1992 Annual Report

United States
Securities and Exchange Commission

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United States
Securities and Exchange Commission
Washington, D.C. 20549

The Honorable Albert Gore, Jr.
President of the Senate
Washington, D.C. 20510

The Honorable Thomas S. Foley
Speaker of the House
Washington, D.C. 20515

Gentlemen:

I am honored to transmit the Securities and Exchange Commission's annual report for fiscal year 1992. During the past year, the Commission:

- presided over by far the largest volume of securities registrations in history, and the largest volume of securities offerings of all types;
- substantially expanded the rights of shareholders to communicate without unnecessary restrictions under the federal proxy rules;
- expanded the disclosure requirements of proxy rules concerning executive compensation to provide comprehensive information in clear presentations using charts and graphs, together with mandated descriptions of performance factors relied on by a company's compensation committee in making compensation awards;

- simplified the process of raising capital and reduced the cost of complying with federal regulations for small businesses, leading to a substantially increased rate of offerings by small businesses;
- modified regulations to permit offerings of securities backed by pools of non-mortgage financial assets such as small business loans to facilitate growth of new liquidity for small business loans;
- obtained court orders requiring defendants to pay a total of approximately $558 million, including disgorgement of $51 million to reimburse injured parties and civil penalties of $221 million to the U.S. Treasury;
- reached a settlement with Salomon Brothers requiring that firm to pay $290 million in monetary sanctions;
- released the report *Protecting Investors: A Half Century of Investment Company Regulation,* the first comprehensive review of the Investment Company Act in its 52 years of existence;
- entered into new agreements with four countries providing for exchange of investigative information, technical assistance and other matters; and
- collected $406 million in fee revenue, almost twice as much as its annual funding level of $226 million.

Enforcement

The strength of the Commission's enforcement program has been its diversity and its capacity to deal with the most current and pressing problems of the marketplace. While the traditional program areas – accounting, financial disclosure/financial fraud, regulated entity cases, market manipulation and insider trading cases – remain a core component of the program, the Commission has taken a much more visible role in cases involving the government securities markets, fraud by investment advisers, and affinity fraud.

In fiscal year 1992, the Commission instituted a record 394 enforcement actions involving insider trading, fraud, market manipulation, securities offerings, broker-dealer and investment company violations, and other matters.

The Commission obtained court orders requiring defendants to pay approximately $558 million. This included court orders in insider trading cases requiring defendants to contribute approximately $51 million to funds created to reimburse injured parties. Civil penalties authorized by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, the Insider Trading Sanctions Act of 1984 and the Insider Trading and Securities Fraud Enforcement Act of 1988 totaled over $221 million.

The Securities Enforcement Remedies and Penny Stock Reform Act of 1990, which empowered the Commission to seek and impose fines and to issue cease and desist orders, added considerably to the strength and flexibility of the Commission's enforcement arsenal. The new cease and desist powers have become a key component of the Commission's enforcement program.

In *SEC v. Salomon Inc,* the Commission settled one of the largest fraud cases in history. The SEC charged Salomon with committing multiple violations of the antifraud and recordkeeping provisions of the federal securities laws through false bids in Treasury auctions and other activities. Under the settlement agreement, Salomon paid a monetary sanction of $290 million. Of this amount, $100 million was placed in a “claims fund” to provide compensatory damages to persons with claims resulting from Salomon's conduct. In addition, Salomon paid $122 million in civil fines under the securities laws and

$68 million in fines and forfeitures in settlement of claims by the Department of Justice, The settlement included a permanent injunction against violations by Salomon of the antifraud and recordkeeping provisions of the federal securities laws. The settlement also required Salomon to maintain appropriate procedures to prevent similar violations in the future.

International Affairs

In June 1992, the SEC joined with other securities regulatory authorities of North, South, and Central America and the Caribbean to create the Council of Securities Regulators of the Americas. COSRA will provide a forum for mutual cooperation and communication among regulatory authorities throughout the Americas. In addition, COSRA will enhance the efforts of each country in the region to develop and foster the growth of fair and open securities markets.

During 1992, the Commission signed comprehensive Memoranda of Understanding for consultation and cooperation with Argentina and Spain. The Argentina MOU also contains provisions for technical assistance. The SEC also signed more limited understandings, involving technical assistance and mutual cooperation, with securities authorities in Costa Rica and Indonesia. In addition, the SEC now has a senior staff person working as a full-time resident advisor to the Polish Securities Commission. The costs of our assistance in Warsaw have been fully paid by a grant from the Agency for International Development.

In addition, the Commission continued to provide technical assistance to many emerging market countries and worked closely with

international regulatory bodies to strengthen market inter-relationships, capital adequacy and other regulatory standards.

Regulation of the Securities Markets

In 1992, the Division of Market Regulation undertook the Market 2000 Study. The study is intended to provide an understanding of how the equity markets have changed over the past 20 years. The Division will study the overall structure of equity market regulation, including its impact on the primary and regional exchanges, exempt exchanges, the over-the-counter market and proprietary trading systems. Among the issues the report will explore are the allocation of regulatory responsibilities, the need for enhanced transparency, and transaction costs and market fragmentation.

The Commission continued in its efforts toward implementing major legislative initiatives enacted by Congress in 1990. The Commission approved a large trader reporting system, which will monitor material financial exposures of holding company systems with broker-dealer affiliates. In addition, the SEC promulgated seven investor disclosure rules designed to address abuses in the penny stock market. The Commission also reviewed a substantial number of new securities and derivative products introduced by the industry.

Investment Companies and Advisers

The SEC's Division of Investment Management completed its two-year study of the Investment Company Act – the first comprehensive review of the Act in its 52 years of existence. *Protecting Investors: A Half Century of Investment Company Regulation* examined the regulation of investment companies to see where the law could be

more flexible and where regulatory costs could be reduced without sacrificing the quality of investor protection. The Commission has already begun to implement some of the report's recommendations.

The Commission also proposed amendments to Regulation E under the Securities Act that are intended to enhance the ability of small business investment companies to raise capital and to increase the liquidity of investments in small business investment companies and in business development companies.

Full Disclosure System

The Commission adopted major initiatives to streamline regulations and reduce the cost of compliance for small businesses. The small business initiatives reflect the Commission's recognition that traditional sources of funding for small companies have decreased substantially. The actions taken include tripling the limit for simplified stock offerings not required to be filed with the SEC and creating simpler forms for small offerings and financial reports.

The Commission adopted significant revisions of the proxy rules to facilitate effective communications among shareholders and between shareholders and their corporations. The reforms will encourage greater participation by shareholders in corporate governance by removing unnecessary regulatory barriers, reducing the costs of complying with the proxy rules and improving disclosure.

In addition, the Commission revised its rules to ensure that shareholders receive better information about executive compensation. Among other things, the new executive compensation disclosure rules require new tables that will disclose clearly and

concisely the compensation received by a corporation's highest paid executives.

Accounting and Auditing Matters

The Commission continued to provide policy direction to the accounting profession to move toward using appropriate market-based measures in accounting for financial instruments. Through the review and comment process, the accounting staff ensured compliance with existing rules during the interval. The Commission also continued to devote significant resources to initiatives involving international accounting and auditing independence requirements.

Other Litigation and Legal Activities

The Office of the General Counsel continued both to advise the Commission on all pending legal questions and to handle the Commission's appellate and certain other litigation. The staff opened 264 litigation matters and received 56 adjudication cases. In addition, the General Counsel's Office worked extensively on legislative proposals concerning financial services, litigation reform and other issues.

Economic Research and Analysis

The economics staff reviewed proposals encompassing the full range of the Commission's regulatory program. Notably, the staff directed its attention towards a number of issues including executive compensation, the impact of banking reforms on the securities markets, market value accounting, and bond market efficiency. Analysis and technical assistance provided to the agency included a

quarterly report on the financial health of the securities industry, reports on trends in the composition of bank asset portfolios, assessments of materiality and monetary penalties in matters of securities violations, and analysis of trading events as a result of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990.

Management and Program Support

The SEC collected $406 million in fees. The agency received budget authority of $271 million but had spending authority of $226 million. The fee collections less budgeted funds created a net gain of $135 million to the United States Treasury.

The Commission held 60 meetings and considered 323 matters on a wide-range of securities issues.

A variety of changes occurred in the administrative support functions of the agency. They included the reorganization of the Office of Equal Employment Opportunity and the creation of the Office of Information Technology to consolidate and manage the agency's increasingly complex information systems.

The past year's accomplishments are a result of the ability and dedication of the staff and Commissioners. Our success in enhancing our system of corporate governance, dealing with internationalization, facilitating access to capital for small businesses, as well as the ongoing battle against market manipulation and fraud was also the result of the excellent cooperation and support from the business and financial community, the investing public, the Administration and the Congress.

Sincerely,

Richard C. Breeden
Chairman

COMMISSION MEMBERS AND PRINCIPAL STAFF OFFICERS

(As of November 4, 1992)

Commissioners

Richard C. Breeden, *Chairman* **– Term expires 1993**
Edward H. Fleischman – Term expires1992 [resigned from the Commission on March 31,1992.]
Mary L. Schapiro **– Term expires** 1994
Richard Y. Roberts **– Term expires** 1995
J. Carter Beese, Jr. **– Term expires** 1996

Principal Staff Officers

Barbara Green, Executive Assistant and Senior Advisor to the Chairman

Mary Ann Gadziala, Counselor to the Chairman

Linda C. Quinn, Director, Division of Corporation Finance
Elisse B. Walter, Deputy Director
Mary E.T. Beach, Senior Associate Director
Abigail Arms, Associate Director
Robert Bayless, Associate Director
Teresa Iannaconi, Associate Director

Howard Morin, Associate Director
William Morley, Associate Director
Mauri Osheroff, Associate Director

William R. McLucas, Director, Division of Enforcement
C. Gladwyn Coins, Associate Director
Joseph I. Goldstein, Associate Director
Bruce A. Hiler, Associate Director
Harry J. Weiss, Associate Director
Colleen P. Mahoney, Chief Counsel
Thomas C. Newkirk, Chief Litigation Counsel
George Diacont, Chief Accountant

Marianne K. Smythe, Director, Division of Investment Management
Matthew Chambers, Associate Director
Gene A. Gohlke, Associate Director
Thomas S. Harman, Associate Director
William C. Weeden, Associate Director
Vacant, Associate Director

William H. Heyman, Director, Division of Market Regulation
Brandon Decker, Deputy Director
Larry Bergmann, Associate Director
Robert Colby, Associate Director
Mark D. Fitterman, Associate Director
Jonathan Kallman, Associate Director
Michael Macchiaroli, Associate Director
Catherine McGuire, Special Assistant to the Director

James R. Doty, General Counsel, Office of the General Counsel

Paul Gonson, Solicitor and Deputy General Counsel
Phillip D. Parker, Deputy General Counsel
Anne E. Chafer, Associate General Counsel
Richard Humes, Associate General Counsel
Diane Sanger, Associate General Counsel
Jacob H. Stillman, Associate General Counsel
William S. Stern, Counselor for Adjudication

Walter P. Schuetze, Chief Accountant, Office of the Chief Accountant

Warren E. Blair, Chief Administrative Law Judge, Office of the Administrative Law Judges

Susan Woodward, Chief Economist, Office of Economic Analysis

Faith D. Ruderfer, Director, Office of Equal Employment Opportunity

James M. McConnell, Executive Director, Office of the Executive Director

Kenneth A. Fogash, Deputy Executive Director
James A. Clarkson, III, Director of Regional Office Operations
Lawrence H. Haynes, Associate Executive Director for Financial Management
Wilson A. Butler, Jr., Associate Executive Director for Filings, Information and Consumer Services
John Innocenti, Associate Executive Director for Human Resources Management
John J. Lane, Associate Executive Director for Information Technology

Fernando L. Alegria, Jr., Assistant Executive Director for Administrative and Management Support

Michael D. Mann, Director, Office of International Affairs

Kathryn Fulton, Director, Office of Legislative Affairs

Peter M. Robinson, Director, Office of Public Affairs, Policy Evaluation and Research

Jonathan G. Katz, Secretary, Office of the Secretary

BIOGRAPHIES OF COMMISSION MEMBERS

Richard C. Breeden, Chairman

Following his confirmation by the Senate, Richard C. Breeden was sworn in as the 24th Chairman of the Securities and Exchange Commission on October 11, 1989. The SEC oversees trading markets in stocks, options, bonds and other securities with more than $10 trillion in aggregate value. It is also responsible for overseeing the activities of more than 10,000 registered broker-dealers and investment companies, and approximately 18,000 investment advisors. The SEC also is responsible for establishing disclosure and accounting policies for the nation's 13,500 publicly-owned companies. The SEC also enforces U.S. laws against insider trading and other market abuses.

As Chairman, Mr. Breeden directs a staff of more than 2,600 persons operating in offices throughout the United States. During his tenure, Mr. Breeden has emphasized improvements to the capital raising process for small and large businesses, increased market stability, control of unlawful practices and fundamental reform of the corporate governance system in America. Mr. Breeden has testified before Congress on more than 40 occasions, and he regularly appears on news and investment programs in the U.S. and foreign countries to discuss capital market issues.

In addition to his domestic responsibilities, Mr. Breeden is actively involved in international financial regulation. During his tenure as Chairman, he has signed more than 15 international agreements to

promote cooperation in law enforcement and to provide technical assistance to emerging securities markets around the world. Mr. Breeden has held several leadership positions in the International Organization of Securities Commissions, and he is the first President of the Council of Securities Regulators of the Americas, a group linking securities regulators of North, South and Central America and the Caribbean.

Prior to assuming the Chairmanship, Mr. Breeden served in several governmental assignments, including serving in the White House under President Bush as Assistant to the President for Issues Analysis. From 1982-1985, Mr. Breeden also served as Deputy Counsel to then-Vice President Bush and Staff Director of the President's Task Group on Regulation of Financial Services, a cabinet-level group established to recommend improvements in federal financial regulatory programs.

Mr. Breeden is a lawyer by training. His legal practice has included corporate and financial transactions of all types. In his most recent period of private practice, he was a corporate finance partner with the Washington, D.C. office of one of the nation's largest law firms. Prior to his original government service, Mr. Breeden practiced law in New York City from 1976-1981. This followed completion of an appointment to teach constitutional law and federal jurisdiction at the University of Miami School of Law.

Educated at Stanford University (B.A. with honors in international relations, 1972) and Harvard Law School (1975), Mr. Breeden is the author of articles in both legal and financial publications. Mr. Breeden resides in Virginia with his wife, Holly, and their three sons. The family is active in local church, school, athletic and civic affairs.

Edward H. Fleischman

Edward H. Fleischman was sworn in as the 66th Member of the Securities and Exchange Commission on January 6,1986. He resigned from the Commission on March 31, 1992 to return to private practice.

Mr. Fleischman was admitted to the New York Bar in 1959 and to the bar of the U.S. Supreme Court in 1980. He formerly practiced law with Beekman & Bogue, where he specialized in securities and corporate law and related areas.

During his career, Mr. Fleischman has been elected a member of the American Law Institute, the American College of Investment Counsel (of which he was President in 1990-1991) and the American Society of Corporate Secretaries, and he serves as an Adjunct Professor of Law teaching securities regulation at the New York University Law School.

Mr. Fleischman was born in Cambridge, Massachusetts on June 25, 1932. He received his undergraduate education at Harvard College, served in the U.S. Army from 1952 to 1955, and obtained his LL.B degree from Columbia Law School.

Mr. Fleischman is a member of the Council of the American Bar Association Section of Business Law. He serves on that Section's Committee on Counsel Responsibility and in 1987-1991 he chaired the Committee on Developments in Business Financing, for which he co-drafted that Committee's 1979 paper on resale of institutional privately-placed debt and chaired its Subcommittees on Simplified

Indenture and on Annual Review of Developments. He also serves on the Committee on Federal Regulation of Securities, for which he chaired Subcommittees on Rule 144 and on Broker-Dealer Matters and co-drafted the Committee's 1973 letter on utilization and dissemination of “inside” information. In addition, he serves on the Committee on Futures Regulation and the Committee on Developments in Investment Services, and has been active in the Section on Administrative Law.

Mr. Fleischman is also a member of Committee E – Banking Law and of Committee Q – Issues and Trading in Securities of the International Bar Association Section on Business Law. In the International Law Association (American Branch), he has been appointed to membership on the Committee on International Regulation of Securities.

Mary L. Schapiro

Mary L. Schapiro was sworn in as the 67th member of the Securities and Exchange Commission on December 19, 1989 by the Honorable Sandra Day O'Connor, Associate Justice of the United States Supreme Court. Ms. Schapiro was nominated to the Commission on November 8, 1989 by President George Bush and confirmed by the United States Senate on November 18, 1989. Her term expires in June 1994. Ms. Schapiro had previously been appointed by President Ronald Reagan for a one year term.

Ms. Schapiro was named chairman of the SEC Task Force on Administrative Process in 1990, with responsibility for comprehensive review and revision of the agency's rules for administrative proceedings. Ms. Schapiro also serves on the Developing Markets

Committee of the International Organization of Securities Commissions.

Before being appointed to the Commission, Ms. Schapiro was General Counsel and Senior Vice President for the Futures Industry Association. While at the FIA her work included regulatory, tax and international issues, including extensive liaison with foreign government officials and analysis of state and Federal legislation.

Ms. Schapiro came to the FIA from the Commodity Futures Trading Commission, where she spent four years. She joined the CFTC in 1980 as a Trial Attorney in the Manipulation and Trade Practice Investigations Unit of the Division of Enforcement, and from 1981 to 1984 served as Counsel and Executive Assistant to the Chairman of the agency. In the latter position, Ms. Schapiro advised on all regulatory and adjudicatory matters pending before the Commission and on legislation. She also represented the Chairman with Federal and state officials, Congress, and the futures industry, in addition to other duties.

A 1977 honors graduate of Franklin and Marshall College (Lancaster, Pennsylvania), Ms. Schapiro earned a Juris Doctor degree (with honors) from The National Law Center of George Washington University in 1980.

Richard Roberts

Richard Roberts was nominated to the Commission by President Bush and confirmed by the Senate on September 27, 1990. He was sworn in as a Commissioner on October 1, 1990 by the Honorable

Stanley Sporkin, Judge for the United States District Court of the District of Columbia. His term expires in June 1995.

Before being nominated to the Commission, Mr. Roberts was in the private practice of law with the Washington office of Miller, Hamilton, Snider & Odom.

Before joining the law firm in April 1990, Mr. Roberts was administrative assistant and legislative director for Senator Richard Shelby (D., Ala.), a position he assumed in 1987. Prior to that, Mr. Roberts was, for four years, in the private practice of law in Alabama. From 1979 to 1982, Mr. Roberts was administrative assistant and legislative director for then-Congressman Shelby.

Mr. Roberts is a 1973 graduate of Auburn University and a 1976 graduate of the University of Alabama School of Law. He also received a Master of Laws in taxation from the George Washington University National Law Center in 1981. He is admitted to the bar in the District of Columbia and Alabama. Mr. Roberts is a member of the Alabama State Bar Association and the District of Columbia Bar Association.

He and his wife, the former Peggy Frew, make their home in Fairfax, Virginia with their son and two daughters.

Mr. Roberts was born in Birmingham, Alabama on July 3, 1951.

J. Carter Beese, Jr.

J. Carter Beese, Jr. was nominated to the U.S. Securities and Exchange Commission in October 1991 by President George Bush.

He was recommended for confirmation by the Senate Committee on Banking, Housing, and Urban Affairs by a vote of 21-0, and confirmed by the U.S. Senate by unanimous voice vote on February 27, 1992. In a private ceremony held on March 10, 1992, Mr. Beese was sworn in as the 71st member of the Commission by the Honorable Stanley

Sporkin, Judge for the U.S. District Court for the District of Columbia. On April 20, 1992, Mr. Beese was formally sworn in at the White House by Vice President Dan Quayle. Mr. Beese's term expires in June of 1996. Before being appointed to the Commission, Mr. Beese was a partner of Baltimore-based Alex Brown & Sons, the oldest investment banking firm in the U.S. Mr. Beese's corporate responsibilities included business development in the areas of corporate finance, investment management, and institutional brokerage. Mr. Beese joined Alex Brown in 1978, became an officer of the firm in 1984 and was named partner in 1987. Mr. Beese was also active in the founding of the Carlyle Group, a Washington based merchant bank, and served as an advisory director from 1986 to 1989. In 1990, in a poll of 250 senior financial industry executives conducted by *Institutional Investor* magazine, Mr. Beese was named as one of the next generation's financial leaders.

Before becoming a Commissioner, Mr. Beese was appointed by President Bush to serve as a Director of the Overseas Private Investment Corporation (OPIC), a U.S. Government agency that assists American private business investment in over 120 countries by financing direct loans and loan guarantees and by insuring investments against a broad range of political risks. Mr. Beese was appointed to this position in April 1990, recommended for confirmation without dissent by the Senate Foreign Relations Committee, and unanimously confirmed by the U.S. Senate.

In addition, Mr. Beese also served on the Securities and Exchange Commission's Emerging Markets Advisory Committee and was a member of the SEC delegation to Hungary and Mexico. As part of his responsibilities, Mr. Beese provided technical assistance on the formation and regulatory oversight of financial markets. Further during 1991, Mr. Beese served as a member of the Committee on Financing Technology in the U.S., a joint project between the Treasury and Commerce Departments initiated to study the adequacy of investment in technology needed by U.S. companies to meet global competition.

Mr. Beese is active in a number of civic organizations, including the American Center for International Leadership (ACIL) of which he is a director. ACIL brings young American leaders together with their counterparts in various foreign countries. Mr. Beese participated in ACIL missions to the Peoples Republic of China in 1988 and to the former USSR in 1990. He is a committee member of CHILDHELP USA and serves on the boards of Preservation Maryland, The Palm Beach Maritime Museum and Ocean Engineering Institute, and the Advisory Board of National Rehabilitation Hospital. Mr. Beese resides in Baltimore, Maryland with his wife, Natalie, and two children, Courtney and John Carter.

REGIONAL AND BRANCH OFFICES AND ADMINISTRATORS

(As of November 4, 1992)

REGION 1

Richard Walker
NEW YORK REGIONAL OFFICE
75 Park Place, 14th Floor
New York, NY 10007
212/264-1636
Region: New York and New Jersey

REGION *2*

Douglas Scarff
BOSTON REGIONAL OFFICE
John W. McCormack Post Office and Courthouse Building, Suite 700
Boston, MA 02109
617/223-9900
Region: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut

REGION 3

Richard P. Wessel
ATLANTA REGIONAL OFFICE
3475 Lenox Road, N.E., Suite 1000
Atlanta, GA 30326-1232

404/842-7600
Region: Tennessee, Virgin Islands, Puerto Rico, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, and 10uisiana east of the Atchafalaya River

Charles C Harper
MIAMI BRANCH OFFICE
Dupont Plaza Center
300 Biscayne Boulevard Way, Suite 500
Miami, FL 33131
305/536-5765

REGION 4

William D. Goldsberry
CHICAGO REGIONAL OFFICE
Northwestern Atrium Center
500 W. Madison Street, Suite 1400
Chicago, IL 60661
312/353-7390
Region: Michigan, Ohio, Kentucky, Wisconsin, Indiana, Iowa, Illinois, Minnesota, and Missouri

REGION 5

T. Christopher Browne
FORT WORTH REGIONAL OFFICE
411 West Seventh Street, 8th Floor
Fort Worth, TX 76102
817/334-3821

Region: Oklahoma, Arkansas, Texas, 10uisiana west of the Atchafalaya River, and Kansas

REGION *6*

Robert H. Davenport
DENVER REGIONAL OFFICE
1801 California Street, Suite 4800
Denver, CO 80202-2648
303/391-6800
Region: North Dakota, South Dakota, Wyoming, Nebraska, Colorado, New Mexico, and Utah

Donald M. Hoerl
SALT LAKE CITY BRANCH OFFICE
500 Key Bank Tower
50 South Main Street, Suite 500
Salt Lake City, UT 84144-0402
801/524-5796

REGION 7

Elaine Cacheris
LOS ANGELES REGIONAL OFFICE
5670 Wilshire Boulevard, 11th Floor
Los Angeles, CA 90036-3648
213/965-3900
Region: Nevada, Arizona, California, Hawaii, and Guam

Vacant
SAN FRANCISCO BRANCH OFFICE

901 Market Street, Suite 470
San Francisco, CA 94103
415/744-3140

REGION 8

Jack H. Bookey
SEATTLE REGIONAL OFFICE
3040 Jackson Federal Building
915 Second Avenue
Seattle, WA 98174
206/553-7990
Region: Montana, Idaho, Washington, Oregon, and Alaska

REGION 9

Vacant
PHILADELPHIA REGIONAL OFFICE
The Curtis Center, Suite
1005 E. 601 Walnut Street
Philadelphia, PA 19106-3322
215/597-3100
Region: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia

ENFORCEMENT

The Commission's enforcement program is designed to protect investors and foster investor confidence by preserving the integrity and efficiency of the securities markets. Last year, as in prior years, the Commission maintained a strong presence in all areas within its jurisdiction. The deterrent impact of the program was enhanced, by, among other things, the Commission's extensive use of important new remedies during the year.

Key 1992 Results

In 1992, the Commission instituted a record number of enforcement actions, responding to a wide range of securities law violations. Remedies and procedures authorized by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (Remedies Act) strengthened the Commission's enforcement arsenal.

The Commission obtained court orders requiring defendants to disgorge illicit profits of approximately $558 million. This included disgorgement orders in insider trading cases requiring the payment of approximately $51 million. Civil penalties authorized by the Remedies Act and the Insider Trading Sanctions Act of 1984 (ITSA) and the Insider Trading and Securities Fraud Enforcement Act of 1988 (ITSFEA) totaled over $221 million.

Ninety criminal indictments or informations and 86 convictions were obtained by criminal authorities during 1992 in Commission-related

cases. The Commission granted access to its files to domestic and foreign prosecutorial authorities in 280 cases.

[table omitted]

Enforcement Authority

The Commission has broad authority to investigate possible violations of the federal securities laws. Informal investigations are conducted on a voluntary basis, with the Commission requesting persons with relevant information to cooperate by providing documents and testifying before the staff. The federal securities laws also empower the Commission to conduct formal investigations, in which the Commission has the authority to issue subpoenas that compel the production of books and records and the appearance of witnesses to testify. Both types of investigations generally are conducted on a confidential, nonpublic basis.

Traditionally, the Commission's primary enforcement mechanism for addressing violative conduct has been the federal court injunction. In civil actions for injunctive relief, the Commission *is* authorized to seek temporary restraining orders and preliminary injunctions as well as permanent injunctions against any person who is violating or about to violate any provision of the federal securities laws. A federal court injunction prohibits future violations. Once an injunction has been imposed, conduct that violates the injunction will be punishable by either civil or criminal contempt, and violators are subject to fines or imprisonment. In addition to seeking such orders, the Commission often seeks other equitable relief such as an accounting and disgorgement of illegal profits. When seeking temporary restraining orders, the Commission often requests a freeze order to prevent

concealment of assets or dissipation of the proceeds of illegal conduct. The Remedies Act authorized the Commission to seek, and the courts to impose, civil penalties for any violation of the federal securities laws (with the exception of insider trading violations for which penalties are available under ITSA). The Remedies Act also affirmed the existing equitable authority of the federal courts to bar or suspend individuals from serving as corporate officers or directors.

In addition to civil injunctive actions, the Commission has the authority to institute several types of administrative proceedings. The Commission may institute administrative proceedings against regulated entities, in which the sanctions that may be imposed include a censure, limitation on activities, and suspension or revocation of registration. The Commission may impose similar sanctions on persons associated with such entities and persons affiliated with investment companies. For example, the Commission may bar or suspend individuals associated with a broker or dealer from participating in an offering of penny stock. In these proceedings, the Remedies Act authorizes the Commission to impose penalties and order disgorgement against regulated entities and persons associated with such entities.

The Remedies Act authorizes the Commission to institute administrative proceedings in which it can issue cease-and-desist orders. A permanent cease-and-desist order can be entered against any person violating the federal securities laws, and the order can require disgorgement of illegal profits. The Commission also is authorized to issue temporary cease-and-desist orders, if necessary on an *ex parte* basis, against regulated entities and persons associated with regulated entities, if the Commission

determines that the violation or threatened violation is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest prior to completion of proceedings.

Section 8(d) of the Securities Act of 1933 (Securities Act) enables the Commission to institute proceedings to suspend the effectiveness of a registration statement that contains false and misleading statements. Administrative proceedings pursuant to Section 15(c)(4) of the Securities Exchange Act of 1934 (Exchange Act) can be instituted against any person who fails to comply, and any person who is a cause of failure to comply, with reporting, beneficial ownership, proxy, and tender offer requirements. Respondents can be ordered to comply or to take steps to effect compliance with the relevant provisions. Pursuant to Rule 2(e) of the Commission's Rules of Practice, administrative proceedings can be instituted against persons who appear or practice before the Commission, such as accountants and attorneys. The sanctions that can be imposed in these proceedings include suspensions and bars from practicing before the agency.

The Commission is authorized to refer matters to other federal, state, or local authorities or self-regulatory organizations such as the New York Stock Exchange or the National Association of Securities Dealers (NASD). The staff often provides substantial assistance to criminal authorities, such as the Department of Justice, for the criminal prosecution of securities violations.

Enforcement Activities

Set forth below are summaries of significant enforcement actions initiated in various program areas during 1992. Defendants or respondents who consented to settlements of actions did so without admitting or denying the factual allegations contained in the complaint or order instituting proceedings. See Table 6 for a listing of all enforcement actions instituted in 1992.

International Enforcement

A substantial number of investigations have international aspects, and the staff took depositions in and obtained information from a number of foreign countries. In conjunction with the Office of International Affairs, the staff prepared more than 180 requests to obtain information from foreign authorities, pursuant to formal or informal agreements and understandings, and worked on a substantial number of requests for assistance from agencies of foreign nations.

As part of its increasing emphasis on international coordination and cooperation, the staff participated in a number of training and education opportunities. Representatives from 38 foreign securities agencies attended the 1992 Enforcement Training Program at the invitation of the Division of Enforcement.

Violations Relating To the Government Securities Markets

During the year, the Commission focused increased attention on violative activities affecting the conduct and fairness of the market for

securities issued by the U.S. Treasury and various government-sponsored entities.

The Commission instituted proceedings, jointly with the Comptroller of the Currency and the Board of Directors of the Federal Reserve System, against 98 registered broker-dealers, registered government securities brokers and/or dealers and banks (*In the Matter of the Distribution of Certain Debt Securities Issued by Government Sponsored Enterprises*[1]). The administrative proceedings arose from the respondents' alleged violations of record-keeping provisions in connection with their participation in certain primary distributions of unsecured debt securities issued by one or more of the following government-sponsored enterprises: the Federal Home loan Banks, the Federal Home loan Mortgage Corporation, the Federal National Mortgage Association, and the Student loan Marketing Association. The sanctions imposed in the proceedings included cease and desist orders, and orders requiring the payment of civil penalties totaling $5.2 million. In addition, the Commission issued a report regarding this matter pursuant to Section 21 (a) of the Exchange Act.

In an action against Salomon Inc. and Salomon Brothers Inc., the Commission alleged that between August 1989 and May 1991, Salomon repeatedly submitted false bids in auctions for U.S. Treasury securities (*SEC v. Salomon Inc.*[2]). These activities allowed Salomon to circumvent the limitations imposed by the Treasury Department on the amount of securities any one person or entity may obtain from auctions of U.S. Treasury securities. Salomon also created numerous false books and records in connection with these bids. Salomon consented to the entry of an order by which it was enjoined, and also entered into settlement agreements with respect to civil claims of the Department of Justice. In addition, Salomon

consented to the entry of an order requiring the payment of $290 million, of which $122 million represents the payment of civil penalties under the Remedies Act, $50 million represents a forfeiture to the Department of Justice Asset Forfeiture Fund, and $18 million represents payment to the United States in respect of potential claims under the False Claims Act and common law. The remaining $100 million was paid into the registry of the court for the satisfaction of private civil claims against Salomon.

Related administrative proceedings also were instituted against Salomon Brothers Inc. (*In the Matter of Salomon Brothers Inc.*[3]). In addition to finding that Salomon Brothers had been enjoined, the order instituting proceedings alleged that senior management of Salomon Brothers had learned in late April 1991 that a managing director of the firm had submitted a false bid in an auction of U.S. Treasury securities in February 1991. Despite this information, Salomon Brothers took no action over the next several months to investigate the matter or to discipline the managing director. The Commission thus alleged that Salomon Brothers failed reasonably to supervise the managing director with a view toward preventing his violations. Salomon consented to the entry of an order by which it was censured and ordered to comply with its undertaking to maintain policies reasonably designed to prevent a recurrence of its violations.

The Commission brought an action against Stotler and Company, formerly a registered broker-dealer engaged in the government securities business, and four individuals associated with Stotler, its parent or affiliates, alleging that they participated in a scheme to defraud public investors and to deceive the Commission and other regulatory agencies concerning the financial condition of Stotler and its parent and affiliates (*SEC v. Thomas M. Egan*[4]). Among other

things, the defendants engaged in a series of unlawful transactions to conceal self-dealing and create the false appearance of regulatory capital compliance and profitability. At the end of 1992, this action was pending.

Violations Relating To Financial Institutions

The Commission has focused increased attention on possible securities law violations by financial institutions and persons associated with them. A special unit within the Division of Enforcement is dedicated to investigating, among other things, financial fraud encompassing false financial statements and misleading disclosures in filings by publicly-held financial institutions and holding companies, and insider trading by persons associated with financial institutions.

The Commission brought an enforcement action against Charles Keating, Jr., and eight other former officers, directors, and high-ranking employees of American Continental Corporation (ACC) and its former subsidiary, Lincoln Savings and loan Association, and against the former chairman and chief executive officer of CenTrust Savings Bank, alleging violations of the federal securities laws arising from the operations of ACC and Lincoln (*SEC v. Charles H. Keating, Jr.*[5]). The charges involve: ACC's improper recognition of over $120 million in income between 1985 and 1988 from nine real estate and securities transactions that were structured to create the false appearance that gain recognition was appropriate; the fraudulent sale of approximately $275 million worth of ACC's subordinated debentures in the branches of Lincoln; false and misleading disclosures about ACC's liquidity, cash flow, related party transactions and due diligence procedures; the issuance of a false

press release to bolster the price of ACC's stock; insider trading by Keating; and violation of the broker-dealer registration requirements. In addition to seeking permanent injunctions against the defendants, the Commission is seeking to bar Keating and another defendant from serving as officers or directors of any publicly-traded company, and is seeking disgorgement of losses avoided by Keating through his insider trading activities, along with ITSA penalties of up to three times that amount. Four of the defendants consented to the entry of injunctions. At the end of the year, this action was pending as to Keating and the other defendants.

The Commission instituted cease and desist proceedings against Abington Bancorp, Inc., a savings bank holding company (*In the Matter of Abington Bancorp, Inc.*[6]). During 1989 and 1990, Abington allegedly failed to classify as “other than temporary” the declines in market values below cost bases of certain noncurrent marketable equity securities of various issuers. The order instituting proceedings concluded that Abington should have written down these securities to their realizable values and recognized the corresponding losses in the appropriate periods as required by generally accepted accounting principles (GAAP). It further concluded that Abington's financial statements for the reporting periods in which it failed to recognize such losses were materially inaccurate with respect to net after-tax income. Abington consented to the entry of a cease and desist order.

In *SEC v. Donald Coleman,*[7] the Commission alleged violations by Donald J. Coleman, the former chief financial officer of Washington Bancorporation (WBC); W. Thomas Fleming III, the former president of National Bank of Washington (NBW), a WBC subsidiary; and a former NBW salesperson. The complaint alleged that prior to WBC's default on $37 million in commercial paper sold through NBW,

Coleman and Fleming failed to disclose material information relating to WBC's inability to repay its commercial paper obligations. The complaint further alleged that Coleman aided and abetted the filing of a false and misleading Form 10-K for fiscal year 1989, and that he allowed continued sales of unregistered commercial paper. The complaint further alleged that the former NBW salesperson invested customers' funds in WBC commercial paper (since repaid) without the customers' knowledge, authorization or consent. Coleman and the former NBW salesperson consented to the entry of orders enjoining them. At the end of the year, the action against Fleming was pending.

The Commission filed an action against seven defendants, alleging a scheme to defraud in the offer and sale of approximately $10 million of uninsured subordinated capital notes issued by Germania Bank, a federal savings institution subsequently placed in receivership by the Resolution Trust Corporation (*SEC v. Edward Morris*[8]). The alleged violations included Germania's issuance of false financial statements in a quarterly report that understated loan loss reserves by at least $4.1 million; Germania's false statement in its offering circular that no commissions would be paid to salespeople when in fact such commissions were paid for sales of the notes; and misrepresentations concerning whether the notes were insured, the risk associated with an investment in the notes, and the liquidity of an investment in the notes. At the end of 1992, this action was pending.

The Commission instituted administrative proceedings pursuant to Rule 2(e) against Robert J. 10mmazzo, a former partner in the accounting firm of Coopers & Lybrand, alleging improper professional conduct in that he failed to maintain his independence during audits of Citizens First Bancorp, Inc., for fiscal years 1986, 1988 and 1989

(*In the Matter of Robert J. 10mmazzo, CPA*[9]). 10mmazzo, the concurring partner on the audits, was responsible, among other things, for performing a review of the audits and ensuring that the audits were conducted in accordance with the rules of professional conduct. During the years at issue, 10mmazzo directly or indirectly obtained numerous loans from Citizens, many of which were unsecured. Despite the lack of independence allegedly arising from his receipt of the loans, 10mmazzo concurred in Coopers' unqualified reports on Citizens financial statements, and did not cause Coopers' reports to contain a disclaimer of opinion or to reference the lack of independence. At the end of the year, this matter was pending.

Insider Trading

Insider trading occurs when a person in possession of material nonpublic information engages in securities transactions or communicates such information to others who trade. Insider trading encompasses more than trading and tipping by traditional insiders, such as officers and directors who are subject to a duty to disclose any material nonpublic information or abstain from trading in the securities of their own company. Violations may also arise from the transmission or use of material nonpublic information by persons in a variety of other positions of trust and confidence, or by those who misappropriate such information.

The Commission ordinarily seeks permanent injunctions and ancillary relief, including disgorgement of any profits gained or losses avoided, against alleged violators. In addition, the ITSA penalty provisions authorize the Commission to seek a civil penalty, payable to the United States, of up to three times the profit gained or loss avoided, against persons who unlawfully trade in securities while in possession

of material nonpublic information, or who unlawfully communicate material nonpublic information to others who trade. Civil penalties also can be imposed upon persons who control insider traders. During 1992, the Commission brought 41 civil and administrative actions alleging insider trading violations.

In an action against Edward R. Downe, Jr., a member of the board of directors of both Kidde, Inc., and Bear, Stearns Companies, Inc., six other individual defendants and a corporate defendant, the Commission alleged a scheme involving numerous instances of insider trading occurring between 1987 and 1989 (*SEC v. Edward R. Downe, Jr.*[10]). The Commission alleged that Downe learned material nonpublic information concerning mergers, leveraged buyouts, tender offers, and other extraordinary corporate events, through his employment or tips from other defendants. Downe traded while in possession of such information and also provided information to other defendants who traded. The complaint seeks disgorgement of more than $23 million plus prejudgment interest, ITSA penalties, and an order prohibiting Downe from acting as an officer or director of a publicly-held company. One of the defendants consented to the entry of an order enjoining him and requiring him to pay an ITSA penalty of $58,000. At the end of 1992, this case was pending as to Downe and all other defendants.

A number of cases were brought involving violative conduct by traditional corporate insiders. In SEC v. *Hugh Thrasher,*[11] the Commission alleged violations by eighteen individuals and a broker-dealer firm in connection with transactions in the stock of Motel 6, L.P. According to the complaint, Hugh Thrasher, the executive vice president in charge of corporate communications at Motel 6, tipped material nonpublic information regarding a proposed tender offer for

Motel 6 stock to a friend who in turn tipped numerous relatives and acquaintances. The complaint seeks disgorgement of $4.5 million plus prejudgment interest, ITSA penalties, and an order prohibiting Thrasher from acting as an officer or director of a publicly-held company. Four of the defendants consented to the entry of injunctions and agreed to disgorge a total of $467,685 plus prejudgment interest, and to pay ITSA penalties totaling $426,603. At the end of the year, this action was pending as to Thrasher and the other defendants.

Two actions involved allegations that government officials had engaged in illegal trading while in possession of material nonpublic information obtained in the course of their employment. In *SEC v. John Acree,*[12] the Commission alleged that two employees of the Office of the Comptroller of the Currency (OCC) and a former OCC employee who was then working for a private consulting firm, misappropriated information from their employers, including information concerning a planned bank examination and two proposed mergers of financial institutions. Trades were in some instances concealed by being executed through the account of a fourth defendant, the manager of a diner, who subsequently consented to the entry of an order enjoining him and requiring him to disgorge $26,336, plus prejudgment interest, and to pay an ITSA penalty equal to the disgorgement amount. This action was pending at the end of the year against the other defendants.

In *SEC v. N. Donald Morse, II*,[13] the Commission for the first time brought charges of insider trading in the municipal bond market. The defendant, the secretary/treasurer of the Kentucky Infrastructure Authority, was responsible for selecting certain bonds for redemption by the agency, and for soliciting tenders from bondholders. In its

complaint, the Commission alleged that the defendant, while in possession of material nonpublic information regarding the quantity of bonds that the agency needed to repurchase, obtained bonds selling at 94 which he then tendered, through a local bank to conceal his identity, at 99 7/8, the highest amount paid to any tendering bondholder. When his bonds were purchased by the agency, the defendant failed to disclose either his ownership or the fact that bonds were available at a lower price. The defendant consented to the entry of an order enjoining him, and requiring him to disgorge $6,462, plus pre-judgment interest.

With the Commission's assistance, Eddie Antar, a fugitive from justice since 1989, was 10cated and arrested in Israel. The Commission obtained access to extensive banking records related to Antar's financial transactions, leading to the entry of *freeze* orders affecting more than $50 million subject to Antar's control in six foreign countries. In addition to federal criminal actions against him, Antar was named as a defendant in a Commission civil action filed in 1989. According to the complaint, Antar, the founder and chairman of Crazy Eddie, Inc., and others engaged in a fraud involving the falsification of financial records and the overstatement of the company's financial condition by tens of millions of dollars. Antar made more than $60 million by selling his Crazy Eddie stock at artificially high prices caused by the company's falsified financial performance. An order was entered in 1990 that required Antar to disgorge $73 million.

In an action against a Swiss attorney, related to the Commission's prior action against Finacor Anstalt and Christian Norgren involving insider trading in the common stock and options for the common stock of Combustion Engineering, Inc., the Commission alleged that the defendant, who acted as counsel to Norgren and as a business

agent for Norgren and Finacor, recommended that Norgren proceed with the insider trading scheme and that the purchases be made through Finacor (*SEC v. Kurt Naegeli*[14]). The Commission also alleged that the defendant received an explicit warning from another associate of Norgren's that the planned activities would be illegal in the United States. The defendant opened an account for Finacor at a Liechtenstein bank, transferred approximately $1.8 million from his own bank account in Switzerland to the new account, and placed orders which caused the new account to purchase a total of 55,000 shares of Combustion Engineering common stock and 1,700 call option contracts for Combustion Engineering common stock, prior to the public announcement of the tender offer. At the end of the year, this case was pending.

Financial Disclosure

Actions involving false and misleading disclosures concerning matters that affect the financial condition of companies or involving the issuance of false financial statements often are complex, and, in general, demand more resources than other types of cases. Effective prosecution in this area is essential to preserving the integrity of the full disclosure system. The Commission brought 54 cases containing significant allegations of financial disclosure violations against issuers, regulated entities, or their employees. Many of these cases included alleged violations of the books and records and internal accounting control provisions of the Foreign Corrupt Practices Act. The Commission also brought 15 cases alleging misconduct by accounting firms or their partners or employees.

In *SEC v. College Bound, Inc.,*[15] the Commission brought an emergency action alleging, among other things, that the defendants

engaged in conduct resulting in the material overstatement of College Bound's earnings. The annual pre-tax income of $8.7 million reported by College Bound for fiscal year 1991 was overstated by at least $5.2 million. The case involved, in part, transfers to an off-the-books bank account of millions of dollars of funds derived primarily from the proceeds of various offerings of College Bound's convertible notes in Europe. Those funds were transferred to College Bound centers around the country and then retransmitted to College Bound headquarters and improperly recognized as revenues. The Commission obtained a temporary restraining order, preliminary injunctions, and asset freezes as to College Bound and the two individual defendants. The Commission also secured the appointment of a receiver for the company. The company consented to the entry of an injunction. The action continues against the two individual defendants. The Commission's motion for summary judgment as to liability was pending at the end of the year.

SEC v. Albert Barette[16] was an action against Michael Strauss, the chief executive officer and chairman of Capital Credit Corporation, a subsidiary of Union Corporation, and Albert Barette, Capital's chief financial officer. The complaint alleged that Barette and Strauss caused Capital to misstate its earnings and revenues in monthly reports to Union, thereby causing certain of Union's quarterly reports filed with the Commission during fiscal years 1990 and 1991 to misstate materially Union's pre-tax income, Strauss and Barette consented to the entry of injunctions and order. requiring them to pay $50,000 and $10,000, respectively, as civil penalties under the Remedies Act.

In an action against the former chief financial officer and executive vice president of Convenient Food Mart, Inc., *SEC v. George R.*

Thompson,[17] the Commission alleged that George R. Thompson, who had primary responsibility for the preparation of Convenient's financial statements, altered various accounts in Convenient's 1987 financial statements to hide a $4.1 million discrepancy, lied to Convenient's auditors, and failed to implement and maintain appropriate accounting controls. Thompson consented to the entry of an injunction. In related administrative proceedings, the Commission entered a cease and desist order, by consent, against Convenient's chief financial officer (*In the Matter of Agnes E.* The Commission filed an action against James N. Von Germeten, the president of The Boston Company, Inc. (*SEC v. James N. Von Germeten*[18]). In the complaint, the Commission alleged that The Boston Company reported inflated income figures (overstating pre-tax profits for the firs' three quarters of 1988 by $44 million) to its corporate parent Shearson Lehman Brothers Holdings, Inc., thereby causing Shearson to report overstatements of net income for that period totaling $30 million. The overstatements arose from various improper accounting practices. In addition, Von Germeten knew that The Boston Company's controller had resigned after refusing to sign a financial statement. Von Germeten consented to the entry of an injunction.

The Commission instituted cease and desist proceedings alleging that Caterpillar Inc. failed adequately to disclose the importance of its Brazilian subsidiary's 1989 earnings to Caterpillar's overall results of operations in the management's discussion and analysis (MD&A) portion of Caterpillar's Form 10-K for the fiscal year ended December 31, 1989 (*In the Matter of Caterpillar Inc.*[20]). The Brazilian subsidiary accounted for about 23 percent of Caterpillar's net profits of $497 million, but only about 5 percent of Caterpillar's revenues. Much of the gain resulted from Brazil's hyperinflation and a favorable exchange rate. Because the subsidiary's results were reported on a

consolidated basis, the unusual nature of its profitability was not apparent on the face of Caterpillar's financial statements. Caterpillar consented to the entry of a cease and desist order.

Cease and desist proceedings also were instituted against Presidential Life Corporation, a holding company engaged primarily in the annuity contracts business through a life insurance subsidiary (*In the Matter of Presidential Life Corp.*[21]). The Commission alleged that Presidential improperly accounted for its investments in high yield bonds and other securities, which resulted in a material overstatement of its pre-tax income for the year ended December 31, 1989. The overstatement allegedly was caused by the company's failure to account properly for securities that had declined in market value by approximately $25 million, roughly 37 percent of the company's reported pre-tax income. Of this amount, $20.7 million was attributable to “other than temporary” declines in the market value of Presidential's high yield bond portfolio, declines which, under generally accepted accounting principles, require a write-down of securities to their realizable values. Among other things, the Commission also alleged that the management discussion and analysis portion of Presidential's Form 10-K for fiscal year 1989 contained materially false and misleading statements regarding the effects of its high yield bond portfolio. At the end of the year, this proceeding was pending.

Securities Offering Cases

Securities offering cases involve the offer and sale of securities in violation of the registration provisions of the Securities Act. In some cases, the issuers attempt to rely on exemptions from the registration requirements that are not available under the circumstances. Offering

cases frequently involve material misrepresentations concerning, among other things, use of proceeds, risks associated with investments, disciplinary history of promoters or control persons, business prospects, promised returns, success of prior offerings, and the financial condition of issuers.

A number of offering cases involved the operation of “Ponzi” schemes, in which funds obtained from new investors are used to meet obligations to earlier investors, thereby creating the illusion of profitability. In *SEC v. Metro Display Advertising, Inc.,*[22] the Commission alleged that Metro Display Advertising, Inc., doing business as Bustop Shelters, Inc., Jean Claude LeRoyer, Metro Display's founder and chief executive officer, Karen LeRoyer, and two related companies raised more than $45 million in a fraudulent scheme. Investors were told that for an investment of $10,000, they would each become the owner of a bus stop shelter that could be leased back to Metro Display for a period of five years, with the company repurchasing the shelter at the investor's option at the end of the lease term. Lease payments were to be made out of advertising revenues generated by the shelters. The complaint alleged however, that the lease payments were made from other investor funds as part of a Ponzi scheme. The complaint further alleges that the LeRoyers misappropriated company and investor funds for personal uses. This case was pending at the end of the year.

Other cases involving alleged Ponzi schemes included *SEC v. Deepak Gulati,*[23] a settled case involving the sale of $4 million in unregistered securities and limited partnership interests in Indian and Pakistani communities in the U.S. Northeast; *In the Matter of Stephen J. Klos,*[24] a settled case involving the sale of more than $3 million in

unregistered promissory notes and investor bonds; and *SEC v. Custom Trading International Corp.,*[25] a pending action involving the sale of $10 million in unregistered securities in the form of joint venture interests in an investment pool.

In *SEC v. Current Financial Services, Inc.,*[26] the Commission filed a complaint against Current Financial Services, Inc., ten individuals and six other corporate defendants. Current Financial offered and sold unregistered debt securities to the other corporate defendants who financed their purchases by selling their own unregistered debt securities to the public. The Commission alleged that investors were told, falsely, that they would receive extraordinary annual rates of return, typically between 12 and 60 percent annually. Defendants also failed to disclose the risks of the investments, representing in some instances that the debt securities were as risk-free as certificates of deposit, treasury notes or blue chip stocks. At the end of the year, this action was pending.

The Commission filed an action against AMI Securities, Inc., a registered broker-dealer, and seven present or former AMI officers (*SEC v. AMI Securities, Inc.*[27]). The complaint alleged that AMI fraudulently offered and sold in excess of $250 million in church and non-profit corporation bonds. Offering documents and sales presentations misrepresented, among other things, the financial condition of the issuers, the value of underlying collateral, the misapplication of certain proceeds, and the relationship between AMI and one of the issuers. At the end of 1992, this action was pending.

The Commission instituted cease and desist proceedings against the State Bank of Pakistan, alleging that it violated Section 5(c) of the Securities Act by participating in and directing the offer in the United

States of bearer certificates issued by the Government of Pakistan (*In the Matter of State Bank of Pakistan*[26]). The order instituting proceedings alleged that the unregistered certificates were not subject to any exemption from registration. In addition, the bank was alleged to have arranged for United States newspapers to run advertisements for the certificates claiming, among other things, that there would be no questions asked about the source of purchasers' funds, and that the certificates were not subject to taxation. The bank consented to the entry of a cease and desist order.

The Commission's action against Westdon Holding & Investment, Inc., was the first enforcement action involving purported reliance on Regulation *S,* adopted by the Commission in 1990 to clarify the extraterritorial application of the registration provisions of the Securities Act (*SEC v. Westdon Holding & Investment, Inc.*[29]). The safe harbors of Regulation S apply to offers and sales of securities abroad, and are not available for transactions within the United States. The complaint alleged, among other things, that the defendants sought to distribute unregistered shares of Work Recovery, Inc., which they had purchased abroad purportedly in reliance on Regulation S, within the United States and without the benefit of any valid exemption from registration. One of the individual defendants consented to the entry of an injunction. At the end of the year, this matter was pending as to the other defendants.

Market Manipulation

The Commission is charged with ensuring the integrity of trading on the national securities exchanges and in the over-the-counter markets. The Commission staff, the exchanges, and the NASD engage in surveillance of these markets.

In an action against Paul Kutik, an international investor residing in London, the Commission alleged a scheme to support artificially the price of the common stock of Columbia Laboratories, Inc., by placing purchase orders for millions of dollars worth of Columbia common stock without the intent or ability to pay on a timely basis, and by effecting wash sales and matched orders (*SEC v. Paul Kutik*[30]). Kutik's scheme allegedly was intended to maintain Columbia's stock at or above $9 per share, in order to avoid the sale of stock pledged as collateral or the need for additional collateral, under the terms of certain loan agreements. Kutik's broker's incurred losses totaling nearly $1.3 million on the sale of stock that Kutik ordered but for which he did not pay. At the end of the year, this case was pending. Related administrative proceedings were instituted and settled with respect to registered representatives who facilitated the scheme, *In the Matter of Jeffrey R. Leach;*[31] *In the Matter of Matthew L. Wager,*[32] and a branch manager who failed to supervise one of the registered representatives, *In the Matter of Buddy S. Cohen.*[33]

The Commission alleged that Edward A. Accomando, a registered representative employed by a broker-dealer, aided and abetted by one of his customers, Charles C. Patsos, manipulated the stock of Central Co-Operative Bank by executing sixty-four wash sales and matched orders in customer accounts under his control (*SEC v. Edward A, Accomando*[34]). During a three week period in March and April, 1989, the reported volume of cross trades alone represented approximately 63 percent of the total trading volume in Central's shares. Patsos held Central stock in ten accounts, including eight nominee accounts, that were either the purchaser or seller, or both, in fifty-three of the sixty-four cross trades. The complaint also alleged that Accomando converted $129,500 from the margin account of

another customer. Patsos consented to the entry of an order enjoining him. At the end of 1992, this action was pending as to Accomando.

In *SEC v. Maurice A. Halperin,*[35] the Commission alleged a manipulation of the price of the common stock of HMG Courtland Properties, Inc., a Florida real estate investment trust. Halperin effected a series of purchases of HMG common stock, which allegedly caused the price of the stock to increase from $9.625 to $12.25 per share. Halperin, his son and a corporation controlled by his son also allegedly violated beneficial ownership provisions of the Exchange Act by, among other things, falsely reporting a divestment of HMG stock in which the defendants retained a beneficial interest. The defendants consented to the entry of an order enjoining them and requiring them to pay total civil penalties of $200,000.

In SEC *v. Joseph Pandolfino, Jr.,*[36] the Commission alleged that the defendant, between January and April 1991, engaged in a scheme to manipulate the market price of two NASDAQ securities. The defendant effected a mass mailing of anonymous letters urging purchase of the securities based upon false and misleading information, including the claim that one of the companies would be the subject of a tender offer. The defendant purchased stock in both companies prior to the mailings and liquidated his positions at a profit thereafter. He consented to the entry of an order enjoining him, and requiring him to disgorge $23,979, plus prejudgment interest, and to pay a civil penalty in an amount equal to the disgorgement sum.

Corporate Control

The Commission's enforcement program scrutinizes corporate mergers, takeovers and other corporate control transactions, and the adequacy of disclosure made by acquiring persons and entities and their targets. The Commission brought cases involving Sections 13 and 14 of the Exchange Act, which govern securities acquisition, proxy, and tender offer disclosure. The Commission on a number of occasions exercised its cease and desist authority under the Remedies Act to respond to violations in this area.

Two separate cease and desist proceedings were instituted against The Lionel Corporation and against RIT Acquisition Corporation and its parent, Robert I. Toussie Limited Partnership, alleging violations occurring during a tender offer by RIT for Lionel (*In the Matter of The Lionel Corp.;*[37] *In the Matter of RIT Acquisition* Corp.[38]). The Commission alleged in the Lionel proceedings that the company failed to amend its Schedule 14D-9 to disclose as negotiations certain telephone conversations with the bidder, a board resolution in response to the tender offer, or that the sale of half the bidder's position in connection with the termination of the tender offer had been made to a third party identified by Lionel. In the proceedings against RIT and Toussie, the Commission alleged a failure to disclose the discussions with the target. Respondents in both proceedings consented to the entry of cease and desist orders.

The Commission's cease and desist proceedings against the general partners of four limited partnerships that were the subject of a “roll-up” transaction (i.e., a restructuring from a partnership to a corporate form) involved allegations of various delaying tactics during the solicitation of proxies to avoid responding to requests by limited partners for lists of the names and addresses of other limited partners (*In the Matter of The Krupp Corp.*[39]). Under Rule 14a-7, a registrant

must respond promptly to such requests either by providing the requested list of investors or by offering to do a mailing to all investors on behalf of the requestor. The Commission alleged that the respondents failed promptly to comply with the rule's requirements. The respondents consented to the entry of a cease and desist order.

The Commission also instituted and settled cease and desist proceedings alleging failure to make adequate or timely disclosure of changes in beneficial ownership of securities as required by Section 13(d) of the Exchange Act. These included *In the Matter of Douglas A. Kass,*[40] which involved deficient and untimely disclosure on Schedules 13D and amendments thereto regarding holdings of H.H. Robertson Company; and *In the Matter of BGC Special Equity Ltd. Partnership,*[41] which involved inaccurate disclosure with respect to the acquisition of shares issued by Kentucky Medical Insurance Company.

Broker-Dealer Violations

Each year, the Commission files a significant number of enforcement actions against broker-dealer firms and persons associated with them. The Commission's actions against broker-dealers often focus on violations of the net capital and customer protection rules, as well as violations of books and records provisions.

The Commission instituted administrative proceedings against Michael S. Shapiro, the chief financial officer of Thomson McKinnon Securities, Inc., and a member of its executive committee (*In the Matter of Michael S. Shapiro*[42]). Shapiro allegedly caused Thomson McKinnon to violate net capital and other provisions of the securities laws by engaging in transactions by which checks drawn on a bank

account with insufficient funds to cover them were routinely used to obtain funds from another bank. The funds so obtained were then used to cover overdrafts from the previous day. A series of such transactions continued on a daily basis until approximately the end of September 1989, with the size of the daily checks reaching over $126.5 million. The purpose of the scheme was ultimately to inflate Thomson McKinnon's net capital, which permitted the firm to operate in violation of net capital requirements from December 1988 until June 1989. Shapiro consented to the entry of the cease and desist order and an order that barred him from association with any regulated entity.

The Commission instituted administrative proceedings against-Kevin Upton, the former chief financial officer of Financial Clearing and Services Corporation, a now defunct clearing broker-dealer, and John Dolcemaschio, Financial Clearing's former money manager *(In the Matter of Kevin Upton*[43]). The order instituting proceedings alleged that Financial Clearing routinely paid-down a bank loan collateralized by customer securities at the end of each business week with substitute financing, and reinstated the loan at the beginning of the following business week. This practice enabled Financial Clearing to avoid including the loan in its reserve formula computation and resulted in a deficient reserve bank account averaging $20 million per week. Dolcemaschio allegedly aided and abetted the firm's violations, and Upton allegedly failed reasonably to supervise Dolcemaschio. At the end of the year, this case was pending.

The Commission instituted cease and desist proceedings against Shearson Lehman Brothers, Inc., in which violations of Regulation T were alleged, arising from Shearson's borrowing of securities to take advantage of reduced stock prices available under dividend

reinvestment plans, commonly referred to as DRIPS, offered by various issuers (*In the Matter of Shearson Lehman Brothers, Inc.*[44]). Pursuant to DRIPS, shareholders may receive dividends in the form of additional stock from the issuer at a discount to market price. The Board of Governors of the Federal Reserve System issued two opinions in 1984 interpreting Regulation T as proscribing the borrowing of securities solely for the purpose of taking advantage of reduced stock prices available under DRIPS. Between January 1986 and October 1988, Shearson and Princeton Newport Partners, L.P., a Shearson customer, engaged in a series of transactions designed to create the appearance that certain borrowing by Shearson was for purposes permitted by the Federal Reserve Board when in fact the transactions were intended solely to take advantage of DRIPS. Shearson consented to the entry of the cease and desist order and agreed to adopt procedures reasonably designed to assure, among other things, that the firm complied with Regulation T.

The Commission filed an action against Donald W. Wright, chairman of Nevatech Industries, Inc., and Kenneth Y. Kimura, Nevatech's president, alleging that the defendants attempted to close Nevatech's mini-max initial public offering by entering into an arrangement whereby a Swiss Bank would purchase the required minimum number of shares in exchange for a guaranty against any loss incurred in reselling the shares (*SEC v. Donald W. Wright*[45]). Nevatech's initial public offering failed to close when the Swiss Bank failed to pay for the Nevatech shares by the last day of the offering. Wright and Kimura consented to the entry of injunctions.

Other Commission actions addressed various abusive sales practices, particularly with respect to penny stocks. For example, in *SEC v. Stratton Oakmont, Inc.,*[46] the Commission filed a complaint

against a broker-dealer firm and five individual defendants. The complaint alleged that Stratton Oakmont, Inc., operated a boiler room selling speculative over-the-counter securities issued by unseasoned companies. The defendants were charged, variously, with making misrepresentations or omitting to state material facts, engaging in unlawful sales practices such as the making of price predictions without a reasonable basis, and manipulation of the price of certain securities. At the end of the year, this case was pending. Other penny stock related cases included *In the Matter of Wellshire Securities, Inc.;*[47] *In the Matter of Patrick Raymond Comerford;*[48] *In the Matter of Martin Herer Engelman*[49] (pending proceedings); *In the Matter of Linda K. Rees.*[50]

The Commission also took action in several cases in which it was alleged that supervisory and compliance personnel failed reasonably to supervise broker-dealer employees with a view to preventing the employees' securities law violations. The Commission instituted proceedings against First Albany Corporation, a registered broker-dealer, and against two individuals, a First Albany branch manager, and First Albany's chief compliance officer (*In the Matter of First Albany Corp.*[51]). Allegedly, a registered representative associated with First Albany had engaged in a manipulation of securities issued by Central Co-Operative Bank, and had misappropriated funds from a customer's account. The order instituting proceedings alleged that First Albany and the individual respondents had railed reasonably to supervise the registered representative. The respondents consented to the entry of an order by which First Albany was censured and ordered to comply with certain undertakings, the branch manager and the compliance officer were censured and suspended from association with any regulated entity for thirty days and one year,

respectively, and the branch manager was barred from association with any regulated entity in a supervisory capacity.

Investment Adviser and Investment Company Violations

The Commission instituted several significant cases involving investment advisers and investment companies.

The Commission sought emergency relief in an action against Institutional Treasury Management, Inc. (ITM), its corporate predecessor, Denman & Company, and their principal and sole owner, Steven Wymer (*SEC v. Institutional Treasury Management, Inc.*[52]). ITM was an investment adviser, primarily to small municipalities and counties and certain financial institutions. The alleged fraudulent activity involved more than $100 million in client funds. Among other things, Wymer allegedly defrauded two advisory clients by selling U.S. Treasury Notes to them at inflated prices, thereby obtaining $10 million to cover funds missing from another client's account. Wymer also sold U.S. Treasury Notes from a client's account, without the client's consent, thereby obtaining $65 million, part of which was funneled to other advisory clients' accounts. The defendants consented to the entry of injunctions. In addition, in a global settlement of civil and criminal charges against him, Wymer agreed to plead guilty to a nine count felony information and to an order requiring the payment of approximately $209 million in restitution to his defrauded advisory clients. In related administrative proceedings, Wymer consented to a bar from association with any regulated entity, and ITM's registration as an investment adviser was revoked.

In *SEC v. First Investors Corp.,*[53] the Commission alleged that First Investors authorized and permitted some of its sales representatives to sell certain high yield funds by making material oral misrepresentations and omissions concerning the risk and performance of the funds. The complaint also alleged that First Investors recommended and sold the Funds to some investors for whom they were unsuitable. First Investors consented to the entry of an injunction and an order requiring the disgorgement of $24.7 million.

In the action against Cheshire Hall Advisors, Inc., an investment adviser, John T. Hall, the president and sole officer and director of Cheshire, and Treasury First, Inc., a mutual fund managed by Cheshire and Hall, the Commission alleged that Hall, through Cheshire, misappropriated approximately $2.1 million of Treasury's assets (*SEC v. Treasury First, Inc.*[54]). Hall allegedly accomplished the misappropriation by creating bogus securities that Treasury then purportedly purchased. The complaint further alleges that Hall intended to use $2 million of the misappropriated funds to purchase the management contracts of other mutual funds, the Strategic Funds. This use was not disclosed to Treasury's shareholders. The defendants consented to the entry of injunctions and to orders requiring the disgorgement of illegal profits and the payment of civil penalties to be determined by the court. In a related action that was pending at the end of the year, the adviser for the Strategic Funds and its two principals consented to the entry of injunctions based on their failure to disclose to shareholders the $2 million payment from Hall (*SEC v. Leroy S. Brenna*[55]).

The Commission filed an action against G. Albert Griggs, a former analyst/assistant portfolio manager with a registered investment

adviser, and John D. Collins II, a friend of Griggs (*SEC v. G. Albert Griggs, Jr.*[56]). The complaint alleged that Griggs and Collins engaged in a fraudulent kickback scheme with a senior officer of The Cooper Companies, Inc. Griggs allegedly told the Cooper officer which high yield bonds he was recommending for the funds. The Cooper officer caused accounts under the control of Cooper and members of his immediate family to purchase such bonds, which then were sold to the funds at inflated prices. In addition, the Cooper officer diverted Cooper corporate funds, representing a portion of the bonds' trading profits, to Griggs and Collins. The scheme generated illicit profits for members of the Cooper officer's family and Cooper in excess of $3 million; Cooper paid in excess of $700,000 in corporate funds to Griggs and Collins. Griggs and Collins consented to the entry of injunctions and orders requiring Collins to disgorge $224,904 plus any tax refunds received on tax returns for 1992. In related administrative proceedings, Griggs and Collins consented to the entry of orders barring them from association with any registered entity.

In an action against Public Funding Group, Inc., a registered investment adviser, V. Thayne Whipple II, its president and sole shareholder, and two registered investment companies, Public Funding Portfolios, Inc., and American Vision Funds, Inc., the Commission alleged that Public Funding and Whipple sold the investment companies' shares in exchange transactions with shareholders at grossly inflated net asset values and in violation of the investment companies' policies (*SEC v. Public Funding Group, Inc.*[57]). Shareholders then used the shares, at their inflated values/as collateral for margin loans from broker-dealers. The defendants consented to the entry of injunctions. In related administrative proceedings, Public Funding's investment adviser registration was

revoked, and Whipple was barred from association with any regulated entity.

The Commission instituted administrative proceedings against William H. Pike, a former employee of Fidelity Management & Research Company, an investment adviser to the Fidelity group of mutual funds *(In the Matter of William H. Pike*[56]). On three occasions during 1985 and 1986, Pike engaged in securities transactions pursuant to an undisclosed arrangement with the High Yield and Convertible Bond Department of Drexel Burnham Lambert Incorporated. Pursuant to the arrangement, Pike purchased high yield bonds for a Fidelity high yield fund and, at the time of purchase, agreed to sell the bonds back to Drexel on a specified date and at an understood price. Pike did not record the terms of the arrangement on the fund's books and records but instead caused the subject transactions to be recorded as unrelated purchases and sales of the underlying securities. Pike consented to the entry of a cease and desist order and a suspension from association with any regulated entity for a period of three months.

Sources For Further Inquiry

The Commission publishes the SEC *Docket,* which includes announcements regarding enforcement actions. The Commission's litigation releases describe civil injunctive actions and also report certain criminal proceedings involving securities-related violations. These releases typically report the identity of the defendants, the nature of the alleged violative conduct, and the disposition or status of the case, as well as other information. The SEC *Docket* also contains Commission orders instituting administrative proceedings, making findings and imposing sanctions in those proceedings, and

initial decisions and significant procedural rulings issued by Administrative Law Judges.

INTERNATIONAL AFFAIRS

The Office of International Affairs (OIA) has primary responsibility for the negotiation and implementation of information-sharing arrangements and for developing legislative and other initiatives to facilitate international cooperation. OIA coordinates and assists in making requests for assistance to, and responding to requests for assistance from, foreign authorities. OIA also addresses other international issues that arise in litigated matters, such as effecting service of process abroad and gathering foreign-based evidence using various international conventions, freezing assets 10cated abroad, and enforcing judgments obtained by the SEC in the United States against foreign parties. In addition, OIA operates in a consultative role regarding the significant ongoing international programs and initiatives of the SEC's other divisions and offices.

Key 1992 Results

In June 1992, the SEC and other securities regulatory authorities of North, South and Central America, and the Caribbean announced the creation of a new organization, the Council of Securities Regulators of the Americas (COSRA), to provide a forum for mutual cooperation and communication in the Americas and to enhance efforts of each country in the region to develop and foster the growth of fair and open securities markets.

The SEC signed comprehensive Memoranda of Understanding (MOUs) for consultation and cooperation with the Comision Nacional de Valores of Argentina and the Comision Nacional del Mercado de

Valores of Spain. The Argentine MOU also contains provisions for technical assistance.

In addition, the SEC signed more limited communiqués and understandings involving technical assistance and mutual cooperation with securities authorities in Costa Rica and Indonesia.

Arrangements for Mutual Assistance and Exchanges of Information

The increasing internationalization of the world's securities markets has raised many new and complex issues that affect the SEC's ability to enforce the United States federal securities laws. For example, a central problem the SEC faces is collecting information 10cated abroad. The SEC has attempted to resolve this problem by developing information-sharing arrangements on a bilateral basis with various foreign authorities.

The information-sharing arrangements allow the SEC to obtain information 10cated abroad while avoiding the conflicts that may result from differences in legal systems. In recent years, the SEC has entered into various arrangements with foreign authorities from over 15 nations. These relationships are an effective means for obtaining information and developing cooperative relationships between regulators. In addition, the staff coordinates closely with the regulators with who has information-sharing arrangements to develop ways to implement and improve the arrangements. The SEC also cooperates on an informal basis with foreign authorities with whom it does not have explicit information-sharing arrangements.

On December 9, 1991, the SEC signed an MOU with the Comision Nacional de Valores of Argentina. On July 8, 1992, the SEC signed an MOU with the Comision Nacional del Mercado de Valores of Spain. Those MOUs contain comprehensive provisions for consultation and the provision of mutual assistance in the administration and enforcement of United States and Argentine and Spanish securities laws, respectively. The MOUs also provide for consultations between the parties on all matters relating to the operation of the securities markets of their respective countries, and for consultation on questions related to the operation of the MOUs. The enforcement aspects of the MOUs follow closely the SEC's previous MOUs. The MOUs express each signatory's intent to gather information when requested on all matters relating to possible violations of the requesting authority's securities laws or regulations, and when voluntary measures fail, to use compulsory (subpoena) powers, if necessary. The comprehensive scope of the MOUs assures that the fullest measure of assistance will be available to administer and enforce the respective countries' securities laws or regulations. The Argentine MOU includes provisions for technical assistance. Such provisions are intended to assist authorities responsible for emerging markets. Areas of assistance in the Argentine MOU include training and advice relating to development of securities markets and procedures and practices to protect investors.

On October 10, 1991, the SEC signed a Communiqué on technical assistance and international cooperation with the Costa Rican Comision Nacional de Valores (CNV). The Communiqué creates a framework for the provision of technical assistance, exchange of information, and consultation involving the operation of the securities markets in the United States and Costa Rica.

On March 24, 1992, the SEC entered into an Understanding with the Capital Market Supervisory Agency of Indonesia (the BAPEPAM) regarding mutual cooperation and the provision of technical assistance for the development of the Indonesian securities markets. The Understanding also recognizes that the SEC and the BAPEPAM intend to use their best efforts to provide each other assistance to facilitate the effective administration and enforcement of their respective laws and the regulations relating to securities matters.

Enforcement Matters

Some of the more significant matters in which OIA provided assistance to the Division of Enforcement during 1992 were: *SEC v. Antar, et al.,* 89 Civ. 3773 (D.N.J.); *SEC v. Kurt Naegeli,* 92 Civ. 4583 (S.D.N.Y.); SEC *v. Downe,* 92 Civ. 4092 (S.D.N.Y.); SEC *v. Arnold Kimmes, et al.,* 89 Civ. 5942 (N.D. Ill.); and *In the Matter of State Bank of Pakistan,* SEC Administrative Proceeding File No. 3-7727. Details regarding these cases are in the Enforcement chapter of this report.

International Organizations and Multilateral Initiatives

During 1992, the SEC participated in, worked on, and was involved in the work of, the following international organizations and multilateral initiatives:

The International Organization of Securities Commissions (IOSCO).

The SEC is an active participant in IOSCO. IOSCO is an international forum created to promote cooperation and consultation among

regulators overseeing the world's securities markets. With over 50 members, most of the world's securities regulators are represented.

In 1992, Chairman Breeden played an active leadership role in IOSCO by chairing the Technical Committee, completing a two-year term. Under Chairman Breeden's leadership, the Technical Committee has re-examined its mission and goals, and has undergone a significant restructuring of its organization and functions. The working groups prepared several significant documents which were issued by the Technical! Committee during the IOSCO Annual Conference in October 1992. Significant topics studied by the working groups during the year included derivative products, market disruptions, money laundering and international accounting and auditing standards.

The report, “Contract Design of Derivative Products on Stock Indices,” stresses the importance of ensuring that the design of derivative products not impair orderly pricing in either the cash or the derivative markets, and that the design is appropriate to avoid the risk of manipulation and other potential disturbances. The report identifies seven components of the underlying index that regulators and exchanges should consider in the design of a derivative. Another report prepared during 1992 and issued at the IOSCO Annual Conference, “Measures to Minimize Market Disruption,” focuses on the effects of large rapid market declines that threaten to create panic conditions in the market, such as that experienced in October 1987. The working group noted the role of circuit breakers and price limits in responding to extreme market volatility and the importance of enhancing the ability of regulators to communicate on an open and timely basis to facilitate regulatory decision-making during market disruptions. Also during 1992, a report was prepared studying how

securities regulators can contribute to global efforts to combat money laundering, and how the securities markets can best be protected against being used to perpetrate money laundering schemes. The working group consulted extensively with members of the Financial Action Task Force, an international group of representatives of developed countries formed to combat money laundering, which has promulgated recommendations applicable to financial regulators and institutions designed to prevent and detect money laundering activity.

Another Technical Committee priority has been development of international accounting and auditing standards. A core group of international auditing standards prepared by the International Accounting and Auditing Standards Committee was the subject of intensive study by an IOSCO working group. As a result of this study, a resolution was adopted at the IOSCO Annual Conference recommending acceptance of audits prepared in accordance with such standards for use in multinational offerings and continuous reporting by foreign issuers.

During the past two years, the Technical Committee has devoted considerable attention to the development of common *capital* adequacy standards for securities firms and banks. In January 1992, the Technical Committee met with the Basle Committee and reached certain preliminary understandings regarding capital standards for the securities positions of banks and securities firms and the definition of permitted regulatory capital. The chairmen of the Technical Committee and the Basle Committee issued a Joint Statement memorializing these understandings.

The Technical Committee also has agreed to set up a working group on investment management, taking into account the activities of the

Enlarged Contact Group, a group of mutual fund regulators that meets annually to discuss current developments in this area. The Technical Committee is conducting a broad-based survey of institutional fund management in its members' jurisdictions to be used as a basis for developing a specific mandate.

Council of Securities Regulators of the Americas (COSRA).

In June 1992, the SEC and other securities regulatory authorities in the Americas and Caribbean announced the creation of COSRA, an organization formed to provide a forum for cooperation and communication and to enhance efforts of each member country to foster the growth of fair and open securities markets. Chairman Breeden and Luis Miguel Moreno, Chairman of the Comision Nacional de Valores of Mexico, were selected for one-year inaugural terms as Chairman and Vice Chairman, respectively, of COSRA. Among the goals of COSRA are: (1) the proposal and implementation of regulatory, legal, and structural reforms to facilitate participation in the securities markets and to provide a means for privatization of state-owned businesses in the Americas; (2) the protection of investors through the establishment and enforcement of requirements for accounting and disclosure, and the maintenance of market integrity through surveillance and enforcement; (3) the creation of investment incentives and the removal of barriers that impede cross-border investment and market development; and (4) the development of trading systems based on transparency and efficient clearance and settlement, and the establishment of linkages among markets to provide liquidity and enhance market access.

The Organization for Economic Cooperation and Development (OECD).

The SEC staff participated in discussions at the OECD regarding the establishment of international standards governing illicit payments to government officials, the OECD Codes of Liberalization relating to securities matters, and accounting issues.

***The General Agreement on Tariffs and Trade* (*GATT*).**

The SEC is an active participant in the effort, through the Uruguay Round of the GATT, to establish a multilateral framework of principles and rules for trade in financial services. Throughout 1992, the SEC has consulted and coordinated with the Office of the United States Trade Representative, the Department of Treasury, and other United States government agencies, in connection with the GATT negotiations and other international trade and investment initiatives, such as the North American Free Trade Agreement (NAFTA) negotiations,

NAFTA.

On August 12, 1992, President Bush announced that the United States, Canada and Mexico reached a “handshake” agreement on the North American Free Trade Agreement (NAFTA), which was signed by President Bush, President Salinas and Prime Minister Mulroney on December 17, 1992. The agreement contains a Financial Services Chapter, which will encompass activities of financial service providers, such as broker-dealers and investment advisors, within NAFTA countries. The Financial Services Chapter allows a strong “prudential carve-out,” which enables the SEC to

adopt or modify measures for the protection of investors or the securities markets. The SEC staff provided technical assistance and advice to the Department of Treasury, the lead negotiator in the Financial Services Chapter, during the negotiation process.

The Wilton Park Group.

The United Kingdom Department of Trade and Industry sponsors this informal meeting which includes regulators from 12 countries. During this year's meeting, the SEC tabled for discussion the regulatory concerns posed by the use of bearer share corporations to conceal the identities of participants in fraudulent schemes.

The European Community.

The SEC has been involved with other United States government agencies in reviewing the plans and directives of the European Economic Community. The SEC has been involved in several different studies, and provided assistance to other United States government agencies, including the Department of the Treasury, in connection with the impact of EC 92 on the United States financial services markets.

International Requests for Assistance

The following table summarizes the international requests for assistance made and received by the Commission.

[table omitted]

REGULATION OF THE SECURITIES MARKETS

The Division of Market Regulation, together with regional office examination staff, is charged with the responsibility of overseeing the operations of the nation's securities markets and market professionals. In 1992, over 8,300 broker-dealers, 8 active registered securities exchanges, as well as the over-the-counter (OTC) markets, the National Association of Securities Dealers (NASD) and Municipal Securities Rulemaking Board (MSRB), 16 registered clearing agencies and over 800 transfer agents were subject to the agency's oversight.

Key 1992 Results

In 1992, the division continued to direct its efforts toward market and other reforms to implement the major legislative initiatives enacted by Congress in 1990. To that end, a large trader reporting system was proposed and a risk assessment recordkeeping and reporting system, which will monitor material financial exposures of holding company systems with broker-dealer affiliates, was approved. The Commission also promulgated seven investor disclosure rules designed to address abuses in the penny stock market. The agency reviewed a large number of new securities and derivative products introduced by the industry. Further, as a means by which to direct future market initiatives, the division undertook the Market 2000 Study. The year-long study is intended to provide an understanding of how the equity markets have changed over the past 20 years. It will explore how market participants and the rules governing them have served the interests of fairness, efficiency, and competitiveness in the equity markets. In addition, the SEC continued to provide technical assistance to many emerging market countries and worked closely

with international working groups to strengthen market inter-relationships and capital adequacy and other regulatory standards for financial institutions around the world.

Securities Markets, Facilities, and Trading

Market Reform Initiatives

In 1991, the Commission published for comment proposed Rule 13h-1 under the Securities Exchange Act (Exchange Act) to establish a large trader reporting system, as authorized by the Market Reform Act of 1990 (Market Reform Act). The proposed rule would establish an activity-based identification, recordkeeping, and reporting system for large trader accounts and trades to facilitate the reconstruction and analysis of market events. Proposed Rule 13h-1 received 77 written comments from market participants, including foreign and domestic investors, broker-dealers, banks, industry associations, and regulatory organizations. The staff participated in lengthy discussions, which were held with market participants, industry associations, self-regulatory organizations (SROs), and information processors, in order to identify alternatives that would minimize the burdens of the proposed system.

On July 16, 1992, the Commission adopted Rules 17h-1T and 17h-2T which, together with new Form 17-H, establish a risk assessment recordkeeping and reporting system for registered broker-dealers concerning certain of their associated persons in accordance with provisions of the Market Reform Act.[59] Rule 17h-1T sets forth the records and other information broker-dealers are required to maintain with respect to their material associated persons. Rule 17h-2T

requires broker-dealers to file with the SEC on Form 17-H a quarterly summary of the information required to be kept by Rule 17h-1T.

Market 2000 Study

In 1992, the division began a study of the United States equity markets entitled, *Market 2000.* The study will explore the role that the SEC and SRO rules play in maintaining the fairness, efficiency and competitiveness of our equity markets. In conducting the study, the division will examine equity market issues such as market fragmentation, fair competition between markets, payment for order flow, market transparency, and proprietary trading systems, among others. The study also will focus on the equitable allocation of regulatory costs.[60]

Penny Stock Disclosure Rules

On April 10, 1992, the Commission adopted Rules 3a51-1 and 15g-1 through 15g-6 pursuant to the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, as part of a comprehensive effort to reduce fraud and manipulation in the penny stock market and to provide investors with important information concerning that market.[61] Penny stocks are generally defined under Rule 3a51-1 as equity securities below $5 that are not listed and traded on an exchange or quoted on NASDAQ.[62] Rules 15g-2 through 15g-5 require a broker-dealer effecting a penny stock transaction to make disclosures to its customers of bid and ask quotations as well as broker-dealer and associated person compensation. Rule 15g-6 requires a broker-dealer to provide monthly account statements to its customers giving the market value of the penny stocks held in the customer's account. Rule 15g-2 further requires a broker-dealer, prior to effecting; a penny

stock transaction, to distribute to its customers a risk disclosure document that describes the risks of investing in the penny stock market and other relevant information.

Options and Other Derivative Products

During 1992, the Commission approved several significant SRO proposals to strengthen market stability and integrity, including the following:

- extension of the American Stock Exchange (AMEX), Boston Stock Exchange (BSE), Midwest Stock Exchange (MSE), New York Stock Exchange (NYSE), Philadelphia Stock Exchange (Phlx), and NASD pilot programs for circuit breaker provisions during volatile markets;[63]

- permanent approval of NYSE Rule 80A, which imposes certain conditions on the execution of index arbitrage orders during unusually volatile markets;[64]

- requirements that Chicago Board Options Exchange (CBOE) members who clear market maker trades provide the CBOE prior written notice of a significant business transaction and/ in some instances, obtain prior approval by the CBOE before engaging in such transactions;[65]

- establishment of CBOE procedures for the intraday trade match system;[66] and

- expedited opening procedures for certain equity and index option series on the Phlx.[67]

The Commission also approved several other significant rule changes submitted by options SROs, including the following that:

- raise CBOE position and exercise limits for European-style S&P 500 Index Options that settle based on the opening prices of the underlying securities, and gradually phase out all closing-price settled S&P 500 Index Options on the CBOE;[68]

- create a CBOE minor rule violation fine plan;[69] and

- institute pilot programs on AMEX and CBOE that allow investors to effect in cash accounts debit put spreads in broad-based stock index options with European-style exercise.[70]

In addition, the Commission approved several proposals by the SROs to trade new financial instruments, including the following:

- capped-style index options on the S&P 100 and 500 Indexes to trade on the CBOE, and on the Major Market Index, the Institutional Index, and the MidCap 400 Index to trade on the AMEX;[71]

- warrants based on the Nikkei Stock Price Average to trade on the NYSE, MSE, PSE, and Phlx; warrants based on the Tokyo Stock Price Index to trade on the Phlx; and warrants based on the Japan Index to trade on the AMEX;[72]

- equity long term options (LEAPS) and LEAPS on reduced value indexes to trade on the NYSE;[73] and

- warrants based on foreign and domestic stock market indexes to trade on NASDAQ.[74]

The SEC also acted on several futures-related matters, including the following:

- amendments to Rule 3al2-8 under the Exchange Act that expanded the list of countries included in the rule whose debt obligations are exempted securities for purposes of futures trading to include the Republics of Ireland and Italy;[75]

- division letters to the Commodity Futures Trading Commission (CFTC) not objecting to the designation of the following boards of trade as contract markets for futures and stock index futures options on the following indexes: Chicago Mercantile Exchange, MidCap 400 Stock Price Index and Financial Times-Stock Exchange 100 Index;[76] and Commodity Exchange, Eurotop 100 Stock Index;[77] and

- division letters to the CFTC not objecting to the offer and sale to U.S. persons on the following markets of the following foreign stock index products: Sydney Futures Exchange, All Ordinaries Share Price Index Futures Option;[78] Marche a Terme International de France, CAC-40 Index Futures;[79] Singapore International Monetary Exchange, Nikkei Price Average Futures Options;[80] Osaka Stock Exchange, Nikkei Index Futures;[81] and Tokyo Stock Exchange, TOPIX Index Futures.[82]

Automation Review

In response to the Commission's second Automation Review Policy Statement,[83] the SROs commenced independent reviews of the controls in place for their automated trading and information dissemination systems and risk analyses of those controls. To facilitate Commission oversight of this area, the division formed the Branch of Electronic Data Processing Review and instituted an on-site inspection program of SRO automation review procedures.

National Clearance and Settlement System

The staff continued to work to enhance all components of the national clearance and settlement system. In July 1991, a task force was formed by John Bachmann, a prominent securities industry leader, to evaluate the clearance and settlement system and to make recommendations for improvements. In May 1992, this task force issued its report recommending, among other things, that the settlement cycle for securities transactions be reduced from the current five days to three days after the trades.[84] The Commission published the report for public comment and has received over 1,000 comment letters in response.[85]

The Market Transactions Advisory Committee (MTAC), formed by the Commission pursuant to Section 17A(f) of the Exchange Act[86] to assist the SEC in assessing the need for greater uniformity in existing state and federal laws regarding the transfer and pledge of securities, held its inaugural meeting on October 29, 1991, and has met regularly since then. MTAC established three working subgroups (the broker-dealer/futures commission merchant bankruptcy/liquidation

subgroup, the financial gridlock subgroup, and the crisis financing subgroup) to explore issues in particular areas.

Government Securities Markets

In January 1992, the SEC, the U.S. Department of the Treasury, and the Board of Governors of the Federal Reserve System issued the *Joint Report on the Government Securities Market.* H.R. 3927, the Government Securities Reform Act, which was reported by the House Energy and Commerce Committee in June 1992, incorporated in different respects certain recommendations made by the SEC. Specifically, among other provisions, the bill: (1) would grant the SEC authority to promulgate uniform recordkeeping rules for all government securities firms and to require non-routine trade reports for investigatory purposes; (2) would remove existing limitations on application of NASD sales practice rules to government securities transactions; and (3) called for two-tiered backup authority to the SEC to assure that information reported through broker screens was made publicly available on a fair, reasonable, and nondiscriminatory basis and allowed investors to determine the prevailing market price of securities quoted on the screens.[87]

In response to a congressional inquiry, the staff issued a letter discussing the effects of price competition among government securities brokers on the liquidity and efficiency of the market for government securities.[88] The response suggested that commission-free trading does not unfairly disadvantage smaller dealers and is not a main component of manipulative trading strategy.

Internationalization

During 1992, the SEC provided information and technical assistance to several emerging market countries, including Costa Rica and Thailand. As a member of the International Organization of Securities Commissions (IOSCO), the agency participated in the Working Party on the Regulation of Secondary Markets, which discussed issues concerning measures to minimize market disruption, contract design of derivative products on stock indices, regulation of screen-based trading systems, and transparency of markets.

The SEC also participated actively in the Working Party on the Regulation of Market Intermediaries, which focused its efforts on issues relating to development of common capital adequacy standards for securities firms and banks, and on principles for the supervision of financial conglomerates. In the area of capital adequacy, this working party addressed issues relating to (1) the appropriate level of capital requirements for positions in equity and debt securities and (2) the appropriate definition of capital. In the area of supervision of conglomerates, the working party produced a paper setting forth principles for the supervision of financial conglomerates. The paper was approved by the IOSCO Technical Committee and endorsed by IOSCO at its 1992 annual meeting.

Regulation of Brokers, Dealers, Municipal Securities Dealers, and Transfer Agents

Broker-Dealer Examination

The primary purpose of the broker-dealer examination program is to provide oversight of the SROs responsible for the routine examination

of those broker-dealers conducting a public securities business. This oversight is accomplished primarily through the examination of broker-dealer firms recently examined by a SRO. Additionally, cause examinations are conducted when the agency becomes aware of circumstances that warrant direct SEC inquiry rather than SRO review.

In 1992, the agency completed a total of 550 examinations. Specifically, the staff completed 419 oversight examinations, a 5 percent decrease from 1991, and 131 cause examinations, an 8 percent increase from 1991. Findings from 73 examinations were referred to regional office enforcement staff, representing 13 percent of all completed examinations. Referrals to SROs were made in 45 examinations.

During 1992, oversight examinations were conducted at 10 of the largest NYSE member firms, which included comprehensive financial and operational reviews at each firm. In addition to these large firm examinations, 71 other self-clearing NYSE member firms were examined. Finally, in conjunction with the Division of Enforcement, hiring, retention and supervisory practices at large NYSE member firms were reviewed.

Broker-Dealer Regulation

The Commission published for comment a release proposing adoption of a rule that would permit passive market making during distributions of certain NASDAQ securities designated as National Market System (NASDAQ/NMS) securities, where application of Rule 10b-6 would result in significant market degradation.[89] In general, the

proposed rule would limit a passive market maker's bids by the level of bids of market makers who are not participating in the distribution.

Exchange Act Rule 10b-2, subject to certain exceptions, prohibits any person participating in, or financially interested in, a distribution of a security from paying compensation to induce the purchase on a national securities exchange of any security of the issuer whose security is the subject of a distribution. In view of other antifraud and anti-manipulation provisions of the securities laws that provide coverage of the types of abuses that Rule 10b-2 addresses, and the significant changes that have taken place in the securities markets since the rule's adoption, the Commission issued a release soliciting public comment on a proposal to rescind Rule 10b-2.[90]

The Commission published for comment proposed amendments to Rule 10a-1, the short sale rule, which would: (1) provide an exception for a short sale that equalizes the opening price of a foreign security on a U.S. exchange with its price in the principal foreign market for the security; (2) exclude from application of Rule 10a-1 transactions in corporate bonds and debentures effected on an exchange; and (3) codify a staff no-action position related to certain liquidations of index arbitrage positions.[91]

Exchange Act Rule 15c2-11, with certain exceptions, prohibits a broker or dealer from publishing a quotation for a covered security in a quotation medium unless it has in its records and reviews specified information concerning the security and the issuer. The Commission granted an exemption under Rule 15c2-11 to permit broker-dealers to publish quotations immediately in another quotation medium for NASDAQ securities that were no longer authorized for quotation in

NASDAQ, as a result of the implementation of revised maintenance standards for NASDAQ securities approved by the Commission.[92]

In 1992, the staff issued a series of no-action letters concerning the term “ready market” under Exchange Act Rule 15c3-1 regarding certain commercial paper, money market instruments, debt securities, preferred stock, and equities listed on the Mexican Stock Exchange.[93] When an instrument is deemed to have a “ready market,” it becomes subject to lower regulatory capital requirements under the Commission's net capital rule.

Broker-Dealer Registration

The SEC implemented several initiatives in 1992 designed to reduce the costs associated with broker-dealer registration. Specifically, in July 1992, the Commission adopted amendments to Form BD, the uniform registration form for broker-dealers under the Exchange Act.[94] These amendments, which were developed in consultation with the North American Securities Administrators Association, Inc., the NASD, and members of the securities industry, updated the disciplinary history provisions and narrowed the scope of disclosure required by the schedules to the form. The Commission also proposed amendments to the broker-dealer registration rules and filing instructions under the Exchange Act in order to facilitate SEC participation in the Central Registration Depository (CRD) system.[95] CRD is a computer system operated by the NASD that maintains registration information regarding NASD member firms and their registered personnel and is used for licensing broker-dealers and their agents with SROs and the states. The agency's primary objective in joining the CRD system is to provide “one-stop filing” for broker-dealers.

Transfer Agent Examinations and Regulation

The regional office staff completed 210 transfer agent examinations, including 58 examinations of federally regulated banks. Thirty-six of the 58 bank examinations were cause examinations prompted by the incomplete cancellation and destruction of redeemed certificates circulating in the financial industry. The program resulted in 134 deficiency letters, 7 registration cancellations or withdrawals, 8 referrals to the Division of Enforcement, 2 staff conferences with delinquent registrants, and one referral to federal bank examiners.

The Commission adopted Rule 17Ad-15[96] under the Exchange Act governing transfer agent acceptances of signature guarantees.[97] The Commission also published for comment Rule 17Ad-16 under the Exchange Act.[98] The proposed rule, if adopted, would address problems of transfer delays resulting from unannounced changes in the transfer agent's services or its name or address.

Application of Rules 10b-6 and 10b-7 to International Distributions

The SEC granted relief under anti-manipulation Rules 10b-6 and 10b-7 for multinational offerings. This action was taken to permit non-United States persons to continue customary market activities in foreign jurisdictions until nine business days prior to the commencement of offerings in the United States by issuers in Mexico, [99] Venezuela,[100] and Portugal,[101] subject to certain conditions designed to prevent a manipulative impact on the U.S. market. In other multinational offerings, based on the issuers' total market capitalization, public float, and the trading volume of the securities in

the offering, distribution participants and their affiliated purchasers were permitted to continue customary market activities in the securities until two business days prior to the commencement of the offerings.[102]

Certain market makers on the London Stock Exchange that were affiliated with underwriters in a global offering of ordinary shares and American Depositary Shares of a British company by the United Kingdom government were permitted to continue normal market making on the London Stock Exchange's SEAQ system, based on the magnitude of the offering, the volume of trading by the affiliated market makers, and the process of setting the offering price through a tendering process rather than based on the secondary market price.[103] Similarly, equity market makers on the London Stock Exchange and options market makers on the London International Financial Futures and Options Exchange or the Paris Options Market that were affiliated with distribution participants were permitted to continue making a market during certain multinational distributions, subject to certain conditions.[104]

Lost and Stolen Securities

Rule 17f-1 under the Exchange Act sets forth participation, reporting, and inquiry requirements for the SEC Lost and Stolen Securities Program (program).[105] Statistics for calendar year 1991 (the most recent data available) reflect the program's continuing effectiveness. As of December 31, 1991, 23,403 institutions were registered in the program. The number of securities certificates reported as lost, stolen, missing, or counterfeit increased from 651,305 in 1990 to 876,519 in 1991, a 35 percent increase. The dollar value of these securities decreased 12 percent, from $2.6 billion to $2.3 billion. The

aggregate dollar value of the securities contained in the program's database increased from $18.4 billion in 1990 to $20.1 billion in 1991, a 9 percent increase. Program participants (*e.g.,* banks and broker-dealers) made inquiries concerning 3.9 million certificates, an increase of 44 percent over 1990. Inquiries concerning 11,378 certificates valued at $192 million matched reports of lost, stolen, missing, or counterfeit securities on file in the database.

Oversight of Self-Regulatory Organizations

National Securities Exchanges

As of September 30,1992, there were eight active securities exchanges registered with the SEC as national securities exchanges: AMEX, BSE, CBOE, Cincinnati Stock Exchange (CSE), MSE, NYSE, Phlx and Pacific Stock Exchange (PSE).[106] During 1992, the agency granted exchange applications to delist 104 debt and equity issues, and granted applications by issuers requesting withdrawal from listing and registration for 56 issues. In addition, the SEC granted 1,713 exchange applications for unlisted trading privileges.

The exchanges submitted 249 proposed rule changes to the SEC during 1992. Many of these filings are described in the section above entitled “Securities Markets, Facilities, and Trading.” Other notable rule filings approved by the Commission included proposals to:

- establish listing criteria for the new AMEX Emerging Company Marketplace (ECM);[107]

- adopt listing standards for new hybrid securities on the Phlx;[108]

- modify the procedures by which the NYSE reviews subsequent listing applications;[109]

- extend for one year NYSE Rule 103A relating to specialist stock reallocations;[110] and

- amend the NYSE basic Floor Member (Series 15} Examination to revise the content outline and specifications for the examination.[111]

National Association of Securities Dealers, Inc.

The NASD, with over 5,200 member firms, is the only national securities association registered with the SEC. It is the operator of NASDAQ, the second largest stock market in the United States, and the third largest in the world (after the NYSE and the Tokyo Stock Exchange). In 1992, the NASD reported a total of 1,126 final disciplinary actions, which consisted of 966 formal and summary disciplinary actions by its district committees and 160 formal and summary actions by its market surveillance committee.

A total of 63 proposed rule changes were submitted to the Commission by the NASD in 1992. The Commission approved 66 proposed rule changes, which includes many of the submissions received during the year and in several received prior years. Among the significant changes approved by the Commission were:

• codification of the practices and policies of the NASD's Corporate Financing Department for review of underwriting compensation arrangements of NASD members participating in a public offering;[112]

- extension of the hours of operation for the NASD's screen-based trading system, SelectNet, to include a one-half hour pre-opening session from 9:00 a.m. to 9:30 a.m. eastern time;[113]

- the NASD's Investor Inquiry Program proposal, which implements the newly-enacted provisions of Section 15A(i) of the Exchange Act;[114]

- requirements that the NASD review, prior to granting NASDAQ/NMS designation, an issuer's past corporate governance activities when the issuer's securities were traded on, or after withdrawal from, the NASDAQ/NMS or a securities exchange that imposes corporate governance requirements;[115]

- requirements that NASD member firms forward proxy material to beneficial owners at the request of persons other than the issuer, *i.e.,* shareholders;[116]

- requirements for real-time last sale trade reporting for NASDAQ Small Cap securities;[117] and

- offering, on a pilot basis, the NASDAQ International service, which will support an early trading session in London to be available from 3:30 a.m. to 9:00 a.m. eastern time on each business day that coincides with the business hours of the London financial markets.[118]

Arbitration

Each SRO that administers an arbitration program has been asked by the SEC to initiate refinements to procedures for selecting and training arbitrators, in response to a report by the General Accounting Office (GAO) entitled *Securities Arbitration: How Investors Fare.*[119] In its report, which found no indication of a pro-industry bias in decisions at the SRO forums, the GAO accepted the approaches for improving arbitrator selection and training recommended by the SEC in its comments on a draft of the report.[120]

The SEC approved proposed rule changes by the NASD and national securities exchanges that strengthen the arbitration rules for disputes between investors and broker-dealers, and among broker-dealers. The arbitration rules of the NYSE and the NASD were amended to exclude class action claims from arbitration, and to enable investors to pursue class actions through the courts.[121] The NYSE and NASD amended their rules to clarify the authority of arbitrators to take appropriate action to enforce their own interim orders during an arbitration proceeding.[122] The Phlx amended its rules to simplify its procedures for composing the arbitration panel in cases among its members.[123]

Clearing Agencies

Sixteen clearing agencies were registered with the SEC at the end of 1992, 12 of which were active. During 1992, these registered clearing agencies submitted 127 proposed rule changes and withdrew one. The SEC approved 81 proposed rule changes, including the following:

- implementation by the Depository Trust Company (DTC) of a commercial paper program to permit participants to settle commercial paper trades through DTC's same-day funds settlement system;[124]

- enhancements to the Government Securities Clearing Corporation's (GSCC) clearance and settlement system to allow GSCC to net, prior to the U.S. Treasury auction, trades in Treasury securities submitted by participating members;[125]

- expansion of the Options Clearing Corporation (OCC) and the Intermarket Clearing Corporation (ICC) cross-margining program[126] to include non-proprietary, market maker positions; expansion of the OCC/ Chicago Mercantile Exchange cross-margining program[127] to include non-proprietary, market maker positions; establishment of the OCC/Board of Trade Clearing Corporation proprietary cross-margining program;[128] and establishment of the OCC/Kansas City Board of Trade Clearing Corporation proprietary cross-margining program;[129] and

- extension of temporary clearing agency registration of the Participants Trust Company,[130] the International Securities Clearing Corporation,[131] and ICC.[132]

Municipal Securities Rulemaking Board

The SEC received seven proposed rule changes from the MSRB and approved eight. Of particular note, on April 6, 1992, the Commission approved an 18-month continuing disclosure information pilot system. The system creates a central repository for timely dissemination of continuing disclosure information under which customers who buy

and sell municipal securities in the secondary market are expected to have greater access to information regarding the financial health of an issuer.[133]

Securities Investor Protection Corporation (SIPC)

The SIPC Fund amounted to $713.5 million on September 30, 1992, an increase of $51 million from September 30, 1991. Further financial support for the SIPC program is available through a $1 billion confirmed line of credit established by SIPC with a consortium of banks. In addition, SIPC may borrow up to $1 billion from the U.S. Department of the Treasury, through the SEC.

Inspections of SRO Surveillance and Regulatory Compliance Programs

The staff conducted two inspections of the NYSE's Division of Member Firm Regulation, including an evaluation of the NYSE's program for investigating customer complaints against NYSE member firms and associated persons. That inspection revealed that most investigations reviewed were conducted in a satisfactory manner, but also recommended improvements in procedures to ensure full and timely investigation of all relevant issues. The staff also conducted an inspection of the NYSE's financial surveillance program. A substantial part of that program involves the use by NYSE personnel of information produced by an automated financial system developed by the NYSE to detect abnormal fluctuations in the financial condition of NYSE member firms. This system provides the NYSE with a mechanism to detect member firms experiencing financial difficulty and to take remedial action when appropriate. The

staff found that the NYSE financial surveillance program is functioning in a very satisfactory manner.

The staff conducted an inspection of the NASD's program for monitoring transfers of customer accounts between member firms for compliance with requirements contained in the NASD's Uniform Practice Code. While no major deficiencies were found in the NASD's program, the inspection revealed minor delays which could be addressed by closer monitoring by NASD personnel.

The regional office staff conducted routine oversight inspections of regulatory programs administered by 10 of the NASD's 14 district offices. These inspections included evaluations of the districts' broker-dealer examination, financial surveillance and formal disciplinary action programs as well as investigations of customer complaints, terminations of registered representatives for cause and members' notices of disciplinary action against their own employees. Although these inspections disclosed several deficiencies involving a variety of issues, most were characterized as less serious in degree and magnitude. Overall, these inspections revealed that the NASD was meeting its regulatory responsibilities in an effective manner.

The staff undertook comprehensive inspections of the arbitration programs administered at the MSE, AMEX, NASD and Phlx arbitration programs. These inspections were designed to evaluate the effectiveness of these SRO programs in the processing and resolution of disputes between SRO members and their customers. In particular, the staff reviewed the adequacy and thoroughness of case documentation, the efficiency of the case management systems, and the role each department played in processing its cases. In addition, consideration was given to whether major rule changes, adopted by

the AMEX and the NASD in 1989, and by the Phlx in 1991 in response to Commission concerns regarding the rules and procedures governing SRO-sponsored arbitration, were successful in improving the documentation and fairness of cases administered by these SROs.

The MSE arbitration inspection revealed a minor inconsistency between MSE published rules and administrative practice relating to the handling of customer related claims. The staff recommended that the MSE file with the SEC a proposed rule change so that the MSE's practices are consistent with its rules. The AMEX arbitration inspection revealed that the AMEX generally administers its arbitration program satisfactorily. Nevertheless, the staff discovered certain deficiencies involving arbitrator disclosure and case processing. The staff made several recommendations to remedy the weaknesses. The inspections of the NASD and Phlx arbitration programs were still in progress at the end of the year.

The staff continued its inspections of SRO securities listing departments. These inspections focused on SRO determination of securities qualifying for initial listing and continued trading. The staff conducted inspections of the AMEX and the BSE. In the AMEX inspection, which focused on AMEX listing of securities issued in roll-up transactions, the staff found that the AMEX generally implemented adequately its quantitative listing standards. The BSE inspection found that while the program for the initial listing of securities was acceptable, deficiencies existed in the program to assure that companies with listed securities comply with BSE maintenance standards.

In December 1991, the staff conducted an inspection of the NASD Corporate Finance Department. The staff found that the department reviewed offerings filed with the NASD in a diligent, timely and efficient manner. An inspection of AMEX surveillance and investigatory programs for monitoring options and equities trading conducted in April and May 1992 found these programs to be functioning adequately. With respect to the AMEX's Enforcement Department, the inspection revealed some deficiencies in the timeliness of cases, and the staff found that a deterioration in the overall quality of its program. In addition, the Financial Regulatory Services Department had failed to implement several recommendations from the staff's 1988 inspection.

The SEC published a staff overview of the market decline on November 15, 1991, analyzing the effects of hedging activities related to OTC derivative products and unwinding activities related to expirations of options and futures. Finally, at the staff's request, the NYSE, CBOE, AMEX, and NASD formed a task force to study the scope of member firms' activities in OTC derivatives in general, and OTC options on U.S. stock indexes in particular.

During 1992, the staff also expanded access to data concerning Treasury securities, including programs to access and compile Treasury market data.

Applications for Re-entry

As a result of the expanded definition of statutory disqualification contained in the International Securities Enforcement Cooperation Act, the number of SRO filings under Rule 19h-1 under the Exchange Act processed by the staff increased 68 percent, from 47 in 1991 to

79 in 1992. The distribution of filings among the SROs was: NASD, 57; NYSE, 19; and AMEX, 3. No applications were denied, but two were withdrawn and the staff declined to take a no-action position for three other applications.

SRO Final Disciplinary Actions

Section 19(d)(1) of the Exchange Act and Rule 19d-1 thereunder require all SROs to file reports with the SEC of all final disciplinary actions. A Rule 19d-1 filing reports the facts about a completed action that may have been initiated at any time during the previous years. The time needed to complete a SRO disciplinary action frequently reflects the severity of the violations charged, the number of respondents involved, and the complexity of the underlying facts. SROs generally conclude cases involving minor or technical violations by a single respondent in less than a year. Cases involving serious trading violations (*e.g.,* price manipulation, insider trading, frontrunning, *etc.)* often require more time to complete because of the necessity of demonstrating specific intent to the disciplinary panel that acts as trier of fact. Consequently, the absolute volume of Rule 19d-1 notices submitted by a SRO in a given year is not a precise measure of its proficiency in market surveillance and compliance. Nevertheless, the number of actions reported can be useful in assessing the regulatory effectiveness of different SROs over similar time periods, and this information has proven useful in focusing inspections of SRO regulatory programs.

In 1992, the AMEX filed 26 Rule 19d-1 reports; the CBOE filed 173; the NYSE filed 202; the Phlx filed 66; the PSE filed 31; the registered clearing agencies and the Boston, Cincinnati and Midwest Stock Exchanges filed none; and the NASD filed 1,126.

INVESTMENT COMPANIES AND ADVISERS

The Division of Investment Management oversees the regulation of investment companies and investment advisers under two companion statutes, the Investment Company Act of 1940 (Investment Company Act) and the Investment Advisers Act of 1940 (Investment Advisers Act), and administers the Public Utility Holding Company Act of 1935 (Holding Company Act).

Key 1992 Results

In 1992, the Division of Investment Management released a report on the regulation of investment companies, *Protecting Investors: A Half Century of Investment Company Regulation.* The Commission and the staff implemented some of the report's recommendations during the year. The Commission proposed amendments to Regulation E under the Securities Act of 1933 (Securities Act) that are intended to enhance the ability of small business investment companies to raise capital for small business and to increase the liquidity of investments in small business investment companies and in business development companies. In connection with the SEC's efforts to remove unnecessary barriers to capital formation and to facilitate access to the capital markets by small business, the SEC announced that mutual funds generally would be permitted to increase the amount of illiquid assets they may hold from 10 percent to 15 percent of their net assets. The staff also responded to the growing globalization of investment and securities markets.

Program Overview

The tables below show the number of registered investment companies and investment advisers and the amounts of assets under management. All figures are reported for year end.

[tables omitted]

The number of registered investment companies increased by over 5 percent during 1992. Many investment companies combine several separate portfolios or investment series in one investment company registration statement. The number of portfolios generally ranges from three to ten. However, some unit investment trusts group as many as 900 separate portfolios under one Investment Company Act registration. The number of portfolios increased by nearly 17 percent during 1992. In addition, the agency was responsible for regulating 18,000 investment advisers at the end of 1992, over a 27 percent increase since 1988.

Investment Company and Adviser Inspection Program

During 1992, program resources were focused on inspections of funds in the largest 100 investment company complexes, all money market mutual funds, and investment advisers with assets under management in excess of $1 billion. The 100 largest investment company complexes managed $1.4 trillion in assets, which represented 77 percent of total investment company industry assets of $1.8 trillion. The total assets under management of the over 1,000 money market portfolios were $580 billion, which represented 32 percent of all investment company assets.

Although the Investment Advisers Act establishes a system of registration and regulation designed to disclose to clients basic facts about an adviser and to hold the adviser to the highest standards of honesty and 10yalty expected of a fiduciary, the primary means by which the SEC enforces the Investment Advisers Act is through a program of periodic inspections.

Results Achieved by the Program

The division and regional office staff conducted inspections of funds within each of the 100 largest investment company complexes as well as 125 other complexes. These inspections focused on portfolio management activities. Each of the 1,048 money market funds were reviewed for compliance with Rule 2a-7, which specifies the quality and maturity of permissible instruments that may be held by money market funds and requirements for portfolio diversification. The staff inspected 614 investment advisers, of which 210 managed more than $1 billion. These inspections focused on the portfolio management and trading activities of advisers. As a result of all inspections conducted during 1992, the staff sent 782 deficiency letters to registrants requiring that they eliminate violative activities. In 49 inspections, where the registrant appeared to be engaged in serious misconduct, the staff referred the inspection results to the enforcement program for further investigation.

Regulatory Policy

Significant Investment Company Developments

In May 1992, the Division of Investment Management released its report, *Protecting Investors: A Half Century of Investment Company*

Regulation (*Protecting Investors)*,[134] culminating a two-year special study of the regulation of investment companies. The report, while concluding that the basic investment company regulatory structure remains sound, contained many recommendations to modernize the regulatory structure, increase investor protection, and promote increased competition in the industry. In many instances, the regulatory structure has not kept pace with the tremendous changes that have occurred in the financial markets. The report contained a number of proposals for regulatory and legislative reform in three major areas: the scope of the Investment Company Act; barriers to cross-border sales of investment management services; and regulation of investment companies. Some of the report's recommendations can be accomplished by rulemaking while others require legislative changes. Many of the rulemaking initiatives to implement report recommendations are discussed in the material that follows.

In November 1992, the Commission adopted Rule 3a-7 under the Investment Company Act to exempt from the definition of investment company, and hence from regulation under the Investment Company Act, structured financings that meet certain conditions.[135] In structured financings, income-producing, often illiquid assets – such as credit card receivables, automobile loans, and corporate bonds – are pooled and converted into capital market instruments. Although structured financings fall within the Investment Company Act definition of investment company, they cannot, as a practical matter, register as investment companies because they cannot operate under the statutory provisions. Some structured financings have not been regulated under the Investment Company Act based on statutory exceptions that were intended for very different businesses. Other financings, primarily involving mortgage products, have

received exemptions by Commission order. Financings that were unable to rely on an exception or obtain an exemptive order were sold offshore or in private placements to not more than 100 investors.

In August 1992, the Commission proposed a rule to permit closed-end management investment companies to repurchase their shares periodically at net asset value. At the same time, the Commission proposed a rule to permit open-end management investment companies to operate either as extended payment companies, which would redeem shares continuously but take longer to make payments than the seven days currently mandated for open-end companies, or as interval companies, whose shareholders could redeem at fixed, regular intervals, such as monthly.[136] These proposed rules were among the recommendations made in the *Protecting Investors* report. Funds operating under the proposed rules would provide alternatives to the traditional open-end and closed-end companies. To prevent investor confusion, the new rule for open-end companies would require prominent disclosure of a fund's limits on redeemability and prohibit the use of the label “mutual fund.”

In March 1992, the Commission proposed for public comment amendments to Regulation E under the Securities Act,[137] which exempts from registration under the Securities Act certain securities offerings by small business investment companies (SBICs) registered under the Investment Company Act and business development companies (BDCs).[138] The amendments would increase, from $5 million to $15 million, the aggregate offering price of SBIC securities that may be sold annually without registration under the Securities Act. The amount of SBIC or BDC securities that may be sold annually by any person other than the issuer would increase from $100,000 to $1,500,000. In addition, certain other revisions were proposed to

modify procedural requirements under Regulation E. The proposed amendments are intended to enhance the ability of small business investment companies to raise capital for small businesses and to increase the liquidity of investments in SBICs and BDCs.

Significant Disclosure Program Developments

In March 1992, the Commission published revisions to the staff guidelines to Form N-1A, the registration form used by open-end management investment companies to register under the Investment Company Act and to register their securities under the Securities Act. The revised guidelines generally permit mutual funds, other than money market funds, to increase, from 10 percent to 15 percent of net assets, the amount of illiquid assets they may hold[139] and thereby permit mutual funds more flexibility to make investments in illiquid securities of small businesses, resulting in better access to capital markets for small businesses.

In November 1992, the Commission adopted amendments to Form N-2, the registration form used by closed-end management investment companies under the Investment Company Act and the Securities Act, and related rules.[140] The amendments shorten and simplify the prospectus provided to investors by adopting the two-part disclosure format used by mutual funds and update disclosure standards for closed-end funds including companies electing to be regulated as BDCs. Amendments to Rule 8b-16 under the Investment Company Act exempt closed-end funds from the requirement to update their Investment Company Act registration statements annually, provided certain disclosures are made to fund shareholders annually. The Commission also published staff guidelines for the preparation of Form N-2.

During the year, the staff devoted considerable attention to the increased use of “hub and spoke” arrangements in which several open-end investment companies, or “spokes,” invest in one large investment company, or “hub.” The structure permits a spoke fund to tailor its distribution and shareholder services to a particular group, while it takes advantage of professional advisory services and economies of scale that might not otherwise be available to smaller investment companies. These structures were scrutinized to ensure that they do not result in undue duplication of fees or deprive the ultimate investors – the spoke shareholders – of any rights otherwise provided by the federal securities laws.

During 1992, the staff reviewed new registration statements or amendments to existing registration statements for: 991 new open-end fund portfolios; 6,962 existing open-end fund portfolios; 184 new closed-end fund portfolios; 347 existing closed-end fund portfolios; 964 new unit investment trust portfolios; and 9,099 existing unit investment trust portfolios.

Section 13(f)(1) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 13f-1 require “institutional investment managers” exercising investment discretion over accounts holding certain equity securities with a fair market value of at least $100 million to file quarterly reports on Form 13F. For the quarter ended September 30, 1992, 1,048 managers filed Form 13F reports, for total holdings of nearly $2 trillion. Under Rule 13f-2T, these managers may elect to file the report on magnetic tape submitted to the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.

Form 13F reports are available to the public at the agency's Public Reference Room promptly after filing. Two tabulations of the information contained in these reports are available for inspection: an alphabetical list of the individual securities showing the number held by the managers reporting the holding, and an alphabetical list of all reporting managers showing the total number of shares of securities held. These tabulations are generally available two weeks after the date on which the reports must be filed.

Significant Insurance Products Developments

On October 23, 1992, the staff issued a letter to insurance company sponsors/depositors of separate accounts registered as investment companies to assist the sponsors/depositors in preparing post-effective amendments and other disclosure documents. The letter included comments about recent substantive and procedural developments. For example, several insurance companies issuing variable life insurance contracts have sought to advertise fund performance based on certain assumptions about contract charges. The letter described staff concerns about the use of these assumptions because of the difficulty of reflecting in any standardized form the cost of insurance charge, which varies depending on the age, gender (in some states), health and smoking/non-smoking status of the individual purchaser.

Significant Public Utility Holding Company Act Developments

Title VII of the Energy Policy Act of 1992 (Energy Policy Act), enacted on October 24, 1992, amends the Holding Company Act by creating new classes of exempt entities, exempt wholesale generators (EWGs) and foreign utility companies.[141] The legislation also permits

registered holding companies to acquire small power production facilities, in addition to cogeneration facilities, anywhere in the United States.[142] Although acquisitions of EWGs and foreign utility companies no longer require SEC approval, related financings and guarantees by a registered holding company or its subsidiaries remain subject to SEC jurisdiction. Further, the legislation directs the SEC, within six months of the date of enactment of the legislation, to adopt rules for the protection of consumers of the registered holding-company systems.

The Commission amended Rule 52 of the Holding Company Act to broaden the current exemption for certain financings by public utility subsidiary companies, and proposed for comment amendments that would further expand the scope of exemption under the rule.[143] The Commission also proposed for public comment amendments to various rules and forms under the Holding Company Act.[144] The proposed amendments would generally reduce the regulatory burdens for companies in a registered holding-company system by expanding existing exemptions for, *inter alia,* certain acquisitions and sales, financings, investments in non-utility enterprises, and the provision of services to foreign associate companies. In addition, the Commission proposed rescission of a rule that requires competitive bidding for the issue and sale of securities by companies in a registered holding-company system.[145]

As of September 30, 1992, 14 public utility holding company systems were registered with the SEC. The 14 registered systems were comprised of 91 public utility subsidiaries, 125 non-utility subsidiaries, and 30 inactive companies, for a total of 246 companies operating in 26 states. These registered systems had aggregate assets of approximately $99.1 billion as of September 30, 1992, an increase of

$4.9 billion over September 30, 1991. Total operating revenues for the 12 months ending September 30, 1992 were approximately $38.1 billion, a $1.2 billion increase from the 12 months ending September 30, 1991.

During 1992, the agency authorized registered holding-company systems to issue $6.7 billion in short-term debt, $8.3 billion in long-term debt, and $1.3 billion in common and preferred stock. long-term debt increased by 232 percent in 1992, primarily as a result of an increase in the sale of medium-term notes and debentures, and short-term debt increased by 22 percent. The SEC also approved pollution control financings of $267 million, nuclear fuel and oil procurement financings of $245 million, and investments in qualified cogeneration facilities of $488 million, an increase of $325 million over 1991. Total financing authorizations of approximately $17.4 billion represented an approximate 63 percent increase over such authorizations in 1991.

The SEC audits service companies and special purpose corporations. In the future, this audit program also will be used to audit EWGs and foreign utility companies. In addition, the agency reviews the fuel procurement activities, accounting policies, annual reports of service company subsidiaries and fuel procurement subsidiaries of registered holding companies, and quarterly reports filed by non-utility subsidiaries of registered holding companies. By uncovering misapplied expenses and inefficiencies, the agency's activities during 1992 resulted in savings to consumers of approximately $10.2 million.

Significant Interpretations and Applications

Investment Company Act Matters

The staff stated that Section 11(a) of the Investment Company Act prohibits a mutual fund from offering to waive its front-end sales load to attract shareholders of unaffiliated funds that charge contingent deferred sales loads, absent a Commission order. The purpose of Section 11(a) is to protect mutual fund shareholders from paying multiple sales loads through the churning of their investments. Since salespersons may receive compensation for moving shareholders from fund to fund, they may have an incentive to switch shareholders even when no front-end load is imposed by the new fund. The staff concluded that inducements to shareholders to switch their investments should continue to require a Commission order where the exchange is not made at net asset value.[146]

In two no-action letters under Section 17(f) of the Investment Company Act and Rule 17f-5 thereunder, the staff stated that it would not recommend enforcement action if various entities acted as eligible foreign custodians for registered investment companies. These positions were based in part on representations that each entity operated the central system in its country for the handling of certain types of securities, *i.e..* Commonwealth Government securities issued in Australia and securities listed on the Stock Exchange of Hong Kong Limited. The staff also considered whether, and to what extent, a foreign government operated or regulated the entities.[147]

The staff declined to take a no-action position where a fund proposed to treat an affiliate of a foreign broker-dealer as a disinterested

person of the fund for the purposes of Section 10(a) of the Investment Company Act. Section 10(a) provides that no more than 60 percent of the members of a registered investment company's board of directors may be interested persons of the registered investment company. The individual in question was a director of a major foreign broker-dealer in a country in which the fund made investments. Section 2(a)(19)(v) of the Investment Company Act provides that a person is an interested person of an investment company if the person is a broker or dealer registered under the Exchange Act or an affiliate of such a broker or dealer. While the foreign broker-dealer was not registered under the Exchange Act, the staff took the position that the individual's position as a director of the broker-dealer posed the same conflicts of interest that Section 2(a)(19)(v) was designed to address. The staff, therefore, refused to provide no-action assurance to the fund.[148]

The Commission issued a conditional order under Section 10(f) of the Investment Company Act to permit the First Philippine Fund, Inc. (First Philippine) to purchase foreign securities in public offerings in which an affiliate of First Philippine's investment adviser participates in the underwriting syndicate.[149] First Philippine agreed to comply with all of the conditions in Rule 10f-3, except the requirement that the securities be registered under the Securities Act. Prior orders had required that the foreign securities be registered under the laws of the foreign country, which were “substantially equivalent” to the Securities Act. The Commission granted the order to First Philippine notwithstanding the fact that the securities laws of the Philippines may not be “substantially equivalent” to the Securities Act. Instead, the order requires that any securities purchased by First Philippine be sold in public offerings conducted in accordance with Philippine law,

the securities be listed on the Philippine exchanges, and financial statements of the issuers of the securities be available.

The Commission issued a conditional order exempting SPDR Trust, Series 1 (Trust) and its sponsor, a wholly-owned subsidiary of the AMEX, from numerous provisions of the Investment Company Act and the rules thereunder.[150] The Trust invests in a portfolio of securities designed to mirror the Standard & Poor's 500 Index. The Trust's securities, known as SPDRs, can be purchased from and tendered for redemption to the Trust only in lots of 50,000. Transactions involving fewer than 50,000 SPDRs must be effected in the secondary market. To facilitate secondary market trading, SPDRs will be listed on the AMEX. Among other things, the order provides an exemption from Section 24(d), enabling dealers effecting certain secondary market transactions in SPDRs to do so without delivering a prospectus, and from Section 26(a)(2)(C), to permit the Trust to pay certain expenses associated with the creation and maintenance of the Trust.

In response to an application filed by Merrill Lynch Ready Assets Trust and other taxable money market funds whose investment advisers are direct or indirect wholly-owned subsidiaries of Merrill Lynch & Co., Inc. (Merrill), the Commission issued an order under Sections 6(c) and 17(b) of the Investment Company Act that permits those funds to engage in principal transactions in money market securities with dealers in money market securities that are directly or indirectly wholly-owned by Merrill, subject to conditions with respect to pricing, quality, volume, and recordkeeping.[151]

The Commission issued an order on an application filed by Paine Webber P.C., Inc. (PaineWebber), the investment adviser to a limited

partnership (the Partnership), to invest primarily in other limited partnerships owning low-income and moderate-income housing.[152] The order exempts PaineWebber from Section 205(a)(1) of the Investment Advisers Act to permit it to receive a portion of the proceeds that the Partnership receives from the sale, refinancing, or disposition of apartment complexes. Because PaineWebber is a registered investment adviser, it is prohibited from receiving compensation based on a share of the capital gains upon or capital appreciation of any portion of a client's funds. Prior Commission orders granting relief from Section 205(a)(1) to advisers of real estate limited partnerships have required the investors in those partnerships to meet stringent net worth standards, a requirement that the investors in the Partnership did not meet. In granting relief, the Commission considered the following factors: (1) Section 205(a) (1) was neither designed nor intended to apply to long-term investments in real estate; (2) compensation based on capital appreciation is common among entities investing in real estate; and (3) the Partnership was promoted and its investments selected primarily as a means for providing tax benefits to the limited partners over several years.

The Commission issued a conditional order on an application filed by the Drexel Burnham Lambert Group Inc. (DEL Group).[153] DBL Group and certain of its subsidiaries, including Drexel Burnham Lambert Incorporated, were engaged in a broad range of securities related businesses. In 1990, DBL Group and certain companies controlled by DBL Group filed petitions for reorganization under Chapter 11 of the Bankruptcy Code, The order under Sections 6(c) and 6(e) of the Investment Company Act and Section 206A of the Investment Advisers Act exempts companies, escrows, and reserves that were created pursuant to the reorganization of DBL Group and of certain

controlled companies from many, and in some cases all, provisions of the Investment Company Act and exempts New Street Capital Corporation, the successor to DBL Group, from Section 203 of the Investment Advisers Act for limited purposes.

The Commission issued a temporary order under Section 9(c) of the Investment Company Act on an application filed by First Investors Corporation (FIC), a registered broker-dealer and the co-underwriter of several open-end investment companies.[154] FIC consented to the entry of a final judgment by the United States District Court for the Southern District of New York enjoining and restraining FIC from further violations of Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, and Section 17(a) of the Securities Act in connection with the sale of the securities of two investment companies. Section 9(a) of the Investment Company Act prohibits persons who are subject to a securities related injunction, or affiliates of such persons, from engaging in investment company related activities. The Commission order exempts FIC and certain affiliated entities from Section 9(a). The Commission required FIC to agree to a number of conditions, including the submission of reports relating to FIC's investment company operations.

On an application filed by Salomon Brothers Asset Management Inc. (Salomon) and Salomon Brothers Inc. (SBI), the Commission issued an order under Section 9(c) of the Investment Company Act that exempts Salomon, SBI, and their affiliated persons from Section 9(a) of the Investment Company Act.[155] Salomon, SBI, and their affiliates became subject to the provisions of Section 9(a) as a result of an injunction entered against Salomon and SBI in connection with the May 1991 auction of two-year United States Treasury notes. The Commission required the Salomon entities to agree to a number of

conditions, including the submission of reports relating to Salomon's and SBI's procedures.

Investment Advisers Act Matters

The staff stated that it would not recommend enforcement action if a foreign bank shared personnel and research with a wholly-owned subsidiary, a United States registered adviser located abroad, without registering itself under the Investment Advisers Act. The staff further stated that it would not recommend enforcement action if the registered advisory subsidiary provided investment advisory services to non-United States clients solely in accordance with foreign law. The staff granted the no-action request on the general conditions that (1) the bank provide the SEC with access to trading and other records and to all of its employees to the extent necessary for the SEC to monitor and police conduct that might harm United States clients or markets, and (2) the registered subsidiary agree to keep records in accordance with Investment Advisers Act requirements and to provide the SEC with access to its employees. The no-action response is the first to implement the proposal in the *Protecting Investors* report regarding the jurisdictional reach of the Investment Advisers Act. This approach should make it easier for foreign advisers to offer advisory services to United States investors.[156]

Insurance Company Matters

On February 26, 1992, the staff issued an order pursuant to delegated authority to permit a separate account and other affiliated and unaffiliated insurance company separate accounts to invest in shares of an underlying fund whose shares also would be sold directly to qualified pension and retirement plans. The order was

based on representations by applicants that the applicable tax regulations allow shares in an investment company to be held by the trustee of a qualified pension or retirement plan and by the separate accounts of insurance companies in connection with their variable contracts. Applicants also made representations that provisions had been made to avoid potential conflicts of interest between the plans and the separate accounts.[157]

On December 4, 1992, the staff issued a notice of an application, pursuant to delegated authority, for an order granting an exemption from certain provisions of the Investment Company Act to permit an insurance company to deduct a mortality and expense risk charge from the assets of the separate account at a rate higher than permitted in the past. The higher charge is attributable to the payment of an enhanced death benefit.[158]

The staff stated that it would not recommend enforcement action against an insurance company offering variable life insurance policies to a law firm partnership without registering the separate account that funded the policies under the Investment Company Act. The insurance company asserted that the law firm rather than its individual partners should be considered the beneficial owner of the policies. The separate account's securities would then be owned by less than 100 persons and come within the exclusion from the definition of investment company in Section 3(c)(1) of the Investment Company Act. In addition, the insurance company stated that the policies should not be deemed voting securities because of the law firm's limited rights with respect to the separate account.[159]

Holding Company Act Matters

Prior to enactment of the Energy Policy Act, the SEC issued orders permitting exempt and registered holding companies to acquire foreign utility operations.[160] The Energy Policy Act added Sections 32 and 33 to the Holding Company Act, which provides that prior SEC approval is no longer required for the acquisition of exempt wholesale generators and foreign utility companies.[161] However, certain other related transactions, including financings and guarantees by a registered holding company remain jurisdictional, as do transactions between companies in a registered holding-company system.[162]

In its first orders under new Section 33 of the Holding Company Act, the Commission authorized certain transactions related to the acquisitions by Entergy Corporation (Entergy), a registered holding company, of interests in Argentine electric generation and transmission operations.[163] State and local regulators initially had intervened in the matter in opposition to SEC authorization of the transaction, arguing that they would be unable to protect domestic consumers if there were any adverse effects from the foreign activities. They subsequently withdrew their interventions pursuant to a settlement agreement with Entergy. The Commission denied the joint request for a hearing by the Environmental Action Foundation and Alliance for Affordable Energy on the grounds that new Section 33 had mooted the challenge to the legality of the acquisition and, further, that concerns about consumer protection were met by the settlement agreement between state and local regulators and Entergy.

In 1990, the Commission had authorized Entergy to organize and capitalize Entergy Power, Inc. (EPI), a wholly-owned public utility

subsidiary company, for the purpose of participating as a supplier in bulk power markets.[164] The Commission also had authorized Arkansas Power & Light Company (AP&L), an associated public utility company, to sell two of its generating units (Units) to EPI for use in its business. The United States Court of Appeals for the District of Columbia Circuit recently held that the Commission properly had determined that the Holding Company Act did not prohibit Entergy's proposed transaction, but remanded the case to the SEC to develop further the administrative record regarding certain capacity and energy costs to the system associated with AP&L's transfer of the Units to EPI.[165]

The Commission approved a corporate reorganization which resulted in the formation of a new public utility holding company over Kentucky Utilities Company, and exempted the new holding company, KU Energy Corporation, under Section 3(a)(1) of the Holding Company Act.[166] The reorganization involved the dual incorporation of a public utility subsidiary company in Kentucky and Virginia. The Commission found that the corporate reorganization was consistent with the economical and efficient development of an integrated holding-company system and that the exemption was not detrimental to the interests protected by the Holding Company Act.

The Commission authorized UNITIL Corporation (UNITIL), an electric public utility company, and Charles H. Tenney II to acquire Fitchburg Gas and Electric Light Company, a combination electric and gas public utility company.[167] Following the acquisition, UNITIL became the first company in more than a quarter of a century to register as a holding company under Section 5 of the Holding Company Act. The Commission also determined that UNITIL could retain the Fitchburg gas properties as an additional integrated system.

The Commission authorized Northeast Utilities (Northeast), a registered holding company, to form a new wholly-owned subsidiary company, North Atlantic Energy Service Corporation (NAESCO), that will assume operating responsibility for the Seabrook Nuclear Power Project (Seabrook) in Seabrook, New Hampshire.[168] The formation of NAESCO was part of the reorganization of the Public Service Company of New Hampshire (PSNH), a New Hampshire electric utility company.[169] The Commission's decision regarding Northeast's acquisition of PSNH was recently upheld on appeal by the United States Court of Appeals for the District of Columbia Circuit.[170]

The United States Court of Appeals for the District of Columbia Circuit, on remand from the Supreme Court, found that Section 13(b) of the Holding Company Act empowered the Commission to approve the price of affiliate sales of goods, such as coal, and that the Federal Energy Regulatory Commission (FERC) was constrained from altering that price under its “just and reasonable” rate-setting authority.[171] The case involved the cost of coal charged by Southern Ohio Coal Company (SOCCO), to its parent Ohio Power Company (Ohio Power), a public utility subsidiary company of American Electric Power Company, a registered holding company. In a series of orders, the Commission had authorized SOCCO to sell its coal to Ohio Power at cost.[172] Certain industrial and municipal customers of Ohio Power intervened in a rate proceeding before FERC, asserting that the cost of coal charged to Ohio Power exceeded the market price for such coal. FERC initially had agreed with the intervenors and excluded the excess costs from rates. The Court of Appeals remanded the matter to FERC for further findings consistent with its opinion. On November 9, 1992, the United States Supreme Court denied a petition for certiorari filed by FERC.

FULL DISCLOSURE SYSTEM

The full disclosure system is administered by the Division of Corporation Finance (Division). The system is designed to provide investors with material information, foster investor confidence, contribute to the maintenance affair and orderly markets, facilitate capital formation, and inhibit fraud in the public offering, trading, voting, and tendering of securities.

Key 1992 Results

Despite general economic conditions/ the total dollar amount of securities filed for registration with the SEC during 1992 reached a record of over $700 billion, a 40 percent increase from the approximately $500 billion registered last year. The number of issuers accessing the public markets for the first time soared, with initial public offering (IPO) filings of equity or debt reaching $66.5 billion, an increase of about 53 percent from the $43.6 billion filed in 1991.

[chart omitted]

Foreign issuers' participation in the U.S. markets continued to show strong growth. More than $34.6 billion of securities of foreign issuers filed for registration under the Securities Act of 1933 (Securities Act). In 1992, 87 new foreign companies from 21 countries, including the United Kingdom, France, Italy, Australia, Brazil, Korea, and Singapore, entered the U.S. public market. At the end of 1992, there were 496 foreign companies from 35 countries filing reports with the SEC.

The Division's rulemaking program was extraordinarily active in 1992. During the year, the Commission proposed and adopted a set of major initiatives to streamline regulations affecting small businesses. The Commission expanded the small offerings exemptions under the Securities Act and provided a simplified, integrated disclosure system for small businesses (companies with less than $25 million revenues and a public float of less than $25 million). As part of its Small Business Initiatives, the Commission also proposed legislation to increase its small offering exemptive authority to $10 million.

The Commission adopted important amendments to its executive compensation disclosure requirements. The amendments are designed to (1) ensure that shareholders receive comprehensible, relevant, and complete information about compensation paid to executives upon which to base their voting and investment decisions; and (2) foster accountability of directors to shareholders by permitting shareholders to vote on the proposals of other shareholders with regard to executive and director compensation, and thereby advise the board of directors of the shareholders' assessment of the compensation policies and practices applied by the board.

After three years of study, two releases for public comment, a two-day public conference, and more than 1,700 public comment letters, the Commission substantially revised its rules governing proxy solicitations. The revisions were adopted to (1) facilitate effective communications among shareholders and between shareholders and their corporations, as well as participation by shareholders in corporate governance, by removing unnecessary regulatory barriers, (2) reduce the costs of complying with the proxy rules, (3) improve disclosures to shareholders, and (4) restore a balance between the

free speech rights of shareholders and Congress' concern that solicitation of proxy voting authority be conducted on a fair, honest and informed basis.

To facilitate capital raising and the securitization of financial assets, such as small business loans, the Commission adopted amendments to Form S-3 under the Securities Act to (1) expand the classes of issuers eligible to use these short-form registration statements, (2) increase the availability of shelf registration under Securities Act Rule 415, and (3) provide increased flexibility in the raising of equity capital by permitting eligible companies to file one shelf registration covering all types of securities without requiring a specific allocation of offering amounts among the securities. It is estimated that approximately 450 additional issuers with an aggregate public float of about $88 billion became eligible to use short-form registration as a result of the changes.

The Commission adopted amendments to the Rule 144A safe harbor from registration requirements for institutional resales that expanded the definition of qualified institutional buyer. The amendments are estimated to qualify additional institutions with $1 trillion of assets. Since the adoption of the rule in April 1990, there have been 212 Rule 144 A placements, totaling approximately $25 billion, involving the securities of 210 issuers (including 130 foreign issuers).

Review of Filings

During 1992, the staff conducted 3,058 reporting issuer reviews. The reporting issuer reviews were accomplished through the full review of 1,180 registration statements and post-effective amendments to registration statements filed under the Securities Act; 1,450 annual

and subsequent periodic reports; 141 merger and going private proxy statements; and 1,126 full financial reviews of annual reports. The number of documents reviewed exceeded the number of reporting issuer reviews because in many cases more than one document filed by the same issuer received a full review during the year.

The following table summarizes filings reviewed during the last five years. The decline in reviews of IPOs, tender offers, contested solicitations, and going private transactions, all of which are subject to review, reflects the reduction in the transactional filings received.

[table omitted]

Rulemaking, Interpretive, and Legislative Matters

Small Business Initiatives

The Commission adopted revisions to the rules and forms under the Securities Act, Exchange Act, and Trust Indenture Act of 1939 (Trust Indenture Act) intended to reduce compliance burdens for small businesses and assist capital raising.[173] To facilitate the raising of seed capital, the Small Business Initiatives included revisions to small offering exemptive Rule 504 of Regulation D, which permits nonpublic companies to raise up to $1 million from any number or type of investors subject only to antifraud prohibitions. The revisions allow such offerings to use general advertising and offering activity and permit investors to freely resell such securities. The amendments also foreclosed the exemption to blank check companies, *i.e.,* companies with no business plan.

In addition, to make it easier for nonpublic developing small businesses to raise greater amounts of capital without incurring the substantial legal and accounting expenses of a registered offering, the Commission revised its small public offering registration exemption, Regulation A. The revisions: (1) increase the amount that may be raised under the exemption from $1.5 million to $5 million; (2) permit the use of a simple and easily comprehended question-and-answer form developed by state securities regulators; and (3) permit companies to “test the waters” for potential interest in the company before preparing and filing the offering circular with the SEC. In the first four months of the revised rules, approximately $65 million of Regulation A offerings were filed with the SEC, as compared to $15.4 million in the comparable period of the prior year.

An integrated disclosure system – consisting of simplified disclosure requirements, reduced financial statement requirements and a new series of rules and forms – also was adopted for small business issuers. Small business issuers are defined as those companies with revenues of less than $25 million, provided that their public float does not exceed $25 million. Conforming changes were made to the rules under the Trust Indenture Act, increasing the dollar amount of debt securities that may be offered without full compliance with that act. In the first four months of the new system, approximately $350 million of offerings were filed on the new form.

In response to favorable comment on the Small Business Initiatives, the Commission published for comment, rule and form proposals that would permit small businesses to transition from non-reporting to reporting status using the Regulation A disclosure format, with the added requirement that the requisite financial statements be audited for both reporting and registration of small offerings ($5 million).[174]

Changes to the financial statement requirements applicable to small business issuers also were proposed. The Commission proposed to exclude a “test the waters” document that complies with applicable requirements from the definition of a prospectus. Finally, the Commission proposed that the informational and financial statement requirements of Regulation D be revised to substantially parallel those in Regulation A.

Executive Compensation

The amendments to the executive compensation disclosure requirements of Item 402 of Regulation S-K are designed to make compensation disclosure clearer and more concise, and of greater utility to shareholders.[175] Specific provisions were made for small businesses to minimize costs of compliance with the compensation disclosures where consistent with shareholder interests.[176]

Previous narrative disclosure regarding executive compensation has been replaced with a series of tables. Specifically, the rules provide for a new, comprehensive table disclosing the annual salaries, bonuses and other compensation awards and payouts to the five highest paid executives, including the chief executive officer (CEO), for each of the last three fiscal years. The other tables require more detailed disclosure for the last fiscal year with respect to, among other things, information bearing on the potential values of stock options and stock appreciation rights (SARs) granted to and exercised by the named executives, the repricing of executive options and SARs, long-term incentive compensation awards, and defined benefit and actuarial plans.

In addition to these tables, the annual meeting proxy statement is required to include a report on the registrant's compensation policies with respect to executive officers, the basis for the decisions made with respect to the CEO's compensation for the last fiscal year, and the relationship between executive compensation and the registrant's performance. The report must be made over the individual names of the Compensation Committee members. To complement this discussion of the relationship of executive compensation to performance, companies are required to include with the report a line graph presentation comparing the registrant's cumulative total shareholder return over the prior five years with a performance indicator of overall stock market return, and either a published industry index, or registrant-determined peer comparison. Disclosure also is required of specific interlocking relationships of directors involved in compensation decisions and potential conflicts of interest.

In February 1992, the Commission announced that precatory shareholder proposals concerning executive and director compensation would no longer be considered matters relating to the ordinary business operations of the issuer for purposes of determining whether the proposals must be included in a company's proxy statement under the Commission's shareholder proposal rule, Rule 14a-8. As a result, such shareholder proposals, not otherwise excludable under Rule 14a-8, would have to be included in the company's proxy statement and submitted to shareholders for a vote. During the 1992 proxy season, 10 shareholder proposals with respect to executive and director compensation were included under the new policy and subject to a shareholder vote. Reported results on compensation proposals were as follows.

[table omitted]

Proxy Reform

The amendments, initially proposed in June 1991,[177] were reproposed in June 1992,[178] and adopted in October 1992.[179] The amendments (1) provide an exemption from the filing and disclosure requirements for solicitations by persons not seeking proxy authorization and who do not have a disqualifying interest; (2) provide a safe harbor to allow shareholders to announce how they intend to vote without having to comply with the proxy rules; (3) eliminate preliminary filing requirements for all soliciting materials other than proxy statements and proxy cards; (4) eliminate the nonpublic treatment of virtually all preliminary materials; (5) require a separate vote on each matter to be approved by shareholders; and (6) improve the shareholder list or mailing rule.

Simplification of Registration Procedures for Primary Securities Offerings

The Commission adopted amendments to Form S-3 to expand the classes of companies eligible to use short-form registration and primary delayed shelf offerings pursuant to Rule 415.[180] The amendments shortened the minimum issuer reporting requirement from 36 to 12 months for offerings of non-asset-backed securities, reduced the public float requirement for primary offerings of non-investment grade securities from $150 million to $75 million, and eliminated the trading volume test. Investment grade asset-backed securities, such as small business loans, are now eligible for shelf registration on Form S-3 without any reporting history requirement. The amendments also: (1) provide for same-day, automatic effectiveness of dividend or interest reinvestment plan registration

statements; (2) permit the registration of debt, equity and other securities on a single shelf registration statement, without having to specify the amount of each class of securities to be offered; and (3) permit changes in the offering price and decreases in the amount of the securities to be reflected after effectiveness without the need to file a post-effective amendment if the changes would not materially change the disclosure in the registration statement at effectiveness.

Private Resales of Securities to Institutions

The Commission adopted amendments to Rule 144A, expanding the definition of qualified institutional buyer to include collective and master trusts, and legal forms commonly used for the collective investment of the funds of employee benefit plans.[181] The amendments also recognize purchases by an insurance company for separate accounts not required to be registered under the Investment Company Act of 1940 as purchases for the account of the insurance company. Finally, the amendments allow the inclusion of U.S. Government and similar securities in calculating the amount of securities owned or invested by a particular institutional investor for purposes of determining qualified institutional buyer status.

Blank Check Offerings

Pursuant to the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, the Commission adopted new rules to provide special registration procedures for offerings by blank check companies.[182] Specifically, the rules require that the proceeds received and securities issued in a blank check offering be deposited (with permissible disbursements to underwriters and the issuer) into an escrow account maintained by an insured depository institution or

trust account maintained at a bank. Funds and securities must be held for the sole benefit of purchasers in the offering and deposited funds can only be invested in insured deposits as defined under the Federal Deposit Insurance Act, obligations of or guaranteed by the United States, or money market funds. Upon execution of a business acquisition agreement accounting for at least 80 percent of the maximum offering proceeds, the blank check company must furnish to each purchaser a copy of the prospectus describing the acquisition. The purchaser would have no fewer than 20 business days to either confirm an intent to invest or request a refund of funds held in the escrow account.

Roll-up Transactions

The Commission adopted rules designed to enhance the quality of information provided to investors in connection with roll-up transactions and to establish a minimum solicitation period for such offerings.[183] A roll-up is defined as any transaction or series of transactions that directly or indirectly, through acquisition or otherwise, involves the combination or reorganization of one or more finite-life partnerships, provided securities of a successor issuer will be issued in the transaction. The rules require distribution of disclosure documents to investors at least 60 calendar days in advance of a meeting, unless under applicable state law the maximum period permitted for giving notice is less than 60 calendar days. The rules also require inclusion of (1) separate disclosure supplements for each partnership involved in the transaction; (2) a clear, concise and comprehensible summary of the roll-up transaction; (3) disclosures concerning the risks and effects of the transaction; (4) a brief description of the background of each partnership involved in the transaction; (5) disclosure regarding the

reasons for the transaction and alternatives considered by the general partner; (6) information about the possibilities of liquidating or continuing the partnerships; (7) information regarding the fairness of the roll-up transaction; (8) information that reveals any possible "opinion shopping"; (9) a clear and concise summary description of each material federal income tax consequence; and (10) specified new financial information. The Commission also amended its proxy rules to require that investors subject to roll-up transactions have a right to a list of investors pursuant to Rule 14a-7.

Electronic Data Gathering Analysis and Retrieval System (EDGAR)

The Commission issued for public comment proposed amendments to its rules, forms, schedules and procedures to implement the agency's EDGAR system. Under EDGAR, registrants and others will be required to submit most filings and related correspondence processed by the Division of Corporation Finance to the SEC electronically.[184] In addition, comment was solicited on proposed phase-in schedules indicating when companies would be brought onto the EDGAR system.

Earlier in the year, the Commission adopted amendments to the temporary rules and forms applicable to the Pilot electronic disclosure program of EDGAR.[185] These amendments permitted the transition to the operational phase of EDGAR by Pilot participants who elect to convert to the operational system in advance of their mandated phase-in date. The rules became effective upon closure of the Pilot and opening of the operational EDGAR system on July 15, 1992.

Conferences

Corporate Governance Conference

In March 1992, the Commission held a two-day public forum on the interplay between the United States corporate governance system and the competitiveness of United States issuers in a rapidly globalizing economy. The conference on “Corporate Governance and American Economic Competitiveness: The Role of Shareholders, Directors and Management” brought together a variety of distinguished speakers from the corporate, shareholder, academic and governmental sectors. The fundamental question addressed was whether the board-centered model of corporate governance that predominates in this country provides a sound foundation for the continued international competitiveness of domestic companies. Topics discussed included the nature and scope of the relationship between corporate governance and corporate performance, executive compensation and competitiveness, the role of management, directors and shareholders in our governance system, the relative merits of foreign corporate governance systems, and the implications of the increasing institutionalization of the United States equity markets.

SEC/NASAA Conference Under Section 19(c) of the Securities Act

On March 30, 1992, approximately 60 SEC senior officials met with approximately 80 representatives of the North American Securities Administrators Association in Washington, D.C. to discuss methods of effecting greater uniformity in federal and state securities matters.

After the conference, a final report summarizing the discussions was prepared and distributed to interested persons.

SEC Government-Business Forum on Small Business Capital Formation

The eleventh annual SEC Government-Business Forum on Small Business Capital Formation was held in Scottsdale, Arizona on September 10 and 11, 1992. Approximately 250 small business representatives, accountants, attorneys, and government officials attended the forum. Numerous recommendations were formulated with a view to eliminating unnecessary governmental impediments to small businesses' ability to raise capital. A final report setting forth a list of recommendations for legislative and regulatory changes approved by the forum participants was prepared and provided to interested persons, including Congress and regulatory agencies.

ACCOUNTING AND AUDITING MATTERS

The Chief Accountant is the principal advisor to the Commission on accounting and auditing matters arising from the administration of the various securities laws. The primary Commission activities designed to achieve compliance with the accounting and financial disclosure requirements of the federal securities laws include:

- *rulemaking that supplements private sector accounting standards, implements financial disclosure requirements, and establishes independence criteria for accountants;*

- *review and comment process for agency filings directed to improving disclosures in filings, identifying emerging accounting issues (which may result in rulemaking or private sector standard-setting), and identifying problems that may warrant enforcement actions;*

- *enforcement actions that impose sanctions and serve to deter improper financial reporting by enhancing the care with which registrants and their accountants analyze accounting issues; and*

- *oversight of private sector efforts, principally by the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA), which establish accounting and auditing standards designed to improve financial accounting and reporting and the quality of audit practice.*

Key 1992 Results

The Commission oversaw a number of significant public and private sector initiatives intended to enhance the reliability of financial reporting and to ensure that the accounting profession meets its responsibilities under the federal securities laws. Notably, the Commission continued to provide policy direction to the accounting profession to move toward using appropriate market-based measures in accounting for financial instruments. Through the review and comment process, the staff endeavored to ensure compliance with existing rules during the interval. The Commission also continued to devote significant resources to initiatives involving international accounting and auditing independence requirements.

Mark-to-Market Accounting

In previous annual reports, the agency has emphasized the importance of initiatives directed toward improving the accounting guidance for investments in financial instruments. The importance of considering market value accounting for investment securities was demonstrated during the savings and loan crisis, when historical cost accounting, among other factors, led to the delayed recognition of the deteriorating condition of loan and corporate bond portfolios.[186]

The FASB issued an exposure draft of a proposed accounting standard to address the accounting and reporting for investments in equity securities that have determinable fair values and for all investments in debt securities.[187] The proposed standard represents a limited scope project since it does not address the comprehensive

use of market value accounting for all securities and other financial instruments and related liabilities.

The question of the appropriate accounting for investment securities was a pervasive issue in the context of the staff's review of registrants' filings. Where the volume of a particular registrant's trading activity demonstrated that its accounting practices did not conform to existing authoritative literature, the staff sought the correction of that entity's financial statements. In this regard, the staff required several registrants in the banking, thrift, and insurance industries to reclassify portions of their debt security portfolios *as* “trading” or as “available for sale” to be accounted for at market value or lower of cost or market, respectively.

Accounting-Related Rules and Interpretations

The agency's accounting-related rules and interpretations supplement private sector accounting standards, implement financial disclosure requirements, and establish independence criteria for accountants. The agency's principal accounting requirements are embodied in Regulation S-X, which governs the form and content of financial statements filed with the SEC.

Technical Amendments. During 1992, the staff reviewed each rule in Regulation S-X to identify rules that are obsolete or in conflict with professional standards. Consistent with this review, the Commission adopted technical amendments to its accounting-related rules for purposes of eliminating duplicative and obsolete disclosures and conforming these rules with recent changes in generally accepted accounting principles (GAAP).[188] The amendments should reduce

confusion and costs associated with registrants' compliance with Regulation S-X.

Oversight of Private Sector Standard Setting

The SEC monitors the structure, activity, and decisions of the private sector standard-setting organizations. These organizations include the FASB and the Financial Accounting Foundation (FAF). The Commission and its staff worked closely with the FASB and the FAF in an ongoing effort to improve the standard-setting process, including the need to respond to various regulatory, legislative, and business changes in a timely and appropriate manner. A description of FASB activities in which the staff was involved is provided below.

In light of the North American Free Trade Agreement, the FASB undertook a joint project with standard setters in Canada and Mexico to compare accounting standards in the three countries. The goal of this project is to develop recommendations for consideration by standard setters in the U.S., Canada, Mexico, and the International Accounting Standards Committee on what action can and should be taken to move towards greater comparability.

The recent FASB standard on employer's accounting for health care and other forms of post retirement benefits other than pensions will result in a dramatic change in the manner in which many public companies account for other post employment benefits. The standard generally is effective for the fiscal years beginning after December 15, 1992.

The FASB completed work on a revised standard on accounting for income taxes.[189] Under the revised standard, entities may recognize

and measure a deferred tax asset for an entity's deductible temporary differences and operating loss and tax credit carry forward. A valuation allowance is recognized if it is more likely than not that some portion or all of the deferred tax asset will not be realized. Although application of the standard is not mandatory until fiscal years beginning after December 15, 1992, the staff encountered circumstances involving early adoption where it was not apparent that a particular registrant's existing level of operations would be sufficient for the registrant to realize the deferred tax assets recorded pursuant to the revised standard. In circumstances where it was reasonably likely that realization of a material deferred tax asset would require significant improvements in profitability, changes in trends, changes in relationship between pretax accounting and taxable income, or asset sales, the staff requested that registrants disclose the assumptions relied upon by management in concluding that realization of the asset was “more likely than not.”

On January 31, 1992, the SEC's Chief Accountant testified before the Subcommittee on Oversight of Government Management of the Senate Committee on Governmental Affairs concerning the existing accounting rules for employee stock compensation. The Chief Accountant testified that the existing accounting requirements for stock and option awards can be improved to provide more consistent accounting treatment for different plans with similar economic effects and more realistically and appropriately measure the value of benefits provided by employers to employees, and expense to the employer.[190] He also emphasized that the most effective way to seek these improvements is through the existing process for setting accounting standards by the FASB, rather than by SEC rule or through proposed legislation.

The FASB resumed work on its stock compensation project. During 1992, the FASB reached tentative agreement that compensation expenses arising from awards of stock or options under both fixed and performance stock compensation plans should be measured as the fair value of the award at the date it is granted. The estimated value at the grant date would be subsequently adjusted, if necessary, to reflect the outcome of performance conditions and service-related factors such as forfeitures before vesting.

The FASB also issued an exposure draft (ED) on accounting for loan impairment by creditors.[191] Under the ED's provisions, a loss on impairment of a loan would be recognized when it is probable that a creditor will be unable to collect all principal and interest due under the terms of the loan agreement.

Oversight of the Accounting Profession's Initiatives

The Commission and its staff continued to be active in overseeing the audit standard-setting process and other activities of the accounting profession. A discussion of the activities in which the SEC staff was involved follows.

AICPA. The SEC oversaw various activities of the accounting profession conducted primarily through the AICPA. These included (1) the Auditing Standards Board (ASB), which establishes generally accepted auditing standards; (2) the Accounting Standards Executive Committee (AcSEC), which provides guidance on specific industry practices through its issuance of statements of position and practice bulletins and prepares issue papers on accounting topics for consideration by the FASB; and (3) the SEC Practice Section (SECPS), which seeks to improve the quality of audit practice by

member accounting firms that audit the financial statements of public companies through various requirements, including peer review.

ASB. The staff continued to work closely with the ASB to enhance the effectiveness of the audit process. During 1992, the staff met with ASB representatives concerning a proposed auditing standard that, among other things, would govern the availability of comfort letters, which are provided to underwriters in relation to the underwriters' due diligence reviews pertaining to securities offerings.[192] The staff's primary concern has been that such letters continue to be available in private securities' offerings. The ASB also (1) adopted a new auditing standard on changes in the GAAP hierarchy,[193] (2) continued its work on an ongoing project on examination and reporting on management's assertions about the effectiveness of an entity's internal control structure, and (3) issued a series of annual Audit Risk Alerts to provide auditors with an overview of recent economic, professional, and regulatory developments that may affect 1992 year-end audits.

SECPS. Two programs administered by the SECPS are designed to ensure that the financial statements of SEC registrants are audited by accounting firms with adequate quality control systems. A peer review of member firms by other accountants is required every three years and the Quality Control Inquiry Committee (QCIC) reviews on a timely basis the quality control implications of litigation against member firms that involves public clients. The most recent report shows 1,203 SECPS member firms that audit the financial statements of over 14,000 SEC clients.[194] An estimated 300 accounting firms that are not SECPS members audit the financial statements of approximately 500 SEC registrants.

The SECPS peer review and QCIC programs are closely monitored by the Public Oversight Board (POB), which is independent of the AICPA (except for funding). The SEC oversaw the activities of the SECPS through frequent contact with the POB and members of the executive, peer review, and quality control inquiry committees of the SECPS. The staff reviewed POB files and selected working papers of the peer reviewers. This oversight has shown that the peer review process contributes significantly to maintaining the quality control systems of member firms and, therefore, enhances the consistency and quality of practice before the Commission.

AcSEC. During 1992, the AcSEC issued statements of position on revenue recognition in the computer software industry[195] and the appropriate balance sheet treatment of foreclosed assets.[196] The AcSEC also began working on a statement of position on the appropriate treatment of operating results relating to foreclosed assets.[197]

AcSEC also made significant progress during 1992 on statements of position which would (1) establish appropriate accounting for advertising costs[198] and (2) revise the existing guidance on accounting for employee stock ownership plans. Also, the AcSEC proposed three separate statements of position on accounting issues unique to investment companies[199] and initiated a project to enhance disclosures about risks and uncertainties by entities generally.

International Accounting and Auditing Standards

Significant differences in accounting and auditing standards currently exist between countries. These differences are an impediment to multinational offerings of securities. The SEC, in cooperation with other members of the International Organization of Securities

Commissions (IOSCO), actively participated in initiatives by international bodies of professional accountants to establish appropriate international standards that might be considered for use in multinational offerings. For example, the staff worked with the IASC to reduce accounting alternatives as an initial movement toward appropriate international accounting standards. The SEC staff also monitored the lASC's projects to address issues relating to the extent of implementation guidance, adequacy of disclosure requirements, and the completeness of international accounting standards. In 1992, the IASC issued seven exposure drafts related to projects concerning revenue recognition, construction contracts, property, plant, and equipment, the effects of changes in foreign exchange rates, business combinations, extraordinary items, fundamental errors and changes in accounting policies, and retirement benefit costs.[200] Four final standards were approved concerning cash flow statements, research and development activities, inventories, and capitalization of borrowing costs.[201]

The staff also continued working with the International Federation of Accountants (IFAC) to revise international auditing guidelines. Auditors in different countries are subject to different independence standards, perform different procedures, gather varying amounts of evidence to support their conclusions, and report the results of their work differently. The staff, as part of an IOSCO working group, worked closely with IFAC to expand and revise international auditing guidelines to narrow these differences, and significant progress was made.

OTHER LITIGATION AND LEGAL ACTIVITIES

The General Counsel represents the SEC in all litigation in the United States Supreme Court and the courts of appeals. The General Counsel defends the Commission and its employees when sued in district courts, prosecutes administrative disciplinary proceedings against securities professionals, appears amicus curiae in significant private litigation involving the federal securities laws, and oversees the regional offices' participation in corporate reorganization cases. The General Counsel analyzes legislation that would amend the federal securities laws, drafts congressional testimony, prepares legislative comments, and advises the Commission on all regulatory and enforcement actions under the federal securities laws. In addition, the General Counsel advises the Commission in administrative proceedings under various statutes.

Key 1992 Results

Much of the General Counsel's Office continued to experience substantial increases in workload while the litigation workload continued to maintain the high level experienced in 1991.

[table omitted]

Significant Litigation Developments

Insider Trading

In *SEC v.* Peters,[202] a case involving the validity of the Securities Exchange Act (Exchange Act) Rule 14e-3, the U.S. Court of Appeals for the Tenth Circuit, agreeing with *U.S. v. Chestman,*[203] upheld the Commission's authority to proscribe insider trading in Rule 14e-3 without including breach of fiduciary duty as an element of the offense. The court of appeals reversed a jury verdict for the defendant, holding that the jury was improperly instructed that it had to find a breach of fiduciary duty to find a Rule 14-3 violation.

Definition of a Security

In *SEC v. International loan Network, Inc.,*[204] the U.S. Court of Appeals for the D.C. Circuit agreed with the Commission that investment programs offered by International loan Network, Inc. in a nationwide pyramid scheme were securities under the Supreme Court's "investment contract" test set forth in *SEC v. W.J. Howey Co.*[205] Typically, the company induced investors to invest money in it and then become sponsors of others placing money with the company. The sponsors were paid a percentage of the money brought in by the new members. The company never had a significant source of income other than money from new members or members buying into new programs.

Likewise, in *Gomez v. Leonzo,*[206] a private action related to the Commission's action in *SEC v. Latin Investment Corp.* pending before the same judge, the U.S. District Court for the District of Columbia agreed with the Commission, which filed an *amicus curiae*

brief at the court's request, arguing that “savings passbooks” issued in exchange for “deposits” by Latin Investment Corporation, a company that held itself out as a bank but in fact was neither chartered nor regulated as a bank, were securities. The Commission argued that the savings passbooks were securities under both the “note” test enunciated by the Supreme Court in *Reves v. Ernst & Young,*[207] and the *Howey* “investment contract” test.

On the other hand, in *Banco Espanol de Credito v. Security Pacific National Bank,*[208] a divided U.S. Court of Appeals for the Second Circuit held, contrary to the position urged by the Commission, that certain debt instruments sold by Security Pacific National Bank which Security Pacific called “loan notes” are not securities under the Securities Act of 1933 (Securities Act). Dissenting, Chief Judge Oakes agreed with the Commission, which had filed an *amicus curiae* brief at the court's request, that these loan notes are securities. In its loan note program, Security Pacific makes short-term unsecured loans to corporations, takes back a note from the corporation, and then immediately sells all or part of the note to mostly non-financial entities such as corporations, pension funds, and mutual funds, as well as some financial institutions. The Commission filed a brief in support of rehearing that prompted the court to amend its decision to clarify that its ruling applies only to the specific instruments “as marketed in this case,” thus reducing the adverse precedential impact.

In *re NBW Commercial Paper Litigation,*[209] a private civil action alleging registration and antifraud violations through sales of commercial paper, the Commission filed an *amicus curiae* brief to address two issues of significance to the Commission's parallel enforcement action, *SEC v. Coleman,*[210] which is currently pending

before the same judge. The Commission's brief argued first, that the commercial paper was a security under the *Reves* test, and second, that it did not qualify for a registration exemption because it was not "prime quality," and was sold to customers without regard to their investment expertise or financial situation. On December *11, 1992* the district court agreed with the Commission's legal analysis and held that the commercial paper was a security.

Statutes of Limitations

The Commission as *amicus curiae* defended newly-enacted Section 27A of the Exchange Act against constitutional attack in numerous cases. Section 27A eliminates retroactive application of the new statute of limitations for Section 10(b) private damages claims announced by the Supreme Court in *Lampf, Pleva, Lipkind, Prupis & Pettigrow v. Gilbertson,*[211] by preserving the pre-*Lampf* statute in cases that were filed before *Lampf*.

In *Anixter v. Home-Stake Production* Co.[212] and *Henderson v. Scientific Atlanta,*[213] the U.S. Courts of Appeals for the Tenth and Eleventh Circuits sustained Section 27A as applied to Section 10(b) claims that were pending when Section 27A was enacted. The courts rejected defendants' arguments that Congress had violated the separation of powers and encroached on the judicial function by directing a particular outcome in certain cases, holding that Section 27A was an exercise of the legislative function to change the governing law. The Tenth Circuit also rejected the argument that Section 27A contravenes *James B. Beam Distilling Co. v. Georgia,*[214] wherein the Supreme Court rejected selective prospectivity, the practice of applying a new rule of law to the parties before the court but not to other pending cases, holding that *Beam* was not a

constitutional decision and thus placed no constraint on Congress' enactment of Section 27A. Both courts also ruled that Section 27A did not violate due process or equal protection. Constitutional challenges to Section 27A remain pending in the Second, Fifth, Sixth, Seventh, and Ninth Circuits.

In *SEC v. Rind*[215] and *SEC v. Hayes,*[216] appeals pending in the U.S. Courts of Appeals for the Ninth and Fifth Circuits respectively, defendants asserted that the Commission's actions were time-barred by the one and three year statute of limitations held applicable in *Lampf.* The Commission filed briefs in both cases arguing that the limitations period enunciated in *Lampf* applies only to implied private rights of action for damages brought under Section 10(b), and not to Commission cases, which are brought to vindicate public rights pursuant to an express right of action that contains no limitations period.

Disgorgement and Related Issues

In *SEC v. AMX International, Inc.*[217] and *SEC v. Maxwell C. Huffman,*[218] the U.S. District Court for the Northern District of Texas applied the Federal Debt Collection Procedures Act of 1990[219] to disgorgement orders in Commission enforcement actions. The decision permitted defendants to invoke certain state law property exemptions to debt collection, thereby sheltering assets otherwise available to pay disgorgement. The Commission has appealed both cases to the U.S. Court of Appeals for the Fifth Circuit, arguing that a disgorgement order in a Commission action is not a “debt” as defined in the Act.

Market Manipulation

The Supreme Court declined to review the U.S. Court of Appeals for the Second Circuit's decision in *U.S. v. Regan*[220] addressing an important aspect of market manipulation under Section 10(b) of the Exchange Act and Rule 10b-5. Petitioner Zarzecki was convicted for engaging in short sales as part of a scheme with the Drexel Burnham Lambert Group, Inc. to drive down the price of a Drexel client's stock in order to influence the pricing of the client's upcoming offering of convertible notes. In his petition, Zarzecki argued that because his short sales were actual transactions and not fictitious, they were lawful, and that any violation caused by his trading would have to be based on a fiduciary duty to the persons with whom he traded. The government's brief responded that Congress intended to outlaw trades made to artificially alter the price of a security, and that their illegality does not depend on the existence of a fiduciary duty because such transactions are affirmative acts of deception designed to rig securities prices, rather than mere silence about a trader's subjective intent.

Liability in Private Actions

The Commission filed an *amicus curiae* brief in *Musick, Peeler & Garrett v. Employers Insurance of Wausau,*[221] urging the Supreme Court to recognize the existence of a right to contribution in private civil actions brought under Section 10(b) of the Exchange Act and Rule 10b-5. The Commission's brief argues that the implied right of action under Section 10(b) and Rule 10b-5 should be interpreted consistently with the analogous express private rights of action in the Exchange Act, which contain explicit rights to contribution, in order to

conform the implied right of action as closely as possible to the congressional policy expressed in the statute.

Inclusion of Shareholder Proposal in Proxy Materials

In *Roosevelt v. E.I. Du Pont de Nemours & Co.,*[222] the U.S. Court of Appeals for the D.C. Circuit agreed with the Commission, as *amicus curiae* in a brief filed at the request of the court, that a Du Pont shareholder had an implied right of action under Exchange Act Section 14(a) and Rule 14a-8 against Du Pont for its refusal to include her shareholder proposal in its proxy materials. However, the court ruled that the proposal, which would have instructed Du Pont to accelerate its target date for the phase-out of the production of chlorofluorocarbons, did not have to be included in the proxy materials because it fell within the exception in the proxy rules for "ordinary business."

Motions to Vacate Permanent Injunctions

In *SEC v. American Bancshares,*[223] James Sullivan, a former officer of American Bancshares, moved in the United States District Court for the Eastern District of Wisconsin to vacate an injunction entered against him in 1978. The injunction enjoins Sullivan from violating antifraud and reporting provisions of the federal securities laws. Sullivan based his motion on his claims that he was a minor participant in the fraudulent scheme, the injunction was entered against him by default, and he has not violated any laws since that time. The Commission opposed Sullivan's motion asserting that he failed to meet his substantial burden to demonstrate that the injunction is working a "grievous wrong" (*United States v. Swift*[224]). A decision is pending.

Actions Against the Commission and Staff

In *Yeaman v.* SEC,[225] plaintiff David Yeaman and others sued the SEC and several staff members, charging violations of their constitutional and statutory rights. Plaintiffs alleged that the staff had illegally harassed them during an SEC investigation of plaintiffs' activities in the penny stock market. The lawsuit also alleged that the plaintiffs' attempts to register the stock of certain “shell” corporations were illegally “stonewalled” by the staff. The Commission moved to dismiss the lawsuit primarily on the grounds that it was barred by sovereign and official immunity. Agreeing with the Commission that plaintiffs had failed to state a claim, the United States District Court for the District of Utah dismissed the lawsuit in its entirety.

Requests for Access to Commission Records

The SEC received approximately 80 subpoenas for documents and/or testimony in 1992. In some of these cases, the SEC declined to produce the requested documents or testimony because the information was privileged. The SEC's assertions of privilege were upheld in every case when the party issuing the subpoena challenged the assertion in court. For example, in *In re United Telecommunications, Inc., Securities Litigation,*[226] the SEC asserted the law enforcement privilege in response to a subpoena for documents from an on-going SEC investigation. In response to a subsequent motion to compel their production, the Commission argued that release of the documents could impair the investigation and that most of the documents could be obtained from other parties in the litigation or from third party witnesses. The court denied the motion, finding that the movants had made no showing of need

sufficient to overcome the SEC's privilege, particularly since the documents were available from other sources.

In *Scholes v. Stone, McGuire & Benjamin,*[227] the defendants subpoenaed internal staff notes and memoranda concerning a recently concluded SEC investigation. The SEC declined to produce these documents on the grounds that they were protected from disclosure by the deliberative process, attorney-client and attorney work product privileges. The defendants argued that because the SEC was not a party to the proceeding, it was precluded from asserting these privileges. The court ruled that the SEC was not required to be a party to assert a claim of privilege and that the SEC properly withheld the requested documents.

The SEC received 1,724 requests under the Freedom of Information Act (FOIA) for access to agency records and 5,390 confidential treatment requests from persons who submitted information. There were 55 appeals to the SEC's General Counsel from initial denials by the FOIA office. One such appeal resulted in litigation.

In *Alexander & Alexander Services, Inc. v. SEC,*[226] plaintiff brought an action against the SEC under the Administrative Procedure Act, 5 U.S.C. 701-06, seeking to enjoin the SEC from disclosing certain documents to a law firm under the FOIA, 5 U.S.C. 552. Alexander claims that the documents are exempt from disclosure by 5 U.S.C. 552(b)(4) because the documents contain confidential commercial information, the disclosure of which would allegedly harm its competitive position. Alexander alleges that the SEC did not afford it an adequate opportunity to substantiate its claim for confidential treatment. The SEC has moved for summary judgment on the

grounds that plaintiff failed to substantiate its claim that disclosure of these documents would harm its competitive position.

Actions Under the Right to Financial Privacy Act

Three actions were filed under the Right to Financial Privacy Act to block SEC subpoenas for customer information from financial institutions.[229] All three challenges were dismissed after the courts found, in each case, that the records were relevant to legitimate law enforcement inquiries.

Actions Against Professionals Under Commission Rule 2(e)

During 1992, the SEC issued an important ruling under Rule 2(e) of the SEC's Rules of Practice, in *In re Checkosky and Aldrich.*[230] In that case the Commission affirmed the decision of an Administrative Law Judge that two partners of the accounting firm of Coopers & Lybrand had engaged in improper professional conduct during five audits of Savin Corporation. The Commission found that respondents had failed to employ an “appropriate degree of skepticism” in testing whether Savin had improperly deferred costs of research and development associated with the company's ultimately unsuccessful efforts to manufacture a copier. The Commission accordingly suspended each respondent from appearing or practicing before the SEC for two years. The Commission also affirmed prior SEC precedent that proof of bad faith or willful misconduct is not a prerequisite for the imposition of sanctions pursuant to Rule 2(e)(1)(ii). The respondents have appealed the ruling to the Court of Appeals for the District of Columbia.

The staff also prosecuted successfully certain other Rule 2(e) disciplinary proceedings. In *In re Kagan*[231] and *In re Lamoreaux*[232] the Commission "forthwith" suspended from practice before the Commission an attorney and an accountant, respectively, based on prior felony convictions. In *In re Domingues and Brimhall*[233] two accountants consented to a Commission order under Rule 2(e) finding that they engaged in improper professional conduct during the 1985 audit of Fluid Companies, a small-business investment company. The Commission censured both accountants and suspended Domingues from appearing or practicing before the Commission for ten months. In *In re Denkensohn and Schoemer*[234] the Commission censured two accountants who consented to the issuance of an order finding that they engaged in improper professional conduct during the 1983 audit of Marsh & McLennan.

Significant Adjudication Developments

The backlog of older appeals awaiting staff review was essentially eliminated. This development occurred while the number of appeals entering the staff's inventory rose from 30 to 56, an increase of 87 percent.

The number of cases reviewed by the staff on the merits increased from 39 to 52, and the post-briefing age of the staff's case inventory was cut in half. As a result of such recent improvements, the Commission decided nearly twice the number of appeals on the merits as it had 1991. Although the staff's increased production was a factor in offsetting the upsurge in new cases, the year-end inventory grew by about 11 percent.

Significant Adjudicatory Decisions Involving Broker-Dealers and Market Professionals

A number of the most significant opinions issued by the Commission have involved the setting of prices for securities:

In *Kevin B. Wade,*[235] the Commission articulated for the first time special restrictions on a dealer's percentage markup in riskless retail sales. The basis for the percentage may not exceed the firm's wholesale cost, even if the wholesale market price is higher. The Commission nevertheless reversed National Association of Securities Dealers Inc. (NASD) action against Wade and others because published industry guidelines had made it appear that market price would control.

Other cases explored the means of establishing the wholesale market price, which is the proper basis of markups when dealers maintain an inventory and hence are at risk. For example, in *Meyer Blinder,*[236] the Commission re-affirmed its view that, where a dealer controls trading in a security, “market” price is best reflected by the dealer's recent cost. That measure prevails over asked quotations, and even over prices the dealer has actually charged other firms. The Commission accordingly sustained the NASD's imposition of substantial suspensions and fines upon several brokerage firm officials. Also, in *Century Capital Corp. of South Carolina,*[237] the Commission elaborated on its previous statements to the effect that a marketmaker's quotations may constitute reliable evidence of the market price. The Commission explained that a firm does not constitute a marketmaker for that purpose even if it is a “marketmaker” as defined in Section 3(a)(38) of the Exchange Act.

In *Lake Securities,* Inc.,[238] the Commission sustained the NASD's finding that a firm and its president committed fraud by charging a 7.4 percent markdown in buying an interest-only mortgage-backed security from a customer. Fraudulent intent was found because the firm did not try to discern the market at the time of the transaction and because the president later refused to revise the price despite being warned that the markdown was excessive.

In *Michael David Szveeney,*[239] the Commission elaborated on the appropriate standards for finding an excessive trading violation under NASD rules and for assessing disgorgement. The Commission explained that, even assuming that investors wanted their accounts traded aggressively, it would still be possible to find excessive trading. Because transaction costs were so frequently incurred, customers in this case needed to earn rates of return ranging from 22 to 44 percent just to break even. On disgorgement, the Commission urged that in future cases the NASD: 1) assess prejudgment interest or explain why such need not be done; 2) ensure that the total wrongful gain is properly computed; and 3) remit the disgorged amounts to customers who have been harmed, and not to the NASD. In this case, the Commission directed the NASD to order the distribution of specific amounts to four customers.

Shortly after the end of the 1992, the Commission addressed a number of serious violations in *Donald T. Sheldon.*[240] The Commission barred Sheldon, former president of former municipal and government securities firms and Bruce Reid, the manager of the firms' Houston branch office. It also suspended Gregory Pattison, a salesman in the Houston office. The Commission found that the respondents defrauded municipal securities customers (and government securities customers, in the case of Sheldon and Reid).

In addition, Sheldon and Reid failed to exercise proper supervision and charged, or aided and abetted the charging of, excessive markups. Sheldon was further found to have aided and abetted the firms' misuse of customers' fully-paid securities and a violation of the net capital rule.

Significant Legislative Developments

The second session of the 102nd Congress adjourned in October 1992 without enactment of significant securities legislation. Although the major securities bills considered by the 102nd Congress relating to regulation of the government securities market and investment advisers did not pass in 1992, Congress did pass other legislation that affects the Commission and its work. For example, Congress amended the Public Utility Holding Company Act of 1935 (PUHCA) in the context of broader energy legislation (P.L. 102-486). Although the PUHCA amendments will eliminate the Commission's authority to approve: (i) the acquisitions of independent power producers by registered holding companies; and (ii) the ownership of foreign utility companies by registered holding companies, the Commission will retain its authority to approve financing arrangements with respect to such acquisitions and also is directed to promulgate rules with respect to such acquisitions.

In the commodities area, the “Futures Trading Practices Act of 1992,” was passed by both Houses in early October, and signed into law by the President on October 28, 1992 (P.L. 102-546). Included in the law is Title v. a compromise on various jurisdictional proposals considered by Congress earlier in the 102nd Congress. The Title V compromise includes: (1) Federal Reserve Board oversight authority with respect to margin levels on stock index futures (a proposal

strongly advocated by the Commission since the 1987 Market Break); (2) broad Commodity Futures Trading Commission (CFTC) exemptive authority, including authority with respect to certain hybrid and derivative products; and (3) a comprehensive study of the markets for swaps and other off-exchange derivative products to be conducted by the CFTC, in cooperation with the Commission and the Federal Reserve Board.

Additionally, Congress actively considered securities legislation in a number of other areas, including executive compensation, limited partnership “roll-ups,” accounting reforms, and the Commission's small business initiative. Efforts to legislate in these areas ultimately were not successful.

Details regarding legislative developments during the year are discussed in the appendix.

Corporate Reorganizations

The Commission acts as a statutory advisor in reorganization cases under Chapter 11 of the Bankruptcy Code to see that the interests of public investors are adequately protected. During a reorganization, the debtor generally is allowed to continue business operations under court protection while negotiating a plan to rehabilitate the business and to pay the company's debts. Although Chapter 11 relief is available to businesses of all sizes, the Commission typically limits its participation to cases involving debtors that have publicly traded securities registered under the Exchange Act.

In 1990, the Commission authorized a review of its role in reorganization cases and of the adequacy of public investor

protection under Chapter 11. During 1991, the staff completed its review of the bankruptcy program. Commission consideration of the staff's recommendations was deferred.

Committees

Official committees are empowered to negotiate with a debtor on the administration of a case and to participate in all aspects of the case, including formulation of a reorganization plan. In addition to a committee representing unsecured creditors, which must be appointed in all Chapter 11 cases, the Bankruptcy Code allows the court or a United States Trustee to appoint additional committees for stockholders and others where necessary to assure adequate representation of their interests. During 1992, the Commission moved for, and the court approved, the appointment of a committee to represent investors in two Chapter 11 cases.[241] In a case having practical significance for the representation of both equity security-holders and public debt-holders by official committees, *In re El Paso Electric Co,,*[242] the bankruptcy court adopted the position advocated by the Commission. The court held that an institutional member of an official committee did not violate its fiduciary duties as a committee member by trading in the debtor's securities if the committee member is engaged in the trading of securities as a regular part of its business and the entity has implemented an appropriate information blocking device (commonly known as a Chinese Wall). The Chinese Wall is designed to prevent misuse of nonpublic information obtained through participation on the committee.

Estate Administration

The Commission protects the interests of public investors in reorganization cases by participating in selected matters involving administration of the debtor's estate.

In a matter still pending from 1991, *In re Amdura* Corp.,[243] the Commission had filed a brief in an appeal to the district court expressing its view that class claims are permissible in bankruptcy.[244] The bankruptcy court had rejected a class proof of claim on the ground that the decision of the Tenth Circuit in *In re Standard Metals,* 817 F.2d 625 (10th Cir. 1987), concluding that a class claim is not permissible in bankruptcy, was controlling authority. The Commission argued that that decision is dictum and the issue remains open in the Tenth Circuit. The Commission also pointed out that the better reasoned view, represented by several subsequent circuit and district court decisions,[245] is to permit class proofs of claim in bankruptcy cases.

In *SIPC v. Blinder, Robinson &* Co., *Inc.,*[246] the United States Court of Appeals for the Tenth Circuit, agreeing with the position urged jointly by the Commission and the Securities Investor Protection Corporation (SIPC), held that under the bankruptcy laws and the Securities Investor Protection Act (SIPA), Blinder, a broker-dealer, was not eligible to utilize Chapter 11 of the Bankruptcy Code and was properly placed in a SIPC liquidation. The Court of Appeals agreed with the findings of the district court that, as a matter of law, Blinder was a stockbroker and therefore expressly prohibited from reorganizing under Chapter 11. Moreover, the Court found that a trustee had been properly appointed pursuant to the provisions of SIPA because Blinder, by placing itself in Chapter 11, became

“unable to meet its obligations as they mature,” a statutory ground for liquidation pursuant to SIPA.

Disclosure Statements/Plans of Reorganization

A disclosure statement is a combination proxy and offering statement used to solicit acceptances of a plan of reorganization. Such plans often provide for the issuance of new securities to creditors and shareholders in exchange for part or all of their claims or interests in the debtor, pursuant to an exemption in Section 1145 of the Bankruptcy Code from registration under the Securities Act. Under the Code, the adequacy of disclosure is to be determined without regard to whether the information provided would otherwise comply with the disclosure requirements of the federal securities laws. However, in recognition of its special expertise on disclosure questions, the Code gives the Commission the right to be heard on the adequacy of disclosure. The staff limits its review to disclosure statements of publicly-held companies or companies likely to be traded publicly after reorganization. During 1992, the staff reviewed 146 disclosure statements and commented on 104. Most of the Commission's comments were adopted by debtors without the need to file a formal objection.

In *In re I.M.T. Inc.,*[247] the Commission filed a formal objection to a disclosure statement for a plan that sought to discharge claims of creditors of a substantially assetless publicly-held shell corporation. The debtor sought through the plan to emerge from Chapter 11 as a publicly-traded company without assets or liabilities and to merge with operating businesses at some unspecified time in the future. The Commission contended that this would contravene Section 1141(d)(3) of the Bankruptcy Code, which precludes a debtor from

obtaining a discharge if it has liquidated all or substantially all of its assets and does not engage in business after consummation of the reorganization plan. The Commission also pointed out that the disclosure statement was deficient in numerous areas. Following the filing of the Commission's objection, the debtor withdrew its reorganization plan.

In *In re Prime Motor Inc.,*[228] *In re Service Corp.,*[249] *In re Washington Corp.,*[250] and *In re Lomas Financial Corp.,*[251] the Commission filed objections to the confirmation of proposed plans, arguing, as it has on several other occasions,[252] that plan provisions purporting to release non-debtor third parties from liability were beyond the discharge of liability provided for debtors in the Bankruptcy Code. The Commission argued that under Section 524(e) of the Code, a bankruptcy court can affect only the relationships of debtors and creditors, and cannot discharge the liabilities of a non-debtor, unless separate consideration is supplied by the third parties or unless the releases are voluntary. In *Prime Motor Inc.,* the bankruptcy court approved the releases following a finding that the consideration provided by third parties was fair and that the settlements also would be subject to approval by the District Court supervising two class action proceedings pending against the third parties. In *Service Corp.,* the court overruled the Commission's objections, noting that 99 percent of creditors holding 92 percent of the company's debt had voted in favor of the plan and releases and that the debtor had agreed to permit creditors to opt out of the releases in a post-confirmation solicitation. In *Washington Corp.,* the court held the releases invalid as to claimants and interest-holders who did not vote or who voted against the plan, except for claims subject to indemnification or contribution rights against the debtor or for which the debtor may be jointly liable. In *Lomas Financial Corp,* the debtor

agreed voluntarily to delete the third-party releases from the reorganization plan.

Ethics Matters

The agency's ethical conduct program is administered by the Ethics Counsel under the oversight and supervision of the General Counsel. Three major new government-wide ethics regulations, upon which the Ethics Counsel had previously filed comments, were issued by the Office of Government Ethics in the past year. Implementation of these regulations is in progress. Specifically, the new Standards of Ethical Conduct for Employees of the Executive Branch become effective February 3, 1993, and will supersede most of the Commission's existing Conduct Regulation. In connection with implementation of the new Standards, substantial revisions are underway with respect to Rule 5 of the Commission's Conduct Regulation which restricts the securities transactions of Commission members, employees, and their families; to Rule 4 which relates to conflicts of interest associated with outside employment and activities of employees; and to Rule 3 which prohibits disclosure of nonpublic information.

Implementation of the new government-wide confidential financial disclosure system, which parallels the public disclosure system, is proceeding. Under the new system, the number of confidential filers at the agency has increased from 235 filers to approximately 900 filers.

In anticipation of these developments, a field system, consisting of an ethics liaison officer and one or more deputies in each division or office, was established during the past year, to handle the overflow of requests for counseling and to ensure a smooth transition under the

new regulations. The Ethics Counsel and staff conducted a series of intensive training sessions for these ethics officers, and prepared and distributed ethics manuals and binders to all employees. During 1992, the Ethics Counsel and staff alone handled 247 matters. This total does not reflect the additional matters handled by the individual Ethics Liaison Officers and deputies throughout the Commission's Divisions, Offices and Regions, all of whom depend on the Ethics Counsel and staff for guidance and support on novel, unique, and difficult issues.

ECONOMIC RESEARCH AND ANALYSIS

The Office of Economic Analysis provides technical support and analysis to assist in evaluating the economic aspects of the Commission's regulatory program. The economics staff provides the Commission with research and advice on rule proposals, policy initiatives, and enforcement actions. The staff also monitors developments in capital markets around the world and major program initiatives affecting the United States financial services industry, markets, and investors.

Key 1992 Results

The staff reviewed rule proposals encompassing the full range of the Commission's regulatory program. The staff also provided advice, technical assistance, and empirical analyses of issues of concern to the Commission and its operating divisions. In addition, monitoring programs were maintained to study the implementation of major rules, new trading facilities, and developments in the domestic and international securities markets.

Economic Analysis and Technical Assistance

The staff directed its attention towards a number of issues including executive compensation, the impact of banking reforms on the securities markets, market value accounting, and bond market efficiency. Analysis and technical assistance provided to the agency included:

- a quarterly report on the financial health of the securities industry and reports on trends in the composition of bank asset portfolios;

- advice to the Commission on the impact of banking reforms on the securities and financial industries;

- assessments of materiality and monetary penalties in matters of securities violations, such as insider trading, market manipulation, and disclosure violations;

- analysis of trading events as a result of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990;

- work on regulatory reform initiatives that helped to provide estimated cost savings from the reform initiatives;

- assistance on projects related to limited partnership roll-ups and option market trade-throughs;

- capital markets briefing reports that assessed the economic, institutional, and regulatory developments outside the United States; and

- support to the Office of International Affairs concerning international securities regulation and enforcement matters.

The staff also assisted the U.S. Attorney's Office in its successful prosecution of a bribery case involving an investment manager, and worked with the Department of the Treasury's interagency planning group on international portfolio investment.

POLICY MANAGEMENT AND ADMINISTRATIVE SUPPORT

Policy management and administrative support provide the Commission and operating divisions with the necessary services to accomplish the agency's mission. Policy management is provided by the executive staff (including the Office of Legislative Affairs); the Office of the Secretary; the Office of Public Affairs, Policy Evaluation and Research; and the Office of the Executive Director. The responsibilities and activities of policy management include developing and executing management policies, formulating and communicating program policy, overseeing the allocation and expenditure of agency funds, maintaining liaison with the Congress, disseminating information to the press, and facilitating Commission meetings.

Administrative support includes services such as accounting, financial management, fee collection, technology management, data processing, staffing, space and facilities management, and consumer affairs. Under the direction of the Office of the Executive Director, these support services are provided by the Offices of the Comptroller; Information Technology; Human Resources Management; and Filings, Information and Consumer Services.

Key 1992 Results

The Commission held 60 meetings and considered 323 matters. Major activities of the Commission included proposing comprehensive revisions to the Commission's shareholder communications rules, proposing regulations on disclosure of

executive compensation, and adopting a wide-ranging initiative to facilitate small business access to capital markets.

For the tenth consecutive year, the agency collected fees for the United States Treasury in excess of its appropriation. Further, an interagency agreement was signed with the U.S. Agency for International Development (AID) that provides the Commission up to $2.8 million over three years to support technical assistance programs related to the development and regulation of capital markets in Central and Eastern European countries. An agency representative was sent to Poland on a one-year technical assistance assignment.

Policy Management

Commission Activities. The Commission held 60 meetings in 1992, during which it considered 323 matters, including the proposal and adoption of Commission rules, enforcement actions, and other items that affect the stability of the nation's capital markets and the economy. Significant regulatory actions taken by the Commission included:

• revising its rules governing proxy solicitations,

• adopting amendments to the Commission's executive compensation disclosure requirements,

• adopting a wide-ranging initiative to facilitate small business access to the capital markets, and

• proposing the exclusion of certain structured financings from

coverage under the Investment Company Act of 1940. During 1992, the Congress actively considered a number of important issues under the Commission's jurisdiction. These were most notably:

- proposed amendments to the Investment Advisers Act of 1940, including fee provisions to fund more frequent Commission inspections of investment advisers;

- the government securities market, coupled with the agency's inquiry into the activities of Salomon Brothers and other participants in the government securities market;

- limited partnership “roll-ups” and their impact on limited partner investors;

- explicit statute of limitations for implied rights of private action in violations of the Securities Exchange Act of 1934 (an issue raised by the decision of the Supreme Court in *Lampf, Pleva, Lipkind, Prupis and Petigrow v. Gilbertson, 111* S.Ct. 2773);

- reforms relating to accountants' responsibilities and shareholders' rights including issues pertaining to executive compensation levels;

- the treatment of hybrid instruments, swaps, off-exchange derivative markets, and margin requirements as part of the budget reauthorization of the Commodity Futures Trading Commission; and

- omnibus energy legislation which would amend the Public Utility Holding Company Act to make it easier for utilities and independent producers to compete in the wholesale electric power market and enable domestic utilities to purchase foreign utility interests. Congressional interest in the agency's activities and initiatives remained at a high level. The Commission and staff members testified at 17 congressional hearings during the year.

Public Affairs. The Office of Public Affairs, Policy Evaluation and Research (OPAPER) communicated information on agency activities to those interested in or affected by Commission actions, including the press, the general public, regulated entities, and employees of the agency, through ongoing programs and special projects. The office published daily the *SEC News Digest* which provided information on rule changes, enforcement actions against individuals or corporate entities, registration statements, acquisition filings, interim reports, releases, decisions on requests for exemptions, Commission meetings, upcoming testimony by Commission members and staff, lists of Section 16 letters, and other events of interest. Information on Commission activities also was disseminated through notices of administrative actions, litigation releases, and other materials. Many of the agency's actions are of national and, increasingly, international interest. When appropriate, these actions are brought to the attention of regional, national, and international press. During the year, a total of 52 news releases on upcoming events, agency programs, and special projects were issued. Additionally, congressional testimony and speeches presented by Commissioners and senior staff were maintained on file and disseminated in response to requests from the public. The staff responded to over 86,000 requests for specific

information on the agency or its activities. Programs for 295 foreign visitors were coordinated during the year.

OPAPER also provided support for activities related to the International Organization of Securities Commissions (IOSCO) and the SEC's International Institute for Securities Markets Development and meetings of the Emerging Markets Advisory Committee, the Market Transactions Advisory Committee, and the Market Oversight and Financial Services Advisory Committee.

Management Activities. The Office of the Executive Director coordinated special projects such as the development of the automation systems mandated by the Market Reform Act and the implementation of a comprehensive audit follow-up program and tracking system. The staff worked closely with the Chairman and other senior officials in formulating the agency's budget submissions for the Office of Management and Budget and the Congress.

Equal Employment Opportunity (*EEO*). The Office of Equal Employment Opportunity was reorganized, an attorney experienced in EEO matters was appointed director, and additional resources were allocated to expand the office's complaint processing and affirmative employment capabilities. In addition, the EEO office accomplished the following in 1992:

- issued a comprehensive set of internal regulations detailing the complaint process and the equal employment opportunity rights/ responsibilities of all employees,

- completed an analysis of the agency's EEO program (1988 to 1992) for the Civil Rights Commission,

- implemented an agency-wide mandatory training course in sexual harassment awareness and issued a sexual harassment policy statement detailing expectations for appropriate workplace behavior,

- held town meetings of two special emphasis programs (the Hispanic and Black Employment Programs), and

- improved the ability to conduct in-house investigations.

The agency continued actively to recruit minorities and women. At the end of the year, women accounted for 48.7 percent of the total agency work force, blacks accounted for 26.2 percent, Hispanics accounted for approximately 3 percent, and Asians made up 2.7 percent.

Freedom of Information Act (*FOIA) and Privacy Act.* The Office of Freedom of Information Act and Privacy Act Operations responded to requests for access to information pursuant to FOIA, the Privacy Act, and the Government in the Sunshine Act and processed requests under the agency's confidential treatment rules. Confidential treatment requests were generally made in connection with proprietary corporate information and evaluated in conjunction with access requests to prevent the unwarranted disclosure of information exempt under the FOIA.

In 1992, the agency received 1,779 FOIA requests and appeals, 4 Privacy Act requests, 36 Government in the Sunshine Act requests, 13 government referrals, and 5,394 requests and appeals for

confidential treatment. All FOIA/Privacy Act requests were responded to within the statutory timeframe.

Administrative Support

Financial Management and Operations. For the tenth consecutive year, the agency collected fees for the United States Treasury in excess of its appropriation. In 1992, the SEC's total fee collections were $406 million, 180 percent of the agency's spending authority of $226 million (which consisted of $158 million in appropriations and $68 million in offsetting Section 6(b) filing fees). The $406 million in total fee collections, minus the SEC's spending authority and $45 million in offsetting fee collections, resulted in a net gain of $135 million to the United States Treasury.

In 1992, offsetting fee collections were generated as a result of a fee rate increase under Section 6(b) of the Securities Act of 1933 to one-thirty-second of one percent from one-fiftieth of one percent.

Fee revenue was collected from four basic sources: registrations under Section 6(b) of the Securities Act (comprising 79 percent of total 1992 fee collections), transactions on securities exchanges (17 percent), tender offer and merger filings (2 percent), and miscellaneous filings (2 percent).

The agency completed its fourth year of operating the Federal Financial System which allowed for direct entry of voucher and payment data, creation of travel authorization and procurement documents, decentralized data throughout the agency, on-line voucher research, and readily available management data.

The staff continued work on the development of an automated fee tracking, reporting, and accounts receivable system. In addition, the agency continued to improve its automated collection and processing of annual fees through electronic funds transfer and the implementation of an account system and a 10ckbox depository system. In 1992, the agency received over 41,000 separate fee payments of differing amounts for transactions by regulated and registered entities. The Comptroller's staff processed a 15 percent increase in payroll actions (12,289), a 9 percent increase in electronic fund transfers (89,674), a 10 percent increase in travel vouchers (9,628), and a 17 percent increase in miscellaneous invoices (14,585).

The Office of the Comptroller completed a five-year plan to strengthen the agency's financial management system and published a new *Travel Handbook.* Direct on-line access to the agency's core financial accounting system was made available throughout headquarters in 1992 and regional office access is planned for next year. The development of improved payroll, personnel, disgorgement, and property systems began in 1992.

Information Resources Management. In order to manage more effectively the SEC's rapidly growing information systems, a Chief Information Officer was appointed and the Office of Information Technology (OIT) was created in 1992 through the merger of the Office of EDGAR (Electronic Data Gathering, Analysis, and Retrieval) Management and the Office of Information Systems Management.

During 1992, the Office of Information Technology continued to assist SEC staff by providing technical assistance to personal computer users and by managing local area networks. OIT completed

installation of the agency's integrated office automation network in the headquarters building and several regional offices and established data communication links between the SEC and the Securities Industry Automation Corporation.

Additionally, OIT initiated several major system development or enhancement projects during 1992 which included:

- completing the requirements for the first phases of both the large trader reporting system and the risk assessment system,

- implementing the Entity Filing Fee System (EFF) and the EDGAR/ EFF interface that enhances the automatic fee acceptance functions in EDGAR,

- developing an insurance products tracking system, and

- modifying the payroll system to conform with new regulations.

In November 1991, the SEC's primary computer facilities and operational staff were relocated to the new SEC Operations Center in Alexandria, Virginia. In conjunction with this move, OIT initiated work on a contingency plan to use headquarters as a backup site in the event of a failure at the Operations Center.

On July 14, 1992, the EDGAR pilot project was closed after operating for nearly eight years. During this period, the pilot demonstrated the feasibility of electronic filing by successfully receiving, processing, and storing more than 100,000 electronic filings submitted voluntarily by more than 1,500 pilot filers.

The operational EDGAR system was opened on July 15, 1992 for live filing by the pilot participants on a voluntary basis. The new system performed well with the exception of initial difficulties with the electronic fee payment process and a temporary failure of the EDGAR disk storage system.

Significant progress was made on the design and development of an updated release of EDGAR during 1992. This release of EDGAR is scheduled for completion in April 1993, and mandatory electronic filing by the pilot filers will commence shortly thereafter.

Following the 1991 review of EDGAR by the National Institute of Standards and Technology, the SEC asked the General Services Administration (GSA) to conduct an information resources management/ security review of the EDGAR project. OIT also had previously requested a risk assessment of EDGAR by GSA. Both reviews (which were contracted out by GSA) were completed in 1992 and produced several recommendations which the SEC plans to implement in 1993.

The General Accounting Office (GAO) also conducted an audit of the EDGAR project during 1992. The final report, entitled Securities and Exchange Commission: Effective Development of the EDGAR System Requires Top Management Attention (GAO/IMTEC-92-85), noted that EDGAR requirements and costs have increased since the contract was awarded in January 1989. As a result of this audit, the SEC's Executive Director modified the EDGAR Change Control Board and established the EDGAR Executive Steering Committee to set policy for system development and review and approve all changes that impact the cost, schedule, or functionality of the EDGAR system.

The SEC continued to keep the filing and investment communities informed of EDGAR developments by holding conferences in January and August 1992 to review the system status, the development schedule, and the EDGAR rule proposal.

In addition, SEC staff reviewed plans for implementing one-stop filing with representatives from the North American Securities Administrators Association and the self-regulatory organizations.

Human Resources Management. The Office of Human Resources Management managed recruitment and staffing, position management and classification, employee compensation and benefits, training, labor relations, counseling, disciplinary actions, personnel action processing, and maintenance of official employee records. The staff monitored turnover to assist in formulating hiring strategies and developed and administered programs to meet a broad range of employee and management needs as well as federal regulatory requirements.

During 1992, fifteen new or revised policies were published in the *Personnel Operating Policies and Procedures Manual,* which provided managers and employees with updated human resources program guidance. To implement new authorities under the Federal Employee Pay Comparability Act of 1990 (FEPCA), new policies were issued on relocation bonuses, retention allowances, advances in pay, and time-off awards. New policies were written to establish a structured approach for assuring position description accuracy, establish consistent procedures for proposing and processing reorganizations, document and clarify compensatory time policy, establish formal procedures for handling requests for representation

before the Commission by former Commission members and SEC employees, and establish a formal Personnel Management Evaluation program.

The agency undertook an effort to revamp the performance appraisal systems for general schedule, wage grade, Performance Management and Recognition System, and Senior Executive Service employees. In conjunction, a review of the agency's incentive awards program policy was initiated with the intent of incorporating regulatory changes and streamlining documentation requirements. Policy revisions for the appraisal systems and incentive awards program should be issued in 1993 following OPM review and approval. In 1992, more than $1.54 million in incentive and performance awards was paid and eight time-off awards were granted to employees.

Major occupational studies of securities compliance examiners (SCEs), attorneys, accountants, investigators, and administrative program support personnel were completed. As a result:

- the SEC received Office of Personnel Management (OPM) approval for special pay rates for attorneys and accountants with securities industry expertise,

- investigator positions were reclassified as criminal investigators and OPM subsequently approved the positions for coverage under the law enforcement officer retirement and FEPCA special pay provisions, and

- a modified career ladder and a crossover path to accountant positions were established for SCEs.

The recruitment program, particularly for attorneys, accountants, SCEs, computer specialists, and administrative/clerical support personnel, continued to be emphasized through active participation in job fairs; on-campus interviews at law schools; advertising; and the use of merit promotion, the outstanding scholars program, delegated examining authorities, and OPM certification authorities.

Under the SEC's reactivated Upward Mobility Program, 26 participants were selected from 620 applicants in 1992. In June 1992, the 26 participants began their career advancement training programs which will lead to paraprofessional and professional positions.

Approximately 1,800 agency employees attended 3,100 training courses during the year. The training areas emphasized were litigation skills, international securities regulation, computer applications, the EDGAR system, EEO, and cultural diversity.

Facilities Management. The Office of Administrative and Management Support managed the agency's facilities and provided a wide range of logistical and office support services including lease administration, procurement and contracting, space management, printing, mail services, and property management.

The agency continued to exercise its independent leasing authority and obtained new space and improved working conditions for several field offices such as Los Angeles, Fort Worth, and New York. In 1992, the agency administered 23 leases including the headquarters' leases for an approximate total of 750,000 square feet of office and related space.

The agency awarded contracts and purchase orders in excess of $31 million during 1992. Also, printing production increased from 61 million units to 67 million units, incoming mail increased by approximately 9 percent, and outgoing mail increased by approximately 2 percent.

Consumer Affairs. The Office of Filings, Information and Consumer Services (OFICS) was responsible for:

- responding to investor complaints and inquiries;
- screening information received for referrals to SEC program divisions, self-regulatory agencies, states, or other federal agencies;
- preparing educational materials to assist investors in protecting their interests; and
- developing and implementing the agency's consumer protection program.

In 1992, the staff received 35,490 contacts (*i.e.,* letters, telephone calls, or walk-in visits). Of those contacts, 17,541 were complaints and 17,949 were inquiries. Approximately 36 percent of the complaints involved broker-dealers, while the remainder involved issuers, mutual funds, banks, transfer agents, clearing agents, and investment advisers. The two most frequent complaints against broker-dealers involved allegations of unauthorized transactions executed in customer accounts and recommendations by the broker-dealers of unsuitable investments. Over 800 complaints were referred

to SEC program divisions, self-regulatory agencies, or other regulatory entities for review and/or action.

Public Reference. OFICS also was responsible for making available to the public all company filings and Commission rules, orders, studies, reports, and speeches. These documents (dating from 1933 through the present) were available in the public reference room and could be obtained by writing the agency or contacting the agency's dissemination contractor.

In 1992, the staff provided assistance to 45,370 visitors to the public reference room, answered 4,467 written requests for documents, and responded to 114,252 telephone inquiries. A total of 322,856 paper documents and 397,122 microfiche records were added to the existing library of publicly available information. In addition, the staff processed 559 formal requests for certifications of filings and records.

ENDNOTES

[1]In the Matter of the Distribution of Certain Debt Securities Issued by Government Sponsored Enterprises, Exchange Act Release No. 30255 (Jan. 16, 1992), 50 SEC Docket 1308; In the Matter of the Distribution of Certain Debt Securities Issued by Government Sponsored Enterprises, Exchange Act Release No. 30191 (Jan. 16, 1992), 50 SEC Docket 1174.

[2]*SEC v. Salomon Inc.,* Litigation Release No. 13246 (May 20, 1992), 51 SEC Docket 1133.

[3]*In the Matter of Salomon Brothers Inc.,* Exchange Act Release No. 30721 (May 20, 1992), SEC Docket 1025.

[4]*SEC v. Thomas M, Egan,* Accounting and Auditing Enforcement Release No. 387 (May 27, 1992), 51 SEC Docket 1213.

[5]*SEC v. Charles H. Keating, Jr.,* Litigation Release No. 13118 (Dec. 12, 1991), 50 SEC Docket 776.

[6]*In the Matter of Abington Bancorp, Inc.,* Accounting and Auditing Enforcement Release No. 370 (Apr. 22, 1992), 51 SEC Docket 0599.

[7]*SEC v. Donald Coleman,* Accounting and Auditing Enforcement Release No. 330 (Oct. 9, 1991), 49 SEC Docket 1887.

[8]*SEC v. Edward Morris,* Accounting and Auditing Enforcement Release No. 352 (Jan. 27, 1992), 50 SEC Docket 1543.

[9]*In the Matter of Robert J. Iommazzo, CPA,* Accounting and Auditing Enforcement Release No. 385 (May 22, 1992), 51 SEC Docket 1157.

[10]*SEC v. Edward R. Downe, Jr.,* Litigation Release No. 13260 (June 4, 1992), 51 SEC Docket 1354.

[11]*SEC v. Hugh Thrasher,* Litigation Release No. 13381 (Sept. 24, 1992), 52 SEC Docket 2393.

[12]*SEC v. John Acree,* Litigation Release No. 13219 (Apr. 9, 1992), 51 SEC Docket 0376.

[13]*SEC v. N, Donald Morse, II,* Litigation Release No. 13280 (June 24, 1992), 51 SEC Docket 1680.

[14]*SEC v. Kurt Naegeli,* Litigation Release No. 13227 (June 23, 1992), 51 SEC Docket 1677.

[15]*SEC v. College Bound, Inc.,* Accounting and Auditing Enforcement Release No. 371 (Apr. 24, 1992), 51 SEC Docket 0670.

[16]*SEC v. Albert Barette,* Accounting and Auditing Enforcement Release No. 389 (June 17, 1992), 51 SEC Docket 1561.

[17]*SEC v. George R. Thompson,* Accounting and Auditing Enforcement Release No. 366 (Apr. 6, 1992), 51 SEC Docket,

[18]*In the Matter of Agnes E, Jenkins,* Accounting and Auditing Enforcement Release No. 421 (Sept. 29, 1992), 52 SEC Docket 2424.

[19]*SEC v. James N. Von Germeten,* Accounting and Auditing Enforcement Release No. 426 (Sept. 30, 1992), 52 SEC Docket 2655.

[20]*In the Matter of Caterpillar Inc.,* Accounting and Auditing Enforcement Release No. 363 (Mar. 31, 1992), 51 SEC Docket 300.

[21]*In the Matter of Presidential Life Corp.,* Accounting and Auditing Enforcement Release No. 416 (Sept. 22, 1992), 52 SEC Docket 2441.

[22]*SEC v. Metro Display Advertising, Inc.,* Litigation Release No. 13162 (Feb. 7, 1992), 50 SEC Docket 1735.

[23]*SEC v. Deepak Gulati,* Litigation Release No. 13171 (Feb. 20, 1992), 50 SEC Docket 1806.

[24]*In the Matter of Stephen J. Klos,* Exchange Act Release No. 30723 (May 21, 1992), 51 SEC Docket 1030.

[25]*SEC v. Custom Trading International Corp.,* Litigation Release No. 13229 (Apr. 24, 1992), 51 SEC Docket 0829.

[26]*SEC v. Current Financial Services, Inc.,* Litigation Release No. 13112 (Dec. 9, 1991), 50 SEC Docket 770.

[27]*SEC v. AMI Securities, Inc.,* Litigation Release No. 13258 (June 2, 1992), 51 SEC Docket 1352.

[28]*In the Matter of State Bank of Pakistan,* Securities Act Release No. 6937 (May 6, 1992), 51 SEC Docket 0834.

[29]*SEC v. Westdon Holding & Investment, Inc.,* Litigation Release No. 13085 (Nov. 7, 1991), 50 SEC Docket 270.

[30]*SEC v. Paul Kutik,* Litigation Release No. 13240 (May 14, 1992), 51 SEC Docket 0997.

[31]*In the Matter of Jeffrey R. Leach,* Exchange Act Release No. 31007 (Aug. *6,* 1992), 52 SEC Docket 838.

[32]*In the Matter of Matthew L. Wager,* Exchange Act Release No. 31009 (Aug. 6, 1992), 52 SEC Docket 848.

[33]*In the Matter of Buddy S. Cohen,* Exchange Act Release No. 31008 (Aug. 6, 1992), 52 SEC Docket 845.

[34]*SEC v. Edward A. Accomando,* Litigation Release No. 13222 (Apr. 9, 1992), 51 SEC Docket 0379.

[35]*SEC v. Maurice A. Halperin,* Litigation Release No. 13052 (Oct. 21, 1991), 49 SEC Docket 2116.

[36]*SEC v. Joseph Pandolfino, Jr.,* Litigation Release No. 13250 (May 26, 1992), 51 SEC Docket 1211.

[37]*In the Matter of The Lionel Corp.,* Exchange Act Release No. 30121 (Dec. 30, 1991), 50 SEC Docket 990.

[38]*In the Matter of KIT Acquisition Corp.,* Exchange Act Release No. 30732 (May 22, 1992), 51 SEC Docket 1152.

[39] *In the Matter of The Krupp Corp.,* Exchange Act Release No. 30566 (Apr. 8, 1992), 51 SEC Docket 0334.

[40]*In the Matter of Douglas A. Kass,* Exchange Act Release No. 31046 (Aug. 17, 1992), 52 SEC Docket 1119.

[41]*In the Matter of BGC Special Equity Ltd. Partnership,* Exchange Act Release No. 30875 (June 30, 1992), 51 SEC Docket 1730.

[42]*In the Matter of Michael S. Shapiro,* Accounting and Auditing Enforcement Release No. 358 (Mar. 4, 1992), 50 SEC Docket 2036.

[43]*In the Matter of Kevin Upton,* Exchange Act Release No. 29842 (Oct. 21, 1991), 47 SEC Docket 2061.

[44]*In the Matter of Shearson Lehman Brothers, Inc.,* Exchange Act Release No. 31196 (Sept. 17, 1992), 52 SEC Docket 1995.

[45]*SEC v. Donald* W. *Wright,* Litigation Release No. 13110 (Dec. 5, 1991), 50 SEC Docket 680.

[46]*SEC v. Stratton Oakmont, Inc.,* Litigation Release No. 13195 (Mar. 20, 1992), 51 SEC Docket 176.

[47]*In the Matter of Wellshire Securities, Inc.,* Exchange Act Release No. 30544 (Apr. 1, 1992), 51 SEC Docket 0242.

[48]*In the Matter of Patrick Raymond Comerford,* Exchange Act Release No. 30820 (June 17, 1992), 51 SEC Docket 1494.

[49]*In the Matter of Martin Herer Engelman,* Exchange Act Release No. 30635 (Apr. 27, 1992), 51 SEC Docket 0743.

[50]In *the Matter of Linda K. Rees,* Exchange Act Release No. 30612 (Apr. 22, 1992), 51 SEC Docket 0595.

[51]*In the Matter of First Albany Corp.,* Exchange Act Release No. 30515 (Mar. 25, 1992), 51 SEC Docket 106.

[52]*SEC v. Institutional Treasury Management, Inc.,* Litigation Release No. 13121 (Dec. 12, 1991), 50 SEC Docket 0783.

[53]*SEC v. First Investors Corp.,* Litigation Release No. 13267 (June 11, 1992), 51 SEC Docket 1448.

[54]*SEC v. Treasury First, Inc.,* Litigation Release No. 13094 (Nov. 19, 1991), 50 SEC Docket 485.

[55]*SEC v. Leroy S. Brenna, et al,* Litigation Release No. 13116 (Dec. 10, 1991), 50 SEC Docket 774.

[56]*SEC v. G. Albert Griggs, Jr.,* Litigation Release No. 13247 (May 21, 1992), 51 SEC Docket 1136.

[57]*SEC v. Public Funding Group, Inc.,* Litigation Release No. 13192 (Mar. 18, 1992), 51 SEC Docket 76.

[58]*In the Matter of William H. Pike,* Investment Company Release No. 18601 (Mar. 5, 1992), 50 SEC Docket 2023.

[59]Exchange Act Release No. 30929 (July 16, 1992), 57 FR 32159 (July 21, 1992).

[60]Exchange Act Release No. 30920 (July 14, 1992), 57 FR 32587 (July 22, 1992).

[61]Exchange Act Release No. 30608 (Apr. 20, 1992), 57 FR 18004 (Apr. 28, 1992).

[62]Exchange Act Release No. 30610 (Apr. 28, 1992), 57 FR 18046 (Apr. 28, 1992).

[63]Exchange Act Release Nos. 29868 (Oct. 28, 1991), 56 FR 56535 (Nov. 5, 1991) and 30304 (Jan. 29, 1992), 57 FR 4658 (Feb. 6, 1992).

[64]Exchange Act Release No. 29854 (Oct. 24, 1991), 56 FR 55963 (Oct. 30, 1991).

[65]Exchange Act Release No. 29797 (Oct. 8, 1991), 56 FR 51945 (Oct. 16, 1991).

[66]Exchange Act Release No. 30000 (Nov. 26, 1991), 56 FR 63531 (Dec. 4, 1991).

[67]Exchange Act Release No. 29869 (Oct. 28, 1991), 56 FR 56537 (Nov. 5, 1991).

[68]Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[69]Exchange Act Release No. 30369 (Feb. 13, 1992), 57 FR 6148 (Feb. 20, 1992).

[70]Exchange Act Release No. 29992 (Nov. 26, 1991), 56 FR 63526 (Dec. 4, 1991).

[71]Exchange Act Release Nos. 29865 (Oct. 28,1991), 56 FR 56255 (Nov. 1, 1991) (CBOE); 29934 (Nov. 13, 1991), 56 FR 58593 (Nov. 20, 1991) (AMEX), and 29876 (Oct. 28, 1991), 56 FR 56435 (Nov. 4, 1991).

[72]Exchange Act Release No. 30256 (Jan. 16, 1992), 57 FR 2797 (Jan. 23, 1992) (Nikkei and TOPIX); Exchange Act Release No. 31016 (Aug. 11,1992), 57 FR 37012 (Aug. 17, 1992) (Japan Index).

[73]Exchange Act Release No. 30159 (Jan. 7, 1992), 57 FR 1506 (Jan. 14, 1992).

[74]Exchange Act Release No. 30773 (June 3, 1992), 57 FR 24835 (June 11, 1992).

[75]Exchange Act Release No. 30166 (Jan. 8, 1992), 57 FR 1375 (Jan. 14, 1992); International Series Release No. 357 (Jan. 8, 1992).

[76]Letter from William H. Heyman, Director, Division of Market Regulation, SEC, to Joanne T. Medero, General Counsel, CFTC, dated Jan. 23, 1992 (Midcap 400 Letter) and letter from William H.

Heyman to Brian Folkerts, Director, Office of Congressional and Government Affairs, CFTC, dated Mar. 27, 1992 (FT-SE 100 Letter).

[77]Letter from William H. Heyman, Director, Division of Market Regulation, SEC, to Brian Folkerts, Director, Office of Congressional and Governmental Affairs, CFTC, dated May 27, 1992.

[78]Letter from William H. Heyman, Director, Division of Market Regulation, SEC, to Joanne T. Medero, General Counsel, CFTC, dated Oct. 7, 1991.

[79]Letter from William H. Heyman, Director, Division of Market Regulation, SEC, to Joanne T. Medero, General Counsel, CFTC, dated Oct. 16, 1991.

[80]Letter from William H. Heyman, Director, Division of Market Regulation, SEC, to Joanne T. Medero, General Counsel, CFTC, dated Jan. 16, 1992.

[81]Letter from William H. Heyman, Director, Division of Market Regulation, SEC, to Joanne T. Medero, General Counsel, CFTC, dated Jan. 16, 1991.

[82]*Id.*

[83]Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991).

[84]Report of the Bachmann Task Force on Clearance and Settlement Reform in U.S. Securities Markets (May 1992).

[85]Exchange Act Release No. 30802 (June 15, 1992), 57 FR 27812 (June 22, 1992).

[86]15 U.S.C.A. § 78q-1 (f) (West Supp. 1992).

[87]Testimony of Richard C. Breeden, Chairman, SEC, before the Subcommittee on Domestic Monetary Policy of the House Committee on Banking, Finance, and Urban Affairs, Apr. 28, 1992. Chairman Breeden restated the Commission's position in a June 1, 1992 letter to Chairman Dingell of the House Committee on Energy and Commerce. The Commission also strongly supported a provision of the type contained in S. 1699, the Government Securities Offering Enforcement Act, which had been passed by the Senate in September 1992, making it explicitly unlawful to knowingly or wilfully make a false or misleading written statement to an issuer of government securities in a primary offering.

[88]Letter from Edward J. Markey, Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives, to Richard C. Breeden, Chairman, SEC, dated Oct. 23, 1991; letter from Richard C. Breeden, Chairman, SEC, to Edward J. Markey, Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives, dated Dec. 23, 1991.

[89]Exchange Act Release No. 31347 (Oct. 22, 1992), 57 FR 49039 (Oct. 29, 1992).

[90]Exchange Act Release No. 31520 (Nov. 25, 1992), 57 FR 57397 (Dec. 4, 1992).

[91]Exchange Act Release No. 30772 (June 3, 1992), 57 FR 24415 (June 9, 1992).

[92]Letter regarding Rule 15c2-11: NASDAQ Initial Listing and Maintenance Standards (Feb. 28, 1992).

[93]Letters from Michael A. Macchiaroli, Assistant Director of the Division of Market Regulation to Mr. Guillermo T. Prieto, Vice-Chairman of Market Development, Commission Nacional de Valores, dated Aug. 28, 1992; Douglas G. Preston, Attorney, SIA, dated Aug. 21, 1992; Dominic A. Carone, Chairman, SIA's Capital Committee, dated June 12,1992; Douglas G. Preston, Attorney, SIA, dated Mar. 10, 1992.

[94]Exchange Act Release No. 30958 (July 27, 1992), 57 FR 34028 (July 31, 1992). The Commission also adopted clarifying amendments to Form BD in Securities Exchange Act Release No. 31398 (Nov. 4, 1992), 57 FR 53261 (Nov. 9, 1992).

[95]Exchange Act Release No. 30959 (July 27, 1992), 57 FR 34048 (July 31, 1992).

[96]17 C.F.R. § 240.17Ad-15 (1992).

[97]Exchange Act Release No. 30146 (Jan. 9, 1992), 57 FR 1082 (Jan. 10, 1992). Rule 17Ad-15 prohibits inequitable treatment of eligible guarantor institutions, requires transfer agents to establish written standards for the acceptance of signature guarantees, and allows transfer agents to reject a request for transfer because the guarantor is neither a member of nor a participant in a signature guarantee program.

[98]Exchange Act Release No. 30148 (Jan. 6, 1992), 57 FR 1128 (Jan. 10, 1992). Rule 17Ad-16 would require a registered transfer agent to send notice to the appropriate qualified securities depository when assuming or terminating transfer agent services on behalf of an issuer or when changing its name or address.

[99]Letter regarding Transportacion Maritima Mexicana, S.A. de C.V., dated June 8, 1992.

[100]Letter regarding C.A. Venezolana de Pulpa y Papel S.A.C.A., dated Jan. 3, 1992.

[101]Letter regarding Banco Comercial Portugues, S.A., dated June 11, 1992.

[102]Letter regarding Vitro, Sociedad Anonima, dated Nov. 19, 1991; Letter regarding Orbital Engine Corporation Limited, dated Nov. 21,1991; Letter regarding CEMEX, Sociedad Anonima, dated Mar. 12, 1992; Letter regarding China Steel Corporation, dated May 15, 1992; Letter regarding Grupo Financiero Banamex Accival, S.A. de C.V., dated June 23, 1992. *See also* Letter regarding Istituto per la Ricostruzione Industriale/Credito Italiano S.p.A., dated Oct. 17,1992; Letter regarding Telefonos de Mexico, S.A. de C.V., dated May 7, 1992.

[103]Letter regarding British Telecommunications plc, dated Dec. 3, 1991).

[104]Letter regarding Wellcome plc, dated July 21,1992; Letter regarding Total, dated June 23, 1992; Letter regarding Alcatel Alsthom Compagnie Generale d'Electricite, dated May 15, 1992.

[105]17 C.F.R. § 240.17f-1 (1992).

[106]The Spokane Stock Exchange withdrew its registration as a national securities exchange and ceased operations on May 24, 1991.

[107]Exchange Act Release No. 30445 (Mar. 5, 1992), 57 FR 8693 (Mar. 11,1992). This new marketplace was designed to accommodate the listing of companies currently too small to meet the regular AMEX listing requirements.

[108]Exchange Act Release No. 30466 (Mar. 11, 1992), 57 FR 9301 (Mar. 17, 1992). The proposal revised Phlx listing standards to incorporate criteria for certain new products not easily categorized under existing Phlx rules for common or preferred stock, bonds or warrants.

[109]Exchange Act Release No. 30662 (May 1, 1992), 57 FR 19655 (May 7,1992). Among other things, these procedures enable the NYSE to review formally increases in the amount of securities listed, changes in a listed security or issuer requests to list another class or series of securities.

[110]Exchange Act Release No. 30676 (May 7, 1992), 57 FR 20544 (May 13, 1992).

[111]Exchange Act Release No. 30464 (Mar. 11, 1992), 57 FR 9300 (Mar. 17, 1992).

[112]Exchange Act Release No. 30587 (Apr. 15, 1992), 57 FR 14597 (Apr. 21, 1992).

[113]Exchange Act Release No, 30581 (Apr. 14, 1992), 57 FR 14596 (Apr. 21, 1992). The rule change also implemented real-time trade reporting within 90 seconds of execution of the trade for off-hours trading sessions on SelectNet.

[114]Exchange Act Release No. 30629 (Apr. 23, 1992), 57 FR 18535 (Apr. 30, 1992). The program makes available to the public on request certain information contained in the Central Registration Depository System regarding the employment and disciplinary history of NASD members and their associated persons. The public can obtain this information by calling a toll-free number established by the NASD for this purpose. Information available to the public includes final disciplinary actions taken by federal or state securities agencies and self-regulatory organizations which relate to securities or commodities transactions.

[115]Exchange Act Release No. 30840 (June 19, 1992), 57 FR 29109 (June 30, 1992). This review is designed to determine whether an issuer's withdrawal from NASDAQ/NMS or a securities exchange and a subsequent application to NASDAQ/NMS was for the purpose of evading corporate governance criteria.

[116]Exchange Act Release No. 30478 (Mar. 16, 1992), 57 FR 10051 (Mar. 23, 1992). Previously, NASD members were required only to

forward proxy material to beneficial owners upon the request of the issuer.

[117]Exchange Act Release No. 30569 (Apr. 10, 1992), 57 FR 13396 (Apr. 16, 1992).

[118]Exchange Act Release No. 29812 (Oct. 11, 1991), 56 FR 52082 (Apr. 17,1991). NASDAQ International consists of the basic automation services currently provided during the domestic session to support market making by NASD members in NASDAQ/NMS, non-Canadian, foreign equity securities or ADRs included in NASDAQ but not designated as NASDAQ/NMS, and exchange-listed securities.

[119]*See i.e.,* letter from William H. Heyman, Director, Division of Market Regulation, SEC, to Richard A. Grasso, Executive Vice Chairman, President and Chief Operating Officer, NYSE, dated July 6, 1992.

[120]Letter from William H. Heyman, Director, Division of Market Regulation, SEC, to Richard L. Fogel, Assistant Comptroller General, GAO, dated Mar. 12, 1992.

[121]Exchange Act Release Nos. 31097 (Aug. 21, 1992), 57 FR 40235 (Sept. 2, 1992), and 31371 (Oct. 28, 1992), 57 FR 52659 (Nov. 4, 1992).

[122]Exchange Act Release Nos. 31097 (Aug. 21,1992), 57 FR 40235 (Sept. 2, 1992) and 31464 (Nov. 16, 1992), 57 FR 55011 (Nov. 23, 1992).

[123]Exchange Act Release No. 30400 (Feb. 24, 1992), 57 FR 7420 (Mar. 2, 1992).

[124]Exchange Act Release No. 30986 (July 31, 1992), 57 FR 35856 (Aug. 11, 1992).

[125]Exchange Act Release No. 30170 (Jan. 8, 1992), 57 FR 1774 (Jan. 15, 1992).

[126]Exchange Act Release No. 30041 (Dec. 5, 1991), 56 FR 64824 (Dec. 12, 1991).

[127]Exchange Act Release No. 29991 (Nov. 26, 1991), 56 FR 61458 (Dec. 3, 1991).

[128]Exchange Act Release No. 29888 (Oct. 31, 1991), 56 FR 56680 (Nov. 6, 1991).

[129]Exchange Act Release No. 30413 (Feb. 16, 1992), 57 FR 7830 (Mar. 4, 1992).

[130]Exchange Act Release No. 30537 (Mar. 31, 1992), 57 FR 17947 (Apr. 28, 1992).

[131]Exchange Act Release No. 30005, International Series Release No. 347 (Nov. 27, 1991), 56 FR 63747 (Dec. 5, 1991).

[132]Exchange Act Release No. 29781 (Oct. 3, 1991), 56 FR 50959 (Oct.

9, 1991).

[133]Exchange Act Release No. 30556 (Apr. 6, 1992), 57 FR 12534 (Apr.

10, 1992).

[134]Di vision of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation (May 1992).

[135]Investment Company Act Release No. 19105 (Nov. 19, 1992), 57 FR 56248, 52 SEC Docket 17.

[136]Investment Company Act Release No. 18869 (July 28, 1992), 51 SEC Docket 2587.

[137]17 CFR 230.601 *et seq.*

[138]Investment Company Act Release No. 18611 (Mar. 12, 1991), 50 SEC Docket 2116.

[139]Investment Company Act Release No. 18612 (Mar. 12, 1992), 50 SEC Docket 2119.

[140]Investment Company Act Release No. 19115 (Nov. 20, 1992), 52 SEC Docket 4079.

[141]Section 711 of the legislation designates Sections 32 and 33 of the Holding Company Act as Sections 34 and 35, and adds a new Section 32, “Exempt Wholesale Generators.” Section 715 of the legislation adds a new Section 33, “Treatment of Foreign Utilities.”

[142]Section 713 of the Energy Policy Act.

[143]Holding Company Act Release No. 25573 (July 7, 1992), 51 SEC Docket 2004.

[144]Holding Company Act Release No. 25668 (Nov. 4, 1992), 52 SEC Docket 3545.

[145]*Id.*

[146]Investment Company Institute (pub. avail. Aug. 7, 1992).

[147]Reserve Bank of Australia (pub. avail. Sept. 2, 1992) and Hong Kong Securities Clearing Co. Ltd. (pub. avail. Sept. 8, 1992).

[148]Founders Funds, Inc. (pub. avail. Aug. 4, 1992).

[149]Investment Company Act Release Nos. 19034 (Oct. 16, 1992), 52 SEC Docket 3195 (Notice) and 19096 (Nov. 12, 1992), 52 SEC Docket 3745 (Order); International Series Release No. 475 (Oct. 16, 1992), 52 SEC Docket 3195 (Notice).

[150]Investment Company Act Release Nos. 18959 (Sept. 17, 1992), 52 SEC Docket 2107 (Notice) and 19055 (Oct. 26, 1992), 52 SEC Docket 3380 (Order).

[151]Investment Company Act Release Nos. 18693 (May 6, 1992), 51 SEC Docket 900 (Notice) and 18748 (June 2, 1992), 51 SEC Docket 1331 (Order).

[152]Investment Advisers Act Release Nos. 1310 (May 18, 1992), 51 SEC Docket 1094 (Notice) and 1317 (June 15, 1992), 51 SEC Docket 1523 (Order).

[153]Investment Company Act Release Nos. 18643 (Apr. 1, 1992), 51 SEC Docket 290 (Notice) and 18675 (Apr. 24, 1992), 51 SEC Docket 798 (Order).

[154]Investment Company Act Release No. 18778 (June 12, 1992), 52 SEC Docket 1524 (Notice and Temporary Order).

[155]Investment Company Act Release Nos. 18717 (May 20, 1992), 51 SEC Docket 1112 (Notice and Temporary Order) and 19051 (Oct. 21, 1992), 52 SEC Docket 3365 (Order).

[156]Uniao de Bancos de Brasileiros S.A. (pub. avail. July 28, 1992).

[157]*Neuberger & Berman Advisers Management Trust,* Investment Company Act Release Nos. 18506 (Jan. 29, 1992), 50 SEC Docket 1528 (Notice) and 18573 (Feb. 26, 1992), 50 SEC Docket 1917 (Order).

[158]*Anchor National Life Insurance Company,* Investment Company Act Release No. 19147 (Dec. 4, 1992), 52 SEC Docket 20.

[159]*MML Bay State Life Insurance Company* (pub. avail. Sept. 9, 1992).

[160]*See, e.g., SCEcorp,* Holding Company Act Release No. 25564, International Series Release No. 405 (June 29, 1992), 51 SEC Docket 1763 (acquisition by an exempt holding company of

Australian public-utility operations); *Southern Co.,* Holding Company Act Release No. 25639, International Series Release No. 460 (Sept. 23, 1992), 52 SEC Docket 2300 (acquisition by registered holding company of Australian operations).

[161]*See* Sections 711 and 715 of the Energy Policy Act.

[162]*Id.*

[163]*Entergy Corp.,* Holding Company Act Release No. 25673, International Series Release No. 487 (Nov. 10, 1992), 52 SEC Docket 16; *Entergy Corp.,* Holding Company Act Release No. 25706, International Series Release No. 510 (Dec. 14, 1992), 53 SEC Docket 1; *Entergy Corp.,* Holding Company Act Release No. 25705, International Series Release No. 511 (Dec. 14, 1992), 53 SEC Docket 1.

[164]*Entergy Corp.,* Holding Company Act Release No. 25136 (Aug. 27, 1990), 46 SEC Docket 1911.

[165]*New Orleans v. S.E.C.,* 969 F.2d 1163 (D.C. Cir. 1992).

[166]*KU Energy Corp.,* Holding Company Act Release No. 25409 (Nov. 13, 1991), 50 SEC Docket 349.

[167]UMTIL Corp., Holding Company Act Release No. 25524 (Apr. 24, 1992), 51 SEC Docket 764.

[168]*Northeast Utils.,* Holding Company Act Release No. 25565 (June 29, 1992), 51 SEC Docket 1775.

[169]*Northeast Utils.,* Holding Company Act Release No. 25221 (Dec. 21, 1990), 47 SEC Docket 1887, *supplemented,* Holding Company Act Release No. 25273, (Mar. 15, 1991), 48 SEC Docket 776.

[170]City of Holyoke Gas & Elec. Dept. v. SEC, Nos. 91-1001 et al, (D.C. Cir. July 24, 1992).

[171]*Ohio Power Co. v. FERC,* No. 88-1293 (D.C. Cir. Feb. 4, 1992), *cert. denied,* No. 92-280 (Nov. 9, 1992).

[172]*Ohio Power Co.,* Holding Company Act Release No. 17383 (Dec. 2, 1971); Holding Company Act Release No. 20515 (Apr. 24, 1978), 14 SEC Docket 928; *Southern Ohio Coal Co.,* Holding Company Act Release No. 21008 (Apr. 17, 1979), 17 SEC Docket 310; Holding Company Act Release No. 21537 (Apr. 25, 1980), 19 SEC Docket 1309.

[173]Securities Act Release No. 33-6949 (July 30, 1992), 51 SEC Docket 2613.

[174]Securities Act Release No. 33-6950 (July 30, 1992), 51 SEC Docket 2673.

[175]Securities Act Release No. 6962 (Oct. 15,1992), 52 SEC Docket 2980.

[176]Securities Act Release No. 6940 (June 23,1992), 51 SEC Docket 1570, *as modified;* Securities Act Release No. 6941 (July 10,1992), 51 SEC Docket 2046.

[177]Exchange Act Release No. 29315 (June 17,1991), 49 SEC Docket 0139.

[178]Exchange Act Release No. 30849 (June 23,1992), 51 SEC Docket 1619.

[179]Exchange Act Release No. 34-31326 (Oct. 16, 1992), 52 SEC Docket 3022.

[180]Securities Act Release No. 33-6964 (Oct. 22, 1992), 52 SEC Docket 3014.

“'Securities Act Release No. 33-6963 (Oct. 22, 1992), 52 SEC Docket 3013.

[182]Securities Act Release No. 6932 (Apr. 13, 1992), 51 SEC Docket 382.

[183]Securities Act Release No. 6922 (Oct. 30, 1991), 50 SEC Docket 12.

[184]Securities Act Release No. 33-6944 (July 23, 1992), 51 SEC Docket 2163.

[185]Securities Act Release No. 33-6933 (Apr. 20, 1992), 51 SEC Docket 503.

[186]*See* Testimony of Richard C. Breeden, Chairman, SEC, Concerning Issues Involving Financial Institutions and Accounting Principles, before the Senate Committee on Banking, Housing and Urban Affairs, Sept. 10, 1990 at 32.

[187]Proposed Statement of Financial Accounting Standards, Accounting for Certain Investments in Debt and Equity Securities (Sept. 9, 1992).

[188]Financial Reporting Release No. 40 (Oct. 6, 1992), 52 SEC Docket 1914.

[189]Statement of Financial Accounting Standards No. 109, Accounting for Income Taxes (Feb, 1992).

[190]Testimony of Walter P. Schuetze, Chief Accountant, SEC, Concerning Accounting for Employee Stock Compensation, before the Senate Committee on Governmental Affairs, Jan. 31, 1992 at 15.

[191]Proposed Statement of Financial Accounting Standards, Accounting for Creditors for Impairment of a loan, An Amendment of FASB Statements No. 5 and 15 (June 30, 1992).

[192]Proposed Statement on Auditing Standards, Letters to Underwriters in Conjunction with Filings Under the Securities Act of 1933 and Letters Issued to a Requesting Party in Conjunction with Other Financing Transactions (May 1991).

[193]Statement of Auditing Standards No. 69, The Meaning of Present Fairly in Conformity with Generally Accepted Accounting Principles in the Independent Auditor's Report (Feb, 1992).

[194]Annual Report, 1991-1992, Public Oversight Board, SEC Practice Section, American Institute of Certified Public Accountants.

[195]Statement of Position 91-1, Software Revenue Recognition (Dec. 12, 1991).

[196]Statement of Position 92-3, Accounting for Foreclosed Assets (Apr. *28,* 1992).

[197]Proposed Statement of Position, Accounting for the Results of Operations of Foreclosed Assets Held for Sale (Nov. 10, 1992).

[198]Proposed Statement of Position, Reporting on Advertising Costs (June 22, 1992).

[199]Proposed Statements of Position titled Foreign Currency Accounting and Financial Statement Presentation for Investment Companies (June 5, 1992); Determination, Disclosure, and Financial Statement Presentation of Income, Capital Gain, and Return of Capital by Investment Companies (Feb. 10, 1992); and Financial Accounting and Reporting for High Yield Securities by Investment Companies (Mar. 4, 1992).

[200]IASC E41, Revenue Recognition (May 1992); E42, Construction Contracts (May 1992); E43, Property, Plant and Equipment (May 1992); E44, The Effects of Changes in Foreign Exchange Rates (May 1992); E45, Business Combinations (June 1992); E46, Extraordinary Items, Fundamental Errors and Changes in Accounting Policies (July 1992); and E47, Retirement Benefit Costs (Dec, 1992).

[201]IASC (revised 1992), Cash Flow Statements (Dec, 1992). Final standards for research and development activities, inventories, and capitalization of borrowing costs will not be formally adopted until late

in 1993 as a package with seven other standards constituting the improvements project, although approved in 1992.

[202]*SEC v. Peters,* No. 90-3346 (10th Cir. Oct. 26, 1992).

[203]*U.S. v. Chestman,* 947 F.2d 551 (2d Cir. 1991) (*en bane), cert, denied,* 112 S.Ct. 1759.

[204]*SEC v. International loan Network, Inc.,* Fed. Sec. L. Rep. (CCH) If 96,886 (D.C. Cir. 1992).

[205]*SEC v. W.J. Howey Co.,* 328 U.S. 293 (1946).

[206]*Gomez v. Leonzo,* 788 F. Supp. 604 (D.D.C, 1992).

[207]*Reves v. Ernst & Young,* 110 S. Ct. 945 (1990).

[208]*Banco Espanol de Credito v. Security Pacific National Bank,* 973 F.2d 51 (2d Cir. 1992), petition for cert, filed Nov 25, 1992.

[209]*In re NBW Commercial Paper Litigation,* Fed. Sec. L. Rep (CCH), No. 97,278 (D.D.C.1992).

[210]*SEC v. Coleman,* No. 91-2526 (D.D.C.).

[211]*Lampf, Pleva, Lipkind, Prupis & Pettigrow v. Gilbertson*, 111 S.Ct. 2773 (1991).

[212]*Anixter v. Home-Stake Production* Co., 977 F.2d 1533 (10th Cir. 1992), petition for cert, filed, Jan. 6, 1993.

[213]*Henderson v. Scientific Atlanta*, 971 F.2d 1567 (11th Cir. 1992).

[214]*James B. Beam Distilling Co. v. Georgia*, 111 S.Ct. 2439 (1991).

[215]*SEC v. Rind,* No. 91-55972 (9th Cir.).

[216]*SEC v. Hayes,* No. 92-1027 (5th Cir.).

[217]*SEC v. AMX International, Inc.*, No. 92-1376 (5th Cir.).

[218]*SEC v. Maxwell* C *Huffman,* No. 92-1363 (5th Cir.).

[219]Federal Debt Collection Procedures Act of 1990, 28 U.S.C. §3001 *et. seq.*

[220]*U.S. v. Regan*, 937 F.2d 823 (2d Cir. 1991), cert, denied sub nom. Zarzecki v. United States, 112 S.Ct. 2773 (1992).

[221]*Mustek, Peeler & Garrett v. Employers Insurance of Wausau*, No. 92-34 (U.S. S.Ct.).

[222]*Roosevelt v. E.I. Du Pont de Nemours & Co.*, 958 F.2d 416 (D.C. Cir. 1992).

[223]*SEC v. American Bancshares*, No. 77-C-750.

[224]*United States v. Swift,* 286 U.S. 106, 119 (1932).

[225]*Yeaman v. SEC,* No. 91-C-805-J (D. Utah 1991).

[226]*In re United Telecommunications, Inc., Securities Litigation*, Misc. No. 92-105 (D.D.C.).

[227]*Scholes v. Stone, McGuire & Benjamin*, 90 C 7201 (N.D. 111.).

[228]*Alexander & Alexander Services, Inc. v. SEC*, No. 92-1112 (D.D.C. 1992).

[229]*Bach v. SEC,* Case No. CV-92-1288 (ADS) (E.D.N.Y. May 9, 1992); *Donald v. SEC,* No. MC 92-32-PHX-SMM (D. Ariz. June 16, 1992); *Whitten v. SEC,* No. MC 92-33-PHX-SMM (D. Ariz. June 16, 1992).

[230]*In re Checkosky and Aldrich,* Exchange Act Release No. 31094 (Aug. 16, 1992), 52 SEC Docket 1389.

[231]*In re Kagan,* Exchange Act Release, No. 34-31205 (Sept. 18, 1992), 52 SEC Docket 1548.

[232]*In re Lamoreaux,* Exchange Act Release, No. 429 (Oct. 14, 1992), 52 SEC Docket 2845.

[233]*In re Domingues and Brimhall,* Exchange Act Release No. 30978 (July 30, 1992), 51 SEC Docket, 2771.

[234]*In re Denkensohn and Schoemer,* Exchange Act Release No. 3656 (Mar. 31), 1992, 51 SEC Docket 0221.

[235]*Kevin B. Wade,* Exchange Act Release No. 30561 (Apr. 7, 1992), 51 SEC Docket 323.

[236]*Meyer Blinder,* Exchange Act Release No. 31095 (Aug. 26, 1992), 52 SEC Docket 1436.

[237]*Century Capital Corp. of South Carolina,* Exchange Act Release No. 31206 (Sep. 21, 1992), 52 SEC Docket 2023.

[238]*Lake Securities, Inc.,* Exchange Act Release No. 31283 (Oct. 2, 1992), 52 SEC Docket 2662.

[239]*Michael David Sweeney,* Exchange Act Release No. 29884 (Oct. 30, 1991), 50 SEC Docket 59.

[240]*Donald T. Sheldon,* Exchange Act Release No. 31475 (Nov. 18, 1992) 52 SEC Docket 3826.

[241]*In re El Paso Electric Co.,* Case No. 92-10148-FM (W.D. Tex.) and *In re Orion Pictures Inc.,* 91B15635 (BRL) (S.D.N.Y.).

[242]*In re El Paso Electric Co.,* Case No. 92-10148-FM (W.D. Tex.).

[243]7n *re Amdura Corp.,* Case No. 90-3811-E *et. seq.* (Bankr. D. Colo.).

[244]*In re Amdura Corp.,* No. 91 N 1521 (D. Colo.).

[245]*In re American Reserve Corp.,* 840 F.2d 487 (7th Cir. 1988); *In re The Charter Co.,* 876 F.2d 866 (11th Cir. 1989), *petition for cert, dismissed,* 110 S.Ct. 3232 (1990); and *Reid v. White Motor Corp.,* 886 F.2d 1462 (6th Cir. 1989), *cert, denied,* 110 S.Ct. 1809 (1990). *See also In re Chateaugay Corp.,*104 Bankr. 626 (S.D.N.Y. 1989); and *In re Zenith Laboratories, Inc.,* 104 Bankr. 659 (D.N.J. 1989). Cf.

In re Mortgage & Realty Trust, 125 Bankr. 575 (Bankr. C.D. Cal, 1991).

[246]*SIPC v. Blinder, Robinson & Co., Inc.,* 962 F. 2d 960 (10th Cir. 1992).

[247]*In re I.M.T. Inc.,* 89-4-0746 PM (Bankr. D. Md.).

[248]*In re Prime Motor Inc.,* 90-16604-BKC-AJC (Bankr. S.D. Fla.).

[249]*In re Service Corp.,* 90-36655 - BKC-AJC (Bankr. S.D. Fla.).

[250]*In re Washington Corp.,* 90-00597 (Bankr. D. D.C.).

[251]*In re Lomas Financial Corp.,* 89B12471-89B 12478 (Bankr. S.D.N.Y.).

[252]*See, e.g., In re Southmark Corp.* and *In re SIS Corp.,* 56th Annual Report at 91 (objection to confirmation of reorganization plan); *In re Custom Laboratories, Inc.,* 53rd Annual Report at 74 (objection to disclosure statement); *In re Energy Exchange Corp. and Vulcan Energy Corp.* and *In re Storage Technology Corp.,* 53rd Annual Report at 74-75 (objection to confirmation of reorganization plan).