

**26th Annual Report
of the
Securities and Exchange Commission**

Fiscal Year Ended June 30, 1960

SECURITIES AND EXCHANGE COMMISSION

Headquarters Office
425 Second Street NW.
Washington 25, D.C.

COMMISSIONERS

January 3, 1961

EDWARD N. GADSBY, Chairman
HAROLD C. PATTERSON [Deceased November 29, 1960.]
EARL F. HASTINGS
BYRON D. WOODSIDE
DANIEL J. McCAULY, JR.

ORVAL L. DuBois, Secretary

LETTER OF TRANSMITTAL

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

SIR : On behalf of the Securities and Exchange Commission, I have the honor to transmit to you the Twenty-Sixth Annual Report of the Commission covering the fiscal year July 1, 1959, to June 30, 1960, in accordance with the provisions of Section 23 (b) of the Securities Exchange Act of 1934, approved June 6, 1934; Section 23 of the Public Utility Holding Company Act of 1935, approved August 26, 1935; Section 46 (a) of the Investment Company Act of 1940, approved August 22, 1940; Section 216 of the Investment Advisers Act of 1940, approved August 22, 1940; and Section 3 of the act of June 29, 1949, amending the Bretton Woods Agreement Act; and Section 11 (b) of the Inter-American Development Bank Act. Respectfully,

EDWARD N. GADSBY,

Chairman.

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

Harold C. Patterson
1897-1960

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

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

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

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

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

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

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FOREWORD

This 26th Annual Report of the Securities and Exchange Commission to the Congress for the fiscal year July 1959 to June 30, 1960 describes the Commission's activities during the year in discharging its duties under the statutes which it administers. These include supervision of the registration of securities for sale to the public by the use of the mails and in interstate commerce, enforcement of the anti-fraud provisions of the federal securities laws, surveillance of the exchange and over-the-counter markets in securities, regulation of the activities of brokers and dealers and investment advisers, and regulation of registered public utility holding company systems and investment companies.

In the fiscal year 1960 a record number of registration statements under the Securities Act of 1933 became effective. There were a total of 1,398 such statements as compared with the previous high of 1,055 in fiscal 1959. The dollar amount of issues of securities registered for public sale totalled \$14.4 billion, down somewhat from the \$15.7 billion in fiscal 1959.

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

During the fiscal year, following submission of recommendations made by the Commission for amendments to the securities laws, which are described in the Commission's 25th Annual Report, major amendments were enacted to the Investment Advisers Act of 1940. In addition, an amendment was passed to the Trust Indenture Act

of 1939. While Congressional action was taken on other bills embodying Commission recommendation, those bills were not enacted.

COMMISSIONERS AND STAFF OFFICERS

(As of November 25, 1960)

Commissioners

EDWARD N. GADSBY of Massachusetts, Chairman -- Term expires June 5, 1963

HAROLD C. PATTERSON of Virginia [Deceased November 29, 1960.] -- Term expires June 5, 1965

EARL F. HASTINGS of Arizona -- Term expires June 5, 1964

BYRON D. WOODSIDE of Virginia [Succeeded Andrew Downey Orrick on July 15, 1960.] -- Term expires June 5, 1962

DANIEL J. MCCAULEY, JR. of Pennsylvania [Succeeded James C. Sargent on October 22, 1960 under recess appointment.] -- Term expires June 5, 1961

Secretary: ORVAL L. DuBois

Staff Officers

ALBERT K. SCHEIDENHELM, Executive Director. CHARLES T. KAPPLER, Associate Executive Director.

MANUEL F. COHEN, Director, Division of Corporation Finance [Succeeded Byron D. Woodside on July 15, 1960.] SHARON C. RISK, Associate Director.

JOSEPH C. WOODLE, Director, Division of Corporate Regulation. W. ALLEN JOHNSON, Associate Director

PHILIP A. LOOMIS, Jr., Director, Division of Trading and Exchanges. RALPH S. SAUL, Associate Director.

WALTER P. NORTH, General Counsel [Succeeded Thomas G. Meeker on October 29, 1960.] MITCHELL F. RIEGER, Associate General Counsel. [Succeeded Walter P. North on October 31, 1960.]

ANDREW BARR, Chief Accountant.

LEONARD HELFENSTEIN, Director, Office of Opinion Writing. W. VICTOR RODIN, Associate Director.

REGIONAL AND BRANCH OFFICES

Regional Administrators

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

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

Region 3. Tennessee, North Carolina. South Carolina, Georgia, Alabama, Mississippi, Florida, and that part of Louisiana lying east of the Atchafalaya River. -- William Green, Suite 138, 1371 Peachtree Street NE., Atlanta 9, Ga.

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

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

Region 6. Wyoming, Colorado, New Mexico, Nebraska, North Dakota, South Dakota, Utah. -- Milton J. Blake, 802 Midland Savings Building, 44417th Street, Denver 2, Colo.

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

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

Region 9. Pennsylvania, Maryland, Virginia, West Virginia, Delaware, District of Columbia. -- William J. Crow, Courts Building, 310 6th Street NW., Washington 25, D.C.

Branch Offices

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

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

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

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

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

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

St. Paul 1, Minn. Main Post Office and Courthouse (Room 1027), 180 East Kellogg Boulevard.

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

COMMISSIONERS

Edward N. Gadsby, Chairman

Chairman Gadsby was born in North Adams, Mass., on April 11, 1900. He received an A.B. degree from Amherst College in 1923 and a J.D. degree from the New York University School of Law in 1928. From 1929 to 1937 he was associated with the law firm of Mudge, Stern, Williams & Tucker of New York City. From 1937 to 1947 he practiced law in North Adams, Mass. In 1947 he was appointed a Commissioner of the Massachusetts Department of Public Utilities and held that position until 1952, serving as Chairman from 1947 to 1949. From 1952 to 1956 he served as General Counsel of the Massachusetts Department of Public Utilities and thereafter was a member of the law firm of Sullivan & Worcester of Boston, Mass. On August 20, 1957, he took office as a member of the Securities and Exchange Commission for a term expiring June 5, 1958, and was designated Chairman of the Commission. He was reappointed effective June 5, 1958 for a term expiring June 5, 1963 and was again designated as Chairman.

Harold C. Patterson

Commissioner Patterson was born in Newport, R.I., on March 12, 1897, and attended public schools in Massachusetts and Maryland. He attended George Washington University after graduating from Randolph Macon Academy. In 1918 he enlisted in the United States Naval Reserve for service in World War I, was commissioned ensign, United States Naval Reserve, in 1918; in June 1919 commissioned ensign United States Navy; and resigned in 1923. Prior to 1954, he had for many years been a partner of Auchincloss, Parker & Redpath, members of the New York Stock Exchange, in Washington, D.C. He resigned from the firm June 1, 1954. He served as a Board Member

of the National Association of Securities Dealers, Inc., and was active over the years in its securities industry policing work. On June 15, 1954, he was appointed Director of the Division of Trading and Exchanges of the Securities and Exchange Commission and served in that capacity until August 5, 1955, when he took office as a member of the Commission for a term of office expiring June 5, 1960. He was reappointed effective June 5, 1960, as a member of the Commission for a term expiring June 5, 1965, and served until his death on November 29, 1960.

Earl F. Hastings

Commissioner Hastings was born in Los Angeles, Calif., on April 27, 1908, and resides in Glendale, Ariz. He attended Texas Western University and the University of Denver. He is a registered professional engineer. During the years 1932 to 1941 he served as a consulting engineer with mining and industrial firms. From 1941 to 1942 he worked with Hawaiian constructors on a military installation on Oahu, T.H. From 1942 to 1947 he served in various engineering and managerial capacities. At that time he became a general partner of the firm, Darlington, Hastings & Thorne, which served as industrial consultants and managers. In 1949 he was appointed Director of Securities, Arizona Corporation Commission, Phoenix, and he served in that capacity until March 1, 1956, when he was appointed a member of the Securities and Exchange Commission for a term of office expiring June 5, 1959. He was reappointed, effective June 5, 1959, as a member of the Commission for a term expiring June 5, 1964.

Byron D. Woodside

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

Daniel J. McCauley, Jr.

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

PART I CURRENT PROBLEMS BEFORE THE COMMISSION

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

Unfortunately, the pace of statutory violations of fraudulent distributions and of other malpractices in our security markets has not slowed sufficiently to permit the Commission to divert to these other matters the major segment of our personnel which has been devoted to enforcement activities. Enforcement activities continue and will continue at a high rate; the number of new issuers seeking establishment in our capital markets, and the need for capital by seasoned issuers has not abated -- all signs point rather to increased activity in this area; the variety and increasing important new types of securities created and distributed by the undimmed genius of American issuers continues to grow. All of these factors serve either to intensify old problems or to bring new ones demanding the attention of the Commission and of its staff.

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

Fraudulent Sale of Securities

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

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

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

Registration of Securities

The past fiscal year has seen a larger number of registration statements filed with us preparatory to making a public offering than any previous year in the Commission's history. During the past year, a total of 1628 such registration statements were filed, as against 1226 for the 1959 fiscal year. The dollar amount represented by these statements exceeded \$15,800 million, which is somewhat less than the \$16,600 million covered by registration statements filed in the previous year. In considering our own situation, however, it is necessary to keep in mind that our work is a function of the number of items and not of the amount of money involved.

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

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

Supervision of Broker-Dealer Firms

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

The growth in the number of branch offices intensifies the problem of supervision over broker-dealer firms. The physical separation of branch office personnel from the responsible supervisors in the main office makes control by the managements of the firms more difficult. In many cases, the manager of a branch office may not be a partner or an

officer of the firm. Registered representatives may be relatively inexperienced in the securities business and the task of supervision may be aggravated by the employment of part-time registered representatives, particularly in the mutual fund field. Some registered representatives may solicit from door to door and they may operate not from offices but from private residences remote from supervisory personnel. Finally, the rising demand for experienced business producers results in a rapid turnover of registered representatives, increasing the difficulties of supervision.

Real Estate Securities

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

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

Combination Insurance and Investment Contracts

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

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

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

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

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

Variable Annuity Contracts

The decision of the Supreme Court in *S.E.C. v. Variable Annuity Life Insurance Company of America*, and *The Equity Annuity Life Insurance Company*, 359 U.S. 65 (1959) determined that the "variable annuity" contracts in question and their issuers are subject to federal jurisdiction under the securities laws. It can now be expected that a large segment of the insurance industry will seek to engage in this activity under various forms of variable annuity contracts and methods of operations, many of which are novel and unique. This will involve problems of harmonizing compliance with the Investment Company Act and local insurance laws and regulation. The administrative flexibility which is granted the Commission by the Investment Company Act has made it possible for the defendant companies, in cooperation with the staff of the Commission, to evolve solutions to some of these problems, and these companies are now actively engaged in this business. Informal discussions with other companies are being pursued.

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

Investment Company Size Study and Investigation

Investment companies have achieved tremendous growth since 1940 as media for the investment of their savings by many persons of relatively smaller means. Investment companies as a group have come to represent one of the three principal elements in the securities and capital markets of our nation. As such they may have important effects

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

Investment Advisers

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

PART II LEGISLATIVE ACTIVITIES

Statutory Amendments Proposed by the Commission

As fully discussed in the Commission's 25th Annual Report, its proposals to the 86th Congress for amendment of the Federal securities laws were introduced in the Senate as S. 1178, S. 1179, S. 1180, S. 1181, and S. 1182, and in the House of Representatives as H.R. 5001, H.R. 2480, H.R. 5002, H.R. 2481, and H.R. 2482. The Commission's

proposals were intended to strengthen the safeguards and protections afforded the public by tightening jurisdictional provisions, correcting certain inadequacies revealed through administrative experience and facilitating criminal prosecutions and other enforcement activities. Hearings on the bills were held during the first session of the 86th Congress before the Subcommittee on Securities of the Banking and Currency Committee of the Senate and the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce of the House of Representatives.

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

On August 26, 1960, the Committee on Interstate and Foreign Commerce of the House of Representatives reported out S. 3771, H.R. 5001 (relating to the Securities Act of 1933), H.R. 2480 (relating to the Securities Exchange Act of 1934), H.R. 2481 (relating to the Investment Company Act of 1940), and H.R. 2482 (relating to the Investment Advisers Act of 1940). Of these bills, S. 3771 was reported out as passed by the Senate, and the others embodied the Committee's amendments to the Commission's proposals. On August 30, 1960, the House of Representatives passed S. 3771, S. 3773 and an amended version of S. 3772.5 S. 3771 and S. 3773 were signed by the President on September 13 and became Public Law 86-760 and Public Law 86-750, respectively. The Senate, however, did not act on the amended version of S. 3772.6 Thus amendments were enacted to the Trust Indenture Act of 1939 and the Investment Advisers Act of 1940.

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

Public Law 86-760 amends Section 304 (c) of the Trust Indenture Act of 1939. Under that section the Commission was required to grant an exemption from the provisions

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

In addition an amendment was enacted to Section 4 (a) of the Securities Exchange Act of 1934. S. 1965, as amended by the Committee on Interstate and Foreign Commerce of the House of Representatives and later passed by the Congress and approved by the President, provides that a commissioner, after the expiration of his term, shall continue in office until his successor is appointed and qualified, except that he may not continue beyond the expiration of the next session of Congress subsequent to the expiration of his term in office.

Other Legislative Proposals

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

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

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

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

Congressional Hearings

Proposals to Increase Registration Fees. -- On June 6, 1960, Commissioner Orrick appeared before the Subcommittee on Commerce and Finance of the House Interstate and Foreign Commerce Committee and testified on H.R. 6294, a bill to amend Section 31 of the Securities Exchange Act of 1934. Section 31 now provides an annual fee for the

registration of exchanges of one five-hundredth of 1 percent of the aggregate dollar amount of stock exchange sales transactions, equal to 2 cents per \$1,000. The bill would increase the exchange registration fee to 5 cents per \$1,000, and would impose a similar fee on brokers and dealers on sales transactions effected otherwise than on a national securities exchange. Commissioner Orrick testified that the Commission believed the bill provides an equitable means of substantially increasing the reimbursement to the Treasury for the Commission's cost of operation by spreading the impact of the fees over all of the investing public for whose benefit the various statutes administered by the Commission were enacted.

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

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

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

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

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

2. H.R. 2156, H.R. 2157, and H.R. 7556. -- The Commission's General Counsel, Thomas G. Meeker, appeared on February 25, 1960, to testify before Subcommittee No. 5 of the House Committee on the Judiciary concerning H.R. 2156, H.R. 2157, and H.R. 7556, all of which deal, in general, with conflicts of interest of government employees. The Commission fully concurred in the objectives of these bills, but pointed out that, as drafted, they create unnecessary hardships and pose certain other problems. Mr. Meeker made certain proposals to overcome these problems.

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

PART III

REVISION OF RULES, REGULATIONS AND FORMS

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

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

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

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

THE SECURITIES ACT OF 1933

Amendment of Rule 133

Shortly after the beginning of the fiscal year the Commission adopted certain amendments to Rule 133. This rule, in brief, provides that registration of the securities involved is not required for the submission to the stockholders of a corporation of a plan for a merger, consolidation or similar transaction does not, under the conditions specified in the rule, involve an offer or sale of securities to such stockholders. The general purpose of the amendments is to indicate the circumstances under which securities distributed by persons receiving them in connection with such transactions may be required to be registered under the Act. This matter had been under consideration for some time and has been described at various stages in previous annual reports of the Commission.

Adoption of Rule 136; Amendment of Rule 140

During the fiscal year the Commission adopted a new Rule 136 and certain amendments to Rule 140.4 The new Rule 136 defines the term "offer" and "sale" and certain related terms so as to include specifically the levying of assessments on assessable stock. The rule also provides that the offer or sale of assessable stock at public auction or otherwise to realize the amount of an unpaid assessment thereon is not exempt from registration under the Act. The rule further provides that any person who acquires assessable stock at such a sale with a view to its distribution is to be deemed an underwriter of the stock. The amendment to Rule 140 which defines the term underwriter for certain purposes was adopted to make it clear that it applies to the levying of assessments, as well as to other types of offers and sales. References to these proposed rule changes have been made in previous annual reports.

Proposed Rule 155

The Commission during the fiscal year published notice that it has under consideration a proposed new rule which would be designated Rule 155.6 The purpose of this proposed rule is to make clear that a public offering of an immediately convertible security by persons who purchased such security from an issuer in a "private placement", or a public offering of the underlying security received by such persons upon conversion of the convertible security, may be subject to the registration provisions of the Securities Act.

Consideration of the proposed rule was initiated as a result of the assertion made in a number of situations that the holders of a convertible security, purchased in a private placement may later sell to the public the convertible security, or the security into which it is convertible, free of the prohibitions of Section 5 of the Act because the proposed distribution will not involve a transaction by the issuer or an underwriter, or because the security to be distributed is "free stock", or because the transaction is otherwise exempt by reason of the provisions of Section 3 (a) (9) or 4 (1) of the Act. These views, if followed, would tend to deprive public investors of the information necessary to informed investment decisions and might otherwise impair or impede the effectiveness of the Commission's over-all administration and enforcement of the Act.

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

Rescission of Regulation A-M

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

Amendment of Regulation A

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

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

Rescission of Regulation B-T

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

Adoption of Regulation F

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

Amendment to Form S-9

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

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

Adoption of Form S-14

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

THE SECURITIES EXCHANGE ACT OF 1934

Amendment of Rules 16b-2 and 16c-2

Section 16 (b) of the Securities Exchange Act provides that any profit realized by a beneficial owner of more than 10 percent of any class of any equity security registered on a national securities exchange or by a director or officer of the issuer of such a security (sometimes referred to herein as "insiders") as a result of any non-exempt short-swing transaction (purchase and sale, or sale and purchase, within six months) may be recovered by the issuer or by any security holder on its behalf. Section 16 (c) of the Act makes it unlawful for the "insiders" referred to, directly or indirectly, to sell any non-exempted equity security of such issuer (1) if they do not own the security sold, or (2) if owning it, they do not deliver it within the period specified in the section. Rules 16b-2 and 16c-2 have provided exemptions from the above provisions for certain distributing transactions under specified conditions including, among others, the requirement that persons other than "insiders" be participating in the distribution to an equal extent and on terms at least as favorable as the "insiders".

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

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

Amendment of Rule 16b-3

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

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

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

Amendment of Rule 16b-8

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

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

Proposed Rule 19a2-1

Section 19 (a) (2) of the Securities Exchange Act of 1934 authorizes the Commission, after appropriate notice and opportunity for hearing, by order to deny, to suspend the effective date of, to suspend for a period not exceeding 12 months or to withdraw the registration of a security on a National Securities Exchange if the Commission finds that the issuer of such security has failed to comply with any provision of the Act or the rules and regulations thereunder. The Commission is further authorized by Section 21 of the Act to make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of the Act or any rule or regulation thereunder.

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

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

Amendment of Form 8-K

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

Amendment of Form 9-K

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

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

THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Rescission of Rule 9

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

Modification of Rule 28

Early in 1960 the Commission promulgated a statement of administrative policy regarding the balance sheet treatment of the credit equivalent to the reduction in income taxes arising from deferred tax accounting. The statement is designed to advise all interested persons of the Commission's view that any financial statements filed with the Commission on and after April 30, 1960, the effective date of the statement of administrative policy, in which the accumulated tax credit is designated as earned surplus (or its equivalent) or in any manner as a part of equity capital (even though accompanied by words of limitation such as "restricted" or "appropriated"), will be presumed by the Commission to be misleading or inaccurate despite disclosure contained in the certificate of the accountant or in footnotes to the financial statements, provided the amounts involved are material. The Commission also modified Rule 28 under the Holding Company Act so as to conform the language of that rule with the policy announced in the statement of administrative policy. Rule 28 provided, in pertinent part, that no registered holding company or subsidiary thereof could publish financial statements inconsistent with its book accounts. The rule as modified provides, in effect, that a registered holding company or subsidiary thereof need not conform its published financial statements with its book accounts where such deviation is authorized or required by the Commission by rule, regulation, order, statement of administrative policy or otherwise.

Interpretation of Rule 50

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

Withdrawal of Proposed Revision of Rule 70

On December 8, 1953, the Commission gave notice that it had under consideration a proposal to revise Rule 70. This rule governs the connections with financial institutions of officers and directors of registered holding companies and subsidiary companies thereof. Since 1953 the Commission has amended this rule three times so as to broaden the exceptions in certain aspects and in view of such action the Commission on March 1, 1960, announced that it had decided to withdraw the above proposal to revise the rule.

The most recent amendment to Rule 70 is discussed on page 22 of the 24th Annual Report.

THE INVESTMENT COMPANY ACT OF 1940

Adoption of Rule 3c-2

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

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

Adoption of Rule 14a-1

Section 14 (a) provides that no registered investment company and no principal underwriter for such a company, shall make a public offering of securities of which such company is the issuer, unless it has a net worth of not less than \$100,000 or unless provision is made in connection with and as a condition of the registration of such securities under the Securities Act of 1933 which in the opinion of the Commission adequately insures (A) that after the effective date of such registration statement such company will not issue any security or receive any proceeds of any subscription for any security until firm agreements have been made with such company by not more than twenty-five responsible persons to purchase from it securities to be issued by it for an aggregate net amount which amount plus the then net worth of the company, if any, will equal at least \$100,000; (B) that said aggregate net amount will be paid in to such company before any subscriptions for such securities will be accepted from any persons

in excess of twenty-five; (C) that arrangements will be made whereby any proceeds so paid in, as well as any sales load, will be refunded to any subscriber on demand without any deduction, in the event that the net proceeds so received by the company do not result in the company having a net worth of at least \$100,000 within ninety days after such registration statement becomes effective.

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

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

Section 20 (a) of the Investment Company Act of 1940 makes it unlawful to solicit any proxy, consent or authorization in respect of any security of which any registered investment company is the issuer in contravention of such rules and regulations as the Commission may prescribe. Rule 20a-1 makes applicable to such solicitations the Commission's proxy rules adopted under Section 14 (a) of the Securities Exchange Act of 1934. Developments in the investment-company field indicated that disclosures required for investment companies by the proxy rules, particularly with reference to the investment adviser and his relationship to, and his dealings with, the investment company, were inadequate. In order to obtain better disclosure, the Commission, during the fiscal year, amended Rule 20a-1 and adopted two new rules, Rules 20a-2 and 20a-3.

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

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

The new Rule 20a-3 calls for the disclosure in a proxy statement relating to an investment company of information with respect to the material interests of officers, directors and nominees for election as a director of the investment company in material transactions, actual or proposed, to which the investment adviser or any of its parents or subsidiaries was or is to be a party. However, instructions to this requirement permit the omission of information in regard to interests of security holders as such and affiliated persons of the investment adviser in transactions which are not related to the business or operations of the investment company and to which neither the investment company nor any of its parents or subsidiaries is a party. The instructions further provide that the proportionate interest of a partner in transactions with the partnership need not be disclosed.

Adoption of Annual Report Form N-5R

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

annual financial report to the Small Business Administration pursuant to the Small Business Investment Act of 1958.

PART IV

ADMINISTRATION OF THE SECURITIES ACT OF 1933

The Securities Act of 1933 is primarily a disclosure statute designed to provide investors with material facts concerning securities publicly offered for sale by use of the mails or instrumentalities of interstate commerce, and to prevent misrepresentation, deceit or other fraudulent practices in the sale of securities. The issuer of such securities is required to file with the Commission a registration statement and related prospectus containing significant information about the issuer and the offering. These documents are available for public inspection as soon as they are filed. The registration statement must become "effective" before the securities may be sold to the public. In addition, the prospectus must be furnished to the purchaser at or before the making of any written offering or before the sale or delivery of the security. The registrant and the underwriter are responsible for the contents of the registration statement. The Commission has no authority to control the nature or quality of a security to be offered for public sale or to pass upon its merits or the terms of its distribution. Its action in permitting a registration statement to become effective does not constitute approval of the securities, and any representation to a prospective purchaser of securities to the contrary is made unlawful by Section 23 of the Act.

DESCRIPTION OF THE REGISTRATION PROCESS

Registration Statement and Prospectus

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

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

Examination Procedure

The staff of the Division of Corporation Finance examines each registration statement for compliance with the standards of accurate and full disclosure and usually notifies the registrant by an informal letter of comment of any material respects in which the statement appears to fail to conform to those requirements. The registrant is thus afforded an opportunity to file a curative amendment. In addition, the Commission has power, after notice and opportunity for hearing, to issue an order suspending the effectiveness of a registration statement. In certain cases, such as where a registration statement is so deficient as to indicate a willful or negligent failure to make adequate disclosure, no letter of comment is sent and the Commission either institutes an investigation to determine whether stop-order proceedings should be instituted or immediately institutes stop-order proceedings. Information about the use of this "stop-order" power during 1960 appears below under "Stop Order Proceedings."

Time Required To Complete Registration

Because prompt examination of a registration statement is important to industry, the Commission completes its analysis in the shortest possible time. The Act provides that a registration statement shall become effective on the 20th day after it is filed on or the 20th day after the filing of any amendment thereto. This waiting period is designed to provide investors with an opportunity to become familiar with the proposed offering. Information disclosed in the registration statement is disseminated during the waiting period through distribution of the preliminary form of prospectus. The Commission is empowered to accelerate the effective date so as to shorten the 20-day waiting period where the facts justify such action. In exercising this power, the Commission is required to take into account the adequacy of the information respecting the issuer theretofore available to the public, the facility with which investors can understand the nature of and the rights conferred by the securities to be registered, and their relationship to the capital structure of the issuer, and the public interest and the protection of investors. The note to Rule 460 under the Act indicates, for the information of interested persons, some of the

more common situations in which the Commission feels that the statute generally requires it to deny acceleration of the effective date of a registration statement.

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

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

[table omitted]

VOLUME OF SECURITIES REGISTERED

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

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

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

[table omitted]

The indicated decrease in the value of securities to be sold for cash for account of the issuer results from a decrease of \$1.0 billion (20 percent) in the volume of debt securities and a decrease of almost \$200 million in the volume of preferred stock. Debt securities made up \$4.2 billion of the 1960 volume, preferred stock \$250 million and common stock \$6.4 billion. Two thirds of the common stock was registered by investment companies.

[charts omitted]

The number of statements, total amounts registered, and a classification by type of security for issues to be sold for cash for account of the issuing company is shown for each of the fiscal years 1935 through 1960 in appendix table 1. More detailed information for 1960 is given in appendix table 2.

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

[table omitted]

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

REGISTRATION STATEMENTS FILED

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

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

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

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

[table omitted]

The reasons given by registrants for requesting withdrawal of the 131 registration statements that were withdrawn during the 1960 fiscal year are shown in the following table:

[table omitted]

STOP ORDER PROCEEDINGS

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

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

[table omitted]

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

Ballard Aircraft Corporation. -- The registration statement filed by this Delaware corporation covered a proposed public offering of 300,000 shares of common stock at \$3.25 per share. The prospectus stated that the purpose of the offering was to obtain funds with which to develop, manufacture and sell aircraft designed by Vincent J. Burnelli embodying a "body lift" principle.

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

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

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

The description of registrant's business in the prospectus was also found to be deficient in other respects. The statements in the prospectus with regard to the increased payload and decreased operating costs of the Loadmaster were misleading in view of the lack of any operational experience to support such statements, and the prospectus was misleading in failing to disclose that claimed advantages of the design of the Loadmaster are for the most part conjectural, that the design possesses disadvantages which may have caused its rejection by past potential users, that the Loadmaster has never been flown with R-2800 engines and that performance characteristics set forth in the prospectus based on specifications including such engines are speculative in this respect, that the estimates of the cost of manufacture of the Loadmaster II are not based on any experience, and the statement made that the plane can profitably be sold at less than \$450,000 was completely speculative.

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

requirements and the registrant failed to include certain other necessary financial statements.

Cameron Industries, Inc. -- A registration statement was filed by this corporation for the purpose of registering (a) 300,000 shares of common stock for sale to the public at \$1 per share; (b) 25,000 shares of common stock issued to Robert Grocoff, president of the underwriter of the 300,000-share public offering; (c) three-year purchase warrants for 200,000 shares of common stock exercisable at \$1.50 per share to be delivered to the underwriter; and (d) 200,000 shares of common stock underlying the warrants.

Registration of the securities would have permitted the underwriter and Grocoff, on their own behalf, to acquire from the registrant and sell to the public 225,000 shares of registrant's common stock after the completion of the public distribution on behalf of the registrant. In addition, the underwriter was to receive a commission of 20 percent of the gross proceeds of the public sale of 300,000 shares and \$25,000 in cash for expenses, a total of \$85,000 or more than 28 percent of the gross proceeds.

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

The registration statement, among other things, failed to disclose that Grocoff played an important part in causing registrant to be organized and in formulating its financing proposal, served as its president until shortly before the statement was filed, kept registrant's books and records, and received and exercised authority to co-sign all checks drawn on registrant's bank account. In addition, the Commission found that of the 316,500 shares of registrant's stock issued and outstanding at the filing of the registration statement, 291,500 had been sold in violation of the registration provisions of the Securities Act, which fact and the resulting balance sheet entries were not set forth in the prospectus.

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

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

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

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

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

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

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

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

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

In April 1959, the Commission instituted a proceeding to determine whether a stop order should issue. Prior to the commencement of the hearing, the registrant entered into a stipulation of facts, waived a hearing and all post-hearing procedures and admitted that the registration statement contained untrue statements of material facts and omitted to state material facts necessary to make the statements made therein not misleading. Among other matters, it was stipulated that the following facts were not disclosed in the registration statement: that the registrant had suffered a loss of over \$44,600 during prior operations; that there was no firm commitment for the purchase of the proposed securities; that a previous distribution of registrant's unregistered stock had been enjoined and that the registrant was contingently liable under the Securities Act for such sales; that the management intends to retain control of the registrant by placing all capital stock in a voting trust for 10 years to be controlled by the voting trustees who are also officers and directors of the registrant; that none of the management had ever had any experience in race track management; that the registrant is committed to a 20-year management contract extendable for an additional 20 years at the option of the management group; that said contract provides a commission of 1 percent of the gross parimutuel handle (i.e. total amount bet) plus a fee of not more than \$50,000 for the management group; that substantially all risk capital was to be provided by the public; that the promoters have been granted options to purchase 300,000 shares of registrant's stock; that the registrant omitted under "Earnings" and "Earned Surplus" (deficit) \$22,302.00 payable under the management contract; and that the registrant failed to disclose a note payable in the amount of \$94,021.04 to Sportservice Corporation. In addition the registrant made materially misleading statements and omissions regarding the estimated gross handle and net earnings; the cost of necessary facilities and the amount already expended; the interest rates, repayment provisions, restrictions and other conditions of the mortgages, liens and other encumbrances; the amount, use and order of expenditures of proceeds from the sale of the proposed registration; the type of construction, capacity and the size of the track; the number of days of proposed operation during the racing season; and the distance from urban areas and the extent, type and location of competition. Moreover, the financial statements were misleading in omitting to disclose certain of the above facts.

In addition to the above, the prospectus failed to furnish adequate information concerning the securities to be offered, the method of distribution, the amount of securities being registered and the amount proposed to be offered to the public. It also failed to disclose

that the debentures proposed to be offered were to mature in ten years and that no indenture covering the debentures had been filed in compliance with the Trust Indenture Act of 1939.

Based on the facts set forth in the stipulation the Commission issued a stop order suspending the effectiveness of the registration statement. Thereafter the registrant filed two material amendments to conform with the order and to furnish up-to-date information and the registration statement as amended was declared effective.

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

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

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

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

the registrant, and the things of value received and to be received by them from the registrant.

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

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

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

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

The registration statement also failed to disclose the existence of control of the registrant by certain persons and the interests of the management and other "insiders" in certain transactions with the registrant.

The registration statement was also deficient in numerous other respects including the failure to make accurate and complete disclosure with respect to the use of the proceeds

from the proposed offering, to make a statement summarizing the speculative factors applicable to the registrant and its securities and to furnish financial statements certified by an independent public accountant as required by the applicable rules. In the latter connection, it was found that the employee of the firm who was in charge of the audit of the registrant's books had purchased stock of the registrant for himself or members of his family and could not therefore be regarded as independent.

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

Among the deficiencies constituting the grounds for the issuance of the Commission's stop order were: (1) representations that the registrant's proposed production facilities were planned to be located near manganese ore deposits, and stockpiles owned by the United States Government, in Texas, Arkansas, Arizona, and New Mexico, without disclosing that registrant had no assurance of obtaining any ores owned by the government for beneficiation, and that it had no assured source of raw materials and had not examined any stockpiles, mines or mining properties with a view to locating potential sources of raw material for its proposed plants; (2) representations concerning costs of constructing plant facilities and operating cost estimates, which the registrant conceded were inadequate and misleading; (3) the failure to disclose that the registrant had not conducted any market survey to determine whether any user of manganese ores would be interested in purchasing its upgraded produce; (4) the failure to disclose the current world price of manganese ores, and that on the basis of available information and present world prices for manganese, the Bruce Williams Process is not economically feasible; (5) the failure to disclose that there was no market justification at that time for the construction of any beneficiating plants to upgrade manganese ores; and (6) the failure to disclose in a summary fashion in one place in the early part of the prospectus under an appropriate heading the speculative features of the registrant's business and securities. The Commission also found deficiencies, among others, with respect to the disclosures contained in the financial statements, and representations concerning the use of proceeds, securities proposed to be offered and the amount of securities outstanding, compensation to be paid to the underwriter and the underwriter's relationship to the registrant and the debt securities covered by the registration statement.

EXAMINATIONS AND INVESTIGATIONS

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

[table omitted]

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

[table omitted]

EXEMPTION FROM REGISTRATION OF SMALL ISSUES

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

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

Regulation A: General exemption for United States and Canadian issues up to \$300,000.

Regulation A-R: Special exemption for first lien notes up to \$100,000.

Regulation B: Exemption for fractional undivided interests in oil or gas rights up to \$100,000.

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

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

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

Exempt Offerings under Regulation A

The Commission's Regulation A implements Section 3 (b) of the Securities Act of 1933 and permits a company to offer and sell to the public, securities not in excess of \$300,000 in any one year without registration, if the company complies with the regulation. Upon complying with the regulation a company is exempt from the registration provisions of the Act. A Regulation A filing consists of a notification supplying basic information about the company, certain exhibits and an offering circular which is required to be used in offering the securities. However, in the case of a company with an earnings history which is making an offering not in excess of \$50,000, an offering circular need not be used. A notification is filed with the regional office of the Commission for the region in which the company has its principal place of business.

During the 1960 fiscal year, 1049 notifications were filed under Regulation A, covering proposed offerings of \$224,913,982, compared with 854 notifications covering proposed offerings of \$170,241,400 in the 1959 fiscal year. Included in the 1960 total were 38 notifications covering stock offerings of \$9,412,523 with respect to companies engaged in the exploratory oil and gas business and 37 notifications covering offerings of \$7,428,391 by mining companies.

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

[table omitted]

Most of the offerings which were underwritten were made by commercial underwriters, who participated in 398 offerings in 1960, 251 offerings in 1959, and 185 offerings in 1958. The remaining cases where commissions were paid were handled by officers, directors, or other persons not regularly engaged in the securities business.

Suspension of Exemption

Regulation A provides for the suspension of an exemption thereunder where, in general, the exemption is sought for securities for which the regulation provides no exemption or where the offering is not made in accordance with the terms and conditions of the regulation or in accordance with prescribed disclosure standards. Following the issuance of a temporary suspension order by the Commission, the respondents may request a hearing to determine whether the temporary suspension should be vacated or made permanent. If no hearing is requested within 30 days after the entry of the temporary suspension order and none is ordered by the Commission on its own motion, the temporary suspension order becomes permanent.

During the 1960 fiscal year, temporary suspension orders were issued in 75 cases as compared with 87 cases in the 1959 fiscal year. Of the 75 orders, five were later vacated. Requests for hearing were made in 15 cases. In six of such cases the requests were later withdrawn; in one such case the suspension order was vacated; and as of June 30, 1960, the proceedings in the remaining eight cases were still pending.

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

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

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

not so listed until the Commission has been notified of the issuer's intention to offer the securities in the additional jurisdiction or jurisdictions.

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

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

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

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

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

Condor Petroleum Co., Inc. -- This corporation, a Delaware corporation, was organized in July 1957 for the purpose of exploring, developing and drilling for oil on certain properties located primarily in California. In its notification filed under Regulation A, the issuer named as an underwriter a firm which was not qualified to so act because it had been enjoined in a suit brought by the Commission for violation of the Commission's net capital rule. When this fact was brought to the issuer's attention, the underwriting contract was cancelled and another underwriting contract was entered into with another firm. This latter firm then entered into a sales contract with the first named underwriter under which it was agreed that that firm would be allowed certain commissions on all shares that it might sell and a substantial share of the expense money which the issuer agreed to pay in connection with the offering. No amendment to the notification or offering circular was filed to disclose this agreement.

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

underwriter and the real underwriter being subject to an injunction was not qualified to act.

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

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

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

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

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

The Haratine Gas and Oil Company, Inc. -- The issuer and the underwriter for the offering requested a hearing on the question of vacating a prior temporary suspension order but subsequently stipulated to certain facts, waived a hearing and further

procedures, and consented to the entry of an order permanently suspending the exemption. On the basis of the record the Commission made the following findings:

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

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

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

The offering circular did not reveal the cost of the leases to the company's promoters or that such leases had been acquired by the company for stock. The total cash cost of the leases to the promoters was about \$8,500 whereas the stock received by the two individuals would have had a total value of \$231,185 at the public offering price. If all of the shares in the proposed offering had been sold at the public offering price the public would have owned approximately 52 percent of the outstanding stock at a cost of \$250,000 and the promoters would have owned 48 percent of the stock for a cash outlay of approximately \$9,000. The Commission found that the failure to disclose these facts in the offering circular was a material omission.

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

The offering circular was also false and misleading with respect to the information set forth regarding the production from, and the productivity of, the leases and the quality of the oil obtained therefrom. In addition, the balance sheet filed with the notification was

not prepared in accordance with the requirements of Regulation A and no statement of cash receipts and disbursements was furnished as required by the regulation.

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

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

It was noted that although the expiration date of the company's option on the lease, which was the company's sole asset, had passed, the revised offering circular did not indicate whether the option had been or could be extended. The issuer, despite the fact that it knew it did not have and probably could not obtain a renewal of the option, failed to disclose such fact to the Commission in oral argument in the proceedings and thereafter stated that the final offering circular would refer to a subsisting option. The Commission was of the opinion that the company had not demonstrated such good faith and other mitigating circumstances in connection with the non-disclosure as to warrant vacating the temporary suspension order, and it concluded that the suspension should be made permanent.

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

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

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

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

Wey-Do admitted, and the Commission found, that the offering circular was deficient in that it failed to disclose the amount of expenses of the issuer in connection with the offering, the method by which the securities were to be offered, the remuneration of the company's officers and directors, the stock holdings and other interests of directors and officers, the percentage of outstanding securities to be held by directors, officers and promoters and by the public, assuming the entire issue were sold or the issuer's contingent liability for sales of unregistered stock during the previous year. The offering circular also failed to include an adequate statement of the purposes for which the proceeds of the offering would be used or to contain the required financial statements.

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

Exempt Offerings Under Regulation B

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

[table omitted]

Reports of sales. -- The Commission requires persons who make offerings under Regulation B to file reports of the actual sales made pursuant to that regulation. The purpose of these reports is to aid the Commission in determining whether violations of law have occurred in the marketing of such securities. The following table shows the number of sales reports filed under Regulation B during the past three fiscal years and the aggregate dollar amount of sales during each of such fiscal years.

[table omitted]

Exempt Offerings Under Regulation F

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

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

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

[table omitted]

Regulation F provides for the suspension of an exemption thereunder, as in Regulation A, where the regulation provides no exemption or where the offering is not made in accordance with the terms and conditions of the regulation, or in accordance with prescribed disclosure standards.

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

LITIGATION UNDER THE SECURITIES ACT OF 1933

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

Three very important decisions involving attempts to evade the registration provisions of the Act were rendered by Courts of Appeals during the fiscal year. In *S.E.C. v. Culpepper, et al.* the Court of Appeals for the Second Circuit affirmed the issuance of an injunction by the district court restricting sales of unregistered stock of Micro-Moisture Controls, Inc. This company had exchanged a block of its unregistered stock for the assets of a Canadian company which purportedly distributed the stock to its 31 stockholders, virtually all of whom immediately gave a power of attorney to the same person to sell their stock, and he commenced selling the stock through broker-dealers in the United States. The court held that such brokers were underwriters within the meaning of the Act and not exempt from the registration requirements, notwithstanding that there was no conventional or contractual privity with the issuer, and that one of the brokers was selling for two members of the control group owning only 1.5 percent of the stock. The court also reaffirmed the holding in its 1941 decision in *S.E.C. v. Chinese Consolidated Benevolent Assn.*, that, even where an individual himself does not come within the definition of an underwriter, his transactions are not exempt if he engages in steps necessary to a distribution by an issuer. The court also made it clear that cessation of illegal activities prior to the institution of an action is no bar to the issuance of an injunction, even in the case of one of the brokers who had gone out of business prior to the trial. The brokers had argued that the granting of the injunction could be used as the basis of revocation of their registrations, but the court held that the possible effect of the injunction in future revocation proceedings was not germane to the court's determination.

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

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

In *Hillsborough Investment Corporation et al. v. S.E.C.*, the corporation and its General Manager, Roger Mara, had been preliminarily enjoined with respect to certain securities which they had sold assertedly in reliance on the intrastate exemption of the Securities Act. The exemption, however, was unavailable because of out-of-State sales. After the entry of the preliminary injunction, Hillsborough undertook to create "new" securities, which were to be exchanged with its existing shareholders who were residents of New

Hampshire, the balance to be offered to residents of that State. The District Court found this to be "an open and calculated attempt to avoid the preliminary enjoining order" and issued a permanent injunction extending to "any of the securities of the Hillsborough Investment Corporation."

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

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

An important question as to whether or not a particular transaction involved a "security" arose in *S.E.C. v. Los Angeles Trust Deed & Mortgage Exchange*. The District Court, following a 37-day trial, permanently enjoined the corporate defendants and certain of their managing officers from violating the registration and antifraud provisions of the Securities Act and the Securities Exchange Act in the sale of securities issued in connection with an investment plan and appointed a receiver to carry out the orderly liquidation of the corporate defendants. The investment plan, designated as the Secured 10 Percent Earnings Program, was based upon the sale to the public of discounted real estate trust deeds and mortgages.

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

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

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

year, the case was pending before the Court of Appeals and the receiver was having an audit conducted of the corporate defendants.

The Commission instituted litigation against two Maryland corporations called "savings and loan associations": First Capitol Savings & Loan Assoc., Inc. and American Seal Savings & Loan Assoc., Inc. These companies were originally operated from New Jersey by one James G. Sorce, Jr. Upon receipt of information indicating that First Capitol was soliciting deposits by fraudulent representations, the Commission filed a complaint against it and Sorce. To avoid complying with a subpoena for examination of their books, defendants consented to an injunction restraining violations of the antifraud and registration provisions of the Act. Almost immediately thereafter, however, it was discovered that identical advertising was being placed on behalf of American Seal, also operated by Sorce.

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

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

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

In S.E.C. v. International Planning Inc. the Commission filed a complaint which sought an injunction against IPI and its officers whose specialty was the sale of IPI stock to

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

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

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

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

A number of actions involved fraud in the sale of securities of oil, gas and mining companies. In *S.E.C. v. Mon-O-Co Corporation* the Commission brought suit to enjoin the corporation, Ben Haugner and Frank LeCocq from further violations of the registration and anti-fraud provisions of the Securities Act. The Commission's complaint charges that the defendants have been selling certificates of interest and fractional undivided interests in oil, gas and other mineral rights in the development and operations of oil and gas wells located in the Fertile Prairie Oil Field situated in Montana, and that the defendants' selling activities included the making of false representations and omissions of material facts, namely: the background, experience and success of Mon-O-

Co Oil Corporation, Ben Haugner and Frank LeCocq in the oil and gas business; previous administrative proceedings taken by the Commission in connection with proposed offering of Mon-O-Co's stock because of false and misleading statements and omissions concerning its properties in the Fertile Prairie Field; the rights and obligations of those who purchase interests in the development of a certain oil and gas well; and costs of development of said well; and production to be expected therefrom.

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

Injunctions obtained in other cases involving violations of the registration or anti-fraud provisions or both include: S.E.C. v. Doman Helicopters, S.E.C. v. Vanco, S.E.C. v. Holey, S.E.C. v. Prudential Oil Corporation, S.E.C. v. Clinton Mining Co., S.E.C. v. Judson Commercial Corp., S.E.C. v. Camdale Corporation, S.E.C. v. American Television & Radio Co., S.E.C. v. Belmont Oil Corporation, S.E.C. v. Globe Securities Corp., S.E.C. v. Herbert Rapp, doing business as Webster Securities Co., S.E.C. v. Trans-Southern Oil Development Corp., S.E.C. v. Trans-Globe Lease and Land Exchange, Inc., S.E. C. v. Tidelands Oil and Gas Corporation, S.E.C. v. Jacwin & Costa, Inc., S.E.C. v. Poff, S.E.C. v. Southwestern Iron & Steel Industries Inc., S.E.C. v. Spindletop Petroleum Corp., S.E.C. v. Television Industries, Inc., S.E.C. v. Barnstable Bay, Inc., and S.E.C. v. Platalloy Corp.

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

Subpoena Enforcement Action under Securities Act of 1933

In S.E.C. v. Dobie, the United States District Court for the Western District of Virginia entered an order enforcing a subpoena duces tecum issued by the Commission and served upon Arthur F. Dobie in connection with a Commission investigation. Dobie had previously refused to testify in the investigation being conducted by the Commission into

possible violations of the registration and anti-fraud provisions of the Securities Act of 1933 by John Milton Addison and others.

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

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

SUITS AGAINST THE COMMISSION

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

In 1958 a judgment had been entered by consent in *S.E.C. v. Farm and Home Agency, Inc., et al.* permanently enjoining the defendants from violating the registration provisions of the Securities Act in the sale of the stock of Farm and Home. Defendants later filed a motion to vacate that decree and a motion seeking to enjoin the Commission from investigating, prosecuting, or presenting any evidence to a grand jury pertaining to the alleged violations of the Securities Act involved in the consent decree. The District Court denied both motions. The defendants appealed, arguing that the McCarran-Ferguson Act of 1945 exempted the securities of insurance companies from the registration

requirements of the Securities Act and that, therefore, the prior judgment was void for lack of jurisdiction. The Court of Appeals for the Seventh Circuit affirmed the denial of defendant's motions, and the Supreme Court denied certiorari.

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

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

PART V

ADMINISTRATION OF THE SECURITIES EXCHANGE ACT OF 1934

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

REGULATION OF EXCHANGES AND EXCHANGE TRADING

Registration and Exemption of Exchanges

As of June 30, 1960, 13 stock exchanges were registered under the Exchange Act as national securities exchanges:

American Stock Exchange
Boston Stock Exchange

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

Four exchanges were exempted from registration by the Commission pursuant to Section 5 of the Act:

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

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

Disciplinary Actions

Each national securities exchange reports to the Commission disciplinary actions taken against its members for violation of the Securities Exchange Act of 1934 or of exchange rules. During the year seven exchanges reported 38 cases of such disciplinary action, including imposition of fines aggregating \$42,800 in 26 cases; the suspension of two individuals and the expulsion of another individual from allied membership; the suspension of another individual and his firm from membership; the revocation of a specialist registration in one case; and the censure of a number of individuals and firms.

REGISTRATION OF SECURITIES ON EXCHANGES

It is unlawful for a member of a national securities exchange or a broker or dealer to effect any transaction in a security on such exchange unless the security is registered on that exchange under the Securities Exchange Act or is exempt from such registration. In general, the Act exempts from registration obligations issued or guaranteed by a State or the Federal Government or by certain subdivisions or agencies thereof and authorizes the Commission to adopt rules and regulations exempting such other securities as the Commission may find necessary or appropriate to exempt in the public interest or for the

protection of investors. Under this authority the Commission has exempted securities of certain banks, certain securities secured by property or leasehold interests, certain warrants and, on a temporary basis, certain securities issued in substitution for or in addition to listed securities.

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

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

Section 13 requires issuers having securities registered on an exchange to file periodic reports keeping current the information furnished in the application for registration. These periodic reports include annual reports, semi-annual reports, and current reports. The principal annual report form is Form 10-K which is designed to keep up-to-date the information furnished in Form 10. Semi-annual reports required to be furnished on Form 9-K are devoted chiefly to furnishing mid-year financial data. Current reports on Form 8-K are required to be filed for each month in which any of certain specified events have occurred. A report on this form deals with matters such as changes in control of the registrant, important acquisitions or dispositions of assets, the institution or termination of important legal proceedings and important changes in the issuer's capital securities or in the amount thereof outstanding.

Statistics Relating to Registration of Securities on Exchanges

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

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

The following table shows the number of annual, semiannual and current reports filed during the fiscal year by issuers having securities listed and registered on national securities exchanges. The table also shows the number of such reports filed under section 15 (d) of the Securities Exchange Act of 1934 by issuers obligated to file reports by reason of having publicly offered securities effectively registered under the Securities Act of 1933. The securities of such issuers are traded generally in the over-the-counter markets. As of June 30, 1960, there were 1,818 such issuers, including 275 that were also registered as investment companies under the Investment Company Act of 1940.

[table omitted]

MARKET VALUE OF SECURITIES TRADED ON EXCHANGES

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

[table omitted]

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

[table omitted]

Fiscal Year Share Values and Volumes

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

[table omitted]

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

Foreign Stock on Exchanges

The market value on December 31, 1959, of all shares and certificates representing foreign stocks on the stock exchanges was reported at about \$12.4 billion, of which \$11.1 billion represented Canadian and \$1.3 billion represented other foreign stocks. The market values of the entire Canadian stock issues were included in these aggregates. Most of the other foreign stocks were represented by American Depositary Receipts or American shares, only the outstanding amounts of which were used in determining market values.

Comparative Exchange Statistics

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

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

[table omitted]

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

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

[table omitted]

At the close of 1934, the total market value of all stocks on the exchanges was estimated at about \$54 billion, of which 63 percent was on the New York Stock Exchange. This Exchange's percentage rose to about 82 percent of the \$81.9 billion at the close of 1948, and further to about 91 percent of the \$338.4 billion at the close of 1959. Similarly, the New York Stock Exchange had about 49 percent of the 2.7 billion shares estimated to be

on stock exchanges in 1934, about 61 percent of the 3.3 billion shares in 1948, and about 74 percent of the 7.9 billion shares at the close of 1959. Many New York listings are also listed or traded on an unlisted basis on various regional exchanges.

Comparative Over-the-Counter Statistics

Aggregate domestic over-the-counter share values as computed in the Commission's Annual Reports increased from \$59 billion to \$66 billion during the calendar year 1959. [Footnote: The aggregates include all quoted over-the-counter stocks of all domestic issuers having at least one over-the-counter stock with 300 or more holders, so far as they can be discovered in the standard securities manuals and reports to the Commission. About 3,500 issuers are included. The National Monthly Stock Summary of January 1, 1960, covering the 4th quarter of 1959, shows about 500 additional domestic issuers with actively quoted over-the-counter stocks. Most of the latter are low-price shares, quoted from a few pennies to a few dollars, and apparently would add comparatively little to the figures in billions of dollars shown in our compilation. Registered investment companies are excluded above and are discussed elsewhere in this Annual Report.] Aggregate bank stock values rose from \$15 billion to \$17.5 billion, insurance stocks from \$11.5 billion to \$11.8 billion, and other stocks (industrial, utility, etc.) from \$32.5 billion to \$36.7 billion.

About \$24.2 billion stocks were of companies reporting pursuant to Section 15 (d) of the Securities Exchange Act. Another \$3.3 billion was of companies reporting because they had other securities listed on registered exchanges. Thus \$27.5 billion of the \$48.5 billion domestic over-the-counter values excluding bank stocks was of companies reporting to the Commission. Banks, of course, report to their appropriate regulatory bodies.

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

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

[table omitted]

The issues include a considerable number which are on stock exchanges here and in Canada. The number of issues is more than the number of issuers, since some companies

have more than one quoted issue. The count of issues may be affected by growth in number of subscribers and the Bureau's rules as to entries in the service.

DELISTING OF SECURITIES FROM EXCHANGES

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

During the fiscal year ended June 30, 1960, the Commission granted applications by exchanges and issuers to remove 37 stock issues and 4 bond issues from listing and registration pursuant to Rule 12d2-1 (b). There were 44 removals, since 3 stocks delisted by the New-York Stock Exchange were also delisted by other exchanges. The number of issuers involved was 35. The removals were as follows:

[table omitted]

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

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

Action taken this year by the San Francisco Mining Exchange brings to 7, or a majority of the 13 registered exchanges, the number of these exchanges whose rules provide that an issuer intending to delist may be required to notify its stockholders or obtain their vote before filing an application with the Commission. The other exchanges having such rules include American, Cincinnati, Midwest, New York, Philadelphia-Baltimore and Salt Lake. The requirements for notification or voting have rarely been resorted to. No issuer has applied to the Commission for delisting from the New York Stock Exchange since 1940. Only a few instances of stockholder voting with respect to delisting from other exchanges are on record. The principal benefit of the rule appears to be the notice afforded an exchange of an issuer's intent prior to the filing with the Commission. Opportunity is accordingly afforded an exchange to dissuade an issuer from delisting. If the circumstances are appropriate, an exchange may waive its rule and allow the issuer to proceed with the filing. In such cases the exchange will have had opportunity to discuss the language of the application with the issuer. When the issuers' reasons for delisting are

persuasive, the exchanges generally prefer to file the delisting applications as a matter of good public relations,, and because they then dictate the language of the applications. During the past two years, there were 75 delistings upon exchange application and only 10 upon issuer application, and eight of the 10 delistings upon issuer application were merely for the purpose of reducing multiple listings, leaving the issues listed on the exchanges where their principal activity occurred.

Delisting Proceedings under Section 19 (a)

Section 19 (a) (2) authorizes the Commission to suspend for a period not exceeding twelve months, or to withdraw, the registration of a security on a national securities exchange if, in its opinion, such action is necessary or appropriate for the protection of investors and, after notice and opportunity for hearing, the Commission finds that the issuer of the security has failed to comply with any provision of the Act or the rules and regulations thereunder. The following table indicates the number of such proceedings with which the Commission was concerned during the 1960 fiscal year.

[table omitted]

Section 19 (a) (4) authorizes the Commission summarily to suspend trading in any registered security on a national securities exchange for a period not exceeding ten days if, in its opinion, such action is necessary or appropriate for the protection of investors and the public interest so requires. The Commission has used this power infrequently in the past. However, during the 1960 fiscal year the Commission found it necessary and appropriate in connection with three pending proceedings to use its authority summarily to suspend trading in securities registered on a national securities exchange. Only two of these suspensions remained in effect at the end of the fiscal year.

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

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

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

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

The registrant's income statement filed as a part of its annual report for the fiscal year ending June 30, 1957, included as income profits resulting from the sale of certain properties to insiders. The Commission found that under the circumstances the profits realized constituted a capital contribution rather than income. The income statement also failed to include the registrant's cost of rendering certain services to another company as a deduction against the amount purported to have been paid for such services. After taking the above items into consideration it was found that the income statement would show a substantial deficit instead of a small earned surplus as reported by the registrant.

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

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

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

The registrant filed with the Commission and sent to its stockholders a proxy statement containing a proposal to increase the registrant's authorized common stock from 7,500,000 to 30,000,000 shares in order to make available unissued shares which might be used for the purpose of acquiring additional mining properties or companies. The

proxy statement represented that no particular transactions of such character were pending. The record disclosed, however, that the registrant, through its management, had been actively negotiating for the acquisition of another company prior to the time the proxy statement was filed with the Commission and sent to stockholders and that definitive action on the proposed acquisition was merely deferred until after the meeting of stockholders. The acquisition transaction was carried through to completion shortly after the stockholders meeting. The proxy statement also failed to disclose the interest of certain insiders in the transaction.

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

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

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

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

other company from certain insiders who had acquired the properties for a nominal consideration. The registrant failed to file the required reports and make the required disclosures.

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

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

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

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

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

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

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

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

UNLISTED TRADING PRIVILEGES ON EXCHANGES

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

Unlisted trading privileges on some exchanges in stocks listed on other exchanges continued to increase in number, rising from 1,494 on June 30, 1959 to 1,538 on June 30, 1960. These unlisted trading privileges, in stocks listed for the most part on the New York Stock Exchange, provide the regional exchanges with their principal source of new trading material. The reported volume of unlisted trading on the exchanges in these stocks listed elsewhere, for the calendar year 1959, was close to 47 million shares. About 20 percent of the volume was on the American Stock Exchange in stocks listed on regional exchanges and about 80 percent was on regional exchanges in stocks listed on the New York or American Stock Exchange. The number of unlisted trading privileges is considerably greater than the number of stocks involved, since leading New York listings are traded unlisted on as many as seven regional exchanges. While the 47 million shares

amounted to somewhat less than 3 percent of the total share volume on all the exchanges in 1959, it constituted substantial portions of the share volumes on the leading regional exchanges where it occurred, reaching 76.5 percent at Boston, 72 percent at Philadelphia-Baltimore, 62.7 percent at Cincinnati, 43.3 percent at Pittsburgh, 40.3 percent at Detroit, 33.1 percent at Midwest, and 21.8 percent at Pacific Coast stock exchanges. Roughly, the percentages were less as distances from New York were greater, but they were also affected by other factors including high share volumes in local low-price listed shares on some of the regional exchanges, particularly on the West Coast.

Applications for Unlisted Trading Privileges

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

[table omitted]

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

BLOCK DISTRIBUTIONS REPORTED BY EXCHANGES

Rule 10b-2 under the Securities Exchange Act of 1934 in substance prohibits any person participating or otherwise financially interested in the primary or secondary distribution of a security from paying any other person for soliciting a third person to buy any security of the same issuer on a national securities exchange. This rule is an anti-manipulative rule adopted under Section 10 (b) of the Act which makes it unlawful for any person to use any manipulative or deceptive device or contrivance in contravention of Commission rules prescribed in the public interest or for the protection of investors. Paragraph (d) of Rule 10b-2 exempts transactions where compensation is paid pursuant to the terms of a plan, filed by a national securities exchange and declared effective by the Commission, authorizing the payment of such compensation in connection with the distribution. The Commission in its declaration may impose such terms and conditions upon such plan as it deems necessary or appropriate in the public interest or for the protection of investors.

At the present time two types of plans are in effect to permit a block of securities to be distributed through the facilities of a national securities exchange when it has been determined by the exchange that the regular market on the floor of the exchange cannot

absorb the particular block within a reasonable time and at a reasonable price or prices. These plans have been designated the "Special Offering Plan," essentially a fixed price offering based on the market price, and the "Exchange Distribution Plan," which is a distribution "at the market." Both plans contemplate that orders will be solicited off the floor but executed on the floor. Each plan contains certain anti-manipulative controls and requires specified disclosures concerning the distribution to be made to prospective purchasers.

In addition to these two methods of distributing large blocks of securities on national securities exchanges, blocks of listed securities may be distributed to the public by a "Secondary Distribution" on the over-the-counter market, after the close of exchange trading. The exchanges generally require members to obtain the approval of the exchange before participating in such secondary distributions.

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

[table omitted]

MANIPULATION AND STABILIZATION

Manipulation

The Exchange Act describes and prohibits certain forms of manipulative activity in any security registered on a national securities exchange. The prohibited activities include wash sales and matched orders effected for the purpose of creating a false or misleading appearance of trading activity in, or with respect to the market for, any such security; a series of transactions in which the price of such security is raised or depressed, or in which actual or apparent active trading is created for the purpose of inducing purchases or sales of such security by others; circulation by a broker, dealer, seller, or buyer, or by a person who receives consideration from a broker, dealer, seller or buyer, of information concerning market operations conducted for a rise or a decline in the price of such security; and the making of any false and misleading statement of material information by a broker, dealer, seller, or buyer regarding such security for the purpose of inducing purchases or sales. The Act also empowers the Commission to adopt rules and regulations to define and prohibit the use of these and other forms of manipulative activity in any security registered on an exchange or traded over the counter.

The Commission's market surveillance staff in its Division of Trading and Exchanges in Washington and in its New York Regional Office and other field offices observes the tickertape quotations of securities listed on the New York Stock Exchange and on the

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

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

The following table shows the number of quizzes and formal investigations pending at the beginning of fiscal 1960, the number initiated in fiscal 1960, the number closed or completed during the same period, and the number pending at the end of the fiscal year:

[table omitted]

When securities are to be offered to the public, their markets are watched very closely to make sure that the price is not unlawfully raised prior to or during the distribution. Registered offerings numbering 1,398, having a value of over \$14 billion, and 1,049 offerings exempt under Section 3 (b) of the Securities Act, having a value of about \$215 million, were so observed during the fiscal year. Other offerings numbering 324, such as secondary distributions and distributions of securities under special plans filed by the exchanges, having a total value of \$360 million, were also kept under surveillance.

Stabilization

Stabilization involves open-market purchases of securities to prevent or retard a decline in the market price in order to facilitate a distribution. It is permitted by the Exchange Act

subject to the restrictions provided by the Commission's Rules 10b-6, 7, and 8. These rules are designed to confine stabilizing activity to that necessary for the above purpose, to require proper disclosure and to prevent unlawful manipulation.

During 1960 stabilizing was effected in connection with stock offerings aggregating 52,794,825 shares having an aggregate public offering price of \$1,169,737,429 and bond offerings having a total offering price of \$181,060,000. In these offerings, stabilizing transactions resulted in the purchase of 1,301,132 shares of stock at a cost of \$28,938,359 and bonds at a cost of \$4,123,773. In connection with these stabilizing transactions, 9,213 stabilizing reports showing purchases and sales of securities effected by persons conducting the distribution were received and examined during the fiscal year.

INSIDERS' SECURITY HOLDINGS AND TRANSACTIONS

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

Ownership Reports

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

All ownership reports are available for public inspection as soon as they are filed at the Commission's office in Washington and reports filed pursuant to Section 16 (a) of the Securities Exchange Act may also be inspected at the exchanges where copies of such reports are filed. In addition, for the purpose of making the reported information available to interested persons who may not be able to inspect the reports in person, the

Commission summarizes and publishes such information in a monthly "Official Summary of Security Transactions and Holdings," which is distributed by the Government Printing Office on a subscription basis. Increasing interest in this publication is evidenced by the increase in the total circulation from a rate of about 8,000 at the end of the 1959 fiscal year to more than 10,000 at the end of the 1960 fiscal year.

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

[table omitted]

Recovery of Short Swing Trading Profits by Issuer

In order to prevent insiders from making unfair use of information which may have been obtained by reason of their relationship with a company, Section 16 (b) of the Securities Exchange Act, Section 17 (b) of the Public Utility Holding Company Act, and Section 30 (f) of the Investment Company Act provide for the recovery by or on behalf of the issuer of any profit realized by insiders from certain purchases and sales, or sales and purchases, of securities of the company within any period of less than six months. The Commission has certain exemptive powers with respect to transactions not comprehended within the purpose of these provisions, but is not charged with the enforcement of the civil remedies created thereby.

REGULATION OF PROXIES

Scope of Proxy Regulation

Under Sections 14 (a) of the Securities Exchange Act, 12 (e) of the Public Utility Holding Company Act of 1935, and 20 (a) of the Investment Company Act of 1940, the Commission has adopted Regulation 14 requiring the disclosure in a proxy statement of pertinent information in connection with the solicitation of proxies, consents and authorizations in respect of securities of companies subject to those statutes. The regulation includes provisions that when the management is soliciting proxies, any security holder desiring to communicate with other security holders for a proper purpose may require the management to furnish him with a list of all security holders or to mail his communication to security holders for him. A security holder may also, subject to reasonable prescribed limitations, require the management to include in its proxy material any appropriate proposal which such security holder desires to submit to a vote of security holders. Any security holder or group of security holders may at any time make

an independent proxy solicitation upon compliance with the proxy rules, whether or not the management is making a solicitation.

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

Statistics Relating to Proxy Statements

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

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

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

[table omitted]

Stockholders' Proposals

During the 1960 fiscal year, 42 stockholders submitted a total of 130 proposals which were included in the 94 proxy statements of 94 companies under Rule 14a-8 of Regulation 14.

Typical of such stockholder proposals submitted to a vote of security holders were resolutions relating to amendments to charters or by-laws to provide for cumulative voting for the election of directors, limitations on the granting of stock options and their exercise by key employees and management groups, the sending of a post-meeting report to all stockholders, changing the place of the annual meeting of stockholders, and the approval by stockholders of management's selection of independent auditors.

The managements of 22 companies omitted from their proxy statements under the Commission's Rule 14a-8 a total of 48 additional proposals submitted by 32 individual

stockholders. The principal reasons for such omissions and the numbers of times each such reason was involved (counting only one reason for omission for each proposal even though it may have been omitted under more than one provision of Rule 14a-8) were as follows:

- (a) 11 proposals related to the ordinary conduct of the company's business;
- (b) 11 proposals were not a proper subject matter under State law;
- (c) 9 proposals concerned a personal grievance against the company;
- (d) 5 proposals were resubmitted after not having received sufficient affirmative votes at a previous meeting;
- (e) 1 proposal was not timely submitted;
- (f) 4 proposals and reasons therefor were deemed misleading;
- (g) 1 proposal involved the election of directors; and
- (h) 6 proposals were withdrawn by the stockholders.

Ratio of Soliciting to Non-Soliciting Companies

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

Proxy Contests

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

Management retained control in 12 of 16 contests, 1 was settled by negotiation, and 3 were pending as of June 30, 1960. Of the 9 cases where representation on the board was involved, management retained all places on the board in 7 and in the other 2 cases nonmanagement persons were elected to the board.

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

Registration

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

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

[table omitted]

Administrative Proceedings

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

- (1) willful false or misleading statements in the application or documents supplemental thereto;
- (2) conviction within 10 years of a felony or misdemeanor involving the purchase or sale of securities or any conduct arising out of business as a broker-dealer;
- (3) injunction by a court of competent jurisdiction against engaging in any practices in connection with the purchase or sale of securities;
- (4) willful violation of the Securities Act of 1933 or the Securities Exchange Act of 1934 or any of the Commission's rules and regulations thereunder.

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

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

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

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

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

[table omitted]

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

REVOCAION PROCEEDINGS

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

Stratford Securities Co., Inc. -- The broker-dealer registration of Stratford Securities Co., Inc. was revoked by the Commission on findings that registrant sold approximately

32,000 shares of the unregistered stock of General Oil and Industries Co., Inc. in violation of the registration provisions of the Securities Act and in connection therewith made false and misleading statements concerning General's assets and prospects, and possible appreciation in the market price of General's stock, and that the United States District Court for the Southern District of New York had issued a preliminary injunction restraining registrant and its officers from further violations of the registration and anti-fraud provisions of the Securities Act in the sale of General's stock.

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

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

Security Investment Corporation. -- The broker-dealer registration of Security Investment Corporation was revoked by the Commission and Charles R. Hixon and

Wilmer J. Landry were found to be causes of the order of revocation. The Commission found that registrant in the sale of its own securities made false and misleading statements concerning the safety of the investment, the amount invested by its officers, the distribution of the stock, and expansion of its operations. Because the bank in which registrant deposited the checks granted the registrant "immediate solvent credit", registrant contended that the depository bank acted as principal and therefore registrant could not be charged with the use of the mails by the bank in connection with registrant's sale of the securities involved. The Commission stated that even if the depository bank had acted as principal in these transactions registrant would have been chargeable with knowledge that the mails would be used to effect collection, and, under the anti-fraud provision herein involved, any use of the mails related to a fraudulent selling scheme would satisfy the jurisdictional requirements of the securities laws. Registrant also filed a false and misleading financial statement with its application for registration and failed to file reports of financial condition for the years 1956 through 1958.

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

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

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

H. Carroll & Co. -- The Commission revoked the broker-dealer registration of H. Carroll & Co., naming Howard P. Carroll as a cause of the revocation. Registrant sold to customers 300,000 unregistered shares of Comstock Limited stock which it had acquired from controlling persons. The purported reliance upon advice of counsel was not sufficient to preclude a finding by the Commission of a willful violation of the registration provisions of the Securities Act. A finding of willfulness does not require that the Commission find an intent to violate; it is sufficient that there was an intent to do the act which constitutes the violation. In connection with the sales, registrant made false and misleading statements concerning, among other things, Comstock's properties, dividends, and prospects, and increases in the price of Comstock stock.

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

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

Valley State Brokerage, Inc. -- The Commission revoked the broker-dealer registration of Valley State Brokerage, Inc. upon finding that registrant filed a false financial report for 1955, did not file a financial report for 1957, and failed to correct its application for registration to show changes in its business address, resignation of certain officers and directors and changes in ownership of its stock. Although Eugene D. Eyre, registrant's

president was not served with a notice of hearing, the Commission held that it was not precluded from finding that he aided and abetted registrant's willful violations, insofar as such finding was relevant to issue of revocation of registrant's broker-dealer registration.

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

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

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

Registrant was found to have failed to disclose to investors that it established the market price of Mio Dio stock in a noncompetitive market which it dominated and controlled. The Commission held, "It is well established that a dealer, in quoting prices to customers and selling at such prices, impliedly represents that the sales price bears some relation to the price prevailing in a free and open market. Such representation is false where, as here, the dealer dominates and controls the market and fixes the prices of the stock." The Commission found that Feinberg and Sterling, then president and secretary-treasurer, respectively, of the registrant were responsible for the failure to disclose. In addition, registrant was found to have failed to disclose in its application for registration the identity of a beneficial owner of more than 10 percent of its stock and to amend such application to disclose a change in the beneficial ownership of its stock. The Commission

also decided that the public interest required revocation of the broker-dealer registrations of Marc Sterling & Co. and Columbia Securities Company, Inc. of Wyoming, which were controlled respectively by Sterling and Feinberg. Sterling was named a cause of the revocation of Marc Sterling & Co. and Feinberg a cause of the revocation of Columbia. The Commission, on January 5, 1960, denied the petition of Feinberg and Columbia for rehearing.

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

Milton R. Aronson, doing business as Aronson & Co. -- This broker-dealer's registration was revoked by the Commission upon a finding that registrant was permanently enjoined by a decree of the United States District Court for the Southern District of California, Central Division, from effecting securities transactions by means of false and misleading statements concerning his financial condition and his ability to deliver securities and funds to others and from doing business while insolvent or unable to meet current liabilities, or while in violation of the Commission's net capital or bookkeeping requirements. In addition, the Commission found that registrant effected securities transactions without disclosing insolvency, issued a check for the purchase of securities without having sufficient funds, failed to comply with the net capital requirements and bookkeeping requirements and did not file a report of financial condition for 1958.

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

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

amount of profit realized but in the inherent misrepresentation as to the current value of the securities.

Albert & Company, Inc. (a New York corporation), Albert & Company, Inc. (a New Jersey corporation). -- These broker-dealer registrations were revoked by the Commission and Eli D. Albert, officer and controlling stockholder of both companies, was named as a cause of the orders of revocation. The Commission found that a permanent injunction has been issued by the Supreme Court of the State of New York, New York County, barring the New York registrant from engaging in the securities business in the State of New York. A complaint filed in the State action alleged that the registrant sold a million shares of the common stock of Mohawk Business Machines for approximately a million dollars by means of fraudulent representations. Pursuant to a complaint filed by the Commission, the United States District Court for the District of New Jersey had permanently enjoined the New Jersey registrant and Eli D. Albert from making false and misleading representations in the offer and sale of the common stock of Vari-Pac Corporation. In addition, the New Jersey registrant failed to file a report of financial condition for the year 1958.

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

Best Securities, Inc. -- The Commission revoked the broker-dealer registration of Best Securities, Inc. and expelled it from membership in the National Association of Securities Dealers, Inc. Morton Livenston, Ludwig J. Kabian, and Judah Cohen, also known as Judd Cohen, were named as causes of the revocation and expulsion. Using long-distance telephone calls registrant sold approximately 115,000 shares of the common stock of North Carolina Telephone Company to nearly 300 investors in various parts of the United States, by means of false and misleading statements concerning the future market price of the stock, dividend payments and possibilities of merger with other telephone companies. Registrant's activities violated the anti-fraud provisions of the securities laws which also contemplate that recommendations of a security to a prospective purchaser shall have a reasonable basis and be accompanied by disclosure of known or easily ascertainable facts bearing upon the justification of the recommendations. The sales methods of registrant

were classified by the Commission as of a type customarily used to place a customer in a position where he is asked to make a hasty decision to buy securities of a speculative nature on the basis of oral and undocumented representations promising quick profits by an unseen and unknown person skilled in high-pressure selling techniques and inaccessible to complaints. Registrant also failed to amend its registration application to disclose an injunction against one of its salesmen.

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

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

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

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

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

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

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

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

Jefferson Associates, Inc. -- The registration of Jefferson Associates, Inc., as a broker-dealer was revoked by the Commission and Donald Dunklee was named as a cause of the order of revocation upon findings that registrant had made a false statement in an amendment to its registration application regarding the identity of its principal stockholder and failed to file an amendment to disclose the person who actually controlled registrant.

Talmage Wilcher, Incorporated. -- The Commission revoked the broker-dealer registration of Talmage Wilcher, Incorporated upon a determination that the registrant filed a false statement of financial condition with its registration application, had violated

the Commission's net capital and bookkeeping rules, and had filed a false financial report for the year 1959. Talmage S. Wilcher was named as a cause of the revocation.

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

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

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

R. G. Williams & Co., Inc. -- The registration of R. G. Williams & Co., Inc. as a broker-dealer was revoked by the Commission and Robert G. Williams was named as a cause of the revocation. Registrant was found to have violated the Commission's net capital and bookkeeping rules and engaged in the securities business while insolvent without disclosing its insolvency. Registrant and Williams were also permanently enjoined by the United States District Court for the Southern District of New York from hypothecating customers' securities without their consent, effecting securities transactions while insolvent without disclosing the insolvency, and violating the Commission's net capital rule.

First Lewis Corporation. -- The revocation of the registration of the First Lewis Corporation as a broker-dealer was based upon a finding that registrant was permanently enjoined by the United States District Court for the District of Massachusetts from engaging in the securities business while failing to make its required books and records available for inspection. In addition, registrant was found to have failed to amend its registration application to disclose the resignation of certain of its officers and directors

and abandonment of its principal place of business and to file a report of financial condition for 1958. Fred T. Lewis was named as a cause of the revocation.

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

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

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

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

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

George B. Wallace & Co. -- The Commission revoked the broker-dealer registration of George B. Wallace & Co. upon findings that registrant and its partners, George B. Wallace and August G. Fuchs, are permanently enjoined by the United States District Court for the District of New Jersey from further violations of the Commission's net capital requirements and are also permanently enjoined by State courts in New York and

New Jersey from engaging in the securities business within those States. George B. Wallace and August G. Fuchs were each named a cause of the revocation.

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

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

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

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

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

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

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

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

The broker-dealer registrations of **Gulf States Underwriters, Inc., John S. Hughes, doing business as John S. Hughes Co., Angelo Piomatos, doing business as Hellene Securities, and John M. Irving** were revoked by the Commission, upon a determination that they failed to file financial reports as required by Section 17 (a) of the Securities Exchange Act of 1934 and Rule 17a-5 thereunder. The Commission found that **Daniel Hoffman, W. E. Leonard & Company, Inc. and John Munroe**, registered broker-dealers, also willfully violated the reporting requirements of the Securities Exchange Act; however, after considering all of the circumstances of these cases, the Commission decided no sanctions were necessary in the public interest.

Denial Proceedings

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

Freeman Securities, Inc. -- The Commission denied the application for registration of Freeman Securities, Inc. and named Sam Freeman as a cause of denial upon findings that

registrant failed to list in the application, as required, an owner of 10% of its securities, and grossly overstated its assets in a financial statement filed as a supplement thereto. The statement showed as of December 15, 1958, total assets of \$17,500, no liabilities, and a net worth of \$17,500. The Commission found, however, that as of that date applicant's assets totaled only \$1,000.⁶⁹

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

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

Suspension Proceedings

Section 15 (b) authorizes the Commission to suspend the registration of any broker-dealer pending final determination of whether the registration should be revoked. An order suspending the registration may be entered only after an opportunity for hearing and a finding by the Commission such suspension appears to be necessary or appropriate in the public interest or for the protection of investors. During the past fiscal year the Commission suspended the registrations of several broker-dealers after hearings at which evidence was produced that serious misconduct was currently being engaged in by the respondents. To prevent further harm to investors the Commission determined that it was in the public interest to suspend those registrations pending a full hearing on the question of revocation. The entry of an order of suspension is not determinative of the ultimate questions of whether willful violations have been committed and an order of revocation should be entered which are resolved only after a further hearing at which additional evidence may be presented by all parties to the proceeding.

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

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

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

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

George H. Hildebrand, doing business as Hildebrand & Co., Atlas Securities, Inc. -- Atlas Securities, Inc., succeeded to the business of George H. Hildebrand & Co. on

October 1, 1958. The registrants consented to suspension of their broker-dealer registrations and admitted for purposes of this proceeding that Atlas had engaged in securities transactions while insolvent and in violation of the Commission's net capital rule. The Commission concluded that suspension was appropriate in the public interest and for the protection of investors. Revocation proceedings against the registrants were pending at the end of the fiscal year.

Other Sanctions

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

The Commission analyzed transactions of Patrick H. Coleman, Jr., a salesman in the Carmel Office, in four discretionary investment accounts of customers and concluded that all four accounts were grossly overtraded in light of the character of the accounts. In one account, an average investment of \$57,310 was turned over 29 times in a 46-month period, with purchases totalling \$1,664,572 and sales totalling \$1,651,907. Of 318 "in-and-out" transactions in this account, about 158 were completed within 30 days, with 2,2 being completed on the same day or the following day. William E. Rice, the managing partner of Reynolds' West Coast branch offices, and Wilfred C. Aldous, the manager of the Carmel Office, were found to have failed to exercise proper supervision over Coleman's activities although they were aware of the large volume of trading in the accounts and his confidential relationship to the customers.

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

with Regulation T in the Chicago Office and that the three supervisors involved failed also to perform their responsibilities in this respect.

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

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

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

The Commission concluded that the aforesaid activities in the registrant's branch offices demonstrated serious and extensive misconduct by employees in those offices and grave deficiencies in the supervision and internal control exercised by registrant over such employees. It reiterated the doctrine that brokers and dealers are under a duty to supervise the actions of employees and that in large organizations it is imperative that the system of internal control be adequate and effective and that those in authority exercise the utmost vigilance whenever even a remote indication of irregularity reaches their attention. The Commission felt that the circumstances of this case illustrate vividly the necessity for this doctrine and called for further consideration of its implications, particularly under the present conditions of active markets, increased interest in securities buying, inexperienced customers and the rapid growth and broadened operations of certain large securities firms of which registrant, Reynolds, is one. The Commission held that all of these conditions increase the importance of maintaining and enforcing adequate standards of supervision, and that where failure of a securities firm and its responsible personnel to maintain and diligently enforce a proper system of supervision and internal controls results in the perpetration of fraud upon customers or in other misconduct and willful violation of the Securities Act, for the purposes of applying the sanctions provided under the securities laws, such failure constitutes participation in such conduct and willful violations are committed not only by the person who performed the misconduct but also by those who did not properly perform their duty to prevent it.

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

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

withdrawal of the registration was consistent with in the public interest and the protection of investors.

Net Capital Rule

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

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

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

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

Financial Statements

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

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

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

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

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

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

Broker-Dealer Inspections

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

The process of inspection generally includes: (1) a determination of the broker-dealer's financial condition; (2) a thorough review of his pricing practices; (3) a careful evaluation

of the safeguards employed in his handling of customers' funds and securities; and (4) a determination of the adequacy and accuracy of disclosures made to customers relating to their transactions.

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

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

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

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

[table omitted]

The principal stock exchanges, the National Association of Securities Dealers, Inc., and some of the States have inspection programs that are somewhat similar to but not identical with that of the Commission. Each agency conducts its inspections, examinations or audits in accordance with its own procedures and with particular reference to its own regulations and jurisdiction. Inspections by other agencies cannot be adequate substitutes for Commission inspections since they are not primarily concerned with the detection and prevention of violations of the Federal securities laws and the Commission's regulations thereunder. However, the inspection programs of these other agencies do afford added protection to the public. For this reason, the Commission and

certain other inspecting agencies maintain a program of coordinating inspection activities to obtain the widest possible coverage of brokers and dealers and to avoid unnecessary duplication of inspections. Under this program, each inspecting agency advises the other agencies that it has started a particular inspection, but does not report its findings to them. Information discovered in the course of such inspections or examinations indicating serious violations of regulations administered by another agency may, however, be called to the attention of such other agency. The program does not prevent the Commission from inspecting any firm recently inspected by another agency and such inspections are made whenever good cause exists.

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

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

Section ISA of the Securities Exchange Act of 1934 ("the Maloney Act") provides for registration with the Commission of national securities associations. The statute requires that the rules of such associations must be designed, among other things, to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to perfect the mechanism of a free and open market. Such associations serve as a medium for the cooperative self-regulation of over-the-counter brokers and dealers. They operate under the general supervision of this Commission which is authorized to review disciplinary actions and decisions which affect the membership of members or applicants for membership and to consider all changes in the rules of associations. The National Association of Securities Dealers, Inc. (NASD) is the only association registered with the Commission under the Act.

In the Maloney Act Congress provided an incentive to membership by permitting such associations to adopt, and the NASD has adopted, rules which preclude a member from dealing with a non-member, except on the same terms and conditions as the member affords the general public. As a consequence, membership is necessary to the profitable participation in underwritings and over-the-counter trading in general, and price concessions, discounts and similar allowances may properly be granted by members only to other members. Loss or denial of membership due to expulsion or suspension, or other ineligibility due to a statutory disqualification or the failure to meet the standards of qualification established in NASD rules, thus imposes a severe economic sanction.

Membership in the NASD reached an all-time high of 4,372 at June 30, 1960. During the year membership increased by 354, as a result of 680 admissions to, and 326 terminations of, membership. At the same time, there were registered with the NASD as registered

representatives 90,180 individuals, including generally all partners, officers, traders, salesmen and other persons employed by or affiliated with member firms in capacities which involved their doing business directly with the public. The number of registered representatives increased by 12,263 during the year as a result of 22,949 initial registrations, 10,972 re-registrations, and 21,658 terminations of registrations. At May 31, 1960, registered representatives totalled 90,536, an all-time high figure.

NASD Disciplinary Actions

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

Each formal complaint must be based on allegations that a member has violated specified provisions of the NASD's Rules of Fair Practice, although registered representatives of members, or persons controlling or controlled by members, may also be cited for violations or with having been a cause of violation. Of the 249 final decisions so reported, 177 were based on complaints solely against member firms and 72 others on allegations that both members and registered representatives had violated applicable rules. Of the 177 complaints directed solely against members, 28 were dismissed on findings that the allegations had not been sustained, and in the remaining 149 cases findings of one or more violations resulted. Of the 72 complaints against both members and registered representatives, eight were dismissed as to all parties; ten were dismissed as to members but not representatives; and two were dismissed as to the representatives but not the members. Findings of violations by one or more of the respondents resulted in the remaining cases brought against members and representatives. These cases involved complaints against 130 registered representatives, 119 of whom were found to have committed violations.

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

During the fiscal year, 27 members were expelled; twelve were suspended for periods ranging from 15 days to two years; the registration of 34 registered representatives was revoked and of 12 such representatives were suspended for periods ranging from 30 days to one year; and 27 individuals were found a cause of an expulsion or revocation of

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

During the year the NASD also reported to the Commission the disposition of 12 cases by Minor Violation Procedure, a procedure used exclusively where the facts are not in dispute and where the matter involves only minor or technical violations of the rules with no significant damage to customers or others. Under this procedure, a member may waive a hearing, admit the allegations of violations and accept a penalty which cannot exceed a fine of \$100. The member's right of appeal or to formal complaint treatment, and the right of the Board of Governors and of the Commission to review, are preserved. The 12 cases disposed of by this method resulted in nine fines aggregating \$625, and censure in the remaining three cases.

Commission Review of NASD Disciplinary Action

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

The Commission dismissed an application filed by Raymond G. Chalikian for review of an order of the NASD revoking his registration as a registered representative of Reynolds & Co. The Commission's opinion sustained the finding of the NASD that Chalikian had deceived a customer as to the status of his account and had forged the customer's signature to a margin account, and that by such conduct Chalikian had violated specified

NASD rules of fair practice. The Commission also held that the penalty of revocation was not oppressive or excessive.

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

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

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

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

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

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

Commission Review of NASD Action on Membership

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

A Commission order approving or directing admission to or continuance in Association membership, notwithstanding a disqualification under Section 15A (b) (4) of the Act, or under an effective Association rule adopted under that Section or Section 15A (b) (3), is generally entered only after the matter has been submitted initially to the Association by the member or applicant for membership. Where, after consideration, the Association is favorably inclined, it ordinarily files with the Commission an application on behalf of the petitioner. A broker-dealer refused Association sponsorship, however, may file an application directly with the Commission. The Commission reviews the record and documents filed in support of the application and, where appropriate, obtains additional

relevant and pertinent evidence. At the beginning of the fiscal year, four such petitions were pending before the Commission; during the year, five petitions were filed, five were ruled on by the Commission, and one was withdrawn by the petitioner prior to determination. Three such applications were pending at the year end.

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

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

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

(3) Giles E. MacQueen, Jr., who had been expelled from membership by the NASD in 1953 on findings that he had improperly used customers' funds and securities and had failed to maintain required books and records. The application which was filed on behalf of Carlson and Co., the proposed employer, referred to the fact that after the disqualification was established another NASD member firm had been approved for continuance in membership while employing MacQueen on representations that all securities had been returned to customers and on the understanding that MacQueen would have limited duties and would operate under close supervision. Ownership of this previous employer having changed, approval of the new employment was required and was granted by the Commission, consideration being given to the prior approval, the continued supervision and the limitation of his activities.

(4) Daniel N. Silverman, Jr., formerly president and controlling stockholder of D. N. Silverman Co., Inc. which had been expelled from membership by the NASD in 1958 upon findings that it had engaged in business while insolvent and had failed to maintain required books and records. During the fiscal year, the Commission approved two different applications permitting Silverman's employment by NASD member firms. The first application approved the continuance in membership of T. J. Feibleman and Co., and the second, of Dorsey and Co., Inc. The first approval was granted because Silverman owed no money or securities to any broker or dealer and he stated that he would make

continued efforts to reimburse his company's stockholders and that his activities as a supervised registered representative would be of a different character than those which caused the disqualifying violations. After this approval was issued, T. J. Feibleman and Co. withdrew its broker-dealer registration, resigned from the NASD, and Feibleman became associated with Dorsey and Co., Inc., as a principal stockholder and vice president. The circumstances surrounding the initial approval having changed, re-approval was necessary and was granted by the Commission in view of the earlier approval, Silverman's employment record with Feibleman and Co. and the supervision under which he was to operate in the future.

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

LITIGATION UNDER THE SECURITIES EXCHANGE ACT OF 1934

For the protection of the public, the Commission is authorized to institute actions when violations of the Securities Exchange Act are present or threatened. A large proportion of such actions involve unlawful activities by broker-dealers. During the past year such illegal activities consisted primarily of violations of the anti-fraud sections and of the provisions concerning financial responsibility and the maintenance of net capital and bookkeeping requirements. Frequently the firms involved have violated two or more of the protective provisions of the Act. Generally, also violations of the anti-fraud provisions involve violations of the registration and anti-fraud provisions of the Securities Act of 1933. In several of the cases, it developed that the broker-dealer was insolvent, and on motion of the Commission, receivers were appointed by the court.

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

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

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

In *S.E.C. v. Scott Taylor & Co., Inc.*, the Commission brought an action to enjoin the broker-dealer and others from violating the anti-fraud provisions in connection with the sale of stock of Anaconda Lead & Silver Company. The court entered a preliminary injunction on the basis of findings that customers of the defendant broker-dealer were told false and untrue statements concerning the financial worth of the company. The assertion by the defendants that they had ceased selling the securities and did not intend to continue selling them did not preclude the court from finding that a preliminary injunction was necessary. The court also rejected as not germane the argument that the injunction might result in revocation of the defendant's broker-dealer registration. One aspect of the Commission's action involved the question as to what information obtained by the Commission through its investigatory process was subject to disclosure under the provisions of the Federal Rules of Civil Procedure. One of the salesman-defendants served interrogatories on the Commission demanding the number and copies of all questionnaires received from investors by the Commission. The Commission disclosed the number of questionnaires it received but refused their production, except as to those of any witnesses it would call at the time of trial. The court sustained the Commission's objection that the questionnaires sought by the defendant were irrelevant and would lead to the discovery of no admissible evidence, and that no good cause was shown to require production.

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

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

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

The action of *S.E.C. v. Howard W. McKinney* was to enjoin the defendant from engaging in the brokerage business without being registered. A preliminary injunction was entered

prohibiting him from doing business as a broker unless and until registered under Section 15 (b) of the Securities Exchange Act.

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

Participation as Amicus Curiae

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

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

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

The Commission filed a brief amicus curiae in *Hooper v. Mountain States Securities Corp.* which involved an appeal by a trustee in bankruptcy from the district court's dismissal of his action under Section 10 (b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The trustee had brought suit on behalf of a corporation that had been allegedly fraudulently induced to issue its own unissued securities in exchange for

worthless assets. The Court of Appeals reversed and remanded, holding that a private action may be based upon a violation of Rule 10b-5 and that a corporation which is injured thereby is within the class entitled to seek redress for injury resulting from a violation of the rule. The Court also held that venue for such a suit was proper in the district where representatives of the corporation received an interstate telephone call from the architect of the fraudulent scheme in furtherance thereof.

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

PART VI ADMINISTRATION OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Under the Public Utility Holding Company Act of 1935 the Commission is charged with the regulation of interstate public-utility holding company systems engaged in the electric utility business or in the retail distribution of gas. The Commission's jurisdiction extends to natural gas pipeline companies and other non-utility companies which are subsidiaries of registered holding companies. Although the matters dealt with embrace a variety of intricate and complex questions of law and fact, there are three principal areas of regulation. The first of such areas covers those provisions of the Act, contained principally in Section 11 (b), which require 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 holding company systems. The second area of regulation covers the financing operations of registered holding companies and their subsidiaries, the acquisition and disposition of securities and properties, and certain accounting practices, servicing arrangements and intercompany transactions. The third area of regulation includes the exemptive provisions of the Act, the provisions covering the status under the Act of persons and companies, and those regulating the right of a person affiliated with a public-utility company to acquire securities resulting in a second such affiliation. Matters embraced within this area of regulation require periodic examination by the Commission and its staff. Many such

examinations do not result in formal proceedings and others are reflected in such proceedings only in an indirect manner when they are related to issues principally under one or the other areas of regulation.

The staff functions under the Act are performed primarily in the Branch of Public Utility Regulation of the Division of Corporate Regulation. In performing its functions, the Commission's staff observes and examines problems which arise in connection with transactions which are or may be subject to regulation under the Act and discusses such problems with interested persons and companies and advises them as to the applicable Sections of the Act, its Rules and the Commission policy with respect thereto.

COMPOSITION OF REGISTERED HOLDING COMPANY SYSTEMS -- SUMMARY OF CHANGES

On June 30, 1960, there were 26 registered holding company systems subject to regulation under the Act. For convenience, 18 of these 26 will be referred to in this report as "active registered systems." Three of the remaining 8 systems, namely (1) Cities Service Company, (2) Electric Bond and Share Company, and (3) Standard Gas and Electric Company, do not own as much as 10 percent of the voting securities of any public-utility company operating within the United States. These 3 systems include 4 registered holding companies since the Standard Gas and Electric holding company system has 2 registered holding companies. As of February 29, 1960, the Commission rescinded Rule 9 under the Act which exempted certain holding companies by reason of their small size. Subsequent thereto, certain companies bought exemption on other bases and five registered under the Act. This subject is further discussed at page 143 of this report.

The 18 active registered systems include 19 registered holding companies since, as shown in the tabulation below, the West Penn Electric Company holding company system has 2 registered holding companies. Of these 19 companies, 13 function solely as holding companies and 6 function as operating companies as well as holding companies. In these 18 active registered systems, there are 99 electric and/or gas utility subsidiaries, 42 non-utility subsidiaries, and 12 inactive companies, totalling 172 system companies.

The following tabulation shows the number of holding companies, electric and/or gas utility companies and non-utility companies in each of the 18 active registered systems as at June 30, 1960, and their aggregate assets, less valuation reserves, as of December 31, 1959:

[table omitted]

During the fiscal year, in the General Public Utilities Corporation system, Escudero Electric Company was merged with Manila Electric Company, both being public-utility subsidiaries in the Philippines. In addition, this system organized the Saxton Nuclear

Experimental Corporation, a non-utility subsidiary which will be located in Pennsylvania and which will construct an experimental nuclear reactor. New England Electric System organized the Lynn Gas Company, a public-utility, in order to separate the gas from the electric operations of Lynn Gas and Electric Company (now Lynn Electric Company). National Fuel Gas Company dissolved Iroquois Building Corporation, a non-utility subsidiary.

The maximum number of companies subject to the Act as components of registered holding company systems at any one point of time was 1,620 in 1938. Since that time additional systems have registered and certain systems have organized or acquired additional subsidiaries, with the result that 2,412 companies have been subject to the Act as registered holding companies or subsidiaries thereof during the period from June 15, 1938, to June 30, 1960. Included in this total were 223 holding companies (holding companies and operating-holding companies), 1,037 electric and/or gas utility companies and 1,152 non-utility enterprises. From June 15, 1938, to June 30, 1960, 2,070 of these companies have been released from the regulatory jurisdiction of the Act or have ceased to exist as separate corporate entities. Of the remaining 342 companies, 172 are members of the 18 active systems listed in the table on page 131 and 170 are members of the additional 8 systems named above at page 130 which are also subject to regulation under the Act.

Of the above-mentioned 2,070 companies, 924 with assets aggregating approximately \$13 billion at their respective dates of divestment have been divested by their respective parents and are no longer subject to the Act as components of registered systems. The balance of 1,146 companies includes 783 which were released from the regulatory jurisdiction of the Act as a result of dissolutions, mergers and consolidations and 363 companies ceased to be subject to the Act as components of registered systems as a result of exemptions granted under Sections 2 and 3 of the Act or the grant of orders pursuant to Section 5 (d) of the Act finding such companies had ceased to be holding companies.

While a great many of the problems under Section 11 of the Act existing at the time of its passage have been resolved, there remain a considerable number of Section 11 and other significant problems with respect to which progress is being made in the face of a variety of difficulties which have prevented their final determination. Certain Section 11 cases, which have required a substantial amount of time and effort by the Commission and its staff over a long period, progressed to or near completion during the fiscal year. Examples of such cases are the Section 11 cases involving Cities Service Company and Standard Gas and Electric Company. Among other remaining Section 11 and other problems are issues concerning the retainability by The Columbia Gas System, Inc. of the properties of 10 companies (subsequently reduced to 6) which are involved in a pending proceeding before the Commission; questions concerning the retainability of non-utility pipeline properties by Consolidated Natural Gas Company, issues with respect to whether Delaware Power & Light Company may retain both its gas and electric facilities; problems in the Middle South Utilities, Inc. system with respect to the retainability of

certain gas and transportation properties and the elimination of a minority interest in a subsidiary; issues respecting the retainability by the National Fuel Gas Company system of oil and gas transmission businesses and respecting a minority interest in one of the subsidiaries in the system; and problems under Section 11 (b) (1) of the Act regarding the retainability by Utah Power & Light Company of its subsidiary, The Western Colorado Power Company.

During the fiscal year, the Commission had under consideration step 1 (subsequently approved) of a new plan filed by Eastern Utilities Associates and designed to accomplish the disposition of the gas properties of its subsidiary, Blackstone Valley Gas and Electric Company, which the Commission had previously ordered divested, an application filed by Electric Bond and Share Company for an exemption pursuant to Section 3 (a) (5) of the Act and a declaration by Middle South Utilities, Inc. seeking authorization to adopt a restricted stock option plan. Progress was also made during the fiscal year with respect to the problems involved in proceedings pending before the Commission under Section 11 (b) (1) of the Act to determine whether the gas properties of New England Electric System are retainable together with its electric properties. At present there remains only one subsidiary of New England Electric System engaged solely in the electric business which has a minority interest in its common stock and as a result of discussions which took place during the fiscal year a plan to eliminate this minority interest was subsequently filed.

DEVELOPMENTS IN INDIVIDUAL REGISTERED SYSTEMS

There is discussed below each of the active registered systems and the other systems in which there occurred during the fiscal year 1960 significant developments other than financing transactions, which will be discussed separately.

American Electric Power Company, Inc.

At December 31, 1959, this system had consolidated assets, less valuation reserves, of some \$1,457,811,000, and consolidated operating revenues for the calendar year ended that date amounted to about \$323,606,000. The system sold 25.87 billion kilowatt-hours of electric energy during the calendar year 1959, and is the largest electric holding company system subject to the Act.

During the year 1959 there was substantial growth in all phases of the system's business, and system expenditures for new power plants, lines, substations and other facilities totaled \$116 million.

Plans were completed during the fiscal year for the start of the Smith Mountain hydroelectric generating plant on the Roanoke River in Virginia, a project which is unique for this system in that it involves the building of two dams, combining

conventional hydroelectric power with pump-back storage -- a system of pumping back water from the lower to the upper reservoir during off-peak periods for reuse during peak periods. When fully developed the station is expected to have a capacity of 440,000 Kw.

Ohio Power Company, a subsidiary company of American Electric acquired during the fiscal year the electric-utility system serving Minerva, Ohio, a community in close proximity to communities served by Ohio Power Company.

American Electric owns 37.8 percent of the voting securities of Ohio Valley Electric Corporation, which, with its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation, furnishes electric power to an installation of the Atomic Energy Commission near Portsmouth, Ohio. There was pending before the Commission at the close of the fiscal year the issue of whether the acquisition of such stock by American Electric and other sponsoring companies (Ohio Edison Co. and The West Penn Electric Company) meets the standards of Section 10 of the Act. This issue and the organization and financing of Ohio Valley Electric Corporation and Indiana-Kentucky Electric Corporation, are discussed on pages 126-129 of the Commission's 23d Annual Report.

Cities Service Company

On September 20, 1957, the Commission issued an order pursuant to Section 11 (b) (2) of the Act requiring Cities to eliminate the 48.5 percent minority stock interest in Arkansas Fuel Oil Corporation or to dispose of its holdings of 51.5 percent. Cities, Arkansas, and a stockholder of Arkansas petitioned the United States Court of Appeals for the Third Circuit for review of the order. On July 22, 1958, the Court affirmed the order of the Commission. On September 18, 1958, Cities filed a plan pursuant to Section 11 (e) of the Act for the purpose of eliminating the minority interest in Arkansas. The plan provided for a division of assets of Arkansas into 2 new companies, 1 to be owned by Cities and the other by the minority interest. Subsequently, Cities withdrew that plan and filed a new plan providing for the exchange of 1 share of Cities common stock for each 2.4 shares of Arkansas common stock held by the public. Hearings on the new plan were commenced on March 31, 1959.

During the course of the hearing, certain participating stockholders of Arkansas filed a plan under Section 11 (d) of the Act for the liquidation of the company and the sale of its assets on a basis which would net all the stockholders of Arkansas -- i.e., both Cities and the public stockholders -- \$40 per share in cash. The plan gave Cities the option to purchase certain or all of the assets of Arkansas on the same basis. Cities stated that it would elect to exercise the option if certain modifications which it suggested were made therein.

Subsequent to the close of the fiscal year, the Commission disapproved Cities' exchange-of-stock plan and adopted and approved the Section 11 (d) plan as modified in accordance with the suggestions of Cities. Under the latter plan, the approximately

20,000 public holders of 1,843,346 shares of the common stock of Arkansas would receive a cash payment of \$41 per share, or a total of \$75,577,186. The cash payment of \$41 per share represented a value of \$40 per share for all of Arkansas' assets, less liabilities, plus an additional \$1 per share on the basis of a settlement with respect to certain alleged causes of action for mismanagement asserted on behalf of the public holders of the common stock of Arkansas against Cities and certain of its other subsidiaries. As compared with the amount of \$17.40 in market value of the Cities stock, based on the closing market price thereof at June 30, 1960, which would have been distributed in respect of each share of publicly-held stock of Arkansas under the exchange-of-stock plan, the difference in the value of the distribution to the public stockholders of Arkansas as of June 30, 1960, was approximately \$43,500,000.

On September 2, 1960, the Section 11 (d) plan was approved and ordered enforced by a United States District Court.

Eastern Utilities Associates

This registered holding company and its subsidiary companies had consolidated assets, less valuation reserves, of approximately \$110,260,000 at December 31, 1959. For the calendar year 1959, the system's consolidated revenues amounted to about \$36,349,000.

On April 4, 1950, the Commission issued an order directing Eastern Utilities Associates to sever its relationship with the gas properties of its subsidiary, Blackstone Valley Gas and Electric Company. In 1956 Valley Gas Company was incorporated for the purpose of acquiring and operating such gas properties. A 1957 proposal to effectuate compliance with the order is discussed at pages 126-127 of the 25th Annual Report. In February 1959, Eastern Utilities Associates filed a plan, pursuant to Section 11 (e) of the Act, designed to accomplish the disposition of the Blackstone gas properties. The plan was in 2 steps. Step 1 provides for the transfer of the gas property and related facilities to Valley, in exchange for the common stock, first mortgage bonds, and 15-year unsecured promissory notes of Valley, and the contemporaneous negotiated sale of the bonds and notes. Step 2 provides for the subsequent disposition of the common stock.

Subsequent to the close of the fiscal year the Commission approved Step 1 of the plan.

The Columbia Gas System, Inc.

This registered holding company and its subsidiaries had consolidated assets, less valuation reserves, of about \$1,195,715,000 at December 31, 1959, and consolidated gross revenues of approximately \$465,071,000 for the calendar year 1959.

As indicated at page 126 of the Commission's 25th Annual Report there are before the Commission certain integration proceedings regarding the ultimate status of certain of the

subsidiaries in the Columbia system. The matter was pending at the close of the fiscal year.

During the fiscal year 1960 Atlantic Seaboard Corporation, a wholly-owned non-utility natural gas pipeline subsidiary of Columbia obtained the requisite authorizations to acquire certain rights, facilities, and properties from an affiliate and from a nonaffiliate, and to construct and operate facilities for the activation of an underground storage pool for natural gas located in the Terra Alta field in the Portland and Union Districts of Preston County, West Virginia. The initial activation of the storage pool is scheduled for the calendar years 1960-61, but the development of its estimated maximum capacity of 45,800,000 Mcf of natural gas is scheduled to extend over a period of 4 years and involve aggregate expenditures of \$25,000,000.¹⁰

Electric Bond and Share Company

Electric Bond and Share Company, which no longer holds as much as 5 percent of the outstanding voting securities of any domestic public-utility company, has pending before the Commission an application, filed pursuant to Section 3 (a) (5) of the Act, for exemption as a holding company from provisions of the Act. In the event such exemption is granted, it is the intention of the company to convert its status to that of an investment company and register under the Investment Company Act of 1940. The proceeding on the exemption application involves a number of very difficult and complex issues, among which are the questions as to whether Bond and Share may retain its holdings of common stock of United Gas Corporation and whether, through its wholly-owned engineering and consulting service company subsidiary, Ebasco Services Incorporated, it exercises controlling influence over, or is affiliated with, certain public-utility and holding company clients of Ebasco which formerly were controlled by Bond and Share. Hearings were held and the matter was under active consideration at the end of the fiscal year.

General Public Utilities Corporation

This registered holding company and its subsidiaries, at December 31, 1959, had consolidated assets, less valuation reserves, of about \$936,004,000. The consolidated gross operating revenues for the calendar year 1959 were approximately \$230,715,000.

During the fiscal year four of the system subsidiaries acquired all of the capital stock of Saxton Nuclear Experimental Corporation, a nonprofit stock corporation organized to construct, operate, and maintain a small experimental nuclear reactor. This research and developmental project will be a cooperative effort involving Saxton, the 4 stockholder companies, Westinghouse Electric Corporation, and Gilbert Associates, Inc. Saxton's corporate life is limited by charter provision to 10 years. The contemplated reactor will be a small (5,000 Kw electrical) developmental, pressurized water type nuclear reactor which upon construction and operation will produce steam to be sold to and utilized by one of General Public Utilities' subsidiaries in operating an existing standby electrical

turbo-generator. Saxton has outstanding 20,000 shares of common stock held by the four General Public Utilities subsidiaries which, from time to time, will make cash payments to Saxton aggregating not in excess of \$8,500,000.

Middle South Utilities, Inc.

This registered holding company and its subsidiary companies had consolidated assets, less valuation reserves, of approximately \$754,638,000 at December 31, 1959. For the calendar year 1959, the system's consolidated revenue amounted to about \$198,497,000.

Its four public-utility subsidiaries, together with 46 other utility companies, are sponsoring the construction of an advanced type of helium-cooled atomic power plant.

In 1953, the Commission ordered Louisiana Power & Light Company, a system subsidiary, to dispose of its non-electric properties. In November, 1957, the Commission approved a plan filed under Section 11 (e) of the Act for the transfer of such property to Louisiana Gas Service Company, a newly formed subsidiary, which plan was enforced by the United States District Court for the Eastern District of Louisiana on January 14, 1958. In June 1960, Louisiana Power joined by Middle South and Louisiana Gas, filed amendments to the plan, providing for the sale to the stockholders of Middle South, through subscription rights, of the common stock of Louisiana Gas. Subsequent to the close of the fiscal year the Commission approved the amended plan.

In March 1959, Middle South filed a declaration seeking permission to adopt a restricted stock option plan and to issue to key officers and employees of the company and its subsidiary companies restricted stock options as defined in Section 421 of the Internal Revenue Code. This is the first formal proceeding dealing with the issuance of such stock options by registered holding companies. Ohio Edison Company and the Southern Company requested and were granted leave to file statements of position and briefs in support of the issuance of such options by companies subject to the Act. Hearings were completed during the fiscal year and briefs were filed and oral argument heard thereafter. The matter is pending before the Commission for determination.

New England Electric System

As at December 31, 1959, this registered holding company and its subsidiaries had consolidated assets, less valuation reserves, of approximately \$612,543,000; and, for the year ended on that date, it had consolidated operating revenues of approximately \$172,424,000.

Under a proceeding instituted by the Commission in 1957 in respect of New England Electric System ("NEES") and its subsidiaries to determine the extent to which the electric, gas and other business operations of the NEES system satisfied the integration standards of Section 11 (b) (1) of the Act, the Commission, on February 20, 1958, issued

its findings and opinion and order in which it held that the electric properties of the NEES system constituted an integrated public-utility system in satisfaction of the integration standards of the Act; and at the close of fiscal year 1960 there remained pending for further hearing and determination the question of whether any or all of the gas properties owned and operated by the NEES system are retain-able. The hearing in these proceedings was reconvened pursuant to Commission Order on May 18, 1960, to take evidence on the retain-ability of the NEES system's gas properties. At the conclusion of the NEES system's direct presentation of its case the hearing was adjourned subject to call of the hearing officer, and the matter was pending at the close of fiscal year 1960.

On December 23, 1959, the Commission issued an order approving a proposal by Lynn Gas and Electric Company, a public-utility subsidiary of NEES, to transfer Lynn's gas properties to a newly organized company in the NEES system, Lynn Gas Company. Pursuant to authority granted by an order of the Commission dated December 28, 1959, another NEES utility subsidiary, The Narragansett Electric Company, disposed of its gas properties, located in the State of Rhode Island. As a result of these two transactions none of the NEES system companies now operates a combination electric and gas business, and all of the present NEES system gas properties are located in the Commonwealth of Massachusetts.

On December 30, 1959, the Commission issued an order under Section 13 of the Act conditionally approving a proposal by NEES to transfer to the payroll of its subsidiary service company, New England Power Service Company ("NEPSCO"), the salaries of all officers and employees of NEES who are also officers and employees of NEPSCO. The salaries and related expenses of the officers and employees so transferred, estimated to aggregate approximately \$600,000 per annum, would then be reallocated to the operating companies of the NEES system and to NEES on a cost basis in accordance with services rendered by NEPSCO to the operating subsidiaries and to the parent company. Of the \$600,000, it was estimated that between \$350,000 and \$425,000 would be chargeable to the operating subsidiaries and the balance to NEES. It was represented that the amounts so chargeable to the operating subsidiaries would be equivalent to 1/4 of 1 percent of the consolidated annual gross operating revenues of the NEES system, and that the proposed charges would not of themselves be the basis for seeking rate increases to consumers. In connection with the proposed transactions, NEPSCO undertook to submit quarterly reports to the Commission during a trial period of 18 months showing the distribution of charges under the new arrangement. Inasmuch as the proposed transactions would alter in certain important respects the intra-system servicing arrangements and the basis of charges theretofore approved by the Commission in respect of the NEES system, the Commission's order authorizing the proposed transactions will, by its terms, expire at the end of such 18 month trial period unless at or prior thereto the Commission shall have acted to continue the authorization.

Ohio Edison Company

Ohio Edison Company is a registered holding company and an operating electric utility company. Ohio Edison and its electric utility subsidiary, Pennsylvania Power Company, had consolidated assets, less valuation reserves, of approximately \$641,514,000 at December 31, 1959, and their consolidated operating revenues for the calendar year 1959 amounted to about \$150,798,000. Ohio Edison has a 16.5 percent interest in the common stock of Ohio Valley Electric Corporation, which together with a wholly-owned subsidiary, Indiana-Kentucky Electric Corporation, supply the power requirements of a gaseous diffusion plant of the Atomic Energy Commission located near Portsmouth, Ohio. Further details with respect to Ohio Valley Electric Corporation are set forth at pages 126-129 of the 23rd Annual Report.

During the first half of the calendar year 1960 Ohio Edison effectuated (1) a recapitalization of its common stock in the nature of a two-for-one stock split and delivered to its common stockholders an aggregate of 6,386,749 additional shares of common stock, (2) an amendment to its Articles of Incorporation relating to the preemptive rights of the holders of its common stock, and (3) an amendment of its Code of Regulations so as to increase the authorized fee to be paid certain directors for attendance at Board Meetings.

Standard Gas and Electric Company

This company is a registered holding company and owns 45.6 percent of Philadelphia Company, also a registered holding company. Neither owns directly or indirectly as much as 5 percent of the voting securities of a public-utility company and both are required by orders issued under Section 11 (b) (2) of the Act to liquidate and dissolve. With respect to each of these companies there exist undetermined questions relating to Federal income taxes for the years 1942 through 1950. During the fiscal year, Standard filed an amendment to a plan under Section 11 (e) of the Act, such amendment being designated as Step V of such plan. This step includes the proposed assumption and execution of indemnity agreements with Duquesne Light Company, a former subsidiary of Standard, under which Duquesne, in consideration of certain specified sums, will assume any liability Standard and Philadelphia may be found to have with respect to the tax cases involving the years 1942-50, inclusive, and any liability Standard may be found to have with respect to a claim asserted against it by Wisconsin Electric Power Company, also a former subsidiary of Standard. Hearings on Step V have been held, briefs have been filed, and oral argument heard. The matter is under advisement for decision by the Commission.

Union Electric Company

Union Electric Company is a registered holding company and an operating electric utility company. As at December 31, 1959, the consolidated assets, less valuation reserves, of Union Electric and its subsidiaries amounted to approximately \$589,562,000, and their consolidated operating revenues for 1959 totaled about \$146,630,000.

The company has announced plans, subject to regulatory approval, to construct a pumped-storage plant at the confluence of Taum Sauk Creek and the East Fork of the Black River in the Missouri Ozarks, about 100 miles southwest of St. Louis. This project is designed for pumping water into a high elevation reservoir at off-peak periods, when efficient steam generating capacity would otherwise be idle, and releasing the water to generate electricity when it is needed for peak-load requirements. It will provide 350,000 Kw of peaking capacity for about 8 hours when it goes into operation in 1963. The plant and related transmission and other facilities are expected to cost about \$50,000,000.

Union Electric has filed with the Commission an application for exemption from the provisions of the Holding Company Act pursuant to Section 3 (a) (2) thereof. Hearings on the application were held in Washington, D.C. and in St. Louis, Missouri. A stockholder of Union Electric was granted leave to be heard, briefs have been filed by Union Electric and the stockholder, and the brief of the staff of the Division of Corporate Regulation was filed after the close of the fiscal year.

In the fiscal year, there were 5 cases before the courts arising out of objections by J. Raymond Dyer, a stockholder of Union Electric, to solicitation of proxies by the company's management and out of the proxy solicitation by Dyer. As set forth in the 25th Annual Report at page 131, the Supreme Court of the United States granted Dyer's petition for certiorari to review the dismissal on grounds of mootness by the Court of Appeals for the Eighth Circuit of Dyer's petition for review of the Commission's orders relating to Union Electric's 1957 meeting. The Supreme Court thereafter vacated the judgment and remanded the case to the Eighth Circuit for further consideration. This case was reargued before the Court of Appeals on the merits and was awaiting decision by that Court at the end of the fiscal year. On October 12, 1959, the Supreme Court of the United States denied Dyer's petition for a writ of certiorari to review the Eighth Circuit's decision affirming the Commission's orders permitting management to solicit proxies for the 1958 stockholders meeting. Argument on Dyer's petition to review the Commission's orders in connection with the 1959 solicitation of proxies for Union Electric's meeting was also heard by the Eighth Circuit and this matter was also pending decision by the Court at the close of the fiscal year. The Court of Appeals for the Eighth Circuit also heard argument and took under advisement the Commission's motion to dismiss a petition filed by Dyer for review of alleged orders of the Commission denying Dyer's request that the Commission process Union Electric's proxy material for its 1960 annual meeting pursuant to Rule 62 under the Act and for review of the Commission's non-action with respect to the subsequent proxy solicitation material sent out by Union Electric to its stockholders. As reported in the 25th Annual Report at page 132, a related injunctive action was decided in favor of the Commission on November 16, 1959, and Dyer was enjoined from any further violation of the Commission's proxy rules. Subsequently, Dyer filed a motion to vacate the injunction, and on March 8, 1960, the court denied the motion. This case is now pending on appeal by Dyer to the Court of Appeals for the Eighth Circuit. In addition to the pending litigation arising out of Union Electric's

solicitation of proxies for its annual stockholders meetings, the Commission's order of September 3, 1959, permitting a declaration filed by Union Electric under Section 7 of the Act to become effective, thereby authorizing Union Electric to offer its common stock to stockholders and to offer the unsubscribed shares to its employees, is also before the Court of Appeals for the Eighth Circuit. Dyer filed a petition for review, and argument on the merits was heard by the Court on January 25, 1960. This case is also pending decision by that Court.

Utah Power & Light Company

Utah had consolidated assets, less valuation reserves, of approximately \$238,878,000 at December 31, 1959, and consolidated operating revenues of about \$49,656,000 for the calendar year 1959.

During the fiscal year, Utah amended its Certificate of Organization and By-Laws so as to (1) increase the authorized capital and create 2,000,000 shares of cumulative preferred stock, par value of \$25 per share, (2) fix the preferences, privileges, voting and other rights and restrictions of the preferred stock and (3) grant to the holders of Utah's common stock the limited pre-emptive right to subscribe for or purchase shares of the cumulative preferred stock on any new issue and sale thereof for money, other than by a public offering.

OTHER MATTERS

As reported at page 134 of the 25th Annual Report, International Hydro Electric System was reorganized pursuant to Section 11 (d) of the Act and is now a registered investment company (name changed to Abacus Fund) under the Investment Company Act of 1940 and subject to the Commission's jurisdiction thereunder. At the beginning of the fiscal year the only matter remaining under the Holding Company Act with respect to IHES was the fees and expenses to be awarded in connection with the reorganization. On October 26, 1959, the Commission issued its Finding and Opinion and Order setting forth the fees and expenses to be allowed. The United States District Court for the District of Massachusetts, in overruling the Commission with respect to certain claimants, gave controlling weight to the amounts agreed upon between the company and the claimants and allowed the full amounts which the company was willing to pay and the claimants had agreed to accept.

Also pending at the beginning of the fiscal year were applications for fees and expenses in connection with a plan filed by The United Corporation under Section 11 (e) of the Act for its conversion into an investment company. The Commission issued its Findings and Opinion and Order relating to certain claimants. The United States District Court for the District of Delaware overruled the Commission with respect to certain claimants, finding

that they had participated in extensive litigation and were entitled to compensation for such participation.

As stated in the 24th Annual Report, at page 21, the Commission on February 5, 1958 announced the rescission of Rule 9 of the General Rules and Regulations under the Holding Company Act. This rule permitted a holding company to claim exemption from the Act for itself and its subsidiaries if the holding company system was of relatively small size, measured by the aggregate amount of its utility assets or of the annual revenues derived from public-utility operations. In February 1958, 21 holding companies were claiming exemption under this rule. The effective date of rescission was initially fixed for September 30, 1958, but was several times postponed by the Commission at the request of the companies concerned to afford them additional time to take action, where feasible, which would make them eligible for exemption on some basis other than Rule 9 or would render them no longer holding companies. Rule 9 finally ceased to be in effect on February 29, 1960.

When the rescission of Rule 9 became effective, there were 9 holding companies claiming exemption thereunder. Of these companies, 4 filed statements claiming exemption under Rule 2, which permits holding companies to claim exemption where their systems are essentially "intrastate" or where the holding company is "predominantly a public-utility company." Three of the remaining holding companies had previously registered under the Act; the other 2 holding companies filed registration statements during the fiscal year. On August 11, 1960, pursuant to Section 5 (d) of the Act, the Commission declared one of these 2 latter companies not to be a holding company and thereupon its registration ceased to be in effect.

During the fiscal year the Commission adopted a "Statement of Administrative Policy Regarding Balance Sheet Treatment of Credit Equivalent to Reduction in Income Taxes". This matter is discussed in detail in Part XI under the title, "Activities of the Commission in Accounting and Auditing". This statement of policy generally prohibits the filing of financial statements with the Commission which designate as earned surplus or in any manner as part of equity capital the accumulated credit equivalent to the reduction in income taxes arising from the deduction of costs for income tax purposes at a more rapid rate than for financial statement purposes.

On November 24, 1959, the Commission adopted a new regulation governing the preservation and destruction of the records of those registered holding companies which do not also operate utility assets or other physical properties. The purpose of the new regulation is to permit such holding companies to destroy voluminous records, the retention of which is no longer necessary or appropriate in the public interest or for the protection of investors and consumers. The regulation also authorizes the microfilming of many other records which no longer need be retained in their original form. It is estimated that holding companies affected by the new regulation will realize substantial savings in the cost of storing and handling their records.

The new regulation is entitled "Regulation to Govern The Preservation and Destruction of Books of Account and Other Records of Companies Which Are Subject to the Uniform System of Accounts for Public Utility Holding Companies Under the Public Utility Holding Company Act of 1935" and it is in the nature of a revision of the Commission's Uniform System of Accounts for Public Utility Holding Companies. General Instruction 3C of, the Uniform System of Accounts formerly provided that no registered holding company subject thereto may destroy any books or records, which may be useful in developing the history of or facts regarding any transaction of the company recorded in its accounts, without first having obtained the consent and approval of the Commission. Prior to the revision, the Commission had granted the requests of a number of registered holding companies for authorization to destroy records pursuant to this provision.

The revision of the Uniform System of Accounts, which was adopted by the Commission on November 24, 1959, deleted from General Instruction 3C the prohibition against the destruction of records formerly contained therein and added an Appendix containing the new regulation. The regulation prescribes various retention periods and microfilming privileges for all classes of records of registered holding companies subject to the Uniform System of Accounts.

FINANCING OF ACTIVE REGISTERED PUBLIC UTILITY HOLDING COMPANIES AND THEIR SUBSIDIARIES

Pursuant to authorizations granted by the Commission under Sections 6 and 7 of the Act, active registered holding companies and their subsidiaries sold to the public and to financial institutions, during the fiscal year 1960, 30 issues of long-term debt and stocks aggregating \$554 million. All of these securities were sold for the purpose of providing new capital. In fiscal 1959, 25 issues were sold for an aggregate dollar amount of \$477 million. All but 5 of the 18 active registered holding company systems sold long-term debt or stocks to the public and to financial institutions in varying amounts and of various types in fiscal 1960.

The following table presents the financing by active registered holding companies and each of their subsidiaries classified by amounts and types of securities.

[table omitted]

The table does not include securities issued and sold by subsidiaries to their respective parent holding companies, nor does it reflect the issuance of short-term notes to banks by any of the system companies. These issuances also required authorization by the Commission except in the case of the issuance of notes having a maturity of less than 9 months where the aggregate amount did not exceed 5 percent of the total capitalization of

the company as denned in Section 6 (b) of the Act. The issuance of such securities is exempted by that Section.

Competitive Bidding

Of the 30 issues of securities sold for cash in fiscal 1960, as shown in the preceding table, all but 2 were offered at competitive bidding pursuant to the requirements of Rule 50. General Public Utilities Corporation issued and sold 1,097,048 shares of its \$2.50 par value common stock for \$24 million. This issue was a nonunderwritten rights offering to stockholders and employees but the company utilized the services of securities dealers to solicit subscriptions to the new stock by original warrant holders and for the purpose of selling the unsubscribed shares. By order dated December 28, 1959, the Commission granted the company an exception from the competitive bidding requirements of Rule 50, pursuant to paragraph (a) (5) thereof, with respect to the unsubscribed shares to the extent such exception might become applicable to the transactions.

The second issuance of securities in fiscal 1960 which was not sold at competitive bidding involved an agreement by 10 insurance companies to purchase from Yankee Atomic Electric Company, a subsidiary of New England Electric System, up to \$20,000,000 principal amount of First Mortgage 5 percent bonds due 1982 in installments as funds are required by Yankee for construction not later than January 1, 1962. By order dated June 12, 1959, the Commission granted Yankee an exception from the competitive bidding requirements of Rule 50, pursuant to paragraph (a) (5) thereof, with respect to this issue for the reasons, among others, that the project to be financed was of an unusual nature, that several large institutional investors had shown no interest in the issue, and that bond market conditions at the time were uncertain.

During the fiscal year the Commission announced a change in its procedure under Rule 50. Formerly companies could request authorization to negotiate with prospective purchasers regarding the terms of securities proposed to be sold pursuant to the Act. The Commission would grant or deny such informal request, usually by letter. The revised procedure does not permit such informal negotiations and formal applications are required for any exception from the rule and such applications are given public notice.

During the period from May 7, 1941, the effective date of Rule 50, to June 30, 1960, a total of 795 issues of securities with aggregate sales value of \$11,468 million were sold at competitive bidding under the Rule. These totals compare with 226 issues of securities with an aggregate sales value of \$2,355 million which have been sold pursuant to orders of the Commission granting exception from the competitive bidding requirements of the Rule under paragraph (a) (5) thereof.

Of the total amount of securities sold pursuant to orders of exception granted under paragraph (a) (5) of Rule 50, 124 issues with sales value of \$1,885 million were sold by the issuer and the balance of 102 issues with a dollar value of \$470 million were portfolio

sales. Of the 124 issues sold by issuers, 68 were in amounts of from \$1 million to \$5 million and 2 bond issues were in excess of \$100 million each.

Protective Provisions of First Mortgage Bonds and Preferred Stocks of Public-Utility Companies

The Commission examines the mortgage indentures and charters of public-utility companies issuing first mortgage bonds and preferred stocks under the Act to determine whether or not there is substantial compliance with the applicable Statements of Policy which were adopted by the Commission in 1956. These Statements of Policy represent essentially a codification of the principles and policies which the Commission had been administering over a long period of years on a case-by-case basis, and which the Commission had found necessary and desirable for the protection of investors in first mortgage bonds and preferred stocks of public-utility companies. The Commission has required conformity with the Statements of Policy except where the circumstances of a particular case clearly warrant deviation therefrom.

During fiscal year 1960, applications or declarations were filed by public-utility companies under the Act with respect to 16 first mortgage bond issues involving an aggregate principal amount of \$216,500,000 and 3 preferred stock issues with a total par value of \$18,000,000.

One of the provisions of the Statement of Policy with respect to bonds requires a restriction on the distribution of earned surplus to common stockholders under certain circumstances. In 8 of the 16 bond issues of public-utility companies as to which filings were made with the Commission during the fiscal year, existing indenture provisions adequately conformed to this requirement of the Statement of Policy. In the other 8 bond issues, additional restrictions were required and were either proposed by the issuer or were evolved in informal discussions between the Commission's staff and representatives of the issuer. To avoid unnecessary rigidity, the Commission has permitted the inclusion in the mortgage indenture of a provision which would permit relaxation of the dividend restriction in appropriate cases with the approval of the Commission.

Another provision contained in the bond Statement of Policy concerns the renewal and replacement of depreciable utility property. This provision requires, in substance, that the issuer construct property additions, or alternatively, deposit bonds or cash with the indenture trustee, in an amount which, on a cumulative basis, will provide adequately for the replacement in cash or property of the dollar equivalent of the cost of the depreciable mortgaged property during its estimated useful life. The Statement of Policy requires that the renewal and replacement provision in the mortgage indenture be expressed as a percent of the book cost of depreciable property, except that if the existing indenture provision is expressed on a different basis, as, for example, in terms of a percent of operating revenues, no change will be required if the issuer can satisfactorily demonstrate to the Commission that the existing provision furnishes substantially the same degree of

protection to the bondholders as that based on a percent of the book cost of depreciable property. As in the case of the earned surplus restriction, the Commission, in the interest of flexibility, has allowed the issuer to insert a provision under which the issuer, upon application to, and approval by, the Commission may modify the percent of depreciable property requirement.

Of the 16 bond issues sold during the fiscal year, the indentures as to 12 expressed the renewal and replacement fund requirement as a percent of depreciable property and were deemed adequate by the Commission; and the indentures as to 4 expressed the requirement as a percent of revenues which the Commission found acceptable since they appeared to afford no less protection to the bondholders than would be afforded under an appropriate percent-of-property basis.

During fiscal year 1960, the Commission has continued to require conformity with the provision contained in both the bond and the preferred stock Statements of Policy that the securities be freely refundable at the option of the issuer upon reasonable notice and payment of a reasonable redemption premium, if any. Continuing studies made by the Commission's staff with respect to electric and gas utility bond issues sold at competitive bidding, whether or not subject to the Act, indicate that the presence or absence of a restriction on free refundability has not affected the number of bids received by an issuer at competitive bidding or the ability of the winning bidder to market the bonds. This was discussed in the 25th Annual Report, at pages 140-41, which summarized the results of an examination of all electric and gas utility bond issues (including debentures) sold at competitive bidding between May 14, 1957, and June 30, 1959, by companies subject to the Act as well as those not so subject. This study has been continued for fiscal year 1960.

During the period from May 14, 1957, to June 30, 1960, a total of 240 electric and gas utility bond issues, aggregating \$5,045.6 million principal amount, were offered at competitive bidding. The refundable issues numbered 187 and accounted for a total of \$3,443.6 million, while the nonrefundable issues -- all except one being nonrefundable for a period of 5 years, and one being nonrefundable for a period of 7 years -- numbered 53 and totaled \$1,602 million principal amount. The number of refundable issues thus represented 77.0 percent of the total number of issues, while, in terms of principal amount, the refundable issues accounted for 68.2 percent.

The weighted average number of bids received on the refundable issues for the same period was 4.56, while on the nonrefundable issues it was 4.26. The median number of bids was 5 on the refundable and 4 on the nonrefundable issues. With respect to the success of the marketing of the bond issues, an issue was considered to be successfully marketed if at least 95 percent of the issue was sold at the syndicate price up to the date of termination of the syndicate. On this basis, 73.3 percent of the refundable issues were successful while 69.8 percent of the nonrefundable ones were successful. In terms of principal amount, 69.5 percent of the refundable issues were successful, while 69.6

percent of the nonrefundable ones were successful. Extension of the comparison to include the aggregate principal amounts of all issues which were sold at the applicable syndicate prices up to the termination of the respective syndicates, regardless of whether a particular issue met the definition of a successful marketing, indicates that 87.4 percent of the combined principal amount of all the refundable issues were so sold, as compared with 85.3 percent for the nonrefundable issues. These statistics developed in respect of the two groups of bond issues support the Commission's policy of requiring free refundability of utility bond issues subject to the Act.

In the 25th Annual Report, at page 141, reference was made to a comprehensive study of redemption provisions of corporate bonds being conducted at the Wharton School of Finance and Commerce of the University of Pennsylvania. It was stated that a preliminary draft report on the study had been completed shortly after the close of fiscal year 1959. It was subsequently determined by those making the study to extend its life to cover additional bond issues through at least December 31, 1959. As a result, the Wharton School study was not completed by the close of fiscal year 1960.

The three preferred stock issues which were filed with the Commission during fiscal year 1960, having an aggregate par value of \$18 million, all had protective charter provisions in substantial conformity with the requirements of the Statement of Policy on preferred stock.

PART VII PARTICIPATION OF THE COMMISSION IN CORPORATE REORGANIZATIONS UNDER CHAPTER X OF THE BANKRUPTCY ACT, AS AMENDED

The role of the Commission 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 in that the Commission does not initiate Chapter X proceedings or hold its own hearings. It has no authority to determine any of the issues in these proceedings. However, at the request of the judge or on the Commission's own motion, if approved by the judge, the Commission may participate in such proceedings in order to provide independent, expert assistance to the court, the participants, and investors on matters arising in such proceedings and, where the Commission considers such action appropriate, it may file advisory reports on reorganization plans. Thus, the facilities of the Commission's technical staff and its disinterested recommendations are placed at the service of the judge and the parties, affording them the views of impartial experts in a highly complex area of corporate law and finance. The Commission pays special attention to the interests of public security holders, who may not otherwise be effectively represented.

In any case where the scheduled indebtedness of a debtor corporation does not exceed \$3 million, the judge under Section 172 of Chapter X may, before approving any plan of reorganization, submit it to the Commission for its examination and report. If the indebtedness exceeds \$3 million, the judge must submit the plan to the Commission before he may approve it. Where the Commission files a report, copies of it, or a summary thereof, 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 or require the adoption of a plan of reorganization and is not obligated to file a formal advisory report on a plan.

The Commission's advisory reports on plans of reorganization are usually widely distributed and serve an important function. However, they represent only one aspect of the Commission's activities in cases in which it participates. The Commission, as a party to a Chapter X proceeding, is actively interested in the solution of every major issue arising therein, and the adequate performance of its duties requires that it undertake in most cases intensive legal and financial studies. Even in cases where the plans are not submitted to the Commission and no report is filed, the Commission must consider various reorganization proposals of interested parties while plans are being formulated, and be prepared to comment fully upon all plans that are the subject of hearings for approval or confirmation. In the exercise of its functions under Chapter X, the Commission has endeavored to assist the courts in achieving equitable, financially sound, expeditious and economical readjustments of the affairs of corporations in financial distress. To aid in attaining these objectives the Commission has lawyers, accountants and financial analysts in its New York, Chicago, and San Francisco regional offices who keep in close touch with all Chapter X hearings and issues. Supervision and review of the regional offices' Chapter X work is the responsibility of the Division of Corporate Regulation of the Commission, which also handles the actual trial work in cases arising in the Atlanta and Washington, D.C. regional areas.

SUMMARY OF ACTIVITIES

The Commission actively participated in 52 reorganization proceedings involving 80 companies (52 principal debtor corporations and 28 subsidiaries of those debtors) during the past fiscal year. The stated assets of these 80 companies totaled approximately \$567,094,000 and their indebtedness totaled approximately \$532,120,000. The proceedings were scattered among District Courts in 23 States, as follows: ten proceedings in New York; five each in Illinois and Kentucky; three each in Maryland and Pennsylvania; two each in Nevada, California, North Carolina, Florida, Oklahoma, Utah, and Texas; one each in Virginia, Michigan, Kansas, Iowa, Washington, New Jersey, North Dakota, Louisiana, Wyoming, Colorado, and Arizona. During the year, the Commission entered its appearance in nine new proceedings under Chapter X involving companies with aggregate stated assets of approximately \$25,703,000 and aggregate indebtedness of approximately \$27,850,000. They involved the rehabilitation of corporations engaged in the operation of such varied businesses as a supermarket food

chain, a race track, investment and mortgage loans, securities brokerage, shipbuilding, and home improvements and real estate. Proceedings involving seven principal debtor corporations were closed during the year. At the end of the year, the Commission was actively participating in 45 reorganization proceedings involving 71 companies.

THE COMMISSION AS A PARTY TO PROCEEDINGS

The Commission has not considered it necessary or appropriate that it participate in every Chapter X case. Apart from consideration of the excessive administrative burden of participating in every one of the 83 cases initiated during the fiscal year, many of the cases involve only trade or bank creditors and few stockholders. The Commission has sought to participate principally in those proceedings in which a substantial public investor interest is involved. This is not the only criterion, however, and in some cases involving only limited public investor interest, the Commission has participated because an unfair plan had been or was about to be proposed, the public security holders were not adequately represented, the reorganization proceedings were being conducted in violation of important provisions of the Act, the facts indicated that the Commission could perform a useful service, or the judge requested the Commission to participate.

[Footnote: In In the Matter of Southern Enterprise Corporation (S. D. Texas, Houston Div., No. 2548), the judge stated his reasons for requesting the Commission to participate as follows:

"* * * (1) the complexity of the corporate structure of Southern Enterprise Corporation and its several subsidiaries and the complexity of this reorganization proceeding, (2) the necessity for protection of the public investor interest of more than 885 stockholders, holding more than 211,300 shares at a cost of more than \$833,900.00 of the common capital stock of the debtor, (3) the necessity for the interests of creditors holding asserted claims against the debtor in excess of \$295,700.00, (4) and the desire of this Court and of the Trustee in this proceeding for the expert assistance in technical matters offered by the Securities and Exchange Commission."]

MATTERS RELATED TO THE PROCEEDINGS

When a party in Chapter X proceedings, the Commission has urged upon the court the procedural safeguards to which all parties are entitled. The Commission also has attempted in its interpretations of the statutory requirements to encourage uniformity in the construction of Chapter X and the procedures thereunder.

In the Shawano Development Corporation case, the Commission petitioned the court to remove the trustee on the ground that he was not disinterested as defined in section 158 of Chapter X. The Commission presented evidence that the trustee had acted as attorney

for the debtor within two years of the date of the filing of the Chapter X petition. The trustee resigned while the court had the matter under consideration.

In the case of Coffeyville Loan & Investment Company, Inc. the Commission moved the court to remove the trustee on the ground that his law firm had represented the debtor shortly before the institution of the Chapter X proceedings, recovered a judgment in its favor, and filed an attorney's lien for its fee. The judge denied the Commission's motion because, in his view, the particular disqualifying factor was not substantial enough to warrant removal of the trustee. However, the court stated in its opinion:

"It must be conceded that ... [the trustee] ... by the letter of § 158 falls within the class disqualified from appointment as trustee."

Also, in this case, a committee was organized purporting to represent both stockholders and creditors. The Commission objected to the formation of this committee on the grounds that the classes which the committee sought to represent had conflicting interests. Although the court overruled the Commission's objections to the committee, counsel for the committee on its behalf disclaimed representation of the stockholders and the committee is now acting solely on behalf of creditors.

In the case of TMT Trailer Ferry, Inc., the Commission objected to the approval and confirmation of a plan of reorganization because there was no adequate record on the insolvency of the debtor and because of the failure of the trustee to make the detailed investigation contemplated by Section 167 of Chapter X. The Commission petitioned for a complete investigation of the affairs of the debtor when the trustees sought to consummate the plan. The Commission provided the court and the trustee with information tending to show that irregularities had occurred which required full examination and that control of the reorganized company would be lodged in individuals who had been closely associated with the former management of the company, and who had made large profits trading in the debtor's securities. Based upon the Commission's evidence, the trustee withdrew his petition to consummate the plan and the court ordered an investigation.

In the Inland Gas Co. case, the Commission supported the appeal of three debenture holders from an order of the District court dismissing their petition to modify and amend the plan of reorganization after confirmation. The Court of Appeals, one judge dissenting, affirmed the District Court, and the bondholders' petition to the Supreme Court for a writ of certiorari was denied. The Court of Appeals based its decision primarily on the ground that the debtors had been in reorganization for over 20 years and that the proposed modifications to the plan, which the court felt constituted, in effect, a new plan of reorganization, would open the door to further hearings and litigation. The Court of Appeals concluded that the district judge did not abuse his discretion in denying the bondholders' petition. The dissenting opinion by Judge Miller pointed out that the majority gave little or no consideration to the fact that the proposed amendments made a

substantial increase in the amount of cash available for payment of the claims of certain creditors.

In the Texas Portland Cement Company case, the Commission's personnel worked closely with the trustees throughout the section 167 investigation. Many witnesses were examined and as a result of the investigation the trustees on June 27, 1960, filed suit for damages against fifteen defendants. The amount of the recovery sought by the trustees is \$1,695,000. Another result of the trustees' investigation, which was aided by the Commission and the Attorney General's Office for the State of Texas, was a final judgment in an action brought by the state canceling 121,356 shares of stock improperly issued.

In the case of Swan Finch Oil Corporation, the trustees of the debtor recovered all of the outstanding common stock of Keta Gas & Oil Company, a corporation which was seeking an arrangement of its unsecured indebtedness, under chapter XI of the Bankruptcy Act, in the Western District of Pennsylvania. The trustees of Swan Finch later filed a chapter X petition for the reorganization of Keta as a subsidiary of Swan Finch in the Southern District of New York, where the Swan Finch proceeding was pending. The court-appointed receiver of Keta in the Chapter XI proceeding opposed the trustee's petition and alleged inter alia that the District Court for the Southern District of New York did not have jurisdiction to entertain the Chapter X petition because of the pending Chapter XI proceeding in the Western District of Pennsylvania. The Commission supported the trustees, and the court approved the trustees' petition. The Chapter XI receiver appealed; the appeal was argued but no decision had been rendered by the Court of Appeals at the close of the fiscal year.

In the case of U.S. Durox Corporation of Colorado the Commission petitioned the court for an order to restrain certain attorneys, who were also creditors of the debtors and whose claims as creditors has been subordinated to general creditors' claims under the trustees' plan of reorganization, from representing other general creditors whose claims were not subordinated. Since a conflict of interests existed between the subordinated creditors and other creditors, the referee, as special master, recommended to the judge that the Commission's petition should be approved and that an order be issued restraining the attorneys. The matter was before the judge at the close of the fiscal year.

Prior to the formulation of a plan in the case of Food Town, Inc., several supermarket chains submitted bids to purchase the debtor's grocery chain in the metropolitan Washington, D.C., area. Bidders eventually dropped out until only Kroger Co. and Greenbelt Consumer Services, Inc., remained. While Greenbelt's bid appeared to be better than that of its competitor, counsel for the trustee and for the Commission agreed that additional competition could be generated if a plan embodying both offers was submitted to the court. At the hearing on the plan, the two chains engaged in further bidding with Kroger Co. making the highest offer. As a result the estate was benefited by an additional \$120,000.

PROBLEMS IN CONNECTION WITH THE ADMINISTRATION OF ESTATES

The trustee of The Kentucky Jockey Club, Inc., faced with a desperate financial situation, negotiated a four-year lease of the debtor's track. Chapter X requires that security holders be given an opportunity to prepare plans of reorganization and to vote on any plan before it can be carried out. The Commission contended that negotiating such a lease, without an option on the part of the trustee to terminate it in the event of a sale or internal reorganization, was tantamount to effecting a plan without a vote of security holders. The Commission, in conjunction with a bondholders' committee, prevailed upon the lessee to modify the proposed lease. The modifications, all beneficial to the debtor, included the right of termination of the lease by the trustee and excluded a proposed option to the lessee to meet any purchase offer.

In Magnolia Park, Inc. the trustee's plan of reorganization provided for a sublease of the debtor's race track to Jefferson Downs, Inc. to operate the track and pay a percentage of the pari-mutuel pool as rental. Prior to confirmation the Louisiana state legislature amended its pari-mutuel tax laws, the effect of which was to increase the anticipated income of Jefferson Downs. The judge indicated that a part of this increment in earnings should inure to Magnolia. Representatives of Jefferson Downs consulted with the staff and urged the Commission to intercede in order to resolve the problem. Commission counsel conferred with the judge, and after extensive negotiations with all the interested parties an agreement was reached which materially benefited the estate. The plan of reorganization was subsequently confirmed.

TRUSTEE'S INVESTIGATIONS

A complete accounting for the stewardship of corporate affairs by the old management is a requisite under the Bankruptcy Act and 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 company's affairs, diverted its funds to their own use or benefit or been guilty of other misconduct. The staff of the Commission participates in the trustee's investigation so that it may be fully informed as to all details of the financial history and business practice of the debtor. The Commission views its duty under Chapter X as requiring it to call the attention of the trustee, or the court if necessary, to any matters which should be acted upon.

In the case of TMT Trailer Ferry, Inc. the Commission petitioned the court to direct a complete investigation of the debtor's affairs. Commission counsel was authorized to advise the court that the Commission's staff would work closely with the trustee and his counsel and advise them with respect to the witnesses to be called and the areas of

investigation to be covered. The court ordered the investigation. During a period of four months the depositions of 33 witnesses were taken, a total of 2,200 pages of testimony was transcribed, and over 60 exhibits were made a part of the record. Thereafter, the Commission assisted the trustee and his counsel in evaluating the evidence and in preparing the trustee's report which was filed just after the close of the fiscal year.

In the Food Town case, the trustee filed a very brief report of his cursory investigation in which he reported that nothing had come to his attention to indicate significant irregularities, misconduct or mismanagement. The Commission objected to this inadequate report, and suggested various matters that demanded investigation. An investigation by the Commission's staff disclosed that within four months of the filing of the petition, Food Town's secured creditor had received from the debtor \$300,000 of secured debentures in place of a pre-existing unsecured debt for the same amount. This transaction appeared to constitute a voidable preference. Thereafter, the trustee, through his successor counsel, submitted a plan of sale which stated that the trustee's investigation was not completed and that the distribution of the proceeds of sale would be deferred pending its completion and the determination of the status of the various claims, including the \$300,000 claims.

INTERVENTION IN CHAPTER XI PROCEEDINGS

Chapter XI of the Bankruptcy Act provides a procedure by which debtors can arrange their unsecured debts under court supervision. Where the proceeding should have been brought under Chapter X, Section 328 of the Bankruptcy Act authorizes the Commission to make application to the court to dismiss a Chapter XI proceeding, unless the petition that initiated the proceeding is amended to comply with the requirements of Chapter X.

The importance of the Commission's role in Chapter XI proceedings was demonstrated in the attempted Pickman Trust Deed Corporation arrangement. The debtor, a second trust deed dealer and broker in the San Francisco area, engaged in questionable activities which culminated in the commencement of an administrative proceeding on March 29, 1960, by the California State Real Estate Commissioner for the revocation of the company's license, and the licenses of its president and secretary. It appeared that the debtor was short some \$700,000 of customers' funds which were either deposited with it for investment or were earnings on investments left with it "in trust" for accumulation and reinvestment. On April 21, 1960, Pickman filed a petition for an arrangement pursuant to Chapter XI of the Bankruptcy Act. Believing that an arrangement would not accomplish the thorough-going reorganization needed to protect the interests of the more than 1,300 public investors, the Commission petitioned the Court to dismiss the arrangement proceeding unless the debtor amended its petition to comply with the provisions of Chapter X. The debtor filed an amended petition, which was approved by the Court on June 13, 1960.

In the *Lea Fabrics, Inc.* case, the Commission moved to dismiss the Chapter XI proceeding unless the petition were amended to comply with Chapter X on the ground that after the Chapter XI arrangement a thorough-going reorganization would be effected outside the jurisdiction of the court. This motion was denied by the District Court, and the Court of Appeals for the Third Circuit affirmed. Before the time for filing a petition for a writ of certiorari expired, the debtor was adjudicated a bankrupt. The Commission then moved the Court of Appeals to vacate its judgment and remand the case to the District Court with directions to vacate as moot its order refusing to dismiss the debtor's petition under Chapter XI. This motion was denied without opinion by the Court of Appeals. A petition for a writ of certiorari was filed by the Commission. The Supreme Court, in a per curiam opinion, granted the petition, vacated the judgment of the Court of Appeals, and remanded the case to the District Court with instructions to dismiss the petition under Chapter XI as moot.

Kirchofer & Arnold, Inc. involved a corporation engaged in the investment and financing businesses which had filed a Chapter XI petition but had taken no steps to propose an arrangement. The Commission's staff indicated to the management of the debtor and a creditors' committee that the Chapter XI petition was improper and that a Chapter X reorganization would better serve the interests of all parties to the proceeding. The debtor's petition was voluntarily amended to comply with the requirements of Chapter X.

ACTIVITIES WITH REGARD TO ALLOWANCES

Every reorganization case ultimately presents the difficult problem of determining the allowance of compensation to be paid out of the debtor's estate 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 from the estate for the services it renders, has sought to assist the courts in protecting debtor estates from excessive charges and at the same time equitably allocating compensation on the basis of a claimant's contribution to the administration of an estate and the formulation of a plan.

In the case of *TMT Trailer Ferry, Inc.*, the District Court granted interim allowances to attorneys representing general unsecured creditors. The Commission objected on the ground that interim allowances should not be granted except to the trustee and his counsel and that the notice required by the statute was not given. The Commission also objected to the applications for interim allowances by the trustee and his counsel on the ground that the required notice of the hearing on their applications was not given. Although the interim allowances were granted, the procedure recommended for complying with the notice provisions was approved by the Court for all subsequent interim allowances to the trustee and his counsel.

In the *Kirchofer & Arnold* case, the Commission filed a memorandum with the Court setting forth objections to the applications for allowances by attorneys for the debtor in

the prior Chapter XI proceeding on the grounds that such allowances were premature in light of the status of the reorganization proceeding and that the notice provisions had not been complied with. The Court thereupon withheld ruling on the applications.

In the Empire Warehouses case the parties to the reorganization had requested a total of \$276,846 in fees. The Commission recommended an allowance of slightly more than \$170,000. The Court allowed a total of \$185,582, following the Commission's recommendations, with respect to all but 2 of the applicants, and commended the Commission for its assistance, stating:

Sixteen applications for allowances and expenses were filed and each was carefully and analytically examined by the S.E.C., as is evidenced by the excellent comprehensive report which it filed. The court is grateful to the S.E.C. not only for its very helpful advisory report on the matter of the applications for allowances and expenses, but also for its invaluable assistance throughout this entire proceeding which was extended over three years. Many troublesome and complicated matters arose in this reorganization and the S.E.C. contributed much toward their solution.

In the F. L. Jacobs Company case, receivers were appointed in New York prior to the approval of the Chapter X petition in Michigan. The receivers and their counsel requested a total of \$50,000 in fees. The Commission recommended a total of \$20,000 and the Court granted that amount.

In the case of Adolph Gobel, Inc., the parties to the reorganization filed applications for supplemental allowances for work performed subsequent to the granting by the Court of final allowances. The applications totaled \$32,250, the Commission recommended allowances of \$13,850, and the Court allowed \$16,250.

In the case of General Stores Corporation applications for allowances of \$492,150 for compensation and \$41,696 for expenses were filed by the parties to the reorganization. The Commission recommended allowances of \$208,000 for compensation and \$7,004 for expenses, and the Court awarded \$268,500 and \$16,743, respectively. The Court allowed the exact amounts recommended by the Commission in 6 out of 10 instances and reduced the awards to other applicants to figures close to the amounts recommended by the Commission.

The Commission urged that the proponent of the plan, who was both a creditor and a stockholder, was not entitled to compensation for his services as stockholder, because the proponent's activities were primarily directed to his own self-interest and not to the benefit of the estate. The Court agreed with the Commission's recommendation but for the reason that the estate should not be subjected to two separate fees since as a creditor the proponent was separately represented by counsel who were also claiming compensation. The Commission also recommended that the proponent's joint counsel were not entitled to compensation, and that one of such counsel was also barred from

compensation under Section 249. The Court agreed with the Commission on the application of Section 249, but granted an allowance to the proponent's other counsel for services deemed to be of benefit to the estate.

The Court agreed with the Commission's recommendation as to the Collateral Trustee, but disagreed with the Commission's recommendation in granting additional compensation to his counsel. The Collateral Trustee filed a notice of appeal, and also filed a motion for leave to appeal which was denied by the Court of Appeals for the Second Circuit. A subsequent motion by the Chapter X trustee to dismiss the Collateral Trustee's appeal as of right, supported by the Commission, was granted by the Court of Appeals. The Court agreed with the Commission's view that Section 250 was applicable.

ADVISORY REPORTS ON PLANS OF REORGANIZATION

During the fiscal year, the Commission issued one advisory report and two supplemental advisory reports. Generally speaking, an advisory report is prepared only in a case involving a substantial public investor interest and raising significant problems. On occasion, because of the exigencies of time or for other reasons, no written report is filed but, instead, Commission counsel makes a detailed oral presentation of the Commission's views and the reasons therefor.

In the case of Hudson & Manhattan Railroad Co. the Commission submitted an advisory report during fiscal year 1959 which found that a proposed plan was fair and equitable and feasible but recommended that it should incorporate an appropriate provision for the selection of the initial directors after reorganization. The trustee filed an amendment in accordance with the Commission's views. The plan, as thus amended, was approved by the Court in its order of May 1, 1959, and was accepted by the requisite majorities of the holders of senior bonds (i.e., first mortgage bonds and refunding bonds) and general unsecured claims of the debtor, but not by the holders of the junior bonds (i.e., adjustment income bonds).

The trustee petitioned the Court to confirm the plan and to appraise and pay in cash the value of the junior bondholders' claims in lieu of the distributions provided for them under the plan. A hearing commenced on February 15, 1960, but prior to its completion another amendment was submitted by the trustee. Following this modification, a Supplemental Report dated April 8, 1960 was filed by the Commission finding the modified plan to be fair and equitable and feasible. The Court approved the modified plan on April 21, 1960. A summary of the Commission's reports was filed on April 29, 1960.

The trustee's modified plan is predicated upon the assumption that the debtor is insolvent. Publicly held first mortgage bonds are treated on a parity with the refunding bonds. The modified plan permits only the senior bondholders to share in the value of the mortgaged assets, but recognizes the claims of the junior bondholders against certain assets allegedly

not subject to the mortgage liens ("free assets"); it also provides a contingent interest for the junior bondholders in the proceeds of a sale of the debtor's railroad, if such a sale realizes more than is required to meet the balance of the claims of the senior bondholders.

Under the modified plan, the debtor will continue its corporate existence as a real estate company and a new railroad company will be organized as a wholly-owned subsidiary. The debtor will transfer to the new railroad company substantially all of its railroad properties together with necessary working capital and will retain all its other assets, consisting principally of two office buildings. The real estate company will distribute to the senior bondholders a new issue of \$10,038,100 principal amount of first mortgage bonds and 590,476 shares of a new Class A common stock, representing about 91 percent of the equity; and to the junior bondholders 58,849 shares of a new Class B common stock, representing about 9 percent of the equity. The real estate company will be empowered, for a period of two years following the date of consummation of the modified plan, to issue up to \$2,500,000 principal amount of new prior lien obligations, or to borrow from banks, to finance modernization of the Hudson Terminal Buildings.

Several common stockholders appealed from the order of the District Court approving the trustee's plan and finding that the debtor was insolvent and that the stockholders have no interest in its assets. On May 11, 1960, the Court of Appeals affirmed the lower court's decision. In the summary of its reports, the Commission had stated with respect to the stockholders' interest in the debtor:

"Aggregate claims exceeding \$70,000,000 would be required to be satisfied in full before any participation could be accorded holders of preferred and common stock. Clearly, there is no basis or present valuation for any participation by these security holders. It has been urged, however, that some contingent interest security be issued to recognize the possibility that a sale of the railroad properties would realize enough to satisfy all creditors' claims and leave a balance distributable to stockholders. In our view, such a possibility is so remote as to be of no cognizable value. Moreover, to distribute securities in the nature of warrants or contingent interest certificates to stockholders in these circumstances would in our view create a highly deceptive and speculative security which would be injurious to the public interest and the interest of investors and would render the modified plan unfeasible."

The Commission filed an advisory report with respect to a plan of reorganization for Parker Petroleum Co., Inc. which is engaged in the business of exploration, development and operation of oil and natural gas properties in Kansas, Oklahoma and Texas. The trustee's plan of reorganization provided that Occidental Petroleum Corporation and certain individuals would purchase 750,000 shares of the new common stock of the reorganized company for \$1 per share; the old common stockholders would be offered up to 250,000 shares at the same price; and additional monies would be borrowed on a first mortgage. Two separate series of debentures in the aggregate amount of \$1,400,000

would be issued to creditors with varying amounts of cash. The old preferred and common would receive new common.

The Commission in its Advisory Report concluded that the plan was not fair since it did not accord the preferred stockholders and one of the secured creditors the equitable equivalent of their rights as required by law. The Commission also stated that the plan was not feasible since the proposal of Occidental and certain individuals to contribute new equity capital was not a firm commitment.

The plan was subsequently amended. In its Supplemental Advisory Report, the Commission concluded that, while the amendments met its prior objections in three respects, they failed to correct most of the basic deficiencies, and, in part, added additional elements of unfairness. The Commission reiterated that the amended plan was unfeasible because Occidental had not made a firm commitment to invest new equity capital.

The plan was further amended in minor respects and, over the Commission's objections, was approved by the Court. After acceptance by the requisite numbers of each class of creditors and security holders, the plan was confirmed by the Court. Within a month after the plan had been confirmed, Occidental notified the trustee that it would not perform its agreement because of an alleged material change in the debtor's status resulting from a reappraisal of its gas reserves. The judge has refused to vacate the order of confirmation, having determined that there had been no material change, and ordered Occidental to perform.

In the case of El-Tronics, Inc. which manufactures electrical and electronic equipment at plants in Pennsylvania and California, the trustees submitted a plan which provided for the continuation of operations and for the acquisition of the assets of six corporations controlled by the proponent of the plan. In return, the reorganized company would issue to the proponent \$2,000,000 principal amount of 5 percent subordinated convertible debentures. In addition, the proponent would purchase \$500,000 principal amount of such debentures and 1,300,000 shares of common stock for \$1,700,000. As a result of the Commission's analysis, as presented at the hearing on the plan, it was modified in several respects to provide for the issuance of additional debentures to the proponent, in lieu of a cash payment for inventory, and for an unconditional commitment by him.

In the U.S. Durox Corporation case, the Commission filed a memorandum in support of the Trustee's plan of reorganization. The plan provided, inter alia, for the sale of the debtor's assets and for the distribution of the proceeds to public creditors and stockholders. The plan subordinates claims and stock of insiders to publicly held stock to the extent of the offering price of that stock. The Referee to whom the plan was referred for hearing has filed a well-reasoned report recommending approval of the plan. The plan was under consideration by the judge at the end of the fiscal year.

PART VIII

ADMINISTRATION OF THE TRUST INDENTURE ACT OF 1939

The Trust Indenture Act of 1939 requires that bonds, notes, debentures and similar securities publicly offered for sale, except as specifically exempted by the Act, be issued under an indenture which meets the requirements of the Act and has been duly qualified with the Commission. The Act requires that indentures to be qualified include specified provisions which provide means by which the rights of holders of securities issued under such indentures may be protected and enforced. These provisions relate to designated standards of eligibility and qualification of the corporate trustee to provide reasonable financial responsibility and to minimize conflicting interests. The Act outlaws exculpatory provisions formerly used to eliminate all liability of the indenture trustee and imposes on the trustee, after default, the duty to use the same degree of care and skill "in the exercise of the rights and powers invested in it by the indenture" as a prudent man would use in the conduct of his own affairs.

The provisions of the Trust Indenture Act are closely integrated with the requirements of the Securities Act. Registration pursuant to the Securities Act of securities to be issued under a trust indenture subject to the Trust Indenture Act is not permitted to become effective unless the indenture conforms to the requirements of the latter Act, and necessary information as to the trustee and the indenture must be contained in the registration statement. In the case of securities issued in exchange for other securities of the same issuer and securities issued under a plan approved by a court or other proper authority which, although exempted from the registration requirements of the Securities Act, are not exempted from the requirements of the Trust Indenture Act, the obligor must file an application for the qualification of the indenture, including a statement of the required information concerning the eligibility and qualification of the trustee.

[table omitted]

PART IX

ADMINISTRATION OF THE INVESTMENT COMPANY ACT OF 1940

The Investment Company Act of 1940 provides for the registration and regulation of companies engaged primarily in the business of investing, reinvesting, holding and trading in securities. The Act requires, among other things, disclosure of the finances and investment policies of these companies, prohibits such companies from changing the nature of their business or certain of their investment policies without the approval of their stockholders, regulates the means of custody of the companies' securities, prohibits underwriters, investment bankers and brokers from constituting more than a minority of the directors of such companies, requires new management contracts to be submitted to

security holders for their approval, prohibits transactions between such companies and their officers, directors and affiliates except with the approval of the Commission and regulates the issuance of senior securities. The Act requires face-amount certificate companies to maintain reserves adequate to meet maturity payments upon their certificates.

The securities of investment companies which are offered to the public are also required to be registered under the Securities Act, and the companies must file periodic reports. Such companies are also subject to the Commission's "proxy rules" and closed-end companies are subject to "insider" trading rules. The Division of Corporation Finance and the Division of Corporate Regulation both assist the Commission in the administration of the statute, the former being concerned with the disclosure provisions and the latter with the regulatory provisions.

COMPANIES REGISTERED UNDER THE ACT

As of June 30, 1960 there were 570 investment companies registered under the Act and the estimated aggregate market value of their assets on that date was \$23.5 billion. These figures represent an overall increase of 58 registered companies and an increase of roughly \$3.5 billion in the market value of assets over the corresponding totals at June 30, 1959. These companies were classified as follows:

[table omitted]

During the fiscal year ending June 30, 1960, 67 new companies registered under the Act while the registrations of 9 companies were terminated. The classification of these newly registered companies is as follows:

[table omitted]

Two of the new registered companies were deregistered during the year.

GROWTH OF INVESTMENT COMPANY ASSETS

The striking growth of investment company assets during the past 20 years, particularly in the most recent years, is shown in the following table:

[table omitted]

INSPECTION PROGRAM

Pursuant to its statutory authority under Section 31 of the Investment Company Act the Commission initiated a regular program for the periodic inspection of investment companies in 1957. Up to the fiscal year 1960, 30 companies had been inspected pursuant to this program. As in prior years a number of inspections were undertaken by staff teams consisting of an attorney or analyst from the Division of Corporate Regulation and a securities investigator from the appropriate field office in order to combine the specialized training and knowledge of the Washington staff concerning the regulatory requirements of the Investment Company Act with the field experience and investigative expertness of field office personnel. However, the Commission's program contemplates placing the principal responsibility for making inspections in the regional offices as personnel in such offices become sufficiently experienced in the statutory requirements applicable to investment companies. In line with this program the staff of the Division of Corporate Regulation during the 1960 fiscal year conducted a training course on inspections under the Investment Company Act for certain staff members of the Boston, New York, Chicago and Washington regional offices. With knowledge obtained at this course and experience gained in previous inspections accompanied by Division personnel, staff members of regional offices exclusively made inspections of six investment companies during fiscal 1960. The Washington office staff will continue to review the field office inspection reports, evaluate problems of regulatory compliance raised by such reports and obtain necessary corrective action on the part of the investment companies concerned.

These inspections, although involving only a fraction of the total number of registered investment companies, have revealed the need for continuous field supervision. Inspections made during the term of the program indicated, in some instances, noncompliance with regulatory provisions of the Investment Company Act. For example: (1) improper selling practices by salesmen who promoted the sale of mutual fund shares just prior to dividend payment dates without explaining that the amount of dividend to be paid was included in the purchase price of the shares on which a sales-load was paid and that receipt of the dividend would represent a return of capital on which the shareholder would be liable for income taxes; (2) deviations from fundamental policy without approval of stockholders; (3) improper composition of boards of directors because of the affiliation of directors; (4) acquisition of securities during an underwriting where an affiliated relationship existed between underwriter and company; (5) sale of securities to a company by an affiliated person acting as a principal; (6) noncompliance with the requirements for the custody of the portfolio securities of a company under Section 17 of the Act; and (7) failure to obtain approval of stockholders or the Board of Directors for an investment advisory contract.

There were also instances where books and records of the companies were inadequate or lacking. For example: (1) failure to record the date and time of requests for redemption, thus making it impossible to determine whether the investors received their correct net asset value; (2) failure to maintain purchase and sales journals; failure to maintain ledger accounts for broker-dealers used by the company for its portfolio security transactions;

and (3) failure to keep proper vouchers for out-of-pocket expenses. In addition, the staff noted instances where the custodian did not adhere to the terms of the custodianship agreement, or the Commission's regulations on the safekeeping of portfolio securities of the company. In some instances, there was a considerable delay in the transmission to the investment companies of funds received by dealers selling mutual fund shares.

In cases where deficiencies are noted, unless other action is indicated, they are brought to the attention of the investment companies involved so that corrective steps may be taken.

STUDY OF SIZE OF INVESTMENT COMPANIES

On behalf of the Commission, the Securities Research Unit of the Wharton School of Finance and Commerce of the University of Pennsylvania has been conducting a fact-finding survey in connection with a study of the problems created by the growth in size of investment companies. This inquiry is being made pursuant to the direction contained in Section 14 (b) of the Investment Company Act. The Wharton School gathered information by use of a questionnaire sent to registered investment companies during the fiscal year 1959. The Wharton School is presently engaged in processing and analyzing the information obtained through use of the questionnaire.

Preliminary reports on three phases of the study were received by the staff during the fiscal year. These phases are: (1) Origin and Scope of the Study and Summary of Principal Findings, (2) the Organization and Control of Open-End Investment Companies and (3) Growth of Funds in the Investment Company Industry, 1952-1958. A further preliminary report covering three more phases of the study is planned in the next fiscal year. These phases are (4) Formulation of Investment Decisions by Management and Trading Procedures, (5) Control of Portfolio Companies by Investment Companies, and (6) Costs in the Investment Company Industry. A phase dealing with the impact of size of investment companies on the securities markets is also in preparation.

When the full report on the size study survey is received from the Wharton School, it is expected that the Commission will be in a position to determine whether the increased size of investment companies has created any problems which require specific remedial legislative recommendations by the Commission to the Congress.

CURRENT INFORMATION

The Commission's rules promulgated under the Act require that the basic information contained in notifications of registration and in registration statements of investment companies be kept up-to-date, through periodic and other reports, except in cases of certain inactive unit trusts and face-amount companies. The following current reports and documents were filed during the 1960 fiscal year:

[table omitted]

The foregoing statistics do not reflect the numerous filings of revised prospectuses by open-end mutual funds and unit investment trusts making a continuous offering of their securities. These prospectuses, which must be checked for compliance with the Act, are required to show material changes which have occurred in the operations of the companies since the effective date of the prospectuses on file. In this respect the registration of the securities of such companies is essentially different from the registration of the usual corporate securities.

During the past year 15 Small Business Investment Companies have registered under the Investment Company Act. These registrations are 22.4 percent of the total registrations under the Investment Company Act during the fiscal year. Pursuant to an arrangement with the Small Business Administration, the staff of the Commission examines a copy of each Proposal to Operate as a Small Business Investment Company, filed on SBA Form 414, to determine the status of the Proposed Operator under the Investment Company Act and the other statutes administered by this Commission. Both the Proposed Operator and the SBA are notified as to the staff's conclusion in each case.

As described more fully hereafter a number of rules designed to simplify the operations of Small Business Investment Companies under the statutes administered by the Commission were adopted in fiscal 1960.

APPLICATIONS AND PROCEEDINGS

Since certain types of transactions are prohibited by the Investment Company Act in the absence of an exemptive order by the Commission issued upon a determination that specified statutory standards have been met, one of the principal activities of the Commission in its regulation of investment companies is the processing of applications for such exemptive orders. Under Section 6 (c) the Commission, by rules and regulations, upon its own motion or by order upon application, may exempt any person, security or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Other Sections, such as 6 (d), 9 (b), 10 (f), 17 (b) and 23 (c) contain specific provisions and standards pursuant to which the Commission may grant exemptions from particular sections of the Act or may approve certain types of transactions. Also, under certain provisions of Sections 2, 3, and 8 the Commission may determine the status of persons and companies under the Act.

There were 184 applications under various sections of the Investment Company Act before the Commission during the fiscal year 1960. The various sections of the Act with

which these applications were concerned and their disposition during the fiscal year are shown in the following table:

[table omitted]

Usually the applications for exemptions under the Act are processed without holding formal hearings; however, hearings are held when the impact of the proposal upon investor or the public interest are substantial or matters of fact or of law are in dispute.

In the past fiscal year, the following matters upon which hearings had been held were determined:

In Great American Life Underwriters, Inc. the Commission, in view of the discontinuance of the company's sale of face amount certificates and its further conclusion that applicant was and is primarily engaged in the insurance business through controlled subsidiaries, ruled that applicant should be granted an exemption from the Investment Company Act on the ground that it is not the type of company intended to be regulated thereunder. Among the other considerations leading to this conclusion were the facts that applicant has a very substantial part of its income from its holdings of stock in its insurance subsidiary and that applicant's officers and directors have been active in the management and operation of the insurance subsidiary.

In determining that the exemption might be made retroactive, the Commission pointed out that the company would have been entitled to the exemption at any time, that it failed earlier to file an application for exemption because of the good faith through mistaken belief that it was not registered under the Act, that it is clearly not now an investment company and was at all times primarily engaged in the insurance business, and its outstanding face-amount certificates were at all times protected by reserves on deposit with a state agency and have been reduced to the point where they are insignificant in comparison to applicant's assets.

In Atlas Corporation the Commission held that the proposed merger transactions between affiliates were exempted from Section 17 (a) of the Act since the terms of the merger were reasonable and fair and did not involve overreaching, and in addition were consistent with the stated policies of Atlas, the investment company, and the general purposes of the Investment Company Act.

In Civil and Military Investors Mutual Fund, Inc. the Commission denied a petition for modification of a 1958 decision and order of the Commission which held that the company's name, and specifically the words "Civil and Military Investors" therein, are deceptive and misleading and thus violative of the Investment Company Act.

In Investors Diversified Services, Inc. the Commission denied the company's application for an exemption which would have allowed the company to sell shares at a reduced load

to members of certain associations. The Commission concluded that a showing had not been made by applicants which would entitle them to a special exemption from the provisions of Section 22 (d) which prohibits a registered investment company from selling its redeemable shares to any person except at a current public offering price described in its prospectus.

In Eurofund, Inc. the Commission granted an exemption from Section 17 (f) (1) of the Act to permit the deposit of certain securities of foreign issuers owned by the company with foreign banks, as agents of the company's domestic custodian bank. These foreign banks also service such securities and their use as custodian permits substantial economies. The Investment Company Act and the rules thereunder require that each registered management company shall maintain its securities either in the custody or the safekeeping of a bank. The definition of the word "bank" in the Investment Company Act does not include a foreign bank.

Two additional cases in which decisions were rendered after hearings are discussed hereafter under "Variable Annuities."

At the close of the fiscal year decision was pending in three cases in which hearings had been held. Securities Corporation General involved a request for revocation of a prior exemptive order upon the ground that the board of directors of the company was not elected in accordance with the requirements of Section 16 (a) of the Act Century Investors Inc., et al. involved the merger of two closed-end investment companies into a third company, and the exemption of the surviving company from all provisions of the Act. The merger would effect corporate simplification and eliminate pyramiding in violation of Section 12 (d)(1) of the Act. Madison Fund, Inc., International Mining Corporation involved an exemption application under Section 17 (b) for a proposed sale of assets through a merger of a controlled company of a registered investment company with an affiliated company.

VARIABLE ANNUITIES

Following a Supreme Court decision 1X which made them subject to registration under the Investment Company Act, Variable Annuity Life Insurance Company of America and Equity Annuity Life Insurance Company registered under the Investment Company Act and filed application for exemptions from certain of its provisions. The Commission issued its decision on the application during the fiscal year.

The variable annuity contracts which each of these companies issue provide that the purchasers' payments will be invested by the issuing company in a securities portfolio. Prior to the time "annuity payments" commence the contract may be redeemed at its current value, which will depend upon the investment performance and then current value of the underlying stock portfolio.

At the end of the pay-in period the contract provides for variable monthly payments by the company to the holder for the remainder of his life or other elected pay-out period. These payments will be made on the basis of a fixed number of so-called units which will vary in value in accordance with the value of the underlying portfolio; and the number of such units will depend upon the amount accumulated during the pay-in period and various other factors such as the age and sex of the contract holders and the type of pay-out elected.

The Commission's decision exempts these companies from the prohibitions of the Investment Company Act against the issuance of senior securities. Since these variable annuity contracts are senior securities in relation to the companies' capital stock, an exemption was necessary to permit their issuance. The decision points out that the variable annuity contracts are designed to place on the contract holders the investment risks ordinarily associated with the common stock of an investment company, as distinguished from the usual type of fixed-obligation senior security. The exemption is based on this characteristic of the contracts as well as various protections for investors which are present in the insurance laws to which the companies are subject, and various undertakings by the companies and conditions imposed by the Commission's order.

Exemption was also granted the companies to permit them to collect the sales charges on their variable annuity contracts over an assumed pay-in period of 12 years in the Variable Annuity Life Insurance Company case and 10 years in the Equity Annuity Life Insurance Company case. The Investment Company Act requires that where, as here, an investment company's securities are sold on a periodic payment plan basis with a larger sales charge imposed in the first year than in later years, the sales charges must be spread over the life of the plan so as to average not in excess of 9 percent of all the payments. In the case of Variable Annuity Life Insurance Company, the sales charge on monthly payment contracts is 50 percent of the first year's payments and 5 percent of the payments for the next 11 years for a 12 year average of 8.75 percent; and in the case of Equity Annuity Life Insurance Company 40 percent of the first year's payments and 5 percent of the payments for the next 9 years for a 10 year average of 8.9 percent.

Since the larger first year's sales charges are, in effect, prepayment for future purchases and services, the Investment Company Act requires that the net proceeds of these periodic payment plans be placed in a separate trust with a bank, thus ensuring fulfillment of the plan in the event the sponsor should abandon it. The Commission exempted the applicants from this separate trust requirement in view of the protections provided by the insurance laws to which they are subject; but this exemption does not relieve them from the Investment Company Act's requirement that the charges to be made by the companies for administering the contracts shall be in such reasonable amount as the Commission shall prescribe, and jurisdiction was reserved for this purpose. Charges which the companies propose to deduct are, in the case of Variable Annuity Life Insurance Company, 5 percent of the payments in the first year, 9 percent in each of the next 11

years and 11 percent thereafter; and in the case of Equity Annuity Life Insurance Company, 10 percent in the first year, 7 percent in each of the next 9 years and 8 percent thereafter. Variable Annuity Life Insurance Company also proposes to deduct from the value of the contract holder's interests an annual charge of 1.8 percent of such value, and Equity Annuity Life Insurance Company proposes to deduct 1 percent of such value annually with the right to increase the deduction to 1.8 percent. The foregoing charges include amounts to defray the companies' administrative expenses and other expenses including taxes, investment advice, and contingent mortality reserves as well as to provide a margin for profits.

A request for exemption from prohibitions of the Investment Company Act against transactions with affiliates to permit the companies to make advances or bonus payments in unlimited amounts to affiliated persons was denied by the Commission in view of the possible adverse effect of these "insider" transactions on the companies' common stockholders. The Commission indicated it would consider any modified request which appropriately limits the amounts of such advances or bonuses. The Commission refused to relieve the companies from the prohibitions of the Investment Company Act against postponing, for more than seven days after a request for redemption is made, the payment of the redemption value of the variable annuity contracts.

In the Equity Annuity Life Insurance Company case, an exemption was denied from the Investment Company Act's requirement of a uniform public sales price for redeemable securities. Equity Annuity Life Insurance Company sought this exemption to enable it to sell its variable annuity contracts to individuals who combine their separate purchases to obtain the more favorable group contract prices. In both the Variable Annuity Life Insurance Company and Equity Annuity Life Insurance Company cases an exemption was granted, consistent with the Commission's exemptive Rule 22d-1 (e), to permit a lower public sales price on group contracts sold to pension or profit-sharing plans qualified under the Internal Revenue Code.

The decision recognizes that, apart from the corporations themselves, the variable annuity arrangement involves separate investment companies either as a "fund" or "trust", comprised of the variable annuity contract holders and the proceeds of their payments. The Commission exempted these separate investment companies from registration under the Investment Company Act since Variable Annuity Life Insurance Company and Equity Annuity Life Insurance Company are both registered under the Investment Company Act and the contract holders thus receive its protections.

LITIGATION UNDER THE INVESTMENT COMPANY ACT

On April 21, 1960 the Commission instituted an action against The Equity Corporation, Equity General Corporation, and Development Corporation of America to enjoin these companies from violations of the anti-pyramiding provisions of the Investment Company

Act of 1940 and to compel Equity General Corporation to comply with the registration provisions of the Act. The complaint alleged that on April 16, 1959, the Commission had granted an application of the defendants to permit Equity and Equity General to acquire all of the common stock of DCA. This was permitted on the condition, as the defendants had agreed, that if by December 16, 1959, DCA was still an investment company, Equity and Equity General would dispose of the DCA common stock. This date was later extended to March 16, 1960, on Defendant's request. A further request for extension to September 16, 1960, was refused. The complaint charged inter alia that Equity and Equity General had not complied with the condition in the Commission's order and had not been diligent in eliminating the investment company pyramid that was created and also alleged that Equity General was an investment company which had not registered under the Act and that Equity's ownership of Equity General contravened the anti-pyramiding prohibition of the Act.

The defendants consented to the entry of a judgment enjoining the defendants from such violations. The order of the court also provided that compliance with the injunction should be effected in accordance with specific directions detailing the steps to be taken and the times within which the several actions should be performed which would result in the liquidation or merger into The Equity Corporation of Equity General Corporation and Development Corporation of America, and provided for the redemption of the preferred stock of Development Corporation.

In *S.E.C. v. McPhail*, the Commission brought suit under Sections 36 and 44 of the Investment Company Act of 1940 for an injunction, the appointment of a receiver and other relief charging that the individual defendants, who were officers and directors of the defendant McPhail Candy Corporation, committed acts involving gross misconduct and gross abuse of trust in respect of that corporation. See the 24th Annual Report, pages 157-158, and the 25th Annual Report, pages 165-166, for prior discussions of this case. As stated in the 25th Annual Report, the plan of settlement of this action was approved by the court under the conditions set forth therein. During this fiscal year, the defendant corporation repurchased or redeemed all of its preferred stock and most of its common stock pursuant to a condition of the settlement. By virtue of these purchases, the corporation's outstanding securities were beneficially owned by less than 100 shareholders and, upon application, the Commission declared that the company no longer was an investment company subject to the registration provisions of the Investment Company Act.

Although the case was disposed of by a court-approved settlement, the ruling by the court on the defendants' motion to dismiss portions of the Commission's complaint has significance. The Commission had charged the individual defendants with acts committed prior to the company's registration with it as an investment company but which were committed at a time when the corporation was nevertheless an investment company within the meaning of the act and should have been registered. The court

rejected the defendants' contention that these acts were beyond the scope of an action by the Commission under Section 36.

On November 25, 1959, the Securities and Exchange Commission filed an action in the United States District Court for the Eastern District of Missouri against Hilton P.I. Slayton, Hovey E. Slayton and Slayton Associates, Inc., under Section 36 of the Investment Company Act of 1940, charging gross misconduct and gross abuse of trust in respect of Managed Funds, Inc., a registered investment company. In addition, the complaint charges the 3 named defendants with entering into and performing an investment advisory contract in violation of Section 15 of the Investment Company Act of 1940, and further charges that Hilton H. Slayton and Hovey E. Slayton violated Section 34 (b) of that Act by making false and misleading statements in reports and other documents required to be filed with the Commission. The action seeks an injunction permanently enjoining the defendants from serving or acting as officers, directors, investment advisers or principal underwriters in respect of any registered investment company. An injunction is also sought to prevent further violations of Sections 15 and 34 (b).

The complaint charges that Hilton and Hovey Slayton effectively controlled the fund and operated it for their private gain, that in 1952 the Slaytons, acting through Slayton Associates, Inc., entered into an agreement with Managed Funds whereby Slayton Associates, Inc., was retained as an investment adviser of the Fund and was to furnish the fund with required advisory, research and statistical services for which it would receive a fee at an annual rate equal to one-half of one percent of the value of the Fund's total assets and that, pursuant to this contract, Slayton Associates, Inc. received total fees in excess of \$1,000,000 for the five years ended November 30, 1958. It is further charged that the Slaytons, acting through Slayton Associates, Inc., entered into a contract with Stephen M. Jaquith, then a registered representative in the employ of Model, Roland and Stone, a member firm, of the New York Stock Exchange, whereby Slayton Associates, Inc. retained Jaquith as an investment counsel and manager of the securities portfolio held by the Fund. The contract provided that for a five year period, beginning December 1, 1953, a total amount of brokerage commission business of not less than \$250,000, and for a succeeding 5 year period a total amount of brokerage commission of not less than \$175,000, would be the compensation paid to Jaquith or his designee. The complaint also charges that Hilton and Hovey Slayton directed Jaquith to make the necessary arrangements to have Harold W. Smith and James S. Stubbs become registered representatives of the Model firm and directed that Smith and Stubbs be credited annually with gross brokerage commissions of between \$50,000 and \$60,000. Harold W. Smith is Hovey Slayton's brother-in-law, and James S. Stubbs was formerly the Slayton's attorney and business associate, and a former director of the Fund. During the life of the contract with Jaquith, his designee, Model, Roland and Stone, received \$1,940,806.72 in gross brokerage commissions. Smith received gross commissions in the amount of \$240,831 and Stubbs was credited with gross commissions in the amount of \$459,096. In return for

these commissions Smith and Stubbs performed no services for the Fund, nor for Jaquith, nor for Model, Roland and Stone.

The complaint also charges that Hilton and Hovey Slayton consistently concealed from other members of the Board of Directors material facts which the Board should have known and which were necessary and important to the intelligent functioning of the Board, including the contract between Slayton Associates, Inc. and Stephen M. Jaquith and that the defendants engaged in an improper practice of selling portfolio securities for the Fund primarily for the purpose of realizing a uniform and pre-determined amount to be distributed quarterly to shareholders of the Fund as capital gains, giving no consideration whatsoever to whether or not the growth potential of a given investment had been fully achieved as set forth in the stated investment policy of the Fund. This was done, according to the complaint, to increase sales commissions and management fees, and promote further sales to existing shareholders. All of these profits flowed into companies, the voting stock of which was wholly owned by Hilton and Hovey Slayton. The case is now awaiting trial.

CURRENT DEVELOPMENTS IN THE INVESTMENT COMPANY FIELD

Following the decision of the Court of Appeals in *SEC v. Insurance Securities, Inc.* a number of sales of interests in companies serving as investment advisers and principal underwriters to registered investment companies at prices which permitted the sellers to realize substantial profits occurred, and this trend has continued during the past fiscal year. These sales, in some instances, have been privately arranged and have involved a change in control. More commonly, the controlling persons have made public offerings of common stock in the adviser or underwriter which generally had no voting power but represented a substantial equity in the earnings of the company.

Also, during the past year, a number of stockholder suits have been instituted alleging that the management or advisory fees paid by investment companies are excessive. These suits have referred to the profits realized from the sale of interests in the advisory company and have alleged, in part, that the fees collected are excessive because the advisory fee is fixed at a flat percentage (usually an annual rate of 1/2 of 1 percent) of the value of the investment company's assets even though the cost of investment management does not increase in proportion to the increase in the value of the investment company's assets. Some of the suits have been based on allegations that the investment companies are being managed in the interests of the investment advisers and affiliated directors rather than in the interest of the investment company's stockholders and that the payment of excessive fees under the contracts constitutes a "gross abuse of trust" by directors or investment advisers, within the purview of Section 36 of the Investment Company Act.

The Act does not specifically provide for any regulation by the Commission of the amount of fees paid to investment advisers by investment companies. As provided by the Act, the advisory contracts in question have been approved by shareholders and directors and the terms thereof are disclosed in the prospectus through which the shares of the investment companies are offered to the public.

The Commission has had under consideration the various questions raised by the nature of the management arrangements for investment companies, the sale of interests in the fees to be earned through providing such management and the amount of such fees. Its study of these matters will be continued.

PART X

ADMINISTRATION OF THE INVESTMENT ADVISERS ACT OF 1940

The Investment Advisers Act of 1940 requires the registration of persons who are engaged for compensation in the business of advising others with respect to securities. There are, however, certain limited exemptions from the requirement of registration.

One type of exemption applies to persons in certain occupations when their advice regarding securities is merely an incidental part of the performance of their normal business or profession. These include broker-dealers when they are not separately compensated for the investment advisory aspects of their work, lawyers, accountants, engineers and teachers. Magazines and financial publications of general and regular circulation are similarly exempt.

Certain of the exemptions contained in the Act depend for their applicability on the type of clientele of the adviser. One who advises only investment or insurance companies need not register. An exemption is also afforded the adviser who in the last 12 months had fewer than 15 clients and does not hold himself out generally to the public as an investment adviser.

Furthermore, the registration requirement does not apply to one whose investment advice extends only to persons resident in the state in which the adviser maintains his principal place of business as long as the advice proffered does not concern securities listed on a national securities exchange or admitted to unlisted trading privileges on such an exchange.

The Act makes it unlawful for registered investment advisers to engage in practices which constitute fraud or deceit upon clients. If an adviser is also a broker or dealer, he must disclose his interest in any transaction in which he acts as an investment adviser. The Act also prohibits an investment adviser from basing his compensation upon a share of the capital gains realized or the capital appreciation of his client's funds. Furthermore,

a client's consent is required before an assignment of his investment advisory contract can be effected.

The Act does not grant the Commission power to inspect the books and records of a registered investment adviser, but proceedings by the Commission to revoke or deny the registration of an investment adviser may be instituted under specific circumstances. The filing of a false application for registration constitutes sufficient grounds for administrative proceedings on the question of whether registration should be denied or revoked. Other than this, action by the Commission must be preceded by either an injunction against the adviser by a court of competent jurisdiction from activities in connection with his conduct as an investment adviser or certain other activities or the conviction of the adviser within the previous ten years of a crime involving securities, the securities business, or certain related activities.

During the past fiscal year, the number of registered investment advisers reached a total of 1867. The following table contains statistics concerning the registration and applications for registrations during fiscal year 1960.

[table omitted]

Administrative Proceedings

During the past fiscal year, the Commission has instituted proceedings against six registered investment advisers. These proceedings are still pending.

LITIGATION UNDER THE INVESTMENT ADVISERS ACT OF 1940

In *S.E.C. v. Financial Forecaster, Inc.* the Commission charged the company and its president, Walter Rosenbush, with violations of the registration and the antifraud provisions of the Investment Advisers Act. The Commission's complaint charged that the company had been operating as an investment adviser since July 1959 and that it had not registered with the Commission pursuant to the requirements of Section 203 of the Investment Advisers Act. A final injunction was entered by consent.

S.E.C. v. Michael involved charges that the defendant was serving as an investment adviser without registering as required by Section 203 of the Investment Advisers Act. The defendant consented to a permanent injunction restraining him from further violations of Section 203.

In *S.E.C. v. Cambridge Research and Investment Corporation* the Commission's complaint charged violations of Section 206, which is the antifraud section of the Investment Advisers Act. The defendant's sale of subscriptions to a weekly publication known as the *Investment Chronicle* was alleged to be in violation of that section. As in

Michaels the defendant consented to a final injunction which was entered on January 29, 1960.

Security Forecaster Co., Inc. v. S.E.C. was a petition for review of an order of the Commission, which revoked petitioner's registration as an investment adviser. A stay of the Commission's order was denied. The Commission's motion to dismiss the petition for review for lack of prosecution was granted by the court on June 20, 1960. The complaint against the defendant, James M. Barnes, a Canadian resident who was not served in the action, was dismissed on February 29, 1960.

PART XI OTHER ACTIVITIES OF THE COMMISSION

COURT PROCEEDINGS

Civil Proceedings

At the beginning of the fiscal year 1960 there were pending in the courts 56 injunctive and related enforcement proceedings instituted by the Commission to prevent fraudulent and other illegal practices in the sale or purchase of securities. During the year 90 additional proceedings were instituted and 63 cases were disposed of, leaving 83 such proceedings pending at the end of the year. In addition the Commission participated in a number of corporate reorganization cases under Chapter X of the Bankruptcy Act, in 4 proceedings in the district courts under Section 11 (e) of the Public Utility Holding Company Act; and in 16 miscellaneous actions. The Commission also participated in 61 civil appeals in the United States Courts of Appeals. Of these, 17 came before the courts on petition for review of an administrative order, 16 arose out of corporate reorganizations in which the Commission had taken an active part, 22 were appeals in actions brought by or against the Commission, 1 was an appeal from an order entered pursuant to Section 11 (e) of the Public Utility Holding Company Act, and 5 were appeals in cases in which the Commission appeared as *amicus curiae*. The Commission also participated in 13 appeals or petitions for certiorari before the United States Supreme Court resulting from these or similar actions.

Complete lists of all cases in which the Commission appeared before a Federal or State court, either as a party or as *amicus curiae*, during the fiscal year, and the status of such cases at the close of the year, are contained in the appendix tables.

Certain significant aspects of the Commission's litigation during the year are discussed in the sections of this report relating to the statutes under which the litigation arose.

Criminal Proceedings

The statutes administered by the Commission provide for the transmission of evidence of violations to the Attorney General, who may institute criminal proceedings. The regional offices, and at times, the main office of the Commission prepare detailed reports in cases where the facts appear to warrant criminal prosecution. After careful review by the General Counsel's Office, these reports are considered by the Commission, and if it believes criminal prosecution is appropriate, they are forwarded to the Attorney General. Commission employees familiar with the case generally assist the United States attorneys in the presentation to the grand jury, the conduct of the trial, and the preparation of briefs on appeal. The Commission also submits parole reports prepared by its investigators relating to convicted offenders.

During the past fiscal year 53 cases were referred to the Department of Justice for prosecution. This is the highest number of referrals in the past 18 years and the second highest in the Commission's history and is in line with the continuing increase in the number of referrals during the past several years. As a result of these and prior referrals, 43 indictments were returned against 289 defendants during the fiscal year. This, in keeping with recent trends, represents the largest number of defendants indicted since 1936. There also were 66 convictions in 30 cases, the largest number of convictions since the early 1940's. The conviction in one case was affirmed on appeal and appeals were pending in 7 other criminal cases at the close of the period. There was an acquittal in one criminal contempt case and 4 others were pending at the end of the year.

From 1934, when the Commission was established, until June 30, 1960, 2,777 defendants have been indicted in the United States District Courts in 645 cases developed by the Commission, and 1,385 convictions obtained in 585 cases. The record of convictions obtained and upheld in completed cases is over 85 percent for the 26-year life of the Commission.

Among the criminal cases successfully concluded during the fiscal year 1960 was the first prosecution for failure to file reports required to be made pursuant to the Securities Exchange Act of 1934 and similar charges are now pending in another case. Violations involving the filing of false statements or reports under that Act, as well as the Securities Act of 1933, were involved in a number of other prosecutions. Convictions also were obtained for failure to comply with the registration disclosure provisions of the latter Act in the public offering of securities. Similar registration violations also were charged in a number of the fraud and manipulation cases developed or prosecuted during the year. The fraud cases, as in prior years, covered a wide variety of fraudulent practices. They included high-pressure long distance telephone "boiler room" frauds and other fraudulent conduct on the part of securities broker-dealers and their representatives; frauds by investment advisers; frauds in the sale of securities of established, as well as new, businesses; fraudulent securities sales relating to the promotion of insurance companies and finance companies, oil and gas and mining ventures, alleged inventions and other spurious investment schemes, and the sale of forged securities. Because of the large

volume of cases it is impossible to report in detail all of the criminal matters, but some of the more important and endless variety of fraudulent devices and techniques are described in the specific cases discussed below.

After a 7-week trial the defendants in *United States v. Alexander L. Guterma, et al.* (F. L. Jacobs Co.) (S.D. N.Y.) were convicted of violating and conspiring to violate the reporting provisions of the Securities Exchange Act of 1934 and for conspiring to defraud the United States by obstructing the lawful functions of the Commission in its protection of the investing public. This landmark case represents the first criminal prosecution of corporate insiders for their failure to file stock ownership reports under the Securities Exchange Act and for their obstruction of the making and filing of an annual report required to be filed under that Act by companies having securities listed on a national securities exchange, in this instance the New York Stock Exchange. The vital importance of these provisions is cogently demonstrated by this case where the evidence adduced at the trial showed that the motive for the defendants' failure to file the required reports was to conceal their manipulative and other transactions in the securities of the company and their simultaneous wholesale looting of the assets of the company for their personal benefit.

Guterma received a sentence of 4 years and 11 months and a fine of \$160,000, and his co-defendant Eveleigh was sentenced to 2 years and 11 months and a \$10,000 fine. Maximum fines were imposed on two corporate defendants controlled and dominated by these defendants. Bail was denied pending their appeals, and they were remanded to jail. Shortly after the close of the fiscal year the convictions were unanimously affirmed by the Court of Appeals.

Guterma also is a defendant in *United States v. Alexander L. Guterma, et al.* (S.D. N.Y.), involving the stock of United Dye and Chemical Corporation, in which the indictment is pending. This indictment charges Guterma and others with violating and conspiring to violate the reporting provisions as well as the proxy rules of the Securities Exchange Act, and with conspiring to defraud the United States by impeding the functions of the Commission in its protection of investors. The indictment charges that Guterma, together with other defendants, delayed and obstructed the making and filing of annual and current reports of the United Dye and Chemical Corporation required to be filed with the New York Stock Exchange and the Commission, and solicited proxies by means of a false and misleading statement concerning Guterma's activities with respect to this company. The indictment further charges that Guterma and other defendants employed a scheme to defraud purchasers of United Dye and Chemical Corporation stock and, as part of such scheme, acquired control of the corporation, obstructed and delayed the disclosure of material transactions by Lowell M. Birrell, a co-defendant, while he was Chairman of the Board and a director of the United Dye and Chemical Corporation, and made false and misleading statements to aid in the distribution of shares of United Dye and Chemical Corporation stock to the investing public. It is further charged that the defendants

purchased stock of the United Dye and Chemical Corporation on the New York Stock Exchange in order artificially to maintain its price on that exchange.

The use of false and misleading proxy soliciting material also is involved in the pending indictment in *United States v. Maurice Olen, et al.* (S.D. N.Y.) where the defendants are charged also with using false financial statements in an offering of the common stock of the Olen Co. to the public. The defendants are charged with concealing the true financial condition of the Olen Co. by substantially understating the company's liabilities and by misstating other figures. False financial statements are alleged to have been included in the prospectus issued by the Olen Co. when it offered its common stock to the public, as well as in the solicitation of proxies in connection with the merger of the Olen Co. with H. L. Green Co., Inc.

False financial statements in a registration statement were involved in *United States v. Harold W. Danser, Jr. and Ultrasonic Corporation* (D. Mass.) where both defendants were convicted of violating the anti-fraud provisions of the Securities Act of 1933. A 2-year suspended sentence and a \$15,000 fine were imposed upon Danser. The corporation was fined \$25,000. The indictment charged that the defendants sold securities of Ultrasonic Corporation by means of false financial statements which represented that the corporation was operating at a profit when, in fact, it had suffered substantial losses and its assets were substantially less than those stated. In addition, it was charged that defendants concealed large operating losses incurred by the corporation subsequent to the period covered by the financial statements furnished to investors.

Violations of the registration provisions of the Securities Act of 1933 were charged in *United States v. Philip H. Meade, et al.* (S.D. Ind.), where the defendants sold stock under an alleged intrastate exemption which, among other things, requires sales to be restricted to a single state. In fact, the defendants sold stock both within and without the State of Indiana and, by the use of dummies and nominees, endeavored to conceal the true identity of the out-of-state purchasers of such securities and to create the appearance of sales to residents of Indiana alone.

Evasion of the registration provisions is alleged, among other things, in *United States v. Benjamin W. Silver, et al.* (D. Nev.) in connection with the sale of stock in the promotion of a new hotel and a gambling casino in Las Vegas. The indictment charges that the defendants filed a registration statement covering the proposed offering of preferred and common stock with the Commission, but that the registration statement never became effective and was withdrawn by the defendants. Nevertheless, the indictment alleges, the defendants, in an attempt to evade the registration requirements, caused the company to issue this stock to its then dominating officer in consideration of his unsecured promissory note and then sold the stock to the public purportedly for the benefit of the corporation.

Violations of the registration provisions, coupled with violations of the mail fraud statute, resulted in sentences ranging from two to five years and \$10,000 fines in *United States v. Francis Peter Crosby, et al.* (S.D.N.Y.). This case, in which the Commission collaborated with the Post Office Department in the investigation, involved the fraudulent sale of about 9,000,000 shares of stock in Texas-Adams Oil, Inc. to about 400,000 residents of the United States who were defrauded of approximately \$4,000,000. The Postal authorities consider this to be one of the largest stock promotion schemes to defraud the public in the entire history of the Postal Service. The stock also was distributed in violation of the Securities Act registration requirements.

In the Pandolfo case, after a lengthy trial, guilty verdicts were rendered against all eight defendants. The defendants were charged with violating the antifraud and registration provisions of the Securities Act, as well as the broker-dealer registration requirements of the Securities Exchange Act, in the operation of a securities business. The indictment also charged that the defendant Samuel Parker Pandolfo acquired for himself and his close associates large blocks of securities of Great Northern Investment Company, Inc. and thereafter formed Universal Securities, Inc. to engage generally in the business of a broker-dealer, but particularly to make, maintain and support a market for the Class "A" stock of Great Northern Investment Company, Inc. The indictment further charged that the defendants engaged in a scheme to sell securities through Universal Securities, Inc. by falsely representing to investors that the prices at which the securities were sold were determined by an actual bona fide demand for such securities and that a further rise in the prices of the securities could be immediately expected.

The conversion of customers' funds or securities was alleged as part of the fraud charges in the Campbell, Kyger and Duzan cases. A similar charge is included in the pending indictment in *United States v. Robert B. Larkin* (W. D. La.) in which the defendant is a fugitive.

In the Sills case, the defendant was convicted of making a false statement in a report filed with the Commission concerning the financial condition of his registered broker-dealer firm, Sills & Co.

"Boiler room" fraud practices in the sale of securities by broker-dealers and their salesmen are included among the charges in a number of pending cases: *United States v. Frank S. Kimball, et al.* (Kim-ball Securities, Inc.) (S.D. N.Y.); *United States v. Stanley Ira Younger, et al.* (Lincoln Securities Corp.) (N.D. Ohio); *United States v. Stanley Ira Younger, et al.* (D. N.H.); *United States v. Stanley Ira Younger, et al.* (James C. Graye Co.) (D. Conn.); *United States v. John Van Alien, et al.* (Gulf Coast Leaseholds, Inc.) (S.D. N.Y.), and *United States v. Daniel Price, et al.* (Jean E. Veditz Co., Inc.) (E.D. Va.). In each of these cases the defendants are charged with the sale of unregistered securities by means of misrepresentations made over the long distance telephone and otherwise to investors residing in various states throughout the country. Over 130 defendants are

named in these indictments and some of these individuals are charged as defendants in a number of these cases.

In the Kimball case the defendants are charged with selling unregistered stock of Perry Oil Company to approximately 800 persons residing throughout the United States for over \$700,000 by means of various fraudulent devices including the usual "boiler room" type of misrepresentations. It is alleged that the defendants falsely represented, among other things, that the shares of Perry Oil Company would substantially increase in price in the near future; that the shares were being sold below the market price; that the shares would soon be listed on a national securities exchange at increased prices; and that a merger was imminent which would result in an increase in the price of the stock. In addition, the indictment alleges that the defendants assured investors that they were protected from "boiler room" operations because the Kimball firm had been cleared by the Commission and that the United States Government had established Kimball Securities Inc. to stabilize the securities market and as a check on all securities dealers.

In the Younger (James C. Graye Co.) case the indictment charges Stanley Ira Younger and the other defendants with employing and conspiring to employ a scheme to defraud investors in the sale of Atlas Gypsum Corporation, Ltd. stock. It is alleged that the defendants acquired a large block of Atlas Gypsum stock at approximately 20 cents per share and subsequently offered and sold these shares to numerous persons residing in some 40 States by means of arbitrary mark-ups at prices ranging from \$1.20 to \$3.75 per share. It is charged that for the purpose of executing this scheme the defendants financed, controlled and managed the broker-dealer firm of J. C. Graye Co. through which they offered and sold Atlas Gypsum stock by means of the mails and extensive long distance telephone solicitations in which they employed the usual "boiler room" misrepresentations. It is further charged that the defendants engaged in numerous purported over-the-counter transactions in Atlas Gypsum with no change in beneficial ownership of this stock, thereby creating the appearance of an active and rising market in such stock.

Similar charges are included in the indictments in the Younger (Lincoln Securities Corp. and Philip Newman Associates, Inc.) cases where Stanley Ira Younger and a number of his associates are again named as defendants and charged, along with others, with violating and conspiring to violate the registration and anti-fraud provisions of the Securities Act of 1933 in the sale of shares of stock of Shore-land Mines, Ltd. and Monarch Asbestos Co., Ltd., respectively.

In the Van Allen case the indictment, which contains 160 counts, charges violations of the registration and anti-fraud provisions of the Securities Act in connection with the sale of 750,000 unregistered common shares of Gulf Coast Leaseholds, Inc. Among other things, the indictment alleges that the defendants manipulated and controlled the market price of the stock; disseminated various publications and other literature containing false and misleading statements concerning Gulf Coast Leaseholds, Inc.; and made false and

misleading statements in the course of an intensive long distance telephone campaign to sell the stock.

In the Price case, the defendants are charged, inter alia, with selling by means of long distance telephone the unregistered common stock of National Electro Process Corporation by fraudulently concealing the true financial condition of the corporation from investors and at the same time disseminating to them false information concerning the company and its operations.

A conviction for violation of the antimanipulative provisions of the Securities Exchange Act was obtained in *United States v. John A. Latimer* (S.D.N.Y.) where the defendant pleaded guilty to an indictment charging him with employing "wash sales" and "matched orders" for the purpose of manipulating the market in the stock of American Tractor Company on the American Stock Exchange.

Violations of the antimanipulative provisions of the Securities Exchange Act also are included among the pending charges in *United States v. Sydney L. Albert, et al.* (S.D.N.Y.) and *United States v. Edward Talenfeld, et al.* (W.D. Pa.). In the Albert case the indictment also charges violations of the registration and antifraud provisions of the Securities Act in connection with transactions in the common stock of Bellanca Corporation. It is alleged that the defendants used nominees to effect purchases of Bellanca common stock on the American Stock Exchange, effected a series of transactions in order to raise the price of the Bellanca stock and, after fraudulently inflating its price, offered and sold the stock of Bellanca for assets and securities of other corporations.

In the Talenfeld case the indictment charges the defendants with effecting a series of transactions in the common stock of Cornucopia Gold Mines and with creating actual and apparent active trading in this security and raising its price for the purpose of inducing the purchase and sale of the security by others. The defendants also are charged with conspiring to file and causing to be filed with the Commission false proxy solicitation material and false affidavits concerning transactions in the stock of Cornucopia Gold Mines.

Manipulative transactions also were alleged as part of the fraud in the sale of stock of Nev-Tah Oil and Mining Company in *United States v. Arthur L. Damon* (D. Nev.). The defendant was sentenced to a prison term of a year and a day upon his plea of guilty to charges that he acquired control of the company; that he caused the market price of its stock on the Salt Lake Stock Exchange to rise above 45 cents per share through the use of flamboyant and misleading reports, letters and oral statements; that he caused the company to issue stock into a series of escrows for release at prices ranging from 9 cents to 45 cents per share; and that he offered and sold the escrowed stock to California residents at prices in excess of the escrowed prices, and near the artificial exchange price. The indictment further charged that Damon made fraudulent representations to investors

concerning the financial status of the company, the potential ore reserves of certain mining properties owned or leased by the company and the company's earnings and ability to pay dividends.

The fraudulent sale of corporate notes and debentures of Alabama Acceptance Corporation led to the conviction of all defendants in *United States v. Kalman Greenhill, et al.* (N.D. Ala.). Two defendants were found guilty after trial and three others were convicted on nolo contendere pleas of employing a scheme to defraud investors by means of false representations, pretenses and promises. Among the false representations alleged to have been used by defendants in the sale of notes and debentures of the corporation were the following: that Alabama Acceptance Corporation was in a sound financial condition, was realizing profits from its operations, and that investments in its notes and debentures were safe, sound and profitable; that the corporation was realizing a 12 percent to 16 percent return on its loans and investments and could well afford to pay 8 percent interest because its income taxes were 52 percent and the government absorbed more than one-half of such interest; and that it was purchasing established companies with a long record of earnings, and was receiving income from its investments therein. It is further alleged that the defendants withdrew large sums of money and other assets from the corporation and its so-called subsidiaries, but made no accounting therefor.

Another case involving the sale of stock in a supposedly successful finance company is *United States v. Edward L. Gibbons, et al.* (D. Idaho), which is pending. The indictment charges, inter alia, that the defendants falsely represented that the American National Investment Company was a going and profitable concern with a million dollars in assets and two active loan offices which were earning up to a 42 percent profit on their turnover of money. It further charges that the defendants omitted to state that 62% percent of the proceeds from the sale of stock was being paid to one defendant and that the company not only did not have a small loan company license, but had been refused one by the State of Idaho.

The fraudulent sale of notes is charged in *United States v. Thomas A. Morris, et al.* (E.D. Pa.); *United States v. Kirehofer, et al.* (E.D. N.C.) and *United States v. Robert M. Denner, et al.* (S.D. Fla.), where the indictments are pending. In the Morris case, involving the offer and sale of debenture bonds and promissory notes of Evergreen Memorial Park Association, a cemetery promotion, the indictment charges the defendants with falsely representing the entire financial structure of the association. In both the Kirehofer and Denner cases the defendants are charged with employing the "Ponzi" fraud technique, whereby monies are paid back by the promoters to investors out of the investors' own funds and falsely represented to be profits or interest on their investments. In the Kirchofer case the defendants also are charged with selling participations in fictitious, spurious and nonexistent mortgages and notes.

Fraud charges in the promotion of spurious investment schemes are included in the indictments pending in *United States v. Peter Sahadi, et al.* (D. Conn.), *United States v. Arthur J. Raible* (S.D. Ohio), and *United States v. Lloyd B. Fenderson* (D. N.H.).

In the Sahadi case, the indictment charges that as a part of the scheme and artifice to defraud, the defendants took over Texas Building Company, a dormant corporation, increased its capitalization to 1,000,000 shares of common stock, and thereafter entered orders with various securities brokers in Los Angeles, New York, and Boston to purchase the stock at \$12 to \$17 a share and caused purchase quotations to be published in the National Daily Quotation Service. It is further charged that defendants caused spurious stock certificates to be printed and circulated to various cities throughout the United States and thereafter attempted to sell this spurious stock through brokers and to borrow substantial sums of money from banks, finance companies and other lending institutions, using the Texas stock as collateral, knowing that the quotations referred to were false and without foundation, and that the certificates were without value. In the Raible case, the defendant is charged with selling investment contracts and other securities involving purported options granted by the Briggs Manufacturing Company for the purchase of its common stock. The indictment charges that, as part of the scheme to defraud, the defendant falsely represented that such options had been granted to him and other officers of the company and that they could be exercised to obtain the stock at prices substantially below the market value.

In the Fenderson case the defendant is charged with employing a scheme to defraud by falsely representing that monies obtained would be invested in prime investment securities when, in fact, the funds were misappropriated by the defendant. Similar charges led to a conviction in *United States v. Benjamin F. Kaufman* (D. N.H.) where the defendant also misappropriated the funds which were obtained on the false representation that they would be invested in safe, sound and conservative securities for the investor's benefit.

An indictment was returned in *United States v. Ben Jack (Jaffe, et al.)* (N.D. Tex.) charging the defendants with fraud in the sale of purported revenue bonds of the City of West Buechel, Kentucky. The indictment charges that the defendants caused the City of West Buechel to pass an ordinance authorizing and providing for the issuance of \$2,000,000 face amount of water works, sewer drainage and street revenue bonds, purportedly to finance the construction of such improvements for the city. In effect, the defendants are charged with causing a sale of these bonds to a company controlled by Ben Jack Cage on terms which provided for payment for the bonds of \$275,000 in cash and a promissory note for \$1,725,000 payable in seven annual installments, with installments other than the first payable by the return of revenue bonds. In addition, the defendants are charged with having sold these bonds to various insurance companies and others in Texas and Alabama with the bonds being recorded by the insurance companies as assets.

Two cases involving charges of fraudulent stock sales, where the investors were principally school teachers, were *United States v. Lee A. Curtis, Jr. et al.* (N.D. Ga.) and *United States v. Robert Lee Proffer, et al.* (N.D. Tex.). In the Curtis case the indictment alleges that the defendants, operating through Greater Georgia Investment Corporation, defrauded investors by falsely and fraudulently representing, inter alia, that the funds of Greater Georgia Investment Corporation would be used in an investment program of 50 percent for teacher loans, 25 percent for short-term gain investments, and 25 percent for blue-chip investments; that loans would be made exclusively to people in the educational field and would be secured by good collateral; that State Superintendents of Schools and other leading educators had purchased stock of Greater Georgia Investment Corporation; and that investments in its securities were safe. It is further alleged that defendants caused Greater Georgia Investment Corporation to maintain false books and records and that they caused to be prepared false financial statements which they used in the sale of its securities.

In the Proffer case four defendants pleaded guilty and 2 defendants were convicted after trial. The indictment charged that the defendants falsely represented that the Teachers Professional Investment Company in which they were selling stock owned 16,212 shares in a life insurance company valued at \$108,160.72, and that it had an earned surplus of \$14,278.30; and that money received from the sale of company stock would be used primarily to finance loans on automobiles for school teachers in the State of Texas. The indictment further charged that these defendants omitted to state that they were making uncollateralized loans to themselves from the proceeds of the stock sales.

Charges of fraud in connection with the sale of securities of insurance companies were included in the following cases: *United States v. Charles F. Newell, et al.* (D. Neb.); *United States v. Clarence Hause, et al.* (E.D. Wash.); *United States v. James Lamar McMichael* (D. Ala.); *United States v. Lean A. Cohen, et al.* (W.D. Ga.); and *United States v. Thomas E. Hand, Jr., et al.* (S.D. Tex.).

After a jury trial all defendants were convicted in the Newell case, where the indictment charged them with misrepresenting in the sale of stock of the Unity Insurance Company that purchasers could get their money back at any time with 5 percent interest; that the money raised from the sale of stock would be placed in escrow until the franchise was issued to the Unity Insurance Company by the State of Nebraska; that the stock was going to rise in price; and that the company had money to qualify for and get its insurance license. The defendants also were charged with investing the funds derived from the sale of stock in business ventures unrelated to the organization of an insurance company and with concealing from the investors that the principal organizers, officers, and directors of the Unity Insurance Company did not invest any of their own money in the company, that the stock which they were selling was stock already optioned to themselves and that the greater portion of the purchase price would be retained by them for their own use.

Likewise, the Haux case resulted in convictions of all 3 defendants. The defendants were charged with acquiring shares of the outstanding stock of the American Founders Life Insurance Company at a going-market price of \$2 a share and reselling such shares to investors, many of whom were their personal clients in the life insurance business, at prices ranging from \$7 to \$20 a share by falsely representing that the company had paid substantial dividends; that defendants were acting on behalf of the insurance company which would receive the proceeds of the sales; that the stock could be resold at any time for as much or more than the prices paid; and that such prices represented the current market price. It was also charged that the defendants omitted to disclose that large blocks of this stock were available for \$2 per share; that the insurance company suffered substantial losses and had been the subject of a recent fraud injunction and that the proceeds of these stock sales were to be kept for their own personal use.

In the McMichael case the defendant was convicted of fraudulently selling preorganization subscriptions and certificates for stock in United Security Inc., a holding company proposed to be organized by him purportedly for the purpose of acquiring and consolidating a number of insurance companies. The defendant was further charged with falsely representing that money paid in by investors would be deposited in escrow with the South Carolina National Bank, and, if the corporation did not obtain its charter before a specified date, that the funds of these investors would be returned to them.

The indictments in the Hand and Cohen cases are pending. In these cases the defendants are charged, inter alia, with fraudulently representing that the companies involved would benefit from the sale of stock which in fact was personally owned, and that each company was in excellent financial condition, when in fact all had suffered recent financial reversals.

The sale of securities in connection with the promotion of alleged valuable inventions is involved in the indictments in United States v. Francis A. Moulton (D. Mass.); United States v. John Milton Addison, et al. (N.D. Tex.); and United States v. Clark L. Fry (W.D. Wisc.). Moulton was convicted and sentenced to a 2-year prison term for selling unregistered stock of the Francis Distributing Company, Inc. and other securities by falsely representing, among other things, that the company owned the patent rights to a "wheel chock," that a contract for the purchase of a substantial number of these chocks by the Ford Company was ready for execution, and that the State of Massachusetts had contracted for the installation of the wheel chocks on all of its trucks.

In the Addison case, which is awaiting trial, the defendants are charged with violating the registration and anti-fraud provisions of the Securities Act in the sale of unregistered notes, evidences of indebtedness, investment contracts, and a variety of other securities in connection with the promotion of a "Benson Upgrader" which they represented could upgrade low grade unmarketable uranium ore to produce a marketable commercial uranium ore; that one such machine would net \$86,000 per day; and that the defendants would make many millions of dollars in the operation of that machine. It is further

charged that the defendants falsely represented that a large securities firm had offered \$18,000,000 for a 49 percent interest in the defendant Addison's business ventures, and that the investors would participate in these tremendous profits to an extent resting solely within the discretion of Addison based on the gratitude which he felt for the loyalty, trust and confidence which the investors reposed in him.

In the Fry case the pending indictment charges similar violations in the sale of notes, investment contracts and evidences of indebtedness relating to the purported development and promotion by the defendant of various inventions and devices, including a machine for generating energy, a protective paint application, a non-slip locknut and a water-retaining fertilizer.

Joseph L. Gruber pleaded guilty in the District of Massachusetts to an indictment charging him with violating the registration and anti-fraud provisions of the Securities Act in the sale of unregistered stock of the Eagle Oil and Supply Company, Inc. The defendant falsely represented that the company was averaging sales of \$40,000 to \$50,000 per month and was doing a half-million dollar business annually; that its operations were the "next most profitable to bootlegging," except that its business was legitimate; that the stock would be split ten for one and then offered to the general public at a much higher price; and that the Cadillac Division of General Motors was using Eagle's products and that the Ford Motor Company was going to use Eagle's products instead of the usual break-in lubricants used on new cars.

In *United States v. F. Payson Todd* (D. Mass.) the defendant is charged with violating the anti-touting provisions of the Securities Act and the antifraud provisions of the Investment Advisers Act of 1940 in connection with the common stock of Canadian Javelin, Limited. The indictment, among other things, charges that the defendant, while doing business as The New England Counsellor and registered with the Commission as an investment adviser, employed a scheme to defraud in that he recommended to his clients the purchase at the market of the stock of Canadian Javelin without disclosing that he had received compensation from the issuer, underwriters and dealers therefor. It is further charged that the defendant failed to disclose to clients that his recommendations to purchase at the market were for the purpose of facilitating a distribution of the stock by creating a demand therefor, and to raise its market price.

Mayer Algranati was indicted for perjury in the Southern District of New York for falsely testifying before the Commission in connection with the Commission's investigation into violations of the Securities Act and the Securities Exchange Act by the New York broker-dealer firm of Kimball Securities, Inc. in connection with the offer and sale of common stock of Perry Oil Company. John Van Alien and Roy B. Kelly were indicted in the same district for violating the false-statement provisions of the United States Criminal Code. These defendants are charged with submitting false, fictitious and fraudulent statements and a false document to the New York Regional Office of the Commission in matters relating to the purchase and sale of securities of Gulf Coast Leaseholds, Inc. These

indictments are companion cases to earlier indictments in the Kimball Securities, Inc. and Gulf Coast Leaseholds, Inc. cases, both of which were previously discussed.

In the sole appellate decision in a criminal case during the fiscal year, the United States Court of Appeals for the Third Circuit unanimously affirmed the conviction of Arnold E. Vandersee who was sentenced to an 8-year prison term and \$5,000 fine for violating the anti-fraud provisions of the Securities Act of 1933 in connection with the sale of stock of the Vandersee Corporation in the promotion of a purported invention characterized as a "Metalizing Gun."

COMPLAINTS AND INVESTIGATIONS

Each of the Acts administered by the Commission specifically authorize investigations to determine whether violations of law have occurred.

The Commission's policy of conducting such investigations privately is necessary for effective law enforcement and in the interest of fairness to persons against whom unfounded charges may be presented. Private investigations prevent suspected violators from being warned and afforded an opportunity to frustrate the Commission's efforts in obtaining evidence to establish violations. A similar policy is followed by most law enforcement agencies. Many situations which are investigated ultimately develop facts which establish that no violation has occurred. To conduct such investigations publicly would ordinarily result in hardship or embarrassment to innocent persons and might affect the market for the securities in question, resulting in injury to public investors. Many persons have a tendency to be reluctant to furnish information concerning suspected violations if they think their personal affairs might be publicized. The Commission's policy is designed to protect both those who furnish information relating to securities transactions and the subjects of investigation against whom no violation ultimately is established. Accordingly, the Commission does not generally divulge the existence of or the results of any investigation until the facts are made a matter of public record through proceedings before the Commission or in the courts.

Investigations are conducted primarily by the Commission's regional or branch offices. In addition, the Special Investigations Unit of the Division of Trading and Exchanges conducts investigations dealing with matters of particular public interest or urgency either independently or by assisting the staff of the regional offices. Much of the work of the Special Investigations Unit in the past year has been devoted to investigation and prosecution of persons engaged in "boiler-room" operations in the New York area. The Division of Trading and Exchanges in the principal office exercises general supervision over and coordination of the investigative and enforcement activities of the regional office. It examines and analyzes the results of investigations and makes appropriate recommendations to the Commission with respect to what enforcement action should be

taken. Serious consideration is given to the recommendations of the regional offices in each instance.

One of the principal sources of information upon which investigations are based is complaints from members of the public concerning the activities of persons involved in the offer and sale of securities. Information of this type is carefully studied and if it appears that violations of Federal securities laws may be involved an investigation is commenced. Other sources of information which may be of great help to the Commission in carrying out its enforcement responsibilities are national securities exchanges, brokerage firms, State and Canadian securities authorities, Better Business Bureaus, Chambers of Commerce, and the National Association of Securities Dealers, Inc. Information from these sources has been very helpful, for it comes from persons who are often familiar with the operation and applicability of Federal securities laws. Many investigations also result from processing of filings which are required to be made with the Commission. Many preliminary investigations disclose no violation of law or a violation due to misunderstanding or ignorance of the law. Where no harm to the public has resulted, it is a policy of the Commission to inform the offender of the violation and afford an opportunity to take steps to assure future compliance. Appropriate action is taken where such an offender fails to come promptly into compliance.

If the necessary evidence to determine whether a violation has occurred is not readily developed by a limited investigation of this nature, a case is docketed and a full investigation made. In order to obtain all of the necessary evidence, it is frequently necessary that a formal order of investigation be adopted by the Commission appointing members of the staff as officers with power to issue subpoenas for the production of documentary evidence, the appearance of witnesses and the taking of testimony under oath. This step is taken only when the investigations cannot be otherwise successfully completed, such as when principals and others involved in the investigation are uncooperative and the evidence can be adduced only through the use of the subpoena power. During the past year 117 formal orders of investigation were issued in connection with investigations handled through the Division of Trading and Exchanges.

The staff of the Division of Corporation Finance also conducts investigations where necessary to assist in processing filings made with that Division under either the Securities Act or the Securities Exchange Act.

When an investigation has been completed and action appears warranted, the Commission may proceed in one of several ways. When required in the public interest the case, with all evidence and exhibits-, may be referred to the Department of Justice with a recommendation for criminal prosecution. Members of the staff who are familiar with the evidence assist the Department of Justice and the United States Attorney in the presentation of the case to the Grand Jury and in the trial if an indictment is returned. In appropriate cases, the Commission may authorize the staff to institute civil action in its name for injunctive relief. The complaint in such a case is filed in the appropriate United

States district court and the trial conducted by members of the Commission's staff. The Commission may also institute administrative proceedings when the investigation indicates such action appropriate which may result in the issuance of a stop-order as to a registration statement or the suspension or revocation of the registration of a broker-dealer or an investment adviser.

The following table reflects in summarized form the investigative activities of the Commission during fiscal 1960:

[table omitted]

ENFORCEMENT PROBLEMS WITH RESPECT TO CANADIAN SECURITIES

The unlawful offering and sale of securities by Canadian issuers and broker-dealers continues to be a serious problem. In such enforcement activities the Commission is severely handicapped in that ordinarily both the violator and essential evidence are in Canada, where persons, books and records are beyond our investigative and subpoena powers. It is therefore difficult, and in most instances impossible, to obtain admissible evidence with respect to such violations. Even when evidence is obtainable, sanctions, such as civil or criminal prosecutions, cannot be utilized unless personal jurisdiction over defendants can be secured.

However, the Commission, acting within its jurisdictional limitations, has made aggressive efforts to deal with the problem. Hundreds of investigations have been made, injunctions have been secured whenever jurisdiction over violators could be obtained, and a substantial number of criminal indictments have been returned.

Enforcement difficulties were highlighted in a test case under the Supplementary Extradition Convention consummated in July 1952, the details of which were furnished in our 22d Annual Report. Canadian courts denied extradition of a person who had been indicted in the United States for fraudulent sales of securities to residents of the United States by means of the mails and long-distance telephone. Through appropriate diplomatic channels, negotiations are being continued in an effort to remedy this situation. Currently the Commission is almost wholly dependent upon voluntary cooperation of Canadian provincial regulatory authorities.

When evidence is obtainable that securities are being offered and sold by means of fraudulent representations, the Commission collects such evidence and refers it to the Post Office Department with an application for the issuance of a foreign fraud order. Such order prohibits the dispatch of mail from the United States addressed to the person or persons named in the order. The order, however, does not prohibit mailings in Canada and the delivery of such mailings to residents of the United States. During the past fiscal year, upon evidence furnished by the Commission, six foreign fraud orders have been issued. Also six "extensions" to such orders have been issued to cover changes of address

by persons who sought by such changes to avoid the consequences of original orders directed to them. As of June 30, 1960, eleven additional cases in which the Commission furnished evidence were pending in the Post Office Department.

Canada does not have federal securities legislation nor a federal regulatory body. The public offering and sale of securities are regulated on a provincial basis similar to the administration of state blue sky laws in this country. Excellent cooperation in the enforcement work of the Commission has been obtained from most provinces. In particular, the arrangement with the Saskatchewan Securities Commission, described in the 25th Annual Report, has been of material assistance and a source of encouragement for further progress in this field.

Details concerning actions involving Canadian securities are described elsewhere in the section relating to litigation under the Securities Act of 1933 and the section relating to Criminal Proceedings.

The Commission continues to maintain its Canadian Restricted List. This is a list of Canadian companies whose securities the Commission has reason to believe currently are being, or recently have been, distributed in the United States in violation of the registration requirements of the Securities Act of 1933. Failure to comply with the registration requirements deprives investors of material information and facilitates false claims as to the work of securities. Thus investors are denied the essential protections provided by the Securities Act.

The list and supplements thereto are issued to and published by the press and copies are mailed to all registered broker-dealers and are available to the public. The list serves as a warning to the public and alerts broker-dealers to the fact that transactions in the securities of the companies named therein may be unlawful. Most United States broker-dealers refuse to execute transactions in such securities.

During the fiscal year 1960, 26 supplements to the list were issued in which 82 names were added and 9 deleted upon compliance with established procedures. On June 27, 1960, the list was revised and consolidated, resulting in the deletion of 54 names in instances where the Commission had no evidence of an unlawful public offering or sale of securities in the United States during the past three years, where the companies were no longer in existence due to mergers, charter surrenders, etc., and where there has been a change of name. In the latter case the new name is included on the current list. The number of names on the list as of June 30, 1960, was 210.

The current list, reflecting additions and deletions to September 30, 1960, follows:

CANADIAN RESTRICTED LIST

Adonis Mines Ltd.

Alaska-Canadian Mining & Exploration Co. Ltd.

Alba Explorations Ltd.

Aldor Exploration and Development Co. Ltd.

A. L. Johnson Grubstake

Alouette Mines Ltd.

Amador Highland Valley Coppers Ltd.

Ambassador Mining Developments Ltd.

Americanadian Mining & Exploration Co. Ltd.

Amican Petroleum & Natural Gas Corp. Ltd.

Anthony Gas and Oil Explorations Ltd.

Appollo Mineral Developers Inc.

Arcan Corp. Ltd.

Associated Livestock Growers of Ontario

Atlantis Industrial Development Co. Ltd.

Atlas Gypsum Corp. Ltd.

Ava Gold Mining Co. Ltd.

Baranouri Minerals Ltd.

Barite Gold Mines Ltd.

Basic Lead and Zinc Mines Ltd.

Bengal Development Corp. Ltd.

Black Crow Mines Ltd.

Blue Springs Explorations Ltd.

Bonwitha Mining Co. Ltd.

Burbank Minerals Ltd.

Cable Mines and Oils Ltd.

Caesar Minerals Ltd.

Cairngorm Mines Ltd.

Cameron Copper Mines Ltd.

Canada Radium Corp. Ltd.

Canadian Alumina Corp. Ltd.

Canol Metal Mines Ltd.

Cartier Quebec Explorations Ltd.

Casgoran Mines Ltd.

Central & Eastern Canada Mines (1958) Ltd.

Centurion Mines Ltd.

Cessland Gas and Oil Corp. Ltd.

Colville Lake Explorers Ltd.

Consolidated Easter Island Mines Ltd.

Consolidated Exploration & Mining Co. Ltd.

Consolidated St. Simeon Mines Ltd.

Consolidated Woodgreen Mines Ltd.

Continental Consolidated Mines & Oils Corp. Ltd.

Copper Prince Mines Ltd.

Courageous Gold Mines Ltd.

Cove Uranium Mines Ltd.

Cree Mining Corp. Ltd.

Davian Exploration Ltd.

Dayjon Explorers Ltd.

Dempster Explorations Ltd.

Derogan Asbestos Corp. Ltd.

Diadem Mines Ltd.

Dolmac Mines Ltd.

Dolsan Mines Ltd.

Dominion Fluoridators Ltd.

Dominion Leaseholds Ltd.

DuMaurier Mines Ltd.

Dumont Nickel Corp. Dupont Mining Co. Ltd.

Eagle Plains Developments Ltd.

Eagle Plains Explorations Ltd.

East Trinity Mining Corp.

Eastern-Northern Explorations Ltd.

Elk Lake Mines Ltd.

Embassy Mines Ltd.

Explorers Alliance Ltd.

Export Nickel Corp. of Canada Ltd.

Fairmont Prospecting Syndicate

Federal Chibougainau Mines Ltd.

File Lake Explorations Ltd.

Fleetwood Mining and Exploration Ltd.

Flint Rock Mines Ltd.

Font Petroleums Ltd.

Foreign Exploration Corp. Ltd.

Franksin Mines Ltd.

Gasjet Corp. Ltd.

Georay Prospecting Syndicate

Golden Algouia Mines Ltd.

Golden Hope Mines Ltd.

Goldmaque Mines Ltd.

Granwick Mines Ltd.

Guardian Explorations Ltd.

Haitian Copper Mining Corp. Ltd.

Hallmark Explorations Ltd.

Halistead Prospecting Syndicate

Hoover Mining and Exploration Ltd.

Inlet Mining Corp. Ltd.

International Ceramic Mining Ltd.

Irando Oil and Exploration Ltd.

Jacmar Explorations Ltd.

Jaylac Mines Ltd.

Jilbie Mining Co. Ltd.

Jomac Mines Ltd.

Kateri Mining Co. Ltd.

Kelkirk Mines Ltd.

Kelly-Desmond Mining Corp. Ltd.

Kennamet Development Corp. Ltd.

Key West Exploration Co. Ltd.

Kimberly Copper Mines Ltd.

Kipwater Mines Ltd.

Kordol Explorations Ltd.

Korich Mining Co. Ltd.

Kukatush Mining Corp.

Ladysmith Explorations Ltd.

Lake Kingston Mines Ltd.

Lake Otter Uranium Mines Ltd.

Lama Explorations and Mining Co. Ltd.

Lambton Copper Mines Ltd.

Larutan Petroleum Corp. Ltd.

Lavandin Mining Co.

Lavant Mines Ltd.

Lee Gordon Mines Ltd.

Lindsay Explorations Ltd.

Lucky Creek Mining Co. Ltd.

Lynwatin Nickel Copper Ltd.

Mack Lake Mining Corp. Ltd.

Mallen Red Lake Gold Mines Ltd.

Marian Lake Mines Ltd.

Marpic Explorations Ltd.

Marpoint Gas & Oil Corp. Ltd.

Mattagami Explorers Corp.

Megantic Mining Corp.

Mexicana Explorations Ltd.

Mexuscan Development Corp.

Midas Mining Co. Ltd.

Mile 18 Mines Ltd.

Milmar-Island Mines Ltd.

Mina-Nova Mines Ltd.

Minden Land Enterprises Ltd.

Mineral Exploration Corp. Ltd.

Missile Metals and Mining Corp. Ltd.

Monarch Asbestos Co. Ltd.

Monarch Gold Mines Ltd.

Monitor Gold Mines Ltd.

Monpre Mining Co. Ltd.

Montclair Mining Corp. Ltd.

Mylake Mines Ltd.

Nationwide Minerals Ltd.

Native Minerals Ltd.

New Campbell Island Mines Ltd.

New Faulkenham Mines Ltd.

New Hamil Silver-Lead Mines Ltd.

New Metalore Mining Co. Ltd.

New Spring Coulee Oil and Minerals Ltd.

New Surpass Petrochemicals Ltd.

Norcopper and Metals Corp. Normalloy Explorations Ltd.

Norsco Mines Ltd.

Norseman Nickel Corp. Ltd.

North American Asbestos Co. Ltd.

North Gaspé Mines Ltd.

North Lake Mines Ltd.

North Tech Explorations Ltd.

Northport Mineral Explorers Ltd.

Nortoba Mines Ltd.

Nu-Gord Mines Ltd.

Nu-Reality Oils Ltd.

Nu-World Uranium Mines Ltd.

Palliser Petroleum Ltd.

Pantan Mines Ltd.

Paramount Petroleum & Minerals Corp. Ltd.

Peace River Petroleum Ltd.

Pick Mines Ltd.

Plexterre Mining Corp. Ltd.

Prestige Lake Mines Ltd.

Prudential Petroleum Ltd.

Purdex Minerals Ltd.

Quebec Graphite Corp. Queensland Explorations Ltd.

Quinalta Petroleum Ltd.

Rambler Exploration Co. Ltd.

Red River Mining & Exploration Ltd.

Regal Mining & Development Ltd.

Resolute Oil and Gas Co. Ltd.

Riobec Mines Ltd.

Roberval Mining Corp.

Rockroft Explorations Ltd.

Rothsay Mines Ltd.

Roxton Mining & Development Co. Ltd.

Saskalon Uranium and Oils Ltd.

Sastex Oil and Gas Ltd.

Savoy Copper Mines Ltd.

Seaboard Industries, Ltd.

Senvil Mines Ltd.

Sheba Mines Ltd.

Sheraton Uranium Mines Ltd.

Shoreland Mines Ltd.

Sico Mining Corp. Ltd.

South Seas Mining Ltd.

Space Age Mines Ltd.

St. Stephen Nickel Mines Ltd.

Stackpool Mining Co. Ltd.

Strathcona Mines Ltd.

Sturgeon Basin Mines Ltd.

Sudbay Exploration and Mining Ltd.

Swift Copper Mines Ltd.

Tabor Lake Gold Mines Ltd.

Taiga Mines Ltd.

Tamicon Iron Mines Ltd.

Taurcanis Mines Ltd.

Temanda Mines Ltd.

Territory Mining Co. Ltd.

Trans Nation Minerals Ltd.
Trenton Petroleum & Minerals Corp. Ltd.
Tri-Cor Mining Co. Ltd.
Trio Mining Exploration Ltd.
Trojan Consolidated Mines Ltd.
Turzone Explorations Ltd.
Upper Ungava Mining Corp. Ltd.
Val -Ton Exploration Ltd.
Valray Explorations Ltd.
Vanguard Explorations Ltd.
Venus Chibougamau Mines Ltd.
Vico Explorations Ltd.
Viscount Oil and Gas Ltd.
Wakefield Uranium Mines Ltd.
Webbwood Exploration Co. Ltd.
Westwind Explorations Ltd.
Windy Hill Mining Corp.
Yukon Prospectors' Syndicate

SECTION OF SECURITIES VIOLATIONS

A Section of Securities Violations is maintained by the Commission as a part of its enforcement program to provide a further means of detecting and preventing fraud in securities transactions. The Section maintains files providing a clearinghouse for other enforcement agencies for information concerning persons who have been charged with

violations of various Federal and State securities statutes. Considerable information is also available concerning violators resident in the provinces of Canada. The specialized information in these files is kept current through the cooperation of the United States Post Office Department, the Federal Bureau of Investigation, parole and probation officials, State securities authorities, Federal and State prosecuting attorneys, police officers, better business bureaus, chambers of commerce and other agencies. At the end of the fiscal year these records contained information concerning 71,748 persons against whom Federal or State action had been taken in connection with securities violations. In keeping these records current, there were added during the fiscal year items of information concerning 9,097 persons, including 2,735 persons not previously identified in these records.

The Section issues and distributes quarterly a Securities Violations Bulletin containing information received during the period concerning violators and showing new charges and developments in pending cases. The Bulletin includes a "Wanted" section listing the names and references to bulletins containing descriptive information as to persons wanted on securities violations charges. The Bulletin is distributed to a limited number of officials of cooperating law enforcement and other agencies in the United States and Canada.

Extensive use is made of the information available in these records by regulatory and law enforcing officials. Numerous requests are received each year for special reports on individuals in addition to the information supplied by regular distribution of the quarterly bulletin. All available information is supplied in response to inquiries from law enforcement agencies. During the fiscal year the Commission received 3,373 "securities violations" letters or reports and dispatched 1,157 communications to cooperating agencies.

APPLICATIONS FOR NONDISCLOSURE OF CERTAIN INFORMATION

The Commission is authorized under the various Acts administered by it to grant requests for nondisclosure of certain types of information which would otherwise be disclosed to the public in applications, reports or other documents filed pursuant to these statutes. Thus, under paragraph (30) of Schedule A of the Securities Act of 1933, disclosure of any portion of a material contract is not required if the Commission determines that such disclosure would impair the value of the contract and is not necessary for the protection of the investors. Under Section 24 (a) of the Securities Exchange Act of 1934, trade secrets or processes need not be disclosed in any material filed with the Commission, and under Section 24 (b) of that Act written objection to public disclosure of information contained in any such material may be made by the Commission which is then authorized to make public disclosure of such information only if in its judgment such disclosure is in the public interest. Similar provisions are contained in Section 22 of the Public Utility Holding Company Act of 1935 and in Section 45 of the Investment Company Act of 1940. These statutory provisions have been implemented by rules specifying the

procedure to be followed by persons who apply to the Commission for a determination that public disclosure is not necessary in a particular case.

The number of applications granted, denied or otherwise acted upon during the year are set forth in the following table:

[table omitted]

ACTIVITIES OF THE COMMISSION IN ACCOUNTING AND AUDITING

Successive reports of the Commission have called attention to the fact that the detailed provisions of the several Acts administered by the Commission recognize the importance of dependable informative financial statements which disclose the financial status and earnings history of a corporation or other commercial entity. These statements, whether filed in compliance with the statutes administered by the Commission or included in other material available to stockholders or prospective investors, are indispensable to investors as a basis for investment decisions.

The Congress recognized the importance of these statements and that they lend themselves readily to misleading inferences or even deception, whether or not intended. It accordingly dealt extensively in the several statutes administered by the Commission with financial statement presentation and the disclosure requirements necessary to set forth fairly the financial condition of the company. Thus, for example, the Securities Act requires the inclusion in the prospectus of balance sheets and profit and loss statements "in such form as the Commission shall prescribe" and authorizes the Commission to prescribe the "items or details to be shown in the balance sheet and earnings statement, and the methods to be followed in the preparation of accounts * * *." Similar authority is contained in the Securities Exchange Act, and even more comprehensive power is embodied in the Investment Company Act and the Public Utility Holding Company Act.

The Securities Act provides that the financial statements required to be made available to the public through filing with the Commission shall be certified by "an independent public or certified accountant." The other three statutes permit the Commission to require that such statements be accompanied by a certificate of an independent public accountant, and the Commission's rules require, with minor exceptions, that they be so certified. The value of certification by qualified accountants has been conceded for many years, but the requirement as to independence, long recognized and adhered to by some individual accountants, was for the first time authoritatively and explicitly introduced into law in 1933. Out of this initial provision in the Securities Act and the rules promulgated by the Commission, and the action taken by the Commission in certain cases, have grown concepts of accountant-client relationships that have strengthened the protection given to investors.

As shown above, the statutes administered by the Commission give it broad rule-making power with respect to the preparation and presentation of financial statements. Pursuant to authority contained in the statutes, the Commission has prescribed uniform systems of accounts for companies subject to the Holding Company Act; has adopted rules under the Securities Exchange Act governing accounting and auditing of securities brokers and dealers; and has promulgated rules contained in a single, comprehensive regulation, identified as Regulation S-X, which govern the form and content of financial statements filed in compliance with the several Acts. This regulation is implemented by the Commission's Accounting Series Releases, of which 86 have so far been issued. These releases were inaugurated in 1937 and were designed as a program for making public, from time to time, opinions on accounting principles for the purpose of contributing to the development of uniform standards and practice in major accounting questions. The rules and regulations thus established, except for the uniform systems of accounts which are regulatory reports, prescribe accounting principles to be followed only in certain basic respects. In the large area of financial reporting not covered by such rules, the Commission's principal reliance for the protection of investors is on the certifying accountants' determination and application of accounting principles and auditing standards which are recognized as sound and which have attained general acceptance.

This procedure, which is in accordance with the provisions of the various Acts, places great reliance and responsibility on the accounting profession. The Commission, therefore, is ever vigilant in its efforts to assure itself that the audits which it requires are performed by accountants who are not connected with the registrant or its management and that appropriate auditing and accounting practices and standards have been followed. This endeavor often involves delicate decisions between the public interest and the interests of the accountants, particularly with respect to companies which have not previously had a public interest and consequently less need for a clear-cut status of independence of their accountants. It is common in such circumstances for accountants to have various relationships with the company or its management, such as being an officer, director, voting trustee, promoter, or stockholder, which are incompatible with their status as independent accountants and which are prohibited by our rules.

Since changes and new developments in financial and economic conditions affect the operations and financial status of the several thousand commercial and industrial companies required to file statements with the Commission, accounting and auditing procedures cannot remain static and continue to serve well a dynamic economy. It is necessary for the Commission to be informed of the changes and new developments in these fields and to make certain that the effects thereof are properly reported to investors. The Commission's accounting staff, therefore, engages in studies of the changes and new developments for the purpose of establishing and maintaining appropriate accounting and auditing policies, procedures and practices for the protection of investors. The primary responsibility for this program rests with the Chief Accountant of the Commission, who has general supervision with respect to accounting and auditing policies and their application.

Progress in these activities requires continuing contact and consultation between the staff and accountants both individually and through such representative groups as, among others, the American Accounting Association, the American Institute of Certified Public Accountants, the American Petroleum Institute, the Controllers Institute of America, the National Association of Railroad and Utilities Commissioners and the National Federation of Financial Analysts Societies, as well as other government agencies. Recognizing the importance of cooperation in the formulation of accounting principles and practices, adequate disclosure and auditing procedures which will best serve the interests of investors, the American Institute of Certified Public Accountants, the Controllers Institute of America and the National Federation of Financial Analysts Societies appoint committees which maintain liaison with the Commission's staff. The Commission on its part has authorized its Chief Accountant to serve as a member of an Advisory Committee to the newly created Accounting Principles Board of the American Institute of Certified Public Accountants and to serve as a member of the Accounting Theory Committee of the American Accounting Association.

These committees, the other members of which are leaders of the accounting profession in public and private practice and in teaching, were appointed to study the results of research programs undertaken for the purpose of determining appropriate practice and to narrow areas of difference and inconsistency in practice.

The many daily decisions of the Commission require the almost constant attention of some of the Chief Accountant's staff. These include questions raised by each of the operating divisions of the Commission, the regional offices and the Commission. This day-to-day activity of the Commission and the need to keep abreast of current accounting problems cause the Chief Accountant's staff to spend much time in the examination and re-examination of sound and generally accepted accounting and auditing principles and practices. From time to time members of the staff are called upon to assist in field investigations, to participate in hearings and to review opinions insofar as they pertain to accounting matters.

Pre-filing and other conferences, in person or by telephone, with officials of corporations, practicing accountants and others occupy a considerable amount of the available time of the staff. This procedure, which has proven to be one of the most important functions of the Office of the Chief Accountant and of the Chief Accountant of the Division of Corporation Finance and his staff, saves registrants and their representatives both time and expense.

Many specific accounting and auditing problems arise as a result of the examination of financial statements required to be filed with the Commission. Where examination reveals that the rules and regulations of the Commission have not been complied with or that applicable generally accepted accounting principles have not been adhered to, the examining division usually notifies the registrant by an informal letter of comment. These

letters of comment and the correspondence or conferences that follow continue to be a most convenient and satisfactory method of effecting corrections and improvements in financial statements, both to registrants and to the Commission's staff. Where particularly difficult or novel questions arise which cannot be settled by the accounting staff of the divisions and by the Chief Accountant, they are referred to the Commission for consideration and decision. By these administrative procedures the Commission deals with many accounting questions.

During the year the Commission concluded its consideration of the matter of accounting for deferred taxes, on which there had been a difference of opinion among certifying accountants at the time the matter was taken under advisement. A statement of administrative policy regarding balance sheet treatment of the credit equivalent to reduction of income taxes was issued substantially in the form proposed as submitted for formal public review on December 30, 1958. This statement said in pertinent part "any financial statement filed with this Commission which designates as earned surplus (or its equivalent) or in any manner as a part of equity capital (even though accompanied by words of limitation such as 'restricted' or 'appropriated') the accumulated credit arising from accounting for reductions in income taxes resulting from deducting costs for income tax purposes at a more rapid rate than for financial statement purposes will be presumed by the Commission to be misleading or inaccurate despite disclosure contained in the certificate of the accountant or in footnotes to the statements, provided the amounts involved are material."

Questions were raised by various parties in the proceedings as to whether the Commission has authority to issue such a statement of policy or to establish a uniform method of accounting under the 1933 Act or the 1934 Act and whether the Commission has authority to reconstitute accounting practices of electric utilities which have been prescribed by other agencies having jurisdiction. In reply to these questions the Commission made the following statement in the release:

"Under various statutes administered by it, the Commission has the authority and the corresponding responsibility to require that the financial statements filed with it be prepared in a manner which provides adequate and fair disclosure. This statement of policy is designed to advise all interested persons of the Commission's views as to the presentation in financial statements filed with the Commission of the credit arising when deferred tax accounting is employed. It pertains to the propriety of designating as earned surplus (or its equivalent) or in any manner as a part of equity capital, in financial statements filed with this Commission, the accumulated credit arising from accounting for reductions in income taxes for various items, including those under Section 167 (liberalized depreciation) and Section 168 (accelerated amortization of emergency facilities) of the Internal Revenue Code of 1954. It is not intended to direct or establish any system of accounts or to specify the manner in which a particular item shall be recorded on the books of the reporting companies, nor is it intended in any way to affect

the requirements of any other letter was published in order to extend to the accounting profession and to industry the benefit of the clarification."

During the year the Commission also issued two other Accounting Series Releases, one of which amended the minimum audit requirements prescribed in Form X-17A-5 under the Securities Exchange Act of 1934 to eliminate grounds for an interpretation that duplicate written confirmation was required of certain customers' accounts, and the other revised those parts of the Uniform System of Accounts for Public Utility Holding Companies under the Public Utility Holding Company Act of 1935 governing the preservation and destruction of books of account and other records of registered holding companies.

Other problems arise in connection with initial filings made by new corporate entities and by corporations whose securities had been closely held or traded over-the-counter. Currently there are many such filings being made by companies whose business is closely associated with rapidly growing technological and scientific developments.

Some of the problems frequently causing difficulty arise because audits made in prior years did not measure up to generally accepted standards, particularly in that they often omitted accepted audit procedures with respect to inventories and receivables. These procedures require observation of inventories and confirmation of receivables where either of these assets represents a significant proportion of the current assets or of the total assets of a concern. Failure to apply them where they are practicable and reasonable generally precludes expression of an opinion on the fairness of the financial statements taken as a whole because the income, earned surplus, and the current position may be materially affected. If the auditor finds himself faced with such a situation, he must satisfy himself as to inventories for prior years by appropriate methods. In some instances, this is very difficult and may preclude certification because the client may not have taken an inventory at any prior year end or because inventory records for such years are incomplete or because such records may have been destroyed.

Other difficulties often arise in connection with the initial filings of such companies because accountants and other advisers serving them have not had any prior dealing with the Commission. In some cases these persons have not familiarized themselves with the rules and regulations of the Commission -- particularly the instructions as to financial statements required by the forms, the rules relating to independence of the certifying accountant, and those relating to the form and content of financial statements set forth in Regulation S-X.

During the year members of the staff in this office, together with staff members from other divisions of the Commission, conferred with representatives of the Small Business Administration for the purpose of developing rules and regulations and forms for the guidance of small business investment companies when registering with and reporting to that agency and to this Commission, with the hope that their cooperative efforts would

result in the promulgation of rules and a single basic annual report form which would permit such companies to prepare copies of such annual report for filing under both the Investment Company Act of 1940 and the Small Business Investment Act of 1958.

Early in 1960 Financial Report SBA Form 468 was declared effective after appropriate notice by the Small Business Administration. Thereafter the Commission circulated for comment a proposed annual report form for small business investment companies which would enable such companies to file with the Commission a single annual report which would meet the annual reporting requirements under the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

The instructions as to financial statements in such form require such companies to file copies of their financial reports on SBA Form 468 supplemented by certain additional financial information for the fiscal year covered by the report on the proposed form.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Section 15 of the Bretton Woods Agreements Act, as amended, exempts from registration under both the Securities Act of 1933 and the Securities Exchange Act of 1934 securities issued or guaranteed as to both principal and interest by the International Bank for Reconstruction and Development. The Bank is required to file with the Commission such annual and other reports with respect to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors. The Commission has, pursuant to the above authority, adopted rules requiring the Bank to file quarterly reports and also to file copies of each annual report of the Bank to its board of governors. The Bank is also required to file reports with the Commission in advance of any distribution in the United States of its primary obligations. The Commission, acting in consultation with the National Advisory Council on International Monetary and Financial Problems, is authorized to suspend the exemption at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension.

During the year the Bank made 31 loans totaling the equivalent of \$658.7 million, compared with a total of \$703 million last year. This brought the gross total of loan commitments at June 30, to \$5,181 million. This year's loans were made in Algeria and Sahara, Austria, Belgian Congo, Chile, Colombia, Costa Rica, Honduras, India, Iran, Italy, Japan, Kenya, Mauritania, Nicaragua, Norway, Pakistan, Peru, Rhodesia and Nyasaland, Sudan, United Arab Republic, and Uruguay.

During the year the bank sold or agreed to sell \$242.6 million principal amount of loans, all without its guarantee. On June 30 the total sales of loans amounted to \$811 million, of which \$69 million was with the bank's guarantee.

On June 30, 1960 the outstanding funded debt of the Bank was \$2,073 million, reflecting a net increase of \$168 million during the fiscal year. The Bank's borrowing operations during the year, including new public bond issues and private placements of bank obligations, totaled \$374.5 million. There were three public issues; a United States dollar issue in the amount of \$125 million (of which \$27.6 million is subject to delayed delivery); a Swiss franc issue equivalent to \$14 million; and a pound sterling issue equivalent to \$28 million. There were six private placements of obligations totaling the equivalent of \$207.5 million; this included \$47.6 million in Deutsche Marks of which \$23.8 million still remained to be drawn down by the Bank on June 30. Outstanding debt was also increased by \$19.2 million as a result of delivery of bonds which had been subject to delayed delivery arrangements and by a further \$12.7 million under a Deutsche Mark borrowing arranged in July 1958. Funded debt maturing amounted to \$165.8 million, and sinking and purchase fund transactions amounted to \$21.3 million.

Pursuant to the increase in the Bank's authorized capital from \$10 billion to \$21 billion on September 15, 1959, 55 members had doubled their subscriptions and 20 members had subscribed to \$1,140.6 million in addition to their 100 percent increases. As a result, the subscribed capital of the Bank had been increased by \$9,751.4 million to \$19,307.9 million at June 30, 1960.

INTER-AMERICAN DEVELOPMENT BANK

The Inter-American Development Bank Act, which authorizes United States participation in the new Inter-American Development Bank, provides a similar exemption for certain securities which may be issued by the new Bank. The Commission has had discussions with the Bank regarding the promulgation of appropriate rules and regulations of the character presently in effect with respect to the International Bank. It is expected that such rules and regulations will be adopted in the near future.

OPINIONS OF THE COMMISSION

Opinions are issued by the Commission in contested and other cases arising under the statutes administered by it and under the Commission's rules of practice, where the nature of the matter to be decided, whether substantive or procedural, is of sufficient importance to warrant a formal expression of views. These opinions include detailed findings of fact and conclusions of law based on evidentiary records taken before a hearing examiner who serves independently of the operating divisions, or, in an occasional case, before a single Commissioner or the entire Commission. In some cases, formal hearings are waived by the parties and the findings and conclusions are based on stipulated facts or admissions.

The Commission is assisted in the preparation of findings and opinions by its Office of Opinion Writing, a staff office completely independent of the operating divisions of the Commission and directly responsible to the Commission itself. The independence of the staff members of this office reflects the principle, embodied in the Administrative Procedure Act, of a separation between staff members performing investigatory or prosecutory functions and those performing investigatory or prosecutory functions and those performing quasi-judicial functions. In some cases, with the consent of all parties, the interested operating division assists in the drafting of opinions.

The Commission's opinions are publicly released and distributed to representatives of the press and to persons on the Commission's mailing list. In addition, the opinions are printed and published by the Government Printing Office in bound volumes entitled "Securities and Exchange Commission Decisions and Reports."

During the fiscal year 1959, the Commission issued 166 opinions and other rulings of an adjudicatory nature.

STATISTICS AND SPECIAL STUDIES

During the past fiscal year the Branch of Economic Research continued its regular work in connection with the statistical activities of the Commission and the overall Government statistical program under the direction of the Office of Statistical Standards, Bureau of the Budget.

The statistical series described below are published in the Commission's Statistical Bulletin and in addition, except for data on registered issues, current figures and analyses of the data are published in quarterly press releases. The Commission's stock price index is released weekly, together with the data on round-lot and odd-lot trading on the two New York stock exchanges.

Issues Registered Under the Securities Act of 1933

Monthly and quarterly statistics are compiled on the number and volume of registered securities, classified by industry of issuer, type of security, and use of proceeds.

New Securities Offerings

This is a monthly and quarterly series covering all new corporate and noncorporate issues offered for cash sale in the United States. The series includes not only issues publicly offered but also issues privately placed, as well as other issues exempt from registration under the Securities Act such as intrastate offerings and railroad securities. The offerings series includes only securities actually offered for cash sale, and only issues offered for account of issuers.

Estimates of the net cash flow through securities transactions are prepared quarterly and are derived by deducting from the amount of estimated gross proceeds received by corporations through the sale of securities the amount of estimated gross payments by corporations to investors for securities retired. Data on gross issues, retirements and net change in securities outstanding are presented for all corporations and for the principal industry groups.

Stock Market Data

Statistics are regularly compiled on the market value and volume of sales on registered and exempted securities exchanges, round-lot stock transactions of the New York exchanges for accounts of members and nonmembers, odd-lot stock transactions on the New York exchanges, special offerings and secondary distributions. Indexes of stock market prices are compiled, based upon the weekly closing market prices of 265 common stocks listed on the New York Stock Exchange. The indexes are composed of T major industry groups, 29 subordinated groups, and a composite group.

Individuals' Saving

The Commission compiles quarterly estimates of the volume and composition of individuals' saving in the United States. The series represent net increases in individuals' financial assets less net increases in debt. The study shows the aggregate amount of saving and the form in which the saving occurred, such as investment in securities, expansion of bank deposits, increase in insurance and pension reserves, etc.

A reconciliation of the Commission's estimates with the personal saving estimates of the Department of Commerce, derived in connection with its national income series, is published annually by the Department of Commerce as well as in the Securities and Exchange Commission Statistical Bulletin.

Corporate Pension Funds

An annual survey is made of pension plans of all United States corporations where funds are administered by corporations themselves, or through trustees. The survey shows the flow of money into these funds, the types of assets in which the funds are invested and the principal items of income and expenditures;

Financial Position of Corporations

The series on working capital position of all United States corporations, excluding banks, insurance companies and savings and loan associations, shows the principal components of current assets and liabilities, and also contains an abbreviated analysis of the sources and uses of corporate funds.

The Commission, jointly with the Federal Trade Commission, compiles a quarterly financial report of all United States manufacturing concerns. This report gives complete balance sheet data and an abbreviated income account, data being classified by industry and size of company.

Plant and Equipment Expenditures

The Commission, together with the Department of Commerce, conducts quarterly and annual surveys of actual and anticipated plant and equipment expenditures of all United States business, exclusive of agriculture. Shortly after the close of each quarter, data are released on actual capital expenditures of that quarter and anticipated expenditures for the next two quarters. In addition, a survey is made at the beginning of each year of the plans for business expansion during that year.

DISSEMINATION OF INFORMATION

Widespread public dissemination of the financial and other data filed with the Commission concerning securities offered for public sale and those traded on exchanges is essential if public investors generally are to benefit by the disclosure requirements of the Federal securities laws and be enabled to evaluate securities being sold in the market. This is accomplished in part by distribution of the prospectus or offering circular on new offerings, and by the filing of annual and other periodic reports with exchanges and the Commission by listed companies, all of which are available for public inspection. Much of the data also is reprinted and receives general circulation through published securities manuals, investment advisory services and statistical services, which are reference material for securities analysts.

To facilitate public dissemination of the financial and other proposals filed with and actions taken by the Commission, a daily News Digest is issued by the Commission which contains a resume of these filings and actions. This digest is distributed daily to the press and on a semiweekly basis to a mailing list comprising about 9,500 names of persons, firms and companies who have requested to be kept currently informed of such developments. Digests issued during the year under review contained a resume of the proposals for public offering of \$15.8 billion of securities contained in the 1,628 registration statements filed during the year, as well as a discussion of 858 orders, decisions, rules and related announcements issued by the Commission. Much of the information is published in the daily press and in financial and other periodicals. The texts of the Commission's orders, decisions and rules, announcements of civil and criminal enforcement actions, and the Commission's economic and statistical studies are also released to the press and others.

Members of the Commission and its staff frequently deliver addresses before professional, business and other groups and participate in press conferences and radio and television discussions in order to explain the nature and scope of the Commission's functions and activities and to expound upon particular problems of administration and the basic policies being pursued.

Information Available for Public Inspection

The many thousands of registration statements, applications, declarations, and annual and other periodic reports filed each year are available for public inspection at the Commission's principal office in Washington, D.C. In addition, copies of recent reports filed by companies having securities listed on exchanges other than the New York Stock Exchange and the American Stock Exchange, and copies of current reports of many non-listed companies which have registered securities for public offering under the Securities Act, may be examined in the Commission's New York Regional Office; and recent reports filed by companies whose securities are listed on the New York and American stock exchanges may be examined in the Commission's Chicago Regional Office. Moreover, there are available for examination in all regional offices copies of prospectuses relating to recent public offerings of securities registered under the Securities Act and all regional offices have copies of broker-dealer and investment adviser registration applications, broker-dealer annual financial reports and Regulation A letters of notification filed in their respective regions. Reports of companies listed on the New York, American and Midwest stock exchanges may be seen at the respective exchange offices.

Photocopies of reports or portions thereof and other material in the public files of the Commission may be obtained upon request directed to the Commission's public reference room in Washington. The charge per page for photocopies varies from 20 cents to 60 cents depending upon the size of the page being copied. A minimum charge of \$1 is made for less than 5 pages (legal size). The charge for each certification by the Commission is \$2.

Each year many thousands of requests for photocopies and information from the public files of the Commission are received by the public reference room in Washington, D.C. During the year 5,207 persons examined material on file in the Washington office, and several thousand others examined files in the New York and Chicago regional offices. About 137,870 photocopy pages were sold pursuant to 2,489 individual orders, and about 14,859 individual orders for 538,906 copies of Commission releases and other publications were filled during the year.

ORGANIZATION

The Commission's staff consists of attorneys, security analysts and examiners, accountants, engineers and administrative and clerical employees.

In accordance with the Commission's program of continuing review of its functions and organization, the following changes were made during the 1960 fiscal year:

In August 1959, the position of Adviser to the Commission was established. The incumbent of that position is responsible for assisting the Commission in its re-examination and re-evaluation of policies, interpretations and procedures to keep abreast of the continuing expansion and constantly changing conditions in the securities industry, particularly with respect to problems arising from the development of new techniques of securities flotation and placement and the growing significance of international financing in the American capital markets.

In September 1959, an additional Assistant Director position was established in the Division of Corporation Finance, and twelve Branches of Corporate Analysis and Examination were created in lieu of the twelve sections which formerly had performed that function. The Division is responsible for the examination of an enormous volume of registration statements, preliminary proxy statements, annual reports and other documents for compliance with the disclosure requirements of the securities laws. The realignment was designed to promote efficiency of operation and more timely completion of the examination process.

In October 1959, a second Branch of Investment Company Regulation was established in the Division of Corporate Regulation, Responsibility for enforcing the regulatory aspects of the Investment Company Act of 1940 was transferred to the Division of Corporate Regulation in May 1953. At that time there were 369 registered companies with total assets of \$7 billion. By June 1959, there were 512 registered companies with assets of more than \$20 billion. The Small Business Investment Act of 1958 further increased the Division's workload by creating an additional category of investment companies which must register under the Act -- small business investment companies. The second Branch of Investment Company Regulation will enable the Division to cope more effectively with its regulatory functions in this rapidly expanding area of responsibility.

In March 1960 the functions of the former Branch of Exchange Regulation and Economic Research in the Division of Trading and Exchanges were assigned to 2 new Branches -- the Branch of Exchange Regulation and the Branch of Economic Research. The Branch of Exchange Regulation is now responsible for the Division's regulatory functions with respect to exchange activities and market surveillance and stabilization. The Branch of Economic Research is responsible for the Commission's statistical programs. This realignment places each of these two important Commission programs under the supervision of an Assistant Director of the Division of Trading and Exchanges.

PERSONNEL, BUDGET AND FINANCE

During fiscal 1960 the Commission continued to recruit outstanding college and law school graduates with the specialized courses of study required for its work activities. A number of well qualified business administration graduates were appointed through the Federal Service Entrance Examination conducted by the U.S. Civil Service Commission. As a result of close contact with the placement offices of various law schools and on-campus interviews, the Commission was able to hire a number of recent law graduates for its starting level attorney jobs.

Considerable emphasis was placed on the Commission's training activities in fiscal 1960. Supervisory officials were enrolled in a special training course for middle and top management officials. Training courses also were conducted for professional employees in the New York Regional Office. The Division of Corporate Regulation held a training course for employees to be assigned work in connection with regular inspections of investment companies. Members of the staff were enrolled in training courses for IBM machine operation and automatic data processing. Correspondence workshops sponsored by the General Services Administration were conducted for employees in the Headquarters Office. Orientation classes were held by the Branch of Personnel to explain health plans available as a result of the passage of the Government Employees Health Benefits Act of 1960.

In its Fifth Annual Service and Merit Awards Ceremony held in October 1959, the Commission observed its Silver Anniversary by presenting 36 career employees with silver anniversary plaques in recognition of 25 years of service with the Commission. An additional 80 employees received 10- and 20-year service pins and certificates in recognition of long service with the Commission. Cash awards totaling \$6,825 and certificates of merit were presented to 56 employees, and 8 employees received a total of \$530 for adopted meritorious suggestions.

The outstanding achievements of members of the Commission's staff continued to receive public recognition in the form of special awards. In March 1960, Mr. Andrew Barr, Chief Accountant of the Commission, was one of five Federal employees to receive the President's Award for Distinguished Federal Civilian Service. The citation signed by President Eisenhower read as follows:

"His exceptional contributions to the development of Accounting principles and meaningful accounting presentations of corporate financial affairs to investors have materially aided the process of capital formation in the United States and advanced the cause of investor protection. The confidence of investors in the integrity of the capital markets of the Nation has been enhanced by his outstanding leadership and notable achievements."

In February 1960, Paul Windels, Jr., New York Regional Administrator, received an Arthur S. Flemming Award of the Junior Chamber of Commerce of Washington, D.C. as one of ten outstanding young men in the Federal Service. Mr. John J. Enright, an attorney on the staff of the Commission's Chicago Regional Office, was awarded a Certificate of Merit by the William A. Jump Foundation in May 1960. In its first annual awards presentation, the Federal Government Accountants Association awarded Mr. Frank J. Donaty, Budget and Finance Officer, an outstanding achievement award for contributions to the improvement of financial management in the Federal Service.

The Commission is justifiably proud of these distinctions earned by its employees whose devoted and conscientious service has contributed so much to carrying out the statutory objectives for which the Commission was created.

The following comparative table shows the personnel strength of the Commission as of June 30, 1959 and 1960:

[table omitted]

The table facing page 226 shows the status of the Commission's budget estimates for the fiscal years 1951 to 1961, from the initial submission to the Bureau of the Budget to final enactment of the annual appropriation.

The Commission is required by law to collect fees for registration of securities issued, qualification of trust indentures, registration of exchanges, and sale of copies of documents filed with the Commission. [Footnote: Principal rates are (1) 1/100 of 1 percent of the maximum aggregate price of securities proposed to be offered but not less than \$25.; (2) 1/500 of 1 percent of the aggregate dollar amount of stock exchange transactions. Fees for other services are only nominal.]

The following table shows the Commission's appropriation, total fees collected, percentage of fees collected to total appropriation, and the net cost to the taxpayers of Commission operations for the fiscal years 1958, 1959, and 1960:

[table omitted]