further alleged violations by Mexletter and Latham of the Investment Advisers Act of 1940, including the antifraud, recordkeeping and reporting requirements of the Advisors Act.

The complaint further alleged that Mexletter and Latham acted as broker-dealers without registering with the Commission under the Exchange Act.

The Court, on July 8, 1977, entered Judgments of Permanent Injunction against the defendants, enjoining them from violations of the registration and antifraud provisions of the Federal securities laws. In a Consent and Undertaking filed with the Court, the defendants consented to the entries of the Judgments, without admitting or denying the allegations in the complaint.

SEC v. Uniroyal Inc. — On January 27, 1977, as part of the Commission's ongoing management fraud program, the Commission instituted a civil injunctive action against Uniroyal Inc. in the United States District Court for the District of Columbia.[33]

The Commission's complaint alleged violations of various provisions of the Federal securities laws in connection with (a) the making of substantial improper and illegal payments, involving approximately $2.3 million in corporate funds, to officials and employees of various foreign governments, including Mexico's; (b) the falsification of corporate books and records of Uniroyal; (c) the payment of questionable commissions; (d) the utilization of unrecorded and unaccounted for funds for improper purposes; (e) violations of foreign currency exchange laws; (f) the making of domestic political contributions; and (g) the filing of materially false and misleading annual and periodic reports and proxy statements with the Commission, concerning the aforementioned matters.

Simultaneously with the filing of the complaint, the Court entered a Judgment of Permanent Injunction re-

straining and enjoining Uniroyal from further violations of the antifraud, reporting and proxy provisions of the Exchange Act and ordering certain other relief. Uniroyal consented to the entry of the Court's Judgment without admitting or denying the allegations in the Commission's complaint.

The ancillary relief obtained in this case included independent review of an investigation conducted by Uniroyal regarding political contributions and other improper payments, and orders of the Court directed to certain unlawful conduct.

SEC v. Sucrest Corporation, et al. – On June 1, 1977, the Commission filed a complaint in the United States District Court for the District of Columbia seeking injunctive relief against Sucrest Corporation (Sucrest), a New York sugar refiner, certain of its officers and directors, and Czarnikow Rionda Company, Inc. (RIONDA) a sugar broker located in New York City.[34]

The complaint charged the defendants with violations of antifraud and reporting provisions of the Exchange Act and the Securities Act. The complaint alleged that Sucrest and Rionda had engaged in sham transactions when Sucrest orally agreed with Rionda to resell to Rionda, after Sucrest's year-end, the same quantity of raw sugar which Sucrest had purchased from Rionda prior to Sucrest's year-end at a price which would assure both companies of no monetary gain or loss between them, except for fees which Sucrest paid to Rionda. The complaint further alleged that these transactions materially affected Sucrest's year-end inventory quantities and the income computed therefrom for its fiscal 1975 and 1976 years, and resulted in the dissemination of false and misleading press releases stating Sucrest's income, and in the filing of misleading reports with the Commission. The complaint further alleged that officers of both Sucrest and Rionda made materially false and misleading statements to Sucrest's auditors in order to conceal the existence of the oral agreement from their auditors.

All of the defendants consented to the entry of Judgments of Permanent Injunction which granted certain ancillary relief without admitting or denying the allegations in the Commission's complaint.

SEC v. Charles Jacquin, Et Cie., Inc. et al. – On October 17, 1977, the Commission filed a complaint in the United States District Court for the District of Columbia seeking injunctive and ancillary relief against Charles Jacquin et Cie., Inc. (Jacquin), which produces and imports alcoholic beverage products, and two of its officers, Jerome J. Cooper (J. Cooper) and Norton Cooper (N. Cooper), secretary-treasurer and vice president respectively, alleging violations of the antifraud, proxy and reporting provisions of the Federal securities laws.[35]

The complaint alleged that during the period from at least 1969 to 1977, Jacquin, J. Cooper and N. Cooper made undisclosed payments of money and transferred other assets of Jacquin to customers and others, including payments to state alcoholic beverage control officials, as inducements to purchase Jacquin products. These inducements included the distribution of cases of alcoholic beverages free of charge to retail customers, the value of which approximated $300,000 to $500,000 per year, the payment of money to certain retail customers by means of fictitious invoices for goods or services never actually received by Jacquin, and the

payment of money and other valuable items to members or employees of a state liquor control board.

The Commission also alleged that J. Cooper and N. Cooper, without disclosure, diverted and caused the diversion of Jacquin funds and assets for their own benefit and for the benefit of members of their family, including Elsie Cooper (E. Cooper) and Ruth Cooper (R. Cooper) president and executive employee, respectively, of the company, and mother and sister, respectively, of J. Cooper and N. Cooper. This diversion of funds and assets was accomplished in several different ways, including the payment of salaries to members of J. Cooper's and N. Cooper's family although they rendered no substantial services to Jacquin, and the payment of a variety of personal expenses of the Cooper family such as apartment rentals, maintenance fees for condominiums, utility and real estate tax expenses on personal residences, and college tuition payments for certain children of Jacquin's officers and directors.

The complaint further alleges that in 1973 and 1975 J. Cooper requested certain Jacquin employees to make political contributions to, among other candidates for elective office, a candidate for the presidency, which contributions J. Cooper caused Jacquin to reimburse by causing false and misleading expense vouchers to be prepared.

Jacquin, J. Cooper and N. Cooper consented, without admitting or denying the allegations, to Judgments of Permanent Injunction and Ancillary Relief restraining them from further violations of the antifraud, proxy and reporting provisions of the Federal securities laws. E. Cooper and R. Cooper signed Undertakings agreeing to be bound by the provisions of the aforementioned Judgments.

The ancilllary relief included (1) the expansion of Jacquin's board of directors to include two additional independent directors and provision for additional independent directors in the event Jacquin increases the size of its board; (2) the establishment of an audit committee of Jacquin's board; and (3) the appointment of a Special Counsel for Jacquin to conduct an investigation, and upon the approval of Jacquin's board, to take appropriate action against any officer, director or employee of Jacquin.

SEC v. Potter Instrument Company Inc., et al. – On March 9, 1977, the Commission, having filed a complaint in the United States District Court for the District of Columbia, obtained a Judgment of Permanent Injunction by consent against Potter Instrument Company Inc. (PICO) and John T. Potter, PICO's largest shareholder and the chairman of its board of directors.[36]

The complaint alleged that PICO and Potter had violated certain antifraud and proxy solicitation provisions of the Federal securities laws by failing to disclose that Potter had received substantial benefits from PICO in addition to his stated salary during the period from 1970 through 1974. These additional benefits included the yearly expenditures of approximately $100,000 in corporate funds to maintain Potter's residence and personal racing yacht and to pay the salaries of domestic servants and crew members who were reflected on the company's personnel and payroll records as maintenance personnel and engineers.

The complaint additionally alleged that PICO and Potter had attempted to conceal PICO's deteriorating financial condition during 1974 by issuing false and misleading press

releases and by filing interim reports with the Commission which failed to reflect necessary adjustments for obsolescence in its inventory and rental equipment.

In addition to consenting to the entry of the Judgment of Permanent Injunction against it, PICO undertook to prepare and disseminate to its shareholders a report containing a summary of recent corporate developments and the allegations in the Commission's complaint. PICO further undertook to establish certain committees, including an audit committee, from among the members of its present board of directors, and to appoint only outside directors approved by the Commission to fill any vacancies on its board of directors for a period of three years. The Court's Judgment and Order against Potter placed certain permanent restrictions upon the scope of his activities at PICO and prohibited him from voting his shares to defeat any motion, resolution or course of action recommended by a majority of PICO's board of directors for a period of three years.

SEC v. Banque de Paris et des Pays-Bas (Suisse) S.A. – On May 10, 1977, the Commission filed a complaint in the United States District Court for the District of Columbia seeking injunctive relief against the Banque de Paris et des Pays-Bas (Suisse) S.A. (the Banque), a Swiss banking corporation in Geneva, Switzerland.[37] The complaint alleged that the Banque filed Schedules 13D which contained untrue statements of material fact and omitted to state material facts required to be stated in such Schedules. These Schedules 13D pertained to the Banque's ownership of securities in Amicor Corp. (Amicor); Florida Water and Utilities Co., (Florida Water); Hygrade Food Products Corp. (Hygrade); Princeton Electronic Products, Inc. (PEP); and Electro Audio Dynamics Inc. (EAD).

The Commission's complaint alleged that the Banque acquired approximately 26 percent of the outstanding common stock of Hygrade and stated in its Schedule 13D that such securities were acquired for the Banque's own account and accounts over which the Banque had sole discretionary authority. The complaint alleged that the Banque did not disclose the names of those persons over whose account it acted in a fiduciary capacity.

The Commission's complaint stated that the Banque acquired approximately 7 percent of the common stock of Amicor for its own account and accounts over which it had sole discretionary authority. The complaint alleged that the Banque failed to file either the purchase agreement or the discretionary account agreement, as it was required to do, with the Schedule 13D pertaining to Amicor. In an amendment to the Amicor 13D, the Banque stated that it had purchased the Amicor securities for its own account and for a limited number of accounts not exceeding 20 depositors. Eventually, the Banque admitted that only one account was involved, and that the beneficial owner of the account was an associate of the law firm which acted on behalf of the Banque in negotiating the purchase of the Amicor securities. The Commission's complaint alleged further misrepresentation in that the Banque did not have unfettered discretionary control over this account, since, when requested by the account holder, the Banque bought certain securities back from the account and the account holder would have been able to cancel his account and withdraw all the securities from the account.

The Commission's complaint stated that the Banque acquired 5.1 percent

of the stock of Florida Water and filed a Schedule 13D which stated the securities were purchased for its own account and accounts over which it had sole discretionary authority, pursuant to a loan agreement among Florida Water, the Banque and an unaffiliated party. The complaint alleged that the Banque failed to disclose the identity of either the unaffiliated party or the identity of the discretionary account holders for which it purchased the securities.

The Commission's complaint stated that the Banque filed a Schedule 13D pertaining to the acquisition of 40.5 percent of EAD's common stock for the Banque's own account and accounts over which the Banque had sole discretionary accounts. The complaint alleged that the Banque failed to disclose the identity of the discretionary account holders and that when the Banque disposed of 205,000 shares of EAD pursuant to a registered public offering the Banque failed to file an amended Schedule 13D required to be filed.

The Commission's complaint further stated that the Banque filed a Schedule 13D pertaining to the acquisition of 11.6 percent of the common stock of PEP for its own account and accounts over which it had sole discretionary authority. The complaint alleged that the Banque failed to disclose the identity of the discretionary account agreements as exhibits to the PEP 13D. The complaint also alleged that the Banque failed to disclose that the Banque and two other purchasers were given the right to nominate a person to PEP's board of directors and that such designee was a representative of one of the discretionary account holders.

The Court entered a Judgment of Permanent Injunction against the Banque, enjoining the Banque from violations of the security acquisition reporting provisions of the Federal securities laws. The Banque consented to the entry of the Judgment without admitting or denying the allegations in the complaint. In addition, certain ancillary relief was ordered by the Court, including the following: (a) The Banque is to establish adequate procedures to insure compliance with the reporting requirements of the security acquisition provisions of the Securities Exchange Act of 1934; (b) Within two years the Banque is to dispose of all its holdings and the holdings of those accounts for which it purchased the equity securities of Florida Water, EAD, and PEP; and (c) Until these securities are disposed of, the Banque is to escrow these securities with an agent in the United States who would vote the securities in the same proportion as all other shares in the pertinent issuer are voted.

SEC v. Vanguard Security Funding Corporation – On March 16, 1977, the Commission filed a complaint in the United States District Court for the District of Columbia seeking injunctive relief against Vanguard Security Funding Corporation (Vanguard) of Montgomery, Alabama.[38] Simultaneously, the Court entered a Judgment of Permanent Injunction enjoining Vanguard from violating the antifraud and reporting provisions of the Federal securities laws based upon its consent in which it neither admitted nor denied the allegations of the Commission's complaint. Vanguard, through a subsidiary, is engaged in underwriting group life and health insurance and group disability insurance.

The complaint alleged that in 1974, in order to report an improved legally-required surplus, Vanguard's subsidiary entered into sham transactions

in which it acquired real estate in exchange for surplus debentures. The obligation to pay the surplus debentures was contingent upon achievement of predetermined levels of the Alabama statutory surplus. The complaint alleged that, by reason of accounting treatment given to the sham transactions, real estate and subordinated debt were substantially overstated and net loss and retained earnings deficit were substantially understated in financial statements of Vanguard's subsidiary, included in the Annual Report on Form 10-K, and that footnote assertions therein, that the transactions removed an impairment of capital, were false.

The complaint also alleged that Vanguard failed to disclose: (1) That the fair market value and cost of the real estate was substantially less than reported; (2) The existence of an agreement providing for reversion of title to certain of the real estate should the subsidiary be placed in receivership; and (3) That Vanguard filed false and misleading statutory surplus reports with the Alabama Department of Insurance, including false and misleading appraisals of certain of the real estate.

SEC v. William R. Lummis, et al., Administrators of Estate of Howard R. Hughes, et al.[39] — In March 1975, as previously reported, the Commission instituted a civil proceeding for injunctive and other relief alleging numerous violations of the Federal securities laws arising from the bid by Howard R. Hughes to purchase the assets of Air West, an airline carrier.[40]

On September 20, 1976, the District Court for the Northern District of California issued Findings of Fact and Conclusions of Law in connection with the defaults of Howard R. Hughes, Summa Corporation and Hughes Air Corp. Subsequently, an interlocutory appeal was taken by the defaulted defendants (the Administrators of the Estate of Howard R. Hughes having been substituted as parties defendant). That appeal has been briefed; no date for argument has been set.

On August 19, 1977, the District Court issued a Final Order (on consent) permanently enjoining Patrick Hillings (Hillings) from violating the proxy solicitation provisions of the Federal securities laws. On August 10, 1977, the court issued a Judgment of Permanent Injunction on Consent permanently enjoining David B. Charnay (Charnay) from violating the antifraud and anti-manipulative provisions of the Federal securities laws and ordering Charnay to disgorge $19,500, such payment being deemed satisfaction of the claim for disgorgement in the Commission's action. Both Hillings and Charnay consented to the court's orders without admitting or denying the allegations of the Commission's complaint.

SEC v. Jos. Schlitz Brewing Company – On April 8, 1977, the Commission filed a complaint in the United States District Court for the District of Columbia seeking injunctive and ancillary relief against Jos. Schlitz Brewing Company (Schlitz), a Wisconsin corporation which is the second largest brewer of beer and malt beverages in the United States, alleging violations of the antifraud, proxy and reporting provisions of the Federal securities laws.[41]

The complaint alleged that during the period from 1969 to 1977, Schlitz disbursed millions of dollars in undisclosed payments in cash and other items of value to its customers and others, including approximately $3 million in payments to beer and malt beverage retailers, as inducements

to purchase Schlitz products, in violation of Federal, state and local liquor laws and regulations. These inducements were accomplished by (1) the payment of cash to retailers and their agents and the furnishing of goods and services to retailers; (2) the reimbursement of its nationwide network of 1,000 wholesalers who made cash payments and provided other items of value to retailers; (3) the concealment of these payments through sham contracts, invoices, agreements and other documents; (4) the direction of cash payments through third parties, including certain of Schlitz' and its wholesalers' outside advertising agencies, as well as those of its retailers.

A permanent injunction against violations of the Federal securities laws by Schlitz and the appointment of a Special Agent with the power to investigate the acts and practices alleged in the complaint was requested by the Commission. The case is being litigated.

SEC v. H.K. Porter Company – On March 21, 1977, the Commission filed a complaint in the United States District Court for the District of Columbia, seeking injunctive relief against H.K. Porter Company (Porter), a Delaware corporation with its principal executive offices in Pittsburgh, Pennsylvania.[42] Simultaneous with the filing of the complaint, the Court entered a Judgment of Permanent Injunction against Porter restraining and enjoining Porter from further violations of the filing requirements of the ownership reporting and tender offer provisions of the Federal securities laws and ordering certain other relief.

The complaint alleged that Porter had violated Sections 13(d) and 14(d) of the Exchange Act and the rules promulgated thereunder in filing with the Commission false and misleading statements on Schedule 13D with respect to Porter's intentions in purchasing securities of Missouri Portland Cement Company (Missouri) and making a tender offer for Missouri common stock. The complaint further alleged that Porter's statements and amendments to statements on Schedule 13D, reporting Porter's purchase of a block of Missouri common stock from Cargill, Inc., in August 1975, were false and misleading in stating that the purpose of the purchases was "for investment," when in fact, such purchases were part of Porter's plan to make a tender offer for additional shares of Missouri and to acquire control of Missouri.

The complaint further charged that Porter's amended and restated Schedule 13D and amendments thereto reporting terms of a new tender offer and purchases of Missouri shares pursuant to the tender offer from December 1975 through January 1976, were false and misleading in stating that Porter did not intend to seek representation on Missouri's board of directors or participate in the management of Missouri, when in fact, Porter intended to do so.

SEC v. Arthur T. Mudd and Bobby Hodges – On May 19, 1977, the Commission filed a complaint against Arthur T. Mudd and Bobby Hodges, both of Memphis, Tennessee, alleging violations of the municipal securities registration and antifraud provisions of the Federal securities laws.[43]

The Commission alleged that the defendants were engaging in the business of offering and selling municipal securities to the public without registering with the Commission as municipal securities dealers.

It was further alleged that in the conduct of such business, Mudd and Hodges sold municipal securities to their customers at prices not reasonably related to current market prices. Both defendants consented to the entry of an Order of Permanent Injunction.[44]

This was one of the first cases where an action was brought against a municipal securities dealer for failure to register with the Commission as required by the Securities Acts Amendments of 1975.

SEC v. T.A.S. Investments and Gary R. Paro – On July 20, 1977, the Commission filed a complaint in the United States District Court for the Northern District of New York, seeking to enjoin T.A.S. Investments (T.A.S.) and Gary R. Paro, President of T.A.S., both of Syracuse, New York, from further violations of the registration and antifraud provisions of the securities laws.[45] The Commission's complaint alleged that the defendant's violations arose in the course of their offer and sale of unregistered securities in the form of investment interests in advertising and promotional campaigns. The Commission alleged that the defendants made numerous misrepresentations and omissions of material facts in a brochure mailed nation-wide which offered these securities. These misrepresentations and omissions concerned, among other things, the use of the funds raised from investors, the experience of defendants in the advertising business, and the safety of and return on the investments.

Simultaneously with the filing of the Commission's complaint, a Final Judgment of Permanent Injunction and Order of Ancillary Relief was entered, enjoining T.A.S. and Paro from violating the registration and antifraud provisions of the securities laws. T.A.S. and Paro consented to the entry of the Judgment without admitting or denying the allegations contained in the complaint. The court also ordered, as ancillary relief, that the defendants (1) return to investors all monies received, (2) send a letter to investors and prospective investors informing them of the Commission's action and withdrawing the defendants' offer, and (3) submit affidavits to the court and the Commission demonstrating compliance with this portion of the Court's order.

SEC v. Shelby Bond Service Corporation, et al.—The Commission, on April 18, 1977, filed a complaint against Shelby Bond Service Corporation (Shelby Bond), a defunct Tennessee corporation which conducted business as an unregistered municipal securities broker-dealer prior to January 1, 1976, and others, alleging violations of the antifraud provisions of the Federal securities laws in connection with the offer, purchase and sale of municipal securities, including industrial development revenue bonds.[46] The Commission's complaint alleged that Shelby Bond, its principals, and its salesmen used high pressure sales techniques and charged excessive markups and that Shelby Bond salesmen made fraudulent misrepresentations and omissions concerning such material facts as the speculative nature of the securities and the financial condition of the issuers.

The Commission's complaint further alleged that Precision Optical Laboratory, Inc. (Precision Optical), Shelby Bond, and the principals of Shelby Bond violated the antifraud provisions of the Federal securities laws in connection with the offer and sale of industrial development revenue bonds which were issued to finance Precision

Optical and were underwritten by Shelby Bond.

Six of the defendants consented to permanent injunctions and three defendants were enjoined by default. Three defendants have been preliminarily enjoined until further order of the Court.[47] One of the defendants subsequently consented to the entry of a permanent injunction. No trial date has been set for the remaining two defendants.

SEC v. Charles A. Carter, et al.—This civil injunctive action followed the failure of Bankers Trust Savings and Loan Association (Bankers Savings & Loan), the largest state-chartered savings and loan association in Mississippi.[48] At the time of its failure in May 1976, Bankers Savings & Loan held savings accounts of over $210 million in the form of passbook accounts and certificates of deposit. The savings accounts of Bankers Savings & Loan were not Federally insured by the Federal Savings and Loan Insurance Corporation (FSLIC) but were privately insured along with accounts in other state-chartered associations in Mississippi and Tennessee by American Savings Insurance Company (American Savings) of Jackson, Mississippi.

On June 20, 1976, after Bankers Savings & Loan and other state-chartered savings and loan associations in Mississippi had been unable to honor requests for withdrawals, the Mississippi legislature passed an emergency plan calling for a moratorium on withdrawals and providing for a conservator for all non-Federally insured savings and loan associations in Mississippi. The plan affected about 150,000 depositors having a total of over $450 million deposited in savings accounts in 34 non-Federally insured savings and loan associations. Under the terms of the plan, until an association obtained approval from the conservator to reopen, its depositors could not withdraw any of their funds. This ranged from a few days to a matter of months in some instances. Bankers Savings & Loan has since reorganized, obtained FSLIC insurance and reopened under the name of Depositors Savings Association.

The Commission's complaint, filed on May 13, 1977 in the United States District Court for the Southern District of Mississippi, charged Charles A. Carter (Carter), C. D. Shields (Shields), Ray A. Jones (Jones), American Savings, Plaza Investment Company (Plaza) and Edwin L. Figg (Figg) with violations of the antifraud provisions of the Securities Act and the Exchange Act. The complaint charged that Carter, Shields, Jones and American Savings made misrepresentations and omissions in the offer and sale of the savings accounts of Bankers Savings & Loan concerning, among other things, the insurance of the savings accounts and the financial condition of Bankers Savings & Loan and American Savings. The complaint further charged Carter, Shields, Jones, Plaza and Figg with violations in the offer and sale of securities issued by Bankers Trust Company, the parent holding company of Bankers Savings & Loan, which filed for proceedings under Chapter X of the Bankruptcy Act. The complaint alleged, among other things, that purchasers of debentures and promissory notes of Bankers Trust Company were falsely led to believe that such securities were issued by Bankers Savings & Loan, and that the defendants failed to disclose the operating losses and financial condition of Bankers Trust Company to the purchasers of such securities. All the defendants consented to the entry of permanent injunction against them.

SEC v. American Hospital Supply Corporation—On December 29, 1976,

the Commission filed a complaint against American Hospital Supply Corporation (American Hospital) alleging violations of certain of the reporting and proxy provisions of the Exchange Act in connection with disclosures concerning contracts providing for American Hospital's equipping of the King Faisal Specialist Hospital in Riyadh, Saudi Arabia.[49] According to the complaint, American Hospital's reports filed with the Commission failed to disclose certain facts concerning purported agency, commission and consulting arrangements entered into in connection with the American Hospital contracts. The Commission also charged in the complaint that questionable payments had been made by American Hospital's foreign subsidiaries during the period from 1970 through 1976 and that American Hospital had filed and had caused to be filed with the Commission annual and periodic reports that were materially false and misleading in that they failed to disclose such payments. American Hospital, without admitting or denying the allegations of the Commission's complaint, consented to the entry of a Final Judgment of Permanent Injunction and Ancillary Relief restraining and enjoining American Hospital, or any of its affiliates and subsidiaries, from further violations of the reporting and proxy provisions of the Exchange Act and ordering certain other relief.

Ancillary relief ordered by the Court, among other things, prohibits American Hospital, its employees and agents from, directly or indirectly: (a) making unlawful payments or causing unlawful payments to be made of any corporate funds of American Hospital or any of its affiliates or subsidiaries for the purpose either of obtaining business, whether private or governmental, or avoiding substantial compliance with the legal requirements of any governmental jurisdiction; (b) using or aiding and abetting the use of corporate funds of American Hospital or any of its affiliates or subsidiaries for any unlawful political contributions or any other unlawful political purposes; (c) making or causing to be made any materially false or fictitious entries in the books and records of American Hospital and its affiliates and subsidiaries; and (d) establishing, maintaining or causing to be established or maintained any secret or unrecorded fund of corporate monies or other assets or making or causing to be made any payments or disbursements thereof.

American Hospital was also ordered to institute and maintain enforcement and control measures to assure compliance with its internal business ethics code of conduct and with the provisions of the Final Judgment.

SEC v. Invesco International Corp.— In June 1977, the Commission filed a complaint for injunctive and ancillary relief in the United States District Court for the Northern District of Georgia against Invesco International Corporation, Security Management Company, Inc. and three of Invesco's officers, including its chairman of the board of directors, alleging violations of the reporting and antifraud provisions of the Federal securities laws. The complaint sought injunctions and an order directing the appointment to the board of directors of a majority of independent directors.

The Commission's complaint alleged that Bruce R. Davis, chairman of Invesco's Board of Directors and its chief executive officer, aided and abetted by two other officers, purchased stock from Invesco for inadequate consideration, sold other stock to Invesco at inflated prices, and received other remuneration in the form of loans and

advances and concealed such information by filing false and misleading reports on Forms 8–K and 10–K.

On June 28, 1977, Judge William C. O'Kelly issued orders permanently enjoining Invesco and its chief executive officer from violations of the reporting provisions of the Exchange Act, and the two corporate and three individual defendants from violations of antifraud provisions of the securities laws.[50] In addition, the Court issued orders directing the Invesco board of directors to nominate and recommend for election a number of independent directors who were not unacceptable to the Commission and who would then comprise a majority of said board.

SEC v. Orofino, et al.[51]—This action was instituted in December, 1976 in the United States District Court for the Southern District of New York to enjoin Frank X. Orofino (Orofino), Colonial Securities, Inc., Intermountain Transfer Corp. (Intermountain) and 16 others from further violations of the registration and antifraud provisions of the Federal securities laws in connection with the offer and sale of the common stock of Tucker Drilling Company, Inc. (Tucker). Thereafter, all of the defendants, with the exception of TAO & Co. (TAO), consented to the entry of Final Judgments of Permanent Injunction without admitting or denying the allegations in the Commission's complaint. The Commission stipulated to the dismissal of its complaint against TAO upon the basis that it was a soleproprietorship of the son of defendant Orofino and not an entity under Orofino's control.

The Commission's complaint alleged that Orofino and certain of the other defendants gathered approximately 300,000 shares of the common stock of Tucker representing approximately 19 percent of the issued and outstanding stock. These 300,000 shares included approximately 150,000 shares which had previously been distributed pursuant to a public offering and subsequently accumulated by certain of the defendants and approximately 150,000 unregistered shares. Thereafter, Orofino and several of the other defendants sold approximately 290,000 of these 300,000 shares through their own and various nominee accounts at several broker-dealers. No registration statement for the offer and sale of these approximately 290,000 shares was ever filed with, or declared effective by, the Commission, nor was any exemption from registration available.

The complaint further alleged that in order to facilitate the distribution of these Tucker shares, the defendant Intermountain improperly removed restrictive legends from approximately 100,000 Tucker shares. Additionally, the Commission charged that various undisclosed sums of cash and amounts of securities were given to the brokerage industry-related defendants who, in return, solicited purchasers for Tucker stock. Finally, the complaint stated that in an attempt to maximize their profits, Orofino and several of the other defendants aided the distribution of Tucker stock by bidding for, purchasing and inducing others to purchase Tucker stock while engaged in said distribution.

SEC. v. Forest Laboratories, Inc. et al.—In June, 1977, the Commission filed a complaint in the United States District Court for the Southern District of New York against Forest Laboratories, Inc. (Forest), a New York based pharmaceutical company, Hans Lowey (Lowey), former chairman of the board and president of Forest, Ian Stewart (Stewart), former treasurer of Forest, Milton Dorison (Dorison), former president of Forest, and Roberto Sein (Sein), manager of a Forest subsidiary in Puerto Rico, seeking to enjoin the de-

fendants from violations of the anti-fraud, reporting and proxy provisions of the Federal securities laws.[52]

The Commission's complaint alleged violations of the Federal securities laws in connection with Forest's falsely inflating revenues recorded on its books and records by approximately $4 million in connection with sales and purported sales by Forest to three of its major European customers. This was accomplished, in part, by the preparation and maintenance of two sets of invoices, one set for the customer and shipper which reflected the true price of the goods sold, and the other set for recordation on the books and records of Forest, which reflected an inflated price for the goods sold, in some cases two, three or more times the true price. The complaint alleged that the above schemes resulted (in most years from 1963 through 1973) in reported earnings of Forest being inflated to levels substantially higher than the true earnings of Forest for such years.

Forest consented to the entry of a Permanent Injunction enjoining it from further violations of the above-mentioned provisions of the Federal securities laws and ordering certain other relief without admitting or denying the allegations of the Commission's complaint. The Court's order provides that Forest's counsel and independent public accountants shall conduct an investigation of and prepare a report covering the period from April 1, 1963 to the date of the entry of the Judgment, encompassing the matters set forth in the complaint. Under the terms of the Court's Order, such investigation will be reviewed by a Special Review Counsel. In September 1977, Sein consented to the entry of a similar Permanent Injunction without admitting or denying the allegations of the complaint.

SEC v. Max Wilson, Inc., et al.—This case resulted from an investigation concerning the promotional and sales activities of Max Wilson, Inc., a "File-for-You-Agent" (FFYA), in connection with the U.S. Bureau of Land Management's (BLM) Simultaneous Oil and Gas Lease Filing System.[53] Under the system, the BLM each month posts a list of public land available for oil and gas leases and leases that have expired or were terminated because the former holder did not pay the annual rental. If more than one U.S. citizen wants the lease, the names are drawn in a lottery. The winner gets the lease.

According to the complaint, Max Wilson, Inc., one of a growing number of companies engaged in this type of business, recommended that its clients file on certain BLM parcels that were made available to the public each month. The company received $10 per parcel for each entry. The company also guaranteed to pay each successful client a fixed amount (varying with each parcel) plus a 3 percent overriding royalty interest, if production were to commence, for his parcel. In addition, Max Wilson, Inc. would provide all clerical functions necessary to enter the lottery, pay the yearly rentals for a successful client (if he sold the lease to Max Wilson, Inc.) and notify the client if he were successful.

The Commission filed a civil complaint on March 9, 1977 in the U.S. District Court for the District of New Mexico against Max Wilson, Inc., Max Wilson and Robert Wilson alleging violations of the registration and anti-fraud provisions of the Federal securities laws in the offer and sale of, among other things, investment contracts.

The complaint further alleged that in connection with the offer and sale of the securities, the defendants made untrue statements of material facts including, among others, that: (1) there were no others interested in purchas-

ing investors' leases when, in fact, others had made offers to purchase the investors' leases; and (2) the defendants knew who would pay the highest cash consideration plus overriding royalties for oil and gas leases and that this information would be made available to investors when, in fact, competitive offers were usually not forwarded to investors by defendants. In addition, the complaint also alleged that in connection with the offer and sale of the securities, defendants omitted to state, among other things, that: (1) the use of defendants' address on the BLM Simultaneous Oil and Gas drawing entry card isolated the winner from those who might pay substantially more for the lease than the defendants' guaranteed price; and (2) competing offers for the investors' leases would not be forwarded to the investors.

The defendants consented to the entry of a permanent injunction without admitting or denying the allegations of the Commission's complaint.

SEC v J. Ray McDermott & Co., Inc., et al.—On October 6, 1976, the Commission filed a complaint against J. Ray McDermott & Co., Inc. and several of its past and present officers and directors to enjoin them from further violations of the antifraud, reporting and proxy provisions of the Securities Exchange Act of 1934.[54] The complaint alleged that the above defendants made secret cash payments of corporate funds totaling at least $509,000 to co-defendant Schacht McCollum, a former officer of Tenneco Oil Company, a corporate subsidiary of Tenneco, Inc., to aid in procuring and maintaining certain contracts and billings with the Tenneco Oil Company.

Each of the defendants consented, without admitting or denying the facts set forth in the complaint, to the entry of permanent injunctions prohibiting future violations of the Federal securities laws. In addition, McDermott undertook to prepare a written report describing its internal investigations into the matters set forth in the Commission's complaint together with the results thereof and to make appropriate disclosure of the matters involved in the report to its shareholders.

SEC v Exxon Corporation, et al.—On September 27, 1977, the Commission filed a civil injunctive action against Exxon Corporation (Exxon) and Vincenzo Cazzaniga (Cazzaniga)—a former president and managing director of Esso Italiana, S.p.A., Exxon's wholly-owned subsidiary in Italy, seeking to enjoin the defendants from further violations of the reporting and proxy provisions of the Exchange Act.[55]

The Commission's complaint alleged that during the period from at least 1963 and continuing to at least 1972, defendants Exxon and Cazzaniga, and others, directly and indirectly, expended at least $55.25 million in Italy as payments to political parties, government officials and employees, commercial bribes and other illegal, improper, noncorporate or unaccountable payments. Some or all of these payments to political parties, government officials and government employees were made in connection with governmental action and were made in order to secure or influence such governmental action. Defendants Exxon, Cazzaniga and others, directly and indirectly, disguised said payments by means of false and improper accounting and the use of unrecorded bank accounts.

In addition, the complaint alleged that from at least 1963 and continuing to at least 1975, defendant Exxon and others expended at least an additional $1.25 million in at least 15 other foreign countries as payments to political parties, government officials and em-

ployees, commercial bribes and other illegal, questionable, noncorporate or unaccountable payments.

Without admitting or denying the allegations contained in the Commission's complaint, defendant Exxon consented to the entry of a Final Judgment of Permanent Injunction enjoining the company from further violations of the reporting and proxy provisions of the Exchange Act. In addition, Exxon was required to disclose in a current report for September 1977 on a Form 8-K, filed with the Commission simultaneously with the filing with the Court of the Commission's complaint, further details with respect to matters concerning the Italian and other payments.

On January 9, 1978, the Court entered a Judgment against Cazzaniga, by default, enjoining him from further violations of the reporting and proxy provisions of the Exchange Act. This default judgment was signed after Cazzaniga advised the Court that he would not appear or file an answer or other pleading to the Commission's complaint.

SEC v. Indonesian Enterprises, Inc., et al.—On February 2, 1977, the Commission filed a complaint against Indonesian Enterprises, Inc., Ramayana Indonesian Restaurant of New York, Inc., P. N. Pertamina (the National Oil State Enterprise of the Republic of Indonesia) and Ibnu Sutowo, to enjoin them from further violations of the registration and antifraud provisions of the securities laws.[56] The complaint alleged that the defendants sold over $1 million of Class A common, nonvoting stock of Indonesian Enterprises, Inc., when no registration statement was filed or in effect. Sales were made to 54 of the largest foreign and domestic corporations in the world including Mobil Oil, Ashland Oil, Monsanto Company and Esso Standard Eastern, Inc. The complaint further alleged that the defendants coerced individuals and corporations having business relationships with the defendant Pertamina to purchase shares of the defendant Indonesian Enterprises.

Each of the defendants consented, without admitting or denying the facts set forth in the complaint, to the entry of a permanent injunction prohibiting further violations of the Federal securities laws.

SEC v. Diversified Industries, Inc., et al.—On November 15, 1976, the Commission filed a civil injunctive action seeking to enjoin Diversified Industries, Inc. (Diversified), a metal processing and manufacturing company, and Ben Fixman, Sam Fox, Morris Lefton, Jack Kootman and E. Allen Payne, all present or former officers and/or directors of Diversified or its subsidiaries, from future violations of the registration, proxy and reporting provisions of the Exchange Act. The complaint also sought certain ancillary relief.[57]

The complaint alleged, among other things, that since at least 1968, Diversified, through certain of its subsidiaries, engaged in a course of business involving underpayments and deliveries of materials of lower quality or quantity than actually due. The complaint further alleged that since 1971, Diversified, again through certain of its subsidiaries, falsified corporate records to generate over $400,000 in cash which was used, in part, to make payments to representatives of companies doing business with Diversified. The complaint alleged that the individual defendants participated in certain of these activities, knew of others, and should have known, if they did not know, of still others.

Without admitting or denying the allegations contained in the Commission's complaint, defendant

Diversified, simultaneous with the filing of the complaint, consented to the entry of a Final Judgment of Permanent Injunction enjoining the company from future violations of the antifraud, proxy and reporting provisions of the Exchange Act. In addition, the Judgment provided for certain ancillary relief, including provisions requiring Diversified to appoint a Special Review Committee and Special Counsel, satisfactory to the Commission, to investigate the allegations contained in the Commission's complaint and other matters relevant thereto, to file a report of its findings with the Commission and the Court, and to seek redress and take further action if warranted.

Defendants Ben Fixman, Morris Lefton, Jack Kootman, and E. Allen Payne also consented, without admitting or denying the allegations contained in the Commission's complaint, to the entry of Final Judgments of Permanent Injunction enjoining them from, among other things, future violations of Sections 10(b) (antifraud), 13 (a) (reporting), and 14(a) (proxy) of the Exchange Act. Fixman has also been enjoined from future violations of Section 13(d) (requirement to file report when acquiring over 5% of beneficial interest in securities of public companies) of the Exchange Act. Additionally, the judgments provide for certain ancillary relief, including the payment of $8,000 by Kootman to Diversified.

In other counts, the complaint sought to enjoin Penn-Dixie Industries, Inc. (Penn-Dixie), a company engaged in the manufacture of construction materials, Jerome Castle (Castle), its then chairman and president, Arnold Y. Aronoff (Aronoff), a Detroit businessman, and the JDL Trust, a Cayman Islands trust allegedly created and controlled by Aronoff, from future violations of the antifraud provisions of the Exchange Act. The complaint also sought to enjoin Penn-Dixie, Castle and Aronoff from future violations of the reporting provisions and Penn-Dixie and Castle from future violations of the proxy provisions of the Exchange Act.

The complaint alleged, among other things, that the defendants by fraud and deceit caused Penn-Dixie, in October of 1973, to purchase a parcel of Florida land for approximately $5.9 million. The parcel was less than fifty percent of a larger parcel of land which Aronoff, through the JDL Trust, had purchased the previous day for approximately $5.8 million.

The complaint asked the court to impress a trust on the entire tract of land with a view toward causing appropriate restitution to Penn-Dixie and depriving the non-corporate defendants of unlawfully or improperly obtained benefits, money or property.

Finally, in still another count, the complaint sought to enjoin Castle, Fixman and Penn-Dixie from future violations of Section 13(d) (requirement to file report when acquiring over 5% of beneficial interest in securities of public companies) of the Exchange Act in connection with their alleged efforts during 1974 and 1975 to take over control of Diversified.

Without admitting or denying the allegations contained in the Commission's complaint, Penn-Dixie consented to the entry of a Final Judgment of Permanent Injunction which was entered on July 7, 1977. The Judgment against Penn-Dixie permanently enjoins it from future violations of the antifraud reporting and proxy provisions of the Exchange Act. In addition, the Judgment provides for certain ancillary relief.

Pursuant to the terms of the Judgment and attached Undertaking,

Penn-Dixie is required to appoint to its board three new directors, satisfactory to the Commission, who are neither present nor former employees of Penn-Dixie. These directors will serve on a new Audit Committee of the board created pursuant to the terms of this settlement. Penn-Dixie is further required to maintain a Special Counsel previously appointed by the company.

Pursuant to the terms of the Judgment, the Audit Committee, together with the Special Counsel will, among other things, investigate and report on the allegations contained in the Commission's complaint. Additionally, the judgment provides for review by the Audit Committee of all future transactions between the company and certain persons, including Castle and Aronoff, and provides that the company will enter into only such transactions as are approved by the Audit Committee.

The Commission is currently in litigation with defendants Fox, Castle, Aronoff and the JDL Trust.

SEC v. General Telephone and Electronics Corporation – In January 1977, the Commission filed a complaint seeking to enjoin General Telephone and Electronics Corporation (GTE) from further violations of the antifraud, reporting and proxy provisions of the Federal securities laws.[58]

The complaint alleged that GTE had made numerous payments in the United States and 27 other countries totalling approximately $14 million, a significant portion of which were or may have been to or for the benefit of government officials or their intermediaries or in the nature of commercial bribes, kickbacks and rebates to officials of private foreign customers.

The complaint also alleged that in connection with the financing of the sale of GTE's 28 percent equity interest in Philippine Long Distance Telephone Company (PLDT) to, and subsequent related transactions with, several Philippine nationals, GTE agreed to pay and did pay $484,000 in cash, $2,813,000 in credits, and accrued but did not pay $1,678,000 in the form of commissions, to the group of Philippine nationals on sales of telecommunications equipment by GTE to PLDT as well as $1 million in personal loans and the promise of an additional $1 million in commissions given to the Philippine nationals by GTE in exchange for their directing PLDT to sign a $20 million supply contract with GTE.

The complaint contains similar allegations regarding GTE payments in connection with its efforts to obtain a multi-million dollar telecommunications contract with a state enterprise in Iran.

GTE consented to the entry of a Judgment of Permanent Injunction enjoining it from further violations of the above mentioned provisions of the Federal securities laws without admitting or denying the allegations of the complaint. In addition, GTE adopted, and, pursuant to the Judgment, is to maintain, policy guidelines and procedures relative to commercial practices with respect to payments by GTE to any official or employee of any private customer or any government, or any official or employee of any entity owned and/or controlled by any government which is unlawful under the laws of the United States or such foreign country, which guidelines were consistent with the terms of the Injunction.

Theodore F. Brophy, chairman of the board of directors of GTE, John J. Douglas, vice-chairman of the board

of directors of GTE, and William F. Bennett, executive vice-president–staff of GTE, who were not named as defendants in this action, acknowledged in a Court-ordered Acknowledgement and Undertaking that, as officers and/or directors of GTE, they were bound by the terms of the Permanent Injunction and undertook, as officers and directors of GTE, to comply fully with its terms and conditions and to use their best efforts to cause GTE to continue in full compliance with its terms and conditions.

SEC v. Philippine Long Distance Telephone Corporation, et. al. — In January 1977 the Commission filed a complaint seeking to enjoin Philippine Long Distance Telephone Company (PLDT), Philippine Telecommunications Investment Corporation (PTIC) and Stamford Trading Company, Limited (STC) from further violations of the antifraud and reporting provisions of the Federal securities laws.[59]

The complaint alleged that there was an agreement among Ramon Cojuangco (Cojuangco), president of PLDT; Alfonso Yuchengco (Yuchengco), chairman of the board of PLDT; Luis Tirso Rivilla (Rivilla), an officer and director of PLDT; and Antionio M. Meer (Meer), another stockholder in PTIC, (referred to hereinafter as the PTIC Group); and General Telephone and Electronics Corporation (GTE) to have GTE pay the above-named stockholders of PTIC undisclosed commissions of from five to seven percent on sales of telecommunications equipment by GTE to PLDT in connection with the financing of PTIC's 1967 purchase of GTE's controlling interest in PLDT. The complaint further alleged that the PTIC Group received $1 million in personal loans and the promise of an additional $1 million in commission payments from GTE in 1971 in exchange for their directing PLDT to sign an approximately $20 million supply contract with GTE.

The PTIC Group received commissions from GTE of $484,000 in cash and $2,813,000 in credits. GTE accrued but did not pay an additional $1,678,000 in commissions, and GTE assigned to an independent escrow agent for no consideration the personal promissory notes of the members of the PTIC group, totalling approximately $1 million, given to GTE in 1971 in connection with GTE's $20 million supply contract with PLDT, on which notes no principal or interest had ever been paid. Such assignment irrevocably instructed such escrow agent to deliver the notes in accordance with the instructions of the members of the PTIC Group or, if not so delivered by maturity, to destroy the notes.

PLDT, PTIC and STC consented to the entry of a permanent injunction enjoining them from further violations of the above-mentioned provisions of the Federal securities laws without admitting or denying the allegations of the complaint. In addition to the entry of the permanent injunction against PLDT, PTIC and STC, certain ancillary relief was ordered by the Court and undertaken by PLDT, PTIC, STC, Cojuangco, Yuchengco, Rivilla, and Meer, including the payment by PTIC to PLDT irrevocably of an amount of cash equal to $1 million.

SEC v.Kodiak Industries, et al.—On October 28, 1976, the Commission filed a civil injunctive action in the United States District Court for the Southern District of California seeking to enjoin Kodiak Industries (Kodiak), Dominic J. Alessio (Alessio), Anthony Alessio (A. Alessio), Alvin G. Rosa (Rosa) and C. Arnholt Smith (Smith) from further violations of the antifraud,

reporting, Williams Act proxy and tender offer provisions of the Exchange Act, and Fortuna Corporation (Fortuna) from further violations of the antifraud, reporting and proxy provisions of the Exchange Act.[60]

The complaint alleged that since approximately May 1972, the individual defendants engaged in a scheme to conceal their intentions to effect a merger of Fortuna, a publicly held corporation which operated race tracks in New Mexico, into Kodiak, a private corporation owned by the Alessios and Rosa. The complaint further alleged that the purpose of this merger was to enable the individual defendants to appropriate the assets and cash flow of Fortuna for their personal benefit. The complaint also alleged that the defendants engaged in a scheme to conceal Smith's control of, relationship to and business transactions with Kodiak and Fortuna.

The Commission alleged that the defendants effected these schemes by, among other means, filing with the Commission and disseminating to Fortuna shareholders false and misleading annual reports, proxy materials, Schedules 13D and tender offer statements, which statements were utilized in connection with a cash tender offer made by Kodiak for Fortuna shares in December 1974.

Without admitting or denying the allegations contained in the Commission's complaint, defendants Kodiak, Fortuna, Alessio, A. Alessio and Rosa, consented to the entry of Final Judgments of Permanent Injunction against them, enjoining them from further violations of the aforementioned provisions of the Exchange Act.

In addition to enjoining these defendants from further violation of provisions of the Exchange Act, the injunctions provided for the following ancillary relief: (1) The defendants were required to offer rescission rights to all Fortuna shareholders who tendered shares in response to Kodiak's cash tender offer of December 2, 1974; (2) that with respect to the proposed merger of Kodiak and Fortuna described in Fortuna's definitive proxy material filed with the Commission on October 19, 1976, the enjoined defendants were not able to vote the Fortuna shares owned or controlled by them unless the merger was approved by a majority of the minority shareholders of Fortuna voting; (3) that should the merger proposal not be so approved, the enjoined defendants will be able to vote the Fortuna shares owned and controlled by them in any other proposed merger between Kodiak and Fortuna only with the approval of the Court, pursuant to a plan approved by the Court which provided that Kodiak must demonstrate that the merger is for a legitimate corporate purpose and that the consideration to be paid to Fortuna shareholders was fair and reasonable; and (4) the enjoined defendants were also ordered to make certain corrected filings with the Commission and distribute them to Fortuna shareholders.

On May 19, 1977, without admitting or denying the allegations contained in the Commission's complaint, defendant Smith also consented to the entry of a Final Judgment of Permanent Injunction against him, enjoining him from further violations of the aforementioned provisions of the Exchange Act.

SEC v. World Radion Mission, et al.—On January 16, 1976, the Commission filed suit in the Federal District Court for the District of New Hampshire charging World Radion Mission and Clinton D. White with violating the antifraud provisions of the Federal securities laws. The complaint, alleging that the defendants were fraudu-

lently selling "loan plans" in the form of 8 percent, 9 percent, 10 percent, 11 percent and 12 percent interest-bearing notes, sought injunctive relief and the appointment of a receiver.[61]

After an evidentiary hearing, the Court found that the Commission had made a prima facie showing of a violation of the Federal securities laws and the likelihood that future violations would occur; it nevertheless declined to issue a preliminary injunction on the basis that the issuance of an injunction would have a substantial adverse impact on a bona fide religious organization, and that there was no evidence that denial of an injunction would cause any harm to the public.

The Commission appealed; and, on November 4, 1976, the Court of Appeals for the First Circuit reversed the decision and directed the District Court to issue an injunction preliminarily enjoining the defendants from further violations of the antifraud provisions of the Federal securities laws.[62]

In reversing, the Court of Appeals disagreed with the District Court's finding that the public investors would not suffer harm; noted defendants' stated intent to continue the activities found by the trial court to be deceptive; and dismissed defendants' protestations of good faith, stating that a Commission injunction "is designed to protect the public against conduct; not to punish a state of mind."

SEC v. Mor-Film Fare, Inc., et al.[63] and *SEC v. International Film Corp., et al.*[64]—The cited cases were companion civil injunctive actions filed by the Commission in the United States District Court for the Central District of California in May and June, 1977 against a total of twelve corporate and individual defendants. The complaints alleged the fraudulent, unregistered distribution of securities consisting of limited partnership interests purportedly for the purpose of financing motion picture and other business interests. The fraudulent nature of the distributions involved false representations concerning the tax shelter features and benefits of such investment programs and the existence of contracts with prominent entertainment personalities.

In the International Film Corp. case, District Judge A. Andrew Hauk entered temporary restraining orders against all nine defendants, ordering them not to dispose of assets or destroy property related to the allegations set forth in the Commission's complaint. Both actions are otherwise still pending before the court.

SEC v. E. L. Aaron & Co., Inc.[65]—On May 3, 1977, after a trial on the merits, the Honorable Lee P. Gagliardi of the United States District Court for the Southern District of New York found that defendant Peter E. Aaron (Aaron) had violated the registration and antifraud provisions of the Federal securities laws in connection with the offer and sale of the common stock of Lawn-A-Mat Chemical & Equipment Corp. (LAM).[66] On May 19, 1977, Judge Gagliardi signed a final Judgment of Permanent Injunction enjoining Aaron from further violations of the aforementioned provisions.

The Court found that Aaron violated and aided and abetted violations of the antifraud provisions by failing to restrain E. L. Aaron & Co., Inc. (Aaron & Co.) registered representatives under his supervision from making false and misleading statements in connection with the offer and sale of LAM stock.

In addition, Judge Gagliardi found that Aaron violated the registration provisions and Rule 144 thereunder, by arranging for the purchase of 21,000 unregistered LAM shares for the trading account of Aaron & Co. at a time

when Aaron & Co. was soliciting customers' orders for the purchase of LAM stock. The court found that Aaron & Co. had purchased these unregistered shares in pre-arranged, sham transactions through another brokerage firm acting as an intermediary and, in so doing, functioned not as an agent or broker for a customer, but as a principal or dealer for its own account in violation of Rule 144. This is the first case in which a Federal court has issued an opinion involving a violation of Rule 144.

SEC v. Equity Service Corp., et al.—On April 27, 1977, the Commission filed a complaint in the United States District Court for the Eastern District of Pennsylvania, naming Equity Service Corporation, Robert H. Mortimer (Mortimer), Pacific-Atlantic Oil Co. (PAOCO) and others.[67] The complaint and other motions filed sought preliminary and permanent injunctions, protective orders, an accounting and the appointment of a temporary receiver.

The complaint alleged that the defendants violated the securities registration and antifraud provisions of the Federal securities laws in connection with the offer and sale of fractional undivided working interests in oil and gas leases, limited partnership interests and investment contracts concerning oil and gas leases located in Arkansas, Colorado and Louisiana. The complaint further alleged that the defendants made numerous misrepresentations and omissions to investors concerning, among other things, the use of investor funds, the employing of a psychic and a "Radiation Survey Vehicle" to select sites and the production which had been achieved from wells which had previously been drilled. Mortimer was also charged with misappropriation of investor funds.

In May 1977, District Judge Edward N. Cahn entered Judgments of Permanent Injunction by consent against all defendants.[68] Judge Cahn also appointed a receiver over all the subject oil and gas programs and ordered the defendants to account for assets, including income, derived from their participation in the scheme.

SEC v. American Centennial Corporation—In May 1977, the Commission filed suit in the United States District Court for the Middle District of Tennessee against American Centennial Corporation (ACC), and four of its officers and directors for violations of the antifraud provisions of the Federal securities laws in connection with the offer and sale of common stock of ACC, a publicly held insurance company.[69]

The Commission's complaint alleged that the defendants, in preparing the sales literature for the public offering and in training young inexperienced college students to sell the stock, made material omissions and failed to include information necessary to make that disclosed not misleading. The sales presentation relied heavily upon management's prior association with another company which had a market increase of 2400 percent over an 18-month period before settling at a price near its initial offering price. In both the literature and the oral sales presentations, the complaint alleged that the defendants stressed the rise in the market price of the above shares while failing to include the fact that the market price decreased as dramatically as it rose and was then trading at a price substantially lower than the figures used in the sales literature.

The complaint alleged that the sales presentation also included a comparison of ACC and the other insurance company which ended with the projection that since ACC had more sales representatives, more capital, a wider area of distribution and a greater price per share it would be at least 25 per-

cent more profitable than the other company; in other words, a purchase of the stock was to yield a 600 percent profit according to projections made by the sales personnel.

PARTICIPATION AS AMICUS CURIAE

Tannenbaum v. Zeller[70]—This case presented the question of whether fully informed and truly independent directors of a mutual fund are precluded, under the Investment Company Act, from exercising any discretion and good faith business judgment in determining whether to use a portion of the commissions paid by the fund on brokerage transactions to reward broker-dealers which sold fund shares or provided research services instead of recapturing such excess commissions for the fund's direct cash benefit.

The issue arose because of the minimum fixed-brokerage commission rate structure that prevailed on the exchanges until May 1, 1975, when it was prohibited by the Commission. Under that system, persons were compelled to pay brokerage commissions according to a fixed rate which did not reflect economies of scale. As a result, the brokerage commissions paid by mutual funds far exceeded the actual cost to the broker. The mutual funds had essentially two ways to use these excessive commissions—they could channel the excess to brokers which provided the fund with sales or research services or they could, through a variety of devices, recapture the excess in the form of a direct cash benefit for the funds.

The fund in *Tannenbaum* had chosen to use the excess to reward brokers providing sales and research services. The plaintiff sued on the ground that the defendant investment adviser had caused the fund to take this course in violation of its fiduciary duty. As a defense, the adviser argued that the decision to forego recapture of the excess commission had been made by the disinterested members of the board of directors in the exercise of a good faith business judgment, and that the advisor could not be held liable for carrying out the instructions of the board. The district court agreed with defendant, and plaintiff appealed to the Court of Appeals for the Second Circuit.

In an *amicus curiae* brief, the Commission argued that the recapture decision was one that could be committed to the discretion of the disinterested members of the board of directors. Crucial to this position was the fact that this case arose in the context of rapidly changing market conditions which created substantial equities in favor of the defendants in this case. In addition, the structure of the Investment Company Act and two prior decisions by courts of appeals indicated that the recapture question was one area where independent and disinterested directors could exercise business judgment. In the context of this case, the Commission observed that, contrary to its general experience, the district court had found that the directors were truly independent of the investment advisor. The court had also found that the directors' judgment to forego recapture was not unreasonable.

In an opinion which closely follows the reasoning of the Commission's *amicus curiae* brief, the Court of Appeals held that the defendants had not violated their fiduciary duty to the fund because of their failure to recapture the excess commissions. The Court also held, however, that the defendants had violated the proxy solicitation provisions of the securities laws by failing adequately to inform fund shareholders of the recap-

ture alternative. The Commission had not addressed this issue in its *amicus curiae* brief.

Sanders v. John Nuveen & Co.[71]—In this case, upon remand for its reconsideration,[72] the Seventh Circuit Court of Appeals reversed its earlier finding that an underwriter of commercial paper who had acted in the "mistaken but honest belief that the financial statements prepared by certified public accountants correctly presented the condition of the issuer is liable to its customers for losses sustained as a result of the issuer's default."[73] In so doing, the court of appeals noted that *Hotchfelder* required a finding of a "scienter," whether knowing or reckless conduct, where violations of the antifraud provisions of the Exchange Act are alleged, and that the record in this case was barren of an actual intent to deceive by the underwriter. The court also disposed of plaintiff's claim under the antifraud provisions of the Securities Act when it stated that, even if there is a private right of action under that section, which it did not have to decide, plaintiff had not shown "scienter." The court also rejected plaintiff's argument that a private right of action could be implied under Rule 27 of the National Association of Securities Dealers, Inc., in the absence of a finding of fraud. Since the record was insufficient for the court of appeals to decide whether the underwriter was liable to the plaintiff purchaser of commercial paper under Section 12(2) of the Securities Act, the court of appeals remanded the case to the district court on that issue.

In its *amicus* brief, the Commission had argued that liability in this case could be premised on Section 12(1) of the Securities Act, which prohibits the sale of unregistered securities. Since the plaintiff had waived this argument, the court did not decide the issue.[74]

The Commission had also urged that Section 12(2) of the Act might provide a basis of recovery for the plaintiff. The Commission noted, however, that the standard of care imposed by that section varies with the circumstances under which the securities were sold.

Daniel v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America[75] — In this case arising under the antifraud provisions of the securities laws, the Court of Appeals for the Seventh Circuit held that an interest in a noncontributory, compulsory pension plan was a "security" which had been "sold" to the plaintiff in violation of the antifraud provisions. The plaintiff alleged that he had been a member of the Teamsters union and had worked for employers covered by union contracts for 22½ years. During that period, his employers made contributions on his behalf to a pension fund maintained jointly by representatives of the union and his employers. The only break in this 22½ years of service was a three month involuntary layoff after the plaintiff had worked ten years. When the plaintiff applied for his pension, however, he was informed that the three month layoff had caused him to forfeit his pension. In his complaint, the plaintiff claimed, *inter alia*, that the union and the trustees of his pension fund had made false and misleading representations to him concerning the break-in-service requirement, in violation of the antifraud provisions of the Federal securities laws. In response to the defendants' motion to dismiss the securities laws counts for a failure to state a claim upon which relief may be granted, the district court held that the plaintiff's interest in the fund was a security that had been the sub-

ject of a sale within the meaning of the antifraud provisions.

In an *amicus curiae* brief, the Commission argued that the court of appeals should affirm the district court and allow the plaintiff the opportunity to prove his case in the court below. With respect to the question of whether the interest in the fund was a security, the Commission noted that the prior Supreme Court law on the definition of the term "investment contract" demonstrated that the pension interest was a security. Thus, the Commission argued that the employee invests money, in the form of his services, for which he receives compensation, including wages, fringe benefits and the pension interest. Moreover, this investment is placed in a common trust fund where the promised profit on the investment is dependent upon the managerial efforts of the pension fund trustees. Finally, the Commission pointed out its long-standing position that interests in pension funds were securities, and the Congress' agreement with that position, as evidenced by the Investment Company Act Amendments of 1970 which added a section to the Securities Act providing that interests in pension funds are securities which need not be registered under the Act.

With respect to the question of whether the pension interest was the subject of a "sale" within the meaning of the Federal securities laws, the Commission argued that its previous "no-sale" rationale applicable to the registration of interests in noncontributory (the employer makes the pension contributions on behalf of the employee) and compulsory (the employee has no choice but to participate in the pension plan) plans should not be extended to the antifraud provisions. In addition to the inherent differences between the registration and antifraud provisions, the Commission noted that important changes in the legal and economic significance of pensions rendered the "no-sale" rationale inappropriate for purposes of the antifraud provisions.

The Commission's brief then discussed the question of whether there was some other reason that the antifraud provisions should not apply to the sale of pension interests. The Commission examined the provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and concluded that there was no indication in that act that Congress intended to preempt the Federal securities laws. Indeed, the Commission moved that the disclosure requirements of ERISA were not at all comparable to the protections afforded by the antifraud provisions. Finally, the Commission addressed the argument that application of the antifraud provisions could be disruptive and unfair to existing plans by pointing out that those provisions are only a generalized self-executing prohibition against fraud which does not require any filing with the Commission and that the plaintiff in this and any other case must still show that he relied, to his detriment, on false or misleading representations.

The decision of the court of appeals closely parallels the Commission's *amicus curiae* brief. The Supreme Court has granted petitions for *certiorari.*

Piper, et al. v. Chris-Craft Industries, Inc., et al.[76]—This action arose out of a contest for corporate control of Piper Aircraft Corporation which began in 1969. Piper was the subject of two competing tender offers, one made by Chris-Craft Industries, Inc., and the other by Bangor Punta Corporation. Chris-Craft, the loser in the battle for control of Piper, had won the ensuing litigation, in which it had been held, among other things, that

Bangor Punta, members of the Piper family and an investment banker had violated the Federal securities laws—Section 14(e) of the Exchange Act and Rule 10b–6 under that Act—in connection with Bangor Punta's obtaining control of Piper.[77]

The primary issues in the Supreme Court were whether there was an implied private right of action under Section 14(e) (Williams Act) on behalf of a competing tender offeror against those whose misleading statements injured it; whether any limitations should be imposed on the maintenance of, or on the relief granted under, such an action; if indeed such a right existed; whether private purchases of Piper shares by Bangor Punta, while its exchange offer for the Piper stock was in registration, constituted a violation of Rule 10b–6; whether the alleged violations caused the injury complained of —i.e., Chris-Craft's loss of an opportunity to gain control of Bangor Punta; and whether the court of appeals correctly computed damages to compensate Chris-Craft for its loss and whether the liability had been apportioned properly among the defendants. The Commission filed an *amicus curiae* brief, in which it addressed only the first three issues referred to above.

In its brief the Commission traced the history of tender offers, which prior to the passage of the Williams Act in 1968, had not been regulated, in sharp contrast to the comprehensive regulation of proxy contests under Section 14(a) of the Exchange Act and rules thereunder. Since tender offers were found by Congress to be alternatives to proxy contests as a means of preserving or gaining control,[78] it patterned the protections under the Williams Act on the existing proxy regulation. Since Congress took great care to provide an equal opportunity to the offeror and the target and to "avoid tipping the balance of regulation either in favor of management or in favor of the person making the takeover bid",[79] the Commission urged that the legislative history showed that Congress intended to protect all persons involved in tender offers.

The Commission argued that, since the Williams Act has created a pervasive regulatory scheme similar to that under the proxy rules, a defeated tender offeror who seeks to vindicate provisions of the Williams Act should be accorded standing to sue for the same reasons that the Court previously had implied private remedies for violations of the proxy regulations.[80] Additionally, the Commission, relying on *Cort v. Ash*,[81] asserted that a private right of action should be implied in this case because (1) the Williams Act created such a right in favor of each participant in a tender offer contest;[82] (2) there was no explicit denial of such a right, and, in fact, Congress was aware that language similar to that proposed in Section 14(e) had been used to imply private remedies on behalf of participants in proxy contests; (3) a private right of action was necessary to supplement the Commission's efforts to effectuate the Congressional purposes in enacting the Williams Act; and (4) the Williams Act was an intrusion of Federal law into an area that was the subject of state corporation law, and the state laws to a great extent were inconsistent with the purposes of the Williams Act.

The Commission also argued that Section 14(e) of the Exchange Act, which proscribes misleading, as well as fraudulent, statements made in connection with tender offers, does not require a showing of knowing or

intentional wrongdoing. While injured persons should be compensated for their losses when Section 14(e) is violated, courts should be guided by the express remedies provided in the securities laws and make an award which restores the injured parties to their prior status.

With respect to Rule 10b–6, the Commission noted that the rule proscribes persons distributing securities to the public from bidding in the market place for either the same securities or securities convertible into the securities being distributed. The purpose of the rule is to avoid the situation where a potential purchaser is induced into buying securities being distributed because secret purchases by the issuer, or those affiliated with him, is driving the price up. It was the Commission's position that the announcement of the acquisition of shares so obtained has the same effect since it could lead the target's shareholders to believe that the violator's offer will succeed and that the public investors must tender immediately in order to participate. Accordingly, the Commission urged that any person injured by a violation of Rule 10b–6 should be accorded standing to pursue a private remedy by implication or under one of the several express remedies granted by Section 9(e) of the Exchange Act.

The Court held that a tender offeror, suing in its capacity as a competing takeover bidder, does not have standing to sue for damages under Section 14(e) of the Exchange Act and that the creation of an implied cause of action for damages is not necessary to effectuate the Congressional objective of protecting the shareholders of target companies. The Court also held that Rule 10b–6, which is aimed at maintaining an orderly market for the distribution of securities free from manipulative influences, is not available to compensate a takeover bidder who may have lost an opportunity to gain control of a target because of violations of the Federal securities laws.[83]

LITIGATION INVOLVING COMMISSION LITIGATION

Subpoena Enforcement Actions

SEC v. *Touche Ross & Co. and Misag Tabibian*—This subpoena enforcement action arose from the staff's investigation into possible violations of the securities laws by The Bohack Corporation (Bohack) (a publicly held corporation which operates a chain of grocery supermarkets) and its officers and directors. Specifically, the staff had been investigating possible material misstatements in, or omissions from, Bohack's financial statements from on or about January 24, 1973, and thereafter.

On July 30, 1974, Bohack filed a petition for an arrangement under Chapter XI of the Bankruptcy Act. Prior to the filing of the Chapter XI petition, Peat, Marwick, Mitchell & Co. (PMM), a national auditing firm, had served as Bohack's independent accountants. The Commission's staff learned that National Bank of North America (NBNA), a major Bohack creditor, had hired Touche Ross & Co. (Touche Ross), another national auditing firm, to review the audit of Bohack (conducted by PMM) for the fiscal year ending January 26, 1974. The purpose of Touche Ross' review was to determine whether NBNA had any basis for prosecuting a civil action against PMM. Misag Tabibian, a partner in Touche Ross' New York City office, actually conducted the review.

The respondents refused to comply with subpoenae duces tecum served on them by the staff, asserting that any substantive information gathered

in the course of their review was protected from disclosure to the Commission on several grounds, including, among others, that: (1) the Touche Ross review was in the nature of "peer review"; and (2) there was a "confidentiality" agreement among the parties to the review, i.e., Touche Ross, NBNA, and PMM.

In its decision, the court considered and ultimately rejected the respondents' arguments and held, *inter alia*, that courts and administrative agencies are "entitled to every man's evidence." The court also held that the Commission's investigation was proper and stated that "the public interest will be served by a full and vigorous exploration of all relevant evidence, and information which could lead to relevant evidence."

In accordance with its decision, on October 28, 1977, the court issued an order compelling the respondents to comply with the subpoenae served upon them.

SEC v. Charles Jacquin et Cie., Inc.[85]—In connection with its investigations in the Matters of Emersons, Ltd. (Emersons) and Charles Jacquin et Cie., Inc. (Jacquin), the Commission's staff issued two subpoenae duces tecum to Jacquin, a distiller, and its principal officer, requesting the production of certain documents regarding payments by Jacquin of bribes, rebates and kichbacks to retailers of its liquor products as an inducement to purchase these products.

After a failure to comply with the subpoenae, the Commission applied to the United States District Court for the District of Columbia for an order requiring Jacquin to comply with the Commission's subpoenae. On September 8, 1976, after a hearing, the Court issued such an order. Subsequently, Jacquin failed to produce the documents which were required by the subpoenae and the Court's order.

The Commission thereupon moved the District Court for an order adjudging Jacquin and its two principal officers in civil contempt of the September 8 order, and further fining the company and its two principal officers and appointing a Special Agent to secure compliance with the September 8 subpoena enforcement order.

On December 2, 1976, after a hearing, the Court issued an order finding Jacquin and its two principal officers in civil contempt of the September 8 Order, fining the two officers $1,000 per day for each day after the order that the September 8 Order was not complied with, and appointing a Special Agent to gather from Jacquin's premises all material responsive to the Commission's subpoenae and to take such other necessary action to assure compliance with the Court's September 8 Order. The Special Agent's fees and expenses were ordered by the Court to be paid by Jacquin.

During the course of his 30 day mandate, the Special Agent conducted a thorough review of Jacquin's files and interviews of its personnel in an effort to secure compliance with the Court's Orders. As a result, the Special Agent delivered numerous documents to the Commission and filed with the Court a detailed report covering the methods and results of his inquiry.

The appointment of the Special Agent and his activities and findings, as set forth in his report, constituted an invaluable aid to the Commission's investigation and ultimately helped lead to the filing of a civil injunctive action against Jacquin and entry of a Judgment by consent against the company and its two principal officers.[86]

DELINQUENT REPORTS PROGRAM

Fundamental to the success of the disclosure scheme of the Federal securities laws is the timely filing in proper form and content of annual, periodic, current reports and other filings required of issuers and individuals. The Delinquent Reports Program was commenced by the staff three years ago to identify those situations wherein required reports have not been timely filed and, when appropriate, to recommend remedial enforcement action. Such enforcement actions can include suspension of trading in the securities of a registrant, thus alerting the public to the lack of current and accurate information and/or, when necessary, the initiation of an enforcement action which may include (1) the seeking of a court order requiring the filing of delinquent reports coupled with an injunction against further violations of the Exchange Act's reporting provisions and (2) a revocation or temporary suspension of a registrant's securities pursuant to Exchange Act Section 12(j).

The staff of the Commission continuously monitors compliance with the reporting requirements of Sections 13 and 15(d) of the Exchange Act. When Commission records indicate a delinquency in filing a report required to be filed by Exchange Act Section 13(a), the staff will attempt to, among other things, mail the registrant a notice of detected delinquency and request that a written explanation be filed under cover of Form 8-K. On July 14, 1975[87], the Commission announced its intention to include thereafter in a registrant's public file certain correspondence to and from a registrant concerning its delinquency notwithstanding the registrant's continued filing responsibilities. This procedure makes available to the public a delinquent registrant's reasons for failing to meet its statutory disclosure obligations.

The Commission suspended trading in the securities of approximately thirty registrants during the 1977 fiscal year primarily based on their failure to file at least one required annual report on Form 10-K. These suspensions were temporary—they ran for one ten-day period for each delinquent registrant.

During this fiscal year, the Commission initiated six civil actions against delinquent registrants and other persons seeking court orders compelling the immediate filing of delinquent reports or other required filings and permanently enjoining future analagous Exchange Act violations. Three of those actions were resolved by consents to the entry of, *inter alia*, final judgments of permanent injunction.[88] One case, *SEC v. Aminex Resources Corporation*, was resolved by the grant of a summary judgment in favor of the Commission which included a final judgment of permanent injunction after a preliminary injunction had previously been entered by the Court.[90] Two actions are pending.[89] Another civil action under this Program, *SEC v. MacMillan Ring-Free Oil Co. and John M. Shaheen*, is noteworthy because the Commission sought and obtained injunctive relief by consent against both the delinquent registrant and its chief executive officer.

In this fiscal year, the Commission also initiated three civil contempt proceedings based on delinquencies in spite of court ordered injunctions against such violations. One of these proceedings deserves particular mention. *SEC v. Southwestern Research Corporation* was a civil injunctive action settled by consent upon which a Final Judgment of Permanent In-

junction was entered on June 12, 1975 by the United States District Court for the District of Columbia. Having detected subsequent violations of this injunction, the Commission initiated a civil contempt proceeding on December 26, 1976 against both Southwestern Research Corporation and its president and chief executive officer. After a hearing on the matter, on February 28, 1977, the Court entered an order finding both parties in civil contempt of the Final Judgment of Permanent Injunction and ordering that the delinquent reports be filed and caused to be filed by a specified date. In addition, the Court ordered that should the delinquent reports not be filed by the specified date or, thereafter, if reports were not filed and caused to be filed in proper form with the Commission in compliance with the Final Judgment of Permanent Injunction, a civil fine would be imposed separately against the corporation in the amount of $100 and the named chief executive officer and president in the amount of $1000 for each report for each day that each report is not timely filed with the Commission.[91]

Two administrative proceedings were initiated by the Commission under the Program pursuant to Section 12(j) of the Exchange Act to determine whether the registration of securities with the Commission should be suspended or revoked due to the failure of the registrant to file, *inter alia*, Form 10–K annual reports and thus to comply with the reporting provisions of Section 13 (a) of the Exchange Act. These proceedings were the first instituted after the 1975 Amendments to the Securities Act which expanded Commission authority to suspend or revoke the registration of a security. Exchange Act Section 12(j) provides that the Commission, for the protection of investors, may deny, suspend for a period of not exceeding twelve months, or revoke the registration of a security, if the issuer has failed to comply with any provision of the Exchange Act. Thereafter, broker-dealers are prohibited from engaging in any transaction or inducing the purchase or sale of any such security. One of the proceedings has been concluded by the revocation of the registration of the security[92], and the other administrative proceeding is pending.[93]

CRIMINAL PROCEEDINGS

Members of the staff of the Commission who have investigated a case and are familiar with the facts involved and the applicable statutory provisions and legal principles are often requested by the Department of Justice to participate and assist in the trial of a criminal case referred to the Department, and to participate and assist in any subsequent appeal from a conviction.

The criminal cases that were handled during the fiscal year demonstrate the great variety of fraudulent practices that have been devised and employed against members of the investing public.

U. S. v. William H. Brown, et al.— In July 1977, Judge William W. Knox of the United States District Court for the Western District of Pennsylvania imposed the two longest white collar sentences in the history of the District upon two securities law violators.[94] This action was the culmination of an extensive investigation by attorneys from the Philadelphia Branch Office, the U. S. Attorney's Office, Pittsburgh, Pennsylvania, and the Fraud Section of the Criminal Division, United States Department of Justice. In the 22 count indictment, William H. Brown, Dale R. McDonald and Robert E. Lindsay, Jr., were charged with con-

spiracy, securities fraud, mail fraud and the sale of unregistered securities. The indictment alleged that, from January 1971 until November 1976, the defendants devised a scheme to defraud over 120 investors of more than $1,732,000 by the sale of unregistered investment contracts in Investors Security Leasing Corporation, Monroeville, Pennsylvania. Brown was also the former president of Investors Security Corporation, a broker-dealer which had been registered with the Commission until August 1975, when it was placed in SIPC trusteeship in connection with an injunctive action brought by the Commission staff based on alleged violations of the net capital and antifraud provisions of the Federal securities laws.

Many of the investors were unsophisticated persons who lived in remote areas of Pennsylvania and West Virginia and had invested their life savings in Investors Security Leasing Corporation. The indictment charged that as a result of this scheme, defendant Brown received in excess of $310,000; defendant McDonald in excess of $93,000; and defendant Lindsay in excess of $45,000.

Prior to trial,defendant Lindsay pled guilty to one count of conspiracy and one count of securities fraud. Lindsay was sentenced to three years imprisonment and three years probation. However, the court suspended all but sixty days of Lindsay's prison sentence and ordered Lindsay to serve the remaining sixty days imprisonment on thirty consecutive weekends.

In April 1977, following a three week jury trial, Brown and McDonald were convicted on 19 counts of the indictment. Brown was sentenced to a term of two years imprisonment on each of the mail fraud counts, such sentences to run concurrently; and a term of two years imprisonment on the conspiracy count. The court further ordered that each of Brown's two year sentences were to run consecutively.

McDonald was sentenced to a term of two years imprisonment on the conspiracy count. He received a term of one year imprisonment on each of the securities related counts, such sentences to run concurrently. He also was sentenced to a term of one year on each of the mail fraud counts, such sentences to run concurrently. The court further ordered that the above sentences were to run consecutively.

U.S. v. Maurice A. Lundy, et al.— On October 21, 1977, Maurice A. Lundy, a Rhode Island securities broker, pleaded guilty to two counts of an indictment charging him with violations of the registration and antifraud provisions of the Federal securities laws in connection with the offer and sale of scotch whiskey warehouse receipts.[95] The case was significant in that the underlying security was an investment contract in the form of a whiskey warehouse receipt representing ownership of raw spirits in the United Kingdom.

In 1973, Lundy had been a defendant in a civil action which resulted in the first judicial determination that scotch whiskey warehouse receipts were securities within the contemplation of the Securities Act.[96]

The criminal action, which developed from the civil action, involved the participation among the Company Fraud Department of Scotland Yard as well as the Commission and the Department of Justice and was based, among other things, upon the fact that, in selling the receipts, Lundy had misrepresented the investment as being "insured for profit" and omitted to disclose that the whiskey covered by the receipts was "not in good

order, set up properly or under expert supervision in the United Kingdom".

U.S. v. Robert W. Bradford and Bertsil L. Smith—On February 22, 1977, as a result of the Commission's referral of its investigative files to the Department of Justice concerning Robert W. Bradford and Bertsil L. Smith, both of Memphis, Tennessee, a Federal grand jury in Atlanta returned an indictment charging Bradford with eight counts of wire fraud and Smith with five counts of wire fraud in connection with transactions involving municipal securities.[97]

The indictment charged, among other things, that Smith and Bradford induced investors to purchase municipal bonds and converted the proceeds to their personal use.

After a four day jury trial Bradford was convicted on five counts of wire fraud and sentenced to two years of imprisonment and two years probation.

Smith pleaded guilty to two counts of wire fraud and was sentenced to serve eighteen months on one count and three years on the second count to run consecutively with the first count. The sentence on the second count was suspended, and Smith is to be placed on probation after serving eighteen months imprisonment.

U. S. v. Robert Berkson, et al.,— In June 1975, after investigations by the Commission and the United States Attorney for the Southern District of New York, a grand jury indicted Wilbur Hyman, Robert Berkson, Maurice Rind, and James Gallentine, former officers and employees of Packer, Wilbur & Co., Inc., a now defunct broker-dealer, for violations of, *inter alia*, the antifraud provisions of the Exchange Act. The defendants were charged with misappropriating customer securities held in trust by Packer, Wilbur & Co., Inc., selling and pledging those securities, and using the proceeds, which were in excess of $200,000, for their own benefit. The sales and pledges were accomplished by the use of forged stock transfer powers. After the return of the indictment, defendant Hyman fled to Spain, where he remains a fugitive.

In April 1976, prior to the trial of this matter, defendant Gallentine pleaded guilty to one count of the 10 count indictment and, thereafter, was sentenced to a term of imprisonment of 15 months and was fined $1,500. (Imposition of 12 months of the sentence was suspended.)

In June 1976, after a jury trial, defendants Berkson and Rind were found guilty. Defendant Berkson was sentenced to a term of imprisonment of five years, imposition of which was suspended, and was fined $25,000. Defendant Rind was sentenced to a term of imprisonment of 18 months and was fined $10,000.[98] Appeals by both of these defendants were argued before the Court of Appeals for the Second Circuit, which affirmed the convictions in December 1976. Thereafter, the United States Supreme Court refused to grant certiorari.

On April 13, 1977, the Commission ordered the institution of public administrative proceedings against Berkson, Rind, and Gallentine, based *inter alia*, on the above plea and convictions. On July 26, 1977, the order for administrative proceedings was amended as to Berkson and Rind, to include additional convictions arising from other, unrelated facts.

U.S. v. Larry L. Stevens, a/k/a Frank Goodman—In September 1977, a 39 count indictment was returned in the United States District Court for the Western District of Washington alleging violations of the mail fraud, securities fraud, and bankruptcy fraud statutes by Larry L. Stevens, a/k/a

Frank Goodman, former president of Northwestern Mortgage Investors Corporation (Northwestern), Seattle, Washington.[99] The defendant, through Northwestern and its related companies, and by numerous misstatements and omissions, raised over $5 million from approximately 1,700 investors under various estate oriented investment programs, the primary one being a four-year 8 percent promissory note secured by a fractional interest in real property. The company made extensive use of newspaper, magazine, television, radio and mail advertising, and attracted many elderly people on fixed incomes as investors. The alleged violations of the bankruptcy fraud statute arise out of concealment of assets and false statements in connection with the Chapter X Reorganization of Northwestern, in which the Commission, through the Seattle Regional Office, is a party. A trial date of March 6, 1978 was set by the court.

U. S. v. Dale E. Baker and Jake Evenblij—A 27 count indictment was returned by a grand jury on November 19, 1977, in the Western District of Washington after investigation by the Commission and the F.B.I.[100] The indictment charges the defendants with mail fraud, wire fraud, and securities fraud in connection with an "advance fee" scheme. It is alleged that the defendants used a Cayman Island, British West Indies company controlled by Baker and its purported United States agent, Insured Leasing Services, to obtain fees ranging from 1 percent to 10 percent of the promised loan from various borrowers in five states in exchange for "loan commitments," lease-purchase agreements, and letters of intent totaling over $11 million.

It is further alleged that the defendants promised to maintain the advance deposit in a trust account and utilized a forged letter from a Cayman Island bank verifying $5.5 million in funds to them in order to obtain the deposits. It is also alleged the defendants falsely claimed that a well-known brokerage firm was acting as their agent and had given them authority to use its name and reputation in connection with obtaining advance deposits from borrowers. The defendants are awaiting trial, which is scheduled for early 1978.

U.S. v. E. M. "Mike" Riebold— A 14 count indictment was returned by a Federal Grand Jury in Kansas City, Missouri charging E. M. "Mike" Riebold with 6 counts of securities fraud, 3 counts of wire fraud, and 5 counts of sales of unregistered securities.[101] The indictment alleged that Riebold defrauded purchasers of Time-Western Corporation's common stock and fractional undivided interests in oil and other mineral rights by means of false representations concerning the assets of Time-Western, the nature of the securities being sold, the rate the investor would receive on his investment and the use of the proceeds obtained from the sale of the securities. The indictment also alleged that Riebold failed to disclose the fact that he had been criminally convicted of securities fraud violations on December 19, 1975;[102] that the assets of Time-Western were inflated; and that a well of Time-Western had been tested by an expert and shown not to be commercially feasible. The indictment also alleged that Riebold converted substantial sums of money paid by purchasers of Time-Western securities to his own personal use and benefit.

On February 2, 1977, Time-Western and Riebold were enjoined by consent from further violations of the registration and antifraud provisions of the

Securities Act and Exchange Act in connection with the offer and sale of Time-Western securities.

USA, ex rel. SEC v. Syphers[103] — On January 13, 1977, the Commission instituted a criminal contempt proceeding in the United States District Court for the District of Arizona against John A. Syphers (Syphers). Syphers was charged with wilfully violating and disobeying an order of permanent injunction issued by the Honorable William P. Copple in 1974 enjoining him from violating the registration and antifraud provisions of the Federal securities laws in connection with the securities of Techni-Culture, Inc., or any other securities.[104] In the instant action Syphers was charged with engaging in conduct violative of this injunction. Specifically, he was charged with improperly removing restrictive legends from the securities of Tucker Drilling Company, Inc. in violation of the registration provisions of the Securities Act.

On June 24, 1977 Syphers entered a plea of guilty to criminal contempt and, on August 15, 1977, Judge Copple imposed a fine of $500.[105]

U.S. v. Barry S. Marlin — This case involved a scheme to defraud numerous investors of more than $12 million through a series of fraudulent schemes as alleged in an indictment returned on July 27, 1977.[106] One of the alleged schemes involved real estate limited partnerships with a significant tax shelter feature. In fact, the indictment alleges that no properties were purchased, but amounts invested were, in small part, returned to investors as purported income and the investors were induced to falsely report tax deductions. Other schemes alleged in the indictment include the fraudulent promotion of a Grand Cayman Island bank which had no real existence, the fraudulent solicitation of funds for purported deposit in that bank and the raising of funds through the sale of various securities to finance other fraudulent ventures of the defendant. The indictment further alleges that the defendant diverted a large part of the funds raised to his own use and benefit. The case is awaiting trial in Los Angeles.

U.S. v. Robert Waldman, et al.[107] — After an eight day trial, Robert Waldman and David Dick, general partners of several Massachusetts real estate limited partnerships were found guilty of fifteen counts of a fifty-eight count indictment charging them with securities fraud in the sale of limited partnership interests to 7,000 Massachusetts residents for approximately $35 million. The defendants were found to have defrauded investors by misrepresenting the financial condition of the partnerships, paying dividends out of capital or loans and by illegally diverting funds to companies controlled by the defendants. Dick was sentenced to ten years imprisonment and Waldman was sentenced to five years imprisonment.

U.S. v. Nicholas Chiola[108] — On February 27, 1976, Nicholas Chiola was indicted by a Federal Grand Jury in Chicago, Illinois. The indictment charged that while an employee of a registered broker-dealer, Chiola caused that broker-dealer to fail to make and keep certain records required under the Commission's record-keeping rules. The case against Chiola was developed by the Commission's staff following the discovery that Chiola had embezzled substantial sums of money from his employer and concealed the theft through false and inaccurate entries on the broker-dealer's books and records.

Chiola was subsequently convicted and sentenced to a term of two years in prison based upon his plea of guilty.

After sentencing, Chiola appealed the conviction to the United States Court of Appeals for the Seventh Circuit. Among other things, Chiola challenged the sufficiency of the indictment on the grounds that because he himself was not a registered broker-dealer, he was unable to violate the Commission's recordkeeping rules, which apply only to broker-dealers.

The Court rejected Chiola's contention and affirmed the conviction. In doing so, it noted that under 18 U.S.C. § 2(b), an accessory who lacks capacity for the crime is punishable as a principal if he causes another with capacity to perform the offense. The Court concluded that it was not necessary for the government to separately allege a specific violation of 18 U.S.C. § 2(b) in order to hold Chiola as a principal to the crime charged. The Court also refused to find any ambiguity between the language of 18 U.S.C. § 2(b) and the criminal provisions of the Securities Exchange Act of 1934.

In October, 1977, the Supreme Court denied Chiola's petition for *certiorari*.

U.S. v. Joseph B. Erni — This case involved the criminal prosecution for securities fraud of an individual with a long history of engaging in fraudulent activities. Joseph B. Erni had prior convictions in the District of Columbia and in United States District Court in Colorado.

In January 1971 and continuing through 1975, Erni created a series of enterprises which raised monies from the investing public under the guise of engaging in a variety of businesses including the ownership of lands located in Colorado, subdivision and residential development of real estate, and the manufacture, sale and installation of a patented waste disposal system. In fact the enterprises had little or no assets or operations. Monies raised from the public to fund these enterprises were diverted by Erni to repay investors in previous ventures and to pay his personal expenses.

On February 17, 1975 Erni consented to the entry of a final judgment of permanent injunction.[109]

On August 11, 1977 a Federal grand jury at Milwaukee, Wisconsin returned a multi-count indictment charging Erni with violations of the antifraud and registration provisions of the Federal securities laws and with interstate transportation of money obtained by fraud in connection with the offer and sale of securities of Western Armon Systems, Inc. The indictment also charged Erni with making materially false and misleading statements concerning that company including its ownership of franchise rights to manufacture and sell a waste treatment system, its projected gross profits and the expected market value of the company's common stock.[110]

U.S. v. Institutional Securities of Colorado, Inc., et al. — This case involves both a civil and criminal action against a Denver, Colorado broker-dealer Institutional Securities of Colorado, Inc. (ISOC) and three of its principles who, by falsifying records and bookkeeping entries and by misappropriating customers' assets, continued in business while insolvent and in violation of the Commission's net capital rule.

In the fall of 1976, the Commission filed a civil action seeking a temporary restraining order and permanent injunction. The Temporary Restraining Order was entered September 29, 1976.

The Commission's files were subsequently referred to the Department of Justice, and the matter was presented to a Federal grand jury for the District of Colorado in Denver. A Denver Regional Office staff attorney was ap-

pointed Special Assistant U.S. Attorney to assist in the presentation of the matter to the grand jury and trial of the case.

On April 15, 1977, a 40-count indictment was returned charging ISOC, Abraham Goldberg, William Bernhard, and Stanley Richards, with violations of the net capital provisions of the securities laws, false filings with the Commission, falsification of books and records, fraud in the sale of stock, misappropriation and hypothecation of customers' funds and securities, mail fraud and wire fraud, among other things.[111]

On July 28, 1977 Goldberg and Bernhard pleaded guilty to a three-count information charging them with violating the antifraud and net capital provisions of the Exchange Act and with conspiracy to violate the antifraud, net capital, record keeping and broker-dealer reporting provisions of the Exchange Act as well as certain sections of Title 18 of the U.S. Code. Also on July 28, 1977 ISOC pleaded *nolo contendere* to violating the net capital provisions of the Exchange Act. On September 2, 1977 Goldberg and Bernhard were sentenced to eight days in jail, a $5,000 fine and two years probation which was conditioned upon each performing 408 hours of charitable work. On the same day, ISOC, presently in SIPC trusteeship, was sentenced to a fine of one dollar. At the time of sentencing, the 40-count indictment against the defendants was dismissed.

On September 29, 1977 Stanley Richards, who had also been charged in the indictment was found not guilty.[112]

The Richardson & Co. Cases — As a result of an extensive Commission and Grand Jury investigation involving the collapse in April 1975 of Richardson & Co., a brokerage firm located in Century City, California, four indictments were returned in Los Angeles, California against 10 individuals alleging conspiracy, securities fraud, wire fraud and misapplication of bank funds, and one criminal action was brought in New York City against one person charging willful failure to comply with the broker-dealer recordkeeping requirements.

Richardson & Co. was a "third market" broker which arranged for the purchase and sale of large blocks of stock negotiated directly between major financial institutions without using the national stock exchanges. The prosecutions involved a massive illegal short selling scheme involving large blocks of exchange listed securities and secret kickback schemes between Richardson & Co. and employees of four major financial institutions. Ten of the eleven defendants named in the indictments pleaded guilty to various counts of the indictments and have been sentenced. Eight of the ten received prison sentences. The remaining defendant, Thomas Patrick Richardson, president and controlling shareholder of Richardson & Co., was convicted on May 1, 1976 in a bench trial before the Honorable W. Matthew Byrne and sentenced to a six year prison term, which conviction is currently on appeal. He is awaiting trial on a second indictment in which the other co-defendants have already been convicted and sentenced.

U.S. v. Thomas P. Richardson, et al.[113]—This case involved a 46-count indictment alleging that Thomas Patrick Richardson, Thomas C. Thomas, Jr., treasurer of Richardson & Co., and Kevin Kelley and John E. Kelley, vice presidents and traders at Richardson & Co., effected in excess of $25 million worth of illegal short sales of stock and fraudulently represented to various brokerage firms that

Richardson & Co. owned the stock it purported to be selling through these brokerage firms. The indictment further alleged that the defendants borrowed in excess of $25 million of stock from various stock lenders including Harvard University, Yale University, Columbia University and Bowery Savings Bank and used this borrowed stock to make delivery to the various stock brokerage firms to whom they fraudulently represented that they owned the stock. The indictment further alleged that the defendants concealed their short sales and stock borrowings by creating fictitious and fraudulent entries on Richardson & Co.'s books and records and by filing false financial statements with the Commission and the NASD which failed to reveal the short sales and the liability resulting from the stock borrowings.

Also included in the indictment, on one count of wire fraud, was Joseph C. Werba, former president of Wells Fargo Security Clearance Corporation, a wholly-owned subsidiary of Wells Fargo Company. Werba was charged with the unauthorized clearing of stock transactions for Richardson & Co. and making of unauthorized loans to the firm. In addition to the 6 year prison sentence for Thomas Patrick Richardson, Thomas C. Thomas was sentenced to two years imprisonment; Kevin Kelley and John Kelley were both sentenced to one year imprisonment and Werba was sentenced to nine months imprisonment.

U. S. v. John C. Gammage[114]—This case concerned a one-count information filed in New York City charging the defendant with fraudulently obtaining money from the New York City brokerage firm of Shields Model Roland, Inc. The scheme, as alleged, involved a charging of interest by Wells Fargo Securities Clearance Corporation at the direction of Joseph C. Werba to the Shields firm when, in fact, no interest was charged or received by Wells Fargo Clearance Corporation. According to the information, Werba and Gammage divided the purported interest payments of $10,700 made by the Shields firm. The defendant Gammage pleaded guilty to the charge of fraudulently falsifying the brokerage firm's books and, on February 15, 1977, he was sentenced to one year imprisonment, which was suspended, and he was placed on probation for one year.

U.S. v. Charles Kummer, et al.[115]—The case involved a 23 count indictment alleging that Charles Kummer, while employed as a Senior Securities Trader at Bankers Trust Co. of New York, received secret cash kickbacks amounting to approximately $800,000 from the defendants Thomas Patrick Richardson, John Richardson, and James Richardson in return for causing Bankers Trust Co. of New York to sell in excess of 8.8 million shares of stock of various companies owned by pension funds through Richardson & Co. The indictment further alleged that the defendant Kummer intentionally bought stocks for pension funds managed by Bankers Trust Co. of New York from Richardson & Co. at prices which were higher, and sold stocks to Richardson & Co. at prices which were lower, than those available at the time the trades were executed resulting in losses to the pension funds of approximately $3 million during the period 1972 through 1974. The indictment further alleged that Kummer received the secret kickbacks based upon a percentage of profits Richardson & Co. made in stock trades with Bankers Trust Co. of New York.

Defendants Kummer, John Richardson and James Richardson pleaded

guilty to various counts of the indictment. Kummer was sentenced to six months imprisonment, and an additional five years probation. Additionally, Kummer was fined $5,000 and ordered to make restitution in the amount of $222,500. John Richardson was sentenced to six months in jail and a $5,000 fine and James Richardson to 4-½ months in jail and a $5,000 fine. Thomas P. Richardson is awaiting trial.

U.S. v. Richard Douglas Avery[116]—The indictment charged that defendant Avery, while employed as a senior securities trader at Financial Programs, Inc., an investment adviser which furnished investment advice to a number of Denver based mutual funds, violated provisions of the Investment Company Act by accepting secret cash kickbacks of $6,000 and $9,000 from Richardson & Co. in return for causing the mutual funds affiliated with Financial Programs, Inc., to buy and sell substantial amounts of securities through Richardson & Co. Avery pleaded guilty to both counts of the indictment and was sentenced to 9 months in jail and fined $10,000 for each count.

U.S. v. Peter Klaus[117]—This indictment charged that the defendant Peter Klaus, while employed as a stock trader in the trading department of Fidelity Union Trust Company, Newark, New Jersey, engaged in securities fraud by accepting a cash kickback of $10,000 from Richardson & Co. in return for causing Fidelity Union Trust & Co. to sell 114,900 shares of Travelers Corp. common stock in the amount of $3,734,250 through T.P. Richardson & Co. Klaus pleaded guilty to the charge and was fined $4,000 and placed on three years probation.

U.S. v. Westco Financial Corporation et al.—This case involves the fraudulent unregistered interstate distributions of the securities of two corporations and one limited partnership. The principal of Westco Financial Corporation (Westco), a Denver, Colorado broker-dealer, and an officer, director or general partner in all three issuers effected these distributions through Westco in participation with the other general partner and corporate officers and directors.

As a part of the same course of conduct, securities and other assets of Westco customers were misappropriated and converted in a number of ways, including the placing of worthless securities in discretionary accounts, executing unauthorized transactions, converting customers' securities and free credit balances and hypothecating customers' securities. In addition, in order to conceal the financial condition of Westco and to conceal the aforementioned conduct, Westco's books and records were falsified and Westco filed a false report with the Commission.

On November 11, 1975 the Commission filed a civil action alleging violations of the registration, antifraud, record keeping and reporting provisions of the Federal securities laws. The Commission sought injunctions against Westco, its principal, Old Colorado City Corporation, its officers and directors, Westco Investment Corporation, its president and controlling shareholder, Tanglewood Ranch 50 –A, Ltd. and its general partners. The Commission also sought appointment of receivers for Old Colorado City Corporation, Westco Investment Corporation and Tanglewood Ranch 50 –A, Ltd. As a part of the same action, the Securities Investors Protection Corporation applied for the appointment of a SIPC trustee. On November 14, 1975, the Court entered an Order granting the Commission's

and SIPC's request for permanent injunction. The defendants neither admitted nor denied the Commission's allegations.[118]

The Commission files were subsequently referred to the Department of Justice, and the matter was presented to a Federal grand jury for the District of Colorado. A Denver Regional Office staff attorney was appointed Special Assistant U.S. Attorney to assist in the prosecution of this case.

On May 12, 1977 an indictment was returned charging Westco and Charles Julius Johnson (Johnson), an officer and director of Westco, with violating the antifraud and broker-dealer reporting provisions of the Exchange Act and Milford A. Sims (Sims), of Cody, Wyoming, with violating the antifraud provisions of the Exchange Act.[119]

On July 26, 1977, Johnson pleaded guilty to two counts of securities fraud, and on September 1, 1977, he was sentenced to 3–1/2 years probation, with the requirement he make restitution to investors. On July 29, 1977, Sims pleaded guilty to one count of securities fraud, and on September 1, 1977, he was sentenced to 3–1/2 years probation with the requirement he make restitution to investors. On September 16, 1977, a plea of *nolo contendere* by Westco was accepted to one count of securities fraud, and the company was fined $5,000.[120]

Organized Crime Program

The prosecution of securities cases is often based primarily on circumstantial evidence requiring extensive investigation by highly trained personnel. The difficulties in such investigations and prosecutions are compounded when elements of organized crime are involved. Witnesses are usually reluctant to cooperate because of threats or fear of physical harm. Books, records, and other documentary evidence essential to the investigation and to a successful prosecution may be destroyed or nonexistent. The organized crime element is adept at disguising its participation in transactions, through the use of aliases and nominee accounts, by operating across international boundaries, and by taking advantage of foreign bank secrecy laws. It frequently operates through "fronts" and infiltrates legitimate business concerns. Organized crime also has an extensive network of affiliates throughout this country in all walks of life, and in many foreign nations. As a result of these problems, civil and criminal litigation involving organized crime can result in unusually lengthy proceedings. Despite these difficulties, the Commission, working in cooperation with other enforcement agencies, has been able to make major contributions to the fight against organized crime.

During the fiscal year 1977, the organized crime program focused principally on two goals: (1) increasing the Commission's effectiveness in obtaining current reliable information relating to organized criminal activity in the securities industry; and (2) aggressively pursuing to completion investigations of situations brought to the Commission's attention as potentially involving the infiltration of elements of organized crime into the industry.

In order to increase the flow of reliable data, an intelligence unit was established in 1974 in the Division of Enforcement. Its principal function is to maintain channels of communication with state, local and other Federal agencies, as well as comparable agencies of foreign governments, which might have information on organized criminal activity in the securities industry. Information received by

this unit is correlated with other available information and evaluated in light of the Commission's responsibilities under the Federal securities laws. Information indicating possible securities law violations by organized criminal elements is relayed by the intelligence unit to those other members of the staff whose principal duties are to investigate activity by organized crime. This program has already generated a significant number of new cases, as well as contributing new sources of information to ongoing investigations.

In furtherance of the intelligence function, members of the staff have continued to participate in seminars and lectures sponsored by state and local governments, and their representatives have been included in the Commission's training programs. This has alerted local authorities to the role of the Commission in curtailing organized criminal activity in the securities industry. Members of the Commission staff are also assigned on a full time basis to certain of the Justice Department's Organized Crime Strike Forces. Both the Strike Forces and the Commission staff have benefited thereby in learning more about organized criminal activity in the securities industry.

As a result of the organized crime unit's enforcement efforts during the past fiscal year, the Commission filed injunctive actions naming 32 persons and contributed to the return of indictments naming 18 individuals and the convictions of 14 of them. Four persons considered to be important members of organized crime were enjoined, two such members were indicted and one was convicted on indictments returned in prior years.

The Commission staff assigned to the New York Organized Crime Division Strike Force conducted an extensive investigation into the activities of Tri-State Energy, Inc. (Tri-State). The investigation disclosed that from June 1972 through June 1973 certain officers and principal shareholders of Tri-State joined forces with an officer of Bankers Trust Company, of New York and several known securities violators for purposes of enriching themselves at the expense of lending institutions, creditors and the general investing public through a sophisticated bank and stock swindle.

In order to accomplish their objectives, they caused the issuance of false and misleading financial statements and reports, prepared fraudulent purchase orders, misrepresented certain material facts to banks, artificially inflated the market price of certain securities, and distributed unregistered stock. Following the end of the fiscal year, as a result of this investigation, a Federal grand jury in the Southern District of New York indicted C. W. Deaton, Leonard James, William Rubin, Otto Sebold, Peter Crosby and Raymond J. Ludwig.

Cooperation With Other Enforcement Agencies

In recent years the Commission has given increased emphasis to cooperation and coordination with other enforcement agencies, including the self-regulatory organizations, enforcement agencies at the state and local level, and certain foreign agencies. Its programs in this area cover a broad range. For example, the Commission believes that certain cases are more appropriately enforced at the local rather than the Federal level where the activities, while perhaps violating the Federal securities laws, are essentially of a local nature. In these instances, the Commission authorizes the referral of the case to the appropriate state or local agency, and members of the staff familiar with it are made available for

direct assistance to that agency in its enforcement action. A member of the staff has been specifically designated as a liaison with state enforcement and regulatory authorities.

The Commission also has fostered programs designed to provide a comprehensive exchange of information concerning mutual enforcement problems and possible securities violations. During the fiscal year, it continued its program of annual regional enforcement conferences. These conferences are attended by personnel from state securities agencies, the U.S. Postal Service, Federal, and state and local offices of self-regulatory associations, such as the NASD. They provide a forum for the exchange of information on current enforcement problems and new methods of enforcement cooperation. One result of these conferences has been the establishment of programs for joint investigations. Although the conferences were initially hosted by the Commission's regional offices, many state and local agencies are now serving as sponsors or co-sponsors.

FOREIGN RESTRICTED LIST

The Commission maintains and publishes a Foreign Restricted List which is designed to put broker-dealers, financial institutions, investors and others on notice of unlawful distributions of foreign securities in the United States. The list consists of names of foreign companies whose securities the Commission has reason to believe have been, or are being, offered for public sale in the United States in violation of the registration requirements of Section 5 of the Securities Act. The offer and sale of unregistered securities deprives investors of all the protections afforded by the Securities Act, including the right to receive a prospectus containing the information required by the Act for the purpose of enabling the investor to determine whether the investment is suitable for him. While most broker-dealers refuse to effect transactions in securities issued by companies on the Foreign Restricted List, this does not necessarily prevent promoters from illegally offering such securities directly to investors in the United States by mail, by telephone, and sometimes by personal solicitation. During the past fiscal year, two corporations were added to the Foreign Restricted List, bringing the total number of corporations on the list to 101. The following companies were added during the year:

Mercantile Bank & Trust Company, Limited[121] — Information came to the attention of the Commission that this corporation, with an office in Kingstown, on St. Vincent in the Windward Islands, was offering and selling by mail, instruments purporting to be certificates of deposit, among other things, to investors in the United States. No registration statement under the Securities Act of 1933 has been filed with the Commission covering any of these instruments. Accordingly these offers and sales are in violation of Section 5 of the Securities Act.

Among the other instruments issued were letters of credit, cashiers checks, lines of credit, numbered-account checks and other evidence purporting to reflect cash on deposit.

International Trade Development of Costa Rica, S.A.[122] — The Commission received information that International Trade Development of Costa Rica, S.A. was engaged in publicly offering its securities, represented to be promissory notes, in the United States. No registration statement under the Securities Act has been filed with the Commission covering these

securities. Accordingly, the offering is in violation of Section 5 of the Securities Act.

NOTES TO PART 4

[1]See Office of Consumer Affairs Report.
[2]Securities Act Release No. 5841 (July 5, 1977), 12 SEC Docket 1098.
[3]Securities Exchange Act Release No. 13225 (February 1, 1977), 11 SEC Docket 1628.
[4]Securities Exchange Act Release No. 12851 (October 1, 1976), 10 SEC Docket 655.
[5]76 Civ. 4489 (CBM).
[6]Securities Exchange Act Release Nos. 13766 and 13769 (July 19, 1977), 12 SEC Docket 1277, 1284.
[7]Securities Exchange Act Release No. 13770 (July 19, 1977), 12 SEC Docket 1286.
[8]Securities Exchange Act Release No. 13766 (July 19, 1977), 12 SEC Docket 1283.
[9]Securities Exchange Act Release No. 13801 (July 25, 1977), 12 SEC Docket 1378.
[10]Litigation Release No. 7579 (September 23, 1976), 10 SEC Docket 544.
[11]Securities Exchange Act Release No. 13268 (February 16, 1977), 11 SEC Docket 1724.
[12]Securities Exchange Act Release No. 12752 (September 1, 1976), 10 SEC Docket 327.
[13]Securities Exchange Act Release No. 13976 (September 21, 1977), 13 SEC Docket 120.
[14]Securities Exchange Act Release No. 12930 (October 27, 1976), 10 SEC Docket 790.
[15]Securities Exchange Act Release No. 13213 (January 28, 1977), 11 SEC Docket 1623.
[16]Litigation Release No. 8163 (October 17, 1977), 13 SEC Docket 407.
[17]Litigation Release No. 7845 (March 24, 1977), 11 SEC Docket 2147.
[18]Litigation Release No. 6349 (May 2, 1974), 4 SEC Docket 258. See 41st Annual Report, p. 38.
[19]SEC v. Penn Central Co., et al., 425 F. Supp. 593 (E.D. Pa. 1976).
[20]Litigation Release No. 8057 (August 5, 1977), 12 SEC Docket 1510.
[21]Litigation Release No. 8059 (August 8, 1977), 12 SEC Docket 1511.
[22]Litigation Release No. 8116 (September 15, 1977), 13 SEC Docket 105.
[23]Litigation Release No. 7412 (May 26, 1976), 9 SEC Docket 754.
[24]Litigation Release No. 8001 (June 28, 1977), 12 SEC Docket 1093.
[25]Litigation Release No. 7887 (April 26, 1977), 12 SEC Docket 271.
[26]Litigation Release No. 7777 (February 10, 1977), 11 SEC Docket 1112.
[27]Litigation Release No. 8134 (September 30, 1977), 13 SEC Docket 296.
[28]Litigation Release No. 8132 (September 28, 1977), 13 SEC Docket 259.
[29]Litigation Release No. 8146 (September 6, 1977), 13 SEC Docket 7.
[30]Litigation Release No. 8073 (August 18, 1977), 12 SEC Docket 1563.
[31]Litigation Release No. 8026 (July 13, 1977), 12 SEC Docket 1153.
[32]Litigation Release No. 7550 (September 7, 1976), 10 SEC Docket 437.
[33]Litigation Release No. 7759 (January 27, 1977), 11 SEC Docket 1581.
[34]Litigation Release No. 7951 (June 1, 1977), 12 SEC Docket 747.
[35]Litigation Release No. 8164 (October 17, 1977), 13 SEC Docket 407.
[36]Litigation Release No. 7816 (March 9, 1977), 11 SEC Docket 1984.
[37]Litigation Release No. 7915 (May 10, 1977), 12 SEC Docket 418.
[38]Litigation Release No. 7828 (March 16, 1977), 11 SEC Docket 2039.
[39]Litigation Release No. 7464 (June 24, 1976), 9 SEC Docket 982.
[40]See 42nd Annual Report, p. 118.
[41]Litigation Release No. 7863 (April 8, 1977), 11 SEC Docket 2260.
[42]Litigation Release No. 7841 (March 23, 1977), 11 SEC Docket 2145.
[43]Litigation Release No. 7939 (May 19, 1977), 12 SEC Docket 506.
[44]Litigation Release No. 8036 (July 25, 1977), 12 SEC Docket 1410.
[45]Litigation Release No. 8050 (August 2, 1977), 12 SEC Docket 1453.
[46]Litigation Release No. 7888 (April 27, 1977), 12 SEC Docket 272.
[47]Litigation Release No. 7965 (June 9, 1977), 12 SEC Docket 811.
[48]Litigation Release No. 7929 (May 20, 1977), 12 SEC Docket 501.
[49]Litigation Release No. 7717 (December 30, 1976), 11 SEC Docket 1398.
[50]Litigation Release No. 8031 (July 19, 1977), 12 SEC Docket 1342.
[51]Litigation Release No. 7709 (December 27, 1976), 11 SEC Docket 5.
[52]Litigation Release No. 7596 (June 7, 1977), 12 SEC Docket 806.
[53]Litigation Release No. 7998 (June 28, 1977), 12 SEC Docket 1092.
[54]Litigation Release No. 7603 (October 6, 1976), 10 SEC Docket 687.
[55]Litigation Release No. 8131 (September 27, 1977), 13 SEC Docket 258.
[56]Litigation Release No. 7770 (February 2, 1977), 11 SEC Docket 1109.
[57]Litigation Release No. 7650 (November 15, 1976), 10 SEC Docket 980.
[58]Litigation Release No. 7760 (January 31, 1977), 11 SEC Docket 1662.
[59]Litigation Release No. 7736 (January 13, 1977), 11 SEC Docket 1504.
[60]Litigation Release No. 7622 (October 28, 1976), 10 SEC Docket 831.
[61]Litigation Release No. 7248 (January 23, 1976), 8 SEC Docket 1176.

[62]Litigation Release No. 7837 (March 23, 1977), 11 SEC Docket 2143.

[63]Litigation Release No. 7986 (June 22, 1977), 12 SEC Docket 1007.

[64]Litigation Release No. 7937 (May 25, 1977), 12 SEC Docket 505.

[65]Litigation Release No. 7297 (February 26, 1976), 9 SEC Docket 2.

[66]*SEC v. E.L. Aaron & Co., Inc., et al.*, Litigation Release No. 7966 (June 9, 1977), 12 SEC Docket 8.

[67]Litigation Release No. 7909 (May 5, 1977), 12 SEC Docket 339.

[68]Litigation Release No. 7970 (June 10, 1977), 12 SEC Docket 894.

[69]Litigation Release No. 7949 (June 1, 1977), 12 SEC Docket 747.

[70]552 F.2d 402 (C.A. 2, 1977).

[71]554 F. 2d 790 (C.A. 7, 1977).

[72]The Supreme Court had remanded the case in light of *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1975). See 425 U.S. 929 (1976).

[73]524 F. 2d 1064, 1066 (C.A. 7, 1975).

[74]554 F.2d at 794.

[75]CCH Fed. Sec. Rep., para. 96,141.

[76]U.S. Sup. Ct., Nos. 75–353, 75–354, 75–355.

[77]*Chris-Craft Industries, Inc. v. Piper Aircraft Corp.*, 303 F. Supp. 191 (S.D.N.Y., 1969), *affirmed in part and reversed and remanded in part*, 426 F.2d 569 (C.A. 2, 1970) (*en banc*); on remand, 337 F. Supp. 1128 (S.D.N.Y., 1971), *reversed and remanded*, 480 F.2d 341 (C.A. 2), *certiorari denied*, 414 U.S. 910 (1973); on remand, 384 F. Supp. 507 (S.D.N.Y., 1974), *modified*, 516 F.2d 172 (C.A. 2, 1975). In addition to the Commission's action against Bangor Punta and Piper for violation of Section 5 of the Securities Act, in which a consent injunction was entered, without defendants admitting or denying any of the allegations, the Commission sued Bangor Punta alleging violations of Section 17a of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, with respect to Bangor Punta's misleading registration statement. *SEC v. Bangor Punta Corp.*, 331 F. Supp. 1154 (S.D.N.Y., 1971), *affirmed in part and reversed in part*, 480 F.2d 341 (C.A. 2), *certiorari denied*, 414 U.S. 910 (1973).

[78]Senate Committee on Banking and Currency, Hearings Before the Subcommittee on Securities on S.510, 90th Cong., 1st Sess. 16, 33 (1967).

[79]S. Rep. No. 550, 90th Cong., 1st Sess. 3 (1967); H.R. Rep. No. 1711, 90th Cong., 2nd Sess. 4 (1968).

[80]*J.I. Case. Co. v. Borak*, 377 U.S. 426 (1964), which had also relied on Section 27 of the Exchange Act.

[81]422 U.S. 66, 78 (1975).

[82]*See, e.g., Lowenschuss v. Kane*, 520 F.2d 255 (C.A. 2, 1975) (tendering shareholder may sue offeror); *Smallwood v. Pearl Brewing Co.*, 489 F.2d 579 (C.A. 5), *certiorari denied*, 419 U.S. 873 (1974) (nontendering shareholder); *Electronic Specialty Co. v. International Controls Corp.*, 409 F.2d 937 (C.A. 2, 1969) (target company may sue for an injunction offeror); *H.K. Porter Co. v. Nicholson File Co.*, 482 F.2d 421 (C.A. 1, 1973) (offeror may sue to enjoin target from making misleading statements). *Cf. Crane Co. v. Westinghouse Air Brake Co.*, 419 F.2d 787, 798-99 (C.A. 2, 1969); *Union Pacific Railroad Co. v. Chicago and North Western Railway Co.*, 226 F. Supp. 400, 406 (N.D. Ill., 1964) (proxy contest).

[83]430 U.S. 1 (1977).

[84]Fed. Sec. L. Rep. (CCH), Par. 96,184 at 92,337 (S.D.N.Y. September 30, 1977).

[85]United States District Court for the District of Columbia, (Misc. No. 76-0141 filed August 23, 1976).

[86]Litigation Release No. 8164 (October 17, 1977), 13 SEC Docket 407.

[87]Securities Exchange Act Release No. 11534 (July 14, 1975), 7 SEC Docket 405.

[88]*SEC v. Getty Financial Corporation*, Litigation Release No. 7743 (January 19, 1977), 11 SEC Docket 1543; *SEC v. MacMillan Ring-Free Oil Co. and John M. Shaheen*, Litigation Release No. 7900 (May 2, 1977), 12 SEC Docket 335–336; and *SEC v. Ormont Drug & Chemical Co., Inc.*, Litigation Release No. 7987 (June 23, 1977), 12 SEC Docket 1008.

[89]Litigation Release Nos. 7884 (March 24, 1977), 11 SEC Docket 2147, and 8124 (September 23, 1977), 13 SEC Docket 256.

[90]*SEC v. Canadian Javelin Ltd., et al.*, Litigation Release Nos. 7642 (November 10, 1976), 10 SEC Docket 948 and 7779 (February 14, 1977), 11 SEC Docket 1772 and *SEC v. Bethmann Bank et al.*, Litigation Release No. 7933 (May 23, 1977), 12 SEC Docket 504.

[91]Litigation Release No. 7823 (March 16, 1977), 11 SEC Docket 2038.

[92]*In the Matter of Western Orbis Company*, Securities Exchange Act Release No. 13610 (June 9, 1977), 12 SEC Docket 772.

[93]*In the Matter of Ametex Corporation*, Securities Exchange Act Release No. 13418 (March 31, 1977), 11 SEC Docket 2156.

[94]Litigation Release No. 8026 (July 14, 1977), 12 SEC Docket 1153.

[95]Litigation Release No. 8168 (October 26, 1977), 13 SEC Docket 503.

[96]*SEC v. M. A. Lundy*, 362 F. Supp. 226 (D.C.R.I., 1973).

[97]Litigation Release No. 7813 (March 7, 1977), 11 SEC Docket 1983.

[98]Litigation Release Nos. 6955 (June 30, 1975), 7 SEC Docket 369; 7477 (July 1, 1976), 9 SEC Docket 1011; and 7530 (August 20, 1976), 10 SEC Docket 308.

[99]Litigation Release No. 8176 (October 31, 1977), 13 SEC Docket 630.

[100]Litigation Release No. 8185 (November 7, 1977), 13 SEC Docket 728.

[101]Litigation Release No. 8007 (June 30, 1977), 12 SEC Docket 1138.

[102]Litigation Release No. 7164 (November 12, 1975), 8 SEC Docket 514.

[103]CR. 77–15–PHX–WPC (D. Ariz).

[104]*SEC v. Techni-Culture, Inc., et al.*, Civil Action File No. 73–473–PHX– WPC.

[105]Litigation Release No. 8102 (September 6, 1977), 13 SEC Docket 1.

[106]Litigation Release No. 8113 (September 13, 1977), 13 SEC Docket 103.

[107]Litigation Release No. 8030 (July 19, 1977), 12 SEC Docket 1369.

[108]Litigation Release No. 7513 (August 5, 1976), 10 SEC Docket 4.

[109]Litigation Release No. 7272 February 10, 1976), 8 SEC Docket 1291; Litigation Release No. 7309 (March 11, 1976), 9 SEC Docket 176.

[110]Litigation Release No. 8086 (August 25, 1977), 12 SEC Docket 1594. Subsequently, Erni pleaded guilty to one count of the indictment.

[111]Litigation Release No. 7934 (May 25, 1977), 12 SEC Docket 504.

[112]Litigation Release No. 8167 (October 26, 1977), 13 SEC Docket 502.

[113]Litigation Release Nos. 7155 (November 7, 1975), 8 SEC Docket 428; and 7438 (June 9, 1976), 9 SEC Docket 868.

[114]U.S.D.C., S.D.N.Y., 76 CR 1155 (TPG).

[115]Litigation Release No. 8136 (September 30, 1977), 13 SEC Docket 297.

[116]U.S.D.C. C.D. Cal., CR–76– 1556–LEW.

[117]U.S.D.C. C.D. Cal., CR–76– 1557–LTL.

[118]Litigation Release No. 7177 (November 25, 1975), 8 SEC Docket 584.

[119]Litigation Release No. 7942 (May 26, 1977), 12 SEC Docket 507.

[120]Litigation Release No. 8158 (October 14, 1977), 13 SEC Docket 405.

[121]Securities Act Release No. 5751 (October 5, 1976), 10 SEC Docket 692.

[122]Securities Act Release No. 5725 (July 16, 1976), 10 SEC Docket 57.

Part 5
Investment Companies and Advisers

Part 5
Investment Companies and Advisers

Under the Investment Company Act of 1940 and the Investment Advisers Act of 1940, the Commission is charged with extensive regulatory and supervisory responsibilities over investment companies and investment advisers. The responsibility for discharging these duties lies with the Division of Investment Management.

Unlike other Federal securities laws, which emphasize disclosure, the Investment Company Act provides a regulatory framework within which investment companies must operate. Among other things, the Act: (1) prohibits changes in the nature of an investment company's business or its investment policies without shareholder approval; (2) protects against management self-dealing, embezzlement or abuse of trust; (3) provides specific controls to eliminate or mitigate inequitable capital structures; (4) requires that an investment company disclose its financial condition and investment policies; (5) provides that management contracts be submitted to shareholders for approval and that provision be made for the safekeeping of assets; and (6) sets controls to protect against unfair transactions between an investment company and its affiliates.

Persons in the business of advising others about securities transactions for compensation must register with the Commission under the Investment Advisers Act. This requirement was extended by the Investment Company Amendments Act of 1970 to include advisers to registered investment companies. The Advisers Act, among other things, prohibits fraudulent, deceptive or manipulative practices, performance fee contracts which do not meet certain requirements, and advertising which does not comply with certain restrictions.

The assets of investment companies and assets under the management of investment advisers constitute important resources for investment in the nation's capital markets. In order to continue their role of channeling individual savings into capital needed for industrial development, investment companies and investment advisers must have the confidence of investors. The safeguards provided by the Investment Company and Investment Advisers Acts contributes to sustaining such confidence.

NUMBER OF REGISTRANTS AND INSPECTIONS

As of September 30, 1977, there were 1,333 active investment companies registered under the Investment Company Act. This represents an increase of 22 in the number of active

registered companies since September 30, 1976. The 1,311 active investment companies registered on that date represented an increase of 25 over the number of active registered companies on June 30, 1976. On September 30, 1977, 4,823 investment advisers were registered with the Commission representing an increase of 781 from September 30, 1976. The 4,042 investment advisers registered on that date represented an increase of 185 since June 30, 1976. Further data is presented in Part 9 of the Report.

During the Transitional Quarter the Commission's staff conducted examinations of 52 investment companies and 92 investment advisers, and during the 1977 fiscal year 286 investment companies and 459 investment advisers were examined. It is the Commission's ultimate objective to examine all investment companies and investment advisers within the first year after registration, and once every other year thereafter. This should provide effective regulatory oversight. As a result of the Commission's examination and investigation program in the Transitional Quarter, numerous violations of the Investment Company Act and of the Investment Advisers Act were uncovered. Two investment company and five investment adviser matters were referred to the Division of Enforcement for possible action during the Transitional Quarter, and during the 1977 fiscal year 16 investment company and 25 investment adviser matters were referred to Enforcement.

RULES

Rules Concerning Applications for Orders Filed Under Investment Advisers Act

On May 13, 1976, the Commission proposed the adoption of Rules 0–4, 0–5 and 0–6[1] under the Advisers Act, to establish rules governing the filing and processing of applications for orders under the Advisers Act. The proposed rules, which were similar to the rules under the Investment Company Act concerning applications, were intended to provide the Commission with the kind of formal and complete record normally required as the basis for Commission action on applications for orders. On September 3, 1976, the Commission announced the adoption of Rules 0–2, 0–5 and 0–6, effective October 21, 1976, substantially as proposed.[2]

Rule 15a–2

On September 17, 1976, the Commission announced the adoption of Rule 15a–2 under the Investment Company Act to become effective October 29, 1976.[3]

The primary purpose of Rule 15a–2 is to eliminate uncertainty as to when the required approval of the investment advisory contract must be obtained. The Commission believes that for contract continuances extending past the initial two-year term permitted by the Investment Company Act the votes of approval ought to be taken at intervals of not more than approximately one year and at times when there is meaningful information as to performance over the preceding year on which to base a judgment as to continuing the contracts. An additional purpose of the rule is to eliminate certain practices which the Commission, upon the basis of its experience, considers to be contrary to the policy and purposes of Section 15 of the Act. One such practice would be scheduling votes within successive calendar years so that there may be an interval of substantially more than 365 days between them as where votes are scheduled in January of one year and in December of the following year.

Another such practice would be scheduling votes so far in advance of the date on which the continuance of the contract is to take effect that there is no meaningful information on which either the directors or shareholders can base their votes.

Rule 15a–2 provides that the first continuance of a contract shall be deemed to have been approved at least annually if such contract is specifically approved by the board of directors or by vote of a majority of the investment company's outstanding voting securities during the 90 days prior to and including the earlier of (1) the specified termination date of the contract or (2) the second anniversary of the date on which the contract was executed. The section further provides that any subsequent continuance of a contract shall be deemed to have been approved in compliance with Sections 15(a)(2) or 15(b)(1) if such contract is specifically approved by the board of directors or by a majority of the investment company's outstanding voting securities during the 90 days prior to and including the first anniversary of the date upon which the most recent previous annual continuance of such contract became effective.

Rule 2a–5

On June 3, 1977, the Commission published for comment proposed Rule 2a–5 and, on August 10, 1977, the Commission announced its adoption essentially as proposed.[4] Rule 2a–5 provides an exemption under specified circumstances to a broker or dealer, or any affiliated person of such broker or dealer, who would otherwise be deemed an interested person of an investment company, or an investment company's investment adviser or principal underwriter. It obviates the need for exemptive applications under circumstances in which the Commission has granted a large number of orders.

Proposed Rule 8f–1

The Commission released for public comment on July 21, 1977, proposed rules, a proposed form and a proposed amendment to a form, which would: (1) create a form to be used by certain investment companies registered under the Investment Company Act in requesting orders of the Commission declaring that such companies have ceased to be investment companies and (2) require the quarterly reports of management investment companies to contain specified information in the event that any such company was the surviving company of a merger into or consolidation with another registered company, so as to provide, among other things, a basis for a determination that the latter company has ceased to be an investment company.[5] These proposals represent another step in the Division's program to examine its regulation of investment companies and institute appropriate modifications where practicable. The Division believes that such rules and forms would facilitate the deregistration of companies which have ceased to be investment companies. At the close of the year, the Division was evaluating the information received in response to its request for comments.

Proposed Rule 24f–2 and Proposed Amendment to Rule 24f–1

On July 8, 1976, the Commission published for public comment a proposed Rule 24f–2 under the Investment Company Act of 1940 for registration under the Securities Act of 1933 of an indefinite number of securities

of certain investment companies.[6] One purpose of the proposed rule is to allow the registration fee paid on such securities to be based upon actual sales in certain circumstances, rather than on estimates of the amount of securities to be sold. In addition, the proposed rule might relieve certain investment companies and indirectly their security holders of certain costs associated with the monitoring of the amounts of securities sold and the triple filing fee presently required for retroactive registration of shares. The Commission also published for public comment a conforming amendment to Rule 24f–1 under the Investment Company Act to require the filing of an opinion of counsel with respect to the legality of the issuance of securities registered retroactively under the rule.

In 1970, Section 24(f) of the Investment Company Act was amended to permit the Commission to adopt rules concerning the retroactive registration of securities under the Securities Act where the number of shares sold exceeded the number of shares registered. Pursuant to this authority, the Commission has adopted Rule 24f–1 allowing the retroactive registration of securities if: (1) the securities are retroactively registered within six months of their sale, (2) a filing fee three times the usual fee is paid, and (3) a current prospectus was delivered to persons purchasing the oversold shares.

The amendment to Section 24(f) also empowered the Commission to adopt rules to allow the registration of an indefinite number of securities offered by certain investment companies. The Commission believes, in view of its experience with Rule 24f–1 and proposed Rule 24f–2, investors would have the protections afforded under the Securities Act since they would receive a current prospectus with respect to the security and would have the remedies specified in the Act.

Rule 206(3)–2

On December 2, 1976, the Commission published a proposed Rule 206(3)–2 which provided a nonexclusive method for compliance with the Investment Advisers Act in connection with an agency cross transaction for an advisory client by persons who otherwise might be considered to be acting in a conflict of interest in violation of their fiduciary duties to the client.[7] It requires that the transaction be effected pursuant to a written consent for a period not to exceed one year and executed by the advisory client after full written disclosure that the investment adviser and/or an affiliated broker-dealer are acting as agent for and receiving commissions for both parties and, accordingly, have a conflicting division of loyalties and responsibilities. The rule was adopted, essentially as proposed, on June 1, 1977.[8]

APPLICATIONS

One of the Commission's principal activities in the regulation of investment companies and investment advisers is the consideration of applications for exemptions from various provisions of the Investment Company and Investment Advisers Acts or for certain other relief under these Acts. Applicants may also seek determinations of the status of persons or companies. During the Transitional Quarter, 65 applications were filed under the Investment Company Act, and final action was taken on 44 applications. There were 2 applications filed under the Advisers Act, and no final action was taken on any applications. On September 30,

1976, 203 applications were pending under both Acts.

During fiscal year 1977, 226 applications were filed under the Investment Company Act, and final action was taken on 222. There was 1 application filed under the Advisors Act, and final action was taken on 2 applications. On September 30, 1977, there were 136 applications pending under both Acts.

Under Section 6(c) of the Investment Company Act, the Commission, by order upon application, may exempt any person, security or transaction from any provision of the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act. Under Section 206A of the Advisers Act, the Commission has identical authority with regard to provisions of that Act. Under Section 17 of the Investment Company Act, affiliates of a registered investment company cannot sell to or purchase from the registered company unless they first obtain an order from the Commission. Many of the applications filed with the Commission relate to these sections.

One such application of particular interest was filed by American Bakeries Company (Bakeries). In 1974, Bakeries was contacted by Mathers Fund (Fund) (a registered investment company) and told that the Fund owned 178,200 shares of Bakeries' common stock that it wanted to sell, and offered to sell, the shares to Bakeries. Because this block of stock represented more than 5 percent of Bakeries' outstanding voting securities, under the law Bakeries was an affiliated person of the Fund and therefore prohibited by Section 17(a) from entering into the transaction before filing an application with the Commission. Both parties to the transaction overlooked the applicability of Section 17(a) and executed the transaction without an application having been filed.

Later, by coincidence, the value of the outstanding common stock of Bakeries' began to rise after the sale, and when the Fund discovered that the transaction had been in violation of Section 17(a), and on advice of counsel, it sought to rescind the transactions on the grounds that, because it was in violation of the Act, it was void. When Bakeries refused to return the shares, the Fund brought suit against Bakeries in the United States District Court for the Northern District of Illinois. Bakeries then filed an application with the Commission for an order retroactively exempting the transaction from the prohibitions of Section 17(a). A hearing was held on the matter, and the Commission granted the application after concluding that the transaction was fair to the Fund, that is would have been granted if the application had been filed at the proper time, and that there were special circumstances in this case which justified the granting of retroactive relief.[9]

Also, in the past fiscal year, the Vanguard group of investment companies, a complex of fourteen funds each with identical boards of directors, proposed to internalize the distribution of their shares. Previously, Wellington Management Company served as adviser, manager, and distributor for the funds. In 1975, the Vanguard complex internalized their corporate administrative functions by capitalizing and operating a service company known as the Vanguard Group, Inc. (Van-

guard). The proposal to internalize the distribution function came in February of this year after the boards of directors of each of the Vanguard funds which charged a sales load determined that those funds should become no-load funds immediately. By internalizing their distribution function, the Vanguard funds expect to save approximately $831,000 in the first year of operation. The amount is primarily attributable to reduced advisory fees negotiated with Wellington Management Company by each of the funds. In addition to cost savings, the arrangement is expected to reduce the dependence of each of the Vanguard funds on its outside adviser by placing a function essential to fund existence in the hands of the complex. The arrangement is also expected to enhance the ability of the funds to evaluate services provided to them.

Because of the affiliations among the fourteen funds and Vanguard, the funds and Vanguard filed an application on February 24, 1977 seeking a conditional order by the Commission pursuant to Rule 17d–1 which would permit Vanguard Marketing Corporation, a wholly-owned subsidiary of Vanguard, to undertake the distribution of shares of the Vanguard funds. Conditional orders were also sought pursuant to Sections 17(b) and 6(c) which would facilitate operation of the distribution proposal. The Commission issued a notice of the filing of the application, as amended, on July 15, 1977.[10] A request for hearing was filed on August 8, 1977, by a shareholder of Wellington Fund, Inc., the largest of the Vanguard funds.

After consideration of the matter, the Commission determined that it was appropriate in the public interest of investors that a hearing be held with respect to the application. The Commission also deemed it appropriate, in view of the cost savings that the Applicants had represented would inure to the benefit of the Vanguard Funds during the first year of operation of the Vanguard distribution proposal, to grant an interim and temporary order of exemption. Accordingly, on September 13, 1977, the Commission issued a notice of and order for hearing and a temporary order of exemption.[11] The hearing was scheduled to commence on December 5, 1977, in Philadelphia, Pennsylvania.

OTHER DEVELOPMENTS

In light of the fact that the Division of Investment Management is now responsible for, among other things, processing registration statements and post-effective amendments filed by registered investment companies and similar issuers under the Securities Act of 1933 (14 U.S.C. 77a-1 et. seq.) and consistent with the Commission's practice of publishing the views of its staff to assist registrants, their counsel and accountants, and other interested persons, the Commission authorized publication of a release setting forth procedures for filing and processing registration statements and post-effective amendments filed by registered investment companies.[12]

The enactment of the Tax Reform Act of 1976 affected investment companies in several ways. The most significant effect from the Commission's perspective was the enactment of a provision under the tax laws which allowed registered investment companies organized in corporate or business trust form to "pass through" the tax-exempt status of the income from certain securities of United States states

and territories and the political subdivisions. This "pass through" treatment had under previous tax law been allowed only to managed investment companies which were organized as limited partnerships or to unit investment trusts whose portfolios could not be managed under the Investment Company Act. However, until just a few months prior to the enactment of the Tax Reform Act, several problems under the securities laws had prevented such partnerships from receiving the exemptive orders under the Investment Company Act necessary for them to operate in compliance with the law.

At the time of the enactment of the Tax Reform Act, only a few partnerships with the objective of tax-exempt income had filed registration statements under the 1933 and 1940 Acts, and only two had effective 1933 Act registration statements. After the enactment of the Tax Reform Act, several of the partnerships' registrations were abandoned or withdrawn. Others were amended to indicate a change of the company into corporate form. In addition, during the month prior to, and the two months subsequent to, the enactment of the Tax Reform Act, approximately 30 new investment companies of the management type with the objective of tax-exempt income registered with the Commission.

Another effect of the Tax Reform Act of 1976 was to end a brief flourish of registrations of "exchange funds" in partnership form. Exchange funds are investment companies in which investors have pooled appreciated stock in return for shares of the investment company without paying capital gains tax on the appreciation. In 1966, the tax laws were amended to discontinue the favorable tax treatment when corporations were used as the depositories for the appreciated securities. When the problems under the securities laws which had prevented the use of partnerships as investment companies were overcome and when the Internal Revenue Service issued a ruling that publicly syndicated limited partnerships could be formed tax-free with such appreciated securities, several such partnership exchange funds registered with the Commission. The Tax Reform Act of 1976 had a provision which ended this favorable tax treatment on transfers to partnerships also.

In the face of all this activity, the Commission published a release giving the Division's views with respect to certain regulatory and disclosure matters pertinent to companies investing in securities the income from which is exempt from federal income taxation.[13] The Commission also issued an interpretation of a rule under the Investment Company Act indicating, generally, that it shall be considered inappropriate for "money market" funds and certain other open-end investment companies to determine the fair value of debt portfolio securities on an amortized cost basis, except in the case of securities with remaining maturities of 60 days or less.[14]

NOTES TO PART 5

[1]Investment Advisers Act Release No. 516 (May 13, 1976), 9 SEC Docket 661.

[2]Investment Advisers Act Release No. 532 (September 3, 1976), 10 SEC Docket 433.

[3]Investment Company Act Release No. 9451 (September 17, 1976), 10 SEC Docket 532.

[4]Investment Company Act Release No. 9886 (August 10, 1977), 12 SEC Docket 1509.

[5]Investment Company Act Release No. 9861 (July 21, 1977), 12 SEC Docket 1320.

[6]Investment Company Act Release No. 9347 (July 8, 1976), 10 SEC Docket 206.

[7]Investment Advisers Act Release No. 557 (December 2, 1976), 11 SEC Docket 1072.

[8]Investment Advisers Act Release No. 589 (June 1, 1977), 12 SEC Docket 740.

[9]Investment Company Act Release No. 9924 (September 13, 1977), 12 SEC Docket 88.

[10]Investment Company Act Release No. 9850 (July 15, 1977), 12 SEC Docket 1301.

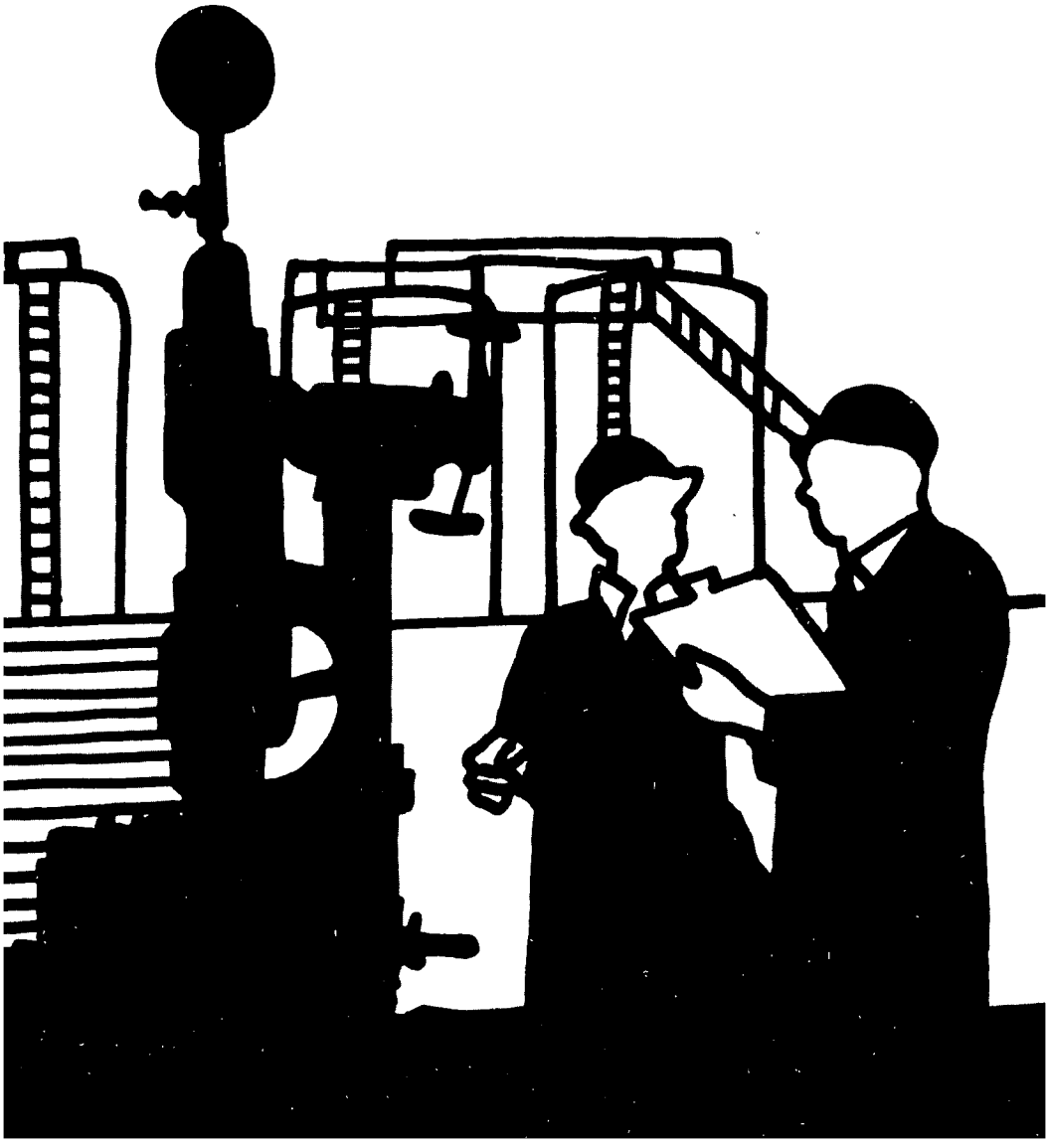
[11]Investment Company Act Release No. 9927 (September 13, 1977), 13 SEC Docket 92.

[12]Investment Company Act Release No. 9426 (September 3, 1976), 10 SEC Docket 404.

[13]Investment Company ACt Release No. 9785 (May 31, 1977), 12 SEC Docket 713.

[14]Investment Company Act Release No. 9786 (May 31, 1977), 12 SEC Docket 715.

Part 6
Public Utility Holding Companies



Part 6
Public Utility Holding Companies

Under the Public Utility Holding Company Act of 1935, the Commission regulates interstate public utility holding company systems engaged in the electric utility business and/or retail distribution of gas. The Commission's jurisdiction also covers natural gas pipeline companies and other nonutility companies which are subsidiaries of registered holding companies. There are three principal areas of regulation under the Act: (1) the physical integration of public utility companies and functionally related properties of holding company systems, and the simplification of intercorporate relationships and financial structures of such systems; (2) the financing operations of registered holding companies and their subsidiary companies, the acquisition and disposition of securities and properties and certain accounting practices, servicing arrangements, and intercompany transactions; (3) exemptive provisions relating to the status under the Act of persons and companies, and provisions regulating the right of persons affiliated with a public utility company to become affiliated with another such company through acquisition of securities.

COMPOSITION

For the fiscal year 1977, there were 18 holding companies registered under the Act. There were 17 registered holding companies within the 14 "active" registered holding company systems.[1] The remaining registered holding company is relatively small, and not included among the "active" systems. In the 14 active systems, there were 67 electric and/or gas utility subsidiaries, 55 nonutility subsidiaries, and 22 inactive companies, or a total of 161 system companies, including the top parent and subholding companies. Table 35 in Part 9 lists the active systems and their aggregate assets.

FINANCING

Volume

During fiscal 1977, a total of 12 active registered holding company systems issued and sold 49 issues of long-term debt and capital stock aggregating $2.4 billion pursuant to authorization by the Commission under Sections 6 and 7 of the Act. Table 36B in Part 9 presents the amount and types of securities issued and sold by these holding company systems.

The aggregate amount of these financings represents a 29 percent decrease over the previous fiscal year. Bonds and debentures issued and sold

decreased 20 percent, preferred stock decreased 62 percent, and the amount of common stock issued and sold decreased 26 percent.

During the transition quarter, July 1 to September 30, 1976, a total of 8 active registered holding company systems issued and sold 13 issues of long-term debt and capital stock aggregating $275.6 million pursuant to Sections 6 and 7 of the Act. Table 36A in Part 9 presents the amount and types of securities issued and sold by these holding company systems.

PROCEEDINGS

Central and South West Corporation[2]—On January 30, 1976, the Commission issued a Notice of and Order for Hearing[3] in this proceeding to examine whether the electric utility facilities of the subsidiaries of Central and South West Corporation (CSW) are operated as a single integrated system or are capable of being operated economically as a single integrated public utility system, as required by Section 11(b)(1) of the Act and, if so, whether engineering plans submitted by CSW for implementing extensive operating changes for its utility system represent a reasonable prospect for achieving such economical operations.

By Order dated May 18, 1977,[4] the Commission amended its January 30, 1976 Order for Hearing to expressly permit an examination of whether the Commission's determination of February 16, 1945, that the electric utility facilities of CSW's subsidiaries constituted a single integrated system, should be modified or set aside in the event the record in the instant proceeding fails to support a finding now that those facilities are operated as a single integrated system or are capable of such operation under any of the proposals submitted by CSW to comply with the standards of Section 11(b)(1).

This is a contested proceeding. Initial hearings before an administrative law judge were held in October 1976. Further testimony was filed in May 1977, and hearings resumed in September 1977.

Lykes Brothers, Inc. – Lykes Brothers, Inc. (Lykes), on behalf of itself and its subsidiaries, filed an application for an exemption by order under Section 3(a) of the Act after the Commission, acting pursuant to Rule 6, notified Lykes of the termination of its claim to exemption under Rule 2. The Division of Corporate Regulation is opposing Lyke's application for exemption claiming that nonutility diversification in the holding company system renders such exemption detrimental to the public interest or the interests of investors or consumers within the meaning of the "unless and except" clause of Section 3(a) of the Act. There are no factual disputes, and the proceeding is being presented on a stipulated record. Lykes and the Division of Corporate Regulation have agreed to a schedule for filing briefs with the Commission. After submission of briefs, the matter will be before the Commission for decision.

The plan provides for the issuance by Union of its shares of common stock, par value $5 per share, in exchange for the publicly held shares of MU's common stock on the basis of 1.1 shares of Union common stock for each share of MU common stock. Consummation of the plan is stayed until the plan is approved and ordered enforced by a United States District Court, in accordance with the Act.

British American Utilities Corporation—British American Utilities Corporation (British American) and North East Heat & Light Company (North

East) have filed a plan with the Commission pursuant to Section 11(e) of the Act providing for the exchange of shares of North East for the outstanding shares of British American and for the liquidation of British American as a corporate entity.

Under the plan, North East will amend its Articles of Incorporation to effect a change in the authorized stock structure of North East. The newly authorized stock of North East will coincide with the present authorized stock of British American. British American will direct that a portion of the newly issued North East stock be delivered to the existing shareholders of British American to replace, on a share for share basis, the shares held by those shareholders. At the closing, British American will convey all of its properties, rights and assets to North East. At that time North East will assume all of British American's liabilities, contracts and obligations.

Colonial Gas Energy System—Colonial Gas Energy System (Colonial), a parent holding company of Lowell Gas Company and Cape Cod Gas Company, both Massachusetts gas utility companies, was notified by the Commission, by letter dated September 9, 1977, issued pursuant to Rule 6, that a substantial question exists as to whether Colonial is entitled to an exemption from the registration requirements of the Act. Colonial's exemption pursuant to Rule 2 terminates thirty days after such notification. In the interim, Colonial is entitled to file an application for exemption by order of the Commission pursuant to the applicable provisions of Section 3(a). Upon such filing, an administrative proceeding is held to explore the questions prompting the Commission to terminate Colonial's exemption.

Union Electric Company—In its opinion of April 29, 1977, the Commission approved a plan filed pursuant to Section 11(e) of the Act under which Union Electric Company (Union) proposed to retire the publicly held minority interest in the common stock of Missouri Utilities Company (MU), a public utility subsidiary of Union.[5]

Upon completion of these transactions British American will be liquidated.

A hearing was held before an administrative law judge and the matter will be submitted to the Commission for decision upon receipt of approval of the plan by the state regulatory body.

NOTES TO PART 6

[1]Three of the 18 are subholding utility companies in these systems. They are The Potomac Edison Company and Monongahela Power Company, public utility subsidiaries of Allegheny Power System, Inc., and Southwestern Electric Power Company, a public utility subsidiary of Central and South West Corporation.

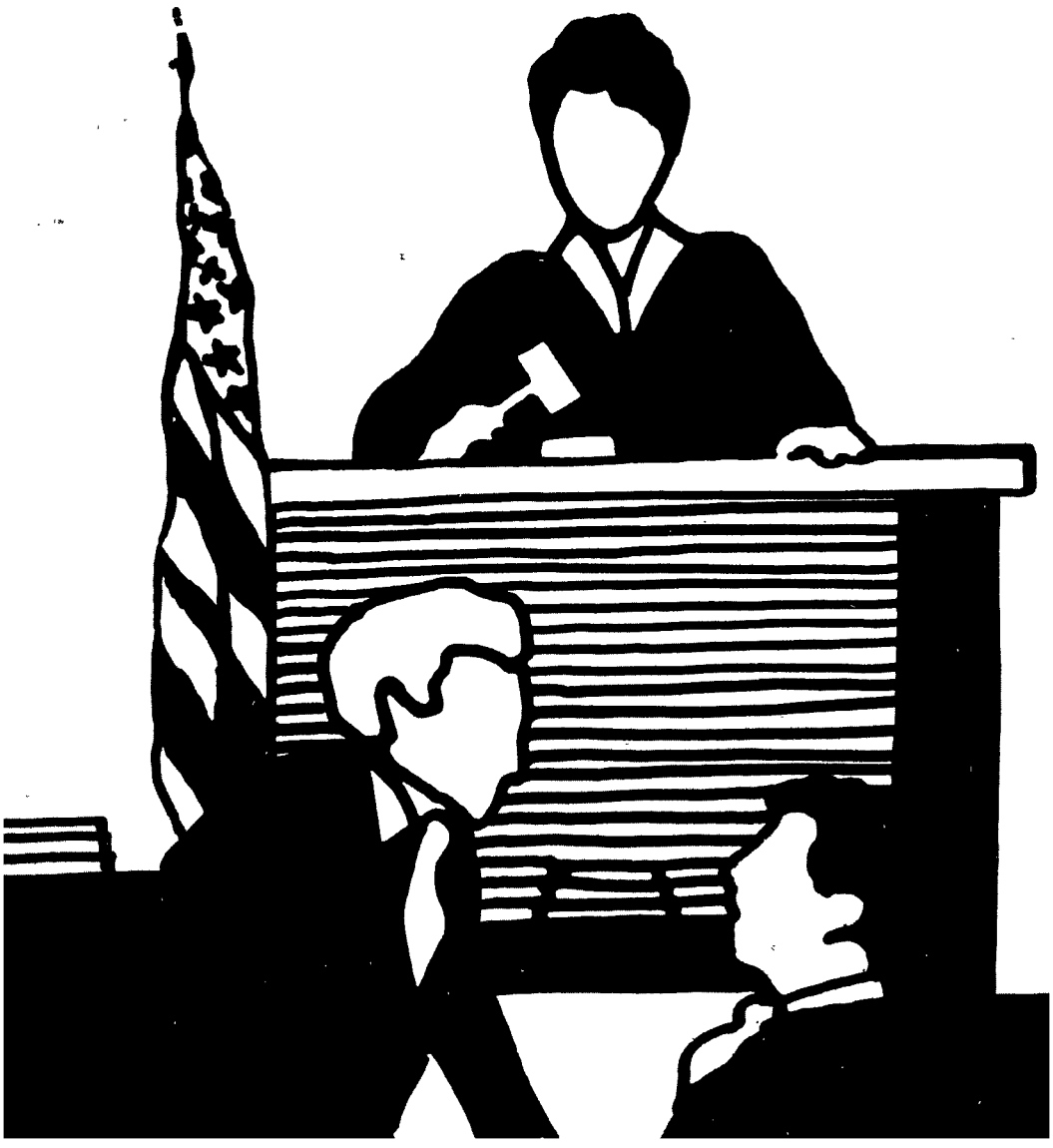
[2]See 42nd Annual Report, p. 146.

[3]Holding Company Act Release No. 19361 (January 30, 1976), 8 SEC Docket 1202.

[4]Holding Company Act Release No. 20031 (May 18, 1977), 12 SEC Docket 443.

[5]Holding Company Act Release No. 20012 (April 29, 1977), 12 SEC Docket 312.

Part 7
Corporate Reorganizations



Part 7
Corporate Reorganizations

The Commission's role under Chapter X of the Bankruptcy Act, which provides a procedure for reorganizing corporations in the United States district courts, differs from that under the various other statutes which it administers. The Commission does not initiate Chapter X proceedings or hold its own hearings, and it has no authority to determine any of the issues in such proceedings. The Commission participates in proceedings under Chapter X to provide independent, expert assistance to the courts, participants, and investors in a highly complex area of corporate law and finance. It pays special attention to the interests of public security holders who may not otherwise be represented effectively.

Where the scheduled indebtedness of a debtor corporation exceeds $3 million, Section 172 of Chapter X requires the court, before approving any plan of reorganization, to submit it to the Commission for its examination and report. If the indebtedness does not exceed $3 million, the court may, if it deems it advisable to do so, submit the plan to the Commission before deciding whether to approve it. When the Commission files a report, copies or summaries must be sent to all security holders and creditors when they are asked to vote on the plan. The Commission has no authority to veto a plan of reorganization or to require its adoption.

The Commission has not considered it necessary or appropriate to participate in every Chapter X case. Apart from the excessive administrative burden, many of the cases involve only trade or bank creditors and few public investors. The Commission seeks to participate principally in those proceedings in which a substantial public investor interest is involved. However, the Commission may also participate because an unfair plan has been or is about to be proposed, public security holders are not represented adequately, the reorganization proceedings are being conducted in violation of important provisions of the Act, the facts indicate that the Commission can perform a useful service, or the court requests the Commission's participation.

The Commission in its Chapter X activities has divided the country into four geographical areas. The New York, Chicago, Los Angeles and Seattle regional offices of the Commission each have responsibility for one of these areas. Supervision and review of the regional offices' Chapter X work is the responsibility of the Division of Corporate Regulation of the Commission which, through its Branch of

Reorganization, also serves as a field office for the southeastern area of the United States.

CHAPTER IX OF THE BANKRUPTCY ACT

Chapter IX provides for a voluntary reorganization procedure for the adjustment of the debts of any state's political subdivision or public agency or instrumentality.

The recent revision of Chapter IX, together with the new Chapter XI Rules of Bankruptcy Procedure effective August 1, 1976, now provide for Commission intervention and participation in Chapter IX cases. The presiding judge may also request the Commission's participation in the proceeding. The Commission appeared in two Chapter IX proceedings, one during the transitional quarter[1] and one during the fiscal year.[2]

Fort Cobb, Oklahoma Irrigation Fuel Authority—Upon the filing of the debtor's petition, the district court requested that the Commission enter an appearance in the proceedings as provided under Chapter IX.

The debtor is a public trust, organized under the laws of the State of Oklahoma, whose principal asset is a rural retail gas distribution system, which provides natural gas to commercial and residential customers in a five county area in the western part of Oklahoma. The principal customers are farmers, who are engaged in peanut and potato farming. The debtor financed the acquisition and construction of its gas distribution system by three public offerings of revenue bonds between 1969 and 1973, totalling $4.5 million. The proceeds from the third offering of revenue bonds, totalling $1.5 million, were misappropriated. The debtor contends that it gave the proceeds from the third offering to the general contractor, who failed to perform under the contractual agreement. As of the date of the petition, the debtor had assets of $2.9 million and liabilities of about $3.7 million, excluding the third issue.

The debtor filed a plan to adjust its debts at the time the proceeding was commenced. The plan provided for payment of the defaulted principal and interest within five years of confirmation of a plan of debt adjustment and resumption of the scheduled principal and interest payments after confirmation of the plan.

A holder of revenue bonds from the third offering commenced a civil action, which has been authorized to proceed as a class action, alleging violations of the fraud provisions of the Federal securities laws and common law fraud and deceit in connection with the sale of the same. The plaintiff also challenged the good faith of the petition, since the proposed plan did not provide for payment of the claims of the defrauded bondholders. The court held the petition to be filed in good faith and adopted the Commission's contention that the need for financial rehabilitation establishes "good faith" in a Chapter IX proceeding.[3]

In order to project the amount of revenues that would be available on a yearly basis to service and retire the revenue bonds, the court appointed a consultant with the debtor's consent to report to the court concerning the prospective earnings capacity of the debtor and ways in which it could be improved. The consultant has completed and filed his report, which will be the basis to evaluate specific plan proposals.

SUMMARY OF ACTIVITIES - CHAPTER X

In fiscal year 1977, the Commission entered 9 new Chapter X proceedings

involving companies with aggregate stated assets of approximately $895 million and aggregate indebtedness of approximately $878 million. During the transitional quarter, July 1 to September 30, 1976, the Commission entered 2 new Chapter X proceedings while closing 2 proceedings. Including the new proceedings, the Commission was a party in a total of 124 reorganization proceedings during the fiscal year. The stated assets of the companies involved in these proceedings totaled approximately $5.3 billion and their indebtedness about $4.8 billion.

During the fiscal year 12 proceedings were closed, leaving 112 in which the Commission was a party at year end.

ADMINISTRATIVE MATTERS

In Chapter X proceedings, the Commission seeks to protect the procedural and substantive safeguards afforded parties in such proceedings. The Commission also attempts to secure judicial uniformity in the construction of Chapter X and the procedures thereunder.

GAC Corporation, et al.[4] — The debtors, including its major operating subsidiaries, are one of the nation's largest land developers involving about 40,000 public investors and over $300 million in assets. The bulk of these assets consists of land under development and receivables generated by the land sales contracts. Over 100,000 lot purchasers at six major developments have bought homesites from GAC under installment land sales contracts that impose future land development obligations on GAC. Accordingly, the effort to reorganize GAC assumes that continued development will (1) permit collection of balances due on the land already sold, (2) eliminate the possibility of extensive damage claims by lot purchasers against GAC for failure to deliver developed lots as promised, and (3) enhance the value of the remaining unsold land.

The GAC trustees have proposed a long range development program, since approved by the court, that will reduce and consolidate GAC's land developments thereby placing GAC's development costs within its financial capabilities. The essential element in the program has involved a lot exchange offer which enables lot purchasers to exchange their lots in areas no longer scheduled for development to other areas where development will be completed. The exchange offer, which reportedly has been accepted by over 80 percent of involved lot purchasers, is considered a success.

The bankruptcy court, to afford the lot purchasers a measure of protection, in light of certain adverse events which have since been eliminated, ordered $19.2 million of the lot purchasers' post-petition payments placed in an interest-bearing escrow account as a guarantee that GAC will have funds available to complete its development obligations. This ruling was appealed to the district court by certain of GAC's bond indenture trustees who argued: (1) that the lot purchasers were not entitled to such special protection, (2) that a formal adversary proceeding pursuant to Rule 10-701 was necessary before the court could escrow the funds, and (3) that diverting the payments into an escrow fund would impair the debtor's estate by depriving it of necessary funds.

The Commission filed in the district court a brief supporting the bankruptcy court and arguing: (1) that the lot purchasers had potential administrative claims for their post-petition installment payments

should the debtor fail to complete the promised development,[5] (2) that requirements of an adversary proceeding under Rule 10–701 apply only to disputes over pre-petition claims and have no application to the determination of post-petition administrative matters,[6] and (3) that placing a portion of lot purchasers' payments in an escrow fund, in fact, furthers the prospects of a successful reorganization because, by granting lot purchasers some measure of protection that GAC will be financially able to fulfill its development obligations, it encourages lot purchasers to continue their installment payments without which a reorganization would be impossible. The matter is still pending at the end of the fiscal year.

Interstate Stores, Inc.[7] — As previously reported,[8] a $38 million claimant appealed to the Second Circuit a decision of the district court retaining jurisdiction in the Chapter X court to determine that claim. A date for trial on the claim before the Chapter X court was set. An expedited appeal was sought and granted. The trustees and the Commission sought affirmance of the district court's decision. After oral argument, claimant sought a stay of the trial pending disposition of the appeal. The Second Circuit granted the motion and further ordered the parties to proceed to trial in the California state court.

The California jury returned a verdict dismissing the claim and awarding $1.6 million to the debtors for rent arrearages plus attorney's fees. A judgment was accordingly entered in the California state court. Motions by claimant for a judgment notwithstanding the verdict and for a new trial were denied. Claimant then appealed to an intermediate California appellate court.

The trustees sought an order from the bankruptcy judge expunging the $38 million proof of claim filed in this case on the basis of the California judgment. The bankruptcy court declined to expunge the proof of claim, pending resolution of the California appeal. The trustees appealed the bankruptcy court's decision to the district court, which appeal was pending at the close of the fiscal year.

Gulfco Investment Corporation, et al.[9] — The debtor is a publicly held holding company operating various businesses, including land development, mortgage banking and consumer financing, through 26 related corporations.

The trustee applied for an order substantively consolidating all of the debtors since they were operated as a single entity and it was impossible, because of the inadequate records, to determine intercompany claims between the debtors. Claimants holding pledges of the stock of the two operating companies opposed the consolidation urging that these companies were solvent, and that a consolidation would effect an unconstitutional taking of their security interests without compensation.

The Commission suggested that as a practical matter it would be preferable to deal with the consolidation issue within the context of a proposed plan of reorganization as creditors could then know specifically what they were to receive as opposed to considering consolidation in the abstract. However, the Commission did support consolidation of all the debtors, but urged recognition of creditors' equitable rights to preferred treatment where warranted by the facts. The Commission noted that unilateral misconduct of the debtors could not effect a forfeiture

of creditors' rights vis-a-vis a debtor company which dealt with its creditors as the sole enterprise receiving the extension of credit. The Commission also concluded that it would be wasteful and destructive to accept the objectors' suggestion of splitting the estate into a number of separate trusteeships charged with litigating with each other to establish the rights of different creditors groups.

The court approved the form of consolidation as recommended by the Commission. After the close of the fiscal year certain creditors appealed the court's order to the United States Court of Appeals for the Tenth Circuit.

Carolina Caribbean Corp.[10] — The trustee had determined that reorganization was impossible and proposed an orderly liquidation for this publicly held company which was engaged in land development and in the operation of related resort facilities. The debtor's development operations mainly involved the installment sale of subdivided homesite lots with title remaining in the seller until the buyer rendered payment in full. The trustee sought to reject as executory about 2,000 such installment contracts, including about 1,300 contracts where buyers had rendered full payment but had not been deeded lots; such rejection of the contracts would have enabled a bank claimant, as mortgagee of the underlying land, to foreclose on the land in satisfaction of its claims against the estate.

The Commission objected to the trustee's proposed rejection of the contracts arguing that (1) land sales contracts which are fully performed save for the granting of deeds by the seller are not "executory" within the meaning of the Bankruptcy Act and thus may not be rejected, and (2), under Chapter X, a trustee may reject only contracts that are "burdensome" to the estate and it would not be "fair and equitable", as part of a Chapter X plan, to reject the contracts and deprive fully paid buyers of their lots where the granting of deeds is the sole act remaining to be performed by the seller, an act imposing no "burdensome" obligations on the estate. As a result, the trustee offered a compromise enabling the lot buyers to obtain lots. Under the terms of the compromise, which was subsequently approved by the court, land was made available to fully paid lot buyers, with the proviso that, to obtain a lot, an eligible buyer pay to the estate an amount covering costs of transfer and survey so that no additional costs were placed on the already bankrupt estate.

C.I.P. Corporations.[11]—The district court agreed with the Commission and permitted the trustee to utilize proceeds from the sale of mortgaged property for the purpose of completing roads contiguous to property which the mortgagee held as additional collateral. The blanket mortgage contained a provision providing for a release price of 125 percent of the pro rata debt plus an additional $500 upon the sale of a parcel of property. The trustee needed that portion of the proceeds exceeding 100 percent of the pro rata debt to complete roads which would enhance the value of surrounding property and enable the trustee to maximize the value of the debtor's real estate holdings.

The Commission argued that the bankruptcy court has the power to use the collateral of secured creditors where adequate protection for their rights can be demonstrated. The court had found that there was a reasonable possibility of a successful reorganization, and the evidence indicated that

the value of the mortgagee's collateral substantially exceeded the amount of the debt. Under these circumstances the court was justified in the exercise of its equitable discretion to modify the release provisions of the mortgage and permit the trustee to apply a portion of the proceeds to the contemplated construction.

TRUSTEE'S INVESTIGATION AND STATEMENTS

A complete accounting for the stewardship of corporate affairs by the prior management is a requisite under Chapter X. One of the primary duties of the trustee is to make a thorough study of the debtor to assure the discovery and collection of all assets of the estate, including claims against officers, directors, or controlling persons who may have mismanaged the debtor's affairs. The staff of the Commission often aids the trustee in his investigation.

Investors Funding Corporation of New York.[12]—As a result of his investigation, the trustee commenced a plenary lawsuit in the Federal court in New York against 188 defendants.[13] The defendants include the debtors' former officers, directors, accountants and consortium of lending banks. The complaint alleges, among other things, that the debtors' officers and directors engaged in a "massive" fraud upon the debtors, its creditors, debenture holders, stockholders and the public and, further, that the accountants failed to properly audit the books and records of the debtors and that the banks received preferential transfers of property. The relief sought includes the subordination of the banks' asserted senior position to the claims of debenture holders and other creditors, as well as damages in an amount yet to be ascertained.

The trustee's report under Section 167 of the Bankruptcy Act concluded that, *inter alia*, the debtors are hopelessly insolvent and that there is no reasonable possibility for reorganization as a going concern. Accordingly, the trustee recommended that the debtors be liquidated in an orderly manner.

Omega-Alpha, Inc.[14]—The trustees resolved through settlements major claims against the estate, involving the LTV Corporation (LTV), Security Mortgage Investors (SMI) and the class action suit known as the Mesh/Shlensky litigation.

The LTV claims and the Mesh/Shlensky litigation were resolved in a single settlement. They both arose out of the sale in 1971 of The Okonite Company by LTV to Omega-Alpha. Mesh and Shlensky were shareholders of LTV at the time of that sale. They brought a consolidated suit seeking rescission of that sale or in the alternative compensatory damages of $21.5 million and other monetary relief. LTV asserted claims of over $39 million based mostly on debentures held by it by virtue of the conversion privilege which allows holders of Omega-Alpha's 4–3/4 percent convertible subordinated debentures to convert into LTV common stock. The settlement required a cash payment by the debtor to LTV of $13.5 million, the equivalent of 34.2 percent of its claim, and fees of the attorneys for Mesh/Shlensky not to exceed $125,000.

The co-trustees deemed the settlement to be in the best interest of the estate because of (1) the complexity and uncertainty of the outcome of the litigation involved, (2) the expense to the estate of prosecuting and defending the claims and counterclaims, and (3) avoidance of delay in distribution of dividends to creditors on account of these controversies until they are resolved by extended litigation.

SMI had objected to the proposed settlement claiming that it violated its rights as a senior creditor to priority in payment before LTV since the settlement would pay LTV unsecured claims in advance of SMI's claim. This objection was resolved by a settlement under the terms of which SMI agreed to receive $8.6 million in cash in full payment of its $9.1 million senior claim. Both settlements were approved by the court.

Stirling Homex Corporation.[15]—The debtor was found insolvent with no hope of rehabilitation. Unsecured creditor claims are approximately $46 million, and an anticipated $15 to $16 million will be available to pay those claims. Shareholders, who were induced by fraud into purchasing the debtor's securities, sought *pari passu* classification with unsecured creditors under Section 197 of Chapter X and Bankruptcy Rule 10–302. Their damage claims aggregate $100 million.

The trustee acknowledged in his report under Section 167 of Chapter X that the information issued by the debtor at the time it offered and sold its shares was distorted and misleading. Additionally, the Commission has sued and obtained injunctive relief based upon materially false financial statements,[16] and former management has been convicted of defrauding its investors.[17] The Commission filed a memorandum with the district court supporting the shareholders' position seeking parity with unsecured creditors.[18] The Commission argued that defrauded purchasers may assert claims on the fraud rather than the instrument and that "an investor who has been swindled by a debtor into purchasing a worthless security suffers as real a loss as that of a supplier of merchandise, a bank that has made a loan, or a pedestrian who has been injured by a debtor's vehicle."

The district court subordinated defrauded shareholders to the rights of unsecured creditors, and those shareholders appealed that decision. At the close of the fiscal year the appeal was pending.

PLANS OF REORGANIZATION

Generally, the Commission files a formal advisory report only in a case which involves substantial public investor interest and presents significant problems. When no such formal report is filed, the Commission may state its views briefly by letter, or authorize its counsel to make an oral or written presentation. During the transitional quarter the Commission published two advisory reports, dealing with two plans of reorganization.[19] During the fiscal year the Commission supplemented one advisory report dealing with one plan of reorganization.[20] Its views on 10 other plans of reorganization were presented to the courts either orally or by written memoranda.[21]

The Commission also filed a staff advisory report on the trustee's plan of reorganization for the Penn Central Transportation Company under Section 77 of the Bankruptcy Act concluding that the plan was fair, equitable and feasible. The report was filed at the invitation of the presiding judge, the Honorable John P. Fullam and is similar to that customarily filed under Chapter X of the Bankruptcy Act.

Imperial-American Resources Fund, Inc.[22]—At the conclusion of the plan hearings, the court referred the trustee's internal plan of reorganization to the Commission for report. The plan created a reorganized company to carry on the oil and gas business which the debtor conducted as sole general partner of 13 limited partnerships. The provisions of the plan consolidated the limited partnership into a reorganized corporate entity and substituted stock

of the reorganized corporation for the limited partnership interests now held by the limited partners.

The plan provides for full payment in cash of administrative, priority claims, and unsecured claims of creditors of the limited partnerships. The plan treats the interests of the limited partners as a claim against the property of the debtor, although the investment is not a loan or debt. Since these claims exceed by far the value of the estate, the common stock of the debtor owned by a subsidiary of the Colorado Corporation, a corporation controlled by John M. King, will not participate in the reorganized company. In addition, the plan provides for the equitable subordination of the claims of the Colorado Corporation as well as John M. King individually.

The proceeding involved a unique situation where a corporate general partner initiated a Chapter X proceeding while the limited partnerships did not. The plan does not change the purpose of the partnerships, nor does the pooling of the partnership assets depart radically from the original investment intent of the limited partners. Indeed, the investors had no advance knowledge of what properties would be purchased by the partnership they were placed in. In fact, there was cross-investing by limited partnerships into each other.

Under the terms of a settlement of a class action claim, based principally on allegations of violations of the Federal securities laws in connection with the sale of the limited partnership interests, 12–1/2 percent of the stock of the reorganized company will be distributed to this class of limited partners on the basis of their damages, and the remaining 87–1/2 percent of the stock will be distributed to limited partners for their present interest in the limited partnerships. Therefore, while the ultimate beneficiaries are the same, the two blocks of shares will be allocated among them on a different basis. The 87–1/2 percent of the stock will be distributed directly to limited partners in proportion to the net present value of their respective interests in the assets acquired by the reorganized company. The 12–1/2 percent block of shares which represents substantially half of the defendants' alleged interest in Imperial will be distributed through the class action court to the class of limited partners in proportion to their losses, defined as the difference between the present value of their partnership interests and their original investment.

The Commission concluded that the plan was fair, equitable and feasible. The Commission did recommend that the plan be amended to provide for cumulative voting for the common stock of the new corporation. This amendment was proffered by the trustee and approved by the court.

R. Hoe & Co., Inc.[23]—The trustees proposed an internal plan of reorganization based upon the continuing operations of the debtor's saw division. Under the plan, common stock in the reorganized company would be distributed to creditors, and Class A stockholders were to be accorded a minimal equity interest in the reorganized company.

The Commission filed an advisory report[24] concluding that the plan was not fair and equitable in that the trustees undervalued the debtor. The Commission placed a value of $19.2 million on the gross estate, as compared to the trustees' value of $17 million. The Commission found such additional value in the going-concern value of the saw division and excess cash and inventory. In addition, the Commission advised that post-petition interest to unsecured creditors should

be computed at the 6 percent judgment rate rather than at the higher legal rate proposed by the trustees. The difference between the trustees' computation and the 6 percent judgment rate was about $800,000.

The Commission urged that the plan be amended to reflect the recommended valuation, and that it should be further amended to provide distribution to unsecured creditors of cash and notes equal to 25 percent of their claims. Under these suggestions, which the Commission stated would render the plan fair and equitable, Class A stockholders would retain a 25 percent equity interest in the reorganized company.

The court's valuation was between the Commission's and the trustee's. Approximately 12 percent of the reorganized company's equity was to be retained by the Class A stockholders. The Commission advised and the court agreed that: (1) a cash distribution should be made to general unsecured creditors; (2) the issuance of warrants to general unsecured creditors should be eliminated; and (3) post-petition interest to unsecured creditors should be computed at the 6 percent New York judgment rate,[25] rather than the higher legal rate (7−1/2 percent to 8−1/2 percent) proposed by the trustee.

The plan was amended in accordance with the court's decision and as amended was approved and confirmed.

King Resources Co.[26]—In a special report the trustee updated the engineering reports indicating substantially higher values for the debtor's oil and gas properties. Based upon this new information, the Commission filed a second advisory report,[27] stating that the debtor may be solvent and recommended that further valuation hearings be held before votes were solicited for the trustee's plan. The report concluded that, since the new valuation evidence reflected a value above the amount of pre-petition claims, the plan was unfair to subordinated debenture holders by virtue of the conversion rights given to senior creditors.

The conversion feature, which allows senior creditors a greater number of new shares of stock per claim than subordinated debt, was originally intended to satisfy the contractual subordination provisions of the indentures which require that senior debt be paid in full before subordinated debt can receive a distribution. Since the senior debt is now fully satisfied by reason of the higher valuation, the conversion privilege is no longer necessary.

The district court rejected the Commission's recommendation and approved the plan. The plan was subsequently voted upon and approved by creditors. The court, in conjunction with the confirmation hearing, conducted further valuation hearings, wherein both the trustee and a stockholders' protective committee offered testimony. The court nevertheless found the debtor insolvent, denied the motion to eliminate the conversion feature, and confirmed the plan. Appeals were filed by the indenture trustees and a stockholders' protective committee, among others, from the confirmation order.

U. S. Financial, Inc.[28]—The trustees filed a plan of orderly liquidation for this San Diego based real estate company. The plan will transfer the debtor's assets to a liquidating corporation whose life is to terminate in 1982 unless holders of two-thirds of the new liquidating common stock vote to permit continuation of the business.

The plan is designed to produce a non-public company with creditors, other than banks and financial institutions, being paid the value of their claim

in cash. The larger creditors will receive the liquidating common stock with proceeds of the ongoing liquidation to be distributed quarterly.

The trustees proposed a conservative liquidation value of the debtor estate of about $44 million but noted that under a more optimistic set of assertions the value could reach $52 million.

The subordinated debenture holders and public shareholders of the debtor will not participate based on their instruments since the value of the debtor estate was found insufficient to satisfy in full senior creditors. However, the plan proposes to compromise the class action claims of public debenture holders and shareholders which are based on, among other things, violation of Federal securities laws, by allocating 15 percent and 5 percent, respectively, of the debtor's value, payable in cash, to the defrauded public investors.

The losses of debenture holders are estimated at about the principal amount of the debentures, $35 million, and the losses of stockholders are estimated at about $100 million.

The Commission filed an advisory memorandum concluding that if certain minor amendments are made the trustees' plan may be found to be "fair, equitable and feasible." The memorandum noted, however, that while the valuation of the estate was within the range of reasonableness it did resolve all significant financial doubts against the small creditors who are to receive cash for their claims.

Aldersgate Foundation, Inc.[29]—The debtor is a non-profit corporation which operates two retirement centers in central Florida. Acquisition of property and development of the centers were accomplished solely through charitable contributions and debt financing consisting primarily of $20 million of 7 percent first mortgage bonds sold to about 3,000 persons.

Seven plans were proposed for the reorganization of Aldersgate, and three of them were referred to the Commission for examination and report. Each of the plans proposed that a profit corporation, controlled by the respective contributors of new equity capital, would acquire the retirement centers and some of the debtor's other properties. Taxes and administrative costs would be paid in full in cash under each plan.

In general, each plan proposed compensating the bondholders up to the court-determined values of the properties securing the respective bond issues since the bond indentures contain nonrecourse provisions which preclude the bondholders from asserting deficiency claims against the debtor. Two of the plans proposed that the reorganized debtor carry about $19 million of debt, about 97 percent of total capitalization, consisting largely of 7 percent first mortgage bonds to be issued to the bondholders. The third plan would have required the reorganized debtor to carry $15 million of debt, consisting of 7 percent debentures and a $7.4 million loan obtained by mortgaging the debtor's properties. The cash proceeds of the loan, the 7 percent debentures and preferred stock would be issued to bondholders in exchange for their claims.

The debtor originally acquired land for its primary retirement center by giving a mortgage to the seller, who agreed to be subordinated to first mortgage bonds sold by the debtor to finance the center's development. The mortgagee has brought an adversary proceeding seeking to avoid the subordination. All three plans proposed to compromise this litigation by offering the mortgagee payment in cash and

securities equal to the full principal of the mortgage.

The Commission, in an advisory memorandum, concluded that none of the plans is feasible because they proposed unrealistic capital structures which required debt service far in excess of the debtor's reasonably foreseeable earnings capacity. The Commission also concluded that the plans' proposals for settling the litigation regarding the relative priorities of the purchase money mortgagee and bondholders are too generous to the mortgagee, in view of the probable recoveries, and, hence, are not fair and equitable.

The Commission agreed that equal treatment of the three issues of bonds sold to construct the debtor's primary retirement center and secured by different portions thereof was proper since, among other things, there was evidence of routine commingling of funds without regard to the stated terms of the respective bond issues.

The Commission also noted that the additional capital expected to be supplied to the debtor if reorganized as a profit corporation in exchange for a controlling interest was minimal in comparison to the debtor's size and that a profit corporation would incur substantial taxes and other expenses for which the debtor has never been obligated. Accordingly, the Commission recommended that an internal plan be devised which would maintain the debtor's non-profit status and that contingent income securities be issued for the portion of creditors' claims left uncompensated after issuance of a realistic amount of senior debt. Shortly after the close of the fiscal year, the court refused approval of the three plans and directed the Chapter X trustee to develop a non-profit plan according to the Commission's recommendations.

Dolly Madison Industries Inc.[30] — The trustee filed a plan of reorganization based upon the continuance of the debtor's furniture manufacturing and convenience retail food store operations. The plan was predicated on the debtor's insolvency. It cured certain defects pointed out by the Commission in an earlier report:[31] that is, (1) the classes of creditors and their treatment were more clearly delineated; (2) the provision for the issuance of warrants was eliminated; and (3) the issuance of non-voting stock was prohibited. The plan, among other things, provided for the payment of creditor claims as follows: (1) bank claims, $1.1 million in cash; $1.6 million in preferred stock and $14.9 million in common stock at the rate of one share for each $20 of claims; and (2) general unsecured creditors, common stock at the rate of one share for each $20 of claims. Included in the general unsecured creditor class are $1.5 million in claims asserted by shareholder fraud claimants as a result of a settled class action.[32]

The Commission reported to the court that the plan was feasible and equitable, if the court found certain compromises with creditors to be fair. The Commission did not find enough evidence in the record to make a recommendation on the proposed compromises. The court found that the plan complied with the statutory standards of fairness and feasibility. The plan was approved and confirmed by the court.

American Mortgage & Investment Company, Inc.[33] — The debtor is a publicly held, South Carolina land development company which suffered financial difficulties in 1972, and 1973 by relying too heavily upon bank debt secured by its principal source of income, land sale contracts. By December 1974, the debtor was forced

to seek relief under Chapter X of the Bankruptcy Act.

Two plans of reorganization were proposed, one by the trustee and another by the debtor. The plans were premised upon the debtor's solvency. The Commission filed a memorandum concluding that certain additional evidence was required before either plan could be found feasible and that in certain respects, the plans were not fair and equitable. Thereafter, the trustee withdrew his plan and adopted an amended version of the debtor's plan as the trustee's amended plan of reorganization.

The trustee's amended plan provides for the continuation of the debtor's land development business. Costs of administration, taxes and wage claims will be paid in full in cash. The secured bank creditor will be paid in full over a four-year period from the current receivables subject to its claim, which will be preserved absent certain after-acquired collateral provisions. Purchase money mortgages on land inventory will be repaid in full at 8 percent interest in three annual installments commencing three years after confirmation. Other secured claims will be repaid in full from the sale of the collateral in the course of the debtor's future operations.

The amended plan proposes to pay unsecured creditors in full in interest bearing notes. Those creditors with claims between $500 and $4,999 will receive two-year notes and those in excess of $5,000 five-year notes with larger payments in the later years. Creditors with claims less than $500 or who reduce their claim to $500 will be paid in full in cash. The rights of stockholders are altered only to the extent of prohibiting payment of dividends until the creditors are repaid.

In a supplemental memorandum, the Commission concluded that the amended plan was feasible but that it was unfair in that payment to the purchase money mortgagees was unnecessarily deferred and that no provision was included for the potential rescission claims of purchasers of lots which were not likely to be developed in accordance with representations by the debtor's sales personnel. The court approved the plan on the basis of presentations by the trustee and the debtor aimed at showing the necessity for the deferred payments and the improbability of viable rescission claims arising in the future. The plan was accepted and confirmed in February 1977.

Detroit Port Development Corp.[34] — The debtor is a non-profit municipal corporation which sold $9 million of revenue bonds to public investors in order to finance the acquisition of an existing port and terminal facility along the Detroit River. Thereafter, the debtor leased the facilities under a 30-year lease to a business corporation. The lessee was to operate the facilities and its rental payments were to go towards retirement of the bonds. However, after several years of operating deficits the lessee-operator defaulted. The debtor clearly lacked the management and the equity capital needed to take over and operate the business for its own account, and accordingly, filed a petition for reorganization under Chapter X.

The trustees' proposed amended plan of reorganization provides for a continuation of the original concept of a lessee-operator. After months of negotiations with several prospective lessees, the trustees signed a letter

of intent with a corporation which has successfully operated a competing port and terminal facility for many years. The letter of intent embodied a temporary operating agreement and a 40-year lease subject to approval by the court and the bondholders.

The trustees' amended plan contemplates extending the maturity date of the outstanding revenue bonds so it will coincide with the termination date of the proposed long-term lease. The bonds now outstanding will be exchanged for new bonds modified as to maturity. Due to a shortage of funds necessary to meet administrative and priority claims, the plan provides for an invasion, up to a maximum amount, of the existing funds held by the indenture trustee in the bondholders' sinking fund. The bondholders will receive a 50 percent cash payment upon confirmation for three delinquent semi-annual interest payments.

Bondholders will be compensated for the balance of lost interest by receipt of additional revenue bonds identical in every regard, except face value, to the modified bonds. The plan further provides for real estate taxes of over $1 million in arrearage to be recomputed based upon a lower assessed valuation, and the resultant figure to be paid to the taxing authorities by the new lessee over a 20-year period. At the close of the fiscal year, the amended plan had been referred to the Commission for its advisory memorandum. Subsequent to the close of the fiscal year, the Commission filed an advisory memorandum with the court advising that the amended plan may be found fair, equitable and feasible.

C.I.P. Corporation.[35]—The debtor is engaged in acquiring, developing and selling real estate and has approximately 880 shareholders. The debtor relied heavily on debt financing to carry its real estate, most of which was nonincome producing.

The trustee's plan of reorganization was premised upon the concept of paying creditors, most of whom are secured, in parcels of real estate in lieu of cash or securities. Creditors will select their land in kind from the real estate securing their mortgages. Title to the land, subject only to real estate taxes, will then be transferred to the creditors. Values placed on the individual parcels of land have been set by court approved appraisals. Creditors holding first and second mortgages were to be entitled to discounts of 25 percent and zero percent, respectively, against the appraised value of the land so selected to compensate them for the market risks of accepting in kind payment. The discounted valuation will then be used in computing value received in satisfaction of the claim.

The Commission filed an advisory memorandum finding the plan fair, equitable and feasible if amendments were made to modify the wide difference in treatment of first and second mortgagees under the plan. Certain mortgagees also opposed this disparity of treatment and sought payment in cash or notes. Following negotiations between the trustee and various mortgagees, an amended plan of reorganization was proposed.

Under the amended plan, first mortgagees who hold purchase money mortgages are given the option of payment in full in kind with a 15 percent discount, or payment in full in cash with no discount within six months of confirmation. Second mortgagees will be given payment in kind with a 5 percent discount. The largest mortgage creditor which holds both first and second mortgages on debtor's land will receive an overall discount of 9.6 percent. These discounts respond to and

satisfy objections raised in the Commission's original report.

Subsequent to the close of the fiscal year, the Commission filed a supplemental advisory memorandum advising the court that the amended plan may be found fair, equitable and feasible.

Arlan's Department Stores, Inc.[36]— The trustee reported to the court, creditors and stockholders that reorganization of the debtor as a viable entity was impossible. In this connection, he cited the progressive deterioration of the estate both prior to and during the Chapter XI case. The debtor's continuing inability to purchase goods on normal credit terms, an inadequate supply of merchandise and an irreversible decline in consumer confidence were insurmountable obstacles to rehabilitation. Accordingly, after obtaining court authorization, the trustee terminated operations and proposed a plan of orderly liquidation.[37] The plan proposed a distribution of the cash resulting from the liquidation of the debtor's assets in accordance with the order of priorities set forth in Section 64 of the Bankruptcy Act.[38] The Commission reported that the plan complied with the statutory standards of "fairness and feasibility". Subsequently, the plan was approved and confirmed by the court.

ACTIVITIES WITH REGARD TO ALLOWANCES

Every reorganization case ultimately presents the difficult problem of determining the compensation to be paid to the various parties for services rendered and for expenses incurred in the proceeding. The Commission, which under Section 242 of the Bankruptcy Act may not receive any allowance for the service it renders, has sought to assist the courts in assuring economy of administration and in allocating compensation equitably on the basis of the claimants' contributions to the administration of estates and the formulation of plans. During the transitional period, 144 applications for compensation totaling about $13.5 million were reviewed. During the fiscal year, 616 applications totaling about $21 million were reviewed.

North American Acceptance Corp.[39] —Trustee's general and special counsel filed a joint fee application in connection with the settlement of adversary proceedings with Security Mortgage Investors (SMI) and The Chase Manhattan Bank, N.A. Counsel each sought $1 million for their services, representing a final award, with respect to this litigation.

The litigation involved the issue of ownership of a $66 million ($44 million on a discounted basis) loan portfolio. A comprehensive settlement was effected resolving the interrelated claims among the parties. This settlement resulted in the estate receiving about $15 million in cash in exchange for relinquishing its claims to the portfolio and its interest in various securities, including certain SMI debentures held by the debtor. The settlement permitted the debtor to continue to service the portfolio.

The Commission concluded that this phase of the Chapter X proceeding was sufficiently distinguishable to justify a separate allowance. The Commission's recommendations were $650,000 for the general counsel and $625,000 for special counsel. The bankruptcy court awarded $637,500 to each. These awards have been appealed to the district court.

Imperial '400' National, Inc.[40] — Twenty-one applications were filed seeking final fees and reimbursement of expenses totalling $3.3 million. The Commission advised the court that, exclusive of $331,000 in interim allow-

ances already paid, further fees and expenses in excess of $1.5 million would imperil the successful reorganization of the debtor. The court awarded the aggregate sum of $1,474,000.[41]

Certain applications raised interesting questions. An unsuccessful plan proponent, who was neither a creditor nor stockholder, sought reimbursement of $516,000 for legal and other expenses. The Commission advised that, notwithstanding the efforts made, only persons who, like a creditor or stockholder, have a financial interest in the estate or have a cognizable administrative interest in the proceedings, have standing to seek fees.[42] The court awarded $25,000 to this unsuccessful proponent.

The attorneys for the debtor requested $100,000. The Commission pointed out that a substantial amount of time expended by counsel in the debtor's superseded Chapter XI proceeding was of dubious value to the estate. Such services included futile attempts to promulgate arrangements far beyond the scope permissible in Chapter XI and opposition to the Commission's transfer motion.[43] Taking these factors into account, the court awarded $52,500.

First Home Investment Company of Kansas, Inc.[44] — Nine applicants sought final allowances (including amounts previously paid) and reimbursement of expenses aggregating about $895,000. The Commission recommended payment of about $533,000. The court awarded fees and expenses totalling about $523,000.

The trustee and his counsel requested $350,000 and $300,000, respectively, for services rendered over a three year period. The Commission recommended $165,000 and $200,000, respectively, noting that exorbitant fees should not be allowed simply because the estate is in a position to pay such fees. The court awarded $200,000 to the trustee and $180,000 to his counsel.

The co-counsel for Investors' Protective Committee "A" requested allowances of $103,585 and $30,742, respectively. The Commission recommended allowances of $75,000 and $25,000, respectively. The Commission pointed out that, although unrecorded time may be a common experience among lawyers, the applicants have the burden of proof of establishing the value of their services. When a substantial volume of services has been recorded, as was the case, it is not unreasonable to presume that unrecorded time was omitted because it was unimportant; such time should not be compensable. The Commission also pointed out that duplication of services cannot be tolerated and that it is unreasonable to have the estate bear the full cost of consultations and preparation for and attendance at meetings and hearings by two sets of counsel. The court awarded the applicants $60,000 and $30,000, respectively.

Interstate Stores, Inc.[45] — The Commission appealed a decision of the bankruptcy court which granted in full interim allowance requests of, among others, general counsel for the trustees. General counsel sought and was awarded $575,000 for services rendered over a 17-½-month period plus $33,717.26 for reimbursement of expenses. The bankruptcy court in granting the application, however, failed to set forth any reasons in law or fact why it declined to follow the Commission's recommendation of $450,000 and disallowance of certain expenses.[46]

On appeal, the Commission reiterated its contention that 22 percent of general counsel's claimed time expenditures of 9,670 hours were inadequately documented and that the requirements of "strict economy" man-

dated a reduced interim fee. The Commission again argued that certain expenses were not properly chargeable to the estate. The district court modified the bankruptcy court's award and granted $525,000. In this connection, the district court stressed the importance of maintaining adequate and contemporaneous time records.[47] With respect to disbursements, the district court found that meals, cab fares and overtime wages to non-legal personnel are ordinary expenses incurred in the operation of a law firm, i.e., overhead, and reduced the award by about $12,000. General counsel returned $62,000 plus interest to the estate.

Investors Funding Corporation of New York.[48] — Applications for allowances, the bulk of which were interim requests, were filed by the trustee, his attorneys and accountants. The aggregate sum sought was $1.3 million. The Commission recommended $995,000 stressing that interim awards in Chapter X do not purport to measure the value of the services rendered but are intended only to alleviate economic hardship and thereby to assure efficient administration of an estate. The court, with but one exception, awarded the sums recommended by the Commission.[49] Based upon its holding that "interim allowances are designed only to keep body and soul together" and the submissions of general counsel reflecting its overhead, the court awarded $422,527 to the trustee's general counsel, rather than the $360,000 recommended by the Commission. General counsel sought $503,000.

INTERVENTION IN CHAPTER XI

Chapter XI of the Bankruptcy Act provides a procedure by which debtors can effect arrangements with respect to their unsecured debts under court supervision. Where a proceeding is brought under that chapter but the facts indicate that it should have been brought under Chapter X, Section 328 of Chapter XI and Rule 11–15 of the Rules of Bankruptcy Procedure authorize the Commission or any other party in interest to make application to the court to transfer the Chapter XI proceeding to Chapter X.

Under Rule 11–15, the Commission, as well as other parties in interest, except the debtor, have 120 days from the first date set for the first meeting of creditors to file a motion. The time may be extended for good cause. A motion made by the debtor for transfer, however, may be made at any time. The rule requires a showing that a Chapter X reorganization is feasible. This in effect means that a motion can be granted only if the court finds both that Chapter XI is inadequate and reorganization under Chapter X is possible.

Attempts are sometimes made to misuse Chapter XI so as to deprive investors of the protection which the Securities Act and the Exchange Act are designed to provide. In such cases the Commission's staff normally attempts to resolve the problem by informal negotiations. If this proves fruitless, the Commission intervenes in the Chapter XI proceeding to develop an adequate record and to direct the court's attention to the applicable provisions of the Federal securities laws and their bearing upon the particular case.

United Merchants & Manufacturers, Inc.[50]—Shortly after the filing of petitions under Chapter XI by the debtor and 374 subsidiaries, the Commission filed a motion, under Section 328 of the Bankruptcy Act and Bankruptcy Rule 11–15, to transfer the case to Chapter X. The Commission argued that Chapter X is the appropriate proceeding for the debtor because,

among other things, (1) more than a minor adjustment of the rights of public debenture holders is necessary; and (2) a comprehensive reorganization and the scrutiny of a disinterested Chapter X trustee, rather than a simple composition of unsecured debt, is required.

The debtor is one of the largest diversified textile companies in the United States, employing about 32,000 people, with substantial foreign operations as well. Other businesses include commercial factoring and finance operations and a nationwide retail clothing chain (Robert Hall Clothes). The petitions reflected consolidated assets and liabilities of $903 million and $677 million, respectively. Subsequent to the filing of the Chapter XI petitions, the debtor sold its factoring division (United Factors, Inc.) and liquidated its nationwide retail clothing chain.

The debtor's capitalization includes $66 million in debentures held by more than 2,000 public investor-creditors and close to six million shares of common stock held by more than 17,000 public investors.

At the close of the fiscal year, a hearing on the Commission's transfer motion had been postponed at the request of the debtor to enable it to file a Chapter XI arrangement. The debtor states that it can propose an arrangement which will not affect in a major way the rights of public debt holders.

Continental Mortgage Investors.[51]— As previously reported,[52] the Commission moved to transfer this Chapter XI case to Chapter X. On September 30, 1976, a hearing was held on the transfer motion. On that date, certain bank and institutional creditors withdrew their transfer motion, and the official creditors' committee, nine of whose eleven members were representatives of the banks that filed the creditors' transfer motion, filed an unverified answer in opposition to the Commission's transfer motion. On the same date, the debtor filed a consent to a transfer to Chapter X and its own transfer motion. Three days earlier, on September 27, 1976, the indenture trustee for the debtors' $46 million of debentures and certain debenture holders also filed a transfer motion.

At the conclusion of the hearing, the bankruptcy court took the Commission's transfer motion and other matters raised at the hearing under advisement. The bankruptcy court never did render a decision. Instead, on application of the official creditors' committee, the bankruptcy court adjudicated the debtor a bankrupt and directed that bankruptcy be proceeded with pursuant to Section 376 of the Bankruptcy Act and Rule 11–42 (b) (1) of the Rules of Bankruptcy Procedure. The Commission appealed to the district court which affirmed the bankruptcy judge's adjudication of the debtor.

The Commission, joined by the debtor, appealed the order of adjudication to the United States Court of Appeals for the First Circuit.[53] The Commission sought a reversal of the adjudication order and a remand with instructions that the various pending transfer motions, including the one filed by the Commission, which were never decided before the adjudication, be acted upon without further delay.

The Commission argued, among other things, that there was no "want of prosecution" within the meaning of Bankruptcy Rule 11–42(b) (1), particularly since the debtor demonstrated its desire to pursue its rehabilitation effort by filing a consent to the Commission's transfer motion and its own

motion to transfer the case to Chapter X. The Commission further stressed that the debtor should be allowed to pursue a Chapter X rehabilitation effort absent the stigma and prejudice of a bankruptcy adjudication.

At the close of the fiscal year, the appeal and hearings before the bankruptcy judge on the debtor's voluntary Chapter X petition,[54] filed after the adjudication, were pending.

Continental Investment Corporation.[55]—The Commission had sought the transfer of this diversified financial service holding company from Chapter XI to Chapter X arguing (1) Chapter X is required where more than a minor adjustment of the rights of public debenture holders is necessary; (2) public debenture holders are entitled to "fair and equitable" treatment; (3) the plan of arrangement was not feasible because, among other things, certain litigation claims against the debtor were not dischargeable in Chapter XI; (4) a comprehensive reorganization rather than a "simple composition" of unsecured debt was required; (5) there was a need for a new management and an investigation by a disinterested trustee into the debtor's past activities; and (6) the debtor sought to circumvent the protections afforded public investors by Chapter X through the use of prefiling acceptances.

The bankruptcy judge denied the Commission's transfer motion holding that, under the facts of the case, the debtor's "needs to be served"[56] were adequately met in the Chapter XI case. The Commission appealed to the district court and obtained a stay of confirmation of the debtor's proposed Chapter XI arrangement pending resolution of its appeal. The Commission stressed, among other things, that the bankruptcy judge did not have "open-ended discretion" to decide the merits of a transfer motion.[57] The discretion of the court, the Commission argued, must be exercised within the framework of the principles enunciated by the cases, and under those principles a transfer to Chapter X was required.[58] At the close of the fiscal year, the matter was still pending before the district court.

Great American Management & Investment.[59]—The Commission filed a motion pursuant to Section 328 of Chapter XI and Rule 11–15 of the Rules of Bankruptcy Procedure to transfer this proceeding to Chapter X. The debtor is a large real estate investment trust with assets of $280 million and liabilities of about $330 million. GAMI invested primarily in short-term construction, land acquisition and development loans. Of these assets only about $61 million are still accruing interest as of the date of the Chapter XI petition.

The debtor has outstanding about $58 million of three classes of subordinated debentures held by 1,500 public investor-creditors, and $4.5 million shares of beneficial interest are held by over 8,300 public investors.

The Commission in its transfer motion argued, among other things, that there was a need for a thorough investigation by an independent trustee and that rehabilitation of the debtor will require a substantial adjustment of widely held public debt. At the close of the fiscal year, a hearing on the Commission's transfer motion had not been held.

Duplan Corporation.[60]—The Commission filed a motion pursuant to Section 328 of the Bankruptcy Act and Rule 11–15 of the Rules of Bankruptcy Procedure to transfer this proceeding to Chapter X. The debtor is a diversified textile and apparel

company which directly and indirectly, through its various subsidiaries and divisions, is engaged in the manufacture and sale of various textile lines, buttons, children's sleepwear and ladies' intimate apparel. The Chapter XI petition reflected assets and liabilities of $84.1 million and $78.6 million, respectively. Its capitalization includes $19.2 million outstanding principal amount of convertible subordinated debentures held by about 1,300 persons and 2.6 million shares outstanding of common stock held by more than 5,000 persons.

The court granted the Commission's transfer motion. It agreed that there was need for a thorough investigation by an independent trustee and that rehabilitation of the debtor required a substantial adjustment of widely held public debt.

Crown Corporation.[61]—The Commission filed a motion pursuant to Section 328 of Chapter XI and Rule 11–15 of the Rules of Bankruptcy Procedure to transfer this proceeding to Chapter X. The debtor is a holding company whose subsidiaries are in such diverse businesses as commercial printing, supplying food packing products, roofing and manufacturing of women's apparel. Crown also has major investments in real estate. The Chapter XI petition reflected assets of $23.7 million, liabilities of $21.5 million and shareholders' equity of $21 million. Also, there are $7.8 million of subordinated debentures held by about 1,900 persons and about 2.1 million shares of outstanding common stock held by about 2,300 persons.

The debtor had filed a plan of arrangement which was accepted by creditors and conditionally confirmed by the court. A key element of the plan of arrangement provided for a proposed settlement of various class action suits pending against the debtors which alleged fraudulent activity on the part of the debtor as well as violations of the securities laws. The suits raised complex issues, were in the early stages of litigation, and appeared too far from being settled, leaving the plan in limbo.

The Commission moved to transfer the case to Chapter X arguing that (1) the plan of arrangement is not feasible because, among other things, the class action suits pending against the debtor assert claims that are not dischargeable in Chapter XI and it is unreasonable to expect that these class suits are capable of settlement within the near future; (2) Chapter X is required when more than a minor adjustment of the rights of public debenture holders is necessary; (3) public debenture holders are entitled to "fair and equitable" treatment; and (4) there is a need for an independent investigation of possible causes of action against former management of Crown.

At the close of the fiscal year, the bankruptcy court had not rendered a decision on the Commission's transfer motion.

NOTES TO PART 7

[1]*Reclamation District No. 2090,* N.D. Calif., No. C–76–1207–RHS.

[2]*Fort Cobb, Oklahoma Irrigation Fuel Authority,* W.D. Okla., No. Bk–76–679–E.

[3]*Ashton v. Town of Deerfield Beach,* 151 F.2d 40.44 (C.A. 5, 1946).

[4]S.D. Fla., No. Bk–76–131–NCR–H.

[5]*In re Los Angeles Land & Investments, Ltd.,* 282 F.Supp. 448, 453 (D. Hawaii, 1968), *affirmed per curiam,* 447 F.2d 1366 (C.A. 9, 1971). See also, *In re Carolina Caribbean Corp.*, W.D. N.C., No. A–B–75–123, Chapter X filed February 28, 1975.

[6]The purposes and kinds of cases covered by Rule 10–701 are described in the Adversary Committee's note to Rule 701.

[7]S.D.N.Y., No. 74–B–614–802, inclusive. Previously reported in 42nd Annual Report, pp. 152–53, 159; 41st Annual Report, pp. 157–58.

[8]42nd Annual Report, pp. 152–53.

[9]W.D. Okla., Nos. Bk–74–484, 512, 525, 554 and 731.

[10]W.D. N.C., No. A–B–75–123.

[11]S.D. Ohio, No. B–1–75–1181. Previously reported in 42nd Annual Report, p. 153.

[12]S.D.N.Y., Nos. 74–B–1454, 1455 and 74–B–1511–1542, inclusive. Previously reported in 41st Annual Report, pp. 150–51.

[13]*Bloor v. Dansker, et al.*, 76 Civ. 4679 (HEW), (S.D.N.Y., 1976).

[14]N.D. Texas, No. Bk–3–74–454–G. Previously reported in 42nd Annual Report, pp. 156–57.

[15]W.D.N.Y., No. Bk–72–1399.

[16]*SEC v. Stirling Homex Corp., et al.*, No. 75–1065 (D. D.C.), Litigation Release No. 6960, July 2, 1975.

[17]*U.S. v. Stirling Homex Corp., et al.*, 76 Crim. 685 (MEF) (S.D.N.Y.), appeal docketed No. 77–11–40–(C.A. 2, March 24, 1977).

[18]*Oppenheimer v. Harriman National Bank & Trust Co*, 301 U.S. 206 (1937); *Associated Gas & Electric Co*, 149 F.2d 996 (C.A. 2), *cert. den.*, 326 U.S. 736 (1945); *Four Seasons Nursing Centers of America, Inc.*, 472 F.2d 747 (C.A. 10, 1973).

[19]*In re R. Hoe & Co., Inc.*, Corporate Reorganization Release No. 319 (September 8, 1976), 10 SEC Docket 441: *In re Imperial-American Resources Fund, Inc.*, Corporate Reorganization Release No. 320 (September 28, 1976), 10 SEC Docket 630.

[20]*In re King Resources Co.*, Corporate Reorganization Release No. 321 (July 1, 1977), 12 SEC Docket 1144.

[21]*In re Aldersgate Foundation, Inc.*, M.D. Fla., No. 74–383–Orl–Bk–P; *In re American Mortgage & Investment Co., Inc.*, D. S.C., No. 74–323; *In re Arlan's Department Stores, Inc.*, S.D.N.Y., No. 73–B–468; *In re C.I.P. Corp.*, S.D. Ohio, No. B–1–75–1181; *In re Detroit Port Development Corp.*, E.D. Mich., No. 76–92807–K; *In re Dolly Madison Industries, Inc.*, E.D. Pa., No. 70–354; *In re U.S. Financial, Inc.*, S.D. Calif., No. 17007–K.

[22]D. Colo., No. 72–B–556. Previously reported in 39th Annual Report, p. 119.

[23]S.D.N.Y., No. 69–B–461. Previously reported in 37th Annual Report, pp. 183, 194–195; 36th Annual Report, p. 179.

[24]*In re R. Hoe & Co, Inc.*, Corporate Reorganization Release No. 319 (September 8, 1976), 10 SEC Docket 441.

[25]CPLR 5004.

[26]D. Colo., No. 71–B–2921.

[27]July 1, 1977.

[28]S.D. Calif., No. 17007–K. Previously reported in 42nd Annual Report, p. 158, 41st Annual Report, p. 158.

[29]M.D. Fla., No. 74–383–Orl–Bk–P.

[30]E.D. Pa., No. 70–354. Previously reported in 41st Annual Report, p. 151, 153–54; 39th Annual Report, p. 122.

[31]See 41st Annual Report, pp. 153–54.

[32]*Bershad v. Dolly Madison Industries, Inc., et al.*, (E.D. Pa., No. 70–2585).

[33]D. S.C., No. 74–323.

[34]E.D. Mich., No. 76–92807–K.

[35]S.D., Ohio, No. B–1–75–1181.

[36]S.D.N.Y., No. 73–B–468. Previously reported in 41st Annual Report, p. 153; 40th Annual Report, p. 131.

[37]A plan of reorganization under Chapter X may contemplate an orderly liquidation. *Country Life Apartments v. Buckley*, 145 F.2d 935 (C.A. 2, 1944); *In re Lorraine Castle Apartments Bldg. Corp.*, 149 F.2d 55 (C.A. 7, 1944); *Bankers Life & Casualty v. Kirtley*, 338 F.2d 1006 (C.A. 8, 1964).

[38]11 U.S.C. §104.

[39]N.D. Ga., B–74–290–A.

[40]D. N. J., No. B–656–65. Previously reported in 42nd Annual Report, p. 156; 40th Annual Report, p. 128; 39th Annual Report, pp. 124–25; 38th Annual Report, pp. 117, 122, 125; 36th Annual Report, pp. 176–77, 190; 35th Annual Report, p. 161; 33rd Annual Report, pp. 132, 137; 32nd Annual Report, p. 94.

[41]*In re Imperial '400' National, Inc.*, 431 F. Supp. 155 (D. N.J., 1977).

[42]11 U.S.C. §§671–73.

[43]See *In re Ulen & Co.*, 130 F.2d 303 (C.A. 2, 1942).

[44]D. Kans., No. 28075–B–2. Previously reported in 42nd Annual Report, p. 156; 40th Annual Report, pp. 125–26.

[45]S.D.N.Y., Nos. 74–B–614–802, inclusive. Previously reported in 42nd Annual Report, pp. 152–53; 41st Annual Report, pp. 157–58.

[46]Such reasons are necessary if the reorganization court declines to follow the Commission's fee recommendations. *Finn v. Childs Co.*, 181 F.2d 431 (C.A. 2, 1950); *Surface Transit, Inc. v. Saxe, Bacon & O'Shea*, 266 F.2d 862 (C.A. 2, 1959); *Ruskin v. Griffiths*, 269 F.2d 827 (C.A. 2, 1959).

[47]See *In re Hudson & Manhattan RR Co.*, 339 F.2d 114 (C.A. 2, 1964); *In re Orbit Liquor Store*, 439 F.2d 1351 (C.A. 5, 1951); *In re Meade Land & Development Co., Inc.*, 527 F.2d 80 (C.A. 3, 1975); *York International Bldg., Inc. v. Chaney*, 527 F.2d 1061 (C.A. 9, 1975).

[48]S.D.N.Y., Nos. 74–B–1454, 1455 and 74–B–1511–1542, inclusive. Previously reported in 41st Annual Report, pp. 150–51.

[49]*In re Investors Funding Corporation of New York, et al.*, 442 F.Supp. 461 (S.D.N.Y., 1976).

[50]S.D.N.Y., Nos. 77–B–1513–1888; 77–B–2003–2015.

[51]D. Mass., No. 76–0593.

[52]42nd Annual Report, pp. 161–62.

[53]Nos. 77-1216 and 1217.

[54]Before a Chapter X petition can be approved, it must be shown that the petition was filed in "good faith". This means, among other things, that it is not unreasonable to expect a successful reorganization §146(3), 11 U.S.C. §546(3).

[55]D. Mass., No. 76-1158-G. Previously reported in 42nd Annual Report, p. 161.

[56]*General Stores Corp.* v. Shlensky, 350 U.S. 462 (1950).

[57]*SEC v. American Trailer Rentals Co.*, 379 U.S. 594 (1965); *Schreibman v. Mason*, 377 F.2d 99 (C.A. 1, 1967); *SEC v. Burton*, 342 F.2d 783 (C.A. 1, 1965); *SEC v. Canandaigua Enterprises Corp.*, 339 F.2d 14 (C.A. 2, 1964).

[58]*SEC v. American Trailer Rentals Co., supra; General Stores Corp., supra; SEC v. U.S. Realty Improvement Co.*, 310 U.S. 434 (1940).

[59]N.D. Ga., No. B-77-760-A.

[60]S.D.N.Y., Nos. 76-B-1967-68.

[61]D. Hawaii, No. 77-30.

Part 8
SEC Management Operations

Part 8
SEC Management Operations

In 1977, the Commission made a number of changes designed to make the most effective use of its resources and provide improved service to the public.

ORGANIZATIONAL CHANGES

Although no major reorganization occurred in 1977, the Commission made several improvements designed to enhance its effectiveness and assure the best allocation of its resources.

The Office of Public Affairs was created by merging the functions of the former offices of Congressional Affairs and Public Information. The new organizational arrangement was created to improve coordination between the Commission's press relations and Congressional relations and provide increased emphasis in both areas.

During 1977, the Office of Public Affairs coordinated agency responses to in-depth Congressional inquiries, including detailed oversight hearings by subcommittees of the House Interstate and Foreign Commerce Committee; tracked approximately 500 House and Senate bills (from both the 94th and 95th Congress); received approximately 1,250 letters and an estimated 20,000 telephone calls; wrote and circulated approximately 300 memoranda to Commissioners and Commission staff members; held approximately ten news conferences; coordinated, edited, and published the Commission's annual report to Congress; and coordinated arrangements for the "SEC Major Issues Conference," an assembly of 64 representatives of the SEC, industry, public interest groups, and the academic community, which considered key major policies confronting the Commission. In addition, the Office initiated a new publication entitled "SEC Employee News," which is being disseminated to the Commission's staff on a monthly basis.

The Branch of Investor Service, formerly part of the Office of Reports and Information Services, became a major component of the Office of Consumer Affairs in April 1977. As a result, the Office of Consumer Affairs has been assigned primary responsibility for processing and responding to inquiries and complaints from individual investors. The Commission attempts to resolve complaints regarding registered entities by requesting reports on the subject of the complaint. In addition, inquiries and complaints from members of the public often provide valuable information about practices within the securities industry. The Office of Consumer Affairs gathers statistics from these

communiques and prepares reports about the entities subject to the Commission's jurisdiction to assist other offices and divisions in carrying out their regulatory and enforcement responsibilities. During 1977, the Commission received, analyzed, and answered approximately 4,000 complaints and inquiries about registered brokers and dealers. Most of the complaints involved operational problems such as failure to deliver funds or securities or the alleged mishandling of accounts. In addition, there were approximately 9,100 complaints and inquiries concerning investment advisers, issuers, banks transfer agents, and mutual funds.

During 1977, the Office of Consumer Affairs concentrated much of its efforts on the development of a uniform system for the resolution of disputes between broker-dealers and small investors. The system will be made available nationwide through the self-regulatory organizations and is to include a simplified procedure for the expeditious resolution of claims involving small dollar amounts. Following two public forums on this subject, the Commission announced on April 26, 1977, that it would consider related proposals to be generated by a conference of representatives of self-regulatory organizations and members of the public. The conference was convened and participants agreed to submit proposed rules for a simplified procedure for resolving small claims by the end of the calendar year and a uniform arbitration code shortly thereafter.

The position of the Director of Regional Office Operations was also established in the Executive Director's Office during this time frame. Before 1977, there was no real "regional presence" in the home office. Although several divisions have branches which have responsibility for assisting the regions with particular programs, these units' primary allegiance resides with their parent divisions.

The creation of a Director of Regional Office Operations, provides the regions with an advocate in headquarters who can represent their interests in the variety of problems and issues which arise in the normal course of business. The Director is responsible for coordinating the regions' response to and participation in a variety of substantive programs being undertaken by the Commission or any of its home office units.

In this same vein, it is the duty of the Director of Regional Office Operations to direct the regions in initiating proposals relating to potential substantive programs and regulatory reform. The regional offices are in a unique position to submit a variety of suggestions impacting upon the substantive and administrative work of the Commission due to their responsibilities for implementing rules and regulations while performing their inspection function and because they are often the first units in the Commission to confront novel enforcement problems. It is the job of the Director of Regional Office Operations to encourage the regions to play an active role in addressing the regulatory and enforcement concerns they perceive and in proposing possible solutions to them.

To assist the Director of Regional Office Operations in carrying out his functions, every six months one of the regional administrators is appointed to be the Director's principal contact point in the field. During his tenure, the Advising Regional Administrator acts as the Director's sounding board on regional issues, consults with the Director and meets with head-

quarters staff to explain the regional viewpoint. The Advising Regional Administrator also helps by evaluating suggestions from other regional administrators and forwarding proposals of his own for consideration at headquarters.

PERSONNEL MANAGEMENT

The permanent personnel strength of the Commission totalled 1,959 employees on September 31, 1977 as shown below:

Commissioners	4
Staff:	
Headquarters Offices	1,237
Regional Offices	718
Total Staff	1,955

Recognizing the importance of sharpening staff skills and keeping abreast of new developments, the Commission expanded its involvement in staff training and development by nearly three-fold. In 1977, over 600 staff members attended nearly 1,000 training programs. Categorically, the greatest increases in training occurred in the areas of executive and management development, litigation and communication. While outside institutions continued to be the major source of staff training, a four-fold increase was experienced in "in-house" courses designed specifically for SEC staff.

The agency commitment to training excellence was illustrated by several noteworthy examples. Over 100 senior staff managers throughout the Commission attended an "in-house" seminar entitled the "Manager's Role in EEO," which was the first such program ever offered at the SEC. Eight senior staff attorneys represented the Commission at the prestigious National Institute of Trial Advocacy in Boulder, Colorado, while another twenty-six staff attorneys attended a one-week securities litigation program developed for the Commission's legal staff by the Columbia Law School. The Commission also began participating in the three-week Harvard University program for government executives and the Brookings Institute Conferences for Senior Executives.

An attorney hiring committee, composed of representatives of each of the Commission's legal divisions, was established to coordinate the SEC's attorney interview and selection processes for 1977. The Committee expanded the Commission's recruiting efforts by contacting more than 100 law schools and by increasing the number of locations at which initial interviews were conducted. The committee, in conjunction with the Personnel Office developed a novel but standardized procedure for rating applications to insure that all attorney candidates receive consideration using the same criteria. The Commission was also successful in recruiting experienced litigators to strengthen enforcement staffs in both the headquarters and regional offices.

The Commission's affirmative action program resulted in the hiring of increased numbers of women and minority attorneys. During 1977, the percentage of female attorneys on the legal staff rose from 12.9 percent to 16.7 percent, and the percentage of minority attorneys rose from 6.3 percent to 6.7 percent.

In the area of recruitment and placement of the handicapped, the Civil Service Commission commended the SEC for its "...comprehensive and results-oriented system which will continue to enhance employment opportunities for qualified handicapped individuals in professional as well as support positions..." The CSC further stated that the SEC's affirmative action plan for the hiring, placement and advancement of handicapped individuals "...could serve as an example

for other Federal agencies of similar size."

Seven of the regional offices received on-site personnel management evaluation and assistance visits from headquarters classification, staffing, and training personnel during 1977. These visits provided staff of the Personnel Office with an opportunity to perform job audits, conduct supervisory training sessions, and meet with individual supervisors and employees to discuss personnel-related problems and concerns.

The Commission is continuing its effort to establish meaningful distinctions between grade levels for professional positions. Guidelines distinguishing senior level broker-dealer compliance examiners from journeyman and junior level examiners have been completed. Similar guidelines for investment company examiners, investment adviser examiners, investigators, and financial analysts are now being considered.

INFORMATION SYSTEMS MANAGEMENT

During 1977, several major programs were initiated to improve the utilization of information at the Commission. In the area of records management, an extensive microfilm system was introduced to begin to address internal storage and dissemination problems associated with the Commission's voluminous paper files. The use of this technology, which is presently being utilized by an outside contractor to make Commission filings available to the public, will eventually result in the elimination of much of the manual handling and transfer of files among offices. This comprehensive micrographics program will, over a period of three or four years, convert all official public filings and formal correspondence to microform. At headquarters, access to these documents will be provided by furnishing copies of individual microfiche. Regional and branch offices will have complete sets of all filmed documents on ultra high reduction film strips with paper copies available as needed.

The Commission's current use of automatic data processing was enhanced by the addition of a teleprocessing capability and the development of associated data entry and retrieval functions for selected applications. The computer terminals, printers, and special computer software required for teleprocessing were procured and installed in the latter part of 1977. The initial teleprocessing applications to be implemented include a microform index to support the microfilm operation described above, a centralized index of unique identifying numbers for SEC registrants, and a workload system to control the internal processing of documents filed with the Commission.

For the microfilm operation, teleprocessing will provide a rapid means of keeping the film index of filings up-to-date and will allow users to obtain that information directly without consulting unwieldy and often incomplete paper listings. The unique identifier will be utilized initially in the microfilm index and the filings workload system and will provide a means of linking various information related to the same SEC registrant. The on-line workload system will reduce chronic delays in recording the receipt of filings, reduce data input errors, and streamline processing, resulting in disposition data which is more timely and accurate.

In order to ensure that adequate computer resources will be available for teleprocessing and other projected needs, the decision was made to up-

grade the in-house computer on an interim basis, pending development of long-term computer requirements. Permanent installation of the replacement computer is scheduled for late 1978. This upgrade will make it possible for the Commission to continue its program of providing effective computer support to its staff.

In line with its commitment to improving its computer capability, the staff completed a five-year plan addressing the role of data processing in the Commission's work and set long-range goals for applying new technology. As the first phase of this plan, a detailed, agency-wide systems requirements analysis was initiated in the last quarter of 1977 by a team of management consultants. A major aim of this study is to find ways to enhance the quality and accessibility of information available both to the Commission's staff and to the general public. Some of the specific areas to be addressed are document indexing, case tracking, direct inquiry of computer maintained information, management reporting, and information services for the regional offices. The requirements analysis is scheduled for completion during 1978. Follow-up work will include computer system designs to meet the identified data requirements and identification of alternative ways of implementing the proposed systems.

FINANCIAL MANAGEMENT

The Commission's 1977 appropriation of $56,270,000 was offset in part by fees collected by the Commission amounting to approximately 56 percent of its operating expenses. The Commission is required by law to collect fees for : (1) registration of securities issued; (2) qualification of trust indentures; (3) registration of exchanges; (4) registration of brokers and dealers who are not members of the NASD; and (5) certification of documents filed with the Commission. In addition, the Commission imposes fees for certain services such as filing annual reports and proxy material.

During 1977, the Commission began developing its annual budget estimate using zero-base budget (ZBB) techniques. Application of this method produced several important benefits:

- The ZBB process highlighted major issues. This process forced the agency to develop a program-oriented budget which focuses attention on objectives and methods of attaining them, thereby facilitating consideration of important substantive issues.
- Zero-base budgeting assisted in identifying trade-offs between programs. For the first time, the Commission was afforded a well ordered opportunity to consider whether to apply an increment of resources to maintaining a marginal activity at its current level or to enhance a critical program of higher priority. The same analysis took place within individual programs, as program coordinators analyzed trade-offs among competing decision packages contributing to the same overall program goal.
- While the content of the Commission's budget justification was enhanced, the size was reduced as a result of the new approach. The material submitted to OMB for its 1979 budget request contained 46 percent fewer pages than in 1978, while the corresponding Congressional

budget justification is only 81 pages, compared with 121 pages the previous year.

In general, the ZBB process worked well throughout the Commision. The emphasis given to sharpening objectives succeeded in convincing managers to support development of a case management system. Further improvement in the use of ZBB to manage Commission resources will depend in large measure on the agency's success in redesigning a manpower reporting system which complements and measures progress toward achieving major program objectives.

FREEDOM OF INFORMATION ACT

Commission rules pursuant to the Freedom of Information Act (FOIA), as revised on February 19, 1975, provide that the public can inspect or obtain copies of all records maintained by the SEC with the exception of certain specified categories of information. Most financial data and other information filed by registered companies has always been available for inspection by the public. However, the public was traditionally denied access to certain categories of material, notably investigatory records. Pursuant to various FOIA requests, the Commission has made available for public inspection many records which had previously been considered confidential. Among these records are portions of the broker-dealer manual and the entire investment advisers and investment company inspection manuals, the summary of administrative interpretations under the Securities Act of 1933, and the periodic securities violations bulletin. Moreover, the Commission has made available, pursuant to specific FOIA requests, staff letters of comment on registration statements and Wells Committee submissions. The Commission received a total of 1,250 requests for information under the FOIA between July 1, 1976 and September 30, 1977.

Part 9
Statistics

Part 9
Statistics

THE SECURITIES INDUSTRY

Income, Expenses and Selected Balance Sheet Items

Registered broker-dealers recorded total revenue of $8.9 billion in 1976, 21.4 percent above the 1975 figure of $7.3 billion. Securities commissions are by far the most important source of revenue; however, the industry appears to be diversifying its business activity. Since 1973, when 53.6 percent of total revenue was generated from this source, commissions have accounted for a steadily declining portion of total revenue. They contributed 46 percent of total revenue in 1975 and 41 percent in 1976. Trading and underwriting revenues were the second and third most important revenue contributors, together accounting for 29 percent of total revenue in 1975 and 32 percent in 1976.

Pre-tax income came to approximately $1.5 billion, bringing the 1975 industry profit margin of 15.2 percent up to 16.9 percent in 1976. Pre-tax income increased 34.8 percent on a 21.4 percent growth in revenue. Ownership equity at the end of 1976 was nearly $5.3 billion, reflecting a 16.9 percent increase during the year.

Table 1

FINANCIAL INFORMATION FOR BROKER-DEALERS 1975–1976

(Millions of Dollars)

		1975	1976
A. Revenue and Expenses			
1	Securities Commissions	$ 3,374 1	$ 3,656 2
2	Gain (Loss) in Trading	1,201 1	1,827 4
3	Gain (Loss) in Investments	131 7	269.2
4.	Profit (Loss) From Underwriting and Selling Groups	930 3	1,022.6
5	Interest Income	601 7	556 7
6	Other revenue Related to Securities Business	697 5	706 1
7	Revenue From All Other Sources	394.3	860.2
8	Total Revenue	7,330.7	8,898.4
9	Total Expenses*	6,215 9	7,395 1
10.	Pre-Tax Income	$ 1,114.8	$ 1,503.3
B Assets, Liabilities and Capital			
11	Total Assets	$ 31,181 1	$ 48,987 2
12	Liabilities		
	a Total liabilities (excluding subordinated debt)	25,824 4	42,842 8
	b Subordinated debt	834 7	858 1
	c Total liabilities (11a + 11b)	26,659.1	43,700.9
13	Ownership Equity	4,522.0	5,286.3
14	Total Liabilities and Ownership Equity	$ 31,181 1	$ 48,987 2
	Number of Firms	4,015	4,347

* Expenses include Partners' Compensation
Source· Form X-17A-10

Historical Financial Information of Broker-Dealers with Securities Revenue of $500,000 or More[1]

Every source of broker-dealer revenues with the exception of interest income increased in 1976 due to the record trading volume. Common stock volume on all registered exchanges increased 12.9 percent in 1976 over 1975. The three most important revenue components increased as follows: Securities Commissions 9 percent to $3.5 billion; Trading Activities 59 percent to $2.0 billion; Underwriting 10 percent to $1.0 billion.

Interest income declined 7 percent in 1976, primarily due to the decline in interest rates. Total revenue increased 22 percent for the year to $8.6 billion and pre-tax income of $1.4 billion was 36 percent higher than the 1975 results. Total assets increased $17.2 billion, or 56 percent in 1976. Of this increase, $16.4 billion was balanced by corresponding increases in liabilities. Other liabilities alone accounted for $10 billion of this increase. The remaining growth in assets, $847 million, represented growth in equity capital, with ownership equity increasing 22 percent in 1976.

[1]The Financial and Operational Combined Uniform Single (FOCUS) reporting system requires larger firms to report in greater detail than smaller broker-dealers Firms with $500,000 or more in securities related revenue, the level at which reporting becomes more detailed, held approximately 98 percent of the industry's assets and reported over 96 percent of all revenue in 1976.

Table 2

HISTORICAL REVENUE AND EXPENSES FOR BROKER-DEALERS WITH TOTAL REVENUE OF $500,000 OR MORE

(Millions of Dollars)

			1970	1971	1972	1973	1974	1975	1976
A	**Revenue and Expenses**								
	1	Commissions							
		a Commissions earned on equity securities transactions executed on a national securities exchange	$1,904 1	$2,727.2	$2,747 3	$2,385 2	$2,081 1	$2,599 3	$2,684.9
		b Other commission revenue	362 4	560 1	656 3	430 6	357 1	616 3	822 5
		c Total commissions	2,266 5	3,287 3	3,403 6	2,815 8	2,438 2	3,215 6	3,507 4
	2	Gain (Loss) on Firm Securities Trading and Investment Accounts							
		a Gain (loss) in trading	823 5	1,056 0	994 2	590 2	722 4	1,136 6	1,756 6
		b Gain (loss) in investments	74.9	242.5	208.6	−3 1	54 5	131.0	253.1
		c Total gain (loss)	898 4	1,298 5	1,202 8	587 1	776 9	1,267 6	2,009 7
	3	Profit (Loss) from Underwriting and Selling Groups	601 3	957 0	915 6	493 5	496 3	912 7	1,007 8
	4	Revenue From Sale of Investment Company Securities							
		a As underwriter	N/A	N/A	N/A	N/A	N/A	48 8	59 9
		b Other than as underwriter (retail transactions)	N/A	N/A	N/A	N/A	N/A	70 9	86.1
		c Total revenue from sale of investment company securities	184 2	195 5	151 0	148 8	78 8	119 7	146 0
	5	Interest Income	378 6	363 8	527 0	620 9	622.0	591 3	549 5
	6	Fees for Account Supervision, Investment Advisory and Administrative Services	63 6	82 3	98 6	82 8	84 6	154 5	205 5
	7	Commodity Revenue	88 2	98 3	124 6	177 5	168 2	186 6	235 8
	8	Other Revenue Related to Securities Business	N/A	N/A	N/A	N/A	N/A	381 3	689 8
	9	Revenue From All Other Sources	266 2	300 4	306 2	323 3	399 7	167 1	200 0
	10	Total Revenue	$4,747 0	$6,583 1	$6,729 4	$5,249 7	$5,064 7	$6,996 4	$8,551 5
B	**Expenses**								
	11	Compensation to registered representatives	$ 777 7	$1,139 0	$1,198 0	$ 937 4	$ 949 4	$1,274 5	$1,571 8
	12	Employee compensation and benefits	1,085 7	1,299.7	1,392 2	1,184 2	1,096 6	1,375.5	1,660 2
	13	Commissions paid to other brokers	128 0	182 0	185 7	188 0	151 0	210 8	346 6
	14	Interest	539 9	519 8	633 7	795 7	749 7	580 0	838 9
	15	Communications	370 0	433 8	488 0	461 0	462 6	481 7	588 4
	16	Occupancy and equipment rental	348 7	412 8	459 6	433 4	439.7	463 0	484 2
	17	Promotional	156 8	187 7	214 0	185.7	172.1	156 8	202 0
	18	All other operating expenses	606 3	787 4	793 5	685 9	633 7	1,413 0	1,445 1
	19	Total expenses	4,013 1	4,962 2	5,364 7	4,871 3	4,654 8	5,955 3*	7,137 2*
C.	**Pre-Tax Income**								
	20	Pre-tax income	$ 733 9	$1,620 9	$1,364 7	$ 378 4	$ 409 9	$1,041 7	$1,414.3
Number of Firms			655	788	817	652	609	764	930

*Expenses include partners' compensation

Source Form X−17A−10

Table 3

HISTORICAL CONSOLIDATED BALANCE SHEET FOR BROKER-DEALERS WITH TOTAL REVENUES OF $500,000 OR MORE

(Millions of Dollars)

	1970	1971	1972	1973	1974	1975	1976
A. Assets							
1. Cash, clearing funds, and other deposits	$ 1,161 7	$ 1,220 5	$ 1,280 6	$ 1,139.4	$ 940 3	$ 922 7	$ 1,133 7
2 Receivables from brokers or dealers							
a Securities failed to deliver	2,318 9	2,230 3	2.567 9	1,843.6	1,219.9	1,446 1	2,213 7
b Securities borrowed	864 8	1,022 2	1,363.9	1,096.0	889.0	1,336 2	2,076 3
c Other receivables	197.7	295.1	382.2	330 0	905.2	1,069.7	1,092 4
3 Receivables from customers	7,077 0	9,643 6	13,372 8	9,056.2	7,450.1	8,455.1	12,796 9
4 Market value or fair value of securities and commodities accounts							
a. Trading accounts	NA	NA	NA	NA	NA	10,573.3	17,742 4
b. Other accounts	NA	NA	NA	NA	NA	2,192 4	3,646.3
c Total market value or fair value of securities and commodities accounts	10,261 4	11,667.0	11,870 1	9,721 6	10,788 5	12,865.7	21,388 7
5 Memberships in exchanges (market value)	210.2	200 1	207 9	123.0	100 5	117 7	141.0
6 Property, furniture, equipment leasehold improvements and rights under lease agreements (net of depreciation)*	228 6	278 1	306 7	279.9	268 5	255.4	303.4
7 Other assets	1,163.8	1,368.1	1,397.5	1,599 0	1,224 8	4,276.4	6,889.9
8 Total assets	$23,484 1	$27,925 0	$32,749.6	$25,188.7	$23,786 8	$30,775 0	$48,036.0
B. Liabilities							
9 Money borrowed							
a. Secured by customer collateral	NA	NA	NA	NA	NA	2,212.5	4,629.8
b Secured by firm collateral	NA	NA	NA	NA	NA	7,123.1	6,915 0
c. Unsecured	NA	NA	NA	NA	NA	142 2	250.6
d. Total money borrowed	8,994 1	11,285 7	14,398.4	9 878.1	10,421.0	9,477 8	11,795 4
10 Payables to brokers or dealers							
a. Securities failed to receive	2,705 7	2,419.6	2,732 2	1,724.3	1,281.0	1,398 9	2,151.2
b. Securities borrowed	835.5	983 6	1,284 3	846.9	579.2	1,063 1	1,602.1
c Other payables to brokers or dealers	197 8	345.2	354 2	364 7	1,058 5	1,084.3	1,018 4
d Total payables to brokers or dealers	3,739 0	3,748.4	4,370 7	2,935.9	2,918.7	3,546 3	4,771 7
11 Payables to customers							
a Free credit balances	2,125 5	2,103.8	2,149 8	2,184.4	1,732 5	1,732 9	2,023.1
b. All other payables to customers	2,116.5	2,632 6	3,078 3	2,793.1	2,253.6	2,958 5	4,144.2
c. Total payables to customers	4,242 0	4,736.4	5,228.1	4,977 5	3,986 1	4,691.4	6,167 3
12 Short positions in securities and commodities accounts	707.4	906.8	1,525.1	1,158 3	1,038 2	1,163.8	2,554 6
13 Other liabilities	2,343 0	2,858.7	2,505.4	2,549.7	2,098 5	7,195 8	17,170.2
14 Total liabilities excluding subordinated borrowings	20,025.5	23,536 0	28,027 7	21,499.5	20,462 5	26,075 1	42,459 2
15. Subordinated borrowings	641.0	728 1	773 9	642.2	593.5	767 0	796.7
16. Total liabilities	$20,666.5	$24,264 1	$28,801 6	22,141 7	21,056.0	$26,842.1	$43,255.9
C. Ownership Equity							
17 Ownership equity	2,817 6	3,660.9	3,948 0	3,047 0	2,730.8	3,932 9	4,780.1
18. Total liabilities and capital	$23,484 1	$27,925 0	$32,749 6	$25,188.7	$23,786.8	$30,775 0	$48,036 0
Number of Firms	655	788	817	652	609	764	930

*Item 6 not net of amortization
Source Form X–17A–10

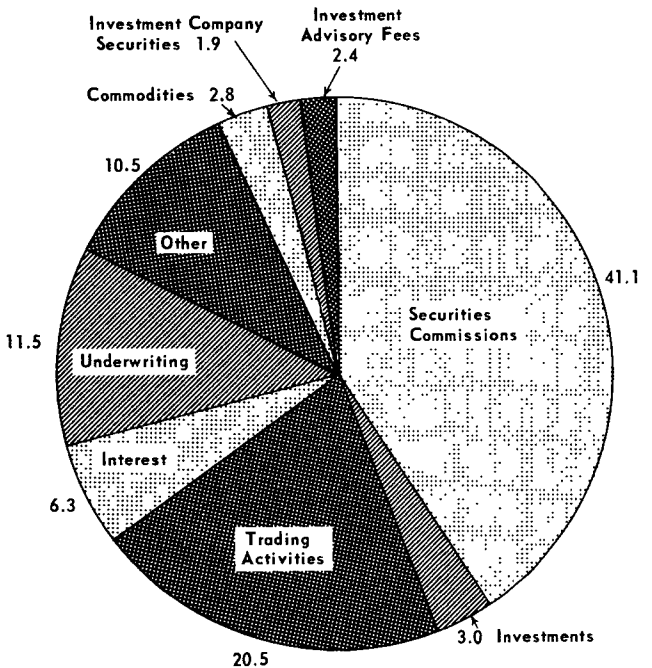
Securities Industry Dollar

Securities commissions represented 41 cents of each dollar of securities industry revenue. Another 20.5 cents of each dollar came from trading activities and underwriting revenue contributed 11.5 cents. Together, these three activities accounted for 73 cents of each revenue dollar.

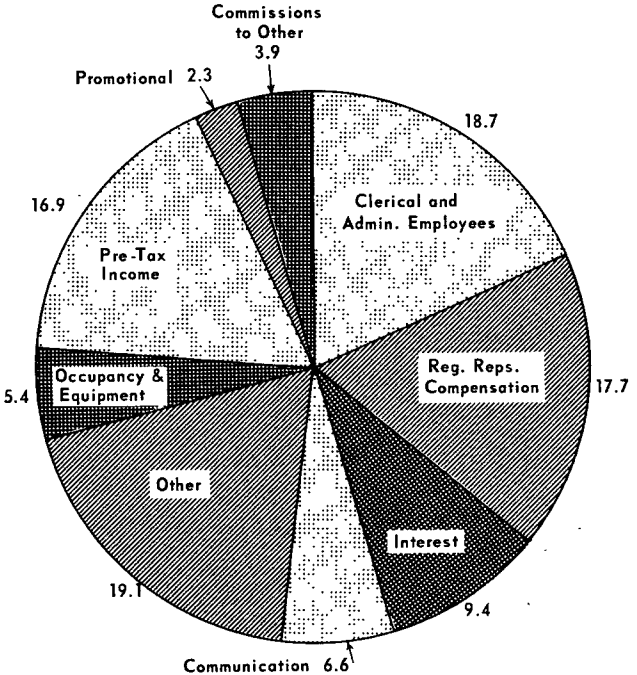
The largest portion of this revenue dollar — 36.4 cents — went to pay registered representatives and support personnel (clerical and administrative employees). Another 12 cents was spent on communications, occupancy and equipment. After all expenses, including partners' compensation, 16.9 cents of the revenue dollar remained. This was the industry's largest pre-tax profit margin since 1972.

SECURITIES INDUSTRY DOLLAR: 1976

SOURCES OF REVENUE



EXPENSES AND PRE-TAX INCOME



NOTE. Includes information for firms with securities related revenues of $500,000 or more in 1976.

SOURCE: X-17A-10 REPORTS

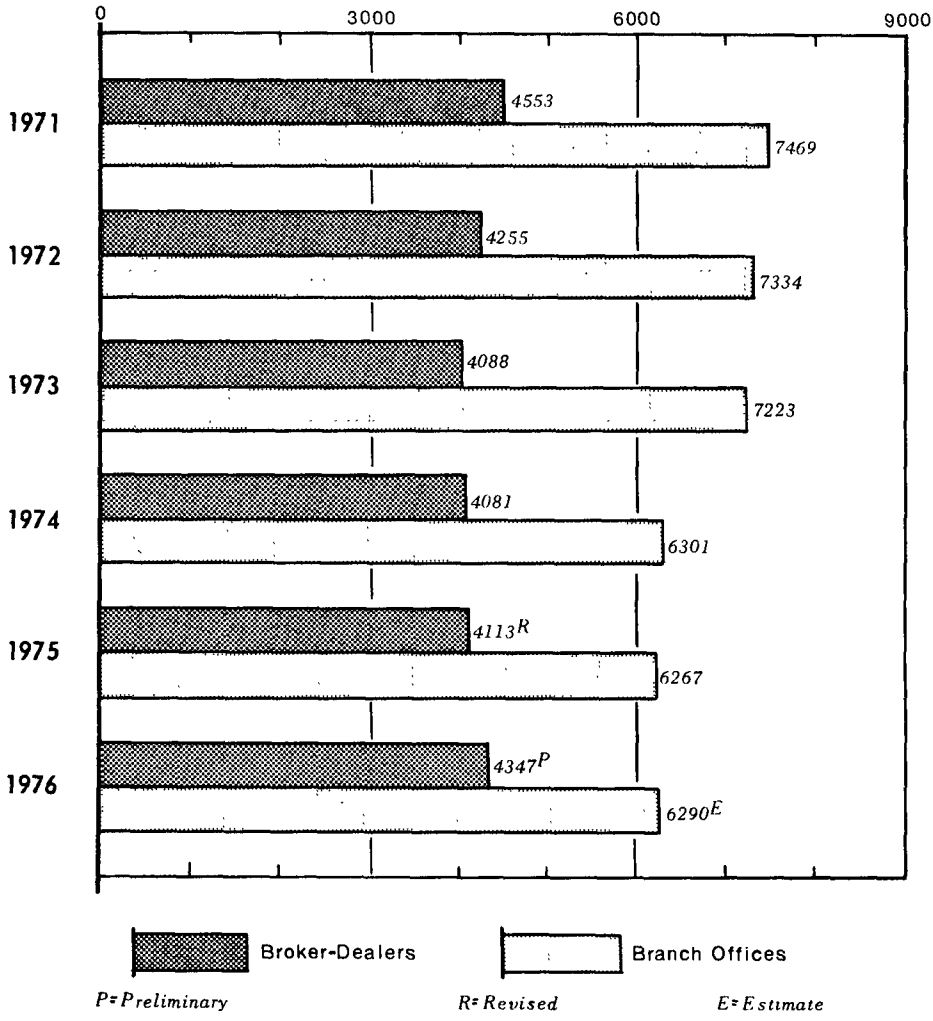
GA-042178-4

Broker-Dealers, Branch Offices, Employees

The number of broker-dealers increased from 4,113 in 1975 to 4,347 in 1976. Following the upward trend of the broker-dealers the number of branch offices increased to 6,290.

The number of full-time broker-dealer employees stood at 200 thousand at the end of 1976. There were approximately 73 thousand full-time registered representatives employed in the industry at the close of the year, 31 percent of the industry's total employment.

BROKER-DEALERS AND BRANCH OFFICES



P=Preliminary *R=Revised* *E=Estimate*

SOURCE : X-17A-10 REPORTS

GA-042178-8

Table 4A

BROKERS AND DEALERS REGISTERED UNDER THE SECURITIES EXCHANGE ACT OF 1934—EFFECTIVE REGISTRATIONS AS OF SEPTEMBER 30, 1976 CLASSIFIED BY TYPE OF ORGANIZATION AND BY LOCATION OF PRINCIPAL OFFICES.

Location of Principal Offices	Number of Registrants				Number of Proprietors, Partners, Officers, etc.[1] [2]			
	Total	Sole proprietorships	Partnerships	Corporations[3]	Total	Sole proprietorships	Partnerships	Corporations[3]
ALABAMA	26	3	1	22	134	3	3	128
ALASKA	0	0	0	0	0	0	0	0
ARIZONA	28	4	1	23	105	4	4	92
ARKANSAS	23	2	0	21	109	2	0	107
CALIFORNIA	477	145	44	288	2,545	145	243	2,157
COLORADO	60	6	3	51	401	6	56	339
CONNECTICUT	58	6	10	42	424	6	117	301
DELAWARE	12	3	0	9	32	3	0	29
DISTRICT OF COLUMBIA	28	2	5	21	268	2	25	241
FLORIDA	111	10	4	97	3,449	10	8	3,431
GEORGIA	38	1	1	36	257	1	2	254
HAWAII	17	0	0	17	93	0	0	93
IDAHO	6	1	0	5	20	1	0	19
ILLINOIS	1,466	1,163	83	220	2,804	1,163	486	1,155
INDIANA	50	7	2	41	259	7	5	247
IOWA	35	2	1	32	210	2	6	202
KANSAS	30	2	2	26	148	2	9	137
KENTUCKY	10	1	1	8	70	1	3	66
LOUISIANA	23	6	4	13	181	6	14	161
MAINE	12	1	4	7	49	1	21	27
MARYLAND	35	2	4	29	229	2	72	155
MASSACHUSETTS	154	33	13	108	1,078	33	95	950
MICHIGAN	56	5	5	46	383	5	108	270
MINNESOTA	74	4	1	69	612	4	2	606
MISSISSIPPI	19	1	4	14	78	1	11	66
MISSOURI	70	3	6	61	781	3	144	634
MONTANA	3	1	0	2	20	1	0	19
NEBRASKA	16	0	0	16	112	0	0	112
NEVADA	2	1	0	1	4	1	0	3
NEW HAMPSHIRE	3	1	0	2	11	1	0	10
NEW JERSEY	183	38	26	119	624	38	77	509
NEW YORK (excluding New York City)	260	93	19	148	613	93	51	469
NORTH CAROLINA	28	5	1	22	145	5	2	138
NORTH DAKOTA	5	0	0	5	27	0	0	27
OHIO	90	5	15	70	683	5	216	462
OKLAHOMA	22	4	1	17	111	4	2	105
OREGON	24	3	1	20	100	3	3	94
PENNSYLVANIA	191	26	41	124	1,127	26	220	881
RHODE ISLAND	18	5	2	11	45	5	8	32
SOUTH CAROLINA	12	1	1	10	49	1	2	46
SOUTH DAKOTA	2	1	0	1	12	1	0	11
TENNESSEE	53	3	2	48	325	3	29	293
TEXAS	151	24	5	122	1,038	24	23	991
UTAH	31	3	4	24	123	3	12	108
VERMONT	5	2	1	2	22	2	2	18
VIRGINIA	39	8	3	28	332	8	13	311
WASHINGTON	54	7	1	46	282	7	4	271
WEST VIRGINIA	5	1	0	4	17	1	0	16
WISCONSIN	35	3	0	32	343	3	0	340
WYOMING	7	2	0	5	24	2	0	22
TOTAL (excluding New York City)	4,164	1,651	322	2,191	20,948	1,651	2,103	17,194
NEW YORK CITY	1,216	373	247	596	10,545	373	2,365	7,807
SUBTOTAL	5,380	2,024	569	2,787	31,493	2,024	4,468	25,001
FOREIGN[4]	29	2	2	25	226	2	9	215
GRAND TOTAL	5,409	2,026	571	2,812	31,719	2,026	4,477	25,216

[1] Includes directors, officers, trustees and all other persons occupying similar status or performing similar functions.
[2] Allocations made on the basis of location of principal offices of registrants, not actual locations of persons.
[3] Includes all forms of organizations other than sole proprietorships and partnerships
[4] Registrants whose principal offices are located in foreign countries or other jurisdictions not listed

Table 4B

BROKERS AND DEALERS REGISTERED UNDER THE SECURITIES EXCHANGE ACT OF 1934—EFFECTIVE REGISTRATIONS AS OF SEPT. 30, 1977 CLASSIFIED BY TYPE OF ORGANIZATION AND BY LOCATION OF PRINCIPAL OFFICES

Location of Principal Offices	Number of Registrants				Number of Proprietors, Partners, Officers, etc [2 3]			
	Total	Sole proprietorships	Partnerships	Corporations[4]	Total	Sole proprietorships	Partnerships	Corporations[4]
ALABAMA	25	2	1	22	133	2	3	128
ALASKA	0	0	0	0	0	0	0	0
ARIZONA	31	4	1	26	112	4	5	103
ARKANSAS	28	7	0	21	105	7	0	98
CALIFORNIA	503	177	46	280	2,530	177	254	2,099
COLORADO	63	5	3	55	409	5	56	348
CONNECTICUT	54	7	8	39	412	7	113	292
DELAWARE	11	3	0	8	37	3	0	34
DISTRICT OF COLUMBIA	30	3	5	22	264	3	25	236
FLORIDA	126	12	4	110	489	12	8	469
GEORGIA	39	1	2	36	256	1	4	251
HAWAII	16	0	0	16	90	0	0	90
IDAHO	6	2	0	4	18	2	0	16
ILLINOIS	1,649	1,251	119	279	3,213	1,251	678	1,284
INDIANA	49	6	2	41	261	6	5	250
IOWA	14	4	1	9	80	4	6	70
KANSAS	28	2	2	24	144	2	9	133
KENTUCKY	11	1	1	9	72	1	3	68
LOUISIANA	18	4	4	10	162	4	16	142
MAINE	13	1	4	8	52	1	21	30
MARYLAND	41	4	4	33	247	4	72	171
MASSACHUSETTS	149	28	13	108	970	28	84	858
MICHIGAN	60	6	5	49	389	6	112	271
MINNESOTA	79	3	1	75	613	3	2	608
MISSISSIPPI	22	1	4	17	88	1	11	76
MISSOURI	71	2	5	64	789	2	141	646
MONTANA	4	2	0	2	21	2	0	19
NEBRASKA	15	0	0	15	108	0	0	108
NEVADA	2	1	0	1	4	1	0	3
NEW HAMPSHIRE	4	1	0	3	15	1	0	14
NEW JERSEY	188	37	25	126	664	37	75	552
NEW MEXICO	7	1	0	6	40	1	0	39
NEW YORK (excluding New York City)	261	98	19	144	605	98	52	455
NORTH CAROLINA	31	6	1	24	147	6	2	139
NORTH DAKOTA	7	1	0	6	40	1	0	39
OHIO	94	5	17	72	682	5	226	451
OKLAHOMA	20	4	0	16	101	4	0	97
OREGON	29	4	1	24	115	4	3	108
PENNSYLVANIA	194	27	45	122	1,150	27	169	954
RHODE ISLAND	18	5	2	11	45	5	8	32
SOUTH CAROLINA	10	0	1	9	44	0	2	42
SOUTH DAKOTA	3	1	0	2	17	1	0	16
TENNESSEE	54	3	2	49	358	3	29	326
TEXAS	157	18	7	132	1,085	18	29	1,038
UTAH	27	2	2	23	115	2	7	106
VERMONT	5	1	1	3	32	1	2	29
VIRGINIA	37	7	3	27	323	7	13	303
WASHINGTON	53	6	0	47	278	6	0	272
WEST VIRGINIA	5	1	0	4	17	1	0	16
WISCONSIN	39	5	0	34	349	5	0	344
WYOMING	5	1	0	4	20	1	0	19
TOTAL (excluding New York City)	4,405	1,773	361	2,271	18,310	1,773	2,245	14,292
NEW YORK CITY	1,320	469	252	599	10,491	469	2,177	7,845
SUBTOTAL	5,725	2,242	613	2,870	28,801	2,242	4,422	22,137
FOREIGN	31	3	2	26	229	3	9	217
GRAND TOTAL	5,756	2,245	615	2,896	29,030	2,245	4,431	22,354

[1] Registrants whose principal offices are located in foreign countries or jurisdictions not listed.
[2] Includes directors, officers, trustees and all other persons occupying similar status or performing similar functions.
[3] Allocations made on the basis of location of principal offices of registrants, not actual locations of persons.
[4] Includes all forms of organizations other than sole proprietorships and partnerships

SECO Broker-Dealers

The number of broker-dealers who are not members of the NASD (SECO broker-dealers) increased from 302 to 309 in fiscal year 1976. This was the third consecutive year in which the number of SECO broker-dealers increased by a small amount despite an overall contraction in the size of the total broker-dealer firm community. This increase is attributable primarily to the registration as broker-dealers of exchange members primarily engaged in an exchange commission business and of persons engaged in the distribution of oil and gas or limited partnership interests. On the other hand there was a decline in the number of firms selling real estate related securities, exchange members primarily engaged in floor activities and put and call broker-dealers.

Table 5

PRINCIPAL BUSINESS OF SECO BROKER-DEALERS

	Fiscal year-end			
	1973	1974	1975	1976
Exchange member primarily engaged in floor activities	17	17	21	11
Exchange member primarily engaged in exchange commission business	28	20	19	28
Broker or dealer in general securities business	66	65	67	61
Mutual fund underwriter and distributor	24	18	19	14
Broker or dealer selling variable annuities	18	18	15	10
Solicitor of savings and loan accounts	9	7	7	5
Real estate syndicator and mortgage broker and dealer	21	33	43	33
Broker or dealer selling oil and gas interests	3	6	4	12
Put and call broker or dealer or option underwriter	20	15	7	3
Limited Partnership interests	*	*	*	23
Broker or dealer selling securities of only one issuer or associated issuers (other than mutual funds)	18	19	20	21
Broker or dealer in municipal bonds	*	*	*	8
Broker or dealer selling church securities	16	17	16	20
Government bond dealer	3	7	8	2
Broker or dealer in other securities business	26	31	42	43
Broker or dealer in interests in condominiums	*	14	6	3
Inactive	7	13	8	22
TOTAL	276	300	302	309

*Not tabulated in prior years

Table 6A

APPLICATIONS AND REGISTRATIONS OF BROKERS AND DEALERS

Transition Quarter ending September 30, 1976

BROKER-DEALER APPLICATIONS		
Applications pending at close of preceding quarter		97
Applications received during quarter 1976		283
Total applications for disposition		380
Disposition of Applications		
Accepted for filing	213	
Returned	60	
Withdrawn	0	
Denied	0	
Total applications disposed of		273
Applications pending as of September 30, 1976		107
BROKER-DEALER REGISTRATIONS		
Effective registrations at close of preceding quarter		5,308
Registrations effective during quarter 1976		213
Total registrations		5,521
Registrations terminated during quarter 1976		
Withdrawn	108	
Revoked	3	
Cancelled	1	
Total registrations terminated		112
Total registrations at end of quarter 1976		5,409
INVESTMENT ADVISER APPLICATIONS		
Applications pending at close of preceding quarter		103
Applications received during quarter 1976		448
Total applications for disposition		551
Disposition of applications		
Accepted for filing	227	
Returned	156	
Withdrawn	3	
Denied	0	
Total applications disposed of		386
Applications pending as of September 30, 1976		165
INVESTMENT ADVISER REGISTRATIONS		
Effective registrations at close of preceding quarter		3,857
Registrations effective during quarter 1976		227
Total registrations		4,084
Registrations terminated during quarter 1976		
Withdrawn	41	
Revoked	0	
Cancelled	1	
Total registrations terminated		42
Total registrations at end of quarter 1976		4,042

Table 6B

APPLICATIONS AND REGISTRATIONS OF BROKERS AND DEALERS

Fiscal Year 1977

BROKER-DEALER APPLICATIONS		
Applications pending at close of preceding year		107
Applications received during fiscal 1977		1,360
Total applications for disposition		1,467
Disposition of Applications		
Accepted for filing	778	
Returned	163	
Withdrawn	5	
Denied	0	
Total applications disposed of		946
Applications pending as of September 30, 1977		521
BROKER-DEALER REGISTRATIONS		
Effective registrations at close of preceding year		5,409
Registrations effective during fiscal 1977		778
Total registrations		6,187
Registrations terminated during fiscal 1977		
Withdrawn	345	
Revoked	0	
Cancelled	86	
Total registrations terminated		431
Total registrations at end of fiscal 1977		5,756
INVESTMENT ADVISER APPLICATIONS		
Applications pending at close of preceding year		165
Applications received during fiscal 1977		1,861
Total applications for disposition		2,026
Disposition of applications		
Accepted for filing	948	
Returned	641	
Withdrawn	1	
Denied	0	
Total applications disposed of		1,590
Applications pending as of September 30, 1977		436
INVESTMENT ADVISER REGISTRATIONS		
Effective registrations at close of preceding year		4,042
Registrations effective during fiscal 1977		948
Total registrations		4,990
Registrations terminated during fiscal 1977		
Withdrawn	167	
Revoked	0	
Cancelled	22	
Total registrations terminated		189
Total registrations at end of fiscal 1977		4,801

Table 7A

APPLICATIONS AND REGISTRATIONS OF MUNICIPAL SECURITIES DEALERS AND TRANSFER AGENTS

Transition Quarter ending September 30, 1976

MUNICIPAL SECURITIES DEALERS APPLICATIONS		
Applications pending at close of preceding quarter		0
Applications received during quarter 1976		325
Total applications for disposition		325
Disposition of Applications		
Accepted for filing	323	
Returned	0	
Withdrawn	0	
Denied	0	
Total applications disposed of		323
Applications pending as of September 30, 1976		2
MUNICIPAL SECURITIES DEALERS REGISTRATIONS		
Effective registrations at close of preceding quarter		314
Registrations effective during quarter 1976		9
Total registrations		323
Registrations terminated during quarter 1976		
Withdrawn	1	
Cancelled	0	
Suspended	0	
Total registrations terminated		1
Total registrations at end of quarter 1976		322
TRANSFER AGENTS APPLICATIONS		
Applications pending at close of preceding quarter		2
Applications received during quarter 1976		16
Total applications for disposition		18
Disposition of Applications		
Accepted for filing	11	
Returned	2	
Withdrawn	0	
Denied	0	
Total applications disposed of		13
Applications pending as of September 30, 1976		5
TRANSFER AGENTS REGISTRATIONS		
Effective registrations at close of preceding quarter		783
Registrations effective during quarter 1976		11
Total registrations		794
Registrations terminated during quarter 1976		
Withdrawn	0	
Cancelled	0	
Suspended	0	
Total registrations terminated		0
Total registrations at end of quarter 1976		794

Table 7B

APPLICATIONS AND REGISTRATIONS OF MUNICIPAL SECURITIES DEALERS AND TRANSFER AGENTS

Fiscal Year 1977

MUNICIPAL SECURITIES DEALERS APPLICATIONS		
Applications pending at close of preceding year		2
Applications received during fiscal 1977		30
Total applications for disposition		32
Disposition of Applications		
Accepted for filing	10	
Returned	0	
Withdrawn	0	
Denied	0	
Total applications disposed of		10
Applications pending as of September 30, 1977		22
MUNICIPAL SECURITIES DEALERS REGISTRATIONS		
Effective registrations at close of preceding year		322
Registrations effective during fiscal 1977		10
Total registrations		332
Registrations terminated during fiscal 1977		
Withdrawn	0	
Cancelled	0	
Suspended	0	
Total registrations terminated		0
Total registrations at end of fiscal 1977		332
TRANSFER AGENTS APPLICATIONS		
Applications pending at close of preceding year		5
Applications received during fiscal 1977		54
Total applications for disposition		59
Disposition of applications		
Accepted for filing	43	
Returned	1	
Withdrawn	0	
Denied	0	
Total applications disposed of		44
Applications pending as of September 30, 1977		15
TRANSFER AGENTS REGISTRATIONS		
Effective registrations at close of preceding year		794
Registrations effective during fiscal 1977		43
Total registrations		837
Registrations terminated during fiscal 1977		
Withdrawn	0	
Cancelled	0	
Suspended	0	
Total registrations terminated		0
Total registrations at end of fiscal 1977		837

Table 8

CONSOLIDATED REVENUES AND EXPENSES OF SELF-REGULATORY ORGANIZATIONS

(Thousands of Dollars)

	1972	1973	1974	1975	1976	1st Qtr 1977	2nd Qtr 1977	3rd Qtr. 1977
Revenues								
Transaction Fees	$ 29,273	$ 26,458	$ 24,166	$ 32,884	$ 38,602	$ 10,144	$ 9,110	$ 9,194
Listing Fees	26,441	26,490	25,434	31,726	40,756	9,363	12,890	10,087
Communication Fees	18,591	21,376	20,822	25,947	33,335	9,594	10,525	10,760
Clearing Fees	36,296	32,602	30,070	35,451	41,185	2,323	2,164	2,074
Depository Fees	19,469	23,586	22,696	27,792	36,227	9,352	8,932	8,926
Tabulation Services	12,037	10,453	11,268	13,553	16,537	4,464	4,069	3,782
All Other Revenues	37,660	38,788	38,740	38,535	42,747	13,259	13,077	13,658
Membership Dues	9,937	11,103	11,156	11,313	13,053	3,593	3,624	3,593
Registration Fees	5,623	6,450	5,136	5,130	4,221	1,443	1,399	1,237
Floor Usage Revenue	4,685	4,777	4,860	6,972	9,022	2,588	2,619	2,762
Corporate Finance Fees	2,221	1,212	816	1,111	1,047	244	227	228
Other	15,194	15,246	16,772	14,009	15,404	5,392	5,208	5,839
Total Revenues	$179,768	$179,753	$173,197	$205,889	$249,388	$ 58,499	$60,767	$ 58,481
Expenses								
Employee Costs	$ 70,233	$ 77,744	$ 80,049	$ 84,342	$ 99,340	$ 25,523	$ 25,254	$ 25,759
Occupancy Costs	7,954	10,663	12,750	12,910	14,646	3,797	3,797	3,530
Equipment Costs	1,734	1,916	2,487	3,510	4,372	993	724	734
Professional and Legal Services	7,343	8,627	5,757	8,006	8,549	2,063	2,583	2,324
Depreciation and Amortization	2,719	3,360	4,093	4,824	5,703	1,494	1,420	1,557
Advertising, Printing and Postage	4,194	5,391	4,882	3,342	3,445	1,012	1,152	657
Communication, Data Processing and Collection	49,840	54,837	52,504	58,854	72,862	15,446	16,406	16,594
All Other Expenses	16,814	15,028	11,746	15,858	23,711	3,784	4,177	3,553
Total Expenses	$160,831	$177,565	$174,269	$191,647	$232,628	$ 54,111	$ 55,513	$ 55,109
Pre-Tax Income	$ 18,937	$ 2,188	$ −1,071	$ 14,243	$ 16,760	$ 4,388	$ 5,255	$ 3,372

NOTE Totals may not add due to rounding.

SOURCE: Survey of Self-Regulatory Organizations and Subsidiaries
Directorate of Economic and Policy Research
Office of Securities Industry And Self-Regulatory Economics

Table 8—cont.

CONSOLIDATED REVENUES AND EXPENSES OF SELF-REGULATORY ORGANIZATIONS

(Thousands of Dollars)

	AMEX		BSE		CBOE		CSE		ISE	
	1976	Jan-Sep 1977	1976	Jan-Sep 1977	1976	Jan-Sep 1977	1976	Jan-Sep 1977	1976	Jan-Sep 1977
Revenues										
Transaction Fees	$ 6,517	$ 5,047	$ 494	$ 371	$ 6,765	$ 4,774	$ 0	$ 0	$ +	$ 0
Listing Fees	5,298	3,942	70	64	0	0	13	4	3	3
Communication Fees	15,980	15,826	0	0	1,370	1,208	6	13	0	0
Clearing Fees	3,181	479	1,456	875	0	0	0	0	0	0
Depository Fees	0	0	109	469	0	0	0	0	0	0
Tabulation Services	0	0	866	598	0	0	10	15	0	0
All Other Revenues	2,648	2,205	961	636	3,583	3,067	55	82	26	20
Membership Dues	600	481	208	153	1,047	780	1	0	6	5
Registration Fees	126	85	8	6	315	269	5	0	+	0
Floor Usage Revenue	768	588	30	20	644	575	43	78	0	0
Corporate Finance Fees	0	0	0	0	0	0	0	0	0	0
Other	1,154	1,051	714	458	1,577	1,442	6	4	20	15
Total Revenues	$33,624	$27,499	$3,956	$3,013	$11,719	$ 9,049	$ 84	$ 114	$ 29	$ 23
Expenses										
Employee costs	$10,168	$ 8,382	$1,897	$1,478	$ 4,294	$ 4,152	$ 33	$ 26	$ 10	$ 8
Occupancy Costs	1,917	1,268	250	208	985	873	16	18	12	9
Equipment Costs	500	374	138	75	747	490	17	14	0	0
Professional and Legal Services	1,246	1,034	172	200	601	806	12	13	2	2
Depreciation and Amortization	1,107	814	148	88	1,032	813	0	0	0	0
Advertising, Printing and Postage	1,008	764	122	84	742	617	7	3	1	+
Communication, Data Processing and Collection	15,490	12,897	580	504	741	816	13	11	+	+
All Other Expenses	690	644	500	356	1,239	1,030	4	9	2	2
Total Expenses	$32,126	$26,177	$3,806	$2,993	$10,380	$ 9,596	$103	$ 94	$ 27	$ 22
Pre-Tax Income	$ 1,498	$ 1,322	$ 150	$ 20	$ 1,339	$ −547	$ −18	$ 20	$ 2	$ 1

+ = less than 500

NOTE. Totals may not add due to rounding.

SOURCE. Survey of Self-Regulatory Organizations and Subsidiaries
Directorate of Economic and Policy Research
Office of Securities Industry And Self-Regulatory Economics

Table 8—cont.

CONSOLIDATED REVENUES AND EXPENSES OF SELF-REGULATORY ORGANIZATIONS

(Thousands of Dollars)

	MSE		NASD		NYSE		PSE		PHLX		SSE	
	1976	Jan-Sep 1977	1976	Jan-Sep 1977	1976	Jan-Sep 1977	1976	Jan-Sep 1977	1976	Jan-Sep 1977	1976	Jan-Sep 1977
Revenues												
Transaction Fees	$ 1,765	$ 1,370	$ 0	$ 0	$ 20,204	$14,135	$ 1,590	$ 1,581	$1,266	$1,170	$ 0	$ 0
Listing Fees	603	458	2,761	1,996	31,002	25,059	901	723	103	89	2	2
Communication Fees	3,892	3,135	0	0	11,987	10,056	59	502	41	138	0	0
Clearing Fees	3,179	2,324	9,461	0	18,650	0	3,000	1,971	2,257	1,539	0	0
Depository Fees	3,838	3,016	0	0	30,190	23,214	2,050	1,552	40	48	0	0
Tabulation Services	11,133	8,585	0	0	0	0	4,524	3,115	0	0	3	3
All Other Revenues	2,712	2,138	11,909	10,019	17,103	16,714	2,835	2,714	900	671	16	13
Membership Dues	653	605	6,752	5,536	2,049	1,537	1,339	1,420	384	280	16	12
Registration Fees	123	97	2,388	1,890	1,140	922	70	25	46	29	+	0
Floor Usage Revenue	174	137	0	0	6,998	6,253	217	197	148	120	0	0
Corporate Finance Fees	0	0	1,047	699	0	0	0	0	0	0	0	0
Other	1,762	1,299	1,722	1,894	6,916	8,002	1,209	1,073	322	243	+	+
Total Revenues	$27,122	$21,026	$24,131	$12,015	$129,135	$89,177	$14,959	$12,159	$4,606	$3,654	$ 21	$ 17
Expenses												
Employee Costs	$12,293	$10,465	$ 9,839	$ 7,034	$ 50,632	$38,473	$ 7,718	$ 4,595	$2,449	$1,919	$ 6	$ 5
Occupancy Costs	1,682	1,457	1,151	834	7,631	6,151	705	474	294	230	3	3
Equipment Costs	153	210	0	0	652	662	2,048	517	115	105	3	3
Professional and Legal Services	766	631	662	544	4,543	3,205	449	444	95	90	2	+
Depreciation and Amortization	373	356	342	0	2,394	2,100	243	192	63	107	0	0
Advertising, Printing and Postage	122	257	37	0	868	668	427	342	105	81	6	5
Communication, Data Processing and Collection	8,436	7,319	7,428	0	37,206	21,580	2,432	4,859	534	460	+	+
All Other Expenses	2,552	1,409	2,680	1,941	13,701	4,952	1,622	591	721	579	+	0
Total Expenses	$26,377	$22,103	$22,139	$10,353	$117,628	$77,791	$15,645	$12,015	$4,376	$3,572	$ 21	$ 16
Pre-Tax Income	$ 745	$−1,077	$ 1,992	$ 1,662	$ 11,507	$11,387	$ −686	$ 144	$ 230	$ 81	$ 1	$ 1

+ = less than 500

NOTE· Totals may not add due to rounding

SOURCE. Survey of Self-Regulatory Organizations and Subsidiaries
Directorate of Economic and Policy Research
Office of Securities Industry And Self-Regulatory Economics

Table 9

HISTORICAL FINANCIAL INFORMATION FOR SELF-REGULATORY ORGANIZATIONS

(Thousands of Dollars)

	AMEX	BSE	CBOE	CSE	ISE	MSE	NASD	NYSE	PSE	PHLX	SSE	Total
Total Revenues												
1972	$26,011	$2,045	$ 0	$129	$ 26	$18,813	$20,455	$ 98,002	$ 9,985	$4,145	$ 17	$179,628
1973	22,436	2,252	1,178	109	28	19,131	21,329	99,129	10,079	3,911	20	179,601
1974	19,770	2,556	3,658	115	30	19,473	20,267	93,698	10,221	3,261	19	173,067
1975	24,566	3,289	8,157	130	27	22,466	21,495	109,949	11,874	3,796	20	205,769
1976	33,624	3,956	11,719	84	29	27,122	24,131	129,135	14,959	4,606	21	249,388
Transaction Fees												
1972	5,986	207	—	20	1	1,404	—	19,474	1,492	647	—	29,230
1973	3,743	201	360	20	—	1,265	—	18,987	1,260	572	—	26,409
1974	2,302	187	2,109	16	1	1,127	—	17,026	896	463	—	24,126
1975	4,016	362	4,853	11	—	1,437	—	20,518	991	656	—	32,844
1976	6,517	494	6,765	—	+	1,765	—	20,204	1,590	1,266	—	38,602
Listing Fees												
1972	5,181	65	—	3	4	422	—	20,053	623	71	3	26,424
1973	4,153	70	—	4	6	334	—	21,333	507	60	3	26,471
1974	4,142	80	—	12	4	330	1,275	18,938	535	101	3	25,418
1975	4,898	90	—	10	4	532	2,581	22,688	822	82	2	31,709
1976	5,298	70	—	13	3	603	2,761	31,002	901	103	2	40,756
Communication Fees												
1972	8,981	—	—	—	—	1,211	—	8,399	—	—	—	18,591
1973	9,082	—	62	—	—	3,761	—	8,471	—	—	—	21,376
1974	9,304	—	110	—	—	3,553	—	7,855	—	—	—	20,822
1975	11,082	—	840	8	—	3,474	—	10,543	—	—	—	25,947
1976	15,980	—	1,370	6	—	3,892	—	11,987	59	41	—	33,335
Clearing Fees												
1972	2,876	998	—	49	—	3,022	7,621	15,466	3,412	2,853	—	36,296
1973	2,279	1,011	—	28	—	1,714	8,298	13,578	3,004	2,689	—	32,602
1974	1,776	988	—	—	—	1,629	7,638	13,275	2,507	2,257	—	30,070
1975	2,103	1,316	—	—	—	2,646	8,166	16,023	3,012	2,184	—	35,451
1976	3,181	1,456	—	—	—	3,180	9,461	18,650	3,000	2,257	—	41,185

+ = less than 500

NOTE: Totals may not add due to rounding. The Detroit Stock Exchange has been excluded from the above data.

SOURCE: Survey of Self-Regulatory Organizations and Subsidiaries
Directorate of Economic and Policy Research
Office of Securities Industry And Self-Regulatory Economics

Table 9—cont.

HISTORICAL FINANCIAL INFORMATION FOR SELF-REGULATORY ORGANIZATIONS

(Thousands of Dollars)

	AMEX	BSE	CBOE	CSE	ISE	MSE	NASD	NYSE	PSE	PHLX	SSE	Total
Depository Fees												
1972	—	—	—	—	—	—	—	19,273	196	—	—	19,469
1973	—	—	—	—	—	137	—	22,601	848	—	—	23,586
1974	—	—	—	—	—	1,211	—	20,738	747	—	—	22,696
1975	—	—	—	—	—	1,393	—	25,259	1,133	7	—	27,792
1976	—	109	—	—	—	3,838	—	30,190	2,050	40	—	36,227
Tabulation Services												
1972	18	71	—	3	—	9,130	—	—	2,815	—	—	12,037
1973	28	107	—	1	—	7,914	—	—	2,403	—	—	10,453
1974	13	454	—	4	—	8,347	—	—	2,450	—	—	11,268
1975	36	676	—	3	—	9,197	—	—	3,642	—	—	13,553
1976	—	866	—	10	—	11,133	—	—	4,524	—	3	16,537
All Other Revenues												
1972	2,969	704	—	54	20	3,625	12,834	15,336	1,448	575	15	37,580
1973	3,151	863	756	55	21	4,005	13,031	14,158	2,058	589	17	38,704
1974	2,233	847	1,439	83	25	3,277	11,354	15,866	3,085	440	17	38,666
1975	2,431	845	2,464	98	23	3,787	10,748	14,918	2,274	867	18	38,472
1976	2,648	961	3,583	55	26	2,711	11,909	17,103	2,835	900	16	42,747
Total Expenses												
1972	25,847	1,734	—	319	31	18,517	17,912	81,652	10,772	3,897	18	160,700
1973	23,132	1,996	1,694	86	27	18,997	21,616	93,819	12,202	3,839	20	177,427
1974	20,816	2,544	4,103	18	27	19,403	21,023	92,885	9,703	3,603	19	174,144
1975	24,147	2,933	6,872	94	23	21,484	20,185	100,014	12,049	3,712	20	191,533
1976	32,126	3,806	10,380	103	27	26,378	22,139	117,628	15,645	4,376	21	232,629
Pre-Tax Income												
1972	164	311	—	(191)	(5)	296	2,543	16,350	(787)	248	(1)	18,928
1973	(696)	256	(516)	23	1	134	(287)	5,310	(2,123)	72	(0)	2,174
1974	(1,046)	11	(445)	97	3	70	(756)	813	517	(341)	—	(1,077)
1975	419	356	1,286	35	4	982	1,310	9,935	(175)	84	—	14,238
1976	1,498	150	1,339	(18)	2	745	1,992	11,507	(686)	230	1	16,760

+ = less than 500

NOTE Totals may not add due to rounding The Detroit Stock Exchange has been excluded from the above data

SOURCE Survey of Self-Regulatory Organizations and Subsidiaries
Directorate of Economic and Policy Research
Office of Securities Industry And Self-Regulatory Economics

Table 10

SELF-REGULATORY ORGANIZATIONS—CLEARING AGENCIES REVENUES AND EXPENSES[1]—FISCAL YEAR 1976

(Thousands of Dollars)

	American Stock Exchange Clearing Corporation 12/31/76	Boston Clearing Corporation 9/30/76	Bradford Securities Processing Service Inc. 12/31/76	Depository Trust Company 12/31/76	Midwest Clearing Corporation 12/31/76	Midwest Securities Trust Company 12/31/76	National Clearing Corporation 9/30/76	Options Clearing Corporation 6/30/77	Pacific Clearing Corporation 12/31/76	Pacific Securities Depository Trust Company 12/31/76	Stock Clearing Corporation 12/31/76	Stock Clearing Corporation of Philadelphia 12/31/76	TAD Depository Corporation 12/31/76	Total
Revenues														
Clearing services[2]	$ 3,072	$ 1,761	$ 5,904		$ 3,180		$ 8,994	$ 4,715	$ 3,107		$ 17,969	$ 1,911		$ 50,613
Depository services[2]				$ 28,240		$ 3,838				$ 2,416			$ 302	34,796
Interest and other revenues	213	475	1,203	2,537	65	218	54	1,360	360	97	711	405	5	7,703
Total Revenue	$ 3,285	$ 2,236	$ 7,107	$ 30,777	$ 3,245	$ 4,056	$ 9,048	$ 6,075	$ 3,467	$ 2,513	$ 18,680	$ 2,316	$ 307	$ 93,112
Expenses														
Employee costs		$ 1,106	$ 2,380	$ 17,635	$ 1,792	$ 2,781	$ 429	$ 2,299	$ 1,594	$ 1,192		$ 1,308		$ 32,516
Data processing and communication costs		432	108	5,144	365	383		1,994	615	307		101		9,449
Occupancy costs		105	247	3,199	172	445		353	99	118		154		4,892
Services contract costs or allocated costs of affiliate shared facilities	2,685						7,788				18,192	721	287	29,673
All other expenses	210	594	1,620	4,765	807	467	584	1,349	854	760				12,010
Total Expenses	$ 2,895	$ 2,237	$ 4,355	$ 30,743	$ 3,136	$ 4,076	$ 8,801	$ 5,995	$ 3,162	$ 2,377	$ 18,192	$ 2,284	$ 287	$ 88,540
Excess of Revenues Over Expenses	$ 390	$ (1)	$ 2,752	$ 34	$ 109	$ (20)	$ 247	$ 80	$ 305	$ 136	$ 488	$ 32	$ 20	$ 4,572

[1] Any single revenue or expense category may not be completely comparable between any two particular clearing agencies because of (i) the varying classification methods employed by the clearing agencies in reporting operating results and (ii) the grouping methods employed by the Commission staff due to these varying classification methods.

[2] Clearing and depository services revenue items reported in this table may differ from clearing and depository fees revenues reported in the statistical table "Consolidated Revenues and Expenses of Self-Regulatory Organizations" contained herein. This difference results from, among other things, differences in classification of revenue items.

Sources: Self-Regulatory Organization Annual Report Filings (Forms 1-A and Form 15AJ-2) Clearing Agency Registration Filings (Forms CA-1), and Registration Statement under the Securities Act of 1933 (Form S-1)

Table 11

MUNICIPAL SECURITIES RULEMAKING BOARD STATEMENT OF REVENUE AND EXPENSES AND CHANGES IN FUND BALANCE

October 1, 1976 – September 30, 1977

(Unaudited)

REVENUE:	
Assessment fees	$1,259,983
Initial fees	50,600
Annual fees	100
Interest income	27,432
EXPENSES:	
Salaries and employee benefits	320,784
Meetings and travel	207,132
Mailing list, Board manual and other printing and postage	115,459
Rent, telephone and other occupancy costs	63,103
Professional and other services	25,114
Payroll taxes	13,840
Depreciation	12,747
Interest	
Other	5,401
	763,580
EXCESS OF REVENUE OVER EXPENSES	574,535
FUND BALANCE—BEGINNING OF PERIOD	509,878
FUND BALANCE—END OF PERIOD	$1,084,413

FINANCIAL INSTITUTIONS

Stock Transactions of Selected Financial Institutions

During 1976, private noninsured pension funds, open-end investment companies, life insurance companies, and property-liability insurance companies purchased $40.6 billion of common stock and sold $33.1 billion, resulting in net purchases of $7.4 billion. In 1975 purchases were $35.6 billion, sales $30.8 billion, and net purchases $4.8 billion. Their 1976 common stock activity rate was 21.1 percent as compared to 23.2 percent one year earlier.

Table 12

COMMON STOCK TRANSACTIONS AND ACTIVITY RATES OF SELECTED FINANCIAL INSTITUTIONS

(Millions of Dollars)

	1969	1970	1971	1972	1973	1974	1975	1976
Private Noninsured Pension Funds[1]								
Purchases	15,231	13,957	21,684	23,222	20,324	11,758	17,560	20,329
Sales	10,271	9,370	12,800	15,651	14,790	9,346	11,846	13,089
Net purchases (sales)	4,960	4,587	8,884	7,571	5,534	2,412	5,714	7,240
Activity rate	21 3	20 5	22.1	19 7	17 3	14.1	18 3	16 5
Open-End Investment Companies[2]								
Purchases	22,059	17,128	21,556	20,943	15,561	9,085	10,949	10,633 r
Sales	19,852	15,901	21,175	22,552	17,504	9,372	12,144	13,279
Net Purchases (sales)	2,207	1,227	381	(1,609)	(1,943)	(287)	(1,195)	(2,646) r
Activity rate	51 0	45 6	48.2	44 8	39 0	30 5	35 8	32 4 r
Life Insurance Companies[3]								
Purchases	3,703	3,768	6,232	6,912	6,492	3,930	4,920 r	6,158 r
Sales	2,184	1,975	2,777	4,427	4,216	2,439	3,630 r	3,924 r
Net purchases (sales)	1,519	1,793	3,455	2,485	2,276	1,491	1,290 r	2,234 r
Activity rate	29 4	27 8	31 0	29 5	25 9	18 7	22 3 r	21 0 r
Property-Liability Insurance Companies								
Purchases	3,781	3,613	4,171	5,128	4,519	2,400	2,193	3,446
Sales	2,879	2,722	1,944	2,738	2,856	3,223	3,196	2,836
Net purchases (sales)	902	891	2,227	2,390	1,663	(823)	(1,003)	610
Activity rate	26 7	28.1	23.2	23.8	20 8	21.3	24 0	24 7
Total Selected Institutions								
Purchases	44,774	38,466	53,643	56,205	46,896	27,173	35,622 r	40,566 r
Sales	35,186	29,968	38,696	45,368	39,366	24,380	30,816 r	33,128 r
Net purchases (sales)	9,588	8,498	14,947	10,837	7,530	2,793	4,806 r	7,438 r
Activity rate	32 4	29 8	30.8	27 8	23 7	19 1	23 2 r	21.1 r
Foreign Investors[4]								
Purchases	12,428	8,927	11,625	14,360	12,768	7,634	15,316	18,228
Sales	10,941	8,301	10,893	12,173	9,977	7,094	10,637	15,475
Net purchases (sales)	1,487	626	732	2,187	2,791	540	4,679	2,753

r=revised

[1]Includes deferred profit sharing and pension funds of corporations, unions, multiemployer groups and nonprofit organizations

[2]Mutual funds reporting to the Investment Company Institute, a group whose assets constitute about ninety percent of the assets of all open-end investment companies

[3]Includes both general and separate accounts

[4]Transactions of foreign individuals and institutions in domestic common and preferred stocks Activity rates for foreign investors are not calculable

NOTE· Activity rate is defined as the average of gross purchases and sales divided by the average market value of holdings

SOURCE Pension funds and property-liability insurance companies, SEC, investment companies, Investment Company Institute; life insurance companies, American Council of Life Insurance, foreign investors, Treasury Department.

STOCKHOLDINGS OF INSTITUTIONAL INVESTORS AND OTHERS

At year-end 1976, the eleven institutional groups listed below held 375.4 billion of total corporate stock outstanding (both common and preferred). In comparison, they accounted for $313.4 billion of the stock held a year earlier. The resulting 19.8 percent increase in the value of the stockholdings of these institutions was significantly less than the 24.9 percent increase in the aggregate market value of all stock outstanding. Thus, the share of total stock outstanding that was held by these institutions declined to 38.7 percent at year-end 1976 from 41.4 percent a year earlier. During 1976, the share held by other domestic investors, which consist of individuals, brokers-dealers and institutions not listed, rose to 53.8 percent from 52.8 percent. Also, foreign investors increased their share of stockholdings to 6.5 percent from 5.7 percent.

Table 13

MARKET VALUE OF STOCKHOLDINGS OF INSTITUTIONAL INVESTORS AND OTHERS

(Billions of Dollars, End of Year)

	1969	1970	1971	1972	1973	1974	1975	1976
1. Private Noninsured Pension Funds	61.4	67.1	88.7	115.2	90.5	63 0	88.6	109.7
2. Open-End Investment Companies	45.0	43.9	52.6	58.0	43.3	30.3	38.7	43 0
3. Other Investment Companies	6.3	6.2	6.9	7.4	6.6	4.7	5.3	5.9
4 Life Insurance Companies	13.7	15.4	20.6	26 8	25 9	21.9	28 1	34.5
5. Property-Liability Insurance Companies[1]	13.3	13.2	16.6	21.8	19.7	12.8	14.2	17.1
6. Common Trust Funds	4.6	4.6	5.8	7.4	6.6	4.3	5.9	7 1
7 Personal Trust Funds	79.6	78.6	94.1	110.2	94.7	67.7	81.0	96.1
8 Mutual Savings Banks	2.5	2.8	3.5	4.5	4.2	3.7	4.4	4.4
9. State and Local Retirement Funds	7.3	10.1	15 4	22.2	20.2	16.4	24.3	30.1
10. Foundations	20.0	22.0	25.0	28.5	24.5	18.4	22.7	27.1
11. Educational Endowments	7 6	7.8	9.0	10 7	9.6	6.7	8 8	10.4
12. Subtotal	261.3	271.6	338.2	412.7	345.8	249.9	322.0	385.4
13 Less. Institutional Holdings of Investment Company Shares	4.0	4.9	5.8	6.5	6.7	6.5	8.6	10.0
14 Total Institutional Investors	257.3	266 8	332.4	406.2	339.1	243.4	313.4	375.4
15 Foreign Investors[2]	26.9	28.7	32.9	41.3	37.0	28.4	43.5	61.4
16. Other Domestic Investors[3]	582.1	563 9	638.4	694.7	481.3	295.5	399.8	508.6
17. Total Stock Outstanding[4]	866.3	859.4	1003.7	1142.3	857.4	567.3	756 7	945.4

R=Revised

[1]Excludes holdings of insurance company stock
[2]Includes estimate of stock held as direct investment.
[3]Computed as residual (line 16=17−14−15) Includes both individuals and institutional groups not listed above.
[4]Includes both common and preferred stock. Excludes investment company shares but includes foreign issues outstanding in the U.S.

Number of Registrants

As of September 30, 1977, there were 1,333 active investment companies registered under the Investment Company Act, with assets having an aggregate market value of over $77 billion. These figures represent an increase of 22 in the number of registered companies since September 30, 1976. At September 30, 1977, 4,801 investment advisers were registered with the Commission, representing an increase of 759 from a year before.

Table 14A

COMPANIES REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940 AS OF SEPTEMBER 30, 1976

	Number of Registered Companies			Approximate Market Value of Assets of Active Companies (Millions)
	Active	Inactive[a]	Total	
Management open-end ("Mutual Funds")	801	32	833	
Funds having no load	257			
Variable annuity-separate accounts	58			
Capital Leverage Companies	2			
All other load funds	484			
Management closed-end	179	37	216	
Small business investment companies	38			
Capital leverage companies	7			
All other closed-end companies	134			
Unit investment trusts	324	20	344	[b]
Variable annuity-separate accounts	58			
All other unit investment trusts	266			
Face-amount certificates companies	7	3	10	
Total	1,311	92	1,403	

[a] "Inactive" refers to registered companies which as of Sept 30, 1976, were in the process of being liquidated or merged, or have filed an application pursuant to Section 8(f) of the Act for deregistration, or which have otherwise gone out of existence and remain registered only until such time as the Commission issues order under Section 8(f) terminating their registration.

[b] Includes about $ billion of assets of trusts which invest in securities of other investment companies, substantially all of them mutual funds

Table 14B

COMPANIES REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940 AS OF SEPTEMBER 30, 1977

	Number of Registered Companies			Approximate Market Value of Assets of Active Companies (Millions)
	Active	Inactive[a]	Total	
Management open-end ("Mutual Funds")	816	37	853	55,979
Funds having no load	274			14,244
Variable annuity-separate accounts	59			1,344
Capital Leverage Companies	2			28
All other load funds	481			40,373
Management closed-end	174	41	215	7,644
Small business investment companies	40			271
Capital leverage companies	7			333
All other closed-end companies	127			7,040
Unit investment trusts	336	23	359	12,136[b]
Variable annuity-separate accounts	63			951
All other unit investment trusts	273			11,185
Face-amount certificates companies	7	3	10	1,145
Total	1,333	104	1,437	76,904

[a] "Inactive" refers to registered companies which as of September 30, 1977, were in the process of being liquidated or merged, or have filed an application pursuant to Section 8(f) of the Act for deregistration, or which have otherwise gone out of existence and remain registered only until such time as the Commission issues order under Section 8(f) terminating their registration.

[b] Includes about $4 0 billion of assets of trusts which invest in securities of other investment companies, substantially all of them mutual funds

Table 15A

COMPANIES REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940

Quarter ending September 30, 1976	Number of companies				Approximate market value of assets of active companies (millions)
	Registered at beginning of quarter	Registered during quarter	Registration terminated during quarter	Registered at end of quarter	
9/30/76	1,376	40	13	1,403	

Table 15B

COMPANIES REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940

Fiscal year ended June 30	Number of companies				Approximate market value of assets of active companies (millions)
	Registered at beginning of year	Registered during year	Registration terminated during year	Registered at end of year	
1941	0	450	14	436	$ 2,500
1942	436	17	46	407	2,400
1943	407	14	31	390	2,300
1944	390	8	27	371	2,200
1945	371	14	19	366	3,250
1946	366	13	18	361	3,750
1947	361	12	21	352	3,600
1948	352	18	11	359	3,825
1949	359	12	13	358	3,700
1950	358	26	18	366	4,700
1951	366	12	10	368	5,600
1952	368	13	14	367	6,800
1953	367	17	15	369	7,000
1954	369	20	5	384	8,700
1955	384	37	34	387	12,000
1956	387	46	34	399	14,000
1957	399	49	16	432	15,000
1958	432	42	21	453	17,000
1959	453	70	11	512	20,000
1960	512	67	9	570	23,500
1961	570	118	25	663	29,000
1962	663	97	33	727	27,300
1963	727	48	48	727	36,000
1964	727	52	48	731	41,600
1965	731	50	54	727	44,600
1966	727	78	30	775	49,800
1967	775	108	41	842	58,197
1968	842	167	42	967	69,732
1969	967	222	22	1,167	72,465
1970	1,167	187	26	1,328	56,337
1971	1,328	121	98	1,351	78,109
1972	1,351	91	108	1,334	80,816
1973	1,334	91	64	1,361	73,149
1974	1,361	106	90	1,377	62,287
1975	1,377	88	66	1,399	74,192
1976	1,399	63	86	1,376	80,564
*1977	1,403	91	57	1,437	76,904

*Fiscal Year Ending September 30, 1977

Table 16

NEW INVESTMENT COMPANY REGISTRATIONS

	Quarter ending 9/30/76	FY 1977
Management open-end		
No-loads	1	12
Variable annuities	0	0
All others	27	52
Sub-total	28	64
Management closed-end		
SBIC's	0	2
All others	3	9
Sub-total	3	11
Unit investment trust		
Variable annuities	1	10
All others	8	5
Sub-total	9	15
Face amount certificates	0	1
Total Registered	40	91

Table 17

INVESTMENT COMPANY REGISTRATIONS TERMINATED

	Quarter ending 9/30/76	FY 1977
Management open-end		
No-loads	0	3
Variable annuities	0	0
All others	10	41
Sub-total	10	44
Management closed-end		
SBIC's	0	1
All others	1	11
Sub-total	1	12
Unit investment trust		
Variable annuities	0	0
All others	2	0
Sub-total	2	0
Face amount certificates	0	1
Total Terminated	13	57

Private Noninsured Pension Funds: Assets

The assets of private noninsured pension funds totaled $160.4 billion at book value and $173.9 billion at market value on December 31, 1976. A year earlier their comparable asset totals were $145.2 billion and $145.6 billion. The book value of common stock holdings increased to $93.4 billion at year-end 1976 from $83.7 billion the previous year. Valued at market, those holdings rose to $108.5 billion, or 62.4 percent of total assets, at the end of 1976 from $87.7 billion, or 60.2 percent of total assets, one year earlier.

Table 18A

ASSETS OF PRIVATE NONINSURED PENSION FUNDS

Book Value, End of Year

(Millions of Dollars)

	1969	1970	1971	1972	1973	1974	1975	1976
Cash and Deposits	1,619	1,804	1,641	1,857	2,336	4,286	2,962	2,199
U S Government Securities	2,792	3,029	2,732	3,689	4,404	5,533	10,764	14,713
Corporate and Other Bonds	27,613	29,666	29,013	28,207	30,334	35,029	37,809	39,070
Preferred Stock	1,757	1,736	1,767	1,481	1,258	1,129	1,188	1,250
Common Stock	47,862	51,744	62,780	74,585	80,593	79,319	83,654	93,359
Own Company	3,062	3,330	3,608	3,868	4,098	4,588	5,075	N A
Other Companies	44,800	48,414	59,172	70,717	76,495	74,731	78,579	N.A.
Mortgages	4,216	4,172	3,660	2,728	2,377	2,372	2,383	2,369
Other Assets	4,720	4,860	4,826	4,983	5,229	6,063	6,406	7,454
Total Assets	90,579	97,011	106,419	117,530	126,531	133,731	145,166	160,414

N A Not Available.
NOTE: Includes deferred profit sharing funds and pension funds of corporations, unions, multiemployer groups, and nonprofit organizations.

Table 18B

ASSETS OF PRIVATE NONINSURED PENSION FUNDS

Market Value, End of Year

(Millions of Dollars)

	1969	1970	1971	1972	1973	1974	1975	1976
Cash and Deposits	1,619	1,804	1,641	1,857	2,336	4,286	2,962	2,199
U S Government Securities	2,568	2,998	2,772	3,700	4,474	5,582	11,097	14,918
Corporate and Other Bonds	21,262	24,919	26,111	26,232	27,664	30,825	34,519	37,858
Preferred Stock	1,598	1,631	2,014	1,869	985	703	892	1,212
Common Stock	59,827	65,456	86,636	113,369	89,538	62,582	87,669	108,483
Own Company	5,775	6,038	7,691	8,750	6,947	5,230	6,958	N A
Other Companies	54,052	59,418	78,945	104,619	82,591	57,352	80,711	N A
Mortgages	3,461	3,504	3,184	2,427	2,108	2,063	2,139	2,160
Other Assets	4,295	4,422	4,560	4,908	5,140	5,681	6,341	7,073
Total Assets	94,632	104,737	126,921	154,363	132,247	111,724	145,622	173,906

N A Not Available
NOTE. Includes deferred profit sharing funds and pension funds of corporations, unions, multiemployer groups, and nonprofit organizations.

Private Noninsured Pension Funds: Receipts and Disbursements

In 1975, the most recent year for which information on the receipts and disbursements of private noninsured pension funds is available, net receipts were $14.0 billion. Of the $26.6 billion in total receipts that year, employers contributed $19.8 billion and employees $1.6 billion. Investment income (interest, dividends and rent) and net loss on sale of assets were $6.7 billion and $1.7 billion, respectively. Of the $12.6 billion in total disbursements, beneficiaries received $12.3 billion.

Table 19

RECEIPTS AND DISBURSEMENTS OF PRIVATE NONINSURED PENSION FUNDS

(Millions of Dollars)

	1969	1970	1971	1972	1973	1974	1975	1976[1]
Total Receipts	14,151	13,195	17,545	20,070	19,673	21,063	26,583	0
Employer Contributions	8,487	9,717	11,324	12,745	14,368	16,971	19,828	0
Employee Contributions	1,011	1,074	1,120	1,199	1,273	1,460	1,604	0
Investment Income	3,549	3,866	4,102	4,302	4,843	5,982	6,703	0
Net Profit (Loss) on Sale of Assets	991	(1,592)	904	1,723	(924)	(3,477)	(1,659)	0
Other Receipts	113	130	95	101	113	127	107	0
Total Disbursements	5,428	6,180	7,263	8,493	9,539	11,030	12,597	0
Benefits Paid Out	5,290	6,030	7,083	8,297	9,313	10,740	12,334	0
Expenses and Other Disbursements	138	150	180	196	226	290	263	0
Net Receipts	8,723	7,015	10,282	11,577	10,134	10,033	13,986	0

[1]Series has been transferred to the Department of Labor.
NOTE: Includes deferred profit sharing and pension funds of corporations, unions, multiemployer groups and nonprofit organizations

SECURITIES ON EXCHANGES

Exchange Volume

Dollar volume of all securities transactions on registered exchanges totaled $207.0 billion in 1976. Of this total, $195.0 billion represented stock trading, $11.7 billion option trading, and the balance trading in rights and warrants. (Due to Section 22 of the Securities Acts Amendments of 1975, bond transactions are no longer reported by the exchanges.) The value of New York Stock Exchange transactions was $164.7 billion in 1976. NYSE share volume increased 11.7 percent from the 1975 total. On the American Stock Exchange, value of shares traded increased 31.5 percent to $7.5 billion. The AMEX volume of 637.0 million shares was up 17.8 percent from the 1975 figure. Share volume on regional exchanges increased 20.1 percent from the 1975 figure to 749.5 million shares, valued at $23.0 billion.

The Chicago Board Options Exchange contract volume for 1976 was 21.5 million, up 49 percent from 14.4 million in 1975. The value was $9.0 billion, an increase of 41 percent from $6.4 billion in 1975. The American Stock Exchange Option volume was 8.17 million contracts in 1976, an increase of 133 percent from the 3.5 million contracts in 1975. The value of AMEX options trading in 1976 was $2.2 billion. Philadelphia Stock Exchange option volume was 1.19 million in 1976, up 327 percent from 279 thousand in 1975, with a value of $325 million in 1976. Pacific Stock Exchange contract volume in 1976 was 550 thousand with a value of $161.4 million. The Midwest Stock Exchange began listed option trading on December 13, 1976. Their contract volume in 1976 was 15 thousand with a value of $3.2 million.

The Detroit Stock Exchange ceased operations June 30, 1976.

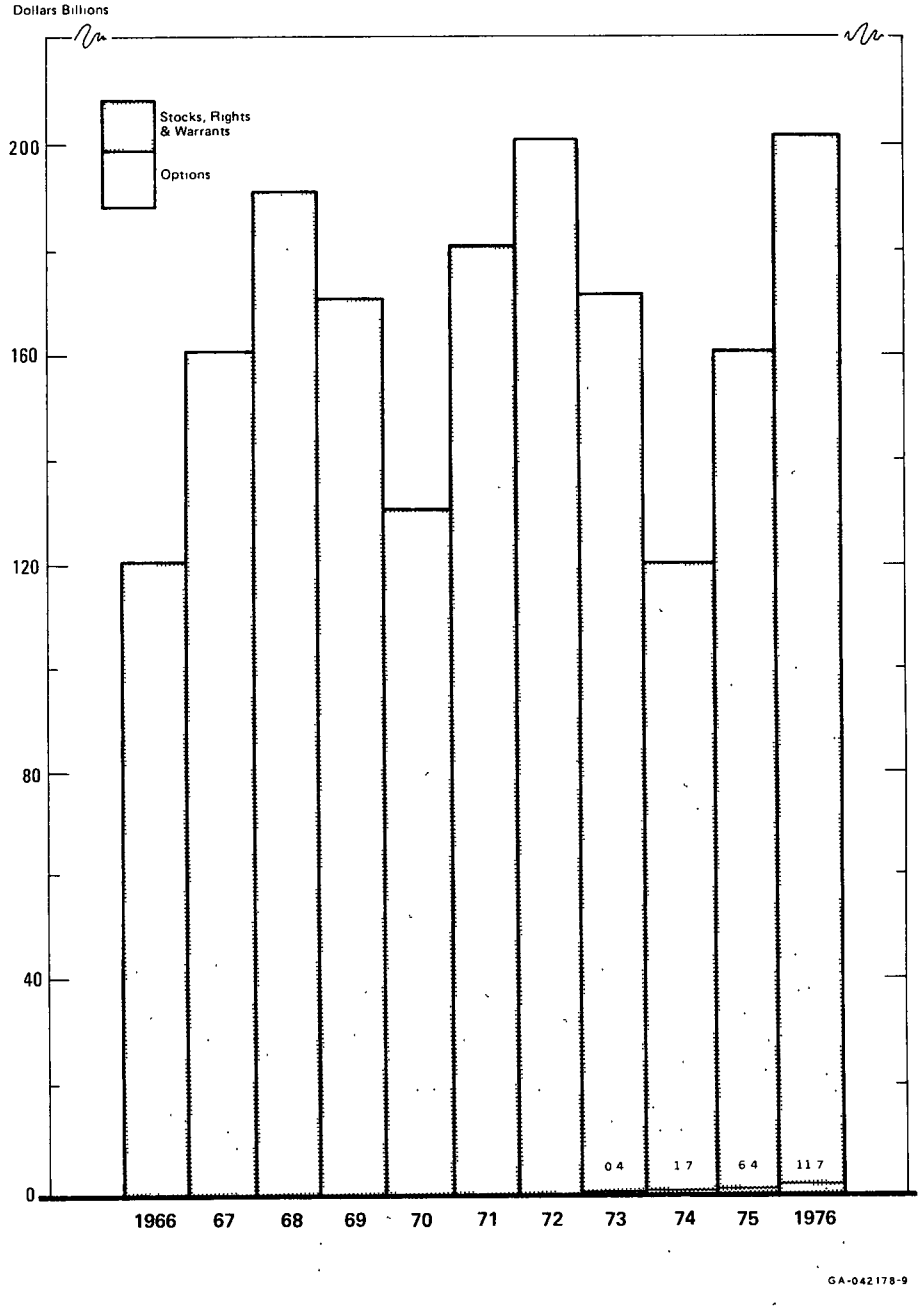
Table 20

EXCHANGE VOLUME: 1976

(Data in thousands)

	Total Dollar Volume	Options		Stocks		Rights and Warrants	
		Dollar Volume	Number of Contracts	Dollar Volume	Share Amount	Dollar Volume	Number of units
All Registered Exchanges	206,958,654	11,734,222	31,428	194,968,674	7,035,662	255,758	89,446
American	9,779,193	2,205,265	8,171	7,468,331	637,047	105,596	29,172
Boston	1,826,681	0	0	1,826,627	55,695	55	24
Chicago Board Options	9,039,849	9,039,849	21,501	0	0	0	0
Cincinnati	1,036,382	0	0	1,036,382	31,458	0	0
Detroit	47,899	0	0	47,899	1,671	0	0
Midwest	9,292,796	3,199	15	9,289,597	276,094	0	0
New York	164,678,859	0	0	164,545,430	5,649,152	133,429	53,497
Pacific Coast	7,629,905	161,374	550	7,456,384	274,220	12,148	6,032
Philadelphia	3,621,989	324,535	1,191	3,292,925	100,380	4,530	720
Intermountain	657	0	0	657	3,263	0	0
Spokane	4,442	0	0	4,442	6,680	0	0
Exempted Exchanges—Honolulu	383	0	0	383	94	0	0

MARKET VALUE OF SECURITIES TRADED ON ALL U.S. STOCK EXCHANGES



NASDAQ Volume

NASDAQ share volume and price information for over-the-counter trading has been reported on a daily basis since November 1, 1971. At the end of 1976, there were 2,627 issues in the NASDAQ system, an increase of 1.1 percent from 2,598 in 1975. Volume for 1976 was 1.7 billion share, up 21 percent from 1.4 billion in 1975. This trading volume reflects the number of shares bought and sold by market makers plus their net inventory changes.

Table 21A

SHARE VOLUME BY EXCHANGES[1]

Year	Total Share volume (thousands)	in Percentage								
		NYSE	AMEX	MIDW	PCSE	PHLE	BCSE	DTSE	CNSE	Other[2]
1935	681,971	73.13	12.42	1.91	2.69	1.10	0.96	0.85	0.03	6 91
1940	377,897	75.44	13.20	2.11	2.78	1.33	1.19	0.82	0 08	3.05
1945	769,018	65 87	21.31	1.77	2 98	1 06	0.66	0 79	0 05	5.51
1950	893,320	76.32	13.54	2.16	3.11	0 97	0 65	0 55	0.09	2.61
1955	1,321,401	68 85	19.19	2 09	3 08	0 85	0 48	0 39	0.05	5 02
1960	1,428,552	69 08	22 46	2.22	3.14	0.89	0.39	0.34	0.04	1.41
1961	2,121,050	65.65	25.84	2.24	3.45	0 80	0 30	0 31	0.04	1 33
1962	1,699,346	71.84	20 26	2 36	2.97	0.87	0.31	0.36	0.04	0 95
1963	1,874,718	73.17	18 89	2 33	2 83	0 83	0 29	0 47	0.04	1.10
1964	2,118,326	72 81	19.42	2.43	2.65	0.93	0.29	0.54	0.03	0.86
1965	2,663,495	70 10	22 59	2 63	2 34	0 82	0 26	0.53	0.05	0.64
1966	3,306,386	69.54	22.89	2.57	2.68	0.86	0.40	0 45	0 05	0 51
1967	4,641,215	64.48	28 45	2 36	2 46	0.87	0.43	0.33	0.02	0.57
1968	5,406,582	62.00	29.74	2.63	2.65	0.89	0.78	0 31	0 01	0 95
1969	5,133,498	63.17	27.61	2.84	3.47	1.22	0.51	0 12	0.00	1.00
1970	4,835,222	71.27	19 02	3 16	3 68	1 63	0 51	0 10	0.02	0.57
1971	6,172,668	71.34	18 42	3.52	3 72	1 91	0 43	0 15	0.03	0.44
1972	6,518,132	70 47	18.22	3.71	4 13	2.21	0.59	0.15	0.03	0.45
1973	5,899,678	74.92	13.75	4.09	3.68	2 19	0 71	0.18	0.04	0.39
1974	4,950,833	78.47	10.27	4.39	3.48	1.82	0.86	0.19	0.04	0.44
1975	6,371,545	81 05	8.97	4 06	3 10	1.54	0 85	0.11	0.13	0.15
1976	7,125,201	80 03	9.35	3 87	3.93	1.41	0 78	0 02	0.44	0.17

[1]Share Volume for Exchanges includes Stocks, Rights, and Warrants
[2]Others include Intermountain, Spokane, National, and Honolulu Stock Exchanges

Table 21B

DOLLAR VOLUME BY EXCHANGES[1]

Year	Total Dollar Volume (thousands)	in Percentage								
		NYSE	AMEX	MIDW	PCSE	PHLE	BCSE	DTSE	CNSE	Other[2]
1935	15,396,139	86 64	7 83	1 32	1.39	0.88	1.34	0 40	0 04	0 16
1940	8,419,772	85.17	7.68	2 07	1 52	1 11	1.91	0.36	0.09	0 09
1945	16,284,552	82.75	10 81	2.00	1 78	0.96	1 16	0.35	0 06	0 13
1950	21,808,284	85 91	6.85	2 35	2.19	1.03	1.12	0 39	0.11	0 05
1955	38,039,107	86 31	6.98	2.44	1.90	1.03	0.78	0 39	0 09	0.08
1960	45,276,616	83.86	9 35	2 72	1 95	1.04	0.60	0 34	0 07	0 03
1961	64,032,924	82.48	10.71	2 75	1 99	1 03	0.49	0.37	0.07	0 05
1962	54,823,153	86 37	6.81	2.75	2.00	1.05	0.46	0.41	0 07	0.04
1963	64,403,991	85.23	7.52	2.72	2.39	1.06	0.42	0.51	0.06	0.04
1964	72,415,297	83 54	8.46	3.15	2.48	1.14	0 42	0.66	0.06	0.04
1965	89,498,711	81.82	9.91	3.44	2.43	1.12	0.42	0 70	0.08	0.03
1966	123,643,475	79.81	11.84	3.14	2 85	1 10	0 56	0.57	0.07	0.02
1967	162,136,387	77 31	14.48	3.08	2.79	1.13	0 67	0.43	0.03	0.03
1968	197,061,776	73.57	18 00	3.12	2.66	1.13	1.04	0 35	0.01	0.08
1969	176,343,146	73.50	17.00	3.39	3.12	1 43	0 67	0.12	0.01	0 12
1970	131,707,946	78.44	11.11	3 76	3.81	1.99	0.67	0.11	0 03	0.04
1971	186,375,130	79.07	9.98	4.00	3.79	2 29	0 58	0.18	0 05	0.03
1972	205,956,263	77.77	10.37	4.29	3 94	2.56	0.75	0.17	0.05	0.05
1973	178,863,622	82.07	6 06	4 54	3.55	2.45	1.00	0 21	0.06	0.01
1974	118,828,272	83.62	4.39	4 89	3.50	2.02	1 23	0.22	0.06	0 01
1975	157,555,360	85 04	3 66	4.82	3 25	1.72	1.18	0 12	0 17	0 00
1976	195,224,815	84 35	3 88	4.76	3.83	1.69	0.94	0 02	0.53	0 00

[1]Dollar Volume for Exchanges includes Stocks, Rights, and Warrants
[2]Others include Intermountain, Spokane, National, and Honolulu Stock Exchanges

Special Block Distributions

In 1976, the total number of special block distributions increased 20 percent. The value of these distributions decreased 57.1 percent to $613.6 million from $1.4 billion in 1975.

Secondary distributions accounted for 60.0 percent of the total number of special block distributions in 1976 and 94.8 percent of the total value of these distributions.

The special offering method was employed 22 times, accounting for 23.2 percent of the total number of special block distributions in 1976, but, with an aggregate value of $18.5 million, these offerings accounted for only 3.0 percent of the value of all special block distributions.

The exchange distribution method was employed 16 times in 1976. The value of exchange distributions was $13.6 million, representing an increase of 64.1 percent from the 1975 figure.

Table 22

SPECIAL BLOCK DISTRIBUTIONS REPORTED BY EXCHANGES

(Value in thousands)

Year	Secondary distributions			Exchange distributions			Special offerings		
	Number	Shares sold	Value	Number	Shares sold	Value	Number	Shares sold	Value
1942	116	2,397,454	82,840				79	812,390	22,694
1943	81	4,270,580	127,462				80	1,097,338	31,054
1944	94	4,097,298	135,760				87	1 053,667	32,454
1945	115	9,457,358	191,961				79	947,231	29,878
1946	100	6,481,291	232,398				23	308,134	11,002
1947	73	3,961,572	124,671				24	314,270	9,133
1948	95	7,302,420	175,991				21	238,879	5,466
1949	86	3,737,249	104,062				32	500,211	10,956
1950	77	4,280,681	88,743				20	150,308	4,940
1951	88	5,193,756	146,459				27	323,013	10,751
1952	76	4,223,258	149,117				22	357,897	9,931
1953	68	6,906,017	108,229				17	380,680	10,486
1954	84	5,738,359	218,490	57	705,781	24,664	14	189,772	6,670
1955	116	6,756,767	344,871	19	258,348	10,211	9	161,850	7,223
1956	146	11,696,174	520,966	17	156,481	4,645	8	131,755	4,557
1957	99	9,324,599	339,062	33	390,832	15,855	5	63,408	1,845
1958	122	9,508,505	361,886	38	619,876	29,454	5	88,152	3,286
1959	148	17,330,941	822,336	28	545,038	26,491	3	33,500	3,730
1960	92	11,439,065	424,688	20	441,644	11,108	3	63,663	5,439
1961	130	19,910,013	926,514	33	1,127,266	58,072	2	35,000	1,504
1962	59	12,143,656	658,780	41	2,345,076	65,459	2	48,200	588
1963	100	18,937,935	814,984	72	2,892,233	107,498	0	0	0
1964	110	19,462,343	909,821	68	2,553,237	97,711	0	0	0
1965	142	31,153,319	1,603,107	57	2,334,277	86,479	0	0	0
1966	126	29,045,038	1,523,373	52	3,042,599	118,349	0	0	0
1967	143	30,783,604	1,154,479	51	3,452,856	125,404	0	0	0
1968	174	36,110,489	1,571,600	35	2,669,938	93,528	1	3,352	63
1969	142	38,224,799	1,244,186	32	1,706,572	52,198	0	0	0
1970	72	17,830,008	504,562	35	2 066,590	48,218	0	0	0
1971	204	72,801,243	2,007,517	30	2,595,104	65,765	0	0	0
1972	229	82,365,749	3,216,126	26	1,469,666	30,156	0	0	0
1973	120	30,825,890	1,151,087	19	802,322	9,140	91	6,662,111	79,889
1974	45	7,512,200	133,838	4	82,200	6,836	33	1,921,755	16,805
1975	51	34,149,089	1,409,933	14	483,846	8,300	14	1,252,925	11,521
1976	57	24,089,636	581,560	16	752,600	13,623	22	1,475,842	18,459

Value and Number of Securities Listed on Exchanges

The market value of stocks and bonds listed on U.S. Stock Exchanges at year-end 1976 was $1,301 billion, an increase of 25 percent from the previous year-end figure of $1,038 billion. The total was composed of $899 billion in stocks and $403 billion in bonds. The value of listed stocks increased by 25 percent in 1976 and the value of listed bonds increased 26 percent. Stocks with primary listing on the New York Stock Exchange were valued at $858 billion and represented 96 percent of the common and preferred stock listed on all U.S. exchanges. The value of NYSE listed stocks increased from their 1975 year-end total by $173 billion or 25 percent. Stocks with primary listing on the AMEX accounted for 4 percent of the total and were valued at $36 billion. The value of AMEX stocks increased $7 billion or 23 percent in 1976. Stocks with primary listing on all other exchanges were valued at $4.2 billion, a decrease of 1 percent from the 1975 total.

The net number of stocks and bonds listed on exchanges increased by 15 issues or 0.2 percent in 1976. The only gains were recorded on the NYSE, where listing increased by 123 issues, and on the Philadelphia Stock Exchange, where listings increased by 1 issue.

Table 23

SECURITIES LISTED ON EXCHANGES[1]

(December 31, 1976)

EXCHANGE	COMMON		PREFERRED		BONDS		TOTAL SECURITIES	
	Number	Market Value (Millions)	Number	Market Value (Millions)	Number	Market Value (Millions)	Number	Market Value (Millions)
Registered:								
American	1,118	$ 34,226	89	$ 1,834	185	$ N.A.	1,392	$ 36,060
Boston	81	353	2	1	1	1	84	355
Cincinnati	6	22	3	6	6	43	15	72
Midwest	21	284	7	83	1	10	29	377
New York	1,550	830,484	608	27,815	2,708	402,220	4,866	1,260,519
Pacific	47	1,950	10	144	18	398	75	2,491
Philadelphia	29	209	94	711	2	7	125	927
Intermountain	31	26	0	0	0	0	31	26
Spokane	25	2	0	0	0	0	25	2
Exempted:								
Honolulu	18	$ 366	7	$ 7	2	$ 5	27	$ 378
Total	2,926	$867,922	820	$30,601	2,923	$402,684	6,672	$1,301,207
Includes the following foreign stocks:								
New York	35	$ 20,018	1	$ 5	170	$ 5,425	206	$ 25,448
American	73	11,213	1	18	5	N A.	79	11,231
Pacific	3	93	1	*	0	0	4	93
Honolulu	2	15	0	0	0	0	2	15
Total	113	$ 13,339	3	$ 23	175	$ 5,425	291	$ 36,787

[1]Excludes securities which were suspended from trading at the end of the year, and securities which because of inactivity had no available quotes

*Less than .5 million but greater than zero.

Table 24

VALUE OF STOCKS LISTED ON EXCHANGES

(Dollars in billions)

Dec. 31	New York Stock Exchange	American Stock Exchange	Exclusively on Other Exchanges	Total
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	25.4	4.2	337.3
1960	307.0	24.2	4.1	335.3
1961	387 8	33 0	5 3	426.1
1962	345.8	24.4	4.0	374.2
1963	411.3	26.1	4.3	441 7
1964	474.3	28.2	4.3	506.8
1965	537 5	30 9	4 7	573 1
1966	482 5	27 9	4 0	514 4
1967	605.8	43.0	3.9	652.7
1968	692.3	61 2	6.0	759 5
1969	629.5	47.7	5 4	682.6
1970	636.4	39.5	4.8	680.7
1971	741.8	49.1	4.7	795.6
1972	871.5	55 6	5 6	932 7
1973	721.0	38.7	4.1	763.8
1974	511 1	23.3	2 9	537 3
1975	685.1	29.3	4.3	718.7
1976	858.3	36.0	4.2	898.5

Securities on Exchanges

As of September 30, 1976, a total of 6,799 securities, representing 3,382 issuers, were admitted to trading on securities exchanges in the United States. Over 4,800 issues were listed and registered on the New York Stock Exchange, accounting for 33.8 percent of the stock issues and 88 percent of the bond issues.

As of September 30, 1977, a total of 6,798 securities, representing 3,283 issuers, were admitted to trading on securities exchanges in the United States. Over 4,950 issues were listed and registered on the New York Stock Exchange, accounting for 27.4 percent of the stock issues and 87 percent of the bond issues.

Data below on "Securities Traded on Exchanges" involves some duplication since it includes both solely and dually listed securities.

Table 25A

SECURITIES TRADED ON EXCHANGES

(September 30, 1976)

	Issuers	Stocks				Bonds[1]
		Registered	Temporarily exempted	Unlisted	Total	
American	1,255	1,260	1	39	1,300	201
Boston	849	143		750	893	16
Chicago Board Options	1	1			1	
Chicago Board of Trade	3	1		2	3	
Cincinnati	346	37		320	357	14
Detroit	373	65		317	382	
Honolulu[2]	35				44	5
Intermountain	52	50		2	52	
Midwest	621	360	1	346	707	29
New York	1,895	2,160	3		2,163	2,594
Pacific Coast	860	854	1	181	1,036	93
PBS	940	303		820	1,123	63
Spokane	37	35		5	40	

[1]Issues exempted under Section 3(a)(12) of the Act, such as obligations of U S Government, the states, and cities, are not included in this table

[2]Exempted exchange had 38 listed stocks and 6 admitted to unlisted trading

Table 25B

SECURITIES TRADED ON EXCHANGES

(September 30, 1977)

	Issuers	Stocks				Bonds[1]
		Registered	Temporarily exempted	Unlisted	Total	
American	1,172	1,179	1	44	1,224	188
Boston	832	147		736	883	16
Chicago Board Options	1	1			1	
Chicago Board of Trade	3	1		2	3	
Cincinnati	343	42		313	355	14
Detroit	1			1	1	
Honolulu[2]	34				44	2
Intermountain	49	48		1	49	
Midwest	614	361	1	333	695	31
New York	1,933	2,217	3		2,220	2,701
Pacific Coast	835	833	1	174	1,008	95
PBS	935	327		782	1,109	67
Spokane	36	34		5	39	

[1]Issues exempted under Section 3(a)(12) of the Act, such as obligations of U.S. Government, the states, and cities, are not included in this table

[2]Exempted exchange had 38 listed stocks and 6 admitted to unlisted trading

Table 26A

UNDUPLICATED COUNT OF SECURITIES ON EXCHANGES

(September 30, 1976)

Registered exchanges	Stocks	Bonds	Total	Issuers Involved
Registered and Listed	3,871	2,835	6,706	3,327
Temporarily exempted from registration	3	2	5	2
Admitted to unlisted trading privileges	40	13	53	31
Exempted exchanges.				
Listed	23	6	29	16
Admitted to unlisted trading privileges	6	0	6	6
Total	3,943	2,856	6,799	3,382

Table 26B

UNDUPLICATED COUNT OF SECURITIES ON EXCHANGES

(September 30, 1977)

Registered exchanges	Stocks	Bonds	Total	Issuers Involved
Registered and Listed	3,761	2,949	6,710	3,227
Temporarily exempted from registration	4	2	6	2
Admitted to unlisted trading privileges	36	14	50	22
Exempted exchanges.				
Listed	22	4	26	24
Admitted to unlisted trading privileges	6	0	6	8
Total	3,829	2,969	6,798	3,283

1933 ACT REGISTRATIONS

Effective Registration Statements Filed

During the fiscal year ending September 30, 1977, 2,912 securities registration statements valued at $93 billion became effective. For the fiscal transition quarter ending September 30, 1976, 639 registrations valued at $15 billion became effective. While the number of effective registrations in fiscal 1977 rose four percent from Fiscal 1976, the dollar value increased six percent. Among these statements, there were 637 first-time registrants in fiscal 1977 as compared with 540 in fiscal 1976 (168 in the fiscal transition quarter).

The number of registration statements filed rose two percent to 3,029 in fiscal 1977 from 2,976 in the previous fiscal year (648 in the fiscal transition quarter).

Purpose of Registration

Effective registrations for cash sale for the account of the issuers amounted to $78 billion in fiscal 1977, increasing from $70 billion in fiscal 1976. With respect to distribution of these registrations between equity and debt offerings, equity offerings increased from $40 billion in fiscal 1976 to $49 billion in fiscal 1977 — a 23 percent increase. Debt offerings in comparison, decreased from $29 billion to $28 billion — a four percent fall.

Among the securities registered for cash sales in fiscal 1977, nearly all debt issues were for immediate offerings, whereas 82 percent of the equity registrations were for extended cash sale. Registration of extended offerings totaled $40.0 billion with investment companies accounting for $30.9 billion and employee plans $8.1 billion. Corporate equity registrations accounted for 25 percent of immediate cash sale registrations, down 14 percent from fiscal 1976.

Securities registered for the account of the issuer for other than cash sale totaled $14.1 billion including $11.9 billion of common stock. The bulk of these registrations were common stock issues relating to exchange offers, mergers and consolidations. In fiscal 1977 common stock effectively registered for this purpose totaled $10 billion, a decrease of 11 percent from fiscal 1976.

Registrations for the purpose of secondary offerings (proceeds going to selling securities holders) typically involve sales of common stock. In fiscal 1977, these registrations amounted to $1.3 billion, representing a decline of 36 percent from fiscal 1976.

Table 27

EFFECTIVE REGISTRATIONS

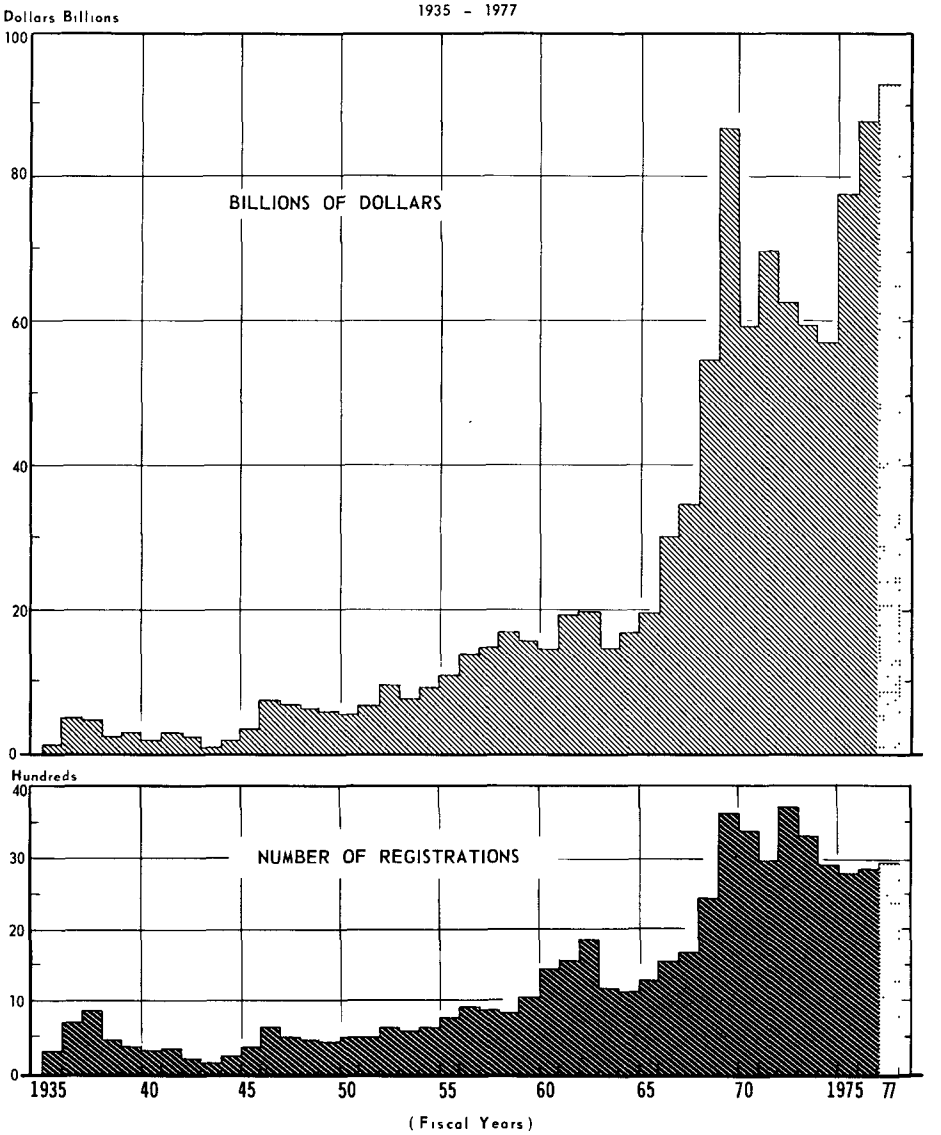
(Dollars in millions)

Fiscal year ended June 30	Total		Cash Sale for Account of Issuers			
	Number	Value	Common Stock	Bonds Debentures, and Notes	Preferred Stock	Total
1935[1]	284	$ 913	$ 168	$ 490	$ 28	$ 686
1936	689	4,835	531	3,153	252	3,936
1937	840	4,851	802	2,426	406	3,635
1938	412	2,101	474	666	209	1,349
1939	344	2,579	318	1,593	109	2,020
1940	306	1,787	210	1,112	110	1,433
1941	313	2,611	196	1,721	164	2,081
1942	193	2,003	263	1,041	162	1,465
1943	123	659	137	316	32	486
1944	221	1,760	272	732	343	1,347
1945	340	3,225	456	1,851	407	2,715
1946	661	7,073	1,331	3,102	991	5,424
1947	493	6,732	1,150	2,937	787	4,874
1948	435	6,405	1,678	2,817	537	5,032
1949	429	5,333	1,083	2,795	326	4,204
1950	487	5,307	1,786	2,127	468	4,381
1951	487	6,459	1,904	2,838	427	5,169
1952	635	9,500	3,332	3,346	851	7,529
1953	593	7,507	2,808	3,093	424	6,326
1954	631	9,174	2,610	4,240	531	7,381
1955	779	10,960	3,864	3,951	462	8,277
1956	906	13,096	4,544	4,123	539	9,206
1957	876	14,624	5,858	5,689	472	12,019
1958	813	16,490	5,998	6,857	427	13,281
1959	1,070	15,657	6,387	5,265	443	12,095
1960	1,426	14,367	7,260	4,224	253	11,738
1961	1,550	19,070	9,850	6,162	243	16,260
1962	1,844	19,547	11,521	4,512	253	16,286
1963	1,157	14,790	7,227	4,372	270	11,869
1964	1,121	16,860	10,006	4,554	224	14,784
1965	1,266	19,437	10,638	3,710	307	14,656
1966	1,523	30,109	18,218	7,061	444	25,723
1967	1,649	34,218	15,083	12,309	558	27,950
1968	2,417	54,076	22,092	14,036	1,140	37,269
1969	3,645	86,810	39,614	11,674	751	52,039
1970	3,389	59,137	28,939	18,436	823	48,198
1971	2,989	69,562	27,455	27,637	3,360	58,452
1972	3,712	62,487	26,518	20,127	3,237	49,882
1973	3,285	59,310	26,615	14,841	2,578	44,034
1974	2,890	56,924	19,811	20,997	2,274	43,082
1975	2,780	77,457	30,502	37,557	2,201	70,260
1976	2,813	87,733	37,115	29,373	3,013	69,502
Transition Quarter July-September 1976	639	15,010	6,767	5,066	413	12,246
1977[2]	2,912	92,997	47,024	28,132	2,425	77,580
Cumulative Total	56,367	1,051,542	450,415	343,061	34,679	828,161

[1]For 10 months ended June 30, 1935
[2]Fiscal year ended September 30, 1977.

SECURITIES EFFECTIVELY REGISTERED WITH S.E.C.

1935 - 1977



FISCAL YEAR END CHANGED FROM JUNE TO SEPTEMBER

GA-042178-6

Table 28

EFFECTIVE REGISTRATIONS BY PURPOSE AND TYPE OF SECURITY

FISCAL 1976

(Dollars in millions)

Purpose of registration	Type of security			
	Total	Bonds, debentures, and notes	Preferred stock	Common stock
All registrations (estimated value)	87,726	30,954	3,573	53,200
For account of issuer for cash sale	69,502	29,373	3,013	37,115
Immediate offering	40,522	28,969	3,010	8,543
Corporate	36,949	25,396	3,010	8,543
Offered to:				
General public	36,284	25,388	2,965	7,932
Security holders	664	8	45	611
Foreign governments	3,573	3,573	0	0
Extended cash sale and other issues	28,980	404	4	28,572
For account of issuer for other than cash sale	16,136	1,510	547	14,079
Secondary offerings	2,089	71	12	2,006
Cash sale	973	30	0	943
Other	1,116	40	12	1,063

TRANSITION QUARTER JULY-SEPTEMBER 1976

(Dollars in millions)

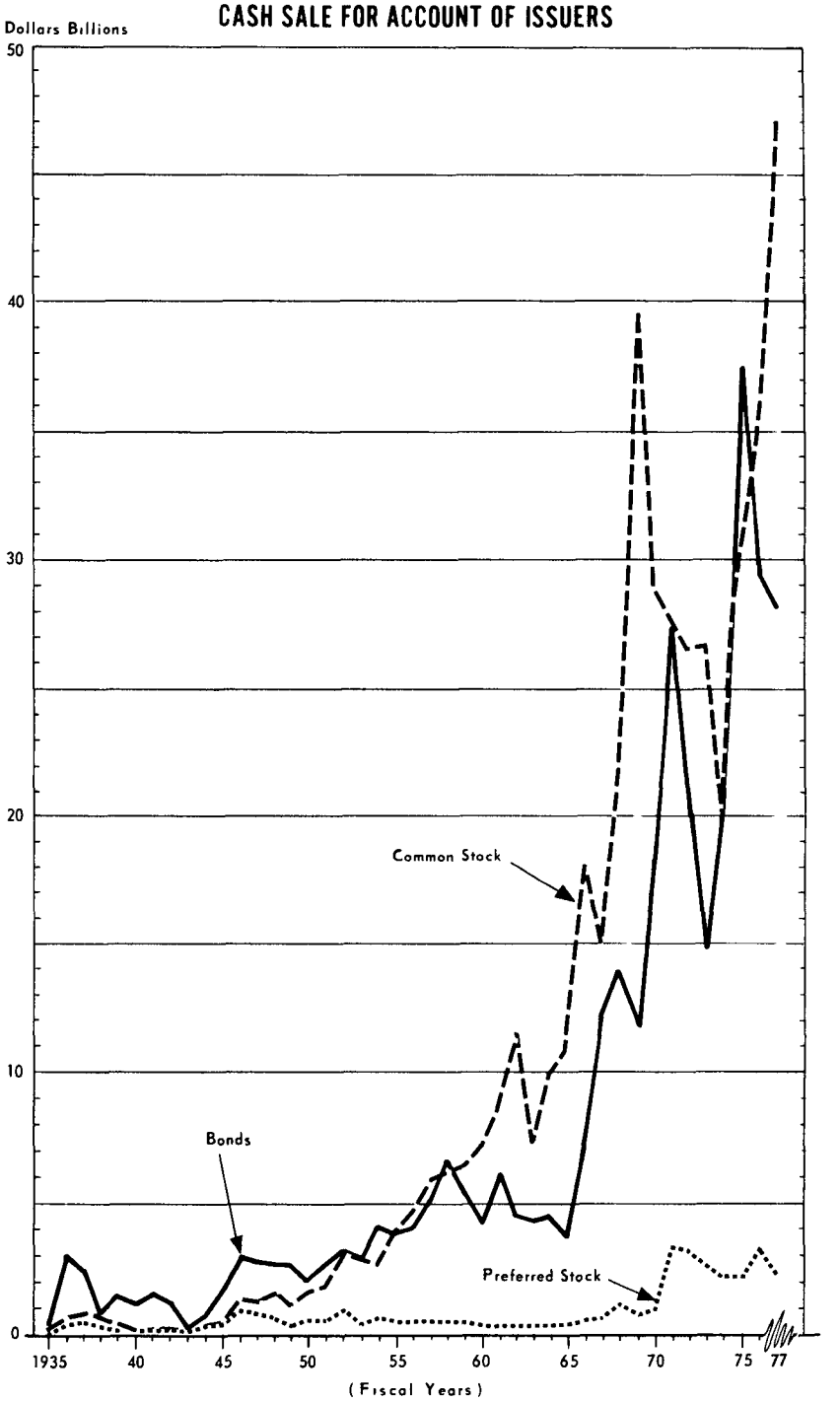
Purpose of registration	Type of security			
	Total	Bonds, debentures, and notes	Preferred stock	Common stock
All registrations (estimated value)	15,010	5,428	474	9,108
For account of issuer for cash sale	12,246	5,006	413	6,767
Immediate offering	6,876	5,050	413	1,414
Corporate	6,152	4,325	413	1,414
Offered to:				
General public	6,024	4,325	411	1,288
Security holders	127	0	2	125
Foreign governments	725	725	0	0
Extended cash sale and other issues	5,369	16	0	5,354
For account of issuer for other than cash sale	2,508	362	58	2,088
Secondary offerings	257	0	4	253
Cash sale	88	0	0	88
Other	169	0	4	165

FISCAL 1977

(Dollars in millions)

Purpose of registration	Type of Security			
	Total	Bonds, debentures, and notes	Preferred stock	Common stock
All registrations (estimated value)	92,997	29,248	3,512	60,237
For account of issuer for cash sale	77,580	28,132	2,425	47,024
Immediate offering	37,091	27,997	2,416	6,679
Corporate	32,717	23,623	2,416	6,679
Offered to:				
General public	31,895	23,613	2,320	5,962
Security holders	822	9	96	717
Foreign governments	4,375	4,375	0	0
Extended cash sale and other issues	40,489	135	9	40,345
For account of issuer for other than cash sale	14,069	1,107	1,020	11,942
Secondary offerings	1,347	9	67	1,272
Cash sale	402	0	0	402
Other	946	9	67	870

EFFECTIVE REGISTRATIONS
CASH SALE FOR ACCOUNT OF ISSUERS



FISCAL YEAR END CHANGED FROM JUNE TO SEPTEMBER

DATA FOR TRANSITION QUARTER JULY-SEPTEMBER 1976 NOT SHOWN ON CHART:
BONDS $5.1 BILLION, PREFERRED STOCK $.4 BILLION, COMMON STOCK $6.8 BILLION

GA-042178 7

Regulation A Offerings

During the transitional quarter, 54 notifications were filed for proposed offerings under Regulation A. Issues between $400,000 and $500,000 in size predominated.

During fiscal year 1977, 218 notifications were filed for proposed offerings under Regulation A. Issues between $400,000 and $500,000 in size predominated.

Table 29

OFFERINGS UNDER REGULATION A

	Fiscal 1977	Transitional Quarter	Fiscal 1976	Fiscal 1975
Size				
$100,000 or less	17	4	24	28
$100,000 – $200,000	30	5	36	42
$200,000 – $300,000	30	8	27	39
$300,000 – $40,000	24	8	39	24
$400,000 – $500,000	117	29	114	132
Total	218	54	240	265
Underwriters				
Used	52	12	37	44
Not Used	166	42	203	221
Total	218	54	240	265
Offerors·				
Issuing Companys	205	48	222	227
Stockholders	7	3	12	7
Issuers and Stockholders jointly	6	3	6	31
Total	218	54	240	265

ENFORCEMENT

Types of Proceedings

As the table below reflects, the securities laws provide for a wide range of enforcement actions by the Commission. The most common types of actions are injunctive proceedings instituted in the Federal district courts to enjoin continued or threatened securities law violators, and administrative proceedings pertaining to broker-dealer firms and/or individuals associated with such firms which may lead to various remedial sanctions as required in the public interest. When an injunction is entered by a court, violation of the court's decree is a basis for criminal contempt action against the violator.

Table 30

TYPES OF PROCEEDINGS

ADMINISTRATIVE PROCEEDINGS

Persons Subject to, Acts Constituting, and Basis for, Enforcement Action	Sanction
Broker-dealer, municipal securities dealer, investment adviser or associated person	
Willful violation of securities acts provision or rule; aiding or abetting such violation; failure reasonably to supervise others; willfull misstatement or omission in filing with the Commission; conviction of or injunction against certain crimes or conduct.	Censure or limitation on activities, revocation, suspension or denial of registration; bar or suspension from association (1934 Act §§15B (c) (2)-(4), 15(b) (4)-(6); Advisers Act. §§203(e)-(f)).*
Registered securities association	
Organization or rules not conforming to statutory requirements.	Suspension of registration or limitation of activities, functions, or operations (1934 Act, §19(h) (1)).
Violation of or inability to comply with the 1934 Act, rules thereunder, or its own rules; unjustified failure to enforce compliance with the foregoing or with rules of the Municipal Securities Rulemaking Board by a member or person associated with a member.	Suspension or revocation of registration; censure or limitation of activities, functions, or operations (1934 Act §19(h) (1)).
Member of registered securities association, or associated person	
Being subject to Commission order pursuant to 1934 Act, §15(b); willful violation of or effecting transaction for other person with reason to believe that person was violating securities acts provisions, rules thereunder, or rules of Municipal Securities Rulemaking Board.	Suspension or expulsion from the association; bar or suspension from association with member of association (1934 Act, §§19(h) (2)-(3)).
National securities exchange	
Organization or rules not conforming to statutory requirements.	Suspension of registration or limitation of activities, functions, or operations (1934 Act, §19(h) (1)).
Violation of or inability to comply with 1934 Act, rules thereunder or its own rules; unjustified failure to enforce compliance with the foregoing by a member or person associated with a member.	Suspension or revocation of registration censure or limitation of activities, functions, or operations (1934 Act, §19(h) (1)).
Member of national securities exchange, or associated persons	
Being subject to Commission order pursuant to 1934 Act, §15(b), willful violation of or effecting transaction for other person with reason to believe that person was violating securities acts provisions or rules thereunder.	Suspension or expulsion from exchange, bar or suspension from association with member (1934 Act, §§19(h) (2)-(3))
Registered clearing agency	
Violation of or inability to comply with 1934 Act, rules thereunder, or its own rules, failure to enforce compliance with its own rules by participants.	Suspension or revocation of registration censure or limitation of activities, functions, or operations (1934 Act, §19(h) (1)).
Participant in registered clearing agency	
Being subject to Commission order pursuant to 1934 Act, §15(b) (4), willful violation of or effecting transaction for other person with reason to believe that person was violating provisions of clearing agency rules	Suspension or expulsion from clearing agency (1934 Act, §19(h) (2)).
Securities information processor	
Violation of or inability to comply with provisions of 1934 Act or rules thereunder.	Censure or operational limitations: suspension or revocation of registration (1934 Act, §11A(b) (6))
Transfer agent	
Willful violation of or inability to comply with 1934 Act, §§17 or 17A, or regulations thereunder.	Censure or limitation of activities; denial, suspension, or revocation of registration (1934 Act, §17A(c) (3)).

*Statutory references are as follows: "1933 Act", the Securities Act of 1933, "1934 Act", the Securities Exchange Act of 1934; "Investment Company Act", the Investment Company Act of 1940; "Advisers Act", the Investment Advisers Act of 1940; "Holding Company Act", the Public Utility Holding Company Act of 1935, "Trust Indenture Act", the Trust Indenture Act of 1939; and "SIPA", the Securities Investor Protection Act of 1970.

Table 30—cont.

TYPES OF PROCEEDINGS

ADMINISTRATIVE PROCEEDINGS

Persons Subject to, Acts Constituting, and Basis for, Enforcement Action	Sanction
Any person	
Willful violation of securities act provision or rule, aiding or abetting such violation, willful misstatement in filing with Commission	Temporary or permanent prohibition from serving in certain capacities for registered investment company (Investment Company Act, §9(b))
Officer or director of self-regulatory organization.	
Willful violation of 1934 Act, rules thereunder, or the organization's own rules, willful abuse of authority or unjustified failure to enforce compliance	Removal from office or censure (1934 Act, §19(h) (4))
Principal of broker-dealer	
Engaging in business as a broker-dealer after appointment of SIPC trustee	Bar or suspension from being or being associated with a broker-dealer (SIPC, §10(b))
1933 Act registration statement	
Statement materially inaccurate or incomplete	Stop order suspending effectiveness (1933 Act, §8(d))
Investment company has not attained $100,000 net worth 90 days after statement became effective	Stop order (Investment Company Act, §14(a))
Persons subject to Sections 12, 13 of 15(d) of the 1934 Act.	
Material noncompliance with such provisions	Order directing compliance (1934 Act, §15(c) (4))
Securities issue	
Noncompliance by issuer with 1934 Act or rules thereunder	Denial, suspension of effective date, suspension or revocation of registration on national securities exchange (1934 Act, §12(j))
Public interest requires trading suspension	Summary suspension of over-the-counter or exchange trading (1934 Act, §12(k))
Registered investment company	
Failure to file Investment Company Act registration statement or required report, filing materially incomplete or misleading statement of report.	Revocation of registration (Investment Company Act , §8(e))
Company has not attained $100,000 net worth 90 days after 1933 Act registration statement became effective	Revocation or suspension of registration (Investment Company Act, §14(a))
Attorney, accountant, or other professional or expert	
Lack of requisite qualifications to represent others; lacking in character or integrity, unethical or improper professional conduct, willful violation of securities laws or rules, or aiding and abetting such violation	Permanent or temporary denial of privilege to appear or practice before the Commission (17 C F R §201 2(e) (1))
Attorney suspended or disbarred by court, expert's license revoked or suspended; conviction of a felony or misdemeanor involving moral turpitude	Automatic suspension from appearance or practice before the Commission (17 C F.R. §201 2(e) (2))
Permanent injuction against or finding of securities violation in Commission-instituted action, finding of securities violation by Commission in administrative proceeding	Temporary suspension from appearance or practice before Commission (17 C F R §201 2(e) (3))
Member of Municipal Securities Rulemaking Board	
Willful violation of securities laws, rules thereunder, or rules of the Board	Censure or removal from office 1934 Act, §15B(c) (8))

Table 30—cont.

CIVIL PROCEEDINGS IN FEDERAL DISTRICT COURTS

Persons Subject to, Acts Constituting, and Basis for, Enforcement Act	Sanction
Any person	
Engaging in or about to engage in acts or practices violating securities acts, rules or orders thereunder (including rules of a registered self-regulatory organization)	Injunction against acts or practices which constitute or would constitute violations (plus other equitable relief under court's general equity powers) (1933 Act, Sec 20(b), 1934 Act, Sec 21(d); 1935 Act, Sec 18(f); Investment Company Act, §42(e), Advisers Act, §209(e), Trust Indenture Act, §321).
Noncompliance with provisions of law, rule, or regulation under 1933, 1934, or Holding Company Acts, order issued by Commission rules of a registered self-regulatory organization, or undertaking in a registration statement	Writ of mandamus, injuntion, or order directing compliance (1933 Act, §20(c), 1934 Act, §21(e), Holding Company Act, §18(g))
Securities Investor Protection Corporation	
Refusal to commit funds or act for the protection of customers.	Order directing discharge of obligations or other appropriate relief (SIPA, §7(b))
National securities exchange or registered securities association	
Noncompliance by its members and persons associated with its members with the 1934 Act, rules and orders thereunder, or rules of the exchange or association	Writ of mandamus, injunction, or order directing such exchange or association to enforce compliance (1934 Act, §21(e)).
Registered clearing agency	
Noncompliance by its participants with its own rules.	Writ of mandamus, injunction, or order directing clearing agency to enforce compliance (1934 Act, §21(e)).
Issuer subject to reporting requirements	
Failure to file reports required under §15(d) of 1934 Act	Forfeiture of $100 per day (1934 Act, §32(b)).
Registered investment company or affiliate	
Name of company or of security issued by it deceptive or misleading	Injunction against use of name (Investment Company Act, §35(d)).
Officer, director, member of advisory board, adviser, depositor, or underwriter of investment company	
Engage in act or practice constituting breach of fiduciary duty involving personal misconduct	Injunction against acting in certain capacities for investment company, and other appropriate relief Investment Company Act, §36(a))
Any person having fiduciary duty respecting receipt of compensation from investment company	
Breach of fiduciary duty	Injunction (Investment Company Act §36(a))

REFERRAL TO ATTORNEY GENERAL FOR CRIMINAL PROSECUTION

Persons Subject to Acts Constituting, and basis for Enforcement Action	Sanction
Any person	
Willful violation of securities acts or rules thereunder or willful misstatement in any document required to be filed by securities laws and rules or by self-regulatory organization in connection with an application for membership, participation or to become associated with a member thereof.	Maximum penalties $10,000 fine and 5 years imprisonment, an exchange may be fined up to $500,000, a public-utility holding company up to $200,000 (1933 Act, Secs 20(b), 24; 1934 Act, Secs. 21(d), 32(a); Holding Company Act, Secs 18(f), 29; 1939 Act, Sec 325, Investment Company Act, Secs 42(e), 49, Advisers Act, Secs 209(e), 217)

Table 31

INVESTIGATIONS OF POSSIBLE VIOLATIONS OF THE ACTS ADMINISTERED BY THE COMMISSION

Pending September 30, 1976	1,329
Opened	400
Total for Distribution	1,729
Closed	325
Pending September 30, 1977	1,404

During the fiscal year ending September 30, 1977, 224 formal orders were issued by the Commission upon recommendation of the Division of Enforcement.

Table 32

ADMINISTRATIVE PROCEEDINGS INSTITUTED DURING FISCAL YEAR ENDING SEPTEMBER 30, 1977

Broker Dealer Proceedings	93
Investment Adviser Proceedings	38
Stop Order, Reg. A Suspension and Other Disclosure Cases	11

Injunctive Actions 1976–1977

During fiscal 1977, 166 suits for injunctions and 21 miscellaneous actions were instituted in the United States district courts by the Commission, and 26 district court proceedings were brought against the Commission. During that year this office handled 7 appellate cases involving petitions for review of Commission decisions, 3 appeals in reorganization matters and 35 appeals in injunction and miscellaneous cases. SEC participated and filed 6 amicus curiae briefs in 6 cases.

During fiscal 1977, the General Counsel referred to the Department of Justice 100 criminal reference reports. (This figure includes 7 criminal contempt actions.)

Table 33

INJUNCTIVE ACTIONS

Fiscal Year	Cases Instituted	Injunctions Ordered	Defendants Enjoined
1968	93	98	384
1969	94	102	509
1970	111	97	448
1971	140	114	495
1972	119	113	511
1973	178	145	654
1974	148	289	613
1975	174	453	749
1976	158	435	722
1977	166	336	715

Criminal Proceedings

During fiscal 1977, 100 cases were referred to the Department of Justice for prosecution. (This figure includes 7 criminal contempt actions.) As a result of these and prior referrals, 68 indictments were returned against 230 defendants during the fiscal year. There were also 135 convictions in 53 cases. Convictions were affirmed in 15 cases that had been appealed, and appeals were still pending in 6 other criminal cases at the close of the period. Of 19 defendants in 17 criminal contempt cases handled during the year, 4 defendants were convicted, prosecution was declined as to 2 defendants, and 9 defendants in 8 cases are still pending. Thirteen cases are pending in a Suspense Category.

Table 34

CRIMINAL CASES

Fiscal year	Number of cases referred to Justice Dept.	Number of indictments	Defendants indicated	Convictions
1968	40	42	123	84
1969	37	64	213	83
1970	35	36	102	55
1971	22	16	83	89
1972	38	28	67	75
1973	49	40	178	83
1974	67	40	169	81
1975	88	53	199	116
1976	116	23	118	97
1977	100	68	230	135

List of All Foreign Corporations on the Foreign Restricted List

The complete list of all foreign corporations and other foreign entities on the Foreign Restricted List on June 30, 1975, is as follows:

Aguacate Consolidated Mines, Incorporated (Costa Rica)
Alan MacTavish, Ltd. (England)
Allegheny Mining and Exploration Company, Ltd. (Canada)
Allied Fund for Capital Appreciation (AFCA, S.A.) (Panama)
Amalgamated Rare Earth Mines, Ltd. (Canada)
American Industrial Research S.A., also known as Investigacion Industrial Americana, S.A. (Mexico)
American International Mining (Bahamas)
American Mobile Telephone and Tape Co., Ltd. (Canada)
Antel International Corporation, Ltd. (Canada)
Antoine Silver Mines, Ltd. (Canada)
ASCA Enterprises Limited (Hong Kong)
Atholl Brose (Exports) Ltd. (England)
Atholl Brose, Ltd. (England)
Atlantic and Pacific Bank and Trust Co., Ltd. (Bahamas)
Banco de Guadalajara (Mexico)
Bank of Sark (United Kingdom)
Briar Court Mines, Ltd. (Canada)
British Overseas Mutual Fund Corporation Ltd. (Canada)
California & Caracas Mining Corp., Ltd. (Canada)
Canterra Development Corporation, Ltd. (Canada)
Cardwell Oil Corporation, Ltd. (Canada)
Caribbean Empire Company, Ltd. (British Honduras)
Caye Chapel Club, Ltd. (British Honduras)
Central and Southern Industries Corp. (Panama)

Cerro Azul Coffee Plantation (Panama)
Cia. Rio Banano, S.A. (Costa Rica)
City Bank A.S. (Denmark)
Claw Lake Holybdenum Mines, Ltd. (Canada)
Claravella Corporation (Costa Rica)
Compressed Air Corporation, Limited (Bahamas)
Continental and Southern Industries. S.A. (Panama)
Credito Mineroy Mercantil (Mexico)
Crossroads Corporation, S.A. (Panama)
Darien Exploration Company, S.A. (Panama)
Derkglen, Ltd. (England)
De Veers Consolidated Mining Corporation, S.A. (Panama)
Doncannon Spirits, Ltd. (Bahamas)
Durman, Ltd., formerly known as Bankers International Investment Corporation (Bahamas)
Ethel Copper Mines, Ltd. (Canada)
Euroforeign Banking Corporation, Ltd. (Panama)
Financiera Comermex (Mexico)
Financiera de Eomento Industrial (Mexico)
Financiera Metropolitana (Mexico)
Finansbanken a/s (Denmark)
First Liberty Fund, Ltd. (Bahamas)
Global Explorations, Inc. (Panama)
Global Insurance Company, Limited (British West Indies)
Globus Anlage-Vermittlungsgesellschaft MBH (Germany)
Golden Age Mines, Ltd. (Canada)
Hebilla Mining Corporation (Costa Rica)
Hemisphere Land Corporation Limited (Bahamas)
Henry Ost & Son, Ltd. (England)
International Communications Corporation (British West Indies)
International Trade Development of Costa Rica, S.A.
Ironco Mining & Smelting Company, Ltd. (Canada)
James G. Allan & Sons (Scotland)
J. P. Morgan & Company, Ltd., of London, England (not to be confused with J. P. Morgan & Co., Incorporated, New York)
Jupiter Explorations, Ltd. (Canada)
Kenilworth Mines, Ltd. (Canada)
Klondike Yukon Mining Company (Canada)
Kokanee Moly Mines, Ltd (Canada)
Land Sales Corporation (Canada)
Los Dos Hermanos, S.A. (Spain)
Lynbar Mining Corp., Ltd. (Canada)
Mercantile Bank & Trust Company, Limited
Norart Minerals Limited (Canada)
Normandie Trust Company, S.A. (Panama)
Northern Survey (Canada)
Northern Trust Company, S.A. (Switzerland)
Northland Minerals, Ltd. (Canada)
Obsco Corporation, Ltd. (Canada)
Pacific Northwest Developments, Ltd. (Canada)
Panamerican Bank & Trust Company (Panama)
Paulpic Gold Mines, Ltd. (Canada)
Pyrotex Mining and Exploration Co., Ltd. (Canada)
Radio Hill Mines Co., Ltd. (Canada)
Rodney Gold Mines Limited (Canada)
Royal Greyhound and Turf Holdings Limited (South Africa)
S.A. Valles & Co., Inc. (Phillipines)
San Salvador Savings & Loan Co., Ltd. (Bahamas)
Santack Mines Limited (Canada)
Security Capital Fiscal & Guaranty Corporation, S.A. (Panama)
Silver Stack Mines, Ltd. (Canada)
Societe Anonyme de Refinancement (Switzerland)
Strathmore Distillery Company, Ltd. (Scotland)
Strathross Blending Company Limited (England)
Swiss Caribbean Development & Finance Corporation (Switzerland)

Tam O'Shanter, Ltd. (Switzerland)
Timberland (Canada)
Trans-American Investments, Limited (Canada)
Trihope Resources, Ltd. (Canada)
Trust Company of Jamaica, Ltd. (West Indies)
United Mining and Milling Corporation (Bahamas)
Unitrust Limited (Ireland)
Vactionland (Canada)
Valores de Inversion, S.A. (Mexico)
Victoria Oriente, Inc. (Panama)
Warden Walker Worldwide Investment Co. (England)
Wee Gee Uranium Mines, Ltd. (Canada)
Western International Explorations, Ltd. (Bahamas)
Yukon Wolverine Mining Company (Canada)

PUBLIC UTILITY HOLDING COMPANIES

Assets

At fiscal year 1977, there were 18 holding companies registered under the Act. There were 17 registered holding companies within the 14 "active" registered holding-company systems. The remaining registered holding company is relatively small, and not included among the "active" systems. In the 14 active systems, there were 67 electric and/or gas utility subsidiaries, 55 nonutility subsidiaries, and 22 inactive companies, or a total of 161 system companies, including the top parent and subholding companies. The following table lists the active systems and their agregate assets.

Table 35

PUBLIC-UTILITY HOLDING COMPANY SYSTEMS

	Soley Registered Holding Companies	Registered Holding Operating Companies	Electric &/or Gas Utility Subsidiaries	Non-Utility Subsidiaries	Inactive Companies	Total Companies	Aggregate System Assets, Net of Depreciation, on 12-31-76*
Allegheny Power System, Inc	1	2	1	4	0	8	$ 2,062,665,000
American Electric Power Co , Inc.	1	0	10	11	6	28	6,879,459,000
Central & Southwest Corp	1	1	3	3	1	9	2,276,539,000
Columbia Gas System, Inc , The	1	0	8	10	1	20	3,243,759,000
Consolidated Natural Gas Co	1	0	5	6	0	12	1,946,717,000
Eastern Utilities Associates	1	0	4	1	2	8	286,004,000
General Public Utilities Corp	1	0	4	4	1	10	3,954,649,000
Middle South Utilities, Inc	1	0	7	2	3	13	4,136,235,000
National Fuel Gas Co	1	0	1	2	0	4	463,604,000
New England Electric System	1	0	4	2	0	7	1,713,833,00
Northeast Utilities	1	0	5	8	6	20	2,873,201,000
Ohio Edison Co	0	1	1	0	0	2	2,343,924,000
Philadelphia Electric Power Co	0	1	1	0	1	3	58,439,000
Southern Company, The	1	0	5	2	0	8	8,072,294,000
Subtotals	12	5	59	55	21	152	$40,311,322,000
Adjustments (a) to take amount of jointly-owned companies, (b) to add net assets of eight jointly-owned companies not included above**	0	5	(a)+8	0	1	9	(b)+688,231,000
Total companies & assets in active systems	12	5	67	55	22	161	$40,999,553,000

*Represents the consolidated net assets of each system as reported to the Commission on Form U5S for the year 1976. The figures for National Fuel Co are as of September 30, 1976

**These nine companies are Beechbottom Power Co., Inc , which is a currently inactive subsidiary that is equally owned by the American Electric Power Co., Inc and Allegheny Power System, Inc, Ohio Valley Electric Corp. and its subsidiary, Indiana-Kentucky Electric Corp., which are owned 37 8 percent by American Electric Power Co., Inc , 16 5 percent of Ohio Edison Co., 12 5 percent by Allegheny Power System, Inc , and 33 2 percent by other companies, Cardinal Operating Co , an indirect subsidiary equally owned by American Electric Power Co , Inc. and an electric utility company not associated with a registered system; The Arklahoma Corp which is owned 32 percent by Central & Southwest Corp. system, 34 percent by Middle South Utilities, Inc. system, and 34 percent by an electric utility company not associated with a registered system; Yankee Atomic Electric Co., Connecticut Yankee Atomic Power Co., Vermont Yankee Nuclear Power Corp and Maine Yankee Atomic Power Co , which are statutory utility subsidiaries of Northeast Utilities, New England Electric System, Eastern Utilities Associates and other electric utilities not associated with a registered system

Table 36A

FINANCING OF HOLDING COMPANY SYSTEMS

(Transition Quarter)
7-1-76 to 9-30-76

	In Million of Dollars[2]			
	Bonds	Debentures	Preferred Stock	Common Stock
American Electric Power Co.				2.1
Appalachian Power Co.	69 4			
Consolidated Natural Gas Co.		74.6		0 7
Eastern Utility Associates		[4]20.0		
General Public Utilities Corp.				2 6
Ohio Edison	59.7			1.1
Pennsylvania Power Co.	15.0			
Middle South Utilities				0.3
Northeast Utilities				
Connecticut Yankee Atomic Power Co.	[4]13 8	[4]10.0		
Southern Company, The				6.3
Total	157.9	104.6	0.0	[3]13.1

[1]This table does not include short-term financings, securities issued and sold by subsidiaries to their parent companies or obligations incurred by registered systems for pollution control facilities financed through the sale of revenue bonds by governmental agencies.
[2]Debt securities are computed at price to company, preferred stock at offering price and common stock at offering or subscription price
[3]All common stock issued during the transition quarter is attributable to dividend reinvestment plans.
[4]Private placement.

Table 36B

FINANCING OF HOLDING COMPANY SYSTEMS[1]

(Fiscal 1977)

	In Millions of Dollars[2]			
	Bonds	Debentures[3]	Preferred Stock	Common[4] Stock
Alleghany Power Systems Inc.	$	$	$	$ 6
Monongahela Power Co.			15.2	
West Penn Power Co.			20.3	
American Electric Power Co.				213.8
Indiana & Michigan Electric Co.			40.0	
Indiana & Michigan Power Co.		[7] 60.0		
Kentucky Power Co	30.2			
Kingsport Power Co		[7] 12.0		
Michigan Power Co.		[7] 5 0		
Ohio Power Co.	[5] 120 4			
Ohio Electric Co.	[6 7] 200 0			
Central and South West Corp.				108.0
Central Power & Light Co.	74.4			
Southwestern Electric Power Co.			30.0	
Consolidated Natural Gas Co.		74.4		5.5
Eastern Utilities Associates				10.7
General Public Utilities Corp.		[7] 50.0		81.4
Jersey Central Power & Light Co.	58 0			
Metropolitan Edison Co	34 4			
Middle South Utilities, Inc.				135.7
Arkansas Power & Light Co.			10.4	
Louisiana Power & Light Co.	40.1			
Middle South Energy, Inc.	[4 6 7] 200.0	[7] 138 0		
New England Electric System		[6 7] 27.5		30.8
Granite State Electric Co.		[7] 8.0		
New England Power Co.	50 0			
Northeast Utilities				9
Connecticut Light & Power Co.	44 5			
Western Massachusetts Electric Co.	29.9			
Ohio Edison Co.	[5] 134 4		40 0	6.0
Southern Company, The				33 1
Alabama Power Co.	99.2		50.0	
Gulf Power Co.	34.4		15.0	
Southern Services, Inc.		[6 7] 22.0		
Yankee Atomic Electric Co.[8]		10.0		
Total	$1,149.9	$406.9	$220.9	$626.5

[1] The table does not include securities issued and sold by subsidiaries to their parent holding companies, short-term notes sold to banks, portfolio sales by any of the system companies, or securities issued for stock or assets of nonaffiliated companies. Transactions of this nature also require authorization by the Commission, except, as provided by Sec 6(b) of the Act, the issuance of notes having a maturity of 9 months or less where the aggregate amount does not exceed 5 percent of the principal amount and par value of the other securities of the issuer then outstanding.

[2] Includes notes to banks maturing in more than one year

[3] Debt securities are computed at price to company, preferred stock at offering price, common stock at offering or subscription price

[4] Common stock includes shares issued by dividend reinvestment plan.

[5] Two or more issues.

[6] Private placement.

[7] At least one issue negotiated.

[8] Statutory utility subsidiary of Northeast Utilities and New England Electric System.

CORPORATE REORGANIZATIONS

Commission Participation

In fiscal year 1977, the Commission entered 9 new Chapter X proceedings involving companies with aggregate stated assets of approximately $895 million and aggregate indebtedness of approximately $878 million. During the transitional quarter, July 1 to September 30, 1976, the Commission entered 2 new Chapter X proceedings while closing 2 proceedings. Including the new proceedings, the Commission was a party in a total of 124 reorganization proceedings during the fiscal year. The stated assets of the companies involved in these proceedings totaled approximately $5.3 billion and their indebtedness about $4.8 billion. During the fiscal year 12 proceedings were closed, leaving 112 in which the Commission was a party at year end.

Table 37

REORGANIZATION PROCEEDINGS UNDER CHAPTER X OF THE BANKRUPTCY ACT IN WHICH THE COMMISSION PARTICIPATED

Fiscal Year 1977

Debtor	District Court	Petition Filed	SEC Notice of Appearance Filed
Air Industrial Research, Inc [4]	N D Cal	March 14, 1974	May 6, 1974
Aldersgate Foundation, Inc	M D Fla	Sept 12, 1974	Oct 3, 1974
American Associated Systems, Inc	E D Ky	Dec 24, 1970	Feb 26, 1971
American Land Corp	S D Ohio	Aug 8, 1973	Sept 25, 1973
American Loan & Finance Co [4]	E D Va.	July 31, 1972	Aug 30, 1972
American Mortgage & Investment Co	D. S C	Dec 13, 1974	Feb 6, 1975
Arizona Lutheran Hospital	D Ariz	May 11, 1970	May 25, 1970
Atlanta International Raceway, Inc [3]	N D Ga	Jan 18, 1971	Feb 3, 1971
Arlan's Dept Stores, Inc	S D N Y.	March 8, 1974	March 8, 1974
Bankers Trust[5]	S D Ind	Oct 7, 1966	Nov 1, 1966
Bankers Trust Co [2]	S D Miss	Dec 16, 1976	April 5, 1977
Beck Industries, Inc	S D N Y	May 27, 1971	July 30, 1971
Bermec Corp	S D N Y	April 16, 1971	April 10, 1971
Beverly Hills Bancorp	C D Cal	April 11, 1974	May 14, 1974
Bubble Up Delaware, Inc	C D Cal	Aug 31, 1970	Oct 19, 1970
BXP Construction Corp	S D N Y	Jan 15, 1974	June 10, 1974
C I P Corp	S D Ohio	May 23, 1975	June 26, 1975
Calvin Christian Retirement Home, Inc [3]	W D Mich	Aug 8, 1974	Nov 4, 1974
Carolina Caribbean Corp	W D N C	Feb 28, 1975	April 17, 1975
Coast Investors, Inc [5]	W D Wash	April 1, 1964	June 10, 1964
Coffeyville Loan & Investment[5]	D Kans	July 17, 1959	Aug 10, 1959
Combined Metals Reduction Co	D Nev	Sept 30, 1970	Sept 7, 1972
Commonwealth Corp	N D Fla	June 28, 1974	July 17, 1974
Commonwealth Financial Corp [5]	E D Pa	Dec 4, 1967	Dec 13, 1967
Community Business Services, Inc	E D Cal	June 8, 1972	April 30, 1973
Continental Mortgage Investors	D Mass	Oct 21, 1976	Oct 21, 1976
Continental Vending Machine Corp	E D N Y	July 10, 1963	Aug 7, 1963
Cosmo Capital Inc [5]	N D Ill	July 22, 1963	April 22, 1963
Davenport Hotel, Inc	E D Wash	Dec 20, 1972	Jan 26, 1973
Detroit Port Development Corp [2]	E D Mich	Sept 14, 1976	Nov 17, 1976
Diversified Equity Corp [2]	S D Ind	Jan 24, 1977	Feb. 17, 1977
Diversified Mountaineer Corp	S D W Va	Feb 8, 1974	April 24, 1974
Dumont-Airplane & Marine[5]	S D N Y	Oct 22, 1958	Nov 10, 1958
Duplan Corp [2]	S D N Y	Oct 5, 1976	Oct. 5, 1976
E T &T Leasing, Inc.	D Md	Dec 20, 1974	June 5, 1975
Educational Computer Systems, Inc	D Ariz	April 26, 1972	Nov 3, 1972
Eichler Corp [5]	N.D Cal	Oct. 11, 1967	Oct 11, 1967
Equitable Mortgage Investment Corp	S D Iowa	July 10, 1975	July 10, 1975
Equitable Plan Co [5]	S D Cal	March 17, 1958	March 24, 1958
Equity Funding Corp of America	C D Cal	April 5, 1973	April 9, 1973
Farrington Manufacturing Co	E D Va	Dec 22, 1970	Jan 14, 1971
First Baptist Church, Inc of Margate, Fla	S D Fla	Sept 10, 1973	Oct 1, 1973
First Home Investment Corp. of Kansas, Inc	D Kan	April 24, 1973	April 24, 1973
First Research Corp	S D Fla	March 2, 1970	April 14, 1970
GAC Corp [1]	S D Fla	May 19, 1976	June 14, 1976
GEBCO Investment Corp [2]	W D Pa	Feb 8, 1977	March 24, 1977
Wm Gluckin Co , Ltd	S D N Y	Feb 22, 1973	March 6, 1973
Gro-Plant Industries, Inc [5]	N D Fla	Aug 30, 1972	Sept 13, 1972
Gulfco Investment Corp	W.D Okla	March 22, 1974	March 28, 1974
Gulf Union Corp	M D La	Aug 29, 1974	Nov 5, 1974
Harmony Loan, Inc	E D Ky	Jan 31, 1973	Jan 31, 1973
Hawaii Corp [2]	D Hawaii	March 17, 1977	March 17, 1977
Hawkeye Land, Ltd	S D Iowa	Dec 19, 1973	Jan 21, 1974
R Hoe & Co , Inc	S D N Y	July 7, 1969	July 14, 1969
Home-Stake Production Co	N D Okla.	Sept 20, 1973	Oct 2, 1973
Houston Educational Foundation, Inc	S D Tex	Feb 16, 1971	March 2, 1971
Human Relations Research Foundation[5]	S D Cal	Jan 31, 1964	Feb 14, 1964
Imperial-American Resources Fund, Inc	D Colo	Feb 25, 1972	March 6, 1972
Imperial '400' National, Inc	D N J	Feb 18, 1966	Feb 23, 1966
Indiana Business & Investment Trust	S D Ind	Oct 10, 1966	Feb 4, 1966
Interstate Stores, Inc	S D N Y	June 13, 1974	June 13, 1974
Investors Associated, Inc [5]	W D Wash	March 3, 1965	March 17, 1965
Investors Funding Corp of New York	S D N Y	Oct 21, 1974	Oct 22, 1974
Jade Oil & Gas Co [5]	C D Cal	June 28, 1967	Aug 16, 1967
J. D Jewell, Inc	N D Ga	Oct 20, 1972	Nov 7, 1972

See footnotes at end of table

Table 37

REORGANIZATION PROCEEDINGS UNDER CHAPTER X OF THE BANKRUPTCY ACT IN WHICH THE COMMISSION PARTICIPATED—Continued

Fiscal Year 1977

Debtor	District Court	Petition Filed	SEC Notice of Appearance Filed
King Resources Co.	D. Colo.	Aug. 16, 1971	Oct. 19, 1971
Kirchofer & Arnold[4]	E.D. N.C.	Nov 9, 1959	Nov. 12, 1959
Lake Winnebago Development Co., Inc	W D Mo.	Oct. 14, 1970	Oct. 26, 1970
Little Missouri Minerals Assn , Inc [4]	D N D	July 18, 1966	Jan. 29, 1968
Los Angeles Land & Investments, Ltd	D. Hawaii	Oct. 24, 1967	Nov. 28, 1967
Louisiana Loan & Thrift, Inc	E.D La.	Oct. 8, 1968	Oct. 8, 1968
Lusk Corp	D. Ariz	Oct. 28, 1965	Nov. 15, 1965
Lyntex Corp	S.D.N.Y	April 15, 1974	Jan 28, 1974
Dolly Madison Industries, Inc.	E D. Pa.	June 23, 1970	July 6, 1970
Magnolia Funds, Inc [4]	E D La	Nov. 18, 1968	May 26, 1969
Manufacturer's Credit Corp [5]	D N J	Aug. 1, 1967	July 30, 1968
Maryvale Community Hospital[3]	D. Ariz.	Aug 1, 1963	Sept. 11, 1963
Mid-City Baptist Church	E.D. La.	July 30, 1968	Oct 23, 1968
Morehead City Shipbuilding[4]	E.D N C	Nov. 9, 1959	Nov. 12, 1959
Mount Everest Corp.[5]	E.D. Pa.	May 29, 1974	June 28, 1974
National Telephone Co , Inc.	D Conn	July 10, 1975	May 27, 1976
Nevada Industrial Guaranty Co.	D. Nev.	May 7, 1963	July 2, 1963
North American Acceptance Corp.	N D. Ga	March 5, 1974	March 28, 1974
North Western Mortgage Investors Corp	W.D. Wash.	Dec 12, 1973	Dec. 12, 1973
Omega-Alpha, Inc.	N.D Tex	Jan. 10, 1975	Jan. 10, 1975
Pan American Financial Corp.	D Hawaii	Oct. 2, 1972	Jan. 9, 1973
Parkview Gem, Inc	W D Mo	Dec. 18, 1973	Dec. 28, 1973
Pinehurst Mortgage & Loan Corp [2,4]	M.D. N.C.	April 16, 1976	Sept. 14, 1976
Pocono Downs, Inc.	M.D. Pa.	Aug 20, 1975	Aug. 20, 1975
RIC International Industries, Inc.[4]	N.D. Tex.	Sept. 16, 1970	Sept. 23, 1970
John Rich Enterprises, Inc [5]	D Utah	Jan. 16, 1970	Feb. 6, 1970
Reliance Industries, Inc.[1]	D. Hawaii	May 24, 1976	Aug. 10, 1976
Riker Delaware Corp [5]	D. N.J.	April 21, 1967	May 23, 1967
Royal Inns of America, Inc.	S.D. Cal.	April 24, 1975	June 24, 1975
Scranton Corp [5]	M D Pa	April 3, 1959	April 15, 1959
Sequoyah Industries, Inc [4]	W D Okla	Jan. 21, 1974	Jan 30, 1974
Edward N Siegler & Co [5]	N.D. Ohio	May 23, 1966	June 7, 1966
Sierra Trading Corp [5]	D Colo	July 7, 1970	July 22, 1970
Sound Mortgage Co., Inc.[5]	W D Wash	July 27, 1965	Aug. 31, 1965
Southern Land Title Corp.	E D. La	Dec 7, 1966	Dec. 31, 1966
Stanndco Developers, Inc.	W.D.N.Y.	Feb. 5, 1974	March 7, 1974
Stirling Homex Corp.	W.D.N.Y.	July 11, 1972	July 24, 1972
Sunset International Petroleum Corp.[5]	N D. Tex	May 27, 1970	June 10, 1970
TMT Trailer Ferry, Inc [5]	S.D. Fla.	June 27, 1957	Nov 22, 1957
Texas Independent Coffee Organization[4]	S.D. Tex.	Jan. 5, 1965	Jan. 13, 1965
Tilco, Inc.	D Kans	Feb 7, 1973	Feb. 22, 1973
Tower Credit Corp [5]	M D. Fla	April 13, 1966	Sept. 6, 1966
Traders Compress Co	W D Okla	May 12, 1972	June 6, 1972
Trans-East Air Inc.[4]	D Me.	Aug 29, 1972	Feb. 22, 1973
Trans-International Computer Investment	N D. Cal.	March 22, 1971	July 26, 1971
Trustors' Corp [5]	C D Cal	Sept 13, 1961	Oct 9, 1961
"U" District Building Corp	W D Wash.	Dec. 9, 1974	Dec. 9, 1974
U S. Financial, Inc	S.D. Cal.	Sept 23, 1975	Nov. 3, 1975
Viatron Computer Systems Corp	D. Mass.	April 29, 1971	April 29, 1971
Virgin Island Properties, Inc.[5]	D V I	Oct. 22, 1971	April 11, 1972
Vinco Corp [5]	E D Mich.	March 29, 1963	April 9, 1963
Waltham Industries Corp	C D Cal.	July 14, 1971	Aug. 19, 1971
Washington Group, Inc [2]	M D N.C	June 20, 1977	July 25, 1977
Webb & Knapp, Inc.[5]	S.D.N.Y.	May 7, 1965	May 11, 1965
H R Weissberg Corp [5]	N.D Ill	March 5, 1968	April 3, 1968
Westec Corp.[4]	S.D. Tex.	Sept 26, 1966	Oct. 4, 1966
Western Growth Capital Corp.	D. Ariz.	Feb 10, 1967	May 16, 1968
Western National Investment Corp.[5]	D. Utah	Jan. 4, 1968	March 11, 1968
Westgate-California Corp.	S.D. Cal.	Feb. 26, 1974	March 8, 1974
Wonderbowl, Inc	C.D Cal.	March 10, 1967	June 7, 1967
Yale Express System, Inc.[5]	S.D N.Y.	May 24, 1965	May 28, 1965

[1] Commission filed notices of appearance in transitional quarter, July 1 to Sept. 30, 1976.
[2] Commission filed notices of appearance in fiscal year 1977
[3] Reorganization proceedings closed during transitional quarter, July 1 to Sept. 30, 1976
[4] Reorganization proceedings closed during fiscal year 1977.
[5] Plan has been substantially consummated but no final decree has been entered because of pending matters

SEC OPERATIONS

Net Cost

Total estimated fees collected by the Commission in fiscal 1977 represented 56 percent of funds appropriated by the Congress for Commission operations. The Commission is required by law to collect fees for (1) registration of securities issued; (2) qualification of trust indentures; (3) registration of exchanges; (4) registration of brokers and dealers who are registered with the Commission but are not members of the NASD; and (5) certification of documents filed with the Commission. In addition, by fee schedule, the Commission imposes fees for certain filings and services such as the filing of annual reports and proxy material.

APPROPRIATED FUNDS vs FEES COLLECTED

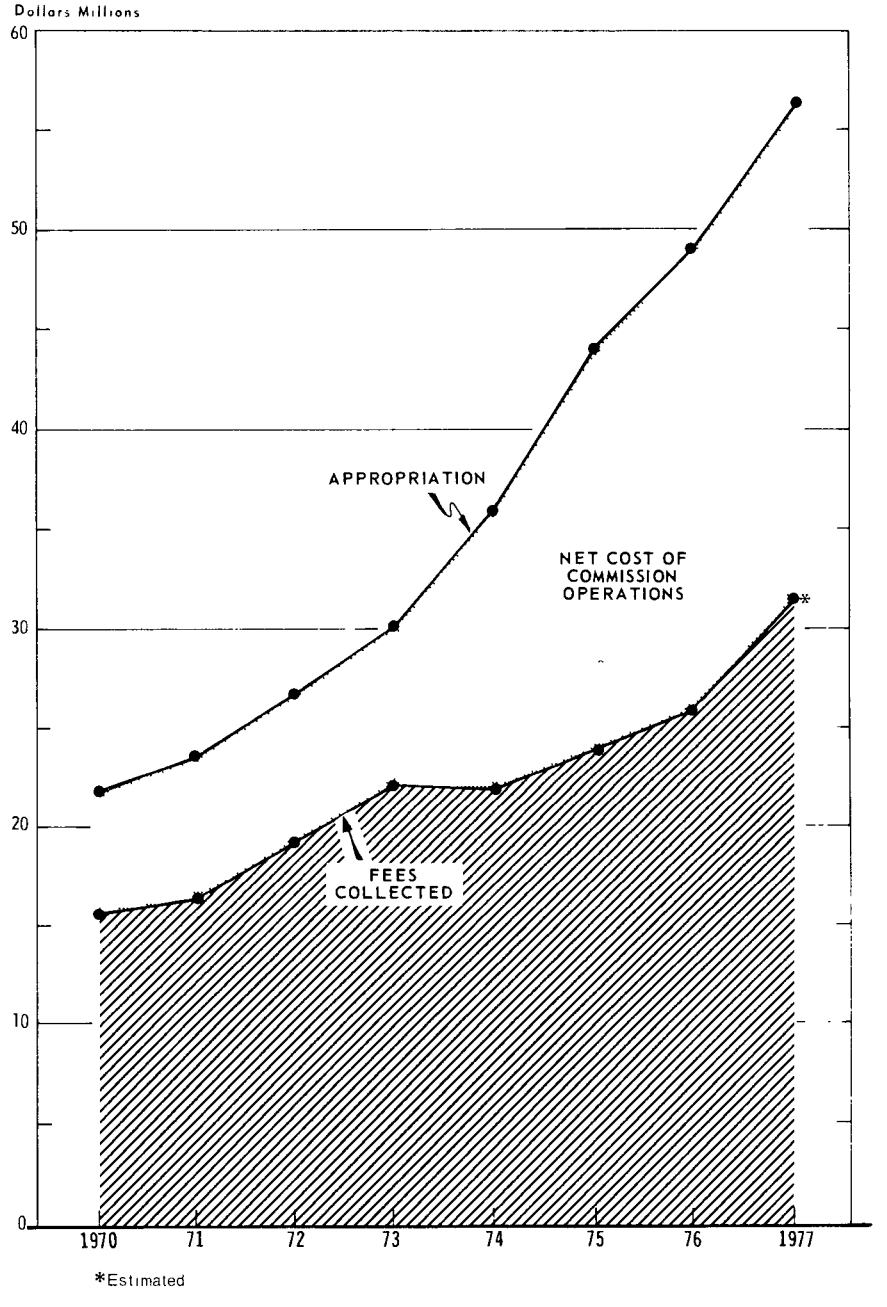


Table 38

BUDGET ESTIMSTES AND APPROPRIATION

Action	Fiscal 1973		Fiscal 1974		Fiscal 1975		Fiscal 1976		Transitional Quarter		Fiscal 1977		Fiscal 1978	
	Positions	Money	Positions	Money	Positions	Money	Positions	Money	Positions	Money	Positions	Money	Positions	Money
Estimate submitted to the Office of Management and Budget	1,939	$33,691,000	1,919	$34,027,000	2,219	$43,674,000	2,294	$54,577,000	2,081	$12,500,000	2,400	$54,822,000	2,133	$59,000,000
Action by the Office of Management and Budget	−313	−2,411,000	−283	−3,930,000	−204	−2,817,000	−225	−1,543,000			−283	−3,064,000	−41	−710,000
Amount allowed by the Office of Management and Budget	1,656	29,761,000	1,715	31,210,000	1,994	42,131,000	2,018	47,187,000	2,081	12,500,000	2,117	53,098,000	2,092	58,290,000
Action by the House of Representatives			+204	+2,817,000	+150	+946,000		−302,000		−75,000		−98,000		
Sub-total	1,656	29,761,000	1,919	34,027,000	2,144	43,077,000	2,018	46,885,000	2,081	12,425,000	2,117	53,000,000	2,097	58,290,000
Action by the Senate							+126	+2,000,000		+250,000				
Sub-total	1,656	29,761,000	1,919	34,027,000	2,144	43,077,000	2,144	48,885,000	2,081	12,675,000	2,117	53,000,000	2,092	58,290,000
Action by conferees							−63	−1,000,000						
Annual appropriation	1,656	29,761,000	1,919	34,027,000	2,144	43,077,000	2,081	47,885,000	2,081	12,675,000	2,117	53,000,000	2,092	58,290,000
Supplemental appropriation		532,000		2,200,000		1,350,000		1,406,000		502,000		3,270,000		
Total appropriation	1,656	30,293,000	1,919	36,227,000	2,144	44,427,000	2,081	49,291,000	2,081	13,177,000	2,117	56,270,000		

* U.S. GOVERNMENT PRINTING OFFICE: 1978 O—276-923