27th Annual Report

of the

Securities and Exchange Commission

Fiscal Year Ended June 30, 1961

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SECURITIES AND EXCHANGE COMMISSION

Headquarters Office

425 Second Street NW.

Washington 25, D.C.

COMMISSIONERS

January 10, 1962

WILLIAM L. CARY, *Chairman*
BYRON D. WOODSIDE
J. ALLEN FREAR, JR.
MANUEL F. COHEN
JACK M. WHITNEY II

ORVAL L. DUBOIS, *Secretary*

LETTER OF TRANSMITTAL

SECURITIES AND EXCHANGE COMMISSION,
Washington 25, D.C.

SIR: On behalf of the Securities and Exchange Commission, I have the honor to transmit to you the Twenty-Seventh Annual Report of the Commission covering the fiscal year July 1, 1960, to June 30, 1961, in accordance with the provisions of Section 23(b) of the Securities Exchange Act of 1934, approved June 6, 1934; Section 23 of the Public Utility Holding Company Act of 1935, approved August 26, 1935; Section 46(a) of the Investment Company Act of 1940, approved August 22, 1940; Section 216 of the Investment Advisers Act of 1940, approved August 22, 1940; Section 3 of the act of June 29, 1949, amending the Bretton Woods Agreement Act; and Section 11(b) of the Inter-American Development Bank Act.

Respectfully,

WILLIAM L. CARY,
Chairman.

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

Earl F. Hastings
1908–1961

We wish to express here our profound regret at the death of Earl F. Hastings on September 8, 1961, shortly after his retirement for reasons of health while serving his second term as a member of the Securities and Exchange Commission.

As Director of Securities for the Arizona Corporation Commission in the years 1949 to 1956, and thereafter as a member of this Commission, he served his State and Nation well as an able and just administrator, bringing to the public service a broad experience in mining and industrial engineering. His fairness in the administration of the law, his staunch advocacy of the cause of investor protection, and his dedication to the objectives for which the Commission was established have left an indelible impression upon those members who served with him and upon the staff.

We shall miss his wise and forthright counsel, and his warm and courteous personality. To the members of his family we extend our deepest sympathy.

William L. Cary
Byron D. Woodside
J. Allen Frear, Jr.
Manuel F. Cohen
Jack M. Whitney II

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COMMISSIONERS AND STAFF OFFICERS

(As of January 4, 1962)

Commissioners	*Term expires June 5*
WILLIAM L. CARY of New York, *Chairman*	1966
BYRON D. WOODSIDE of Virginia	1962
J. ALLEN FREAR, Jr., of Delaware	1965
MANUEL F. COHEN of Maryland	1963
JACK M. WHITNEY II of Illinois	1964

Secretary: ORVAL L. DUBOIS

Staff Officers

EDMUND H. WORTHY, Acting Director, Division of Corporation Finance.
CHARLES E. SHREVE, Acting Associate Director.

ALLAN F. CONWILL, Director, Division of Corporate Regulation.
SOLOMON FREEDMAN, Associate Director.

PHILIP A. LOOMIS, Jr., Director, Division of Trading and Exchanges.
IRVING M. POLLACK, Associate Director.

MILTON H. COHEN, Director, Special Study of Securities Markets.
RALPH S. SAUL, Associate Director.
RICHARD H. PAUL, Chief Counsel.

PETER A. DAMMANN, General Counsel.
DAVID FERBER, Associate General Counsel.
WALTER P. NORTH, Associate General Counsel.

ANDREW BARR, Chief Accountant.

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

WILLIAM E. BECKER, Management Analysis Officer.

FRANK J. DONATY, Comptroller.

ERNEST L. DESSECKER, Acting Records and Service Officer.

HARRY POLLACK, Director of Personnel.

REGIONAL AND BRANCH OFFICES

Regional Administrators

Region 1. New York, New Jersey.—Llewellyn P. Young; William D. Moran, Associate Regional Administrator, 225 Broadway, New York 7, N.Y.

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

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

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

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

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

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

Region 8. Washington, Oregon, Idaho, Montana, Alaska.—James E. Newton, Hoge Building (9th floor), 705 Second Avenue, Seattle 4, Wash.

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

Branch Offices

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

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

Houston 2, Tex. 717 Bettes Building, 201 Main Street.

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

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

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

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

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

COMMISSIONERS

William L. Cary, Chairman

Chairman Cary was born in Columbus, Ohio, on November 27, 1910. He received an A.B. degree in 1931 and an LL.B. degree in 1934 from Yale University and an M.B.A. degree from the Harvard Graduate School of Business Administration in 1938. He is a member of Phi Beta Kappa and Phi Delta Phi. Following admission to the Ohio bar in 1934, he was associated with a Cleveland law firm for 2 years. Upon completion of 2 years of graduate study at the Harvard Graduate School of Business in May 1938, he joined the legal staff of the Securities and Exchange Commission where he served for nearly 2 years in the General Counsel's Office and the Reorganization Division. He served as a Special Assistant to the Attorney General in the Tax Division of the Department of Justice from March 1940 until January 1942, and as Counsel, Office of Coordinator of Inter-American Affairs, in Rio de Janeiro until January 1943. After World War II service with the U.S. Marine Corps Reserve and the Office of Strategic Services in Rumania and Yugoslavia, he became a lecturer in finance and law at the Harvard Graduate School of Business Administration (1946–47). From 1947 to 1955, he served as professor of law at Northwestern University School of Law, except for service as Deputy Department Counsellor for Procurement, Department of the Army, during the Korean War, and at Columbia University School of Law from 1955 to March 1961. He is coauthor of several books in the corporate field, and until his appointment served as special counsel to a New York law firm. He took office as a member of the Securities and Exchange Commission on March 27, 1961, for the term expiring June 5, 1961. His appointment also covered the succeeding 5-year term ending June 5, 1966. He was designated Chairman of the Commission.

Byron D. Woodside

Commissioner Woodside was born in Oxford, Pa., in 1908, and is a resident of Haymarket, Va. He holds degrees of B.S. in economics from the University of Pennsylvania, A.M. from George Washington University, and LL.B. from Temple University. He is a member of the bar of the District of Columbia. In 1929 he joined the staff of the Federal Trade Commission, and in 1933, following the enactment of the Federal Securities Act, was assigned to the Securities Division of that Commission which was charged with the administration of the

Securities Act of 1933. He transferred to the Securities and Exchange Commission when the Securities Exchange Act of 1934 was enacted. In 1940 he became Assistant Director and in 1952 Director of the Division (now Division of Corporation Finance) responsible for administering the registration and reporting provisions of the Securities Act, Securities Exchange Act, the Trust Indenture Act of 1939, and, in part, the Investment Company Act of 1940. For 14 months commencing in May 1948, he was on loan to the Department of the Army and assigned to duty in Japan as a member of a five-man board which reviewed reorganization plans of Japanese companies under the Occupation's decartelization program; and beginning in December 1950 he served 17 months with the National Securities Resources Board and later with the Defense Production Administration as Assistant Deputy Administrator for Resources Expansion. He took office as a member of the Securities and Exchange Commission on July 15, 1960, for the term of office expiring June 5, 1962.

J. Allen Frear, Jr.

Commissioner Frear was born on a farm near Rising Sun, Del., on March 7, 1903, where he attended a rural school, graduated from the Caesar Rodney High School, and obtained a B.S. degree from the University of Delaware in 1924. He also holds an honorary degree from Bethany College. An agriculturist by vocation, he has been active in civic and political affairs. For the 12-year period from January 3, 1949, he served two 6-year terms as a Senator from the State of Delaware in the Senate of the United States. He was a member of the Committee on Banking and Currency, which has jurisdiction over legislative and other matters affecting the Commission, and the Committee on Finance. From 1940 to 1948 he was a member of the Board of Directors, Farm Credit Administration, Second Farm Credit District, except for a period of service with the U.S. Army from 1943 to 1946 in World War II. He also served on the Delaware Old Age Assistance Commission and on the board of trustees for Delaware State College. At present he is a director of two banks in Delaware, and a member of the board of trustees of the University of Delaware. He holds membership in the Rotary Club, Sigma Nu Fraternity, and the American Legion and the Veterans of Foreign Wars. On March 15, 1961, he took the oath of office as a member of the Commission for the term expiring June 5, 1965.

Manuel F. Cohen

Commissioner Cohen was born in Brooklyn, N.Y., on October 9, 1912. He holds a B.S. degree in social science from Brooklyn College of the College of the City of New York. He received an LL.B.

degree, cum laude, in 1936 from Brooklyn Law School of St. Lawrence University and was elected to the Philonomic Council. He is a member of the New York bar. In 1933–1934 he served as research associate in the Twentieth Century Fund studies of the securities markets. He joined the Commission's staff as an attorney in 1942 after several years in private practice, serving first in the Investment Company Division and later in the Division of Corporation Finance, of which he was made Chief Counsel in 1953. He was named Adviser to the Commission in 1959 and in 1960 became Director of the Division of Corporation Finance. He was awarded a Rockefeller Public Service Award by the trustees of Princeton University in 1956 and for a period of 1 year studied the capital markets and the processes of capital formation and of government and other controls in the principal financial centers of Western Europe. In 1961 he was appointed a member of the Council of the Administrative Conference of the United States and received a Career Service Award of the National Civil Service League. Since 1958 he has been lecturer in Securities Law and Regulation at the Law School of George Washington University and is the author of a number of articles on securities regulation published in domestic and foreign professional journals. He took office as a member of the Commission on October 11, 1961, for the term expiring June 5, 1963.

Jack M. Whitney II

Commissioner Whitney was born in Huntington Beach, Calif., on May 16, 1922. He attended Millsaps College in Jackson, Miss., for 2 years, and Northwestern University School of Commerce, from which he received a B.S. degree in 1943. From 1943 to 1946 he was on active duty in the U.S. Naval Reserve, achieving the rank of Lieutenant (junior grade) in the Supply Corps. He was graduated from Northwestern University School of Law in 1949 with the degree of J.D. In law school he was an editor of the law review, and he is a member of Beta Gamma Sigma and Order of the Coif. Following graduation he became associated with the Chicago law firm of Bell, Boyd, Marshall & Lloyd, of which he was a member at the time of his appointment to the Commission. His practice was primarily in the field of corporate finance. He took office as a member of the Commission on November 9, 1961, for the term ending June 5, 1964.

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PART I

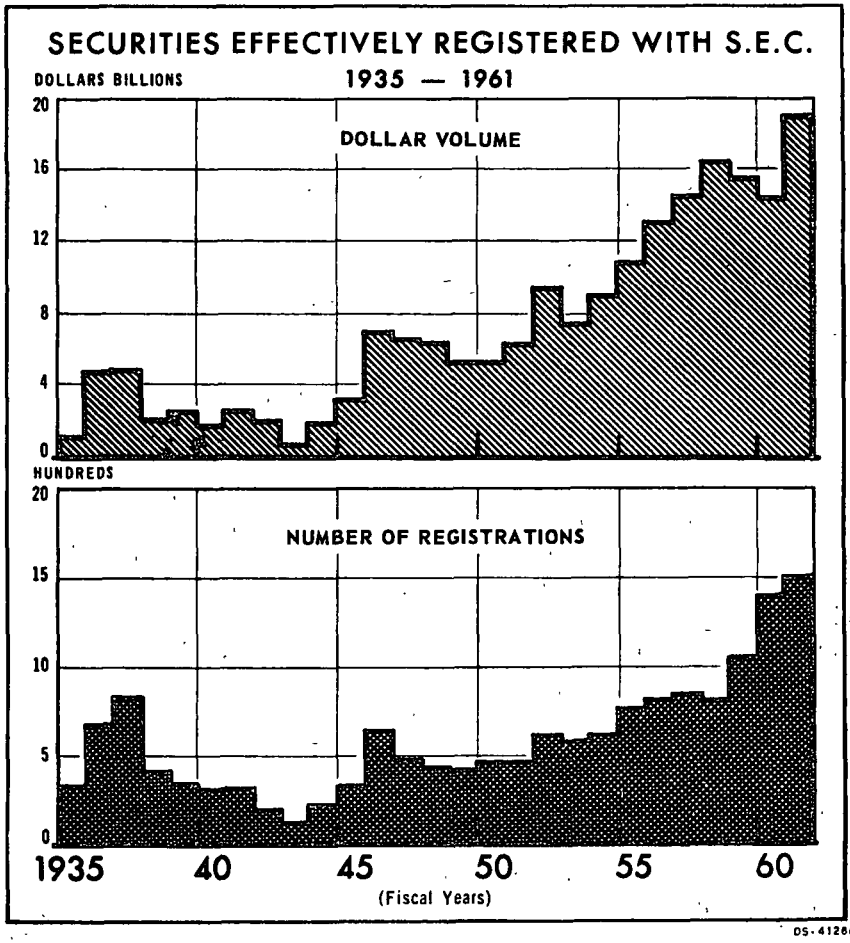
CURRENT PROBLEMS BEFORE THE COMMISSION

The High Level of Activity and Changing Conditions in the Securities Markets

The activity in the security markets of the Nation continued to increase and reached a new peak in fiscal year 1961. This is shown graphically in the chart on page 2, which portrays the successive significant increases that have occurred in recent years in the flotation of new issues of securities for sale to the public. A similar increase has occurred in the volume of trading on the national securities exchanges. In the fiscal year 1961 such trading reached a new peak of 1.97 billion shares with a dollar volume of $57 billion.

These figures reflect a marked growth of public participation in the securities markets. A study made by the New York Stock Exchange shows that during the period 1952–59 the number of shareholders doubled, and that in the last 3 years of that period the number increased by nearly 1⅓ million a year. Correspondingly there has been a large increase in the number of broker-dealers, in the number of their salesmen and in the number of branch offices which they have opened. At the end of the 1961 fiscal year there were 5,500 brokers and dealers registered with the Commission as compared with 3,930 in 1950. The number of customer's men registered with the New York Stock Exchange increased from 10,608 in 1950 to 27,896 in 1961 and the number of customer's men registered with the National Association of Securities Dealers, Inc., increased from 28,794 to 93,351 in the same period. The number of branch offices maintained by member firms of the New York Stock Exchange increased from 1,661 in 1950 to 3,166 at the end of 1960. Some member firms have trebled their retail outlets.

Thus, concomitantly with the influx of a large number of new and presumably inexperienced investors into the market, there has been an influx of new and inexperienced salesmen. At the same time, the increase in the number of branch offices has tended to result in less effective supervision of the salesmen. The problem of supervision is aggravated by the employment of part-time salesmen and salesmen who operate from their private residences. These factors have made more difficult the task of the Commission and the exchange and securities association disciplinary bodies in attempting to insure



that prospective investors receive adequate information and proper advice as to the suitability of particular securities to meet their personal investment needs.

Investment companies have assumed an increasing importance. The number of investment companies registered with the Commission has increased from 366 in 1950 to 663 at the close of the 1961 fiscal year and in the same period the estimated market value of their assets increased from $4.7 billion to $29 billion. In the 1961 fiscal year such companies registered $4.5 billion of new securities for sale to the public, as compared with the total of $19 billion of new securities issues registered for sale by all corporations. In the sale of investment company securities to a larger number of persons, door-to-door salesmen have been utilized and plans are provided whereby such securities may be purchased by a series of periodic payments.

Another phenomenon which has manifested itself is the strong public appeal of new issues of securities and many new issues have moved up sharply in price above the initially established offering price almost from the moment first marketed. In an effort to detect any manipulative or other fraudulent practices contributing to such price increases, the Commission has conducted more market quizzes this year than in any prior year in its history. Detection of such practices is made difficult by the lack of any systematic reporting of prices and volume of transactions in the over-the-counter market such as is available concerning transactions on security exchanges.

Study of Trading and Marketing Practices in the Exchange and Over-the-Counter Markets

In view of the tremendous growth and many new developments in the securities markets, the Commission has welcomed the authorization and special appropriation granted by H.J. Res. 438, enacted shortly after the close of the fiscal year, directing a study of trading and marketing practices on the national securities exchanges and in the over-the-counter market to determine whether exchange and securities association rules, including rules for the expulsion, suspension, or disciplining of members, are adequate for the protection of investors in the light of present conditions, whether the administration of these rules is sufficient and whether additional rules or legislation are required. This study will result in the obtaining and evaluation of much valuable overall information as to distribution and trading practices both on and off the exchanges. The Commission is directed to report the result of its study on or before January 3, 1963, and will promptly submit to the Congress any recommendations for legislation in particular areas which may be shown to be required in the course of the study.

Study of the Implications of the Growth of Investment Companies

As reported in previous reports, the Commission entered into a contract with the Wharton School of Finance and Commerce of the University of Pennsylvania for the preparation of a study of the problems created by the growth in size of investment companies. As discussed in part IX below, a report has now been received covering such subjects as organization and control of open-end investment companies, growth of investment companies, portfolio company control, investment policy, performance, and impact of investment companies on the stock market. A further report dealing with the relationships between open-end investment companies and their investment advisers and principal underwriters is expected to be received by the end of the calendar year 1961. It is anticipated that the information developed in this report will assist in providing a basis

for determination by the Commission of the action which should be taken concerning the problems in these fields and whether specific legislative recommendations should be made by the Commission to the Congress.

The portion of the report yet to be received is of particular interest in view of the stockholders suits, some 50 in number, which have been instituted in the courts during the past 2 years against 18 registered investment companies and in which it is alleged, *inter alia*, that the management or advisory fees paid by the investment companies are grossly excessive.

The Commission has participated in several of these suits as *amicus curiae* in support of plaintiffs' position that the act affords a private Federal right of action for violation of various provisions of the act [1] but has not taken any direct action with respect to merits of the matters involved in the litigation.

Variable Annuity Contracts

The Commission has under study the many problems arising under the Investment Company Act of 1940 in connection with the issuance and sale of variable annuity contracts. On September 26, 1961, after the close of the fiscal year, the President vetoed H.R. 7482, which would have amended the Life Insurance Act of the District of Columbia to permit District life insurance companies to establish certain voting and management procedures with respect to variable annuity contracts. The passage of the bill had been opposed by the Commission. In his veto message the President pointed out that the purchaser of a variable annuity depends largely upon the efficiency and skill of the management in selecting and managing the underlying portfolio securities for the return upon his investment. He stated that the bill failed to give adequate recognition to the basic principle, recognized in the Investment Company Act, that the investor have a voice in the control of his company. He pointed out further that the bill did not resolve the problems under the act and indicated his confidence that the Commission would in the near future be in a position to offer a suggested program for solution of the problem of reconciling with the provisions of the Investment Company Act the operations of life insurance companies which desire to sell variable annuities.

Enforcement Activity

The high level of public interest and participation in the securities markets has offered a fertile field for unscrupulous operators and promoters. To counter fraudulent and other illegal practices in the sale and purchase of securities, the Commission is pursuing a vigorous en-

[1] See the discussion of *Brown* v. *Bullock* and *Brouk* v. *Managed Funds* under "Litigation under the Investment Company Act" in pt. IX of this report.

forcement program. During the fiscal year, 546 antifraud and other regulatory investigations were instituted. Injunction actions were brought in 92 cases, a greater number than in any previous year. In criminal prosecutions 126 convictions were obtained in 45 cases, the largest number of convictions in any fiscal year since the earliest days of the Commission. Inspections were made of 1,627 broker-dealer firms, and the registrations of 55 firms were revoked. Examinations or investigations were initiated in 16 cases to determine whether stop order proceedings should be brought with respect to registration statements filed with respect to new security offerings, and 14 investigations were instituted to determine whether other information filed with the Commission was accurate and adequate. Orders suspending the exemption from registration provided for small security issues were issued in 54 instances. Inspections were conducted of 56 registered investment companies. The most significant of these actions are described in the parts of this report which follow.

Operations from foreign bases continue to plague our enforcement efforts. Despite excellent cooperation from Canadian authorities, it is most difficult to combat fraudulent activities carried on from vantage points outside our jurisdiction.

Registration of New Security Offerings

One of the primary duties of the Commission is the examination of registration statements filed under the Securities Act of 1933 with respect to new security issues proposed to be offered to the public. The unprecedented number of registration statements filed in recent years has taxed the capacity of the Commission's staff to the utmost. The number of such statements filed increased again in the fiscal year 1961 to a new high of 1,830, representing a 12 percent increase over last year. This number may be compared with the total number of registration statements filed in fiscal 1950 of 496.

The problem for the Commission arises not only from the volume of statements, but more particularly from their character. Of the 1,830 statements filed in fiscal 1961, 52 percent, amounting to a record number of 958, were filed by companies that had not previously registered a securities offering. This compares with 28 percent as recently as 1958. The letter of comment technique whereby inadequacies in the registration statement are called to the issuer's attention by our staff and appropriate amendments filed is described in part IV of this report. Needless to say this processing technique is more time consuming where the issuer has had no previous experience in complying with the registration requirements.

The increases in the numbers and change in character of registration statements filed in recent years has far outstripped increases in examining personnel and the median time required to process regis-

tration statements has crept upwards year by year, reaching 55 days from initial filing to effective date in fiscal 1961. For fiscal 1962, under a further increased budget, it has been possible to allocate a personnel increase to the Division of Corporation Finance which it is hoped will result in a decrease in the time required in the examination process.

Management Survey

During the fiscal year the management consulting firm of Booz, Allen & Hamilton conducted a survey of the Commission under contract with the Bureau of the Budget with the consent of the Commission. The general purpose of the survey was to appraise the Commission's organization and operations and to recommend improvements where appropriate. The survey began on July 18, 1960, and the factfinding aspects were completed by October 31, 1960. Printed copies of the survey were made available by the Bureau of the Budget on January 16, 1961, for distribution to appropriate committees of the Congress, interested members of the public, the members and staff of the Commission, and the press.

The report contains the following principal conclusions: (1) the Commission is effectively carrying out the mission assigned to it by the Congress, but additional manpower is required in order to prevent deterioration of regulatory standards; (2) there is an urgent need for a minimum 11 percent increase in manpower above the allocation for fiscal 1961 to meet the increased workload; and (3) certain procedural and organizational changes should be made.

The report encompasses a total of 101 recommendations, 13 outlining the need for additional manpower to permit the Commission to process its workload, 74 relating to procedural changes, 11 pertaining to organizational changes, and 3 pertaining to training of new personnel.

As of August 31, 1961, 82 recommendations had been implemented or otherwise acted upon, and the remaining 19 were under study.

It may be noted that the appropriation for fiscal 1962 provides for an average employment approximately 14 percent above that in 1961.

PART II

LEGISLATIVE ACTIVITIES

Statutory Amendments in the 86th Congress

At the beginning of the fiscal year, amendments to the Investment Advisers Act of 1940 and the Trust Indenture Act of 1939 were enacted by the 86th Congress and signed by the President, becoming Public Laws 86–750 and 86–760, respectively.

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

Public Law 86–760 amends section 304(c) of the Trust Indenture Act of 1939. Under that section the Commission was required to grant an exemption from one or more of the provisions of the act if, at the time the application for exemption was filed, securities were outstanding under the indenture involved which were outstanding within 6 months of the enactment of the act, that is by February 4, 1940, and if compliance would require consent of the holders of outstanding securities, or would impose an undue burden of the issuer, having due regard for the public interest and the interests of investors. As amended, section 304(c) now requires the Commission to grant the exemption in the same situation if there are securities outstanding under the indenture which were outstanding either on February 4, 1940, or such securities were outstanding on January 1, 1959.

The Commission had originally made a number of proposals to the 86th Congress for amendment of the Federal securities law. The proposals were intended to strengthen the safeguards and protections afforded the public by tightening jurisdictional provisions, correcting certain inadequacies revealed through administrative experience and facilitating criminal prosecutions and other enforcement activities.

Hearings on the bills were held and modifications of the proposals were passed by the Senate and reported out by the Committee on Interstate and Foreign Commerce of the House of Representatives. With the exceptions noted above, however, they were not enacted into law. The Commission's proposals and the action taken by Congress concerning them are discussed in the 25th annual report, pages 9–11 and the 26th annual report, pages 9–10.

An amendment enacted to section 4(a) of the Securities Exchange Act of 1934 provides that a member of the Commission, after the expiration of his term, shall continue in office until his successor is appointed and qualified, except that he may not continue beyond the expiration of the next session of Congress subsequent to the expiration of his term in office.[1]

Congressional Action and Hearings in the 87th Congress

1. *H.J. Res. 438.*—On June 27, 1961, Chairman Cary and other members of the Commission appeared before the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce, House of Representatives, to testify on H.J. Res. 438. The resolution, which was introduced by Representative Peter Mack, provided for the amendment of the Securities Exchange Act of 1934 to authorize and direct the Commission to make a study and investigation of the adequacy, for the protection of investors, of the rules of national securities exchanges and national securities associations, including rules for the expulsion, suspension, or disciplining of members for conduct inconsistent with just and equitable principles of trade. The resolution also directed the Commission to report to the Congress on or before January 3, 1963, the results of its study and investigation, together with its recommendations, including recommendations for such legislation as the Commission deems advisable. An appropriation of $750,000 with which to carry out the study and investigation was authorized and $412,000 was appropriated for this purpose for the 1962 fiscal year.

Chairman Cary testified that the Commission supported the resolution and was of the opinion that a thorough study of the over-the-counter market and of the exchanges is desirable. He pointed out that the Commission's present budget is not enough to support such a study and investigation and that the Commission is virtually forced to concentrate all of its funds and manpower upon immediate problems.

Chairman Cary discussed, as tentative areas of inquiry under the study and investigation, the over-the-counter market generally, the lack of information concerning over-the-counter securities, the rules

[1] Public Law 86–619. A correcting amendment relating to the salary of the Chairman was subsequently embodied in H.R. 10366 and enacted into law. Public Law 86–771.

of the exchanges, the growth of public participation and trading volume, the changes in methods of distribution and marketing, and certain problems in connection with the employment of credit in the securities markets and distribution of securities through the facilities of the exchanges.

A modification suggested by Chairman Cary was incorporated in the resolution and after the end of the fiscal year it was passed by the House of Representatives and the Senate and was signed by the President.

2. *Reorganization Plan No. 1 and S. 2135.*—Chairman Cary and other members of the Commission appeared before various committees of the Senate and House of Representatives in connection with hearings on Reorganization Plan No. 1, which concerned the Commission's authority to delegate, by rule or order, any of its functions. Testimony was given on May 18, 1961, before a subcommittee of the Committee on Government Operations, House of Representatives, on June 2, 1961, before a subcommittee of the Senate Committee on Banking and Currency and on June 6, 1961, before the Committee on Government Operations of the Senate.

In substance, Chairman Cary testified that he believed that the plan would serve to relieve the Commission from dealing with many matters of lesser importance and thus conserve its time for the consideration of major matters of policy and planning, that under the plan the rights of any party appearing before the Commission would continue to be preserved, that the Commission would retain the right to review any delegated action and that the plan would expand and clarify the Commission's already existing powers of delegation.

Reorganization Plan No. 1 was disapproved by the Senate, and on June 22, 1961, Senator Harrison A. Williams, Jr. (for himself and for Senator Jacob K. Javits), introduced S. 2135, which also dealt with the Commission's authority to delegate its functions, but which differed in certain respects from Reorganization Plan No. 1. Although no hearings were held on S. 2135, the Commission submitted comments on the bill in which it suggested amendments which it believed would improve the bill, and indicated that it favored the adoption of S. 2135 subject to the suggested amendments. On August 24, 1961, the Committee on Banking and Currency, U.S. Senate, favorably reported S. 2135 with amendments as suggested by the Commission, and on September 1, 1961, the Senate passed the bill as reported.

3. *H.R. 14.*—On June 8, 1961 Chairman Cary and members of the Commission appeared before the Committee on Interstate and Foreign Commerce, House of Representatives, to testify on H.R. 14, a bill to promote the efficient, fair, and independent operation of Federal regulatory agencies. The Chairman testified that the Commission is in

accord with the purposes of the bill, but that certain provisions of the bill might create problems in connection with the operation of the Commission.

Legislative Proposals in the 87th Congress

The following bills relating to the Federal securities laws were introduced in the 87th Congress during the fiscal year 1961.

S. 755, introduced by Senator Homer E. Capehart, would amend section 31 of the Securities Exchange Act of 1934, which now provides an annual fee for registration of exchanges of one five-hundredth of 1 percent of the aggregate dollar amount of stock exchange transactions, equal to 2 cents per $1,000. Under the bill, this registration fee would be increased to a rate of 5 cents per $1,000 and there would be a similar registration fee of 5 cents per $1,000 on transactions effected otherwise than on a national securities exchange.[2]

S. 1117, introduced by Senator Maurine B. Neuberger, would amend section 36 of the Investment Company Act of 1940 to provide an investigatory power in the board of directors of a registered investment company, or the investment adviser or principal underwriter for such a company, with respect to among other things, securities transactions and loans by an officer, director, employee, or agent of the registered investment company or investment adviser.[3]

S. 1842, introduced by Senator John A. Carroll (for himself and Senator Philip A. Hart), would, among other things, amend section 4(a) of the Securities Exchange Act of 1934 to provide for a term of 10 years for members of the Commission.

H.R. 1118, introduced by Representative J. Arthur Younger, would, among other things, amend the Securities Exchange Act of 1934 to provide for the assessment and collection of increased fees to cover the cost of operation of this Commission.[4]

H.R. 1211, introduced by Representative Abraham Multer, would amend section 16(a) of the Securities Exchange Act of 1934 to provide that officers and directors of any issuer of registered securities report periodically the extent to which, and the purposes for which, their holdings of such securities are pledged.[5]

H.R. 1218, also introduced by Representative Multer, would remove the exemption provided by section 3(a)(11) of the Securities Act of 1933 for a security offering confined to the residents of the

[2] See the Commission's 25th Annual Report, p. 12, for a discussion of a similar proposal in the 86th Cong.

[3] See the Commission's 26th Annual Report, p. 10, footnote 5, for a discussion of a similar proposal made in the 86th Cong.

[4] See the Commission's 26th Annual Report, p. 11, for a discussion of a similar proposal made in the 86th Cong.

[5] An identical bill, H.R. 1028, was introduced by Representative Multer in the 86th Cong. See the Commission's 25th Annual Report, p. 13.

state within which the issuer is both incorporated and doing business.[6]

H.R. 2799, introduced by Representative Francis E. Walter, would amend the Investment Company Act of 1940. The bill is substantially similar to S. 1117, which is discussed above.

H.R. 6591, introduced by Representative Abraham Multer, would amend the Securities Act of 1933 and the Investment Company Act of 1940 with respect to the status of variable annuity policies and companies which offer such policies to the public.

H.R. 6863, which was also introduced by Representative Multer, would amend the Investment Advisers Act of 1940 to require disclosure by investment advisers of transactions for their own account in any investments of the type with respect to which they render advisory services.

A substantial amount of time was devoted to matters pertaining to other legislative proposals referred to the Commission for comment and to congressional inquiries. During the fiscal year a total of 41 legislative proposals were analyzed. In addition, numerous congressional inquiries relating to matters other than specific legislative proposals were reviewed and answered.

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[6] An identical bill, H.R. 884, was introduced by Representative Multer in the 86th Cong. See the Commission's 25th Annual Report, p. 13.

PART III

REVISION OF RULES, REGULATIONS, AND FORMS

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

A number of changes were made during the 1961 fiscal year in the rules, regulations, and forms under the various statutes administered by the Commission. Other changes which the Commission announced in preliminary form and on which it invited public comments were pending at the end of the fiscal year. The changes made during the fiscal year and those pending at the end of the year are described below.

GENERAL

Revision of Rules and Forms Concerning the Reporting of Securities Holdings and Transactions

The Commission, during the fiscal year, adopted revised forms for reporting security holdings and transactions pursuant to section 16(a) of the Securities Exchange Act of 1934, section 17(a) of the Public

[1] The rules and regulations of the Commission are published in the Code of Federal Regulations. The rules adopted under the various statutes administered by the Commission appear in the following parts of title 17 of that code:

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

Utility Holding Company Act of 1935 and section 30(f) of the Investment Company Act of 1940.[2]

Previously, the following separate forms were prescribed for statements under each of the statutes referred to: Forms 4, 5, and 6 under the Securities Exchange Act; forms U–17–1 and U–17–2 under the Public Utility Holding Company Act; and forms N–30F–1 and N–30F–2 under the Investment Company Act. All of these forms were consolidated into two forms designated forms 3 and 4 which are used, respectively, for the filing of initial statements of beneficial ownership of securities and statements of changes in such beneficial ownership under all three of these statutes. In connection with the adoption of the revised forms the Commission adopted certain changes in the related rules under the three statutes. The amended rule 30f–1 under the Investment Company Act provides that no statements need be filed pursuant to section 30(f) of that act by an affiliated person of an investment adviser in his capacity as such if such person is solely an employee, other than an officer, of such investment adviser.

The draft of the proposed rule changes published for comment contained a definition of the term "person" which would have included in such term any group or syndicate the members of which are acting in concert with respect to the acquisition, disposition, holding or voting of securities of an issuer. The draft also included a proposed rule relating to the reporting of interests in securties held by corporations and business trusts. The Commission concluded that these two proposals required further study and consideration and did not include them in the revision.

Amendment of Rules Concerning Disclosure of Nonpublic Records by Employees

The Commission amended the applicable provisions of its rules of practice and related rules under the laws it administers to extend the prohibition of the rules against disclosure by Commission employees of nonpublic information in the files of the Commission.[3]

Heretofore, these rules prohibited officers and employees of the Commission, without its specific authorization, from making available to any person other than a member, officer, or employee of the Commission, whether in response to a subpoena or otherwise, any information or document obtained during the course of any private investigation conducted by the Commission. The amendment extends this prohibition to information in "any other nonpublic records of the Commission," whether obtained in an investigation or otherwise.

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[2] Securities Exchange Act Release No. 6487, Holding Company Act Release No. 14383, Investment Company Act Release No. 3207 (Mar. 9, 1961).

[3] Securities Act Release No. 4344, Securities Exchange Act Release No. 6514, Holding Company Act Release No. 14398, Trust Indenture Act Release No. 151 (Apr. 5, 1961).

A similar amendment was made in rule 122 under the Securities Act of 1933, rule 0–4 under the Securities Exchange Act of 1934, rule 104(c) under the Public Utility Holding Company Act of 1935, and rule 0–6 under the Trust Indenture Act of 1939.

THE SECURITIES ACT OF 1933

Amendment of Rule 151

Rule 151 under the Securities Act of 1933, which defines the term "public offering," was amended to exclude under certain conditions the offering of the stock of small business investment companies to small business concerns pursuant to the requirements of the Small Business Investment Act of 1958.[4]

Under the former section 304(d) of the Small Business Investment Act, whenever a small business investment company provided capital to a small business concern, the small business investment company was required to offer, and the small business concern was required to purchase, a certain amount of stock of the small business investment company. Under the provisions of section 304(c) of the Act, as amended by Public Law 86–502, a small business concern has the right but is not required to acquire such stock when capital is provided. The purpose of the amendment to rule 151 was to conform the provisions of the rule to the amended provisions of the Act.

Proposed Rule 155

The Commission during the previous fiscal year published notice that it had under consideration a proposed new rule which would be designated rule 155.[5] The purpose of this proposed rule was to make clear that a public offering of an immediately convertible security by persons who purchased such security from an issuer in a "private placement," or a public offering of the underlying security received by such persons upon conversion of the convertible security, may be subject to the registration provisions of the Securities Act. Reference to this matter was made in the Commission's annual report.[6]

The matter was still under consideration at the close of the 1961 fiscal year.

Adoption of Rules 234 and 235; Rescission of Regulation A–R (Rules 230–233)

The Commission adopted rule 234 which provides a revised exemption from registration under the Securities Act of 1933 for certain

[4] Securities Act Release No. 4264 (Aug. 15, 1960).
[5] Securities Act Release No. 4162 (Dec. 2, 1959).
[6] See 26th annual report, p. 16.

notes secured by a first lien on real estate. The new rule supersedes regulation A–R (rules 230–233) which has been rescinded.[7]

The new rule makes clear what has been the Commission's long-standing interpretation, that the exemption is available only for notes directly secured by a first lien on real estate, and hence is unavailable for collateral trust notes or participations in an underlying note, even though such underlying note is secured by a first lien on real estate, or for investment contracts involved in the offering of first lien notes. The new rule also provides that the amount of first lien indebtedness for which an exemption is available shall not exceed 75 percent of the appraised value of the property securing the notes. This is a liberalization of the previous requirement that all indebtedness against the property, whether secured by senior or junior liens, shall not exceed 75 percent of the appraised value of the property.

The Commission also adopted rule 235 which provides an exemption from registration under the act for securities of certain cooperative housing corporations. Stock or other securities representing membership in a cooperative housing corporation are exempt where the securities are issued only in connection with the sale or lease of dwelling units in the housing project and are transferable by the purchaser only in connection with the transfer of such dwelling units.[8]

Amendments to Rule 472

Rule 472, which relates to the filing of amendments to registration statements filed under the Securities Act, was amended in certain respects during the fiscal year to facilitate the examination of such statements.

One amendment requires that where an amendment to a registration statement relates to financial statements not included in the prospectus, five additional copies of the amended financial statements shall be furnished.[9]

The rule was also amended to require that every amendment to a registration statement shall be accompanied by two additional copies of the amendment marked to indicate clearly and precisely the changes effected in the registration statement by the amendment. If the amendment alters the text of the prospectus or other material previously filed as a part of the registration statement, the changes must be indicated by underscoring or in some other appropriate manner.[10]

The purpose of the latter amendment is to avoid the necessity for the staff, in reviewing the amendment, to reread the entire prospectus

[7] Securities Act Release No. 4305 (Dec. 8, 1960).
[8] *Id.*
[9] Securities Act Release No. 4289 (Oct. 25, 1960).
[10] Securities Act Release No. 4351 (Apr. 11, 1961).

or other document where only a portion of the material has been altered. The amendment to the rule conforms with present administrative practice.

Amendments to Rules 473 and 478

Section 8(a) of the Securities Act of 1933 provides that registration statements filed under that act shall become effective on the 20th day after filing or such earlier date as the Commission shall determine. The filing of an amendment to the statement establishes a new filing date and starts the 20-day period running anew. In order to prevent registration statements from becoming effective through the lapse of time and before they have been amended to cure deficiencies therein, it has been the practice of registrants to file technical or so-called "delaying" amendments to start the waiting period running again.

The Commission has amended rule 473 to permit the filing, either with a registration statement or at a later date, of an amendment which will operate to delay the effective date of the statement without the necessity of filing a delaying amendment at the expiration of each successive 20-day waiting period.[11] The delaying effect of such an amendment may be terminated in either of two ways. One way is by filing a further amendment which specifically states that the registration statement shall thereafter become effective in accordance with section 8(a) of the act. The other way is by the Commission's granting acceleration of the effective date of the registration statement.

The Commission has also adopted an amendment to rule 478 to permit any amendment filed pursuant to rule 473 to be signed by the registrant or its agent for service.[12]

Amendment of Form S–8

Form S–8 is used for registration under the Securities Act of certain equity securities offered pursuant to unincorporated stock purchase or similar plans for the benefit of employees of the issuer of such equity securities and for registration of the interests in such plans. Issuers using this form are required to deliver a copy of the issuer's latest annual report with the prospectus to each eligible employee. The issuer is also required to include in the registration statement an undertaking to transmit to all employees participating in the plan at the time and in the manner such material is sent to such stockholders, copies of all reports, proxy statements and other communications distributed to its stockholders generally. Copies of such material must also be furnished to the Commission.

The foregoing requirements have been amended to provide that such information need not be transmitted to eligible or participating em-

[11] Securities Act Release No. 4329 (Feb. 21, 1961).
[12] *Id.*

ployees pursuant to the requirements of form S–8 where such employees are already stockholders of the issuer and receive copies of such material as such stockholders.[13] The requirement of furnishing copies of such material to the Commission has also been amended to provide that they need not be furnished pursuant to the instructions in form S–8 where they are otherwise furnished pursuant to other requirements of the Commission. The amendments also place the duty of complying with these requirements upon the issuer of the securities offered pursuant to the plan; heretofore such duty was, in part, placed upon the "employer," which might be a company other than the issuer.

Proposed Form S–11 for Securities of Certain Real Estate Companies

During the fiscal year the Commission published notice that it has under consideration a proposed form for registration under the Securities Act of securities of certain real estate companies.[14] The proposed form, which would be designated form S–11, would be used for registration of securities issued by real estate investment trusts, as defined in the recent amendments to the Internal Revenue Code, and by real estate syndicates, partnerships, joint ventures, and other incorporated and unincorporated issuers whose business is primarily that of acquiring and holding real estate or interests in real estate for the purpose of investment.

A number of comments have been received in regard to the proposed new form and the form was being further considered in the light of such comments at the end of the fiscal year.

Amendment of Form S–12

Form S–12 is used for registration under the Securities Act of certain American depositary receipts against outstanding foreign securities. This form requires the inclusion in the registration statement of an undertaking to furnish to the Commission copies of annual and other periodic reports, proxy statements, and other communications distributed to the security holders by the issuer of the underlying securities. The form of this undertaking has been amended to call only for the furnishing of such information in cases where it is not otherwise transmitted to the Commission.[15]

THE SECURITIES EXCHANGE ACT OF 1934

Amendment of Rule 14a–6

Rule 14a–6 which relates to the filing of proxy statements, forms of proxy, and other soliciting material was amended to provide that where amended proxy material is filed with the Commission two

[13] Securities Act Release No. 4328 (Feb. 20, 1961).
[14] Securities Act Release No. 4347 (Apr. 10, 1961).
[15] Securities Act Release No. 4328 (Feb. 20, 1961).

copies of such material (or in the case of investment companies, three copies) shall be marked to show the differences between it and the material as previously filed.[16]

The purpose of the amendment is to expedite the processing of material by making it unnecessary in reviewing proxy material to reread in detail material which is substantially the same as material previously filed.

The amendment represents further action on the part of the Commission to expedite in every practicable way the examination of material filed with it in order to reduce the backlog of unprocessed material.

Proposed Rule 15d–21

Where interests of participation in employee stock purchase, savings, or similar plans have been registered under the Securities Act of 1933 and the securities offered plus those outstanding amount to $2 million or more reports for such plans are required to be filed pursuant to section 15(d) of the Securities Exchange Act of 1934. In the absence of any exemption, these reports are required even though the issuer of the securities offered pursuant to the plan files reports with the Commission pursuant to section 13 or 15(d) of that act. Under a proposed rule 15d–21, on which public comments have been invited, such plans would be exempt from the operation of section 15(d) of the act if the issuer files annual reports on form 10–K and furnishes the information, financial statements and other documents required by that form with respect to the plan.[17]

Proposed Rule 19a2–1

During the 1960 fiscal year the Commission invited public comments on a proposed rule 19a2–1 under the act which would provide that the failure or refusal of an issuer or its officers, directors, employees, or controlling persons to cooperate with the Commission in proceedings under section 19(a)(2) or investigations under section 21 of the act with respect to compliance with section 12 or 13 of the act shall be deemed a failure to comply with the provisions of the act or the rules and regulations thereunder for the purpose of section 19(a)(2).[18] The proposed rule would provide a basis for the issuance of an order under section 19(a)(2) denying, suspending, or withdrawing the registration of a security in such cases. This matter was pending at the end of the fiscal year.

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[16] Securities Exchange Act Release No. 6537 (Apr. 24, 1961).

[17] Securities Exchange Act Release No. 6576 (June 13, 1961).

[18] Securities Exchange Act Release No. 6297 (June 23, 1960): see 26th annual report, p. 21.

Amendment of Form 8–K

The Commission has invited public comments on certain proposed amendments to form 8–K.[19] These proposed amendments are designed to bring to the attention of investors promptly information regarding material changes affecting the company or its affairs where it appears that the changes are of such importance that they should be reported promptly and not deferred to the end of the fiscal year. The amendments relate to matters such as the pledging of securities of the issuer or its affiliates, changes in the board of directors otherwise than by stockholder action, the acquisition or disposition of significant amounts of assets, and transactions with insiders. This matter was pending at the end of the fiscal year.

Amendments to Form 10–K

Form 10–K is used for annual reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. An amendment to this form, adopted during the fiscal year, requires registrants which are not subject to the Commission's proxy rules to furnish to the Commission for its information copies of their proxy soliciting material in the same manner as they are required to furnish copies of their annual reports to stockholders. Another amendment requires registrants which do not furnish annual reports or proxy material to their stockholders to include a statement to that effect in their annual report on form 10–K.[20]

In connection with the proposed rule 15d–21, described above, the Commission also invited public comments on certain proposed amendments to form 10–K which would require disclosure with respect to employee stock purchase, savings, or similar plans.[21] The required information would be furnished by the sponsoring company and the plan itself would be exempted by the proposed rule from the duty of filing reports with the Commission.

THE INVESTMENT COMPANY ACT OF 1940

Amendment of Rule 3c–1

The Commission during the fiscal year amended rule 3c–1 under the Investment Company Act of 1940 which defines the term "public offerings" to exclude under certain conditions the offering of the stock of small business investment companies to small business concerns pursuant to the requirements of the Small Business Investment Act of 1958.[22]

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[19] Securities Exchange Act Release No. 5979 (June 9, 1959); see 26th annual report, p. 22.

[20] Securities Exchange Act Release No. 6475 (Feb. 20, 1961).

[21] Securities Exchange Act Release No. 6576 (June 13, 1961).

[22] Investment Company Act Release No. 3095 (Aug. 15, 1960).

The purpose of the amendment to rule 3c–1 was to conform the provisions of the rule to the amended provisions of the Small Business Investment Act of 1958.[23]

Proposal to Adopt Exemptive Rules Applicable to Licensed Small Business Investment Companies

After the close of the fiscal year 1961 the Commission was giving consideration to the promulgation of certain rules applicable to small business investment companies licensed by the Small Business Administration under the Small Business Investment Company Act of 1958. The Commission has previously adopted rules 3c–1, 3c–2, and 14a–1 (Investment Company Act Release Nos. 2828, 2909, and 3011, respectively), excluding certain activities of small business investment companies or the ownership of their securities from various provisions of section 3(c)(1) of the act and permitting the use by a small business investment company of regulation E filings under the Securities Act of 1933 in raising its initial capital as required by section 14(a) of the act. The rules now under consideration would be applicable only to licensed small business investment companies and would exempt them from various provisions of sections 17(a), 17(d), and 18(c) of the Investment Company Act.[24]

Adoption of Form N–5R

Shortly after the beginning of the fiscal year, the Commission adopted form N–5R for annual reports which small business investment companies are required to file with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934, or pursuant to section 30(a) of the Investment Company Act of 1940.[25] The adoption of this form was referred to in the 26th annual report.[26]

INVESTMENT ADVISERS ACT OF 1940

Amendment of Form ADV and Rule 204–1 and Adoption of Form ADV–SUP

In September 1960 the Investment Advisers Act was amended in many important respects. Among other things, it now provides new grounds for denying, suspending, or revoking the registration of an investment adviser. Before the amendments were adopted the provisions of section 203(d) of the act provided, in substance, that the Commission could deny, suspend, or revoke the registration of an investment adviser if it found that such action was in the public interest and that the investment adviser, or any partner, officer, director, or controlling person: (1) within 10 years of the order, was convicted

[23] See statement in regard to rule 151, *supra*, p. 14.
[24] Investment Company Act Release No. 3324 (Sept. 12, 1961).
[25] Investment Company Act Release No. 3085 (Aug. 1, 1961).
[26] P. 28.

of a felony or misdemeanor involving the purchase or sale of a security or arising out of activities as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or employee of an investment company, bank, or insurance company; or (2) was subject to an injunction based upon similar conduct or activity; or (3) had willfully made any untrue statement or misleading omission of a material fact in any application or report filed with the Commission.

As amended, the act now provides additional bases for denial, suspension, or revocation of registration: (1) conviction of a felony or misdemeanor involving mail fraud; fraud by wire, telephone, radio, or television; or embezzlement, fraudulent conversion, or misappropriation of funds or securities; (2) willful violation of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, or any rule or regulation under any of such acts; or (3) aiding or abetting any other person's violation of any of such acts, rules, or regulations. The amendments also provide that any of the above disqualifications on the part of a controlled person, as well as a partner, officer, director, or controlling person, may be a basis for denial, suspension, or revocation.

Effective May 1, 1961, the Commission amended form ADV, the form of application for registration and to amend such an application, to require the furnishing of information to disclose whether any of the persons mentioned above is subject to any disqualification under the act, as amended; to obtain certain additional information; to clarify the instructions; to simplify its use; and to simplify its processing by the Commission. Rule 204–1 under the act was also amended to require every investment adviser whose registration is effective on May 1, 1961, and every investment adviser who has an application for registration pending on that date, to file a new form ADV–SUP as a supplement to his application not later than June 30, 1961. Form ADV–SUP requires the same information as form ADV as amended.[27]

Adoption of Rule 204–2

Section 204–2 of the act, as amended, provides that every investment adviser (other than one specifically exempted from registration pursuant to section 203(b)) shall make, keep, and preserve such accounts, correspondence, memoranda, papers, books, and other records, and make such reports, as the Commission by rules and regulations may prescribe as necessary or appropriate in the public interest or for protection of investors. Under this section such books and other records are subject to inspection by Commission representatives.

[27] Investment Advisers Act Release No. 112.

On May 25, 1961, the Commission adopted rule 204–2, effective July 1, 1961, to require investment advisers subject to registration to maintain specified books and records relating to their business. In addition to the usual journals and ledgers, the rule requires the maintenance of records with respect to memoranda of orders given and instructions received for the purchase, sale receipt or delivery of securities, and originals or copies of certain communications received or sent by the investment adviser. Additional requirements are applicable to investment advisers who have custody or possession of any funds or securities of any client, and to investment advisers who render any supervisory or management service to any client. The rule specifies the period during which such books and records must be preserved and also provides that an investment adviser, before ceasing to conduct business, must arrange for and be responsible for the preservation of his books and records for the remainder of the period specified in the rule, and must notify the Commission of the place where such books and records will be maintained during such period.[28]

Proposed Rule 206(4)–1

Section 206 of the Investment Advisers Act of 1940, as amended, contains a new subsection (4) which prohibits an investment adviser from engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, and gives the Commission the power by rules and regulations to define and prescribe means reasonably designed to prevent such acts, practices, and courses of business.

On April 4, 1961, the Commission announced its proposal to adopt rule 206(4)–1 to define certain advertisements by investment advisers to be fraudulent, deceptive, or manipulative within the meaning of section 206(4) of the act. The proposed rule is intended to implement the statutory mandate by foreclosing the use of advertisements which have a tendency to mislead or deceive clients or prospective clients.

The proposed rule would prohibit advertisements which contain testimonials or which call attention to specific past recommendations made by the investment advisers which would have been profitable. Such advertisements are generally misleading because by their very nature they emphasize the comments and activities favorable to the adviser and ignore those which are unfavorable. Other provisions of the rule would specify the circumstances under which advertisements offering graphs, charts, formulas, etc. could be used, and would

[28] Investment Advisers Act Release No. 114.

prohibit advertisements which represent that any report, analysis, or other service can be obtained free or without charge unless it is entirely free and subject to no conditions or obligations. The rule would also include a general prohibition against the use of advertisements containing untrue or misleading statements.[29]

The Commission has received many comments and suggestions on this proposal and these are being studied to determine what changes should be made before any further action is taken on the proposal.

[29] Investment Advisers Act Release No. 113.

PART IV

ADMINISTRATION OF THE SECURITIES ACT OF 1933

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

DESCRIPTION OF THE REGISTRATION PROCESS

Registration Statement and Prospectus

Registration of securities under the act is effected by filing with the Commission a registration statement on the applicable form containing the prescribed disclosure. When a registration statement relates, generally speaking, to a security issued by a corporation or other private issuer, it must contain the information, and be accompanied by the documents, specified in schedule A of the act; when it relates to a security issued by a foreign government, the material specified in schedule B must be supplied. Both schedules specify in considerable detail the disclosure which should be made available to an investor in order that he may make an informed decision whether to buy the security. In addition, the act provides flexibility in its ad-

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

In general the registration statement of an issuer other than a foreign government must describe such matters as the names of persons who participate in the direction, management, or control of the issuer's business; their security holdings and remuneration and the options or bonus and profit-sharing privileges allotted to them; the character and size of the business enterprise, its capital structure, past history and earnings, and its financial statements, certified by independent accountants; underwriters' commissions; payments to promoters made within 2 years or intended to be made; acquisitions of property not in the ordinary course of business, and the interest of directors, officers and principal stockholders therein; pending or threatened legal proceedings; and the purpose to which the proceeds of the offering are to be applied. The prospectus constitutes a part of the registration statement and presents the more important of the required disclosures.

Examination Procedure

The staff of the Division of Corporation Finance examines registration statements for compliance with the standards of accurate and fair disclosure established by the act and usually notifies the registrant by an informal letter of comment of any material respects in which the statement appears to fail to conform to those requirements. The registrant is thus ordinarily afforded an opportunity to file a curative amendment. In addition, the Commission has power, after notice and opportunity for hearing, to issue an order suspending the effectiveness of a registration statement. In certain cases, such as where a registration statement is so deficient as to indicate a willful or negligent failure to make adequate disclosure, no letter of comment is sent and the Commission either institutes an investigation to determine whether stop-order proceedings should be instituted or immediately institutes stop-order proceedings. Information about the use of this "stop order" power during 1961 appears below under "Stop Order Proceedings."

Time Required to Complete Registration

Because prompt examination of a registration statement is important to industry, the Commission endeavors to complete its analysis in as short a time as possible. The act provides that a registration

statement shall become effective on the 20th day after it is filed. However, the filing of any amendment thereto establishes a new filing date for the purpose of the 20-day period. This waiting period is designed to provide investors with an opportunity to become familiar with the proposed offering. Information disclosed in the registration statement is disseminated during the waiting period by means of the preliminary form of prospectus. The Commission is empowered to accelerate the effective date so as to shorten the 20-day waiting period where the facts justify such action. In exercising this power, the Commission is required to take into account the adequacy of the information respecting the issuer theretofore available to the public, the facility with which investors can understand the nature of and the rights conferred by the securities to be registered, and their relationship to the capital structure of the issuer, and the public interest and the protection of investors. The note to rule 460 under the act indicates, for the information of interested persons, some of the more common situations in which the Commission feels that the statute generally requires it to deny acceleration of the effective date of a registration statement.

The number of calendar days which elapsed from the date of the original filing to the effective date of registration for the median (average) registration statement with respect to the 1,389[1] registration statements that became effective during the 1961 fiscal year was 55 compared with 43 days for 1,275 registration statements in fiscal year 1960 and 28 days for 925 registration statements in fiscal year 1959. The increase in the elapsed time has been due primarily to the cumulative effect of the unprecedented volume of registration statements filed, particularly those filed by issuers that had never before filed under the Act, and the lack of sufficient number of examining personnel to process such a volume. The number of registration statements filed during fiscal year 1961 was 1,830, as compared with 1,628 and 1,226 in fiscal years 1960 and 1959, respectively.[2]

The following table shows by months during the 1961 fiscal year the number of calendar days for the median registration statement during each of the three principal stages of the registration process, the total elapsed time and the number of registration statements effective:

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[1] Excludes the 163 registration statements of mutual fund companies that became effective during fiscal year 1961 that were filed pursuant to the provisions of sec. 24(e) of the Investment Company Act of 1940. The total elapsed time on these 163 registration statements was 15 calendar days for the average registration statement.

[2] These figures include 163, 159, and 153 for fiscal years 1961, 1960, and 1959, respectively, registration statements filed by mutual fund companies pursuant to the provisions of sec. 24(e) of the Investment Company Act of 1940.

Time in registration under the Securities Act of 1933 by months during the fiscal year ended June 30, 1961

NUMBER OF CALENDAR DAYS

Months	From date of original filing to date of staff's letter of comment	From date of letter of comment to date of filing amendment thereafter	From amendment after letter to effective date of registration	Total number of days in registration	Number of registration statements effective [1]
July 1960	44	11	7	62	104
August	40	10	7	57	100
September	40	11	7	58	105
October	36	11	7	54	115
November	37	10	7	54	119
December	39	12	7	58	87
January 1961	39	11	7	57	92
February	45	14	7	66	85
March	40	11	7	58	111
April	33	9	5	47	133
May	34	9	6	49	178
June	40	10	6	56	160
Fiscal 1961 for median effective registration statement	39	10	6	55	1,389

[1] See footnote 1, *supra*.

VOLUME OF SECURITIES REGISTERED

During the fiscal year 1961, 1,507 statements in the amount of $19.1 billion became fully effective under the Securities Act of 1933, a record both in number and dollar amount. The number of statements increased 8 percent over the preceding year while dollar amount increased 33 percent or $4.7 billion. Not only was there a continuation of the large volume of small issues but also an increase in the registrations covering large issues. The chart on page 2, part I, shows the number and dollar amount of fully effective registrations from 1935 to 1961.

These figures cover all registrations which became fully effective including new issues sold for cash by the issuer, secondary distributions and securities registered for other than cash sale, such as exchange transactions, issues reserved for conversion and issues reserved for options. Of the dollar amount of securities registered in 1961, 74 percent was for the account of issuers for cash sale, 18.7 percent for account of issuers for other than cash sale and 7.3 percent was for the account of others, as shown below.

Account for which securities were registered under the Securities Act of 1933 during the fiscal year 1961 compared with the fiscal years 1960 and 1959

	1961 in millions	Percent of total	1960 in millions	Percent of total	1959 in millions	Percent of total
Registered for account of issuers for cash sale	$14,115	74.0	$10,908	75.9	$12,095	77.3
Registered account of issuers for other than cash sale	3,563	18.7	2,407	16.8	2,746	17.5
Registered for account of others than issuers	1,392	7.3	1,051	7.3	815	5.2
Total	19,070	100.0	14,367	100.0	15,657	100.0

Securities to be sold for cash sale for account of issuer amounted to $14.1 billion, an increase of $3.2 billion over the previous year. This reflects increases of $1.9 billion in debt securities and $1.3 billion in common stock. Debt securities made up $6.1 billion of the 1961 volume, preferred stock $250 million, and common stock $7.7 billion. More than half of the common stock was registered by investment companies. The number of statements, total amounts registered and classification by type of security for issues to be sold for cash for account of the issuing company is shown for each of the fiscal years 1935 through 1961 in appendix table 1. More detailed information for 1961 is given in appendix table 2.

Two industries, communications and manufacturing, showed marked increases over fiscal year 1960 in the dollar amounts registered for cash sale. Communication companies registered $2.4 billion of securities in fiscal 1961 compared with $1 billion in fiscal 1960 while manufacturing companies registered $2.3 billion in fiscal 1961 against $900 million in fiscal 1960. Electric and gas companies registered $2.4 billion of securities in fiscal 1961 and investment companies $4.5 billion, almost the same as in the previous year. Registration of securities by other financial companies (including employee stock pension plans) and real estate companies increased from $1.4 billion in fiscal 1960 to $1.7 billion in fiscal 1961. A classification by major industry is shown below for securities registered for cash sale for account of issuer in each of the last 3 fiscal years.

	1961 in millions	Percent of total	1960 in millions	Percent of total	1959 in millions	Percent of total
Manufacturing	$2,278	16.1	$932	8.5	$1,974	16.3
Extractive	105	.7	127	1.2	128	1.1
Electric, gas and water	2,385	16.9	2,313	21.2	2,726	22.5
Transportation, other than railroads	221	1.6	99	.9	41	.3
Communication	2,389	16.9	1,000	9.2	591	4.9
Investment companies	4,482	31.8	4,437	40.7	4,329	35.8
Other financial and real estate	1,703	12.1	1,354	12.4	880	7.3
Trade	274	1.9	169	1.5	543	4.5
Service	92	.7	101	.9	76	.6
Construction	31	.2	8	.1	75	.6
Total corporate	13,960	98.9	10,539	96.6	11,363	93.9
Foreign governments	155	1.1	369	3.4	732	6.1
Total	14,115	100.0	10,908	100.0	12,095	100.0

Investment company issues were classified as follows:

	1961 in millions	1960 in millions	1959 in millions
Open-end companies [1]	$3,973	$4,138	$3,760
Closed-end companies	254	52	140
Face amount certificate companies	254	246	429
Total	4,482	4,437	4,329

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

Of the net proceeds of the corporate securities registered for cash sale for account of issuers in fiscal 1961, 58 percent was designated for new money purposes, including plant, equipment, and working capital, 5 percent for retirement of securities, 35 percent for purchase of securities (principally by investment companies), and 2 percent for all other purposes.

REGISTRATION STATEMENTS FILED

During the 1961 fiscal year, 1,830 registration statements were filed for offerings of securities aggregating $20.6 billion, as compared with 1,628 registration statements filed during the 1960 fiscal year for offerings amounting to $15.8 billion. This represents an increase of 12 percent in the number of statements filed and 31 percent in the dollar amount involved.

Of the 1,830 registration statements filed in the 1961 fiscal year, 958, or 52 percent, were filed by companies that had not previously filed registration statements under the Securities Act of 1933. Comparable figures for the 1960 and 1959 fiscal years were 774, or 47 percent, and 472, or 39 percent, respectively.

A cumulative total of 19,388 registration statements has been filed under the act by 9,129 different issuers covering proposed offerings of securities aggregating over $203 billion from the effective date of the Securities Act of 1933 to June 30, 1961.

Particulars regarding the disposition of all registration statements filed under the Act to June 30, 1961, are summarized in the following table:

Number and disposition of registration statements filed

	Prior to July 1, 1960	July 1, 1960, to June 30, 1961	Total, June 30, 1961
Registration statements:			
Filed	17,558	[1] 1,830	19,388
Disposition:			
Effective (net)	15,280	[2] 1,538	[3] 16,807
Under stop or refusal order	207	[4] 5	212
Withdrawn	1,736	118	1,854
Pending at June 30, 1960	335		
Pending at June 30, 1961			515
Total	17,558		19,388
Aggregate dollar amount:			
As filed (in billions)	$183.1	$20.7	$203.8
As effective (in billions)	$177.3	$19.1	$196.4

[1] Includes 156 registration statements covering proposed offerings totaling $4,191,497,737 filed by investment companies under sec. 24(e) of the Investment Company Act of 1940 which permits registration by amendment to a previously effective registration statement.

[2] Excludes 15 registration statements that became effective during the year but were subsequently withdrawn; these 15 statements are counted in the 118 statements withdrawn during the year. The 1,538 figure does include 1 statement that became effective during the year by lifting of stop order.

[3] Excludes 10 registration statements effective prior to July 1, 1960, that were withdrawn during the 1961 fiscal year; these 10 statements are counted under withdrawn.

[4] A total of 6 registration statements was placed under stop orders during the 1961 fiscal year; 1 of these stop orders was lifted during the year upon appropriate amendment of the registration statement.

The reasons given by registrants for requesting withdrawal of the 118 registration statements that were withdrawn during the 1961 fiscal year are shown in the following table:

Reason for registrant's withdrawal request	Number of statements withdrawn	Percent of total withdrawn
1. Withdrawal requested after receipt of the staff's letter of comment	23	20
2. Registrant was advised that statement should be withdrawn or stop order proceedings would be necessary	9	8
3. Change in financing plans	45	38
4. Change in market conditions	6	5
5. Financing obtained elsewhere	22	19
6. Regulation A could be used	1	1
7. Registrant was unable to negotiate acceptable agreement with underwriter	10	8
8. Will refile on different form	2	1
Total	118	100

STOP ORDER PROCEEDINGS

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

The following table indicates the number of proceedings under section 8(d) of the act pending at the beginning of the 1961 fiscal year, the number initiated during the year, the number terminated and the number pending at the end of the year.

Proceedings pending at beginning of fiscal year	9	
Proceedings initiated during fiscal year	3	
		12
Proceedings terminated during fiscal year by issuance of stop orders		6
Proceedings pending at the end of the 1961 fiscal year		6

The six proceedings in which stop orders were issued during the fiscal year are described below.

Consolidated Development Corp.—The registration statement filed by this corporation involved a proposed offering of 448,000 shares of its 20 cent par value common stock, of which 100,000 shares were to be offered at $1 a share to the underwriter to which registrant owed $100,000 and 198,000 shares were to be offered to holders of registrant's convertible debentures at 75 cents a share. In the course of the proceeding the registrant stipulated to certain facts and consented to the entry of a stop order. The Commission found the regis-

tration statement to be materially deficient in numerous respects. Some of the more important deficiencies are described below.[3]

The registrant is a Delaware corporation organized in 1956 under the name of Consolidated Cuban Petroleum Corp. to engage in exploration, development, and production of oil and gas in Cuba. It adopted its present name in 1959 after its petroleum ventures had sustained severe financial losses. It was then decided to engage in the acquisition and development of real estate in the State of Florida, and registrant entered into an agreement to acquire certain land for $150,000 in cash, 800,000 shares of its stock, and subject to a $2 million mortgage.

The Commission found the registration statement to be materially deficient in failing to set forth clearly that registrant had been financially unsuccessful in its petroleum operations and was in serious financial condition; that, as a result of recent Cuban governmental acts and its lack of success in the oil business, the registrant had suspended its oil exploration activities in Cuba and was faced with the possibility of having to write off all of its Cuban properties and equipment, leaving it with practically none of the assets shown on the balance sheet filed with the registration statement.

The information in the registration statement regarding registrant's proposed real estate operations was also materially inadequate and misleading in many respects. Among other things, the registration statement failed to disclose the funds necessary for drainage of the Florida land proposed to be acquired, the competitive real estate developments in the area, that no funds were available for acquiring or developing Florida real estate, and registrant had no specific plans for raising such funds.

The registration statement failed to disclose that if the proceeds from the offering did not exceed $100,000 the entire amount thereof might go to the underwriter in payment of advances to the registrant, so that the financing might be solely for the benefit of the underwriter and failed to set forth material facts regarding the issuance and distribution of registrant's outstanding securities, particularly 2 million shares of its common stock.

Hazel Bishop, Inc.—The registrant, a New York corporation organized in 1949 and engaged in the cosmetics business, filed a registration statement in June 1960 relating to 1,157,200 shares of common stock all of which were then outstanding. It was stated that these shares, which represented approximately 61 percent of registrant's outstanding common stock, were held by 70 named persons referred to as the selling stockholders. An amendment to the registration

[3] Securities Act Release No. 4287 (Oct. 27, 1960).

statement was filed in October 1960, which, among other things, increased the number of shares to be offered to 1,274,823 and the number of selling stockholders to 112. The Commission instituted proceedings to determine whether a stop order should issue, and registrant entered into a stipulation of facts admitting that a large part of the stock to be offered had initially been sold in violation of the registration requirements of the Securities Act and that the registration statement was deficient, but urged the Commission to take into consideration amendments filed after the institution of the proceedings and to permit the statement as thus amended to become effective, preferably without issuance of a stop order. However, the Commission rejected this request because of "the widespread distribution of unregistered shares" and "the serious deficiencies found" and issued a stop order.[4]

Among other things, the Commission found that the summary of earnings, which showed a profit of $102,258 for the fiscal year ended October 31, 1959, was deceptive and misleading in several respects, particularly in that, under proper accounting practice, it should have shown a loss of $707,996 for that period.

The registration statement, while stating that television had been registrant's principal advertising medium and that registrant had expended about $30 million for network television advertising during the past 10 years, failed to disclose adequately that there had been a decided downward trend in advertising expenditures and that planned advertising expenses were at a further reduced level.

The registration statement contained the statement that during the period from January 1, 1959, through October 10, 1960, the price of registrant's common stock on the American Stock Exchange ranged from a high of $10 per share to a low of $3.50. The Commission found that the reference to the high of $10 per share was misleading without disclosure that this price was reached on only one day in June 1960 following (1) the publication of a statement by a newspaper columnist that registrant was about to introduce a new product which would increase its sales and earnings; (2) registrant's release of unaudited results of its operations for the 6-month period ended April 30, 1960, showing a profit of $202,776 as compared with a loss of $551,173 for the same period of the preceding year, and (3) registrant's announcements to the cosmetics trade that it would sponsor a number of well-known radio and television personalities.

The registration statement stated that in registrant's opinion sales of 562,500 shares of its stock in 1959 and 1960 constituted private offerings exempt from registration under section 4(1) of the Securi-

[4] Securities Act Release No. 4371 (June 7, 1961).

ties Act. The Commission found, however, that a widespread public distribution was effected with respect to such shares, that the sales were accordingly made in violation of section 5 of the act, and that the representation to the contrary in the registration statement was therefore false. The registration statement was also found deficient in failing to disclose that sales of 293,000 shares by Raymond Spector, registrant's board chairman until March 1960, also constituted a public offering in violation of section 5, and that by virtue of the violations of that section, registrant became contingently liable to the purchasers of the shares.

The Commission stated that the prospectus conveyed the impression that at least some of the shares would be offered through brokers on the American Stock Exchange and that it would be prejudicial to the protection of investors and the public interest if the massive distribution here proposed by a large group including registrant's controlling persons should be initiated through the facilities of the exchange unless prior thereto the facts of the case were given a wider distribution than was likely to result from mere delivery of copies of the prospectus to the exchange, pursuant to Securities Act requirements regarding delivery of prospectuses. Accordingly, the Commission stated that prior to the final effective date of the registration statement, the public interest required the transmittal by registrant of the Commission's opinion together with an adequate prospectus to all selling stockholders and the members of the exchange community.

The Commission further pointed out that in view of the representation that the offering would be "at the market," the large number of selling stockholders, the apparent lack of procedures for coordinating their activities or guarding against unlawful practices, the fact that the shares to be offered amounted to approximately 60 percent of the outstanding stock, almost twice the number of shares previously available for trading in the open market, and other factors, there were grave potentialities for violations of the securities laws by registrant and the selling stockholders. The Commission called specific attention to rule 10b–6 under the Exchange Act, prohibiting bids or purchases by any person participating in a distribution; rule 10b–7 which prohibits stabilizing in connection with an offering "at the market"; rule 10b–2, which prohibits persons participating in a distribution from paying or offering to pay any person for soliciting another to purchase any such security on the exchange; and restrictions, under section 5(b)(1) of the Securities Act, on written communications which constitute an offer of securities. The Commission also pointed out that since an offering "at the market" implied a free and open market, any activity designed to

stabilize, stimulate, or condition the market would render such implication false and misleading.

Following issuance of the stop order, registrant filed a material amendment to conform with the order and to furnish up-to-date information, and the registration statement as amended was declared effective on June 26, 1961.

J. Fred Markwell and Alexander Markwell, voting trustees for shareholders of West Star Mining Co.—A registration statement covering voting trust certificates representing 2,500,000 shares of West Star Mining Co. common nonassessable capital stock was filed in 1957 and became effective. West Star is an Idaho corporation organized in 1939 to engage in the exploration and development of mineral deposits.

After appropriate notice a hearing was held at which the voting trustees did not appear. However, they later submitted an answer and petition in which they admitted that the registration statement was deficient in certain respects and stated that no securities subject to the registration statement had been sold and that they intended to file an amendment. No such amendment was filed.

The prospectus failed to disclose required pertinent financial information regarding the company's operations and material information regarding the exploration of the company's properties, the nature and dates of the work done, the results of such work, and the physical condition of the workings. Certain excerpts taken from old engineering reports bearing various dates from 1923 to 1952 concerning the geology and mining prospects of the company's property were contained in the prospectus. The Commission found that the information contained in the excerpts was materially misleading without disclosure reflecting the results of subsequent exploration and development on the properties, information which was not available to the engineers preparing the reports. The prospectus also contained statements indicating that the company's mine was favorably located with reference to commercial ore bodies found on two adjoining mines. It was found that these statements were materially misleading in view of the failure to set forth information with respect to distances between the location of the ore mined at one of the adjoining mines and the boundary of the company's property. Moreover, the prospectus omitted information as to the nature of the results obtained from exploration and development work as it continued toward the company's mine from the adjoining oil producing area.[5]

National Lithium Corp.—Registrant, a Delaware corporation, was organized in November 1956 for the principal purpose of acquiring and developing certain mining claims containing lithium deposits in the Yellow-knife area of the Northwest Territories of Canada. The

[5] Securities Act Release No. 4317 (Jan. 13, 1961).

registration statement filed in February 1957 related to a public offering of 3,120,000 shares of common stock at $1.25 per share.

A geological report regarding registrant's lithium claims, which was filed as an exhibit to the registration statement and portions of which were quoted or summarized in the prospectus, was found misleading in that the word "ore" was not used in accordance with its generally accepted meaning, and the geologist who prepared the report failed to follow accepted engineering procedures in arriving at his reserve estimates. The Commission further found that the report and the prospectus insofar as it quoted from the report contained a number of other materially misleading statements.

The prospectus also contained misleading statements concerning the market for registrant's product, the prospects for profitable operation, the use of the proceeds from the proposed offering, the possible need for additional funds, and the absence of any reasonable prospects of obtaining such additional funds. In addition, the introductory section of the prospectus did not adequately disclose the speculative features of the enterprise so that they would be plainly evident to the ordinary investor.

The impression conveyed by the figures set forth in the prospectus as acquisition and development costs of the three Canadian corporations from whom registrant obtained its mining claims was that those costs consisted entirely of cash expended when, in fact, some of the claims were acquired for stock and no payment had been made for certain other claims.

The registration statement was found to be deficient for failure to name as promoters certain persons who were instrumental in obtaining the mining claims in question for the Canadian corporations and in organizing two of these corporations, and the prospectus was also deficient in failing to identify the two individuals principally responsible for determining the total consideration to be paid for the claims acquired by the registrant.

The Commission also found that the prospectus presented an inaccurate picture regarding the beneficial ownership of registrant's stock issued to the Canadian corporations as consideration for the mining claims. In addition, the Commission found that registrant's claim that the issuance and sale of a total of 6,880,000 shares to such corporations and to persons designated by the underwriter were exempt under section 4(1) of the act as transactions by an issuer not involving any public offering was false and that disclosure should have been made in the financial statements of the contingent liability under section 12(1) of the act resulting from the sale of the unregistered securities.[6]

[6] Securities Act Release No. 4378 (July 6, 1961).

Oil, Gas & Minerals, Inc., and American Investors Syndicate, Inc.—These were consolidated proceedings relating to registration statements filed by Oil, Gas & Minerals, Inc. ("OGM") and American Investors Syndicate, Inc. ("American"); both Louisiana corporations. The facts were stipulated and the registrants consented to the issuance of stop orders.[7]

OGM's principal assets consisted of a one twenty-fourth working interest in a Louisiana oil field and a plot of land located in New Orleans, La. American was organized to build and operate an apartment hotel, and its chief asset was approximately $32,000 in cash. OGM leased the New Orleans property to American as the site for the planned apartment hotel. James A. and Joseph D. Lindsay were directors, officers and shareholders of both companies and together owned the Lindsay Securities Corp., the underwriter for both proposed issues. American proposed to issue 600,000 shares of 10 cent par value common stock and 200,000 shares of $9 stated value convertible preferred stock for a total offering price of $2,400,000, to be offered in units of 3 shares of common stock and 1 share of preferred stock at a price of $12 per unit. The registration statement of OGM covered 260,000 shares of 35 cent par common stock at an offering price of $2 per share or a total of $520,000.

The description of properties of both corporations was found to be deficient in various respects. For example, there was a failure to disclose that the St. Charles Avenue property which American described as an excellent site for an apartment hotel located in an exclusive and highly restricted neighborhood, was in a neighborhood whose residential quality is deteriorating. The prospectus also failed to disclose that American was formed by OGM's promoters, that the $2 million estimated cost of construction and 1 year estimated construction period were not based on any detailed plans or construction arrangements and that American's management had had no experience in the construction or operation of an apartment hotel. OGM's prospectus failed to describe the proposed apartment hotel and to disclose that American lacked the resources to construct it.

There was a failure to disclose the fact that the underwriter was organized by the promoters of the two registrants for the purpose of distributing the shares of OGM and American, and the cover page of both prospectuses failed to state that the underwriting arrangements were on a "best efforts" basis and that there was, therefore, no assurance that all or any of the proceeds mentioned would be received.

The financial statements contained in the registration statements were certified by an accounting firm which participated in the keeping of the corporate books and, therefore, was not independent. The

[7] Securities Act Release No. 4301 (Nov. 29, 1960).

financial statements of OGM also did not comply with regulation S–X under the act in that they did not present information in the manner required nor include specified schedules with respect to, among other things, intangible assets, capital, profit and loss, depreciation and amortization.

American's prospectus failed to include a clear summarization of the speculative features of its business, including the facts that the Company was relying upon the receipts from the issue to provide the funds for the construction of the proposed apartment hotel; that the company would need net earnings after taxes of $108,000 to meet the annual 6-percent cumulative requirements of the 200,000 shares of preferred stock proposed to be issued and that the company presently had no assets or operations which could provide such earnings; that although the offering price of the common stock was $1 per share, the book value of the company's common stock was 20 cents per share, stock was sold to the organizers at 10 cents per share and shares were recently offered to the public at 50 cents per share; and that OGM, the lessor of the site on which the apartment building was to be constructed, was depending on the receipts from its proposed offering to retire a $125,000 mortgage on the leased property.

The prospectus of OGM failed to include a clear summarization of the speculative features of OGM's business and securities, and failed to disclose, among other things, that the company had operated at a loss since its inception, that it had an operating deficit of $24,297 and that past dividends represented a return of capital; that the proposed offering price for the OGM stock of $2 per share was arbitrarily determined, that the company's stock had a book value of 67 cents per share and that shares of the company's common stock had recently been offered to the public at $1 per share; that before the shares could be resold by the purchasers to anyone else they had to be offered to the company and other shareholders at their book value, which would amount to $1.30 per share if all of the offered shares were sold at $2 per share, and that such restriction could result in substantial loss to an investor desiring to sell his shares; and that the company had a contingent liability of $166,800 to purchasers of 68,000 shares which were sold without having been registered under the act and to purchasers of 101,800 shares which were sold by means of an inaccurate and inadequate offering circular under regulation A.

Skiatron Electronics and Television Corp.—This registration statement covered a proposed secondary distribution of 172,242 shares of registrant's 10 cent par value common stock, of which 75,000 shares had been issued to Matthew M. Fox, registrant's licensee; 50,000 shares were covered by warrants owned by Fox; 30,000 shares were

owned by Arthur Levey, registrant's president, and 17,242 shares had been issued to employees, directors or persons who had performed services for the company. In the course of the hearing, certain facts were stipulated and the registrant consented to the issuance of a stop order.[8]

The registrant, a New York corporation, was organized in 1948 by Levey, to engage in research and development in the field of electronics. In 1950 registrant began efforts to develop a subscription or pay television system. Lacking the resources for the development and operation of such a system, registrant entered into agreement with Fox whereby Fox or his assignee, Skiatron of America Inc., a corporation controlled by him, became the exclusive licensee of the registrant's system. Fox assumed responsibility for the commercial development and exploitation of the system including the necessary development and industrial engineering, the determination of the acceptability and feasibility of the system, and arrangements for programing.

The prospectus stated that the registrant's licensee was planning for the immediate use of its subscription television system by means of wire or close-circuit operations and that if existing negotiations with owners of outstanding entertainment and with municipalities and public utilities whose facilities might be required for such operation progressed favorably, the licensee anticipated that it would commence commercial operations during the early part of 1960. The Commission found that there was no basis for this representation. Contracts for the manufacture of equipment and other arrangements remained to be secured. The prospectus was materially misleading in failing adequately to disclose the financial and other difficulties to be met before the registrant's system could be placed in operation. Among other things, the registration statement failed to show the large amounts of capital needed to establish the proposed subscription television system and defray programing costs and to point out that neither the registrant nor its licensee possessed the resources required and neither had access to sources able and willing to supply the amounts necessary. Registrant's principal asset was the right to receive royalties under the licensing agreement with Fox. Fox and his company were deeply in debt; debts of at least $1 million had been reduced to judgments and Fox had further debts of approximately $3 million, a substantial portion of which was in default.

The prospectus stated that the registrant owned a number of United States and foreign patents and patent applications and that its patent coverage included the Skiatron "Subscriber-Vision" television systems. This representation was materially misleading since the out-

[8] Securities Act Release No. 4282 (Oct. 3, 1960).

standing patents of the registrant were not essential to the operation of either its over-the-air or wire system.

The prospectus was materially misleading in view of the failure to disclose that Fox pledged 70,000 of the 75,000 shares purchased by him and that many of such shares had been sold to the public before the registration statement was filed. Fox had previously disposed of 195,000 warrants which he had received from registrant in 1954 in connection with the licensee agreements. By December 1958 all 195,000 warrants had been exercised and all of the shares sold to the public. In addition, Fox disposed of 206,000 shares of registrant's stock which were loaned to him by Levey for the specific purpose of collateralizing loans negotiated by Fox. The Commission found that at least a part of the shares referred to above were sold in violation of section 5 of the act. Such sales created a contingent liability under section 12(1) of the act which should have been disclosed in the registration statement.

The registration statement was materially deficient in purporting to cover shares which had already been sold to the public. Besides the shares issued to Fox, which had been sold, a substantial portion of the shares issued to officers, directors and creditors, had also been sold by them prior to the filing of the registration statement. None of these shares should have been included in view of the provisions of section 6(a) of the act limiting the effectiveness of a registration statement to securities "proposed to be offered."

Levey, the promoter and organizer of the registrant, also disposed of large blocks of stock to the public without registering such stock under the act. Although he claimed exemptions from registration under section 4(1) of the act and rule 154, the Commission found that neither of these exemptions was available. The registration statement should have disclosed that Levey had been distributing shares of the company without registration as required by the act and the contingent liability under section 12(1) of the act resulting therefrom.

EXAMINATIONS AND INVESTIGATIONS

The Commission is authorized by section 8(e) of the act to make an examination in order to determine whether a stop order proceeding should be instituted under section 8(d). For this purpose the Commission is empowered to subpoena witnesses and require the production of pertinent documents. The Commission is also authorized by section 20(a) of the act to make an investigation to determine whether any provision of the act or of any rule or regulation prescribed thereunder has been or is about to be violated. Investigations are instituted under this section as an expeditious means of determining whether a registration statement is false or misleading or omits to state any

material fact. The following table indicates the number of such examinations and investigations with which the Commission was concerned during the fiscal year.

Cases pending at the beginning of the fiscal year	20	
Cases initiated during the fiscal year	16	
		36
Cases in which stop order proceedings were authorized during the fiscal year	1	
Other cases closed during the fiscal year	18	
		19
Cases pending at the end of the fiscal year		17

EXEMPTION FROM REGISTRATION OF SMALL ISSUES

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

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

Rule 234: Exemption of first lien notes.
Rule 235: Exemption of securities of cooperative housing corporations.
Regulation A: General exemption for United States and Canadian issues up to $300,000.
Regulation B: Exemption for fractional undivided interests in oil or gas rights up to $100,000.
Regulation F: Exemption for assessments on assessable stock and for assessable stock offered or sold to realize the amount of the assessment thereon.

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

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

Exempt Offerings Under Regulation A

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

During the 1961 fiscal year, 1,057 notifications were filed under regulation A, covering proposed offerings of $239,920,549, compared with 1,049 notifications covering proposed offerings of $224,913,982 in the 1960 fiscal year. Included in the 1961 total were 28 notifications covering stock offerings of $5,956,350 with respect to companies engaged in the exploratory oil and gas business and 28 notifications covering offerings of $5,555,084 by mining companies.

The following table sets forth various features of the regulation A offerings during the past 3 fiscal years:

Offerings under regulation A

	Fiscal year		
	1961	1960	1959
Size:			
$100,000 or less	165	220	222
Over $100,000 but not over $200,000	201	216	162
Over $200,000 but not over $300,000	691	613	470
	1,057	1,049	854
Underwriters:			
Used	511	450	318
Not used	546	599	536
	1,057	1,049	854
Offerors:			
Issuing companies	1,006	1,021	797
Stockholders	28	27	31
Issuers and stockholders jointly	23	1	26
	1,057	1,049	854

Most of the offerings which were underwritten were made by commercial underwriters, who participated in 511 offerings in 1961, 398 offerings in 1960, and 251 offerings in 1959. The remaining cases where commissions were paid were handled by officers, directors, or other persons not regularly engaged in the securities business.

Suspension of Exemption

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

During the 1961 fiscal year, temporary suspension orders under regulation A were issued in 54 cases. These cases together with 29 cases pending at the beginning of the fiscal year resulted in a total of 83 cases for disposition. Of these 83 cases, 55 became permanent: 35 by lapse of time, 15 by withdrawal of the request for hearing, and 5 after hearing, leaving 28 cases pending at the end of the fiscal year.

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

American Television and Radio Co.—The issuer's offering circular was materially misleading in stating that the company believed it was recognized as one of the world's leaders in the manufacture of vibrators, which transform direct electrical current to alternating current, and that its market position in this field was equal to that of its competitors, and in failing to disclose the drastic inroads in the vibrator market made by transistor auto radios, and that the market for vibrators has substantially declined in recent years. The offering circular was also misleading in describing the vibrator as essentially a transistor device when in fact there is no similarity between vibrators and transistors. A method employed by the company of merchandising from factory directly to TV technician to consumer, described in the offering circular as "unique," was in fact not unique and had been unsuccessful.

A statement in the offering circular that approximately $120,000 of the net proceeds of the $300,000 offering would be used to reduce the company's short-term indebtedness and that the balance would

be added to working capital was found to be misleading in failing to disclose the more specific uses which the company intended to make of the proceeds, including increase of vibrator production facilities and inventory, hiring trained personnel, and entering the stereophonic high fidelity field. The offering circular was also found deficient in failing to disclose clearly the dilution of the equity of public security holders resulting from offering the securities at a price considerably in excess of book value.

The Commission further found that the company had used certain types of publicity not permitted by regulation A and not filed with the Commission, had failed to use the offering circular in the offer and sale of its securities, and had not set forth in the notification the names of all of the States in which the securities were to be offered or the name of the underwriter.[9]

Committee Oil Co.—According to the Commission's order in this case, the issuer's offering circular failed to disclose the source of funds with which the company intended to pay interest and principal on the debentures and the alternative use of proceeds should the company fail to acquire oil and gas properties as proposed and failed to describe adequately the risks involved in the oil and gas business and the extent to which the properties of the company were to be explored and developed. The order also challenged the company's forecast of profits based on conjecture, the statement that the company would pay all direct sales costs and certain other expenses when in fact no funds were available therefor, and the use of oil and gas reserve figures based upon secondary methods although such methods had not as yet proved successful on the properties involved.[10]

Custer Channel Wing Corp.—The Commission's order alleged that the offering circular in this case contained misrepresentations in regard to the development, manufacture and marketing of aircraft embodying a "new" wing design. Although the design had been proposed and under development since 1940, the company failed to disclose the history of such development in reasonable detail, to indicate that during the 15-year period the proposed aircraft has been under development by Custer, its predecessors and subsidiaries, sums aggregating several hundred thousand dollars were raised through the sale of securities, or to disclose how such sums were expended and the reasons why a salable aircraft has not been fully developed. There was a similar failure to disclose Custer's previous unsuccessful efforts to market the aircraft and the fact that the aircraft was demonstrated to the military and that no interest was shown or orders taken. The patents pertaining to the wing were not described nor was it disclosed that applications filed in 1953 and 1954 with the predecessor of the

[9] Securities Act Release No. 4355 (Apr. 18, 1961).
[10] Securities Act Releases Nos. 4338 and 4348 (Mar. 9 and Apr. 7, 1961).

Federal Aviation Agency were not completed and have since been abandoned. No estimate of the amount required to secure FAA certification of the aircraft proposed to be manufactured was furnished. Misrepresentation was also alleged with respect to statements that the break-even point would be reached at approximately the 15th aircraft produced, that the company had "firm" orders for 20 aircraft, and that $208,850 would be enough to commence actual manufacture of aircraft to fill outstanding orders. There was a failure to disclose that the market price of the class B stock was substantially lower than the public offering price. Financial statements prepared in accordance with generally accepted accounting principles were not included as required.[11]

Hermon Hanson Oil Syndicate, Inc.—The Commission's order stated that the offering circular did not contain accurate or adequate disclosure with respect to the geological aspects of the issuer's properties; the fact that no oil or gas in commercial quantities had been found within 150 miles thereof, that many dry holes have been drilled between the syndicate's properties and the nearest commercially producing area; the speculative features of the offering, including the fact that the $1 per share offering price was essentially an arbitrary price having no direct relation to underlying asset values, and that public investors would be asked to furnish the total funds required to drill a wildcat well for only a 7-percent interest in the company.[12]

Exempt Offerings Under Regulation B

During the fiscal year ended June 30, 1961, 261 offering sheets were filed pursuant to regulation B and were examined by the Oil and Gas Section of the Commission's Division of Corporation Finance. During the 1960 fiscal year, 328 offering sheets were filed and during the 1959 fiscal year, 160 were filed. The following table indicates the nature and number of Commission orders issued in connection with such filings during the fiscal years 1959–61. The balance of the offering sheets filed became effective without order.

Action taken on offering sheets filed under regulation B

	Fiscal years		
	1961	1960	1959
Temporary suspension orders	16	7	4
Orders terminating proceeding after amendment	6	6	1
Orders fixing effective date of amendment (no proceeding pending)	158	138	87
Orders consenting to withdrawal of offering sheet (no proceeding pending)	7	11	2
Orders consenting to withdrawal of offering sheet and terminating proceeding	1	2	2
Total number of orders	188	164	96

[11] Securities Act Releases Nos. 4311 (Dec. 30, 1960) and 4374 (June 12, 1961).
[12] Securities Act Releases Nos. 4344 (Mar. 17, 1961) and 4348 (Apr. 7, 1961).

Reports of sales.—The Commission requires persons who make offerings under regulation B to file reports of the actual sales made pursuant to that regulation. The purpose of these reports is to aid the Commission in determining whether violations of law have occurred in the marketing of such securities. The following table shows the number of sales reports filed under regulation B during the past 3 fiscal years and the aggregate dollar amount of sales during each of the fiscal years 1959–61.

Reports of sales under regulation B

	Fiscal years		
	1961	1960	1959
Number of sales reports filed	2,091	4,425	1,689
Aggregate dollar amount of sales reported	$1,894,018	$2,833,457	$1,204,751

Exempt Offerings Under Regulation E

Regulation E provides a conditional exemption from registration under the Securities Act of 1933 for securities of small business investment companies which are licensed under the Small Business Investment Act of 1958 or which have received the preliminary approval of the Small Business Administration and have been notified by the Administration that they may submit an application for such a license.

The new regulation, which is similar in many respects to the general exemption provided by regulation A, requires the filing of a notification with the Commission and, except in the case of offerings in excess of $50,000, the filing and use of an offering circular containing certain specified information.

Regulation E provides for the suspension of exemption in particular cases if the Commission finds that any of the terms and conditions of the regulation have not been met or complied with.

Two notifications were filed under regulation E during the 1961 fiscal year for offerings of securities aggregating $184,350. Of these two notifications, one became effective for a proposed offering of $168,750. The other notification was pending at the end of the fiscal year.

Exempt Offerings Under Regulation F

Regulation F provides an exemption from registration under the Securities Act for assessments levied upon assessable stock and for delinquent assessment sales in amounts not exceeding $300,000 in any one year. It requires the filing of a simple notification giving brief information with respect to the issuer, its management, principal security holders, recent and proposed assessments and other security

issues. The regulation requires a company to send to its stockholders, or otherwise publish, a statement of the purposes for which the proceeds from the assessment are proposed to be used. If the issuer should employ any other sales literature in connection with the assessment, copies of such literature must be filed with the Commission.

During the 1961 fiscal year, 41 notifications were filed under regulation F, covering assessments of $1,007,864. Regulation F notifications were filed in three of the nine regional offices of the Commission; i.e., the Denver, San Francisco, and Seattle regional offices. Underwriters were not employed in any of the regulation F assessments and in no case did the assessment exceed $61,000.

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

Two regulation F filings were temporarily suspended in fiscal 1961 for alleged false and misleading statements in the sales material used. Requests for hearings were made with respect to both of these suspensions but both issuers subsequently consented to the issuance of permanent suspension orders.

LITIGATION UNDER THE SECURITIES ACT OF 1933

The Commission is authorized by the Securities Act to seek injunctions in cases where continued or threatened violations of the act are indicated, including violations of the registration and antifraud provisions of the act. During the fiscal year, 28 such injunctions were obtained and 9 cases were pending at the end of the year. Certain of these cases are described herein. Other actions in which violations of the Securities Act are present and which also involve violations of other statutes are described under the other statutes.

In *S.E.C.* v. *Federal Shopping Way, Inc., et al.*,[13] the S.E.C. filed a complaint against Federal Shopping Way, Inc., and 18 other defendants seeking an injunction against continued violations of the antifraud provisions of the Securities Act of 1933 in the offer and sale of securities of defendant Federal Shopping, issued in connection with the financing of a shopping center enterprise located at Federal Way, Wash. It was alleged that defendants formed approximately 30 affiliated or cooperating corporations, including Federal Shopping, and sought to create the appearance that various transactions including property sales and rental agreements, between Federal Shopping and others of these corporations, were arm's-length transactions when in

[13] W.D. Wash., No. 2671.

fact the various corporations were at all times under the domination and control of defendant John R. Cessna and other defendants and were formed and operated for the purpose of diverting moneys from Federal Shopping, concealing such diversion from that company's present and potential security holders, and deceiving such security holders as to the original acquisition costs of property acquired by Federal Shopping and the true income and profits being realized by Federal Shopping from the rental and operation of such property.

The complaint further alleged that defendants were obtaining money by means of untrue and misleading statements concerning the asserted success of Federal Shopping and its shopping center enterprise, its net earnings, dividends, and bond interest paid and to be paid and the source of such payments, the amount of rental income and its source, its financial condition, and other matters.

In *S.E.C.* v. *L–Wood Company, Inc.*,[14] the defendants had been selling investment contracts and participations in profit-sharing agreements without registration and had made material misrepresentations concerning increases in the company's assets and the safety of an investment with the company. The defendants consented to entry of a final judgment enjoining further violations of the act.

The Commission secured a permanent injunction by default against all but one of the four defendants in *S.E.C.* v. *American Equities Corporation*[15] prohibiting them from violating the registration and antifraud provisions of the Securities Act of 1933 in the offer and sale of shares of that corporation. For the purpose of inducing the purchase of these securities by investors the defendants provided various broker-dealers with false financial statements of the company and caused various broker-dealers to enter quotations in the over-the-counter market, thus creating the appearance of an active market. The case against Martin Benjamin, the remaining defendant, was still pending at the close of the fiscal year.

In *S.E.C.* v. *Insured Mortgage and Title Corporation, et al.*,[16] the Commission instituted an action against one of the so-called "8 percenters" which had been selling interests in Florida mortgages to investors throughout the United States. Under Insured's "Corrigan Plan," investors were to receive 8 percent interest to be derived from payments made by mortgagors on first mortgage deeds and notes on Florida real estate which were purchased by Insured or its subsidiaries. The company issued its notes to investors, collateralized by the assignment of the mortgages. Insured was to have the authority and responsibility for processing the mortgages, selecting the particular

[14] N.D. Tex. Civil Action No. 8828.
[15] S.D.N.Y. No. 61–1068.
[16] S.D. Fla., No. 4003.

mortgage to be assigned to an investor, collecting payments from mortgagors, remitting monthly payments of principal and interest to investors, replacing the defaulted mortgages with others, or, in the alternative, redeeming corporate notes collateralized by defaulted mortgages, and handling all administrative details pertaining to the mortgages.

The Commission charged that the defendants were selling various types of securities, including evidences of indebtedness and investment contracts, in violation of the registration provisions of the Securities Act. In addition, it was charged that false representations were being made to investors and that Insured was insolvent. The parties stipulated to the entry of a preliminary injunction which restricted the company's operations to the State of Florida pending a trial on the merits. Shortly thereafter, the president of Insured disappeared and the court appointed a receiver to liquidate the corporation's assets.

In *S.E.C.* v. *Glass Marine Industries, Inc.*,[17] the Commission charged the company with violations of sections 17(a)(1), 17(a)(3), and 24 of the Securities Act of 1933 and section 10(b) of the Securities Exchange Act of 1934 and rule 10b–5 thereunder. The complaint charged that the company had made material misrepresentations and had omitted material facts in a registration statement which became effective on July 6, 1960, covering a public offering which netted the company approximately $458,000. The Commission alleged, among other things, that whereas the registration statement had stated that the proceeds of the offering would be used to promote and expand the company's sales, in fact such proceeds had been used to make loans to other companies. In addition, the complaint alleged that the company had failed to disclose its plans for a possible merger, and the fact that its production had been materially reduced by the time the registration statement became effective. A preliminary injunction has been obtained freezing the assets of the company and the matter is pending.

In *S.E.C.* v. *American Sales Training Research Assn., Inc.*,[18] the Commission charged the company and certain of its officers, directors and employees with violating the registration provisions of the act. The complaint alleged that the defendants were engaged in selling education programs designed to educate a person while he sleeps, and had sold "inactive distributorships" to certain investors for a stipulated sum in return for which the investor was to receive a percentage of the profits realized by the defendants' sale of its programs. The Commission contended that the defendants' "inactive distributor-

[17] D. Del. No. 2276.
[18] N.D. Ill. No. 1795.

ships" were investment contracts. A permanent injunction was entered by consent.

In *S.E.C.* v. *Beverly Hills Security Investments, et al.*,[19] the defendants consented to the entry of permanent decrees enjoining them from further violations of the registration and antifraud provisions of the securities acts in the sale of securities issued in connection with a so-called 10-percent investment program. The program was based on the sale to the public of discounted trust deeds, mortgages, and contracts related to real estate situated in California, Arizona, and New Mexico.

The plan in this case was similar to that in *Los Angeles Trust Deed & Mortgage Exchange*, the earlier history of which is discussed in previous annual reports.[20] Since those reports, the Court of Appeals for the Ninth Circuit[21] affirmed the decree of the District Court[22] which had enjoined the corporate defendants and certain of their managing officers from violating the registration and antifraud provisions of the Securities Act and the Securities Exchange Act in the sale of securities issued under an investment plan, based on the sale to investors of individual discounted trust deeds and mortgages. This decision constitutes a significant judicial interpretation of the term "investment contract." It also holds that, despite the absence of specific statutory authority, the Commission may obtain the appointment of an equity receiver for an offender against the Federal securities acts.

The merchandising of individual trust deeds and mortgages under high-yield investment plans, without registration with the Commission, and often through grossly untruthful and deceitful public solicitations, had constituted a serious and growing regulatory problem. Los Angeles Trust Deed & Mortgage Exchange alone had attracted some $40 million from the investing public. It is now being liquidated in bankruptcy, and its promoters are under indictment. The Commission's litigation opened up and exposed the highly speculative nature of the investment programs offered by "10 percenters" who lured many thousands of small investors to commit their savings and earnings on the representation that the investment was sound, stable, and comparatively riskless. Although California was the center for these operations, the same basic scheme has been employed elsewhere throughout the United States.

The collapse of the "10 percenters" created a major financial scandal in California, and led to a sweeping investigation by a special com-

[19] S.D. Calif., No. 127–61–TC.

[20] 24th annual report, pp. 51–52; 25th annual report, p. 51; 26th annual report, pp. 57–58.

[21] 285 F. 2d 162, *certiorari denied* 6 L. ed. (2d) 241.

[22] 186 F. Supp. 830.

mittee of the State assembly, and the enactment of certain remedial legislation. The serious nature of the problem created by the "10 percenters" and the ruinous consequences to many thousands of investors are mirrored in the fact that six such enterprises are now in bankruptcy,[23] one is in State court receivership,[24] two are in the course of reorganization under chapter X of the Bankruptcy Act,[25] and two are subject to arrangement proceedings under chapter XI of the Bankruptcy Act.[26] The criminal indictments returned with respect to "10 percenters" are discussed at p. 170 below.

Participation as *Amicus Curiae*

Honigman v. *Green Giant Company*[27] and *Sawyer* v. *Pioneer Mills Co., Ltd.*,[28] are two cases involving the construction of the Commission's so-called "no-sale" rule.[29] In the *Green Giant* case, the company solicited the consent of its stockholders to a plan of reorganization which would result in one class of shareholders giving up part of their equity in return for greater voting rights, while the other class would give up some voting rights in exchange for a larger equity. In a stockholders' derivative action, it was alleged that acceptance of this reorganization plan was induced by misleading statements and omissions in the literature sent to stockholders by the management. Management denied the misleading nature of the statements made and further asserted that no action for fraud could be maintained under the Federal securities laws because rule 133 provides that a reorganization is not a "sale." The Commission is participating in this case as *amicus curiae*, and has filed a brief which points out that although the transaction in question may not have been a sale within the registration provisions of the Securities Act, rule 133 has no application to the anti-fraud provisions of the Federal securities laws. The Commission took no position on the merits of the case.

In the *Sawyer* case, the Commission, as *amicus curiae*, took the same view as in *Honigman*, with respect to allegedly false and misleading solicitations of stockholder approval for a proposed merger. In addition, the Commission urged that a Federal court has jurisdiction to rescind a consummated corporate transaction effected by means of

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[23] *Best Trust Deed Corporation*, U.S.D.C. S.D. Calif.; *Beverly Hills Security Investments*, U.S.D.C. S.D. Calif.; *Franklin Trust Deed Corporation*, U.S.D.C. S.D. Calif.; *Los Angeles Trust Deed and Mortgage Exchange*, U.S.D.C. S.D. Calif.; *Porter Trust Deed Investment Corporation*, U.S.D.C. N.D. Calif.; *Western Trust Deed Corporation*, U.S.D.C. S.D. Calif.

[24] *Pacific Trust Deed Corporation.*

[25] *Mason Mortgage & Investment Corporation*, U.S.D.C. District of Columbia; *Pickman Trust Deed Corporation*, U.S.D.C. N.D. Calif.

[26] *Trustors' Corporation*, U.S.D.C. S.D. Calif.; *Guardian Trust Deed Corporation*, U.S.D.C. N.D. Calif.

[27] D. Minn. No. 4 60 Civ. 176.

[28] C.A. 9. No. 17223.

[29] 17 CFR 230.133.

violations of the anti-fraud provisions of the Federal securities laws. Decisions in these cases have not yet been rendered.

In *Moses and New* v. *Michael* (consolidated)[30] the sellers of unregistered undivided working interests in oil and gas leases appealed from summary judgments entered against them under section 12(1) of the Securities Act. Among other things, the sellers argued that they did not violate the Federal securities laws because only photostatic copies of the oil and gas assignments, rather than the assignments themselves, were sent through the mails. The Commission filed a brief *amicus curiae*, urging rejection of this contention. On July 20, 1961, the Court of Appeals sustained the Commission's contention, affirmed the judgment of the District Court, and stated that "the mailing of photostatic copies of the lease agreements * * * constituted a violation of the Act * * *."

[30] 292 F. 2d 614 (C.A. 5, 1961).

PART V

ADMINISTRATION OF THE SECURITIES EXCHANGE ACT OF 1934

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

REGULATION OF EXCHANGES AND EXCHANGE TRADING

Registration and Exemption of Exchanges

As of June 30, 1961, 14 stock exchanges were registered under the Exchange Act as national securities exchanges:

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

There have been no sales of securities on the Chicago Board of Trade since 1953. The National Stock Exchange was granted registration as a national securities exchange on August 16, 1960, but had not commenced to operate as of June 30, 1961.

Four exchanges were exempted from registration by the Commission pursuant to section 5 of the act:

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

Disciplinary Action

Each national securities exchange reports to the Commission disciplinary actions taken against its members and member firms for violations of the Securities Exchange Act of 1934 or of exchange rules. During the year 7 exchanges reported 51 cases of such disciplinary actions, including imposition of fines aggregating $30,137 in 25 cases; the suspension of 9 individuals and the expulsion of another individual from membership; the revocation of 5 specialists' registrations and the censure of a number of individuals and firms.

REGISTRATION OF SECURITIES ON EXCHANGES

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

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

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

Section 13 requires issuers having securities registered on an exchange to file periodic reports keeping current the information furnished in the application for registration. These periodic reports include annual reports, semiannual reports, and current reports. The principal annual report form is form 10–K which is designed to keep up-to-date the information furnished in form 10. Semiannual re-

ports required to be furnished on form 9–K are devoted chiefly to furnishing midyear financial data. Current reports on form 8–K are required to be filed for each month in which any of certain specified events have occurred. A report on this form deals with matters such as changes in control of the registrant, important acquisitions or dispositions of assets, the institution or termination of important legal proceedings and important changes in the issuer's capital securities or in the amount thereof outstanding.

Statistics Relating to Registration of Securities on Exchanges

As of June 30, 1961, a total of 2,341 issuers had 3,931 issues of securities listed and registered on national securities exchanges, of which 2,748 were classified as stocks and 1,183 as bonds. Of these totals, 1,332 issuers had 1,544 stock issues and 1,124 bond issues listed and registered on the New York Stock Exchange. Thus, 57 percent of the issuers, 56 percent of the stock issues and 95 percent of the bond issues were on the New York Stock Exchange.

During the 1961 fiscal year, 130 issuers listed and registered securities on a national securities exchange for the first time, while the registration of all securities of 96 issuers was terminated. The total number of applications for registration of classes of securities on exchanges filed during the 1961 fiscal year was 271.

The following table shows the number of annual, semiannual, and current reports filed during the fiscal year by issuers having securities listed and registered on national securities exchanges. The table also shows the number of such reports filed under section 15(d) of the Securities Exchange Act of 1934 by issuers obligated to file reports by reason of having publicly offered securities effectively registered under the Securities Act of 1933. The securities of such issuers are traded generally in the over-the-counter markets. As of June 30, 1961, there were 2,135 such issuers, including 350 that were also registered as investment companies under the Investment Company Act of 1940.

Number of annual and other periodic reports filed by issuers under the Securities Exchange Act of 1934 during the fiscal year ended June 30, 1961

Type of reports	Number of reports filed by		Total reports filed
	Listed issuers filing reports under sec. 13	Over-the-counter issuers filing reports under sec. 15(d)	
Annual reports on form 10–K, etc.	2,243	1,890	4,133
Semiannual reports on form 9–K	1,741	1,221	2,965
Current reports on form 8–K, etc.	3,636	2,255	5,891
Total reports filed	7,623	5,366	12,989

MARKET VALUE OF SECURITIES TRADED ON EXCHANGES

The market value on December 31, 1960, of all stocks and bonds admitted to trading on one or more stock exchanges in the United States was approximately $444,738,418,000.

	Number of issues	Market value Dec. 31, 1960
Stocks:		
New York Stock Exchange	1,528	$306,967,079,000
American Stock Exchange	942	24,170,933,000
Exclusively on other exchanges	510	4,145,800,000
Total stocks	2,980	335,283,812,000
Bonds:		
New York Stock Exchange [1]	1,191	108,256,818,000
American Stock Exchange	63	1,064,503,000
Exclusively on other exchanges	27	133,285,000
Total bonds	1,281	109,454,606,000
Total stocks and bonds	4,261	444,738,418,000

[1] Bonds on the New York Stock Exchange included 52 U.S. Government and New York State and City issues with $79,537,243,000 aggregate market value.

The New York Stock Exchange and American Stock Exchange figures were reported by those exchanges. There was no duplication of issues between them. The figures for all other exchanges were for the net number of issues appearing only on such exchanges, excluding the many issues on them which were also traded on one or the other of the New York exchanges. The number and market value of issues as shown excluded those suspended from trading and a few others for which quotations were not available. The number and market value as of December 31, 1960, of preferred and common stocks separately was as follows:

	Preferred stocks		Common stocks	
	Number	Market value	Number	Market value
Listed on registered exchanges	570	$8,180,521,000	2,125	$313,485,988,000
All other stocks [1]	53	457,160,000	232	13,160,143,000
	623	8,637,681,000	2,357	326,646,131,000

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

The New York Stock Exchange has reported aggregate market values of all stocks thereon monthly since December 31, 1924, when the figure was $27.1 billion. The aggregate market value rose to $89.7 billion in September 1929, and declined to $15.6 billion in July 1932. The number of stocks on this exchange has increased from 1,253 issues of 831 companies on July 1, 1932, to 1,528 issues of 1,143 companies on December 31, 1960. Their aggregate market value at the close of 1960 was nearly 20 times the total at the low point in July

1932. The American Stock Exchange has reported December 31 totals annually since 1936. Aggregates for stocks exclusively on the remaining exchanges have been compiled as of December 31 annually by the Commission since 1948.

Share values on exchanges, in billions of dollars

December 31 each year	New York Stock Exchange	American Stock Exchange	Exclusively on other exchanges	Total [1]
1936	$59.9	$14.8	----------	$74.7
1937	38.9	10.2	----------	49.1
1938	47.5	10.8	----------	58.3
1939	46.5	10.1	----------	56.6
1940	41.9	8.6	----------	50.5
1941	35.8	7.4	----------	43.2
1942	38.8	7.8	----------	46.6
1943	47.6	9.9	----------	57.5
1944	55.5	11.2	----------	66.7
1945	73.8	14.4	----------	88.2
1946	68.6	13.2	----------	81.8
1947	68.3	12.1	----------	80.4
1948	67.0	11.9	$3.0	81.9
1949	76.3	12.2	3.1	91.6
1950	93.8	13.9	3.3	111.0
1951	109.5	16.5	3.2	129.2
1952	120.5	16.9	3.1	140.5
1953	117.3	15.3	2.8	135.4
1954	169.1	22.1	3.6	194.8
1955	207.7	27.1	4.0	238.8
1956	219.2	31.0	3.8	254.0
1957	195.6	25.5	3.1	224.2
1958	276.7	31.7	4.3	312.7
1959	307.7	26.4	4.2	338.4
1960	307.0	24.2	4.1	335.3

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

Fiscal Year Share Values and Volumes

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

	June 30 values (billions)	Volumes in years to June 30	
		Share volume	Dollar volume
1955	$222.8	1,324,383,000	$36,878,540,000
1956	250.0	1,217,935,000	36,226,682,000
1957	262.0	1,210,807,000	32,929,671,000
1958	257.9	1,209,274,000	30,862,129,000
1959	337.6	1,806,810,000	51,577,195,000
1960	327.8	1,456,919,000	47,795,837,000
1961	381.0	1,971,508,000	57,029,271,000

The June 30 values were as reported by the New York Stock Exchange and as estimated for all other exchanges. Volumes include shares, warrants, and rights. Comprehensive statistics of volumes on exchanges are included among the appendix tables in this annual report.

The market value of all stocks on the stock exchanges rose from $335.3 billion on December 31, 1960, to nearly $400 billion in May 1961, subsiding to about $381 billion by June 30, 1961. The rise

of $45.7 billion for the 6 months included approximately $2 billion on account of new listings. The 6 months' trading volume of 1,264,314,000 shares, warrants, and rights, with a dollar volume of $35,712,309,000, brought the fiscal year showings above to a new high total.

Foreign Stock on Exchanges

The market value on December 31, 1960, of all shares and certificates representing foreign stocks on the stock exchanges was reported at about $11.1 billion, of which $10.1 billion represented Canadian and $1 billion represented other foreign stocks. The market values of the entire Canadian stock issues were included in these aggregates. Most of the other foreign stocks were represented by American Depositary Receipts or American shares, only the outstanding amounts of which were used in determining market values.

Foreign stocks on exchanges

Dec. 31, 1960	Canadian		Other foreign		Total	
	Issues	Value	Issues	Value	Issues	Value
Exchanges:						
New York	12	$4,115,823,000	13	$727,864,000	25	$4,843,687,000
American	104	5,950,437,000	41	258,397,000	145	6,208,834,000
Others	1	12,014,000	2	3,975,000	3	15,989,000
Total	117	10,078,274,000	56	990,236,000	173	11,068,510,000

The number of foreign stocks on the exchanges has declined slightly in recent years, owing principally to a reduction on the American Stock Exchange from 152 in 1956 to 145 in 1960. Trading in foreign stocks was 42.4 percent of the reported share volume on this exchange in 1956 and 17.9 percent in 1960.

Trading in foreign stocks on the New York Stock Exchange was 3.4 percent of the reported share volume thereon in 1956 and 2.7 percent in 1960.

Comparative Exchange Statistics

Stocks on the New York Stock Exchange and on the American Stock Exchange continued to increase in number, and stocks exclusively on the regional exchanges continued to decline in number, during the past fiscal year.

Net number of stocks on exchanges[1]

June 30	New York Stock Exchange	American Stock Exchange	Exclusively on other exchanges	Total stocks on exchanges
1959	1,514	871	576	2,961
1960	1,532	931	555	3,018
1961	1,546	977	519	3,042

[1] Annual data from 1938 through 1960 are shown in a table on p. 70 of the 26th annual report (1960).

The ratio of share volume on the regional exchanges to the total volume on the exchanges has continued to decline, as indicated below and in the table on page 71 of our 26th annual report (1960). Dollar volumes on the New York Stock Exchange and the regional exchanges declined proportionately during the first 6 months of 1961 in view of the unusually high showing made by the American Stock Exchange.

Annual sales of stock on exchanges [1]

Calendar year	Percent of share volume			Percent of dollar volume		
	New York	American	All other	New York	American	All other
1959	65.59	24.50	9.91	83.86	9.53	6.81
1960	68.48	22.27	9.25	83.81	9.35	6.84
1st 6 months, 1961	64.46	26.92	8.62	81.46	12.05	6.49

[1] Shares, warrants, and rights are included. Annual data since 1935 are shown in an appendix table in this annual report.

Comparative Over-the-Counter Statistics

So far as can be ascertained from the standard securities manuals and from reports to the Commission, there are about 4,000 stocks with 300 holders or more, of about 3,500 domestic companies, quoted only in the over-the-counter market. The aggregate market value of these stocks on December 31, 1960, was about $69 billion, or about 20 percent of the $335.3 billion on the stock exchanges, continuing the ratio existing over recent years as mentioned in previous annual reports. Registered investment companies are excluded from this compilation, and are referred to elsewhere in this annual report.

The $69 billion market value included $17.6 billion for bank stocks, $12.4 billion for insurance stocks, and $39 billion for industrial, utility, and other miscellaneous stocks.

The largest number of stockholders reported for an over-the-counter stock was "over 200,000" for the Bank of America NT & SA. Over 25,000 stockholders each were reported for 20 stocks of companies including 7 banks, 8 utilities, 2 insurance, and 3 others. The following table groups issues according to number of reported stockholders.

Issues by number of stockholders

Number of holders	Approximate number of stocks	Number of holders	Approximate number of stocks
25,000 upward	20	500 to 999	1,100
10,000 to 24,999	80	300 to 499	1,000
5,000 to 9,999	200		
1,000 to 4,999	1,600	Total	4,000

The most usual number of stockholders for an actively quoted over-the-counter stock appears to be in a range from 1,000 to 3,000.

In addition to the stocks mentioned above, there is a large and rapidly growing number of actively quoted stocks of companies so small as not to require continuous reporting to the Commission, and whose coverage by the standard securities manuals is generally limited to brief announcements of the circumstances of the offerings. At the close of 1959, there were at least 500 actively quoted stocks of companies not reporting to this Commission nor presented in substantial detail by the standard securities manuals. The number has since increased substantially. While the aggregate dollar value of these stocks will add comparatively little to the figures in billions of dollars shown in our $69 billion compilation, the stocks have been of intense interest to many thousands of stockholders. Fragmentary figures indicate that even a small new offering may come to have at least 500 stockholders, running, in numerous instances, into 1,000 or 2,000, and sometimes more.

A comprehensive view of the number of securities quoted over the counter and at any one time is afforded by data supplied by the National Quotation Bureau, which is the principal purveyor of over-the-counter quotations in the United States. The following table shows the number of stocks quoted in recent years and the corresponding number of dealer listings in the aggregate.

Number of issues and dealer listings in the National Quotation Bureau sheets at approximately Jan. 15, yearly

Year	Stock issues [1]	Dealer listings
1959	6,121	23,964
1960	6,551	25,950
1961	6,918	28,270

[1] The number of stock issues over the years since 1925 is shown on p. 72 of our 26th annual report (1960).

The dealer listings average about four per issue, but tend to cluster in stocks of greatest current interest. About 3,500 of the stocks show substantial concentrations of dealer listings, including both bids and offers. Many of the remainder are quoted only on the bid side, generally indicating attempts either to create and expand markets for closely held stocks or to reduce and extinguish residues from offers in exchange following upon mergers, sales of assets, etc.

Much of the increase in number of stocks and dealer listings shown in the table above is accounted for by hundreds of new offerings so small in size that the financial affairs of the companies involved are shown neither in the standard securities manuals nor in continuing reports to this Commission.

The following table separates the components of the $69 billion market value of domestic over-the-counter stocks mentioned above into

categories according to whether the issuers are or are not reporting to this Commission.

Domestic companies reporting 300 or more holders for their over-the-counter stocks as of Dec. 31, 1960

	Stocks	Issuers	Market values
Reporting pursuant to sec. 15(d):			
Miscellaneous	1,530	1,195	$22,941,150,000
Insurance	104	98	3,248,400,000
Reporting for other reasons:[1] Miscellaneous	227	127	4,951,070,000
	1,861	1,420	31,140,620,000
Not reporting to the Commission:			
Miscellaneous	1,300	1,196	11,109,363,000
Insurance	163	159	9,159,900,000
Banks	719	719	17,651,250,000
	2,182	2,074	37,920,513,000
Total	4,043	3,494	69,061,133,000

[1] These companies have other issues listed on stock exchanges.

Reporting Under Section 15(d)

Issuers reporting pursuant to section 15(d) of the Securities Exchange Act continue to increase in number, as shown in appendix table 19 of our 25th annual report. Commencing with 80 as of June 30, 1937, they reached 1,014 in number 16 years later, in 1953. They then more than doubled to 2,135 in the 6 years to June 30, 1961. The 2,017 such reporting issuers as of December 31, 1960, included 1,353 having $31.3 billion aggregate market value of outstanding stocks. The remaining 664 issuers included partnerships, voting trusts duplicative of listed shares, stock purchase and employees' savings plans, companies with only bonds in public hands, registered investment companies, and numerous issuers for whose shares no quotation was available, including a considerable number registering in 1960 but not offering their shares until 1961.

Issuers reporting under sec. 15(d) as of Dec. 31, 1960[1]

	Stocks	Issuers	Market values
Over the counter:			
Miscellaneous	1,530	1,195	$22,941,150,000
Insurance	104	98	3,248,400,000
Foreign	29	26	1,550,400,000
	1,663	1,319	27,739,950,000
On stock exchanges:[2]			
Miscellaneous	30	29	1,462,200,000
Insurance	3	3	915,600,000
Foreign	2	2	1,179,400,000
	35	34	3,557,200,000
Total	1,698	1,353	31,297,150,000

[1] Includes only issuers with stocks for which quotations are available.
[2] These issuers have stocks with only unlisted trading privileges on exchanges. They also have 31 stocks aggregating $625,520,000 which are only over the counter, and which are included in the over-the-counter showing of stocks and market values above.

DELISTING OF SECURITIES FROM EXCHANGES

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

During the fiscal year ended June 30, 1961, the Commission granted applications by exchanges and issuers to remove 51 stock issues and 13 bond issues from listing and registration pursuant to rule 12d2–1(b). There were 53 stock removals, since 2 stocks delisted by the New York Stock Exchange were also delisted by the Midwest Stock Exchange. The number of issuers involved was 50. The removals were as follows:

Applications filed by:	*Stock issues*	*Bond issues*
New York Stock Exchange	22	13
American Stock Exchange	4	0
Chicago Board of Trade	1	0
Cincinnati Stock Exchange	1	0
Detroit Stock Exchange	3	0
Midwest Stock Exchange	7	0
Pacific Coast Stock Exchange	7	0
Philadelphia-Baltimore Stock Exchange	2	0
Pittsburgh Stock Exchange	2	0
San Francisco Mining Exchange	2	0
Issuers	2	0
Total	53	13

In accordance with the practice developed in recent years, nearly all of the delisting applications were filed by exchanges, only two of the applications having been filed by issuers. Many of the applications were filed by the New York Stock Exchange pursuant to its program of delisting securities which no longer meet its standards for continued listing.

During the fiscal year, the Detroit, Pittsburgh, and Pacific Coast stock exchanges adopted rules providing that an issuer intending to delist may be required to obtain a vote of its stockholders before filing an application with the Commission. This brings the number of exchanges protected by their own delisting rules to 10, being all except one of the principal registered exchanges.

Delisting Proceedings Under Section 19(a)

Section 19(a)(2) authorizes the Commission to suspend for a period not exceeding 12 months, or to withdraw, the registration of a security on a national securities exchange if, in its opinion, such action is necessary or appropriate for the protection of investors and, after notice and opportunity for hearing, the Commission finds that the issuer

of the security has failed to comply with any provision of the act or the rules and regulations thereunder. The following table indicates the number of such proceedings with which the Commission was concerned during the 1961 fiscal year.

Proceedings pending at the beginning of the fiscal year	3	
Proceedings initiated during the fiscal year	1	
		4
Proceedings terminated during the fiscal year:		
By order withdrawing security from registration	1	
By order suspending registration of security	0	
		1
Proceedings pending at the end of the fiscal year		3

Section 19(a)(4) authorizes the Commission summarily to suspend trading in any registered security on a national securities exchange for a period not exceeding 10 days if, in its opinion, such action is necessary or appropriate for the protection of investors and the public interest so requires. The Commission has used this power infrequently in the past. However, during the 1961 fiscal year the Commission found it necessary and appropriate in four instances to use its authority summarily to suspend trading in securities registered on a national securities exchange. Three of these suspensions remained in effect at the end of the fiscal year.

The only case in which an order was issued under section 19(a)(2) during the fiscal year withdrawing securities from registration on a national securities exchange is described below.

Cornucopia Gold Mines.—Registrant, a corporation organized in the State of Washington in 1930, registered its common stock on the American Stock Exchange in 1939. It ceased mining operations in 1941 and remained inactive until May 1957. At that time, control of the company passed to a group of individuals, including Earl Belle.

The Commission instituted proceedings under section 19(a)(2) of the act to determine whether it was necessary or appropriate for the protection of investors to suspend or withdraw the common stock from registration on the exchange for failure to comply with section 13 of the Securities Exchange Act of 1934, and the rules thereunder governing the filing of reports with the Commission and for filing with the Commission proxy material which was false and misleading and failed to comply with the requirements of the Commission's proxy rules.

The Commission found the registrant's 1957 annual report to be false and misleading in a number of respects. The financial statements which purported to be certified by independent certified public accountants were, in fact, prepared and certified by an individual accountant who had made no audit of, nor had he even seen, the

registrant's books and records. The statements he certified were copied, with some figure and wording changes, from statements prepared by another accountant. The financial statements furnished were false and misleading in a number of respects including, among other things, inclusion as cash at December 31, 1957, of the proceeds of a loan of $125,000 made on January 20, 1958, the failure to reveal certain contingent liabilities, and to set forth the basis for determining the amounts at which buildings and equipment were listed as assets.

The annual report was also deficient in failing to indicate important changes in the business of the registrant and in stating that certain individuals had been directors of the registrant when, in fact, they had never consented to act as such and were not aware that they had been "elected" to that office.

The Commission also found that the registrant had failed to file current reports pursuant to section 13 of the act to report the acquisition of certain subsidiaries, to describe certain legal proceedings with respect to one of its subsidiaries and to reflect a change in control of the registrant from the group referred to above to Earl Belle.

The Commission further found that the preliminary proxy material filed by the registrant with respect to a proposed meeting of stockholders in July 1958 contained false and misleading statements and omitted necessary information. For example, it gave the misleading impression that the registrant's program for the acquisition of subsidiaries was completed and that only stockholder ratification was being sought whereas, in fact, stockholder approval of certain capital changes was essential in order to enable the registrant to be in a position to meet its commitments to issue large blocks of stock necessary to complete the acquisitions. The proxy material was also false and misleading in failing to disclose adequately and accurately certain transactions by the registrant and its affiliates. Information with respect to remuneration paid by the registrant was also found to be materially misleading.

On the basis of these and numerous other deficiencies the Commission issued an order withdrawing the registrant's common stock from registration on the American Stock Exchange, which had suspended trading in the stock prior to the commencement of the Commission proceedings.[1]

UNLISTED TRADING PRIVILEGES ON EXCHANGES

Stocks with only unlisted trading privileges on the exchanges continued to decline in number, falling from 232 on June 30, 1960, to 212 on June 30, 1961. For comparison, it may be recalled that such stocks

[1] Securities Exchange Act Release No. 6339 (Aug. 11, 1960).

numbered about 1,800 on the American Stock Exchange alone, at their peak in 1931.

The aggregate market value of these stocks on December 31, 1960, was $13 billion, or less than 4 percent of the $335.3 billion total of all stocks on the exchanges. Nearly 98 percent of the $13 billion was on the American Stock Exchange.

Stocks with only unlisted trading privileges on the exchanges as of Dec. 31, 1960 [1]

Exchange	Preferred stocks		Common stocks		Total stocks	
	Issues	Value	Issues	Value	Issues	Value
American	36	$425,046,000	143	$12,305,978,000	179	$12,731,024,000
All other [2]	5	12,800,000	31	286,122,000	36	298,922,000
Total	41	437,846,000	174	12,592,100,000	215	13,029,946,000

[1] Excluding a few stocks for which quotations were not available.
[2] Excluding duplications with respect to 5 common stocks also traded unlisted on the American Stock Exchange.

About $5 billion of the $13 billion aggregate was of 55 stocks of companies reporting as fully as though they were listed, by reason of registrations under the Securities Act, or the Public Utility Holding Company Act, or the Investment Company Act, or because the companies in some cases had other securities listed on registered exchanges.

About $4 billion of the $13 billion aggregate was of 63 Canadian and other foreign stocks and American Depositary Receipts for foreign shares, of companies not reporting to the Commission.

About $4 billion of the $13 billion aggregate was of 97 stocks of domestic companies not reporting to the Commission. More than half of this $4 billion was held by Standard Oil Co. (New Jersey) in shares of Creole Petroleum Corp.

The $13 billion unlisted aggregate presents a sharp reduction from a peak of $22.4 billion on December 31, 1956. About two-thirds of the $9.4 billion reduction was occasioned by removal from the American Stock Exchange to listing on the New York Stock Exchange of Great Atlantic & Pacific Tea Co., Inc., and Singer Manufacturing Co. stocks and by absorption of Humble Oil & Refining Co., International Petroleum Co., Ltd., and United States Foil Co. into companies whose stocks are listed on the New York Stock Exchange. At the close of the fiscal year, listings on the New York Stock Exchange of Duke Power Co. and Electric Bond & Share Co. stocks, involving a further $0.7 billion loss to the American Stock Exchange unlisted section, were in process.

The reported volume of trading on the exchanges in stocks with only unlisted trading privileges thereon, for the calendar year 1960, was about 30,900,000 shares or about 2.2 percent of the total share

volume on all the exchanges. About 82.6 percent of this volume was on the American Stock Exchange, 16.4 percent was on the Pacific Coast Stock Exchange, and four other regional exchanges contributed the remaining 1 percent. The share volume in stocks with only unlisted trading privileges was about 8.5 percent of the total share volume on the American Stock Exchange and about 11.7 percent of that on the Pacific Coast Stock Exchange in the calendar year 1960.

Unlisted trading privileges on some exchanges in stocks listed on other exchanges remained at 1,538, there being 55 additions and 55 removals during the year. The reported volume of unlisted trading on the exchanges in these stocks, for the calendar year 1960, was close to 45 million shares. About one-fifth of this volume was on the American Stock Exchange in stocks listed on regional exchanges, and about four-fifths was on regional exchanges in stocks listed on the New York or American Stock Exchange. The number of unlisted trading privileges is greater than the number of stocks involved, since leading New York listings are traded unlisted on as many as seven regional exchanges. While the 45 million shares amounted to only about 3.2 percent of the total share volume on all the exchanges, it constituted substantial portions of the share volumes on the leading regional exchanges, reaching about 77 percent on Boston, 72 percent on Philadelphia-Baltimore, 64 percent on Cincinnati, 55 percent on Pittsburgh, 47 percent on Detroit, 32 percent on Midwest, and 21 percent on Pacific Coast Stock Exchange.

Appendix tables 7 and 8 of this annual report show the dispersion of stocks and share volumes among the exchanges.

Applications for Unlisted Trading Privileges

Applications by exchanges for unlisted trading privileges in stocks listed on other exchanges, made pursuant to rule 12f–1 under section 12(f) of the Securities Exchange Act, were granted by the Commission during the fiscal year ended June 30, 1961, as follows:

Stock exchange:	*Number of stocks*
Boston	7
Cincinnati	10
Detroit	3
Midwest	3
Pacific Coast	12
Philadelphia-Baltimore	19
Pittsburgh	1
	55

During the fiscal year, the Commission granted an application by the American Stock Exchange pursuant to rule 12f–2 of section 12(f) of the Securities Exchange Act for continuance of unlisted trading, on the ground of substantial equivalence, in the Lackawanna Rail-

road Co. First Mortgage Bonds, Series A and B, after their assumption by the Erie-Lackawanna Railroad Co. upon merger in October 1960.

BLOCK DISTRIBUTIONS REPORTED BY EXCHANGES

The usual method of distributing blocks of listed securities considered too large for the auction market on the floor of an exchange is to resort to "secondary distributions" over the counter after the close of exchange trading.

In an effort to keep as much as possible of this business on their floors, special offering plans were adopted by leading exchanges commencing in 1942, and the somewhat more flexible exchange distribution plans commencing in 1953. The plans, declared effective by this Commission, include an exemption from the antimanipulative rule 10b–2, as set forth in paragraph (d) thereof, with respect to payment of compensation in connection with the distribution of securities.

The largest number of special offerings was 87 in 1944, with $32,454,000 aggregate value. The number has declined through the years, there being only three in 1960, aggregating $5,439,000.

Similarly, the largest number of exchange distributions was 57 in 1954, with $24,664,000 aggregate value, compared with 20 in 1960, aggregating $11,108,000.

Secondary distributions, as reported, averaged 89 in number and about $139,000,000 in amount during the 12 years 1942–53 inclusive, rising to 115 in number and about $433,200,000 in amount as the average over the 7 years 1954–60 inclusive.

During the 6 months ending June 30, 1961, there were no special offerings, 18 exchange distributions aggregating $38,743,000, and 58 secondary distributions aggregating $559,921,000. This last amount was larger than the $424,688,000 secondary distributions during the entire year 1960, and was also larger than the $455,764,000 in the first half and the $366,572,000 in the second half of 1959.

Block distributions reported by exchanges

	Number	Shares in offer	Shares sold	Value
	12 months ended Dec. 31, 1960 [1]			
Special offerings	3	72,473	63,663	$5,439,000
Exchange distributions	20	450,574	441,664	11,108,000
Secondary distributions	92	11,206,438	11,439,065	424,688,000
	6 months ended June 30, 1961			
Special offerings	0	0	0	0
Exchange distributions	18	703,624	619,279	$38,743,000
Secondary distributions	58	11,219,282	11,348,392	559,924,000

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

STUDY OF PUT AND CALL OPTIONS

During the fiscal year, the Division of Trading and Exchanges completed a study of put and call options and reported the results to the Commission. The study was undertaken at the direction of the Commission in May 1959 to enable the Commission to carry out its statutory responsibilities under the Securities Exchange Act of 1934, sections 9 (b) and (c) of which empower the Commission to impose rules and regulations on dealings in puts and calls if it deems necessary.

The study was one of several reviews of option trading made from time to time but was more comprehensive in scope than previous studies. It was based chiefly on replies to questionnaires, covering options outstanding or sold during June 1959, by put and call brokers and dealers and by New York Stock Exchange member firms which endorse or guarantee puts and calls.

A report of the study, which has been published under the title "Report on Put and Call Options," provides for the first time detailed statistical information on the size and nature of the put and call market. It includes data on the proportion of options which were exercised and on the net return to option holders.

MANIPULATION AND STABILIZATION

Manipulation

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

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

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

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

The following table shows the number of quizzes and formal investigations pending at the beginning of fiscal 1961, the number initiated in fiscal 1961, the number closed or completed during the same period, and the number pending at the end of the fiscal year:

Trading investigations

	Quizzes	Formal investigations
Pending June 30, 1960	86	14
Initiated	116	3
Total	202	17
Closed or completed during fiscal year	108	1
Changed to formal during fiscal year	3	
Total	111	1
Pending at end of fiscal year	91	16

When securities are to be offered to the public, their markets are watched very closely to make sure that the price is not unlawfully raised prior to or during the distribution. Registered offerings numbering 1,507, having a value of over $19 billion, and 1,057 offerings exempt under section 3(b) of the Securities Act, having a value of about $239 million, were so observed during the fiscal year. Other offerings numbering 223, such as secondary distributions and distributions of securities under special plans filed by the exchanges, having a total value of $485 million, were also kept under surveillance.

Stabilization

Stabilization involves open-market purchases of securities to prevent or retard a decline in the market price in order to facilitate a distribution. It is permitted by the Exchange Act subject to the restrictions provided by the Commission's rules 10b–6, 7, and 8. These rules are designed to confine stabilizing activity to that necessary for the above purpose, to require proper disclosure and to prevent unlawful manipulation.

During 1961 stabilizing was effected in connection with stock offerings totalling 45,024,882 shares having an aggregate public offering price of $1,271,512,178 and bond offerings having a total offering price of $255,587,250. In these offerings, stabilizing transactions resulted in the purchase of 1,052,186 shares of stock at a cost of $25,015,006 and bonds at a cost of $2,389,262. In connection with the stabilizing transactions, 7,743 stabilizing reports showing purchases and sales of securities effected by persons conducting the distribution were received and examined during the fiscal year.

INSIDERS' SECURITY HOLDINGS AND TRANSACTIONS

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

Ownership Reports

Section 16(a) of the Securities Exchange Act requires every person who is a direct or indirect beneficial owner of more than 10 per-

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

All ownership reports are available for public inspection as soon as they are filed at the Commission's office in Washington and reports filed pursuant to section 16(a) of the Securities Exchange Act may also be inspected at the exchanges where copies of such reports are filed. In addition, for the purpose of making the reported information available to interested persons who may not be able to inspect the reports in person, the Commission summarizes and publishes such information in a monthly "Official Summary of Security Transactions and Holdings", which is distributed by the Government Printing Office on a subscription basis. Such subscriptions to this publication exceeded 16,000 as of June 30, 1961.

During the fiscal year, 40,869 ownership reports were filed, as compared with 38,821 reports filed during the 1960 fiscal year. The following table shows the number of reports filed under each of the three acts under which such reports are required.

Number of reports filed during fiscal year 1961

Section 16(a) of the Securities Exchange Act of 1934	39,127
Section 17(a) of the Public Utility Holding Company Act of 1935	286
Section 30(f) of the Investment Company Act of 1940	1,456
Total	40,869

Recovery of Short-Swing Trading Profits by Issuer

In order to prevent insiders from making unfair use of information which may have been obtained by reason of their relationship with a company, section 16(b) of the Securities Exchange Act, section 17(b) of the Public Utility Holding Company Act, and section 30(f) of the Investment Company Act provide for the recovery by or on behalf of the issuer of any profit realized by insiders from certain purchases and sales, or sales and purchases, of securities of the company within any period of less than 6 months. The Commission has certain exemptive powers with respect to transactions not comprehended within the pur-

pose of these provisions, but is not charged with the enforcement of the civil remedies created thereby.

REGULATION OF PROXIES

Scope of Proxy Regulation

Under sections 14(a) of the Securities Exchange Act, 12(e) of the Public Utility Holding Company Act of 1935, and 20(a) of the Investment Company Act of 1940, the Commission has adopted regulation 14 requiring the disclosure in a proxy statement of pertinent information in connection with the solicitation of proxies, consents, and authorizations in respect of securities of companies subject to those statutes. The regulation includes provisions that when the management is soliciting proxies, any security holder desiring to communicate with other security holders for a proper purpose may require the management to furnish him with a list of all security holders or to mail his communication to security holders for him. A security holder may also, subject to reasonable prescribed limitations, require the management to include in its proxy material any appropriate proposal which such security holder desires to submit to a vote of security holders. Any security holder or group of security holders may at any time make an independent proxy solicitation upon compliance with the proxy rules, whether or not the management is making a solicitation.

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

Statistics Relating to Proxy Statements

During the 1961 fiscal year, 2,197 proxy statements in definitive form were filed under the Commission's regulation 14 for the solicitation of proxies of security holders; 2,169 of these were filed by management and 28 by nonmanagement groups or individual stockholders. These 2,197 solicitations related to 1,974 companies, some 200 of which had more than 1 solicitation during the year, generally for a special meeting not involving the election of directors.

There were 1,966 solicitations of proxies for the election of directors, 217 for special meetings not involving the election of directors, and 14 for assents and authorizations for action not involving a meeting of security holders or the election of directors.

In addition to the election of directors, the decisions of security holders were sought through the solicitation in the 1961 fiscal year

of their proxies, consents and authorizations with respect to the following types of matters:

Mergers, consolidations, acquisitions of businesses, purchases and sales of property, and dissolutions of companies	197
Authorizations of new or additional securities, modifications of existing securities, and recapitalization plans (other than mergers, consolidations, etc.)	304
Employee pension and retirement plans (including amendments to existing plans)	36
Bonus, profit-sharing plans and deferred compensation arrangements (including amendments to existing plans and arrangements)	21
Stock option plans (including amendments to existing plans)	212
Stockholder approval of the selection by management of independent auditors	736
Miscellaneous amendments to charter and bylaws, and miscellaneous other matters (excluding those involved in the preceding matters)	511

Stockholders' Proposals

During the 1961 fiscal year, 48 stockholders submitted a total of 198 proposals which were included in the 127 proxy statements of 127 companies under rule 14a–8 of regulation 14.

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

The managements of 27 companies omitted from their proxy statements under the Commission's rule 14a–8 a total of 55 additional proposals submitted by 31 individual stockholders. The principal reasons for such omissions and the numbers of times each such reason was involved (counting only one reason for omission for each proposal even though it may have been omitted under more than one provision of rule 14a–8) were as follows:

(a) 20 proposals were not a proper subject matter under State law;

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

(c) 8 proposals related to the ordinary conduct of the company's business;

(d) 6 proposals were not timely submitted;

(e) 2 proposals and reasons therefor were deemed misleading or impugned character;

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

(g) 9 proposals were withdrawn by the stockholders.

Ratio of Soliciting to Nonsoliciting Companies

Of the 2,341 issuers that had securities listed and registered on national securities exchanges as of June 30, 1961, 2,097 had voting securities so listed and registered. Of these 2,097 issuers, 30 listed and registered voting securities for the first time after their annual stockholders' meeting in fiscal 1961; thus, of the remaining 2,067 issuers with voting securities, 1,680, or 81 percent, solicited proxies under the Commission's proxy rules during the 1961 fiscal year for the election of directors.

Proxy Contests

During the 1961 fiscal year, 32 companies were involved in proxy contests for the election of directors. A total of 463 persons, both management and nonmanagement, filed detailed statements as participants under the requirements of rule 14a–11. Proxy statements in 20 cases involved contests for control of the board of directors and those in 12 cases involved contests for representation on the board.

Management retained control in 9 of the 20 contests for control of the board of directors, 3 were settled by negotiation, nonmanagement persons won 2, and 6 were pending as of June 30, 1961. Of the 12 cases where representation on the board of directors was involved, management retained all places on the board in 10 cases and there were 2 cases pending as of June 30, 1961.

INVESTIGATIONS

Section 21(a) of the act authorizes the Commission to make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of the act or any rule or regulation thereunder. The Commission is authorized, for this purpose, to administer oaths, subpoena witnesses, compel their attendance, take evidence and require the production of records. In addition to the investigations undertaken in enforcing the anti-fraud, broker-dealer registration, and other regulatory provisions of the act, which are discussed in part XI of this report under "Complaints and Investigations", the following investigations were undertaken in enforcing the reporting provisions of sections 12, 13, 14, and 15(d) of the act and the rules thereunder, particularly those provisions relating to the filing of annual and other periodic reports and proxy material:

Investigations pending at beginning of the fiscal year	26	
Investigations initiated during the fiscal year	14	
		40
Investigations closed during the fiscal year		13
Investigations pending at the close of the fiscal year		27

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

Registration

Section 15(a) of the Securities Exchange Act of 1934 requires the registration of all brokers and dealers who use the mails or instrumentalities of interstate commerce to effect transactions in, or to induce the purchase or sale of, securities in the over-the-counter markets. The act affords exemption from registration for those brokers and dealers whose business is exclusively intrastate or exclusively in exempted securities, commercial paper, bankers' acceptances, or commercial bills.

The following table sets forth statistics with respect to broker and dealer registrations and applications for fiscal 1961.

Effective registrations at close of preceding fiscal year	5,288
Applications pending at close of preceding fiscal year	61
Applications filed during fiscal year	1,065
Total	6,414
Applications denied	5
Applications withdrawn	16
Applications cancelled	0
Registrations withdrawn	673
Registrations cancelled	35
Registrations revoked	53
Registrations suspended	7
Registrations effective at end of year	5,500
Applications pending at end of year	126
Total	6,415
Less suspended registrations revoked during year	[1] 1
Total	6,414

[1] 31 registrations were in suspension at close of the fiscal year.

Administrative Proceedings

Section 15(b) of the Securities Exchange Act provides that the Commission shall, after appropriate notice and opportunity for hearing, deny or revoke registration if it finds such a sanction in the public interest and that the applicant or registrant or any partner, officer, director, or other person directly or indirectly controlling or controlled by such applicant or registrant is subject to one or more of the disqualifications set forth in the act. These disqualifications, in general, are:

(1) willful false or misleading statements in an application or document supplemental thereto;

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

The Commission is empowered by section 15A of the Securities Exchange Act to suspend or expel a broker-dealer from membership in the National Association of Securities Dealers, Inc., the only securities association registered with the Commission, upon a finding of violation of the Federal securities laws or regulations thereunder. Section 19(a)(3) of the act grants similar powers with respect to membership in national securities exchanges.

The Commission may not deny or revoke registration without finding a disqualification of the types set forth in the act. Therefore, bad reputation or character, or lack of experience in the securities business, or even conviction of a felony unrelated to transactions in securities cannot in itself be a basis for ordering denial or revocation of registration as a broker-dealer.

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

The following statistics deal with administrative proceedings instituted during fiscal 1961 to deny and revoke registration and to suspend and expel from membership in an exchange or the National Association of Securities Dealers, Inc.

Proceedings pending at start of fiscal year to:

Revoke registration	54
Revoke registration and suspend or expel from NASD or exchanges	53
Deny registration to applicants	8
Total proceedings pending	115

Proceedings instituted during fiscal year to:	
Revoke registration	29
Revoke registration and suspend or expel from NASD or exchanges	37
Deny registration	11
Total proceedings instituted	77
Total proceedings current during fiscal year	192

Disposition of Proceedings:

Proceedings to revoke registration:	
Dismissed on withdrawal of registration	1
Registration revoked	31
Total	32
Proceedings to revoke registration and suspend or expel from NASD or exchanges:	
Registration revoked	11
Registration revoked and firm expelled from NASD	10
Registration revoked and firm expelled from a securities exchange	1
Dismissed on withdrawal of registration	3
Dismissed—registration and membership permitted to continue in effect	2
Suspended for a period of time from NASD	1
Firm suspended for a period of time from NASD and 2 partners in firm suspended for a period of time from 2 securities exchanges	1
Total	29
Proceedings to deny registration to applicant:	
Registration denied	5
Dismissed on withdrawal of application	1
Dismissed—application permitted to become effective	1
Total	7
Total proceedings disposed of	68
Proceedings pending at end of fiscal year to:	
Revoke registration	51
Revoke registration and suspend or expel from NASD or securities exchanges	61
Deny registration to applicants	12
Total proceedings pending at end of fiscal year	124
Total proceedings accounted for	192

Revocation and Denial Proceedings

Action taken this past year in administrative proceedings under section 15(b) of the Securities Exchange Act included the following cases in which the Commission revoked broker-dealer registrations:

Re, Re & Sagarese.—The Commission found that Gerald A. Re and Gerald F. Re, members of the American Stock Exchange, had willfully violated section 5 of the Securities Act of 1933 in the unlawful distribution on that exchange of the stocks of nine companies in which they acted as specialists on the exchange. It also found that the Res willfully violated the antifraud and antimanipulative provisions of the Securities Exchange Act of 1934, its short-selling provisions and its restrictions applicable to specialists as well as its bookkeeping requirements. Accordingly, the Commission, in advance of the issuance of formal findings and opinion, ordered the immediate expulsion of the two Res from membership on the American Stock Exchange and revoked the broker-dealer registration of Re, Re & Sagarese.[2]

Barnett & Co., Inc.—This registrant was found to have employed well-known "boilerroom" techniques in connection with the offer and sale of stock of Steuben Electronics Corporation, Inc., including the use of numerous salesmen to sell a large block of such stock exclusively by long-distance telephone calls through the means of inaccurate, highly exaggerated, and misleading representations concerning the issuer's financial condition, its income and capital, and the prospective market price of its stock, without any reasonable basis therefor and without any efforts having been made to obtain information concerning such matters.[3] The Commission found Stanley Barnett, Maurice Lieber, and Murray Libman to be causes of the order of revocation.

Midland Securities, Inc.—The Commission found that registrant, Ben Degaetano, president, a director and principal shareholder of registrant, and registrant's salesmen, in the sale of securities of Inland Resources Corp., made false and misleading statements that, among other things, Inland had just brought in a "gusher" and had many producing wells, the stock was to be listed on a national securities exchange, only a limited amount of stock was available, registrant's price for the stock was lower than the prevailing market price, registrant could give a special price for the stock because it had obtained a block from an estate, the price of the stock would increase sharply in a short time, and that Inland had or was about to receive government contracts.[4] The Commission found Degaetano and Joseph P. Emanuel, Samuel Golden, Herbert Geist, Marvin Berkrot, and Irving R. Winkler, salesmen, each a cause of the order of revocation.

Cullen-Stanford Corp.—The Commission determined that the registrant and its president, Stanford R. Gabaeff, whom it found to be a cause of the revocation order, had sold unregistered shares of Union Gulf Petroleum Corp. and had made false and misleading representations in the sale of shares of Union and of Pacific Central Co.

[2] Securities Exchange Act Release No. 6551 (May 4, 1961).
[3] Securities Exchange Act Release No. 6466 (Feb. 8, 1961).
[4] Securities Exchange Act Release No. 6524 (Apr. 10, 1961).

Among other things, it was represented that the Union stock had been approved by the Commission, that it would have a rapid growth and rise within a short period from its current price of $4\frac{1}{8}$ per share to $7 or $8, that dividends would be paid on the stock, and that a New York syndicate was buying up the stock and such activity would cause the price to increase markedly; and that the Pacific stock would double or triple in price within 60 or 90 days, that such stock would be listed on an exchange, that dividend payments would be increased; that Pacific would announce startling new discoveries, that Pacific and Shell Oil Co. expected to merge and had entered into a contract whereby Shell agreed to take Pacific's entire output of oil, and that registrant was the fifth largest brokerage firm on Wall Street.[5]

N. Pinsker & Co., Inc.—Registrant sold shares of unregistered Class B stock of Tyrex Drug & Chemical Corp. in violation of section 5 of the Securities Act, participating in a distribution being made for the issuer and purchasing Tyrex stock with a view to distribution from an individual who was under common control with the issuer. In addition, registrant, employing the technique of using numerous salesmen and wholesale and persistent telephone solicitation, violated the anti-fraud provisions of the securities acts by making false and misleading representations that Tyrex had developed a drug which would cure ulcers, and concerning the future market price of Tyrex stock and the merger or affiliation of Tyrex with another company.[6]

Earl J. Knudson & Co.—The Commission found that registrant Earl J. Knudson, Jr., vice president, illegally offered and sold unregistered shares of International Petroleum Holding Corp. In August 1959, at the request of one Max Gilford, Knudson acquired substantially all the stock of a predecessor of International, which was a corporate shell, for $5,000 and delivered such shares to Gilford. Following a 100-for-1 split of its shares, a total of 2,190,000 shares, all but 100 of the shares outstanding after the split, were transferred to Knudson. Thereafter a wide distribution of the shares was effected in several States through various individuals and broker-dealers without prior registration with the Commission. The Commission found that Knudson participated in significant steps essential to the distribution and aided and abetted in it, and that, in the light of the extensive distribution, no private offering exemption under section 4(1) as claimed by Knudson was available.[7]

Lawrence Rappee, doing business as Lawrence Rappee & Co.—At the same time that registrant was conducting an intensive campaign to effect retail distribution of the common stock of Star Chemical Laboratories, Inc., it purchased shares and entered quotations for

[5] Securities Exchange Act Release No. 6427 (Dec. 2, 1960).
[6] Securities Exchange Act Release No. 6401 (Oct. 21, 1960).
[7] Securities Exchange Act Release No. 6503 (Mar. 21, 1961).

the stock in the daily sheets of the National Daily Quotation Service at progressively increasing prices which averaged 20 percent and were as much as 30 percent higher than the closely contemporaneous cost prices of the shares purchased. Registrant also arranged with a broker-dealer in another city to also submit quotations for Star Chemical stock and periodically furnished this broker-dealer with the prices to quote, which in general were the same as and followed registrant's quotations. No other broker-dealer quoted Star Chemical stock during the period.

The Commission concluded that registrant created the market for Star Chemical stock and through the quotations of the other broker-dealer created the illusion that an independent market existed to facilitate registrant's sales of the block of stock he acquired. These activities of registrant were not revealed to his customers. In addition, registrant used sales brochures which contained false and misleading statements regarding the assets and facilities of Star Chemical and represented that several other companies were its wholly-owned subsidiaries, whereas the company had only nominal assets and had no interest in or control over any of the alleged subsidiaries.[8]

Security Enterprises, Inc.—Registrant, Truman K. Pennell, president and owner of substantially all of the registrant's shares, and Carl L. Linn, a former employee of registrant, sold shares of American Trust Life Insurance Co. and American Trust Underwriters without disclosing to customers as required by rule 15c1–5 of the Exchange Act that Pennell was president and a large stockholder of Life and Underwriters and occupied a position of control in those companies, or the fact that registrant and Linn were also under the common control of Pennell. The Life and Underwriters shares were sold to customers at excessive prices not reasonably related to current market prices, some sales by registrant being at prices representing markups of as much as 283 percent over its contemporaneous costs on purchases from other customers, and sales by Linn representing markups as much as 102 percent over his contemporaneous costs on securities he purchased from Pennell and as much as 185 percent over his contemporaneous costs on purchases from other customers. Customers were not informed of the markups or that shares they purchased had been acquired from Pennell. During the period in which these transactions were being effected registrant and Linn also failed to give or send to customers written confirmations disclosing the information required by rule 15c1–4 of the Exchange Act, including information as to the capacities in which they were acting.[9]

[8] Securities Exchange Act Release No. 6504 (Mar. 22, 1961).
[9] Securities Exchange Act Release No. 6314 (July 11, 1960).

Manthos, Moss & Co., Inc.—This case involved transactions by registrant with customers at prices not reasonably related to prevailing market prices. The Commission held that the best evidence of current market prices is a dealer's own contemporaneous costs, in the absence of countervailing evidence. Certain securities purchased from other customers were sold on the same day at markups ranging from 12.8 percent to 60 percent of such cost and from $62.50 to $5,000. In other transactions where registrant sold to customers securities purchased from other broker-dealers on 1 or 2 days prior to the date of sale, registrant's markups over such cost ranged from 9.7 percent to 300 percent. Registrant also purchased securities from customers which he resold to other broker-dealers at prices ranging from 12.5 percent to 100 percent greater than the prices registrant had paid its customers, registrant's profit on an individual transaction ranging as high as $2,062.[10]

Willful violation of the antifraud provisions of the securities acts resulting from the sale of securities through false and misleading representation were also the basis for revocation in *Berry & Co.*,[11] *Associated Securities Corp.*,[12] *N. Sims Organ & Co., Inc.*,[13] *L. H. Feigin*,[14] and for denial of registration in *R. B. Michaels & Co.*[15] and *Irving Grubman & Co.*[16] Such fraud, together with willful violations of the securities registration provisions, were the grounds for revocation in *L. W. Page & Co., Inc.*,[17] *H. G. Stolle & Co.*,[18] *Ira Armand & Co., Inc.*,[19] *Alan Associates Securities Corp.*,[20] *Mac Robbins & Co., Inc.*,[21] *Stanley Brown* [22] and *Makris Investment Brokers*.[23] Violation of the securities registration provisions was the principal or contributing basis for revocation in *Rudolph V. Klein, doing business as R. V. Klein Co.*,[24] *Angelus & Daly, Inc.*,[25] and *Read, Evans & Co.*[26]

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[10] Securities Exchange Act Release No. 6471 (Feb. 15, 1961). Markups ranging from 12 percent to 66 percent over the contemporaneous high asked prices in the daily quotation sheets were found excessive in William Evan Davis, doing business as United Securities Co.. Securities Exchange Act Release No. 6499 (Apr. 28, 1961).

[11] Securities Exchange Act Release No. 6349 (Aug. 17, 1960).

[12] Securities Exchange Act Release No. 6315 (July 12, 1960). Subsequent to the end of the fiscal year, the U.S. Court of Appeals for the Tenth Circuit, on petition for review, affirmed the Commission's order. *Associated Securities Corporation* v. *S.E.C.*, 293 F. 2d 738 (C.A. 10, 1961).

[13] Securities Exchange Act Release No. 6495 (Mar. 14, 1961) aff'd 293 F. 2d 78 (C.A. 2. 1961), cert. denied, 30 U.S.L. Week 3227 (Jan. 15, 1962).

[14] Securities Exchange Act Release No. 6505 (Mar. 21, 1961).

[15] Securities Exchange Act Release No. 6461 (Feb. 6, 1961).

[16] Securities Exchange Act Release No. 6546 (May 5, 1961).

[17] Securities Exchange Act Release No. 6375 (Oct. 3, 1960).

[18] Securities Exchange Act Release No. 6389 (Oct. 14, 1960).

[19] Securities Exchange Act Release No. 6416 (Nov. 18, 1960).

[20] Securities Exchange Act Release No. 6434 (Dec. 16, 1960).

[21] Securities Exchange Act Release No. 6462 (Feb. 6, 1961).

[22] Securities Exchange Act Release No. 6474 (Feb. 15, 1961).

[23] Securities Exchange Act Release No. 6509 (Mar. 24, 1961).

[24] Securities Exchange Act Release No. 6415 (Nov. 17, 1960).

[25] Securities Exchange Act Release No. 6453 (Jan. 18, 1961).

[26] Securities Exchange Act Release No. 6467 (Feb. 9, 1961).

The use of customers' funds for the registrant's own purposes, a form of misconduct accompanied in most cases by doing business while insolvent and in violation of the net capital requirements, by failure to file financial reports, sending false confirmations, and keeping false records, was found and resulted in revocation in *Wiles & Co.*,[27] *Thompson & Sloan, Inc.*,[28] *First Idaho Corp.*[29] and in *First Securities Co.*[30] In the last named case, Frank L. Wasserman, a partner, commingled securities carried for the accounts of customers with registrant's own securities subject to a lien for loans made to it, and sold for his own account stock belonging to a customer without the latter's knowledge or authorization, signing the customer's name on the stock certificate to effect its transfer.

An injunction against violation of the securities registration provisions, conviction for mail fraud in the sale of securities and the failure to amend registrant's broker-dealer application to disclose such conviction were the grounds for revocation in *Mortgage Clubs of America, Inc.*[31]

Suspension Proceedings

Section 15(b) authorizes the Commission to suspend effectiveness of a broker-dealer's registration pending final determination as to whether registration should be revoked. To suspend, the Commission must make a finding, after notice and opportunity for a hearing, that suspension is necessary or appropriate in the public interest or for the protection of investors. During the past fiscal year the Commission suspended the registrations of five broker-dealers after hearings at which the evidence adduced revealed that serious misconduct was currently being engaged in by the respondents.[32] To prevent further harm to investors the Commission determined that it was in the public interest to suspend those registrations pending determination of the question of revocation. The entry of an order of suspension is not determinative of the ultimate questions of whether willful violations have been committed and an order of revocation should be issued.

Other Sanctions

The Commission is empowered to suspend for a period not exceeding 12 months or to expel any member of a national securities exchange for violations of the Securities Exchange Act and to take such action

[27] Securities Exchange Act Release No. 6354 (Aug. 24, 1960).
[28] Securities Exchange Act Release No. 6443 (Jan. 3, 1961).
[29] Securities Exchange Act Release No. 6543 (Apr. 28, 1961).
[30] Securities Exchange Act Release No. 6446 (Jan. 9, 1961).
[31] Securities Exchange Act Release No. 6508 (Mar. 24, 1961).
[32] *Heft, Kahn & Infante, Inc.*, Securities Exchange Act Release No. 6362 (July 26, 1960); *Biltmore Securities Corp.*, Securities Exchange Act Release No. 6394 (Oct. 17, 1960); *Batten & Co., Inc.*, Securities Exchange Act Release No. 6436 (Dec. 14, 1960); *Allstate Securities, Inc.*, Securities Exchange Act Release No. 6496 (Mar. 13, 1961); and *D. H. Victor & Co., Inc.*, Securities Exchange Act Release No. 6562 (May 17, 1961).

with respect to a member of a registered securities association for such violations or for willful violations of the Securities Act.

In *G. J. Mitchell, Jr. Co.*,[33] the Commission suspended the registrant from membership in the National Association of Securities Dealers, Inc., for 15 days for using sales literature which constituted a prospectus not conforming to the requirements of section 10 of the Securities Act and using a selling brochure which omitted to refer to operating losses by the issuer of the securities being recommended.

In *Bruns, Nordeman & Co.*,[34] the registrant was suspended from membership in the National Association of Securities Dealers, Inc., and two of its partners, Harold S. Coleman and Lawrence H. Lubin were suspended from membership in the New York Stock Exchange and American Stock Exchange—Coleman for a period of 90 days and Lubin for 60 days. The Commission found that Bruns, Nordeman, in advance of a public offering through it as underwriter of additional shares of Gob Shops, Inc., "at the market" price at the time of the offering, entered increasing bids for Gob stock in the daily quotation sheets and engaged in trading activities in such stock which "were designed to stimulate buyer interest and thereby create market activity which would induce the purchase of Gob Shops stock by others at rising prices." Additional stimulus was provided the market by the declaration by Gob, following the proposal by Coleman and Lubin who were directors, that a cash dividend be paid despite an operating loss, which was charged to capital surplus because of the unsufficiency of earned surplus. Misleading optimistic sales literature and misrepresentations were also used as part of the manipulative scheme to raise the price of the Gob stock. The bidding for and purchasing of Gob stock during the distribution of the shares pursuant to the underwriting was also found to violate rule 10b–6.

The Commission found certain mitigating circumstances, including the previous good records of the registrant, Coleman and Lubin, that registrant would be disqualified from acting as an underwriter for an offering of securities under regulation A for a period of 5 years, and that pursuant to rescission offers made to customers who had purchased Gob stock from it, registrant had repurchased many shares and had paid losses sustained by customers of over $10,000. The Commission concluded that, under the circumstances, the public interest did not require the revocation of registrant's registration.

Net Capital Rule

Rule 15c3–1 adopted under section 15(c)(3) of the Securities Exchange Act, commonly known as the net capital rule, provides

[33] Securities Exchange Act Release No. 6433 (Dec. 13, 1960).
[34] Securities Exchange Act Releases Nos. 6540 (Apr. 26, 1961) and 6548 (May 2, 1961).

safeguards for funds and securities of customers dealing with broker-dealers. This rule imposes a 20-to-1 limit on "aggregate indebtedness" which may be incurred by a broker-dealer in relation to his "net capital" as those terms are defined by the rules.

Prompt action is taken whenever it appears from examination of reports filed by a registered broker-dealer, or through inspection of his books and records, that the permitted ratio is exceeded. Unless the broker-dealer promptly takes necessary steps to correct such capital deficiency, injunctive action may be taken and proceedings may be instituted to determine whether the broker-dealer registration should be revoked. During the fiscal year, violations of the net capital rule were charged in injunctive actions filed against 31 broker-dealers and in revocation proceedings instituted against 26 broker-dealers.

Broker-dealers participating in "firm commitment" underwritings must have sufficient net capital to permit participation in the underwriting for the amount agreed upon without impairing the allowable capital-debt ratio prescribed by the rule. In order to protect issuers and customers of broker-dealers participating in such underwritings, the staff carefully analyzes the latest information concerning the capital position of such broker-dealers in order to determine if assumption of the new obligations involved in the underwriting is possible without violating the net capital rule. Acceleration of the effective date of registration statements filed under the Securities Act will be denied where it appears that underwriting commitments may engender violations of the net capital rule by any participating underwriter. Participants who appeared to be inadequately capitalized to take down their commitments were informed of the potential violation and the effect it would have on the pending registration statement. Such broker-dealers either obtained sufficient additional capital so that full compliance with the rule could be had, reduced their commitments in the underwriting to such an extent as to participate in the underwriting without violating the rule, withdrew as underwriters, or participated in the underwriting on a "best efforts" basis only.

Financial Statements

Rule 17a–5 promulgated under section 17(a) of the Securities Exchange Act requires registered broker-dealers to file annual reports of financial condition with the Commission. Every report so filed must be certified by a certified public accountant or a public accountant who is in fact independent with certain specified limited exemptions applicable to situations where certification does not appear necessary for customer protection. The rule provides specific condi-

tions under which members of national securities exchanges are exempt from the necessity of certification. An exemption from the certification requirement is also available to a broker-dealer who, since his previous report, has limited his securities business to soliciting subscriptions as an agent for issuers, has transmitted funds and securities promptly, and has not otherwise held funds or securities for or owed monies or securities to customers. An exemption is also afforded a broker-dealer who, from the date of his last report, has confined his business to buying and selling evidences of indebtedness secured by liens on real estate and has carried no margin accounts, credit balances or securities for any customers.

With respect to the times within which financial statements must be filed, rule 17a–5 provides that upon the initial registration of a broker-dealer the registrant's first financial report must be as of a date during the period between the expiration of the first and fifth months following the effective date of the registration. In all cases, reports must be filed within 45 days after the date as of which the report speaks.

The reports of financial condition furnish a means whereby the Commission and the public may evaluate the financial position and responsibility of registered brokers and dealers. The reports are analyzed by the staff of the Commission to determine whether the registrant is in compliance with the net capital rule. Revocation proceedings may be instituted against registrants who fail to make the necessary filings. However, it is the policy of the Commission first to advise the registrant of his obligations under rule 17a–5 and give him an opportunity to file the report.

During the fiscal year 5,060 reports of financial condition were filed. This compares to the 1960 total of 4,569.

Broker-Dealer Inspections

Section 17(a) of the Securities Exchange Act of 1934 provides for regular and periodic inspections of registered broker-dealers. The inspection device, which the Commission has continually emphasized, is a most useful instrument in protecting investors and preventing and detecting violations of the Federal securities laws.

Among other things, the inspections involve: (1) a determination of the broker-dealer's financial condition; (2) a complete review of his pricing practices; (3) an evaluation of the safeguards employed in his handling of customers' funds and securities; and (4) a determination of whether adequate and accurate disclosures relating to transactions are made to customers.

The inspectors also determine whether brokers and dealers keep books and records in compliance with the Federal securities laws and conform to the margin and other requirements of regulation T as

prescribed by the Federal Reserve Board. In addition, they examine individual trading accounts to determine whether excessive trading or switching has occurred. Frequently inspectors find evidence of the sale of unregistered securities or the use of fraudulent practices, including the use of improper sales literature or sale techniques. The inspection program has also assisted the Commission in its administration of many of its rules.

The number of inspections completed during the fiscal year totaled 1,627, an increase of 128 inspections or almost 9 percent over the previous year. With the steady increase in the number of registered broker-dealers and benefits derived from the inspection program, the Commission intends to continue its policy of increasing the number of inspections in the future.

In determining whether to institute action against a broker-dealer found to be in violation of the statutes or rules as a result of an inspection, consideration is given to the type of violations and to the effect such violations may have upon members of the public. It is not the Commission's policy to take formal action against broker-dealers for every infraction uncovered. For example, inspections frequently reveal various inadvertent violations which are discovered before becoming serious and before customers' funds or securities are endangered. Where no harm has come to the public in such situations, the matter is usually brought to the attention of the registrant and suggestions are made to correct any improper practices. If a violation appears to be willful and the public interest or the protection of investors is best served by formal action, the Commission promptly institutes appropriate proceedings.

The following table shows the various types of violations disclosed as a result of the inspection program during the fiscal year:

Type	*Number*
Financial difficulties	236
Hypothecation rules	42
Unreasonable prices for securities purchases and sales	240
Regulation T of the Federal Reserve Board	200
"Secret profit"	2
Confirmations and bookkeeping rules	1,000
Other	399
Total indicated violations	2,119

In addition to the Commission's inspection program, the National Association of Securities Dealers, Inc., and the principal stock exchanges also conduct inspections of their members and some of the States also have inspection programs. Each inspecting agency conducts inspections in accordance with its own procedures and with particular reference to its own regulations and jurisdiction. Con-

sequently, inspections by other agencies are not an adequate substitute for Commission inspections since the inspector will not be primarily concerned with the detection and prevention of violations of the Federal securities laws and the Commission's regulations thereunder. However, the inspection programs of these other agencies do afford added protection to the public. The Commission and certain other inspecting agencies maintain a program of coordinating inspection activities for the purpose of avoiding unnecessary duplication of inspections and to obtain the widest possible coverage of brokers and dealers. The program does not prevent the Commission from inspecting any person recently inspected by another agency, and such an inspection by the Commission is made whenever reason therefor exists.

Agencies now participating in this coordination program include the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange, the National Association of Securities Dealers, Inc., the New York Stock Exchange, the Pacific Coast Stock Exchange, the Philadelphia-Baltimore Stock Exchange, and the Pittsburgh Stock Exchange.

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

Section 15A of the Securities Exchange Act of 1934 (Maloney Act) provides for the registration with the Commission of national securities associations and establishes standards for such associations. The rules of such associations must be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices and to meet other statutory requirements. Such associations are essentially disciplinary in purpose and serve as a medium for the cooperative self-regulation of over-the-counter brokers and dealers. They operate under the general supervision of this Commission which is authorized to review disciplinary actions and decisions which affect the membership of members, or of applicants for membership, and to consider all changes in the rules of associations. The National Association of Securities Dealers, Inc. (NASD), is the only association registered under the act.

In adopting legislation permitting the formation and registration of such associations, Congress provided an incentive to membership by permitting such associations to adopt rules which preclude a member from dealing with a nonmember, except on the same terms and conditions as the member affords the investing public. The NASD has adopted such rules. Accordingly, membership is necessary to the profitable participation in underwritings and over-the-counter trading since members may properly grant price concessions,

discounts, and similar allowances only to other members. Loss or denial of membership due to expulsion or suspension or other ineligibility due to a statutory disqualification, or to failure to meet standards of qualification established in NASD rules, thus imposes a severe economic sanction.

Membership in the NASD reached an all time high of 4,611 at June 30, 1961. During the year membership increased by 239, as a result of 685 admissions to, and 446 terminations of, membership. At the same time, there were registered with the NASD as registered representatives 94,040 individuals, including generally all partners, officers, traders, salesmen, and other persons employed by or affiliated with member firms in capacities which involved their doing business directly with the public. The number of registered representatives increased by 3,860 during the year as a result of 20,818 initial registrations, 11,813 reregistrations, and 28,771 terminations of registrations. At February 28, 1961, there were 94,176 registered representatives, an all time high figure.

NASD Disciplinary Actions

The Commission receives from the NASD summaries of decisions in all disciplinary actions against members. Each such complaint must be based on allegations that a member has violated specified provisions of the NASD rules of fair practice, although registered representatives of members, and persons controlling or controlled by members, may also be cited for having been the cause of a violation.

The sanctions available where violations are found include expulsion or suspension from membership, revocation or suspension of registration as a registered representative, fine, and censure. An individual may also be found to be the cause of a violation and of the penalty imposed on another party for such violation. Such a cause finding can have far-reaching effects, particularly in the case of expulsion, or suspension from membership or suspension or revocation of registration as a registered representative. A person found to be a cause of suspension or expulsion from membership cannot be employed by any NASD member while such suspension is in effect, except with the approval of the Commission. Where an individual should have been, but was not, registered as a representative, a finding that the unregistered person was a cause of an effective expulsion, suspension, or revocation acts as a disqualification from membership, or from controlling or being controlled by a member, just as if such a penalty had been imposed directly on the person found a cause. In many cases more than a single penalty may be imposed so that expulsion, suspension, or revocation may be accompanied by a fine or censure, and, in cases where a fine is imposed, censure is customarily added.

All decisions by district business conduct committees of the NASD are reviewable by the NASD board of governors on its own motion, or on the timely application of an aggrieved party. On review the board may affirm, modify, or reverse such decisions or remand them for further consideration. At times two or more complaints against a single member are consolidated and disposed of in one decision and at other times one complaint may involve more than one member firm. During the year the association reported to the Commission its final disposition of 304 formal complaint actions. These 304 final decisions reflected action against 273 different firms.[35] In 67 cases, the complaints were dismissed against the named respondents on findings that the allegations had not been sustained. Formal findings of violations were made in the remaining 237 cases and some sanction imposed. Of this total, 178 cases were directed solely against members while 59 cases were against members and their representatives. A total of 149 representatives had been charged with violations in the original complaints. Such charges were dismissed as to 20 such individuals and disciplinary action was taken against 129.

The maximum penalty of expulsion from membership was applied in 31 decisions (including 1 firm expelled in each of 2 decisions), and 17 members were suspended from membership for periods ranging from 10 days to 3 years (including 1 firm suspended in each of 2 decisions for consecutive periods of 12 and 6 months). Fines ranging from $10 to $2,500 were imposed on members in 138 cases (including 3 in which members were expelled and 1 in which the member was suspended). In 55 other cases the only penalty was censure.

The sanctions imposed on registered representatives had a similar wide range. The registrations of 45 registered representatives were revoked and 10 suspended for periods ranging from 60 days to 2 years; 35 were fined amounts ranging from $50 to $1,000; and 13 were censured. Twenty-six were found to be causes of 14 expulsions, 1 suspension, and 11 fines imposed on the employing firms.

In addition to the various penalties described above, some of the costs of the proceedings were usually assessed against the members and the registered representatives found to have acted improperly. During the fiscal year the association collected $83,256.35 in fines and costs. This amount does not reflect the fines and costs assessed since there is little or no incentive for an expelled member or a revoked registered representative to pay them.

Commission Review of NASD Disciplinary Action

Section 15A(g) of the act provides that disciplinary actions by the NASD are subject to review by the Commission on its own motion

[35] A total of 26 firms were each involved in 2 or more of the reported cases: 22 firms in 2 cases; 3 firms in 3 cases; and 1 firm in 4 cases.

or on the timely application of any aggrieved person. This section also provides that the effectiveness of any penalty imposed by the NASD is automatically stayed pending determination in any matter which comes before the Commission for review. Section 15A(h) of the act defines the scope of the Commission's review in proceedings to review disciplinary action of the NASD. If the Commission finds that the disciplined person engaged in such acts or practices, or has omitted such acts as found by the NASD, and that such acts, practices, or omissions to act are in violation of such rules of the association as have been designated in the determination, and that such conduct was inconsistent with just and equitable principles of trade, the Commission must dismiss such proceedings unless it finds that the penalties imposed are excessive or oppressive, having due regard to the public interest, in which case the Commission must, by order, cancel or reduce the penalties. At the beginning of the fiscal year eight such review cases were pending before the Commission. During the year 13 additional such petitions were filed, 1 was withdrawn prior to a determination, and decisions were issued on 5 cases, certain of which are discussed below, leaving 15 petitions pending at the year end.

The Commission sustained certain findings by the NASD that *Boren & Co.*, and its president and sole stockholder, Irving N. Boren, had violated certain association rules but found the penalties imposed excessive.[36] In 24 retail sales to customers of shares of Colorado Gas Co. stock, the prices charged by Boren ranged from 33.3 to 66.7 percent over the firm's contemporaneous cost. In 23 retail sales of Texas Toy Co. stock, the markup ranged from 11.9 to 19 percent over the prices paid by the firm on the day of the sales, and in 4 sales of other securities the markups ranged from 10.8 to 25 percent. The Commission affirmed the NASD's findings that the markups in these transactions were excessive and inconsistent with just and equitable principles of trade. However, in other retail sales of Texas Toy Co. stock, and in certain transactions for customers, the Commission was unable to sustain NASD findings that the prices and commissions charged customers had been unfair. The Commission also set aside the NASD finding of violation in failing to register certain representatives as a required finding of willfulness had not been made by the NASD.

The sanctions imposed by the NASD, expulsion of Boren & Co. from membership and revocation of the registration of Irving H. Boren as a registered representative, and the assessment of $8,318.25 in costs, were reduced by the Commission to 90-day suspensions of the firm's membership and of Boren's registration and $1,000 in costs. The Commission pointed out that although substantial sanctions were

[36] Securities Exchange Act Release No. 6367 (Sept. 19, 1960).

warranted, the sanctions imposed were excessive in view of its modifications of the findings of the association. The Commission further held that a part of the costs of NASD actions is to be borne by the association from its regular budget including items such as employees' salaries which are not directly attributable to particular proceedings; that costs should not be so high as to discourage an adequate defense; and that in determining the amount of the reduction consideration must be given to the facts that certain findings of violations had been set aside and that there had been no showing of deliberate obstruction and delay. Under all the circumstances, costs were reduced to $1,000.

The Commission also dismissed an application for review by *Midland Securities, Inc.*, and its president and sole stockholder, Ben Degaetano, of a decision which expelled the firm from membership, found Degaetano a cause of such expulsion and revoked his registration as a registered representative and assessed costs of $2,292.76 against him.[37] The Commission's opinion affirmed findings by the NASD that the firm had sold securities at unfair prices. The Commission rejected the firm's contention that since the securities involved were low in price, the markups were justified under the NASD's so-called "5-percent markup policy," which indicates that a "somewhat higher" markup than 5 percent may sometimes be appropriate in the case of securities selling below $10 per share. The Commission declared that markups of 10.4 to 67 percent cannot be considered as only "somewhat higher" than 5 percent. Midland's contention that its markups were justified by its claimed costs of doing business, including 10 percent sales commissions on gross sales and allegedly "unusual" services to customers, was also rejected, the Commission pointing out that merely to recoup the 10 percent sales commission on the gross sales price would require a markup of more than 10 percent, and that the alleged services did not appear to be unusual. However, the Commission reduced the assessment of costs to $750 on grounds similar to those cited in the Boren case.

In considering an application for review filed by *Maryland Securities Co., Inc.*, and its president, Morton Sandler, the Commission reduced a fine of $750 imposed on the firm to $500.[38] The Commission sustained the NASD findings that in 17 sales of shares of stock markups ranging from 13.3 to 34.2 percent over the firm's same-day costs of such shares were excessive and violated the NASD's Rules of Fair Practice. The Commission determined that in 28 other transactions for which there were no same-day purchases by the firm the NASD had incorrectly calculated a markup of 27 percent based upon

[37] Securities Exchange Act Release No. 6413 (Nov. 16, 1960).
[38] Securities Exchange Act Release No. 6442 (Dec. 30, 1960).

the prices paid by the firm some weeks prior thereto. Under the circumstances the Commission found that the representative "asked" prices shown in the daily sheets published by the National Daily Quotation Bureau were a more representative basis for the computation of markups, but that even when computed on this basis the firm's markups in 20 transactions of 11.1 percent were excessive and unfair. The Commission reduced the costs assessed by the association from $247.38 to $75.

Commission Review of NASD Action on Membership

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

A Commission order approving or directing admission to or continuance in association membership, notwithstanding a disqualification under section 15A(b)(4) of the act, or under an effective association rule adopted under that section or section 15A(b)(3), is generally entered only after the matter has been submitted initially to the association by the member or applicant for membership. Where, after consideration, the association is favorably inclined, it ordinarily files with the Commission an application on behalf of the petitioner. A broker-dealer, however, may file an application directly with the Commission either with or without association sponsorship. The Commission reviews the record and documents filed in support of the application and, where appropriate, obtains additional relevant and pertinent evidence. At the beginning of the fiscal year, three such petitions were pending before the Commission. During the year nine petitions were filed; one was withdrawn; decisions were issued in eight cases; and three petitions were pending at the year end.

The Commission found it appropriate in the public interest to approve seven petitions for continuance in, and one petition for admission to, NASD membership notwithstanding employment of a disqualified person. In four such instances the petitions concerned

disqualified persons who had earlier received Commission approval to be employed by specified NASD member firms. The circumstances of the initial approval having changed, reapproval was necessary.[39]

LITIGATION UNDER THE SECURITIES EXCHANGE ACT OF 1934

For the protection of the public, the Commission is authorized to institute actions for injunctions when violations of the Securities Exchange Act are present or threatened. A large proportion of such actions involves unlawful activities by broker-dealers. During the past year such illegal activities consisted primarily of violations of the anti-fraud sections and of the provisions concerning financial responsibility and the maintenance of net capital and bookkeeping requirements. Frequently the firms involved have violated two or more of the protective provisions of the act. Generally, also, violations of the anti-fraud provisions involve violations of the Securities Act of 1933. In several of the cases, it developed that the broker-dealer was insolvent, and on motion of the Commission, receivers were appointed by the court. Injunctions were obtained in 40 cases during the fiscal year and at the year end 12 cases were pending.

Section 25 of the act grants to any person aggrieved by an order issued by the Commission under the act the right to obtain review of the order by a U.S. court of appeals.

Illustrative examples of the variety of injunctions and appellate actions are discussed below together with actions in which the Commission participated as *amicus curiae*.

In *S.E.C.* v. *DuPont Homsey & Co.* and *Anton E. Homsey*,[40] the Commission obtained a permanent injunction against a registered broker-dealer and one of its general partners, Anton E. Homsey, who was a member of the New York Stock Exchange, prohibiting further violations of the antifraud and other provisions of the act and the Commission's net capital rule. The case arose out of the misappropriation by Homsey of approximately $690,000 in customers' securities deposited with the firm. Upon motion of the Commission a receiver was appointed for all assets of the firm. The customers of the firm whose securities had been misappropriated were compensated from separate funds contributed by the New York Stock Exchange.

In *S.E.C.* v. *Fruit of the Loom, Inc., et al.*,[41] the Commission alleged that the defendants had violated section 10(b) of the Securities Exchange Act and rule 10b–5 thereunder in connection with a written offer to Loom's stockholders by Bates Manufacturing Co. to purchase

[39] Securities Exchange Act Releases Nos. 6382 (Oct. 7, 1960); 6395 (Oct. 17, 1960); 6450 (Jan. 12, 1961); 6468 (Feb. 9, 1961); 6481 (Feb. 24, 1961); 6513 (Mar. 24, 1961); 6578 (June 12, 1961); and 6581 (June 26, 1961).

[40] D. Mass. No. 60–659–J.

[41] S.D.N.Y. No. 61–640.

the preferred and common stock of Loom at $50 and $20 per share, respectively; the offer was transmitted by Loom's management with its endorsement. At the same time, another company, Philadelphia & Reading Corp., was publicly offering to purchase the preferred and common stock of Loom at higher prices—$51.50 and $23 per share, respectively. To compete with this higher offer, Bates, with the cooperation of two members of Loom's management, entered into a secret agreement with Carl M. Loeb, Rhoades & Co., a broker-dealer, to acquire stock of Loom at prices equaling the P. & R. offer and, with special written approval, at even higher prices and to repurchase all the shares obtained by Loeb, Rhoades.

The Commission charged that Loom, through its management and specifically through two members thereof, violated rule 10b–5 by failing to disclose the higher P. & R. offer to its stockholders while the Bates offer at the lower prices which it had endorsed and transmitted was still continuing. Not only did the management of Loom not disclose the higher prices being offered by P. & R., but it aggravated this violation by advising its stockholders that the Bates offer, which it was transmitting, was better than that of another company, and by its failure to inquire as to the nature of P. & R.'s offer although P. & R. had previously informed Loom's management that an earlier offer would be increased. Two members of Loom's management took advantage of the secret purchasing program of Loeb, Rhoades on behalf of Bates and sold their stock to that firm after having advised Loom's stockholders that members of management intended to tender their shares pursuant to the terms and conditions of the Bates offer.

The Commission charged that Bates violated rule 10b–5 by making a public offer to purchase stock of Loom at one price and then pursuing a secret program through Loeb, Rhoades and under the auspices of Loom's management to pay higher and varying prices. Bates also misrepresented that a certain large block of shares of Loom would not be tendered pursuant to its offer because of a "conflict of interest" when in fact, shortly after the Bates offer was transmitted to Loom's stockholders, this block was sold to Bates at higher prices.

Loeb, Rhoades necessarily violated rule 10b–5, the Commission charged, in its capacity as the knowing instrument through which many of the violations of Bates and of certain members of Loom's management were committed. The defendants consented to a permanent injunction and offers of rescission were made by Bates and by Loeb, Rhoades.

In *S.E.C.* v. *Cecil Rhoades, et al.*,[42] permanent injunctions by consent were entered against Cecil Rhoades and Marshall Field, enjoining them from further violations of the anti-fraud and antimanip-

[42] S.D.N.Y. No. 61 Div. 375.

ulative provisions of the act. Cecil Rhoades had sold short about 600 shares of IBM stock and 1,400 shares of Polaroid Corp. stock, both securities listed on the New York Stock Exchange, and, in order to cover such short position at favorable prices, the defendants employed a device, scheme, and artifice to defraud by concealing their own identities and arranging to have sell orders for 4,000 shares of Polaroid stock and 500 shares of IBM stock placed with various brokers in fictitious names. As a result, a false and misleading appearance of active trading in these stocks was created, and their market prices declined, enabling defendants to cover Rhoades' short position.

In *S.E.C.* v. *Stanley I. Younger*,[43] the Commission brought suit to prohibit Younger from perpetrating a fraudulent scheme by placing orders with various New York broker-dealers to sell securities which he did not own and by instructing the broker-dealers to buy on the over-the-counter market, on the basis of the credit established through the sales of such securities, the common stock of National Photocopy, Inc., a nonexistent corporation. In order to create a market in National Photocopy, Inc., Younger deposited with a Salt Lake City broker-dealer a large block of stock of this fictitious corporation and had the broker-dealer place asked quotations in the National Daily Quotation Service. A permanent injunction was entered by consent.

In *S.E.C.* v. *Arlee Associates, Inc., et al.*,[44] the Commission obtained a permanent injunction prohibiting the defendants from violating the anti-fraud provisions of the securities acts by selling without the consent of the owners securities pledged with the defendant First Discount Corp. as collateral for loans, and prohibiting them from effecting securities transactions for the accounts of others without being registered with the Commission as broker-dealers. The Commission's complaint also alleged that the defendants placed purchase orders with broker-dealers when they did not intend to deposit funds or securities to cover such purchases, and the injunction prohibited any further such conduct. As a result of their unlawful conduct, the defendants had defrauded various broker-dealers of over $1,400,000, and the whereabouts of securities collateralizing loans in excess of $4,500,000 is unknown. A receiver has been appointed to administer the assets of the defendants Arlee Associates, Inc., and First Discount Corp.

In *S.E.C.* v. *William C. Karal*,[45] Karal was permanently enjoined from employing any device, scheme, or artifice to defraud brokers and dealers in securities. He was charged with defrauding brokers

[43] S.D.N.Y. No. 60–3006.
[44] S.D.N.Y. No. 61–1934.
[45] U.S.D.C. Mass. No. 60–661–S.

and dealers by placing orders to purchase large blocks of listed securities with members of the New York Stock Exchange, and then failing to pay for them, causing the firms to cancel the transactions and sell the securities so purchased. If the sellout resulted in a profit, Karal would then tender payment for the securities purchased and demand payment for the proceeds of the sale, including the profit. If, however, the sellout resulted in a loss, Karal ignored demands for payment, and refused to make good the loss.

In *Peoples Securities Company* v. *S.E.C.*[46] the Court of Appeals for the Fifth Circuit affirmed the Commission's denial of Peoples' motion to cancel or withdraw its application for registration as a broker-dealer under section 15(b) of the Securities Exchange Act, its denial of Peoples' application, and its finding that certain controlling persons were causes of the denial. The court rejected Peoples' contention based on the early case of *Jones* v. *S.E.C.*,[47] that it had an absolute right to withdraw its application any time before the effective date of registration. It also held that section 15(b) did not require that the Commission cancel the application simply because Peoples had been dissolved as a corporation.

In *Blaise d'Antoni & Associates* v. *S.E.C.*[48] the Court of Appeals sustained an order of the Commission revoking the registration of a broker-dealer for violation of the net capital rule, naming its president and sole stockholder a cause of the revocation, and denying the latter's application for broker-dealer registration and his request to withdraw such application. The Court noted the importance of the net capital rule as "one of the most important weapons in the Commission's arsenal to protect investors." It rejected the controlling person's contention that he had an absolute right to withdraw his application for registration. Commission orders revoking broker-dealer registrations were also affirmed in *Associated Securities Corporation and Norman B. Jenson* v. *S.E.C.*[49] and *N. Sims Organ & Co.* v. *S.E.C.*[50]

An important decision involving applications for stays of Commission orders involved two such applications heard together by the Court of Appeals for the Tenth Circuit in *Associated Securities Corp.* v. *S.E.C.* and *Greenberg* v. *S.E.C.*[51] Petitioners sought to stay orders of the Commission revoking Associated's broker-dealer registration and affirming the NASD's revocation of Greenberg's registration as a registered representative. The Court noted that in passing on a

[46] 289 F. 2d 268 (1961).
[47] 298 U.S. 1 (1936).
[48] 289 F. 2d 276 (C.A. 5, 1961), rehearing denied 290 F. 2d 688.
[49] 293 F. 2d 738 (C.A. 10, 1961).
[50] 293 F. 2d 78 (C.A. 2, 1961), cert denied, 30 U.S.L. Week 3227 (Jan. 15, 1962).
[51] 283 F. 2d 773 (1960).

request to stay an order of the Commission pending a petition for review, it had to balance the possible injury to the petitioners against the probable harm to the public interest. The Court held that while the exclusion of these petitioners from the securities business may be a serious personal injury, such injury was far outweighed by the consideration of possible harm to the investing public. To grant a stay, the Court felt, would be to substitute its judgment of the public interest considerations for that of the Commission, which had the primary responsibility for making such a determination, and whose determination as to those considerations should not be upset except for cogent reasons.

In *Samuel B. Franklin and Co.* v. *S.E.C.*,[52] the Court of Appeals upheld an order of the Commission dismissing a proceeding to review disciplinary action taken by the National Association of Securities Dealers. The Court held that the evidence amply supported the findings of the Commission that the petitioner had sold and purchased securities at prices which were not fair under all the relevant circumstances and which were not reasonably related to the market price, in violation of the rules of the NASD. Noting that there is no hard-and-fast "5-percent rule," the Court nevertheless held that the NASD's 5-percent policy on markups and markdowns is applicable to low price and penny stocks, and that the Commission did not affirm the fine imposed by the NASD merely because the markups and markdowns of petitioner exceeded 5 percent, but because they were clearly excessive. The Court also adopted the Commission's view that the timely filing of a petition for agency reconsideration tolls the 60-day period within which to seek review of an order of the Commission in a court of appeals and that a petition to review such an order which is filed within 60 days from the termination of the application for reconsideration by the agency is timely. A petition for a writ of *certiorari* is pending.

Participation as Amicus Curiae

The Supreme Court has granted certiorari in *Blau* v. *Lehman*,[53] in which the Commission is participating as *amicus curiae*. This case involves the question whether, under section 16(b) of the Securities Exchange Act, a corporation whose securities are registered on a national securities exchange may recover the entire "short swing" profits realized by an investment banking partnership from trading in such securities where a member of the partnership is also a director of the corporation. The Court of Appeals had held [54] that a waiver by the partner-director of his share of profits realized in such trans-

[52] 290 F. 2d 719 (C.A. 9, 1961).
[53] U.S. Sup. Ct., No. 66.
[54] 286 F. 2d 786 (C.A. 2, 1960).

actions did not relieve him from liability under section 16(b), but that such liability was limited to his proportionate share in the firm's profits, and it dismissed the complaint against the other partners. A motion by the Commission for leave to participate as *amicus curiae* and file a petition for rehearing in the Court of Appeals was denied. In addition to supporting plaintiff's petition for certiorari, the Commission filed a brief on the merits, urging that the partnership be held liable for the entire "short swing" profits realized by the firm.

Bellanca Corporation v. *Sidney L. Albert, et al.*,[55] involved a suit for damages, based on the antifraud and reporting provisions of the act, against a former controlling shareholder and director of the plaintiff corporation and other former directors. The complaint charged that Albert fraudulently induced the corporation to issue and sell its stock and prevented the corporation from filing required reports with the Commission. The other directors were charged with aiding and abetting violations of the act by authorizing, ratifying and acquiescing in Albert's actions. The Commission in a memorandum filed as *amicus curiae* urged that the complaint stated causes of action against the defendants and was timely filed within the applicable statute of limitations.

In *Matheson* v. *Armbrust*,[56] the Court of Appeals upheld a private right of action by a defrauded purchaser of securities based upon violation of section 10(b) or the Securities Exhange Act and rule 10b–5 thereunder. The Court concluded that Congress did not intend to draw a distinction under section 10(b) between defrauded sellers and buyers of securities. Accordingly, it rejected the contention that specific remedies available to the defrauded purchaser under the Securities Act were exclusive and barred an action based upon violation of rule 10b–5.

The Court also held that an interstate telephone call made to induce the negotiations which led to the fraudulent sale was sufficient to create Federal jurisdiction over the transaction, that actions under rule 10b–5 are additional to State and any other Federal actions and a plaintiff may bring suit in a Federal court even though he may also have an adequate remedy in the State courts; and that rule 10b–5 encompasses "face-to-face" securities transactions not involving any broker-dealer firm or a national securities exchange.

[55] N.D.O. No. 36535.
[56] 284 F. 2d 670 (C.A. 9, 1960).

PART VI

ADMINISTRATION OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

In administering the Public Utility Holding Company Act of 1935 the Commission regulates interstate public-utility holding company systems engaged in the electric utility business and/or in the retail distribution of gas. The Commission's jurisdiction also extends to natural gas pipeline companies and other nonutility companies which are subsidiaries of registered holding companies. Although the matters under the act dealt with by the Commission and its staff embrace a variety of intricate and complex questions of law and fact generally involving more than one area of regulation, briefly there are three principal regulatory areas. The first covers those provisions of the act, contained principally in section 11(b)(1), which require the physical integration of public utility companies and functionally related properties of holding company systems and those provisions, contained principally in section 11(b)(2), which require the simplification of intercorporate relationships and financial structures of holding company systems. The second covers the financing operations of registered holding companies and their subsidiaries, the acquisition and disposition of securities and properties, and certain accounting practices, servicing arrangements and intercompany transactions. The third includes the exemptive provisions of the act, the provisions covering the status under the act of persons and companies, and those regulating the right of a person affiliated with a public utility company to acquire securities resulting in a second such affiliation. Matters embraced within this area of regulation frequently come before the Commission and its staff. Many such matters do not result in formal proceedings and others are reflected in such proceedings only in an indirect manner when they are related to issues principally under one of the other areas of regulation.

The Branch of Public Utility Regulation of the Commission's Division of Corporate Regulation performs the principal functions under the act. It observes and examines problems which arise in connection with transactions which are or may be subject to regulation under the act and discusses such problems with interested persons and companies and advises them as to the applicable sections of the act, the rules thereunder and Commission policy with respect thereto. Ques-

tions are raised with and problems are presented to the staff daily. These include questions raised by security holders and problems presented by companies contemplating transactions requiring the filing of an application or declaration, particularly financing operations and the acquisition and disposition of securities and properties. This day-to-day activity includes prefiling discussions and conferences, in person and by telephone, with company representatives and with other persons where the matter under consideration affects their interest. Members of the staff of this Division actively participate in hearings and often aid the Commission in the preparation of its decision on a particular matter. The staff continually reexamines the status of exempt companies, examines the annual reports filed with the Commission and those sent to stockholders and, of course, the staff must keep abreast of new technical developments in the electric and gas industry, including the use of atomic energy as a source of power.

COMPOSITION OF REGISTERED HOLDING COMPANY SYSTEMS AND PROGRESS WITH RESPECT TO SECTION 11 AND OTHER SIGNIFICANT PROBLEMS

At the beginning of the fiscal year there were 26 registered holding company systems subject to regulation under the act. These included five small registered holding company systems [1] which were formerly exempt pursuant to rule 9 of the general rules and regulations under the act.[2] On August 11, 1960, pursuant to section 5(d) of the act, the Commission declared one of these five companies not to be a holding company and thereupon its registration ceased to be in effect.[3]

During the fiscal year a milestone was reached in the administration of the act. Proceedings relating to three of the largest holding company systems subject to the act and which, in the past, had taken up a substantial amount of time and effort by the Commission and its staff, progressed to completion resulting for all practical purposes in the elimination of these three registered holding company systems from regulation under the act. The three systems are those of Cities Service Co., Electric Bond & Share Co., and Standard Gas & Electric Co.

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[1] The 5 companies were Kinzua Oil & Gas Corp., C. E. Burlingame Corp., Colonial Utilities Corp., British American Utilities Corp., and Keystone Pipe & Supply Co. The consolidated assets, less valuation reserves, of these companies ranged from approximately $213,500 (British American) to $3,548,700 (Burlingame).

[2] Rule 9 permitted a holding company to claim exemption from the act for itself and its subsidiaries if the holding company system was of relatively small size, measured by the aggregate amount of its utility assets or of the annual revenues derived from public utility operations. The rule was rescinded effective Feb. 29, 1960.

[3] *Keystone Pipe & Supply Co.*, Holding Company Act Release No. 14268.

Details with respect to Cities Service Co. are set forth on pages 134 and 135 of the Commission's 26th Annual Report. On Dec. 23, 1960, the Commission issued an order pursuant to section 5(d) of the act declaring that Cities Service no longer was a holding company, and its registration under the act ceased to be in effect.[4] The order continued in effect the reservation of jurisdiction over fees and expenses incurred in various proceedings. In 1941, when Cities Service registered as a holding company it was the top company in a holding company system which consisted of 125 companies with extensive utility and nonutility interests and consolidated assets of over $1 billion.

As indicated on pages 136–137 of the Commission's 26th Annual Report, at the beginning of this fiscal year Electric Bond & Share Co. did not own as much as 5 percent of the outstanding securities of any domestic public utility company and had pending before the Commission an application, filed pursuant to section 3(a)(5) of the act, for an exemption as a holding company from the provisions of the act. On December 6, 1960, the Commission granted the exemption subject to certain conditions.[5] These conditions are designed to eliminate any possible affiliate relationship between Bond & Share and a former public utility subsidiary and to prevent or modify practices which might tend toward or lead to an absence of arm's-length dealings in connection with services performed by Bond & Share, through a wholly owned service company, for certain other domestic public utility companies which had formerly been subsidiary companies of Bond & Share. In its order the Commission reserved jurisdiction to revoke Bond & Share's exemption if the conditions are not adhered to or to impose additional conditions if necessary. The Commission also reserved jurisdiction in respect of the fees and expenses incurred by certain participants and after the close of the fiscal year the Commission released jurisdiction over certain of such fees and expenses of some of the participants and reserved jurisdiction as to others.[6] A long and difficult job was thereupon brought to a conclusion. In 1938, when Bond & Share registered as a holding company it was the largest holding company system in the country. As at December 31, 1938, the consolidated assets of Bond & Share and its subsidiary companies amounted to more than $3.6 billion. The system included 5 subsidiary holding companies and 131 domestic subsidiaries. At the time the exemption order was issued Bond & Share had no subsidiary

[4] Holding Company Act Release No. 14340.
[5] Holding Company Act Release No. 14326.
[6] Holding Company Act Release No. 14476 (July 13, 1961).

company which was either a registered holding company or a public utility company, and Bond & Share had converted itself into an investment company, registered as such on February 6, 1961.

Details with respect to Standard Gas & Electric Co. are set forth on page 140 of the Commission's 26th Annual Report. On January 19, 1961, the Commission approved step V of Standard Gas' plan which, briefly stated, proposed a liquidation and dissolution program for Standard Gas and its subsidiary registered holding company, Philadelphia Co., through distributions to Standard Gas' stockholders of portfolio securities and cash.[7] On April 22, 1961, the plan was approved and ordered enforced by the U.S. District Court for the District of Delaware.[8] Although there remains for Commission consideration the fees and expenses in connection with this proceeding and the transactions governing the final distribution of Standard Gas' remaining assets, virtual completion of the long and difficult job in this system was achieved during the fiscal year. In 1938, when Standard Gas registered as a holding company it controlled a farflung utility and nonutility system operating in over 20 States and in the Republic of Mexico. As at December 31, 1939, the system consisted of over 100 companies and its consolidated assets amounted to more than $1 billion. At the present time, Standard Gas controls no public utility company and it has only common stock outstanding in the hands of the public. Philadelphia Co. has been dissolved.

The remaining 18 active registered systems[9] include 20 registered holding companies since, as shown in the tabulation below, the holding company systems of Allegheny Power System, Inc., and Central & South West Corp. have 2 registered holding companies each. Of these 20 companies, 13 function solely as holding companies and 7 function as operating as well as holding companies. In these 18 active registered systems, there are 91 electric and/or gas utility subsidiaries, 40 nonutility subsidiaries, and 12 inactive companies, totaling 163 system companies.

The following tabulation shows the number of holding companies, electric and/or gas utility companies and nonutility companies in each of the 18 active registered systems as at June 30, 1961, and their aggregate assets, less valuation reserves, as at December 31, 1960:

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[7] Holding Company Act Release No. 14352.

[8] *Standard Gas & Electric Co., etc.*, unreported (Civ. No. 1497).

[9] The Granite City Generating Co. (Voting Trustees) system is discussed at page 110. *infra*. Union Electric Co., a registered holding company, has filed an application for exemption pursuant to sec. 3(a)(2) of the act. See p. 116, *infra*.

Classification of companies as of June 30, 1961

System	Solely registered holding companies	Registered holding-operating companies	Electric and/or gas utility subsidiaries	Nonutility subsidiaries	Inactive companies	Total companies	Aggregate system assets, less valuation reserves at Dec. 31, 1960 [1] (thousands)
1. Allegheny Power System, Inc. (formerly the West Penn Electric Co.)	1	1	12	6	1	21	$587,600
2. American Electric Power Co., Inc.	1	0	12	9	1	23	1,507,189
3. American Natural Gas Co.	1	0	2	5	0	8	872,585
4. Central & South West Corp.	1	1	4	0	1	7	724,436
5. Columbia Gas System, Inc., the	1	0	10	8	2	21	1,256,365
6. Consolidated Natural Gas Co.	1	0	4	2	0	7	782,111
7. Delaware Power & Light Co.	0	1	2	0	0	3	204,382
8. Eastern Utilities Associates	1	0	5	0	2	8	111,972
9. General Public Utilities Corp.	1	0	6	3	0	10	930,749
10. Granite City Generating Co. (Voting Trustees)	1	0	1	0	0	2	[2] 292
11. Middle South Utilities, Inc.	1	0	5	0	4	10	793,945
12. National Fuel Gas Co.	1	0	3	4	0	8	215,011
13. New England Electric System	1	0	17	1	0	19	624,697
14. Ohio Edison Co.	0	1	3	0	0	4	660,132
15. Philadelphia Electric Power Co.	0	1	1	0	1	3	39,049
16. Southern Co., the	1	0	5	2	1	9	1,400,312
17. Union Electric Co.	0	1	3	1	0	5	642,830
18. Utah Power & Light Co.	0	1	2	0	0	3	253,493
Subtotals	13	7	97	41	13	171	11,607,150
Less: Adjustment to eliminate duplication in count resulting from 4 companies being subsidiaries in 2 systems and 2 companies being subsidiaries in 3 systems [3]			−6	−1	−1	−8	
Add: Adjustment to include the assets of these 6 jointly owned subsidiaries and to remove the parent companies' investments therein which are included in the system assets above							[4] 496,529
Total companies and assets in active systems	13	7	91	40	12	163	12,103,679

[1] Represents the consolidated assets, less valuation reserves, of each system as reported to the Commission on form U5S for the year 1960, except as otherwise noted.

[2] Represents the corporate assets of Granite City Generating Co. at Mar. 31, 1961. Assets of the Voting Trustees of Granite City Generating Co., the holding company parent of the Generating Co., have not been reported.

[3] These 6 companies are Beech Bottom Power Co., Inc., and Windsor Power House Coal Co., which are indirect subsidiaries of American Electric Power Co., Inc., and Allegheny Power System, Inc.; Ohio Valley Electric Corp. and its subsidiary, Indiana-Kentucky Electric Corp. which are owned 37.8 percent by American Electric Power Co., Inc., 16.5 percent by Ohio Edison Co., 12.5 percent by Allegheny Power System, Inc., and 33.2 percent by other companies; Mississippi Valley Generating Co., which is owned 79 percent by Middle South Utilities, Inc., and 21 percent by the Southern Co., and Arklahoma Corp., which is owned 32 percent by Central & South West Corp. system, 34 percent by Middle South Utilities, Inc., system and 34 percent by a third company.

[4] In addition to the adjustment to include the assets of the 6 jointly owned subsidiaries rather than their investments therein, the total adjustment includes the assets of Electric Energy, Inc., since Union Electric Co., which owns 40 percent of the common stock of Electric Energy, Inc., is a holding company with respect to that company.

During the fiscal year, certain changes occurred in the total number of companies in 6 of the 18 active registered systems, resulting in a net reduction of 9 companies to a total of 163 as compared with a total of 172 companies as at the end of the previous fiscal year. American Electric Power Co., Inc., disposed of a nonutility subsidiary, reducing the total companies in its system from 24 to 23. Central & South West Corp. disposed of its interest in Compania Electrica de Matamoras, S.A., a Mexican public utility subsidiary, reducing the number of system companies from eight to seven. The Columbia Gas System,

Inc., increased the system companies from 20 to 21 as a result of the creation of a new subsidiary, Columbia Gas of Maryland, Inc., which acquired all of the gas distribution utility assets of an associate located in the State of Maryland. Middle South Utilities, Inc., disposed of its interest in Louisiana Gas Service Co., a public utility, reducing the total system companies from 11 to 10. Iroquois Gas Corp., a public utility subsidiary of National Fuel Gas Co., acquired the assets of an associate, Penn-York Natural Gas Corp., a nonutility subsidiary which later dissolved, resulting in a reduction of total system companies from nine to eight. Six of the electric subsidiaries of New England Electric System were merged into a seventh electric subsidiary, resulting in a reduction of total system companies from 25 to 19.

On the basis of total assets, less valuation reserves, of the entire privately owned electric and gas utility and natural gas pipeline companies in the United States, a comparison of such data with similar data for the 18 holding company systems registered under the act indicates that one-fifth of the total privately owned electric and gas utility industry is subject to the Commission's jurisdiction under the act. Since no other regulatory agency supervises the financial practices of as great a segment of the industry, persons interested in financial problems look to this Commission for leadership and guidance with respect to such matters. The Commission took the initiative in requiring competitive bidding regarding securities sold for cash, enunciating standards regarding appropriate capitalization ratios, specifying the protective provisions required to be included in first mortgage bonds and preferred stock, and requiring full refundability of senior securities at all times and at reasonable redemption prices.

The largest number of companies subject to the act as components of registered holding company systems at any one time was 1,620 in 1938. Altogether 2,413 companies have been subject to the act as registered holding companies or subsidiaries thereof at one time or another during the period from June 15, 1938, to June 30, 1961. Included in this total were 224 holding companies (holding companies and operating-holding companies), 1,037 electric and/or gas utility companies, and 1,152 nonutility enterprises. From June 15, 1938, to June 30, 1961, 2,226 of these companies have been released from the regulatory jurisdiction of the act or have ceased to exist as separate corporate entities. Of the remaining 187 companies, 163 are members of the 18 active systems listed in the table above and 24 are members of the 5 additional small systems referred to above.

Of the above-mentioned 2,226 companies, 926 with assets aggregating approximately $13 billion at their respective dates of divestment have been divested by their respective parents and are no longer sub-

ject to the act as components of registered systems. The balance of 1,300 companies includes 791 which were released from the regulatory jurisdiction of the act as a result of dissolutions, mergers and consolidations and 509 companies ceased to be subject to the act as components of registered systems as a result of exemptions granted under sections 2 and 3 of the act or the grant of orders pursuant to section 5(d) of the act finding such companies had ceased to be holding companies.

While, as the above indicates, the Commission has succeeded for the most part in accomplishing the aims and purposes of the Congress reflected in section 11 there still remain a number of problems to be resolved under that section. Some of them are the subject matter of proceedings now before the Commission and are discussed under the developments in individual registered systems.

Unresolved issues under section 11(b)(1) concern the retainability of nonutility pipeline companies by Consolidated Natural Gas Co.; the retainability by Delaware Power & Light Co. of both its gas and electric facilities; the retainability of gas and transportation properties of one of the public utility subsidiary companies in the Middle South Utilities, Inc., system; the retainability by the National Fuel Gas Co. system of oil and gas transmission businesses; and the retainability by Utah Power & Light Co. of its subsidiary, the Western Colorado Power Co. Under section 11(b)(2), unresolved issues relate to the existence of publicly held minority interests in subsidiary companies of Allegheny Power System, Inc., the Columbia Gas System, Inc., Eastern Utilities Associates, New England Electric System, and Union Electric Co.

DEVELOPMENTS IN INDIVIDUAL REGISTERED SYSTEMS

There is discussed below each of the active registered holding company systems and other systems in which there occurred during the fiscal year 1961 significant developments other than financing transactions discussed under another heading.

Allegheny Power System, Inc. (Formerly The West Penn Electric Co.)

This system had consolidated assets, less valuation reserves, of approximately $587,600,000 at December 31, 1960, and for the year ended that date, the system's consolidated operating revenues amounted to about $158,579,000.

During the fiscal year this holding company changed its name from the West Penn Electric Co. to Allegheny Power System, Inc. The change in name was approved by a vote of the stockholders at a special meeting held in November 1960. While the change of name as such was not subject to approval by the Commission under the Holding

Company Act, a declaration was filed pursuant to section 12(e) of the act regarding the solicitation of proxies to amend its charter to effect the change and was permitted such declaration to become effective.[10]

Allegheny Power owns 12.5 percent of the voting securities of Ohio Valley Electric Corp., which, with its wholly-owned subsidiary, Indiana-Kentucky Electric Corp., furnishes electric power to an installation of the Atomic Energy Commission near Portsmouth, Ohio. There was still pending before the Commission at the close of the fiscal year the issue of whether the acquisition of such stock by Allegheny Power and other sponsoring companies (among which are American Electric Power Co., Inc., and Ohio Edison Co., registered holding companies) meets the standards of section 10 of the act. This issue and the organization and financing of Ohio Valley Electric Corp. and Indiana-Kentucky Electric Corp. are discussed on pages 126–129 of the Commission's 23d Annual Report.

American Electric Power Co., Inc.

As at December 31, 1960, the American Electric System had consolidated assets, less valuation reserves, of some $1,507,189,000, and for the year ended that date, consolidated operating revenues totaled about $338,078,000.

The Commission approved a declaration filed by American Electric permitting it to issue sufficient shares of its common stock to pay a 2½-percent stock dividend.[11] The Commission also approved a plan filed by American Electric pursuant to section 11(e) of the act proposing the sale to a nonaffiliate of certain quarrying properties owned and operated by a nonutility subsidiary. In 1945 the Commission had determined that, under the standards of section 11(b)(1), the operation by the system of these properties constituted a business incidental to the operations of the system's integrated electric utility system on the ground that blasting and quarrying operations by a nonaffiliate might have seriously endangered the foundations of a nearby hydroelectric dam which was part of the system's integrated system.[12] Since 1945 more efficient, accurate, and safer quarrying methods have been developed so that it is now possible to obtain assurance that the quarrying operations by a nonaffiliate owner would not jeopardize the dam. In the light of the foregoing the Commission approved the section 11(e) plan on the ground that the conditions upon which the 1945 order was predicated do not now exist and it could no longer be said the quarrying operations were incidental to the operations of the integrated system.

[10] Holding Company Act Release No. 14296 (Oct. 13, 1960).
[11] Holding Company Act Release No. 14319 (Nov. 29, 1960).
[12] 21 S.E.C. 575.

On April 17, 1961, the Commission approved a proposal by Wheeling Electric Co. to sell to Ohio Power Co. all of Wheeling Electric's utility facilities located in the State of Ohio. These companies are both subsidiaries of American Electric.[13]

In addition to the above matters there was an important development relating to capitalization ratios and accounting for deferred taxes which arose from the filing by Kentucky Power Co., a subsidiary of American Electric, of a proposal to issue and sell $40,000,000 face amount of long-term notes to banks. This is discussed as a separate matter at pages 121–123.

American Electric Power owns 37.8 percent of the stock of Ohio Valley Electric Corp. The status of this matter is discussed under Allegheny Power System, Inc., above.

American Natural Gas Co.

As at December 31, 1960, the American Natural system had consolidated assets, less valuation reserves, of approximately $872,585,000, and, for the year then ended, its consolidated operating revenues amounted to about $240,250,000.

On November 13, 1959, the Commission issued its findings and opinion regarding the plan of American Natural filed pursuant to section 11(e) of the act providing for the elimination of American Natural's then outstanding shares of $25 par value nonredeemable preferred stock by the payment of $32.50 per share to the holders thereof.[14] The order approving the plan was not entered until, as required by the Commission, it was modified to provide that the amount of cash payment, exclusive of dividends, in excess of the par value of the preferred stock would be charged by American Natural to its earned surplus and that American Natural would pay only such fees, expenses, and other remuneration in connection with the proceeding as the Commission might determine, award, or allow.[15] During the fiscal year, claims for such fees and expenses were filed, and, after the submission of additional information and the filing of briefs, the Commission approved the amounts requested.[16]

Also during the fiscal year, the Commission permitted an amendment of American Natural's charter to increase its authorized shares of common stock and to split such stock on the basis of 2½ shares for 1.[17]

Central & South West Corp.

As at December 31, 1960, the Central & South West system had consolidated assets, less valuation reserves, of approximately $724,-

[13] Holding Company Act Release No. 14410.
[14] Holding Company Act Release No. 14089.
[15] Holding Company Act Release No. 14102 (Nov. 27, 1959).
[16] Holding Company Act Release No. 14255 (July 6, 1960).
[17] Holding Company Act Release No. 14386 (Mar. 9, 1961).

436,000, and, for the year then ended, its consolidated operating revenues totaled about $173,152,000.

In June 1961, Southwestern Electric Power Co., a subsidiary company of Central, registered as a holding company as to the Arklahoma Corp., an electric transmission company. Central, Southwestern, and Arklahoma had previously filed a joint application requesting that Central and Southwestern each be declared not to be a holding company as to Arklahoma, and that Arklahoma be declared not to be a subsidiary company to Southwestern. Southwestern owns 32 percent of the capital stock of Arklahoma; and Arkansas Power & Light Co. and Oklahoma Gas & Electric Co., neither of which is affiliated with Southwestern or with each other, each owns 34 percent of Arklahoma's capital stock. A hearing was ordered on the joint application,[18] but before the hearing took place, Southwestern registered as a holding company and the Commission, upon request, permitted the joint application to be withdrawn.[19]

Cities Service Co.

The details of the status of Cities and its subsidiaries up to September 2, 1960, are set forth at pages 134–135 of the 26th annual report.

The section 11(d) plan there referred to was consummated December 2, 1960; and Cities, by order issued December 23, 1960, under section 5(d) was found to have ceased to be a holding company and its registration as a holding company ceased to be in effect.[20] The order of the Commission approving the section 11(d) plan reserved jurisdiction in respect of the allowance and allocation of fees and expenses in connection with the consolidated proceeding. At the end of the fiscal year a proceeding was pending with respect to such fees and expenses.

The Columbia Gas System, Inc.

This registered holding company and its subsidiary companies had consolidated assets, less valuation reserves, of $1,256,365,000 at December 31, 1960, and consolidated operating revenues for the year then ended of $517,050,000.

Columbia continued its corporate realignment program, initiated in 1955, to segregate retail and wholesale operations and carry on the retail business by a single company in each State with one additional company to transport gas in interstate commerce and render wholesale service to affiliated and nonaffiliated companies. Effective January 1, 1961, Columbia Gas of Maryland, Inc., acquired the retail gas distribution facilities, in Maryland, of Cumberland & Allegheny Gas Co., another subsidiary company of Columbia, which was en-

[18] Holding Company Act Release No. 14374 (Feb. 16, 1961).
[19] Holding Company Act Release No. 14468 (June 19, 1961).
[20] Holding Company Act Release No. 14340.

gaged in retail service in West Virginia and Maryland.[21] The latter company will sell gas at wholesale to the Maryland company and continue retail service in West Virginia. To date the program has been completed with respect to the retail operations in the States of Kentucky, New York, and Maryland.

After lengthy court proceedings discussed on pages 155–156 of the Commission's 26th annual report, a plan of reorganization of American Fuel & Power Co. and its two principal subsidiary companies, Inland Gas Corp. and Kentucky Fuel Gas Corp., was consummated. A new company, the Inland Gas Corp., Inc., acquired the properties and businesses of the above corporations and the common stock of the new company was placed in escrow for delivery to Columbia if it should, upon application under the act, obtain approval to acquire the stock.

At the close of the fiscal year there was pending before the Commission an integration proceeding regarding the retainability of the properties of six subsidiary companies of Columbia having net property equal to approximately 12.5 percent of the aggregate net property of the Columbia system. Many difficulties have interfered with any substantial progress toward resolution of the proceedings. During the fiscal year the Commission's staff reexamined the problems involved and conferences with company representatives took place. The basic problems were further complicated by the question of whether the facts and circumstances had changed since the hearing was closed. As a result of conferences between the staff of the Division of Corporate Regulation and Columbia officials an agreement was reached as to the appropriate procedure to be followed to bring the record up to date so as to permit the matter to go forward.

Consolidated Natural Gas Co.

This registered holding company and its subsidiary companies had consolidated assets, less valuation reserves, of approximately $782,111,000 at December 31, 1960, and for the year then ended, the system's consolidated revenues amounted to about $363,372,000.

Pursuant to an order of the Commission dated December 29, 1960,[22] Consolidated Natural Gas Co. issued 23,000 shares of its capital stock, par value $10 per share, to the Union Heat & Light Co. of Grove City, Pa., a nonaffiliate. The stock, valued at $45 per share, or an aggregate of $1,035,000, was issued in connection with the acquisition by the Peoples Natural Gas Co., a subsidiary of Consolidated, of all of the assets of Union. Peoples assumed all of Union's liabilities and issued to Consolidated 10,350 shares of Peoples' capital stock, par value $100 per share, or an aggregate par value of $1,035,000.

[21] Holding Company Act Release No. 14299 (Oct. 25, 1960).
[22] Holding Company Act Release No. 14345.

The properties acquired became part of Peoples Natural Gas Co. which now serves the 7,000 former customers of Union. Union proposes to distribute the shares of Consolidated to its two stockholders and then dissolve.

Delaware Power & Light Co.

As at December 31, 1960, this system had consolidated assets, less valuation reserves, of about $204,382,000, and, for the year then ended, its consolidated operating revenues amounted to approximately $54,940,000.

Delaware continues to participate in the Enrico Fermi atomic power project which in connection with Power Reactor Development Co. is discussed on pages 129–130 of the 23d annual report. In addition, Delaware is a member of High Temperature Reactor Development Associates, Inc., which is developing and constructing a reactor project that will embody an electric generating station using steam produced by an advanced type atomic reactor.

Eastern Utilities Associates

This registered holding company and its subsidiaries had consolidated assets, less valuation reserves, of approximately $111,972,000 at December 31, 1960, and, for the year then ended, its consolidated operating revenues amounted to about $38,042,000.

During the fiscal year, a significant step was made with respect to compliance by Eastern Utilities Associates with the April 4, 1950, order directing the company to divest itself of its direct or indirect interest in the gas utility properties of its subsidiary, Blackstone Valley Gas & Electric Co.[23] Step 1 of the section 11(e) plan discussed at pages 135–136 of the Commission's 26th Annual Report was approved on August 10, 1960.[24] Step 1 provided for the transfer of Blackstone's gas properties and related facilities to Valley Gas Co.—a new company organized for that purpose in 1956—in exchange for the common stock, first mortgage bonds and a long-term unsecured promissory note of Valley, and for the contemporaneous negotiated sale of such bonds and notes. On October 21, 1960, this phase of the plan was approved and ordered enforced by the U.S. District Court for the District of Rhode Island; [25] and, on appeal by a public common stockholder of Blackstone, the District Court's order was affirmed by the U.S. Court of Appeals for the First Circuit.[26] Subsequent to the close of the fiscal year, the Commission issued its memorandum opinion and order approving the terms and conditions relating to the sale of Valley's bonds and notes.[27] At the close of the

[23] 31 S.E.C. 329.
[24] Holding Company Act Release No. 14266.
[25] *Valley Gas Co. et al.*, 193 F. Supp. 808.
[26] *Kelaghan* v. *S.E.C.*, 288 F. 2d 67 (Mar. 24, 1961).
[27] Holding Company Act Release No. 14485 (July 24, 1961).

fiscal year, no steps had been taken with respect to step 2 of the plan which contemplates the sale of the common stock of Valley to the public common stockholders of Blackstone and the shareholders of Eastern Utilities.

EUA, through its subsidiary, Montaup Electric Co., has an investment of $900,000, representing a 4.5 percent equity interest, in Yankee Atomic Electric Co., discussed *infra* at pages 114–115.

General Public Utilities Corp.

As at December 31, 1960, this system, excluding Manila Electric Co., a foreign public utility subsidiary, had consolidated assets, less valuation reserves, of approximately $930,749,000, and, for the year then ended, its consolidated operating revenues totaled about $204,813,000.

Construction work began in February 1960 on a small (5,000 kw.) pressurized water-type nuclear reactor at the Saxton generating station of Pennsylvania Electric Co., a system subsidiary. The facility is expected to be completed by the end of 1961, after which it will be operated as a research and development project over a 5-year period. At the end of the fiscal year the Atomic Energy Commission had scheduled a public hearing to consider issuance of a provisional operating license for the Saxton unit.

Granite City Generating Co. (Voting Trustees)

As at March 31, 1961, the end of its fiscal year, this system had total assets, less valuation reserves, of about $292,000 and Granite City Generating Co., an electric utility company, had total operating revenues of about $125,000 for the 12 months ended that date. The Voting Trustees, by virtue of their voting control of all of the voting securities of the electric utility company, are a holding company and registered as such in 1937. The electric utility company owned a power plant which was leased to Union Electric Co. and the entire annual rentals for the leased plant, less expenses and taxes, were devoted to the retirement of the outstanding first mortgage bonds of the electric utility company. During the fiscal year the Voting Trustees and the electric utility company sold all of that company's assets to a nonaffiliated steel company and, to the extent necessary, the proceeds from the sale were used to retire all of the electric utility company's first mortgage bonds then outstanding.[28] During the coming fiscal year, it is expected that the Voting Trustees will file a plan under section 11(e) of the act to distribute the cash balance, after the payment of fees of the Voting Trustees and all liquidating and other expenses, to the holders of the voting trust certificates of the electric utility company.

[28] Holding Company Act Release No. 14449 (May 24, 1961).

Middle South Utilities, Inc.

This registered holding company had consolidated assets, less valuation reserves, of about $793,945,000 at December 31, 1960, and, for the year then ended, its consolidated revenues amounted to approximately $214,574,000.

As discussed at page 138 of the 26th annual report, Middle South proposed to adopt a restricted stock option plan and issue thereunder restricted common stock options to key officers and employees of the company and its subsidiary companies. During the fiscal year, the Commission approved the proposal subject to certain conditions. As filed, the plan provided that during a period of 5 years from the date of approval of the plan by the stockholders of Middle South, nontransferable options were to be granted, as determined by a special option committee, to key executive employees of the system for the purchase of up to 120,000 of the authorized and unissued shares of common stock of Middle South.[29] No options were to be issued to any one employee which would permit him to acquire more than 10,000 shares of stock, no option could be exercised in whole or in part during the first 12 months after its grant but each option could be exercised as to one-fourth of the shares optioned thereunder for each 12-month period subsequent to the date of grant, and no option could be exercised after 7 years from the date of grant. The exercise price per share of the common stock covered by each option was to be not less than 95 percent of the market value of such stock at the time of the grant of the option, subject to modifications and adjustments under certain conditions; and the exercise price could subsequently be reduced to 95 percent of the market value of the stock on the day of reduction if the average market value thereof for the 12 consecutive calendar months preceding the month in which the reduction occurred was less than 80 percent of the fair market value of the stock on the date of the grant of the original option.

In approving the proposal, the Commission required the plan be amended so that (a) the aggregate exercise price of common stock optioned to any one optionee may not exceed 150 percent of the regular annual cash compensation then being paid to him, (b) the exercise price may not be less than 100 percent of the market price of the stock on the date of the grant of the option, and (c) not more than 25 percent of the shares reserved under the plan may be optioned to employees who, at the time of adoption of the plan, are officers in the Middle South system.[30] Middle South accepted the conditions and,

[29] This amounts to 0.72 percent of its issued and outstanding common stock.
[30] Holding Company Act Release No. 14367 (Feb. 7, 1961).

in addition, eliminated the provision permitting the reduction in the exercise price if the market price of the stock declined.[31]

During the fiscal year Middle South filed a plan pursuant to section 11(e) of the act providing for the exchange of shares of its common stock for the 3.18-percent publicly held shares of common stock of New Orleans Public Service, Inc., a public utility subsidiary company of Middle South, on the basis of 2¾ shares of common stock of Middle South for each share of common stock of New Orleans. The Commission consolidated the plan proceeding with a proceeding instituted by the Commission to determine what action, if any, should be taken by Middle South and New Orleans pursuant to section 11(b)(2) of the act to insure that the corporate structure of New Orleans does not unfairly or inequitably distribute voting power among its security holders. A notice of filing was issued [32] and a hearing held, and, at the end of the fiscal year, the matter was under advisement.

Following the announcement by the Government on July 11, 1955 (p. 85 of the 21st annual report) that the power contract between the Atomic Energy Commission and Mississippi Valley Generating Co., a subsidiary of Middle South,[33] would be canceled, the Government advised Mississippi Valley that no payments would be made under the contract. Subsequently, on November 4, 1955, Mississippi Valley sued the Government in the Court of Claims and recovered a judgment on behalf of itself and certain use plaintiffs.[34] Upon appeal by the Government, the U.S. Supreme Court reversed the judgment on the ground that the conflict of interest on the part of one of the Government's participants in the negotiations leading up to the power arrangements vitiated the contract.[35] Mississippi Valley's assets [36] aggregate about $524,000 and its liabilities, including expenses incurred in connection with the litigation in the Court of Claims and Supreme Court, approximate $1,824,000, leaving an excess of liabilities over assets of about $1,300,000. Middle South, in a proceeding pending at the close of the fiscal year, proposed to make available about $1,027,000 [37] to pay the claims against Mississippi Valley, which is to be dissolved.[38]

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[31] Holding Company Act Release No. 14401 (Mar. 31, 1961).

[32] Holding Company Act Release No. 14425 (May 1, 1961).

[33] Middle South holds 79 percent of the common stock of Mississippi Valley. The Southern Co., also a registered holding company, and a nonaffiliate of Middle South, holds 21 percent of such stock.

[34] *Mississippi Valley Generating Co. et al.* v. *U.S.*, 175 F. Supp. 505 (1959).

[35] *U.S.* v. *Mississippi Valley Generating Co. et al.*, 364 U.S. 520 (1961), rehearing denied, 365 U.S. 855 (1961).

[36] Consisting of cash, short-term Government obligations, and land at cost.

[37] This represents 79 percent of the $1,300,000 deficit.

[38] The other $273,000, or 21 percent, is to be made available by the Southern Co. See *Mississippi Valley Generating Co. et al.*, Holding Company Act Release No. 14501 (Aug. 22, 1961).

National Fuel Gas Co.

As at December 31, 1960, the National Fuel system had consolidated assets, less valuation reserves, of approximately $215,011,000, and the system had consolidated operating revenues of $113,118,000 for the year 1960.

In July 1960, a plan was filed by National Fuel pursuant to section 11(e) of the act for the elimination of the 5.95-percent minority interest in the common stock of one of its gas utility subsidiary companies, Pennsylvania Gas Co. The plan provides for the exchange of shares of the common stock of National for the publicly held shares of common stock of Penn Gas. The Commission consolidated the plan proceeding with a proceeding instituted by the Commission to determine what action, if any, should be taken by National and Penn Gas, pursuant to section 11(b)(2) of the act, to ensure that the corporate structure of Penn Gas does not unfairly or inequitably distribute voting power among its security holders. Hearings were held and briefs were filed and, at the end of the fiscal year, the matter was pending before the Commission for determination.

During the fiscal year, a gas utility subsidiary, Penn-York Natural Gas Corp., sold its physical assets to an affiliated company and thereafter dissolved.[39]

New England Electric System

As at December 31, 1960, this registered holding company and its subsidiaries had consolidated assets, less valuation reserves, of $624,697,000; and, for the year ended on that date, the system's consolidated operating revenues amounted to $179,939,000.

In its findings and opinion and order issued February 20, 1958, the Commission held that the electric properties of New England Electric System (NEES) and its subsidiaries constituted an integrated electric utility system retainable under common control under the integration standards of section 11(b)(1) of the act.[40] The order of February 20, 1958, reserved for later determination the question of whether any or all of the gas properties owned and operated by the NEES system are retainable under the integration standards of the act.[41] The hearing has been concluded with respect to the retainability of the system's gas properties and, at the close of fiscal year, requested findings and briefs were in preparation by the participants.

On January 9, 1961, the Commission approved a proposal by NEES

[39] *Iroquois Gas Corp. et al.*, Holding Company Act Release No. 14409 (Apr. 13, 1961).

[40] 38 S.E.C. 193. At Dec. 31, 1960, the NEES system's gross electric plant account (including work in progress) aggregated $638,109,000, and revenues from electric sales in 1960 amounted to $152,159,000.

[41] At Dec. 31, 1960, the NEES system's gross gas plant (including work in progress) amounted to $62,518,000, and revenues from gas sales in 1960 amounted to $26,769,000.

and six of its electric utility subsidiary companies to merge into a seventh electric utility subsidiary.[42] Under the proposal, Worcester County Electric Co. (the name of which was subsequently changed to Massachusetts Electric Co.) acquired all the assets of Attleboro Electric Co., Northampton Electric Lighting Co., Northern Berkshire Electric Co., Quincy Electric Co., Southern Berkshire Power & Electric Co., and Weymouth Light & Power Co. The merged company constitutes the largest retail electric utility subsidiary of the NEES system. As at December 31, 1960, its assets, after deducting valuation reserves amounted to $116,730,000 and its revenues in 1960 amounted to $63,051,000, both figures giving *pro forma* effect to the merger.

During the fiscal year a hearing was held to determine whether (*a*) the Commission should approve a plan filed under section 11(e) of the act by NEES providing for the issuance by NEES of additional shares of its common stock in exchange for the 2.82-percent publicly held shares of the common stock of its electric subsidiary, Lynn Electric Co., and (*b*) whether an order should be entered under section 11(b)(2) of the act directing the elimination of the publicly held interest in Lynn. Subsequent to the close of the fiscal year the Commission issued its findings and opinion and order approving the plan and, in addition, directing the elimination of the minority interest.[43]

On December 30, 1959, the Commission issued an order under section 13 of the act conditionally approving a proposal by NEES and its subsidiary service company, New England Power Service Co., providing for the transfer to the Service Co.'s, payroll of the salaries of all officers and employees of NEES who are also officers and employees of the Service Co.[44] The order of December 30, 1959, provided that the authority granted thereunder would expire on June 30, 1961, unless the Commission continued the authorization. Subsequent to the close of the fiscal year, the Commission issued an order, subject to certain conditions, authorizing the indefinite continuance of the arrangement.[45]

NEES, through a subsidiary company, owns 30 percent of the common stock of Yankee Atomic Electric Co., which, as set forth at page 128 of the Commission's 25th annual report, was authorized to construct and operate a nuclear power generating station.[46] During the fiscal year, the plant, located at Rowe, Mass., was com-

[42] Holding Company Act Release No. 14350.
[43] Holding Company Act Release No. 14490 (Aug. 3, 1961).
[44] Holding Company Act Release No. 14128. The proposal is set forth in greater detail in the 26th annual report, at p. 139.
[45] Holding Company Act Release No. 14491 (Aug. 3, 1961).
[46] The Eastern Utilities Associates holding company system holds 4.5 percent of the stock, the balance being held by 9 other companies.

pleted and commenced the generation of electric power. The completion was ahead of schedule and the construction costs were less than the estimated amounts. Following operation at gradually increasing power levels, the Atomic Energy Commission, on June 23, 1961, amended the experimental license of Yankee Atomic to permit operation at approximately 136,000 kw., the full rated capacity of the plant.

Ohio Edison Co.

This company is a registered holding company and an operating electric utility company. Ohio Edison and its electric utility subsidiary, Pennsylvania Power Co., had consolidated assets, less valuation reserves, of approximately $660,132,000 at December 31, 1960, and system consolidated operating revenues for the year then ended amounted to about $159,947,000.

Ohio Edison has a 16.5 percent interest in the common stock of Ohio Valley Electric Corp. The status of such holding is discussed under Allegheny Power System, Inc., above.

During the fiscal year, the Commission approved [47] a proposal of Ohio Edison concerning adoption of a restricted stock option plan which is substantially similar to the one proposed by Middle South and discussed above.

The Southern Co.

As at December 31, 1960, this system had consolidated assets, less valuation reserves, of approximately $1,400,312,000, and, for the year then ended, it had consolidated operating revenues of about $319,-162,000.

On August 1, 1947, the Commission entered an order, pursuant to section 11(b)(1) of the act, requiring, among other things, the divestment from the Southern system of the bus properties and business operated in Rome, Ga., by Georgia Power Co.[48] No plan having been proposed to the Commission by the system to effectuate compliance with this order, the Division of Corporate Regulation during the 1961 fiscal year filed a plan, under section 11(d) of the act, proposing a public sale of the transportation properties and business through a court-appointed trustee, and the Commission ordered that a hearing be held thereon.[49] The order also stated that the Commission would consider, among other things, whether the proposed plan should be modified or whether another type of plan should be required. Upon

[47] Holding Company Act Release No. 14391 (Mar. 16, 1961).

[48] *The Commonwealth & Southern Corp. et al.*, 26 S.E.C. 464, 491–492, Holding Company Act Release No. 7615.

[49] Holding Company Act Release No. 14364 (Feb. 6, 1961).

request of Georgia Power, postponement of the hearing was granted to give it an opportunity to submit an alternative solution. Subsequently, Georgia Power and the city of Rome, Ga., entered into negotiations and, after the close of the fiscal year, the city adopted a resolution, accepted by Georgia Power, which provided among other things for the transfer of the transportation properties and business to the city. After the close of the fiscal year, the Commission found that this solution satisfied the applicable standards of the act and permitted the transfer to the city to be carried out.[50]

Union Electric Co.

Union Electric is a registered holding company and a public-utility company. As at December 31, 1960, the consolidated assets, less valuation reserves, of Union Electric and its subsidiaries amounted to approximately $642,830,000, and system consolidated operating revenues for the calendar year 1960 totaled about $159,189,000.

As indicated at pages 141–142 of the Commission's 26th annual report, Union Electric has filed with the Commission an application for exemption as a holding company from the provisions of the Holding Company Act pursuant to section 3(a) (2) thereof, and briefs were filed by Union Electric, by J. Raymond Dyer, a stockholder of the company, and by the staff of the Division of Corporate Regulation. Oral argument was held and the matter was pending at the close of the fiscal year.

The three cases arising out of the objections of Dyer to the solicitation of proxies by the company's management which were pending before the courts at the close of the last fiscal year have been decided.[51] The Commission's order, permitting Union Electric's proxy material to become effective and thus authorizing the solicitation with respect to the 1957 annual stockholders meeting, was affirmed by the Court of Appeals for the Eighth Circuit,[52] as was the Commission's order with respect to the 1959 proxy material.[53] That court also affirmed the Commission's order denying Dyer's request that the Commission process Union Electric's proxy material for its 1960 annual meeting pursuant to the provision of the Holding Company Act rather than under the Securities Exchange Act.[54] In addition, the same court dismissed as frivolous a petition filed by Dyer for review of the Commission's action denying his request that the Commission process

[50] Holding Company Act Release No. 13511 (Sept. 13, 1961).
[51] For the background of these cases, see pp. 141–142 of the 26th annual report.
[52] *Dyer* v. *S.E.C.*, 287 F. 2d 773 (C.A. 8, 1961).
[53] *Dyer* v. *S.E.C.*, 289 F. 2d 242 (C.A. 8, 1961).
[54] *Dyer* v. *S.E.C.*, 290 F. 2d 541 (C.A. 8, 1961).

Union Electric's proxy material for the 1961 annual meeting pursuant to the Holding Company Act and to review the Commission's alleged authorization of Union Electric's proxy solicitation.[55] The same court also affirmed the district court's finding that Dyer's mailing of a postcard violated the Commission's order prohibiting anyone from soliciting proxies until a declaration had been filed and the Commission had permitted it to become effective. However, the Court vacated the injunctive decree as being too broad, since it prohibited Dyer from soliciting proxies in connection with any future annual meeting of Union Electric's stockholders and not merely the 1957 meeting to which the Commission's order related.[56] The same court also affirmed the Commission's order permitting a declaration filed by Union Electric under section 7 of the act to become effective, thereby authorizing Union Electric to offer common stock to stockholders and to offer the unsubscribed shares to its employees.[57]

FINANCING OF ACTIVE REGISTERED PUBLIC UTILITY HOLDING COMPANIES AND THEIR SUBSIDIARIES

During the fiscal year, registered holding companies and their subsidiaries issued and sold to the public and to financial institutions, pursuant to authorizations granted by the Commission under sections 6 and 7 of the act, 28 issues of their stock and long-term debt securities aggregating $555 million.[58] Of this amount, $15 million was used for the purpose of refunding outstanding debt securities carrying higher rates of interest. The balance of $540 million represented securities sold for the purpose of raising new capital. Of the 18 active registered holding company systems, 13 of them sold long-term debt or stocks to the public and to financial institutions in varying amounts and of various types.[59]

The following table presents the financing by those 13 registered holding companies and their subsidiaries classified by amounts and types of securities.

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[55] *Dyer* v. *S.E.C.*, 291 F. 2d 750 (C.A. 8, 1961).

[56] *Dyer* v. *S.E.C.*, 291 F. 2d 774 (C.A. 8, 1961).

[57] *Dyer* v. *S.E.C.*, 290 F. 2d 534 (C.A. 8, 1961).

[58] Dollar amounts of all securities are computed at gross proceeds (the amounts paid for the securities by investors).

[59] The systems which did not sell stock or long-term debt securities to the public are Allegheny Power System, Inc.; Delaware Power & Light Co.; Eastern Utilities Associates; Granite City Generating Co.; and Philadelphia Electric Power Co.

Securities issued and sold for cash to the public and financial institutions by active registered holding companies and their subsidiaries, fiscal year 1961.

[In millions]

Holding company system	Bonds	Debentures	Preferred stock	Common stock
American Electric Power Co., Inc.: Indiana & Michigan Electric Co		$20		
American Natural Gas Co.:				
Michigan Consolidated Gas Co	$31			
Michigan Wisconsin Pipeline Co	31			
Central & South West Corp.: West Texas Utilities Co	8			
Columbia Gas System, Inc., The		[1] 60		
Consolidated Natural Gas Co		[1] 86		
General Public Utilities Corp.:				
New Jersey Power & Light Co	5			
Pennsylvania Electric Co	10	12		
Middle South Utilities, Inc.:				
Arkansas Power & Light Co	12			
New Orleans Public Service, Inc	15			
National Fuel Gas Co		28		
New England Electric System:				
Massachusetts Electric Co	18			
Merrimack-Essex Electric Co			$8	
Ohio Edison Co	31			
Southern Company, The				$38
Alabama Power Co	13		8	
Georgia Power Co	12			
Gulf Power Co	5		5	
Southern Electric Generating Co	20			
Union Electric Co	51			
Missouri Edison Co	2			
Utah Power & Light Co	16		10	
Total	280	206	31	38

[1] Each of these companies sold two issues of debentures during the fiscal year 1961.

The table does not include securities issued and sold by subsidiaries to their respective parent holding companies, issuance of short-term notes to banks, portfolio sales by any of the system companies, nor securities issued for stock or assets of nonaffiliated companies. These issuances and sales also required authorization by the Commission except in the case of the issuance of notes having a maturity of less than 9 months where the aggregate amount did not exceed 5 percent of the total capitalization of the company. The issuance of such latter securities is exempted by the provisions of section 6(b) of the act.

Competitive Bidding

All of the 28 issues of securities sold for cash in fiscal 1961, as shown in the preceding table, were offered at competitive bidding pursuant to the requirements of rule 50 promulgated under the act. Three other issues of securities, not included in the table, were sold during the fiscal year 1961 pursuant to orders of the Commission granting exception from the competitive bidding requirements of the rule, because of the unusual circumstances which were present in each case.

One issue not sold at competitive bidding consisted of 710,000 shares of common stock of Louisiana Gas Service Co., a subsidiary of Louisiana Power & Light Co., which in turn is a subsidiary of Middle South Utilities, Inc. As described at pages 137–138 of the 26th annual

report, Louisiana Gas was organized for the purpose of acquiring and operating the gas properties formerly owned by Louisiana Power and on August 11, 1960,[60] the Commission approved the sale by Louisiana Power through a nonunderwritten subscription offering of its holdings of 670,000 shares of common stock of Louisiana Gas to the stockholders of Middle South. The plan, as amended, also provided for the sale in like manner by Louisiana Gas of up to 40,000 additional shares of its stock to the shareholders of Middle South. In its order the Commission granted an exception from the competitive bidding requirements of rule 50 with respect to the proposed sale of both blocks of Louisiana Gas stock, totaling 710,000 shares. All of the 670,000 shares held by Louisiana Power were sold during the fiscal year, but no part of the 40,000 shares to be offered by Louisiana Gas was sold.

In its order of October 6, 1960,[61] which permitted Electric Bond & Share Co. to acquire 73,115 shares of its outstanding common stock by purchase in the open market and to offer such shares to the stockholders of Walter Kidde Constructors, Inc., in exchange for the stock of the latter company, the Commission excepted the proposed offer from the competitive bidding requirements of rule 50.

In its order of December 29, 1960,[62] the Commission granted Consolidated Natural Gas Co. an exception from the competitive bidding requirements of rule 50 with respect to the proposal of that company to issue and sell to Union Heat & Light Co., a nonaffiliate, 23,000 shares of Consolidated's capital stock in connection with the proposed acquisition by Peoples Natural Gas Co., a subsidiary of Consolidated, of all of the assets of Union.

During the period from May 7, 1941, the effective date of rule 50, to June 30, 1961, a total of 823 issues of securities with aggregate sales value of $12,023 million were sold at competitive bidding under the rule. These totals compare with 229 issues of securities with an aggregate sales value of $2,365 million which have been sold pursuant to orders of the Commission granting exception from the competitive bidding requirements of the rule under paragraph (a)(5) thereof.[63] Of the total amount of securities sold pursuant to orders of exceptions granted under this paragraph, 126 issues with sales value of $1,888 million were sold by the issuer and the balance of 103 issues with a dollar value of $477 million were portfolio sales. Of the 126 issues sold by issuers, 70 were in amounts of from $1 million to $5 million and 2 bond issues were in excess of $100 million each.[64]

[60] Holding Company Act Release No. 14267.

[61] Holding Company Act Release No. 14294.

[62] *The Peoples Natural Gas Co. et al.*, Holding Company Act Release No. 14345.

[63] Paragraph (a)(5) of rule 50 provides for exception from the competitive bidding requirements of the rule where the Commission finds such bidding is not necessary or appropriate under the particular circumstances of the individual case.

[64] Ohio Valley Electric Corp., a $360 million issue of bonds; and United Gas Corp., a $116 million issue.

ISSUANCE OF LONG-TERM DEBENTURES BY SUBSIDIARY PUBLIC UTILITY COMPANIES

During the fiscal year, applications were filed under the act by two nonaffiliated public utility subsidiary companies of registered holding companies, seeking, in each case, authority to issue and sell unsecured long-term debentures. The applications were filed by Pennsylvania Electric Co. ("Penelec"), a public utility subsidiary company of General Public Utilities Corp. ("GPU"), for an issue of $12 million principal amount of 25-year debentures, and by Indiana & Michigan Electric Co. ("Indiana & Michigan"), a public utility subsidiary company of American Electric Power Co., Inc., for an issue of $20 million principal amount of 25-year debentures. After thorough consideration, the Commission approved both transactions on May 25, 1961.[65]

In passing upon the Penelec proposal, the Commission noted in its findings and opinion [66] that it departed from the pattern of financing theretofore followed by Penelec and the GPU holding-company system of having outstanding in the hands of the public, except for short-term notes issued to commercial banks, only two layers of securities of subsidiary public utility companies, i.e., first mortgage bonds and cumulative preferred stock. The debenture issue, by reason of its approval by the Pennsylvania Public Utility Commission, the State commission of the State in which Penelec is organized and doing business, was exempt, under the provisions of section 6(b) of the act, from the financing standards prescribed by section 7 of the act, subject to the imposition of such terms and conditions as the Commission might deem appropriate in the public interest or the interest of investors or consumers. The Commission observed that it was required to give weight to the decision of the State regulatory agency and that it may impose conditions only to the extent that the security issue offends the basic standards and policies of the act and thereby creates the likelihood of those abuses which led to passage of the act; and that, in effect, a greater degree of latitude is permitted in applying the standards and policies of the act to a security approved by a State commission than to an issue subject to all provisions of section 7; but that, where there is a material variance from those standards and policies, it is the responsibility of the Commission, despite State approval, to impose appropriate terms and conditions. The Commission noted that the issuance of the proposed debentures would create an additional layer of long-term securities of Penelec in the hands

[65] *Pennsylvania Electric Co.*, Holding Company Act Release No. 14451, and *Indiana & Michigan Electric Co.*, Holding Company Act Release No. 14453.

[66] Although the Commission did not issue a findings and opinion in respect of the Indiana & Michigan financing, the Commission's contemporaneous approval of that company's proposal was bottomed on the same general considerations as those set forth in the Penelec findings and opinion.

of the public, thus having a tendency to create a complexity in the corporate structure of Penelec, and of the GPU holding-company system.

The Commission considered Penelec's contentions that (*a*) after issuance of the debentures, its common stock equity "cushion" would still be adequate to preserve its stability to issue additional senior securities even when economic conditions are unfavorable to the issuance of additional common stock; and (*b*) it had considered the advisability of issuing additional preferred stock but had rejected this as an uneconomical method of raising capital under present tax rates.[67]

Penelec represented to the Commission that, unless conditions not now contemplated change radically, it will abandon any future issuances of preferred stock; and GPU and its subsidiary companies expect to give early consideration to the feasibility of retiring the system's outstanding preferred stock.[68] In view of these representations, and in light of the *pro forma* capitalization ratios and earnings coverage of both Penelec and the GPU system, the Commission deemed it unnecessary to consider what terms and conditions might appropriately be imposed if it had concluded that the proposed creation of an additional layer of permanent securities was a material variance from the policies and standards of the act. In addition, the Commission noted that the indenture under which the proposed debentures were to be issued and which had been the subject of extended conferences between the company and the Commission's staff, contained various protective provisions, including annual cash sinking fund payments designed to retire 48 percent of the issue before maturity thereof; limitations on the payment of common stock dividends; a limitation on short-term indebtedness; and certain conditions, in terms of capitalization ratios and interest coverage, in respect of additional issuance of long-term debt.

CAPITALIZATION RATIOS AND ACCOUNTING FOR DEFERRED TAXES

An important development during the past fiscal year related to capitalization ratios and accounting for deferred taxes arising from the taking of liberalized depreciation and accelerated amortization for tax purposes (pursuant to secs. 167 and 168 of the Internal Revenue Code) while taking straight-line depreciation for financial accounting purposes. The questions involved arose in connection with an application filed pursuant to section 6(b) of the act by Kentucky

[67] In this connection, however, the Commission again took the opportunity of reiterating its longstanding view that the deductibility for tax purposes of interest on debt capital should not be employed as a basis for an excessive debt ratio in a company's capital structure.

[68] The elimination of Penelec's outstanding preferred stock would, of course, restore its financing pattern to only two layers of publicly held long-term securities.

Power Co., a public utility subsidiary company of American Electric Power Co., Inc., a registered holding company, proposing the issuance of $40 million long-term notes to banks.

The balance sheet of Kentucky filed as an exhibit to the application contained an amount of $831,825 designated "Earned Surplus Restricted for Future Federal Income Taxes" and the consolidated balance sheet of American and its subsidiaries contained an amount of $94,698,293 which was similarly designated. The Commission's Division of Corporate Regulation contended that this treatment was not consistent with the Commission's statement of policy regarding balance sheet treatment of credit equivalent to reduction in income taxes.[69] Under the statement of policy, such accumulated tax reduction, if material in amount, may not be designated as "earned surplus" (or its equivalent) or in any manner as a part of equity capital (even though accompanied by words of limitation such as "restricted" or "appropriated").

After several weeks of hearings counsel for Kentucky and American, and counsel for the Commission's Division of Corporate Regulation, entered into discussions looking to the possible settlement of the issues which had been raised. An agreement was reached which was submitted to and approved by the Commission.[70]

Under the settlement proposal, as approved, supplemental financial statements were filed by both companies which the Commission found not in contravention of its statement of policy. In the new financial statements, the accumulated reductions are carried under a designation reading: "Accumulated Amount Invested in the Business Equivalent to Reduction in Federal Income Taxes Resulting From Accelerated Amortization and Liberalized Depreciation, Which Is Recorded as Earned Surplus Restricted for Future Federal Income Taxes in Accounts Maintained Pursuant to State Regulatory Requirements."

As part of the settlement, the Commission also approved certain ratio tests concerning the future capital structure of the various companies in the American holding-company system. The opinion in the matter stated that in future financings by companies in the system, the Commission will give due weight to the existence of the accumulated tax reduction and its size in determining appropriate capitalization ratios; and, so long as the consolidated balance sheet of American and its subsidiary companies, or the corporate balance sheet of any of its subsidiary companies, includes a substantial amount of accumulated tax reduction, the Commission will not take any adverse action in respect of capitalization ratios where, upon completion of the financing: (*a*) common stock equity is not less than 30 percent of total

[69] Holding Company Act Release No. 14173 (Feb. 29, 1960). For the background leading up to the adoption of the statement of policy see the 26th annual report at pp. 212–214.
[70] Holding Company Act Release No. 14353 (Jan. 13, 1961).

capitalization, including surplus; (*b*) mortgage debt is not in excess of 60 percent of total capitalization, including surplus; and (*c*) total long-term debt is not in excess of 65 percent of total capitalization, including surplus. For purposes of these tests, any accumulated tax reduction resulting from charges against income as an operating revenue reduction in respect of accelerated amortization or liberalized depreciation for Federal income tax purposes will not be included as a part of either common stock equity or total capitalization, including surplus.

PROTECTIVE PROVISIONS OF FIRST MORTGAGE BONDS AND PREFERRED STOCKS OF PUBLIC UTILITY COMPANIES

The Commission, in passing upon issuances of first mortgage bonds and preferred stocks of public-utility companies subject to the act, examines the applicable mortgage indentures and charter provisions to insure that there is substantial conformity with the standards set forth in the statements of policy adopted by the Commission in 1956.[71] These statements of policy represent a codification of the principles and policies which the Commission had theretofore been administering on a case-by-case basis, and which the Commission had found necessary and desirable for the protection of investors in first mortgage bonds and preferred stocks of public utility companies. Except where, in particular circumstances, deviations from the statements of policy are clearly warranted, the Commission has uniformly required conformity with the statements.[72]

During the fiscal year, applications or declarations were filed by public utility companies under the act with respect to 14 first mortgage bond issues involving an aggregate principal amount of $265,500,000,[73] and four preferred stock issues with a total par value of $29,500,000.

Among other things, the statement of policy with respect to first mortgage bonds requires that, under certain circumstances, the distribution of earned surplus to common stockholders be restricted. In respect of 4 of the 14 bond issues filed by public utility companies under the act during the fiscal year, this requirement of the statement of policy was adequately provided for in the existing indentures. In the other 10 bond issues, additional restrictions were required, and were provided for either on the initiative of the issuer or as a result

[71] Holding Company Act Releases Nos. 13105 (Feb. 16, 1956), and 13106 (Feb. 16, 1956), as to first mortgage bonds and preferred stocks, respectively.

[72] The application of the statements of policy to filings prior to June 30, 1960, is discussed in the 23d, 24th, 25th, and 26th annual reports at pp. 141–143, 128–131, 137–141, and 148–151, respectively.

[73] Omitted from this total is a bond issue of $30 million principal amount by a natural gas pipeline company which, although a subsidiary of a registered holding company, is not a public utility company within the meaning of the act.

of informal discussions between the Commission's staff and representatives of the issuer.

In recognition of the fact that the mortgaged utility property constitutes the bulk of the bondholders' security, the statement of policy for bonds also requires the periodic renewal and replacement of the depreciable mortgaged utility property. In substance, this requirement obligates the issuer to construct property additions (or, alternatively, to deposit cash or outstanding bonds with the trustee) in an amount which, over the estimated useful life of the mortgaged depreciable property, will provide for the replacement in kind or in cash of the book cost of the mortgaged property. The statement of policy requires that the mortgage indenture express the periodic renewal and replacement provision as a percent of the book cost of depreciable property, but alternatively permits existing indenture provisions expressed on some other basis—as, for example, a percent of operating revenues—to remain unchanged if the issuer can satisfactorily demonstrate to the Commission that the existing provision affords substantially the same protection as that based on a percent-of-property basis.

The indentures of 11 of the 14 bond issues sold during the fiscal year expressed the renewal and replacement provision as a percent of depreciable property deemed adequate by the Commission. The indentures pertaining to the other three bond issues expressed the requirement as a percent of revenues which the Commission found afforded protection to the bondholders at least equal to that which would be afforded under an appropriate percent-of-property basis.

In the case of the four issues of preferred stock with an aggregate par value of $29,500,000, in respect of which applications or declarations were filed during the fiscal year, three issues had charter provisions which substantially conformed with the statement of policy for preferred stock. In the case of the fourth issue, certain charter provisions (or omissions) were found to be inconsistent with the statement of policy in respect of (*a*) the issuance of additional preferred stock or other capital stock ranking prior thereto, (*b*) amendment of the charter in a manner adverse to the preferred stockholders, (*c*) redemption or reacquisition of outstanding preferred stock during periods when dividends thereon are in arrears, (*d*) mergers or consolidations and (*e*) the issuance or assumption of unsecured indebtedness. The Commission, therefore, in approving the proposed issue of preferred stock, conditioned its order so as to extend to the holders of the preferred stock the protective features prescribed by the statement of policy.[74]

[74] *Alabama Power Co.*, Holding Company Act Release No. 14389 (Mar. 15, 1961).

During the fiscal year, the Commission has continued to require adherence to the provision contained in both the bond and the preferred stock statements of policy that the securities be freely refundable at the option of the issuer upon reasonable notice and payment of a reasonable redemption premium, if any.[75] Continuing studies made by the Commission's staff for fiscal year 1961 with respect to electric and gas utility bond issues sold at competitive bidding, whether or not subject to the act, indicate that the presence or absence of a restriction on free refundability has not affected the number of bids received by an issuer at competitive bidding or the ability of the winning bidder to market the bonds. This finding coincides with that described in the 26th annual report, at pages 149–150, containing a summary of the results of an examination of all electric and gas utility bond issues (including debentures) sold at competitive bidding between May 14, 1957, and June 30, 1960, by companies subject to the act as well as those not so subject. This study has been extended to include fiscal year 1961.

During the period from May 14, 1957, to June 30, 1961, a total of 310 electric and gas utility bond issues, aggregating $6,563.1 million principal amount, was offered at competitive bidding. The refundable issues numbered 240 and accounted for a total of $4,434.1 million, while the nonrefundable issues—all except one being nonrefundable for a period of 5 years, and that one being nonrefundable for a period of 7 years—numbered 70 and totaled $2,129 million principal amount. The number of refundable issues thus represented 77.4 percent of the total number of issues, while, in terms of principal amount, the refundable issues accounted for 67.6 percent.[76]

The weighted average number of bids received on the refundable issues for the period was 4.57, while on the nonrefundable issues it was 4.23. The median number of bids was five on the refundable and four on the nonrefundable issues.[77] With respect to the success of the marketing of the bond issues, an issue was considered to have been successfully marketed if at least 95 percent of the issue was sold at the syndicate price up to the date of termination of the syndicate. On this basis, 73.8 percent of the refundable issues were successful, while

[75] The significance of the refunding privilege, both as a matter of conformity with the standards of the act and as a matter of practical finance, was discussed at some length in the 24th annual report, at pp. 130–131.

[76] During fiscal year 1961, a total of 70 bond issues was offered, aggregating $1,517.5 million principal amount, consisting of 53 refundable issues totaling $990.5 million and 17 nonrefundable issues totaling $527 million. The number of refundable issues represented 75.7 percent of all the issues, while, in terms of principal amount, the refundable issues accounted for 65.3 percent.

[77] During the fiscal year 1961, the weighted average number of bids was 4.60 on the refundables and 4.12 on the nonrefundables, while the median number of bids was 4 on both the refundables and the nonrefundables.

70 percent of the nonrefundable ones were successful.[78] In terms of principal amount, 70.8 percent of the refundable issues were successful, while 66.6 percent of the nonrefundable ones were successful.[79] Extension of the comparison to include the aggregate principal amounts all issues which were sold at the applicable syndicate prices up to the termination of the respective syndicates, regardless of whether a particular issue met the definition of a successful marketing, indicates that 87.6 percent of the combined principal amount of all the refundable issues were so sold, as compared with 83.8 percent for the nonrefundable issues.[80] These statistics developed in respect of the two groups of bond issues support the Commission's policy of requiring free refundability of utility bond issues subject to the act. In connection with this policy of the Commission, it may be noted that, during the fiscal year, National Fuel Gas Co., a registered holding company, sold at competitive bidding $27 million principal amount of 4⅞-percent sinking fund debentures due 1986 and used a portion of the proceeds from the sale to redeem, at 106.01 percent of principal amount, $15 million principal amount of its outstanding 5½-percent sinking fund debentures which were issued in 1957 with maturity in 1982. Such redemption will effectuate a savings in capital costs over the remainder of the original life of the redeemed issue. If these 5½-percent debentures due 1982 had been nonrefundable for a 5-year period the company would have been unable to effectuate the redemption.

In the 25th annual report, at page 141, and in the 26th annual report, at pages 150–51, reference was made to a comprehensive study of redemption provisions of corporate bonds being conducted at the Wharton School of Finance and Commerce of the University of Pennsylvania. The final results of this study were not available as of the close of the fiscal year 1961.

EXCHANGE OF SECURITIES PURSUANT TO SECTION 11 REORGANIZATIONS

In connection with the numerous plans of reorganization of holding company systems which have been approved by the Commission over the years pursuant to the provisions of section 11 of the act, the holders of securities of reorganized companies are required to surrender their "old" securities in order to receive the securities of the reorganized companies. While securities amounting to hundreds of millions of dollars have been exchanged by the holders thereof for cash and new

[78] During fiscal year 1961, 75.7 percent of the refundable issues were successful, as against 70.6 percent for the nonrefundables.

[79] During fiscal year 1961, in terms of principal amount, 75.1 percent of the refundables were successful, as against 57.3 percent for the nonrefundables.

[80] During fiscal year 1961, the applicable percents were 88.5 percent for the refundables and 79 percent for the nonrefundables.

securities, some security holders have failed to surrender their "old" securities. The Commission has made continuing efforts to insure that all reasonable steps are taken to locate and to give notice to the security holders entitled to effect an exchange. Establishing contact is often difficult due to the death of registered holders, the lack of recent addresses, and the like, and is frequently complicated by the fact that many of the securities had been considered by their owners to be virtually worthless. In many instances, the further exchange of securities has been barred by the lapsing of the period fixed for exchange in the plan of reorganization or in the order of the appropriate Federal district court enforcing the plan. However, there are many cases in which the "bar date" on exchanges has not passed or in which no time limit has been fixed.

The staff of the Division of Corporate Regulation checks upon efforts made by the various companies to contact and locate holders of unexchanged securities and, in order to explain the situation and clear up misunderstandings, frequently communicates with such security holders by letter and, occasionally, by telephone. In most instances, the companies are urged to employ the services of a professional tracing agency to locate missing shareholders or their heirs. Where an extension of the period for exchanging shares appears necessary, either the company involved or the Commission will petition the appropriate court for additional time.

During the past fiscal year renewed and more intensive efforts were made by the Commission to locate "lost security holders." A further review was made of all reorganization plans under section 11 to determine instances where there was no "bar date" or the time for exchange of securities had not yet expired, and more than 100 questionnaires were sent by the Commission's Division of Corporate Regulation to companies, banks, and exchange agents inquiring as to the status of any unexchanged securities and what efforts had been made or were contemplated to locate the rightful owners of the securities. As a result, renewed efforts were made by the exchange agents, with the aid of professional tracing agencies in some instances. While there can be no exact measurement of the benefits of this inquiry, thousands of dollars worth of securities have found their way to their beneficial owners, who, often are in financial need.

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