

Fourth Annual Report
of the
Securities and Exchange Commission

Fiscal Year Ended June 30, 1938

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Securities and Exchange Commission
Office: 1778 Pennsylvania Avenue NW.
Washington, D.C.

COMMISSIONERS

William O. Douglas, Chairman
George C. Mathews
Robert E. Healy
J. D. Ross
John W. Hanes (resigned June 30, 1938)
Francis P. Brassor, Secretary

Address All Communications
Securities and Exchange Commission
Washington, D.C.

LETTER OF TRANSMITTAL

Securities and Exchange Commission
Washington, January 3, 1939

SIR:

I have the honor to transmit to you the fourth Annual Report of the Securities and Exchange Commission, in compliance with the provisions of Section 23(b) of the Securities Exchange Act of 1934, approved June 6, 1934, and Section 23 of the Public Utility Holding Company Act of 1935, approved August 26, 1935.

Respectfully,
William O. Douglas, Chairman

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

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FOURTH ANNUAL REPORT
OF THE SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D. C.

INTRODUCTION

The Securities and Exchange Commission is required, pursuant to the provisions of Section 23 (b) of the Securities Exchange Act of 1934 and Section 23 of the Public Utility Holding Company Act of 1935, to submit annually a report to the Congress covering the work of the Commission for the preceding year and such information, data, and recommendations for further legislation as it may find advisable. The following report, made pursuant to such provisions, covers the fiscal year ended June 30, 1938.

The Securities and Exchange Commission was created under its organic Act, the Securities Exchange Act of 1934, approved June 6, 1934, for the purpose of administering this Act and the Securities Act of 1933. [Footnote: Sections 201 to 209 of Title II of the Securities Exchange Act of 1934 amended and repealed certain provisions of the Securities Act of 1933. A further, but very slight, amendment was made on August 9, 1935. In the Motor Carrier Act of 1935.] The Congress next passed the Public Utility Holding Company Act of 1935, which Act became effective on August 26, 1935. So that during the fiscal years 1936 and 1937 the Commission had three major legislative enactments under its jurisdiction. Through the passage of Public No. 621, 74th Congress, approved May 27, 1936, the Congress further strengthened certain provisions of the Securities Exchange Act of 1934 by amending, in addition to other sections, Section 15 thereof, relating to over-the-counter markets. This constituted in brief the status of legislation falling within the jurisdiction of the Commission as of June 30, 1937.

During the closing days of the last session of the 75th Congress, new legislation was passed which placed additional responsibilities and duties upon this Commission. This new legislation comprises the following:

(1) The Maloney Act (Public No. 719, 75th Congress) approved by the President on June 25, 1938. This Act amends certain sections of the Securities Exchange Act of 1934, relating to the regulation of the over-the-counter markets and imposes new duties upon the Commission with respect thereto. In brief, this amendment provides for a system of regulation in the over-the-counter markets through the formation of voluntary associations of investment bankers, dealers, and, brokers doing business in these markets under appropriate Governmental supervision.

(2) The Chandler Act (Public No. 696, 75th Congress), approved by the President on June 22, 1938. This Act constitutes a comprehensive revision of the National Bankruptcy

Act. Chapter X thereof imposes new duties upon the Commission with respect to corporate reorganization procedure, by providing the Federal courts with the administrative assistance of the Commission in such complex and difficult tasks as examining and reporting on plans of reorganization.

(3) Public Resolution No. 113, 75th Congress, approved by the President on June 16, 1938. This resolution established a Temporary National Economic Committee consisting of six members of the Congress and six representatives of Executive departments and independent establishments of the Government. The Securities and Exchange Commission is represented on the Temporary National Economic Committee by Chairman Douglas and his alternate, Commissioner Frank. This Committee is charged with the duty of making a full and complete study and investigation with respect to the matters referred to in the President's Message of April 29, 1938, on monopolistic practices and economic and financial concentration. The Committee has assigned certain studies to each of these departments and independent agencies. To date studies assigned to the Securities and Exchange Commission include insurance companies, investment banking, and corporate practices.

A survey of some of the more important provisions of the legislative enactments enumerated above, together with a brief summarization of each major project thereunder, is included in the body of the report.

For the sake of efficient administration, the Commission has established several divisions in Washington, D. C., and nine regional offices.

[Footnote: On November 21, 1938, the Commission announced the establishment of a new Regional Office in Cleveland, Ohio. Mr. Dan Tyler Moore was appointed Regional Administrator of this office.]

The organization chart, included below, outlines the present divisional structure of the Commission. The Commissioners, staff officers, and regional administrators, as of the close of the last fiscal year are as follows:

Commissioners:

Douglas, William O., Chairman
Mathews, George C.
Healy, Robert E.
Frank, Jerome
Hanes, John W.

Commissioner Douglas was elected Chairman of the Commission on September 21, 1937, for the period ending June 30, 1938, vice Chairman James M. Landis, who resigned on September 15, 1937.

[Footnote: On July 1, 1938, Commissioner Douglas was reelected Chairman of the Commission, for the period ending June 30, 1939.]

Commissioner Mathews was reappointed Commissioner on May 28, 1938, for the term ending June 5, 1943.

Commissioner Frank was appointed Commissioner on December 20, 1937, for the term ending June 5, 1942, vice James M. Landis.

Commissioner Hanes was appointed Commissioner on December 20, 1937, for the term ending June 5, 1940, vice J. D. Ross, who resigned as Commissioner October 31, 1937. Commissioner Hanes resigned as Commissioner on June 30, 1938.

[Footnote: Mr. Edward C. Eicher was appointed Commissioner on December 1, 1938, for the term ending June 5, 1940, vice Commissioner John W. Hanes.]

Staff Officers:

Allen, James, Supervisor of Information Research

Bane, Baldwin B., Director of the Registration Division

Blaisdell, Thomas C., Jr., Director of the S. E. C. Monopoly Study

[Footnote: Mr. Blaisdell was appointed Director of the S. E. C. Monopoly Study on July 16, 1938.]

Blough, Carman G., Chief Accountant

[Footnote: Mr. Blough resigned August 15, 1938, and Mr. William W. Werntz was appointed Chief Accountant.]

Brassor, Francis P., Secretary of the Commission and Director of the Administrative Division

Clark, Samuel O., Jr., Director of the Reorganization Division

[Footnote: Mr. Clark was appointed Director of the Reorganization Division on July 12, 1938.]

Gourrich, Paul P., Technical Adviser to the Commission and Director of the Investment Trust Study

[Footnote: Mr. Gourrich was appointed Technical Adviser to the Commission on July 1, 1938. Mr. Gourrich was formerly Director of the Research Division, which Division was transferred to the Trading and Exchange Division.]

Kenney, William J., Chief of the Oil and Gas Unit

[Footnote: Mr. Kenney resigned August 12, 1938, and Mr. John M. Clifford was appointed Chief of the Oil and Gas Unit.]

Neff, Harold H., Director of the Division of Forms and Regulations

Purcell, Ganson, Director of the Trading and Exchange Division

Sheridan, Edwin A., Executive Assistant to the Chairman

Smith, C. Roy, Director of the Public Utilities Division

Throop, Allen A., General Counsel

[Footnote: Mr. Throop resigned August 28, 1938, and Mr. Chester T. Lane was appointed General Counsel.]

Regional Administrators:

Allred, Oran H., Fort Worth Regional Office

Caffrey, James J., New York Regional Office

Green, William, Atlanta Regional Office

Judy, Howard A., San Francisco Regional Office

Karr, Day, Seattle Regional Office

Kennedy, W. McNeill, Chicago Regional Office

Lary, Howard N., Denver Regional Office

Malone, William M., Washington Field Office

Rooney, Joseph P., Boston Regional Office

REGISTRATION OF PUBLIC UTILITY HOLDING COMPANIES

An outstanding event of the past fiscal year was the decision by the Supreme Court of the United States upholding the constitutionality of the registration provisions of the Public Utility Holding Company Act of 1935. [Footnote: Decided on March 28, 1938, 303 U. S. 419 (1938), and summarized on p. 46 et seq. of this report.]

On the day the above-mentioned decision was rendered, several of the larger unregistered holding companies filed notification of registration. With a few exceptions, the remainder of the industry subject to the Act and unregistered filed their notifications as rapidly thereafter as the forms could be completed and forwarded to the Commission.

Registration under the provisions of the Public Utility Holding Company Act of 1935 is accomplished by the public utility holding company filing with the Commission a notification of registration (Form U-5A) and, within a prescribed time, a registration statement (Form U-5B). The Commission's report for the fiscal year ended June 30, 1937, described in some detail the information required to be furnished on Form U-5B. An analysis of the completed forms now on file has shown a wealth of information not heretofore available. This information has been and will continue to be of great assistance to the public and to the Commission in the discharge of its duties.

As a result of experience, the Commission, on May 17, 1938, promulgated an amended Form U-5B (registration statement). The amendments to this form made no changes of substance. They were designed to produce greater precision, clarity, and simplification in the presentation of the data required. The important changes in this amended form included requirements as to additional information relating to the surplus accounts of system companies and to the original cost of securities acquired by system companies.

The Commission also, on May 17, 1938, promulgated Form U-5S, which is an annual supplement to the Form U-5B registration statement. The purpose of this new form is to keep the information contained in the registration statement current and up to date.

At the beginning of the fiscal year, 36 public utility holding company systems had registered under the Act containing altogether 86 registered holding companies. At the close of the year, 55 public utility holding company systems had registered containing 139 registered holding companies. This represents during the year an approximate increase of 215 percent in the value of holding company system assets registered under the Act.

The 55 registered public utility holding company systems as of June 30, 1938, together with an indication of their approximate consolidated assets as of December 31, 1937, are identified in the following table:

[Table data format is Name of utility company system, approximate consolidated assets as of December 31, 1937.]

[Footnote: These figures were obtained from various sources generally considered reliable, such as, annual reports to stockholders, registration statements, and commercial manuals, and no determination as to the accuracy thereof has been made by the Commission.]

American States Utilities Corporation; \$11,989,373

American Utilities Service Corporation; \$18,719,346

American Water Works and Electric Company, Inc; \$455,189,065

Arkansas Natural Gas Corporation; \$108,579,230

Associated Gas and Electric Company; \$1,166,985,655

British-American Utilities Corporation; \$88,937

Central-Public Utility Corporation; \$131,742,274

Central States Edison, Inc; \$1,631,099

Cities Service Power and Light Company; \$428,485,473

Citizens Public Service Company; \$2,851,669

Citizens Utilities Company; \$11,848,108

Colonial Utilities, Incorporated; \$3,936,623

Columbia Gas & Electric Corporation, The; \$724,879,407

Commonwealth & Southern Corporation, The; \$1,194,040,376

Community Gas and Power Company; \$61,190,745

Community Power and Light Company; \$51,811,928

Crescent Public Service Company; \$12,124,703

East Coast Public Service Company; \$3,265,788

Eastern Utilities Associates; \$42,727,909

Electric Bond and Share Company; \$2,626,284,057

Engineers Public Service Company; \$369,046,447

Federal Water Service Corporation; \$192,181,483

Foster Petroleum Company; [Footnote: Company very small and assets cannot be ascertained.]

Great Lakes Utilities Company; \$4,632,851

Interstate Gas and Electric Company; \$1,527,252

Lone Star Gas Corporation; \$155,822,973

Middle West Corporation, The; \$598,812,328

Midland United Company; \$353,804,627

National Fuel Gas Company; \$94,948,812

National Gas and Electric Corporation; \$6,859,209

National Public Utilities Corporation; \$5,220,464

New England Power Association; \$455,339,356

New England Public Service Company; \$190,982,970

North American Company, The; \$1,183,270,807

North American Gas and Electric Company; \$21,831,166

North Continent Utilities Corporation; \$24,858,840

Penn Western Gas & Electric Company; \$77,300,240

Peoples Light and Power Company; \$16,743,963

Republic Electric Power Corporation; \$3,285,268

Republic Service Corporation; \$8,552,497

Sandar Corporation; \$129,516

Southeast Power & Light Company; \$1,042,085

Southern Union Gas Company; \$14,026,694

Southwestern Development Company; \$25,222,662

Standard Power and Light Corporation; \$1,217,382,507

United Cities Utilities Company; \$2,044,161

United Corporation; [Footnote: A company holding blocks of voting stocks of holding company systems which are separately registered and whose assets are included.]

United Gas Improvement Company, The; \$828,040,177

United Light and Power Company, The; \$572,822,348

United Public Utilities Corporation; \$21,223,979

United Telephone and Electric Company, The; \$6,180,232

Utilities Power and Light Corporation; \$303,812,597

Utilities Stock and Bond Corporation; \$3,902,689

Walnut Electric & Gas Corporation; \$1,884,691

Washington and Suburban Companies; \$48,723,024

Total, all systems -- \$13,869,830,680

ORDERS GRANTING EXEMPTIONS FROM REGISTRATION UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Under the provisions of Sections 2 and 3 of the Public Utility Holding Company Act of 1935, authority is granted to the Commission to exempt by order certain types of companies from the obligations, duties, and liabilities imposed by that Act. [Footnote: The Commission's powers to exempt by rule are not discussed in this section.] The requirements as to the various kinds of applications for exemption under these sections are extremely flexible.

The form such exemptions may take varies considerably, that is, among other things, (1) a company may be declared not a "holding company" as that term is defined in Section 2 (a) (7) of the Act; (2) not to be a subsidiary of a specified holding company pursuant to Section 2 (a) (8); or (3) a holding company may be exempted from the registration requirements if it falls within one of the categories specified in Section 3 (a). The Commission is also empowered by the provisions of Section 3 (b) to exempt certain subsidiaries of registered holding companies from such provisions of the Act which it finds proper if such subsidiaries carry on their business wholly in foreign countries.

However, before the Commission acts on any application for exemption, public hearings are held at which any interested member of the public or a representative of a State public utility commission may appear and take part in the proceedings. In granting any of these exemptions, the Commission is directed by the Act to impose such conditions as may be necessary to protect the public interest or the interest of investors or consumers.

The following statistics indicate the number of applications for exemption received, granted, withdrawn, and pending at the close of the fiscal year:

To June 30, 1937: 399 applications received, 87 applications approved, 172 applications withdrawn, 140 applications pending at the close of the fiscal year

July 1, 1937, to June 30, 1938: 45 applications received, 13 applications approved, 42 applications withdrawn, 131 applications pending at the close of the fiscal year (includes 1 reopened application)

REORGANIZATION, SIMPLIFICATION, AND INTEGRATION OF REGISTERED PUBLIC UTILITY HOLDING COMPANIES AND SUBSIDIARIES

Section 11 of the Public Utility Holding Company Act imposes upon the Commission the duty of passing upon all plans, whether voluntary or involuntary, for the reorganization of registered holding companies or their subsidiaries, and the duty of requiring the corporate simplification and geographical integration of public utility holding company systems.

Subparagraph (1) of Section 11(b) of the Act provides that it shall be the duty of the Commission to require by order each registered holding company and subsidiary to take such action as the Commission shall find necessary to limit the operations of the holding company system of which such company is a part to a single integrated public utility system and to such other businesses as are reasonably incidental or economically necessary to the operations of such integrated public utility system. The Commission may, however, permit a registered holding company to control more than one integrated public utility system if it finds that each additional system cannot be operated as an independent system without the loss of substantial economies, that each is located in one or adjoining states, and that the combination of such systems under the control of a single holding company is not so large as to impair the advantages of localized management. Subparagraph (2) of Section 11(b) provides that it shall be the duty of the Commission to require by order that each registered holding company and subsidiary take such steps as the Commission shall find necessary to insure that the corporate structure and continued existence of each company in the holding company system does not unduly or unnecessarily complicate the structure or unfairly or inequitably distribute voting power among stockholders in the holding company system. More particularly, the Commission's order shall require that each holding company shall cease to be a holding company with respect to any subsidiary which itself has a subsidiary which is a holding company. Both subparagraphs of this section are to be effectuated as soon as practicable after January 1, 1938.

Section 11 (e) provides an alternative method for complying with these standards established in Section 11 (b). Under Section 11 (e) any registered holding company or subsidiary may submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary for the purpose of enabling it or any subsidiary to comply with the provisions of Section 11 (b). If, after hearing, the Commission shall find such plan necessary to effectuate the provisions of Section 11 (b) and fair and equitable to the persons affected by the plan, the Commission shall make an order approving the plan.

It will be realized that the problem of conforming the electric and gas utilities to the requirements of Section 11 (b) is a task of great magnitude. Its most expeditious accomplishment turns upon the willingness of the industry voluntarily to take the necessary steps. [Footnote: On May 5, 1938, a Committee of Holding Company Executives was chosen by 14 major utility systems for the purpose of conferring with the Commission from time to time on these and other problems arising under the Public Utility Holding Company Act of 1935. On August 3, 1938, Chairman Douglas addressed a letter to the heads of all registered holding companies requesting the various systems to present, not later than December 1, 1938, tentative suggestions and programs looking toward compliance with Sections 11 (b) (1) and 11 (b) (2) of the Public Utility Holding Company Act of 1935.]

The Commission's policy has been and is to give each holding company every reasonable opportunity to effectuate the Section 11 (b) programs by voluntary proceedings, and to institute involuntary proceedings under Section 11 (b) only as a last resort or where the exigencies of special situations make such a course desirable or necessary.

By June 30, 1938, relatively few plans for compliance with Section 11 (b) had been submitted to the Commission. It had not at that date instituted any involuntary proceedings. But in this connection it should be recalled that only part of the industry was operating under the statute prior to the Supreme Court decision in the Electric Bond and Share case on March 28, 1938, and that Section 11 (b) did not become mandatory until January 1, 1938. But a sound commencement and real progress were made in the Section 11 (b) program. In that connection the following three cases, however, will be of interest:

American Water Works and Electric Company, Incorporated

On December 30, 1937, the Commission approved, with certain modifications, the first major plan of corporate simplification filed pursuant to the provisions of Section 11 (e). This concerned the application of American Water Works and Electric Company, Incorporated. This company controls, through the medium of The West Penn Electric Company, an intermediate holding company, stocks in public utility and holding companies whose electric operations extend over an area covering portions of the States of Pennsylvania, West Virginia, Ohio, Maryland, and Virginia. The area extends, roughly, 300 miles north and south and 300 miles east and west. The assets of American Water Works and Electric system on a consolidated basis amount to approximately \$455,189,065 and its annual consolidated earnings amount to approximately \$58,868,968 (both as of December 31, 1937) [Footnote: These figures were obtained from the annual report of American Water Works and Electric Company, Inc., to its stockholders for the year ended December 31, 1937.]

In addition to its electric operations and a small amount of gas service, subsidiaries of American Water Works and Electric Company, Incorporated, are engaged in a number of other businesses which do not constitute public utility enterprises within the meaning of the Public Utility Holding Company Act of 1935. These include water works; coal appliance sales, electric railway and bus transportation, and bridges, agriculture, and certain other minor operations.

The plan submitted by the applicant contemplated, by process of dissolution, merger and re-alignment, the elimination of several "second-degree" holding company relationships, the continuance of which is forbidden under the terms of Section 11 (b) (2) of the statute. No change in the actual physical utility properties of the applicant was involved inasmuch as the company contended and the Commission found that the operations of its electric and gas utility subsidiaries were limited to a single integrated public utility system.

The Commission found that the retention by American Water Works and Electric Company, Incorporated, of its water properties (other than those controlled through American Communities Company) and its coal and appliance businesses were reasonably incidental and economically appropriate to the operation of its integrated public utility system.

The Commission reserved its decision with respect to the applicant's retention of its interest in American Communities Company system to afford an opportunity to effectuate the elimination of American Communities Company as an intermediate company, and the recapitalization or reorganization of its system, and an increase of applicant's equity therein.

The Commission found that the applicant's interests in its agricultural properties in California were not reasonably incidental or economically necessary or appropriate to its utility operations, and gave the applicant a reasonable period of time to dispose of these interests.

The Commission found that the distribution of voting power in the applicant and its subsidiaries, especially in the event of non-payment of preferred stock dividends, was not fair and equitable. The applicant was given a reasonable period of time to effect appropriate changes in that respect.

Finally the Commission found that upon consummation of the simplification plan, the corporate structure of the American Water Works and Electric system, except as relates to the distribution of voting power and subject to approval of a plan to simplify and reorganize the American Communities Company system and to increase applicant's equity therein, would conform to the requirements of Section 11(b) (2).

Massachusetts Utilities Associates

The second voluntary simplification plan was filed by Massachusetts Utilities Associates, a registered holding company and a subsidiary of New England Power Association. Under the plan, Massachusetts Utilities Associates was to absorb three of its direct subsidiary subholding companies, Massachusetts Lighting Companies, Central Massachusetts Light & Power Company, and Commonwealth Gas & Electric Companies. Upon consummation of the plan the 16 utility subsidiaries of these 3 sub-holding companies would become direct subsidiaries of Massachusetts Utilities Associates. This plan was approved by the Commission on January 11, 1938.

Penn Western Gas and Electric Company

Penn Western Gas and Electric Company is a registered holding company whose assets consisted principally of common stocks of the following subsidiaries:

(1) Pennsylvania Gas & Electric Corporation, a registered holding company which has 16 subsidiaries engaged in the manufactured and natural gas business in Pennsylvania, New York, Massachusetts, Rhode Island, and Virginia. (Applicant owned 100% of the Class B common stock.)

(2) American Railways Corporation, a non-utility holding company with one subsidiary, which supplies transportation service in Dayton, Ohio. (Applicant owned 100% of the common stock.)

(3) Iowa Public Service Company, which is primarily an electric and gas utility company, serving the central and western portion of Iowa. It is also a registered holding company. (Applicant owns 42.3% of the common stock and the balance is owned by Sioux City Gas and Electric Company.)

(4) Sioux City Gas and Electric Company, which is primarily an electric and gas utility company serving Sioux City, Iowa. It is also a registered holding company. (Applicant owns 87.5% of the common stock and the balance is owned by Iowa Public Service Company.)

The application of Penn Western Gas and Electric Company proposed a partial liquidating dividend to applicant's common stockholders of its holdings in Pennsylvania Gas and Electric Corporation, American Railways Corporation and Iowa Public Service Company. This divestment would leave Penn Western with but one direct subsidiary, namely, Sioux City Gas and Electric Company.

Severance of the "Eastern" holding company system, namely, Pennsylvania Gas and Electric Corporation, from the "Western" holdings of the system would be a distinct step toward meeting the requirements of Section 11. In addition, the applicant satisfied the Commission that it intends, within a reasonable period of time, to eliminate certain inter-company holdings which now complicate the system and then to distribute the balance of its holdings, including the stock of Sioux City Gas and Electric Company, to its own stockholders, and that, thereupon, Penn Western Gas and Electric Company will be dissolved. Accordingly, the Commission approved the application on March 30, 1938.

Including the 3 cases noted above, there have been filed 24 applications during the fiscal year dealing with plans for the reorganization and simplification of 16 holding company systems. As of June 30, 1937, there were 3 such applications pending. Of the total 27 applications, the Commission disposed of 7 and 20 were pending as of June 30, 1938. The total approximate consolidated assets affected by these plans amounted to \$4,213,655,479.

RULES, REGULATIONS, AND FORMS UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Pursuant to the provisions of the Public Utility Holding Company Act of 1935, the Commission, during the fiscal year ended June 30, 1938, adopted 19 new rules and amended 19 existing rules. The Commission also adopted 6 new forms and amended 1 form.

The new rules adopted during the past fiscal year include the following:

Rule U-3D-7: Subsidiaries exempted under Section 3 (b) also exempted as affiliates and not deemed subsidiaries when acting within scope of exemption. [Footnote: Rules promulgated under the Public Utility Holding Company Act of 1935 are designated by a "U". The middle figures in the designation, as in this instance "3D", indicate that the subject matter of the rule is concerned with the subject matter of Section 3 (d) of the Act.]

Rule U-3D-8: Exemption of subsidiaries subject to jurisdiction of Interstate Commerce Commission.

Rule U-3D-9: Exempting certain securities issued in connection with installment sales.

Rule U-3D-10: Exempting issue of note for purchase price of equipment.

Rule U-3D-11: Exempting issue and sale of evidences of indebtedness to consumers for advances by them to be used solely for construction of electric or gas line extensions.

Rule U-9C-4: Applications for approval of investment programs for current funds of registered holding companies or subsidiaries. (Designed to facilitate the use of surplus funds of utility holding companies in diversified investment programs in both utility and non-utility securities.)

Rule U-11F-1: Applications for approval of reorganization plans.

Rule U-11F-2: Commission approval of fees in connection with reorganization proceedings.

Rule U-12B-1: Extensions of credit to foreign companies.

Rule U-12D-1: Sale of public utility securities and utility assets by registered holding companies.

Rule U-5: Non-disclosure of information obtained in the course of examinations, studies, and investigations.

Rule U-12E-1: Definitions of various terms used in Rules U-12E-2 to U-12E--6, inclusive.

Rule U-12E-2: Solicitation of proxies.

Rule U-12E-3: Solicitations of authorization in connection with reorganization.

Rule U-12E-4: Applications for reports on plans.

Rule U-12E-5: Declarations as to solicitations.

Rule U-12E-6: Incorporation by reference.

Rule U-14-2: Annual supplements to registration statements, form and time of filing.

Rule U-14-3: Annual reports by public utility holding companies.

The following rules were amended during the past year:

Rule U-3: General requirements of applications and declarations.

Rule U-3A5-1: Exemption of certain extra-territorial holding companies. (No longer exempts foreign holding companies having domestic public utility holding companies from registration if they acquire or negotiate for acquisition of certain assets or securities.)

Rule U-3D-5: Exemption of non-utility subsidiaries.

Rule U-5B-1: Registration statements, form and time of filing. (Amended by prescribing a new Form U-5B registration statement, such new form being optional for any company which has filed notification of registration prior to effective date of this amendment.)

Rule U-7A-1: Form of declarations. (Adds (b): Such a declaration shall become effective only at such time as the Commission shall fix by order. Every order for hearing on a declaration shall include an order to declarant to show cause why such declaration shall become effective.)

Rule U-11F-2: Commission approval of fees in connection with reorganization proceedings. (A minor amendment.) (Amended so as to require that the application to the Commission be filed with the Commission before a petition for fees or expenses is filed with the court and also that the applicant include a 'copy of the Commission's findings and order on the application in the petition to the court.)

Rule U-14-1: Reports of acquisitions under Rule U-9C-3.

Rule U-17C-3: Officers and directors approved by a federal court. (Under this new rule, subject to certain limitations, once a person is so appointed or designated, he may by virtue of this appointment also serve as officer or director of any subsidiary of said company or voting trust.)

Rule U-17C-4: Owners of securities and their representatives. (Amended to permit registered holding companies or their subsidiaries to have, under certain circumstances, as their officers or directors, representatives of owners of 10 percent of outstanding voting securities, regardless of such representative's financial connections.)

Rule U-17C-6: Limitations on number of directors and officers having financial connections. (Limits the number of directors and officers having financial connections, and was extended to include the new category in Rule U-17C-4.)

Rule U-17C-7: Institutions having specified loaning capacity, or located in territory served. (Amended so that an officer or director of financial institutions may occupy a similar position in any subsidiary company, even though the territory served by such subsidiary company does not meet the requirements set forth in the rule.)

Rule U-17C-11: Independent officers or directors. (Extending from January 1, 1938, to January 1, 1939, the period during which independent officers or directors of financial institutions, meeting specified conditions, may continue to act as officers or directors of registered holding companies or subsidiary companies.)

Rule U-9A2-3: Exemption from Section 9 (a) (2). (Narrows in some respects, and broadens in other respects, the exemption from Section 9 (a) (2) of the Act.)

Rule U-9C-3 (5): Certain acquisitions of securities exempted.

Rule U-9C-3 (6): Certain acquisitions of securities exempted. (Both of these amendments deal with acquisitions of securities by way of dividend where the dividend is payable either in securities or in cash or other property at the election of the acquiring company. Such an acquisition is not within the scope of the exemption granted by Rule U-9C-3 (5), as amended, but may fall within the exemption granted by Rule U-9C-3 (6), as amended, if the issuing company is either a majority-owned subsidiary or is not, immediately before or after the acquisition, an associate of the acquiring company. The amendment to Rule U-9C-3 (6) also broadens in other respects the exemption as to acquisitions of securities of a company which was not, before or after the acquisition, an associate company of the issuer.)

Rule U-9C-3 (9): Certain acquisitions of securities exempted. (Amended by adding clause (f) which extends the types of exempted acquisitions acquired by virtue of a reorganization to include securities acquired incidentally to transactions exempted by Rule U-3D-8 under certain circumstances.)

Rule U-9C-3 (11): Certain acquisitions of securities exempted. (Amended by striking from that rule the proviso that only securities whose issuance was duly authorized by rule or order of the Commission could be acquired under the rule. The amended rule makes more liberal the exemption granted by this rule.)

Rule U-11F-1: Applications for approval of reorganization plans. (Amended by adding to paragraph (d) at the end of the first sentence: "or any rules or order pursuant to Section 12.")

Rule U-12D-1: Sale of public utility securities and utility assets by registered holding companies. (Amended by adding paragraph (f).)

The new forms promulgated during the past fiscal year are as follows:

Form U-5S: Annual supplement to registration statement (Form U-5B).

Form U-6B-2: Certificate of notification. [Footnote: Adopted July 1, 1938.]

Form U-12D-1: Form for application for approval of sale of utility securities.

Form U-12D-2: Form for application for approval of sale of utility assets.

Form U-14-1: Quarterly reports of security acquisitions.

Form U-14-3: Annual report of registered public utility holding companies.

The following form was amended during the past fiscal year:

Form U-5B: Amended form of registration statement. (The important changes in Form U-5B include the requirements as to additional information relating to the surplus accounts of system companies and information relating to the original cost of securities acquired by system companies.)

ISSUANCE OF SECURITIES BY REGISTERED HOLDING COMPANIES AND THEIR SUBSIDIARIES

The Commission received, during the fiscal year ended June 30, 1938, 94 applications or declarations under the provisions of Sections 6 (b) and 7 of the Public Utility Holding Company Act of 1935, relating to the issue of securities by registered holding companies or their subsidiaries.

The following table discloses the number of applications or declarations received, approved, denied, withdrawn, or dismissed, and pending as of June 30, 1938:

To June 30, 1937: 119 applications or declarations received; 87 applications or declarations approved; 0 applications or declarations denied; 11 applications or declarations withdrawn or dismissed; 21 applications or declarations pending at close of fiscal year.

July 1, 1937, to June 30, 1938: 94 applications or declarations received; 75 applications or declarations approved; 1 applications or declarations denied; 10 applications or declarations withdrawn or dismissed; 29 applications or declarations pending at close of fiscal year.

Total: 213 applications or declarations received; 162 applications or declarations approved; 1 applications or declarations denied; 21 applications or declarations withdrawn or dismissed.

Of the total 94 applications and declarations received during the past year, the 75 which have been approved by the Commission related to the issue of \$321,505,000 of securities; those denied related to \$27,500,000 of securities; the 21 withdrawn or dismissed related to \$17,385,000 of securities; and the 29 pending at the close of the fiscal year related to securities amounting to over \$112,533,000. Since the Act became effective, a total of 213 applications and declarations have been filed with the Commission relating to the issue of over \$1,543,923,000 of securities.

As was the case in the year ended June 30, 1937, a very large proportion of the security issues covered securities which were issued for the purpose of refunding outstanding securities by issuance of other securities having lower interest or dividend rates. In many instances, the issues had been previously authorized by state commissions in states in which the issuing company was incorporated and doing business. In more than one instance, the staff of the Commission, before granting an exemption or allowing the declaration to become effective, made suggestions which materially improved the character of the securities and their relationship to the capital structure and earning power of the company.

ACQUISITION OF SECURITIES OR UTILITY ASSETS AND OTHER INTERESTS BY REGISTERED HOLDING COMPANIES OR THEIR SUBSIDIARIES

During the year ended June 30, 1938, the Commission received 49 applications requesting approval of the acquisition of securities and assets under Section 10 of the Public Utility Holding Company Act of 1935. At the beginning of the year, 15 such applications were pending. Of these 64 applications, 37 were approved or exempted by rule, 7 were withdrawn and 20 were pending at the close of the year.

The following statistics indicate the number of applications received, approved or exempted by rule, withdrawn or dismissed, and pending at the close of the fiscal year:

To June 30, 1937: 76 applications received; 53 applications approved or exempted by rule; 8 applications withdrawn or dismissed; 15 applications pending at close of fiscal year.

July 1, 1937, to June 30, 1938: 49 applications received; 37 applications approved or exempted by rule; 7 applications withdrawn or dismissed; 20 applications pending at close of fiscal year.

Total: 125 applications received; 90 applications approved or exempted by rule; 15 applications withdrawn or dismissed.

Of the total 125 applications received since the effective date of the Act, 102 requested approval of the acquisition of securities, and the remaining 23 requested approval of the acquisition of utility assets or an interest in a business.

UNIFORM SYSTEM OF ACCOUNTS FOR PUBLIC UTILITY HOLDING COMPANIES

On October 21, 1937, the Commission adopted Form U-14-3 for use by registered holding companies in filing annual reports of financial condition and results of Operations. The information required in the annual report form is based upon the Uniform System of Accounts for Public Utility Holding Companies promulgated by the Commission August 8, 1936, and made effective as of January 1, 1937. These annual reports cover the calendar year and are required to be filed with the Commission on or before May 1 of each year. The first of such reports cover the calendar year 1937 and permit for the first time accurate current comparisons of financial data pertaining to different holding companies.

The requirements of the form include certain questions designed to give historical data concerning the companies, including date and state of incorporation or organization and information concerning consolidations, mergers, or reorganizations to which the company has been a party; a list of the directors and of the managing officers as of the

close of the year; financial statements, including a comparative balance sheet showing the financial condition of the company as of the beginning of the year (or period) and as of the close of the year, an income account showing the results of operation during the period between balance sheet dates and a statement of surplus showing the changes therein during the same period of time. This form also provides for numerous schedules calling for additional information concerning items included in the principal balance sheet, and income, expense, and surplus accounts. Among these are a schedule calling for a detailed analysis of investments at the close of the year, together with information with respect to investments acquired or disposed of during the year, and a schedule for a report of the dividend and interest revenues in detail.

During the fiscal year ended June 30, 1938, 54 annual reports of public utility holding companies were received.

SERVICE COMPANIES

Section 13 of the Public Utility Holding Company Act of 1935 is designed, in major part, to regulate the performance of services, sales, and construction by companies in a holding company system for companies within the system. Broadly speaking, the Act permits such intra-system services to be performed only at cost and subject to such limitations as the Commission finds appropriate in the public interest. With certain exceptions, therefore, the Act, and the rules adopted under this section, provide that services be performed, if performed by a company within the system, by a company whose methods of rendering services and calculating costs have been approved by the Commission. The Commission, during the past year, received 6 applications for approval of mutual service companies and 12 applications for approval of subsidiary service companies. One application for approval of a subsidiary service company, pending on July 1, 1937, was withdrawn during the course of the past year. Of the 6 applications for approval of mutual service companies, all of them were pending at the close of the year, while of the 12 applications for approval of subsidiary service companies, 2 were approved, 1 was withdrawn, and 9 were pending as of June 30, 1938.

[table omitted]

Mutual service companies and subsidiary service companies, the applications of which have been approved by the Commission, are required to file annual reports (Form U-13-60) with the Commission on or before April 1 of each year for the prior calendar year. These annual reports are based upon the Uniform System of Accounts for Mutual Service and Subsidiary Service Companies, which became effective August 1, 1936. Consequently, the annual reports filed with the Commission during the year ended June 30, 1937, covered at most a period of 5 months. The reports filed during the past year cover the first complete year for which results reported on this form were available. Through the medium of these reports, a study is being made of the operating methods of

various service companies which will enable the Commission to make suggestions and if necessary to promulgate orders to insure an accurate distribution of costs for this class of service in accordance with the standards set forth in Section 13 of the Act. During the year ended June 30, 1938, 15 such annual reports were received.

STATEMENTS REQUIRED PURSUANT TO SECTION 12 (i) OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Section 12 (i) of the Public Utility Holding Company Act of 1935 requires the filing of statements by any person employed or retained by any registered holding company or any subsidiary thereof who presents, advocates or opposes any matter affecting any registered holding company or any subsidiary thereof, before the Congress or any member or committee thereof, or before the Securities and Exchange Commission or the Federal Power Commission, or any member, officer, or employee of either such Commission, in such form and detail as the Securities and Exchange Commission shall by rules, regulations, or order prescribe. The information required to be contained in these statements pertains to the nature and character of such retainer or employment, and the amount of compensation received or to be received, directly or indirectly, in connection therewith.

During the year ended June 30, 1938, 76 statements on Form U-12 (i)-1 were filed pursuant to Section 12 (i) of the Public Utility Holding Company Act of 1935. [Footnote: On July 9, 1938, the Commission adopted two forms, namely, Form U-12 (1)-A and Form U-12 (1)-B, in lieu of the old Form U-12 (i)-1. These forms became effective on August 1, 1938.]

NATIONAL SECURITIES EXCHANGES

Exchange Reorganization

During the past fiscal year, material progress has been made toward the attainment of one of the Commission's vital objectives, namely, the adequate supervision of national securities exchanges. The Commission has consistently advocated such regulation by the exchanges themselves that the Commission need only exercise a residual control or supervision. It had long been apparent, however, that serious defects in the organization of many exchanges had hindered their effective assumption of this degree of responsibility for the conduct of their business. Efforts were being made, however, by groups of members of certain exchanges to replace the cumbersome administrative mechanism with organizations that were adapted to current needs. To these efforts the Commission gave its encouragement.

In connection with this matter, conferences between representatives of the New York Stock Exchange and the Commission were held during the latter part of the year 1937. During these conferences various plans were discussed, but no agreement as to an adequate solution could be reached. Therefore, on November 23, 1937, the Commission, through its Chairman, publicly requested the New York Stock Exchange to proceed at once to work out a satisfactory plan of reorganization in order that the needs of efficient management of an important public institution might be satisfied. In compliance with this request, the Exchange appointed an independent committee to study and report on the need for such a reorganization. This Committee, headed by Carle C. Conway, Chairman of the Board of Directors of the Continental Can Company, immediately instituted studies and on January 27, 1938, submitted an outstanding report to the Exchange. This report recognized the fact that national securities exchanges are public institutions impressed with a public trust, and provided a plan for a modern administrative organization to supplant the old outmoded one. On March 17, 1938, the Exchange, in order to effectuate the principal recommendations contained in this report, voted to adopt a radically revised constitution. On May 16, 1938, that constitution became effective and the newly elected Exchange administration assumed office. William McC. Martin, Jr., was elected President on June 30, 1938.

The reorganization of the New York Stock Exchange provides for direct representation of the public on the Board of Governors and increased representation of Exchange firms doing business with the public. Further results of this reorganization are as follows: The administrative structure has been greatly simplified; the number of standing committees was reduced from 17 to 7; the President of the Exchange is a salaried individual and may not be a member of the Exchange; and executive staffs have been created to carry out, under the direction of the President of the Exchange, the administrative functions formerly conducted by the Governors sitting as committee members.

The process of exchange reorganization has not been limited to the New York Stock Exchange. In addition, on March 31, 1938, the Chicago Stock Exchange, after long and careful study, effected a revision of its constitution to provide a form of administrative organization more in keeping with the modern, progressive concept of a stock exchange. Also, the New York Curb Exchange appointed a committee to study its organizational problems and to make recommendations in regard thereto. At the end of the past fiscal year this committee had not as yet made public its findings and recommendations.

[Footnote: On July 13, 1938, the Advisory Committee to the Committee on Organization and Administration issued a report in which it urged adoption of a form of organization similar in certain features to that of the New York Stock Exchange. On October 4, 1938, the Board of Governors of the New York Curb Exchange submitted to the membership its Plan of Reorganization, embodying suggestions substantially the same in theory as those proposed and carried out on the New York Stock Exchange. This plan was approved by the membership with only one dissenting vote.]

On February 15, 1938, the Detroit Stock Exchange materially amended its constitution and rules in order to effect changes in its existing procedure and practice.

Round Table Conferences

An outgrowth of the reorganization of the New York Stock Exchange has been the creation of a mechanism for the discussion and disposition of various problems in which both the Commission and the Exchange are interested. Round table conferences, first proposed by the Commission's Chairman, were inaugurated on June 3, 1938. At the first meeting the Chairman, in setting forth the agenda for the conferences, named five principal subjects for future exploration, namely, a trust institution to perform the banking and custodial functions of brokers; the problems of trading on the floor, including aspects of segregation of the broker-dealer functions as respects the specialist and the floor trader; the quality and quantity of bond trading on the Exchange; the conduct of business in odd lots; and a comprehensive examination of commission rates for transactions in securities on the Exchange. A second meeting was held on June 9, 1938, and during subsequent months these discussions have become a regular practice. The Exchange has appointed a special committee to represent it in the meetings and the Commission has been represented by some of its members as well as by staff officials. Prior to the end of the past fiscal year, no definite results of these conferences were announced inasmuch as the program with the new management had been so recently undertaken. However, material progress was made toward working out financial safeguards for customers' property and toward studying the marked decline which had taken place during recent years in bond trading on exchanges. [Footnote: On October 31, 1938, the Commission and the New York Stock Exchange announced the results to that date of these conferences in the form of a joint program designed to prevent the repetition of certain abuses and lax practices and to provide certain protective assurances to customers through the establishment of more stringent requirements respecting financial responsibility of brokers and dealers. See Report of Securities and Exchange Commission in the matter of Richard Whitney, et al., Vol. I, Part II, November 1, 1938.] Further consideration of the segregation problem, as well as other subjects, also was under continued discussion.

Exchanges Registered

In addition to the major revision in exchange reorganization, many changes in exchange rules and practices were also made. During the fiscal year ended June 30, 1938, more than 250 amendments were filed by registered exchanges in connection with their applications for registration, which amendments were examined for the purpose of ascertaining compliance with the Securities Exchange Act of 1934 and the rules and regulations of the Commission. Furthermore, studies have been made of the organization, rules, trading practices, listing procedure and personnel of seven national securities exchanges and one exempted exchange. The exchanges which were so examined are listed below:

Chicago Board of Trade
Los Angeles Stock Exchange
Philadelphia Stock Exchange
San Francisco Curb Exchange
San Francisco Mining Exchange
San Francisco Stock Exchange
Seattle Stock Exchange
Standard Stock Exchange of Spokane

At the time of the examination of the San Francisco Curb Exchange and the San Francisco Stock Exchange, negotiations had already been undertaken for a merger of the two institutions. Commission representatives assisted in the ensuing conferences and, on April 15, 1938, the San Francisco Curb Exchange applied to the Commission for permission to withdraw its registration as a national securities exchange in pursuance of a plan for its dissolution and consolidation with the San Francisco Stock Exchange. In its application, the San Francisco Curb Exchange declared that its reasons for seeking the withdrawal of its registration were (1) that the Exchange had been formed primarily for the purpose of providing a market for unlisted stocks and that this field had become materially restricted during the past 4 years with a gradual reduction in the number of issues enjoying unlisted trading privileges on the Exchange; (2) that approximately 78 percent of its members were members of or affiliated with member firms of the San Francisco Stock Exchange, the facilities of which were considered sufficient for the volume of trading experienced in the region during the past several years; and (3) that, under conditions then existing, it was believed that the dissolution of the San Francisco Curb Exchange and the absorption of its trading privileges by the San Francisco Stock Exchange would result in a continuance of market facilities on an improved basis and would stimulate the growth of the San Francisco Stock Exchange as a regional exchange to the ultimate benefit of the general public and industry in the region of the Exchange. On April 21, 1938, the Commission issued an order granting the application of the San Francisco Curb Exchange to withdraw its registration as a national securities exchange. Pursuant to Rule JF7 of the General Rules and Regulations under the Securities Exchange Act of 1934, securities admitted to unlisted trading privileges on the San Francisco Curb Exchange were transferred to the San Francisco Stock Exchange for trading thereon as securities admitted to unlisted trading privileges.

On February 26, 1938, the Commission issued an order granting the application of the Chicago Curb Exchange for the withdrawal of its registration as a national securities exchange. This application cited as reasons for withdrawal the facts that its membership had substantially declined, that it had operated at a large deficit for the past 4 years and that the volume of its listings and transactions was insufficient to warrant continued operation.

The Buffalo Stock Exchange, which had been permitted to withdraw its registration as a national securities exchange with leave to apply for reinstatement, originally before April 1, 1937, and subsequently before April 30, 1938, again requested and received a further extension of time until June 30, 1938, within which it might apply for reinstatement as a national securities exchange. As of June 30, 1938, the Buffalo Stock Exchange had made no application for reinstatement.

The 20 exchanges listed below constitute those national securities exchanges registered with the Commission as of June 30, 1938:

Baltimore Stock Exchange
Board of Trade of the City of Chicago
Boston Stock Exchange
Chicago Stock Exchange
Cincinnati Stock Exchange
Cleveland Stock Exchange
Detroit Stock Exchange
Los Angeles Stock Exchange
New Orleans Stock Exchange
New York Stock Exchange
New York Curb Exchange
New York Real Estate Securities Exchange, Inc.
Philadelphia Stock Exchange
Pittsburgh Stock Exchange
St. Louis Stock Exchange
Salt Lake Stock Exchange
San Francisco Stock Exchange
San Francisco Mining Exchange
Standard Stock Exchange of Spokane
Washington (D. C.) Stock Exchange

Exchanges Exempted from Registration

As of June 30, 1938, the 7 exchanges granted exemption from registration as national securities exchanges remain the same as for the past 2 fiscal years and are as follows:

Colorado Springs Stock Exchange
Honolulu Stock Exchange
Milwaukee Grain and Stock Exchange
Minneapolis-St. Paul Stock Exchange
Richmond Stock Exchange
Seattle Stock Exchange
Wheeling Stock Exchange

REGISTRATION OF SECURITIES ON EXCHANGES

Applications for Registration of Securities on Exchanges

Under the Securities Exchange Act of 1934, financial and other pertinent factual data had been made available to the public with respect to 2,485 companies having securities listed and registered on national securities exchanges. These registrants include most of the leading nationally known companies in the United States as well as many with activities of a sectional or local character.

The Securities Exchange Act of 1934 requires that a company seeking such registration of its securities must file an application on the appropriate form prescribed by the Commission, which application must contain detailed financial data, including schedules breaking down the more significant accounts reflected therein. In general, the financial data thus required include, among others, such items of vital interest to investors as sales, cost of goods sold, and inventories. The application must also reveal pertinent information concerning the history of the company, its capital structure and that of its affiliates, the full terms of its securities, warrants, rights, and options, the control and management of its affairs, and the remuneration of its officers and directors.

Under the Securities Exchange Act of 1934 and the General Rules and Regulations promulgated thereunder, each of the 2,485 companies with securities listed and registered on national securities exchanges also has the duty to file within 120 days after the close of its fiscal year, with the Commission and the exchange, an annual report bringing up to date the financial and other more important items of information contained in its application for registration of securities. In addition, each must also file a current report for any calendar month during the interim in the event certain material changes occur in its affairs.

All of these 2,485 applications and several thousand supplementary annual and current reports have been examined by the Commission to determine whether they furnish adequate disclosure of information required by the Act and the rules and regulations pertaining thereto. Where deficiencies are discovered as a result of the examination, the registrant is required to file correcting amendments, which in turn are examined as to their sufficiency in the same manner as the original application or report.

Certain information is also required to be filed by companies whose securities are listed on the seven exchanges which are exempted from registration pursuant to the Act.

At the beginning of the fiscal year, proceedings were pending under Section 19 (a) (2) of the Act to determine whether to suspend for a period not exceeding 12 months or to withdraw the registration of securities of three companies, which securities were listed on national securities exchanges. During the year, similar proceedings were instituted with

respect to securities of 11 additional companies. This action was based upon the failure of these registrants to comply with Sections 12 or 13 of the Act and the Commission's rules and regulations thereunder. [Footnote: Section 12 of the Securities Exchange Act of 1934 requires the registration of all securities which are listed on a national securities exchange, unless such securities are specifically exempted from registration by the Act or by the rules and regulations promulgated thereunder. Section 13 provides that the information contained in the application for registration filed under Section 12 shall be kept reasonably current in accordance with the rules and regulations of the Commission.] Eleven of these proceedings were disposed of, four by dismissal and seven by orders of the Commission withdrawing the registration; and three were still pending at the close of the year.

The Commission made effective as of January 3, 1938, revised rules and forms governing the registration of certain securities for "when issued" trading on exchanges. [Footnote: The old rules JD4 to JD12, inclusive, were changed into one rule designated JD4. Forms 1-J and 2-J were revised and continued under the same designations; Form 4-J was revised and designated Form 15AN; and amendment Forms 3-J and 5-J were discontinued and in lieu thereof the standard amendment Form 8 was made applicable for amendments to Forms 1-J, 2-J, and 15AN.] This revision consisted in general of the clarification and simplification of rules and forms previously used in connection with such securities. The two changes of most significance as a practical matter were:

(1) Under the old rules, "when issued" trading was limited to the exchange where the security to be issued would ultimately be traded. Under the new rules, "when issued" trading is also possible on the exchange where the security bearing the warrant or right is listed. A similar change has been made with respect to trading in issued warrants.

(2) A change in procedure provides for a notice of deficiency to be issued by the Commission if an application for "when issued" trading does not comply with the rules. This notice has the effect of automatically delaying the effectiveness of the registration but shall be withdrawn when the deficiencies are remedied. A hearing as to the adequacy of such notice is provided for upon request. If no hearing is requested and the notice is not withdrawn the application is regarded as abandoned.

Statistics of Securities Registered or Exempt From Registration on Exchanges

[statistical tables omitted, unable to reproduce in text format]

Applications for the Withdrawal or Striking from Listing and Registration of Securities on Exchanges

Pursuant to Rule JD2 (b), 64 applications were filed with the Commission during the past year for the withdrawal or striking from listing and registration of securities fully listed

and registered on national securities exchanges. As of June 30, 1937, 22 such applications were pending. Of this combined total, 65 were granted and 21 were pending as of June 30, 1938.

Pursuant to Rule JD3 (a), the Commission received 226 certifications from exchanges stating that securities fully listed and registered thereon had been paid, redeemed, or retired in full.

Applications for the Granting, Extension, and Termination of Unlisted Trading Privileges on Exchanges

Rule JF2 (a) permits unlisted trading privileges on a national securities exchange to continue in a security where minor changes have occurred therein, such as changes in the title, the interest rate, the par value, amount outstanding, etc. The rule provides that exchanges shall notify the Commission of any such changes promptly after learning thereof. During the fiscal year ended June 30, 1938, the Commission received 739 such notifications.

If more substantial changes are made in securities, an application must be filed by the exchange in support of the contention that the altered security is substantially equivalent to the security admitted to unlisted trading privileges thereon. The application must be approved by the Commission before the altered security may be traded in lieu of the original security. Subsection (b) of Rule JF2 prescribes the information to be contained in such application. During the fiscal year in question, 22 applications were received by the Commission, of which 14 were granted and 8 were denied.

Clause 2 of Section 12 (f) of the Securities Exchange Act of 1934, as amended on May 27, 1936, provides that the Commission, upon application by a national securities exchange, and upon conforming with certain standards, may extend unlisted trading privileges to securities duly listed and registered on an other national securities exchange. As of June 30, 1937, 45 such applications were pending. During the fiscal year ended June 30, 1938, 26 additional applications were filed. Of these 71 applications, 37 were granted, 7 were denied, 5 were withdrawn, the Commission reserved decision in connection with 1 application, and 21 were pending as of June 30, 1938.

The amended Section 12 (f) also permits the Commission, upon application by a national securities exchange, to extend unlisted trading privileges to securities in respect of which there is available, from a registration statement and periodical reports or other data filed pursuant to the rules or regulations of the Commission adopted under the Securities Act of 1933 or the Securities Exchange Act of 1934, information substantially equivalent to that required in respect of a security duly listed and registered on a national securities exchange. As of June 30, 1937, 22 such applications were pending. During the fiscal year ended June 30, 1938, 4 additional applications were filed. Of these 26 applications, 12 were granted, 6 were denied, 4 were withdrawn and 4 were pending as of June 30, 1938.

As of June 30, 1937, there were pending before the Commission two applications by a broker or dealer for the termination of unlisted trading privileges on the New York Curb Exchange. These applications were granted during the fiscal year. An application by an issuer for the termination of unlisted trading privileges in its common stock on the same exchange was filed on June 24, 1938, and was pending at the close of the fiscal year.

During the past year, the Commission was notified, pursuant to Rule JF3 (c), of the removal from unlisted trading privileges of 360 securities. Of this number, 14 were removed when the registration of the Chicago Curb Exchange was withdrawn on March 15, 1988, and 166 were removed when the registration of the San Francisco Curb Exchange was withdrawn on April 30, 1938.

When the San Francisco Stock Exchange absorbed the San Francisco Curb Exchange on April 30, 1938, the Commission amended its Rule JF7 so as to permit an exchange which has absorbed another exchange in the same metropolitan area to continue unlisted trading privileges in those securities which enjoyed unlisted trading privileges on the other exchange at the time of the absorption. The 166 Securities which had theretofore been admitted to such privileges on the San Francisco Curb Exchange were accordingly transferred to the San Francisco Stock Exchange.

As of June 30, 1938, 13 national securities exchanges and 3 exempted exchanges permitted trading in securities on an unlisted basis. Of the 13 registered exchanges, 5 permitted trading in both stocks and bonds on an unlisted basis and the other 8 exchanges in stocks only. As of June 30, 1938, 1,223 stock and 496 bond issues were admitted to unlisted trading privileges on the 13 registered exchanges. The combined total represented 1,719 securities 23 against a total of 1,883 securities admitted to unlisted trading privileges on June 30, 1937. Thus, during the year there was a net decline of 164 securities so admitted.

There are three exempted exchanges upon which securities are admitted to unlisted trading privileges. As of June 30, 1938, 153 stock and 14 bond issues were admitted to unlisted trading privileges on these exchanges. The combined total represented 167 securities, compared with 164 at the end of the previous year. [Footnote: This figure does not represent the total of admissions to dealings on an unlisted trading basis since many securities enjoy this privilege on more than one exchange.]

REGULATION OF THE OVER-THE-COUNTER MARKETS

The Maloney Amendment and Rules Thereunder

During the past fiscal year, the work of the Commission in the over-the-counter securities markets has been signaled by the inauguration of a comprehensive program for

administering and supervising this important branch of the securities business. This program had its origin several years ago in a cooperative endeavor of the Commission and various voluntary associations of brokers and dealers, particularly the Investment Bankers Conference, Inc., to improve the standards of practice prevailing in the business. The program is based upon a bill introduced in the Senate by Senator Francis T. Maloney, of Connecticut, who availed himself, inter alia, of material accumulated by the Commission in the intensive studies it had conducted and of the conclusions which had been reached in the frequent round table conferences between the Commission and representatives of the various groups of investment bankers, dealers, and brokers. Representatives of the Commission appeared in support of the bill at hearings before the Committee on Banking and Currency of the Senate and a subcommittee of the Committee on Interstate and Foreign Commerce of the House of Representatives. After some amendment, this bill was passed by the Congress as Public No. 719, 75th Congress, and was approved by the President on June 25, 1938.

The new legislation follows the principle of conferring upon regulatory groups from business a primary responsibility for enforcing high standards of business conduct upon their members. In part, it amends the Securities Exchange Act of 1934 by inserting after Section 15 of the Act a new Section 15A. In its essentials, the new section sets up a system of regulation in the over-the-counter markets through the formation of voluntary associations of investment bankers, dealers and brokers doing business in these markets under appropriate Governmental supervision. This system is designed to provide investors in the over-the-counter markets with protection comparable to that provided by the Securities Exchange Act of 1934 with respect to national securities exchanges and is patterned upon the control of exchanges provided in that Act.

Prior to passage of Public No. 719, 75th Congress, known as the "Maloney Act", the Commission drafted an extensive set of rules under Sections 15 (c), 10 (b), 17 (a), and 23 (a) of the Securities Exchange Act of 1934, as a result of study and research into over-the-counter trading practices. These rules, defining practices which are manipulative, deceptive, or fraudulent in the over-the-counter markets were adopted by the Commission and became effective on October 1, 1937, as Rules MC1 through MC8 and GB2, GB3, and OA1. Rule MC9 was subsequently adopted and became effective on March 1, 1938.

The Maloney Amendment, in addition to adding a new section to the Securities Exchange Act of 1934, effected certain amendments in Section 15 (c). These amendments are designed to clarify and strengthen the direct regulatory powers of the Commission with respect to the over-the-counter markets, as well as to provide the Commission with certain additional direct powers over fictitious quotations and the financial responsibility of brokers and dealers. As a result of these amendments the former Section 15 (c) became Section 15 (c) (1). Therefore, on June 28, 1938, the rules defining manipulative, deceptive, and fraudulent practices in the over-the-counter markets were repromulgated under the new Section 15 (c) (1), and the rules renumbered as Rules X-15C1-1 through X-15C1-9.

Registration of Brokers and Dealers

[statistical tables omitted]

REGISTRATION OF SECURITIES UNDER THE SECURITIES ACT OF 1933

Examination of Securities Act Registration Statements

Unless a registration statement under the Securities Act of 1933 is in effect as to a security, the security may not (except where one of the exemptions from registration provided by the Act is available) be publicly offered for sale or sold in interstate commerce or through the mails. A security may be registered by filing with the Commission on an appropriate form a registration statement meeting the conditions specified in the Act. Forms have been prescribed by the Commission for registration of the various types of security. All of these forms are designed to secure a fair disclosure of material facts concerning the security to be offered for sale to the public and the issuer thereof, in order that the investor may thus be better able intelligently to appraise its desirability as an investment.

A required part of each registration statement is a prospectus which must contain the more essential information set forth in the registration statement. A copy of such prospectus must be given to every person to whom the security covered thereby is offered for sale and to every purchaser at or before the time of the sale.

The registration statement becomes effective on the twentieth day after its filing with the Commission, except in certain cases as provided in the Act. This 20-day period enables an investor to consider facts concerning the proposed security issue before it is offered for sale. It also gives a reasonable time for the Commission to make an examination of the registration statement for omissions, incomplete disclosures and inaccuracies. Under the Securities Act of 1933 the Commission is not empowered to express approval of the merits or value of any security, but is limited to requiring the disclosure of the material facts necessary for the investor to exercise properly his own judgment.

It is important to note that the registration statement constitutes a record of the representations made in connection with the offering, and thus, if any such representations were false, simplifies the problem of proof in any legal proceedings which may result.

Where the examination and analysis of the registration statement disclose deficiencies but nevertheless reveal an honest attempt to meet the specified requirements, the registrant is advised of the deficiencies. In such case the deficiencies may be corrected by the filing of amendments. However, where the examination shows that the registration statement

includes untrue statements or omissions of material facts which reflect intentional or reckless disregard of the standard of fair disclosure prescribed by the Act, stop order proceedings usually are instituted immediately. The Commission also has the power to refuse registration in any case where the information presented in the registration statement is incomplete or inaccurate on its face and to undertake investigations involving examination of the issuer, underwriter, or any other person to determine whether a stop order should issue in any particular case. In addition, the Commission may suspend registration even after a registration statement becomes effective where it develops that the information furnished therein is untrue or misleading in any material respect.

The Act provides that neither the fact that a registration statement for a security has been filed or is in effect, nor the fact that a stop order is not in effect with respect to that particular statement, shall be deemed a finding by the Commission that the registration statement is true and accurate on its face, or that it does not contain an untrue statement of material fact, or a material omission, or be held to mean that the Commission has in any way passed upon the merits of, or given its approval to, the security. The statute makes it a criminal offense to represent otherwise to any prospective purchaser.

Section 15 (d) of the Securities Exchange Act of 1934, as amended, provides for the filing of annual reports with the Commission by certain issuers having securities registered under the Securities Act of 1933. During the year there were filed 180 such annual reports, which were examined in the same manner as registration statements.

In order to give some indication of the result of the Commission's examinations in securing fair disclosure in registration statements, a few typical cases are briefly summarized below:

(1) A registrant acting as sponsor-depositor of an unincorporated investment trust sought to register 18,000,000 trust shares to be offered to the public at varying prices based upon the previous day's closing sale prices of the trust's portfolio. The proposed aggregate offering price of these shares approximated \$19,620,000. The sponsor-depositor had previously registered two blocks amounting to 862,069 and 3,000,000 shares, respectively.

The prospectus contained a tabulated sample price make-up sheet representing that in the computation of the daily offering price of the trust shares the only premium, commonly called "service charge" or "load," to be received by the registrant was the 9.5% premium for the sale of shares to the public plus "breakage" of fractional cents resulting from rounding out the offering price per share to the next higher cent where fractions of a cent were involved. This representation as to the amount taken out for such charges was further supported by a statement in the prospectus that the estimated net proceeds accruing to the investor approximated 91.3%. (Proceeds to the sponsor-depositor

corporation of 8.7% of the offering price would approximately equal a 9.5% premium on the creation price.)

However, it developed from certain additional information filed in connection with its third registration statement that the sponsor-depositor was receiving income in connection with the sale of securities in an amount exceeding the charges disclosed in the prospectus. Further examination revealed that this registrant enjoyed unrevealed profits adverse to the interests of the trust and security holders. The chief source of such unrevealed profits, discovered as a result of the Commission's investigation, arose from the mechanics employed in the creation of trust shares. The sponsor-depositor "closed" with the trustee at 4:30 p.m., at which time the sponsor-depositor had before it the price make-up sheet used during the current day and the newly determined price make-up sheet to be used the following day. In the event the "new" price was higher than the "current" price, orders received were filled, and additional shares were purchased in advance of orders, at the lower "current" price, such unordered shares being sold the following day at a higher price, the sponsor-depositor pocketing the increase. Conversely, if the "new" price were lower, the sponsor-depositor withheld placing orders on shares already sold to the public, pocketing the difference represented by the decline in the market for the period such purchases were withheld. Through this device (not disclosed in the registration statement) the registrant made additional profits and the trust was deprived of funds which would otherwise have flown into it. Furthermore, the sponsor-depositor used different bases in creating and in selling shares whereby it was able to acquire trust shares from the "trustee" at the bid value of the portfolio underlying the shares, although in selling the same shares it used the sales value and added thereto the "load." It was the sponsor-depositor who received the benefit of this "spread" between the closing bid and closing sales price of the portfolio per share.

The Commission discovered from its investigation that by reason of this undisclosed practice, together with the method of computing the creation and offering prices of the trust shares, and the profits from the so-called "breakage" received by the registrant, the "load" borne by investors approximated 12%, rather than 9.5% as claimed in the registration statement, and that therefore approximately 88% of the investors' funds actually accrued to the trust, instead of approximately 91.3% as represented in the prospectus.

Because of these material omissions, and the failure to set forth clearly in the prospectus certain other information required to be furnished, the Commission instituted proceedings, resulting in the issuance of a stop order suspending the effectiveness of all three of the registration statements filed by this registrant. Subsequently the registrant amended its registration statement so as to include those material facts, as well as a statement of its contingent liability to purchasers of its shares resulting from failure properly to disclose these facts.

(2) In a registration statement as originally filed by a company organized to construct and operate a mill for the purpose of refining and milling custom ores, it was stated that various engineers had attested to adequacy of ore reserves in the surrounding territory. One engineer indicated in a report which was filed as a part of the registration statement that a property near the mill contained a potential ore body of some 2,000,000 tons of ore with values averaging \$12 per ton. As a further apparent indication of the need for a mill, the issuer had drawn 12 contingent contracts with the owners of surrounding properties which provided for the supplying and milling of ores. These "contracts" provided no penalty for the failure to provide ores in the amounts specified therein. As a result of an investigation by the Commission, the registration statement was amended by the registrant, before it became effective, so as to include the following statements:

a. "The investor should bear in mind that this is a highly speculative proposition. It involves construction at investor's expense of a comparatively large custom mill in a district where suitable ore in substantial quantity has not been blocked out and is not known to exist (beyond an amount sufficient for about three month's operation of the mill at initial capacity), in anticipation that if adequate milling facilities are made readily available suitable ore will be discovered, mined and delivered to the proposed mill by mines which cannot, or do not wish to, incur the expense and hazard of constructing and operating their own mills."

b. "Records of shipments of ore during 1937 in this vicinity indicate that all were of high grade, and showed one mine shipped two hundred tons, one shipped thirty tons, one shipped five tons and one shipped two tons * * *. None of these mines, except possibly one or two, is equipped to mine and deliver low grade ore in quantity, and all or most of them would require financial aid * * *."

c. "A principal purpose of this company is to provide milling facilities for the Company [Footnote: The company referred to is under practically the same Control as the registrant.] and thus afforded an opportunity to develop its mining properties without incurring the additional expense to itself or its stockholders of erecting and operating its own mill."

d. "There is no provision for the withholding or escrow of 1 proceeds of sales of stock until a specified amount estimated as sufficient to complete necessary construction and assure operation has been subscribed, and if a sufficient amount should not be received the company would have only a partially completed mill or a plant without adequate capital to operate and stockholders would be faced with the necessity of raising more funds or of suffering losses on their investments."

(3) A newly formed corporation, described as an investment trust of the general management type, sought to register 299,093 common shares out of an authorized 300,000 shares with a stated value of \$1 per share.

At the time of filing there were 907 shares of stock outstanding sold to the members of the management group for a cash consideration of \$15 per share. The initial offering price was to be \$15 per share and thereafter at the liquidating value, based on the market value of investments, plus a "load" of 7.5% of such offering price.

The plan of operation provided for a management contract with a corporation formed in 1929 which had sponsored another trust since that time. The prospectus as originally filed contained six pages of statistical data including a summary of the record made by the managed trust and a comparison of such record with the results which would have been obtained had a permanent investment of \$10,000 been made in common stock of each of the 15 largest corporations; 15 corporations for which was recorded the greatest number of sales on the New York Stock Exchange during 1928; or the 15 corporations having the largest number of stockholders during the period January 9, 1929, to December 31, 1937, which was selected for these comparisons.

These data purported to show the advantage of a managed investment and ended with a comparative table on a percentage basis showing that the trust suffered a shrinkage of only 11.8% in value for the period under review, whereas the other groups on the arbitrary basis assumed showed shrinkages ranging from 30.6% to 71.3%. The Commission took the position that such a comparison, based on the one hand on actual facts and on the other on assumed transactions on a different basis, was misleading. As a result, the statistical tables and percentages were eliminated from the prospectus, there being substituted therefor a clear statement of the proposed operation of the new trust and data concerning the record made by the old trust under the same management.

(4) A Delaware corporation filed a registration statement covering 15,000 shares of \$1.50 convertible preferred stock (par value \$5) and 52,750 shares of common stock (\$1 par). Under the charter provisions the preferred stock was entitled in liquidation to \$25 per share and was proposed to be offered at \$27.50 per share to net the company \$25, of which \$5 was to be allocated to capital and \$20 to paid-in surplus. Under the Delaware statutes, corporations may pay dividends on any class of stock out of paid-in surplus. The registration statement and prospectus did not disclose the possibility that thus, under the laws of Delaware, the common stock holders might receive dividends out of surplus contributed by the preferred stock holders, thereby taking away the surplus contributed by the preferred holders covering the excess of liquidating value over par value. Accordingly, the Commission required the registrant to include as a footnote to the preferred stock account in the balance sheet a statement of the aggregate amount to which the preferred stock would be entitled in liquidation, and an opinion of counsel for the company as to whether there was any legal restriction on surplus by reason of the fact that the amount to which preferred shareholders would be entitled in liquidation exceeded the par value of the stock. It was stated in the footnote that in the opinion of counsel there was no such restriction but that it was the present intention of the company to limit the payment of dividends to the amount of surplus in excess of \$20 per share of preferred stock outstanding.

Since the effective date of the registration statement, the company has indicated its intention to remove from surplus and allocate to capital, by proper legal procedure, a sufficient amount of such surplus to cover the full liquidating value of the preferred stock.

Statistics of Securities Registered Under the Securities Act

At the beginning of the fiscal year there were 3,281 registration statements on file, of which 2,571 were effective, 143 were under stop or refusal order, and 422 had been withdrawn, while 145 were under examination or held pending the receipt of amendments.

During the year 459 additional registration statements were filed, and there were 454 registration statements which became effective (of which latter all but 13 were fully effective); a total of 2,941 statements were effective at the end of the period, 84 of those effective at the beginning of the period or during the period either having been withdrawn or placed under stop order.

The net number of registration statements withdrawn during the year increased by 156, to a total of 578 on June 30, 1938. The net number of stop or refusal orders increased during the period by 10, a total of 153 of such orders being in effect on June 30, 1938. As of June 30, 1938, there were 68 registration statements in the process of examination or awaiting amendments.

Appendix in contains a list of the registration statements as to which stop orders, consent refusal orders, and withdrawal orders were issued during the year. It also includes the name of the registrant and aggregate dollar amount of the proposed offering involved in each case.

It might be well to point out that apart from the 459 additional registration statements proper there were also filed during the year a total of 1,813 amendments to registration statements. [Footnote: Including 1,296 amendments classed as "pre-effective" and 517 as "post-effective." These figures do not take into account certain purely formal amendments classed as "delaying" amendments of which 854 were also filed during the period.] Many of these amendments involve substantial changes in the information previously furnished, and all were given the same detailed examination as that given in the case of the original registration statements.

During the fiscal year ended June 30, 1938, registrations for \$1,912,000,000 of new securities became effective under the Securities Act. This compares with a total of \$4,686,000,000 for the previous fiscal year and \$4,677,000,000 for the fiscal year ended June 30, 1936. [Footnote: In addition to these new issues, there were effectively registered during the fiscal year ended June 30, 1938, approximately \$193,000,000 of

voting trust certificates, certificates of deposit and securities proposed to be offered in exchange for registrants' or predecessors' securities as well as the guarantee by a parent company of \$25,000,000 principal amount of subsidiary debt. In the preceding fiscal year, registrations of reorganization and exchange securities covered securities valued at \$164,000,000 and there were also registered the guarantees of four individuals on three bond and note issues having an aggregate principal amount of slightly under \$1,000,000.]

Of the total of \$1,912,000,000 which was registered during the year, approximately 29.1% of the total must be deducted as having been registered for purposes other than immediate cash sales for the account of the registrants. This figure includes \$270,000,000 of securities which were to be reserved against the conversion of issues having convertible features; \$124,000,000 registered "for the account of others"; \$76,000,000 registered for exchange for other securities mainly in connection with substitution of new bonds or preferred stocks for the old issues; \$54,000,000 reserved against the exercise of options and warrants; \$4,000,000 for issuance for various assets, claims, selling commissions, etc., and \$28,000,000 reserved for subsequent issuance.

Registrants expected to offer for immediate cash sale for their own accounts the balance of \$1,356,000,000 of registered securities remaining after these deductions. Of this amount, it was anticipated that approximately \$60,000,000 (4.4% of the estimated gross proceeds) would go for commissions and discounts to underwriters and agents and for the registrants' own selling expenses. Slightly more than \$10,000,000 (0.8% of the estimated gross proceeds) would go for other expenses in connection with the flotation and issuance of securities. This left approximately \$1,286,000,000 as the estimated net cash proceeds which were expected to be received by the registrants themselves.

Of these net cash proceeds it was indicated that approximately \$457,000,000 or 35.5% would be used for new money purposes. This is the highest ratio of estimated net proceeds intended for new money purposes for any fiscal year since the Securities Act became effective. But it should be noted that as an absolute total it amounts to only approximately 51% of the new money which was expected to be raised from the sale of securities registered in the previous fiscal year. Registration statements indicated that the new money was to be allocated approximately as follows: \$272,000,000 (against \$257,000,000 in the preceding fiscal year) for expenditures for plant and equipment and \$185,000,000 (against \$633,000,000) for additional working capital. Of the balance of net cash proceeds indicated in the registration statements, \$451,000,000 (35.1% of all net proceeds) was intended for the repayment of indebtedness while \$348,000,000 (27.1% of total net proceeds) was intended to be used for the purchase of securities for investment.

[distribution table omitted]

The registration statements disclosed that approximately \$1,106,000,000 or 81.6% of the \$1,356,000,000 of securities proposed for cash offering for the account of the registrants were to be offered to the public generally, \$232,000,000 or 17.1% to the registrants' security holders, and \$18,000,000 or 1.3% to special persons. About \$817,000,000 or 60.2% of the securities were underwritten while \$424,000,000 or 31.3% were to be offered by various selling agents and \$115,000,000 or 8.5% were to be offered by the registrants themselves.

Of the total of \$1,642,000,000 of securities effectively registered (after deducting amounts reserved against conversion), approximately \$463,000,000 or 28.2% were for common stock issues; \$250,000,000 or 15.2% were for preferred stock issues; \$228,000,000 or 13.9% were for certificates of participation, beneficial interest and warrants; \$321,000,000 or 19.5% were for secured bonds; \$367,000,000 or 22.4% were for debentures and \$13,000,000 or 0.8% were for short-term notes. Interest-bearing obligations, then, totaled 42.7%, stock issues 43.4%, and other types of securities 13.9%.

Approximately \$601,000,000 or 36.6% of the total registrations (after deducting only the amounts reserved against conversion) were for manufacturing companies; \$458,000,000 or 27.9% were for financial and investment companies; \$454,000,000 or 27.7% were for electric light and power, gas and water utility companies; \$44,000,000 or 2.6% were for transportation and communication companies (exclusive of common carriers exempted under the Securities Act); \$27,000,000 or 1.7% were for companies in the extractive industries; \$25,000,000 or 1.5% were for merchandising companies and \$33,000,000 or 2.0% were for all other registrants including a foreign governmental issuer.

Detailed statistical tables showing number of issues, type of securities, classification of issuers, gross proceeds, net proceeds, cost of distribution, channels of distribution, and proposed use of funds for the securities registered under the Securities Act of 1933 during the year ended June 30, 1938, are contained in Appendix V. In interpreting the tables as well as the summary figures quoted above, it should be kept in mind that these statistics are based solely on the registration statements filed by the registrants with the Securities and Exchange Commission. All the data, therefore, refer to registrants' intentions and estimates as they appear in the registration statements on the effective dates and, thus, in reality represent statistics of intentions to sell securities rather than statistics of actual sales of securities.

EXEMPTION FROM REGISTRATION REQUIREMENTS OF SECURITIES ACT OF 1933

Under Section 3 (b) of the Securities Act of 1933, as amended, the Commission is authorized to prescribe rules and regulations providing for conditional exemptions of certain issues of securities from the provisions of this Act. This subsection provides, however, that no issue of securities shall be exempted where the aggregate amount at

which such issue is offered to the public exceeds \$100,000. The Commission, acting pursuant to this authority, has adopted Regulations A, B, and B-T, the latter of which became effective on March 1, 1938. Regulation A pertains to exemptions other than those relating to oil and gas interests. Regulation B covers exemptions relating to fractional undivided interests in oil or gas rights. Regulation B-T provides for exemptions pertaining to interests in an oil royalty trust or similar type of trust or unincorporated association.

During the past fiscal year there were received and examined 353 prospectuses filed pursuant to Rule 202 of Regulation A of the General Rules and Regulations under the Securities Act of 1933. The securities covered by these prospectuses represent an aggregate offering price, mainly of stocks, of \$26,827,793. Numerous amendments filed in connection with these prospectuses were also examined.

Also, during the past fiscal year, there were received and examined 1,794 offering sheets, together with 630 amendments, filed pursuant to Regulation B of the General Rules and Regulations under the Securities Act of 1933. The securities covered by these offering sheets represent an aggregate offering price of approximately \$20,000,000. The following statistics indicate the various actions of the Commission with respect to those filings which did not satisfy the requirements of the regulation:

Temporary Suspension Orders: 553

Orders for Hearing and Designating Trial Examiner (Rule 340 (b)): 19

Orders Terminating Proceeding After Amendment: 419

Orders Consenting to Withdrawal and Terminating Proceeding: 121

Orders Terminating Effectiveness of Offering Sheet (No Proceeding Pending): 93

Orders Terminating Proceeding After Explanation: 9

Orders Consenting to Amendment (No Proceeding Pending): 88

Orders Consenting to Withdrawal (No Proceeding Pending): 72

Orders Terminating Effectiveness of Offering Sheet and Terminating Proceeding: 4

Order Rejecting List of Persons on Whose Behalf Offering Sheet is Filed: 9

Up to June 30, 1938, no filings had as yet been made under Regulation B-T.

On April 22, 1938, the Commission undertook a tentative simplification of its rules governing exemptions by adopting an additional exemption designated as Rule 210 of Regulation A. This was designed as a temporary rule and to aid the Commission in ascertaining whether a lightening of such requirements would help small business enterprises to raise capital. This rule was to remain in effect until October 29, 1938, [Footnote: On October 27, 1938, the Commission announced an extension in substance for 4 months, until the end of February 1939, of the effectiveness of Rule 210 of Regulation A and the amendment to Form A-2.] and is applicable to any issue of securities offered for cash provided the aggregate offering price does not exceed \$100,000, but does not apply to oil and gas interests which are covered by Regulations B and B-T. The primary condition of this new exemption is the compliance with the Blue Sky Laws of all States in which the securities are offered, sold, or delivered after sale. This exemption does not extend to transactions effected in the District of Columbia. As a further condition of the exemption, a notice of intention to issue securities under the new rule must be filed at the Washington office of the Commission. In addition, copies of all prospectuses, letters or other communications used at the commencement of the public offering or subsequently sent to more than 10 persons are to be filed with the Commission prior to use.

As an integral part of this effort to ascertain if alteration of these requirements would assist particularly the small business enterprise in obtaining new capital more simply and economically, the Commission established during the month of April, a special unit in the Registration Division to which was assigned the function of aiding prospective registrants and advising them and their representatives on any problems which may arise in connection with their registration statements. Pending completion of this program, a number of amendments were made in the existing forms. One of these was an amendment to Form A-2. This form may be used, by corporations, other than finance companies, which have total assets not exceeding 5 million dollars and which have been in existence for at least 5 years and have had a net income for 1 fiscal year of the past 5. However, as a result of the amendment, corporations meeting these conditions are permitted to omit historical financial information and are required to file certified profit-and-loss statements, and schedules supporting balance sheet and profit-and-loss statements, only for the latest fiscal year before the date of the certified balance sheet and for any period between the two. This amendment is experimental in nature and will not be effective after October 29, 1938, unless further action is taken by the Commission. [Footnote: On October 27, 1938, the Commission announced an extension in substance for 4 months, until the end of February 1939, of the effectiveness of Rule 210 of Regulation A and the amendment to Form A-2.]

During the last 2 months of the year, when Rule 210 was in force, the Commission received and examined thereunder 45 letters of notification for issues aggregating \$3,034,000. In this connection, a comparison of the filings under Rules 202 and 210 during the months of May and June 1938 with filings under Rule 202 for the preceding 2 months and the corresponding months a year before might be of some interest. In May

1938 there were filed 17 prospectuses under Rule 202 involving an aggregate offering of \$1,356,700 together with 23 letters of notification under Rule 210 involving an aggregate offering of \$1,405,000, making a total of 40 filings involving \$2,761,700. Corresponding figures for June 1938 were 26 prospectuses, \$1,750,000; 22 letters of notification, \$1,629,000; or a total of 48 filings involving \$3,379,000. In comparison the prospectuses under Rule 202 filed in March 1938 numbered 31 for \$2,094,500 and in April 1938, 29 for \$2,157,300. Such prospectuses filed in May 1937 numbered 44 for \$3,549,105 and for June 1937 there were 37 for \$3,050,700.

SECURITIES ACT AND SECURITIES EXCHANGE ACT FORMS, RULES, AND REGULATIONS

A program of basic revision of the forms for registration of securities and for reports by issuers under the Securities Act of 1933 and the Securities Exchange Act of 1934 was carried forward by the Commission during the past fiscal year. In addition, the preparation of a new accounting handbook containing a compilation of the requirements as to form and content of financial statements filed with registration statements of and reports by issuers under the Securities Act of 1933 and the Securities Exchange Act of 1934 was carried forward during the year. Like the general form for registration, which is in process of preparation, this handbook when completed will contain provisions of general application as well as requirements for particular classes of persons, so that the necessary measure of particularization may be achieved without undue repetition. Drafts of this compilation of financial requirements and of the proposed general form were submitted for criticism during the year to a large number of accountants, lawyers, investment bankers, security analysts, teachers, and other experts in the securities field. At the close of the fiscal year the Commission was engaged in re-examining the material in the light of the comments and suggestions of such experts. The other new forms in the series, for special types of securities and issuers, were also in the course of preparation. Principal forms in this group were those for recently organized issuers and for fixed investment trusts.

A number of amendments to the existing forms for registration under the Securities Act of 1933 were also made during the past year and several revisions of rules and regulations were adopted.

Additional interpretative opinions were published during the past year. These opinions were designed to assist registrants in making prospectuses concise and intelligible to the investing public without omitting material information or violating the Securities Act of 1933. By taking portions of actual prospectuses filed under the Act and reducing them to a fraction of their original length, the opinions pointed out the possibilities for eliminating excess legal verbiage and providing more readable documents. The examples of condensed statements in these opinions were followed in many prospectuses subsequently prepared by registrants.

During the past year several changes were made in the forms and rules and regulations under the Securities Exchange Act of 1934. [Footnote: On October 1, 1938, the Commission announced the adoption of a system of designation for its General Rules and Regulations under the Securities Exchange Act of 1934, which indicates the particular section of the Act to which the respective rules relate. Under this new system all rules under the Act are designated as "X" rules.] The Commission also adopted and published a new form (Form 24-K) for annual reports of bank holding companies. This form completed the series of forms for annual reports of issuers having securities registered on national securities exchanges.

During the last part of the fiscal year, the existing regulations and forms under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Public Utility Holding Company Act of 1935, were set up in form for inclusion in the Code of Federal Regulations, under the supervision of the Codification Board, as required by the Federal Register Act and the regulations of the Administrative Committee of the Federal Register.

LITIGATION UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

The decision of the United States Supreme Court in *Electric Bond & Share Company v. Securities and Exchange Commission*, 303 U. S. 419 (1938), sustaining the separability and constitutional validity of Sections 4 (a) and 5, the registration provisions, of the Public Utility Holding Company Act of 1935, by far overshadowed all other litigation during the past year. The background of the ease reflects its importance. Within a few months after the passage of the Act on August 26, 1935, a total of 58 suits were brought challenging the Act as unconstitutional; none, however, but this single case instituted by the Government as a test suit culminated in a decision on constitutionality by the Supreme Court. *Burco v. Whitworth*, 297 U. S. 726 (1936), ended with the denial of a petition for certiorari. *North American Company v. Landis*, 299 U. S. 248 (1936), terminated with a decision by the Supreme Court vacating the District Court's order and remanding the cause for further proceedings. The Supreme Court sustained the power of the District Court to stay its own proceedings and thus affirmed the position taken by the Government. The remaining suits were handled in accordance with a uniform policy developed by the Commission in collaboration with the Department of Justice. No effort was made to defend on their merits actions brought outside the District of Columbia, and in each such suit appropriate motions were made for dismissal for lack of jurisdiction. The suits then remained pending as to the local Government officials. In 26 cases injunctions were issued against parties subject to the jurisdiction of the court, and in the remainder, the courts either refused to make, any disposition until after a decision by the Supreme Court on the constitutionality of the Act or the parties themselves agreed to hold the litigation in abeyance until such a decision.

The status of cases involving the constitutionality of the Act still pending during the fiscal year is indicated in Table 6 of Appendix VI. It may be noted here that in some of these cases the bill of complaint has already been dismissed and that in all of the cases the company involved has registered pursuant to the mandate of the Supreme Court, so that the issues between the Commission and such company are moot. The Electric Bond & Share case thus marks the successful conclusion of a preliminary phase in the administration of this highly important statute.

The suit was begun in the United States District Court for the Southern District of New York on November 26, 1935, by a bill of complaint which sought to compel the principal defendant and 12 intermediate holding companies in the Bond and Share holding company system to comply with Sections 4 (a) and 5 of the Act. The defendants' answer to the bill of complaint was divided into two parts: a first defense by which they sought to have the bill dismissed on the ground that not only Sections 4 (a) and 5 but the entire Act, including each and every provision thereof, was unconstitutional; and a separate and distinct defense by way of counterclaim and cross bill by which they sought to enjoin the plaintiff Commission and the individual cross defendants from enforcing any provision of the Act and sought to obtain a declaratory judgment that the whole Act, including each and every provision thereof, was unconstitutional. On June 30, 1936, a stipulation of facts, approximately 2,000 pages in length, was filed with the court. On January 29, 1937, Judge Julian W. Mack, in an exhaustive opinion, held that the registration provisions were the only provisions of the Act as to which any justiciable controversy existed or was presented to the court; that the registration provisions were separable from the other provisions of the Act and standing alone served a useful purpose to which legal effect could be given; and that the registration provisions, as applied to the 13 defendants, constituted a valid exercise by the Congress of the federal power over interstate commerce and the mails. The District Court further held that the cross bill presented no justiciable case or controversy, "and no actual controversy" within the Federal Declaratory Judgments Act, and that in any event defendants have failed to show irreparable or substantial damage, present or imminent, to support the cross bill. By its decree the District Court dismissed the cross bill both as against the plaintiff Commission and the individual cross defendants, and awarded relief as prayed for in the bill of complaint by ordering that the 13 defendants be enjoined, so long as they should not have registered with the Commission under Sections 4 (a) and 5 (a) of the Act, from carrying on any of the activities in interstate commerce or through the mails forbidden to unregistered holding companies by the several subparagraphs of Section 4 (a). (18 Fed. Supp. 131 (S. D. N. Y. 1937).) The Circuit Court of Appeals, on November 8, 1937, all three judges concurring, affirmed the District Court's decree both in the enforcement of the registration provisions and the dismissal of the cross bill (92 F. (2d) 580 (C. C. A. 2d, 1937)).

On March 28, 1938, the Supreme Court, speaking through Mr. Chief Justice Hughes, reaffirmed the decree of the District Court. Mr. Justice McReynolds dissented without

opinion, and Mr. Justice Cardozo and Mr. Justice Reed took no part in the consideration and decision of the case. The Court concluded that the defendant companies are engaged in activities within the reach of the power of Congress; that Sections 4 (a) and 5 are separable from the remaining provisions of the Act; and that standing alone the registration provisions constitute a useful and valid regulation by the informatory process. The cross bill was disposed of as follows:

“Defendants are not entitled to invoke the Federal Declaratory Judgment Act in order to obtain an advisory decree upon a hypothetical state of facts. . . . By the cross bill, defendants seek a judgment that each and every provision of the Act is unconstitutional. It presents a variety of hypothetical controversies which may never become real. We are invited to enter into a speculative inquiry for the purpose of condemning statutory provisions the effect of which in concrete situations, not yet developed, cannot now be definitely perceived. We must decline that invitation.”

John Lawless, Jr., v. Securities and Exchange Commission, et al., is the first case in which a circuit court of appeals has been petitioned to review an order of the Commission under the Public Utility Holding Company Act of 1935. On December 1, 1935, International Paper and Power Company (hereinafter called the Company) filed an application for exemption under Section 3 (a) (5) of the Act and an application for an order under Section 2 (a) (8) declaring that the New England Power Association was not a subsidiary of International Hydro-Electric System and the Company, and that Moreau Manufacturing Corporation was not a subsidiary of International Hydro-Electric System and the Company. If these applications were filed in good faith, the statute afforded the Company a temporary exemption from the requirements of the Act.

While these exemptions were pending, on March 12, 1937, the Company filed an application with the Commission in which it asked (1) for a report “in the manner provided in Section 11 (g) (2) of said Act,” on a plan for change in capitalization which it desired to propose for the approval and authorization of its shareholders, and (2) for an order exempting it from the provisions of Sections 4 (a) and 6 (a) of the Act, and from all other provisions applicable to the changes in shareholders’ rights involved in the plan and to the securities which it proposed to issue under the plan.

Justification for this somewhat unusual request was claimed to exist in the fact that if the exemption which the Company claimed to enjoy should be terminated by act of the Commission after the plan had become effective and after the change in securities had been completed, doubt would be cast upon the legality of the securities proposed to be issued under the plan. On March 29, 1937, the Commission conducted a hearing on the application for a report on the plan and for exemption from the relevant provisions of the Act. On May 5, 1937, the Commission issued a report on the reorganization plan and an opinion without order declaring that power existed to make the report, and thereafter, on July 31, 1937, following a second hearing, the Commission issued an order exempting the Company from the provisions of Sections 4(a) and 6(a) and all other sections of the

Act applicable to the proposed plan. [Footnote: Chairman Douglas, in a written opinion, dissented from the order of July 31, 1937. Commissioner Healy, likewise in written opinions, dissented from the report on the plan and opinion accompanying the report and took no part in the order of July 31, 1937.]

On September 11, 1937, John Lawless, Jr., filed a petition for review in the Circuit Court of Appeals for the First Circuit alleging that the Commission had no power to make the report or order and requesting that such action be set aside. The decision of the Court has not yet been announced.

One other proceeding may be noted here. Section 11(g) of the Act provides, in part, that in any proceeding in a court of the United States in which a receiver or trustee is appointed for any registered holding company, the court shall not appoint any person other than the Commission as trustee or receiver without notifying the Commission and giving it an opportunity to be heard before making any such appointment. More than a year after the effective date of the registration requirements of the Act, Utilities Power and Light Corporation filed a petition for reorganization under Section 77B of the Bankruptcy Act in the United States District Court for the Northern District of Illinois. On January 9, 1937, 5 days after the petition was filed, the debtor was temporarily continued in possession, and on March 6, 1937, this possession was made permanent, and an investigator was appointed to consider and report upon certain charges of mismanagement. This report was filed with the Court on July 30, 1937, and on the following day the Commission was notified that on August 2, 1937, a hearing would be held for the purpose of considering whether the debtor should be kept in possession or whether an independent trustee should be appointed. Taking the view that the circumstances of the case required an independent trustee to represent and protect the interests of investors and consumers, the Commission appeared at the hearing as *amicus curiae* and moved for the discharge of the debtor. After extended argument and despite opposition, the Court, on August 14, 1937, accepted the view of the Commission and entered an order removing the debtor from possession and appointing Mr. Willoughby G. Walling trustee for the estate.

LITIGATION UNDER THE SECURITIES ACT OF 1933 AND THE SECURITIES EXCHANGE ACT OF 1934

There was an increase in the amount of both civil and criminal litigation under the Securities Act of 1933 and the Securities Exchange Act of 1934 during the past fiscal year. The number of civil cases, by types, pending, filed and closed during the fiscal year ended June 30, 1938, is indicated in the following table:

[statistical table omitted, summary data below]

195 total cases instituted prior to July 1, 1937

95 total cases instituted during fiscal year ended June 30, 1938
290 total cases instituted prior to July 1, 1938
138 total cases closed prior to July 1, 1937
115 total cases closed during fiscal year ended June 30, 1938
253 total cases closed prior to July 1, 1938
37 total cases pending as of June 30, 1938

As a result of suits instituted 486 firms and individuals had by the Commission, by June 30, 1938, been permanently enjoined from the acts and practices complained of, 217 of such injunctions having been obtained during the past fiscal year. [Footnote: These figures include some firms and individuals as to whom the injunction was subsequently vacated.]

Cases that were pending under the Securities Act of 1933 and the Securities Exchange Act of 1934 during the past fiscal year are listed and briefly described in Appendix VI. Among the more interesting cases which merit a fuller description are the following:

United States v. Troutman, et al. On February 21, 1938, Percival H. Troutman, President of the Union Trust Company of Denver, Col., and Ralph L. Young, President of the Bankers National Securities Corporation of Denver, were convicted of violation of the Securities Act of 1933. Troutman was sentenced to serve 5 years in Leavenworth and fined \$2,500, and Young was sentenced to serve 15 months, for conspiracy. One defendant was found not guilty and a verdict of acquittal was directed as to another. The defendants were charged with making false representations in the sale of trust agreements and securities of a group of corporations and investment trusts known as the "Union Group." The companies operated by the defendants had been operating at a loss and the whole picture was one of a shell composed of fictitious assets. The operations were largely carried on by means of the so-called "sell and switch" device and the defendants were charged with having induced a large number of persons in many states to switch out of one kind of investment trust unit into another kind of unit or into stock of corporations affiliated with the Union Trust Company. On March 3, 1938, the defendants filed notice of appeal.

Pace v. United States. An indictment was returned in the Northern District of Texas alleging that four defendants had violated the fraud provisions of the Securities Act of 1933 in the sale of stock of the Atlas Holding Company, a Nevada corporation. Three defendants pleaded guilty and received sentences ranging from 18 months to 4 years. The fourth defendant, S. A. Pace, was convicted and sentenced to 7 years in the penitentiary. On February 8, 1938, the Circuit Court of Appeals for the Fifth Circuit confirmed the conviction of Pace. The Circuit Court found that the evidence showed that Pace and the other defendants had " * * * devised and operated a scheme to defraud holders of stock in building and loan associations by exchanging with them the shares of the Atlas Holding Company. Acting in concert, these parties obtained the names of numerous parties who were not versed in the business of securities and investments, and who had deposited

their earnings, or purchased stock, in building and loan associations which had been embarrassed by the depression and had either suspended payment of dividends, curtailed dividends, or were in liquidation. These small investors were approached by one or more of the defendants, and representations were made to them that the affairs of the association were being grossly mismanaged; that there was a deficiency of assets; and that the association's stock was otherwise a bad investment. The Atlas stock was represented to be a safe and sound investment yielding high earnings. It was usually represented that the particular association under discussion owned certain property which the defendants, or Atlas, wished to acquire, and that the association's stock would be worth par to them in the purchase of the property. The victim being persuaded, the transfer was effected by the defendants, acting in concert and cooperating to the end that the victim parted with whatever remained of his earnings for a stock that was worthless."

Securities and Exchange Commission v. Harry Ladner, et al. On June 28, 1938, the Commission instituted an injunctive proceeding in the District Court for the Eastern District of Pennsylvania to enjoin Harry Ladner and Karl S. Ladner from violation of the fraud provisions of the Securities Act of 1933. The defendants had acquired more than \$1,000,000 worth of the securities of the Studebaker Corporation of New Jersey, the Richfield Oil Company of California, the Willys-Overland Company and other corporations, which, through receiverships and reorganizations, had been succeeded by successor corporations of the same or similar names. The Commission alleged that the defendants were preparing to launch a campaign to sell these obsolete and worthless certificates by representing that they were the securities of the successor corporations. On the same date that the action was instituted the defendants consented to the entry of a permanent injunction.

Securities and Exchange Commission v. Universal Service Association, et al. On March 30, 1936, the Commission filed a bill of complaint in the District Court for the Northern District of Illinois to enjoin Universal Service Association and certain individuals from violations of the registration and fraud provisions of the Securities Act of 1933 in the sale of what, according to the allegations of the Commission, constituted securities. The Universal Service Association and the Universal Order of Plenocrats were engaged in securing "applications for enrollment" in their two companies and accepting payments of "contributions" on these applications. The defendants contended that the Universal Order of Plenocrats, the name of which was a combination of Latin and Greek words meaning "The Power of Plenty," was engaged in teaching American citizens how to establish and maintain a cooperative Commonwealth and that the "contributions" would be used to bring forth a natural increase from the natural resources of the earth. The enrollees were assured of an increase of 30% per annum on the "contributions" and the return of such "contributions" intact at the expiration of 5 years. The Commission contended that the sale of memberships in the order was nothing more than the sale of securities as that term is defined in the Securities Act of 1933. The Commission further contended that the fraud provisions of the Securities Act of 1933 had been violated in that the defendants had failed to disclose that both the Universal Service Association and the Universal Order

of Plenocrats were and always had been insolvent and that the payments allegedly made from the “30% natural increase” were in fact paid out of the contributions of subsequent members. On April 14, 1938, a permanent injunction restraining further violations of the registration and fraud provisions was entered. The defendants have filed notice of intention to appeal.

Securities and Exchange Commission v. R. J. Koeppe & Company, et al. On November 9, 1936, the Commission filed a bill of complaint in the District Court for the Northern District of Illinois charging the defendants, a firm of brokers and dealers, with violations of both the Securities Act of 1933 and the Securities Exchange Act of 1934, through a series of market manipulations in the stock of the Paducah Cooperage Co., Inc., and the Wahl Company during the fall of 1935. The Commission alleged that during a 3-month period the price of Paducah stock was raised some 200 percent and quickly collapsed as soon as support was withdrawn. It was further alleged that the advance in price of both stocks was accomplished by a heavy volume of trading; buying at the high for the day; establishing the closing price for the day; placing matched orders; paying commissions to other brokers who induced their customers to purchase the stock; etc. The District Court found that the manipulation itself constituted a violation of the Securities Exchange Act of 1934 and the failure to inform many of the persons to whom the defendants were selling stock at the market that the price was being advanced by their manipulations was fraud under the terms of the Securities Act of 1933. On April 30, 1937, a permanent injunction was granted from which the defendants appealed. On February 4, 1938, the Circuit Court of Appeals for the Seventh Circuit affirmed the decree.

Securities and Exchange Commission v. Torr & Co., et al. In December 1935, the Commission instituted suit in the District Court for the Southern District of New York to enjoin certain individuals and a co-partnership from further violations of the fraud provisions of the Securities Act of 1933 and the provisions of the Securities Exchange Act of 1934 prohibiting manipulation of security prices. The Commission alleged that the defendants distributed stock of the Trans-Lux Daylight Picture Screen Corporation against an option held by Torr & Company, and that their methods of distribution involved manipulation and a conspiracy designed to cause purchasers to be deceived through having various persons, agents of the defendants, recommend the purchase of Trans-Lux stock without disclosing the fact that such persons were to receive as commissions for making these recommendations \$12.50 to \$25.00 per hundred shares for all purchases of the stock on the New York Curb Exchange that could be attributed to their recommendations. The Commission further alleged that the purchases which were the consequence of the recommendations resulted in artificially increasing the activity of the stock on the Curb Exchange. A preliminary injunction was obtained in the District Court which was appealed to the Circuit Court of Appeals for the Second Circuit and there reversed on the ground of lack of justification for special relief pending trial. The Commission thereafter had a hearing on the merits before the District Court, and a permanent injunction was granted March 4, 1938, against Torr & Company and 11 individuals, restraining further violations of the Securities Act of 1933 and the Securities

Exchange Act of 1934, and against 2 individuals restraining further violation of the Securities Exchange Act of 1934.

Securities and Exchange Commission v. Benjamin Franklin Foundation, Inc., et al.; *Securities and Exchange Commission v. Capital Savings Plan, Inc., et al.*; *Securities and Exchange Commission v. Financial Independence Founders, Inc.* On February 4, and June 27, 1938, the Commission filed bills in the United States District Court for the District of New Jersey to restrain Benjamin Franklin Foundation, Inc., together with certain of its officers, and Financial Independence Founders, Inc., respectively, from violations of registration and fraud provisions of the Securities Act of 1933. On June 23, 1938, suit was instituted in the United States District Court for the Eastern District of Pennsylvania to enjoin Capital Savings Plan, Inc., and Independence Shares Corporation, its wholly owned subsidiary, from violations of the fraud provisions of such Act. Each of the companies was engaged in the issuance and distribution of certain types of investment trust certificates commonly known as “Thrift” or “Foundation” plans which peculiarly originated in this country shortly after the precipitous decline of market values in the fall of 1929. In form, the certificates were investment contracts which contemplated monthly payments of \$10 or more, in multiples of \$5, over a period of 10 years to a corporate trustee which immediately applied such monies to the purchase of shares of an underlying investment trust, either of the fixed or restricted management type. All three complaints alleged that the defendants in the sale of their respective certificates had misrepresented material facts relative to the character and operation of such certificates and had omitted to reveal various fees and costs charged against the payments made thereon by reason of which the statements made, in the light of the circumstances under which they were made, were misleading. On February 10, 1938, Benjamin Franklin Foundation, Inc., and three of its officers consented to the entry of the permanent injunction prayed for in the Commission’s bill, without admitting willfulness in the violations alleged. On June 23 and June 27, 1938, permanent injunctions were likewise consented to and entered against Capital Savings Plan, Inc., and its subsidiary company, and against Financial Independence Founders, Inc., respectively, restraining them from the violations alleged.

Securities and Exchange Commission v. Sunbeam Gold Mines Company, et al. In May 1937, the Commission instituted an injunctive action in the United States District Court for the Western District of Washington to enjoin the issuance of promissory notes by the Sunbeam Gold Mines Company without compliance with the registration provisions of the Securities Act of 1933. The defendant company, Sunbeam Gold Mines Company, which had previously been enjoined from further violation of the fraud provisions of the Securities Act of 1933 and the broker-dealer provisions of the Securities Exchange Act of 1934, was engaged in negotiations looking to the acquisition of the assets of Golden West Mining Company, which had previously been enjoined from further violations of the registration provisions of the Securities Act of 1933 and the broker-dealer provisions of the Securities Exchange Act of 1934. During the course of these negotiations, an offering of promissory notes of the defendant, Sunbeam Gold Mines Company, was made to its

own existing stockholders and the existing stockholders of Golden West Mining Company, aggregating approximately 530 in number. The District Court held that while the notes were securities and had been the subject of sales, the transactions of the defendants, being confined to existing stockholders, had not, irrespective of the number of such stockholders, involved a public offering and consequently were not subject to the requirement of registration. From this decision the Commission appealed, and on March 21, 1938, the Circuit Court of Appeals for the Ninth Circuit reversed the District Court, and, after reviewing the legislative history of Section 4 (1) of the Securities Act of 1933, held that the offering, although confined to stockholders, was nevertheless a public offering.

Securities and Exchange Commission v. Consolidated Mines of California, et al. On November 30, 1937, the Commission applied to the District Court for the Southern District of California to enforce compliance with a subpoena duces tecum directed against appellants in the course of the investigation conducted by the Commission into the affairs of the corporation. The subpoena was issued pursuant to an order of investigation which recited that the Commission had reasonable grounds to believe that the corporation and its officers were selling the securities of the corporation, although no registration statement was on file, in violation of the registration provisions of the Securities Act of 1933, and that in the sale of these securities untrue statements were being made concerning the extent and value of ore bodies and the profits to be derived by the corporation from its operation, in violation of the fraud provisions of the Securities Act of 1933. The subpoena required the production of engineers reports, mining records, and other exhibits and letters concerning the properties operated by appellant. The Court granted the Commission's application on December 29, 1937, and on June 30, 1938, the Circuit Court of Appeals for the Ninth Circuit affirmed the decision of the lower Court. The Circuit Court held that the subpoena was not too broad because the documents called for were clearly material. It compared the Commission's investigations to those of a grand jury, where the identity of the offender, and the existence and nature of the offense are normally developed at the conclusion of its labors, not at the beginning. For that reason the Court held that the subpoena power should not be limited too narrowly by forecasts of the probable results of the investigation.

Frank J. Ryan v. M. U. Newfield and Western Union Telegraph Company, et al. In March 1937, three suits were instituted in the Southern District of Florida against representatives of the Commission and against the Western Union and Postal Telegraph Companies to enjoin enforcement of and compliance with certain subpoenas duces tecum calling for the production of copies of certain telegrams sent or received by the plaintiffs. The subpoenas were issued pursuant to an order of investigation reciting that the Commission had reasonable grounds to believe that the securities of the Ryan Florida Corporation and of the Florida Tex Oil Company had been sold in violation of the registration and fraud provisions of the Securities Act of 1933 and authorizing an investigation of the corporations and certain individuals. The three cases, involving almost identical questions, were consolidated for trial. On April 14, 1937, District Judge

Alexander Akerman, of Tampa, granted interlocutory orders restraining the enforcement of the subpoenas stating that “The rights of the plaintiffs as to the privacy of their telegrams is protected by the Fourth and Fifth Amendments, and this right extends even when telegrams are in the possession of the telegraph companies.” An appeal from this decision was taken by the Commission, and on July 22, 1937, the Circuit Court of Appeals for the Fifth Circuit reversed the decision of the District Court, holding that the subpoenas did not constitute unreasonable searches and seizures and that the plaintiffs had no standing to invoke the Fourth or Fifth Amendments. The Court further stated “* * * we think it plain, that in enacting the Securities Legislation in question, Congress was well within its constitutional powers, and that the investigations and subpoenas under attack are fully supported by that legislation.” On October 18, 1937, plaintiffs’ petitions for a writ of certiorari were denied by the Supreme Court of the United States, and on November 8 and November 15, 1937, that Court denied a petition for rehearing and a motion for leave to file a second petition. On December 2, 1937, Judge Akerman dissolved and vacated the interlocutory orders of injunction and dismissed all of the plaintiffs’ bills.

Woolley v. United States. On May 31, 1938, the United States Circuit Court of Appeals for the Ninth Circuit affirmed the conviction of Ernest R. Woolley, who had been previously sentenced to serve 3 years in the Federal penitentiary and fined \$1,000 for perjury during the course of an investigation conducted by the Commission, the order for which recited that the Commission had reasonable grounds to believe that Woolley and others had violated the registration and fraud provisions of the Securities Act of 1933 in the sale of stock of the Cota Oil Company. It was charged that Woolley, after being duly sworn before an officer of the Commission in connection with the investigation, testified falsely that he had no part in the organization or incorporation of Cota Oil Company and that he was not connected with the operation of that company and had no information about its affairs. The Circuit Court upheld the constitutionality of Section 20 (a) and ruled that even though the investigation was ex parte false testimony therein constituted perjury. The Court held that the function of the Commission in investigating probable violations of the Securities Act of 1933 is closely akin to that of the grand jury, that if false testimony has a tendency to influence the investigation it is material and will support a conviction for perjury, and that the Commission had authority to “determine what matters are material to an inquiry,” which authority may be delegated to an examining officer. A petition for certiorari has been filed with the Supreme Court of the United States.

United States v. Secord, Vanderpoel & Company, Inc., et al. On June 29, 1938, Secord, Vanderpoel & Company, Inc., Max Strahl, Morton Edell, Edwin T. Vanderpoel, and Walter Gutterson, were found guilty of violation of the Securities Act of 1933 in the United States District Court for the Southern District of New York in connection with false representations made in the sale of stock of a number of mining corporations. Lynn N. Secord pleaded guilty, and four other defendants tried were found not guilty. Certain of the latter are under indictment by the Federal Grand Jury in New York City for

fraudulent distribution of the stock of Hidalgo Gold Mining Company. In the Vanderpoel case, sentences ranging from fines to 3 years imprisonment were imposed. Before prosecution the Securities and Exchange Commission obtained temporary injunctions enjoining the defendants from further violations of the fraud provisions of the Securities Act of 1933. Secord, Vanderpoel & Company had sold the various mining company stocks by means of the distribution of circulars and "market letters" addressed to persons on certain "sucker lists." The prospective victims were deluged with long-distance telephone calls urging them to dispose of other securities and invest in the mining stocks. The victims were then "switched" into the stock of another company which owned a mine which had not been in operation since 1929 and possessed no tangible assets, the stock of which had been bought by Secord, Vanderpoel & Company at from 30¢ to 60¢ a share and sold at \$1.50. False representations were made that the price of the stock of the latter company would go as high as \$5 within 30 days; that a "pool" was being formed to manipulate the stock; and that the Securities and Exchange Commission had approved listing of this stock on the New York Curb Exchange.

United States v. R. Cummins & Company, H. H. Landay, et al. On August 27, 1937, Edward A. Attix, an attorney, Samuel Lafata, Leonard E. Brown, Harry H. Landay, and Frank H. Lane, all residents of Detroit, were convicted in the United States District Court at Detroit, Mich., for violations of the registration and fraud provisions of the Securities Act of 1933 in the sale of stock of R. Cummins & Company. Sentences totaling 19 years and fines totaling \$50,000 were imposed. An appeal is pending before the Sixth Circuit Court of Appeals. It was alleged that the defendants organized and dominated R. Cummins & Company, Inc., and issued to themselves approximately 500,000 shares of bonus stock, much of which was sold to the public upon the representation that the stock was being sold for the corporation and that the proceeds from its sale would be paid into the company's treasury. The indictment further charged that the defendants falsely represented that the corporation was an old established distillery company which formerly operated in Kentucky, and that they padded the company's payroll, received "kick backs" from contractors who furnished machinery for the rehabilitation of the plant, and obtained stock by selling property to the corporation at prices greatly in excess of the price paid for it.

COMPLAINTS, INFORMAL AND FORMAL INVESTIGATIONS

The Commission still receives a heavy volume of complaints and inquiries. While most of the complaints come from investors, a considerable number are received from State Securities Commissions, State and Federal officials, and voluntary agencies such as Better Business Bureaus and Chambers of Commerce. A reply is made to every complaint, and to the extent that the Commission's powers and the subject matter permit, every complaint is investigated. The Commission continued to use its facilities, directly and through public and private agencies, to call attention to the many fraudulent and illegal devices too often employed to defraud the investing public.

At the beginning of the past fiscal year, 750 complaint cases were pending. During the year, 545 new cases have been set up and 600 cases disposed of. As of June 30, 1938, 695 cases were pending.

[table omitted]

A full description of the Commission's practice with respect to the investigation of complaints is contained in the Third Annual Report. The Securities Violations Files have been enlarged during the past fiscal year by the addition of 6,353 items of information pertaining to existing files and the addition of 3,097 new names to such files. On June 30, 1938, the Commission had assembled data concerning 28,476 persons or corporations against whom State or Federal action had been taken during the past 10 years or more in connection with the sale of securities.

PUBLIC HEARINGS

The following statistics indicate the number of public hearings held by fiscal years for 1936, 1937, and 1938.

Securities Act of 1933: 55 public hearings held in fiscal year 1936; 174 public hearings held in fiscal year 1937; 62 public hearings held in fiscal year 1938.

Securities Exchange Act of 1934: 37 public hearings held in fiscal year 1936; 44 public hearings held in fiscal year 1937; 116 public hearings held in fiscal year 1938.

Public Utility Holding Company Act of 1935 (exclusive of the Investment Trust Study): 124 public hearings held in fiscal year 1936; 180 public hearings held in fiscal year 1937; 191 public hearings held in fiscal year 1938.

Total: 216 public hearings held in fiscal year 1936; 398 public hearings held in fiscal year 1937; 369 public hearings held in fiscal year 1938.

FORMAL OPINIONS

The Commission, during the past year, issued 179 formal opinions involving matters under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Public Utility Holding Company Act of 1935. These opinions were issued in the following cases:

Securities Act of 1933, as Amended

CONSENTING TO WITHDRAWAL OF REGISTRATION STATEMENT:

In the Matter of Seneca Petroleum Corporation -- Apr. 19, 1938

DENYING MOTION FOR DECLARATION THAT REGISTRATION STATEMENT
HAS BEEN AMENDED IN ACCORDANCE WITH STOP ORDER:

In the Matter of American Kid Company -- Feb. 11, 1938

In the Matter of Underwriters Group, Inc -- Jan. 10, 1938

FIXING EFFECTIVE DATE OF AMENDMENTS TO REGISTRATION
STATEMENTS AND DISMISSING STOP ORDER PROCEEDINGS:

In the Matter of Bondholders Committee for Republic of Colombia Dollar Bonds -- Dec.
7, 1937

In the Matter of Consolidated Funds Corporation -- Sept. 9, 1937

In the Matter of Equity Corporation -- Aug. 23, 1937

In the Matter of Monroe Loan Society -- May 25, 1938

STOP ORDERS:

In the Matter of Bering Straits Tin Mines, Inc -- July 2, 1937

In the Matter of Canusa Gold Mines Limited -- July 15, 1937

In the Matter of Cimarron Petroleum Trust -- Feb. 25, 1938

In the Matter of Corporate Leaders Securities Company -- Aug. 21, 1937

In the Matter of Crusader Aircraft Corporation -- Feb. 11, 1938

In the Matter of Gold Dust Mining & Milling Company -- Jan. 12, 1938

In the Matter of Gold Dust Mining & Milling Company (Amended)-- June 11, 1938

In the Matter of Golden Conqueror Mines, Inc -- Aug. 6, 1937

In the Matter of Herman Hanson Oil Syndicate -- Sept. 15, 1937

In the Matter of Kane-America Corporation -- Dec. 14, 1937

In the Matter of Kinner Airplane and Motor Corporation Ltd -- Dec. 17, 1937

In the Matter of Metropolitan Personal Loan Company -- Oct 28 1937

In the Matter of Oklahoma-Texas Trust Sept. 2-- 3, 1937

In the Matter of Old Diamond Gold Mines, Limited (No Personal Liability) -- Oct. 8, 1937

In the Matter of Paper Sales Company of Detroit, Inc Sept. -- 16, 1937

In the Matter of Paper Sales Company of Detroit, Inc (Revised). -- Jan. 27, 1938

In the Matter of Petersen Engine Co Inc -- Dec. 2,1937

In the Matter of Puget Sound Distillery, Inc Apr. -- 22, 1938

In the Matter of Queensboro Gold Mines, Ltd -- Nov. 17, 1937

In the Matter of Seminole Provident Trust -- Nov. 15, 1937

In the Matter of South Umpqua Mining Company -- Mar. 7, 1938

In the Matter of Sunbeam Gold Mines Company -- Apr. 1, 1938

In the Matter of T. I. S. Management Corporation -- Feb. 25, 1938

In the Matter of Trenton Valley Distillers Corporation -- Jan. 18, 1938

In the Matter of Virginia City Gold Mining Company -- Nov. 16, 1937

In the Matter of Ypres Cadillac Mines Limited (No Personal Liability) -- Jan. 11, 1938

Securities Exchange Act of 1934, as Amended

BROKER AND DEALER:

In the Matter of Albert Ahrens, doing business as Albert Ahrens Company -- Sept. 13, 1937

In the Matter of L. P. Atwater & Company -- Sept. 18, 1937

In the Matter of William A. Bachrach, doing business as Wilbac Securities Company -- Oct. 29, 1937

In the Matter of Collateral Bankers Inc -- Sept. 13, 1937

In the Matter of Foreman and Company, Incorporated -- Feb 2 1938

In the Matter of Henry Friedlander, doing business as Henry Friedlander & Company and doing business as Acme Royalty Company; and William V. Stenton & Company, a corporation -- July 14, 1937

In the Matter of Frank B. Hamlin -- July 10, 1937

In the Matter of Herbert A. Jacobs, doing business as Herjay Company -- Sept. 13, 1937

In the Matter of Securities Exchange Corporation -- Sept. 21, 1937

In the Matter of William J. Stratton, doing business as William J. Stratton Company -- Feb. 19, 1938

In the Matter of Trusteed Collateral Corporation -- Feb. 7, 1938

In the Matter of Edward J. Wiley, doing business as E. J. Wiley Company -- May 23, 1938

MANIPULATION:

In the Matter of Gerald M. Loeb, et al -- Apr. 26, 1938

In the Matter of Gerald M. Loeb and Gordon B. Crary, individually and as partners of B. F. Hutton & Co., a partnership, and H. Terry Morrison, individually -- Mar. 4, 1938

In the Matter of Michael J. Meehan -- July 31, 1937

In the Matter of White, Weld & Company -- June 21, 1938

In the Matter of Charles C. Wright et al. -- Feb. 28, 1938

UNLISTED TRADING:

In the Matter of Atlas Corporation -- Jan. 8, 1938

In the Matter of Atlas Corporation -- Apr. 21, 1938

In the Matter of Berkey & Gay Furniture Company -- Jan. 8, 1938

In the Matter of Bethlehem Steel Corporation -- July 20, 1937

In the Matter of Boston Stock Exchange (Applications for Unlisted Trading Privileges in 15 Securities) -- July 14, 1937

In the Matter of Los Angeles Stock Exchange (Applications for Unlisted Trading Privileges in 16 Securities) -- Apr. 1, 1938

In the Matter of Nash-Kelvinator Corporation -- Apr. 18, 1938

In the Matter of National Tunnel & Mines Company -- Sept. 11, 1937

In the Matter of New York Curb Exchange (Applications for Unlisted Trading Privileges in 14 Securities) -- Jan. 21, 1938

In the Matter of Niagara Hudson Power Corporation -- Apr. 21, 1938

In the Matter of San Francisco Curb Exchange (Applications for Unlisted Trading Privileges in 7 Securities) -- Aug. 6, 1937

In the Matter of The Studebaker Corporation -- July 20, 1937

In the Matter of Utah-Idaho Sugar Company -- Sept. 11, 1937

WITHDRAWAL AND STRIKING FROM LISTING AND REGISTRATION:

In the Matter of The Autoline Oil Company -- Mar. 3, 1938

In the Matter of Jumbo Extension Mining Company -- Jan. 31, 1938

In the Matter of Michigan-Utah Consolidated Mines Company -- Jan. 31, 1938

In the Matter of Mother Lode Coalition Mines Company -- Mar. 30, 1938

In the Matter of North American Securities Company -- July 7, 1937

In the Matter of Obra Mines Corporation -- Mar. 28, 1938

In the Matter of Prima Company -- Mar. 14, 1938

In the Matter of Richfield Oil Corporation -- Jan. 21, 1938

In the Matter of Rosetta Mines Company -- Jan. 31, 1938

In the Matter of The Teck-Hughes Gold Mines, Limited -- June 21, 1938

In the Matter of United Towns Electric Company, Ltd -- Feb. 11, 1938

Public Utility Holding Company Act of 1935

ACQUISITION OF SECURITIES, ASSETS, BUSINESS, OR OTHER INTERESTS:

In the Matter of Bellows Falls Hydro-Electric Corporation -- Dec. 16, 1937

In the Matter of Commonwealth Edison Company, Commonwealth Subsidiary Corporation -- Aug. 31, 1937

In the Matter of Cumberland County Power and Light Company -- Dec. 30, 1937

In the Matter of Eastern Shore Gas Corporation -- July 26, 1937

In the Matter of Federal Water Service Corporation -- Apr. 29, 1938

In the Matter of The Greenville Electric Light and Power Co -- Aug. 25, 1938

In the Matter of International Hydro-Electric System -- July 14, 1937

In the Matter of Iowa Power and Light Company -- May 9, 1938

In the Matter of Keokuk Electric Company, Fort Madison Electric Company, Dallas City Light Company -- Dec. 23, 1937

In the Matter of Lexington Utilities Company, Kentucky Securities Company -- Dec. 29, 1937

In the Matter of Lone Star Gas Corporation, Lone Star Gas Company, and Community Natural Gas Company -- Dec. 3, 1937

In the Matter of The Middle West Corporation -- Feb. 15, 1938

In the Matter of National Gas & Electric Corporation -- July 31, 1937

In the Matter of NY PA NJ Utilities Company, Keystone Utilities, Inc. -- June 30, 1938

In the Matter of Peoples Light and Power Company and subsidiaries -- Nov. 15, 1937

In the Matter of Public Service Corporation of Texas, Mobeetie Gas Company -- Dec. 22, 1937

In the Matter of Public Service Company of New Hampshire -- Dec. 1, 1937

In the Matter of Sioux City Gas& Electric Company -- Jan 13, 1938

In the Matter of Southern Natural Gas Company -- Mar. 21, 1938

In the Matter of Southwestern Development Company -- Oct. 28, 1937

ALLOWANCE OF FEES, EXPENSES, AND REMUNERATION:

In the Matter of Charles True Adams, Trustee of Utilities Power and Light Corporation and Central Service Corporation -- May 23, 1938

DECLARATION WITH RESPECT TO ORGANIZATION AND CONDUCT OF BUSINESS OF SUBSIDIARY SERVICE COMPANY:

In the Matter of Columbia Engineering Corporation -- Apr. 16, 1938

In the Matter of General Management Corporation -- Aug. 27, 1937

DECLARING APPLICANT NOT TO BE AN ELECTRIC UTILITY COMPANY:

In the Matter of Sloss-Sheffield Steel & Iron Company -- June 15, 1938

DECLARING APPLICANT NOT TO BE A HOLDING COMPANY:

In the Matter of Albert D. Brokaw, A. Faison Dixon, and H. Harper McKee, a partnership doing business under the name of Brokaw, Dixon and McKee -- Dec. 18, 1937

In the Matter of Central New Hampshire Power Company -- Feb. 10, 1938

In the Matter of Great Lakes Utilities Corporation -- Dec. 22, 1937

In the Matter of Hugh M. Morris & Harold S. Schutt, Trustees, Peoples Light and Power Corporation -- June 1, 1938

In the Matter of Public Service Corporation of Texas -- Jan. 7, 1938

In the Matter of The Twin State Gas and Electric Company -- May 21, 1938

In the Matter of West Penn Railways Company -- Dec. 30, 1937

DECLARING APPLICANT NOT TO BE A SUBSIDIARY COMPANY OF A SPECIFIED HOLDING COMPANY:

In the Matter of The Cleveland-Cliffs Iron Company, the Cliffs Corporation, Win. G. Mather, Cyrus S. Eaton & Edward B. Greene, as Voting Trustees, Wm. G. Mather, S. Livingston Mather, and G; G. Wade, as Voting Trustees, Wm. G. Mather, Individually -- Apr. 15

DENYING APPLICATION FOR RE-HEARING:

In the Matter of International Paper and Power Company -- Oct. 12, 1937

DISMISSING DECLARATION:

In the Matter of The Mission Oil Company -- Jan. 17, 1938

DIVIDEND DECLARATIONS AND PAYMENTS:

In the Matter of Columbia Gas & Electric Corporation -- Apr. 8, 1938

In the Matter of Commonwealth Gas & Electric Companies -- Dec. 23, 1937

In the Matter of Nebraska Natural Gas Company -- Dec. 6, 1937

In the Matter of Penn Western Gas & Electric Company -- Mar. 25, 1938

In the Matter of Southwestern Development Company -- Dec. 8, 1937

In the Matter of West Texas Gas Company -- Nov. 24, 1937

EXEMPTION FROM PROVISIONS OF THE ACT:

In the Matter of Godfrey L. Cabot, Inc -- Mar. 25, 1938

In the Matter of The Cleveland-Cliffs Iron Company, The Cliffs Corporation, Win. G. Mather, Cyrus S. Eaton, and Edward B. Greene, as Voting Trustees, Wm. G. Mather, S. Livingston Mather, and G. G. Wade, as Voting Trustees, Wm. G. Mather, Individually -- Apr. 15, 1938

In the Matter of General Electric Company, Electrical Securities Corporation, G. E. Employees Securities Corporation -- Mar. 16, 1938

In the Matter of Hickok Oil Corporation -- June 8, 1938

In the Matter of Kennecott Copper Corporation -- Mar. 16, 1938

In the Matter of Middle West Utilities Company of Canada, Limited -- July 9, 1937

In the Matter of Phelps Dodge Corporation -- May 26, 1938

In the Matter of F. L. Putnam & Company, Inc -- Nov. 29, 1937

In the Matter of Stone & Webster and Blodget, Incorporated -- Mar. 14, 1938

In the Matter of Utilities Holding Corporation -- Apr. 14, 1938

In the Matter of The Youngstown Sheet and Tube Company, The Youngstown Corporation, and The Continental Supply Company -- Nov. 19, 1937

EXEMPTION OF SECURITY TRANSACTIONS FROM PROVISIONS OF SECTION 6 (A) OF THE ACT:

In the Matter of Alabama Gas Company -- Nov. 16, 1937

In the Matter of The Buckeye Light & Power Company -- Aug. 25, 1937

In the Matter of Central Maine Power Company -- May. 26, 1938

In the Matter of Central Ohio Light & Power Company -- Dec. 31, 1937

In the Matter of Cumberland County Power and Light Company -- Feb. 28, 1938

In the Matter of Detroit City Gas Company -- July 3, 1937

In the Matter of Fall River Electric Light Company -- Mar. 4, 1938

In the Matter of Granite State Electric Company -- July 2, 1937

In the Matter of International Paper & Power Company -- July 31, 1937

In the Matter of Knife River Coal Mining Company -- Jan. 27, 1938

In the Matter of The Mystic Power Company -- Sept. 20, 1937

In the Matter of The Narragansett Electric Company -- July 17, 1937

In the Matter of New York State Electric & Gas Corporation -- Apr. 29, 1938

In the Matter of New York State Electric & Gas Corporation -- June 3, 1938

In the Matter of Northern Berkshire Gas Company -- Nov. 19, 1937

In the Matter of Peoples Service Company -- Jan. 14, 1938

In the Matter of Potomac Electric Power Company -- Nov. 26, 1937

In the Matter of Public Service Company of New Hampshire -- May 28, 1938

In the Matter of The St. Louis County Gas Company -- Aug. 27, 1937

In the Matter of South Carolina Utilities Company, Walnut Electric & Gas Corporation -- Apr. 26, 1938

In the Matter of Tidewater Electric Service Company -- Aug. 28, 1937

In the Matter of Washington Gas Light Company -- June 4, 1938

In the Matter of Webster and Southbridge Gas & Electric Company -- Aug. 28, 1937

In the Matter of Wisconsin Michigan Power Company -- Dec. 9, 1937

EXEMPTION OF ACQUISITION OF SECURITIES FROM PROVISIONS OF SECTION 9 (A) OF THE ACT:

In the Matter of American Utilities Service Corporation -- Sept. 7, 1937

In the Matter of Copper District Power Company, The Middle West Corporation -- Nov. 3, 1937

In the Matter of The Middle West Corporation -- Aug. 26, 1937

In the Matter of The Middle West Corporation -- Nov. 26, 1937

In the Matter of United Public Utilities Corporation -- Nov. 24, 1937

In the Matter of United Public Utilities Corporation -- Jan. 27, 1938

FIXING DATE FOR DECLARATION TO BECOME EFFECTIVE:

In the Matter of American Light & Traction Company, San Antonio Public Service Company -- Mar. 16, 1938

In the Matter of American Water Works and Electric Company, Inc -- Jan. 19, 1938

In the Matter of Copper District Power Company, The Middle West Corporation -- Nov. 3, 1937

In the Matter of Federal Water Service Corporation -- Apr. 29, 1938

In the Matter of Iowa Power and Light Company -- May 9, 1938

In the Matter of The Kansas Electric Power Company -- July 28, 1937

In the Matter of The Kansas Electric Power Company -- June 3, 1938

In the Matter of The Kansas Power Company -- Aug 13, 1937

In the Matter of Keokuk Electric Company, Fort Madison Electric Company, Dallas City Light Company -- Dec. 23, 1937

In the Matter of Massachusetts Lighting Companies and Massachusetts Utilities Associates, Central Massachusetts Light & Power Company and Massachusetts Utilities Associates, Commonwealth Gas & Electric Companies and Massachusetts Utilities Associates -- Jan. 7, 1938

In the Matter of Minnesota Utilities Company -- Oct. 11, 1937

In the Matter of Oklahoma Power and Water Company -- July 20, 1937

In the Matter of Old Dominion Power Company -- Aug. 26, 1937

In the Matter of Public Service Corporation of Texas, Mobeetie Gas Company -- Dec. 22, 1937

In the Matter of San Antonio Public Service Company -- May 25, 1938

In the Matter of South Carolina Utilities Company -- Dec. 20, 1937

In the Matter of Southern Natural Gas Company -- Dec. 8, 1937

In the Matter of Worcester County Electric Company -- Nov. 19, 1937

PERMITTING DECLARATION TO BECOME EFFECTIVE:

In the Matter of Gardner Electric Light Company -- Sept. 25, 1937

In the Matter of Gardner Electric Light Company -- Mar. 25, 1938

In the Matter of General Public Utilities, Inc -- Nov. 18, 1937

In the Matter of Haverhill Electric Company, Gloucester Electric Company, Beverly Gas and Electric Company, Maiden Electric Company, Suburban Gas and Electric Company, Salem Gas Light Company -- Oct. 26, 1937

In the Matter of Lone Star Gas Corporation and Lone Star Gas Company -- July 26, 1937

In the Matter of Louisiana Ice and Electric Company, Inc -- June 27, 1938

In the Matter of Louisiana Steam Generating Corporation and Gulf States Utilities Company -- Apr. 22, 1938

In the Matter of National Gas & Electric Corporation -- July 31, 1937

In the Matter of National Gas & Electric Corporation (Amended) -- Aug. 3, 1937

In the Matter of Nebraska Natural Gas Company -- Dec. 6, 1937

In the Matter of New England Power Company -- Apr. 27, 1938

In the Matter of North Boston Lighting Properties -- Oct. 26, 1937

In the Matter of Northern States Power Company -- Dec. 11, 1937

In the Matter of Peoples Light and Power Company and subsidiaries -- Nov. 15, 1937

In the Matter of Peoples Water and Gas Company -- May 28, 1938

In the Matter of Puget Sound Power & Light Company -- June 29, 1938

In the Matter of Southwestern Development Company -- Oct 28, 1937

In the Matter of West Texas Gas Company -- Nov. 24, 1937

REFUSING TO PERMIT DECLARATION TO BECOME EFFECTIVE:

In the Matter of Northern States Power Company -- Nov. 6, 1937

REORGANIZATION PLAN:

In the Matter of American Water Works and Electric Company, Inc -- Dec. 20, 1937

In the Matter of Genesee Valley Gas Company, Inc -- Jan. 24, 1938

STUDY AND INVESTIGATION:

In the Matter of Alpha Shares, United Standard Oil Fund of America, Inc., Monthly Income Shares, Inc., of New York, Monthly Income Shares, Inc., of N. J -- Aug. 11, 1937

Miscellaneous

ADMISSIONS TO PRACTICE:

In the Matter of Van Dorn, Joseph H. -- Mar. 23, 1938

REPORTS OF OFFICERS, DIRECTORS, AND PRINCIPAL STOCKHOLDERS

General Scope of Reporting Requirements

Every person who is an officer, director, or principal stockholder (a principal stockholder is one who beneficially owns, directly or indirectly, more than 10% of any class of registered equity security) of an issuer which has any class of equity security listed and registered on any national securities exchange is required by Section 16 (a) of the Securities Exchange Act of 1934 to file with the Commission and the exchange an initial report showing his holdings of, and a monthly report disclosing all his transactions in, any equity security of the company of which he is the direct or indirect beneficial owner. Likewise, every person who is an officer or a director of a holding company which is registered under the Public Utility Holding Company Act of 1935, is required by Section 17 (a) thereof to file similar reports covering his holdings of and transactions in all securities of the registered holding company and its subsidiaries.

Volume of Reports

The comparative numbers of original and amended ownership reports filed with and examined by the Commission during each of the past 2 years are tabulated below.

[Data format is Reports filed and examined: in Fiscal year 1937; in Fiscal year 1938

Original reports -- Securities Exchange Act: 25,022; 19,200

Amended reports -- Securities Exchange Act: 5,101; 2,610

Original reports -- Holding Company Act: 416; 839

Amended reports -- Holding Company Act: 44; 90

Up to the close of the year 25,843 persons had filed with the Commission 109,732 ownership reports disclosing 35,529 different security ownership positions and changes therein. These reports relate to the equity securities of 2,345 companies having equity securities registered on national securities exchanges under the Securities Exchange Act of 1934 and to the securities of 157 holding companies registered under the Public Utility Holding Company Act of 1935 and of the subsidiaries thereof.

Decline in Reports Needing Amendment

When the examination of a report indicates that it is deficient because of any material incompleteness, inconsistency, or inaccuracy, an amended report is required to be filed, which is examined in the same manner as the original report. Where amended reports are thus necessary, they are obtained, in most cases, in less than a month after the original

was filed. While one out of every five reports filed during the year 1937 required such amendment, this ratio dropped to about one out of every eight during the past year.

Decline in Late Filing of Reports

The law prescribes a period within which each type of report is due to be filed, and from time to time a certain number of reports are received after the date they are due. The chief reasons stated for such delay in the filing of reports include: ignorance of the reporting requirements; overlooking transactions made by the reporter or his broker or agent; illness; absence from office or principal place of business; delay in obtaining information from partnership or personal holding company as to its transactions; and ignorance of reductions in total issued amount of a class of stock, through conversions, etc., whereby reporter had unwittingly become a principal stockholder.

The Commission recognizes that, in order to effectuate the purpose of Sections 16 (b) of the Securities Exchange Act of 1934 and 17 (b) of the Public Utility Holding Company Act of 1935, accurate information as to security transactions should be available to interested persons as soon as possible after they occur, since the existing statutory 2-year limitation of any action thereunder runs from the date on which the profit from a purchase and sale or sale and purchase within the 6-month period was realized. Accordingly, the Commission has taken steps to eliminate every possible instance of the late filing of ownership reports, with the result that the proportion of original Form 4 reports filed late (i.e., after the tenth day of the month following that which they cover) to the total number of original Form 4 reports filed decreased during the year by about 20%. It might be added that approximately half of the late reports are generally received not more than a month after the date they are due.

Extent of Compliance with Reporting Requirements

An investigation has been made of the extent of compliance with the reporting requirements of Section 16 (a) of the Securities Exchange Act of 1934 during the period of nearly 4 years that they have been in force. It discloses only 34 known cases of persons who have failed for various reasons to file certain reports apparently required of them (mainly initial reports of security position on Form 5 or 6) after the usual efforts have been made to obtain them. A principal reason for such delinquency in these few instances is the inability despite exhaustive search to locate the person who had the obligation to file the report. It also develops that the companies of which certain of the persons delinquent in this respect are officers and directors have been dissolved, or the registration of their securities has been withdrawn by order of the Commission pursuant to Section 19 (a) (2) of the Act. However, when it is recalled that more than 35,000 security ownership positions have so far been reported to the Commission, this comparatively small number of delinquents indicates that not more than one person out of every thousand persons subject to Section 16 (a) has failed to comply with its provisions to the extent of filing at least an initial report.

Publication of Security Ownership Reports

Information as to the security transactions and holdings of officers, directors and principal stockholders, disclosed in their reports which are filed on Forms 4, 5, 6, U-17-1 and U-17-2, is compiled and published by the Commission in a semi-monthly Official Summary of Security Transactions and Holdings which is widely distributed among newspaper correspondents, individual investors and other interested persons. Copies of these summaries are also available at each office of the Commission and each national securities exchange. In addition, the actual reports are available for public inspection both at the office of the Commission in Washington, D. C., and the particular exchange with which an additional copy of reports relating to the issuer concerned must be filed.

SOLICITATION OF PROXIES, CONSENTS, AND AUTHORIZATIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934 AND THE PUBLIC UTILITY HOLDING COMPANY ACT. OF 1935

During the fiscal year, 2,232 solicitations of proxies, consents, or authorizations and 447 follow-up communications thereon were examined for compliance with the rules promulgated by the Commission under authority of Section 14 (a) of the Securities Exchange Act of 1934. In a substantial number of cases in which the soliciting material was either false or misleading in character or deficient in the descriptive material called for by the proxy rules, communications containing information, clarifying or supplementing the original soliciting literature, were required to be sent to security holders. Depending upon the character of the particular case, either new proxies, consents, or authorizations were solicited or security holders were afforded an opportunity to revoke or confirm the proxies which they had given. In other cases, in order to avoid the possibility of failure to comply with such rules, proxies were not voted upon matters which appeared either not to have been described or to have been inadequately described in the soliciting literature.

In one case the management solicited approval of a managerial and stock option contract entered into between the president of the corporation and the corporation, which contract provided for a substantial salary and for options to the president to purchase stock of the corporation at a price to be calculated on the basis set forth in the contract, and also requested the approval of purchases by the corporation of its own common stock. The Commission concluded after examining the proxy soliciting material that such material did not comply with the proxy rules in that it failed to disclose that the president, by virtue of ownership of almost half of the outstanding common stock, had practical control of the corporation at the time of making the contract and that no other member of the board of directors owned any stock of the corporation so that in fact there was no bargaining between the corporation and the president over the terms of the contract. The material also failed to disclose that the purchase price of the stock under the options

calculated on the basis provided in the contract was substantially below the market price of the stock at the date of solicitation, so that under the contract, the terms of which he had apparently dictated, the president was in a position to realize a substantial profit on the stock options. The material further failed to disclose that some of the purchases of stock which the management desired to have ratified were made at private sales at varying prices, some of them as high as \$20 a share over the market price at the time of the purchase. The Commission required that a further communication disclosing these facts and a form of revocation or confirmation be sent to stockholders to enable them to revoke or confirm their proxies on the basis of the subsequent information.

In another case the management solicited approval by stockholders of the proposed dissolution of the company. In the course of such solicitation a letter was sent to stockholders over the signature of the president in which he urged both common and preferred stockholders to vote in favor of the dissolution and in which he stated that he owned six and one-half times as many shares of the common stock as he owned of preferred. The Commission, after examining the material used by the management, concluded that it failed to comply with the proxy rules in that it gave no information from which an owner of common stock could deduce that upon dissolution of the company there would probably be no funds available for distribution to the holders of the common stock, and in that the president neglected to state that there were almost eight times as many shares of common stock outstanding as there were preferred, so that in fact he had a proportionately larger interest in the preferred stock than he had in the common, although his statement that he owned six and one-half times as many shares of common stock than of preferred was calculated to lead stockholders to believe that his principal interest lay in common stock.

The company refused, in the first instance, to send stockholders a further communication disclosing these facts. When, however, it appeared that the Commission would take action pursuant to the authority conferred by Section 21(e) of the Securities Exchange Act of 1934 and file a bill seeking an order restraining the use of the proxies obtained from the management's solicitation, the company did send a communication to stockholders containing the necessary information and also sent a form of confirmation to be used by stockholders confirming proxies previously given. Only proxies confirmed or obtained on the basis of the subsequent communication were voted on the question of the dissolution of the company.

There was a substantial increase during the fiscal year in the number of occasions on which corporate counsel or other representatives of management submitted proposed proxy soliciting material to the Commission for comment in advance of its use.

Under Section 11(g) of the Public Utility Holding Company Act of 1935 solicitation of proxies or other authorizations in connection with a reorganization plan of a registered holding company or a subsidiary is prohibited unless, among other things, the plan has been proposed by the Commission or submitted to the Commission by a person having a

bona fide interest in the reorganization and is accompanied or preceded by a copy of the Commission's report on the plan. Under Section 12 (e) of the Act solicitation of proxies and other authorizations regarding any securities of registered holding companies and their subsidiaries is prohibited except in accordance with the Commission's rules, regulations or orders.

Pursuant to the provisions of these sections of the Act, the Commission, on July 26, 1937, adopted rules and regulations governing the solicitation of proxies, deposits, consents, and dissents in respect of securities of holding companies registered under the Public Utility Holding Company Act of 1935 or their subsidiaries.

These rules (Rules U-12E-1 through U-12E-6) may be divided into two general categories: First, the rules apply to the solicitation of proxies, deposits, consents, and dissents from owners of securities of registered holding companies and subsidiaries, in connection with reorganization plans and for other similar purposes; second, the rules make applicable the existing and other future rules with respect to proxies under the Securities Exchange Act of 1934 to certain solicitations of a proxy regarding a security of a registered holding company or subsidiary. Generally speaking, the rules set up standards to which those soliciting proxies must conform. Such standards, for instance, call for periodic accounting by protective committees, prohibition against trading in securities by committee members and detailed information through Commission reports to enable those solicited for votes to act with some judgment.

More specifically, Rule U-12E-1 defines the terms used in the rules adopted pursuant to Sections 11 (g) and 12 (e) of the Public Utility Holding Company Act of 1935. Rule U-12E-2 provides that no person shall solicit, with certain exceptions, any proxy regarding any security of a registered holding company or a subsidiary thereof except upon compliance with the rules and regulations adopted pursuant to Section 14 (a) of the Securities Exchange Act of 1934, which rules would be applicable to such solicitation if such securities were registered on a national securities exchange.

Rule U-12E-3 deals with solicitation of authorizations in connection with reorganizations. This rule imposes general requirements as to the terms and conditions upon which such solicitations must be made. Among such requirements are provisions for independent review and determination of all fees and expenses, the submission of periodic reports and statements of account, the prohibition of the buying or selling of securities affected by the reorganization on behalf of the persons making the solicitation, and the right to revoke such authorizations and to withdraw securities from deposit, without expense, prior to the exercise of the authorization. The rule also deals with different types of solicitation classified according to the scope of the solicitation and the kind of authority solicited. limited requirements are imposed in regard to solicitations from not more than 25 owners of securities and also from security holders without limit as to number which are restricted to representation in connection with preliminary action pertaining to such activities as the negotiation, formulation, or development of the plan, and the appearance

before courts or commissions where such action does not authorize consent to or dissent from a plan on behalf of the persons solicited. More comprehensive information is required to be submitted to the Commission and to security holders in connection with solicitations of proxies or authorizations which empower the persons making the solicitation to consent to or dissent from any plan of reorganization, whether such authorization is granted upon condition or absolutely.

The use of deposit agreements and the deposit of securities is, in effect, greatly curtailed by the rules. Deposits of securities may not be solicited until after the plan has been prepared and the Commission has made a report thereon, except in certain special circumstances where the Commission finds that the deposit of securities is necessary in order to accomplish certain specified purposes such as the maintenance of actions at law or in equity for the protection of the rights of the owners of such securities, the collection or distribution of payments on account of securities, the tender of securities in connection with a contemplated purchase of assets at a judicial or foreclosure sale, or for other purposes found by the Commission to be in the interest of security holders.

Rules U-12E-4, 5, and 6 prescribe the form and content of applications for reports on plans and for declarations in connection with solicitations to be made in accordance with Rule U-12E-3. These rules require the statement of comprehensive information as to the terms of any plan, financial and other data relative to the fairness and feasibility of a plan, the interests of persons composing or negotiating the plan and soliciting with respect to it, the basis upon which claims for expenses and compensation are to be made, and description of the manner in which solicitations are to be made. Forms of agreements with security holders, authorizations and letters of solicitation and other soliciting material are also required to be filed as exhibits.

It is expected that the general revision of the rules adopted under Section 14 (a) of the Securities Exchange Act of 1934 referred to in the Third Annual Report of the Commission will be promulgated early in the fiscal year ending June 30, 1939.

[Footnote: A complete revision of the rules and regulations relating to the solicitation of proxies, consents, or authorizations with respect to securities registered on national securities exchanges was published by the Commission on August 11, 1938, designated as Regulation X-14. The new rules substantially broaden the amount of information which is to be made available to the security holders whose proxies are solicited and increase the facility with which he may determine the nature of the matters upon which a vote is being sought.] This revision will be based on the experience of security holders, corporations, and the Commission's staff over a period of almost 3 years.

CONFIDENTIAL TREATMENT OF APPLICATIONS, REPORTS, OR DOCUMENTS

Under the provisions of Section 24 (b) of the Securities Exchange Act of 1934, and the rules adopted thereunder, persons who object to the public disclosure of information contained in any application, report, or document filed by them with the Commission under that Act may submit the confidential portion of such material to the Chairman of the Commission, together with an application stating the grounds upon which the objection to public disclosure is based. The Commission is empowered to grant or deny such application.. The Securities Act of 1933, as amended, also authorizes confidential treatment by the Commission of material contracts filed in connection with registration statements where the disclosure of such contracts would impair their value and would not be necessary for the protection of investors. Similarly, the Commission may act on applications for confidential treatment of information in applications,. declarations, reports, or other documents filed under the Public Utility Holding Company Act of 1935.

During the year, 139 applications for the confidential treatment of certain material were filed, involving a total of 195 separate items of information, principally in connection with the annual reports of such issuers filed with the Commission pursuant to Section 13 of the Securities Exchange Act of 1934. Material filed by 298 applicants involving 381 items of information (including applications pending at the beginning of the fiscal year), was made available for public inspection during the year, pursuant to Rule UB2 (which rule was redesignated as Rule X-24B-2 as of September 10, 1938), the Commission having determined that disclosure of such information is in the public interest, or the applicants having withdrawn their objections to its public disclosure. Sixty-one applications for confidential treatment (including a number pending from the previous year), submitted by 35 applicants, involving 90 items of information, were granted during the year and 56 private hearings on applications for confidential treatment were held at the request of the various applicants.

Twenty-one applications for confidential treatment of material contracts or portions thereof submitted in connection with registration statements filed under the Securities Act of 1933, as amended, were submitted during the year, pursuant to Rule 580 under that Act. Of these requests, 17 were granted in whole or in part, 1 was denied, and 3 were withdrawn.

Twenty-two applications for confidential treatment of material filed under the Public Utility Holding Company Act of 1935 were received during the year, all of which applications were pending on June 30, 1938.

At the beginning of the year, there were pending in several U. S. Circuit Courts of Appeal 21 petitions filed by issuers seeking to review determinations by the Commission denying applications for confidential treatment. During the year, 11 of these petitions were dismissed on the motion of the petitioners, and the material involved was made public. At the close of the year, it was expected that 3 of the remaining 10 petitions would be presently dismissed. Only one petition for judicial review of the Commission's determinations in such matters was filed during the fiscal year. Appendix VI, Table 5,

contains a summary of all confidential treatment cases pending in the courts during the past fiscal year and their status as of June 30, 1938.

REPORT ON THE STUDY AND INVESTIGATION OF PROTECTIVE AND REORGANIZATION COMMITTEES

During the past fiscal year the Commission has continued to report to the Congress the results of its study and investigation of the work, activities, personnel, and functions of protective and reorganization committees, pursuant to the authority conferred upon it by Section 211 of the Securities Exchange Act of 1934. This study was originally under the general supervision of Chairman William O. Douglas and during the last year under the supervision of Commissioner Jerome Frank, with Abe Fortas as Assistant Director and Samuel O. Clark, Jr., as Counsel.

Part VII of the Commission's report, which pertains to Management Plans Without Aid of Committees, was transmitted to the Congress on May 10, 1938. This volume deals with so-called voluntary reorganizations and contains recommendations for legislative action designed to correct the abuses prevalent in this field. In addition to Part VII referred to above, the parts of this report which have been completed and transmitted to the Congress are as follows:

Part I. Strategy and Techniques of Protective and Reorganization Committees.

Part II. Committees and Conflicts of Interest.

Part III. Committees for the Holders of Real Estate Bonds.

Part IV. Committees for the Holders of Municipal and Quasi-Municipal Obligations.

Part V. Protective Committees and Agencies for Holders of Defaulted Governmental Bonds.

Part VI. Trustees Under Indentures.

A final report, Part VIII, Conclusions and Recommendations, is now in the process of completion. This volume includes an extensive discussion of the law relating to corporate reorganizations and an examination of recent legislative reforms in this field.

The basic recommendations contained in the various parts of the report described above were embodied in three bills which were under consideration by the 75th Congress: The Barkley Bill (S. 2344), the Lea Bill (H. R. 6968), and Chapter X of the Chandler Bill (H. R. 6439, H. R. 8046). The last-named bill was sponsored by Congressman Walter Chandler in the House and Senator Joseph C. O'Mahoney in the Senate. This bill, which

constitutes a comprehensive revision of the National Bankruptcy Act, was enacted by the Congress and approved by the President on June 22, 1938. Chapter X of this Act, as now amended, effects a number of substantive and procedural improvements in the corporate reorganization provisions previously known as Section 77B and embodies many of the recommendations made by this Commission to the Congress in Part I of the report in question. Among the more important of these changes are the provisions which require the appointment of disinterested trustees in every case of substantial size and which supply administrative assistance to the Federal Courts by placing the Commission's technical facilities in business and financial matters at their disposal in reorganization cases under Chapter X. The court may invite or permit the Commission to appear in any reorganization proceeding thereunder. In addition, the court may, in any such reorganization proceeding, refer reorganization plans to the Commission for an advisory report thereon. Such reference is mandatory where liabilities of a debtor corporation exceed \$3,000,000. The Commission has authorized the creation of a Reorganization Division in connection with the exercise of its functions under this chapter.

The Barkley Bill (S. 2344), introduced on June 6, 1937, deals with the corporate trustee and the trust indenture. It was favorably reported by the Senate Banking and Currency Committee on April 19, 1938, and hearings on a companion bill (H. H. 10292), introduced in the House of Representatives on April 18, 1938, were held before the House Committee On Interstate and Foreign Commerce. Hearings were also held on the Lea Bill (H. R. 6968) before the House Committee on Interstate and Foreign Commerce. This bill relates generally to the solicitation of proxies, deposits, and assents in connection with reorganizations. Representatives of the Commission assisted the Congressional Committees in drafting the above described legislation and appeared at committee hearings and testified in connection therewith.

STUDY OF INVESTMENT TRUSTS AND INVESTMENT COMPANIES

The Commission is completing its study of investment trusts and investment companies, being conducted pursuant to Section 30 of the Public Utility Holding Company Act of 1935. This study and the preparation of the reports have been under the general supervision of Commissioner Robert B. Healy, with Paul P. Gourrich, Technical Adviser to the Commission, as Director of the Study, the late William R. Spratt, Jr., as Chief of the Study, David Schenker as Counsel and L. M. C. Smith as Associate Counsel.

On June 11, 1938, the Commission transmitted Part One of its final report to the Congress. This part of the report, consisting of three chapters, deals with the origin, scope, and conduct of the study, the nature and classification of investment companies, and the origins of the investment company movement in this country.

Part Two of this final report, consisting of eight chapters containing detailed analyses of statistical data, is practically completed. The Commission will transmit these chapters to

the Congress immediately upon completion. [Footnote: Volume I, Volume II, and volume in covering the first five chapters of Part Two were transmitted to the Congress on July 28, 1938, September 19, 1938, and October 31, 1938, respectively.]

Both Part Three, dealing with the economic significance of investment companies and their control of industry, and Part Four, treating with the abuses and defects in connection with investment companies, as well as six supplemental reports relating respectively to fixed and semi-fixed investment trusts, installment investment plans, companies issuing face amount installment certificates, common or commingled trust funds, investment counsel and investment advisory services, and British management investment trusts, are nearing completion and will be submitted to the Congress within the current fiscal year.

During the past fiscal year, the Commission conducted additional public examinations on approximately 90 investment companies, at which about 13,000 pages of testimony were taken and approximately 2,700 exhibits were introduced into evidence.

In addition, the Commission held a public conference with representatives of investment counsel and investment advisory services to supplement the basic statistical information obtained from the replies to the questionnaire prepared by these organizations.

The following are the names of the companies upon which public inquiries were held during the past fiscal year:

Management Investment Companies

Administered Fund Second, Inc. See First Income Trading Corporation.

Affiliated Fund, Inc. (formerly known as Affiliated Investors Fund, Inc.).

Aldred Investment Trust.

Alexander Fund, The.

Alpha Shares, Inc.

Investors Fund of America, Inc.

Monthly Income Shares, Inc. (New Jersey).

Monthly Income Shares, Inc. (New York).

United Standard Oil-fund of America, Inc.

American and Continental Corporation. See American General Corporation.

American and Dominion Corporation.

American Utilities & General Corporation.

American Founders Corporation. See American General Corporation.

American Founders Trust. See American General Corporation.

American & General Securities Corporation. See American General Corporation.

American General Corporation (Founders Group).

American and Continental Corporation.

American Founders Corporation.

American Founders Trust.

American & General Securities Corporation.

American Securities Corporation.

Founders Associates.

General Investment Corporation.

Insuranshares Certificates, Inc.

Insuranshares Corporation of Delaware.

Insuranshares & General Management Corporation.

International & General Corporation.

International Securities Corporation of America.

International Securities Trust of America.

Investment Trust Associates.

North and South American Corporation (Delaware).

Second International Securities Corporation.

United Founders Corporation.

United States & British International Co., Ltd.

United States Electric Power Corporation.

United States & Overseas Corporation.

American I. G. Chemical Corporation.

American Securities Corporation (formerly known as Founders General Corporation).
See American General Corporation.

American Utilities & General Corporation. See American & Dominion Corporation.

Bond & Share Trading Corporation. See First Income Trading Corporation.

Broad Street Investing Co., Inc., The. See Tri-Continental Corporation.

Capital Administration Co., Ltd. See Tri-Continental Corporation.

Consolidated Investment Trust.

Kidder Participations., Inc.

Kidder Participations, Inc. No. 2.

Kidder Participations, Inc. No. 3.
Kidder Peabody Acceptance Corporation.

Continental Securities Corporation. See First Income Trading Corporation.

Continental Securities Corporation (old). See First Income Trading Corporation.

Continental Securities Holding Corporation. See First Income Trading Corporation.

Continental Shares, Inc.

Eastern Utilities Investing Corporation (formerly known as Eastern Utility Preferred Holding Corporation).

First Income Trading Corporation.

Administered Fund Second, Inc.

Bond & Share Trading Corporation.

Burco, Inc.

Continental Securities Corporation.

Continental Securities Corporation (old).

Continental Securities Holding Corporation.

Insuranshares Corporation of Delaware.

Reynolds Investing Co., Inc.

Founders Associates. See American General Corporation.

Founders Group, The. See American General Corporation.

General Investment Corporation (formerly known as Public Utility Holding Corporation of America). See American General Corporation.

Graymur Corporation. See Tri-Continental Corporation.

International & General Corporation. See American General Corporation.

International Securities Corporation of America. See American General Corporation.

International Securities Trust of America. See American General Corporation.

Investment Trust Associates. See American General Corporation.

Investors Equity Co., Inc. See Tri-Continental Corporation.

Investors Fund of America, Inc. (formerly known as Corporate Securities Fund,. Inc.).
See Alpha Shares, Inc.

Kidder Participations, Inc. See Consolidated Investment Trust.

Kidder Participations, Inc. No. 2. See Consolidated Investment Trust.

Kidder Participations, Inc. No. 3. See Consolidated Investment Trust.

Kidder Peabody Acceptance Corporation. See Consolidated Investment Trust.

Marine Share Corporation (formerly known as Randwood Corporation). See Marine
Union Investors, Inc.

Marine Union Investors, Inc.

Marine Share Corporation.

Niagara Cataract Consolidated Corporation.

Pan-American Share Corporation.

Monthly Income Shares, Inc. (New Jersey). See Alpha Shares, Inc.

Monthly Income Shares, Inc. (New York). See Alpha Shares, Inc.

Niagara Cataract Consolidated Corporation. See Marine Union Investors, Inc.

Niagara Share Corporation (Delaware). See Niagara Share Corporation of Maryland.

Niagara Share Corporation of Maryland.

Bennie Share Corporation.

Niagara Share Corporation (Delaware).

Niagara Share Corporation (New York).

Union Rochester Share Corporation.

Niagara Share Corporation (New York). See Niagara Share Corporation of Maryland.

North & South American Corporation (Delaware). See American General Corporation.

Pan-American Share Corporation. See Marine Union Investors, Inc.

Railroad Shares Corporation. See Seaboard Utilities Shares Corporation.

Reynolds Investing Co., Inc. See First Income Trading Corporation.

Seaboard Utilities Shares Corporation (Delaware).

Railroad Shares Corporation.
Seaboard Utilities Shares Corporation (Massachusetts).
Utilities Hydro & Rails Shares Corporation.

Seaboard Utilities Shares Corporation (Massachusetts). See Seaboard Utilities Shares Corporation (Delaware).
Second International Securities Corporation. See American General Corporations

Selected Industries, Inc. See Tri-Continental Corporation.

Tri-Continental Corporation.
Broad Street Investing Co., Inc., The.
Capital Administration Co., Ltd.
Graymur Corporation.
Investors Equity Co., Inc.
Selected Industries, Inc.
Wedgwood Investing Corporation.

Union Rochester Share Corporation. See Niagara Share Corporation of Maryland.

United Founders Corporation. See American General Corporation.

United Standard Oil-fund of America, Inc. See Alpha Shares, Inc. United States & British International Co., Ltd. See American General Corporation.

United States Electric Power Corporation. See American General Corporation.

United States & Overseas Corporation. See American General Corporation.

Utilities Hydro & Rails Shares Corporation. See Seaboard Utilities Shares Corporation (Delaware).

Wedgwood Investing Corporation. See Tri-Continental Corporation.

Fixed and Semi-Fixed Investment Trusts

A B C Trust Shares, Series D. See Alpha Shares Inc.
A B C Trust Shares, Series E. See Alpha Shares, Inc.

Affiliated Fund, Inc.
Super-Corporations of America Trust Shares, Series A.
Super-Corporations of America Trust Shares, Series B.
Super-Corporations of America Trust Shares, Series C.
Super-Corporations of America Trust Shares, Series D.

Super-Corporations of America Trust Shares, Series AA.
Super-Corporations of America Trust Shares, Series BB.

Alpha Shares, Inc.

A B C Trust Shares, Series D.

A B C Trust Shares, Series E.

American Composite Trust Shares, Cumulative Series.

Collateral Trustee Shares, Series A.

Trustee Standard Investment Shares, Series C.

Trustee Standard Investment Shares, Series D.

Trustee Standard Oilshares, Series A.

Trustee Standard Oilshares, Series B.

Trusteed New York Bank Shares.

Universal Trust Shares.

American Composite Trust Shares, Cumulative Series. See Alpha Shares, Inc.

Collateral Trustee Shares, Series A. See Alpha Shares, Inc.

Super-Corporations of America Trust Shares, Series A. See Affiliated Fund, Inc.

Super-Corporations of America Trust Shares, Series B. See Affiliated Fund, Inc.

Super-Corporations of America Trust Shares, Series C. See Affiliated Fund, Inc.

Super-Corporations of America Trust Shares, Series D. See Affiliated Fund, Inc.

Super-Corporations of America Trust Shares, Series AA. See Affiliated Fund, Inc.

Super-Corporations of America Trust Shares, Series BB. See Affiliated Fund, Inc.

Trustee Standard Investment Shares, Series C. See Alpha Shares, Inc.

Trustee Standard Investment Shares, Series D. See Alpha Shares, Inc.

Trustee Standard Oilshares, Series A. See Alpha Shares, Inc.

Trustee Standard Oilshares, Series B. See Alpha Shares, Inc.

Trusteed New York Bank Shares. See Alpha Shares, Inc.

Universal Trust Shares. See Alpha Shares, Inc.

Sponsors of Installment Investment Plans

Income Foundation Fund, Inc.

Income Foundation, Inc.

Face Amount Installment Certificate Companies

Fidelity Investment Association.

Investors Syndicate.

MARGIN REGULATIONS

Regulations T and U, dealing with margin requirements, were promulgated by the Board of Governors of the Federal Reserve System pursuant to Section 7 of the Securities Exchange Act of 1934. But responsibility for enforcement of Regulation T devolves upon the Commission. Accordingly, the Commission has continued, with such personnel as was available, its systematic inspection of the books and records of firms carrying margin accounts for customers.

Following the revision of Regulation T, which became effective on January 1, 1938, Commission representatives visited the offices of security dealers in selected vicinities throughout the country for the purpose of reviewing their methods of doing business. As a result of this work the Commission was able to assist numerous dealers in securities in arriving at a greater understanding of the requirements of Regulation T and other rules and regulations adopted pursuant to the Securities Exchange Act of 1934.

The New York, Boston, Chicago and San Francisco Regional Offices of the Commission are at present equipped to carry on margin inspections on a small scale. These inspections cover the accounts carried by members of the exchanges in these regions. The accounts of non-member brokers and dealers subject to Regulation T are also receiving such inspection as personnel limitations permit.

The results of these inspections have been made available to the Board of Governors of the Federal Reserve System, and in a number of instances the Commission has referred these results to various exchanges for disciplinary action.

DETECTION OF MANIPULATIVE AND DECEPTIVE PRACTICES

Market Surveillance

During the past fiscal year, the Commission rounded out its procedure for the systematic surveillance of trading in securities on exchange markets for the purpose of detecting manipulative activity. At the close of the fiscal year, daily volume and price movements of 3,133 exchange issues were under continued observation. [Footnote: The figure given above includes some duplication, inasmuch as one issue traded on two exchanges is treated as two separate issues.] These observations continue the routine established by the Commission for scrutinizing the market action of securities in the light of developments affecting the general market and specific industries.

This routine is supplemented by special observations of securities in the process of primary and secondary distribution, securities for which any substantial options are outstanding and securities in which unusual transactions by officers, directors, or principal stockholders have been reported. Data serving as a basis for these observations are secured from examination of the terms of offering of all registration statements filed under the Securities Act of 1933 pertaining to securities traded on the exchange or convertible into any such security; from reports furnished by the New York Stock Exchange and the New York Curb Exchange of all essential facts of secondary distributions of securities traded on these exchanges where members are required to submit their distribution plans to the exchange for approval; from reports furnished by these exchanges of all options of which they were notified by their members; by examination of the reports filed under Section 16 (a) of the Securities Exchange Act of 1934 and Section 17 (a) (2) of the Public Utility Holding Company Act of 1935; from information furnished by members of the public; and from other sources.

The Commission has also sought to extend its observation of securities traded in the over-the-counter markets. The methods used in observing the market action of such securities are, in general, similar to those employed in the case of securities traded on exchanges, but even greater emphasis is placed upon the importance of market action during distributions, and careful studies are made of all registration statements filed under the Securities Act of 1933.

Trading Investigations

Trading investigations are conducted by the Commission for the purpose of detecting the use of manipulative practices in connection with the trading in securities registered on national securities exchanges. For reasons of policy the Commission keeps confidential the fact that trading in a security is under investigation lest knowledge of the existence of such an investigation react adversely upon the issuer or its securities. These investigations entail varying degrees of time and effort. Some cases may be disposed of after a short investigation. In other cases it becomes necessary for the Commission to reconstruct the market over an extended Period of time.

In the conduct of these investigations the Commission frequently finds it necessary to resort to the subpoena power conferred upon it by Section 21 (b) of the Securities

Exchange Act of 1934. Such cases are classified as formal investigations. These are frequently preceded by investigations which are conducted without the use of subpoena power and in that sense are informal in nature. To expedite its work, the Commission divides informal cases into flying quizzes and preliminary investigations. The flying quiz is designed to detect and discourage incipient manipulation by a prompt determination of the causes for unusual market behavior. Often the results of a flying quiz point to a legitimate reason for the activity under review and the case is closed. Frequently they uncover facts which require a more extended investigation, in which case a preliminary investigation is undertaken.

During the fiscal year 66 flying quizzes were in progress, of which 19 developed into preliminary investigations and 35 were closed. There were 12 flying quizzes still in process at the end of the year. On July 1, 1937, 48 preliminary investigations were in process. During the fiscal year 27 such investigations were initiated and 40 were closed. As the result of these preliminary investigations, 11 formal investigations were authorized. There were 24 preliminary investigations pending at the end of the year. On July 1, 1937, 29 formal investigations were in process and during the year 14 new formal investigations were authorized and 14 were closed, leaving 29 still in process at the end of the year.

Thus, a total of 154 trading investigations were in progress throughout the year, of which 65 were pending at the end of the year. In many of the 89 cases which were closed, evidence was obtained which resulted in affirmative action by the Commission, the Department of Justice, or national securities exchanges.

Disposition of Trading Cases

There are a number of remedies which the Commission may invoke against persons who have violated the anti-manipulative provisions of the Securities Exchange Act of 1934. It may seek to enjoin the persons complained of through the courts. It may refer the matter to the Department of Justice for criminal prosecution, and it may also take appropriate administrative action. Thus, if the respondent is a member of a national securities exchange, proceedings may be instituted by the Commission under Section 19 (a) (3) of the Securities Exchange Act of 1934 to determine whether such member shall be suspended for a period not exceeding 12 months or expelled from the exchange. If the respondent is a registered broker-dealer (whether a member of an exchange or a non-member) the Commission may, pursuant to Section 15 (b) of such Act, conduct hearings to determine whether such registration shall be revoked.

Since by the provisions' of Section 6 (b) the rules of a registered national securities exchange must include a provision for the expulsion, suspension, or disciplining of any member who willfully violates any provision of the Securities Exchange Act of 1934 or any rule or regulation thereunder, the Commission may refer evidence of such violation to the appropriate exchange for disciplinary action under its rules.

During the past fiscal year, formal action was taken in a total of 15 cases of alleged violation of Section 9 of the Securities Exchange Act of 1934, the provisions of which prohibit manipulation of security prices. Five proceedings under Section 19 (a) (3) of the Act resulted in the expulsion or suspension of members from exchanges; one hearing for revocation of registration of a broker-dealer resulted in the withdrawal of the registration; permanent injunctions were secured in the courts in four cases; two convictions were secured in criminal prosecutions conducted by the Department of Justice; another case was referred to that department; and two references were made to exchanges on evidence of violation of Section 9 of the Securities Exchange Act of 1934. These references resulted in the dissolution of one firm, with an undertaking that certain partners of that firm should not apply for membership in the exchange or partnership in any member firm, and in the expulsion of one exchange member and the suspension of another. A chronological record of action taken on cases involving violation of Section 9 during the fiscal year ended June 30, 1938, follows: [Footnote: From this record is omitted the case referred to the Department of Justice, since no public action has yet been taken.]

Securities Exchange Act of 1934 -- Commission Action taken on Section 9 Cases During the Fiscal Year Ended June 30, 1938.

On August 19, 1937, the Commission issued an order expelling Michael J. Meehan from membership on the New York Stock Exchange, the New York Curb Exchange and the Board of Trade of the City of Chicago. This action was based upon proceedings instituted under Section 19 (a) (3) on October 26, 1935, which alleged violations of Sections 9 (a) (1) and 9 (a) (2) in transactions in Ballanca Aircraft Corporation common stock on the New York Curb Exchange during 1935.

On August 7, 1937, F. L. Cord and Morris Markin consented to being permanently enjoined by the U. S. District Court at Chicago from further violations of Section 9 of the Securities Exchange Act of 1934. This action resulted from an investigation of the activities and transactions of these persons in the securities of Checker Cab Manufacturing Corp., Parmelee Transportation Co., and Chicago Yellow Cab Co., and of Cord in Auburn Automobile Co. stock during 1935 and 1936.

On August 7, 1937, John R. Moore consented to being permanently enjoined from further violations of Section 9 (a) (2) of the Securities Exchange Act of 1934 and Section 17 (a) of the Securities Act of 1933 following a bill of complaint entered in the U. S. District Court for the Eastern District of Washington. This action resulted from an investigation into the transactions of Moore, then an officer of the National Company of Idaho, Inc., during March 1937 in Jack Waite Mining Company common stock listed on the Standard Stock Exchange of Spokane.

On October 8, 1937, Thomas F. Gagen, a member of the Boston Stock Exchange consented to suspension as a member of that exchange for 1 year beginning October 11,

1937. Gagen was a respondent in proceedings which were instituted under Section 19 (a) (3) in May 1936, based on transactions on the Boston Stock Exchange in East Boston Company capital stock during 1935. A hearing was ordered on October 8, 1937, to determine whether the broker-dealer registration of John L. Cronan, a former partner of Gagen and a participant in the transactions complained of, should not be revoked. Cronan withdrew his registration on January 5, 1938.

On October 16, 1937, the Commission announced that as a result of investigations conducted by the New York Stock Exchange, the New York Curb Exchange and the Commission, the firm of Arnold & Co., members of the New York Stock Exchange and associate members of the New York Curb Exchange, executed and delivered to the New York Stock Exchange an undertaking to dissolve on or before October 20, 1937. The undertaking stipulated that if any new firm be formed, neither Roy W. Arnold nor Maurice Goodman, then partners in Arnold & Co., will be partners of such firm. Roy W. Arnold tendered his resignation as an associate member of the New York Curb Exchange effective October 20, 1937. This action was taken as a result of an investigation conducted by the Commission late in 1936 and early in 1937 into their activities in connection with transactions in the common stock of Pierce Governor Co., on the New York Curb Exchange. Substantial evidence was adduced of acts of members of this firm which indicated the existence of possible violations of Sections 9 (a) (1), 9 (a) (2) and 11(d) (1) of the Securities Exchange Act of 1934. On April 8, 1937, the Commission authorized the reference of this matter to both the New York Stock and New York Curb Exchanges. Arnold & Co. withdrew their broker-dealer registration on December 6, 1937.

On January 21, 1938, the U. S. District Court of Massachusetts sentenced Morey Getz who pleaded guilty to violation of Section 9 (a) (1) of the Securities Exchange Act of 1934 to 1 year and 1 day. His sentence was suspended and he was placed on probation. Two indictments alleging such violation were brought on January 4, 1937, in connection with his transactions in Suburban Electric Securities Company common stock on the Boston Stock Exchange during 1936.

On February 4, 1938, the U. S. Circuit Court of Appeals for the Seventh Circuit affirmed the action of the District Court for the Northern District of Illinois in enjoining R. J. Koepp & Co. from further violations of Section 9 (a) (1), (2), and (3) of the Securities Exchange Act of 1934 and Section 17 (a) (2) of the Securities Act of 1933. This case involved transactions of K. J. Koepp in the common stocks of Paducah Cooperage Co., Inc., and Wahl Company during 1935, the former security then registered on the Chicago Curb Exchange and the latter security registered on the Chicago Stock Exchange

On February 28, 1938, Charles C. Wright, a member of the New York Stock Exchange, the New York Curb Exchange, the Philadelphia Stock Exchange, the Chicago Stock Exchange and the Board of Trade of the City of Chicago, was expelled from such exchanges, effective April 30, 1938. Norman Stern and Herbert King, members of the

New York Stock Exchange and the New York Curb Exchange, were suspended from such exchanges for 1 year beginning April 30, 1938. This action resulted from proceedings initiated under Section 19 (a) (3) on February 27, 1936, based upon their transactions in the common stock of Kinner Airplane & Motor Corp., Ltd., on the Los Angeles Stock Exchange during 1935. An appeal to the U. S. Circuit Court of Appeals by the respondent Wright is now pending.

On March 5, 1938, the U. S. District Court for the Southern District of New York permanently enjoined 16 individuals and the firm of Torr & Co. from further violations of Section 9 (a) (2) of the Securities Exchange Act of 1934 and Section 17 (a) (1) of the Securities Act of 1933. This action was based upon an investigation of the transactions during 1935 of these individuals in the common stock of Trans-Lux Daylight Picture Screen Corporation, a registered security on the New York Curb Exchange.

On May 12, 1938, the U. S. District Court for the Southern District of New York sentenced seven individuals who pleaded guilty to fraud and manipulation in the sale of the common stock of Standard Commercial Tobacco Company, General Bronze Corporation, and Cable Electric Products, Inc. They received sentences of 1 year and 1 day, and 2 years. The individuals operated as H. W. Schmid Co. and the indictment which was brought on March 30, 1937, alleged violations of Sections 9 (a) (1) and 9 (a) (2) of the Securities Exchange Act of 1934, as well as violations of the Securities Act of 1933 and the mail fraud statutes.

On May 18, 1938, Gerald M. Loeb and Gordon B. Crary, partners of E. F. Hutton & Co., members of the New York Stock Exchange, the New York Curb Exchange, the Board of Trade of the City of Chicago, and the Los Angeles Stock Exchange, having resigned as partners from that firm agreed, for a period of 10 and 8 months, respectively, not to become a member of a national securities exchange, and not to apply for registration as a broker or dealer, and not to become a partner, official or director, or branch manager of any registered broker or dealer. Such action resulted from the institution of proceedings under Section 19 (a) (3) on December 31, 1937, against these persons in connection with their transactions in the capital stock of Auburn Automobile Company during 1935 and 1936.

On June 1, 1938, the Chicago Stock Exchange suspended W. S. Mills, Jr., for a period of 1 year and expelled H. J. Mills. This action was based upon a reference to the Exchange by the Commission of information concerning certain transactions in 1937 in Backstay Welt Company common stock, a security registered on the Chicago Stock Exchange.

On June 21, 1938, the Commission by order suspended Faris R. Russell, a partner of White, Weld & Co., for a period of 90 days from August 21, 1938, from membership on the New York Stock Exchange, the New York Curb Exchange, and the Board of Trade of the City of Chicago. This action was based upon the institution of proceedings under Section 19 (a) (3) on April 23, 1936, in connection with the activities and transactions of

White, Weld & Co. during 1935 in the common stock of A. O. Smith Corporation, then a security registered on the New York Curb Exchange.

On April 7, 1938, the Trial Examiner's report on the proceedings instituted under Section 19 (a) (3) against the firm of W. E. Hutton and certain of its partners was filed with the Commission. Briefs in support of the findings of the Trial Examiner, exceptions to such findings and briefs in support of such exceptions were filed on October 5, 1938. Reply briefs are to be filed by February 1, 1939, and February 8, 1939 has been set as the date for oral argument before the Commission.

Miscellaneous

As a result of trading investigations evidence was uncovered in numerous instances of violations of other provisions of the Securities Exchange Act of 1934 as well as of the Securities Act of 1933 and of the rules and settled practices of national securities exchanges. Trading investigations have sometimes resulted in the institution of stop order proceedings under Section 8 (d), and examinations under Section 8 (e), of the Securities Act of 1933. A notable instance occurring during the past year was in the matter of Austin Silver Mining Company, in which a stop order was entered by the Commission on July 13, 1938.

On June 27, 1938, stop order proceedings under Section 8 (d) were instituted in the matter of Reiter-Foster Oil Co. as a result of facts adduced in a trading investigation. In numerous other instances the facts uncovered by a trading investigation have resulted in the filing of amendments to registration statements, the revision of reports filed under Section 16 of the Securities Exchange Act of 1934 by officers, directors, and principal stockholders, and in other ways have brought about compliance with the provisions of these Acts.

Trading investigations have led to the institution of proceedings for the purpose of enjoining continued violations of Section 8 (b) of the Securities Exchange Act of 1934 and Section 17 of the Securities Act of 1933. Thus, on February 4, 1938, upon application by the Commission, the U. S. District Court sitting in Philadelphia permanently enjoined John W. Fry of Philadelphia from the further sale of securities in violation of the above sections. This action was based on facts developed during a trading investigation and as a result John W. Fry & Co. withdrew its registration as broker-dealer.

During the fiscal year, a program for more vigilant administration of national securities exchanges has been developed as narrated elsewhere in this report. In continuance of its former policy, the Commission has assisted national securities exchanges in their efforts to enforce their own rules and in many instances matters have been brought to the attention of national securities exchanges which, as a result, have taken disciplinary action against members, who have been censured, fined, and in some cases suspended or

expelled. In one instance a specialist was fined by an exchange and required to undo four trades. Disciplinary action of this character has been predicated upon such matters as the failure of members to keep proper records, insolvency, violation of Regulation T of the Board of Governors of the Federal Reserve System, manipulative practices, and other violations of exchange rules.

In addition, facts disclosed by trading investigations have indicated the necessity for rules and regulations which have been adopted by the Commission pursuant to the provisions of the Securities Exchange Act of 1934, and have influenced national securities exchanges to amend or supplement their own rules.

SPECIAL STUDIES AND THE PREPARATION OF RULES

Short Selling

Although the problems relating to short selling have received continuous attention from the Commission since its creation in 1934, market conditions, until the past fiscal year, did not present an opportunity for first-hand current observation of short selling in severely declining markets. The Commission used the opportunity afforded by the sharp drop in prices in September and October of 1937 to make a detailed study of transactions in 20 selected stocks listed on the New York Stock Exchange during the periods of September 7 to 13, inclusive, and October 18 to 23, inclusive.

As a result of this study the Commission issued Rules X-10A-1, X-10A-2 and X-3B-3 on January 24, 1938, effective on February 8, 1938. The principal effect of these rules is to require that any short sale of a security must be made at a price above the last preceding sale price. Since the issuance of Rule X-10A-1, two exemptions from its provisions have been adopted. On February 10, 1938, the Commission allowed an exemption applicable to equalizing transactions on domestic exchanges; on April 8 1938, certain arbitrage transactions were exempted.

Subsequently, the Commission called for data similar to that which provided the bases for its study of the market in September and October of 1937. The same stocks which had been used at that time were again subjected to detailed scrutiny for the period of March 21 to April 2, 1938, inclusive. This re-check of its data will permit the Commission to judge the adequacy and effectiveness of its regulations.

Trading by Officers, Directors, and Principal Stockholders

At this time the Commission also instituted a study and review of the effects of the requirements of Section 16 (a) of the Securities Exchange Act of 1934. This section covers the trading by officers, directors and principal stockholders in the securities of their own companies. The Commission's study, which is still in process, covers all

reports filed with the Commission since this section of the Act became applicable, in an effort to determine (a) the extent to which this trading is carried on, (b) the price ranges of securities in which there appears to be the greatest concentration of this type of trading, (c) other characteristics of the securities in which this type of trading appears to be concentrated, and (d) the extent to which the reduction in this type of trading, resulting from the publicity requirements of the statute, affected the general market.

Segregation

Continuing the procedure suggested in the Commission's report on the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Broker, the Commission carried on during the fiscal year the study of this problem and has prepared drafts of rules to require the registration of members of certain national securities exchanges as floor traders and to impose certain limitations upon their activities; to limit securities positions of members' registered firms carrying margin accounts for customers; and to require the filing of reports of all transactions of such firms. These rules, in tentative form, have been sent to all exchanges for comment and criticism. Discussions of the proposed rules have been instituted.

Further study has also been devoted to the activities of specialists, with emphasis upon material which the New York Stock Exchange assembled in cooperation with the Commission indicating the financial resources of specialists. This information should enable the Commission to determine whether these resources are adequate to permit specialists to perform their function in the maintenance of fair and orderly markets in the securities in which they are registered.

Financial Safeguards -- Richard Whitney & Company

The efforts of the Commission continued to be directed toward the creation of effective means of protecting customers from loss through the insolvency of brokerage firms. In this connection, the failure of the firm of Richard Whitney & Company, members of the New York Stock Exchange, and the disclosures of misappropriations of customers' funds and securities, by the senior partner demonstrated the urgent necessity of more adequate regulation.

The investigation of the circumstances antecedent to and surrounding the failure of Richard Whitney and Company and the expulsion of Richard Whitney from the New York Stock Exchange was, in this connection, one of the most significant ever undertaken by the Commission. Richard Whitney had held the highest offices in the New York Stock Exchange, having been Chairman of the Business Conduct Committee, Vice President, and President for several terms. At the time of his failure and exposure in March 1938, he was a member of the Governing Committee, a member of the Law Committee, and Trustee of the Gratuity Fund.

The Securities and Exchange Commission received information concerning Richard Whitney's misconduct and the financial distress of his firm during the evening of March 7, 1938, when these matters were brought to its attention by Exchange officials. The Commission ordered an immediate investigation on the morning of March 8, 1938. On March 8, 1938, the New York Stock Exchange suspended the firm of Richard Whitney and Company for insolvency and issued a statement indicating that Richard Whitney, senior partner of the firm, had been guilty of misconduct. On March 17, 1938, Richard Whitney was expelled from the Exchange and two of his partners were suspended for 3 years. In the meantime, Richard Whitney had been indicted for grand larceny in the first degree for appropriating to his own use securities entrusted to him in a fiduciary capacity. To these indictments he pleaded guilty and, on April 11, 1938, was sentenced to a term of from 5 to 10 years in Sing Sing Prison.

In order to determine the necessity for additional legislation or rules or regulations for the protection of investors and brokerage customers the Commission on April 6, 1938, ordered that a public hearing be held pursuant to Section 21(a) of the Securities Exchange Act of 1934 to ascertain the facts, conditions, practices, and matters antecedent to and culminating in the failure of Richard Whitney and Company.

Fifty-two witnesses, all officials, members, or partners of members of the New York Stock Exchange, or Commission experts, testified during the course of the hearings, which began on April 8, 1938, and ended on June 29, 1938. Throughout, these proceedings the Exchange was represented by counsel, as were all witnesses who desired counsel. The printed record of the proceedings comprises 937 pages of testimony and over 100 exhibits. [Footnote: On November 1, 1938, the Commission published a report of its investigation. Part I at the report contains a complete statement of the facts of the case, based on the record developed in the course of the public hearings. Part II sets forth the reforms recently inaugurated or announced by the new management of the New York Stock Exchange, together with the Commission's program under the Securities Exchange Act of 1934, respecting the further protection of customers of brokerage houses. Part in contains the conclusions of the Commission. These reports may be purchased from the Superintendent of Documents (Washington, D. C.). Volume I, containing Parts I, II, and in is available at 20 cents per copy. Volume II, which contains a complete transcript at the testimony taken In the public hearings, Is available at \$1 per copy. Volume III, which contains all the exhibits Introduced in evidence during the public hearings is available at 65 cents per copy.]

On February 23, 1938, after extensive study by the Commission's staff, a draft of tentative rules and forms pursuant to Section 8 (b) of the Securities Exchange Act of 1934 was sent to exchanges, accountants, and other experts in brokerage accounting for comment and criticism. These proposed rules limit the aggregate indebtedness of brokers to a fixed percentage of their net capital. Numerous conferences have been held with exchange officials and accounting experts and the suggestions submitted to the

Commission are being considered preparatory to the issuance of a revised draft of rules and forms.

On March 17, 1938, the Commission submitted to all exchanges and organizations of over-the-counter brokers and dealers a list of questions relating to the suggestion to require brokers and dealers to furnish the Commission and all customers periodic statements of their financial condition. The Commission received in response numerous suggestions which are now under consideration.

Rules have also been drafted pursuant to the provisions of Section 8 (c) of the Act concerning the hypothecation and commingling of customers' securities by brokers.

On May 20, 1938, the Chairman of the Commission, discussing problems of security of customers' property, publicly urged the New York Stock Exchange to study means further to prevent misuse of customers' funds and securities, and suggested as one device the creation of a central trust institution to assume the functions of banking, clearing of securities, and the custodial duties of all members of the Exchange. The Commission's staff has given a considerable amount of time to joint exploration with Exchange officials of the possibilities of establishing such an institution. Other devices to serve as financial safeguards of brokerage solvency have also been under consideration.

Margins

The Commission assisted the staff of the Board of Governors of the Federal Reserve System in the revision of Regulation T which became effective January 1, 1938. The Commission's staff also conferred with members of the Board's staff with respect to the formulation of a procedure for the inspection of banks, relative to conformity with Regulation U. The Commission's investigation of Richard Whitney & Company and loans outstanding to that firm indicated the desirability of initiating such inspections.

Miscellaneous Exchange Studies and Rules

The Commission, during the fiscal year, sent to representative groups, two successive drafts of rules under Section 9 (a) (6) of the Securities Exchange Act of 1934, prescribing practices to be followed in connection with pegging, fixing, and stabilizing the price of registered securities. The first draft, dated January 3, 1938, was thoroughly revised on the basis of suggestions made by representative banks, investment bankers, underwriters, stock exchange members, and stock exchanges themselves, as well as by the Investment Bankers Association, the Investment Bankers Conference, Inc., and the New York Security Dealers Association. Subsequently this revision was made the basis of a shorter draft of rules applicable to a limited number of situations and this draft, dated June 27, 1938, was again sent to representatives of the industry on July 1, 1938.

Rules under Section 17 (a), requiring the maintenance of specific records by brokers and dealers, have been prepared in an effort to codify the best brokerage accounting procedure now employed by representative exchange members. The value of these rules lies chiefly in the establishment of uniform bookkeeping for non-member brokers and dealers, some of whom have been found by the Commission to maintain their records in an un-businesslike manner.

Additional projects for study of matters relating to exchange procedure have included a survey of the odd-lot business, a study of trading procedure on the London Stock Exchange, a study of British methods of security distribution, a statistical analysis of commission rates on domestic exchanges, and an investigation of the problems of business solicitation by exchange members.

Over-the-Counter Studies

The Commission's general examination of the problem of establishing adequate supervision over the business of brokers and dealers doing business in the over-the-counter market, has, as has already been noted, served as a basis for the new legislation which became effective on June 25, 1938. [Footnote: For further discussion of Public Act No. 719, 75th Congress, introduced as the Maloney Bill, see above.] However, another study of major importance on the machinery for the collection, publication and dissemination of quotations and transactions for securities dealt in in the over-the-counter market was also begun. The Commission has also turned its attention to the creation of financial safeguards for customers dealing with non-member brokers and dealers in order to assure to such customers a degree of protection against insolvency and malfeasance comparable to that afforded customers of exchange member firms.

ADMISSION TO PRACTICE AS ATTORNEY OR AGENT BEFORE THE COMMISSION

On June 25, 1938, the Commission adopted Amended Rules of Practice, effective July 1, 1938, which revoked and replaced all previously adopted Rules of Practice. Rule II of the Amended Rules of Practice, which rule pertains to appearance and practice before the Commission, does not provide for the formal admission of any person to practice before the Commission, nor does it provide for the maintenance of a register such as the one established November 1, 1935, in which were entered the names and addresses of all persons admitted to practice before the Commission.

Under Rule II, as amended, practice before the Commission has been defined to include the preparation of any statement, opinion, or other paper by any attorney, accountant, engineer, or other expert, filed with the Commission in any registration statement, application, or other document with the consent of such attorney, accountant, engineer, or other expert. Therefore, all persons who present cases before the Commission, or who

prepare material to be filed with the Commission are regarded as practicing before the Commission. Any person may be disqualified and denied, temporarily or permanently, the privilege of appearing or practicing before the Commission in any way, if such person is found, after a hearing in the matter, not to possess the requisite qualifications to represent others or to be lacking in character or integrity or to have engaged in unethical or improper professional conduct. Thus, persons preparing statements, opinions, and other papers filed with the Commission, as set forth above, are subject to disqualification and disbarment to the same extent as those appearing before the Commission in person.

Prior to July 1, 1938, the Rules of Practice provided for the admission to practice as Attorney or Agent before the Commission of those persons who filed applications therefore and were found by the Commission to possess the requisite qualifications to represent others before it. Inasmuch as the Commission no longer requires formal admission to practice and has discontinued the above mentioned register, the enrollment of all persons admitted to practice terminated July 1, 1938, and those persons have been so informed. The Commission has also informed those persons whose applications for admission to practice before it were pending at the time the Rules of Practice were amended that, in view of the foregoing, their applications had been filed without further action.

The following statistics indicate the number of applications received since the register referred to above was established (November 1, 1935), and prior to its abolishment (July 1, 1938), the number of persons admitted to practice, and the number of applications pending as of June 30, 1938.

[table omitted]

With respect to practice before the Commission by former members of the staff of the Commission, or by persons employing the services of former members of the staff, the Commission has issued the following statement:

“Under the amended Rules of Practice any former member of the staff of the Commission who shall appear in a representative capacity in any matter, including an investigation conducted by the Commission, which was pending before the Commission during the period of his employment and with which matter he has, by virtue of his employment with the Commission, such familiarity as to be prejudicial to the proper conduct of the case, or in which matter he acted for the Commission in such a way as to make unethical his subsequent connection therewith, and any person employing the services of any such former member of the staff in such matters, without first obtaining the consent of the Commission, may be held to be lacking in proper professional conduct.”

PUBLIC REFERENCE ROOMS

During the past year, the facilities in the Public Reference Room of the Commission at Washington, D. C., were utilized by more than 10,200 members of the public seeking information from registration statements, applications, reports, declarations, and other documents filed with the Commission and available for public inspection. As in previous years, thousands of letters and telephone calls were received from members of the public requesting registered information. The Commission, through the facilities provided for the sale of public registered information, filled more than 3,500 orders for photocopies of material, involving 249,160 pages.

In the Public Reference Room in the New York Regional Office, there are available for public inspection copies of such applications for permanent registration of securities on all national securities exchanges, except the New York Stock Exchange and the New York Curb Exchange, as have received final examination in the Commission, together with copies of supplemental reports and amendments thereto. There are also available in this Public Reference Room copies of annual reports filed pursuant to the provisions of Section 15 (d) of the Securities Exchange Act of 1934, as amended, by issuers that have securities registered under the Securities Act of 1933, as amended, and copies of prospectuses filed pursuant to Rules 202, 210, and 800 (b) of the General Rules and Regulations promulgated under the Securities Act of 1933, as amended. During the year ended June 30, 1938, more than 10,600 members of the public seeking registered public information, forms, releases, and other material, visited this Public Reference Room.

More than 3,100 members of the public requesting registered information, forms, releases, and other material were received in the Public Reference Room of the Chicago Regional Office. In this Public Reference Room, there are available for public inspection copies of applications for permanent registration of securities on the New York Stock Exchange and the New York Curb Exchange which have received final examination in the Commission, together with copies of all supplemental reports and amendments thereto.

Duplicate copies of all applications for permanent registration of securities on national securities exchanges are available for inspection by the public at the respective exchanges upon which the securities are registered.

Duplicate copies of applications for registration statements of broker or dealer transacting business on over-the-counter markets, together with supplemental statements thereto, filed with the Commission under the Securities Exchange Act of 1934, are available for public inspection in each regional office having jurisdiction over the zone in which the principal office of the broker or dealer is located.

Photocopies of registered public information may be procured from the offices of the Commission in Washington, D. C., only.

PUBLICATIONS

Information Releases

The activities of the Commission are made known to the public through information releases which are currently issued. These releases include the announcement of rules, regulations, findings, opinions, and orders of the Commission; filings of registration statements, applications, declarations, and reports; public hearings; reports of security issuers, officers, directors, and principal stockholders; and other activities. The releases of the Commission are classified according to subject and made available through issuance to the press and the medium of a mailing list maintained for the convenience of those persons who desire to receive them as they are issued. Upon request, members of the public may have their names placed upon the mailing list to receive all or any classes of releases.

During the year ended June 30, 1938, the Commission published 276 releases under the Securities Act of 1933, 493 releases under the Securities Exchange Act of 1934, and 419 releases under the Public Utility Holding Company Act of 1935. There were also published 301 releases pertaining to daily figures on odd-lot trading on the New York Stock Exchange, and 160 general releases.

There is given below a classification, according to subject matter, of the total 1,649 information releases issued by the Commission during the past fiscal year:

Orders of the Commission: 474

Filing of Registration Statements, Applications, and other Public Documents: 472

Statistical Data: 436

Reports of Court Actions: 117

Rules, Regulations, Interpretations: 82

Investment Trust Study: 17

Personnel Changes and Appointments: 16

Accounting Opinions: 6

Unclassified: 29

Total releases issued: 1, 649

Registration Record, Securities Act of 1933

In addition to the various classes of releases described above, the Commission publishes a daily report known as the Registration Record. This report, which was first made available for public distribution on May 10, 1937, and more fully described in the Third Annual Report of this Commission, contains information concerning events occurring each day in connection with each security issue with respect to which there is a registration statement under the Securities Act of 1933.

Other Publications

Other publications issued by the Commission during the year included the following:

Report to the Congress on the Study and Investigation of the Work, Activities, Personnel and Functions of Protective and Reorganization Committees: Part VII. Management Plans without Aid of Committees.

Report to the Congress on the Study of Investment Trusts and Investment Companies: Part I. Origin, Scope, and Conduct of the Study; Nature and Classification of Investment Trusts and Investment Companies; and Origins of the Investment Trust and Investment Company Movement in the United States.

Decisions of the Commission, Volume 1, containing all decisions contained and printed in Volume 1, Nos. 1, 2, and 3.

Twenty-four semi-monthly issues of the Official Summary of Stock Transactions and Holdings of Officers, Directors, and Principal Stockholders.

List of Securities Traded on Exchanges under the Securities Exchange Act of 1934 as of June 30, 1938, together with supplements thereto.

PERSONNEL

At the close of the fiscal year ended June 30, 1938, the personnel of the Commission comprised 5 Commissioners and 1,209 employees. Of these 1,209 employees, 794 were men and 415 were women. Statistics:

Commissioners: 5

Departmental:

Permanent: 973

Temporary: 23

Regional offices:

Permanent: 213

Temporary: 0

Total: 1,214

Subject to retirement act: 724

FISCAL AFFAIRS

Appropriations for fiscal year 1938

Salaries and expenses: \$3,850,000
Printing and binding: \$45,000
Total appropriated: \$3,895,000

Obligations for fiscal year 1938

Salaries

Departmental: \$2,504,536
Field: \$637,746

Expenses: \$

Mileage and witness fees: \$15,867
Supplies and material: \$107,005
Communications service: \$52,018
Travel expense: \$145,796
Transportation of things: \$2,032
Reporting hearings: \$43,143
Light and power: \$3,410
Rents: \$67,954
Repairs and alterations: \$9,225
Special and miscellaneous expenses: \$1,880
Purchase of equipment: \$49,350

Total obligations for salaries and expenses: \$3 639, 962 'I'

Obligations for printing and binding: \$44,806

Grand total obligations: \$3,684,768

Unobligated balance: \$210,232

Appropriations: \$3,895,000

RECEIPTS FOR THE FISCAL YEAR 1938

During the fiscal year the Commission received \$716,456.35 in revenue. This sum is not available for expenditure by the Commission but is deposited into the U. S. Treasury as miscellaneous receipts. The Commission is at liberty to expend only such funds as the Congress appropriates for its use.

[table data omitted]

APPENDIX I

RULES OF PRACTICE AS AMENDED JUNE 25, 1938 EFFECTIVE JULY 1, 1938

RULE I

BUSINESS HOURS -- REGIONAL OFFICES

The principal office of the Commission at Washington, D. C., is open on each business day, excepting Saturdays, from 9 a. m. to 4:30 p. m., and on Saturdays from 9 a. m. to 1 p. m. Regional offices are maintained at New York, Boston, Atlanta, Chicago, Fort Worth, Denver, San Francisco, and Seattle.

RULE II

APPEARANCE AND PRACTICE BEFORE THE COMMISSION

(a) An individual may appear in his own behalf, a member of a partnership may represent the partnership, a bona-fide officer of a corporation, trust or association may represent the corporation, trust or association, and an officer or employee of a state commission or of a department or political subdivision of a state may represent the state commission or the department or political subdivision of the state, in any proceeding.

(b) A person may be represented in any proceeding by an attorney at law admitted to practice before the Supreme Court of the United States, or the highest court of any State or Territory of the United States, or the Court of Appeals or the District Court of the United States for the District of Columbia.

(c) A person shall not be represented at any hearing before the Commission or a trial examiner except as stated in paragraphs (a) and (b) of this rule.

(d) Any person appearing before or transacting business with the Commission in a representative capacity may be required to file a power of attorney with the Commission showing his authority to act in such capacity.

(e) The Commission may disqualify, and deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to, any person who is found by the Commission after hearing in the matter

(1) Not to possess the requisite qualifications to represent others; or

(2) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct.

(f) Contemptuous conduct at any hearing before the Commission or a trial examiner shall be ground for exclusion from said hearing and for summary suspension without a hearing for the duration of the hearing.

(g) For the purposes of this rule, practicing before the Commission shall include the preparation of any statement, opinion or other paper by any attorney, accountant, engineer or other expert, filed with the Commission in any registration statement, application, report or other document with the consent of such attorney, accountant, engineer or other expert.

RULE III NOTICE OF HEARINGS

(a) Whenever a hearing is ordered by the Commission in any proceeding, notice of such hearing shall be given by the Secretary or other duly designated officer of the Commission to the registrant, applicant, or other parties to the proceeding, or to the person designated as being authorized to receive notices issued by the Commission. Such notice shall state the time, place and subject matter of the hearing and, in proceedings instituted by the Commission, shall be accompanied, except as provided in paragraph (b) hereof, by a short and simple statement of the matters to be considered and determined. Such notice shall be given by personal service, registered mail, or confirmed telegraphic notice, a reasonable time in advance of the hearing.

(b) Whenever a hearing is ordered by the Commission in any proceeding pursuant to Section 8 of the Securities Act of 1933, as amended, notice of such hearing shall be given by the Secretary or other duly designated officer of the Commission to the person designated in the registration statement as being authorized to receive service and notice of orders and notices issued by the Commission relating to such registration statement. Such notice shall state the time and place of hearing and shall include a statement of the items in the registration statement by number or name which appear to be incomplete or inaccurate in any material respect, or to include any untrue statement of a material fact, or to omit a statement of any material fact required to be stated therein or necessary to make the statement therein not misleading. Such notice shall be given either by personal service or by confirmed telegraphic notice a reasonable time in advance of the hearing. The

personal notice or the confirmation of telegraphic notice shall be accompanied by a short and simple statement of the matters and items specified to be considered and determined.

RULE IV AMENDMENTS

(a) Whenever a hearing is ordered by the Commission in any proceeding pursuant to Section 8 of the Securities Act of 1933, as amended, and items in the registration statement which appear to be incomplete or inaccurate in any material respect, or to include any untrue statement of a material fact, or to omit a statement of any material fact required to be stated therein or necessary to make the statements therein not misleading, are not particularly specified in the notice, such items shall be so specified by amendment to the notice prior to the taking of testimony in regard to such items. The trial examiner may grant or deny a motion for such amendment. Such motions shall be in writing, and may be filed with the trial examiner at any time prior to the termination of the hearing. On request of the registrant the trial examiner, after granting such motion, shall grant a reasonable time within which the registrant may familiarize himself with such matters before taking testimony in regard to such items.

(b) In any other proceeding instituted by the Commission, amendment may be allowed to the order, rule to show cause or other moving papers, by the Commission on application to it, or by it upon its own motion.

(c) When issues not raised by the pleading of a party or the Commission's statement of matters to be considered and determined are tried by express or implied consent of the parties, they may be treated in all respects as if they had been raised in the pleadings.

RULE V HEARINGS FOR THE PURPOSE OF TAKING EVIDENCE

(a) Hearings for the purpose of taking evidence shall be held as ordered by the Commission.

(b) All such hearings shall be held before the Commission, one or more of its members, or a duly designated officer, herein referred to as the trial examiner, and all such hearings, except hearings pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, as amended, or Section 24 (b) of the Securities Exchange Act of 1934, as amended, or Section 22 (b) of the Public Utility Holding Company Act of 1935, shall be public unless otherwise ordered by the Commission.

(c) Hearings for the purpose of taking evidence shall be stenographically reported and a transcript thereof shall be made which shall be a part of the record of the proceeding.

Transcripts of public hearings will be supplied by the official reporter at the prescribed rates. Transcripts of private hearings will be supplied at the prescribed rates to the parties.

(d) Objections to the admission or exclusion of evidence before the Commission or trial examiner shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate thereon except as ordered by the Commission or the trial examiner. Exception to any such ruling must be noted before the trial examiner in order to be urged before the Commission. Rulings by the Commission or trial examiner on such objections shall be a part of the transcript.

(e) In any proceeding the Commission or the trial examiner may call for the production of further evidence upon any issue, and, upon notice to all parties, may reopen any hearing at any time prior to the Commission's order disposing of such proceeding.

(f) Subpoenas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the Commission or any officer designated by it for that purpose in connection with any hearing ordered by the Commission, upon written application therefor.

(g) Subpoenas for the production of documentary evidence will issue only upon application in writing, which must specify, as nearly as may be, the documents desired and the facts to be proved by them, in sufficient detail to indicate the materiality and relevance of the documents desired.

(h) Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

(i) In proceedings pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, as amended, or Section 24 (b) of the Securities Exchange Act of 1934, as amended, or Section 22 (b) of the Public Utility Holding Company Act of 1935, if a hearing for the purpose of taking testimony is requested, the Commission may in its discretion, prior to the hearing, require the registrant to furnish in writing additional information in respect of its grounds of objection. Failure to supply the information so requested within 15 days from the date of receipt by the registrant of a notice of the information required, shall be deemed a waiver of the objections to public disclosure of that portion of the information filed confidentially with respect to which the additional information required by the Commission relates, unless the Commission shall otherwise order for good cause shown at or before the expiration of such 15-day period.

RULE VI

MOTIONS

(a) Motions in any proceeding before a trial examiner which relate to the introduction or striking of evidence, or motions before a trial examiner in any proceeding pursuant to Section 8 of the Securities Act of 1933, as amended, which relate to amendment of the notice of hearing to include additional items of the registration statement as provided in Rule IV (a), may be ruled on by the trial examiner. All other motions shall be ruled on by the Commission.

(b) Motions or similar pleadings calling for determination by the Commission shall be filed with the Secretary or other duly designated officer of the Commission in writing, provided that motions or similar pleadings calling for determination by the Commission but made in the course of a hearing, may be filed with the trial examiner in writing, who shall refer such motion to the Commission. Any such motion or similar pleading shall be accompanied by a written brief of the points and authorities relied upon in support of the same. Any party or counsel to the Commission may file a reply brief within 5 days after service upon him of such motion or other pleading as provided in Rule XIV, unless otherwise ordered by the Commission. Motions and similar pleadings will be considered on the briefs filed following the time for filing the reply brief, unless otherwise ordered by the Commission. No oral argument will be heard on such matters unless the Commission so directs.

RULE VII

EXTENSIONS OF TIME -- CONTINUANCES AND ADJOURNMENTS

Except as otherwise expressly provided by law, the Commission for cause shown may extend any time limits prescribed by these rules for filing any papers, and may continue or adjourn any hearing. A hearing before a trial examiner shall begin at the time and place ordered by the Commission, but thereafter may be successively adjourned to such time and place as may be ordered by the Commission or by the trial examiner.

RULE VIII

DEPOSITIONS

(a) The Commission may, for cause shown, order testimony to be taken by deposition.

(b) If any party or counsel to the Commission desires to take a deposition he shall make application in writing, setting forth the reasons why such deposition should be taken, the name and residence of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition. Thereupon the Commission may, in its discretion, issue an order which will name the witness whose deposition is to be taken and specify the time when, the place where, and

the designated officer before whom the witness is to testify. Such order shall be served upon all parties and counsel to the Commission by the Secretary, or other duly designated officer of the Commission, a reasonable time in advance of the time fixed for taking testimony.

(c) Witnesses whose testimony is taken, by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall be recorded and the answers shall be taken down in the words of the witness.

(d) Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon, but no transcript filed by the officer shall include argument or debate. Objections to questions or evidence shall be noted by the officer upon the deposition, but he shall not have power to decide on the competency or materiality or relevancy of evidence. Objections to questions or evidence not taken before the officer shall be deemed waived.

(e) The testimony shall be reduced to writing by the officer, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. The original deposition and exhibits shall be forwarded under seal to the Secretary of the Commission with such number of copies as may be requested by the Secretary of the Commission. Upon receipt thereof the Secretary shall file the original in the proceedings and shall forward a copy to each party or his attorney of record and to counsel to the Commission.

(f) Such depositions shall conform to the specifications of Rule XV.

(g) Any part of a deposition not received in evidence at a hearing before the Commission or a trial examiner shall not constitute a part of the record in such proceeding, unless the parties and counsel to the Commission shall so agree, or the Commission so orders.

(h) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. The interrogatories shall be filed with the application in triplicate, and copies thereof shall be served on all other parties and counsel to the Commission by the Secretary or other duly designated officer of the Commission. Within 5 days any other party or counsel to the Commission may file with the Secretary his objections, if any, to such interrogatories, and may file such cross-interrogatories as he desires to submit. Cross-interrogatories shall be filed in triplicate, and copies shall be served on all other parties and counsel to the Commission, who shall have 3 days thereafter to file their objections, if any, to such cross-interrogatories. Objections to interrogatories or cross-interrogatories shall be settled by the Commission or trial examiner. Objections to interrogatories shall be made before the order for taking the deposition issues and if not so made shall be deemed waived. When a deposition is taken upon written interrogatories and cross-interrogatories, neither any party nor counsel to the Commission shall be present or represented, and no person

other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

RULE IX TRIAL EXAMINER' S REPORT

(a) Following any hearing before a trial examiner, except hearings in proceedings pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, as amended, or Section 24 (b) of the Securities Exchange Act of 1934, as amended, or Section 22 (b) of the Public Utility Holding Company Act of 1935, the transcript of the testimony shall forthwith be filed with the Secretary of the Commission. Following any hearing before a trial examiner in the excepted cases, the transcript of the testimony shall forthwith be filed with the Chairman of the Commission.

(b) Following any hearing before a trial examiner other than (1) a hearing under the Public Utility Holding Company Act of 1935, or (2) a hearing on the question of postponement of the effective date of registration of a broker or dealer under Section 15 (b) of the Securities Exchange Act of 1934, as amended, pending final determination whether such registration shall be denied, or (3) a hearing pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, as amended, or Section 24 (b) of the Securities Exchange Act of 1934, as amended, the trial examiner shall, within 10 days after service upon him by the Secretary or other duly designated officer of the Commission of a copy of the transcript of the testimony, file with the Secretary of the Commission his report containing his findings of fact.

(c) Such reports shall be advisory only, and the findings of fact therein contained shall not be binding upon the Commission. The initial page of the report shall contain a statement to such effect. In any proceeding in which, under the provisions of Rule XIII (b) of the Rules of Practice of the Commission, the report is first to be made available to the public on the opening date of public argument on the merits before the Commission, or in the event of submission to the Commission without argument, on the date of such submission, the initial page of the report shall also contain a statement to the effect that the report is confidential, shall not be made public, and is for the use only of the Commission, the respondent or respondents, and counsel, but copies of the report issued on or after such opening date or submission may omit such statement.

(d) A copy of such report shall be forthwith served on each party and on counsel to the Commission by the Secretary or other duly designated officer of the Commission.

(e) Within 5 days after the conclusion of the hearing in any proceeding any party or counsel to the Commission may submit to the presiding officer, or, in the case of a

hearing before a trial examiner in respect of which no trial examiner's report is required to be submitted, to the officer designated in paragraph (a) of this rule as the person with whom transcripts of testimony are to be filed, a statement in writing in terse outline setting forth such party's request for specific findings, which may be accompanied by a brief in support thereof. [Footnote: On October 14, 1938, the Commission amended Rule IX (e) of the Rules of Practice by striking the first sentence of said rule and substituting the following sentence: "Within five days after the receipt of a copy of the transcript of the testimony, if promptly at the conclusion of the hearing he has ordered a copy thereof, or if he has not ordered a copy, within five days after the filing of the transcript of the testimony with the duly designated officer of the Commission, any party or counsel to the Commission may submit to the presiding officer, or, in the case of a hearing before a trial examiner in respect of which no trial examiner's report is required to be submitted, to the officer designated in paragraph (a) of this Rule as the person with whom transcripts of testimony are to be filed, a statement in writing in terse outline setting forth such party's request for specific findings, which may be accompanied by a brief in support thereof."] A copy of such request and brief in support thereof shall be served upon each party and upon counsel to the Commission as provided in Rule XIV in the case of a hearing before a trial examiner in respect of which no trial examiner's report is required to be submitted. A copy of such request and brief in support thereof shall be served upon each party and upon counsel to the Commission by the presiding officer in the case of a hearing in which a trial examiner's report is to be submitted in which event the trial examiner shall immediately certify the facts concerning such service, including the dates thereof to the Secretary of the Commission. In all cases where such requests and briefs in support thereof are served upon each party and upon counsel to the Commission by the trial examiner the provisions of Rule XIII (d) shall not be applicable. This paragraph shall not apply to any proceeding on the question of postponement of the effective date of registration of a broker or dealer under Section 15 (b) of the Securities Exchange Act of 1934, as amended, pending final determination whether such registration shall be denied.

(f) All requests for specific findings filed pursuant to paragraph (e) of this rule shall be a part of the record.

RULE X EXCEPTIONS

(a) Within 5 days after receipt of a copy of the trial examiner's report, any party or counsel to the Commission may file exceptions to the findings of the trial examiner or to his failure to make findings, or to the admission or exclusion of evidence. A copy of such exceptions shall be forthwith served on each party and on counsel to the Commission by the Secretary or other duly designated officer of the Commission. Exceptions shall be argued only at the final hearing on the merits before the Commission.

(b) Objections to the findings of the trial examiner or to his failure to make findings not saved by exception filed pursuant to this rule will be deemed to have been abandoned and may be disregarded. Objections to the admission or exclusion of evidence not saved by exception at the time of the hearing for the purpose of taking evidence and included in the exceptions filed pursuant to this rule will be deemed to have been abandoned and may be disregarded.

RULE XI BRIEFS

(a) Any party to a proceeding or counsel to the Commission may file a brief in support of his contentions and exceptions within 15 days from the date of service on such party or on counsel to the Commission of a copy of the trial examiner's report. In a case where no trial examiner's report is to be filed and a request for specific findings is filed by a party to the proceeding or counsel to the Commission, any party to the proceeding or counsel to the Commission may file a brief in support of his contentions and exceptions within 15 days of the filing as provided in paragraph (e) of Rule IX hereof by such party or counsel to the Commission of such request for specific findings, or within 15 days from the date of service on such party or on counsel to the Commission of a copy of such request for specific findings. In a case where no trial examiner's report is to be filed and where no request for specific findings is filed, any party to a proceeding or counsel to the Commission may file a brief in support of his contentions and exceptions within 15 days from the date when the transcript of testimony is filed with the Secretary or other duly designated officer of the Commission.

(b) All briefs shall be confined to the particular matters in issue. Each exception or request for findings which is briefed shall be supported by a concise argument and by citation of such statutes, decisions and other authorities and by page references to such portions of the record, as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate references to the transcript. Reply briefs shall be confined to matters in original briefs of opposing parties. Reply briefs in proceedings held pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, as amended, or Section 24 (b) of the Securities Exchange Act of 1934, as amended, or Section 22 (b) of the Public Utility Holding Company Act of 1935, will be received only by special permission of the Commission. Any scandalous or impertinent matter contained in any brief may be stricken on order of the Commission.

(c) Exceptions and, in cases where no trial examiner's report is to be filed, requests for specific findings not briefed in accordance with Rule XI may be regarded by the Commission as waived.

(d) All briefs, including briefs filed pursuant to Rule VI, containing more than 10 pages shall include an index and table of cases. The date of each brief must appear on its front cover or title page. If briefs are typewritten or mimeographed, 10 copies shall be filed; if printed, 20 copies, provided that only 7 copies of briefs in proceedings held pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, as amended, or Section 24 (b) of the Securities Exchange Act of 1934, as amended, or Section 22 (b) of the Public Utility Holding Company Act of 1935, need be filed in any instance. No brief shall exceed 60 pages in length, except with the permission of the Commission.

(e) Copies of briefs shall be served by the Secretary or other duly designated officer of the Commission on the parties to the proceeding and on counsel to the Commission, and reply briefs may be filed within 5 days thereafter. Such reply briefs as are authorized by the Commission in proceedings held pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, as amended, or Section 24 (b) of the Securities Exchange Act of 1934, as amended, or Section 22 (b) of the Public Utility Holding Company Act of 1935, shall be filed within 5 days after such authorization.

(f) Briefs not filed on or before the time fixed in these rules will be received only upon special permission of the Commission.

(g) Without regard to the foregoing provisions of this rule with respect to filing of briefs, in the event an application is submitted to the Commission for final determination pursuant to paragraph (e) of Rule UB2 under the Securities Exchange Act of 1934, as amended, or paragraph (c) of Rule U-22B-1 under the Public Utility Holding Company Act of 1935, either party or counsel to the Commission may file a brief in support of his contentions within 15 days from the time of such submission. In such proceeding, reply briefs will be received only upon special permission of the Commission.

(h) This rule shall not apply to any proceeding on the question of postponement of the effective date of registration of a broker or dealer under Section 15 (b) of the Securities Exchange Act of 1934, as amended, pending final determination whether such registration shall be denied and in any such proceeding neither any party nor counsel to the Commission shall be entitled to file a brief.

RULE XII HEARING BEFORE THE COMMISSION

(a) Upon written request of any party or of counsel to the Commission, which must be made within the time provided for filing the original briefs or, in the case of a proceeding on the question of postponement of the effective date of registration of a broker or dealer under Section 15 (b) of the Securities Exchange Act of 1934, as amended, pending final determination whether such registration shall be denied, before the close of the hearing for the purpose of taking evidence, the matter will be set down for oral argument before

the Commission; provided that, except upon order of the Commission, neither any party nor counsel to the Commission will be permitted to make oral argument before the Commission on matters arising out of proceedings pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, as amended, or Section 24 (b) of the Securities Exchange Act of 1934, as amended, or Section 22 (b) of the Public Utility Holding Company Act of 1935.

(b) In a case where no trial examiner's report is made, the Commission shall determine the matter on the moving papers, the transcript of the testimony and exhibits received at the hearing, requests for specific findings, if any, the briefs of the parties and counsel to the Commission, if any, and oral argument before the Commission, if any.

(c) The Commission, upon its own motion or upon application in writing by any party or counsel to the Commission for leave to adduce additional evidence which application shall show to the satisfaction of the Commission that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence at the hearing before the Commission or the trial examiner, may hear such additional evidence or may refer the proceeding to the trial examiner for the taking of such additional evidence.

(d) Any petition for rehearing by the Commission shall be filed within 5 days after issuance of the order complained of and shall clearly state the specific grounds and the specific matters upon which rehearing is sought.

RULE XIII

FILING PAPERS -- DOCKET -- COMPUTATION OF TIME

(a) All reports, exceptions, briefs, and other papers required to be filed with the Commission in any proceeding shall be filed with the Secretary, except that all papers containing data as to which confidential treatment is sought pursuant to Rules 580, UB2, or U-22B-1 of the Rules and Regulations of the Commission, together with applications making objection to the disclosure thereof, shall be filed with the Chairman. Any such papers may be sent by mail or express to the officer with whom they are directed to be filed, but must be received by such officer at the office of the Commission, in Washington, D. C., within the time limit, if any, for such filing.

(b) All papers containing data as to which confidential treatment is sought pursuant to Rules 580, UB2, or U-22B-1 of the Rules and Regulations of the Commission, together with any application making objection to the disclosure thereof, or other papers relating in any way to such application, shall be made available to the public only in accordance with the applicable provisions of Rules 580 (h), UB2 (i), or U-22B-1. The report of the trial examiner, exceptions thereto, requests for findings, and briefs in support of such requests or in support of or in opposition to such exceptions, which are filed in connection with any hearing pursuant to Section 15 (b) or Section 19 (a) (3) of the

Securities Exchange Act of 1934, as amended, shall first be made available to the public on the opening date of public argument on the merits before the Commission or in the event of submission to the Commission without argument upon the date of such submission.

(c) The Secretary shall maintain a docket of all proceedings, and each proceeding shall be assigned a number.

(d) Wherever under these rules, unless otherwise expressly provided, any limitation is made as to the time within which any reports, exceptions, briefs, or other papers are required to be filed with the Commission in any proceeding, trial examiners and parties who are residents of the following states: Montana, Idaho, Wyoming, Colorado, New Mexico, Utah, Arizona, Nevada, Washington, Oregon, and California, shall have an additional period of 5 days; and trial examiners and parties who reside beyond the confines of the continental United States shall have an additional period of 20 days within which to file such reports, exceptions, briefs, and other papers. For the purposes of this rule the person upon whom service is made by the Commission is the party whose residence shall determine whether the additional time provided herein shall be granted.

(e) In computing any period of time prescribed or allowed by these rules or by order of the Commission, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday in the District of Columbia, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. Intermediate Sundays and holidays shall be included in the computation. A half-holiday shall be considered as other days and not as a holiday.

(f) Unless otherwise specifically provided in these rules, an original and 8 copies of all papers shall be filed, unless the same be printed, in which case 20 copies shall be filed.

RULE XIV

SERVICE OF REPORTS, EXCEPTIONS, BRIEFS, AND OTHER PAPERS

(a) All reports, exceptions, briefs, requests for specific findings, or other documents or papers required by these rules to be served on any party to a proceeding, or on counsel to the Commission, shall be served by the Secretary or other duly designated officer of the Commission, provided that such papers concerning applications for confidential treatment pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, as amended, or Section 24 (b) of the Securities Exchange Act of 1934, as amended, or Section 22 (b) of the Public Utility Holding Company Act of 1935, shall be served by the Chairman.

(b) Subject to the provisions of Rule in (a) hereof, such service, except on counsel to the Commission, shall be made by personal service on the party or his attorney of record or by registered mail addressed to the party or his attorney of record.

RULE XV

FORMAL REQUIREMENTS AS TO PAPERS FILED IN PROCEEDINGS

(a) All papers filed under these rules shall be typewritten, mimeographed, or printed, shall be plainly legible, shall be on one grade of good unglazed white paper approximately 8 inches wide and 10 inches long, with left-hand margin 1.5 inches wide, and shall be bound at the upper left-hand corner. They shall be double-spaced, except that quotations shall be single-spaced and indented. If printed, they shall be in either 10- or 12-point type with double-leaded text and single-leaded quotations.

(b) All papers must be signed in ink by the party filing the same, or his duly authorized agent or attorney, or counsel to the Commission, and must show the address of the signer.

(c) All papers filed must include at the head thereof, or on a title page, the name of the Commission, the names of the parties, and the subject of the particular paper or pleading, and the docket number assigned to the proceeding.

RULE XVI

SIGNATURE OF COMMISSION ORDERS

All orders of the Commission shall be signed by the Secretary or such other person as may be authorized by the Commission.

RULE XVII

INTERVENTION

Any person upon proper showing of sufficient interest in the subject matter may, upon application in writing to the Commission duly made, be allowed to intervene in any proceeding upon such terms and conditions as the Commission may prescribe.

RULE XVIII

CONSOLIDATION

By order of the Commission, or upon agreement between the parties and counsel to the Commission, proceedings involving a common question of law or fact may be joined for hearing of any or all the matters in issue in such proceedings and such proceedings may

be consolidated; and the Commission may make such orders concerning the conduct of such proceedings as may tend to avoid unnecessary costs or delay.

RULE XIX

NONAPPLICABILITY OF RULES TO INVESTIGATIONS

These rules, other than Rule II, shall not be applicable to investigations conducted by the Commission pursuant to Sections 8 (e) 19 (b), and 20 (a) of the Securities Act of 1933, as amended, Sections 21(a) and 21 (b) of the Securities Exchange Act of 1934, as amended, or Sections 11(a), 13 (g), 18 (a), 18 (b), 18 (e) and 30 of the Public Utility Holding Company Act of 1935.

APPENDIX II

GUIDES TO FORMS [Footnote: This guide is designed to aid in the selection of appropriate forms and is revised from time to time as circumstances require. Copies of the forms herein referred to will be furnished without charge upon request.]

GUIDE TO FORMS ADOPTED UNDER THE SECURITIES ACT OF 1933

FOR REGISTRATION STATEMENTS

FORM A-1 -- GENERAL FORM

(a) *General Rule.* -- This form is to be used for registration under the Securities Act of 1933, as amended, of all securities for the registration of which no other form is specifically prescribed.

(b) *Special Rule.* -- Notwithstanding the rules for the use of Form A-2 for corporations, Form A-1 may be used by any incorporated investment trust for registration under the Securities Act of 1933, as amended, of an additional block of securities of a class, part of which has previously been registered on Form A-1.

FORM A-O-1 FOR SECURITIES OF CORPORATIONS ORGANIZED WITHIN 2 YEARS TO ENGAGE IN THE EXPLOITATION OF MINERAL DEPOSITS (OTHER THAN OIL OR GAS)

This form is to be used for registration under the Securities Act of 1933 of securities of any corporation organized within 2 years prior to the date of filing the registration statement to engage primarily in the exploitation of mineral deposits (other than oil or gas) if such securities are to be sold to the public for cash or purchasers' obligations to pay cash.

This form shall not be used, however, by any corporation which (a) has any subsidiary, or (b) was organized to take over and continue the business of another person or persons, unless such other persons were organized within such 2 years.

FORM A-2-FOR CORPORATIONS

This form is to be used for registration statements, except such statements as to which a special form is specifically prescribed, under the Securities Act of 1933, as amended, by any corporation which files profit-and-loss statements for 3 years and which meets either one of the following conditions: (a) Such corporation has made annually available to its

security holders, for at least 10 years, financial reports (which may be reports consolidating the reports of the corporation and its subsidiaries) including at least a balance sheet and a profit-and-loss or income statement, or (b) such corporation had a net income for any 2 fiscal years of the 5 fiscal years preceding the date of the latest balance sheet filed with the registration statement. If such corporation has subsidiaries, such income shall be determined on the basis of consolidated reports for such corporation and its subsidiaries. Notwithstanding what is hereinabove prescribed in this paragraph, however, this form shall not be used by any corporation organized within 10 years, if the majority of the capital stock thereof was issued to promoters of the corporation in consideration of property or services, or if more than one-half of the proceeds of the sale of securities of such corporation has been used to purchase property acquired by the corporation from the promoters of the corporation.

This form may also be used for registration statements (except such statements as to which a special form is specifically prescribed) by a corporation organized for the purpose of distributing to its stockholders only, water, electricity, or gas, and prohibited from paying any dividends to its stockholders except upon its dissolution or liquidation, provided that:

1. The corporation has been in existence at least 15 years prior to the date of the filing of the registration statement;
2. There has been no default by the corporation upon any of its funded indebtedness within the period of 15 years prior to the date of the filing of the registration statement;
3. The registrant will have a total indebtedness, upon the issuance of the securities registered, not exceeding 50 percent of the amount, less valuation reserves, at which the total assets of the registrant are carried on the latest balance sheet of the registrant filed with the registration statement, giving effect to the proceeds of the -securities registered; and
4. Within the period of 10 years preceding the date of the filing of the registration statement, the corporation shall not have failed to levy and collect assessments in amounts sufficient to meet all current charges.

SPECIAL RULES AS TO THE USE OF FORM A-2 FOR CORPORATIONS

1. Notwithstanding that Form E-1 is specifically prescribed for use in cases involving an exchange of securities by the issuer thereof for others of its securities or a modification of the terms of securities by agreement between the issuer and its security holders, a registrant otherwise entitled to use Form A-2 may, at its option, use Form A-2 in any such case if the registrant is not in reorganization pursuant to Section 77B of the Bankruptcy Act or in bankruptcy or receivership and if no default exists on any

outstanding funded debt (other than a default in sinking fund payments which has been waived by the holders of at least 80 percent in principal amount of the issue outstanding). If Form A-2 is used pursuant to this rule, the fee payable for registration shall be calculated in accordance with Instruction 7 in Form E-1, and the table setting forth the calculation shall be prepared as prescribed in such form.

2. Form A-2 may be used by a registrant if all the following conditions exist:

(a) The registrant was organized as the successor to a single predecessor, or to a group of predecessors one of which, at the time of succession, directly or indirectly owned substantially all of the outstanding stock of all the other predecessors;

(b) The registrant acquired all of the assets and assumed all of the liabilities of such predecessor or predecessors, and the capital structure of the registrant immediately following the succession was substantially the same as the capital structure of the single predecessor, or as the consolidated capital structure of the group of predecessors, except for such changes as may have resulted from the substitution of issuers incident to the succession or from changes in capital stock liability per share; and

(c) The single predecessor, or the parent company in a group of predecessors, could have used Form A-2 if the succession had not taken place.

In determining whether such single predecessor or such parent company in a group of predecessors could have used Form A-2, the record of the registrant in regard to income or annual reporting to security holders shall be considered a continuation of the record of such single predecessor or such parent company. In the case of a group of predecessor companies, the income of the parent company of the group shall be determined on the basis of consolidated reports for such parent company and its subsidiaries, the subsidiaries to be included in the consolidated reports whether or not they were combined with the parent company to form the registrant.

3. Notwithstanding the provisions of the last sentence of the rule for the use of Form A-2 for corporations, that form may be used by a corporation otherwise entitled to use the form, if the property acquired from promoters under the circumstances stated in such last sentence consisted principally of one or more going businesses, or of securities representing directly or indirectly more than 50 percent of the voting power controlling such businesses.

4. Notwithstanding the rules as to the use of Form E-1, or the rule as to the use of form A-2 for Corporations, Form A-2 may be used in the situation described below for registration statements, except those for which a special form (other than Form E-1) is specifically prescribed, by corporations which file profit-and-loss statements of their own or of their predecessors for 3 years and which, or the predecessors of which, have in the past 15 years paid dividends upon any class of common stock for at least 2 consecutive

years.. The situation in which Form A-2 may thus be used is that of registration of securities issued or sold in the course of a "reorganization," as defined in Rule 5 (1) as to the use of Form E-1, where the only operation which brings the transaction within the definition is the acquisition of assets of a subsidiary by the registrant in consideration of securities of the registrant, or the exchange of securities of the registrant for outstanding securities of a subsidiary. [Footnote: Rule 5 (1) defining the term "reorganization" is set forth below under the caption "Form E-1 for Securities in Reorganization."]

5. Any corporation which was formed by the consolidation of two or more corporations may use Form A-2, if each of the constituent corporations which collectively brought in a majority of the assets,. as shown by the books of the constituent corporations prior to the consolidation, could have used Form A-2 if the consolidation had not taken place. In determining whether any such constituent corporation could have used Form A-2, the record of the registrant in regard to income or annual reporting to security holders shall be considered a continuation of such constituent corporation's record. In this rule, all the corporations consolidated to form the registrant. are called the "constituent corporations."

6. Form A-2 may be used by a registrant if all the following conditions exist:

(a) The registrant was a wholly owned subsidiary of a corporation which, either alone or with one or more of its other wholly owned subsidiaries, was merged into the registrant;

(b) The registrant acquired all the assets and assumed all the liabilities of the corporations merged into it; and

(c) The parent corporation could have used Form A-2 had the merger not taken place. In determining whether such parent corporation could have used Form A-2, the record of the registrant subsequent to the merger, in regard to income or annual reporting to security holders, shall be considered a continuation of the record of such parent corporation.

7. Notwithstanding the provisions of Clause (b) of the rule as to the use of Form A-2 for corporations, this form may be used by a corporation which has had a net income for only 1 fiscal year of the 5 fiscal years preceding the date of the latest balance sheet filed with the registration statement, if --

(1) The corporation was organized at least 5 years prior to the date of filing;

(2) Total assets of the registrant and its subsidiaries, after deducting valuation and qualifying reserves, amount to not more than \$5,000,000, as shown by the most recent balance sheets filed with the registration statement; and

(3) The registrant is not an investment company, a bank holding company or a small-loan or other finance company. [Footnote: In the absence of further action by the Commission, this special Rule 7 will cease to be effective after February 28, 1939.]

FORM A-R FOR CORPORATE BONDS SECURED BY MORTGAGE INSURED BY FEDERAL HOUSING ADMINISTRATION

This form is to be used for registration under the Securities Act of 1933, as amended, of corporate bonds constituting part of an issue secured by mortgage insured by Federal Housing Administration under the authority of Section 207 of the National Housing Act.

FORM C-1 FOR SECURITIES OF UNINCORPORATED INVESTMENT TRUSTS

This form is to be used for registration under the Securities Act of 1933, as amended, of securities of unincorporated investment trusts of the fixed or restricted management type, having a depositor or sponsor but not having a board of directors or persons performing similar functions.

FORM C-2 FOR CERTAIN TYPES OF CERTIFICATES OF INTEREST IN SECURITIES

This form is to be used for registration under the Securities Act of 1933 of certificates of interest in securities of a single class of a single issuer, if the following conditions exist:

- (1) The major part of the certificates are to be sold to the public for cash;
- (2) Under the terms of the deposit agreement the depositor (as defined below) has no rights or duties as depositor, subsequent to the deposit of the securities with the depository;
- (3) Under the terms of the deposit agreement the power to vote or give a consent with respect to the deposited securities may be exercised only by, or pursuant to the instructions of, the holders of the certificates of interest, except a power, if any, to vote to effect a split-up of deposited stock in such manner as to cause no change in the aggregate capital stock liability of the issuer of the deposited securities;
- (4) The securities deposited by the depositor are registered under the Securities Act of 1933 in connection with the sale of the certificates of interest.

FORM C-3 FOR AMERICAN CERTIFICATES AGAINST FOREIGN ISSUES AND FOR THE UNDERLYING SECURITIES

This form shall be used for registration under the Securities Act of 1933 of American certificates (for example, so-called American depository receipts for foreign shares or

American participation certificates in foreign bonds or notes) issued against securities of foreign issuers deposited or to be deposited with an American depository (whether physically held by such depository in America or abroad) and of the foreign securities so deposited.

FORM D-1 FOR CERTIFICATES OF DEPOSIT

In registering certificates of deposit issued in anticipation of or in connection with a plan of reorganization or readjustment, Form D-1 shall be used. If a plan of reorganization or readjustment is proposed at the time the call for deposits is to be made, Parts I and II of Form D-1 should be filed at the same time. If no such plan is proposed at the time the call for deposits is to be made, Part I may be filed alone, and Part II must then be filed before the plan is submitted to the security holders or deposits are solicited under the plan. Part II is an amendment of Part I and as such shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

In the event that a registrant is exempted from the necessity for filing Part I, he may nevertheless file Part II.

Before the issuance of the securities provided in the plan of readjustment or reorganization, Form E-1 is to be filed by the issuer of such securities, unless exempted from the necessity of such filing by the Act.

FORM D-1A FOR CERTIFICATES OF DEPOSIT ISSUED BY ISSUER OF SECURITIES CALLED FOR DEPOSIT

This form is to be used only where the issuer of the certificates of deposit is the original issuer of the securities called for deposit, and only if the certificates of deposit are issued in connection with a plan of reorganization or readjustment which involves the issue of new securities to the holders of certificates of deposit.

FORM E-1 FOR SECURITIES IN REORGANIZATION

This form is to be used to register securities (including contracts of guaranty but excepting voting trust certificates, certificates of deposit, and certificates of interest or shares in unincorporated investment trusts of the fixed or restricted management type not having a board of directors or a board of persons performing similar functions, but having a depositor or sponsor) sold or modified in the course of a reorganization. [Footnote: 4Attention Is called to the rules as to the use of Form A-2 which permit the use of that form in certain instances for securities in reorganization.]

The “Rules and Instructions Accompanying Form E-1” contain the following definition of the term “reorganization”:

5. As used in these rules and the accompanying instructions:

(1) The term “reorganization” includes any transaction involving:

(a) A readjustment by modification of the terms of securities by agreement; or

(b) A readjustment by the exchange of securities by the issuer thereof for others of its securities; or

(c) The exchange of securities by the issuer thereof for securities of another issuer; or

(d) The acquisition of assets of a person, directly or indirectly, partly or wholly, in consideration of securities distributed or to be distributed as part of the same transactions directly or indirectly to holders of securities issued by such person or secured by assets of such person; or

(e) A merger or consolidation.

FORM F-1 FOR VOTING TRUST CERTIFICATES

This form is to be used to register Voting trust certificates issued in the course of a reorganization or otherwise.

FORM G-1 FOR FRACTIONAL UNDIVIDED OIL AND GAS ROYALTY INTERESTS

Form G-1 is to be used to register fractional undivided producing oil and gas royalty interests.

As used in the foregoing paragraph, the term “producing royalty interest” means any royalty interest in a tract of land from which oil or gas was being produced in commercial quantities within 7 days prior to the filing of the registration statement and from which production of oil or gas had not permanently ceased, to the knowledge of the issuer, on the date on which the statement became effective.

FORM G-2 FOR FRACTIONAL UNDIVIDED NONPRODUCING OIL AND GAS ROYALTY INTERESTS

Form G-2 is to be used to register fractional undivided nonproducing oil and gas royalty interests.

As used in the foregoing paragraph, the term “nonproducing royalty interest” means any royalty interest not included in the definition of “producing royalty interest” above.

[Footnote: Form A-1 should be used for overriding royalties and working interests, as distinct from landowners’ royalties for which Forms G-1 and G-2 are appropriate. In the case of overriding royalties or working interests, however, the information specified by Form G-1 or G-2 should be added to the statement on Form A-1 by way of supplemental material.]

INFORMATION AND DOCUMENTS REQUIRED FOR EXEMPTION OF CERTAIN SECURITIES UNDER SECTION 3 (b) OF THE ACT

Certain issues of securities having an aggregate offering price to the public not exceeding \$100,000 are exempted from the registration provisions of the Act by regulations of the Commission pursuant to Section 3 (b) of the Act upon compliance with certain conditions provided in the regulations. The pertinent regulations are available without charge upon request.

FORM 1-G FOR REPORT OF SALE OF OIL OR GAS RIGHT

This form is to be used for reports of sales of oil or gas rights, required by Rule 320.

FORM 2-G FOR REPORT OF SALE OF OIL OR GAS RIGHT

This form is to be used for reports Of sales of oil or gas rights, required by Rule 322.

FOR ANNUAL REPORTS OF REGISTRANTS UNDER THE SECURITIES ACT OF 1933 [Footnote: The filing of annual reports on these forms is required by Rule X-15D-1, pursuant to Section 15 (d) of the Securities Exchange Act of 1934, as amended.]

FORM 1-MD GENERAL FORM

This form is to be used for the annual reports, pursuant to Section 15 (d) of the Securities Exchange Act of 1934, of all issuers except those for which another form is specifically prescribed.

FORM 2-MD FOR SECURITIES OF FIXED INVESTMENT TRUSTS

This form is to be used for annual reports, pursuant to Section 15 (d) of the Securities Exchange Act of 1934, relating to securities of unincorporated investment trusts of the fixed or restricted management type, having a depositor or sponsor but not having a board of directors or persons performing similar functions.

FORM 3-MD FOR VOTING TRUST CERTIFICATES

This form is to be used for annual reports, pursuant to Section 15 (d) of the Securities Exchange Act of 1934, relating to voting trust certificates.

FORM 4-MD FOR CERTIFICATES OF DEPOSIT

This form is to be used for annual reports, pursuant to Section 15 (d) of the Securities Exchange Act of 1934, relating to certificates of deposit issued by a committee.

GUIDE TO FORMS ADOPTED UNDER THE SECURITIES EXCHANGE ACT OF 1934

FOR APPLICATIONS FOR REGISTRATION OF SECURITIES ON NATIONAL SECURITIES EXCHANGES

Form 7. For provisional applications. -- Where the form for permanent registration of any particular class of security has not yet been authorized, and for a period of 90 days after the filing of applications on such form is authorized, a provisional application for registration of a security of such class may be filed on Form 7 pursuant to Rule X-12B-2. (Rule X-12B-2 sets forth the requirements of an application filed on Form 7.)

Form 8. For amendments to applications for registration or amendments to annual reports. -- This form shall be used for amendments to applications for registration of securities pursuant to Section 12 (b) and (c) of the Securities Exchange Act of 1934 or amendments to annual reports pursuant to Section 13 of that Act.

Form 8-A. For additional securities. -- This form shall be used for applications for registration of securities on an exchange on which other securities of the registrant, whether of the same or a different class, are registered pursuant to Section 12 (b) and (c)

of the Act if Form 10, 11, 13, 15, 17, 22, or 23 would be the form appropriate for registration in case the registrant did not have securities so previously registered: Provided, That if Form 22 or 23 would be appropriate for original registration, this form shall be used only if securities of the registrant issued pursuant to the plan of reorganization or succession by reason of which Form 22 or 23 would be appropriate for original registration have been registered on such exchange pursuant to an application on such form.

Form 8-B. For securities issued in certain cases upon the registrant's successor to an issuer or issuers of previously registered securities. -- This form shall be used by an issuer, not having securities previously registered for applications filed on and after March 12, 1936, for the registration of securities, if the conditions set forth in the following paragraphs (a), (b), (c), and (d) exist:

(a) (1) The registrant, having no assets at the time other than nominal assets, succeeded to a single predecessor which had securities registered pursuant to Section 12 (b) and (c) of the Act on the exchange or exchanges on which registration is applied for on this form; or

(2) The registrant was organized as the successor to, or, having no assets at the time other than nominal assets, succeeded to, a group of predecessors consisting of a parent which had securities so registered and one or more wholly owned subsidiaries of such parent; or

(3) The registrant was a wholly owned subsidiary of a corporation having securities so registered, which corporation, either alone or with one or more of its other wholly owned subsidiaries, was merged into the registrant.

(b) Substantially all of the securities to be registered on this form were or are to be issued in exchange for or otherwise in respect of previously registered securities of one or more of the predecessors, or are securities which, having been previously registered, have become or are to become securities of the registrant by operation of law or otherwise upon the succession.

(c) The registrant acquired all the assets and assumed all the liabilities of its predecessor or predecessors.

(d) Except for such changes as may have resulted (1) from the substitution of issuers incident to the succession, or (2) from changes in capital stock liability per share, or (3) from the issuance of securities in satisfaction of dividends or interest in arrears on securities of predecessors, the capital structure of the registrant immediately following the succession was substantially the same as the capital structure of the single predecessor or the combined capital structure of the predecessors, or in a case falling within paragraph (a) (3) above, the combined capital structure of all the constituent corporations.

The term “wholly owned subsidiary” as used in this rule refers to a subsidiary substantially all the outstanding stock of which is held, directly or indirectly, by a single parent.

Form 8--C. For registration on an additional exchange. -- This form may be used for applications for registration of securities on an exchange upon which no securities of the registrant are listed and registered, if securities of the registrant are registered pursuant to Section 12 (b), (c), and (d) on another exchange.

Form 10. For corporations. -- This form shall be used for applications for the permanent registration of securities of corporations, filed on and after February 13, 1935, except the following: Securities of companies making annual reports under Section 20 of the Interstate Commerce Act, as amended, or under Section 219 of the Communications Act of 1934; certificates of deposit; American certificates against foreign issues, either government or corporate; securities of insurance companies, other than companies engaged primarily in the title insurance business; securities of banks and bank holding companies; securities of investment trusts; securities issued by any corporation organized under the laws of any foreign country other than a North American country or Cuba; bonds issued by any corporation organized under the laws of a North American country or Cuba, which are guaranteed by any foreign government; securities issued by any corporation, foreign or domestic, which is directly or indirectly owned or controlled by any foreign government: Provided, however, That this form shall not be used for applications for the permanent registration of securities of any corporation for which, at the time the application is filed, Form 22 or 23 is prescribed. And provided further, That this form shall not be used for applications for the permanent registration of securities of any corporation, if, at the time the application is filed, such corporation is in bankruptcy or receivership or in the process of reorganization pursuant to Section 77 or 77B of the Bankruptcy Act, and (a) a trustee or receiver appointed in such proceedings has title to or possession of a substantial portion of the assets of such corporation, or (b) such corporation is in possession of a substantial portion of its assets pursuant to an order entered under Subdivision (c), Clause (2) of said Section 77 or Subdivision (c), Clause (1) of said Section 77B. Any foreign issuer which by this paragraph is to file on Form 10 as to any class of securities other than bonds may also file on such form for such bonds; and any issuer of bonds which is organized under the laws of any foreign country may at its option file on Form 10 until 90 days after the proper form applicable to such foreign issuer shall have been published.

Form 11. For unincorporated issuers. -- This form shall be used for applications filed on or after March 30, 1935, for the permanent registration of securities of unincorporated issuers, except the following: Securities of companies making annual reports under Section 20 of the Interstate Commerce Act, as amended, or under Section 219 of the Communications Act of 1934; certificates of deposit; voting trusts certificates; American certificates against foreign issues, either government or private; securities of insurance companies; securities of banks and bank holding companies; securities of investment

trusts; securities issued by a national of a foreign country other than a North American country or Cuba; bonds issued by a national of a North American country or Cuba, which are guaranteed by any foreign government; securities of any issuer, foreign or domestic, which is directly or indirectly owned or controlled by any foreign government: Provided, however, That this form shall not be used for applications for the permanent registration of securities of any issuer for which, at the time the application is filed, Form 22 or 23 is prescribed. And provided further, That this form shall not be used for applications for the permanent registration of securities of any issuer, if, at the time the application is filed, such issuer is in bankruptcy or receivership or in the process of reorganization pursuant to Section 77 or 77B of the Bankruptcy Act, and (a) a trustee or receiver appointed in such proceedings has title to or possession of a substantial portion of the assets of such issuer, or (b) such corporation is in possession of a substantial portion of its assets pursuant to an order entered under Subdivision (c), Clause (2) of said Section 77 or Subdivision (c), Clause (1) of said Section 77B.

Form 12. For companies making annual reports under Section 20 of the Interstate Commerce Act, as amended, or under Section 219 of the Communications Act of 1934. -- This form shall be used for applications filed on or after April 10, 1935, for the permanent registration of securities of companies making annual reports under Section 20 of the Interstate Commerce Act, as amended, or under Section 219 of the Communications Act of 1934, except such companies in receivership or in process of reorganization pursuant to Section 77 of the Bankruptcy Act.

Form 12-A. For companies in receivership or bankruptcy and making annual reports under Section 20 of the Interstate Commerce Act, as amended, or under Section 219 of the Communications Act of 1934. -- This form shall be used for applications filed on or after June 17, 1935, for the permanent registration of securities of companies making annual reports under Section 20 of the Interstate Commerce Act, as amended, or under Section 219 of the Communications Act of 1934, and in receivership or in bankruptcy (including proceedings under Sections 77 or 77B of the Bankruptcy Act).

Form 13. For insurance companies other than life and title insurance companies. -- This form shall be used for applications filed on or after May 7, 1935, for permanent registration of securities of corporations engaged, directly or through subsidiaries, primarily in insurance business, except corporations engaged primarily in the life or title insurance business. This form shall not be used for corporations engaged primarily in the business of guaranteeing mortgages or mortgage-participation certificates.

Pending the authorization of a form for registration of securities of corporations engaged primarily in the life insurance business, and for a period of 30 days after the filing of applications on such form is authorized, such corporations may file application on Form 13 for Insurance Companies other than Life and Title Insurance Companies.

Insofar as Form 13 may be inappropriate to the life insurance business, a corporation engaged in the life insurance business filing on Form 13, pursuant to this rule, shall furnish information comparable to that required by Form 13; and, in lieu of financial statements required under the Instructions as to Financial Statements in the Instruction Book for Form 13, such corporation may file a copy of its last annual statement filed with its State regulatory authority.

Form 14. For certificates of deposit issued by a committee. -- This form shall be used for applications on or after May 10, 1935, for the permanent registration of certificates of deposit issued by a committee.

Form 15. For incorporated investment companies. -- This form shall be used for applications filed on or after May 15, 1935, for the permanent registration of securities of any corporation which is engaged, either directly or through subsidiaries, primarily in the business of investing and reinvesting, or trading in securities, for the purpose of revenue and for profit, and not in general for the purpose, or with the effect, of exercising control; except securities of such corporations in process of reorganization pursuant to Section 77B of the Bankruptcy Act or securities of such corporations in bankruptcy or receivership.

Form 16. For voting trust certificates and underlying securities. -- This form shall be used for applications filed on or after May 18, 1935, for the permanent registration of voting trust certificates and underlying securities.

Form 17. For unincorporated issuers engaged primarily in the business of investing or trading in securities. -- This form shall be used for applications filed on or after May 31, 1935, for the permanent registration of securities of any unincorporated issuer which is engaged, either directly or through subsidiaries, primarily in the business of investing and reinvesting, or trading, in securities, for the purpose of revenue and for profit, and not in general for the purpose, or with the effect, of exercising control; except securities of such issuers in process of reorganization pursuant to Section 77B of the Bankruptcy Act or securities of such issuers in bankruptcy or receivership.

Form 18. For foreign governments and political subdivisions thereof. -- This form shall be used for applications filed on or after July 1, 1935, for the permanent registration of securities of any foreign government or political subdivision thereof: Provided, however, That any public corporation or other autonomous entity in the nature of a political subdivision, except a State, province, county, or municipality or similar body politic, may, at its option, use Form 21 in lieu of this form.

Form 19. For American certificates against foreign issues and for the underlying securities. -- This form shall be used for applications filed on or after July 15, 1935, for the permanent registration of American certificates (for example, so-called American depositary receipts for foreign shares or American participation certificates in foreign

bonds or notes) issued against securities of foreign issuers deposited with an American depositary (whether physically held by such depositary in America or abroad) and of the foreign securities so deposited.

Form 20. For securities other than bonds of foreign private issuers. -- This form shall be used for applications filed on or after July 15, 1935, for the permanent registration of securities other than bonds or other evidences of indebtedness (a) issued by a national of a foreign country other than a North American country or Cuba, or (b) issued by any corporation or unincorporated association, foreign or domestic, which is directly or indirectly owned or controlled by any foreign government.

Form 21. For bonds of foreign private issuers. -- This form shall be used for applications filed on or after July 15, 1935, for the permanent registration of bonds or other evidences of indebtedness (a) issued by a national of a foreign country other than a North American country or Cuba; (b) issued by a national of a North American country or Cuba which are guaranteed by any foreign government; (c) issued by any corporation or unincorporated association, foreign or domestic, which is directly or indirectly owned or controlled by any foreign government; or (d) issued by any public corporation or other autonomous entity in the nature of a political subdivision which shall at its option elect to use this form in lieu of Form 18, except that this form is not to be used by a State, province, county, or municipality or similar body politic.

Form 22. For issuers reorganized in insolvency proceedings or which have succeeded to a person in insolvency proceedings. -- This form shall be used for applications for registration of securities of any issuer which, pursuant to a plan --

(a) Has been or is being reorganized in insolvency proceedings; or

(b) Has acquired or is to acquire, directly or indirectly, substantially all of its business and assets (other than cash) from a person in insolvency proceedings or from such person and one or more of its subsidiaries, and is continuing or is to continue the business so acquired; or

(c) Being a subsidiary of a person in insolvency proceedings, has acquired or is to acquire directly or indirectly substantially all of its assets (other than cash and other than assets owned by it prior to such acquisition) from such person or from such person and one or more of its subsidiaries;

if the securities are, or are to be, outstanding or issued pursuant to the plan, or were or are to be issued after the consummation of the plan: Provided, That this form shall not be used by issuers for which Form 8-A, 12, or 12-A is prescribed, or for applications filed with the exchange after the expiration of a full fiscal year of the issuer commencing on or after the date on which the transfer or opening of accounts was made.

Form 23. For successor issuers. -- This form shall be used for applications for registration of securities of any issuer which has acquired, or is presently to acquire, directly or indirectly (through the acquisition of securities or otherwise) the major portion of its business and assets (other than cash) by acquiring all or a part of the business and assets of one or more other persons, and is continuing or is to continue, the business so acquired: Provided, however, That this form shall not be used by issuers for which either Form 8-A, 8-B, 12, 12-A, 20, 21, or 22 is prescribed, or for applications filed with the exchange after the expiration of a full fiscal year of the issuer commencing on or after the date of succession.

Form 24. For bank holding companies. -- This form shall be used for applications for the registration of securities of any person which is engaged, either directly or through subsidiaries, primarily in the business of owning securities of banks, for the purpose or with the effect of exercising control.

Form 1-J. For registration of unissued warrants for "when issued" dealing. -- This form is to be used for applications for registration of unissued warrants, pursuant to Section 12 (d) of the Securities Exchange Act of 1934 for "when issued" dealing on a national securities exchange.

Form 2-J. For registration of unissued securities, other than unissued warrants for "when issued" dealing. -- This form is to be used for applications for registration of unissued securities, other than unissued warrants, pursuant to Section 12 (d) of the Securities Exchange Act of 1934 for "when issued" dealing on a national securities exchange.

Form 15-AN. For statements in respect of exemption of issued warrants. -- This form is to be used for statements in respect of exemption of issued warrants, pursuant to Section 3 (a) (12) of the Securities Exchange Act of 1934.

FOR REPORTS TO BE FILED BY OFFICERS, DIRECTORS, AND SECURITY HOLDERS

Form 4. For reporting changes in ownership of equity securities. -- Every person who at any time during any month has been directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is listed on a national securities exchange, or a director or an officer of the issuer of such security, shall, if there has been any change during such month in his ownership of any equity security of such issuer, whether registered or not, file with each exchange on which any equity security of the issuer is listed and registered a statement on Form 4 (and a single duplicate original thereof with the Commission) indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred

during such calendar month. Such statements must be received by the Commission and the exchange on or before the 10th day of the month following that which they cover.

Form 5. For reporting ownership of equity securities. -- In the case of an equity security (other than an exempted security) which is listed subsequent to February 15, 1935 on a national securities exchange, every person who at the time such registration becomes effective is directly or indirectly the beneficial owner of more than 10 percent of any class of such security or a director or an officer of the issuer of such security, shall file with each exchange on which any equity security of the issuer is listed and registered a statement on Form 5 (and a single duplicate original thereof with the Commission) of the amount of all equity securities of such issuer, whether registered or not, so beneficially owned by him at the, time such registration became effective. Such statement must be received by the Commission and the exchange on or before the 10th day of the following calendar month. If such person files a statement on Form 4 for the same calendar month in respect of the same securities, he need not file an additional statement pursuant to this paragraph.

Form 6. For reports by persons who have just become officers or directors or security holders of more than 10 percent of any class of equity security. -- Every person who becomes directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security), which is listed on a national securities exchange, or becomes a director or an officer of the issuer of such security, shall file with each exchange on which any equity security of the issuer is listed and registered a statement on Form 6 (and a single duplicate original thereof with the Commission) of the amount of all equity securities of such issuer, whether registered or not, so beneficially owned by him immediately after becoming such beneficial owner, director, or officer. Such statement must be received by the Commission and the exchange on or before the 10th day following the day on which such person became such beneficial owner, director, or officer. Such person need not file the statement required by this paragraph, if prior to such 10th day and during the calendar month in which he has become such beneficial owner, director, or officer,. there has been a change in his beneficial ownership which will require him to file a statement on Form 4 with respect to the same securities.

FOR REGISTRATION OF BROKERS AND DEALERS TRANSACTING BUSINESS ON OVER-THE-COUNTER MARKETS

Form 3-M. For applications for registration of brokers and dealers, except applications for which Form 4-M is authorized. -- This form is to be used for applications filed on or after July 1, 1936, for the registration of brokers and dealers pursuant to Section 15 (b) of the Securities Exchange Act of 1934, as amended, except applications. for which Form 4-M is authorized to be used.

Form 4-M. For applications for registration of partnerships formed upon death, withdrawal, or admission of one or more partners in partnerships registered as brokers or dealers. -- This form is to be used (a) for applications filed by a registered partnership on or after July 1, 1936, pursuant to Section 15 (b) of the Securities Exchange Act of 1934, as amended, for the registration of a partnership to be formed as the successor to the applicant by the withdrawal or admission of one or more partners in the applicant; and (b) for applications filed on or after October 10, 1936, pursuant to said Section 15 (b) and Rule X-15B-4, for the registration of a partnership formed as the successor to a registered partnership which has been dissolved by the death, withdrawal, or admission of one or more partners: Provided, That the application is filed within 30 days after such dissolution.

Form 5-M. For adoption of applications filed by predecessors. -- This form is to be used by a broker or dealer in adopting as its own an application for registration on Form 3-M or Form 4-M filed on its behalf by a predecessor.

Form 6-M For supplemental statements to applications for registration of brokers and dealers. -- This form is to be used for correcting inaccuracies and reporting changes in the information contained or incorporated in any application filed on Form 1-M, Form 3-M, or Form 4-M or in any adoption filed on Form 5-M or in any supplemental statement filed on Form 2-M or Form 6-M.

FOR ANNUAL AND OTHER REPORTS OF ISSUERS HAVING SECURITIES REGISTERED ON NATIONAL SECURITIES EXCHANGES

Form 8-K. For current reports. -- This form is to be used for the current reports required by Rule X-13A-6.⁷ [Footnote: Rule X-ISA-6. Current reports. (a) A current report on the appropriate form shall be filed by the issuer of a security registered on a national securities exchange (hereinafter called "the registrant") in case any of the events enumerated below occurred or shall occur at any time after the close of the first fiscal year or other one-year period for which an annual report is required to be filed by the registrant, or if the registrant had no security registered on a national securities exchange on December 31, 1935, at any time after the registration of any of its securities first became or shall become effective:

- (1) A material amendment of any exhibit previously filed by the registrant pursuant to Section 12 or 13 of the Act;
- (2) The execution of any voting trust agreement, contract, or indenture of a character required to be filed as an exhibit in the form of annual report appropriate for the registrant;
- (3) A substantial restatement of the capital shares account of the registrant;

(4) The issuance of any new class of securities, or an aggregate increase or decrease of more than five percent in the amount of any class of securities of the registrant outstanding, as last previously reported, unless resulting from an ordinary sinking fund operation; provided that (i) no report need be made with respect to notes, drafts, bills of exchange, or bankers' acceptances having a maturity at the time of issuance of not exceeding one year, and (ii) for the purposes of this paragraph (4), securities held by the registrant shall not be deemed "outstanding";

(5) The granting or extension of any option to purchase equity securities of the registrant from the registrant, provided that a current report need be made only when one or more options calling for an aggregate principal amount of \$50,000 or more of a single issue of convertible evidences of indebtedness, or an aggregate of 1,000 or more shares or other units of any other single class of equity securities, have been granted or extended and have not been previously reported;

(6) The exercise, in whole or in part, of any option to purchase equity securities of the registrant from the registrant, provided that a current report need be made only when a person or persons have acquired an aggregate principal amount of \$50,000 or more of a single issue of convertible evidences of indebtedness, or an aggregate of 1,000 or more shares or other units of any other single class of equity securities, through one or more exercises which have not been previously reported;

(7) A person's becoming, or ceasing to be, a parent or subsidiary of the registrant, provided that no report need be made as to any subsidiary the name of which would not be required to be furnished in the form of annual report appropriate-for the registrant;

(8) A substantial revaluation of the assets of the registrant;

(9) A substantial withdrawal or substitution with respect to property securing any issue of registered securities; provided however, That no report need be filed as to any event concerning which information substantially similar to that required by Form 8-K shall have been previously reported by the registrant.

(b) The current report shall be filed not more than ten days after the close of the calendar month during which occurred the event obligating the registrant to file the current report, or if the event occurred prior to December 1, 1936, not later than January 10, 1937.

(c) As used in this rule, the term "previously reported" means previously reported in an application for registration or a report filed pursuant to Section 12 or 13 of the Act; the term "option" does not include options evidenced by an issue of securities, such as an Issue of warrants or rights; the term "unit" means that unit of a class of securities representing the smallest interest in the registrant or in property of the registrant, or having the smallest par or face value or denomination which is separately transferable by

a holder thereof. Unless the context otherwise requires, all other terms used In this rule have the same meanings as in the Act, In the form appropriate for an annual report of the registrant, and In the Instruction book accompanying such form.

(d) The foregoing provisions of this rule shall not be applicable to Issuers of securities which are registered pursuant to an application on Form 18, 19, 20, or 21.]

Form 10-K. For corporations. -- This form is to be used for the annual reports of all corporations except those for which another form is specifically prescribed.

Form 11-K. For unincorporated issuers. -- This form is to be used for the annual reports of all unincorporated issuers except those for which another form is specifically prescribed.

Form 12-K. For companies making annual reports under Section 20 of the Interstate Commerce Act, as amended, or under Section 219 of the Communications Act of 1934. -- This form is to be used for the annual reports of companies making annual reports under Section 20 of the Interstate Commerce Act, as amended, and of carriers making annual reports under Section 219 of the Communications Act of 1934, except such companies in receivership or in bankruptcy, including proceedings for reorganization pursuant to Section 77 or 77B of the Bankruptcy Act, at the close of the fiscal year for which the report is made.

Form 12A-K. For companies in receivership or bankruptcy at close of fiscal year and making annual reports under Section 20 of the Interstate Commerce Act, as amended, or under Section 219 of the Communications Act of 1934. -- This form is to be used for the annual reports of companies making annual reports under Section 20 of the Interstate Commerce Act, as amended, and of carriers making annual reports under Section 219 of the Communications Act of 1934, if such companies were in receivership or in bankruptcy, including proceedings for reorganization pursuant to Section 77 or 77B of the Bankruptcy Act, at the close of the fiscal year for which the report is made.

Form 13-K. For insurance companies other than life and title insurance companies. -- This form is to be used for the annual reports of corporations engaged, directly or through subsidiaries, primarily in the insurance business, except corporations engaged primarily in the life or title insurance business. This form is not to be used by corporations engaged primarily in the business of guaranteeing mortgages or mortgage-participation certificates.

Form 14-K. For certificates of deposit issued by a committee. -- This form is to be used for the annual reports of issuers of certificates of deposit issued by a committee.

Form 15-K. For incorporated investment companies. -- This form is to be used for the annual reports of corporations engaged either directly or through subsidiaries primarily in

the business of investing and reinvesting or trading in securities for the purpose of revenue and for profit, and not in general for the purpose or with the effect of exercising control.

Form 16-K. For voting trust certificates and underlying securities. -- This form is to be used for annual reports relating to securities evidencing a participation in a voting trust agreement or a similar agreement for the holding of securities for voting purposes and to securities held subject to such agreements.

Form 17-K. For unincorporated issuers engaged primarily in the business of investing or trading in securities. -- This form is to be used for the annual reports of unincorporated issuers engaged either directly or through subsidiaries primarily in the business of investing and reinvesting or trading in securities for the purpose of revenue and for profit, and not in general for the purpose or with the effect of exercising control.

Form 18-K. For foreign governments and political subdivisions thereof. -- This form is to be used for the annual reports of foreign governments or political subdivisions thereof, except any public corporation or other autonomous entity in the nature of a political subdivision, other than a State, province, county, or municipality or similar body politic which, at its option, has registered its securities on Form 21 in lieu of Form 18.

Form 19-K. For issuers of American certificates against foreign issues and the underlying securities. -- This form is to be used for the annual reports of issuers of American certificates (for example, so-called American depositary receipts for foreign shares or American participation certificates in foreign bonds or notes) issued against securities of foreign issuers deposited with an American depositary (whether physically held by such depositary in America or abroad) and of the foreign securities so deposited.

Form 20-K. For foreign private issuers registering securities other than bonds. -- This form is to be used for the annual reports of the following issuers with respect to securities other than bonds or other evidences of indebtedness: (a) Nationals of a foreign country other than a North American country or Cuba, and (b) corporations or unincorporated associations, foreign or domestic, which are directly or indirectly owned or controlled by any foreign government.

Form 21-K. For foreign private issuers registering bonds. -- This form is to be used for the annual reports of the following issuers with respect to bonds or other evidences of indebtedness: (a) Nationals of a foreign country other than a North American country or Cuba, (b) nationals of a North American country or Cuba if such bonds or other evidences of indebtedness are guaranteed by any foreign government, (c) corporations or unincorporated associations, foreign or domestic, which are directly or indirectly owned or controlled by any foreign government, and (d) public corporations or other autonomous entities in the nature of political subdivisions which, at their option, have registered securities on Form 21 in lieu of Form 18.

Form 24-K. For bank holding companies. -- This form is to be used for the annual reports of any person which is engaged, either directly or through subsidiaries, primarily in the business of owning securities of banks, for the purpose or with the effect of exercising control.

FOR REGISTRATION OR EXEMPTION OF A NATIONAL SECURITIES EXCHANGE

Form 1. Application for registration or exemption from registration as a National Securities Exchange. -- This form shall be filed in connection with the applications of securities exchanges for registration or exemption from registration.

Form 9. Amendatory and/or supplementary statement to registration statement filed by an exchange. -- This form shall be used for filing amendatory and/or supplementary statements to registration statements of national securities exchanges.

Form 9-A. Amendatory and/or supplementary statement to application for exemption from registration filed by an exchange. -- This form shall be used for filing amendatory and/or supplementary statements to applications for exemption from registration as national securities exchanges.

GUIDE TO FORMS ADOPTED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Form U-2. Declaration and periodic report. -- This form is to be used by a subsidiary of a registered holding company primarily engaged in business as a broker or dealer, which claims exemption under Rule U-3D-4 and also for the quarterly reports to be filed by such a company.

Form U-3A3-1. Quarterly statement filed by banks claiming exemption. -- This form is prescribed for quarterly reports to be filed by banks claiming exemption from any provisions of the Act by virtue of Rule U-3A3-1.

Form U-5-A. Notification of registration. This form is to be used for notification of registration pursuant to Section 5 (a) of the Act.

Form U-5-B. Registration statement. -- This form is to be used for registration statements to be filed by registered holding companies pursuant to Section 5.

Form U-5-S. Annual supplement to registration statement. -- This form is to be used for the annual supplements to registration statements (Form U-5-B) to be filed by registered holding companies.

Form U-6B-1. Application pursuant to Section 6 (b) . -- This form is to be used for applications by subsidiary companies of registered holding companies, pursuant to Section 6 (b) of the Act, for exemption from the provisions of Section 6 (a) with respect to the issue or sale of securities solely for the purpose of financing the business of the applicant and expressly authorized by the State commission of the State in which the applicant is organized and doing business.

Form U-6B-2. Certificate of notification. -- This form is to be used for the filing of certificates of notification by registered holding companies and subsidiaries thereof pursuant to Rule U-6B-2.

Form U-7. Declaration pursuant to Section 7. -- This form is to be used for declarations filed pursuant to Section 7 of the Act, by a registered holding company or subsidiary company thereof, either in respect of the issue or sale of securities issued by it, or in respect of the exercise by the declarant of any privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of any outstanding securities issued by it.

Form U-10-1. Application pursuant to Section 10 (a) (1). -- This form is to be used for applications for the approval of the acquisition of any securities by a registered holding company, or any subsidiary company thereof, or the acquisition of securities of a public utility company by a person who is an affiliate (as defined in Clause (A) of Section 2 (a) (11) of the Act) of such company and of any other public utility or holding company, or will become such an affiliate by virtue of such acquisition.

Form U-10-2. Application pursuant to Section 10 (a) (2) or 10 (a) (3). -- This form is to be used for applications for the approval of the acquisition of any utility assets or other interest in any business by a registered holding company, or any subsidiary company thereof.

Form U-12D-1. Application pursuant to Section 12 (d). -- This form is to be used for applications for the approval of a sale, directly or indirectly, by a registered holding company to any person of any voting security which it owns of a public utility company.

Form-U-12D-2. Application pursuant to Section 12 (d). -- This form is to be used for applications for the approval of the sale of utility assets, directly or indirectly, by registered holding companies.

Form U-12 (i)-1. Statement required pursuant to Section 12 (i) This form is to be used for statements to be filed with the Commission, pursuant to Section 12 (i), by any person

employed or retained by any registered holding company or by any subsidiary company thereof, who presents, advocates, or opposes any matter affecting any such company before the Congress or any member or committee thereof, or before the Securities and Exchange Commission or the Federal Power Commission or any member, officer, or employee of either such Commission.

Form U-13-1. Application for approval of mutual service company or declaration with respect to organization and conduct of business of subsidiary service company. -- This form is to be used, pursuant to Rule U-13-22, for an application for approval of a mutual service company or for a declaration with respect to the organization and conduct of business of a subsidiary service company.

Form U-13-60. Annual report of mutual and subsidiary service companies. -- This form is to be used for the filing of annual reports by each mutual service company and each subsidiary service company pursuant to Rule U-13-60.

Form U-14-1. Quarterly report of acquisitions. -- This form is prescribed for quarterly reports of acquisitions of securities to be filed by registered holding companies pursuant to Rule U-14-1.

Form U-14-3. Annual report of registered holding companies. -- This form is to be used for the filing of annual reports by registered holding companies pursuant to Rule U-14-3.

Form U-17-1. Reports of ownership by officers and directors. -- This form is to be used for statements of ownership required by Section 17 (a) of the Act to be filed by persons who are officers or directors of a registered holding company at the time when it is registered. A statement must be filed by every officer and director of a holding company following its registration and following his appointment or election after registration, even if he owns no securities of the company or its subsidiaries.

Form U-17-2. Reports of changes of ownership by officers and directors. -- This form is to be used by officers and directors of registered holding companies in reporting changes in their beneficial ownership of securities of such holding companies or any of their subsidiaries, as required by Section 17 (a) of the Act.

Form U-17-3. Statement to be signed by officer or director pursuant to Rule U-17C-11. -- This form is to be used for statements to be signed by officers or directors with respect to whom exemption is claimed pursuant to Rule U-17C-11 from the provisions of Section 17 (c) of the Act.